CITY COUNCIL AGENDA
PORTERVILLE, CALIFORNIA
MAY 15, 2007, 6:00 P.M.

Call to Order
Roll Call

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

CLOSED SESSION:
A. Closed Session Pursuant to:
   3. Government Code Section 54956.9(c) - Conference with Legal Counsel - Anticipated Litigation: One Case.
   4. Closed Session Pursuant to Government Code Section 54957 - Public Employee Performance Evaluation (Follow-Up) - Title: City Manager

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

Pledge of Allegiance Led by the Council Member McCracken
Invocation

PROCLAMATION
Freedom Days” - June 14 - July 4, 2007

PRESENTATION
Employee Service Awards
City Manager’s Featured Projects for May 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. Approval of City Council Minutes of January 5, 2007; April 3, 2007; April 27, 2007; and
2. **Budget Adjustment for the 2006-07 Fiscal Year**  
Re: Approving budget adjustment in the amount of $5,000 to account for costs associated with the Tule River Clean-up Project.

3. **Acceptance of Improvements – Williams Ranch, Phase Four (Brian Ennis – Ennis Homes)**  
Re: Accepting the public improvements, excluding sidewalks, for subdivision located generally south of Westfield Avenue between Westwood Street and Mathew Street.

4. **Acceptance of Final Subdivision Map – New Expressions, Phase Five**  
Re: Approving the final map, accepting all offers of dedications, and authorizing the City Clerk to file said map with the County Recorder for that subdivision located generally south of the Tule River, between State Highway 65 and Indiana Street.

5. **Approval for Community Civic Event -Landmark Christian Center – Summerfest, June 23, 2007**  
Re: Approving event at Veteran’s Park, near the Skateboard Park, from 12:00 p.m. to 4:00 p.m. to include game booths, music and public outreach, subject to stated requirements.

6. **Airport Lease Renewal – Lot 45**  
Re: Approving an extension of the Lease Agreement between the City of Porterville and Mr. and Mrs. Michael Archer of Springville.

7. **Airport Lease Renewal – Lot 46A**  
Re: Approving a Lease Agreement between the City of Porterville and Mr. & Mrs. Robert Baranek of Porterville.

8. **City Council Policy for the Use of the Airport Pavilion**  
Re: Ratifying policy and suggested fee for the use of the pavilion located at the Porterville Municipal Airport.

9. **Sierra Management Transit Center Lease**  
Re: Approving Lease for a one-year term and monthly rental fee of $758, effective July 1, 2007, for space located at 61 West Oak Avenue.

10. **Tule River Abatement Project**  
Re: Informational report on the status of the project scheduled to commence May 16, 2007 to clean up the Tule River from Jaye Street east to the railroad bridge.

    * * *  

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

**PUBLIC HEARINGS**

11. **Formation of Landscape and Lighting Maintenance Districts No. 38 Through 40, and Establishing Assessments**  
Re: Adopting resolution ordering the formation of Districts, approving the Engineer’s Reports, and the method and levy of assessments, pursuant to preliminary approval granted by the
Council on May 1, 2007.

12. **Murry Park Master Plan**  
   Re: Considering approval of an amendment to the Parks and Recreation Element of the General Plan to adopt a program to rehabilitate areas and facilities in Murry Park.

13. **Ennis Estates Tentative Subdivision Map (Ennis Land Development, Inc.)**  
   Re: Considering the continuance of the item to the Meeting of June 5, 2007.

14. **Vacation of a Portion of Public Water, Sewer and Storm Drain Facilities Easement Related to the Development of the Skilled Nursing Facility (Sierra View District Hospital)**  
   Re: Continuing the Public Hearing to June 5, 2007 for the proposed vacation of a 60-foot wide easement, generally located in the former Cleveland Avenue right-of-way, west of Pearson Drive.

15. **Vacation of Temporary Easements for Vehicular Access and Storm Water Flow and Retention Related to the Development of Sierra Meadows, Phase Two Subdivision (Smee Builders)**  
   Re: Considering vacation of temporary easements associated with the development of the subdivision located generally north of Gibbons Avenue between Chess Terrace and Jaye Street.

**SCHEDULED MATTERS**

16. **Acceptance of Final Subdivision Map – Sierra Meadows, Phase Two**  
   Re: Considering acceptance of final map for subdivision located generally north of Gibbons Avenue, between Chess Terrace and Jaye Street.

17. **Receiving the City Manager’s Proposed Budget for Fiscal Year 2007-2008 and Setting Study Session and Public Hearing Dates**  
   Re: Receiving the draft Budget and considering dates on which the Council should schedule the budget study sessions and a public hearing.

18. **Approval of Measure ‘R’ Cooperative Agreement**  
   Re: Consideration to approve agreement with the Tulare County Association of Governments (“TCAG”) for the purpose of funding Measure R projects.

19. **Consideration of a Request for Assistance to Address the County Clinic Closure by a Community Based Organization**  
   Re: Considering financial contribution to community based organization to assist the City in addressing the potential closure of the County’s Clinic in Porterville.

20. **Request by Council Member – Request for Approval of League of California Cities’ Latino Caucus Support Letter for SB 59 and the Governor’s Water Infrastructure Upgrades Program**  
   Re: Considering approval of letter of support for Senate Bill 59.

**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 June 5, 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 of Porterville

Proclamation

WHEREAS: There is a three week period between Flag Day, June 14, 2007, and Independence Day, July 4, 2007; and

WHEREAS: The local patriotic activities during this period have grown to involve the support of several community based institutions, service clubs and community organizations; and

WHEREAS: These organizations consist of the Elks Lodge, American Legion, Emblem Club, American Legion Auxiliary, Veterans of Foreign Wars and their Auxiliary, Old Glory Club, Smith's Enterprise, Save-Mart Supermarkets, Porterville Chamber of Commerce, the Alta Mira Chapter of the Daughters of the American Revolution, the Porterville Exchange Club, Main Street Porterville, Inc., and the Navy League of the United States, Kings/Tulare County Chapters; and

WHEREAS: These organizations have, together, formed the Porterville Flag Day Committee; and

WHEREAS: It is the wish of the Porterville Flag Day Committee for the entire community to join with them in the events occurring during this period; and

WHEREAS: The Porterville Flag Day Committee encourages all citizens to display "OLD GLORY" each day from Flag Day to Independence Day; and

WHEREAS: The Flag Day Committee encourages the citizens of Porterville to participate in the 25th Annual Flag Day Ceremony at the Save-Mart Supermarket, 50 W. Olive Avenue, at 6:30 p.m. on June 14, 2007;

NOW, THEREFORE, I, CAMERON HAMILTON, Mayor of Porterville, do hereby proclaim the period between June 14 and July 4, 2007, as

"FREEDOM DAYS IN PORTERVILLE"

and join with the Porterville City Council in encouraging all citizens to participate in the many patriotic activities scheduled during Freedom Days.

PROCLAIMED this 15th day of May, 2007.

Cameron Hamilton, Mayor

Felipe A. Martinez
Mayor Pro Tem

Pedro R. Martinez,
Council Member

Eduardo Hernandez
Council Member
CITY MANAGER’S FEATURED PROJECT FOR
MAY 2007

1. Completion of Wall of Fame

2. Adoption of Subdivision Ordinance
Roll Call: Council Member Pete McCracken, Council Member Pedro Martinez, Mayor Pro Tem Felipe Martinez, Council Member Eddie Hernandez, Mayor Cameron Hamilton

Pledge of Allegiance led by Council Member Pedro Martinez
Invocation - A Moment of Silence was observed.

ORAL COMMUNICATIONS

Greg Shelton, 888 Williford Drive, came forward and spoke about the disbanding of the Subdivision Review Committee. He stated that with the mandatory processing through the Project Review Committee (PRC), came the mandatory fee of $753.00. Mr. Shelton stated that they then had the initial processing fee for their project, and then the $753 on top of that. He asked the Council to revisit this item and change it to where the minor items did not go to PRC and incur that cost.

SCHEDULED MATTER

1. SUBDIVISION ORDINANCE AMENDMENT

Recommendation: That the City Council provide direction to Staff on preparing the final ordinance and direct staff to schedule a public hearing.

The City Manager stated that this was a study session to review the draft ordinance. He stated that following this meeting modifications would be made and then it would return to a public hearing. He stated that Mr. Dunlap and Mr. Reed, the City Engineer, would present the item.

Community Development Director Brad Dunlap then gave the staff report and highlighted the three main points of the revisions which were basically procedural changes, quality of life issues, and legal issues.

On the procedural changes, Mr. Dunlap stated that Section 21-12, Subdivision Review Committee (SRC), had been eliminated, along with the definition of the SRC, and any reference to the Committee. Mr. Dunlap stated that they could achieve what had been achieved in the SRC without a formally agenized meeting and putting all the staff together, but any impasses would come to the Council. He clarified that this did streamline the process by eliminating having to notice and meet the cycle of the SRC to allow time to integrate any comments from that into the staff report for City Council. The SCR meetings were typically on Wednesday afternoons, and packets went out on Thursday for Council, so if there was any reconciliation of issues needed, they could miss the next Council meeting and delay the project. Mr. Dunlap further clarified that the proponent received
the conditions of approval by transmittal, and they looked them over and commented, and the item was then forwarded to Council for consideration.

City Attorney Julia Lew stated that the City’s Subdivision Ordinance was already fairly consistent with the State Subdivision Map Act, and they just wanted to make sure they continued to be consistent with those laws. There was some ‘oddball stuff’ for the Permit Streamlining Act, and they tried to fix that.

Mr. Dunlap stated that Mike Reed was the resident expert on the Subdivision Map Act, and Mike and Mr. Winton had sat down with him and provided substantial input into these revisions to make sure they work out.

Mr. Dunlap stated that the second primary point was Section 21-1.4, Authority to Vary Regulations. He stated that there were two provisions for varying regulations, one for subdivision maps and one for parcel maps, and the basic difference was four or fewer lots on parcel maps versus more than four on a subdivision map. He stated that process and concept were very consistent, so it didn’t make sense to have two separate sets of findings made when there could be one standardized set of findings made for either. So they had combined that into one section. Mr. Dunlap stated that the types of variations typically granted, and Council would see them in the reports that came before them, were when they had a double-frontage lots. He stated that sometimes, based on the lot configuration, they would go with deeper lots as opposed to the 180 foot limit. Mr. Dunlap stated that these types of exceptions would continue to be done in the same way as currently done, and what they had built in was an ability to consider other varying regulations as subdivisions were proposed, based on unique circumstances.

Council clarified that conditional use permits could only be approved by Council, and the Zoning Administrator could approve only minor modifications to conditional use permits that did not change the conditions of approval.

The City Attorney stated that the City needs to have a development agreement ordinance put into place which would relate to more than just subdivisions, it would also deal with any complex commercial project. This would give the City and the developer more flexibility and would also be another way to allow for variances and so staff may want to look at how they tie that in. Ms. Lew stated that they would want the concept of the conditional use permit, but she wasn’t sure they needed to actually have the concept of the conditional use permit when dealing with a recorded development agreement, which was essentially a way to make legislative changes due to a specific application. She stated that it was allowed pursuant to California law, but an ordinance had to be adopted in conformity with the very complex body of California law that covers that area. Ms. Lew stated that it was referenced here, and it needed to be done to give the Council flexibility. She stated that they needed to figure it out so there was not competing areas of flexibility, conditional use permit versus development agreement, and when it was appropriate for one versus the other.

Mr. Dunlap stated that he would like to add another comment. When they adopt their hillside development ordinance, they would also make additional changes to the Subdivision
Ordinance. He stated that they didn’t want the Council to not go forward with this while waiting for the Hillside Development Ordinance, because there were things in this ordinance that were appropriate and beneficial to move forward with. He stated that they would be back to integrate some components that were coming out of the Hillside Development Ordinance effort into this because this was the comprehensive Subdivision Ordinance. He stated that they would be coming back to visit this in the next few months.

When asked why they would need a development agreement ordinance when the City was already using them, Ms. Lew stated that, although they were contractual, they change the existing standards, and in order to do that, a mechanism was needed which was why Mr. Dunlap was suggesting a conditional use permit, because that was one way to do it. Staff stated that each development agreement was approved by ordinance, as it was a legislative act, and there was a limitation on the term of the agreement and it was subject to referendum. Staff stated that primarily what they had used so far were more of subdivision agreements or public improvement agreements. Ms. Lew pointed out that a development agreement was different from a public improvement agreement.

Mr. Dunlap stated that if they equated a development agreement with a vested tentative map, it basically established, at that point in time, all of the provisions and requirements of law and code in zoning that would pertain to that project for the life of the agreement. He stated that any code changes during the life of the document, didn’t pertain to that project unless those changes were built into the agreement. It gives the proponent a vested right. Staff stated that the development agreement ordinance would give a set of standards—exactly how they were processed, and reviewed. Just as there was a subdivision ordinance or zoning ordinance, the development ordinance agreement would just specify how they go about it. Mr. Dunlap stated that when they had a project that required an environmental, it was part of the project description that came in from the beginning.

Mr. Dunlap stated that the third general category was the quality of life category that contains both the lighting and landscape maintenance districts, as well as the pocket parks. Section 21-8.5 addresses Landscaping and Lighting Maintenance Districts, and they have built into the ordinance the current practice. Section 21-8.6 addresses pocket parks and, while they went through the process with representatives from the BIA and discussed that aspect, generally this was the method that was derived that was a logical way of determining an area for a pocket park. He stated that the communication to them was that the developers were not in agreement with doing pocket parks, but if it was done, this was the way to do it. Mr. Dunlap then reviewed that section.

Mayor Hamilton stated that the two percent site area was written in stone instead of negotiating parcels, so there was no flexibility. He stated that the way it was written, he felt it should be part of the landscape maintenance districts. He stated that perhaps it could be zero to two percent, so there was not a firm perimeter at two percent of whatever the acreage was. Mayor Hamilton stated that depending on what they came up with during the tentative parcel map.

Mr. Dunlap stated that, if that was the will of the Council, he might suggest that if there was a zero to two percent allowance, there would be some developers that would want to do zero. If
Council wanted the ability to adjust, then it needs to either say a percent, or its covered as an exception and its built into the authority to vary regulations. Mr. Dunlap stated that they could build this into the exceptions provided there were offsets to compensate for a reduction in land.

Greg Woodard stated that most developments come in at more than 49 lots, and obviously they would participate in this, but for the projects under 50 lots, he didn’t think that was equitable either. If they had something in there that basically said ‘in lieu of’, he thought that everybody should be required to participate, no matter how many lots.

Greg Shelton stated that last night at the Parks and Leisure Services Commission meeting they discussed coming up with an idea about impact fees, and would be discussing it at their next meeting in order to bring something to Council for consideration.

Jim Winton stated that he was not against the concept, but he was bothered that some of the language didn’t seem to belong in the subdivision ordinance, as they appeared to be zoning considerations, such as improvement requirements. Mr. Winton stated that the City had recently done an increase in the percentage of lot coverage, but the zoning ordinance already sets up set backs and lot coverage, which he assumed was set up in order to provide the open space and areas around the houses. He stated that it bothered him that they apply the requirement to a zone regardless of the size of the lots. Mr. Winton stated if they added 10,000 or 12,000 sf lots in the R-1 Zone, it seemed that they were already providing a lot of uncovered space within the subdivision, although it was for personnel use rather than public use, as opposed to what would be provided with a 4,000 sf lot with a 2,000 sf house on it. He stated that the application to the zone period was not going to be consistent with need. When asked how he would implement pocket parks into the procedure, Mr. Winton stated that if the requirements were incorporated into the zoning ordinance where it recognizes what densities are being created, perhaps there should be ten percent with small lots and high lot coverage, as opposed to the two percent. He stated that it just seemed overly broad to just apply to the R-1 Zone.

Mr. Dunlap stated that it was basically a compromise as they worked through the process. He stated that they could apply this to subdivisions with an average lot size of 10,000 sf or less, which was non-zone specific but took into consideration a threshold where lot sizes were on average above the standard 6,000 sf lot.

Mr. Winton then spoke about lot sizes and densities and lot coverage, and the loss of personal open space not being made up by the public open space.

Mr. Dunlap stated that nothing in the ordinance was intended to result in a reduction in lot sizes for the residential lots.

Brian Ennis stated that he felt more developers supported pocket parks when they served the neighborhood they were building. He stated that the reluctance to be open toward pocket parks was due to outside elements coming in and using the area.
Mayor Hamilton stated that would be a reason to tie it to landscape maintenance, so the pocket park would be maintained without blight.

Mr. Ennis spoke about Section 21-8 (d) and requiring the pocket park to be fenced off, which might create a hazard. He stated that it would be better with a wrought iron fence. The Mayor stated that he liked that idea.

Parks and Leisure Services Director Jim Perrine stated that concept was to place the pocket parks in areas of the greatest visibility, for a variety of reasons. He stated that the masonry wall was not intended to be placed around the pocket park, but rather to be used instead of wood fences between the park and residential back yards. When questioned about walking trails in conjunction to open areas and whether the trail would have to be fenced, Mr. Perrine spoke about the layout of the Royal Oaks pocket park and trails.

Mr. Dunlap stated that staff would be looking at various items as they review plans. He stated that they would add intent in the language.

Staff discussed the use of park impact fees, and as a part of the General Plan Update, they would be revisiting impact fees for implementation. Mr. Dunlap stated that he had touched on the high points of the revisions and the other items were technical updates to bring the ordinance into compliance with the Subdivision Map Act.

Mr. Winton spoke about the Subdivision Review Committee and asked the Council to reconsider eliminating that Committee. He stated that he didn’t get his conditions of approval or the resolution of approval until the Friday before the Council meeting. He stated that the SRC was more valuable to him then the PRC.

Mr. Dunlap stated that the intent was that he get the information earlier than the agenda packet, and that was possible. He stated that he could provide the list of conditions earlier than Friday.

Council Member McCracken clarified that he heard Mr. Dunlap state that what took place at SRC would take place earlier on an informal staff basis, and negotiations back and forth would be earlier than SRC.

Mr. Dunlap stated that this addressed R-1 and they would be looking at multiple family when directed by Council.

**ORAL COMMUNICATIONS**

Greg Shelton, 888 Williford Drive, spoke again about the Project Review Committee and the $753 cost, in addition to revisiting the mandatory PRC meetings.
Mr. Dunlap stated that they would make the revisions to the draft ordinance and would come back to for a public hearing.

**ADJOURNMENT**

The Council adjourned at 1:46 p.m. to the Council Meeting of January 16, 2006.

Georgia Hawley, Chief Deputy City Clerk

SEAL

______________________________
Cameron Hamilton, Mayor
Call to Order at 6:00 p.m.
Roll Call: Council Member McCracken, Council Member Pedro Martinez (arrived late), Mayor Pro Tem Felipe Martinez, Council Member Hernandez, Mayor Hamilton

ORAL COMMUNICATIONS
None.

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

7:00 P.M. RECONVENE OPEN SESSION

REPORT ON ANY ACTION TAKEN IN CLOSED SESSION
City Attorney Julia Lew reported that no action had taken place.

Pledge of Allegiance Led by Council Member Eddie Hernandez
Invocation – one individual participated.

PROCLAMATION
“Public Schools’ Month” - April 2007
“Community Development Week” - April 9-15, 2007
“Iris Festival Day” - April 28, 2007

PRESENTATION
• Employee of the Month - Ted Williams
• County General Plan Update Presentation – Theresa Szymanis, Tulare County Local Agency Formation Commission
• CAFR

ORAL COMMUNICATIONS
• Boyd K. Leavitt, 457 East Oak Avenue, voiced concern with commercial vehicles parking in residential areas, citing 160 Esther Street as an example. He requested that the Council address the issues of off-street parking and business licensing for trucking
companies, and spoke of the negative impact the parking of commercial vehicles in residential areas had on property values.

- Rodney Martin, 146 South Villa, came forward and requested that he have the opportunity to speak when the Council considered Item No. 21.
- Donnette Silva Carter, Porterville Chamber of Commerce, 93 North Main Street, invited everyone to “Music on Main Street” on Friday, April 6th at Centennial Plaza.
- Greg Woodard, 1055 West Morton Avenue, requested that he have the opportunity to speak when the Council considered Item No. 21.
- Dick Eckhoff, Downtown Porterville Association, 197 North Main Street, 1) spoke in favor of, and commended Ms. Silva Carter for, the Chamber’s efforts on “Music on Main Street”; 2) voiced support for Item No. 3; 3) spoke of a “Memories of Yesterday Zalud House Winetasting” event to be held at the Zalud House on May 12th, from 5:00 p.m. to 8:00 p.m., and encouraged everyone to support the fundraising event; 4) agreed with Mr. Leavitt’s concerns regarding the parking of commercial vehicles throughout Porterville, citing The Home Depot location as an example; and 5) requested the opportunity to speak when the Council considered Item No. 22.
- Justin Barnett, a Visalia resident, indicated he would like to discuss a possible lease of the motocross track; and thanked the Council for its assistance with the Toys For Tots Toy Drive in 2006.

Council Member Pedro Martinez clarified with Police Chief McMillan that the parking of commercial vehicles in residential areas was already prohibited pursuant to current provisions in the Municipal Code. Chief McMillan indicated that the Police Department had stepped up enforcement of such violations and that he would follow-up on the potential violation on Esther Street cited by Mr. Leavitt.

**CONSENT CALENDAR**

1. **CITY COUNCIL MINUTES OF OCTOBER 26, 2006 AND FEBRUARY 20, 2007**

   **Recommendation:** That the City Council approve the City Council Minutes of October 26, 2006 and February 20, 2007.

   **Documentation:** M.O. 01-040307
   **Disposition:** Approved.

2. **BUDGET ADJUSTMENT FOR THE 2006-2007 FISCAL YEAR**

   **Recommendation:** That the City Council approve the proposed budget adjustment, and authorize staff to modify revenue and expenditure estimates as described in the schedule attached to the staff report.

   **Documentation:** M.O. 02-040307
   **Disposition:** Approved.
3. AUTHORIZATION TO PROCEED WITH REQUEST FOR PROPOSALS TO DESIGN AND INSTALL PUBLIC SOUND SYSTEM FOR CENTENNIAL PLAZA AND MAIN STREET

Recommendation: That the City Council authorize staff to proceed with a Request for Proposals to design and install the sound system for Centennial Plaza and Main Street.

Documentation: M.O. 03-040307
Disposition: Approved.

4. AUTHORIZATION TO PROCEED WITH REQUEST FOR PROPOSALS FOR BANKING SERVICES

Recommendation: That the City Council authorize staff to proceed with a Request for Proposals (RFP) for Banking Services.

Documentation: M.O. 04-040307
Disposition: Approved.

5. EXPANSION OF CONTRACT FOR PLANNING SERVICES

Recommendation: That the City Council:
1. Authorize staff to amend the contract with Provost & Pritchard for an additional amount not to exceed $3,500 per month; and
2. Authorize the Mayor to sign all necessary documents.

Documentation: M.O. 05-040307
Disposition: Approved.

6. ACCEPTANCE OF DONATION OF CENTENNIAL PLAZA REFUSE BIN ENCLOSURE

Recommendation: That the City Council accept the offer from Ennis Commercial Properties, LLC for the construction and donation of a refuse bin enclosure at Centennial Plaza.

Documentation: M.O. 06-040307
Disposition: Approved.

7. PORTERVILLE PACIFIC ASSOCIATES PAYMENT-IN-LIEU OF TAXES AGREEMENT FOR SEQUOIA VILLAGE AT RIVER’S EDGE MULTIFAMILY DEVELOPMENT

Recommendation: That the City Council:
1. Approve the draft resolution to enter into a Payment-In-Lieu of Taxes Agreement with Proterville Pacific Associates for the Sequoia Village at River’s Edge development; and
2. Authorize the Mayor to execute said Agreement.
8. REQUEST FOR A SIX (6) MONTH EXTENSION OF TIME FOR ONE (1) TEMPORARY MODULAR STRUCTURE TO BE UTILIZED AS A SALES OFFICE (SIERRA ESTATES, FORMERLY KNOWN AS NORTH GATE ESTATES)

Recommendation: That the City Council adopt the draft resolution and conditions of approval for a six (6) month extension of time for the temporary modular structure for a period of time expiring on September 19, 2007 or until the model homes open, whichever occurs first.

9. PROPOSED INDEMNIFICATION AGREEMENT FOR THE CITY OF PORTERVILLE FOR ALL LOCAL AGENCY FORMATION COMMISSION (LAFCO) PROJECTS

Recommendation: That the City Council:
1. Adopt the draft resolution requiring applicant(s) to submit an executed Indemnification Agreement to the City prior to Council action; and
2. Adopt the draft Indemnification Agreement.

10. APPROVAL FOR COMMUNITY CIVIC EVENT - PORTERVILLE CHAMBER OF COMMERCE IRIS FESTIVAL APRIL 28, 2007

Recommendation: That the City Council approve the Community Civic Event Application and Agreement from the Porterville Chamber of Commerce, subject to the Restrictions and Requirements contained therein.

11. APPROVAL FOR COMMUNITY CIVIC EVENT - VICTORY OUTREACH - KIDZ CRUSADE - APRIL 28, 2007

Recommendation: That the City Council approve the Community Civic Event Application and Agreement from the Porterville Area Ministerial Association, subject to the Restrictions and Requirements contained therein.
12. AUTHORIZATION TO APPLY FOR FAA GRANT FOR AIRPORT ELECTRICAL WORK

Recommendation: The annual allocation amount is $150,000. To preserve this amount, it is recommended that the City be authorized to apply for $100,000 in the study and design portions, and $50,000 for early implementation of any aspect of the outlined scope of work.

Documentation: M.O. 09-040307
Disposition: Approved.

13. ASSIGN AIRPORT LEASE – LOT 33

Recommendation: That the City Council approve the assigning of the Lease Agreement for Airport Hangar Lot 33 between the City of Porterville and Dr. Westel L. Creager to James Costa.

Documentation: M.O. 10-040307
Disposition: Approved.

14. CONSIDERATION OF AMENDMENT TO SCOPE OF WORK OF FRANCHISE COMPLIANCE/RENEWAL OF CONSULTANT

Recommendation: That the City Council:
1. Authorize staff to expand the franchise fee audit by Communications Support Group, Inc., to include the 2006 calendar year at a cost of $8,500, and authorize the execution of any and all documents necessary to effect the scope of services; and
2. Authorize a necessary budget adjustment of $8,500 from unallocated General Fund reserves to the City Council’s Professional Services Account.

Documentation: M.O. 11-040307
Disposition: Approved.

14A. BIO-SOLIDS ANNUAL MANAGEMENT AND DISPOSAL CONTRACT

Recommendation: That the City Council approve appropriating $300,000 from the Wastewater Capital Reserve fund to be added to the 2006/2007 Budget for the disposal of the City’s bio-solids.

Documentation: M.O. 12-040307
Disposition: Approved.
COUNCIL ACTION: MOVED by Council Member McCracken, SECONDED by Council Member Pedro Martinez that the Council approve Item Nos. 1 through 14a. The motion carried unanimously.

PUBLIC HEARINGS

15. CONDITIONAL USE PERMIT 1-2007 – PROPOSED FAMILY PIZZERIA/ARCADE TO BE LOCATED AT 45 NORTH SECOND STREET (FORMERLY THE POLICE PAL BUILDING)

Recommendation: That the City Council adopt the draft resolution approving Conditional Use Permit 1-2007 subject to conditions of approval.

City Manager John Longley presented the item, and called on Community Development Director Brad Dunlap for the report. Acting Associate Planner Jose Ortiz came forward and provided the staff report.

Mayor Hamilton consulted the City Attorney as to a potential conflict of interest due to the ownership of property in the vicinity by his family. Ms. Lew clarified that an actual conflict did not exist and that the Mayor need not recuse himself.

A discussion ensued as to the necessity of the street lamps required in Condition 10. Public Works Director Baldo Rodriguez indicated that the City Engineer wanted to again analyze the street lamp requirement at the subject location. Mr. Rodriguez elaborated on the City’s policy with regard to street lamps. It was then clarified that Condition 16 did not require the applicant to build a trash enclosure.

Council Member Pedro Martinez and Mayor Pro Tem Felipe Martinez voiced support for continuing the public hearing to allow for the City Engineer to make a determination with regard to the street lamps.

The public hearing opened at 8:13 p.m.

• Pat Mena, 22660 Avenue 178, applicant, came forward at the Council’s request and spoke in favor of approval. He then spoke against the proposed conditions pertaining to requiring street lamps, a trash enclosure, and ADA improvements, suggesting that said conditions, particularly the street lamps, would be financially burdensome. At the request of the Council, Mr. Mena provided renderings of the proposed exterior of the building.
• Joe Ruiz, Jr., came forward as Bank Security Officer for Bank of the Sierra, 80-86 North Main Street, and spoke against the proposed CUP, voicing concern with the safety of bank employees. Mr. Ruiz spoke of vandalism and criminal activities in the vicinity when the subject building had been occupied by P.A.L.
• Dick Eckhoff, address on record, spoke in favor of the proposed business; noted the expenses in opening a business; spoke in favor of continuing the item until the street lamp requirement was determined; inquired as to the documented criminal activities at P.A.L.; and voiced support for maintaining consistency with the nostalgic lamps in the event additional street lamps were required.
The public hearing closed at 8:21 p.m.

The Council confirmed that the applicant could wait an additional two weeks to allow for further study.

COUNCIL ACTION: MOVED by Mayor Pro Tem Felipe Martinez, SECONDED by Council Member Pedro Martinez that the Council adopt the draft resolution approving Resolution 20-2007 Conditional Use Permit 1-2007 subject to conditions of approval. The motion carried unanimously.

Disposition: Approved.

16. ENNIS ESTATES TENTATIVE SUBDIVISION MAP (ENNIS LAND DEVELOPMENT, INC.)

Recommendation: That the City Council continue the Item to the April 17, 2007 City Council Meeting.

City Manager John Longley presented the item, indicating that the applicant had again requested a continuance to the Meeting of April 17, 2007.

Disposition: Continued to the Meeting of April 17, 2007.

17. ORDINANCE PERTAINING TO THE REGULATION OF SQUATTER CAMPS

Recommendation: That the City Council hold the public hearing and consider public comment concerning the proposed regulations; approve and give First Reading to the proposed ordinance; and order it to print.

City Manager John Longley presented the item, and City Attorney Julia Lew presented the staff report. Ms. Lew noted that the proposed ordinance required two minor revisions: 1) The reference to “City of Tulare” in Section 18-77(b) should be changed to “City of Porterville”; and 2) “...and without express permission from the property owner” should be added to the end of the last sentence in Section 18-77(b).

The public hearing opened at 8:26 p.m.

• Dick Eckhoff, address on record, spoke of the homeless issue; clarified various provisions with the City Attorney; and spoke in favor of the proposed ordinance.

The public hearing closed at 8:31 p.m.

COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED by Mayor Pro Tem Felipe Martinez that the Council approve and give First Reading to the
Ordinance 1719 proposed ordinance; and order the ordinance to print, being AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ADDING ARTICLE VII, SECTIONS 18-76 THROUGH 18-83 TO CHAPTER 18 OF THE PORTERVILLE MUNICIPAL CODE PERTAINING TO THE REGULATION OF SQUATTER CAMPS. The motion carried unanimously.

Mr. Longley read the Ordinance by title only.

Disposition: Approved.

The Council recessed for ten minutes.

SCHEDULED MATTERS

18. NUISANCE ABATEMENT ALONG RIVER AND OTHER PRIVATE PROPERTIES

Recommendation: As directed by Council.

City Manager John Longley presented the item, and Acting Deputy City Manager John Lollis presented the staff report, which included two options for the Council’s consideration:

Option No. 1: Pursuant to Municipal Code Section 18-26, the City could require private property owners to abate the nuisance. After a 90-day period, the City could declare the private property a public nuisance, and through court action, the City could either require the owner to abate the nuisance, or the City could abate and recoup costs from the owner.

Option No. 2: In cases in which the private property owners with squatters have clearly expressed their desire to have the transients and their personal belongings removed, the City could require that the transients leave and allow a reasonable amount of time for the removal of the items left behind. The City could then, with the owner’s consent, enter the property, confiscate the items, retain said items for a reasonable time with notice to the affected transients, then discard.

In response to questions posed by the Council, Ms. Lew elaborated on the options before the Council.

Council Member Pedro Martinez voiced support for approving Option No. 1.

Council Member Hernandez spoke of the importance of restoring the river bed to its natural state, and voiced support for moving forward. He then moved that the Council approve Option No. 1.

Council Member Pedro Martinez seconded the motion.

In response to a question posed by Mayor Hamilton, a brief discussion ensued as to whether a 404 Permit from Fish & Game would be required to operate machinery in the river bed during the cleanup. Public Works Director Baldo Rodriguez indicated that staff’s intent was to work with the
Irrigation District utilizing its permit. Staff was to follow up with the Irrigation District with regard to the permit.

City Attorney Julia Lew clarified that the City might not need to wait the 90 days, since the property owners were cooperating with the City, stating that the property owner could consent to the declaration.

City Manager clarified that the Council’s intent was to make the Tule River Cleanup Project a Freeze Relief Project.

COUNCIL ACTION: MOVED by Council Member Hernandez, SECONDED by Council Member Pedro Martinez that the Council approve Option No. 1, and identify the project as a Freeze Relief Project. The motion carried unanimously.

Disposition: Option No. 1 approved.

19. REGULATIONS ESTABLISHING AN ADMINISTRATIVE CODE ENFORCEMENT PROGRAM

Recommendation: That the City Council consider the proposed ordinance, provide further direction, and schedule a public hearing for a subsequent meeting to consider the Code Enforcement Program and the proposed ordinance.

City Manager John Longley presented the item, and City Attorney Julia Lew presented the staff report.

After some discussion as to various provisions in the proposed program, the Council directed staff to schedule a public hearing for April 17, 2007 to consider the Code Enforcement Program and the proposed ordinance.


20. CONSIDERATION OF HAYES FIELD CONCESSION LICENSE AGREEMENT WITH THE PORTERVILLE AMATEUR YOUTH SOFTBALL ASSOCIATION

Recommendation: That the City Council approve the Hayes Field Concession License Agreement between the Porterville Amateur Youth Softball Association and the City of Porterville, and determine if the hourly fee is to be included and charged, or not.

City Manager John Longley presented the item, and Parks & Leisure Services Director Jim Perrine presented the staff report.

Council Member Hernandez thanked the Council for continuing the item and allowing him the opportunity to take part in the discussion.
Council Member Pedro Martinez noted that the issues had been remedied, and commented that he did not believe the proposed fee was excessive, suggesting that PAYSA would receive the first right to sell concessions at all events taking place at Hayes Field. He then moved that the Council approve the Agreement, with the proposed hourly fee.

Mayor Pro Tem Felipe Martinez seconded the motion.

Mayor Hamilton spoke of his discussions with PAYSA representatives, and stated that he too did not believe the proposed fee was excessive, yet also noted that the City had been fairly lenient as to other City fees. He stated that he was comfortable with either way the Council decided to go.

After a brief discussion of fees and an acknowledgment of the work conducted by PAYSA at Hayes Field, Council Member Pedro Martinez withdrew his motion. He then proposed that the License Agreement be approved, that the fee be waived for the current year, and that the term be amended to terminate on September 1, 2007.

Mayor Pro Tem Felipe Martinez noted that Hayes Field was primarily a drainage basin, and that its secondary use was for recreation.

Mayor Hamilton commented that during the budgetary process, staff might look into the possibility of making Hayes Field a full-time ball field.

Council Member McCracken inquired as to whether volunteer efforts would be the basis by which future decisions were made with regard to fees. Council Member Pedro Martinez indicated that his decision to waive the fee had been based on the fact that PAYSA had come forward in good faith, and that a misunderstanding had taken place with regard to what would be expected of them. It was clarified that under the License Agreement, PAYSA would have the exclusive right for concessions during the softball season, which ran through September 1, 2007.

COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED by Council Member Hernandez that the Council approve the Hayes Field Concession License Agreement between the Porterville Amateur Youth Softball Association and the City of Porterville, as amended with the fee waived and the term revised to terminate on September 1, 2007.

AYES: P. Martinez, F. Martinez, Hernandez, Hamilton
NOES: McCracken
ABSTAIN: None
ABSENT: None

Disposition: Approved.

21. REQUEST FROM PORTERVILLE CHAMBER OF COMMERCE FOR A PARTNERSHIP FINANCIAL INVESTMENT OF $10,000

Recommendation: If the Council determines to approve the request, $10,000 should be budgeted from non-allocated reserve monies for the purpose.
City Manager John Longley presented the item and staff report.

- Greg Woodard, address on record, came forward and spoke in favor of the Council’s approval of the Chamber’s request for $10,000. He spoke of the vision and the efforts to date of the Economic Development Committee.
- Rodney Martin, 146 South Villa Street, came forward as both Administrator for the Tule River Tribe and Porterville resident, and spoke in favor of the Council’s support of the item. He commented on the Tribe’s recognition of the benefits of the Chamber’s request and of the Tribe’s participation in the program. He spoke of the unfavorable view many individuals had of Porterville and of the need to change that perception.

Council Member Pedro Martinez moved that the Council approve the City’s participation in the program and fund the requested $10,000.

Mayor Pro Tem Felipe Martinez seconded the motion.

In response to Council Member McCracken’s inquiry, Chamber of Commerce President and CEO Donnette Silva Carter came forward and indicated that the following organizations were participating in the program: Tule River Tribal Council – $10,000; Community Civic Foundation – $10,000; Woodard Homes – $10,000; Sierra View District Hospital – $10,000; Porterville Recorder – $5,000; Anonymous contribution – $10,000; Chamber of Commerce – $10,000; Subway Sandwiches – amount to be determined; and others pending.

Mayor Hamilton voiced support for the concept and commented on the difficulty in moving from concept to implementation. A brief discussion ensued during which the Council Members voiced support for the project, and thanked Mr. Woodard for his efforts.

**COUNCIL ACTION:** MOVED by Council Member Pedro Martinez, SECONDED by Mayor Pro Tem Felipe Martinez that the Council approve the request by the Porterville Chamber of Commerce’s Economic Development Committee for $10,000, to be paid from non-allocated reserve monies. The motion carried unanimously.

**Disposition:** Approved.

22. **CITY FLAG**

**Recommendation:** That the City Council:
1. Determine which design shall be designated as the art work to be finalized for preparation of the official City flag;
2. Determine that the City flag rules shall be consistent with the U.S. flag rules, only modified to address City regulations or event;
3. Designate the Mayor as the person to make decisions relating to lowering the City flag and approving requests for its use; and
4. Direct the committee to obtain bids and make an award for the preparation of two City flags. Said award shall be no more than $1,000,
City Manager John Longley presented the item, and called on Administrative Analyst II Linda Clark for the staff report.

Mayor Pro Tem Felipe Martinez moved that the Council approve staff’s recommendation, designating Design No. 3, and striking the requirement for further Council approval in the event the cost of flag preparation exceeded the estimated $1,000.

Council Member Pedro Martinez seconded the motion.

• Dick Eckhoff, address on record, spoke against the proposed designs, taking issue with the color scheme. He instead recommended that the Council wait until such time as the branding consultant made its recommendations, as was discussed in the previous item.

COUNCIL ACTION: MOVED by Mayor Pro Tem Felipe Martinez, SECONDED by Council Member Pedro Martinez that the Council designate Design No. 3 as the artwork to be finalized for preparation of the official City flag; determine that the City flag rules shall be consistent with the U.S. flag rules, only modified to address City regulations or event; designate the Mayor as the person to make decisions relating to lowering the City flag and approving requests for its use; and direct the committee to obtain bids and make an award for the preparation of two City flags, at an estimated amount of $1,000, to be charged against unallocated General Fund reserves. The motion carried unanimously.

Disposition: Approved.

23. CONSIDERATION OF RE-ESTABLISHMENT OF A PLANNING COMMISSION

Recommendation: That the Council consider the information presented and direct staff accordingly.

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

Council Member McCracken spoke of the pros and cons of re-establishing the Planning Commission, and agreed with Mr. Dunlap’s contention that the Commission could become political in nature. He suggested that the topic warranted much discussion and serious consideration by the Council.

Council Member Pedro Martinez spoke in favor of holding a public hearing on the topic so that those who would be directly affected by the action, such as developers, could be heard. Mayor Hamilton commented that a public hearing might invite political influence on the matter.

Mayor Pro Tem Felipe Martinez commented that Porterville would continue to grow and that the Council should consider moving forward with a Planning Commission. A discussion ensued as to the political nature of Planning Commissions in other local cities.
Mayor Hamilton commented that he currently believed that the negatives outweighed the positives on re-establishing the Planning Commission, yet stated that he would be open to looking at the item further in a study session.

A discussion ensued during which Council Member McCracken espoused the benefits of a Planning Commission, suggesting that with the Commission’s assistance on a significant portion of planning items, the Council would be available to tackle other issues facing the City.

Council Member Pedro Martinez moved that the Council direct staff to schedule a study session.

Mayor Pro Tem Felipe Martinez seconded the motion.

A discussion ensued as to when the Council was available to attend the study session. The Council acknowledged the potential impact on the budget and confirmed with Mr. Dunlap that staff would not require excessive time to prepare the staff report, as the report currently before them was comprehensive. The Council decided that April 27, 2007 at 10:00 a.m. would be appropriate.

The Council clarified with the City Attorney that a vote was not necessary to set a study session.

Disposition: Study Session scheduled for 10:00 a.m on April 27, 2007.

**ORAL COMMUNICATIONS**

None

**OTHER MATTERS**

- Council Member Hernandez spoke of the Mayor’s Conference on At Risk Youth that he recently attended in Miami, Florida, and informed everyone of the useful information gleaned from the Conference.
- Council Member Pedro Martinez:
  1. Requested that the Council recognize the female wrestler from Granite Hills with either a letter or a Proclamation;
  2. Requested that the Council send congratulatory letters to the Spirit of Freedom award recipients. It was stated that the letters had already been drafted.
  3. Updated the Council on progress with the Softball Fundraiser with the City of Tulare, and encouraged the Council Members to seek event sponsors.
- Mayor Pro Tem Felipe Martinez:
  1. Thanked Ms. Velasquez for participating in the Board of Supervisor’s public hearing regarding the County’s proposed closure of its clinic in Porterville;
  2. Requested that the Council direct the Parks & Leisure Services Commission to bring revisit the issue of a beautification award program. It was stated that the item would be placed on the next Council Agenda.
  3. Spoke of the Child Within Cook-off event that took place the previous weekend, and congratulated Council Member McCracken for his second place finish for his apple meatloaf.
- Council Member Hernandez reminded everyone of the 100% Attendance BBQ to take place on Thursday at the Airport.
• Council Member Pedro Martinez:
  1. Reminded everyone of the San Joaquin Water Forum to take place in Visalia on Friday; and
  2. Spoke of a new dentist in Porterville, Nina Joshi, DDS, and of her interest in civic involvement;
• Mayor Pro Tem Felipe Martinez spoke of his recent meeting with Governor Schwarzenegger regarding the freeze, and stated that some of the Governor’s staff would be in Porterville on Wednesday, April 11th to discuss the efforts.
• Mayor Hamilton requested that two additional monitors be provided on the dias for the Commissioners. Mr. Longley indicated that the IT Department would look into the matter.

ADJOURNMENT
The Council adjourned at 10:28 p.m. to the meeting of April 17, 2007.

______________________________
Patrice Hildreth, Deputy City Clerk

SEAL

______________________________
Cameron Hamilton, Mayor
PORTERVILLE CITY COUNCIL MINUTES
ADJOURNED MEETING - APRIL 27, 2007
CITY HALL COUNCIL CHAMBERS
291 NORTH MAIN STREET, PORTERVILLE
FRIDAY - 10:00 A.M.

Roll Call: Council Member McCracken, Council Member Pedro Martinez, Mayor Pro Tem Felipe Martinez, Council Member Hernandez, Mayor Hamilton

Pledge of Allegiance led by Mayor Pro Tem Felipe Martinez
Invocation - a moment of silence was observed.

ORAL COMMUNICATIONS
None

SCHEDULED MATTER
1. STUDY SESSION - REVIEW RE-ESTABLISHMENT OF A PLANNING COMMISSION

Recommendation: That the City Council consider the information presented and direct staff accordingly.

City Manager John Longley presented the item, and Community Development Director Brad Dunlap presented a summarized staff report.

Mayor Hamilton began the discussion by asking which Council Members were in favor of re-establishing the Planning Commission.

Council Member McCracken indicated that he was in favor of a Planning Commission as long as it was established in a manner that made sense, emphasizing the need to keep the process efficient. He commented that re-establishing the Commission should provide for more public input, while at the same time take some of the workload off of the Council. A brief discussion ensued, during which Council Member McCracken spoke of the benefits a Commission would provide, suggesting that a body dedicated to matters of planning could provide the additional scrutiny needed to develop the City appropriately.

Mayor Hamilton disagreed with Council Member McCracken’s contentions.

Mayor Pro Tem Felipe Martinez voiced support for proceeding with the re-establishment of the Planning Commission, noting the changing make-up of the Council and the varying time each Council Member could devote to planning matters. He then suggested that the Commission would create a buffer.

Mayor Hamilton noted that the Council relied upon a staff of professionals, and inquired how a non-professional body would be beneficial to the process. He commented that the Commission
would create additional costs and increase time spent by staff on projects, and suggested that spending approximately $150,000 on the re-establishment of a Planning Commission might have ill effects on the Meet and Confer process which he stated was currently under way with the City’s bargaining units. Mayor Hamilton indicated that if it was the intent of the Council to streamline its application process, then it should consider proceeding as the Cities of Tulare and Visalia had.

Mayor Pro Tem Felipe Martinez commented that his motive for re-establishing the Planning Commission was not to streamline the process, but rather to have an additional body to review planning items. He then disagreed that the cost of re-establishment might negatively affect the Meet and Confer process.

Council Member Pedro Martinez requested clarification as to what authority would be transferred from the Council to the Commission. Mr. Dunlap stated that typically any legislative acts, including ordinances, general plan amendments, zoning map changes, etc. would move through the Planning Commission up to the City Council for action; whereas conditional use permits, design review overlays, variances, subdivision maps, and associated environmental documents – unless there was also a legislative action as a part of the project – would stop at the Planning Commission level. City Attorney Julia Lew noted that in situations in which an applicant appealed the decision of the Planning Commission, the City Council would have final say.

A discussion then ensued as to the possibility of forming an advisory committee which would provide for another layer of review, yet allow the Council to retain its authority. Mr. Dunlap indicated that the Long Range Planning Committee had been an advisory committee appointed by the Council to review proposed general plan amendments, other planning studies, and long range planning items. He stated that there were several occasions on which the Committee’s recommendation conflicted with staff’s recommendation, and that when the Council opted to follow staff’s recommendation, the Council’s action affected the Committee’s enthusiasm for continuing in its advisory capacity. Mr. Dunlap noted that rather than providing more clarity, the Committee actually created more controversy as many of the items resulted in split recommendations to the Council.

Mayor Hamilton reiterated his opposition to re-establishing the Planning Commission. He then stated that former Mayor Pro Tem Ron Irish had contacted him that day and had requested that the Council postpone any action on the item so as to provide him the opportunity to speak on the matter. He noted that he and Mr. Irish had opposing viewpoints on the topic, but requested that the Council consider continuing the item.

Mr. Longley stated that the item would need to be looked at in terms of what the budgetary bottom line was. He elaborated on ways the item could be budgetarily addressed, those being either “above the line” or “below the line.” He stated “above the line” would entail adding a new line item in Community Development for $140,000, which would then pull the bottom line down by that same amount. He stated that the “below the line” approach was to not add a line item in the budget, and that the Council could then determine what actions to take to fund the item. He indicated that there were a number of items, such as Johnson Controls, that would be “below the line” items. A brief discussion ensued, during which Mr. Longley stated that there were two options – one in which the City paid a penalty, and one in which the City paid debt service.
A discussion next ensued as to the typical make-up of a Planning Commission, during which Mr. Dunlap indicated that staff had suggested a body of five, which he stated was a representative number that could effectively make decisions. He added that the previous Planning Commission had been comprised of seven members.

Council Member McCracken spoke against moving forward with an advisory committee, commenting that it would be a waste of time and expense. He stated, however, that a Planning Commission would be beneficial in that the Council could delegate approximately 40% to 60% of the planning items to the Commission.

Mayor Hamilton disagreed with Council Member McCracken’s contention, and stated that by re-establishing the Planning Commission the Council would merely be delegating its authority. He added that approximately one-half of the planning items would still go to the Council for approval.

Council Member McCracken reiterated his position, adding that if the Council wanted professionals handling the City’s planning, then it should delegate the more ministerial items, such as conditional use permits, to staff, or place them on Consent Calendar. A discussion ensued during which the Council debated whether or not the re-establishment of the Planning Commission would provide for more public input. Mr. Dunlap shared his experience in working with Planning Commissions in other cities, and noted that during approximately 8 of his 13 years the Planning Commissions were comprised of good Commissioners and operated with relative efficiency. He stated that the appointment of Commissioners then became highly politicized, with each individual Council Member appointing one Commissioner. Council Member McCracken commented that he would not support a Planning Commission in which its Commissioners were appointed in such a fashion. He stated that the Council as a whole should have the authority to appoint and remove the Commissioners.

Mr. Dunlap also stated that the Council might wish to consider the fact that a comprehensive zoning ordinance update was budgeted, and that it would likely change based on the direction of the General Plan. He stated that there was the ability in the process of that update to build into that performance standards, which could remove the requirement of some items coming before the Council. He stated that developing good performance standards could assist in achieving some of what the Council was seeking. He indicated that there were ways to build into the Code standards of expectation that would be established by the City Council in policy, and that could be effectively implemented by staff in working with developers. Mr. Dunlap added that as the City proceeded with large scale or sensitive projects, staff had employed the process of holding a community meeting, such as with the recent annexations and the Riverwalk Project. This, he stated, provided an opportunity for additional public input on sensitive projects. He stated that there were ways in which to accomplish what the Council sought to accomplish without re-establishing a Planning Commission. He added that he was not advocating any position, but merely providing information to the Council to aid in its decision.

Council Member Hernandez acknowledged the pros and cons of re-establishing the Planning Commission and voiced concern with possibly jeopardizing the Meet and Confer process, by sending the message that the City had funds available to spend on the re-establishment of the
Planning Commission to alleviate some of the Council’s workload, but not to spend on employees. He spoke of the aptitude of staff, and questioned if another layer of government was necessary.

Mayor Hamilton commented that he did not want the decision on the matter to be solely based on funding, but instead on whether the benefits would outweigh the costs and/or the cons associated with re-establishment. He suggested that if the Council could not come to a determination that re-establishing the Commission would be beneficial to City government and the people whom the Council represented, then the Council should not move forward.

Council Member McCracken noted that despite the notice to the public of the meeting, no developers had attended to protest. He then suggested that in the event the meeting was continued, the local developers should be contacted so as to provide public input, with which some Council Members disagreed. Council Member McCracken then requested that the next meeting be held after 3:00 p.m.

Council Member McCracken then informed the Council that he needed to excuse himself from the current meeting. A brief discussion ensued during which the Mayor reiterated that he had received a request from a former Council Member that the Council continue the meeting so as to allow for his commentary. Council Member McCracken noted that he too had received a couple of requests to continue the meeting.

Council Member Hernandez stated that he also had received requests.

Council Member McCracken moved that the Council continue the study session to after 3:00 p.m. on a future date.

City Manager John Longley advised the Council on the budget timeline.

Council Member Hernandez seconded the motion.

Mayor Hamilton commented that he believed that continuing the item would place on the Council an unnecessary timeline and would put Mr. Longley in a precarious position with regard to the budget. He suggested that the matter could be brought back for discussion at any time, and the Council need not impetuously act thereby creating an unnecessary timeline.

Council Member McCracken disagreed with Mayor Hamilton’s comments.

Mayor Pro Tem Felipe Martinez commented that when the Council Members were elected, the people gave them the authority to make decisions on their behalf.

COUNCIL ACTION: MOVED by Council Member McCracken, SECONDED by Council Member Hernandez to continue the study session on the re-establishment of the Planning Commission to a time after 3:00 p.m. on an unspecified date.

AYES: McCracken, Hernandez
Disposition: Study Session will not be continued.

Mayor Hamilton noted that while the Study Session would not be continued, the matter could be brought back at a later time.

Council Member McCracken advised the Council that he needed to leave, and exited the Council Chambers.

ORAL COMMUNICATIONS
None

OTHER MATTERS
• Council Member Pedro Martinez:
  1. Requested that an item be placed on the Agenda to consider the removal of the parking fees at the Sports Complex. Mr. Longley suggested, and Council Member Martinez agreed, that an analysis could be provided during the budget study session.
  2. Advised everyone that a theme for the softball game against the City of Tulare was “Cream of the Crop Cup” with a logo comprised of an orange with udders.
• Mayor Pro Tem Felipe Martinez thanked City Attorney Julia Lew for the information she provided on requirements for pet owners to remove pet feces. He spoke of the problem of inconsiderate pet owners in City parks, and requested that an item on possible regulations be brought to the Council. Ms. Lew clarified that the City could post a rule in the City parks, and stated she would confirm whether violation of a posted rule would be prosecutable. She added that either the Council or the Parks and Leisure Services Commission would need to authorize the rule.
• Mayor Hamilton thanked Police Chief McMillan and his staff, as well as the school districts, for their efforts in keeping Porterville’s children safe. He commented that the recent attempted abductions had turned out to be a success story.

ADJOURNMENT
The Council adjourned at 10:45 a.m. to the Council Meeting of May 1, 2007.

Patrice Hildreth, Deputy City Clerk

SEAL

Cameron Hamilton, Mayor
CITY COUNCIL MINUTES
PORTERVILLE, CALIFORNIA
MAY 1, 2007, 6:00 P.M.

Call to Order at 6:00 p.m.
Roll Call: Council Member McCracken, Council Member Pedro Martinez, Mayor Pro Tem Felipe Martinez, Council Member Hernandez, Mayor Hamilton (arrived late)

ORAL COMMUNICATIONS
None

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

7:00 P.M. RECONVENE OPEN SESSION

REPORT ON ANY ACTION TAKEN IN CLOSED SESSION
City Attorney Julia Lew reported that no action had been taken.

Pledge of Allegiance Led by Council Member Eddie Hernandez
Invocation – One individual participated.

PROCLAMATION
“Water Awareness Month” - May 2007
“Stamp Out Hunger Food Drive” - May 12, 2007

PRESENTATIONS
Porterville Historical Museum - Bill Scruggs and Wayne Foltz
Raul Pickett - Vita Program
Employee of the Month - Sonia Silva
Recognition of Service - K-9 “Emor”

Council Member Pedro Martinez thanked the Chamber of Commerce for its efforts with the Iris Festival and spoke of the event’s success.
ORAL COMMUNICATIONS

- Patricia Young, 489 W. Kanai, voiced concern with bike lanes on Bellevue and Palm, suggesting that the streets were not wide enough to accommodate parking, two-way vehicular traffic and bike lanes. She requested that the roads be striped so as to differentiate between the two traffic lanes. Ms. Young then spoke of the new medical building at the corner of Morton Avenue and Villa Street, and inquired as to whether its occupancy permit had been issued, and how much the City had received for the sign easement. Public Works Director Baldo Rodriguez indicated that the City Engineer was currently looking into striping, stating that the width of Bellevue was sufficient for traffic, parking and bike lanes. As to the medical building, he indicated that an occupancy permit had been issued, and that he would research how much the City received for the sign easement, and provide that information to Ms. Young.

- Dick Eckhoff, 197 North Main Street, noted an error on the December 19, 2006 City Council Minutes, indicating that under Oral Communications, “Dick Schaffer” should actually be “Dick Eckhoff.”

CONSENT CALENDAR

Item No.1, as to the Minutes of March 20, 2007, and Item No. 13 were removed for abstention by Council Member Hernandez and Council Member Pedro Martinez, respectively. Item No. 4 was removed for further discussion. Item No. 6 was pulled from the Agenda at the request of staff.

2. BUDGET ADJUSTMENTS FOR THE 2006/2007 FISCAL YEAR

Recommendation: That the City Council approve the proposed budget adjustments, and authorize staff to modify revenue and expenditure estimates as described in the schedule included in staff’s report.

Documentation: M.O. 01-050107
Disposition: Approved.

3. AUTHORIZATION TO SEND OUT REQUEST FOR QUALIFICATIONS FOR NEGOTIATION/RELOCATION SERVICES

Recommendation: That the City Council:
1. Authorize staff to send out Request for Qualifications for Negotiations/Relocation Services;
2. Authorize staff to negotiate an agreement with the Number One consultant and, if unsuccessful, negotiate with the second; and
3. Return to City Council for award of an agreement.

Documentation: M.O. 02-050107
Disposition: Approved.

5. AUTHORIZATION TO ADVERTISE FOR BIDS - REMODEL OF FIRE STATION NO. 1 RESTROOM

Recommendation: That the City Council:
1. Approve the Plans and Project Manual; and
2. Authorize staff to advertise for bids on the project.

Documentation: M.O. 03-050107
Disposition: Approved.

7. ACCEPTANCE OF CLASS II & III BIKEWAY PROJECT

Recommendation: That the City Council:
1. Accept the project as complete;
2. Authorize the filing of the Notice of Completion; and
3. Authorize the release of the 10% retention thirty-five (35) days after recordation, provided no stop notices have been filed.

Documentation: M.O. 04-050107
Disposition: Approved.

8. LOAN AGREEMENT BETWEEN CITY OF PORTERVILLE AND THE PORTERVILLE REDEVELOPMENT AGENCY

Recommendation: That the City Council:
1. Adopt a resolution to provide funds in the form of a loan to the Porterville Redevelopment Agency for the repayment of the County of Tulare Loan Agreement No. 18584, with a term of five (5) years and an interest rate to be equivalent to the local Agency Investment Fund rate as reported for the quarter ending March 31 of each year; and
2. Authorize disbursement from unallocated general fund money for payment of the principal balance of $195,000, and any interest that may be due, to the County of Tulare for Loan Agreement No. 18584.

Documentation: Resolution 31-2007
Disposition: Approved.

9. APPROVAL OF INVESTMENT AUTHORIZATION

Recommendation: That the Council approve the draft resolution approving a Municipal Government, Public Funds Banking Resolution for a Deposit Account with Coast Bank of Florida.

Documentation: Resolution 32-2007
Disposition: Approved.

10. CONSIDERATION OF AUTHORITIES SIGNING OF FARM RECONSTITUTION AGREEMENT FOR AIRPORT AGRICULTURAL PROPERTIES

Recommendation: That the Council authorize the Mayor to sign the Farm Reconstitution Agreement for Airport Agricultural properties.
11. ENGINEERS REPORT AND SETTING OF A PUBLIC HEARING FOR ESTABLISHING LIGHTING AND LANDSCAPE MAINTENANCE DISTRICTS AND TAX ASSESSMENTS FOR PARCELS WITHIN: RANCH VICTORIA PHASE ONE SUBDIVISION, WILLIAMS RANCH PHASE FOUR SUBDIVISION, AND AMALENE ESTATES SUBDIVISION

Recommendation: That the City Council adopt:
1. A Resolution Ordering the Proceedings for Formation of Landscape and Lighting Maintenance District Nos. 38, 39 and 40, and Ordering the Preparation of the Engineer’s Reports;
2. A Resolution Giving Preliminary Approval to the Engineer’s Reports; and

Disposition: Approved.

12. APPROVAL FOR COMMUNITY CIVIC EVENT – ANNUAL PORTERVILLE FAIR – MAY 16-20, 2007

Recommendation: That the Council:
1. Approve the Community Civic Event Application and Agreement from the Porterville Community Fair Board, subject to the Restrictions and Requirements containing in the Application and Agreement; and
2. Approve the use of the parking lot on the south side of Olive Avenue and bare ground south of that parking lot for fair patron parking, and set up from May 16 through May 20, 2007.

Documentation: M.O. 06-050107
Disposition: Approved.

COUNCIL ACTION: MOVED by Mayor Pro Tem Felipe Martinez, SECONDED by Council Member Pedro Martinez that the Council approve Item Nos. 2, 3, 5, and 7 through 13. The motion carried unanimously.

1. CITY COUNCIL MINUTES OF DECEMBER 19, 2006; FEBRUARY 23, 2007; AND MARCH 20, 2007

COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED by Mayor Pro Tem Felipe Martinez that the Council approve the City Council Minutes of December 19, 2006, as amended to change “Dick Schaffer” to “Dick Eckhoff” on Page Two, under Oral Communications; the City Council Minutes of February 23, 2007; and the City Council Minutes of March 20, 2007, as amended to note Council Member Hernandez’s excused absence.

AYES: McCracken, P. Martinez, F. Martinez, Hernandez (as to the Minutes of December 19, 2006 and February 23, 2007 only); Hamilton

NOES: None

ABSTAIN: Hernandez (as to the Minutes of March 20, 2007 only)

ABSENT: None

Disposition: Approved.

4. AUTHORIZATION TO ADVERTISE FOR BIDS - BURIED SLUDGE REMOVAL PROJECT

Recommendation: That the City Council:
1. Approve the Plans and Project Manual; and
2. Authorize staff to advertise for bids on the project.

City Manager John Longley presented the item, and Public Works Director Baldo Rodriguez presented the staff report. Mr. Rodriguez amended staff’s recommendation to also include the authorization of a budget adjustment for funding the project out of the Waste Water Treatment Fund, which he noted would be reimbursed through the CIEDB loan.

It was clarified that the subject project was required by the Cease and Desist Order.

COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED by Mayor Pro Tem Felipe Martinez that the Council approve the Plans and Project Manual; and authorize staff to advertise for bids on the project. The motion carried unanimously.

Disposition: Approved.

6. AUTHORIZATION TO EXECUTE A COOPERATIVE AGREEMENT TO PROVIDE CONCRETE REPAIR/REPLACEMENT SERVICES

Recommendation: That the City Council:
1. Authorize the Purchasing Agent to complete the cooperative purchasing documentation and issue a purchase order to Sierra Range Construction; and
2. Authorize staff to make payment upon satisfactory completion of the work.

Disposition: At the request of staff, this item was removed from the Agenda.

Recommendation: That the Council approve the request for a Community Civic Event “Plane Bikes,” allowing the use of City property to the front and side of the Tule Aero facility.

COUNCIL ACTION: MOVED by Mayor Pro Tem Felipe Martinez, SECONDED by Council Member Hernandez that the Council approve the request for a Community Civic Event “Plane Bikes,” allowing the use of City property to the front and side of the Tule Aero facility.

AYES: McCracken, F. Martinez, Hernandez, Hamilton
NOES: None
ABSTAIN: P. Martinez
ABSENT: None

Disposition: Approved.

PUBLIC HEARINGS
14. CONSIDERATION OF THE ADOPTION OF A NOISE ORDINANCE

Recommendation: That the City Council:
1. Approve the proposed ordinance and give first reading to the draft ordinance;
2. Waive further reading, and order the ordinance to print.

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

The public hearing opened at 7:44 p.m.

• Joe Guerrero, 342 South F Street, spoke generally of the proposed ordinance, and requested that the Council be fair in its decision.
• Dick Eckhoff, 197 North Main, spoke in favor of the proposed ordinance, and inquired as to various aspects of the proposed regulations.

The public hearing closed at 7:50 p.m.

A discussion ensued as to whether the ordinance would need to be revisited after the adoption of the updated General Plan. Mr. Dunlap stated that he did not see anything in the proposed General Plan that would likely trigger an amendment to the noise ordinance before the Council that evening.

Council Member Pedro Martinez inquired as to why the provision requiring that event sponsors provide sound level meters remained in the ordinance, when it was his understanding that during the study session the Council had requested that the provision be removed.

Mayor Hamilton stated that he too thought the provision would be removed.
Mr. Dunlap indicated that the last sentence in Section 18-82 (C)(2), which read, “The sponsor shall provide a sound level meter to accomplish this task” could be stricken.

Council Member Pedro Martinez voiced concern with the noise ordinance being too stringent and impacting family get-togethers, suggesting that the rights of those individuals ought to be protected as well. He suggested that the ordinance was too complex and spoke in favor of a more simplified version to avoid confusion. A discussion ensued as to the subjectivity of noise and whether a noise ordinance was necessary. Council Member Pedro Martinez then spoke in favor of continuing the matter until such time as the General Plan had been updated.

Mayor Hamilton commented that the Council would not be re-writing an ordinance, but merely modifying what it already had. He spoke in favor of the proposed ordinance, and commented that he did not believe the ordinance was too restrictive.

In response to questions posed by the Council, Police Chief Chuck McMillan came forward and spoke of the call volume in his department related to noise complaints. He stated the P.D. received approximately 35 to 40 calls after 10:00 p.m. on weekends, including Fridays, and that the majority of those offenders complied before the revocation of the noise permit was necessary. Mr. Dunlap added that his department handled land use related noise complaints, and that only about one complaint per year was typically received. With regard to vehicles playing loud music, Chief McMillan indicated that his department issued a large number of citations, the majority of which occurred on weekends along the Henderson and Olive corridors. Chief McMillan added that the proposed ordinance would assist his officers in enforcing the Vehicle Code in locations such as the parking lot at the Galaxy 9 Theater. The Chief then clarified that citing motorcycles for noise was not common.

Mayor Hamilton referenced the Chief’s comments as to citing vehicles on Henderson and Olive Avenues for playing loud music, and commented that he was more concerned with citing vehicles in residential areas. A discussion ensued during which Chief McMillan stated that his department received a large number of complaints of loud music from vehicles parked in parking lots. He added that generally, unless the vehicle was stationary, by the time an officer could respond to loud music in a residential area, the vehicle was usually already gone.

Council Member McCracken indicated that he opposed the draft ordinance, commenting that he did not believe there was a need for it.

**COUNCIL ACTION:**

MOVED by Council Member Pedro Martinez, SECONDED by Council Member McCracken that the Council continue the matter until such time as the General Plan was updated.

**M.O. 10-050107**

AYES: McCracken, P. Martinez, F. Martinez
NOES: Hernandez, Hamilton
ABSTAIN: None
ABSENT: None

Council Member Pedro Martinez voiced support for simplifying the language in the ordinance.
Disposition: Continued to after the General Plan was updated.

15. ADOPTION OF THE 2007/2008 ACTION PLAN FOR INVESTMENT OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ENTITLEMENT FUNDS

Recommendation: That the City Council:
1. Conduct a public hearing to solicit comments on the 2007/2008 Action Plan;
2. Adopt the 2007/2008 Action Plan resolution of approval; and
3. Authorize the City Manager to execute all necessary documents.

City Manager John Longley presented the item, and called on Community Development Director Brad Dunlap to present the staff report. At Mr. Dunlap’s request, Development Associate Denise Marchant came forward and presented the staff report.

The public hearing opened at 8:12 p.m. and closed at 8:13 p.m. when nobody came forward.

At the request of Council, staff elaborated on the administrative fee, noting the intensive amount of labor involved in administering the CDBG programs; the programs involved in the entitlement allocation for 2007; how programs qualified for CDBG funding; and the difference between grant monies and annual entitlement allocations.

Council Member Hernandez spoke of the needs in some of the recently annexed areas, and suggested that the City ought to proactively work to improve those areas. For the Council’s edification, Mr. Dunlap indicated that other areas in the City had also been identified by staff as areas in need of reconstruction, similar to the work accomplished in the Roche neighborhood, citing the area between Putnam and Olive Avenues, along Prospect Street, as one example.

COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED by Mayor Pro Tem Felipe Martinez that the Council adopt the 2007/2008 Action Plan Resolution 36-2007 resolution of approval; and authorize the City Manager to execute all necessary documents. The motion carried unanimously.

Disposition: Approved.

16. COMPRESSED NATURAL GAS (CNG) REGIONAL FUELING FACILITY PROJECT

Recommendation: That the City Council adopt the draft resolution approving the Negative Declaration and Site Plan for the Compressed Natural Gas Regional Refueling Facility.

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

The public hearing opened at 8:29 p.m. and closed at 8:30 p.m. when nobody came forward.
Council Member Pedro Martinez moved that the Council approve staff’s recommendation.

Mayor Pro Tem Felipe Martinez seconded the motion.

In response to questions posed by Mayor Hamilton, Public Works Director Baldo Rodriguez indicated that the project was funded through the Congestion Mitigation and Air Quality Program (“CMAQ”), and was a part of the Reasonably Available Control Measures Plan (“RACM”).

**COUNCIL ACTION:** MOVED by Council Member Pedro Martinez, SECONDED by Mayor Pro Tem Felipe Martinez that the Council adopt the draft resolution approving the Resolution 37-2007 Negative Declaration and Site Plan for the Compressed Natural Gas Regional Refueling Facility. The motion carried unanimously.

Disposition: Approved.

17. **ENNIS ESTATES TENTATIVE SUBDIVISION MAP (ENNIS LAND DEVELOPMENT, INC.)**

Recommendation: That the City Council continue the item to the May 15, 2007 City Council Meeting.

City Manager John Longley presented the item, and Community Development Director Brad Dunlap presented the brief staff report, indicating that the applicant had again requested a continuance. Mr. Dunlap then noted for the record that he would not be present at the next Council Meeting.

**COUNCIL ACTION:** MOVED by Council Member McCracken, SECONDED by Council Member Pedro Martinez that the Council continue the item to the City Council Meeting of May 15, 2007.

   **AYES:** P. Martinez, F. Martinez, Hamilton
   **NOES:** McCracken, Hernandez
   **ABSTAIN:** None
   **ABSENT:** None

Disposition: Continued to the Meeting of May 15, 2007.

The Council recessed for ten minutes.

**SECOND READING**

18. **ORDINANCE NO. 1720, CODE ENFORCEMENT OFFICER AND AN ADMINISTRATIVE CODE ENFORCEMENT CITATION PROGRAM**

Recommendation: That the City Council give Second Reading to Ordinance No. 1720, waive further reading, and adopt said ordinance.

City Manager John Longley presented the item and the staff report.
COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED by Council Member Hernandez that the Council give Second Reading to Ordinance No. 1720, waive further reading, and adopt said ordinance, being AN ORDINANCE OF THE COUNCIL OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE REPEALING AND REPLACING SECTION 1-9 OF CHAPTER 1, ADDING ARTICLE IV, SECTIONS 2-26.1 THROUGH 2-26.4, AND ADDING ARTICLE XIV, SECTIONS 2-141 THROUGH 2-155, TO CHAPTER 2 OF THE PORTERVILLE MUNICIPAL CODE PERTAINING TO CODE ENFORCEMENT OFFICER AND AN ADMINISTRATIVE CODE ENFORCEMENT CITATION PROGRAM. The motion carried unanimously.

Mr. Longley read the ordinance by title only.

Disposition: Approved.

19. ORDINANCE NO. 1721, AMENDING THE SUBDIVISION ORDINANCE

Recommendation: That the City Council give Second Reading to Ordinance No. 1721, waive further reading, and adopt said ordinance.

City Manager John Longley presented the item and the staff report.

COUNCIL ACTION: MOVED by Mayor Pro Tem Felipe Martinez, SECONDED by Council Member Pedro Martinez that the Council give Second Reading to Ordinance No. 1721, waive further reading, and adopt said ordinance, being AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE AMENDING CHAPTER 21 OF THE MUNICIPAL CODE PERTAINING TO SUBDIVISION REGULATIONS. The motion carried unanimously.

Mr. Longley read the ordinance by title only.

Disposition: Approved.

SCHEDULED MATTERS


Recommendation: That the City Council consider the staff report and attachments, and declare the subject property a public nuisance, and authorize abatement by the City.
City Manager John Longley presented the item, and City Attorney Julia Lew presented the staff report. Ms. Lew advised that since the printing of the Agenda, the City had received written consent from Mr. Dexter Goodall for an earlier declaration, as well as entry on the property. She then provided copies of same to the Council. Photographs of the subject area were then displayed for everyone’s view.

In response to the Council’s questions, staff elaborated on access and safety issues; and the use of the City’s intent to coordinate with the Irrigation District to utilize its permit so as to allow mechanized machinery in the river bed during the clean up efforts.

COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED by Mayor Pro Tem Felipe Martinez that the Council declare the property identified as APN 260-320-010-000, APN 260-320-029-000, APN 260-310-042-000, APN 260-043-000, APN 260-250-031-000, APN 260-260-002-000, APN 260-260-005-000, APN 260-310-016-000, and APN 260-250-026-000 as a public nuisance; and authorize abatement by the City. The motion carried unanimously.

Disposition: Approved.

21. ANIMAL CONTROL REGULATIONS PERTAINING TO VICIOUS ANIMALS AND “REPEAT OFFENDERS”

Recommendation: That the Council consider the staff report and the attachments, and provide further direction as to any modifications to the City’s animal control regulations.

City Manager John Longley presented the item, and City Attorney Julia Lew presented the staff report.

In response to questions posed by the Council, Ms. Lew spoke of licensing and vaccination requirements, and of the potential ability to limit the number of dogs of a specific breed that an owner could have. She then elaborated on the process cities must follow to enact breed specific policies.

Council Member Hernandez voiced support for approving an ordinance with teeth.

In response to questions posed by Mayor Pro Tem Felipe Martinez, Ms. Lew indicated that certain characteristics of dogs could also be acknowledged, such as size and temperament, noting that a larger breed would likely be more menacing than a smaller breed. A discussion then ensued as to situations in which certain breeds, such as Pitbulls, were tethered in their owners’ front yards and were perceived to be menacing by passersby. It was noted that State law governed various aspects of animal control, such as tethering, and that such laws would need to be considered when drafting the City’s ordinance.

The Council concurred to direct staff to bring back a draft ordinance for its review.

Disposition: Direction given to staff.
Mr. Longley recommended that Item Nos. 22 and 23 be consolidated.

22. INTERIM FINANCIAL STATUS REPORTS AND GRANTS SUMMARY REPORT
Recommendaition: That the City Council accept the Interim Financial Status Reports and Grants Summary Report, as presented.

23. QUARTERLY PORTFOLIO SUMMARY
Recommendaition: That the City Council accept the quarterly Portfolio Summary in accordance with SB 564 and SB 866.

City Manager John Longley presented the items, and Chief Financial Officer Maria Bemis presented the staff reports. Mr. Longley indicated that the Airport, in terms of direct expenses, not including overhead allocation, would show a profit; however, he stated, if the overhead allocation was added in, the Airport showed a loss of approximately $35,000 to $36,000. He stated that if the transfers were added in, which he stated had been defined by the Council in the Budget, the Airport showed a profit. He noted that there were three ways of looking at the Fund, two of which showed a profit, and one of which did not.

In response to a question posed by Council Member Pedro Martinez, staff briefly spoke of the purchase of vehicles with Measure H funds, and on the funding of the Zalud House, during which it was stated that the subsidized transfer to the account occurred at the end of the year.

COUNCIL ACTION: MOVED by Mayor Pro Tem Felipe Martinez, SECONDED by Council Member Hernandez that the Council accept the Interim Financial Status M.O. 13-050107 Reports and Grants Summary Report, as presented; and accept the quarterly Portfolio Summary in accordance with SB 564 and SB 866. The motion carried unanimously.

Disposition: Approved.

24. REQUEST FOR ANNUAL CONTRIBUTION TO THE BUSINESS, INDUSTRY AND GOVERNMENT (BIG) COALITION OF THE SOUTH SAN JOAQUIN VALLEY
Recommendaition: To be determined by Council.

City Manager John Longley presented the item and the staff report.

Mayor Hamilton commented that his only concern was that the Coalition’s request stated “annual.”

Council Member Pedro Martinez spoke in favor of the contribution, and suggested that the item could be brought back to the Council every year.
COUNCIL ACTION: MOVED by Council Member Pedro Martinez, SECONDED by Mayor Pro Tem Felipe Martinez that the Council approve the $1,000 contribution, to be included in the 07/08 Budget. The motion carried unanimously.

Disposition: Approved.

ORAL COMMUNICATIONS

- Patricia Young, address on record, inquired as to the County’s responsibilities with regard to the public nuisance issue discussed in Item No. 20, particularly as it related to public health, and suggested that the City contact the County for its assistance in the matter.
- Joe Guerrero, address on record, requested the City’s assistance in requiring Hemphill’s Furniture Store to clean the alleyway behind its location; and suggested that the Council consider a moratorium on residential development, noting the diversion to new residences of limited water resources needed for agriculture.
- Dick Eckhoff, address on record, spoke of various issues, including water resources; clean-up on other portions of the Tule River; proposed animal regulations; and the noise ordinance, for which he voiced support.

OTHER MATTERS

- Council Member Pedro Martinez:
  1. Thanked the Council for its participation in the Mayor’s Prayer Breakfast; and
  2. Requested that the Council recognize the Granite Hills High School Academic Decathlon Team.
- Mayor Hamilton requested that the Council also recognize the Granite Hills High School online newspaper team for its recent award.
- Council Member Hernandez:
  1. Spoke in favor of the bike lanes, noting the benefit to the local air quality issue; and
  2. Invited everyone to the Boys and Girls Club Reception to be held on May 3, 2007 at Centennial Park.
- Mayor Pro Tem F. Martinez:
  1. Spoke of the success of the “Porterville Reads” event, noting the need for a bookstore in Porterville;
  2. Invited everyone to the Porterville Education Foundation event to take place May 2, 2007; and
  3. Spoke of the late Mrs. Olmedo, recognizing her contributions with regard to children throughout her years in Porterville.
- Mayor Hamilton:
  1. Spoke of the success of the “Porterville Reads” event, stating that 3,200 to 3,400 children had participated; and that 3,000 books had been distributed;
  2. Invited everyone to attend an event at Premier Realty on Monday, May 7th from 6:00 p.m. to 8:00 p.m. to honor and thank those involved in resolving the recent crisis regarding the attempted abductions of school children; and
  3. Spoke of the multitude of events to take place in Porterville the upcoming weekend, including the Cinco de Mayo Parade; the Rollin’ Relic Car Show, the Cinco de Mayo Founders Awards Dinner Dance; and the Red Star event at the Airport.
ADJOURNMENT
The Council adjourned at 9:46 p.m. to the meeting of May 15, 2007.

Patrice Hildreth, Deputy City Clerk

SEAL

Cameron Hamilton, Mayor
SUBJECT: BUDGET ADJUSTMENT FOR THE 2006-07 FISCAL YEAR

SOURCE: Administrative Services

COMMENT: During the course of the fiscal year, budget information becomes available that more accurately identifies revenue projections and project costs. Once known, budget modifications are necessary to complete projects and record revenues. To address budget adjustments in an orderly fashion, all adjustments will be presented as one agenda item for Council’s consideration.

There is one (1) adjustment proposed for tonight’s Council meeting.

No. 1: Freeze Relief Work Assistance Program Contingency
This budget adjustment accounts for additional expenses both experienced and anticipated by the Public Works Department in the provision of the City’s freeze relief work assistance program. Such expenses include the dumping and hauling fees incurred in the cleanup of the Tule River, as well as the outfitting of the job experience workers with safety wear (gloves, bump hats, etc). Funds would be budgeted for this item from unallocated General Fund reserves.

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

Item No. 2
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<td>General Fund Reserves</td>
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Modification No: 8-06/07
SUBJECT: ACCEPTANCE OF IMPROVEMENTS – WILLIAMS RANCH, PHASE FOUR (Brian Ennis – Ennis Homes)

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.

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 Williams Ranch, Phase Four 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

P:\pubworks\Engineering\Council Items\Acceptance of improvements Williams Ranch Ph4 - 2007-5-15.doc

Dir Appropriated/Funded Item No. 3
SUBJECT: ACCEPTANCE OF FINAL SUBDIVISION MAP - NEW EXPRESSIONS, PHASE FIVE SUBDIVISION (Ennis Land Development, Inc.)

SOURCE: Public Works Department - Engineering Division

COMMENT: The developer, Ennis Land Development, Inc. (Brian G. Ennis, Managing Member), has submitted the final map for the subject single-family residential project. The developer is requesting Council approval of the final map in conformance with Section 21-27 of the Subdivision Ordinance, prior to completing the construction of the required public improvements.

The developer has submitted the required guarantee to the City to complete all necessary public improvements on the project. A subdivision agreement between the developer and the City has been signed by the developer, and all fees have been paid.

The final map is in conformance with the approved tentative map and City Council Resolution No 34-2001. The improvement plans, specifications, dedications, and the final map have been approved by the Public Works Director and City Engineer.

RECOMMENDATION: That City Council:

1. Approve the final map of New Expressions, Phase Five Subdivision;

2. Accept all offers of dedication shown on the final map; and

3. Authorize the City Clerk to file said map with the County Recorder.

ATTACHMENT: Final Map
NEW EXPRESSIONS
phase five

BEING A SUBDIVISION OF THE REMAINDER OF NEW EXPRESSIONS, PHASE FOUR, RECORDER'S IN BOOK 41, PAGE 87, OF MAPS, Recorder's District No. 1, Situated Within the City Limits of the City of Porterville, Tulare County, State of California.

GROSS AREA: 19.72 AC

Owner: ENNIS LAND DEVELOPMENT, INC.

Survey: JAMES WINTON & ASSOCIATES

CITY ENGINEER'S STATEMENT

I hereby state that a survey of said subdivision was made by me, JAMES WINTON, registered civil engineer, of Porterville, Tulare County, State of California, all of which survey is hereby recognized by me as well as the surveyor herein above named.

Michael R. Moss, City Engineer, Tulare, Calif.

SOIL ENGINEER'S STATEMENT

I hereby state that the subdivision was surveyed by me, Richard L. Swope, soils engineer, of Porterville, Tulare County, State of California, and the survey is hereby recognized by me.

Richard L. Swope, Soil Engineer, Tulare, Calif.

CITY PLANER'S STATEMENT

I hereby state that the plan continues to the approved tentative plan.

J. S. GOLDFARB, City Planner, Tulare, Calif.

CITY COUNCIL'S STATEMENT

This is to certify that the subdivision of the city of Porterville, Tulare County, State of California, hereunto annexed, has been duly adopted by the City Council of the City of Porterville, Tulare County, State of California, and the same is hereby approved.

M. L. WALKER, Mayor, City of Porterville, Tulare County, State of California.

CITY CLERK'S STATEMENT

I, [Name], City Clerk of the City of Porterville, Tulare County, State of California, do hereby certify that the map herewith annexed has been duly adopted by the City Council of the City of Porterville, Tulare County, State of California, and is hereby approved.

M. L. WALKER, Mayor, City of Porterville, Tulare County, State of California.

BOARD OF SUPERVISORS' STATEMENT

I, [Name], Supervisor of the County of Tulare, State of California, do hereby certify that the map herewith annexed has been duly adopted by the Board of Supervisors of the County of Tulare, State of California, and is hereby approved.

M. L. WALKER, Mayor, City of Porterville, Tulare County, State of California.
COUNCIL AGENDA: MAY 15, 2007


SOURCE: Administrative Services, Finance Division

COMMENT: The Landmark Christian Center is requesting approval to hold a “Summer Fest” event at the Veteran’s Park, near the Skateboard Park, on Saturday, June 23, 2007, from 12:00 p.m. until 4:00 p.m. This event will include game booths, music and public outreach, and will also be open to the public. No street or sidewalk closures have been requested.

This request is made under the Community Civic Events Ordinance No. 1326, as amended. The application has been routed according to the ordinance regulations and reviewed by all departments involved. The requirements are listed on the attached copy of the application, agreement and Exhibit “A.”

RECOMMENDATION: That the Council approves the attached Community Civic Event Application and Agreement submitted by the Tree of Life Church, subject to the stated requirements contained in Exhibit “A.”

ATTACHMENT: Community Civic Event Application, Agreement and Exhibit “A”, and Outside amplifier permit.
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: 3-14-07  Event date: June 23, 2007

Name of Event: Summer Fest
Sponsoring organization: Landmark Christian Center
Address: 2380 W. Olive Ave.  PHONE # 784-2827
Porterville CA 93257
Authorized representative: Tony Hendley  PHONE # 784-2827
Address: 2380 W. Olive Ave.
Event chairperson: ___________________________

Location of event (location map must be attached): Veterans Park
1501 W. Henderson Ave.
Type of event/method of operation: Stage and pop up booths
Music, giveaways and speaking, Car Show
Nonprofit status determination: Non Profit

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

Barricades (quantity): n/a  Street sweeping  Yes ___  No x
Police protection  Yes ___  No x  Refuse pickup  Yes ___  No x
Other: ___________________________

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

Landmark Christian Center
(Name of organization)

(Signature)

3-14-07
(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: Summer Fest

Sponsoring organization: Landmark Christian Center

Location: 1501 W. Henderson Ave. Event date: June 23, 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.

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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: ___________ Summer Fest ____________________________________________________________________________

Sponsoring organization: ____________________________ Landmark Christian Center ________________________________

Event date: ______________ June 23, 2007 ____________ Hours: ___________ 12-4:00 PM ___________

ATTACH MAP MARKING AREAS TO BE CLOSED OR USED

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4 of 4
REQUIREMENTS FOR COMMUNITY CIVIC EVENT

SUMMER FEST

JUNE 23, 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 indication of where in the park or amount of area needed.

Field Services Manager:
B. Styles

No comments.

Fire Chief:
M.G. Garcia

No comments.

Parks and Leisure Services Director:
J. Perrine

Mark and avoid driving over sprinkler heads, pick-up litter after event. Need to supply own portable generators for power

Police Chief:
C. McMillan

Amplifier permit approved.

Interim Deputy City Manager:
J.D. Lollis

See Page 2, Exhibit “A”.

EXHIBIT “A,” Page 1
REQUIREMENTS FOR COMMUNITY CIVIC EVENT

Sponsor: Landmark Christian Center
Event: Summer Fest
Event Chairman: Tony Hendley
Location: Veteran’s Park – Skateboard Park
Date of Event: June 23, 2007

RISK MANAGEMENT: Conditions of Approval

That the Landmark Christian Center 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.

B. 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.
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:
   
   Tony Hendley  
   Phone # 784-2827  
   2380 W. Olive Ave.

2. Address where amplification equipment is to be used:
   
   1501 W. Henderson Ave.  
   Phone # 784-2827

3. Names and addresses of all persons who will use or operate the amplification equipment:
   
   Rick Reyna 2380 W. Olive Ave.

   Leonard Gomez 2380 W. Olive Ave.

4. Type of event for which amplification equipment will be used:
   
   Community Outreach

5. Dates and hours of operation of amplification equipment:
   
   June 23, 2007 12-4:00 PM

6. A general description of the sound amplifying equipment to be used:
   
   To play music and speak, Amplifiers and Microphones
I hereby certify that all statements and answers on this registration form are true and correct.

Applicant

Chief of Police

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:  AIRPORT LEASE RENEWAL – LOT 45

SOURCE:  ADMINISTRATIVE SERVICES/PURCHASING DIVISION

COMMENT:  Mr. Michael Archer is the current lease holder of Lot 45 at the Porterville Municipal Airport. The lease will expire on June 30, 2007; however, the lease terms allow for options to extend the lease in five-year periods. We have received a request from Mr. Archer to exercise his option to extend his lease for an additional five years, expiring on June 30, 2012.

RECOMMENDATION:  That the Council approve the extension of the Lease Agreement between the City of Porterville and Mr. & Mrs. Michael Archer of Springville, CA, for Lot 45 at the Porterville Municipal Airport.

ATTACHMENT:  Locator Map
Letter from Mr. Archer requesting renewal
Paragraph 2 of original Lease Agreement

D.D. Appropriated/Funded  C.M.  Item No. 6
Michael Archer  
19426 Campbell Creek Drive  
Springville, Ca 93265  

20 November 2006

Mr. Frank Guyton  
Airport Manager  
Porterville Municipal Airport  
Porterville, Ca 93257

Subject: Airport Lease - Lot 45  
Dated 1 October 2002

Dear Mr. Guyton:

At this time, I am requesting renewal of my lease for Lot #45, due to expire  
30 June 2007, be extended from 30 June 2007 to 30 June 2012 with a 5 year option.

If you have further questions, please call me at (559) 782-1281.

Sincerely,  

Michael Archer
LEASE AGREEMENT
PORTERVILLE MUNICIPAL AIRPORT

THIS LEASE AGREEMENT ("Lease"), executed at Porterville, California this 1st day of July, 1992, by and between the CITY OF PORTERVILLE, a political subdivision of the State of California, hereinafter referred to as "City" and MICHAEL AND FRANKIE L. ARCHER 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, 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:
   (a) Demised 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, more particularly described by metes and bounds in Exhibits being attached hereto and by this reference made a part hereof.

2. Term: The term of this lease shall commence when both parties have executed the same and shall terminate on June 30, 2002. Provided Lessee is not in default with respect to any of the
conditions or covenants of this lease. Lessee shall have an option to request an extension of the terms hereof for additional periods of five (5) years, by giving written notice thereof to Lessor not less than 120 days prior to expiration of this agreement or any five year extension. Lessor is not obligated to grant any extension but such shall not be unreasonably withheld.

3. **Rental and Business Privilege Consideration**: Lessee agrees to pay to City in lawful money of the United States without deduction or offset, to the Finance Director, City of Porterville, P O Box 432, Porterville, California, 93258, or to such person or persons and as such place or places as may be designated from time to time by City, a rental rate of $.1662 per square foot per year. Inasmuch as the lease site contains approximately 5,180 square feet of land area, said rental rate will be $860.92 per year payable in advance on July 1, of each year of this lease. See Exhibit "A" attached.

At the end of each year of this lease, the rate shall be adjusted by a percentage equal to the percentage increase or decrease in the Consumer Price Index (CPI) for San Francisco in the interval between the date of execution of this Lease or the last date or rate adjustment.

4.a **Purpose**: This Lease is made for the purpose of constructing and operating an aircraft hangar to be used for hte parking and storage of aircraft and other activities incident 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.

Lessee shall not do or permit any act or thing to be done upon the premises which constitutes nuisance or which may disturb the
SUBJECT: AIRPORT LEASE RENEWAL – LOT 46A

SOURCE: ADMINISTRATIVE SERVICES/PURCHASING DIVISION

COMMENT: Mr. Robert Baranek is the current lease holder of Lot 46A at the Porterville Municipal Airport. The lease will expire on June 30, 2007. We have received a request from Mr. Baranek to renew his lease for a period of fifteen (15) years which is the City’s standard lease term. He has also requested his wife, Judith, be added to the lease. A new Lease Agreement is attached.

RECOMMENDATION: That the Council approve the Lease Agreement between the City of Porterville and Mr. & Mrs. Robert Baranek of Porterville, CA, for Lot 46A at the Porterville Municipal Airport.

ATTACHMENT: Locator Map
Letter from Mr. Baranek requesting renewal
Lease Agreement
April 9, 2007

Susan Perkins  
Purchasing Agent  
City of Porterville  
291 North Main St.  
Porterville, CA 93257

Re: Lease Agreement Lot 46A

Dear Susan:

As per our phone conversation, I am requesting that my Lease of Lot 46A at the Porterville Municipal Airport be renewed.

When the new Lease Agreement is written would you include my wife Judith E. Baranek and myself as owners of the hanger on lot 46A.

If you have any questions, please contact me.

Very truly yours,

[Signature]

Robert Baranek
LEASE AGREEMENT

PORTERVILLE MUNICIPAL AIRPORT

THIS LEASE AGREEMENT ("Lease"), executed at Porterville, California the first day of July, 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 ROBERT and JUDITH E. BARANEK, 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 46A 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 July 1, 2007, both parties having executed the same, and shall terminate on June 30, 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 3,220 square feet of land area, said rental rate will be $795.34 annually, or $66.28 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:

<table>
<thead>
<tr>
<th>To the Lessee:</th>
<th>Mr. &amp; Mrs. Robert Baranek</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>310 S. Chestnut</td>
</tr>
<tr>
<td></td>
<td>Porterville, CA 93257</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>To the City:</th>
<th>Airport Manager</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>City of Porterville</td>
</tr>
<tr>
<td></td>
<td>291 N. Main Street</td>
</tr>
<tr>
<td></td>
<td>Porterville, CA 93257</td>
</tr>
</tbody>
</table>

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

By: ________________________________
    Cameron Hamilton, Mayor

LESSEE

By: ________________________________
    Robert Baranek

By: ________________________________
    Judith E. Baranek

ATTEST:

By: ________________________________
    John Longley, City Clerk

APPROVED AS TO FORM:

By: ________________________________
    Julia Lew, City Attorney
SUBJECT: City Council Policy for the Use of the Airport Pavilion

SOURCE: City Manager

A request has been made to define the rules for the utilization of the Pavilion at the Porterville Municipal Airport.

The Porterville Area Pilots Association constructed the Pavilion on Airport property about 1991. It was constructed specifically for the use of the organization and other Airport users. This was consistent with FAA agreements regarding the use of Airport facilities that are conditions of the original airport transfer and subsequent FAA grants for airport development. An example of the condition is:

The Airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with the use for airport purposes. . . . . (Airport Assurance 9/99, Condition 19a.)

Because a restaurant is located at the Airport and is a major attraction to aircraft flying into the facility to purchase fuel and utilize local fixed based operators, the Pavilion and the grounds south of the Airport administration building have been used to host aviation based activities at which the restaurant can provide food and/or drinks.

In 2003, Airport management attempted to increase business to the restaurant by making the canopy and grounds available for general public use. Instead of finding that this enhanced the restaurant’s business, the Airport management found that often the general public did not utilize restaurant services, consumed restaurant and airport parking, making it difficult for customers to find access to the restaurant and extensively utilized restrooms and other facilities directly supported by the restaurant itself.

Because of these factors, the Airport management determined to change the policy back to its previous status, which is stated as follows:

Item No. 8

City Manager Longley
The Porterville Municipal Airport Pavilion is for use by reservation only. A fee of $45.00 may be charged for preparation, cleanup and maintenance. The Pavilion is intended for use by the Porterville Area Pilots Association. The Pavilion may also be reserved by businesses, organizations, and tenants located on the Airport. Flying clubs, fly in individuals, service clubs and civic organizations may also use the Pavilion.

With this policy in effect, the Pavilion is used once or twice a month. Making the Pavilion available to the general public doubled the usage.

A final issue is the fee which is charged. The fee outlined in the policy above cannot be supported without a cost study. This may be necessary in the future; however, in the meantime it is suggested the fee be established at $33, which is the current fee for use of Park canopies. This fee has been established through the fee analysis required by State Law.

**Recommendation:**

Ratify the policy for the use of the Airport PAPA Pavilion, with the modification that the fee should be $33.00.
SUBJECT: SIERRA MANAGEMENT TRANSIT CENTER LEASE

SOURCE: Administration (Transit)

COMMENT: The commercial lease for the Transit Center expires June 30, 2007. Since December 1, 2006, Sierra Management has also been occupying the additional lease space formerly used by Orange Belt Stages and assumed the rental fee for that additional space. The total rent being received is $754.00 per month.

The attached lease represents all of the Transit Center office space, and the monthly lease payment has been increased to $785.00 to reflect a 4% average increase in the Consumer Price Index (CPI).

Attached is a modified lease granting Sierra Management the use of the entire Transit Center leased space under the same terms and conditions as the current Lease, with the exception of the amended monthly lease payment.

RECOMMENDATION: That the City Council:

1. Approve the Lease with Sierra Management; and

2. Authorize the Mayor and the City Clerk to execute the Lease which will go into effect July 1, 2007.

ATTACHMENT: 1. Commercial Lease with Sierra Management

DD  Appropriated/Funded  CM

Item No. 9
COMMERCIAL LEASE

The City of Porterville ("Lessor"), hereby offers to lease to Sierra Management ("Lessee") the Property situated in the County of Tulare, State of California, that certain space outlined on the plat map attached and marked as Exhibit "A" in the City of Porterville's Transit Building located at 61 West Oak, Porterville, California, 93257 (the "Property") upon the following TERMS and CONDITIONS:

1. TERM: The tenancy shall be for one year, commencing July 1, 2007 and ending June 30, 2008.

2. RENT: The rent shall be $785.00 per month, plus Lessee's share of utility and maintenance costs as described in Paragraph 12 below, payable as follows: $785.00 on or before the fifteenth day of each month. All rents shall be paid to Lessor, at the following address: 291 North Main Street, Porterville, California 93257. In the event rent is not paid by the date due, Lessee agrees to pay a late charge of $30.00. Lessee further agrees to pay $18.00 for each dishonored bank check. The late charge period is not a grace period, and shall be considered "additional rent", and Lessor is entitled to make written demand for any rent, including "additional rent," if not paid when due. Any unpaid balances remaining after termination of occupancy are subject to 1½% interest per month or the maximum rate allowed by law.

3. USE: The Premises are to be used for Lessee's operational and management services for Fixed Route and Dial-A-Ride public transit services.

4. USES PROHIBITED: Lessee shall not use any portion of the Premises for purposes other than those specified hereinabove, and no use shall be made or permitted to be made upon the Premises, nor acts done, which will increase the existing rate of insurance upon the property, or cause cancellation of insurance policies covering said property.

5. ASSIGNMENT AND SUBLETTING: Lessee shall not assign this Lease or sublet any portion of the Premises without prior written consent of the Lessor. Lessor is entitled to withhold such consent for any reason it deems appropriate. Any such assignment or subletting without consent shall be void and, at the option of the Lessor, may terminate this Lease.

6. ORDINANCES AND STATUTES: Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, occasioned by or affecting the use thereof by Lessee. The commencement or pendency of any state or federal court abatement proceeding affecting the use of the Premises shall, at the option of the Lessor, be deemed a breach hereof.

7. MAINTENANCE, REPAIRS, ALTERATIONS: Lessee acknowledges having inspected the Premises and hereby accepts the Premises in their present condition. Lessee shall, at its own expense and at all times, maintain the Premises in good and safe condition, including plate glass, electrical wiring, plumbing and heating installations, and any other system or equipment upon the Premises and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. Lessee shall be responsible for all repairs required as a result of inappropriate usage or behavior of Lessee, or any of its employees. Lessor shall be responsible for other repairs to the plate glass, electrical wiring, plumbing and heating installations, due to normal wear and tear or mechanical malfunctions, or acts of vandalism.

No improvement or alteration of the Premises shall be made without the prior written consent of the Lessor. Prior to the commencement of any substantial repair, improvement, or alterations, Lessee shall give Lessor at least two (2) weeks written notice in order that Lessor may post appropriate notices to avoid any liability for liens.

Lessee shall not commit any waste upon the Premises, or any nuisance or act which may disturb the quiet enjoyment of any tenant in the building.
8. **ENTRY AND INSPECTION:** Lessee shall permit Lessor or Lessor's agents to enter upon the Premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same and will permit Lessor at any time within sixty (60) days prior to the expiration of this Lease, to place upon the Premises any usual "To Let" or "For Lease" signs or "For Sale" signs and permit persons desiring to lease or purchase the same to inspect the Premises thereafter.

9. **INDEMNIFICATION OF LESSOR:** To the fullest extent permitted by law, Lessor shall not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the leased portions of the premises or any part thereof, and Lessee agrees to hold Lessor harmless from any claims for damages, no matter how caused, save and excepting only those caused by the gross or active negligence of Lessor, and only to the extent caused by the gross or active negligence of Lessor.

10. **POSSESSION:** If Lessor is unable to deliver possession of the Premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby, nor shall this Lease be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this Lease if possession is not delivered within ten (10) days of the commencement of the term hereof.

11. **INSURANCE:** Lessee, at its expense, shall procure and maintain for the mutual benefit of Lessor and Lessee, throughout the term of this Lease, public liability insurance including bodily injury and property damage insuring Lessee and Lessor with minimum coverage as follows: $5,000,000.00 for personal injury or death for each person and $5,000,000.00 for personal injury or death of two or more persons in each accident or event. Lessor shall be named as an additional insured and the policy shall contain cross-liability endorsements. Lessor shall also procure and maintain, at its expense, throughout the term of this Lease, insurance against loss or damage to any structures constituting any part of the demised Premises, by fire and lightning, with extended coverage insurance. Furthermore, Lessor shall maintain, for the mutual benefit of Lessor and Lessee, general public liability and property damage insurance covering the common areas against claims for personal injuries, death, or property damage, in the amounts determined by Lessor at its sole discretion.

12. **UTILITIES AND SERVICES:** Lessee agrees that it shall pay for all utilities. Lessee shall be responsible for 100% of the costs of electricity, gas, refuse, and the electronic security system. Lessee shall be responsible for its own telephone and communications services, and domestic water service. Lessor shall be responsible for water service for landscaping.

13. **COMMON AREAS:** Lessor shall make available at all times during the term of this lease in any portion of the Building that Lessor from time to time designates or relocates, automobile parking and common areas (jointly referred to as "common areas," as that term is defined below) as Lessor shall from time to time deem appropriate. Lessee shall have the nonexclusive right during the term of this lease to use the common areas for itself, its employees, agents, customers, clients, invitees, and licensees. The term "common areas" means the portions of the Building that, at the time in question, have been designated and improved for common use by or for the benefit of more than one tenant of the Building, including the parking areas; access and perimeter roads; landscaped areas; exterior walks, stairways, elevators, escalators and/or ramps; interior corridors, elevators, stairs, and balconies; directory equipment; the main entry lobby; restrooms; and drinking fountains. Lessor reserves the right to redesignate a common area for a non-common use or to designate as a common area a portion of the Building not previously designated a common area. All common areas shall be subject to the exclusive control and management of Lessor or those designated by Lessor to exercise management and control. Lessor shall have the right to establish, modify, amend and enforce reasonable rules and regulations with respect to the common areas and the Building. Lessee shall fully and faithfully
comply with and observe the rules and regulations for the common areas and the Building of which the leased space is a part. Lessor shall not be liable in any way for failure of any other occupant of the Building of which the leased space is a part to comply with and observe these rules and regulations.

14. TRADE FIXTURES: Any and all improvements made to the Premises during the Lessee's occupancy hereof shall belong to the Lessor, except trade fixtures of the Lessee. Lessee may, upon termination hereof, remove all its trade fixtures, but shall repair or pay for all repairs necessary for damages to the Premises occasioned by removal.

15. DESTRUCTION OF PREMISES: In the event of a partial destruction of the Premises during the term hereof, from any cause, Lessor shall forthwith repair the same to the extent that proceeds of insurance are available to Lessor, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this Lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the Premises. If such repairs cannot be made within said sixty (60) days, Lessor, at its option, may make the same within a reasonable time, this Lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Lessor shall not elect to make such repairs which cannot be made within sixty (60) days, this Lease may be terminated at the option of either party.

In the event the building in which the demised Premises may be situated is destroyed to an extent of not less than one-third of the replacement costs thereof, Lessor may elect to terminate this Lease whether the demised Premises be injured or not. A total destruction of the building in which the Premises may be situated shall terminate this Lease. In either case the election of Lessor shall be without regard to the availability of insurance proceeds available to Lessor.

16. HAZARDOUS MATERIALS: Lessee shall not use, store, or dispose of any hazardous substances upon the Premises, except use and storage of such substances if they are customarily used in Lessee's business, and such use and storage complies with all environmental laws. Hazardous substances means any hazardous waste, substance or toxic materials regulated under any environmental laws or regulations applicable to the property.

17. INSOLVENCY: In the event a receiver is appointed to take over the business of Lessee, or in the event Lessee makes a general assignment for the benefit of creditors, or Lessee takes or suffers any action under any insolvency or bankruptcy act, the same shall constitute breach of this Lease by Lessee.

18. BREACH OF LEASE/DEFAULT: The following are deemed to be breaches of this Lease: 1) failure to pay rent for a period of two months; 2) failure of Lessee to maintain the property in a good and safe condition, and in the same condition existing at the time this agreement was executed; 3) failure of Lessee to comply with any provision in this lease; 4) the execution, attachment or other judicial seizure of substantially all of Lessee’s assets located at the leased premises or of Lessee’s interest in the lease, when the seizure is not discharged within 15 days; or 5) the breach of this lease and abandonment of the lease premises before the expiration of the term of this lease.

19. REMEDIES OF LESSOR ON DEFAULT: In the event of any breach of this Lease by Lessee, Lessor may, at its option, terminate the Lease by hand delivering written notice of termination specifying the alleged default, and recover from Lessee: (a) the worth at the time of award of the unpaid rent which was earned at the time of termination; (b) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rental loss that the Lessee proves could have been
reasonably avoided; (c) 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 that Lessee proves could be reasonably avoided; and (d) any other amount necessary to compensate Lessor for all detriment proximately caused by Lessee's failure to perform his obligations under the Lease or which in the ordinary course of things would be likely to result therefrom. Upon receiving such notice of termination, Lessee shall vacate the premises. In lieu of, or in addition to, bringing an action for any or all of the recoveries described above, Lessor may bring an action to recover and regain possession of the leased premises in the manner provided by the California law of unlawful detainer then in effect.

Lessor may, in the alternative, continue this Lease in effect, as long as Lessor does not terminate Lessee's right to possession, and Lessor may enforce all its rights and remedies under the Lease, including the right to recover the rent, including "additional rent", as it becomes due under the Lease. If said breach of Lease continues, Lessor may, at any time thereafter, elect to terminate the Lease.

The remedies set forth in this enumerated section are not exclusive; they are cumulative in addition to any remedies now or later allowed by law.

20. **WAIVER OF RIGHT TO JURY TRIAL:** In the event there shall be a dispute between Lessor and Lessee and either party shall file an action against the other party to enforce their rights under this Lease, to interpret the Lease terms, or arising out of their relationship as Lessee and Lessor, the parties agree that the matter shall be tried by the court without a jury and each party specifically waives the right to a jury trial in any such action.

21. **ATTORNEY'S FEES AND COSTS:** In any action or proceeding involving a dispute between Lessor, and Lessee, arising out of the execution of this lease, or to enforce the terms and conditions of this lease, the prevailing party shall be entitled to receive from the other party reasonable attorney's fees, expert fees, appraisal fees, and all other costs incurred in connection with such action or proceedings, to be determined by the court or arbitrator(s).

22. **WAIVER:** No failure of Lessor to enforce any term hereof shall be deemed to be a waiver.

23. **NOTICES:** Any notice which either party may or is required to give other than as otherwise provided in this Lease, shall be given by hand delivery or by mailing the same, postage prepaid, to Lessee or Lessor at the addresses shown below, or at such other places as may be designated by the parties, by notice in writing to the other party, from time to time.

24. **TIME:** Time is of the essence of this Lease.

25. **HEIRS, ASSIGNS, SUCCESSORS:** This Lease is binding upon and inures to the benefit of the heirs, assigns and successors in interest to the parties.

26. **LESSOR'S LIABILITY:** The term "Lessor," as used in this paragraph, shall mean only the owner of the real property. In the event of any transfer of such title or interest, the Lessor named herein (or the grantor in case of any subsequent transfers) shall be relieved of all liability related to Lessor's obligations to be performed after such transfer. Provided, however, that any funds in the hands of Lessor or Grantor at the time of such transfer shall be delivered to Grantee. Lessor's obligations hereunder shall be binding upon Lessor's successors and assigns only during their respective periods of ownership.

27. **INDEPENDENT COUNSEL:** Lessee acknowledges it has been advised by all other parties and counsel to seek independent legal counsel to assist in reviewing this document before executing it and ask said legal counsel to explain its import and meaning. Any signature by Lessee
represents, inter alia, that it has had independent counsel assistance, or that it has personally reviewed and studied the Lease, understands each and every term, chooses not to avail itself to the assistance of independent legal counsel, and agrees fully with each and every term of this Lease. All parties acknowledge and understand that this agreement was a freely, openly negotiated document and that those attorneys that did assist in negotiation represented the interests only of their clients and not those of the parties who have chosen to waive the assistance of independent legal counsel.

DATED: ________________  LESSEE:  
CITY OF PORTERVILLE

By: _______________________
Mayor

_______________________
City Clerk

DATED: ________________  LESSEE:  
SIERRA MANAGEMENT

_______________________
Steven Tree, Owner
COUNCIL AGENDA:  May 15, 2007

SUBJECT:  TULE RIVER ABATEMENT PROJECT

SOURCE:  FIRE DEPARTMENT

COMMENT: INFORMATION ONLY - Effective May 16, 2007, the City of Porterville will be starting “Tier 1” of the abatement process at the Tule River from Jaye Street east to the railroad bridge. Several meetings have been scheduled to discuss the logistics of the abatement with the U. S. Army Corps of Engineers, the Lower Tule River Irrigation District, and the Department of Fish and Game. This collaborative effort resulted with positive outcomes and support for the clean-up of the Tule River. No permits are required for the scope of the Tule River abatement process.

At the direction of the City Attorney, the property has been posted at various locations with signage in English and Spanish advising the users of this area that the area has been declared a “public nuisance” and on May 16, 2007, an abatement effort will commence; therefore, they will need to vacate immediately and take all their personal belongings.

The City of Porterville Police Department has been making sweeps of the area several days prior to the May 16 commencement date advising the users to vacate and remove all their personal property.

A workforce of 32 workers are assigned to this detail, with 15 to 20 of these workers being funded through the City of Porterville’s Emergency Freeze Relief Fund. Two (2) 32 cubic yard roll-off dumpsters will be provided daily to remove the debris. Fred Beltran, Field Services Superintendent, will supervise this operation.

Porterville Police Officers and the Department of Fish and Game personnel will be making routine spot checks on the workforce to insure their safety during the project.

It is anticipated that the abatement process will take one week to ten days to complete.

ATTACHMENTS: None.

DIR. [Signature] APPROPRIATED/FUNDED _____ CM _____ ITEM NO. 10
PUBLIC HEARING

SUBJECT: FORMATION OF LANDSCAPE AND LIGHTING MAINTENANCE DISTRICTS NO. 38 THROUGH 40, AND ESTABLISHING ASSESSMENTS

SOURCE: PARKS AND LEISURE SERVICES DEPARTMENT

COMMENT: At the City Council meeting of May 1, 2007 the City Council gave preliminary approval to Engineer’s Reports and approved initial Resolutions towards the formation of Landscape and Lighting Maintenance Districts No. 38 through 40. A public hearing was set for May 15, 2007.

The improvements associated with the assessments have been or will be completed by the various developers of the subdivisions of land encompassed by each of the proposed districts. The developers/owners of each of the subdivisions have petitioned to the city for the creation of the assessment districts to provide funds and to perform the maintenance of the installed improvements. Improvements consist generally of street lighting and public area landscaping.

An Engineer’s Report prepared for each of the three proposed districts provides details on the estimated maintenance cost and lot assessments.

RECOMMENDATION: That the City Council conduct a public hearing on the formation and levy of assessments; and adopt Resolution ordering formation of Landscape and Lighting Maintenance District numbers 38, 39, and 40, approving Engineer’s Reports, and the method and levy of assessments.

ATTACHMENT: Resolution ordering formation of Districts, and approving Engineer’s Reports and assessments. Engineer’s Reports for Landscape and Lighting Maintenance Districts No. 38, 39 and 40.
RESOLUTION NO. 2007

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ORDERING THE FORMATION OF LANDSCAPE AND LIGHTING MAINTENANCE DISTRICT NUMBERS 38, 39, AND, APPROVING ENGINEER’S REPORTS FOR SAID DISTRICTS, AND APPROVING THE METHOD AND LEVY OF ASSESSMENTS

WHEREAS, the City Council of the City of Porterville did on the 1st day of May 2007, adopt Resolution No. 35 – 2007 declaring its intention to order the formation of Landscape and Lighting Maintenance District numbers 38, 39, and 40; and

WHEREAS, in conjunction with the land division and development process, petitions to form said districts were filed by the owners of the lands included within each of said proposed Districts; and

WHEREAS, a duly noticed public hearing has been held to receive objections to the formation of said Districts, or the levy of assessments.

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

1. The public interest, convenience and necessity require the formation of Landscape and Lighting Maintenance District numbers 38, 39, and 40, and that each District shall hereby be formed.

2. The Engineer’s Report and diagram for each of said Districts is hereby approved, and the work as set forth therein is to be done.

3. That the method of assessment, and the levy of assessments as indicated within each of said Engineer’s Reports are hereby approved.

APPROVED AND ADOPTED THIS 15th DAY OF MAY 2007.

_________________________
Cameron J. Hamilton, Mayor

ATTEST:
John Longley, City Clerk

By: _______________________
Georgia Hawley, Deputy City Clerk
SECTION 1. Authority for Report

This report is prepared by order of the City Council of the City of Porterville Resolution No. __________. The report is in compliance with the requirement of Article 4, Chapter 1, Division 15 of the Streets and Highways Code, State of California (Landscape and Lighting Act of 1972).

SECTION 2. General Description

The City Council has elected to include lighting at Ranch Victoria, Phase One Subdivision into the Landscape and Lighting Maintenance District No. 38. The City Council has determined that the areas to be lighted will have an effect upon all parcels within the proposed boundaries of the District. The District includes lighting on Putnam Avenue as a part of the subdivision. Proposed areas for lighting are on the north side of the street located within the subdivision.

SECTION 3. Plans and Specifications

The plans and specifications for the lighting were prepared by the developer and are in conformance with the requirements of the City of Porterville. All lights to be maintained will be shown on the subdivision maps as roadway rights-of-way, or easements to be granted to the City of Porterville. The total street lights to be maintained are 2.

SECTION 4. Improvements

Landscape and lighting improvements were made by the developer of Ranch Victoria, Phase One Subdivision.

SECTION 5. Estimated Costs
The construction cost will be borne by the developer and will not be assessed. The subdivision map has been filed for record and it is intended that the improvements will be constructed during or before the 2007 – 2008 fiscal year and certain lighting costs will be incurred during fiscal year 2007 –2008. It is appropriate that the assessments be made in advance of the anticipated expenditure to provide working capital for the maintenance effort. District 38 assessments during the 2007-2008 Fiscal Year are as follows.

Electricity/Lighting*

2 fixtures, 5,800 lumens @ $30.21 per year $ 60.41

Project Management Costs

6 Lots @ $400.00 plus $3.00 per lot $ 418.00
Sub Total 2007-2008 $ 478.41

Incidental Expenses

5% Reserve Fund $ 23.92

Total 2007-2008 Initial Assessment $ 502.33

*Lighting costs are based on 29% benefit of total cost because lights are spaced closer together resulting in 40% more lights than the city standard outside the maintenance district.

After the 2007-2008 fiscal year, the assessments shall be increased with the cost of service. The increased cost of services shall be the lesser of the actual prior year’s cost or the prior year’s estimated cost adjusted according to the annualized Consumer price Index rate. The Consumer Price Index is based on the San Francisco Model, and any increase for the year 2008/2009 will refer back to the prior year’s CPI. In the event that the costs of services provided do not increase to
exceed the full amount of CPI from one year, such excess CPI percentage shall be carried over from year to year and may be utilized to increase the amount of assessment in future years.

SECTION 6. Assessment Diagram

A copy of the proposed assessment diagram entitled “Landscape and Lighting Maintenance District No. 38 is attached to this report and by reference is made part thereof.

SECTION 7. Assessment

The initial cost of constructing improvements has been borne by the developer. The improvement areas are established for the benefit of all properties within the proposed Landscape and Lighting Maintenance District No. 38. The establishment and maintenance of the improvements is a vital part of the development of Ranch Victoria, Phase One. The City Council of Porterville has determined that to insure satisfactory levels of maintenance of street lighting at Ranch Victoria, Phase One, it should become Landscape and Lighting Maintenance District No. 38. The lighting includes 2 street lights.

Landscape and Lighting Maintenance District No. 38 will consist of an area comprising approximately 1.33 acres. A total of 6 lots are proposed to be developed in Ranch Victoria, Phase One Subdivision. The improvements will consist of those improvements described in Section 4 of this report. The maintenance of the improvements is a vital part of the development for the protection or safety, economic and humanistic values. The City Council has determined that, for the preservation of values incorporated within this
development, all lots will receive equal benefit from the landscaping and street lighting.

The determination of benefits takes into consideration the following facts:

1. The purpose of the improvements is to provide a favorable aesthetic appearance of the area.
2. Properly maintained landscaping and lighting benefits all properties in the development.
3. The lots not adjacent to the landscaping and lighting facility improvements benefit for the maintenance equally to those lots adjacent to the improvements.

**Estimated 2007-2008 Assessment**

\[
\text{Assessment (A)} = \frac{\text{Cost (C)}}{\text{Number of Lots (L)}}
\]

\[
A = \frac{502.33}{6} = 83.72 \text{ per lot for 6 lots}
\]

Total Assessment for 2007-2008 = $502.32
Total developed lot count is 6 lots.

**SECTION 8. Order of Events**


2. City Council Adopts Resolution of Preliminary Approval of Engineer’s Report.

3. City Council Adopts Resolution of Intention to Order the Formation of Landscape and Lighting Maintenance District No. 38 and determines the district.


5. Every year between April and June the Engineer of Work file a report with the City Council.

6. Every year between April and June, the City Council conducts a public hearing and approves, or modifies the individual assessments.
Douglas Wilson
Engineer of the Work
CITY OF PORTERVILLE
ENGINEER’S REPORT FOR LANDSCAPING AND LIGHTING
MAINTENANCE DISTRICT NO. 39

SECTION 1. Authority for Report

This report is prepared by order of the City Council of the City of Porterville Resolution No. __________. The report is in compliance with the requirement of Article 4, Chapter 1, Division 15 of the Streets and Highways Code, State of California (Landscape and Lighting Act of 1972).

SECTION 2. General Description

The City Council has elected to include lighting at Williams Ranch Phase 4 Subdivision into the Landscape and Lighting Maintenance District No. 39. The City Council has determined that the areas to be lighted will have an effect upon all parcels within the proposed boundaries of the District. The District includes lighting on Silver Maple Street, Red Oak Street, Theta Avenue, Bel-Aire Court and Terry Court as a part of the subdivision. Proposed areas for lighting are on both sides of the streets located within the subdivision.

SECTION 3. Plans and Specifications

The plans and specifications for the lighting were prepared by the developer and are in conformance with the requirements of the City of Porterville. All lights to be maintained will be shown on the subdivision maps as roadway rights-of-way, or easements to be granted to the City of Porterville. The total streetlights to be maintained are 17.

SECTION 4. Improvements

Landscape and lighting improvements were made by the developer of Williams Ranch Phase 4 Subdivision.

SECTION 5. Estimated Costs
The construction cost will be borne by the developer and will not be assessed. The subdivision map has been filed for record and it is intended that the improvements will be constructed during or before the 2007 – 2008 fiscal year and certain lighting costs will be incurred during fiscal year 2007 –2008. It is appropriate that the assessments be made in advance of the anticipated expenditure to provide working capital for the maintenance effort. District 39 assessments during the 2007-2008 Fiscal Year are as follows.

**Electricity /Lighting***

17 fixtures, 5,800 lumens @ $30.21 per year $ 513.51

**Project Management Costs**

59 Lots @ $400.00 plus $3.00 per lot $ 577.00

Sub Total 2007-2008 $ 1,090.51

**Incidental Expenses**

5% Reserve Fund $ 54.53

Total 2007-2008 Initial Assessment $ 1,145.04

*Lighting costs are based on 29% benefit of total cost because lights are spaced closer together resulting in 40% more lights than the city standard outside the maintenance district.

After the 2007-2008 fiscal year, the assessments shall be increased with the cost of service. The increased cost of services shall be the lesser of the actual prior year’s cost or the prior year’s estimated cost adjusted according to the annualized Consumer price Index rate. The Consumer Price Index is based on the San Francisco Model, and any increase for the year 2008/2009 will refer back to the
prior year’s CPI. In the event that the costs of services provided do not increase to exceed the full amount of CPI from one year, such excess CPI percentage shall be carried over from year to year and may be utilized to increase the amount of assessment in future years.

SECTION 6. Assessment Diagram
A copy of the proposed assessment diagram entitled “Landscape and Lighting Maintenance District No. 39 is attached to this report and by reference is made part thereof.

SECTION 7. Assessment
The initial cost of constructing improvements has been borne by the developer. The improvement areas are established for the benefit of all properties within the proposed Landscape and Lighting Maintenance District No. 39. The establishment and maintenance of the improvements is a vital part of the development of Williams Ranch Phase 4 Subdivision. The City Council of Porterville has determined that to insure satisfactory levels of maintenance of street lighting at Williams Ranch Phase 4 Subdivision, it should become Landscape and Lighting Maintenance District No. 39. The lighting includes 17 streetlights.

Landscape and Lighting Maintenance District No. 39 will consist of an area comprising approximately 15.44 acres. A total of 59 lots are proposed to be developed in Williams Ranch Phase 4 Subdivision. The improvements will consist of those improvements described in Section 4 of this report. The maintenance of the improvements is a vital part of the development for the protection or safety, economic and humanistic values. The City Council has determined that, for the
preservation of values incorporated within this development, all lots will receive
equal benefit from the landscaping and street lighting.

The determination of benefits takes into consideration the following facts:

4. The purpose of the improvements is to provide a favorable aesthetic
appearance of the area.
5. Properly maintained landscaping and lighting benefits all properties in the
development.
6. The lots not adjacent to the landscaping and lighting facility improvements
benefit for the maintenance equally to those lots adjacent to the
improvements.

**Estimated 2007-2008 Assessment**

\[
\text{Assessment (A)} = \frac{\text{Cost (C)}}{\text{Number of Lots (L)}}
\]

\[
A = \frac{1,145.04}{59} = 19.40 \text{ per lot for } 59
\]

Total Assessment for 2007-2008 = $1,144.60
Total developed lot count is 59 lots.

SECTION 8. Order of Events

7. City Council adopts Resolution Instituting Proceedings, appoints an Engineer of Work
and Orders Engineer’s Report.


9. City Council Adopts Resolution of Intention to Order the Formation of Landscape and
Lighting Maintenance District No. 39 and determines the district.

10. City Council adopts Resolution Ordering the Improvements and the Formation of
Landscape and Lighting Maintenance District No. 39.

11. Every year between April and June the Engineer of Work file a report with the City
Council.

12. Every year between April and June, the City Council conducts a public hearing and
approves, or modifies the individual assessments.
Douglas Wilson
Engineer of the Work
SECTION 1. Authority for Report

This report is prepared by order of the City Council of the City of Porterville. Resolution No. ___________. The report is in compliance with the requirement of Article 4, Chapter 1, Division 15 of the Streets and Highways Code, State of California (Landscape and Lighting Act of 1972).

SECTION 2. General Description

The City Council has elected to include landscaping and lighting at Amalene Estates Subdivision into the Landscape and Lighting Maintenance District No. 40. The City Council has determined that the areas to be landscaped and lighted will have an effect upon all parcels within the proposed boundaries of the District. The areas for street lights are included on all the streets located within the subdivision. Proposed areas for lighting are on both sides of the streets located within the subdivision. The landscaping includes a masonry wall along the east and a portion of the north boundary. The wall maintenance includes: cleaning, repairing, painting and rodent control. A landscaped area was installed by the developer generally adjacent to the masonry walls. The landscaped area maintenance includes cleaning, weed control, maintenance of irrigation facilities, and control of the growth.

SECTION 3. Plans and Specifications

The plans and specifications for the lighting were prepared by the developer and are in conformance with the requirements of the City of Porterville. All lights to be maintained will be shown on the subdivision maps as roadway rights-of-way, or easements to be granted to the City of Porterville. The total street lights to be
maintained are 17 (11 initially and 6 to be added when the remainder is constructed). Total landscaped area to be maintained is 736 lineal feet of 6-foot masonry wall, and 5445 square feet of landscaped area.

Maintenance activities within the Landscape and Lighting Maintenance District No. 40 are to include landscape and lighting maintenance.

SECTION 4. Improvements

Landscape and lighting improvements were made by the developer of Amalene Estates Subdivision.

SECTION 5. Estimated Costs

The construction cost will be borne by the developer and will not be assessed. The subdivision map has been filed for record and the improvements have been installed and certain maintenance on the areas will be necessary during fiscal year 2007-2008. It is appropriate that the assessments be made in advance of the anticipated expenditure to provide working capital for the maintenance effort. In this District assessments will be made during the 2007-2008 Fiscal Year.

Landscaped Area

Masonry wall  736 L.F. @ $0.47 per L.F.  $ 345.92
5445 sq ft landscaped area @ $0.60 per sq ft  $3,267.00

Electricity/Lighting

16 fixtures, 5,800 lumens @ $30.21 per year  $ 483.30
1 fixtures, 16,000 lumens @ $47.47 per year  $ 47.47

Portion due Ford Estates District Number 7

37.25 percent $3,038.80  $1,131.86

Project Management Costs
53 Lots (includes remainder) @ $1,000 plus $4 per lot $1,212.00

Sub Total 2007-2008 $6,487.55
15% Reserve Fund $ 973.13
Total 2007-2008 Initial Assessment $7,460.68

**Lighting costs are based on 29% benefit of total cost because lights are spaced closer together resulting in 40% more lights than the city standard outside the maintenance district.

After the 2007-2008 fiscal year, the assessments shall be increased with the cost of service. The increased cost of services shall be the lesser of the actual prior year’s cost or the prior year’s estimated cost adjusted according to the annualized Consumer price Index rate. The Consumer Price Index is based on the San Francisco Model, and any increase for the year 2008/2009 will refer back to the prior year’s CPI. In the event that the costs of services provided do not increase to exceed the full amount of CPI from one year, such excess CPI percentage shall be carried over from year to year and may be utilized to increase the amount of assessment in future years.

SECTION 6. Assessment Diagram

A copy of the proposed assessment diagram entitled “Landscape and Lighting Maintenance District No. 40 is attached to this report and by reference is made part thereof.
SECTION 7. Assessment

The initial cost of constructing improvements has been borne by the developer. The improvement areas are established for the benefit of all properties within the proposed Landscape and Lighting Maintenance District No. 40. The establishment and maintenance of the improvements is a vital part of the development of Amalene Estates Subdivision. The City Council of Porterville has determined that to insure satisfactory levels of maintenance for the landscape and lighting at Amalene Estates Subdivision, it should become Landscape and Lighting Maintenance District No. 40. The subdivision consists of 53 Lots (24 in Amalene Estates and 29 presently proposed for the remainder). The Landscape area, which benefits the 53 lots, is located along the easterly and a portion of the northerly boundary of the district.

Landscape and Lighting Maintenance District No. 40 will consist of an area comprising approximately 19.55 acres. A total of 24 lots and a remainder are proposed to be developed at this time. The improvements will consist of those improvements described in Section 4 of this report. The maintenance of the improvements is a vital part of the development for the protection or safety, economic and humanistic values. The City Council has determined that, for the preservation of values incorporated within this development, all lots will receive equal benefit from the landscaping and street lighting.

The determination of benefits takes into consideration the following facts:

7. The purpose of the improvements is to provide a favorable aesthetic appearance of the area.

8. Properly maintained landscaping and lighting benefits all properties in the development.
9. The lots not adjacent to the landscaping and lighting facility improvements benefit for the maintenance equally to those lots adjacent to the improvements.

Estimated 2007-2008 Assessment

\[
A = \frac{\text{Cost (C)}}{\text{Number of Lots (L) including the remainder}} = \frac{7460.68}{53} = 140.76 \text{ per lot for Amalene Estates Subdivision}
\]

Assessment of Remainder (AR) = \(A \times \text{Number Lots proposed Remainder (LR)} - \text{Number Lights proposed for Remainder} \times 30.21\)

\[
AR = 29 \times 140.76 - 6 \times 30.21 = 3900.78
\]

Total Assessment for 2007-2008 = 7,460.68

Total developed lot count is 24 lots plus a remainder.

SECTION 8. Order of Events


15. City Council Adopts Resolution of Intention to Order the Formation of Landscape and Lighting Maintenance District No. 40 and determines the district.


17. Every year between April and June the Engineer of Work file a report with the City Council.

18. Every year between April and June, the City Council conducts a public hearing and approves, or modifies the individual assessments.
Douglas Wilson
Engineer of the Work
STAFF REPORT
PUBLIC HEARING

SUBJECT: MURRY PARK MASTER PLAN

SOURCE: PARKS AND LEISURE SERVICES/COMMUNITY DEVELOPMENT DEPARTMENTS

COMMENT: The City of Porterville is proposing an amendment to the Parks and Recreation Element of the General Plan to adopt a program to rehabilitate areas and facilities in Murry Park that are in need of repair and/or replacement, and construct new facilities on adjacent land west of the park. The 20-acre community park currently consists of family picnic areas, pavilions, barbecue pits, sinks, tables and benches, internal streets, two children's play areas, and restrooms. Pioneer Ditch flows through the north end of the project area, and the park also contains an excavated duck pond.

The Master Plan would be implemented in multiple phases, and would include the expansion of the park by approximately 15-acres. Full implementation of the plan would require acquisition of seven parcels of land, five of which are fronting onto Plano Street, one of which fronts onto Corona Drive. Six homes and one Boy Scout activity building are located on the seven parcels.

In 2004, the Parks and Leisure Services Department retained the services of HMA Landscape Architects to prepare the Murry Park Master Plan. The plan consists of a site map and a menu of project components that could be completed as funds become available. The intent of the Plan was to define park features that could be improved, rehabilitated, or constructed in various phases, as federal, state, local, or private monies become available. Attachment 3 identifies the project area and includes a list of proposed improvements.

COMMISSION ACTION:
The proposed Master Plan has been reviewed by the Parks and Leisure Services Commission, and the Commission voted to recommend the Plan for Council Approval at the April 5, 2007 Commission meeting. Priorities established by the Commission at that meeting are as follows:

1. Acquisition of expansion area parcels as available (an ongoing priority throughout the term of the Plan).
2. Playgrounds
3. Restrooms- build two and demolish existing
4. Main Picnic Arbor replacement
5. Parking and vehicular access from Putnam Avenue to pond area
6. Pond area renovation and stream amenities
7. Pool parking and vehicular access
8. Lighting, pathways, and Park Drive parking reconfiguration
9. Additional picnic arbors/areas, pool shade structures and parking lot at Corona Avenue & Oak Street
10. Landscape, irrigation system, and existing structure enhancements
11. Other amenities- Basketball, Volleyball, relocate maintenance facility
12. Expansion area improvements

These priorities will help staff determine which funding sources to investigate first, but would not restrict opportunities to develop components out of order if funds become available, as discussed below. The Commission recommends that the timeline for full implementation of the Murry Park Master Plan be ten (10) years following the completion of the Softball Field Complex for the Heritage Center site. The environmental document similarly defined the time frame as a fifteen (15) year period. (Attachments 3 and 4).

FUNDING: The proposed Master Plan has been considered and evaluated in such a way that as funding sources become available, projects suited to such monies could be completed. Approval of the proposed project, in and of itself, requires no funding. The Master Plan components can be selected by staff to meet the goals of a funding agency or to suit the criteria for a grant application as such opportunities become available. Likewise, should a private entity or non-profit wish to make a donation, a project meeting the benefactor’s means could be formulated from the “menu” of project components.

ENVIRONMENTAL:
On March 6, 2007, the Environmental Coordinator made a preliminary determination that a Mitigated Negative Declaration and a Finding of No Significant Impact would be appropriate for the proposed project. The City of Porterville is the lead agency pursuant to CEQA, and may act as the Federal lead agency under the delegation of the U.S. Department of Housing and Urban Development (HUD) pursuant to NEPA. A joint Initial Study/Environmental Assessment was prepared for the proposed project. (Attachment 4)

The environmental document evaluated potential environmental effects associated with the implementation of the proposed Master Plan. Mitigation measures were identified for impacts that would otherwise result in a potentially significant effect. These measures are summarized below and defined in detail in Attachment 4.
Aesthetics: Project lighting shall be limited in hours of operation, and shall not be brighter than 0.25-foot candles in the project area.

Biological Resources: An elderberry shrub was identified in the vacant lot west of the current park, in the area of proposed expansion. Construction and maintenance activity must maintain a 100-foot buffer zone around the elderberry shrub. Further, a pre-construction nest survey for avian predators and migratory birds should occur prior to project construction if the construction period is within the breeding season (February 15 through September 15). Valley oaks should be retained as much as possible, particularly for larger trees.

Cultural Resources: Activities in the vicinity of the Pioneer Ditch and the Leslie Mill site must be monitored by a qualified archaeologist.

Geology and Soils: Any structure built on the Cibo Clay portion of the site and/or on slopes greater than 15 percent shall be designed by a structural engineer based on valid geotechnical information.

Noise: Construction noise shall be limited to daytime hours, and equipment must use mufflers.

Implementation of the mitigation measures would reduce impacts to a less than significant level.

RECOMMENDATION: Staff recommends that the City Council:

3. Adopt a resolution to approve General Plan Amendment 2-2007 pertaining to the Murry Park Master Plan.

ATTACHMENTS:
1. Draft Resolution to Approve a Mitigated Negative Declaration/Finding of No Significant Impact
2. Draft Resolution to Amend the Parks and Recreation Element of the General Plan
3. Murry Park Master Plan Site Map and Project Description
4. Initial Study/Environmental Assessment
5. Mitigation Monitoring & Reporting Plan
RESOLUTION NO. __________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE CONTAINING FINDINGS IN SUPPORT OF APPROVAL OF A MITIGATED NEGATIVE DECLARATION AND A FINDING OF NO SIGNIFICANT IMPACT FOR GENERAL PLAN AMENDMENT 2-2007 TO THE PARKS AND RECREATION ELEMENT OF THE GENERAL PLAN

WHEREAS: The Environmental Coordinator made a determination on March 7, 2007 that the proposed project with defined mitigation measures would have a less than significant environmental impact; and

WHEREAS: An Initial Study and Environmental Assessment was circulated for public review for a period of 30 days pursuant to CEQA and NEPA; and

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of May 15, 2007, conducted a public hearing to consider General Plan Amendment 2-2007, being an amendment to the Parks and Recreation Element of the General Plan pertaining to the Murry Park Master Plan; and

WHEREAS: The potential environmental effect of General Plan Amendment 2-2007 was considered at that public hearing; and

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

1. That a Mitigated Negative Declaration was prepared in accordance with the California Environmental Quality Act
2. That the subject General Plan Amendment and project implementation will not create adverse environmental impacts.
3. That the City Council is the decision-making body for the projects.
4. That the Mitigated Negative Declaration prepared for the General Plan Amendment was made available for public review and comment.
5. That review of the environmental circumstances regarding the projects covered under the proposed general plan amendment indicates that no adverse impacts would accrue to wildlife resources from implementation of these projects.
6. That the mitigation measures contained in the Mitigated Negative Declaration were incorporated into a Mitigation Monitoring Program.
7. That construction of the project will require consultation with the State Office of Historic Preservation consistent with measures identified in Section 106 of the National Historic Preservation Act.
8. That the environmental assessment and analysis prepared for the projects supporting the Mitigated Negative Declaration reflects the independent judgment of the City of Porterville.

Attachment 1
NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve the Mitigated Negative Declaration prepared for the General Plan Amendment 2-2007.

__________________________
Cameron Hamilton, Mayor

ATTEST:

__________________________
John Longley, City Clerk
RESOLUTION NO. ________________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE
APPROVING GENERAL PLAN AMENDMENT 2-2007
AMENDING THE PARKS AND RECREATION ELEMENT
OF THE CITY OF PORTERVILLE GENERAL PLAN

WHEREAS: The City Council of the City of Porterville at its regularly scheduled meeting of May 15, 2007, conducted a public hearing to consider General Plan Amendment 2-2007 pertaining to the Murry Park Master Plan; 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, as specifically outlined in the proposed master plan, is consistent with the goals and policies of the General Plan in that it furthers the following objectives and policies of the Parks and Recreation Element:

   1.1 To establish a system of parks and recreation facilities sufficiently diverse in design to effectively serve the needs and desire of all the citizens of Porterville.

   2.2 To provide park and recreation facilities within close proximity to the residents they are designed to serve.

   3.6 The size and design of activity areas with facilities shall be regarded as flexible, so as to be adaptable to changes in the population served and in the recreation program offered for meeting changing needs.

2. That the objectives, goals and policies of the General Plan support the proposed amendments pertaining to the revised Murry Park Master Plan.

3. That the proposed amendments to the Murry Park Master Plan include elements as defined and prioritized below:

   1) Acquisition of expansion area parcels as available (an ongoing priority throughout the term of the Plan).
   2) Playgrounds
   3) Restrooms- build two and demolish existing
   4) Main Picnic Arbor replacement
   5) Parking and vehicular access from Putnam Avenue to pond area
   6) Pond area renovation and stream amenities
   7) Pool parking and vehicular access

Attachment 2
8) Lighting, pathways, and Park Drive parking reconfiguration
9) Additional picnic arbors/areas, pool shade structures and parking lot at Corona Avenue & Oak Street
10) Landscape, irrigation system, and existing structure enhancements
11) Other amenities- Basketball, Volleyball, relocate maintenance facility
12) Expansion area improvements

WHEREAS: Depending on availability and source of funding, the order and/or priority of proposed improvements will be flexible; and

WHEREAS: A Mitigated Negative Declaration and a Finding of No Significant Impact were prepared for this project pursuant to CEQA and NEPA indicating that the project will not have a significant effect on the environment and that implementation of the project 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 2-2007 being an amendment to the Parks and Recreation Element as described above.

________________________________________
Cameron Hamilton, Mayor

ATTEST:

________________________________________
John Longley, City Clerk
INITIAL STUDY/ENVIRONMENTAL ASSESSMENT
MITIGATED NEGATIVE DECLARATION/
FINDING OF NO SIGNIFICANT IMPACT

for the

Murry Park Master Plan

Submitted by

Quad Knopf
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P.O. Box 3699
Visalia, California 93278
(559) 733-0440

March 2007
INITIAL STUDY/ENVIRONMENTAL ASSESSMENT
MITIGATED NEGATIVE DECLARATION/
FINDING OF NO SIGNIFICANT IMPACT

MURRY PARK MASTER PLAN

March 2007

Lead Agency: City of Porterville
c/o Bradley Dunlap, AICP
Community Development Director
291 N. Main Street
Porterville, CA 93257

Consultant: Quad Knopf, Inc.
P. O. Box 3699
Visalia, CA 93278

Contact Person: David Young, Senior Environmental Planner
Phone: (559) 733-0440
Fax: (559) 733-7821
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Appendix B – Reconnaissance Level Biological Survey
Appendix C – Cultural Resources Records Search, May 2005
Appendix D – Cultural Resources Investigations, September 2006
Appendix E – GPS Coordinates for Leslie Mill Site
NOTICE OF INTENT TO ADOPT
A MITIGATED NEGATIVE DECLARATION
NOTICE OF INTENT TO ADOPT A
MITIGATED NEGATIVE DECLARATION

To:
(Agency)

(Address)

Subject: Notice of Intent to Adopt a Mitigated Negative Declaration

Lead Agency:
City of Porterville
(Agency Name)
City Hall, 291 N. Main Street
(Street Address)
Porterville, CA 93257
(City/State/Zip)
Bradley D. Dunlap, AICP
(Community Development Director)
Consulting Firm (if applicable):
Quad Knopf, Inc.
(Firm Name)
5110 W. Cypress Avenue
(Street Address)
Visalia, CA 93277
(City/State/Zip)
David Young
(Senior Environmental Planner)

The City of Porterville will be the Lead Agency and will prepare a Mitigated Negative Declaration for the project identified below. We need to know the views of your agency as to the scope and content of the environmental information germane to your agency’s statutory responsibilities in connection with the proposed project. Your agency may need to use the Negative Declaration prepared by our agency when considering permits or other approvals for the project.

The project description, location and the potential environmental effects are contained in the attached materials. A copy of the Initial Study (X is [ ] is not) attached.

Opportunity for Comments: This Notice of Intent and Initial Study will be circulated for a period of 30 days. Due to the time limits mandated by State law, your response must be sent at the earliest possible date but not later than 30 days after receipt of this notice.

The Porterville City Council will consider this matter at a public meeting on Tuesday, April 17, 2007 at 7:00PM in the council chambers at City Hall, 291 N. Main Street in Porterville.

Please send your response to Bradley D. Dunlap, Community Development Director at the address shown above. We will need the name for a contact person in your agency.

Project Title: City of Porterville Murry Park Master Plan

Project Location: Porterville
(City-nearest)

Tulare County
(County)

Project Description: (brief)

The proposed Murry Park Master Plan (project) proposes various improvements to Murry Park at Park Drive and Putnam Avenue in the City of Porterville. This 20-acre community park currently consists of family picnic areas, pavilions, barbecue pits, sinks, tables and benches, internal streets, two children’s play areas, and restrooms. Pioneer Ditch, a non-jurisdictional water, flows through the north end of the existing project site. The park also contains an excavated duck pond. The proposed project consists of multiple phases including the expansion of the park by addition of an adjacent 15 acre parcel. The project will also include the renovation and replacement of park buildings and structures, road improvements, and new parking lots.

Date March 7, 2007

Signature David K. Young

Title Senior Environmental Planner

Telephone 559-733-0440
CHAPTER ONE

INTRODUCTION
CHAPTER ONE - INTRODUCTION

1.1 Purpose and Authority

The proposed project for which this Initial Study/Mitigated Negative Declaration and Environmental Assessment/Finding of No Significant Impact has been prepared will make various improvements to and expand Murry Park in the City of Porterville. The City of Porterville expects to allocate a portion of the City’s Community Development Block Grant entitlement from the U.S. Department of Housing and Urban Development (HUD), to fund this project. The Murry Park project is included in the Consolidated Plan and the Action Plan adopted by the City on May 3, 2005. The anticipated funding source invokes a federal nexus, resulting in the need to evaluate the project in accordance with the National Environmental Policy Act (NEPA). In addition, all non-exempt projects in the State of California are required to comply with the California Environmental Quality Act (CEQA). This document has been prepared in accordance with both NEPA and CEQA. The City of Porterville (City) will act as the lead agency for this project pursuant to CEQA. The U.S. Department of Housing and Urban Development (HUD) will act as lead agency pursuant to NEPA.

1.2 Opportunity for Comments

This Initial Study/Environmental Assessment will be circulated for a period of 30 days. Comments on the Initial Study/Environmental Assessment should be sent at the earliest possible date, but not later than 30 days after receipt of this document and should be made in writing to the following address:

Bradley Dunlap, AICP
Community Development Director
City of Porterville
291 N. Main Street
Porterville, CA 93257
Fax (559) 784-4569

1.3 Determination

On the basis of the Initial Study, the Environmental Assessment, and review of the City’s General Plan and Murry Park Master Plan, it has been determined that the project will have no significant effect on the environment with the incorporated mitigation measures. Therefore, a Mitigated Negative Declaration and Finding of No Significant Impact is proposed for adoption.

Signature

Name: David Young, Senior Environmental Planner
Date: March 9, 2007
For: Quad Knopf, Inc.
   Consultants to the City of Porterville

Initial Study/ Environmental Assessment, March 2007
Mitigated Negative Declaration/Finding of No Significant Impact 1-1
Murry Park Master Plan
CHAPTER TWO

PROJECT DESCRIPTION
CHAPTER TWO – PROJECT DESCRIPTION

2.1 Project Location and Description

The City of Porterville proposes adoption of a program to rehabilitate areas and facilities in Murry Park which are in need of repair and/or replacement, and the construction of new facilities on an adjacent parcel located west of the park. The park is currently located at the southeast intersection of East Putnam Avenue and Park Drive in Porterville (Figures 2-1, 2-2 and 2-3). The proposed expansion would include the area to the west of the existing park, which currently lies east of Corona Drive. The existing 20-acre community park currently includes such features as family picnic areas, pavilions, barbecue pits, sinks, tables and benches, internal streets, two children's play areas, an excavated duck pond, and restrooms. Porter Slough, a jurisdictional waterway, flows south of the proposed project and is located outside the project’s boundary. Pioneer Ditch, a non-jurisdictional water, flows through the north end of the existing project site. The proposed plan consists of the activities listed below, which would be introduced as funding becomes available over the next 15 years. The plan will include the renovation and replacement of park buildings and structures, road improvements, and new parking lots. Figure 2-3 shows the proposed plan for both the existing park property and for the proposed expansion onto the approximately 15-acre property located to the west of the existing park. This 15-acre area is currently made up of a large vacant lot which has been routinely disked as evident by the ruderal weedy species present on site, and by six smaller parcels along Plano Street, four of which are currently occupied by houses. The project will include the following actions, which will not necessarily be implemented in the order listed.

- A physical topographic survey for existing and new park sections.

- Design and development plans and cost estimates.

- Construction plans and specifications.

- Architect estimates and bid sheet formats.

- Develop a general priority-ranking list for the proposed park improvements.

- Renovate and replace existing playgrounds. This will involve the replacement of existing playgrounds adjacent to Corona Drive and Mill Avenue with new playground equipment and fall-protective surfacing, the renovation of the eastern playground located near the swimming pool, and additional accessibility to the eastern playground.

- Develop a new northern entrance to the park aligned with Sierra Vista Street. The new entry will be created at Putnam Avenue and will include new signage, lighting, and parking as well as irrigation and landscaping. Adjacent trees will be pruned, and a new parking area near the existing pond with 30 to 40 spaces will also be built.
Pond renovations: some existing elements will be cleared to make way for the renovations, including the Putnam wall, adjacent paving, and select trees and shrubs. Renovation of the pond will include increasing the basin depth, removing the existing island, renovating the outlet stream with a waterfall, renovating the inlet stream with boulders and installation of an aeration system and utilities. A new pedestrian path will circle the pond and connect to Putnam Avenue. Two new bridges and a new group picnic pavilion will also be added to the areas around the pond. New furniture will include seating areas, picnic tables, and a fish cleaning station. New lighting, irrigation, plantings and signage in the area of these improvements will also be installed.

Provide new Americans with Disabilities Act (ADA) accessible parking and walkways, entry courtyard, and a drop-off area for the pool. Park Drive, the golf course 6th fairway, and the fence line will be realigned and the golf course’s 6th tee box will be relocated to accommodate these improvements. New lighting, irrigation, and plantings in the area of these improvements will also be installed.

Construct two new restrooms and a new arbor. One new restroom will be built between the swimming pool and the playground. A second new restroom will be ADA accessible and will be built southwest of the pond. This phase also includes removal of existing paving south of the pond stream, new ADA access paving to the restrooms, and paving to connect the new restroom to the new and existing pavilions and the new parking lot. Additionally, a new arbor will be built at the site of the old restroom, which will be removed. New lighting, irrigation, and plantings in the area of these improvements will also be installed.

Relocate the memorial flag pole. Palm trees will be pruned, harvested and in some cases relocated. Internal paths connecting pool parking and the playground will be paved, as will a new internal promenade. Old internal streets will be demolished. The stream through the park will be renovated, the existing rose arbor will be renovated, and internal picnic areas will be added. New lighting, irrigation, plantings, and furniture in the area of these improvements will also be added.

Rehabilitate Park Drive and adjacent improvements. Damaged turf, paving, and trees will be removed and replaced with a new pedestrian promenade with connecting paving, a new parking area, and new curbs, gutters, and sidewalks on the south side of Park Drive. New lighting, irrigation, and plantings will also be added to these areas.

Relocate the Maintenance Area and add a new basketball court immediately adjacent to the existing park at Oak Avenue and Corona Drive. This will include the following activities: acquiring the property for the new basketball court and parking area; selling and relocating the adjacent building; demolishing the existing maintenance yard and adjacent remaining structures; pruning adjacent trees; building the new basketball court; installing new lighting, irrigation, and plantings; and building a new 36-space parking area on the west side of Corona Drive.
Build a replica mill and other miscellaneous amenities. This will include the following activities: building the replica mill; installing interpretive signage; building connecting paving; adding new lighting; adjusting irrigation; new planting; and installing miscellaneous improvements.

Construct a new 40-60 space parking lot on the east side of Corona Avenue just north of its intersection with Oak Avenue and add shade and picnic structures. This will also involve removing affected turf, trees, and paving; pruning adjacent trees; installing utilities; and installing new pedestrian paving, lighting, irrigation, and plantings.

Acquire the new park site just west of the existing park. This will consist of obtaining property appraisals, negotiating purchase terms, and acquiring the properties.

Grade the new park site and install infrastructure. This will consist of the following activities: habitat reconnaissance; removal of existing structures; grading to define rolling hills and a natural looking landscape; erosion control work; installing underground utilities; and creating a drainage area wetland.

Install hardscape and structures at the new park site. This will consist of constructing access points and parking areas, including closing Corona Drive near its intersection with Oak Avenue and creating a cul-de-sac at the new end of Corona created by this closure; building a new group picnic pavilion; building a new restroom facility; and installing new lighting.

Install softscape and amenities at the new park site. This will consist of installing irrigation, new pedestrian pathways, new plantings, and miscellaneous improvements.

The Project requires the acquisition of seven parcels along and immediately east of Plano Street and one parcel on the east side of Corona Drive. The rest of the parcels that make up the Project site, both in the existing park and the proposed expansion area, are already owned by the City. The total new acreage to be added to the park is approximately 15 acres. This will include new picnic pavilions, restrooms, and parking as mentioned above, and involves the following ground-disturbing activities:

- Removal of some foliage and planting of new foliage
- Road and driveway realignments
- Paving of pedestrian paths
- Remodeling of the existing pond, including removing island, increasing basin depth, realigning the stream, and realigning the outlet
- Installing irrigation and lighting
• Installing new buildings and surfaces such as the pool entry courtyard, arbor, replica mill, basketball court, shade structures, and picnic pavilions

2.2 *Environmental Factors Potentially Affected and Summary of Mitigation Measures*

The attached environmental checklist and determination indicates that the following environmental impacts will be less than significant or mitigated to be less than significant for reasons provided in the checklist narrative:

• Aesthetics
• Agricultural Resources
• Air Quality
• Biological Resources
• Cultural Resources
• Geology/Soils
• Hazards & Hazardous Materials
• Hydrology/Water Quality
• Land Use/Planning (including socio-economic)
• Mineral Resources
• Noise
• Population / Housing
• Public Services
• Recreation
• Transportation/Traffic
• Utilities/Service Systems

Mitigation measures required to reduce impacts to *less than significant* include:

**AESTHETICS: LIGHT AND GLARE**

Project lighting shall operate, when necessary, during park hours from 8:00 a.m. to 8:00 p.m. The project shall be designed so that it will not expose people, either on or off site to glare (a continuous or periodic intense light that may cause eye discomfort or be blinding to humans) or an increase in off site ambient light of more than 0.25 foot candles. A registered illumination engineer shall design a lighting plan that will specify measures to reduce light and glare from project lighting to 0.25 foot candles or less.

**BIOLOGICAL RESOURCES: CANDIDATE, SENSITIVE, OR SPECIAL-STATUS SPECIES**

I. Elderberry Mitigation

**Avoidance:** Establishment and Maintenance of a Buffer Zone

Complete avoidance (i.e., no adverse effects) may be assumed when a 100-foot (or wider) buffer is established and maintained around elderberry plants containing stems measuring 1.0 inch or
greater in diameter at ground level. Firebreaks may not be included in the buffer zone. In buffer areas construction-related disturbance should be minimized, and any damaged area should be promptly restored following construction. The US Fish and Wildlife Service (USFWS) must be consulted before any disturbances within the buffer area are considered. In addition, the USFWS must be provided with a map identifying the avoidance area and written details describing avoidance measures.

**Protective Measures**

1. Fence and flag all areas to be avoided during construction activities. In areas where encroachment on the 100-foot buffer has been approved by the USFWS, provide a minimum setback of at least 20 feet from the dripline of each elderberry plant.

2. Brief contractors on the need to avoid damaging the elderberry plants and the possible penalties for not complying with these requirements.

3. Erect signs every 50 feet along the edge of the avoidance area with the following information: "This area is habitat of the valley elderberry longhorn beetle, a threatened species, and must not be disturbed. This species is protected by the Endangered Species Act of 1973, as amended. Violators are subject to prosecution, fines, and imprisonment." The signs should be clearly readable from a distance of 20 feet, and must be maintained for the duration of construction.

4. Instruct work crews about the status of the beetle and the need to protect its elderberry host plant.

**Restoration and Maintenance**

1. Restore any damage done to the buffer area (area within 100 feet of elderberry plants) during construction. Provide erosion control and re-vegetate with appropriate native plants.

2. Buffer areas must continue to be protected after construction from adverse effects of the project. Measures such as fencing, signs, weeding, and trash removal are usually appropriate.

3. No insecticides, herbicides, fertilizers, or other chemicals that might harm the beetle or its host plant should be used in the buffer areas, or within 100 feet of any elderberry plant with one or more stems measuring 1.0 inch or greater in diameter at ground level.

4. The applicant must provide a written description of how the buffer areas are to be restored, protected, and maintained after construction is completed.

5. Mowing of grasses/ground cover may occur from July through April to reduce fire hazard. No mowing should occur within five (5) feet of elderberry plant stems. Mowing must be done in a manner that avoids damaging plants (e.g., stripping away bark through careless use of mowing/trimming equipment).
II. Avian Predator and Other Resident and Migratory Bird Mitigation

A pre-construction nest survey for avian predators and other resident and migratory birds should be conducted prior to project construction if any heavy equipment operations are to occur during the breeding season (February 15 through September 15). The survey should include all large trees on the project site and all large trees on adjacent lands. If any occupied nests are observed, heavy equipment operations should be minimized or avoided until the young have fledged and nesting has ceased. If this is not feasible, the US Fish and Wildlife Service (USFWS) (and California Department of Fish and Game (CDFG), if State-listed species, e.g., Swainson’s hawk are involved) would need to be contacted for guidance on how to proceed. The USFWS would prescribe specific mitigation dependant upon the particular species involved and the manner in which heavy equipment operations are to be conducted.

III. Valley Oak Mitigation

The project should retain as many of the valley oaks on site as is feasible. This is especially true for the larger trees. Construction activities within the dripline of these trees should be avoided or minimized. The following measures are recommended to minimize impacts to valley oaks during project construction. These measures are adapted from the Standard Specifications for Building Around Valley Oaks, City of Visalia Urban Forestry Guidelines (2004).

- A protection zone around all Valley oaks should be drawn to scale on plans; this includes accurately locating the trunk and depicting the crown dripline. Earthwork is discouraged around the crown dripline.

- All utility locations should be included in all development plans involving valley oaks.

- Protective tree fencing should be added prior to any earthwork, at least 3 ft. minimum in height, installed at outer most end of the dripline surrounding the trunk of a valley oak. The temporary fencing should be safety orange color, plastic webbing, temporary construction type fencing (snow fencing). Steel T-bar stakes should support the fencing. This fence should remain until construction is complete. Nothing should be stored inside the protective fence.

- The addition of fill within the crown dripline of a valley oak should be limited to a maximum of 6 inches and no fill should be placed within 10 feet of the trunk. The fill should be of a high quality soil and clean of any debris.

- Trenching within the crown dripline of a valley oak should be avoided. If utilities must be installed within the crown dripline it is recommended that utilities be installed via directional boring at a minimum depth of 36”. If this is not feasible, care should be taken to avoid damaging the root system. Larger supportive roots should not be cut. If possible, there should be no soil compaction, paving or structures placed within the crown dripline of a valley oak.
- Valley oak trees should be irrigated before construction starts and through construction during the summer (June through October). This will help ensure that the tree can better withstand the stresses of construction. Irrigation is extremely important during spring and summer when the environment around a mature valley oak is changed by construction. Irrigations should water all of the area under the crown dripline.

- Permanent irrigation systems should be bubbler, drip, flood or sub-surface only. Sprinkler systems should not be used within 6 ft. of the tree.

Landscaping under valley oaks should consist of drought tolerant plants or California native plants that are drought tolerant in nature. There should be no landscaping within 6 ft. of the trunk. Chipped bark and mulch or similar materials are suitable for this area. No lawns should be planted within 10 ft. of the trunk, and it is recommended that there be no lawn placed within the crown dripline.

CULTURAL RESOURCES

I. Pioneer Ditch

The main channel of Pioneer Ditch is a significant resource. Major modifications to the aspects of the ditch, including changes in its course, dimension, material, and associated features, would be considered adverse effects. The City shall consult with a qualified archaeologist once the renovations to Pioneer Ditch proposed by the project become better defined in order to ensure that the integrity of this significant resource is not compromised.

II. Leslie Mill site

The boundaries of the Leslie Mill site (see Figure 6-5 of the CRI, Appendix C) delineate an archaeologically sensitive area within Murry Park. On site monitoring by a qualified archaeologist shall be required for activities within the mill site.

III. Other Measures

In the event that any as-yet undetected (i.e., buried) cultural resources are encountered on this property at a future time, work shall cease within a 50-foot area of the find, and a qualified archaeologist shall be contacted to evaluate any such discoveries.

GEOLOGY AND SOILS: SOIL INSTABILITY, EROSION, LANDSLIDES, EXPANSIVE SOILS

Any structure built on the Cibo Clay portion of the site and/or on slopes greater than 15 percent shall be designed by a structural engineer based on valid geotechnical information.

NOISE: EXCEEDANCE OF APPLICABLE NOISE STANDARDS

Construction noise shall be mitigated by scheduling activities during daytime hours (between 7:00 a.m. and 7:00 p.m. Monday through Friday, and between 9:00 a.m. and 6:00 p.m. Saturday and Sunday), and use of equipment mufflers.
These measures are defined in greater detail in the Environmental Checklist.

In compliance with the California Environmental Quality Act, appropriate environmental regulations will be met. The following list provides reference to some of these regulations.

**Air Quality:** 42 U.S.C. 7401 40 CFR, 6, 51, 93, CAA §176 c) d), 17 CCR § 90700; and San Joaquin Valley Air Pollution Control District regulations

**Cultural Resources:** 14 CCR § 4852, 36 CFR 800

**Water Quality:** Clean Water Act § 101a), § 303, § 401, § 510; Clean Water Counsel, Division 7, Chapter 4, Article 3, § 13247; Clean Water Counsel § 13000, The Porter-Cologne Act, 23 CCR § 640

**Biology:** 14 CCR 6 § 2050-2116, 50 CFR 402

### 2.3 Evaluation of Environmental Impacts

An Environmental Assessment and Checklist follow in Chapters Three and Four. A brief explanation is included for all answers except “No Impact” answers that are adequately supported by the information sources cited. A “No Impact” answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g. the project falls outside a fault rupture zone). A “No Impact” answer is explained where it is based on project-specific factors as well as general standards (e.g. the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).

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

Earlier analyses have been used where, pursuant to tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or other environmental document prepared pursuant to CEQA.

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*Initial Study/ Environmental Assessment, Mitigated Negative Declaration/Finding of No Significant Impact*  
*March 2007*  
*Murry Park Master Plan*  

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CHAPTER THREE

NATIONAL ENVIRONMENTAL POLICY ACT
ENVIRONMENTAL ASSESSMENT
CHAPTER THREE – NATIONAL ENVIRONMENTAL POLICY ACT ENVIRONMENTAL ASSESSMENT

Responsible Entity [24 CFR 58.2(a)(7)]: City of Porterville

Certifying Officer [24 CFR 58.2(a)(2)]: Bradley D. Dunlap, AICP, Community Development Director

Project Name: City of Porterville Murry Park Master Plan Project

Project Location: South of Putnam Avenue, East of Plano Street, West of Park Drive in the City of Porterville, County of Tulare, California (Regional Map, Figure 2-1, and Vicinity Map, Figure 2-2).

Estimated total project cost: The Project will be implemented over several years in multiple phases. Construction and materials costs increase over time, thus it is infeasible to estimate project costs at this time.

Grant Recipient [24 CFR 58.2(a)(5)]: City of Porterville

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

Project Representative: Jim Perrine, Parks and Leisure Services Director

Telephone Number: (559) 782-7523

Conditions for Approval: The following mitigation measures are adopted by the City to eliminate or minimize adverse environmental impacts. These conditions must be included in project contracts or other relevant documents as requirements. [24 CFR 58.40(d), 40 CFR 150.2(c)]

AESTHETICS: LIGHT AND GLARE

Project lighting shall operate, when necessary, during park hours from 8:00 a.m. to 8:00 p.m. The project shall be designed so that it will not expose people, either on or off site to glare (a continuous or periodic intense light that may cause eye discomfort or be blinding to humans) or an increase in off site ambient light of more than 0.25 foot candles. A registered illumination engineer shall design a lighting plan that will specify measures to reduce light and glare from project lighting to 0.25 foot candles or less.

BIOLOGICAL RESOURCES: CANDIDATE, SENSITIVE, OR SPECIAL-STATUS SPECIES

Although the project site and surrounding areas are known to provide habitat for a number of special-status plant and animal species, a survey completed by Quad Knopf biologists identified no special-status plant and animal species located on the project site. However, during the survey, three blue elderberry shrubs were observed on the project site. Blue elderberry is the host plant and exclusive habitat for the federally threatened Valley elderberry longhorn beetle.
(VELB). No evidence of VELB exit holes were observed on the blue elderberry shrubs located
on site; however, there is a possibility these beetles could exist on the project site in the future.
In addition, a number of old growth Valley oaks were observed on the project site. Valley oaks
are not listed species; however, these trees provide important habitat for native wildlife. There
were no signs (e.g., tracks, scat, dens, prey remains, etc.) of San Joaquin kit fox presence
observed, and there were no nests for raptors or other special-status birds observed during the
field survey. A number of mitigation measures have been recommended in the attached biology
report including preventing inadvertent entrapment of kit foxes or other animals during the
construction phase of the project, conducting a pre-construction nest survey for Swainson’s
hawks, and establishing a buffer zone from the drip-line of each elderberry plant and around
each Valley oak. These mitigation measures are summarized in the Mitigation Monitoring Plan,
Appendix A (see Appendix B for the Biological Survey).

CULTURAL RESOURCES

The Cultural Resources Investigations report (CRI) completed by Applied Earthworks, Inc. in
September 2006 (Appendix D), contains the following mitigation measures that will reduce the
project’s impacts on cultural resources to a less than significant level.

I. Pioneer Ditch

The main channel of Pioneer Ditch is a significant resource. Major modifications to the aspects
of the ditch, including changes in its course, dimension, material, and associated features, would
be considered adverse effects. The City shall consult with a qualified archaeologist once the
renovations to Pioneer Ditch proposed by the project become better defined in order to ensure
that the integrity of this significant resource is not compromised.

II. Leslie Mill site

The boundaries of the Leslie Mill site (see Figure 6-5 of the CRI, Appendix D) delineate an
archaeologically sensitive area within Murry Park. On site monitoring by a qualified
archaeologist shall be required for activities within the mill site.

III. Other Measures

In the event that any as-yet undetected (i.e, buried) cultural resources are encountered on this
property at a future time, work shall cease within a 50-foot area of the find, and a qualified
archaeologist shall be contacted to evaluate any such discoveries.

GEOLOGY AND SOILS: SOIL INSTABILITY, EROSION, LANDSLIDES, EXPANSIVE SOILS

A small part of the site has soils that are susceptible to erosion, instability, excessive runoff, and
shrinking and swelling. Observing all applicable codes and regulations, and implementing the
following mitigation measure will reduce these potential impacts to a less than significant level:

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Murry Park Master Plan
• Any structure built on the Cibo Clay portion of the site and/or on slopes greater than 15 percent shall be designed by a structural engineer based on valid geotechnical information.

NOISE: EXCEEDANCE OF APPLICABLE NOISE STANDARDS

Construction noise shall be mitigated by scheduling activities during daytime hours (between 7:00 a.m. and 7:00 p.m. Monday through Friday, and between 9:00 a.m. and 6:00 p.m. Saturday and Sunday), and use of equipment mufflers.

FINDING: [58.40(g)]

☑ Finding of No Significant Impact
   (The project will not result in a significant impact on the quality of the human environment)

☐ Finding of Significant Impact
   (The project may significantly affect the quality of the human environment)

Federal Agency Responsible Official Signature: _________________________________ Date: ________
Title/ Agency:

Initial Study/ Environmental Assessment, Mitigated Negative Declaration/Finding of No Significant Impact Murry Park Master Plan March 2007 3 - 3
**Statement of Purpose and Need for the Proposal:** [40 CFR 1508.9(b)]

The purpose of this proposal is to rehabilitate those areas and facilities in Murry Park in need of repair and/or replacement, and to construct new facilities in the existing park and on an adjacent parcel located west of the existing park. The City of Porterville needs to pursue this project in order to accommodate existing and future demand for recreational facilities in the city of Porterville. The proposed project will help to accommodate existing and future recreational demand created by the growth of the city within the Murry Park Master Plan period (15 years) as well as refurbish existing park facilities.

**Description of the Proposal:** Include all contemplated actions which logically are either geographically or functionally a composite part of the project, regardless of the source of funding. [24 CFR 58.32, 40 CFR 1508.25]

The City of Porterville proposes adoption of a program to rehabilitate a number of the facilities in Murry Park in need of repair and/or replacement, and the construction of new facilities on an adjacent parcel located west of the park. The park is currently located at the southwest corner of the intersection of East Putnam Avenue and Park Drive in Porterville. The proposed expansion would include the area to the west of the existing park (Figures 2-1 and 2-2). The existing 20-acre community park currently includes such features as family picnic areas, pavilions, barbecue pits, sinks, tables and benches, internal streets, two children's play areas, an excavated duck pond, and restrooms. Porter Slough, a jurisdictional waterway, flows south of the proposed project and is located outside the project's boundary. Pioneer Ditch, a non-jurisdictional water, flows through the north end of the existing Project Site. The plan will include the renovation and replacement of park buildings and structures, road improvements, and new parking lots. Figures 2-3 and 2-4 illustrate the proposed plan for the existing Murry Park parcel and the proposed plan for the new, approximately 15 acre parcel located to the west of the park.

A detailed project description per phase can be found in Chapter Two of this document.

**Existing Conditions and Trends:** Describe the existing conditions of the project area and its surroundings, and trends likely to continue in the absence of the project. [24 CFR 68.40(a)]

The Project Area is currently occupied by the existing Murry Park, a 20-acre community park with family picnic areas, pavilions, barbecue pits, sinks, tables and benches, internal streets, two children's play areas, and restrooms, and by an approximately 15-acre vacant lot that would be used to expand the existing park.

The population of the City of Porterville grew by 1.2 percent from January 2005 to January 2006, from 44,694 to 45,220 people, and has grown 14.1 percent (2.3 percent per year) from 39,615 people in the year 2000 to 45,220 people in the year 2006 according to the US Census and the California Department of Finance. The California Department of Transportation forecast in 2002 that the County as a whole would grow by 1.5 percent per year from 2003 to 2008. The City is likely to continue growing with or without the Project, thus increasing City-wide demand.
for recreational facilities. The project is part of the City’s overall strategy for providing adequate recreational facilities to a growing community.

Sources


**Statutory Checklist**

For each listed statute, executive order or regulation, record the determinations made. Note reviews and consultations completed as well as any applicable permits or approvals obtained. Attach evidence that all required actions have been taken. Record any conditions or mitigation measures required. Then, make a determination of compliance or consistency.

<table>
<thead>
<tr>
<th>Factors</th>
<th>Determinations and Compliance Documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Historic Preservation</strong></td>
<td>A Cultural Resources Investigations (CRI) report performed by Applied Earthworks, Inc. for this project found that the project site contains several significant cultural resources. The following mitigation measures, listed in the Mitigation Monitoring Plan (Appendix A) and discussed in more depth in the CRI report (Appendix D) will reduce potential environmental impacts on these resources to a less than significant level.</td>
</tr>
<tr>
<td>[36 CFR 800]</td>
<td>I. <strong>Pioneer Ditch</strong></td>
</tr>
<tr>
<td></td>
<td>The main channel of Pioneer Ditch is a significant resource. Major modifications to the aspects of the ditch, including changes in its course, dimension, material, and associated features, would be considered adverse effects. The City shall consult with a qualified archaeologist once the renovations to Pioneer Ditch proposed by the project become better defined in order to ensure that the integrity of this significant resource is not compromised.</td>
</tr>
<tr>
<td></td>
<td>II. <strong>Leslie Mill site</strong></td>
</tr>
<tr>
<td></td>
<td>The boundaries of the Leslie Mill site (see Figure 6-5 of the CRI, Appendix D) delineate an archaeologically sensitive area within Murry Park. On site monitoring by a qualified archaeologist shall be required for activities within the mill site.</td>
</tr>
<tr>
<td></td>
<td>III. <strong>Other Measures</strong></td>
</tr>
<tr>
<td></td>
<td>In the event that any as-yet undetected (i.e., buried) cultural resources are encountered on this property at a future time, work shall cease within a 50-foot area of the find, and a qualified archaeologist shall be contacted to evaluate any such discoveries.</td>
</tr>
<tr>
<td><strong>Floodplain Management</strong></td>
<td>According to the Flood Insurance Rate Map, City of Porterville, California, Community Panel Number 060407-0010, small parts of the Project area lie within the 100-year flood zone around Pioneer Ditch. The Project does not, however, involve the construction of housing or place any structures within the flood zone that would significantly impede or redirect flood flows (Project Description; Figure 2-3).</td>
</tr>
<tr>
<td>[24 CFR 55, Executive Order 11988]</td>
<td></td>
</tr>
<tr>
<td><strong>Wetlands Protection</strong></td>
<td>A National Wetlands Inventory (NWI) Map query illustrated two wetland areas located within the project site: Palustrine Forested</td>
</tr>
<tr>
<td>[Executive Order 11990]</td>
<td></td>
</tr>
<tr>
<td>Coastal Zone Management Act</td>
<td>The proposed project site lies in the southeastern San Joaquin Valley, approximately 100 miles from the Pacific Ocean. The project does not fall under the jurisdiction of the Coastal Zone Management Act.</td>
</tr>
<tr>
<td>Sole Source Aquifers</td>
<td>The proposed project site is not located within a sole source aquifer. According to the EPA's Office of Water, the closest source aquifer to the site is the Fresno County Aquifer. (<a href="http://www.epa.gov/safewater/swp/ssa/reg9.html">www.epa.gov/safewater/swp/ssa/reg9.html</a>)</td>
</tr>
<tr>
<td>Endangered Species Act</td>
<td>A biological field reconnaissance survey completed on March 16, 2005 identified no special status plant or animal species in the area surrounding any of the proposed improvements. It did, however, indicate that there are blue elderberry bushes and Valley oaks on the site. Blue elderberry bushes are host plants for the federally threatened valley elderberry longhorn beetle. U.S. Fish and Wildlife Service guidelines listed in the Biology Report in Appendix B (along with the biological survey results) will be followed and will reduce impacts on these resources to a less than significant level.</td>
</tr>
<tr>
<td>Wild and Scenic Rivers Act</td>
<td>There are no rivers within or near the project site that qualify under the Wild and Scenic Rivers Act (Vicinity Map, Figure 2-1; Field Visit, Site Photos - Appendix D).</td>
</tr>
<tr>
<td>Air Quality</td>
<td>A less than significant operational impact will come from the addition of new parking lots that will result in additional visitors driving to the park. However, construction related activities have the potential to result in a significant impact due to PM_{10} emissions. In accordance with the San Joaquin Valley Unified Air Pollution Control District's &quot;Guide for Assessing and Mitigating Air Quality Impacts&quot;, the temporary air quality impacts resulting from the construction of the proposed project will be reduced to a less than significant level through implementation of the San Joaquin Valley Air Pollution Control District's mandatory Regulation VIII Control Measures. (Project Description; Chapter Four, Section III).</td>
</tr>
<tr>
<td>Farmland Protection Policy Act</td>
<td>No farmland will be converted as part of the project (see Figure 4-1).</td>
</tr>
<tr>
<td>Environmental Justice</td>
<td>The proposed project is for improvements to, and expansion of, an existing park, and will have no substantial adverse environmental impacts on minorities or low income populations (Project Description).</td>
</tr>
<tr>
<td>HUD Environmental Standards</td>
<td>Determinations and Compliance Documentation</td>
</tr>
<tr>
<td>----------------------------</td>
<td>---------------------------------------------</td>
</tr>
<tr>
<td><strong>Noise Abatement and Control [24 CFR 51 B]</strong></td>
<td>There may be a temporary increase in ambient noise levels during the construction of the facilities. However, construction will be limited to the hours between 7:00 am and 7:00 pm, Monday through Friday and 9:00 am and 6:00 pm, Saturday and Sundays. Operation of the facilities will not exceed adopted City noise standards (City Manager).</td>
</tr>
<tr>
<td><strong>Toxic or Hazardous Substances and Radioactive Materials [HUD Notice 79-33]</strong></td>
<td>There are no toxic or hazardous substances and radioactive materials in the project area.</td>
</tr>
<tr>
<td><strong>Siting of HUD-Assisted Projects near Hazardous Operations [24 CFR 51 C]</strong></td>
<td>There are no potentially hazardous sites in the vicinity of the project area.</td>
</tr>
<tr>
<td><strong>Airport Clear Zones and Accident Potential Zones [24 CFR 51 D]</strong></td>
<td>The proposed project is not within the vicinity of a public airport or a private airstrip (Project Location, Figure 2-2).</td>
</tr>
</tbody>
</table>
Environmental Assessment Checklist

**Impact Codes:**  (1) - No impact anticipated; (2) - Potentially beneficial; (3) - Potentially adverse; (4) - Requires mitigation; (5) - Requires project modification. Note names, dates of contact, telephone numbers and page references.

<table>
<thead>
<tr>
<th>Land Development</th>
<th>Code</th>
<th>Source or Documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conformance with Comprehensive Plans</td>
<td>1</td>
<td>The project conforms with City plans and zoning (Porterville General Plan, July 1998; Porterville Zoning Ordinance, October 1990).</td>
</tr>
<tr>
<td>and Zoning</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compatibility and Urban Impact</td>
<td>1</td>
<td>The proposed facilities will be compatible with existing residential, recreational, and public uses surrounding the project site (Porterville General Plan, July 1998).</td>
</tr>
</tbody>
</table>
| Slope                                  | 4    | The U.S. Department of Agriculture, Western Tulare County Soils Survey, November 1999, shows that the soils in the project area have slopes ranging from 0 percent to potentially as high as 30 percent. The potential for soil instability from placing structures on these slopes will be mitigated to a less than significant level by observing all applicable codes and regulations, and implementing the following mitigation measure:  
  - Any structure built on the Cibo Clay portion of the site and/or on slopes greater than 15 percent shall be designed by a structural engineer based on valid geotechnical information. |
<p>| Erosion                                | 4    | Most of the Project site is characterized by stable soils having slow surface runoff and low levels of erosion (Soils Survey of Western Tulare County, CA, November 1999). The hill on which the existing swimming pool is located is made up of Cibo Clay, which has a tendency to creep down slope when saturated with water, and to develop deep, wide cracks when it is dry. All grading activities within the project site must be approved by the City Engineer. Implementation of a Storm Water Pollution Prevention Plan (SWPPP), including measures to prevent soil erosion, soil instability, and damage from expansive soils, will mitigate this impact to a less than significant level. |
| Soil Suitability                       | 4    | Most of the Project site is characterized by stable soils having slow surface runoff and low levels of erosion (Soils Survey of Western Tulare County, CA, November 1999). The hill on which the swimming pool is located is made up of Cibo Clay, which has a tendency to creep down slope when saturated with water, and to develop deep, wide cracks when it is dry. All grading activities within the project site must be approved by the City Engineer. Implementation of a Storm Water Pollution Prevention Plan (SWPPP), including measures to prevent soil erosion, soil instability, and damage from expansive soils, will mitigate this impact to a less than significant level. |
| Hazards and Nuisances including Site   | 1    | The proposed improvements to Murry Park will be constructed in a seismically quiet area, on soil that is either stable or rendered stable (see above). In addition, no potentially hazardous sites have been identified in the project area. All hazardous or potentially   |
| Safety                                 |      |                                                                                                                                                    |
| Demographic Character Changes | 1 | The Project does not include housing and will not directly or indirectly induce population growth. The improvements will not result in substantial direct or indirect changes in the area's demographics (Chapter Four, Section XII). |
| Displacement | 1 | The Project will necessitate the acquisition of four houses on Plano Street across from the Porterville Fairgrounds. The City will negotiate with willing sellers or acquire these properties as they become available on the open market, thus not resulting in forced displacement. The necessary acquisition of four houses to allow ultimate development of the project proposal will not result in a significant effect or change to housing availability in Porterville (Chapter Four, Section XII). |</p>
<table>
<thead>
<tr>
<th>Community Facilities and Services</th>
<th>Code</th>
<th>Source or Documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Educational Facilities</td>
<td>1</td>
<td>The improvements to and expansion of Murry Park are intended to accommodate existing and planned growth in the need for recreational facilities, not to attract new residents. Therefore, the project will not induce substantial population growth, and will not increase the demand for, or need for maintenance of, educational facilities (Project Description; Chapter Four, Section XIII).</td>
</tr>
<tr>
<td>Commercial Facilities</td>
<td>1</td>
<td>The improvements to and expansion of Murry Park are intended to accommodate existing and planned growth in the need for recreational facilities, not to attract new residents. Therefore, the project will not induce substantial population growth, and will not increase the demand for, or need for maintenance of, commercial facilities (Project Description; Chapter Four, Section XII).</td>
</tr>
<tr>
<td>Health Care</td>
<td>1</td>
<td>The improvements will not induce substantial population growth, and therefore will not increase the demand for health care (Project Description; Chapter Four, Section XIII).</td>
</tr>
<tr>
<td>Social Services</td>
<td>1</td>
<td>The improvements will not induce substantial population growth, and therefore will not increase the demand for social services. (Project Description; Chapter Four, Section XIII.)</td>
</tr>
<tr>
<td>Solid Waste</td>
<td>1</td>
<td>The project will result in the production of a negligible amount of additional solid waste (Project Description; Chapter Four, Section XVI).</td>
</tr>
<tr>
<td>Waste Water</td>
<td>1</td>
<td>The project will result in the generation of a negligible amount of additional wastewater (Project Description; Chapter Four Section XVI).</td>
</tr>
<tr>
<td>Storm Water</td>
<td>1</td>
<td>The project will lead to some increase in paved area due to the construction of additional parking lots, but will result in a negligible increase in the amount of storm water draining off the site (Project Description; Chapter Four, Section XVI).</td>
</tr>
<tr>
<td>Water Supply</td>
<td>1</td>
<td>The project will not induce population growth, and will not increase demand on the existing water supply (Project Description; Chapter Four, Section XVI).</td>
</tr>
<tr>
<td>Public Safety - Police</td>
<td>1</td>
<td>The proposed project will neither increase the need for police protection nor interfere with emergency response plans. (Project Description; Chapter Four, Section XIII).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The facility improvements will not increase the demand for fire protection and will not interfere with existing emergency response plans (Project Description; Chapter Four, Section XIII).</td>
</tr>
<tr>
<td>Category</td>
<td>Page</td>
<td>Description</td>
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<tr>
<td>----------------------------------</td>
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</tr>
<tr>
<td>- Emergency Medical</td>
<td>1</td>
<td>The proposed facility improvements will not induce substantial population growth, and therefore will not increase the demand for emergency medical services (Project Description; Chapter Four, Section XII).</td>
</tr>
<tr>
<td>Open Space and Recreation</td>
<td>2</td>
<td>The proposed improvements will not induce substantial population growth and therefore will not result in an increase in the demand for open space in the project area, in fact, it is increasing the amount of useable open space available (Project Description; Chapter Four, Section XIV).</td>
</tr>
<tr>
<td>- Recreation</td>
<td>2</td>
<td>The proposed improvements will increase the amount of useable recreational space available to the community and will therefore help meet the demand for recreational facilities (Project Description; Chapter Four, Section XIV).</td>
</tr>
<tr>
<td>- Cultural Facilities</td>
<td>4</td>
<td>A Cultural Resources Investigations (CRI) report performed by Applied Earthworks, Inc. for this project found that the project site contains several significant cultural resources. The following mitigation measures, listed in the Mitigation Monitoring Plan (Appendix A) and discussed in more depth in the CRI report (Appendix D) will reduce potential environmental impacts on these resources to a less than significant level.</td>
</tr>
<tr>
<td>I. Pioneer Ditch</td>
<td></td>
<td>The main channel of Pioneer Ditch is a significant resource. Major modifications to the aspects of the ditch, including changes in its course, dimension, material, and associated features, would be considered adverse effects. The City shall consult with a qualified archaeologist once the renovations to Pioneer Ditch proposed by the project become better defined in order to ensure that the integrity of this significant resource is not compromised.</td>
</tr>
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<td>II. Leslie Mill site</td>
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<td>The boundaries of the Leslie Mill site (see Figure 6-5 of the CRI, Appendix D) delineate an archaeologically sensitive area within Murry Park. On site monitoring by a qualified archaeologist shall be required for activities within the mill site.</td>
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<tr>
<td>III. Other Measures</td>
<td></td>
<td>In the event that any as-yet undetected (i.e., buried) cultural resources are encountered on this property at a future time, work shall cease within a 50-foot area of the find, and a qualified archaeologist shall be contacted to evaluate any such discoveries.</td>
</tr>
<tr>
<td>Transportation</td>
<td>1</td>
<td>The proposed improvements may lead to a minor increase in the number of vehicle trips coming to and from the park, but that increase should not be enough to reduce the level of service on surrounding roadways (Project Description; Chapter Four, Section XV).</td>
</tr>
<tr>
<td>Natural Features</td>
<td>Code</td>
<td>Source or Documentation</td>
</tr>
<tr>
<td>----------------------------------------------------</td>
<td>------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Water Resources</td>
<td>1</td>
<td>The only rivers, streams, ponds, or other water resources that will be affected by the proposed Project are Pioneer Ditch, a man-made waterway that runs through the park, and the duck pond along Pioneer Ditch at the northern end of the Project area (Site Plan, Figure 2-3; Site Photos, Appendix D). The appearance of both will be improved by the project, their function will not be impaired, and no natural water resource will be affected.</td>
</tr>
<tr>
<td>Surface Water</td>
<td>1</td>
<td>According to the Flood Insurance Rate Map, City of Porterville, California, Community-Panel Number 060407-0010, 1985, parts of the Project area are located in the 100-year flood zone around Pioneer Ditch. The Project will not alter flood flows and does not include structures that will impede flows. There is no impact (See FEMA Map, Figure 3-3).</td>
</tr>
<tr>
<td>Unique Natural Features and Agricultural Lands</td>
<td>1</td>
<td>The improvements will be compatible with the natural features of the existing park and will enhance the natural features of the property designated for expansion of the park. The Project Area is neither being used for nor adjacent to properties being used for agricultural purposes and no agricultural impacts will result from the project (Project Description; Chapter Four, Section II).</td>
</tr>
<tr>
<td>Vegetation and Wildlife</td>
<td>4</td>
<td>The project site and surrounding areas are known to provide habitat for a number of special-status plant and animal species. A survey of the site indicates that three blue elderberries were observed on the project site. Blue elderberry is the host plant and exclusive habitat for the federally threatened Valley elderberry longhorn beetle (VELB). No evidence of VELB exit holes were observed on the blue elderberry shrubs located on site; however, there is a possibility these beetles could exist on the project site in the future. In addition, a number of old growth Valley oaks were observed on the project site. Valley oaks are not a listed species; however, these trees provide important habitat for native wildlife. There were no signs (e.g., tracks, scat, dens, prey remains, etc.) of San Joaquin kit fox observed, and there were no nests for raptors or other special-status birds observed during the field survey. A number of mitigation measures have been recommended in the attached biology report including preventing inadvertent entrapment of kit foxes or other animals during the construction phase of the project, conducting a pre-construction nest survey for Swainson's hawks, and establishing a buffer zone from the drip-line of each elderberry plant and around each Valley oak. These mitigation measures are summarized in the Mitigation Monitoring Plan, Appendix A.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Other Factors</th>
<th>Code</th>
<th>Source or Documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td></td>
<td></td>
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</tbody>
</table>
SUMMARY OF FINDINGS AND CONCLUSIONS

Construction of the proposed improvements to and expansion of Murry Park in the city of Porterville will have no significant impact on the quality of the environment. The mitigation measures discussed will reduce the potential impacts to aesthetics, biological resources, cultural resources, geology/soils, and noise in the project vicinity to a less than significant level.

Alternatives to the Proposed Action

The City identified several project modification alternatives during the Project planning process pursuant to 24 CFR 58.40 (e). The more environmentally sound and feasible of these project elements have been chosen as the improvements.

NO ACTION ALTERNATIVE

The No Action Alternative would omit the construction of the proposed improvements to and expansion of Murry Park and leave the Project site as it currently is. The city would continue to grow without the benefit of increased access to recreational facilities provided by the proposed Project. The Project's limited impacts on aesthetics, biological resources, cultural resources, geology/soils, and noise would be outweighed by the community's benefit from the proposed Project.

MITIGATION MEASURES

1. Aesthetics

   Project lighting shall operate, when necessary, during park hours from 8:00 a.m. to 8:00 p.m. The project shall be designed so that it will not expose people, either on or off site to glare (a continuous or periodic intense light that may cause eye discomfort or be blinding to humans) or an increase in off site ambient light of more than 0.25 foot candles. A registered illumination engineer shall design a lighting plan that will specify measures to reduce light and glare from project lighting to 0.25 foot candles or less.

2. Biological Resources

   Guidelines, regulations, and mitigation measures will be followed and will reduce impacts to a less than significant level. These measures include:

   - Avoidance of all elderberry shrubs onsite by no less than 100 feet. If a 100-foot buffer zone cannot be maintained around all elderberry plants with at least one stem 1-inch or greater in diameter at ground level, USFWS must be contacted for guidance on how to proceed.

   - The Valley oaks on site should be retained and incorporated into the project site design. Construction activities within the dripline of these trees should be avoided or minimized.
 Detailed tasks to incorporate these mitigation measures are outlined in the Biological Survey Results, Appendix B.

1. Cultural Resources

A Cultural Resources Investigations (CRI) report performed by Applied Earthworks, Inc. for this project found that the project site contains several significant cultural resources. The following mitigation measures, listed in the Mitigation Monitoring Plan (Appendix A) and discussed in more depth in the CRI report (Appendix D) will reduce potential environmental impacts on these resources to a less than significant level.

I. Pioneer Ditch

The main channel of Pioneer Ditch is a significant resource. Major modifications to the aspects of the ditch, including changes in its course, dimension, material, and associated features, would be considered adverse effects. The City shall consult with a qualified archaeologist once the renovations to Pioneer Ditch proposed by the project become better defined in order to ensure that the integrity of this significant resource is not compromised.

II. Leslie Mill site

The boundaries of the Leslie Mill site (see Figure 6-5 of the CRI, Appendix D) delineate an archaeologically sensitive area within Murry Park. On site monitoring by a qualified archaeologist shall be required for activities within mill site.

III. Other Measures

In the event that any as-yet undetected (i.e., buried) cultural resources are encountered on this property at a future time, work shall cease within a 50-foot area of the find, and a qualified archaeologist shall be contacted to evaluate any such discoveries.

2. Geology and Soils

A small part of the Project site has soils that are susceptible to erosion, instability, excessive runoff, and shrinking and swelling. Observing all applicable codes and regulations, and implementing the following mitigation measure will reduce these potential impacts to a less than significant level:

- Any structure built on the Cibo Clay portion of the site and/or on slopes greater than 15 percent shall be designed by a structural engineer, based on valid geotechnical information.
1. **Noise**

In order to reduce the impacts of temporary construction noise, noise-producing equipment used during project construction will be restricted to the hours from 7:00 a.m. through 7:00 p.m. Monday through Friday, and 9:00 a.m. through 6:00 p.m. on Saturday and Sunday. In addition, mufflers shall be fitted to gas and diesel-powered equipment to further reduce noise.

**ADDITIONAL STUDIES PERFORMED OR REFERENCED**

Appendix B: Reconnaissance Level Biological Survey
Appendix C: Cultural Resources Records Search, May 2005
Appendix D: Cultural Resources Investigations, September 2006

**LIST OF SOURCES, AGENCIES AND PERSONS CONSULTED**

- California Department of Fish and Game (National Diversity Database)
- California Native Plant Society (CNPS Database)
- USDA Soils Survey, Western Tulare County, California, November 1999
- Randy Baloian, Historian/Administrative Archaeologist, Applied EarthWorks, Inc.
- Bradley Dunlap, City of Porterville Community Development Director
- Kay Hutmacher, ASLA, Sierra Designs Inc. (Formerly HMA)
- Jim Perrine, City of Porterville Parks and Leisure Services Director
- Mike Reed, City of Porterville, City Engineer
- Daniel M. Veyna, ASLA, Sierra Designs Inc. (Formerly HMA)
- Audry Williams, Senior Staff Archaeologist, Center for Archaeological Research, California State University Bakersfield

*Initial Study/ Environmental Assessment, Mitigated Negative Declaration/Finding of No Significant Impact, Murry Park Master Plan*  
*March 2007 3 - 16*
CHAPTER FOUR

CALIFORNIA ENVIRONMENTAL QUALITY ACT
ENVIRONMENTAL CHECKLIST
CHAPTER FOUR – CALIFORNIA ENVIRONMENTAL QUALITY ACT ENVIRONMENTAL CHECKLIST

ENVIRONMENTAL FACTORS POTentially AFFECTED:

The environmental factors checked below could be potentially affected by this project. However, mitigation measures for each factor as indicated by the narrative within the checklist on the following pages will result in a less than significant impact.

| ☒ Aesthetics                      | ☐ Agriculture Resources | ☐ Air Quality                        |
| ☒ Biological Resources            | ☒ Cultural Resources    | ☒ Geology /Soils                    |
| ☐ Hazards & Hazardous Materials   | ☐ Hydrology / Water Quality | ☐ Land Use / Planning               |
| ☐ Mineral Resources               | ☒ Noise                | ☐ Population / Housing              |
| ☐ Public Services                 | ☐ Recreation           | ☐ Transportation / Traffic          |
| ☐ Utilities / Service Systems     | ☒ Mandatory Findings of Significance |
DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

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

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

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

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

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

Signature

Date

Signature

Date

Initial Study/ Environmental Assessment,
Mitigated Negative Declaration/Finding of No Significant Impact

Murry Park Master Plan

March 2007

4 - 2
I. AESTHETICS -- Would the project:

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

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

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

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

Response:

a) The proposed improvements will enhance the scenic value of the site by improving the existing park and converting adjacent, currently vacant land into an attractive and useful extension of that park. The improvements will not block existing views of the foothills and mountains of the Sierra Nevada to the east, which are identified in the City’s Open Space Element as a significant scenic resource. In addition, adjacent residences will have an improved view of attractive park landscaping.

b) The project site is not located adjacent to State Route 190, which is eligible to be designated a State scenic highway.

c) The Master Plan will upgrade the visual character and quality of the site by adding and refurbishing landscaping and amenities.

d) The project will include renovation of lighting in the existing park and installation of lighting in the new parking lots and pavilions. Project lighting shall operate, when necessary, during park hours from 8:00 a.m. to 8:00 p.m. The project will be designed so that it will not expose people, either on or off site to glare (a continuous or periodic intense light that may cause eye discomfort or be blinding to humans) or an increase in off site ambient light of more than 0.25 foot candles. A registered illumination engineer shall design a lighting plan that will specify measures to reduce light and glare from project lighting to the 0.25 foot candles or less. This measure will reduce potential impacts to a less than significant level.
II. AGRICULTURE RESOURCES -- Would the project:

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

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

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

Response:

a) Construction of the proposed project will not occur on prime or unique farmland or Farmland of Statewide Importance as shown on Farmland Mapping and Monitoring Program maps (see Figure 4-1).

b) None of the proposed project areas are under any agricultural easement or contract (see Figure 4-2).

c) The Project involves improvements to, and expansion of, an existing city park. The vacant land used for expansion of the park is non-agricultural. There will be no growth-inducing impacts or other impacts that could result in conversion of farmland to non-agricultural use.
III. AIR QUALITY -- Would the project:

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

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

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

d) Expose sensitive receptors to substantial pollutant concentrations? ☐ ☐ ☐ ☒

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

Response:

a), b), c), d), e) The Project site is located in the San Joaquin Valley Air Pollution Control District (District). This portion of the Valley is designated as a non-attainment area for both state and federal standards for Particulate Matter smaller than 10 microns in diameter (PM$_{10}$) and Ozone. Ozone precursors include Oxides of Nitrogen (NOx) and Reactive Organic Compounds (ROC). The primary contributor to such emissions is indirect activities such as vehicle trips. The attainment deadline for the federal PM$_{10}$ standard is 2010, but the District recently submitted a request to the United States Environmental Protection Agency (EPA) to reclassify the area as in attainment for PM$_{10}$. In order to meet the standard, the District had to provide three years of data showing that PM$_{10}$ concentrations did not exceed 24-hour and annual caps. Since 1990, emissions of PM$_{10}$ and its precursors have dropped 36 percent as a result of the extraordinary commitments undertaken by the District and the Valley’s businesses, citizens and local governments. The District’s request for reclassification was granted by the EPA in October 2006. However, the EPA’s finding does not change the District’s classification as a serious PM$_{10}$ non-attainment to attainment area. Re-designation from serious non-attainment to attainment requires additional documentation and will occur at some future date, until which time the Valley remains a serious non-attainment area.

The addition of improvements and facilities described in the Master Plan will have a less than significant impact on air quality. The project will add approximately 250 parking spaces to the existing
and expanded portions of the park, about half of which will be accessed off of Plano Street and Olive Avenue, and the rest distributed among four lots off Corona Drive, Oak Avenue, Putnam Avenue and Park Drive. This additional parking will partly accommodate existing traffic to the park, and will partly accommodate new trips to the existing and expanded portions of the park generated by the project. A less than significant operational impact will result from the additional visitors driving to the park (see section XV, Transportation/Traffic). However, construction related activities have the potential to result in a significant impact due to PM$_{10}$ emissions. The contractor will be required to implement the San Joaquin Valley Air Pollution Control District's mandatory Regulation VIII Control Measures (listed in Table 4-1). These measures will reduce impacts to air quality to a less than significant level, and because they are required and thus part of the regulatory setting of the project, do not constitute mitigation.

Expanding and improving an existing park is not an activity that will induce significant population growth and therefore will not have air quality impacts associated with such growth. The project will not expose sensitive receptors to substantial pollutant concentrations or create objectionable odors affecting a substantial number of people.

Table 4 - 1

Mandatory Control Measures for Construction, Excavation, Extraction, and Other Earthmoving Activities. A Summary of Regulation VIII

Pre-Activity:
- Pre-water site sufficient to limit Visible Dust Emissions (VDE) to 20% opacity
- Phase work to reduce the amount of disturbed surface area at any one time.

During Active Operations:
- Apply water or chemical/organic stabilizers/suppressants sufficient to limit VDE to 20% opacity
- Construct and maintain wind barriers sufficient to limit VDE to 20% opacity. If utilizing wind barriers, control measure B1 above shall also be implemented.
- Apply water or chemical/organic stabilizers/suppressants to unpaved haul/access roads and unpaved vehicle/equipment traffic areas sufficient to limit VDE to 20% opacity and meet the conditions of a stabilized unpaved road surface.

Temporary Stabilization During Periods Of Inactivity:
- Restrict vehicular access to the area
- Apply water or chemical/organic stabilizers/suppressants, sufficient to comply with the conditions of a stabilized surface. If an area having 0.5 acres or more of disturbed surface area remains unused for seven or more days, the area must comply with the conditions for a stabilized surface area as defined below:
  - Stabilized Surface: any disturbed surface area or open bulk material storage pile that is resistant to wind blown fugitive dust emissions. A surface is considered to be stabilized if it meets at least one of the following conditions:
    - A visible crust; or
    - A threshold friction velocity (TFV) for disturbed surface areas corrected for non-erodible elements of 100 centimeters per second or greater; or
    - A flat vegetative cover of at least 50 percent that is attached or rooted vegetation; or unattached vegetative debris lying on the surface with a predominant horizontal orientation that is not subject to movement by wind; or
    - A standing vegetative cover of at least 30 percent that is attached or rooted vegetation with a predominant vertical orientation; or

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- A standing vegetative cover that is attached or rooted vegetation with a predominant vertical orientation that is at least 10 percent and where the TFV is at least 43 centimeters per second when corrected for nonerodible elements; or
- A surface that is greater than or equal to 10 percent of non-erodible elements such as rocks, stones, or hard-packed clumps of soil.

**Speed Limitations and Posting of Speed Limit Signs**
- Limit the speed of vehicles traveling on uncontrolled unpaved access/haul roads within construction sites to a maximum of 15 miles per hour.
- Post speed limit signs that meet State and Federal Department of Transportation standards at each construction site's uncontrolled unpaved access/haul road entrance. At a minimum, speed limit signs shall also be posted at least every 500 feet and shall be readable in both directions of travel along uncontrolled unpaved access/haul roads.

**Wind Generated Fugitive Dust Requirements**
- Cease outdoor construction, excavation, extraction, and other earthmoving activities that disturb the soil whenever VDE exceeds 20% opacity. Indoor activities such as electrical, plumbing, dry wall installation, painting, and any other activity that does not cause any disturbances to the soil are not subject to this requirement.
- Continue operation of water trucks/devices when outdoor construction excavation, extraction, and other earthmoving activities cease, unless unsafe to do so.

**Carryout and Trackout:**
- Prevent or cleanup carryout and trackout as per SJVAPCD rule 8041.
  - The use of blower devices, or dry rotary brushes or brooms, for removal of carryout and trackout on public roads is expressly prohibited.
  - The removal of carryout and trackout from paved public roads does not exempt an owner/operator from obtaining state or local agency permits which may be required for the cleanup of mud and dirt on paved public roads.

Source: San Joaquin Valley Air Pollution Control District
### IV. BIOLOGICAL RESOURCES -- Would the project:

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<th>Issues</th>
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<th>Less Than Significant Impact</th>
<th>No Impact</th>
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<tr>
<td>a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?</td>
<td>☐</td>
<td>☒</td>
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<tr>
<td>b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?</td>
<td>☐</td>
<td>☐</td>
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<tr>
<td>c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?</td>
<td>☐</td>
<td>☐</td>
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</tr>
<tr>
<td>d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?</td>
<td>☐</td>
<td>☐</td>
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</tr>
<tr>
<td>e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?</td>
<td>☐</td>
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<tr>
<td>f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?</td>
<td>☐</td>
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Response:

a) Although the project site and surrounding areas are known to provide habitat for a number of special-status plant and animal species, a survey completed by Quad Knopf biologists identified no special-status plant and animal species located on the project site. However, during the survey, three blue elderberry shrubs were observed on the project site. Blue elderberry is the host plant and exclusive habitat for the federally threatened Valley elderberry longhorn beetle (VELB). No evidence of VELB exit holes were observed on the blue elderberry shrubs located on site; however, there is a possibility these beetles could exist on the project site in the future. In addition, a number of old growth Valley oaks were observed on the project site. Valley oaks are not listed species; however, these trees provide important habitat for native wildlife. There were no signs (e.g., tracks, scat, dens, prey remains, etc.) of San Joaquin kit fox presence observed, and there were no nests for raptors or other special-status birds observed during the field survey. A number of mitigation measures have been recommended in the attached biology report including preventing inadvertent entrapment of kit foxes or other animals during the construction phase of the project, conducting a pre-construction nest survey for Swainson’s hawks, and establishing a buffer zone from the drip-line of each elderberry plant and around each Valley oak. These mitigation measures are summarized in the Mitigation Monitoring Plan, Appendix A. As the phasing of the project means that the improvements will take place over an extended period of time, a biologist must visit the site before implementation of specific project activities and evaluate potential impacts to Swainson’s hawks and other migratory bird species. This evaluation will consist of a pre-construction nest survey for avian predators and other resident and migratory birds if any heavy equipment operations are to occur during the breeding season (February 15 through September 15).

b), c) A National Wetlands Inventory (NWI) Map query illustrated two wetland areas located within the project site: Palustrine Forested Seasonally Flooded (PFOC) and Palustrine Unconsolidated Bottom Permanently Flooded Excavated (PUBEx) (See Figure 4 in the Biology Report). These areas consist of the duck pond and outlet channel through the park from the pond, which are both part of the man-made waterway known as Pioneer Ditch. Both areas will remain in the park as part of the project improvements, with no significant change in their ability to support riparian habitat. No significant biological impacts to these waterways will result from this project.

d) The proposed park improvements would not create a barrier to migratory movements. In addition, no native wildlife nursery sites were identified on the project site.

e) The City of Porterville does not have any local policies or ordinances protecting biological resources.

f) Presently, there are no Habitat Conservation Plans (HCP) adopted in the City. The project does not conflict with any other habitat conservation plan.
V. CULTURAL RESOURCES -- Would the project:

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

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

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

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

Response:

a), b), c), d) According to a Cultural Resources Records Search completed by the Center for Archaeological Research at California State University Bakersfield in May 2005, a previous cultural resource study found a minimum of four cultural resources on the subject property. On behalf of the City, Quad Knopf retained Applied Earthworks (AE) in January 2006 to assess the significance of cultural resources within the 35-acre project site. These studies found that the park is the site of historic structures that no longer remain such as a flour mill along Pioneer Ditch, constructed in 1868 and demolished in 1938, and statues from the World’s fair. Pioneer Ditch was constructed in the 1860s by local Native Americans, and water from the ditch was used to power the mill. The park itself constitutes a historic resource, having been deeded to the City in 1908.

The Cultural Resource Investigations (CRI) report, completed for the project site by AE in September 2006 (Appendix D), concluded that of all the features in the park, including the park itself, only the rock bridges and waterfall and the Pioneer Ditch warrant formal consideration for the National Register of Historic Places (NRHP). The CRI did not determine the significance of the Leslie Mill site, but the site is assumed to be significant for the purposes of the CRI because it is the site of known archaeological resources which were confirmed to be present by field work performed as part of the CRI and which can be placed within historical context. The City may seek federal funding to support the Murry Park project; if the project does apply for federal funding, it would be subject to Section 106 of the National Historic Preservation Act (NHPA), which requires federal agencies to take into account the effects of their undertakings on historic properties.
The CRI included archival research, a pedestrian survey, significance evaluations, and limited excavation within the project area. The initial phases of the study were conducted in January and February 2006, while the evaluation and limited excavations were performed in July and August 2006. The remainder of this section summarizes the findings of the CRI.

The survey of the existing and proposed expansion area of Murry Park revealed 11 resources within the project area, including Murry Park (P-54-004032; CA-TUL-2449H), established in 1908; Pioneer Ditch, built between the early 1860s and late 1880s; a historical trash scatter; a former home site dating to the early 1900s; the remains of a flour mill; and six existing historical structures, including the Barn Theater and Boy Scout Clubhouse (see Figure 4-6 of the CRI, Appendix D). No prehistoric remains were discovered.

The subsequent phase of the study evaluated nine of the resources for significance and project effects per Section 106 of the NHPA, while archaeological excavations at the mill site were conducted to better define the boundaries of this site. Because the project will have no negative impact on the setting or surroundings of the Barn Theater, it was excluded from the evaluation. Of the nine resources, only the Pioneer Ditch possessed both significant historical associations and integrity to be considered eligible for the National Register of Historic Places (NRHP). Although Murry Park is associated with locally significant events and individuals and once displayed distinctive landscape architecture at the county level, the park no longer retains integrity from its period of significance. The five buildings and two archaeological sites within the proposed expansion were evaluated as ineligible for the NRHP. Based on the spatial distribution of artifacts and features as well as the footprints of nonextant structures, AE defined the boundaries of the mill site relative to the project but did not evaluate the significance of the site.

Although the proposed renovation of the park does not constitute an effect on historic property, AE suggests that the palm-lined segment of Park Drive retain the original character of the path, which represents one of the unmodified park features.

The main channel of the Pioneer Ditch is considered a significant resource and, as such, warrants management consideration. Major modifications to the aspects of the ditch — including changes in its course, dimension, material, and associated features — would be considered adverse effects. The project description states that the City plans to renovate the ditch but does not go into detail regarding the scope and specifics of such renovations. The City shall consult with a qualified archaeologist once the renovations become better defined in order to ensure that the integrity of this significant resource is not compromised. In contrast to the main channel, alterations to the lateral branch of the ditch and/or the removal of the two water gate stations in the proposed park expansion area do not constitute adverse effects to the significant qualities of the ditch, since they do not represent significant features of the ditch.

Due to their ineligibility to the NRHP, the two archaeological sites and five buildings located in the proposed expansion do not require further study. The archaeological potential of the east side of Plano Street is minimal; similarly this area does not necessitate additional study. However, in the event that archaeological remains are encountered anywhere in the project area, ground-moving activities should cease until a qualified archaeologist can assess the finds.

The boundaries of the Leslie Mill site (see Figure 6-5 of the CRI, Appendix D) delineate an archaeologically sensitive area within Murry Park. Ground-moving activities planned in this area...
require management consideration to ensure that significant archaeological deposits are not disturbed. On site monitoring by a qualified archaeologist shall be required for activities within the mill site.

Field notes and maps as well as a complete set of photographs from the current investigation are on file at AE's office in Fresno, California. A copy of the final version of the CRI is included in this Initial Study as Appendix D and will be placed on file with the California Historical Resources Information System at the Southern San Joaquin Valley Information Center located on the campus of California State University, Bakersfield.

In the event that any as-yet undetected (i.e. buried) cultural resources are encountered within the project site, work shall cease within a 50-foot area of the find, and a qualified archaeologist shall be contacted to evaluate any such discoveries.

The mitigation measures discussed in this section and summarized in the Mitigation Monitoring Plan (Appendix A) will mitigate any potentially significant impacts to a less than significant level.
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<tr>
<td>VI. GEOLOGY AND SOILS — Would the project:</td>
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<tr>
<td>a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:</td>
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<tr>
<td>i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.</td>
<td>☐ ☐ ☐ ☒</td>
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<tr>
<td>ii) Strong seismic ground shaking?</td>
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<td>iii) Seismic-related ground failure, including liquefaction?</td>
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<td>iv) Landslides?</td>
<td>☐ ☒ ☐ ☐</td>
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<tr>
<td>b) Result in substantial soil erosion or the loss of topsoil?</td>
<td>☐ ☒ ☐ ☐</td>
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<tr>
<td>c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?</td>
<td>☐ ☒ ☐ ☐</td>
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<tr>
<td>d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?</td>
<td>☐ ☒ ☐ ☐</td>
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<tr>
<td>e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?</td>
<td>☐ ☐ ☐ ☒</td>
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Response:

a) i), ii), iii) The proposed Project site is located in a relatively seismically quiet area of California. Neither the City of Porterville nor Tulare County are affected by Alquist-Priolo Earthquake Fault Zones (California Geological Survey, September 2006). No faults are known to exist within the Project area, and structures built as part of the Project will be reinforced in accordance with State and local building codes and ordinances. The Project will not expose people or structures to the adverse effects of earthquakes, seismic ground shaking, or seismic ground failure.

a) iv), b), c) d) The Project does not involve construction of structures for the purpose of habitation. It will involve the addition of 3 new restrooms, 1 new arbor, 1 replica mill, 1 new shade structure, and 2 new group picnic pavilions.

The Project site is located on three soil types: Cibo Clay, 15 to 30 percent slopes; Porterville Clay, 2 to 9 percent slopes; and Tujunga loamy sand, 0 to 2 percent slopes (USDA, November 1999). The Cibo Clay is located on the sides of the hill leading up to the swimming pool and at the base of Murry Hill along Park Drive. The Replica Mill, Rose Arbor and Picnic Pavilion proposed along the base of the hill beneath the swimming pool may be located on this soil, which has slow permeability, rapid surface runoff and on which the hazard of erosion is high. The soil has a tendency to creep down slope when it is saturated with water, and to develop deep, wide cracks when it is dry. As required by law for a project of this size, a Storm Water Pollution Prevention Plan (SWPPP) will be implemented that will include measures to prevent soil erosion, soil instability, and damage from expansive soils. Also, all applicable building codes will be observed. In addition, the following mitigation measure will also be implemented:

- Any structure build on the Cibo Clay portion of the site and/or on slopes greater than 15 percent shall be designed by a structural engineer based on valid geotechnical information.

This measure will reduce the risk of soil erosion and instability to a less than significant level.

e) The Project does not include the use of septic tanks or alternate wastewater disposal systems.
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<tr>
<td>VII. HAZARDS/HAZARDOUS MATERIALS - Would the project:</td>
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<tr>
<td>a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?</td>
<td>☐</td>
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<tr>
<td>b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?</td>
<td>☐</td>
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<td>c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?</td>
<td>☐</td>
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<tr>
<td>d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?</td>
<td>☐</td>
<td>☐</td>
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<tr>
<td>e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?</td>
<td>☐</td>
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<tr>
<td>f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
<td>☐</td>
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<tr>
<td>g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?</td>
<td>☐</td>
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</table>
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?

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**Response:**

a), b), c) The operation of the existing park involves the use of some potentially hazardous chemicals for landscaping purposes such as fertilizers, pesticides, and herbicides, some used to clean park facilities such as the restrooms, and some such as chlorine used to maintain the pool. The improvements to and expansion of the park may increase the amount of these chemicals used on the site. Construction activities would involve the use of, and therefore storage and transport of, petroleum based fuels for maintenance and construction equipment.

These materials could, if not handled properly, pose a threat to the health of people on and around the Project site, but are regulated by Federal and State agencies, and will be used, stored, and transported according to applicable Federal, State, and City of Porterville requirements. Adherence to these requirements will ensure that the potential for negative environmental impacts remains less than significant.

Nearby schools include Santa Fe Elementary (which is next door to the Heritage Community Center), Olive Street Elementary, and Roche Elementary, all between one half mile and one mile from the site, a sufficient distance not to pose any significant risk to these facilities from Project activities.

d) The proposed site is not listed on a hazardous materials sites list.

e), f) The proposed project site is not located in the vicinity of an airport or a private airstrip (Porterville Municipal Airport Master Plan Report, 1990.)

g) Movement of emergency vehicles and pedestrians will not be affected by construction of the project.

h) No significant risks of wildfire are anticipated in the Project area.

The 2 fully staffed fire stations in the City of Porterville have been strategically located to provide response times of 5 minutes, or less, to all areas of the City. Growth and population will be monitored to ensure that the number of stations in Porterville is sufficient to maintain acceptable standards of fire suppression and control. Reserve firefighters assist full time firefighters on routine grass and structural calls. Fire dispatch is handled by the City Police Department by 9-1-1 calls (Safety Element of the General Plan, 1998, P.6-6).
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<tr>
<td>a) Violate any water quality standards or waste discharge requirements?</td>
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<tr>
<td>b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?</td>
</tr>
<tr>
<td>c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site? Courses will be altered, but erosion or siltation will not occur.</td>
</tr>
<tr>
<td>d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?</td>
</tr>
<tr>
<td>e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?</td>
</tr>
<tr>
<td>f) Otherwise substantially degrade water quality?</td>
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<tr>
<td>g) Place housing within a 100-year flood hazard area as mapped on a federal Flood</td>
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<tr>
<td>Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map? No housing.</td>
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<tr>
<td>h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?</td>
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</tr>
<tr>
<td>i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?</td>
<td>☐</td>
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<tr>
<td>j) Inundation by seiche, tsunami, or mudflow?</td>
<td>☐</td>
<td>☐</td>
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</table>

**Response:**

a), f) All wastewater generated by the Project will be disposed of through City wastewater facilities, and all applicable Regional Water Quality Control Board (RWQCB) guidelines will be followed in regards to wastewater and stormwater runoff.

b) The Project will place no notable new demand on the City’s municipal water supply and thus will not result in substantial depletion of groundwater supplies.

c), d) Pioneer Ditch will be renovated and the existing duck pond will be deepened, but none of these improvements would result in substantial erosion, siltation, or flooding on or off site.

e) The Project will construct four new parking lots on the site, increasing the paved area of the site. RWQCB guidelines will be followed and a Storm Water Pollution Prevention Plan (SWPPP) will be filed to help control runoff from these lots, which may contain petroleum and oil residues. Following the RWQCB guidelines should reduce this impact to a less than significant level.

g), h) The Project does not involve the construction of housing. It will place some new structures in the 100-year flood zone around Pioneer Ditch (Figure 4-3), but these should not significantly impede or redirect flood flows.

i) In the event of the failure of Success Dam, the City’s Emergency Preparedness Plan outlines evacuation routes (Safety Element of the Porterville General Plan, 1998, p 6-16).

j) The Project area is not within an area subject to these hazards. It is over a hundred miles from the ocean in an area not subject to tsunamis, not on a large body of water subject to seiche, and not in an area subject to mudflow (Safety Element of the Porterville General Plan, 1998).
Quad Knopf

FLOOD MAP

100 Year Flood

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<table>
<thead>
<tr>
<th>Issues</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporation</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
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<tr>
<td>IX. LAND USE AND PLANNING - Would the project:</td>
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<tr>
<td>a) Physically divide an established community?</td>
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<td>☐</td>
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<tr>
<td>b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
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<tr>
<td>c) Conflict with any applicable habitat conservation plan or natural community conservation plan?</td>
<td>☐</td>
<td>☐</td>
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</tr>
<tr>
<td>d) Would the project result in impacts to other commercial land uses within the meaning of Section 15131 of the CEQA guidelines; more specifically, will the project cause substantial physical impact on existing commercial districts including excessive vacancies, blight, relocation of existing anchor tenants to the project?</td>
<td>☐</td>
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</table>

**Response:**

a) The proposed project site is adjacent to low density residential areas, a golf course, the Porterville Fairgrounds, and a National Guard Facility. It would not separate those areas from any other part of that community. (Site Plan, Figure 2-3).

b) The proposed project does not conflict with any applicable land use plan, including the City of Porterville General Plan. (Porterville General Plan, July 1998).

c) Currently there is no Habitat Conservation or Natural Community Conservation Plan in the City (see Response IV.f).

d) Such potential negative socio-economic impacts will not result from development of the project.

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X. MINERAL RESOURCES – Would the project:

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

☐ ☐ ☐ ☒

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

☐ ☐ ☐ ☒

Response:

a), b) No mineral resources are known to exist at the proposed park location, (Porterville General Plan, Conservation Element, July 1998).
XI. NOISE — Would the project result in:

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<tr>
<th>Issues</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporation</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
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</thead>
<tbody>
<tr>
<td>a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?</td>
<td>☐</td>
<td>☒</td>
<td>☐</td>
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<tr>
<td>b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?</td>
<td>☐</td>
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<tr>
<td>c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?</td>
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</tr>
<tr>
<td>d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?</td>
<td>☐</td>
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<tr>
<td>e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?</td>
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<tr>
<td>f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?</td>
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**Response:**

*a), d*) *With the exception of constructing the proposed facilities, there will be minimal noise created from operation. Construction noise will be mitigated by scheduling activities during daytime hours (between 7:00 a.m. and 7:00 p.m. Monday through Friday, and between 9:00 a.m. and 6:00 p.m. Saturday and Sunday), and use of equipment mufflers.*

*b), c*) *Operation of the park would not result in excessive groundborne vibration or groundborne noise levels, and will not result in a significant permanent increase in ambient noise levels.*
e), f) The Project is not located within 2 miles of an airport or a private airstrip. (Porterville Municipal Airport Master Plan Report, 1990)
XII. POPULATION AND HOUSING —
Would the project:

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

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

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

Response:

a) Population growth will not be induced by the proposed park project, which will improve a City amenity but will not extend City services or infrastructure that will enable greater population growth.

b), c) The Project will necessitate the acquisition of four houses on Plano Street across from the Porterville Fairgrounds. The City will negotiate with willing sellers or acquire these properties as they become available on the open market, thus not resulting in forced displacement. The necessary acquisition of four houses to allow ultimate development of the project proposal will not result in a significant effect or change to housing availability in Porterville.
XIII. PUBLIC SERVICES -- Would the project:

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

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<tr>
<th>Issues</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporation</th>
<th>Less Than Significant Impact</th>
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<td>Fire protection?</td>
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<tr>
<td>Police protection?</td>
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<td>Schools?</td>
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<td>Parks?</td>
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<td>Other public facilities?</td>
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Response:

a) The Project will not induce population growth (see section XII) and this will not result in a significantly increased demand on these public services.
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<th>Issues</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporation</th>
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<td>XIV. RECREATION -- Would the project:</td>
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<td>a) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?</td>
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<td>b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?</td>
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**Response:**

*a), b) The Project would increase the use of Murry Park by increasing its size and the number and quality of its facilities. The improvements detailed in the Master Plan would both be the cause of and be designed to accommodate this increased use. The proposed improvements would not have an adverse physical effect on the environment.*
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<th>Issues</th>
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<th>Less Than Significant Impact</th>
<th>No Impact</th>
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<td>XV. TRANSPORTATION/TRAFFIC – Would the project:</td>
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<td>a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?</td>
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<td>b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?</td>
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<td>c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that result in substantial safety risks?</td>
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<td>d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?</td>
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<td>e) Result in inadequate emergency access?</td>
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<tr>
<td>f) Result in inadequate parking capacity?</td>
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<tr>
<td>g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?</td>
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Response:

*a), b)* During the construction period, traffic may be temporarily disrupted. The project calls for installation of a cul-de-sac on Corona Drive at Oak Street. This closure may cause some inconvenience to those living immediately around the park, but should not lead to a substantial increase in congestion, worsened levels of service or significant circulation changes. The Project calls for the addition of approximately 250 parking spaces to the existing and expanded portions of the park, about half of which will be accessed off of Plano Street and Olive Avenue, identified as arterial streets.
on the City's Land Use and Circulation General Plan Map, and the rest distributed among four lots off Corona Drive, Oak Avenue, Putnam Avenue and Park Drive. This design will minimize traffic and congestion on any one street or intersection, and should not constitute a significant impact in this regard.

c) The proposed project would have no impact on air traffic patterns.

d), e), f), g) The proposed project would not increase hazards due to design features, nor would it result in inadequate emergency access or parking capacity. The north and south ends of Corona Drive, both park entrances, are easily accessed from two arterial streets – Putnam Avenue and Olive Avenue – that provide emergency routes for the park and adjacent residences. The proposed project implements improvements planned by the City in the Parks and Recreation Element.
XVI. UTILITIES/SERVICE SYSTEMS – Would the project:

<table>
<thead>
<tr>
<th>Issues</th>
<th>Potentially Significant Impact</th>
<th>Less Than Significant with Mitigation Incorporation</th>
<th>Less Than Significant Impact</th>
<th>No Impact</th>
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<td>g)</td>
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</table>

*Response:*

a), b), c), d), e), f), g) The proposed park expansion and improvements will not place significant demands on these utilities/service systems. A park is not a high-intensity user or producer of
wastewater, water, stormwater, or trash. New facilities such as new restrooms will connect to existing City infrastructure surrounding the park (City Engineer).
XVII. MANDATORY FINDINGS OF SIGNIFICANCE – Would the project:

<table>
<thead>
<tr>
<th>Issues</th>
<th>Potentially Significant Impact</th>
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<th>Less Than Significant Impact</th>
<th>No Impact</th>
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</table>

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

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

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

d) Does the project have the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals?

Response:

a) The project has the potential to degrade the quality of the environment, specifically in regards to aesthetics, air quality, biological resources, cultural resources, geology and soils, and noise. Each of these impacts will be mitigated to a level less than significant by implementing the measures outlined in Appendix A.
b), c) Cumulative impacts resulting from the project will be less than significant, as will impacts to the human environment (Project Description).

d) The project does not have the potential to disadvantage long term goals for a short term benefit. The project will help provide for the long term recreation and open space needs of the community.
CHAPTER FIVE

LIST OF PREPARERS
CHAPTER FIVE – LIST OF PREPARERS

Gregory Martin, Assistant Planner
David Young, Senior Environmental Planner
Teresa Hiatt, Project Specialist
Abigail Miranda, Project Specialist
CHAPTER SIX

PERSONS AND SOURCES CONSULTED
Persons and Agencies Consulted

Randy Baloian, Historian/Administrative Archaeologist, Applied Earth Works, Inc.

Bradley Dunlap, City of Porterville Community Development Director

Kay Hutmacher, ASLA, Sierra Designs Inc. (Formerly HMA)

Jim Perrine, City of Porterville Parks and Leisure Services Director

Mike Reed, City of Porterville, City Engineer

Daniel M Veyna, ASLA, Sierra Designs Inc. (Formerly HMA)

Audry Williams, Senior Staff Archaeologist, Center for Archaeological Research, California State University Bakersfield

Documents Consulted


City of Porterville, Land Use, Open Space, Conservation and Safety Elements of the General Plan, July 1998

Hodges and Shutt, Porterville Municipal Airport – Master Plan Report, April 1990


US Department of Agriculture, USDA Soils Survey, Western Tulare County, California, November 1999


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Appendix A

Mitigation Monitoring Plan
### Summary of Potential Impacts, Mitigation Measures, and Mitigation Monitoring Program

<table>
<thead>
<tr>
<th>Impact No.</th>
<th>Impact Number</th>
<th>Mitigation Measure</th>
<th>Implementation</th>
<th>Monitoring</th>
<th>Time Span</th>
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</thead>
<tbody>
<tr>
<td>I (d)</td>
<td>Light and Glare (d)</td>
<td>Project lighting shall operate, when necessary, during park hours from 8:00 a.m. to 8:00 p.m. The project shall be designed so that it will not expose people, either on or off site to glare (a continuous or periodic intense light that may cause eye discomfort or be blinding to humans) or an increase in off site ambient light of more than 0.25 foot candles. A registered illumination engineer shall design a lighting plan that will specify measures to reduce light and glare from project lighting to 0.25 foot candles or less.</td>
<td>City of Porterville and registered illumination engineer</td>
<td>City of Porterville</td>
<td>Before and during project construction</td>
</tr>
</tbody>
</table>

### IV. Biological Resources

<table>
<thead>
<tr>
<th>Impact No.</th>
<th>Impact Number</th>
<th>Mitigation Measure</th>
<th>Implementation</th>
<th>Monitoring</th>
<th>Time Span</th>
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</thead>
<tbody>
<tr>
<td>IV a)</td>
<td>Candidate, Sensitive, or Special-Status Species</td>
<td>I. Elderberry Mitigation</td>
<td>Construction contractor and qualified biologist</td>
<td>City of Porterville</td>
<td>Before, during, and after project construction</td>
</tr>
</tbody>
</table>

Avoidance: Establishment and Maintenance of a Buffer Zone

Complete avoidance (i.e., no adverse effects) may be assumed when a 100-foot (or wider) buffer is established and maintained around elderberry plants containing stems measuring 1.0 inch or greater in diameter at ground level. Firebreaks may not be included in the buffer zone. In buffer areas construction-related disturbance should be minimized, and any damaged area should be promptly restored following construction. The US Fish and Wildlife Service (USFWS) must be notified.

---

*The mitigation measures listed in this table will reduce all environmental impacts to a less than significant level.

---

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consulted before any disturbances within the buffer area are considered. In addition, the USFWS must be provided with a map identifying the avoidance area and written details describing avoidance measures.

Protective Measures

1. Fence and flag all areas to be avoided during construction activities. In areas where encroachment on the 100-foot buffer has been approved by the USFWS, provide a minimum setback of at least 20 feet from the dripline of each elderberry plant.

2. Brief contractors on the need to avoid damaging the elderberry plants and the possible penalties for not complying with these requirements.

3. Erect signs every 50 feet along the edge of the avoidance area with the following information: "This area is habitat of the valley elderberry longhorn beetle, a threatened species, and must not be disturbed. This species is protected by the Endangered Species Act of 1973, as amended. Violators are subject to prosecution, fines, and imprisonment." The signs should be clearly readable from a distance of 20 feet, and must be maintained for...
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<th>Impact No.</th>
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<th>Mitigation Measure</th>
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<td>the duration of construction.</td>
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<td>4.</td>
<td>Instruct work crews about the status of the beetle and the need to protect its elderberry host plant.</td>
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</table>

**Restoration and Maintenance**

1. Restore any damage done to the buffer area (area within 100 feet of elderberry plants) during construction. Provide erosion control and re-vegetate with appropriate native plants.

2. Buffer areas must continue to be protected after construction from adverse effects of the project. Measures such as fencing, signs, weeding, and trash removal are usually appropriate.

3. No insecticides, herbicides, fertilizers, or other chemicals that might harm the beetle or its host plant should be used in the buffer areas, or within 100 feet of any elderberry plant with one or more stems measuring 1.0 inch or greater in diameter at ground level.

4. The applicant must provide a written description of how the buffer areas are to be restored, protected, and maintained after construction is completed.

5. Mowing of grasses/ground cover may occur from July through April to reduce fire.
hazard. No mowing should occur within five (5) feet of elderberry plant stems. Mowing must be done in a manner that avoids damaging plants (e.g., stripping away bark through careless use of mowing/trimming equipment).

II. Avian Predator and Other Resident and Migratory Bird Mitigation

A pre-construction nest survey for avian predators and other resident and migratory birds should be conducted prior to project construction if any heavy equipment operations are to occur during the breeding season (February 15 through September 15). The survey should include all large trees on the project site and all large trees on adjacent lands. If any occupied nests are observed, heavy equipment operations should be minimized or avoided until the young have fledged and nesting has ceased. If this is not feasible, the US Fish and Wildlife Service (USFWS) and California Department of Fish and Game (CDFG), if State-listed species, e.g., Swainson’s hawk are involved) would need to be contacted for guidance on how to proceed. The USFWS would prescribe specific mitigation dependant upon the particular species involved and the manner in which heavy equipment operations are to be conducted.

III. Valley Oak Mitigation

The project should retain as many of the valley oaks on site as is feasible. This is especially true
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<th>Impact No.</th>
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<th>Mitigation Number</th>
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<th>Time Span</th>
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<tr>
<td></td>
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<td>for the larger trees. Construction activities within the dripline of these trees should be avoided or minimized. The following measures are recommended to minimize impacts to valley oaks during project construction. These measures are adapted from the Standard Specifications for Building Around Valley Oaks, City of Visalia Urban Forestry Guidelines (2004).</td>
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<td>￭ A protection zone around all Valley oaks should be drawn to scale on plans; this includes accurately locating the trunk and depicting the crown dripline. Earthwork is discouraged around the crown dripline.</td>
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<td>￭ All utility locations should be included in all development plans involving valley oaks.</td>
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<td>￭ Protective tree fencing should be added prior to any earthwork, at least 3 ft. minimum in height, installed at outer most end of the dripline surrounding the trunk of a valley oak. The temporary fencing should be safety orange color, plastic webbing, temporary construction type fencing (snow fencing). Steel T-bar stakes should support the fencing. This fence should remain until construction is complete. Nothing should be stored inside the protective fence.</td>
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<td>￭ The addition of fill within the crown dripline of a valley oak should be limited to a maximum of 6 inches and no fill should be placed within 10 feet of the trunk. The fill</td>
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<td>Impact No.</td>
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<td>should be of a high quality soil and clean of any debris.</td>
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<td>- Trenching within the crown dripline of a valley oak should be avoided. If utilities must be installed within the crown dripline it is recommended that utilities be installed via directional boring at a minimum depth of 36&quot;. If this is not feasible, care should be taken to avoid damaging the root system. Larger supportive roots should not be cut. If possible, there should be no soil compaction, paving or structures placed within the crown dripline of a valley oak.</td>
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<td>- Valley oak trees should be irrigated before construction starts and through construction during the summer (June through October). This will help ensure that the tree can better withstand the stresses of construction. Irrigation is extremely important during spring and summer when the environment around a mature valley oak is changed by construction. Irrigations should water all of the area under the crown dripline.</td>
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<td>- Permanent irrigation systems should be bubbler, drip, flood or sub-surface only. Sprinkler systems should not be used within 6 ft. of the tree.</td>
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<td>- Landscaping under valley oaks should consist of drought tolerant plants or California native plants that are drought tolerant in nature.</td>
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</table>

Initial Study/ Environmental Assessment
Mitigated Negative Declaration/ Finding of No Significant Impact
Murry Park Master Plan

March 2007
<table>
<thead>
<tr>
<th>Impact No.</th>
<th>Impact</th>
<th>Mitigation Number</th>
<th>Mitigation Measure</th>
<th>Implementation</th>
<th>Monitoring</th>
<th>Time Span</th>
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<tbody>
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<td></td>
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<td>There should be no landscaping within 6 ft. of the trunk. Chipped bark and mulch or similar materials are suitable for this area. No lawns should be planted within 10 ft. of the trunk, and it is recommended that there be no lawn placed within the crown dripline.</td>
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</table>

### V. CULTURAL RESOURCES

<table>
<thead>
<tr>
<th>V a), b), c), d)</th>
<th>Cultural and Historic Resources</th>
<th>V a), b), c), d)</th>
<th>I. Pioneer Ditch</th>
<th>City of Porterville, qualified archaeologist, and construction contractor</th>
<th>City of Porterville</th>
<th>Before and during project construction</th>
</tr>
</thead>
</table>

The main channel of Pioneer Ditch is a significant resource. Major modifications to the aspects of the ditch, including changes in its course, dimension, material, and associated features, would be considered adverse effects. The City shall consult with a qualified archaeologist once the renovations to Pioneer Ditch proposed by the project become better defined in order to ensure that the integrity of this significant resource is not compromised.

#### II. Leslie Mill site

The boundaries of the Leslie Mill site (see Figure 6-5 of the CRI, Appendix D) delineate an archaeologically sensitive area within Murry Park. On site monitoring by a qualified archaeologist shall be required for activities within the mill site.

#### III. Other Measures

In the event that any as-yet undetected (i.e., buried) cultural resources are encountered on this property at a future time, work shall cease within a 50-foot area of the find, and a qualified

Initial Study/ Environmental Assessment
Mitigated Negative Declaration/ Finding of No Significant Impact
Murry Park Master Plan

March 2007
A-7
<table>
<thead>
<tr>
<th>Impact No.</th>
<th>Impact</th>
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<th>Mitigation Measure</th>
<th>Implementation</th>
<th>Monitoring</th>
<th>Time Span</th>
</tr>
</thead>
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<tr>
<td></td>
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<td>archaeologist shall be contacted to evaluate any such discoveries.</td>
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</table>

**VI. GEOLOGY AND SOILS**

| VI a), b), c), d) | Soil instability, erosion, landslides, expansive soils | VI a), b), c), d) | Any structure built on the Cibo Clay portion of the site and/or on slopes greater than 15 percent shall be designed by a structural engineer based on valid geotechnical information. | Structural engineer and construction contractor | City of Porterville | Before project construction |

**XI. NOISE**

| XI a), d) | Exceedance of Applicable Noise Standards | XI a), d) | Construction noise shall be mitigated by scheduling activities during daytime hours (between 7:00 a.m. and 7:00 p.m. Monday through Friday, and between 9:00 a.m. and 6:00 p.m. Saturday and Sunday), and use of equipment mufflers. | Construction contractor | City of Porterville | Before and during project construction |
Appendix B

Reconnaissance Level Biological Survey
BIOLOGICAL ASSESSMENT

for the

Murry Park Master Plan Update,
Porterville, California

Prepared by:

Quad Knopf, Inc.
5001 California Avenue, Suite 230
Bakersfield, CA 93309
(661) 616-2600

June 13, 2005
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Appendix C – Conservation Guidelines for the Valley Elderberry Longhorn Beetle
INTRODUCTION

A reconnaissance-level biological survey was requested as part of the initial study for the Murry Park Master Plan Update which includes repair and/or replacement of existing facilities as well as the construction of new facilities on an adjacent parcel located west of the park. The 20-acre community park currently consists of family picnic areas, pavilions, barbecue pits, sinks, tables and benches, fishing pond and street, two children's play areas and restrooms. The proposed plan consists of sixteen phases that includes the expansion of the park to include the historic Barn Theater. The plan will also include the renovation and replacement of park buildings and structures, road improvements, and new parking lots. Figure 2 illustrates the proposed plan for the existing Murry Park parcel, including the proposed plan for the new parcel located to the west of the park. The park is currently located at the intersection of East Putnam Avenue and Park Drive in the southeast ¼ of Section 25 and northeast ¼ of Section 36, Township 21 South, and Range 27 East in the Porterville USGS 7.5 minute quadrangle (Figures 1).

Phase 1 of the Murry Park Master Plan will be to complete an Environmental Assessment for the park, a physical topographic survey for existing and new park sections, design and development plans, design and development cost estimates, construction plans and specifications, and architect estimates and bid sheet formats. Part of Phase 1 included developing a general priority-ranking list for the proposed park improvements. The first priority, Phase 2, will be to renovate and replace existing playgrounds. This will involve the replacement of existing playgrounds adjacent to Corona Drive and Mill Avenue with new playground equipment and fall protective surfacing, the renovation of the eastern playground located near the swimming pool, and additional accessibility to the eastern playground.

Phase 3 will develop a new northern entrance to the park aligned with Sierra Vista Street. The new entry will be created Putnam Avenue and will include new signage, lighting, and parking as well as irrigation and landscaping. Adjacent trees will be pruned, and a new pond parking area with 30 to 40 spaces will also be built during this phase.

Pond renovations will be completed during Phases 4 and 5. Some existing elements will be cleared to make way for the renovations, including the Putnam wall, adjacent paving, and select trees and shrubs. Renovation to the pond will include increasing the basin depth, removing the existing island, renovating the outlet stream with a waterfall, renovate the inlet with boulders, renovate the inlet, stream, and outlet providing fish habitat, install an aeration system, utilities, and stocking fish. A new pedestrian path will circle the pond and connect to Putnam Avenue. Two new bridges and a new group picnic pavilion will also be added to the areas around the pond. New furniture will include seating areas, picnic tables, and a fish cleaning station. New lighting, irrigation, and plantings in the area of these improvements will also be installed during this phase and signage.

Phase 6 will provide new pool area ADA accessible parking and walkways, a pool entry courtyard, and a drop-off area. Park Drive, the golf course 6th fairway and the fence line
will be realigned and the golf course 6th tee box will be relocated to these improvements. New lighting, irrigation, and plantings in the area of these improvements will also be installed during this phase.

Two new restrooms and a new arbor will be constructed during Phase 7. One new restroom will be built between the swimming pool and the playground. A second new restroom will be ADA accessible and will be built southwest of the pond. This phase also includes removal of existing paving south of the pond stream, new ADA access paving to the restrooms, and paving to connect the new restroom to the new and existing pavilions and the new parking lot. Additionally a new arbor will be built at the site of the old restroom which will be removed. New lighting, irrigation, and plantings in the area of these improvements are also included in this phase.

During Phase 8, the memorial flag pole will be relocated, palm trees will be pruned, harvested and in some cases relocated, internal paths connecting pool parking and the playground will be paved as will a new internal promenade and old internal streets will be demolished. The stream through the park will be renovated, the existing rose arbor will be renovated, and internal picnic areas will be added. New lighting, irrigation, plantings, and furniture in the area of these improvements will also be added during this phase.

Phase 9 will rehabilitate Park Drive and adjacent improvements. First, damaged turf, paving, and trees, will be removed, and replaced with a new pedestrian promenade with connecting paving, a new parking area, and new curbs, gutters, and sidewalks on the south side of Park Drive. Then new lighting, irrigation, and plantings will be added in the area of these improvements.

In Phase 10 the Maintenance Area will be relocated and a new basketball court will be added immediately adjacent to the existing park at Oak Avenue and Corona Drive. This will include the following activities: acquiring the property for the new basketball court; selling and relocating the adjacent building; demolishing the existing maintenance yard and adjacent remaining structures; pruning adjacent trees; building the new basketball court; new lighting; new irrigation; new planting; and building a new 36-space parking area on the west side of Corona Drive.

Phase 11 will involve building a replica mill and other miscellaneous amenities, and will include the following activities: building the replica mill; installing interpretive signage; building connecting paving; adding new lighting; adjusting irrigation; new planting; and installing miscellaneous improvements.

Phase 12 will involve construction of a new 40-60-space parking lot on the east side of Corona Avenue just north of its intersection with Oak Avenue, as well as the addition of shade and picnic structures. In addition, this phase will involve removing affected turf, trees, and paving; pruning adjacent trees; installing utilities; and installing new pedestrian paving, lighting, irrigation, and plantings.
Phase 13 activities will be for the purpose of acquiring the new park site just west of the existing park and will consist of obtaining property appraisals, negotiating purchase terms, and acquiring the properties.

During Phase 14 the new site will be graded and infrastructure will be installed. This will consist of the following activities: habitat reconnaissance; removal of existing structures; mass grading and erosion control work; installing underground utilities; and creating a drainage area wetland.

In Phase 15 hardscape and structures will be installed at the new site. This will consist of constructing access points and parking areas, including closing Corona Drive near its intersection with Oak Avenue and creating a cul-de-sac at the new end of Corona created by this closure; building a new group picnic pavilion; building a new restroom facility; and installing new lighting.

In Phase 16 softscape and amenities will be installed at the new site. This will consist of installing irrigation, new pedestrian pathways, new plantings, and miscellaneous improvements.

**EXISTING CONDITIONS**

The proposed project site is located in an urbanized area surrounded by residential land. The parcel located to the west of the existing park has been routinely disked as evident by the ruderal weedy species present on site. Porter Slough, a jurisdictional waterway, flows south of the proposed project and is located outside the project’s boundary. Pioneer Ditch, a non-jurisdictional water, flows through the north end of the existing project site. Also identified on site is an excavated duck pond. Attachment A provides photographs of the project area (Photoplates 1-3).
METHODOLOGY

Prior to conducting the field survey, a query of the California Department of Fish and Game Natural Diversity Data Base (CNDDB) (CDFG 2005) was conducted for the Porterville, Success Dam, Fountain Springs, Ducor, Sausalito School, Woodville, Cairns Corner, Lindsay, and Frazier Valley USGS 7.5-minute quadrangles. A review of literature and the CNDDB query indicated that ten special-status animal species, twelve special-status plant species, and two natural vegetation communities of concern have been reported for these quadrangles. A query of the California Native Plant Society’s Electronic Inventory (CNPS 2005) was also conducted for the same quadrangles to provide information on additional plant species of concern that have the potential to occur in the project area and surrounding vicinity. This review resulted in two additional plant species. Table 1 lists the results of these reviews. Figure 3 illustrates observed locations for special-status species. As part of the data base research, a species list was obtained from the U.S. Fish and Wildlife Service (USFWS) website for the Porterville USGS 7.5-minute quadrangle to provide information on additional special-status species that have the potential to occur in the vicinity of the proposed project; this list is provided in Attachment B. Please note that only those species with the potential to occur on the project site were given consideration.

Lastly, a query of the USFWS National Wetland Inventory (NWI) Map for the Porterville USGS 7.5-minute quadrangle was conducted for information regarding known wetlands in the project area (Figure 4).

On March 16, 2005, quad Knopf, Inc. biologists, James W. Jones Jr. (botanist) and Jason Kang (biologist) conducted a reconnaissance level biological survey to determine whether special-status plant and animal species or their habitats exist in the project areas. The project area was surveyed on foot and the surrounding vicinity was driven. Special effort was made to identify San Joaquin kit fox (Vulpes macrotis mutica) sign of presence (e.g., scat, tracks, dens, prey remains, etc.) and blue elderberry (Sambucus mexicana) in the project area.
<table>
<thead>
<tr>
<th>Species</th>
<th>Habitat</th>
<th>Status</th>
<th>Potential Occurrence in project area</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Animals</strong></td>
<td></td>
<td></td>
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</tbody>
</table>
| *Branchinecta lynchii*  
(Vernal pool fairy shrimp) | Vernal pools. | FT | **Absent.** No habitat present. |
| *Buteo swainsoni*  
(Swainson's hawk) | Stands with few trees in juniper-sage flats, riparian, and oak savannah habitats. Requires adjacent suitable foraging areas such as grasslands, grain fields, or alfalfa, that support rodent populations. | MBTA, CT | Unlikely. Project site is located within a highly urbanized setting with limited foraging and nesting opportunities for this species. In addition, the CNDDDB review did not indicate any known nest locations within 10 miles of the project site. |
| *Desmocerus californicus dimorphis*  
(Valley elderberry longhorn beetle) | Elderberry shrubs in the Sacramento and San Joaquin Valleys. | FT | Possible. Three elderberry shrubs observed during the field survey. No exit holes were observed. |
| *Dipodomys nitratoides nitratoides*  
(Tipton kangaroo rat) | Saltbrush scrub and sink scrub communities in the Tulare Lake Basin of the southern San Joaquin Valley. Requires soft, friable soils which escape seasonal flooding. | FE, CE | **Absent.** No habitat present. |
| *Gymnogyps californianus*  
(California condor) | Requires vast expanses of open savannah, grasslands, and foothill chaparral in mountain ranges of moderate altitude. Deep canyons containing clefts in the rocky walls provide nesting sites. | FE, MBTA, CE | **Absent.** No nesting or foraging habitat present. |
| *Lyttia molestas*  
(Molestan blister beetle) | Inhabits the Central Valley, from Contra Costa to Kern and Tulare Counties. | --- | Unlikely. Not reported in the area for many years. Project site is located on disturbed lands. |
| *Perognathus inornatus inornatus*  
(San Joaquin pocket mouse) | Typically found in grasslands and blue oak savannahs. Requires friable soils. | --- | **Absent.** No habitat present. |
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<tr>
<th>Species</th>
<th>Habitat</th>
<th>Status</th>
<th>Potential Occurrence in project area</th>
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<tbody>
<tr>
<td><em>Rana boylii</em> (Foothill yellow-legged frog)</td>
<td>Partly shaded, shallow streams and riffles with a rocky substrate in a variety of habitats. Requires at least some cobble-sized substrate for egg-laying.</td>
<td>CSC</td>
<td>Absent. No habitat present.</td>
</tr>
<tr>
<td><em>Spea hammondii</em> (Western spadefoot)</td>
<td>Vernal pools and other wet areas within grasslands.</td>
<td>CSC</td>
<td>Absent. No habitat present.</td>
</tr>
<tr>
<td><em>Vulpes macrotus mutica</em> (San Joaquin kit fox)</td>
<td>Chenopod scrub, grasslands, sometimes forage in agricultural areas. Requires a suitable prey base.</td>
<td>FE, CT</td>
<td>Absent. Area is highly developed, open areas are disked or developed with existing park features, and no potential dens were observed during field survey. In addition, this species has not been observed within the City for many years.</td>
</tr>
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</table>

**Plants**

<table>
<thead>
<tr>
<th>Species</th>
<th>Habitat</th>
<th>Status</th>
<th>Potential Occurrence in project area</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Atriplex cordulata</em> (Heartscale)</td>
<td>Alkaline flats and scalds with sandy soils, within Chenopod scrub, grasslands, and meadows.</td>
<td>1B</td>
<td>Absent. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td><em>Atriplex erecticaulis</em> (Earlimart orache)</td>
<td>Grasslands.</td>
<td>1B</td>
<td>Absent. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td><em>Atriplex persistens</em> (Vernal pool smallscale)</td>
<td>Vernal pools.</td>
<td>1B</td>
<td>Absent. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td><em>Atriplex subtilis</em> (Subtle orache)</td>
<td>Grasslands.</td>
<td>1B</td>
<td>Absent. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td><em>Caulanthus californicus</em> (California jewel-flower)</td>
<td>Sandy soils within Chenopod scrub, pinyon and juniper woodland, and grasslands.</td>
<td>FE, CE, 1B</td>
<td>Absent. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td><em>Delphinium recurvatum</em> (Recurved larkspur)</td>
<td>Alkaline soils in Chenopod scrub, cismontane woodlands, and grasslands.</td>
<td>1B</td>
<td>Absent. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td><em>Eryngium spinosepalum</em> (Spiny-sepaled button-celery)</td>
<td>Vernal pools, depressions within grasslands.</td>
<td>1B</td>
<td>Absent. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td>Species</td>
<td>Habitat</td>
<td>Status</td>
<td>Potential Occurrence in project area</td>
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<tr>
<td><em>Fritillaria striata</em></td>
<td>Cismontane woodland, grasslands with heavy clay adobe soils.</td>
<td>CT, 1B</td>
<td>Absent. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td><em>(Striped adobe-lily)</em></td>
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<tr>
<td><em>Linanthus serrulatus</em></td>
<td>Dry slopes, often on decomposed granite in cismontane woodlands or lower montane coniferous forests.</td>
<td>1B</td>
<td>Absent. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td><em>(Madera linanthus)</em></td>
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<tr>
<td><em>Mimulus pictus</em></td>
<td>Bare ground around gooseberry bushes or around granite rock outcrops within broad-leaved upland forests or cismontane woodlands.</td>
<td>1B</td>
<td>Absent. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td><em>(Calico monkeyflower)</em></td>
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</tr>
<tr>
<td><em>Pseudobahia peirsonii</em></td>
<td>Adobe clay soils within foothill woodlands and grasslands.</td>
<td>FT, CE, 1B</td>
<td>Absent. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td><em>(San Joaquin adobe sunburst)</em></td>
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</tr>
<tr>
<td><em>Sidalcea keckii</em></td>
<td>Grassy slopes in blue oak woodlands and grasslands.</td>
<td>FE, 1B</td>
<td>Absent. No habitat present. Project site is located on disturbed lands.</td>
</tr>
<tr>
<td><em>(Keck's checkerbloom)</em></td>
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**Natural Vegetation Communities of Concern**

| Northern Claypan Vernal Pool  | Absent.               |
| Sycamore Alluvial Woodland    | Absent.               |

**Abbreviations:**

- **FE**: Federal Endangered Species
- **FT**: Federal Threatened Species
- **MBTA**: Species fully protected by the Migratory Bird Treaty Act
- **CE**: California Endangered Species
- **CT**: California State Threatened Species
- **CSC**: California Department of Fish and Game Species of Special Concern
- **1B**: Plants categorized by the California Native Plant Society as Rare, Threatened, or Endangered in California and elsewhere.
- **---**: None

**Sources:**

- California Department of Fish and Game. 2005. California Natural Diversity Data Base, California Department of Fish and Game, Sacramento, CA.

**Potential Occurrence Definitions:**

- **Present**: Species or sign of their presence observed on the project site at time of field surveys.
- **Likely**: Species not observed on the site, but may reasonably be expected to occur there on a regular basis.
- **Possible**: Species not observed on the site, but which could occur there from time to time.
- **Unlikely**: Species not observed on the site, and would not be expected to occur there except, perhaps, as a transient.
- **Absent**: Species or sign of their presence not observed on the site, and precluded from occurring there because habitat requirements not met.
REGULATORY SETTING

Threatened and Endangered Species

State and federal “endangered species” legislation has provided the CDFG and the USFWS with a mechanism for conserving and protecting plant and animal species of limited distribution and/or low or declining populations. Species listed as threatened or endangered under provisions of the state and federal endangered species acts, candidate species for such listing, state species of special concern, and some plants listed as endangered by the CNPS are collectively referred to as “species of special status”. Permits may be required from both the CDFG and USFWS if activities associated with a proposed project will result in the “take” of a listed species. “Take” is defined by the state of California as “to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill” (California Fish and Game Code, Section 86). “Take” is more broadly defined by the federal Endangered Species Act to include “harm” (16 USC, Section 1532(19), 50 CFR, Section 17.3). Furthermore, the CDFG and the USFWS are responding agencies under the California Environmental Quality Act (CEQA). Both agencies review CEQA documents in order to determine the adequacy of their treatment of endangered species issues and to make project-specific recommendations for their conservation.

Migratory Birds

Most birds are protected by state and federal law. The Migratory Bird Treaty Act (MBTA: 16 U.S.C., sec. 703, Supp. I, 1989) prohibit killing, possessing, or trading in migratory birds, except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs.

Birds of Prey

Birds of prey are protected in California under provisions of the State Fish and Game Code, Section 3503.5, 1992), which states that it is “unlawful to take, possess, or destroy any birds in the order Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto. Construction disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered “taking” by the CDFG.

California Native Plant Protection Act

In 1977 the State Legislature passed the Native Plant Protection Act (NPPA) in recognition of rare and endangered plants of the state. The NPPA gave the California Fish and Game Commission the power to designate native plants as endangered or rare, and to require permits for collecting, transporting, or selling such plants.
California Environmental Quality Act

The California Environmental Quality Act (CEQA) identifies that a species that is not listed on the federal or state endangered species list may be considered rare or endangered if the species meets certain criteria. Under CEQA public agencies must determine if a project would adversely affect a species that is not protected by FESA or CESA. Species that are not listed under FESA or CESA, but are otherwise eligible for listing (i.e. candidate, or proposed) may be protected by the local government until the opportunity to list the species arises for the responsible agency (i.e. USFWS or CDFG).

Wetlands and Other “Jurisdictional Waters”

Natural drainage channels and wetlands are considered “Waters of the United States” (hereafter referred to as “jurisdictional waters”). The filling or grading of such waters is regulated by the U.S. Army Corps of Engineers (USACE) by authority of Section 404 of the Clean Water Act (Wetland Training Institute, Inc. 1990). The extent of jurisdiction within drainage channels is defined by “ordinary high water marks” on opposing channel banks. Wetlands are habitats with soils which are intermittently or permanently saturated, or inundated. The resulting anaerobic conditions select for plant species known as hydrophytes, which show a high degree of fidelity to such soils. Wetlands are identified by the presence of hydrophytic vegetation, hydric soils (soils saturated intermittently or permanently saturated by water) and wetland hydrology according to methodologies outlined in the 1987 Corps of Engineers Wetlands Delineation Manual (USACE 1987).

All activities involving the discharge of fill into jurisdictional waters are subject to the permit requirements of the USACE. Such permits are typically issued on the condition that the applicant agrees to provide mitigation, which results in no net loss of wetland functions or values. No permit can be issued until the Regional Water Quality Control Board (RWQCB) issues a certification (or waiver of such certification) that the proposed activity will meet state water quality standards. The RWQCB is also responsible for enforcing National Pollution Discharge Elimination System (NPDES) permits, including the General Permit for Stormwater Discharges Related to Construction Activity. All projects receiving federal funding must also comply with Executive Order 11990 (Protection of Wetlands).

The CDFG has jurisdiction over the bed and bank of natural drainages according to provisions of Section 1600 et. Seq. of the California Fish and Game Code (CDFG 2002). Activities potentially disturbing these drainages are regulated by the CDFG via a Streambed Alteration Agreement. Such an agreement typically includes conditions or measures that are to be implemented for the protection of the habitat values of the drainage in question.
RESULTS

The CNPS and CNDDB queries indicated that eleven special-status animal species, twelve special-status plant species, and two natural vegetation communities of concern have been reported for the Porterville and eight surrounding quadrangles; however, no special-status animal or plant species were observed at the project site (Table 2). As illustrated in Figure 3, the observed occurrence of striped adobe-lily (Fritillaria striata) has been removed by agriculture and no longer exists. No habitat for this species was observed on the project site during the field survey.

No sign (e.g., tracks, scat, dens, prey remains, etc.) of San Joaquin kit fox presence was observed during the field survey. The project site is not identified in the Recovery Plan for Upland Species of the San Joaquin Valley, California (USFWS 1998), as an area of connectivity or linkage between meta populations of San Joaquin kit fox. Furthermore, the proposed project site is not identified as an area of critical importance to the recovery of the San Joaquin kit fox in the Valley.

There were no nests for raptors or other special-status birds observed during the field survey; however, the project site does have a number of large trees that could provide nesting for migratory bird species. Bird species observed during the field survey included numerous house sparrows (Passer domesticus), American crows (Corvus brachyrhynchos), ravens (Corvus corax) and a red-shouldered hawk (Buteo lineatus). A complete list of animals and plants observed in and around the project site is provided in Table 2.

Table 2

<table>
<thead>
<tr>
<th>Scientific Name</th>
<th>Common Name</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Plants</strong></td>
<td></td>
</tr>
<tr>
<td>Amsinckia menziesii var. intermedia</td>
<td>Fiddleneck</td>
</tr>
<tr>
<td>Avena fatua</td>
<td>Wild oat</td>
</tr>
<tr>
<td>Avena sativa</td>
<td>Cultivated oats</td>
</tr>
<tr>
<td>Brassica nigra</td>
<td>Black mustard</td>
</tr>
<tr>
<td>Bromus diandrus</td>
<td>Rippog brome</td>
</tr>
<tr>
<td>Capsella bursa-pastoris</td>
<td>Shepherd's purse</td>
</tr>
<tr>
<td>Casuarina equisetifolia</td>
<td>Australian pine</td>
</tr>
<tr>
<td>Chamaesyce maculata</td>
<td>Spotted spurge</td>
</tr>
<tr>
<td>Chamomilla suaveolens</td>
<td>Pineapple weed</td>
</tr>
<tr>
<td>Claytonia perfoliata</td>
<td>Miner's lettuce</td>
</tr>
<tr>
<td>Dichotostemma capitatum</td>
<td>Blue dicks</td>
</tr>
<tr>
<td>Eucalyptus sp.</td>
<td>Eucalyptus tree</td>
</tr>
<tr>
<td>Ficus carica</td>
<td>Fig</td>
</tr>
<tr>
<td>Galium aparine</td>
<td>Bedstraw</td>
</tr>
<tr>
<td>Hordeum murinum ssp. leporinum</td>
<td>Wild barley</td>
</tr>
<tr>
<td>Lactuca serriola</td>
<td>Prickly lettuce</td>
</tr>
<tr>
<td>Lamium amplexicaule</td>
<td>Henbit</td>
</tr>
<tr>
<td>Lepidium nitidum</td>
<td>Pepper grass</td>
</tr>
<tr>
<td>Malva parviflora</td>
<td>Cheeseweed</td>
</tr>
</tbody>
</table>

City of Porterville

Murry Park Master Plan Update

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12
Medicago polymorpha California burclover
Morus alba White mulberry tree
Nerium oleander Oleander
Phacelia sp. Phacelia
Phoenix dactylifera Date palms
Pistacia chinensis Chinese pistachio
Podocarpus sp. Podocarpus
Prunus armeniaca Apricot tree
Pyracantha augustifolia Pyracantha bush
Quercus lobata Valley oak tree
Raphanus sativus Cultivated radish
Rumex crispus Curly dock
Schinus molle Pepper tree
Seguia sempervirens Coast redwood
Silybum marianum Milk thistle
Sisymbrium irio London rocket
Solanum nigrum Black nightshade
Sonchus oleraceus Common sowthistle
Sorghum halepense Johnson grass
Stellaria media Chickweed
Triticale tilioides Prettyface
Urtica dioica ssp. holosericea Stinging nettle
Urtica urens Burning nettle
Vulpia myuros Vulpia
Erodium cicutarium red-stemmed filaree
Erodium moschatum white-stemmed filaree
Poa annua Annual bluegrass
Sambucus mexicana Blue elderberry
Sisymbrium irio London rocket

Animals
Aphelocoma coerulescens Scrub jay
Bombycilla cedrorum Cedar waxwing
Buteo lineatus Red-shoudered hawk
Cathartes aura Turkey vulture
Corvus brachyrhynchos American crow
Corvus corax Raven
Passer domesticus House sparrow
Thomomys bottae Pocket gopher
Uta stansburiana Side-blotched lizard
Zonotrichia leucophrys White-crowned sparrow

Source: Quad Knopf, Inc. reconnaissance level field survey conducted on March 16, 2005.

The NWI Map query illustrated two wetland areas located within the project site: Palustrine Forested Seasonally Flooded (PFOC) and Palustrine Unconsolidated Bottom Permanently Flooded Excavated (PUBHx) (Figure 4)\(^1\). These two areas are identified as the duck pond and the outlet channel. A pipe coming from the golf course delivers the

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\(^1\) The NWI wetland codes, as modified, are based on the National Wetlands Classification Standards from Cowardin, L.M., V. Carter, F. Golet, and E. LaRoe. 1979. *Classification of Wetlands and Deepwater Habitats of the United States*. U.S. Fish and Wildlife Service (Cowardin). While both USFWS and United States Army Corps of Engineers use the Cowardin classification system, not all areas illustrated on the NWI map would qualify or meet the 1987 United States Army Corps of Engineers’ criteria for determining “waters of the United States”.

City of Porterville

*Murry Park Master Plan Update*

*June 2005*
inlet flows to the duck pond. Furthermore, the pond appears to have been excavated and routinely maintained (Photograph 3).

Three blue elderberry shrubs were observed at the site (Photoplate 3). Blue elderberry is the host plant and exclusive habitat for the federal threatened valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*). The locations of all blue elderberry shrubs with at least one stem measuring one-inch or greater at ground level were located using a GPS receiver. These locations were mapped and are illustrated in Figure 5. In addition, a number of mature valley oak (*Quercus lobata*) trees were also observed at the site.

**IMPACTS**

Because the proposed project site is in an urbanized area surrounded by residential land and portions have been routinely disked for years, the project site provides limited opportunities for special-status species to utilize the property. Therefore, the potential for the project to impact special-status species is likely very low. That being said, there is some potential for the project to impact habitat for the valley elderberry longhorn beetle. In addition, avian predators (e.g., hawks, kestrels, and kites) are known to occur in the area from time to time; some of these could potentially nest in trees that are located in the surrounding area. Finally, Porter Slough will not be impacted by this project and Pioneer Ditch, although not considered as jurisdictional, may be subject Section 106 of the State Historic Preservation Act and potentially the National Register of Historic Places (NRHP) should impacts occur to this ditch. However, as proposed, no impacts to Pioneer Ditch are anticipated.

**Valley Elderberry Longhorn Beetle**

Although no Valley elderberry long horn beetles (VELB) were observed and no exit holes were present on the blue elderberry shrubs, the species is known to exist in the vicinity of the project site and other areas in and around Porterville. The CNDDB review indicated VELB presence approximately 2 miles east of the project site. Therefore, it is reasonable to conclude that there is potential or VELB to exist on the project site in the future.

**Avian Predators and other Resident or Migratory Birds**

No nests for any avian predators or other resident or migratory bird species were observed on the project site or surrounding vicinity during the field survey; however, there are numerous large trees on the project site and on other lands nearby. Therefore, it is reasonable to conclude that there is a potential for avian predators such as Swainson’s hawks, red-tailed hawks, hawks, red-shouldered hawks, American kestrels, and white-tailed kites to nest on or nearby the project sties. In addition, several other resident or migratory birds such as Lawrence’s goldfinch, loggerhead shrike, and Nuttall’s woodpecker could potentially nest on the project site or surrounding area. If any such species are nesting on the project site or adjacent land, they could be impacted during construction activities.

*City of Porterville*  
*June 2005*  
*Murray Park Master Plan Update*
Valley Oak Trees

Several mature valley oak (*Quercus lobata*) trees were observed on the parcel adjacent to the existing park site. Valley oaks provide habitat for native wildlife including a wide variety of birds, amphibians, mammals, and invertebrates. The large canopies of these trees also provide refuge from the hot, valley summers. Valley oak numbers have been declining in California due to development, harvesting, agricultural conversions, and other human disturbances. Some of these trees will need to be removed during project construction to accommodate facilities installations.

RECOMMENDATIONS AND MITIGATION MEASURES

Valley Elderberry Longhorn Beetle

The USFWS considers that complete avoidance (i.e., no adverse effects) may be assumed when a 100-foot (or wider) buffer zone is established and maintained around all elderberry plants containing stems measuring one-inch or greater in diameter at ground level. If a 100-foot buffer zone cannot be maintained around all elderberry plants with at least one stem 1-inch or greater in diameter at ground level, the USFWS must be contacted for guidance on how to proceed. In certain instances the USFWS may approve encroachment on the 100-foot buffer zone, provided a minimum setback of at least 20 feet from the dripline of each elderberry plant can be maintained. In addition, the USFWS will require written verification of protective measures, restoration and maintenance of the 100-foot buffer zone, and other requirements in order to approve the encroachment. These requirements and other important information regarding protection of the valley elderberry longhorn beetle can be found in the *Conservation Guidelines for the Valley Elderberry Longhorn Beetle* (USFWS 1999) (Attachment C). These guidelines and the mitigation measures contained therein must be followed for this project.

Avian Predators and other Resident or Migratory Birds

A pre-construction nest survey for avian predators and other resident and migratory birds should be conducted prior to project construction if any heavy equipment operations are to occur during the breeding season (February 15 through September 15). The survey should include all large trees on the project site and all large trees on adjacent lands. If any occupied nests are observed, heavy equipment operations should be minimized or avoided until the young have fledged and nesting has ceased. If this is not feasible, the USFWS (and CDFG, if State-listed species, e.g., Swainson’s hawk are involved) would need to be contacted for guidance on how to proceed. The USFWS would prescribe specific mitigation dependant upon the particular species involved and the manner in which heavy equipment operations are to be conducted.
Valley Oak Trees

The project should retain as many of the valley oaks on site as is feasible. This is especially true for the larger trees. Construction activities within the dripline of these trees should be avoided or minimized. The following measures are recommended to minimize impacts to valley oaks during project construction. These measures are adapted from the Standard Specifications for Building Around Valley Oaks, City of Visalia Urban Forestry Guidelines (2004).

- A protection zone around all Valley oaks should be drawn to scale on plans; this includes accurately locating the trunk and depicting the crown dripline. Earthwork is discouraged around the crown dripline.

- All utility locations should be included in all development plans involving valley oaks.

- Protective tree fencing should be added prior to any earthwork, at least 3 ft. minimum in height, installed at outer most end of the dripline surrounding the trunk of a valley oak. The temporary fencing should be safety orange color, plastic webbing, temporary construction type fencing (snow fencing). Steel T-bar stakes should support the fencing. This fence should remain until construction is complete. Nothing should be stored inside the protective fence.

- The addition of fill within the crown dripline of a valley oak should be limited to a maximum of 6 inches and no fill should be placed within 10 feet of the trunk. The fill should be of a high quality soil and clean of any debris.

- Trenching within the crown dripline of a valley oak should be avoided. If utilities must be installed within the crown dripline it is recommended that utilities be installed via directional boring at a minimum depth of 36". If this is not feasible, care should be taken to avoid damaging the root system. Larger supportive roots should not be cut. If possible, there should be no soil compaction, paving or structures placed within the crown dripline of a valley oak.

- Valley oak trees should be irrigated before construction starts and through construction during the summer (June through October). This will help ensure that the tree can better withstand the stresses of construction. Irrigation is extremely important during spring and summer when the environment around a mature valley oak is changed by construction. Irrigations should water all of the area under the crown dripline.

- Permanent irrigation systems should be bubbler, drip, flood or sub-surface only. Sprinkler systems should not be used within 6 ft. of the tree.

- Landscaping under valley oaks should consist of drought tolerant plants or California native plants that are drought tolerant in nature. There should be no
landscaping within 6 ft. of the trunk. Chipped bark and mulch or similar materials are suitable for this area. No lawns should be planted within 10 ft. of the trunk, and it is recommended that there be no lawn placed within the crown dripline.

DETERMINATION

Valley Elderberry Longhorn Beetle: NOT LIKELY TO ADVERSELY AFFECT. The three elderberry shrubs identified on the project site shall be incorporated into site design and the mitigation measures specified in Attachment C will be implemented for this project. If these measures are implemented, the project is “not likely to adversely affect” the valley elderberry longhorn beetle of its habitat.

Avian Predators and other Resident or Migratory Birds: NOT LIKELY TO ADVERSELY AFFECT. Although no nesting birds were observed on the project site at the time of the field survey, the potential for avian predators and other resident or migratory birds to nest on the project site or in large trees on adjacent lands does exist. Therefore mitigation measures have been prescribed and are discussed above. If these measures are implemented, the project is “not likely to adversely affect” any avian predators or other resident or migratory bird species.
LITERATURE CITED

California Department of Fish and Game. 2004. California Natural Diversity Data Base, California Department of Fish and Game, Sacramento, CA.


Photograph 1: Murry Park, looking east along Putnam Avenue.

Photograph 2: Murry Park, looking west along Putnam Avenue.

Photograph 3: Existing Murry Park Pond.
Photograph 4: Existing restrooms in Murry Park.

Photograph 5: Pioneer Ditch located within the proposed project site

Photograph 6: Existing Murry Park playground.
Photograph 7: Elderberry within proposed project area.

Photograph 8: Looking southwest at the proposed parcel.

Photograph 9: From Corona Drive looking west at the proposed parcel.
ATTACHMENT B

U.S. FISH AND WILDLIFE SERVICE LIST OF SPECIAL-STATUS SPECIES
Federal Endangered and Threatened Species
that Occur in or may be Affected by Projects in the
PORTERVILLE (310D)
U.S.G.S. 7 1/2 Minute Quad

Database Last Updated: May 3, 2005
Document Number: 050505105828

Listed Species

Invertebrates

Branchinecta lynchi - vernal pool fairy shrimp (T)

Desmocerus californicus dimorphus - valley elderberry longhorn beetle (T)

Fish

Hypomesus transpacificus - delta smelt (T)

Amphibians

Rana aurora draytonii - California red-legged frog (T)

Reptiles

Gambelia (=Crotaphytus) sila - blunt-nosed leopard lizard (E)

Thamnophis gigas - giant garter snake (T)

Birds

Haliaeetus leucocephalus - bald eagle (T)

Mammals

Dipodomys nitratoides nitratoides - Tipton kangaroo rat (E)

Vulpes macrotis mutica - San Joaquin kit fox (E)

Plants

Pseudobahia peirsonii - San Joaquin adobe sunburst (T)
Species of Concern

**Invertebrates**

*Cicindela tranquabarica* ssp. - San Joaquin tiger beetle (SC)

*Linderiella occidentalis* - California linderiella fairy shrimp (SC)

*Lytta molesta* - molestan blister beetle (SC)

**Fish**

*Lampetra hubbsi* - Kern brook lamprey (SC)

*Pogonichthys macrolepidotus* - Sacramento splittail (SC)

*Spirinchus thaleichthys* - longfin smelt (SC)

**Amphibians**

*Rana boylii* - foothill yellow-legged frog (SC)

*Spea hammondii (was Scaphiopus h.)* - western spadefoot toad (SC)

**Reptiles**

*Anniella pulchra pulchra* - silvery legless lizard (SC)

*Clemmys marmorata marmorata* - northwestern pond turtle (SC)

*Clemmys marmorata pallida* - southwestern pond turtle (SC)

*Masticophis flagellum ruddocki* - San Joaquin coachwhip (=whipsnake) (SC)

*Phrynosoma coronatum frontale* - California horned lizard (SC)

**Birds**

*Agelaius tricolor* - tricolored blackbird (SC)

*Athene cunicularia hypugaea* - western burrowing owl (SC)

*Branta canadensis leucopareia* - Aleutian Canada goose (D)

*Buteo regalis* - ferruginous hawk (SC)

*Buteo Swainsoni* - Swainson's hawk (CA)

*Calypte costae* - Costa's hummingbird (SC)
Carduelis lawrencei - Lawrence's goldfinch (SC)
Chaetura vauxi - Vaux's swift (SC)
Cypseloides niger - black swift (SC)
Elanus leucurus - white-tailed (=black shouldered) kite (SC)
Empidonax traillii brewsteri - little willow flycatcher (CA)
Falco peregrinus anatum - American peregrine falcon (D)
Grus canadensis tabida - greater sandhill crane (CA)
Lanius ludovicianus - loggerhead shrike (SC)
Melanerpes lewisi - Lewis' woodpecker (SC)
Numenius americanus - long-billed curlew (SC)
Picoides nuttallii - Nuttall's woodpecker (SLC)
Plegadis chihi - white-faced ibis (SC)
Selasphorus rufus - rufous hummingbird (SC)

Mammals

Ammospermophilus nelsoni - San Joaquin (=Nelson's) antelope squirrel (CA)
Corynorhinus (=Plectotus) townsendii townsendii - Pacific western big-eared bat (SC)
Euderma maculatum - spotted bat (SC)
Eumops perotis californicus - greater western mastiff-bat (SC)
Myotis ciliolabrum - small-footed myotis bat (SC)
Myotis thysanodes - fringed myotis bat (SC)
Myotis volans - long-legged myotis bat (SC)
Myotis yumanensis - Yuma myotis bat (SC)
Onychomys torridus ramona - Southern grasshopper mouse (SC)
Onychomys torridus tularensis - Tulare grasshopper mouse (SC)
Perognathus inomatus - San Joaquin pocket mouse (SC)
**Plants**

*Fritillaria striata* - Greenhorn adobe-lily (CA)

*Mimulus pictus* - calico monkeyflower (SC)

**Key:**

- (E) *Endangered* - Listed (in the Federal Register) as being in danger of extinction.
- (T) *Threatened* - Listed as likely to become endangered within the foreseeable future.
- (P) *Proposed* - Officially proposed (in the Federal Register) for listing as endangered or threatened.
- (NMFS) Species under the Jurisdiction of the National Marine Fisheries Service. Consult with them directly about these species.
- *Critical Habitat* - Area essential to the conservation of a species.
- (FX) *Proposed Critical Habitat* - The species is already listed. Critical habitat is being proposed for it.
- (C) *Candidate* - Candidate to become a proposed species.
- (CA) Listed by the State of California but not by the Fish & Wildlife Service.
- (D) *Delisted* - Species will be monitored for 5 years.
- (SC) *Species of Concern/SLC* - Species of Local Concern - Other species of concern to the Sacramento Fish & Wildlife Office.
- (X) *Critical Habitat designated for this species*

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**Important Information About Your Species List**

**How We Make Species Lists**

We store information about endangered and threatened species lists by U.S. Geological Survey 7½ minute quads. The United States is divided into these quads, which are about the size of San Francisco.

The animals on your species list are ones that occur within, or may be affected by projects within, the quads covered by the list.

- Fish and other aquatic species appear on your list if they are in the same watershed as your quad or if water use in your quad might affect them.

- Amphibians will be on the list for a quad or county if pesticides applied in that area may be carried to their habitat by air currents.

- Birds are shown regardless of whether they are resident or migratory. Relevant birds on the county list should be considered regard-less of whether they appear on a quad list.

**Plants**

Any plants on your list are ones that have actually been observed in the quad or quads covered by the list. Plants may exist in an area without ever having been detected there. You can find out what's in the nine surrounding quads through the California Native Plant Society's online *Inventory of Rare and Endangered Plants.*
Surveying

Some of the species on your list may not be affected by your project. A trained biologist or botanist, familiar with the habitat requirements of the species on your list, should determine whether they or habitats suitable for them may be affected by your project. We recommend that your surveys include any proposed and candidate species on your list.

For plant surveys, we recommend using the Guidelines for Conducting and Reporting Botanical Inventories. The results of your surveys should be published in any environmental documents prepared for your project.

State-Listed Species

If a species has been listed as threatened or endangered by the State of California, but not by us nor by the National Marine Fisheries Service, it will appear on your list as a Species of Concern. However you should contact the California Department of Fish and Game Wildlife and Habitat Data Analysis Branch for official information about these species.

Your Responsibilities Under the Endangered Species Act

All plants and animals identified as listed above are fully protected under the Endangered Species Act of 1973, as amended. Section 9 of the Act and its implementing regulations prohibit the take of a federally listed wildlife species. Take is defined by the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" any such animal.

Take may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or shelter (50 CFR §17.3).

Take incidental to an otherwise lawful activity may be authorized by one of two procedures:

- If a Federal agency is involved with the permitting, funding, or carrying out of a project that may result in take, then that agency must engage in a formal consultation with the Service.

  During formal consultation, the Federal agency, the applicant and the Service work together to avoid or minimize the impact on listed species and their habitat. Such consultation would result in a biological opinion by the Service addressing the anticipated effect of the project on listed and proposed species. The opinion may authorize a limited level of incidental take.

- If no Federal agency is involved with the project, and federally listed species may be taken as part of the project, then you, the applicant, should apply for an incidental take permit. The Service may issue such a permit if you submit a satisfactory conservation plan for the species that would be affected by your project.

  Should your survey determine that federally listed or proposed species occur in the area and are likely to be affected by the project, we recommend that you work with this office and the California Department of Fish and Game to develop a plan that minimizes the project's direct and indirect impacts to listed species and compensates for project-related loss of habitat. You should include the plan in any environmental documents you file.
Critical Habitat

When a species is listed as endangered or threatened, areas of habitat considered essential to its conservation may be designated as critical habitat. These areas may require special management considerations or protection. They provide needed space for growth and normal behavior; food, water, air, light, other nutritional or physiological requirements; cover or shelter; and sites for breeding, reproduction, rearing of offspring, germination or seed dispersal.

Although critical habitat may be designated on private or State lands, activities on these lands are not restricted unless there is Federal involvement in the activities or direct harm to listed wildlife.

If any species has proposed or designated critical habitat within a quad, there will be a separate line for this on the species list. Boundary descriptions of the critical habitat may be found in the Federal Register. The information is also reprinted in the Code of Federal Regulations (50 CFR 17.95). See our critical habitat page for maps.

Candidate Species

We recommend that you address impacts to candidate species. We put plants and animals on our candidate list when we have enough scientific information to eventually propose them for listing as threatened or endangered. By considering these species early in your planning process you may be able to avoid the problems that could develop if one of these candidates was listed before the end of your project.

Species of Concern

Your list may contain a section called Species of Concern. This is an informal term that refers to those species the Sacramento Fish and Wildlife Office believes might be in need of concentrated conservation actions. Such conservation actions vary depending on the health of the populations and degree and types of threats. At one extreme, there may only need to be periodic monitoring of populations and threats to the species and its habitat. At the other extreme, a species may need to be listed as a Federal threatened or endangered species. Species of concern receive no legal protection and the use of the term does not necessarily mean that the species will eventually be proposed for listing as a threatened or endangered species.

Wetlands

If your project will impact wetlands, riparian habitat, or other jurisdictional waters as defined by section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act, you will need to obtain a permit from the U.S. Army Corps of Engineers. Impacts to wetland habitats require site specific mitigation and monitoring. For questions regarding wetlands, please contact Mark Littlefield of this office at (916) 414-6580.

Updates

Our database is constantly updated as species are proposed, listed and delisted. If you address proposed, candidate and special concern species in your planning, this should not be a problem. However, we recommend that you get an updated list every 90 days. That would be August 03, 2005.
ATTACHMENT C

CONSERVATION GUIDELINES FOR THE VALLEY ELDERBERRY LONGHORN BEETLE
United States Department of the Interior

FISH AND WILDLIFE SERVICE Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825

Conservation Guidelines for the
Valley Elderberry Longhorn Beetle
9 July 1999

The following guidelines have been issued by the U.S. Fish and Wildlife Service (Service) to assist Federal agencies and non-federal project applicants needing incidental take authorization through a section 7 consultation or a section 10(a)(1)(B) permit in developing measures to avoid and minimize adverse effects on the valley elderberry longhorn beetle. The Service will revise these guidelines as needed in the future. The most recently issued version of these guidelines should be used in developing all projects and habitat restoration plans. The survey and monitoring procedures described below are designed to avoid any adverse effects to the valley elderberry longhorn beetle. Thus a recovery permit is not needed to survey for the beetle or its habitat or to monitor conservation areas. If you are interested in a recovery permit for research purposes please call the Service's Regional Office at (503) 231-2063.

Background Information

The valley elderberry longhorn beetle (Desmocerus californicus dimorphus), was listed as a threatened species on August 8, 1980 (Federal Register 45: 52803-52807). This animal is fully protected under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The valley elderberry longhorn beetle (beetle) is completely dependent on its host plant, elderberry (Sambucus species), which is a common component of the remaining riparian forests and adjacent upland habitats of California's Central Valley. Use of the elderberry by the beetle, a wood borer, is rarely apparent. Frequently, the only exterior evidence of the elderberry’s use by the beetle is an exit hole created by the larva just prior to the pupal stage. The life cycle takes one or two years to complete. The animal spends most of its life in the larval stage, living within the stems of an elderberry plant. Adult emergence is from late March through June, about the same time the elderberry produces flowers. The adult stage is short-lived. Further information on the life history, ecology, behavior, and distribution of the beetle can be found in a report by Barr (1991) and the recovery plan for the beetle (USFWS 1984).

Surveys

Proposed project sites within the range of the valley elderberry longhorn beetle should be surveyed for the presence of the beetle and its elderberry host plant by a qualified biologist. The beetle’s range extends throughout California’s Central Valley and associated foothills from about the 3,000-foot elevation contour on the east and the watershed of the
Central Valley on the west (Figure 1). All or portions of 31 counties are included: Alameda, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Kern, Kings, Lake, Madera, Mariposa, Merced, Napa, Nevada, Placer, Sacramento, San Benito, San Joaquin, San Luis Obispo, Shasta, Solano, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Yolo, Yuba.

If elderberry plants with one or more stems measuring 1.0 inch or greater in diameter at ground level occur on or adjacent to the proposed project site, or are otherwise located where they may be directly or indirectly affected by the proposed action, minimization measures which include planting replacement habitat (conservation planting) are required (Table 1).

All elderberry shrubs with one or more stems measuring 1.0 inch or greater in diameter at ground level that occur on or adjacent to a proposed project site must be thoroughly searched for beetle exit holes (external evidence of beetle presence). In addition, all elderberry stems one inch or greater in diameter at ground level must be tallied by diameter size class (Table 1). As outlined in Table 1, the numbers of elderberry seedlings/cuttings and associated riparian native trees/shrubs to be planted as replacement habitat are determined by stem size class of affected elderberry shrubs, presence or absence of exit holes, and whether a proposed project lies in a riparian or non-riparian area.

Elderberry plants with no stems measuring 1.0 inch or greater in diameter at ground level are unlikely to be habitat for the beetle because of their small size and/or immaturity. Therefore, no minimization measures are required for removal of elderberry plants with no stems measuring 1.0 inch or greater in diameter at ground level with no exit holes. Surveys are valid for a period of two years.

Avoid and Protect Habitat Whenever Possible

Project sites that do not contain beetle habitat are preferred. If suitable habitat for the beetle occurs on the project site, or within close proximity where beetles will be affected by the project, these areas must be designated as avoidance areas and must be protected from disturbance during the construction and operation of the project. When possible, projects should be designed such that avoidance areas are connected with adjacent habitat to prevent fragmentation and isolation of beetle populations. Any beetle habitat that cannot be avoided as described below should be considered impacted and appropriate minimization measures should be proposed as described below.

Avoidance: Establishment and Maintenance of a Buffer Zone

Complete avoidance (i.e., no adverse effects) may be assumed when a 100-foot (or wider) buffer is established and maintained around elderberry plants containing stems measuring 1.0 inch or greater in diameter at ground level. Firebreaks may not be included in the buffer zone. In buffer areas construction-related disturbance should be minimized, and any damaged area should be promptly restored following construction. The Service must be consulted before any disturbances within the buffer area are considered. In addition, the Service must be provided with a map identifying the avoidance area and written details describing avoidance measures.
Protective Measures

1. Fence and flag all areas to be avoided during construction activities. In areas where encroachment on the 100-foot buffer has been approved by the Service, provide a minimum setback of at least 20 feet from the dripline of each elderberry plant.

2. Brief contractors on the need to avoid damaging the elderberry plants and the possible penalties for not complying with these requirements.

3. Erect signs every 50 feet along the edge of the avoidance area with the following information: "This area is habitat of the valley elderberry longhorn beetle, a threatened species, and must not be disturbed. This species is protected by the Endangered Species Act of 1973, as amended. Violators are subject to prosecution, fines, and imprisonment." The signs should be clearly readable from a distance of 20 feet, and must be maintained for the duration of construction.

4. Instruct work crews about the status of the beetle and the need to protect its elderberry host plant.

Restoration and Maintenance

1. Restore any damage done to the buffer area (area within 100 feet of elderberry plants) during construction. Provide erosion control and re-vegetate with appropriate native plants.

2. Buffer areas must continue to be protected after construction from adverse effects of the project. Measures such as fencing, signs, weeding, and trash removal are usually appropriate.

3. No insecticides, herbicides, fertilizers, or other chemicals that might harm the beetle or its host plant should be used in the buffer areas, or within 100 feet of any elderberry plant with one or more stems measuring 1.0 inch or greater in diameter at ground level.

4. The applicant must provide a written description of how the buffer areas are to be restored, protected, and maintained after construction is completed.

5. Mowing of grasses/ground cover may occur from July through April to reduce fire hazard. No mowing should occur within five (5) feet of elderberry plant stems. Mowing must be done in a manner that avoids damaging plants (e.g., stripping away bark through careless use of mowing/trimming equipment).

Transplant Elderberry Plants That Cannot Be Avoided

Elderberry plants must be transplanted if they cannot be avoided by the proposed project. All elderberry plants with one or more stems measuring 1.0 inch or greater in diameter at ground level must be transplanted to a conservation area (see below). At the Service's discretion, a plant that is unlikely to survive transplantation because of poor condition or
location, or a plant that would be extremely difficult to move because of access problems, may be exempted from transplantation. In cases where transplantation is not possible the minimization ratios in Table 1 may be increased to offset the additional habitat loss.

Trimming of elderberry plants (e.g., pruning along roadways, bike paths, or trails) with one or more stems 1.0 inch or greater in diameter at ground level, may result in take of beetles. Therefore, trimming is subject to appropriate minimization measures as outlined in Table 1.

1. Monitor. A qualified biologist (monitor) must be on-site for the duration of the transplanting of the elderberry plants to insure that no unauthorized take of the valley elderberry longhorn beetle occurs. If unauthorized take occurs, the monitor must have the authority to stop work until corrective measures have been completed. The monitor must immediately report any unauthorized take of the beetle or its habitat to the Service and to the California Department of Fish and Game.

2. Timing. Transplant elderberry plants when the plants are dormant, approximately November through the first two weeks in February, after they have lost their leaves. Transplanting during the non-growing season will reduce shock to the plant and increase transplantation success.

3. Transplanting Procedure.
   a. Cut the plant back 3 to 6 feet from the ground or to 50 percent of its height (whichever is taller) by removing branches and stems above this height. The trunk and all stems measuring 1.0 inch or greater in diameter at ground level should be replanted. Any leaves remaining on the plant should be removed.
   b. Excavate a hole of adequate size to receive the transplant.
   c. Excavate the plant using a Vermeer spade, backhoe, front end loader, or other suitable equipment, taking as much of the root ball as possible, and replant immediately at the conservation area. Move the plant only by the root ball. If the plant is to be moved and transplanted off site, secure the root ball with wire and wrap it with burlap. Dampen the burlap with water, as necessary, to keep the root ball wet. Do not let the roots dry out. Care should be taken to ensure that the soil is not dislodged from around the roots of the transplant. If the site receiving the transplant does not have adequate soil moisture, pre-wet the soil a day or two before transplantation.
   d. The planting area must be at least 1,800 square feet for each elderberry transplant. The root ball should be planted so that its top is level with the existing ground. Compact the soil sufficiently so that settlement does not occur. As many as five (5) additional elderberry plantings (cuttings or seedlings) and up to five (5) associated native species plantings (see below) may also be planted within the 1,800 square foot area with the transplant. The transplant and each new planting should have its own
watering basin measuring at least three (3) feet in diameter. Watering basins should have a continuous berm measuring approximately eight (8) inches wide at the base and six (6) inches high.

c. Saturate the soil with water. Do not use fertilizers or other supplements or paint the tips of stems with pruning substances, as the effects of these compounds on the beetle are unknown.

f. Monitor to ascertain if additional watering is necessary. If the soil is sandy and well-drained, plants may need to be watered weekly or twice monthly. If the soil is clayey and poorly-drained, it may not be necessary to water after the initial saturation. However, most transplants require watering through the first summer. A drip watering system and timer is ideal. However, in situations where this is not possible, a water truck or other apparatus may be used.

Plant Additional Seedlings or Cuttings

Each elderberry stem measuring 1.0 inch or greater in diameter at ground level that is adversely affected (i.e., transplanted or destroyed) must be replaced, in the conservation area, with elderberry seedlings or cuttings at a ratio ranging from 1:1 to 8:1 (new plantings to affected stems). Minimization ratios are listed and explained in Table 1. Stock of either seedlings or cuttings should be obtained from local sources. Cuttings may be obtained from the plants to be transplanted if the project site is in the vicinity of the conservation area. If the Service determines that the elderberry plants on the proposed project site are unsuitable candidates for transplanting, the Service may allow the applicant to plant seedlings or cuttings at higher than the stated ratios in Table 1 for each elderberry plant that cannot be transplanted.

Plant Associated Native Species

Studies have found that the beetle is more abundant in dense native plant communities with a mature overstory and a mixed understory. Therefore, a mix of native plants associated with the elderberry plants at the project site or similar sites will be planted at ratios ranging from 1:1 to 2:1 [native tree/plant species to each elderberry seedling or cutting (see Table 1)]. These native plantings must be monitored with the same survival criteria used for the elderberry seedlings (see below). Stock of saplings, cuttings, and seedlings should be obtained from local sources. If the parent stock is obtained from a distance greater than one mile from the conservation area, approval by the Service of the native plant donor sites must be obtained prior to initiation of the revegetation work. Planting or seeding the conservation area with native herbaceous species is encouraged. Establishing native grasses and forbs may discourage unwanted non-native species from becoming established or persisting at the conservation area. Only stock from local sources should be used.

Examples

Example 1
The project will adversely affect beetle habitat on a vacant lot on the land side of a river levee. This levee now separates beetle habitat on the vacant lot from extant Great Valley Mixed Riparian Forest (Holland 1986) adjacent to the river. However,
it is clear that the beetle habitat located on the vacant lot was part of a more extensive mixed riparian forest ecosystem extending farther from the river's edge prior to agricultural development and levee construction. Therefore, the beetle habitat on site is considered riparian. A total of two elderberry plants with at least one stem measuring 1.0 inch or greater in diameter at ground level will be affected by the proposed action. The two plants have a total of 15 stems measuring over 1.0 inch. No exit holes were found on either plant. Ten of the stems are between 1.0 and 3.0 inches in diameter and five of the stems are greater than 5.0 inches in diameter. The conservation area is suited for riparian forest habitat. Associated natives adjacent to the conservation area are box elder (Acer negundo californica), walnut (Juglans californica var. hindsii), sycamore (Platanus racemosa), cottonwood (Populus fremontii), willow (Salix gooddingii and S. laevigata), white alder (Alnus rhombifolia), ash (Fraxinus latifolia), button willow (Cephalanthus occidentalis), and wild grape (Vitis californica).

Minimization (based on ratios in Table 1):

- Transplant the two elderberry plants that will be affected to the conservation area.

- Plant 40 elderberry rooted cuttings (10 affected stems compensated at 2:1 ratio and 5 affected stems compensated at 4:1 ratio, cuttings planted:stems affected)

- Plant 40 associated native species (ratio of associated natives to elderberry
  Plantings is 1:1 in areas with no exit holes):
    5 saplings each of box elder, sycamore, and cottonwood 5
    willow seedlings
    5 white alder seedlings
    5 saplings each of walnut and ash 3
    California button willow
    2 wild grape vines
    Total: 40 associated native species

- Total area required is a minimum of 1,800 sq. ft. for one to five elderberry
  seedlings and up to 5 associated natives. Since, a total of 80 plants must be
  planted (40 elderberries and 40 associated natives), a total of 0.33 acre (14,400
  square feet) will be required for conservation plantings. The conservation area
  will be seeded and planted with native grasses and forbs, and closely monitored
  and maintained throughout the monitoring period.

Example 2
The project will adversely affect beetle habitat in Blue Oak Woodland (Holland 1986). One elderberry plant with at least one stem measuring 1.0 inch or greater in diameter at ground level will be affected by the proposed action. The plant has a total of 10 stems measuring over 1.0 inch. Exit holes were found on the plant. Five of the stems are between 1.0 and 3.0 inches in diameter and five of the stems are between 3.0 and 5.0 inches in diameter. The conservation area is suited for elderberry savanna (non-riparian habitat). Associated natives adjacent to the conservation area are willow (Salix species), blue oak (Quercus douglasii), interior live oak (Q. wislizenii), sycamore, poison oak (Toxicodendron diversilobum), and wild grape.
Minimization (based on ratios in Table 1):

- Transplant the one elderberry plant that will be affected to the conservation area.

- Plant 30 elderberry seedlings (5 affected stems compensated at 2:1 ratio and 5 affected stems compensated at 4:1 ratio, cuttings planted:stems affected)

- Plant 60 associated native species (ratio of associated natives to elderberry plantings is 2:1 in areas with exit holes):
  
  20 saplings of blue oak, 20 saplings of sycamore, and 20 saplings of willow, and seed and plant with a mixture of native grasses and forbs

- Total area required is a minimum of 1,800 sq. ft. for one to five elderberry seedlings and up to 5 associated natives. Since, a total of 90 plants must be planted (30 elderberries and 60 associated natives), a total of 0.37 acre (16,200 square feet) will be required for conservation plantings. The conservation area will be seeded and planted with native grasses and forbs, and closely monitored and maintained throughout the monitoring period.

Conservation Area—Provide Habitat for the Beetle in Perpetuity

The conservation area is distinct from the avoidance area (though the two may adjoin), and serves to receive and protect the transplanted elderberry plants and the elderberry and other native plantings. The Service may accept proposals for off-site conservation areas where appropriate.

1. Size. The conservation area must provide at least 1,800 square feet for each transplanted elderberry plant. As many as 10 conservation plantings (i.e., elderberry cuttings or seedlings and/or associated native plants) may be planted within the 1800 square foot area with each transplanted elderberry. An additional 1,800 square feet shall be provided for every additional 10 conservation plants. Each planting should have its own watering basin measuring approximately three feet in diameter. Watering basins should be constructed with a continuous berm measuring approximately eight inches wide at the base and six inches high.

The planting density specified above is primarily for riparian forest habitats or other habitats with naturally dense cover. If the conservation area is an open habitat (i.e., elderberry savanna, oak woodland) more area may be needed for the required plantings. Contact the Service for assistance if the above planting recommendations are not appropriate for the proposed conservation area.

No area to be maintained as a firebreak may be counted as conservation area. Like the avoidance area, the conservation area should connect with adjacent habitat wherever possible, to prevent isolation of beetle populations.

Depending on adjacent land use, a buffer area may also be needed between the
conservation area and the adjacent lands. For example, herbicides and pesticides are often used on orchards or vineyards. These chemicals may drift or runoff onto the conservation area if an adequate buffer area is not provided.

2. Long-Term Protection. The conservation area must be protected in perpetuity as habitat for the valley elderberry longhorn beetle. A conservation easement or deed restrictions to protect the conservation area must be arranged. Conservation areas may be transferred to a resource agency or appropriate private organization for long-term management. The Service must be provided with a map and written details identifying the conservation area; and the applicant must receive approval from the Service that the conservation area is acceptable prior to initiating the conservation program. A true, recorded copy of the deed transfer, conservation easement, or deed restrictions protecting the conservation area in perpetuity must be provided to the Service before project implementation.

Adequate funds must be provided to ensure that the conservation area is managed in perpetuity. The applicant must dedicate an endowment fund for this purpose, and designate the party or entity that will be responsible for long-term management of the conservation area. The Service must be provided with written documentation that funding and management of the conservation area (items 3-8 above) will be provided in perpetuity.

3. Weed Control. Weeds and other plants that are not native to the conservation area must be removed at least once a year, or at the discretion of the Service and the California Department of Fish and Game. Mechanical means should be used; herbicides are prohibited unless approved by the Service.

4. Pesticide and Toxicant Control. Measures must be taken to insure that no pesticides, herbicides, fertilizers, or other chemical agents enter the conservation area. No spraying of these agents must be done within one 100 feet of the area, or if they have the potential to drift, flow, or be washed into the area in the opinion of biologists or law enforcement personnel from the Service or the California Department of Fish and Game.

5. Litter Control. No dumping of trash or other material may occur within the conservation area. Any trash or other foreign material found deposited within the conservation area must be removed within 10 working days of discovery.

6. Fencing. Permanent fencing must be placed completely around the conservation area to prevent unauthorized entry by off-road vehicles, equestrians, and other parties that might damage or destroy the habitat of the beetle, unless approved by the Service. The applicant must receive written approval from the Service that the fencing is acceptable prior to initiation of the conservation program. The fence must be maintained in perpetuity, and must be repaired/replaced within 10 working days if it is found to be damaged. Some conservation areas may be made available to the public for appropriate recreational and educational opportunities with written approval from the Service. In these cases appropriate fencing and signs informing the public of the beetle’s threatened status and its natural history and ecology should be used and maintained in perpetuity.
7. Signs. A minimum of two prominent signs must be placed and maintained in perpetuity at the conservation area, unless otherwise approved by the Service. The signs should note that the site is habitat of the federally threatened valley elderberry longhorn beetle and, if appropriate, include information on the beetle's natural history and ecology. The signs must be approved by the Service. The signs must be repaired or replaced within 10 working days if they are found to be damaged or destroyed.

Monitoring

The population of valley elderberry longhorn beetles, the general condition of the conservation area, and the condition of the elderberry and associated native plantings in the conservation area must be monitored over a period of either ten (10) consecutive years or for seven (7) years over a 15-year period. The applicant may elect either 10 years of monitoring, with surveys and reports every year; or 15 years of monitoring, with surveys and reports on years 1, 2, 3, 5, 7, 10, and 15. The conservation plan provided by the applicant must state which monitoring schedule will be followed. No change in monitoring schedule will be accepted after the project is initiated. If conservation planting is done in stages (i.e., not all planting is implemented in the same time period), each stage of conservation planting will have a different start date for the required monitoring time.

Surveys. In any survey year, a minimum of two site visits between February 14 and June 30 of each year must be made by a qualified biologist. Surveys must include:

1. A population census of the adult beetles, including the number of beetles observed, their condition, behavior, and their precise locations. Visual counts must be used; mark-recapture or other methods involving handling or harassment must not be used.

2. A census of beetle exit holes in elderberry stems, noting their precise locations and estimated ages.

3. An evaluation of the elderberry plants and associated native plants on the site, and on the conservation area, if disjunct, including the number of plants, their size and condition.

4. An evaluation of the adequacy of the fencing, signs, and weed control efforts in the avoidance and conservation areas.

5. A general assessment of the habitat, including any real or potential threats to the beetle and its host plants, such as erosion, fire, excessive grazing, off-road vehicle use, vandalism, excessive weed growth, etc.

The materials and methods to be used in the monitoring studies must be reviewed and approved by the Service. All appropriate Federal permits must be obtained prior to initiating the field studies.
Reports. A written report, presenting and analyzing the data from the project monitoring, must be prepared by a qualified biologist in each of the years in which a monitoring survey is required. Copies of the report must be submitted by December 31 of the same year to the Service (Chief of Endangered Species, Sacramento Fish and Wildlife Office), and the Department of Fish and Game (Supervisor, Environmental Services, Department of Fish and Game, 1416 Ninth Street, Sacramento, California 95814; and Staff Zoologist, California Natural Diversity Data Base, Department of Fish and Game, 1220 S Street, Sacramento, California 95814). The report must explicitly address the status and progress of the transplanted and planted elderberry and associated native plants and trees, as well as any failings of the conservation plan and the steps taken to correct them. Any observations of beetles or fresh exit holes must be noted. Copies of original field notes, raw data, and photographs of the conservation area must be included with the report. A vicinity map of the site and maps showing where the individual adult beetles and exit holes were observed must be included. For the elderberry and associated native plants, the survival rate, condition, and size of the plants must be analyzed. Real and likely future threats must be addressed along with suggested remedies and preventative measures (e.g. limiting public access, more frequent removal of invasive non-native vegetation, etc.).

A copy of each monitoring report, along with the original field notes, photographs, correspondence, and all other pertinent material, should be deposited at the California Academy of Sciences (Librarian, California Academy of Sciences, Golden Gate Park, San Francisco, CA 94118) by December 31 of the year that monitoring is done and the report is prepared. The Service's Sacramento Fish and Wildlife Office should be provided with a copy of the receipt from the Academy library acknowledging receipt of the material, or the library catalog number assigned to it.

Access. Biologists and law enforcement personnel from the California Department of Fish and Game and the Service must be given complete access to the project site to monitor transplanting activities. Personnel from both these agencies must be given complete access to the project and the conservation area to monitor the beetle and its habitat in perpetuity.

Success Criteria

A minimum survival rate of at least 60 percent of the elderberry plants and 60 percent of the associated native plants must be maintained throughout the monitoring period. Within one year of discovery that survival has dropped below 60 percent, the applicant must replace failed plantings to bring survival above this level. The Service will make any determination as to the applicant's replacement responsibilities arising from circumstances beyond its control, such as plants damaged or killed as a result of severe flooding or vandalism.

Service Contact

These guidelines were prepared by the Endangered Species Division of the Service's Sacramento Fish and Wildlife Office. If you have questions regarding these guidelines or to request a copy of the most recent guidelines, telephone (916) 414-6600, or write to:

U.S. Fish and Wildlife
Service Ecological


USFWS. 1980. Listing the valley elderberry longhorn beetle as a threatened species with critical habitat. Federal Register 45:52803-52807.


Conservation Guidelines for the Valley Elderberry Longhorn Beetle
Figure 1: Range of the Valley Elderberry Longhorn Beetle
Table 1:
Minimization ratios based on location (riparian vs. non-riparian), stem diameter of affected elderberry plants at ground level, and presence or absence of exit holes.

<table>
<thead>
<tr>
<th>Location</th>
<th>Stems (maximum diameter at ground level)</th>
<th>Exit Holes on Shrub Y/N (quantify)</th>
<th>Elderberry Seedling Ratio&lt;sup&gt;1&lt;/sup&gt;</th>
<th>Associated Native Plant Ratio&lt;sup&gt;2&lt;/sup&gt;</th>
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</thead>
<tbody>
<tr>
<td>non-riparian</td>
<td>stems &gt;= 1&quot; &amp; &lt; 3&quot;</td>
<td>No:</td>
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<td>stems &gt; 3&quot; &amp; &lt; 5&quot;</td>
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<td></td>
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</tr>
<tr>
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<td>stems &gt;= 5&quot;</td>
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<td>stems &gt;= 1&quot; &amp; &lt; 3&quot;</td>
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<td></td>
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<td>riparian</td>
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<td>No:</td>
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<td></td>
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<td>2:1</td>
</tr>
</tbody>
</table>

<sup>1</sup> All stems measuring one inch or greater in diameter at ground level on a single shrub are considered occupied when exit holes are present anywhere on the shrub.

<sup>2</sup> Ratios in the Elderberry Seedling Ratio column correspond to the number of cuttings or seedlings to be planted per elderberry stem (one inch or greater in diameter at ground level) affected by a project.

<sup>3</sup> Ratios in the Associated Native Plant Ratio column correspond to the number of associated native species to be planted per elderberry (seedling or cutting) planted.
Appendix C

Cultural Resources Records Search
May 2005
May 9, 2005

Gregory Martin
Quad Knopf
PO Box 3699
Visalia CA 93278

Re: Cultural Resources Records Search for the project titled "Murry Park Master Plan," for land in Sections 25 and 36, T21S, R27E, of the Porterville, California 7.5' USGS Topographic Quadrangle, on behalf of the City of Porterville, Tulare County, California.

Dear Mr. Martin:

Per your request, a cultural resources records search (RS No. 05-263; CAR Project No. 05-25) was conducted for the above-referenced project on May 9, 2005 at the Southern San Joaquin Valley Information Center (SSJVIC) at California State University, Bakersfield, by myself. The purpose of this records search is for the City of Porterville to refurbish and/or construct new amenities on the existing Murray Park, and to expand the park onto adjacent parcels. These parcels include both undeveloped areas, and the demolition of homes on Plano Street.

The results of the records search indicate that one (TU-1061) cultural resource study has been conducted on the subject property, and that the existing Murry Park has been surveyed and recorded (P54-004032). Furthermore, four (TU-532, -630, -1052, and -1150) cultural resource studies have been conducted within about a half mile of the property. A minimum of four cultural resources have been reported on the subject property, two of which, have been formally recorded, and two are listed in the TU-1061 report. The possibility remains that other known historic properties exist on the subject property, but no record of them was found at the SSJVIC (i.e., the theater). Two Historic Districts (P54-002805, and -003170) containing 136 historic properties, and one prehistoric site are located within about a half-mile radius of the subject property. Furthermore, much of the area within about a one-to two-mile radius of the subject property is listed as 10 separate historic districts, which contain two properties that are listed on the National Register of Historic Places.

There are no known cultural resources within the subject property or within a half-mile radius that are listed in the California Register of Historical Resources, California Points of Interest, California Inventory of Historic Resources, or the California State Historic Landmarks.
CITY COUNCIL AGENDA: MAY 15, 2007

PUBLIC HEARING- CONTINUED

SUBJECT: ENNIS ESTATES TENTATIVE SUBDIVISION MAP (ENNIS LAND DEVELOPMENT INC.)

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 June 5, 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 June 5, 2007 meeting.
PUBLIC HEARING

SUBJECT: VACATION OF A PORTION OF PUBLIC WATER, SEWER AND STORM DRAIN FACILITIES EASEMENT RELATED TO THE DEVELOPMENT OF THE SKILLED NURSING FACILITY (Sierra View District Hospital)

SOURCE: Public Works Department – Engineering Division

COMMENT: This is the time and place set for the hearing on the proposed vacation of a portion of a 60-foot wide water, sewer and storm drain facilities easement, generally located in the former Cleveland Avenue right of way west of Pearson Drive.

However, due to Sierra View District Hospital not submitting the necessary easements for underground utility relocation, this item needs to be continued until the next City County meeting.

RECOMMENDATION: That the City Council continue the Public Hearing until June 5, 2007.

P:\PUBWORKS\ENGINEERING\COUNCIL ITEMS\PUBLIC HEARING - VACATION OF TEMPORARY EASEMENTS FOR VEHICULAR ACCESS - SVDH - 2007-05-15 DOC

Dir BSR Appropriated/Funded J CM _____ Item No. 14
PUBLIC HEARING

SUBJECT: VACATION OF TEMPORARY EASEMENTS FOR VEHICULAR ACCESS AND STORM WATER FLOW AND RETENTION RELATED TO THE DEVELOPMENT OF SIERRA MEADOWS, PHASE TWO SUBDIVISION (Smee Builders)

SOURCE: Public Works Department – Engineering Division

COMMENT: This is the time and place set for the hearing on the proposed vacation of temporary easements for vehicular access and storm water flow and retention related to the development of Sierra Meadows, Phase One. These easements are generally located between Chess Terrace Street and Jaye Street, north of Gibbons Avenue. The easements were necessary for the orderly development of the first phase of this subdivision. Construction of the public improvements for phase two ends the need for these easements. The City has authority to vacate these easements under Section 8320, Part 3, Division 9, of the Streets and Highways Code of the State of California.

Staff believes that there are no problems with any reversionary rights since these easements are in favor of the City of Porterville. Abandonment of these easements does not affect other agencies or other utility companies. The need to additional public utility easements will be addressed during the processing of the Sierra Meadows, Phase Two Subdivision Final Map

RECOMMENDATION: That the City Council:

1. Conduct a Public Hearing; and

2. Authorize the City Clerk to execute the vacation of temporary easements shown on the Sierra Meadows, Phase Two Subdivision Map by signing the appropriate statement on the Final Map.

ATTACHMENT: Resolution No. 21-2007
RESOLUTION NO. 21-2007

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE OF INTENTION TO VACATE AND CLOSE TO PUBLIC USE, EASEMENTS FOR VEHICULAR ACCESS AND STORM WATER FLOW AND RETENTION

SECTION 1: The Council of the City of Porterville, California, pursuant to Division 9, Part 3, Section 8320, of Streets and Highways Code of the State of California, does hereby resolve as follows, to-wit:

That it is the intention of the Council of the City of Porterville to vacate, abandon, and close to public use those certain easements for vehicular access and storm water flow and retention in the City of Porterville, County of Tulare, State of California, and known as easements no longer necessary due to the orderly development of Sierra Meadows, Phase Two Subdivision, of which easements are generally located within the southwestern portion of said proposed development.

SECTION 2: A map or plan of said public easements intended to be vacated, abandoned and closed to public use is on file in the office of the City Clerk of the City of Porterville, reference to which is hereby made.

SECTION 3: That the public convenience and necessity requires the reservation of easements and rights of way for structures enumerated, if any, in Section 8340 of the California Streets and Highways Code.

SECTION 4: Notice is further given that on Tuesday, the 15th day of May, 2007, at 7:00 p.m., or as soon thereafter as the matter can be heard, in the Council Chambers in the City Hall in the City of Porterville, at 291 North Main Street, is hereby fixed for the time and place for hearing any objections to the vacation, abandonment and closing to public use of said easements way.

Cameron Hamilton, Mayor

ATTEST:

John Longley, City Clerk

Georgia Hawley, Chief Deputy City Clerk
APN 269-060-053

Exhibit A

(Parcel 1)

A temporary easement for storm water flow and retention over, across, through and within the North 673 feet of the South 698 feet of the West 50 feet of the Northeast quarter of the Southwest quarter of Section 2, Township 22 South, Range 27 East, Mount Diablo Base and Meridian, in the City of Porterville, County of Tulare, State of California.

CONTAINING 33,650 square feet more or less.

(Parcel 2)

A temporary easement for vehicular access over, across, through and within that portion of the Northeast quarter of the Southwest quarter of Section 2, Township 22 South, Range 27 East, Mount Diablo Base and Meridian, in the City of Porterville, County of Tulare, State of California, described as follows:

BEGINNING AT a point in the West line of the Northeast quarter of said Southwest quarter, said point being North 00°33'07" East, 668.00 feet of the Southwest corner of the Northeast quarter of said Southwest quarter;

THENCE, North 00°33'07" East, 60.00 feet;

THENCE, South 89°54'08" East, 30.00 feet;

THENCE, South 00°33'07" West, 60.00 feet;

THENCE, North 89°54'08" West, 30.00 feet, to the POINT OF BEGINNING.

CONTAINING 1,800 square feet more or less

END OF DESCRIPTION
STATE OF CALIFORNIA  
CITY OF PORTERVILLE  
COUNTY OF TULARE  

I, JOHN LONGLEY, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy a resolution passed and adopted by the Council of the City of Porterville at a regular meeting of the Porterville City Council duly called and held on the 17th day of April, 2007.

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

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<th>F. MARTINEZ</th>
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JOHN LONGLEY, City Clerk

[Signature]

by Patrice Hildreth, Deputy City Clerk
SUBJECT: ACCEPTANCE OF FINAL SUBDIVISION MAP – SIERRA MEADOWS, PHASE TWO (Daryl Nicholson & Gary Smee)

SOURCE: Public Works Department - Engineering Division

COMMENT: The subdivider, Nicholson and Smee, LLC, has submitted the final map of the subject project for Council approval. The subdivider is requesting approval prior to the acceptance of the required improvements.

The subdivider has submitted the required guarantee to the City to complete and/or accept all necessary public improvements on the project. A subdivision agreement between the subdivider and the City has been signed by the subdivider, and all fees have been paid.

The final map is in conformance with the approved tentative map and City Council Resolution No. 142-2005. The improvement plans, specifications, dedications and the final map have been approved by the Public Works Director and City Engineer and all other requirements have been met.

RECOMMENDATION: That City Council:

1. Approve the final map of Sierra Meadows, Phase Two Subdivision;

2. Accept all offers of dedication and vacations shown on the final map; and

3. Authorize the City Clerk to file said map with the County Recorder.

ATTACHMENT: Final Map – Sierra Meadows, Phase Two

Dir Appropriated/Funded CM Item No. 16
SUBJECT: Receiving the City Manager’s Proposed Budget for Fiscal Year 2007-08 and Setting Study Session and Public Hearing Dates.

SOURCE: City Manager

Consistent with the calendar for the development of the City Budget, the City Manager’s draft is presented for City Council consideration. The normal process involves the Council’s consideration of the draft through study session(s) and public hearing(s). It is recommended that two study sessions be set. One should be for the entire Budget while the other should be for the City’s Capital Program.

In addition, the Council should specify a public hearing date. Normally, this is set for a Council Meeting in June. The two dates are: June 5, 2007 and June 19, 2007.

Recommendation: Receive the draft budget for consideration, and set dates for:

- Draft Budget Study Session
- Capital Program Study Session
- Budgetary Public Hearing
SUBJECT: APPROVAL OF MEASURE ‘R’ COOPERATIVE AGREEMENT

SOURCE: Public Works Department - Engineering Division

COMMENT: The Tulare County Association of Governments, acting as the Local Transportation Authority (“Authority”) is requesting that all agencies within Tulare County, including the County, enter into a cooperative agreement for the purpose of funding Measure ‘R’ projects.

As stated in the language of the cooperative agreement, in no event shall expenses incurred prior to the execution of this agreement be considered eligible reimbursement costs. The significant issues identified in the Cooperative Agreement are as follows:

Regional Projects:

1. Project must be included in the “Strategic Action Plan”.
2. City must submit Program Supplement for each project containing the following information; a) project scope, b) project cost, and c) project schedule.

Transit Operations:

1. City must submit a Program Supplement.
2. City must submit an approved annual transit operation plan by September 28, 2007.

Local Projects:

1. City must submit a “Maintenance of Effort” base-line information (i.e., 06/07 street maintenance budget or 3 year average street maintenance budget). The “maintenance of effort” document is due by June 29, 2007.
2. City must submit an annual summary report.

Bike & Transit Capital Projects:

1. City must submit a Program Supplement for each project containing the following information; a) project scope, b) project cost, and c) project schedule.

Dir Appropriated/Funded Item No. 18
Another Measure 'R' requirement is that signs be posted at both ends of the project boundaries so as to be visible to motorist traveling in either direction.

The requirements mentioned in this staff report are not all that is contained within the cooperative agreement, but the items mentioned are the significant issues. The full text and example supplemental agreement are attached for Council's full reading.

RECOMMENDATION: That the City Council:

1. Approve the Cooperative Agreement as written;

2. Authorize the Mayor to execute the Cooperative Agreement;

3. Authorize the City Clerk to transmit the executed Cooperative Agreement to the Tulare County Association of Governments, acting as the Local Transportation Authority; and

4. Authorize and direct the Public Works Director to complete or have completed the necessary Bike and Transit Plans by September 28, 2007.

ATTACHMENTS: Cooperative Agreement
Supplemental Agreement Examples
MEASURE R COOPERATIVE AGREEMENT

This Cooperative Agreement ("Agreement") is made and entered into on __________________, by and between the City of Porterville ("Sponsor") and the TULARE COUNTY ASSOCIATION OF GOVERNMENTS, acting as the Local Transportation Authority ("Authority").

RECITALS

WHEREAS, Authority and Sponsor desire to enter into an Agreement for funding of transportation improvements in Tulare County pursuant to the authority provided by 2006 1/2 Cent Transportation Sales Tax Measure Expenditure Plan ("Expenditure Plan") and Tulare County Transportation Authority Ordinance No. 2006-01, which was approved by the voters of Tulare County on November 7, 2006 as “Measure R”; and

WHEREAS, Sponsor desires to receive funding from the Authority for the transportation improvement projects ("Projects") specified in the Expenditure Plan; and,

WHEREAS, the Authority is authorized under the Expenditure Plan and Ordinance No. 2006-01 to issue Measure R funds to Sponsor in accordance with the Expenditure Plan; and,

WHEREAS, Authority is authorized to approve project funding in accordance with this agreement and the Expenditure Plan regarding the specific projects listed in the Expenditure Plan or as amended from time to time, and to provide payment or reimbursement for those specific projects in accordance with the Expenditure Plan.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein made and the mutual benefits to be derived therefrom, the parties hereto represent, covenant and agree as follows:

AGREEMENT

This agreement shall have no force or effect with respect to Regional Projects, Bike projects, or Transit Projects unless and until a project-specific Program Supplement to this Agreement hereinafter referred to as “Program Supplement”, has been fully executed by both the Authority and the Sponsor.

SECTION I
Covenants of Sponsor

Sponsor agrees to abide by the terms and conditions of the Authority as set forth herein for the receipt of Measure R funds and to comply with the Expenditure Plan and Tulare County Transportation Authority Ordinance No. 2006-01; and adopted Policies and Procedures, and current adopted Strategic Action Plan, as well as any subsequent amendments or updates; and,

1.1. Project Application.
1.1a **Regional Projects** - The complete Project description, scope of work, delivery schedule, estimate of cost by activity, anticipated amount and type of funds that will supplement Measure R funds, and the anticipated timing for release of Measure R funds shall be specified in the application and approved by the Authority.

1.1b **Transit Operations** – Sponsor must submit an annual Transit expansion plan summarizing how the transit planning funds will be expended. The transit plan is due each year by the end of May (prior to the fiscal year beginning) except in 2007 when the plan is allowed to be submitted by September 28, 2007.

1.1c **Bike and Transit Capital Projects** – Sponsor must submit an annual Bike and Transit Capital plan summarizing how the bike and transit capital funds will be expended. The plan is due each year by the end of May (prior to the fiscal year beginning) except in 2007 when the plan is allowed to be submitted by September 28, 2007.

1.1d **Local Program Funding** – Sponsor is not required to submit an annual report prior to the receipt of funding. However, an annual report is required at the end of the year in accordance with the Adopted Policies and Procedures. In addition, Sponsor in the first year must submit the baseline “Maintenance of Effort Summary” prior to any funding being received. The “Maintenance of Effort Summary” is due by June 29, 2007.

1.2. **Project Scope.** A Project scope of work or any change to such may not be implemented until it has been approved by the Authority in accordance with the Expenditure Plan.

1.3. **Eligible Reimbursement Costs.** Eligible reimbursement costs shall be costs as specified in the Expenditure Plan or as may be approved from time to time by the Authority pursuant to Section 1.2. In no event shall expenses incurred prior to the execution of this Agreement be considered eligible reimbursement costs.

1.4. **Measure R Percentage Share Defined.** For this Agreement, the Measure R percentage share of eligible costs shall be as set forth in the Adopted Strategic Action Plan.

1.5. **Invoices and Progress Reports.** Starting one month after the execution of this Agreement, Sponsor shall provide quarterly progress reports. Sponsor shall provide invoices no less than monthly for activities conducted over the prior unbilled month. These documents shall include the following specified information:

1.5.a. **Sponsor’s Staff Expenses.** Sponsor may include in the invoice direct staff expenses for the eligible costs of the Project.

1.5.b. **Copies of Consultant Invoices.** Sponsor shall provide the Authority with one (1) copy of all invoices submitted to Sponsor by every consultant, subconsultant, contractor, or subcontractor performing work related to the Project.

1.5.c. **Progress Reports.** The quarterly progress reports shall include a brief description of the
status of the Project and the work completed to date. This summary may be included on the invoices submitted to the Authority or be attached to those invoices.

1.5.d. **Deadline to Submit Reimbursement Requests.** All invoices and progress reports shall be submitted to Authority on or before 5:00 p.m. on the tenth (10th) calendar day of the month in which the Sponsor requests reimbursement payments. Authority shall issue reimbursement payments to Sponsor on or before the last day of the month for all timely submittals.

1.5.e. **Late Submittals.** If Sponsor fails to submit documents to Authority as set forth in Section 1.5.d, above, then Authority shall provide reimbursement payments for late submittals in the following calendar month.

1.6. **Use of Funds.** Sponsor shall use Measure R funds consistent with the Project scope of work approved by the Authority pursuant to Section 1.2.

1.7. **Submittal of Documents.** Sponsor shall provide copies to the Authority of all executed contracts which relate to the Project scope approved by the Authority pursuant to Section 1.2. Sponsor shall retain records pertaining to the Project for a four (4) year period following completion of the Project.

1.8. **Completion of Project.** Sponsor shall be responsible for the timely completion of construction and provide management of consultant and contractor activities, including responsibility for schedule, budget and oversight of the services, consistent with the scope of work.

1.8.a. **Letter of Project Completion.** Sponsor shall provide a letter of project completion which includes final cost, revenues, schedule of activities. This letter shall accompany the final invoice for payment from Sponsor to provide notice of project account closing by Authority.

1.9. **Provision of Signs.** Sponsor shall install Measure R signs approved and/or required by the Authority. Measure R Signs shall be posted at both ends of the project boundaries so as to be visible to motorists traveling in either direction.

1.10. **Cost Savings and Excess Costs.**

1.10.a. **Definition of Cost Savings.** After a Project has been accepted by the Sponsor as complete, any positive difference between the total Project cost, as approved by the Authority pursuant to Section 1.2, and the total amount invoiced to the Authority shall be considered Project cost savings.

1.10.b. **Cost Savings.** If, according to the most recently amended Measure R Expenditure Plan, the Projects are not segments of a larger project, or if all other segments of the larger project have been completed, the Authority shall allocate the Measure R share according to the Adopted Policies and Procedures.

1.10.c. **Segmented Projects.** If, according to the most recently amended Measure R Expenditure Plan, the Project is a segment of a larger project and other segments have not been completed, the Authority shall allocate the Measure R share (as specified in Section 1.4) of
these cost savings to the uncompleted segment(s) of the larger project.

1.10.d. Excess Costs: In the event the actual total project costs exceed the estimate approved by the Authority, this amount will be considered an excess cost.

1.10.e. Reconciliation of Excess Costs: In the event that costs to complete the project exceeds the total amount of funds programmed, Sponsor will be fiscally responsible for the full amount of excess costs associated with the Sponsor’s project, unless otherwise agreed by the parties pursuant to Section 2.4.

1.11. Provision of Groundbreaking and Ribbon Cutting Ceremonies. Sponsor shall be responsible for groundbreaking ceremonies and ribbon cutting ceremonies related to their project(s) and as determined necessary by the Authority. Sponsor may contract both ceremonies through a private consultant. All ceremonies shall be coordinated with the Public Relations Officer of the Authority. The cost of all ceremonies will be an expense of the project construction.

SECTION II
Covenants of Authority

Authority agrees to issue Measure R funds for the transportation improvements of the Sponsor's Project(s) according to the terms and conditions set forth herein, and to comply with the Expenditure Plan and Tulare County Transportation Authority Ordinance No. 2006-01; and Adopted Polices and Procedures, and current adopted Strategic Action Plan, as well as any subsequent amendments or updates.

2.1. Reimbursement Payments. The Authority shall make reimbursement payments to Sponsor for eligible Project costs as specified in the Expenditure Plan and subsequent updates of the Expenditure Plan. To receive monthly reimbursement payments for work completed on the Project, Sponsor shall comply with the following reimbursement procedures:

2.1.a. Ineligible Costs. The Authority reserves the right to adjust current or future reimbursement payments to Sponsor if an invoice includes ineligible costs.

2.1.b. Reimbursement Amount. The amount of reimbursement payments to Sponsor shall be made pursuant to the Expenditure Plan.

2.1.c. Suspension of Reimbursement. Reimbursement payments for the item(s) in question shall be suspended without interest when a dispute arises as to whether or not the cost item(s) is eligible for reimbursement.

2.1.c. (1) Meeting. Once a dispute has occurred, the Authority shall arrange a meeting between the Authority and the Sponsor to discuss and attempt to resolve the dispute. If the invoice was received on or before 5:00 p.m. on the 10th day of the month (or if the 10th is not a business day, then the next business day), the meeting shall be held no later than the 20th day of the same month. If the invoice was received after this date
and time, then the meeting shall be held no later than the 20th day of the following month.

2.1.c. (2) Technical Advisory Committee. If an agreement cannot be reached at the meeting, then the Sponsor or the Authority shall have the option to take the dispute to the Authority's Technical Advisory Committee, with the understanding that by doing so the reimbursement for the disputed cost item(s) will be delayed until a resolution of the matter is reached.

2.1.c. (3) Board Decision. If the Sponsor or the Authority disagrees with the resolution by the Technical Advisory Committee then the dispute shall be submitted to the Authority Board for resolution. Reimbursement for the disputed cost item(s) will be further delayed until a resolution of the matter is reached by the Authority Board. If the Authority Board determines that the disputed cost item(s) is ineligible, the Authority shall not provide reimbursement payment to the Sponsor for the disputed item(s). If the Authority Board determines that the disputed cost item(s) is eligible, then the Authority shall provide reimbursement payment to the Sponsor for the disputed cost.

2.1.c. (4) Reservation of Rights. By utilizing the above procedures, Sponsor does not surrender any rights to pursue available legal remedies if Sponsor disagrees with the Authority Board decision.

2.1.d. Acceptance of Work Does Not Result In Waiver. Reimbursement payments shall not result in a waiver of the right of the Authority to require fulfillment of all terms of this Agreement.

2.2. Right to Conduct Audit. The Authority shall have the right to conduct an audit of all Sponsor’s records pertaining to Projects at any time during the four (4) year period after completion of the Projects.

2.3. Reconciliation of Excess Costs. In the event that costs to complete the Project exceeds the total amount of funds programmed, Authority may, by further agreement with Sponsor, agree to provide additional funding.

SECTION III
Mutual Covenants

The Authority is released from any liability to Sponsor regarding the Authority’s administration and issuance of the Measure R transportation sales tax proceeds except for any breach of Authority’s fiduciary duty as set forth in the Expenditure Plan.

3.1. Term. This Agreement shall remain in effect until discharged or terminated as provided in Section 3.2 or Section 3.14.

3.2. Discharge. This Agreement shall be subject to discharge as follows:
3.2.a. **Termination by Mutual Consent.** This Agreement may be terminated between Sponsor and the Authority at any time by mutual consent of Sponsor and Authority. If this Agreement is mutually terminated by the parties, Sponsor will no longer receive Measure R funds unless a new agreement between Sponsor and Authority is formed.

3.2.b. **Discharge Upon Completion of Project.** Except as to any rights or obligations which survive discharge as specified in Section 3.13, this Agreement shall be discharged, and the parties shall have no further obligation to each other, upon completion of all of Sponsor’s projects as certified by the Authority.

3.3. **Indemnity.** It is mutually understood and agreed, relative to the reciprocal indemnification of Authority and Sponsor:

3.3.a. **Indemnity.** Sponsor shall fully defend, indemnify and hold harmless Authority, and any officer or employee of Authority, against any damage or liability occurring by reason of anything done or omitted to be done by Sponsor under the Agreement and related to the Sponsor’s Project(s). It is also fully understood and agreed that, pursuant to Government Code Section 895.4, Sponsor shall fully defend, indemnify and hold the Authority harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by Sponsor under this Agreement or in connection with any work, authority, or jurisdiction delegated to Sponsor under this Agreement.

3.3.b. **Indemnity.** Authority shall fully defend, indemnify and hold harmless Sponsor, and any officer or employee of Sponsor, against any damage or liability occurring by reason of anything done or omitted to be done by Authority under or in connection with any work, authority or jurisdiction delegated to Authority under the Agreement and related to Sponsor’s Project(s). It is also understood and agreed that, pursuant to Government Code Section 895.4, Authority shall fully defend, indemnify and hold Sponsor harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by Authority under this Agreement or in connection with any work, authority, or jurisdiction delegated to Authority under this Agreement.

3.4. **Notices.** Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

**AUTHORITY:**
Executive Director
Tulare County Transportation Authority
5961 S. Mooney Blvd.
Visalia, CA 93277
**Phone No.:** 559 733 6291
**Fax No.:** 559 733 6720

**With A Copy To:**

**SPONSOR:**
3.4.a. Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

3.4.b. Either party may change its address by giving notice of such change to the other party in the manner provided in this Section 3.4. All notices and other communications shall be deemed communicated as of actual receipt or after the second business day after deposit in the United States mail.

3.5. **Additional Acts and Documents.** Each party agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of the Agreement.

3.6. **Integration.** This Agreement represents the entire Agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.

3.7. **Amendment.** This Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

3.8. **Independent Agency.** Sponsor renders services under this Agreement as an independent agency and the Authority is also an independent agency under the Agreement. None of the Sponsor’s agents or employees shall be agents or employees of the Authority and none of the Authority’s agents or employees shall be agents or employees of Sponsor.

3.9. **Assignment.** The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the parties.

3.10. **Binding on Successors.** This Agreement shall be binding upon the successor(s), assignee(s) or transferee(s) of the Authority or as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement other than as provided above.

3.11. **Severability.** Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of either party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.
3.12. **Counterparts.** This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single document.

3.13. **Survival.** The following provisions in this Agreement shall survive discharge:

3.13.a. **Sponsor.** As to Sponsor, the following sections shall survive discharge: Section 1.6 (obligation to apply funds to Project), Section 1.7 (obligation to provide copies and retain records), and Section 1.8 (obligation to continue to manage Project).

3.13.b. **Authority.** As to Authority, the following section shall survive discharge: Section 2.2 (right to conduct audit).

3.13.c. **All Parties.** As to all parties, the following sections shall survive discharge: Section 3.2.a. (obligation which survives termination), and Section 3.3. (mutual indemnities).

3.14. **Limitation.** All obligations of Authority under the terms of this Agreement are expressly contingent upon the Authority's continued authorization to collect and expend the sales tax proceeds provided by Measure R. If for any reason the Authority's right or ability to collect or expend such sales tax proceeds is terminated or suspended in whole or part so that it materially affects the Authority's ability to fund the project, the Authority shall promptly notify Sponsor, and the parties shall consult on a course of action. If, after twenty-five (25) working days, a course of action is not agreed upon by the parties, this Agreement shall be deemed terminated by mutual or joint consent. Any future obligation to fund this project or any other project or projects of Sponsor, not already specifically covered by separate Agreement, shall arise only upon execution of a new Agreement.

3.16. **Time.** Time is and shall be of the essence of this Agreement and each and all of its provisions in which performance is a factor.

3.17. **Remedies Cumulative.** No remedy or election of remedies provided for in this Agreement shall be deemed exclusive, but shall be cumulative with all other remedies at law or in equity. Each remedy shall be construed to give the fullest effect allowed by law.

3.18. **Applicable Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California. The parties agree that this contract is made in and shall be performed in Tulare County, California.

3.19. **Captions.** The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the provisions of this Agreement and shall not affect the construction or interpretation of any of its provisions.

3.20. **No Continuing Waiver.** The waiver by any party of any breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same, or of any other provision of this Agreement.
3.21. No Rights in Third Parties. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any third party, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party to any party to this Agreement, nor shall any provision of this Agreement give any third party any right of subrogation or action over or against any party to this Agreement.

3.22. Exhibits and Recitals. The Recitals and Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

3.23. Signator's Warranty. Each party warrants to each other that he or she is fully authorized and competent to enter into this Agreement in the capacity indicated by his or her signature and agrees to be bound by this Agreement as of the day and year first mentioned above upon the execution of this Agreement by each other party.

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

COUNTY OF TULARE TRANSPORTATION AUTHORITY

By: ____________________________
    Chair of the Authority

ATTEST:

By: ____________________________
    Authority Director

COUNTY OF TULARE

By: ____________________________
    Chair of the Board

ATTEST: C. BRIAN HADDIX
County Administrative Officer/Clerk of the Board of Supervisors of the County of Tulare

By: ____________________________
    Deputy Clerk

CITY OF PORTERVILLE

By: ____________________________
    Mayor

ATTEST: John R. Longley
City Manager – City of Porterville

By: ____________________________
    City Clerk
MEASURE R PROGRAM SUPPLEMENT TO
COOPERATIVE AGREEMENT

This Program Supplement is made and entered into on ____________, by and between the City of Porterville ("Sponsor") and the TULARE COUNTY ASSOCIATION OF GOVERNMENTS, acting as the Local Transportation Authority ("Authority").

This Program Supplement hereby incorporates the “Measure R Cooperative Agreement” for Measure R Expenditures which was entered into between the Sponsor and the Authority on __________ and is subject to all terms and conditions thereof. This Program Supplement is executed under authority of Resolution No. __________, approved by the Sponsor on __________. (See copy attached)

Project Scope, Costs, and Schedule are incorporated herein as Attachment “A” and agreed upon by Sponsor and Authority.

Covenants of Sponsor
1.1. SPONSOR agrees that it will only proceed with work authorized for specific phases(s) with a written “Authorization to Proceed” or Authority action and will not proceed with future phase(s) of this project(s) prior to receiving a written “Authorization to Proceed” or Authority action.

1.2. The SPONSOR will advertise, award, and administer the project(s) in accordance with SPONSOR standards.

1.3. Award information shall be submitted by the SPONSOR to the AUTHORITY within 60 days after the project contract award.

1.4. Failure to submit award information in accordance with section 1.3 will cause a delay (without interest or penalties) in AUTHORITY processing invoices for the construction phase.

1.5. If no costs have been invoiced for a six-month period, SPONSOR agrees to submit for each phase a written explanation of the absence of project(s) activity along with target billing date and target billing amount.

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

CITY OF PORTERVILLE

By: ____________________________  ATTEST:
      Michael K. Reed, City Engineer

By: ____________________________
      Baldomero Rodriguez, Public Works Director
SUBJECT: Consideration of A Request for Assistance to Address The County Clinic Closure by A Community Based Organization

SOURCE: City Manager

A request has been provided to the City Manager to place on the Agenda consideration of financial support to a community based organization to address the County Clinic Closure.

The extent of the financial support will be reported at the City Council Meeting along with other specifics of the request. The understanding is that the request is for financial support that provides the public benefit of protecting the health of Porterville residents through normal governmental or non-profit type actions.

Recommendation: If governmental assistance is approved, the amount should be specified and it should be specifically budgeted from the City’s Emergency Reserve.
SUBJECT: REQUEST BY COUNCIL MEMBER–
REQUEST FOR APPROVAL OF LEAGUE OF CALIFORNIA CITIES' 
LATINO CAUCUS SUPPORT LETTER FOR SB 59 AND THE 
GOVERNOR’S WATER INFRASTRUCTURE UPGRADES 
PROGRAM

SOURCE: Administration

COMMENT: A request has been made by Mayor Pro Tem F. Martinez to add the above subject matter to this agenda for discussion and approval of a letter to be sent to Governor Schwarzenegger regarding surface water storage in the Central San Joaquin Valley.

RECOMMENDATION: To be determined by Council.

Attachments: 1) Draft Letter of Support
2) SB 59 Supporter List

Item No. 20
May 3, 2007

The Honorable Arnold Schwarzenegger
State Capitol
Sacramento, CA 95814

Re: California Strategic Growth Plan - Support

Dear Governor Schwarzenegger:

The Latino Caucus of the League of California Cities wishes to advise you of its support for your California Strategic Growth Plan as embodied in Senate Bill 59 (Cogdill). This important proposal addresses an issue that California has been ducking for much too long.

Along with the many other infrastructure improvements required across California is a growing need for additional surface water storage. Placing your California Strategic Growth Plan and its Flood Control, Water Supply and Conveyance elements before voters is critical to meeting California’s future water needs while helping resolve a number of other challenges, including protecting the economic and social well being of communities with populations that are largely Latino.

California cities, particularly those in the Central Valley, are growing rapidly. They require adequate and reliable supplies of water to meet future municipal and industrial needs. California also requires additional water to sustain existing economic activity and social structure while improving flood control and providing water for environmental restoration – such as that planned along the San Joaquin River.

Our Caucus believes it is imperative to plan, fund and develop additional surface water storage in the central San Joaquin Valley’s foothills. The Caucus has taken this position despite the Legislature’s passage last year of State Infrastructure Bond measures that omitted surface storage and river restoration from funding. Since that time, you and your office together with a bipartisan coalition of legislators and a rising chorus of Central Valley leaders from all walks of life, have revived the issue. The League’s Latino Caucus believes it is vital to recognize, respect and respond to the Valley’s support and call for new water storage.

While additional water storage would directly benefit the lives and well being of people throughout much of California, just from the perspective of communities with large Latino populations within the San Joaquin Valley, here are some of the reasons why additional water storage is so important:

**Importance to the San Joaquin Valley and Its People:**

- There has long been a need for additional San Joaquin River surface storage but it has been highlighted by the pending settlement in litigation over the San Joaquin River fishery downstream from Friant Dam (which will require water now used by cities and farmers) as well as a big water runoff year. The latter has vividly illustrated the system’s shortcomings in flood control and management.

- San Joaquin Valley people rely on or are concerned with water from the San Joaquin River, both in terms of water used beneficially as well as the need to be protected from damaging floods.

- A majority of the population in many parts of the valley—a big majority in many areas—is Hispanic. It tends to be lower income and more reliant upon farm-based employment. This is true of several of the communities represented in the Latino Caucus.

- The cities of Firebaugh and Mendota in western Fresno County, with their large Hispanic populations, are threatened frequently with flooding because of insufficient storage facilities with
which to capture this spring’s big runoff. Both of those cities have suffered economically and socially because of past reductions in farm irrigation supplies for environmental purposes.

- The City of Orange Cove’s municipal water users are 100% dependant upon water delivered down the Friant-Kern Canal from the San Joaquin River. Water from the San Joaquin River makes up about 40% of Fresno’s supply as well as much of the water used domestically in Friant, Lindsay, Strathmore and Terra Bella. Deliveries through the Madera Canal from Friant Dam are the principal surface water supply source in Madera County. Groundwater recharged after delivery through the Madera and Friant-Kern canals helps supplement the domestic water supplies of cities such as Madera, Chowchilla, Clovis, Fresno, Visalia, Exeter, Tulare, Lindsay, Porterville, Delano, McFarland, Shafter, Wasco, Arvin and Bakersfield, all of which have large Hispanic populations.

- Hispanics account for 53% of the population in Tulare County, 46% in Fresno County and 38% in Kern County, and 87% or more of the populations of Orange Cove, Firebaugh and Mendota, and some communities in Tulare and Kern counties.

- More water is needed in the rapidly-urbanizing Valley, not less, as would be the case without new storage under the pending settlement of the San Joaquin River litigation.

**Why More Water Storage Is Needed:**

- Millerton Lake on the San Joaquin River is too small to provide a water supply adequate to meet existing farm irrigation needs, let alone demands created by future urban growth.

- Millerton Lake doesn’t hold enough water for adequate flood control, requiring fairly frequent flood releases, sometimes with damaging flows.

- Storage in Millerton Lake is insufficient to meet downstream environmental needs while protecting existing users.

- Millerton Lake is too small to capture large amounts of runoff from big rains and snowmelt and store that water until it can be transported to water banking facilities due to limited conveyance and percolation capabilities.

- Groundwater recharge is vital but is only one element of the many needed to create new water yields. By itself, recharge in the Friant service can harness only a small portion of big runoff because Millerton Lake is too small and the Friant-Kern Canal’s capacity is too limited to convey to recharge facilities.

- More storage would help protect the economy and social structure of the San Joaquin Valley, and improve opportunities for the millions who live here. More storage would help protect the economy and social structure of the San Joaquin Valley, and improve opportunities for the millions who live here, including the big percentages of Hispanic people who live and work here.

**Recommended Action:**

- The League of California Cities’ Latino Caucus supports the need for additional surface water storage throughout California and for San Joaquin River surface water storage above Millerton Lake and Friant Dam. The Caucus recommends that the Legislature approve legislation (as currently reflected in SB 59) and place a ballot proposition for surface water storage and river restoration bond authorization before voters in 2008.

Thank you for your leadership on this issue and your commitment to the long term needs of California’s current residents and future generations. We stand ready to assist your efforts in any way possible.
SB 59 Support Letters

Legislative Support

Governor Arnold Schwarzenegger
Congressman Jim Costa *
Congressman Dan Lungren *
Senator Dianne Feinstein
Congressman John Doolittle *
Congressman Kevin McCarthy
Congressman Ken Calvert *
Congressman David Dreier *
Congressman Devin Nunes *
Congressman Dennis Cardoza *
Congressman Wally Herger *
Congressman George Radanovich *

* Signed letter to Gov. Schwarzenegger supporting Water Infrastructure Plan

Cities

City of Avenal City of Fresno City of Orange Cove
City of Bakersfield City of Hanford City of Parlier
City of Clovis City of Huron City of Porterville
City of Coalinga City of Kerman City of Reedley
City of Corcoran City of Kingsburg City of Sanger
City of Delano City of Lemoore City of Shafter
City of Dinuba City of Lindsay City of Selma
City of Farmersville City of Madera City of Tulare
City of Firebaugh City of Maricopa City of Visalia
City of Fowler City of Mendota City of Wasco
City of Woodlake

Counties

County of Fresno County of Kings County of Tulare
County of Kern County of Madera
County of Kings County of Merced

Farm Bureaus (FB)

Fresno County FB Madera County FB
Kern County FB Tulare County FB
Kings County FB

Chambers of Commerce (COC)

California COC Greater Tulare COC Porterville COC
Delano COC Hanford COC Visalia COC
Greater Fresno Area COC Lemoore COC

Water Districts/Agencies

Association of CA Water Agencies Kings County Water District Northern CA Water Association
Chowchilla Water District Merced Irrigation District Lower San Joaquin Levee District
Contra Costa Water District Modesto Irrigation District Shafter-Wasco Irrigation District
Delano-Earlimart Irrigation District Oceano Water District SJR Exchange Contractors Water Authority
El Dorado Irrigation District San Joaquin River Association SJR Resource Management Coalition
Frijant Water Users Authority Santa Clara Valley Water District Tulare Irrigation District
Kern County Water Agency Stockton East Water District United Water Conservation District
Orange Cove Irrigation District

Agriculture & Business Associations/Coalitions/Corporations/Councils

CA Building Industry Assoc. Reynen & Bardin Comm, CV Division Tulare/Kings County Building Association
CA Business Properties Assoc. RWD Consulting BIG Coalition of the South SJV
CA Landscape Contr. Assoc. SJV Building Association Home Build Assoc. of Tulare/Kings Count, Inc
Diversified Benefit Services, Inc. Southwest CA Legislative Council Consulting Engin. & Land Surveyors of CA
Kern County Building Industry Assoc. State Build. & Constr. Trades Council Fresno Economic Development Corporation
Long, Richert & Patch Taxpayers Assoc. of Madera County Kern Economic Development Corporation
Regional Council of Rural Counties The Evans HR Group Kings County Economic Development Corp.
Borba Farms, Inc. California Citrus Mutual Tulare County Economic Development Corp.
CA Cotton Ginners & Growers Assoc. CA Grape and Tree Fruit League Visalia Economic Development Corporation
Valley Water Alliance Valley Ag Water Coalition West Hills College
Agricultural Council of California C2 Farms CA Farm Bureau Federation

Individuals

Alene Taylor, Kings County Supervisor Sandra Walden, London Properties James Sims
Stacy Rianda Robert Gunning, Director, UBS