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

This SECOND AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY and SURLAND COMMUNITIES, LLC (the "Second Amendment") is made and entered into as of this ____ day of _____, 2018 (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 Agreements By and Between The City of Tracy and Surland Communities, LLC dated April 18, 2013 and recorded on September 17, 2013 under Recorder's Serial 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. Among other things, the Development Agreement provides for Owner to (i) provide $10,000,000 (the "Owner Swim Center Contribution") to be used to design and fund the construction of a public swim center (the "Swim Center"), and (ii) offer to dedicate approximately 16 acres of land to the City, which will be used for the proposed Swim Center (the "Land Dedication Offer"). The Development

Agreement also provides that, in exchange for the Owner Swim Center Contribution and Land Dedication Offer, the City shall reserve and Owner shall be eligible for the allocation of up to 2,250 Residential Grown Allocations ("Subsection F.3. RGAs") to be used exclusively on the Property.

B. On October 14, 2014 (Recorders Serial # 2014-097799), Owner timely made Owner's Land Dedication Offer. Under the Agreement to Extend (Recorder's Serial # 2015-073934), the City had until September 15, 2016, to accept the Land Dedication Offer or the City would be deemed to have rejected the Land Dedication Offer and the land would be available for development by Owner consistent with the Ellis Specific Plan. Following Owner's submittal of the Land Dedication Offer, the City and Owner agreed that there is an alternate location in the Ellis Specific Plan area that may be preferable as the location for the proposed Swim Center, and Owner agreed to prepare and submit to the City a revised land dedication offer (the "Revised Land Dedication Offer") to replace the original Land Dedication Offer.

C. Under the Development Agreement, the Owner Swim Center Contribution was due in two (2) installment payments. Owner timely made Owner's First Swim Center Payment on September 5, 2014. Owner's second installment payment of $8,000,000 ("Owner's Second Swim Center Payment") is a subject of this amendment.

D. On August 16, 2016, the City Council approved Owner's request to negotiate a second amendment to the Development Agreement to extend the deadline for Owner's Second Swim Center Payment and the deadline for the City's acceptance of the Land Dedication Offer, in exchange for Owner's providing to the City certain infrastructure improvements relating to the proposed Swim Center.

E. To give the Parties time to prepare and process Owner's requested Development Agreement amendment, the City and Owner executed that certain Agreement To Toll And Extend The Dedication Acceptance Period And The 60-Day Cure Period Respecting The Second Swim Center Payment Under Amended And Restated Development Agreement By And Between The City Of Tracy And Surland Communities, LLC (the "First Tolling Agreement"), by which the City and Owner agreed to: (i) extend the sixty-day cure period for Owner's Second Swim Center Payment to September 5, 2017; (ii) extend the time period for the City's acceptance of the Land Dedication Offer to November 24, 2017; and (iii) require Owner to deliver the Revised Land Dedication Offer not later than September 15, 2017.

F. In December of 2016, the City and Owner began discussions to expand the scope of the proposed Development Agreement amendment to provide for Owner to assume the obligation to design and construct the proposed Swim Center, and to describe a process by which other real property could become subject to the Development Agreement, subject to future Owner applications and future City approvals. The City and Owner agreed that such expanded negotiations would require additional time to prepare and process the expanded second amendment to the Development Agreement, and on August 15, 2017, the City Council approved that certain Second Agreement To Toll And Extend The Dedication Acceptance Period And The 60-Day Cure Period For The Second Swim Center Payment Under The Amended And Restated Development Agreement By And Between The City Of Tracy And Surland Communities, LLC (the "Second Tolling Agreement"), by which the City and Owner agreed to: (i) extend the sixty-day cure period for Owner's Second Swim Center Payment to December 5, 2017; (ii) extend the time period for the City's acceptance of the Land Dedication Offer to December 5, 2017, provided that the City shall not accept the Land Dedication Offer before November 15, 2017; and (iii) require Owner to

deliver the Revised Land Dedication Offer not later than December 5, 2017. Subsequently in November 2017 the parties entered into a third tolling agreement that extends the time for the parties to perform their obligations until April 4, 2018.

G. On **[date]**, the City Planning Commission, following a duly noticed public hearing, recommended approval of this Second Amendment. On **[date]**, 2017, the City Council following a duly noticed public hearing, adopted Ordinance No. ____ approving this Second Amendment and authorizing its execution. That Ordinance took effect on **[date]**, the Effective Date of the Second Amendment.

H. Pursuant to the provisions of the Development Agreement Enabling Resolution, Government Code section 65868 and Section 1.09 of the Development Agreement, Owner has filed with the City an application for an amendment to the Development Agreement. The City found that the Owner was not in default under the Development Agreement, has considered the application and reviewed the substance of the proposed changes, modifications, and amendments contained in this Second Amendment. By entering into and executing this Second Amendment, the parties hereto agree that the Development Agreement shall hence forward be modified and amended as contained herein.

I. This Agreement is consistent with the General Plan and the 2013 Ellis Specific Plan as further amended in 2014. Owner has filed further amendments to the Ellis Specific Plan which are scheduled to be considered by the City Council in December 2017. As required by the General Plan, this Agreement envisions proper environmental analysis and a proper planning process in compliance with controlling law before any approval allowing development can take place.

J. The parties understand and agree that:

(i) In order to achieve area wide consistency in planning and design achieve General Plan goals, policies objectives to efficiently use land and public infrastructure, and for community consistency Owner intends to annex to the Ellis Property Owners Association all real property which is subsequently subject to the Development Agreement; and, (ii) such other real property may adopt the Ellis Specific Plan design and planning standards for all infrastructure and site improvements.

K. This Development Agreement for all purposes in naming and otherwise shall be referred to as the "Surland Development Agreement".

NOW, THEREFORE, the parties hereto agree as follows:

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

2. Section 1.01(j). The Swim Center Obligations, is added as follows. Section 1.01 **The Swim Center Obligations**.

(j) (i) Owner agrees to retain and compensate consultants to design the Swim Center with input from the community and City staff and with direction from the City Council. All true and correct expenses paid by Owner concerning the design and construction of the Swim Center shall be a credit against the Owner's contribution identified in Recital A. In anticipation of this Development Agreement amendment and at the request of City, Owner retained consultants prior to the approval and execution of this Development Agreement amendment, and funds expended by Owner during the period before the Second Amendment is executed shall be eligible for credits. The parties acknowledge that the studies, reports and designs prepared by

Owner's consultants shall be the property of Owner and shall not without prior written consent of Owner be used by City in any manner. The studies, reports and designs shall be jointly owned by Owner and City after Owner is fully reimbursed for Owner's costs of obtaining the studies, reports and designs through reimbursements and/or credits unless City is subsequently in default under this Agreement in which case City shall not longer be treated as a co-owner. All studies, reports and designs shall be assigned to City upon Owner's transfer of ownership of the Swim Center to City.

(ii) Before Owner prepares construction improvement plans the City Council shall approve a final conceptual plan. City and Owner shall agree upon a list of design, construction and/or improvements that Owner shall design and/or construct. If, after the City Council approves a final conceptual plan, it decides to modify the plan or add additional features or amenities then the cost of changing the conceptual plan or any design or construction plans relying on the original conceptual plan shall be additive funding provided by the City above the initial Swim Center funding.

(iii) Previously Owner has provided Two Million Dollars of a Ten Million Dollar contribution to the City for the Swim Center. City, in a manner consistent with the performance, funding and construction agreement mentioned subsequently, shall cause the Two Million Dollars initial contribution to be applied to the Swim Center's design and construction activities. If the Swim Center is relocated to a location other than a location within the Ellis Specific Plan area then Owner shall pay the remaining Eight Million Dollar future contribution to the City. However, if the Swim Center continues to be sited within the Ellis Specific Plan area then, since the Two Million Dollar initial contribution has previously been paid by Owner to City, the remaining Eight Million future contribution shall be satisfied in full by Owner providing Swim

Center design and construction of improvements equal to Eight Million Dollars in costs incurred by Owner. The initial contribution of Two Million Dollars shall be used to pay for Swim Center design and construction. The parties shall enter into a design, funding and construction agreement contemporaneously with the approval of this Second Amendment. The City Council has requested Owner facilitate additional design, construction, operations, and improvements beyond the Owner contribution. Owner has agreed and shall facilitate completion of additional design improvements and construction of approved plans beyond Eight Million Dollars with funding provided by City in an amount equal to Thirty Five Million Dollars with a supplementary contingency amount of twenty percent of the total estimated costs of Forty Five Million Dollars (Swim Center Funding). The City shall have the right to review and approve the design and improvement plans and City shall not unreasonably withhold approval. This additional construction of approved plans shall represent Owner's entire obligation to facilitate design and construction improvements for the Swim Center improvements and once the additional agreed upon improvements are constructed Owner's obligation to facilitate design and construction improvements for the Swim Center under this Agreement shall terminate. If the parties agree that Owner shall construct Swim Center improvements in addition to the final conceptual plan approved by City Council and the list of design, construction and/or improvements then the parties shall meet in good faith to negotiate and execute agreements concerning the method of City paying for additional constructed improvements. All subsequent costs shall be paid by the City and not the Owner, and Owner shall have no further financial obligation toward the design, construction, development, operation or maintenance of the Swim Center.

(iv) As required by and according to the manner established by the CFD, each residential lot and Commercial parcel (as defined in subsection v) within the Ellis Property Owners

Association (which is defined to mean for purposes of this Agreement a property owners association established by Owner) shall pay an annual fee of $110 per lot/parcel toward Swim Center maintenance, which fee shall be adjusted annually according to the applicable community facility district formula.

(v) The residents of each residential dwelling shall receive from the City an annual all access family pass administered by the EPOA, and the Ellis Commercial Association shall receive one all access family pass for each legally created lot designated village center or commercial (Commercial) located within the Ellis Property Owners Association boundary to the Swim Center at no additional cost.

(vi) Owner has made an irrevocable offer to dedicate approximately sixteen acres for a swim center and subsequently the City Council has determined that the Swim Center shall be located at the property offered for dedication, therefore, Owner's contribution of land for the Swim Center shall be equal to and be treated as the dedication of sixteen (16) acres of community park land under the City's parkland dedication ordinance and this credit of sixteen (16) acres of park land and shall be available by Owner and shall be applied at the option of Owner to the Property and/or to such other real property which is subsequently subject to the Development Agreement (DA Property). (The criteria for Owner applying this Agreement to DA Property is explained in subsection 1.07(h) of this Agreement.) After Owner's irrevocable offer of dedication and the City's determination that this land shall be used for the swim center then there shall be no more dedications and/or community park fees collected or paid by any residential or commercial real property within the Property, and any land offered for dedication or community park fees previously collected shall be reimbursed to Owner within thirty (30) days of approval of this agreement which is date of the decision to locate the Swim Center at Ellis. However, the decision

of when to accept the dedication of land may be made at any time until the City accepts the Swim Center improvements constructed by Owner.

(vii) If the City elects to construct or authorize Owner to construct the Swim Center using the Owner Swim Center Contribution then the Swim Center shall be named the "Serpa Aquatic Park" for all naming and identification purposes, as further described in Exhibit A, including but not limited to digital, print and signage, the designation of "Les and Carol Serpa Aquatic Park" may also be used. If the City elects to construct or authorize the Owner to construct the Swim Center at the Ellis Swim Center Site, the site shall only be used for a public swim center with only those uses as formally agreed upon by the City and Owner or Owner's designee. In making the dedication of the real property for the Swim Center it was the intent of the parties that the real property shall only be used for an aquatic park and no other use and the City shall not sell the real property. This term shall survive the term of this Development Agreement.

(viii) City shall promptly and immediately take reasonable actions necessary to expeditiously process all required plans, City Council approval of improvement plans, acquire all land necessary, (including by not limited to easements, real property, entitlements, project approval(s), San Joaquin County approval (s), railroad easements, any other agency approvals), and completion of all actions necessary shall be perfected without unreasonable delay whatsoever, for the approval and start of construction of Storm Basin 3A by Owner or Owner's designee as soon as practical. Owner or Owner's designee shall promptly and immediately take reasonable actions necessary to finalize an off-site improvement agreement with City Council approval, and following those actions expeditiously to prepare all required plans, process improvement plans for City Council approval, and commence construction once all permits, easements and other approvals have been provided by the City. The parties agree that in performing this obligation time

is of the essence. Unless expressly prohibited by law or expressly required by a condition of a grant, City shall not charge any development, planning or construction fees or charge (including overhead, plan checking, building permit, project management, or any other fee) for the Swim Center. Any and all regulatory agency fees, or actual special outside plan review costs, including but not limited to the SJCOG conservations easement costs, shall be paid by the City. If improvements are funded by a CFD and funds are available to the City of Tracy from the CFD, no bonding shall be required as part of an improvement agreement or any public improvements.

3. Section 1.07, Residential Growth Allotments, shall be deleted from the Development Agreement and the following inserted in its place:

1.07 **Residential Growth Allotments; Building Permits**.

(a) Treatment of Development Agreement Residential Growth Allocations.

(i) Through this Development Agreement City shall reserve and vest in favor of Owner, and Owner shall be eligible for, the allocation of 2,250 Development Agreement Residential Growth Allotments and building permits (Subsection F.3 RGAs) for residential development on the Property as may be revised from time to time, minus any Subsection F.3 RGAs already issued by City to Owner. As explained subsequently Owner is eligible to receive Subsection F.4 RGAs (Subsection F.4. RGAs or RGAs) and building permits from any available source of allocating RGAs or building permits other than through this Development Agreement. This amendment to the Development Agreement does not exempt building permits from being subject to plan check, building code requirements, and other permit related requirements in effect as of the Effective Date of the amendment to the Development Agreement.

(ii) At Owner's option, Subsection F.3 RGAs may be applied to a project as defined in the GMO on the Development Agreement Effective Date (Project) within the Property's boundary and all Subsection F.3 RGAs perfected (a RGA is perfected when a residential building permit is issued according to the allocated RGA)for which a building permit is issued shall be deducted from the 2,250 DA RGAs allocated by this Agreement and to DA Property which become part of the Property in accordance with section 1.07(f)(i) through and including (iv), below. For a calendar year where Owner applies Subsection F.3 RGAs to a Project, or more than one Project in that calendar year the Project(s) may not receive more than 225 Subsection F.3 RGAs and building permits. At the end of the calendar year this limitation of receiving no more than 225 Subsection F.3 RGAs and being unable to receive RGAs from other sources for those Projects shall automatically lapse. The Subsection F.3 RGAs applied to the Project(s) and for which building permits are issued shall be deducted from the 2,250 Subsection F.3 RGA allocation derived from and vested by this Development Agreement.

(iii) Except as otherwise provided herein, in no event shall Owner be allocated more than 2,250 Subsection F.3 RGAs from this Development Agreement over the Term of this Agreement ("Overall RGA Maximum") (the 2,250 Subsection F.3 RGAs includes any Subsection F.3 RGAs allocated by the City to Owner and perfected prior to the Effective Date of this Amendment) which may be applied to the Property.

(b) Treatment of RHNA or unused RGAs that may become available for re-issuance from subsequent rounds of RGA allocations under the GMO or other sources other than this Development Agreement.

(i) This Development Agreement vests Owner with the absolute right to obtain Subsection F.4 RGAs and building permits from any and all other sources. Thus each year Owner shall be eligible for Subsection F.4 RGAs as provided in the GMO and the GMO Guidelines in effect on the Effective Date ("Annual RGA Eligibility").

(ii) This amendment is designed to permit additional property to be added to and incorporated in to the Development Agreement and therefore become Property of the Development Agreement, and Owner may apply for RGAs for Projects and home builders within the Property (whether or not annexed to the ESP) area. Owner shall not apply RGAs subject to this Agreement to other real property unless this property has been added to the Development Agreement as Property pursuant to subsection 1.07(h). Owner may allocate RGAs, building permit or both, derived from any source, including the Growth Management ordinance, this Development Agreement, the RHNA or any other sources not specifically identified herein to Projects or homebuilders within the property subject to this Agreement and building permits in certain circumstances may be acquired without an RGA such as through RHNA, and as subsequently provided by this section.

(iii) RGAs secured by Owner by means of any provision of the GMO Guidelines other than subsection F.3, RHNA, subsequent rounds of the allocation of RGAs under the GMO or from any other source other than from Section F.3 RGAs through this Development Agreement shall not be deducted from the Overall RGA Maximum and shall not be subject to a limitation of 225 subsection F.3 RGAs in a single calendar year. The parties acknowledge and agree that Owner has a vested right to receive no more than 2,250 RGAs and building permits through this Development Agreement; however, this limitation of receiving 2,250 RGAs and building permits at a rate of no more than 225 Subsection F.3 RGAs and building permits during

a calendar year does not operate in any manner to prevent or frustrate Owner's efforts to obtain RGAs and building permits from all other sources and applying those RGAs and building permits to Projects within the Property that do not receive Section F.3 RGAs and building permits during the applicable calendar year.

(c) Owner shall apply to City for Subsection F.3.RGAs and/or Subsection F.4 RGAs ("RGA Application(s)") according to the Development Agreement and the requisite applicable requirements of the GMO Guidelines in effect on the Development Agreement Effective Date using the Application form attached hereto as Exhibit B or the form then stipulated in the GMO Guidelines then in effect, at the option of the Owner. The form shall designate the Project receiving the Subsection F.3 RGAs/Subsection F.4 RGAs and shall identify whether the application is for Subsection F.3 RGAs or Subsection F.4 RGAs.

(d) Owner shall provide a separate Application for each calendar year in which Owner seeks Subsection F.3 RGAs/Subsection F.4 RGAs. There shall be a separate application for each type of RGA applied for. Pursuant to Section F.4(c) of the GMO Guidelines, Owner shall have the first right and shall be entitled to apply for at any time during the year and obtain for the Property any RGAs not applied for, applied for but not granted, unclaimed, or unassigned to the Tracy Hills project, or granted RGAs which have been rescinded from the Tracy Hills project, according to the maximum amount of RGAs available or prioritized for Tracy Hills through the GMO in any calendar year, during any calendar year during the term of this Agreement and all RGAs obtained through this process and applied to the Project shall not be deducted from the annual Overall RGA Maximum. Owner shall have the right to apply RGAs obtained under this subsection (d) to any DA Properties and these RGAs shall not be subject to the total or annual limitation of Subsection F.3 RGA allocations or be a deduction against the Overall Subsection F.3 RGA Total.

Only Owner may apply for Subsection F.3 RGAs/Subsection F.4 RGAs for property subject to this Agreement, unless Owner notifies City in writing of an exception and designates another entity to apply for RGAs. Pursuant to Section F.4(c) of the GMO Guidelines, City shall notify Owner within ten (10) days of any RGAs not applied for, applied for but not granted, unclaimed, or unassigned to the Tracy Hills project, or granted RGAs which have been rescinded from the Tracy Hills project according to the maximum amount of RGAs available or prioritized for Tracy Hills through the GMO in any calendar year. City agrees to make RGAs available to Owner pursuant to Section F.4(c) of the GMO Guidelines at the earliest possible date such RGAs become available after the time for Tracy Hills to request a RGA has passed or at the earliest possible time to acquire an allocated RGA after the time for Tracy Hills to perfect the allocated RGA has lapsed without Tracy Hills perfecting the allocated RGA pursuant to GMO rules. If RGAs are available Owner shall have the right to apply for Tracy Hills RGAs and the Growth Management Board shall allocate Tracy Hills RGAs to the Project(s) identified by Owner within fifteen (15) days of the date the Growth Management Board received the Owner's application(s).

(e) With the expressed exception of subsection F.1 "Vested Projects", in instances where all RGAs are not claimed or claimed but are not perfected (collectively unclaimed RGAs) such unclaimed RGAs shall be allocated using the following procedure, priority and percentages. RGAs shall be allocated according to each category's percentage of the total number of eligible RGAs until all RGAs are claimed or the City conducts an entire round of RGA allocations and no RGAs are claimed by any category. The priority of categories shall follow the order the subcategories are listed in subsection F of the GMO Guidelines. Hence the priority shall be Primary Growth Areas, Development Agreements, Tracy Hills and Ellis Specific Plan Projects, and then Other Projects. Since subsection F.1, Vested Projects, is not assigned a total number of RGAs by

the GMO Guidelines it does not participate in subsequent rounds of RGA allocations. Vested Project as defined in Subsection F.1 of the GMO at the time of this amendment approval shall retain all rights as provided by the GMO immediately prior to this amendment being effective. For purposes of clarification, Owner's right to seek RGAs allocated by the GMO Guidelines to subsections F.2, F.3, and F.5 does not extend to instances where eligible property owners within the designated subsection claim the GMO Guideline allocated RGAs. Rather Owner's right to seek RGAs allocated by the GMO Guidelines to subsections F.2, F.3, and F.5 only extends to instances where these eligible property owners within the designated subsection do not claim the GMO Guideline allocated RGAs. In addition. the parties do not intend this Amendment to the Development Agreement to change the current City practice of issuing RHNA permits on a "first come/first serve" basis nor do the parties intend for this Agreement to grant to Owner a priority to receive RHNA permits over any other applicant for RHNA permits.

(f)(1) However, after first excluding RHNA or other similar sources of building permits, Owner agrees it will not apply for Tracy Hills RGAs or other Available RGAs in a manner that is responsible for the City allocating more than the maximum possible RGAs in a given calendar year.

(f)(2) This Agreement does not intend to prohibit or prevent the City from granting RGAs in the future to any other person or entity in a manner consistent with the GMO and GMO Guidelines, so long as a future city decision does not impair Owner's right and ability to obtain RGAs as provided by this Agreement.

(g) Owner shall be eligible for building permits according this Development Agreement and to the applicable requirements of the GMO and the GMO Guidelines in effect on

the Development Agreement Effective Date and the building permits issued hereunder shall be in accordance with the following:

(i) Building permits issued hereunder shall be deemed to have been secured by Owner upon the meeting of applicable plan check review requirements to issue a building permit and payment to the City of the building permit plan check inspection fee, due under the Municipal Code;

(ii) Despite any provision of the Municipal Code to the contrary, building permits issued hereunder shall continue in existence for a period of not less than twenty-four (24) months or until a certificate of occupancy for the structure is issued, whichever first occurs, and plot plans approved at the time of building permits may be adjusted or resubmitted during this period without further fees for minor modifications

(iii) If noticed by Owner to City for a Project, all development impact fees and other fees and contributions identified in the EFIP, or agreed upon by the City and Owner in other finance plans such as the City Master Plans, or any other Fee Programs, or other impact fee, agreed to by the City and Owner and attributable to a structure shall be due and payable through close of escrow for a home builder to a home buyer for a residential structure, and upon a final inspection approval for a commercial structure for the noticed Project. The process for such payment is attached hereto and incorporated herein by this reference as Exhibit C. However, if a type of fee to be collected is immediately necessary to fund infrastructure construction that is directly needed by the building being constructed by the building permit for a commercial building then a fee for that relevant category shall be collected at the time the building permit is issued by the City, if prior to issuing the building permit City sends Owner a written justification for accelerating

collection of the fee based upon the reason stated in this sentence and second meets and confers with Owner in good faith at the earliest possible time before accelerating collection of the specific category of fee for the specific building permit. However, if a type of fee to be collected is immediately necessary to fund infrastructure construction that is directly needed by the building being constructed for a residential building then the fee for that related category shall be collected at the time the building permit is issued by the City, if the determination for the need to accelerate payment is made prior to approving the final map that including the relevant building lot(s). City shall send Owner a written detailed and comprehensive justification for accelerating collection of the fee based upon the reason stated in this sentence and shall meet and confer with Owner in good faith at the earliest possible time before accelerating collection of the specific category of fee for the specific final map buildings. In no event shall the time to pay the applicable fees exceed twenty four (24) months from approval of the final inspection for a residential lot.

However, if during the twenty-four months City determines that some or all of the deferred fees are immediately needed to fund infrastructure construction that is directly needed for the future occupants of the residential unit then the City has the right to deliver written notice to the real property owner demanding payment of the applicable fee and the real property owner shall pay the demand within thirty (30) days of receipt of City's written notice.

(iv) The Ellis Specific Plan Finance and Implementation Plan ("EFIP") shall be the finance plan for ESP Property, and the amount of fees as documented is a vested element, and no other fees shall be charged without the mutually written consent of the parties. Owner may request that the ESP or a portion of the ESP join another finance district and upon approval by Owner and City the ESP or a portion of the ESP may be included in a different finance district, including updating the EFIP as needed.

(v) For any finance district, district fee, or community facility districts to be effective Owner's prior written consent, which may be withheld for any reason, is required for any property subject to this development agreement and, the Ellis Community Facilities District (ECFD) has been approved by Owner and is in effect. The obligation to make ECFD payments to City for maintaining the Swim Center shall be considered a community wide benefit and shall take the place of, be the equivalent of participating in and shall constitute full satisfaction for any future community wide facilities district or fees, including any facility district or other funding mechanism to fund public services, public landscape, park maintenance, basin maintenance, project-specific maintenance, police, fire and/or public works. Owner agrees to include Property into the ECFD and therefore, City shall not delay, deny, or condition any application filed, or processing for any Property because any or all of the Property is not joined into a CFD, Mello Roos District, or other Financing District.

(h) Subject to Section 1.02, Owner shall have the right but not the obligation to file a request with the City to approve and if approved thereafter have recorded this development agreement against DA Property subject to the following conditions being satisfied:

(i) The DA Property has been annexed to the City of Tracy;

(ii) The Owner owns or has an enforceable right, within the meaning of "legal and equitable interest in real property" as used in current Government Code Section 65865(a) and (b), to purchase DA Property;

(iii) The Owner agrees to annex the DA Property into the Ellis Property Owners Association, the ECFD or equivalent community finance district, the Ellis Finance Plan, or other requisite finance districts; and,

(iv) The development agreement, either in the form of this Development Agreement or as may be modified by the parties, proposed for DA Property contains an amended property description that includes a property description of the DA Property.

(v) The City Council adopts a finding that amending the property description into this Development Agreement is not inconsistent with the GMO in its form as of the Effective Date of this Agreement.

For purposes of this subsection 1.07(h) the parties acknowledge and agree the term "annexed to the City of Tracy" as used in subsection 1.07(h)(i) means the City of Tracy has complied with the California Environmental Quality Act for purposes of adopting a general plan designation, a zoning or pre-zoning classification, an application to the San Joaquin Local Agency Formation Commission (LAFCo) and, at Owner's option, a specific plan and one or more tentative parcel or subdivision maps, and LAFCo has approved the City's annexation request and, if required a sphere of influence amendment for real property not currently subject to the Development Agreement

(i) Notwithstanding any other provision of this Agreement or any other City ordinance, rule, regulation or custom: (1) except for a tentative map receiving DA RGAs in a calendar year, the Property shall not be subject to any limitation or condition concerning the total number of RGAs or building permits from all potential sources in any year or during any RGA and/or building permit cycle; and, (2) approved plot plans and building permits shall have a term of at least two (2) years and shall be eligible for extensions as provided by the City ordinance, rules and regulations or other applicable laws.

5. Section 1.15(c) is added as follows.

(c) The concept plan for neighborhood parks shall be first presented to the City Parks Commission, the concept plan shall then be updated in coordination with City staff, and if City Council approves the neighborhood parks as part of the Specific Plan or relevant planning and approval documents (Project Plan) then the neighborhood park concept and design shall be in accordance with the then existing Project Plan and may including approximate size, name, location site plans, structures, equipment, uses, plants, trees, signage, color palette and features. Neighborhood parks may be one acre or more, and parks of two acres or more are allowed to have adjacent mail boxes with a roof structure, lighting and other features for mail service to the neighborhood residents, adjacent mail boxes with a roof structure shall not be a credit towards neighborhood park acreage, and maintenance for such neighborhood parks shall be funded by the Ellis community facility district or similar district. The neighborhood parks shall be bonded through a park improvement agreement or other acceptable agreement, at a bonding amount determined by the applicable finance plan or Project Plan, the developer shall be responsible for building the parks and there shall be no impact fee or other fees collected for neighborhood parks. The Project Plan shall provide developed neighborhood park land of three (3) acres per thousand residents. The Project Plan shall provide regulations on the character and amenities for each park. As the park system is implemented detailed designs will be developed for the construction of each park and the final location of parks shall be identified by Owner on tentative maps(s). Modifications and refinements of individual park designs including park location will be considered a minor variation as per the approved Project Plans. The elimination of a major amenity, or comprehensive change of a major amenity to another use shall be considered a major variation and require review by the City parks commission.

6. Section 1.15 Ellis Specific Plan Parks (b) is deleted and replaced with the following:

(b) The timing of constructing Property neighborhood park improvements shall be according to the applicable Project Plan.

7. Section 1.15(d) is added as follows.

(d) Except for neighborhood park land which shall be maintained by City with funding from the ECFD, all landscape improvements shall be maintained by the Ellis Property Owners Association (EPOA), with funding from the ECFD. The City and EPOA have or shall enter into a maintenance agreement to set forth and facilitate among other things the required maintenance obligations, standards for maintenance, and other associated obligations(s) as well as compliance with the Ellis operations and maintenance manual, to ensure the long-term maintenance of all public park and landscape areas, and other public improvements within the ECFD boundaries. The City and EPOA may amend and make changes agreed upon to the maintenance agreement and Ellis operations and maintenances manual upon mutual consent. The maintenance manual will be updated by Owner periodically to include improvements which have been installed in public parks, landscape areas, and other public improvements within the ECFD boundaries, and updated versions shall be provided to the City and EPOA. The City and EPOA may then amend and make changes to existing improvement standards or guidelines which are part of the manual upon mutual agreement.

8. A new section 1.16(e) is added as follows:

e. On August 16, 2016 the parties agreed to defer the performance of certain acts. As consideration for this deference Owner agreed to:

(i) design and construct the Swim Center monument sign at the corner of Summit Drive and Corral Hollow Road at Owner's sole expense in an amount not to exceed One Hundred and Fifty Thousand Dollars ($150,000); and,

(ii) expand and improve the Summit Drive paved travel section to the northeast along the frontage of the Swim Center to a five-foot wider section to accommodate potential future Swim Center turn lanes; and,

(iii) construct the frontage improvements for the Swim Center on Summit Drive; and,

(iv) construct the stubbed utilities to the Swim Center site from Summit Drive; and,

(v) fund up to One Hundred Thousand Dollars ($100,000) for the resources of Surland planners and architects to work with the City to complete a design for the Swim Center.

9. A new section 1.17 is added as follows:

Section 1.17 **Community Facilities District**.

The City and Owner shall cooperate to annex property into the ECFD and the ECFD shall authorize bond indebtedness, and authorize the special taxes, and bond proceeds from the ECFD. Property identified as a Future Annexation Area may annex into a then existing improvement area, or a new improvement area using the unanimous approval process.

Any fees paid from Property or Owner which are determined to be subject to reimbursement with ECFD proceeds or other proceeds shall be deemed "deposits" which may be

returned to Owner upon payment of an equivalent amount to the City from ECFD proceeds. City and Owner shall agree on all Property which shall be subject to any other community facility district.

10. A new section 1.18 is added as follows:

Section 1.18 **Program/Public Improvements/Infrastructure**

A. Except for the process to fund, design, and/or construct the Aquatic Center which is described at section 1.01(j) of this Second Amendment, Owner or Owner's designee may fund, design, and/or construct any program/public infrastructure upon the execution of the requisite improvement agreement, as approved by the City which approval shall not be unreasonably withheld. Owner shall notify the City in writing of the intent to design and/or construct improvements, and at the time of such notice there shall not be a construction or improvement contract in effect that provides for the construction of the specific improvement. Owner shall insure that improvement agreements have been executed and security is posted for the work of the improvement. Owner shall be eligible for credits and/or reimbursements for the work in amounts equal to the full amount of the capital improvement program plan identified in the applicable fee program, or other public improvements, in such instances City shall not charge cost recovery for the related component of the plans and improvements, plans check fees shall be fully reimbursable. For site improvements which Owner or Owner's designee will fund, design, and/or construct public infrastructure, and a plan check fee is collected by City, Owner shall be eligible to receive reimbursements of plan check fees paid, after acceptance of the improvement by the City, the City shall then reconcile actual costs against the plan check fee paid and shall only charge based on the actual costs, for any project work over five million dollars which is allowed by City code. City

shall keep all EFIP funds in discrete accounts, including program management, and provide Owner with an annual accounting of all accounts.

B. After the parties execute a written agreement to fund, design, and/or construct program infrastructure improvements all credits and reimbursements available to Owner, including without limitation credits and reimbursements available as a result of Owner's election,, shall apply to any program expenditure. Owner shall be eligible for both a credit against fees paid, and/or against future fees to be paid, and reimbursement. Owner and City shall enter into a master reimbursement agreement to identify credits and reimbursements, which shall become part of the reimbursement agreement prior to, concurrent with, or subsequent to the improvement(s).

C. Reimbursement Agreement credits and reimbursements, approved by the City through a Reimbursement Agreement shall be allocated in such a manner determined, and in the sole discretion of Owner as Owner deems appropriate, with credits being allocated to "like-kind" fees, like-kind fees shall be fees which are in the same fund type of infrastructure, such as water, wastewater, storm, transportation/roads, public facilities, parks, etc. Owner may have balances of credits before impact fee payments are due, in such event Owner may allocate such credits to specific lots by written direction to the City indicating available credits being applied to specific lots.

D. All program infrastructure/public improvement capacity funded or constructed by Owner shall be available to accommodate the fair share capacity for Owner's Property as approved by City in the relevant agreement (for purposes of this subsection D and section 1.18. F) The City has discretion on the use of the capacity prior to when Owner needs occur, so long as the capacity is available without delay or restriction to Owner or any partial use of this capacity is required or needed. Owner may construct on-site and off-site infrastructure necessary to provide recycled

water service. Recycled Water Fees will be paid in an amount equal to the requisite finance plan, and in accordance Project Plans but no other current or future fee. All recycled water infrastructure improvements within entry, collector and community streets, and other public streets as approved by the City, and as defined by the requisite Project Plan will be recommended by staff to be program costs as part of the water master plan update. Once adopted these costs will be subject to credit and reimbursement according to the reimbursement agreement designee. Concurrent with approval of a final map for any part of Property subject to the Agreement City shall review, and if capacity not currently being used exists, shall reserve wastewater services capacity for treatment and conveyance for residential and commercial wastewater uses included in the approved final map. Through this Agreement City shall allocate and vest in favor of Owner and City shall supply Owner water supply for 2,250 residential units, including all commercial areas and uses (Including Ellis Village Center and Limited Use Area) in the Ellis Specific Plan, including the Swim Center in accordance with the Ellis FIP. Owner shall have the right to use all fair share infrastructure capacity described in the Ellis FIP, including but not limited to storm, water, wastewater, transportation (traffic), community park and public buildings. The applicable Project Plan shall identify the financial plan(s) such as the Ellis FIP, the City Master Plans, or any other Fee Programs, or other impact fee, development impact fees and other fees and contributions identified and agreed upon by the City and Owner and attributable to a structure.

E. The Reimbursement Agreement shall be approved prior to the City Council second reading of with this Agreement, and within thirty (30) days after approval of the Reimbursement Agreement for the funding and/or constructing infrastructure, the City shall immediately establish separate Reimbursement accounts for the work identified in the Reimbursement Agreement, and the work identified in future additional work to the Reimbursement Agreement for depositing

reimbursements funds due per the Reimbursement Agreement. City shall provide Owner with a written accounting of funds available for reimbursement to the party identified in the Reimbursement Agreement for the Work within sixty (60) days after executing the Reimbursement Agreement or additional work to the Reimbursement Agreement, City shall transfer to the appropriate reimbursement account all available funding necessary to reimburse Developer for any of the Work Components identified in the Reimbursement Agreement which are subject to an executed Improvement Agreement, Off-Site Improvement Agreement, or other agreement to construct the Work Components. In accordance with the Reimbursement Agreement Fee Credits, as this term is defined in the Reimbursement Agreement, credits may be applied toward impact fees due or paid, on any property with like kind infrastructure fees, by notice to the City from Reimbursement Agreement identified party, after the City Council accepts the Work component identified in the Reimbursement Agreement. The City and Owner shall cooperate to amend the Reimbursement Agreement to add additional Work components as necessary. Reimbursements and credits will be based on infrastructure category funds such as water, wastewater, roadways, parks, and storm, etc.

Sources for the Reimbursements may include monies from the South ISP, Plan C, RSP, Infill, I-205, Ellis FIP, Master Plans, benefitting properties, and/or other City Impact Fee Funds, Finance Plans, or other funding sources, as identified by the City. Credits shall apply against Impact Fees, which otherwise would be payable by properties to City, and applied as directed in writing to the City by the party identified in the Reimbursement Agreement. Payment of reimbursements by City shall be by check or by wire and payable as per the Reimbursement Agreement. City shall provide Owner a quarterly report indicating the balance of said reimbursement accounts. Administrative costs may apply for enhanced reporting and accounting.

All reimbursements shall be made in full in accordance with the Reimbursement Agreement from funds available at least as often as each City fiscal quarter the City shall release and immediately disburse all funds in any accounts in accordance with the Reimbursement Agreement. The reimbursement agreement will not substantially impair existing reimbursement agreements, or written commitments in effect, as of the date of this amendment. The City represents, warrants and covenants that the funds deposited in infrastructure fund account(s) available for reimbursement shall not be used for any intra-fund transfer without the prior written consent in accordance with the Reimbursement Agreement. Funds in the account shall be deposited in an interest-bearing account and all interest shall be paid in accordance with the Reimbursement Agreement as additional consideration for entering into this Agreement. City shall make all reasonable efforts to provide the "Total Credit and Reimbursement" as of approval of an agreement for the improvement(s) or work, or as soon thereafter as possible. The right to Reimbursement for the improvement(s) or work shall have priority over other improvement projects, or reimbursements. The reimbursement agreement will not substantially impair existing reimbursement agreements, or written commitments in effect as of the date of this amendment.

F. Wastewater treatment capacity needed by Owner which have not yet been provided shall be made available from existing available capacity of the Tracy Waste Water Treatment Plant by determining the capacity requirements of a final map for use of available capacity during the processing of the final map. Owner may participate in additional expansions above for Owner needs by request to the City. The Ellis Initial Capacity shall be applied to the Property according to written directions from Owner to City. In addition to the Ellis Initial Capacity, all property depicted on final maps which are approved by the City shall be served by the existing wastewater treatment capacity. The Ellis Initial Capacity credits shall be applied to the Property according to

written directions from Owner to City. Owner wastewater conveyance needs which have not been met shall be included in the Corral Hollow Conveyance Expansion, or other requisite conveyance system(s) as approved by City, which approval shall not be unreasonably withheld. City shall make available a minimum capacity from the Corral Hollow Conveyance Capacity Phase 1 Expansion (referred to as a choke point at times) for five hundred and fifty (550) residential units whenever needed by Owner for project improvements and/or development until the ultimate Corral Hollow Conveyance Expansion is complete. Owner may use the Eastside sewer conveyance system via a connection through Peony on an interim basis for the first 550 residential units until the ultimate Corral Hollow Conveyance Expansion upgrades are constructed and operational, including the Corral Hollow conveyance system connection to Ellis Town Drive to serve conveyance required by Owner in the Corral Hollow Conveyance System for property subject to this Agreement.

11. Section 3.01(b).4 is deleted.

12. Section 3.01(b).9 shall be deleted from the Development Agreement and the following inserted in its place.

(9) "**Certificate of Occupancy**" shall mean a certificate issued by the City authorizing occupancy of a residential unit.

IN WITNESS WHEREOF, the Parties do hereby agree to the full performance of the terms set forth herein.

"City" **CITY OF TRACY**, a municipal corporation	**"Owner"** **SURLAND COMMUNITIES, LLC**, a California limited liability company
_____	_____
By:	By:

Title: Mayor
Date: _____

By: _____
Les Serpa
Title: _____
Date: _____

Attest:

_____
By:
Title: CITY CLERK
Date: _____

EXHIBIT A

When Recorded return to:

For Recorder's Use Only

AQUATIC PARK TERMS

1.1. Aquatic Park Annual Pass. Members of the EPOA, as property owners within the boundaries of the ECFD, shall receive a pass (pass for annual all access and use at no charge for utilization of all facilities and amenities located within the Aquatic Park 16-acre site for residents of a household at any time (the "Aquatic Center Pass")) for each member's household to the Aquatic Park at Ellis which is within the boundaries of the ECFD. The Commercial Property Owners Association ("CPOA") shall receive a number of Aquatic Center Passes equal to the number of commercial lots, parcels, and condominium units, within the Ellis Storage/Limited Use and Ellis Village Center area which are within the boundaries of the ECFD. The EPOA and CPOA shall, for the benefit of the City, administer the process of annually providing the Aquatic Center Pass and shall keep accurate records of property ownership, lots/parcels/units, and determine eligibility.

1.2. Naming Rights. Serpa Aquatic Park shall be the official and the sole and exclusive name for aquatic park at Ellis. The exclusive imaging elements and permanent signage connected to the aquatic park shall come from the design of the aquatic park which shall have the locations and dimensions generally set forth in the Surland aquatic park design which shall then become Exhibit "A" to this Document shall not change without written agreement of Rights Holder. Permanent signage is defined as any fixed signage that is present for all events, including any digital signage. The cost of the design, installation, implementation and maintenance of such signage shall be paid as a cost of the aquatic park project. Serpa Aquatic Park shall be the exclusive Aquatic Park name for the park, and shall be included in all signage, digital signage, marketing, promotion, websites, apparel, and printed material, and shall have prominence and dominance over any naming or sponsors having a presence inside or outside of the Aquatic Park. Prominence must be present in the embodiment of the park structures and each and every event at the facility. No other signage, or naming shall be placed on any structures, buildings, offsite or onsite signage, or used in digital, or fixed signage without written consent of Rights Holder. The style manual which includes approved artwork for park logos and stylized form of the park name shall be used for all signage, websites, advertising, paper products, tickets, passes, apparel, marketing, print, merchandise inventory, and other items. The Les and Carol Serpa Aquatic Park may also be prominently used throughout the Aquatic Park as generally set forth in Exhibit "A" to this Document and shall not change without written consent of Rights Holder. The Aquatic Park signage locations, size, and style as depicted in Exhibit "A" to this Document shall not change without the consent of Rights Holder. Any signs prepared for gyms, party rooms, event areas, archways and entry gates, or any other signs for the Aquatic Park shall include the official name or logo either in or adjacent to the name of the respective arch or entry. Any apparel, wrist bands, tickets, or other items prepared, given away, used, or sold for the gym, party rooms, events, passes, or any other productions for the Aquatic Park shall include the official name or logo prominently. Aquatic Park official name or logo shall be prominently displayed in and on all design materials, images, illustrations, renderings, site plans, blueprints, animation, video or other depictions that are developed for the Aquatic Park.

1.3. Exclusivity. Other than using the official name, unless approved in writing by Rights Holder, the City will not permit any exterior signage, advertising, or promotion on the aquatic park or, on the grounds surrounding the aquatic park (including the entry, gym, parking lots, driveways and roads approaching and surrounding the aquatic park), either temporary or permanent. The City agrees to provide that any party entering into an agreement with the City to use the aquatic park for any event cannot remove, cover or otherwise obscure the view of any signage, or naming without the written consent of Rights Holder.

1.4. Advertising, Marketing, Events. All advertising, marketing, website, and any other locational information, including event advertising, and promotion by any party shall use the following for identification and naming purposes of the event "Serpa Aquatic Park at Ellis". The name shall be of the same font size as the largest font size in the print, and shall be a minimum of 10% of the total area, or 10% of the total time as applicable.

1.5. Indemnification Against Claims by Third Parties. The City shall defend, indemnify and hold harmless, to the extent permitted by law, Rights Holder from and against any and all claims, damages, causes of action, judgments, liens, losses and costs and liabilities including, without limitation, attorneys, fees and other

litigation expenses arising from the City's acts, omissions or breach of this Document and/or from any litigation, arbitration, hearing, investigation or other proceeding commenced by any third party alleging or arising from claims of wrongful conduct or omission by the City, including, but not limited to, negligence, breach of warranty, and unsafe, hazardous, or defective product or service, except to the extent that such damages, claims, losses and judgments and costs incident thereto are caused by the negligence or intentional misconduct of any party seeking indemnification hereunder. The City shall at all times be insured with liability insurance and such insurance as will provide against claims which may arise from the City's operations of the aquatic park and under this Document.

1.6. Copyrights. Trademarks. Service Marks. Logos and Similar Rights of Serpa Aquatic Park. Serpa Aquatic Park Marks. The parties acknowledge that Rights Holder shall own, and have the responsibility to protect, in the United States, and elsewhere in its sole discretion, the trade name "Serpa Aquatic Park"," Serpa Aquatic Park at Ellis", and all associated trademarks, logos, designs, and service marks (the "Aquatic Park Marks"). Rights Holder hereby grants the City a non-exclusive royalty-free, worldwide license to use the Aquatic Park Marks, subject to the terms provided below, for the purpose of promoting the Aquatic Park. Rights Holder further grants the City the right to sublicense the Aquatic Park Marks as approved from time to time by Rights Holder. Further, all such uses of the Aquatic Park Marks shall be subject to the prior written consent of Rights Holder as to form, copy and content. The City agrees that it will include the name of "Serpa Aquatic Park" and any related logo or trademark for all of the following related to the Aquatic Park, on all of its letterhead, envelopes, invoices, brochures, business cards and shall include the name of the Aquatic Park in its address. The City shall use "Serpa Aquatic Park" when making reference to the aquatic park and no other name shall be used without the written consent of Rights Holder. The City in any and all contracts, agreements, arrangements, writings and communications, entered into or amended after the date of this Document, pertaining in any manner to the Aquatic Park (such as contracts with tenants, lessors, operators, and users, suppliers, clubs, media, advertisers and others) shall refer to, and as a term of such contracts, agreements and/or arrangements shall require all other parties to such contracts, agreements and/or arrangements to refer to the Aquatic Park as, and only as, "Serpa Aquatic Park." All printed materials promulgated by the City which would normally refer to the address or site of the Aquatic Park shall refer to the Aquatic Park as " Serpa Aquatic Park at Ellis." The City agrees to use reasonable efforts to ensure that the name "Serpa Aquatic Park" is (i) used in all communications and media concerning the Aquatic Park; and (ii) used by all media and news organizations. With respect to all events that are specifically created for the Aquatic Park by the City or scheduled or hosted in the Aquatic Park by the City or its affiliates, or lessors during the Term, the City agrees that for all such events the City shall use its best efforts to require that (i) all communications and media concerning the Aquatic Park; (ii) all local media and news organizations; and (iii) all tickets issued by users of the Aquatic Park will refer to the Aquatic Park as "Serpa Aquatic Park at Ellis." In addition, the City shall use its reasonable efforts to require that all advertising by users of the Aquatic Park, including teams, leagues, business, or associations refers to the Aquatic Park as ""Serpa Aquatic Park at Ellis".

1.7. Entire Document; Amendment; Assignment. This Document constitutes the entire agreement and understanding between Rights Holder and the City and supersedes all prior agreements, understandings and representations relating to the subject matter. This Document may only be amended, modified or supplemented by a written agreement between Rights Holder and the City. This Document may not be assigned by either party except with the prior written consent of the other party; provided, however, that

Rights Holder may assign this Document as part of any planning undertaken by Rights Holder for future authorizations related to this Document.

1.8. Right of Use. With respect to all events that are specifically created for the aquatic park by the City or its affiliates, scheduled or hosted by the City or its affiliates, the City agrees that to the extent determined or controlled by the City, Rights Holder, shall have the priority access to purchase, from the City or event promoter at the standard ticket price, tickets to all such events. The location of such tickets shall be on a best available basis. Owner or it's assigns (Rights Holders) shall include a location for a cabana during the design process as selected by Rights Holders, and shall fund costs of the cabana structure for that location, which shall be at all times be reserved for Rights Holders use. Cabana may have food and beverage service for users and guests, arranged through and provided by the Aquatic Park food and beverage purveyor's if arranged for by the cabana without any consequence from City.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

EXHIBIT B

APPLICATION FOR RESIDENTIAL GROWTH ALLOTMENTS – GMO
Subsection F.3

Application

Applicant Information

Name: _____Telephone No.: _____

Company: _____

Mailing Address: _____

City/State/Zip Code: _____

Owner Information

Name: _____Telephone No.: _____

Company: _____

Mailing Address: _____

City/State/Zip Code: _____

Tentative Map / Map / RGA Information

Tentative Map or other Map: _____

# of RGA's requested: _____

Applicant's Signature

I, the undersigned, have complied with the requirements of the Development Agreement relevant to this application:

_____ _____
Applicant's Signature Date

APPLICATION FOR RESIDENTIAL GROWTH ALLOTMENTS – GMO
Subsection F.4

Application

Applicant Information

Name: _____Telephone No.: _____

Company: _____

Mailing Address: _____

City/State/Zip Code: _____

Owner Information

Name: _____Telephone No.: _____

Company: _____

Mailing Address: _____

City/State/Zip Code: _____

Tentative Map / Map / RGA Information

Tentative Map or other Map: _____

# of RGA's requested: _____

Applicant's Signature

I, the undersigned, have complied with the requirements of the Development Agreement relevant to this application:

_____ _____
Applicant's Signature Date

When Recorded return to:

EXHIBIT C

For Recorder's Use Only

AGREEMENT FOR DEFFERRAL OF
CERTAIN IMPACT FEES

THIS AGREEMENT is entered into by and between the City of Tracy ("City"), and _____, ("Applicant") on _____ to secure the payment of certain impact fees, which the City has agreed may be deferred until sometime after the filing of the Final Map for this Project and the issuance of building permits.

Recitals

A. Applicant owns the land included on the final map entitled "_____" ("Final Map"), which is to record concurrently with this Agreement for Deferral of Certain Impact Fees ("Agreement") for the project known as _____, ("Project"). New homes will be constructed on the lots created by the Final Map.

B. Applicant has requested a deferral of certain impact fees, which are imposed under Tracy ordinances and resolutions for said Project.

C. City has agreed to defer the payment of such impact fees ("Deferred Impact Fee") until each new home that is constructed on a lot depicted on the Final Map is sold and conveyed to the original homebuyer as evidenced by a completed close of escrow transaction. The impact fees that shall be paid to the City are itemized on a per lot basis on the Deferred Impact Fee Schedule by Lot No. attached as Exhibit "B" ("Deferred Impact Fee"). The Deferred Impact Fee Schedule may be adjusted by mutual consent of the City and Applicant at any time prior to payment in order to account for fee credits or fee adjustments.

D. Applicant shall cause an escrow to be opened with an escrow holder ("Escrow Holder") who is processing the escrow closings for the sale of the new homes in the Project. The Deferred Impact Fee shall be paid to City by the Escrow Holder through the escrow upon the close of escrow of each new home sale in the Project to the original homebuyer.

E. Upon request from Applicant, City shall provide Escrow Holder with a Demand Letter that provides the Deferred Impact Fee for particular lot in the form attached as Exhibit "C" in connection with the sale of a new home to a homebuyer.

F. Upon receipt of Deferred Impact Fee from Escrow Holder, City shall provide Escrow Holder with a Confirmation and Instruction Letter that confirms the Deferred Impact Fee for a particular lot has been received by City and paid in full, in the form attached as Exhibit "A".

NOW, THEREFORE, the parties hereto agree to the following:

1. This Agreement shall be recorded immediately after the recordation of the Final Map

2. Upon completion of the new home on any lot as shown on the Final Map in the Project, the City shall allow Applicant to obtain utility services, including water, sewer, gas and electricity, to the house; but, shall not allow occupancy until the Escrow has closed and the City has received the Deferred Impact Fee, as set forth below.

3. The Applicant shall instruct the Escrow Holder to deduct sufficient funds to pay the Deferred Impact Fee from the sale escrow of a new home to the original buyer and such Deferred Impact Fee shall be wired by the Escrow Holder to the City as a condition of the closing of such escrow and the conveyance of a lot in the Project to the original homebuyer.

4. Upon receipt of said Deferred Impact Fee by the City from the sale of a new home located on a lot shown on the Final Map that is conveyed to the original homebuyer, this Agreement shall be deemed irrevocably released on said lot in the Project without the necessity of a recorded release signed by the City, and Escrow Holder shall remove any and all exceptions or notices on the title or record related to Deferred Impact Fee for said lot. City agrees to promptly execute and record a release of the Agreement, upon request, if necessary to remove the Agreement from the title to a lot.

5. General Provisions.

    5.1 Notices. Notices to the parties shall be in writing and delivered in person, or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the City and Applicant. Notice shall be effective on the date delivered in person or the date when the postal authorities indicate the mailing was delivered to the address of the receiving party indicated below.

    To Applicant: To City:

    5.2 California Law. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of California.

5.3 Severability. If any one or more of the provisions of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected or be impaired in any way.

5.4 Attorneys' Fees. If any party files an action or brings any proceeding against the other party arising out of this Agreement or for the declaration of any rights under this Agreement, the prevailing party shall be entitled to recover from the other parties all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party as determined by the court.

5.5 Modification. This Agreement cannot be modified in any respect except by a writing signed and entered into by the Applicant and the City.

5.6 Captions. The captions of the paragraphs of this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope of the intent of the Agreement.

IN WITNESS WHEREOF, this Agreement is executed by THE CITY OF TRACY and by APPLICANT.

CITY OF TRACY

By: _____

Its: _____

APPLICANT

By: _____

Its: _____

Approved as to form and legality this
_____ day of _____, 20___ .

City Attorney

_____

Exhibit "A"

Confirmation and Instruction Letter

To: _____ (Escrow Holder)
From: The City of Tracy
Re: Payment of Deferred Fee
Final Map_____, Lot # _____
Address of Property: _____
Your Escrow Number if applicable: _____
Date: _____

Regarding the above referenced escrow, Escrow Holder is directed, pursuant to the provisions of the Agreement of Deferral of Certain Impact Fees, recorded on _____, as Document Number _____ in Official Records of the San Joaquin County Recorder's Office, that the following amount has been collected from the above referenced Lot either directly by the City or from Escrow the sum of $_____, representing the amount of the Deferred Impact Fee ascribable to the above referenced Lot. Such Deferred Fee has been collected and received by the City of Tracy.

Upon the Escrow Holder receipt of this Confirmation and Instruction Letter, the Agreement of Deferral of Certain Impact Fees shall be deemed irrevocably released on said lot in the Project with this letter considered a release signed and authorized by the City, which may be recorded.

City of Tracy

By: _____

Its: _____

Exhibit “B”

Deferred Fee Schedule

By Lot No.

Exhibit "C"

Demand Letter

To: _____ (Escrow Holder)

From: The City of Tracy

Re: Payment of Deferred Fee

Final Map _____ Lot # _____
Address of Property: _____
Your Escrow Number: _____

Date: _____

Regarding the above referenced escrow, you are directed, pursuant to the provisions of the Agreement of Deferral of Certain Impact Fees, recorded on _____, as Document Number _____ in Official Records of the San Joaquin County Recorder's Office, to collect from the above referenced Escrow the sum of $_____, representing the amount of the Deferred Impact Fee allocated to the above referenced Lot. Such Deferred Fee shall be collected at the closing the escrow and wired to the City of Tracy as follows:

Wiring Instructions.

Upon the City of Tracy's receipt of such Deferred Impact Fee, the Agreement of Deferral of Certain Impact Fees shall be deemed irrevocably released on said lot in the Project without the necessity of a recorded release signed by the City.

City of Tracy

By: _____

Its: _____

EXHIBIT D

SWIM CENTER

DESIGN, FUNDING, AND CONSTRUCTION AGREEMENT

By and Between the

CITY OF TRACY,

a municipal corporation and

SURLAND COMMUNITIES, LLC

Effective Date: _____, 20__

SWIM CENTER

AGREEMENT

This Swim Center Acquisition Agreement ("Agreement") is made by and between the CITY OF TRACY, a municipal corporation ("City"), and SURLAND COMMUNITIES, LLC ("Owner") (City and Owner are collectively referred to as "Parties") and is effective as of _____, 20___.

RECITALS

A. The Ellis Specific Plan identifies an approximately 1 6 acre (the "Property") within the plan for an Swim Center.

B. On December _____, 20____, the City Council approved and adopted a development agreement amendment which includes the Property (the "DA").

C. The DA obligates Owner to retain and compensate consultants, and contractors for the design and construction of a Swim Center ("Swim Center") on the Property, and requires Owner and the City to execute this Agreement to provide for and memorialize the Parties' obligations with regard to site acquisition, design, and construction of the Swim Center. This Agreement intends to provide the method by which Owner will perform this obligation but does not intend to expand or change the Owner obligation as presented in the amendment to the Development Agreement. The City acknowledges that Owner is not a licensed contractor and therefore in performing the obligations of this Agreement Owner shall retain the services of license contractor as required by law.

AGREEMENT

Based upon the foregoing Recitals, which are incorporated herein as provisions of this Agreement by this reference, and in consideration of the covenants and promises of the City and Owner contained in this Agreement, the Parties agree to perform each of their respective obligations in a timely manner.

SECTION 1 -Definitions

"Affiliate" means (i) an entity that, directly or indirectly, controls, is controlled by, or is under common control with, Owner; or (ii) an entity in which Owner directly or indirectly owns at least a twenty-five percent (25%) interest.

"City" means the City of Tracy, acting through its City Council, officers, employees, and authorized representatives.

"City Engineer" means the City Engineer for the City of Tracy or authorized delegee.

"Construction Contract" means the contract between Owner and Owner's contractor(s) for all of the Work (as defined below) required to construct the Swim Center as designed, including all

services required to be provided by or customarily provided by or under the direction of a licensed general contractor.

"Construction Contract Price" means the total amount of contractors Construction Contract(s).

"Construction Documents" means the design and construction documents, including the Construction Contract and all drawings, specifications, and schematic plans prepared pursuant to the RFP (as defined below), if Owner elects to follow the RFP process, and consistent with all applicable local, state, and federal laws, ordinances, policies, and regulations.

"Development Agreement" or "DA" is defined in Recital B.

"Final Acceptance" means that, following Final Completion, the City has received Owner's irrevocable offer of dedication for the Swim Center Site and all improvements thereon, and the City Council has formally accepted the Work by resolution.

"Final Completion" means that the City Engineer and City Building Official have determined that the Work has been fully completed in accordance with the Construction Documents and this Agreement, including all Punch List items, and title to the Swim Center Site is free and clear of all construction liens and encumbrances, unless otherwise assumed by City.

"Site" is defined as the real property selected by the City Council for this project.

"Swim Center" is defined in Recital C and in the Ellis Specific Plan.

"Swim Center Site" means the Site for the Swim Center that is owned by or under contract to purchase by Owner or Owner's affiliate until City's acquisition at Final Acceptance, and is further described in Section 3.

"Request for Proposal" or "RFP" means Owner's optional "Request for Proposals for Consultant Services" related to design, architectural, and other consultant services, including construction of the Swim Center.

"Total Cost" means all costs, including, but not limited to, costs of design, architectural, consultants, engineering, plan checking, land preparation, utilities installation, project management and overhead, applicable governmental fees, materials, labor, and construction. The Total Cost includes the cost of the land, whether currently owned by Owner or acquired from a third party, at a cost of $210,000 per acre.

"Work" means all of the design and construction services necessary or incidental to completing the Swim Center in conformance with the requirements of the DA, this Agreement, and the Construction Documents.

SECTION 2 – City Site Selection

Pursuant to the DA and Section 2 of this Agreement, the City has selected the Site for the Swim Center. The Site shall be in the location, and as described in the offer

of dedication. Owner shall own or acquire the Site selected by the City, and the City shall not own the Swim Center Site until Final Acceptance.

SECTION 3 – City Approval of Plans and Construction Documents

Within sixty (60) days after the Development Agreement Amendment is Effective, the Specific Plan is approved and the Owner-Tracy Swim Center construction agreement is executed, then Owner and City representatives shall meet to establish joint timelines and milestones for event 3) and event 4): 1) Owner presenting a final conceptual plan for the Swim Center to the City for City review and approval on or before April 30, 2018; 2) a community groundbreaking ceremony on or before September 30, 2018; 3) After the City has approved all necessary design, plans and construction documents, Owner bid out and enter into a construction contract; and, 4) Owner completing the construction according to the construction documents and this document.

Before Owner starts preparing construction improvement plans the City Council shall approve a final conceptual plan, and a list of design, construction and/or improvements that Owner shall cause to be designed and/or constructed. If, after the City Council approves a final conceptual plan, it decides to modify the plan or add additional features or amenities then all direct and indirect costs of changing the conceptual plan or any design or construction plans relying on the original conceptual plan shall be additive funding provided by the City above the initial Swim Center funding and within the time periods specified herein. To insure the Swim Center is completed with available funds the project may be bid with a base bid, and with bid alternatives, depending on available funds bid alternates may or may not be awarded. City shall promptly approve the Construction Documents, including all design plans, drawings, and specifications. The Construction Documents must include an estimated Construction Contract Price, and must comply with the following:

1. California Building Code; and
2. Applicable Law

SECTION 4 – Schedule

A. General Surety Requirements

Each bond must be issued by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven days following written notice from City, Owner must substitute a surety reasonably acceptable to City.

B. Required Bonds

1. Faithful Performance Bond

To secure faithful performance of this Agreement each contractor not covered by a bond for the project shall provide a faithful performance bond in the amount of the work provided, a performance bond shall be provided to the City in the amount of the

Construction Contract Price prior to commencement of construction. The bond must be in the form required by Government Code sections 66499 through 66499.10.

2. Warranty Bond

As a condition precedent to City's Final Acceptance of the Swim Center, a warranty bond must be provided in the amount of 10% of the final Construction Contract Price of the Swim Center, as a full guarantee for one year of Work following Final Acceptance.

Bonds and insurance shall be purchased from the Owner's Contribution funds, funds contributed by the City for the project, or paid for by the contractor.

SECTION 5 – Construction

A. Owner's Obligation to Cause to Construct

Owner shall cause to be constructed the Swim Center in conformance with the Construction Documents to Final Completion.

B. Owner's Swim Center Contribution

Owner's maximum financial obligation regarding the Swim Center is Ten Million Dollars ($10,000,000.00) ("Owner's Contribution") for the Total Cost. Previously Owner has provided Two Million Dollars of a Ten Million Dollar contribution to the City for the Swim Center. City shall cause the Two Million Dollars initial contribution to be applied to the Owner's design and construction activities in accordance with Exhibit "A", including but not limited to reimbursing Owner for all of Owner's design activity expenses undertaken prior to executing this Agreement, subject to Owner providing City true and correct copies of invoices for the work performed or, at the discretion of Owner, the City shall treat the expense of all of Owner's design activities as credits against development fees. After the Two Million Dollar initial contribution is applied to the Eight Million future contribution then the remaining obligation shall be satisfied in full by Owner facilitating Swim Center design and construction of improvements equal to Ten Million Dollars in costs incurred by Owner. In anticipation of this agreement and at the City's request, the Owner retained consultants prior to approving and executing this agreement or the amendment to the Development Agreement, and funds expended by the Owner prior to this agreement or the amendment to the Development Agreement being executed shall be eligible for reimbursement or credits.

C. City's Obligation for Costs over Owner's Contribution

The City shall provide funding for the Swim Center in an amount equal to Thirty-Five Million Dollars with a supplementary contingency amount of twenty percent of the total estimated costs of Forty-Five Million Dollars (Swim Center Funding). This additional construction of approved plans, which shall take into account the total Swim Center Funding, shall represent Owner's entire obligation to facilitate design and construction improvements for the Swim Center improvements and once the additional agreed upon improvements are constructed the Owner's obligation to facilitate design and construction improvements for the Swim Center under this agreement automatically terminates. Owner shall have no obligation to advance funds above the Owner's Contribution to continue or complete the Swim Center and upon reaching the amount of Owner's Contribution if City fails to fund its share, Owner shall be conclusively deemed to have satisfied its obligation under this agreement and the Development Agreement. City shall pay in full all requested invoiced payments to Owner or Contractor within thirty (30) days of the portion of the Work completion from city Swim Center funding.

D. Change Orders

Change orders which include costs of more than 10% of the construction contingency shall require the City Manager's or his/her designee's approval, which shall not be unreasonably withheld or delayed. Change orders which include costs 10% or less of the construction contingency shall require the Assistant City Manager's or his/her designee's approval, which shall not be unreasonably withheld or delayed.

E. Prevailing Wages

Each worker performing Work under this Agreement that is covered under Labor Code section 1720 or 1720.9, including cleanup of the construction site, must be paid at a rate not less than the prevailing wage as defined in sections 1771 and 1774 of the Labor Code.

F. Payroll Records

At all times during performance of this Agreement, Owner's contractor must comply with the provisions of Labor Code section 1776 and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for electronic submission of payroll records.

G. Insurance

Prior to the commencement of construction, the Owner shall furnish or cause to be furnished evidence to the City that all of the following insurance requirements have been satisfied:

1. General Requirements

The Owner shall or shall cause its agents or contractors to maintain insurance to cover Owner, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

2. Policies and Limits

(a) Commercial General Liability Insurance ("CGL"): A CGL policy (with coverage at least as broad as ISO form CG 00 01 01 96) 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.

(b) Automobile Liability Insurance: An automobile policy (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") in an amount not less than $1,000,000 per accident for bodily injury and property damage.

(c) Workers' Compensation Insurance and Employer's Liability: As required by the State of California.

3. Required Endorsements

The automobile and commercial general liability policies shall contain endorsements with the following provisions:

(a) The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."

(b) For any claims related to this Agreement, the required coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Owner's (or contractor or agent, if provided by them) insurance and shall not contribute with it.

4. Notice of Cancellation

All insurance policies required hereby shall contain endorsements by which each insurer is required to provide thirty (30) days prior written notice to the City should the policy be canceled 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.

5. Authorized Insurers

All insurance companies providing coverage required by this Agreement 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.

6. Insurance Certificate

Owner (or its agent or contractor) shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney.

7. Substitution of Certificates

No later than thirty (30) days prior to the policy expiration date of any insurance policy required by this Agreement, Owner (or agent contractor) shall provide a substitute certificate of insurance.

8. Owner's Obligation

Maintenance of insurance by the Owner as specified in this Agreement shall in no way be interpreted as relieving the Owner of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Owner may carry, at its own expense, such additional insurance as it deems necessary.

SECTION 6: Inspection and Final Completion

A. Inspection and Oversight

The City may perform daily field inspections of the construction in progress, during regular business hours, as required to assure that the construction is in accordance with the requirements of this Agreement. All inspections shall be coordinated with Owner's designee with at least 24 hours advance written notice and the City inspection team shall be accompanied by Owner's designee at all times when on Site. In order to permit the City to inspect the Work, the Owner shall, at all times, provide to the City proper and safe access to the site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation. The City shall receive copies of materials quality tests required to assure that the quality meets the construction plans requirements, and may require inspection or any re-testing which may be necessary. The City will perform a final inspection of the Work and prepare an inspection report, setting forth any deficiencies from the Construction Documents that may exist (the "Punch List"). Prior to determining that Owner has achieved Final Completion, as described below, the City may re-inspect any corrective work performed by Owner and the as-built construction plans and records to insure the Punch List has been completed.

B. Final Completion

The City shall certify that Owner has achieved Final Completion when both the City Engineer and City Building Official have determined that the Work is fully completed in accordance with the Construction Documents and this Agreement. Final Completion cannot be achieved until Owner has completed all Punch List items and provided all required submittals, including any contractor warranty, and as-built drawings, to City's satisfaction. After Final Completion has occurred, the City Engineer will recommend Final Acceptance to the City Council. Upon request by Owner City shall provide a Punch List within fifteen days, and once the work from the Punch List provided is complete City shall certify that Owner has achieved Final Completion.

SECTION 7: Dedication and Acceptance

Final Acceptance by the City Council will not be made unless and until a final inspection and determination of Final Completion has been made by the City Engineer and City Building Official in accordance with Section 5.B above, and Owner has submitted to the City an irrevocable offer of dedication for the Swim Center Site with improvements from Owner and evidence that the title to the Swim Center Site is free of all construction liens and encumbrances. Upon recommendation of the City Engineer, the City Council shall formally accept the Work by resolution.

SECTION 8: Warranties and Fee Credits

A. Correction of Defective Work During the Warranty Period

The Contractor(s) shall warrant the quality of the Work, in accordance with the terms of the plans and Construction Documents, for a period of one year after Final Acceptance of the Work by the City Council. In the event that (during the one-year warranty period) any portion of the Work is determined by the City Engineer, or if requested validated by a 3rd party agreed upon by Contractor and City to be defective, the City shall notify Owner of the defect and the Owner shall begin facilitation of the correction of the defect within ten (10) days of receiving notice of the defect from the City. If the defect cannot be corrected within 30 days, Owner shall have such time as is necessary to correct the defect, provided that Owner has timely caused the correction to begin and the contractor is diligently continuing the work necessary to correct the defect. If Owner fails to have the contractor begin the work to correct the defect within 60 days of receiving such notice, or fails to diligently have the contractor continue such work, as reasonably determined by the City, City may take actions as necessary to complete the Work using the Warranty Bond. Pursuant to Section 4.B.3 of this Agreement, Contractor's must provide City with a warranty bond as a condition precedent to Final Acceptance.

SECTION 9: Indemnity

To the fullest extent permitted by law, Owner must indemnify, defend, and hold harmless the City, its agents and consultants (individually, an "Indemnitee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with acts or omissions of Owner, its employees, subcontractors, representatives, or agents, in bidding or performing the Work or its failure to comply with any of its obligations under the Agreement, except such Liability caused by the active and sole negligence, or willful misconduct, of an Indemnitee. Owner's failure or refusal to timely accept a tender of defense pursuant to this provision will be deemed a material breach of this Agreement. Upon Final Acceptance to the fullest extent permitted by law, City must indemnify, defend, and hold harmless the Owner, its agents and consultants (individually, an "Indemnitee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with acts or omissions of City, its employees, subcontractors, representatives, or agents, in bidding or performing the Work or its failure to comply with any of its obligations under the Agreement, except such Liability caused by the active and sole negligence, or willful misconduct, of an Indemnitee. Cities failure or refusal to timely accept a tender of defense pursuant to this provision will be deemed a material breach of this Agreement.

SECTION 10: Miscellaneous Provisions

A. Integration; Severability

This Agreement, the DA, and the Construction Documents incorporated herein, including authorized amendments or change orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Owner. If any provision of this Agreement, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions will remain in full force and effect.

B. Amendment

No amendment or modification of this Agreement will be binding unless it is in a writing duly authorized and signed by the parties to this Agreement, and unless any such amendment conforms to the requirements of the DA, as that document may be amended.

C. Governing Law and Venue

This Agreement will be governed by California law and venue will be in the Superior Court of San Joaquin County, and no other place.

D. Assignment and Successors

Owner may not assign its rights or obligations under this Agreement, in part or in whole, without City's written consent and without simultaneous assignment of its rights and obligations under the DA. Notwithstanding the foregoing, Owner may assign its obligations hereunder to an Affiliate, provided that any such assignment shall not release Owner from responsibility for ensuring that the assigned obligations are satisfied, and Owner shall remain liable to the City for any and all failures by any assignee to fully perform all obligations under this Agreement, such that a failure by an assignee to fully perform an obligation under this Agreement shall constitute a default by Owner.

E. Notice

Any notice given pursuant to this Agreement must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email. Notice shall be deemed to have been given and received on the first to occur of: (i) actual receipt at the address designated above, or (ii) two working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated below. Notice for each party must be given as follows:

City:

City Manager
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
Telephone No.: (209) 831-6400

Facsimile
No.: (209)
831-6439

With copy to:

City Attorney
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
Telephone No.: (209) 831-6130
Facsimile No.: (209) 831-6137

Owner:

Surland Communities
1024 Central Avenue
Tracy, CA 95376
Attention Les Serpa
Telephone No.: (209) 832-7000
Facsimile No.: (209) 833-9700

With copy to:

Herum Crabtree
5757 Pacific Avenue, Suite 222
Stockton, California 95207
Attention: Steve Herum
Telephone: (209) 472-7700
Facsimile: (209) 472-7986

F. Default

1. General

In the event that the Owner is in a material default of this Agreement, as defined in this section, the City Engineer shall provide written notice to the Owner in which the default is described.

2. Default Defined

The Owner shall be in default of this Agreement if the City Engineer determines that any one of the following conditions exist:

(a) The Owner is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.

(b) The Owner abandons the Work for a continuous period of thirty (30) days that is not due to weather conditions, labor disputes, acts of God, lack of city funding, or other circumstances beyond the control of Owner,

(c) The Owner fails to perform one or more requirements of this Agreement.

(d) The Owner fails to remedy any loss or damage incurred by the City caused by Owner or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work in instance where Owner does not dispute that it is responsible for the loss or damage.

(e) The Owner violates any legal requirement related to the Work.

3. Cure

In the event that the Owner fails to cure the default within thirty (30) days, or provide adequate written assurance to the satisfaction of the City Engineer that the cure will be promptly commenced and diligently prosecuted to its completion, the City may, in the discretion of the City Engineer, take any or all of the following actions:

(a) Cure the default.

(b) Demand the Owner to complete performance of the Work.

G. Independent Contractor Status

The Owner is an independent contractor and is solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Owner is not City's employee and Owner shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Owner.

H. Attorneys' Fees

In the event any legal action is commenced to enforce this Agreement, the prevailing Party is entitled to reasonable attorney's fees, costs, and expenses incurred.

I. Waiver

Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

J. Signatures

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Owner and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

[SIGNATURE PAGE FOLLOWS]

"City"
CITY OF TRACY, a municipal corporation

_____
By:
Title: _____
Date: _____

Attest:

_____
By:
Title: CITY CLERK
Date: _____

"Owner"
SURLAND COMMUNITIES, LLC, a California limited liability company

_____
By:

By: _____
Les Serpa
Title: _____
Date: _____

Robert Mehlhaff

Law Offices Of
ROBERT MEHLHAFF
4600 S. Tracy Blvd., Ste. 114
PO Box 1129
Tracy, CA 95378-1129

Telephone: (209) 835-3232
Facsimile: (209) 835-7251

December 18, 2017

Mayor Robert Rickman
Mayor Pro Tem Veronica Vargas
Council Members Nancy Young,
Rhodesia Ransom, Juana L. Dement

and

Planning Commissioners Robert Tanner, Jacy Krogh,
Jass Sangha, Albert Hudson and Joseph Orcutt

and

City Manager and
City Attorney

333 Civic Center Plaza
Tracy, CA 95376

re: Proposed Second Amendment to Amended and Restated Development Agreement
By and Between the City of Tracy and Surland Communities, LLC

Planning Commission Agenda Item IA-2,
December 20, 2017 Planning Commission Meeting

Ladies and Gentlemen,

I represent Maninder Sandhu, and related partnerships and corporate entities which own lands within the City of Tracy, within its approved specific plans and within its sphere of influence.

I am writing to urge that the Planning Commission and, if necessary, the City Council DENY the proposed second amendment to the Development Agreement referenced above.

The proposed amendment violates both the "first come first served" principles and the "proportional" allocation of unused RGAs as contained in paragraphs F.1 through F.8 of the Growth Management Guidelines

It "vests" and allocates RGAs that exceed the RGAs to which the Ellis Project is entitled to other projects that Surland Communities, LLC may add to the development agreement, contrary to the provisions of the Growth Management Ordinance and the Growth Management Guidelines, and does so before any EIR is done or considered on such additional project. It therefore arbitrarily

and capriciously discriminates in favor of this particular developer and against other developers in violation of the latters' rights, and deprives the latter developers of equal protection of the law.

By assuring this developer such "excess" RGAs, to which the Ellis Project is not entitled because the number of proposed residences within that project does not come close to the 2,250 allocations, it effectively grants to Surland Communities and to Tracy Hills, under paragraph F.4 of the Growth Management Guidelines, a monopoly. No "Other Development" will effectively be eligible for RGAs for their projects.

Please be advised that if the proposed amendment is adopted by the City of Tracy, litigation will ensue to invalidate your actions, and my clients will seek redress of their rights and damages for the decrease in the value of their property by inverse condemnation.

Sincerely yours,

Robert Mehlhaff

COX CASTLE NICHOLSON

Cox, Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, California 94111
P: 415.262.5100 F: 415.262.5199
Christian H. Cebrian
415.262.5123
ccebrian@coxcastle.com

File No. 099999

December 19, 2017

VIA E-MAIL

Members of the Planning Commission
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
cityclerk@cityoftracy.org
des@cityoftracy.org

Re: Agenda Item 1.A.2 (Amendment to Surland Communities Development Agreement)

Dear Members of the Planning Commission:

My firm represents Tom Grewal, an area landowner. In a separate letter, Mr. Mehlhaff, on behalf of Mr. Sandhu, has identified several infirmities in the proposed amendment to the development agreement between the City of Tracy and Surland Communities, LLC. Mr. Grewal shares Mr. Sandhu's concerns regarding the development agreement amendment allowing Residential Growth Allocations to be transferred outside of the Ellis Specific Plan area to the detriment of other Tracy landowners. Mr. Grewal also objects to the amendment for the reasons stated more fully below.

Section 1.07(f) states in part:

> " . . . the City represents and warrants that during the duration of this Development Agreement . . . it shall not grant RGAs [Residential Growth Allotments] to another person or entity through a development agreement and shall not expand the currant boundaries of the Primary Area and Other Projects Area, if Owner's right to obtain RGAs under this Agreement may be directly or indirectly prohibited, restricted or impaired."

Section 1.07 would appear to prohibit the City from amending its growth policies in the future as they may apply to third-parties. It would also appear to require the City to deny third-parties' applications for RGAs under certain circumstances.

There are procedural due process issues raised when the fate an application by a third-party is decided by a contract that it is not a party to. In any event, "[i]t is settled that a government entity may not contract away its right to exercise the police power in the future . . .

[and a] contract that purports to do so is invalid as against public policy." *Cotta v. City and County of San Francisco* (2007) 157 Cal.App.4th 1550, 1557-1558. For example, in *County Mobilehome Positive Action Com., Inc. v. County of San Diego* (1998) 62 Cal.App.4th 727, 736–739, an ordinance and agreement with certain mobilehome park owners constituted a contractual agreement by the county to not enact rent control legislation for 15 years against the properties owned by the parties to the agreement. The court held that the ordinance was facially unconstitutional and the accord was invalid because, together, they represented an express attempt by the county to surrender or bargain away its control of police power. *Id.* at p. 741.

Though a development agreement may lawfully vest a project in development rights by freezing the land use regulations applicable to that project (*see e.g., Santa Margarita Area Residents Together v. San Luis Obispo County* (2000) 84 Cal.App.4th 221), to our knowledge, no case has held that a development agreement may be used to disapprove third-party applications or to prohibit a City amending its own code or guidelines as they may apply to third-party properties. Such a use of a development agreement would not be a legitimate exercise of governmental police power in the public interest, but would instead be a surrender of the police power to a special interest – Surland Communities, LLC. Although Surland Communities may obtain certainty in its own development rights through a development agreement, it may not do so by predetermining the rights of third-parties or by restricting the City from amending its own policies or ordinances applicable to other properties.

The staff report states that the City would rely on an addendum to the Ellis Project Environmental Impact Report. However, that addendum does not address the potential indirect impacts of the development agreement amendment providing entitlements for property to be acquired by Surland Communities. For example, Mr. Mehlhaff noted that the amendment would result in the inability of properties within the Other Projects Area from obtaining RJAs. As recognized by the California Supreme Court, such displaced development is a potential environmental impact and must be studied under CEQA. *See Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, 383. The addendum's failure to address this potential impact renders the amendment's CEQA review inadequate.

The amendment in its current form is unacceptable. By permitting Surland Communities to transfer its RGAs under the existing development agreement to later acquired properties, the development potential of our client's properties will be severely impacted. The amendment accomplishes this monopolization of development rights through an unlawful

surrender of the police power and by infringing on the due process rights of other landowners. Simply put, if the City continues to process the amendment, it will be exposing itself to unnecessary litigation risk. Mr. Grewal requests that the Planning Commission recommend that the City Council deny Application DA 16-0001.

Sincerely,

Christian H. Cebrian

Cc: Mayor and Members of the City Council, council@cityoftracy.org
City Manager, cm@cityoftracy.org
City Attorney, attorney@cityoftracy.org

CHC
099999\9345125v2

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Attorney at Law

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Telephone (209) 836 0725
Fax (209) 832 3796
E -mail:mconnolly@connollylaw.net
www.connollylaw.net

December 28, 2017

Honorable Mayor, Members of the City Council
& Planning Commission
City of Tracy
City Hall
333 Civic Center Plaza
Tracy, CA 95376

Re: My Client: Michael Sandhu
Amendment of Development Agreement with Surland Communities, LLC.

Honorable Mayor, Members of the City Council, and Members of the Planning Commission:

I have been retained by Michael Sandhu concerning Surland Communities, LLC ("Surland") and the Ellis project and Development Agreements.

The purpose of this letter is to communicate to the City, Council and Planning Commission that the proposed Amendment to the Development Agreement with Surland ("2017 DA") is a violation of the Statement of Decision and Judgment both entered in San Joaquin County Superior Court, Case No. 39-2009-00211854-CU-WM-STK in 2011. Surland is inviting the City to amend the Development Agreement back into the Development Agreement ("2008 DA") invalidated by San Joaquin County Superior Court Judge Holland in 2011.

Surland consented to the consideration of an amendment to the most recent in a long history of approved, invalided, amended, restated and tolled Development Agreements being dropped from Planning Commission consideration on December 20, 2017. The Council and Commission need to be aware that they were being asked to enter into an Amended Development Agreement, the terms of which have already been determined to be a violation of California law. The Council and Commission may in the future be again requested to violate the Government Code on behalf of this project.

A copy of the Statement of Decision by Judge Holland filed on October 31, 2011, is attached as Exhibit A to this letter. The section dealing with the 2008 Surland

Development Agreement is on pages 5 and 6, and pages 8 to 15. The City was ordered to "Vacate and Set Aside the Development Agreement". (Statement of Decision, pg. 40).

A copy of the "Judgment Granting Preemptory Writ of Mandate" ("Judgment") filed on October 31, 2011, is attached as Exhibit B. In that Judgment "The court finds the Development Agreement ("DA") does not comply with Government Code Sections 65865(b) and 65865.2 and is therefore void." (Judgment at 2:27-28).

The history of the Development Agreements in this case is contained in Judge Holland's Statement of Decision. The original proposed 2008 DA allocated to Surland 3,850 RGAs. Surland was to pay $20 million and dedicate 21 acres to the City. (Statement of Decision at 7:22-28).

As a result of Planning Commission concerns, the 2008 DA was changed and obligated Surland to pay $10 million toward future development of a swim center, offer to dedicate 16 acres for a swim center and the term was shortened from 30 to 25 years. (Statement of Decision at 7:22-28, 5:11-16). The 2008 DA provided Surland with the right to develop consistent with the laws in effect in **2008**. (Statement of Decision at 5:17-21). The 2,250 RGAs represented the maximum number of units that could be built at Ellis thereby providing the certainty of surplus RGAs.

On December 16, 2008, the City Council approved the 2008 DA. (Statement of Decision at 8:1-6).

TRAQC challenged the 2008 DA contending "...The approved Development Agreement violates Government Code Section 65865(a) because Surland does not have legal or equitable title in the real property to be developed, and because **the Development Agreement is not associated with any project, parcel or real property.**" (Statement of Decision at 8:15-18).

On October 31, 2011, the court determined "...**the DA in this case is not tethered to any specifically identified property or project**." (Statement of Decision at 12:9-12). The court ordered the City to vacate and set aside the 2008 DA.

In December 2011, Surland filed applications for an amendment and restatement of the invalided 2008 DA.

On September 17, 2013, the City recorded the "Amended and Restated Development Agreement by and Between the City of Tracy and Surland Communities LLC." ("2011 DA"). The 2011 DA provided for Surland to pay $2 million within 60 days of annexation and no later than 3 years later an additional $8 million dollars. Most importantly, it provided that "City and Owner agree that the RGAs allocated under this Agreement **apply only to the Property and may not be applied or transferred to any other property.**" (Amended and Restated DA at 16). This limitation of use of the RGAs to the Ellis Specific Plan ("ESP") was intended by the City to prevent RGAs and vested rights (Super RGAs) being allocated to other properties and comply with the Statement of Decision and Judgment.

This is where City Staff in its most recent starts its history. As the December 20, 2017 Planning Commission Staff Report states that in May 2014 the DA was amended to provide funding in two payments. ("2014 DA").

On September 15, 2014, Surland made the first payment of $2 million dollars. The second payment was due on September 15, 2015.

The City and Surland entered into several tolling agreements tolled the payment. Surland has never made the $8 million payment originally promised in 2008 as part of the $10 million even though Surland is building houses in Ellis today. No swim center has been constructed. The 16 acres has not been dedicated to the City. Surland has been able to obtain approvals and commence building by paying only $2 million dollars, not building a swim center and not dedicating the 16 acres, nothing when it originally offered $20 million and 21 acres. This reflects an amazing accomplishment by the developer and an equally amazing failure by the City. The parents who stood before the Planning Commission and City Council in 2008 viewing watercolor renditions of a swim center with their young children and who were promised it would be built immediately have seen those children grow up and graduate from high school.

On August 16, 2016, the City Council apparently approved Surland's request to negotiate an amendment to the DA and extended the deadline for the $8 million payment.

On August 15, 2017, the City Council approved the Second Tolling Agreement extending the due date for the payment of the $8 million dollars to December 5, 2017.

According to City staff a third tolling agreement in November 2017 extended the deadline for payment of the $8 million to April 4, 2018.

The Amendment to the Development Agreement ("2017 DA") proposed to be presented to the Planning Commission has circled back to incorporate the invalided provisions of the 2008 DA. (See Section 1.07, pgs. 10-19). It adds back the language that made the 2008 DA invalid:

> "This amendment is designed **to permit additional property to be added to and incorporated in to the Development Agreement** and therefore become Property of the Development Agreement, and Owner may apply for RGAs for Projects and home builders within the Property (whether or not annexed to the ESP) area." (2016 DA pg. 12).

Surland and City Staff apparently believe that if they just let 6 years pass from Judge Holland's Statement of Decision and Judgment they can quietly return and approval a 2017 DA containing provisions already determined to be invalid in the 2008 DA.

If the City adopts any DA, such as the one proposed on December 20, 2017, Mr. Sandhu will challenge that DA and it will be set aside. He will certainly be awarded his

costs and fees in light of the City's clear attempt to adopt a DA already determined to be void and invalid. Adopting the 2017 DA may also be a contempt of court since it is a violation of a court order.

The City has already deferred the $8 million, which should have been paid in 2009 had a valid DA been adopted in 2008. This delay to April 2018 is a delay of approximately 10 years. It will be paid at the earliest after homes have been constructed on Ellis and the children who stood before the Council in 2008 demanding a pool immediately are gone.

Setting aside the fact that the 2017 DA violates Judge Holland's Judgment and Order, as to the substance of the 2017 DA, it provides no benefit to the City and is nothing more than a series of concessions and gifts to Surland. There is no evidence to support the finding of any benefit to the City. Some of the major concessions to Surland are:

(1) The 2017 DA language appears to allow Surland to avoid paying the balance of the $10 million dollars at all in exchange for services some of which are reimbursed. The language is confusing and ambiguous:

"Previously Owner has provided "Two Million Dollars of a Ten Million Dollar Contribution to the City for the Swim Center. City, in a manner consistent with the performance, funding and construction agreement mentioned subsequently, shall cause the Two Million Dollars initial contribution to be applied to the Owner's design and construction activities. After the Two million dollar **contribution is applied to the Eight Million future contribution** the remaining obligation shall be satisfied in full by Owner providing Swim Center Design and construction improvements equal to Ten Million Dollars in costs incurred by Owner." (2017 DA pg. 6).

This language is confusing in that the $2 million would not be applied to the $8 million leaving a balance of $6 million dollars. It is unknown what this means as it is inconsistent with other provisions of the 2017 DA.

If this and the other provisions are intended to mean that Surland could provide services in lieu of any part of the remaining $8 million due on April 4, 2018, Surland will have gone from an offer of $20 million and 21 acres to build a swim center, to only $2 million, services for which it will be in part reimbursed and possibly dedicating 16 acres. For example, Surland receives credits against the $8 million for consultants to design the swim center. (2017 DA, pg. 5-6). This is an amazing series of concessions to Surland which will have bought vested rights to 2,250 RGAs and commenced construction for a mere $2 million having delivered NO swim center.

(2) The City allows the already too low dedication of parkland to be further increased by allowing Surland credit against its park land dedication requirements in other unidentified properties to be added to the DA. This means that further developments who have no right to use the swim center at no cost annually will not get parks and adequate open space in their communities because a pay-to-play swim center

was built in another part of Tracy. It is also a repeat of the same violation that invalidated the DA in the first place: applying benefits of this DA, in this case park credits, to unidentified property. (2017 DA pg. 8).

(3) The 2017 DA does not allow the City to build the swim center at another location, which the council discussed, or sell the real property. The 2017 DA places the City in the position of having to build a swim center at Ellis by expending $35,000,000 or give the property back to Surland for development. (2017 DA pg. 9). The City may have placed itself in a position where it cannot build the swim center or accept the dedication of the 16 acres, and the proposed 2017 DA makes this situation worse.

(4) Surland is allowed to prevent the City from expanding the current boundaries of the Primary Areas and Other Projects Areas if Surland's right to obtain RGAS may be directly or indirectly prohibited, restricted or impaired. (2017 DA pg. 15). This gives Surland control over City growth planning restricting the City's ability to provide affordable housing and satisfy other community needs. It is an improper delegation of the City's authority to direct growth and a misuse for the Development Agreement process. This is beyond the powers a City may transfer to a developer in a development agreement.

(5) Unlike any other development, impact fees are not due until the close of escrow when the home is sold. (2017 DA 16). A complex system is set up putting the burden on the City to justify an earlier collection of fees. Requiring payment of impact fees at the permit stage is too late to insure infrastructure is completed in a timely manner, but delaying collection until the house is about to be occupied is gross negligence on the part of the City and a gift to the developers that has not been made even for affordable housing.

(6) Surland's obligation to erect a Swim Center monument sign is limited to $150,000.00. (2017 DA pg. 21).

(7) A new "Section 1.18 Program/Public Improvements/Infrastructure" is another financial concession to Surland. Credits and reimbursements from a variety for monies for infrastructure a provided. (2017 DA pg. 26). At a minimum, Surland changes an obligation to pay $10 million into becoming a General Contractor for the City.

In summary, the 2017 Development Agreement is a violation of the Government Code because it allows its vested rights from 2008 to be transferred to property other than that in the ESP. It is an improper delegation of City authority to a developer allowing the developer to control City growth. The City will be selling its authority to govern to Surland. The 2017 DA will be challenged if approved.

The 2017 DA provides no new benefits to the City but many concessions to Surland. The 2017 DA recites the same benefits cited in prior DAs, not new benefits.

The 2017 DA should not be approved. Surland should be required to comply with its obligations under the current DA fully with no further tolling of its obligations. It is

time for Surland to live up to the promises it made 9 years ago. It is time for the City to make Surland live up to those promises made in many public hearings even earlier than 2008.

Very truly yours,

MARK V. CONNOLLY

EXHIBIT A

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Attorney for TRAQC

Superior Court of California, County of San Joaquin

Unlimited Jurisdiction

TRACY REGION ALLIANCE FOR A QUALITY COMMUNITY (TRAQC)

Petitioner,

vs.

CITY OF TRACY, BY AND THROUGH THE CITY COUNCIL; and DOES 1-20 inclusive,

Respondents.

SURLAND COMMUNITIES, a California Limited Liability Company; THE SURLAND COMPANIES LLC, a California Limited Liability Company; SURLAND DEVELOPMENT COMPANY; and DOES 21-40 inclusive,

Real Parties in Interest.

Case No. 39-2009-00201854-CU-WM-STK

~~[PROPOSED]~~ STATEMENT OF DECISION

HEARING:
Dates: October 15 & November 19, 2010
Dept: 13
Time: 10:00 a.m.
Judge: Honorable ~~Leslie~~ Holland

LESLEY HOLLAND

MAR 14 2011

The above-referenced petition came on regularly for hearing on October 15, 2010, and November 19, 2011, before the Honorable Lesley D. Holland, Judge of the Superior Court. Petitioner Tracy Region Alliance for a Quality Community ("TRAQC") was represented by its attorney of record, Mark V. Connolly of the Law Offices of Mark V. Connolly; Respondent City

of Tracy ("City") was represented by City Attorney Debra E. Corbett, and by Rick W. Jarvis of Jarvis, Fay, Doporto & Gibson, LLP; Real Parties in Interest Surland Communities, Surland Development Company, and The Surland Companies (collectively "Surland") were represented by their attorneys of record, George Speir and Arthur Coon of Miller Starr Regalia.

Briefly, TRAQC seeks issuance of a writ of mandate to enjoin by Respondent City of Tracy ("City") from proceeding under a Development Agreement, and from proceeding with a project known as the Ellis Specific Plan ("ESP", "Plan", or "Ellis Plan").

The matter was argued by counsel and stood submitted as of November 19, 2010. The court has read and considered the written briefs submitted in support and opposition to the Petition and has heard and considered the arguments of counsel.

Issues Raised by the Petition

First, Petitioner contends that a Development Agreement made by City and Surland violates Government Code sections 65865(a) and 65865.2 and is, therefore, invalid.

Second, Petitioner contends is that the subject Project violates CEQA on the following grounds:

1. The Project's description is inaccurate, inconsistent and unstable;
2. On-site Project alternatives were not properly considered;
3. Off-site Project alternatives were not considered at all;
4. The change in the Project as re-negotiated required a new analysis and re-circulation of an appropriate EIR; and
5. The analysis and responses provided to the EIR comments were inadequate.

Overview

A. The Project

Briefly, the project involved in this litigation "consists of two distinct components: (1) development of Ellis Specific Plan area; and (2) a Development Agreement between the City and Surland in which, *inter alia*, the City agree[d] to allocate to Surland up to 2,250 Residential Growth Allotments ("RGAs") at a rate of no more than 225 RGAs per year." City's Opposition, page 4:19-22.

To obtain approval of residential construction in Tracy, a developer must meet certain requirements, make certain applications, and obtain certain approvals or permits, as follows:

1. Developer is required to obtain City water treatment and wastewater conveyance and treatment capacities. One ECU (equivalent consumer unit) is required for a single-family residence. This is done by application to the Capacity Allocation Review Board (CARB). CARB will only award ECUs when the necessary supplies/capacities are available.
2. Next, the developer submits an application for a Residential Growth Allotment (RGA). The City's Growth Management Review Board considers the application and awards the allotments after specific findings are made that needed public facilities and services, including water and wastewater supplies/capacities, are available for the new housing.
3. Lastly, a building permit is required before construction may begin. The City does not issue a residential building permit unless the necessary ECUs and RGAs are in place. In past litigation between TRAQC and City, the parties have agreed that the issuance of a permit is merely a ministerial act.

Thus, approval of a developer's application for Residential Growth Allotments (RGAs) is a crucial required step under Tracy's Growth Management Ordinance. Without an allotment of RGAs, a developer cannot obtain necessary building permits. Tracy's Growth Management Ordinance caps annual RGAs at 750, with a maximum annual average of 600, subject to certain exceptions. The Growth Management Ordinance also limits the number of RGAs that Tracy may allocate annually by development agreements to not more than 225.

B. The Ellis Specific Plan

The Ellis Specific Plan is a "specific plan" within the meaning of Government Code section 65450, et seq[1]. This Plan provides for the development of a residential village on approximately 321 acres to be annexed the City of Tracy. The Plan includes a maximum of 2,250 residences (with a minimum of 1,200), plus 180,000 square feet of retail, office, and other commercial space, and approximately 40 acres of neighborhood and community parks. The Plan is to be developed in three phases over more than 10 years. The Ellis Plan is intended to serve as "a comprehensive planning document that establishes the vision, goals, and objectives to serve as a blueprint to the future growth and development within the project site." See AR 7:1640-1642.

The City's prior General Plan had designated the ESP area for development since 1993. AR 7:1637. The current General Plan (2006) also identifies the ESP area, and likewise designates it for development over a 20 year horizon. AR 4:882; 7:1637-1638; 17:4367, 4387-4388; 39:10390, 10393.

Surland has been working with the City on development plans for the ESP area since 2003. AR37:10022-10030.

Meanwhile, City has been planning for the development of a community/city swim center for nearly a decade. AR 1:176.

In October and November of 2005, Surland approached City with proposal to develop such a swim center as part of the Ellis Plan. AR 1:176; 36:9690-9691. By April 2006, Surland submitted an application for approval of the development of the Ellis Plan which included Surland's offer to dedicate 20 acres in the ESP area plus payment of $20 million toward the design and development

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[1] Govt. Code§65450 reads: "After the legislative body has adopted a general plan, the planning agency may , or if so directed by the legislative body, shall, prepare specific plans for the systematic implementation of the general plan for all or part of the area covered by the general plan.

of the swim center, in return for an allocation of RGA's. AR 30:8084-8088. In response, the City Council directed staff to negotiate a development agreement with Surland for the potential development of the swim center. AR 30:8065-8067,8094,8121.

C. The Development Agreement

The Development Agreement ("DA") at issue in this litigation came into existence as part of the development of the ESP. Importantly, however, the specific DA in this case addresses and directly impacts development both within, and outside, the boundaries of the ESP area. Some of the major components of this DA include:

Swim Center – the DA obligates Surland to pay $10 million toward future development of a swim center and to make an offer of dedication to Tracy of 16 acres within the ESP area as a site for the swim center. The City would then have 2 years from the date the ESP area was annexed to decide whether to accept the offer of dedication. If not accepted, Surland would retain the a 16 acre parcel and could develop it for other uses consistent with the ESP. AR 1:177.

Vested Development Rights – the DA gives Surland a vested right to develop the ESP area consistent with the ESP, the City's General Plan, and all other zoning laws which are in effect on December 1, 2008, without being subject to any newly adopted local laws unless later agreed to by all parties. AR 1:180-184.

Allocation of Residential Growth Allotments – The DA provides that the City shall allocate to Surland up to 2,250 RGA's over a period of more than 11 years, with annual limits ranging from 125 to 225 RGA's per year. AR 1:186-189. The DA mandates that the first 500 RGAs must be used in the ESP area. AR 1:189. All remaining RGAs may be used in the ESP area, assuming it builds out to the maximum permitted density of 2,250 homes. Alternately, the DA allows Surland to apply for RGAs to be used on other property owned by Surland if, and only if, Surland hereafter first

meets numerous preconditions, including obtaining from of the City a specific plan or similar legislative approval for development of such property. AR 1:186. In this regard, the DA reads, in pertinent part:

> "Again, if and only if certain specified prerequisites set forth in this Agreement are first satisfied, then may Owner record this Agreement against properties and become 'eligible' to apply for the RGAs provided for in this Agreement. As to all property, as detailed in this Agreement, Owner must have a legal or equitable interest in such property before this Agreement can be recorded against such property. Further, under this Agreement, only after an application for development of such property by Owner is first properly and publicly processed and reviewed in compliance with all controlling planning and environmental (CEQA) laws, the CEQA compliance work is certified and adopted by City, and then the development proposal and its needed permits and entitlements are adopted and approved by City (which City adoption and approval shall remain within the full and exclusive discretion of City and which adoption and approval is not mandated by the Agreement), will Owner be eligible to make application for RGAs under this Agreement." AR 1:174-175.

The DA does expressly recognize that Surland might ultimately not be able to obtain the maximum 2,250 RGAs potentially allocated if it does not obtain the required approvals. AR 1:187.

CEQA Review by the City of Tracy

The City prepared the Initial Study for the ESP in August 2006. In April 2008, the City published the Draft Environmental Impact Report (DEIR). The "Project" identified in the DEIR consisted of: (1) a "Development Agreement Program (DAP)"[2] allocating up to 3,850 RGAs to Surland, including "up to 2,250" units proposed by the ESP, and (2) development of the ESP itself. See AR 1:187.

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[2] Under Guideline, section 15168, program EIRs are used for a series of related actions that can be characterized as one large project. See *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 C.A. 4th 511, 531.

Under the proposed DAP, Surland would have been entitled to allocations of up to 3,850 RGAs in the future for use both within the ESP area (up to the 2,250 maximum units), as well as in other future projects developed by Surland if (and only if) the City later approved such projects. The DEIR analyzed the environmental impacts of the DAP at a program level and also at a more extensive and detailed project specific level. The City circulated the DEIR for public review in April and May 2008. The Planning Commission held three public hearings to receive comments. The Final EIR was published in December 2008.

The Final EIR reproduced and responded to the nineteen comment letters received during the comment period, as well as the oral comments made at the hearings.

Prior to the City's final public hearings on the Project, City Staff and Surland negotiated certain changes to the proposed Development Agreement, apparently to give the City more flexibility in deciding whether to locate the swim center within the ESP area or elsewhere.

On December 3, 2008, the Planning Commission voted to recommend that the City Council certify the EIR and approve the Ellis Plan, but voted to recommend against approval of the Development Agreement. The Planning Commission expressed concerns about the City making a commitment to provide RGAs to Surland in excess of what could be used within the ESP area, as well as about the length of the proposed 30 – year term of the DA. AR 19:4941.

In response to the Planning Commission's concerns, City negotiated with Surland a reduction in the number of RGAs (from 3,850 to 2,250); the new limit of 2,250 matched the number of RGAs that would be needed for maximum development of the ESP area. In return, Surland's commitment of money and acreage toward the swim center was reduced (from $20 million/21 acres, to $10 million/16 acres). Finally, the term of the Development Agreement was shortened from 30 years to 25 years. AR 20:4935-4939.

On December 16, 2008, the City Council considered the Project, including the DA as re-negotiated. The City Council voted to approve the Project and also took the following actions:

1. Certified the Final EIR and adopted the CEQA findings (including a statement of overriding considerations and a mitigation monitoring program);
2. Approved a General Plan amendment;
3. Approved a petition to annex the ESP area;
4. Approved the ESP and related pre-zoning; and
5. Approved the DA.

Standard of Review

The pertinent standard of review is whether there was a prejudicial abuse of discretion by City in approving the Development Agreement and/or certifying the EIR, and in issuing the related approvals to proceed with the Project. "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." See *National Parks & Conservation Assn. v. County of Riverside* (1996) 42 Cal.App.4th 1505, 1514.

TRAQC'S First Challenge - Validity of the Development Agreement

TRAQC contends that the approved Development Agreement violates Government Code § 65865 (a) cause Surland does not have legal or equitable title in the real property to be developed, and because the Development Agreement is not associated with any project, parcel, or real property.

TRAQC further argues at the Development Agreement violates Government Code § 65865.2 because it does not provide adequate detail concerning the project.

A. Discussion —Development Agreements Generally

The decision in *Santa Margarita Area Residents Together (SMART) v. San Luis Obispo County Board Supervisors* (2000) 84 Cal.App.4th 221 includes a good overview and discussion of development agreements generally, and of the relevant Government Code provisions at issue in this writ proceeding. The *SMART* court explained:

> "The development agreement statute permits a city or county to 'enter into a development agreement' with any property owner 'for the development of the property.' Section 658659(a). In essence, the statute allows a city or county to freeze zoning and other land use regulation applicable to specified property to guarantee that a developer will not be affected by changes in the standards for government

approval during the period of development. [Citations omitted.] In the words of the statute, '[u]nless otherwise provided by the development agreement, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement.'

...A development agreement is a legistaltive act (section 65867.5). ... ***A reviewing court will not set aside a legislative act unless it is arbitrary, capricious, or unlawful. On the other hand, courts, independently decide purely legal issues such a statutory interpretation....***

...[D]evelopment agreements are permitted before the issuance of building permits, just not too much before....

... ***The statute is limited to actual projects***, but does not require deferral of development agreements until construction is ready to begin or require any particular stage of project approval as a prerequisite. In fact, by permitting conditional development agreements property is subject to future annexation, section 65865, subdivision (b) expressly permits local government to freeze zoning and other land use regulation before a project is finalized.

This specific provision supports the general conclusion that the development agreement statute permits local government to make commitments to developers at the time the developer makes a substantial investment in a project."

--*Ibid.*, at 226-230 (emphasis added).

B. Adequacy of Surland's Interest in Subject Real Property

Government Code section 65865(a) reads: "(a) [a]ny city, county, or city and county, may enter into a development agreement with any person having *a legal or equitable interest in real property for the development of the property* as provided in this article". (Emphasis added).

TRAQC maintains that this statutory language requires that the person with whom the city enters into such an agreement have a legal or equitable interest in the real property *to be developed.* According to TRAQC, the Development Agreement at issue here has no conditions precedent to its effectiveness and, in particular, argues that the promises/obligations set forth in the Development Agreement will be against Surland's *future* not-yet-identified development projects. Opening Brief,

page 3:1-13. It is lawful and appropriate that Surland be able to record the DA in connection with the 23 acres within the Ellis Plan area which it presently owns. However, the DA by its terms is not limited to these 23 acres. Rather, this Development Agreement could also be recorded against any of 28,260 acres within the City's Sphere of Influence, or against any of the 298 acres within the ESP, *in which Surland has no interest whatsoever.*

TRAQC cites to *National Parks and Conservation Assn. v. County of Riverside et* (1996) 42 CA.4th 1505 in support of its argument. In *National Parks*, the appellate court upheld the development agreement even though the developer did not own all of the property necessary for the project because: (1) the DA was written so that it was not effective until the developer acquired an interest in specifically identified adjacent property that would be used for the project, and (2) the developer already had a significant legal interest in the bulk of the adjacent property which would be developed.

In opposition, Surland and City point out that Surland owns 23 acres within the ESP area[3]. Surland and City then argue that Government Code § 65865 can be read to mean that "less than full ownership of the property can be sufficient to support a development agreement." Surland Opposition, page 21:18-22. Surland and City maintain that under the *National Parks* case, Surland has a substantial interest in the real property which composes the ESP. Further, Surland and City quote the language of the DA — "as to all property ... Owner must have a legal or equitable interest in such property before this Agreement can be recorded against the property." According to Surland and City, this is a condition precedent to the effectiveness of the DA and, so, following this reasoning, the statutory requirements are satisfied.

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[3] The Ellis Specific Plan involves a total of 321 acres, of which Surland presently owns 23 acres.

Surland's and City's argument is not persuasive. First, Surland and City ignore the phrase "for the development of the property" included in Section 65865(a). The phrase cannot be disregarded. Cities may make development agreements, but only with "person[s] having a legal or equitable interest in real *property for the development of the property*". Government Code § 65865(a). Second, *National Parks, supra*, supports TRAQC's contention. In *National Parks*, a conservation group challenged a development agreement entered to by County and developer because the developer had an insufficient legal or equitable interest in the real property where the landfill project was to be sited. Developer did not own all of the land needed for the project. Some of the land needed for the project was federally owned and managed by the US Bureau of Land Management (BLM). At the time of the challenge, however, there was a pending land exchange between the developer and BLM. To account for that pending exchange and in order to meet the statutory requirements of the development agreement statute, the DA provided that the agreement would not be effective until the developer acquired the fee interest in the real property currently owned by the federal government.

In interpreting the development agreement In *National Parks* and deciding whether or not it satisfied requirements of Government Code § 65865(a), the trial court made findings that the developer already had significant legal interest in the bulk of the adjacent land to be developed and it was reasonably foreseeable the developer would also acquire an interest in the BLM land. The court thus ruled, "In order to effect the legislative intent, the court concludes under the particular circumstances of this case, the law should be liberally construed to allow this agreement to stand. To hold otherwise would unduly restrict public agencies from working with private entities to develop housing and other facilities needed to support growing populations." *Ibid* @ 1521.

In affirming the trial court, the appellate court explained:

> "In general, substantial compliance is the governing test for determining whether statutory requirements have been met. Strict compliance is required only when the intent of the statute can only be served by such a test. Substantial compliance ... means actual compliance in respect to the substance essential to every reasonable objective of the statute. The reasonable objectives of the development agreement article are to promote an orderly planning process and encourage private participation in such planning, particularly for large projects subject to many types of regulation.
>
> [Developer] has a sufficiently defined and adequate interest in the property to permit it to enter into the development agreement with the County upon the specified terms." Ibid @ 1522.

In contrast, the DA in this case is not tethered to any specifically identified property or project. Instead, as TRAQC says, the DA "allows the developer to apply the DA anywhere within the Sphere of Influence with no possibility that [Surland] would acquire an interest in all of it." Further, Surland's interest in the ESP property is arguably not sufficiently significant or substantial; it is just 23 of 321 acres (about 7%). Most significantly, to the extent of development outside of the ESP area and within Tracy's Sphere of Influence, Surland has not shown that it has any interest — legal or equitable—to support the DA. See also, *SMART, supra*, where the court wrote "the statute [Govt. Code § 65865(a)] is limited to actual projects." *Ibid* @230.

Also notable is the language of the DA itself. In pertinent part, it reads: "Again, if, and only if, certain specified prerequisites set forth in this Agreement are first satisfied, then may Owner record this Agreement against properties and become 'eligible' to apply for the RGAs provided for in this Agreement. As to all property, as detailed in this Agreement, Owner[4] must have a legal or equitable interest in such property before this Agreement can be recorded against such property." See AR 1:174, para. H of Development Agreement." Elsewhere, the DA specifies that its "effective" date is "thirty (30) days after the adoption of the Approving Ordinance ("Agreement

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[4] The court notes that the DA describes Surland as "Owner" suggesting again that the parties to a development agreement must own the real property which is to be developed thereunder.

Effective Date"), and shall continue twenty-five (25) years plus one day Term") ...." See AR 1. 184, para. 1.06(a). Thus, the Agreement is *effective*. Plainly, the DA contemplates allocation of RGAs for future, not-yet-identified, residential developments. In so doing, the DA runs afoul of the Government Code.

This case is quite different from *National Parks, supra*. Whereas *National Parks* concerned an identified parcel and a developer's substantial investment in an identified project, the DA in this case is not similarly tied or tethered to particular projects or parcel(s). Tracy's sphere of influence is some 28,230 acres. Aside from 23 acres within the Ellis Plan area, Surland does not identify a project or parcel and, hence, cannot show substantial investment. Without the context of an actual project, "actual compliance in respect to the substance essential to every reasonable objective of the statute" cannot be determined. Similarly, whether the DA in this case "promote[s] an orderly planning process and encourage[s] private participation in such planning" is not knowable without some tie or tether to an actual project.

This Court cannot find substantial compliance with Government Code § 65865(a) - as the court did in *National Parks* - under the circumstances presented here. Rather, the Court finds that the Development Agreement in this case is a reservation of future development rights for Surland within Tracy's Sphere of Influence, contrary to the plain language and objectives of the Section 65865(a).

C. Adequacy of Project Detail Provided in the Development Agreement

Government Code § 65865.2 specifies: "A development agreement shall specify the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of the proposed buildings, and provisions for reservation or dedication of land for public purposes."

TRAQC argues that given the broad nature of the Development Agreement, the required information is not provided in the DA and cannot be provided by reference to other plans, ordinances, or regulations. For example, reference to the General Plan is insufficient because there are too many variables, too many unknowns given the range of real property that could potentially be subject to the Development Agreement. Simply put, there is not enough specificity to satisfy the statute.

TRAQC relies upon the *SMART* case, cited above, in support of its argument by comparison. In *SMART* there was a definite project, a definite commitment by the developer regarding specified property. In that context, the *SMART* court - like the *National Parks* court- invoked the liberal construction of the development agreement statute and found compliance with Section 65865.2 because the specifics for the maximum height and size of proposed buildings within the project were limited by San Luis Obispo County Land Use Ordinances and the Salinas River Area Plan. *Ibid* @ 231. TRAQC urges that this case is nothing like the *SMART* case.

In opposition, the City and Surland try to argue that TRAQC has made a concession that the DA complies with section 65865.2 as to the ESP property. See Opposition, page 25:16-17. TRAQC, in fact, wrote "If this DA applied ONLY to the ESP then the density of housing, permitted uses, intensity of use, maximum height and size of buildings would be known as they are specified in the ESP." Opening Brief, page 5: 5-7. From there, City and Surland urge that the DA does not become invalid because of its references to property outside the ESP because the DA cannot be recorded against and/or bind such property until Surland acquires it. According to the Opposition, "the DA by its own terms is currently inoperative as to and does not apply to such 'other property." Surland Opposition, page 25:19-20.

City and Surland cite to *SMART* in support and further contend: "[T]his Court should likewise defer to the City's sound judgment that the modest and heavily-conditioned *priority status*[5] conferred on Surland merely to be eligible for a limited number of RGAs pursuant to the DA's terms was a required and appropriate incentive for the substantial benefits City was to receive in return. These benefits included Surland's engaging and funding the comprehensive planning and environmental review for the 321-acre Ellis Specific Plan property, as well as the agreement to dedicate 16 acres of land and $10 million for the City to construct a much-needed and long-awaited first-class swim center for its citizens and youth, should the City choose to do so." Surland Opposition, page 27:15-22.

SMART is distinguishable from this case. It is the potential applicability of the DA to 28,260 acres within the Tracy's sphere of influence, for which there is no specified project, which makes it distinguishable. Under such broad terms, there can be no reference to existing regulations or zoning ordinances which can satisfy the requirements of Government Code § 65865.2.

Defenses and Objections Raised by City and Surland

City and Surland raised certain procedural challenges to TRAQC's petition. Specifically, City and Surland contend that Petitioner (1) failed to exhaust its administrative remedies, (2) failed to join necessary and indispensable parties, and (3) failed to present an actual controversy ripe for adjudication.

A. Exhaustion of Administrative Remedies

Government Code § 65009(b) reads:

> "(b)(1) In an action or proceeding to attack, review, set aside, void, or annul a finding, determination, or decision of a public agency made pursuant to this title at a properly noticed public hearing, the issues raised shall be limited to those raised in

[5] The use of the phrase "priority status" confirms the court's impression that the DA is a reservation of future development rights for Surland in exchange for what is really a promise to build/contribute toward a swim center somewhere in City.

the public hearing or in written correspondence delivered to the public agency prior to, or at, the public hearing, except where the court finds either of the following:

(A) The issue could not have been raised at the public hearing by persons exercising reasonable diligence.

(B) The body conducting the public hearing prevented the issue from being raised at the public hearing.

(2) If a public agency desires the provisions of this subdivision to apply to a matter, it shall include in any public notice issued pursuant to this title a notice substantially stating all of the following: "If you challenge the (nature of the proposed action) in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the (public entity conducting the hearing) at, or prior to, the public hearing."

City and Surland contend that TRAQC failed to raise the issue —that the DA lacked adequate specificity — in hearings before the City Council. City and Surland point out that "(t)he purpose of the rule of exhaustion of administrative remedies is to provide an administrative agency with the opportunity to decide matters in its area of expertise prior to judicial review.' Exhaustion of administrative remedies is said to be a jurisdictional prerequisite to judicial action challenging a planning decision." Surland Opposition, page 8:18- a, quoting *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 831-832. City and Surland argue that TRAQC did not raise the issue of the DA's alleged failure to comply with Government Code § 65865.2 specifically or even generally object to the DA's lack of specificity, either in writing or at any noticed hearing.

TRAQC relies to excerpts in the Administrative Record — most notably AR 35:9465 and AR 30:8126 in support of its contention that TRAQC representatives and other speakers raised the issue, and dismisses the notion that it needed to re-raise the issue after the DA was modified and key terms changed.

The Administrative Record confirms that on April 17, 2006, Keenan Land Company raised the issue of uncertainties in the DA and, more specifically, it cited to Government Code § 65865.2.

See, AR 30:8126. Further, on July 28, 2008, TRAQC submitted a letter in which the perceived deficiencies of the DA were used including its lack of specificity as a statutory requirement. See, AR 35:9465.

Accordingly, the Court finds that the issue of lack of specificity was adequately raised both by TRAQC and other interested parties in proceedings prior to this petition. The Court further finds that changes in the terms of the DA were of no moment; the DA was insufficiently specific before the modification the changes did not appreciably worsen the problem, and therefore TRAQC's original concerns were sufficient to reserve the issue.

B. Joinder of Necessary or Indispensable Parties

As noted above, Surland owns just 23 acres within the Ellis Plan area. The remaining 298 acres are owned by other persons who were not named as parties-defendants in the petition. City and Surland argue that these not-named owners are "recipients of the project approvals because such entitlements run with land." Surland Opposition 16:5-7. *Citing County of Imperial v. Superior Court* (2007) 152 Cal.Appg 13, 31, Surland submits that "Unnamed recipients of approvals automatically satisfy the "necessary" party test of Code of Civil Procedure §389(a)" and must be joined in this lawsuit. Surland Opposition 15:26-27.

TRAQC maintains that the only parties to the Development Agreement are City and Surland. The unnamed owners of the other 298 acres within the ESP are not parties to the Development Agreement. TRAQC further contends that Surland's reliance on *County of Imperial v. Superior Court, supra* is misplaced because unlike the situation in *County of Imperial* where two water districts which were named as recipients of water were not named, "[e]very party entitled to receive any benefit from DA is named... The DA is not a land use applied tied to any particular parcel... [;] by its very language [it] is personal to [Surland]." Reply, page 11:6-10, 22-23.

TRAQC is correct. The issue presented here is validity of the Development Agreement. It is undisputed that the only parties to the Development Agreement are City and Surland. AR 1:170-211. True, the approvals conferred pursuant to the Development Agreement run with the land; however, they run with the owned *by Surland*, and do not run with other property. AR 1:180, 198. The other non-Surland owners of real property within the boundaries of the ESP are not indispensible. See, Code of Civil Procedure §389.

C. Actual Controversy/ Ripeness for Adjudication

"The principle that courts will not entertain an action which is not founded on an actually controversy is tenet of common law jurisprudence, the precise content of which is difficult to define and hard to apply... A controversy is 'ripe' when it has reached, but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made." *(California Water & Telephone Co. v County of Los Angeles* (1967) 253 Cal.App.2d 16, 22.) ... [I]ts basic rationale is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170.

City and Surland argue that because the Development Agreement allows Surland to be eligible for up 2,250 RGAs — that is, the maximum capacity of the ESP site — and because TRAQC concedes that there is sufficient project detail in the Development Agreement as it relates to the ESP property, that a possibility exists that the controversy at issue may never arise. Stated differently, since it is mathematically possible that all RGAs afforded by the DA could be used within the ESP area alone, thereby leaving no RGAs for other, not-yet-named or identified developments, it is likewise possible that the problem identified by TRAQC — failure to tether the DA to specific real estate in which Surland has a ownership or equitable interest as require

Government Code § 65865.2— might never arise. City and Surland argue that it is "sheer guesswork" as to whether any of the contingencies will occur in the future and, therefore, TRAQC's challenge is not ripe for adjudication.

TRAQC submits that Surland and City misconstrue its challenge; the challenge is not to the future recording of RGAs under the Development Agreement. The challenge is to the Development Agreement as it exists today. The challenge is that the Development Agreement - in its present form - fails to satisfy statutory requirements. Moreover, TRAQC argues that any challenge to a local decision to adopt or amend a development agreement must be made within 90-days from the date the decision is made. Government Code §65009(c). Thus, the challenge had to be filed now.

The court agrees with TRAQC. The controversy is ripe. The DA plainly contemplates use of RGAs in development projects that are not now known. Hence, the DA as it exists today violates the requirements of the Government Code.

TRAQC'S Second Challenge - Compliance with CEQA

As noted above, TRAQC contends that the Project violates CEQA (California Environmental Quality Act) in the following ways:

1. The Project's description is inaccurate, inconsistent and unstable;
2. On-site Project alternatives were not properly considered;
3. Off-site Project alternatives were not considered at all;
4. The change in the Project as re-negotiated required a new analysis and re-circulation of an appropriate EIR; and
5. The analysis and responses provided to the EIR comments were inadequate.

A. Adequacy of Project Description

The EIR must describe the project being reviewed. Guideline, section 15124. "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR. *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.

TRAQC maintains that before, during and after the Draft EIR process, City represented that 2,250 RGAs would go to ESP. In January 2006, Surland proposed to donate 10 acres and $10 million for an aquatics enter. AR 31:8150, 8156. Surland asked for RGAs to be used at the ESP area only. There was no mention of extra non-ESP RGAs. AR 31:8157. By April 2006, Surland proposed to design and construct an aquatic park and community park on 20 acres and Surland agreed to contribute up to $20 million. AR 29:7589. On May 15, 2007, the proposal was described as $20 million and 20 acres for 2,250 RGAs for Ellis and 2,450 RGAs for undefined, future projects. AR 29:7673, 7678. It was contemplated that the extra RGAs would only be issued after the 2,250 Ellis RGAs were used on Ellis and Ellis was built-out. AR 29:7651.

On July 24, 2008, after the comment period on the DEIR had closed, the draft DA was released and with the exception of the first 500 RGAs, the 2,250 RGAs could be used anywhere. AR 24:6076. In other words "the proposal changed from a request for 2,250 RGAs for only the ESP to 1,750 RGAs to be used anywhere on 28,260 acres." Opening Brief, page 8:25-27.

TRAQC also complains that the project description significantly changed when the Development Agreement originally called for the aquatics center to be built in the ESP but later, in its revisions, allowed the aquatics center to be built anywhere and further included different conditions as to money paid, dedication and reversion rights. TRAQC submits that the Project description has not been accurate, consistent, stable or finite; instead, it changed over time. Opening Brief, page 8:3-4.

City and Surland argue that "there is no requirement that a project description remain exactly the same throughout the CEQA process. Citing *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, City and Surland urge that "the CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal." *Ibid* @ 200.

City and Surland concede, as they must, that changes were made to the Development Agreement, but they claim TRAQC misrepresents what the Draft EIR advised the public. The Opposition stresses that the Draft EIR stated: "The Development Agreement Program (DAP) would provide eligibility for the Project applicant to obtain up to 3,850 RGAs at some time in the future, which would include **up to 2,250** units proposed by the ESP." AR 7:1605 (emphasis added.)

City and Surland also point to AR 7:1705: "Phase I of this program would be the development of **up to 2,250** residential units within the Ellis Specific Plan The remaining RGAs would be developed within the City's Planning Area, Sphere of Influence, or City Limits in the future." (Emphasis added)

Citing to these excerpts of the Draft EIR, City and Surland maintain that the Draft EIR clearly put the public on notice of the possibility that less than 2, 250 RGAs would be used within the ESP area (and thus more could be used elsewhere). City's Opposition, page 15:6-12.

In an attempt to explain TRAQC's citations, City and Surland state that TRAQC is quoting portions of the record from 2006 and 2007, before the Draft EIR was published. To that, the Respondents claim that "the only legal question" ... is whether the Draft EIR published in 2008 adequately and consistently described the project." City's Opposition, page 15:15-18.

Finally, Respondents add that while changes were made regarding the RGAs, the changes *reduced* the number of RGAs available to Surland and so, the description is adequate.

In reply, TRAQC first argues that the Opposition mentions only the number of RGAs and re-iterates that there were other changes to the Project (via the Development Agreement); for example, where the swim center would be located. Moreover, TRAQC adds that the Opposition specifically acknowledged that there were "significant changes to the project" from April 2008 to its approval in December 2008. See Surland opposition, page 11:9-11 ["The language of the DA and

development approvals under consideration had changed considerably in the several months before the hearing due to ongoing negotiations and revisions."]

With attention to Respondents' emphasis on the words "**up to**" when referring to the number of RGAs, TRAQC states that the argument proves why the description is misleading. "Nothing in the phrase 'up to 2,250 tells the reader that it was planned that the entire 3, 850 RGAs could be used anywhere in the 28,260 acre sphere of influence. The General Plan showed a minimum density of 1,200 RGAs for the ESP. The description certainly implies that SOME of the 3,850 RGAs would be used in the ESP....". Reply Brief, page 21:15-18.

According to TRAQC, the history of the Project is relevant. The Project in 2006 provided that the RGAs were to be used at the ESP only. But, in December 2008, when the Project was approved, "the last links between the DA RGAs and the ESP were broken. The DA was amended so the swim center could be located anywhere and a new property description for only 23 acres was substituted for the ESP property description as a new Exhibit A. The ESP was a slight of hand used to give the illusion that RGAs were being issued to be used in the ESP." Reply Brief, page 21:18-24.

TRAQC submits that in November 2007, the clear representation was made that 2,250 RGAs would be applied to the ESP. In support of the argument, TRAQC notes that RGAs beyond the 2,250 were categorized as "Post-Ellis" or "Non-Ellis" RGAs. According to TRAQC, those sorts of representations/categorizations continued to be made in 2008. Citing to the Administrative Record, TRAQC points to representations made by Surland that perpetuated the impression that *some* of the RGAs would be used in the ESP. See AR 24:6129. Also, when the final number of RGAs was reduced, the Planning Commission and staff again spoke in terms of "Post-Ellis" or "Non-Ellis" RGAs. Moreover, the Planning Commission recommended rejection of the 1,600 Non-Ellis RGAs because "it is currently unknown where an additional 1,600 RGAs could be located."

AR 21:5393. That statement by the Planning Commission makes no sense if the Planning Commission always understood that the 2,250 RGAs could likewise be placed elsewhere.

TRAQC maintains that the term "up to 2,250" meant a cap for the Ellis project. The phrase does not tell the reader that none of the RGAs need to be used at ESP and could be used anywhere, as the Opposition now urges.

Looking at the administrative record as a whole, the court concludes that the Project description is not clear; the description either changed or morphed, or it is not an accurate description. In any event, at a minimum, the description has created confusion about the Project and about the Development Agreement's provision of RGAs and how many are available and where. A legally sufficient EIR requires an accurate and stable project description. *County of Inyo v. City of Los Angeles*, (1977) 71 Cal.App.3d 185.

B. Project Changes Required Re-Circulation of EIR

In 1993, the California Supreme Court interpreted and clarified the grounds for re-circulation of an EIR. See *Laurel Heights Improvement Assn. v. Regents* (Laurel Heights II) (1993) 6 Cal.4th 1112. The Court interpreted Public Resources Code, section 21092.1, to require re-circulation of an EIR in four different circumstances:

1. When new information discloses a new, substantial environmental impact of a project.
2. When new information shows a substantial increase in the severity of an environmental impact (unless mitigation measures reduce that impact to insignificant).
3. When new information discloses a feasible alternative or mitigation measure that has not been adopted and that clearly would lessen environmental impacts.
4. When the draft EIR was so fundamentally flawed that public comment on the draft was effectively meaningless.

This standard was adopted and is now set forth as Guidelines, section 15088.4. Review of an agency's decision relating to re-circulation is subject to the substantial evidence standard of review.

TRAQC argues that substantial changes were made to the Project and such changes "require major revisions of the environmental impact report or new information ... which was not known and could not have not known at the time the environmental impact report was certified as complete." Opening Brief, page 30:10-14. Specifically, TRAQC points to these changes in the Development Agreement:

1. Reduction of parkland and money for the Project: The Development Agreement provided for 40 acres of parkland with a 20 acre aquatic park. AR 30:7846-7847; AR 19:4778. The Project further contemplated Surland spend $20 million toward the swim center. AR 30:8112-8130; 8117-8118. The amendments reflect that only 20 acres of parkland would be dedicated. AR 19:4778. The amendments further reflect that $10 million would be used toward the swim center. AR 20:4937.

The Development Agreement originally provided that Surland would provide design assistance for the swim center. AR 22:5663. The amendments, however, require that Surland be reimbursed 100% for its design assistance. TRAQC calculates that cost to be $324,000.00. AR 1:218-219.

The amendments created an reversionary interest in Surland of the swim center site and further allowed Surland to build the swim center somewhere other than within the ESP. AR 20:5108; AR 22:5625, 5665.

The Development Agreement originally had a park built next to the aquatic center, but with the amendments to the DA, the park would not be constructed until Surland received funds from other projects. AR 20:4940.

2. Possible conversion of the 16-acre swim center to residential development. AR 20:4937:

The General Plan Amendment (required for the Project) allows a residential development ***or*** a swim center at the site originally designated to be the swim center site. Thus, it differs from the original plan which was to only allow swim center at the site. AR 19:4775; 20:5108. The revision

apparently is meant to address the possibility of reversion of the swim center property to Surland and/or the development of the swim center outside of the ESP and at another site.

3. 1,750 RGAs to be held for Surland can be used outside of the Ellis Specific Plan area: The 2,250 RGAs represented to be available to Surland for development of Ellis (AR 29:7673, 7678; AR 9:2155) was reduced to 500 and as a result, the balance of 1,600 RGAs represented to be available for outside development were increased to 1,750, even though the overall total number of RGAs allocated to Surland was reduced from 3,850 to 2,250. AR 19:4792; AR 1:189; AR 24:6076.

4. The ESP, DAP and the aquatics center are effectively split: Simply, by reason of the immediately proceeding changes – enumerated 1-3 – the DAP and swim center have been effectively severed from development of the Ellis Plan area. The Project has morphed into three unrelated projects.

Respondents argue that the above changes do not fall within the four categories outlined in Guidelines, section 15088.5, and no obligation arose to re-circulate. Respondents add that the most significant change was the reduction of RGAs to be available to Surland and such a reduction "will only reduce the potential impacts that were analyzed in the EIR."

Notwithstanding the reduction in RGAs, the point is that the project did morph over time in a substantial way, with confusion as a consequence. Does the Project described in the EIR provide that up to 2, 250 RGAs are to be used in Ellis Plan area, with 1,600 other RGAs available for outside development — as TRAQC urges? Or, as Respondents contend, has the Project always provided that up to 2,250 RGAs could be used in the Ellis area but, if not used there, could be used outside the Ellis area? At a minimum, there is confusion about the Project, especially about the

Development Agreement's provision of RGAs. Such confusion undermines the EIR and the public comments thereto.

For the reasons stated, re-circulation of the ER was required[6].

C. **TRAQC's challenges to the City's approvals of the Ellis Specific Plan ("ESP"), pre-zoning, general plan amendment and annexation petition are not barred because Surland's being named as Real Parties in Interest was sufficient.**

Surland raised the issue of indispensible parties as to the Second Cause of Action relating to the DA only. See Real Parties Opposition page 14:19-20. The City's Opposition Brief did not argue the issue. At oral argument on October 15, 2010 the City and Surland stated they were making this argument as to the CEQA issues as well. The indispensible party issue as to the CEQA challenges had been previously raised by demurrer which demurrer was overruled.

The administrative record as a whole demonstrates Surland represented itself as representative of the property owners and the developer of the project including the ESP throughout the application, hearing and approval process. The City and Surland both strongly defended the ESP and other approvals in this legal challenge. The court finds the owners of property in the ESP were not necessary parties because as a practical matter their interests were represented by the developer Surland. (*Citizens Association for Sensible Development of Bishop Areas v. County of Inyo* (1985) 172 Cal.App.3d 151, 161-162, citing *Hollister Co. v. Cal-L Exploration Corp.* (1972) 26 Ca.App.3d 713 and *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017) Any non-joined interested parties interests were adequately protected by the named parties to the action. (*Deltakeeper vs. Oakdale Irrigation District* (2001) 94 Cal.App.4th 1092, 1107)

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[6] Parenthetically, re-circulation will also be required in light of the Court's decision, above, regarding the Development Agreement's lack of compliance with Government Code §65865(b) and 65865.2. The Court's decision effectively eliminated one of the two components of the Project. Such a change in Project compels re-circulation.

In consideration of the policy and purpose of CEQA and the harsh result a dismissal would cause, the court finds that the non-joined parties were not indispensable. (*Deltakeeper* id at 1109)

D. TRAQC fairly summarized the relevant information.

The court finds that Petitioner's 40 page Opening Brief, 48 page Reply Brief, written Summary of Citations submitted at trial and oral presentation at trial set forth fully the facts relating to Respondent's decisions on the project and fairly summarized the relevant information in the FEIR.

E. The FEIR's analysis of alternatives was legally inadequate.

TRAQC contends that off-site alternative locations should have been considered.

The purpose of alternatives analysis "...is to allow a decision maker to determine whether there is an environmentally superior alternative that will meet **most** of the project's objectives, the key to the selection of the range of alternatives is to identify alternatives that meet most of the project's objectives but have a reduced level of environmental impacts." (*Watsonville Pilots Association v. City of Watsonville* (March 15, 2010) 031510 CAAPP6, H033097) The lead agency **must** consider such alternatives "even if [they] would impede to some degree the attainment of the project objectives, or would be more costly." (Regs § 15126.6(b))

The EIR's analysis of alternatives was legally inadequate due to the failure to consider off-site alternatives. An alternative location should be considered if it **could substantially reduce significant environmental impacts, attain most of the basic project objectives, is potentially feasible, reasonable and realistic.** (Regs §15126.6(c)) Potentially feasible alternative locations including the Keenan Saddlebrook Development/UR 17, Moitoso/Plan B and the Alvarez/UR1 proposal were presented but were never considered as alternatives.

Saddlebrook was represented as an alternative as early as 2006, included an aquatic center and was not in the airport flight path. AR 30:8125-8130; 30:7978

Plan B included an aquatic center and was not in the airport flight path. AR 28:7409; 28:7411-7412.

Alvarez was 300 acres offering 50 acres for recreational facilities and was not in the airport flight path. AR 27:7057-7068 (Note the letter is in the record from last page to first), 2:498-502;

City and Surland argue that some alternatives were smaller parcels and would not accommodate all the RGAs of Ellis. However by final approval the swim center could be located off the ESP, the $10 million could be used other than at the ESP, and most of the RGAs could be used at other than at the ESP which meant the reasons for not considering these other proposals – that they were not the entire project- had disappeared.

It was undisputed that airport noise was a significant unavoidable impact as the ESP within the 60 CNEL Airport noise contour. (AR 2:484; 7:1845) TRAQC argued because the airport related noise impact could be avoided or substantially lessened by an alternative location, those locations needed to be considered. AR 22:5785 The FEIR was legally inadequate due to the failure to consider alternative locations which could have avoided airport noise impacts. TRAQC is correct that the FEIR was inadequate due to the failure to consider alternative locations that were presented that potentially could have avoided airport noise impacts. 14 Cal Code Regs Section 15126.6(f)(2)(A)

F. <u>Rejection of the reduced density alternative (Alternative #6) was not supported by substantial evidence.</u>

TRAQC argues the City improperly rejected the environmentally superior alternative without substantial evidence demonstrating infeasibility. An EIR must identify the environmentally superior alternative which in this case was Alternative 6. Regs §15126.6(e)(2); AR 8:2037 Alternative 6 was a reduced density version of the ESP. AR 19:4823-4824. The FEIR determined Alternative 6 would meet all of the ESP's basic objectives including the building of a swim center

and community park. It reduced all impacts, and it was identified as the environmentally superior alternative. AR 8:2021-2027, 2037

The City gave two reasons for rejecting Alternative 6: that the lower density would result in the overflow of the units to other areas resulting in adverse impacts and an insufficient amount of housing for UR10 (the ESP). These findings are not supported by substantial evidence and are inconsistent with other findings. The City rejected Alternative 6 finding that 1,026 non-Ellis RGAs would "convert undeveloped land to urban uses or create the potential for growth inducement" in either infill areas or the SOI. AR 1:55 This finding conflicted with the City's position that the 1,750 non-Ellis RGAs of the DAP would not result in significant land use and planning impacts. AR 1:25

The City's reasons for rejecting Alternative 6 also conflicted with the City's response to comments that 1,600 RGAs used outside the ESP but within the SOI would create land use, farmland conversion, and other impacts that should be analyzed. AR 2:55

The City's finding that reducing the RGAs from 2,250 to 1,224 would result in insufficient number of units being built in UR 10 (ESP) is also not supported by substantial evidence. The allowed density range for the ESP is "1,200 to 2,250" RGAs. AR 1:172, 174; 27:7018; AR 21:5413 The density of Alternative 6 was within the planned range for the ESP.

The City could reject mitigation measures or project alternatives if it found them to be "infeasible." Public Resources Code §21081(a)(3); Regs §15091(c)(3) "Feasible" is defined as capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, technological, and legal factors. Public Resources Code §21061.1; Regs §15364) To be rejected Alternative 6 would have to be determined to be "truly infeasible." See *City of Marina v. Board of Trustees of California State University* (2006) 39

Cal.4th 341, 369 The finding of infeasibility must be supported by substantial evidence in the record. (Public Resources Code §21081.5; Regs §15091(b)) The City's findings rejecting the environmentally superior alternative did not rise to the level of determining infeasibility and were not supported by substantial evidence.

G. The FEIR did not adequately respond to public comments regarding alternatives.

A FEIR must include written responses to comments on the DEIR raising significant environmental issues. (Regs §15088) A specific detailed response is required when a comment raises a specific question about a significant environmental issue. Regs §§15088(b),15204(a); See *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348. A reasoned analysis of the issue and references to supporting evidence may be required. *California Oak Foundation vs. City of Santa Clarita* (2005) 133 Cal.App.4th 1219; *Santa Clarita Organization for Planning the Environment vs. County of Los Angeles* (2003) 106 Cal.App.4th 715; *Vineyard Areas Citizens for Responsible Growth, Inc. vs. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449

Specific detailed responses supported by a reasoned analysis are particularly important when the EIR's impact analysis is criticized by experts or other agencies with expertise in the area such as the many comments about airport impacts. A FEIR must at least acknowledge the conflicting opinions and explain why suggestions made in the comments have been rejected, supporting its statements with relevant data. See *Berkeley Keep Jets Over the Bay Comm. Vs. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1367, 1371

In comments TRAQC suggested specific alternative locations. AR 2:0490-0491 The City's Response was conclusory and not responsive stating in part that the City was not required to analyze potential alternative sites "...when alternative sites would not definitely alleviate potential unavoidable significant impacts of the proposed Project or meet the basic principals of the proposed

Project." AR 2:513 The response was not a reasoned analysis of the issue and provided no references to supporting evidence. The response ignored that specific suggested alternative locations outside airport noise contours could reduce the significant noise impact related to the airport identified in the DEIR.

At subsequent hearings TRAQC again asked that alternative locations not in the airport flight path be considered as airport noise was identified as a significant unavoidable impact. AR 22:5622 TRAQC argued and now contends that the City's reasons for not considering alternative locations to avoid airport noise impacts was non-responsive and ignored alternative locations outside those same noise contours. (AR 22:5785) The response was conclusory and did not address whether any significant effects, such as airport related noise impacts, could be avoided or substantially lessened by an alternative location. Regs § 15126.6(f)(2)(A) The City should have either explained why further consideration of the alternative was rejected or provided an evaluation of the alternative. See *Marin Municipal Water District vs. KG Land Cal. Corp.* (1991) 235 Cal. App.3d 1652, 1666. The City's reasons for excluding potential alternatives from the EIR on the grounds that they are infeasible or incapable of fulfilling project objectives should have included in responses to comments contained in the FEIR. See *City of Long Beach v Los Angeles Unified Sch. Dist.* (2009) 176 CA4th 889, 922

TRAQC also commented that the DEIR alternatives were just parts of the same project. AR 2:490-491 Again the City's response was conclusory and non-responsive saying just that 'each of the alternatives was carefully selected to be compliant and consistent with the requirements..." of the Guidelines. AR 2:513 This Response is devoid of any analysis, explanation or supporting evidence and is also legally inadequate.

H. The FEIR did not adequately analyze or respond to comments regarding growth management, land use, and loss of farmland.

1. The FEIR did not adequately analyze or respond to comments regarding growth management: The City received comments that providing a single developer with RGAs, permits, water and sewage and allowing that developer chose any property on which to apply the RGAs would mean more contiguous developments or developments on non-agricultural land would have to stand down. AR 2:468-469, 2:471-472, 2:491-492. The City's esponses were non-responsive and never addressed the effect of allowing a developer to deprive other locations of RGAs. AR 2: 473-474, 475-476

The responses were also inconsistent with the City's position and findings in rejecting 1,600 non-Ellis RGAs in the original proposed DAP, rejecting Alternative 2 with 1,600 non-Ellis RGAs, and rejecting the environmentally superior Alternative 6 with its 1,026 non-Ellis RGAs. (AR 1:25, 1:53, 1:55)

For these reasons the FEIR did not adequately analyze or respond to comments regarding growth management.

2. The FEIR did not adequately analyze or respond to comments regarding land use: The concerns expressed in comments to the DEIR concerning land use had been made before the DEIR was circulated. The August 2006 Draft Initial Study identified as a potentially significant impact conflicts with land use plans. AR 30:7872 City Staff expressed concern that project approval might mean property ownership might require amendment of City policies. AR 29:7651

TRAQC and others commented that allocation of RGAs to Surland would create a priority system due to identified shortages of RGAs and that RGAs allocated to Surland could be used in the SOI on agriculturally designated property. (AR 24:6268-6269; 2:468-469) The shortage of RGAs

was quantified. AR 27:6999-7006, 27:7018 Commentators stated that the RGA need was up to 10,500. RGAs available over the 10 years to 2017 were only 3,542 and available over 20 years to 2027 were only 9,542. AR 2:468-469 Commentator's argued that higher priority projects, some infill and many more contiguous than the Ellis project would be displaced. The City acknowledged the project would require rewriting the GMO and other projects to "stand down" and be deprived of RGAs. AR 21:5392 TRAQC and others commented that this commitment of RGAs was a prioritization as other projects with a higher priority in the GMO were deprived of RGAs. (AR 22:5622; 21:5310-5311; 21:5294) The City acknowledged approval would mean the GMO would have to be written to accommodate Surland and that other projects would have to "stand down". Surland would never have to "stand down" even if it used RGAs at locations outside priority areas like the downtown, infill or concentric growth projects. AR 20:4939

In written comments on this issue TRAQC made the above arguments. AR 2:0493-0494) The City response did not address the issue raised by TRAQC. The response indicated that since the RGAs allocated to Surland were within the total number planned there would be no impacts. The City went on to summarily respond, without analysis, that there would be no impact. AR 2:513. This response was deficient in failing to address the issue raised which was the prioritization of growth which would occur as a result of the approval of the project. It was conclusory, provided no reasoning or analytical support, and was not supported by substantial evidence in the record.

The finding that "no significant impacts relative to land use would occur with implementation of the amended Development Program" is not supported by substantial evidence. AR 19:4794 As described above there was evidence that a prioritization of growth would occur as a result of project approval affecting land use growth patterns. The City's finding rejecting environmentally superior Alternative 6, that 1,026 RGAs if used in the SOI would have significant

impacts, conflicts with this finding. See AR 1:55 The EIR failed to analyze the impact of this de facto reprioritization and allocation of development depriving other projects of RGAs, building permits, water and sewer capacity which could affect the pattern of growth. It is an abuse of discretion to make contradictory findings not supported by substantial evidence.

The responses to comments and analysis in the FEIR on land use were deficient.

3. The FEIR did not adequately analyze or respond to comments regarding conversion of farmland: Supported by statistical analysis Attorney Nicolaou commented that "annexation of the Ellis Specific Plan area will result in the premature conversion of open space and agriculture land to developed uses when adequate land already exists within City limits." He quantified an inventory of land already able to accommodate 10,050 units. (AR 2:468-469) Nicoleau's comment potentially understated the impact because the DA actually created 1,750 RGAs non-Ellis.

The response did not address the issue instead arguing that this was a policy issue not an environmental issue and the policy "will" be considered by Council decision makers. AR 2:475 This response is not adequate. The response identifies no specific General Plan policy in support of its conclusion and no such policy of the General Plan was identified. The record does not contain any reference to a policy indicating the ESP should develop before other areas in the secondary growth areas and no such policy was identified by Surland or the City. The City cannot refuse to analyze and respond to comments concerning a potentially significant environmental impact based on an unidentified policy.

The City takes conflicting positions in the FEIR on this issue. The City takes the position that so long as the 1,750 RGAs are used in the SOI there is no additional impact on agricultural land, but then in rejects DAP Alternative 2 and the environmentally superior Alternative 6 because

"non-Ellis" RGAs because these alternatives would have similar impacts. The FEIR did not adequately analyze or respond to comments regarding conversion of farmland.

I. The FEIR did not adequately analyze or respond to comments regarding airport-related impacts.

The 2007 Initial Study identified the location of the Airport relative to the ESP as a potentially significant hazard impact because the main runway approach and departure flight path was directly over the eastern portion of the ESP. AR 9:2180 The FEIR concluded these hazards were a less than significant impact and required no mitigation. AR 7:1629

TRAQC contends the City relied on the outdated 1993 Airport Land Use Plan (ALUP) and 1998 Airport Master Plan update which contracted the hazard zones. TRAQC contends the City should have considered and the FEIR should have used the more recent May 2008 studies which significantly expanded all airport impact zones, in particular the Inner and Outer Approach/Departure Zones that overlap the ESP. AR 22:5723-5724

There was documentary and testimony evidence of the safety risks of locating the ESP, including the aquatics center, in the direct flight path of the Airport. AR 20:5111, 5190-5235, 5297-5302, 5312-5346; 22:5617-5618, 5719-5722 TRAQC argued to the City that the "...EIR relies on outdated data even though more current data is available..." (AR20:5190) Exhibits including CTM1- Compatibility Factors and CTM-2 Compatibility Zones from the May 2008 which testimony indicated "will result in airport protection zones that are significantly larger than the outdated model" were submitted. (AR 20:5190-5200)

The City's contention was that the FEIR was prepared using the latest **approved** Airport Land Use Plan ("ALUP"). (AR19:4780) That response was non-responsive to the issue of failure to use currently available data. As in *Berkeley Keep Jets Over the Bay* (2001) 91 Cal.App 4th 1347

more current data, information and studies cannot be ignored. *Ibid at 1367.* The more current information and studies should have been considered.

The City deferred studies and mitigation to the future and disregarded requests for the noise studies to be completed with appropriate mitigation today. *Endangered Habitats League v. County of Orange (2005) 131 Cal. App.4th 777, 794* rejected a mitigation measure requiring submission of acoustical analysis and approval of mitigation measures recommended by analysis because no mitigation criteria or potential mitigation measures were identified. The same failure occurred in this case. The proposed mitigation measure, to conduct noise studies in the future and implement unspecified mitigation measures which might or might not mitigate the impact, was not adequate.

J. The FEIR did not adequately analyze or respond to comments regarding traffic.

Adverse traffic impacts were significant and unavoidable. AR 7:1758-1762 Mitigation was payment of project's proportionate fair share of roadway improvements. When this mitigation would occur for intersections with unacceptable levels of service was unknown. AR 7:1761-1762 The record is devoid of any evidence that a program for collection of fees and development in the area of the ESP will ever allow this mitigation to occur and no commitment or time frame to make these roadway improvements is in place. *Gray vs. County of Madera* (2008) 167 Cal.App.4th 1099, 1122, *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1187) *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.61, 79) As with airport noise impacts and mitigation measures, these traffic mitigation measures were inadequate.

K. The EIR did not adequately analyze or respond to comments regarding air quality.

The FEIR confirmed adverse ongoing cumulative air quality impacts primarily relating to increased direct traffic and indirect electricity loads, identifying the impacts as significant and

unavoidable. Commentators noted that alternative locations more contiguous to the city core including for the aquatics facility that would have reduced vehicle miles driven were not evaluated. AR 2:559-560 The City's response did not address the alternative location issue relative to vehicle omissions and was therefore non-responsive and inadequate. AR 3:616-617

L. The EIR did not adequately analyze or respond to comments relating to gas and oil pipelines.

Written comments were made during the comment period concerning the danger of large PG&E gas transmission pipelines and the need for a greater setback. (AR 526-619) Specific and detailed comments arguing a 100 foot setback was insufficient and the impact zone for a 36 inch pipeline was 660 feet to 1,000 feet. AR 2:565 This comment specifically referencing the 660 foot setback was contained in a three page comment on the PG&E pipelines. (2:564-566)

The FEIR response was "Operation of the pipelines by PG&E and construction activities by Project contractors would be in accordance with State and Federal regulations regarding pipeline operations." AR 3:618 The response is conclusionary, contains no analysis, was non-responsive to the setback issue and did not address the setback issue or other issues raised in the comment.

The City argues comments made at later hearings on this same issue are not relevant. The record shows commentators continued to urge the City to increase the setback and provided additional information at later hearings supporting the earlier comments. On December 16, 2011 commentators again argued a 660 foot setback from gas lines was required. (AR 32:8644: 3-13) These efforts even at the final approval hearing were attempts to have the City provide a meaningful response and analysis to the issue of a 100 foot vs. a 660 foot setback and to provide the requested setback. Other Responses did not address the 660 foot setback but only acknowledged a 100 foot setback. (AR 2:410) The analysis and responses concerning the requested minimum 660 footset back were inadequate.

The City argues that incidents discussed in the comments were at locations distant from the ESP, that the risks had been analyzed, that the pipelines had been inspected and that some project design modifications had been undertaken. (City Opposition 32:28-33:8) However none of these responses or analysis discussed why a 100 foot setback was sufficient and a 660 setback was unnecessary. The City cites to no part of the record where there is any response concerning comment that a 660 to 1,000 foot setback was needed for a 36 inch gas pipeline. There was no analytical response by the City or analysis contained in the FEIR as to why a 100 foot rather than a 600 foot setback was sufficient. The EIR therefore did not adequately analyze or respond to comments relating to gas pipelines.

J. The FEIR did not adequately analyze or respond to comments regarding water supply impacts.

TRAQC challenged the sufficiency of the Water Supply Assessment (WSA) which was relied upon by the City to determine, based on the entire record, whether water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses. (Water Code Section 10911(c)) The City could still approve a project with supplies are not sufficient, but would be required to make additional findings. (Water Code Section 10911) The City determined that the water supply was sufficient. This finding is not supported by substantial evidence for two reasons.

Table 21 of the WSA indicates that in an extreme drought year demand is 24,989 acre feet per year with a supply of 24,308 acre feet per year for a shortage of 681 acre feet per year. The City reduces this demand by unspecified "mandatory conservation measures". (AR 24:6348, footnote (a)) TRAQC argues that this is not an adequate supply, but an unsupported assertion that demand will be less by simply providing less water and rationing. The City cannot avoid making a finding that the Water Supply would not be sufficient in an extreme drought year by referring to some

unspecified reduction in demand due to unspecified conservation measures. The finding that water supply is adequate is not supported by substantial evidence.

The record also indicates that not all projects were included in the WSA. A discussion between a council member and staff indicated that 206 RGAs were projected for the downtown and these were not included. AR 35:9399-9400 Neither the City or Surland responded to this issue in briefing or at trial.

The Respondent did not properly analyze water impacts by using a reduction of demand not supported by substantial evidence and because the study did not apparently include all the projects.

K. The administrative record relative to Notice to OPR and State Clearinghouse.

The administrative record shows that in April 2008, the City sent a copy of the Draft EIR and a Notice of Completion to the Office of Planning and Research ("OPR") and State Clearinghouse, and OPR thereafter returned a stamped copy of the Notice of Completion to the City indicating it had received the Draft EIR and provided a copy to the San Joaquin Valley Air Pollution Control District ("SJ VAPCD").

California Rule of Court requires a party requesting a request for a Statement of Decision must specify the principal controverted issues in the request. CRC 3.1590(d) The request that the court address "Any other issue of fact or law subsidiary to the above or otherwise necessary to the resolution of the proceeding (Request 4:1-2) does not comply with CRC 3.1590(d).

Petitioner is the prevailing party.

Conclusion

The Court finds the subject Development Agreement does not comply with Government Code §65865(b) and 65865.2 and is therefore invalid.

The Court also finds that the Project description was neither accurate nor stable, that the EIR was inadequate as a consequence, and/or that the Project changed significantly such that re-circulation of the EIR as required.

The Court also finds that the FEIR's analysis of alternatives was legally inadequate, the rejection of the Environmentally Superior Reduced Density Alternative #6 was not supported by substantial evidence, that the FEIR did not respond adequately to public comments regarding alternatives, and that the FEIR did not adequately analyze or respond to comments regarding growth management, land use and loss of farmland, airport-related impacts, traffic, air, gas and oil pipelines and water supply impacts.

IT IS HEREBY ORDERED: The Petition is granted. A peremptory writ of mandate shall issue by which Respondent shall be ordered and directed to:

1. Vacate and set aside the Development Agreement;
2. Vacate and set aside approvals of the Project including, but not limited:
   a. Certification of the Final Environmental Impact Report ("FEIR") Adopting Findings of Fact, A Statement of Overriding Considerations and a Mitigation Monitoring Program for the Surland Companies Applications No. 1-04-GPA, 1-04-A/P; 2-04-SPA;
   b. Adoption of an Ordinance of the City of Tracy Approving a Development Agreement ("DA") with the Surland Companies, Application 2-06-DA;
   c. Approval of a Petition for Annexation, Application No. 1-04-GPA,
   d. Approval of a General Plan Amendment, Application No. 1-04-GPA; and
   e. Approval of the Ellis Specific Plan and Pre-Zoning, Application 2-04-SPA

Dated: ~~March~~ October 31, 2011

LDH

Hon. ~~Leslie~~ Holland
Judge of the Superior Court

LESLEY HOLLAND

EXHIBIT B

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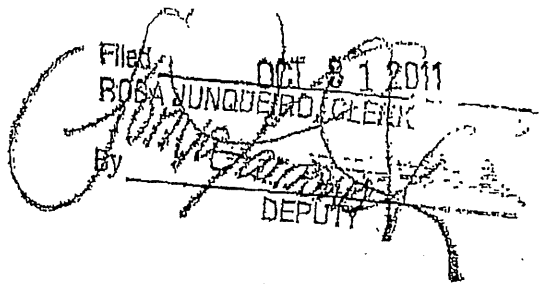

Superior Court of California, County of San Joaquin

Unlimited Jurisdiction

TRACY REGION ALLIANCE FOR A QUALITY COMMUNITY (TRAQC)

Petitioner,

vs.

CITY OF TRACY, BY AND THROUGH THE CITY COUNCIL; and DOES 1-20 inclusive,

Respondents.

SURLAND COMMUNITIES, a California Limited Liability Company; THE SURLAND COMPANIES LLC, a California Limited Liability Company; SURLAND DEVELOPMENT COMPANY; and DOES 21-40 inclusive,

Real Parties in Interest.

Case No. 39-2009-00201854-CU-WM-STK

~~[PROPOSED]~~ JUDGMENT GRANTING PEREMPTORY WRIT OF MANDATE

HEARING:
Dates: October 15 & November 19, 2010
Dept: 13
Time: 10:00 a.m.
Judge: Honorable ~~Leslie~~ Holland

LESLEY HOLLAND

MAR 14 2011

This matter came regularly for hearing on October 15, 2010 and November 19, 2010 in Department 13 of this Court, located at 222 E. Weber Avenue, Stockton, CA. Mark V. Connolly, Esq. appeared on behalf of Petitioner TRAQC. Arthur F. Coon, Miller Starr & Regalia appeared on behalf of Real Parties in Interest. Rick W. Jarvis, Esq. Jarvis, Fay, Doporto & Gibson appeared on behalf of Respondents.

The Court having reviewed the record of Respondent's proceedings in this matter, the briefs submitted by counsel, and the arguments of counsel; the matter having been submitted for decision, and the court having issued its Tentative Decision of February 16, 2011 and its Statement of Decision granting the Application for Writ of Mandate filed by Tracy Region Alliance for a Quality Community ("Petitioner" or "TRAQC"), and good cause appearing therefore,

IT IS ORDERED, DECREED AND ADJUDGED that:

1. Judgment granting a Peremptory Writ of Mandate is entered in favor of Petitioner in this proceeding. Judgment is so entered because the Court finds that Respondents committed a prejudicial abuse of discretion under the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.* in taking the following actions, hereinafter referred to as the "Project":

   a. Certifying the Final Environmental Impact Report ("FEIR") Adopting Findings of Fact, A Statement of Overriding Considerations and a Mitigation Monitoring Program for the Surland Companies Applications No. 1-04-GPA, 1-04-A/P; 2-04-SPA;

   b. Adopting an Ordinance of the City of Tracy Approving a Development Agreement ("DA") with the Surland Companies, Application 2-06-DA;

   c. Approving a Petition for Annexation, Application No. 1-04-GPA;

   d. Approving a General Plan Amendment, Application No. 1-04-GPA; and

   e. Approving of the Ellis Specific Plan and Pre-Zoning, Application 2-04-SPA.

2. The court finds the Development Agreement ("DA") does not comply with Government Code Sections 65865 (b) and 65865.2 and is therefore void.

3. A Peremptory Writ of Mandate directed to Respondents shall issue under seal of this Court, ordering Respondents to vacate and set aside, within thirty (30) days from service of the Writ of Mandate, all approvals of the Project, as described in paragraphs 1 and 2 above in their entirety and all other actions taken by Respondents to approve or implement the Project approvals described above including approval of the Development Agreement.

4. Respondents shall file a return to the Peremptory Writ of Mandate within 10 days of completion of the actions mandated by this judgment. This Court shall retain jurisdiction over Respondents' proceedings by way of the return to the Peremptory Writ of Mandate until the Court has determined that Respondents have complied with the directives of this Court.

5. Petitioner shall be awarded its costs of suit. The Court reserves jurisdiction to determine entitlement to attorneys' fees and litigation expenses, pursuant to any properly and timely filed motion which Petitioner may make.

6. Injunctive relief is granted consistent with this ruling. Respondents, Real Parties in Interest, and their respective agents, employees, and persons acting in concert with them are enjoined from any and all actions to further implement the Project as described in paragraph 1 and the Development Agreement as described in paragraph 2 above.

Dated: ~~March~~ October 31, 2011

Hon. ~~Leslie~~ Holland
Judge of the Superior Court

LESLEY HOLLAND

HERUM \ CRABTREE \ SUNTAG
ATTORNEYS

Steven A. Herum
sherum@herumcrabtree.com

January 4, 2018

VIA ELECTRONIC MAIL

Honorable Members of the Tracy City Council and Tracy Planning Commission
City of Tracy
Tracy City Hall
333 Civic Center Plaza
Tracy, California 95376

Re: Ellis Specific Plan Amendment/Ellis Development Agreement Amendment
Response to December 28, 2017 Michael Sandhu/Mark Connolly letter

Dear Honorable Members of the Tracy City Council and Tracy Planning Commission:

Surland asked me to briefly respond to Mr. Sandhu's December 28, 2017 letter written by Mr. Mark Connolly (Letter).

The Letter's argument depends upon an overarching yet false assumption: that the proposed amendment to the 2012 Development Agreement somehow implicates a court ruling about the 2008 Development Agreement. The explanation for this faulty analysis is discussed in more detail in my letter to Mr. Thomas Watson, but in short after the adverse 2009 trial court ruling about the 2008 EIR and 2008 DA the City approved a new EIR and new Development Agreement in 2012. (The 2012 DA was amended in 2014.)

Then, following customary court procedure, the City then asked the trial court to dissolve the Writ because it had complied with it by nullifying the 2008 EIR and DA. In 2013 the Court ruled in favor of the City and against Mr. Connolly, concluding that the City had satisfied the Writ and therefore dissolved the Writ against the City. Thus the documents cited by Mr. Connolly were dissolved or repealed by the trial court in 2013 and are of no importance today.

Indeed the Trial Court judge also made clear that the 2009 court actions were no longer relevant. He wrote that Mr. Connolly's earlier lawsuit that "targeted the old EIR and the old EIR...is moot." He also found that the 2008 DA has "been superseded by the Amended and Restated Development Agreement". The 2008 DA and the 2009 court ruling are no longer relevant to our discussion.

Thus the Letter's heavy reliance on the 2009 court ruling about the old 2008 DA is sadly misplaced and irrelevant to this 2018 DA amendment. The Letter distorts the truth by abruptly and wrongly ending the litigation's history in 2011; however, by studying the

litigation's entire history until its 2013 conclusion we reach the logical conclusion that the first three pages of the Letter are irrelevant and moot.

Starting at page 4 the Letter outlines seven additional objections to the DA amendment. None of these points are accurate or relevant.

First, the Letter fundamentally misunderstands or deliberately misstates the treatment of Surland's Aquatic Center contribution. The amendment provides for Surland to contribute Ten Million Dollars to design, plan and construct the Aquatic Center. Contrary to the Letter's assertion this section does not involve reimbursing Surland for the Aquatic Center contribution; rather it provides for an accurate accounting of Surland funds expended to design and build the Aquatic Center. The Letter is just wrong.

Second, the parkland dedication provisions are consistent with City policies. Apparently Mr. Sandhu and Mr. Connolly seemingly disagree with building an Aquatic Center and use of objection will obstruct the Aquatic Center. The treatment of parkland dedications reasonably accommodates the need for parkland and the community's desire for an Aquatic Center. Contrary to the implication presented in the Letter, all members of Tracy will be able to use the Aquatic Center. The Letter is just wrong.

Third, the Letter deliberately misstates the true facts and history of the situation. The City Council at a noticed public hearing made a public decision about the location of the Aquatic Center. The City staff recommended locating the Aquatic Center at Ellis. *No one, including Mr. Sandhu or Mr. Connolly appeared at this noticed public hearing and opposed locating the Aquatic Center at Ellis.* If the City moves the Aquatic Center at this time, as the Letter intimates, the opening of the Aquatic Center will be delayed by five to seven years,

Fourth, the Letter is simply wrong in asserting the amendment does not permit the boundaries of the Primary or Other Project Areas to change. The amendment language cited by the Letter merely acknowledges Surland's vested and contractual rights. Other than acknowledging a standard contractual concept the amendment does not impede the City's discretion to adjust Primary or Other Project Areas. The Letter is just wrong.

Fifth, with respect to the timing of development fees, the City and Surland worked closely and studiously on this provision and adopted a system successfully implemented in other communities. Also, the Letter fails to remind the reader that if development fees, in the opinion of the City, are immediately needed for public infrastructure, then these fees can be immediately collected. The City is fully protected under this provision. The Letter is just wrong.

Sixth, Surland and the City believe an attractive monument sign can be constructed and erected for $150,000. The Letter offers no evidence to the contrary.

Seventh, the amendment does not involve a financial concession as the Letter suggests. Indeed, contrary to the Letter's assertion the amendment makes absolutely clear that Surland will not be the General Contractor for the Aquatic Center. The Letter is just wrong.

Surland's expanded involvement—designing, planning and supervising the construction of the Aquatic Center—provides a major and measurable public benefit. The long awaited Aquatic Center will be constructed sooner and with less expense of City staff time and taxpayer money. The public wants the Aquatic Center built; Mr. Sandhu and Mr. Connolly by their actions are obstructing it. It is clear the citizens of Tracy overwhelmingly want the Aquatic Center. The question is answered by whether this amendment to the Ellis Development Agreement is approved.

Very truly yours,

Steven A. Herum

STEVEN A. HERUM
Attorney-at-Law

SAH:lac

cc: Randall Bradley
Client

RESOLUTION 2018-002

RECOMMENDING THAT THE CITY COUNCIL APPROVE APPLICATION NUMBER DA16-0001, A SECOND AMENDMENT TO THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY AND SURLAND COMMUNITIES, LLC

WHEREAS, On March 5, 2013, the City Council approved that certain Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC, executed by the City of Tracy (the "City") and Surland Communities, LLC ("Surland"), recorded in the official records of San Joaquin County as Document Number 2013-119548 (the "DA"); and

WHEREAS, On June 5, 2014, the City and Surland executed that certain First Amendment to the Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC, recorded in the official records of San Joaquin County as Document Number 2014-064062; and

WHEREAS, On July 12, 2016, Surland submitted a request to the City asking the City Council to authorize staff to negotiate a second amendment to the DA (the "Second Amendment") to extend the time periods in the DA for (a) the City to accept Surland's land dedication offer, and (b) Surland to make its second Swim Center payment of eight million dollars ($8,000,000). In exchange for the City's agreement to extend these time periods, Surland offered to design and construct certain infrastructure improvements relating to the proposed public Swim Center described in the DA, at Surland's sole cost; and

WHEREAS, On August 16, 2016, the City Council approved Surland's request and directed staff to prepare the proposed Second Amendment to extend the above-described time periods and provide for Surland's design and construction of the above-described infrastructure improvements; and

WHEREAS, On May 25, 2017, Surland submitted a request to the City asking the City Council to authorize staff to expand the scope of the negotiations for the Second Amendment to, among other things, also address the concepts of (a) having Surland construct the proposed public Swim Center and fund the first $8 million of construction costs in lieu of making its second Swim Center payment, and (b) potentially expanding the property subject to the DA to lands outside of the current Ellis Specific Plan area, subject to future discretionary approvals; and

WHEREAS, On July 5, 2017, the City Council approved Surland's request and authorized staff to expand the scope of negotiations for the Second Amendment; and

WHEREAS, The City and Surland have completed their negotiations for the Second Amendment; and

WHEREAS, On February 14, 2018, the City's Planning Commission held a duly noticed public hearing on Surland's application for the Second Amendment, during which the Planning Commission determined that, pursuant to the applicable requirements of the California Environmental Quality Act (Public Resources Code § 21000 *et seq.*) ("CEQA") and its implementing regulations (California Code of Regulations § 15000 *et seq.*), the proposed Second Amendment would not result in any new significant environmental effects that were not

identified and adequately addressed in the Final Environmental Impact Report for the Surland Communities Amended and Restated Development Agreement and Ellis Specific Plan Applications (SCH # 2012022023) (the "EIR") certified by the City Council on January 22, 2013, by Resolution Number 2013-011, and therefore the City's approval of the Second Amendment is adequately supported by an addendum to the EIR pursuant to CEQA Guidelines Sections 15162 and 15164;

NOW, THEREFORE, BE IT RESOLVED, That the Planning Commission hereby recommends that the City Council adopt an Ordinance (in substantially the form of the draft ordinance attached hereto as Exhibit 1), approving the Second Amendment to the Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC (Application Number DA16-0001), with the following modifications:

- Reduce the number of Residential Growth Allotments (RGAs) available to Owner under F.3 of the Growth Management Ordinance (GMO) Guidelines to 2,000 (as opposed to the 2,250 currently proposed in the Second Amendment);
- Eliminate provisions in the Second Amendment that allow Owner to apply for RGAs on property(ies) not currently a part of the Ellis Specific Plan area;
- Delete Paragraph 1.8 ("Right of Use") of Exhibit A to the Second Amendment, "Aquatic Park Terms," which proposes priority access to event tickets and private use of a cabana;
- Modify "Section 1.01 (j)(v)" [sic] of the Second Amendment to allow for a 50% discount on an all access family pass for the residents of each residential dwelling unit (rather than free of charge as is currently proposed);
- Delete the last two lines of the paragraph defining "Total Cost" under Section 1, "Definitions," of Exhibit D ("Swim Center Design, Funding, and Construction Agreement") to the Second Amendment. The last two lines state that the total cost includes the cost of land at a cost of $210,000 per acre. This is old language that was included in error; and
- Modify Section 1.07(g)(ii) of the Second Amendment to delete the following: *"building permits issued hereunder shall continue in existence for a period of not less than twenty-four (24) months or until a certificate of occupancy for the structure is issued, whichever first occurs."*

* * * * * * * * * * * * *

The foregoing Resolution 2018-002 was adopted by the Planning Commission on the 14th day of February, 2018, by the following vote:

AYES:	COMMISSION MEMBERS:	HUDSON, KROGH, TANNER
NOES:	COMMISSION MEMBERS:	NONE
ABSENT:	COMMISSION MEMBERS:	KAUR, ORCUTT
ABSTAIN:	COMMISSION MEMBERS:	NONE

Robert C. Tanner
ACTING CHAIR

ATTEST:

STAFF LIAISON

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

This SECOND AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF TRACY and SURLAND COMMUNITIES, LLC (the "Second Amendment") is made and entered into as of this ____ day of _____, 2018 (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 Agreements By and Between The City of Tracy and Surland Communities, LLC dated April 18, 2013 and recorded on September 17, 2013 under Recorder's Serial 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. Among other things, the Development Agreement provides for Owner to (i) provide $10,000,000 (the "Owner Swim Center Contribution") to be used to design and fund the construction of a public swim center (the "Swim Center"), and (ii) offer to dedicate approximately 16 acres of land to the City, which will be used for the proposed Swim Center (the "Land Dedication Offer"). The

Development Agreement, as originally approved and executed, also provides that, in exchange for the Owner Swim Center Contribution and Land Dedication Offer, the City shall reserve and Owner shall be eligible for the allocation of up to 2,250 Residential Grown Allocations ("Subsection F.3. RGAs") to be used exclusively on the property comprising and subject to the 2013 Ellis Specific Plan ("Property").

B. On October 14, 2014 (Recorders Serial # 2014-097799), Owner timely made Owner's Land Dedication Offer. Under the Agreement to Extend (Recorder's Serial # 2015-073934), the City had until September 15, 2016, to accept the Land Dedication Offer or the City would be deemed to have rejected the Land Dedication Offer and the land would be available for development by Owner consistent with the Ellis Specific Plan. Following Owner's submittal of the Land Dedication Offer, the City and Owner agreed that there is an alternate location in the Ellis Specific Plan area that may be preferable as the location for the proposed Swim Center, and Owner agreed to prepare and submit to the City a revised land dedication offer (the "Revised Land Dedication Offer") to replace the original Land Dedication Offer.

C. Under the Development Agreement, the Owner Swim Center Contribution was due in two (2) installment payments. Owner timely made Owner's First Swim Center Payment on September 5, 2014. Owner's second installment payment of $8,000,000 ("Owner's Second Swim Center Payment") is a subject of this amendment.

D. On August 16, 2016, the City Council approved Owner's request to negotiate a second amendment to the Development Agreement to extend the deadline for Owner's Second Swim Center Payment and the deadline for the City's acceptance of the Land Dedication Offer, in exchange for Owner's providing to the City certain infrastructure improvements relating to the proposed Swim Center.

E. To give the Parties time to prepare and process Owner's requested Development Agreement amendment, the City and Owner executed that certain Agreement To Toll And Extend The Dedication Acceptance Period And The 60-Day Cure Period Respecting The Second Swim Center Payment Under Amended And Restated Development Agreement By And Between The City Of Tracy And Surland Communities, LLC (the "First Tolling Agreement"), by which the City and Owner agreed to: (i) extend the sixty-day cure period for Owner's Second Swim Center Payment to September 5, 2017; (ii) extend the time period for the City's acceptance of the Land Dedication Offer to November 24, 2017; and (iii) require Owner to deliver the Revised Land Dedication Offer not later than September 15, 2017.

F. In December of 2016, the City and Owner began discussions to expand the scope of the proposed Development Agreement amendment to provide for Owner to assume the obligation to design and construct the proposed Swim Center, and to describe a process by which other real property could become subject to the Development Agreement, subject to future Owner applications and future City approvals. The City and Owner agreed that such expanded negotiations would require additional time to prepare and process the expanded second amendment to the Development Agreement, and on August 15, 2017, the City Council approved that certain Second Agreement To Toll And Extend The Dedication Acceptance Period And The 60-Day Cure Period For The Second Swim Center Payment Under The Amended And Restated Development Agreement By And Between The City Of Tracy And Surland Communities, LLC (the "Second Tolling Agreement"), by which the City and Owner agreed to: (i) extend the sixty-day cure period for Owner's Second Swim Center Payment to December 5, 2017; (ii) extend the time period for the City's acceptance of the Land Dedication Offer to December 5, 2017, provided that the City shall not accept the Land Dedication Offer before November 15, 2017;

and (iii) require Owner to deliver the Revised Land Dedication Offer not later than December 5, 2017. Subsequently in November 2017 the parties entered into a third tolling agreement that extends the time for the parties to perform their obligations until April 4, 2018.

G. On February 14, 2018, the City Planning Commission, following a duly noticed public hearing, recommended approval of this Second Amendment as modified. On **[date]**, 2018, the City Council following a duly noticed public hearing, adopted Ordinance No. ____ approving this Second Amendment and authorizing its execution. That Ordinance took effect on **[date]**, the Effective Date of the Second Amendment.

H. Pursuant to the provisions of the Development Agreement Enabling Resolution, Government Code section 65868 and Section 1.09 of the Development Agreement, Owner has filed with the City an application for an amendment to the Development Agreement. The City found that the Owner was not in default under the Development Agreement, has considered the application and reviewed the substance of the proposed changes, modifications, and amendments contained in this Second Amendment. By entering into and executing this Second Amendment, the parties hereto agree that the Development Agreement shall hence forward be modified and amended as contained herein.

I. This Agreement is consistent with the General Plan and the 2013 Ellis Specific Plan as further amended in 2014 and concurrently with this Agreement. As required by the General Plan, this Agreement envisions proper environmental analysis and a proper planning process in compliance with controlling law before any approval allowing development can take place.

K. This Development Agreement for all purposes in naming and otherwise shall be referred to as the "Surland Development Agreement".

NOW, THEREFORE, the parties hereto agree as follows:

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

2. Section 1.01(k). The Swim Center Obligations, is added as follows. Section 1.01 **The Swim Center Obligations**.

(k) (i) Owner agrees to retain and compensate consultants to design the Swim Center with input from the community and City staff and with direction from the City Council. All true and correct expenses paid by Owner concerning the design and construction of the Swim Center shall be a credit against the Owner's contribution identified in Recital A. In anticipation of this Development Agreement amendment and at the request of City, Owner retained consultants prior to the approval and execution of this Development Agreement amendment, and funds expended by Owner during the period before the Second Amendment is executed shall be eligible for credits. The parties acknowledge that the studies, reports and designs prepared by Owner's consultants shall be the property of Owner and shall not without prior written consent of Owner be used by City in any manner. The studies, reports and designs shall be jointly owned by Owner and City after Owner is fully reimbursed for Owner's costs of obtaining the studies, reports and designs through reimbursements and/or credits unless City is subsequently in default under this Agreement in which case City shall not longer be treated as a co-owner. All studies, reports and designs shall be assigned to City upon Owner's transfer of ownership of the Swim Center to City.

(ii) Before Owner prepares construction improvement plans the City Council shall approve a final conceptual plan. City and Owner shall agree upon a list of design, construction and/or improvements that Owner shall design and/or construct. If, after the City

Council approves a final conceptual plan, it decides to modify the plan or add additional features or amenities then the cost of changing the conceptual plan or any design or construction plans relying on the original conceptual plan shall be additive funding provided by the City above the initial Swim Center funding.

(iii) Previously Owner has provided Two Million Dollars of a Ten Million Dollar contribution to the City for the Swim Center. City, in a manner consistent with the performance, funding and construction agreement mentioned subsequently, shall cause the Two Million Dollars initial contribution to be applied to the Swim Center's design and construction activities. If the Swim Center is relocated to a location other than a location within the Ellis Specific Plan area then Owner shall pay the remaining Eight Million Dollar future contribution to the City. However, if the Swim Center continues to be sited within the Ellis Specific Plan area then, since the Two Million Dollar initial contribution has previously been paid by Owner to City, the remaining Eight Million future contribution shall be satisfied in full by Owner providing Swim Center design and construction of improvements equal to Eight Million Dollars in costs incurred by Owner. The initial contribution of Two Million Dollars shall be used to pay for Swim Center design and construction. The parties shall enter into a design, funding and construction agreement contemporaneously with the approval of this Second Amendment. The City Council has requested Owner facilitate additional design, construction, operations, and improvements beyond the Owner contribution. Owner has agreed and shall facilitate completion of additional design improvements and construction of approved plans beyond Eight Million Dollars with funding provided by City in an amount equal to Thirty Five Million Dollars with a supplementary contingency amount of twenty percent of the total estimated costs of Forty Five Million Dollars (Swim Center Funding). The City shall have the right to review and approve the

design and improvement plans and City shall not unreasonably withhold approval. This additional construction of approved plans shall represent Owner's entire obligation to facilitate design and construction improvements for the Swim Center improvements and once the additional agreed upon improvements are constructed Owner's obligation to facilitate design and construction improvements for the Swim Center under this Agreement shall terminate. If the parties agree that Owner shall construct Swim Center improvements in addition to the final conceptual plan approved by City Council and the list of design, construction and/or improvements then the parties shall meet in good faith to negotiate and execute agreements concerning the method of City paying for additional constructed improvements. All subsequent costs shall be paid by the City and not the Owner, and Owner shall have no further financial obligation toward the design, construction, development, operation or maintenance of the Swim Center.

(iv) As required by and according to the manner established by the CFD, each residential lot and Commercial parcel (as defined in subsection v) within the Ellis Property Owners Association (which is defined to mean for purposes of this Agreement a property owners association established by Owner, "EPOA") shall pay an annual fee of $110 per lot/parcel toward Swim Center maintenance, which fee shall be adjusted annually according to the applicable community facility district formula.

(v) The residents of each residential dwelling shall receive from the City a fifty percent (50%) discount on one (1) annual all access family pass administered by the EPOA, and the Ellis Commercial Association shall receive a fifty percent (50%) discount on one (1) all access family pass for each legally created lot designated village center or commercial

(Commercial) located within the Ellis Property Owners Association boundary to the Swim Center at no additional cost.

(vi) Owner has made an irrevocable offer to dedicate approximately sixteen acres for a swim center and subsequently the City Council has determined that the Swim Center shall be located at the property offered for dedication, therefore, Owner's contribution of land for the Swim Center shall be equal to and be treated as the dedication of sixteen (16) acres of community park land under the City's parkland dedication ordinance and this credit of sixteen (16) acres of park land and shall be available by Owner and shall be applied at the option of Owner to the Property. After Owner's irrevocable offer of dedication and the City's determination that this land shall be used for the swim center then there shall be no more dedications and/or community park fees collected or paid by any residential or commercial real property within the Property, and any land offered for dedication or community park fees previously collected shall be reimbursed to Owner within thirty (30) days of approval of this Agreement. However, the decision of when to accept the dedication of land may be made at any time until the City accepts the Swim Center improvements constructed by Owner.

(vii) If the City elects to construct or authorize Owner to construct the Swim Center using the Owner Swim Center Contribution then the Swim Center shall be named the "Serpa Aquatic Park" for all naming and identification purposes, as further described in Exhibit A, including but not limited to digital, print and signage, the designation of "Les and Carol Serpa Aquatic Park" may also be used. If the City elects to construct or authorize the Owner to construct the Swim Center at the Ellis Swim Center Site, the site shall only be used for a public swim center with only those uses as formally agreed upon by the City and Owner or Owner's designee. In making the dedication of the real property for the Swim Center it was the intent of

the parties that the real property shall only be used for an aquatic park and no other use and the City shall not sell the real property. This term shall survive the term of this Development Agreement.

(viii) City shall promptly and immediately take reasonable actions necessary to expeditiously process all required plans, City Council approval of improvement plans, acquire all land necessary, (including by not limited to easements, real property, entitlements, project approval(s), San Joaquin County approval (s), railroad easements, any other agency approvals), and completion of all actions necessary shall be perfected without unreasonable delay whatsoever, for the approval and start of construction of Storm Basin 3A by Owner or Owner's designee as soon as practical. Owner or Owner's designee shall promptly and immediately take reasonable actions necessary to finalize an off-site improvement agreement with City Council approval, and following those actions expeditiously to prepare all required plans, process improvement plans for City Council approval, and commence construction once all permits, easements and other approvals have been provided by the City. The parties agree that in performing this obligation time is of the essence. Unless expressly prohibited by law or expressly required by a condition of a grant, City shall not charge any development, planning or construction fees or charge (including overhead, plan checking, building permit, project management, or any other fee) for the Swim Center. Any and all regulatory agency fees, or actual special outside plan review costs, including but not limited to the SJCOG conservations easement costs, shall be paid by the City. If improvements are funded by a CFD and funds are available to the City of Tracy from the CFD, no bonding shall be required as part of an improvement agreement or any public improvements.

3. Section 1.07, Residential Growth Allotments, shall be deleted from the Development Agreement and the following inserted in its place:

1.07 **Residential Growth Allotments; Building Permits**.

(a) Treatment of Development Agreement Residential Growth Allocations.

(i) Through this Development Agreement City shall reserve and vest in favor of Owner, and Owner shall be eligible for, the allocation of 2,000 Development Agreement Residential Growth Allotments and building permits (Subsection F.3 RGAs) for residential development on the Property, minus any Subsection F.3 RGAs already issued by City to Owner. As explained subsequently Owner is eligible to receive Subsection F.4 RGAs (Subsection F.4. RGAs or RGAs) and building permits from any available source of allocating RGAs or building permits other than through this Development Agreement. This amendment to the Development Agreement does not exempt building permits from being subject to plan check, building code requirements, and other permit related requirements in effect as of the Effective Date of the amendment to the Development Agreement.

(ii) At Owner's option, Subsection F.3 RGAs may be applied to a project as defined in the GMO on the Development Agreement Effective Date (Project) within the Ellis Specific Plan's boundary that exist as of the date of this Amendment and all Subsection F.3 RGAs perfected (a RGA is perfected when a residential building permit is issued according to the allocated RGA) for which a building permit is issued shall be deducted from the 2,000 DA RGAs allocated by this Agreement. For a calendar year where Owner applies Subsection F.3 RGAs to a Project, or more than one Project in that calendar year the Project(s) may not receive more than 225 Subsection F.3 RGAs and building permits. At the end of the calendar year this

limitation of receiving no more than 225 Subsection F.3 RGAs and being unable to receive RGAs from other sources for those Projects shall automatically lapse. The Subsection F.3 RGAs applied to the Project(s) and for which building permits are issued shall be deducted from the 2,000 Subsection F.3 RGA allocation derived from and vested by this Development Agreement.

(iii) Except as otherwise provided herein, in no event shall Owner be allocated more than 2,000 Subsection F.3 RGAs from this Development Agreement over the Term of this Agreement ("Overall RGA Maximum") (the 2,000 Subsection F.3 RGAs includes any Subsection F.3 RGAs allocated by the City to Owner and perfected prior to the Effective Date of this Amendment) which may be applied to the Property.

(b) Treatment of RHNA or unused RGAs that may become available for re-issuance from subsequent rounds of RGA allocations under the GMO or other sources other than this Development Agreement.

(i) This Development Agreement vests Owner with the absolute right to obtain Subsection F.4 RGAs and building permits from any and all other sources. Thus each year Owner shall be eligible for Subsection F.4 RGAs as provided in the GMO and the GMO Guidelines in effect on the Effective Date ("Annual RGA Eligibility").

(ii) Owner may allocate RGAs, building permits or both, derived from any source, including the Growth Management ordinance, this Development Agreement, the RHNA or any other sources not specifically identified herein to Projects or homebuilders within the Ellis Specific Plan, as it exists on the date of this Amendment, and building permits in certain circumstances may be acquired without an RGA such as through RHNA, and as subsequently provided by this section.

(iii) RGAs secured by Owner by means of any provision of the GMO Guidelines other than subsection F.3, RHNA, subsequent rounds of the allocation of RGAs under the GMO or from any other source other than from Section F.3 RGAs through this Development Agreement shall not be deducted from the Overall RGA Maximum and shall not be subject to a limitation of 225 subsection F.3 RGAs in a single calendar year. The parties acknowledge and agree that Owner has a vested right to receive no more than 2,000 RGAs and building permits through this Development Agreement; however, this limitation of receiving 2,000 RGAs and building permits at a rate of no more than 225 Subsection F.3 RGAs and building permits during a calendar year does not operate in any manner to prevent or frustrate Owner's efforts to obtain RGAs and building permits from all other sources and applying those RGAs and building permits to Projects within the Property that do not receive Section F.3 RGAs and building permits during the applicable calendar year.

(c) Owner shall apply to City for Subsection F.3.RGAs and/or Subsection F.4 RGAs ("RGA Application(s)") according to the Development Agreement and the requisite applicable requirements of the GMO Guidelines in effect on the Development Agreement Effective Date using the Application form attached hereto as Exhibit B or the form then stipulated in the GMO Guidelines then in effect, at the option of the Owner. The form shall designate the Project receiving the Subsection F.3 RGAs/Subsection F.4 RGAs and shall identify whether the application is for Subsection F.3 RGAs or Subsection F.4 RGAs.

(d) Owner shall provide a separate Application for each calendar year in which Owner seeks Subsection F.3 RGAs/Subsection F.4 RGAs. There shall be a separate application for each type of RGA applied for. Pursuant to Section F.4(c) of the GMO Guidelines, Owner shall have the first right and shall be entitled to apply for at any time during the year and obtain

for the Property any RGAs not applied for, applied for but not granted, unclaimed, or unassigned to the Tracy Hills project, or granted RGAs which have been rescinded from the Tracy Hills project, according to the maximum amount of RGAs available or prioritized for Tracy Hills through the GMO in any calendar year, during any calendar year during the term of this Agreement and all RGAs obtained through this process and applied to the Project shall not be deducted from the annual Overall RGA Maximum.

Only Owner may apply for Subsection F.3 RGAs/Subsection F.4 RGAs for property subject to this Agreement, unless Owner notifies City in writing of an exception and designates another entity to apply for RGAs. Pursuant to Section F.4(c) of the GMO Guidelines, City shall notify Owner within ten (10) days of any RGAs not applied for, applied for but not granted, unclaimed, or unassigned to the Tracy Hills project, or granted RGAs which have been rescinded from the Tracy Hills project according to the maximum amount of RGAs available or prioritized for Tracy Hills through the GMO in any calendar year. City agrees to make RGAs available to Owner pursuant to Section F.4(c) of the GMO Guidelines at the earliest possible date such RGAs become available after the time for Tracy Hills to request a RGA has passed or at the earliest possible time to acquire an allocated RGA after the time for Tracy Hills to perfect the allocated RGA has lapsed without Tracy Hills perfecting the allocated RGA pursuant to GMO rules. If RGAs are available Owner shall have the right to apply for Tracy Hills RGAs and the Growth Management Board shall allocate Tracy Hills RGAs to the Project(s) identified by Owner within fifteen (15) days of the date the Growth Management Board received the Owner's application(s).

(e) With the expressed exception of subsection F.1 "Vested Projects", in instances where all RGAs are not claimed or claimed but are not perfected (collectively unclaimed RGAs) such unclaimed RGAs shall be allocated using the following procedure,

priority and percentages. RGAs shall be allocated according to each category's percentage of the total number of eligible RGAs until all RGAs are claimed or the City conducts an entire round of RGA allocations and no RGAs are claimed by any category. The priority of categories shall follow the order the subcategories are listed in subsection F of the GMO Guidelines. Hence the priority shall be Primary Growth Areas, Development Agreements, Tracy Hills and Ellis Specific Plan Projects, and then Other Projects. Since subsection F.1, Vested Projects, is not assigned a total number of RGAs by the GMO Guidelines it does not participate in subsequent rounds of RGA allocations. Vested Project as defined in Subsection F.1 of the GMO at the time of this amendment approval shall retain all rights as provided by the GMO immediately prior to this amendment being effective.

For purposes of clarification, Owner's right to seek RGAs allocated by the GMO Guidelines to subsections F.2, F.3, and F.5 does not extend to instances where eligible property owners within the designated subsection claim the GMO Guideline allocated RGAs. Rather Owner's right to seek RGAs allocated by the GMO Guidelines to subsections F.2, F.3, and F.5 only extends to instances where these eligible property owners within the designated subsection do not claim the GMO Guideline allocated RGAs. In addition, the parties do not intend this Amendment to the Development Agreement to change the current City practice of issuing RHNA permits on a "first come/first serve" basis nor do the parties intend for this Agreement to grant to Owner a priority to receive RHNA permits over any other applicant for RHNA permits.

(f)(1) However, after first excluding RHNA or other similar sources of building permits, Owner agrees it will not apply for Tracy Hills RGAs or other Available RGAs in a manner that is

responsible for the City allocating more than the maximum possible RGAs in a given calendar year.

(f)(2) This Agreement does not intend to prohibit or prevent the City from granting RGAs in the future to any other person or entity in a manner consistent with the GMO and GMO Guidelines, so long as a future city decision does not impair Owner's right and ability to obtain RGAs as provided by this Agreement.

(g) Owner shall be eligible for building permits according this Development Agreement and to the applicable requirements of the GMO and the GMO Guidelines in effect on the Development Agreement Effective Date and the building permits issued hereunder shall be in accordance with the following:

(i) Building permits issued hereunder shall be deemed to have been secured by Owner upon the meeting of applicable plan check review requirements to issue a building permit and payment to the City of the building permit plan check inspection fee, due under the Municipal Code;

(ii) If noticed by Owner to City for a Project, all development impact fees and other fees and contributions identified in the EFIP, or agreed upon by the City and Owner in other finance plans such as the City Master Plans, or any other Fee Programs, or other impact fee, agreed to by the City and Owner and attributable to a structure shall be due and payable through close of escrow for a home builder to a home buyer for a residential structure, and upon a final inspection approval for a commercial structure for the noticed Project. The process for such payment is attached hereto and incorporated herein by this reference as Exhibit C. However, if a type of fee to be collected is immediately necessary to fund infrastructure

construction that is directly needed by the building being constructed by the building permit for a commercial building then a fee for that relevant category shall be collected at the time the building permit is issued by the City, if prior to issuing the building permit City sends Owner a written justification for accelerating collection of the fee based upon the reason stated in this sentence and second meets and confers with Owner in good faith at the earliest possible time before accelerating collection of the specific category of fee for the specific building permit. However, if a type of fee to be collected is immediately necessary to fund infrastructure construction that is directly needed by the building being constructed for a residential building then the fee for that related category shall be collected at the time the building permit is issued by the City, if the determination for the need to accelerate payment is made prior to approving the final map that including the relevant building lot(s). City shall send Owner a written detailed and comprehensive justification for accelerating collection of the fee based upon the reason stated in this sentence and shall meet and confer with Owner in good faith at the earliest possible time before accelerating collection of the specific category of fee for the specific final map buildings. In no event shall the time to pay the applicable fees exceed twenty four (24) months from approval of the final inspection for a residential lot.

However, if during the twenty-four months City determines that some or all of the deferred fees are immediately needed to fund infrastructure construction that is directly needed for the future occupants of the residential unit then the City has the right to deliver written notice to the real property owner demanding payment of the applicable fee and the real property owner shall pay the demand within thirty (30) days of receipt of City's written notice.

(iv) The Ellis Specific Plan Finance and Implementation Plan ("EFIP") shall be the finance plan for ESP Property, and the amount of fees as documented is a vested element, and no

other fees shall be charged without the mutually written consent of the parties. Owner may request that the ESP or a portion of the ESP join another finance district and upon approval by Owner and City the ESP or a portion of the ESP may be included in a different finance district, including updating the EFIP as needed.

(v) For any finance district, district fee, or community facility districts to be effective Owner's prior written consent, which may be withheld for any reason, is required for any property subject to this development agreement and, the Ellis Community Facilities District (ECFD) has been approved by Owner and is in effect. The obligation to make ECFD payments to City for maintaining the Swim Center shall be considered a community wide benefit and shall take the place of, be the equivalent of participating in and shall constitute full satisfaction for any future community wide facilities district or fees, including any facility district or other funding mechanism to fund public services, public landscape, park maintenance, basin maintenance, project-specific maintenance, police, fire and/or public works. Owner agrees to include Property into the ECFD and therefore, City shall not delay, deny, or condition any application filed, or processing for any Property because any or all of the Property is not joined into a CFD, Mello Roos District, or other Financing District.

(i) Notwithstanding any other provision of this Agreement or any other City ordinance, rule, regulation or custom, except for a tentative map receiving DA RGAs in a calendar year, the Property shall not be subject to any limitation or condition concerning the total number of RGAs or building permits from all potential sources in any year or during any RGA and/or building permit cycle.

5. Section 1.15(c) is added as follows.

(c) The concept plan for neighborhood parks shall be first presented to the City Parks Commission, the concept plan shall then be updated in coordination with City staff, and if City Council approves the neighborhood parks as part of the Specific Plan or relevant planning and approval documents (Project Plan) then the neighborhood park concept and design shall be in accordance with the then existing Project Plan and may including approximate size, name, location site plans, structures, equipment, uses, plants, trees, signage, color palette and features. Neighborhood parks may be one acre or more, and parks of two acres or more are allowed to have adjacent mail boxes with a roof structure, lighting and other features for mail service to the neighborhood residents, adjacent mail boxes with a roof structure shall not be a credit towards neighborhood park acreage, and maintenance for such neighborhood parks shall be funded by the Ellis community facility district or similar district. The neighborhood parks shall be bonded through a park improvement agreement or other acceptable agreement, at a bonding amount determined by the applicable finance plan or Project Plan, the developer shall be responsible for building the parks and there shall be no impact fee or other fees collected for neighborhood parks. The Project Plan shall provide developed neighborhood park land of three (3) acres per thousand residents. The Project Plan shall provide regulations on the character and amenities for each park. As the park system is implemented detailed designs will be developed for the construction of each park and the final location of parks shall be identified by Owner on tentative maps(s). Modifications and refinements of individual park designs including park location will be considered a minor variation as per the approved Project Plans. The elimination of a major amenity, or comprehensive change of a major amenity to another use shall be considered a major variation and require review by the City parks commission.

6. Section 1.15 Ellis Specific Plan Parks (b) is deleted and replaced with the following:

(b) The timing of constructing Property neighborhood park improvements shall be according to the applicable Project Plan.

7. Section 1.15(d) is added as follows.

(d) Except for neighborhood park land which shall be maintained by City with funding from the ECFD, all landscape improvements shall be maintained by the Ellis Property Owners Association (EPOA), with funding from the ECFD. The City and EPOA have or shall enter into a maintenance agreement to set forth and facilitate among other things the required maintenance obligations, standards for maintenance, and other associated obligations(s) as well as compliance with the Ellis operations and maintenance manual, to ensure the long-term maintenance of all public park and landscape areas, and other public improvements within the ECFD boundaries. The City and EPOA may amend and make changes agreed upon to the maintenance agreement and Ellis operations and maintenances manual upon mutual consent. The maintenance manual will be updated by Owner periodically to include improvements which have been installed in public parks, landscape areas, and other public improvements within the ECFD boundaries, and updated versions shall be provided to the City and EPOA. The City and EPOA may then amend and make changes to existing improvement standards or guidelines which are part of the manual upon mutual agreement.

8. A new section 1.16(e) is added as follows:

e. On August 16, 2016 the parties agreed to defer the performance of certain acts. As consideration for this deference Owner agreed to:

(i) design and construct the Swim Center monument sign at the corner of Summit Drive and Corral Hollow Road at Owner's sole expense in an amount not to exceed One Hundred and Fifty Thousand Dollars ($150,000); and,

(ii) expand and improve the Summit Drive paved travel section to the northeast along the frontage of the Swim Center to a five-foot wider section to accommodate potential future Swim Center turn lanes; and,

(iii) construct the frontage improvements for the Swim Center on Summit Drive; and,

(iv) construct the stubbed utilities to the Swim Center site from Summit Drive; and,

(v) fund up to One Hundred Thousand Dollars ($100,000) for the resources of Surland planners and architects to work with the City to complete a design for the Swim Center.

9. A new section 1.17 is added as follows:

Section 1.17 **Community Facilities District**.

The City and Owner shall cooperate to annex property into the ECFD and the ECFD shall authorize bond indebtedness, and authorize the special taxes, and bond proceeds from the ECFD. Property identified as a Future Annexation Area may annex into a then existing improvement area, or a new improvement area using the unanimous approval process.

Any fees paid from Property or Owner which are determined to be subject to reimbursement with ECFD proceeds or other proceeds shall be deemed "deposits" which may be

returned to Owner upon payment of an equivalent amount to the City from ECFD proceeds. City and Owner shall agree on all Property which shall be subject to any other community facility district.

10. A new section 1.18 is added as follows:

Section 1.18 **Program/Public Improvements/Infrastructure**

A. Except for the process to fund, design, and/or construct the Aquatic Center which is described at section 1.01(j) of this Second Amendment, Owner or Owner's designee may fund, design, and/or construct any program/public infrastructure upon the execution of the requisite improvement agreement, as approved by the City which approval shall not be unreasonably withheld. Owner shall notify the City in writing of the intent to design and/or construct improvements, and at the time of such notice there shall not be a construction or improvement contract in effect that provides for the construction of the specific improvement. Owner shall insure that improvement agreements have been executed and security is posted for the work of the improvement. Owner shall be eligible for credits and/or reimbursements for the work in amounts equal to the full amount of the capital improvement program plan identified in the applicable fee program, or other public improvements, in such instances City shall not charge cost recovery for the related component of the plans and improvements, plans check fees shall be fully reimbursable. For site improvements which Owner or Owner's designee will fund, design, and/or construct public infrastructure, and a plan check fee is collected by City, Owner shall be eligible to receive reimbursements of plan check fees paid, after acceptance of the improvement by the City, the City shall then reconcile actual costs against the plan check fee paid and shall only charge based on the actual costs, for any project work over five million dollars which is

allowed by City code. City shall keep all EFIP funds in discrete accounts, including program management, and provide Owner with an annual accounting of all accounts.

B. After the parties execute a written agreement to fund, design, and/or construct program infrastructure improvements all credits and reimbursements available to Owner, including without limitation credits and reimbursements available as a result of Owner's election, shall apply to any program expenditure. Owner shall be eligible for both a credit against fees paid, and/or against future fees to be paid, and reimbursement. Owner and City shall enter into a master reimbursement agreement to identify credits and reimbursements, which shall become part of the reimbursement agreement prior to, concurrent with, or subsequent to the improvement(s).

C. Reimbursement Agreement credits and reimbursements, approved by the City through a Reimbursement Agreement shall be allocated in such a manner determined, and in the sole discretion of Owner as Owner deems appropriate, with credits being allocated to "like-kind" fees, like-kind fees shall be fees which are in the same fund type of infrastructure, such as water, wastewater, storm, transportation/roads, public facilities, parks, etc. Owner may have balances of credits before impact fee payments are due, in such event Owner may allocate such credits to specific lots by written direction to the City indicating available credits being applied to specific lots.

D. All program infrastructure/public improvement capacity funded or constructed by Owner shall be available to accommodate the fair share capacity for Owner's Property as approved by City in the relevant agreement (for purposes of this subsection D and section 1.18. F) The City has discretion on the use of the capacity prior to when Owner needs occur, so long as the capacity is available without delay or restriction to Owner or any partial use of this

capacity is required or needed. Owner may construct on-site and off-site infrastructure necessary to provide recycled water service. Recycled Water Fees will be paid in an amount equal to the requisite finance plan, and in accordance Project Plans but no other current or future fee. All recycled water infrastructure improvements within entry, collector and community streets, and other public streets as approved by the City, and as defined by the requisite Project Plan will be recommended by staff to be program costs as part of the water master plan update. Once adopted these costs will be subject to credit and reimbursement according to the reimbursement agreement designee. Concurrent with approval of a final map for any part of Property subject to the Agreement City shall review, and if capacity not currently being used exists, shall reserve wastewater services capacity for treatment and conveyance for residential and commercial wastewater uses included in the approved final map. Through this Agreement City shall allocate and vest in favor of Owner and City shall supply Owner water supply for 2,250 residential units, including all commercial areas and uses (Including Ellis Village Center and Limited Use Area) in the Ellis Specific Plan, including the Swim Center in accordance with the Ellis FIP. Owner shall have the right to use all fair share infrastructure capacity described in the Ellis FIP, including but not limited to storm, water, wastewater, transportation (traffic), community park and public buildings. The applicable Project Plan shall identify the financial plan(s) such as the Ellis FIP, the City Master Plans, or any other Fee Programs, or other impact fee, development impact fees and other fees and contributions identified and agreed upon by the City and Owner and attributable to a structure.

E. The Reimbursement Agreement shall be approved with sixty (60) days of the City Council second reading of this Agreement, and within thirty (30) days after approval of the Reimbursement Agreement for the funding and/or constructing infrastructure, the City shall

immediately establish separate Reimbursement accounts for the work identified in the Reimbursement Agreement, and the work identified in future additional work to the Reimbursement Agreement for depositing reimbursements funds due per the Reimbursement Agreement. City shall provide Owner with a written accounting of funds available for reimbursement to the party identified in the Reimbursement Agreement for the Work within sixty (60) days after executing the Reimbursement Agreement or additional work to the Reimbursement Agreement, City shall transfer to the appropriate reimbursement account all available funding necessary to reimburse Developer for any of the Work Components identified in the Reimbursement Agreement which are subject to an executed Improvement Agreement, Off-Site Improvement Agreement, or other agreement to construct the Work Components. In accordance with the Reimbursement Agreement Fee Credits, as this term is defined in the Reimbursement Agreement, may be applied toward impact fees due or paid, on any property with like kind infrastructure fees, by notice to the City from Reimbursement Agreement identified party, after the City Council accepts the Work component identified in the Reimbursement Agreement. The City and Owner shall cooperate to amend the Reimbursement Agreement to add additional Work components as necessary. Reimbursements and credits will be based on infrastructure category funds such as water, wastewater, roadways, parks, and storm, etc.

Sources for the Reimbursements may include monies from the South ISP, Plan C, RSP, Infill, I-205, Ellis FIP, Master Plans, benefitting properties, and/or other City Impact Fee Funds, Finance Plans, or other funding sources, as identified by the City. Credits shall apply against Impact Fees, which otherwise would be payable by properties to City, and applied as directed in writing to the City by the party identified in the Reimbursement Agreement. Payment of

reimbursements by City shall be by check or by wire and payable as per the Reimbursement Agreement. City shall provide Owner a quarterly report indicating the balance of said reimbursement accounts. Administrative costs may apply for enhanced reporting and accounting.

All reimbursements shall be made in full in accordance with the Reimbursement Agreement from funds available at least as often as each City fiscal quarter the City shall release and immediately disburse all funds in any accounts in accordance with the Reimbursement Agreement. The reimbursement agreement will not substantially impair existing reimbursement agreements, or written commitments in effect, as of the date of this amendment. The City represents, warrants and covenants that the funds deposited in infrastructure fund account(s) available for reimbursement shall not be used for any intra-fund transfer without the prior written consent in accordance with the Reimbursement Agreement. Funds in the account shall be deposited in an interest-bearing account and all interest shall be paid in accordance with the Reimbursement Agreement as additional consideration for entering into this Agreement. City shall make all reasonable efforts to provide the "Total Credit and Reimbursement" as of approval of an agreement for the improvement(s) or work, or as soon thereafter as possible. The right to Reimbursement for the improvement(s) or work shall have priority over other improvement projects, or reimbursements. The reimbursement agreement will not substantially impair existing reimbursement agreements, or written commitments in effect as of the date of this amendment.

F. Wastewater treatment capacity needed by Owner which has not yet been provided shall be made available from existing available capacity of the Tracy Waste Water Treatment Plant by determining the capacity requirements of a final map for use of available capacity during the processing of the final map. Owner may participate in additional expansions above for

Owner needs by request to the City. The Ellis Initial Capacity shall be applied to the Property according to written directions from Owner to City. In addition to the Ellis Initial Capacity, all property depicted on final maps which are approved by the City shall be served by the existing wastewater treatment capacity. The Ellis Initial Capacity credits shall be applied to the Property according to written directions from Owner to City. Owner wastewater conveyance needs which have not been met shall be included in the Corral Hollow Conveyance Expansion, or other requisite conveyance system(s) as approved by City, which approval shall not be unreasonably withheld. City shall make available a minimum capacity from the Corral Hollow Conveyance Capacity Phase 1 Expansion (referred to as a choke point at times) for five hundred and fifty (550) residential units whenever needed by Owner for project improvements and/or development until the ultimate Corral Hollow Conveyance Expansion is complete. Owner may use the Eastside sewer conveyance system via a connection through Peony on an interim basis for the first 550 residential units until the ultimate Corral Hollow Conveyance Expansion upgrades are constructed and operational, including the Corral Hollow conveyance system connection to Ellis Town Drive to serve conveyance required by Owner in the Corral Hollow Conveyance System for property subject to this Agreement.

11. Section 3.01(b).4 is deleted.

12. Section 3.01(b).9 shall be deleted from the Development Agreement and the following inserted in its place.

(9) "**Certificate of Occupancy**" shall mean a certificate issued by the City authorizing occupancy of a residential unit.

IN WITNESS WHEREOF, the Parties do hereby agree to the full performance of the terms set forth herein.

"City"
CITY OF TRACY, a municipal corporation

_____
By:
Title: Mayor
Date: _____

Attest:

_____
By:
Title: CITY CLERK
Date: _____

"Owner"
SURLAND COMMUNITIES, LLC, a California limited liability company

_____
By:

By: _____
Les Serpa
Title: _____
Date: _____

EXHIBIT A

When Recorded return to:

For Recorder's Use Only

AQUATIC PARK TERMS

1.1. Discounted Aquatic Park Annual Pass. Members of the EPOA, as property owners within the boundaries of the ECFD, shall receive a fifty percent (50%) discount on one (1) all access family pass (pass for annual all access and use at no charge for utilization of all facilities and amenities located within the Aquatic Park 16-acre site for residents of a household at any time (the "Aquatic Center Pass")) for each residential dwelling unit owned by the member which is within the boundaries of the ECFD. Members of the Commercial Property Owners Association ("CPOA") shall receive a fifty percent (50%) discount on one (1) all access family pass for each commercial lot, parcel, and condominium unit owned by the member which is within the Ellis Storage/Limited Use and Ellis Village Center area and the boundaries of the ECFD.

1.2. Naming Rights. Serpa Aquatic Park shall be the official and the sole and exclusive name for aquatic park at Ellis. The exclusive imaging elements and permanent signage connected to the aquatic park shall come from the design of the aquatic park which shall have the locations and dimensions generally set forth in the Surland aquatic park design which shall then become Exhibit "A" to this Document shall not change without written agreement of Rights Holder. Permanent signage is defined as any fixed signage that is present for all events, including any digital signage. The cost of the design, installation, implementation and maintenance of such signage shall be paid as a cost of the aquatic park project. Serpa Aquatic Park shall be the exclusive Aquatic Park name for the park, and shall be included in all signage, digital signage, marketing, promotion, websites, apparel, and printed material, and shall have prominence and dominance over any naming or sponsors having a presence inside or outside of the Aquatic Park. Prominence must be present in the embodiment of the park structures and each and every event at the facility. No other signage, or naming shall be placed on any structures, buildings, offsite or onsite signage, or used in digital, or fixed signage without written consent of Rights Holder. The style manual which includes approved artwork for park logos and stylized form of the park name shall be used for all signage, websites, advertising, paper products, tickets, passes, apparel, marketing, print, merchandise inventory, and other items. The Les and Carol Serpa Aquatic Park may also be prominently used throughout the Aquatic Park as generally set forth in Exhibit "A" to this Document and shall not change without written consent of Rights Holder. The Aquatic Park signage locations, size, and style as depicted in Exhibit "A" to this Document shall not change without the consent of Rights Holder. Any signs prepared for gyms, party rooms, event areas,

archways and entry gates, or any other signs for the Aquatic Park shall include the official name or logo either in or adjacent to the name of the respective arch or entry. Any apparel, wrist bands, tickets, or other items prepared, given away, used, or sold for the gym, party rooms, events, passes, or any other productions for the Aquatic Park shall include the official name or logo prominently. Aquatic Park official name or logo shall be prominently displayed in and on all design materials, images, illustrations, renderings, site plans, blueprints, animation, video or other depictions that are developed for the Aquatic Park.

1.3. Exclusivity. Other than using the official name, unless approved in writing by Rights Holder, the City will not permit any exterior signage, advertising, or promotion on the aquatic park or, on the grounds surrounding the aquatic park (including the entry, gym, parking lots, driveways and roads approaching and surrounding the aquatic park), either temporary or permanent. The City agrees to provide that any party entering into an agreement with the City to use the aquatic park for any event cannot remove, cover or otherwise obscure the view of any signage, or naming without the written consent of Rights Holder.

1.4. Advertising, Marketing, Events. All advertising, marketing, website, and any other locational information, including event advertising, and promotion by any party shall use the following for identification and naming purposes of the event "Serpa Aquatic Park at Ellis". The name shall be of the same font size as the largest font size in the print, and shall be a minimum of 10% of the total area, or 10% of the total time as applicable.

1.5. Indemnification Against Claims by Third Parties. The City shall defend, indemnify and hold harmless, to the extent permitted by law, Rights Holder from and against any and all claims, damages, causes of action, judgments, liens, losses and costs and liabilities including, without limitation, attorneys, fees and other litigation expenses arising from the City's acts, omissions or breach of this Document and/or from any litigation, arbitration, hearing, investigation or other proceeding commenced by any third party alleging or arising from claims of wrongful conduct or omission by the City, including, but not limited to, negligence, breach of warranty, and unsafe, hazardous, or defective product or service, except to the extent that such damages, claims, losses and judgments and costs incident thereto are caused by the negligence or intentional misconduct of any party seeking indemnification hereunder. The City shall at all times be insured with liability insurance and such insurance as will provide against claims which may arise from the City's operations of the aquatic park and under this Document.

1.6. Copyrights. Trademarks. Service Marks. Logos and Similar Rights of Serpa Aquatic Park. Serpa Aquatic Park Marks. The parties acknowledge that Rights Holder shall own, and have the responsibility to protect, in the United States, and elsewhere in its sole discretion, the trade name "Serpa Aquatic Park"," Serpa Aquatic Park at Ellis", and all associated trademarks, logos, designs, and service marks (the "Aquatic Park Marks"). Rights Holder hereby grants the City a non-exclusive royalty-free, worldwide license to use the Aquatic Park Marks, subject to the terms provided below, for the purpose of promoting the Aquatic Park. Rights Holder further grants the City the right to sublicense the Aquatic Park Marks as approved from time to time by Rights Holder. Further, all such uses of the Aquatic Park Marks shall be subject to the prior written consent of Rights Holder as to form, copy and content. The City agrees that it

will include the name of "Serpa Aquatic Park" and any related logo or trademark for all of the following related to the Aquatic Park, on all of its letterhead, envelopes, invoices, brochures, business cards and shall include the name of the Aquatic Park in its address. The City shall use "Serpa Aquatic Park" when making reference to the aquatic park and no other name shall be used without the written consent of Rights Holder. The City in any and all contracts, agreements, arrangements, writings and communications, entered into or amended after the date of this Document, pertaining in any manner to the Aquatic Park (such as contracts with tenants, lessors, operators, and users, suppliers, clubs, media, advertisers and others) shall refer to, and as a term of such contracts, agreements and/or arrangements shall require all other parties to such contracts, agreements and/or arrangements to refer to the Aquatic Park as, and only as, "Serpa Aquatic Park." All printed materials promulgated by the City which would normally refer to the address or site of the Aquatic Park shall refer to the Aquatic Park as " Serpa Aquatic Park at Ellis." The City agrees to use reasonable efforts to ensure that the name "Serpa Aquatic Park" is (i) used in all communications and media concerning the Aquatic Park; and (ii) used by all media and news organizations. With respect to all events that are specifically created for the Aquatic Park by the City or scheduled or hosted in the Aquatic Park by the City or its affiliates, or lessors during the Term, the City agrees that for all such events the City shall use its best efforts to require that (i) all communications and media concerning the Aquatic Park; (ii) all local media and news organizations; and (iii) all tickets issued by users of the Aquatic Park will refer to the Aquatic Park as "Serpa Aquatic Park at Ellis." In addition, the City shall use its reasonable efforts to require that all advertising by users of the Aquatic Park, including teams, leagues, business, or associations refers to the Aquatic Park as ""Serpa Aquatic Park at Ellis".

1.7. Entire Document; Amendment; Assignment. This Document constitutes the entire agreement and understanding between Rights Holder and the City and supersedes all prior agreements, understandings and representations relating to the subject matter. This Document may only be amended, modified or supplemented by a written agreement between Rights Holder and the City. This Document may not be assigned by either party except with the prior written consent of the other party; provided, however, that Rights Holder may assign this Document as part of any planning undertaken by Rights Holder for future authorizations related to this Document.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

EXHIBIT B

APPLICATION FOR RESIDENTIAL GROWTH ALLOTMENTS – GMO
Subsection F.3

Application

Applicant Information

Name: _____Telephone No.: _____

Company: _____

Mailing Address: _____

City/State/Zip Code: _____

Owner Information

Name: _____Telephone No.: _____

Company: _____

Mailing Address: _____

City/State/Zip Code: _____

Tentative Map / Map / RGA Information

Tentative Map or other Map: _____

# of RGA's requested: _____

Applicant's Signature

I, the undersigned, have complied with the requirements of the Development Agreement relevant to this application:

_____ _____
Applicant's Signature Date

APPLICATION FOR RESIDENTIAL GROWTH ALLOTMENTS – GMO
Subsection F.4

Application

Applicant Information

Name: _____Telephone No.: _____

Company: _____

Mailing Address: _____

City/State/Zip Code: _____

Owner Information

Name: _____Telephone No.: _____

Company: _____

Mailing Address: _____

City/State/Zip Code: _____

Tentative Map / Map / RGA Information

Tentative Map or other Map: _____

# of RGA's requested: _____

Applicant's Signature

I, the undersigned, have complied with the requirements of the Development Agreement relevant to this application:

_____ _____
Applicant's Signature Date

When Recorded return to:

EXHIBIT C

For Recorder's Use Only

AGREEMENT FOR DEFFERRAL OF
CERTAIN IMPACT FEES

THIS AGREEMENT is entered into by and between the City of Tracy ("City"), and _____, ("Applicant") on _____ to secure the payment of certain impact fees, which the City has agreed may be deferred until sometime after the filing of the Final Map for this Project and the issuance of building permits.

Recitals

A. Applicant owns the land included on the final map entitled "_____" ("Final Map"), which is to record concurrently with this Agreement for Deferral of Certain Impact Fees ("Agreement") for the project known as _____, ("Project"). New homes will be constructed on the lots created by the Final Map.

B. Applicant has requested a deferral of certain impact fees, which are imposed under Tracy ordinances and resolutions for said Project.

C. City has agreed to defer the payment of such impact fees ("Deferred Impact Fee") until each new home that is constructed on a lot depicted on the Final Map is sold and conveyed to the original homebuyer as evidenced by a completed close of escrow transaction. The impact fees that shall be paid to the City are itemized on a per lot basis on the Deferred Impact Fee Schedule by Lot No. attached as Exhibit "B" ("Deferred Impact Fee"). The Deferred Impact Fee Schedule may be adjusted by mutual consent of the City and Applicant at any time prior to payment in order to account for fee credits or fee adjustments.

D. Applicant shall cause an escrow to be opened with an escrow holder ("Escrow Holder") who is processing the escrow closings for the sale of the new homes in the Project. The Deferred Impact Fee shall be paid to City by the Escrow Holder through the escrow upon the close of escrow of each new home sale in the Project to the original homebuyer.

E. Upon request from Applicant, City shall provide Escrow Holder with a Demand Letter that provides the Deferred Impact Fee for particular lot in the form attached as Exhibit "C" in connection with the sale of a new home to a homebuyer.

F. Upon receipt of Deferred Impact Fee from Escrow Holder, City shall provide Escrow Holder with a Confirmation and Instruction Letter that confirms the Deferred Impact Fee for a particular lot has been received by City and paid in full, in the form attached as Exhibit "A".

NOW, THEREFORE, the parties hereto agree to the following:

1. This Agreement shall be recorded immediately after the recordation of the Final Map

2. Upon completion of the new home on any lot as shown on the Final Map in the Project, the City shall allow Applicant to obtain utility services, including water, sewer, gas and electricity, to the house; but, shall not allow occupancy until the Escrow has closed and the City has received the Deferred Impact Fee, as set forth below.

3. The Applicant shall instruct the Escrow Holder to deduct sufficient funds to pay the Deferred Impact Fee from the sale escrow of a new home to the original buyer and such Deferred Impact Fee shall be wired by the Escrow Holder to the City as a condition of the closing of such escrow and the conveyance of a lot in the Project to the original homebuyer.

4. Upon receipt of said Deferred Impact Fee by the City from the sale of a new home located on a lot shown on the Final Map that is conveyed to the original homebuyer, this Agreement shall be deemed irrevocably released on said lot in the Project without the necessity of a recorded release signed by the City, and Escrow Holder shall remove any and all exceptions or notices on the title or record related to Deferred Impact Fee for said lot. City agrees to promptly execute and record a release of the Agreement, upon request, if necessary to remove the Agreement from the title to a lot.

5. General Provisions.

   5.1 Notices. Notices to the parties shall be in writing and delivered in person, or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the City and Applicant. Notice shall be effective on the date delivered in person or the date when the postal authorities indicate the mailing was delivered to the address of the receiving party indicated below.

   To Applicant: To City:

5.2 California Law. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of California.

5.3 Severability. If any one or more of the provisions of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected or be impaired in any way.

5.4 Attorneys' Fees. If any party files an action or brings any proceeding against the other party arising out of this Agreement or for the declaration of any rights under this Agreement, the prevailing party shall be entitled to recover from the other parties all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party as determined by the court.

5.5 Modification. This Agreement cannot be modified in any respect except by a writing signed and entered into by the Applicant and the City.

5.6 Captions. The captions of the paragraphs of this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope of the intent of the Agreement.

IN WITNESS WHEREOF, this Agreement is executed by THE CITY OF TRACY and by APPLICANT.

CITY OF TRACY

By: _____

Its: _____

APPLICANT

By: _____

Its: _____

Approved as to form and legality this
_____ day of _____, 20___ .

City Attorney

_____

Exhibit "A"

Confirmation and Instruction Letter

To: _____ (Escrow Holder)
From: The City of Tracy
Re: Payment of Deferred Fee
Final Map_____, Lot # _____
Address of Property: _____
Your Escrow Number if applicable: _____
Date: _____

Regarding the above referenced escrow, Escrow Holder is directed, pursuant to the provisions of the Agreement of Deferral of Certain Impact Fees, recorded on _____, as Document Number _____ in Official Records of the San Joaquin County Recorder's Office, that the following amount has been collected from the above referenced Lot either directly by the City or from Escrow the sum of $_____, representing the amount of the Deferred Impact Fee ascribable to the above referenced Lot. Such Deferred Fee has been collected and received by the City of Tracy.

Upon the Escrow Holder receipt of this Confirmation and Instruction Letter, the Agreement of Deferral of Certain Impact Fees shall be deemed irrevocably released on said lot in the Project with this letter considered a release signed and authorized by the City, which may be recorded.

City of Tracy

By: _____

Its: _____

Exhibit "B"

Deferred Fee Schedule

By Lot No.

Exhibit "C"

Demand Letter

To: _____ (Escrow Holder)

From: The City of Tracy

Re: Payment of Deferred Fee

Final Map _____ Lot # _____
Address of Property: _____
Your Escrow Number: _____

Date: _____

Regarding the above referenced escrow, you are directed, pursuant to the provisions of the Agreement of Deferral of Certain Impact Fees, recorded on _____, as Document Number _____ in Official Records of the San Joaquin County Recorder's Office, to collect from the above referenced Escrow the sum of $_____, representing the amount of the Deferred Impact Fee allocated to the above referenced Lot. Such Deferred Fee shall be collected at the closing the escrow and wired to the City of Tracy as follows:

Wiring Instructions.

Upon the City of Tracy's receipt of such Deferred Impact Fee, the Agreement of Deferral of Certain Impact Fees shall be deemed irrevocably released on said lot in the Project without the necessity of a recorded release signed by the City.

City of Tracy

By: _____

Its: _____

EXHIBIT D

SWIM CENTER

DESIGN, FUNDING, AND CONSTRUCTION AGREEMENT

By and Between the

CITY OF TRACY,

a municipal corporation and

SURLAND COMMUNITIES, LLC

Effective Date: _____, 20__

SWIM CENTER

AGREEMENT

This Swim Center Acquisition Agreement ("Agreement") is made by and between the CITY OF TRACY, a municipal corporation ("City"), and SURLAND COMMUNITIES, LLC ("Owner") (City and Owner are collectively referred to as "Parties") and is effective as of _____, 20___.

RECITALS

A. The Ellis Specific Plan identifies an approximately 1 6 acre (the "Property") within the plan for an Swim Center.

B. On December _____, 20____, the City Council approved and adopted a development agreement amendment which includes the Property (the "DA").

C. The DA obligates Owner to retain and compensate consultants, and contractors for the design and construction of a Swim Center ("Swim Center") on the Property, and requires Owner and the City to execute this Agreement to provide for and memorialize the Parties' obligations with regard to site acquisition, design, and construction of the Swim Center. This Agreement intends to provide the method by which Owner will perform this obligation but does not intend to expand or change the Owner obligation as presented in the amendment to the Development Agreement. The City acknowledges that Owner is not a licensed contractor and therefore in performing the obligations of this Agreement Owner shall retain the services of license contractor as required by law.

AGREEMENT

Based upon the foregoing Recitals, which are incorporated herein as provisions of this Agreement by this reference, and in consideration of the covenants and promises of the City and Owner contained in this Agreement, the Parties agree to perform each of their respective obligations in a timely manner.

SECTION 1 -Definitions

"Affiliate" means (i) an entity that, directly or indirectly, controls, is controlled by, or is under common control with, Owner; or (ii) an entity in which Owner directly or indirectly owns at least a twenty-five percent (25%) interest.

"City" means the City of Tracy, acting through its City Council, officers, employees, and authorized representatives.

"City Engineer" means the City Engineer for the City of Tracy or authorized delegee.

"Construction Contract" means the contract between Owner and Owner's contractor(s) for all of the Work (as defined below) required to construct the Swim Center as designed, including all

services required to be provided by or customarily provided by or under the direction of a licensed general contractor.

"Construction Contract Price" means the total amount of contractors Construction Contract(s).

"Construction Documents" means the design and construction documents, including the Construction Contract and all drawings, specifications, and schematic plans prepared pursuant to the RFP (as defined below), if Owner elects to follow the RFP process, and consistent with all applicable local, state, and federal laws, ordinances, policies, and regulations.

"Development Agreement" or "DA" is defined in Recital B.

"Final Acceptance" means that, following Final Completion, the City has received Owner's irrevocable offer of dedication for the Swim Center Site and all improvements thereon, and the City Council has formally accepted the Work by resolution.

"Final Completion" means that the City Engineer and City Building Official have determined that the Work has been fully completed in accordance with the Construction Documents and this Agreement, including all Punch List items, and title to the Swim Center Site is free and clear of all construction liens and encumbrances, unless otherwise assumed by City.

"Site" is defined as the real property selected by the City Council for this project.

"Swim Center" is defined in Recital C and in the Ellis Specific Plan.

"Swim Center Site" means the Site for the Swim Center that is owned by or under contract to purchase by Owner or Owner's affiliate until City's acquisition at Final Acceptance, and is further described in Section 3.

"Request for Proposal" or "RFP" means Owner's optional "Request for Proposals for Consultant Services" related to design, architectural, and other consultant services, including construction of the Swim Center.

"Total Cost" means all costs, including, but not limited to, costs of design, architectural, consultants, engineering, plan checking, land preparation, utilities installation, project management and overhead, applicable governmental fees, materials, labor, and construction.

"Work" means all of the design and construction services necessary or incidental to completing the Swim Center in conformance with the requirements of the DA, this Agreement, and the Construction Documents.

SECTION 2 – City Site Selection

Pursuant to the DA and Section 2 of this Agreement, the City has selected the Site for the Swim Center. The Site shall be in the location, and as described in the offer of dedication. Owner shall own or acquire the Site selected by the City, and the City shall not own the Swim Center Site until Final Acceptance.

SECTION 3 – City Approval of Plans and Construction Documents

Within sixty (60) days after the Development Agreement Amendment is Effective, the Specific Plan is approved and the Owner-Tracy Swim Center construction agreement is executed, then Owner and City representatives shall meet to establish joint timelines and milestones for event 3) and event 4): 1) Owner presenting a final conceptual plan for the Swim Center to the City for City review and approval on or before April 30, 2018; 2) a community groundbreaking ceremony on or before September 30, 2018; 3) After the City has approved all necessary design, plans and construction documents, Owner bid out and enter into a construction contract; and, 4) Owner completing the construction according to the construction documents and this document.

Before Owner starts preparing construction improvement plans the City Council shall approve a final conceptual plan, and a list of design, construction and/or improvements that Owner shall cause to be designed and/or constructed. If, after the City Council approves a final conceptual plan, it decides to modify the plan or add additional features or amenities then all direct and indirect costs of changing the conceptual plan or any design or construction plans relying on the original conceptual plan shall be additive funding provided by the City above the initial Swim Center funding and within the time periods specified herein. To insure the Swim Center is completed with available funds the project may be bid with a base bid, and with bid alternatives, depending on available funds bid alternates may or may not be awarded. City shall promptly approve the Construction Documents, including all design plans, drawings, and specifications. The Construction Documents must include an estimated Construction Contract Price, and must comply with the following:

1. California Building Code; and
2. Applicable Law

SECTION 4 – Schedule

A. General Surety Requirements

Each bond must be issued by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven days following written notice from City, Owner must substitute a surety reasonably acceptable to City.

B. Required Bonds

1. Faithful Performance Bond

To secure faithful performance of this Agreement each contractor not covered by a bond for the project shall provide a faithful performance bond in the amount of the work provided, a performance bond shall be provided to the City in the amount of the Construction Contract Price prior to commencement of

construction. The bond must be in the form required by Government Code sections 66499 through 66499.10.

2. Warranty Bond

As a condition precedent to City's Final Acceptance of the Swim Center, a warranty bond must be provided in the amount of 10% of the final Construction Contract Price of the Swim Center, as a full guarantee for one year of Work following Final Acceptance.

Bonds and insurance shall be purchased from the Owner's Contribution funds, funds contributed by the City for the project, or paid for by the contractor.

SECTION 5 – Construction

A. Owner's Obligation to Cause to Construct

Owner shall cause to be constructed the Swim Center in conformance with the Construction Documents to Final Completion.

B. Owner's Swim Center Contribution

Owner's maximum financial obligation regarding the Swim Center is Ten Million Dollars ($10,000,000.00) ("Owner's Contribution") for the Total Cost. Previously Owner has provided Two Million Dollars of a Ten Million Dollar contribution to the City for the Swim Center. City shall cause the Two Million Dollars initial contribution to be applied to the Owner's design and construction activities in accordance with Exhibit "A", including but not limited to reimbursing Owner for all of Owner's design activity expenses undertaken prior to executing this Agreement, subject to Owner providing City true and correct copies of invoices for the work performed or, at the discretion of Owner, the City shall treat the expense of all of Owner's design activities as credits against development fees. After the Two Million Dollar initial contribution is applied to the Eight Million future contribution then the remaining obligation shall be satisfied in full by Owner facilitating Swim Center design and construction of improvements equal to Ten Million Dollars in costs incurred by Owner. In anticipation of this agreement and at the City's request, the Owner retained consultants prior to approving and executing this agreement or the amendment to the Development Agreement, and funds expended by the Owner prior to this agreement or the amendment to the Development Agreement being executed shall be eligible for reimbursement or credits.

C. City's Obligation for Costs over Owner's Contribution

The City shall provide funding for the Swim Center in an amount equal to Thirty-Five Million Dollars with a supplementary contingency amount of twenty percent of the total

estimated costs of Forty-Five Million Dollars (Swim Center Funding). This additional construction of approved plans, which shall take into account the total Swim Center Funding, shall represent Owner's entire obligation to facilitate design and construction improvements for the Swim Center improvements and once the additional agreed upon improvements are constructed the Owner's obligation to facilitate design and construction improvements for the Swim Center under this agreement automatically terminates. Owner shall have no obligation to advance funds above the Owner's Contribution to continue or complete the Swim Center and upon reaching the amount of Owner's Contribution if City fails to fund its share, Owner shall be conclusively deemed to have satisfied its obligation under this agreement and the Development Agreement. City shall pay in full all requested invoiced payments to Owner or Contractor within thirty (30) days of the portion of the Work completion from city Swim Center funding.

D. Change Orders

Change orders which include costs of more than 10% of the construction contingency shall require the City Manager's or his/her designee's approval, which shall not be unreasonably withheld or delayed. Change orders which include costs 10% or less of the construction contingency shall require the Assistant City Manager's or his/her designee's approval, which shall not be unreasonably withheld or delayed.

E. Prevailing Wages

Each worker performing Work under this Agreement that is covered under Labor Code section 1720 or 1720.9, including cleanup of the construction site, must be paid at a rate not less than the prevailing wage as defined in sections 1771 and 1774 of the Labor Code.

F. Payroll Records

At all times during performance of this Agreement, Owner's contractor must comply with the provisions of Labor Code section 1776 and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for electronic submission of payroll records.

G. Insurance

Prior to the commencement of construction, the Owner shall furnish or cause to be furnished evidence to the City that all of the following insurance requirements have been satisfied:

1. General Requirements

The Owner shall or shall cause its agents or contractors to maintain insurance to cover Owner, its agents, representatives, contractors, subcontractors, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein.

2. Policies and Limits

(a) Commercial General Liability Insurance ("CGL"): A CGL policy (with coverage at least as broad as ISO form CG 00 01 01 96) 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.

(b) Automobile Liability Insurance: An automobile policy (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") in an amount not less than $1,000,000 per accident for bodily injury and property damage.

(c) Workers' Compensation Insurance and Employer's Liability: As required by the State of California.

3. Required Endorsements

The automobile and commercial general liability policies shall contain endorsements with the following provisions:

(a) The City (including its elected and appointed officials, officers, employees, agents, and volunteers) shall be named as an additional "insured."

(b) For any claims related to this Agreement, the required coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Owner's (or contractor or agent, if provided by them) insurance and shall not contribute with it.

4. Notice of Cancellation

All insurance policies required hereby shall contain endorsements by which each insurer is required to provide thirty (30) days prior written notice to the City should the policy be canceled 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.

5. Authorized Insurers

All insurance companies providing coverage required by this Agreement 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.

6. Insurance Certificate

Owner (or its agent or contractor) shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney.

7. Substitution of Certificates

No later than thirty (30) days prior to the policy expiration date of any insurance policy required by this Agreement, Owner (or agent contractor) shall provide a substitute certificate of insurance.

8. Owner's Obligation

Maintenance of insurance by the Owner as specified in this Agreement shall in no way be interpreted as relieving the Owner of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Owner may carry, at its own expense, such additional insurance as it deems necessary.

SECTION 6: Inspection and Final Completion

A. Inspection and Oversight

The City may perform daily field inspections of the construction in progress, during regular business hours, as required to assure that the construction is in accordance with the requirements of this Agreement. All inspections shall be coordinated with Owner's designee with at least 24 hours advance written notice and the City inspection team shall be accompanied by Owner's designee at all times when on Site. In order to permit the City to inspect the Work, the Owner shall, at all times, provide to the City proper and safe access to the site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation. The City shall receive copies of materials quality tests required to assure that the quality meets the construction plans requirements, and may require inspection or any re-testing which may be necessary. The City will perform a final inspection of the Work and prepare an inspection report, setting forth any deficiencies from the Construction Documents that may exist (the "Punch List"). Prior to determining that Owner has achieved Final Completion, as described below, the City may re-inspect any corrective work performed by Owner and the as-built construction plans and records to insure the Punch List has been completed.

B. Final Completion

The City shall certify that Owner has achieved Final Completion when both the City Engineer and City Building Official have determined that the Work is fully completed in accordance with the Construction Documents and this Agreement. Final Completion cannot be achieved until Owner has completed all Punch List items and provided all required submittals, including any contractor warranty, and as-built drawings, to City's satisfaction. After Final Completion has occurred, the City Engineer will

recommend Final Acceptance to the City Council. Upon request by Owner City shall provide a Punch List within fifteen days, and once the work from the Punch List provided is complete City shall certify that Owner has achieved Final Completion.

SECTION 7: Dedication and Acceptance

Final Acceptance by the City Council will not be made unless and until a final inspection and determination of Final Completion has been made by the City Engineer and City Building Official in accordance with Section 5.B above, and Owner has submitted to the City an irrevocable offer of dedication for the Swim Center Site with improvements from Owner and evidence that the title to the Swim Center Site is free of all construction liens and encumbrances. Upon recommendation of the City Engineer, the City Council shall formally accept the Work by resolution.

SECTION 8: Warranties and Fee Credits

A. Correction of Defective Work During the Warranty Period

The Contractor(s) shall warrant the quality of the Work, in accordance with the terms of the plans and Construction Documents, for a period of one year after Final Acceptance of the Work by the City Council. In the event that (during the one-year warranty period) any portion of the Work is determined by the City Engineer, or if requested validated by a 3rd party agreed upon by Contractor and City to be defective, the City shall notify Owner of the defect and the Owner shall begin facilitation of the correction of the defect within ten (10) days of receiving notice of the defect from the City. If the defect cannot be corrected within 30 days, Owner shall have such time as is necessary to correct the defect, provided that Owner has timely caused the correction to begin and the contractor is diligently continuing the work necessary to correct the defect. If Owner fails to have the contractor begin the work to correct the defect within 60 days of receiving such notice, or fails to diligently have the contractor continue such work, as reasonably determined by the City, City may take actions as necessary to complete the Work using the Warranty Bond. Pursuant to Section 4.B.3 of this Agreement, Contractor's must provide City with a warranty bond as a condition precedent to Final Acceptance.

SECTION 9: Indemnity

To the fullest extent permitted by law, Owner must indemnify, defend, and hold harmless the City, its agents and consultants (individually, an "Indemnitee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with acts or omissions of Owner, its employees, subcontractors, representatives, or agents, in bidding or performing the Work or its failure to comply with any of its obligations under the Agreement, except such Liability caused by the active and sole negligence, or willful misconduct, of an Indemnitee. Owner's failure or refusal to timely accept a tender of defense pursuant to this provision will be deemed a material breach of this Agreement. Upon Final Acceptance to the fullest extent permitted by law, City must indemnify, defend, and hold harmless the Owner, its agents and consultants (individually, an "Indemnitee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with acts or omissions of City, its employees, subcontractors, representatives, or agents, in bidding or performing the Work or its failure to comply with any of its obligations under the Agreement, except such Liability caused by the active and sole negligence, or willful misconduct, of an Indemnitee. Cities failure or refusal to timely accept a tender of defense pursuant to this provision will be deemed a material breach of this Agreement.

SECTION 10: Miscellaneous Provisions

A. Integration; Severability

This Agreement, the DA, and the Construction Documents incorporated herein, including authorized amendments or change orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Owner. If any provision of this Agreement, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions will remain in full force and effect.

B. Amendment

No amendment or modification of this Agreement will be binding unless it is in a writing duly authorized and signed by the parties to this Agreement, and unless any such amendment conforms to the requirements of the DA, as that document may be amended.

C. Governing Law and Venue

This Agreement will be governed by California law and venue will be in the Superior Court of San Joaquin County, and no other place.

D. Assignment and Successors

Owner may not assign its rights or obligations under this Agreement, in part or in whole, without City's written consent and without simultaneous assignment of its rights and obligations under the DA. Notwithstanding the foregoing, Owner may assign its obligations hereunder to an Affiliate, provided that any such assignment shall not release Owner from responsibility for ensuring that the assigned obligations are satisfied, and Owner shall remain liable to the City for any and all failures by any assignee to fully perform all obligations under this Agreement, such that a failure by an assignee to fully perform an obligation under this Agreement shall constitute a default by Owner.

E. Notice

Any notice given pursuant to this Agreement must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email. Notice shall be deemed to have been given and received on the first to occur of: (i) actual receipt at the address designated above, or (ii) two working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated below. Notice for each party must be given as follows:

City:

City Manager
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
Telephone No.: (209) 831-6400

Facsimile
No.: (209)
831-6439

With copy to:

City Attorney
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
Telephone No.: (209) 831-6130
Facsimile No.: (209) 831-6137

Owner:

Surland Communities
1024 Central Avenue
Tracy, CA 95376
Attention Les Serpa
Telephone No.: (209) 832-7000
Facsimile No.: (209) 833-9700

With copy to:

Herum Crabtree
5757 Pacific Avenue, Suite 222
Stockton, California 95207
Attention: Steve Herum
Telephone: (209) 472-7700
Facsimile: (209) 472-7986

F. Default

1. General

In the event that the Owner is in a material default of this Agreement, as defined in this section, the City Engineer shall provide written notice to the Owner in which the default is described.

2. Default Defined

The Owner shall be in default of this Agreement if the City Engineer determines that any one of the following conditions exist:

(a) The Owner is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.

(b) The Owner abandons the Work for a continuous period of thirty (30) days that is not due to weather conditions, labor disputes, acts of God, lack of city funding, or other circumstances beyond the control of Owner,

(c) The Owner fails to perform one or more requirements of this Agreement.

(d) The Owner fails to remedy any loss or damage incurred by the City caused by Owner or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work in instance where Owner does not dispute that it is responsible for the loss or damage.

(e) The Owner violates any legal requirement related to the Work.

3. Cure

In the event that the Owner fails to cure the default within thirty (30) days, or provide adequate written assurance to the satisfaction of the City Engineer that the cure will be promptly commenced and diligently prosecuted to its completion, the City may, in the discretion of the City Engineer, take any or all of the following actions:

(a) Cure the default.

(b) Demand the Owner to complete performance of the Work.

G. Independent Contractor Status

The Owner is an independent contractor and is solely responsible for all acts of its employees, agents, or subcontractors, including any negligent acts or omissions. Owner is not City's employee and Owner shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Owner.

H. Attorneys' Fees

In the event any legal action is commenced to enforce this Agreement, the prevailing Party is entitled to reasonable attorney's fees, costs, and expenses incurred.

I. Waiver

Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

J. Signatures

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Owner and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

[SIGNATURE PAGE FOLLOWS]

"City"
CITY OF TRACY, a municipal corporation

_____
By:
Title: _____
Date: _____

Attest:

_____
By:
Title: CITY CLERK
Date: _____

"Owner"
SURLAND COMMUNITIES, LLC, a California limited liability company

_____
By:

By: _____
Les Serpa
Title: _____
Date: _____

Attachment E

ADDENDUM TO THE
ELLIS MODIFIED PROJECT
ENVIRONMENTAL IMPACT REPORT
SCH NO. 2012022023

February 2018

Proposed Amendment to the
Ellis Specific Plan

Prepared For:

City of Tracy
Department of Development Services
333 Civic Center Plaza
Tracy, CA 95376

Prepared By:

Kimley-Horn and Associates, Inc.
100 West San Fernando Street, Suite 250
San Jose, CA 95113

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INTRODUCTION

The following document provides an analysis of the proposed Amendment to the Ellis Specific Plan and General Plan Amendment ("proposed Project") with respect to consistency with the previously approved Ellis Specific Plan, the analysis contained in the certified Modified Ellis Project EIR ("EIR" or "Ellis Project"), and any site specific environmental impacts or cumulative impacts that may result from the proposed Amendment to the Specific Plan as described herein.

California Environmental Quality Act

This Addendum has been prepared in accordance with the provisions of the California Environmental Quality Act (CEQA) (California Public Resources Code [PRC] §§ 21000 et seq.); the State CEQA Guidelines (Title 14, California Code of Regulations [CCR] §§ 15000 et seq.); and the rules, regulations, and procedures for implementing CEQA as set forth by the City of Tracy (City).

Section 15164(a) of the State CEQA Guidelines states that "the lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred." Pursuant to Section 15162(a) of the State CEQA Guidelines, a subsequent EIR or Negative Declaration is only required when:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

    (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

    (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

    (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or,

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

The following describes the requirements of an addendum, as defined by CEQA Guidelines Section 15164:

(a) The lead agency or responsible agency shall prepare an Addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a Subsequent EIR have occurred.

(b) An Addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.

(c) An Addendum need not be circulated for public review but can be included in or attached to the Final EIR.

(d) The decision-making body shall consider the Addendum with the Final EIR prior to making a decision on the project.

(e) A brief explanation of the decision not to prepare a Subsequent EIR pursuant to Section 15162 should be included in an Addendum to an EIR, the lead agency's findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence.

If none of these circumstances are present, and only minor technical changes or additions are necessary to update the previously certified EIR, an addendum may be prepared, consistent with CEQA Guidelines Section 15164.

Based on the analysis and evaluation provided in this Addendum, no new significant impacts would occur because of the proposed Amendment, nor would there be any substantial increase in the severity of any previously-identified significant environmental impact. In addition, no new information of substantial importance shows that mitigation measures or alternatives that were previously found not to be feasible or that are considerably different from those analyzed in the Modified Ellis Project Environmental Impact Report would substantially reduce one or more significant effects on the environment. Therefore, no conditions described in Section 15162 of the CEQA Guidelines has occurred. For this reason, an Addendum is the appropriate document that will comply with CEQA requirements for the proposed Amendment.

PREVIOUS ENVIRONMENTAL ANALYSIS OF THE PROJECT

The Tracy City Council approved the Ellis Specific Plan and certified the corresponding EIR (Modified Ellis Project EIR (SCH# 2012022023)) on January 22, 2013. This EIR incorporates by reference, where relevant and appropriate, discussion and analysis contained in the previously prepared Ellis Specific Plan EIR. The Modified Ellis Project EIR evaluates the potential environmental impacts resulting from the approval and implementation of the Ellis Specific Plan Project. The Ellis Specific Plan Project involves the development of a minimum of 1,000 to a maximum of 2,250 residential units, as well as a Village Center, open space, 180,000 square feet of retail, office, and other commercial uses, and, consistent with the City's

requirements, approximately four acres per 1,000 people of parks with an opportunity to include a Swim Center on approximately 321 acres. As noted above, the Specific Plan also included a zoning action, and therefore constitutes the zoning for the Ellis Specific Plan Area, which includes the proposed Project site.

PURPOSE OF ADDENDUM

The purpose of this Addendum is to analyze any potential differences between the impacts identified in the previously certified Modified Ellis Project EIR and those that would be associated with the proposed modifications to the Ellis Specific Plan Project.

Pursuant to provisions of CEQA and the State CEQA Guidelines, the City of Tracy is the Lead Agency charged with the responsibility of deciding whether to approve the proposed Amendment. As part of its decision-making process, the City is required to review and consider whether the proposed Amendment would create new significant impacts or significant impacts that would be substantially more severe than those disclosed in the previously certified EIR. The decision-making body must consider the whole of the data presented in the Modified Ellis Project EIR, and as augmented by this Addendum and the previously adopted Mitigation Monitoring and Reporting Program. Additional CEQA review beyond this Addendum would only be triggered if the proposed Amendment created new significant environmental effects or a substantial increase in the severity of previously identified significant effects disclosed in the Modified Ellis Project EIR used to approve the Ellis Specific Plan.

PROPOSED REVISIONS TO THE APPROVED PROJECT

An Amendment to the previously approved Ellis Specific Plan and General Plan Amendment (proposed Project) has been submitted to the City of Tracy for consideration. The purpose/intent of the Amendment is for modification to the proposed swim center location within the Ellis Specific Plan and other proposed refinements to the Village Center and Limited Use acreages. There are also other proposed changes to the Specific Plan, such as the addition of the Residential Estate designation. The overall existing footprint of the Ellis Specific Plan has not changed, nor the overall number of proposed dwelling units or commercial square footage. Rather, the Project proposes to shift land uses slightly for better use of the Ellis Specific Plan site.

Project Location

The City of Tracy is located in San Joaquin County, which is within the Central Valley region of California. The City is approximately 60 miles east of San Francisco, which is separated from the Central Valley by the Coastal Range. The southwestern portion of San Joaquin County is located within the Diablo Range, and generally consists of rolling hills cut by drainage channels; refer to Figure 1, *Regional Vicinity Map.*

The Ellis Specific Plan area is physically separated from surrounding areas by the Union Pacific Railroad on the south, the Delta Mendota Canal to the southwest, Corral Hollow Road on the east, and Lammers Road on the west; refer to Figure 2, *Project Vicinity Map.*

Change in Site Condition

A portion of Phase I of the Ellis Specific Plan area has already been developed with approximately 40 single-family residential units under the existing Project approvals. Another 62 single-family residential units are currently under construction.

Proposed Modifications to the Ellis Specific Plan Amendment (Proposed Modifications)

As set forth in the City's General Plan, the General Plan designations for the Ellis Specific Plan area includes Traditional Residential-Ellis (TR-Ellis), Commercial, and Village Center. The proposed Amendment (modifications) to the Ellis Specific Plan would decrease the Residential Mixed designation from 284.7 acres to 260 acres, increase the Village Center designation from 5.7 to 14 acres, eliminate the Commercial designation, increase the Limited Use designation from 26.2 acres to 30 acres, and add 17 acres in a new designation known as "Residential Estates." The proposed Amendment would merge the 5.7 acres of Village Center (60,000 square feet of non-residential uses and up to 50 high density residential units) with the existing 4.4 acres of Commercial use (40,000 square feet of non-residential uses) and add 4 acres to create a total of approximately 14 acres of Village Center. The proposed Swim Center location would also shift south of its existing proposed location for better site access; refer to Figure 3, *Revised General Plan Land Use Designations,* and Figure 4, *Revised Ellis Specific Plan Zoning Summary.*

Table 1, *Existing vs Proposed Ellis Specific Plan Land Use Summary*, identifies the proposed land use changes.

Table 1: Existing vs Proposed Ellis Specific Plan Land Use Summary

Land Use Designation	2012 Ellis Specific Plan	2017 Ellis Specific Plan Amendment	Change
Residential Mixed	1,000 to 2,250 Units	1,000 to 2,250 units	No Change
Residential Estates	N/A	0 to 9 units	+9 units
Village Center	0 to 50 units	0 to 50 units	No Change
Total Residential Units Allowed	***2,250 maximum***	***2,250 maximum***	***No Change***
Village Center	60,000 sf	140,000 sf	+80,000 sf
Commercial	40,000 sf	0 sf	-40,000 sf
Limited Use (subset of Commercial Uses	80,000 sf	40,000 sf	-40,000 sf
Total Non-Residential Square Feet Allowed	***180,000 sf***	***180,000 sf***	***No Change***

Source: Ellis Specific Plan Amendment, March 2017

As identified in Table 1, no changes would occur to the overall allowable residential units or overall square footage previously approved as part of the Ellis Specific Plan.

The Specific Plan Amendment would also require a General Plan Amendment to provide consistency between the General Plan Land Use Designations Map with the changes proposed in the Specific Plan Amendment.

All future development within the Ellis Specific Plan footprint (including in newly designated areas as identified in the Specific Plan Amendment) would be required to go through City processes and approvals prior to construction, as specified in the Ellis Specific Plan.

Development Agreement Amendment

The proposed Project also includes a second amendment to the existing Amended and Restated Development Agreement (DA) for the Ellis Specific Plan. The key changes to the existing Development Agreement are as follows:

- City and Owner (identified in the DA as Surland Communities, LLC) to execute an agreement to provide for, among other things, the design, funding and construction of the Swim Center and certain associated infrastructure improvements;
- States that Owner may in the future apply to the City for subsequent DA Amendments to bring additional property outside of the existing Ellis Specific Plan area within the coverage, terms and conditions of the Development Agreement. This additional property is defined in the proposed DA Amendment as "DA Property" (in contrast with the property within the existing Ellis Specific Plan Area, which is defined in the DA as "Property"). Before this additional property (the "DA Property") can become subject to the coverage of the DA, it must be annexed to the City through normal annexation and planning procedures, which include all necessary San Joaquin County Local Agency Formation Commission approvals, all necessary City Council approvals, and compliance with all applicable California Environmental Quality Act requirements. The City Council will retain its full discretion to approve, conditionally approve, or deny any application by Owner to bring such additional DA Property within the coverage of the DA;
- Modifies the City's Growth Management Ordinance Guidelines to expand the scope of Owner's eligibility for Residential Growth Allotments (RGAs) and to allow Owner to transfer RGAs issued to Owner under the DA to additional properties which, in the future, come within the coverage of the DA through future DA Amendments;
- Owner to be granted a right-of-first-refusal for Residential Growth Allotments (RGAs) not accepted by other property owners, up to the City's entire maximum RGA allocation for that year;
- The effective term of Building Permits issued to the Project Applicant shall be extended to 24 months;
- Owner may execute an agreement with the City to provide for payment of development impact fees at close of escrow for each residential unit, rather than at issuance of building permit or certificate of occupancy;
- Modifications to park approval process for parks within the Project site;
- City and Owner to execute a Park & Landscape Maintenance Agreement;
- City and Owner to cooperate to annex all property covered by the Development Agreement (as it now exists or may exist in the future) to the Ellis Community Facilities District;
- City and Owner to execute a Public Infrastructure Credit & Reimbursement Agreement.

Development Agreement Properties or additional property ("DA Property") not currently within the boundaries of the Ellis Specific Plan are not evaluated in this Addendum, as they are unknown at this time, and any analysis related to their respective impacts would be too speculative for evaluation. Further, as summarized in bullet point #2 above, the DA is intended to preclude the extension of any rights to additional property, specifically, any lands outside of the boundaries of the Ellis Specific Plan until such

time as the owner processes any other DA Property through all of the City's conventional planning processes, including securing applicable general plan amendments/zone changes, annexation, sphere of influence boundary modifications and complies with all requirements under CEQA for discretionary actions related to the inclusion of DA Properties within the boundaries of Ellis.

Among other factors, additional CEQA review beyond this Addendum would be triggered if the proposed second amendment to the DA created new significant environmental effects (not previously analyzed in the certified EIR) or would result in a substantial increase in the severity of previously identified significant effects disclosed in the EIR used to approve the Ellis Specific Plan. The key changes identified above are intended to further govern the implementation of the above project and do not constitute substantial changes to the project or project circumstances that would require major revisions to the certified EIR. The key changes identified above are minor technical changes that neither result in new environmental impacts, nor increase the severity of the environmental impacts previously analyzed.

Zoning Ordinance Amendment

The proposed Project also includes an amendment to the Zoning Ordinance. The purpose of the Zoning Ordinance Amendment is to add the Ellis Specific Plan Zone to the list of zone districts in the City. Upon implementation of the Zoning Ordinance Amendment, all property within the Ellis Specific Plan Area will be zoned Ellis Specific Plan Zone and the City's Zoning Map would be amended to reflect this change. The zoning regulations for the Ellis Specific Plan Zone are contained in the existing Ellis Specific Plan.

Based on the analysis and evaluation provided in this Addendum, no new significant impacts would occur because of the proposed Zoning Ordinance Amendment, nor would there be any substantial increase in the severity of any previously-identified significant environmental impact.

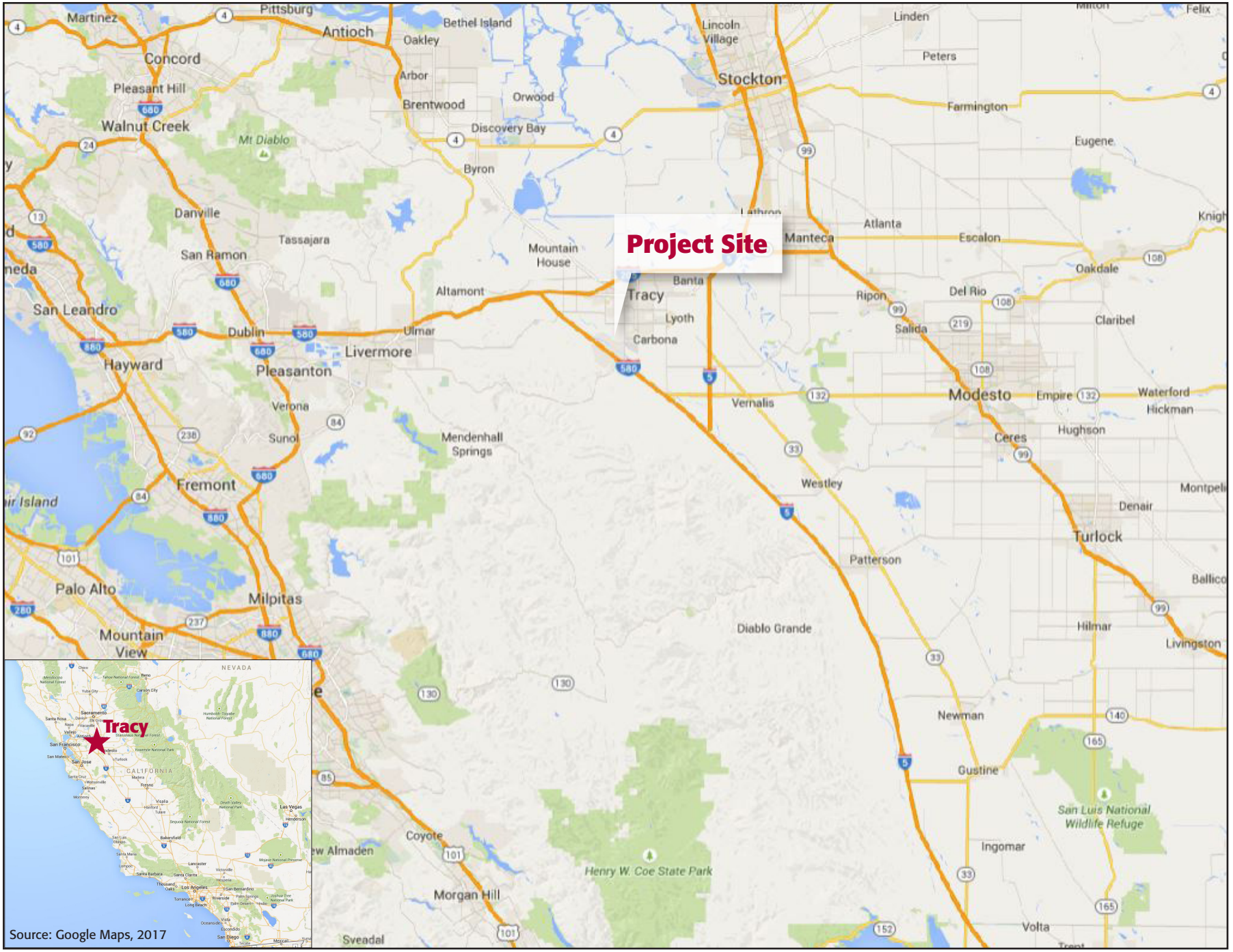
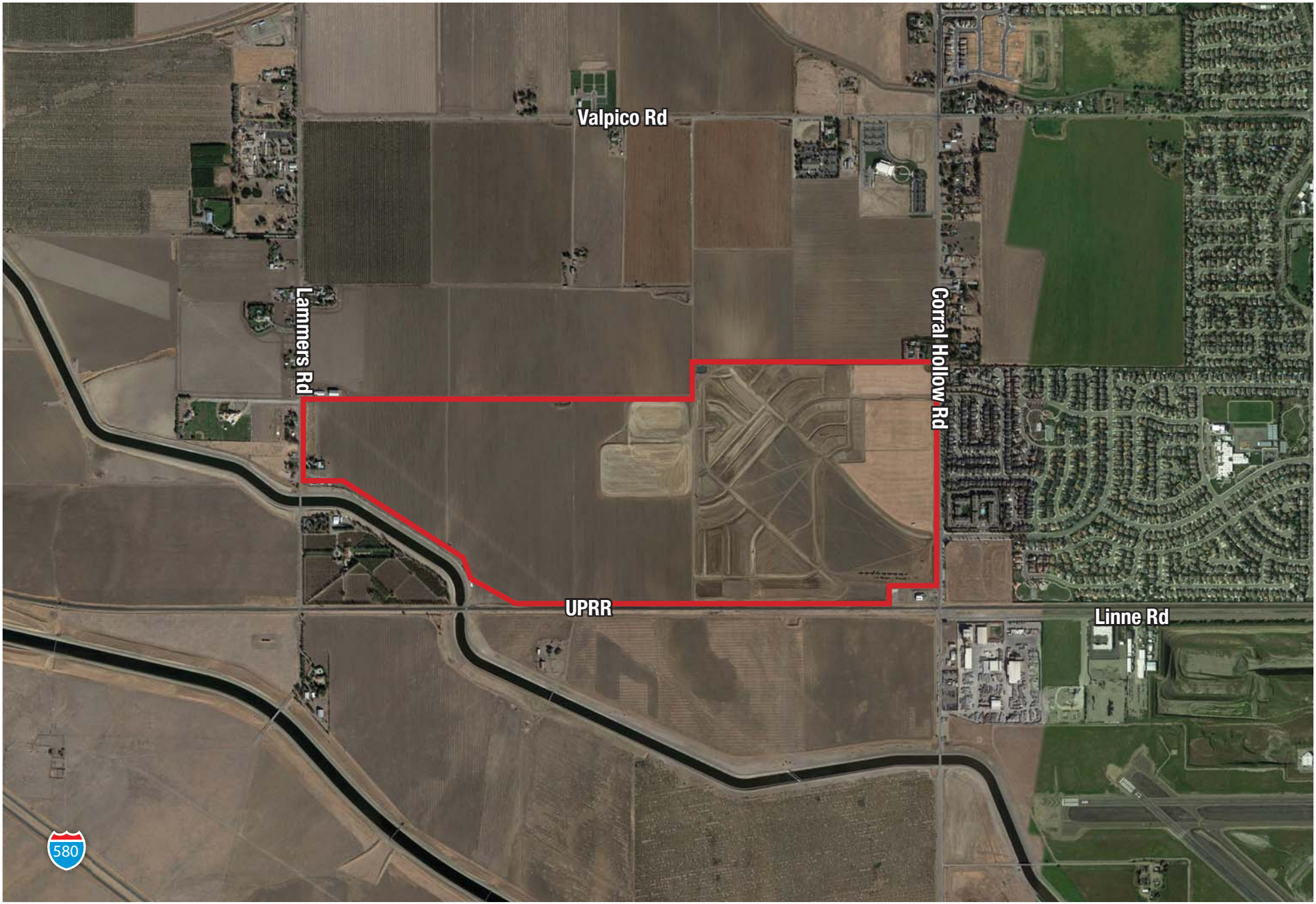


FIGURE 1: Regional Vicinity Map
Addendum to the Ellis Modified Project EIR
City of Tracy

Not to scale

Kimley»Horn



Source: Google Earth, 2017

Project Site

FIGURE 2: Project Vicinity Map
Addendum to the Ellis Modified Project EIR
City of Tracy

Not to scale

Kimley»Horn

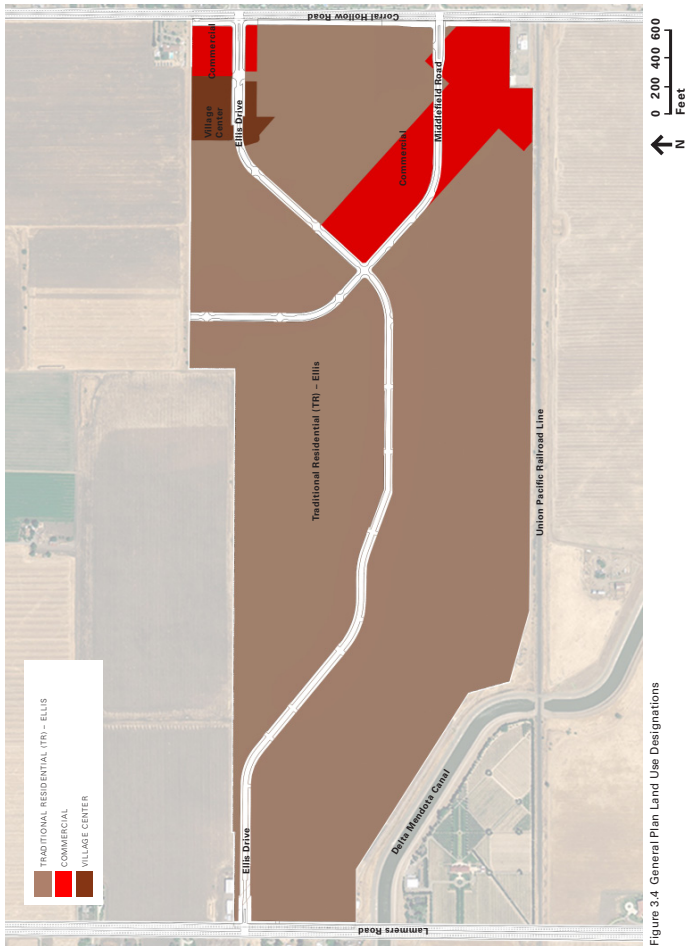


Figure 3.4 General Plan Land Use Designations

APPROVED

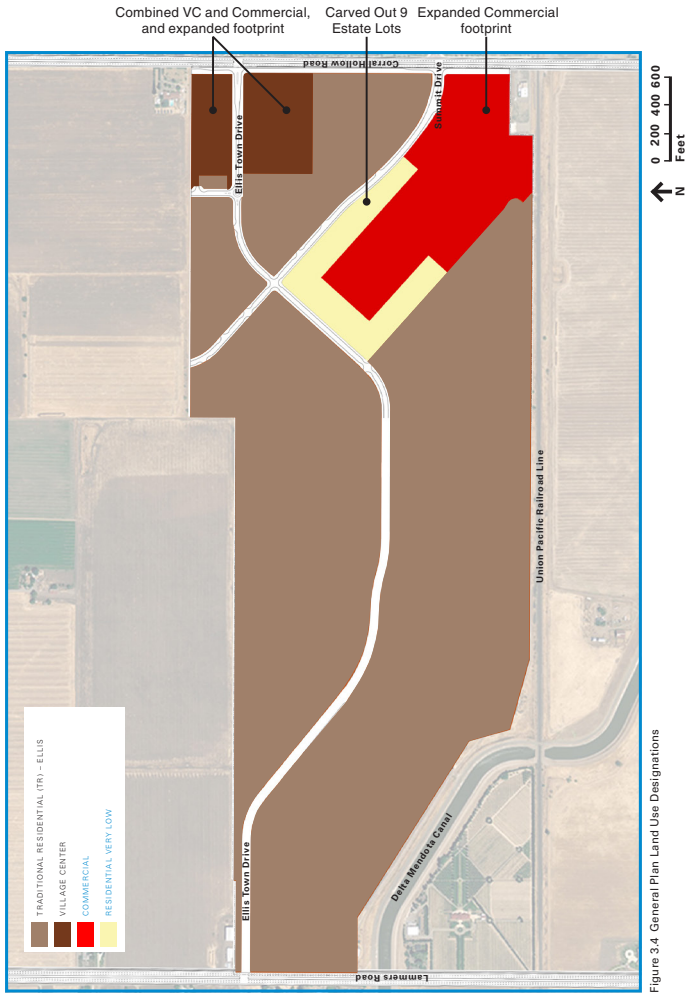


Figure 3.4 General Plan Land Use Designations

PROPOSED

FIGURE 3: Revised General Plan Land Use Designations
Addendum to the Ellis Modified Project EIR
City of Tracy

Not to scale

Kimley»Horn

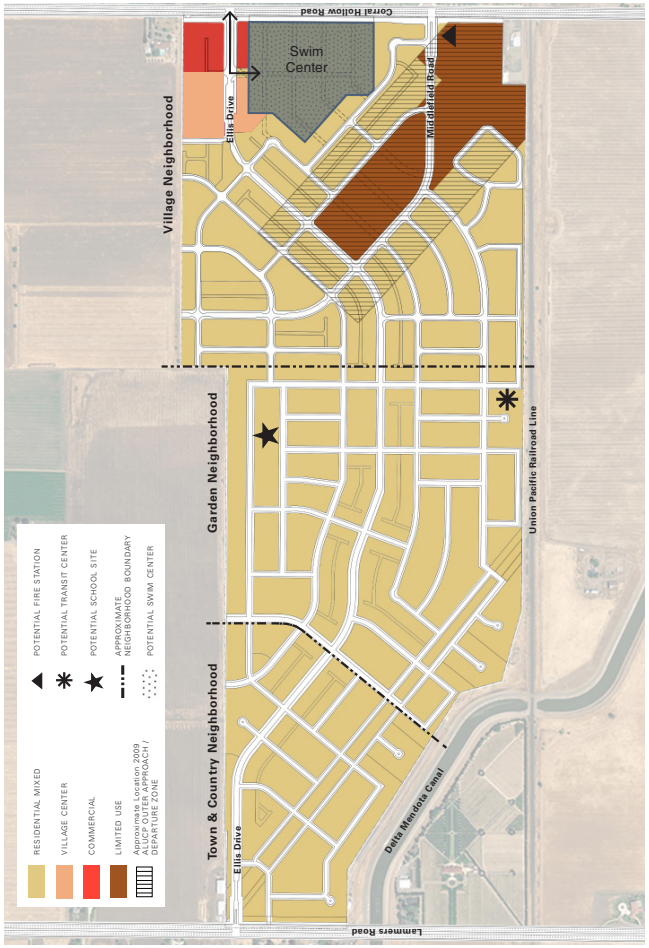


Figure 3.6 ESP Zoning Summary
Note 1: Pursuant to the City of Tracy General Plan, parks and special landscape features are allowed within residential land use designations. The precise location of such facilities will be determined upon approval of detailed plans. For an illustration showing the approximate location of parks and special landscape features, see Section 4, Figure 4.49.
Note 2: Pursuant to the City of Tracy General Plan, lanes are allowed within residential land use designations. The precise location of such facilities will be determined upon the approval of detailed plans. Diagrams in the ESP are illustrative and not intended to indicate the percent or location of lane loaded lots. In general, lanes are encouraged parallel to higher traffic interior streets and along view corridors.

APPROVED

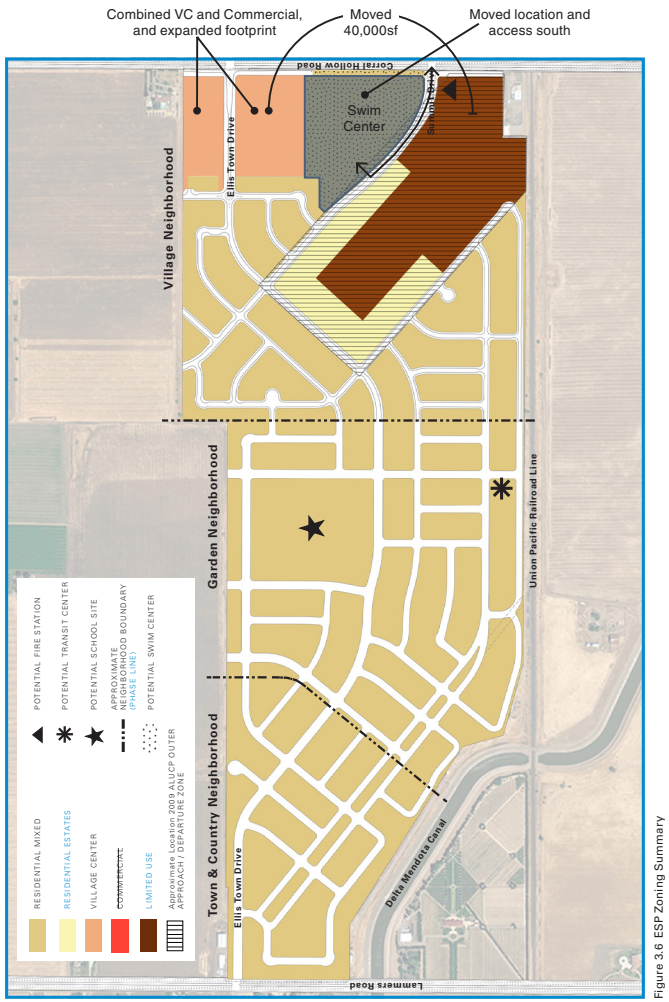


Figure 3.6 ESP Zoning Summary
Note 1: Pursuant to the City of Tracy General Plan, parks and special landscape features are allowed within residential land use designations. The precise location of such facilities will be determined upon approval of detailed plans. For an illustration showing the approximate location of parks and special landscape features, see Section 4, Figure 4.49.
Note 2: Pursuant to the City of Tracy General Plan, lanes are allowed within residential land use designations. The precise location of such facilities will be determined upon the approval of detailed plans. Diagrams in the ESP are illustrative and not intended to indicate the percent or location of lane loaded lots. In general, lanes are encouraged parallel to higher traffic interior streets and along view corridors.

PROPOSED

FIGURE 4: Revised Ellis Specific Plan Zoning Summary
Addendum to the Ellis Modified Project EIR
City of Tracy

Not to scale

Kimley»Horn

Ellis Specific Plan Environmental Impact Analysis Summary

The Modified Ellis Project EIR, certified on January 22, 2013, found the following effects to be significant and unavoidable impacts:

Aesthetics, Light, and Glare:

- The Ellis Specific Plan would create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area.
- Implementation of the Ellis Specific Plan could substantially degrade the existing visual character or quality of the site and its surroundings.
- The Ellis Specific Plan could cause a substantial adverse effect on a scenic vista.
- The Ellis Specific Plan could substantially damage scenic resources, including, but not limited to, trees, rocks, outcroppings, and historic buildings within a state scenic highway.

Air Quality:

- The Ellis Specific Plan would result in an overall increase in the local and regional pollutant load due to direct impacts from vehicle emissions and indirect impacts from area sources and electricity consumption.
- Due to the Ellis Specific Plan site's exceedances of SJVAPCD's air quality standards, future development within the ESP site would not be consistent with the most recent Air Quality Management Plan.
- Implementation of the Ellis Specific Plan could impact regional air quality levels on a cumulatively considerable basis.

Agricultural Resources:

- The proposed Ellis Specific Plan would convert Prime Farmland to non-agricultural uses.

Greenhouse Gas Emissions:

- Significant generation of greenhouse gas emissions.
- Future development facilitated by the Ellis Specific Plan and other related cumulative projects could have a cumulatively considerable contribution to greenhouse gas emissions.

Land Use:

- Agricultural land conversion.

Noise:

- Substantial noise levels for future residential uses along the Union Pacific Railroad.
- Temporary increases in noise and/or vibration from grading and construction.
- Substantial increases in traffic noise.
- Cumulatively considerable contribution to traffic noise.

Traffic:

- The addition of traffic to the regional transportation system from the Ellis Specific Plan would degrade LOS on I-580 west of I-205 to unacceptable traffic conditions during the AM and PM peak hours.
- The addition of traffic from the Ellis Specific Plan would further degrade an existing unacceptable traffic condition on Tesla Road and Patterson Pass Road individually and cumulatively.
- Cumulative contribution of traffic to segments of I-580.

The 2013 Modified Ellis Specific Plan Final EIR found the following effects to be less than significant with mitigation incorporated:

Air Quality:

- Construction related dust and vehicle emissions;

Agriculture:

- Impacts to Important Farmland;

Biological Resources:

- Impacts to candidate, sensitive, or special status species or sensitive natural community identified in local or regional plans, policies, or regulations;
- Impacts to riparian habitat or other sensitive natural communities;
- Cumulatively considerable contribution to the loss of vegetation and wildlife resources;

Geology and Soils Hazards:

- Located on expansive soils;

Greenhouse Gas Emissions:

- Conflict with an applicable greenhouse gas reduction plan, policy, or regulation;

Hazards and Hazardous Materials:

- Accidental release of hazardous materials;

Hazards associated with natural gas and oil pipelines;

- Cumulatively considerable contribution to hazardous impacts;

Hydrology, Drainage, and Water Quality:

- Violate water quality standards;
- Alter drainage patterns;
- Degrade water quality;

Public Utilities:

- Increase demand necessitating the expansion of utility services;
- Substantial adverse impacts associated with provisions of new or physically altered government facilities, or the need for new facilities.

Traffic:

- Generation of unacceptable levels of service;

Water Supply and other Public Utilities:

- Expansion of City's existing wastewater treatment system;
- Cumulative demand for water, wastewater, and storm drainage facilities;

Implementation of mitigation measures identified in the Modified Ellis Project EIR would reduce the severity of potentially significant and unavoidable impacts as well as mitigate aforementioned impacts to a level of less than significant. Where applicable, mitigation measures stemming from the previously certified Specific Plan EIR and adopted as conditions of Specific Plan approval would be incorporated into the proposed Project.

The Ellis Specific Plan Final EIR found that build-out of the Ellis Specific Plan would have a less than significant impact or no impact to remaining topical areas not identified above pursuant to the *CEQA Guidelines*.

Conclusion

The proposed Amendment would not result in any new significant impacts that have not already been analyzed in the Modified Ellis Project EIR. The implementation of the Amendment would also not result an increase in the severity of any previously identified environmental impacts. The potential impacts associated with this Amendment would either be of the same significance or less than those described in the Modified Ellis Project EIR. There are no substantial changes to the conditions under which the proposed Amendment would be undertaken that would result in any new or more severe environmental impacts than those already addressed in the certified Modified Ellis Project EIR. No new information regarding the potential for new or more severe significant environmental impacts been identified. Therefore, in accordance with the State CEQA Guidelines, this Addendum to the previously certified Modified Ellis Project EIR is the appropriate environmental documentation for the Ellis Specific Plan Amendment. No further environmental review associated with the proposed Amendment is thereby required.

On January 22, 2013, the Tracy City Council adopted a Statement of Overriding Considerations for all significant impacts associated with build-out of the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact not contemplated in the previously certified Modified Ellis Project EIR.

I. AESTHETICS

Threshold (a) Would the Project have a substantial adverse effect on the scenic vista?

Previous Significance Determination: Impacts related to scenic vistas were considered significant and unavoidable in the previously certified Modified Ellis Project EIR.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

Implementation of the proposed Amendment would not impact the scenic vista, as the changes are limited to a shift in land use designations and acreages. A portion of the Ellis Specific Plan Area has already been developed with residential uses. Implementation of the proposed Amendment would lead to future development of the site consistent with the Specific Plan Amendment. As such, the scenic vista would not be altered any further than what was previously analyzed. No greater impacts and no change to the disposition of impacts on the build-out of the Ellis Specific Plan would occur as a result of the proposed Amendment. Additional environmental review is not required since this impact was addressed and is consistent with the development density analyzed in the Modified Ellis Project EIR.

Threshold (b) Would the Project substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a State scenic highway?

Previous Significance Determination: The Ellis Specific Plan would result in the construction of buildings and other urban features within the range of the I-580, which is a designated scenic corridor. Thus, a significant and unavoidable impact would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

Implementation of the proposed Amendment would not damage scenic resources, as the modifications to the Specific Plan are limited to a shift in land use designations and acreages. Implementation of the proposed Amendment would lead to future development of the site consistent with the Specific Plan Amendment. As such, impacts to scenic resources would not be altered any further than what was previously analyzed. Additional environmental review is not required since this impact was addressed and is consistent with the development density analyzed in the Modified Ellis Project EIR.

Threshold (c) Would the project substantially degrade the existing visual character or quality of the site and its surroundings?

Previous Significance Determination: Impacts related to the visual character of the Ellis Specific Plan site were considered significant and unavoidable in the previously certified Modified Ellis Project EIR.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

Implementation of the proposed Amendment would likely lead to future development of the site consistent with the Specific Plan and as modified by the proposed Amendment. No greater impacts and

no change to the disposition of impacts on the build-out of the Ellis Specific Plan would occur as a result of the proposed Amendment. Additional environmental review is not required since this impact was addressed and is consistent with the development density analyzed in the Modified Ellis Project EIR.

Threshold (d) Would the project create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?

Previous Significance Determination: Light and glare generated by the Ellis Specific Plan were considered significant and unavoidable in the previously certified Modified Ellis Project EIR.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The proposed modifications to the Specific Plan would have no material effect on the previously analyzed light and glare impacts, as the modifications to the Specific Plan are limited to a shift in land use designations and acreages. The proposed modifications to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed.

Cumulative Impacts

The potential aesthetic impacts related to views, aesthetics, and light and glare are site specific. While impacts are minimized with implementation of mitigation measures, impacts related to aesthetics across the Specific Plan Area were considered cumulatively significant and unavoidable in the previously certified Modified Ellis Project EIR. As discussed above, the proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Amendment-related impacts are consistent with the environmental effects previously identified certified Modified Ellis Project EIR. The proposed Amendment would be consistent with the land use and development regulations contained in the Ellis Specific Plan. Therefore, no additional adverse cumulative aesthetic impacts would occur. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed.

Mitigation Program

The proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. The mitigation measures provided in the Modified Ellis Project EIR continue to be applicable and no additional mitigation measures are required.

II. AGRICULTURAL AND FORESTRY RESOURCES

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

Threshold (b) Would the project conflict with existing zoning for agricultural use, or a Williamson Act contract?

Previous Significance Determination: Impacts related to the conversion of prime farmland were considered significant and unavoidable in the previously certified Modified Ellis Project EIR.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The California Department of Conservation Farmland Mapping and Monitoring Program has designated the site "Farmland of Local Importance". No Prime Farmland, Unique Farmland, or Farmland of Statewide Importance is currently mapped in the Ellis Specific Plan vicinity. It should be noted however, that at the time of the preparation of the Modified Ellis Project EIR, a portion of the site was mapped as Prime Farmland. The proposed Ellis Specific Plan site is not the subject of a Williamson Act contract. The site is currently zoned Ellis Specific Plan.

The proposed Amendment is consistent with the City's overall planning vision, which assumes residential and commercial uses would be developed with urban uses. The proposed Amendment does not contribute to this impact since the proposed Amendment area does not currently contain prime farmland, unique farmland, or farmland of statewide importance.

Thus, the proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed.

Threshold (c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?

Threshold (d) Result in the loss of forest land or conversion of forest land to non-forest use?

Threshold (e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to Previous

Previous Significance Determination: No impacts related to the conversion of forest land were in the previously certified Modified Ellis Project EIR.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

No forest land occurs within or adjacent to the Ellis Specific Plan area. The Ellis Specific Plan, the 2011 City of Tracy General Plan and the 2013 Tracy Zoning Ordinance do not provide for any forest land preservation within the site. No change to the disposition of impacts associated with the build-out of the Ellis Specific Plan would result from the proposed Amendment. Impacts were considered less than significant for build-out of the Ellis Specific Plan, therefore impacts would remain less than significant. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed.

Cumulative Impacts

As discussed above, the proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Amendment-related impacts are consistent with the environmental effects previously identified in the certified Modified Ellis Project EIR. The proposed Amendment would be consistent with the land use and development regulations contained in the Ellis Specific Plan. Therefore, no additional adverse cumulative agricultural and forestry related impacts would occur. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Less than significant impacts would occur.

Mitigation Program

The proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. The mitigation measures provided in the Modified Ellis Project EIR continue to be applicable and no additional mitigation measures are required.

III. AIR QUALITY

Threshold (a) Would the project conflict with or obstruct implementation of the applicable air quality plan?

Previous Significance Determination: The Modified Ellis Project EIR found that build-out of the Specific Plan would generate a substantial increase in (both construction and operational-related) criteria air pollutants that would exceed the SJVACPD's significance thresholds. Therefore, build out of the Specific Plan Area would be inconsistent with the SJVAPCD's air quality plans and impacts were considered significant and unavoidable within the previously certified EIR prepared for the Ellis Specific Plan.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The density and intensity of land uses proposed under the Amendment are consistent with the Ellis Specific Plan; thus, impacts relative to conflicts with applicable air quality plans would be similar to the building density, intensity, and land use designations identified in the Modified Ellis Project EIR and no new impact or increase in the severity of a previously identified impact would occur.

Threshold (b) Would the project violate an air quality standard or contribute to an existing or projected air quality violation?

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

Threshold (d) Would the project expose sensitive receptors to substantial pollutant concentrations?

Previous Significance Determination: The region of the proposed Amendment area is classified as nonattainment for ozone, PM_{10}, and particulate matter with a diameter smaller than 2.5 microns ($PM_{2.5}$). Buildout of the Specific Plan Area would generate emissions of ROG, PM_{10}, and NO_x during operation that would be above the SJVACPD's regional thresholds of significance. Therefore, impacts were determined to be significant and unavoidable within the previously certified EIR prepared for the Ellis Specific Plan.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The density and intensity of land uses proposed under the Amendment are consistent with the Ellis Specific Plan; thus, the impact relative to air quality violations would be similar to the building density, intensity, and land use designations identified in the Modified Ellis Project EIR and no new impact or increase in the severity of a previously identified impact would occur.

Threshold (e) Would the project create objectionable odors affecting a substantial number of people?

Previous Significance Determination: The Ellis Specific Plan does not propose to include any odor inducing uses on the site. Therefore, impacts were determined to be less than significant within the previously certified EIR prepared for the Ellis Specific Plan.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

SJVAPCD has identified a list of common types of facilities that have been known to produce odors in the SJVAB along with a reasonable distance from the source within which, the degree of odors could be significant. These land uses include the following: wastewater treatment facilities, sanitary landfills, transfer stations, composting facilities, petroleum refinery, asphalt batch plant, chemical manufacturing, fiberglass manufacturing, painting/coating operations, food processing facilities, feed lot/dairies and rendering plants. The proposed Amendment does not propose to include any odor inducing uses on the site. Therefore, the Amendment would not allow for development of uses that would be a source of objectionable odors, therefore no impact would occur. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed.

Cumulative Impacts

Impacts related to air quality associated with the development of the Ellis Specific Plan were considered cumulatively significant and unavoidable in the previously certified Modified Ellis Project EIR. As discussed above, the proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Amendment-related impacts are consistent with the environmental effects previously identified certified Modified Ellis Project EIR. The proposed Amendment would be consistent with the land use and development regulations contained in the Ellis Specific Plan. Therefore, no additional adverse cumulative air quality related impacts would occur. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Less than significant impacts would occur.

Mitigation Program

The proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. The mitigation measures provided in the Modified Ellis Project EIR continue to be applicable and no additional measures are required.

IV. BIOLOGICAL RESOURCES

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

Previous Significance Determination: The Modified Ellis Project EIR concluded that, with mitigation, implementation of the Specific Plan would not impact candidate, sensitive, or special status species.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

Future development that may occur under the proposed Amendment would be located within the same footprint of the Ellis Specific Plan. Thus, impacts associated with sensitive, candidate, or special status species were previously analyzed in the Modified Ellis Project EIR. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed in the certified Modified Ellis Project EIR.

Threshold (b) Would the project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?

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

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, the site does not contain riparian habitat, and no impacts would occur. The Modified Ellis Project EIR concluded that no impacts would occur with respect to either riparian habitat or wetlands.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

As previously discussed, the Ellis Specific Plan area does not contain riparian habitat or wetlands. Implementation of the proposed Amendment would not impact riparian habitat or resources. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed in the certified Modified Ellis Project EIR.

Threshold (d) Would the project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

Previous Significance Determination: The Modified Ellis Project EIR concluded that, with mitigation, implementation of the Specific Plan would not impact movement of fish or wildlife species.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

> *Future development that may occur under the proposed Amendment would be located within the same footprint of the Ellis Specific Plan. Impacts associated with interference of fish or wildlife movement were previously analyzed in the Modified Ellis Project EIR. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed in the certified Modified Ellis Project EIR.*

Threshold (e) Would the project conflict with any local policies or ordinances related to protecting biological resources, such as a tree preservation policy or ordinance?

Previous Significance Determination: The Modified Ellis Project EIR concluded that, with mitigation, implementation of the Specific Plan would not conflict with local policies or ordinances protecting biological resources.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The proposed Amendment is being prepared to update the Ellis Specific Plan, which was adopted in 2013 and is in compliance with the City of Tracy General Plan. All impacts regarding conflicts with relevant plans and ordinances were considered at the time the previously certified Modified Ellis Project EIR was adopted. Consistent with the conclusion identified in the previously certified EIR, the proposed Amendment's impacts in this regard would be less than significant.

Threshold (f) Would the project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

Previous Significance Determination: The Modified Ellis Project EIR concluded that implementation of the Specific Plan would not conflict with an adopted habitat conservation plan.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

As with implementation of the adopted Specific Plan, future development that may occur under the proposed Amendment would be subject to the regulations and provisions of the San Joaquin Multi Species Conservation Plan (SJMSCP). As a result, no impacts relative to conservation plans would occur. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed.

Cumulative Impacts

As discussed above, the proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Amendment-related impacts are consistent with the environmental effects previously identified in the certified Modified Ellis Project EIR.

The proposed Amendment would be consistent with the land use and development regulations contained in the Ellis Specific Plan. Additionally, future development that may occur under the proposed Amendment would be located within the same footprint previously analyzed in the Modified Ellis Project EIR. Therefore, no additional adverse cumulative biological resources impacts would occur. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Less than significant impacts would occur.

Mitigation Program

The proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. The mitigation measures provided in the Modified Ellis Project EIR continue to be applicable and no additional measures are required.

V. CULTURAL RESOURCES

Threshold (a) Would the project cause a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines Section 15064.5?

Previous Significance Determination: The Modified Ellis Project EIR concluded that implementation of the Specific Plan would not impact historic resources.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The Ellis Specific Plan area does not contain any sites that are listed on National Register or California Register, are State Landmarks, or are California Points of Interest. Since there are no known historical resources within the Specific Plan Area, the proposed Amendment would not have an impact in this regard. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed.

Threshold (b) Would the project cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines Section 15064.5?

Threshold (c) Would the project directly or indirectly destroy a unique paleontological resource or site or unique geological feature?

Previous Significance Determination: The Modified Ellis Project EIR concluded that implementation of the Specific Plan would not impact archaeological or paleontological resources.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The City of Tracy likely contains undiscovered archaeological and paleontological resources, especially in undeveloped areas. Future development that may occur under the proposed Amendment would be developed on vacant land, all of which was analyzed in the previously certified EIR. Thus, although there is the potential to disturb previously undiscovered archaeological and paleontological resources, this potential was previously disclosed and mitigated for in the previously certified EIR. As such, construction within land use designations identified by proposed Amendment would be required to comply with federal and state regulations and the existing Tracy General Plan policies, which would reduce any potential impacts to archaeological resources, if any archaeological resources were discovered during the implementation. Specifically, Tracy General Plan Goal CC-3, Objective CC-3.1, Policies P4 and P5 on pages 3-19 and 3-20 require immediate cessation of construction activity upon discovery of archaeological resources and the protection of cultural resources. Therefore, less than significant impacts would occur. This determination of less than significant impact is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Threshold (d) Would the project disturb any human remains, including those interred outside of formal cemeteries?

Previous Significance Determination: The Modified Ellis Project EIR concluded that implementation of the Specific Plan would not impact human remains.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

There are no known human remains buried within the Ellis Specific Plan site. However, buried remains could be present and unearthed as a result of excavation and grading associated with future development facilitated by the proposed Amendment. State law and the Tracy General Plan provide guidance should human remains be discovered during construction. The California Health and Safety Code and Tracy General Plan Goal CC-3, Objective CC-3.1, Policy P4, P5, and P6 on pages 3-19 and 3-20 require that if human remains are inadvertently discovered during excavation or construction activities, all construction affecting the discovery site must halt, the contractor must contact the appropriate professionals, and the county coroner must examine the remains within 48 hours of discovery. Additionally, if the remains are determined to be Native American, the City would work with local Native American representatives to ensure that the remains and any associated artifacts are treated in a respectful and dignified manner. Despite the applicable regulatory framework and the relatively low likelihood of discovery, it remains possible that future development could discover human remains during subsurface activities, which could then result in the remains being inadvertently damaged. Therefore, less than significant impacts would occur. This determination of less than significant impact is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Cumulative Impacts

As discussed above, the proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Amendment-related impacts are consistent with the environmental effects previously identified in the certified Modified Ellis Project EIR. The proposed Amendment would be consistent with the land use and development regulations contained in the Ellis Specific Plan. Additionally, future development that may occur under the proposed Amendment would be located within the same footprint previously analyzed in the Modified Ellis Project EIR. Therefore, no additional adverse cumulative cultural resources impacts would occur. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Less than significant impacts would occur.

VI. GEOLOGY AND SOILS

Thresholds (a.i – a.iv) Would the project expose persons or structures to seismic hazards?

Previous Significance Determination: The Modified Ellis Project EIR concluded that implementation of the Specific Plan would not expose persons or structures to seismic hazards.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The Ellis Specific Plan area is not considered susceptible to the risk of loss, injury, or death due to fault rupture and the associated impacts would be less than significant. This determination of less than significant impact is supported by the previously certified EIR prepared for the Ellis Specific Plan.

The Seismic Hazards Zonation Program of the California Geological Survey (CGS) has not identified any seismically-induced liquefaction zones in the City of Tracy or in the Ellis Specific Plan Area and impacts would be considered less than significant. This determination of less than significant impact is supported by the previously certified EIR prepared for the Ellis Specific Plan.

The risk of loss, injury, or death due to landslides is considered very low on the Ellis Specific Plan site and the impacts would be considered less than significant. This determination of less than significant impact is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Threshold (b) Would the project result in substantial erosion or loss of topsoil?

Previous Significance Determination: The Modified Ellis Project EIR concluded that implementation of the Specific Plan would not result in erosion or loss of topsoil.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

No land uses or densities are proposed as part of the Amendment that have the potential to increase the severity or likelihood of erosion, and thus impacts are less than significant. This determination of less than significant impact is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Threshold (c) Would the project be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?

Previous Significance Determination: The Modified Ellis Project EIR concluded that implementation of the Specific Plan would not result in landslide, lateral spreading, subsidence, liquefaction and/or collapse.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

Typically, subsidence occurs in areas underlain by soils that are highly compressible, such as soft clays or silts and unconsolidated sand or fill material. Thus, implementation of the proposed Amendment would have a less than significant impact relative to geologically unstable soils. Landslide and liquefaction potential for the Ellis Specific Plan site is considered low, and thus, implementation of future development under the proposed Amendment would also be low, as the land area covered by the proposed Amendment is within the same development footprint covered by the adopted Specific Plan. This determination of less than significant impact is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Threshold (d) Would the project be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code, creating substantial risks to life or property?

Previous Significance Determination: The Modified Ellis Project EIR concluded that, with mitigation, implementation of the Specific Plan would not be subject to expansive soil.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

Because the Ellis Specific Plan site contains clay-type soils, on-site soils are potentially expansive. No land uses or densities are proposed as part of the Amendment that have the potential to increase the severity or likelihood of expansive soils, and thus impacts are less than significant. This determination of less than significant impact is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Threshold (e) Would the project have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewer is not available for the disposal of waste water?

Previous Significance Determination: The Modified Ellis Project EIR concluded that no impacts would occur with regard to use of septic tanks.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

No septic tanks would be used in any land uses developed under the Specific Plan or the proposed Amendment. As a result, no impacts associated with the use of septic tanks would occur as part of the proposed Amendment's implementation.

Cumulative Impacts

As discussed above, the proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Amendment-related impacts are

consistent with the environmental effects previously identified certified Modified Ellis Project EIR. The proposed Amendment would be consistent with the overall land use and development regulations contained in the Ellis Specific Plan. Additionally, future development that may occur under the proposed Amendment would be located within the same footprint previously analyzed in the Modified Ellis Project EIR. Therefore, no additional adverse cumulative geological impacts would occur. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Less than significant impacts would occur.

Mitigation Program

The proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. The mitigation measures provided in the Modified Ellis Project EIR continue to be applicable and no additional measures are required.

VII. GREENHOUSE GAS EMISSIONS

Threshold (a) Would the project generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

Previous Significance Determination: The previously certified EIR prepared for the Ellis Specific Plan found that GHG emissions generated by the proposed Specific Plan (both construction and operational-related) would exceed the applicable threshold set forth in SJVAPCD's guidance because the proposed Project's GHG emissions cannot feasibly be reduced to 29 percent below business as usual (BAU) despite the incorporation of numerous sustainability measures. The impact is significant and unavoidable

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

No changes would occur to the overall allowable number of residential units or overall square footage previously approved as part of the Ellis Specific Plan.

The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Threshold (b) Would the project conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, Specific Plan implementation would not conflict with or otherwise interfere with achievement of CARB's Scoping Plan, the City's Sustainability Action Plan, the California Attorney General's Office, and the California Air Pollution Control Officer's Association (CAPCOA) applicable measures.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

No changes would occur to the overall allowable number of residential units or overall square footage previously approved as part of the Ellis Specific Plan.

As such, the Amendment would be consistent with local and regional plans designed to reduce GHG emissions. No conflict or interference with achievement of an applicable GHG emissions reduction plan would occur.

Cumulative Impacts

As discussed above, the proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Project-related impacts are consistent with the environmental effects previously identified certified EIR.

No changes would occur to the overall allowable number of residential units or overall square footage previously approved as part of the Ellis Specific Plan. Therefore, no additional adverse cumulative greenhouse gas impacts would occur. This finding is supported by the previously certified EIR prepared

for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Less than significant impacts would occur.

Mitigation Program

The proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. The mitigation measures provided in the Modified Ellis Project EIR continue to be applicable and no additional measures are required.

VIII. HAZARDS AND HAZARDOUS MATERIALS

Threshold (a) Would the project create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, Specific Plan implementation would not create a significant hazard to the public with respect to hazardous materials.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

No changes would occur to the overall allowable number of residential units or overall square footage previously approved as part of the Ellis Specific Plan.

Therefore, the proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed.

Threshold (b) Would the project create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the likely release of hazardous materials into the environment?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, with mitigation, Specific Plan implementation would not release hazardous materials into the environment.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The Amendment proposes overall land uses and densities that were previously analyzed and located within the same footprint as in the Modified Ellis Project EIR. Therefore, as it relates to the creation of hazards or routine transport and disposal of hazards, the proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed.

Threshold (c) Would the project emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, Specific Plan implementation would not emit hazardous materials within one quarter mile of a school.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

No changes would occur to the overall allowable number of residential units or overall square footage previously approved as part of the Ellis Specific Plan.

Additionally, changes proposed as part of the Amendment would be located within the same footprint as what was previously analyzed in the Modified Ellis Project EIR. Therefore, the proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed.

Threshold (d) Would the project be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and as a result, would create a significant hazard to the public or the environment?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, the Ellis Specific Plan Area is not listed on any hazardous materials site lists.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The Ellis Specific Plan Area is not listed on any hazardous materials site lists, and thus, future development that may occur under the proposed Amendment would not be located on hazardous site lists. This determination of less than significant impact is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Threshold (e) Would the project be located within an airport land use plan, or where such a plan has not been adopted, within two miles of a public airport or public use airport, result in a safety hazard for people residing or working in the project area?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, implementation of the Ellis Specific Plan would not cause a safety hazard associated with being located within an airport land use plan.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The proposed Amendment does not include development of uses that are restricted in the 2009 Airport Land Use Compatibility Plan Outer Approach/Departure Zone 4 Safety Zone. The Specific Plan includes a land use (Limited Use) that covers the airport safety zone, and includes development standards and restrictions on land uses within that area to guide development. The proposed Amendment would increase the acreage of the Limited Use Zone by approximately 4 acres. This determination of less than significant impact is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Threshold (f) Would the project be located within the vicinity of a private airstrip, result in a safety hazard for people residing or working in the project area?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, the Ellis Specific Plan site is not located within 2 miles of a private airstrip.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The Ellis Specific Plan site is not located within 2 miles of a private airstrip and no impact would occur. This determination is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Threshold (g) Would the project impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

Previous Significance Determination: The City's General Plan Safety Element includes policies that require the City to maintain emergency access routes that are free of traffic impediments (Objective SA-6.1, P1 and A2). The Ellis Specific Plan does not include any actions that would interfere with emergency response and evacuation plan policies. Primary access to all major roads would be maintained during construction of the proposed Project and the Specific Plan provides for streets consisting of two lanes with shoulders on each side to provide for emergency vehicle parking and access. Thus, since the building footprint is no different under the proposed Amendment, no associated impacts would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

No component of the proposed Amendment would create future development that would impair or physically interfere with an adopted emergency response or evacuation plan. This determination is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Threshold (h) Would the project expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas?

Previous Significance Determination: The Ellis Specific Plan site is not located within a High or Moderate fire hazard area, per the California Department of Forestry. No impacts would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The Ellis Specific Plan site is not located within a High or Moderate fire hazard area, per the California Department of Forestry. Thus, because the building footprint is coterminous with the previously adopted Ellis Specific Plan, no impacts would occur. This determination of no impact is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Cumulative Impacts

As discussed above, the proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Project-related impacts are consistent with the environmental effects previously identified certified Modified Ellis Project EIR. The proposed Amendment would be consistent with the overall land use and development regulations contained in the Ellis Specific Plan. Therefore, no additional adverse cumulative hazards impacts would occur. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Less than significant impacts would occur.

Mitigation Program

The proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. The mitigation measures provided in the Modified Ellis Project EIR continue to be applicable and no additional measures are required.

VII. HYDROLOGY AND WATER QUALITY

Threshold (a) Would the project violate any water quality standards or waste discharge requirements?

Threshold (f) Would the project otherwise substantially degrade water quality?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, with mitigation, the Ellis Specific Plan would not violate or substantially degrade water quality.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

Implementation of the proposed Amendment would not impact water quality, as the changes are limited to a shift in land use designations and acreages. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Threshold (b) Would the project substantially deplete groundwater supplies or interfere with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, implementation of the Ellis Specific Plan would not substantially deplete groundwater supply.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

Changes proposed as part of the proposed Amendment are limited to a shift in land use acreages. The overall density and intensity of land uses would not increase, and thus, would not increase the demand for groundwater. The results of the previously certified EIR prepared for the Ellis Specific Plan support this finding. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Threshold (c) Would the project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?

Threshold (d) Would the project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, with mitigation, implementation of the Ellis Specific Plan would not substantially alter the existing drainage pattern of the site.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

Changes proposed as part of the proposed Amendment are limited to a shift in land use designations and acreages within the same footprint previously analyzed in the Modified Ellis Project EIR. Thus, no increased or substantially different impacts associated with onsite drainage would occur. The results of the previously certified EIR prepared for the Ellis Specific Plan support this finding. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Threshold (e) Would the project create or contribute runoff water, which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, with mitigation, implementation of the Ellis Specific Plan would not create or contribute runoff water that exceeds the capacity of existing or planned storm water drainage systems.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

Changes proposed as part of the proposed Amendment are limited to a shift in land use designations and acreages within the same footprint previously analyzed in the Modified Ellis Project EIR. Thus, no increased or substantially different impacts associated with onsite drainage would occur. The results of the previously certified EIR prepared for the Ellis Specific Plan support this finding. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Threshold (g) Would the project place housing/structures within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?

Threshold (h) Would the project place within a 100-year flood hazard area structures which would impede or redirect flood flows?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, the Ellis Specific Plan area is not located within a 100-year flood hazard area. As a result, no impact would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The Ellis Specific Plan is not located within a 100-year flood hazard area. As a result, no impact would occur given that the proposed Amendments are within the Specific Plan development footprint previously analyzed. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Threshold (i) Would the project expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?

Threshold (j) Would the project result in inundation by seiche, tsunami or mudflow?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, the Ellis Specific Plan area is not located in close proximity to an area subject to flooding due to tsunamis or seiches resulting in levee failure, and would not be subject to mudflows as a result of a seiche. As a result, less than significant impacts would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The Ellis Specific Plan area is not located in close proximity to an area subject to flooding due to tsunamis or seiches resulting in levee failure, and would not be subject to mudflows as a result of a seiche. As a result, implementation of the proposed Amendment would result in less than significant impacts given that the Amendment area is within the Specific Plan development footprint previously analyzed. This determination of less than significant impact is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Cumulative Impacts

As discussed above, the proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Project-related impacts are consistent with the environmental effects previously identified certified Modified Ellis Project EIR. The proposed Amendment would be consistent with the overall land use and development regulations contained in the Ellis Specific Plan. Therefore, no additional adverse cumulative hydrology impacts would occur. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Less than significant impacts would occur.

Mitigation Program

The proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. The mitigation measures provided in the Modified Ellis Project EIR continue to be applicable and no additional measures are required.

IX. LAND USE AND PLANNING

Threshold (a) Would the project physically divide an established community?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, implementation of the Ellis Specific Plan area would not divide an established community. As a result, no impacts would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The proposed Amendment would make minor modifications to the land use designations, acreages, and square footage previously identified within the existing Ellis Specific Plan. However, the proposed land use designations and intensity of uses is consistent with the adopted Ellis Specific Plan. The proposed Amendment is consistent with the City's overall planning vision, and would not divide an established community. The finding of no impact is supported by the previously certified EIR prepared for the Ellis Specific Plan which found that no potentially significant impacts to physical division of a community would occur. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed.

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

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, implementation of the Ellis Specific Plan area would not conflict with land use plans, policies, or regulations. As a result, no impacts would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

It is not anticipated that the proposed Amendment would conflict with applicable land use plans, policies, or regulations, including the Ellis Specific Plan, the City's current General Plan, applicable citywide infrastructure master plans, and regional plans. The purpose of the proposed Amendment is to update certain land use designations within the existing Ellis Specific Plan. The overall existing footprint of the Ellis Specific Plan has not changed since the analysis in the Modified Ellis Project EIR, nor has the overall number of dwelling units proposed. Rather, the Specific Plan Amendment proposes to "shift" land uses, acreages, and square footage slightly.

The proposed Project also includes a second amendment to the existing Amended and Restated Development Agreement (DA) for the Ellis Specific Plan. As noted under "Proposed Revisions to the Approved Project" on Page 5 of this Addendum, the key changes to the existing Development Agreement are as follows:

- City and Owner (identified in the DA as Surland Communities, LLC) to execute an agreement to provide for, among other things, the design, funding and construction of the Swim Center and certain associated infrastructure improvements;
- States that Owner may in the future apply to the City for subsequent DA Amendments to bring additional property outside of the existing Ellis Specific Plan area within the coverage, terms and conditions of the Development Agreement. This additional property is defined in the proposed DA Amendment as "DA Property" (in contrast with the property within the existing Ellis Specific Plan Area, which is defined in the DA as "Property"). Before this additional property (the "DA Property") can become subject to the coverage of the DA, it must be annexed to the City through normal annexation and planning procedures, which include all necessary San Joaquin County Local Agency Formation Commission approvals, all necessary City Council approvals, and compliance with all applicable California Environmental Quality Act requirements. The City Council will retain its full discretion to approve, conditionally approve, or deny any application by Owner to bring such additional DA Property within the coverage of the DA;
- Modifies the City's Growth Management Ordinance Guidelines to expand the scope of Owner's eligibility for Residential Growth Allotments (RGAs) and to allow Owner to transfer RGAs issued to Owner under the DA to additional properties which, in the future, come within the coverage of the DA through future DA Amendments;
- Owner to be granted a right-of-first-refusal for Residential Growth Allotments (RGAs) not accepted by other property owners, up to the City's entire maximum RGA allocation for that year;
- The effective term of Building Permits issued to the Project Applicant shall be extended to 24 months;
- Owner may execute an agreement with the City to provide for payment of development impact fees at close of escrow for each residential unit, rather than at issuance of building permit or certificate of occupancy;
- Modifications to park approval process for parks within the Project site;
- City and Owner to execute a Park & Landscape Maintenance Agreement;
- City and Owner to cooperate to annex all property covered by the Development Agreement (as it now exists or may exist in the future) to the Ellis Community Facilities District;
- City and Owner to execute a Public Infrastructure Credit & Reimbursement Agreement.

As noted on page 5 of this Addendum, Development Agreement Properties or additional property ("DA Property") not currently within the boundaries of the Ellis Specific Plan are not evaluated in this Addendum, as they are unknown at this time, and any analysis related to their respective impacts would be too speculative for evaluation. While the DA provides the opportunity for the owner to bring additional properties outside of the existing Ellis Specific Plan area into the coverage of the DA, doing so requires the additional properties to be annexed to the City through normal annexation and planning procedures, which include all necessary San Joaquin County Local Agency Formation Commission approvals, all necessary City Council approvals, and compliance with all applicable California Environmental Quality Act requirements. As noted above, the DA is intended to preclude the extension of any rights to additional property, until such time as the DA Property is processed through all of the City's conventional planning

processes, including securing applicable general plan amendments/zone changes, annexation, sphere of influence boundary modifications and complies with all requirements under CEQA for discretionary actions related to the inclusion of DA Properties within the boundaries of Ellis.

Based on the analysis and evaluation provided in this Addendum, no new significant impacts would occur because of the proposed second amendment to the DA, nor would there be any substantial increase in the severity of any previously-identified significant environmental impacts.

As set forth in the City's General Plan, the General Plan designations for the Ellis Specific Plan area includes Traditional Residential-Ellis (TR-Ellis), Commercial, and Village Center. The currently proposed Amendment to the Ellis Specific Plan would decrease the Residential Mixed designation from 284.7 acres to 260 acres, increase the Village Center designation from 5.7 to 14 acres, eliminate the Commercial designation, increase the Limited Use designation from 26.2 acres to 30 acres, and add 17 acres in a new designation known as "Residential Estates."

The Project would also require a General Plan Amendment to provide consistency between the General Plan Land Use Designations Map and the changes proposed in the Specific Plan Amendment. Additionally, the Project would also include a Zoning Ordinance Amendment. The purpose of the Zoning Ordinance Amendment is to add the Ellis Specific Plan Zone to the list of zoning districts in the City. All property within the Ellis Specific Plan Area would be zoned Ellis Specific Plan Zone and the City's Zoning Map would be amended to reflect this change. The modifications would result in no direct or indirect change to the existing physical environment. Overall, the proposed Amendments are consistent with the underlying land use and zoning designations that have been included in local and regional planning efforts. No impact would occur. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Threshold (c) Would the project conflict with any applicable habitat conservation plan or natural community conservation plan?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, implementation of the Ellis Specific Plan area would not conflict with any habitat conservation plans or natural community plans. As a result, no impacts would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

Future development that may occur under the proposed Amendment would be subject to the regulations and provisions of the San Joaquin Multi Species Conservation Plan (SJMSCP). As a result, no impacts relative to conservation plans would occur. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed.

Cumulative Impacts

As discussed above, the proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Project-related impacts are consistent with the environmental effects previously identified certified Modified Ellis Project EIR. The proposed Amendment would be consistent with the land use and development regulations contained in the Ellis Specific Plan. Therefore, no additional adverse cumulative land use impacts would occur. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Less than significant impacts would occur.

Mitigation Program

None identified.

X. MINERAL RESOURCES

Threshold (a) Would the project result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the State?

Threshold (b) Would the project result in the loss of availability of a locally important mineral resources recovery site delineated on a local general plan, specific plan, or other land use plan?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, the Ellis Specific Plan site is not located in an area designated for Aggregate use in the 2011 General Plan, and impacts related to the loss of availability of known mineral resources are considered less than significant. As a result, no impacts would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

Cumulative Impacts

As discussed above, the proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Project-related impacts are consistent with the environmental effects previously identified certified Modified Ellis Project EIR. The proposed Amendment would be consistent with the development regulations contained in the Ellis Specific Plan. Therefore, no additional adverse cumulative mineral resources impacts would occur. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Less than significant impacts would occur.

Mitigation Program

None identified.

XI. NOISE

Threshold (a) Would the project result in the exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, the Ellis Specific Plan would result in excess noise. A significant and unavoidable impact would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The density and intensity of land uses proposed under the Amendment are consistent with the Ellis Specific Plan; thus, impacts relative to excessive noise would be similar to what was identified in the Modified Ellis Project EIR and no new impact or increase in the severity of a previously identified impact would occur.

Threshold (b) Would the project result in the exposure of persons to or generation of, excessive groundborne vibration or groundborne noise levels?

Previous Significance Determination: The Modified Ellis Project EIR determined that vibration impacts would be generated by the Project temporarily during construction; however, impacts would be less than significant

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The overall density and intensity of land uses proposed under the Amendment are consistent with the Ellis Specific Plan; thus, impacts relative to vibration would be similar to what was identified in the Modified Ellis Project EIR and no new impact or increase in the severity of a previously identified impact would occur.

Threshold (c) Would the project result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, the Ellis Specific Plan would result in a substantial permanent increase in ambient noise levels. A significant and unavoidable impact would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The overall density and intensity of land uses proposed under the Amendment are consistent with the Ellis Specific Plan; thus, impacts relative to a permanent increase in noise would be similar to what was identified in the Modified Ellis Project EIR and no new impact or increase in the severity of a previously identified impact would occur. This determination is consistent with the previously certified EIR prepared

for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed.

Threshold (d) Would the project result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, the Ellis Specific Plan would result in a substantial periodic increase in ambient noise levels. A significant and unavoidable impact would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The overall density and intensity of land uses proposed under the Amendment are consistent with the Ellis Specific Plan; thus, impacts relative to a periodic increase in noise would be similar to what was identified in the Modified Ellis Project EIR. and no new impact or increase in the severity of a previously identified impact would occur. This determination is consistent with the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed.

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

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, implementation of the Ellis Specific Plan would not substantially expose people to excessive airport noise levels with mitigation incorporated.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The overall density and intensity of land uses proposed under the Amendment are consistent with the Ellis Specific Plan; thus, impacts relative to airport noise would be similar to what was identified in the Modified Ellis Project EIR, and no new impact or increase in the severity of a previously identified impact would occur. This determination is consistent with the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed.

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

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, the Specific Plan area is not located within two miles of a private airstrip. No impacts would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

As identified in the previously certified EIR prepared for the Ellis Specific Plan, the Specific Plan area is not located within two miles of a private airstrip. No impacts would occur.

Cumulative Impacts

As discussed above, the proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Project-related impacts are consistent with the environmental effects previously identified certified Modified Ellis Project EIR. The proposed Amendment would be consistent with the development regulations contained in the Ellis Specific Plan. Therefore, no additional adverse cumulative noise impacts would occur. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Less than significant impacts would occur.

Mitigation Program

The proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. The mitigation measures provided in the Modified Ellis Project EIR continue to be applicable and no additional measures are required.

XII. POPULATION AND HOUSING

Threshold (a) Would the project induce substantial population growth in an area, either directly or indirectly?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, the Ellis Specific Plan would not induce substantial population growth, and thus less than significant impacts would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The proposed Amendment is consistent with the City's overall planning vision, which assumes residential and commercial uses would be developed within the Specific Plan area. The amount of new residential growth facilitated by the Ellis Specific Plan (between 1,000 and 2,250 housing units) would be within the range of housing development planned for in the City of Tracy General Plan and thus would result in less than significant impacts on housing growth. The proposed Amendment would not induce substantial population growth beyond that already projected to occur. Because the population growth associated with the Ellis Specific Plan is within the estimates projected by San Joaquin Council of Governments (SJCOG), and was also considered in the General Plan, the Ellis Specific Plan would not exceed the amount of growth projected for the City for the year 2025, and thus would result in less than significant impacts on population growth. Jobs generated by the Ellis Specific Plan would result in less than significant indirect increases in population growth.

No potentially significant impacts to population and housing have been identified. This determination of less than significant impact is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed.

Threshold (b) Would the project displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?

Threshold (c) Would the project displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, the Ellis Specific Plan would not displace substantial numbers of people or housing, and thus less than significant impacts would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

As previously discussed, the proposed Amendment would make minor modifications to the Ellis Specific Plan, and would not involve the displacement of people or housing. As a result, there are no impacts from displacing people or housing. This determination is consistent with the previously identified determination of less than significant impact which is supported by the previously certified EIR prepared

for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed.

Cumulative Impacts

As discussed above, the proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Project-related impacts are consistent with the environmental effects previously identified certified Modified Ellis Project EIR. The proposed Amendment would be consistent with the land use and development regulations contained in the Ellis Specific Plan. Therefore, no additional adverse cumulative land use impacts would occur. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Less than significant impacts would occur.

Mitigation Program

None identified.

XIII. PUBLIC SERVICES

Threshold (a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for: fire protection, police protection, schools, parks, and other public facilities?

i. Fire Protection

ii. Police Protection

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, with mitigation, the Ellis Specific Plan would not result in a substantial adverse impact associated with the need for new police or fire facilities, and thus less than significant impacts would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The proposed Amendment is consistent with the overall density and intensity of development analyzed in the Ellis Specific Plan EIR, and as such, would not create a significant or more substantial impact relative to police and/or fire services. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

iii. Schools

iv. Parks

v. Other Public Facilities

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, the Ellis Specific Plan would not result substantial adverse impact associated with the need for new school, park, or other facilities, and thus less than significant impacts would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

Any future population increases associated with development under the proposed Addendum have already been accounted for and analyzed in the previous Modified Ellis Project EIR. The Amendment is consistent with the overall density and intensity of land uses previously identified in the Ellis Specific Plan, and as such, does not impact schools, parks, or other public facilities in any greater way than what was previously analyzed. Less than significant impacts would occur. This determination of less than significant impact is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Cumulative Impacts

As discussed above, the proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Project-related impacts are consistent with the environmental effects previously identified certified Modified Ellis Project EIR. The proposed Amendment would be consistent with the land use and development regulations contained in the Ellis Specific Plan. Therefore, no additional adverse cumulative public service impacts would occur. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Less than significant impacts would occur.

Mitigation Program

The proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. The mitigation measures provided in the Modified Ellis Project EIR continue to be applicable and no additional measures are required.

XIV. RECREATION

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

Threshold (b) Would the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, the Ellis Specific Plan would not increase the use of existing parks or increase the need for parks, and thus less than significant impacts would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The proposed Amendment would not generate population growth beyond what has been anticipated in the City's General Plan for the Specific Plan area; therefore, it would not create an increased demand for recreational facilities. Therefore, impacts would remain less than significant. This determination of less than significant impact is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Cumulative Impacts

As discussed above, the proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Project-related impacts are consistent with the environmental effects previously identified certified Modified Ellis Project EIR. The proposed Amendment would be consistent with the land use and development regulations contained in the Ellis Specific Plan. Therefore, no additional adverse cumulative recreation impacts would occur. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Less than significant impacts would occur.

Mitigation Program

None identified.

XIV. TRANSPORTATION/TRAFFIC

A Traffic Memorandum was prepared by Kimley-Horn in April 2017 to identify whether the changes proposed as part of the Amendment would result in greater or more significant traffic impacts when compared to the existing traffic analysis contained in the Modified Ellis Project EIR. The Traffic Memorandum is located as Appendix A of this Addendum EIR.

Threshold (a) Would the project conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?

Previous Significance Determination: Impacts of the Ellis Specific Plan to the effectiveness of the circulation system were considered significant and unavoidable in the previously certified EIR.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

As previously discussed, a Traffic Memorandum was prepared for the Amendment. The Traffic Memorandum evaluates the proposed Amendment to the Specific Plan by developing trip generation estimates for the revised land use mix/shift, estimating the trip distribution for the revised land use mix/shift, and analyzing AM and PM peak hour LOS for the following future intersections:

1. Driveway #1 / Corral Hollow Road
2. Driveway #2 / Corral Hollow Road
3. Driveway #3 / Lammers Road

The Ellis Specific Plan site, study intersections, and existing roadway network are shown in Figure 5, *Existing Roadway Network*.

Trip generation was prepared using City of Tracy average rates for the Project. Table 2, *Trip Generation,* shows the estimated trip generation for the approved Ellis Specific Plan and the proposed Ellis Specific Plan.

The estimated net trip generation for the project is 1400 (309 IN / 1091 OUT) in the AM peak and 2780 (1661 IN / 1119 OUT) in the PM peak. The net estimates presented includes the assumed calibration factors and internal reduction. Land use assumptions included up to 2250 mixed residential units, 140 retail jobs, 90 service (office) jobs, 80 warehousing jobs, an aquatic center (three pools), and 19 acres of parks. The parks were assumed to only generate internal trips, primarily comprised of walk and bike trips.

Revised trip generation estimates are shown in Table 2, *Trip Generation,* based on a revised land use plan (proposed Amendment). The estimated net trip generation for the proposed Amendment is 1521 (384 IN / 1137 OUT) in the AM peak and 3155 (1833 IN / 1322 OUT) in the PM peak. The net estimates presented includes the same calibration factors and internal reductions assumed in the 2007 Ellis Specific

Plan Transportation Impact Analysis. Land use assumptions included up to 2259 mixed residential units, 220 retail jobs, 210 service (office) jobs, 430,000 square feet of self-storage space, an aquatic center (three pools), and 19 acres of parks. The parks were again assumed to only generate internal trips, primarily comprised of walk and bike trips.

The proposed Amendment land use changes to the Ellis Specific Plan include:

1. Residential – propose to add 9 residential estate units
2. Retail – propose to add 70 jobs
3. Service (Office) – propose to add 120 jobs
4. Other – propose to remove warehousing and add 430 KSF of self-storage
5. Aquatic Center & Parks – no change

Table 2: Trip Generation

Land Uses	Project Size		AM PEAK HOUR				PM PEAK HOUR			
			Total Peak Hour	IN	/	OUT	Total Peak Hour	IN	/	OUT
Approved Project Uses and Trip Generation (from Ellis										
Residential Low Density	789	DU	513	77	/	436	1002	641	/	361
Residential Medium Density	1211	DU	787	118	/	669	1538	984	/	554
Residential High Density	250	DU	93	13	/	80	180	115	/	65
Retail	140	Jobs	98	69	/	29	550	248	/	302
Service (Office)	90	Jobs	31	27	/	4	43	12	/	31
Other (Warehousing)	80	Jobs	25	23	/	2	27	6	/	21
Aquatic Center	3	Pools	30	21	/	9	136	71	/	65
Parks	19	Acres	-	-	/	-	-	-	/	-
Gross Total Residential			***1393***	***208***	***/***	***1185***	***2720***	***1740***	***/***	***980***
Gross Total Commercial			***154***	***119***	***/***	***35***	***620***	***266***	***/***	***354***
Gross Total			***1577***	***348***	***/***	***1229***	***3476***	***2077***	***/***	***1399***
Calibrated Total			1535	339	/	1196	3393	2027	/	1366
Internal Reduction (8.8% AM, 18.1% PM)			-135	-30	/	-105	-613	-366	/	-247
Net Total			***1400***	***309***	***/***	***1091***	***2780***	***1661***	***/***	***1119***
Proposed Project Uses and Trip Generation										
Residential Low Density	789	DU	513	77	/	436	1002	641	/	361
Residential Medium Density	1211	DU	787	118	/	669	1538	984	/	554
Residential High Density	250	DU	93	13	/	80	180	115	/	65
Residential Estates (Single Family)	9	DU	6	1	/	5	11	7	/	4
Retail (Village Center) - 110 KSF	220	Jobs	154	108	/	46	865	389	/	476
Service (Office) - 70 KSF (40 in Village and 30 in Limited Use)	210	Jobs	71	62	/	9	101	29	/	72
Other (Self Storage) - 430 KSF	430	KSF	60	33	/	27	112	56	/	56
Aquatic Center	3	Pools	30	21	/	9	136	71	/	65
Parks	19	Acres	-	-	/	-	-	-	/	-
Gross Total Residential			***1399***	***209***	***/***	***1190***	***2731***	***1747***	***/***	***984***
Gross Total Commercial			***285***	***203***	***/***	***82***	***1078***	***474***	***/***	***604***
Gross Total			***1714***	***433***	***/***	***1281***	***3945***	***2292***	***/***	***1653***
Calibrated Total (per previous TIA)			1668	421	/	1247	3851	2237	/	1614
Internal Reduction (8.8% AM, 18.1% PM, per previous TIA)			-147	-37	/	-110	-696	-404	/	-292
Net Total			***1521***	***384***	***/***	***1137***	***3155***	***1833***	***/***	***1322***
Trip Generation Summary										
Approved Net Total			***1400***	***309***	***/***	***1091***	***2780***	***1661***	***/***	***1119***
Proposed Net Total			***1521***	***384***	***/***	***1137***	***3155***	***1833***	***/***	***1322***
Difference (Proposed - Approved)			***121***	***75***	***/***	***46***	***375***	***172***	***/***	***203***

Notes:

du = dwelling unit

1. Trip generation based on the model-derived rates for Single Family Residential, Multi-Family Residential, Retail jobs and Service jobs, as follows:
   Single Family AM Rate: T = 0.65 (X) (15% in, 85% out); PM Rate: T = 1.27 (X) (64% in, 36% out); T = Trip ends; X = Dwelling Units
   Multi-Family AM Rate: T = 0.37 (X) (14% in, 86% out); PM Rate: T = 0.72 (X) (64% in, 36% out); T = Trip ends; X = Dwelling Units
   Retail AM Rate: T = 0.7 (X) (70% in, 30% out); PM Rate: T = 3.93 (X) (45% in, 55% out); T = Trip ends; X = Jobs
   Service AM Rate: T = 0.34 (X) (88% in, 12% out); PM Rate: T = 0.48 (X) (29% in, 71% out); T = Trip ends; X = Jobs
   Other (Warehousing) AM Rate: T = 0.31 (X) (91% in, 9% out); PM Rate: T = 0.34 (X) (24% in, 76% out); T = Trip ends; X = Jobs
   Other (Self Storage) AM Rate: T = 0.14 (X) (55% in, 45% out); PM Rate: T = 0.26 (X) (50% in, 50% out); T = Trip ends; X = KSF
2. Based on the project description, we assumed a 70%/30% retail/service split of the unrestricted commercial square footage: 60,000 sq. ft. in Village Center plus 40,000 sq. ft. in SE corner of site. Restricted commercial square footage in the Approach Zone was assumed to be warehousing. Jobs for each were based on model factors developed for Tracy: 2 employees per 1000 sq ft of retail space; 3 employees per 1000 sq ft of office space, and 1 employee per 1000 sq ft of other space.
3. PM peak hour trip rate and in/out split is based on vehicle counts conducted at the Roseville Aquatic Center in October, 2000. AM peak hour trips are based on communication with staff of the Roseville Aquatic Center in August, 2006. In/out split is based on vehicle counts conducted at the Morgan Hill Aquatic Center in August, 2006.
4. Neighborhood Park trips are assumed to occur primarily outside of peak hours and to be mainly internal and largely walk and bike trips

Trip Distribution and Assignment

Internal trip distribution and distribution at the two Project driveways on Corral Hollow Road would change slightly due to the changes in land use locations along the east side of the Specific Plan (i.e. more retail and office uses would be located along Ellis Drive and less intense land uses off Summit Drive), compared to the approved Specific Plan. The driveway off Lammers road would also experience a very small change in traffic volumes.

Level of Service

A Level of Service (LOS) analysis was completed due to the change in land use designations and their locations along the east side of the Specific Plan. area, and subsequently a small change would occur in project trip generation and assignments.

The following study intersections would potentially be impacted.

1. Ellis Drive / Corral Hollow Road
2. Summit Drive / Corral Hollow Road
3. Ellis Drive / Lammers Road

Table 3, *Existing Plus Project Level of Service Results* shows LOS results for Existing Plus Approved Project and Existing Plus Proposed Project.

Table 3: Existing Plus Project Level of Service Results

#	Intersection	Control Type	Existing Plus Approved Project Conditions						Existing Plus Proposed Amendment Conditions					
			AM Peak Hour			PM Peak Hour			AM Peak Hour			PM Peak Hour		
			Movement	Delay	LOS	Movement	Delay	LOS	Movement	Delay	LOS	Movement	Delay	LOS
1	Corral Hollow Rd / Driveway 1	Signal	Overall	31.1	C	Overall	17.1	B	Overall	32.1	C	Overall	18.6	B
2	Corral Hollow Rd / Driveway 2	Signal	Overall	18.3	B	Overall	16.0	B	Overall	20.3	C	Overall	21.5	C
3	Lammers Rd / Driveway 3	Signal	Overall	5.5	A	Overall	5.6	A	Overall	5.6	A	Overall	6.4	A

Notes:

1. Analysis performed using HCM 2010 methodologies.

2. Delay indicated in seconds/vehicle.

3. Overall level of service (LOS) standard is D.

4. Intersections that fall below City standard are highlighted and shown in ***bold.***

Source: Kimley Horn and Associates, 2017.

The analysis indicates that the change in LOS does not substantially change the operating conditions at the intersections for existing plus project conditions, as the City's LOS threshold is D, and thus the chance in LOS is still acceptable by City standards. Since the change in cumulative conditions would be smaller than the change in existing conditions, the cumulative conditions would also operate acceptably. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

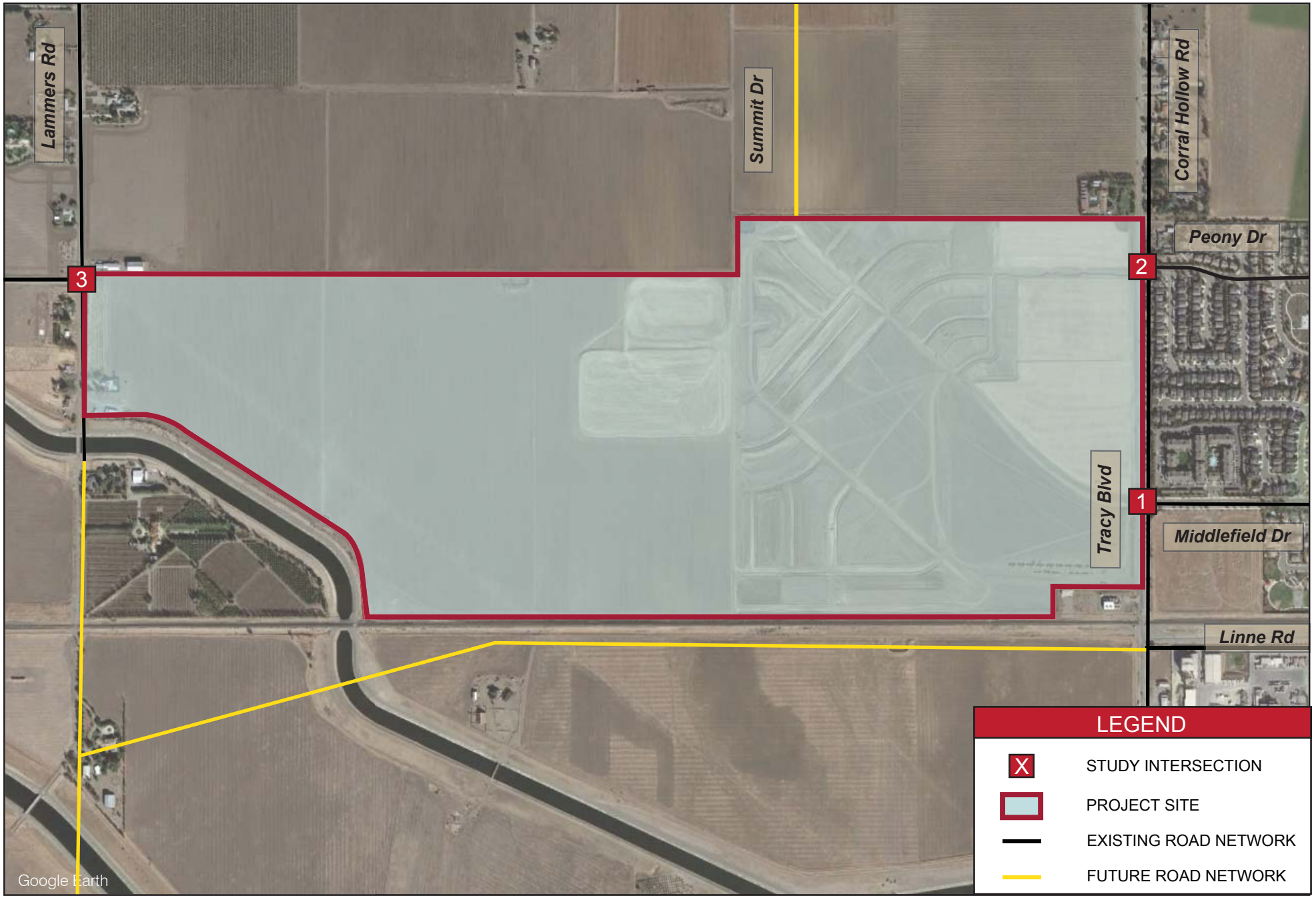


FIGURE 5: Existing Roadway Network
Addendum to the Ellis Modified Project EIR
City of Tracy

Not to scale

Kimley»Horn

Threshold (b) Would the project conflict with an applicable congestion management program, including but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?

Previous Significance Determination: Impacts related to conflicts with level of service standards were considered significant and unavoidable in the previously certified Modified Ellis Project EIR.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

Refer to the discussion in a), above. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Threshold (c) Would the project result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?

Previous Significance Determination: As identified in the previously certified EIR, the Ellis Specific Plan would not result in a change in air traffic patterns, and thus no impact would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The proposed Amendment is consistent with the overall density and intensity of development analyzed in the Ellis Specific Plan EIR, and as such, would not create a significant or more substantial impact relative to a change in air traffic patterns. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

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

Previous Significance Determination: As identified in the previously certified EIR, the Ellis Specific Plan would not result in a substantial increase in design feature hazards, and thus no impact would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The proposed Amendment is consistent with the overall density and intensity of development analyzed in the Ellis Specific Plan EIR, and as such, would not create a significant or more substantial impact relative to an increase in hazards due to design features. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Threshold (e) Would the project result in inadequate emergency access?

Previous Significance Determination: As identified in the previously certified EIR, with mitigation, the Ellis Specific Plan would not result in inadequate emergency access, and thus less than significant impacts would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The proposed Amendment is consistent with the overall density and intensity of development analyzed in the Ellis Specific Plan EIR, and as such, would not create a significant or more substantial impact relative to inadequate emergency access. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Threshold (f) Would the project conflict with adopted policies, plans or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?

Previous Significance Determination: As identified in the previously certified EIR, the Ellis Specific Plan would not result in a conflict with public transit policies, and thus less than significant impact would occur.

Amendment-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The proposed Amendment is consistent with the overall density and intensity of development analyzed in the Ellis Specific Plan EIR, and as such, would not create a significant or more substantial impact relative to conflicts with public transit policies. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Cumulative Impacts

As discussed above, the proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Amendment-related impacts are consistent with the environmental effects previously identified certified Modified Ellis Project EIR. The proposed Amendment would be consistent with the overall density and intensity of land development contained in the Ellis Specific Plan. Therefore, no additional adverse cumulative traffic related impacts would occur. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Less than significant impacts would occur.

Mitigation Program

The proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. The mitigation measures provided in the Modified Ellis Project EIR continue to be applicable and no additional measures are required.

XV. UTILITIES AND SERVICE SYSTEMS

Threshold (a) Would the project exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?

Threshold (e) Would the project result in a determination by the wastewater treatment provider, which serves or may serve the project that it has inadequate capacity to serve the project's projected demand in addition to the provider's existing commitments?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, with mitigation, the Ellis Specific Plan would not exceed wastewater treatment requirements or capacities, and thus less than significant impacts would occur.

Project-Specific Analysis and Significance Determination: No substantial change from previous analysis.

Any development that would occur under the proposed Amendment would be utilizing the City's wastewater treatment facilities. Anticipated wastewater generated by the Ellis Specific Plan would not be expected to result in an exceedance of any wastewater treatment requirements of the applicable RWQCB. Given that the proposed Amendment does not increase the overall density or intensity of land uses, less than significant impacts would occur. Consistent with the determination in the Modified Ellis Project EIR, impacts would be considered less than significant. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed in the certified Modified Ellis Project EIR.

Threshold (b) Would the project require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, the Ellis Specific Plan would not require new water or wastewater facilities, the construction of which would cause significant effects. As such, given that the development footprint under the proposed Amendment is within the previously adopted Ellis Specific Plan, less than significant impacts would occur.

Project-Specific Analysis and Significance Determination: No substantial change from previous analysis.

Anticipated water and wastewater generated by the Ellis Specific Plan would not be expected to result in an exceedance of any water or wastewater facilities. Given that the proposed Amendment does not increase the density or intensity of land uses, less than significant impacts would occur. Consistent with the determination in the Modified Ellis Project EIR, impacts would be considered less than significant. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed in the certified Modified Ellis Project EIR.

Threshold (c) Would the project require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which would cause significant environmental effects?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, with mitigation, the Ellis Specific Plan would not require new storm drainage facilities, the construction of which would cause significant effects. As such, less than significant impacts would occur.

Project-Specific Analysis and Significance Determination: No substantial change from previous analysis.

Anticipated storm drainage needs associated with the Ellis Specific Plan were not be expected to result in an exceedance of existing facilities. Given that the proposed Amendment does not increase the overall density or intensity of land uses, less than significant impacts would occur. Consistent with the determination in the Modified Ellis Project EIR, impacts would be considered less than significant. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed in the certified Modified Ellis Project EIR.

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

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, there are sufficient water supplies to service the Ellis Specific Plan. As such, less than significant impacts would occur.

Project-Specific Analysis and Significance Determination: No substantial change from previous analysis.

Given that the proposed Amendment does not increase the overall density or intensity of land uses, no population increases would occur. Thus, water supply needed for development under the proposed Amendment was already previously contemplated in the Modified Ellis EIR. Consistent with the determination in the Modified Ellis Project EIR, impacts would be considered less than significant. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed in the certified Modified Ellis Project EIR.

Threshold (f) Would the project be served by a landfill with insufficient permitted capacity to accommodate the project's solid waste disposal needs?

Threshold (g) Would the project comply with federal, state, and local statutes and regulations related to solid waste?

Previous Significance Determination: As identified in the previously certified EIR prepared for the Ellis Specific Plan, there is sufficient landfill capacity to service the Ellis Specific Plan. As such, less than significant impacts would occur.

Project-Specific Analysis and Significance Determination: No substantial change from previous analysis.

The Ellis Specific Plan site would be served by the Foothill Sanitary Landfill, which has sufficient capacity to serve the City of Tracy through the year 2082. The build-out of the Ellis Specific Plan is considered a small addition to the overall tons per day Tracy currently generates. For these reasons, solid waste needs of development that would occur under the proposed Amendments can be met and existing landfill and associated impacts are less than significant. This determination of less than significant impact is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause

neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

The City of Tracy has implemented 43 waste diversion programs and is currently exceeding its State residential disposal rate target by over 50 percent. The waste diversion programs, together with adherence to the CALGreen Code, are sufficient to ensure that implementation of the proposed Amendment would not compromise the ability to meet or perform better than the State-mandated target. Therefore, the proposed Amendment would comply with applicable statutes and regulations and the impact would be less than significant. This determination of less than significant impact is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. As such, no further analysis is required.

Cumulative Impacts

As discussed above, the proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Project-related impacts are consistent with the environmental effects previously identified certified Modified Ellis Project EIR. The proposed Amendment would be consistent with the land use and development regulations contained in the Ellis Specific Plan. Therefore, no additional adverse cumulative utilities and service systems impacts would occur. This finding is supported by the previously certified EIR prepared for the Ellis Specific Plan. The proposed Amendment would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. Less than significant impacts would occur.

Mitigation Program

The proposed Amendment to the Specific Plan would cause neither a new impact to occur, nor an increase in the severity of an impact previously disclosed. The mitigation measures provided in the Modified Ellis Project EIR continue to be applicable and no additional measures are required.

DETERMINATION OF APPROPRIATE CEQA DOCUMENTATION

Section 15162 – Subsequent EIRs and Negative Declarations

(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, one of more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

The City of Tracy proposes to implement the Amendment within the context of the Ellis Specific Plan, as described in this Addendum. As discussed in the Environmental Impact Analysis section of this Addendum, no new or substantially more severe significant environmental effects beyond what was evaluated in the Modified Ellis Project EIR would occur.

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

As documented herein, no circumstances associated with the location, type, setting, or operations of the proposed Amendment have substantively changed beyond what was evaluated in the Modified Ellis Project EIR; and none of the proposed Amendment elements would result in new or substantially more severe significant environmental effects than previously identified. No major revisions to the Modified Ellis Project EIR are required.

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant environmental effects not discussed in the previous EIR or negative declaration;

No new significant environmental effects beyond those addressed in the Modified Ellis Project EIR were identified.

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR.

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

No mitigation measures or alternatives were found infeasible in the certified Modified Ellis Project EIR.

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

No other mitigation measures or feasible alternatives have been identified that would substantially reduce significant impacts.

(b) If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subsection (a). Otherwise, the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation.

(c) Once a project has been approved, the lead agency's role in project approval is completed, unless further discretionary approval on that project is required. Information appearing after an approval does not require reopening of that approval. If after the project is approved, any of the conditions described in subsection (a) occurs, a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project, if any. In this situation, no other Responsible Agency shall grant an approval for the project until the subsequent EIR has been certified or subsequent negative declaration adopted.

None of the conditions listed in subsection (a) would occur as a result of the proposed Amendment. No subsequent EIR is required.

Section 15164 – Addendum to an EIR or Negative Declaration

(a) The lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary, but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

As described above, none of the conditions described in the State CEQA Guidelines Section 15162 calling for the preparation of a subsequent EIR have occurred.

(b) An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.

None of the conditions described in Section 15162 calling for preparation of a subsequent EIR would occur as a result of the proposed Amendment. Therefore, an addendum to the certified Final EIR is the appropriate CEQA document for the proposed Amendment.

(c) An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration.

This Addendum will be attached to the Final EIR and maintained in the administrative record files at the City of Tracy.

(d) The decision-making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project.

The City of Tracy will consider this Addendum with the Final EIR prior to making a decision on the proposed Amendment.

(e) A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's required findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence.

This document provides substantial evidence for City of Tracy records to support the preparation of this Addendum for the proposed Amendment.

CONCLUSION

This Addendum has been prepared in accordance with the provisions of the State CEQA Guidelines to document the finding that none of the conditions or circumstances that would require preparation of a subsequent EIR, pursuant to Sections 15162 and 15164 of the State CEQA Guidelines, exist in connection with the proposed Amendment. No major revisions would be required to the Modified Ellis Project EIR prepared for the City of Tracy as a result of the proposed General Plan Amendment and Ellis Specific Plan Amendment. No new significant environmental impacts have been identified. Since the certification of the Final EIR, there has been no new information showing that mitigation measures or alternatives once considered infeasible are now feasible, or showing that there are feasible new mitigation measures or alternatives substantially different from those analyzed in the EIR that the City declined to adopt. Therefore, preparation of a subsequent EIR is not required and the appropriate CEQA document for the proposed Amendment is this Addendum to the City of Tracy Ellis Specific Plan EIR. No additional environmental analysis or review is required for the proposed General Plan Amendment and Ellis Specific Plan Amendment. This document will be maintained in the administrative record files at City of Tracy City Hall.

APPENDIX A

TRAFFIC MEMORANDUM

Kimley»Horn

MEMORANDUM

From: Frederik Venter, P.E., Kimley-Horn and Associates

To: Scott Claar, City of Tracy Planning Division

Date: May 1, 2017

Re: **Ellis Specific Plan Amendment – Consistency Analysis**

The purpose of this memorandum is to indicate the consistency of the proposed Ellis Project with the traffic assumptions and supporting analysis in the previously certified Ellis Specific Plan EIR.

1. Background

The Ellis Specific Plan ("Project") is proposed to be developed as a multiuse community. The Project site is bounded by Lammers Road in the west, Corral Hollow Road in the east, future Linne Road in the south, and crop land/future development areas in the north. Primary access to the site will be via two driveways located on Corral Hollow Road and one driveway located on Lammers Road. A secondary access point will be located on Valpico Road north of the site (through the planned Avenues residential development).

Per the City of Tracy Transportation Master Plan, Ellis is located within Tracy Future Planning Area 3 (Ellis) for which the previous Ellis Specific Plan Environmental Impact Report (EIR) was prepared and subsequently certified in January 2013.

The purpose of this analysis is to evaluate the conformance of the traffic impacts associated with the proposed Amendments to the Ellis Specific Plan Project's with those described in the transportation/traffic section of the Modified Ellis Project EIR ("EIR"). As discussed in the EIR, the Ellis planning area includes the extent anticipated to be developed up to 2035. Specifically, this analysis seeks to determine whether the driveway level of services' (LOS) estimated for the project are acceptable compared to what was assumed for the same site in the Ellis Specific Plan EIR. Given the assumption that the LOS remains acceptable, the CEQA mitigations measures identified within the Ellis Specific Plan EIR would be assumed to adequately address the proposed Project's traffic impacts. If this assumption proves accurate, the proposed Project's mitigation obligations would be limited to payment of Traffic Impact Fees to offset its potential Cumulative impacts on the City road network.

2. Introduction

This study evaluates the proposed Amendment to the Specific Plan by developing trip generation estimates for the revised land use mix/shift, estimating the trip distribution for the revised land use mix/shift, and analyzing AM and PM peak hour LOS for the following future intersections:

1. Driveway #1 / Corral Hollow Road

2. Driveway #2 / Corral Hollow Road
3. Driveway #3 / Lammers Road

The Project site and study intersections, as well as existing and cumulative roadway network are shown in **Figure 1**.

3. Trip Generation

Trip generation was prepared using City of Tracy average rates for the Project. **Table 1** shows the estimated trip generation for the approved Ellis Specific Plan and the proposed Ellis Specific Plan.

As shown in the Ellis Specific Plan Transportation Impact Analysis (2007), completed by Fehr & Peers, and **Table 1** above, the estimated net trip generation for the project is 1400 (309 IN / 1091 OUT) in the AM peak and 2780 (1661 IN / 1119 OUT) in the PM peak. The net estimates presented includes the assumed calibration factors and internal reduction. Land use assumptions included up to 2250 mixed residential units, 140 retail jobs, 90 service (office) jobs, 80 warehousing jobs, an aquatic center (three pools), and 19 acres of parks. The parks were assumed to only generate internal trips, primarily comprised of walk and bike trips.

Revised trip generation estimates are shown **Table 1** based on a revised land use plan (proposed Project). The estimated net trip generation for the proposed Project is 1521 (384 IN / 1137 OUT) in the AM peak and 3155 (1833 IN / 1322 OUT) in the PM peak. The net estimates presented includes the same calibration factors and internal reductions assumed in the 2007 study. Land use assumptions included up to 2259 mixed residential units, 220 retail jobs, 210 service (office) jobs, 430,000 square feet of self-storage space, an aquatic center (three pools), and 19 acres of parks. The parks were again assumed to only generate internal trips, primarily comprised of walk and bike trips.

The proposed Amendment land use changes to the Approved Project include:

1. Residential – propose to add 9 residential estate units
2. Retail – propose to add 70 jobs
3. Service (Office) – propose to add 120 jobs
4. Other – propose to remove warehousing and add 430 KSF of self-storage
5. Aquatic Center & Parks – no change

Kimley»Horn

Table 1: Trip Generation

Land Uses	Project Size		AM PEAK HOUR				PM PEAK HOUR			
			Total Peak Hour	IN	/	OUT	Total Peak Hour	IN	/	OUT
Approved Project Uses and Trip Generation (from Ellis										
Residential Low Density	789	DU	513	77	/	436	1002	641	/	361
Residential Medium Density	1211	DU	787	118	/	669	1538	984	/	554
Residential High Density	250	DU	93	13	/	80	180	115	/	65
Retail	140	Jobs	98	69	/	29	550	248	/	302
Service (Office)	90	Jobs	31	27	/	4	43	12	/	31
Other (Warehousing)	80	Jobs	25	23	/	2	27	6	/	21
Aquatic Center	3	Pools	30	21	/	9	136	71	/	65
Parks	19	Acres	-	-	/	-	-	-	/	-
Gross Total Residential			***1393***	***208***	***/***	***1185***	***2720***	***1740***	***/***	***980***
Gross Total Commercial			***154***	***119***	***/***	***35***	***620***	***266***	***/***	***354***
Gross Total			***1577***	***348***	***/***	***1229***	***3476***	***2077***	***/***	***1399***
Calibrated Total			1535	339	/	1196	3393	2027	/	1366
Internal Reduction (8.8% AM, 18.1% PM)			-135	-30	/	-105	-613	-366	/	-247
Net Total			***1400***	***309***	***/***	***1091***	***2780***	***1661***	***/***	***1119***
Proposed Project Uses and Trip Generation										
Residential Low Density	789	DU	513	77	/	436	1002	641	/	361
Residential Medium Density	1211	DU	787	118	/	669	1538	984	/	554
Residential High Density	250	DU	93	13	/	80	180	115	/	65
Residential Estates (Single Family)	9	DU	6	1	/	5	11	7	/	4
Retail (Village Center) - 110 KSF	220	Jobs	154	108	/	46	865	389	/	476
Service (Office) - 70 KSF (40 in Village and 30 in Limited Use)	210	Jobs	71	62	/	9	101	29	/	72
Other (Self Storage) - 430 KSF	430	KSF	60	33	/	27	112	56	/	56
Aquatic Center	3	Pools	30	21	/	9	136	71	/	65
Parks	19	Acres	-	-	/	-	-	-	/	-
Gross Total Residential			***1399***	***209***	***/***	***1190***	***2731***	***1747***	***/***	***984***
Gross Total Commercial			***285***	***203***	***/***	***82***	***1078***	***474***	***/***	***604***
Gross Total			***1714***	***433***	***/***	***1281***	***3945***	***2292***	***/***	***1653***
Calibrated Total (per previous TIA)			1668	421	/	1247	3851	2237	/	1614
Internal Reduction (8.8% AM, 18.1% PM, per previous TIA)			-147	-37	/	-110	-696	-404	/	-292
Net Total			***1521***	***384***	***/***	***1137***	***3155***	***1833***	***/***	***1322***
Trip Generation Summary										
Approved Net Total			***1400***	***309***	***/***	***1091***	***2780***	***1661***	***/***	***1119***
Proposed Net Total			***1521***	***384***	***/***	***1137***	***3155***	***1833***	***/***	***1322***
Difference (Proposed - Approved)			***121***	***75***	***/***	***46***	***375***	***172***	***/***	***203***

Notes:

du = dwelling unit

1. Trip generation based on the model-derived rates for Single Family Residential, Multi-Family Residential, Retail jobs and Service jobs, as follows:
   Single Family AM Rate: T = 0.65 (X) (15% in, 85% out); PM Rate: T = 1.27 (X) (64% in, 36% out); T = Trip ends; X = Dwelling Units
   Multi-Family AM Rate: T = 0.37 (X) (14% in, 86% out); PM Rate: T = 0.72 (X) (64% in, 36% out); T = Trip ends; X = Dwelling Units
   Retail AM Rate: T = 0.7 (X) (70% in, 30% out); PM Rate: T = 3.93 (X) (45% in, 55% out); T = Trip ends; X = Jobs
   Service AM Rate: T = 0.34 (X) (88% in, 12% out); PM Rate: T = 0.48 (X) (29% in, 71% out); T = Trip ends; X = Jobs
   Other (Warehousing) AM Rate: T = 0.31 (X) (91% in, 9% out); PM Rate: T = 0.34 (X) (24% in, 76% out); T = Trip ends; X = Jobs
   Other (Self Storage) AM Rate: T = 0.14 (X) (55% in, 45% out); PM Rate: T = 0.26 (X) (50% in, 50% out); T = Trip ends; X = KSF
2. Based on the project description, we assumed a 70%/30% retail/service split of the unrestricted commercial square footage: 60,000 sq. ft. in Village Center plus 40,000 sq. ft. in SE corner of site. Restricted commercial square footage in the Approach Zone was assumed to be warehousing. Jobs for each were based on model factors developed for Tracy: 2 employees per 1000 sq ft of retail space; 3 employees per 1000 sq ft of office space, and 1 employee per 1000 sq ft of other space.
3. PM peak hour trip rate and in/out split is based on vehicle counts conducted at the Roseville Aquatic Center in October, 2000. AM peak hour trips are based on communication with staff of the Roseville Aquatic Center in August, 2006. In/out split is based on vehicle counts conducted at the Morgan Hill Aquatic Center in August, 2006.
4. Neighborhood Park trips are assumed to occur primarily outside of peak hours and to be mainly internal and largely walk and bike trips

4. Trip Distribution and Assignment

Internal trip distribution and distribution at the two Project driveways on Corral Hollow Road would change slightly due to the changes in land use locations along the east side of the Specific Plan (i.e. more retail and office uses would be located along Ellis Drive and less intense land uses off Summit Drive), compared to the approved Specific Plan. The driveway off Lammers road would also experience a very small change in traffic volumes.

5. Level of Service

A Level of Service (LOS) analysis was completed due to the change in land use designations and their locations along the east side of the Specific Plan. area, and subsequently a small change would occur in project trip generation and assignments.

The following study intersections would potentially be impacted.

1. Ellis Drive / Corral Hollow Road
2. Summit Drive / Corral Hollow Road
3. Ellis Drive / Lammers Road

Table 2 shows LOS results for Existing Plus Approved Project and Existing Plus Proposed Project.

Table 2: Existing Plus Project Level of Service Results

#	Intersection	Control Type	Existing Plus Approved Project Conditions						Existing Plus Proposed Amendment Conditions					
			AM Peak Hour			PM Peak Hour			AM Peak Hour			PM Peak Hour		
			Movement	Delay	LOS	Movement	Delay	LOS	Movement	Delay	LOS	Movement	Delay	LOS
1	Corral Hollow Rd / Driveway 1	Signal	Overall	31.1	C	Overall	17.1	B	Overall	32.1	C	Overall	18.6	B
2	Corral Hollow Rd / Driveway 2	Signal	Overall	18.3	B	Overall	16.0	B	Overall	20.3	C	Overall	21.5	C
3	Lammers Rd / Driveway 3	Signal	Overall	5.5	A	Overall	5.6	A	Overall	5.6	A	Overall	6.4	A

Notes:

1. Analysis performed using HCM 2010 methodologies.

2. Delay indicated in seconds/vehicle.

3. Overall level of service (LOS) standard is D.

*4. Intersections that fall below City standard are highlighted and shown in **bold**.*

Source: Kimley Horn and Associates, 2017.

The analysis indicates that the change in LOS does not substantially change the operating conditions at the intersections for existing plus project conditions. The City of Tracy's LOS standard is LOS D and all study intersections/driveways will operate at LOS C or better. Therefore, the Proposed Amendment will not trigger a significant impact. Since the change in cumulative conditions would be smaller than the change in existing conditions, the cumulative conditions would also operate acceptably, with no significant impacts.