

## NOTICE OF A REGULAR MEETING

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

**Date/Time:** Wednesday, April 23, 2014  
7:00 P.M. (or as soon thereafter as possible)

**Location:** City of Tracy Council Chambers  
333 Civic Center Plaza

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.

### REGULAR MEETING AGENDA

CALL TO ORDER

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 Commission Member to sponsor the item for discussion at a future meeting.*

1. OLD BUSINESS
2. NEW BUSINESS

- A. **APPLICATION TO AMEND A VESTING TENTATIVE SUBDIVISION MAP FOR THE DEVELOPMENT OF 57 SINGLE-FAMILY LOTS ON A 9.42-ACRE PARCEL, AND A PRELIMINARY AND FINAL DEVELOPMENT PLAN AMENDMENT TO ALLOW FOR THE CONSTRUCTION OF 57 SINGLE-FAMILY HOMES LOCATED WITHIN THE 9.42-ACRE INFILL SITE. TSM13-0006 AND PUD13-0006: APPLICANT AND OWNER IS WOODSIDE 05N, LP – NORTHWEST CORNER OF PESCADERO ROAD AND MACARTHUR DRIVE.**
- B. **AMENDMENT TO THE 2770 N. NAGLEE ROAD PRELIMINARY AND FINAL DEVELOPMENT PLAN TO REMOVE THE EXISTING RESTAURANT BUILDING AND REPLACE IT WITH A 5,671 SQUARE FOOT RESTAURANT WHILE RETAINING THE PARKING AND LANDSCAPE IMPROVEMENTS - APPLICANT IS RED ROBIN GOURMET INTERNATIONAL AND OWNER IS TRACY MALL PARTNERS, L.P.**

**C. PUBLIC HEARING TO CONSIDER PLANNING COMMISSION RECOMMENDATION REGARDING THE SURLAND COMMUNITIES LLC APPLICATIONS FOR A DEVELOPMENT AGREEMENT AMENDMENT RELATED TO THE ELLIS PROJECT. THE ELLIS PROJECT AND DEVELOPMENT AGREEMENT SITE IS APPROXIMATELY 321-ACRES LOCATED AT THE NORTHWEST CORNER OF CORRAL HOLLOW ROAD AND LINNE ROAD. APPLICATION DA13-0002 - APPLICANT IS THE SURLAND COMMUNITIES LLC.**

3. ITEMS FROM THE AUDIENCE
4. DIRECTOR'S REPORT
5. ITEMS FROM THE COMMISSION
6. ADJOURNMENT

Posted: **April 17, 2014**

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 APPLICATION TO AMEND A VESTING TENTATIVE SUBDIVISION MAP FOR THE DEVELOPMENT OF 57 SINGLE-FAMILY LOTS ON A 9.42-ACRE PARCEL, AND A PRELIMINARY AND FINAL DEVELOPMENT PLAN AMENDMENT TO ALLOW FOR THE CONSTRUCTION OF 57 SINGLE-FAMILY HOMES LOCATED WITHIN THE 9.42-ACRE INFILL SITE LOCATED AT THE NORTHWEST CORNER OF MACARTHUR DRIVE AND PESCADERO AVENUE. THE APPLICANT AND OWNER IS WOODSIDE 05N, LP- APPLICATION NUMBERS TSM13-0006 AND PUD13-0006**

BACKGROUND

The subject property is located at the northwest corner of Mac Arthur Drive and Pescadero Avenue, south of and adjacent to I-205. It is also adjacent to and east of the California Mirage subdivision (Attachment A). The total project area is 9.42 acres, to be subdivided for the construction of 57 single-family homes, herein called the project site. The project site was annexed to the City in 1957. The project site falls within the Infill development and finance plan area. In 2006 the General Plan was updated and changed the land use designation from Commercial to Residential Medium. One of the reasons for the change was the effort to identify sites for residential development to meet the City's Regional Housing Needs Allocation numbers as determined by the State Department of Housing and Community Development.

In 2008 this property was rezoned from Highway Service (HS) to Planned Unit Development (PUD), to gain compliance with the General Plan designation. With that rezoning, a Vesting Tentative Subdivision Map, and Concept, Preliminary and Final Development Plans were also approved for the development of 64 single-family homes on the project site.

Site and Project Area Description

The current zoning designation is Planned Unit Development (PUD), with a General Plan designation of Residential Medium, allowing for 5.9 to 12 dwelling units per gross acre. The properties to the west and south of the project site are zoned Medium Density Cluster (MDC), and are within the California Mirage subdivision. Across I-205 to the north, the property is zoned Highway Service, and across Mac Arthur Drive to the east, the properties fall within the Freeway Commercial land use designation of the I-205 Specific Plan.

DISCUSSION

PUD Amendment

In order to establish a Planned Unit Development (PUD) zone, the minimum and maximum standards must be established for the project in the Concept, Preliminary and Final Development Plan (Attachment B). The Concept Development Plan (CDP) is the

first step, which describes the proposed uses in a very general manner, showing potential building locations, parking areas, and proposed land uses. The Preliminary Development Plan (PDP) supplies all of the detailed information, such as architectural renderings, site plans showing open space and circulation, landscape, and utility plans. The Final Development Plan (FDP) must be approved prior to any construction, and typically finalizes all of the details laid out by the Preliminary Development Plan, and any changes proposed. It is typical for the CDP to be approved upon annexation or rezoning, and then later the PDP and FDP are often reviewed concurrently, showing their conformity with the adopted CDP.

When this property was rezoned to PUD in 2008, a CDP/PDP/FDP was approved for the land that encompassed the 64 lots that were proposed for development at the time. That approval contained lots for the construction of 64 single-family homes in an area with private streets and alley-loaded garages. The project currently proposed would be comprised of 57 lots served by a small grid pattern of public streets from a single entry point off of Pescadero Avenue.

#### Subdivision

The proposal is to divide the property into 57 lots in order to develop 57 detached single-family homes on approximately 9.42 acres (Attachment C). The proposed lot sizes range from 4,012 to 8,577 square feet with an average lot size of approximately 4,600 square feet. The gross density of the proposed subdivision is 6.1 units per acre, within the range allowable under the site's General Plan designation of Residential Medium.

There is one main access point for the subdivision, located on the south side of the proposed subdivision, along Pescadero Avenue. That access point leads to the streets, designed in a semi-grid pattern to access the 57 proposed houses.

#### Building Setbacks, Development Standards

The minimum building setbacks are to be as shown in the revised Preliminary and Final Development Plan as shown in Attachment B. The minimum setbacks, lot coverage, and other requirements are listed for the proposed lots. Staff worked with the applicant to create the development standards for the subdivision so the end result would be a well-planned but flexible subdivision that accounts for the needs of the future residents of the proposed houses, with regards to building shade structures, additions, pools, etc.

#### Building Height

The proposed houses are one and two stories in height. The Tracy Municipal Code provides that height limits can be established in each PUD, as appropriate. The proposed maximum building height is 35 feet, which is consistent with the zoning regulations of all of the adjacent single-family homes in the Medium Density Cluster zone, which are allowed to be up to two and a half stories, or 35 feet, whichever is less.

### Architecture

Upon submittal of a vesting tentative subdivision map application (or map amendment), as well as a PUD, the applicant is required by Tracy Municipal Code Sections 12.28.040(b)(2) and 10.08.1830 to submit architectural floor plans and elevations for review and approval by the Planning Commission and City Council. The proposed architecture for the 57 units contains a total of five floor plans as described above, each with two to four different architectural elevations, including Ranch, Craftsman, Cottage and Traditional styles (Attachment D).

Each individual home design has been created with unique characteristics, as inspired by these styles. The Ranch style (A elevations) is expressed with lower pitched roofs, front porch posts and corbels, and gable end details utilizing various materials, including board & batten accents. The Craftsman style (B elevations) employs a mainly stucco finish highlighted with shingle siding, kickers and the base incorporates a stone wainscot. The Cottage style (C elevations) incorporates mainly hip roof forms with a steeper pitch. Windows patterns highlight this style, as well as the use of shutters, larger stone elements, and gable end accents of horizontal siding. For added diversity, the Traditional style (D elevations) is incorporated on two home designs and introduces strong gable roof lines, dormer elements and brick wainscoting.

### Residential Growth Allotments (RGAs)

Because this project is an amendment to the existing Vesting Tentative Subdivision Map, the requirements for allocation of RGAs are vested to the requirements of the 2005 Growth Management Ordinance (GMO) and its Guidelines. The project does not currently have any RGAs and will apply for RGAs in accordance with the 2005 GMO prior to the issuance of any building permits for the project. The project falls within the "Primary Area" of the 2005 GMO and is eligible to apply for RGAs in accordance with the 2005 GMO Guidelines.

### Schools

The Tracy Joint Unified School District has determined that the Tiburon Village project does not need to dedicate property for a school site within the subdivision. However, in order to mitigate the proposed developments' impacts on school facilities, the developer will work with the School District prior to the issuance of any building permits, and the appropriate per-square foot or per-unit fee to be charged for each of the 57 units constructed.

### Parks

Parks are required to be established within residential neighborhoods to serve the residents of the homes that are established in Tracy. In order to meet the need for park land, projects are either required to build their own park, or pay park in-lieu fees. Since the minimum park size within the City is typically required to be two acres, this project will pay the park in-lieu fees, as the 57 homes proposed would only constitute a need for a 1/2-acre park. (The total population estimate for the project area is 187 residents, based on 57 dwelling units, and 3.28 people per unit.) In addition, community parks are

required at a rate of 1 acre of park land per every 1,000 residents, resulting in 0.19 acres of community park area required, or mitigation fees paid.

### Environmental Document

Public Resources Code section 21083.3 and its parallel Guidelines provision, section 15183, provide for streamlined environmental review for projects consistent with the development densities established by existing zoning, general plan, or community plan policies for which an environmental impact report ("EIR") was certified. Such projects require no further environmental review except as might be necessary to examine whether there are project-specific significant effects that are peculiar to the project or its site. If an impact is not peculiar to the parcel or to the project, has been addressed as a significant impact in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards, then an additional EIR need not be prepared for the project solely on the basis of that impact.

On July 20, 2006, the City adopted a new General Plan (the "2006 General Plan") and certified the associated General Plan EIR (SCH# 1992 122 069) (the "2006 General Plan EIR").

The General Plan land use designation for the Project site is Residential Medium. The development density of the project is consistent with the Residential Medium land use designation.

Staff has examined the environmental effects of the project and has determined that no further review is necessary because there are no:

- a) Environmental effects that are peculiar to the project or the parcel on which the project would be located;
- b) Environmental effects that were not analyzed as significant effects in the General Plan EIR;
- c) Potentially significant off-site impacts and cumulative impacts which were not discussed in the 2006 General Plan EIR; or
- d) Previously identified significant effects in the 2006 General Plan EIR which, as a result of substantial new information which was not known at the time the EIR was certified, is determined to have a more severe adverse impact than discussed in the EIR.

Finally, the General Plan EIR specified a number of feasible mitigation measures to address significant effects on the environment that would result in implementing the Plan. To the extent applicable, these mitigation measures are incorporated as part of the project or as part of the project's conditions of approval.

### RECOMMENDATIONS

Staff recommends that the Planning Commission recommend that the City Council approve the amendment to the Classics Vesting Tentative Subdivision Map, Application Number TSM13-0006, and the amendment to the Preliminary and Final Development Plans, Application Number PUD13-0006, based on the findings and subject to the

conditions contained in the Planning Commission Resolution (Attachment E) dated March 26, 2013.

MOTION

Move that the Planning Commission recommend that the City Council approve the amendment to the Classics Vesting Tentative Subdivision Map, Application Number TSM13-0006, and the amendment to the Preliminary and Final Development Plans, Application Number PUD13-0006, based on the findings and subject to the conditions contained in the Planning Commission Resolution (Attachment E) dated April 23, 2014.

Prepared by: Victoria Lombardo, Senior Planner

Reviewed by: Bill Dean, Assistant Development Services Director

Approved by: Andrew Malik, Development Services Director

ATTACHMENTS

Attachment A — Location Map

Attachment B — PUD Guidelines

Attachment C — Subdivision Map (Oversize: Copies available in the Development Services Department, City Hall)

Attachment D — Architectural Renderings (Oversize: Copies available in the Development Services Department, City Hall)

Attachment E — Planning Commission Resolution to approve VTSM Amendment and Amendment to the PDP/FDP

**PLANNED UNIT DEVELOPMENT (PUD)****THE CLASSICS****GENERAL DEVELOPMENT STANDARDS**

The following standards apply to the Classics single family development. As small lot single family homes, this community is intended to create affordability by design, through limiting the size of the homes and maximizing the open space within the project. Development standards are appended by City Ordinance found in the table of standards and plan requirements.

**PROPERTY DESCRIPTION**

- **LOCATION**

The proposed project is approximately 9.42 acres in area, located off North MacArthur Drive, south of Highway 205, and in the proximity of the intersection of North MacArthur Drive and Pescadero Avenue.

- **SITE DESCRIPTION**

The site is currently an undeveloped vacant lot with topography change of approximately 2' from one end of the property to the other, sloping up from northeast to southwest with an elevation of approximately 23' in the north east corner to an elevation of approximately 25' in the south west corner.

- **ACCESS**

The main access to the site will be via a 57-foot wide neighborhood entry intersecting at Pescadero Avenue.

- **CIRCULATION**

Circulation within the subdivision shall consist of 55' right-of-way residential collector streets, A, B, C, D, and E, connecting to the neighborhood entry.

- **LAND USE**

The project shall be developed with four single-family detached unit product types and 50'x 90' lots typical. The number of units within the PUD shall be limited to 57, with the density of development not to exceed 6.05 dwelling units per gross acre.



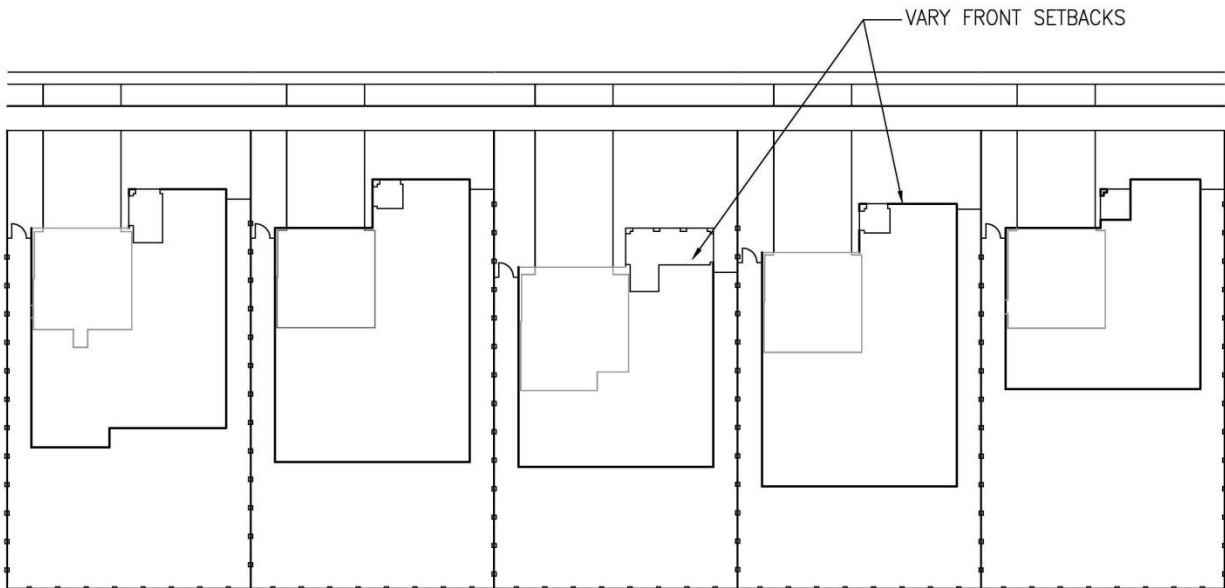
### SITING CRITERIA

It is important to create a street scene that provides visual quality and variety. This can be accomplished by siting homes with varying setbacks, reversing plans so that garages and entries are adjacent to each other, and providing architectural massing relief through porches and other single story elements along the street.

- DIFFERENT BUILDING STYLES

- MIXED USE OF ONE AND TWO-STORY ELEMENTS

- VARIED ROOF TYPES AND PITCHES



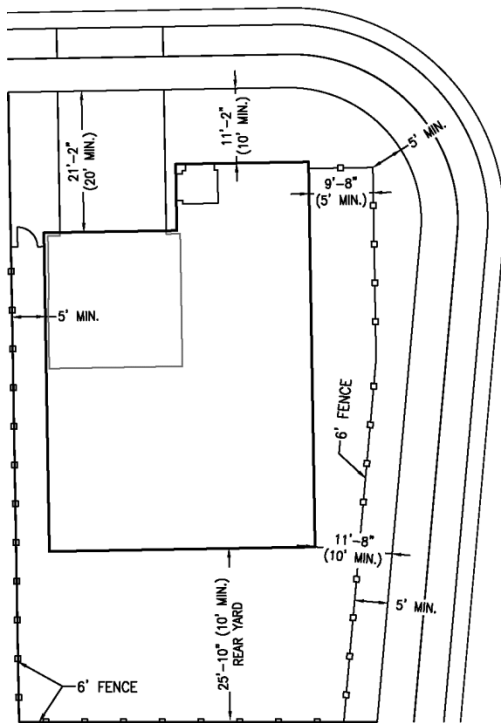
## SITING AND MASSING DIAGRAM

## Residential Development Regulations

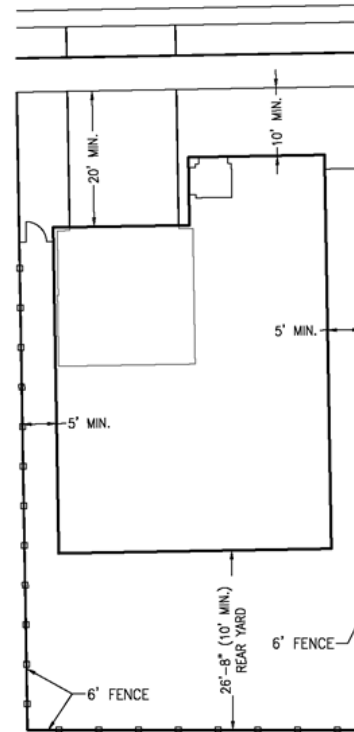
### Single Family Homes

Minimum Lot Area	3,689 S.F.
Average Lot Area	4,852 S.F.
Lot Width	50' min.
Lot Depth right-of-way to rear lot line	66.4' min.
Front Yard Setback to Living Space or Porch*	10' min.
Front Yard Setback to Garage*	20' min.
Rear Yard Setback	10' min.
Side Yard Setback*	5' min.
Side Yard Setback at Corner Lot*	10' min.
Minimum Building Separation*	10'
Maximum Lot Coverage – Single Story	55%
Maximum Lot Coverage – Two Story	55%
Maximum Building Height	35'
Required Parking	2 covered
Guest Parking	1/unit on-street

\* Architectural projections up to 24 inches, including bay windows, fireplace chimneys, utility cabinets and balconies are allowed within the setback.



**TYPICAL CORNER LOT  
SETBACK DIAGRAM**



**TYPICAL INTERIOR LOT  
SETBACK DIAGRAM**

### ARCHITECTURAL DESIGN STANDARDS

The purpose of this section is to provide guidance on the architectural design and massing of the various home plans within the community. Care and consideration should be given when plotting specific home plans on specific lots to insure a variety of massing, architectural style and color and material variation within the project. Setbacks and requirements not specifically mentioned in this document shall be as specified in the City of Tracy Design Goals and Standards and the Medium Density Cluster zone.

- **MASSING**

The homes shall be articulated so that the massing of the perceived street scene of a neighborhood has variety and visual interest. This is applicable to the front and street facing side elevations of the corner lots, as well as easily visible rear elevations such as those that back onto public streets outside the development. Unless it is not appropriate to the architectural style, this can be accomplished by providing a variety of both single and double story elements. Solutions to achieve these goals include:

- 25% of the homes shall be of one-story character.
- Floor plans that provide a variety of setbacks and massing along the street.

- **ARCHITECTURAL PLAN MIX**

Homes shall be plotted on individual lots so as to provide a variety of home plans and elevations along any given streetscape. At no time shall the same plan and elevation be plotted on adjacent lots. When homes of the same plan are plotted across a street from each other different elevations and color schemes shall be used.

- **CORNER LOT CONDITIONS**

- The building materials on the front facade should wrap to a logical termination point or perpendicular change of plane on the elevation adjacent to the exterior side yard. End lots on lanes or courts shall be considered corner lots.

- **SIDE YARDS**

- The homes shall be plotted so as to maximize the visual separation between homes within the project.
- Trash receptacles are permitted to be located within the side yard setbacks provided that they are screened from view by appropriate side yard fencing and have access to the street through an appropriate gate.

- **ENCROACHMENTS**

Encroachments of up to two (2) feet are permitted into required yards for architectural projections that provide relief to the main building massing form. Items such as, but not limited to air conditioning condensers, porches, chimneys, bay windows, retaining walls less than 4' in height, media centers, etc. may encroach 2' into the required setback of one side yard, provided a minimum of 36" flat and level area is maintained for access around the house.

- **ACCESSORY STRUCTURES**

Accessory and garden structures are subject to the City of Tracy Municipal Code - Medium Density Cluster Zone and all applicable Building Codes.

ARBOR AVE.

RECEIVED

OCT 31 2013

CITY OF TRACY  
D.E.S.

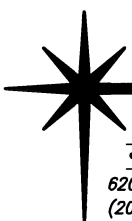
**PROJECT  
LOCATION**

HWY. 205



COPYRIGHT © 2013 NORTHSTAR ENGINEERING GROUP, INC

PLOTTED: 10/28/13 16:11 PLOTTED BY: stlanger  
DWG NAME: FA\13-1251 The Classics\Planning\13-1251 Location Map.dwg



*NorthStar*

**Engineering Group, Inc.**

• CIVIL ENGINEERING • SURVEYING • PLANNING •

620 12th Street Modesto, CA 95354  
(209) 524-3525 Phone (209) 524-3526 Fax

# LOCATION MAP

# THE CLASSICS

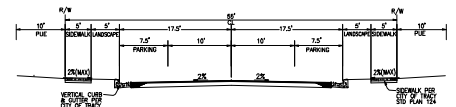
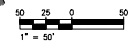
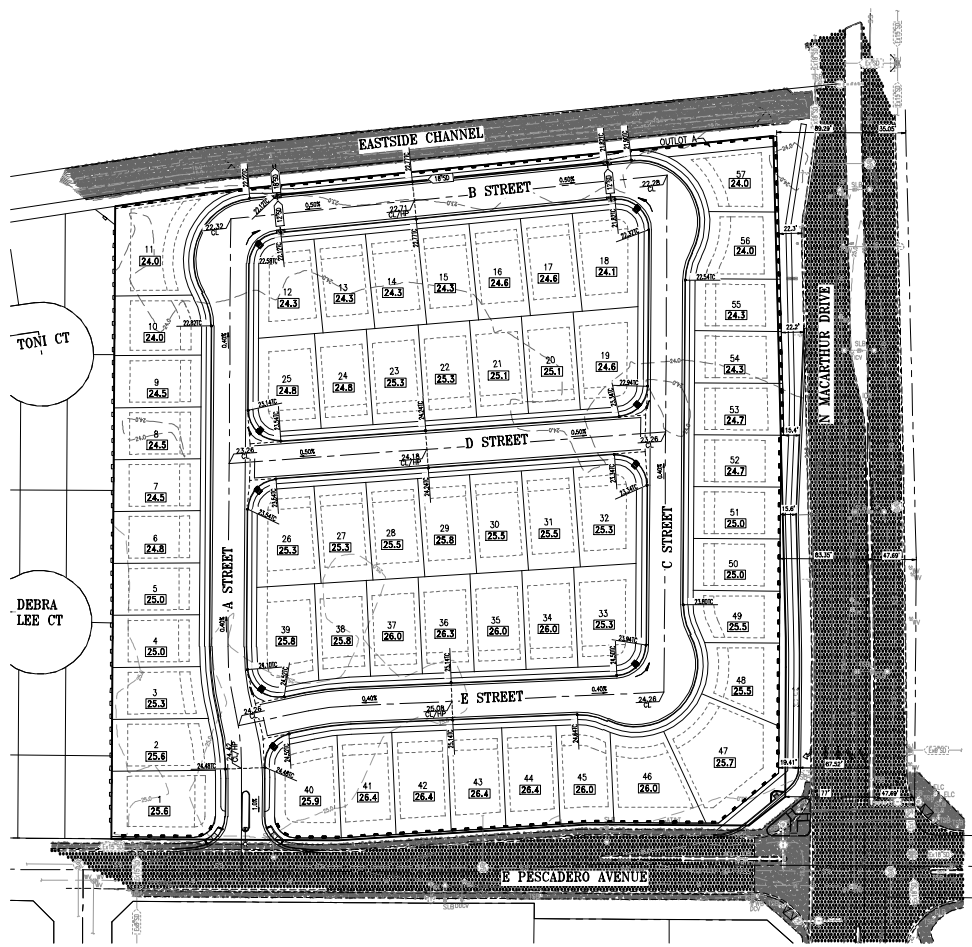
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CALIFORNIA

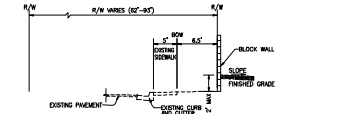
JOB:	13-125
DATE:	10/28/2013
SCALE:	NTS
DRAWN:	SHS
DESIGN:	EWB
CHK'D:	EWB
SHEET	

**EX1**

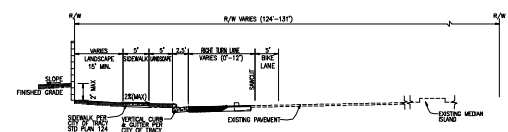




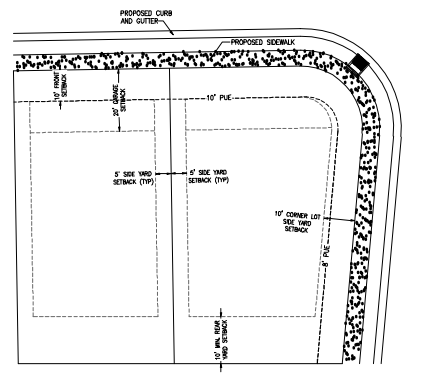
**25' CROSS SECTION - RESIDENTIAL STREET**  
 NTS  
 SEE CITY OF TRACY STANDARD PLAN 102 FOR ADDITIONAL REQUIREMENTS



**EAST PESCADERO AVENUE CROSS SECTION (TYPICAL)**  
 NTS



**NORTH MACARTHUR DRIVE CROSS SECTION (TYPICAL)**  
 NTS



**TYPICAL BUILDING SETBACKS**  
 NTS



**GRADING AND DRAINAGE PLAN**

**THE CLASSICS TRACT No. 3351**

TRACT CALIFORNIA

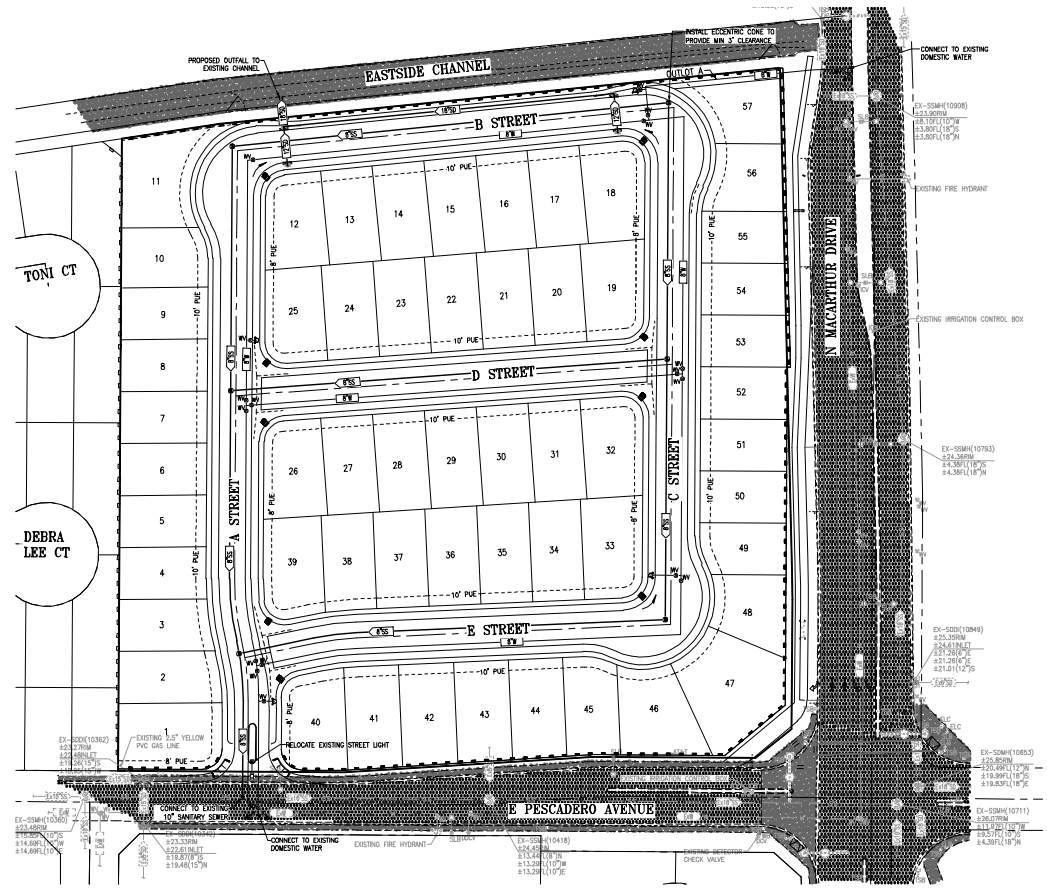
NO.	DESCRIPTION	DATE	APPROVED



**Northstar Engineering Group, Inc.**  
 2201 UNIVERSITY AVENUE, SUITE 200  
 TRACY, CA 95376  
 (209) 875-2000 Fax (209) 875-2001

DATE: 11-15-2011
PROJECT: 137202014
CLIENT: N.E. & S.E. TRACT
SCALE: AS SHOWN
SHEET NUMBER
<b>02</b>

NORTHSTAR ENGINEERING GROUP, INC. 11/15/2011 11:45 AM  
 PROJECT: 137202014 THE CLASSICS TRACT N.E. & S.E. TRACT



NO.	DESCRIPTION
1	12" WATER MAIN
2	12" GAS MAIN
3	12" SANITARY SEWER
4	12" WATER MAIN
5	12" GAS MAIN
6	12" SANITARY SEWER
7	12" WATER MAIN
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54	12" SANITARY SEWER
55	12" WATER MAIN
56	12" GAS MAIN
57	12" SANITARY SEWER

**UTILITY PLAN**  
**THE CLASSICS TRACT NO. 3351**  
TRACT

**NorthStar**  
Engineering & Construction, Inc.  
22111 BAYVIEW BLVD., SUITE 100  
SAN ANTONIO, TEXAS 78258  
PHONE: 214.343.3333 FAX: 214.343.3333

DATE	11-15-2011
SCALE	AS SHOWN
PROJECT NO.	11-2007-2014
DRAWN BY	...
CHECKED BY	...
DATE	...

**03**



RESOLUTION 2014 – \_\_\_\_\_

RECOMMENDING CITY COUNCIL APPROVAL OF THE AMENDMENT TO THE 57-LOT THE CLASSICS VESTING TENTATIVE SUBDIVISION MAP AND AMENDMENT TO THE PRELIMINARY AND FINAL DEVELOPMENT PLAN FOR A 9.42-ACRE SITE LOCATED AT THE NORTHWEST CORNER OF PESCADERO AVENUE AND MAC ARTHUR DRIVE APPLICATION NUMBERS TSM13-0006 AND PUD13-0006

WHEREAS, The subject property was annexed to the City of Tracy in 1957 and is an infill parcel, with a General Plan land use designation of Residential Medium, and

WHEREAS, The project will amend an existing Vesting Tentative Subdivision Map to create 57 single-family dwelling units on 19.42 gross acres, with an overall density of approximately 6.1 dwelling units per acre, which is consistent with the General Plan land use and density requirements, and

WHEREAS, The proposed map amendment is consistent with the General Plan, and Title 12, the Subdivision Ordinance, of the Tracy Municipal Code. The General Plan designation of the property is Residential Medium, which provides for a density range of 5.9 to 12 dwelling units per acre. The General Plan identifies that the characteristic housing for the Medium Density Residential categories includes single family homes, as well as other housing types, and

WHEREAS, The site is physically suitable for the type of development, as the site, once graded will be virtually flat and the characteristically high clay content of Tracy's soils may require amendments and treatment for proposed landscaping, foundations, and other surface and utility work. The physical qualities of the property make it suitable for residential development in accordance with City standards, and

WHEREAS, The site is physically suitable for the proposed density of development. The 6.1 dwelling units per acre proposed is consistent with the allowable density range prescribed by the General Plan. Traffic circulation is designed in accordance with City standards for the proposed density to ensure adequate traffic service levels are met, and

WHEREAS, The design of the subdivision or the proposed improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. An Environmental Impact Report was certified for the City's General Plan in 2006. Significant fish or wildlife or their habitat have not otherwise been identified on the site and no further environmental documentation is required, and

WHEREAS, The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision, and

WHEREAS, The project complies with all other applicable ordinances, regulations and guidelines of the City, including but not limited to, the local floodplain ordinance. The subject property is not located within any floodplain and the project, with conditions, will meet all applicable City design and improvement standards, and

WHEREAS, All the public facilities necessary to serve the subdivision will be in place prior to the issuance of building permits. All the public facilities necessary to serve the subdivision or mitigate the impacts created by the subdivision will be assured through a subdivision improvement agreement prior to the approval of a final map, and

WHEREAS, the architectural renderings are in compliance with Tracy's Design Goals and Standards because they have incorporated significant variation between floor plans and elevations, located garages set back from the facades of the living space, and used architectural features on all four sides of each house, and

WHEREAS, The Planning Commission conducted a public hearing to review and consider the amendments to the Vesting Tentative Subdivision Map and Preliminary and Final Development Plan on April 23, 2014;

NOW, THEREFORE, BE IT RESOLVED, That the Planning Commission hereby recommends that the City Council approve the amendments to The Classics Vesting Tentative Subdivision Map and Preliminary and Final Development Plan, Application Numbers TSM13-0006 and PUD13-0006, subject to conditions stated in Exhibit "1", attached and made part hereof.

\* \* \* \* \*

The foregoing Resolution 2014-\_\_\_\_\_ was adopted by the Planning Commission on the 23<sup>rd</sup> day of April, 2014, by the following vote:

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

\_\_\_\_\_  
CHAIR

ATTEST:

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STAFF LIAISON

Exhibit 1 - Development Services Department Conditions of Approval

**Conditions of Approval for  
The Classics Vesting Tentative Subdivision Map and  
Concept, Preliminary and Final Development Plan  
Application Numbers 1-06-TSM, 9-06-D, and 1-06-R**

1. These Conditions of Approval shall apply to the real property described as The Classics Vesting Tentative Subdivision Map Amendment, Application Numbers TSM13-0006, and PUD13-0006 (hereinafter "Project"), generally located on approximately 9.42 gross acres at the northwest corner of Pescadero Avenue and Mac Arthur Drive, Assessor's Parcel Number 213-350-61.
2. The following definitions shall apply to these Conditions of Approval:
  - a. "Applicant" means any person, or other legal entity, defined as a "Developer".
  - b. "City Engineer" means the City Engineer of the City of Tracy, or any other duly licensed engineer designated by the City Manager, or the Public Works Director, or the City Engineer to perform the duties set forth herein.
  - c. "City Regulations" means all written laws, rules, and policies established by the City, including those set forth in the City of Tracy General Plan, the Tracy Municipal Code, ordinances, resolutions, policies, procedures, and the City's Design Documents (including the Standard Plans, Standard Specifications, Design Standards, and relevant Public Facility Master Plans).
  - d. "Development Services Director" means the Development Services Director of the City of Tracy, or any other person designated by the City Manager or the Development Services Director to perform the duties set forth herein.
  - e. "Conditions of Approval" shall mean the conditions of approval applicable to the Classics Vesting Tentative Subdivision Map and Concept, Preliminary and Final Development Plan Amendment, Application Numbers TSM13-0006, and PUD13-0006. The Conditions of Approval shall specifically include all Development Services Department Conditions set forth herein.
  - f. "Project" means the real property consisting of approximately 9.42 gross acres located at the northwest corner of Pescadero Avenue and Mac Arthur Drive, Assessor's Parcel Number 213-350-61.
  - g. "Subdivider" means any person, or other legal entity, who applies to the City to divide or cause to be divided real property within the Project boundaries, or who applies to the City to develop or improve any portion of the real property within the Project boundaries. "Subdivider" also means the Developer. The term "Subdivider" shall include all successors in interest.
3. The Developer shall comply with all laws (federal, state, and local) related to the development of real property within the Project, including, but not limited to: the Planning and Zoning Law (Government Code sections 65000, *et seq.*), the Subdivision

Map Act (Government Code sections 66410, *et seq.*), the California Environmental Quality Act (Public Resources Code sections 21000, *et seq.*, "CEQA"), and the Guidelines for California Environmental Quality Act (California Administrative Code, title 14, sections 15000, *et seq.*, "CEQA Guidelines").

4. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all City Regulations, including, but not limited to the Planned Unit Development Zone district.
5. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all mitigation measures identified in the General Plan Environmental Impact Report, dated July 20, 2006.
6. Pursuant to Government Code Section 66020, including Section 66020 (d)(1), the City HEREBY NOTIFIES the Developer that the 90-day approval period (in which the Developer may protest the imposition of any fees, dedications, reservations, or other exactions imposed on this Project by these Conditions of Approval) has begun on the date of the conditional approval of this Project. If the Developer fails to file a protest within this 90-day period, complying with all of the requirements of Government Code Section 66020, the Developer will be legally barred from later challenging any such fees, dedications, reservations or other exactions.
7. All final maps shall be consistent with the Amended Vesting Tentative Subdivision Map received by the Development and Engineering Services Department on March 20, 2014, unless modified herein.
8. Prior to the issuance of a building permit, the developer shall document compliance with all applicable school mitigation requirements consistent with City Council standards and obtain certificate of compliance from Tracy Unified School District for each new residential building permit. School mitigation requirements include payment of all special taxes associated with Community Facilities District 87-1 and the Sterling Act "school fee".
9. Prior to approval of the Final Map, the Developer shall obtain approval of all street names from the Traffic Division.
10. Prior to the issuance of building permits, the applicant shall pay all park in-lieu fees required for the project.
11. The floor plans and architectural elevations for the project shall be consistent with the plans received by the Development and Engineering Service Department on March 20, 2014.
12. The building setbacks, heights, lot coverage, and other descriptive regulations shall be consistent with The Classics Planned Unit Development Standards, received March 20, 2014.

13. Unless otherwise noted within the Planned Unit Development Standards, the project shall comply with the regulations of the Medium Density Cluster Zone.
14. Prior to the approval of the first Final Map, the Subdivider shall prepare a detailed landscape and irrigation plan consistent with City standards, including the Water Efficient Landscape Guidelines, to the Satisfaction of the Development and Engineering Services Director.
15. Prior to the recordation of the first Final Map, the Subdivider shall show public utility easements necessary to accommodate the needs of local utility providers in accordance with City standards, to the satisfaction of the City Engineer.

C. Engineering Division Conditions of Approval

Contact: Criseldo S. Mina, P. E. C#54782 (209) 831-6425 cris.mina@ci.tracy.ca.us

C.1 Tentative Subdivision Map

Prior to signature of the Tentative Subdivision Map by the City Engineer, the Subdivider shall comply with the following requirements, to the satisfaction of the City Engineer.

- C.1.1 The Subdivider shall satisfy the City Engineer that the design, development, or improvements relating to this subdivision are in compliance with the Tracy General Plan, Specific Plans, relevant ordinances, policies and standards in effect at the time of approval or conditional approval.

C.2 Final Map Application

No application for Final Map within the Project boundaries will be accepted by the City as complete until the Subdivider provides all documents required by City Regulations and these Conditions of Approval, to the satisfaction of the City Engineer, including, but not limited to the following:

- C.2.1 The Subdivider has completed all the requirements set forth in this section, and Condition C.1, above.
- C.2.2 One (1) reproducible copy of the approved Tentative Subdivision Map for the Project within ten (10) days after Subdivider's receipt of notification of approval of the Tentative Subdivision Map by the City Council.
- C.2.3 The Final Map application, which includes tract boundary, right-of-way and lot closure calculations, updated subdivision map guarantee, preliminary title report (not more than 3 months old) and copies of recorded easements and/or deeds needed in the technical review of the Final Map, as required by the City Engineer.
- C.2.4 The Final Map prepared in accordance with the Subdivision Ordinance and the City Design Documents. Multiple final maps may be filed with prior approval of the proposed construction phasing.

- C.2.5 The improvement plans for all improvements (on-site and off-site) required to serve the Project as described by the Final Map, in accordance with the Subdivision Ordinance, the City Design Documents, and these Conditions of Approval. The improvement plans shall specifically include, but not be limited to the following items:
  - C.2.5.1 All existing and proposed utilities. Indicate size and approximate location of the utilities.
  - C.2.5.2 All supporting calculations, specifications, and reports related to the design of the subdivision improvements.
  - C.2.5.3 Improvement plans shall be prepared on a 24" x 36" size polyester film (mylar) with the City approved title and signature blocks.
- C.2.6 The Grading Plan in accordance with applicable sections of Tracy Municipal Code and City Regulations.
- C.2.7 The landscape, irrigation, and masonry wall improvement plans including the engineering calculations.
- C.2.8 Utility and joint-trench improvement plans as required in Condition C.7.3, below.
- C.2.9 A detailed phasing plan, if applicable, showing construction limits and logical sequence of construction of street improvements and utilities. The phasing plan shall clearly identify the improvements to be constructed with each phase of the Project.
- C.2.10 Traffic Control Plan signed and stamped by a Civil Engineer or Traffic Engineer licensed to practice in the State of California, if necessary, as determined by the City Engineer.
- C.2.11 A construction cost estimate (Engineer's Estimate) for all required public facilities, prepared in accordance with City Regulations. Add 10% for construction contingencies.
- C.2.12 Streets must be identified with street names that are approved by the Engineering Division and Fire Department.
- C.2.13 Payment of applicable fees, reimbursements and engineering review fees including plan check, agreement processing, final map review, inspection and other fees required by these Conditions of Approval and City Regulations.

### C.3 Final Map Approval

No Final Map within the Project boundaries will be approved by the City until the Subdivider demonstrates, to the satisfaction of the City Engineer, compliance with all required Conditions of Approval, including, but not limited to, the following:

- C.3.1 The Subdivider has completed all requirements set forth in Condition C.2, above.
- C.3.2 The Subdivider has obtained the approval of all other public agencies with jurisdiction over the required public facilities.
- C.3.3 The final map shall include dedications or offers of dedication of all rights-of-way and temporary/construction and/or permanent easements that are required to serve the Project described by the Final Map, in accordance with City Regulations and these Conditions of Approval.
- C.3.4 Horizontal and vertical control for the Project shall be based upon the City of Tracy coordinate system and at least three 2nd order Class 1 control points establishing the "Basis of Bearing" and shown as such on the Final Map. The Final Map shall also identify surveyed ties from two of the control points to a minimum of two separate points adjacent to or within the Property described by the Final Map.
- C.3.5 Execution of all improvements agreements, posting of all improvement security, and providing documentation of insurance, as required by these Conditions of Approval.
- C.3.6 Payment of all fees and engineering review fees including agreement fees, map review fees, encroachment and grading permit and inspection fees, and testing fees required by these Conditions of Approval and City Regulations.
- C.3.7 Payment of habitat mitigation fee in accordance with the pay zone or fee category applicable for this Project, that are in effect at the time these fees are due to be collected and paid to appropriate agency(s), as required in Condition C.6.4, below.
- C.3.8 Name of the streets must be approved by Engineering Division and the City's Fire Department. Subdivider shall ensure that all street names shown on the Final Map meets their approval.
- C.3.9 The Subdivider shall provide documentation issued by the Director of Parks and Community Services Department, stating that Subdivider's obligation towards the dedication of a park site, and construction of a neighborhood/mini park and community park will be mitigated by paying the applicable development neighborhood/mini park and community park impact fees (a.k.a. capital in-lieu fees). The final development impact fees to be paid by the Subdivider shall be the Infill neighborhood/mini park and community park

development impact fees that are in effect at the time of issuance of the building permit.

- C.3.10 The Subdivider has financially assured all public facilities required to serve the Project, including water and wastewater capacity. The City will make reasonable efforts to facilitate the necessary planning, but cannot and does not guarantee that sufficient public facilities, and the resulting capacity, will be available before expiration of the Tentative Subdivision Map for this Project (under Government Code Section 66452.6 and relevant City Regulations).

C.4 Building Permit

No building permit within the Project boundaries will be approved by the City until the Subdivider demonstrates, to the satisfaction of the City Engineer, compliance with all the required Conditions of Approval, including, but not limited to the following:

- C.4.1 The Subdivider has completed all requirements set forth in Condition C.3, above.
- C.4.2 Payment of all fees, reimbursements and processing fees including all applicable Infill Properties development impact fees required by these Conditions of Approval and City Regulations.
- C.4.3 Signed and stamped letter from the Project Geo-Technical Engineer certifying that grading work performed by the Subdivider within the Project meets the requirements of the Project Engineering Soils Reports and recommendations by the Project Geo-Technical Engineer and that the grading work was performed under the Project Geo-Technical Engineer's direct supervision, as required in Condition C.6.1, below.
- C.4.4 Letter to the City acknowledging participation in a Benefit District as required by these Conditions of Approval. The letter shall state that the Subdivider agrees to pay the Project's proportional share of cost of public improvements as determined by the Benefit District and shall deliver the payment at the time specified by the City or in a written notice from the City requesting payment to be made.

C.5 Final Building Inspection

The City will not conduct a final building inspection on any of the buildings within the Project boundaries until the Subdivider provides documentation which demonstrates, to the satisfaction of the City Engineer, that:

- C.5.1 The Subdivider has completed all requirements set forth in Condition C.4, above.
- C.5.2 The Subdivider has completed construction of all public facilities (either temporary or permanent facilities, as approved by the City Engineer) required



to serve the building for which a final building inspection is requested. Unless specifically provided in these Conditions of Approval, or some other City Regulation, the Subdivider shall take all actions necessary to construct all public facilities required to serve the Project, and the Subdivider shall bear all costs related to construction of the public facilities (including all costs of design, construction, construction management, plan check, inspection, land acquisition, program implementation, and contingency).

C.6 Site Grading

The Subdivider shall prepare improvement plans, and design and construct the required improvements in accordance with the City Regulations, these Conditions of Approval, and the following requirements.

- C.6.1 A Grading Plan prepared by a Registered Civil Engineer and accompanied by Soils Engineering and Engineering Geology reports shall be submitted to the City with the Subdivision Improvement Plans. The reports shall provide recommendations regarding adequacy of sites to be developed by the proposed grading and also information relative to the stability of soils. Slope easements shall be recorded per City's requirements. Prior to the issuance of each building permit within the Property, the Subdivider shall submit a letter to the City's Building Division, signed and stamped by a Registered Geo-Technical Engineer, certifying that grading work including excavation, backfilling, compacting and backfilling work performed by the Subdivider, meets the requirements of the Project's Soils Report and was completed under the supervision of the Project's Geo-Technical Engineer (licensed to practice in the State of California) for that specific residential lot where a building permit is sought and being processed.
- C.6.2 All grading work within and around the Project shall require a Grading Permit. Erosion control measures shall be implemented in accordance with plans approved by the City Engineer for all grading work not completed before October 15. Improvement Plans shall designate all erosion control methods and materials to be employed.
- C.6.3 Prior to the issuance of the Grading Permit, the Subdivider shall submit three (3) sets of the Storm Water Pollution Prevention Plan (SWPPP) and a copy of the Notice of Intent (NOI) submitted to the State Water Quality Control Board (SWQCB) and any documentation or written approvals from the SWQCB. After the completion of the project, the Subdivider is responsible for filing the Notice of Termination (NOT) required by SWQCB. The Subdivider shall provide the City, a copy of the completed Notice of Termination. Cost of preparing the SWPPP, NOI and NOT including the filing fee of the NOI and NOT shall be paid by the Subdivider. The Subdivider shall provide the City with Waste Water Discharge Identification number, prior to the issuance of the grading permit. The Subdivider shall comply with all the requirements of the SWPPP and applicable Best Management Practices (BMPs) and the City's Storm Water Management Program.

- C.6.4 This Project is within the boundaries of Land Category C and Pay Zone B and is classified as Agricultural Habitat Land/ Open Spaces per the San Joaquin County of Governments Compensation Plan Map and is subject to applicable habitat mitigation fees (SJMSCP development fees) per the adopted San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). The purpose of the SJMSCP development fees is to finance the SJMSCP program including preserving land acquisition, preserving enhancement, land management, and administration associated with land lost as a result of developments in the City and San Joaquin County areas. In accordance with the amended SJMSCP that was approved by the City Council on October 15, 2013, pursuant to Resolution No. 2013-164, the applicable fee for the identified pay zone is \$13,295 per acre. The Subdivider is required to submit the payment of the fees described in this section, in cash, prior to the issuance of the Grading Permit.
- C.6.5 Prior to the issuance of the Grading Permit, the Subdivider shall provide documentation of Project's compliance with the San Joaquin Valley Air Pollution Control District's (SJVAPCD) dust control requirements and program. Subdivider shall comply with the requirements of Regulation VIII, Fugitive PM10 Prohibitions of the San Joaquin Valley Air Pollution Control District, pertaining to Fugitive Dust Control at Construction Sites. Compliance to regulations related to Visible Dust Emissions, Soil Stabilization, Carryout and Track-out, Access and Haul Roads, Storage Piles and Materials, Dust Control Plans, Nuisances, Notification and Record Keeping are required. Subdivider is responsible for all costs associated with compliance to this requirement.
- C.6.6 If the grade differential at and along the boundary of the Property exceeds 12 inches, an engineered masonry wall or reinforced concrete wall will be required to retain soil. If the difference in elevation between two properties is less than 12 inches, a treated wooded board can be used. The retaining wall shall be installed within the Property if arrangement has not been made to install the retaining wall outside the Property. Prior to the issuance of the grading permit, the Subdivider shall submit documentation to the City to show that permission have been granted by owner(s) of affected property(s) or slope easement has been obtained, if applicable.

If the height of the retaining wall and the fence is more than 84 inches, the Subdivider shall obtain a building permit, and pay plan check, permit and inspection fees. Construction details of the wall and structural calculations (signed and stamped by a Structural Engineer) will be required as part of a complete submittal of a building permit application. Length of the retaining wall including the bottom and top of wall elevation must be shown on the Grading Plans.

- C.6.7 The masonry wall located along the northern boundaries of the Project and the City's storm drainage channel and MacArthur Drive shall be at least 8-foot high and shall be constructed outside Caltrans (State of California). Subdivider shall submit improvement plans, structural calculations, construction detail and other documents as required by the City Engineer and the City's Building Division. Prior to starting construction of the masonry wall, the Subdivider shall obtain a building permit, and pay plan check and building permit and inspection fees.
- C.6.8 The existing masonry wall along the western boundary of the Project is located along the common boundary line of the Project and California Mirage Subdivision. The Subdivider or owner of record shall coordinate with the respective owner(s) of the portions of the masonry wall located within the California Mirage Subdivision on the maintenance and repair of the masonry wall.

The proposed masonry wall along the south and east sides of the Project shall be constructed outside City right-of-way on Pescadero Avenue and MacArthur Drive, respectively. The owner of record where the masonry wall is located will be responsible for repairing and maintaining the portion of the masonry that is located on their property. The City has no obligation to repair and maintain the masonry wall.

C.7 Street Improvements

The Subdivider shall prepare improvement plans, and design and construct the required improvements in accordance with the City Regulations, these Conditions of Approval, and the following requirements.

- C.7.1 The Subdivider shall comply with all the mitigation measures and recommendations identified in the traffic analysis dated January 18, 2008, prepared by TJKM Transportation Consultants entitled "City of Tracy – Queuing and Circulation Evaluation for The Classics Development" (Traffic Report). Cost of public improvements and cost of mitigating Project's traffic impact identified in the Traffic Report shall be paid by the Subdivider. Subdivider is responsible for completing the design, improvement plans, acquiring right-of-way, if necessary, and construction of the required public improvements. Subdivider shall also pay plan check, agreement processing, if applicable, and engineering inspection fees. The Traffic Report is on file with the office of the City Engineer and is available for review upon request.
- C.7.2 The Subdivider shall dedicate right-of-way, design, and construct all roadway improvements on MacArthur Drive that are required for the Project in conformance with the recommendations in the Traffic Report and in accordance with City Regulations, including an exclusive 12-foot wide right-turn lane on MacArthur Drive for westbound Pescadero Avenue and the construction of a "pork-chop" shape island at the northwest corner of MacArthur Drive and Pescadero Avenue (hereinafter "Offsite

Improvements”). The radius for the corner curb and the “pork-chop” island shall be in accordance with the Traffic Report. The exclusive 12-foot wide right-turn lane shall be designed and constructed to have a storage length of 307 feet. Offsite improvements shall include, but not limited to, concrete curb, gutter, sidewalk, asphalt concrete pavement, asphalt concrete overlay with reinforcing fabric where street cuts were made (limits to be determined during improvement plan review), streetlight, fire hydrant, irrigation water service and meter, backflow prevention device, parkway landscaping with automatic irrigation system, masonry wall, pavement marking and striping, traffic sign, and other necessary improvements as determined by the City Engineer.

As part of the striping work on MacArthur Drive, the existing shared “through and right” MacArthur Drive southbound travel lane shall be re-striped to be a “through” travel lane. The geometric configuration of the intersection of Pescadero Avenue and MacArthur Drive, signing and striping of MacArthur Drive and Pescadero Avenue shall require approval from the City Engineer. After the completion of the Offsite Improvements, if it is necessary to adjust the signal timing of the existing traffic signal to achieve efficient operation of the traffic signal, the Subdivider shall coordinate the necessary work with the City’s Traffic Section, and shall complete the necessary signal timing adjustment, prior to the acceptance of the Offsite Improvements by the City Council.

Offsite Improvements must be completed by the Subdivider, prior to the final inspection of the first building to be constructed or occupied within the Property. To guarantee completion of the Offsite Improvements within the specified time, the Subdivider shall commence construction of the Offsite Improvements, prior to the issuance of the first building permit.

- C.7.3 All public utilities including appurtenances such as vaults, electrical transformers, switches and service line(s) within the Property and along street frontages shall be undergrounded, to the satisfaction of the utility companies and the City Engineer and in accordance with the requirements of the Tracy Municipal Code. All existing overhead utilities and appurtenances on MacArthur Drive and Pescadero Drive including service lines to the Property and to the residential lots shall be undergrounded by the Subdivider. Undergrounding work performed by the Subdivider beyond Subdivider’s responsibility shall be compensated in accordance with the requirements of the Tracy Municipal Code and these Conditions of Approval. All on site service connections shall be undergrounded. No above ground transformers, switches in cabinets or above-ground boxes will be allowed on Macarthur Drive and Pescadero Avenue.
- C.7.4 Subdivider shall install concrete sidewalk along the entire frontage of the Property on MacArthur Drive and Pescadero Avenue per City Regulations. A “No Pedestrian Beyond This Point” sign mounted on an inverted U shape

metal railing made of 1 ½" diameter galvanized iron pipes shall be installed at the north end of the sidewalk on MacArthur Drive. If necessary, the Subdivider shall obtain encroachment permit from Caltrans (State of California) and pay plan check, permit and inspection fees, for work that is necessary to be performed within Caltran's right-of-way.

- C.7.5 The Subdivider shall dedicate a 10-foot wide Public Utility Easement (PUE) along the residential lot frontages, or where appropriate, to the City, on the Final Map(s), for the installation, repair, operation, use and maintenance of public utilities such as electric, gas, telephone, cable TV and others. The Subdivider shall coordinate with PG&E or the respective owner(s) of the public utilities the design, installation and timely completion of the Project's electrical, gas, telephone and TV cable service connections. Joint trench or composite utility plans are part of the improvement plans submittal.
- C.7.6 All improvements between the final or existing face of curb and the ultimate right-of-way line (masonry wall) including landscaping with automatic irrigation system (irrigation system equipped with Motorola Controller) and masonry wall within the frontage of the Project on Pescadero Avenue and MacArthur Drive shall be designed and constructed in accordance with the City's Design Standards, Streetscape Design Guidelines (previously described as "Parks and Parkways Design Manual") and City Regulations. Size, type and spacing of plants shall be in accordance with City Regulations, or as approved by the City. Irrigation and Landscape Improvement Plans must be signed and stamped by a registered Landscape Architect.
- C.7.7 Paving work on Pescadero Avenue and MacArthur Drive will be allowed after all underground utilities are installed. No lane closure will be allowed without prior approval from the City Engineer. The Subdivider shall submit Traffic Control Plan prepared or signed by a Civil Engineer or Traffic Engineer licensed to practice in the State of California for all offsite work that require lane closure or interruption of traffic flow or as determined by the City Engineer.
- Paving design and construction shall be based on State of California "R" value method, using Traffic Indices approved by the City Engineer. The Subdivider may request the City Engineer to approve a change on the pavement structural section subject to an R value test by a City approved soil testing company.
- C.7.8 If cuts are required to install any utility connections on an existing street, the Subdivider will be required to install a 2-inch thick (uniform thickness) asphalt concrete overlay with reinforcing fabric 25 feet from each each side of the trench, for the full width of the street or up to the limits determined by the City Engineer. A 2-inch thick pavement-grind with uniform thickness across the entire width of the pavement or the areas to be applied with asphalt concrete

overlay. The elevation of the pavement crown and the existing pavement cross slope must remain.

- C.7.9 Valley gutters shall not be used to provide drainage across any through street or through intersections.
- C.7.10 All traffic control devices, including stop signs, speed limit signs, street name signs, legends and striping shall be installed in accordance with a detailed striping and signing plan approved by the City Engineer. The Subdivider shall provide documentation that placement of fence on each lot meet the required horizontal sight distance.
- C.7.11 Streetlights shall be installed in accordance with City Standards on a detailed street light plan and at locations approved by the City Engineer.
- C.7.12 To provide the City access to the Project's storm drainage connection to the existing channel, Subdivider is required to design and construct a paved access road along the northern boundary of the Property between the existing storm drainage channel and the masonry wall. The width of the access road shall not be less than 12 feet and the asphalt concrete pavement shall be at least 3 inches thick over an 8 inches thick aggregate base. Cross slope of the entire pavement shall not be less than two percent (2%) and shall drain towards the existing storm drainage channel. Cost of these improvements is the responsibility of the Subdivider without any reimbursement from the City.
- C.7.13 It has been determined that a portion of City's right-of-way on MacArthur Drive south of the I-205 Interstate Highway will not be needed for roadway purposes and it will be vacated. The amount and location of the excess right-of-way on MacArthur Drive is shown on the Tentative Subdivision Map. The Subdivider shall pay all costs associated with the vacation of the excess right-of-way on MacArthur Drive such as street-abandonment processing fees, document recording, and the cost of preliminary title report, legal description and plat map, and reproduction of recorded documents needed by the City. Within fifteen (15) calendar days from the date of City Council's approval of the Tentative Subdivision Map, the Subdivider shall submit a letter requesting the City to begin the street-vacation process. The required street-vacation processing fee must be submitted with the letter. The City shall make reasonable efforts subject to prompt to complete the street vacation process before the approval of the Final Map. The legal description and plat map and is required to be submitted as part of the Final Map application.

C.8 Storm Drainage Facilities

The Subdivider shall prepare improvement plans, and design and construct the required improvements in accordance with the City Regulations, these Conditions of Approval, and the following requirements.

- C.8.1 The storm drainage system shall be designed in accordance with City Regulations. The runoff coefficient shall be consistent with the runoff coefficient adopted by the City Council. No reverse flow shall be permitted in any storm drain lines. All cul-de-sacs shall be designed in such a way that it will drain away from the cul-de-sac bulb towards the intersecting street. The use of bubble-up system within City's right-of-way on Pescadero Avenue and MacArthur Drive will not be permitted.
- C.8.2 Storm drainage drop-inlets shall be installed throughout the Project and where it is required, to ensure no valley gutter conditions exist on through-streets.
- C.8.3 The Technical Memorandum dated November 6, 2007 titled "The Classic/Pombo Square – Concrete Lining of Eastside Channel Bottom" prepared by City's consultant identified that the discharge point for storm water from the Project will be at the existing Eastside Channel located along the northern boundary of the Property. This storm drainage channel was constructed as part of the Community Facilities District 89-1 (CFD 89-1) improvements.

In accordance with the technical report, in order to control erosion at the bottom of the channel, the riprap bottom is required to be upgraded with an 8 inches thick concrete lining for a portion of the storm drainage channel for a total length of 1,067 feet at the location specified in the technical report. The west end of the proposed channel bottom concrete lining that the Subdivider is required to fund is approximately 290 feet away or upstream of the point of connection with the old storm drainage channel. This gap of 290 feet in length also requires concrete lining and will be included on the cost of upgrading the storm drainage channel.

In lieu of performing the work, the Subdivider is required to pay the estimated cost of the upgrade to the City's storm drainage channel as described above in the amount of \$386,745 (1357 lineal feet multiplied by \$285 per lineal foot), prior to the approval of the Final Map. Upon receipt of the cash payment, the City will consider that the Subdivider's obligation towards the upgrade improvements to the City's storm drainage channel to be have been fully satisfied. The City will be responsible for completing the upgrade improvements as part of a storm drainage capital improvement project.

Subdivider shall prepare improvement plans, specifications and cost estimates for City's review and approval. Design, Improvement Plans and Cost Estimates must be completed prior to the approval of the first Final Map. The improvements required under this section shall be constructed as part of the subdivision improvements and must be completed prior the issuance of the first building permit.

C.9 Water System

The Subdivider shall prepare improvement plans, and design and construct the required improvements in accordance with City Regulations, these Conditions of Approval, and the following requirements.

- C.9.1 Prior to approval of any Final Map, the Subdivider shall demonstrate to the satisfaction of the City Engineer that water facilities (capacities at the plant and distribution or transmission lines) are adequate to meet project service demands on a permanent basis, and are, consistent with the City's Water Master Plan. Water analysis may be required to be performed by the City (or its consultant) to determine whether or not this condition has been satisfied for both interim and ultimate needs of the Project. Costs of such analysis by City (including cost of consultants) required to make such finding shall be the responsibility of the Subdivider.
- C.9.2 The Developer shall design and install the fire service line for the Project in accordance with City's Regulations and to the satisfaction of the City's Fire Department. Size, type, location and construction details of the fire service line shall be approved by the Fire Department.
- C.9.3 Water system facilities shall be designed and constructed in accordance with the recommendations of the water network analysis prepared by West Yost & Associates, and as approved by the City. The Subdivider shall comply with all the recommendations of the water network analysis described above, and if necessary, Subdivider shall design and construct the water facilities improvements required in the technical analysis, at the time specified in the technical analysis or as determined by the City.
- C.9.4 The Subdivider shall design and install fire hydrants at the spacing and locations approved by the Fire Department.
- C.9.5 Individual water meter for each lot will be required. The water meter shall be installed at the location approved by the City Engineer. The Subdivider shall submit improvement plans that show the construction detail of the individual water service connection for City's review and approval. Water meter shall be located outside driveway approach and driveway areas. Water service shall be 11 feet away from a sanitary sewer lateral.

C.10 Sanitary Sewer System

The Subdivider shall prepare improvement plans, and design and construct the required improvements in accordance with City Regulations, these Conditions of Approval, and the following requirements.

- C.10.1 Prior to approval of any Final Map, the Subdivider shall demonstrate to the satisfaction of the City Engineer that wastewater facilities (capacities at the treatment plant and collection or conveyance lines) are adequate to meet project service demands on a permanent basis, and are, consistent with the



City's Wastewater Master Plan. Wastewater analysis may be required to be performed by the City (or its consultant) to determine whether or not this condition has been satisfied for both interim and ultimate needs of the Project. Costs of such analysis by City (including cost of consultants) required to make such finding shall be the responsibility of the Subdivider.

- C.10.2 Sanitary sewer lines and manholes to serve this Project shall be designed and constructed in accordance with City Regulations. Sanitary sewer lines that are located outside City rights-of-way will be maintained by the owner of record where the sanitary sewer line(s) is located.
- C.10.3 The location and construction detail of the sewer service (with cleanout) shall be in accordance with City Regulations. Cleanout shall be located outside the driveway approach and driveway areas and shall be 11 feet away from a water service line.

C.11 Neighborhood/Mini and Community Park

- C.11.1 The Subdivider shall pay Infill Properties community and neighborhood/mini park development impact fees (a.k.a. capital in-lieu fees) in lieu of dedicating a park site and constructing a neighborhood/mini park within the Project. Subdivider shall pay the Infill Properties community and neighborhood/mini park development impact fees that are in effect at the time of issuance of the building permit.

C.12 Agreements, Improvement Plans, Improvement Security, and Bonds

- C.12.1 Improvement Plans - Complete improvement plans (drawn upon City furnished mylars), specifications and calculations shall be submitted to and approved by the City Engineer prior to the recordation of the Final Map.
- C.12.2 Inspection Improvement Agreement. Prior to approval of a final map, the Subdivider may request to proceed with construction of the public facilities required to serve the real property described by the final map only if the Subdivider satisfies all of the following requirements to the satisfaction of the City Engineer:
  - C.12.2.1 The Subdivider has submitted all required improvement plans in accordance with the requirements of City Regulations and these Conditions of Approval, and the City Engineer has approved the improvement plans.
  - C.12.2.2 The Subdivider has submitted a complete application for a final map which is served by the required public improvements, and the final map is in the process of being reviewed by the City.
  - C.12.2.3 The Subdivider has paid all required processing fees including plan check and inspection fees.

- C.12.2.4 The Subdivider executes an Inspection Improvement Agreement, in substantial conformance with the City's standard form agreement, by which (among other things) the Subdivider agrees to complete construction of all required improvements, and the Subdivider agrees to assume the risk that the City may not approve the proposed final map.
- C.12.2.5 The Subdivider posts all required improvement security and provides required evidence of insurance.
- C.12.3. Subdivision Improvement Agreement - Concurrently with the City's processing of a final map, and prior to the City's approval of the final map, the Subdivider shall execute a Subdivision Improvement Agreement (for the public facilities required to serve the real property described by the final map), which includes the Subdivider's responsibility to complete all of the following requirements to the satisfaction of the City Engineer:
  - C.12.3.1 The Subdivider has submitted all required improvement plans in accordance with the requirements of City Regulations and these Conditions of Approval, and the City Engineer has approved the improvement plans.
  - C.12.3.2 The Subdivider has submitted a complete application for a final map, which is served by the required public improvements, and the City Engineer has approved the final map.
  - C.12.3.3 The Subdivider has paid all required processing fees including plan check and inspection fees.
  - C.12.3.4 The Subdivider executes a Subdivision Improvement Agreement, in substantial conformance with the City's standard form agreement, by which (among other things) the Subdivider agrees to complete construction of all required improvements.
  - C.12.3.5 The Subdivider posts all required improvement security and evidence of insurance.
- C.12.4 Improvement Security - The Subdivider shall provide improvement security for all public facilities, as required by an Inspection Improvement Agreement or a Subdivision Improvement Agreement. The form of the improvement security may be a bond, or other form in accordance with City Regulations. The amount of the improvement security shall be in accordance with City Regulations, generally, as follows: Faithful Performance (100% of the approved estimates of the construction costs of public facilities), Labor & Material (100% of the approved estimates of the construction costs of public facilities), and Warranty (10% of the approved estimates of the construction costs of public facilities).

- C.12.5 Insurance - For each Inspection Improvement Agreement and Subdivision Improvement Agreement, the Subdivider shall provide the City with evidence of insurance, as follows:
- C.12.5.1 General. The Subdivider shall, throughout the duration of the Agreement, maintain insurance to cover Subdivider, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under the Agreement at the minimum levels set forth below.
  - C.12.5.2 Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) coverage shall be maintained in an amount not less than \$3,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
  - C.12.5.3 Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
  - C.12.5.4 Workers' Compensation coverage shall be maintained as required by the State of California.
  - C.12.5.5 Endorsements Subdivider shall obtain endorsements to the automobile and commercial general liability with the following provisions:
    - C.12.5.5.1 The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."
    - C.12.5.5.2 For any claims related to this Agreement, Subdivider's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Subdivider's insurance and shall not contribute with it.
  - C.12.5.6 Notice of Cancellation Subdivider shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty (30) days prior written notice to the City should the policy be cancelled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

- C.12.5.7 Authorized Insurers All insurance companies providing coverage to Subdivider shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.
  - C.12.5.8 Insurance Certificate Subdivider shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City.
  - C.12.5.9 Substitute Certificates No later than thirty (30) days prior to the policy expiration date of any insurance policy required by the Agreement, Subdivider shall provide a substitute certificate of insurance.
  - C.12.5.10 Subdivider's Obligation Maintenance of insurance by the Subdivider as specified in the Agreement shall in no way be interpreted as relieving the Subdivider of any responsibility whatsoever (including indemnity obligations under the Agreement), and the Subdivider may carry, at its own expense, such additional insurance as it deems necessary.
- C.12.6 Benefit District - The Subdivider may make a written request to the City for the formation of a Benefit District only if the written request is made prior to the approval of the final map for which the public facilities are required, and in accordance with these conditions of approval and City Regulations (including the Tracy Municipal Code).
- C.12.6.1 The written request shall include a description of all information relevant to the formation of the Benefit District, including the following: the public facility for which the Subdivider requests reimbursement; the estimated costs related to the construction of the public facility; the amount of capacity provided by the public facility; the amount of capacity in the public facility which is supplemental to the capacity required to serve the Project, including a detailed description of the method of allocating capacity; and the dollar amount for which the Subdivider requests reimbursement.
  - C.12.6.2 Concurrently with the written request, the Subdivider (hereinafter, "Responsible Subdivider") shall pay the City a processing fee to cover all costs related to the formation of the Benefit District.
  - C.12.6.3 After the City has received the required processing fee from the Responsible Subdivider, the City shall prepare a first draft Benefit District Study, and the City shall provide a written notice to all affected property owners, and the City shall accept written

comments on the first draft Benefit District Study for a period not less than 14 days. The written notice shall include, at a minimum, the following elements, each to the satisfaction of the City Engineer:

- C.12.6.3.1 A notice of the City's intention to form a Benefit District, and a request for written comments until a specified date not less than 14 days after the date the City sends the written notice.
- C.12.6.3.2 A notice of the date, time, and place of a public hearing before City Council to discuss approval of the Benefit District. The hearing will be scheduled no earlier than 14 days after the date the City sends the written notice.
- C.12.6.3.3 A description of the geographical area ("Benefit District Area") to be served by the Benefit District Public Facilities. This description shall include a description of the assumptions regarding amounts and locations of the proposed land uses and/or dwelling unit types within the Benefit District Area. The description shall include maps, graphs, tables, and narrative text, and a numbering system to identify each legal parcel within the Benefit District Area.
- C.12.6.3.4 A description of the Benefit District Public Facilities. This description shall include an outline of all essential elements of the Benefit District Study in a level of detail satisfactory to the City Engineer.
- C.12.6.3.5 An estimate of all costs related to the construction of the public facilities included in the Benefit District Area. The cost estimate shall include costs of design, construction, construction management, plan check, inspection, land acquisition, program implementation, and contingency.
- C.12.6.3.6 An identification of the owners of real property, other than the Responsible Subdivider, which benefit from the Benefit District Public Facility ("Benefiting Subdividers"). The identification of real property owners shall be based upon information from the County Assessors office, or any other more accurate evidence of property ownership provided to the City, as of the date of the notice of public hearing.

C.12.6.3.7 A quantification of the capacity (or benefit) created by the Benefit District Public Facilities, a description of how the Responsible Subdivider and the Benefiting Subdividers benefit from the Benefit District Public Facility, a description of the method of spreading the capacity to the Responsible Subdivider and the Benefiting Subdividers, a description of the method of spreading the cost of the Benefit District Public Facility to the Responsible Subdivider and the Benefiting Subdividers so that there is a reasonable relationship between each development project and the benefit received from the Benefit District Public Facility, and a quantification of the resulting Benefit District Fee.

C.12.6.3.8 A statement that the full text of the final draft Benefit District Study is available for review, upon request, in the office of the City Engineer. The Benefit District Study shall include, at a minimum, the following items prepared to the satisfaction of the City Engineer, in accordance with City Regulations: a preliminary design based upon technical analysis of the Benefit District Public Facilities, and a precise plan line describing the location of the Benefit District Public Facilities. The precise plan line for any roadway shall take into consideration, and coordinate with, the alignment of all other required public facilities including water, wastewater, and storm drainage, as well as other private utilities.

C.12.6.4 After the City Council approves the Benefit District Study, any final map for any Benefiting Subdivider shall not be approved by the City until the Benefiting Subdivider demonstrates to the satisfaction of the City Engineer that either: (1) the Benefiting Subdivider has entered into a written agreement with the Responsible Subdivider including essential terms in a form substantially the same as that set forth in Condition subsection f, below; or (2) the Benefiting Subdivider has paid a Benefit District Fee to the City (to be reimbursed to the Responsible Subdivider) for the Benefiting Subdividers' proportionate share of all costs related to construction of the Benefit District Public Facilities, in an amount established by the City Engineer (including the City's cost of administering the collection of the fee and reimbursement to the Responsible Subdivider) in accordance with the approved Benefit District Study.

C.12.6.5 After the City Council approves the Benefit District Study, the Benefit District Fee shall be a fixed dollar amount, and the

obligation to pay the Benefit District Fee shall be recorded against the real property of all Benefiting Subdividers. Provided, however, that the Responsible Subdivider or any Benefiting Subdivider may apply for an amendment to the Benefit District Study in the event that the subdivider establishes, to the satisfaction of the City Engineer, that actual construction costs vary from the estimated construction costs by more than 10 percent. The application for the amendment to the Benefit District Study shall include the payment of a processing fee by the Responsible Subdivider to cover the City's estimated costs of reviewing the application. A notice of the request for amendment shall be sent to all Benefiting Subdividers, including all relevant information and notice of public hearing as required by this condition. The amendment shall be subject to the approval of City Council at a duly noticed public hearing.

- C.12.6.6 The form of the agreement between the Benefiting Subdivider and the Responsible Subdivider, as referenced in Condition subsection d, above, shall contain, at a minimum, all of the following essential elements, to the satisfaction of the City Engineer: (a) Identifying information including: an identification of the legal names of all relevant parties, an identification of the Benefit District Public Facilities which is the subject of the agreement, an identification of the legal descriptions of all real property benefiting from the Benefit District Public Facilities, a quantification of the dollar amount paid by the Responsible Subdivider for the costs related to construction of the Benefit District Public Facilities, a quantification of the Benefiting Subdivider's proportionate share of the costs related to construction of the Benefit District Public Facilities; and (b) The Responsible Subdivider's signed waiver of rights to any reimbursement in language substantially the same as the following: "The Responsible Subdivider hereby acknowledges that it has received valuable consideration from the Benefiting Subdivider, in return for which the Responsible Subdivider hereby waives its right to request reimbursement for the Benefiting Subdivider's proportionate share of the costs related to construction of the Benefit District Public Facilities. The Responsible Subdivider shall indemnify, defend, and hold harmless the Benefiting Subdivider and the City of Tracy (including their officials, officers, agents, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorney's fees) resulting from or arising out of Benefiting Subdivider's failure to pay an in-lieu fee to the City for costs related to construction of the Benefit District Public Facilities."

- C.12.6.7 The City shall use reasonable efforts to administer the reimbursements from the Benefiting Subdivider to the Responsible Subdivider. The City shall make reimbursement payments to the Responsible Subdivider only to the extent that the City actually receives reimbursement payments from Benefiting Subdividers pursuant to Condition subsection d, above. Under no circumstances will the City be required to make any reimbursement payments to the Responsible Subdivider unless the City has actually received an equivalent sum in reimbursement payments from a Benefiting Subdivider. The City shall make no reimbursement payments to the Responsible Subdivider until after the construction of the Subregional Public Facilities are accepted as complete by the City Council. The right to receive reimbursement payments, if any, shall be personal to the Responsible Subdivider and shall not run with the land.
- C.12.6.8 The Responsible Subdivider shall maintain a file, for a minimum of five years after completion of construction of the Benefit District Public Facility, of all original documents related to: the construction of the Benefit District Public Facility, and all costs for which the Responsible Subdivider seeks reimbursement. The Responsible Subdivider shall provide access to the file to the City, upon reasonable prior notice from the City. After completion of construction of the Benefit District Public Facility, the Responsible Subdivider shall provide access to the file to any Benefiting Subdivider, upon reasonable prior notice from the Benefiting Subdivider.
- C.12.7 Within twenty (20) days of approval of the Final Map, the Subdivider shall provide the City one (1) set of reproducible duplicates on polyester film of all approved Improvement Plans for the development. Upon completion of the work, the City shall temporarily release the originals to the Subdivider for revisions to show the "As Built" configuration of all improvements. These Record Drawings shall be submitted within 30 days of Council acceptance of the public improvements and release or partial release of Bonds, etc. shall be contingent upon submittal of "As Built" originals.

**C.13 Fees and Deposits**

- C.13.1 The Subdivider shall participate and pay required fees in accordance with the Infill Properties Finance Implementation Plan (FIP) and all amendments and update to the FIP, for public improvements including public buildings, parks, wastewater treatment plant upgrade, water treatment plant upgrade, roadways, and storm drainage as established by the City, except for water distribution system and wastewater conveyance which are paid through assessments as lien on the Property through Assessment District 87-3 and 84-1, respectively. The final development impact fees to be paid by the



Subdivider shall be the Infill Properties development impact fees that are in effect at the time of issuance of the building permit.

- C.13.2 The Subdivider shall participate in any applicable Benefit Districts and/or Assessment Districts as required by the City, and shall pay all formation and processing fees, as required by these Conditions of Approval.

C.14 City Release of Improvement Security

C.14.1 The City shall not release any improvement security for faithful performance until the Subdivider has completed all required public improvements and provided as-built plans, all to the satisfaction of the City Engineer, and subject to the final approval and acceptance by the City Council. Within twenty (20) days after the City's approval of the Final Map, the Subdivider shall provide the City one (1) set of reproducible duplicates on polyester film of all approved Improvement Plans. Upon completion of the construction by the Subdivider, the City shall temporarily release the originals to the Subdivider so that the Subdivider will be able to document revisions to show the "As Built" configuration of all improvements. The Subdivider shall submit these As-Built Plans (or Record Drawings) to the City Engineer within thirty calendar (30) days after City Council's acceptance of the public improvements.

- C.14.2 The City shall not release any improvement security for labor and materials (also known as payment bond) until the statutory time has passed for claimants to file claims with the City on the security and until the As-Built Plans as listed above are submitted to the City in a satisfactory manner. Generally, claimants have six months after acceptance of improvements to file a claim.

C.15 Miscellaneous

C.15.1 Prior to approval of the Final Map, for each phase, the Subdivider shall coordinate with the City and the School Districts regarding pedestrian and vehicular access to schools from this Project, and submit to the City improvements plans showing pedestrian routes, facilities for bus transportation and bike paths for approval by the City. Subdivider shall design and construct "School Zone" improvements as determined by the City, all at the Subdivider's sole cost and expense, without any reimbursement from the City. Subdivider shall pay for the cost of design, preparation of improvement plans, engineering calculations, construction, plan checking and engineering inspection and all costs for complying with the requirements under this section.

- C.15.2 The Property is within the boundaries of Assessment District 84-1 (Wastewater Facilities) and Assessment District 87-3 (Water Facilities). The Subdivider shall provide, for each assessment district in which subdivision is

located, all preliminary assessment maps and payment of fees as required by the City Engineer, for proper segregation of said assessment district, prior to the approval of the Final Map by the City Council. The segregation of sewer and water assessment and recordation of sewer and water assessment maps including the notice of amending water and sewer assessments must be recorded at the San Joaquin County Recorder must be completed, prior to the issuance of building permit.

- C.15.4 The Subdivider shall coordinate with the Tracy United States Postal Service (USPS) Post Master for location of, and installation (by Subdivider) of, cluster type mailbox units within the Project. Design and construction details of the cluster mailbox shall be in accordance with USPS requirements and these Conditions of Approval. Concrete pad for the mailbox shall extend from the back of the sidewalk to the street right-of-way line or property line of the adjacent residential lot where the mailbox is installed. Subdivider shall submit an improvement plans showing the location and construction details of all the cluster mailbox(s) that will be installed within the Project. Cluster mailbox shall be at least 8 feet away from a fire hydrant or streetlight.
- C.15.7 All existing on-site wells shall be abandoned in accordance with the City and San Joaquin County requirements. All costs associated with the abandonment of existing wells including the cost of permits, if required, shall be the responsibility of the Subdivider. The Subdivider shall provide the City documentation or copy of permit issued by the San Joaquin County, approving the removal of destruction of existing well, if applicable, prior to the issuance of the Grading Permit.
- C.15.8 Nothing contained herein shall be construed to permit any violation of relevant ordinances and regulations of the City of Tracy, or other public agency having jurisdiction. These Conditions of Approval does not preclude the City from requesting additional revisions and requirements to the Improvement Plans, prior to the City Engineer's signature and approval of the proposed improvement plans, if the City deems it necessary. The Subdivider shall bear all cost for the inclusion, design, and implementations of such additions or revisions and requirements, without reimbursement or any payment from the City.

April 23, 2013

## AGENDA ITEM 2-B

### REQUEST

**AMENDMENT TO THE 2770 N. NAGLEE ROAD PRELIMINARY AND FINAL DEVELOPMENT PLAN TO REMOVE THE EXISTING RESTAURANT BUILDING AND REPLACE IT WITH A 5,671 SQUARE FOOT RESTAURANT WHILE RETAINING THE PARKING AND LANDSCAPE IMPROVEMENTS - APPLICANT IS RED ROBIN GOURMET INTERNATIONAL AND OWNER IS TRACY MALL PARTNERS, L.P.**

### DISCUSSION

#### Background

On May 2, 2000, the City Council approved a Preliminary and Final Development Plan (PDP/FDP) for the Chevy's restaurant, which was described as a 7,700 square foot restaurant with outdoor dining, a full service bar, and associated parking and landscape improvements within the I-205 Specific Plan at 2770 North Naglee Road (Attachment A). The building was constructed and operated as a Chevy's restaurant until several years ago, and is currently vacant.

#### Proposed Amendment

The applicant and owner wish to tear down and replace the existing building with a new 5,671 square foot Red Robin restaurant. In this proposal, there will be no changes to the parking area and only the landscaping immediately adjacent to the building will be replaced, all parking lot landscaping will remain.

Restaurants are a permitted use within the Commercial Center land use designation assigned to the property by the I-205 Specific Plan. The proposed replacement of the building requires an amendment to the PDP and FDP because the architecture and size of the building are completely different than those in the original project approval. The proposed amendment to the approved PDP/FDP is shown in Attachments B and C.

#### Architecture

The proposed building is 5,671 square feet, which includes 136 seats in the dining area, 70 and seats in the bar area. The proposed building consists mainly of stucco and a stone wainscot material, with accents at the entry comprised of glazed red tile and clear anodized aluminum trim (Attachment C). The building uses a parapet roofline with varying colors, heights and materials to provide visual interest along all four sides of the building. The renderings show that the parapets will be tall enough to screen all of the roof-mounted equipment from public view as required.

The trash enclosure, which is attached to the east side of the building, will be comprised of materials and colors matching those of the building, with solid doors to block the view of the trash bins beyond.

#### Parking, Circulation and Landscaping

Based on the parking requirements within the I-205 Specific Plan, the existing parking lot, planned to remain unchanged will be more than sufficient for the size and land use of the proposed new building. There are 109 parking spaces, and the proposed building requires 91. The landscaping on the site will also remain, which allows the project to begin with the benefit of mature landscaping.

#### Environmental Document

The proposed PDP/FDP amendment is categorically exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15332, pertaining to infill projects smaller than five acres in size substantially surrounded by urban uses. In accordance with CEQA Guidelines, no further environmental assessment is required.

### RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council approve the amendment to the 2770 North Naglee Road Preliminary and Final Development Plan to remove the existing restaurant building and replace it with a 5,671 square foot restaurant while retaining the parking and landscape improvements, based on the findings contained in the Planning Commission Resolution dated April 23, 2014 (Attachment D).

### MOTION

Move that the Planning Commission recommend that the City Council approve the amendment to the 2770 North Naglee Road Preliminary and Final Development Plan to remove the existing restaurant building and replace it with a 5,671 square foot restaurant while retaining the parking and landscape improvements, based on the findings contained in the Planning Commission Resolution dated April 23, 2014 (Attachment D).

Prepared by: Victoria Lombardo, Senior Planner

Approved by: Bill Dean, Assistant Development Services Director

Agenda Item 2-B

April 23, 2014

Page 3

ATTACHMENTS

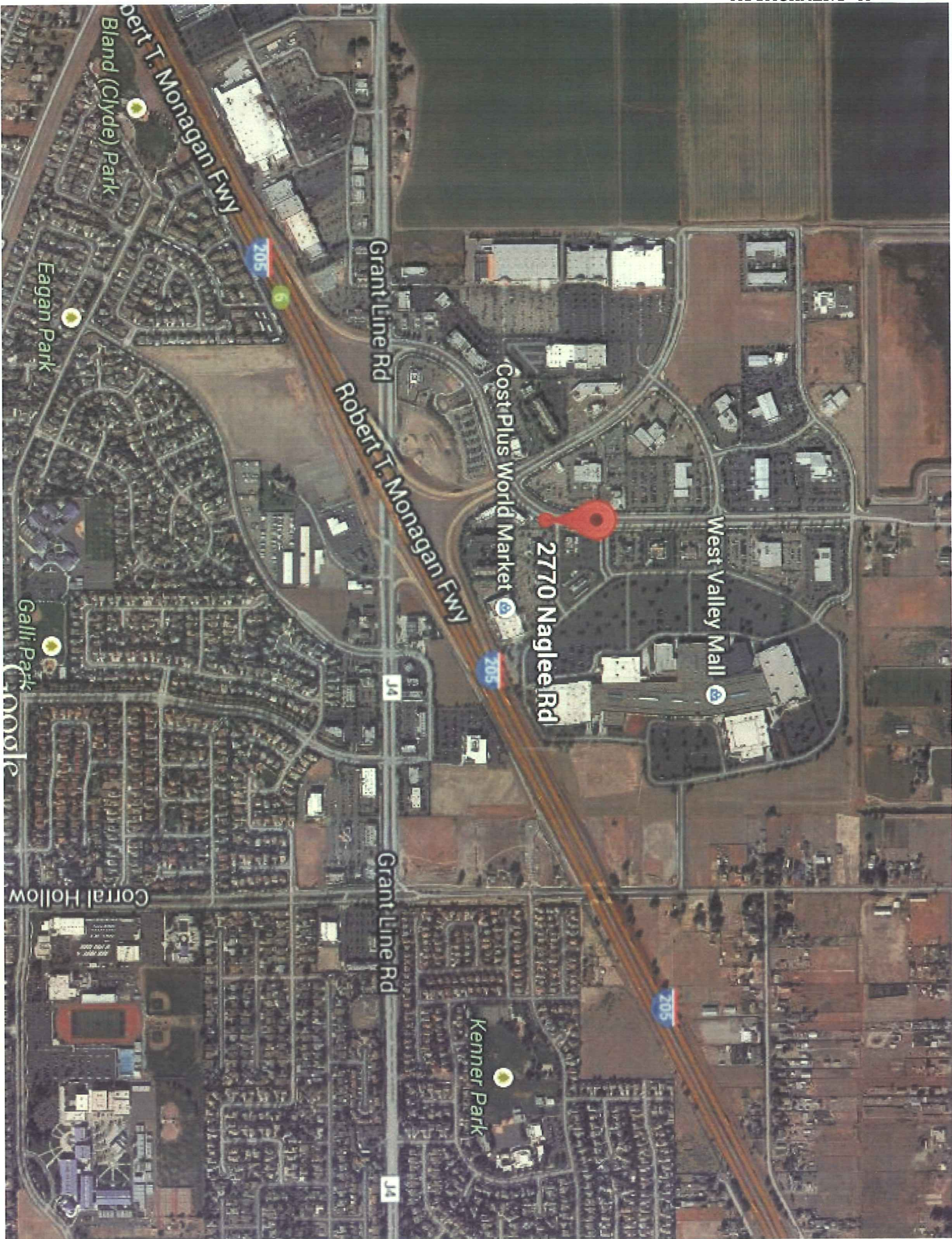
Attachment A—Location Map

Attachment B—Site Plan (Oversize Item: Copies available in the Development Services Department at City Hall)

Attachment C—Color Rendering (Oversize Item: Copies available in the Development Services Department at City Hall)

Attachment D—Planning Commission Resolution (Oversize Item: Copies available in the Development Services Department at City Hall)

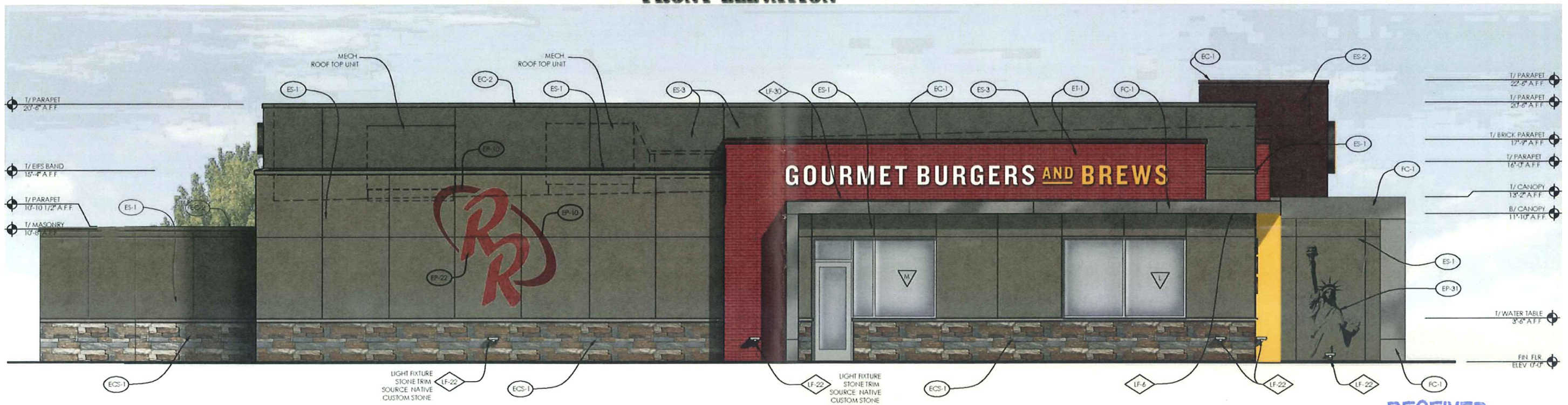




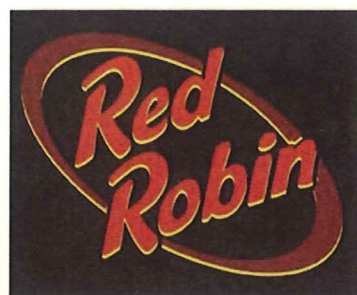




**FRONT ELEVATION**



**LEFT ELEVATION**



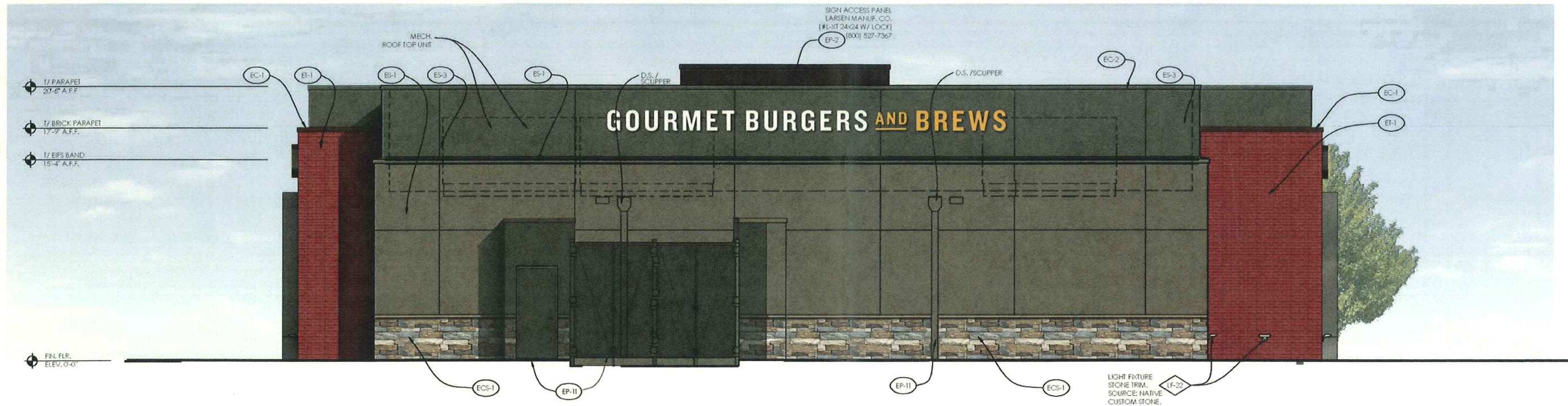
**TRACY, CA**  
 Elev: 3A  
 04/14/2014

**RECEIVED**  
 APR 17 2014

**CITY OF TRACY**

**CD** ChipmanDesign  
 Architecture Inc.  
 2700 S. River Road, Suite 400  
 Des Plaines, Illinois 60018  
 T 847.298.6900 F 847.298.6966

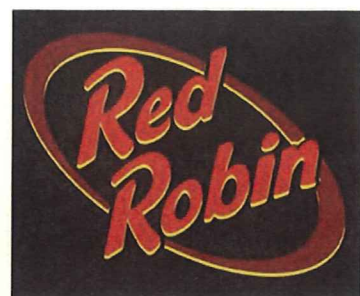




**REAR ELEVATION**



**RIGHT ELEVATION**



**TRACY, CA**  
**Elev: 3B**  
**04/14/2014**

**CD** **ChipmanDesign**  
 Architecture Inc.  
 2700 S. River Road, Suite 400  
 Des Plaines, Illinois 60018  
 T 847.298.6900 F 847.298.6966



ES-1: E.I.F.S. - SANDBLAST FINISH - INTEGRAL FINISH COAT COLOR TO MATCH SHERWIN WILLIAMS #SW7032 WARM STONE

ES-2: E.I.F.S. - LIMESTONE TEXTURE - INTEGRAL FINISH COAT COLOR TO MATCH BENJAMIN MOORE CLASSIC BURGUNDY

ES-3: E.I.F.S. - SANDBLAST FINISH - INTEGRAL FINISH COAT COLOR TO MATCH SHERWIN WILLIAMS #SW7047 PORPOISE

FC-1: 20 GA. CLEAR ANODIZED ALUMINUM - BREAK METAL FINISH ( COLOR TO MATCH STOREFRONT FRAMING FINISH )

FC-2: 20 GA. CLEAR ANODIZED ALUMINUM - BREAK METAL FINISH  
(COLOR TO MATCH SHERWIN WILLIAMS #SW6905 GOLDFINCH)

EP-11: EXTERIOR PAINT FINISH - SHERWIN WILLIAMS #SW7032 WARM STONE

EP-10: EXTERIOR PAINT FINISH - SHERWIN WILLIAMS #SW2914 VERMILLION

EP-22: EXTERIOR PAINT FINISH - SHERWIN WILLIAMS #SW6866 HEARTTHROB

EP-31: EXTERIOR PAINT FINISH - STENCIL - SHERWIN WILLIAMS #SW6991 BLACK MAGIC

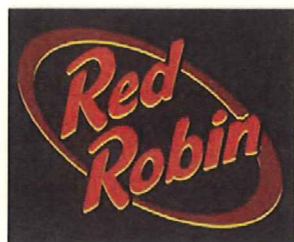
ET-1: EXTERIOR GLAZED TILE BRICK - ELGIN BUTLER: #8800 CLASSIC RED

ECS-1: NATIVE CUSTOM STONE #17 CEDAR CREEK

ESF: ALUMINUM STOREFRONT SYSTEM, 2" x 4 1/2" - FINISH: CLEAR ANODIZED ALUMINUM

EC-1: PARAPET WALL COPING - BERRIDGE - STANDARD COLOR - BENJAMIN MOORE CLASSIC BURGUNDY

EC-2: PARAPET EDGE FASCIA - BERRIDGE - STANDARD COLOR - SHERWIN WILLIAMS #SW7047 PORPOISE



**TRACY, CA**  
**EXTERIOR FINISHES - 2**  
**04/14/2014**



RESOLUTION PC 2014-\_\_\_\_\_

RECOMMENDING CITY COUNCIL APPROVAL OF AN AMENDMENT TO THE 2770 NORTH NAGLEE ROAD PRELIMINARY AND FINAL DEVELOPMENT PLAN TO REMOVE THE EXISTING RESTAURANT BUILDING AND REPLACE IT WITH A 5,671 SQUARE FOOT RESTAURANT WHILE RETAINING THE PARKING AND LANDSCAPE IMPROVEMENTS ASSESSOR'S PARCEL NUMBER 212-050-60 APPLICATION NUMBER D14-0006

WHEREAS, The City Council adopted the I-205 Corridor Specific Plan and certified its Environmental Impact Report on August 21, 1990, and approved a subsequent Negative Declaration approved on July 6, 1999, and

WHEREAS, Red Robin Gourmet International, on behalf of Tracy Mall Partners, L.P., submitted an application to amend the 2770 North Naglee Road Preliminary and Final Development Plan to remove the existing restaurant building and replace it with a 5,671 square foot restaurant while retaining the parking and landscape improvements (Application Number D14-0006) on February 19, 2014, and

WHEREAS, The subject property is located within the I-205 Corridor Specific Plan area, with a land use designation of Commercial Center, which allows restaurants as a permitted land use, and

WHEREAS, The Planning Commission conducted a public hearing to review and consider the application on April 23, 2014;

NOW, THEREFORE BE IT RESOLVED, The Planning Commission recommends that the City Council approve an amendment to the 2770 North Naglee Road Preliminary and Final Development Plan to remove the existing restaurant building and replace it with a 5,671 square foot restaurant while retaining the parking and landscape improvements, Application Number D14-0006, subject to the conditions contained in Exhibit 1 to this Resolution, and based on the findings below.

1. The establishment, maintenance, and operation of the proposed restaurant and associated landscape and hardscape improvements are compatible with the land use, design, and operational characteristics of the neighboring properties. It will not, under the circumstances of the particular case or as conditioned, be injurious or detrimental to the health, safety, or general welfare of persons or property in the vicinity of the proposed use and its associated structures, or to the general welfare of the City because the project is consistent with the land use, design, and other elements of the I-205 Specific Plan, the City of Tracy General Plan, and applicable requirements of Chapter 10.08 of the Tracy Municipal Code, including, but not limited to, Article 26, Off-Street Parking Requirements, and Article 30, Development Review.
2. The project will not adversely affect or impair the benefits of occupancy, most appropriate development, property value stability, or the desirability of property in the vicinity because the site design and architectural elements of the project as designed and conditioned, are an architecturally interesting addition to the parcel, and will not adversely visually impair the benefits of the properties in the vicinity, as the project includes desirable elements, including outdoor seating and mature landscaping.

- 3. The project, as designed and conditioned, will not cause any significant environmental impact, because it is categorically exempt from the California Environmental Quality Act Pursuant to CEQA Guidelines Section 15332, pertaining to infill projects smaller than five acres surrounded by urban uses that are consistent with the Zoning and General Plan designations and not having any significant environmental effects. An analysis of the project shows that there will be no significant on-site impacts as a result of this particular project. There is also no evidence of any significant impacts to occur off-site as a result of the project, as traffic, air quality, land use and other potential cumulative impacts.

\* \* \* \* \*

The foregoing Resolution 2014-\_\_\_\_\_ was adopted by the Planning Commission on the 23<sup>rd</sup> day of April, 2014, by the following vote:

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

\_\_\_\_\_  
CHAIR

ATTEST:

\_\_\_\_\_  
STAFF LIAISON

Exhibit 1 - Conditions of Approval

**Conditions of Approval for Red Robin  
Application No. D14-0006  
April 23, 2014**

1. These Conditions of Approval shall apply to the real property described as a 5,671 square foot restaurant, Application Number D14-0006 (hereinafter "Project"), located at 2770 N. Naglee Road, Assessor's Parcel Number 212-050-60.
2. The following definitions shall apply to these Conditions of Approval:
  - a. "Applicant" means any person, or other legal entity, defined as a "Developer".
  - b. "City Engineer" means the City Engineer of the City of Tracy, or any other duly licensed engineer designated by the City Manager, or the Development Services Director, or the City Engineer to perform the duties set forth herein.
  - c. "City Regulations" means all written laws, rules, and policies established by the City, including those set forth in the City of Tracy General Plan (also known as the Urban Management Plan), the Tracy Municipal Code, I-205 Corridor Specific Plan, ordinances, resolutions, policies, procedures, and the City's Design Documents (including the Standard Plans, Standard Specifications, Design Standards, and relevant Public Facility Master Plans).
  - d. "Development Services Director" means the Development Services Director of the City of Tracy, or any other person designated by the City Manager or the Development Services Director to perform the duties set forth herein.
  - e. "Conditions of Approval" shall mean the conditions of approval applicable to the 5,671 square foot restaurant, Application Number D14-0006.
  - f. "Project" means the real property consisting of the building located at 2770 N. Naglee Road, Assessor's Parcel Number 212-050-60.
  - g. "Subdivisor" means any person, or other legal entity, who applies to the City to divide or cause to be divided real property within the Project boundaries, or who applies to the City to develop or improve any portion of the real property within the Project boundaries. The term "Developer" shall include all successors in interest.
3. The Developer shall comply with all laws (federal, state, and local) related to the development of real property within the Project, including, but not limited to: the Planning and Zoning Law (Government Code sections 65000, et seq.), the Subdivision Map Act (Government Code sections 66410, et seq.), the California Environmental Quality Act (Public Resources Code sections 21000, et seq., "CEQA"), and the Guidelines for California Environmental Quality Act (California Administrative Code, title 14, sections 1500, et seq., "CEQA Guidelines").

4. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all City Regulations.
5. Unless specifically modified by these Conditions of Approval, the Developer shall comply with all mitigation measures identified in the General Plan Environmental Impact Report, dated February 1, 2011, and the I-205 Corridor Specific Plan Negative Declaration dated July 6, 1999.
6. Except as otherwise modified herein, all construction shall be consistent with the site plan and architectural renderings received by the Development Services Department on April 17, 2014.
7. Prior to the issuance of a building permit, the applicant shall provide a detailed landscape and irrigation plan for the new landscape improvements consistent with City landscape and irrigation standards, including, but not limited to Tracy Municipal Code Section 10.08.3560, I-205 Corridor Specific Plan, and Water Efficient Landscape Guidelines on private property, to the satisfaction of the Development Services Director.
8. All improvements shall be consistent with the Tracy Municipal Code, Standard Plans, and other applicable City Regulations.
9. Prior to the issuance of a building permit, a detailed plan of the trash enclosure shall be approved, showing solid metal doors, an interior concrete curb, a minimum height of seven feet, and exterior materials and color compatible with the adjacent building exterior.
10. No roof mounted equipment, including, but not limited to, HVAC units, vents, fans, antennas, sky lights and dishes whether proposed as part of this application, potential future equipment, or any portion thereof, shall be visible from Naglee Road, I-205, or any other public right-of-way.
11. All vents, gutters, downspouts, flashing, electrical conduit, and other wall-mounted or building-attached utilities shall be painted to match the color of the adjacent surface or otherwise designed in harmony with the building exterior to the satisfaction of the Development Services Director.
12. All PG&E transformers, phone company boxes, Fire Department connections, backflow preventers, irrigation controllers, and other on-site utilities, shall be vaulted or screened from view from any public right-of-way, behind structures or landscaping, to the satisfaction of the Development and Engineering Services Director.
13. The backs of all parapet walls that are visible from any public right-of-way shall be finished with the same materials and colors as the exterior walls of the buildings.



AGENDA ITEM 2-C

REQUEST

**PUBLIC HEARING TO CONSIDER PLANNING COMMISSION RECOMMENDATION REGARDING THE SURLAND COMMUNITIES LLC APPLICATIONS FOR A DEVELOPMENT AGREEMENT AMENDMENT RELATED TO THE ELLIS PROJECT. THE ELLIS PROJECT AND DEVELOPMENT AGREEMENT SITE IS APPROXIMATELY 321-ACRES LOCATED AT THE NORTHWEST CORNER OF CORRAL HOLLOW ROAD AND LINNE ROAD. APPLICATION DA13-0002 - APPLICANT IS THE SURLAND COMMUNITIES LLC.**

DISCUSSION

This agenda item involves a Planning Commission public hearing to consider the Surland Communities application for a Development Agreement (DA) Amendment. The DA Amendment was requested by Surland Communities in July, 2013, (Attachment A) and direction to negotiate was received by City Council on September 17, 2013. Since that time, City staff has evaluated the DA amendment request and received further direction from City Council on March 18, 2014.

The DA, approved in 2013, provides in relevant part that, not later than the annexation effective date (September 15, 2013), Surland shall deposit into a swim center funds account \$2,000,000 for use by the City in the development, construction, operation and maintenance of a swim center. The DA amendment would extend the time to make this initial deposit to no later than September 15, 2014.

The DA also requires Surland to offer to dedicate to the City approximately 16 acres of land for the location of a potential swim center. Surland has submitted to the City a proposed draft dedication offer. Under the DA, the City has until July 17, 2014, to accept the dedication offer. The proposed DA amendment would extend the time for the City to accept the offer to September 15, 2015.

Collectively, the proposed DA amendment would provide additional time for Surland to make the initial \$2 million payment, and provide the City additional time to accept the land dedication offer.

ENVIRONMENTAL REVIEW

On January 22, 2013, the City of Tracy certified the Modified Ellis Project Draft Environmental Impact Report (EIR) (SCH # 2012022023) for the Ellis project, including the DA. City staff has evaluated the proposed DA amendment and determined that it does not propose new significant changes to the environment that was not analyzed in the EIR, and would not require major revisions to the EIR. Therefore, under Section 15162 of the California Environmental Quality Act ("CEQA") implementing regulations (the "CEQA Guidelines"), no subsequent or supplemental environmental review is required for the proposed DA amendment. In addition, City staff has determined that the proposed DA amendment is exempt from further CEQA review under Section 15061(b)(3) of the CEQA Guidelines, because it can be seen with certainty that there is

no possibility that the proposed DA amendment may have a significant effect on the environment. Therefore, no further documentation is needed.

**RECOMMENDATION**

Staff recommends that the Planning Commission recommend that City Council approve a Development Agreement Amendment with Surland Communities, LLC, Application Number DA13-0002.

Prepared by: Bill Dean, Assistant Development Services Department Director

Approved by: Andrew Malik, Director of Development Services Department

**ATTACHMENTS:**

Attachment A – Surland Communities, LLC request for a DA Amendment

Attachment B – Proposed Resolution



RECORDING REQUESTED BY:  
AND WHEN RECORDED MAIL TO:

The City of Tracy  
333 Civic Center Plaza  
Tracy, California 95376

Space above this line for Recorder's use.

**FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT  
AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND  
SURLAND COMMUNITIES, LLC**

This FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY and SURLAND COMMUNITIES, LLC (the "First Amendment") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2014 (the "Effective Date") by and between the CITY OF TRACY, a municipal corporation ("City"), and SURLAND COMMUNITIES, LLC, a California limited liability company ("Owner"), pursuant to Government Code sections 65864 et seq. and City Resolution No. 2004-368 which establishes the rules, regulations and procedures for the approval, operation and modification of development agreements and the provisions of that certain Amended and Restated Development Agreement By and Between The City of Tracy and Surland Communities, LLC dated April 18, 2013 and recorded on September 17, 2013 as Document No. 2013-119548 Official Records of San Joaquin County, California (the "Development Agreement").

**RECITALS**

A. The City and Owner entered into the Development Agreement in order to strengthen the public planning process and encourage private participation and the funding of community benefits and amenities that could not otherwise be required under controlling law. Specifically, the Development Agreement provides for the offer to dedicate by Owner of sixteen (16) acres of land and the contribution of \$10,000,000 (the "Owner's Swim Center Contribution") towards the cost of construction of the swim center for the benefit of the greater Tracy community. The Owner's Swim Center Contribution is to be made in two installments. The First Payment of \$2,000,000 was due September 15, 2013 (60 days after the Annexation Effective Date) and the Second Payment of \$8,000,000 will be due July 17, 2016 (3 years after the Annexation Effective Date). The offer of dedication shall be made by Owner to the City within thirty (30) days after the Annexation Effective Date, as defined in the Development

Agreement. The parties have calculated the Annexation Effective Date to be July 17, 2013, and the date for the offer of dedication to be August 16, 2013.

B. The parties wish to modify and amend the Development Agreement to extend the date for payment of the Owners' First Swim Center Payment of \$2,000,000 to no later than September 15, 2014, and to extend the time in which the City may accept the Land Dedication Offer to September 15, 2015.

C. Pursuant to the provisions of the Development Agreement Enabling Resolution, Government Code section 65868 and the provisions of the Development Agreement, Owner has filed with the City an application for an amendment to the Development Agreement. The City has considered the application and reviewed the substance of the proposed changes, modifications, and amendments contained in this First Amendment. By entering into and executing this First Amendment, the parties hereto agree that the Development Agreement shall hence forward be modified and amended as contained herein.

D. On \_\_\_\_\_, 2014, the City Planning Commission, following a duly noticed public hearing and following appropriate notice, recommended approval of this First Amendment. On \_\_\_\_\_, 2014, the City Council following a noticed public hearing which was held on \_\_\_\_\_, 2014, adopted Ordinance No. \_\_\_\_\_ approving this First Amendment and authorizing its execution. That Ordinance took effect on \_\_\_\_\_, 2014, the Effective Date of the First Amendment.

NOW, THEREFORE, the parties hereto agree as follows:

1. Incorporation of Recitals: The recitals set forth above are incorporated into this First Amendment as though set forth in full herein.

2. Subsection 1.01(a), The Swim Center Obligations, shall be amended to read as follows:

1.01 **The Swim Center Obligations.**

(a) Owner hereby commits to provide ten million dollars (\$10,000,000.00) ("Owner Swim Center Contribution") to the City, as set forth in this Section 1.01(a), to fund the design, construction, operation and maintenance of a swim center. Owner shall deposit into a segregated and interest-bearing City account the Owner Swim Center Contribution, for use by the City for the construction and operation of a swim center as provided herein. Upon completion of the Owner Swim Center Contribution, Owner shall be deemed to have satisfied any and all fees applicable to the Property or the Ellis Project for a swim center or pool.

(1) Not later than September 15, 2014, Owner shall deposit into a segregated and interest-bearing account designated by the City (the "Swim Center Funds Account") two million dollars (\$2,000,000.00) ("Owner's First Swim Center

Payment”) for use by the City in the development, construction, operation and maintenance of a Swim Center.

(2) Not later than two (2) years following the date of Owner’s First Swim Center Payment, Owner shall deposit into the Swim Center Funds Account eight million dollars (\$8,000,000.00) (“Owner’s Second Swim Center Payment”) for use by the City in the development, construction, operation and maintenance of a Swim Center.

(3) Owner’s obligations under this section are separate and independent of Owner’s obligations under Subsection (b), and are binding upon Owner regardless of whether or not City accepts Owner’s Dedication Offer as provided in Subsection (b).

(4) In addition to any other remedies available to the City under this Agreement, and any and all other provisions of this Agreement or the City’s Growth Management Ordinance and Guidelines to the contrary notwithstanding, Owner fails to make either or both of the two non-refundable payments as required by Sections 1.01(a)(1) and (2) above, then the City may, in its sole and exclusive discretion, withhold from Owner such Residential Growth Allotments or building permits as Owner would otherwise be entitled to receive under this Agreement or the City’s Growth Management Ordinance or Guidelines, and may continue to withhold the issuance of such Residential Growth Allotments or building permits until all such overdue payment or payments due under this Agreement have been made in full.

3. Subsection 1.01(b)(1) shall be amended to read as follows:

(b) Owner shall offer to dedicate to the City approximately sixteen (16) acres of land as described generally in the Revised EIR and the Ellis Specific Plan as the location of the “Potential Swim Center” (the “Ellis Swim Center Site”), subject to the following:

(1) Not later than September 15, 2014, Owner shall offer to dedicate to the City at no cost to the City, the Ellis Swim Center Site (“Land Dedication Offer”). City shall have until September 15, 2015 to accept the Land Dedication Offer (“Dedication Acceptance Period”), subject to such extensions as may be mutually agreed by the Parties. If City does not accept the Land Dedication Offer within the Dedication Acceptance Period, then one day after the conclusion of the Dedication Acceptance Period, the Land Dedication Offer shall be considered rejected by the City and shall expire without any further action of the Parties.

Thereafter, the Ellis Swim Center Site shall be available for development by Owner pursuant to the 2013 Ellis Specific Plan. Additionally, at any time prior to the end of the Dedication Acceptance Period, City may, by resolution of the City Council, reject the Land Dedication Offer and upon such City rejection, the Ellis Swim Center Site shall be available to Owner for development pursuant to the 2013 Ellis Specific Plan.

4. This First Amendment shall become effective upon the Effective Date which is deemed to be thirty (30) days after the adoption of the Ordinance approving this First Amendment, which Effective Date shall then be inserted into this First Amendment.

5. Recordation: Pursuant to the provisions of Government Code section 65868.5, the duly executed and notarial acknowledged copy of this First Amendment shall be recorded in the Official Records of San Joaquin County, California, no later than ten (10) days following its Effective Date and the burdens and benefits conferred herein will constitute covenants running with the land binding on successors and assigns.

6. Continued Effectiveness of Development Agreement: Except as expressly modified herein, the Development Agreement shall remain in full force and effect. The provisions of this First Amendment are several and separate and should a legal challenge be brought challenging the First Amendment, such challenge shall in no way affect or impact the continued validity and existence of the Development Agreement.

[Signatures on following page]

Executed on the date indicated below.

**"City"**

**"Owner"**

**CITY OF TRACY**, a municipal corporation

**SURLAND COMMUNITIES, LLC**, a California limited liability company

\_\_\_\_\_  
By: Brent Ives  
Title: Mayor  
Date: \_\_\_\_\_

\_\_\_\_\_  
Les Serpa, Managing Member  
Title: Managing Member  
Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
By:  
Title: CITY CLERK  
Date: \_\_\_\_\_

Approved As To Form:

\_\_\_\_\_  
By: Daniel Sodergren  
Title: City Attorney  
Date: \_\_\_\_\_

STATE OF CALIFORNIA            )  
  )  
COUNTY OF \_\_\_\_\_)        ss.

On \_\_\_\_\_, 2014 before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA            )  
  )  
COUNTY OF \_\_\_\_\_)        ss.

On \_\_\_\_\_, 2014 before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA            )  
  )  
COUNTY OF \_\_\_\_\_)        ss.

On \_\_\_\_\_, 2014 before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA            )  
  )  
COUNTY OF \_\_\_\_\_)        ss.

On \_\_\_\_\_, 2014 before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

RESOLUTION 2014-\_\_\_\_\_

RECOMMENDING THAT THE CITY COUNCIL APPROVE AN AMENDMENT TO THE  
MODIFIED AND RESTATED DEVELOPMENT AGREEMENT WITH THE SURLAND  
COMMUNITIES APPLICATION NUMBER DA13-0002

WHEREAS, on April 18, 2013, the City and Surland Communities, LLC (“Surland”) entered into an Amended and Restated Development Agreement (“Development Agreement”); and

WHEREAS, the Development Agreement provides for the offer to dedicate by Surland of sixteen acres of land and the contribution of \$10,000,000 (the “Owner’s Swim Center Contribution”) towards the cost of construction of the swim center for the benefit of the greater Tracy community. The Owner’s Swim Center Contribution is to be made in two installments. The First Payment of \$2,000,000 was due September 15, 2013 (60 days after the Annexation Effective Date) and the Second Payment of \$8,000,000 will be due July 17, 2016 (Three years after the Annexation Effective Date). The offer of dedication shall be made by Owner to the City within 30 days after the Annexation Effective Date, as defined in the Development Agreement. The parties have calculated the Annexation Effective Date to be July 17, 2013, and the date for the offer of dedication to be August 16, 2013, and

WHEREAS, the parties wish to modify and amend the Development Agreement to extend the date for payment of the Owners’ First Swim Center Payment of \$2,000,000 to no later than September 15, 2014, and to extend the time in which the City may accept the Land Dedication Offer to September 15, 2015, and

WHEREAS, on April 23, 2014, the Planning Commission, following a duly noticed public hearing and following appropriate notice, recommended approval of the First Amendment to the Development Agreement (“First Amendment”) to the City Council;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. Development Agreement Amendment Approval. The Planning Commission recommends that the City Council adopt the Ordinance approving the First Amendment attached as Exhibit “1”.
2. Effective Date. This resolution shall be effective upon adoption.

\* \* \* \* \*



The foregoing Resolution 2014-\_\_\_\_\_ was passed and adopted by the Planning Commission of the City of the Tracy on the April 23, 2014, by the following vote:

AYES: COMMISSION MEMBERS:

NOES: COMMISSION MEMBERS:

ABSENT: COMMISSION MEMBERS:

ABSTAIN: COMMISSION MEMBERS:

\_\_\_\_\_  
CHAIR

\_\_\_\_\_  
STAFF LIAISON