

NOTICE OF REGULAR MEETING

Pursuant to Section 54954.2 of the Government Code of the State of California, a Regular meeting of the Planning Commission is hereby called for:

Date/Time: **Wednesday, December 21, 2011, 7:00 p.m.**
(or as soon thereafter as possible)

Location: City Hall Council Chambers
333 Civic Center Plaza, Tracy

Government Code Section 54954.3 states that every public meeting shall provide an opportunity for the public to address the Planning Commission on any item, before or during consideration of the item, however no action shall be taken on any item not on the agenda.

PLEDGE OF ALLEGIANCE

ROLL CALL

MINUTES APPROVAL

DIRECTOR'S REPORT REGARDING THIS AGENDA

ITEMS FROM THE AUDIENCE

In accordance with Procedures for Preparation, Posting and Distribution of Agendas and the Conduct of Public Meetings, adopted by Resolution 2008-140 any item not on the agenda brought up by the public at a meeting, shall be automatically referred to staff. If staff is not able to resolve the matter satisfactorily, the member of the public may request a Planning Commission Member to sponsor the item for discussion at a future meeting.

1. OLD BUSINESS

2. NEW BUSINESS

A. PUBLIC HEARING TO CONSIDER AN ORDINANCE OF THE CITY OF TRACY: (1) ADDING A NEW SECTION 1.08.140 TO CHAPTER 1.08 OF THE TRACY MUNICIPAL CODE RELATING TO COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAW; AND (2) ADDING A NEW SECTION 10.08.3195 TO CHAPTER 10.08 OF THE TRACY MUNICIPAL CODE CLARIFYING THAT MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION ARE NOT PERMITTED USES

B. CONDUCT A SCOPING MEETING TO OBTAIN COMMENTS FROM PUBLIC AGENCIES OR OTHER INTERESTED PARTIES REGARDING ISSUES TO BE ANALYZED IN THE CORDES RANCH SPECIFIC PLAN PROJECT ENVIRONMENTAL IMPACT REPORT – APPLICATION NUMBERS 1-03-A/P, 3-03-GPA, AND DA11-0001

3. ITEMS FROM THE AUDIENCE
4. DIRECTOR'S REPORT
 - A. UPDATE REGARDING DOWNTOWN SPECIFIC PLAN PLANNING COMMISSION STUDY SESSIONS**
5. ITEMS FROM THE COMMISSION
6. ADJOURNMENT

December 15, 2011

Posted Date

The City of Tracy complies with the Americans with Disabilities Act and makes all reasonable accommodations for the disabled to participate in public meetings. Persons requiring assistance or auxiliary aids in order to participate should call City Hall (209-831-6000), at least 24 hours prior to the meeting.

Any materials distributed to the majority of the Planning Commission regarding any item on this agenda will be made available for public inspection in the Development and Engineering Services Department located at 333 Civic Center Plaza during normal business hours.

AGENDA ITEM 2-A

REQUEST

PUBLIC HEARING TO CONSIDER AN ORDINANCE OF THE CITY OF TRACY: (1) ADDING A NEW SECTION 10.08.140 TO CHAPTER 10.08 OF THE TRACY MUNICIPAL CODE RELATING TO COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAW; AND (2) ADDING A NEW SECTION 10.08.3195 TO CHAPTER 10.08 OF THE TRACY MUNICIPAL CODE CLARIFYING THAT MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION ARE NOT PERMITTED USES

DISCUSSION

Background and Summary

On November 15, 2011, the City Council considered the regulation of medical marijuana. A copy of the City Council staff report is attached as Attachment A.

Under the City's Zoning Ordinance, any use not specifically authorized in a particular zone is prohibited. (Tracy Municipal Code ("TMC"), §10.08.1070.) Therefore, unauthorized uses are considered public nuisances. (TMC, §1.04.050.)

Medical marijuana uses, including cultivation (either as a primary use or as an accessory residential use in a backyard), are not allowable uses in any of the City's zoning districts. Therefore, such uses are not allowed and are considered public nuisances.

The City Council directed staff to present it with an ordinance clarifying the existing ban on such uses under the TMC.

The proposed ordinance includes two amendments to the TMC.

First, it adds a new section to the TMC clarifying that "no provision of [the] Code is intended to or shall be interpreted or applied to allow or authorize a use, structure, activity, or conduct that violates federal, state or local law."

Second, it adds a new section to the Zoning Ordinance clarifying that medical marijuana dispensaries and/or cultivation are not allowed as principal uses, conditional uses, special uses, or accessory uses in any zone.

The purpose of adopting such a clarifying ordinance is twofold: (1) to provide clear notice to the public that medical marijuana uses are prohibited under the TMC; and (2) to assist staff and the courts in interpreting and implementing the provisions of the TMC related to the use of medical marijuana.

Environmental Document

The proposed ordinance is not considered a project for the purposes of the California Environmental Quality Act ("CEQA"). (See CEQA Guidelines, § 15378.)

RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council adopt an ordinance of the City of Tracy: (1) adding a new Section 1.08.140 to Chapter 1.08 of the Tracy Municipal Code relating to compliance with federal, state, and local law; and (2) adding a new Section 10.08.3195 to Chapter 10.08 of the Tracy Municipal Code clarifying that medical marijuana dispensaries and cultivation are not permitted uses.

MOTION

Move that the Planning Commission recommend that the City Council adopt an ordinance of the City of Tracy: (1) adding a new Section 1.08.140 to Chapter 1.08 of the Tracy Municipal Code relating to compliance with federal, state, and local law; and (2) adding a new Section 10.08.3195 to Chapter 10.08 of the Tracy Municipal Code clarifying that medical marijuana dispensaries and cultivation are not permitted uses.

Prepared by Bill Dean, Assistant DES Director

Approved by Andrew Malik, Development and Engineering Services Director

ATTACHMENTS

- A— November 15, 2011 City Council Staff Report
- B— Proposed Ordinance
- C— Planning Commission Resolution

November 15, 2011

AGENDA ITEM 3

REQUEST**DISCUSS AND PROVIDE DIRECTION ON THE REGULATION OF MEDICAL MARIJUANA**EXECUTIVE SUMMARY

It is recommended that the City Council discuss and provide direction to staff on the regulation of medical marijuana.

DISCUSSIONI. Background and Summary

At the City Council meeting on November 1, 2011, Council Member Rickman requested that staff present options to the City Council relating to the regulation of medical marijuana cultivation.

The regulation of medical marijuana is complex because it is subject to differing legal standards on the federal, state, and local level. Under both state and federal law, it is illegal to possess or cultivate marijuana. However, state law provides that such state law criminal provisions do not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the approval of a physician.

Notwithstanding federal and state law, the City may restrict the location, operation, or establishment of medical marijuana uses based on its land use and police power authority. However, while the City may restrict such uses, it may not specifically permit them because they are illegal under federal law.

Currently, medical marijuana uses, including cultivation (either as a primary use or as an accessory residential use in a backyard), are not allowed under the City's Zoning Ordinance because they are not specifically permitted in any of the City's zoning districts. Therefore, under the Tracy Municipal Code ("TMC"), such uses are considered public nuisances.

The City Council could direct staff to present it with an ordinance clarifying the existing ban on such uses under the TMC by specifically referencing medical marijuana uses as not being allowed in any of the City's zoning districts.

Alternatively, the City Council could direct staff to present it with an ordinance that contains certain restrictions on medical marijuana uses (e.g., restricting or banning outdoor or all cultivation) and establishes immunity from civil and criminal enforcement of the TMC for those who operate in strict compliance with its terms.

II. Statutory Background

Under both state and federal law, it is illegal to possess, distribute, or cultivate marijuana. However, state law provides that such state law criminal provisions do not apply to a patient, or to a patient's primary caregiver, who possesses, distributes, or cultivates marijuana for the personal medical purposes of the patient upon the approval of a physician.

A. The Federal Controlled Substances Act ("CSA")

The federal Controlled Substances Act ("CSA") was enacted in 1970 as part of President Nixon's "war on drugs." (21 U.S.C. §§801 – 904.) The CSA criminalizes the unauthorized manufacture, distribution, dispensing, and possession of substances classified in any of the Act's five schedules. The CSA includes marijuana on schedule I, the schedule of controlled substances that are subject to the most restrictions. (21 U.S.C. §812.) Drugs on other schedules may be dispensed and prescribed for medical use; drugs on schedule I may not.

Therefore, the CSA makes it illegal to manufacture, distribute, or possess marijuana. (21 U.S.C. §§ 841, 844.) It is also illegal under the CSA to maintain any place for the purpose of manufacturing, distributing, or using any controlled substance. (21 U.S.C. §856(a)(1).)

B. The Compassionate Use Act ("CUA")

The state Compassion Use Act ("CUA") was approved by voters as a ballot initiative in 1996. The CUA provides that certain state law criminal provisions relating to the possession and cultivation of marijuana "shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician." (Health & Saf. Code, §11362.5(d).) Apart from possession and cultivation, the CUA did not alter the other state statutory criminal prohibitions related to marijuana, including those that bar transportation, possession for sale, and sale. (*People v. Urziceanu* (2005) 132 Cal.App.4th 747.)

C. The Medical Marijuana Program Act ("MMPA")

In 2003, the state Legislature enacted the Medical Marijuana Program Act ("MMPA"). (Health & Saf. Code, §§ 11362.7 – 11362.83.) The intent of the MMPA was to: (1) clarify the scope of the CUA and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers; (2) to promote uniform and consistent application of the CUA; and (3) to enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects. (Stats. 2003, ch. 875, §1.)

The MMPA created a voluntary program for the issuance of identification cards to qualified patients and primary caregivers. (Health & Saf. Code, §11362.71.)

The MMPA expressly immunizes from criminal liability qualified patients, persons with identification cards, and primary caregivers who transport or process marijuana for the personal medical use of a qualified patient or person with an identification card. (Health & Saf. Code, §11362.765(b)(1)-(2).) The MMPA also created an affirmative defense to criminal liability for qualified patients, persons with identification cards and primary caregivers who collectively or cooperatively cultivate marijuana. (Health & Saf. Code, §11362.775.)

III. The City's Ability to Restrict Medical Marijuana Uses

Notwithstanding the CUA and the MMPA, discussed above, the City may restrict the location, operation, or establishment of medical marijuana uses based on its land use police power authority. However, while it may restrict such uses, it may not specifically permit such uses because they are illegal under federal law.

A. The City May Restrict Medical Marijuana Uses Based on its Police Power and Land Use Authority

Case law has made clear that neither the CUA nor the MMPA preempts cities from enforcing zoning requirements related to medical marijuana uses.¹

This has also been statutorily clarified. For example, the CUA expressly states that: "Nothing in this [Act] shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others" (Health & Saf. Code, §11362.5(b)(2).) Similarly, the MMPA provides that "Nothing in this [Act] shall prohibit a city . . . from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider." (Health & Saf. Code, § 11362.768(f).)

Finally, as part of the 2011-2012 Regular Session, the Legislature adopted Assembly Bill ("AB") 1300. AB 1300 amended Health and Safety Code section 11362.83 to read as follows:

Nothing in this article shall prevent a city or other local governing body from adopting and enforcing any of the following:

- (a) Adopting local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective.

¹ See for example: *County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861 [County ordinance regulating the operation of medical marijuana dispensaries, including the location of dispensaries, was not preempted by the CUA or the MMPA.]; *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153 [City's moratorium on medical marijuana dispensaries was not preempted by the CUA or the MMPA.]; and *City of Corona v. Naulls* (2008) 166 Cal.App.4th 418 [Upholding the City's determination that medical marijuana dispensary was a public nuisance because it was not a permitted use under the City's zoning ordinance.].

(b) The civil and criminal enforcement of local ordinances described in subdivision (a).

(c) Enacting other laws consistent with this article.

B. Although the City May Restrict Medical Marijuana Uses, it May Not Permit Such Uses Because They are Illegal Under Federal Law

Although the City may restrict medical marijuana uses, it may not permit such uses because it would conflict with federal law. This was made clear in the recent case of *Pack v. Superior Court (City of Long Beach)* (2011) 199 Cal.App.4th 1070.

At issue in *Pack* was a comprehensive regulatory scheme enacted by the City of Long Beach by which medical marijuana collectives with the City are governed. The City charges an application fee, holds a lottery, and issues a limited number of permits. Permitted collectives, which must then pay an annual fee, are highly regulated, and subject to numerous restrictions on their operations.

The court in *Pack* found that, because the City's regulatory scheme *permitted* medical marijuana collectives rather than merely decriminalized specific acts, it was preempted by federal law. The court pointed out that: "The City's permit system . . . provides that collectives with permits may collectively cultivate marijuana with the City *and those without permits may not*. The City's permit is nothing less than an *authorization* to collectively cultivate."

Nevertheless, the court in *Pack* found that some of the regulations that were adopted by the City were in not in conflict with federal law because they did not permit or authorize activity prohibited under federal law. For example, the City's ordinance included provisions: (1) prohibiting a medical marijuana collective from providing medical marijuana to its members between the hours of 8:00 p.m. and 10:00 a.m.; (2) prohibiting a person under the age of 18 from being on the premises of a medical marijuana collective unless that person is a qualified patient accompanied by his or her physician, parent or guardian; and (3) prohibiting the collective from permitting the consumption of alcohol on the property or in its parking area. The court found that these provisions were not preempted by federal law.

IV. The City of Tracy's Zoning Ordinance

Under the City's Zoning Ordinance, any use that is not specifically authorized in a particular zone is prohibited.² (Tracy Municipal Code ("TMC"), §10.08.1070.) Therefore, unauthorized uses are considered public nuisances. (TMC, §1.04.050.)

² This type of zoning ordinance is commonly referred to as a "permissive zoning ordinance." (See *City of Corona v. Naulls, supra*, 166 Cal.App.4th at 430 – 433.)

Medical marijuana uses, including cultivation (either as a primary use or as an accessory residential use in a backyard), are not allowable uses in any of the City's zoning districts.³ Therefore, such uses are not allowed and are considered public nuisances.

In 2006, the City issued an Order to Abate Public Nuisance or Show Cause on the owners and operators of a medical marijuana dispensary, known as the Valley Wellness Center Collective, Inc., that was located at 130 West 11th Street. After a hearing on the Order, the Hearing Officer determined that the dispensary did not fall within any permitted uses with the City's Central Business District ("CBD") Zone in which it was located, and as such, was an unauthorized use in violation of the TMC. The Hearing Officer deemed the use a public nuisance and ordered that it be abated. The medical marijuana dispensary shut down as a result of the ruling.

V. Options

A. Clarify That Medical Marijuana Uses are Not Allowed Under the City's Zoning Ordinance

The City Council could direct staff to present it with an ordinance clarifying the existing ban on such uses under the TMC.

Such an ordinance would: (1) add a new section to Chapter 1.01 of the TMC (Adoption of Code) to clarify that "No use authorized under this code shall violate state or federal law"; and (2) add a new section to Article 23 of the Zoning Ordinance (General Provisions, Conditions, and Exceptions) expressly prohibiting medical marijuana uses in all zoning districts.

The purpose of adopting such a clarifying ordinance would be twofold: (1) to provide clear notice to the public that medical marijuana uses are prohibited under the TMC; and (2) to assist staff and the courts in interpreting and implementing the provisions of the TMC related to the use of medical marijuana.

Under this option, code enforcement would continue to enforce the Zoning Ordinance's prohibitions on such uses.

³ Zoning ordinances typically identify three types of uses: permitted uses, conditional uses, and accessory uses. The City's Zoning Ordinance defines "accessory" as ". . . a building, a part of a building, or a use which is subordinate to, and the use of which is incidental to, that of the main building, structure, or use on the same lot as the main building or use . . ." (TMC, §10.08.050.) The City's Zoning Ordinance permits accessory uses in all residential districts. (TMC, §10.08.1080(29).) In a residential district, accessory uses would normally include such things as gardens, garages, swimming pools, fences, hedges, trees and shrubs.

The City has broad authority to identify permitted and accessory uses in its Zoning Ordinance based on the police power authority granted to it under the state Constitution. (Cal. Const., art. XI, §7.) However, the City may only adopt ordinances, including zoning ordinances, which do not conflict with the Constitution and the laws of the state or the United States. (Gov. Code, §37100.) Because marijuana is illegal under federal law, the City has no power to adopt a zoning ordinance which would allow for its use either as a permitted or accessory use.

B. Restrict Medical Marijuana Uses and Provide Immunity from Prosecution Under the Tracy Municipal Code

Alternatively, the City Council could direct staff to present it with an ordinance that contains restrictions on medical marijuana uses and establishes immunity from prosecution under the TMC for those who operate in strict compliance with its terms.

As an example, the City of San Jose recently adopted an ordinance that: (1) requires medical marijuana collectives to register with the City; (2) restricts the number and location of collectives; (3) and provides operating regulations and conditions including those relating to cultivation (i.e., conditions relating to safety and operating hours). San Jose's ordinance makes clear that is intended only to establish an affirmative defense to criminal and civil enforcement of the San Jose Municipal Code (as such uses continue to be deemed "nuisances" under the San Jose Municipal Code because they conflict with federal law).

Although such an ordinance would establish immunity from prosecution under the TMC, it would not immunize medical marijuana uses from prosecution under federal law. This is important to keep in mind. On October 7, 2011, California's four U.S. attorneys held a joint press conference announcing increased enforcement of federal laws criminalizing the cultivation and sale of medical marijuana and authorizing the seizure of real property used for such activities.

Under this option, code enforcement would not enforce the Zoning Ordinance's prohibitions on such uses as long as they complied with the restrictions contained in the ordinance.

STRATEGIC PLAN

This agenda item seeks policy direction from Council and does not relate to the Council's strategic plans at this time.

FISCAL IMPACT

If the City Council chooses to adopt an ordinance that restricts medical marijuana uses, it could require significant staff time to draft and implement.

RECOMMENDATION

Staff recommends that the City Council discuss the options presented above and provide direction to staff.

ORDINANCE _____

AN ORDINANCE OF THE CITY OF TRACY: (1) ADDING A NEW SECTION 1.08.140 TO CHAPTER 1.08 OF THE TRACY MUNICIPAL CODE RELATING TO COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAW; AND (2) ADDING A NEW SECTION 10.08.3195 TO CHAPTER 10.08 OF THE TRACY MUNICIPAL CODE CLARIFYING THAT MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION ARE NOT PERMITTED USES

The City Council of the City of Tracy does ordain as follows:

SECTION 1: A new Section 1.08.140 is added to Chapter 1.08 of the Tracy Municipal Code to read as follows:

“1.08.140 Federal, State or Local Law. No provision of this Code is intended to nor shall be interpreted or applied to allow or authorize a use, structure, activity, or conduct that violates federal, state or local law.”

SECTION 2: A new Section 10.08.3195 is added to Chapter 10.08 of the Tracy Municipal Code to read as follows:

“10.08.3195 Medical Marijuana Dispensaries and Cultivation.

(a) For the purposes of this section, the following definitions apply:

(1) “Medical marijuana dispensary” or “dispensary” means any facility or location where medical marijuana is grown, made available to and/or distributed by or to any of the following: a primary caregiver, a qualified patient, or a person with an identification card.

(2) “Person with an identification card” shall have the same definition as in California Health and Safety Code Section 11362.5 et seq., and as may be amended.

(3) “Primary caregiver” shall have the same definition as in California Health and Safety Code Section 11362.5 et seq., and as may be amended.

(4) “Qualified patient” shall have the same definition as in California Health and Safety Code Section 11362.5 et seq., and as may be amended.

(b) A medical marijuana dispensary is not allowed, and shall be unlawful, as a principal use, conditional use, special use, or accessory use in any zone.

(c) Medical marijuana cultivation is not allowed, and shall be unlawful, as a principal use, conditional use, special use, or accessory use in any zone.

(d) Violations of this section are punishable as misdemeanors and as otherwise set forth in Chapter 1.04 of this code. Each day of operation of a medical marijuana dispensary, or cultivation of medical marijuana occurs, in violation of this section constitutes a separate offense.

SECTION 3: This Ordinance shall take effect thirty days after its final passage and adoption.

SECTION 4: This Ordinance shall be published once in the Tri-Valley Times, a newspaper of general circulation, within fifteen days from and after its final passage and adoption.

* * * * *

The foregoing Ordinance _____ was introduced at a regular meeting of the Tracy City Council on the ___ day of _____, 2012, and finally adopted on the _____ day of _____, 2012, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

RESOLUTION _____

RECOMMENDING CITY COUNCIL APPROVAL OF AN ORDINANCE OF THE CITY OF TRACY: (1) ADDING A NEW SECTION 1.08.140 TO CHAPTER 1.08 OF THE TRACY MUNICIPAL CODE RELATING TO COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAW; AND (2) ADDING A NEW SECTION 10.08.3195 TO CHAPTER 10.08 OF THE TRACY MUNICIPAL CODE CLARIFYING THAT MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION ARE NOT PERMITTED USES

WHEREAS, Medical Marijuana uses, including dispensaries and cultivation, are not allowable uses in any of the City's zoning districts, and

WHEREAS, The proposed ordinance clarifies this existing ban, and

WHEREAS, The Planning Commission conducted a public hearing to review and consider the proposed ordinance on December 21, 2011;

NOW, THEREFORE BE IT RESOLVED, That the Planning Commission does hereby recommend that the City Council adopt an ordinance of the City of Tracy: (1) adding a new Section 1.08.140 to Chapter 1.08 of the Tracy Municipal Code relating to compliance with federal, state, and local law; and (2) adding a new Section 10.08.3195 to Chapter 10.08 of the Tracy Municipal Code clarifying that medical marijuana dispensaries and cultivation are not permitted uses.

The foregoing Resolution _____ was adopted by the City Council on the 21st day of December, 2011, by the following vote:

AYES: COMMISSION MEMBERS:
NOES: COMMISSION MEMBERS:
ABSENT: COMMISSION MEMBERS:
ABSTAIN: COMMISSION MEMBERS:

Chair

ATTEST:

Staff Liaison

AGENDA ITEM 2-B

REQUEST

CONDUCT A SCOPING MEETING TO OBTAIN COMMENTS FROM PUBLIC AGENCIES OR OTHER INTERESTED PARTIES REGARDING ISSUES TO BE ANALYZED IN THE CORDES RANCH SPECIFIC PLAN PROJECT ENVIRONMENTAL IMPACT REPORT – APPLICATION NUMBERS 1-03-A/P, 3-03-GPA, AND DA11-0001

DISCUSSION

The Cordes Ranch Specific Plan (Project) application has been submitted to begin the entitlement process for future industrial, office, and commercial development. The approximately 1774-acre Project site is adjacent to and south of Interstate 205 near Mt House Parkway and northeast of Interstate 580 (Attachment A).

The Project proposes to annex the site to the City, amend the General Plan land use designation from Urban Reserve 6 to Commercial, Office and Industrial, and establish the Cordes Ranch Specific Plan which will serve as the zoning for the Project. The project also involves a possible Development Agreement with the property owners.

In accordance with California Environmental Quality Act (CEQA) Guidelines, an Environmental Impact Report (EIR) is required to analyze the potential environmental effects of the Project. Design, Community and Environment (DCE) was chosen by the City to prepare the EIR. DCE has successfully completed numerous EIR's and other CEQA documentation and, most recently in Tracy, completed the EIR for the General Plan and Sustainability Action Plan project.

The Notice of Preparation (NOP) for this Project EIR was published on December 5, 2011 (Attachment B). Through the NOP, public agencies and other parties are asked to provide input with respect to areas or issues that should be analyzed in the EIR. The NOP comment period runs through January 4, 2012.

CEQA Guidelines require a scoping meeting for EIR projects that meet one or more of the criteria to become a project of "statewide, regional, or area-wide significance." The characteristics of this project triggering that designation are (1) an amendment to the General Plan, and (2) the Project has the potential to be major development area consisting of over 20 million square feet of manufacturing, distribution, and other light industrial uses, over 800,000 square feet of commercial uses, and over 8 million square feet of office uses. The purpose of this scoping meeting is to provide an opportunity for the City to consult directly with public agencies or other interested parties who may be concerned about the environmental effects of a project. Scoping may help identify project alternatives, mitigation measures, or significant effects to be analyzed in the EIR. A list of probable environmental effects anticipated to be analyzed in the EIR is contained in the NOP, Attachment B.

The NOP, including notice of tonight's scoping meeting, was sent to a variety of public and private agencies and property owners adjacent to the Project site. The NOP was also placed on the City's website.

Presentation on the Cordes Ranch Specific Plan

City staff will provide an overview of the project and the EIR process. Members of the Cordes Ranch development team will present land use, design, and infrastructure related information as part of their presentation to the Planning Commission.

RECOMMENDATION

Staff recommends that the Planning Commission receive a presentation by the project proponents on the Cordes Ranch Specific Plan and then receive input from any interested parties regarding issues or alternatives that should be evaluated in the EIR.

Prepared by Bill Dean, Assistant Director of Development and Engineering Services

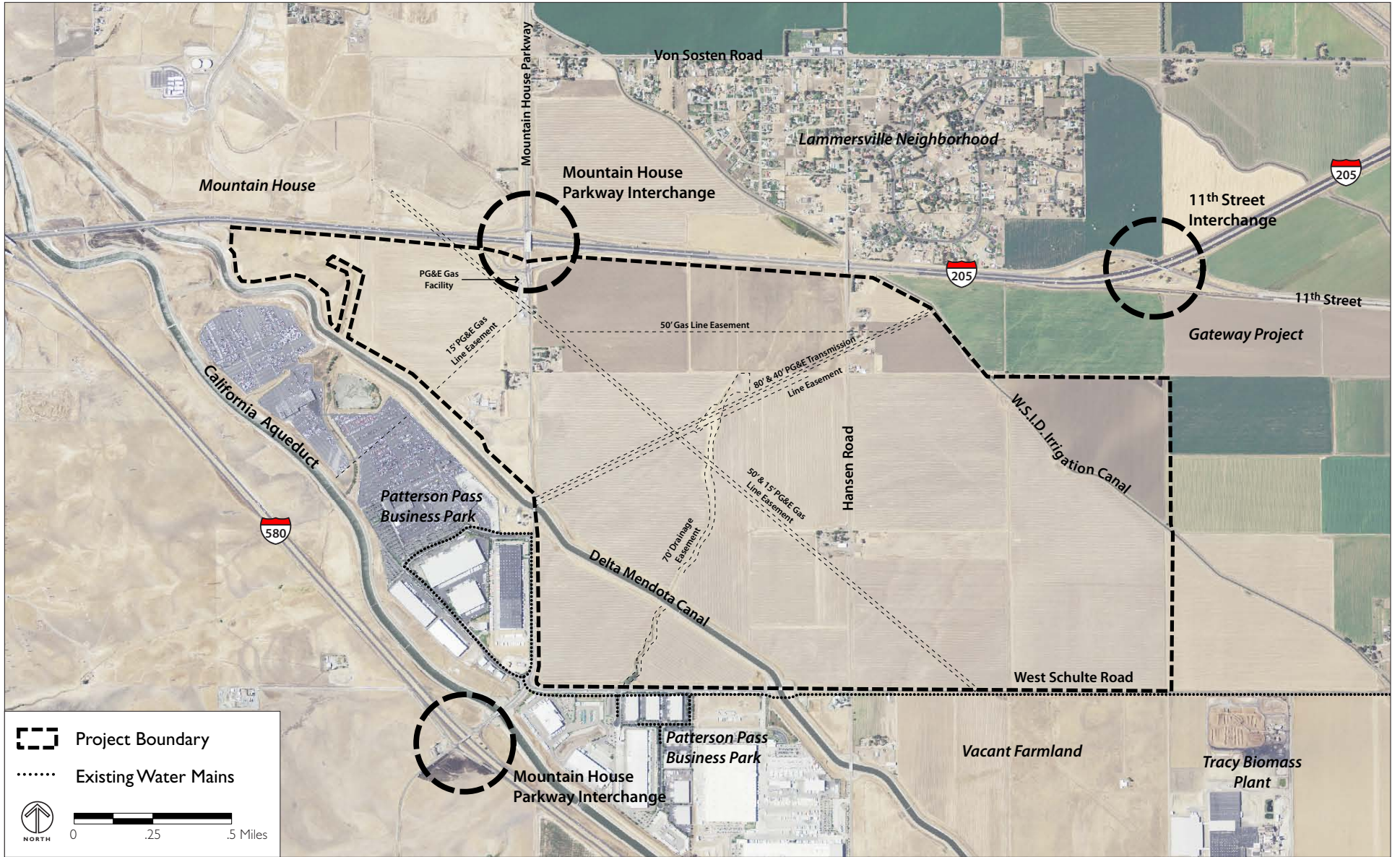
Approved by Andrew Malik, Director of Development and Engineering Services

ATTACHMENTS

Attachment A – Project Location Map

Attachment B – Notice of Preparation for the Cordes Ranch EIR

CITY OF TRACY
CORDES RANCH SPECIFIC PLAN EIR
NOTICE OF PREPARATION



Source: The Planning Center | DC&E, 2011; USGS, 2011.

FIGURE 2
PLAN AREA

Notice of Preparation (NOP)

Date: November 30, 2011

<p>To: Responsible and Trustee Agencies and Other Interested Parties</p> <p>State Clearinghouse P.O. Box 3044 Sacramento, CA 95812-3044</p>	<p>From: City of Tracy Development and Engineering Services 333 Civic Center Plaza Tracy, CA 95376 Attn.: Mr. Bill Dean</p>
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The City of Tracy will be the Lead Agency and will prepare a project-level Environmental Impact Report (EIR) for the Cordes Ranch Specific Plan. The project, its location, and potential environmental effects are described below.

The project would require the following discretionary approvals from the City of Tracy: a general plan amendment; a zoning amendment; specific plan approval; parcel/tentative (phased) subdivision map approval; annexation; a development agreement; conditional use permit(s); design review. The development agreement, among other things would address phasing and other obligations related to construction of necessary on- and off-site infrastructure and amenities, obligations related to payment of applicable development impact fees and/or dedication of land in lieu thereof, phasing of development, obligations related to utility capacity issues, and applicable development standards.

Members of the public and public agencies are invited to provide comments in writing as to the scope and content of the EIR. The City is requesting the views of public agencies as to the scope and content of the environmental information as it pertains to your agency's statutory responsibilities in connection with the proposed project. Where applicable, public agencies will need to use the EIR prepared by the City when considering permit approval or other approvals for the project, design guidelines, and other rights and obligations of the respective parties related to developing the project.

The project also may require discretionary approvals from other federal, state and regional agencies including:

- ◆ Approvals of permits from federal regulatory agencies with jurisdiction over the project (e.g., the United States Fish and Wildlife Service, National Marine Fisheries Services, United States Army Corps of Engineers) in connection with biological resources impacts.
- ◆ Approval by the San Joaquin Local Agency Formation Commission (LAFCO) to annex the Plan Area to the City of Tracy. The City's proposed Sphere of Influence includes the Plan Area and is currently the subject of a review process at LAFCO.

- ◆ Approval or permits from other state and regional agencies such as the California Department of Fish and Game, State Water Resources Control Board, California Department of Transportation, Central Valley Regional Water Quality Control Board and the San Joaquin Valley Air Pollution Control District in connection with air quality, biological resources, public services, transportation, and utilities impacts.

Due to the time limits mandated by State law, your response must be sent at the earliest possible date, but no later than the close of the 30-day NOP review period. The 30-day comment period closes on January 4, 2011. Please send written responses to Mr. Bill Dean, Development and Engineering Services, at the address shown below. Public agencies providing comments are requested to include a contact person for the agency.

The City will also conduct two public scoping meetings on the project in accordance with Public Resources Code §§ 21080.4(b), 21083.9. Members of the public and public agencies are invited to provide comments to the county at the public scoping meeting. The scoping meetings will occur on the following date, at the following times and locations at Tracy City Hall, located at 333 Civic Center Plaza, Tracy, CA 95376:

December 21, 2011
3:00 P.M.
City Hall Conference Room 120

December 21, 2011
7:00 P.M.
Planning Commission Meeting, Council
Chambers

1. Project Name:

Cordes Ranch Specific Plan

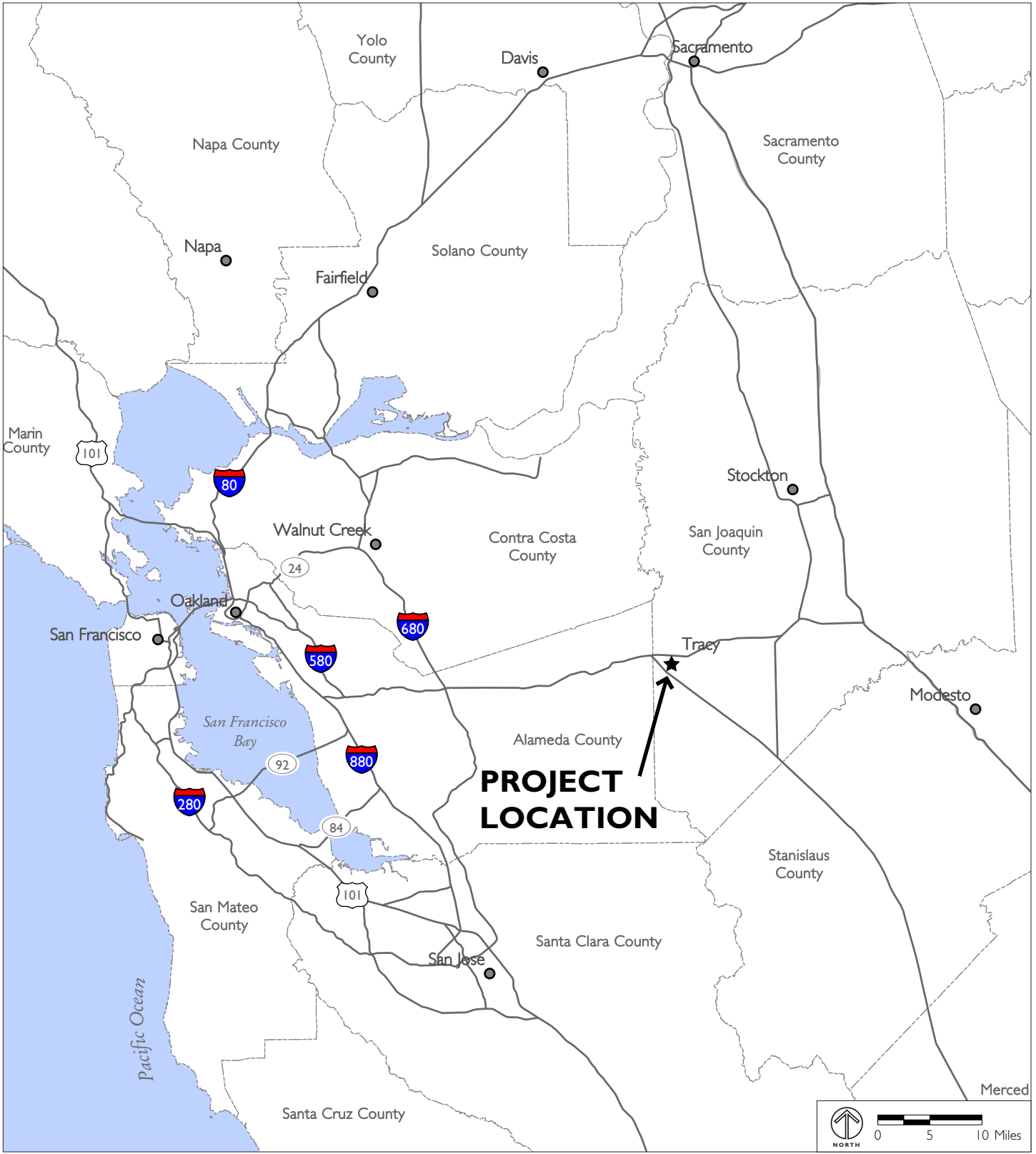
2. Project Location and Surrounding Uses:

The Plan Area is located near the eastern slope of the Altamont Pass in unincorporated San Joaquin County, adjacent to the City of Tracy, California, as shown in Figures 1 and 2. The Plan Area is adjacent to and south of Interstate 205 near Mountain House Parkway and northeast of Interstate 580. The Plan Area is outside of, and directly adjacent to, the City limits and is outside the City's current Sphere of Influence (SOI). The Plan Area is bordered by Interstate 205 to the north, Mountain House Parkway and the Delta-Mendota Canal to the west, West Schulte Road to the south, and the Tracy City limit to the east, as shown in Figure 2.

The Plan Area consists of approximately 1,774 acres of largely undeveloped, primarily vacant agricultural land that slopes from an elevation of approximately 220 feet at the southwest property corner to an elevation of approximately 90 feet at the northeast property corner, with a general slope of approximately 1 percent. There are a number of existing farm buildings, and a Pacific Gas & Electric (PG&E) natural gas facility maintenance yard, with associated outbuildings, located in the northwestern portion of the Plan Area, near Mountain House Parkway. An existing residence and other structures are located at the mid portion of the Plan Area, adjacent to Hansen Road. A cellular installation with a related equipment building is located within the PG&E transmission easement adjacent to Hansen Road.

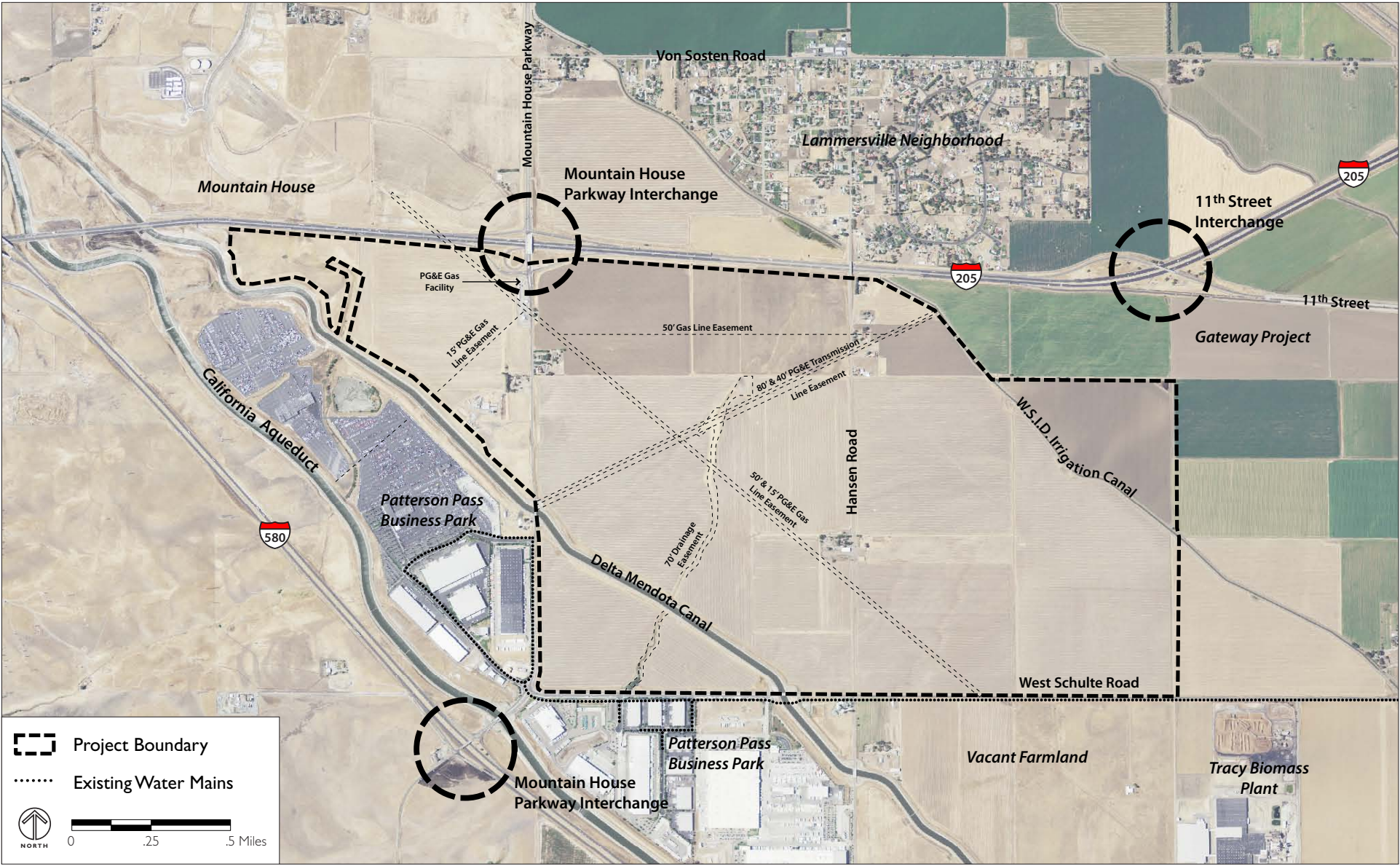
A number of utility easements traverse the site, as shown on Figure 2. An approximate 40- and 80-foot PG&E transmission line easement enter the mid-portion of the site from the southwest and extend diagonally across the site and exit to the northeast. Three high-pressure gas lines are also located on site. An approximate 50- and 15-foot gas line easement extends from the southeast at the southern property boundary, through the PG&E natural gas facility maintenance yard, and exits near the northwest property boundary. An oil pipeline is located within this easement. A second approximate 15-foot gas line easement extends from the southwest near the Delta-Mendota Canal, and terminates at the PG&E natural gas facility maintenance yard. A third gas line easement has historically extended east from the PG&E natural gas facility maintenance yard to the approximate 40- and 80-foot electrical transmission easement near Hansen Road.

Two water distribution canals are located on site. The Delta-Mendota Canal parallels the western property boundary, then enters the site at Mountain House Parkway and extends southeast toward the southern property boundary. The West Side Irrigation District Canal parallels the northern property boundary and enters the site at a proposed new road, and then exits the site at the mid-portion of the eastern property boundary. It is envisioned that this canal would be piped and undergrounded in the future within an easement.



Source: The Planning Center | DC&E, 2011.

FIGURE 1
REGIONAL LOCATION



Source: The Planning Center | DC&E, 2011; USGS, 2011.

FIGURE 2
 PLAN AREA

An approximate 70-foot drainage easement generally follows the existing swale and drainage channel from the southern property boundary to the mid-portion of the site, terminating at a small basin. From the basin, a series of ditches convey the stormwater to the east to Hansen Road, and then north along Hansen Road to a pumping station that pumps the storm water to the north side of Interstate 205. The channel and basin area have both been delineated as a jurisdictional wetlands.

The southern and mid portions of the site are serviced by existing water mains located within the Hansen and West Schulte Road rights-of-way. An existing 24-inch water transmission main extends east adjacent to the southern property boundary within West Schulte Road and terminates at Mountain House Parkway. From the transmission main, a 14-inch water line extends north within Mountain House Parkway along the western property boundary.

An existing 21-inch sanitary sewer extends from the northeast property boundary to Hansen Road and continues south through the Plan Area, to West Schulte Road and extends westerly to Mountain House Parkway. An existing 15-inch sanitary sewer line and an 8-inch sanitary sewer force main extend north from West Schulte Road along Mountain House Parkway to the Delta-Mendota Canal.

3. Lead Agency Contact:

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5. Project Description:

The Cordes Ranch Specific Plan (Plan) contains land use, landscaping, circulation, sustainability, and infrastructure-related goals, policies, and actions to guide investment and development in the approximately 1,774-acre Plan Area, and sets forth a comprehensive planning and regulatory framework for development of the Plan Area. The Plan proposes a mix of commercial, retail and business park, and manufacturing and distribution uses, and an organizing concept for the Plan is the creation of districts of clustered compatible land uses.

Proposed on-site roadways are shown in Figure 3. As shown in Figure 3, the primary site access to the site would be from the west on Mountain House Parkway, which can be accessed from Interstate 580 from the south and Interstate 205 from the north. Additional site access would be provided by a new road, which would extend eastward from Mountain House Parkway and terminate at Lammers Road. The new roadway would divide the Plan Area in half and would be the main east – west circulation element for the project, allowing truck and vehicle access to a majority of interior development and parcels.

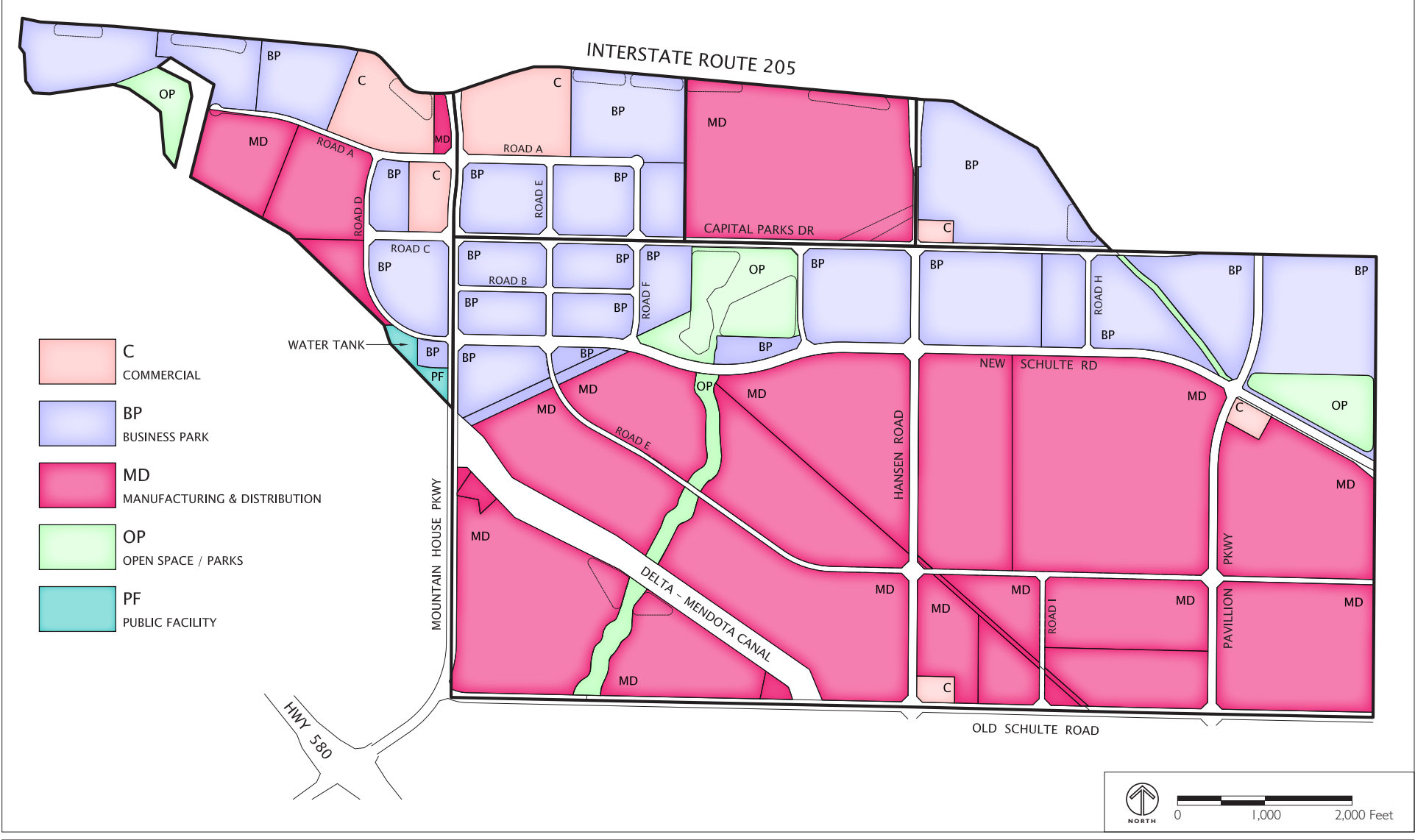
Figure 3 shows the conceptual site plan. The Plan calls for a district consisting of commercial, retail, tech/flex and light industrial uses on the eastern side of Mountain House Parkway. Development would be linked together by a circulation network and streetscape that provides access to a central open space area. The central green would provide employees access to picnic areas, walking paths, and passive use areas. This district would continue east from the central green to the eastern property boundary. Development of this portion of the district is envisioned to include more tech/flex and smaller scale manufacturing and distribution uses than other areas of the Plan Area. Bike and pedestrian paths as part of the streetscape for new on-site roadways would provide employees with access to a central green and east park area located adjacent the eastern property boundary.

A second district would be formed at the western portion of the Plan Area by Mountain House Parkway and would consist of a variety of uses, from commercial, retail, tech/flex and light industrial uses along the freeway, to manufacturing and distribution adjacent to the Delta-Mendota Canal. Bicycle and pedestrian linkages would be provided along new roadways to allow for employees to access the central green. At the western most Plan Area boundary, a gateway element consisting of signage and landscaping would create an entry way and gateway to the project and City of Tracy.

A third district, south of the main east-west road to the southern Plan Area boundary, would consist of manufacturing and warehouse and distribution uses. Logistic and distribution uses are envisioned in this district, developed around an efficient grid street network to provide easy access from both Interstate 580 and Interstate 205 by trucks and employees. The grid street network would provide circulation for bicycles and pedestrians to the central green space and park at the eastern Plan Area boundary. Trucks would access the Plan Area from both Interstate 580 and Interstate 205 at Mountain House Parkway. The main project roads would be designated as the main truck routes to access manufacturing and distribution facilities. Truck route intersections would be designed to Surface Transportation Assistance Act (STAA) standards to accommodate the large truck and trailer turning movements.

Key project features include the following:

- ◆ **Commercial Development:** Approximately 850,500 square feet.
- ◆ **Business Park:** Approximately 8.9 million square feet.
- ◆ **Manufacturing and Distribution Development:** Approximately 20.7 million square feet.



Source: The Planning Center | DC&E, 2011; Kier & Wright, 2011.

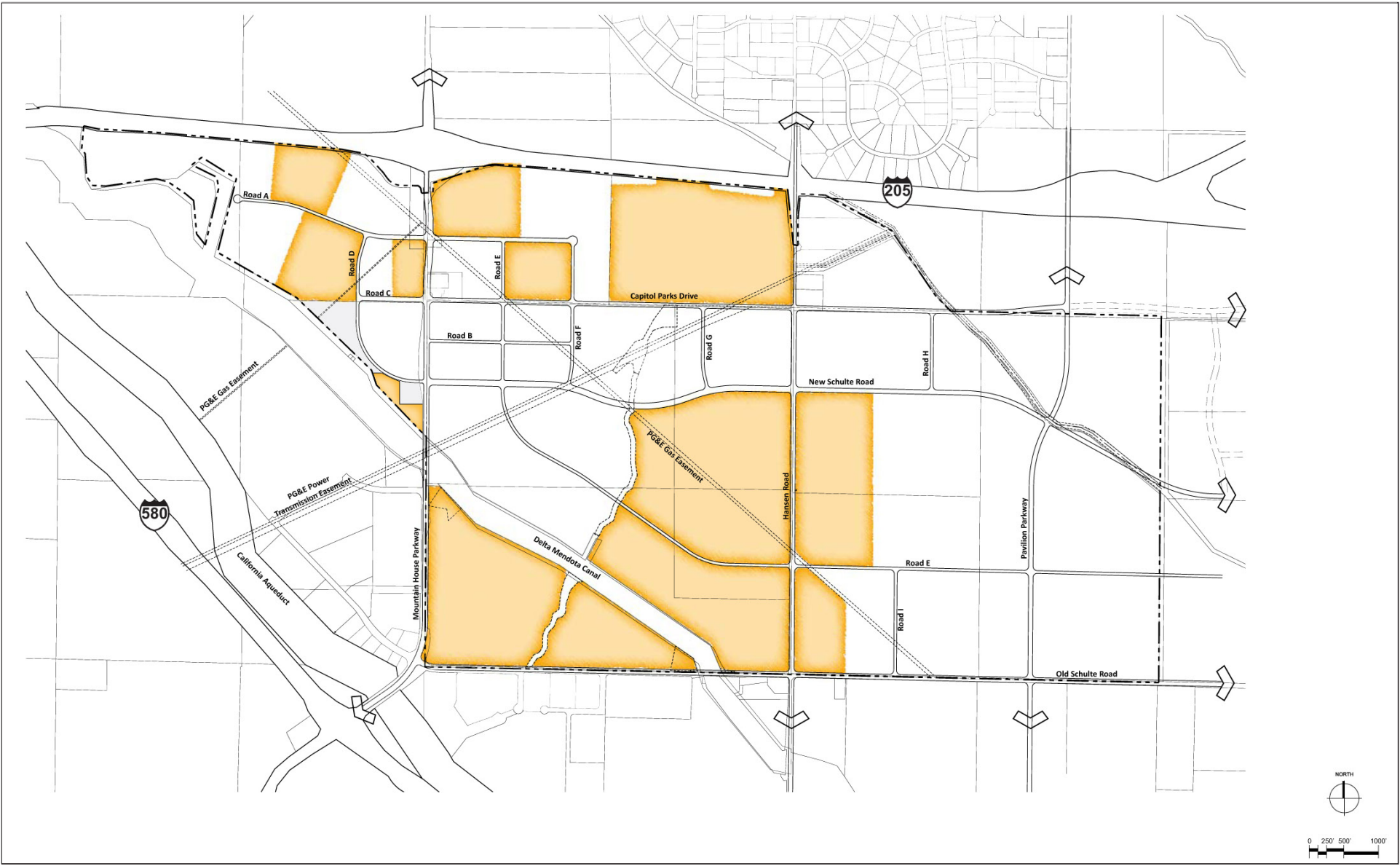
FIGURE 3
PROPOSED LAND USE PLAN

- ◆ **Phasing:** The project is conceptually envisioned to develop in four phases, although phasing may change based on market conditions and development demand. The portion of the Plan Area to be developed during Phase 1 is shown in Figure 4. Phase 1 would develop the manufacturing and distribution uses within the triangular parcel at southwest portion of the site, a major portion of the area between Hansen Road and Pavilion Parkway between New and Old (formerly West) Schulte roads, and a portion of the commercial retail, business park, and manufacturing and distribution uses adjacent to Interstate 205. Phase 1 development would utilize the existing road circulation which may need additional widening and improvements to accommodate development.
- ◆ **New Streets and Proposed Roadway Pattern:** Three new arterials are proposed; the construction of other on-site roads would be flexible to allow demand to dictate locations and lane configurations.
- ◆ **Bicycle and Pedestrian Circulation:** Class I and II bicycle paths would connect throughout the Plan Area.
- ◆ **Open Space:** An integrated network of open spaces and park areas would provide active and passive use areas for users.
- ◆ **Landscaping:** The landscape will include the use of native and climate adapted plant species which will utilize a high-efficiency water use irrigation system. The design will create a contemporary California landscape that is attractive, resource-efficient, and that is relatively low-maintenance.
- ◆ **Utilities:** Development of the project would require the extension of existing utilities (sewer, water, and stormwater) consistent with the recommendations of the City of Tracy Infrastructure Master Plans.
- ◆ **Telephone, Cable, Electricity, and Gas:** The project is planning to rely on local service providers to provide electrical, telephone, cable, and gas services to the Plan Area.

6. Environmental Factors Potentially Affected:

The EIR will include a summary of the EIR's analysis and conclusions, a project description, a description of the existing environmental setting, potential environmental impacts, and feasible mitigation measures. Consistent with the State CEQA Guidelines (Appendix G), the following environmental factors will be considered in relation to this project:

- ◆ Aesthetics
- ◆ Agriculture Resources
- ◆ Air Quality
- ◆ Biological Resources
- ◆ Cultural Resources
- ◆ Geology and Soils
- ◆ Greenhouse Gas Emissions
- ◆ Hazards and Hazardous Materials
- ◆ Hydrology and Water Quality
- ◆ Land Use and Planning



Source: The Planning Center | DC&E, 2011; David Babcock & Associates, 2011.

FIGURE 4
PHASE I

- ◆ Population and Housing
- ◆ Hazards and Hazardous Materials
- ◆ Public Services
- ◆ Recreation
- ◆ Transportation/Traffic
- ◆ Utilities and Service Systems
- ◆ Energy
- ◆ Alternatives
- ◆ Environmental consequences, including: (a) any significant environmental effects that cannot be avoided if the project is implemented; (b) any significant irreversible and irretrievable commitments to resources; (c) growth-inducing impacts of the proposed project; (d) effect found not to be significant; and (e) cumulative impacts.

CEQA allows environmental issues for which there is no likelihood of a significant impact to be “scoped out,” and not analyzed further in the EIR. An initial evaluation of the project has determined that it would not have an effect on mineral or forestry resources. Therefore, these issues will not be analyzed in detail in the EIR, although the basis for this determination will be discussed.

7. Lead Agency Signature

Date 12/1/11

Signature 

Title Assistant Director, Development and Engineering Services