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:  
   1- Government Code Section 54956.9(b) - Conference with Legal Counsel - Anticipated Litigation: One Case.  
   2- Government Code Section 54956.9(a) - Conference with Legal Counsel - Existing Litigation: John Hale et al. v. City of Porterville et al.  

7:00 P.M. RECONVENE OPEN SESSION  
**REPORT ON ANY ACTION TAKEN IN CLOSED SESSION**  

Pledge of Allegiance Led by Council Member Pedro Martinez  
Invocation  

**PRESENTATION**  
City Manager’s Featured Projects for February, 2007  

**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. **Claim - Mills**  
   Re: Considering rejection of a claim in the amount of $3,550 for property losses allegedly sustained on December 28, 2006 when the City shut off the electricity preventing claimant from moving out of the Porterville Hotel as required and removing her belongings.  

2. **Claim - Carmona**  
   Re: Considering rejection of a claim in the amount of $147.50 for property damage allegedly sustained on January 11, 2007 due to a sewer backup at 293 North Baker Street.  

Page 1 of 5
3. Claim - Wicked Wardrobe
Re: Considering rejection of a claim in the amount of $31,875, an unlimited civil case, for property damage sustained on December 2, 2006 at 228 North Main Street when City firefighters allegedly used excessive amounts of water to extinguish a fire at claimant’s business.

4. Amendment of Dee Jaspar and Associates Water Well Design and Inspection Service Agreement
Re: Authorizing Amendment to Agreement for additional services pertaining to the Newcomb Street Booster Station Facility for an amount not to exceed $24,932.

5. California Infrastructure & Economic Development Bank (CIEDB) Water Loan Application
Re: Approving submission of loan application for financing Eastside Water Improvement Projects.

6. Intent to Set a Public Hearing for Reimbursement Agreements for Concrete Improvement Construction by the City - Indiana Street Project, Putnam Avenue to Olive Avenue
Re: Setting a public hearing for March 7, 2007, pursuant to the Mitigation Fee Act, for the establishment of a concrete reimbursement fee.

7. Acceptance of Improvements - Amalene Estates, Phase One (Antoine Bechara - Bechara Construction)
Re: Accepting public improvements for the Subdivision generally located west of Westwood Street, south of Olive Avenue, and north of the Tule River.

8. Reimbursement for the Construction of Master Plan Improvements - Amalene Estates, Phase One Subdivision
Re: Approving the reimbursement to Bechara Construction, pursuant to Municipal Code Section 25-32.3, in an amount not to exceed $56,270.24, for Master Plan Improvements built in conjunction with the Subdivision generally located west of Westwood Street, south of Olive Avenue, and north of the Tule River.

9. Community Clean-Up Events
Re: Declaring April 28, 2007 as “Spring Clean Up Day,” and October 27, 2007 as “Fall Clean Up Day,” and authorizing the City to accept trash, litter and yard clippings on said days at no cost to City refuse customers, at an estimated projected total cost to the City of $5,000.

10. Airport Lease Renewal - Lot 44A
Re: Approving Lease Renewal between the City and Mr. Silvio Addamo for Lot 44A at the Porterville Municipal Airport for a fifteen (15) year term at the annual rate of $1,037.40 with annual CPI adjustments.

Re: Approving annual event to be held from 5:00 a.m. to 11:00 a.m. beginning at Putnam Avenue and Tulsa Street, subject to the restrictions and requirements contained in the application documents.

12. State of California, Office of Traffic Safety Grant
Re: Authorizing the Fire Department to submit a $30,000 grant application to fund purchase of emergency equipment and associated training.

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

PUBLIC HEARINGS
Re: Considering approval of: the environmental document, a General Plan Amendment from Industrial to General Commercial, and Zone Change from M-1 (Light Manufacturing) to C-2(D) (General Commercial with Design Review Overlay) for a 10.7± acre vacant site located on the northeast corner of South Jaye Street and State Route 190.

14. Zone Change 1-2007
Re: Considering a Zone Change from R-1 (One-Family Residential) to C-1 (D) (Neighborhood Commercial-Design Review Overlay) for two parcels located at 1907 West Morton Avenue.

15. Zone Change 2-2007
Re: Considering a Zone Change from C-1 (D) (Neighborhood Commercial-Design Review Overlay) to R-1 (One-Family Residential) for two lots located at the southwest corner of West Morton Avenue and North Salisbury Street.

16. Ennis Estates Tentative Subdivision Map (Ennis Homes)
Re: Considering a request to continue the public hearing and item to the meeting of March 6, 2007.

SECOND READING
17. Ordinance 1711, Zoning Ordinance Amendment 2006-7 (Formerly 3-2004) – An Ordinance Amending Various Signage Regulations
Re: Giving Second Reading to Ordinance 1711, amending portions of the Porterville Municipal Code and Zoning Ordinance pertaining to signage standards; waiving further reading and adopting said Ordinance.

18. Ordinance 1712, Request for Special Fireworks Permit
Re: Giving Second Reading to Ordinance 1712, amending Chapter 12, Article II, Fireworks, of the Porterville Municipal Code, waiving further reading and adopting said Ordinance.

SCHEDULED MATTERS
19. Resolution of Necessity Pertaining to the Acquisition of a Portion of Property (Approximately 7.3 Acres) Located at 1099 South Indiana Street, APN #268-090-008, Owners Carl D. Dennis and Alma L. Dennis, for the Proposed Construction of a Drainage Basin
Re: Considering adoption of resolution and granting the City Attorney the authority to take all appropriate action to acquire the real property.

Re: Considering approval of “D” Overlay Site Review for a commercial complex consisting of
11,775± sq. ft. of commercial lease space to be located at the northeast corner of Prospect Street
and Grand Avenue.

21. Regulations Concerning the Use of Land for the Purpose of Operating Dispensaries of
Marijuana for Medical Purposes
Re: Considering options available pertaining to the possible regulation of medical marijuana
dispensaries.

22. Porterville Municipal Water Slide – Construction Options
Re: Considering options available to proceed with the Water Slide Project, including directing
staff to negotiate a contract with sole bidder Webb & Sons at a cost not to exceed $183,288.29.

23. General Plan Referral - Porterville Unified School District
Re: Determining whether the University Center Project proposed to be located generally at the
easterly prolongation of Morton Avenue, and the northerly prolongation of Holcomb Street, is
consistent with the General Plan.

24. Consider Revised Master Plan and Design Services for Heritage Site Softball Complex
Re: Considering the Parks & Leisure Services Commission’s recommendation to approve the
revised Master Plan for a softball complex; approve the proposed expanded services with
Community Works Design Group; and approve the initial phase of construction.

25. Monache Basketball Court Lighting Project
Re: Considering Parks & Leisure Services Commission’s recommendation to consider various
funding options, project prioritization, and allocation of funds during the next budgetary cycle.

26. Centennial Plaza Bench Donations
Re: Approving recommendation of the Parks & Leisure Services Commission for selection of
a park bench style, and authorizing the acceptance of offers of donations for installation of
personalized benches.

27. Remediation of Pesticides Near the Air Attack Base at the Porterville Airport
Re: Considering project to remove contaminated soil, at an amount not to exceed $560,000,
pursuant to the requirements of the Department of Toxic Substance Control and the U.S.
Environmental Protection Agency.

28. Authorization to Advertise for Reclamation Area Manager or Farm Lease Services
Re: Considering options available with regard to management of City’s farming operation.

29. Tulare County Indian Gaming Initiative - Special Investigations Officer and Fire
Prevention/Public Education Officer
Re: Considering grant application in an amount of $161,439 for continuance of Special
Investigations Officer and Fire Prevention/Public Education Officer positions.

30. Council Member Request for an Agenda Item – “Discussion of City Nepotism Rule”
Re: Review of the City’s current nepotism policy.
31. **Request by Council Member – Discussion of Resolution of Support of the Request for Cross Deputization of the Tule River Tribe’s Tribal Police Force**
   Re: Consideration of a Council request.

32. **Council Member Request for an Agenda Item – “Work Assistance Program from Emergency Reserve”**
   Re: Considering implementation of a work assistance program through Proteus, Inc., utilizing $100,000 from the City’s Emergency Reserve, to assist local individuals impacted by the recent freeze.

**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 February 23, 2007

   *It shall be the policy of the City Council to complete meetings, including closed sessions, by 11:00 p.m. unless, upon consensus, Council elects to continue past the adjournment hour.*

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 Chief 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.
CITY MANAGER’S FEATURED PROJECT FOR FEBRUARY 2007

1. Indiana Street Project
2. Seven Human Resources Placements
3. Sign Ordinance Update
SUBJECT: CLAIM - MILLS

SOURCE: Administration

COMMENT: Carol Mills has filed a claim against the City for property losses sustained on December 28, 2006, when she was forced to move from the Porterville Hotel at 14 North Main Street. Ms. Mills is alleging that the City shut off the electricity preventing her from moving and removing her belongings.

The amount being claimed as of the presentation of this claim is $3,550.00, based on the purported value of Ms. Mill’s belongings.

RECOMMENDATION: That the Council reject said claim; refer the matter to the City's insurance adjustor; and direct the City Clerk to give the Claimant proper notification.

Item No. 1

DCM Appro./ Funded CM
CLAIM AGAINST

CLAIM FORM

(Please Type Or Print)

CITY OF PORTERVILLE

RECEIVED

JAN 2 2 2007

CITY OF PORTERVILLE

PERSONNEL

CITY OF PORTERVILLE

AMENDED

RECEIVED

JAN 19 2007

CITY OF PORTERVILLE

PERSONNEL

CLAIMANT'S NAME: [Redacted]

SS#: [Redacted]

Claimant's Telephone No.: [Redacted]

DOB: [Redacted]

Claimant's address: Living address confidential

Address where notices about claim are to be sent, if different from above: P.O. Box 1282

Porterville, Calif. 93257

Date of incident/accident: Dec. 21, 2006

Date injuries, damages, or losses were discovered: Dec. 21, 2006

Location of incident/accident: 14 N. Main, Porterville, Calif.

(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? Electricity was shut off preventing my moving out of hotel building plan.

(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)? Gary

Said he did not know if the city shut off Ele. or Nat.

What specific injuries, damages, or losses did claimant receive? Electricity was shut off from Dec. 21 to Dec. 28, preventing my move.

(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(1)] $2,250.00 Total loss.

How was this amount calculated (please itemize)? 250 small bags and 100 large bags of apparel $250 x $5.00 = $1,250 + 100 bags at $10.00 each = $1,000.00 + Closet + jewelry, furniture, house where = $1,300.00 = $2,550.00

Date Signed: Jan 19, 2007 Signature: [Redacted]

If signed by representative:

Representative's Name

Address

Telephone #

Relationship to Claimant
SUBJECT: CLAIM - CARMONA

SOURCE: Administration

COMMENT: Vanessa Carmona has filed a claim against the City for property damage sustained on January 11, 2007, when the sewer line backed up into her home at 293 N. Baker Street. Ms. Carmona is claiming that there was about an inch of water in the house causing damage to her home.

The amount being claimed as of the presentation of this claim is $147.50 plus replacement costs for the home, based on the plumber’s bill.

RECOMMENDATION: That the Council reject said claim; refer the matter to the City’s insurance adjustor; and direct the City Clerk to give the Claimant proper notification.
CITY OF PORTERVILLE
CLAIM FORM

FORM B
(Please Type Or Print)

CLAIM AGAINST
CITY OF PORTERVILLE

Claimant's name: Vanessa Caramona. SS#: [Redacted]
Claimant’s Telephone No.: [Redacted] DOB: [Redacted]
Claimant's address: Porterville, CA 93257

Address where notices about claim are to be sent, if different from above:

Date of incident/accident: 1-11-07
Date injuries, damages, or losses were discovered: Same
Location of incident/accident: Bathroom, side of house, inside existing rooms (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? I called at 7:00am to ask for them to come and look to see what was going on. It was an emergency. I don't remember names.

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

What specific injuries, damages, or losses did claimant receive? There was about an inch of water in the house to pave there will be rooms i bathroom. That Sheet was damaged.

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)] I would just like my money back for the plumbing $147.50 and replace what was damaged.

How was this amount calculated (please itemize)?

Date Signed: 1/16/07 Signature: [Signature]

If signed by representative:
Representative's Name
Address

Telephone # Relationship to Claimant
They told me to call back at 7:30 am. I called back at 7:30.
I told them my side of my house was flooded and if they can come out and look at it. I also told them the bathroom was backed up. They told me to hang up and call a plumber.
Then as the water kept coming out, I called them back to ask them if they could at least come turn off my water because I was not sure where it was coming from.

Was wet and along the walls.
<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>AMOUNT</th>
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<tr>
<td>Rooted Mainline</td>
<td></td>
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</table>

Service Charge: $147.50

I hereby acknowledge that the above work was performed in a satisfactory manner.

- Pumping Service
- Precast Septic Tanks
- Cesspools

Interest at the rate of 1 1/2% per month which is an annual rate of 18% will be charged on past due accounts.

THIS IS YOUR INVOICE - STATEMENT SENT ONLY ON REQUEST
SUBJECT: CLAIM - WICKED WARDROBE

SOURCE: Administration

COMMENT: Sheri Rodriguez, owner of the Wicked Wardrobe, has filed a claim against the City for property damage which occurred on December 2, 2006. Ms. Rodriguez is claiming that the Fire Department used an exorbitant amount of water negligently applied to a very small fire at her business, which resulted in major water damage.

The amount being claimed as of the presentation of this claim is $31,875.00, as an Unlimited civil case, based on damage to merchandise, equipment, lost revenue, repairs, and fees for water restoration.

RECOMMENDATION: That the Council reject said claim; refer the matter to the City's insurance adjustor; and direct the City Clerk to give the Claimant proper notification.

DCM Appro./ Funded CM
CITY OF PORTERVILLE
CLAIM FORM
FORM B
(Please Type Or Print)

CLAIM AGAINST ___________________________ CITY OF PORTERVILLE

Claimant's name: Wicked Wardrobe / Sheri Rodriguez SS#: [redacted]
Claimant's Telephone No.: [redacted] DOB: [redacted]
Claimant's address: [redacted] Porterville, CA 93257
Address where notices about claim are to be sent, if different from above: __________________________

Date of incident/accident: December 2, 2006
Date injuries, damages, or losses were discovered: December 2, 2006
Location of incident/accident: 228 N. Main Street, Porterville, CA 93257
(If blank 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? An exorbitant amount of water negligently applied to a very small fire which resulted in major water damage.
(If blank 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)? Porterville Fire Department / Firefighter Kirk Lowry

What specific injuries, damages, or losses did claimant receive? Store merchandise, equipment, costs for water damage/restoration, 4 days loss of revenue, repairs
(If blank 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(6) $31,875.00 Unlimited civil case

How was this amount calculated (please itemize)? Merchandise $15,000 equipment $6000
fees for water restoration $4375, 4 days revenue (Christmas Season) $5200 repairs $800
(If blank of this form or separate sheet if necessary to answer this question in detail)

Date Signed: 12/6/06 Signature: [signature]

If signed by representative:
Representative's Name ___________________________
Address _______________________________________
[additional information]
Telephone # ___________________________
Relationship to Claimant ___________________________
SUBJECT: AMENDMENT OF DEE JASPAR AND ASSOCIATES WATER WELL DESIGN AND INSPECTION SERVICE AGREEMENT

SOURCE: Public Works Department - Engineering Division

COMMENT: Dee Jaspar & Associates is under contract with the City to design Well No. 28 and four additional municipal water wells. Well No. 28 is located on the west side of "F" Street, north of Gibbons Avenue and adjacent to the southerly boundary of the WalMart Distribution Center.

Staff is seeking an amendment to Dee Jaspar's Service Agreement that will allow the designer to design, prepare plans and specifications for the construction of the Newcomb Street Booster Station Facility. This facility will transfer water from the West Pressure Zone to the Central Pressure Zone in the City water distribution system.

Dee Jaspar and Associates will perform three tasks for the City. These tasks are 1) prepare plans and specifications for a booster pump station between the West & Central Pressure Zones, 2) prepare plans and specifications for site electrical and controls, and 3) issue plans for review, incorporate comments/modifications, re-issue plans for bidding purposes. The engineering proposal received from Dee Jaspar & Associates, Inc. is a not-to-exceed amount of $24,932.

Funding for this project will be from the Water Replacement Fund.

RECOMMENDATION: That City Council:

1. Authorize the Mayor to execute an Amendment to Dee Jaspar & Associates Service Agreement at an agreed fee of not-to-exceed $24,932 for the services described herein; and

2. Authorize progress payments up to 100% of the fee amount and authorize a 10% contingency to cover unforeseen costs.

ATTACHMENT: Locator Map
Dee Jaspar & Associates, Inc. Proposal
Addendum No. 1 – Newcomb Street Booster Station Facility
February 2, 2007

Michael K. Reed, City Engineer
City of Porterville Public Works Department
291 N. Main Street
Porterville, CA 93257

Re: Newcomb St. Booster Station Facility

Gentlemen:

Attached is an itemized list of engineering services to be provided to prepare plans and specifications for the construction of the Newcomb St. Booster Station Facility. This facility will transfer water from the West Pressure Zone to the Central Pressure Zone in the City water distribution system. The engineering proposal is a not-to-exceed amount of $24,932.00 and will be billed on a hourly basis for the work performed in accordance with our 2007 Rate Schedule.

Sincerely,

Curtis M. Skaggs
Dee Jaspar & Associates, Inc.
<table>
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<th>Phase</th>
<th>Principal Engineer</th>
<th>Registered Engineer</th>
<th>Staff Engineer</th>
<th>Surveyor</th>
<th>3-Man Crew</th>
<th>Drafting/Prep</th>
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Site survey data to be provided by City staff
City staff to provide as-built drawings of existing utilities and water lines in the vicinity of the site and puholing excluded from this scope
ADDENDUM NO. 1

***********

NEWCOMB STREET BOOSTER STATION FACILITY

***********

CITY OF PORTERVILLE

AND

DEE JASPAR & ASSOCIATES, INC.

Addendum No. 1 to the existing Service Agreement for Water Well No. 28 and four future Wells is issued by the City and accepted by CONSULTANT pursuant to the mutual promises, covenants and conditions contained in said Service Agreement between the above named parties dated January 17, 2006, in connection with the performance outlined in Tasks 1 through 5 for Newcomb Street Booster Station Facility.

Please refer to M.O. #07-021704 and M.O. #04-111505.

The creation of a new Purchase Order for the Newcomb Street Booster Station Facility is required. The project account number is 89-9770.

PURPOSE:

The purpose of this addendum is to amend the contract to provide services to the City to design, prepare plans and specifications for the construction of the Newcomb Street Booster Station Facility. The CONSULTANT will provide the City with three tasks. Those tasks are 1) prepare plans and specifications for a booster pump station between the West & Central Pressure Zones, 2) prepare plans and specifications for site electrical and controls, and 3) issue plans for review, incorporate comments/ modifications, re-issue plans for bidding purposes.

PAYMENT:

CITY shall pay CONSULTANT the not-to-exceed amount of $24,932 for the completion of the specified professional services. Payment will be made monthly on presentation of documented invoices and shall include CONSULTANT'S direct labor costs, indirect labor costs (overhead), direct expenses and CONSULTANT'S fee, not to exceed the sum set forth herein above.

IN WITNESS WHEREOF, duly authorized representatives of the CITY and the CONSULTANT have executed Addendum No. 1 for the Newcomb Street Booster Station Facility evidencing its issuance by CITY and accepted by CONSULTANT.

CONSULTANT'S NAME

By: Dee Jaspar

CITY OF PORTERVILLE

Cameron Hamilton, Mayor

Date

Date
SUBJECT: CALIFORNIA INFRASTRUCTURE & ECONOMIC DEVELOPMENT BANK (CIEDB) WATER LOAN APPLICATION

SOURCE: Public Works Department - Engineering Division

COMMENT: In September 2004, the City Council authorized Public Works to proceed with an application to the CIEDB to secure funding in the amount of 8.4 million to construct various water projects. The loan amount has been refined to reflect a loan application in the amount of 9 million dollars.

Changes in staff personnel made it difficult for the application process to move forward in a timely manner. However, subsequent to Council's direction, Engineering proceeded with the following:

- Design of a 550,000-gallon reservoir on the east side.
- Secured the services of and had east side property appraised.
- Evaluated and recommended converting an agricultural well to a municipal well.
- Prepared “Guideline” documents for constructing a surface water treatment facility.
- Negotiated an agreement with a consulting firm to update existing plans on the Martin Hill Reservoir project.
- Negotiated the purchase of a pump station site to supply water to the future Martin Hill Reservoir.

As indicated above, workload and available staff were unable to complete the CIEDB Water Loan application in a timely manner. Because of this reason, staff requested and Council approved the hiring of Quad Knopf to complete the water loan application. The application in question is complete and ready for Council's approval and the Mayor's signature.

The documents are considerable and available in the Public Works Directors' office for review. The 9 million dollar loan will be used to fund the following projects:

1. Eastside Water Reservoir Projects (2)
2. Martin Hill 3 Million Gallon Reservoir Project
3. Surface Water Treatment Facility
4. Water Well Development & Construction (3 -5)

Dir Bsp Appropriated/Funded ____ CM ____ Item No. 5
The current interest rate offered by the CIEDB is approximately 2.93%. It is anticipated that it will take approximately 90 to 120 days for the CIEDB to process the City’s application. A full review of the City’s current water rate structure will be a component of the application process to determine whether current City water revenues will support re-payment of the 9 million dollar loan.

The City Council still has the option of securing Certificate of Participation bonds. The interest rate on COP funds is not as attractive as a CIEDB loan but the “turn around” from application to approval is faster. COP funds do not require “prevailing wage” whereas this is always a condition of a CIEDB loan. A significant difference between COPs and a CIEDB loan is the bond origination fees. COP bond origination fees can be in the hundreds of thousands of dollars whereas the CIEDB processing fee on the City’s prior 5.3 million dollar sewer loan was approximately $45,000.

If Council so directs, staff will make inquiries with “bond” counsels to get representative rates, timelines and bond generation fees. The City has used the firm of Seidler-Fitzgerald in the past to secure two COP bonds. Calls to Seidler-Fitzgerald found that John Fitzgerald no longer works at the firm and Seidler-Fitzgerald is no longer in the “bond” business.

Time is of the essence with regard to the CIEDB Water Loan application. The original deadline to submit the application under the City’s “pre-approved” status was extended to February 2, 2007. A quick call to the CIEDB officer resulted in a 2nd extension to the end of February. This is the last extension that the City will receive from the CIEDB to submit their application.

RECOMMENDATION: That the City Council:

1. Approve the Water Loan CIEDB Application as prepared by Quad Knopf;

2. Pass a resolution authorizing the submission of the Application to the CIEDB for financing of Eastside Water Improvement Projects and approving certain other matters in connection therewith;

3. Authorize the Mayor to execute the CIEDB Water Loan Application; and

4. Direct Public Works to package and transmit the CIEDB Water Loan Application and supporting documents to:
   California Infrastructure & Economic development Bank
   1001 'I' Street, 19th Floor, Sacramento, CA 95814

ATTACHMENT: Resolution
RESOLUTION NO.

A RESOLUTION OF THE CITY OF PORTERVILLE AUTHORIZING THE SUBMISSION OF THE APPLICATION TO THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK FOR FINANCING OF EASTSIDE WATER IMPROVEMENT PROJECTS AND APPROVING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the California Infrastructure and Economic Development Bank ("I-Bank") administers a financing program to assist local governments with the financing of Public Development Facilities as described in Section 63000 et seq. of the California Government Code (the "Act"); and,

WHEREAS, the I-Bank has instituted an application process for financing under its Infrastructure State Revolving Fund Program ("ISRF Program"); and,

WHEREAS, the City of Porterville ("Applicant") desires to submit an application ("Financing Application") to the I-Bank from the ISRF Program for the financing of Eastside Water Improvements ("Project") in an amount not to exceed $9,075,000 and,

WHEREAS, the Act requires the Applicant to certify by resolution certain findings prior to a Project being selected for financing by the I-Bank; and,

WHEREAS, the ISRF Program requires funding sources, other than the I-Bank financing, be identified and approved prior to Project financing approval by the I-Bank Board.

NOW, THEREFORE, the City of Porterville does resolve as follows:

Section 1. The City of Porterville hereby approves the filing of an ISRF Program Financing Application with the I-Bank for the Project; and in connection therewith certifies:

a. that the Project is consistent with the General Plan of both the City of Porterville and the County of Tulare;
b. the proposed financing is appropriate for the Project;
c. the Project facilitates effective and efficient use of existing and future public resources so as to promote both economic development and conservation of natural resources;
d. the Project develops and enhances public infrastructure in a manner that will attract, create, and sustain long-term employment opportunities; and
e. the Project is consistent with the I-Bank’s Criteria, Priorities and Guidelines for the ISRF Program.

Section 2. That the Applicant has available and commits not to exceed $9,075,000 to the Project.

Section [3]. John R. Longley, City Manager is hereby authorized and directed to act on behalf of the City of Porterville in all matters pertaining to this application.
**Section [4].** If the application is approved, John R. Longley, City Manager is authorized to enter into and sign the financing documents and any amendments thereto with the 1-Bank for the purposes of this financing.

**Section [5].** This resolution shall become effective immediately upon adoption.

PASSED, APPROVED and ADOPTED this _____ day of ________, 200_ by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

__________________________
Cameron Hamilton, Mayor

STATE OF CALIFORNIA
COUNTY OF Tulare
CITY OF Porterville

I, Georgia Hawley, Chief Deputy City Clerk of the City of Porterville, do hereby certify that the foregoing Resolution No. _______ was duly and regularly adopted at a regular meeting of the Porterville City Council, which was duly noticed in accordance with Government Code section 54954.2 and held on 20 day of February, 2007.

By: _________________________
Georgia Hawley, Chief Deputy City Clerk
COUNCIL AGENDA: FEBRUARY 20, 2007

SUBJECT: INTENT TO SET A PUBLIC HEARING FOR REIMBURSEMENT AGREEMENTS FOR CONCRETE IMPROVEMENT CONSTRUCTION BY THE CITY - INDIANA STREET PROJECT, PUTNAM AVENUE TO OLIVE AVENUE

SOURCE: Public Works Department - Engineering Division

COMMENT: The concrete improvements for the Indiana Street Project, Putnam Avenue to Olive Avenue, are complete. City Council accepted the Indiana Street Project during the February 6, 2007 Council meeting. Section 20-40.1 of the Municipal Code stipulates that these improvements, once constructed, shall be reimbursed to the City of Porterville upon the issuance of a new building permit. Section 20-40.2 of the Municipal Code also stipulates that remodeling permits exceeding a $15,000 valuation will also trigger the reimbursement.

The City has complied with Section 20-40.8 of the Municipal Code on the Indiana Street Project by notifying affected property owners and holding Public Hearings addressing the City's intentions to seek reimbursement for the concrete improvements constructed as a part of this project. Section 20-40.8 requires that City Council hold at least one additional Public Hearing prior to the establishment of a fee. Once the fee is established, the City will record a general notice of "reimbursement fee" with the office of the Tulare County Recorder. The recorded document will officially notify the current owner and potential buyers that the property is subject to a concrete reimbursement fee.

Staff has calculated the cost of the concrete improvements constructed along the frontages of undeveloped properties and/or developed properties that lacked these public improvements for the Indiana Street Project. The calculations are based on actual costs incurred by the City. A map of the affected property owners and the associated concrete reimbursement fee is attached for Council's reference.

RECOMMENDATION: That the City Council:

1. Set a Public Hearing for March 6, 2007 according to the Mitigation Fee Act, for the establishment of the concrete reimbursement fee; and

2. Authorize staff to notify all affected property owners of the Public Hearing, via certified mail, including the concrete reimbursement amount.

ATTACHMENTS: Locator Map
Fee Spreadsheet

Appropriated/Funded ____ CM ____ Item No. 60
Exhibit "B"

Indiana Street Project - Putnam Avenue to Olive Avenue
Reimbursement for City Installed Improvements

<table>
<thead>
<tr>
<th>APN</th>
<th>OWNER</th>
<th>Owner Address</th>
<th>Curb</th>
<th>Gutter</th>
<th>Sidewalk</th>
<th>Driveway</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>252-291-018</td>
<td>Jill A. &amp; David R. Vierra</td>
<td>18 Walnut Park Dr.</td>
<td>Chico, Ca. 95928</td>
<td>$2,745.60</td>
<td>$3,876.00</td>
<td>$1,694.52</td>
<td>$8,316.12</td>
</tr>
<tr>
<td>251-202-029</td>
<td>Iqbal Singh &amp; Parmjit Kaur</td>
<td>814 W. Olive Ave.</td>
<td>Porterville, Ca. 93257</td>
<td>$5,362.50</td>
<td>$1,040.76</td>
<td>$2,024.01</td>
<td>$8,427.27</td>
</tr>
<tr>
<td>259-112-024</td>
<td>S E E Of Olive Lp</td>
<td>875 W. Olive Ave.</td>
<td>Porterville, Ca. 93257</td>
<td>$2,659.80</td>
<td></td>
<td></td>
<td>$2,659.80</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>$19,403.19</strong></td>
</tr>
</tbody>
</table>
SUBJECT: ACCEPTANCE OF IMPROVEMENTS - AMALENE ESTATES, PHASE ONE (ANTOINE BECHARA – BECHARA CONSTRUCTION)

SOURCE: Public Works Department - Engineering Division

COMMENT: The subdivider has requested that the public improvements, constructed for their subdivision, be accepted by the City for maintenance. All required improvements, excluding sidewalks, have been completed, inspected by City staff and found to be acceptable. Due to security concerns, the roads will be closed to public access until request for occupancy has been received and approved.

The subdivider has submitted a one (1) year maintenance guarantee for five percent of the total cost of improvements.

RECOMMENDATION: That City Council:

1. Accept the public improvements of Amalene Estates, Phase One Subdivision for maintenance;

2. Authorize the filing of the Notice of Completion; and

3. Release the payment guarantee thirty-five (35) days after recordation, provided no liens have been filed.

ATTACHMENT: Locator Map

MRK/PublicWorks/Engineering/Council Items/Acceptance of Improvements Amalene Estates, Phase One DOC
SUBJECT: REIMBURSEMENT FOR THE CONSTRUCTION OF MASTER PLAN IMPROVEMENTS – AMALENE ESTATES, PHASE ONE SUBDIVISION

SOURCE: Public Works Department - Engineering Division

COMMENT: The developer of the subject subdivision, Bechara Construction, is requesting reimbursement for the cost of constructing Water Master Plan improvements as a part of their phased development. The subdivision project is generally located west of Westwood Street, between Vine Avenue and Roby Avenue. The underground improvements were a requirement of Amalene Estates, Phase One Subdivision. In accordance with the Municipal Code these Master Plan improvements become reimbursable once the subdivision improvements have been accepted by the City Council.

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

The costs associated with the water main improvements constructed along Vine Avenue and Dogwood Street as part of Amalene Estates, Phase One Subdivision were prepared by the Civil Engineer in charge and found to be acceptable to staff:

<table>
<thead>
<tr>
<th>Item</th>
<th>Quantity</th>
<th>Unit Cost</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>12” Water line including fittings</td>
<td>1,037’</td>
<td>$33.00</td>
<td>$34,221.00</td>
</tr>
<tr>
<td>12” Gate Valves</td>
<td>2</td>
<td>$2,145.00</td>
<td>$4,290.00</td>
</tr>
<tr>
<td>10” Gate Valve</td>
<td>1</td>
<td>$1,980.00</td>
<td>$1,980.00</td>
</tr>
<tr>
<td>Hot Tap Westwood</td>
<td></td>
<td>L.S. = $7,150.00</td>
<td></td>
</tr>
<tr>
<td>Blow Off Assembly</td>
<td></td>
<td>1 ea. = $2,475.00</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Total = $50,116.00</td>
<td></td>
</tr>
</tbody>
</table>

Plan check and Inspection @ 2.28%
Administration, Engineering & Construction Staking @ 10%

Total = $56,270.24

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

Dir 359 Appropriated/Funded _____ CM _____ Item No. 8
RECOMMENDATION: That City Council approve reimbursement to Bechara Construction per Section 25-32.3 of the City of Porterville Municipal Code. The total reimbursement amount to be disbursed shall not exceed $56,270.24.

ATTACHMENT: Locator Map

P:\pub\work\Engineering\Council Items\Reimbursement for the Construction of Master Plan Improvements - Amalene Estates - 2007-02-20.doc
SUBJECT: COMMUNITY CLEAN UP EVENTS

SOURCE: Public Works Department - Field Services Division

COMMENT: In 2006, to encourage property maintenance and beautification, the City sponsored two clean up events. One in the Spring and one in the Fall. The events offer City residential refuse customers free disposal of general trash, bulky items, wood waste and yard clippings at the City’s Corporation Yard. Last year the events were well received, with 357 residents participating in the Spring and 329 participating in the Fall. Approximately 51.29 tons of general refuse was received, and an additional 66.94 tons of recyclable material was diverted from the landfill. Total cost of both events, including disposal fees and personnel, was approximately $4,268.

Based on the success of the 2006 event, staff recommends the City host two Community Clean Up Events in 2007. Proposed event dates are Saturday, April 28th, and Saturday, October 27th. As in the past, the events are open to all residents receiving City refuse service. Staff estimates City disposal costs for both events to be approximately $5,000 funded through the Solid Waste Operating Budget.

RECOMMENDATION: That City Council:


2. Encourage all residents to clean up their properties and take advantage of these special opportunities offered by the City;

3. Authorize the City to accept trash, litter and yard clippings delivered by City residents receiving City refuse service to the Spring and Fall Clean Up Events for free disposal; and

4. Authorize the cost of both events be funded from the Solid Waste Operating budget.
SUBJECT: AIRPORT LEASE RENEWAL – LOT 44A

SOURCE: ADMINISTRATIVE SERVICES/PURCHASING DIVISION

COMMENT: Mr. Silvio Addamo is the current lease holder of Lot 44A at the Porterville Municipal Airport. The lease will expire on February 28, 2007. We have received a request from Mr. Addamo to renew his lease for a period of fifteen (15) years which is the City’s standard lease term. A draft Lease Agreement is attached.

RECOMMENDATION: That the Council approve the Lease Agreement between the City of Porterville and Mr. Silvio Addamo of Porterville, CA, for Lot 44A at the Porterville Municipal Airport.

ATTACHMENT: Locator Map
Letter from Mr. Addamo requesting renewal
Draft Lease Agreement

D.D. Appropriated/Funded C.M. Item No. 10
VINCENT ADDAMO & SILVIO ADDAMO

# 44A

We would like to renew our lease for another 15 years

Thank you

[Signatures]
LEASE AGREEMENT
PORTERVILLE MUNICIPAL AIRPORT

THIS LEASE AGREEMENT ("Lease"), executed at Porterville, California the first day of March, 2007, by and between the CITY OF PORTERVILLE, a charter city and municipal corporation of the State of California, hereinafter referred to as "City" and SILVIO ADDAMO, hereinafter referred to as "Lessee."

WHEREAS, City owns and operates an airport in the City of Porterville, State of California, commonly known and described as "Porterville Municipal Airport"; and

WHEREAS, Lessee desires to lease a portion of said airport for the purpose of operating an existing aircraft hangar to be used for the parking and storage of aircraft and other activities incidental thereto; and

WHEREAS, it is the desire of City to utilize said airport for the general public by its development and use in providing aeronautical-related facilities and service.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

1. **Premises:** City, for and in consideration of the covenants, conditions, agreements, and stipulations herein set forth, does hereby demise and lease to Lessee, and Lessee hereby hires from City, those certain premises situated in the City of Porterville, State of California, described as Lot 44A at the Porterville Municipal Airport, as shown on the site map marked Exhibit “A” being attached hereto and by this reference made a part hereof.

2. **Term:** The term of this Lease shall commence on March 1, 2007, both parties having executed the same, and shall terminate on February 28, 2022, provided Lessee is not in default with respect to any of the conditions or covenants of this lease.

3. **Rental and Business Privilege Consideration:** Lessee agrees to pay to City in lawful money of the United States without deductions or offset, to the Finance Director, City of Porterville, 291 N. Main Street, Porterville, California, 93257, or to such person or persons and at such place or places as may be designated from time to time by City, a rental rate of $ .247 per square foot per year.
Inasmuch as the lease site (See Exhibit “A” attached) contains approximately 4,200 square feet of land area, said rental rate will be $1,037.40 annually, or $86.45 per month, payable in advance.

Beginning January 1, 2008, and each January 1 thereafter for the term of this Lease, the rate shall be adjusted by a percentage equal to the annual percentage increase or decrease in the Consumer Price Index (CPI). The CPI used shall be a twelve (12) month average of the San Francisco CPI and the Los Angeles CPI as published for October of the prior year. The CIP index will be “All Urban Consumers.”

4. **Purpose:** This Lease is made for the purpose of operating an existing aircraft hangar to be used for the parking and storage of aircraft and other activities incidental thereto. Lessee shall not use the premises or any part thereof or permit them to be used for any purpose or purposes other than stated above. The City reserves the right to conduct on-site inspections for the purpose of compliance with Building Code, Fire Code, and Zoning Ordinance. Lessee shall not do or permit any act or thing to be done upon the premises which constitutes a nuisance or which may disturb the quiet enjoyment of City or any tenant of City on adjacent neighboring property.

   Lessee further agrees that, within 72 hours from receiving written notice by the City that a nuisance exists, to abate or otherwise cause said nuisance to be cured.

   In the event Lessee has not (a) taken corrective action within 72 hours, or (b) filed an appeal with the City Council, City of Porterville, within 72 hours, then City may enter and abate said nuisance at the expense of Lessee without any liability whatsoever to City for monetary loss or anticipated profits of Lessee or others.

   Said appeal to the City Council must be made in writing and be received by the City Clerk, 291 N. Main Street, Porterville, California, 93257, within 72 hours after Lessee received notice of said nuisance.

5. **Right of Ingress and Egress:** Lessee shall have the right-of-way to property owned and controlled by City for ingress thereto and egress therefrom for pedestrian, vehicular, and air travel, together with the right to use in common with other Lessee or licensees of City the airplane landing field adjacent to the demised premises. None of these rights are exclusive, but shall be exercised in
common with and subject to possible similar rights of other users of said airport. All of the foregoing is subject to such reasonable rules and regulations as the City or its authorized agents may make from time to time. Such rules and regulations, however, shall be reasonable and shall not conflict in any way with similar rules and regulations adopted from time to time by the Federal Aviation Administration or its successor.

6. **Condition of Premises:** Lessee has inspected the demised premises and knows the extent and condition thereof and accepts same in its present condition, subject to and including all defects, latent and/or patent.

7. **Alteration:** Lessee shall make no structural modifications to existing structures or make permanent improvements or additions in or on the demised premises without the written consent of the City Airport Manager first being obtained.

8. **Maintenance:** Lessee agrees to keep the improvements in a good state of repair by periodic maintenance and painting as the same are required and to keep the grounds of Lessee in a good state of maintenance and repair. During the term of this Lease, the City Airport Manager shall have the right to notify Lessee in writing wherein Lessee has failed to maintain said structure and improvements in a good state of repair. Lessee shall make such corrections in the time and manner prescribed by said Airport Manager, or in the event Lessee disagrees, Lessee shall have the right to appeal within fifteen (15) days from date of notice from said Airport Manager to the City Council concerning the request for maintenance made to Lessee by said Airport Manager; it being understood and agreed that the decision of the City Council shall be final.

9. **Utilities:** Lessee agrees to pay during the term of the Lease, or any holding over, any and all utilities utilized by it to said demised premises. The term “utilities” as used herein shall include, but is not limited to, telephone, electrical, water, sewer, gas, janitorial, heating, cooling, and trash and refuse disposal service.

10. **Utility Extension or Modification:** Lessee shall pay any and all expenses that may be incurred in obtaining the extension of public utility services to the demised premises from existing utility facilities or any modifications of same.

11. **Taxes and Assessments:** Lessee understands that the Lease of the premises creates a
possessory interest subject to taxation by the County of Tulare. Lessee agrees to pay all taxes and/or assessments levied by any governmental agency upon any interest acquired by Lessee under the terms of this Lease.

12. **Compliance with Law:** Lessee shall, at its expense, promptly comply with any and all laws, ordinances, rules, regulations, requirements, and orders whatever, present or future, of the national, state, county or city government which may in any way apply to the use, maintenance or occupation of, or operations on the premises.

13. **Liens and Encumbrances:** Lessee shall keep the premises and all structures and improvements situated thereon free from any liens or encumbrances arising out of any work performed, material furnished, or obligations incurred by Lessee, or from any other cause.

14. **Negation of Partnership:** City shall not become or be deemed a partner or joint venturer with Lessee or associate in any relationship with Lessee’s operations thereon. City reserves all rights in and with respect to the premises, not inconsistent with Lessee’s use of the premises as in this Lease provided, including (without limiting the generality of the foregoing) the right of City to enter upon the premises for the purpose of installing, using, maintaining, renewing, and replacing such underground oil, gas, water, sewer, and other pipelines, and such underground or aboveground telephone, telegraph, and electric power conduits or lines as City may deem desirable in connection with the development or use of any other property in the neighborhood of the premises. City shall compensate Lessee for any and all damage to Lessee’s improvement and personal property caused by the exercise of the rights reserved in this paragraph.

15. **Indemnification:** Lessee agrees to indemnify, defend (upon request by the City) and save harmless the City, its agents, officers, and employees, and each of them, from any and all losses, costs, expenses, claims, liabilities, action, or damages, including liability for injuries to person or persons, or damage to property of third persons arising out of or in any way connected with (a) the conducting or operation of Lessee’s business on the demised premises during the term of the Lease or any holding over, or (b) the construction or the removal of any facilities or improvements on the demised premises during the term of this Lease or any holding over.

16. **Liability Insurance:** Lessee, in order to protect the City, its agents, officers, and
employees against all claims and liability for death, injury, loss, and damage as a result of Lessee’s (a) use and operations on the demised premises or in connection therewith, or (b) construction or removal of any improvements on the demised premises or in connection therewith, shall name the City as additional insured on Lessee’s aircraft insurance policy or policies in the amount of not less than ONE MILLION DOLLARS ($1,000,000). Coverage shall include General Liability combined Bodily Injury and Property Damage, Single Limits and Aggregate, with a reliable insurance carrier authorized to do such public liability and property damage insurance business in the State of California. Said insurance shall not be subject to cancellation or coverage reduction without thirty (30) days prior written notice to City. Within (10) days from the date of this Lease, Lessee shall file with the City Clerk, City of Porterville, a duly certified Certificate of Insurance evidencing that the herein above mentioned public liability and property damage provisions have been complied with, and setting forth that City, its agents, officers, and employees are named as additional insured. In the event that Lessee shall fail to take out and keep in effect such policy or to furnish evidence thereof to City, City may, at City’s option, procure the same, pay the premium thereof and collect same with the next payment of rental due from Lessee or immediately terminate this Lease. The limits of insurance coverage set forth herein may be reviewed by City each January and may be adjusted at such reviews in order to protect the interests of the City.

17. **Nondiscrimination:** Lessee for itself, its heirs, personal representatives, successors in interest and assigns as part of the consideration hereof does hereby covenant and agree that (1) no person on the grounds of race, color, sex or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, or national origin shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination; (3) that Lessee shall use the premises in compliance with other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally - Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and/or services on a
fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge a fair, reasonable and not unjustly discriminatory price for each unit or service; provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or similar type of price reductions to volume purchasers.

In the event of breach of any of the above nondiscriminatory covenants, City shall have the right to terminate this Lease and to re-enter and repossess the demised premises and the facilities thereon and hold the same as if the Lease had never been made or issued.

Lessee agrees that it shall insert the above nondiscrimination provisions in any sublease or other agreement by which Lessee grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the premises herein leased.

18. **Improvement of Land Area:** City reserves the right to further develop or improve the landing area of the airport as it sees fit regardless of the desires or views of Lessee and without interference or hindrance.

19. **Maintenance of Landing Area:** City reserves the right to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of the Lessee in this regard; providing further, City shall keep and maintain in a safe and operable condition the taxiways, runways (including the lighting thereof) and roadways on the airport during such hours and to such extent as City may determine is reasonably required for the operation of the airport.

20. **Lease Subordinate to Agreements with the United States Government:** This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States relative to the development, operation or maintenance of the airport.

21. **Non-Exclusive Right:** It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 (a) of the Federal Aviation Act of 1958. (49 U.S.C. 1349).
22. **Rights of United States Government:** This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation, or taking over of said airport.

23. **Notices:** All notices herein provided to be given, or which may be given, by either party to the other shall be deemed to have been fully given when made in writing and deposited with the United States Postal Service, Registered or Certified, postage prepaid and addressed as follows:

   To the Lessee: Mr. Silvio Addamo
                810 W. Mulberry
                Porterville, CA  93257

   To the City:  Airport Manager
                City of Porterville
                291 N. Main Street
                Porterville, CA  93257

The address to which the notices shall be or may be mailed, as aforesaid, to either party shall or may be changed by written notice given by such party to the other, as hereinbefore provided, but nothing herein contained shall preclude the giving of any such notice by personal service.

24. **Authorized Agent of the City:** The Airport Manager of the City of Porterville is the duly authorized agent of the City for purposes of this Lease; and as to any obligations assumed herein by Lessee, they shall be performed to the satisfaction of said Airport Manager.

25. **Assignment and Subletting:** This Lease shall be binding upon and shall inure to the benefit of the heirs, administrators, executors, successors, and assigns of the respective parties hereto. Lessee shall not, and Lessee herewith agrees that it will not, sublet the premises, or any part thereof or assign, transfer, mortgage, or otherwise convey the premises or its rights and interest hereunder without the prior written consent of the City. In the event the Lessee shall sublet, assign, transfer, mortgage, or otherwise convey the premises or its rights and interest hereunder, or any part thereof, or attempt to do so in violation to the foregoing provision, then in addition to any and all other rights and remedies available to it, the City may, at its option by written notice to Lessee, either declare such sublease, assignment, transfer, mortgage or other conveyance void or terminate this Lease and all
rights and interest of Lessee and all other persons hereunder. Any consent by City to any sublease, assignment, transfer, mortgage, or conveyance shall not be deemed or construed as a transfer, mortgage, or conveyance. This clause shall not be construed to limit right or remedy which City may become entitled to by reason of the action(s) or failure(s) to act of Lessee.

26. **Hypothecation:** Lessee may, with the consent of the City, give, assign, transfer, mortgage, hypothecate, grant control of, or encumber Lessee’s interest under this Lease and the leasehold estate so created to a bonafide lender on the security of the leasehold estate. Any such bonafide lender shall have the right at any time during the term of the loan and while this Lease is in full force and effect:

(a) To do any act or thing required of Lessee in order to prevent a forfeiture of Lessee’s rights hereunder, and all such acts or things so done shall be as effective to prevent a forfeiture of Lessee’s rights hereunder by Lessee.

(b) To succeed to the interest of Lessee hereunder and thereafter at such lender’s option to convey, assign or sublease the interest or title to said leasehold estate to another person acceptable to City, subject to all the terms, conditions, and covenants of this Lease. Two (2) copies of any and all security devices or instruments shall be filed with City’s Airport Manager prior to the effective date thereof, and Lessee shall give Airport Manager prior written notice of any changes or amendments thereto.

Any bona fide lender shall have the right, if so permitted by the terms and conditions of the concerned instrument of hypothecation between lender and Lessee, to remove any or all of Lessee’s improvements under said hypothecation from the demised premises, subject only to the restriction that in the event of such removal, the demised premises herein above described be restored by Lessee to a condition satisfactory to the City’s Airport Manager, and that said removal be done in a manner and at a time satisfactory with said Airport Manager.

27. **Breach by Lessee:** In the event of the breach by Lessee of any term, condition, or agreement herein contained, and the failure to cure such breach within thirty (30) days after written notice has been given to Lessee by City, this Lease and all privileges herein granted shall be terminated and be of no other force or effect, and Lessee shall immediately surrender possession of the premises.
hereby granted, and in the event City has to resort to legal action to enforce any provision hereof, or to obtain restitution hereunder, the Lessee shall pay all costs and expenses, including attorney’s fees of such action. Providing further, that in the event Lessee breaches this Lease and abandons the demised premises before the end of the term, or if Lessee’s right to possession is terminated by City because of a breach of this Lease, City shall have the right to recover from Lessee, as provided in State of California Civil Code Section 1951.2. Damages City may recover shall include the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss for the same period that the Lessee proves could be reasonably avoided. This clause shall not be construed to limit any right or remedy which City may become entitled to by reason of the action(s) or failure(s) to act of Lessee.

28. Waiver of Breach: The waiver by City of any breach by Lessee of any provision contained herein shall not be deemed to be a waiver of such provision, or a waiver of any breach of any other provision contained herein.

29. Bankruptcy: In the event the (a) Lessee shall file a voluntary petition in bankruptcy proceeding; (b) any voluntary or involuntary proceeding for the reorganization of Lessee shall be instituted by anyone other than the City under any of the provisions of the bankruptcy laws of the United States; or (c) a receiver or judicial trustee or custodian shall be appointed for Lessee, or any alien or any writ of attachment, garnishment, execution, or distraint shall be levied upon any of Lessee’s rights or interest under this Lease; or (d) there shall be any other assignment of any of Lessee’s rights or interest under this Lease by operation of law, then in addition to any and all other rights and remedies available to it, City may, at its option by written notice to Lessee, terminate this Lease and all rights and interest of Lessee and all other persons under this Lease. The term “Lessee,” as used in this paragraph, includes any individual, partnership, or corporation who is a Lessee hereunder, even though several individuals, partnerships, or corporations are such, and includes each partner of any partnership who is a Lessee hereunder. Any consent by City to any sublease, assignment, transfer, mortgage, or conveyance shall not be deemed or construed as a consent to any other different or subsequent sublease, assignment, transfer, mortgage, or conveyance.
30. **Quiet Possession:** Notwithstanding any other provision in this Lease, City covenants that Lessee, on paying the rent and performing the covenants herein contained, shall and may peaceably and quietly have and enjoy the demised premises for the term hereof.

31. **Surrender of Premises:** On the last day of said term, or extension thereof, or sooner termination of the Lease, Lessee will peaceably and quietly leave, surrender, and yield up to the City the demised premises in as good condition and repair as at the commencement of Lessee's occupancy, reasonable use and wear thereof, and damage by earthquake, public calamity, by the elements, by acts of God, or by fire or other circumstances over which Lessee has no control, excepted.

32. **Removal of Improvement at Termination:** Upon the termination of this Lease, or any holding over, for any reason other than Lessee's failure to perform its obligations under the terms and conditions of this Lease, Lessee shall have the right at Lessee's sole cost and expense, to remove all improvements and/or furniture, furnishings, equipment, and fixtures of whatsoever kind or nature placed of the demised premises by Lessee or its contractors so long as they could be removed without damage or disfigurement to the demised premises. Full restoration of the demised premises as it existed prior to the construction of said improvements or the installation of said furniture, furnishings, equipment, and fixtures shall be made by Lessee. If after the termination of this Lease Lessee has not removed said improvements, furniture, furnishings, equipment, and fixtures, the City shall have the option to claim the ownership thereof or to remove same and restore the demised premises as set forth above at the expense of Lessee. Said expense shall also include consideration for the additional time Lessee or its improvements occupy the premises beyond the termination date and disallow the City's total utilization of the premises pursuant to its ownership of the property.

In the event of a termination by City of this Lease because of Lessee's failure to faithfully perform the terms and conditions of this Lease, the City may accept cash or other satisfactory security for the amount of its costs, expense, loss and damage accruing from Lessee's failure to perform and thereupon the Lessee shall have the right to remove the said improvements.
33. **Incorporation of Prior Agreements and Amendments:** This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of modification.

34. **Severability:** The invalidity of any provision of this Lease as determined by a Court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

35. **Construed Pursuant to California Law:** The parties hereto agree that the provisions of this Lease will be construed pursuant to the laws of the State of California.

36. **Venue:** If either Lessee or City initiates an action to enforce the terms hereof or declare rights hereunder, including actions on any bonds and/or surety agreements, the parties agree that the venue thereof shall be the County of Tulare, State of California. Lessee hereby waives any rights he might have to remove any such action pursuant to California Code of Civil Procedure Section 394.

37. **Covenants and Conditions:** Each provision of this Lease performable by Lessee shall be deemed both a covenant and a condition.

38. **Captions:** The use of Paragraph headings in this Lease is solely for convenience, and they shall be wholly disregarded in the construction of this Lease.

39. **Time of Essence:** Time is hereby expressly declared to be the essence of this Lease and of each and every provision thereof, and each such provision is hereby made and declared to be a material, necessary, and essential part of this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the day and year first herein above written.
CITY OF PORTERVILLE

SILVIO ADDAMO, LESSEE

By: ________________________________  By: ________________________________
    Cameron Hamilton, Mayor          Silvio Addamo

ATTEST:

By: ________________________________
    John Longley, City Clerk

APPROVED AS TO FORM:

By: ________________________________
    Julia Lew, City Attorney

SOURCE: Administrative Services - Finance Division, Business Tax Section

COMMENT: Porterville Breakfast Rotary is requesting approval to hold a 5K Cancer Run on Saturday, May 5, 2007, from 5:00 a.m. to 11 a.m. The 5K run will start at Tulsa Street and Putnam Avenue, head south to Olive Avenue, turn west on Olive Avenue, turn north on Crestview Street, then east on Morton Avenue, turn south on Conner Street, and turn east on Putnam to finish at Tulsa Street. No street closures are requested. This application is submitted in accordance with the Community Civic Events Ordinance No. 1326, as amended.

The application has been routed according to the ordinance regulations and reviewed by all of the departments involved. All requirements are listed on the attached Exhibit “A.” The application, Exhibit “A,” the agreement, request for street usage, and a map showing the streets to be used are attached.

RECOMMENDATION: That Council approve the Community Civic Event Application and Agreement from Porterville Breakfast Rotary, subject to the Restrictions and Requirements contained in application, agreement and exhibit “A” of the Community Civic Event application form.

ATTACHMENT: Community civic event application and agreement, vendor list, request for street, sidewalk and parking lot closure/usage, map, exhibit A, outside amplifier permit.

D.D. Appropriated/Funded C.M. Item No. 11
CITY OF PORTERVILLE
APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

Application date: 12-28-2006  Event date: May 5th 2007

Name of Event: Porterville Breakfast Rotary Cancer Run

Sponsoring organization: Porterville Breakfast Rotary
Address: 122 E Morton Porterville CA 93257

Authorized representative: Jackie Witzel
Address: 939 W. Fountain Porterville CA 93257

Event chairperson: Mandy Lafayette

PHONE # 781-6617

Location of event (location map must be attached):

Agua Caliente High School

Type of event/method of operation: 5K Run/Walk

Nonprofit status determination: 501 C & E Comm. Use

City services requested (an (fees associated with these services will be billed separately)

Barricades (quantity): Yes __ No ___
Police protection: Yes ___ No ___
Other: ____________________________

Street sweeping: Yes ___ No ___
Refuse pickup: Yes ___ No ___

Parks facility application required: Yes ___ No ___
Assembly permit required: Yes ___ No ___

STAFF COMMENTS (list special requirements or conditions for event):

Approve  Deny
______  ______ Bus Lic Spvr __________________________
______  ______ Pub Works Dir __________________________
______  ______ Comm Dev Dir __________________________
______  ______ Field Svcs Mgr __________________________
______  ______ Chief Fire Oper. __________________________
______  ______ Parks Dir __________________________
______  ______ Police Chief __________________________
______  ______ Deputy City Mgr __________________________
CITY OF PORTERVILLE

APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

Authorization: This permit must be submitted 30 days PRIOR to the date of the event in order to obtain City Council approval.

City Code requirements:

At least 48" must remain clear on sidewalks for pedestrian traffic.
Do not block any entrance to or exit from buildings.
Area must be accessible to emergency and safety personnel and vehicles.
Electrical cords must be approved and installation checked by the Fire Department.

Liability insurance: The sponsoring organization/applicant agrees to provide and keep in force during the term of this permit a policy of liability and property damage insurance against liability for personal injury, including accidental death, as well as liability for property damage which may arise in any way during the term of this permit. The City of Porterville shall be named as additional insured. The amounts of such insurance and any additional requirements are listed in Exhibit "A."

Alcohol liability insurance: Organization/Applicant will obtain an alcohol permit if any alcoholic beverages are to be served. The insurance policy shall be endorsed to include full liquor liability in an amount not less than one million dollars ($1,000,000) per occurrence. The City of Porterville shall be named as additional insured against all claims arising out of or in connection with the issuance of this permit or the operation of the permittee, his/her agents or representatives pursuant the permit. Claims-made policies are not acceptable.

Health permit: Organization/Applicant will obtain or ensure that all participants obtain a health permit(s) from the County of Tulare Department of Health if any food is to be served in connection with this Community Civic Event.

First aid station: Organization/Applicant will establish a first aid station to provide basic emergency care, such as ice/hot packs, bandages, and compresses.

Agreement: The sponsoring organization/applicant agrees to comply with all provisions of the Community Civic Event Ordinance 1326, as amended, and the terms and conditions set forth by City Council and stated in Exhibit "A." The sponsoring organization/applicant agrees, during the term of this permit, to secure and hold the City free and harmless from all loss, liability, and claims for damages, costs and charges of any kind or character arising out of, relating to, or in any way connected with his/her performance of this permit. Said agreement to hold harmless shall include and extend to any injury to any person or persons, or property of any kind whatsoever and to whomever belonging, including, but not limited to, said organization/applicant, and shall not be liable to the City for any injury to persons or property which may result solely or primarily from the action or non-action of the City or its directors, officers, or employees.

Porterville Breakfast Rotary
(Name of organization)

(Signature)

12-28-2006
(Date)
CITY OF PORTERVILLE

VENDOR/PARTICIPANT LIST IN CONNECTION WITH THE APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

Name of event: Porterville Breakfast Rotary 5K Run/Walk

Sponsoring organization: Porterville Breakfast Rotary

Location: Granite Hills High School  Event date: May 5th, 2007

List all firms, individuals, organizations, etc., that will engage in selling at or participate in the above-named event. **NO PERMIT WILL ISSUED WITHOUT THIS INFORMATION.** This form should be completed at the time of application, but must be submitted one week prior to the event.

<table>
<thead>
<tr>
<th>Vendor name</th>
<th>Address</th>
<th>Telephone</th>
<th>Type of Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Porterville Breakfast Rotary</td>
<td></td>
<td>781-666-1</td>
<td>Running-Event</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Vendor name</th>
<th>Address</th>
<th>Telephone</th>
<th>Type of Activity</th>
</tr>
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<tbody>
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</tbody>
</table>

3 of 4
CITY OF PORTERVILLE

REQUEST FOR STREET CLOSURES AND PUBLIC PROPERTY USAGE IN CONNECTION WITH THE APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

Name of event: Porterville Breakfast Rotary 5K Run

Sponsoring organization: Porterville Breakfast Rotary

Event date: May 5th, 2007

Hours: 5am - 11 am

ATTACH MAP MARKING AREAS TO BE CLOSED OR USED

<table>
<thead>
<tr>
<th>Street Name</th>
<th>From</th>
<th>To</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paterna Ave</td>
<td></td>
<td></td>
<td>5K Run</td>
</tr>
<tr>
<td>Olive Ave</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prospect Ave</td>
<td>6am</td>
<td>11am</td>
<td></td>
</tr>
<tr>
<td>Mornings Ave</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Connor St</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sidewalks</th>
<th>From</th>
<th>To</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paterna Ave</td>
<td></td>
<td></td>
<td>5K Run</td>
</tr>
<tr>
<td>Olive Ave</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prospect St</td>
<td>6am</td>
<td>11am</td>
<td></td>
</tr>
<tr>
<td>Mornings Ave</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Connor St</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Parking lots and spaces

<table>
<thead>
<tr>
<th>Location</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Granite Hills High School</td>
<td>participant parking</td>
</tr>
</tbody>
</table>
REQUIREMENTS FOR COMMUNITY CIVIC EVENT
PORTERVILLE BREAKFAST ROTARY
CANCER RUN
MAY 5, 2007

Business License Supervisor:  
S. Perkins  
No requirements.

Public Works Director:  
B. Rodriguez  
Provide general clean up after event.

Community Development Director:  
B. Dunlap  
No comments.

Field Services Manager:  
B. Styles  
No comments.

Chief of Fire Operations:  
M. G. Garcia  
No comments.

Parks and Leisure Services Director:  
J. Perrine  
No comments.

Police Chief:  
C. McMillan  
Street closure required. City Council approval

Interim Deputy City Manager:  
J. D. Lollis  
See exhibit "A", page 2
REQUIREMENTS FOR COMMUNITY CIVIC EVENT

Sponsor: Porterville Breakfast Rotary
Event: 5 K Cancer Run
Event Chairman: Marty Lalanne
Location: Granite Hills High School
Date of Event: May 5, 2007
Time of Event: 5:00 a.m. to 11:00 a.m.

RISK MANAGEMENT: Conditions of Approval

That the Porterville Breakfast Rotary provide a Certificate of Commercial General Liability Insurance Coverage evidencing coverage of not less than $1,000,000 per occurrence, and having the appropriate Endorsement naming the City of Porterville, its Officers, Employees, Agents and Volunteers as "Additional Insured" against all claims arising from, or in connection with, the Permittee's operation and sponsorship of the aforementioned Community Civic Event.

a. Said Certificate of Insurance shall be an original (fax and xerographic copies not acceptable), the Certificate shall be signed by an agent authorized to bind insurance coverage with the carrier, and the deductible, if any, shall not be greater than $1,000.

a. Said insurance shall be primary to the insurance held by the City of Porterville, be with a company having an A.M. Best Rating of no less that A:VII, and the insurance company must be an "admitted" insurer in the State of California.

Approval of the Community Civic Events Permit by the Porterville City Council pertains only to authorized activities conducted at designated locations within the incorporated area of the City of Porterville, and such approval shall not be construed or interpreted to authorize sponsor utilization of public right-of-ways outside of the jurisdiction of the City of Porterville.
CITY OF PORTERVILLE

OUTSIDE AMPLIFIER PERMIT
(City Ordinances #18-14 & 18-9)

This application must be submitted 10 days prior to the date of the event. A copy of this permit must be at the operating premises of the amplifying equipment for which this registration is issued.

1. Name and home address of the applicant:
   
   Name: [Name]
   Home Address: [Address]
   Phone #: [Phone Number]

2. Address where amplification equipment is to be used:
   
   Location: [Location]
   Phone #: [Phone Number]

3. Names and addresses of all persons who will use or operate the amplification equipment:
   
   Name: [Name]
   Address: [Address]

4. Type of event for which amplification equipment will be used:
   
   Event: [Event]

5. Dates and hours of operation of amplification equipment:
   
   Start Date: [Start Date]
   End Date: [End Date]
   Time: [Time]

6. A general description of the sound amplifying equipment to be used:
   
   Description: [Description]
I hereby certify that all statements and answers on this registration form are true and correct.

[Signature]
Applicant

12-28-04
Date

[Signature]
Chief of Police

1-15-07
Date

Section 18-14 City Ordinance Outside Amplifiers; permit required.
It shall be unlawful for any person to maintain, operate, connect, or suffer or permit to be maintained, operated, or connected any loud-speaker or sound amplifier in such a manner as to cause any sound to be projected outside of any building or out of doors in any part of the city, without having first procured a permit from the Chief of Police.

Section 18-9 City Ordinance, Radios, record players, etc.
It shall be unlawful for any person within the city to use or operate or cause to be operated or to play any radio, phonograph, juke box, record player, loudspeaker musical instrument, mechanical device, machine, apparatus, or instrument for intensification or amplification of the human voice or any sound or noise in a manner so loud as to be calculated to disturb the peace and good order of the neighborhood or sleep of ordinary persons in nearby residences or so loud as to unreasonably disturb and interfere with the peace and comfort of the occupants of nearby residences.

California Penal Code Section 415
Any person who maliciously and willfully disturbs another person by loud and unreasonable noise, is guilty of a misdemeanor.

THIS OUTSIDE AMPLIFIER PERMIT HAS BEEN APPROVED. HOWEVER, WE URGE YOU TO REMAIN CONSIDERATE OF THE GENERAL PEACE AND ORDER OF THE NEIGHBORS IN THE AREA. FAILURE TO ABIDE BY THESE REGULATIONS CAN RESULT IN REVOCATION OF THE PERMIT.

cc: _______________________

                                  _______________________

                                  _______________________

3/27/01
SUBJECT: STATE OF CALIFORNIA, OFFICE OF TRAFFIC SAFETY GRANT

SOURCE: FIRE DEPARTMENT

COMMENT: The State of California's Office of Traffic Safety (OTS) recently announced their grant opportunities available to municipalities for the Federal Fiscal Year 2008. OTS awards federal funding on a competitive basis to state and local agencies of the state. In 2005 OTS awarded $74.9 million in traffic safety grants to 225 agencies for a wide range of programs in the areas of public safety, including emergency medical services.

The Porterville Fire Department submitted an application asking for a grant award of $30,000 to be used to purchase emergency equipment, i.e., hydraulic cutter and spreaders, and training associated with the use of this new equipment.

OTS notifies agencies of the award in May 2007 with the grant funds becoming available to successful applicants on October 1, 2007. Under the terms of the grant program, the Fire Department would purchase the items and send in Project Claim Invoices for reimbursement to OTS.

RECOMMENDATIONS: That the City Council:

1) Authorize staff to proceed with the grant application process.
2) Authorize staff to purchase the equipment under the negotiated bid process.

ATTACHMENT: OTS Grant Application
January 29, 2007

Proposal Submission
Office of Traffic Safety
7000 Franklin Boulevard, Suite 440
Sacramento, CA 95823-1899

Subject: OTS EMS Grant

This letter shall serve as the intent to commit the City of Porterville Fire Department to the guidelines of the O.T.S. grant process.

The desire of the City of Porterville’s Fire Department is to be “Committed to Quality Service.” This desire is reflected in the strong work ethic of our employees. The City of Porterville Fire Department provides protection to a growing community of over 50,000. Through automatic and mutual aid agreements, the City also provides services to the Tulare County Fire Department in the Southern Tulare County area. This grant would enable us to provide a higher level of service to these communities and to all who travel through our response area.

If I can be of further assistance, please don’t hesitate to contact me at (559) 782-7526 or by e-mail at mgarcia@ci.porterville.ca.us

Sincerely,

Mario G. Garcia
Fire Chief
Coversheet for Traffic Safety Proposals
Federal Fiscal Year 2007

<table>
<thead>
<tr>
<th>Agency Name:</th>
<th>Porterville (5405)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department:</td>
<td>Fire Department</td>
</tr>
<tr>
<td>Proposal Title:</td>
<td>F.I.R.E. (Firefighters Initiating Rescue Efficiently)</td>
</tr>
</tbody>
</table>

**Proposal Summary:** (Summarize grant goals and objectives. Maximum 750 characters—about 100 words)

1. To replace 20+ year old hydraulic spreaders and combination tool with modern, lighter, and easier to use spreaders and cutters, and to add 2 airbags to our current inventory of two to complete a full set.

2. To add several items to our trench strut kit inventory that would enable us to stabilize a vehicle that has been involved in a traffic accident. (we currently have no vehicle stabilization kit in our inventory).

3. To respond to all traffic accidents in the City of Porterville and the surrounding areas that we provide automatic and mutual aid to in an efficient manner, and initiate rescue of trapped and or injured parties with modern rescue equipment such as hydraulic spreaders, cutters, airbags and vehicle stabilizing struts.

<table>
<thead>
<tr>
<th>Equipment: (if applicable)</th>
<th>Requested Funding by Budget Category:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Two (2) Hydraulic Spreaders</td>
<td>Personnel: $0.00</td>
</tr>
<tr>
<td>One (1) Hydraulic Cutter</td>
<td>Travel: $2,400.00</td>
</tr>
<tr>
<td></td>
<td>Contractual Services: $0.00</td>
</tr>
<tr>
<td></td>
<td>Equipment: $22,027.34</td>
</tr>
<tr>
<td></td>
<td>Other Direct Costs: $5,184.94</td>
</tr>
<tr>
<td></td>
<td>Indirect Costs: $0.00</td>
</tr>
</tbody>
</table>

I verify the costs requested for personnel and benefits are accurate.

<table>
<thead>
<tr>
<th>Agency Contact</th>
<th>Requested Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Name:</td>
<td>Mario</td>
</tr>
<tr>
<td>Last Name:</td>
<td>Garcia</td>
</tr>
<tr>
<td>Title:</td>
<td>Fire Chief</td>
</tr>
<tr>
<td>Address 1:</td>
<td>40 W. Cleveland Ave.</td>
</tr>
<tr>
<td>Address 2:</td>
<td></td>
</tr>
<tr>
<td>Address 3:</td>
<td></td>
</tr>
<tr>
<td>City:</td>
<td>Porterville</td>
</tr>
<tr>
<td>State:</td>
<td>CA</td>
</tr>
<tr>
<td>Zip Code:</td>
<td>93257</td>
</tr>
<tr>
<td>Phone #:</td>
<td>(559)782-7526</td>
</tr>
<tr>
<td>Ext.:</td>
<td></td>
</tr>
<tr>
<td>Fax #:</td>
<td>(559)791-7834</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:ghall@ci.porterville.ca.us">ghall@ci.porterville.ca.us</a></td>
</tr>
<tr>
<td>Fiscal Year 1</td>
<td>2008</td>
</tr>
<tr>
<td>(10/1/07 - 9/30/08)</td>
<td>$29,612.28</td>
</tr>
<tr>
<td>Fiscal Year 2</td>
<td>2009</td>
</tr>
<tr>
<td>(10/1/08 - 9/30/09)</td>
<td>$0.00</td>
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<tr>
<td>Fiscal Year 3</td>
<td>2010</td>
</tr>
<tr>
<td>(10/1/09 - 9/30/10)</td>
<td>$0.00</td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$29,612.28</td>
</tr>
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</table>
GRANT TITLE: F.I.R.E. – FIREFIGHTERS INITIATING RESCUE EFFICIENTLY

AGENCY: CITY OF PORTERVILLE

PROPOSED BEGINNING DATE: 10/1/07

PROPOSED ENDING DATE: 9/30/08

PROBLEM STATEMENT:
The City of Porterville is seeking to provide the most efficient patient care possible at all traffic related incidents. Our current inventory consists of 2 hydraulic spreaders (1985 & 2006) 2 hydraulic cutters (2001 & 2006) 2 hydraulic rams with extensions (2001) and 1 hydraulic combination tool (1985). By replacing extrication equipment purchased in 1985, with current up to date equipment, adding 2 airbags, and by obtaining vehicle stabilization equipment for use at these accident sites, the City of Porterville will have taken another step forward in the quality care of those involved in traffic accidents and will provide a safer work environment for it’s employees as they help the injured parties.

Data:

Collision experience over the past three years has been:

<table>
<thead>
<tr>
<th>Collision Type</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
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<tbody>
<tr>
<td>All Vehicle Acc. and Veh. Vs. Pedestrian</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fatal</td>
<td>1</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Injury</td>
<td>90</td>
<td>N/A*</td>
<td>58</td>
</tr>
</tbody>
</table>

Collision victims requiring extrication:

<table>
<thead>
<tr>
<th>Year</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of victims requiring extrication in City of Porterville jurisdiction</td>
<td>6</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Number of victims where mutual aid extrication services were provided to Tulare County Fire Dept. jurisdiction</td>
<td>3</td>
<td>2</td>
<td>4</td>
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</tbody>
</table>

Average response and extrication times for City of Porterville jurisdiction:

<table>
<thead>
<tr>
<th>Year</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average response time for appropriate equipment (receipt of call to arrival at collision site)</td>
<td>4.12 min.</td>
<td>4.58 min.</td>
<td>3.0 min.</td>
</tr>
<tr>
<td>Average extrication time (arrival at site to transport)</td>
<td>N/A*</td>
<td>N/A*</td>
<td>N/A*</td>
</tr>
<tr>
<td>Total Number of Service Calls</td>
<td>352</td>
<td>346</td>
<td>376</td>
</tr>
<tr>
<td>Total Number of Traffic Related Calls</td>
<td>161</td>
<td>131</td>
<td>154</td>
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</tbody>
</table>

* N/A = Information not tracked during that time frame.
PERFORMANCE MEASURES

GRANT GOALS

2. To improve first-responder services to traffic collision victims in ____ community and its surrounding area by 12-1-07.

3. To improve the emergency medical services (EMS) delivery system in ____ community and its surrounding area through the replacement of out-dated rescue equipment by 12-1-07.

GRANT OBJECTIVES

1. To train ____ firefighters in the use of the new equipment 1-15-08.

2. To develop Memorandums of Understanding with recipient agencies which lists the description of equipment, explains the submission of data collection and quarterly reporting, responsibility of maintaining equipment, and yearly reporting of fair market value of equipment.

Media Objectives

1. To issue a press release announcing the kick-off of the grant by November 15, 2007. The press releases and media advisories, alerts, and materials must be forwarded to the OTS Public Information Officer at pio@ots.ca.gov and the OTS Coordinator for approval 14 days prior to the issuance date of the release.

2. To conduct a regional press conference or media event by Nov. 1, 2007 to kick-off or publicize the grant. OTS will be notified at least two weeks in advance of the grant kick-off event.

3. To notify OTS in the event grant funded equipment is used to save a life, OTS will be notified of the facts involving the incident.

4. To use the following standard language in all press, media, and printed materials: “Funding for this program was provided by a grant from the California Office of Traffic Safety, through the National Highway Traffic Safety Administration.”

5. To email OTS at pio@ots.ca.gov and the OTS Coordinator draft press releases for OTS approval for all grant funded operations at least 14 days prior to the issuance date of the release.

METHOD OF PROCEDURE

Phase 1 – Program Preparation (October 1, 2006 – January 10, 2007)

This project was started with an evaluation of our current inventory of equipment. Data was gathered from our incident reporting program and a matrix of types of actions taken at the various calls was created. The results of
our findings are placed into this report. The training system has been developed to train with this new equipment, and the Department will carry the cost of the training to show our commitment to this project.

**Phase 2 – Program Operations** (October 1, 2007 – November 15, 2007)

The equipment will be acquired according to the City of Porterville’s purchasing guidelines and the guidelines set forth in this grant program, and used to replace the aging equipment. Initial training will be provided to all full time “Operations” personnel. Subsequent training will be conducted for “Staff” personnel and our reserve firefighters.

**Phase 3 – Data Gathering & Reporting** – (Throughout Project Period)

Agencies are required to collect and report quarterly, appropriate data that support each of the goals and objectives progress.

Statistical data relating to the grant goals and objectives will be collected, analyzed, and incorporated in Quarterly Performance Reports (QPRs). QPRs for the quarter ending September 30 will include year to date comparisons of goals and objectives. If required the Quarterly Evaluation Data Form, Schedule C, will be completed each quarter and submitted as part of the QPR.

These reports will compare actual grant accomplishments with the planned accomplishments. They will include information concerning changes made by the grant Director in planning and guiding the grant efforts.

Reports shall be completed in accordance with OTS requirements specified in the Grant Program Manual, Chapter 7, and submitted in compliance with the signed Acceptance of Conditions and Certifications (OTS-33) included within this agreement.

**Method of Evaluation**

Using the data compiled in Phase 3, the grant manager will evaluate: (1) how well the stated grant goals and objectives were accomplished, (2) if all the activities outlined in the “Method of Procedure” were performed in accordance with the grant agreement; and (3) was the grant cost effective?

**Administrative Support**

This program has full support of the City of Porterville administration. Every effort will be made to continue the activities after the project conclusion. We are committed to the quality service we offer to the citizens of Porterville and the surrounding area.

[OTS9]
### Schedule B
#### Page 1
**Detailed Budget Estimate**

**Grant No.: TBD**

<table>
<thead>
<tr>
<th>COST CATEGORY</th>
<th>FISCAL YEAR ESTIMATES</th>
<th>TOTAL COST TO GRANT</th>
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<tr>
<td></td>
<td>FY-1 10/1/2007 thru 9/30/2008</td>
<td>FY-2 10/1/2008 thru</td>
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<tr>
<td><strong>A. Personnel Costs</strong></td>
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<tr>
<td>Positions and Salaries</td>
<td>None Required</td>
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<tr>
<td><strong>Category Sub-Total</strong></td>
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<td><strong>B. Travel Expense</strong></td>
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<td>In State</td>
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<td><strong>C. Contractual Services</strong></td>
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OTS-38d (Rev. 7/06)
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<td>D. EQUIPMENT</td>
<td>FY-2 10/1/2008 thru 1/0/2000</td>
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<td>FY-3 1/0/1900 thru 1/0/1900</td>
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<td>Two (2) Hydraulic Spreaders</td>
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<td>One (1) Hydraulic Cutter</td>
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<td>Category Sub-Total</td>
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<td>E. OTHER DIRECT COSTS</td>
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<td>Two (2) 30' Hydraulic hoses (1 orange, &amp; 1 green)</td>
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<td>Two (2) Air Bags (1-12&quot; &amp; 1-22&quot;)</td>
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<td>One (1) Duel safety relief and control valve</td>
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<td>Various Strut adaptors that will enable us to use our current struts as vehicle stabilization struts.</td>
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<td>$1,937.35</td>
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<tr>
<td>GRANT TOTAL</td>
<td>$27,212.28</td>
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PERSONNEL COSTS
None

TRAVEL EXPENSE

In-State – It is anticipated that one staff members will attend the OTS Summit in 2008. It is anticipated that this cost would be around $900. In addition to that class, the training officer or his designee will attend an advanced extrication course where the attendee will gain skills and knowledge that he/she will bring back and share with other employees on the advanced use of the tools acquired through the grant. It is estimated that these costs would be around $1500 bringing the total to $2400. Costs are included for appropriate staff to attend conferences and training events supporting the grant goals and objectives and/or traffic safety. Funds may be used to attend OTS approved training. Anticipated travel and events include local mileage for grant activities and meetings, OTS Summit, and other known conferences or required travel. All conferences, seminars or training not specifically identified in the Schedule B-1, must be approved by OTS. All travel claimed would be at the agency approved rate. Per diem may not be claimed for meals provided at conferences when registration fees paid with OTS grant funds.

CONTRACTUAL SERVICES
None

EQUIPMENT
City of Porterville Fire Department will purchase and distribute to the appropriate station two (2) Heavy Extrication System Spreaders and one (1) Heavy Extrication system Cutters. We currently have the power unit and attachments, accessories, and auxiliary apparatus necessary to make it usable for the purpose it was acquired, and costs $5,000 or more (including tax, shipping, and installation).

OTHER DIRECT COSTS

Extraction Items: The City of Porterville Fire Department may distribute to either station the following extrication items: Rescue strut adaptors, airbags and accessories, and hydraulic hoses as required. These items will be placed in the most advantageous location so as to initiate as efficient a rescue as possible.

NOTE: Each item must have a unit cost of less than $5,000 (which includes tax, shipping, and installation). Additionally, each extrication item purchased must operate independent of the grant funded power unit.

INDIRECT COSTS
None

PROGRAM INCOME
None

OTS-38f EMS
(Rev. 12/06)
**TO:** CITY OF PORTERVILLE, FIRE DEPT
CAPT. GLENN HALL
40 W. CLEVELAND AVE
PORTERVILLE, CA 93257

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<td>1</td>
<td>EA</td>
<td>3530022</td>
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<td>1</td>
<td>EA</td>
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<td>30' GREEN EXTENSION HOSE</td>
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<td>KPI12 KEV AIR BAG 12</td>
<td>668.00</td>
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<td>EA</td>
<td>888160 MAXFRC</td>
<td>KPI122 KEVLAR AIR BAG</td>
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<td>21.8 TON</td>
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<td>1</td>
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<td>DUAL DEADMAN CONTROLLER</td>
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</table>

**SUBTOTAL: $ 25,255.00**

**TAX: $1,957.27**

**TOTAL: $ 27,212.27**

* Above prices include freight to Porterville.

* Thank you for the opportunity to quote.
CITY COUNCIL AGENDA: FEBRUARY 20, 2007

PUBLIC HEARING - STAFF REPORT

TITLE: PORTERVILLE COMMERCIAL CENTER - CERTIFICATION OF ENVIRONMENTAL IMPACT REPORT, GENERAL PLAN AMENDMENT 1-2007 AND ZONE CHANGE 3-2007

APPLICANT: John Hale
220 Pine Street
Bakersfield, CA 93301

PROJECT LOCATION: Northeast corner of South Jaye Street and State Route 190.

SPECIFIC REQUEST: The applicant is requesting approval of a General Plan Amendment and Zone Change for that 10.7± acre vacant site located on the northeast corner of South Jaye Street and State Route 190. In order to facilitate approval of the General Plan Amendment and Zone Change, the applicant is requesting Certification of the Environmental Impact Report prepared for the project, which includes the ultimate development of the site with commercial uses.

PROJECT DETAILS: General Plan Amendment 1-2007 proposes to change the land use designation of the General Plan from Industrial to General Commercial. Zone Change 3-2007 proposes to change the present zoning from M-1 (Light Manufacturing) to C-2 D (General Commercial with Design Review Overlay) Zone to maintain consistency between the General Plan and the zoning. Approval of the zone change is contingent upon approval of General Plan Amendment 1-2007.

A conceptual plan for a 75,000± commercial center was evaluated in the Environmental Impact Report but is not a part of the approvals considered with the General Plan Amendment and Zone Change. Prior to the applicant/agent submitting a final map or Conditional Use Permit for processing to approve the actual development of the site, General Plan Amendment 1-2007, and Zone Change 3-2007 would have to be approved.

GENERAL PLAN LAND USE DESIGNATION: Industrial.

SURROUNDING AREA ZONING AND LAND USE:

North: Industrial land (only one lot is currently developed), Tule River.
South: State Route 190, Commercial, including hotel, and restaurants, Wal-Mart Distribution Center.
East: Industrial uses.
West: 40 acre pending commercial development Multi-family and Single family residential.

DD APPROPRIATED/FUNDED CM ITEM NO. 13
STAFF ANALYSIS:

The Land Use Element of the City's General Plan defines General Commercial as a "land use designation intended to provide for a variety of commercial activities and development, including ...regional and sub-regional shopping centers. Primarily, general commercial is oriented to retail comparison shopping, and allows supporting public, financial, and professional uses." The General Plan notes that General Commercial land uses should be concentrated and located along major arterial and collector streets to adequately accommodate the volumes of traffic typically generated by such uses without disruption to the community and residential development.

Though the existing zoning of the project site as industrial could also benefit from the proximity to two arterials, any future industrial development would be limited by the size of the project area, which is approximately 10.7 acres in size. The industrial area at the City's Airport would accommodate industrial development once infrastructure in the area is constructed. To encourage industrial development at the Airport Industrial Park, the City is working on a project that would tie in the airport to the City's water system. Other industrial land in the city is either fragmented or on sloping topography.

Based on an estimate prepared by City staff, the proposed project is anticipated to generate approximately $2 Million annually in total sales tax, which results in approximately $200,000 in City sales tax revenue.

Jaye Street is a planned arterial, as is Springville Avenue in the vicinity of the project. Vandalia Avenue, which would be a dedicated city street, is a necessary circulation link when the Poplar Avenue connection to Jaye Street is eliminated. The traffic study completed as part of the EIR requires mitigation measures to ensure adequate functionality of adjacent streets with the additional trips generated by the project. The location of the proposed project meets the parameters defined by the General Plan for the proposed use.

Development of the site as proposed will be consistent with development to the south of the project area and proposed development west of the project area. Environmental impacts were evaluated in comparison to what would be constructed if the General Plan land use and zoning remained industrial. All environmental impacts were found to be less than significant with the incorporation of mitigation measures.

ALTERNATIVES TO THE PROJECT AND THEIR EFFECT:

1. No Project. Denial of the proposed general plan amendment would not allow the change of zone as proposed.

2. Approve the project. Approval of the general plan amendment and zone change as proposed, would allow for future development of the site to be in conformance with the General Plan and proposed zoning.
ENVIRONMENTAL: On October 15, 2004, the Environmental Coordinator made a preliminary determination that an Environmental Impact Report would be required for the proposed project, and an Initial Study was circulated for a thirty day period. The Draft Environmental Impact Report has been transmitted to interested agencies, groups, and individuals for a thirty (30) day review period from November 10, 2005 to December 10, 2005. On December 20, 2005, the City Council held a public hearing to obtain comments from the public. Five agencies provided comment on the project, and those comments as well as comments received at the public hearing were addressed in the Final EIR, which was publicly noticed and made available from January 23, 2006 to February 2, 2006.

GENERAL PLAN AMENDMENT PROCESS/TIMING OPTIONS

Government Code Section 65358 (b) limits an agency’s ability to amend the City’s General Plan to no more than four (4) amendments per year per element. In essence, the City may only amend the Land Use Element of the General Plan up to four (4) times in any calendar year. If the Council approves this proposed amendment, there will be a maximum of three (3) more amendments for the remainder of 2007. The City is currently working on the comprehensive General Plan update that will address a multitude of changes. Currently, there are no other amendments being processed outside the comprehensive update.

RECOMMENDATION: That the City Council:

1. Adopt the draft resolution approving the Environmental Impact Report prepared for General Plan Amendment 1-2007 (formerly 1-2006 (A)) and Zone Change 3-2007 (formerly 1-2006); and

2. Adopt the draft resolution approving General Plan Amendment 1-2007 (formerly 1-2006 (A)); and

3. Adopt the draft revised ordinance approving Zone Change 3-2007 (formerly 1-2006) and give first reading to the draft ordinance; and

4. Waive further reading of the draft ordinance, approve Zone Change 3-2007 (formerly 1-2006).

ATTACHMENTS:

1. Zoning/Land Use Map
2. Zone Change Application
3. Conceptual Site Plan
4. Final Environmental Initial Report
7. Draft Ordinance approving Zone Change 3-2007
City of Porterville General Plan Land Use

- Low Density Residential
- Medium Density Residential
- High Density Residential
- General Commercial
- Neighborhood Commercial
- Highway Commercial
- Industrial
- Professional and Office
- Schools
- Public and Quasi-Public
- Recreation and Open Space
- Porterville City Limits

Project Site

0 475 950 Feet

ATTACHMENT ITEM NO. 1B
APPLICATION FOR CHANGE OF ZONE NO. .....................

TO THE PORTERVILLE CITY PLANNING COMMISSION:

We, the owners of real property set opposite our respective names, hereby petition to have Ordinance No. 707 amended by reclassifying from Zone M-1 to Zone C-2'D', the property described hereon and shown in colored cross-hatching on the attached map which, together with the Property Owner's List, also attached hereto, are made a part of this petition.

The property is situated on the East side of Jaye Street between Poplar Avenue and Springville Drive.

Exact legal description of said property being Parcel No. 260-290-003.007.009 Pleasant Grove TR For 36 to 39

1. Does public necessity require the proposed change? Is there a real need in the community for more of the types of uses permitted by the Zone requested than can be accommodated in the areas already zoned for such uses?
   (Fully explain your answer, considering the surrounding property as well as the property proposed to be reclassified.)
   
   Yes,
   The City of Porterville has extended growth to the south end of the town, which this Rezone will be in harmony with existing and proposed commercial uses.

2. Is the property involved in the proposed reclassification more suitable for the purposes permitted in the proposed classification than for the purposes permitted in the present classification?
   (Answer completely; give all reasons for your answer.)
   
   No,
   Commercial development is the highest and best use of the property.

3. Would the uses permitted by the proposed zone be detrimental in any way to surrounding property?
   (Explain reasons supporting your answer.)
   
   No,
   Surrounding property is predominantly vacant land & industrial/office uses.

FORM B

ATTACHMENT
ITEM NO. 2
4. What were the original deed restrictions, if any, concerning the type and class of uses permitted on the property involved? Give the expiration date of these restrictions.

(You may attach a copy of these restrictions, after properly underscoring the portions that are in answer to this question.)

N/A

The following spaces are for signatures of owners whose properties lie within the radius of 300 feet of the property proposed to be reclassified and who approve of the change. (Not required. (See Item 2, Page 4.))

(Attach extra sheets if necessary.)

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--- 2 ---
We, the undersigned property owners, herewith request that our respective properties which are included in the reclassification petitioned for, be reclassified and for the reasons herein enumerated.

(This space is for signatures of owners of property actually included in the proposed reclassification. Attach extra sheets if necessary.)

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STATE OF CALIFORNIA

COUNTY OF TULARE

OWNER'S DECLARATION

I, ................................................................., being duly sworn, declare and say that I am the owner of part (or all) of the property involved and that this application has been prepared in compliance with the requirements of the Porterville City Planning Commission as printed herein and that the foregoing information thoroughly and completely, to the best of my ability, presents the argument in behalf of the application herewith submitted 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 Number ................................................................. Signed .................................................................

Mailing Address .................................................................

This is to certify that the foregoing application has been inspected by me and found to be complete and acceptable for filing with the Porterville City Planning Commission.

Received ................................................................. Date ................................................................. Receipt No. .................................................................

By ................................................................. For The Porterville City Planning Commission

- 3 -
November 8, 2005

Bradley Dunlap  
CITY OF PORTERVILLE  
291 N. Main Street  
Porterville, CA 93258

Re: Porterville Commercial Center

Dear Brad:

This letter shall serve as notice that I am requesting the contact name for the application for the General Plan Amendment and Rezone be changed from Scott Mommer to the following:

John S. Hale  
2200 Pine Street  
Bakersfield, CA 93301

Please contact me should you have any questions.

Sincerely,

[signature]

John S. Hale

(661) 323-4523 • (661) 323-2002 Fax  
2200 Pine Street • Bakersfield, CA 93301
FINAL
ENVIRONMENTAL IMPACT REPORT
for the
Porterville Commercial Center Project

Submitted by
Quad Knopf
5110 West Cypress Avenue
P.O. Box 3699
Visalia, California 93278
(559) 733-0440

January 2006
FINAL
ENVIRONMENTAL IMPACT REPORT
for the
Porterville
Commercial Center Project
SCH #2004091116

Submitted By
Quad Knopf
5110 West Cypress Avenue
P.O. Box 3699
Visalia, California 93278
(559) 733-0440

January 2006
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CHAPTER ONE

INTRODUCTION
CHAPTER ONE - INTRODUCTION

In October 2004, the City of Porterville distributed to public agencies and interested citizens a Notice of Preparation (NOP) together with an Initial Study for the proposed Porterville Commercial Center project. The NOP informed these agencies of the City’s intent to prepare an Environmental Impact Report (EIR). The 30-day review of the NOP/Initial Study started on October 6, 2004 and ended on November 5, 2004. The City also invited interested agencies and citizens to a scoping meeting on October 21, 2004 to solicit comments on the information contained in the Initial Study. The comments received during that period are contained in Appendix B of the Draft EIR.

In November 2005, the City requested from the State Clearinghouse a shortened review period of 30 days. The State Clearinghouse determined that the request was consistent with criteria set forth in the written guidelines of the Office of Planning and Research for shortened review and in Section 21091 of the Public Resource Code. A Draft EIR was delivered to the State Clearinghouse and mailed out to agencies on November 11, 2005, for a 30-day review period. A notice was published in the Porterville Recorder on November 11, 2005, notifying the public of the availability of the Draft EIR and soliciting comments thereon. The City Council held a public hearing on December 20, 2005.

Upon the close of the public review period, the City prepared responses to both written and oral comments. These comments and the responses thereto are contained in this Final EIR. Chapter Two provides a verbatim excerpt of all written and oral comments on the Draft EIR and presents responses to significant environmental issues raised in the comments. Where a comment results in a change to the EIR text, a notation is made in the response indicating that the text is revised. Chapter Three of the Final EIR includes a revised Mitigation Implementation and Monitoring Program that includes all of the recommended mitigation measures. Actual comment letters and minutes of the December 20, 2005, Public Hearing on the Draft EIR are contained in Appendix A.

Responses to comments are directed towards the disposition of significant environmental issues that are raised in the comments, as set forth in Section 15068(b) of the California Environmental Quality Act CEQA Guidelines. When reviewing the comments and in developing responses thereto, every effort is made to compare the comment to the facts contained in the Draft EIR, and to provide supplemental information to provide “substantial evidence” about the presence or absence of environmental impacts. According to CEQA, Section 15064(f)(5) “argument, speculation, unsubstantiated opinions, or narrative, or evidence that is clearly inaccurate or erroneous does not constitute such [substantial] evidence.” Responses are not provided to comments on the non-environmental aspects of the proposed project. For comments not directed to significant environmental issues, the responses indicate that the comment has been “noted”.

CEQA requires that a Final EIR be prepared, certified and considered by the City Council prior to taking action on the project. The Final EIR provides the City of Porterville with an opportunity to respond to comments on the Draft EIR and to incorporate any changes necessary to clarify and/or supplement information contained in the document. This Final EIR, therefore, summarizes all environmentally related issues raised during the comment period. This Final EIR

Porterville Commercial Center
Final Environmental Impact Report

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will be circulated to community public agencies and will be available to all commenting agencies for at least ten (10) days prior to its certification, as required by CEQA.
CHAPTER TWO

COMMENTS AND RESPONSES
CHAPTER TWO – COMMENTS AND RESPONSES

Section 2.1 provides a list of all agencies, organizations and individuals that submitted comments on the accuracy and sufficiency of the Draft EIR. The excerpted comments and responses to environmental issues raised in those letters are presented in Section 2.2. Oral comments and associated responses thereto received at the City Council meeting of December 20, 2005, are also included in Section 2.2.

2.1 LIST OF COMMENTATORS

The following agencies, organizations and individuals provided written or oral comments on the Draft EIR:

Written Comments:

1. Matthew D. Francois, Esq.
   Cassidy Shimko Dawson Kawakami
   20 California Street, Suite 500
   San Francisco, CA  94111

2. Jim Perrine, Director
   Parks & Leisure Services
   City of Porterville
   291 North Main Street
   Porterville, CA  93257

3. Mike Mirmazaheri, Chief
   Floodway Protection Section
   Department of Water Resources
   1416 Ninth Street
   P.O. Box 942836
   Sacramento, CA  94236-0001

4. Al Dias
   Office of Transportation Planning
   District 6
   Caltrans
   1352 West Olive Avenue
   P.O. Box 12616
   Fresno, CA  93778-2616

5. Hector Guerra
   Senior Air Quality Planner
   San Joaquin Valley Air Pollution Control District
   Central Regional Office
   1990 East Gettysburg Ave
   Fresno, CA  93726-6061
Oral Comments:

7. John Hale
   2200 Pine Street
   Bakersfield CA

8. Daryl Nicholson
   26914 Avenue 140
   Porterville CA

9. Greg Shelton
   888 North Williford Drive
   Porterville CA

10. Ben Ennis
    643 North Westwood
    Porterville CA

11. Boyd K. Leavitt
    457 East Oak Avenue
    Porterville CA

12. Dick Eckhoff
    197 North Main
    Porterville CA

13. Felipe Martinez
    195 Putnam Avenue
    Porterville CA

2.2 Responses to Comments

This section restates the written and oral comments received on the Draft EIR during the 30-day review period. Following each comment (shown in italics) is a response intended to either supplement, clarify, or amend information provided in the Draft EIR, or refer the commentor to the appropriate place in the Draft EIR where the information is found. Each letter and corresponding response is numbered for reference. Comments not directed to significant environmental issues may be included in this section; responses thereto indicate that the comment has been noted and that no detailed response is necessary. Comments and responses are referenced by comment letter number and comment number. For example, response 1-1 indicates the first comment of the first commentor, etc.
COMMENT LETTER 1

MATTHEW D. FRANCOIS
CASSIDY SHIMKO DAWSON KAWAKAMI
20 CALIFORNIA STREET. SUITE 500
SAN FRANCISCO, CA  94111

Comment 1-1

...since most of the traffic impacts associated with the Project only occur under cumulative conditions, it needs to be made clear that the Project is only responsible for mitigating its proportional fair share of the cumulative impacts along with the other reasonably foreseeable projects identified in the traffic study.

Response 1-1

Table 13 of the Traffic Impact Study, Appendix H of the Draft EIR, identifies the pro rata share of the project's impacts based on the Caltrans Guide for the Preparation of Traffic Impact Studies (June 2001). The methodology used in the pro rata share calculation is not a legal standard for determining equitable responsibility and cost of the project's traffic impact; rather the intent is to provide a means for establishing rough proportionality of the project's traffic impacts.

Comment 1-2

The table purporting to calculate the Project's pro-rata share to the various traffic improvements included in the Traffic Study (Appendix H to the DEIR) uses an appropriate application of the Caltrans proportionate share equation. The value for \( T_E \) in the equation should be changed, however, to account for existing traffic only and not existing plus other approved projects...

Response 1-2

The value of \( T_E \) is based upon the definition given in the Caltrans Guide for the Preparation of Traffic Impact Studies (June 2001).

Comment 1-3

In addition, the traffic mitigation measures are inconsistently described in Tables ES-1, 7-1, and Impact 3.15.1.

Response 1-3

Mitigation Measure #3.15.1 identified Table ES-1; ES-7 has been corrected.
Comment 1-4

The traffic improvements proposed to mitigate cumulative traffic conditions need to be traced back to the Capital Improvement Program or some other reasonable plan of actual mitigation that the City commits itself to implementing. For instance, the Project Staff Report should discuss the City's approved traffic improvement plan for Jaye Street. In addition, the Staff Report should discuss the other improvements, noting that the Project and other probable future developments will be conditioned on paying their fair share toward these improvements, that the monies will be used by the City to finance these improvements, and that once a certain specified threshold of development is met, no further development will be allowed until these improvements are constructed.

Response 1-4

Only those projects that are General Plan level can be traced to the Capital Improvement Program. Project specific impacts and mitigation will be undertaken in conjunction with project implementation.

Comment 1-5

The current Project site plan shows Vandalia Avenue at its maximum length of approximately 250 feet. The traffic study nonetheless recommends that Vandalia Avenue be lengthened to 300 feet.

Response 1-5

Vandalia Avenue serves as a storage lane for traffic access to Jaye Street. The amount of storage that would be provided by 2 – 300 foot lanes could be provided by additional lanes of a shorter length.

Comment 1-6

In addition, the concept of internal capture rate is discussed in the Traffic Study, but does not appear to have been applied to the Project.

Response 1-6

Internal capture rates were calculated and applied to the project. The Traffic Impact Study has been amended with a table to display the calculated internal capture rates.

Comment 1-7

Further, there is no requirement that a Development Agreement be entered into in connection with this Project.
Response 1-7

Early discussion with the project applicant identified a Development Agreement as the preferred method of determining project specific design features and mitigation measures. Since publication of the Draft EIR, other methods to achieve the same purpose have been identified and the City may instead require a Design Overlay Site Review.

Comment 1-8

Mitigation Measure 3.3.1 needs to be amended to clarify that alternative-fueled construction equipment will be used, "if feasible." Since the Project emissions fall below the San Joaquin Valley Air Pollution Control District's 10 ton per year thresholds, the references to "mitigated" and "unmitigated" emissions in Table 3.3-8 is confusing and makes no sense. Similarly, since the Project's air quality impacts are less than the District's thresholds, the Project's contribution to cumulative air quality impacts (i.e., ROG, NOx, and PM10) will be less than cumulatively considerable. The text of Chapter 5 (Cumulative Impacts) should be revised accordingly.

Response 1-8

In the Draft EIR, Table 3.3-8 only applies to operational emissions. The title of the table has been changed to reflect this. Table 3.3-7, "Construction, Equipment, Mitigation Measures," has been amended. The phrase "where feasible" is now included for "use of alternative field or catalyst equipped diesel construction equipment," and "replaces fossil-fueled equipment with electrically driven equivalents.”

Comment 1-9

Under Section 4.2 (Reduced Project Size Alternative), the reference to a 5% reduction was apparently intended to refer to a 50% reduction. Correct the typographical error in the first sentence of the fourth paragraph under Section 4.1 (No Project Alternative).

Response 1-9

Section 4.2 (Reduced Project Size Alternative) has been corrected.

Comment 1-10

In regard to Table 7-1 (Mitigation and Monitoring Program), the "Implementation," "Monitoring," and "Time Span" sections need to be completed for Mitigation Measure 3.3.1. The timing of Mitigation Measures 3.1.1 and 3.1.2 should probably be revised to read: "Prior to issuance of building permits." The timing for Mitigation Measures 3.13.1 and 3.15.2 also needs to be specified.

Response 1-10

Table 7-1 (Mitigation and Monitoring Program) has been corrected.
COMMENT LETTER 2

JIM PERRINE
PARKS & LEISURE SERVICES – DIRECTOR
CITY OF PORTERVILLE
291 N, MAIN STREET
PORTERVILLE, CA  93257

Comment 2-1

The Draft EIR for the reference project indicates that Impact #3.4.2 “Removal of a Valley Oak Tree” is necessary because the alteration of the project plans "is not practical or feasible."

Response 2-1

Construction of the street improvements can be designed to accommodate the Valley oak tree. The applicant will modify the site plan to retain the oak in place. Thus, Mitigation Measure #3.4.2 is no longer required. A conclusion to Impact #3.4.1 – Special Status Species – Migratory Birds is added. Construction activities may disturb avian predators and other migratory birds during nesting season and is a potentially significant impact, but will be less than significant with mitigation. Mitigation Measure #3.4.1 is modified.

COMMENT LETTER 3

MIKE MIRMAZAHERI, CHIEF
FLOODWAY PROTECTION SECTION
DEPARTMENT OF WATER RESOURCES
1416 NINTH STREET
P.O. BOX 942836
SACRAMENTO, CA  94236

Comment 3-1

Portions of the proposed project may be located within a regulated stream over which The Reclamation Board has jurisdiction and exercises authority.

Response 3-1

The Draft EIR correctly states that the project is not located within a regulated stream, wetlands or a 100 year flood zone
COMMENT LETTER 4

AL DIAS
OFFICE OF TRANSPORTATION PLANNING
DISTRICT 6
CALTRANS
1352 WEST OLIVE AVENUE
P.O. BOX 12616
FRESNO, CA 93778-2616

Comment 4-1

The internal capture rates of 36% to 53% shown in Appendix H (Page 11) of the DEIR are above the allowed 5% threshold and are excessive because the proposed project does not have true mixed uses, i.e. residential or commercial components.

Response 4-1

A basic premise behind the data presented in the Trip Generation Manual is that they were collected at single-use, free-standing sites. However, the development of mixed-use or multi-use sites is increasingly popular. While the trip generation rates for individual uses on such sites may be the same or similar to what they are for free standing sites, there is potential for interaction among those uses within the multi-use site, particularly where the trip can be by walking. A common example of this internal-trip making occurs at multi-use developments containing two or more ITE use classifications between which trips can be made without using the off-site road system. As outlined in the ITE Trip Generation Handbook, an internal capture rate can generally be defined as a percentage reduction that can be applied to the trip generation estimates for individual land uses to account for trips internal to the site. Although the proposed project does not have a mixed use with a residential component, the Trip Generation Manual does not state that a mixed/multi use development requires a residential component.

The following internal capture rates were derived from studies outlined in the Trip Generation Handbook and applied to approved/pending projects (including Riverwalk) and to the project:

- Free Standing Discount Superstore – 36%
- Specialty Retail Center – 36%
- Sit Down Restaurant – 53%
- Fast Food with Drive Thru – 41%
- Gasoline/Service Station – 36%

Comment 4-2

Opening day improvements, without the Riverwalk Marketplace project, should include the following as a minimum:

Intersection of Vandalia Avenue and Jaye Street

Porterville Commercial Center
Final Environmental Impact Report
Eastbound Vandalia Avenue - 1 left, 1 shared through/leaf, 1 right

Westbound Vandalia Avenue - 1 left, 1 right

Northbound Jaye Street - 2 through, 1 right

Southbound Jaye Street - 2 left, 2 through

Intersection of SR 190 and Jaye Street

Eastbound SR 190 - 1 left, 2 through, 1 right. Westbound SR 190 - 1 left, 2 through, 1 right Northbound Jaye Street - 1 left, 1 through, 1 right Southbound Jaye Street - 2 left, 2 through, 2 right.

Response 4-2

If the Riverwalk Marketplace project were not constructed for opening day of the Porterville Commercial Center project, there would be no need for any improvements to eastbound Vandalia at Vandalia and Jaye Streets.

Comment 4-3

It is recommended that an additional 12 feet of right-of-way on the east side of Jaye Street be acquired for an additional left turn/through lane. Building pads should be set back an additional 20 feet for any future additional traffic or utility improvements.

Response 4-3

The designs, as illustrated in Appendix H of the Draft EIR, show the needed configuration of that area for traffic projected to 2030. All necessary right-of-way will be obtained prior to construction of the project, as shown in preliminary maps prepared by City Staff. Setbacks will conform to City Code.

Comment 4-4

Ultimate improvements to the intersection of SR 190 and Jaye Street should include dual northbound left-turn lanes and two through northbound lanes to accommodate the high percentage of slow-moving trucks from the distribution center. Without these additional lanes, the intersection is projected to operate at LOS E in 2030.

Response 4-4

Impacts of the proposed project without consideration of adjacent pending development are relatively minor. The improvements recommended above are in response to the anticipated cumulative impacts of the adjacent projects. Mitigation monitoring after each phase of development of the Riverwalk Marketplace project would ensure continued function of the SR 190/Jaye Street intersection. If the Riverwalk Marketplace project were not built, the full extent
of the improvements recommended above would not be required. The Traffic Impact Study for the project outlines mitigation measures needed for the project.

Comment 4-5

The City of Porterville is required to monitor the LOS of SR 190/Jaye Street intersection. When the LOS of the intersection falls below LOS D or the LOS of the eastbound left-turn movements is E, all development within the vicinity is to be halted once the set threshold is reached.

Response 4-5

Comment noted.

Comment 4-6

It is recommended that the project proponent needs to implement the improvements prior to opening day or make a "fair share" funding contribution towards future required improvements as noted in the Draft Environmental Impact Report. The City of Porterville is financially responsible for the improvements of the SR 190/Jaye Street intersection. The City of Porterville should create a development impact fee program to help fund future, local and State transportation improvement projects necessitated by the accumulated impacts of development. The Freeway Agreement between Caltrans and the City of Porterville maintains SR 190 as a freeway between SR 63 and Jaye Street and an expressway east of Jaye Street with the intersection of SR 190 and Jaye Street maintained as an at-grade intersection.

Response 4-6

The project proponent will implement improvements needed for opening day traffic as discussed in the Traffic Impact Study. For improvements required in addition to opening day scenario, the project proponent will either implement the improvements or make a fair share funding contribution towards required improvements as noted in the Draft EIR. Likewise, the City will make a fair share contribution to future improvements to State Route 190 and Jaye Street. While the City accepts that its percentage of responsibility for improvements is large, the burden must be shared with those developments occurring east of the City, in County communities and at the tribal reservation. The City cannot agree to fund all projects unless there is a nexus for traffic volumes due to City development. Following the City's update to the General Plan Circulation Element, the City will study the establishment of a new impact fee for State facilities.

Comment 4-7

The close intersection spacing on Jaye Street between SR 190 and Vandalia Avenue and the excessive turning traffic at the intersection of SR 190 and Jaye Street may require additional street improvements in the future. The proposed project and future land use changes require that mitigation monitoring. Through the continual mitigation monitoring acceptable levels of service for all local roads and State facilities may be developed and improvements implemented prior to the LOS being affected.

Porterville Commercial Center
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January 2006
2-9
Response 4-7

The Draft EIR states that the City shall implement and monitor Mitigating Measure 3.15.1 (Page 3-60 Draft EIR).

Comment 4-8

It is recommended that the City of Porterville conduct a corridor study for SR 190, which will ultimately have a combination of full interchanges, partial interchanges, and at-grade intersections. The City will have the full financial responsibility for the future widening of SR 190 and making intersection improvements to the SR 190 at Jaye Street intersection to obtain a minimum LOS C. for the intersection.

Response 4-8

The Porterville Commercial Center project does not create traffic impacts substantial enough to merit a corridor study for State Route 190. Regarding financial responsibility, please note the response to Comment 4-6.

Comment 4-9

The existing intersection when signalized needs to be synchronized with the SR 190/Jaye Street intersection.

Response 4-9

The existing “T” intersection when signalized will be synchronized with the SR 190/Jaye Street intersection; however, the City will determine which technology provides the appropriate degree of accuracy.

Comment 4-10

Existing curb, gutter and sidewalk, and curb ramps may need to be reconstructed to meet current ADA standards or other applicable State or Federal accessibility and safety requirements.

All existing concrete curb, gutter and sidewalk that is damaged; broken and/or cracked shall be removed and replaced in-kind.

Any and all damaged concrete surfaces within the right-of-way which pose a safety hazard due to potential tripping hazards shall be replaced or repaired in accordance with ADA and/or applicable State or Federal requirements.

Response 4-10

Comment noted.
Comment 4-11

An encroachment permit must be obtained for all proposed activities for placement of encroachments within, under or over the State highway rights-of-way. Activity and work planned in the State right-of-way shall be performed to State standards and specifications, at no cost to the State. Engineering plans, calculations, specifications, and reports (documents) shall be stamped and signed by a licensed Engineer or Architect, Engineering documents for activity and work in the State right-of-way shall be submitted using Metric Units. However, dual units may be used for activity and work in the right-of-way costing $1,000,000 or less, or by an exception approved by the Director. The preferred method of delineating dual units is by showing the English unit first then the Metric unit next to it in parenthesis. The Permit Department and the Environmental Planning Branch will review and approve the activity and work in the State right-of-way before an encroachment permit is issued. Encroachment permits will be issued in accordance with Streets and Highway Codes, Section 671.5, "Time Limitations." Encroachment permits do not run with the land. A change in ownership requires a new permit.

Response 4-11

Comment noted.

Comment 4-12

All proposed landscaping plans along the SR 190 right-of-way including corner cut-off shall meet current standards as determined by the District Landscape Architect. All features of landscaping shall be evaluated for type, location and site visibility conflicts during the encroachment review process. All permits for landscaping in conventional highway right-of-way must be accompanied by a "District" approved maintenance agreement obligating a local agency or the permittee to maintaining the landscaping. Said maintenance agreement must accompany and be approved prior to issuance of the landscape permit. Proposed landscape projects in access control rights-of-way require an exception process, and approval is subject to the Headquarters Departmental approval process.

Response 4-12

Comment noted.

Comment 4-13

Dust control measures shall be implemented on the site in a manner to prevent dust from entering the State right-of-way.

Response 4-13

Comment noted.
Comment 4-14

Stormwater is not allowed to be discharged to the State right-of-way. Since the proposed development/project involves one acre or more of ground disturbance, the applicant needs to be advised by the lead agency to contact the Central Valley Regional Water Quality Control Board office in Fresno at (559) 445-5116 to determine whether a Notice of Construction will be required. The applicant will be required to adhere to Caltrans construction stormwater requirements if there is proposed work within the State right-of-way.

Response 4-14

Comment noted.

Comment 4-15

Advertising signs within the immediate area outside the State right-of-way need to be cleared through the Caltrans Right-of-Way Division, Office of Outdoor Advertising. The project proponent must construct and maintain the advertising signs without access to the State Routes.

Response 4-15

Comment noted.

Comment 4-16

Alternative transportation policies should be applied to the development. An assessment of multi-modal facilities should be conducted. This assessment should be used to develop an integrated multi-modal transportation system to serve and help alleviate traffic congestion caused by the project and related development in this area of the City. The assessment should include the following:

Pedestrian walkways should link this retail complex to an internal project area walkway, transit facilities, as well as other walkways in the surrounding area.

Response 4-16

The project is adjacent to the recently constructed Tule River Parkway Trail, and is accessible to pedestrians and bicyclists. The project size is not so great that a trail within the development is necessary, but sidewalks throughout the retail center and crosswalks connecting separated buildings will meet the intent of trails. The site plan will be designed to encourage pedestrian activity within the center. Bus turnouts along the project’s Jaye Street frontage will be provided with implementation of the related projects.

Comment 4-17

The project should develop a Transportation Management Plan (TMP). The TMP needs to address construction and traffic impacts during the building of the sewer, drainage and other
infrastructure. The goal of the TMP is to reduce overall trips and the impact of those trips on transportation/air quality.

Response 4-17

A traffic control plan will be completed to manage traffic impacts during construction.

Comment 4-18

The consideration of bicycles as an alternative needs more attention. The project should offer internal amenities to encourage bicycle use. These include parking, security, lockers and showers. However, internal bicycle paths should be coordinated with local and regional pathways to further encourage the use of bicycles for commuter and recreational purposes.

Response 4-18

The project is adjacent to the recently constructed Tule River Parkway Trail, and is accessible to pedestrians and bicyclists. The project size is not so great that a trail within the development is necessary, but sidewalks throughout the retail center and crosswalks connecting separated buildings will meet the intent of trails. The site plan will be designed to encourage pedestrian activity within the center. Bus turnouts along the project’s Jaye Street frontage will be provided with implementation of the related projects.

Comment 4-19

Local roads in the vicinity of the SR 190/Jaye Street intersection are experiencing severe queuing resulting in peak-period congestion that has the potential to exacerbate local (spot) as well as regional air quality concerns. This raises concerns pertaining to the cumulatively significant impact this project will have on air quality.

Response 4-19

The circulation improvements mitigating traffic impacts to the site, as well as the planned and upcoming circulation improvements to the Jaye Street corridor will reduce traffic congestion and alleviate local (spot) air quality impacts.
COMMENT LETTER 5

HECTOR GUERRA
SENIOR AIR QUALITY PLANNER
SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT
CENTRAL REGIONAL OFFICE
1990 EAST GETTYSBURG AVE
FRESNO, CA 93726-6061

Comment 5-1

The following items are rules that have been adopted by the District to reduce emissions throughout the San Joaquin Valley, and are required:

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, road construction, bulk materials storage, landfill operations, etc.

If a non-residential project is 5.0 or more acres in area or will include moving, depositing, or relocating more than 2,506 cubic yards per day of bulk materials on at least three days, a Dust Control Plan must be submitted as specified in Section 6-3-1 of Rule 8021 Construction activities shall not commence until the District has approved the Dust Control Plan.

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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 4621 (Gasoline Transfer into Stationary Storage Containers, Delivery Vessels, and Bulk Plants) This rule limits VOC emissions from stationary gasoline storage tanks with capacity greater than 250 gallons (except for tanks subject to Rule 4623), gasoline delivery vessels, and tanks with capacity than 250 gallons, but not exceeding 19,800 gallons located at gasoline bulk plants and Rule 4622 (Gasoline Transfer into Motor Vehicle Fuel Tanks) which limits emissions of gasoline vapors from the transfer of gasoline into motor vehicle fuel tanks.
Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations)
If asphalt paving will be used, then paving operations of this project will be subject to Rule 4641. This rule applies to the manufacture and use of cutback asphalt, slow cure asphalt and emulsified asphalt for paving and maintenance operations.

Rule 4692 (Commercial Charbroiling) This rule regulates chain-driven charbroilers to limit Volatile Organic Compounds (VOC) and PM10 emissions. Items subject to this rule include (but are not limited to): grill charbroilers, flamebroilers and direct-fired barbecues.

Response 5-1
Comment noted

ORAL COMMENT 6

JOHN HALE
2200 PINE STREET
BAKERSFIELD CA

Mr. Hale is the project applicant and stated he looks forward to the opportunity to build a quality project and bring something to the community to be proud of and was present to answer any questions.

Response 6-1
Comment noted

ORAL COMMENT 7

DARYL NICHOLSON
26914 AVENUE 140
PORTERVILLE CA

Mr. Nicholson identified several issues: the project, the property, the process and traffic and the impacts to an oak tree. The property is not zoned appropriately in the General Plan; he didn’t like the process of proposing a zone change in an EIR and then changing the General Plan. The intersection [SR 190 and Jaye Street] is the worst intersection in Porterville.

Response 7-1

The Draft TIS (Traffic Impact Study) fully analyzes the environmental effects of project related traffic impacts and identifies required mitigation measures that reduce the level of impacts to less than significant.
ORAL COMMENT 8

GREG SHELTON
888 NORTH WILLIFORD DRIVE
PORTERVILLE CA

*Mr. Shelton did not like the process under consideration by the City Council.*

Response 8-1

The comment apparently does not refer to the environmental process pursuant to the California Environmental Quality Act (CEQA). The CEQA process has been followed in a legal and appropriate manner.

ORAL COMMENT 9

BEN ENNIS
643 NORTH WESTWOOD
PORTERVILLE CA

*Mr. Ennis didn’t receive a copy of the Draft EIR until the afternoon before the hearing [December 20, 2005]. He stated that Alternative 4.2 has mistakes and he doesn’t like the process that is under consideration by the City Council.*

Response 9-1

See Response 1-9.

ORAL COMMENT 10

BOYD K. LEAVITT
457 EAST OAK AVENUE
PORTERVILLE CA

*Mr. Leavitt believes that a complete economic report should be prepare for a complete EIR*

Response 10-1

Economic and social impacts are not the subject of EIRs, except to the extent that they contribute to or are caused by physical impacts on the environment. However, recent California court decisions (*Bakersfield Citizens for Local Control v. City of Bakersfield, Panama 99 Properties LLC, and Castle and Cooke Commercial-CA, Inc., as well as Dolan Ingram, et al. v. City of Redding and Wal-Mart, Inc., et al.*) have made clear that for large retail developers, an economic impact analysis should be undertaken to assess the possibility of “urban decay” and deterioration and direct physical impacts on the environment. However, the proposed 75,000 square foot shopping center does not meet the size precedents of other projects where economic studies were found to be appropriate and needed by the courts.

*Porterville Commercial Center*  
*Final Environmental Impact Report*  
*January 2006*  
*2-16*
ORAL COMMENT 11

DICK ECKHOFF
197 NORTH MAIN
PORTERVILLE CA

Mr. Eckhoff supports preserving the oak tree located on the west side of the property.

Response 11-1

See response to Comment 2-1.

ORAL COMMENT 12

FELIPE MARTINEZ
195 PUTNAME AVENUE
PORTERVILLE CA

Mr. Martinez asked if the apartments going in on Date and E Streets were taken into account in the traffic study.

Response 12-1

The Traffic Impact Study (Appendix H of the Draft EIR) fully analyzed the impacts of traffic for existing and proposed projects and future, pending projects known at the time that the Notice of Preparation was issued.
CHAPTER THREE

MITIGATION REPORTING/MONITORING PROGRAM
CHAPTER THREE – MITIGATION REPORTING/MONITORING PROGRAM

3.1 INTRODUCTION

State and local Agencies are required by Section 21081.6 of the California Public Resources Code to establish a mitigation monitoring and reporting program for all projects that are approved and which require CEQA processing.

Local agencies are given broad latitude in developing programs to meet the requirements of Public Resources Code Section 21081.6. The mitigation-monitoring program outlined in this document is based upon guidance issued by the Governor’s Office of Planning and Research.

In this instance, mitigation of the potentially significant environmental impacts attributable to the project will be implemented by the City in accordance with its construction plan review and site inspection activities.

The mitigation and reporting program for the proposed project corresponds to mitigation measures outlined in the Draft EIR plus modifications made in response to comments thereto. The program summarizes the significant environmental issues identified in the EIR, the mitigation measures required to reduce each potentially significant impact to less than significance, and the agency or agencies responsible for monitoring and reporting on the implementation of the mitigation measures.
<table>
<thead>
<tr>
<th>Impact Number</th>
<th>Developer Initial</th>
<th>Responsible Party</th>
<th>Mitigation Measure</th>
<th>City Approval</th>
<th>Time Span</th>
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<tbody>
<tr>
<td>Impact #3.1.1: Visual Compatibility</td>
<td>City of Porterville</td>
<td>Mitigation Measure #3.1.1: The north and west elevations of the Porterville Commercial Center will be designed to minimize views of urban development and will be landscaped with trees and shrubbery. A licensed landscape architect will design a landscaping plan to achieve these goals. Outdoor billboards shall be excluded from the site. The design and appearance of retail stores, restaurants, and fueling station structures shall be in conformance with the City’s Building codes.</td>
<td>Completed prior to issuance of building permit</td>
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<td>Impact #3.1.2: Light and Glare</td>
<td>City of Porterville</td>
<td>Mitigation Measure #3.1.2: A lighting plan will be developed by a registered illumination engineer so that lighting levels comply with generally accepted standards. Lighting will be designed to avoid direct exposure of lighting elements and associated glare into adjacent areas. No more than a 0.25 footcandle increase shall be detected offsite on adjacent properties.</td>
<td>Completed prior to issuance of building permit</td>
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<tr>
<td>Impact #3.3.1: PM₁₀ From Construction Activities</td>
<td>San Joaquin Valley Air Pollution Control District</td>
<td>Mitigation Measure #3.3.1: The optional dust control measures in Tables 3.3-4 and 3.3-5 will be implemented. Enhanced Control Measures – The following measures should be implemented at construction sites when required to mitigate significant PM₁₀ impacts (note these measures are to be implemented in addition to Regulation VIII requirements) Limit traffic speeds on unpaved roads to 15 mph; and Install sandbags or other erosion control measures to prevent silt runoff to public roadways from sites with a slope greater than one percent. Additional Control Measures – The following control measures are strongly encouraged at construction sites that are large in area, located near sensitive receptors, or which for any other reason warrant additional emissions reduction. Install wheel washers for all exiting trucks, or wash off all trucks and equipment leaving the site Install wind breaks at windward side(s) of construction areas Suspend excavation and grading activity when winds exceed 20 mph*; and Limit area subject to excavation, grading, and other construction activity at any</td>
<td>During construction period</td>
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<td><em>Regardless of windspeed, an owner/operator must comply with Regulation VIII’s 20 percent opacity limitation.</em></td>
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<td><em>Source: San Joaquin Valley Unified Air Pollution Control District, Guide for Assessing and Mitigating Air Quality Impacts, January 2002</em></td>
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<td>Heavy duty equipment (scrapers, graders, trenchers, earth movers, etc.)</td>
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<td>▪ Use of alternative fueled or catalyst equipped diesel construction equipment</td>
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<td>▪ Minimize idling time (e.g., 10 minute maximum)</td>
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<td>▪ Limit the hours of operation of heavy duty equipment and/or the amount of equipment in use</td>
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<td>▪ Replace fossil-fueled equipment with electrically driven equivalents (provided they are not run via a portable generator set)</td>
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<td>▪ Curtail construction during periods of high ambient pollutant concentrations; this may include ceasing of construction activity during the peak-hour of vehicular traffic on adjacent roadways</td>
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<td>▪ Implement activity management (e.g. rescheduling activities to reduce short-term impacts)</td>
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<td><em>Source: San Joaquin Valley Unified Air Pollution Control District, Guide for Assessing and Mitigating Air Quality Impacts, January 2002</em></td>
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<td>Impact #3.4.1:</td>
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<td>City of Porterville</td>
<td><strong>Mitigation Measure #3.4.1:</strong> The nesting season for avian predators and other migratory birds generally occurs sometime between February 1 and September 15. A pre-construction survey for migratory birds will be conducted prior to construction. If nesting is occurring, construction activities within 250 feet of the nest will not occur.</td>
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<td>Special Status</td>
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<td>Species – Migratory Birds</td>
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<td>Impact #3.5.1:</td>
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<td>City of Porterville</td>
<td><strong>Mitigation Measure #3.5.1:</strong> Should buried cultural resources be discovered during construction, the project contractor shall immediately halt all work within 50-feet of the find until a qualified professional archaeologist can be consulted to evaluate the find and implement appropriate mitigation measures. Should human skeletal remains be encountered, State law requires immediate notification of the County Coroner. Should the County Coroner determine that such remains are in an archaeological context, the Native American Heritage Commission in Sacramento shall be notified immediately, pursuant to State law, to arrange for Native American</td>
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<td>During construction period.</td>
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<td>Impact #3.11.1: Construction Noise</td>
<td>City of Porterville</td>
<td>Mitigation Measure #3.11.1: Noise producing equipment used during construction shall be restricted to the hours from 7:00 a.m. to 7:00 p.m., Monday through Friday, and 9:00 a.m. to 6:00 p.m. on Saturday and Sunday. Also, effective mufflers shall be fitted to gas- and diesel-powered equipment.</td>
<td>Before opening day of project</td>
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<td>Impact #3.15.1: Increased traffic</td>
<td>City of Porterville</td>
<td>Mitigation Measure #3.15.1: The following mitigation measures are recommended to reduce traffic impacts to a less than significant level: Under “Existing plus Approved/Pending Projects plus Project Only” conditions, the following mitigation measures are recommended:</td>
<td>Before opening day of project</td>
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1. **Springville Avenue/Jaye Street intersection**: Install a traffic signal. This intersection is projected to operate at LOS “F” conditions during the AM and PM peak hour periods. This is a result of vehicles experiencing long periods of delay on Springville Avenue (minor street) while waiting for a “gap” to enter or cross Jaye Street (major street). This intersection is also projected to meet the Caltrans’ Peak-Hour Volume Warrant 11 for urban areas. Implementation of the recommended mitigation measure will result in LOS “B” conditions during the AM and PM peak hour periods.

2. **Vandalia Avenue/Jaye Street intersection**: Install a traffic signal and widen the southbound approach to accommodate a dedicated left turn lane. This two-way stop-controlled intersection, which currently provides access to a home improvement store and garden center, is projected to operate at LOS “F” conditions during the AM and PM peak hour periods under this scenario. This intersection is also projected to meet the Caltrans’ Peak-Hour Volume Warrant 11 for urban areas. Implementation of the recommended mitigation measure will result in LOS “C” conditions during the AM and PM peak hour periods.

3. **State Route 190/Jaye Street intersection**: Widen the southbound approach of this signalized intersection to include dual right turn lanes. Under “Existing plus Approved/Pending Projects” conditions this intersection is projected to operate at LOS “E” conditions during the PM peak hour period. With the implementation of the recommended mitigation measures, this intersection is projected to operate at LOS “D” conditions during the AM and PM peak hour periods.

*Porterville Commercial Center*
*Final Environmental Impact Report*
4. **Project Driveways**: It is recommended that the project driveways along Springville Avenue contain shared movements as shown in Figure 8. The project driveway on Jaye Street between State Route 190 and Vandalia Avenue is recommended to be a “right turn only” driveway and should provide for a deceleration lane no less than 100 feet in length.

For recommended phasing of these mitigation measures please refer to the TIS (Appendix H).

| Impact #3.15.2: Exceeds traffic threshold needed to maintain level of service | City of Porterville | Mitigation Measure #3.15.2: The following mitigation measures are recommended to reduce traffic impacts to a **less than significant** level:

Under “Existing plus Approved/Pending Projects plus Project Only” conditions, the following mitigation measures are recommended:

5. **Springville Avenue/Jaye Street intersection**: Install a traffic signal. This intersection is projected to operate at LOS “F” conditions during the AM and PM peak hour periods. This is a result of vehicles experiencing long periods of delay on Springville Avenue (minor street) while waiting for a “gap” to enter or cross Jaye Street (major street). This intersection is also projected to meet the Caltrans’ Peak-Hour Volume Warrant 11 for urban areas. Implementation of the recommended mitigation measure will result in LOS “B” conditions during the AM and PM peak hour periods.

6. **Vandalia Avenue/Jaye Street intersection**: Install a traffic signal and widen the southbound approach to accommodate a dedicated left turn lane. This two-way stop-controlled intersection, which currently provides access to a home improvement store and garden center, is projected to operate at LOS “F” conditions during the AM and PM peak hour periods under this scenario. This intersection is also projected to meet the Caltrans’ Peak-Hour Volume Warrant 11 for urban areas. Implementation of the recommended mitigation measure will result in LOS “C” conditions during the AM and PM peak hour periods.

7. **State Route 190/Jaye Street intersection**: Widen the southbound approach of this signalized intersection to include dual right turn lanes. Under “Existing
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APPENDICES
APPENDIX A

WRITTEN AND ORAL COMMENTS
DATE: November 17, 2005

TO: Julie Boyle, Senior Planner

FROM: Jim Perrine, Parks & Leisure Services Director

SUBJECT: Environmental Review – Porterville Commercial Center

The Draft EIR for the reference project indicates that Impact #3.4.2 Removal of a Valley Oak Tree is necessary because the alteration of the project plans, “is not practical or feasible.” There should be no question that modification of preliminary development plans is always feasible. To say otherwise would imply that procedural review and comment including environmental mitigation and presentation of public comments, are of no consequence.

The practicality of modifying plans would similarly imply that such modification would jeopardize the achievement of the Project Objective. No discussion is offered on how the preservation of a single mature Oak tree would jeopardize the stated Project Objective—building and operating an economically and competitive commercial center.

The preservation of the Oak tree would enhance the esthetics, mitigate for the loss of scenic agricultural field land along a heavily traveled corridor of the City, and provide pedestrian attraction to the proposed commercial center. The preservation of this tree would thus foster the Project Objective.

No discussion is offered to indicate that the single mature Oak tree is of poor health or in a declining or dangerous condition beyond reasonable preservation care. Therefore, alternative project plans and street designs must be considered. Opportunities for public analysis and comment on these alternatives need to be provided.
December 1, 2005

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

RE: Porterville Commercial Center

Dear Julie Boyle:

We have reviewed your shortened review request and have determined that it is consistent with the criteria set forth in the written guidelines of the Office of Planning and Research for shortened reviews, and Section 21091 of the Public Resources Code.

The shortened review period for an EIR shall not be less than 30 days. The review process for the referenced project will start on 11/10/2005 and end on 12/9/2005.

If you have any questions, please contact Scott Morgan at (916) 445-0613.

Sincerely,

[Signature]

Terry Roberts  
Director

cc: file
December 5, 2005

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

Subject: Draft Environmental Impact Report - Porterville Commercial Center Project

Dear Mr. Dunlap,

The San Joaquin Valley Air Pollution Control District (District) has reviewed the Draft Environmental Impact Report (DEIR) for the Porterville Commercial Center Project (Project) forwarded by Quad/Khop for the City of Porterville. The DEIR appropriately addresses the project’s potential impact on Air Quality. Development as a result of this project will be subject to District rules and regulations. The District previously commented on November 18, 2004; Reference No. S20040304, and it appears that our comments were thoroughly addressed. We agree that all mitigations included in the DEIR Mitigation Measures 3.3.1 through 3.3.4 should be implemented to the extent specified to reduce air quality impacts. Also, we concur with the conclusions and recommendations contained in Appendix H Traffic (as it relates to road improvements to minimize traffic impacts and thereby preserves air quality).

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 encouraged to contact the District’s Small Business Assistance Office at (661) 326-6959. Based on the information provided, the proposed project will be subject to the following District rules:

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, road construction, bulk materials storage, landfill operations, etc.

If a non-residential project is 5.0 or more acres in area or will include moving, depositing, or relocating more than 2,500 cubic yards per day of bulk materials on at least three days, a Dust Control Plan must be submitted as specified in Section 6.3.1 of Rule 8021. Construction activities shall not commence until the District has approved the Dust Control Plan. A template of the District's Dust Control Plan is available at: http://www.valleymr.org/busind/comply/PM10/forms/DCP-Form%20-%2010-14-2004.pdf.

David L. Crowe
Executive Director / Air Pollution Control Officer

Northern Region Office
4800 Enterprise Way
Modesto, CA 95356-8718
(209) 537-6400 • FAX (209) 537-6475

Central Region Office
1900 East Gettysburg Avenue
Fresno, CA 93726-0244
(559) 236-6000 • FAX (559) 236-6061
www.valleymr.org

Southern Region Office
2700 M Street, Suite 273
Bakersfield, CA 93301-2373
(661) 326-6901 • FAX (661) 326-6985
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 as specified in Section 6.4.2 of Rule 8021. A template of the District's Construction Notification Form is available at: http://www.valleyair.org/busind/comply/PM10/forms/Reg%20VIII%20Notification%20-%2011-17-2004.pdf.

**Rule 3135** (Dust Control Plan Fee) This rule requires the applicant to submit a fee in addition to a Dust Control Plan. The purpose of this fee is to recover the District's cost for reviewing these plans and conducting compliance inspections. More information on the fee is available at: http://www.valleyair.org/rules/currntrules/Rule%203135%201005.pdf.

**Rule 4101** (Visible Emissions) This rule prohibits emissions of visible air contaminants to the atmosphere and applies to any source operation that emits or may emit air contaminants. The applicant must contact the District's Small Business Assistance Office at (209) 557-6446 / (559) 230-5888 / (661) 326-6869 to receive additional information/instructions.

**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 4621** (Gasoline Transfer into Stationary Storage Containers, Delivery Vessels, and Bulk Plants) This rule limits VOC emissions from stationary gasoline storage tanks with capacity greater than 250 gallons (except for tanks subject to Rule 4623), gasoline delivery vessels, and tanks with capacity than 250 gallons, but not exceeding 19,800 gallons located at gasoline bulk plants and **Rule 4622** (Gasoline Transfer into Motor Vehicle Fuel Tanks) which limits emissions of gasoline vapors from the transfer of gasoline into motor vehicle fuel tanks.

**Rule 4641** (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations) If asphalt paving will be used, then paving operations of this project will be subject to Rule 4641. This rule applies to the manufacture and use of cutback asphalt, slow cure asphalt, and emulsified asphalt for paving and maintenance operations.

**Rule 4692** (Commercial Charbroiling) This rule regulates chain-driven charbroilers to limit Volatile Organic Compounds (VOC) and PM10 emissions. Items subject to this rule include (but are not limited to): grill charbroilers, flamebroilers, and direct-fired barbecue.

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) 230-5820.

Sincerely,

Hector R. Guerra
Senior Air Quality Planner

cc: file
DEC 02, 2005

Bradley D. Dunlap, Community Development Director
City of Porterville
291 North Main Street
Porterville, California 93257

Porterville Commercial Center
State Clearinghouse (SCH) Number: 2004101087

Staff for the Department of Water Resources has reviewed the subject document and provides the following comments:

Portions of the proposed project may be located within a regulated stream over which The Reclamation Board has jurisdiction and exercises authority. If the project includes any "channel reconfiguration" that was not previously permitted, new plans must be submitted. Section 8710 of the California Water Code requires that a Board permit must be obtained prior to start of any work, including excavation and construction activities, within floodways, levees, and 10 feet landward of the landside levee toes. A list of streams regulated by the Board is contained in the California Code of Regulations, Title 23, Section 112.

Section 8(b)(2) of the Regulations states that applications for permits submitted to the Board must include a completed environmental questionnaire that accompanies the application and a copy of any environmental documents if they are prepared for the project. For any foreseeable significant environmental impacts, mitigation for such impacts shall be proposed. Applications are reviewed for compliance with the California Environmental Quality Act.

Section 8(b)(4) of the Regulations states that additional information, such as geotechnical exploration, soil testing, hydraulic or sediment transport studies, biological surveys, environmental surveys and other analyses may be required at any time prior to Board action on the application.

You may disregard this notice if your project is outside of the Board jurisdiction. For further information, please contact Sam Brandon of my staff at (916) 574-0651.

Sincerely,

[Signature]

Mike Mirmazaheri, Chief
Floodway Protection Section

cc: Governor's Office of Planning and Research
State Clearinghouse
1400 Tenth Street, Room 121
Sacramento, CA 95814
VIA FACSIMILE and U.S. MAIL

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

Re: Draft Environmental Impact Report for the Porterville Commercial Center Project

Dear Mr. Dunlap:

We are writing on behalf of our client, John Hale ("Hale"), to provide comments on the proposed Draft Environmental Impact Report ("DEIR") for the Porterville Commercial Center (the "Project") dated November 2005. While the DEIR adequately analyzes the Project's potential significant environmental effects in a manner that comports with the requirements of the California Environmental Quality Act ("CEQA"), we are writing to clarify and amplify several points that are raised by the DEIR, as mentioned below.

As a preliminary matter, since most of the traffic impacts associated with the Project only occur under cumulative conditions, it needs to be made clear that the Project is only responsible for mitigating its proportional fair share of the cumulative impacts along with the other reasonably foreseeable projects identified in the traffic study. See, CEQA Guidelines §15130(b)(5) ("An EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects.") (emphasis added); see, also, Anderson First Coalition v. City of Anderson, 130 Cal.App.4th 1173, 1188 (2005) ("A single project's contribution to a cumulative impact is deemed less than significant if the project is required to implement or fund its 'fair share' of a mitigation measure designed to alleviate the cumulative impact.") and CEQA Guidelines § 15130(a)(3) ("An EIR may determine that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. A project's contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact.").
Mr. Bradley Dunlap  
December 9, 2005  
Page 2:

The table purporting to calculate the Project’s pro-rata share to the various traffic improvements included in the Traffic Study (Appendix H to the DEIR) uses an appropriate application of the Caltrans proportionate share equation. The value for T_F in the equation should be changed, however, to account for existing traffic only and not existing plus other approved projects, since the other projects listed in the study will also be required to participate in contributions to the stated roadway improvements. In addition, the traffic mitigation measures are inconsistently described in Tables ES-1, 7-1, and Impact 3.15.1. The measures should be revised to clearly and concisely state the amount of the Project’s dollar contribution to the various traffic improvements as well as compliance with any applicable Traffic Impact Fee Program.

The traffic improvements proposed to mitigate cumulative traffic conditions need to be traced back to the Capital Improvement Program or some other reasonable plan of actual mitigation that the City commits itself to implementing. For instance, the Project Staff Report should discuss the City’s approved traffic improvement plan for Jaye Street. In addition, the Staff Report should discuss the other improvements, noting that the Project and other probable future developments will be conditioned on paying their fair share toward these improvements, that the monies will be used by the City to finance these improvements, and that once a certain specified threshold of development is met, no further development will be allowed until these improvements are constructed.

The current Project site plan shows Vandalia Avenue at its maximum length of approximately 250 feet. The traffic study nonetheless recommends that Vandalia Avenue be lengthened to 300 feet. This “recommendation” is not needed in order to mitigate any environmental impact and would be infeasible in any event given the commercial development located immediately to the east of the Project site. As you know, the City may only impose “feasible” mitigation measures on the proposed Project, i.e., ones that are “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” Public Resources Code § 21061.1. The lengthening of Vandalia Avenue is not such a feasible mitigation measure.

In addition, the concept of internal capture rate is discussed in the Traffic Study, but does not appear to have been applied to the Project. The Project trips should be adjusted for the internal capture rate, as was done for the Riverwalk Marketplace Project.

Further, there is no requirement that a Development Agreement be entered into in connection with this Project. See, DEIR, pp. 1-1, 2-1. While the Project sponsor has expressed a willingness to enter into such an agreement with the City, it should be made clear that this agreement is not mandated by any local or state law. In addition, the DEIR should note that the State Clearinghouse, in accordance with Public Resources Code § 21091 and Appendix K to the CEQA Guidelines, agreed to a shortened 30 day review period for the DEIR.

Mitigation Measure 3.3.1 needs to be amended to clarify that alternative-fueled construction equipment will be used, “if feasible.” Since the Project emissions fall below the
San Joaquin Valley Air Pollution Control District’s 10 ton per year thresholds, the references to "mitigated" and "unmitigated" emissions in Table 3.3-8 is confusing and makes no sense. Similarly, since the Project’s air quality impacts are less than the District’s thresholds, the Project’s contribution to cumulative air quality impacts (i.e., ROG, NOx, and PM10) will be less than cumulatively considerable. The text of Chapter 5 (Cumulative Impacts) should be revised accordingly.

Under section 4.2 (Reduced Project Size Alternative), the reference to a 5% reduction was apparently intended to refer to a 50% reduction. Correct the typographical error in the first sentence of the fourth paragraph under section 4.1 (No Project Alternative).

In regard to Table 7-1 (Mitigation and Monitoring Program), the “Implementation,” “Monitoring,” and “Time Span” sections need to be completed for Mitigation Measure 3.3.1. The timing of Mitigation Measures 3.1.1 and 3.1.2 should probably be revised to read: “Prior to issuance of building permits.” The timing for Mitigation Measures 3.15.1 and 3.15.2 also needs to be specified.

Thank you for your consideration of Hale’s comments on the DEIR. Please do not hesitate to contact me with any questions or comments.

Very truly yours,

Matthew D. Francois

cc: John Hale
    Dave Mossman
    John Schuler
    Mike Tolladay
December 19, 2005.

Bradley D. Dunlap
City of Porterville,
291 North Main Street
Porterville, CA 93257

Subject: Porterville Commercial Center (NBC JAYE/SH190)
SCH#: 2004101087

Dear Bradley D. Dunlap,

The enclosed comment(s) on your Draft EIR was (were) received by the State Clearinghouse after the end of the state review period, which closed on December 9, 2005. We are forwarding these comments to you because they provide information or raise issues that should be addressed in your final environmental document.

The California Environmental Quality Act does not require Lead Agencies to respond to late comments. However, we encourage you to incorporate these additional comments into your final environmental document and to consider them prior to taking final action on the proposed project.

Please contact the State Clearinghouse at (916) 445-0613 if you have any questions concerning the environmental review process. If you have a question regarding the above-named project, please refer to the ten-digit State Clearinghouse number (2004101087) when contacting this office.

Sincerely,

Terry Roberts
Senior Planner, State Clearinghouse

Enclosures

cc: Resources Agency
December 15, 2005

Mr. Bradley D. Dunlap, AICP
City of Porterville
291 N. Main Street
Porterville, CA 93257

Dear Mr. Dunlap:

Thank you for the opportunity to review the Notice of Preparation for the Porterville Commercial Center draft Environmental Impact Report (DEIR), notice of Completion (NOP). The project proposes that the zoning designation be changed from light manufacturing to central commercial. The proposal will allow the construction of, at maximum, a 75,000 square-foot shopping center consisting of three building pads for fast food restaurants, a gas station and three pads for general retail stores. These elements would complement an adjacent large anchor tenant (Home Depot), with several smaller retail stores and other facilities. The project site is located on the northeast corner of State Route (SR) 190 and Jaye Street, in the City of Porterville. Caltrans has the following comments:

The City and Caltrans staff met on December 16, 2005 to discuss the City’s proposed Jaye Street geometrics for opening day improvements. Caltrans and the City staff have agreed to the following:

The internal capture rates of 36% to 53% shown in Appendix H (Page 11) of the DEIR are above the allowed 5% threshold and are excessive because the proposed project does not have true mixed uses, i.e., residential or commercial components. The capture rate for the gas station is acceptable, but the capture rates for the other uses are too high. Because additional traffic studies will be required for future phases of the Riverwalk Marketplace project, a revised traffic study will not be requested.

Right-turn in and out access to the site on the east side of Jaye Street should be no closer than 300 feet from SR 190.

Opening day improvements, without the Riverwalk Marketplace project, should include the following as a minimum:

Intersection of Vandalia Avenue and Jaye Street

"Caltrans improves mobility across California"
Mr. Bradley D. Dunlap  
December 15, 2005  
Page 2

Eastbound Vandalia Avenue - 1 left, 1 shared through/left, 1 right  
Westbound Vandalia Avenue - 1 left, 1 right  
Northbound Janye Street - 2 through, 1 right  
Southbound Janye Street - 2 left, 2 through

Intersection of SR 190 and Janye Street

Eastbound SR 190 - 1 left, 2 through, 1 right  
Westbound SR 190 - 1 left, 2 through, 1 right  
Northbound Janye Street - 1 left, 1 through, 1 right  
Southbound Janye Street - 2 left, 2 through, 2 right

It is recommended that an additional 12 feet of right-of-way on the east side of Janye Street be acquired for an additional left-turn/through lane. Building pads should be set back an additional 20 feet for any future additional traffic or utility improvements.

Opening day improvements, with the Riverwalk Marketplace project, should include the following:

Intersection of Vandalia Avenue and Janye Street

Eastbound Vandalia Avenue - 1 left, 1 shared through/left, 1 right  
Westbound Vandalia Avenue - 1 left, 1 shared through/left, 1 shared through/right  
Northbound Janye Street - 2 left, 2 through, 1 right  
Southbound Janye Street - 2 left, 2 through, 1 right

Intersection of SR 190 and Janye Street

Eastbound SR 190 - 2 left, 2 through, 1 right  
Westbound SR 190 - 1 left, 2 through, 1 right  
Northbound Janye Street - 1 left, 1 through, 1 right  
Southbound Janye Street - 2 left, 2 through, 2 right

Ultimate improvements to the intersection of SR 190 and Janye Street should include dual northbound left-turn lanes and two through northbound lanes to accommodate the high percentage of slow-moving trucks from the distribution center. Without these additional lanes, the intersection is projected to operate at LOS E in 2030.

The City of Porterville is required to monitor the LOS of SR 190/Janye Street intersection. When the LOS of the intersection falls below LOS D or the LOS of the eastbound left-turn movements is E, all development within the vicinity is to be halted once the set threshold is reached.

It is recommended that the project proponent needs to implement the improvements prior to opening day or make a "fair share" funding contribution towards future required improvements as noted in the Draft Environmental Impact Report. The City of Porterville is financially responsible for the improvements of the SR 190/Janye Street intersection. The City of Porterville should create a development impact fee program to help fund future local and State transportation
improvement projects necessitated by the accumulated impacts of development. The Freeway Agreement between Caltrans and the City of Porterville maintains SR 190 as a freeway between SR 65 and Jaye Street and an expressway east of Jaye Street with the intersection of SR 190 and Jaye Street maintained as an at-grade intersection.

The close intersection spacing on Jaye Street between SR 190 and Vandalia Avenue and the excessive turning traffic at the intersection of SR 190 and Jaye Street may require additional street improvements in the future. The proposed project and future land use changes require that mitigation monitoring. Through the continual mitigation monitoring acceptable levels of service for all local roads and State facilities may be developed and improvements implemented prior to the LOS being affected.

It is recommended that the City of Porterville conduct a corridor study for SR 190, which will ultimately have a combination of full interchanges, partial interchanges, and at-grade intersections. The City will have the full financial responsibility for the future widening of SR 190 and making intersection improvements to the SR 190 at Jaye Street intersection to obtain a minimum LOS C for the intersection.

The existing "T" intersection when signalized needs to be provided with interconnect cable in order to be synchronized with the SR 190/Jaye Street intersection.

Existing curb, gutter and sidewalk, and curb ramps may need to be reconstructed to meet current ADA standards or other applicable State or Federal accessibility and safety requirements.

All existing concrete curb, gutter and sidewalk that is damaged, broken and/or cracked shall be removed and replaced in-kind.

Any and all damaged concrete surfaces within the right-of-way which pose a safety hazard due to potential tripping hazards shall be replaced or repaired in accordance with ADA and/or applicable State or Federal requirements.

An encroachment permit must be obtained for all proposed activities for placement of encroachments within, under or over the State highway rights-of-way. Activity and work planned in the State right-of-way shall be performed to State standards and specifications, at no cost to the State. Engineering plans, calculations, specifications, and reports (documents) shall be stamped and signed by a licensed Engineer or Architect. Engineering documents for activity and work in the State right-of-way shall be submitted using Metric Units. However, dual units may be used for activity and work in the right-of-way costing $1,000,000 or less, or by an exception approved by the Director. The preferred method of delineating dual units is by showing the English unit first then the Metric unit next to it in parenthesis. The Permit Department and the Environmental Planning Branch will review and approve the activity and work in the State right-of-way before an encroachment permit is issued. Encroachment permits will be issued in accordance with Streets and Highway Codes, Section 671.5, "Time Limitations." Encroachment permits do not run with the land. A change in ownership requires a new permit.
Mr. Bradley D. Dunlap  
December 15, 2005  
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All proposed landscaping plans along the SR 190 right-of-way including corner cut-off shall meet current standards as determined by the District Landscape Architect. All features of landscaping shall be evaluated for type, location and site visibility conflicts during the encroachment review process. All permits for landscaping in conventional highway right-of-way must be accompanied by a “District” approved maintenance agreement obligating a local agency or the permittee to maintaining the landscaping. Said maintenance agreement must accompany and be approved prior to issuance of the landscape permit. Proposed landscape projects in access control rights-of-way require an exception process, and approval is subject to the Headquarters Departmental approval process.

Dust control measures shall be implemented on the site in a manner to prevent dust from entering the State right-of-way.

Stormwater is not allowed to be discharged to the State right-of-way. Since the proposed development/project involves one acre or more of ground disturbance, the applicant needs to be advised by the lead agency to contact the Central Valley Regional Water Quality Control Board office in Fresno at (559) 445-5116 to determine whether a Notice of Construction will be required. The applicant will be required to adhere to Caltrans construction stormwater requirements if there is proposed work within the State right-of-way. Additional information on Caltrans stormwater management requirements may be found on the Internet at www.dot.ca.gov/hq/env/stormwater/index.htm.

Advertising signs within the immediate area outside the State right-of-way need to be cleared through the Caltrans Right-of-Way Division, Office of Outdoor Advertising. The project proponent must construct and maintain the advertising signs without access to the State Routes. Contact Susan Swenssen at (209) 948-7869 or (209) 948-7641 for additional information or to obtain a sign permit application. Additional information on Caltrans Outdoor Advertising Permit requirements may also be found on the Internet at www.dot.ca.gov/hq/oda.

Alternative transportation policies should be applied to the development. An assessment of multi-modal facilities should be conducted. This assessment should be used to develop an integrated multi-modal transportation system to serve and help alleviate traffic congestion caused by the project and related development in this area of the City. The assessment should include the following:

Pedestrian walkways should link this retail complex to an internal project area walkway, transit facilities, as well as other walkways in the surrounding area.

The project should develop a Transportation Management Plan (TMP). The TMP needs to address construction and traffic impacts during the building of the sewer, drainage and etc. infrastructure. The goal of the TMP is to reduce overall trips and the impact of those trips on transportation/air quality.

The consideration of bicycles as an alternative needs more attention. The project should offer internal amenities to encourage bicycle use. These include parking, security, lockers and

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showers. However, internal bicycle paths should be coordinated with local and regional pathways to further encourage the use of bicycles for commuter and recreational purposes.

Local roads in the vicinity of the SR 190/Jaye Street intersection are experiencing severe queuing resulting in peak-period congestion that has the potential to exacerbate local (spot) as well as regional air quality concerns. This raises concerns pertaining to the cumulatively significant impact this project will have on air quality.

Please be advised that any future development adjacent to a State Route, whether the entitlement is deemed by the lead agency to be discretionary or ministerial should be sent to Caltrans for review. Please send a response to our comments and a copy of the Council resolution related to the proposed project. If you have any questions, please call me at (559) 488-7306.

Sincerely,

[Signature]

AL DIAS
Office of Transportation Planning
District 6

C: Mr. Brad Dunlap, Planner, City of Porterville
   State Clearinghouse
   Mr. Ted Smalley, TCAG Staff

"Caltrans improves mobility across California"
Mr. Bradley D. Dunlap, AICP  
City of Porterville  
291 N. Main Street  
Porterville, CA 93257  

Dear Mr. Dunlap:

This letter will supersede our letter of December 15, 2005. Thank you for the opportunity to review the Notice of Preparation for the Porterville Commercial Center draft Environmental Impact Report (DEIR) notice of Completion (NOP). The project proposes that the zoning designation be changed from light manufacturing to central commercial. The proposal will allow the construction of, at maximum, a 75,000 square-foot shopping center consisting of three building pads for fast food restaurants, a gas station and three pads for general retail stores. These elements would complement an adjacent large anchor tenant (Home Depot), with several smaller retail stores and other facilities. The project site is located on the northeast corner of State Route (SR) 190 and Jaye Street, in the City of Porterville. Caltrans has the following comments:

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Westbound Vandalia Avenue - 1 left, 1 right  
Northbound Jaye Street - 1 through, 1 right  
Southbound Jaye Street - 1 left, 1 through

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“Caltrans improves mobility across California”
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Sincerely,

[Signature]

AL DIAS
Office of Transportation Planning
District 6

C: Mr. Brad Dunlap, Planner, City of Porterville
   State Clearinghouse
   Mr. Ted Smalley, TCAG Staff

"Caltrans Improves Mobility Across California"
TRANSCRIPT OF PUBLIC COMMENTARY PORTION OF
PUBLIC HEARING ITEM 14 - PORTERVILLE COMMERCIAL CENTER
DRAFT ENVIRONMENT IMPACT REPORT
PORTERVILLE CITY COUNCIL MEETING
DECEMBER 20, 2005

PUBLIC HEARINGS
ITEM 14. PORTERVILLE COMMERCIAL CENTER DRAFT ENVIRONMENTAL IMPACT REPORT

City Manager John Longley presented the item, and Community Development Director Brad Dunlap presented the staff report. Mr. Dunlap then introduced Mr. Stephen Peck, AICP, of Quad Knopf, Inc., the consultant who prepared the Environmental Impact Report ("EIR"), who made a presentation of the EIR to everyone. Mr. Dunlap then noted the written request - copies of which had been provided to the Council - of Thomas C. Brodersen, Esq., attorney for Ennis Commercial Properties, LLC, to continue the public hearing until the January 17, 2006 Council Meeting.

The Public Hearing opened at 8:20 p.m.

JOHN HALE:
Yes, I’m John Hale, 2200 Pine Street, Bakersfield. I’m the project applicant. I think that Mr. Peck and his staff would be better suited to answer any specifics with regard to the Environmental Impact Report, as they are the experts there. I just want to reiterate that we’re, we own the property, we’re, we’ve made an investment in Porterville. We look forward to the opportunity to build a quality project and bring something to the community that you would be proud of, and I’m here to answer any specific questions you would have regarding the project, and anything regarding that. Thank you very much.

DARYL NICHOLSON:
Good evening Mr. Mayor and City Council Members. My name is Daryl Nicholson. I live at 26914 Avenue 140 in the City of Porterville. I hope you will grant me just a little more than three minutes. We just sat through a long discussion on a circle that could have been done in some other setting, an I hope that I can get through what I have to talk to you about. I’d like to address
three issues tonight with you, and I, and ask for your consideration. First issue is the property. The second issue is the project, and the third issue is the process. The property: the property that you’re looking at and considering an Environmental Impact Report is currently not zoned appropriately in your General Plan. The property is not commercial in your General Plan, and it appears to me, as a citizen of the City, that the process is, that we’re getting the horse before the cart here. The cart before the horse, I guess. Why would you consider a project when its, when you haven’t even addressed the large issue of a General Plan. We came before you about six or eight months ago. We had a Special Meeting on General Plan, and of that meeting, this was the worst project that you had before you, as defined by your vote, and it is the first project to come before you in some kind of other form. Its not right for one developer to take precedent because of something called expedited processing. Home Depot was slipped in under the radar. Home Depot was allowed Industrial Zone because it sold lumber, and that’s appropriate for an Industrial Zoning. But, none, none of the projects or the proposals that you’ve just seen on that board have anything to do with proper zoning and a General Plan of Industrial. They are Commercial Zoning, and therefore to be looking at an EIR before you’ve even looked at the General Plan is just not appropriate. Traffic and circulation, this is the worst major intersection in Porterville. We have one intersection that probably more impacted, it’s a minor intersection, at Henderson and Prospect. This is a disaster. Home Depot has shown through their increased traffic that you can wait at times through a whole cycle of the lights, and not get through anymore, without this development. You have already approved, through form of previous approvals, additional Commercial at this intersection. Nothing further should be approved here at this intersection until you’ve looked very carefully at traffic. You just heard that it was only a minor, or
insignificant. Nothing in that EIR, unless you have it in writing, nothing I have just heard addresses the eastbound lane of 190. There are times today now that, that stacking lane is not long enough to, to accept the cars, so they stop in the fast lane of 190 today, without any further commercial development. O.K.? There’s so many cars that can’t get through and it becomes worse and worse. Tonight at 5:10, they didn’t get through on one cycle of the lights. O.K.? That’s with one business there. Please be careful, traffic is a major mitigation, and eastbound 190 is, is set with additional commercial, is set to be a disaster. You must work with CalTrans if you’re going to approve anything else beyond what you’ve approved now, to extend that further, or you can’t approve it. It’s a mitigated factor that you can address. Now, all of the, the westbound lane at 190 was not addressed in it, and it is a mitigation based upon increased traffic that you’re going to push off of that highway and onto Jaye Street. It’s, I don’t know how many of you are out there all the time, especially during rush hour, coming and going, but it’s a disaster ready to happen, and you need to look carefully at it. That’s why it was zoned Industrial, so that Industrial doesn’t have nearly the traffic generation that the project that you see up there, but hasn’t even been zoned or general planned for. You have already approved enough commercial at that intersection for any type of mitigation you can do with that intersection with CalTrans. It’s been done, and further approval will only create problems in the future. This developer is currently advertising for commercial pads. He doesn’t have his General Plan, he doesn’t have a Zone Change, he doesn’t have an approval of Conditional Use Permit, he has nothing, but you’re addressing an EIR that will address a large project. Those need to come first, before someone from out of town, a carpetbagger in the worst sense, would come and ask for this approval from you, put forward so that later on, you’re not going to
be able to address the General Plan correctly because you’ve already approved an EIR. You won’t be able to address the zoning properly, because you’ve already taken an action tonight. The process: we, your residents don’t understand this process. Why does one piece of property singled out for expedited delivery. Why is this before you? We don’t understand it. We have been waiting in line. We have been told that staff is inundated, and so we wait our turn, and this project, started way after others, at the time I was here last, he hadn’t even paid his fees for a General Plan Amendment. I have two projects with fees paid, and yet I get put to the back. When you expedite one project, in front of others, you injure those people that are waiting, because it’s staff time, it’s staff processing, it’s your time looking at it, to the injury of others. So, your staff report says that the City of Porterville asked for this to be expedited. I’m wondering if you, our electors, our elected representatives of the City of Porterville, are aware of it and asked for it. If so, then you’ve made a decision. If not, it shouldn’t be there. No plans that I saw tonight address the traffic impact at that intersection, and therefore, there are significant mitigations that need to be addressed in a full EIR, not a mitigated EIR.

I just heard that an Oak tree is not significant anymore in the City of Porterville. Some of you are probably aware that in a development that I was involved in, we changed the entire circulation working with the City to, quote, save an Oak tree on a residential street that basically went almost nowhere. But, we worked with you to save that Oak tree, and worked with your staff. We’d ask you to make this developer to consider an Oak tree as a significant mitigating circumstance, and therefore, again, do a full Environmental Impact Report to save the Oak tree, if that’s the new process for the citizens, and I believe it. I’m very much a believer in it, and we worked with you, not as an antagonist, but to save one that was, and we saved one there, you
don't do it there. An Oak tree can be divined in almost any project. An Oak tree could surely be kept in an industrial project in which this property is currently zoned, and general planned for. The real question is why does this applicant get a shortened review period? Why does this applicant move ahead of others, while we wait, and wait, and wait. We don't understand, I don't know the answer, but I bring that to your attention. Your residents who live in this community, your residents who work in this community, your residents who invest in this community, your residents who spend time and money to make this community a better, a better place to both live, work, and invest, your residents deserve at least a fair process system in which their projects come in line, and are not put on the shelf while someone else's project rolls on and comes before you for your approval. I don't know, except for input what action you are taking tonight. But I would ask you to take an action tonight. I would ask you to take an action tonight to send this back, this application back to staff, to take it off of your January Agenda, and, so that this application can go inline, the way it was paid for, the person who paid the fee is supposed to be in line to get approvals. Until that happens, you should not be addressing this type of application tonight, in my humble opinion. They should be expected to get in line, just for the consideration. You may or may not approve or deny any other project in that line, but it's important for the process to happen correctly. We're your residents, we're your elected, electorate, and we're asking right now for help from you tonight. We have been injured by placing somebody in front of us, and we ask for some correction in that injury. As I said, The Home Depot was approved on a technicality. These are not technicalities here. These are not consistent with your zoning, and therefore, that's the first process that needs to take place. I hope you don't take a General Plan Amendment, a Zone Change, and a Conditional Use Permit all in one night. That's not what
the process was made for. That doesn’t allow for public input at each one of those stages. That’s just rolling through and approving a specific plan. We need your help tonight to send this project back to staff to get in line, or have staff work with some of us, and tell us why it’s not appropriate. For, we think it is appropriate and we’ve got money invested here, time invested here, and our lives invested here. We need your help tonight. I thank you. I thank you for your time, and Mr. Mayor I thank you for the extended time I have taken. I appreciate it.

GREG SHELTON:

Greg Shelton, 888 North Williford Drive. I remember when all this was happening. I don’t remember, I don’t agree with Mr. Nicholson about it being under the radar. I think it was pretty much above the radar. We all knew what was going on over there. My recollection was that Ben had optioned all of the commercial property because he rightly believed that nothing could go into the manufacturing property, which it shouldn’t have, but it was a popular project, and I do agree with Mr. Nicholson in the fact that I think we let it through on a technicality. And, Ben, if I remember, was probably in line to get that lease, and he didn’t get it; but, I will give him this – he took his lumps and he walked away, and he developed the other one, or he’s been trying to develop the other one. And, he played it by the book. He got his, when something was asked, he did it. When he asked for an EIR, he got it. I think he spent a hundred and some odd thousand dollars for a traffic study. You know, that apparently this gentleman is going to piggyback on. So, it just seems, you know, I just feel like Ben’s took his lumps on this last one, and he should, he deserves a little consideration, you know, on his project. We shouldn’t be shoveling anybody in front of him. Thank you.

BEN ENNIS:

(Mr. Ennis provides documents to Mr. Longley for distribution to the Council.) There’s one for each. My name is Bill Ennis. Anyway, that’s what everyone’s calling me today, and
I’m not sure why. Ben Ennis, 643 North Westwood, Porterville. I, of course, have some concerns with this project. I have some concerns with what I think is fair play on the part of the City. I was never informed that this draft EIR was available, even though I’ve had meetings with staff this month. And, it was regarding the draft EIR for Riverwalk. So, I was very surprised, after asking that I would be provided with the draft EIR, that I was not. I received this at 4:00 today and I read as much of it as I could. But, I hope the Council received one of these. I would encourage you to read through it. I also am very surprised that the State Clearinghouse was petitioned to cut the review from 45 days to 30 days. I don’t know why all this is happening out...well, I do know why. It’s happening because of what I consider a non-conforming use of having a retail establishment in an industrial zone, and if that applies, then I would think that I could go to the corner there, and put in a Walgreen’s, as long as they sold toothpicks, because that’s a wood product. They could sell 2x4s out of the back, and would qualify, if there’s no percentages or anything, as long as they’re building products. Home Depot is a home improvement store. As a home improvement store, it sells a lot of the same things that Long’s Drugs sells, that Rite-Aid sells, that Walmart sells, and your local appliance stores sell, and I doubt that if the lumber products would amount to more than ten percent. I know that we build a lot of houses, and the only time that we ever buy a 2x4 from Home Depot is whenever we are kind of desperate, because they’re not in the bulk business. They’re for the local person that’s doing a, sometime of a project at home. I noticed by reading the EIR that it says that the changing of this zoning would eliminate potential conflicts with the City’s Zoning Code and general planned land use designation. To me, there either is no conflict, or this is a conflict. And, if there is no conflict, and that’s a proper zoning, then why are we changing the zoning on the Home Depot store? Why aren’t we just
I'm not sure why. Ben Ennis, 643 North Westwood, Porterville. I, of course, have some concerns with this project. I have some concerns with what I think is fair play on the part of the City. I was never informed that this draft EIR was available, even though I've had meetings with staff this month. And, it was regarding the draft EIR for Riverwalk. So, I was very surprised, after asking that I would be provided with the draft EIR, that I was not. I received this at 4:00 today and I read as much of it as I could. But, I hope the Council received one of these. I would encourage you to read through it. I also am very surprised that the State Clearinghouse was petitioned to cut the review from 45 days to 30 days. I don't know why all this is happening out...well, I do know why. It's happening because of what I consider a non-conforming use of having a retail establishment in an industrial zone, and if that applies, then I would think that I could go to the corner there, and put in a Walgreen's, as long as they sold toothpicks, because that's a wood product. They could sell 2x4's out of the back, and would qualify, if there's no percentages or anything, as long as they're building products. Home Depot is a home improvement store. As a home improvement store, it sells a lot of the same things that Long's Drugs sells, that Rite-Aid sells, that WalMart sells, and your local appliance stores sell, and I doubt that if the lumber products would amount to more than ten percent. I know that we build a lot of houses, and the only time that we ever buy a 2x4 from Home Depot is whenever we are kind of desperate, because they're not in the bulk business. They're for the local person that's doing a, sometime of a project at home. I noticed by reading the EIR that it says that the changing of this zoning would eliminate potential conflicts with the City's Zoning Code and general planned land use designation. To me, there either is no conflict, or this is a conflict. And, if there is no conflict, and that's a proper zoning, then why are we changing the zoning on the Home Depot store? Why aren't we just
changing the zoning on the out-front if that was the real issue. As far as traffic mitigations, CalTrans in their letter to Randy Rouda, which is in this, asked that the two centers be addressed in the same traffic impact study, which was not done.

COUNCIL MEMBER IRISH:

I move to extend Mr. Ennis’ time.

BEN ENNIS:

O.K. Thank you. There, basically, even though all of the things was said about the traffic impact things there, I would question what’s going to be done beyond and above their traffic impact fees. Basically, along the frontage there, they have one extra lane, and then really nothing more than what we have to do in a residential subdivision. So, they’re not doing a whole lot. I resent the fact that whenever Home Depot went in, they considered Poplar Road the main entrance, which probably does accommodate ten to fifteen percent of the people going in, so that no improvements had to be done along the frontage of Jaye Street. That was almost criminal, in my opinion. It, of all things that the City should have done, that never should have happened. I was told by a friend of mine who has worked for Home Depot for many many years, his name is George Ray, and he handles Arizona and Southern California, and he told me at an ICSC, which is International Council of Shopping Centers, that the, that Home Depot was actually looking at a site at North Grand and Highway 65, came into see the staff about it, the staff directed them to the industrial property, when that property up there that they came into look at was zoned right. So, it was a kind of a conspiracy to put Home Depot, as far as I’m concerned, into an Industrial Zone, and to take and stretch the Zoning Ordinance as far as you could stretch it. Of all of the intersection improvements, I’m not sure what that’s being required of them, but we’re having to go across south of Highway 190 on Jaye Street to do improvements over the turn lanes and all where Walmart trucks come out, in front of the Burger King.
That’s part of ours. Part of ours is to put in the east and west bound additional lanes, and then also, I’m being asked to fund a project study report, PSR, for that intersection. Now, we’re considering on the other site, 75,000, but we’re not considering anything about the Home Depot. They slid through free. They’re there. But that’s not right to, whenever they create the traffic, some of the traffic, and then come in and they don’t get involved in this. Will we be paying impact fees also? Sure we will. The report on the 75,000 square feet, it says that they would, that that project would create somewhere between 240 to 600 employees, and that’s without them having to do, what I can see, any real basic, anything above the real basic improvements above what (inaudible) commercial building here in town would probably take. Also, I’m looking through it and remind, I remind you that I got this at 4:00, and didn’t have but less than an hour to look at it, but on the Alternatives, 4.2, there’s a lot of mistakes in there. It says that if they reduce the project by five percent, it will come out at 35,000 square feet. I think that things like that need to be corrected in there. I think that should be fifty percent. The Alternative Site, that made me laugh. It, Alternative 4.3, that’s on North Grand, the one where they went into check on before. And then, the Alternative 4.1, that you could take as no project at all, so I do object to the EIR as it is written, there’s a lot of mistakes in there. I would like to talk about the center that we’ve been doing, when we started on this three years ago, I remind you that we started because we had donated the majority of the land along the river, wait a minute, let me back up. We did not donate it. We talked Ted into donating the ground along the river, and then we helped with that portion that needed to be taken care of, so that they could have the walkway along there. Then we donated the land along Highway 65, and, that goes then around the ponding basin. The whole concept of this was that the people would be able to walk from
the subdivision over, around and into the project, and sit down and have a Coke or coffee, or have a meal, a sandwich, whatever they wanted to. That’s why that this foodcourt was so important. It’s another reason that this project is called Riverwalk Marketplace. I was all tied together three years ago. We though we would only be doing mostly studies for like a year and three months or so, and it has been three years. I gave you a letter there, and that is kind of a monthly letter that we get from our leasing agents, and it was written at the first of the month. You can read it there, but it tells you that Target and Lowes are both interested in this project. It also tells you that the other tenants that have expressed ongoing interest: Applebee’s, Famous Dave’s BBQ, Chili’s, Me and Ed’s Pizza, Chuck E. Cheese, Panda Express, Tokyo Bowl, China Bowl, Carl’s Jr., Del Taco, Blimpy’s, Subway, Coldstone, Starbuck’s, America’s Tire, Wells Fargo, Tulare County Federal Union, Bank of the Sierra, Barnes and Noble, T-Mobile, Marshall’s, Dress Barn, Fashion Bug, Bright Now, which is a dental office, Circuit City, I should also add to that Best Buy has been talking to them also. Now, Smart & Final, Pet Co, Payless Shoes, Famous Footwear, Pier One, Big Lots, and LA Weight Loss. Within the last part of it that they wrote, was I think is what’s very important. It says that “we believe that it is extremely important that we continue to keep these tenants in our project to ensure the utmost success of our proposed regional center. The restaurants, fast food tenants in particular, are critical to the success of our project, as they 1) are excellent traffic generators that create cross-shopping opportunities with other retailers; 2) provide a needed, as well as expected service, which contributes greatly towards achieving our one-stop shopping experience goal; 3) add important name recognition and brand loyalty; and 4) a very important component to ensuring that we achieve a well-balanced tenant mix. We will be awaiting your comments looking forward to continuing
our marketing efforts with our ultimate goal being to provide Porterville with a first class regional shopping center." That's exactly what are plans laid out was a first-class regional shopping center, and I would ask the Council that they support us in that. If we move the food across the street, across eight lanes of traffic, people will get in their cars to go eat, and then most of them will not come back, and those retailers know that. If you look at Visalia, you will see the new shopping center on South Mooney, all of the food is located on the east side. They did have Krispy Kreme, but they closed up. I'm not against the zoning on that property, as far as being commercial. I think that it's kind of covering up what we made the mistake on with Home Depot, and I think that we need to get this shopping center well-established. Why would you want to take and risk a 640,000 shopping center for a 75,000 retail pads there? The difference is about two million dollars each year in taxes that each one of them would generate. I've heard all kinds of discussions on how important it is that the City save money wherever they can, and this just doesn't make sense. We've been years in trying to make this first, and even thought the letter from our attorneys that you have asked for it to be put off, I'm just ready to go on down the road and get something done - right, wrong, or otherwise. So, I would just as soon that you make whatever decisions you're going to make and I can go ahead and tell these people and they can make their own decisions what they want to do. Thank you.

BOYD K. LEAVITT:

First of all, I hope I'm given the same time consideration that Mr. Nicholson had - eleven and a half minutes, or Mr. Ennis had - thirteen minutes, although I don't think I'll need that much. My name is Boyd K. Leavitt. I reside at 457 East Oak Avenue. The reason I'm here tonight is I read the paper this morning, and I was unaware of some of things that were taking place. And if the paper was accurate, and I'm sure they are, I agree with everything that Mr. Nicholson said, so I'm
not going to repeat that. I believe there should be a complete economic, complete EIR. But, the one thing that seems to be missing, the reason this one project before you tonight, is here earlier, not only the fast track, but they were not required to do an Economic Impact Report, and the one at Riverwalk was required to do that. Well, if Riverwalk is going to have an economic impact on the community, I would expect this one would too. It’s already going to have an impact on Riverwalk. So, to have a complete environmental, or economic report in this Environmental Impact Report, that should be a component of it, just like the other. Otherwise you have a double standard. You’re expecting one person to provide more data than you are the other one, and they’re in the same area. So, I think that it’s incomplete if you don’t require that of the development before you – an Economic Impact Report. Now if I could take just another minute, I’m still within my time, the subject of the Oak tree. If I could be a tree-hugger for a minute. We in the Porterville area have been very sensitive about the Oak trees, as Mayor Nicholson said, they had to save an Oak tree one time, and they had to work around, and the community is very interested in it, and people work around having it. If I read the brief part I had, I didn’t have the big book, but I’m not asking for one, I got the impression that they were saying that it’s not important, it’s not practical. Well, I disagree. I recently returned from China, and I’ve been in various places in the North and South. I’ve even seen trees growing inside buildings, so I’m not going to buy into the fact that you can’t leave the tree. You certainly can, but you have to have a motivation to also not only keep it, but to save it, and so I think that should be addressed thoroughly in the Environmental Impact Report. So without repeating everything else that’s been said, I think you’ve got a double standard if you’re requiring one to do an Economic Impact Report within the EIR, and you’re not the other one. And, I think it should be a complete EIR.
Thank you very much. That was two minutes, fifty-seven seconds.

DIck ECKHOFF:

Dick Eckhoff, business address 197 North Main. I think that I shall never see a poem lovely as a tree. It's a poem I learned a long time ago, and I really enjoyed it. And then I just got to thinking here, we've got all the media here, and I could just see the headlines tomorrow, "Tree City Cuts Oak." Well, I studies some architecture, and I did a lot of design work in the forest and stuff on roads, and trees can be dodged. I dodged a whole lot of Redwoods anywhere's from 24 dba, up to about 15-20 feet dba, and believe me we had to dodge those things. We worked around it. You know, anybody can go up and take a big square lot or ground and draw lines on it, divide it up and create something. I take that back, make a checkerboard, they don't create a thing. A painter can take a 10x10 square foot piece, or 10x10 foot piece of wood and throw paint on it, cover it up and make it all red, and he's painted it, but he hasn't created a work of art. An artist will come in and design something on there and make it look like something. And, a tree is not that difficult to dodge. It's not that difficult to work around, and it could be a real focal point. When my dad moved his house out onto 104 in Terra Bella, we found a little old Oak scrub sitting out there, and he took that up and planted it in the front yard, and it was known as the Lone Oak Ranch ever since, and that tree is still there. If Frank Lloyd Wright had just decided that big boulder was something in the way and had thrown it out, it would have never become a hearthstone for Fallingwater, probably the number one piece of architecture in the world in all times. In the report here I'm reading, let's see, if I can read this with one eye, "...the nesting season for avian predators and other migratory birds generally occurs sometime between February 1 and September 15. Therefore, it is recommended that removal of the Valley Oak on the project site should occur outside the nesting season. If the
tree is to be removed, etc., etc., etc." It says replacement will be at the rate of three
trees, at least one fifteen gallon size for
each six inches of breast height diameter,
etc., etc. That's an awful lot of work, an
awful of concern, an awful lot of hassle in
reporting and checking and studying and
everything. Why not just leave the blessed
thing there and be done with it. I would
also like to flip over a couple of pages
here, and there's a memorandum from the desk
of Jim Perrine, Director, draft EIR for the
referenced project indicates that the impact,
the removal of Valley Oak tree is necessary
because the alteration of the project lands,
"is not practical or feasible." I think we,
ever mind. There should be no question that
modification of preliminary of development
plans is always feasible. To say otherwise
would imply that procedural review and
comment, including environmental mitigation,
presentation of public comments, are of no
consequence. In other words, why am I
standing up here? You're probably wondering
that anyway. Practicality of modifying plans
with similarity imply that such modifications
would jeopardize the achievement of the
project objective. No discussion is offered
on how the preservation of a single mature
Oak tree would jeopardize the stated project
objective. The preservation of the Oak tree
should, would enhance the aesthetics,
mitigate the loss of scenic agricultural
field land, and so on. Year ago, I was in a
photo studio here in town and saw an old
photograph that was being renovated. It was
taken from the top of Scenic Heights up here,
shooting south, and all you saw was Oak
trees. Now, all I see is power poles, radio
towers, and a lot of buildings, and some
trees that have been planted, but were not
native here. Like I say, there's no reason
that Oak tree can't be worked around.
Instead of going out there and seeing how
much you can cut up and how much you can
throw down on a piece of property, let's try
to be a little artistic. Let's design around
what we've go there, instead of creating
something that doesn't even look right.
Otherwise we’re going to wind up as another great poet, Ogden Nash wrote, “I think I shall never see a billboard lovely as a tree. And if billboards do not fall, I will never see a tree at all.” Thank you.

(After closing, and re-opening the public hearing...)

FELIPE MARTINEZ: Felipe Martinez, 195 Putnam Avenue, here in Porterville. You know, I’m not in favor or against, or anything like that. What I would recommend is that we go back and look at it. I believe that on the corner of Date and E Street we’re going to have some apartments going in there. So, is that taken into account on the traffic study that was done? If it wasn’t shame on all of us. I’m not going to sit here and point fingers, and fire anybody, but let’s go back, take two steps back, humble ourselves, and, let’s be the servant and stewards that we really should be to the community, and look at that corner that’s a very important corner to the economics of Porterville, to the economics of certain individuals to their own pockets, but most importantly to do the stewardship and look at that corner, and come back and look at it. Because, I have lived around that area for over forty years. I’ve been all over that little corner there. I can’t remember how old I was the first time I totaled by first car, was one that corner, and that was my fault. But, I would recommend that we go back and look at the environmental report and not move one forward faster than the other one. And I believe on that corner, we’ve also done a lot of the, changed zones from residential to high-residential to commercial, and of all these things that I’ve seen over the last three years that I’ve come for the Council to listen, and you gentlemen have made some really good decisions, and some decisions that deep in your heart were the right decisions, but only you knew that it was the right decision or not. We can sit back here and tell you they’re all wrong, or one’s wrong, but I would greatly appreciate it if
you would take this back and say, you know what, lets go back and look at the drawing board again, and let’s count those people that are moving in, and let’s count the houses that aren’t built yet, and let’s count exactly what’s going on. Like I said, I'm not in favor or against either project. I'm in favor as far as sitting on the Board of the Tulare/Kings Hispanic Chamber, it’s an economic revenue that’s coming in. As far as a citizen of this community, well heck yes, wouldn’t I want two million dollars of taxes coming in and helping our infrastructure, and helping our police and fire departments, and getting rid of our water, and getting rid of all these things. So, that’s what I’m in favor is, let’s take a step back and wait before we make decisions. Thank you.

The public hearing closed at 8:59 p.m.
RESOLUTION NO._______

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE CONTAINING FINDINGS IN SUPPORT OF CERTIFICATION OF AN ENVIRONMENTAL IMPACT REPORT FOR GENERAL PLAN AMENDMENT 1-2007 (FORMERLY 1-2006 (A)) AND ZONE CHANGE 3-2007 (FORMERLY 1-2006) FOR THAT 10.7± ACRE VACANT SITE LOCATED ON THE NORTHEAST CORNER OF SOUTH JAYE STREET AND STATE ROUTE 190

WHEREAS: The Final Environmental Impact evaluates the development and land use changes necessary to facilitate the development of a 10.7± acre site with a 75,000± square foot shopping center;

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of February 7, 2006, conducted a public hearing to consider General Plan Amendment 1-2007 and Zone Change 3-2007 for that 10.7± acre vacant site located on the northeast corner of South Jaye Street and State Route 190; and

WHEREAS: General Plan Amendment 1- 2007, proposes to change the land use map of the Land Use Element of the General Plan from Industrial to General Commercial; and

WHEREAS: Zone Change 3-2007 proposes to change the present zoning from M-1 (Light Manufacturing) to C-2 “D” (General Commercial with Design Review Overlay) Zone contingent upon approval of General Plan Amendment 1-2007; and

WHEREAS: Development of a 75,000± square foot commercial center was evaluated in the Environmental Impact Report and will subsequently be brought to the City Council for approval. Prior to the applicant/agent submitting any final map or Conditional Use Permit for processing, General Plan Amendment 1-2007, and Zone Change 3-2007 would have to be approved; and

WHEREAS: A reconnaissance-level field survey was conducted on September 10, 2004 by Quad Knopf biologist James W. Jones, Jr. to determine whether special-status plant and animal species occur on an area which includes the subject site (area between State Route 190 to the south, Springville Avenue to the north, Jaye Street to the west and an existing Home Depot store and vacant lot to the east) or if habitats for such species are present in the project area. No Elderberry shrubs, wetland habitat, or Kit Fox dens were found to exist on the subject site. The biological study was included by reference into the Initial Study for this project; and

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

1. That an Environmental Impact Report was prepared in accordance with the California Environmental Quality Act.
2. That the subject project will not create unmitigatable adverse environmental impacts.

The Environmental Impact Report was evaluated in light of the prepared technical reports, 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.

3. That the City Council is the decision-making body for the project.

4. That the Environmental Impact Report prepared for this project was made available for public review and comment for a thirty (30) day review period from November 11, 2005 to December 11, 2005. The agencies and parties that responded were: Matthew Francois, Esq. of Cassidy Shimko Dawson Kawakami; Porterville Parks and Leisure Services; California Department of Water Resources Floodway Protection Section; Caltrans District 6, Office of Transportation Planning; and the San Joaquin Valley Air Pollution Control District. Comments were received at the public hearing in December from John Hale, Daryl Nicholson, Greg Shelton, Ben Ennis, Boyd Leavitt, Dick Eckhoff, and Felipe Martinez. All comments have been responded to in the Final EIR.

5. That the mitigation measures contained in the Environmental Impact Report were incorporated into a Mitigation Monitoring Program attached hereto as Attachment A.

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

The reconnaissance-level field survey conducted on September 10, 2004 by Quad Knopf biologist James W. Jones, Jr. determined that there are no Elderberry shrubs, wetland habitat, or Kit Fox dens located on the subject site. Potential impacts to migratory birds associated with the removal of one oak tree on site will be mitigated as described in the mitigation monitoring reporting program or will be avoided through incorporation of the oak tree into site design.

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 analysis prepared for this project supporting the Environmental Impact Report reflects the independent judgment of the City of Porterville.

9. The developer/applicant shall comply with all mitigation measures adopted as a component of the approval of the Environmental Impact Report for this project. The
developer/applicant will be required to sign a document committing to comply with the adopted mitigation measures prior to any construction on the site.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve the Environmental Impact Report prepared for General Plan Amendment 1-2007 and Zone Change 3-2007, and that the mitigation measures defined in Attachment A shall be implemented by the applicant or his/her successors with project implementation.

______________________________
Cameron Hamilton, 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
APPROVING GENERAL PLAN AMENDMENT 1-2007 (FORMERLY 1-2006 (A)) WHICH
PROPOSES TO CHANGE THE LAND USE DESIGNATION FROM INDUSTRIAL TO
GENERAL COMMERCIAL FOR THAT 10.7± ACRE VACANT PARCEL LOCATED ON
THE NORTHEAST CORNER OF SOUTH JAYE STREET AND STATE ROUTE 190

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of
February 20, 2007, conducted a public hearing to consider General Plan Amendment 1-2007 to
change the land use map of the Land Use Element of the General Plan from Industrial to General
Commercial for that 10.7± acre vacant site located at the northeast corner of South Jaye Street and
State Route 190; and

WHEREAS: In conjunction with General Plan Amendment 1-2007, Zone Change
3-2007 proposes to change the present zoning for the same site from M-1 (Light Manufacturing) to
C-2 “D” (General Commercial with a Design Review Overlay); and

WHEREAS: Development of a 75,000± square foot commercial center was evaluated in the
Environmental Impact Report and will subsequently be brought to the City Council for approval
pending the outcome of the Council action on the General Plan Amendment and Zone Change; and

WHEREAS: The City Council received testimony from all interested parties relative to the
General Plan Amendment; and

WHEREAS: The City Council made the following findings:

1. That the proposed General Plan Amendment is consistent with the goals and policies
   of the General Plan.

   1.1  Well balanced land use pattern, with compatibility among adjacent uses,
       satisfying the economic, social and environmental requirements of the
       community.

   1.3  Primary retail trade center for a large market area,

   3.1  The distribution and intensity of land uses in the community shall conform to
        the Land Use and Circulation Plan.

2. The amendment to the Land Use Element of the General Plan from Industrial to
   General Commercial with the associated Zone Change 1-2006 from M-1 (Light
   Manufacturing) to C-2 ‘D’ (General Commercial with Design Review Overlay) will
   allow for future development of the site to be in conformance with the General Plan
   and Zoning Ordinance and in a manner that is compatible with surrounding land uses.
3. That an Environmental Impact Report was prepared for this project in accordance with the California Environmental Quality Act indicating that such will not have a significant effect on the environment and that implementation of the projects will comply with the recommended mitigation measures.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve General Plan Amendment 1-2007 (formerly 1-2006 (A)) being an amendment to the Land Use Element of the General Plan as described above.

________________________________________
Cameron Hamilton, Mayor

ATTEST:
John Longley, City Clerk

By ________________________________
Georgia Hawley, Chief Deputy City Clerk
ORDINANCE NO. —

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF PORTERVILLE APPROVING ZONE CHANGE 3-2007 (FORMERLY 1-2006)
FROM M-1 (LIGHT MANUFACTURING) TO C-2 "D" (GENERAL COMMERCIAL DESIGN
REVIEW OVERLAY) FOR THAT 10.7± ACRE VACANT SITE LOCATED ON THE
NORTHEAST CORNER OF SOUTH JAYE STREET AND STATE ROUTE 190

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of
February 20, 2007, conducted a public hearing to consider General Plan Amendment 1-2007 and
Zone Change 3-2007 for that 10.7± acre vacant site located on the northeast corner of South Jaye
Street and State Route 190; and

WHEREAS: General Plan Amendment 1- 2007, proposes to change the Land Use
Element of the General Plan from Industrial to General Commercial; and

WHEREAS: In conjunction with General Plan Amendment 1-2007, Zone Change
3-2007 proposes to change the present zoning for the same site from M-1 (Light Manufacturing) to
C-2 “D” (General Commercial with a Design Review Overlay); and

WHEREAS: Development of a 75,000± square foot commercial center was evaluated in the
Environmental Impact Report and will subsequently be brought to the City Council for approval
pending the outcome of the Council action on the General Plan Amendment and Zone Change; 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 Zone Change 3-2007; and

WHEREAS: The City Council made the following findings in support of the approval of
Zone Change 3-2007:

1. The Land Use Element of the General Plan (General Plan Amendment 1-2007),
through the proposed change, designates the subject site for General Commercial
uses.

2. That the proposed zoning to C-2 “D” (General Commercial with Design Review
Overlay) for the subject site is consistent with the proposed General Plan designation.

3. That all uses listed in Article 8 of the Porterville Zoning Ordinance will be allowed in
the C-2 “D” (General Commercial with a Design Review Overlay) Zone subject to all
other laws, rules and regulations.

4. That an Environmental Impact Report was certified for this project in accordance
with the California Environmental Quality Act and mitigation measures incorporated into the approval will be precedent to project implementation.

5. That this zoning classification 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: Zone Change 3-2007 is contingent upon approval of General Plan Amendment 1-2007; and

Section 2: That the following described property in the City of Porterville, County of Tulare, State of California, known as Zone Change 3-2007, is hereby re-zoned from M-1 (Light Manufacturing) to C-2 “D” (General Commercial with a Design Review Overlay) for that 10.7± acre vacant site located on the northeast corner of South Jaye Street and State Route 190, more particularly shown on the attached map, incorporated herein by this reference as Exhibit “A” subject to prior approval of General Plan Amendment 1-2007; and

Section 3: It is further ordained that all records of the City of Porterville, together with the official zoning map of the City of Porterville, shall be changed to show that all of the above described real property is re-zoned from M-1 (Light Manufacturing) to C-2 “D” (General Commercial with a Design Review Overlay) for that 10.7± acre vacant site located on the northeast corner of South Jaye Street and State Route 190; and

Section 4: This ordinance shall be in full force and effect thirty (30) days from and after its publication and passage.

__________________________
Cameron Hamilton, Mayor

ATTEST:
John Longley, City Clerk

By ________________________
    Georgia Hawley, Chief Deputy City Clerk
CITY COUNCIL AGENDA: February 20, 2007

PUBLIC HEARING

TITLE: ZONE CHANGE 1-2007

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

COMMENT: Zone Change 1-2007 proposes to change the present zoning for the site from R-1 (One-Family Residential) to C-1 (D) (Neighborhood Commercial- Design Review Overlay) for those two (2) parcels located at 1907 West Morton Avenue.

The subject site is currently a convenience store and gas station. An existing 3,000± square foot building and a fueling station exists on the site. The property was incorporated into the city limits on March 3, 2006 with a R-1 (One-Family Residential) zone, which created a non-conforming use. The zoning was inadvertently placed on these parcels rather than that of an existing convenience store site to the West. The City Council, on January 16, 2007 authorized staff to initiate the zone change process, in compliance with Government Code Section 56375 (e), for this property along with three other properties to a conforming zone.

ENVIRONMENTAL: The project is categorically exempt from CEQA requirements.

RECOMMENDATION: That the City Council:

1. Adopt the draft ordinance approving Zone Change 1-2007 and give first reading to the draft ordinance.

2. Waive further reading of the draft ordinance, approving Zone Change 1-2007, and order to print.

ATTACHMENT:

1. Complete Staff Report
PUBLIC HEARING - STAFF REPORT

TITLE: ZONE CHANGE 1-2007

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

PROJECT LOCATION: Those two (2) parcels located at 1907 West Morton Avenue.

SPECIFIC REQUEST: Zone Change 1-2007 proposes to change the present zoning for the site from R-1 (One-Family Residential) to C-1 (D) – Neighborhood Commercial- Design Review Overlay for those two (2) parcels located at 1907 West Morton Avenue.

PROJECT DETAILS: The subject site is currently a convenience store and gas station. An existing 3,000± square foot building and a fueling station exists on the site. The property was incorporated into the city limits on March 3, 2006 with a R-1 (One-Family Residential) zone, which created a non-conforming use. The zoning was inadvertently placed on these parcels rather than that of an existing convenience store site to the West. The City Council, on January 16, 2007 authorized staff to initiate the zone change process, in compliance with Government Code Section 56375 (e), for this property along with three other properties to a conforming zone.

GENERAL PLAN LAND USE DESIGNATION: NEIGHBORHOOD COMMERCIAL

SURROUNDING AREA ZONING AND LAND USE:

North: City - Morton Avenue and residential uses.
South: City - Residential uses.
East: City - Residential uses.
West: City - Residential uses.

Staff Analysis: The zone change to C-1 (D) would bring the use into compliance with the use and General Plan designation. Staff finds that a change in circumstances, as related to the prezoning that created the nonconforming uses, does warrant the City Council approving the zone change to a commercial zoning classification in compliance with Government Code Section 56375(e).

ALTERNATIVES TO THE PROJECT AND THEIR EFFECT:

1. No Project. Denial of the proposed zone change would result in the existing site continuing as a non-conforming use with no options available for expanding or rebuilding. Once the property is abandoned or destroyed the property would be required to conform to the current zoning.

2. Approve the project. Approval of the proposed zone change to City C-1 (D) will allow for the site to continue in accordance with the Porterville Zoning Ordinance supported by the General Plan.
ENVIRONMENTAL: The project is categorically exempt from CEQA requirements in accordance with “General Rule” Exemption of California Administrative Code 15061 (b-3).

RECOMMENDATION: That the City Council:

1. Adopt the draft ordinance approving Zone Change 1-2007 and give first reading to the draft ordinance.

2. Waive further reading of the draft ordinance, approving Zone Change 1-2007, and order to print.

ATTACHMENTS:

1. Zoning/Land Use Map
2. Zone Change Application
3. Notice of Exemption
4. Draft Ordinance containing Findings approving Zone Change 1-2007, Exhibit “A”
ZONE CHANGE #1-2007

LAND USE MAP
SCHOOL AVE

MORTON AVE

WALCH ST.

VACANT

HARRISON AVE.

C B = COMMERCIAL BUSINESS
● = SINGLE FAMILY RESIDENTIAL

GENERAL PLAN MAP
SCHOOL AVE

MORTON AVE

WALCH ST.

HARRISON AVE.

= NEIGHBORHOOD COMMERCIAL
= LOW DENSITY RESIDENTIAL

CURRENT ZONING MAP
SCHOOL AVE.

MORTON AVE

WALCH ST.

HARRISON AVE.

R-1 = SINGLE FAMILY RESIDENTIAL

PROPOSED ZONING MAP
ZONE CHANGE #1-2007
SCHOOL AVE.

MORTON AVE

WALCH ST.

HARRISON AVE.

R-1 TO C-1(D)

ATTACHMENT
ITEM NO. 1
CITY OF PORTERVILLE

APPLICATION FOR CHANGE OF ZONE
NO. 1-2007
(See Page 4 of this form for information on preparing and filing this application)

CURRENT ZONING OF PARCEL(S): R-1 (One-Family Residential)

PROPOSED ZONING OF PARCEL(S): C-1(D) Neighborhood Commercial—Design Review Overlay

NAME, MAILING ADDRESS AND TELEPHONE NUMBER OF PROPERTY OWNER(S):
AROUSH OSAMA G
1907 W MORTON, PORTERVILLE CA 93257

NAME, MAILING ADDRESS AND TELEPHONE NUMBER OF APPLICANT /CONTACT PERSON:
Same

PROJECT ADDRESS AND NEAREST CROSS STREETS:
1907 W MORTON, PORTERVILLE CA 93257
Walch Street

1. Does public necessity require the proposed change? Is there a real need in the community for more of the types of uses permitted by the zone requested than can be accommodated in the areas already zoned for such uses? (Fully explain your answer, considering the surrounding property as well as the property proposed to be reclassified)

2. Is the subject property more suitable for the purposes permitted in the proposed zone than for the purposes permitted in the present zone? (Answer completely; give all reasons for your answer)

3. Would the uses permitted by the proposed zone be detrimental in any way to surrounding property? (Explain reasons supporting your answer)

4. What were the original deed restrictions, if any, concerning the type and class of uses permitted on the property involved? Give the expiration date of these restrictions. (Please attach a copy of these restrictions and properly underscore the portions that are relevant.)

ATTACHMENT
ITEM NO. 2
TO THE PORTERVILLE CITY COUNCIL:

We, the owners of real property set opposite our respective names, hereby petition to have Ordinance No. 707 amended by reclassifying from Zone R-1___ to Zone C-1(D)_____, the property described hereon and shown in colored cross-hatching on the attached map which, together with the Property Owner’s List, also attached hereto, are made a part of this petition.

OWNER’S DECLARATION

STATE OF CALIFORNIA  )
COUNTY OF TULARE  ) ss

I, ____________________________________________, being duly sworn, declare and say that I am the owner of part (or all) of the property involved and that this application has been prepared in compliance with the requirements of the Porterville City Council as printed herein and that the foregoing information thoroughly and completely, to the best of my ability, presents the argument in behalf of the application 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 __________________________, 20_____.

Telephone (__)___________________  Signed____________________________________

Mailing Address ______________________________________

____________________________________

This is to certify that the foregoing application has been inspected by me and found to be complete and acceptable for filing with the Porterville City Council.

Received ____________________________  Receipt No. ________

Date

By ____________________________________

Mayor of the City of Porterville
NOTICE OF EXEMPTION

TO: ________  Office of Planning and Research  ________  Tulare County Clerk
   1400 Tenth Street, Room 121  County Civic Center
   Sacramento, CA 95814  Visalia, CA 93291

FROM: City of Porterville
       291 N. Main Street
       Porterville, California 93257

Zone Change 1-2007
Project Title

South side of Morton Avenue, 1907 West Morton Ave, 265 feet east of North Wash Street
Project Location (Specific)

City of Porterville  Tulare
Project Location (City)  Project Location (County)

A City of Porterville initiate zone change to bring a nonconforming use into compliance with zoning for an existing 3,000+ square foot building and a fueling station exists on the site in compliance with California Government Code Section 56375(e). Rezoning from R-1 (One-Family Residential) to C-1 (D) (Neighborhood Commercial-Design Review Overlay) for those two (3) Lots described as Lot 5, 6 and the north eight-feet of Lot 8 on Recorded Tract Map 339 of the official records, located at 1907 West Morton Avenue.

Description of Nature, Purpose, and Beneficiaries of Project

City of Porterville
Name of Public Agency Approving Project

City of Porterville. 291 N. Main Street. 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: 15315 Class 15


There is no potential that the project will have an impact on the environment.
Reasons why project is exempt

Bradley D. Dunlap, AICP, City Planner (559) 782-7460
Contact Person Telephone

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:______

Signature

Title: Community Development Director
ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE APPROVING FINDINGS SUPPORING FACTS THAT SUBSTANTIAL CHANGES HAVE OCCURRED AND APPROVING ZONE CHANGE 1-2007 ON PROPERTY LOCATED ON THE SOUTH SIDE OF WEST MORTON AVENUE

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of January 16, 2007, gave consent for staff to prepare a zone change to be presented at a public hearing in compliance with Government Code Section 56375(e); and

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of February 20, 2007, conducted a public hearing to approve findings and consider Zone Change 1-2007, being a change of zone from R-1 (One-Family Residential) to C-1 (D) (Neighborhood Commercial- Design Review Overlay) for those two (3) Lots located at 1907 West Morton Avenue; 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 Zone Change 1-2007; and

WHEREAS: The City Council made the following findings in support of the approval of Zone Change 1-2007:

1. That the current zoning is not consistent with the intended prezoning as theorized and considered by the City of Porterville Staff and Porterville City Council.

2. That the current zoning classification resulting from the city initiated annexation of the area has resulted in the uses on the property, inappropriately becoming non-conforming which could cause possible adverse environmental effects and considerable costs to the property owners who may wish to expand, rebuild, sell or refinance their properties.

3. That the Porterville City Council desires that the current land use on the subject properties be continued.

4. That the current land uses and General Plan Designation give cause and support for the rezone.

5. That California Government Code Section 56375(e) allows for the Porterville

ATTACHMENT
ITEM NO. 4
City Council, if it makes finds that a substantial change has occurred in the circumstance involved in the prezoning and annexation of the property, to consider and reclassify the property zoning within the normal two-year prohibition after the completion of the annexation.

6. That the subject rezoning will not create adverse environmental impacts.

7. The Land Use Element of the General Plan designates the subject parcels as Neighborhood Commercial.

8. That the proposed C-1 (D) - Neighborhood Commercial- Design Review Overlay zoning will conform with the land use designation (Neighborhood Commercial) of the General Plan.

9. That current uses on the property are in conformance with the uses allowed in the C-1 (Neighborhood Commercial), Article 7 of the Porterville Zoning Ordinance.

10. That in accordance with “General Rule” Exemption of California Administrative Code 15061 (b-3), the proposed rezoning classification to C-1 (Neighborhood Commercial) is categorically except from CEQA.

11. 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.

12. That the City Council is the decision-making body for the project.

NOW, THEREFORE, BE IT ORDAINED: That the City Council of the City of Porterville does ordain as follows:

Section 1: That the following described property in the City of Porterville, County of Tulare, State of California, known as Zone Change 1-2007, is hereby rezoned from R-1 (One-Family Residential) to C-1 (D) (Neighborhood Commercial- Design Review Overlay) for those two (3) Lots described as lot 5, 6, and the north eight-feet of Lot 8 on Recorded Tract Map 339 of the official records, located at 1907 West Morton Avenue, more particularly shown on the attached map, incorporated herein by this reference as Exhibit "A", and

Section 2: It is further ordained that all records of the City of Porterville, together with the official zoning map of the City of Porterville, shall be changed to show that all of the above described real property is rezoned from R-1 (One-Family Residential) to C-1 (D) (Neighborhood Commercial- Design Review Overlay) for those two (3) lots described as Lots 5, 6, and the north eight-feet of Lot 8 on Recorded Tract Map 339 of the official records, located at 1907 West Morton Avenue, more particularly shown on the attached map; and
Section 3: This ordinance shall be in full force and effect thirty (30) days from and after its publication and passage.

______________________________
Cameron Hamilton, Mayor

ATTEST:
John Longley, City Clerk

By ______________________________
Georgia Hawley, Chief Deputy City Clerk
ZONE CHANGE #1-2007

SCHOOL AVE.

MORTON AVE.

WALCH ST.

BELMONT ST.

HARRISON AVE.

PROPOSED ZONING CHANGE

R-1 TO C-1(D)

CITY COUNCIL
ORDINANCE NO. #_______

EXHIBIT "A"
PUBLIC HEARING

TITLE: ZONE CHANGE 2-2007

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

COMMENT: Zone Change 2-2007 proposes to change the present zoning for the site from C-1 (D) (Neighborhood Commercial- Design Review Overlay) to R-1 (One-Family Residential) for those two (2) lots located at the southwest corner of West Morton Avenue and north Salisbury Street.

The subject site is currently occupied by three One-family residential homes. The area was incorporated into the city limits on March 3, 2006 with a C-1 (D) (Neighborhood Commercial- Design Review Overlay) zone, which created a non-conforming use. The zoning was inadvertently placed on these parcels rather than that of an existing convenience store site to the West. This action would correct the non-conforming status. The City Council, on January 16, 2007 authorized staff to initiate the zone change process, in compliance with Government Code Section 56375 (e), for this property along with one other property to a conforming zone.

ENVIRONMENTAL: The project is categorically exempt from CEQA requirements.

RECOMMENDATION: That the City Council:

1. Adopt the draft ordinance approving Zone Change 2-2007.

2. Waive further reading of the draft ordinance, approving Zoning Change 2-2007, and order to print.

ATTACHMENT:

1. Complete Staff Report
PUBLIC HEARING - STAFF REPORT

TITLE: ZONE CHANGE 2-2007

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

PROJECT LOCATION: Those two (2) parcels located at the southwest corner of West Morton Avenue and North Salisbury Street.

SPECIFIC REQUEST: Zone Change 2-2007 proposes to change the present zoning for the site from C-1 (D) – Neighborhood Commercial- Design Review Overlay to R-1 (One-Family Residential) for those two (2) parcels located at the southwest corner of West Morton Avenue and North Salisbury Street.

PROJECT DETAILS: The subject site is currently occupied by three One-family residential homes. The property was incorporated into the city limits on March 3, 2006 with a C-1 (D) (Neighborhood Commercial- Design Review Overlay) zone, which created non-conforming uses. The zoning was inadvertently placed on these parcels rather than that of an existing convenience store site to the West. The City Council, on January 16, 2007 authorized staff to initiate the zone change process, in compliance with Government Code Section 56375 (e), for this property along with one other property to a conforming zone.

GENERAL PLAN LAND USE DESIGNATION: LOW DENSITY RESIDENTIAL

SURROUNDING AREA ZONING AND LAND USE:

North: City - Morton Avenue and residential uses.
South: City - Residential uses.
East: City - Residential uses.
West: City – Open Field and Convenience Store Automobile fueling station.

Staff Analysis: The zone change to R-1 would bring the use into compliance with use and General Plan designation. Staff finds that a change in circumstances, as related to the prezoning that created the nonconforming uses, does warrant the City Council approving the zone change to a residential zoning classification in compliance with Government Code Section 56375(e).

ALTERNATIVES TO THE PROJECT AND THEIR EFFECT:

1. No Project. Denial of the proposed zone change would result in the existing site continuing as a non-conforming use with no options available for expanding or rebuilding. Once the property is abandoned or destroyed the property would be required to conform to the current zoning.
2. Approve the project. Approval of the proposed zone change to City R-1 will allow for the site to continue in accordance with the Porterville Zoning Ordinance supported by the General Plan.

ENVIRONMENTAL: The project is categorically exempt from CEQA requirements in accordance with “General Rule” Exemption of California Administrative Code 15061 (b-3).

RECOMMENDATION: That the City Council:

1. Adopt the draft ordinance approving Zone Change 2-2007 and give first reading to the draft ordinance.

2. Waive further reading of the draft ordinance, approving Zone Change 2-2007, and order to print.

ATTACHMENTS:

1. Zoning/Land Use Map
2. Zone Change Application
3. Notice of Exemption
4. Draft Ordinance containing Findings approving Zone Change 2-2007, Exhibit "A"
CITY OF PORTERVILLE

APPLICATION FOR CHANGE OF ZONE
NO. 1-2007

(See Page 4 of this form for information on preparing and filing this application)

CURRENT ZONING OF PARCEL(S): C-1(D) Neighborhood Commercial–Design Review Overlay

PROPOSED ZONING OF PARCEL(S): R-1 (One-Family Residential)

NAME, MAILING ADDRESS AND TELEPHONE NUMBER OF PROPERTY OWNER(S):

1805 W MORTON AVE, BOWLES JUDITH A, 1819 W MORTON AVE, TAPIA JOSE, 381 N SALISBURY STREET, CARRERA FERNANDO & FRANCES

NAME, MAILING ADDRESS AND TELEPHONE NUMBER OF APPLICANT /CONTACT PERSON:

Same

PROJECT ADDRESS AND NEAREST CROSS STREETS:

1805 W MORTON AVE, 1819 W MORTON AVE, 381 N SALISBURY STREET-

1. Does public necessity require the proposed change? Is there a real need in the community for more of the types of uses permitted by the zone requested than can be accommodated in the areas already zoned for such uses? (Fully explain your answer, considering the surrounding property as well as the property proposed to be reclassified)

2. Is the subject property more suitable for the purposes permitted in the proposed zone than for the purposes permitted in the present zone? (Answer completely; give all reasons for your answer)

3. Would the uses permitted by the proposed zone be detrimental in any way to surrounding property? (Explain reasons supporting your answer)

4. What were the original deed restrictions, if any, concerning the type and class of uses permitted on the property involved? Give the expiration date of these restrictions. (Please attach a copy of these restrictions and properly underscore the portions that are relevant.)
TO THE PORTERVILLE CITY COUNCIL:

We, the owners of real property set opposite our respective names, hereby petition to have Ordinance No. 707 amended by reclassifying from Zone C-1(D) to Zone R-1, the property described hereon and shown in colored cross-hatching on the attached map which, together with the Property Owner’s List, also attached hereto, are made a part of this petition.

OWNER'S DECLARATION

STATE OF CALIFORNIA

 )

COUNTY OF TULARE

 ) ss

I, ____________________________, being duly sworn, declare and say that I am the owner of part (or all) of the property involved and that this application has been prepared in compliance with the requirements of the Porterville City Council as printed herein and that the foregoing information thoroughly and completely, to the best of my ability, presents the argument in behalf of the application 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 ____________________________, 20____.

Telephone (____)________________________ Signed ____________________________

Mailing Address ____________________________

______________________________

This is to certify that the foregoing application has been inspected by me and found to be complete and acceptable for filing with the Porterville City Council.

Received ____________________________

Date ____________________________

Receipt No. ____________________________

By ____________________________

Mayor of the City of Porterville
NOTICE OF EXEMPTION

TO: Office of Planning and Research
    1400 Tenth Street, Room 121
    Sacramento, CA 95814
    X Tulare County Clerk
    County Civic Center
    Visalia, CA 93291

FROM: City of Porterville
      291 N. Main Street
      Porterville, California 93257

Zone Change 2-2007
Project Title

Southwest corner of west Morton Avenue and north Salisbury Street.
Project Location (Specific)

City of Porterville                 Tulare
Project Location (City)             Project Location (County)

A City of Porterville initiate zone change, in compliance with California Government Code Section 56375(c), to bring a
nonconforming use into compliance with zoning for three single-family residential homes sites. Rezoning from C-1 (D)
(Neighborhood Commercial - Design Review Overlay) to R-1 (One-Family Residential) for those two (2) Lots described
as Lot 3 and 4 on Recorded Tract Map 14 of the official records.
Description of Nature, Purpose, and Beneficiaries of Project

City of Porterville
Name of Public Agency Approving Project

City of Porterville, 291 N. Main Street, 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)
 _____ Categorical Exemption. State type and section number: 15315 Class 15

There is no potential that the project will have an impact on the environment.
Reasons why project is exempt

Bradley D. Dunlap, AICP, City Planner     (559) 782-7460
Contact Person                         Telephone

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:__________

Signature ________________________
Title: Community Development Director

ATTACHMENT
ITEM NO. 3
ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE APPROVING FINDINGS SUPPORTING FACTS THAT SUBSTANTIAL CHANGES HAVE OCCURRED AND APPROVING ZONE CHANGE 2-2007 ON PROPERTY LOCATED ON THE SOUTHWEST CORNER OF WEST MORTON AVENUE AND NORTH SALISBURY STREET

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of January 16, 2007, gave consent for staff to prepare a zone change to be presented at a public hearing in compliance with Government Code Section 56375 (e); and

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of February 20, 2007, conducted a public hearing to approve findings and consider Zone Change 2-2007, being a change of zone from C-1 (D) (Neighborhood Commercial- Design Review Overlay) to R-1 (One-Family Residential) for those two (2) lots located on the southwest corner of west Morton Avenue and north Salisbury Street; 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 Zone Change 2-2007; and

WHEREAS: The City Council made the following findings in support of the approval of Zone Change 2-2007:

1. That the current zoning is not consistent with the intended prezoning as theorized and considered by the City of Porterville Staff and Porterville City Council.

2. That the current zoning classification resulting from the city initiated annexation of the area has resulted in the uses on the property, inappropriately becoming non-conforming which could cause possible adverse environmental effects and considerable costs to the property owners who may wish to expand, rebuild, sell or refinance their properties.

3. That the Porterville City Council desires that the current land use on the subject properties be continued.

4. That the current land uses and General Plan Designation give cause and support for the rezone.
5. That California Government Code Section 56375(e) allows for the Porterville City Council, if it makes finds that a substantial change has occurred in the circumstance involved in the rezoning and annexation of the property, to consider and reclassify the property zoning within the normal two-year prohibition after the completion of the annexation.

6. That the subject rezoning will not create adverse environmental impacts.

7. The Land Use Element of the General Plan designates the subject parcels as Low Density Residential.

8. That the proposed R-1 (One-Family Residential) zoning will conform to the land use designation (Low Density Residential) of the General Plan.

9. That current uses on the property are in conformance with the uses allowed in the R-1 (One-Family Residential), Article 2 of the Porterville Zoning Ordinance.

10. That in accordance with “General Rule” Exemption of California Administrative Code 15061 (b-3), the proposed rezoning classification to R-1 (One-Family Residential) is categorically except from CEQA.

11. 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.

12. That the City Council is the decision-making body for the project.

NOW, THEREFORE, BE IT ORDAINED: That the City Council of the City of Porterville does ordain as follows:

Section 1: That the following described property in the City of Porterville, County of Tulare, State of California, known as Zone Change 2-2007, is hereby rezoned from C-1 (D) (Neighborhood Commercial- Design Review Overlay) to R-1 (One-Family Residential) for those two (2) lots described as Lot 3 and 4 on Recorded Tract Map 14 of the official records, located on the southwest corner of West Morton Avenue and North Salisbury Street, more particularly shown on the attached map, incorporated herein by this reference as Exhibit “A”; and

Section 2: It is further ordained that all records of the City of Porterville, together with the official zoning map of the City of Porterville, shall be changed to show that all of the above described real property is rezoned from C-1 (D) (Neighborhood Commercial-Design Review Overlay) to R-1 (One-Family Residential) for those two (2) lots described as Lot 3 and 4 on Recorded Tract Map 14 of the official records, located on the southwest corner of West Morton Avenue and north Salisbury Street, more particularly shown on the attached map; and
Section 3: This ordinance shall be in full force and effect thirty (30) days from and after its publication and passage.

_________________________
Cameron Hamilton, Mayor

ATTEST:
John Longley, City Clerk

By _________________________
  Georgia Hawley, Chief Deputy City Clerk
CITY COUNCIL AGENDA: FEBRUARY 20, 2007

PUBLIC HEARING- CONTINUED

SUBJECT: ENNIS ESTATES TENTATIVE SUBDIVISION MAP (ENNIS HOMES)

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

COMMENT: On October 3, 2006, the City Council continued the public hearing for the proposed Ennis Estates project. The applicant requested that the matter be continued to a later date to allow time for further discussion between the interested parties. The applicant has requested a number of continuances in an effort to work out design issues with adjacent property owners. While progress has been made, the applicant is requesting that the item be continued until March 6, 2007.

The applicants are requesting approval of the Ennis Estates Tentative Subdivision Map to divide a 34.1± acre parcel east of Lombardi Street and south of the prolongation of Castle Avenue in northwest Porterville. The City’s General Plan Land Use Map shows that the project area is designated Low Density Residential and is in the R-1 (Single-family Residential) Zone. The property will be divided into approximately 70 estate size (17,000 square foot average) single-family residential lots. Two lots, one approximately 6,400± square feet and the other 9,580± square feet, will be pocket parks maintained by a Homeowners Association. The project will be constructed in one phase.

ENVIRONMENTAL: On August 4, 2006, 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 August 4, 2006 to August 25, 2006. Comments were received from representatives of Burton School District and Mr. Lombardi, a neighboring property owner. Comments have been addressed where appropriate; the comment letters and Staff responses are attached to the staff report.

RECOMMENDATION: That the City Council continue the item to the March 6, 2007 meeting.
SUBJECT: SECOND READING - ORDINANCE NO. 1711, ZONING
ORDINANCE AMENDMENT 2006-7 (FORMERLY 3-2004) – AN
ORDINANCE AMENDING VARIOUS SIGNAGE REGULATIONS

SOURCE: Administration/City Clerk Division

COMMENT: Ordinance No. 1711, amending portions of the Municipal Code and
Zoning Ordinance pertaining to signage standards, was given First
Reading on February 6, 2007, and has been printed.

RECOMMENDATION: That Council give Second Reading to Ordinance No. 1711,
waive further reading, and adopt said ordinance.

Attachment: Ordinance No. 1711
ORDINANCE NO. 1711

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF PORTERVILLE AMENDING PORTIONS OF
THE MUNICIPAL CODE AND ZONING ORDINANCE
PERTAINING TO SIGNAGE STANDARDS

WHEREAS: In July 2004, the City Council directed staff to prepare a General Amendment to the Zoning Ordinance pertaining to regulations and standards for signage specifically addressing banners and other temporary signage, guild signage, roof mounted signage, and maintenance of signs; and

WHEREAS: The Council acted to undertake an ordinance amendment pertaining to signage due to the deleterious effect an excess of temporary and unkempt signs can have on a business district; and

WHEREAS: Staff prepared a proposed amendment and brought the matter back to the Council in September 2004, at which time the Council directed the formation of a committee of local business people and interested parties to provide input on the proposed ordinance amendment; and

WHEREAS: Staff held a number of meetings with the committee to define reasonable signage provisions that address the desire of the Council as well as preserve the ability of the businesses to hold promotional activities and promote their businesses with suitable signage, both temporary and permanent; and

WHEREAS: The City Council considered the proposed amendment on February 6, 2007 which incorporated the input of the business community and the will of the City Council; and

WHEREAS: A public hearing has been held before the City Council, pursuant to the Planning and Zoning Law of the State of California and the Municipal Code of the City; and

WHEREAS: Pursuant to State and local environmental regulations, it has been determined that the regulations encompassed in this Ordinance are exempt from the California Environmental Quality Act, and as a general rule, a Notice of Exemption is filed.

NOW, THEREFORE, BE IT ORDAINED: That the City Council of the City of Porterville does hereby amend the Porterville Municipal Code including the Zoning Ordinance as pertains to signage regulations and standards as follows:

Municipal Code - Chapter 3 - ADVERTISING AND SIGNS is amended as follows:

ARTICLE I. IN GENERAL

No changes are proposed to this article.

ARTICLE II. HANDBILLS, ADVERTISING CIRCULARS, ETC.

No changes are proposed to this article.
ARTICLE III. SOUND TRUCKS AND SOUND AMPLIFYING EQUIPMENT

No changes are proposed to this article.

ARTICLE IV. SIGNS

Sec. 3-21. **Title, scope and enforcement.**

(a) **Title.** This article shall be known as the "Uniform Sign Code," may be cited as such, and will be referred to herein as "this Code."

(b) **Purpose and scope.** The purpose of this Code is to provide minimum standards to safeguard life, health, property and public welfare by regulating and controlling the design, quality of materials, construction, location, electrification, and maintenance of all signs and sign structures visible from outside the building or intended for view by people outside the building. The regulations of this Code are not intended to permit any violation of the provisions of any other lawful ordinance.

(c) **Enforcement.** The building official is hereby authorized and directed to enforce all the provisions of this Code.

(d) **Right of entry.** Upon presentation of proper credentials the building official or his duly authorized representatives may enter at reasonable times any building, structure, or premises in the city to perform any duty imposed upon him by this Code.

(e) **Board of appeals.** The board of appeals as provided in the currently adopted Building Code and which has been established thereunder is the appellate board to provide for reasonable interpretation of this article. (Ord. No. 759, § 1, 3-19-63)

Sec. 3-22. **Definitions and abbreviations.**

For the purpose of this Code, certain abbreviations, terms, phrases, words and their derivatives shall be construed as defined in Article Twenty of the Zoning Ordinance. Words used in the singular include the plural, and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine.

Sec. 3-23. **Permits, fees and inspection.**

(a) **Permits required.** No sign shall hereafter be erected, re-erected, constructed, altered, or maintained, except as provided by this Code and a permit for the same has been issued by the building official. A separate permit shall be required for each sign. In addition, electrical permits shall be obtained for electric signs.

(b) **Application.** Application for a sign permit shall be made in writing upon forms furnished by the building official. Such application shall contain the location by street and number of the proposed sign structure, as well as the name and address of the owner and the sign contractor or erector. The building official may require the filing of plans and specifications to be prepared and designed by an engineer or architect licensed by the state to practice such.

(c) **Exemption.** The following signs shall not require a sign permit. These exceptions shall not be construed as relieving the owner of the sign from the responsibility of its erection and maintenance, and its compliance with the provisions of this Code or any other law or ordinance regulating the same.
(1) The changing of the advertising copy or message on a painted or printed sign only. Except for theater marquees and similar signs specifically designed for the use of replaceable copy, electric signs shall not be included in this exception.

(2) Painting, repainting or cleaning of an advertising copy or message thereon shall not be considered an erection or alteration which requires sign permit unless a structural change is made.

(3) Real estate signs not exceeding twelve (12) square feet in area and not to exceed six (6) feet in height, which advertise the sale, rental, or lease of the premises upon which said signs are located and do not interfere with visibility of motor vehicle traffic.

(4) Professional name plates not exceeding two (2) square feet in area.

(5) Identification signs on apartment houses, boarding or rooming houses or similar uses, not exceeding six (6) square feet in area.

(6) Name plates or signs not exceeding two (2) square feet in area in the aggregate for residential dwelling units.

(7) Bulletin boards not over twelve (12) square feet in area for public, charitable, or religious institutions when said bulletin boards are located on the premises of said institutions.

(8) Signs denoting the architect, engineer or contractor when placed upon work under construction and not exceeding twelve (12) square feet in area.

(9) Memorial signs or tablets, names of buildings and date of erection when cut into any masonry surface, or when constructed of bronze or other incombustible materials.

(10) Traffic, informational, or municipal signs designed to give information in the specific interest of the traveling public, including legal notices, railroad crossing, and danger signs.

(11) Non-advertising warning signs or no trespassing signs on private property posted no closer than one hundred (100) feet apart nor exceeding two (2) square feet in area per sign.

(12) Non-advertising signs of public utility companies as may be required in their operations in providing services for the health and welfare of the general public, or as required by any law or regulation of the State of California, or any agency thereof.

(13) Non-advertising displays commemorating legal holidays, providing, however that said displays are not detrimental to public health, safety, and general welfare.

(14) Temporary and political signs as set forth in Article Twenty of the Porterville Zoning Ordinance.

(d) *Sign permit fee.* A fee for each sign permit shall be paid to the building official as set forth in the schedule below.
The determination of value or valuation under any of the provisions of this Code shall be made by the building official.

Where work for which a permit is required by this Code is started or proceeded with prior to obtaining said permit, the fees specified above shall be doubled, but the payment of such double fee shall not relieve any person from fully complying with the requirements of this Code in the execution of the work nor from any other penalties prescribed herein.

Fees will be collected based on:

1. A resolution adopted by the City Council.
2. Electrical permit fee to be taken from Ordinance No. 742. [Codified as § 7-11]
   
   (e) Plan checking fees. Where plans and other pertinent information are required in accordance with Section 3-23(b), a plan check fee as per a resolution adopted by the City Council shall be paid to the building official.

   (f) Maintenance. All signs, together with all of their supports, braces, guys, and anchors shall be kept in repair and in proper state of preservation. The display surfaces of all signs shall be kept neatly painted or posted at all times.

   (g) Inspections. All signs for which a permit is required shall be subject to inspection by the building official.

- Footing inspections will be required for all ground signs.
- Electric signs shall be inspected before erection.
- The building official may order the removal of any sign that is not maintained in accordance with provisions of subsection (f) of this Section.
- All signs may be re-inspected at the discretion of the building official. (Ord. No. 759, § 3, 3-19-63; Ord. No. 1537, § 15, 8-6-96)

Sec. 3-24. Design and Construction.

DESIGN

(a) General. Signs and sign structures shall be designed and constructed to resist wind and seismic forces as specified in this section. All bracing systems shall be designed and constructed to transfer lateral forces to the foundations. For signs on buildings the dead and lateral loads shall be transmitted through the structural frame of the building to the ground in such manner as not to overstress any of the elements thereof.

The overturning moment produced from lateral force shall be transmitted through the ground in such manner as not to overstress any of the elements thereof. The overturning moment produced from lateral forces shall in no case exceed two-thirds of the dead-load resisting moment. Uplift due to overturning shall be adequately resisted by proper anchorage to the ground or to the structural frame of the building. The weight of earth superimposed over footings may be used in determining the dead-load resisting moment. Such earth shall be carefully placed and thoroughly compacted.

(b) Wind loads. For the purpose of design, and except for combination signs, wind pressure shall be taken upon the gross area of the vertical projection of all signs and sign structures at not less than fifteen (15) pounds per square foot for those portions less than sixty (60) feet above the ground,
and at not less than twenty (20) pounds per square foot for those portions more than sixty (60) feet above the ground.

Wind pressure upon combination signs and their support shall be taken at not less than thirty (30) pounds per square foot of the gross area of the plane surface, acting in any direction. In calculating wind pressure on curved surfaces such as cylindrical or spherical signs or sign structures, this pressure shall be assumed to act on six-tenths (6/10) of the projected area. In all open frame signs or sign structures the area used in computing wind pressure shall be one and one-half (1 1/2) times the net area of the framing members exposed to the wind.

(c) **Seismic loads.** Signs and sign structures shall be designed and constructed to resist seismic forces as specified in the currently adopted Building Code.

(d) **Combined load.** Wind and seismic loads need not be combined in the design of signs or sign structures; only that loading producing the larger stresses need be used. Vertical design loads shall be assumed to be acting simultaneously with the wind or seismic loads.

(e) **Allowable stresses.** The design of wood, concrete, or steel members shall conform to the requirements of the currently adopted Building Code. Loads, both vertical and horizontal, exerted on the soil shall not produce stresses exceeding those specified in the currently adopted Building Code. The working stresses for wind or seismic loads combined with dead loads may be increased as specified in the currently adopted Building Code.

**CONSTRUCTION**

(f) **General.** The supports for all signs or sign structures shall be placed in or upon private property and shall be securely built, constructed and erected in conformance with the requirements of this Code.

(g) **Material.** Materials of construction for signs and sign structures shall be of the quality and grade as specified for buildings in the currently adopted Building Code. Anchors and supports when of wood are embedded in the soil, or within six (6) inches of the soil, shall be of all heartwood of durable specie or shall be pressure-treated with an approved preservative. Such members shall be marked or branded by an approved agency.

(h) **Restrictions on combustible materials.** Ground signs may be constructed of any material meeting the requirements of this Code, except as provided above. Combination signs, wall signs, projecting signs, and signs on marquees shall be constructed of incombustible materials, except as provided in subsection (i) of this section. No combustible materials other than approved plastic materials shall be used in the construction of electric signs.

(i) **Nonstructural trim.** Nonstructural trim may be of wood, metal, approved plastics, or any combination thereof.

(j) **Anchorage.** Members supporting un-braced signs shall be so proportioned that the bearing loads imposed on the soil in either direction, horizontal or vertical shall not exceed the safe values. Braced ground signs shall be anchored to resist the specified wind or seismic load acting in any direction. Anchors and supports shall be designed for safe bearing loads on the soil and for an effective resistance to overturning. Anchors and supports shall penetrate to a depth below ground greater than that of the frost line.
Portable ground signs supported by frames or posts rigidly attached to the base shall be so proportioned that the weight and size of the base will be adequate to resist the wind pressure specified in subdivision (b) of this section.

Signs attached to masonry, concrete, or steel shall be safely and securely fastened thereto by means of metal anchors, bolts, or approved expansion screws of sufficient size and anchorage to support safely the loads applied.

No wooden block or plugs or anchors with wood used in connection with screws or nails shall be considered proper anchorage, except in the case of signs attached to wood framing.

No anchor or support of any sign shall be connected to, or supported by, a parapet wall, unless such wall is designed in accordance with the requirements specified in the currently adopted Building Code for parapet walls.

(k)  **Display surfaces.** Display surfaces in all types of signs may be made of metal, glass or approved plastics, in accordance with the area limitations set forth in Tables No. 4-A and No. 4-B of this article [See § 3-25].

(l)  **Restrictions as to zoning regulations.** All signs shall comply with zoning regulation ordinances of the City of Porterville.

(m)  **Clearance from electric power lines.** No permit for any sign shall be issued and no sign shall be constructed, installed, or erected which has less horizontal or vertical clearance from energized electrical power lines than prescribed by the California Penal Code, Section 385, the regulations of the California Public Utility Commission, and the Orders of Division of Industrial Safety, State of California. (Ord. No. 759, § 4, 3-19-63)

**Sec. 3-25.  Ground signs.**

(a)  **General.** Ground signs may be constructed of any material meeting the requirements of this Code, except as provided in Section 3-24(h).

(b)  **Design.** Ground signs shall be designed in accordance with the requirements specified in Section 3-24.

(c)  **Projection.** Ground signs shall not project over public property or beyond a building line. For projection of combination signs, see Section 3-28.
### Table 4-A
**LIMITATIONS OF APPROVED PLASTICS IN SIGNS**

<table>
<thead>
<tr>
<th>AREA OF FACING OR DISPLAY SURFACE</th>
<th>AREA OCCUPIED OR COVERED BY APPROVED PLASTIC MATERIALS</th>
</tr>
</thead>
<tbody>
<tr>
<td>100 square feet or less</td>
<td>100% of display surface area</td>
</tr>
<tr>
<td>Over 100 square feet, but less than 2,000 square feet</td>
<td>100 square feet plus 25% of the difference between 100 sq. ft. and the area of the display surface</td>
</tr>
<tr>
<td>Over 2,000 square feet</td>
<td>Not over 575 square feet</td>
</tr>
</tbody>
</table>

### Table 4-B
**SIZE, THICKNESS, AND TYPE OF GLASS PANELS IN SIGNS**

<table>
<thead>
<tr>
<th>MAXIMUM SIZE OF EXPOSED GLASS PANEL</th>
<th>MINIMUM THICKNESS OF GLASS IN INCHES</th>
<th>TYPE OF GLASS</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANY DIMENSION IN INCHES</td>
<td>AREA IN SQUARE INCHES</td>
<td>1/8</td>
</tr>
<tr>
<td>30</td>
<td>500</td>
<td>3/16</td>
</tr>
<tr>
<td>45</td>
<td>700</td>
<td>1/4</td>
</tr>
<tr>
<td>144</td>
<td>3,600</td>
<td>1/4</td>
</tr>
<tr>
<td>Over 144</td>
<td>Over 3,600</td>
<td>1/4</td>
</tr>
</tbody>
</table>
Sec. 3-26. Wall signs.

(a) **General.** Wall signs shall be constructed of materials compliant with Title 24 of the California Building Code, except as provided in Section 3-24 (i).

(b) **Design.** Wall signs shall be designed in accordance with the requirements specified in Section 3-24.

(c) Signs or advertising structures projecting not more than six (6) inches from the face of a building or any other supporting structure, over a public sidewalk or any other public property, shall have a minimum clearance of eight (8) feet above the pavement or finished grade.

Sec. 3-27. Projecting signs.

(a) **General.** Projecting signs shall be constructed of materials compliant with Title 24 of the California Building Code, except as specified in Section 3-24(i).

(b) **Design.** Projecting signs shall be designed in accordance with the requirements specified in Section 3-24.

(c) In any residentially zoned district, with the exception of newspaper and mail receptacles, no sign or advertising structure shall extend or project over any public sidewalk, street, alley, or other public property unless exempted under Section 2006, paragraph 8 of the Zoning Ordinance.

(d) Signs or advertising structures projecting more than six (6) inches from the face of a building, or any other supporting structure, over travel ways or walkways on private property used or intended to be used by the general public, shall have a minimum clearance of eight (8) feet above the pavement or finished grade.

(e) **Projection.** No wall sign shall have a projection over public property or beyond a building line greater than the distances set forth in this Code, nor shall extend above any adjacent parapet or roof of the supporting building. No sign or sign structure shall project into any public alley whatsoever, below a height of eight (8) feet above grade, nor more than eight (8) inches when over eight (8) feet. (Ord. No. 759, § 7, 3-19-63)

(f) Signs or advertising structures projecting more than six (6) inches from the face of a building or any other supporting structure shall have a minimum clearance of ten (10) feet above the pavement or finished grade.

(g) No sign or advertising structure shall exceed a horizontal dimension of more than thirty (30) inches when projecting from the face of any building or any other supporting structure, whether privately or publicly owned. When the sign projects over a public sidewalk or any other public property, and is suspended from or supported by a rod, anchor, or other hardware, the overall horizontal dimension may not exceed thirty-six (36) inches. When the sign projects over a public sidewalk or any other public property, and when said sign is placed on or suspended from an awning, canopy, or marquee, the overall horizontal dimension must not exceed forty-eight (48) inches.

(h) Signs or advertising structures in any residential, P-O, and C-1 zoned districts may not be attached to the roof of a building, nor shall it exceed the height of the roof of the building to which it is attached.
(i) **Clearance.** No sign or sign structure shall be erected in such a manner that any portion of its surface or supports will interfere in any way with the free use of any fire escape, exit or standpipe. No sign shall obstruct any window to such an extent that any light or ventilation is reduced to a point below that required by any law or ordinance.

Signs shall be so located as to maintain all required clearances from overhead power and service lines.

**Sec. 3-28. Combination signs.**

(a) **General.** Combination signs shall be constructed of incombustible materials except as provided in Section 3-24 (i).

(b) **Design.** All supports of combination signs shall be placed in or upon private property and shall be securely built, constructed and erected to conform to the requirements specified in Section 3-24.

(c) **Projection.** Combination signs may project over public property or beyond a building line as set forth in the Zoning Ordinance, Article 2015.

The individual requirements of projecting and ground signs shall be applied for combination signs incorporating any or all of the aforesaid features.

**Sec. 3-29. Marquees.**

(a) **General.** Signs may be placed on, attached to, or constructed in a marquee. Such signs shall, for the purpose of determining projection clearance, height and material, be considered a part of and shall meet the requirement for a marquee as specified in the currently adopted Building Code. (Ord. No. 759, § 10, 3-19-63)

**Sec. 3-30. Electric signs.**

(a) **General.** Electric signs shall be constructed of incombustible materials, except as provided in Section 3-24(h). The enclosed shell of electric signs shall be watertight, excepting that service holes fitted with covers shall be provided into each compartment of such signs.

(b) **Installation.** Electric equipment used in connection with display sign shall be installed in accordance with local ordinances regulating electrical installations.

(c) **Erector's name.** Every electric sign projecting over any street or alley or public place shall have painted on the surface of the sign the name of the sign erector and date of erection. Such name and date shall be of sufficient size and contrast to be readable from a reasonable distance. Failure to provide such name and date shall be grounds for rejection of the sign by the building official. (Ord. No. 759, § 11, 3-19-63)

**Sec. 3-31. Temporary signs and banners.**

Refer to Ordinance No. 727 [Codified as Article I of this chapter], and Article Twenty of the Zoning Ordinance, which shall apply. (Ord. No. 759, § 12, 3-19-63)
Sec. 3-32. Violation and penalties.

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use or maintain any sign or structure in the city or cause or permit the same to be done contrary to or in violation of any of the provisions of this Code.

Any person, firm, or corporation violating any of the provisions of this Code shall be guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Code is committed, continued, or permitted, and upon conviction of any such violation such person shall be punishable by a fine of not more than five hundred dollars ($500.00) or by imprisonment for not more than one hundred eighty (180) days, or by both such fine and imprisonment. (Ord. No. 759, § 13, 3-19-63)

Municipal Code Appendix A - Zoning Ordinance is amended to read as follows:

ARTICLE TWENTY - SIGNS AND ADVERTISING STRUCTURES

SECTION 2000: Definitions of Words, Phrases, and Terms Contained in this Article.

Advertising Area: Shall mean the total square foot area of all sign facings (except double face signs which shall be computed as one (1) face), calculated by adding the outer dimensions of all faces capable of presenting a sign message including the border and/or frame. The area of a sign without a border placed on the wall of a building shall be computed by enclosing the entire sign within sets of parallel lines touching the outer limits of the sign message and computing the area thus enclosed.

Advertising Structure: Shall mean a structure of any kind or character erected or maintained for outdoor advertising purposes, upon which any poster, bill, printing or other advertisement of any kind whatsoever may be placed, including statuary, for the purpose of advertising the business or activity on the premises, but shall not include official notices issued by any court or public body or officer, notices posted by any public officer in the performance of a public duty or by any person in giving legal notice; directional, warning or information structures required or authorized by law or by federal, state, or county authority.

Approved plastic material: Shall mean a plastic material that the building official has found to be suitable functionally for the purpose for which it is offered; which conforms to the currently adopted Building Code as adopted by Ordinance.

Balloon display: Shall mean an arrangement of one (1) or more balloons, with or without any message thereon, which are individually less than thirty-six (36) inches in any dimension and inflated with air, helium, or gas, that are tethered at a fixed location and are primarily intended to draw attention to that location.

Banner: Shall mean a sign made of cloth, heavy duty plastic, or similar lightweight, flexible material (except paper), attached to or suspended from any structure, building, staff, pole, line, framing, or other projection, and used for temporary advertising purposes, not including "flags".
Building Code: Whenever "Building Code" is referred to in this Chapter it shall be that building code and appendices thereto which have been adopted by Ordinance and are in full force and effect at the time of compliance with, or enforcement of, any provisions of this Chapter.

Building Line: Shall mean a line established by ordinance beyond which no building may extend. A building line may be a property line.

Building Official: Shall mean the duly appointed and acting Chief Building Inspector of the City of Porterville, his duly authorized representatives or such person as may hereafter be authorized by law to perform the duties now being performed by that official in the City of Porterville.

Business Face: Shall mean either but not both of the following for any business or building:

1) That portion of a building or tenant space within a building which faces a public street; OR

2) That portion of a building or tenant space within a building which contains an entrance open to the public and which faces a parking area available to customers or clients of any business within the building.

Business Face Area: Shall mean the computed lineal width of a business or building face multiplied by the height extending from finished grade to the top of the vertical wall of the business face.

Combination sign: Shall mean any sign incorporating a combination of the features of ground and projecting signs.

Curb Line: Shall mean the line at the face of the curb nearest to the street or roadway. In the absence of a curb, the curb line shall be established by the City Engineer.

Display Frontage: Shall mean the lineal footage of display frontage for those businesses where the principal display of merchandise is located outside of a main building.

Display Surface: Shall mean the area made available by the sign structure for the purpose of displaying the advertising message.

Flag: Shall mean any fabric or bunting containing distinctive colors, patterns, symbols, or logos of a government agency, political subdivision, business, corporation, church, or other entity.

Freeway: Shall mean a highway with respect to which the owners of abutting lands have no right of easement or access to or from their abutting lands, or in respect to which such owners have only limited or restricted easement or access, and which is declared to be in compliance with the Streets and Highways Code of the State of California.

Hand-held Sign: Shall mean a commercial sign held by a person or persons in a manner to attract attention to an area, development, business, or service.

Highway: Shall mean roads, streets, boulevards, lanes, courts, places, commons, trails, ways or other rights-of-way or easements used for or laid out and intended for the public passage of vehicles or of vehicles and persons.
Incombustible material: Shall mean any material which will not ignite at, or below a temperature of one thousand two hundred (1,200) degrees Fahrenheit during an exposure of given minutes, and which will not continue to burn or glow at that temperature. Tests shall be made as specified in the currently adopted Building Code.

Integrated Business Development: Shall mean a development consisting of five (5) or more interrelated business establishments using common driveways and on-site parking facilities.

Marquee: Shall mean a permanent roofed structure attached to and supported by a building and projecting over public property.

Nonstructural trim: Shall mean the molding, battens, caps, nailing strips, latticing, cutouts or letters and walkways that are attached to the sign structure.

Open Uses: Shall mean those uses that do not have to be associated with buildings or structures for the carrying on of their trade, service or activity, such as, but not limited to, automobile sales, contractor's storage yards, and equipment rental yards.

Pennant: Shall mean any lightweight plastic, paper, fabric, or other similar, flexible material, suspended from or attached to a rope, wire, string, or pole, usually in a series, designed to move in the wind.

Primary Highway: Shall mean any highway, other than an interstate highway, at any time officially designated as a part of the federal-aid primary system by the Director of the Department of Public Works of the State of California and approved by appropriate authority of the federal government.

Roof: Shall mean the cover of any building or part of a building including patio, porch and awning covers.

Roofline: Shall mean the height above finished grade of the upper most beam, rafter, ridge board, or purlin of any building.

Sign: Shall mean and include every announcement, declaration, demonstration, display, illustration, insignia, surface or space when erected or maintained in view of the general public for identification, advertisement or promotion of the interests of any individual, organization, or business.

Sign, A-Frame: Shall mean an unanchored freestanding sign, usually hinged at the top and widening at the bottom to form a shape similar to the letter "A."

Sign, Business Identification: Shall mean any sign installed or maintained for the purpose of identifying a bona fide business, use, service, product, commodity, and interest or entertainment being conducted upon the premises on which the sign is located.

Sign, Center Identification: Shall mean a free standing advertising structure which supports a sign containing the name identifying an integrated business development and may also include identification signs on which the names and nature of businesses only within the development are uniformly displayed.

Sign, Double Face: Shall mean a single sign with two parallel sign faces back-to-back.
**Sign, Electric:** Shall mean any sign containing electrical wiring, but not including signs illuminated by an exterior light source.

**Sign, Energized:** Shall mean any sign or advertising structure energized from any source for the purpose of illumination or sustaining motion.

**Sign, Facing or Surface:** Shall mean the surface of the sign upon, against or through which the message is displayed or illustrated on the sign, excepting signs in which the words, letters, or symbols are independently mounted, then the sign surfaces shall mean the outside dimensions of the area containing all of the individual words, letter, and symbols.

**Sign, Freestanding:** Shall mean a sign not attached to the building that it advertises; generally a monument mounted on a foundation.

**Sign, Ground:** Shall mean a sign which is supported by one or more uprights, poles, or braces in or upon the ground other than a combination sign as defined by this Code.

**Sign Height:** The height of signs shall be measured from ground level (finished grade) to the top of the sign.

**Sign, Inflatable:** Shall mean an inflated balloon, in any shape or in the form of any character or animal, and over thirty-six (36) inches in diameter in any dimension, made of vinyl, fabric, cloth, or other similar, lightweight, flexible, material, primarily intended to draw attention to that location.

**Sign, Non-Advertising:** Shall mean any sign posted on private property containing thereon a regulatory or warning notice and upon which no advertising matter is displayed.

**Sign, Non-appurtenant:** Shall mean any sign which advertises or directs attention to a use, service, product, commodity, an interest, or entertainment, which is not conducted, available, sold or offered on the same premises.

**Sign, Permanent Reader Panel:** Shall mean a permanently constructed changeable copy bulletin board lighted or unlighted, attached to a building or freestanding advertising structure, with detachable precut letters and figures.

**Signs, Political:** Shall mean any sign concerning candidates for political office, propositions involving a ballot issue, or promotional campaigns.

**Sign, Portable:** Shall mean a temporary sign which is not permanently affixed to, secured or attached to an approved structure, support or anchor, and is capable of being carried or readily moved from one location to another. This may include, but is not limited to: A-Frame Signs, sandwich signs, or signs that lean on a stationary object, building, or structure. Portable signs shall not include banners, pennants, flags, inflatable signs, vehicle signs, and hand-held signs.

**Sign, Projecting:** Shall mean any sign which is attached to, and is supported solely by a building wall or structure and extends beyond the building wall, structure, or parts thereof, more than six (6) inches and whose angle of incidence to said building wall, structure or parts thereof, is greater than thirty degrees.

**Sign, Roof:** Shall mean a sign attached to a building that is characterized by one or more of the following:
● Sign is placed atop, or projects above the top edge of a roof, mansard roof, canopy, or a similar structure not at a vertical plane; or

● Sign is placed atop, or projects above the top edge of a parapet wall, canopy fascia, or a similar structure at or near a vertical plane; or

● Sign is placed on a tower or similar wall structure that extends above the top of the roof or parapet wall of a building.

**Sign structure:** Shall mean the supports, uprights, braces and framework of the sign.

**Sign, Temporary:** Shall mean sign, banner, pennant, valance or advertising display constructed of cloth, canvas, light fabric, cardboard, wallboard, or other light materials, with or without frames; intended to be displayed for a limited period of time only.

**Sign, Wall:** Shall mean all flat signs, whether painted, or of solid face construction or of individual letters, which are placed against the exterior wall of any building or structure.

**Sign, Window:** Shall mean any sign that is applied, painted, or attached to a window or located within two (2) feet of the interior of a window and visible from the exterior of a building.

**Street:** Shall mean the same as "Highway".

**Structure:** Shall mean that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts jointed together in some definite manner.

**SECTION 2001:** Continuation of Existing Regulations.

A. The provisions of this Article, insofar as they are substantially the same as existing ordinances relating to the same subject matter, shall be construed as restatements and continuations and not as new enactments.

**SECTION 2002:** Purpose and Intent.

A. Recognizing the desire and need of each individual, business, firm or corporation to identify its place of residence, business or service, and realizing that the indiscriminate erection, location, illumination, coloring, size, and lack of proper maintenance of signs and advertising structures, constitutes a significant contributing factor detrimental to the well-being and continuing activity of a city's people and economy, it is the purpose and intent of this article to:

1. Assure that all signs and advertising structures are designed, erected and maintained in a manner to enhance, rather than detract from, the ultimate design and appearance of the affected locality, and do not impair the view of nearby or adjacent signs.

2. Prohibit the installation and maintenance of signs or advertising structures that unduly distract motorists' attention from driving, and which detract from attention to traffic movement and to signs and signals promoting traffic safety.
3. Prevent the installation and maintenance of signs or advertising structures that individually or collectively have an injurious effect on the morale of the people and the economic well being of the City.

4. Assure that size and location of signs and advertising structures do not constitute an obstacle to effective fire protection and fire fighting techniques; nor constitute a direct or potential danger to vehicular or pedestrian traffic, especially in the event of structural failure during the period of inclement weather and earthquakes or in the event of impaired vision due to improper size or location.

5. Otherwise protect the public health, safety, morale, and promote the public welfare.

SECTION 2003: Sign Permit.

A. It shall be unlawful for any person to construct, install, structurally alter, or relocate within the City of Porterville any sign or advertising structure without first satisfying the requirement of this Article and obtaining a sign permit as required by Chapter 3, Article IV of the Municipal Code, except as described in Section 2006.


A. Upon the filing of an application for a sign permit, the plans, specifications and other data, as may be required, shall be examined by the Community Development Director or his designee, and the Chief Building Official, and if it shall appear that the proposed sign or advertising structure is in compliance and all of the requirements of this ordinance and all other laws of the City, the Community Development Director or his designee shall certify compliance on the plans, and the Chief Building Official shall issue the necessary sign permit.

SECTION 2005: Stop Orders.

A. The issuance of a sign permit shall not constitute a waiver of this Article or any ordinance of the City of Porterville, and the Chief Building Official is hereby authorized to stop any sign or advertising structure installations that are being carried on in violation of this ordinance, or of any other ordinance of the City of Porterville.

SECTION 2006: Exceptions and Exemptions.

A. The provisions and regulations of this Article shall not apply to certain classes of signs and advertising structures which are designated in the following subsections; provided, however, that such signs shall be subject to the provisions of Sections 2007 through 2014:

1. Real estate signs not exceeding twelve (12) square feet in area per face or eight (8) feet in height pertaining to the sale or rental of the property on which they are displayed, but not more than one such sign for each street frontage, excepting that all such signs located in any "R" Zone shall not exceed six (6) square feet in area per face or four (4) feet in height.

2. Professional name plates and occupational signs denoting only the name and occupation of any occupant in a commercial building or public institutional building, and not exceeding two (2) square feet in area.
3. Identification signs on apartment houses, boarding or rooming houses or similar uses, not exceeding six (6) square feet in area.

4. Name plates or signs not exceeding two (2) square feet in area in the aggregate for residential dwelling units.

5. Permanent reader panels for public, charitable, or religious institutions provided said reader panels are located on the property to which such reader panels pertain and do not exceed sixteen (16) square feet in total area per face nor more than ten (10) feet in height, and further provided said reader panels are located in such a manner as not to constitute a hazard to vehicular or pedestrian traffic. Electronic reader boards which otherwise comply with the signage requirements of the zone in which they are located, and do not include animation, characters, flashing, or similar rapid movements, and which are programmed to change messages no more frequently than once every three (3) seconds shall be permitted.

6. Signs identifying a development and denoting the architect, engineer or contractor when placed upon work under construction, provided, however, that no such sign shall exceed thirty-two (32) square feet in area.

7. Memorial and/or historical signs or tablets, names of buildings or date of building construction, when constructed of bronze or other incombustible materials or cut into any masonry surface.

8. Traffic, informational, or municipal signs designed to give information in the specific interest of the traveling public, legal notices, railroad crossing, danger signs.

9. Non-advertising warning signs or no trespassing signs on private property posted no closer than one hundred (100) feet apart nor exceeding two (2) square feet in area per sign.

10. Non-advertising signs of public utility companies as may be required in their operations in providing services for the health and welfare of the general public, or as required by any law or regulation of the State of California or any agency thereof.

11. On-site directional signs for public or private developments, denoting the entrance, exit, and direction of traffic flow and not exceeding four (4) square feet in area per face, provided such signs are not prohibited or further regulated by other sections of this or any other ordinance of the City of Porterville.

12. Non-advertising displays commemorating legal holidays, hours of operation, opened or closed, etc, providing, however, that said displays are not detrimental to public health, safety, and general welfare.

13. Temporary signs noting businesses, which sponsor and contribute to the sports activities upon public premises, subject to the provision of Section 2012 contained herein. For the purposes of interpretation of Section 2012, the "event" shall also mean all sports/recreational activities, and the "date of the event" shall be construed to be the first and/or last game or event of the respective season of that activity.
14. Signs required by State or Federal law.

15. Pennants and balloon displays at outdoor display areas which otherwise comply with the zone in which they are located.

16. Flags, up to three (3) per site.

SECTION 2007: Non-Conforming Signs

A. Non-conforming signs advertising a business which has been vacated for a period of one-hundred eighty (180) days shall be removed or made to conform by the property owner.

B. Window signs which do not conform to this article, but which lawfully existed and were maintained on the effective date of this article or any amendments thereto, shall, within one (1) year after the effective date of this article, or any amendments, be removed or made to conform. The effective date of this article in all cases shall be interpreted to mean the date of the adoption of the sign ordinance revisions, February 6, 2007.

C. Temporary Signs which do not conform to this article, but which lawfully existed and were maintained on the effective date of this article or any amendments thereto, shall, within sixty (60) days after the effective date of this article, or any amendments, be removed or shall be made to conform.

D. All other non-conforming signs and advertising devices shall, be regulated as nonconforming structures pursuant to Article Twenty-Five of this Ordinance.

SECTION 2008: Traffic Hazards

A. No sign, light or advertising structure shall be located in such a manner as to constitute a hazard to pedestrian or vehicular traffic, or in such a manner as to obstruct free and clear vision, at any location where, by reason of the position, shape, color or movement may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal or device. Nor shall such sign or advertising structure make use of any word, phrase, symbol or character in such a manner as to interfere with, mislead, or confuse traffic.

SECTION 2009: Compliance with Federal and State Regulations.

A. Nothing contained in this Article shall be construed to exempt compliance with applicable outdoor advertising regulations of any federal or state agency having authority over the control of signs and advertising structures within such jurisdictions as may be designated adjacent to and along any Freeway, Highway, Interstate Highway, or Primary Highway.

B. If at any time a regulation or a provision of this Article conflicts with a similar regulation or a provision of another governmental agency, the more restrictive application shall apply unless noted otherwise.

SECTION 2010: Prohibited Signs and Advertising Structures.

A. Any sign or advertising structure that is rotating, animated, simulates movement, or contains any moving parts, shall not be permitted.
B. Any energized sign or advertising structure containing flashing lights, including signs or advertising structures with lights flashing in sequence to simulate movement shall not be permitted. This restriction does not apply to electronic reader boards which otherwise comply with the signage requirements of the zone in which they are located, and do not include animation, characters, flashing, or similar rapid movements, and which are programmed to change messages no more frequently than once every 3 seconds.

C. No signs or sources of illumination shall be permitted in any zoned district if in the opinion of the Community Development Director, or his designee, they impose a glare upon any street, alley, driveway, parking area, adjacent property, or into the eyes of any motorist or pedestrian.

D. Non-appurtenant signs shall not be permitted in any zoned district, except as provided for in Sections 2011 and 2012.

E. Advertising structures containing display surface areas or image areas in excess of the maximum square footage permitted for allowable signing within the zoned districts in which they are located or are intended to be located, shall not be permitted.

F. No portable signs shall be permitted in any zoned district with the exception of those temporary advertising devices listed in Sections 2019 and Section 2020, below.

G. Roof signs shall not be permitted in any zoned district.

SECTION 2011: Temporary Real Estate Subdivision Signs.

A. Two temporary real estate subdivision signs, each face not to exceed one-hundred (100) square feet in area, and not to exceed ten (10) feet in height, may be located on any new subdivision zone; provided, that such signs and advertising structures shall be removed twenty-four (24) months from the date the permit for same is issued, or when the subdivision is completely sold out, whichever comes first, and further provided that:

1. Plans, indicating the size, design, location and sign copy shall be submitted to the Community Development Director, or his designee, and the Building Official for approval prior to the issuance of a sign permit by the Building Official.

2. Any change in sign copy or advertising structure must be resubmitted for approval.

3. Not more than one (1) such sign shall be permitted to be displayed adjacent to the same street frontage.

4. A Letter of Agreement from the property owners giving the City right of entry to remove signs in the event the above stipulations are not complied with shall be submitted to the Planning Division prior to the issuance of a sign permit.

5. If at any time the property on which the signs are located is sold, the signs shall be removed or a new Letter of Agreement shall be submitted from the buyer to permit the sign to remain and granting the City right to enter the property and remove the sign.
B. Three (3) temporary off-site directional real estate subdivision signs and advertising structures for each subdivision may be located in any zone, subject to the approval by the Zoning Administrator provided that:

1. Said signs shall not exceed thirty-two (32) square feet in area per face and not exceed twelve (12) feet in height.

2. Said signs and advertising structures shall be removed twenty-four (24) months from the date the permit for same is issued, or when the subdivision is completely sold out, whichever comes first.

3. A completed application form, including a notarized affidavit signed by each property owner of each site.

4. No more than one temporary off-site directional sign shall be allowed per site.

C. Failure to comply with any or all of the applicable provisions as set forth in this Section shall be cause for the immediate removal of the signs and/or advertising structures.

SECTION 2012: Promotional, Campaign, and Political Signs.

A. Temporary promotional, campaign and political signs are permitted on private property in any zoned district and within the public right-of-way providing that:

1. The individual in charge of posting said signs files with the City Clerk his/her name, address and telephone number and receives a copy of Sections 2012 and 2014 of the Zoning Ordinance.

2. Any such sign on a residentially zoned property with frontage on an Arterial or Collector Street as designated by the Circulation Element of the General Plan shall be no greater than twelve and one-half (12.5) square feet in area. Signs on residentially zoned property not fronting an Arterial or Collector Street shall be limited to a maximum of four (4) square feet in area.

3. Any such sign exceeding thirty-two (32) square feet in area shall require approval of a use permit in conformance with Article 29 contained within this ordinance.

4. No such sign shall be posted within public right-of-way in residentially zoned districts except along Arterial streets and Collector Streets as designated in the Circulation Element of the General Plan. Such signs in the public right-of-way shall be limited to a maximum of four (4) square feet in area.

5. No such sign shall be located so as to constitute a hazard to vehicular and pedestrian traffic.

6. No such sign in the City right-of-way shall be attached to any pole or structure supporting a traffic control sign or device, street tree or fire hydrant.

7. No such sign shall be placed in the roadway or on the sidewalk.
8. No such signs shall be posted more than ninety (90) days preceding the date of the event or election to which the signs pertain.

9. All such signs shall be removed within fifteen (15) days following the date of the event or election to which the signs pertain.

10. No such sign shall be placed in the public right-of-way abutting any public property including parklands or within City maintained landscaped parkways within public right-of-way.

B. Violation to any of the above regulatory conditions shall be deemed a public nuisance and may be summarily abated as such; and each day that such violation continues shall be regarded as a new and separate offense.

SECTION 2013: Quality and Maintenance of Signs.

A. Quality

1. All signs are to be reviewed by the Community Development Director or his designee and the Chief Building Official prior to issuance of a sign permit. Signs must have finished edges with a clean, smooth, consistent surface. Lettering on the sign is to be of complementary size, proportion, and font and either carved, routed, painted or applied. If such lettering or design on the sign is painted, it shall exemplify the work as if performed by a qualified professional, expert designer, or proficient individual who specializes in quality workmanship.

2. Colors and materials used for the sign must be compatible with the associated building design. Signs must be architecturally compatible with affected structures and the character of the surrounding development.

3. Wall signs shall be oriented to achieve balanced composition and harmony with other architectural elements of a building façade.

4. A-frame signs, effective for certain types of uses, such as markets, restaurants or bakeries that have changing specials and menus, may be exempt to the lettering requirement stated above, when utilizing a re-writable surface, such as a chalk board or dry-erase board, as the interior surface of the sign.

5. Window signs, applied to windows or oriented for visibility thru the window, shall be no greater than 50% coverage of the window, and no greater than 15% of signage allowed per business face. Such signage should be applied to the inside of the window (with an exception for painted signs) but in such a manner as to allow visibility outside the building as well as achieve a balanced composition and harmony with other architectural elements of the building façade.

A. Maintenance

1. All signs, including those exempt under this chapter, and legal nonconforming signs shall be structurally safe, maintained and kept in good condition. The display surface of all signs shall be kept clean, neatly painted, and free from rust, corrosion, breaks, and/or tears. Any crack, broken surface, malfunctioning lights, missing
sign copy or other un-maintained or damaged portion of a sign shall be diligently repaired or replaced. Signs, and all parts, portions, and materials shall be erected in compliance with all applicable federal, state, and city laws and regulations.

2. When signs are removed, the wall behind the sign shall be repaired and painted to match the rest of the building wall.

3. Abandoned Signs: Any sign, including its supporting structure, which no longer identifies the current occupant after a lapse of 60 days, shall be deemed an abandoned sign and shall be removed by the owner of the property on which it is located.

SECTION 2014: Advertising on Public Property.

A. No person, except a "public officer" or "City employee" in the performance of his duty shall paste, post, paint, or erect any flag, pennant, sign, banner, or notice of any kind or cause the same to be done upon public property, street, bridge, or sidewalk within the City of Porterville and no person shall attach any item to private utility company poles without prior written approval from the utility company to which the poles belong.

B. Exceptions:

1. Signs affixed to or painted on temporary construction or fences located within the public right-of-way during construction and only to advertise the architect, construction company or future development, provided that no sign shall exceed thirty-two (32) square feet in area and shall be neatly painted.

2. Non-advertising displays commemorating legal holidays or special events when authorized by the City Council.

3. Signs permitted by Section 2006(A) 13 and Section 2012 contained herein.

SECTION 2015: Projection of Signs and Advertising Structures.

A. In any residentially zoned district, with the exception of newspaper and mail receptacles, no sign or advertising structure shall extend or project over any public sidewalk, street, alley, or other public property unless exempted under Section 2006(A) 8 of this article.

B. Signs or advertising structures projecting more than six (6) inches from the face of a building, or any other supporting structure, over travel ways or walkways on private property used or intended to be used by the general public, shall have a minimum clearance of eight (8) feet above the pavement or finished grade. Such signs may not project greater than forty-eight (48) inches.

C. Signs or advertising structures projecting not more than six (6) inches from the face of a building or any other supporting structure, over a public sidewalk or any other public property, shall have a minimum clearance of eight (8) feet above the pavement or finished grade.

D. Signs or advertising structures projecting more than six (6) inches from the face of a building or any other supporting structure, over a public sidewalk or any other public
property, shall have a minimum clearance of ten (10) feet above the pavement or finished grade.

E. No sign or advertising structure shall exceed a horizontal dimension of more than thirty (30) inches when projecting from the face of any building or any other supporting structure, whether privately or publicly owned. When the sign projects over a public sidewalk or any other public property, and is suspended from or supported by a rod, anchor, or other hardware, the overall horizontal dimension may not exceed thirty-six (36) inches. When the sign projects over a public sidewalk or any other public property, and when said sign is placed on or suspended from an awning, canopy, or marquee, the overall horizontal dimension must not exceed a length of forty-eight (48) inches.

F. No sign or advertising structure shall project into any public alley below a height of eight (8) feet, nor more than eight (8) inches when over eight (8) feet.

G. Signs or advertising structures in any residential, P-O, and C-1 zoned districts may not be attached to the roof of a building, nor shall it exceed the height of the roof of the building to which it is attached.

H. A-Frame Signs: Within a portion of the Redevelopment Area Number 1, further defined as that area bounded by Henderson Ave. to the north, the Tule River to the south, A St. and 3rd St. to the east, and E St to the west, as defined in Section 5032 of the City Code, such signs may encroach into the right of way up to two (2) feet from the property line if, once the sign is in place, there remains an eight (8) foot wide walkable area. Such sign is to be removed during non-operational hours and the sign shall be oriented so it is clearly visible to pedestrians.

SECTION 2016: Clearance of Signs and Advertising Structures.

A. No permit for any sign or advertising structure shall be issued nor shall same be constructed, installed, or erected which has less horizontal or vertical clearance from energized electrical power lines than prescribed by the California Public Utility Commission, or the Orders of the Division of Industrial Safety, State of California.

B. No sign or advertising structure shall be erected in such a manner that any portion of its surface or supports will interfere in any way with the free use of any fire escape, exit, or standpipe.

C. No sign or advertising structure shall obstruct any window to such an extent that any light or ventilation is reduced to a point below that required by any law or ordinance.

D. That freestanding signs or advertising structures having a minimum clearance of less than eight (8) feet from finished grade shall not be located within pedestrian or vehicular walkways or travel ways. Such signs shall be subject to the setback requirements applicable to buildings in the zoning district where located, unless stated otherwise in this article.

SECTION 2017: Abatement of Illegal Signs.

A. Signs on City Property and Rights-of-way: The Community Development Director, or his designee, may immediately remove any sign located on city property and/or public right
of way which are in violation of this article or which constitute an immediate danger as a traffic or safety hazard as determined by the City Engineer.

B. Permanent or Temporary Commercial Signs and Permanent Noncommercial signs on Private Property:

1. The Community Development Director may require any permanent or temporary commercial sign or permanent noncommercial sign installed, constructed, maintained, or relocated on private property in violation of this article, or otherwise constituting a public nuisance, to be removed within thirty (30) days after providing a written notice to the owner of the sign, if known, and to the owner of the property.

2. Such notice shall state the location of the sign, the nature of the violation, and/or the manner in which the sign constitutes a public nuisance. The notice also shall require the removal or other abatement of the sign before the date specified in the notice. Further, the notice shall state that failure to comply may result in the removal of the sign by the City of Porterville and that the cost of such removal may be imposed on the owner of the property. The notice shall also include instructions for the filing of an appeal, pursuant to Article 30 of this Ordinance, of the determination of the Community Development Director that the sign is in violation of this article or constitutes a public nuisance.

3. If an appeal is received prior to the date specified in the notice, abatement proceedings shall be suspended, and any deadlines shall be suspended, pending the outcome of such appeal.

4. Notices referred to in this section shall be served by posting on the property on which the sign is located and by registered or certified mail delivery, postage prepaid to the owner of the property, and, if known, the owner of the sign.

5. If the sign is not removed or otherwise abated by being brought into compliance with this article after any appeals have been resolved and any deadlines have passed, the Community Development Director shall cause the removal of the sign at the expense of the owner of the property and the owner of the sign, if known. Expenses shall include any and all administrative costs, court and/or legal fees, including reasonable attorney's fees, incurred in the abatement and shall become the responsibility of both the owner of the property and the owner of the sign.

SECTION 2018: Signs in Residential Zones.

A. The following signs are permitted in Residential zones in addition to those exempted by Section 2006.

1. One sign per street frontage for each housing development or institutional use, not to exceed twenty (20) square feet in area, nor ten (10) feet in height and containing no advertising matter except the name and street address of the housing development or institutional use.

2. One sign for each church not to exceed twenty (20) square feet in area.
3. Directional subdivision signs in accordance with the provisions of Section 2011 and promotional, campaign, and political signs in accordance with the provisions of Section 2012.

SECTION 2019: Advertising in P-O and C-1 Zones.

A. The following regulations shall apply to all signs and advertising structures in the Professional Office (P-O) zone, and Neighborhood Commercial (C-1) zone.

B. No sign shall be permitted that does not pertain directly to an approved business service or activity conducted on the premises except as provided in Section 2011 and Section 2012, or unless exempted by Section 2006.

C. When an exterior wall of a building faces abutting property in an Residential Zone, no advertising sign shall be painted or placed on such wall, or on any portion of the lot between said wall and said Residential Zone.

D. Signs attached to a building shall be mounted parallel to the face of the structure and shall not project more than eighteen (18) inches from the main building or its attached canopy, nor shall such sign exceed the height of the roof of the building to which it is attached.

E. Business Identification Signs:

1. Not more than two (2) signs shall be permitted for the same business per business face.

2. The total advertising area of all signs shall not exceed 15% of the total business face area except that a minimum of twenty (20) square feet and a maximum of sixty (60) square feet of total advertising area will be permitted for each business face.

3. Except as otherwise prohibited, the total allowed signage may be concentrated or distributed among building walls and freestanding signs.

4. No sign shall be affixed to the roof of a building, nor shall it exceed the height of the roof of that building.

5. A maximum of one freestanding business identification sign shall be permitted for each business face.

   a. No more than one freestanding sign for any business may face any street.

   b. The area of a single face of any freestanding sign shall be included in the maximum allowed sign area.

   c. The total height above the finished grade at the front property line shall not exceed twenty (20) feet in height.

   d. Freestanding signs shall comply with all requirements relating to location, size, area, projection over public right-of-way, height, total signage area and/or setbacks contained herein and elsewhere within the Municipal Code.
e. Additional identification signage may be allowed when incorporated into a center identification sign without exceeding the maximum allowable sign area.

F. Center Identification Signs: One (1) free standing Center Identification sign shall be permitted for integrated developments of five (5) or more separated businesses, providing that:

1. The total area of said sign shall not exceed forty (40) square feet plus five (5) square feet for each additional business in the center over five up to a maximum area allowed of one hundred (100) square feet.

2. Said sign shall not exceed twelve (12) feet in height above the highest finished grade at the front property line.

3. Notwithstanding Section 2016(D), center identification signs, including signs with less than eight (8) feet clearance above finished grade, may be permitted in the front setback area within the P-O zone, provided that no such sign shall be located within a ten (10) foot radius of the corner property lines of a corner lot.

G. Window signs advertising sales, cut rates, weekend specials and similar sales and promotions shall be permitted, provided that such signs shall be limited to covering a maximum of 50% of the area of a window. Window signs that are not painted on to the window surface must meet the intent of Section 2013(A) and shall only be permitted on the interior side of the building or structure through which they are viewed.

H. Banners, Handheld Signs, Portable Signs and Inflatable Signs: Banners, handheld signs, portable signs, and other similar temporary advertising devices shall be prohibited except for business openings, special events, and promotional events.

1. A Temporary Sign Permit shall be secured prior to the installation or display of any such sign. Issuance of a temporary sign permit may be contingent upon the overall permissible area available for temporary signs within a geographic area as identified in Section 2019 (H) 6. In addition, the application would be reviewed in light of other temporary sign permit applications submitted for the same area, which may put such signs in conflict with Section 2019(H) 6.

2. A Temporary Sign Permit shall be granted for any one (1) business or building for a period of three (3) calendar months. A Temporary Sign Permit shall authorize the business to display a banner, handheld sign, portable sign or inflatable sign for the duration of the sign permit. A maximum of two (2) such signs may be permitted with a single application.

3. No more than one (1) Temporary Sign Permit shall be in effect simultaneously for any business.

4. Each business shall be limited to a maximum of four (4) Temporary Sign Permits in any calendar year. Permits valid in two calendar years shall be counted within the earlier calendar year.
5. Each business shall be limited to a maximum of one (1) Temporary Sign Permit for the purpose of advertising a "Going Out of Business Sale," or the equivalent in any calendar year.

6. Unless otherwise authorized by a signage plan adopted by the City Council as a component of a Design Overlay Site Review or Planned Development Specific Plan, freestanding Temporary Signs for multiple tenants of any one building, shopping center, office complex, or unified development, shall be separated by a minimum of one hundred (100) feet.

7. No banners shall exceed forty (40) square feet.

8. A-Frame signs are not considered temporary and as such do not apply to Section 2019 of this Code. A-Frame signs are regulated in Section 2015.

SECTION 2020: Advertising in C-2, C-3, C-H, M-1, M-2, and A-D Zone.

A. The following regulations shall apply to all signs and advertising structures in the C-2, C-3, and C-H Commercial zones, in the M-1 and M-2 Industrial zones, and in the A-D Airport Development zone.

B. No sign shall be permitted that does not pertain directly to an approved business service or activity conducted on the premises except as provided in Section 2011 and Section 2012, or unless exempted by Section 2006.

C. Business Identification Signs:

1. Not more than four (4) signs shall be permitted for the same business per business face.

2. The total advertising area of all signs shall not exceed either:
   a. Fifteen percent (15%) of the total business face area, or forty (40) square feet, whichever is greater, for businesses conducted primarily within a building, or;
   b. One (1) square foot per linear foot of display frontage up to fifty (50) feet plus one-half (.5) square foot for each additional linear foot of display frontage to which such signs pertain for businesses conducted primarily outside of a building.

3. No sign shall be affixed to the roof of a building, nor shall it exceed the height of the roof of that building.

4. A maximum of one freestanding business identification sign shall be permitted for each business face.
   a. No more than one (1) freestanding sign for any business may face any street.
   b. The area of a single face of any freestanding sign shall be included in the maximum allowed sign area.
c. The total height above the finished grade at the front property line shall not exceed thirty (30) feet in height.

d. Freestanding signs shall comply with all requirements relating to location, size, area, projection over public right-of-way, height, total signage area and/or setbacks contained herein, and elsewhere in the Municipal Code.

e. Freestanding Business Identification Ground signs shall be subject to the setback requirements applicable to buildings in the zoning district where located.

f. Signs displayed on awnings, canopies, and marquees shall be subject to all of the regulations as stipulated in this chapter.

g. When an exterior wall of a building faces abutting property in an Residential zone, no advertising signs shall be painted or placed on such wall, or on any portion of the lot between said wall and said Residential zone.

h. The total advertising area permitted within this section shall include all business identification signs in the aggregate, visible from the exterior of the business.

D. Center Identification Signs: In addition to the above, one (1) center identification sign per street frontage is allowed for integrated developments of five (5) or more separate businesses, subject to the following:

1. The combined sign area of the center identification sign does not exceed thirty (30) square feet per one hundred (100) lineal feet of the street frontage on which the sign is located, provided, however, that no one sign shall exceed three hundred and twenty (320) square feet per face.

2. No sign is permitted for frontage areas, located adjacent to residentially zoned districts, within a projection of the adjacent residential building setback line.

3. No sign shall exceed thirty-five (35) feet in height above the highest finished grade of the center at the street right-of-way line.

4. No sign shall be located within twenty (20) feet of the side property lines on interior lots, or in such a manner as to constitute a hazard to pedestrian or vehicular traffic.

E. Window signs advertising sales, cut rates, weekend specials and similar sales and promotions shall be permitted, provided that such signs shall be limited to covering a maximum of 50% of the area of a window. Window signs made of paper, cardboard, or similarly unstable material, shall only be permitted on the interior side of the building or structure through which they are viewed.

F. Banners, Handheld Signs, Portable Signs and Inflatable Signs: Banners, handheld signs, portable signs, and other similar temporary advertising devices shall be prohibited except for business openings, special events, and promotional events.
1. A Temporary Sign Permit shall be secured prior to the installation or display of any such sign. Issuance of a temporary sign permit may be contingent upon the separation between temporary signs within a multi-tenant development or an individual site as identified in Section 2020(F) 6. In addition, the application would be reviewed in light of other temporary sign permit applications submitted for the same area, which may put such signs in conflict with Section 2020(F) 6.

2. A Temporary Sign Permit shall be granted for any one (1) business or building for a period of three (3) calendar months. A Temporary Sign Permit shall authorize the business to display one (1) banner, handheld sign, portable sign or inflatable sign per business frontage for the duration of the sign permit.

3. No more than one (1) Temporary Sign Permit shall be in effect simultaneously for any business.

4. Each business shall be limited to a maximum of four (4) Temporary Sign Permits in any calendar year. Permits valid in two (2) calendar years shall be counted within the earlier calendar year.

5. Each business shall be limited to a maximum of one (1) Temporary Sign Permit for the purpose of advertising a "Going Out of Business Sale," or the equivalent in any calendar year.

6. Unless otherwise authorized by a signage plan adopted by the City Council as a component of a Design Overlay Site Review or Planned Development Specific Plan, freestanding Temporary Signs for multiple tenants of any one building, shopping center, office complex, or unified development, facing a common street frontage shall be separated by a minimum of one hundred (100) feet.

7. All banners, regardless of their ratio allowance of signage to building face, shall not exceed forty (40) square feet.

SECTION 2021: Advertising in the P-D and O-A Zones.

A. The following regulations shall apply to all signs and advertising structures in the Planned Development (P-D), and Open Area (O-A) zones.

1. No sign shall be permitted that does not pertain directly to an approved business, service, or activity conducted on the premises except as may be provided in Section 2011 and Section 2012 or unless exempted by Section 2006.

2. All signs and advertising structures shall conform to a uniform sign program approved by the City Council in accordance with the Conditional Use Permit provisions of Article 29 contained within this Ordinance.

This ordinance shall be in full force and effect thirty (30) days from and after its publication and passage.

PASSED APPROVED AND ADOPTED this ______ day of February, 2007.
SUBJECT: SECOND READING - ORDINANCE NO. 1712, AMENDING CHAPTER 12, ARTICLE II, FIREWORKS, OF THE PORTERVILLE MUNICIPAL CODE

SOURCE: Administration/City Clerk Division

COMMENT: Ordinance No. 1712, amending Chapter 12, Article II, Fireworks, of the Porterville Municipal Code, was given First Reading on February 6, 2007, and has been printed.

RECOMMENDATION: That Council give Second Reading to Ordinance No. 1712 waive further reading, and adopt said ordinance.

Attachment: Ordinance No. 1712

Item No. 18
ORDINANCE NO. 1712

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
AMENDING CHAPTER 12, ARTICLE II, FIREWORKS, OF THE PORTERVILLE
MUNICIPAL CODE

WHEREAS, on May 1, 2001, the City Council did adopt Ordinance No. 1601 revising Chapter 12, Article II, Fireworks, to allow for the sale of Safe and Sane Fireworks within the City of Porterville; and

WHEREAS, The City Council has determined that eligible non-profit organizations may be instrumental in presenting the public fireworks displays for the benefit of the community as a whole; and

WHEREAS, the City Council has determined that for calendar year 2007 the Exchange Club of Porterville shall be granted a permit without participation in the lottery;

THEREFORE THE CITY COUNCIL OF THE CITY OF PORTERVILLE DOES ORDAIN AS FOLLOWS:

Section 1. For Calendar Year 2007, the following eligible organization shall be granted a permit to sell safe and sane fireworks, in addition to those permits issued by the lottery pursuant to Section 12.2.5., within the City of Porterville:

The Exchange Club of Porterville

This organization must adhere to all other rules and requirements set forth in Chapter 12, Article II, in order to receive their permit.

Section 2. This ordinance shall be in full force and effect thirty (30) days from and after its publication and passage.

Cameron Hamilton, Mayor

ATTEST:

Georgia Hawley, Chief Deputy City Clerk
COUNCIL AGENDA: FEBRUARY 20, 2007

SUBJECT: RESOLUTION OF NECESSITY PERTAINING TO THE ACQUISITION OF A PORTION OF PROPERTY (APPROXIMATELY 7.3 ACRES) LOCATED AT 1099 SOUTH INDIANA STREET, APN #268-090-008, OWNERS CARL D. DENNIS AND ALMA L. DENNIS, FOR THE PROPOSED CONSTRUCTION OF A DRAINAGE BASIN

SOURCE: City Attorney’s Office

COMMENT: Staff has been working with the owners of the subject property to acquire the above-referenced portion of property. This portion of the property needs to be acquired in order to commence disposal of storm water to an existing depressed area. The depressed area will store a large quantity of storm water servicing a large area in the southeast quadrant of Highway 65 and Highway 190. The City and property owner have not yet been able to reach an agreement.

Staff is asking City Council to adopt a Resolution of Necessity, as the plans for the proposed Supplemental Master Plan Drainage Reservoir (project) are complete and the City wishes to commence construction work. The City Attorney has prepared the attached Resolution of Necessity for adoption by City Council. The statutory offer and summary of the basis for just compensation, pursuant to Government Code Sections 7267.1 and 7267.2(a) and prepared by Paragon Partners, Ltd., the City’s Acquisition Agent, have been sent to the owners. The City Attorney has also notified the above owners, in writing via certified mail, and more than 15 days prior to the Council meeting, that this matter would be scheduled for this meeting’s agenda. As of today, no written request to be heard has been received by the City from the property owners. In adopting a Resolution of Necessity, the City Council must find that the public interest and necessity require the project, that the project is planned or located in the manner that will be most compatible with the greatest public good and least private injury, and that the property sought to be acquired is necessary for the project. A four-fifths vote is necessary for the Resolution to be adopted. The amount to be paid is not considered at this time, and adoption of the Resolution does not foreclose future negotiations between the City and the owners concerning the amount of compensation to be paid.

RECOMMENDATION: That City Council:
1. Hear testimony from the owners and/or their representative(s), if they appear at the hearing and request to be heard;
2. Adopt the attached Resolution of Necessity; and
3. Authorize the City Attorney to take all appropriate action necessary to acquire said property on behalf of the City of Porterville.

Attachment: Resolution of Necessity, with Appendices 1 and 2

ITEM NO. 19
CITY COUNCIL, CITY OF PORTERVILLE  
COUNTY OF TULARE, STATE OF CALIFORNIA  

RESOLUTION NO. ___-2007  


WHEREAS, the City of Porterville intends to construct a drainage basin (entitled the “Supplemental Master Plan Drainage Reservoir Project”), which requires the acquisition of the subject property;  

WHEREAS, after notice and opportunity have been given to the property owner(s) at issue, the City Council of the City of Porterville hereby finds and determines as follows:  

1. The City of Porterville intends to construct the aforementioned Project, a public use, together with related improvements to carry out and make effective the principal purpose pursuant to Code of Civil Procedure Section 1240.120(a), and in connection therewith, acquire interest in certain real property. Said public use is a function of the City of Porterville.  

2. The City of Porterville is authorized to acquire the portion of the parcel described in Appendix 1 herein and exercise the power of eminent domain for the public use set forth herein in accordance with the California Constitution and the California Eminent Domain Law, Code of Civil Procedure Section 1230.010 et seq. and pursuant to Government Code Section 37350.5, Streets and Highways Code Section 5100 et seq., and Sections 3 and 4 of the Charter of the City of Porterville.  

3. The property to be acquired consists of a portion of one parcel and is generally located at 1099 South Indiana Street, Assessor’s Parcel Number 268-090-008.
The property to be acquired is more particularly described in Appendix 1, attached hereto and incorporated herein by reference together with a map thereof.

4. On January 17, 2007, there was mailed a Notice of Hearing on the intent of the City of Porterville to adopt a Resolution of Necessity for acquisition by eminent domain of the real property described in Appendix 1 herein, which Notice of Hearing is attached hereto as Appendix 2 and is incorporated herein by this reference. Said Notice of Hearing was mailed to all persons whose names appear on the last equalized County Assessment Roll as having an interest in the property described in Appendix 1, and to the situs address appearing on said Roll. Said Notice advised said persons of their right to be heard on the matters referred to therein on the date and at the time and place stated therein. Said persons received the Notice of the Hearing.

5. The hearing set out in said Notice was held on February 20, 2007, at the time and place stated therein, and all interested parties were given an opportunity to be heard. The hearing was closed.

Based upon the evidence presented, this City Council by vote of two-thirds or more of its members, further finds, determines, declares, and resolves each of the following:

a. The public interest and necessity require the proposed project.

b. The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

c. The property described herein in Appendix 1 is necessary for the proposed project.
d. The offer required by Section 7267.2(a) of the Government Code, and the summary of the basis for the amount established as just compensation, was made to the owner or owners of record.

e. All conditions and statutory requirements necessary to exercise the power of eminent domain ("the right to take") to acquire the property described herein have been complied with by the City of Porterville.

f. A portion of the property described in Appendix 1 may be acquired for a more necessary public use pursuant to Code of Civil Procedure Section 1240.610. The City Council further finds and determines that insofar as and to the extent that said parcel has heretofore been dedicated to a public use for telephone and/or electric utility purposes, the acquisition and use of said parcel by the City of Porterville for the public use described above is for a more necessary public use than the use to which the property has already been appropriated.

6. The City Attorney is hereby AUTHORIZED and EMPOWERED:

a. To acquire in the name of the City of Porterville, by condemnation, the property described in Appendix 1, attached hereto and incorporated herein by this reference in accordance with the provisions of the California Eminent Domain Law and the Constitution of California;

b. To acquire the property in fee simple unless a lesser estate is described in Appendix 1, herein;

c. To prepare or have prepared and to prosecute or to retain counsel to prosecute in the name of the City of Porterville such proceedings in the proper court as are necessary for such acquisition;
d. To deposit the probable amount of compensation, based on an appraisal, and to apply to said court for an order permitting the City of Porterville to take immediate possession and use of said property for said public uses and purposes.

This Resolution was passed and adopted by the Council of the City of Porterville at a regular meeting of the Porterville City Council duly called and held on the 20th day of February, 2007, by the following vote:

AYES:

NOES:

ABSENT:

______________________________
Mayor Cameron Hamilton
City of Porterville

ATTEST:

______________________________
John Longley, City Clerk,
City of Porterville
EXHIBIT "A"

That portion of the Northeast quarter of the Southeast quarter of the Northeast quarter of Section 3, Township 22 South, Range 27 East, Mount Diablo Base and Meridian, according to the Official Plat thereof, lying Westerly of the following described line:

**Beginning** at a point in the south line of the Northeast quarter of the Southeast quarter of the Northeast quarter of said Section 3, said point being 466.50 feet, East of the southwest corner thereof;

**Thence**, North 10° 09' 38" East, a distance of 97.51 feet;

**Thence**, North 15° 12' 47" East, a distance of 73.55 feet;

**Thence**, North 14° 30' 01" East, a distance of 13.03 feet;

**Thence**, North 8° 30' 26" East, a distance of 134.29 feet;

**Thence**, North 4° 58' 14" East, a distance of 55.26 feet;

**Thence**, North 2° 04' 29" West, 297.6 feet, more or less, to a point in the north line of the Northeast quarter of the Southeast quarter of the Northeast quarter of said Section 3.

**EXCEPTING** that interest in the West 38.15 feet of the Northeast quarter of the Southeast quarter of the Northeast quarter of Section 3, Township 22 South, Range 27 East, Mount Diablo Base and Meridian, according to the Official Plat thereof, as granted to Tulare County for road purposes per Deed recorded in Volume 1931 of Deeds, at page 357, Tulare County Official Records.

**ALSO EXCEPTING** that interest in the East 25.00 feet of the Northeast quarter of the Southeast quarter of the Northeast quarter of Section 3, Township 22 South, Range 27 East, Mount Diablo Base and Meridian, according to the Official Plat thereof, as granted to Tulare County for road purposes per Deed recorded in Volume 825 of Deeds, at page 98, Tulare County Official Records.

**SUBJECT TO** an easement for road purposes over, across, through, in and to the North 40 feet of the land described herein per Deed recorded in Volume 182 of Deeds, at page 253, Tulare County Official Records.

**BASIS OF BEARINGS** being the east line of the Northeast quarter of Section 3, Township 22 South, Range 27 East, Mount Diablo Base and Meridian, taken as North 0° 39' 16" East, as shown on Record of Survey filed in Book 21 of Licensed Surveys, at page 68 in the Office of the Tulare County Recorder.

End of Description

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: **Michael K. Reed**  
Licensed Land Surveyor

Date: 9/15/06

[Signature Stamp]

[License Stamp]
PRIVATE EASEMENT
FOR ROAD PURPOSES OVER, ACROSS, THROUGH, IN AND TO THE NORTH 40 FEET
OF THE LAND DESCRIBED HEREIN PER DEED
RECORDED IN BK:182 OF DEEDS, AT PG. 253,
TULARE COUNTY OFFICIAL RECORDS.

EASEMENT IN FAVOR OF TULARE COUNTY FOR
ROAD PURPOSES OVER, ACROSS, THROUGH, IN
AND TO THE WEST 38.15 FEET OF THE LAND
DESCRIBED HEREIN PER DEED RECORDED IN
BK: 1931 OF DEEDS, AT PG. 357, TULARE
COUNTY OFFICIAL RECORDS.

BASIS OF BEARINGS:
E. LINE OF N.E. QTR.
SEC. 3, T22S, R27E,
M.D.B. & M.

25' PER
VOL 825, PG 98
11-9-1938

C O U R S E     D I S T .
1  N 10° 09' 38" E    97.51'
2  N 15° 12' 47" E    73.55'
3  N 14° 30' 01" E    13.03'
4  N 8° 30' 26" E    134.29'
5  N 4° 58' 14" E    55.26'
6  N 2° 04' 29" W    297.6'

0  100  200  400
SCALE: 1"=200'

INDICATES SUBJECT PROPERTY TO BE ACQUIRED

City of Porterville
291 N. MAIN ST.
PORTERVILLE, CA. 93257
559 782-7462

That portion of the Northeast quarter of
the Southeast quarter of the Northeast
quarter of Section 3, Township 22 South,
Range 27 East, Mount Diablo Base and
Meridian.

OWNER: CARL D. &
ALMA L. DENNIS
APN: 268-090-008
AREA: 7.18 AC.
DRAWN BY TJ
CHC'K BY MKR
EXHIBIT “A”

The South 30 feet of the North 70 feet of the Northeast quarter of the Southeast quarter of the Northeast quarter of Section 3, Township 22 South, Range 27 East, Mount Diablo Base and Meridian, according to the Official Plat thereof.

EXCEPTING THEREFROM that portion lying Westerly of the following described line:

Beginning at a point in the south line of the Northeast quarter of the Southeast quarter of the Northeast quarter of said Section 3, said point being 466.50 feet, East of the southwest corner thereof;

Thence, North 10° 09’ 38” East, a distance of 97.51 feet;

Thence, North 15° 12’ 47” East, a distance of 73.55 feet;

Thence, North 14° 30’ 01” East, a distance of 13.03 feet;

Thence, North 8° 30’ 26” East, a distance of 134.29 feet;

Thence, North 4° 58’ 14” East, a distance of 55.26 feet;

Thence, North 2° 04” 29” West, 297.6 feet, more or less, to a point in the north line of the Northeast quarter of the Southeast quarter of the Northeast quarter of said Section 3.

EXCEPTING that interest in the East 25.00 feet of the Northeast quarter of the Southeast quarter of the Northeast quarter of Section 3, Township 22 South, Range 27 East, Mount Diablo Base and Meridian, according to the Official Plat thereof, as granted to Tulare County for road purposes per Deed recorded in Volume 825 of Deeds, at page 98, Tulare County Official Records.

BASIS OF BEARINGS being the east line of the Northeast quarter of Section 3, Township 22 South, Range 27 East, Mount Diablo Base and Meridian, taken as North 0° 39’ 16” East, as shown on Record of Survey filed in Book 21 of Licensed Surveys, at page 68 in the Office of the Tulare County Recorder.

End of Description

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: Michael K. Reed
Licensed Land Surveyor

Date: 9/15/06
PROPOSED EASEMENT IN FAVOR OF THE CITY OF PORTERVILLE INSTALLATION, OPERATION, INGRESS, EGRESS, MAINTENANCE, REPAIR AND REPLACEMENT OF A STORM DRAIN PIPELINE THAT ENCUMBERS A PORTION A PORTION OF THE LAND DESCRIBED PER DEED RECORDED IN BK. 1931 OF DEEDS, AT PG. 357, TULARE COUNTY OFFICIAL RECORDS.

PROPOSED FEE TITLE ACQUISITION

BASIS OF BEARINGS:
E. LINE OF N.E. QTR.
SEC. 3, T22S, R27E,
M.D.B. & M.

25' PER
VOL 825, PG 98
11-9-1938

S.W. COR, N.E.4, S.E.4, N.E.4, SEC 3, T22S, R27E

±636.1'
±121.6'
±624.8'

NORTH

SCALE: 1"=200'
January 17, 2007

[VIA CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED]

Carl D. Dennis and Alma L. Dennis
1099 South Indiana Street
Porterville, California 93257

Re: Notice of Hearing regarding Adoption of a Resolution of Necessity to Acquire Property by Eminent Domain [California Code of Civil Procedure 1245.235]

Dear Mr. and Mrs. Dennis:

1. Notice of Intent of City of Porterville to Adopt a Resolution of Necessity. The City Council of the City of Porterville intends to consider the adoption of a Resolution of Necessity on February 20, 2007, which, if adopted, will authorize the City to acquire the property described herein by eminent domain for the proposed construction of a drainage basin. A description of the property being considered for acquisition is attached to this Notice and is marked Exhibit A.

2. Notice of Your Right to Appear and Be Heard. Please take notice that the City Council of the City of Porterville, at a regular meeting to be held on Tuesday, February 20, 2007, at 7:00 p.m., or as soon thereafter as the matter may be heard, at City Hall, 291 North Main Street, Porterville, California, will hold an hearing on whether such Resolution of Necessity should be adopted, as required by California Code of Civil Procedure Section 1245.220 for the commencement of an eminent domain proceeding to acquire real property.

You have the right to appear and be heard before the City Council at the above scheduled hearing on the following matters and issues, and to have the City Council give judicious consideration to your testimony prior to deciding whether or not to adopt the proposed Resolution of Necessity:

a. Whether the public interest and necessity require the proposed project;
b. Whether the proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

c. Whether the property sought to be acquired by eminent domain and described in the Resolution of Necessity is necessary for the proposed project;

d. Whether the offer required by Government Code Section 7267.2(a), and the summary of the basis for the amount established as just compensation, was actually made to you and whether said offer and summary were sufficient pursuant to Government Code Section 7267.2(a);

e. Whether the City of Porterville has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain (the right to “take”) to acquire the property described herein, as well as any other matter regarding the right to take said property by eminent domain; and

f. Whether the City has the authority to acquire the property by eminent domain.

A copy of the proposed Resolution of Necessity will be available, upon your request, for inspection at the office of the Clerk of the City Council of the City of Porterville at City Hall ten (10) days prior to the hearing.

Your name appears on the last equalized Tulare County assessment roll and as Owner in our preliminary title report of the property required for the proposed project.

The statutes which authorize the City of Porterville to acquire the property by eminent domain for this proposed project are Code of Civil Procedure Sections 1240.010 and 1240.125, Streets and Highways Code Sections 5100 et seq., and Government Code Section 37350.5.

3. Failure to File a Written Request to Be Heard within Five (5) Days of the Hearing Will Result in Waiver of the Right to Appear and Be Heard. If you desire to be heard, please be advised that you must file a written request with the clerk of the governing board no later than five (5) days prior to the hearing. You must file your request to be heard with the City Clerk, Porterville City Hall, P.O. Box 432, Porterville, California 93258.

Should you elect to mail your request to the clerk of the governing board, it must be actually received by the clerk five (5) days prior to the hearing.

The date of Mailing appears at the end of this Notice.

California Code of Civil Procedure Section 1245.235(b)(3) provides that “failure to file a written request to appear and be heard within fifteen (15) days after the Notice was mailed will result in waiver of the right to appear and be heard” on the above matters and issues which are the subject of the hearing. Note that the City of Porterville, in an effort to allow further time for negotiations, is giving you more time than statutorily required to file a written request to appear. If you fail to file a written request at least five days prior to the hearing, however, this failure will result in waiver of the right to appear and be heard.
If you elect not to appear and be heard in regard to compensation, your nonappearance will not be a waiver of your right to claim greater compensation in a court of law. The amount to be paid for the property will not be considered by the board at this hearing.

If you elect not to appear and not to be heard, your failure to appear will be a waiver of your right to later challenge the right of the City of Porterville to take the property by eminent domain.

This Notice is not intended to foreclose future negotiations between you and the representatives of the City of Porterville on the amount of compensation to be paid for your property.

If you elect not to appear and not to be heard, you will only be foreclosed from raising in a court of law the issues which are the subject of this noticed hearing and which are concerned with the right to take the property by eminent domain.

If the City Council elects to adopt the Resolution of Necessity, then within six months of the adoption of the Resolution, the City of Porterville will commence eminent domain proceedings in Superior Court. In that proceeding, the Court will determine the amount of compensation to which you are entitled.


Very truly yours,

[Signature]

Julia M. Lew
City Attorney, Porterville

Enclosure
cc: City of Porterville
TITLE: “D” OVERLAY SITE REVIEW 1-2007 (PROSPECT PLAZA)

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

COMMENT: The applicants are requesting approval of a commercial complex to allow for 11,775± square feet of commercial lease space under one roof to be located at the northeast corner of Prospect Street and Grand Avenue. The subject site is within the C-2 (D) (Central Commercial - Design Review Overlay) Zone.

The proposed building is configured in an “L” shape design and will be located adjacent to the north and east property lines. The west end of the building will front on Prospect Street. The portion of the building extending east from Prospect Street will consist of 8,670± square feet. The remaining portion of the building extending south towards Grand Avenue will consist of 3,105± square feet. Ingress and egress to the parking area will be from Prospect Street and Grand Avenue.

The site plan indicates that a potential of thirteen (13) commercial lease spaces could be provided. The applicants have indicated the building will be built as a shell. Depending on how much commercial lease space will be required by a proposed tenant, the location of interior walls separating the individual lease spaces will be located accordingly. The door openings located at the main entrances to the building will be located side-by-side sharing a covered entrance. The covered entrances will protrude out from the main portion of the building to provide for a more articulation of wall surface providing architectural interest to the building. A covered area (tower) will be located at the west end of the building and south end of the building. An additional covered (tower) with a hardscape courtyard area will be located at the northeast corner of the subject site connecting the two (2) buildings. The building will consist of a textured stucco finish, earth tone (ICI Camel Coat) color. The covered entrances including the covered towers, the buildings and outside covered areas will consist of a textured stucco finish, earth tone (ICI Ratan Tan) color. The standing seam metal roof on the three (3) towers will have an (Evergreen – Melroy) color. The trim for the entire building will consist of an earth tone (ICI Ratan Tan) color. The windows/doors will have tinted glass to further cool the interior of the building. All mechanical equipment will be screened from public view.

APPROPRIATED/FUNDED CM ITEM NO. 20
Pursuant to Section 2202 A-17 of the Porterville Zoning Ordinance, retail stores and personal service establishments require one (1) parking space for every 200 square feet of gross floor area. Based on the 11,775± square feet of gross floor area, 59 parking spaces are required. A total of 59 parking spaces in an addition to a loading zone will be provided.

ENVIRONMENTAL: The project as proposed is Categorically Exempt pursuant to Section 15332, Class 32 of the CEQA Guidelines - (In-fill Development Projects). 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.

RECOMMENDATION: That the City Council:

1. Adopt the draft resolution containing findings and conditions in support of approval for “D” Overlay Site Review 1-2007.

ATTACHMENTS:

1. Complete Staff Report.
STAFF REPORT

TITLE: DESIGN OVERLAY SITE REVIEW 1-2007

APPLICANT:
Terry Schuler
P.O. Box 211
Porterville, CA 93258

Juan Castillo
1358 N. Lime St.
Porterville, CA 93258

REPRESENTATIVE:
Townsend Architectural Group
633 N. Westwood Street
Porterville, CA 93257

SPECIFIC REQUEST: The applicants are requesting approval of a commercial complex to allow for 11,775± square feet of commercial lease space under one roof to be located at the northeast corner of Prospect Street and Grand Avenue. The subject site is within the C-2 (D) (Central Commercial – Design Review Overlay) Zone.

PROJECT DETAILS: The proposed building is configured in an “L” shape design and will be located adjacent to the north and east property lines. The west end of the building will front on Prospect Street. The portion of the building extending east from Prospect Street will consist of 8,670± square feet. The remaining portion of the building extending south towards Grand Avenue will consist of 3,105± square feet. Ingress and egress to the parking area will be from Prospect Street and Grand Avenue.

The site plan indicates that a potential of thirteen (13) commercial lease spaces could be provided. The applicants have indicated the building will be built as a shell. Depending on how much commercial lease space will be required by a proposed tenant, the location of interior walls separating the individual lease spaces will be located accordingly. The door openings located at the main entrances to the building will be located side-by-side sharing a covered entrance. The covered entrances will protrude out from the main portion of the building to provide for more articulation of wall surface providing architectural interest to the building. A covered area (tower) will be located at the west end of the building and south end of the building. An additional covered (tower) with a hardscape courtyard area will be located at the northeast corner of the subject site connecting the two (2) buildings. The building will consist of a textured stucco finish, earth tone (ICI Camel Coat) color. The covered entrances including the covered towers, the buildings and outside covered areas will consist of a textured stucco finish, earth tone (ICI Ratan Tan) color. The standing seam metal roof on the three (3) towers will have an (Evergreen – Melroy) color. The trim for the entire building will consist of an earth tone (ICI Ratan Tan) color. The windows/doors will have tinted glass to further cool the interior of the building. All mechanical equipment will be screened from public view.
Pursuant to Section 2202 A-17 of the Porterville Zoning Ordinance, retail stores and personal service establishments require one (1) parking space for every 200 square feet of gross floor area. Based on the 11,775± square feet of gross floor area, 59 parking spaces are required. A total of 59 parking spaces in an addition to a loading zone will be provided.

GENERAL PLAN AND ZONING: The General Plan designates the site as General Commercial. The subject site is within the C-2 (D) (Central Commercial - Design Review Overlay) Zone.

SURROUNDING ZONING AND LAND USE:

North: City - C-3 (D) – Restaurant
South: City – R-2 – Grand Avenue and apartments
East: City – R-4 (D) Vacant land; building permits for triplexes have been submitted
West: City – Prospect Street and the City Corporation Yard and school

STAFF ANALYSIS:

The area surrounding the subject site has not developed with a unified architectural theme. The building as proposed appears to be an attractive addition to the streetscape.

ALTERNATIVES TO THE PROJECT AND THEIR EFFECT:

1. No project. Denial of the proposed use permit would not allow the applicants to construct the commercial complex as proposed.

2. Approve the project. Approval of the request would result in the applicant being conditionally allowed to construct the commercial complex as proposed subject to approval of “D” Overlay Site Review 1-2007.

ENVIRONMENTAL: This project is Categorically Exempt pursuant to Section 15332 Class 32 of the CEQA Guidelines - In-fill Development projects. 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: July 12, 2006

DATE ACCEPTED AS COMPLETE: February 12, 2007

ATTACHMENTS:

1. Zoning, Land Use and General Plan designation map
2. Notice of Exemption
3. Draft Resolution containing findings and conditions in support of “D” Overlay Site Review 1-2007 (Site plan, and elevations - Exhibit “A”)
NOTICE OF EXEMPTION

TO: Office of Planning and Research
    1400 Tenth Street, Room 121
    Sacramento, CA 95814

FROM: City of Porterville
      291 N. Main Street
      Porterville, California 93257

Tulare County Clerk
County Civic Center
Visalia, CA 93291

Juan Castillo
1358 N. Lime Street
Porterville, CA 93257

“D” Overlay Site Review 1-2007
Project Title

Generally the northeast corner of Prospect Street and Grand Avenue.
Project Location (Specific)

City of Porterville
Project Location (City)
Tulare
Project Location (County)

“D” Overlay to allow for the construction of commercial complex to provide 11,772 square feet of commercial lease space.
Description of Nature, Purpose, and Beneficiaries of Project

City of Porterville
Name of Public Agency Approving Project

Terry Schuler and Juan Castillo
Name of Person or Agency Carrying Out Project

Exempt Status: (Check One)

X Categorical Exemption. State type and section number: 15332 Class 32

In-fill development.
Reasons why project is exempt

Bradley D. Dunlap, AICP, 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 Project? Yes: [Signature]

Date Received for filing: [Signature]

Community Development Director
Title

U/NoticeExempt "D" overlay 1-2007
RESOLUTION NO.__________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE CONTAINING FINDINGS AND CONDITIONS IN SUPPORT OF “D” OVERLAY SITE REVIEW 1-2007 TO ALLOW FOR THE CONSTRUCTION OF A COMMERCIAL COMPLEX LOCATED AT THE NORTHEAST CORNER OF PROSPECT STREET AND GRAND AVENUE IN THE PO (D) (CENTRAL COMMERCIAL - “D” OVERLAY SITE REVIEW) ZONE

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of February 20, 2007, reviewed and considered “D” Overlay Site Review 1-2007, to allow for the construction of a commercial complex to consist of 11,775± square feet of commercial lease space under one roof to be located at the northeast corner of Prospect Street and Grand Avenue. The subject site is within the C-2 (D) (Central Commercial – Design Review Overlay) Zone; and

WHEREAS: Pursuant to Section 2202 A-17 of the Porterville Zoning Ordinance, retail stores and personal service establishments require one (1) parking space for every 200 square feet of gross floor area. Based on the 11,775± square feet of building area, 59 parking spaces are required. A total of 59 parking spaces in addition to a loading zone will be provided; and

WHEREAS: The City Council made the following findings:

1. This project is Categorically Exempt pursuant to Section 15332 Class 32 of the CEQA Guidelines - In-fill Development projects. 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.

2. That the proposed project is consistent with the General Plan.

The General Plan designates the subject site for Central Commercial uses. The existing C-2 (D) zoning and proposed use is consistent with the General Plan.

3. That the design and operation of the proposed project are consistent with the existing Zoning.

Pursuant to Article Seven (7) and Article (8) of the Porterville Zoning Ordinance, only those uses are allowed in this zone. The proposed use is consistent with those uses allowed in this zone.

ATTACHMENT ITEM NO. 3
4. That the proposed use is not likely to cause substantial environmental damage.

The subject site is flat. City staff conducted an on-site inspection. The subject site is vacant and has been regularly discarded for weed control. No natural habitat was observed. As such, no endangered, threatened or rare species or habitats exist and no impact will occur.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve “D” Overlay Site Review 1-2007 subject to the following conditions:

1. Pursuant to Section 2617 of the City of Porterville Zoning Ordinance, a masonry wall must be constructed separating the proposed commercial development from adjacent residential uses to the east. The submitted site plan represents this, but since the building abuts the property line and has no access along the back and side, a masonry wall will not be required.


3. The developer/applicant shall pay all applicable fees according to the Municipal Code and State law. 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 follow Appendix Chapter 33 of the California Building Code including provision of a grading and drainage plan signed by a licensed 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 and/or repair street, alley, curb, gutter, sidewalk, etc. along the full frontage of the parcel except where they exist and are in good condition in the opinion of the City Engineer (Ord. No. 1306). The required sidewalk width for this project is 9.5 feet along all street frontages.

6. The developer/applicant is hereby notified that the property is subject to $1,039.50 development fees per Resolution No. 133-2003. The fee is associated with the construction of concrete improvements along Prospect Street by the City of Porterville.
7. The developer/applicant shall construct drainage facilities as required to serve the property (Ord. No. 1306). Staff is requesting that the parking lot be designed to convey water to the City drainage system without crossing driveways.

8. Easements shall be in place that allows for mutual ingress, egress and maintenance of the parking lot, if applicable.

9. Easements shall be in place that allow for mutual use of sewer and water, if applicable.

10. 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). This project will require the relocation or removal of existing utility pole(s).

11. The developer/applicant shall provide streetlights on Marbelite poles following Southern California Edison Company specifications, as approved by the City Engineer. The spacing shall be at 320 intervals along the Grand Avenue frontage only. Do not use wood poles without prior written approval of the City Engineer.

12. The developer/applicant shall design and improve the parking lot in conformance with Section 2206 and 2211 (Exhibit A) of the Zoning Ordinance.

13. The developer/applicant shall, under City inspection, remove all existing abandoned and unnecessary items, to the satisfaction of the City Engineer, before the issuance of a certificate of occupancy (For example, foundations, septic tanks, irrigation pipes, etc.).

14. The developer/applicant shall abandon existing wells, if any, after first getting an abandonment permit from the County Department of Environmental Health, and providing the City Engineer with proof of compliance with County regulations before performing any grading or issuance of the building permit, whichever comes first.

15. The developer/applicant shall assure compliance with applicable San Joaquin Valley Unified Air Pollution Control District Rules (e.g., Numbers 8010, 8020 and 8030), regarding fugitive dust, as well as Section 7-8, Project Site Maintenance of the Standard Specifications. The developer/applicant shall provide a street sweeper as necessary to comply.
16. The developer/applicant shall comply with Ordinance No. 1636 regarding Waste Water Discharge requirements and shall complete and submit the following:

Wastewater Discharge Permit Application, Part “A”, and

If monitoring is required, based on the responses to questions in Part “A” of the Wastewater Discharge Permit, then the developer/applicant shall complete and submit the remainder of the application along with the Permit Fee, and provide monitoring facilities to allow inspection, sampling, and flow measurement of the flows in the sewer and drainage system.

17. The developer/applicant shall construct the pipe connecting to on-site fire hydrants to City water main standards and shall provide easements for maintenance to the on-site water mains.

18. The developer/applicant shall comply with City standard for “backflow” prevention pursuant to Resolution No. 9615.

19. The developer/applicant is hereby notified that the installation of an additional water meter, servicing the irrigation system would be beneficial for monitoring actual water usage. The City will monitor actual water usage for one year and will bill the owner the impact fees based on the actual water usage.

20. A back-flow device maybe required on the water meter depending on the actual building uses.

21. The developer/applicant shall install a refuse container enclosure according to City Standards. Enclosure location to be approved by City prior to issuance of building permit. Enclosure should be oriented for direct pick up (can be installed at an angle). The developer/applicant shall also sign a waiver of liability for refuse truck damage to the parking lot if the refuse container location requires refuse trucks to travel on the parking lot. Consideration should be made for a future-recycling bin if appropriate. Solid gates will be required across the enclosure opening if oriented toward Grand Avenue or prospect Street for pick up.

22. A minimum five (5) foot wide screen-planting strip shall be provided and permanently maintained adjacent to any property line separating a parking area from a public street. Provide wheel stops for the parking spaces along the Grand Avenue frontage to prevent vehicle overhang into the planting strip, or extend the curb face out into parking spaces an additional two (2) feet to account for vehicle overhang.
23. A minimum of 5% of parking lot and driveway areas are to be landscaped with live plant materials. The parking lot and driveway areas are to be shaded with trees planted on the property at a minimum ratio of one tree per 8 parking spaces distributed throughout the paved area.

24. The owner/applicant is to install trees, approved as City Street Trees, along all public roadway frontages of the property. The number of trees to be planted shall be equivalent to a minimum of one tree per 35 feet of roadway frontage. The trees are to be a minimum of #15 size specimens incorporated into the designated landscape areas. Root barriers are required for all trees planted within ten feet of public sidewalks. The selection of planting locations, and performance of canopy maintenance for the trees shall be conducted to minimize vehicular sight safety conflicts.

25. The owner/applicant shall provide an automatic irrigation system for all landscape planting, including trees and right of way planting. All landscaping shall be installed prior to occupancy and be permanently maintained by the owner/applicant in a healthy and vigorous growing condition, and cleanly appearance.

26. 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.

27. Compliance with access laws (both State and Federal) is required.

28. Plan check fees are required at the time of building permit submittal.

* A soils compaction test will be required.

* School Development fees and all other City fees are due at the time of building permit issuance.

* Signs require a separate permit.

* Firewalls are required at the north and east walls.

29. The project must comply with the latest applicable codes.

30. Based on the occupancy classification, an automatic sprinkler system may be required.
31. When a sprinkler system is installed all valves controlling the water supply for automatic sprinkler systems and water-flow switches on all sprinkler systems shall be electrically monitored where the numbers of sprinklers are:
   * Twenty or more in Group I Divisions 1.1 and 1.2 occupancies.
   * One hundred or more in all other occupancies.

32. Submit two (2) complete sets of sprinkler and/or fire alarm plans to the Fire Department for review prior to installation.

33. For automatic sprinkler systems, underground plans must be submitted and approved prior to submittal of the above ground plans. A hydrant will be required within 50 feet of the Fire Department connection. Placement of the FDC, detector check and PIV should be located in the area of parking stall number 24. Verify the exact location with the Fire Department prior to plan submittal.

34. Depending on the location of the existing fire hydrant(s), additional fire hydrants may be required. All hydrants must be in place and accepted by the Fire Department prior to any combustibles being brought onto the site.

35. 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.

36. Fire hydrant spacing shall be as follows:
   In Residential development, one hydrant shall be installed at 500-foot intervals.
   In Commercial development, one hydrant shall be installed at 300-foot intervals.

37. All dead-end access roads in excess of 150 feet must be provided with an approved turn-around complying with City Standards.

38. Project must meet minimum fire flow requirements per the table in Appendix III-A & III-B of the California Fire Code.

39. 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 Section 22500.1.

40. A Knox box may be required. An application may be obtained from the Fire Department.

41. All mechanical devises, to include gas and electrical meters, heating and cooling units shall be screened from public view.
42. That the subject site will be developed in accordance with the site plan and elevation plans labeled EXHIBIT “A”. Any change in the color scheme or architecture to the proposed building shown on Exhibit “A” will require the approval of the Community Development Director.

____________________________
Cameron Hamilton, Mayor

ATTEST:

John Longley, City Clerk

By __________________________
Georgia Hawley, Chief Deputy City Clerk
Prospect Plaza materials board.

WEST ELEVATION
Prospect Plaza color board.

WEST ELEVATION
CITY COUNCIL AGENDA: FEBRUARY 20, 2007

TITLE: REGULATIONS CONCERNING THE USE OF LAND FOR THE PURPOSE OF OPERATING DISPENSARIES OF MARIJUANA FOR MEDICAL PURPOSES

SOURCE: CITY ATTORNEY

COMMENT: California voters approved Proposition 215, which codified into the California Health and Safety Code the “Compassionate Use Act of 1996.” The stated intent of the Proposition 215 was to enable people in need of marijuana for medical purposes the ability to obtain and use it without fear of criminal prosecution under limited, specific circumstances.

Consequently, there have been commercial (as well as noncommercial) endeavors to distribute medical marijuana to those who qualify under the Act. The proposition is unclear, however, about the details of doctor recommendations and how the substance is distributed. Adding further confusion is the fact that pursuant to Federal law the use, possession, transpiration and distribution of marijuana is specifically illegal.

In 2005, the U.S. Supreme Court issued its decision in Gonzales v. Raich (2005) 545 U.S. 1. The Respondents in the case, two women who cultivated, obtained, and/or processed cannabis for their own personal medical use, claimed that their individual activities (which would have been in compliance with State law and the Compassionate Use Act) were purely local activities beyond the reach of federal power. The Supreme Court overruled the 9th Circuit and found that Congress’ Commerce Clause authority includes the power to prohibit the local cultivation and use of marijuana, even if said activities are in compliance with California law. While the Court did clearly provide that under the Supremacy clause of the U.S. Constitution the federal law would prevail over state law with regard to these activities, the Court was also careful to note that in this case, the parties did not assert that a particular statute or body of state law fell outside the federal commerce power. Rather, this case involved individual activities. Therefore, there was no express holding that they Compassionate Use Act was unlawful or unconstitutional.

Immediately after the Supreme Court ruling, The California Attorney General’s office issued a bulletin to all law enforcement agencies in the State stating that it was the Attorney General’s position that the Compassionate Use Act is not preempted by federal law, and that law enforcement should continue to refrain from arresting and prosecuting individuals who use medicinal marijuana under the Act. The Attorney General also issued a statement providing, in part
“Today’s ruling does not overturn California law permitting the use of medical marijuana, but it does uphold a federal regulatory scheme that contradicts the will of California voters and limits the right of states to provide appropriate medical care for its citizens.” Hence, while state authorities will not prosecute those operating under the State law, those who use or distribute medical marijuana run the risk of federal prosecution.

THE COMPASSIONATE USE ACT

The Compassionate Use Act adopted in 1996, and SB 420 enacted in 2004 are codified as Division 10, Chapter 6, Article 2.5 of the California Health and Safety Code, Sections 11362.7 et seq., portions of which are attached to this report. The laws establish a State system for permitting possession and cultivation of marijuana for limited medical treatment purposes, subject to the procedural requirements under the Act. Medical cannabis or marijuana dispensaries appear to be an instance where advocates of the medical use of marijuana are using the statutory language of the Act to establish businesses (nonprofit – as state law prohibit the provision of medical marijuana “for profit” under the law) to distribute to those entitled to possess or use under the law. While dispensaries are not specifically addressed under the Act, a person providing the marijuana may be the “primary care giver” to persons located in the same city or county the primary care giver is located.

The Act does not directly require that cities and counties, in exercising their police power and land use regulatory authority, permit businesses that would distribute medical marijuana. Cities may permit the uses under State law. However, and especially given the status of the most recent interpretation of the Federal Controlled Substances Act (CSA) as discussed above, cities may also arguably prohibit land uses that are inconsistent with any other law, including federal law. Such a regulation would, from a practical standpoint, prohibit the location of medical marijuana dispensaries within City limits until and unless marijuana is reclassified under the CSA.

REGULATORY ALTERNATIVES

Attached, as sample regulations, are two types of ordinances. The first is an ordinance that simply prohibits land uses inconsistent with local, state, or federal law. This ordinance would have the effect of prohibiting medical marijuana dispensaries within the City unless the federal laws change.

The second ordinance, as adopted by the City of Tulare, regulates medical marijuana dispensaries by establishing a “medical marijuana business permit,” prohibiting the public smoking or consumption of medical marijuana, and adding certain location requirements. Under these provisions, an applicant for such a business permit must provide, for example, additional information concerning security arrangements for safety purposes. The permit must be renewed annually. The business must also adhere to certain operational requirements, including but
not limited to the maintenance of a current register of all qualified patients and primary care givers, signage, requirements concerning the volume of marijuana per patient, and prohibitions on consumption on the premises, security, prohibition of the sale of alcohol, food, or other sales of goods or services. The ordinance prohibits medical marijuana businesses/uses as an accessory use to any other use. Only one dispensary may operate out of a single building, and the dispensaries are prohibited within 1000 feet of schools, and may only be located in the City’s C-2 zone or within the downtown precinct area as defined by the City’s general plan.

Given the ambiguity that still exists in the law, either scheme could still be subject to legal challenge. However, it should be noted that the City of Tulare did consult with certain nonprofit medical marijuana advocates in the development of its ordinance. Also, the general consensus in California is that, unless and until there is a higher court holding that the Compassionate Use Act is invalid pursuant to federal law, cities and counties are unlikely to face legal challenge from federal authorities (although this is theoretically possible) for the adoption of regulatory ordinances consistent with the state law. Thus far, federal authorities have focused on the users/providers of medical marijuana, and not the local authorities that permit or regulate them. If the City Council were to proceed with a regulatory structure, I would recommend that additional staff input be received concerning appropriate locations given the current zoning in Porterville, and additional samples of regulations can be reviewed.

There is, of course, a third option, which would be to do nothing. If the Council does not adopt local laws prohibiting or regulating the location and operations of these dispensaries, the City cannot refuse to issue a business license or otherwise impose restrictions that would not otherwise be enforceable against any other business. These businesses would then simply be subject to State law in that circumstance.

If the Council directs the development of an ordinance, a public hearing will be required.

RECOMMENDATION: That the City Council consider the staff report and attachments, accept this report as the report required pursuant to the interim ordinance adopted February 9, 2007, and provide direction concerning the regulation of medical marijuana dispensaries.

ATTACHMENTS:

1. Excerpts from California Health and Safety Code Sections 11362.7 et seq. (“Compassionate Use Act” as amended.)

2. Sample ordinance prohibiting any land uses inconsistent with federal law.

3. City of Tulare’s Ordinances related to medical marijuana dispensaries.
§ 11362.7 Health & Safety.

For purposes of this article, the following definitions shall apply:

(a) "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counselling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

(b) "Department" means the State Department of Health Services.

(c) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.

(d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 5 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a
qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

(f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

(g) "Identification card" means a document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person a designated primary caregiver, if any.

(h) "Serious medical condition" means all of the following medical conditions:

(1) Acquired immune deficiency syndrome (AIDS).

(2) Anorexia.

(3) Arthritis.

(4) Cachexia.

(5) Cancer.

(6) Chronic pain.

(7) Glaucoma.

(8) Migraine.

(9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.

(10) Seizures, including, but not limited to, seizures associated with epilepsy.

(11) Severe nausea.

(12) Any other chronic or persistent medical symptom that either:

(A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).

(B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

(1) "Written documentation" means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph
(2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

(Added by Stats. 2003, c. 875, sec. 2.)
California Code

California Code
CALIFORNIA HEALTH AND SAFETY CODE
DIVISION 10. UNIFORMCONTROLLED SUBSTANCES ACT
Chapter 6. Offenses and Penalties
Article 2.5. Medical Marijuana Program

§ 11362.71 Health & Safety.

(a)(1) The department shall establish and maintain a voluntary program for the issuance of identification cards to qualified patients who satisfy the requirement of this article and voluntarily apply to the identification card program.

(2) The department shall establish and maintain a 24-hour, toll-free telephone number that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of an identification card issued by the department, until a cost-effective Internet Web-based system can be developed for this purpose.

(b) Every county health department, or the county's designee, shall do all of the following:

(1) Provide applications upon request to individuals seeking to join the identification card program.

(2) Receive and process completed applications in accordance with Section 11362.72.

(3) Maintain records of identification card programs.

(4) Utilize protocols developed by the department pursuant to paragraph (1) of subdivision (d).

(5) Issue identification cards developed by the department to approved applicants and designated primary caregivers.

(c) The county board of supervisors may designate another health-related governmental or nongovernmental entity or organization to perform the functions described in subdivision (b), except for an entity or organization that cultivates or distributes marijuana.

(d) The department shall develop all of the following:

(1) Protocols that shall be used by a county health department or the county's designee to implement the responsibilities described in subdivision (b), including, but not limited to, protocols to confirm the accuracy of information contained in an application and to protect the confidentiality of program records.

(2) Application forms that shall be issued to requesting applicants.

(3) An identification card that identifies a person authorized to engage in the medical use of marijuana and an identification card that identifies the person's designated primary caregiver, if any. The two identification cards developed pursuant to this paragraph shall be easily
distinguishable from each other.

(e) No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in an amount established pursuant to this article, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of this article.

(f) It shall not be necessary for a person to obtain an identification card in order to claim the protections of Section 11362.5.

(Added by Stats. 2003, c. 875, sec. 2.)
California Code

CALIFORNIA HEALTH AND SAFETY CODE
DIVISION 10, UNIFORM CONTROLLED SUBSTANCES ACT
Chapter 6. Offenses and Penalties
Article 2.5. Medical Marijuana Program

§ 11362.765 Health & Safety.

(a) Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570. However, nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this article nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.

(b) Subdivision (a) shall apply to all of the following:

(1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use.

(2) A designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those established in subdivision (a) of Section 11362.77, only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.

(3) Any individual who provides assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person.

(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360.

(Added by Stats. 2003, c. 875, sec. 2.)

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CALIFORNIA HEALTH AND SAFETY CODE
DIVISION 10, UNIFORM CONTROLLED SUBSTANCES ACT
Chapter 6. Offenses and Penalties
Article 2.5. Medical Marijuana Program

§ 11362.77 Health & Safety.

(a) A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient.

(b) If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.

(c) Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).

(d) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.

(e) The Attorney General may recommend modifications to the possession or cultivation limits set forth in this section. These recommendations, if any, shall be made to the Legislature no later than December 1, 2005, and may be made only after public comment and consultation with interested organizations, including, but not limited to, patients, health care professionals, researchers, law enforcement, and local governments. Any recommended modification shall be consistent with the intent of this article and shall be based on currently available scientific research.

(f) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of marijuana consistent with this article.

(Added by Stats. 2003, c. 875, sec. 2.)
§ 11362.775 Health & Safety.

Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

(Added by Stats. 2003, c. 875, sec. 2.)

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§ 11362.78 Health & Safety.

A state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.

(Added by Stats. 2003, c. 875, sec. 2.)

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CALIFORNIA HEALTH AND SAFETY CODE
DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT
Chapter 6. Offenses and Penalties
Article 2.5. Medical Marijuana Program

§ 11362.785 Health & Safety.

(a) Nothing in this article shall require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.

(b) Notwithstanding subdivision (a), a person shall not be prohibited or prevented from obtaining and submitting the written information and documentation necessary to apply for an identification card on the basis that the person is incarcerated in a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained.

(c) Nothing in this article shall prohibit a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained, from permitting a prisoner or a person under arrest who has an identification card, to use marijuana for medical purposes under circumstances that will not endanger the health or safety of other prisoners or the security of the facility.

(d) Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana.

(Added by Stats. 2003, c. 875, sec. 2.)

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DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT
Chapter 6. Offenses and Penalties
Article 2.5. Medical Marijuana Program

§ 11362.79 Health & Safety.

Nothing in this article shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana under any of the following circumstances:

(a) In any place where smoking is prohibited by law.

(b) In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence.

(c) On a schoolbus.

(d) While in a motor vehicle that is being operated.

(e) While operating a boat.

(Added by Stats. 2003, c. 875, sec. 2.)

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CALIFORNIA HEALTH AND SAFETY CODE
DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT
Chapter 6. Offenses and Penalties
Article 2.5. Medical Marijuana Program

§ 11362.83 Health & Safety.

Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.

(Added byStats. 2003, c. 875, sec. 2.)
SAMPLE PROVISION – RELATING TO STATE AND FEDERAL LEGALITY OF THE USE OF LAND WITHIN CITY LIMITS

Section ______. Legal Use of Land. No use of land, under this Title, shall be permitted within the City Limits if such use shall be in violation of any local, state, or federal laws.
AGENDA ITEM: A public hearing regarding ordinances regulating Medical Marijuana.

IS PUBLIC HEARING REQUIRED: □ Yes □ No

BACKGROUND EXPLANATION:

Attached are the three ordinances regulating medical marijuana. The first ordinance (Chapter 5.96) establishes a “medical marijuana business permit”. This ordinance outlines the steps to require to obtain the permit. Section 5.96.140 lists the operating requirements and is very similar to Visalia’s ordinance.

The second ordinance (Chapter 7.48) is a very straightforward prohibition on public smoking or consumption of marijuana in public.

The third ordinance revises Chapter 10.168 by adding Section 10.168.090 (medical marijuana businesses). This new section adds locational requirements for medical marijuana businesses to the zoning ordinance.

STAFF RECOMMENDATION:

Pass to Print the following new ordinances.

1. Medical Marijuana Dispensaries by adding Chapter 5.96.
2. Public Use/Consumption of Medical Marijuana by adding Chapter 7.48.
3. Revise Chapter 10.168 by adding “Medical Marijuana Businesses” (Section 10.168.090)

IS ADDITIONAL (NON-BUDGETED) FUNDING REQUIRED: □ Yes □ No

Signed: Mark S. Kiely

Title: Director of Planning and Building

Date: 12/14/05

Liaison Approval

Attachment 3
ORDINANCE NO. 05-1998

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TULARE
AMENDING TITLE 5 ADDING CHAPTER 5.96 OF THE TULARE MUNICIPAL
CODE PERTAINING TO MEDICAL MARIJUANA DISPENSARIES

SECTION 1. Title 5 of the Tulare Municipal Code is hereby amended by the addition thereto of
Chapter 5.96, which shall read as follows:

Chapter 5.96

MEDICAL MARIJUANA DISPENSARIES

5.96.010 Purpose and Intent
5.96.020 Definitions
5.96.030 Enforcement of Chapter
5.96.040 Medical Marijuana Business Permit Required
5.96.050 Applications
5.96.060 Term, Renewals and Fees
5.96.070 Notification
5.96.080 Investigation and Action on Application
5.96.090 Grounds for Denial of Permit
5.96.100 Appeal from Denial
5.96.110 Suspension or Revocation of Permit
5.96.120 Judicial Review
5.96.130 Effect of Denial or Revocation
5.96.140 Operating Requirements
5.96.150 Zoning and Development Standards
5.96.160 Minors
5.96.170 Display of Permit
5.96.180 Transfer of Permits
5.96.190 Violations of Chapter: Enforcement
5.96.200 Severability
5.96.210 Existing Medical Marijuana Dispensaries; Time Limit for Filing Application for Permit

Section 5.96.010 Purpose and Intent

It is the purpose and intent of this ordinance to promote the health, safety, and general welfare of the
residents and businesses within the city by regulating medical marijuana dispensaries. It is not the intent nor
effect of this ordinance to restrict or deny qualified patients access to marijuana for medical purpose as intended
by the passage of the Compassionate Use Act of 1996 and SB 420 in 2004. Neither is it the intent nor effect of
this ordinance to condone or legitimize the use of marijuana.

Section 5.96.020 Definitions

All definitions set forth in Health & Safety Code sections 11362.5 and 11362.7 et seq., as may be
amended, including but not limited to the terms "attending physician", "person with an identification card",
"serious medical conditions", shall apply under this Ordinance in addition to the definitions set for as follows:

"Applicant" means a person who is required to file an application for a permit under this chapter, including
an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee
or agent of a Medical Marijuana Business.

"City Planner" means the Planning and Building Director holding office in the City of Tulare or his or her
designee.
"Medical Marijuana" is defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 et seq.

"Medical Marijuana Dispensary" means any facility or location, whether fixed or mobile, where medical marijuana is made available to, distributed by, or distributed to one or more of the following: (1) a qualified patient, (2) a person with an identification card, or (3) a primary caregiver. All three of these terms are defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 et seq. Unless otherwise regulated by this Code or applicable law, a "medical marijuana dispensary" shall not include the following uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code sections 11362.5, and 11362.7 et seq.

"Medical Marijuana Businesses" means any Medical Marijuana Dispensary; any cultivation and/or processing of medical marijuana operations by primary caregivers for three or more qualified patients or persons with identification cards; or collective or cooperative cultivation operations.

"Cultivation of Medical Marijuana" means the growing of medical marijuana for medical purposes as defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 et seq.

"Collective or Cooperative Cultivation" means the association with California of qualified patients, persons with valid identification cards, and designated primary caregivers to cultivate marijuana for medical purposes as defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 et seq.

"Processing of Medical Marijuana" means the harvesting of marijuana or the use of any process or equipment, including but not limited to dehydrators or humidifiers, that may be necessary to convert raw marijuana plants or plant parts into a consumable product.

"Permittee" means the person to whom a Medical Marijuana Business permit is issued.

"Written Recommendation" shall have the same definition as California Health and Safety Code section 11362.7 et seq., and as may be amended.

Section 5.96.030   Enforcement of Chapter.

The City Planner of the City of Tulare shall have the responsibility and duty of enforcement of this Chapter.

Section 5.96.040   Medical Marijuana Business Permit Required.

A. It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City of Tulare the operation of a Medical Marijuana Business unless the person first obtains and continues to maintain in full force and effect a Medical Marijuana Business permit from the City of Tulare as herein required.

B. A Medical Marijuana Business shall also be required to apply for and maintain a general City of Tulare business license as a prerequisite to obtaining a permit pursuant to the terms hereof.

Section 5.96.050   Applications.

A. The applicant for a Medical Marijuana Business permit shall submit to the City Planner or designee an application for a permit. The application shall be made under penalty of perjury and shall include the following information:
1. The full name, present address, and telephone number of the applicant;
2. The address to which notice of action on the application is to be mailed;
3. Previous addresses for the past five (5) years immediately prior to the present address of the applicant;
4. Written proof that the applicant is over the age of eighteen (18) years of age.
5. Applicant's height, weight, color of eyes and hair;
6. An identification photograph of the applicant;
7. All business, occupation, or employment of the applicant for the five years immediately preceding the date of the application;
8. The business license history of the applicant, including whether such person, in previously operating in this or another city, county or state under a license has had such license revoked or suspended, the reason therefore, and the business or activity or occupation subsequent to such action of suspension or revocation;
9. The name or names of the person or persons having the management or supervision of applicant's business;
10. Whether the person or persons having the management or supervision of applicant's business have been convicted of a crime(s), the nature of such offense(s), and the sentence(s) received therefore;
11. The name of all employees, independent contractors, and other persons who will work at the proposed Medical Marijuana Business;
12. The proposed security arrangements for ensuring the safety of persons, safe and secure storage of the marijuana, and to protect the premises from theft which shall be kept confidential and not disclosed to the public as the public interest is served in preserving the confidentiality of such security arrangements;
13. A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the proposed Medical Marijuana Business. The sketch or diagram need not be professionally prepared, but must be drawn with marked dimensions of the interior of the premises;
14. A current and accurate straight-line drawing depicting the building and/or the portion thereof to be occupied by the proposed Medical Marijuana Business;
15. Authorization for the City of Tulare, its agents and employees to seek verification of the information contained within the application;
16. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct; and

B. If the applicant has completed the application improperly, or if the application is incomplete, the City Planner or designee shall within ten (10) days of receipt of the original application, notify the applicant of such fact.

C. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a Medical Marijuana Business permit.

Section 5.96.060 Term, Renewals and Fees.

A. Unless otherwise suspended or revoked, a Medical Marijuana Business permit shall expire one (1) year following its issuance. An operator of a Medical Marijuana Business may re-apply for a permit for subsequent year(s).

B. Every application for a permit or renewal shall be accompanied by a nonrefundable fee, as established by resolution adopted by the City Council from time to time. This application or renewal fee shall not include fingerprinting, photographing or background check costs and shall be in addition to any other business license fee or permit fee imposed by this code or other governmental agencies.

Section 5.96.070 Notification of Community.

A. Within ten (10) calendar days of filing an application for a Medical Marijuana Business permit, the applicant shall provide the City Planner or designee with proof that all residents and property owners within 300 feet of the proposed premises have been notified in writing by U.S. mail of the applicant's intent to open such a business and filing of such application.
B. After the background checks and investigation are complete, and in no case later than forty-five (45) days after receipt of a completed application, the City Planner or designee shall determine whether to issue the Medical Marijuana Business permit. The City Planner or designee may grant the permit subject to conditions he or she deems reasonable under the circumstances to protect the public health, safety and welfare of the community. The City Planner or designee shall cause a written notice of his or her decision to issue or deny a permit to be delivered in person or mailed to the applicant by certified U.S. mail, postage prepaid, return receipt requested.

Section 5.96.090  Grounds for Denial of Permit.

The grounds for denial of a permit shall be one or more of the following:

A. The business or conduct of the business at a particular location is prohibited by any local or state law, statute, rule or regulation.

B. The applicant has violated any local or state law, statute, rule or regulation relating to medical marijuana business.

C. The applicant has knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a permit.

D. The applicant, his or her agent or employees, or any person who is exercising managerial authority on behalf of the applicant has been convicted of a felony or of a misdemeanor involving moral turpitude, or has engaged in misconduct related to the qualifications, functions or duties of a permittee. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

E. The applicant has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

F. The applicant has committed any act, which, if done by a permittee, would be grounds for suspension or revocations of a permit.

G. An applicant is under eighteen (18) years of age.

H. The Medical Marijuana Business does not comply with the ordinance standards of the City of Tulare Municipal Code or the development standards set forth in this Chapter.

I. The required application or renewal fees have not been paid.

Section 5.96.100  Appeal from Denial.

A. An applicant aggrieved by the decision of the City Planner or designee to deny a permit may appeal such decision to the City Council by filing a written notice with the City Clerk within ten (10) calendar days of service of the written notice of decision. If an appeal is not taken within such time, the City Planner's decision shall be final.

B. Upon filing of a timely appeal, the permit application shall be scheduled by the City Clerk for a public hearing within forty-five (45) calendar days.

C. Notice of the hearing shall be given by the posting of notice on the premises where the activity is to be conducted for a period of not less than five (5) working days prior to the date of the hearing. In addition, a copy of the notice of hearing shall be mailed to the applicant at least five (5) working days in advance of the hearing. The City Council may give such additional notice of hearing as it deems appropriate in a particular case.

D. Following public hearing, the City Council may grant the permit subject to such conditions as it deems reasonable under the circumstances to protect the public health, safety, and welfare of the community or it
may deny the issuance of the permit for any of the grounds specified in this Chapter. The decision of the City Council shall be final.

**Section 5.96.110  Suspension or Revocation of Permit.**

A. The City Planner or designee may suspend or revoke a permit when the permittee or the permittee’s agent or employee has committed any one or more of the following acts:

1. Any act which would be considered a ground for denial of the permit in the first instance.
2. Violates any other provision of this Chapter or any local or State law, statute, rule or regulation relating to his or her permitted activity.
3. Engages in or permits misconduct substantially related to the qualification, functions or duties of the permittee.
4. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public.
5. Fails to take reasonable measures to control the establishment’s patrons’ conduct resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the business operation of another business.

6. Violates or fails to comply with the terms and conditions of the permit.

B. Prior to suspension or revocation, the City Planner or designee shall conduct a hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least five (5) working days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery to the permittee or by certified U.S. Mail, postage prepaid, addressed to the permittee at his or her address as it appears in his application for the permit.

C. If any permittee or person acting under the authority of a permittee is convicted of a public offense in any court for the violation of any law which relates to his or her permit, the City Planner or designee may immediately revoke the permit without any further action, other than giving notice of revocation to the permittee. In this circumstance, during the pendency of any appeal to the City Council, the permit shall not remain in effect.

D. Any permittee aggrieved by the decision of the City Planner or designee in suspending or revoking a permit may, within ten (10) calendar days, appeal to the City Council by filing a written notice with the City Clerk. Unless otherwise stated in this Chapter, during the pendency of the appeal to the Council, the permit shall remain in effect. If such appeal is not taken within ten (10) days, the decision of the City Planner or designee shall be final. If an appeal is timely filed, the appeal shall be held in accordance with the procedures for considering an appeal of the denial of a permit. The City Council may suspend or revoke the permit for any of the grounds specified in this Chapter. The City Council’s decision shall be final.

**Section 5.96.120  Judicial Review.**

Judicial review of a final decision made under this Chapter may be had by filing a petition for a writ of mandate with the superior court in accordance with the provision of the California Code of Civil Procedure section 1094.5. Any such petition shall be filed within ninety (90) days after the day the decision becomes final as provided in California Code of Civil Procedure section 1094.6, which shall be applicable for such actions.

**Section 5.96.130  Effect of Denial or Revocation.**

When the City Planner or designee has denied or revoked a permit and the time for appeal to the City Council has elapsed, or if after appeal to the City Council, the decision of the City Planner or designee has been affirmed by the City Council, no new application for a permit shall be accepted from the applicant and no permit shall be issued to such person or to any corporation in which he or she shall have any beneficial interest for a period of one (1) year after the action denying or revoking the permit.
Section 5.96.140 Operating requirements.

A Medical Marijuana Business, once permitted by the City Planner or Designee, shall meet the following operating standards for the duration of the use:

A. A Medical Marijuana Business shall be open for business only between the hours of 8:00 a.m. and 8:00 p.m. on any particular day.

B. A Medical Marijuana Business shall maintain a current register of the names of all employees employed by the Business.

C. A Medical Marijuana Business shall maintain a current register of all qualified patients, persons with identification cards and primary caregivers to whom it provides or distributes medical marijuana. Once documented the qualified patients, persons with identification cards and primary caregivers shall be “registered” patrons of the Business. The Business’s register shall be subject to periodic inspection to ensure compliance with the state law. The Business shall further maintain records of all patients and primary caregivers using the identification card number only when issued by the county, or its agent, pursuant to California Health and Safety Code section 11362.7 et seq., so as to protect the confidentiality of the cardholders, or a copy of the written recommendation from a physician stating the need for medical marijuana.

D. A Medical Marijuana Business shall post a sign, either at the building entrance or inside at the entrance, with a notice indicating that persons under the age of eighteen (18) years are precluded from entering the premises unless they are a qualified patient and they are in the presence of their parent or guardian.

E. A Medical Marijuana Dispensary may not possess more than eight (8) ounces of dried marijuana per registered qualified patient or primary caregiver on the premises. However, if a qualified patient or primary caregiver has a doctor’s recommendation that this quantity does not meet the qualified patient’s medical needs, the dispensary may increase the amount of dried marijuana per the doctor’s recommendation, the dispensary may not possess an amount of marijuana in excess of the registered patient’s needs.

F. No marijuana shall be smoked, ingested or otherwise consumed on the premises of the Business. The term “premises” includes the actual building, as well as any accessory structures, parking areas, or other immediate surroundings. The building entrance to a Medical Marijuana Business shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming marijuana on the premises or in the vicinity of the Business is prohibited.

G. Any cultivation of medical marijuana or processing of medical marijuana conducted by the Business shall at all times occur in a secure, locked, and fully enclosed structure. No Medical Marijuana Business may cultivate or process more than 99 marijuana plants, whether mature or immature.

H. No Medical Marijuana Business shall hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. In addition, alcohol shall not be provided, stored, kept, located, sold, dispensed, or used on the premises of the Business.

I. No Medical Marijuana Business shall conduct or engage in the commercial sale of any product, good or service. The term “commercial sale” does not include the provision of medical marijuana on terms and conditions consistent with this Chapter and the Compassionate Use Act of 1996, and any amendments thereto.

J. A Medical Marijuana Business shall provide adequate security on the premises, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft.

K. A Medical Marijuana Business shall provide litter removal services once during each day of operation on and in front of the premises and, if necessary, on public sidewalks within one hundred (100) feet of the premises.
L. A Medical Marijuana Business shall not cultivate, distribute or sell medical marijuana for a profit. A Business may receive compensation for its actual expenses, including reasonable compensation for service provided, or for payment of out-of-pocket expenses incurred in providing those services. However, any such Business must pay applicable sales tax on such sales or services and maintain the applicable seller's permit or similar permit from the State Franchise Tax Board or other applicable agency.

M. A Medical Marijuana Business shall meet all the operating criteria for the dispensing of medical marijuana as required pursuant to California Health and Safety Code sections 11362.5 and 11362.7 et seq.

N. Each Medical Marijuana Business shall allow the City Planner or designee to have access to the Business's books, records, accounts, and any and all data relevant to its activities for the purposes of conducting an audit or examination. Books, records, accounts, and any and all relevant data shall be produced no later than 24 hours after receipt of the City Planner's written request(s).

O. The Medical Marijuana Business shall meet any specific additional operating procedures and measures as may be imposed as conditions of approval by the City Planner or designee to ensure that operations of the Business is consistent with protection of the health, safety and welfare of the community, qualified patients and primary caregivers, and will not adversely affect surrounding uses.

P. The building in which the Medical Marijuana Business is located shall comply with all applicable local, state and federal rules, regulations and laws including, but not limited to, building codes and the Americans with Disability Act, as certified by the Building Official of the City.

Q. Any marijuana provided by a Medical Marijuana Business for the purpose of consumption by the recipient shall be contained in a package that includes, in a conspicuous location, the following warning: "Smoking may be hazardous to the health of the consumer, and smoking by pregnant women may result in fetal injury, premature birth and low birth weight. Further, ingestion of marijuana in any form may be hazardous to the health of the consumer and may impair the judgment of the consumer."

R. A Medical Marijuana Business that provides marijuana in the form of food or other comestibles shall obtain and maintain the appropriate licenses from the County Health Department for the provisions of food or other comestibles.

S. A Medical Marijuana Business shall provide to the City Planner or designee, upon request, written evidence to the City Planner or designee's reasonable satisfaction, that the Business is not engaged in interstate commerce.

T. No Medical Marijuana Business shall sell or display any drug paraphernalia as defined in California Health and Safety Code section 11364, e t seq., or any implement that may be used to administer, use, consume, smoke or ingest medical marijuana.

Failure to comply with any of the above operating requirements shall result in the revocation of any permit issued.

Section 5.96.150 Zoning and Development Standards.

The provisions of Chapter 10.168.09 of Title 10 ("Zoning") of the Municipal Code are applicable to Medical Marijuana Dispensaries and compliance with those provisions shall be considered additional requirements for a permit required by this Chapter.

Section 5.96.160 Minors.

A. It shall be unlawful for any permittee, operator, or other person in charge of any Medical Marijuana Business to employ any person who is not at least eighteen (18) years of age.

B. Persons under the age of eighteen (18) years shall not be allowed on the premises of a Medical Marijuana Business unless they are a qualified patient and they are in the presence of their parent or guardian.
Section 5.96.170 Display of permit.

Every Medical Marijuana Business shall display at all times during business hours the permit issued pursuant to the provisions of this Chapter in a conspicuous place so that the same may be readily seen by all persons entering the Medical Marijuana Business.

Section 5.96.180 Transfer of permits.

A. A permittee shall not operate a Medical Marijuana Business under the authority of a Medical Marijuana Business permit at any place other that the address of the Medical Marijuana Business stated in the application for the permit.

B. A permittee shall not transfer ownership or control of a Medical Marijuana Business permit to another person unless and until the transferee obtains an amendment to the permit from the City Planner or designee stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the City Planner or designee in accordance with this Chapter and accompanies the application with the transfer fee in an amount set by the resolution of the City Council, and the City Manager determines that the transferee would be entitled to the issuance of an original permit.

C. No permit may be transferred when the City Planner or designee has notified the permittee that the permit has been or may be suspended or revoked.

D. Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void, and the permit shall be deemed revoked.

Section 5.96.190 Violations of Chapter: Enforcement.

A. Any person that violates any provision of this Chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

B. Any use of condition caused or permitted to exist in violation of any of the provisions of this Chapter shall be and is hereby declared a public nuisance and may be summarily abated by the City pursuant to the City of Tulare Municipal Code.

C. Any person who violates, causes, or permits another person to violate any provision of this Chapter commits a misdemeanor.

D. The violation of any provisions of this Chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of City, create a cause of action for injunctive relief.

E. In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this Chapter may be subject to administrative remedies as set forth by City ordinance.

Section 5.96.200 Severability.

The provisions of this Chapter are hereby declared to be severable. If any provision, clause, word, sentence, or paragraph of this Chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Chapter.

Section 5.96.210 Existing Medical Marijuana Dispensaries; Time Limit for Filling Application for Permit.

The continued operation of a Medical Marijuana Business in existence before the effective date of this Chapter without having applied for a permit obtained pursuant to the provisions of this Chapter for more than ninety (90) days after the effective date of this Chapter shall constitute a violation of this Chapter.
Section 2. This Ordinance shall be in full force and effect thirty (30) days from and after its adoption.

Section 3. The City Clerk is hereby authorized and directed to publish this Ordinance by one insertion in a newspaper of general circulation in the City of Tulare within ten (10) days of its passage to print.

PASSED, ADOPTED AND APPROVED this _______ day of ____________________, 2005.

President of the Council and Ex-Officio Mayor of the City of Tulare

ATTEST:

Chief Deputy City Clerk and Clerk
of the Council of the City of Tulare
ORDINANCE NO. 05-1999

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TULARE
AMENDING TITLE 7 ADDING CHAPTER 7.48 OF THE TULARE MUNICIPAL
CODE PERTAINING TO PUBLIC USE/CONSUMPTION OF MEDICAL
MARIJUANA

SECTION 1. Title 7 of the Tulare Municipal Code is hereby amended by the addition thereto of
Chapter 7.48, which shall read as follows:

Chapter 7.48
PUBLIC USE/CONSUMPTION OF MEDICAL MARIJUANA

7.48.010 Purpose and Intent
7.48.020 Definitions
7.48.030 Regulations Applicable to Public Use/Consumption of Medical Marijuana
7.48.040 Regulations Applicable to Individual Cultivation
7.48.050 Penalties

Section 7.48.010 Purpose and Intent

It is the purpose of this ordinance to promote the health, safety, morals, general welfare and enjoyment of private property of the residents within the City of Tulare by restricting the public use and consumption of marijuana for medical purposes and by regulating the individual cultivation of medical marijuana.

Section 7.48.020 Definitions

All definitions set forth in Health & Safety Code sections 11362.5 and 11362.7 et seq, as may be amended, including but not limited to the terms "person with an identification card", "primary caregiver", "qualified patient", and "identification card" shall apply under this Ordinance in addition to the definitions set forth as follows: "Medical Marijuana" is defined in strict accordance with California Health and Safety Code section 11362.5 and 11362.7 et seq. "Cultivation of medical marijuana" means the growing of medical marijuana for medical purposes as defined in strict accordance with California Health and Safety Code sections 11362.5 and 11362.7 et seq.

Section 7.48.030 Regulations Applicable to Public Use/Consumption of Medical Marijuana

No person shall smoke, ingest, or otherwise consume medical marijuana in the City of Tulare unless such smoking, ingesting or consumption occurs entirely within a private residence.

Section 7.48.040 Regulations Applicable to Individual Cultivation

In addition to any other applicable regulation under the Municipal Code, all cultivation of medical marijuana in the City of Tulare shall occur at all times in a secure, locked and fully enclosed structure.

Section 7.48.050 Penalties

Any person who violates any provisions of this Chapter which are declared to be unlawful, shall be guilty of a misdemeanor, subject to a penalty of imprisonment in the County Jail for a period of time not to exceed six (6) months, or by a fine not to exceed Five Hundred Dollars ($500) or both, for each such violation. Notwithstanding the classification of a violation of this Chapter as a misdemeanor, at the time an action is commenced to enforce the provisions of this Chapter, the trial court, upon recommendation of the Prosecuting Attorney, may reduce the charged offense from a misdemeanor to an infraction. Any person convicted of an infraction under this Chapter shall be punished by: (1) a fine not exceeding Fifty Dollars ($50) for a first violation; (2) a fine not exceeding One Hundred Dollars ($100) for the second violation of this Chapter within one (1) year; and (3) a fine not exceeding Two Hundred Fifty Dollars ($250) for each additional violation of this Chapter within one (1) year.
Section 2. This Ordinance shall be in full force and effect thirty (30) days from and after its adoption.

Section 3. The City Clerk is hereby authorized and directed to publish this Ordinance by one insertion in a newspaper of general circulation in the City of Tulare within ten (10) days of its passage to print.

PASSED, ADOPTED AND APPROVED this ______ day of ____________, 2005.

ATTEST:

[Signature]

Chief Deputy City Clerk and Clerk of the Council of the City of Tulare

[Signature]

President of the Council and Ex-Officio Mayor of the City of Tulare
ORDINANCE NO. 05-2000

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TULARE
AMENDING TITLE 10, CHAPTER 10.168 OF THE TULARE MUNICIPAL
CODE PERTAINING TO MEDICAL MARIJUANA BUSINESSES

SECTION 1. Title 10 of the Tulare Municipal Code is hereby amended by the addition thereto of
Chapter 10.168.090, which shall read as follows:

Chapter 10.168

SPECIAL USES

10.168.010 Purpose
10.168.020 Objectives
10.168.030 Sale of Vehicle Fuel
10.168.040 Alcoholic Beverage, On-Sale and Off-Sale
10.168.050 Modular Structures
10.168.060 Movement and Placement of Structures
10.168.070 Recycling Facilities
10.168.080 Outdoor Assemblies in the RA Zone District
10.168.090 Medical Marijuana Businesses

Section 10.168.010 Purpose

The purpose of this Chapter is to provide procedures, development standards and location criteria for
special uses within the City of Tulare. Special uses may include, but shall not be limited to, service stations,
sale of alcoholic beverages, and modular structures.

Section 10.168.020 Objectives

A. Establish location criteria for special uses to insure that these uses do not have an adverse impact on the
public health, safety or welfare.

B. Set forth development standards for special uses when they are constructed

Section 10.168.030 Sale of Vehicle Fuel

A. A conditional use permit is required for a business engaged in the sale an automobile gasoline or diesel
fuel:

B. The following are development standards and location criteria for businesses engaged in the sale of
automobile gasoline:

1. Service stations, convenience stores and mini-markets shall have a minimum lot size of not less
than 15,000 square feet, with not less than 125 feet of frontage on a public street (this requirement shall
not apply to the redevelopment of a pre-existing service station use).

2. Except for truck refueling stations, service stations, convenience stores and mini-markets shall be
permitted only at the intersection of a major arterial or arterial street as shown on the General Plan, except
in the case of an integrated commercial shopping center, where the Planning Commission, at its
discretion, may allow the development of a service station, provided that the service station can be made
a functional part of the center; that it will blend architecturally with the center; and that it will not disrupt
either the internal or external traffic flow in and around the center.

3. Businesses engaged in the sale of automobile gasoline shall not be constructed on more than two
corners of an intersection.
4. Utility trailers and rental trucks may be stored (for rental purposes) on a service station site, provided they are screened from view and adequate space is provided by addition to the minimum site requirement. Utility trailers and other rental equipment shall not be permitted in a C-1 district or in shopping centers.

5. All merchandise shall be stored and displayed within the service station building with the exception of lubricating items and accessories, which may be displayed and maintained in movable cabinets or racks especially designed for the display of such items.

6. All repair works and servicing operations shall be conducted within a completely enclosed building. No outdoor storage of disabled vehicles, vehicles under repair, automobile parts, or repair equipment shall be allowed at any time. No dismantling of automobiles for the purposes of selling parts shall be allowed.

7. No body or fender work, automobile painting, or tire recapping shall be permitted.

Section 10.168.040   Alcoholic Beverage, On-Sale and Off-Sale

A. The Planning Commission shall consider all uses and businesses proposing to sell alcoholic beverages to the public, or in case of a private club, its members, in accordance with Section 10.116: Conditional Use Permits.

B. The Planning Commission shall consider whether the proposed use or business will detrimentally affect nearby properties or sensitive land uses, including but not limited to, residential neighborhoods, schools, churches, hospitals, public playgrounds or other similar uses.

C. The sale of alcoholic beverages for temporary periods shall not be subject to a conditional use permit, but shall be subject to review and approval by the Planning and Building Director and City Police Chief, in accordance with Section 10.140: Administrative Agreements.

D. The provisions of this Section do not apply to wholesale businesses providing services to retailers only.

Section 10.168.050   Modular Structures

A. A modular structure shall mean any designed, manufactured, re-manufactured, altered, used, or converted-for-use transportable building or major component of a building designed for use by itself or for on-site incorporation with similar units into a structure for residential, commercial, professional, or industrial use. A modular structure includes all residential units except as defined in Sections 18008 and 18008.5 of the California Health and Safety Code.

B. A permanent modular structure shall have the same meaning as modular structure but will exist on a parcel of land two years or more.

C. A temporary modular structure shall have the same meaning as modular structure but will exist on a parcel of land for less than two years. The Planning Commission may set a time limit of less than two years where it deems appropriate.

D. A permanent modular structure may be approved by the Planning Commission in accordance with Section 10.116, Conditional Use Permits, subject to the following provisions:

1. A conditional use permit shall be filed and approved for each modular structure on a site.

2. Each permanent modular structure shall be placed on a permanent foundation.

3. All permanent modular structures shall be of an architectural style consistent with surrounding structures.

4. Permanent parking spaces shall be provided as required by Section 10.192: Parking and Loading.

5. Landscaping shall be provided as required by Section 10.196: Landscaping.
6. Permanent modular structures shall comply with all applicable Federal, State and local laws.

E. A temporary modular structure may be approved by the Planning Commission in accordance with Section 10.116; Conditional Use Permits subject to the following development standards and regulations:

1. All temporary modular structures shall be screened or located to minimize visibility from street frontages.

2. All temporary modular structures shall provide skirting around the structure as required by the Planning Commission.

3. A temporary modular structure shall be removed within 30 days of expiration of the time period approved by the Planning Commission.

4. A bond in the amount set by the Planning Commission shall be posted and filed with the Planning and Building Department prior to installation of any temporary modular structure. Said bond shall be executed by the City of Tulare if the temporary modular structure is not removed after 30 days have lapsed from expiration of the time limit as approved by the Planning Commission.

5. Each temporary modular structure shall comply with all applicable Federal, State and local laws.

Section 10.168.060 Movement and Placement of Structures

A. No structure (except a modular structure regulated by Section 10.168.05 of the Tulare Municipal Code) shall be moved and located onto real property located within the City of Tulare unless and until a conditional use permit pursuant to Section 10.116 governing Conditional Use Permit(s) of the Tulare Zoning Ordinance shall have been first applied for and obtained. No movement of said structure can commence until and unless such a conditional use permit has been issued. At a minimum, the following conditions shall be imposed as part of the conditional use permit.

1) Prior to movement of a structure all requisite permits, including, but not limited to, a moving permit and a building permit, shall be obtained.

2) The structure shall be compatible in size and scale, with the neighborhood the structure is intended to be moved into.

3) Prior to the movement of any structure, a cash deposit, in an amount not less than five-thousand dollars ($5,000), with the amount established by the Planning Commission, shall be transmitted to the City of Tulare for the purpose of securing the movement of a structure off the site, or demolition, should performance and completion of improvement to the structure not take place within limits set forth in this ordinance and by the Planning Commission.

The deposit shall be reimbursed to the depositor based upon performance, as follows:

20% after structure is placed on a permanent foundation.
30% after completion of street-facing elevations
50% following issuance of a Certificate of Occupancy

4) A building permit, issued for the purpose of improving a structure to be moved onto a site within the City of Tulare, shall be valid for a period not to exceed 90 days. Any building permits issued after this period shall be subject to the structure being substantially completed and the full completion of the side or sides of the structure facing a public street.

5) Except as permitted by the Planning Commission, the front door of a residential structure shall be located on the side of the structure facing the nearest public street.

Section 10.168.070 Recycling Facilities

Recyclable material is reusable material including but not limited to metals, glass, plastic and paper, which are intended for reuse, remanufacture, or reconstitution for the purpose of using the altered form.
Recyclable material does not include refuse or hazardous materials. Recyclable material may include used motor oil collected and transported in accordance with Section 25250.11 and 216643.2(b)(4) of the California Health and Safety Code.

A recycling facility is a center for the collection and processing of recyclable materials. A certified recycling facility or certified processor means a recycling facility certified by the Department of Conservation as meeting the requirements of the California Beverage Container Recycling and Litter Reduction Act of 1986. A recycling facility does not include storage containers or processing activity located on the premises of a residential, commercial or manufacturing use and used solely for the recycling of material generated by that residential property, business or manufacturer. Recycling facilities are either collection facilities or processing facilities.

A collection facility is a center for the acceptance by donation, redemption, or purchase, of recyclable materials from the public. Such facility shall not complete any processing except limited bailing, batching and the sorting of recyclable material and shall be classified as either a small collection or a large collection facility.

A. A small collection facility is a collection facility which occupies an area of not more than 200 square feet, and may include a mobile unit, bulk reverse vending machine or a grouping of reverse vending machines, a kiosk type unit which may include a permanent structure, or an unattended container placed for the donation of recyclable materials.

B. A large collection facility is a collection facility which occupies an area of more than 200 square feet and may include a mobile unit, bulk reverse vending machine or a grouping of reverse vending machines, a kiosk type unit which may include a permanent structure, or an unattended container placed for the donation of recyclable materials.

C. A processing facility is a building or enclosed space used for the collection and processing of recyclable materials. Processing means the preparation of material for efficient shipment, or to an end-user's specifications, by such means as baling, briquetting, impacting, flattening, grinding, crushing, mechanical sorting, shredding, cleaning and re-manufacturing.

Section 10.168.080 Outdoor Assemblies in the RA Zone District

Outdoor assemblies shall comply with the following requirements of this section.

A. A conditional use permit shall be obtained in accordance with the procedures outlined in Section 10.116.

B. Applicant shall provide a detailed site plan depicting areas to be used for seating, parking, driveways, open space areas and setbacks.

C. Parking shall be provided at one space per three seats, or if no seats are provided, one space per 40 square feet of area devoted to assembly use. All parking areas shall be improved to include gravel, rock, dust binder or other surfacing material, which will mitigate dust. All parking areas shall be maintained to control dust.

D. All outdoor music shall not exceed 65dbA at any property line conterminous with any R-1 zone district.

E. All public works improvements shall be provided as required by the Public Works Director.

F. No loud speaker may be used for an outdoor assembly that produces sounds, which will cause a significant noise impact. An applicant who proposes the use of a loud speaker shall submit a plan to the Planning Commission demonstrating that the use of a loud speaker will not cause significant noise impacts.

G. Property must contain a single family house which is owner occupied by the applicant/holder of the use permit.

H. Hours of operation shall be limited to 9:00 a.m. to 10:00 p.m. The Planning Commission may impose additional requirements by restricting the use to certain days of the week.
The Planning Commission may require a time limit (sunset clause) on any use permit.

10.168.090 Medical Marijuana Businesses

A. Definition of "Medical Marijuana", Medical Marijuana Business", and "Medical Marijuana Dispensary" are defined in Title 5, Section 5.96.020.

B. A Medical Marijuana Business is not and may not be approved as an accessory use to any other use permitted by this Code.

C. No more than one Medical Marijuana Business may operate out of a single building.

D. A Medical Marijuana Dispensary shall not operate within 1000 feet of a public or private school serving the educational needs of elementary or high school students.

E. All Medical Marijuana Dispensaries may only be located in a C-2 zone or within the downtown precinct as defined by the Tulare General Plan.

F. Medical Marijuana Dispensaries under this Ordinance are considered commercial business with a Standard Industrial Classification (SIC) of "Personal Services (group 70) or "Miscellaneous Services (group 89).

Section 2: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 3. This Ordinance shall be in full force and effect thirty (30) days from and after its adoption.

Section 4. The City Clerk is hereby authorized and directed to publish this Ordinance by one insertion in a newspaper of general circulation in the City of Tulare within ten (10) days of passage to print.

PASSED, ADOPTED AND APPROVED this ______day of __________________, 2005.

ATTEST:

President of the Council and Ex-Officio Mayor of the City of Tulare

Chief Deputy City Clerk and Clerk of the Council of the City of Tulare
§ 11362.7 Health & Safety.

For purposes of this article, the following definitions shall apply:

(a) "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient’s medical record the physician’s assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

(b) "Department" means the State Department of Health Services.

(c) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.

(d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

   (1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 5 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

   (2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

   (3) An individual who has been designated as a primary caregiver by a...
qualified patient or person with an identification card who resides in a
city or county other than that of the primary caregiver, if the
individual has not been designated as a primary caregiver by any other
qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the
primary caregiver is the parent of a minor child who is a qualified
patient or a person with an identification card or the primary caregiver
is a person otherwise entitled to make medical decisions under state law
pursuant to Sections 6922, 7002, 7050, or 7120 of the
Family Code.

(f) "Qualified patient" means a person who is entitled to the
protections of Section 11362.5, but who does not have an identification
card issued pursuant to this article.

(g) "Identification card" means a document issued by the State
Department of Health Services that document identifies a person
authorized to engage in the medical use of marijuana and the person a
designated primary caregiver, if any.

(h) "Serious medical condition" means all of the following medical
conditions:

1. Acquired immune deficiency syndrome (AIDS).

2. Anorexia.

3. Arthritis.


5. Cancer.

6. Chronic pain.

7. Glaucoma.

8. Migraine.

9. Persistent muscle spasms, including, but not limited to, spasms
associated with multiple sclerosis.

10. Seizures, including, but not limited to, seizures associated with
epilepsy.

11. Severe nausea.

12. Any other chronic or persistent medical symptom that either:

(A) Substantially limits the ability of the person to conduct one or
more major life activities as defined in the Americans with Disabilities

(B) If not alleviated, may cause serious harm to the patient’s safety
or physical or mental health.

(i) "Written documentation" means accurate reproductions of those
portions of a patient’s medical records that have been created by the
attending physician, that contain the information required by paragraph
(2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

(Added by Stats. 2003, c. 875, sec. 2.)
§ 11362.71 Health & Safety.

(a)(1) The department shall establish and maintain a voluntary program for the issuance of identification cards to qualified patients who satisfy the requirement of this article and voluntarily apply to the identification card program.

(2) The department shall establish and maintain a 24-hour, toll-free telephone number that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of an identification card issued by the department, until a cost-effective Internet Web-based system can be developed for this purpose.

(b) Every county health department, or the county's designee, shall do all of the following:

(1) Provide applications upon request to individuals seeking to join the identification card program.

(2) Receive and process completed applications in accordance with Section 11362.72.

(3) Maintain records of identification card programs.

(4) Utilize protocols developed by the department pursuant to paragraph (1) of subdivision (d).

(5) Issue identification cards developed by the department to approved applicants and designated primary caregivers.

(c) The county board of supervisors may designate another health-related governmental or nongovernmental entity or organization to perform the functions described in subdivision (b), except for an entity or organization that cultivates or distributes marijuana.

(d) The department shall develop all of the following:

(1) Protocols that shall be used by a county health department or the county's designee to implement the responsibilities described in subdivision (b), including, but not limited to, protocols to confirm the accuracy of information contained in an application and to protect the confidentiality of program records.

(2) Application forms that shall be issued to requesting applicants.

(3) An identification card that identifies a person authorized to engage in the medical use of marijuana and an identification card that identifies the person's designated primary caregiver, if any. The two identification cards developed pursuant to this paragraph shall be easily
distinguishable from each other.

(e) No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in an amount established pursuant to this article, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of this article.

(f) It shall not be necessary for a person to obtain an identification card in order to claim the protections of Section 11362.5.

(Added by Stats. 2003, c. 875, sec. 2.)
$11362.765 Health & Safety.

(a) Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.3, or 11570. However, nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this article nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.

(b) Subdivision (a) shall apply to all of the following:

(1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use.

(2) A designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those established in subdivision (a) of Section 11362.77, only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.

(3) Any individual who provides assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person.

(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360.

(Added by Stats. 2003, c. 875, sec. 2.)
§ 11362.77 Health & Safety.

(a) A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient.

(b) If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.

(c) Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).

(d) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.

(e) The Attorney General may recommend modifications to the possession or cultivation limits set forth in this section. These recommendations, if any, shall be made to the Legislature no later than December 1, 2005, and may be made only after public comment and consultation with interested organizations, including, but not limited to, patients, health care professionals, researchers, law enforcement, and local governments. Any recommended modification shall be consistent with the intent of this article and shall be based on currently available scientific research.

(f) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of marijuana consistent with this article.

(Added by Stats. 2003, c. 875, sec. 2.)
California Code

CALIFORNIA HEALTH AND SAFETY CODE
DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT
Chapter 6. Offenses and Penalties
Article 2.5. Medical Marijuana Program

§ 11362.775 Health & Safety.

Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

(Added by Stats. 2003, c. 875, sec. 2.)

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California Code

CALIFORNIA HEALTH AND SAFETY CODE
DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT
Chapter 6. Offenses and Penalties
Article 2.5. Medical Marijuana Program

§ 11362.78 Health & Safety.

A state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.

(Added by Stats. 2003, c. 875, sec. 2.)
§ 11362.785 Health & Safety.

(a) Nothing in this article shall require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.

(b) Notwithstanding subdivision (a), a person shall not be prohibited or prevented from obtaining and submitting the written information and documentation necessary to apply for an identification card on the basis that the person is incarcerated in a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained.

(c) Nothing in this article shall prohibit a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained, from permitting a prisoner or a person under arrest who has an identification card, to use marijuana for medical purposes under circumstances that will not endanger the health or safety of other prisoners or the security of the facility.

(d) Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana.

(Added by Stats. 2003, c. 875, sec. 2.)
California Code

California Code
CALIFORNIA HEALTH AND SAFETY CODE
DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT
Chapter 6. Offenses and Penalties
Article 2.5. Medical Marijuana Program

§ 11362.79 Health & Safety.

Nothing in this article shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana under any of the following circumstances:

(a) In any place where smoking is prohibited by law.

(b) In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence.

(c) On a schoolbus.

(d) While in a motor vehicle that is being operated.

(e) While operating a boat.

[Added by Stats. 2003, c. 875, sec. 2.]

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California Code

CALIFORNIA HEALTH AND SAFETY CODE
DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT
Chapter 6. Offenses and Penalties
Article 2.5. Medical Marijuana Program

§ 11362.83 Health & Safety.

Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.

(Added by Stats. 2003, c. 875, sec. 2.)

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AGENDA ITEM TRANSMITTAL SHEET

Submitting Department: DSD - Planning and Building Department

For Council Meeting of: December 20, 2005

Documents Attached: ■ Ordinance □ Resolution □ Staff Report □ Other □ None

AGENDA ITEM: A public hearing regarding ordinances regulating Medical Marijuana.

IS PUBLIC HEARING REQUIRED: ■ Yes □ No

BACKGROUND EXPLANATION:

Attached are the three ordinances regulating medical marijuana. The first ordinance (Chapter 5.96) establishes a “medical marijuana business permit”. This ordinance outlines the steps to require to obtain the permit. Section 5.96.140 lists the operating requirements and is very similar to Visalia’s ordinance.

The second ordinance (Chapter 7.48) is a very straightforward prohibition on public smoking or consumption of marijuana in public.

The third ordinance revises Chapter 10.168 by adding Section 10.168.090 (medical marijuana businesses). This new section adds locational requirements for medical marijuana businesses to the zoning ordinance.

STAFF RECOMMENDATION:

Pass to Print the following new ordinances.

1. Medical Marijuana Dispensaries by adding Chapter 5.96.
2. Public Use/Consumption of Medical Marijuana by adding Chapter 7.48.
3. Revise Chapter 10.168 by adding “Medical Marijuana Businesses” (Section 10.168.090)

IS ADDITIONAL (NON-BUDGETED) FUNDING REQUIRED: □ Yes ■ No

Signed: [Signature]

Mark S. Kielty

Date: 12/14/05

Title: Director of Planning and Building

Liaison Approval: [Signature]
ORDINANCE NO. 05-1998

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TULARE
AMENDING TITLE 5 ADDING CHAPTER 5.96 OF THE TULARE MUNICIPAL
CODE PERTAINING TO MEDICAL MARIJUANA DISPENSARIES

SECTION 1. Title 5 of the Tulare Municipal Code is hereby amended by the addition thereto of
Chapter 5.96, which shall read as follows:

Chapter 5.96

MEDICAL MARIJUANA DISPENSARIES

5.96.010 Purpose and Intent
5.96.020 Definitions
5.96.030 Enforcement of Chapter
5.96.040 Medical Marijuana Business Permit Required
5.96.050 Applications
5.96.060 Term, Renewals and Fees
5.96.070 Notification
5.96.080 Investigation and Action on Application
5.96.090 Grounds for Denial of Permit
5.96.100 Appeal from Denial
5.96.110 Suspension or Revocation of Permit
5.96.120 Judicial Review
5.96.130 Effect of Denial or Revocation
5.96.140 Operating Requirements
5.96.150 Zoning and Development Standards
5.96.160 Minors
5.96.170 Display of Permit
5.96.180 Transfer of Permits
5.96.190 Violations of Chapter: Enforcement
5.96.200 Severability
5.96.210 Existing Medical Marijuana Dispensaries; Time Limit for Filing Application for Permit

Section 5.96.010 Purpose and Intent

It is the purpose and intent of this ordinance to promote the health, safety, and general welfare of the
residents and businesses within the city by regulating medical marijuana dispensaries. It is not the intent nor
effect of this ordinance to restrict or deny qualified patients access to marijuana for medical purposes as intended
by the passage of the Compassionate Use Act of 1996 and SB 420 in 2004. Neither is it the intent nor effect of
this ordinance to condone or legitimize the use of marijuana.

Section 5.96.020 Definitions

All definitions set forth in Health & Safety Code sections 11362.5 and 11362.7 et seq., as may be
amended, including but not limited to the terms “attending physician”, “person with an identification card”,
“serious medical conditions”, shall apply under this Ordinance in addition to the definitions set for as follows:

“Applicant” means a person who is required to file an application for a permit under this chapter, including
an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee
or agent of a Medical Marijuana Business.

“City Planner” means the Planning and Building Director holding office in the City of Tulare or his or her
designee.
"Medical Marijuana" is defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 et seq.

"Medical Marijuana Dispensary" means any facility or location, whether fixed or mobile, where medical marijuana is made available to, distributed by, or distributed to one or more of the following: (1) a qualified patient, (2) a person with an identification card, or (3) a primary caregiver. All three of these terms are defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 et seq. Unless otherwise regulated by this Code or applicable law, a "medical marijuana dispensary" shall not include the following uses: a clinic licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code sections 11362.5, and 11362.7 et seq.

"Medical Marijuana Businesses" means any Medical Marijuana Dispensary; any cultivation and/or processing of medical marijuana operations by primary caregivers for three or more qualified patients or persons with identification cards; or collective or cooperative cultivation operations.

"Cultivation of Medical Marijuana" means the growing of medical marijuana for medical purposes as defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 et seq.

"Collective or Cooperative Cultivation" means the association with California of qualified patients, persons with valid identification cards, and designated primary caregivers to cultivate marijuana for medical purposes as defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 et seq.

"Processing of Medical Marijuana" means the harvesting of marijuana or the use of any process or equipment, including but not limited to dehydrators or humidifiers, that may be necessary to convert raw marijuana plants or plant parts into a consumable product.

"Permittee" means the person to whom a Medical Marijuana Business permit is issued.

"Written Recommendation" shall have the same definition as California Health and Safety Code section 11362.7 et seq., and as may be amended.

Section 5.96.030 Enforcement of Chapter.

The City Planner of the City of Tulare shall have the responsibility and duty of enforcement of this Chapter.

Section 5.96.040 Medical Marijuana Business Permit Required.

A. It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City of Tulare the operation of a Medical Marijuana Business unless the person first obtains and continues to maintain in full force and effect a Medical Marijuana Business permit from the City of Tulare as herein required.

B. A Medical Marijuana Business shall also be required to apply for and maintain a general City of Tulare business license as a prerequisite to obtaining a permit pursuant to the terms hereof.

Section 5.96.050 Applications.

A. The applicant for a Medical Marijuana Business permit shall submit to the City Planner or designee an application for a permit. The application shall be made under penalty of perjury and shall include the following information:
1. The full name, present address, and telephone number of the applicant;
2. The address to which notice of action on the application is to be mailed;
3. Previous addresses for the past five (5) years immediately prior to the present address of the applicant;
4. Written proof that the applicant is over the age of eighteen (18) years of age.
5. Applicant’s height, weight, color of eyes and hair;
6. An identification photograph of the applicant;
7. All business, occupation, or employment of the applicant for the five years immediately preceding the date of the application;
8. The business license history of the applicant, including whether such person, in previously operating in this or another city, county or state under a license has had such license revoked or suspended, the reason therefore, and the business or activity or occupation subsequent to such action of suspension or revocation;
9. The name or names of the person or persons having the management or supervision of applicant’s business;
10. Whether the person or persons having the management or supervision of applicant’s business have been convicted of a crime(s), the nature of such offense(s), and the sentence(s) received therefore;
11. The name of all employees, independent contractors, and other persons who will work at the proposed Medical Marijuana Business:
12. The proposed security arrangements for ensuring the safety of persons, safe and secure storage of the marijuana, and to protect the premises from theft which shall be kept confidential and not disclosed to the public as the public interest is served in preserving the confidentiality of such security arrangements;
13. A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the proposed Medical Marijuana Business. The sketch or diagram need not be professionally prepared, but must be drawn with marked dimensions of the interior of the premises;
14. A current and accurate straight-line drawing depicting the building and/or the portion thereof to be occupied by the proposed Medical Marijuana Business;
15. Authorization for the City of Tulare, its agents and employees to seek verification of the information contained within the application;
16. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct; and

B. If the applicant has completed the application improperly, or if the application is incomplete, the City Planner or designee shall within ten (10) days of receipt of the original application, notify the applicant of such fact.

C. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a Medical Marijuana Business permit.

Section 5.96.060  Term, Renewals and Fees.

A. Unless otherwise suspended or revoked, a Medical Marijuana Business permit shall expire one (1) year following its issuance. An operator of a Medical Marijuana Business may re-apply for a permit for subsequent year(s).

B. Every application for a permit or renewal shall be accompanied by a nonrefundable fee, as established by resolution adopted by the City Council from time to time. This application or renewal fee shall not include fingerprinting, photographing or background check costs and shall be in addition to any other business license fee or permit fee imposed by this code or other governmental agencies.

Section 5.96.070  Notification of Community.

A. Within ten (10) calendar days of filing an application for a Medical Marijuana Business permit, the applicant shall provide the City Planner or designee with proof that all residents and property owners within 300 feet of the proposed premises have been notified in writing by U.S. mail of the applicant’s intent to open such a business and filing of such application.
B. After the background checks and investigation are complete, and in no case later than forty-five (45) days after receipt of a completed application, the City Planner or designee shall determine whether to issue the Medical Marijuana Business permit. The City Planner or designee may grant the permit subject to conditions he or she deems reasonable under the circumstances to protect the public health, safety and welfare of the community. The City Planner or designee shall cause a written notice of his or her decision to issue or deny a permit to be delivered in person or mailed to the applicant by certified U.S. mail, postage prepaid, return receipt requested.

Section 5.90.090   Grounds for Denial of Permit.

The grounds for denial of a permit shall be one or more of the following:

A. The business or conduct of the business at a particular location is prohibited by any local or state law, statute, rule or regulation.

B. The applicant has violated any local or state law, statute, rule or regulation relating to medical marijuana business.

C. The applicant has knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a permit.

D. The applicant, his or her agent or employees, or any person who is exercising managerial authority on behalf of the applicant has been convicted of a felony or of a misdemeanor involving moral turpitude, or has engaged in misconduct related to the qualifications, functions or duties of a permittee. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

E. The applicant has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

F. The applicant has committed any act, which, if done by a permittee, would be grounds for suspension or revocations of a permit.

G. An applicant is under eighteen (18) years of age.

H. The Medical Marijuana Business does not comply with the ordinance standards of the City of Tulare Municipal Code or the development standards set forth in this Chapter.

I. The required application or renewal fees have not been paid.

Section 5.96.100   Appeal from Denial.

A. An applicant aggrieved by the decision of the City Planner or designee to deny a permit may appeal such decision to the City Council by filing a written notice with the City Clerk within ten (10) calendar days of service of the written notice of decision. If an appeal is not taken within such time, the City Planner’s decision shall be final.

B. Upon filing of a timely appeal, the permit application shall be scheduled by the City Clerk for a public hearing within forty-five (45) calendar days.

C. Notice of the hearing shall be given by the posting of notice on the premises where the activity is to be conducted for a period of not less than five (5) working days prior to the date of the hearing. In addition, a copy of the notice of hearing shall be mailed to the applicant at least five (5) working days in advance of the hearing. The City Council may give such additional notice of hearing as it deems appropriate in a particular case.

D. Following public hearing, the City Council may grant the permit subject to such conditions as it deems reasonable under the circumstances to protect the public health, safety, and welfare of the community or it
may deny the issuance of the permit for any of the grounds specified in this Chapter. The decision of the City Council shall be final.

Section 5.96.110 Suspension or Revocation of Permit.

A. The City Planner or designee may suspend or revoke a permit when the permittee or the permittee’s agent or employee has committed any one or more of the following acts:

1. Any act which would be considered a ground for denial of the permit in the first instance.
2. Violates any other provision of this Chapter or any local or State law, statute, rule or regulation relating to his or her permitted activity.
3. Engages in or permits misconduct substantially related to the qualification, functions or duties of the permittee.
4. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public.
5. Fails to take reasonable measures to control the establishment’s patrons’ conduct resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the business operation of another business.

6. Violates or fails to comply with the terms and conditions or the permit.

B. Prior to suspension or revocation, the City Planner or designee shall conduct a hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least five (5) working days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery to the permittee or by certified U.S. Mail, postage prepaid, addressed to the permittee at his or her address as it appears in his application for the permit.

C. If any permittee or person acting under the authority of a permittee is convicted of a public offense in any court for the violation of any law which relates to his or her permit, the City Planner or designee may immediately revoke the permit without any further action, other than giving notice of revocation to the permittee. In this circumstance, during the pendency of any appeal to the City Council, the permit shall not remain in effect.

D. Any permittee aggrieved by the decision of the City Planner or designee in suspending or revoking a permit may, within ten (10) calendar days, appeal to the City Council by filing a written notice with the City Clerk. Unless otherwise stated in this Chapter, during the pendency of the appeal to the Council, the permit shall remain in effect. If such appeal is not taken within ten (10) days, the decision of the City Planner or designee shall be final. If an appeal is timely filed, the appeal shall be held in accordance with the procedures for considering an appeal of the denial of a permit. The City Council may suspend or revoke the permit for any of the grounds specified in this Chapter. The City Council’s decision shall be final.

Section 5.96.120 Judicial Review.

Judicial review of a final decision made under this Chapter may be had by filing a petition for a writ of mandate with the superior court in accordance with the provision of the California Code of Civil Procedure section 1094.5. Any such petition shall be filed within ninety (90) days after the day the decision becomes final as provided in California Code of Civil Procedure section 1094.6, which shall be applicable for such actions.

Section 5.96.130 Effect of Denial or Revocation.

When the City Planner or designee has denied or revoked a permit and the time for appeal to the City Council has elapsed, or if after appeal to the City Council, the decision of the City Planner or designee has been affirmed by the City Council, no new application for a permit shall be accepted from the applicant and no permit shall be issued to such person or to any corporation in which he or she shall have any beneficial interest for a period of one (1) year after the action denying or revoking the permit.
Section 5.95.140  Operating requirements.

A Medical Marijuana Business, once permitted by the City Planner or Designee, shall meet the following operating standards for the duration of the use:

A. A Medical Marijuana Business shall be open for business only between the hours of 8:00 a.m. and 8:00 p.m. on any particular day.

B. A Medical Marijuana Business shall maintain a current register of the names of all employees employed by the Business.

C. A Medical Marijuana Business shall maintain a current register of all qualified patients, persons with identification cards and primary caregivers to whom it provides or distributes medical marijuana. Once documented the qualified patients, persons with identification cards and primary caregivers shall be “registered” patrons of the Business. The Business’s register shall be subject to periodic inspection to ensure compliance with the state law. The Business shall further maintain records of all patients and primary caregivers using the identification card number only when issued by the county, or its agent, pursuant to California Health and Safety Code section 11362.7 et seq., so as to protect the confidentiality of the cardholders, or a copy of the written recommendation from a physician stating the need for medical marijuana.

D. A Medical Marijuana Business shall post a sign, either at the building entrance or inside at the entrance, with a notice indicating that persons under the age of eighteen (18) years are precluded from entering the premises unless they are a qualified patient and they are in the presence of their parent or guardian.

E. A Medical Marijuana Dispensary may not possess more than eight (8) ounces of dried marijuana per registered qualified patient or primary caregiver on the premises. However, if a qualified patient or primary caregiver has a doctor’s recommendation that this quantity does not meet the qualified patient’s medical needs, the dispensary may increase the amount of dried marijuana per the doctor’s recommendation, the dispensary may not possess an amount of marijuana in excess of the registered patient’s needs.

F. No marijuana shall be smoked, ingested or otherwise consumed on the premises of the Business. The term “premises” includes the actual building, as well as any accessory structures, parking areas, or other immediate surroundings. The building entrance to a Medical Marijuana Business shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming marijuana on the premises or in the vicinity of the Business is prohibited.

G. Any cultivation of medical marijuana or processing of medical marijuana conducted by the Business shall at all times occur in a secure, locked, and fully enclosed structure. No Medical Marijuana Business may cultivate or process more than 99 marijuana plants, whether mature or immature.

H. No Medical Marijuana Business shall hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. In addition, alcohol shall not be provided, stored, kept, located, sold, dispensed, or used on the premises of the Business.

I. No Medical Marijuana Business shall conduct or engage in the commercial sale of any product, good or service. The term “commercial sale” does not include the provision of medical marijuana on terms and conditions consistent with this Chapter and the Compassionate Use Act of 1996, and any amendments thereto.

J. A Medical Marijuana Business shall provide adequate security on the premises, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft.

K. A Medical Marijuana Business shall provide litter removal services once during each day of operation on and in front of the premises and, if necessary, on public sidewalks within one hundred (100) feet of the premises.
L. A Medical Marijuana Business shall not cultivate, distribute or sell medical marijuana for a profit. A Business may receive compensation for its actual expenses, including reasonable compensation for service provided, or for payment of out-of-pocket expenses incurred in providing those services. However, any such Business must pay applicable sales tax on such sales or services and maintain the applicable seller's permit or similar permit from the State Franchise Tax Board or other applicable agency.

M. A Medical Marijuana Business shall meet all the operating criteria for the dispensing of medical marijuana as required pursuant to California Health and Safety Code sections 11362.5 and 11362.7 et seq.

N. Each Medical Marijuana Business shall allow the City Planner or designee to have access to the Business's books, records, accounts, and any and all data relevant to its activities for the purposes of conducting an audit or examination. Books, records, accounts, and any and all relevant data shall be produced no later than 24 hours after receipt of the City Planner's written request(s).

O. The Medical Marijuana Business shall meet any specific additional operating procedures and measures as may be imposed as conditions of approval by the City Planner or designee to ensure that operations of the Business is consistent with protection of the health, safety and welfare of the community, qualified patients and primary caregivers, and will not adversely affect surrounding uses.

P. The building in which the Medical Marijuana Business is located shall comply with all applicable local, state and federal rules, regulations and laws including, but not limited to, building codes and the Americans with Disability Act, as certified by the Building Official of the City.

Q. Any marijuana provided by a Medical Marijuana Business for the purpose of consumption by the recipient shall be contained in a package that includes, in a conspicuous location, the following warning: “Smoking may be hazardous to the health of the consumer, and smoking by pregnant women may result in fetal injury, premature birth and low birth weight. Further, ingestion of marijuana in any form may be hazardous to the health of the consumer and may impair the judgment of the consumer.”

R. A Medical Marijuana Business that provides marijuana in the form of food or other comestibles shall obtain and maintain the appropriate licenses from the County Health Department for the provisions of food or other comestibles.

S. A Medical Marijuana Business shall provide to the City Planner or designee, upon request, written evidence to the City Planner or designee’s reasonable satisfaction, that the Business is not engaged in interstate commerce.

T. No Medical Marijuana Business shall sell or display any drug paraphernalia as defined in California Health and Safety Code section 11364, et seq., or any implement that may be used to administer, use, consume, smoke or ingest medical marijuana.

Failure to comply with any of the above operating requirements shall result in the revocation of any permit issued.

Section 5.96.150 Zoning and Development Standards.

The provisions of Chapter 10.168.09 of Title 10 (“Zoning”) of the Municipal Code are applicable to Medical Marijuana Dispensaries and compliance with those provisions shall be considered additional requirements for a permit required by this Chapter.

Section 5.96.160 Minors.

A. It shall be unlawful for any permittee, operator, or other person in charge of any Medical Marijuana Business to employ any person who is not at least eighteen (18) years of age.

B. Persons under the age of eighteen (18) years shall not be allowed on the premises of a Medical Marijuana Business unless they are a qualified patient and they are in the presence of their parent or guardian.
Section 5.96.170 Display of permit.

Every Medical Marijuana Business shall display at all times during business hours the permit issued pursuant to the provisions of this Chapter in a conspicuous place so that the same may be readily seen by all persons entering the Medical Marijuana Business.

Section 5.96.180 Transfer of permits.

A. A permittee shall not operate a Medical Marijuana Business under the authority of a Medical Marijuana Business permit at any place other that the address of the Medical Marijuana Business stated in the application for the permit.

B. A permittee shall not transfer ownership or control of a Medical Marijuana Business permit to another person unless and until the transferee obtains an amendment to the permit from the City Planner or designee stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the City Planner or designee in accordance with this Chapter and accompanies the application with the transfer fee in an amount set by the resolution of the City Council, and the City Manager determines that the transferee would be entitled to the issuance of an original permit.

C. No permit may be transferred when the City Planner or designee has notified the permittee that the permit has been or may be suspended or revoked.

D. Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void, and the permit shall be deemed revoked.

Section 5.96.190 Violations of Chapter: Enforcement.

A. Any person that violates any provision of this Chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

B. Any use of condition caused or permitted to exist in violation of any of the provisions of this Chapter shall be and is hereby declared a public nuisance and may be summarily abated by the City pursuant to the City of Tulare Municipal Code.

C. Any person who violates, causes, or permits another person to violate any provision of this Chapter commits a misdemeanor.

D. The violation of any provisions of this Chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of City, create a cause of action for injunctive relief.

E. In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this Chapter may be subject to administrative remedies as set forth by City ordinance.

Section 5.96.200 Severability.

The provisions of this Chapter are hereby declared to be severable. If any provision, clause, word, sentence, or paragraph of this Chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Chapter.

Section 5.96.210 Existing Medical Marijuana Dispensaries: Time Limit for Filing Application for Permit.

The continued operation of a Medical Marijuana Business in existence before the effective date of this Chapter without having applied for a permit obtained pursuant to the provisions of this Chapter for more than ninety (90) days after the effective date of this Chapter shall constitute a violation of this Chapter.
Section 2. This Ordinance shall be in full force and effect thirty (30) days from and after its adoption.

Section 3. The City Clerk is hereby authorized and directed to publish this Ordinance by one insertion in a newspaper of general circulation in the City of Tulare within ten (10) days of its passage to print.

PASSED, ADOPTED AND APPROVED this ______ day of ______________________, 2005.

________________________
President of the Council and Ex-Officio Mayor of the City of Tulare

ATTEST:

________________________
Chief Deputy City Clerk and Clerk of the Council of the City of Tulare
ORDINANCE NO. 05-1999

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TULARE
AMENDING TITLE 7 ADDING CHAPTER 7.48 OF THE TULARE MUNICIPAL
CODE PERTAINING TO PUBLIC USE/CONSUMPTION OF MEDICAL
MARIJUANA

SECTION 1. Title 7 of the Tulare Municipal Code is hereby amended by the addition thereto of
Chapter 7.48, which shall read as follows:

Chapter 7.48

PUBLIC USE/CONSUMPTION OF MEDICAL MARIJUANA

7.48.010 Purpose and Intent
7.48.020 Definitions
7.48.030 Regulations Applicable to Public Use/Consumption of Medical Marijuana
7.48.040 Regulations Applicable to Individual Cultivation
7.48.050 Penalties

Section 7.48.010 Purpose and Intent

It is the purpose of this ordinance to promote the health, safety, morals, general welfare and enjoyment of
private property of the residents within the City of Tulare by restricting the public use and consumption of
marijuana for medical purposes and by regulating the individual cultivation of medical marijuana.

Section 7.48.020 Definitions

All definitions set forth in Health & Safety Code sections 11362.5 and 11362.7 et seq, as may be
amended, including but not limited to the terms "person with an identification card", "primary caregiver",
"qualified patient", and "identification card" shall apply under this Ordinance in addition to the definitions set forth
as follows: "Medical Marijuana" is defined in strict accordance with California Health and Safety Code section
11362.5 and 11362.7 et seq. "Cultivation of medical marijuana" means the growing of medical marijuana for
medical purposes as defined in strict accordance with California Health and Safety Code sections 11362.5 and
11362.7 et seq.

Section 7.48.030 Regulations Applicable to Public Use/Consumption of Medical Marijuana

No person shall smoke, ingest, or otherwise consume medical marijuana in the City of Tulare unless such
smoking, ingesting or consumption occurs entirely within a private residence.

Section 7.48.040 Regulations Applicable to Individual Cultivation

In addition to any other applicable regulation under the Municipal Code, all cultivation of medical
marijuana in the City of Tulare shall occur at all times in a secure, locked and fully enclosed structure.

Section 7.48.050 Penalties

Any person who violates any provisions of this Chapter which are declared to be unlawful, shall be guilty
of a misdemeanor, subject to a penalty of imprisonment in the County Jail for a period of time not to exceed six
(6) months, or by a fine not to exceed Five Hundred Dollars ($500) or both, for each such violation.
Notwithstanding the classification of a violation of this Chapter as a misdemeanor, at the time an action is
commenced to enforce the provisions of this Chapter, the trial court, upon recommendation of the Prosecuting
Attorney, may reduce the charged offense from a misdemeanor to an infraction. Any person convicted of an
infraction under this Chapter shall be punished by: (1) a fine not exceeding Fifty Dollars ($50) for a first
violation; (2) a fine not exceeding One Hundred Dollars ($100) for the second violation of this Chapter within one
(1) year; and (3) a fine not exceeding Two Hundred Fifty Dollars ($250) for each additional violation of this
Chapter within one (1) year.
Section 2. This Ordinance shall be in full force and effect thirty (30) days from and after its adoption.

Section 3. The City Clerk is hereby authorized and directed to publish this Ordinance by one insertion in a newspaper of general circulation in the City of Tulare within ten (10) days of its passage to print.

PASSED, ADOPTED AND APPROVED this ________ day of ________________, 2005.

ATTEST:

______________________________
Chief Deputy City Clerk and Clerk of the Council of the City of Tulare

President of the Council and Ex-Officio Mayor of the City of Tulare
ORDINANCE NO. 05-2000

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TULARE
AMENDING TITLE 10, CHAPTER 10.168 OF THE TULARE MUNICIPAL
CODE PERTAINING TO MEDICAL MARIJUANA BUSINESSES

SECTION 1. Title 10 of the Tulare Municipal Code is hereby amended by the addition thereto of
Chapter 10.168.090, which shall read as follows:

Chapter 10.168

SPECIAL USES

10.168.010 Purpose
10.168.020 Objectives
10.168.030 Sale of Vehicle Fuel
10.168.040 Alcoholic Beverage, On-Sale and Off-Sale
10.168.050 Modular Structures
10.168.060 Movement and Placement of Structures
10.168.070 Recycling Facilities
10.168.080 Outdoor Assemblies in the RA Zone District
10.168.090 Medical Marijuana Businesses

Section 10.168.010 Purpose

The purpose of this Chapter is to provide procedures, development standards and location criteria for
special uses within the City of Tulare. Special uses may include, but shall not be limited to, service stations,
sale of alcoholic beverages, and modular structures.

Section 10.168.020 Objectives

A. Establish location criteria for special uses to ensure that these uses do not have an adverse impact on the
    public health, safety or welfare.

B. Set forth development standards for special uses when they are constructed

Section 10.168.030 Sale of Vehicle Fuel

A. A conditional use permit is required for a business engaged in the sale an automobile gasoline or diesel
    fuel:

B. The following are development standards and location criteria for businesses engaged in the sale of
    automobile gasoline:

1. Service stations, convenience stores and mini-markets shall have a minimum lot size of not less
   than 15,000 square feet, with not less than 125 feet of frontage on a public street (this requirement shall
   not apply to the redevelopment of a pre-existing service station use).

2. Except for truck refueling stations, service stations, convenience stores and mini-markets shall be
   permitted only at the intersection of a major arterial or arterial street as shown on the General Plan, except
   in the case of an integrated commercial shopping center, where the Planning Commission, at its
   discretion, may allow the development of a service station, provided that the service station can be made
   a functional part of the center, that it will blend architecturally with the center, and that it will not disrupt
   either the internal or external traffic flow in and around the center.

3. Businesses engaged in the sale of automobile gasoline shall not be constructed on more than two
   corners of an intersection.
4. Utility trailers and rental trucks may be stored (for rental purposes) on a service station site, provided they are screened from view and adequate space is provided by addition to the minimum site requirement. Utility trailers and other rental equipment shall not be permitted in a C-1 district or in shopping centers.

5. All merchandise shall be stored and displayed within the service station building with the exception of lubricating items and accessories, which may be displayed and maintained in movable cabinets or racks especially designed for the display of such items.

6. All repair works and servicing operations shall be conducted within a completely enclosed building. No outdoor storage of disabled vehicles, vehicles under repair, automobile parts, or repair equipment shall be allowed at any time. No dismantling of automobiles for the purposes of selling parts shall be allowed.

7. No body or fender work, automobile painting, or tire recapping shall be permitted.

Section 10.168.040 Alcoholic Beverage, On-Sale and Off-Sale

A. The Planning Commission shall consider all uses and businesses proposing to sell alcoholic beverages to the public, or in case of a private club, its members, in accordance with Section 10.116: Conditional Use Permits.

B. The Planning Commission shall consider whether the proposed use or business will detrimentally affect nearby properties or sensitive land uses, including but not limited to, residential neighborhoods, schools, churches, hospitals, public playgrounds or other similar uses.

C. The sale of alcoholic beverages for temporary periods shall not be subject to a conditional use permit, but shall be subject to review and approval by the Planning and Building Director and City Police Chief, in accordance with Section 10.140: Administrative Agreements.

D. The provisions of this Section do not apply to wholesale businesses providing services to retailers only.

Section 10.168.050 Modular Structures

A. A modular structure shall mean any designed, manufactured, re-manufactured, altered, used, or converted-for-use transportable building or major component of a building designed for use by itself or for on-site incorporation with similar units into a structure for residential, commercial, professional, or industrial use. A modular structure includes all residential units except as defined in Sections 18008 and 18008.5 of the California Health and Safety Code.

B. A permanent modular structure shall have the same meaning as modular structure but will exist on a parcel of land two years or more.

C. A temporary modular structure shall have the same meaning as modular structure but will exist on a parcel of land for less than two years. The Planning Commission may set a time limit of less than two years where it deems appropriate.

D. A permanent modular structure may be approved by the Planning Commission in accordance with Section 10.116, Conditional Use Permits, subject to the following provisions:

1. A conditional use permit shall be filed and approved for each modular structure on a site.

2. Each permanent modular structure shall be placed on a permanent foundation.

3. All permanent modular structures shall be of an architectural style consistent with surrounding structures.

4. Permanent parking spaces shall be provided as required by Section 10.192: Parking and Loading.

5. Landscaping shall be provided as required by Section 10.196: Landscaping.
6. Permanent modular structures shall comply with all applicable Federal, State and local laws.

E. A temporary modular structure may be approved by the Planning Commission in accordance with Section 10.116; Conditional Use Permits subject to the following development standards and regulations:

1. All temporary modular structures shall be screened or located to minimize visibility from street frontages.

2. All temporary modular structures shall provide skirting around the structure as required by the Planning Commission.

3. A temporary modular structure shall be removed within 30 days of expiration of the time period approved by the Planning Commission.

4. A bond in the amount set by the Planning Commission shall be posted and filed with the Planning and Building Department prior to installation of any temporary modular structure. Said bond shall be executed by the City of Tulare if the temporary modular structure is not removed after 30 days have lapsed from expiration of the time limit as approved by the Planning Commission.

5. Each temporary modular structure shall comply with all applicable Federal, State and local laws.

Section 10.168.060 Movement and Placement of Structures

A. No structure (except a modular structure regulated by Section 10.168.05 of the Tulare Municipal Code) shall be moved and located onto real property located within the City of Tulare unless and until a conditional use permit pursuant to Section 10.116 governing Conditional Use Permit(s) of the Tulare Zoning Ordinance shall have been first applied for and obtained. No movement of said structure can commence until and unless such a conditional use permit has been issued. At a minimum, the following conditions shall be imposed as part of the conditional use permit.

1) Prior to movement of a structure all requisite permits, including, but not limited to, a moving permit and a building permit, shall be obtained.

2) The structure shall be compatible in size and scale, with the neighborhood the structure is intended to be moved into.

3) Prior to the movement of any structure, a cash deposit, in an amount not less than five-thousand dollars ($5,000), with the amount established by the Planning Commission, shall be transmitted to the City of Tulare for the purpose of securing the movement of a structure off the site, or demolition, should performance and completion of improvement to the structure not take place within limits set forth in this ordinance and by the Planning Commission.

The deposit shall be reimbursed to the depositor based upon performance, as follows:

20% after structure is placed on a permanent foundation.

30% after completion of street-facing elevations

50% following issuance of a Certificate of Occupancy

4) A building permit, issued for the purpose of improving a structure to be moved onto a site within the City of Tulare, shall be valid for a period not to exceed 90 days. Any building permits issued after this period shall be subject to the structure being substantially completed and the full completion of the side or sides of the structure facing a public street.

5) Except as permitted by the Planning Commission, the front door of a residential structure shall be located on the side of the structure facing the nearest public street.

Section 10.168.070 Recycling Facilities

Recyclable material is reusable material including but not limited to metals, glass, plastic and paper, which are intended for reuse, remanufacture, or reconstitution for the purpose of using the altered form.
Recyclable material does not include refuse or hazardous materials. Recyclable material may include used motor oil collected and transported in accordance with Section 25250.11 and 216043.2(b) (4) of the California Health and Safety Code.

A recycling facility is a center for the collection and/or processing of recyclable materials. A certified recycling facility or certified processor means a recycling facility certified by the Department of Conservation as meeting the requirements of the California Beverage Container Recycling and Litter Reduction Act of 1986. A recycling facility does not include storage containers or processing activity located on the premises of a residential, commercial or manufacturing use and used solely for the recycling of material generated by that residential property, business or manufacturer. Recycling facilities are either collection facilities or processing facilities.

A collection facility is a center for the acceptance by donation, redemption, or purchase, of recyclable materials from the public. Such facility shall not complete any processing except limited bailing, batching and the sorting of recyclable material and shall be classified as either a small collection facility or a large collection facility.

A. A small collection facility is a collection facility which occupies an area of not more than 200 square feet, and may include a mobile unit, bulk reverse vending machine or a grouping of reverse vending machines, a kiosk type unit which may include a permanent structure, or an unattended container placed for the donation of recyclable materials.

B. A large collection facility is a collection facility which occupies an area of more than 200 square feet and may include a mobile unit, bulk reverse vending machine or a grouping of reverse vending machines, a kiosk type unit which may include a permanent structure, or an unattended container placed for the donation of recyclable materials.

C. A processing facility is a building or enclosed space used for the collection and processing of recyclable materials. Processing means the preparation of material for efficient shipment, or to an end-user's specifications, by such means as bailing, briquetting, impacting, flattening, grinding, crushing, mechanical sorting, shredding, cleaning and re-manufacturing.

Section 10.168.080 Outdoor Assemblies in the RA Zone District

Outdoor assemblies shall comply with the following requirements of this section.

A. A conditional use permit shall be obtained in accordance with the procedures outlined in Section 10.116.

B. Applicant shall provide a detailed site plan depicting areas to be used for seating, parking, driveways, open space areas and setbacks.

C. Parking shall be provided at one space per three seats, or if no seats are provided, one space per 40 square feet of area devoted to assembly use. All parking areas shall be improved to include gravel, rock, dust binder or other surfacing material, which will mitigate dust. All parking areas shall be maintained to control dust.

D. All outdoor music shall not exceed 65dbA at any property line contiguous with any R-1 zone district.

E. All public works improvements shall be provided as required by the Public Works Director.

F. No loud speaker may be used for an outdoor assembly that produces sounds, which will cause a significant noise impact. An applicant who proposes the use of a loud speaker shall submit a plan to the Planning Commission demonstrating that the use of a loud speaker will not cause significant noise impacts.

G. Property must contain a single family house which is owner occupied by the applicant/holder of the use permit.

H. Hours of operation shall be limited to 9:00 a.m. to 10:00 p.m. The Planning Commission may impose additional requirements by restricting the use to certain days of the week.
1: The Planning Commission may require a time limit (sunset clause) on any use permit.

10.168.090 Medical Marijuana Businesses

A. Definition of "Medical Marijuana", Medical Marijuana Business", and "Medical Marijuana Dispensary" are defined in Title 6, Section 5.96.020.

B. A Medical Marijuana Business is not and may not be approved as an accessory use to any other use permitted by this Code.

C. No more than one Medical Marijuana Business may operate out of a single building.

D. A Medical Marijuana Dispensary shall not operate within 1000 feet of a public or private school serving the educational needs of elementary or high school students.

E. All Medical Marijuana Dispensaries may only be located in a C-2 zone or within the downtown precinct as defined by the Tulare General Plan.

F. A Medical Marijuana Dispensaries under this Ordinance are considered commercial business as with a Standard Industrial Classification (SIC) of "Personal Services (group 70) or "Miscellaneous Services (group 89)."

Section 2. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 3. This Ordinance shall be in full force and effect thirty (30) days from and after its adoption.

Section 4. The City Clerk is hereby authorized and directed to publish this Ordinance by one insertion in a newspaper of general circulation in the City of Tulare within ten (10) days of passage to print.

PASSED, ADOPTED AND APPROVED this ______ day of ____________, 2005.

ATTEST:

Chief Deputy City Clerk and Clerk of the Council of the City of Tulare

President of the Council and Ex-Officio Mayor of the City of Tulare
SUBJECT: PORTERVILLE MUNICIPAL WATER SLIDE – CONSTRUCTION OPTIONS

SOURCE: Public Works Department - Engineering Division

COMMENT: On November 7, 2006, the City received one bid for the water slide project. Unfortunately, the lone bid ($183,288.29) received from Webb & Sons of Porterville, exceeded the Engineer’s estimate by 13%. Council directed staff to re-bid the project with the hope that more bids would be received and that the bids would come within 10% of the engineer’s estimate of probable cost. Funding is available from eligible CDBG grant allocations and programmed within the current budget for the project.

The City did not receive any bids at the close of the bid opening date of February 13, 2007. Some effort and previous expense were put into preparatory work for a water slide when the pool construction was done 3 years ago. Under deck plumbing, electrical conduits and foundation work are in place. At this time, staff is looking for direction from Council on the best way to proceed with the project. Staff provides the following suggestions for Council’s consideration:

1. Do nothing. Use the allocated funds on other Murry Park Master Plan facilities.

2. Public Works to act as the “General Contractor”. The City can purchase the water slide equipment and hire the individual “trades” needed to properly install the water slide. Considerable effort will be required by staff to document expenditures and procurement processes, determine staff compensation rates with consideration to mandated prevailing wages, and the implementing of competitive procurement process for every outside trade and equipment purchase. The full extent of staff effort necessary for this alternative is unknown largely because there is no experience to rely upon. The risk would be if an audit exception is taken at some point in the future, or if a claim is made that the correct wages were not paid, the City could be required to reimburse significant CDBG funds.

3. Negotiate with Webb & Sons for construction of the water slide. The City is interested in this scenario if Webb & Sons will agree to construct the water slide at the bid price ($183,288.29) offered on November 7, 2006. Webb & Sons has indicated an interest in this proposal but needs time to confirm supplier costs.

Appropriated/Funded ✓ CM ✓ Item No. 22
RECOMMENDATION: That the City Council:

1. Direct Public Works to negotiate a contract with Webb & Sons for the installation of the water slide at a cost not to exceed $183,288.29;

2. Authorize a 10% contingency to cover unforeseen Construction costs; and

3. Authorize progress payments up to 90% of the contract amount.

If Webb & Sons cannot construct the water slide at the above mentioned bid amount, that the City Council:

Direct Public Works to return the matter for further Council consideration for either a negotiated contract with Webb & Sons, or more complete information on the option of City crews acting as the "General Contractor" for completion of the project within the current available funding.

ATTACHMENT: Locator Map
CITY COUNCIL AGENDA: FEBRUARY 20, 2007

SUBJECT: GENERAL PLAN REFERRAL – PORTERVILLE UNIFIED SCHOOL DISTRICT

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT – PLANNING DIVISION

COMMENT: Pursuant to Public Resources Code Section 21151.2 and Government Code Section 65402, the Porterville Unified School District has requested review of a proposed site for a future University Center. The University Center would be located generally at the easterly prolongation of Morton Avenue and the northerly prolongation of Holcomb Street. The District is required to carry out such consultation prior to purchasing for the construction of a new school. The City is required to respond to such request within 40 days or the proposal is deemed to conform to the General Plan.

The request was received by the Planning Division on December 27, 2006. Due to the holidays and Staff vacation schedules, the City requested a two week extension of time to complete review of the site and allow for Staff to bring to City Council. On February 7, 2007, the Project Review Committee discussed the matter with representative Dr. John Snavely, Superintendent of the Porterville Unified School District. At this meeting, the Porterville Unified School District noted that the District planned to acquire adjacent parcels for inclusion in the future project.

As proposed, the site consists of 9.38± acres of vacant land not currently utilized. This is the first request of a series from the PUSD to acquire contiguous property for the university center. The total area of the District’s future university center is approximately 30± acres and is entirely within City limits.

The Land Use Element of the General Plan designates the subject site for Low-Density Residential. The site is Zoned for R-1 (Single-Family Residential). Schools are permitted in the R-1 Zone.

The City is currently working on an update to the General Plan. It is anticipated that by Spring or early Summer of 2007 the update will be completed. It is not anticipated that this General Plan update will have an effect on the current land use designation and zoning of the subject site. However, until such time as the final analysis of the proposed changes have been determined, it is not possible to predict likely land use designations.

DDCECM Appro./Funded Item No. 23
As the location of public facilities such as schools in the General Plan is intended to be broadly applied, rather than applied to specific parcels, Staff recommends that the City Council determine that the proposed future University Center complies with both the Low Density Residential Designation and the R-1 Zoning Designation. An attachment is attached identifying the subject site and the location of the University Center on the General Plan Land Use Map.

Other issues communicated to the School District at the PRC meeting included:

1. Private Schools require a Conditional Use Permit (CUP).


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. At this stage, engineering comments are focused on infrastructure required for public health, safety, and orderly development of the surrounding area. The following are the general public improvements required upon development of the subject site:

- Two public access routes designed and improved to meet City Standards shall serve the subject site.

- Sewer shall be extended to the City sewer system. Nearest accessible point of connection is Putnam Avenue, midway between Conner Street and Holcomb Street.

- Water shall be extended to site in conformance with the City’s Water Master Plan. Currently, the property is located within Rocky Hill Pressure Zone 2, in which facilities do not exist. The City is currently seeking funds for these facilities, Rocky Hill Pressure Zone 1 facilities and other facilities as part of Hillside/East Side Water Development Plan. A private booster system is an acceptable alternative once the Water Master Plan facilities are in place for Rocky Hill Pressure Zone 1.
• Storm water shall be collected and stored in accordance with the Storm Drain Master Plan, which may include collection and detention of up gradient run-off.

RECOMMENDATION: That the City Council:

1. Determine that the proposed University Center to be located generally on the northwest corner of the easterly prolongation of Morton Avenue and the northerly prolongation of Holcomb Street is consistent with the General Plan of the City of Porterville.

ATTACHMENTS:

1) Letter from the Porterville Unified School District Requesting Review
2) Site Plan of the Proposed University Center
3) General Plan Land Use Map
December 26, 2006

Brad Dunlap, Community Development Director
City of Porterville
291 No. Main Street
Porterville, CA 93257

Dear Mr. Dunlap:

Please accept this letter as notification to the City of Porterville Community Development Department that the Porterville Unified School District intends to acquire real property located on Putnam Avenue, Porterville, California, identified as APN No. 254-140-009. The property is currently vacant.

The District plans to eventually use the property for a university center. Pursuant to Government Code Section 65402, the District requests an opinion as to whether this use conforms to the adopted General Plan, if any.

I would appreciate a response at your earliest convenience.

Sincerely,

John Snavely, Ed.D.
Superintendent

Property Acquisition
COP – Woodward acquisition
General Plan Land Use Designation

- Public & Quasi Public
- Recreation & Open Space
- Low Density Residential
- City limits
- Parcels

CITY OF PORTERVILLE ZONING

- R-1 SINGLE FAMILY RESIDENTIAL
- City limits
- Parcels

ATTACHMENT
ITEM NO. 3
COUNCIL AGENDA: FEBRUARY 20, 2007

SUBJECT: CONSIDER REVISED MASTER PLAN AND DESIGN SERVICES FOR HERITAGE SITE SOFTBALL COMPLEX

SOURCE: PARKS AND LEISURE SERVICES DEPARTMENT

COMMENT: Summary The Commission has provided recommendations for the City Council to approve the revised Master Plan for a softball field complex, and authorize design of full site improvements. The Commission further recommends that the construction documents be finalized and construction work be undertaken for an initial phase of improvements within the funding presently available. The initial phase, endorsed by the Commission, is to be the construction of the entrance area landscaping and parking lot improvements. Staff supports the Commission’s recommendations, and further requests the City Council to consider issuing debt to build the full project with a completion date in 2008.

The Commission has evaluated a budget level construction cost estimate and an approach to phase the initial construction. There is currently $624,000 of Section 108 funds budgeted for this project, of which approximately $500,000 is available for initial construction contract award. This funding has a time limit of December 31, 2007 for expenditure. Design work should be started no later than early March in order to complete initial phase construction within the funding deadline.

Master Plan Community Works Design Group has prepared a revised Master Plan and a construction cost estimate for the Heritage Center site under the guidance and input of the Parks and Leisure Services Commission. The Commission’s recommended Master Plan provides for three softball fields with lights, a concession/restroom building, pathways, warm-up area, three hard courts and parking lot. It is worth noting that the softball fields could easily be adapted for either youth or adult play. The budget-level construction estimate for the Master Plan improvements is $4.95 million.

Initial Construction Phase The Commission has recommended with the available current funding the full design of the softball complex and construction of initial improvements. The initial phase of work is recommended to consist of Heritage Center entrance area landscaping and completion of the parking lot with a second entrance connection to ‘A’ Street. This initial phase would benefit the Heritage Center tremendously as an enhancement to the entrance as well as alleviating the parking difficulties during peak times.

[Signature]
Director _____ Appropriated/Funded _____ City Manager

ITEM NO.: 24
Another option reviewed by the Commission would complete the initial work for one softball field. The current funding would not be sufficient to provide full completion of a league-playable softball field. The original Master Plan provided for a baseball field complex, with similar entrance and parking provisions. Again, the initial funding would not be sufficient to fully complete one baseball field.

**Design Services** The current design scope for the consultant includes Master Plan preparation and final construction documents for ball fields related improvements of an approximate $500,000 construction value. The Consultant’s fee for such services is not to exceed $43,550.00. An alternative is now proposed that will provide construction plans for full site improvements in a manner that will accommodate phased improvement construction as funding or donated services become available. The fee for this more expanded scope of design services would be a total of $75,185.00. The Commission has recommended that the City Council approve the expanded design services so that complete design documents can be accomplished. Completion of the design documents is anticipated by May 31, 2007 should authorization to commence the design work be provided at this meeting. Construction contract bidding process would then be undertaken for the entrance area and parking phase of the softball complex.

**Full Project Funding** The shortage of lit ballfields in town has become very apparent recently. Leisure Services Staff frequently turns organizations away wishing to reserve ballfields due to the shortage of playing fields. Expediting the complete construction of the full Master Plan softball complex by issuing debt would eliminate the need for adults to leave town to participate in softball leagues and be extremely beneficial to the local youth sports organizations. Staff encourages the Council to initiate evaluation of a Certificate of Participation issuance in the amount of $5.5 million towards accomplishing an expeditious completion of this sports facility.

**RECOMMENDATION:** That the City Council consider the Heritage Center site, and:

1. Approve the revised Master Plan for a softball complex as recommended by the Parks & Leisure Services Commission, and;
2. Approve Addendum No. 1 to the Services Agreement with Community Works Design Group, and;
3. Adopt the initial phase of construction being the entrance area landscaping and parking lot improvements with the funding presently allocated, and;
4. Direct staff to prepare information to allow consideration by the Council for the issuance of debt to build the full sports facility by 2008.

**ATTACHMENTS:** Alternative Master Plans & budget level estimate summaries
Services Agreement Addendum
## BUDGET- LEVEL COST ESTIMATE

3 SOFTBALL FIELDS ALTERNATE - PARKING/ENTRANCE INITIAL PHASE

**DATE:** 01/26/07

**PROJECT:** PORTERVILLE HERITAGE CENTER SITE

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ADDENDUM NO. 1 TO
SERVICE AGREEMENT WITH
COMMUNITY WORKS DESIGN GROUP

1. This Addendum No. 1 to the Service Agreement is entered into by and between the City of Porterville ("CITY"), and Community Works Design Group ("CONSULTANT").

2. The Scope of Services of the Services Agreement, dated October 17, 2006 is expanded to include construction documentation preparation for full site improvements as illustrated on the three-field softball complex Preliminary Master Plan dated January 18, 2007. The construction documents shall be prepared in a manner to accommodate multiple phases of construction, with the first phase of work to be related to the landscaping and parking improvements associated with the westerly entrance areas.

3. The first sentence of Section 2, "Payment" to the Service Agreement is modified to read as follows:

   "In consideration for said services and materials, CITY shall pay to CONSULTANT on a time and material basis, not to exceed seventy five thousand one hundred eighty five dollars ($75,185.00)."

4. The completion date, as indicated in the first paragraph of Section 3, "Completion Date" to the Service Agreement, is modified to be May 31, 2007.

5. All other terms and provisions of the Service Agreement, not inconsistent with this Addendum, remain in full force and effect.

Executed on February 20, 2007 at Porterville, California.

Community Works Design Group

________________________________________
Tim Maloney

City of Porterville

________________________________________
Cameron J. Hamilton, Mayor
SUBJECT: MONACHE BASKETBALL COURT LIGHTING PROJECT

SOURCE: Parks and Leisure Services Department

COMMENT: City Council referred this matter to the Parks and Leisure Services Commission for consideration and recommendation. During the February 2, 2007 meeting Commissioners reviewed information compiled by staff in an effort to provide recommendations to the City Council.

It is recommended that a project be considered reusing the existing poles from Porterville College, but equipped with modern energy efficient lighting. A budgetary figure estimated at $175,000 is suggested based upon preliminary cost data.

Presently there is no source for funding this project, however a donation program could be established, grant funding researched, a partnership program for cost sharing developed with Porterville Unified School District, or redirection of current available funds could be considered.

The conceptual project has been discussed in a regular coordination meeting between officials with the City and School District’s. It appears that PUSD will be receptive to a cooperative arrangement for the project. PUSD participation with funding is not very probable in view of little to no direct benefit to the District’s educational programs.

RECOMMENDATION: That City Council approve the Commission’s recommendation for considering the project along with other capital projects for prioritization and allocation of funding during the next budgetary cycle.
SUBJECT: CENTENNIAL PLAZA BENCH DONATIONS

SOURCE: Parks and Leisure Services Department

COMMENT: The Parks and Leisure Services Department has been approached by two parties in regards to donating park benches within the Centennial Plaza grounds. In addition to donating they would also like to have their names attached in some manner to the bench. The potential donors are Rotary Club of Porterville, and Kelly & Janice West.

This matter was brought to the Parks and Leisure Services Commission at the February 2, 2007 meeting for their recommendation to the City Council. Catalog sheets were provided for two styles of benches that were considered by the Commission.

The Parks and Leisure Services Commission chose a black steel bench in keeping with the Main Street theme. The Commission recommends the Deluxe Diamond-Patterned Roll-Formed Personalized Bench to provide for recognition of donors. This bench comes in two sizes, six (6) foot and eight (8) foot.

Staff recommends that the benches be permanently mounted on concrete slabs. Installation of the concrete slab and mounting the bench are required to be performed by a bench donor. To enhance record keeping of the value of a donation, some donors may prefer to donate funds to the City for the initial purchase of the bench. It is requested that this arrangement be permitted with direction to staff to agendize budget adjustments so that the facility budget can accommodate the donated fund expenditure.

RECOMMENDATION: That City Council approve the Commission’s bench style recommendation and accept offers for donation of installed custom benches personalized with Rotary Club of Porterville, and Kelly & Janice West.

ATTACHMENT: Catalog page showing benches.
**DIAMOND PERSONALIZED BENCHES...**

Do you need the 6 ft. or the 8 ft. size?

As Easy As 1, 2, 3

1. Order your bench length & color
2. Email your message to logos@barcoproducts.com
3. Approve your proof & wait for delivery!

- Increasingly popular way to convey messages!
- Recommended spacing:
  20 character maximum (6 ft.) – including spaces
  26 character maximum (8 ft.) – including spaces
- Plastic-coated, rolled steel bench with cast iron legs
- Pre-drilled for permanent mounting
- Easy assembly, only 3 pieces!

| #RFP6 (6 ft.) | Price includes-personalization $895.00 ea. + shipping |
| #RFP8 (8 ft.) | Price includes-personalization $1,095.00 ea. + shipping |

- Black
- Blue
- Brown
- Burgundy
- Granite
- Green
- Orange
- Red

Order by phone: 1-800-338-2697
SUBJECT: REMEDIATION OF PESTICIDES NEAR THE AIR ATTACK BASE AT THE PORTERVILLE AIRPORT

SOURCE: Administration

COMMENT: The U.S. Army Corps of Engineers constructed the Porterville Municipal Airport during World War II for use by the U.S. Army Air Corps, which utilized it in direct support of the war effort until the end of hostilities in 1945. Title to the airport was transferred to the City of Porterville in 1946. From that time on, it has been operated by the City of Porterville in support of general aviation activities. One of these activities was the aerial application of agricultural crop chemicals. Loading of the chemicals was done on an aircraft parking hardstand that was part of the military construction improvements. The hardstand was located on the north side of the east end of the main taxiway. Use of the hardstand area in support of crop dusting activities was discontinued in 1967.

In the summer of the year 2000 an expansion project commenced at the Airport in preparation for creating a "Porterville Air Attack Base" for the U.S. Department of Agriculture, Forest Service Region 5. During this expansion phase, the taxiway pavement that was laid in 1967 over the location of the previous aerial chemical applicator servicing facility was removed. When the pavement was removed and subgrade disturbed, strong chemical odors within the former agricultural chemical applicator handling area were detected by the construction equipment operators.

As a result of finding agricultural chemicals in the former agricultural chemical application area, construction work was halted in this area pending an environmental site assessment to determine the vertical and lateral extent of agricultural chemical contamination within the subject area. Based on results of exploratory borings and soil samples collected from the borings, soil in an area encompassing approximately 225-feet by 25-feet and to a depth of 3 to 3.5-feet was excavated in the year 2001, to remove impacted soil from beneath areas that are within the current airport expansion project. The soil removed during excavation activities was placed in the area formerly used to handle agricultural chemicals, and was covered with plastic sheeting of approximately 30-millimeter thickness. The plastic sheeting is held in place along its side edges with the use of clean soil.
A total of four alternatives were identified for the agricultural chemical impacted soil removal action: 1) No action; 2) Off-site disposal; 3) Incineration; and 4) On-site containment. The first three of the four alternatives identified were removed from further consideration after evaluating the alternatives using the USEPA and DTSC guidance criteria that include: effectiveness, implementability, and expense. The fourth alternative, which consists of on-site containment, was selected as the removal action method to be implemented at the site. The project essentially will consist of encapsulating the impacted soil by: 1) grading the impacted area such that surface runoff will drain toward a storm drain located north west of the impacted area; 2) placing a 0.2 to 0.3-inch thick geosynthetic clay liner over the top of the impacted soil within the former agricultural chemical handling area; 3) placing a 4-inch thick aggregate sub-base material consisting of decomposed granite over the top of the liner; and 4) placing a 2.5-inch thick asphaltic concrete cap completely over the impacted soil. In addition, a deed restriction will be placed on the impacted area, limiting future use of the subject property to industrial purposes only.

The total estimated cost of the soil removal action project is $850,000, including approximately $200,000 the City has spent to date. Approximately $90,000 is remaining in Airport COP funds, leaving an estimated balance of $560,000 to complete the project. Please see diagram below:

| Total Project Cost Estimate: | $850,000 |
| Paid to Date: | - 200,000 |
| Airport COP Funds | - 90,000 |
| | $650,000 (Remediation Estimate) |
| | $560,000 (Final Estimated Cost) |

It is the recommendation of staff that to complete the soil removal action project, funds be utilized from the Risk Management Fund and that the Public Works Department facilitate the completion of the project. For the past five years, the Airport has been participating and contributing to the City’s structure and vehicle risk management programs, although it has been contributing to the overhead administration component of Risk Management for many years. Currently, the Risk Management Fund has a balance in excess of $3,000,000 specifically for liability remediation.

According to representatives of the DTSC, completion of the soil removal project is already extended beyond approved timelines, therefore, failure by the City to complete the soil removal project in a short undetermined amount of time will result in the City being issued a Notice to Abate, which if not acted upon could result in daily fines to the City of up to $25,000.
RECOMMENDATION: That the Council authorize staff to advertise for bids for the completion of the soil removal action project.

ATTACHMENT: Letter from Department of Toxic Substances Control
March 30, 2006

Mr. Frank Guyton, Fire Chief
Porterville Fire Department
40 West Cleveland Avenue
Porterville, California 93257

REVIEW OF "GRADING PLAN, AIR ATTACK BASE" DATED FEBRUARY 7, 2006;
PORTERVILLE MUNICIPAL AIRPORT SITE AT 1893 SOUTH NEWCOMB ROAD

Dear Mr. Guyton:

The above noted plan depicts expected as-built contour lines for the area to be capped at the City of Porterville airport. The engineered cap will cover contaminated soil containing pesticides. This plan was submitted in response to Department of Toxic Substances Control (DTSC) correspondence dated October 19, 2005.

As you know, California Department of Transportation staff previously relayed information identifying maximum height restrictions associated with structures adjacent to airport runways and taxiways. For the Porterville Airport, a three inch maximum height difference applies to any object within 93 feet from the centerline of the taxiway that abuts the proposed area to be capped. DTSC staff have reviewed the subject plan. Review of the plan indicates that the maximum height restrictions will not be exceeded at locations to the southwest and northwest. Therefore the plan can be considered approved by DTSC.

The Final Removal Action Workplan for the site was approved in the DTSC correspondence dated October 19, 2005. Therefore DTSC recommends at this time that the Final RAW, which is dated September 2, 2005, be implemented. In accordance with the schedule included in the RAW, DTSC again requests that an Implementation Report be submitted for review and approval within thirty days of completion of field activities. Subsequent activities, including preparation and recordation of a deed restriction are also noted in the schedule included with the RAW, and should be reviewed.
Mr. Frank Guyton  
March 30, 2006  
Page 2

If you should have any questions regarding this letter, please contact  
Mr. Michael Pfister, Engineering Geologist of the Fresno Responsible Party Unit,  
Northern California – Central Cleanup Operations Branch at (559) 297-3958.

Sincerely,  

[Signature]  
Thomas W. Kovac, P.E., Chief  
Fresno Responsible Party Unit  
Northern California - Central  
Cleanup Operations Branch

cc: Mr. Gorden Woods, Mayor  
City of Porterville  
40 West Cleveland Avenue  
Porterville, California 93257

Mr. David Harris, REA  
Principal  
Consolidated Testing Laboratories, Inc.  
603 East Worth Avenue  
Porterville, California 93257

Mr. George A. Stott, R.G.  
ValleyGeo  
14297 Brookhill Road  
Madera, California 93638

Mr. Russell Walls, P.E.  
Regional Water Quality Control Board  
1685 E Street  
Fresno, California 93706

Mr. James L. Tjosvold, P.E., Chief  
Northern California - Central  
Cleanup Operations Branch  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826
COUNCIL AGENDA: FEBRUARY 20, 2007

SUBJECT:  AUTHORIZATION TO ADVERTISE FOR RECLAMATION AREA MANAGER OR FARM LEASE SERVICES

SOURCE:  Public Works Department - Engineering Division

COMMENT: Consistent with Council's direction of August 15, 2006, staff prepared a Reclamation Area Manager and Farmland Lease “Request for Proposals” (RFP). Staff seeks Council direction on whether to advertise for a reclamation area manager or advertise for a farmer to enter into a farmland lease agreement.

Consistent with the City's response of July 24, 2006 to the Grand Jury, this staff report provides all the pertinent information that will allow the City Council to properly choose between implementing a new Reclamation Area Management Agreement, leasing City owned property under an alternative Reclamation Area Lease Agreement or, determining that the current arrangement with modifications is appropriate.

Staff commented to the Grand Jury that a Pros and Cons assessment on hiring a City employee to manage the “operation” would be performed by the City. That assessment is presented to council as a separate overhead slide.

Mr. Bob Nuckols, the current Reclamation Area Manager, recently presented a third option. Mr. Nuckols' proposes that the City extend his present contract for another ten years. Staff finds merit in Mr. Nuckols proposal. Mr. Nuckols, even under very difficult circumstances, has always cooperated fully with the City to dispose of the effluent.

Recent scrutiny of the farming operation identified concerns in the manner of accounting for farming and non-farming expenses. Once the accounting matter was resolved, the farming operation revenues exceeded expenditures. Development of new land and extension of irrigation pipes continues at an accelerated pace. Mr. Nuckols has and continues to assist Engineering in the planning phases for the new farmland and pipeline routes. Engineering is appreciative of these efforts.

The “Reclamation Area Manager” RFP and the “Farmland Lease” RFP are very similar in content. Both proposals explicitly inform interested farmers that the City is looking for farmers competent in farm husbandry using treated effluent, non-crop maintenance of farmland, knowledgeable in the application of bio-solids and must maintain and manage the City's 62 acres of percolation ponds.

Dir Appropriated/Funded Item No. 28
The major differences between the two proposals are as follows:

- **Reclamation Area Manager Agreement** - the City pays for all services rendered by the farmer. Services include non-crop maintenance of fields such as weed abatement, rodent control, field road maintenance, application of bio-solids and maintenance/management of the City’s percolation ponds. All crop and revenues thereof become the property of the City.

- **Farmland Lease Agreement** – the farmer pay a “per acre” fee for the right to farm approximately 400 City owned acres in the reclamation area. Services include non-crop maintenance of fields such as weed abatement, rodent control, field road maintenance, application of bio-solids and maintenance/management of the City’s percolation ponds. All crops and revenues thereof are the property of the farmer.

- **Farmland Lease Agreement** – over irrigating crops to the point of damage. The principal purpose of the program is to discharge treated effluent within the reclamation area limits. Circumstances beyond the City’s control may force the City to direct the farmer to flood irrigate planted crops to the point of damaging the crops. No compensation for damaged or lost crops will be forthcoming.

It must be stressed that the controls in place with regard to crop selection, effluent and bio-solid application rates that are included in the Reclamation Area Manager agreement are also included in the Farmland Lease agreement. The City cannot transfer or otherwise diminish its responsibilities promulgated by the Regional Water Quality Control Board’s “Cease & Desist” orders.

One of the documents referenced in both the Reclamation Area Manager and the Farmland Lease RFP is the “Bio-solids Application & Crop Rotation” plan. The “plan” provides guidance to the farmer to the extent that it places limits on the rate of bio-solids application and identifies the number of acres that should be “fertilized” to match yearly bio-solids generation. The City’s consultant has not completed this document and therefore, staff expects to issue an addendum to the RFP once the document is completed.

**RECOMMENDATION:** That the City Council extend the City’s current Farm Manager contract for an additional ten years.

**ATTACHMENTS:** Management:
1. Reclamation Area Management Agreement - RFP
2. Bid Forms for Reclamation Area Manager Agreement
3. Reclamation Area Management Agreement
Lease:
1. Reclamation Area Lease – RFP
2. Proposal Forms for Reclamation Area Lease
3. City of Porterville Reclamation Area Land Lease

Nuckols Letter
CITY OF PORTERVILLE
WASTE WATER TREATMENT PLANT
Reclamation Area Management Agreement – REQUEST FOR PROPOSAL

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   2. Crop Plan, 5 year
   3. Copy of Bio-Solids Utilization Plan
   4. Copy of Water Reclamation Requirements WRR 5-01-246 as adopted 19 OCT 2001
   5. Map of Reclamation Area
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CITY OF PORTERVILLE
WASTE WATER TREATMENT PLANT
Reclamation Area Management Agreement – REQUEST FOR PROPOSAL

I SUMMARY

The City of Porterville is soliciting bids from experienced farming entities for the management of the City Reclamation Area. The Reclamation Area Management Agreement covers the operation of properties used for the disposal of effluent from the City Wastewater Treatment Facility. Applicants are invited to propose monthly management, irrigation, percolation pond and custom farming fees. The resulting crops are the property of the City, but Reclamation Area Manager will be responsible for the inventory and sale of these crops, and will be paid a 5% commission of gross revenues. The Reclamation Area is operated by the City, and all activities are directed by the City to achieve program objectives. The entity that is awarded the contract will serve as an independent contractor. It is recommended that prospective bidders become familiar with the regulatory requirements prior to preparing the bid documents. (See attachments.)

II BACKGROUND

The City of Porterville operates a reclamation enterprise for disposing up to 5.3 million gallons, or 15acre-feet, per day of treated effluent. The system delivers wastewater to the reclamation area 24 hours per day, 7 days per week. Approximately 1,000 tons of bio-solids are also delivered to the reclamation area annually. The method of disposal consists of different operations:

- Farming
- Percolation Ponds
- Bio-Solids Application

The primary method is the irrigation of between 425 to 650 acres of leveled farmland. Effluent is delivered from the Wastewater Treatment Facility to the reclamation area through a City owned pipe system, and then applied through conventional flood irrigation systems. Up to 50% of the treated effluent is discharged to percolation ponds located at the reclamation area. Bio-solids are delivered via truck transport and stored in non-crop areas. The bio-solids will be broadcasted on fields during field preparation for alfalfa and must be irrigated with well water for one (1) year.

The choice of crops and rate of effluent application has been predetermined by the Waste Discharge Requirements (WDR) 5-01-103 and Water Reclamation Requirements (WRR) 5-01-246 as mandated by the Regional Water Quality Control Board (RWQCB). These requirements direct all activities at the reclamation area, whether it is wastewater application or other customary farming practices such as the application of soil amendments, fertilizers, pesticides, and herbicides. The RWQCB has directed the City to dispose of its effluent in an environmentally sound manner that minimizes groundwater degradation to the area, and does not adversely affect the Teapot Dome Landfill. The Department of Health Services regulations (California Title 22, Article 3, Section 60304) allow irrigation of fodder and fiber crops with secondary-treated recycled water. Currently, the program rotates alfalfa, sudan grass, wheat and oat hay.
First and foremost, the City is committed to program development that prioritizes the changing needs of a growing community, minimizes taxpayer cost, and maximizes effective disposal of effluent. The Reclamation Area program can therefore be expected to change as development requires. Whereas all of the situations that may develop cannot be anticipated, it is recognized that compliance and changing disposal needs will necessitate close coordination between all involved parties. The City and contracted management must operate knowing that there are unknown future developments that will likely affect the program.

**III ELEMENTS OF Reclamation Area Management Agreement**

The complete managerial duties of the Reclamation Area Manager are included in the Reclamation Area Management Agreement (see attachment). In summary, the agreement establishes a management agreement between the City and the Reclamation Area Manager, the parties are not joint ventures or partners, but the manager is an independent contractor.

The applicant must submit a bid for the entire program, including all crop, non-crop, and percolation pond responsibilities. The awarded Reclamation Area Manager shall provide for all the necessary labor and equipment (including maintenance and fuel) for the daily farming operations, including the harvesting and marketing of all crops, and bill the City for these services. The Manager must maintain and provide proof of liability insurance (including insurance for all vehicles used for farm operations) and provide workers compensation for labor he employs. The Reclamation Area Manager is responsible for non-crop and percolation pond property maintenance and operation as directed by the management contract. *Irrigation infrastructure, utilities, inventory insurance, capital projects, and materials for direct crop needs and harvest (seed, herbicide, pesticides, fertilizer, and twine) are budget items and are paid directly to vendors by the City.*

*Administrative responsibilities*

The Reclamation Area Manager will prepare the annual line item reclamation area budget as a projection of the necessary custom farming activities. The Reclamation Area Manager will match delivery receipts to invoices to insure vendor accountability with the WWTF office staff. The Manager invoices the City monthly for pre-approved custom farming activities, allocated per field and crop for cost accounting purposes.

The City Capital projects will be included in the budget. Capital projects are defined as any projects having useful life of more than one cropping season such as deep ripping or leveling. The City and Reclamation Area Manager maintain a five year crop plan. (See attached 5 year Crop Plan.)

*Compliance & Reporting*

The Manager agrees to operate the property in order to maximize irrigation with effluent according to all applicable regulations and discharge requirements. Operation and management of the property is to comply with all federal, state, and local regulation including, but not limited to, waste discharge and biosolids utilization requirements, and plans concerning management of the reclamation area and the San Joaquin Air Pollution Control District Rule 8 (agricultural...
sources). The Manager shall comply with all requirements of regulatory agencies and for enrollment in the USDA farming programs. The Manager shall collect, compile data and prepare reports as required by the City. For these services, the Manager is compensated by:

- Annual Base payment per acre, consisting of management, irrigation, and percolation pond disposal fees for overall program operations, paid monthly. The management fee is calculated for the overall acres in the reclamation area, the irrigation fee is multiplied by farming acres, and percolation pond disposal fee is paid by the size of the pond area.

- Custom Farm Work payment per acre per activity, billed monthly as activities are completed.

- Sales Commission of 5% percent of gross receipts upon verification of weight tickets and or brokers report.

1) SUMMARY OF CONTRACT

The Reclamation Area Management Agreement consists of three components, described as such in the City budget: Farming Activities, Non-crop activities, and Percolation Pond Operation / Maintenance. The contractual duties are summarized below:

A) Farming Activities: All direct farming operations for the establishment, husbandry, harvest, storage, and sale of crops and management of all irrigation water, whether delivered to a field in the Reclamation Area or to outside water users.

B) Non-Crop Activities: Maintenance and adherence to all requirements of regulatory agencies for property outside direct crop land. Weed abatement and rodent control in all acreage defined in Agreement as Non-Crop areas. Operate the delivery system i.e. provide water to other property owners as directed by the City.

C) Percolation Pond: Maintenance and adherence to all requirements of regulatory agencies for percolation pond system.

The mission of this program is the disposal of reclaimed water. If the challenges of managing a constant flow of effluent through irrigation or emergency water management practices either deleteriously affect or even ruin crop yields, there is no additional compensation for the Reclamation Area Manager. Harvested inventory, stored on reclamation area property, is insured by the City. However, manager must take reasonable steps to protect crops from weather damage. In the case of crop loss, the Reclamation Area Manager forfeits the 5% commission of crop proceeds whether or not an insurance claim is submitted.
IV DESCRIPTION of RECLAMATION AREA

1) See Attachment for property map and locations.

2) Program Specifics

The following outlines the responsibilities for each component of the operation. Also see attached Reclamation Area Management Agreement.

A) Farming Activities:

a) Field management including field preparation, (not including initial or second season laser leveling, deep ripping, or other activities covered under ‘capital expenses’\(^1\) in the annual budget), furrowing, seed bed preparation, herbicide application and weed management, planting, and cultivation

b) General Crop Management including irrigation, pest control, nutrient management

c) Harvesting, including inventory management and sales

d) Assist in preparation of RWQCB reports & documentation, compliance with all regulatory reporting

e) Emergency water management as needed

f) Operate and maintain all well, return pumps and irrigation facilities

g) Compilation of data and assistance for enrollment in all government programs

B) Non-crop Activities:

a) Maintenance of non-crop areas, including but not limited to roadways, roadsides, drainage ditches, irrigation channels, levee banks, fence lines, vacant acreage, pumps, tail water ponds, water control structures, hay storage areas, miscellaneous structures.

b) Non-crop weed abatement

c) Limited capital projects – minor pipeline repair and installation, land planing, and culvert maintenance. There may also include pre-determined Capital Projects to be undertaken where Reclamation Area Manager may

\(^1\) Capital Expense category was added in 2005 to the WWTF budget and includes all items that apply to general operation of the entire program and have a useful life beyond the current crop year, and therefore can be depreciated.
CITY OF PORTERVILLE
WASTE WATER TREATMENT PLANT
Reclamation Area Management Agreement – REQUEST FOR PROPOSAL

provide custom farm work and be compensated under the terms of agreement for specific budget items.

d) Application of Bio-solids, gypsum and soil amendments

e) Soil testing and reporting

C) Percolation Pond
   a) Distribution of effluent to and within percolation ponds
   b) Maintain ponds against erosion, rodent damage
   c) Periodic disking, clearing, or other maintenance as directed by the City to maintain infiltration rates.
   d) Weed abatement adjacent to and including within pond areas
   e) Maintenance of existing pipeline, valves, meters, overflows and other percolation pond infrastructure and levees.
   f) Emergency water management as needed

3) Requirements of Reclamation Area Manager

1. Provide proof of general liability insurance, minimum of $2 million overall coverage
2. Provide proof of Workers Compensation coverage
3. Compliance with all requirements of regulatory agencies, including labor laws
4. Reclamation Area Manager complies with the principles of Best Management Practices:

   **Best Management Practices**

   The list of general principles which define BMPs follows:
   - Set accomplishable, realistic, and measurable economic and environmental objectives, using annual budget and cropping plans.
   - Know and understand economic, environmental, and agronomic processes involved.
   - Timely and uniformly apply water and nutrients as needed.
   - Quantify economic and environmental processes and results.
   - Evaluate results and amend implementation plan for next cycle.

   BMPs for this project may include, but are not limited to:
   - No use of nitrogen fertilizers without prior approval from the City
   - No discharge of recycled water or run off beyond the boundaries of the contracted parcel
CITY OF PORTERVILLE
WASTE WATER TREATMENT PLANT
Reclamation Area Management Agreement – REQUEST FOR PROPOSAL

- Maintenance of the premises in an orderly and clean condition
- Avoidance or reduction of irrigation during rain events
- Application of soil amendments at agronomic rates per bio-solids application plan.

V PROJECT TIME SCHEDULE

1. 2/2007 RFP Available to Public
2. 3/2007 Pre-Proposal Site Tour
3. 4/2007 Proposals Due
4. 6/1/2007 Contract Awarded
5. 11/30/2007 Current contract terminates
6. 12/1/2007 Contract begins

VI PRE-PROPOSAL SITE TOUR

A scheduled pre-proposal site tour is available for all applicants. This tour will be held in March of 2007.

VII QUALIFICATIONS AND SELECTION CRITERIA

The City policy in awarding this Reclamation Management Agreement will be based on the most qualified applicant as determined by the City, not necessarily the applicant who submits the lowest bid. The City will carefully investigate each applicant’s background and experience in farming operations. The City recognizes its policy of providing equal opportunity to all qualified persons and reaffirms its commitment that there shall be no discrimination against qualified applicants on the basis of race, gender, color, national origin, religion, age or disability.

The applicant must have experience in managing farming operations of similar or greater size. The proposing farming entities will also make their existing farming operations available for review and inspection by City staff and consultants. Proposal selection will be based on the criteria shown on the following table:

<table>
<thead>
<tr>
<th>PROPOSAL SELECTION CRITERIA AND WEIGHTING</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Criteria</strong></td>
</tr>
<tr>
<td>1. Farming Business experience, Financial condition of the applicant</td>
</tr>
<tr>
<td>2. Marketing &amp; Sales experience for Crops</td>
</tr>
<tr>
<td>3. Proposed annual Mgt, Farming, and Maintenance Fees ($/acre)</td>
</tr>
<tr>
<td>4. Other factors (recycled water irrigation and/or biosolids experience, quality of existing farming operations, quality of response)</td>
</tr>
<tr>
<td>Total items 1-4</td>
</tr>
</tbody>
</table>
VIII FORMAT OF THE PROPOSAL RESPONSE

See Attachment, Bid Proposal and application. Please return proposal and application by Monday April 30, 12pm, to:

City of Porterville
Attn: Director of Public Works
Re: Reclamation Area RFP
291 Main Street
Porterville, CA 93257

1. Required Bid Conditions – signature page
2. Summary of Experience
3. Financial Credit References
4. Authority to Release information and Hold Harmless
5. Proof of General Liability and Workers Compensation Coverage
6. Bid for:
   a) Management, Irrigation, Percolation Pond Management Fees (Table 1)
   b) Custom Farming Activities (Table 1)

The proposal should be brief and complete. Submittal of the attached forms is required and considered sufficient for the response to this RFP. However, applicants may include additional information as deemed necessary.

The proposal must be for the entire length of Reclamation Area Management Agreement (5 years) with automatic extension of 5 years by mutual agreement.

IX GENERAL ATTACHMENTS

1. Reclamation Area Management Agreement
2. Crop Plan, 5 year
3. Copy of Bio-Solids Utilization Plan
4. Copy of Water Reclamation Requirements WRR 5-01-246 as adopted 19 OCT 2001
5. Map of Reclamation Area
6. Bid Proposal and Application (to be returned to the City)

X GLOSSARY OF TERMS

Bio-Solid  Sewage sludge, dry solids, same as sludge
WDR Waste Discharge Requirements
WRR Water Reclamation Requirements
WWTF Wastewater Treatment Facility
Recycled Wastewater Same as Effluent
RWQCB Regional Water Quality Control Board
Treated Wastewater WWTF Effluent, containing nitrogen as fertilizer
CITY OF PORTERVILLE - WASTE WATER TREATMENT FACILITY
Bid Forms for Reclamation Area Manager Agreement

NAME: ___________________________ DATE: ___________ Page ___ of ___

1. REQUIRED BID CONDITIONS – signature page

For the Bid on the Reclamation Area Management Agreement, City of Porterville, Wastewater Treatment Facility Reclamation Area and Farmland

Name of Applicant: ___________________________
Business Address: ___________________________
City and Zip: ___________________________
Place of Residence: ___________________________
Telephone: Office: ___________ Mobile: ___________

The agricultural acreage referred to herein is to be farmed in accordance with the agreement summary and the provisions and specifications contained therein and be referenced thereto made a part hereof. In the event I am the successful bidder, I will diligently farm all land available for irrigation.

The undersigned, as proposer, declares that the only person or persons interested in the proposal as principals, are those names herein; that this proposal is made without collusion with any other person, firm or corporation; that he has carefully examined the locations of the Reclamation Area acreage, Federal, State, County and City laws relating to farming operations upon the Reclamation Area Management Agreement, the term, conditions, specifications and other stipulations hereinbefore or hereinafter set out and the Reclamation Area Management Agreement attached hereto; and he proposes and agrees, if this proposal is accepted, that he will agree with the City of Porterville, to provide all necessary equipment, implements, labor, and other means of operation for all acres of said Reclamation Area Management Agreement in effect, he will be compensated as follows:
1) Management, irrigation, and percolation pond maintenance fees on a per acre basis
2) Custom Farming Practices as pre-approved and billed to City as per/acre fee
3) 5% of the gross receipts as a commission

He agrees to utilize the principles of Best Management Practices in the care and operation of all farming, harvesting, storage and sales of the crops.

If this proposal is accepted, said undersigned applicant shall execute a Reclamation Area Management Agreement. If the undersigned shall fail to execute such a agreement within five (5) days after the applicant has received notice from the City or its duly authorized representative that the agreement is ready for signature, the City may determine that the applicant has abandoned the agreement; and thereupon this proposal and the acceptance thereof shall be null and void, and of no force and effect.

IMPORTANT NOTICE
If the proposer is a corporation, state legal name of corporation, address, state of incorporation, person designated for service of process, also names of directors, president, secretary, treasurer
CITY OF PORTERVILLE - WASTE WATER TREATMENT FACILITY
Bid Forms for Reclamation Area Manager Agreement

NAME: ___________________________ DATE: _____________ Page ___ of ___

and manager thereof; If co-partnership, state true name of firm, also names of individual co-
partners comprising the firm; if bidder is an individual, state first, middle, and last name in full.

____________________________________

____________________________________

____________________________________

____________________________________

Dated: ____________________ Signature of Applicant: ________________________
2. SUMMARY OF EXPERIENCE  
(Use additional paper/attachments as needed)  

1. Describe your current farming operations, experience with irrigated crops, including amount of land owned or leased, length of existing operations, and other relevant details regarding your existing operation.

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

2. Describe the expected challenges associated with your current understanding of the Reclamation Area Management Agreement, and how you are prepared to address them.

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

3. Describe your experience with irrigation using recycled water and/or the application of bio-solids

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
4. Describe the agronomic challenges regarding the composition of the recycled water, the constant flow of water, and mitigation techniques.

5. Describe the existing and future markets for the crops that will be produced. Provide an estimated crop yield per acre per year and your intended sales plan.
6. Describe required operations and suggested activity schedule for the crops currently grown at the City Reclamation Area: Alfalfa, Oats, Wheat, and Sudan Grass. (Oats or Wheat is double cropped in the same year as 1st year Alfalfa.)
3. **FINANCIAL and CREDIT REFERENCES**

Please include Bank Reference and three (3) credit references with regard to your current or past farming activities:

**BANK REFERENCE**
Name: __________________________________________________________
Contact: _________________________________________________________
Address: _________________________________________________________
Phone: __________________________________________________________
Acct Name and Number: ___________________________________________

**CREDIT REFERENCES**
1) Name: ________________________________________________________
Contact: _________________________________________________________
Address: _________________________________________________________
Phone: __________________________________________________________
Acct Name and Number: ___________________________________________

1) Name: ________________________________________________________
Contact: _________________________________________________________
Address: _________________________________________________________
Phone: __________________________________________________________
Acct Name and Number: ___________________________________________

1) Name: ________________________________________________________
Contact: _________________________________________________________
Address: _________________________________________________________
Phone: __________________________________________________________
Acct Name and Number: ___________________________________________
1. AUTHORITY TO RELEASE INFORMATION AND HOLD HARMLESS

TO Whom It May Concern:

It is my understanding that in connection with the proposal for the Reclamation Area Manager Agreement of the Wastewater Treatment Plant of the City of Porterville, I am required to furnish information for a thorough background and credit investigation to determine my qualifications. Based on that understanding, I hereby authorize the release of any and all information that you may have concerning me, including, but not limited to information of a confidential or privileged nature, or any data or materials which have been sealed or agreed to be withheld pursuant to any prior agreement or court proceeding involving disciplinary matters, upon the request of any agent of the agreement or court proceeding involving disciplinary matters, upon the request of any agent of the City of Porterville bearing this release or a copy thereof within twelve (12) months of the date signed.

I understand that I will not receive and am not entitled to know the contents of confidential reports received, and I further understand that these reports are privileged.

I hereby release, discharge and exonerate the City of Porterville, its officers, agents, employees, representatives and any person or organization furnishing information, from any all liability of every nature and kind arising out of the furnishing and inspection of such documents, records and other information, and this release shall be binding on my legal representative, heirs and assigns.

Failure to comply with this request may adversely affect my potential for entering into a Reclamation Area Management Agreement with the City of Porterville. Should there be any question as to the validity of this release, you may contact me as indicated below.

________________________________________________________________________
Signature

________________________________________________________________________
Name

________________________________________________________________________
Current Address

________________________________________________________________________
Home Phone        Business Phone

________________________________________________________________________
Witness            Date
2. **PROOF OF GENERAL LIABILITY AND WORKERS COMPENSATION COVERAGE**

Please attach proof of insurance and contact information.
3. BID FOR MANAGEMENT, IRRIGATION FEES PER PARCEL ($ per acre)
Please complete shaded areas for proposed Mgt, Irrigation, Percolation Pond fees AND for Custom Farming Activities:

TABLE #1 PROPOSAL

<table>
<thead>
<tr>
<th>Task</th>
<th>Proposed $/acre</th>
<th>units</th>
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<tbody>
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<td>Management and Program Fees</td>
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<tr>
<td>Harvest</td>
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<tr>
<td>18 Cutting Hay</td>
<td></td>
<td>per acre</td>
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<tr>
<td>19 Turn Hay</td>
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<td>per acre</td>
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<tr>
<td>20 Rake Hay</td>
<td></td>
<td>per acre</td>
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<tr>
<td>21 Bale Hay (&gt;115 lb bale)</td>
<td></td>
<td>per bale</td>
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<tr>
<td>22 Road siding</td>
<td></td>
<td>per bale</td>
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<tr>
<td>23 Specify Other</td>
<td></td>
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<tr>
<td>Non-Crop*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>23 Non-Crop Weed Spraying</td>
<td></td>
<td>per acre</td>
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<tr>
<td>24 Bio-Solids Application</td>
<td></td>
<td>Estimated 15% of gross irrigated acreage x 6 per season per acre (15-20 tons/ac, approx 60 ac/year.)</td>
</tr>
<tr>
<td>25 Specify Other</td>
<td></td>
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</tbody>
</table>

* Non-crop: Including but not limited to roadways, roadsides, drainage ditches, irrigation channels, levee banks, fence lines, vacant acreage, pumps, tail water ponds, water control structures, hay storage areas, miscellaneous structures.

NOTE: The list of cultivation activities is inclusive of all irrigated crops of Alfalfa, Oats, and Sudan Grass. Some activities may be done more than once during the establishment of a crop or as a result of weather damage. Harvesting of Alfalfa and Sudan Grass are done several times per season. Seasons vary in length and may change the number of harvests from year to year. Oats are harvested once per season. Oats are followed with Sudan Grass in the same budget year on the same acreage.
RECLAMATION AREA MANAGEMENT AGREEMENT

THIS RECLAMATION AREA MANAGEMENT AGREEMENT entered into on DATE: ________________________ by and between the CITY OF PORTERVILLE, a charter law city, ("City") and ________________________________, individual, ("Manager").

Recitals

A. The City is the owner of parcels of real Property located in Tulare County, more particularly described as Parcels 1 through 17 in Exhibit B. All areas identified as “Not a Part” in Exhibit B are specifically excluded from this Agreement. The City would like to spread bio-solids and reclaimed water (Wastewater Effluent) for further land treatment and beneficial irrigation use. All revenue derived, either directly or indirectly, from the irrigated Property with regard to the farming and spreading operations, shall belong to the City.

B. Manager is experienced in the husbandry and care of the type of agricultural operations conducted, or intended to be initiated, on the Property.

C. The Property has been and/or will be operated for the farming of alfalfa, corn, wheat, Sudan, and oat hay with the use of reclaimed water for irrigation use. The property may be operated for the farming of other crops as appropriate pursuant to the purpose of and all other terms of this Agreement, upon written consent by the City.

D. The City wishes to continue and/or commence operation of the Property for the purpose described above and wishes to employ Manager for this purpose.

E. Manager is willing to operate the Property as described above.
CITY AND MANAGER MUTUALLY AGREE AS FOLLOWS:

Appointment and Independent Contractor Status

1. The City hereby appoints Manager and Manager hereby accepts appointment as Manager for the development and care of the Property as described above. This Agreement shall terminate on June 30, 2012 (or five years). The Agreement will be extended by mutual agreement between the parties for an additional 5 years. Either party may cancel the Agreement, for any reason and without penalty, with ninety (90) days prior written notice. The City and Manager acknowledge and agree that this Agreement establishes and constitutes only a Management Agreement between the parties, that the parties are not joint ventures or partners, and that Manager shall not be deemed to be an employee of City. Manager shall at all times be an independent contractor.

Description of Required Management Services

2. Manager shall perform no less than the following duties:

(a) The management of all farming operations, including the purchase and/or rental of all necessary equipment, supplies, and services subject to the conditions in this Agreement. Such management includes daily farming decisions; the care and maintenance of the Property, including crop insect control work; plant nutrition measures; pruning and training; proper irrigation; the frequent weeding of the plots, as well as the non-crop areas, to keep the areas free of noxious and unsightly weeds; and rodent abatement on all of the property;

(b) Irrigation of the property using the reclaimed wastewater effluent as described above; management and maintenance of the irrigation system to include repairs to
lateralcs, risers and valves where the value of each repair is less than $350 for labor and materials; and all labor for the operation of the system, irrigation of the property, and to maintain the irrigation system in good working order;

(c) Maintenance of all roads on the property;

(d) Collection and compilation of data with the assistance of the City for all reports necessary pursuant to the State of California Regional Water Quality Control Board waste reclamation requirements for tracking effluent and bio-solids usage;

(e) Collection and compilation of data with the assistance of the City for all reports necessary for enrollment of the City in the United States Department of Agriculture farming program;

(f) Preparation of annual farming budget, using agreed upon computer software program, which will include a listing of all expenses required to operate all irrigated areas of the properties:

(g) Operation and maintenance of the percolation ponds located on the property, which shall be maintained by a separate budget;

(h) Application of bio-solids to be done as a part of five year bio-solids utilization and cropping plan, and associated records for applying bio-solids;

(i) Use of agricultural wells will be required to deliver water to the fields having had bio-solids spread upon them in the first cropping year after application;

(j) Prepare with the assistance of the City all compliance documentation for submission to the Central Valley Regional Water Quality Control Board (CVRWQCB) for all reclamation activities (per WRR) and the application of bio-solids pursuant to the California General Order;
(k) Operation and management of the property in compliance with federal, state, and local regulations including, but not limited to, waste discharge requirements and plans concerning management of the reclamation area and San Joaquin Air Pollution Control District Rule 8 (agricultural sources);

(l) Development of a land management program, including a 5 year schedule for crop rotation, for all property subject to this Agreement, to monitor nutrient needs of the crops; protection of the soil; and effective use of the reclaimed water pursuant to all State requirements;

(m) Specify items for purchase of all necessary planting materials, subject to the conditions set forth in this Agreement;

(n) The positioning of crops so as to obtain the maximum percentage planted;

(o) The harvesting and marketing of all crops and produce;

(p) The Manager will respond to problems as required in an immediate and effective manner to resolve all irrigation issues to eliminate fugitive water within 2 hours of notification of water leaving the reclamation area or for identified negative impacts upon the Tea Pot Dome landfill and adjacent lands properties, roads or other such occurrences as demanded by the City;

(q) The maintenance of accurate written records of all activities relating to the care and maintenance of the property, certifying that water is used as required in WRR;

(r) The securing and maintaining of liability insurance (including insurance for all vehicles used with regard to farm management operations) naming the City as an additional insured with a minimum coverage of $2,000,000 for personal injury or death
for each person or for damage to property and $2,000,000 for personal injury or death of two or more persons in each accident or event;

(s) The maintenance and use of a separate account for all funds utilized in the farm management operation; and

(t) Provide all reasonable protection of harvested crops from weather, vandalism or theft.

3. Both parties mutually agree to abide by the lawful orders and regulations of those governmental agencies having jurisdiction over the disposition of the effluent and bio-solids and the Porterville Municipal Airport.

**Standard of Care**

4. Manager agrees to operate the Property in order to maximize discharge of effluent according to all applicable regulations and the City's discharge requirements. The City reserves the right to select crops in order to maximize the discharge of effluent, without regard to the Manager's financial interests. Consistent with these requirements, Manager also agrees to operate the Property in a manner consistent with good husbandry and the best farming practices as applied to similar agricultural property located in the surrounding geographical location. The City will offer the Manager written notice to repair any discovered failure to comply with any provision of this agreement and the Manager must comply within 30 days of the date of such notification. Failure of the Manager to comply with the conditions of the WRR, bio-solids, and best management practices for agricultural after notification of the failure will be grounds for termination of this agreement.
Budget and Financial Records

5. As discussed above, Manager shall prepare an annual budget (the “Budget”), based on the fiscal year beginning July 1, which shall contain the Manager’s good faith, estimates of all expenses and all revenues and Manager’s estimated monthly cash flow. Manager shall submit the Budget to City by March 1 of each year. Each item of custom farm work shall be a line item in the Budget. The Budget may be modified or amended after discussions between the Manager and the City. The City will use the Budget to develop the Preliminary City Budget. Manager shall meet with the City Manager or appropriate staff as required to review and monitor the progress of the budget.

6. Manager shall keep and maintain separate, accurate records of revenues and expenses for the Property. Manager and City shall prepare an annual profit and loss statement for the fiscal year that summarizes the expenses incurred during that year and compares the expenditures with the Budget previously submitted. Manager shall submit the annual report and statement to City no later than forty five (45) days after the end of the fiscal year. The Manager is to provide an inventory of all materials on hand as noted in paragraph #11 of this agreement as an attachment to the annual report.

Compensation

7. For Manager’s services described in Paragraph 2 of this Agreement, City shall pay Manager the following sums per year:

(a) Annual base fee (which shall consist of the Irrigation, Management, and Percolation Pond fee in Table #1 attached) for fiscal year beginning July 1, 2007, will be adjusted by
the scheduled per acre value noted in Table #1 attached. Custom farm activities (defined as all work done to cultivate, harvest, and sell crops) and maintain non-crop areas by activity will be compensated based upon a per acre charge as noted in “Table #1”. For Example:

If 405 acres is in irrigation:

\[
\text{Irrigation fee/acre} = \$3.00 \text{ /aces} \times 405 \text{ acres} \times 12 \text{ mo/yr} = \$14,580/\text{yr}
\]

\[
\text{Management fee/acre} = \$2.50/\text{acre} \times 405 \text{ acres} \times 12 \text{ mo/yr} = \$12,150/
\]

\[
\text{Total Irrigation & Management Fee} = \$26,780/\text{yr}
\]

All custom work will be paid per the following:

1) An estimate for the task must be submitted and authorized by the City prior to commencement of the work,

2) Submitted work must have been included in the City approved budget for the current fiscal year,

3) Satisfactory completion of the work, and

4) An invoice must be submitted to the City for payment.

(b) For percolation pond operation and maintenance, the Manager will be compensated separately based on charges listed in “Table #1”, which includes, a Management fee per acre and other maintenance tasks as needed.

(c) Commission—5% commission on the gross income on all revenue and income generated from the farming operation upon verification of weight tickets and/or
Broker's report, and subject to the cap set forth below. Such commission shall be paid semi-annually on December 1 and June 30, each year.

(d) Providing all relevant, certified as accurate records for the uses of all irrigation waters and bio-solids applied each year in accordance with the WRR and CVRWQCCB General Order the use of bio-solids.

8. The annual base fee shall be paid in 12 equal payments. The annual base fee includes all costs of the Manager for all farm management activities, general supervision, and all labor, fuel, twine purchases, maintenance of the Managers equipment and all equipment used for irrigation and road maintenance. All labor and equipment for rodent abatement are included in the Management fee. Weed abatement adjacent to all planted fields is to be billed at the rate noted in “Table #1”. All of Manager's responsibilities concerning compliance with all laws, regulations and orders (including but not limited to Water Reclamation Requirements) and ten (10) hours per week concerning the collection/compilation of data and assistance with reports necessary pursuant to waste reclamation requirements; collection and compilation of data for and assistance with all reports necessary with regard to federal farming programs; and all other work unless specifically excepted in this Agreement or separately approved by the City as a custom item. Cash overhead costs are included with the Management fee and include, but are not limited to, office expenses, Manager's possessory interest in property taxes, insurance, repairs to existing infrastructure including, but not limited to, irrigation lines, and replacement of equipment currently owned by Manager. Non-cash overhead is also a part of the Management fee and includes, but is not limited to, shop buildings, hay barns, storage buildings, fuel tanks
and pumps, and shop tools and equipment. The City shall be responsible for any property tax assessed to its possessory interest in the property.

9. Custom farm work must have been approved in estimate form and submitted for all cultivation of irrigated crops and harvest work done in accordance with this agreement and at the rate(s) specified in “Table #1” for payment.

10. For cost containment purposes, equipment costs for such work will be calculated into a dollars/acre rate schedule approved by the City. Manager is required to obtain written authorization from the City prior to commencing all cultivation or harvesting farm work. This Agreement does not in any way preclude the City from purchasing equipment for Manager’s use in his operations on the property.

11. The City shall be responsible for the cost of supplies not specifically covered under Paragraph 8. For cost containment purposes, all supplies and services concerning custom farm work or other services not included within the per acre fee shall be purchased through the City’s purchasing system pursuant to City purchasing procedures. Manager, however, retains the discretion over the appropriate supplies and services needed for the operation and maintenance of the property under this Agreement. Manager will compare price quotes for material from active vendors to obtain the best pricing, where practical. The Manager is to provide, as part of the annual report, an accurate inventory of all materials on hand as of June 30 each year. The list of material will be provided as an attachment to the annual report.

12. In the event that additional irrigated property is added or removed from this Agreement, Manager will be compensated at the dollar/acre values noted in Table #1.
13. Compensation (excluding commissions) shall be paid monthly, less amount for impound account. All invoices from the Manager shall be billed monthly to the City in accordance with the accounts payable schedule provided to the Manager. The City will pay all pre-approved invoices within thirty days of their receipt. Commissions shall be paid on a semi-annual basis on December 1 and June 30 of each year. Disbursement of impounds account funds are to be paid 30 days prior to the being due.

14. Compensation for baling of alfalfa will be done to provide for a minimum 115 pounds per bale weight or 17.4 bales per ton. The payment rate per bale is shown on line 17 of “Table #1” attached. The average weight of bales is to be determined from the total tons of alfalfa sold and weighed. Total tonnage is then divided into the bale count as noted on the broker’s report to determine the average bale weight. If bale weights are found to be less than 115 pounds per ton, an adjustment to the commission payment will be made to compensate the City for the lighter bales.

15. City is entitled to offset amounts owed to Manager concerning amounts owed to City for rents, leases, licenses, fees or other payments with regard to any and all other agreements to which the City and the Manager are parties.

**Termination for Default**

16. In addition to the termination provisions stated in Paragraph No. 1, in the event either party violates any of the terms or conditions of this Agreement or fails, in the opinion of the other party, to satisfactorily perform its duties under this Agreement, the aggrieved party may deliver an Allegation of Default to the violating party. The Allegation of Default shall be delivered in the manner described below. After delivery of
the Allegation of Default, the violating party shall have 30 days within which to cure, or initiate curing in good faith, the alleged default or to otherwise respond to the Allegation of Default. If the violating party does cure the alleged default within the required time period, this Agreement may continue in effect as though no default had occurred. In the event that: 1) the violating party fails to cure the alleged default within the required time period and fails to otherwise respond to the Allegation of Default within the required time period, or 2) The violating party, within the required time period, alleges in writing that it has not in fact committed an act of default, then the aggrieved party may deliver a Demand for Mediation to the violating party. Within 10 days after delivery of a Demand for Mediation, the parties shall endeavor, in good faith, to agree on a qualified agricultural expert to serve as Mediator. If the parties are unable within that time period to agree on a qualified expert to mediate the dispute, either party may request the head of the County Agricultural Department of Tulare County to designate a qualified expert to act as mediator. In the event the parties are unable to come to an Agreement pursuant to Mediation, the parties may pursue any and all other remedies available in accordance with the law.

17. If Manager is adjudicated bankrupt, or shall make an assignment for the benefit of creditors, or file a voluntary petition under any law having for its purpose the adjudication of Manager as bankrupt, or the extension of time of payment, composition, adjustment, modification, settlement or satisfaction of the liabilities of Manager under such bankruptcy proceeding or with regard to any such assignment described, notwithstanding anything to the contrary elsewhere in this Agreement, the City shall have the immediate right to terminate this Agreement.
18. In the event this Agreement is terminated, Manager shall be entitled to the compensation described in this Agreement, for work actually performed under the Agreement, prorated through the date of termination.

Maintenance and Inspection of Records

19. Manager is required to maintain accurate records concerning all aspects of the farm management operation under this Agreement including, but not limited to, records concerning all employees' time and wages, and records concerning supplies and equipment. City is entitled to inspect all records at anytime, provided that such inspection is conducted during regular business hours.

Assignment

20. Manager may not assign this Agreement without the prior written consent and approval of City, and consent may be withheld for any reason. Any unauthorized assignment shall be void.

Notices

21. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either party by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom they are directed; or in lieu of personal service, when deposited in the United State mail first-class postage prepaid, addressed to the City at 291 North Main Street, Porterville, California 93257 or to Manager at _________________________________.
Either party may change its address for the purpose of this paragraph by giving written notice of the change to the other party in the manner provided in this paragraph.

**Workers’ Compensation Insurance**

22. Manager shall be responsible for obtaining workers’ compensation insurance or ensuring that all employees have workers’ compensation coverage, as required by law, concerning all work performed in accordance with this Agreement. Proof of coverage is to be provided annually as an attachment to Manager’s annual report.

**Merger and Construction, and Termination of Leases**

23. This Agreement sets forth the entire understanding and agreement of the parties and may be modified only by an agreement in writing executed by the parties. All negotiations between the parties are merged into this Agreement. This Agreement supersedes and extinguishes any and all prior Lease Agreements entered into by the parties concerning property leased by Manager from the City; however, any and all amounts currently due and owed under any and all prior Agreements and Leases shall be paid as prescribed by such prior Agreements and Leases. This Agreement shall not be construed against the drafting party but shall be construed as if drafted by both parties. The paragraph headings used are for convenience only and do not form a part of this Agreement.

**Indemnification**

24. The City shall and does hereby agree to save, indemnify and hold harmless Manager from all manner of claims, suits, demands, actions or causes of actions of all persons arising from or in any way connected with the City’s actions concerning the
Property or the improvements thereon, or activities engaged on or carried on or conducted upon the premises by the City, together with costs and attorney fees.

25. Manager shall and does hereby agree to save, indemnify and hold harmless the City from all manner of claims, suits, demands, actions or causes of actions of all persons arising from or in any way connected with Manager’s actions and activities on the Property or the improvements thereon, or carried on or conducted upon the premises by Manager, together with costs and attorney fees.

**Binding on Heirs and Assigns**

26. This Agreement shall bind and inure to the benefit of the heirs, executors, administrators and permitted assigns of Manager and the successors and assigns of the City and time shall be the essence thereof. The parties hereto hereby agree that permitted assigns shall be restricted to heirs and family members and no other assignment of any interest in this Agreement shall be valid or operative unless the City shall formally approve the assignee and such assignee executes an agreement with the City on the same terms and conditions as the assigned Agreement.

**Attorneys Fees**

27. If any legal action is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of the Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs incurred in that action, in addition to any other relief which it may be entitled.
Severability

28. In the event any portion of this Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion shall be deemed severed from this Agreement; and the remaining parts hereof shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable portion had never been a part of this Agreement.

Venue

29. Venue for any action filed concerning this Agreement shall be in Tulare County, California.

Waiver

30. No waiver of any provision of this Agreement shall be deemed to be a waiver of any other provision hereof or of any subsequent breach of the same or any other provision. Any consent to or approval of any act requiring consent or approval shall not be deemed to render unnecessary the obtaining of consent to or approval of any subsequent act, whether or not similar to the act so consented to or approved.

Executed on _____________, at Porterville, California.

___________________________

[City signature line(s)]

___________________________

CITY OF PORTERVILLE

___________________________

Cameron Hamilton, Mayor

___________________________

John Longley, City Clerk

___________________________

Julia M. Lew, City Attorney
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<tr>
<td>15 Insect Spraying</td>
<td></td>
<td>per acre</td>
</tr>
<tr>
<td>16 Specify Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17 Specify Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Harvest</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18 Cutting Hay</td>
<td></td>
<td>per acre</td>
</tr>
<tr>
<td>19 Turn Hay</td>
<td></td>
<td>per acre</td>
</tr>
<tr>
<td>20 Rake Hay</td>
<td></td>
<td>per acre</td>
</tr>
<tr>
<td>21 Bale Hay (&gt;115 lb bale)</td>
<td></td>
<td>per bale</td>
</tr>
<tr>
<td>22 Road siding</td>
<td></td>
<td>per bale</td>
</tr>
<tr>
<td>23 Specify Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Non-Crop</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23 Non-Crop Weed Spraying</td>
<td></td>
<td>per acre Estimated 15% of gross irrigated acreage x 6 per season</td>
</tr>
<tr>
<td>24 Bio-Solids Application</td>
<td></td>
<td>per acre (15-20 tons/ac, approx 60 ac/year.)</td>
</tr>
<tr>
<td>25 Specify Other</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Non-crop*: including but not limited to roadways, roadsides, drainage ditches, irrigation channels, levee banks, fence lines, vacant acreage, pumps, tail water ponds, water control structures, hay storage areas, miscellaneous structures.

**NOTE:** The list of cultivation activities is inclusive of all irrigated crops of Alfalfa, Oats, and Sudan Grass. Some activities may be done more than once during the establishment of a crop or as a result of weather damage. Harvesting of Alfalfa and Sudan Grass are done several times per season. Seasons vary in length and may change the number of harvests from year to year. Oats are harvested once per season. Oats are followed with Sudan Grass in the same budget year on the same acreage.
CITY OF PORTERVILLE
WASTE WATER TREATMENT PLANT
Reclamation Area LEASE – REQUEST FOR PROPOSAL

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CITY OF PORTERVILLE
WASTE WATER TREATMENT PLANT
Reclamation Area LEASE – REQUEST FOR PROPOSAL

I SUMMARY

The City of Porterville is soliciting bids from experienced farming entities for the Lease of the City Reclamation Area. Prospective farming entities are invited to propose a Farmland Lease expressed as a fee per farmable acre to be paid to the City of Porterville. The Lessee will be entitled to the

a) Recycled wastewater as delivered by the City to the Reclamation Area for Irrigation
b) Ownership of all crops
c) Value of Crops used by Lessee for his/her own use
d) All government subsidies
e) All revenue from whatever source received in connection with planting or withholding the planting of crops on the subject property

As part of the Lease, the Lessee will be required to maintain and operate the non-crop and percolation pond components of the Reclamation Area. All activities shall be under the supervision of the City and disposal program objectives are the priority. The farming entity that is awarded the Lease will be directed by City to complete activities as needed. It is recommended that prospective bidders become familiar with the regulatory requirements prior to preparing the bid documents. (See attachments.)

II BACKGROUND

The City of Porterville operates a reclamation enterprise for disposing up to 5.3 million gallons, or 15acre-feet, per day of treated effluent. The system delivers wastewater to the reclamation area 24 hours per day, 7 days per week. Approximately 1,000 tons of bio-solids are also delivered to the reclamation area annually. The method of disposal consists of different operations:

- Farming
- Percolation Ponds
- Bio-Solids Application

The primary method is the irrigation of between 425 to 650 acres of leveled farmland. Effluent is delivered from the Wastewater Treatment Facility to the reclamation area through a City owned pipe system, and then applied through conventional flood irrigation systems. Up to 50% of the treated effluent is discharged to percolation ponds located at the reclamation area. Biosolids are delivered via truck transport and stored in non-crop areas. The bio-solids will be broadcasted on fields during field preparation for alfalfa and must be irrigated with well water for one (1) year.

The choice of crops and rate of effluent application has been predetermined by the Waste Discharge Requirements (WDR) 5-01-103 and Water Reclamation Requirements (WRR) 5-01-246 as mandated by the Regional Water Quality Control Board (RWQCB). These requirements direct all activities at the reclamation area, whether it is wastewater application or other
customary farming practices such as the application of soil amendments, fertilizers, pesticides, and herbicides. The RWQCB has directed the City to dispose of its effluent in an environmentally sound manner that minimizes groundwater degradation to the area, and does not adversely affect the Teapot Dome Landfill. The Department of Health Services regulations (California Title 22, Article 3, Section 60304) allow irrigation of fodder and fiber crops with secondary-treated recycled water. Currently, the program rotates alfalfa, sudan grass, wheat and oat hay.

First and foremost, the City is committed to program development that prioritizes the changing needs of a growing community, minimizes taxpayer cost, and maximizes effective disposal of effluent. The Reclamation Area program can therefore be expected to change as development requires. Whereas all of the situations that may develop cannot be anticipated, it is recognized that compliance and changing disposal needs will necessitate close coordination between all involved parties. The City and Lessee must operate knowing that there are unknown future developments that will likely affect the program.

III ELEMENTS OF Reclamation Area Lease Agreement

The Lessee will have specific obligations as part of the Farmland Lease. The Reclamation area is operated in three components: Farming, Non-Crop, and Percolation Ponds. The Lessee agrees to operate the entire property in order to maximize discharge of effluent according to all applicable regulations and the City’s discharge requirements.

The applicant must submit a bid for all of the properties included in the program. The Lessee is responsible for water management, irrigation, farming and operations of the crop land while irrigation infrastructure and capital projects are budget items and are paid by the City. The Lessee is responsible for all utility expenses.

Operation of the property is to comply with all federal, state, and local regulation including, but not limited to, waste discharge requirements and plans concerning management of the reclamation area and the San Joaquin Air Pollution Control District Rule 8 (agricultural sources). The Lessee shall comply with all requirements of regulatory agencies, the collection and compilation of data and reporting for these agencies and for enrollment in the USDA farming programs. The Lessee must maintain general liability insurance with a minimum of $2 million in coverage. The Lessee is responsible for the harvesting and marketing of all crops.

1. SUMMARY OF RECLAMATION AREA LEASE:

A) Right to farming Activities and Limited Right to Wastewater: All direct farming operations for the establishment, husbandry, harvest, storage, and sale of crops.

B) Obligation to fulfill Non-Crop Activities: Maintenance and adherence to all requirements of regulatory agencies for property outside direct crop land. Operate the delivery system i.e. provide water to other property owners as directed by the City.
C) Obligation to Operate and Maintain Percolation Pond: Maintenance and adherence to all requirements of regulatory agencies for percolation pond system.

The mission of this program is the disposal of reclaimed water. If the challenges of managing a constant flow of effluent through irrigation or emergency water management practices either deleteriously affect or even ruin crop yields, there is no additional compensation for the farm Lessee. Crop insurance, pre and post-harvest, if available, is the responsibility of the Lessee.

Compliance & Reporting
The Lessee agrees to operate the property in order to maximize irrigation with effluent according to all applicable regulations and discharge requirements. Operation and Lease of the property is to comply with all federal, state, and local regulation including, but not limited to, waste discharge and biosolids utilization requirements, and plans concerning Lease of the reclamation area and the San Joaquin Air Pollution Control District Rule 8 (agricultural sources).

2) CONTRACTUAL RESPONSIBILITIES

The Reclamation Area Lease Agreement consists of three components: Farming Activities, Non-crop activities, and Percolation Pond Operation / Maintenance. The contractual duties are summarized below:

A) Farming Activities: All direct farming operations for the establishment, husbandry, harvest, storage, and sale of crops; use and management of all irrigation water, whether delivered to a field in the Reclamation Area or to outside water users. At no time shall the entire system of valves be closed at once, as the lessee must dispose of all water delivered to the Reclamation Area daily.

B) Non-Crop Activities: Maintenance and adherence to all requirements of regulatory agencies for property outside direct crop land. Weed abatement and rodent control in all acreage defined in Agreement as Non-Crop areas. Operate the delivery system i.e. provide water to other property owners as directed by the City.

C) Percolation Pond: Maintenance and adherence to all requirements of regulatory agencies for percolation pond system.

IV DESCRIPTION of RECLAMATION AREA

1) See Attachment for property map and locations.

2) Program Specifics
The following outlines the responsibilities for each component of the operation. Also see attached Reclamation Area Lease Agreement.

A) Farming Activities:
   a) Field Lease including field preparation, furrowing, seed bed preparation, herbicide application and weed, planting, and cultivation,
b) General Crops including irrigation, pest control, nutrient use,

c) Harvesting, including inventory and sales,

d) Assist in preparation of RWQCB reports & documentation, compliance with all regulatory reporting,

e) Emergency water management as needed,

f) Operate and maintain all well, return pumps and irrigation facilities, and

g) Compilation of data and assistance for enrollment in all government programs.

B) Non-crop Activities:

a) Maintenance of non-crop areas, including but not limited to roadways, roadsides, drainage ditches, irrigation channels, levee banks, fence lines, vacant acreage, pumps, tail water ponds, water control structures, hay storage areas, miscellaneous structures,

b) Non-crop weed abatement,

c) Limited capital projects – minor pipeline repair and installation, land planing, and culvert maintenance. There may also include pre-determined Capital Projects to be undertaken where Reclamation Area Leassee may provide custom farm work and be compensated under the terms of agreement for specific items,

d) Application of Bio-solids, gypsum and soil amendments,

e) Soil testing and reporting.

C) Percolation Pond

a) Distribution of effluent to and within percolation ponds,

b) Maintain ponds against erosion, rodent damage,

c) Periodic disking, clearing, or other maintenance as directed by the City to maintain infiltration rates,

d) Weed abatement adjacent to and including within pond areas,

e) Maintenance of existing pipeline, valves, meters, overflows and other percolation pond infrastructure and levees,
3) Requirements of Reclamation Area Lessee

1. Provide proof of general liability insurance, minimum of $2 million overall coverage
2. Provide proof of Workers Compensation coverage
3. Compliance with all requirements of regulatory agencies, including labor laws
4. Lessee must comply with the principles of Best Management Practices:

   **Best Management Practices**

   The list of general principles which define BMPs follows:

   - Set accomplishable, realistic, and measurable economic and environmental objectives, using annual budget and cropping plans.
   - Know and understand economic, environmental, and agronomic processes involved.
   - Timely and uniformly apply water and nutrients as needed.
   - Evaluate results and amend implementation plan for next cycle.

   BMPs for this project may include, but are not limited to:

   - No use of nitrogen fertilizers without prior approval from the City
   - No discharge of recycled water or run off beyond the boundaries of the contracted parcel
   - Maintenance of the premises in an orderly and clean condition
   - Avoidance or reduction of irrigation during rain events
   - Application of soil amendments at agronomic rates per bio-solids application plan.

V PROJECT TIME SCHEDULE

1. 2/2007 RFP Available to Public
2. 3/2007 Pre-Proposal Site Tour
3. 4/2007 Proposals Due
4. 6/1/2007 Lease Contract Awarded
5. 11/30/2007 Current contract terminates
6. 12/1/2007 Lease Contract begins

VI PRE-PROPOSAL SITE TOUR

A scheduled pre-proposal site tour is available for all applicants. This tour will be held in March of 2007.
VII QUALIFICATIONS AND SELECTION CRITERIA

The City policy for awarding this Reclamation Area Lease Agreement will be based on the most qualified applicant as determined by the City, not necessarily the applicant who submits the highest lease amount per acres. The City will carefully investigate each applicant’s background and experience in farming operations. The City recognizes its policy of providing equal opportunity to all qualified persons and reaffirms its commitment that there shall be no discrimination against qualified applicants on the basis of race, gender, color, national origin, religion, age or disability.

The applicant must have experience in managing farming operations of similar or greater size. The proposing farming entities will also make their existing farming operations available for review and inspection by City staff and consultants. Proposal selection will be based on the criteria shown on the following table:

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Farming Business experience, Financial condition of the applicant</td>
<td>25</td>
</tr>
<tr>
<td>2. Marketing &amp; Sales experience for Crops</td>
<td>25</td>
</tr>
<tr>
<td>3. Proposed annual Lease ($/acre)</td>
<td>25</td>
</tr>
<tr>
<td>4. Other factors (recycled water irrigation experience, quality of existing farming operations, quality of response)</td>
<td>25</td>
</tr>
<tr>
<td>Total items 1-5</td>
<td>100</td>
</tr>
</tbody>
</table>

VIII FORMAT OF THE PROPOSAL RESPONSE

See Attachment, Bid Proposal and application. Please return proposal and application by Monday, April 30, 2007, 12 pm, to:

City of Porterville
Attn: Director of Public Works
Re: Reclamation Area RFP
291 Main Street
Porterville, CA 93257

1. Required Proposal Conditions – signature page
2. Summary of Experience
3. Financial Credit References
4. Authority to Release information and Hold Harmless
5. Proof of General Liability and Workers Compensation Coverage
6. Proposal for Annual Reclamation Area Lease
The proposal should be brief and complete. Submittal of the attached forms is required and considered sufficient for the response to this RFP. However, applicants may include additional information as deemed necessary.

The proposal must be for the entire length of Reclamation Area Lease Agreement (10 years) with automatic extension of 10 years by mutual agreement.

IX GENERAL ATTACHMENTS

1. Reclamation Area Lease Agreement
2. Crop Plan, 5 year
3. Copy of General Order, Bio-Solids Utilization
4. Copy of Water Reclamation Requirements WRR 5-01-246 as adopted 19 OCT 2001
5. Map of Reclamation Area
6. Proposal and Application (to be returned to the City)

X GLOSSARY OF TERMS

Bio-Solid  *Sewage sludge, dry solids, same as sludge*
WDR Waste Discharge Requirements
WRR  *Water Reclamation Requirements*
WWTF Wastewater Treatment Facility
Recycled Wastewater Same as Effluent
CVRWQCB  *Central Valley Regional Water Quality Control Board*
Treated Wastewater *WWTF Effluent, containing nitrogen as fertilizer*
Premises *Interchangeable with Reclamation Area*
CITY OF PORTERVILLE - WASTE WATER TREATMENT FACILITY
Proposal Forms for Reclamation Area Lease

NAME: ___________________________  DATE: ____________  Page ___ of ___

1. REQUIRED PROPOSAL CONDITIONS – signature page

For the Proposal on the Reclamation Area Lease, City of Porterville, Wastewater Treatment
Facility Reclamation Area and Farmland

Name of Applicant: ___________________________
Business Address: ___________________________
City and Zip: ___________________________
Place of Residence: ___________________________
Telephone: Office: ____________ Mobile: ____________

The Premises referred to herein is to be operated in accordance with the agreement summary and
the provisions and specifications contained therein and be referenced thereto made a part hereof.
In the event I am the successful proposer, I will diligently farm all land available for irrigation
and follow all specifications of the Lease Contract.

The undersigned, as proposer, declares that the only person or persons interested in the proposal
as principals, are those names herein; that this proposal is made without collusion with any other
person, firm or corporation; that he has carefully examined the locations of the Reclamation Area
accreage, Federal, State, County and City laws relating to farming operations upon the
Reclamation Area Lease, the term, conditions, specifications and other stipulations hereinbefore
or hereinafter set out and the Reclamation Area Lease attached hereto.

If this proposal is accepted, said undersigned applicant shall execute a Reclamation Area Lease.
If the undersigned shall fail to execute such a agreement within five (5) days after the applicant
has received notice from the City or its duly authorized representative that the agreement is ready
for signature, the City may determine that the applicant has abandoned the agreement; and
thereupon this proposal and the acceptance thereof shall be null and void, and of no force and
effect.

IMPORTANT NOTICE
If the proposer is a corporation, state legal name of corporation, address, state of incorporation,
person designated for service of process, also names of directors, president, secretary, treasurer
and manager thereof; If co-partnership, state true name of firm, also names of individual co-
partners comprising the firm; if proposer is an individual, state first, middle, and last name in
full.

________________________________________

________________________________________

________________________________________

Dated: _______  Signature of Applicant: ________________
2. SUMMARY OF EXPERIENCE
(Use additional paper/attachments as needed)

1. Describe your current farming operations, experience with irrigated crops, including amount of land owned or leased, length of existing operations, and other relevant details regarding your existing operation.

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

2. Describe the expected challenges associated with your current understanding of the Reclamation Area Lease, and how you are prepared to address them.

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

3. Describe your experience with irrigation using recycled water and/or the application of bio-solids.

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
4. **Describe the agronomic challenges regarding the composition of the recycled water, the constant flow of water, and mitigation techniques.**

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

5. **Describe the existing and future markets for the crops that will be produced. Provide an estimated crop yield per acre per year and your intended sales plan.**

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

6. **Describe required operations and suggested activity schedule for the crops currently grown at the City Reclamation Area: Alfalfa, Oats, Wheat, and Sudan Grass. (Oats or Wheat is double cropped in the same year as 1st year Alfalfa.)**

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
3. **FINANCIAL and CREDIT REFERENCES**

Please include Bank Reference and three (3) credit references with regard to your current or past farming activities:

**BANK REFERENCE**
Name: __________________________________________
Contact: __________________________________________
Address: __________________________________________

Phone: __________________________________________
Acct Name and Number: ____________________________

**CREDIT REFERENCES**
1) Name: __________________________________________
Contact: __________________________________________
Address: __________________________________________
Phone: __________________________________________
Acct Name and Number: ____________________________

1) Name: __________________________________________
Contact: __________________________________________
Address: __________________________________________
Phone: __________________________________________
Acct Name and Number: ____________________________

1) Name: __________________________________________
Contact: __________________________________________
Address: __________________________________________
Phone: __________________________________________
Acct Name and Number: ____________________________
4. AUTHORITY TO RELEASE INFORMATION AND HOLD HARMLESS

TO Whom It May Concern:

It is my understanding that in connection with the proposal for the Reclamion Area Lease Agreement of the Wastewater Treatment Plant of the City of Porterville, I am required to furnish information for a thorough background and credit investigation to determine my qualifications. Based on that understanding, I hereby authorize the release of any and all information that you may have concerning me, including, but not limited to information of a confidential or privileged nature, or any data or materials which have been sealed or agreed to be withheld pursuant to any prior agreement or court proceeding involving disciplinary matters, upon the request of any agent of the agreement or court proceeding involving disciplinary matters, upon the request of any agent of the City of Porterville bearing this release or a copy thereof within twelve (12) months of the date signed.

I understand that I will not receive and am not entitled to know the contents of confidential reports received, and I further understand that these reports are privileged.

I hereby release, discharge and exonerate the City of Porterville, its officer, agents, employees, representatives and any person or organization furnishing information, from any all liability of every nature and kind arising out of the furnishing and inspection of such documents, records and other information, and this release shall be binding on my legal representative, heirs and assigns.

Failure to comply with this request may adversely affect my potential for entering into a Reclamation Area Lease with the City of Porterville. Should there be any question as to the validity of this release, you may contact me as indicated below.

______________________________  ________________________________  
Signature

______________________________  ________________________________  
Name

______________________________  ________________________________  
Current Address

______________________________  ________________________________  
Home Phone  Business Phone

______________________________  ________________________________  
Witness  Date
5. **PROOF OF GENERAL LIABILITY, WITH CITY OF PORTERVILLE DESIGNATED AS “ADDITIONAL INSURED”**

Please attach proof of insurance and contact information.

6. **PROPOSAL FOR LEASE of RECLAMATION AREA**

________________ (per acre)

Additional information

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Signed

________________________________________________________________________

Name (Please Print) __________________________

Date __________________________
City of Porterville Reclamation Area Land Lease
Porterville, CA

(City of Porterville - ____________________, Lessee)

THIS AGREEMENT, is executed in Porterville, California, on ______________, 2008, (herein after “Execution Date”) by and between the City OF PORTERVILLE, (hereinafter “Lessor”), and ________________________________, (hereinafter “Lessee”).

WITNESSETH:

WHEREAS:

1. THE CITY Farm Management Agreement and ensuing amendments thereto expire ______
2. THE CITY ______ and ensuing amendments thereto allowed parties to farm Reclamation Area property for the specific purpose of dispersing effluent from THE CITY wastewater operations to irrigate crops not used for human consumption; and
3. Lessee has acknowledged it is capable of such farming and operational management of the Reclamation Area, and dispersion of effluent on the City land; or contracted land.
4. THE CITY desires to contract with Lessee for these purposes.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

In addition to the terms and provisions provided herein, and unless otherwise stated in this Lease, Lessee shall be required to perform all obligations as set forth in the “Reclamation Area Lease – Request for Proposal”, which is attached hereto as Exhibit ____ and fully incorporated herein by reference.

1. Premises
   1.1. The Premises is defined as the area leased to Lessee for the purposes of this Agreement and further described in Provisions herein below.
   1.2. As of January 1, 2008 the Premises is described as “The Reclamation Area” on Exhibit A and includes:
       1.2.1. Parcel 1: Airport A - D
       1.2.2. Parcel 2: Nuckols 169
       1.2.3. Parcel 3: 46
       1.2.4. Parcel 4: Underhill 160
       1.2.5. Parcel 5: Hunsaker 160
   1.4. Exhibits A and B are attached hereto and by this reference incorporated herein.
   1.5. The City makes no covenants or warranties regarding the condition of the Premises, the soils thereon, the effluent, or the improvements and appurtenances thereto.
   1.6. Lessee has inspected the Premises and improvements thereon, knows the extent and condition thereof, and accepts same in their present condition, including all defects, latent and/or patent.
1.7. The City shall have the right to reduce or expand the acreage of the Premises and remove or add to this area for Lessee’s use.

1.7.1. At lease 90 days prior to reduction or enlargement of the lease area, the City shall provide Lessee written notice stating:

1.7.1.1. The effective date of the reduced or enlarged area.
1.7.1.2. A description and drawing that identify the reduced or enlarged area and remaining lease area.
1.7.1.3. A revised rental rate to begin the effective date.
1.7.1.4. A request to meet with Lessee to provide additional information.

1.7.2. Lessee shall have 60 days from the date of the City’s written notice to terminate this Agreement by providing written notice to the City and if so terminated:

1.7.2.1. Lessee’s date of termination shall be the same as the effective date.
1.7.2.2. Lessee shall have the right to harvest existing crops within the Premises through the 90 day to the effective date. ???????

1.7.2.3. Lessee shall be required to pay the rent due within the 90 day period in the manner described in Paragraph 5 herein below, but said payment shall be prorated for the number of days after that last rent payment (either April 1st or October 1st) to the effective date of termination.

1.7.2.4. Upon such early termination due to enlargement or reduction of the lease area, the City shall pay to Lessee, or credit Lessee’s last rent payment, $2,000 as compensation for, including but not limited to, costs for any long term crop investment on the Premises (this $2,000 would not be in addition to the $2,000 stated in Paragraph 4.3.3.1 herein below).

2. Off-Premises and Easement Areas

2.1. Lessee is aware of existing agreements with other parties to provide wastewater for property outside of the Reclamation Area (Off-Premises).

2.2. Lessor shall also permit Lessee the non-exclusive right to use existing roads on Section lines and quarter Section lines on the Premises.

2.2.1. Lessor and Lessor’s easement holders and invitees may also use said roads for vehicular traffic.

2.2.2. Lessee shall not remove said roads and shall keep said roads open and maintained to allow two-wheel drive travel.

2.3. Lessee is aware that various easements cross the Premises and that from time to time easement holders have the right to enter the Premises, conduct their operations, and may temporarily hinder Lessee’s operations.

2.4. Lessee has inspected the farm connection road, dirt roads, easement areas, and other off-Premises areas that Lessee may use or benefit from, knows the extent and condition thereof, and accepts same in their present condition, including all defects, latent and/or patent.

3. Purpose

3.1. The purpose of this Agreement is for Lessee to reuse and disperse the wastewater from the City exclusively on the Premises in order to irrigate and farm the Premises.

3.1.1. The City effluent is controlled by the Central Valley Region Water Quality Control Board Waste Discharge Requirements (WDR 5-01-103 and WRR 5-01-246).

3.1.2. Lessee shall not farm or grow crops to be used for human consumption.

3.1.3. No grazing of dairy cows shall be permitted on the Premises.
3.2 Lessee shall not use the Premises or effluent for any other purposes, except as provided elsewhere in this Agreement.

4. Term
4.1. The term hereof shall commence on _________________ and terminate on _________________.

4.2. Provided that Lessee has met the terms and conditions of this Agreement, Lessee may renew and extend this Agreement for one ten (10) year period (______________) by providing the City written notice by ________________ at which time Lessee shall pay to the City rent for first 6 months of ________________, which shall include the rent increase stated in Paragraph 5.4 herein below.

4.3. Early termination of the Agreement may be instituted by:
   4.3.1. Lessee, by providing to the City written notice at least 365 days prior to the new date of termination.
      4.3.1.1. In such case Lessee shall pay to the City rent for the remaining 365 days (the remainder of the then current calendar year and a daily pro-rated rent through the date of termination of the next calendar year).
      4.3.1.2. Lessee shall continue to farm and disperse effluent and abide by the terms as stated in this Agreement through the noticed date of termination.
   4.3.2. The City, by providing to Lessee written notice 30 days prior to the new date of termination if:
      4.3.2.1. Lessee has demonstrated reckless or dangerous operations on the Premises and has not corrected those operations immediately upon written notice by the City.
      4.3.2.2. Lessee assigns or sublets any portion of the Premises without written permission by the City.
   4.3.3. The City, by providing to Lessee written notice at least 365 days prior to the new date of termination.
      4.3.3.1. Upon such early termination, the City shall also pay to Lessee, or credit Lessee’s last rent payment, $2,000 as compensation for, including but not limited to, costs for any long-term crops on the Premises (this $2,000 would not be in addition to the $2,000 stated in Paragraph 1.7.2.4 herein above).
      4.3.3.2. After the new termination date described in the 365 day notice, Lessee understands that the City will not be required to recom pense Lessee for any losses of income or damages incurred by Lessee in such instance.
   4.3.4. Mutual written agreement of both parties.

5. Rent and Payment Requirements
5.1. Beginning ________________, Lessee shall pay to the City, in lawful money of the United States, an annual rental in the amount of ________________ ($/acre) for Lessee’s use of the Premises and effluent water.
   5.1.1. At least fifty percent (50%) of the annual rental amount shall be paid prior to July 1 of each year.
   5.1.2. The remainder of the annual rent, to equal 100%, shall be paid prior to December 31 of each year.
   5.1.3. Payments later than 7/31 and 12/31, respectively, shall be assessed a late fee of one half of one percent (.005 time 50% of the annual rent) per day through the day the required payment is made.
5.2. Rent shall be paid by check made out to City of Porterville and mailed or delivered in person to the City of Porterville, 291 Main Street, Porterville, CA 93257.
5.3. Rent through any term extension shall be paid in the same manner.
5.4. Should the term of this Agreement be extended as provided in Paragraph 4.2 herein above, rent shall increase ten percent (10%).
5.5. As security for this Lease, Lessee must provide and Irrevocable Standby Letter of Credit as shown on Exhibit C, which is attached hereto, and by this reference incorporated.
5.6. The cost of work or improvements done by Lessee outside the scope of Paragraph 8, may only be deducted from the next scheduled payment if:
   5.6.1. The work is performed at the request of the City
   5.6.2. The City has given prior written approval to a written estimate provided by Lessee for the not to exceed cost of work or improvements; and
   5.6.3. Upon completion of the work or improvements, contractor provides the City with an invoice of the final actual cost amounts, including units and cost per unit as appropriate.

6. Operations
   6.1. Lessee shall conduct all operations according to good farm husbandry practices.
   6.2. Lessee shall manage operations in compliance with all applicable federal, state, and county laws, regulations and ordinances, including local water board discharge requirements and the local air district rules.
   6.3. Lessee shall conduct operations in a business-like manner and not harm or degrade the City and its operations.
   6.4. Lessee shall not do or permit any act or thing that constitutes a nuisance by the City either on or off the Premises.
      6.4.1. Lessee shall take immediate action to correct any such nuisance discovered by Lessee or through notification by the City within three (3) days of discovery or notification.
      6.4.2. Lessee shall promptly perform the correction efforts in a manner to prevent its reoccurrence.
   6.5. Each year, upon notification by the City, Lessee agrees to meet with representatives of the City to discuss operation of the farm and plans for the next calendar year and submit for approval a rolling 5 year cropping plan.

7. Improvements
   7.1. Lessor does not warrant or guarantee the safety, condition, or effectiveness of the improvements on the Premises on or before 1/1/2008.
   7.2. Existing improvements owned by the City and available for use by the Lessee include:
      7.2.1. Pressurized pipeline and appurtenances
      7.2.2. Percolation Ponds and Fencing
      7.2.3. Storage Yard and Structures
      7.2.4. Five (5) Irrigation Wells
      7.2.5. Other
   7.3. Lessee, at its sole cost and expense, may alter, add to, and replace, remove, or demolish any part of the improvement for or in conjunction with efficient and prudent farming operations and dispersal of effluent, with prior written approval from the City.
      7.3.1. Alteration include changes to the physical land such as removing, adding; or significantly changing ditches, embankments, ponds, and reservoirs as well as drilling and major trenching.
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7.3.2. Additions include construction or installation of new buildings, structures, checks, weirs, levees, culverts, roads, head gates, wells, and fences.

7.3.3. Repairs and replacements include those for fences and above and underground pipes and valves and pumps.

7.3.4. Demolishment includes partial or entire destruction and/or removal of any improvements such as fences, posts, structures, etc. and Lessee understands that Lessee shall be solely responsible to properly remove and dispose of such demolished material.

7.4. Such alterations, additions, replacements, removals, or demolishment described or implied in Paragraph 7.3 herein above shall only occur after written approval is provided by the City for the specific action to be taken and Lessee has received all other approvals by any governing or regulatory body that exercise control for such changes.

8. Upkeep and Property Management

8.1. Lessee shall be responsible for the general upkeep and maintenance of the Premises.

8.2. STANDING WATER: Lessee shall grade, level, drain and otherwise maintain the Premises in a manner to level any low areas in order to prevent standing and stagnating water on the Premises.

8.3. STORM WATER: Lessee shall properly manage and/or dispose of any storm water entering the Premise.

8.4. TRASH: Lessee shall be responsible for regular and prudent trash, debris, weed, and brush removal from the Premises.

8.5. ROADS: Lessee shall maintain and keep all roads on the Premises, and the farm connection road stated in Paragraph 2 herein above, in good condition and repair and at proper elevation and compaction to limit erosion and provide reasonable two-wheel drive travel.

8.6. EARTHEEN IMPROVEMENTS: Lessee shall maintain and keep in good condition and repair all ditches, sumps, ponds reservoirs, and embankments in order to keep the ditches, sumps, ponds, reservoirs, and embankments watertight.

8.7. WEEDS: Lessee shall remove weeds, trash, and debris from and near all ditches, sumps, ponds, reservoirs and embankments, roads, wells, pump stations, and irrigation structures.

8.8. EFFLUENT WATER DISTRIBUTION SYSTEM: Lessee shall at his expense, maintain and keep in good condition and repair existing aboveground and underground water distribution system, which includes pipelines, risers, and valves required for proper irrigation.

8.9. PUMP/MOTORS: Lessee shall at his expense, maintain, repair, replace, or add pumps/motors used at the irrigation wells, tail water sumps and elsewhere on the Premises after first receiving specific written approval from the City.

8.10. RODENTS: Lessee shall make frequent and reasonable efforts to minimize ground squirrel population on the Premises

8.11. FENCES AND GATES:

8.11.1. Lessee shall promptly maintain and repair all fences and gates on or that borders the Premises and shall hold the City free and harmless from any liability or loss sustained by Lessee due to trespassers on the Premises.

8.11.2. The City shall replace gates and any sections of fence it deems necessary.

8.12. NON-CROP AREAS:

8.12.1. Lessee shall remove weeds, trash, and debris from and near Percolation Ponds.
8.12.2. Lessee shall maintain and keep in good condition and repair embankments in order to keep the sumps, ponds, and ditches watertight.
8.12.3. Lessee shall conduct farming and non-crop activities as to comply with all air pollution control standards, and to minimize dust.

9. Hazardous Waste and Chemicals
9.1. Lessee shall not use the Premises to dump gas, oils, dairy waste, chemicals or other hazardous waste and shall contact the City immediately if such a release occurs or is found.
9.1.1. Any such release shall be the sole responsibility of Lessee.
9.1.2. Lessee shall be responsible to clean up and cure such release in a timely manner.
9.2. Lessee shall only use chemicals that are reasonable and typically used for farming operations, weed control, and pest control.

10. Electricity
10.1. Lessee shall be responsible to pay all utility costs for pumps and motors used on the Premises.
10.2. Lessee shall make all utility payments promptly and stay in good standing with the utility company.

11. Water
11.1. Lessee shall control the flow, reuse, and dispersal of all effluent supplied by the City year round as surface water onto the Premises in a prudent and efficient manner to farm the Premises unless provided specific allowance by the City in writing to disperse portion of the wastewater elsewhere.
11.1.1. Lessee understands that the City production of effluent may vary significantly but may produce up to or more than 6 million gallons of effluent per day.
11.1.2. Notwithstanding Paragraph 12.2.1 herein above, Lessor expects the typical effluent produced on the Execution Date to be approximately 5.2 million gallons per day although Lessor does not guarantee any specific amount of wastewater suitable for irrigation and shall not be liable for any damages to crops due to insufficient, excess, or oil or chemical contaminated wastewater.
11.1.3. Lessee agrees that the City may decrease or increase the gallons per day of effluent and also agrees to manage any such decreases and increases and to utilize all the effluent on the Premises.
11.2. Lessee may supplement the effluent with well water from the Premises or other water sources that have first been approved in writing by the City.
11.2.1. By the tenth (10th) of each month of this Agreement, beginning with ______________, Lessee shall provide a written report that provides the amount of supplemental water (water or effluent not supplied by the City) used and dispersed by the Lessee on the Premise.
11.2.2. The written report shall identify the source of all water and the volume of water in gallons or acre/feet used on each field.
11.3. Water from existing or new wells on the Premises shall only be used on the Premises for the purposes of this Agreement and shall not be dispersed or sent off the Premises.
11.4. The City does not and shall not supply potable or drinking water to the Premise.
11.5. The City may enter into an Agreement with other property owners for the expressed purpose of providing effluent for irrigation.
12. **Crops**

12.1. Lessee shall use the Premises and effluent to irrigate the farm, grow and harvest non-human consumable crops, and maintain an agronomic nitrogen balance with the effluent applied to farmed area.

12.2. In the third quarter of each year of this Agreement, Lessee shall, if notified by the City, meet with the City to discuss operation of the farm for the next calendar year.

12.3. Lessee shall have the right to remove all existing crops within 30 days after expiration or termination of this Agreement and shall leave said area in good condition after such removal.

12.4. Lessor shall not be liable for any crop loss sustained by Lessee for any reason.

13. **Biosolids, Fertilizers, and Soil Amendments**

13.1. Lessee shall use biosolids and soil amendments on the Premises in accordance with good farming practices, and schedules provided.

13.2. Lessee shall not accept or allow any placement of biosolids, sludge, septage, or similar materials on the Premises from parties other than Lessor and Lessee shall notify Lessor immediately of any unauthorized placement.

13.3. By January 31 of each year of this Agreement, Lessee shall provide to the City a written report that states the pounds of nitrogen and any other materials applied to the Premises over the previous calendar year.

13.4. The five year biosolids application and management plan shall be followed.

13.5. An Amendment to the biosolids management plan shall be updated annually.

13.6. The Lessee will provide the City with all relevant information required verifying compliance with the approved plan for reporting to the governing agencies (CVRWCB and US EPA by January 15 of each year.

14. **Percolation Ponds**

14.1. The City owned percolation ponds are to be operated and maintained at the lessee’s expense.

14.2. The ponds are available for use by the Lessee at all times provided less than 50% of all effluent delivered to the reclamation area is percolated in the ponds.

14.3. The ponds shall not be operated in such a manner as to have, or threaten to have a negative impact upon the Teapot Dome landfill from rising ground water levels.

14.4. The pond bottoms shall be kept open and free of weeds, algae, noxious odors, or other such nuisances.

14.5. Rodent control is the responsibility of the Lessee, in order to avoid breaching of levees and or loss of the pond embankments.

14.6. Lessee must provide mosquito abatement in all pipes, ponds, and other collection areas of the percolation ponds.

15. **Security**

15.1. Lessor does not supply security for the Premises and Lessees operation thereon.

15.2. Lessor does not warrant that the fences and gates within or around the Premises will prevent trespassers.

15.3. Lessee shall keep all gates closed and locked when not in use during the day and closed and locked during the night.
16. Health and Notice
16.1. Lessee shall notify its employees, sub-contractors, and visitors to the Premises that the irrigation water used on the Premises is treated wastewater and is not to be used for drinking or other human consumption.
16.2. This notification shall be documented and signed and dated by all Lessee’s employees at, sub-contractors on, and visitors to the Premises and such documentation shall be kept on file with Lessee and shall be presented to the City if requested.
16.3. Lessee shall provide for all employees who work at the Premises immunization in accordance with any requirements of the Tulare County Health Department.
16.4. Lessee shall comply with all rules and regulation regarding mosquito control on the Premises and shall bear any and all costs regarding mosquito abatement on the Premises.

17. Inspection and Testing
17.1. Lessee shall allow:
   17.1.1. The City, the county of Tulare, the State of California, or any other regulatory agency to enter onto the Premises to visit the Premises and to perform any soil, air, water or other tests and samplings.
   17.1.1.1. Such testing shall be performed in a reasonable manner to minimize any damage to crops.
   17.1.1.2. Lessee is aware that such testing could result in partial or complete termination of Lessee’s farming operation on the Premises.
   17.1.2. The City, the county of Tulare, the State of California, or any other regulatory agency to install monitoring wells on the Premises.
   17.1.2.1. The City shall recommend that the agencies work with Lessee to install such wells in locations to minimize hindrance or damage to Lessee’s farming operation, but makes no guarantee of locations.
   17.1.2.2. Lessee is aware that such testing could result in partial or complete termination of Lessee’s farming operations on the Premises.
17.2. Lessee shall provide to the City a copy of any reports involving test of soil, air, crops, or water within the Premises performed by or for Lessee immediately after receipt of such reports by Lessee.

18. Discharge of Claims, Liens, Taxes
18.1. Lessee shall discharge or provide for the discharge of all claims that it has authorized or incurred for labor, materials, and supplies furnished for or in connection with the Premises.
18.2. Lessee agrees to keep and shall keep the Premises and improvements thereon free and clear from any liens or encumbrances, including mechanics or material men’s liens, or any kind or nature for any work done, labor performed, or material furnished for the Premises or Lessee’s operations thereon or from any other cause.
18.3. Lessee agrees to indemnify and save harmless the City, its agents, officers, and employees from and against any and all claims, liens, demands, costs and expenses of whatsoever nature for any such work done, labor performed, or material furnished.
18.4. Lessee agrees to pay all taxes (real, personal, possessory interest tax, or whatever other tax) and assessments that may be levied or charged upon the rights of Lessee for Lessee’s rights under this Agreements and Lessees’ operation here under.
18.5. Lessee shall also obtain and pay for all other Agreements or permits necessary or required by law for the conduct of its operation hereunder.
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19. Indemnification
19.1. To the fullest extent permitted by law, Lessee agrees to indemnify, defend (upon request by the City) and hold the City, its agents, officers, and employees, and each of them, harmless from any and all losses, costs, expenses, claims, attorney’s fees, liabilities, actions or damages, including liability for death or injury to person or persons or damage to property, arising out of or in any way connected with:
19.1.1. The conducting or operation of Lessee’s business on the Premises or pursuant to this Agreement; or
19.1.2. The construction, renovation, remodel, removal, or significant change to the structure facilities, grounds, or improvements on the Premises or pursuant to this Agreement; or
19.1.3. The intentional or negligent conduct of Lessee, its agents, employees, or independent contractors.

20. Insurance: Lessee, in order to protect the City and its council members, officials, agents, officers, and employees against all claims liability for death, injury, loss and damage as a result of Lessee’s actions in connection with the performance of Lessee’s obligations, as required in this Agreement, shall secure and maintain insurance as described below. Lessee shall not perform any work under this Agreement until Lessee has obtained all insurance required under this Paragraph and the required certificates of insurance have been filed with and approved by the City. Lessee shall pay any deductibles and self-insure retentions under all required insurance policies.
20.1. Workers Compensation and Employer’s Liability Insurance Requirement – Lessee shall submit written proof that lessee is insured against liability for workers’ compensation in accordance with the provisions of section 3700 of the Labor Code.
20.1.1. In signing this Agreement, Lessee makes the following certification, required by section 1861 of the Labor Code.
20.1.1. “I am aware of the provision of section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provision of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement.”
20.1.2. Lessee shall require any sub-contractors to provide workers’ compensation for all to the subcontractors’ employees, unless the sub-contacts’ employees are covered by the insurance afforded by Lessee.
20.1.3. If any class of employees engaged in work or services performed under this Agreement is not covered by Labor Code section 3700, Lessee shall provide and/or require each sub-contractor to provide adequate insurance for the coverage of employees not otherwise covered.
20.1.4. Lessee shall also maintain employer’s liability insurance with limits of two million dollars ($2,000,000) for bodily injury or disease.

20.2. Liability Insurance Requirements:
20.2.1. Lessee shall maintain in full force and effect, at all times during the term of this Agreement, the following insurance:
20.2.1.1. Commercial General Liability Insurance, including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provision of this Agreement), Products-Competed Operations Hazard, Liquor Liability, Persona Injury (including bodily injury and death), and Property Damage for liability arising out of Lessee’s performance of work under this
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Agreement. Said insurance coverage shall have minimum limits for Bodily Injury and Property Damage liability of two million dollars ($2,000,000) Combined Single Limit (CSL) each occurrence and two million dollars ($2,000,000) aggregate and shall include an endorsement naming the City and the City’s council members, officials, officers, agents and employees as additional insured for liability arising out of this Agreement and any operations related thereto.

20.2.1.2. Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage cover all owned, leased, hired and non-owned vehicles used in the performance of services pursuant to this Agreement with minimum limits for Bodily Injury and Property Damage liability of one million dollars ($1,000,000) each occurrence and shall include an endorsement naming the City and the City’s council members, official, officers, agents and employees as additional insured for liability arising out of this Agreement and any operations related thereto.

20.2.2. If any of the insurance coverage required under this Agreement is written on a claims-made basis, the insurance policy shall provide an extended reporting period of not less than four (4) years following the termination of this Agreement or completing of Lessee’s work specified in this Agreement, which ever is later.

20.2.3. Prior to Lessee commencing any of its obligations under this Agreement, evidence of insurance in compliance with the requirements above shall be furnished to the City by Certificate of Insurance naming the City as “additional insured”. Receipt of evidence of insurance that doesn’t comply with above requirements shall not constitute a waiver of the insurance requirements set forth above.

20.3. Cancellation of Insurance – The above stated insurance coverage required to be maintained by Lessee shall be maintained until the completion of all the Lessee’s obligations under this Agreement, and shall not be reduced, modified, or canceled without thirty (30) days prior written notice to the City. Lessee shall immediately obtain replacement coverage for any insurance policy that is terminated, cancelled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

20.4. All insurance shall be issued by a company or companies admitted to do business in California and listed in the current “Best’s Key Rating Guide” publication with a minimum of an “A-VII” rating. Any exception to these requirements must be approved by the City Risk Manager, or the City employee with Risk Management responsibilities.

20.5. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Lessee for any liability, whether within, outside, or in excess so such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the City from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

20.6. Failure by Lessee to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Lessee. The City, at its sole option, may terminate this Agreement and obtain damages from Lessee resulting from said breach. Alternatively, the City may purchase such required insurance coverage, and without further notice to Lessee, the City shall deduct from sums due to Lessee any premiums and associated costs advanced or paid by the City for such insurance. If the balance of monies obligated to Lessee pursuant to this Agreement are insufficient to reimburse the City for the premiums and any associated cost, Lessee agrees to reimburse the City for the premiums and pay for all costs associated with the purchase of
said insurance. Any failure by the City to take this alternative action shall not relieve
Lessee of its obligation to obtain and maintain the insurance coverage required by this
Agreement.

21. Assignment, Subletting, Merger
21.1. Assignment by Lessee of any or all rights under this Agreement may only occur
upon written consent of the City.
21.1.1. Lessee shall submit to the City a written request for assignment or to sublet and
provide any information about the proposed assignee or party to sublet that the City
may require.
21.1.2. Lessee shall submit in advance a non-refundable sum of $2,500 to the City for
each request for assignment or sublet in order to cover costs for processing such
request.
21.1.3. The City shall answer Lessee’s request for assignment or sublet with 60 days of
receipt of such notification by Lessee.
21.1.4. The City may reject the proposed assignment or sublet for any reason and, if so
and notwithstanding Paragraph 20.1.2 herein above, the City shall refund $1,500 to
lessee.
21.2. At least 120 days in advance of any proposed merger between Lessee and a
corporation or any other entity, Lessee shall provide to the City written notice of its
intention to participate in such merger and provide any information required by the City
in regards to the merger.
21.3. This Agreement shall be binding upon and shall inure to the benefit of the heirs,
administrators, executors, successors and assigns of the respective parties hereto.

22. Breach and Default
22.1. Each of the following shall be a default by Lessee and breach of this Agreement:
22.1.1. Lessee shall become insolvent, or shall take the benefit of any present or future
insolvency statute, or shall make a general assignment for the benefit of creditors, or
file a voluntary petition in bankruptcy, or a petition or answer seeking an
arrangement for its reorganization, or the readjustment of its indebtedness under the
federal bankruptcy laws or under any other law or stature of the United States, or of
any state law, or consent to the appointment of a receiver, trustee, or liquidator, and
such act prevents Lessee from conducting its operations under this Agreement for a
period of thirty (30) calendar days or more.
22.1.2. By order or decree of a court, Lessee shall be adjudged bankrupt, or an order
shall be made approving a petition filed by any other creditors seeking its
reorganization of its indebtedness under federal bankruptcy laws, or under any law
or stature of the United States, or any state thereof and such act prevents Lessee
from conducting its operations under this Agreement for a period of thirty (30)
calendar days or more.
22.1.3. A petition under any part of the federal bankruptcy laws, or an action under any
present or future solvency law or stature shall be filed against Lessee and shall not
be dismissed within ninety (90) days after the filing thereof and such act prevents
Lessee from conducting its operation under this Agreement for a period of thirty
(30) calendar days or more.
22.1.4. Pursuant to or under authority of any legislative act, resolution or rule or any
offer or decree of any court, governmental board, agency, or officer having
jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all
or substantially all of the property of lessee, and such possession or control shall continue in effect for a period of ninety (90) days and prevents Lessee from conducting its operations under this Agreement for a period of thirty (30) calendar days or more.

22.1.5. Any lien (including, without limitation, mechanic’s and materialmens’ liens) is filed against the Premises because of any act or omission of lessee and is not removed within thirty (30) day.

22.1.6. Lessee’s voluntary abandonment, desertion, vacating, or discontinuation of its operations as authorized by this Agreement.

22.1.7. Failure to perform any term, covenant, or condition of this Agreement.

22.1.8. Lessee fails to punctually make any payments due to the City under this Agreement.

22.2. Notwithstanding any other remedies of the City under this Agreement, should lessee default or breach this Agreement, the City may terminate this Agreement immediately, re-enter the Premises and take full possession thereof, and remove all persons connected with Lessee there from and Lessee shall have no further claim thereon or hereunder.

22.3. The remedies given to the City in Paragraph 2 shall be in addition and supplement to all other rights or remedies that the City may have under the laws then in force.

22.4. Lessee hereby waives any and all rights for redemption granted by or under any present or future law, or statute, arising in the event it is evicted or dispossessed for any cause or in the event the City obtains or retains possession of the Premises in any lawful manner.

22.5. No waiver the City of any default or breach on the part of Lessee in the performance of any of the terms, covenants, or conditions hereof to be performed, kept, or observed by Lessee shall be or be construed to be a waiver by the City of any other or subsequent default or breach in performance of any of said terms, covenants, or conditions contained in this Agreement.

22.5.1. The subsequent acceptance of rent by the City shall not be deemed a waiver of any preceding breach by Lessee of any term, covenant or condition of this Agreement, including the failure of Lessee to pay the particular rental so accepted, regardless of the City’s knowledge of such preceding breach at the time of acceptance of such rent.

22.5.2. No covenant, term or condition of this Agreement shall be deemed to have been waived by the City, unless the City provides such waiver in writing.

23. Negation of Partnership

23.1. The City shall not become or be deemed a partner or joint venture with Lessee or associate in any relationship with Lessee other than that of Licensor and Lessee by reason of the provisions of this Agreement.

23.2. Lessee shall not for any purpose be considered an agent, officer, or employee of the City.

23.3. To whatever extent the City, its agents, officers, or employees may be deemed to be associated with the Lessee or the Lessee’s agents, officers, or employees because of any activity or operation pursued by Lessee or its agents, officers or employees on the Premises, then to such extent Lessee shall be deemed an independent contractor of the City.

24. Workers Compensation: Lessee shall comply with the workers’ Compensation Act of this State and shall indemnify and save and hold harmless the City from any and all liability under the said Act.
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25. **Compliance With Law:** Lessee shall, at its expense, promptly comply with any and all laws, ordinances, rules, regulations, requirements and orders whatever, present or future, of the federal, state, the City or City government which may in any way apply to the use, maintenance, occupation of or operations on the Premises, including but not limited to the Americans with Disabilities Act.

26. **Nondiscrimination:** Lessee, in the operation to be conducted pursuant to the provision to this Agreement and otherwise in the use of Premises, shall not discriminate or permit discrimination against any person or class of persons by reason of race, color, creed, sex or national origin or by any arbitrary reason.

27. **Notices:** All notices herein provided to be given, or which may be given, by either party to the other shall be deemed to have been fully given when made in writing and deposited with the United States Postal Service, Registered or Certified, postage prepaid and addressed as follows:

To the Lessee:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

To the Lessor (the City of Porterville)

City of Porterville
291 Main Street
Porterville, CA 93257

The address to which the notices may be mailed to either party may be changed by written notice. Nothing, however, shall preclude the giving of any such notice by personal service.

28. **Definitions and Terminology**

28.1. In this Agreement the capitalized term “Paragraph” shall indicate the numerical subject headings or sub-headings of this Agreement (such as this Paragraph is identified as 28.1)

28.2. In this Agreement the capitalized terms “Section” or “Sections” shall indicate the actual physical location for the certain real property locations, as they exist in Tulare County. (As such, the only Section 5 to be mentioned in this Agreement will be the Sections as originally stated in Paragraph 1.2 herein above.)

28.3. In the context of this Agreement the terms “wastewater” and “effluent” may be used interchangeably and shall be defined as untreated sewage water that has been channeled to the City treatment plant, treated to certain requirements, and discharged from the treatment plant as non-potable water to be used on the Premises to grow fiber and fodder crops.

29. **Damage to Premises:**

29.1. In the event more than 20% of the Premises or more than 100 acres of farmed land is declared a disaster area by Federal, State, or local authorities:

29.1.1. Lessee may, within 15 days of such declaration, provide to the City evidence of the declaration, the location and number of acres affected, and petition for
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temporary relief from rent until the affected real property can reasonably and in a
timely manner be restored by Lessee, at its expense, to a condition again usable for
Lessee’s farming operations, and
29.1.2. The City shall review such petition or request and if found credible shall pro-rate
Lessee’s rent by
29.1.2.1. Determining the number of currently farmed acres,
29.1.2.2. Determining the number of current acres deemed not farmable due to the
disaster
29.1.2.3. Determining the number of days the farmed areas are out of production
until Lessee can reasonable put the area back into production,
29.1.2.4. Regarding this Paragraph 29.01, determine an acreage percentage and
divide the result by 365 days to determine a days percentage.
29.1.2.5. Multiply the acreage percentage times the days percentage to determine
an overall percentage
29.1.2.6. Multiply the overall percentage times the annual rent to determine rent
credit to Lessee (no more than 30% of the annual rent)
29.1.3. And within 15 days after the City determines the affected real property can
reasonably be farmed by Lessee, the City shall notify Lessee the amount of rent
reduction and whether it will be refunded to Lessee soon thereafter by check or
credited towards Lessee’s next rental payment.
29.2. Should the City determine the Premises or significant parts thereof are rendered
unusable for a period of more than 30 days due to no fault of Lessee, the City may
determine a refund of rent based on the formula determined in Paragraph 29.1 of this
Agreement and pay or credit Lessee for the time period beyond the 30 day period
mentioned heron above (NOTE - in this instance the pro-rated rent shall take effect 30
days after the City’s reasonable determination of the date the acreage was determined
unusable.)

30. Surrender of Premises: On the last day of the term, any extension thereof or sooner
termination of this Agreement, Lessee shall peaceable and quietly leave, surrender and yield
up to the City the Premises and improvements thereon in good condition, reasonable use and
wear thereof, and damage by earthquake, public calamity, by the elements, by act of God or
by fire or other circumstances over which Lessee has no control, excepted.

31. Authorized Agent of THE CITY: Wastewater Treatment Facility Superintendent is the duly
authorized agent of the City for purposes of this Agreement and any obligations assumed
hereby by Lessee shall be performed to his satisfaction.

32. Disposition of Improvements and Equipment: Upon termination or expiration of this
Agreement, Lessee, may, at Lessee’s sole cost and expense, remove its farm equipment and
trade fixtures, which have been placed on the Premises but not permanently affixed thereto.
No real property or improvements to real property shall be removed by Lessee without
Lessee first obtaining written approval to remove such real property or improvements to real
property.

33. Lost, Stolen, Damaged Property: The City does is in no way responsible for Lessee’s lost,
stolen, or damaged property unless the City or the City’s agents take possession of Lessee’s
property.
34. **Right of Ingress and Egress:**

34.1. Lessee shall have reasonable non-exclusive right of way for pedestrian and vehicular travel for ingress and egress to the Premises over property owned and controlled by the City.

34.2. Lessee’s right of way is subject to such reasonable rules and regulations as the City may make from time to time.

34.3. The City and its invitees shall have the right, at any time, to enter and inspect the Premises, Lessee’s operations, and conduct studies, surveys, and tests.

35. **Incorporation of Prior Agreements and Amendments:**

35.1. This Agreement contains all agreements of the parties with respect to any matter mentioned.

35.2. No prior agreement or understanding pertaining to any such matter shall be effective.

35.3. This Agreement can only be modified as a written agreement, signed by the parties in interest at the time of the modification.

36. **Venue:** If either Lessee or the City initiates an action to enforce the terms hereof or declare rights hereunder, including actions on any bonds and/or surety agreements, the parties agree that the venue thereof shall be the County of Tulare, State of California.

37. **Severability:** The invalidity of any provision of this Agreement, as determined by a Court of competent jurisdiction, shall not affect the validity or any other provision hereof.

38. **Captions:** Paragraph headings in this Agreement are used solely for convenience and shall be wholly disregarded in the construction of this Agreement.

39. **Covenants and Conditions:** Each provision of this Agreement performable by Lessee shall be deemed both a covenant and a condition.

40. **Time of Essence:** Time is hereby expressly declared to be of the essence of this agreement and of each and every provision thereof; and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

41. **Attorneys Fees:** If any litigation is commenced between the parties to this Lease concerning the Lease or the rights and duties of either in relation to the Lease, the party prevailing in that litigation shall be entitled, in addition to any other relief that may be granted in the litigation, to it’s cost for the litigation including expert witness fees and a reasonable sum as and for its attorneys’ fees in the litigation, which shall be determined by the court in that litigation or in a separate action brought for that purpose.
City of Porterville Reclamation Area Land Lease
Porterville, CA

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first hereinabove written.

City of Porterville

By __________________________________________
Cameron Hamilton, Mayor

APPROVED AS TO FORM
City of Porterville

By __________________________________________
City Attorney

Lessee
By __________________________________________

Title __________________________________________

Business Name __________________________________

APPROVED AS TO FORM

By __________________________________________
Legal Counsel for Lessee

Exhibit A – Overall Map including WWTF, infrastructure, and easements
Exhibit B – Map of Reclamation Area
Exhibit C – Letter of Credit for Lessee
Porterville City Council  
City of Porterville  
291 S. Main Street  
Porterville, CA 93257

November 10, 2006

Dear Sirs,

This letter serves as a request for a council agenda item to consider a proposal for a ten (10) year extension of the farm management contract (rev July 6, 2006). "The Agreement may be extended by mutual agreement between the parties." ¹

An extension of the agreement will insure continuity of current capital projects, including percolation pond construction, major field preparation (leveling), and new field development (~200 acres: Underhill, Hunsaker). In addition, it will provide an incentive to the current farm manager to simultaneously invest in equipment/operational improvements.

An extension will allow for full evaluation of the recently revised agreement at conclusion of upcoming crop years. The farming program, in its fifth year, has undergone intensive managerial and executive scrutiny and overhaul. 2005-2006 crop year showed substantial operational efficiencies as compared to previous years ($74.6 K operational profit for farming-only program).

Achieving the overall program objectives of efficient and maximum effluent disposal within regulatory mandates at lowest and possibly no cost to the City is tantamount. While using the wastewater for farming purposes can achieve these goals, the program is a unique combination of inflexibility of irrigation scheduling and the standard unpredictable nature of farming. Because of uncontrollable factors such as weather and markets, and the additional restrictions of a continuous flow of effluent, the City Farming and Wastewater Disposal program requires an intensive, cooperative, and 24/7 relationship between City Officials and the Farm Manager.

Nuckols Farms has filled this role without fail for the past 4 ½ years and has a working history with the City WDR since 1986. We have forged an excellent working and collaborative relationship with the city during the formative years of the program. In a situation where over-irrigation is a constant threat to crop quality, we have contributed our 38 years of experience farming within the reclamation area. We have gone beyond the call of duty and the requirements

¹ p.2 City of Porterville Farm Management Contract, see Appendix A
of our contract to insure that the program is accomplishing its stated goals. We have been available 24/7, for collaborative planning meetings, City Council inquiry, and for emergencies, such as the 2005-06 wet winter season, when we enacted emergency water management measures. Present management has had no violations with the RWQCB.

This sound working relationship with City staff and responsiveness has precipitated a number of cooperative developments. We participated and contributed to the evolution of the current agreement including the separation of cost centers into Farming, Non-Crop, and Percolation Pond Op & Maintenance. The new agreement has reduced certain line item payments to Nuckols Farms, and specified additional duties. As an addition to a ten year extension of the current contract, we would be willing to agree to a cap on cultivation, harvest, management and irrigation labor costs for 2 year increments.

The current management fee includes office, clerical services, vehicle insurance, and the use of Nuckols HQ yard for City hay storage and City fuel equipment storage and activity. Accessibility to the farm manager is a key benefit of using Nuckols Farms since Nuckols Farms HQ is located in the reclamation area. Another consideration, in the case of an outside lessee, is the potential buy-out of Nuckols property within the reclamation area; this termination of the lease-purchase agreement would cost the City $266K.

IN SUMMARY, we believe that the farming operation has successfully reached a milestone in its development. Many of the challenges of the initial program have been met. We have a crop plan in place, a rapidly growing infrastructure (percolation ponds and field development), cost center reporting, and a revised farm management agreement. This has been accomplished at great effort by the City staff, farm management team, and City officials. However, the overall goals of the program to meet requirements of the RWCQA Cease and Desist order while accomplishing current capital projects effectively must be held as priority.

We believe that an extension of the newly revised contract will keep these goals foremost, insure continuity with the success of the farming operations, regulatory compliance with the RWQB, and keep capital projects intact and on-course.

We urge the City Staff and Council to consider an extension to the farm management contract.

As always, we are available to for questions or further discussion.

Sincerely,
Nuckols Farming

_________________________________________  _______________________________________
Bob C. Nuckols                                             Justin Nuckols
SUBJECT: TULARE COUNTY INDIAN GAMING INITIATIVE -- SPECIAL INVESTIGATIONS OFFICER AND FIRE PREVENTION/PUBLIC EDUCATION OFFICER

SOURCE: Administration

COMMENT: The City of Porterville has filed three applications with the Tulare County Indian Gaming Local Community Benefit Committee, and considerable funding has been obtained through these three grants. Specifically, the amounts requested, and the actual amounts received are listed below, with a description of how the funding has been used:

FY 04/05, the City requested $280,000, and received $100,454. A total of $70,454 was distributed to the Fire Department to assist with the purchase of a ladder truck, and $30,000 was distributed to the Police Department towards funding a School Resources Officer.

FY 05/06, the City requested $130,000, and received $115,978. All of the funding was given to the Police Department for personnel and equipment costs for a Gang Deterrence Officer.

FY 06/07, the City requested $158,872, and received $134,348.76. A total of $78,568 was distributed to the Police Department to continue funding for the Special Investigations Unit position, and $55,780.76 was distributed to the Fire Department for employee costs and public education materials for a Fire Prevention/Public Education Officer.

For FY 07/08, the City is once again applying for funds in the total amount of $161,439. This request consists of $89,439 in funding requested to continue the Special Investigations Unit position, and $72,000 to fund the last year of the Fire Prevention/Public Education Officer. It is anticipated that this position will be wholly funded by Measure H funds during FY 2008/09.

As indicated in this year's grant application, Police Department and Fire personnel responded to 14 calls from the Tule River Economic Development Corporation Industrial Park, with the low
number being attributed to the Police Department personnel initiating over 80 patrol checks for that area alone. These are activities where a police employee responds to the area without request and patrols the area to look for signs of disturbance, crimes, etc. Additionally, the Police Department has provided leadership training and pepper spray training to Tule Tribe Security and Law Enforcement personnel, and the Fire Department has almost tripled the number of citizens it has reached through public education training. It has offered to present the same types of educational training to residents and employee groups of the Tule River Indian Reservation, through a cooperative effort with the Tule River Fire Department, and has provided Self-Contained Breathing Apparatus Fit Testing and Hazardous Materials First Responder Operation training to the Tule River Indian Reservation Fire Department personnel.

It is hoped the City will once again be successful in receiving funding from this source which will help to ensure sufficient staffing to enhance patrols to the Eagle Mountain Casino warehouse and maintenance facility, assist with adequate traffic enforcement on roadways serving Eagle Mountain Casino, and provide fire protection through public education which will benefit all local residents and regional employers.

RECOMMENDATION: That the City Council:

1. Approve the grant application seeking funding for continuance of a Special Investigations Unit position for the Police Department, and a Fire Prevention/Public Education Officer for the Fire Department; and

2. Authorize staff, if successful in receiving these grant funds, to continue the two programs outlined above.
SUBJECT: COUNCIL MEMBER REQUEST FOR AN AGENDA ITEM -
“Discussion of City Nepotism Rule”

SOURCE: Administration

COMMENT: At the request of a Council member at the February 6th meeting, the Council discussed the City’s current Nepotism policy and interests in modifications to such policy. At the request of the Council, each Councilman was provided copies of sample policies collected from other cities by the City’s Human Resources division in support of this subject discussion.

In the review and consideration of the sample policies collected from other cities, the City’s policy was fairly similar in its scope, although some cities allow more flexibility in the employment of family members within departments (family members not permitted to share a common supervisor) and degree of definition of family relationship (2nd degree versus the City’s 3rd degree). Additionally, some of the cities consider the divisions of the Public Works Department differently, providing policy flexibility between the divisions.

Pursuant to City Municipal Code Chapter 2, Article 10 (Personnel System), the City Manager is provided the authority to administer all provisions of Article 10 and of the personnel rules not specifically reserved to the City Council, as well as to prepare and recommend to the City Council personnel rules and and revisions and amendments to such rules. Most of the recent discussions regarding the Nepotism policy have involved situations in which part-time employment of individuals have been prohibited when family members are employed within the same department, due to the Nepotism policy not differentiating between part-time and full-time employment or volunteers. If it is the Council’s direction, the City Manager could provide a report in evaluation of the necessity for a separate policy that specifically addresses volunteer and part-time employment conditions and restrictions.

RECOMMENDATION: None

ATTACHMENT: Porterville System Rules and Regulations, Sec. 5. Employment of Relatives/Nepotism

Item No. 30
places as the City Council shall prescribe together with notice of time, place, and date of consideration by the City Council. Unless otherwise noted, amendments and revisions shall become effective upon adoption by the City Council.

3. **Violation of Personnel Rules and Regulations**

Violation of these rules shall be grounds for rejection of application, or other disciplinary action deemed appropriate under the circumstances by the Appointing Authority.

4. **Outside Employment**

Gainful employment other than an employee’s regular position with the City shall be considered a privilege subject to regulation and not a right. No employee shall continue or engage in gainful occupation outside his/her City position which is incompatible with City employment, or which is of such nature as to interfere with the satisfactory discharge of his/her regular duties. In determining incompatibility, it shall be recognized that many City positions require employees to be available at times additional to their regular work hours. Any employee who wishes to engage in, or accept employment outside his/her regular employment with the City, may do so after having obtained written approval of the respective department head.

5. **Employment of Relatives/Nepotism**

The employment of relatives or persons with close personal relationships can create undesirable results, particularly in connection with evaluation of their progress, in disciplining their conduct, and the injurious effects upon morale where favoritism, real or imaginary, may exist. Therefore, there shall be no appointments to a position of any person with close personal relationships by marriage, blood, or adoption within the third degree, or by co-
habitation with any employee of the City in the same department. Should such relationship develop in conflict with this policy, employees may be transferred or separated from City employment. Applications of this section to married employees shall be in compliance with the State Department of Fair Employment and Housing Rules and Regulations on Marital Status Discrimination.

RULE III - CLASSIFICATION PLAN

1. Preparation of Plan

The Personnel Officer, or a person or agency employed for that purpose, shall ascertain and record the duties and responsibilities of all positions in the classified service and, after consultation with appointing power and heads of departments affected, shall recommend a classification plan for such positions. The classification plan shall consist of classes of positions in the City service defined by class specifications, including title, a description of typical duties and responsibilities of positions in each class, a statement of the training, experience, and other qualifications to be required of applicants for positions in each class. The classifications shall be so developed and maintained that all positions substantially similar with respect to duties, responsibilities, authority, and character of work are included within the same class, and that same schedules of compensation may be made to apply with equity under like working conditions to all positions in the same class.

2. Adoption of Plan

Before the classification plan shall become effective, it shall first be approved by the City Council. Upon adoption, provisions of the plan shall be observed in the handling of all
SUBJECT: REQUEST BY COUNCIL MEMBER– DISCUSSION OF RESOLUTION OF SUPPORT OF THE REQUEST FOR CROSS DEPUTIZATION OF THE TULE RIVER TRIBE’S TRIBAL POLICE FORCE

SOURCE: Administration

COMMENT: A request has been made to add the above subject matter to this agenda for discussion and possible adoption of a resolution of support.

RECOMMENDATION: None

Attachment: Draft Resolution

Item No. 31

CM
SUBJECT: COUNCIL MEMBER REQUEST FOR AN AGENDA ITEM – “Work Assistance Program from Emergency Reserve”

SOURCE: Administration

COMMENT: At the request of a Council member at the February 6th meeting, options and possibilities were discussed by the Council as to what role the City might be able to play in support of the local relief efforts due to the recent freeze. To date, according to statistics provided by the Tulare County Health and Human Services Agency, more than 7,000 individuals have sought freeze assistance services, the largest contingency of which have sought services in the Porterville area. In consideration of the discussion and the local impact of the freeze, the Council provided direction to staff to define the elements of a work assistance program that would benefit victims of the freeze.

Staff has met and is coordinating with Proteus, Inc. in the development of a work assistance program. Proteus is a non-profit, community-based organization specializing in employment, training, education, and community service serving the Central San Joaquin Valley. Through discussions with Proteus, staff has developed a three (3) month work assistance program, that with the City’s commitment of $100,000 from emergency reserves toward the program, the City could employ twenty (20) individuals per week at the rate of $8.00 per hour, which would affect two hundred and forty (240) individuals over the three-month program. The work program would be targeting community beautification and clean-up efforts, focusing on refuse and graffiti abatement. To coordinate the proposed workforce employment and payroll processes, Proteus would serve as the actual employer, at an expense of ten percent (10%) for administrative costs, or $10,000.00 based upon the City’s $100,000.00 commitment.

Staff has developed the following option for the Council’s consideration in the implementation of the work assistance program: At the rate of $8.00 per hour, and based upon an eight (8) hour day, individuals would earn gross wages of $320.00 for the week. This amount would be more than the statutory amount allowed for an individual to continue to receive unemployment payments for the week of work, however, these individuals would again be eligible for unemployment payments the following week.
Staff had been in consideration of several additional options given the Council's direction. One option included distributing the funds from the emergency reserve to Proteus in support of their utility relief program without the work assistance component, however, this option presents the distinct possibility of a gift of public funds. Another option involved Proteus requiring individuals participating in the recommended work assistance program agreeing to a payroll deduction toward utility vouchers, however, Proteus could not support this option due to labor law considerations.

RECOMMENDATION: That the Council provide direction to staff in consideration of the work assistance program presented, authorizing both the program option presented and the necessary budget adjustments.

ATTACHMENT: Proteus Freeze Customer Services Data Worksheet
|                   | 1/17/07 | 1/18/07 | 1/19/07 | 1/22/07 | 1/23/07 | 1/24/07 | 1/25/07 | 1/26/07 | 1/29/07 | 1/30/07 | 1/31/07 | 2/1/07 | 2/2/07 | 2/5/07 | 2/6/07 | 2/7/07 | 2/8/07 | 2/9/07 | 2/10/07 | 2/20/07 | Site Totals |
|-------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|-----------|
| Visalia Svc Cntr  | 17      | 27      | 91      | 135     | 217     | 185     | 197     | 210     | 197     | 1006    | 80      | 87      | 50      | 76      | 34      | 327     | 44      | 22      | 65      | 99      | 230       |
| Woodlake Outreach Office | 4      | 4       | 25      | 33      | 47      | 22      | 2       | 3       | 22      | 96      | 38      | 26      | 28      | 29      | 24      | 145     | 25      | 16      | 12      | 10      | 63        |
| Hanford Svc Cntr  | 1       | 0       | 1       | 2       | 2       | 2       | 2       | 2       | 10      | 0       | 0       | 1       | 0       | 2       | 3       | 0       | 1       | 0       |         | 1         |
| Delano Career Svc Cntr | 4      | 1       | 14      | 19      | 13      | 10      | 6       | 9       | 21      | 59      | 16      | 26      | 17      | 15      | 8       | 82      | 8       | 11      | 4       | 7       | 30        |
| Selma Svc Cntr    | 7       | 16      | 42      | 65      | 45      | 49      | 45      | 50      | 33      | 222     | 31      | 30      | 29      | 25      | 13      | 128     | 22      | 23      | 26      |         | 71        |
| Kerman Svc Cntr   | 6       | 0       | 4       | 10      | 4       | 0       | 1       | 0       | 2       | 7       | 0       | 0       | 0       | 0       | 0       | 0       | 0       | 0       | 0       | 0         |
| Dinuba Svc Cntr   | 18      | 74      | 75      | 167     | 95      | 52      | 82      | 76      | 74      | 379     | 77      | 102     | 41      | 41      | 34      | 295     | 25      | 31      | 31      | 35      | 122       |
| Fresno Svc Cntr   | 3       | 1       | 21      | 25      | 14      | 15      | 15      | 16      | 15      | 75      | 16      | 17      | 17      | 16      | 9       | 75      | 0       | 2       |         | 6        | 8         |
| Sanger Svc Cntr   | 7       | 13      | 36      | 56      | 44      | 38      | 41      | 35      | 22      | 180     | 24      | 22      | 24      | 40      | 33      | 143     | 17      | 11      | 16      | 16      | 60        |
| Porterville Svc Cntr | 28     | 212     | 240     | 322     | 266     | 232     | 226     | 220     | 1266    | 276     | 147     | 122     | 88      | 68      | 701     | 58      | 47      | 17      | 30      | 36        |
| MEC Orange Cove   | N/A     | N/A     | N/A     | N/A     | N/A     | N/A     | 53      | N/A     | N/A     | N/A     | N/A     | N/A     | N/A     | N/A     | N/A     | N/A     | N/A     | N/A     | N/A     | N/A     | 0         |
| **Weekly Totals** |         |         |         |         |         |         |         |         |         |         |         |         |         |         |         |         |         |         |         |         | **737**   |
| **Grand Total**   |         |         |         |         |         |         |         |         |         |         |         |         |         |         |         |         |         |         |         | **6741**  |

Customers Inquiring about Freeze Services

Rev 2/8/07