



CITY OF YUBA CITY
PLANNING COMMISSION
STAFF REPORT

Meeting Date: November 13, 2019

To: Chair and Planning Commission Members

From: Development Services Department

Presentation: Brian Millar, Interim Director of the Development Services Department
Denis Cook, Planning Consultant

Public Hearing: **Bogue-Stewart Master Plan and Associated General Plan Amendment, Pre-annexation Zoning and Environmental Impact Report:**

A proposal to consider recommendations to the City Council regarding the Bogue-Stewart Master Plan (Master Plan or BSMP), including General Plan Amendment NO. 14-05, Specific Plan Amendment 16-05 (adopting the Bogue-Stewart Master Plan), Rezoning 14-04, and Environmental Impact Report (EIR) (SCH #2017012009) prepared for the project.

Project Location: The 741-acre Master Plan area is located immediately south of Yuba City between Bogue Road on the north and Stewart Road on the south. The eastern boundary of the Master Plan area is the Feather River levee and the western boundary is South Walton Avenue. The area is bisected by State Route 99 (**Figure 1**).

Recommendation: Following the close of the public hearing recommend to the City Council:

1. *Adopt a Resolution Of The Planning Commission Of The City Of Yuba City Recommending The City Council (1) Adopt The Findings Required By CEQA Guidelines, Section 15091; (2) Certify The Environmental Impact Report (SCH #2017012009) For The Proposed Bogue Stewart Master Plan (A 741-Acre Specific Plan Area Located South Of Yuba City Between Bogue Road On The North And Stewart Road On The South), Including General Plan Amendment (GPA 14-05), And Rezoning (RZ 14-04), As Well As The Newkom Ranch Large And Small Lot Subdivisions (TSMs 14-06 And 14-07), The Kells East Ranch Large And Small Lot Subdivisions (TSMs 15-02 And 15-03), And Development Agreements Within The Planning Area; And (3) Adopt The Proposed Mitigation Monitoring And Reporting Program, And (4) Adopt A Statement Of Overriding Considerations, Pursuant To The California Environmental Quality Act. (CEQA Resolution)*
2. *Adopt a Resolution Of The Planning Commission Of The City Of Yuba City Recommending To The City Council Of The City Of Yuba City Adoption Of The Bogue-Stewart Master Plan (BSMP) And The*

Accompanying General Plan Amendment And Preannexation Zoning For Approximately 741 Acres Of Land Generally Located South Of Bogue Road, North Of Stewart Road, West Of South Walton Avenue And East Of The Feather River Levee (BSMP Resolution)

Project Proposal:

The project consists of the following components:

1. *Environmental Impact Report:* An EIR was prepared for the entire Master Plan at a program level and at the project level for the Newkom Ranch and Kells East Ranch Subdivisions, located within the Master Plan boundaries.
2. *General Plan Amendment to reflect the Master Plan:* The amendment will primarily include revisions to the Land Use Element and Circulation Element, but also includes the other General Plan Elements as this is an expansion of the geographical area covered by the General Plan. If approved, this could lead to an expansion of the City's sphere of influence and annexation of the properties into the City limits.
3. *Specific Plan:* Bogue-Stewart Master Plan.
4. *Pre-annexation Zoning:* To reflect the City's updated General Plan and Master Plan land use designations.

Other items associated with this project:

Newkom Ranch Subdivisions: One of the two subdivisions proposed to be subdivided within the Master Plan area. They are being processed concurrently with the adoption of this Master Plan but with a separate public hearing. (Newkom Ranch is technically two subdivisions - large lot and small lot subdivisions). This will be heard separately by the Planning Commission.

Kells East Ranch Subdivisions: The second of the two subdivision maps that are within the Master Plan area that are being processed concurrently with the adoption of this Master Plan but with a separate public hearing. (Kells East Ranch is technically two subdivisions - large lot and small lot subdivisions). This will be heard separately by the Planning Commission.

Development Agreements: Also included as part of this project, but under separate Planning Commission hearings for the subdivisions that will follow the Master Plan, are the Development Agreements for the Newkom Ranch and Kells East Ranch property within a portion of the Master Plan area. The agreements are included at the applicants' request primarily for the purpose of extending the life of the tentative subdivision maps with a proposed 20-year term. The Development Agreements will be heard by the Planning Commission concurrently with their respective subdivision.

Sphere of Influence (SOI) Amendment and Annexation into the City: If the Master Plan is approved by the City and a tax exchange agreement between the City and Sutter County is approved, Sutter LAFCo will become involved with the project. Sutter LAFCo will consider amending the City's sphere of influence to add the 741-acre Master Plan area into the City's SOI, and will consider annexation of the two subdivisions into the City.

Municipal Services Review (MSR): Before LAFCO can consider the Sphere of Influence Amendment that will accommodate the Master Plan area, an update of the City's MSR is needed. This is a document that is required by State law (Govt. Code Sections 56425 and 56430) that ensures that adequate public services can be provided within the probable physical boundaries and service area of the City over the next 20 years.

Project Information:

The Master Plan is intended to provide for the orderly and systematic development of the 741-acre Bogue Road – Stewart Road area. This proposed Master Plan combines elements from the City's General Plan and Zoning Regulations that will establish the regulatory structure to guide development. The proposed Master Plan will provide for the development of a planned community of residential, commercial, office/business park and recreational sites and other public facilities. In addition to creating this new Master Plan, this report also addresses a General Plan Amendment and Pre-Annexation Zoning for the entire Master Plan area, as well as the environmental assessment under the California Environmental Quality Act (CEQA). The area is outside of the 2004 General Plan boundary, so the General Plan Land Use Element and Circulation Elements must be expanded, and other General Plan Elements amended by reference. The preannexation zoning will expand the Citywide zoning to be consistent with the General Plan Amendment.

The Master Plan would provide direction for land use and community design, transportation, utilities, public services and implementation. The Master Plan regulates land uses, development standards, and design guidelines. The Master Plan also provides preliminary design criteria for infrastructure including all modes of transportation, water distribution, wastewater collection facilities, stormwater drainage, parks and open space, and other public services. The Master Plan considered all of these improvements in relation to existing neighborhoods that adjoin the Master Plan area.

The Bogue-Stewart Master Plan is an extrapolation of the City General Plan. It is intended to directly implement the General Plan by providing more detail about the City's development expectations, details for extending City infrastructure, and to otherwise serve as a tool to guide land developers and provide the public with a more complete picture of how the area will transition into an urban part of the City. **Figure 2** provides the Master Plan's land use map, while **Table 1** below provides for the growth potential based on average assumptions for the density and intensity of new development within the Master Plan area.

Table 1: Bogue-Stewart Master Plan Growth Potential

<i>General Plan Designation</i>	<i>Acres</i>	<i>Estimated number of residential units or building square footage (sf) for nonresidential uses</i>
Low Density Residential (LDR)	368.9	1,328 Single Family Residences
Medium/Low Density Residential (MDR)	62.6	430 Multiple-Family Residences
Medium/High Density Residential (HDR)	32	759 Multiple-Family Residences
Office (O)	8.6	108,464 sf
Neighborhood Commercial (NC)	7.2	82,328 sf
Community Commercial (CC)	36.7	390,951 sf
Business, Technology, & Light Industrial (B, T & LI)	55.8	574,992 sf
Public Facilities (K-8 school)	27.5	131,987 sf
Parks	22.1	
Open Space	61	
Roads and Circulation	58	
Total	741	

The proposed Master Plan, which will function and be adopted as a Specific Plan, would be the primary land use, policy, and regulatory document used to guide the overall development of this area. It establishes a development framework for land use, all modes of transportation, utilities and services, resource protection, and implementation to promote the systematic and orderly development of the Master Plan area. All subsequent development projects and related activities within the Master Plan area would be required to be consistent with the Bogue-Stewart Master Plan.

The Master Plan proposes being developed in three phases. Phase 1 are the Newkom Ranch Subdivisions which are an approximately 161-acre mixed use development proposing single-family and multiple-family residential uses, commercial, office, park and open space areas. Phase

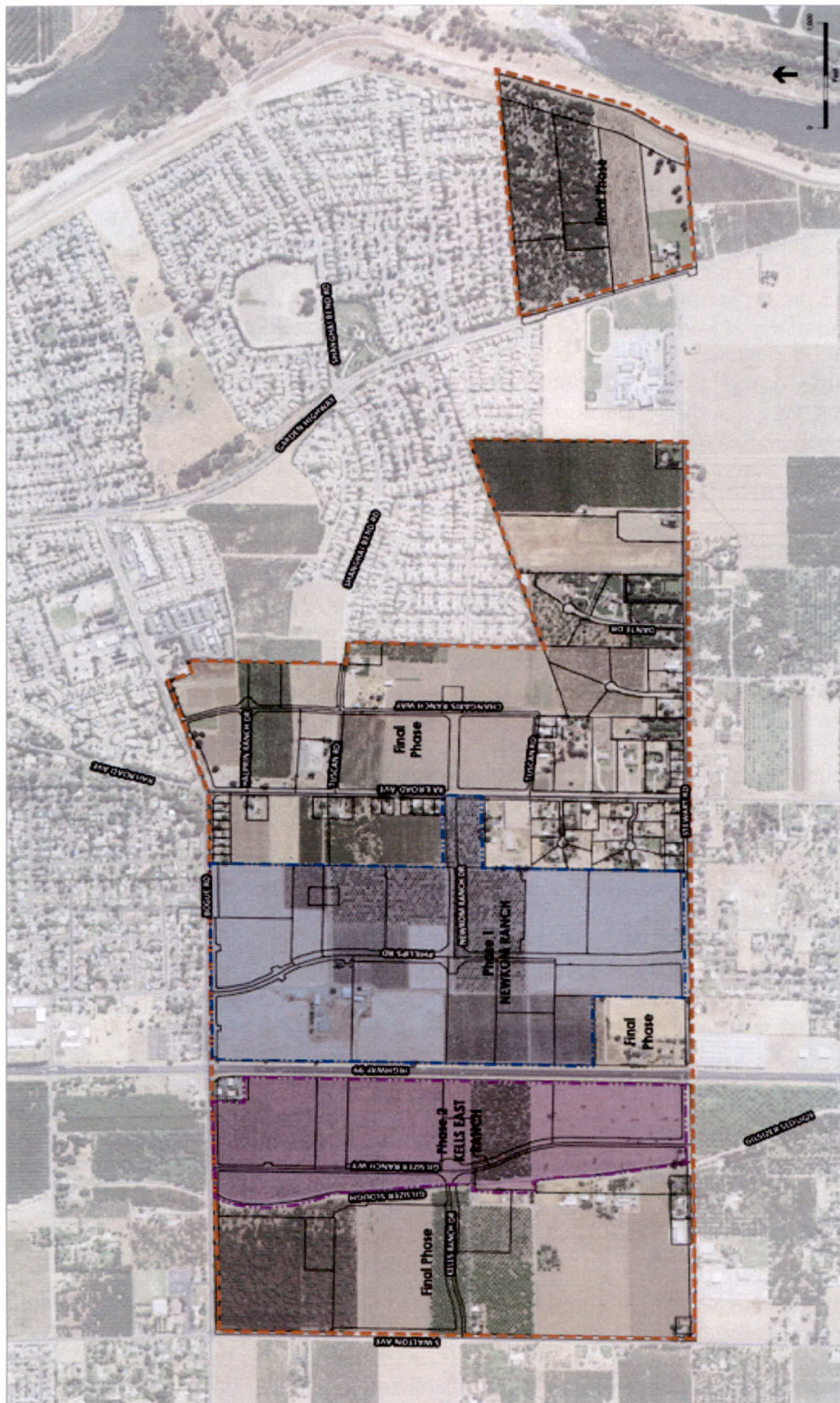


Figure 1: Location Map

2 are the Kells East Ranch Subdivisions which consists of 93.5 acres for a mixed-use subdivision also proposing single-family and multiple-family residences, commercial development and open space. These subdivisions are also accompanied by Development Agreements. These subdivisions and their accompanying Development Agreements will be discussed in more detail following this Master Plan review as they are being processed separately and will each have a separate public hearing.

Phase 3 of the Master Plan is the development of the remaining areas outside of the two subdivisions, including the area of the Master Plan that is detached from the main plan area located on the east side of Garden Highway that abuts the Feather River levee. The Phase 3 area includes approximately 100 parcels consisting of ranchette properties with homes on them as well as other properties that are currently in agricultural uses. No homes are proposed to be removed as part of the Master Plan and no projects are being considered in Phase 3 at this time.

The EIR prepared for the Master Plan considers all of the environmental impacts of the proposed Master Plan as well as the additive effects of this growth (including cumulative impacts) throughout the City. Most of the impacts are considered to be less than significant, although there remain some significant impacts that cannot be fully mitigated. Those significant impacts are summarized later in this staff report.

Project Background:

Following the adoption of Yuba City's new General Plan in 2004, the City Council noted that the General Plan provided the longer-term vision for the City, but, as the name implies, was too broad-based to assure the detail needed in planning the City's growth. The City Council expressed that new development should:

- Fully implement the new General Plan.
- That services should be properly planned and efficiently provided; and
- That new development should be of expected quality and be compatible with existing development.

The 2004 General Plan addresses the long-term community vision - how the City should look in 20 or 30 years in regard to its image and character, and how resources and infrastructure should be most efficiently utilized. This vision led to a need to prepare more detailed plans to adequately address how desired outcomes will be achieved through new development. In short, Specific Plans and Master Plans are utilized to help guide development and implement the City's long-term vision for a defined area within the City.

As part of the implementation of the General Plan, in 2005 the City Council adopted a resolution establishing growth policies related to future development within Yuba City's SOI. More specifically, this resolution requires that, prior to annexation into the City and review of individual development projects, a Specific Plan or Master Plan be prepared for each of the expected growth areas.

Existing Uses and Conditions:

The Bogue-Stewart Master Plan is currently outside of the Yuba City SOI as well as outside of the City limits. Until properties are annexed into the City, Sutter County has land use authority for these properties. The Sutter County General Plan designates the properties in this area as Agricultural, Estates Residential, and Low Density Residential.

The area is relatively flat with no unique topographical features. The land is primarily used for agriculture and rural residences, but also includes a gas station at the southwest corner of SR 99 and Bogue Road, and a PG&E substation located near the corner of Railroad Avenue and Tuscan Road. The majority of the agricultural lands contain orchards.

Currently there are 114 parcels under multiple ownerships, totaling 741 acres. There are approximately 71 existing residences located in the Master Plan area, with many of those homes in the southern portion of the Master Plan area. The homes are generally located adjacent to existing County roads on one-acre plus sized lots and are served by individual wells and septic systems. These ranchette style properties comprise approximately 261 acres (35%) of the Master Plan area. Individual property owners in the Master Plan area would not be required to sell and/or relocate their homes. Development will only occur on properties that the owners choose to develop.

Annexation of the Phase 3 properties into the City is not proposed at this time. Only the Phase 1 and Phase 2 properties are being requested by their property owners for annexation. If at any time existing residences are annexed into the City, the City would not require that they improve their property by connecting to City services including water and sewer and street improvements, nor will their property taxes change.

State Route 99 is a north and south four-lane highway that bisects the area. The proposed Newkom Ranch Subdivision is located on the east side of SR 99; Kells East Ranch subdivision is located on the west side of SR 99. The Gilsizer Slough is a drainage channel that transects the Master Plan area from north to south and provides drainage for much of the Master Plan area.

Riverbend K-8 school is located in the southeast quadrant of the Master Plan area at the northwest corner of the Garden Highway and Stewart Road intersection (between the two detached Master Plan area sections).

Surrounding Uses:

Uses surrounding the Master Plan area were also considered when the land use pattern was developed. Most of the north side of the Master Plan area is bound by Bogue Road, which in many places is the southern boundary of the City and the Yuba City Sphere of Influence. The area north of the Master Plan primarily consists of suburban type single-family residential development, much of which is in the City. The exception is the remaining unincorporated agricultural land located on the west side of SR 99, although it is planned for future urban growth.

The eastern boundary of the Master Plan area is the Feather River Levee. The south side borders Stewart Road, and south of Stewart consisting of agricultural land (orchards) and rural residential uses. The west side of the Master Plan boundary is South Walton Avenue which is generally bordered by agricultural uses.

General Plan:

Existing Land Use Designations (Sutter County General Plan): As the properties are within the unincorporated area of Sutter County, the County General Plan regulates land uses. The Sutter County General Plan designates the properties in this area as Agricultural, Estates Residential, and Low Density Residential.

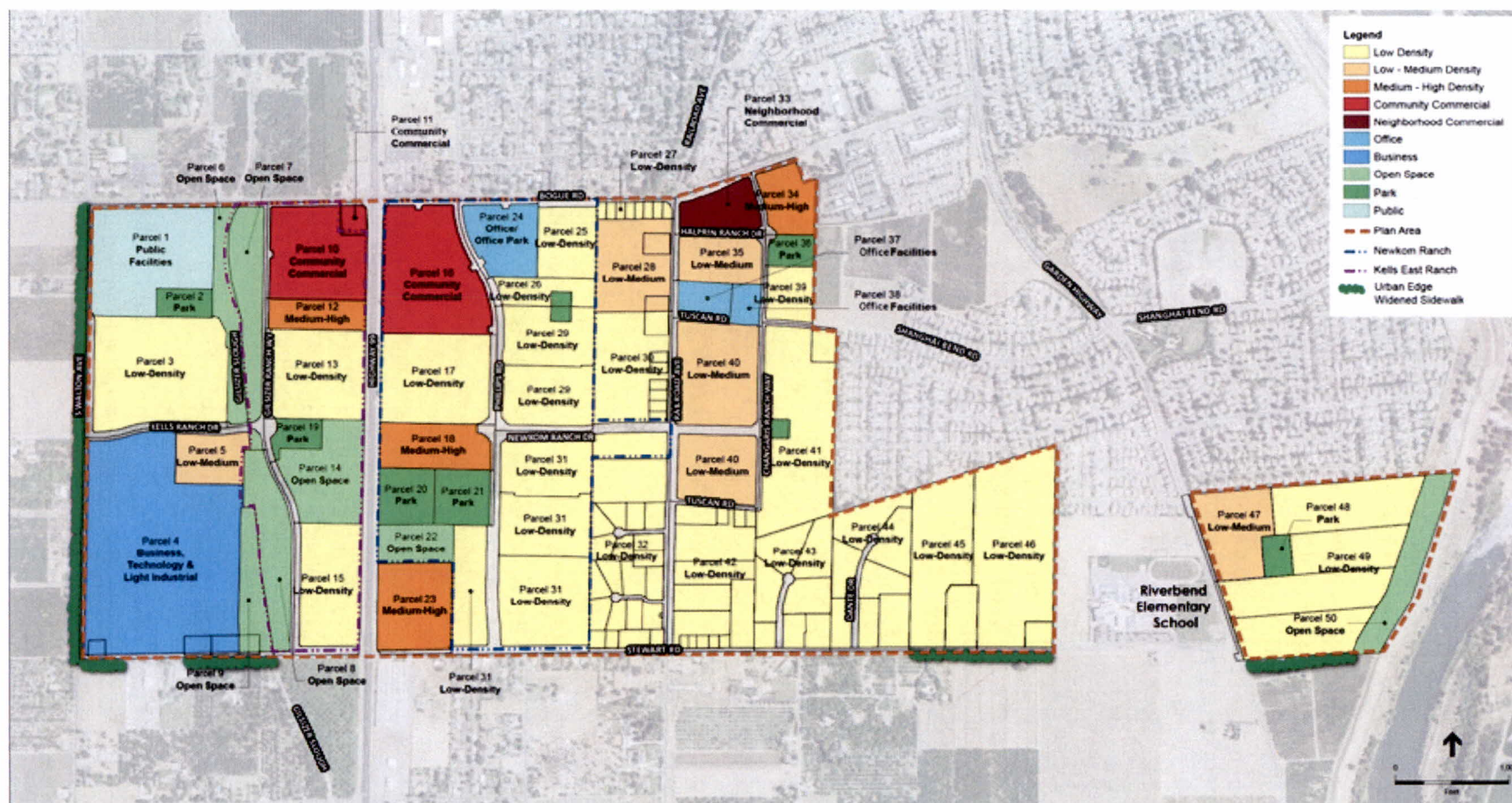


Figure 2: Proposed Bogue- Stewart Master Plan Land Use Map

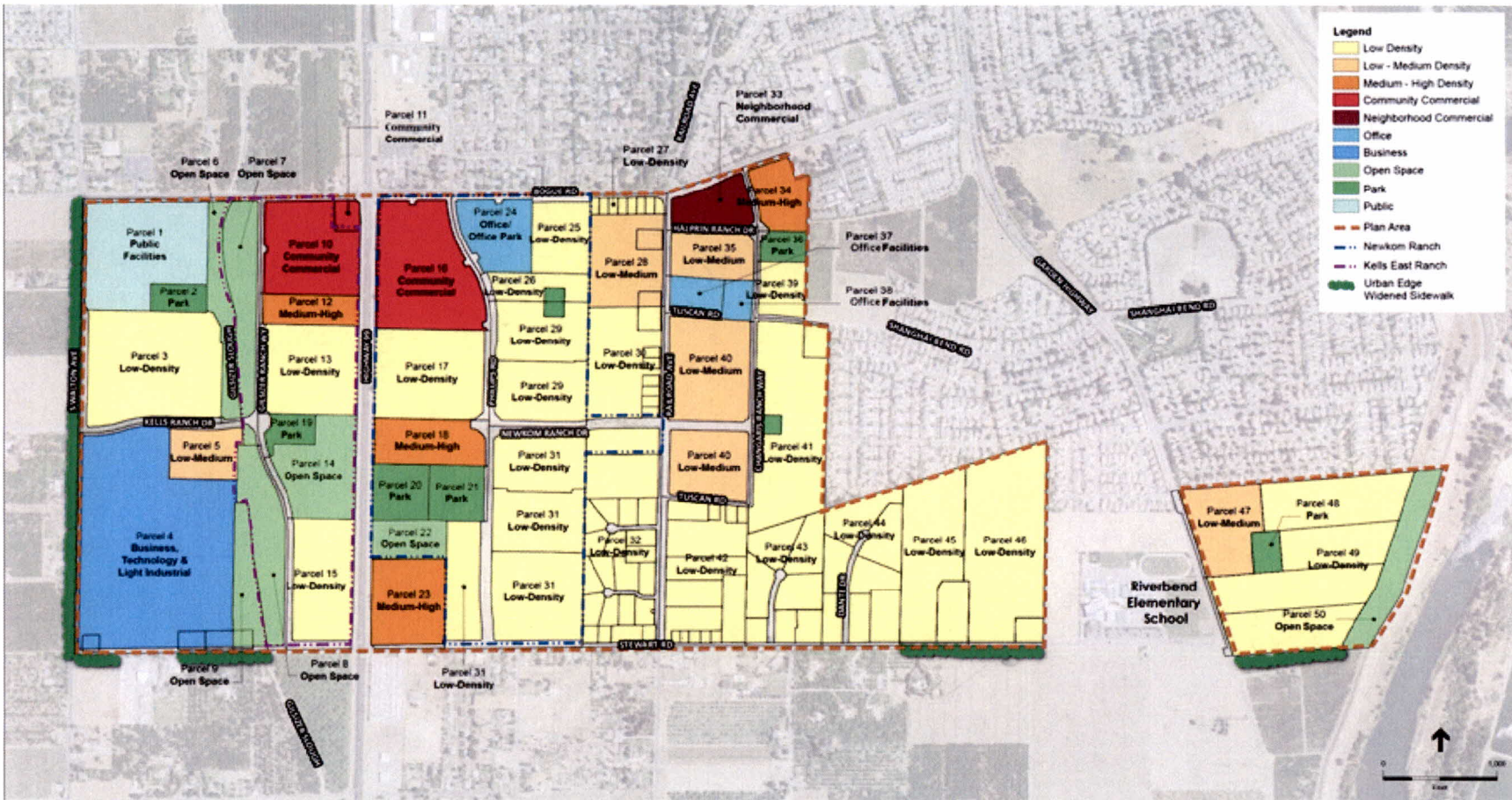


Figure 3: Proposed General Plan Land Use Map

Proposed Land Use Designations (Figure 3): The Yuba City General Plan designations will reflect the Master Plan. As this is a new community or neighborhood that will be within the City, there are a full range of land uses proposed. To be consistent with the Master Plan, the General Plan includes a full range of residential types – single-family residences to apartments, commercial, office/office park, light industrial uses, and parks and open space. Also note the agricultural/urban interface buffer shown in green along several edges of the Master Plan area. The proposed agricultural buffer is discussed later in this staff report.

Other elements of the General Plan are also affected by the Master Plan. There will be an expansion of the transportation network (Figure 4), park system, expansion of City services, etc. These changes are discussed in more detail in the EIR prepared for the project as well as below under “Staff Comments.”

Master Plan:

The proposed Bogue-Stewart Master Plan establishes a new community in south Yuba City (Figure 4). As such it contains a full range of land uses including all housing types, commercial and office uses, light industrial uses, parks and open space, and a potential school site. The Master Plan also provides for the extension of all City services into this 741-acre area. Although titled a “Master Plan” it is being adopted as a specific plan as provided in Govt. Code Sections 65450 through 65457.

Zone Districts:

Existing Zoning: The Sutter County Zoning Regulations zones the properties as Agricultural (AG), Estate Residential (ER), and Single-Family Residential (R-1).

Proposed Pre-annexation Zoning (Figure 5): The proposed City pre-annexation zoning will match all of the Master Plan land use designations, ranging from Single-Family Residential (R-1), Two-Family Residential (R-2), Multiple-Family Residential (R-3), Neighborhood Commercial (C-1) Community Commercial (C-2), Light Industrial (M-1), and Public Facility (PF) Zone Districts.

Previous Commission/Council Actions:

This area would be a new addition to the City. Several years ago, the City Council held discussions on the boundary for this Master Plan.

On June 24, 2019, there was a joint City Council/Planning Commission study session on the Bogue-Stewart Master Plan. No recommendations or decisions were made.

Staff Comments:

General Plan Amendment

The General Plan Amendment accompanying this Master Plan is needed as this is an expansion of the planning area covered by the City’s 2004 General Plan. The General Plan is the document that overarches all other City planning documents, including specific plans, zoning text and maps, road and other infrastructure expansion, development and design standards, etc. The General Plan is often considered the constitution as it relates to other laws and standards. All City decisions on land use and infrastructure improvements must be

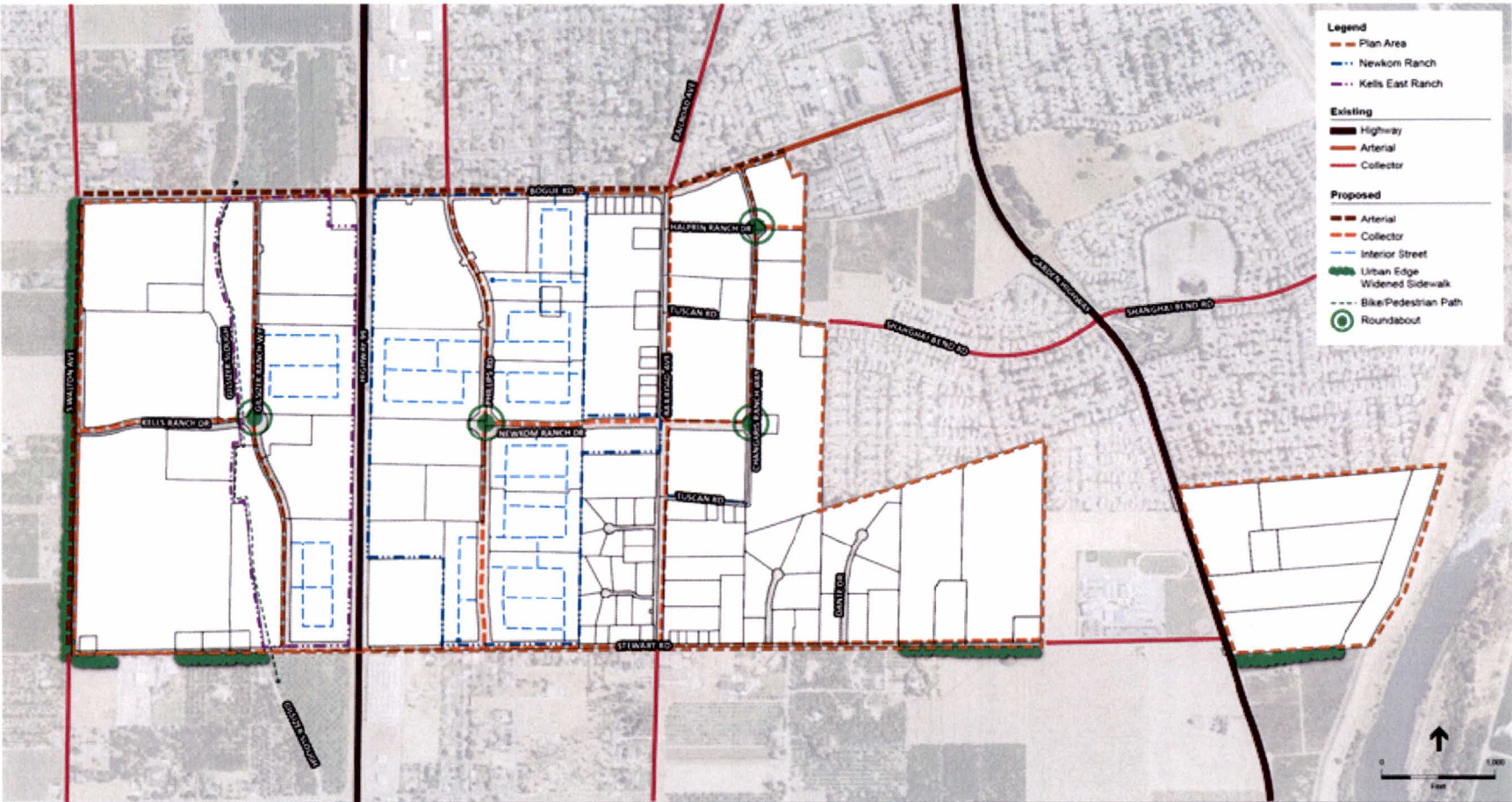


Figure 4: Proposed General Plan Circulation Element Map

consistent with the General Plan. Therefore, the General Plan must be updated to ensure consistency for the Bogue-Stewart Master Plan. This translates to updating the General Plan Land Use Map (Figure 3-1 in the General Plan) and the Roadway Network (Figure 5-1 in the General Plan).

There are other sections in the General Plan that will be updated by reference. This includes the Parks, Schools and Community Facilities Element as there will be new parks and a new K-8 school site; the Public Utilities Element as the areas that can be served by City water and wastewater systems will be expanded; the Environmental Conservation Element as open space areas will grow, and more agricultural uses will be located within the City's General Plan area. The Noise and Safety Element maps will be expanded to include the expansion of areas subject to the City's emergency services (Police and Fire), the new areas along SR 99 that are subject to traffic noise, and the areas subject to the City's stormwater drainage system (in conjunction with the Gilsizer Drainage District) as well as the flood prone areas within the Master Plan area.

The EIR prepared for the Master Plan provides an extensive comparative analysis of the existing General Plan policies and the proposed Master Plan policies and maps (EIR pages 3.10-7 to 3.10-10), finding that the Master Plan maps and policies were consistent with the General Plan.

Another result if this General Plan Amendment, as well as the preannexation zoning discussed below, is that it enables the City's Sphere of Influence to be expanded to include the Master Plan area, and annexation into the City of properties within the Master Plan. This is proposed by the larger property owners and will be considered by the Sutter Local Agency Formation Commission (Sutter LAFCo) if this General Plan Amendment and associated preannexation zoning is approved by the City.

Master Plan

This Master Plan, which will function as a Specific Plan, is an assemblage of 114 parcels under multiple ownerships. Two of the larger property owners are the project applicants, Newkom Ranch LLC and Bains Revocable Family Trust 2005, which own and/or control 161 acres (22 percent) and 93.5 acres (13 percent), respectively of the Master Plan area. For purposes of this discussion these ownerships are referred to as Newkom Ranch and Kells East Ranch respectively. There are subdivisions proposed for both of these ownerships that are being processed concurrently but separate from this Master Plan.

By comprehensively planning the 741-acre area, the City, community members, and developers are better able to address wide-ranging infrastructure, housing, environmental, fiscal, and community challenges associated with accommodating growth. Planning at this scale allows the City and stakeholders to design and phase infrastructure improvements that are more efficient, environmentally sensitive, and more cost effective. The Master Plan provides a land use pattern that provides for a full range of housing styles and densities as well as complete neighborhoods with parks and open space and coordination with the Yuba City Unified School District. To make the new community complete, the Master Plan also provides for commercial and employment centers, allowing residents the opportunity to work and live in the same vicinity. In summary, the intent of this Master Plan is to provide for the development of complete neighborhoods served by all City services that provide a full range of housing, parks and open space, shopping opportunities and employment centers.

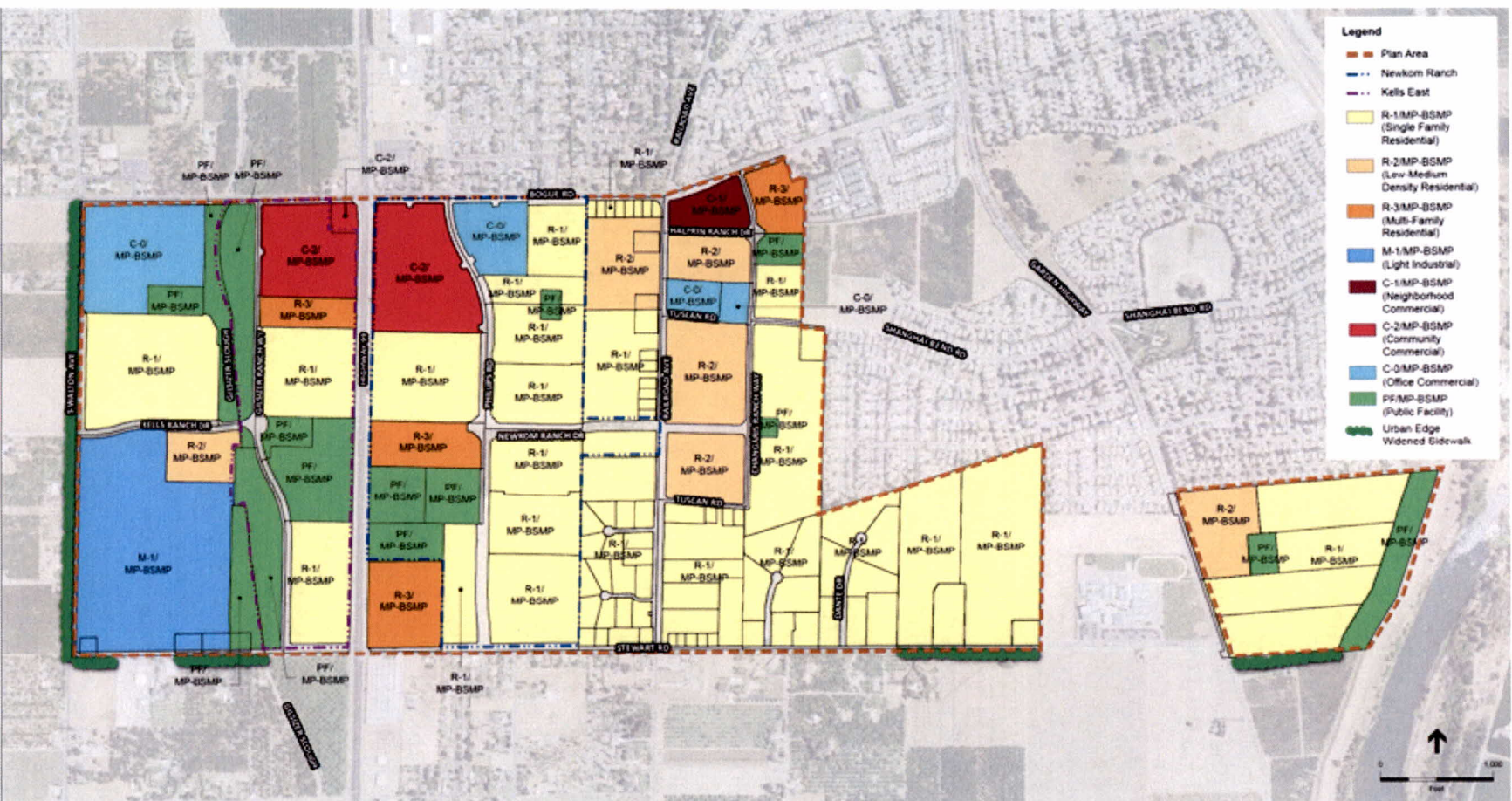


Figure 5: Proposed Pre - Annexation Zoning

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To complement the land use pattern, the Master Plan provides design guidelines that ensure quality developments that meet community expectations and that match or exceed the quality development that has occurred throughout the City in recent years.

The Master Plan is also a good tool to plan an efficient road system that is coordinated with the existing citywide road network. The proposed road network is designed to ensure that the streets operate at levels of service that meet City traffic flow standards, as well as connect seamlessly with the existing City road network.

The Master Plan also allows for a more comprehensive design of primary (or backbone) City infrastructure. The water distribution system, wastewater collection system, and drainage system were all modeled to ensure that adequate capacity is designed into those systems to accommodate the new growth as well as properly connect with the existing City infrastructure system.

Rezoning (Pre-annexation Zoning)

Just as the General Plan needs to be updated to reflect this Master Plan, the Master Plan area must also include pre-annexation zoning in order for any of the areas to be annexed into the City. **Figure 5** reflects the new zoning. The zoning would become effective upon completion of the annexation process.

All of the zone districts have an “SP-BSMP” Combining Zone District. This combining zone district ensures that anyone referencing the zoning will be made aware that the property is within a Master Plan with its own development standards.

Compatibility with Surrounding Uses

North: The neighboring properties boarding the north side of the Master Plan area consist of single-family residences, a convenience store and remaining agricultural land. The Master Plan contemplates corresponding suburban type uses along that existing urban boundary consisting of commercial, office, single-family and multiple-family residential development as well as a K-8 school. Due to the separation of uses created by Bogue Road and screening criteria in the EIR for commercial uses, there are not expected to be land use conflicts along this boundary except potentially some interim conflicts with the remaining agricultural uses. That agricultural land, however, is slated ultimately for City development.

West and South: The areas to the south of the Master Plan area, bordered by Stewart Road, are a mix of agricultural uses and rural residential uses. This pattern is similar on the west side of the Master Plan area along South Walton Avenue, which is also bordered by agricultural uses. Conflicts between the new, primarily residential development and the neighboring orchards will be minimized by the Yuba City/Sutter County agricultural buffer policy which triggers an approximately 162-foot wide open space buffer intended to protect agricultural uses from urban uses. (See “Agricultural Buffering” below).

East: This is bordered by the Feather River Levee. With the proper levee setbacks that are called for there are not expected to be any compatibility issues.

Traffic

A traffic study was prepared for the Master Plan by *KDA Associates*. There is a detailed summary of the study provided in Section 3.14 of the EIR.

The traffic study evaluated all intersections on SR 99 between SR-20 (Colusa Avenue) in the north and Barry Road in the south, as well as studying many City controlled intersections on either side of SR 99. The traffic study concludes, that at build-out of the Master Plan, which would be many years out, an additional net 52,600 daily vehicle trips will be generated. This translates to an additional 223,000 vehicle miles traveled daily, which would be an estimated 4.5 percent of all the City traffic at that time.

This new traffic will be a significant addition to the existing levels of traffic, especially in the south Yuba City area. To accommodate this, the Master Plan provides for a significant expansion of traffic capacity within the Master Plan area and its vicinity. Bogue Road will become four lanes with signals at the new Gilsizer Way, Phillips Road and Railroad Avenue. SR 99/Bogue Road signalized intersection will be expanded, and a new signal will be added at SR 99/Stewart Road. South Walton Avenue and Stewart Road will be widened to three lanes, and other new two-lane collector streets will be added within the Master Plan area. The study also anticipates that SR 99 will be widened to six lanes by that time.

All of the new streets and extended and/or expanded existing streets will be constructed in phases as the Master Plan is built-out over many years. Per the traffic study prepared for the project, the expansion of the circulation network being completed in conjunction with the phasing of development will keep all of the City streets within acceptable levels of service (LOS), which by adopted City standards is a LOS of D or better. SR 99 on a cumulative basis may drop to a LOS of F. This is because there are, at this time, no Caltrans funding sources to widen the highway. This could be a significant traffic impact (See below under "Environmental Determination). This may not be a likely scenario, however, since Caltrans typically does not provide funding for road expansions that far out in time.

Agricultural Buffering:

Wherever there is a common boundary between agricultural uses and urban uses, commonly referred to as the agricultural/urban interface, there can be conflicts, as each use can create problems for the other. The City and Sutter County utilize a standard for providing buffering between the permanent areas of the agricultural/urban interface. This is an approximately 162-foot wide space between the nearest residence and the agricultural use. It consists of streets with extra width, tree plantings, and masonry walls with limited access to the nearby agricultural properties. The intent is to separate to the maximum feasible amount the two often incompatible uses. There are several places along the perimeter of the Master Plan where this is proposed, as shown on **Figure 5**.

Availability of Public Services

All City services, including water, sewer and storm-water drainage will be extended to serve the Master Plan area.

Table 2: Summary of Public Facilities and Services

Water	City water is available to the Master Plan boundary. There are existing trunk lines in Bogue Road, Garden Highway, Stewart Road, and South Walton Avenue that will be extended into the Master Plan area. Two new water storage tanks may be installed within the Master Plan area near the PG&E substation depending on needs elsewhere in the City. Each development project will be responsible for extending water lines to the project as well as pay water connection fees which goes towards future plant expansions and trunk line extensions.
Wastewater	There are existing sewer trunk lines in Bogue Road and Shanghai Bend Road that connect to a Garden Highway trunk line flowing to the wastewater treatment plant northeast of the Master Plan. The wastewater generated from this Master Plan area will connect to those lines. Other offsite improvements and lines may be needed to accommodate the new growth. Each development project will be responsible for extending sewer lines to the project as well as pay sewer connection fees which goes towards future wastewater treatment plant expansions and trunk line extensions.
Stormwater	Most Master Plan drainage will flow to the Gilsizer Slough (Sutter County Water Agency). The eastern portion of the plan area will flow east to existing City owned ponds along Shanghai Bend Road and pumped to the Feather River. Each project will be responsible for building its portion of the stormwater collection system as well as either dedicate land for detention ponds and build needed portions of the backbone system or pay a BSMP fee for the major drainage system improvements.
Streets	There will be an extensive new street system based on the traffic study prepared for the Master Plan. The street system will be expanded to accommodate new growth as it occurs. Each development will pay fees for and/or build its fair share of needed street improvements.
Law Enforcement	The Yuba City Police Department will service the Master Plan area upon annexation. Police services will continue to be provided out of the existing Police Station on Poole Boulevard. The Sutter County Sheriff's Department and California Highway Patrol provides law enforcement to the remaining unincorporated areas. Each new building will pay City development impact fees for future police facility expansion and new equipment that is needed due to growth.
Fire protection	The Yuba City Fire Department provides fire protection to the entire Master Plan area from its existing five fire stations. No new fire stations are proposed for the Master Plan area. Each new building will pay City development impact fees for future facility expansion and new equipment that is needed due to growth.
Schools	The entire Master Plan area is within the Yuba City Unified School District. New students located east of Railroad Avenue will attend Riverbend Elementary School; students located west of Railroad Avenue will attend Barry Elementary School. A new K-8 school site is proposed in the northwest corner of the Master Plan area. Each new residence must join a Yuba City Unified School District required Community Facility District to pay their fair share for future school expansions or a new school.

Finance Plan

A Public Facility Finance Plan was prepared for the Master Plan by *New Economics and Advisory*. A summary of that study is as follows:

- The estimated total cost to provide the backbone infrastructure (roadways, sewer, water, storm water drainage, landscaping, and parks to the area is approximately \$79.1 million (in 2019 dollars). This does not include the local infrastructure that each project will build as part of their development.
- The estimated total backbone infrastructure cost of Phase 1 (Newkom Ranch Subdivisions) is estimated to be \$26.2 million; Phase 2 (Kells East Ranch Subdivisions) is estimated to be \$17.2 million.
- The developers of Phases 1 and 2 will be required to bear additional upfront costs which is higher than would otherwise be required. They will be reimbursed over time by developments in the Phase 3 area, although this likely will be over many years.
- There may be one or more Community Facilities Districts (CFD) created to pay for infrastructure. But due to the School District also creating a CFD that will absorb much of the remaining property taxes and assessment capacity, there will be only approximately \$15 million available (assumes up to a 1.8 percent property tax rate).
- The total cost burden (building permit, existing fees, other infrastructure) is expected to be \$90,000 for single-family residences (estimated 21 percent of home cost) and \$61,200 for apartment units (23 to 26 percent of total cost). This creates the need for a BSMP Impact Fee that is suggested in the Public Facility Finance Plan.
- Given the amount of infrastructure required, and the fact that development must fund all of this infrastructure without the City sharing it, there are concerns about the financial feasibility of the project.

Environmental Determination:

An Environmental Impact Report (EIR) was prepared for the Bogue-Stewart Master Plan and circulated through the State (State Clearinghouse Number 2017012009). This EIR is written at two levels. For the Master Plan it is considered to be a “program” EIR. That is, it is written at more of a general level because the Master Plan only establishes a regulatory and policy framework for future development and does not describe or analyze any specific projects. As a result, future developments within Phase 3 of the Master Plan area will use this EIR as a basis of the analysis but must conduct their own project level environmental review.

The EIR is also a “project” EIR since there are proposed subdivisions that are actual development projects that are based on the new Master Plan. As such, the level of review for the two subdivisions is in much more detail.

At the outset there were numerous potential significant environmental impacts that could result from Master Plan development. In the Final EIR there are approximately 40 mitigation measures, some of which contain additional subcomponents. With those mitigation measures, many of the potential significant impacts are reduced to less than significant. However, there still remain several potential significant impacts which could not be feasibly mitigated. A summary of the remaining significant impacts includes:

Aesthetics, Light and Glare. The transition from agriculture to urban and suburban uses could degrade the scenic vista and the existing visual character of the area. New lighting will increase light and glare and cumulatively degrade nighttime views.

Agriculture. The development of the Master Plan area would result in the loss of Important Farmland to non-agricultural uses. This is a significant and unavoidable impact.

Air Quality. Even with mitigation measures, the new construction of land uses, ongoing operational activities, and additional traffic generated by the new development associated with the Master Plan would generate criteria pollutant emissions that could substantially contribute to a potential violation of air quality standards or nonattainment conditions. This is a significant and unavoidable impact.

Biological Resources. Development in the Master Plan area could result in the loss of special-status plants and wildlife, protected trees and could result in cumulative impacts to heritage oak trees and other trees. This is a significant and unavoidable impact.

Cultural Resources. Development in the Master Plan area could cause a substantial change in the significance of a historical architectural resource.

Transportation and Traffic. Development in the Master Plan area, in combination with other cumulative development would cause cumulatively significant Level of Service (LOS) reductions related traffic impacts at intersections maintained by Caltrans (SR 99).

Because there are significant and unavoidable environmental impacts associated with this Master Plan and its associated entitlements, approval of the Master Plan must be preceded by Findings of Fact and Statement of Overriding Considerations that there are economic, legal, social, technological or other benefits associated with the project that outweigh the unavoidable adverse environmental impacts. Those findings, are provided in **Attachment 2, Exhibit "B"**, of this staff report. All of the findings are supported by substantial evidence in the record.

Recommended Action:

After reviewing and considering the Master Plan, the proposed General Plan Amendment and Pre-annexation Zoning, the EIR prepared for the project, and all of the other written material that has been provided, and all of the written and oral testimony that has been received, staff recommend the Planning Commission take the following actions:

A. Adopt a Resolution Of The Planning Commission Of The City Of Yuba City Recommending The City Council (1) Adopt The Findings Required By Ceqa Guidelines, Section 15091; (2) Certify The Environmental Impact Report (SCH #2017012009) For The Proposed Bogue Stewart Master Plan (A 741-Acre Specific Plan Area Located South Of Yuba City Between Bogue Road On The North And Stewart Road On The South), Including General Plan Amendment (GPA 14-05), And Rezoning (RZ 14-04), As Well As The Newkom Ranch Large And Small Lot Subdivisions (TSMs 14-06 And 14-07), The Kells East Ranch Large And Small Lot Subdivisions (TSMs 15-02 And 15-03), And Development Agreements Within The Planning Area; And (3) Adopt The Proposed Mitigation Monitoring And Reporting Program, And (4) Adopt A Statement Of Overriding Considerations, Pursuant To The California Environmental Quality Act. (CEQA Resolution)

B. Adopt a Resolution Of The Planning Commission Of The City Of Yuba City Recommending To The City Council Of The City Of Yuba City Adoption Of The Bogue-Stewart Master Plan (BSMP) And The Accompanying General Plan Amendment And Preannexation Zoning For Approximately 741 Acres Of Land Generally Located South Of Bogue Road, North Of Stewart Road, West Of South Walton Avenue And East Of The Feather River Levee (BSMP Resolution)

Attachments:

1. Draft Bogue-Stewart Master Plan (previously provided).
2. CEQA Resolution, including the following exhibits:
 - Exhibit A: Environmental Impact Report (provided as a separate document).
 - Exhibit B: CEQA Findings of Fact which include: Impacts Determined to be Less Than Significant; Impacts Mitigated to Less Than Significant; Significant Unavoidable Adverse Impacts; Alternatives Considered and Rejected; and Statement of Overriding Considerations.
 - Attachment A: Mitigation Monitoring and Reporting Program.
3. BSMP Resolution, including the following exhibits:
 - Exhibit A: General Plan Amendment 14-05
 - Exhibit B: Bogue-Stewart Master Plan (SPA 16-05) (Attached separately)
 - Exhibit C: Rezoning 14-04 (Preannexation Zoning)

PLANNING COMMISSION RESOLUTION NO. _____

**RESOLUTION OF THE PLANING COMMISSION OF THE CITY OF YUBA CITY
RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF YUBA CITY
ADOPTION OF THE BOGUE-STEWART MASTER PLAN (BSMP) AND THE
ACCOMPANYING GENERAL PLAN AMENDMENT AND PREANNEXATION
ZONING FOR APPROXIMATELY 741 ACRES OF LAND GENERALLY
LOCATED SOUTH OF BOGUE ROAD, NORTH OF STEWART ROAD, WEST
OF SOUTH WALTON AVENUE AND EAST OF THE FEATHER RIVER LEVEE**

WHEREAS, several property owners in the Bogue-Stewart area requested to be included into the Yuba City Sphere of Influence ("SOI") for the purpose of annexing their properties into the City and developing their properties; and

WHEREAS, the City desires to ensure cohesive, integrated, and planned development of the Bogue-Stewart area through adoption of the Bogue-Stewart Master Plan ("BSMP" or "Master Plan"), a specific plan, for the region; and

WHEREAS, the City has policies requiring that areas new to the City be required to prepare a specific plan or master plan prior to the properties being developed. In this case the Master Plan (Specific Plan Amendment ("SPA") 16-05) was prepared for the 741-acre planning area; and

WHEREAS, because the Master Plan area adjoins the City's SOI and is outside of the City's General Plan and Zoning boundary, a General Plan amendment and rezoning are also needed for this area to be included into the City and developed within the City limits; and

WHEREAS, General Plan amendment ("GPA") 14-05 proposes an expansion of the land use map, circulation map as well as also includes by reference amendments to all other general plan maps for other elements including Parks, Schools, and Community Facilities Element, Public Utilities, Environmental Conservation, and Noise and Safety, to accommodate the additional area added by the Master Plan; and

WHEREAS, City services can be reasonably extended to the Master Plan area; and

WHEREAS, the BSMP is being adopted as a Specific Plan consistent with Government Code 65450 through 65457, and is referred to as a "master plan" for the sake of convenience; and

WHEREAS, a preannexation zoning map was prepared (RZ 14-04) since no City zoning existed with the BSMP area, and that zoning map was prepared to implement the proposed General Plan and Master Plan designations for the 741 acres; and

WHEREAS, the Master Plan, including GPA 14-05, SPA 16-05, and RZ 14-04, have been environmentally assessed consistent with the California Environmental Quality Act ("CEQA"), which has resulted in an Environmental Impact Report ("EIR") (SCH #2017012009) for the project; and

WHEREAS, after deliberation and consideration of all relevant items required by CEQA, the Planning Commission has concurrently recommend the City Council (1) adopt the findings

required by CEQA Guidelines section 15091; (2) certify the EIR; (3) adopt the proposed mitigation monitoring and reporting program ("MMRP"), and (4) adopt a statement of overriding considerations, pursuant to CEQA; and

WHEREAS, the City of Yuba City on November 1, 2019, published a legal notice in compliance with State law concerning Planning Commission consideration of the Master Plan and related entitlements in the Appeal-Democrat, a local newspaper of general circulation, which included the date and time of the Planning Commission consideration of a recommendation regarding the Master Plan and related entitlements. In addition, on or prior to November 1, 2019, a public hearing notice was mailed to each property owner within at least 300 feet of the Project site, as well as to all property owners within the Master Plan area, indicating the date and time of the public hearing regarding the proposed project in accordance with State law; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing at the City Council Chambers located at 1201 Civic Center Boulevard on the Master Plan and accompanying General Plan Amendment and Rezoning, on November 13, 2019; and

WHEREAS, in conjunction with the public hearing the Planning Commission has reviewed and considered the BSMP, proposed General Plan amendment and preannexation zoning, CEQA documents including the EIR, the staff report, Financing Plan, received oral testimony, and any other relevant information and determined that the proposed BSMP and proposed preannexation zoning are internally consistent with the goals, policies and objectives of the General Plan; and

WHEREAS, the Planning Commission now desires to adopt this Resolution recommending to the City Council adopt GPA 14-05, SPA 16-05, and RZ 14-04 for the 741-acre planning area generally located south of Bogue Road, north of Stewart Road, between South Walton Avenue and the Feather River Levee.

NOW, THEREFORE, BE IT RESOLVED the Planning Commission of the City of Yuba as follows:

1. Recitals. The Planning Commission hereby finds that all of the facts set forth in the recitals above are true and correct and incorporated herein.
2. Findings. The Planning Commission finds that public necessity, general welfare, good planning practices, and convenience warrant approval of GPA 14-05, SPA 16-05, and Rezoning 14-04.
 - a. *General Plan*: The Planning Commission finds that the project would facilitate and guide growth in accordance with the General Plan, and is consistent with the General Plan goals and policies, any operative plan, or adopted policy. In this regard, the Planning Commission incorporates the analysis of Table 3.10-1 ("City of Yuba City General Plan Consistency – Land Use and Planning") of the EIR and finds that the project is consistent with the General Plan for all the reasons set forth therein. The project does not affect the implementation of the General Plan with respect to surrounding properties.

Approval of the change would assist with the implementation of the Housing Element goals and policies in providing opportunity site for high density and other residential development that would provide necessary housing. The proposed Amendment would support the City's efforts to meet the Regional Housing Need Allocation (RHNA) as directed by the State of California Department of Housing and Community Development

and as required by the City's Housing Element of the General Plan. The RHNA is an effort to meet the affordable housing needs of the State California, including the City of Yuba City. This is considered to be in the public's interest.

- b. *Zoning Ordinance*: The proposed project is consistent with the purpose of the zoning ordinance to promote and protect the public's health, safety, peace, comfort, convenience and general welfare. The project would provide open space, light, air, privacy, convenience of access, aesthetic values, protection of environmental values, and protection of public and private improvements. Among others:
 - i. The project will allow for the creation of high-quality balanced neighborhoods that provide a wide range of housing opportunities, along with a mix of community- and neighborhood-commercial, office, and business/technology-oriented uses.
 - ii. The project will provide a framework for maintaining the integrity of surrounding residential neighborhoods by providing connections where necessary and continuing development in a visually compatible manner.
 - iii. The project will support the long term operation of adjacent agricultural uses, as well as continued interim agricultural production within the BSMP plan area.
 - iv. The project will provide an interconnected modified grid street system that expands upon the existing and adjacent roadways in the plan area to provide adequate and ample travel options for pedestrians, bicyclists, transit, and vehicles.
 - v. The project will foster a positive community image through the incorporation of high-quality architectural details and landscaping features.
 - vi. The project will coordinate the development of land uses and infrastructure to ensure that the infrastructure can support that development and the development can support the associated costs.
 - vii. The project will support Sutter County Local Area Formation Commission (LAFCo) approval for the annexation of the plan area into the City of Yuba City.
 - viii. The project will ensure that appropriate funding mechanisms are established to fully fund planned improvements and services over the buildout term without creating a negative fiscal impact to the City's General Fund.
 - c. *Environmental*. The potential impacts of the proposed project have been assessed as required by CEQA as noted above, and have been determined not to be detrimental to the public health, safety, or welfare.
3. Recommendation for Approval. Based on the information provided above the Planning Commission recommends to the City Council of Yuba City adopt:
- a. General Plan Amendment 14-05, which includes the Land Use and Transportation Elements, as set forth in Exhibit A; and
 - b. The Bogue-Stewart Master Plan (SPA 16-05) for the 741-acre area as set forth in Exhibits B; and
 - c. Rezoning 14-04 (Preannexation Zoning) for those zoning designations set forth and depicted in Exhibit C.
4. Effective Date of Resolution. This Resolution shall become effective immediately. The Secretary of the Planning Commission shall certify to the adoption of the Resolution and shall transmit copies of the same to the City Council of the City of Yuba City.

The foregoing resolution was introduced at the regular meeting of the Planning Commission held on November 13, 2019, by Commissioner _____ who moved its adoption, which motion was seconded by Commissioner _____ and carried by the following vote:

Ayes:

Noes:

Absent:

Recused:

By order of the Planning Commission of the City of Yuba City.

Brian Millar, Secretary

Exhibit A: General Plan Amendment 14-05

Exhibit B: Bogue-Stewart Master Plan (SPA 16-05) (Attached separately)

Exhibit C: Rezoning 14-04 (Preannexation Zoning)

EXHIBIT “B”

BOGUE-STEWART MASTER PLAN (SPA 16-05)

(PROVIDED AS A SEPARATE DOCUMENT)

EXHIBIT “C”

REZONING 14-04 (PREANNEXATION ZONING)

RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF YUBA CITY RECOMMENDING THE CITY COUNCIL (1) ADOPT THE FINDINGS REQUIRED BY CEQA GUIDELINES, SECTION 15091; (2) CERTIFY THE ENVIRONMENTAL IMPACT REPORT (SCH #2017012009) FOR THE PROPOSED BOGUE STEWART MASTER PLAN (A 741-ACRE SPECIFIC PLAN AREA LOCATED SOUTH OF YUBA CITY BETWEEN BOGUE ROAD ON THE NORTH AND STEWART ROAD ON THE SOUTH), INCLUDING GENERAL PLAN AMENDMENT (GPA 14-05), AND REZONING (RZ 14-04), AS WELL AS THE NEWKOM RANCH LARGE AND SMALL LOT SUBDIVISIONS (TSMs 14-06 and 14-07), THE KELLS EAST RANCH LARGE AND SMALL LOT SUBDIVISIONS (TSMs 15-02 AND 15-03), AND DEVELOPMENT AGREEMENTS WITHIN THE PLANNING AREA; AND (3) ADOPT THE PROPOSED MITIGATION MONITORING AND REPORTING PROGRAM, AND (4) ADOPT A STATEMENT OF OVERRIDING CONSIDERATIONS, PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, the project known as the "Bogue-Stewart Master Plan" (Master Plan), a specific plan, is located on approximately 741 acres in south Yuba City between Bogue Road on the north, Stewart Road on the south, South Walton Avenue on the west and the Feather River Levee on the east. The project also includes, within the boundaries of the Master Plan, the Newkom Ranch Subdivisions on approximately 161 acres and the Kells East Ranch Subdivisions on approximately 93.5 acres; and

WHEREAS, the Master Plan proposes a mix of uses consisting of low-, medium- and high-density residential uses, neighborhood and community commercial uses, office uses, light industrial uses and public spaces for a K-8 school, parks and drainage detention areas. The project would include up to 1,328 single-family residences and approximately 1,189 multiple-family residences, approximately 473,000 square feet of commercial uses, 108,500 square feet of office uses, and 575,000 square feet of business and light Industrial uses; and

WHEREAS, approval of the Master Plan would require approval of General Plan Amendment 14-05, Specific Plan Amendment 16-05 (adopting the Master Plan), and Rezoning 14-04; and

WHEREAS, Newkom Ranch, LLC, has submitted the Newkom Ranch Tentative Subdivision Maps for private development within a portion of the Master Plan area consisting of a large lot subdivision (Tentative Subdivision Map (TSM) 14-06) that will create 12 large lots, and four lettered lots to be utilized for public purposes. The 12 lots include a commercial lot, an office lot, a multiple-family residential lot, and nine large lots that will be further subdivided (TSM 14-07) creating 423 single-family residential lots; and

WHEREAS, a development agreement between Newkom Ranch, LLC, and the City of Yuba City is also contemplated for the governing of land uses in that area of the Master Plan known as the "Newcom Ranch" area; and

WHEREAS, Bains Properties, LP, has submitted the Kells East Ranch Tentative Subdivision Maps, also for private development within a separate portion of the Master Plan area consisting of a large lot subdivision (TSM 15-02) that will create four large lots, and three lettered

lots to be utilized for public purposes. The four lots include, a commercial lot and a multiple-family residential lot, and two large lots that will be further subdivided (TSM 15-03) creating 147 single-family residential lots; and

WHEREAS, a development agreement between Baines Properties, LP, and the City of Yuba City is also contemplated for the governing of land uses in that area of the Master Plan known as the "Kells East Ranch" area; and

WHEREAS, as a result the following entitlements are being considered for approval:

Master Plan:

- General Plan Amendment 14-05
- Specific Plan Amendment 16-05 (Adopting the Bogue-Stewart Master Plan)
- Rezoning 14-04
- Environmental Impact Report (SCH #2017012009)

Newkom Ranch:

- Development Agreement
- Tentative Subdivision Map 14-06
- Tentative Subdivision Map 14-07

Kells East Ranch:

- Development Agreement
- Tentative Subdivision Map 15-02
- Tentative Subdivision Map 15-03

(collectively "Project"); and

WHEREAS, pursuant to the authority and criteria contained in the California Environmental Quality Act of 1970 ("CEQA"), the City, as the Lead Agency, has analyzed the proposed Project and has prepared an Environmental Impact Report (SCH #2017012009) (as further defined below, the "EIR") in order to evaluate the proposed Project; and

WHEREAS, in compliance with CEQA Section 21080.4, a Notice of Preparation ("NOP") was prepared by the City and distributed for public comment to the State Clearinghouse, Office of Planning and Research, responsible agencies, and other interested parties for a 30-day public review and comment period commencing on January 4, 2017, after which a public scoping meeting was held during the NOP review period on January 18, 2017; and

WHEREAS, the draft EIR ("DEIR") was circulated for a 45-day public review and comment period commencing on May 3, 2019, a copy of the DEIR was circulated through the State Clearinghouse (SCH #2017012009), posted on the City's website, and was available at the Sutter County Library in Yuba City and City Hall; and

WHEREAS, the public review period for the DEIR ended on June 17, 2017; and

WHEREAS, a Final EIR (FEIR) was prepared on the proposed Project consistent with CEQA Guidelines Section 15088(b), which addressed comments received on the DEIR, responses to those comments, as well as any appropriate revisions and clarifications to the DEIR; and

WHEREAS the City of Yuba City on November 1, 2019, published a legal notice in compliance with State law concerning Planning Commission consideration of the EIR in the Appeal-Democrat, a local newspaper of general circulation, which included the date and time of the Planning Commission consideration of a recommendation for the EIR. In addition, on or prior to November 1, 2019, a public hearing notice was mailed to each property owner within at least 300 feet of the Project site, as well as to all property owners within the Master Plan area, indicating the date and time of the public hearing regarding the proposed Project (including the EIR) in accordance with State law; and

WHEREAS, on November 13, 2019, the Planning Commission conducted a duly noticed public hearing on the EIR as defined below, at which time it received input from City Staff, the City Attorney's office, and the developers; public comment portion was opened, and public testimony and evidence, both written and oral, was considered by the Planning Commission of the City of Yuba City, after which public testimony was closed; and

WHEREAS, the Planning Commission has reviewed the EIR and all associated documents prepared for the project, the staff reports pertaining to the EIR, and all of the evidence received by the Planning Commission; and

WHEREAS, Section 21000 of the *Public Resources Code* and Section 15000 *et. seq.* of Title 14 of the California Code of Regulations ("CEQA Guidelines") which govern the preparation, content, and processing of environmental impact reports, have been fully implemented in the preparation of the EIR; and

WHEREAS, the EIR identified certain significant and potentially significant adverse effects on the environment caused by the Master Plan and the associated subdivisions; and

WHEREAS, the Planning Commission desires, in accordance with CEQA, to recommend the City Council declare that, despite the occurrence of significant environmental effects that cannot be substantially lessened or avoided through adoption of feasible mitigation measures or feasible alternatives, there exist certain overriding economic, social, technical, and other considerations for approving the project that the Council believes justify the occurrence of those impacts; and

WHEREAS, CEQA (Guidelines Section 15043) affirms the City Council's authority to approve a project even though it may cause significant effects on the environment so long as the Council makes a fully informed and publicly disclosed decision that there is no feasible way to lessen or avoid the significant effects (CEQA Guidelines Section 15091) and that there are specifically identified expected benefits from the project that outweigh the policy of reducing or avoiding significant environmental impacts of the project (CEQA Guidelines Section 15093).

WHEREAS, after deliberation and consideration of all relevant items, the Planning Commission desires to recommend the City Council (1) adopt the findings required by CEQA Guidelines, section 15091; (2) certify the EIR; (3) adopt the proposed mitigation monitoring and reporting program ("MMRP"), and (4) adopt a statement of overriding considerations, pursuant to CEQA; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED the Planning Commission of the City of Yuba City resolves as follows:

1. Recitals. The Planning Commission hereby specifically finds that all of the facts set forth in the recitals above are true and correct and incorporated herein.
2. EIR Contents. The EIR consists of the following:
 - a. The FEIR including any attached appendices;
 - b. The DEIR including attached appendices;
 - c. The Notice of Preparation and comments received in response to the Notice of Preparation;
 - d. The Mitigation Monitoring and Reporting Plan ("MMRP");
 - e. Additions and corrections to the remaining portions of the DEIR that have been made pursuant to public comments and DEIR review including all appendices attached thereto;
 - f. Comments received on the DEIR with responses to each of the comments made;
 - g. The Notice of Completion and Availability of the DEIR for public review; and
 - h. Any other information added by the Lead Agency.

(All hereafter collectively referred to as the "EIR").

3. Accompanying Documents To EIR. Documents that shall accompany and be part of the EIR are:
 - a. Mitigation Monitoring and Reporting Program;
 - b. Findings of Fact; and
 - c. Statement of Overriding Considerations.
4. Certification Of Compliance With California Environmental Quality Act. The Planning Commission does hereby find that the EIR (Exhibit "A" to this Resolution, a copy which is on file with the City's Development Services Department), the Findings of Fact and the Statement of Overriding Considerations (Exhibit "B" to this Resolution), and the Mitigation Monitoring and Reporting Program (Attachment "A" to Exhibit "B" to this Resolution) have been prepared in accordance with requirements of the California Environmental Quality Act, and the CEQA Guidelines.
5. CEQA Findings of Fact, Mitigation Monitoring And Reporting Program and Statement of Overriding Considerations.
 - a. *Recommendation to Adopt Findings of Fact*. The Planning Commission does hereby recommend to the City Council that it approve, accepts as its own, incorporate as if set forth in full herein, and make each and every one of the findings contained in the Findings of Fact, Exhibit "B" of this Resolution.
 - b. *Recommendation to Certify Environmental Impact Report*. The Planning Commission hereby recommends to the City Council that it certify that (1) the EIR has been completed in compliance with CEQA; (2) that it has reviewed and considered the information contained in the EIR prior to approving the project; and (3) that the EIR reflects the City Council's independent judgment and analysis.
 - c. *Recommendation Regarding Feasible and Binding Effect of Mitigation Monitoring and Reporting Program*. As more fully identified and set forth in EIR and in the Findings of Fact for this Project, which is Exhibit "B" to this Resolution, the Planning Commission

hereby recommends to the City Council that it find that the mitigation measures described and specifically identified in the above referenced documents are feasible and shall become binding upon the entity (such as the project proponent or the City) assigned thereby to implement the particular mitigation measures as identified in the Mitigation Monitoring and Reporting Program.

- d. *Recommendation to Adopt Statement of Overriding Considerations.* Even after the adoption of all feasible mitigation measures and, certain significant or potentially significant environmental effects caused by the proposed modified Project directly, or cumulatively, will remain. The proposed Project has been carefully reviewed and the policies included in the proposed Project along with the mitigation measures identified in the EIR have avoided or substantially lessen several environmental impacts, to the extent feasible. Nonetheless, the proposed Project may have certain environmental effects which cannot be avoided or substantially lessened. The City has carefully considered all of the environmental impacts that have not been mitigated to an insignificant level. Therefore, the Planning Commission hereby recommends that the City Council issue and approve a Statement of Overriding Considerations in the form set forth in Exhibit "B," which identifies the specific economic, legal, social, technological and other considerations that render the unavoidable significant adverse environmental effects acceptable, either in its current form or as may be modified or amended by the City Council. Additionally, the Planning Commission also recommends that the City Council issue and approve a Statement of Overriding Considerations in the form set forth in Exhibit "B" identifying the changes or alterations that are within the responsibility and jurisdiction of another public agency and not the agency making the finding, and that such changes have been adopted by such other agency or can and should be adopted by such other agency, and that they render the unavoidable significant adverse environmental effects acceptable, either in its current form or as may be modified or amended by the City Council.
 - e. *Recommendation to Adopt Mitigation Monitoring and Reporting Program.* As required by applicable State law, the Planning Commission hereby recommends to the City Council that it adopt the Mitigation Monitoring and Reporting Program set forth in Attachment "A" to Exhibit "B" of this Resolution. The Planning Commission finds that the Program is designed to ensure that, during project implementation, the City and any other responsible parties implement the project components and comply with the mitigation measures identified in the Findings of Fact and the Mitigation Monitoring and Reporting Program.
6. Effective Date of Resolution. This Resolution shall become effective immediately. The Secretary of the Planning Commission shall certify to the adoption of the Resolution and shall transmit copies of the same to the City Council of the City of Yuba City.

The foregoing resolution was introduced at the regular meeting of the Planning Commission held on November 13, 2019, by Commissioner _____ who moved its adoption, which motion was seconded by Commissioner _____ and carried by the following vote:

Ayes:

Noes:

Absent:

Recused:

By order of the Planning Commission of the City of Yuba City.

Brian Millar, Secretary

Exhibit A: Environmental Impact Report (provided as a separate document).

Exhibit B: CEQA Findings of Fact which include: Impacts Determined to be Less Than Significant;
Impacts Mitigated to Less Than Significant; Significant Unavoidable Adverse Impacts;
Alternatives Considered and Rejected; and Statement of Overriding Considerations.

Attachment A: Mitigation Monitoring and Reporting Program.



CITY OF YUBA CITY
PLANNING COMMISSION
STAFF REPORT

Date: November 13, 2019

To: Chair and Members of the Planning Commission

From: Development Services Department

Presentation By: Brian Millar, Interim Director of the Development Services Department
Denis Cook, Planning Consultant

Public Hearing: **Newkom Ranch Subdivision Maps and Development Agreement:**

Tentative Subdivision Map (TSM) 14-06 (Large Lots) (Contingent Approval): A proposal to create 12 large lots ranging in size from 3.61 acres to 21.48 acres; and

Tentative Small Lot Subdivision Map (TSM) 14-07 (Small Lots) (Contingent Approval): A proposal to subdivide the nine residential large lots from TSM 14-06 into 423 single-family residential lots; and

Development Agreement (DA) (Recommendation): A development agreement for the Newkom Ranch Subdivisions.

Project Location: The 161.17-acre property is located along the east side of State Route 99 between Bogue Road and Stewart Road (**Figure 1**). Assessor's Parcel Numbers 23-040-001, 004, 005, 062, and 064 and 23-380-007.

Recommendation: Adopt a Resolution Of The Planning Commission Of The City Of Yuba City Contingently Approving The Newkom Ranch Subdivisions (Tentative Subdivision Maps (TSM) 14-06 And 14-07) Located At The Southeast Corner Of State Route 99 And Bogue Road; Assessor's Parcel Numbers 23-040-001, 004, 005, 062, 064, And 23-380-007; and

Adopt a Resolution Of The Planning Commission Of The City Of Yuba City Recommending To The City Council Of The City Of Yuba City Approval Of An Uncodified Ordinance For A Development Agreement With Newkom Ranch, LLC, For The Development Of The Newkom Ranch Subdivisions (TSM 15-02 And TSM 15-03); Assessor's Parcel Numbers 23-040-001, 004, 005, 062, 064, And 23-380-007.

TENTATIVE SUBDIVISION MAPS
2014-06 (LARGE LOT) AND 2014-07 (SMALL LOT)
NEWKOM RANCH

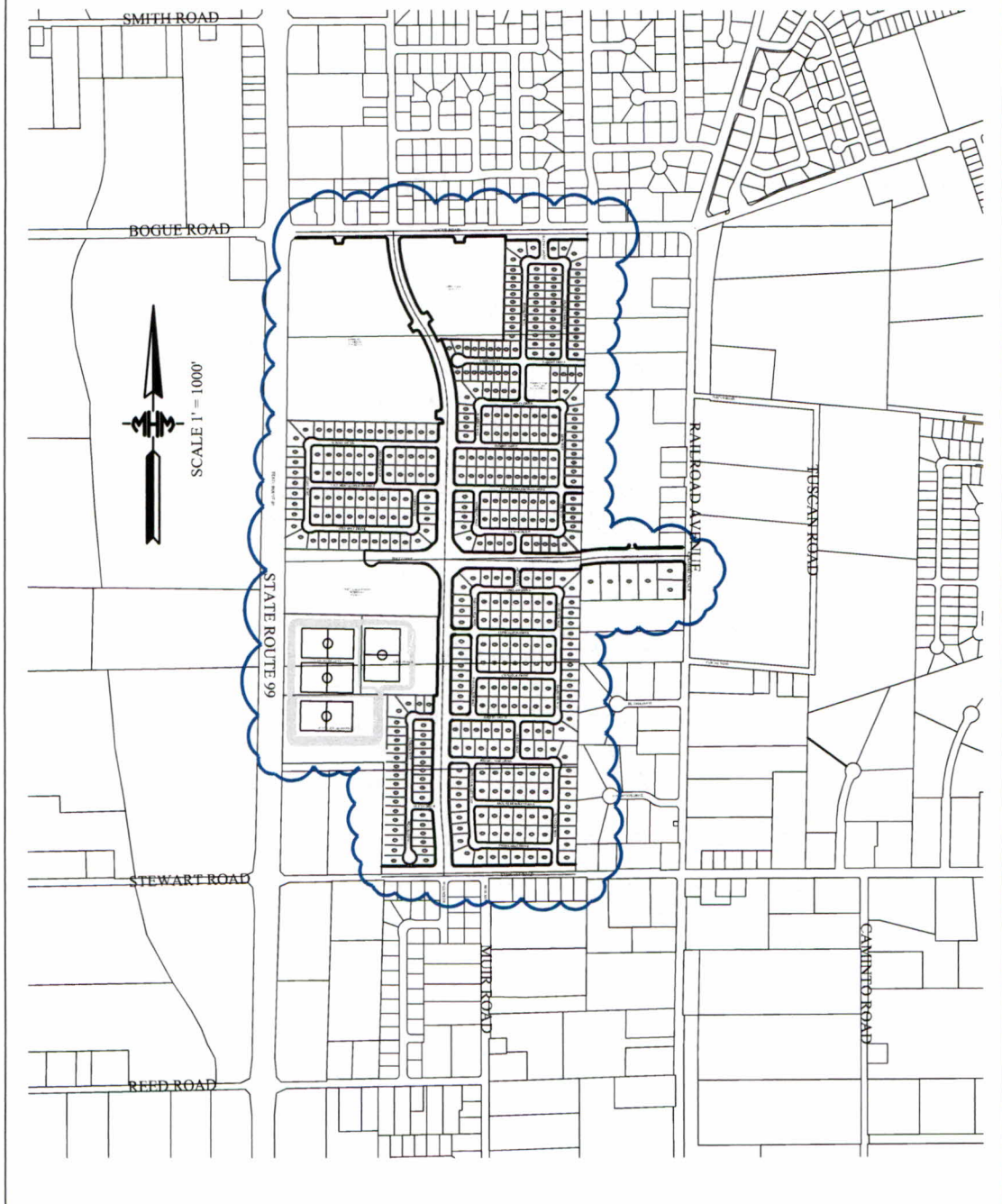


Figure 1: Newkom Ranch Location Map

Project Proposal:

Subdivisions

The subdivisions are for a mixed-use development that is part of the Bogue-Stewart Master Plan. As proposed the Newkom Ranch Subdivision will create the following land uses:

Table 1: Proposed Newkom Ranch build-out		
Use	Acres	Number of residential units or building square footage (sf)
Single-family residences	95.21	423
Multiple-family residences	9.02	220 (est.)
Commercial	21.48	230,000 sf (est.)
Office	8.58	108,500 sf (est.)
Park/Detention Ponds	17.34	-
Major Roads	9.54	-
Total	161.17	-

The subdivisions cover the same 161 acres. TSM 14-06 is a large lot subdivision that divides most of the 161 acres into 12 large lots ranging in size from 3.61 acres to 21.48 acres (the subdivisions are provided in **Figure 2**, or a larger version is provided as an exhibit to **Attachment 1** to this staff report). Nine of the large lots, totaling 95.21 acres are intended to be further subdivided into 423 single-family lots per TSM 14-07. One 9.02-acre large lot will be utilized for multiple-family development, one large lot of 21.48 acres will be for commercial development, and one 8.58-acre large lot will be utilized for office type development. There are also four additional large lots that will be dedicated to the public for a community park, community park/detention pond, and detention pond.

The intent for creating the nine residential large lots is to allow for their sale to individual home builders as a large lot where they can then record the small lot subdivision and build homes. For example, proposed Large Lot 1 can be purchased by a homebuilder who in turn will finish and record the small lot subdivision into 70 smaller single-family residential lots for home construction.

The land uses that will result from each large lot are provided in **Table 2**.

Development Agreement

A Development Agreement is also proposed, which is a contract between the City and developer that defines processes and criteria for the subdivisions to be developed. The Development Agreement that accompanies these subdivisions is intended to satisfy the City's Growth Policies and was also requested by the applicant. The primary benefit of the agreement is to allow a 20-year plus life for the tentative subdivision map, versus a standard subdivision that has about half that lifespan without the Development Agreement.

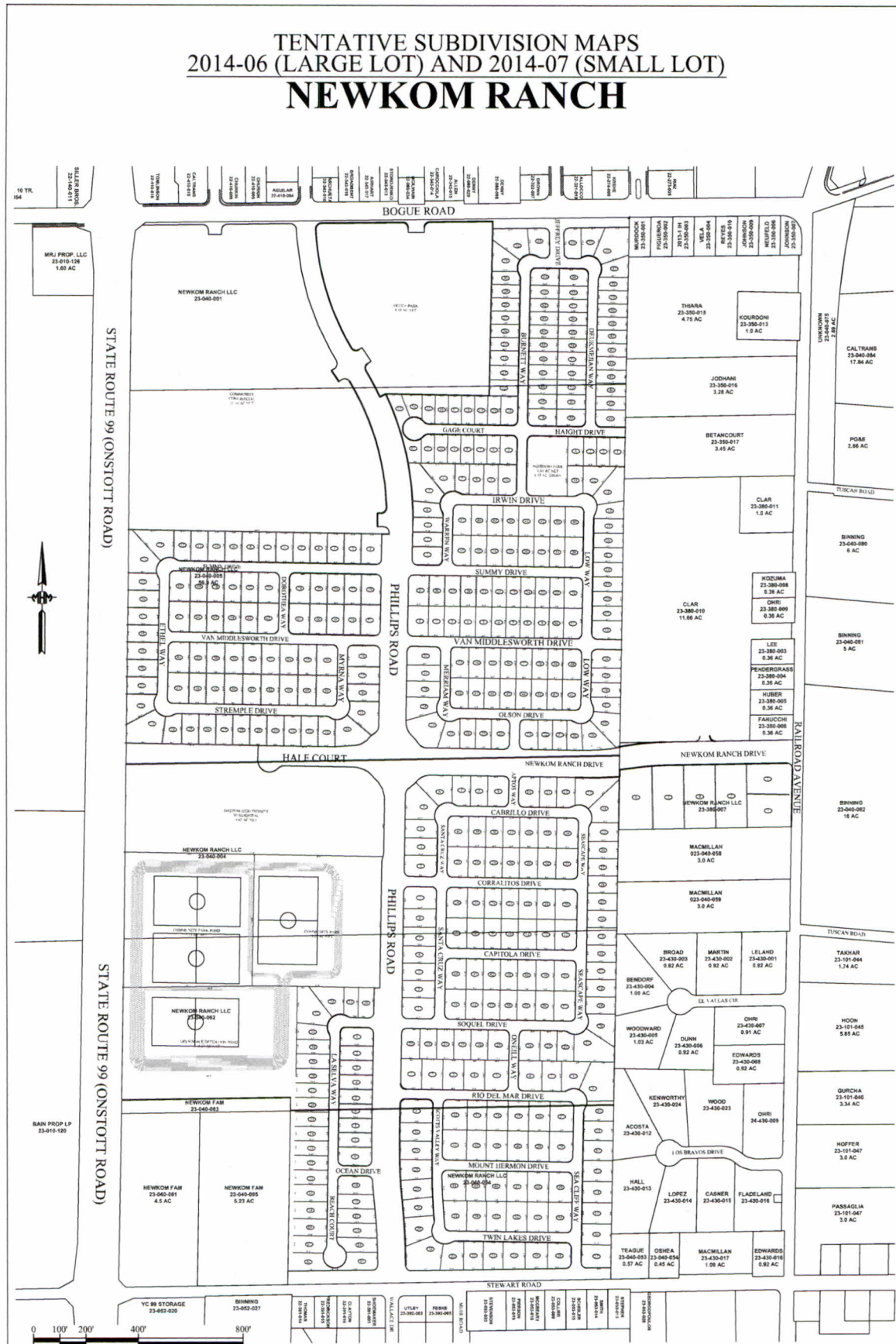


Figure 2: Newkom Ranch Tentative Subdivision Map

Table 2: Build-out of the Subdivision		
Large Lot	Use	Acres
1	70 Single-family residences (SFR)	12.32
2	47 SFR	9.52
3	48 SFR	9.96
4	78 SFR	17.77
5	6 SFR	3.61
6	40 SFR	9.77
7	44 SFR	10.20
8	55 SFR	14.63
9	35 SFR	7.43
10	220 Multiple-Family Residences	9.02
11	Community Commercial	21.48
12	Office	8.58
A	Neighborhood Park	.80
B	Community Park	5.53
C	Community Park/Detention Pond	5.74
D	Detention Pond	5.27
	Roads	9.54
Total		161.17

Background:

The Newkom Ranch and Kells East Ranch Subdivisions are located across from each other along SR 99 other side of SR 99. They comprise the two proposed projects that are being processed concurrently with the 741-acre Bogue Stewart Master Plan. Newkom Ranch Subdivisions comprise approximately 161 acres, or approximately 22 percent, of the 741-acre Master Plan area. The Master Plan has been under development for the last few years. There are many other parcels in the Master Plan, some of which are already developed with residences, others are in agricultural use. It is not known if or when the owners of the remaining agricultural properties will want to develop their property.

Access and Public Improvements:

The primary east-west access roads to the subdivision will be by Bogue Road and Stewart Road. On a north-south basis Phillips Road and Railroad Avenue provide the primary access, connecting Bogue Road and Stewart Road. The subdivisions will be served by City water and wastewater systems. Storm-water drainage will be provided by Gilsizer County Drainage District and Yuba City. The public properties will consist of a neighborhood park and a Community park/stormwater drainage pond. All City services will be constructed in stages as the project is developed. Police Department and Fire Department services will be provided by Yuba City out of existing locations.

The Master Plan is within the Yuba City Unified School District. According to the school district K-8 students will attend Barry School. High school students will attend Yuba City High School.

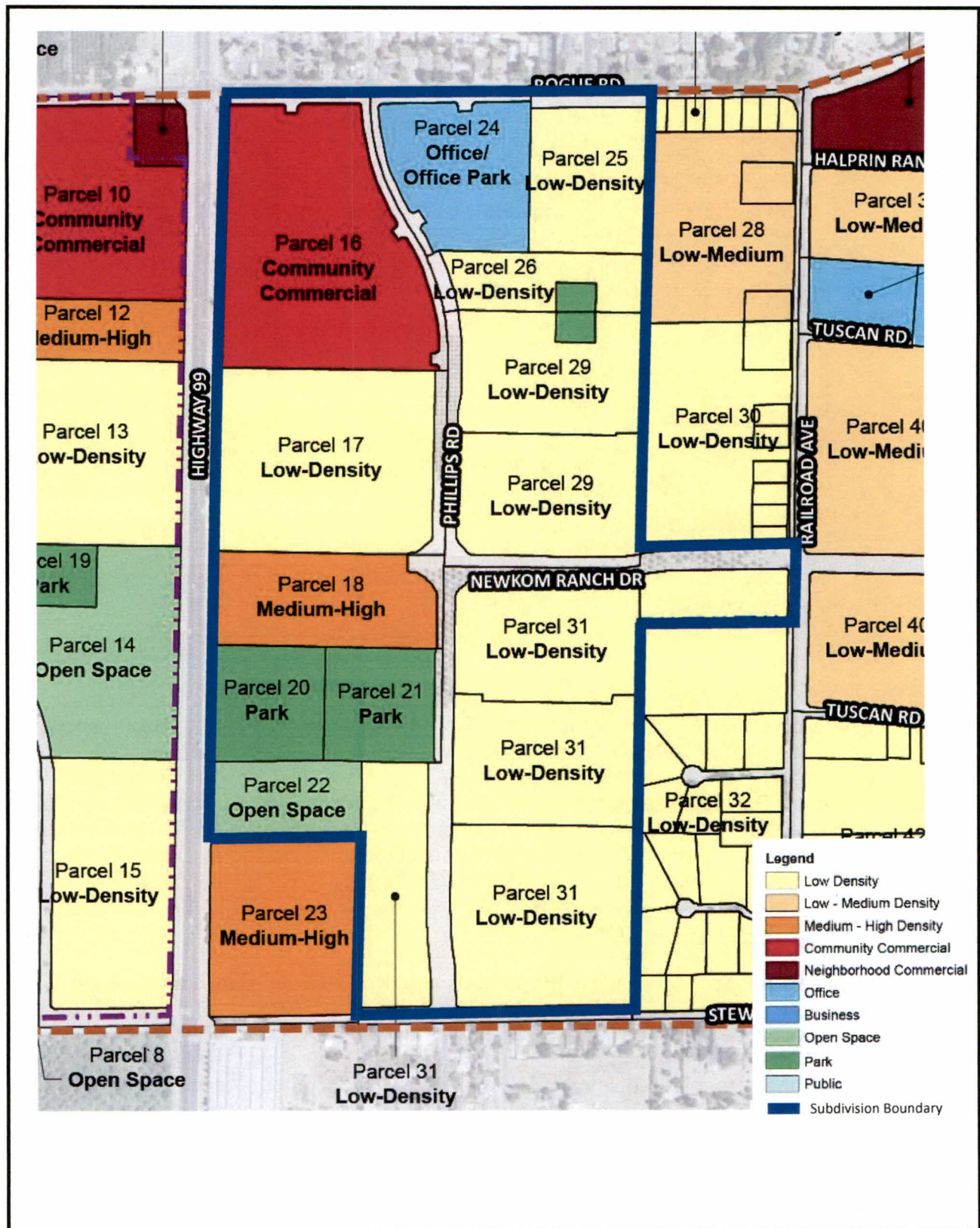


Figure 3: Master Plan Land Use Map for Newkom Ranch Subdivisions

Property Description:

The site is relatively flat with no unique topographic features such as rock outcroppings. The property is currently planted in orchards. Access roads to the property are County roads designed to serve an agricultural area.

Existing Bordering Uses:

Table 3: Bordering Information and Uses			
	General Plan Land Use Classification	Zoning	Existing Land Use
<i>Project Site</i> ¹	Low Density Residential (LDR), High Density Residential (HDR), Community Commercial (CC), Office & Office Park (O), Parks and Open Space (P)	One-Family Residential (R-1), Multiple-Family Residential (R-3), Community Commercial (C-2), and Public Facility (PF)	Orchards
<i>North</i> ¹	LDR, Neighborhood Commercial (NC)	R-1, Neighborhood Commercial (C-1)	Single-family residences, convenience market.
<i>East</i> ¹	LDR, MDR	R-1, Two-Family Residential (R-2)	Orchards, ranchettes
<i>West</i> ¹	CC, LDR, HDR, P	R-1, R-3, C-2, PF	SR 99, orchards.
<i>South</i> ²	Agriculture 20, LDR	AG, R-1	Orchards, ranchettes.

¹ Area is unincorporated but designations and pre-annexation zoning is for City.

² Sutter County General Plan and Zoning.

Yuba City General Plan Land Use Designations:

Low Density Residential (LDR) - This designation provides for a residential density range of 2-8 residences per gross acre. This designation is typically used for single-family residential uses. The proposed single-family residential density for this project is approximately 4.2 residences per gross acre.

Medium-High Density Residential (HDR) - This designation provides for a residential density range of 12-36 residences per gross acre. This designation typically includes apartments and condominium developments. The applicant's proposed density is approximately 22 residences per gross acre.

Neighborhood Commercial - Provides smaller commercial areas to service the daily needs of the surrounding neighborhood.

Community Commercial (CC) - Provides for a wider variety of retail and service commercial uses.

Office and Office Park (O) - Provides for office type and related uses.

Park/Open Space (PF).

Zoning:

Single-Family (R-1), Multiple-Family (R-3), Community Commercial (C-2), Office (O), Public Facility (PF) Zone Districts. These zone districts compliment their respective general plan designations.

Previous Commission/Council Actions:

This area will be a new addition to the City. Several years ago, the City Council held discussions on the boundary for this Master Plan.

There was a joint City Council/Planning Commission study session on the Bogue-Stewart Master Plan and accompanying EIR on June 24, 2019. No recommendations or decisions were made.

Staff Comments:

The subdivisions are for a mixed-use development that is part of the Bogue-Stewart Master Plan. The large lot subdivision divides the 161.17 acres into 12 large lots ranging in size from 3.62 acres to 21.48 acres. Nine of the large lots are being further subdivided by TSM 14-07 into 423 single-family lots. One 9.02-acre large lot will be utilized for multiple-family development, the 21.48-acre large lot will be for commercial development and one 8.58-acre large lot will be utilized for office type development. The intent for being able to further subdivide the nine large lots into small single-family residential lots is to allow for the individual sale of a large lot to individual home builders that can then construct and record the small lot subdivision and build homes. For example, Large Lot 1 can be purchased by a homebuilder who in turn will finish and record the small lot subdivision into 70 smaller single-family lots for individual home construction. There are also four lettered lots totaling 17.34 acres that are intended for public use – a community park, community park/detention pond, and detention pond.

Compatibility with neighboring uses

The west side of the subdivision borders SR 99. Those new lots will be developed in commercial, multiple-family and single-family residences, and open space. The commercial and open space lots will not be adversely impacted by SR 99. The residential components may be impacted by noise generated by SR 99 traffic, especially truck traffic. There is a condition included with the subdivision map that prior to recording a small lot final map or multiple-family large lot, a noise study shall be prepared. The condition also requires that, based on the noise study, the new residences have adequate noise attenuation such that the indoor noise levels meet the General Plan Noise Element's "normally acceptable" noise standard, as provided in Figure 9-4 of the General Plan, and the relevant General Plan noise policies.

The north side of the subdivision is bordered by Bogue Road. The area north of Bogue Road

is within the existing Yuba City Sphere of Influence, primarily consisting of suburban type residential development as well as a convenience market/gas station. The uses proposed by the Master Plan along this boundary varies from commercial, office, and a residential area. In some cases, there could be conflicts with new commercial or office uses located across from existing single-family residential uses. The EIR prepared for the project (pg 3.10-12) offers various design improvements such as walls, vegetative plantings, lighting control and architectural design intended to a minimize those impacts.

The south side of the subdivision, which borders Stewart Road, proposes new single-family residential uses which will border existing ranchette type uses located across Stewart Road. Although residential uses facing residential uses is typically considered compatible, the new homes will not face Stewart Road. Instead they will face away from Stewart Road and have a decorative masonry wall and landscaping facing the existing homes. This is not expected to create compatibility issues.

Another local issue regarding building new single-family that back up to existing one-story residences. In this case the east side of Newkom Ranch will be developed in single-family residences that will back onto agricultural uses and ranchette homes. The agricultural uses, however, are designated to also be similarly developed with homes at some point in the future so no mitigation is needed. For the ranchette style homes along the eastern boundary with Newkom Ranch, the new single-family homes will back up to the rear or sides of those homes. A condition is included that the new homes that back up to the ranchette housing be single-story.

While these existing residences in the vicinity of Newkom Ranch will experience more activity in their area as well as increased traffic on the major streets, there are not expected to be compatibility issues between the existing and proposed residential uses. Most of the new traffic will be westbound, thereby not affecting the existing residences located east of the subdivision.

Traffic and Circulation:

Note: Traffic related Impacts created by the Kells East Ranch Subdivision and Newkom Ranch Subdivision are discussed in detail in the EIR, starting on page 3-14.1. There was also a traffic study prepared for the projects which is contained in the appendices of the EIR). The following is a brief summary of that discussion.

With the construction of this subdivision and other projects within this Master Plan area, a notable change will be the increase in traffic. The retail development portion of the subdivision will generate an estimated 230,000 square feet of buildings, the office portion will create an estimated 108,500 square feet of new offices, and there will be approximately 643 new single-family and multiple-family residences. The EIR does not break projected traffic down for just this project but estimates the build out of the Phases I and 2 (Newkom Ranch and Kells East Ranch) of the Master Plan will generate approximately 30,000 daily vehicle trips. As a result, significant street expansions will be needed on the major road system. Bogue Road and the new northern section of Phillips Road (south of Bogue Road) will be expanded to four lanes with signalized intersections at Bogue Road/Phillips Road and Bogue Road/Railroad intersections. At the Bogue Road/SR 99 intersection the westbound and eastbound lanes will be widened to have double right and left turn lanes respectively. Signals at the Stewart Road/SR 99 intersection will also be constructed.

The EIR prepared for the Master Plan, provides numerous other mitigation measures for street improvements. The list of mitigations is provided in the EIR prepared for the BSMP and this subdivision, as well as more detailed summary of all the traffic issues associated with the development of this Master Plan in Section 3.14 of the EIR.

These street improvements will not occur all at once. The street improvements will occur as the various phases of the project are constructed. The conditions of the tentative subdivision map and the mitigation measures dictate when these improvements will occur.

The new roads proposed by the Master Plan as well as widening of existing streets will provide a roadway network that will function at a Level of Service (LOS) D or better during peak traffic hours. LOS D is the minimal level of service allowed by the City's General Plan policies.

This subdivision, like other portions of the Master Plan area will also provide for alternative forms of transportation. All arterial and collector streets will have bike lanes, five or six-foot wide sidewalks, and bus stops at chosen locations. On some major streets there will be 10-foot wide "shared paths." These are for use by both bicycle and pedestrians and are detached from the main road.

Development Agreement:

There is a development agreement (DA) that is also proposed as part of the subdivisions. This is a binding agreement between the City and the Developer spelling out items that go beyond the standard planning, zoning, and development and design standards that are required of the project. While development agreements are allowed by state law, there are no established rules or policies regarding the deal points. As such, each proposal is unique and must be considered on its own terms.

In this case the DA was requested by the applicant and is also required by the City Council's Growth Policies requiring a DA for newly annexed areas. The primary deal point for this DA is to extend the life of the subdivision for 20 years. The typical life span to construct an approved subdivision without a development agreement does not typically extend more than ten years. Due to the nature of residential development in Yuba City, this was not considered enough time for the developer to build the subdivision when considering the large investment required early in the subdivision's life.

Availability of City Services:

All City services, including water, sewer and storm-water drainage will be extended to serve this subdivision, as provided in Table 4.

Table 4: Summary of Public facilities and Services

Water	City water is available near the subdivision's boundary. There are existing trunk lines in Bogue Road, Garden Highway, and Stewart Road that will be extended into the subdivision. Two new water storage tanks may be installed in the Master Plan area (near the PG&E substation), dependent on other City needs. The subdivision will be responsible for extending water lines to the project as well as pay water connection fees which go towards future plant expansions and trunk line extensions.
Wastewater	There is a sewer trunk line in Bogue Road, connecting to a Garden Highway trunk line. The subdivision will connect to both Bogue and Garden Highway lines via the existing Bogue Road line, Shanghai Bend Road, and Stewart Road lines. Other offsite improvements and lines may be needed to accommodate the new growth. The subdivision will be responsible for extending sewer lines to each new lot as well as pay sewer connection fees which goes towards future plant expansions and trunk line extensions.
Stormwater	Most Newkom Ranch drainage will flow to the Gilsizer Slough (Gilsizer County Drainage District). The subdivision will be responsible for building its portion of the stormwater collection system as well as either dedicate land for detention ponds and build needed portions of the backbone system or pay a BSMP fee to pay for the major drainage system improvements.
Streets	There will be an extensive new street system based on the traffic study. The street system will be expanded to accommodate development as it occurs. Each new development will also pay fees for and/or build its fair share of needed street improvements
Law Enforcement	The Yuba City Police Department will service the Master Plan area upon annexation. Police services will continue to be provided out of the existing Police Station on Poole Boulevard. The Sutter County Sheriff's Department and California Highway Patrol provides law enforcement to the remaining unincorporated areas. Each new building will pay City development impact fees for future police facility expansion and new police equipment that is needed due to growth.
Fire protection	The Yuba City Fire Department provides fire protection to the subdivision from its existing five fire stations. No new fire stations are proposed for the subdivision. Each new building will pay City development impact fees for Fire Department future facility expansion and new fire equipment that is needed due to growth.
Schools	The entire subdivision is within the Yuba City Unified School District. According to the school district, K-8 students will attend Barry Elementary School. High school students will attend Yuba City High School. A new K-8 school site is proposed in the northwest corner of the Master Plan area, which is outside of this subdivision. The subdivision must join a Yuba City Unified School District required Community Facility District requiring each new residence to pay an annual assessment for future school expansions or a new school.

Environmental Determination:

An Environmental Impact Report (EIR) was prepared for the Bogue-Stewart Master Plan and circulated through the State (State Clearinghouse Number 2017012009). This EIR is written at two levels. For the Master Plan it is considered to be a "program" EIR. That is, it is written at more of a general level because the Master Plan only establishes a regulatory and policy framework for future development and does not describe or analyze any specific projects.

The EIR is also a "project" EIR since Newkom Ranch and Kells East Ranch Subdivisions are actual development projects. As such, the level of review for the two subdivisions is more detailed. Other future developments within the Master Plan area will use this EIR as a basis of the analysis but must conduct their own project level environmental review.

At the outset there were numerous potential significant environmental impacts that could result from this project. The EIR has approximately 40 mitigation measures, some of which contain additional subcomponents. With those mitigation measures many of the potential significant impacts are reduced to less than significant. However, there still remain several potential significant impacts which could not be mitigated. A summary of the remaining significant impacts includes:

Aesthetics, Light and Glare. The transition from agriculture to urban and suburban uses could degrade the scenic vista and the existing visual character of the area. New lighting will increase light and glare and cumulatively degrade nighttime views.

Agriculture. The development of the Master Plan area would result in the loss of Important Farmland to non-agricultural uses. This is a significant and unavoidable impact.

Air Quality. Even with mitigation measures, the new construction of land uses, ongoing operational activities, and additional traffic generated by the new development associated with the Master Plan would generate criteria pollutant emissions that could substantially contribute to a potential violation of air quality standards or nonattainment conditions. This is a significant and unavoidable impact.

Biological Resources. Development in the Master Plan area could result in the loss of special-status plants and wildlife, protected trees and could result in cumulative impacts to heritage oak trees and other trees. This is a significant and unavoidable impact.

Cultural Resources. Development in the Master Plan area could cause a substantial change in the significance of a historical architectural resource.

Transportation and Traffic. Development in the Master Plan area, in combination with other cumulative development would cause cumulatively significant Level of Service (LOS) related traffic impacts at intersections maintained by Caltrans.

Note that the discussion of the significant impacts is based on the entire Master Plan. This is relevant to this subdivision as it contributes a proportional share of those impacts. Note also that there is a small difference in the number of lots shown in the Bogue-Stewart Master Plan due to the tentative subdivision map being revised following the completion of the Master Plan. The environmental effects did not change as there are now fewer lots, which would have less of an effect on the environment.

Because there are significant and unavoidable environmental impacts associated with this Master Plan and its associated entitlements, approval of the Master Plan was preceded by Findings of Fact and Statement of Overriding Considerations (provided as an attachment to the Planning Commission's Master Plan staff report for this meeting) that there are economic, legal, social, technological or other benefits associated with the project that outweigh the unavoidable adverse environmental impacts. All of the findings are supported by substantial evidence in the record.

Recommended Action:

A. Adopt a Resolution Of The Planning Commission Of The City Of Yuba City Contingently Approving The Newkom Ranch Subdivisions (Tentative Subdivision Maps (TSM) 14-06 And 14-07) Located At The Southeast Corner Of State Route 99 And Bogue Road; Assessor's Parcel Numbers 23-040-001, 004, 005, 062, 064, And 23-380-007.

Note: If the Planning Commission approves these proposed subdivisions the decision is considered a "contingent" approval, as it is dependent upon the City Council certifying the environmental impact report, approving the Bogue-Stewart Master Plan as well as the accompanying General Plan Amendment and Pre-annexation zoning. The approval of these subdivisions also would not be completed until Sutter LAFCo approves the Sphere of Influence Amendment and annexation of the properties into the City.

B. Adopt a Resolution Of The Planning Commission Of The City Of Yuba City Recommending To The City Council Of The City Of Yuba City Approval Of An Uncodified Ordinance For A Development Agreement With Newkom Ranch, LLC, For The Development Of The Newkom Ranch Subdivisions (TSM 15-02 And TSM 15-03); Assessor' Parcel Numbers 23-040-001, 004, 005, 062, 064, And 23-380-007.

Attachments:

1. Resolution Contingently Approving The Newkom Ranch Subdivisions (Tentative Subdivision Maps (TSM) 14-06 And 14-07). Includes the following as Exhibits:
 - Exhibit A: TSM 14-06
 - Exhibit B: Conditions of approval for TSM 14-06
 - Exhibit C: TSM 14-07
 - Exhibit D: Conditions of approval for TSM 14-07
2. Resolution Recommending Approval Of A Development Agreement With Newkom Ranch, LLC. Includes the following as an attachment:
 - Attachment "A:" Development Agreement

PLANNING COMMISSION RESOLUTION NO. _____

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF YUBA CITY
CONTINGENTLY APPROVING THE NEWKOM RANCH SUBDIVISIONS
(TENTATIVE SUBDIVISION MAPS (TSM) 14-06 AND 14-07) LOCATED AT THE
SOUTHEAST CORNER OF STATE ROUTE 99 AND BOGUE ROAD;
ASSESSORS PARCEL NUMBERS 23-040-001, 004, 005, 062, 064, AND 23-
380-007**

WHEREAS, Newkom Ranch, LLC (“Developer”) submitted two tentative subdivision maps to subdivide the approximately 161.17-acre property in a portion of what is proposed to be the Bogue-Stewart Master Plan (“BSMP” or “Master Plan”), generally located east of State Route 99 between Bogue Road on the north and Stewart Road on the south, and known as the Newkom Ranch area.

WHEREAS, Newkom Ranch tentative subdivision map (“TSM”) 14-06 proposes to create 12 large lots for commercial, office, and residential uses, as well as four lettered lots to be dedicated to the City for public use, and TSM 14-07 proposes to further subdivide nine of the 12 larger single-family residential large lots into 423 single-family residential lots. The remaining three large lots would be for future community commercial, office and multiple-family uses; and

WHEREAS, an adjoining property to the west, in an area known as the Kells East Ranch, is also being proposed to be developed to urban levels as part of the Master Plan; and

WHEREAS, these properties are currently outside of City’s Sphere of Influence (“SOI”), and under City policy are required to prepare a specific plan or master plan before the properties could be annexed into the City and developed to urban uses; and

WHEREAS a specific plan known as the “Bogue-Stewart Master Plan” was prepared for this purpose, and encompasses both the Newkom Ranch and East Kells Ranch properties, as well as other properties, consisting of a total of 741 acres; and

WHEREAS, because the proposed Master Plan area is outside of the City’s SOI, a General Plan Amendment (GPA 14-05), Master Plan (SPA 16-05), and a Rezoning (RZ 14-04), were processed concurrently with the TSM 14-06 and TSM 14-07, as well as other entitlements; and

WHEREAS, an Environmental Impact Report (SCH #2017012009) (“EIR”) prepared for the Master Plan also assessed development of Newkom Ranch, including TSM 14-06 and TSM 14-07; and

WHEREAS, the City of Yuba City on November 3, 2019, published a legal notice in compliance with State law concerning Planning Commission consideration of TSM 14-06 and TSM 14-07 in the Appeal-Democrat, a local newspaper of general circulation, which included the date and time of the Planning Commission consideration of a recommendation for the approval of the TSMs. In addition, on or prior to November 1, 2019, a public hearing notice was mailed to each property owner within at least 300 feet of the project site, as well as to all property owners within the Master Plan area, indicating the date and time of the public hearing regarding the proposed Project (including the TSMs) in accordance with State law; and

WHEREAS, on November 13, 2019, the Planning Commission conducted a duly noticed public hearing at the City Council Chambers located at 1201 Civic Center Boulevard on the EIR, BSMP, GPA and Preannexation Zoning, and at that meeting recommended to the City Council certification of the EIR, and approval of the BSMP, GPA and Preannexation Zoning; and

WHEREAS, immediately following that hearing, the Planning Commission conducted a duly noticed public hearing on the Newkom Ranch TSMs 14-06 and 14-07, and the proposed Development Agreement for the subdivisions, at which time it received input from City Staff, the City Attorney's office, and the developers. Public comment portion was opened, and public testimony and evidence, both written and oral, was considered by the Planning Commission of the City of Yuba City, after which public testimony was closed; and

WHEREAS, immediately following this hearing, the Planning Commission anticipates considering and making a recommendation to the City Council regarding a Development Agreement with Bains Properties, LP, for the Kells East Ranch portion of the Master Plan area. The Planning Commission also anticipates considering the contingent approval of the Kells East Ranch TSM 14-06 and TSM 14-07, subject to the conditions of approval and mitigation measures and contingent on the City Council's Certification of the Environmental Impact Report prepared for the Bogue-Stewart Master Plan and these subdivisions, and approval of the accompanying General Plan Amendment, the Bogue-Stewart Master Plan, and the Pre-annexation Zoning; and

WHEREAS, to accommodate the Developer's request to consider the TSMs in conjunction with the approval of the Master Plan, etc., Planning Commission now to desires to contingently approve TSM 14-06 and TSM 14-07 such that no decision of approval of TSM 14-06 or TSM 14-07 becomes final and effective until immediately after the City Council certifies the EIR (SCH #2017012009) and adopts General Plan Amendment (GPA 14-05), Master Plan (SPA 16-05), Rezoning (RZ 14-04); and if no such approval occurs within 180 days of the adoption of this Resolution, then the Planning Commission intends that TSM 14-06 or TSM 14-07 be set for further consideration and a final decision by the Planning Commission; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED the Planning Commission of the City of Yuba City resolves as follows:

1. Recitals. The Planning Commission hereby finds that all of the facts set forth in the recitals above are true and correct and incorporated herein.
2. CEQA. Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, the City, as the Lead Agency, has analyzed the proposed Project and has prepared an environmental impact report ("EIR") to evaluate the environmental effects of the Project, including development of the Newkom Ranch area. The Planning Commission has fully considered the EIR, and has concurrently recommended it for certification by the City Council. The Planning Commission finds that TSM 14-06 and TSM 14-07 are consistent with, and have been fully assessed by, the EIR, and that TSM 14-06 and TSM 14-07 are entitlements specifically anticipated for the proposed Project in the EIR, and are consistent with the purpose and intent of the EIR.
3. Subdivision Findings: The Planning Commission determines that none of the findings required by Yuba City Municipal Code Section 8-2.609, and the California Subdivision Map Act Section 66474 that require the City to deny approval of a tentative map apply to this

project, or that findings regarding flood protection cannot be made. To the contrary, the Planning Commission finds as follows:

- a. The proposed tentative subdivision maps are consistent with the applicable general plan and specific plan.

Support. There is no evidence the subdivision maps are inconsistent with the General Plan and BSMP. To the contrary, Section 3.10 of the EIR, including Table 3.10-1 (entitled "City of Yuba City General Plan Consistency – Land Use and Planning), incorporated by reference, contains an analysis of the consistency of the Master Plan to the General Plan – which includes the Newkom Ranch. Additionally, the Bogue Stewart Master Plan implements the goals and policies of the City's General Plan. It establishes the land use designations, planning principles and project objectives and design guidelines for the BSMP area consistent with the General Plan as amended. For example, the subdivisions create lots for single-family residential, multiple-family residential, commercial, office and public uses. The boundaries of these parcels match the boundaries of the Bogue-Stewart Master Plan as well as the General Plan, which are the only plans applicable to this Project. The single-family residential lots proposed will have a density of approximately 4.2 residences per gross acre. These residences are within the LDR (Low Density Residential) General Plan designation which allows a density range of 2 to 6 residences per acre. Although the actual number of multiple-family residences that will be constructed is not known, the suggested amount by the applicant is 216 residences on approximately 9.7 gross acres, providing a residential density range of approximately 21.7 residences per gross acre. This is well within the HDR (High Density Residential) density range of 12 to 36 residences per acre, and is also consistent with both the General Plan and BSMP.

The Planning Commission has reviewed the analysis and all evidence presented in this matter, and determines that proposed TSM 14-06 and TSM 14-07 are consistent with Specific Plan Amendment 16-05 (adopting the Master Plan), has also found the Specific Plan Amendment is consistent with the General Plan as amended by General Plan Amendment 14-05, and as such, the TSM 14-06 and TSM 14-07 are also therefore consistent with the General Plan.

- b. The design and improvement of the tentative subdivision maps are consistent with applicable general and specific plans or adopted City standards.

Support. As discussed above, the TSMs are consistent with the General Plan as amended by GPA 14-05 and the BSMP as created by SPA 16-05. Additionally, the proposed parcel sizes, as shown on the tentative subdivision maps, meet the City's zoning minimum parcel size and are therefore of adequate size to accommodate the uses that will be permitted on them. The property will be improved with new or expanded street system for which the traffic study prepared for the project indicates will operate within acceptable levels of service (D or better) and the project will also be provided with full City services that meet all City standards. Further, any new use that locates onto one of the new lots is required to meet all City Zoning, Building, and Public Works development standards, and to comply with the Development Standards and Guidelines of the BSMP.

- c. That the site is physically suited for the density of development.

Support. There is no substantial evidence in the record that the site is not suited for the density of development being proposed. Each new lot will meet or exceed the minimum

lot sizes required by the relevant zone district. The proposed subdivisions were thoroughly analyzed and compared to the Master Plan and the EIR that was prepared for the subdivisions, which determined that the proposed density of development was appropriate for this site and is physically suited for the proposed development density.

- d. That the site is physically suited for the type of development.

Support. There is no evidence that the site is not physically suited for the type of development proposed by the tentative subdivision maps. Newkom Ranch Subdivisions were thoroughly analyzed and compared to the Master Plan and General Plan. Additionally, all relevant CEQA environmental concerns were addressed in the EIR that was prepared for the Master Plan and the subdivisions, including flooding, drainage, and other items dealing with physical characteristics of the site. The proposed subdivisions comply with the allowable land use and residential planned land use density and acreage allocations, and with the goals, objectives, and policies contained in the BSMP and the General Plan. The proposed development meets all adopted standards and requirements, and is physically suited for the type of development being proposed.

- e. That the design of the subdivision maps or likely improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

Support. There is no evidence that the design or improvements will, in themselves, cause substantial environmental damage, etc. The EIR prepared for the project compared it with all of the relevant CEQA environmental concerns, including fish and wildlife habitat. Although even with the proposed mitigation measures there remain unavoidable significant environmental impacts, these are not related to design issues, but are instead related to cumulative impacts of the BSMP overall to the loss of certain habitat. Regardless, there are economic, legal, social, technological or other benefits associated that outweigh the unavoidable adverse environmental impacts that are addressed in the Overriding Considerations prepared as a result of the EIR that was prepared for this project. Further, the project has been conditioned with mitigation to reduce the significance of potential cumulative impacts fish or wildlife or their habitat. As such, the design of the subdivision maps or likely improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

- f. The design of the subdivision maps or the type of improvements is not likely to cause serious public health problems.

Support. There is no substantial evidence in the record that the design of the subdivision maps will cause serious public health problems. Every new lot will be connected to City water, sewer and storm drainage systems which will minimize public health concerns. Mitigation has been imposed on the project to address potential environmental impacts, including those related to hazardous wastes, etc. As such, design of the subdivision maps or the type of improvements is not likely to cause serious public health problems.

- g. That the design of the subdivision maps or the type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision.

Support. The subdivisions will be served by public streets that are dedicated to the City for public use and the parks and open spaces will be on land owned by the City. There is no use of private streets or other types of easements with which the project would cause a conflict. Dedications for public right of way, etc., are required for public utilities, roadways, and other improvements. There is no evidence in the record that the subdivision maps or the type of improvements will conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision.

- h. There is adequate flood protection for the project.

Support. The City requires that an Urban Level of Flood Protection (ULOP), or 200 year flood protection, be provided across portions of the City containing flood depths greater than three feet. Portions of the Master Plan area are located within such an area, or within the 100-year flood hazard zone. The Sutter Butte Flood Control Agency (SBFCA) is the "Local Flood Management Agency" for the Sutter-Butte Basin and as such, has the responsibility to prepare an annual report demonstrating adequate progress as defined in California Government Code Section 65007(a). SBFCA has prepared Adequate Progress Report Updates for ULOP and transmitted them to the Central Valley Flood Protection Board. Additionally, the City has imposed conditions on the Development Agreement governing the TSMs that will protect property within the Master Plan area to the urban level of flood protection in urban areas and urbanizing areas. Such conditions are also implemented as conditions of tentative maps or other entitlements. The applicable Development Agreement also requires payments of certain impact fees, including those related to levee improvements. Conditions of approval are imposed for the residential/"small lot" subdivisions requiring all development to be designed to local, state, and federal flood standards. Finally, the Development Agreement is also required to be consistent with the Master Plan, which has a comprehensive plan providing for drainage and flood protection improvements. (See BSMP, pp. 5-21 – 5-28.) Among others, proposals to develop within either the 100-year or 200 year flood hazard zone require a site-specific hydrological study. With the infrastructure required by the stormwater drainage infrastructure, drainage facilities would be large enough to contain a 100-year storm with one foot of freeboard. All building pad elevations are required to be one foot above the 100-foot flood elevation. As such, the site has adequate flood protection.

- 4. Approval with Conditions. Based on the aforementioned findings, the Planning Commission hereby approves TSM 14-06 (Exhibit "A") and TSM 14-07 (Exhibit "C"), subject to the conditions set forth in Exhibit "B" (TSM 14-06 conditions of approval) and Exhibit "D" (TSM 14-07 conditions of approval) attached hereto, which approvals are contingent upon the following:

- a. The approval of TSM 14-06 and TSM 14-07 shall become final and effective immediately only after the City Council of the City of Yuba City i) certifies the Environmental Impact Report (SCH #2017012009), ii) adopts General Plan Amendment 14-05; iii) adopts Specific Plan Amendment 16-05; and iv) adopts Pre-annexation Zoning 14-04 (collectively "Council Approvals"). If all of the Council Approvals are not made within 180 days of the adoption of this Resolution, then both TSM 14-06 and TSM 14-07 shall be returned to the Planning Commission for further consideration and a final decision. If Council Approvals are made within 180 days of the adoption of this Resolution, but any change is made by the Council to any of the Council Approvals in a manner that could reasonably affect the findings of the Planning Commission herein, or require a modification or addition of a condition of approval to be consistent with a Council Approval, then both TSM 14-06 and

TSM 14-07 shall be returned to the Planning Commission for further consideration and a final decision.

5. Certification. The Secretary shall certify to the adoption of the Resolution and shall transmit copies of the same to the applicant.
6. Final Action and Appeals. This action shall become final and effective 15 days after, and only upon, the Council Approvals including of the EIR and adoption of the BSMP, unless within such 15 days an appeal is filed with the City Clerk in accordance with the provisions of the Yuba City Zoning Ordinance.

The foregoing resolution was introduced at the regular meeting of the Planning Commission held on November 13, 2019, by Commissioner _____ who moved its adoption, which motion was seconded by Commissioner _____ and carried by the following vote:

Ayes:

Noes:

Absent:

Recused:

By order of the Planning Commission of the City of Yuba City.

Brian Millar, Secretary

Exhibit A: TSM 14-06

Exhibit B: Conditions of approval for TSM 14-06

Exhibit C: TSM 14-07

Exhibit D: Conditions of approval for TSM 14-07

EXHIBIT A

TENTATIVE SUBDIVISION MAP 14-06

EXHIBIT B

TENTATIVE SUBDIVISION MAP 14-06 CONDITIONS OF APPROVAL

EXHIBIT C

TENTATIVE SUBDIVISION MAP 14-07



EXHIBIT D

TENTATIVE SUBDIVISION MAP 14-07 CONDITIONS OF APPROVAL

**Tentative Subdivision Map 14-06
Newkom Ranch (Large Lot) Subdivision
Conditions of Approval**

Conditions of Approval

General

1. The purpose of the large lot is to create parcels for planning and financial purposes only. These lots will not have development rights unless they are further subdivided in accordance with TSM 14-07 Small Lot Subdivision Map or through a Certificate of Compliance process.
2. Farming rights will not be impacted by recordation of the large lot final map.
3. Approval of Tentative Subdivision Map (TSM) 14-06 may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on the tentative subdivision map, the Zoning Ordinance, the most recently City-adopted Uniform Building Code, and all Public Works Standards and Specifications. The City shall not assume responsibility for any deletions or omissions resulting from the permit review process, or for additions or alterations to construction plans not specifically submitted and reviewed and approved pursuant to this subdivision or subsequent amendments or revisions.
4. The applicant/property owner agrees to defend, indemnify and hold harmless the City, its officers, agents and employees, from any and all claims, damages, liability or actions arising out of, or connected with, this Agreement, except to the extent such liabilities are caused by actions of the City.
5. The Planning Commission's conditional approval of TSM 14-06 is contingent upon the City Council approval of General Plan Amendment 14-05, Specific Plan Amendment 16-05, and Rezoning 14-04. The effective approval date of this subdivision for purposes of this subdivision map's expiration date, as described in Condition #6 below, shall be the effective date of the rezoning.
6. Approval of TSM 14-06 shall be null and void without annexation of the affected lands into the City's jurisdictional boundary within the term provided in the Development Agreement that was approved as part of the subdivision, or as the Development Agreement is amended thereafter.

Expiration and Development Impact Fees

6. Approval of TSM 14-06 shall be null and void without further action for phases of the subdivision that have not been recorded within the term provided in the Development Agreement that was approved as part of the subdivision, or as the Development Agreement is amended thereafter.
7. All City adopted Development Impact Fees and other City adopted fees shall be paid pursuant to the Yuba City Municipal Code.

Planning Division

8. The lot design on the subdivision map shall be designed in conformance with the TSM 14-06, as approved by the Planning Commission.
9. TSM 14-06 shall comply with the Conditions of Approval.

Public Works Department

General

10. Development of any "Large Lot" parcels created shall require a Certificate of Compliance, as provided under Section 66424.6 and Section 66499.34 of the Subdivision Map Act, to be obtained prior to the issuance of any required building permit or other grant of approval. A certificate of compliance shall not be required if a small lot final map, in accordance with TSM 14-07, is recorded that covers the land in the Large Lot.

Prior to approval of Improvement Plans

11. The Developer shall submit to the City a proposed phased infrastructure improvement matrix that coordinates with the BSMP, the project DA, and the proposed parcels to be developed. The plan should identify needed infrastructure, (including water, sewer, and storm), fencing, and landscaping, and the plan should also consider traffic impacts and site access by phases. The subdivision, and associated improvements, shall conform to all stormwater MS4 requirements. All mitigation measures associated with the project are to be met. The City reserves the right for final determination of configuration of proposed infrastructure.

**Tentative Subdivision Map 14-07
Newkom Ranch (Small Lot) Subdivision
Conditions of Approval**

Conditions of Approval

General

1. Approval of Tentative Subdivision Map (TSM) 14-07 may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this tentative subdivision map, the Zoning Ordinance, the most recently City-adopted Uniform Building Code, and all Public Works Standards and Specifications. The City shall not assume responsibility for any deletions or omissions resulting from the permit review process or for additions or alterations to construction plan not specifically submitted and reviewed and approved pursuant to this subdivision or subsequent amendments or revisions.
2. The applicant/property owner agrees to defend, indemnify and hold harmless the City, its officers, agents and employees, from any and all claims, damages, liability or actions arising out of or connected with this Agreement, except to the extent such liabilities are caused by actions of the City.
3. The Planning Commission's conditional approval of TSM 14-07 is contingent upon the City Council approval of General Plan Amendment 14-05, Specific Plan Amendment 16-05, and Rezoning 14-04. The effective approval date of this subdivision for purposes of this subdivision map's expiration date, as described in Condition #4 below, shall be the effective date of the rezoning.
4. Approval of TSM 14-07 shall be null and void without annexation of the affected lands into the City's jurisdictional boundary within the term provided in the Development Agreement that was approved as part of the subdivision, or as the Development Agreement is amended thereafter.
5. All mitigation measures contained in the BSMP Final Environmental Impact Report are applicable to any and all development within the BSMP.

Expiration and Development Impact Fees

6. Approval of TSM 14-07 shall be null and void without further action for phases of the subdivision that have not been recorded within the term provided in the Development Agreement that was approved as part of the subdivision, or as the Development Agreement is amended thereafter.
7. All City adopted Development Impact Fees and other City adopted fees shall be paid pursuant to the Yuba City Municipal Code.

Planning Division

8. The lot design on the subdivision maps shall be designed in conformance with the TSM 14-07, as appropriate, and as approved by the Planning Commission.

9. TSM 14-07 shall comply with the Conditions of Approval and Mitigation Measures.
10. In conjunction with Mitigation Measure 3.11-2, prior to final map recordation for any small residential lots that abut State Route 99, a noise study shall be completed that either indicates that the exterior noise levels for new residences will be in compliance with General Plan Policies 9.1-I-1, 9.1-I-2, and 9.1-I-6 and Table 9-4 that meet "Normally Acceptable" levels or, if not within a Normally Acceptable level, that construction criteria is provided that will reduce indoor noise levels comparable to residences that are located in areas where the noise level is within the Normally Acceptable range.
11. The following small single-family residential lots in the Newkom Ranch Subdivision are limited to single-story construction, or with final design as approved by the Development Services Director:
 - Large Lot 7 – Small Lots 14 through 21.
 - Large Lot 8 – Small Lots 9 through 17.

Public Works Department

General

12. Improvement plans shall be developed in accordance with the Bogue Stewart Master Plan (BSMP), the Development Agreement (DA), and Condition of Approval and Mitigation Measures for the project, or as approved by the Public Works Director.
13. Development of any "Remainder" parcels created shall require a Certificate of Compliance, as provided under Section 66424.6 and Section 66499.34 of the Subdivision Map Act, to be obtained prior to the issuance of any required building permit or other grant of approval.
14. To help contain fugitive dust, construction sites shall be watered down during the construction phase of the project or as directed by the Public Works Department.
15. Paved streets shall be swept frequently (water sweeper with reclaimed water recommended; wet broom) if soil material has been carried onto adjacent paved, public thoroughfares from the project site.
16. The Developer, at their expense, shall be solely responsible for all quality control associated with the project. The quality control shall include, but is not limited to, the following: survey work, potholing existing utilities, all geotechnical testing, soil reports, concrete testing, asphalt testing, and any other required special testing/inspections. The City will only perform necessary testing to insure compliance.
17. Storage of construction material is not allowed in the travel way.
18. The only hard surface (concrete or pavers) that can be placed in the street planter area other than one standard driveway serving the residence are two (2) 18" wide strips to accommodate the wheel path of vehicles unless authorized/approved by the Public Works Director.

19. Developer is to construct bus stop improvements at locations in conformance with the BSMP Transit Map (Figure 4-6 of the Master Plan) that are located within the proposed final subdivision map area. Work is to include a concrete bus shelter pad and concrete bus turnout. Exact size, location and design of transit improvements shall be approved by both Transit and City.
20. Concrete pedestrian access pads from sidewalk to curb shall be installed on each leg of all major intersections to facilitate future placement of simple curbside bus stops. Exact size, location and design of transit improvements shall be approved by both Transit and City.
21. The applicant shall be required to pay their fair share cost of a determined Yuba-Sutter Transit impact fee associated with increased needs for vehicle capacity (fixed route, demand response, and intercity commuter buses), and related passenger amenities, such as park and ride facilities.

Prior to approval of Improvement Plans

22. The Developer shall submit to the City a proposed phased infrastructure improvement plan that coordinates with the BSMP, the project DA, and the proposed parcels to be developed. The plan should identify needed infrastructure, (including water, sewer, and stormwater drainage), fencing, and landscaping, and the plan should also consider traffic impacts and site access by phases. The subdivision, and associated improvements, shall conform to all stormwater MS4 requirements. All mitigation measures associated with the project are to be met. The City reserves the right for final determination of configuration of proposed infrastructure.
23. The development shall incorporate bus stops and shelters in accordance with the BSMP into the street improvement design for the subdivision or as required and approved by the Yuba-Sutter Transit Authority and the Public Works Department.
24. Any single-family residential lots adjacent to State Route 99 are to provide a sound wall that meets the necessary decibel requirements and as approved by the Development Services Director. The proposed wall shall be the same in theme, style, and construction as the wall to the north (south of Lincoln Road).
25. The Developer shall, prior to the issuance of the first certificate of occupancy of the first residence in each phase, install the perimeter wall per City Standards and/or to the satisfaction of the Public Works Director.
26. Plans are to provide for enhanced/protected pedestrian crossing locations along Phillips Road as determined by the Public Works Director.
27. A decorative fence (e.g, wrought iron) shall be installed at the perimeter of the ponds and open space, and at the commercial development. The Developer shall confirm the fence design and phasing with the Development Services Department.

28. The Developer shall coordinate the removal of the existing Caltrans fence, as necessary, with Caltrans.
29. The improvement plans shall provide for a "walk through" path from Hidden Drive to the adjacent park/open space.
30. Park improvements and timing of construction shall be constructed in accordance with the DA and the BSMP.
31. The improvement plans for the development of the subject property shall include all measures required to ensure that no drainage runoff resulting from the development of the property flow onto adjacent lands or impede the drainage from those properties. The lots that are created by this subdivision shall have the same finish grade elevation as the adjacent lots within tolerances as approved by the Public Works Department. If retaining walls are required, they shall be constructed of concrete or masonry block. The retaining wall is required where grade differences between the proposed development and the surrounding land is greater than six (6") inches.
32. A master grading plan for all phases of the subdivision shall be submitted to the Public Works Department as part of the improvement plans with the first subdivision phase.
33. Improvement plans and necessary calculations for all improvements and associated drainage facilities required by these conditions shall be submitted to and approved by the Public Works Department. Such approvals shall include the alignment and grades of roads and drainage facilities.
34. Obtain all necessary approvals from City, State, and Federal agencies, utilities and other effected parties that are required for the project including, but not limited to, the preparation of drawings, studies, reports and permit applications, and payment of fees. Prior to City approval of improvement plans the Developer shall provide evidence, to the satisfaction of the Public Works Department, that all such obligations have been met.
35. The contractor shall obtain an Encroachment Permit from the City, and/or County, prior to performing any work within public rights of way.
36. Where an excavation for a trench and/or structure is 5 feet deep or more, the contractor shall conform to O.S.H.A. requirements. The contractor shall provide a copy of the approved O.S.H.A. permit, and shoring details and calculations prepared by California licensed structural engineer to the Public Works Department.
37. Streets within the development shall be constructed as determined in the BSMP, or as otherwise approved by the Public Works Director.
38. The structural section of all road improvements shall be designed using a geotechnical investigation which provides the basement soils R-value and expansion pressure test results. The structural section shall be designed to the following standards:
 - a. Use 3" minimum for residential, 4" minimum for collectors and 5" minimum for arterials, of 'Type A' asphaltic concrete over Class 2 aggregate base (the thickness of the base shall be designed to the R-value of the soil)
 - b. Use a traffic index of 6 for residential streets

- c. Use a traffic index of 7 for collector streets
- d. Use a traffic index of 10 for arterial streets

A copy of the geotechnical investigation, including R-value, test locations and structural section calculations, shall also be submitted with the first improvement plan check.

- 39. Striping, pavement markings and traffic signage shall be provided on all streets as necessary and as required by the Public Works Department. Signage restricting parking and red painted curbing shall be installed where appropriate. Speed limit signs shall be installed at locations determined by the Public Works Department. Twenty-five miles per hour speed limit signs shall be installed within the subdivision at locations determined by the Public Works Department. The Developer shall submit to the Public Works Department a design recommendation for all other speed limits. These proposed speed limit signs shall be shown on the Improvement Plans.
- 40. The Developer shall be responsible for preparation of a street tree and irrigation plan that is deemed acceptable by the Community Services Director prior to entering into a Subdivision Agreement with the City. Only one tree species shall be planted on any street. For tree planting: maintain minimum 25.0-foot clearance to street/stop signs, street lights, and fire hydrants. Maintain adequate clearance to any irrigation line.
- 41. The street landscape planters, the street trees, and street lighting are public improvements which shall meet the Parks Division Planting Standards and Yuba City Standard Details and be included in the improvement plans and specifications for the subdivision when the improvement plans are submitted for the first improvement plan check.
- 42. The Improvement Plans shall show provisions for the placement of centralized mail delivery units in the Public Utility Easement (P.U.E.). Developer shall provide a concrete base for placement of the centralized mail delivery unit. Specifications and location of such base shall be determined pursuant to the applicable requirements of the Postal Service and the Yuba City Public Works Department, with due consideration for street light location, traffic safety, security and consumer convenience.
- 43. Required Improvement Plan Notes:
 - a. "Any excess materials shall be considered the property of the contractor/owner and shall be disposed of away from the job site in accordance with applicable local, state and federal regulations."
 - b. "During construction, the Contractor shall be responsible for controlling noise, odors, dust and debris to minimize impacts on surrounding properties and roadways. The Contractor shall be responsible for all construction equipment to be equipped with manufacturers approved muffler baffles. Failure to do so may result in the issuance of an order to stop work."
 - c. "If any hazardous waste is encountered during the construction of this project, all work shall be immediately stopped and the Sutter County Environmental Health Department, the Fire Department, the Police Department, and the City Inspector shall be notified immediately. Work shall not proceed until clearance has been issued by all of these agencies."

- d. "The Contractor(s) shall be required to maintain traffic flow on affected roadways during non-working hours, and to minimize traffic restriction during construction. The Contractor shall be required to follow traffic safety measures in accordance with the Caltrans "Manual of Traffic Safety Controls for Construction and Maintenance Work Zones." The City of Yuba City emergency service providers shall be notified, at least two working days in advance, of proposed construction scheduled by the contractor(s)."
 - e. "Soil shall not be treated with lime or other cementitious material without prior express permission by the Public Works Department."
44. All development shall be designed to local, state, and federal flood standards.
45. The development shall incorporate bicycle, pedestrian, and trail improvements in accordance with the BSMP or as required and approved by the Public Works Department.

Prior to acceptance of Public Improvements

46. All existing well(s), septic tank(s), and service lines shall be destroyed in accordance with the requirements of the Sutter County Environmental Health and Yuba City Building Departments, respectively. Connections shall be made to public sewer and water. The Developer shall pay all applicable fees.
47. Prior to paving, the Developer shall vacuum test all manholes to ensure no leakage will occur.
48. Prior to paving, the Developer shall hydroflush, and televise, all storm drain mains and all sewer mains. In addition, prior to the City's acceptance of the subdivision improvements, and at the Public Works Department's discretion, the storm sewer and sewer mains shall be re-hydroflushed.
49. The contractor shall maintain record drawings of the improvements and keep them on site at all times. When the project is complete, the contractor shall deliver a marked set of plans to the Engineer of Record. The Engineer of Record shall update the improvement plans with the record information. Once the changes have been added to the plans, the Engineer of Record shall submit both an electronic copy (AutoCad version 2010 or newer) and a hard copy to the City. The City will not accept the completion of the improvements until the electronic copy and hard copy have been submitted.
50. The developer shall pay all applicable fees in accordance with the Development Agreement

Prior to Final Map Recordation

51. The development shall pay for operations and/or maintenance for police, fire, regional parks, drainage, and ongoing street maintenance costs. This condition may be satisfied through participation in a Mello Roos CFD. The City shall be reimbursed actual costs associated with the formation of the district.

52. Owner shall provide, to the City, an irrevocable offer of dedication of all streets and public facilities or as determined by the Public Works Director for each phase of development.
53. The Developer is to obtain and dedicate access rights, as necessary, to facilitate construction of storm drain facilities, as outlined in the BSMP, including the connection to the Gilsizer drainage system and/or the City's drainage system. Scope is to conform with current Gilsizer and/or City requirements or as determined by the Public Works Director.
54. The Developer shall make provisions to relocate the Yuba City Welcome sign to the southwest corner of Pond D as shown on the tentative map (dated September 28, 2018).
55. The property shall petition for formation of a Zone of Benefit of the Yuba City Landscaping and Lighting Maintenance District for the purpose of maintaining the neighborhood park, street trees, street lights, masonry walls, irrigation, landscape areas, street barricades/fences, and any other identified special benefit (e.g. weed control, storm water maintenance). The Engineering Division shall be reimbursed actual costs associated with the formation of the district.
56. All easements of record which affect any of the proposed lots in the development are to be shown on the final map.
57. Written approvals shall be submitted to the Public Works Director from all pertinent public service providers that their requirements have been met and that financial arrangements have been made to insure their facilities will be installed and that they are satisfied with the public utility easements as shown on the Final Map.
58. All public street lighting shall be constructed and dedicated to the City of Yuba City.
59. A public utility easement shall be provided along all interior streets extending 10 feet behind the back of the sidewalk.
60. A BSMP fee shall be determined for the project and the Developer shall coordinate with the City to decide payment terms and accounting.
61. Adjacent to State Route 99, for the length of the subdivision, the Developer shall offer the City an Irrevocable Offer of Dedication of a maximum 10.0-foot wide strip of land parallel to, and contiguous to, the state highway right-of-way to facilitate the installation and maintenance of the sound wall and any landscaping. In addition, this dedicated area shall be landscaped to the satisfaction of the Development Services Director.
62. The developer shall annex the subdivision into the Gilsizer Drainage District, conform to Gilsizer drainage requirements, and pay all applicable fees.
63. The Developer shall demonstrate to the satisfaction of the Public Works Director, how notice will be provided informing individuals acquiring lots in this subdivision of the proximity of:
 - a. Ongoing agricultural operations such as: burning; pesticide spraying; machinery operation; and other impacts associated with said activities are in the vicinity of the subdivision and have the right to continue such operations.

Prior to Certificate of Occupancy

64. The curb, gutter, sidewalk, and lot drainage shall be inspected and approved by the City. Any curb, gutter and sidewalk which is not in accord with City standards or is damaged before or during construction, shall be replaced. All sidewalks along the City right-of-way shall be free of any non-control joint cracking. In addition, any concrete with cracks, chips, blemishes, and spalling greater than an inch in diameter shall be replaced from control joint to control joint.
65. The Developer shall, prior to the issuance of the first certificate of occupancy of the first residence in each phase, install the perimeter subdivision wall and/or fence in place to the satisfaction of the Public Works Department.
66. The Developer shall, prior to the issuance of the first certificate of occupancy of the first residence in each phase, construct a solid 6-foot high chain link fence across the right-of-way, of roads that "end" at bare land, connecting with the adjoining six-foot high fences. This fencing shall be constructed in addition to the standard dead end barricade, or as determined by the Public Works Director. The fence and barricade shall be maintained by the City via the landscape and lighting district.
67. Prior to issuance of any certificate of occupancy, all existing overhead utilities (of 26,000 volts or less), and proposed utilities, both onsite and along all project frontages shall be placed underground. The undergrounding shall extend the entire frontage, or as approved by the Public Works Director to facilitate construction and/or meet current City undergrounding policy.

This does not include surface mounted transformers, pedestal mounted terminal boxes, meter cabinets, or riser poles in approved locations. Appropriate easements shall be obtained by the Developer to facilitate these installations. The Development Services Director may grant exceptions to the certificate of occupancy requirement on a case by case basis if the improvements are fully bonded or paid for in advance.
68. The Developer's Superintendent/Representative shall submit three sets of Pacific Gas and Electric approved utility plans showing joint trench locations and distribution lines prior to issuance of first building permit for each phase of construction.
69. Prior to issuance of any certificate of occupancy, all utilities, public improvements, and site improvements, including rough grading, shall be completed unless an agreement is prepared acceptable to the Public Works Director and it does not impact the public health and safety.

Recording Requested by:

Development Services Department
City of Yuba City
1201 Civic Center Blvd.
Yuba City, CA

When Recorded Mail To:

City Clerk
City of Yuba City
1201 Civic Center Blvd.
Yuba City, CA 95993

DOCUMENT WILL BE RETURNED TO NAME & ADDRESS IDENTIFIED ABOVE

[Space Above for Recorder's Use]

DEVELOPMENT AGREEMENT

by and between

NEWKOM RANCH LLC
A California Limited Liability Company

and

CITY OF YUBA CITY
A General Law City

(Newkom Ranch Development Agreement)

DEVELOPMENT AGREEMENT

by and between

NEWKOM RANCH LLC

A California Limited Liability Company

and

CITY OF YUBA CITY,

A General Law City

(Newkom Ranch Development Agreement)

THIS DEVELOPMENT AGREEMENT dated _____, 2019 (Effective Date), at Yuba City, California (hereinafter referred to as "Agreement"), is entered into by and between Newkom Ranch, LLC, a California limited liability company (hereinafter referred to as "Newkom Ranch Landowner," "Landowner" or "Developer") and the City of Yuba City, a general law city, created and existing under the laws of the State of California (hereinafter referred to as "the City"), pursuant to the authority of Sections 65864-65869.5 of the Government Code of the State of California.

RECITALS

A. State Authorization. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864 *et seq.* of the Government Code (the "Development Agreement Statute"), which authorizes the City to enter into a binding property development agreement with any person having a legal or equitable interest in real property for the development associated with such property in order to establish certain development rights in the property which is the subject of the development project application.

B. City Procedure and Requirements. The City has implemented the provisions of Government Code Section 65864 *et seq.* and is authorized to enter into development agreements with persons having legal or equitable interests in real property located in the City.

C. Landowner. The Landowner is Newkom Ranch LLC, a California limited liability company organized under the laws of the State of California.

D. Property. The subject of this Agreement is the development of that certain property commonly known as Newkom Ranch, consisting of approximately 161.17 acres located in the County of Sutter, as described in Exhibit A-1 and depicted in Exhibit A-2, attached hereto and incorporated herein by reference (referred to as "the Property"). Landowner owns the Property in fee and represents that all other persons holding legal or equitable interests in the Property shall be bound by this Agreement.

E. Bogue-Stewart Master Plan ("Master Plan" or "BSMP"). The Property is located within the area subject to the Bogue-Stewart Master Plan.

F. Project. The development of the Property is in accordance with the City's General Plan, as amended, the Master Plan, and the Development Approvals shall be referred to herein as the "Project."

G. The Environmental Impact Report. The City examined the environmental effects of this Agreement and the Development Approvals in the Environmental Impact Report (the "EIR") (SCH No. 2017012009) prepared pursuant to the California Environmental Quality Act (CEQA). The City Council reviewed and certified the EIR as adequate and complete as part of the approval of the Development Approvals.

H. Purposes. The Landowner and City desire to enter into an agreement for the purpose of implementing the plan for subdividing and development of Newkom Ranch as set forth herein and in the Master Plan, and Development Approvals and for mitigating the environmental impacts of such development as identified in the EIR. The City has an expressed interest in ensuring the proper growth of the community by entering into Development Agreements as a method whereby a level of assurance can be achieved to meet that interest. The City has determined that the development of Newkom Ranch pursuant to the proposed Tentative Subdivision Maps Nos. 14-06 (large lot) and 14-07 (small lots) is a development for which a Development Agreement is appropriate. A Development Agreement will provide certain benefits to the City; will eliminate uncertainty in the City's land use planning for and secure orderly development of the Property in accordance with the policies and goals set forth in the City's General Plan and consistent with the BSMP. The Landowner has incurred and will incur substantial costs in order to comply with the conditions of approval and to assure development of the Property in accordance with this Agreement. In exchange for these benefits to the City and the public, the Landowner desires to receive assurance that the City shall grant permits and approvals required for the development of the Property in accordance with the Existing City Laws, subject to the terms and conditions contained in this Agreement. In order to effectuate these purposes, the Parties desire to enter into this Agreement.

I. Entitlements Needed Prior to the Development Agreement. The application for approval of this Agreement and the appropriate CEQA documentation required for approval of this Agreement, including:

- General Plan Amendment 14-05.
- Specific Plan Amendment 16-05.
- Rezoning 14-04.
- Tentative Subdivision Maps 14-06 and 14-07 (approvals may occur after adoption of the Development Agreement).
- Environmental Assessment 14-14 (Certification of the EIR).

The entitlements are collectively referred to as "Development Approvals."

J. Adequacy of CEQA Environmental Documentation. The Yuba City City Council certified the EIR, which also included a project level review of the Newkom Ranch Tentative Subdivision Maps (TSM) 14-06 (large lot) and 14-07 (small lots). In January, 2014 Newkom Ranch LLC submitted an application to the City to develop a

portion of the BSMP referred to as the Newkom Ranch Tentative Subdivision Maps. The original application included the Newkom Ranch properties, with some surrounding properties along Bogue Road. The original application request was for a large lot and small lot Tentative Map, General Plan Amendment, and Pre-annexation Zoning for those properties. An EIR and Technical Master Plan were then prepared for the expanded BSMP area, including the Project properties, which includes a project-level analysis of the Property. Following consideration of the CEQA environmental documentation and after conducting a duly noticed public hearing, the City Council found that the provisions of this Agreement are consistent with and within the scope of the EIR and that adoption of this Agreement involves no new impacts not considered in the EIR. Specifically, the Development Agreement does not change the environmental assessment of the EIR. Further, the EIR was recently certified. The City Council found that no subsequent review is required under CEQA Guidelines section 15162 as since that time no substantial changes have been proposed in the project which will require major revisions of the previously certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. Likewise, no substantial changes have occurred since that time with respect to the circumstances under which the project is undertaken which will require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. There is also no new information, which was not known and could not have been known at the time of the EIR that the project will have significant effect not discussed in the EIR. As such, the City Council determined the Development Agreement has already been fully assessed in accordance with CEQA, no subsequent review is required under CEQA Guidelines Section 15162, and no further action or review is required under CEQA.

K. Development Agreement Adoption. After conducting a duly noticed public hearing and making the requisite findings, the City Council by the adoption of an Ordinance approved this Agreement and authorized its execution. The City has determined that this Agreement furthers the public health, safety and general welfare, that the provisions of this Agreement are consistent with the goals and policies of the General Plan and is a community benefit. The City and Developer have determined that the project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Development Approvals and certain subsequent development approvals, thereby encouraging planning for, investment in and commitment to use and develop the Property. Continued use and development of the Property is anticipated to, in turn, provide the following substantial benefits and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement laws were enacted, including (1) providing for the development of unused land; (2) providing increased tax revenues for the City; (3) providing for jobs and economic development in the City; and (4) providing for infrastructure improvements that can be utilized by regional users and future users.

L. Consistency with Yuba City General Plan and Bogue-Stewart Master Plan. Development of the Property in accordance with this Agreement will provide for orderly growth and development in accordance with the policies set forth in the City General Plan, as amended, the Master Plan and the Development Approvals. Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, the City Council finds and declares that this Agreement is consistent with the General Plan of the City, the Master Plan, and with the Development Approvals.

M. Landowner Payments for the Costs of Public Infrastructure, Facilities, and Services. Landowner agrees to pay the costs of such City of Yuba City public facilities and services as herein provided to mitigate impacts of the development of the Property, and City agrees to assure that Landowner may proceed and complete development of the Property, in accordance with the terms and conditions of this Agreement. City's approval of development of the Property as provided herein is in reliance upon and in consideration of Landowner's agreement to make such payments toward the costs of public improvements and services as herein provided to mitigate the impacts of development of the Property.

N. Development Agreement Ordinance. City and Landowner have taken all actions mandated by and fulfilled all requirements set forth in the California Government Code Sections 65864 through 65869.5 regulating the use of development agreements.

O. Flood Hazard. The City has imposed conditions on the project that will protect the property to the urban level of flood protection in urban and urbanizing areas. Such conditions may also be implemented as conditions of tentative maps or other entitlements.

NOW THEREFORE, pursuant to the authority contained in Government Code Sections 65864-65869.5, and in consideration of the mutual covenants and promises contained herein, the adequacy and sufficiency of which is hereby acknowledged, the Landowner and the City, each individually referred to as a Party and collectively referred to as the Parties ("Parties"), agree as follows:

AGREEMENT

1. General Provisions.

1.1 Incorporation of Recitals. The Preamble, the Recitals and all defined terms set forth in both, are hereby incorporated in this Agreement as if set forth herein in full.

1.2 Definitions. In addition to the defined terms in the Preamble and the Recitals, each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term. Certain other terms shall have the meaning set forth for such term in this Agreement.

1.2.1 Approvals. Any and all permits or approvals of any kind or character required under the City Laws in order to develop the Project, including, but not limited to, architectural review approvals, building permits, site clearance and demolition permits, grading permits and utility connection permits.

1.2.2 City Laws. The ordinances, resolutions, codes, rules, regulations and official policies of the City govern the permitted uses of land, density, design, improvements and construction standards and specifications applicable to the development of the Property. Specifically, but without limiting the generality of the foregoing, City Laws shall include the City's General Plan, the BSMP, the Zoning Regulations of the City of Yuba City, and the Subdivision Regulations of the City of Yuba City.

1.2.3 Conditions. All conditions, exactions, fees or payments, dedication or reservation requirements, obligations for on or off-site improvements, services or other conditions of approval called for in connection with the development of or construction on the Property under the existing City Laws, whether such conditions of approval constitute public improvements, or mitigation measures in connection with environmental review of any aspect of the Project.

1.2.4 Director. The Director of the Development Services Department.

1.2.5 Existing City Laws. The City Laws in effect as of the Effective Date of this Agreement.

1.2.6 Laws. The laws and Constitution of the State of California, the laws and Constitution of the United States and any codes, statutes or executive mandates in any court decision, state or federal, thereunder.

1.2.7 Mortgagee. "Mortgagee" means: (a) the holder of the beneficial interest under a Mortgage; (b) the lessor under a sale and leaseback Mortgage; and (c) any successors, assigns and designees of the foregoing.

1.2.8 Party. A signatory to this Agreement: or a successor or assign of a signatory to this Agreement.

1.2.9 Property. The Property is that property described and shown on Exhibits A-1 and A-2. It is intended and determined that the provisions of this Agreement shall constitute covenants which shall run with the Property and the benefits and burdens hereof shall bind and inure to all successors-in-interest to the parties hereto.

2. Effective Date: Term.

2.1 Recordation. Not later than ten (10) days after the Effective Date, the Parties shall cause this Agreement to be recorded in the Official Records of the County of Sutter, State of California, as provided for in Government Code Section 65868.5. However, failure to record this Agreement within ten (10) days shall not affect its validity or enforceability by and between the Parties.

2.2 Term. Except as provided herein, the term of this Agreement shall commence on the Effective Date and terminate twenty (20) years thereafter; provided, however, that the initial term shall be automatically extended for an additional five (5) year term if the Parties have not completed their obligations pursuant to Section 4 ("Term"), for a total of twenty-five (25) years. If the parties still have not completed their obligations pursuant to Section 4 by the end of the initial automatic extension period, either the City or the Landowner shall have the right to request up to two (2) additional five (5) year extensions [for a total of thirty-five (35) years] in order to complete any obligations under this Agreement. In order to consider the request for an extension timely, the extension must be requested by either the City or Landowner in writing delivered to the other party prior to the expiration date of the then current Term. Following the expiration of the Term, this Agreement shall be deemed terminated and be of no further force and effect; provided, however, said termination of the Agreement shall

not affect any right or duty emanating from City Entitlements on the Property approved concurrently with or subsequent to the approval of this Agreement.

2.3. Operative Date. The Property has not been annexed into the City. Consistent with Government Code section 65865, this Agreement shall not become operative unless annexation proceeding(s) annexing the Property to the City are completed within the Term of this Agreement, or earlier if required by law. If the annexation of the Property is not completed within the Term of this Agreement, or earlier if required by law, then the Agreement shall be null and void. Nothing in this paragraph shall toll or otherwise extend the Term, which shall commence on the Effective Date notwithstanding the Property may not be annexed to the City as of the Effective Date.

3. General Development of the Project.

3.1 Project: Vested Entitlements.

3.1.1 The City has adopted certain approvals in connection with the Property, including the adoption of the Master Plan, the tentative maps and the EIR Certification. To the extent the provisions of this Agreement conflicts with the General Plan and Bogue-Stewart Master Plan, those plans shall take precedence.

3.1.2 Development of the Property shall be governed by this Agreement, and the Development Approvals. This Agreement does not impose affirmative obligations on the Landowner to commence development of the Project, or any phase thereof, in advance of its decision to do so.

3.1.3 The permitted uses of the Property, the density and intensity of use, including, but not limited to, minimum landscape areas, maximum lot coverage, minimum and maximum number of parking spaces, and the allowable floor area ratios), and provisions for public improvements and all mitigation measures and conditions required or imposed in order to minimize or eliminate environmental impacts or any impacts of the Property applicable to development of the Property, are as set forth in ordinances, policies, and standards in effect as of the Effective Date and are hereby vested subject to the provisions of this Agreement ("Vested Entitlements").

3.2 Project Phasing. Landowner and City acknowledge and agree that the Project is designed to be developed in phases. The Parties also acknowledge and agree that presently the Landowner cannot predict the timing of the Project phasing. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, that failure of the Parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the Parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that the Landowner shall have the right to develop the building components of the Project in phases in accordance with the Development Approvals and at such times as the Landowner deems appropriate within the exercise of its subjective business judgment and the provisions of this Agreement.

3.3 Other Government Permits. The Landowner or City (whichever is appropriate) shall apply for such other permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Project (such as public utility districts, Gilsizer County Drainage District, the U.S. Army Corps of Engineers, or

CalTrans) as may be required for the development of, or provision of services to, the Project. The City shall promptly and diligently cooperate, at no cost or damage to the City, with the Landowner in its endeavors to obtain such permits and approvals and, from time-to-time at the request of the Landowner, and shall attempt with due diligence and in good faith to enter into binding agreements with any such entity in order to assume the availability of such permits and approvals of services. To the extent allowed by law, the Landowner shall be a party or third-party beneficiary to any such agreement and shall be entitled to enforce the rights of the Landowner or City thereunder or the duties and obligations of the parties thereto. The Landowner shall reimburse the City for all its expenses, including, but not limited to, legal fees and staff time incurred in entering into such agreements, in accordance with the terms and conditions of that certain Funding Agreement for Staff Costs and Consulting Contract entered into between the parties in 2016.

3.4 Additional Fees. Except as set forth in this Agreement, the City shall not impose any further or additional fees, taxes or assessments, whether through exercise of the police power, the taxing power, or any other means, other than those required by Existing City Laws and this Agreement, provided that:

3.4.1 [Intentionally deleted]

3.4.2 Community Facilities District. Prior to the approval of any final map within the area covered by this Agreement, the Developer shall be required to enter into a Community Facilities District ("CFD") or similar funding mechanism acceptable to the City for the purpose of funding on-going operational costs for police, fire, and other government services and for the on-going maintenance costs for road and park facilities.

Developer shall cooperate in the formation or annexation to the CFD or funding mechanism, and irrevocably consents herewith to the levy of such special taxes, establishment of funding mechanisms, or collection of other fees or charges, as are necessary to fund the operational and/or maintenance costs.

3.4.3 The City may charge the Landowner the standard processing fees for land use approvals, building permits and other similar permits, which are in force and effect on a City-wide basis at the time application is submitted for those permits.

3.4.4 City shall have the authority to enact or increase development impact fees provided the fees are consistent with the fees applied to other properties in the City or area wide that is similarly situated.

3.4.5 If the City exercises its taxing power in a manner which will not change any of the conditions applicable to the Project and so long as any taxes are uniformly applied on a City-wide or area-wide basis, as defined below, the Property may be so taxed, which tax shall be consistent with the taxation of other properties in the City or area wide that is similarly situated.

3.4.6 If state or federal laws are adopted which enable cities to impose fees on existing projects and if, consequently, the City adopts enabling legislation and imposes fees on existing projects on a City-wide basis, these fees may be imposed on the Project, which fees shall be consistent with the fees imposed on other properties in the City similarly situated.

3.4.7 Landowner shall pay the following fees:

i. City-wide development impact fees, which may include but not be limited to:

- Parks and Recreation
- Community Civic Center
- Fire Protection
- Library Services
- Police Protection
- Roadways/Traffic
- Flood Protection/Levee Improvements
- City Corporation Yard
- Drainage
- Administration Component
- Connection and Trunk Line Fees (Water and Sewer)

ii. A neighborhood park fee per Paragraph 4.2.5 of this Agreement.

iii. Any fees that Developer is obligated to directly pay to any Federal, State, County or local agency (other than any City Agency) under applicable Federal, State, County or local law.

iv. Any fees the City is legally required to collect for other State or Federal agencies pursuant to State or Federal law or any City agreement or City ordinance that the City is legally mandated or required to adopt or enter into to comply with State or Federal law or a judgment of a court of law, but only to the extent necessary to satisfy such compliance.

Fees shall be paid at the then-applicable rate in effect at the time building permits are obtained. Certain City fees may be deferred to prior to issuance of a certificate of occupancy if otherwise allowed by City ordinance, regulation, or policy.

The parties also acknowledge that the City is currently assessing a publically administered fee program for the Bogue-Stewart Master Plan area. If adopted, this program may impose fee(s) applicable to the entire area including the Property. Landowner agrees to pay such fee(s) once adopted by the City. Nothing in this Agreement shall preclude Landowner from objecting to or contesting the adoption of the fees in the same manner as any other member of the public.

3.4.8 For purposes of this Agreement, "area wide" shall cover not only the Property, but also at least all parcels zoned and/or developed in a manner similar to the Property and located in the combined area of the Master Plan. The Parties acknowledge that the provisions contained in this Section 3.4 are intended to implement the intent of the Parties that the Landowner has the right to develop the Project pursuant to specified and known criteria and rules, and that the City receives the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations.

3.5 Applicable Laws and Standards. Notwithstanding any change in any Existing City Law, including but not limited to, any change by means of ordinance, resolution, initiative, referendum, policy or moratorium, and except as otherwise provided in this Agreement, the laws and policies applicable to the Property are set forth in Existing City Laws (regardless of future changes in these by the City), and this Agreement. The Project has vested rights to be built and occupied on the Property, provided that the City may apply and enforce the

Uniform Building Code (including the Uniform Mechanical Code, Uniform Electrical Code and Uniform Plumbing Code) and Uniform Fire Code and all applicable hazardous materials regulations in effect at the time the Landowner applies for any particular building permits for any particular building or other development aspect of the Project.

3.6 Application of New Laws. Nothing herein shall prevent the City from applying to the Property new federal, state or City Laws that are not inconsistent or in conflict with the Existing City Laws or the intent, purposes or any of the terms, standards or conditions of this Agreement; and which do not alter the terms, impose any further or additional fees or impose any other conditions requiring additional traffic improvements requirements or additional off-site improvements that are inconsistent with this Agreement or the intent of this Agreement. Any action or proceeding of the City that has any of the following effects on the Project shall be considered to be in conflict with this Agreement and the existing City Laws, and shall not be applied by the City to the Project or this Agreement:

3.6.1 Limiting the uses permitted on the Property;

3.6.2 Limiting or reducing the density or intensity of uses, the maximum height, the allowable floor area ratios, the required number of parking spaces, increasing the amount of required landscaping or reservations and dedications of land for public purposes;

3.6.3 Limiting the timing or phasing of the Project in any manner that is inconsistent with or more restrictive than the provisions of this Agreement;

3.6.4 Limiting the location of building sites, grading or other improvement on the Property in a manner that is inconsistent with or more restrictive than the limitations included in this Agreement; or

3.6.5 Applying to the Project or the Property any law, regulation, or rule restricting or affecting a use or activity otherwise allowed by this Agreement.

3.7 Moratorium, Quotas, Restrictions, or Other Limitations. Without limiting the City's standard application processing procedures, no moratorium or other limitation affecting building permits or other land use entitlements, or the rate, timing or sequencing thereof shall apply to the Project.

3.8 Easements: Improvements. The City shall cooperate with the Landowner in connection with any arrangements for abandoning existing utility or other easements and facilities and the relocation thereof or creation of any new easements within the Property necessary or appropriate in connection with the development of the Project.

3.9 Farming Rights. The City shall acknowledge that the Landowner shall have the right to continue to farm the lands non-developed portion of the Property.

4. Developer Obligations

4.1 Public Improvements: Developer shall be responsible for constructing and financing the public infrastructure improvements necessary to serve the Project and as provided in this Agreement and the Development Approvals including the BSMP Public Facilities Financing Plan. Developer agrees to dedicate, construct or acquire the improvements or facilities and to perform the obligations set forth in this Section at its expense, subject only to those reimbursements and credits as specified in this Agreement. Public infrastructure improvements shall be designed and constructed in accordance with the improvement plans approved by City for such improvements, and in accordance with the requirements and regulations pursuant to California State law.

4.2 Developer Obligations. Developer shall be obligated to construct and finance the public infrastructure improvements as called out in the BSMP Public Facilities Finance Plan and as provided below, in accordance with the BSMP and consistent with the City's infrastructure Master Plans. Developer shall be required to post appropriate financial security with City prior to recordation of Final Maps, consistent with Project conditions of approval and as called out in the Public Facilities Financing Plan. The developer may be entitled to fee credits as provided in Section 5.1.

4.2.1 Roads. Roads shall be constructed per the approved phased infrastructure improvement matrix per the tentative map conditions of approval, Master Plan and as provided in the approved tentative maps or other discretionary City permits. On-site improvements shall be as per project approvals and approved improvement plans.

Bogue Road from Highway 99 to Railroad Avenue is to be constructed to the ultimate number of lanes required for traffic mitigation as indicated in the Master Plan Traffic Study with the development of commercial zone property in Large Lot 11 per the tentative subdivision map. Reimbursement would be applicable per the Development Impact Fee Program Credit/Reimbursement Agreement.

4.2.2 Storm Drainage. Developer shall provide necessary on-site and off-site improvements for storm drainage consistent with Project conditions of approval and as required by the City and the Gilsizer County Drainage District. Improvements shall be constructed for the approved phased infrastructure improvement matrix per the tentative map conditions of approval, Master Plan, and as provided in the approved tentative maps or other discretionary City permits.

4.2.3 Sewer. Developer shall construct sewer lines consistent with the Master Plan and conditions of approval of the tentative maps and other discretionary City permits. Improvements shall be constructed for the approved phased infrastructure improvement matrix per the tentative map conditions of approval, Master Plan, and as provided in the approved tentative maps or other discretionary City permits.

4.2.4 Water. Developer shall construct water line improvements consistent with the Master Plan and conditions of approval of the tentative maps and other discretionary City permits. Developer shall also be responsible for all on-site water line improvements. Improvements shall be constructed for the approved phased infrastructure improvement matrix per the tentative map conditions of approval, Master Plan, and as provided in the approved tentative maps or other discretionary City permits.

4.2.5 Park and Open Space Improvements and Dedications.

Developer shall irrevocably offer for dedication to the City all park land and open space within Newkom Ranch during each phase of development as provided for in the Master Plan, and per the approved phased infrastructure improvement matrix, required per the tentative map conditions of approval, prior to the recordation of the final map for each small lot within the Newkom Ranch property, and as prescribed per the Master Plan.

Developer is to pay to the City a specific Bogue Stewart Master Plan Neighborhood Park fee in the amount of \$3,206 per single-family residential unit and \$2,298 per multifamily unit, prior to certificate of occupancy of each parcel. This fee is subject to inflation utilizing the Engineering News and Record Construction Index beginning January 2020.

With the application of the 117th single family residential building permit in total, in either properties described as Large Lot Parcel 1 or Large Lot Parcel 2 of the Newkom Ranch Tentative Subdivision Map, the Developer is to construct and dedicate the Neighborhood Park designated as Parcel A, in total (1.05 gross acres +/- or 0.80 net acres), as designated on the tentative subdivision map(s). The construction improvement scope of the park is to include the:

Grading of the park area to drain, at a minimum cross slope of 1% to a maximum of 2%, or as approved by the Public Works Department.

Installation of an acceptable grass throughout the designated area with an approved irrigation system tied to the City's water distribution system.

4.3 Reimbursement by Developer to Third Parties. In the event that facilities, including, but not limited to, roadway, sewer, water, drainage, and parks are constructed by third parties which benefit Developer, Developer agrees that it will pay to City for reimbursement to the third parties, Developer's pro-rata share, as reasonably determined by the City, of the cost of construction prior to the issuance of the first building permit in the Project. Third party reimbursement will include, in addition to construction costs, those costs associated with planning, design and permitting as set forth in Section 4.1 of this Agreement.

4.4 Covenants, Conditions and Restrictions; Enforcement by City. Upon the recordation of each final subdivision map or other development project, Developer shall record against such portion of the Property a master set of covenants, conditions and restrictions ("CC&R's") to require the development and use of the property to be consistent with the Project Entitlement development plan or other appropriate City designation and applicable design guidelines for the Project. The CC&R's shall include the covenants that all structures and landscaping within the Project are to be built, installed and maintained in accordance with the Master Plan and subject to an obligation to obtain design approval from the City prior to any construction or modification of such improvements. The CC&R's shall provide that the City shall be a third party beneficiary thereof and may not be amended without the City's consent. As a third party beneficiary, the City shall have the right, but no obligation, to review and/or enforce any covenant under the CC&R's and the City shall not be obligated hereby to respond to any demands or complaints thereunder or otherwise take any action with respect thereto. The CC&R's shall give the City the same rights as any other owner of record and enforce liens to recover the costs of such enforcement, which may include costs to perform maintenance obligations, remove trash or debris, tow any unlawfully parked vehicles, or other such violations, all at the cost of any defaulting party. The form of such CC&R's shall be subject to the review

and approval by the City Attorney, which shall not be unreasonably withheld, prior to recordation thereof and prior to any amendment thereof that may affect the City's enforcement rights thereunder. City acknowledges that Developer shall not be obligated by the foregoing to form a homeowner's association.

4.5 Reimbursement for City Costs. Developer shall reimburse City for all of City's costs incurred in the drafting, negotiating, development, and implementation of this Agreement, including, but not limited to, the annual review pursuant to Section 6.1 in accordance with the terms and conditions of the Funding Agreement for Staff Costs and Consulting Contract entered into between the parties in 2016. Said costs shall include, but not be limited to, the full cost recovery of all City's staff time and City's attorney fees. This Agreement shall not take effect until the City costs, as provided for in this section, owed by Developer to City are paid to the City.

4.6 Building and Site Design. Developer shall comply with the design intent of the Design Guidelines contained in the Bogue-Stewart Master Plan or in the City-wide adopted Design Guidelines, whichever is more restrictive as may be reasonably determined by the Development Services Director.

5. Reimbursement and Fee Credits, Financing, and Right-of Way

5.1 Reimbursement to Developer for Oversizing

5.1.1 Developer agrees the City may require Developer to construct certain on-site and off-site improvements in a manner that provides for oversize or excess capacity beyond that size or capacity needed to serve the project (collectively "Oversizing") so that the constructed improvement will be available to serve other development or residences or facilities outside of the Property. The City shall not require any Oversizing from the Developer except in connection with project approvals or in Development Approvals, and in accordance with the provisions of the Subdivision Map Act. Developer may be entitled to a fee credit or reimbursement for Oversizing improvements per Section 5 of this Agreement.

5.1.2 In the event that City requires Developer to install a specific improvement (for example, a traffic signal), Developer's obligation to pay the relevant development impact fees otherwise owed under this Agreement regarding the category of improvement the Developer is installing shall be satisfied by the installation of such improvement in the manner mutually agreed upon by the City and the Developer so long as the amount of the development impact fees for this category of improvement does not exceed the cost of such improvement. City shall accept Developer's dedication of such improvements, consistent with the terms and conditions of this Agreement.

By entering into this Agreement, City and Developer agree that certain facilities, including, but not limited to, roadway, sewer, water, and drainage will be constructed by Developer pursuant to this Agreement which will benefit third-party landowners. Developer shall be entitled to a fee credit for any such facilities to the extent they benefit third party landowners in an amount as reasonably determined by the City. If Developer's fee credit for a particular facility exceeds the amount of the fee owed, then Developer shall be reimbursed for the amount the fee credit exceeds the fee owed by the benefited third-party landowners. Developer shall request the City enter into a Reimbursement Agreement, which shall specify the reimbursement calculations and amounts as determined by the City. The Reimbursement Agreement will require future development by third-party landowners benefiting from the

Oversizing to reimburse Developer's pro-rata share for a period of up to twenty (20) years from the installation of the oversized or other qualifying improvements benefiting third-party landowners, provided, that Developer shall have the right to extend the initial twenty (20) year period with five (5) year extension requests until such time that Developer has been reimbursed in full from the benefited third party Landowners. The extension request must be received, by the City, in writing six months prior to the expiration of the Reimbursement Agreement. The City Council is authorized to enter into a Reimbursement Agreement on behalf of the City subject to approval as to legal form by the City Attorney.

5.1.3 Reimbursement Calculations. City will provide Developer with the available documentation showing the basis for the reimbursement amounts pursuant to Section 4.1. The reimbursement obligations provided in this Agreement will be in amounts as reasonably determined by the City.

5.1.4 Reimbursement Personal to Constructing Owner. All rights to reimbursement created pursuant to Section 4.1 shall be personal to the owner installing the improvements and shall not run with the land unless such rights are expressly assigned in writing.

5.2 Reimbursement to Developer for Cost of Preparing Master Plan and Environmental Impact Report. City and Developer agree that preparation of the Bogue-Stewart Master Plan and its accompanying draft and final Environmental Impact Report will benefit third-party landowners that are also located within the boundary of the Master Plan. Developer shall be entitled to a fee credit for the cost of preparation of the Master Plan and EIR to the extent they benefit third-party landowners. Developer shall be reimbursed for the fair share amount owed by the benefited third-party based on the pro-rata share of the acreage to be developed. Reimbursement Agreements shall be established consistent with a City-adopted Capital Improvement Program. The pro-rata share of such up-front planning costs shall be calculated at the time of reimbursement, and shall be paid to Developer by City, and such payment will be funded by such benefited third-party landowners.

5.3 City's Support of Public Financing for Project Improvements. Development of the Project requires the investment of significant capital to fund the Project's necessary major infrastructure. Developer may, at its discretion, seek public financing mechanism for financing the construction, improvement or acquisition of major infrastructure. At the request of Developer, the City may consider the use of finance districts, special assessment districts, and other similar project-related public financing mechanisms to fund the Project's necessary infrastructure.

5.4 Right-of-Way Acquisition. With respect to the acquisition of any off-site interest in real property required by Developer in order to fulfill any condition required by the Project or the Entitlements, Developer shall make a good faith effort to acquire the necessary interest by private negotiations at the fair market value of such interest. If, after such reasonable efforts, Developer has been unable to acquire such interest and provided that Developer (i) provides evidence of a good faith effort to acquire the necessary property interest to the reasonable satisfaction of City and (ii) agrees to pay the cost of such acquisition, including reasonable attorney's fees, City shall make an offer to acquire the necessary property interest at its fair market value. If such offer has not been accepted within 60 days, City agrees, to the extent permitted by law, to cooperate and assist Developer in efforts to obtain such necessary property interest. Any such acquisition by City shall be subject to City's good faith discretion, which is expressly reserved by City, to make the necessary findings, including a

finding thereby of public necessity, to acquire such interest. Subject to the reservation of such good faith discretion, the City shall schedule the necessary hearings, and if approved by City, thereafter prosecute to completion the proceedings and action to acquire the necessary property interests by power of eminent domain.

Developer shall fund all costs of the acquisition of such necessary property interests, including reasonable attorney's fees and court costs in the event that such acquisition and/or condemnation is necessary.

6. Annual Review.

6.1 Good Faith Compliance. Developer shall annually provide documentation of good faith compliance with this agreement per Govt. Code Section 65865.1 to the City. The City may, at least every twelve (12) months, during the Term of this Agreement, conduct a public meeting to review the extent of good faith substantial compliance by Landowner with the terms of this Agreement at Landowner's expense. Such periodic review shall be limited in scope to compliance with the terms of this Agreement pursuant to Government Code Section 65865.1. Notice of such annual review will be provided by the Development Services Director to Landowner thirty (30) days prior to the date of the public meeting by the Planning Commission and shall include the statement that any review may result in amendment or termination of this Agreement as provided herein. A finding by the City of good faith compliance by the Landowner with the terms of Agreement shall conclusively determine the issue up to and including the date of such review. Nothing in this Section shall be deemed to create a duty of responsibility of City or Landowner or define an event of default that but for such concurrent review would not have been so created or defined.

6.2 Failure to Comply in Good Faith. If the City Council makes a finding that the Landowner has not complied in good faith with the terms and conditions of this Agreement, the City shall provide written notice to the Landowner describing: (i) such failure to comply with the terms and conditions of this Agreement (referenced to herein as a "Default"); (ii) the actions, if any, required by the Landowner to cure such Default; and (iii) the time period within which such Default must be cured. The Landowner shall have, at a minimum, thirty (30) business days after the date of such notice to cure such Default, or in the event that such Default cannot be cured within such thirty (30) day period but can be cured within one (1) year, the Landowner shall have commenced the actions necessary to cure such Default and shall be diligently proceeding to complete such actions necessary to cure such Default within thirty (30) days from the date of notice. If the Default cannot be cured within one (1) year, as determined by the City during periodic or special review, the City Council may modify or terminate this Agreement as provided in Section 6.4 and Section 6.5.

6.3 Failure to Cure Default. If the Landowner fails to cure a Default within the time periods set forth above, the City Council may modify or terminate this Agreement as provided below.

6.4 Proceedings Upon Modification or Termination. If, upon a finding under Section 6.2 and the expiration of the cure period, the City determines to proceed with modification or termination of this Agreement, the City shall give written notice to the Landowner of its intention to do so. The notice shall be given at least fifteen (15) calendar days before the scheduled hearing and shall contain:

6.4.1 The time and place of the hearing;

6.4.2 A statement as to whether or not the City proposes to terminate or to modify the Agreement; and

6.4.3 Such other information as is reasonably necessary to inform the Landowner of the nature of the proceeding.

6.5 Hearings on Modification or Termination. At the time and place set for the hearing on modification or termination, the Landowner shall be given an opportunity to be heard, and the Landowner shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on the issue shall be on the Landowner. If the City Council finds, based upon substantial evidence, that the Landowner has not complied in good faith with the terms or conditions of the Agreement, the City Council may terminate this Agreement or modify this Agreement and impose such conditions as are reasonably necessary to protect the interests of the City.

7. Permitted Delays.

7.1 Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either Party under this Agreement shall not be deemed to be in default where delays or, defaults are due to war, insurrection, strikes, lockouts, walkouts, drought, riots, floods, earthquakes, fire, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, restrictions imposed by governmental or quasigovernmental entities other than the City, unusually severe weather, acts of the other Party, acts or the failure to act of any public or government agency or entity other than the City, or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of cause. If, however, notice by the Party claiming such extension of time is sent to the other Party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the joint agreement of the City and Landowner. Litigation attacking the validity of this Agreement, or any permit, ordinance, or entitlement or other action of a governmental agency necessary for the development of the Property pursuant to this Agreement shall also be deemed to create an excusable delay under this Section.

7.2 Supersedure by Subsequent Laws. If any Law made or enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Immediately after enactment of any such new Law, the Parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. If such modification or suspension is infeasible in the Landowner's reasonable business Judgment, then the Landowner shall have the right to terminate this Agreement by written notice to the City. The Landowner shall also have the right to challenge the new Law preventing compliance with the terms of this

Agreement, and, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

8. Termination.

8.1 City's Right to Terminate. The City shall have the right to terminate this Agreement if the Landowner is not in substantial compliance with the terms of this Agreement and this default remains uncured, all as set forth in Section 6.

8.2 Landowner's Right to Terminate. The Landowner shall have the right to terminate this Agreement only under the following circumstances:

8.2.1 The Landowner has found the City in breach of this Agreement, has given the City notice of such breach and the City has not cured such breach within thirty (30) days of receipt of such notice or, if the breach cannot reasonably be cured within such thirty (30) day period, if the City has not commenced to cure such breach within thirty (30) days of receipt of such notice and is not diligently proceeding to cure such breach.

8.2.2 The Landowner is unable to complete the Project because of supersedure by a subsequent law per Section 7.2 or court action.

8.2.3 The Landowner determines, in its business judgment, that it is not practical or reasonable to pursue development of the Property, however if termination occurs for this reason the City reserves the right to revoke any remaining entitlement to develop the property.

8.3 Mutual Agreement. This Agreement may be terminated upon the mutual Agreement of the Parties.

8.4 Effect of Termination.

8.4.1 General Effect. If this Agreement is terminated for any reason, such termination shall not affect any condition or obligation due to the City from the Landowner prior to the date of termination and such termination shall not otherwise affect any other City entitlement or approval with respect to the Property that has been granted prior to the date of termination.

8.5 Recordation of Termination. In the event of a termination, the City and Landowner agree to cooperate with one another in executing a Memorandum of Termination to record in the Official Records of Sutter County within thirty (30) days of the date of termination.

9. Remedies. Either Party may, in addition to any other rights or remedies, institute legal or equitable action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforce by specific performance the obligations and rights of the Parties hereto.

10. Waiver: Cumulative Remedies. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the

future. No waiver by a Party of an event of default shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such event of default. No express written waiver of any event of default shall affect any other event of default, or cover any other period of time, other than any event of default and/or period of time specified in such express waiver. Except as provided in this Section, all of the remedies permitted or available to a Party under this Agreement, or at law or in equity, shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

11. Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties that the Project is a private development. This Agreement is made and entered into for the sole protection and benefit of the Landowner and the City and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement. The City and Landowner hereby renounce the existence of any third-party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third-party beneficiary status. No partnership, joint venture or other association of any kind is formed by this Agreement.

12. Cooperation in the Event of Legal Claim. In the event any legal action or proceeding is instituted by any third-party challenging the validity of any provision of this Agreement or any action or decision taken or made hereunder, the Parties shall cooperate in defending such action or proceeding.

13. Estoppel Certificate. Either Party may, at any time, and from time-to-time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties; ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments; (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and amount of any such defaults; and (iv) the requesting Party has been found to be in compliance with this Agreement, and the date of the last determination of such compliance. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following receipt thereof. The Director shall have the right to execute any certificate requested by the Landowner hereunder. The City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

14. Right to Assign or Transfer. The Landowner's rights and responsibilities hereunder may be sold or assigned in conjunction with the transfer, sale or assignment of the Property at any time during the term of this Agreement subject to the following conditions precedent:

14.1 No default by Developer shall be outstanding and uncured as of the effective date of the proposed transfer, unless the City Council has received adequate assurances satisfactory to the City Council that such default shall be cured in a timely manner either by Developer or the transferee under the transfer.

14.2 Prior to the effective date of the proposed transfer, Developer or the proposed transferee has delivered to the City an executed and acknowledged assignment and assumption agreement (the "Assumption Agreement") in recordable form. Such Assumption Agreement shall include provisions regarding: (a) the rights and interest proposed to be transferred to the proposed transferee; (b) the obligations of Developer under this Agreement that the proposed transferee will assume; and (c) the proposed transferee's acknowledgment that such transferee has reviewed and agrees to be bound by this Agreement. The Assumption Agreement shall also include the name, form of entity, and address of the proposed transferee, and shall provide that the transferee assumes the obligations of Developer to be assumed by the transferee in connection with the proposed transfer. The Assumption Agreement shall be recorded in the official records of the County of Sutter concurrently with the consummation of the transfer.

14.3 Prior to the effective date of the proposed transfer, the Developer must obtain the City's consent in writing to the transfer, which may be evidenced by the City Council's approval of an Assumption Agreement. City's consent shall not be unreasonably withheld. Factors the City may consider in determining whether to consent to the transfer include the financial capacity of the proposed transferee to comply with all of the terms of the Agreement and the history, if any, of compliance of transferee, its principals, officers or owners with the provisions of federal or state law, the Yuba City Municipal Code or agreements with the City relating to development projects within the City.

14.4 Mortgagee as Transferee. No Mortgage (including the execution and delivery thereof to the Mortgagee) shall constitute a transfer. A Mortgagee shall be a transferee only upon: (a) the acquisition by such Mortgagee of the affected interest of Developer encumbered by such Mortgagee's Mortgage; and (b) delivery to the City of an Assumption Agreement executed by the Mortgagee pursuant to which the Mortgagee assumes assuming, from and after the date such Mortgagee so acquires its interest, the applicable rights, duties and obligations of Developer under this Agreement. No further consent of the City shall be required for any such transfer to a Mortgagee.

14.5 Effect of Transfer. A transferee shall become a Party to this Agreement only with respect to the interest transferred to it under the transfer and then only to the extent set forth in the Assumption Agreement. If Developer transfers all of its rights, duties and obligations under this Agreement, Developer shall be released from any and all obligations accruing after the date of the transfer under this Agreement. If Developer effectuates a transfer as to only some but not all of its rights, duties and obligations under this Agreement, Developer shall be released only from its obligations accruing after the date of the transfer which the transferee assumes in the Assumption Agreement.

15 Financing. Mortgages, deeds of trust, sales and leasebacks, or other forms of conveyance required for any reasonable method of financing requiring a security arrangement with respect to the Property ("Mortgages") are permitted without the consent of the City, provided the Landowner complies with the following:

15.1 Mortgage Protection. This Agreement and any covenants entered into between the Developer and City shall be superior and senior to the conveyance of any Mortgage encumbering any interest in the Property. No default shall defeat, render invalid, diminish or impair the conveyance of any Mortgage made for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any person (including any Mortgagee) who acquires title to the Property or any portion thereof or interest

therein or improvement thereon, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

15.2 Mortgagee Not Obligated; Mortgagee as Transferee. No Mortgagee shall have any obligation or duty under this Agreement whatsoever, except that nothing contained in this Agreement shall be deemed to permit or authorize any Mortgagee to undertake any new construction or improvement in the Newkom Ranch Project Area, or to otherwise have the benefit of any rights of Developer, or to enforce any obligation of the City, under this Agreement, unless and until such Mortgagee elects to become a Transferee in the manner specified in this Agreement. Any Mortgagee that affirmatively elects to become a Transferee shall be later released from all obligations and liabilities under this Agreement upon the subsequent Transfer by the Mortgagee of its interest as a transferee to another person.

15.3 Entitlement to Written Notice of Default. The Mortgagee of a Mortgage or beneficiary of a deed of trust encumbering the Property, or any part thereof, and their successors and assigns shall, upon written request to the City, be entitled to receive from the City written notification of any default by Landowner of the performance of Landowner's obligations under this Agreement which has not been cured within sixty (60) days following the date of default. Landowner shall reimburse the City for its actual costs, reasonably and necessarily incurred, to prepare this notice of default.

15.4 Priority of Mortgages and Subordination. Landowner shall ensure that all Mortgages subordinate to this Agreement. For purposes of exercising any remedy of a Mortgagee or for becoming a Transferee, the applicable laws of the State of California shall govern the rights, remedies and priorities of each Mortgagee, absent a written agreement between Mortgagees otherwise providing.

15.5 Collateral Assignment. As additional security to a Mortgagee under a Mortgage on the Property or any portion thereof, Developer shall have the right, without the consent of the City, to execute a collateral assignment of Developer's rights, benefits and remedies under this Agreement in favor of the Mortgagee (a "Collateral Assignment") on the standard form provided by the Mortgagee.

16. Covenants to Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors, assignees, devisees, administrators, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors and assignees. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder: (i) is for the benefit of such properties and is a burden upon such properties; (ii) runs with such properties; and (iii) is binding upon each Party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each Party and its property hereunder, and each other person succeeding to an interest in such properties; provided that no liability or obligation shall accrue to any person, if this Agreement terminates pursuant to Section 8 of this Agreement.

17. Amendment.

17.1 Amendment or Cancellation. Except as otherwise provided in this Agreement, this Agreement may be canceled, modified or amended only by mutual consent of the Parties in writing, and then only in the manner provided for in Government Code Section 65868. Minor amendments to this Agreement may be made without a public hearing upon approval of the Development Services Director. "Minor Amendments" shall mean amendments which are similar in significance to the type of minor amendments to land use entitlements that may be made without a full public hearing or approval of the Planning Commission or City Council pursuant to the Yuba City Municipal Code.

17.2 Recordation. Any amendment, termination or cancellation of this Agreement shall be recorded by the City Clerk not later than ten (10) days after the effective date of the action effecting such amendment, termination or cancellation; however, a failure to record shall not affect the validity of the amendment, termination or cancellation.

18. Notices.

18.1 Procedure. Any notice to either Party shall be in writing and given by delivering the notice in person or by sending the notice by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the Party's mailing address.

18.2 Mailing Addresses. The respective mailing addresses of the Parties are, until changed as hereinafter provided, the following:

City:	Development Services Director City of Yuba City 1201 Civic Center Blvd. Yuba City, CA 95993
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With a copy to:	City Manager City of Yuba City 1201 Civic Center Blvd. Yuba City, CA 95993
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Landowners:	Newkom Ranch LLC Attn: Dave Lanza P.O. Box 591 Marysville, CA 95901
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With a copy to:	MHM Incorporated Attn: Sean Minard P.O. Box B Marysville, CA 95901
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Either Party may change its mailing address at any time by giving ten (10) days notice of such change in the manner provided for in this section. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is affected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. Nothing in this provision shall be construed to prohibit communication by facsimile transmission, so long as an original is sent by first class mail, commercial carrier or is hand-delivered.

19. Indemnification.

19.1 Third Party Actions. To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, attorneys, and volunteers from any and all loss, liability, fines, penalties, forfeitures, damages and costs (including attorney's fees, litigation expenses and administrative record preparation costs) arising from, resulting from, or in connection with any Third Party Action (as hereinafter defined). The term "Third Party Action" collectively means any legal action or other proceeding instituted by (i) a third party or parties or (ii) a governmental body, agency or official other than the City or a City Agency, that: (a) challenges or contests any or all of this Agreement, the Newkom Ranch Subdivision Map Applications and Approvals, or the Development Approvals; or (b) claims or alleges a violation of CEQA or another law in connection with the certification of the EIR by the City Council or the grant, issuance or approval by the City of any or all of this Agreement, the Newkom Ranch Subdivision Map Applications and Approvals, and the Development Approvals. Developer's obligations under this Section shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties forfeitures, costs or damages caused solely by the active negligence or willful misconduct of the City or any of its officers, officials, employees, agents or volunteers. The provisions of this Section shall survive the termination of this Agreement.

19.2 Damage Claims. The nature and extent of Developer's obligations to indemnify, defend and hold harmless the City with regard to events or circumstances not addressed in Section 19.1 shall be governed by this Section 19.2. To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, attorneys, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Developer or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement or the performance of any or all work to be done by Developer or its contractors, agents, successors and assigns pursuant to this Agreement (including, but not limited to design, construction and/or ongoing operation and maintenance of off-site improvements unless and until such off-site improvements are dedicated to and officially accepted by the City). Developer's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, attorneys, or agents are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents, attorneys, or volunteers.

If Developer should subcontract all or any portion of the services to be performed under this Agreement, Developer shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, attorneys, and volunteers in accordance with the terms of the preceding paragraph. The Developer further agrees that the

use for any purpose and by any person of any and all of the streets and improvements required under this Agreement, shall be at the sole and exclusive risk of the Developer, at all times prior to final acceptance by the City of the completed street and other improvements, unless any loss, liability, fines, penalties, forfeitures, costs or damages arising from said use were caused by the active or sole negligence, or the willful misconduct, of the City or any of its officers, officials, employees, agents or volunteers.

Notwithstanding the preceding paragraph, to the extent that Subcontractor is a "design professional" as defined in Section 2782.8 of the California Civil Code and performing work hereunder as a "design professional" shall, in lieu of the preceding paragraph, be required to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers to the furthest extent allowed by law, from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in Agreement, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

This Section shall survive termination or expiration of this Agreement.

20. Insurance. Prior to starting construction of any phase of the project through the date of City's final formal acceptance of off-site improvements constructed pursuant to the terms of this Agreement (the "Insurance Period"), Developer shall pay for and maintain in full force and effect all policies of insurance described in this Section with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Public Work's Director. The following policies of insurance are required:

20.1 Commercial General Liability. Insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and shall include insurance for bodily injury, property damage and personal injury with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, contractual liability (including indemnity obligations under this Agreement), with limits of liability of not less than \$5,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal injury, \$5,000,000 general aggregate and \$5,000,000 aggregate for products and completed operations and \$5,000,000 general aggregate.

20.2 Commercial Automobile Liability. insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Business Auto Coverage Form CA 00 01 and shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 B Any Auto), with combined single limits of liability of not less than \$5,000,000 per accident for bodily injury and property damage.

20.3 Workers Compensation. insurance as required under the California Labor Code.

20.4 Employers Liability. with minimum limits of liability of not less than \$1,000,000 each accident, \$1,000,000 policy limit and \$1,000,000 for each employee.

In the event Developer purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Developer shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Developer shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of City of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a ten (10) calendar day written notice of such cancellation of coverage. In the event any policies are due to expire during the term of this Agreement, Developer shall provide a new certificate evidencing renewal of such policy not less than ten (10) calendar days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, Developer shall file with City a new certificate and all applicable endorsements for such policy(ies).

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, attorneys, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Developer's insurance shall be primary, and no contribution shall be required of City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers. Developer shall have furnished City with the certificate(s) and applicable endorsements for all required insurance prior to start of construction of any phase of development. Developer shall furnish City with copies of the actual policies upon the request of City's Director of Public Works at any time during the life of the Agreement or any extension, and this requirement shall survive termination or expiration of this Agreement.

If at any time during the Insurance Period, Developer fails to maintain the required insurance in full force and effect, the Director of Public Works, or designee, may order that the Developer, or its contractors or subcontractors, immediately discontinue any further work under this Agreement and take all necessary actions to secure the work site to insure that public health and safety is protected. All payments due or that become due to Developer shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. The insurance requirements set forth in this Section are material terms of this Agreement.

If Developer should hire a general contractor to provide all or any portion of the services or work to be performed under this Agreement, Developer shall require the general contractor to provide insurance protection in favor of City, its officers, officials, employees, attorneys, volunteers and agents in accordance with the terms of each of the preceding paragraphs, except that the general contractor's certificates and endorsements shall be on file with Developer and City prior to the commencement of any work by the general contractor.

If the general contractor should subcontract all or a portion of the services or work to be performed under this Agreement to one or more subcontractors, Developer shall require the general contractor to require each subcontractor to provide insurance protection in favor of City, its officers, officials, employees, attorneys, volunteers and agents in accordance with the terms of each of the preceding paragraphs, except that each subcontractor shall be required to pay for and maintain Commercial General Liability insurance with limits of liability of not less than

\$1,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal injury, \$2,000,000 aggregate for products and completed operations and \$2,000,000 general aggregate and Commercial Automobile Liability insurance with limits of liability of not less than less than \$1,000,000 per accident for bodily injury and property damage. Subcontractors' certificates and endorsements shall be on file with the general contractor, Developer and City prior to the commencement of any work by the subcontractor. Developer's failure to comply with these requirements shall constitute a default of this Agreement.

21. Miscellaneous.

21.1 Approvals. Unless otherwise provided herein, whenever approval, consent or satisfaction (herein collectively referred to as an "approval") is required of a Party pursuant to this Agreement, such approval shall not be unreasonably withheld. If a Party shall disapprove, the reasons therefor shall be stated in reasonable detail in writing. Approval by a Party to or of any act or request by the other Party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests. The Parties acknowledge and agree that the intent of the Parties is that this Agreement be construed in a manner that protects the rights granted to Landowner herein to the as allowed by law. Except for the limitations on the exercise by the City of its police power which are provided in this Agreement or which are construed in accordance with the immediately preceding sentence, the Parties further acknowledge and agree that: (a) the City reserves all of its police power and/or statutory or other legal powers or responsibilities; and (b) this Agreement shall not be construed to limit the authority or obligation of the City to hold necessary public hearings, to limit the discretion of the City or any of its officers or officials with regard to rules, regulations, ordinances, laws, and entitlement of use which require the exercise of discretion by the City or any of its officers or officials. This Agreement shall not be construed to limit the obligations of the City to comply with CEQA or any other federal or state law.

21.2 Project Approvals Independent. All approvals that may be granted pursuant to this Agreement, and all approvals or other land use approvals which have been or may be issued or granted by the City with respect to the Property, constitute independent actions and approvals by the City. If any provisions of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if the City terminates this Agreement for any reason, such invalidity, unenforceability or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any approvals or other land use approvals. In such cases, such approvals will remain in effect pursuant to their own terms, provisions and conditions.

21.3 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of the Property, or of the Project, or any portion thereof, to the general public, for the general public, or for any-public use or purpose whatsoever. This proscription does not extend to any portion of the Property that may be dedicated in compliance with any conditions of approval. The Landowner shall have the right to prevent or prohibit the use of the Property, or any portion thereof, including common areas and buildings and improvements located thereon; by any person for any purposes inimical to the operation of a private, integrated Project as contemplated by this Agreement.

21.4 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

21.5 Construction of Agreement. The provisions of this Agreement and the Exhibits shall be construed as a whole according to their common meaning and not strictly for or against any Party in order to achieve the objectives and purpose of the Parties. The captions preceding the text of each Article, Section, Subsection and the Table of Contents are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. All references to "person" shall include, without limitation, any and all corporations, partnerships or other legal entities.

21.6 Other Necessary Acts. Each Party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all further instruments, documents and writings as may be reasonably necessary or proper to achieve the purposes and objectives of this Agreement and to secure the other party the full and complete enjoyment of its rights and privileges hereunder.

21.7 Applicable Law. This Agreement, and the rights and obligations of the Parties, shall be construed by and enforced in accordance with the laws of the State of California.

21.8 Equal Authorship. This Agreement has been reviewed by legal counsel for both the Landowner and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

21.9 Time. Time is of the essence of this Agreement and of each and every term and condition hereof. In particular, the City agrees to act in a timely fashion in accepting, processing, checking and approving all maps, documents, plans, permit applications and any other matters requiring the City's review or approval relating to the Project or Property. Subject to extensions of time by mutual consent in writing, unreasonable delay by either party to perform any term or provision of this Agreement shall constitute a default.

21.10 Subsequent Projects. After the effective date of this Agreement, the City may approve other projects that place a burden on the City's infrastructure; however, it is the intent and agreement of the Parties that Landowner's right to build and occupy the Project, as described in this Agreement, shall not be diminished despite the increased burden of future approved development on public facilities.

21.11 Entire Agreement. This written Agreement and the Exhibits contain all the representations and the entire agreement between the Parties with

respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits.

21.12 Form of Agreement: Exhibits. This Agreement is executed in three duplicate originals, each of which is deemed to be an original. This Agreement constitutes the entire understanding and agreement of the parties. Said exhibits are identified as follows:

Exhibit A-1: Property legal description
Exhibit A-2: Newkom Ranch Subdivisions

All attachments to this Agreement, including all exhibits referenced herein, and all subparts thereto, are incorporated herein by this reference.

21.13 Attorneys' Fees. If either Party commences any action for the interpretation, enforcement, termination, cancellation or rescission hereof, or for specific performance of the breach hereof, the prevailing party shall be entitled to its reasonable attorneys' fees and litigation expenses and costs, and any judgment, order or decree rendered in such action, suit or proceeding shall include an award thereof. Attorneys' fees under this Section shall include attorneys' fees on any appeal and any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

21.14 Limitation of Legal Acts. In no event shall the City, or its officers, agents, attorneys, or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed that the Developer's sole legal remedy for a breach or violation of this Agreement by the City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.

21.15 Interpretation and Governing State Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objective and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, both Parties having been represented by counsel in the negotiation and preparation hereof. All legal actions brought to enforce the terms of this Agreement shall be brought and heard in the Superior Court of the State of California, County of Sutter.

21.16 Successor Statutes Incorporated. All references to a statute or ordinance, shall incorporate any, or all, successor statute or ordinance enacted to govern the activity now governed by the statute or ordinance, noted herein to the extent, however, that incorporation of such successor statute or ordinance does not adversely affect the benefits and protections granted to the Developer under this Agreement.

21.17 Counterparts. This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and each of which shall be deemed to be one and the same instrument when each Party signs each such counterpart.

21.18 Signature Pages. For convenience, the signatures of the Parties to this Agreement may be executed and acknowledged on separate pages which, when attached to this Agreement, shall constitute this as one complete Agreement.

21.19 Days. Unless otherwise specified in this Agreement, the term "days" means calendar days.

21.20 Authority. The Parties hereby represent that the person hereby signing this Agreement on behalf of each respective Party has the authority to bind the Party to the Agreement.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

"City"

CITY OF YUBA CITY,
A General Law City

"Landowner"

Newkom Ranch LLC,
a California limited liability company

By: _____

Shon Harris, Mayor

By: Newkom Ranch LLC
a California limited liability company

Date: _____

By: _____
Dave Lanza, Member

Attest:

City Clerk

Approved as to Form:

Shannon Chaffin, City Attorney

Attachments:

2013-0014069

RECORDING REQUESTED BYFirst American Title Insurance Company National
Commercial Services**AND WHEN RECORDED MAIL DOCUMENT TO:**NEWKOM RANCH, LLC
Attn: David W. Lanza
P. O. Box 591
Marysville, CA. 95901

Recorded		REC FEE	26.00
Official Records		SURVEY MONUMENT	10.00
County of			
Sutter			
Donna M. Johnston			
Clerk Recorder			

12:15PM 22-Aug-2013 | RB
Page 1 of 5

Space Above This Line for Recorder's Use Only

APN: 23-040-001, 004, 005, 062, 064 and 23-380-007

GRANT DEED**Conf.**The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX \$R&T Code 11932 - Per separate statement;
CITY TRANSFER TAX \$NONE; SURVEY MONUMENT FEE \$ 10.00

- [] computed on the consideration or full value of property conveyed, OR
 [] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
 [**XX**] unincorporated area; [] City of -----, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

DANE SILLER and LISA SILLER, husband and wife, as joint tenants

hereby GRANTS to

NEWKOM RANCH, LLC, a California limited liability companythe following described property in the unincorporated area of the County of **Sutter**, State of **California**:**PARCEL ONE:**

BEGINNING AT A POINT ON THE WEST LINE OF SECTION 3, TOWNSHIP 14 NORTH, RANGE 3 EAST, MOUNT DIABLO BASE AND MERIDIAN, 80 RODS NORTH OF THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3; AND RUNNING THENCE NORTH ON THE WEST SECTION LINE OF SAID SECTION 3, A DISTANCE OF 40 RODS; THENCE AT A RIGHT ANGLE EAST 1860 FEET MORE OR LESS TO THE WEST LINE OF A PRIVATE ROADWAY DESCRIBED IN THE DEED FROM GEORGE WALTON TO FRANCIS WALTON, DATED NOVEMBER 10, 1910 AND RECORDED MARCH 13, 1913 IN BOOK 51 OF DEEDS, AT PAGE 92; THENCE SOUTH ALONG THE WEST LINE OF SAID PRIVATE ROADWAY AS DESCRIBED IN SAID DEED RECORDED IN BOOK 51 OF DEEDS, AT PAGE 92, A DISTANCE OF 40 RODS TO A POINT 80 RODS NORTH OF THE LINE DIVIDING THE SOUTHWEST QUARTER OF SAID SECTION 3 INTO NORTH AND SOUTH HALVES; AND THENCE WEST AND PARALLEL WITH SAID LAST NAMED LINE 1860 FEET MORE OR LESS TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED FROM HAROLD E. NEWKOM, ET UX, RECORDED JUNE 14, 1954 IN BOOK 425, AT PAGE 190, OFFICIAL RECORDS.

APN: 23-040-004

PARCEL TWO:

BEGINNING AT A POINT ON THE WEST LINE OF SECTION 3, TOWNSHIP 14 NORTH, RANGE 3 EAST, MOUNT DIABLO BASE AND MERIDIAN, 160 RODS NORTH OF THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3; THENCE NORTH ON THE WEST SECTION LINE OF SAID SECTION 3, TO A POINT ON SAID LINE 40 RODS; SOUTH OF THE NORTHWEST CORNER OF SAID SECTION 3; THENCE EAST AND PARALLEL WITH THE NORTH LINE OF SAID SECTION 3, A DISTANCE OF 1860 FEET, MORE OR LESS, TO THE WEST LINE OF A PRIVATE ROADWAY DESCRIBED IN THE DEED FROM GEORGE WALTON TO FRANCIS WALTON, DATED NOVEMBER 10, 1910 AND RECORDED MARCH 13, 1913 IN BOOK 51 OF DEEDS, AT PAGE 92; THENCE SOUTH ALONG THE WEST LINE OF SAID PRIVATE ROADWAY AS DESCRIBED IN SAID DEED RECORDED IN BOOK 51 OF DEEDS, AT PAGE 92, TO A POINT 160 RODS NORTH OF THE LINE DIVIDING THE SOUTHWEST QUARTER OF SAID SECTION 3 INTO NORTH AND SOUTH HALVES; AND THENCE WEST AND PARALLEL WITH SAID LAST NAMED LINE 1860 FEET MORE OR LESS TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED FROM HAROLD E. NEWKON, ET UX, RECORDED JUNE 14, 1954 IN BOOK 425, AT PAGE 190, OFFICIAL RECORDS.

APN: 23-040-005 (PORTION)

PARCEL THREE:

BEGINNING AT A POINT ON THE WEST LINE OF SECTION 3, TOWNSHIP 14 NORTH, RANGE 3 EAST, MOUNT DIABLO BASE AND MERIDIAN, 120 RODS NORTH OF THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3; AND RUNNING THENCE NORTH ON THE WEST SECTION LINE OF SAID SECTION 3, A DISTANCE OF 40 RODS; THENCE AT A RIGHT ANGLE EAST 1860 FEET MORE OR LESS TO THE WEST LINE OF A PRIVATE ROADWAY DESCRIBED IN THE DEED FROM GEORGE WALTON TO FRANCIS WALTON, DATED NOVEMBER 10, 1910 AND RECORDED MARCH 13, 1913 IN BOOK 51 OF DEEDS, AT PAGE 92; THENCE SOUTH ALONG THE WEST LINE OF SAID PRIVATE ROADWAY AS DESCRIBED IN SAID DEED RECORDED IN BOOK 51 OF DEEDS, AT PAGE 92, TO A POINT 120 RODS NORTH OF THE LINE DIVIDING THE SOUTHWEST QUARTER OF SAID SECTION 3 INTO NORTH AND SOUTH HALVES; THENCE WEST AND PARALLEL WITH SAID LAST NAMED LINE 1860 FEET MORE OR LESS TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED FROM HAROLD E. NEWKON, ET UX, RECORDED JUNE 14, 1954 IN BOOK 425, AT PAGE 190, OFFICIAL RECORDS.

APN: 23-040-005 (PORTION)

PARCEL FOUR:

BEGINNING AT A POINT ON THE WEST LINE OF SECTION 3, TOWNSHIP 14 NORTH, RANGE 3 EAST, MOUNT DIABLO BASE AND MERIDIAN, 40 RODS NORTH OF THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3; AND RUNNING THENCE NORTH ON THE WEST LINE OF SAID SECTION 3, A DISTANCE OF 40 RODS; THENCE AT A RIGHT ANGLE EAST 1860 FEET MORE OR LESS TO THE WEST LINE OF A PRIVATE ROADWAY DESCRIBED IN THE DEED FROM GEORGE WALTON TO FRANCIS WALTON, DATED NOVEMBER 10, 1910 AND RECORDED MARCH 13, 1913 IN BOOK 51 OF DEEDS, AT PAGE 92; THENCE SOUTH ALONG THE WEST LINE OF SAID PRIVATE ROADWAY AS DESCRIBED IN SAID DEED RECORDED IN BOOK 51 OF DEEDS, AT PAGE 92, TO A POINT 40 RODS NORTH OF THE LINE DIVIDING THE SOUTHWEST QUARTER OF SAID SECTION 3 INTO NORTH AND SOUTH HALVES; THENCE WEST AND PARALLEL WITH SAID LAST NAMED LINE 1860 FEET MORE OR LESS TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED FROM HAROLD E. NEWKON, ET UX, RECORDED JUNE 14, 1954 IN BOOK 425, AT PAGE 190, OFFICIAL RECORDS.

APN: 23-040-062

PARCEL FIVE:

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3; TOWNSHIP 14 NORTH, RANGE 3 EAST, MOUNT DIABLO BASE AND MERIDIAN, AND RUNNING THENCE NORTH ALONG THE WEST LINE OF SAID SECTION 3, A DISTANCE OF 40 RODS; THENCE AT A RIGHT ANGLE EAST A DISTANCE OF 1860 FEET MORE OR LESS TO THE WEST LINE OF A PRIVATE ROADWAY AS DESCRIBED IN THE DEED FROM GEORGE WALTON TO FRANCIS WALTON, DATED NOVEMBER 10, 1910 AND RECORDED MARCH 13, 1913 IN BOOK 51 OF DEEDS, AT PAGE 92 THENCE SOUTH ALONG THE WEST LINE OF SAID ROADWAY A DISTANCE OF 40 RODS TO THE LINE DIVIDING THE SOUTHWEST QUARTER OF SAID SECTION 3 INTO NORTH AND SOUTH HALVES; THENCE RUNNING WEST ALONG SAID LAST NAMED LINE, A DISTANCE OF 1860 FEET MORE OR LESS TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED FROM HAROLD E. NEWKON, ET UX, RECORDED JUNE 14, 1954 IN BOOK 425, AT PAGE 190, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PORTION;

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3; TOWNSHIP 14 NORTH, RANGE 3 EAST, MOUNT DIABLO BASE AND MERIDIAN, AND RUNNING THENCE NORTH ALONG THE WEST LINE OF SAID SECTION 3, A DISTANCE OF 710 FEET; THENCE AT A RIGHT ANGLE EAST, A DISTANCE OF 645 FEET; THENCE SOUTH ON A LINE PARALLEL WITH THE WEST LINE OF SAID SECTION 3, A DISTANCE OF 710 FEET MORE OR LESS, TO THE LINE DIVIDING THE SOUTHWEST QUARTER OF SAID SECTION 3 INTO NORTH AND SOUTH HALVES; THENCE RUNNING WEST ALONG SAID LAST MENTIONED LINE A DISTANCE OF 645 FEET TO THE POINT OF BEGINNING.

APN: 23-040-064

PARCEL SIX:

BEGINNING AT A POINT ON THE TOWNSHIP LINE BETWEEN TOWNSHIPS 14 NORTH AND 15 NORTH, RANGE 3 EAST, MOUNT DIABLO BASE AND MERIDIAN WHERE THE SAME IS INTERSECTED BY THE WEST LINE OF THE NEW HELVETIA RANCHO, SAID POINT BEING KNOWN AS THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 14 NORTH, RANGE 3 EAST, MOUNT DIABLO BASE AND MERIDIAN, AND RUN THENCE SOUTH 1° 0' WEST ALONG THE WEST BOUNDARY LINE OF SAID NEW HELVETIA RANCHO, 35 CHAINS AND 32 LINKS TO A POINT; THENCE SOUTH 87 ½° WEST 1 CHAIN AND 37 LINKS TO A POINT ON THE WEST SIDE OF THE COUNTY ROAD AT THIS PLACE, WHICH LAST NAMED POINT IS THE POINT OF BEGINNING FOR THE DESCRIPTION OF THE LAND HEREBY DESCRIBED; FROM SAID POINT OF BEGINNING RUN THENCE SOUTH 87 ½° WEST 660 FEET TO A POINT; THENCE NORTH 1° 0' EAST 327.67 FEET TO A POINT; THENCE NORTH 87 ½° EAST 660 FEET TO A POINT; THENCE SOUTH 1° 0' WEST 327.67 FEET TO THE POINT OF BEGINNING.

APN: 23-380-007

Grant Deed - continued

Date: 08/16/2013

PARCEL SEVEN:

BEGINNING AT THE NORTHWEST CORNER OF SECTION 3, TOWNSHIP 14 NORTH, RANGE 3 EAST, MOUNT DIABLO BASE AND MERIDIAN; AND THENCE SOUTH ON THE WEST LINE OF SAID SECTION 3, A DISTANCE OF 40 RODS; THENCE EAST AND PARALLEL WITH THE NORTH LINE OF SAID SECTION; A DISTANCE OF 1860.0 FEET, MORE OR LESS, TO THE WEST LINE OF A PRIVATE ROADWAY AS DESCRIBED IN DEED FROM GEORGE WALTON TO FRANCIS WALTON DATED NOVEMBER 10, 1910, RECORDED MARCH 13, 1913 IN BOOK 51 OF DEEDS, AT PAGE 92; THENCE NORTH ALONG THE WEST LINE OF SAID ROADWAY, A DISTANCE OF 40 RODS, MORE OR LESS, TO A POINT ON THE NORTH LINE OF SAID SECTION 3; THENCE WEST ALONG SAID NORTH LINE 1860 FEET, TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED JUNE 14, 1954 IN BOOK 425, AT PAGE 190, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED MARCH 07, 2002 AS DOCUMENT NO. 2002-0004534 OF OFFICIAL RECORDS.

APN: 23-040-001

Date: August 16, 2013



DANE SILLER



LISA SILLER

Grant Deed - continued

Date: **08/16/2013**

STATE OF **CALIFORNIA**)SS
 COUNTY OF **SACRAMENTO**)

On **August 20**, 2013, before me, **CAROLYN HUNT**, Notary Public, personally appeared **DANE SILLER and LISA SILLER**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~ ~~she~~ they executed the same in ~~his~~ ~~her~~ their authorized capacity(ies), and that by ~~his~~ ~~her~~ their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



Carolyn Hunt

My Commission Expires: **APRIL 17, 2015**

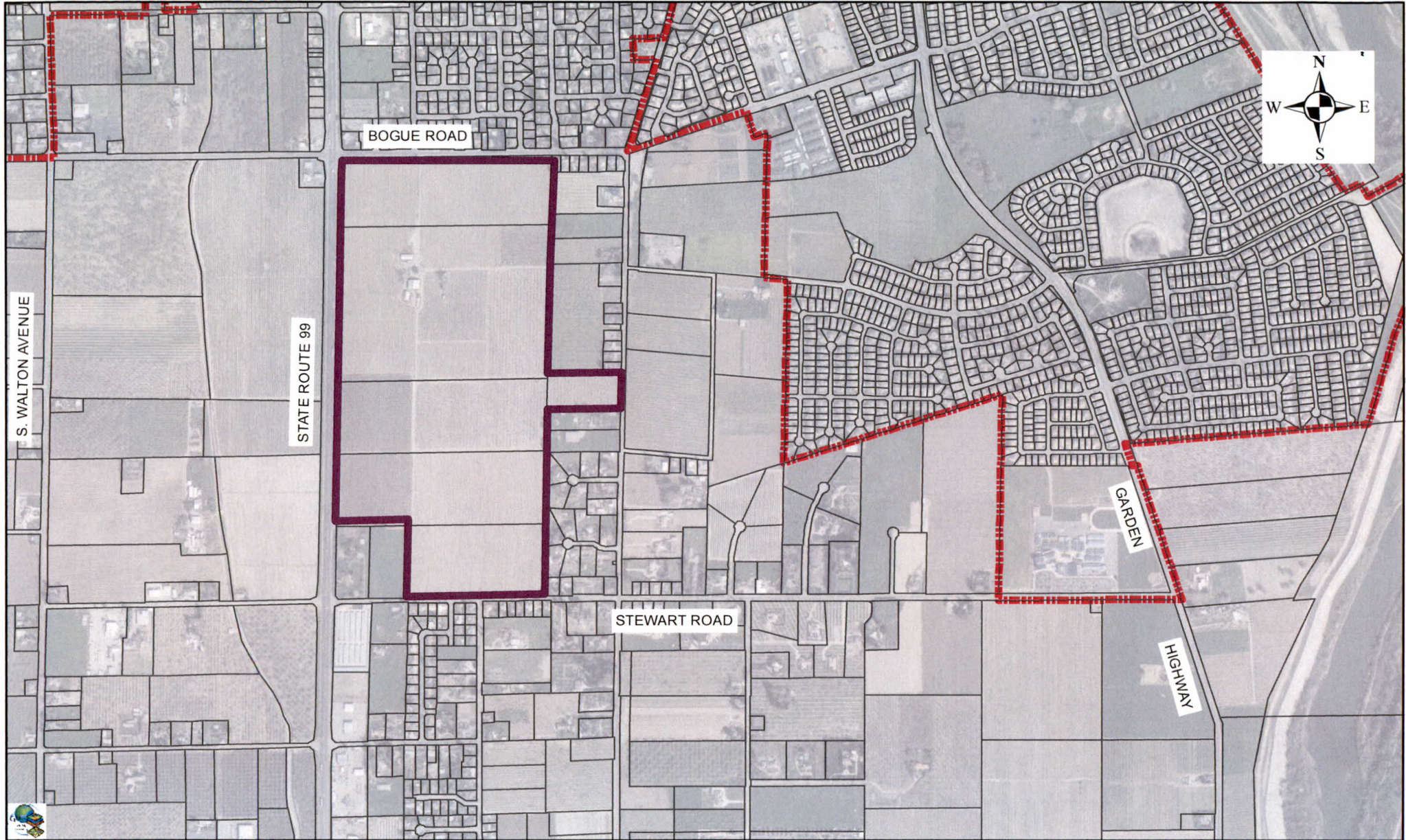
This area for official notarial seal

Notary Name: **CAROLYN HUNT**
 Notary Registration Number: **1932930**

Notary Phone: **916-576-3141**
 County of Principal Place of Business: **SACRAMENTO**

END OF DOCUMENT

Vicinity Map



Bogue Stewart Master Plan

EXHIBIT A-2



Newkom Ranch Subdivision



City Limits

1 inch = 1,200 feet



CITY OF YUBA CITY
PLANNING COMMISSION
STAFF REPORT

Date: November 13, 2019

To: Chair and Members of the Planning Commission

From: Development Services Department

Presentation By: Brian Millar, Interim Director of the Development Services Department
Denis Cook, Planning Consultant

Public Hearing: **Kells East Ranch Subdivision Maps and Development Agreement:**

Tentative Subdivision Map (TSM) 15-02 (Large Lot) (Contingent Approval) A proposal to create four large lots, ranging from 5.30 acres to 15.43 acres; and

Tentative Subdivision Map (TSM) 15-03 (Small Lot) Contingent Approval): A proposal to subdivide the two single-family residential large lots from TSM 15-02 into 147 single-family residential lots; and

Development Agreement (Recommendation): A development agreement for the Kells East Subdivisions.

Project Location: The 93.50-acre property is located along the west side of State Route 99 between Bogue Road and Stewart Road (the convenience market and gas station at the southwest corner of SR 99 and Bogue Road is not a part) **(Figure 1)**. Assessor's Parcel Numbers 23-010-005, 120, and 127.

Recommendation: Adopt a Resolution Of The Planning Commission Of The City Of Yuba City Contingently Approving The Kells East Ranch Subdivisions (Tentative Subdivision Maps (TSM) 15-02 And 15-03) Located At The Southwest Corner Of State Route 99 And Bogue Road; Assessor's Parcel Numbers 23-010-005, 23-010-120, And 23-010-127; and

Adopt a Resolution Of The Planning Commission Of The City Of Yuba City Recommending To The City Council Of The City Of Yuba City Approval Of An Uncodified Ordinance For A Development Agreement With Bains Properties, LP, For The Development Of The Kells East Ranch Subdivisions (TSM 15-02 And TSM 15-03); Assessor's Parcel Numbers 23-010-005, 23-010-120, And 23-010-127.

TENTATIVE SUBDIVISION MAPS
2015-02 (LARGE LOT) AND 2015-03 (SMALL LOT)
KELLS EAST RANCH

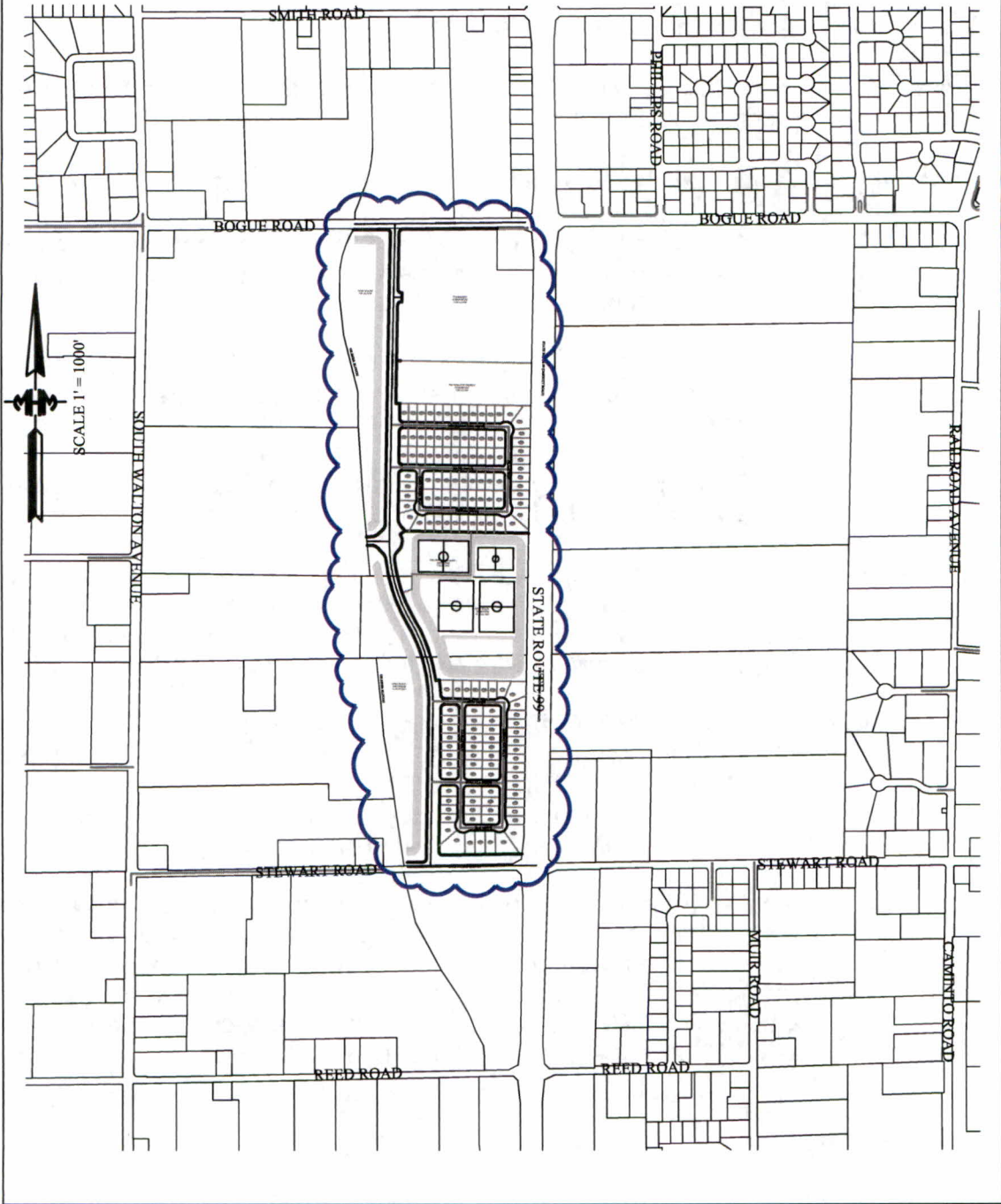


Figure 1: Kells East Ranch Location Map

Project Proposal:

Subdivisions

The subdivisions are for a mixed-use development that is part of the Bogue-Stewart Master Plan. As proposed the Kells East Ranch Subdivisions will create the following land uses:

Table 1: Proposed Kells East Ranch build-out		
<i>Use</i>	<i>Acres</i>	<i>Number of residential units or building square footage (sf)</i>
Single-family residences	29.05	147
Multiple-family residences	5.30	123 (est.)
Commercial	15.19	161,172 sf (est.)
Open Space/Detention Pond	36.79	-
Major Roads	7.80	-
Total	93.5	-

The two subdivisions cover the same 93.5-acre area. TSM 15-02 is a large lot subdivision that divides most of the 93.50 acres into four large lots, ranging in size from 5.30 acres to 15.43 acres (the subdivisions are shown in **Figure 2**, or a larger version is provided as an exhibit to **Attachment 1** to this staff report). Two of the large lots, totaling 29.05 acres, are intended to be further subdivided into 147 single-family lots per TSM 15-03. The 5.30-acre large lot will be utilized for multiple-family development, one large lot of 15.19 acres will be for commercial development. There are also three large lots totaling 36.79 acres, which include the Gilsizer Slough, will be utilized for open space/drainage ponds that will be dedicated to the public.

The intent for the two large lots is to allow for their sale to individual home builders as a large lot that then can record the small lot subdivision and build homes. For example, proposed Large Lot 3 can be purchased by a homebuilder who then in turn will finish and record the small lot subdivision into 82 smaller single-family lots for individual single-family home construction.

The land uses that will result from each large lot are provided in **Table 2**.

Development Agreement

A Development Agreement is also proposed, which is a contract between the City and developer that defines processes and criteria for the subdivisions to be developed. The Development Agreement that accompanies these subdivisions is intended to satisfy the City's Growth Policies and was also requested by the applicant. The primary benefit of the agreement is to allow a 20-year plus life for the tentative subdivision map, versus a standard subdivision that has about half that lifespan without the Development Agreement.

Background:

The Kells East Ranch Subdivisions, and the Newkom Ranch Subdivisions are located on opposite sides of SR 99 from each other. They comprise the two proposed projects that are being processed concurrently with the 741-acre Bogue Stewart Master Plan. This 93.5 acre

TENTATIVE SUBDIVISION MAPS
2015-02 (LARGE LOT) AND 2015-03 (SMALL LOT)
KELLS EAST RANCH

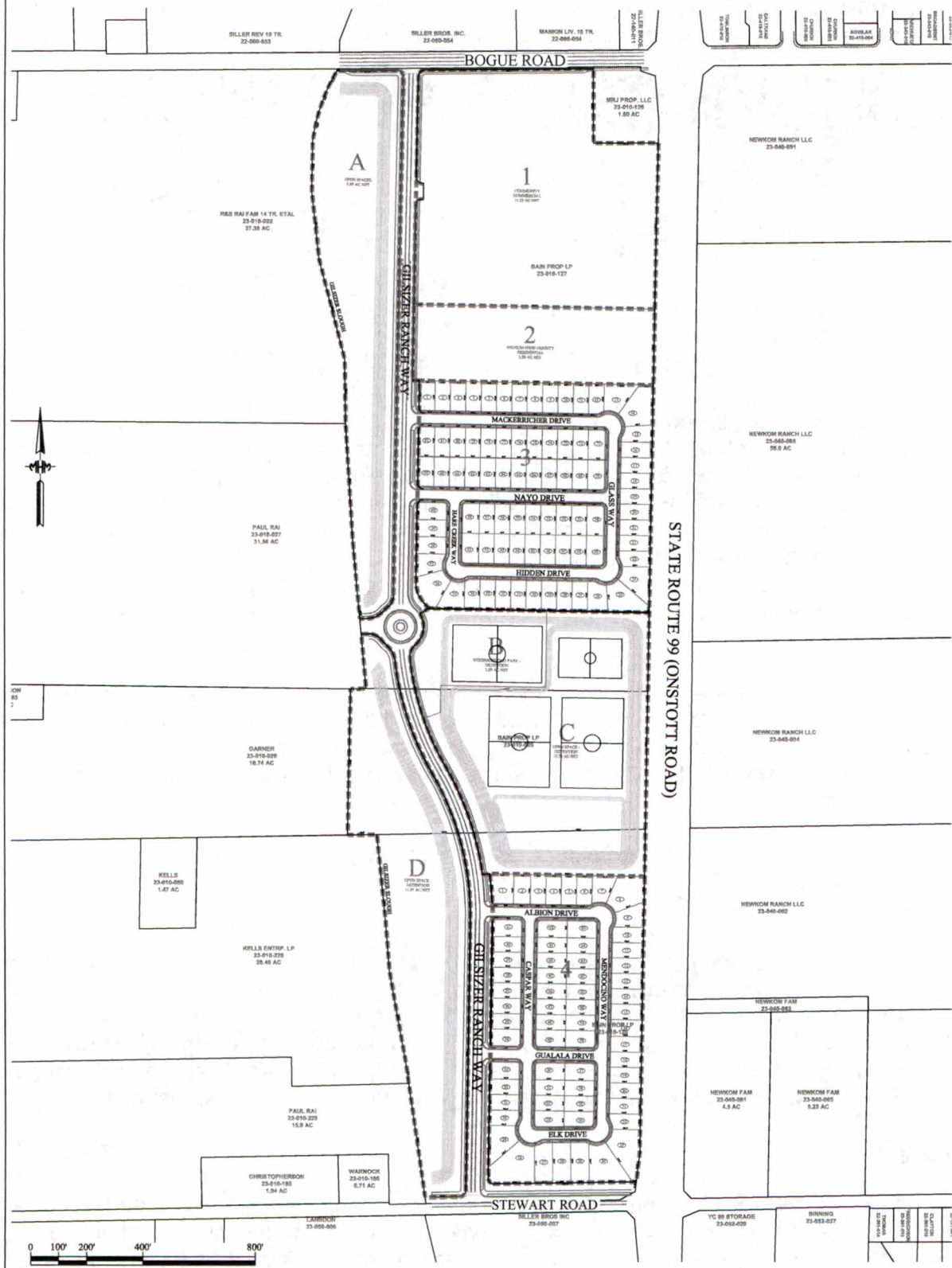


Figure 2: Kells East Ranch Tentative Subdivision Map

subdivision comprises approximately 12.6 percent, of the 741 Master Plan acres. The Master Plan has been under development for the last few years. There are many other parcels in the Master Plan, some of which are already developed with residences, others are in agricultural use. It is not known if or when the owners of the remaining agricultural properties will want to develop their property.

Table 2: Land Uses		
Large Lot Number or letter	Use	Acres
1	Commercial	15.19
2	Multiple-Family	5.30
3	Single-Family Residential	15.43
4	Single-Family Residential	13.62
A	Open Space/Detention Pond	9.89
B	Park/Detention Pond	3.09
C	Open Space/Detention Pond	12.74
D	Open Space/Detention Pond	11.07
	Roads	7.80
Total		93.50

Access and Public Improvements:

The primary east-west access roads to the subdivisions will be by Bogue Road and Stewart Road. On a north-south basis a primary access will be by a new north-south collector street, tentatively named Gilsizer Ranch Way, which will run through the project connecting Bogue Road and Stewart Road. The subdivisions will be served by City water and wastewater systems. Storm-water drainage will be provided by Gilsizer County Drainage District and Yuba City (the Gilsizer Slough runs through the project). There will also be three open space/detention ponds and a park/pond. Two of those lots (A & D) are open space lots that accommodate the Gilsizer Slough and environs. The other open space lot will be utilized as a stormwater detention pond. All City services will be constructed in stages as the project is developed. Police Department and Fire Department services will be provided by Yuba City out of existing facilities.

The Master Plan is within the Yuba City Unified School District. According to the school district K-8 students will attend Barry School. High school students will attend Yuba City High School.

Property Description:

The site is relatively flat with no unique topographic features such as rock outcroppings. The property is currently planted in orchards. Current access roads to the property are County roads generally designed to serve an agricultural area.

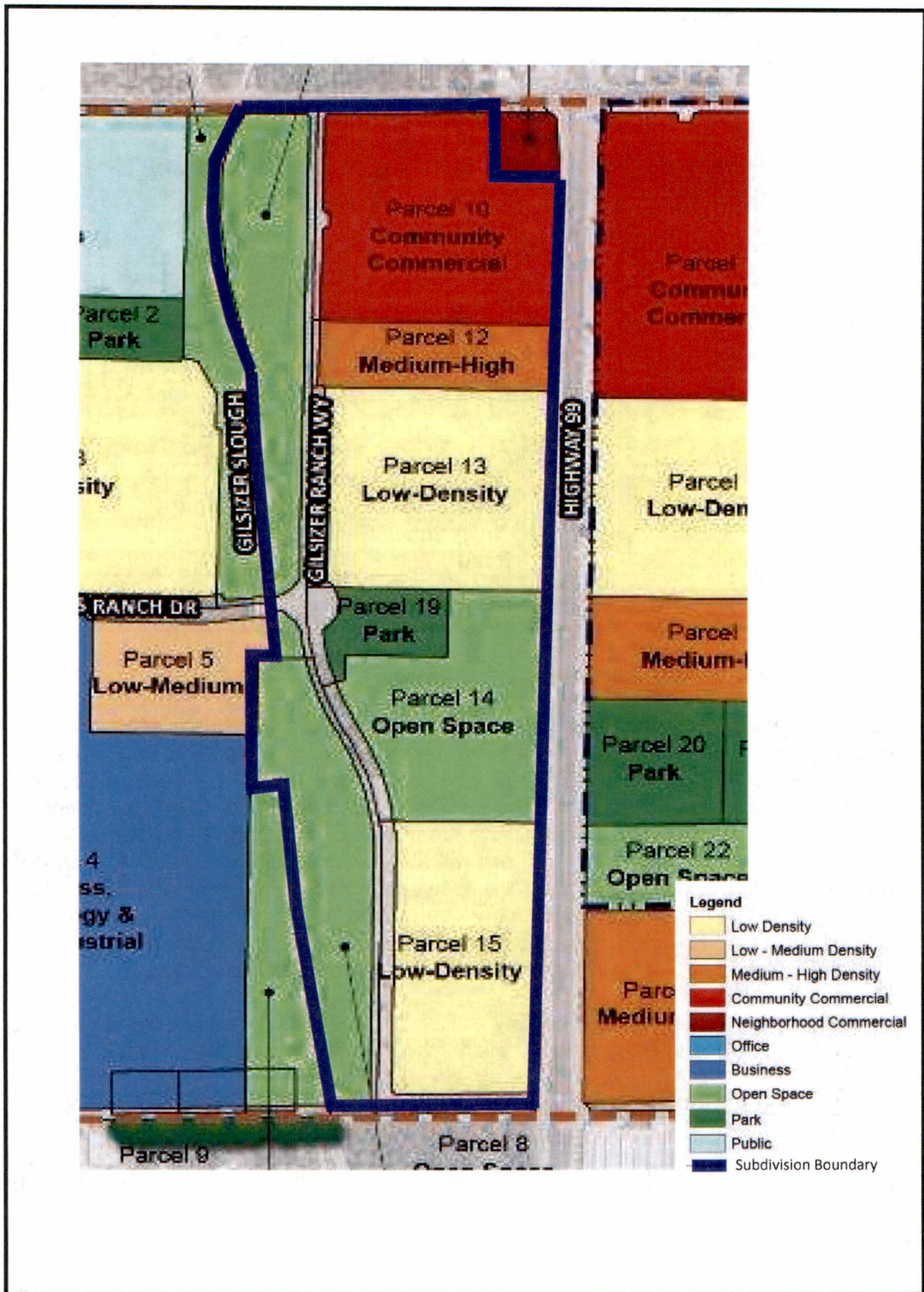


Figure 3: Master Plan Land Use Map for Kells East Ranch Subdivisions

Existing Bordering Uses:

Table 3: Bordering Information and Uses			
	<i>General Plan Land Use Classification</i>	<i>Zoning</i>	<i>Existing Land Use</i>
<i>Project Site¹</i>	Low Density Residential (LDR), High Density Residential (HDR) Community Commercial (CC), and Open Space (PF)	One-Family Residential (R-1), Multiple-Family Residential (R-3), Community Commercial (C-2), and Public Facility (PF)	Orchards
<i>North¹</i>	Regional Commercial (RC)	General Commercial (C-3)	Orchards, convenience market.
<i>East¹</i>	CC, LDR, Medium Density Residential (MDR), PF	R-1, R-3, C-2, PF	SR 99, Newkom Ranch Subdivision
<i>West¹</i>	Office (O), LDR, MDR, Light Industrial, PF	R-1, R-2, C-2, M-1, PF	SR 99, orchards.
<i>South²</i>	Agriculture 20 ac. min.	AG	Orchards

¹ Area is unincorporated but designations and pre-annexation zoning is for City.

² Sutter County General Plan and Zoning.

Yuba City General Plan Land Use Designations:

Low Density Residential (LDR) - This designation provides for a residential density range of 2-8 residences per gross acre. This designation is typically used for single-family residential uses. The proposed density for the single-family residential part of this project is approximately 4.6 dwellings per gross acre.

High Density Residential (HDR) - This designation provides for a residential density range of 12-36 residences per gross acre. This designation typically includes apartments and condominiums. The applicant's proposed density is approximately 20 residences per gross acre.

Community Commercial (CC) - Provides for a wide variety of retail and service commercial uses.

Park/Open Space (PF).

Zoning:

Single-Family Residential (R-1), Multiple-Family Residential (R-3), Community Commercial (C-2), and Public Facilities (PF) Zone Districts. These zone districts compliment their respective general plan designations.

Previous Commission/Council Actions:

This area will be a new addition to the City. Several years ago, the City Council held discussions on the boundary for this Master Plan.

There was a joint City Council/Planning Commission study session on the Bogue-Stewart Master Plan and accompanying EIR on June 24, 2019. No decisions or recommendations were made.

Staff Comments:

The subdivisions are for a mixed-use development that is part of the Bogue-Stewart Master Plan. The large lot subdivision divides the 93.5 acres into 4 large lots as well as three large lots totaling 36.79 acres, including the Gilsizer Slough, that will be dedicated to the public for stormwater drainage and stormwater detention ponds. The small lot subdivision consists of two of the large lots are being further subdivided into 147 single-family lots per TSM 15-03. One 5.30-acre large lot will be utilized for multiple-family development, and one large lot of 15.19 acres will be for commercial development. The intent for being able to further subdivide the two large lots is to allow for their sale to individual home builders that can then construct and record the small lot subdivision and build homes. For example, Lot 3 can be purchased by a homebuilder who in turn will construct and record the small lot subdivision into 82 smaller single-family lots for individual home construction. There are also four lettered lots intended for public use – open space and detention pond.

Compatibility with Neighboring Uses

The subdivision will border existing uses on its north, south and west sides. The east side borders on SR 99.

The north side of the Master Plan area is bordered by Bogue Road. That area north of Bogue Road is within the unincorporated area of Sutter County but within the existing Yuba City Sphere of Influence. The area primarily consists of agricultural uses. On the same side of Bogue Road and abutting the northeast corner of this property is a convenience store and gas station. The use proposed by the Master Plan along this boundary is commercial. Since the agricultural area north of Bogue Road is within the City's SOI and is designated in the City General Plan for commercial development, there are not expected to be long term impacts from the proposed Kells East Ranch commercial development.

The south side of the subdivision proposes new single-family residential uses. These new residences will border existing agricultural uses located across Stewart Road. The new single-family homes will back up to Stewart Road, with a solid wall, trees and other landscaping and a widened Stewart Road. This meets the Yuba City/Sutter County urban/agricultural buffer standard, so the impact on the agricultural land is minimized to the degree feasible.

The east side of the subdivisions will be developed in commercial, multiple-family and single-family residences, and open space uses. All of these will border SR 99. The commercial and open space lots will not be adversely impacted by SR 99. The residential components may be impacted by noise generated by SR 99 traffic, especially truck traffic. There is a condition included with the subdivision maps that prior to recording the multiple-family large lot and the single-family residential small lots, a noise study shall be prepared. The condition also

requires that, based on the noise study, the new residences have adequate indoor noise attenuation such that the noise levels meet the General Plan Noise Element's "normally acceptable" noise standard, as provided in Figure 9-4 of the General Plan, and the relevant General Plan noise policies.

The west side of the subdivision is bordered by Gilsizer Slough with agricultural uses on the opposite side. Those agricultural uses are part of this master plan and are slated, at some point in the future, to be urbanized. Considering the separation of the uses by the Gilsizer Slough and the long term planned uses of the agricultural properties, there is not expected to be long term agricultural/urban conflicts.

Traffic and Circulation:

Note: Traffic related Impacts created by the Kells East Ranch Subdivisions and Newkom Ranch Subdivisions are discussed in detail in the EIR, starting on page 3-14.1. There was also a traffic study prepared for the projects which is contained in the appendices of the EIR. The following is a brief summary of that discussion.

With the construction of this project and other projects within this Master Plan area, a notable change to the area will be the increase in traffic. The new subdivision, once built-out, will generate significant amounts of traffic. The retail development will generate an estimated 161,000 square feet of buildings and there will be 147 new single-family and an estimated 123 multiple-family residences. The EIR does not break projected traffic down for just this project but estimates the build out of Phases 1 and 2 (Kells East Ranch and Newkom Ranch) of the Master Plan will generate approximately 30,000 daily vehicle trips. As a result, new collector streets will be created, and existing streets will be expanded. Bogue Road will be widened to four lanes. South Walton Avenue and Stewart Road will remain at two lanes, but the lanes will be widened, and expanded to an urban standard from a rural standard. A new north-south two-lane collector street, called Gilsizer Ranch Way, will provide access from within the subdivision to Bogue Road and Stewart Road. As part of Phase 3 a new east-west collector street, named Kells Ranch Drive, will be created to connect Gilsizer Ranch Way and South Walton Avenue. At the Bogue Road/SR 99 intersection the westbound and eastbound lanes will be widened to have double left and right turn lanes. Signals at the Stewart Road/SR 99 intersection will also be constructed.

The EIR prepared for the Master Plan, provides numerous other mitigation measures for street improvements. The mitigations are provided in the EIR, as well as more detailed summary of all the traffic issues associated with the development of this Master Plan in Section 3.14 of the EIR.

These street improvements will not occur all at once. The street improvements will occur as the various phases of the project are constructed. The conditions of the tentative subdivision map and the mitigation measures dictate when these improvements will occur.

The new roads proposed by the Master Plan as well as widening of existing streets will provide a roadway network that will function at a Level of Service (LOS) D or better during peak traffic hours. LOS D is the minimal service level allowed the City's General Plan policies.

This subdivision, like other portions of the Master Plan area also provide for alternative forms of transportation. All arterial and collector streets will have bike lanes, five or six-foot wide

sidewalks, and bus stops at chosen locations. On some major streets there will be 10-foot wide “shared paths.” These are for use by both bicycle and pedestrians and are detached from the main road.

Development Agreement:

There is a development agreement (DA) that is also proposed as part of the subdivisions. This is a binding agreement between the City and the Developer spelling out items that go beyond the standard planning, zoning, and development and design standards that are required of the project. While development agreements are allowed by state law, there are no established rules or policies regarding the deal points. As such, each proposal is unique and must be considered on its own terms.

In this case the DA was requested by the applicant and is also required by the City Council's Growth Policies requiring a DA for newly annexed areas. The primary deal point for this DA is to extend the life of the subdivision for 20 years. The typical life span to construct an approved subdivision without a development agreement does not typically extend more than 10 years. Due to the nature of residential development in Yuba City, this was not considered enough time for the developer to build the subdivision when considering the large investment required early in the subdivision's life.

Availability of City Services:

All City services, including water, sewer and storm-water drainage a will be extended to serve this site, as shown in Table 4.

Table 4: Summary of Public Facilities and Services	
Water	City water is available up to the subdivision's boundary. There are existing trunk lines in Bogue Road, Stewart Road, and South Walton Avenue that will be extended into the Master Plan area. Two new water storage tanks may be installed in the Master Plan area (near the PG&E substation), dependent on other City needs. The subdivision will be responsible for extending water lines to the project as well as pay water connection fees which go towards future plant expansions and trunk line extensions.
Wastewater	The wastewater generated from this subdivision will connect to an existing sewer trunk line in Bogue Road that connects to a Garden Highway trunk line and flow to the wastewater treatment plant northeast of the subdivision. Other offsite improvements and lines may be needed to accommodate the new growth. The subdivision will be responsible for extending sewer lines to the project as well as pay sewer connection fees which goes towards future plant expansions and trunk line extensions.
Stormwater	Stormwater drainage will flow to the Gilsizer Slough (Gilsizer County Drainage District). The subdivision will be responsible for building its portion of the stormwater collection system as well as either dedicate land for detention ponds and build needed portions of the backbone system or pay a BSMP fee to pay for the major drainage system improvements.
Streets	There will be an extensive new street system based on the traffic study. The street system will be expanded to accommodate development as it occurs.

	Each new building will pay fees for and/or build its fair share of needed street improvements.
Law Enforcement	The Yuba City Police Department will service the subdivision upon annexation. Police services will continue to be provided out of the existing Police Station on Poole Boulevard. The Sutter County Sheriff's Department and California Highway Patrol provides law enforcement to the remaining unincorporated areas. Each new building will pay City development impact fees for future police facility expansion and new police equipment that is needed due to growth.
Fire protection	The Yuba City Fire Department provides fire protection to the subdivisions from its existing five fire stations. No new fire stations are proposed for the subdivisions. Each new building will pay City development impact fees for future facility expansion and new fire equipment that is needed due to growth.
Schools	The entire subdivision is within the Yuba City Unified School District. New students will attend Barry Elementary School. A new K-8 school site is proposed in the northwest corner of the Master Plan area, which is outside of this subdivision. The subdivision must join a Yuba City Unified School District required Community Facility District requiring each new residence to pay an annual assessment for future school expansions or a new school.

Environmental Determination:

An Environmental Impact Report (EIR) was prepared for the Bogue-Stewart Master Plan and circulated through the State (State Clearinghouse Number 2017012009). This EIR is written at two levels. For the Master Plan it is considered to be a "program" EIR. That is, it is written at more of a general level because the Master Plan only establishes a regulatory and policy framework for future development and does not describe or analyze any specific projects.

The EIR is also a "project" EIR since Kells East Ranch and Newkom Ranch Subdivisions are actual development projects. As such, the level of review for the two subdivisions is more detailed. Other future developments within the Master Plan area will use this EIR as a basis of the analysis but must conduct their own project level environmental review.

At the outset there were numerous potential significant environmental impacts that could result from this project. The EIR has approximately 40 mitigation measures, some of which contain additional subcomponents. With those mitigation measures many of the potential significant impacts are reduced to less than significant. However, there still remain several potential significant impacts which could not be mitigated. A summary of the remaining significant impacts includes:

Aesthetics, Light and Glare. The transition from agriculture to urban and suburban uses could degrade the scenic vista and the existing visual character of the area. New lighting will increase light and glare and cumulatively degrade nighttime views.

Agriculture. The development of the Master Plan area would result in the loss of Important Farmland to non-agricultural uses. This is a significant and unavoidable impact.

Air Quality. Even with mitigation measures, the new construction of land uses, ongoing operational activities, and additional traffic generated by the new development associated with

the Master Plan would generate criteria pollutant emissions that could substantially contribute to a potential violation of air quality standards or nonattainment conditions. This is a significant and unavoidable impact.

Biological Resources. Development in the Master Plan area could result in the loss of special-status plants and wildlife, protected trees and could result in cumulative impacts to heritage oak trees and other trees. This is a significant and unavoidable impact.

Cultural Resources. Development in the Master Plan area could cause a substantial change in the significance of a historical architectural resource.

Transportation and Traffic. Development in the Master Plan area, in combination with other cumulative development would cause cumulatively significant Level of Service (LOS) related traffic impacts at intersections maintained by Caltrans.

Note that the discussion of the significant impacts is based on the entire Master Plan. This is relevant to this subdivision as it contributes a proportional share of those impacts.

Because there are significant and unavoidable environmental impacts associated with this Master Plan and its associated entitlements, approval of the Master Plan was preceded by Findings of Fact and Statement of Overriding Considerations (provided as an attachment to the Planning Commission's Master Plan staff report for this meeting) that there are economic, legal, social, technological or other benefits associated with the project that outweigh the unavoidable adverse environmental impacts. All of the findings are supported by substantial evidence in the record.

Recommended Action:

A. Adopt a Resolution Of The Planning Commission Of The City Of Yuba City Contingently Approving The Kells East Ranch Subdivisions (Tentative Subdivision Maps (TSM) 15-02 And 15-03) Located At The Southwest Corner Of State Route 99 And Bogue Road; Assessor's Parcel Numbers 23-010-005, 23-010-120, And 23-010-127

Note: If the Planning Commission approves these proposed subdivisions the decision is considered a "contingent" approval as it is dependent upon the City Council certifying the environmental impact report, approving the Bogue-Stewart Master Plan as well as the accompanying General Plan Amendment and Pre-annexation zoning. The approval of these subdivisions also would not be complete until LAFCo approves the Sphere of Influence Amendment and annexation of the properties into the City.

B. Adopt a Resolution Of The Planning Commission Of The City Of Yuba City Recommending To The City Council Of The City Of Yuba City Approval Of An Uncodified Ordinance For A Development Agreement With Bains Properties, LP, For The Development Of The Kells East Ranch Subdivisions (TSM 15-02 And TSM 15-03); Assessor's Parcel Numbers 23-010-005, 23-010-120, And 23-010-127

Attachments:

1. Adopt a Resolution Of The Planning Commission Of The City Of Yuba City Contingently Approving The Kells East Ranch Subdivisions (Tentative Subdivision Maps (TSM) 15-02 And 15-03). Includes the following exhibits:
 - Exhibit A: TSM 15-02
 - Exhibit B: Conditions of approval for TSM 15-02
 - Exhibit C: TSM 15-03
 - Exhibit D: Conditions of approval for TSM 15-03
2. Resolution Recommending Approval Of A Development Agreement With Bains Properties, LP. Includes the following as an attachment:
 - Attachment "A:" Development Agreement

PLANNING COMMISSION RESOLUTION NO. _____

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF YUBA CITY
CONTINGENTLY APPROVING THE KELLS EAST RANCH SUBDIVISIONS
(TENTATIVE SUBDIVISION MAPS (TSM) 15-02 AND 15-03) LOCATED AT THE
SOUTHWEST CORNER OF STATE ROUTE 99 AND BOGUE ROAD;
ASSESSORS PARCEL NUMBERS 23-010-005, 23-010-120, AND 23-010-127**

WHEREAS, Bains Properties, LP ("Developer"), submitted two tentative subdivision maps to subdivide the approximately 93.5-acre area in a portion of what is proposed to be the Bogue-Stewart Master Plan ("BSMP" or "Master Plan"), generally located west of State Route 99 between Bogue Road on the north and Stewart Road on the south, and known as the Kells East Ranch area.

WHEREAS, Kells East Ranch tentative subdivision map ("TSM") 15-02 is a large lot subdivision that divides most of the 93.50 acres into four large lots, ranging in size from 5.30 acres to 15.43 acres. Two of the large lots, totaling 29.05 acres, are proposed to be further subdivided into 147 single-family lots per TSM 15-03. The 5.30-acre large lot will be utilized for multiple-family development, and one large lot of 15.19 acres will be for commercial development. There are also three large lots totaling 36.17 acres, which include the Gilsizer Slough, will be utilized for open space/drainage ponds that will be dedicated to the public; and

WHEREAS, an adjoining property to the east, in an area known as the Newkom Ranch, is also being proposed to be developed to urban levels as part of the Master Plan; and

WHEREAS, these properties are currently outside of City's Sphere of Influence ("SOI"), and under City policy are required to prepare a specific plan or master plan before the properties could be annexed into the City and developed to urban uses; and

WHEREAS a specific plan know as the "Bogue-Stewart Master Plan" was prepared for this purpose, and encompasses both the Newkom Ranch and East Kells Ranch properties, as well as other properties, consisting of a total of 741 acres; and

WHEREAS, because the proposed Master Plan area is outside of the City's SOI, a General Plan Amendment (GPA 14-05), Master Plan (SPA 16-05), and a Rezoning (RZ 14-04), were processed concurrently with the TSM 14-06 and TSM 14-07, as well as other entitlements; and

WHEREAS, an Environmental Impact Report (SCH #2017012009) ("EIR") prepared for the Master Plan also assessed development of Kells East Ranch, including TSM 15-02 and TSM 15-03; and

WHEREAS, the City of Yuba City on November 3, 2019, published a legal notice in compliance with State law concerning Planning Commission consideration of TSM 15-02 and TSM 15-03 in the Appeal-Democrat, a local newspaper of general circulation, which included the date and time of the Planning Commission consideration of a recommendation for the approval of the TSMs. In addition, on or prior to November 1, 2019, a public hearing notice was mailed to each property owner within at least 300 feet of the project site, as well as to all property owners within the Master Plan area, indicating the date and time of the public hearing regarding the proposed Project (including the TSMs) in accordance with State law; and

WHEREAS, on November 13, 2019, the Planning Commission conducted a duly noticed public hearing at the City Council Chambers located at 1201 Civic Center Boulevard on the EIR, BSMP, GPA and Preannexation Zoning, and at that meeting recommended to the City Council certification of the EIR, and approval of the BSMP, GPA and Preannexation Zoning; and

WHEREAS, immediately following that hearing, the Planning Commission considered and recommended the City Council approve a Development Agreement with Newkom Ranch, LLC, for a portion of the Master Plan area located to the west of the Kells East Ranch. The Planning Commission also contingently approved the Newkom Ranch Tentative Subdivision Maps (TSM) 14-06 and 14-07, subject to the conditions of approval and mitigation measures and contingent on the City Council's Certification of the Environmental Impact Report and Statement of Overriding Considerations prepared for the Bogue-Stewart Master Plan and these subdivisions, and approval of the accompanying General Plan Amendment, the Bogue-Stewart Master Plan, and the Pre-annexation Zoning; and

WHEREAS, immediately following the conclusion of the hearing on the Newkom Ranch Development Agreement and TSMs 14-06 and 14-07, the Planning Commission conducted a duly noticed public hearing on the Kells East Ranch TSMs 15-02 and TSM 15-03, and the proposed Development Agreement for the subdivisions, at which time it received input from City Staff, the City Attorney's office, and the developers. Public comment portion was opened, and public testimony and evidence, both written and oral, was considered by the Planning Commission of the City of Yuba City, after which public testimony was closed; and

WHEREAS, to accommodate the Developer's request to consider the TSMs in conjunction with the approval of the Master Plan, etc., Planning Commission now desires to contingently approve TSM 15-02 and TSM 15-03 such that no decision of approval of TSM 15-02 and TSM 15-03 becomes final and effective until immediately after the City Council certifies the EIR (SCH #2017012009) and adopts General Plan Amendment (GPA 14-05), Master Plan (SPA 16-05), Rezoning (RZ 14-04); and if no such approval occurs within 180 days of the adoption of this Resolution, then the Planning Commission intends that TSM 15-02 and TSM 15-03 be set for further consideration and a final decision by the Planning Commission; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED the Planning Commission of the City of Yuba City resolves as follows:

1. Recitals. The Planning Commission hereby finds that all of the facts set forth in the recitals above are true and correct and incorporated herein.
2. CEQA. Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, the City, as the Lead Agency, has analyzed the proposed Project and has prepared an environmental impact report ("EIR") to evaluate the environmental effects of the Project, including development of the Kells East Ranch area. The Planning Commission has fully considered the EIR, and has concurrently recommended it for certification by the City Council. The Planning Commission finds that TSM 15-02 and TSM 15-03 are consistent with, and have been fully assessed by, the EIR, and that TSM 15-02 and TSM 15-03 are entitlements specifically anticipated for the proposed Project in the EIR, and are consistent with the purpose and intent of the EIR.

3. Subdivision Findings: The Planning Commission determines that none of the findings required by Yuba City Municipal Code Section 8-2.609, and the California Subdivision Map Act Section 66474 that require the City to deny approval of a tentative map apply to this project, or that findings regarding flood protection cannot be made. To the contrary, the Planning Commission finds as follows:

- a. The proposed tentative subdivision maps are consistent with the applicable general plan and specific plan.

Support. There is no evidence the subdivision maps are inconsistent with the General Plan and BSMP. To the contrary, Section 3.10 of the EIR, including Table 3.10-1 (entitled "City of Yuba City General Plan Consistency – Land Use and Planning), incorporated by reference, contains an analysis of the consistency of the Master Plan to the General Plan – which includes the Newkom Ranch. Additionally, the Bogue Stewart Master Plan implements the goals and policies of the City's General Plan. It establishes the land use designations, planning principles and project objectives and design guidelines for the BSMP area consistent with the General Plan as amended. For example, the subdivisions create lots for single-family residential, multiple-family residential, commercial, office and public uses. The boundaries of these parcels match the boundaries of the Bogue-Stewart Master Plan as well as the General Plan, which are the only plans applicable to this Project. The single-family residential lots proposed will have a density of approximately 4.6 residences per gross acre. These residences are within the LDR (Low Density Residential) General Plan designation which allows a density range of 2 to 6 residences per gross acre. For the multiple-family development the actual number of multiple-family residences is not known, the suggested amount by the applicant is 123 residences on approximately 5.3 acres, providing a residential density range of approximately 21.7 residences per acre. This is well within the HDR (High Density Residential) density range of 12 to 36 residences per acre and is also consistent with both the General Plan and BSMP.

The Planning Commission has reviewed the analysis and all evidence presented in this matter, and determines that proposed TSM 15-02 and TSM 15-03 are consistent with Specific Plan Amendment 16-05 (adopting the Master Plan), has also found the Specific Plan Amendment is consistent with the General Plan as amended by General Plan Amendment 14-05, and as such, the TSM 15-02 and TSM 15-03 are also therefore consistent with the General Plan.

- b. The design and improvement of the tentative subdivision maps are consistent with applicable general and specific plans or adopted City standards.

Support. As discussed above, the TSMs are consistent with the General Plan as amended by GPA 14-05 and the BSMP as created by SPA 16-05. Additionally, the proposed parcel sizes, as shown on the tentative subdivision maps, meet the City's zoning minimum parcel size and are therefore of adequate size to accommodate the uses that will be permitted on them. The property will be improved with new or expanded street system for which the traffic study prepared for the project indicates will operate within acceptable levels of service (D or better) and the project will also be provided with full City services that meet all City standards. Further, any new use that locates onto one of the new lots is required to meet all City Zoning, Building, and Public Works development standards, and to comply with the Development Standards and Guidelines of the BSMP.

- c. That the site is physically suited for the density of development.

Support. There is no substantial evidence in the record that the site is not suited for the density of development being proposed. Each new lot will meet or exceed the minimum lot sizes required by the relevant zone district. The proposed subdivisions were thoroughly analyzed and compared to the Master Plan and the EIR that was prepared for the subdivisions, which determined that the proposed density of development was appropriate for this site and is physically suited for the proposed development density.

- d. That the site is physically suited for the type of development.

Support. There is no evidence that the site is not physically suited for the type of development proposed by the tentative subdivision maps. Kells East Ranch Subdivisions were thoroughly analyzed and compared to the Master Plan and General Plan. Additionally, all relevant CEQA environmental concerns were addressed in the EIR that was prepared for the Master Plan and the subdivisions, including flooding, drainage, and other items dealing with physical characteristics of the site. The proposed subdivisions comply with the allowable land use and residential planned land use density and acreage allocations, and with the goals, objectives, and policies contained in the BSMP and the General Plan. The proposed development meets all adopted standards and requirements, and is physically suited for the type of development being proposed.

- e. That the design of the subdivision maps or likely improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

Support. There is no evidence that the design or improvements will, in themselves, cause substantial environmental damage, etc. The EIR prepared for the project compared it with all of the relevant CEQA environmental concerns, including fish and wildlife habitat. Although even with the proposed mitigation measures there remain unavoidable significant environmental impacts, these are not related to design issues, but are instead related to cumulative impacts of the BSMP overall to the loss of certain habitat. Regardless, there are economic, legal, social, technological or other benefits associated that outweigh the unavoidable adverse environmental impacts that are addressed in the Overriding Considerations prepared as a result of the EIR that was prepared for this project. Further, the project has been conditioned with mitigation to reduce the significance of potential cumulative impacts fish or wildlife or their habitat. As such, the design of the subdivision maps or likely improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

- f. The design of the subdivision maps or the type of improvements is not likely to cause serious public health problems.

Support. There is no substantial evidence in the record that the design of the subdivision maps will cause serious public health problems. Every new lot will be connected to City water, sewer and storm drainage systems which will minimize public health concerns. Mitigation has been imposed on the project to address potential environmental impacts, including those related to hazardous wastes, etc. As such, design of the subdivision maps or the type of improvements is not likely to cause serious public health problems.

- g. That the design of the subdivision maps or the type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision.

Support. The subdivisions will be served by public streets that are dedicated to the City for public use and the parks and open spaces will be on land owned by the City. There is no use of private streets or other types of easements with which the project would cause a conflict. Dedications for public right of way, etc., are required for public utilities, roadways, and other improvements. There is no evidence in the record that the subdivision maps or the type of improvements will conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision.

- h. There is adequate flood protection for the project.

Support. The City requires that an Urban Level of Flood Protection (ULOP), or 200 year flood protection, be provided across portions of the City containing flood depths greater than three feet. Portions of the Master Plan area are located within such an area, or within the 100-year flood hazard zone. The Sutter Butte Flood Control Agency (SBFCA) is the "Local Flood Management Agency" for the Sutter-Butte Basin and as such, has the responsibility to prepare an annual report demonstrating adequate progress as defined in California Government Code Section 65007(a). SBFCA has prepared Adequate Progress Report Updates for ULOP and transmitted them to the Central Valley Flood Protection Board. Additionally, the City has imposed conditions on the Development Agreement governing the TSMs that will protect property within the Master Plan area to the urban level of flood protection in urban areas and urbanizing areas. Such conditions are also implemented as conditions of tentative maps or other entitlements. The applicable Development Agreement also requires payments of certain impact fees, including those related to levee improvements. Conditions of approval are imposed for the residential/"small lot" subdivisions requiring all development to be designed to local, state, and federal flood standards. Finally, the Development Agreement is also required to be consistent with the Master Plan, which has a comprehensive plan providing for drainage and flood protection improvements. (See BSMP, pp. 5-21 – 5-28.) Among others, proposals to develop within either the 100-year or 200 year flood hazard zone require a site-specific hydrological study. With the infrastructure required by the stormwater drainage infrastructure, drainage facilities would be large enough to contain a 100-year storm with one foot of freeboard. All building pad elevations are required to be one foot above the 100-foot flood elevation. As such, the site has adequate flood protection.

- 4. Approval with Conditions. Based on the aforementioned findings, the Planning Commission hereby approves TSM 15-02 (Exhibit "A") and TSM 145-03 (Exhibit "C"), subject to the conditions set forth in Exhibit "B" (TSM 15-02 conditions of approval) and Exhibit "D" (TSM 15-03 conditions of approval) attached hereto, which approvals are contingent upon the following:

- a. The approval of TSM 15-02 and TSM 15-03 shall become final and effective immediately only after the City Council of the City of Yuba City i) certifies the Environmental Impact Report (SCH #2017012009), ii) adopts General Plan Amendment 14-05; iii) adopts Specific Plan Amendment 16-05; and iv) adopts Pre-annexation Zoning 14-04 (collectively "Council Approvals"). If all of the Council Approvals are not made within 180 days of the adoption of this Resolution, then both TSM 15-02 and TSM 15-03 shall be returned to the Planning Commission for further consideration and a final decision. If Council Approvals

are made within 180 days of the adoption of this Resolution, but any change is made by the Council to any of the Council Approvals in a manner that could reasonably affect the findings of the Planning Commission herein, or require a modification or addition of a condition of approval to be consistent with a Council Approval, then both TSM 15-02 and TSM 15-03 shall be returned to the Planning Commission for further consideration and a final decision.

5. Certification. The Secretary shall certify to the adoption of the Resolution and shall transmit copies of the same to the applicant.
6. Final Action and Appeals. This action shall become final and effective 15 days after, and only upon, the Council Approvals including of the EIR and adoption of the BSMP, unless within such 15 days an appeal is filed with the City Clerk in accordance with the provisions of the Yuba City Zoning Ordinance.

The foregoing resolution was introduced at the regular meeting of the Planning Commission held on November 13, 2019, by Commissioner _____ who moved its adoption, which motion was seconded by Commissioner _____ and carried by the following vote:

Ayes:

Noes:

Absent:

Recused:

By order of the Planning Commission of the City of Yuba City.

Brian Millar, Secretary

- Exhibit A: TSM 15-02
- Exhibit B: Conditions of approval for TSM 15-02
- Exhibit C: TSM 15-03
- Exhibit D: Conditions of approval for TSM 15-03

EXHIBIT A

TENTATIVE SUBDIVISION MAP 15-02

EXHIBIT B

TENTATIVE SUBDIVISION MAP 15-02 CONDITIONS OF APPROVAL

EXHIBIT D

TENTATIVE SUBDIVISION MAP 15-03 CONDITIONS OF APPROVAL

**Tentative Subdivision Map 15-02
Kells East Ranch Large Lot Subdivision
Conditions of Approval**

Conditions of Approval

General

1. The purpose of the large lot is to create parcels for planning and financial purposes only. These lots will not have development rights unless they are further subdivided in accordance with Tentative Subdivision Map (TSM) 15-03 Small Lot Subdivision Map or through a certificate of compliance process.
2. Farming rights will not be impacted by recordation of the large lot final map.
3. Approval of TSM 15-02 and may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this tentative subdivision map, the Zoning Ordinance, the most recently City-adopted Uniform Building Code, and all Public Works Standards and Specifications. The City shall not assume responsibility for any deletions or omissions resulting from the permit review process or for additions or alterations to construction plan not specifically submitted and reviewed and approved pursuant to this subdivision or subsequent amendments or revisions.
4. The applicant/property owner agrees to defend, indemnify and hold harmless the City, its officers, agents and employees, from any and all claims, damages, liability or actions arising out of or connected with this Agreement, except to the extent such liabilities are caused by actions of the City.
5. The Planning Commission's conditional approval of TSM 15-02 is contingent upon the City Council approval of General Plan Amendment 14-05, Specific Plan Amendment 16-05, and Rezoning 14-04. The effective approval date of this subdivision for purposes of this subdivision map's expiration date, as described in Condition #6 below, shall be the effective date of the rezoning.
6. Approval of TSM 15-02 shall be null and void without annexation of the affected lands into the City's jurisdictional boundary within the term provided in the Development Agreement that was approved as part of the subdivision, or as the Development Agreement is amended thereafter.

Expiration and Development Impact Fees

7. Approval of TSM 15-02 shall be null and void without further action for phases of the subdivision that have not been recorded within the term provided in the Development Agreement that was approved as part of the subdivision, or as the Development Agreement is amended thereafter.

8. All Development Impact Fees and other City adopted fees shall be paid pursuant to the Yuba City Municipal Code.

Planning Division

9. The lot design on the subdivision maps shall be designed in conformance with the TSM 15-02, as approved by the Planning Commission.
10. TSM 15-02 shall comply with the Conditions of Approval.

Public Works Department

General

10. Development of any "Large Lot" parcels created shall require a Certificate of Compliance, as provided under Section 66424.6 and Section 66499.34 of the Subdivision Map Act, to be obtained prior to the issuance of any required building permit or other grant of approval. A certificate of compliance shall not be required if a small lot final map in accordance with SM 15-03 is recorded that covers the land in the Large Lot.

Prior to approval of Improvement Plans

11. The Developer shall submit to the City a proposed phased infrastructure improvement matrix that coordinates with the BSMP, the project DA, and the proposed parcels to be developed. The plan should identify needed infrastructure, (including water, sewer, and storm), fencing, and landscaping, and the plan should also consider traffic impacts and site access by phases. The subdivision, and associated improvements, shall conform to all stormwater MS4 requirements. All mitigation measures associated with the project are to be met. The City reserves the right for final determination of configuration of proposed infrastructure.

**Tentative Subdivision Map 15-03
Kells East Ranch (Small Lot) Subdivision
Conditions of Approval**

Conditions of Approval

General

1. Approval of Tentative Subdivision Map (TSM) 15-03 may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this tentative subdivision map, the Zoning Ordinance, the most recently City-adopted Uniform Building Code, and all Public Works Standards and Specifications. The City shall not assume responsibility for any deletions or omissions resulting from the permit review process or for additions or alterations to construction plan not specifically submitted and reviewed and approved pursuant to this subdivision or subsequent amendments or revisions.
2. The applicant/property owner agrees to defend, indemnify and hold harmless the City, its officers, agents and employees, from any and all claims, damages, liability or actions arising out of or connected with this Agreement, except to the extent such liabilities are caused by actions of the City.
3. The Planning Commission's conditional approval of TSM 15-03 is contingent upon the City Council approval of General Plan Amendment 14-05, Specific Plan Amendment 16-05 and Rezoning 14-04. The effective approval date of this subdivision for purposes of this subdivision map's expiration date, as described in Condition #4 below, shall be the effective date of the rezoning.
4. Approval of TSM 15-03 shall be null and void without annexation of the affected lands into the City's jurisdictional boundary within the term provided in the Development Agreement that was approved as part of the subdivision, or as the Development Agreement is amended thereafter.
5. All mitigation measures contained in the BSMP Final Environmental Impact Report are applicable to any and all development within the BSMP.

Expiration and Development Impact Fees

6. Approval of TSM 15-03 shall be null and void without further action for phases of the subdivision that have not been recorded within the term provided in the Development Agreement that was approved as part of the subdivision, or as the Development Agreement is amended thereafter.
7. All Development Impact Fees and other City adopted fees shall be paid pursuant to the Yuba City Municipal Code.

Planning Division

8. The lot design on the subdivision maps shall be designed in conformance with the TSM 15-03, as appropriate, and as approved by the Planning Commission.
9. TSM 15-03 shall comply with the Conditions of Approval and Mitigation Measures.
10. In conjunction with Mitigation Measure 3.11-2, prior to final map recordation for any small residential lots that abut State Route 99, a noise study shall be completed that either indicates that the exterior noise levels for new residences will be in compliance with General Plan Policies 9.1-I-1, 9.1-I-2, and 9-1-I-6 and Table 9-4 that meet "Normally Acceptable" levels or, if not within a Normally Acceptable level, that construction criteria is provided that will reduce indoor noise levels comparable to residences that are located in areas where the noise level is within the Normally Acceptable range.

Public Works Department

General

11. Improvement plans shall be developed in accordance with the Bogue Stewart Master Plan (BSMP), the Development Agreement (DA), and Condition of Approval requirements for the project, or as approved by the Public Works Director.
12. Development of any "Remainder" parcels created shall require a Certificate of Compliance, as provided under Section 66424.6 and Section 66499.34 of the Subdivision Map Act, to be obtained prior to the issuance of any required building permit or other grant of approval.
13. The development shall pay all City adopted fees.
14. To help contain fugitive dust, construction sites shall be watered down during the construction phase of the project or as directed by the Public Works Department.
15. Paved streets shall be swept frequently (water sweeper with reclaimed water recommended; wet broom) if soil material has been carried onto adjacent paved, public thoroughfares from the project site.
16. The Developer, at their expense, shall be solely responsible for all quality control associated with the project. The quality control shall include, but is not limited to, the following: survey work, potholing existing utilities, all geotechnical testing, soil reports, concrete testing, asphalt testing, and any other required special testing/inspections. The City will only perform necessary testing to insure compliance.
17. Storage of construction material is not allowed in the travel way.
18. The only hard surface (concrete or pavers) that can be placed in the street planter area other than one standard driveway serving the residence are two (2) 18" wide strips to accommodate the wheel path of vehicles unless authorized/approved by the Public Works Director.

19. Developer is to construct bus stop improvements at locations in conformance with the BSMP Transit Map (Figure 4-6 of the Master Plan) that are located within the proposed final subdivision map area. Work is to include a concrete bus shelter pad and concrete bus turnout. Exact size, location and design of transit improvements shall be approved by both Transit and City.
20. Concrete pedestrian access pads from sidewalk to curb shall be installed on each leg of all major intersections to facilitate future placement of simple curbside bus stops. Exact size, location and design of transit improvements shall be approved by both Transit and City.
21. The applicant shall be required to pay their fair share cost of a determined Yuba-Sutter Transit impact fee associated with increased needs for vehicle capacity (fixed route, demand response, and intercity commuter buses), and related passenger amenities, such as park and ride facilities.

Prior to approval of Improvement Plans

22. The developer shall submit to the City a proposed phased infrastructure improvement plan that coordinates with the BSMP, the project DA, and the proposed parcels to be developed. The plan should identify needed infrastructure, (including water, sewer, and storm), fencing, and landscaping, and the plan should also consider traffic impacts and site access by phases. The subdivision, and associated improvements, shall conform to all stormwater MS4 requirements. All mitigation measures associated with the project are to be met. The City reserves the right for final determination of configuration of proposed infrastructure.
23. The development shall incorporate bus stops and shelters in accordance with the BSMP into the street improvement design for the subdivision or as required and approved by the Yuba-Sutter Transit Authority and the Public Works Department.
24. Any single-family residential lots adjacent to State Route 99 are to provide a sound wall that meets the necessary decibel requirements and as approved by the Development Services Director. The proposed wall shall be the same in theme, style, and construction as the wall on the east side of State Route 99, just south of Lincoln Road.
25. The Developer shall, prior to the issuance of the first certificate of occupancy of the first residence in each phase, install the perimeter wall per City Standards and/or to the satisfaction of the Public Works Director.
26. Plans are to provide for enhanced/protected pedestrian crossing locations along Gilsizer Ranch Road as determined by the Public Works Director.
27. A decorative fence (e.g, wrought iron) shall be installed at the perimeter of the ponds and open space, and at the commercial development. The Developer shall confirm the fence design and phasing with the Development Services Department.

28. The Developer shall coordinate the removal of the existing Caltrans fence, as necessary, with Caltrans.
29. The improvement plans shall provide for "walk through" paths at the end of the cul-de-sacs on Gage Court and Beach Court.
30. Park improvements and timing of construction shall be constructed in accordance with the DA and the BSMP.
31. The improvement plans for the development of the subject property shall include all measures required to ensure that no drainage runoff resulting from the development of the property flow onto adjacent lands or impede the drainage from those properties. The lots that are created by this subdivision shall have the same finish grade elevation as the adjacent lots within tolerances as approved by the Public Works Department. If retaining walls are required, they shall be constructed of concrete or masonry block. The retaining wall is required where grade differences between the proposed development and the surrounding land is greater than six (6) inches.
32. A master grading plan for all phases of the subdivision shall be submitted to the Public Works Department as part of the improvement plans with the first subdivision phase.
33. Improvement plans and necessary calculations for all improvements and associated drainage facilities required by these conditions shall be submitted to and approved by the Public Works Department. Such approvals shall include the alignment and grades of roads and drainage facilities.
34. Obtain all necessary approvals from City, State, and Federal agencies, utilities and other effected parties that are required for the project including, but not limited to, the preparation of drawings, studies, reports and permit applications, and payment of fees. Prior to City approval of improvement plans the Developer shall provide evidence, to the satisfaction of the Public Works Department, that all such obligations have been met.
35. The contractor shall obtain an Encroachment Permit from the City, and/or County, prior to performing any work within public rights of way.
36. Where an excavation for a trench and/or structure is 5 feet deep or more, the contractor shall conform to O.S.H.A. requirements. The contractor shall provide a copy of the approved O.S.H.A. permit, and shoring details and calculations prepared by California licensed structural engineer to the Public Works Department.
37. Streets within the development shall be constructed as determined in the BSMP, or as otherwise approved by the Public Works Director.
38. The structural section of all road improvements shall be designed using a geotechnical investigation which provides the basement soils R-value and expansion pressure test results. The structural section shall be designed to the following standards:
 - a. Use 3" minimum for residential, 4" minimum for collectors and 5" minimum for arterials, of 'Type A' asphaltic concrete over Class 2 aggregate base (the thickness of the base shall be designed to the R-value of the soil)
 - b. Use a traffic index of 6 for residential streets

- c. Use a traffic index of 7 for collector streets
- d. Use a traffic index of 10 for arterial streets

A copy of the geotechnical investigation, including R-value, test locations and structural section calculations, shall also be submitted with the first improvement plan check.

- 39. Striping, pavement markings and traffic signage shall be provided on all streets as necessary and as required by the Public Works Department. Signage restricting parking and red painted curbing shall be installed where appropriate. Speed limit signs shall be installed at locations determined by the Public Works Department. Twenty-five miles per hour speed limit signs shall be installed within the subdivision at locations determined by the Public Works Department. The Developer shall submit to the Public Works Department a design recommendation for all other speed limits. These proposed speed limit signs shall be shown on the Improvement Plans.
- 40. The Developer shall be responsible for preparation of a street tree and irrigation plan that is deemed acceptable by the Community Services Director prior to entering into a Subdivision Agreement with the City. Only one tree species shall be planted on any street. For tree planting: maintain minimum 25.0-foot clearance to street/stop signs, street lights, and fire hydrants. Maintain adequate clearance to any irrigation line.
- 41. The street landscape planters, the street trees, and street lighting are public improvements which shall meet the Parks Division Planting Standards and Yuba City Standard Details and be included in the improvement plans and specifications for the subdivision when the improvement plans are submitted for the first improvement plan check.
- 42. The Improvement Plans shall show provisions for the placement of centralized mail delivery units in the Public Utility Easement (P.U.E.). Developer shall provide a concrete base for placement of the centralized mail delivery unit. Specifications and location of such base shall be determined pursuant to the applicable requirements of the Postal Service and the Yuba City Public Works Department, with due consideration for street light location, traffic safety, security and consumer convenience.
- 43. Required Improvement Plan Notes:
 - a. "Any excess materials shall be considered the property of the contractor/owner and shall be disposed of away from the job site in accordance with applicable local, state and federal regulations."
 - b. "During construction, the Contractor shall be responsible for controlling noise, odors, dust and debris to minimize impacts on surrounding properties and roadways. The Contractor shall be responsible for all construction equipment to be equipped with manufacturers approved muffler baffles. Failure to do so may result in the issuance of an order to stop work."
 - c. "If any hazardous waste is encountered during the construction of this project, all work shall be immediately stopped and the Sutter County Environmental Health Department, the Fire Department, the Police Department, and the City Inspector shall be notified immediately. Work shall not proceed until clearance has been issued by all of these agencies."
 - d. "The Contractor(s) shall be required to maintain traffic flow on affected roadways during non-working hours, and to minimize traffic restriction during construction. The

Contractor shall be required to follow traffic safety measures in accordance with the Caltrans "Manual of Traffic Safety Controls for Construction and Maintenance Work Zones." The City of Yuba City emergency service providers shall be notified, at least two working days in advance, of proposed construction scheduled by the contractor(s)."

- e. "Soil shall not be treated with lime or other cementitious material without prior express permission by the Public Works Department."

- 44. All development shall be designed to local, state, and federal flood standards.
- 45. The development shall incorporate bicycle, pedestrian, and trail improvements in accordance with the BSMP or as required and approved by the Public Works Department.

Prior to acceptance of Public Improvements

- 46. All existing well(s), septic tank(s), and service lines shall be destroyed in accordance with the requirements of the Sutter County Environmental Health and Yuba City Building Departments, respectively. Connections shall be made to public sewer and water. The Developer shall pay all applicable fees.
- 47. Prior to paving, the Developer shall vacuum test all manholes to ensure no leakage will occur.
- 48. Prior to paving, the Developer shall hydroflush, and televise, all storm drain mains and all sewer mains. In addition, prior to the City's acceptance of the subdivision improvements, and at the Public Works Department's discretion, the storm sewer and sewer mains shall be re-hydroflushed.
- 9. The contractor shall maintain record drawings of the improvements and keep them on site at all times. When the project is complete, the contractor shall deliver a marked set of plans to the Engineer of Record. The Engineer of Record shall update the improvement plans with the record information. Once the changes have been added to the plans, the Engineer of Record shall submit both an electronic copy (AutoCad version 2010 or newer) and a hard copy to the City. The City will not accept the completion of the improvements until the electronic copy and hard copy have been submitted.
- 50. The developer shall pay all applicable fees in accordance with the Development Agreement.

Prior to Final Map Recordation

- 51. The development shall pay for operations and/or maintenance for police, fire, regional parks, drainage, and ongoing street maintenance costs. This condition may be satisfied through participation in a Mello Roos CFD. The City shall be reimbursed actual costs associated with the formation of the district.
- 52. Owner shall provide, to the City, an irrevocable offer of dedication of all streets and public facilities or as determined by the Public Works Director for each phase of development.

53. The Developer is to obtain and dedicate access rights, as necessary, to facilitate construction of storm drain facilities, as outlined in the BSMP, including the connection to the Gilsizer drainage system and/or the City's drainage system. Scope is to conform with current Gilsizer and/or City requirements or as determined by the Public Works Director.
54. The property shall petition for formation of a Zone of Benefit of the Yuba City Landscaping and Lighting Maintenance District for the purpose of maintaining the neighborhood park, street trees, street lights, masonry walls, irrigation, landscape areas, street barricades/fences, and any other identified special benefit (e.g. weed control, storm water maintenance). The Engineering Division shall be reimbursed actual costs associated with the formation of the district.
55. All easements of record which affect any of the proposed lots in the development are to be shown on the final map.
56. Written approvals shall be submitted to the Public Works Director from all pertinent public service providers that their requirements have been met and that financial arrangements have been made to insure their facilities will be installed and that they are satisfied with the public utility easements as shown on the Final Map.
57. All public street lighting shall be constructed and dedicated to the City of Yuba City.
58. A public utility easement shall be provided along all interior streets extending 10 feet behind the back of the sidewalk.
59. A BSMP fee shall be determined for the project and the Developer shall coordinate with the City to decide payment terms and accounting.
60. Adjacent to State Route 99, for the length of the subdivision, the Developer shall offer the City an Irrevocable Offer of Dedication of a maximum 10.0-foot wide strip of land parallel to, and contiguous to, the state highway right-of-way to facilitate the installation and maintenance of the sound wall and any landscaping. In addition, this dedicated area shall be landscaped to the satisfaction of the Development Services Director.
61. The developer shall annex the subdivision into the Gilsizer Drainage District, conform to Gilsizer drainage requirements, and pay all applicable fees.
62. The Developer shall demonstrate to the satisfaction of the Public Works Director, how notice will be provided informing individuals acquiring lots in this subdivision of the proximity of:
 - a. Ongoing agricultural operations such as: burning; pesticide spraying; machinery operation; and other impacts associated with said activities are in the vicinity of the subdivision and have the right to continue such operations.

Prior to Certificate of Occupancy

63. The curb, gutter, sidewalk, and lot drainage shall be inspected and approved by the City. Any curb, gutter and sidewalk which is not in accord with City standards or is damaged before or during construction, shall be replaced. All sidewalks along the City right-of-way shall be free of any non-control joint cracking. In addition, any concrete with cracks, chips,

blemishes, and spalling greater than an inch in diameter shall be replaced from control joint to control joint.

64. The Developer shall, prior to the issuance of the first certificate of occupancy of the first residence in each phase, install the perimeter subdivision wall and/or fence in place to the satisfaction of the Public Works Department.
65. The Developer shall, prior to the issuance of the first certificate of occupancy of the first residence in each phase, construct a solid 6-foot high chain link fence across the right-of-way, of roads that "end" at bare land, connecting with the adjoining six-foot high fences. This fencing shall be constructed in addition to the standard dead end barricade, or as determined by the Public Works Director. The fence and barricade shall be maintained by the City via the landscape and lighting district.
66. Prior to issuance of any certificate of occupancy, all existing overhead utilities (of 26,000 volts or less), and proposed utilities, both onsite and along all project frontages shall be placed underground. The undergrounding shall extend the entire frontage, or as approved by the Public Works Director to facilitate construction and/or meet current City undergrounding policy.

This does not include surface mounted transformers, pedestal mounted terminal boxes, meter cabinets, or riser poles in approved locations. Appropriate easements shall be obtained by the Developer to facilitate these installations. The Development Services Director may grant exceptions to the certificate of occupancy requirement on a case by case basis if the improvements are fully bonded or paid for in advance.
67. The Developer's Superintendent/Representative shall submit three sets of Pacific Gas and Electric approved utility plans showing joint trench locations and distribution lines prior to issuance of first building permit for each phase of construction.
68. Prior to issuance of any certificate of occupancy, all utilities, public improvements, and site improvements, including rough grading, shall be completed unless an agreement is prepared acceptable to the Public Works Director and it does not impact the public health and safety.

Recording Requested by:

Development Services Department
City of Yuba City
1201 Civic Center Blvd.
Yuba City, CA

When Recorded Mail To:

City Clerk
City of Yuba City
1201 Civic Center Blvd.
Yuba City, CA 95993

DOCUMENT WILL BE RETURNED TO NAME & ADDRESS IDENTIFIED ABOVE

[Space Above for Recorder's Use]

DEVELOPMENT AGREEMENT

by and between

BAINS PROPOERTIES LP
A California Limited Partnership

and

CITY OF YUBA CITY
A General Law City

(Kells East Ranch Development Agreement)

DEVELOPMENT AGREEMENT

by and between

BAINS PROPERTIES

A California Limited Partnership

and

CITY OF YUBA CITY,

A General Law City

(Kells East Ranch Development Agreement)

THIS DEVELOPMENT AGREEMENT dated _____, 2019 (Effective Date), at Yuba City, California (hereinafter referred to as "Agreement"), is entered into by and between Bains Properties LP, a California Limited Partnership (hereinafter referred to as "Kells East Ranch Landowner," "Landowner" or "Developer") and the City of Yuba City, a general law city, created and existing under the laws of the State of California (hereinafter referred to as "the City"), pursuant to the authority of Sections 65864-65869.5 of the Government Code of the State of California.

RECITALS

A. State Authorization. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864 *et seq.* of the Government Code (the "Development Agreement Statute"), which authorizes the City to enter into a binding property development agreement with any person having a legal or equitable interest in real property for the development associated with such property in order to establish certain development rights in the property which is the subject of the development project application.

B. City Procedure and Requirements. The City has implemented the provisions of Government Code Section 65864 *et seq.* and is authorized to enter into development agreements with persons having legal or equitable interests in real property located in the City.

C. Landowner. The Landowner is Bains Properties LP, a California limited partnership organized under the laws of the State of California.

D. Property. The subject of this Agreement is the development of that certain property commonly known as Kells East Ranch, consisting of approximately 93.5 acres located in the County of Sutter, as described in Exhibit A-1 and depicted in Exhibit A-2, attached hereto and incorporated herein by reference (referred to as "the Property"). Landowner owns the Property in fee and represents that all other persons holding legal or equitable interests in the Property shall be bound by this Agreement.

E. Bogue-Stewart Master Plan ("Master Plan" or "BSMP"). The Property is located within the area subject to the Bogue-Stewart Master Plan.

F. Project. The development of the Property is in accordance with the City's General Plan, as amended, the Master Plan, and the Development Approvals shall be referred to herein as the "Project."

G. The Environmental Impact Report. The City examined the environmental effects of this Agreement and the Development Approvals in the Environmental Impact Report (the "EIR") (SCH No. 2017012009) prepared pursuant to the California Environmental Quality Act (CEQA). The City Council reviewed and certified the EIR as adequate and complete as part of the approval of the Development Approvals.

H. Purposes. The Landowner and City desire to enter into an agreement for the purpose of implementing the plan for subdividing and development of Kells East Ranch as set forth herein and in the Master Plan, and Development Approvals and for mitigating the environmental impacts of such development as identified in the EIR. The City has an expressed interest in ensuring the proper growth of the community by entering into Development Agreements as a method whereby a level of assurance can be achieved to meet that interest. The City has determined that the development of Kells East Ranch pursuant to the proposed Tentative Subdivision Maps Nos. 15-02 (large lot) and 15-03 (small lots) is a development for which a Development Agreement is appropriate. A Development Agreement will provide certain benefits to the City; will eliminate uncertainty in the City's land use planning for and secure orderly development of the Property in accordance with the policies and goals set forth in the City's General Plan and consistent with the BSMP. The Landowner has incurred and will incur substantial costs in order to comply with the conditions of approval and to assure development of the Property in accordance with this Agreement. In exchange for these benefits to the City and the public, the Landowner desires to receive assurance that the City shall grant permits and approvals required for the development of the Property in accordance with the Existing City Laws, subject to the terms and conditions contained in this Agreement. In order to effectuate these purposes, the Parties desire to enter into this Agreement.

I. Entitlements Needed Prior to the Development Agreement. The application for approval of this Agreement and the appropriate CEQA documentation required for approval of this Agreement, including:

- General Plan Amendment 14-05.
- Specific Plan Amendment 16-05.
- Rezoning 14-04.
- Tentative Subdivision Maps 15-02 and 15-03 (approvals may occur after adoption of the Development Agreement).
- Environmental Assessment 14-14 (Certification of the EIR).

The entitlements are collectively referred to as "Development Approvals."

J. Adequacy of CEQA Environmental Documentation. The Yuba City City Council certified the EIR, which also included a project level review of the Kells East Ranch Tentative Subdivision Maps (TSM) 15-02 (large lot) and 15-03 (small lots). In February, 2015 Bains Properties LP submitted an application to the City to develop a

portion of the BSMP referred to as the Kells East Ranch Tentative Subdivision Maps. The original application included the Kells East Ranch properties. Incorporated in the original application was a request for a large lot and small lot Tentative Map, General Plan Amendment, and Pre-annexation Zoning for those properties. An EIR and Technical Master Plan were then prepared for the expanded BSMP area, including the Project properties, which includes a project-level analysis of the Property. Following consideration of the CEQA environmental documentation and after conducting a duly noticed public hearing, the City Council found that the provisions of this Agreement are consistent with and within the scope of the EIR and that adoption of this Agreement involves no new impacts not considered in the EIR. Specifically, the Development Agreement does not change the environmental assessment of the EIR. Further, the EIR was recently certified. The City Council found that no subsequent review is required under CEQA Guidelines section 15162 as since that time no substantial changes have been proposed in the project which will require major revisions of the previously certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. Likewise, no substantial changes have occurred since that time with respect to the circumstances under which the project is undertaken which will require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. There is also no new information, which was not known and could not have been known at the time of the EIR that the project will have significant effect not discussed in the EIR. As such, the City Council determined the Development Agreement has already been fully assessed in accordance with CEQA, no subsequent review is required under CEQA Guidelines Section 15162, and no further action or review is required under CEQA.

K. Development Agreement Adoption. After conducting a duly noticed public hearing and making the requisite findings, the City Council by the adoption of an Ordinance approved this Agreement and authorized its execution. The City has determined that this Agreement furthers the public health, safety and general welfare, that the provisions of this Agreement are consistent with the goals and policies of the General Plan and is a community benefit. The City and Developer have determined that the project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Development Approvals and certain subsequent development approvals, thereby encouraging planning for, investment in and commitment to use and develop the Property. Continued use and development of the Property is anticipated to, in turn, provide the following substantial benefits and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement laws were enacted, including (1) providing for the development of unused land; (2) providing increased tax revenues for the City; (3) providing for jobs and economic development in the City; and (4) providing for infrastructure improvements that can be utilized by regional users and future users.

L. Consistency with Yuba City General Plan and Bogue-Stewart Master Plan. Development of the Property in accordance with this Agreement will provide for orderly growth and development in accordance with the policies set forth in the City General Plan, as amended, the Master Plan and the Development Approvals. Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, the City Council finds and declares that this Agreement is consistent with the General Plan of the City, the Master Plan, and with the Development Approvals.

M. Landowner Payments for the Costs of Public Infrastructure, Facilities, and Services. Landowner agrees to pay the costs of such City of Yuba City public facilities and services as herein provided to mitigate impacts of the development of the Property, and City agrees to assure that Landowner may proceed and complete development of the Property, in accordance with the terms and conditions of this Agreement. City's approval of development of the Property as provided herein is in reliance upon and in consideration of Landowner's agreement to make such payments toward the costs of public improvements and services as herein provided to mitigate the impacts of development of the Property.

N. Development Agreement Ordinance. City and Landowner have taken all actions mandated by and fulfilled all requirements set forth in the California Government Code Sections 65864 through 65869.5 regulating the use of development agreements.

O. Flood Hazard. The City has imposed conditions on the project that will protect the property to the urban level of flood protection in urban and urbanizing areas. Such conditions may also be implemented as conditions of tentative maps or other entitlements.

NOW THEREFORE, pursuant to the authority contained in Government Code Sections 65864-65869.5, and in consideration of the mutual covenants and promises contained herein, the adequacy and sufficiency of which is hereby acknowledged, the Landowner and the City, each individually referred to as a Party and collectively referred to as the Parties ("Parties"), agree as follows:

AGREEMENT

1. General Provisions.

1.1 Incorporation of Recitals. The Preamble, the Recitals and all defined terms set forth in both, are hereby incorporated in this Agreement as if set forth herein in full.

1.2 Definitions. In addition to the defined terms in the Preamble and the Recitals, each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term. Certain other terms shall have the meaning set forth for such term in this Agreement.

1.2.1 Approvals. Any and all permits or approvals of any kind or character required under the City Laws in order to develop the Project, including, but not limited to, architectural review approvals, building permits, site clearance and demolition permits, grading permits and utility connection permits.

1.2.2 City Laws. The ordinances, resolutions, codes, rules, regulations and official policies of the City govern the permitted uses of land, density, design, improvements and construction standards and specifications applicable to the development of the Property. Specifically, but without limiting the generality of the foregoing, City Laws shall include the City's General Plan, the BSMP, the Zoning Regulations of the City of Yuba City, and the Subdivision Regulations of the City of Yuba City.

1.2.3 Conditions. All conditions, exactions, fees or payments, dedication or reservation requirements, obligations for on or off-site improvements, services or other conditions of approval called for in connection with the development of or construction on the Property under the existing City Laws, whether such conditions of approval constitute public improvements, or mitigation measures in connection with environmental review of any aspect of the Project.

1.2.4 Director. The Director of the Development Services Department.

1.2.5 Existing City Laws. The City Laws in effect as of the Effective Date of this Agreement.

1.2.6 Laws. The laws and Constitution of the State of California, the laws and Constitution of the United States and any codes, statutes or executive mandates in any court decision, state or federal, thereunder.

1.2.7 Mortgagee. "Mortgagee" means: (a) the holder of the beneficial interest under a Mortgage; (b) the lessor under a sale and leaseback Mortgage; and (c) any successors, assigns and designees of the foregoing.

1.2.8 Party. A signatory to this Agreement: or a successor or assign of a signatory to this Agreement.

1.2.9 Property. The Property is that property described and shown on Exhibits A-1 and A-2. It is intended and determined that the provisions of this Agreement shall constitute covenants which shall run with the Property and the benefits and burdens hereof shall bind and inure to all successors-in-interest to the parties hereto.

2. Effective Date: Term.

2.1 Recordation. Not later than ten (10) days after the Effective Date, the Parties shall cause this Agreement to be recorded in the Official Records of the County of Sutter, State of California, as provided for in Government Code Section 65868.5. However, failure to record this Agreement within ten (10) days shall not affect its validity or enforceability by and between the Parties.

2.2 Term. Except as provided herein, the term of this Agreement shall commence on the Effective Date and terminate twenty (20) years thereafter; provided, however, that the initial term shall be automatically extended for an additional five (5) year if the Parties have not completed their obligations pursuant to Section 4 ("Term"), for a total of twenty-five (25) years. If the parties still have not completed their obligations pursuant to Section 4 by the end of the initial automatic extension period either the City or the Landowner shall have the right to request up to two (2) additional five (5) year extensions [for a total of thirty-five (35) years] in order to complete any obligations under this Agreement. In order to consider the request for an extension timely, the extension must be requested by either the City or Landowners in writing delivered to the other party prior to the expiration date of the then current Term. Following the expiration of the Term, this Agreement shall be deemed terminated and be of no further force and effect; provided, however, said termination of the Agreement shall

not affect any right or duty emanating from City Entitlements on the Property approved concurrently with or subsequent to the approval of this Agreement.

2.3. Operative Date. The Property has not been annexed into the City. Consistent with Government Code section 65865, this Agreement shall not become operative unless annexation proceeding(s) annexing the Property to the City are completed within the Term of this Agreement, or earlier if required by law. If the annexation of the Property is not completed within the Term of this Agreement, or earlier if required by law, then the Agreement shall be null and void. Nothing in this paragraph shall toll or otherwise extend the Term, which shall commence on the Effective Date notwithstanding the Property may not be annexed to the City as of the Effective Date.

3. General Development of the Project.

3.1 Project: Vested Entitlements.

3.1.1 The City has adopted certain approvals in connection with the Property, including the adoption of the Master Plan, the tentative maps and the EIR Certification. To the extent the provisions of this Agreement conflicts with the General Plan and Bogue-Stewart Master Plan, those plans shall take precedence.

3.1.2 Development of the Property shall be governed by this Agreement, and the Development Approvals. This Agreement does not impose affirmative obligations on the Landowner to commence development of the Project, or any phase thereof, in advance of its decision to do so.

3.1.3 The permitted uses of the Property, the density and intensity of use, including, but not limited to, minimum landscape areas, maximum lot coverage, minimum and maximum number of parking spaces, and the allowable floor area ratios), and provisions for public improvements and all mitigation measures and conditions required or imposed in order to minimize or eliminate environmental impacts or any impacts of the Property applicable to development of the Property, are as set forth in ordinances, policies, and standards in effect as of the Effective Date and are hereby vested subject to the provisions of this Agreement ("Vested Entitlements").

3.2 Project Phasing. Landowner and City acknowledge and agree that the Project is designed to be developed in phases. The Parties also acknowledge and agree that presently the Landowner cannot predict the timing of the Project phasing. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, that failure of the Parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the Parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that the Landowner shall have the right to develop the building components of the Project in phases in accordance with the Development Approvals and at such times as the Landowner deems appropriate within the exercise of its subjective business judgment and the provisions of this Agreement.

3.3 Other Government Permits. The Landowner or City (whichever is appropriate) shall apply for such other permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Project (such as public utility districts, Gilsizer County Drainage District, the U.S. Army Corps of Engineers, or

CalTrans) as may be required for the development of, or provision of services to, the Project. The City shall promptly and diligently cooperate, at no cost or damage to the City, with the Landowner in its endeavors to obtain such permits and approvals and, from time-to-time at the request of the Landowner, and shall attempt with due diligence and in good faith to enter into binding agreements with any such entity in order to assume the availability of such permits and approvals of services. To the extent allowed by law, the Landowner shall be a party or third-party beneficiary to any such agreement and shall be entitled to enforce the rights of the Landowner or City thereunder or the duties and obligations of the parties thereto. The Landowner shall reimburse the City for all its expenses, including, but not limited to, legal fees and staff time incurred in entering into such agreements, in accordance with the terms and conditions of that certain Funding Agreement for Staff Costs and Consulting Contract entered into between the parties in 2016.

3.4 Additional Fees. Except as set forth in this Agreement, the City shall not impose any further or additional fees, taxes or assessments, whether through exercise of the police power, the taxing power, or any other means, other than those required by Existing City Laws and this Agreement, provided that:

3.4.2 Community Facilities District. Prior to the approval of any final map within the area covered by this Agreement, the Developer shall be required to enter into a Community Facilities District ("CFD") or similar funding mechanism acceptable to the City for the purpose of funding on-going operational costs for police, fire, and other government services and for the on-going maintenance costs for road and park facilities.

Developer shall cooperate in the formation or annexation to the CFD or funding mechanism, and irrevocably consents herewith to the levy of such special taxes, establishment of funding mechanisms, or collection of other fees or charges, as are necessary to fund the operational and/or maintenance costs.

3.4.3 The City may charge the Landowner the standard processing fees for land use approvals, building permits and other similar permits, which are in force and effect on a City-wide basis at the time application is submitted for those permits.

3.4.4 City shall have the authority to enact or increase development impact fees provided the fees are consistent with the fees applied to other properties in the City or area wide that is similarly situated.

3.4.5 If the City exercises its taxing power in a manner which will not change any of the conditions applicable to the Project and so long as any taxes are uniformly applied on a City-wide or area-wide basis, as defined below, the Property may be so taxed, which tax shall be consistent with the taxation of other properties in the City or area wide that is similarly situated.

3.4.6 If state or federal laws are adopted which enable cities to impose fees on existing projects and if, consequently, the City adopts enabling legislation and imposes fees on existing projects on a City-wide basis, these fees may be imposed on the Project, which fees shall be consistent with the fees imposed on other properties in the City similarly situated.

3.4.7 Landowner shall pay the following fees:

i. City-wide development impact fees, which may include but not be limited to:

- Parks and Recreation
- Community Civic Center
- Fire Protection
- Library Services
- Police Protection
- Roadways/Traffic
- Flood Protection/Levee Improvements
- City Corporation Yard
- Drainage
- Administration Component
- Connection and Trunk Line Fees (Water and Sewer)

ii. A neighborhood park fee per Paragraph 4.2.5 of this Agreement.

iii. Any fees that Developer is obligated to directly pay to any Federal, State, County or local agency (other than any City Agency) under applicable Federal, State, County or local law.

iv. Any fees the City is legally required to collect for other State or Federal agencies pursuant to State or Federal law or any City agreement or City ordinance that the City is legally mandated or required to adopt or enter into to comply with State or Federal law or a judgment of a court of law, but only to the extent necessary to satisfy such compliance.

Fees shall be paid at the then-applicable rate in effect at the time building permits are obtained. Certain City fees may be deferred to prior to issuance of a certificate of occupancy if otherwise allowed by City ordinance, regulation, or policy.

The parties also acknowledge that the City is currently assessing a publically administered fee program for the Bogue-Stewart Master Plan area. If adopted, this program may impose fee(s) applicable to the entire area including the Property. Landowner agrees to pay such fee(s) once adopted by the City. Nothing in this Agreement shall preclude Landowner from objecting to or contesting the adoption of the fees in the same manner as any other member of the public.

3.4.8 For purposes of this Agreement, "area wide" shall cover not only the Property, but also at least all parcels zoned and/or developed in a manner similar to the Property and located in the combined area of the Master Plan. The Parties acknowledge that the provisions contained in this Section 3.4 are intended to implement the intent of the Parties that the Landowner has the right to develop the Project pursuant to specified and known criteria and rules, and that the City receives the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations.

3.5 Applicable Laws and Standards. Notwithstanding any change in any Existing City Law, including but not limited to, any change by means of ordinance, resolution, initiative, referendum, policy or moratorium, and except as otherwise provided in this Agreement, the laws and policies applicable to the Property are set forth in Existing City Laws (regardless of future changes in these by the City), and this Agreement. The Project has vested rights to be built and occupied on the Property, provided that the City may apply and enforce the Uniform Building Code (including the Uniform Mechanical Code, Uniform Electrical Code and Uniform Plumbing Code) and Uniform Fire Code and all applicable hazardous materials

regulations in effect at the time the Landowner applies for any particular building permits for any particular building or other development aspect of the Project.

3.6 Application of New Laws. Nothing herein shall prevent the City from applying to the Property new federal, state or City Laws that are not inconsistent or in conflict with the Existing City Laws or the intent, purposes or any of the terms, standards or conditions of this Agreement; and which do not alter the terms, impose any further or additional fees or impose any other conditions requiring additional traffic improvements requirements or additional off-site improvements that are inconsistent with this Agreement or the intent of this Agreement. Any action or proceeding of the City that has any of the following effects on the Project shall be considered to be in conflict with this Agreement and the existing City Laws, and shall not be applied by the City to the Project or this Agreement:

3.6.1 Limiting the uses permitted on the Property;

3.6.2 Limiting or reducing the density or intensity of uses, the maximum height, the allowable floor area ratios, the required number of parking spaces, increasing the amount of required landscaping or reservations and dedications of land for public purposes;

3.6.3 Limiting the timing or phasing of the Project in any manner that is inconsistent with or more restrictive than the provisions of this Agreement;

3.6.4 Limiting the location of building sites, grading or other improvement on the Property in a manner that is inconsistent with or more restrictive than the limitations included in this Agreement; or

3.6.5 Applying to the Project or the Property any law, regulation, or rule restricting or affecting a use or activity otherwise allowed by this Agreement.

3.7 Moratorium, Quotas, Restrictions, or Other Limitations. Without limiting the City's standard application processing procedures, no moratorium or other limitation affecting building permits or other land use entitlements, or the rate, timing or sequencing thereof shall apply to the Project.

3.8 Easements: Improvements. The City shall cooperate with the Landowner in connection with any arrangements for abandoning existing utility or other easements and facilities and the relocation thereof or creation of any new easements within the Property necessary or appropriate in connection with the development of the Project.

3.9 Farming Rights. The City shall acknowledge that the Landowner shall have the right to continue to farm the lands non-developed portion of the Property.

4. Developer Obligations

4.1 Public Improvements: Developer shall be responsible for constructing and financing the public infrastructure improvements necessary to serve the Project and as provided in this Agreement and the Development Approvals including the BSMP Public

Facilities Financing Plan. Developer agrees to dedicate, construct or acquire the improvements or facilities and to perform the obligations set forth in this Section at its expense, subject only to those reimbursements and credits as specified in this Agreement. Public infrastructure improvements shall be designed and constructed in accordance with the improvement plans approved by City for such improvements and in accordance with the requirements and regulations pursuant to California State law.

4.2 Developer Obligations. Developer shall be obligated to construct and finance the public infrastructure improvements as called out in the BSMP Public Facilities Finance Plan and as provided below, in accordance with the BSMP and consistent with the City's infrastructure Master Plans. Developer shall be required to post appropriate financial security with City prior to recordation of Final Maps, consistent with Project conditions of approval and as called out in the Public Facilities Financing Plan. The developer may be entitled to fee credits as provided in Section 5.1.

4.2.1 Roads. Roads shall be constructed per the approved phased infrastructure improvement matrix per the tentative map conditions of approval, Master Plan and as provided in the approved tentative maps or other discretionary City permits. On-site improvements shall be as per project approvals and approved improvement plans.

4.2.2 Storm Drainage. Developer shall provide necessary on-site and off-site improvements for storm drainage consistent with Project conditions of approval and as required by the City and the Gilsizer County Drainage District. Improvements shall be constructed for the approved phased infrastructure improvement matrix per the tentative map conditions of approval, Master Plan, and as provided in the approved tentative maps or other discretionary City permits.

4.2.3 Sewer. Developer shall construct sewer lines consistent with the Master Plan and conditions of approval of the tentative maps and other discretionary City permits. Improvements shall be constructed for the approved phased infrastructure improvement matrix per the tentative map conditions of approval, Master Plan, and as provided in the approved tentative maps or other discretionary City permits.

4.2.4 Water. Developer shall construct water line improvements consistent with the Master Plan and conditions of approval of the tentative maps and other discretionary City permits. Developer shall also be responsible for all on-site water line improvements. Improvements shall be constructed for the approved phased infrastructure improvement matrix per the tentative map conditions of approval, Master Plan, and as provided in the approved tentative maps or other discretionary City permits.

4.2.5 Park and Open Space Improvements and Dedications.

Developer shall irrevocably offer for dedication to the City all park land and open space within Kells East Ranch during each phase of development as provided for in the Master Plan, and per the approved phased infrastructure improvement matrix, required per the tentative map conditions of approval, prior to the recordation of the final map for each small lot within the Kells East Ranch development.

Developer is to pay to the City a specific Bogue Stewart Master Plan Neighborhood Park fee in the amount of \$3,206 per single-family residential unit and \$2,298 per

Agreement shall not take effect until the City costs, as provided for in this section, owed by Developer to City are paid to the City.

4.6 Building and Site Design. Developer shall comply with the design intent of the Design Guidelines contained in the Bogue-Stewart Master Plan or in the City-wide adopted Design Guidelines, whichever is more restrictive as may be reasonably determined by the Development Services Director.

5. Reimbursement and Fee Credits, Financing, and Right-of Way

5.1 Reimbursement to Developer for Oversizing

5.1.1 Developer agrees the City may require Developer to construct certain on-site and off-site improvements in a manner that provides for oversize or excess capacity beyond that size or capacity needed to serve the project (collectively "Oversizing") so that the constructed improvement will be available to serve other development or residences or facilities outside of the Property. The City shall not require any Oversizing from the Developer except in connection with project approvals or in Development Approvals, and in accordance with the provisions of the Subdivision Map Act. Developer may be entitled to a fee credit or reimbursement for Oversizing improvements per Section 5 of this Agreement.

5.1.2 In the event that City requires Developer to install a specific improvement (for example, a traffic signal), Developer's obligation to pay the relevant development impact fees otherwise owed under this Agreement regarding the category of improvement the Developer is installing shall be satisfied by the installation of such improvement in the manner mutually agreed upon by the City and the Developer so long as the amount of the development impact fees for this category of improvement does not exceed the cost of such improvement. City shall accept Developer's dedication of such improvements, consistent with the terms and conditions of this Agreement.

By entering into this Agreement, City and Developer agree that certain facilities, including, but not limited to, roadway, sewer, water, and drainage will be constructed by Developer pursuant to this Agreement which will benefit third-party landowners. Developer shall be entitled to a fee credit for any such facilities to the extent they benefit third party landowners in an amount as reasonably determined by the City. If Developer's fee credit for a particular facility exceeds the amount of the fee owed, then Developer shall be reimbursed for the amount the fee credit exceeds the fee owed by the benefited third-party landowners. Developer shall request the City enter into a Reimbursement Agreement, which shall specify the reimbursement calculations and amounts as determined by the City. The Reimbursement Agreement will require future development by third-party landowners benefiting from the Oversizing to reimburse Developer's pro-rata share for a period of up to twenty (20) years from the installation of the oversizing or other qualifying improvements benefiting third-party landowners, provided, that Developer shall have the right to extend the initial twenty (20) year period with five (5) year extension requests until such time that Developer has been reimbursed in full from the benefited third party Landowners. The extension request must be received by the City, in writing six months prior to the expiration of the Reimbursement Agreement. The City Council is authorized to enter into a Reimbursement Agreement on behalf of the City subject to approval as to legal form by the City Attorney.

5.1.3 Reimbursement Calculations. City will provide Developer with the available documentation showing the basis for the reimbursement amounts pursuant to

Section 4.1. The reimbursement obligations provided in this Agreement will be in amounts as reasonably determined by the City.

5.1.4 Reimbursement Personal to Constructing Owner. All rights to reimbursement created pursuant to Section 4.1 shall be personal to the owner installing the improvements and shall not run with the land unless such rights are expressly assigned in writing.

5.2 Reimbursement to Developer for Cost of Preparing Master Plan and Environmental Impact Report. City and Developer agree that preparation of the Bogue-Stewart Master Plan and its accompanying draft and final Environmental Impact Report will benefit third-party landowners that are also located within the boundary of the Master Plan. Developer shall be entitled to a fee credit for the cost of preparation of the Master Plan and EIR to the extent they benefit third-party landowners. Developer shall be reimbursed for the fair share amount owed by the benefited third-party based on the pro-rata share of the acreage to be developed. Reimbursement Agreements shall be established consistent with a City-adopted Capital Improvement Program. The pro-rata share of such up-front planning costs shall be calculated at the time of reimbursement, and shall be paid to Developer by City, and such payment will be funded by such benefited third-party landowners.

5.3 City's Support of Public Financing for Project Improvements. Development of the Project requires the investment of significant capital to fund the Project's necessary major infrastructure. Developer may, at its discretion, seek public financing mechanism for financing the construction, improvement or acquisition of major infrastructure. At the request of Developer, the City may consider the use of finance districts, special assessment districts, and other similar project-related public financing mechanisms to fund the Project's necessary infrastructure.

5.4 Right-of-Way Acquisition. With respect to the acquisition of any off-site interest in real property required by Developer in order to fulfill any condition required by the Project or the Entitlements, Developer shall make a good faith effort to acquire the necessary interest by private negotiations at the fair market value of such interest. If, after such reasonable efforts, Developer has been unable to acquire such interest and provided that Developer (i) provides evidence of a good faith effort to acquire the necessary property interest to the reasonable satisfaction of City and (ii) agrees to pay the cost of such acquisition, including reasonable attorney's fees, City shall make an offer to acquire the necessary property interest at its fair market value. If such offer has not been accepted within 60 days, City agrees, to the extent permitted by law, to cooperate and assist Developer in efforts to obtain such necessary property interest. Any such acquisition by City shall be subject to City's good faith discretion, which is expressly reserved by City, to make the necessary findings, including a finding thereby of public necessity, to acquire such interest. Subject to the reservation of such good faith discretion, the City shall schedule the necessary hearings, and if approved by City, thereafter prosecute to completion the proceedings and action to acquire the necessary property interests by power of eminent domain.

Developer shall fund all costs of the acquisition of such necessary property interests, including reasonable attorney's fees and court costs in the event that such acquisition and/or condemnation is necessary.

6. Annual Review.

6.1 Good Faith Compliance. Developer shall annually provide documentation of good faith compliance with this agreement per Govt. Code Section 65865.1 to the City. The City may, at least every twelve (12) months, during the Term of this Agreement, conduct a public meeting to review the extent of good faith substantial compliance by Landowner with the terms of this Agreement at Landowner's expense. Such periodic review shall be limited in scope to compliance with the terms of this Agreement pursuant to Government Code Section 65865.1. Notice of such annual review will be provided by the Development Services Director to Landowner thirty (30) days prior to the date of the public meeting by the Planning Commission and shall include the statement that any review may result in amendment or termination of this Agreement as provided herein. A finding by the City of good faith compliance by the Landowner with the terms of Agreement shall conclusively determine the issue up to and including the date of such review. Nothing in this Section shall be deemed to create a duty of responsibility of City or Landowner or define an event of default that but for such concurrent review would not have been so created or defined.

6.2 Failure to Comply in Good Faith. If the City Council makes a finding that the Landowner has not complied in good faith with the terms and conditions of this Agreement, the City shall provide written notice to the Landowner describing: (i) such failure to comply with the terms and conditions of this Agreement (referenced to herein as a "Default"); (ii) the actions, if any, required by the Landowner to cure such Default; and (iii) the time period within which such Default must be cured. The Landowner shall have, at a minimum, thirty (30) business days after the date of such notice to cure such Default, or in the event that such Default cannot be cured within such thirty (30) day period but can be cured within one (1) year, the Landowner shall have commenced the actions necessary to cure such Default and shall be diligently proceeding to complete such actions necessary to cure such Default within thirty (30) days from the date of notice. If the Default cannot be cured within one (1) year, as determined by the City during periodic or special review, the City Council may modify or terminate this Agreement as provided in Section 6.4 and Section 6.5.

6.3 Failure to Cure Default. If the Landowner fails to cure a Default within the time periods set forth above, the City Council may modify or terminate this Agreement as provided below.

6.4 Proceedings Upon Modification or Termination. If, upon a finding under Section 6.2 and the expiration of the cure period, the City determines to proceed with modification or termination of this Agreement, the City shall give written notice to the Landowner of its intention to do so. The notice shall be given at least fifteen (15) calendar days before the scheduled hearing and shall contain:

6.4.1 The time and place of the hearing;

6.4.2 A statement as to whether or not the City proposes to terminate or to modify the Agreement; and

6.4.3 Such other information as is reasonably necessary to inform the Landowner of the nature of the proceeding.

6.5 Hearings on Modification or Termination. At the time and place set for the hearing on modification or termination, the Landowner shall be given an opportunity to be heard, and the Landowner shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on the issue shall be on the Landowner. If the City Council finds, based upon substantial evidence, that the Landowner has not complied in good faith with the terms or conditions of the Agreement, the City Council may terminate this Agreement or modify this Agreement and impose such conditions as are reasonably necessary to protect the interests of the City.

7. Permitted Delays.

7.1 Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either Party under this Agreement shall not be deemed to be in default where delays or, defaults are due to war, insurrection, strikes, lockouts, walkouts, drought, riots, floods, earthquakes, fire, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, restrictions imposed by governmental or quasigovernmental entities other than the City, unusually severe weather, acts of the other Party, acts or the failure to act of any public or government agency or entity other than the City, or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of cause. If, however, notice by the Party claiming such extension of time is sent to the other Party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the joint agreement of the City and Landowner. Litigation attacking the validity of this Agreement, or any permit, ordinance, or entitlement or other action of a governmental agency necessary for the development of the Property pursuant to this Agreement shall also be deemed to create an excusable delay under this Section.

7.2 Supersedure by Subsequent Laws. If any Law made or enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Immediately after enactment of any such new Law, the Parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. If such modification or suspension is infeasible in the Landowner's reasonable business judgment, then the Landowner shall have the right to terminate this Agreement by written notice to the City. The Landowner shall also have the right to challenge the new Law preventing compliance with the terms of this Agreement, and, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

8. Termination.

8.1 City's Right to Terminate. The City shall have the right to terminate this Agreement if the Landowner is not in substantial compliance with the terms of this Agreement and this default remains uncured, all as set forth in Section 6.

8.2 Landowner's Right to Terminate. The Landowner shall have the right to terminate this Agreement only under the following circumstances:

8.2.1 The Landowner has found the City in breach of this Agreement, has given the City notice of such breach and the City has not cured such breach within thirty (30) days of receipt of such notice or, if the breach cannot reasonably be cured within such thirty (30) day period, if the City has not commenced to cure such breach within thirty (30) days of receipt of such notice and is not diligently proceeding to cure such breach.

8.2.2 The Landowner is unable to complete the Project because of supersedure by a subsequent law per Section 7.2 or court action.

8.2.3 The Landowner determines, in its business judgment, that it is not practical or reasonable to pursue development of the Property, however if termination occurs for this reason the City reserves the right to revoke any remaining entitlement to develop the property.

8.3 Mutual Agreement. This Agreement may be terminated upon the mutual Agreement of the Parties.

8.4 Effect of Termination.

8.4.1 General Effect. If this Agreement is terminated for any reason, such termination shall not affect any condition or obligation due to the City from the Landowner prior to the date of termination and such termination shall not otherwise affect any other City entitlement or approval with respect to the Property that has been granted prior to the date of termination.

8.5 Recordation of Termination. In the event of a termination, the City and Landowner agree to cooperate with one another in executing a Memorandum of Termination to record in the Official Records of Sutter County within thirty (30) days of the date of termination.

9. Remedies. Either Party may, in addition to any other rights or remedies, institute legal or equitable action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforce by specific performance the obligations and rights of the Parties hereto.

10. Waiver: Cumulative Remedies. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of an event of default shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such event of default. No express written waiver of any event of default shall affect any other event of default, or cover any other period of time, other than any event of default and/or period of time specified in such express waiver. Except as provided in this Section, all of the remedies permitted or available to a Party under this Agreement, or at law or in equity, shall be cumulative and not alternative, and invocation of any such right or remedy shall not

constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

11. Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties that the Project is a private development. This Agreement is made and entered into for the sole protection and benefit of the Landowner and the City and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement. The City and Landowner hereby renounce the existence of any third-party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third-party beneficiary status. No partnership, joint venture or other association of any kind is formed by this Agreement.

12. Cooperation in the Event of Legal Claim. In the event any legal action or proceeding is instituted by any third-party challenging the validity of any provision of this Agreement or any action or decision taken or made hereunder, the Parties shall cooperate in defending such action or proceeding.

13. Estoppel Certificate. Either Party may, at any time, and from time-to-time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties; ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments; (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and amount of any such defaults; and (iv) the requesting Party has been found to be in compliance with this Agreement, and the date of the last determination of such compliance. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following receipt thereof. The Director shall have the right to execute any certificate requested by the Landowner hereunder. The City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

14. Right to Assign or Transfer. The Landowner's rights and responsibilities hereunder may be sold or assigned in conjunction with the transfer, sale or assignment of the Property at any time during the term of this Agreement subject to the following conditions precedent:

14.1 No default by Developer shall be outstanding and uncured as of the effective date of the proposed transfer, unless the City Council has received adequate assurances satisfactory to the City Council that such default shall be cured in a timely manner either by Developer or the transferee under the transfer.

14.2 Prior to the effective date of the proposed transfer, Developer or the proposed transferee has delivered to the City an executed and acknowledged assignment and assumption agreement (the "Assumption Agreement") in recordable form. Such Assumption Agreement shall include provisions regarding: (a) the rights and interest proposed to be transferred to the proposed transferee; (b) the obligations of Developer under this Agreement that the proposed transferee will assume; and (c) the proposed transferee's acknowledgment that such transferee has reviewed and agrees to be bound by this Agreement. The Assumption Agreement shall also include the name, form of entity, and address of the proposed transferee, and shall provide that the transferee assumes the obligations of Developer to be assumed by

the transferee in connection with the proposed transfer. The Assumption Agreement shall be recorded in the official records of the County of Sutter concurrently with the consummation of the transfer.

14.3 Prior to the effective date of the proposed transfer, the Developer must obtain the City's consent in writing to the transfer, which may be evidenced by the City Council's approval of an Assumption Agreement. City's consent shall not be unreasonably withheld. Factors the City may consider in determining whether to consent to the transfer include the financial capacity of the proposed transferee to comply with all of the terms of the Agreement and the history, if any, of compliance of transferee, its principals, officers or owners with the provisions of federal or state law, the Yuba City Municipal Code or agreements with the City relating to development projects within the City.

14.4 Mortgagee as Transferee. No Mortgage (including the execution and delivery thereof to the Mortgagee) shall constitute a transfer. A Mortgagee shall be a transferee only upon: (a) the acquisition by such Mortgagee of the affected interest of Developer encumbered by such Mortgagee's Mortgage; and (b) delivery to the City of an Assumption Agreement executed by the Mortgagee pursuant to which the Mortgagee assumes assuming, from and after the date such Mortgagee so acquires its interest, the applicable rights, duties and obligations of Developer under this Agreement. No further consent of the City shall be required for any such transfer to a Mortgagee.

14.5 Effect of Transfer. A transferee shall become a Party to this Agreement only with respect to the interest transferred to it under the transfer and then only to the extent set forth in the Assumption Agreement. If Developer transfers all of its rights, duties and obligations under this Agreement, Developer shall be released from any and all obligations accruing after the date of the transfer under this Agreement. If Developer effectuates a transfer as to only some but not all of its rights, duties and obligations under this Agreement, Developer shall be released only from its obligations accruing after the date of the transfer which the transferee assumes in the Assumption Agreement.

15 Financing. Mortgages, deeds of trust, sales and leasebacks, or other forms of conveyance required for any reasonable method of financing requiring a security arrangement with respect to the Property ("Mortgages") are permitted without the consent of the City, provided the Landowner complies with the following:

15.1 Mortgagee Protection. This Agreement and any covenants entered into between the Developer and City shall be superior and senior to the conveyance of any Mortgage encumbering any interest in the Property. No default shall defeat, render invalid, diminish or impair the conveyance of any Mortgage made for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any person (including any Mortgagee) who acquires title to the Property or any portion thereof or interest therein or improvement thereon, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

15.2 Mortgagee Not Obligated; Mortgagee as Transferee. No Mortgagee shall have any obligation or duty under this Agreement whatsoever, except that nothing contained in this Agreement shall be deemed to permit or authorize any Mortgagee to undertake any new construction or improvement in the Kells East Ranch, or to otherwise have the benefit of any rights of Developer, or to enforce any obligation of the City, under this Agreement, unless and until such Mortgagee elects to become a Transferee in the manner specified in this

Agreement. Any Mortgagee that affirmatively elects to become a Transferee shall be later released from all obligations and liabilities under this Agreement upon the subsequent Transfer by the Mortgagee of its interest as a transferee to another person.

15.3 Entitlement to Written Notice of Default. The Mortgagee of a Mortgage or beneficiary of a deed of trust encumbering the Property, or any part thereof, and their successors and assigns shall, upon written request to the City, be entitled to receive from the City written notification of any default by Landowner of the performance of Landowner's obligations under this Agreement which has not been cured within sixty (60) days following the date of default. Landowner shall reimburse the City for its actual costs, reasonably and necessarily incurred, to prepare this notice of default.

15.4 Priority of Mortgages and Subordination. Landowner shall ensure that all Mortgages subordinate to this Agreement. For purposes of exercising any remedy of a Mortgagee or for becoming a Transferee, the applicable laws of the State of California shall govern the rights, remedies and priorities of each Mortgagee, absent a written agreement between Mortgagees otherwise providing.

15.5 Collateral Assignment. As additional security to a Mortgagee under a Mortgage on the Property or any portion thereof, Developer shall have the right, without the consent of the City, to execute a collateral assignment of Developer's rights, benefits and remedies under this Agreement in favor of the Mortgagee (a "Collateral Assignment") on the standard form provided by the Mortgagee.

16. Covenants to Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors, assignees, devisees, administrators, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors and assignees. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder: (i) is for the benefit of such properties and is a burden upon such properties; (ii) runs with such properties; and (iii) is binding upon each Party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each Party and its property hereunder, and each other person succeeding to an interest in such properties; provided that no liability or obligation shall accrue to any person, if this Agreement terminates pursuant to Section 8 of this Agreement.

17. Amendment.

17.1 Amendment or Cancellation. Except as otherwise provided in this Agreement, this Agreement may be canceled, modified or amended only by mutual consent of the Parties in writing, and then only in the manner provided for in Government Code Section 65868. Minor amendments to this Agreement may be made without a public hearing upon approval of the Development Services Director. "Minor Amendments" shall mean amendments which are similar in significance to the type of

minor amendments to land use entitlements that may be made without a full public hearing or approval of the Planning Commission or City Council pursuant to the Yuba City Municipal Code.

17.2 Recordation. Any amendment, termination or cancellation of this Agreement shall be recorded by the City Clerk not later than ten (10) days after the effective date of the action effecting such amendment, termination or cancellation; however, a failure to record shall not affect the validity of the amendment, termination or cancellation.

18. Notices.

18.1 Procedure. Any notice to either Party shall be in writing and given by delivering the notice in person or by sending the notice by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the Party's mailing address.

18.2 Mailing Addresses. The respective mailing addresses of the Parties are, until changed as hereinafter provided, the following:

City:	Development Services Director City of Yuba City 1201 Civic Center Blvd. Yuba City, CA 95993
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With a copy to:	City Manager City of Yuba City 1201 Civic Center Blvd. Yuba City, CA 95993
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Landowners:	Bains Properties LP Attn: Jaswant Bains 1880 Lorraine Way Yuba City, CA 95993
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With a copy to:	MHM Incorporated Attn: Sean Minard P.O. Box B Marysville, CA 95901
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Either Party may change its mailing address at any time by giving ten (10) days notice of such change in the manner provided for in this section. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is affected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. Nothing in this provision shall be construed to prohibit communication by facsimile transmission, so long as an original is sent by first class mail, commercial carrier or is hand-delivered.

19. Indemnification.

19.1 Third Party Actions. To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, attorneys, and volunteers from any and all loss, liability, fines, penalties, forfeitures, damages and costs (including attorney's fees, litigation expenses and administrative record preparation costs) arising from, resulting from, or in connection with any Third Party Action (as hereinafter defined). The term "Third Party Action" collectively means any legal action or other proceeding instituted by (i) a third party or parties or (ii) a governmental body, agency or official other than the City or a City Agency, that: (a) challenges or contests any or all of this Agreement, the Kells East Subdivision Map Applications and Approvals, or the Development Approvals; or (b) claims or alleges a violation of CEQA or another law in connection with the certification of the EIR by the City Council or the grant, issuance or approval by the City of any or all of this Agreement, the Kells East Subdivision Map Applications and Approvals, and the Development Approvals. Developer's obligations under this Section shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties forfeitures, costs or damages caused solely by the active negligence or willful misconduct of the City or any of its officers, officials, employees, agents or volunteers. The provisions of this Section shall survive the termination of this Agreement.

19.2 Damage Claims. The nature and extent of Developer's obligations to indemnify, defend and hold harmless the City with regard to events or circumstances not addressed in Section 19.1 shall be governed by this Section 19.2. To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, attorneys, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Developer or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement or the performance of any or all work to be done by Developer or its contractors, agents, successors and assigns pursuant to this Agreement (including, but not limited to design, construction and/or ongoing operation and maintenance of off-site improvements unless and until such off-site improvements are dedicated to and officially accepted by the City). Developer's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, attorneys, or agents are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents, attorneys, or volunteers.

If Developer should subcontract all or any portion of the services to be performed under this Agreement, Developer shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, attorneys, and volunteers in accordance with the terms of the preceding paragraph. The Developer further agrees that the use for any purpose and by any person of any and all of the streets and improvements required under this Agreement, shall be at the sole and exclusive risk of the Developer, at all times prior to final acceptance by the City of the completed street and other improvements, unless any loss, liability, fines, penalties, forfeitures, costs or damages arising from said use were caused by the active or sole negligence, or the willful misconduct, of the City or any of its officers, officials, employees, agents or volunteers.

Notwithstanding the preceding paragraph, to the extent that Subcontractor is a "design professional" as defined in Section 2782.8 of the California Civil Code and performing work hereunder as a "design professional" shall, in lieu of the preceding paragraph, be required to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers to the furthest extent allowed by law, from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in Agreement, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

This Section shall survive termination or expiration of this Agreement.

20. Insurance. Prior to starting construction of any phase of the project through the date of City's final formal acceptance of off-site improvements constructed pursuant to the terms of this Agreement (the "Insurance Period"), Developer shall pay for and maintain in full force and effect all policies of insurance described in this Section with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Public Work's Director. The following policies of insurance are required:

20.1 Commercial General Liability. Insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and shall include insurance for bodily injury, property damage and personal injury with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, contractual liability (including indemnity obligations under this Agreement), with limits of liability of not less than \$5,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal injury, \$5,000,000 general aggregate and \$5,000,000 aggregate for products and completed operations and \$5,000,000 general aggregate.

20.2 Commercial Automobile Liability. insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Business Auto Coverage Form CA 00 01 and shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 B Any Auto), with combined single limits of liability of not less than \$5,000,000 per accident for bodily injury and property damage.

20.3 Workers Compensation. insurance as required under the California Labor Code.

20.4 Employers Liability. with minimum limits of liability of not less than \$1,000,000 each accident, \$1,000,000 policy limit and \$1,000,000 for each employee.

In the event Developer purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Developer shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Developer shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of City of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a ten (10) calendar day written notice of such cancellation of coverage. In the event any policies are due to expire during the term of this Agreement, Developer shall provide a new certificate evidencing renewal of such policy not less than ten (10) calendar days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, Developer shall file with City a new certificate and all applicable endorsements for such policy(ies).

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, attorneys, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Developer's insurance shall be primary, and no contribution shall be required of City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers. Developer shall have furnished City with the certificate(s) and applicable endorsements for all required insurance prior to start of construction of any phase of development. Developer shall furnish City with copies of the actual policies upon the request of City's Director of Public Works at any time during the life of the Agreement or any extension, and this requirement shall survive termination or expiration of this Agreement.

If at any time during the Insurance Period, Developer fails to maintain the required insurance in full force and effect, the Director of Public Works, or designee, may order that the Developer, or its contractors or subcontractors, immediately discontinue any further work under this Agreement and take all necessary actions to secure the work site to insure that public health and safety is protected. All payments due or that become due to Developer shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. The insurance requirements set forth in this Section are material terms of this Agreement.

If Developer should hire a general contractor to provide all or any portion of the services or work to be performed under this Agreement, Developer shall require the general contractor to provide insurance protection in favor of City, its officers, officials, employees, attorneys, volunteers and agents in accordance with the terms of each of the preceding paragraphs, except that the general contractor's certificates and endorsements shall be on file with Developer and City prior to the commencement of any work by the general contractor.

If the general contractor should subcontract all or a portion of the services or work to be performed under this Agreement to one or more subcontractors, Developer shall require the general contractor to require each subcontractor to provide insurance protection in favor of City, its officers, officials, employees, attorneys, volunteers and agents in accordance with the terms of each of the preceding paragraphs, except that each subcontractor shall be required to pay for and maintain Commercial General Liability insurance with limits of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal injury, \$2,000,000 aggregate for products and completed operations and \$2,000,000 general aggregate and Commercial Automobile Liability insurance with limits of liability of not less than less than \$1,000,000 per accident for bodily injury and property damage. Subcontractors' certificates and endorsements shall be on file with the general contractor, Developer and City prior to the commencement of any work by the subcontractor. Developer's failure to comply with these requirements shall constitute a default of this Agreement.

21. Miscellaneous.

21.1 Approvals. Unless otherwise provided herein, whenever approval, consent or satisfaction (herein collectively referred to as an "approval") is required of a Party pursuant to this Agreement, such approval shall not be unreasonably withheld. If a Party shall disapprove, the reasons therefor shall be stated in reasonable detail in writing. Approval by a Party to or of any act or request by the other Party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests. The Parties acknowledge and agree that the intent of the Parties is that this Agreement be construed in a manner that protects the rights granted to Landowner herein to the as allowed by law. Except for the limitations on the exercise by the City of its police power which are provided in this Agreement or which are construed in accordance with the immediately preceding sentence, the Parties further acknowledge and agree that: (a) the City reserves all of its police power and/or statutory or other legal powers or responsibilities; and (b) this Agreement shall not be construed to limit the authority or obligation of the City to hold necessary public hearings, to limit the discretion of the City or any of its officers or officials with regard to rules, regulations, ordinances, laws, and entitlement of use which require the exercise of discretion by the City or any of its officers or officials. This Agreement shall not be construed to limit the obligations of the City to comply with CEQA or any other federal or state law.

21.2 Project Approvals Independent. All approvals that may be granted pursuant to this Agreement, and all approvals or other land use approvals which have been or may be issued or granted by the City with respect to the Property, constitute independent actions and approvals by the City. If any provisions of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if the City terminates this Agreement for any reason, such invalidity, unenforceability or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any approvals or other land use approvals. In such cases, such approvals will remain in effect pursuant to their own terms, provisions and conditions.

21.3 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of the Property, or of the Project, or any portion thereof, to the general public, for the general public, or for any-public use or purpose whatsoever. This proscription does not extend to any portion of the Property that may be dedicated in compliance with any conditions of approval. The Landowner shall have the right to prevent or prohibit the use of the Property, or any portion thereof, including common areas and buildings and improvements located thereon; by any person for any purposes inimical to the operation of a private, integrated Project as contemplated by this Agreement.

21.4 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

21.5 Construction of Agreement. The provisions of this Agreement and the Exhibits shall be construed as a whole according to their common meaning and not strictly for or against any Party in order to achieve the objectives and purpose of the Parties. The captions preceding the text of each Article, Section, Subsection and the Table of Contents are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. All references to "person" shall include, without limitation, any and all corporations, partnerships or other legal entities.

21.6 Other Necessary Acts. Each Party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all further instruments, documents and writings as may be reasonably necessary or proper to achieve the purposes and objectives of this Agreement and to secure the other party the full and complete enjoyment of its rights and privileges hereunder.

21.7 Applicable Law. This Agreement, and the rights and obligations of the Parties, shall be construed by and enforced in accordance with the laws of the State of California.

21.8 Equal Authorship. This Agreement has been reviewed by legal counsel for both the Landowner and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

21.9 Time. Time is of the essence of this Agreement and of each and every term and condition hereof. In particular, the City agrees to act in a timely fashion in accepting, processing, checking and approving all maps, documents, plans, permit applications and any other matters requiring the City's review or approval relating to the Project or Property. Subject to extensions of time by mutual consent in writing, unreasonable delay by either party to perform any term or provision of this Agreement shall constitute a default.

21.10 Subsequent Projects. After the effective date of this Agreement, the City may approve other projects that place a burden on the City's infrastructure; however, it is the intent and agreement of the Parties that Landowner's right to build and occupy the Project, as described in this Agreement, shall not be diminished despite the increased burden of future approved development on public facilities.

21.11 Entire Agreement. This written Agreement and the Exhibits contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits.

21.12 Form of Agreement: Exhibits. This Agreement is executed in three duplicate originals, each of which is deemed to be an original. This Agreement constitutes the entire understanding and agreement of the parties. Said exhibits are

identified as follows:

Exhibit A-1: Property legal description
Exhibit A-2: Kells East Ranch Subdivisions

All attachments to this Agreement, including all exhibits referenced herein, and all subparts thereto, are incorporated herein by this reference.

21.13 Attorneys' Fees. If either Party commences any action for the interpretation, enforcement, termination, cancellation or rescission hereof, or for specific performance of the breach hereof, the prevailing party shall be entitled to its reasonable attorneys' fees and litigation expenses and costs, and any judgment, order or decree rendered in such action, suit or proceeding shall include an award thereof. Attorneys' fees under this Section shall include attorneys' fees on any appeal and any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

21.14 Limitation of Legal Acts. In no event shall the City, or its officers, agents, attorneys, or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed that the Developer's sole legal remedy for a breach or violation of this Agreement by the City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.

21.15 Interpretation and Governing State Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objective and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, both Parties having been represented by counsel in the negotiation and preparation hereof. All legal actions brought to enforce the terms of this Agreement shall be brought and heard in the Superior Court of the State of California, County of Sutter.

21.16 Successor Statutes Incorporated. All references to a statute or ordinance, shall incorporate any, or all, successor statute or ordinance enacted to govern the activity now governed by the statute or ordinance, noted herein to the extent, however, that incorporation of such successor statute or ordinance does not adversely affect the benefits and protections granted to the Developer under this Agreement.

21.17 Counterparts. This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and each of which shall be deemed to be one and the same instrument when each Party signs each such counterpart.

21.18 Signature Pages. For convenience, the signatures of the Parties to this Agreement may be executed and acknowledged on separate pages which, when attached to this Agreement, shall constitute this as one complete Agreement.

21.19 Days. Unless otherwise specified in this Agreement, the term "days" means calendar days.

21.20 Authority. The Parties hereby represent that the person hereby signing this Agreement on behalf of each respective Party has the authority to bind the Party to the Agreement.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

"City"

CITY OF YUBA CITY,
A General Law City

"Landowner"

Bains Properties LP,
a California limited partnership

By: _____

Shon Harris, Mayor

Date: _____

By: Bains Properties LP
a California limited partnership

By: _____
Jaswant Bains, Member

Attest:

City Clerk

Approved as to Form:

Shannon Chaffin, City Attorney

Attachments:

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:****BOUTIN JONES INC.**

Attorneys at Law
555 Capitol Mall, Suite 1500
Sacramento, CA 95814
Attention: Kent W. Silvester, Esq.

MAIL TAX STATEMENTS TO:

Bains Properties LP
1880 Lorraine Way
Yuba City, CA 95993

2015-0018585

Recorded	REC FEE	25.00
Official Records	CC1 - CONFORME	0.00
County of Sutter		
Donna M. Johnston		
Clerk Recorder		

08:35AM 28-Dec-2015 CM
Page 1 of 4

APN: 23-010-120

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Grant Deed

The undersigned Grantor(s) declare(s): This is a transfer from a trust and limited liability company to a limited partnership, which results solely in a change in the method of holding title, proportional ownership interests remain the same. CA R & T Code 11925(d).

Documentary transfer tax is \$ None Due.

- ☐ Computed on full value of property conveyed, or
☐ Computed on full value less value of liens and encumbrances remaining at time of sale.
☒ Unincorporated area ☐ City of _____

FOR NO CONSIDERATION,

Jaswant Singh Bains and Satwant Kaur Bains, Trustees of the Jaswant Singh Bains and Satwant Kaur Bains 2005 Family Revocable Trust and Bains Property Management LLC, a California limited liability company

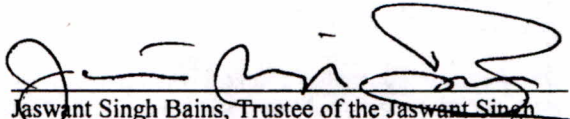
hereby GRANT to

Bains Properties LP, a California limited partnership, all of their right title and interest, in and to the following described real property located in the County of Sutter, State of California:

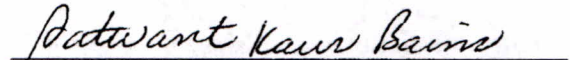
See **Exhibit A** attached hereto and incorporated herein by this reference.

(Commonly known as 1401 Stewart Road)

Dated: 12/18/15

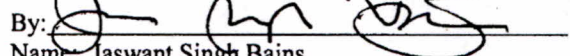

 Jaswant Singh Bains, Trustee of the Jaswant Singh
 Bains and Satwant Kaur Bains 2005 Family
 Revocable Trust

Dated: 12/18/15


 Satwant Kaur Bains, Trustee of the Jaswant Singh
 Bains and Satwant Kaur Bains 2005 Family
 Revocable Trust

BAINS PROPERTY MANAGEMENT LLC, a
 California limited liability company

Dated: 12/18/15

By: 
 Name: Jaswant Singh Bains
 Its: Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Sacramento

On December 18, 2015, before me, Charlotte E. Siligo, Notary Public personally appeared JASWANT SINGH BAINS and SATWANT KAUR BAINS, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s), is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature




A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Sacramento

On December 18, 2015, before me, Charlotte E. Siligo, Notary Public personally appeared JASWANT SINGH BAINS, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s), is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature




EXHIBIT ALEGAL DESCRIPTION

The land referred to is situated in the unincorporated area, County of Sutter, State of California, and is described as follows:

All that portion of the Southeast quarter of Section 4, Township 14 North, Range 3 East, Mount Diablo Base and Meridian, more particularly described as follows

Beginning at the Northeast corner of the Southeast quarter of said Section 4, thence Westerly along the North line of the Southeast quarter of said Section 4, South 89 Degrees 10 minutes 56 Seconds West, 1,105 04 feet to the centerline of Gilsizer Slough, thence Southeasterly along said Gilsizer Slough, South 04 Degrees 27 minutes 33 Seconds East, 289 90 feet, thence South 03 Degrees 17 minutes 30 Seconds East, 200 46 feet, thence, South 08 Degrees 39 minutes 45 Seconds East, 333 17 feet, thence South 07 Degrees 52 minutes 52 seconds East, 503 45 feet along the East line of that certain Parcel of land Deeded to Michiko Uyemoto and Kanichi Uyemoto, husband and wife, as Recorded in Book 379 of Official Records, Page 473, Sutter County Records, to a point on the Northerly line of "Plat of Mrs A Stewart, Subdivision No 2" as Recorded in Book 1 of Surveys, Page 17, Sutter County Records, thence Easterly along said Northerly line of said "Mrs A Stewart Subdivision No 2" North 89 Degrees 10 minutes 17 Seconds East, 921 63 feet to a point on the East line of said Section 4, thence Northerly along said East line of Section 4, North 01 Degrees 18 minutes 30 seconds East, 1,320 00 to the point of beginning

EXCEPTING THEREFROM that portion thereof conveyed to the State of California by Deed from Robert N Kells, also known as R N Kells, and Norma E Kells, his wife, dated May 24, 1954 and Recorded June 30, 1954 in Book 415 of Official Records, Page 8, more particularly described as follows

All that portion of those certain Parcels of land acquired by Robert N Kells and Norma E Kells, his wife, by Deed dated February 3, 1943, Recorded February 11, 1943 in Book 195 of Official Records, Page 64, and by Deed Recorded November 24, 1909 in Book 39 of Deeds, Page 358, Records of Sutter County, described as follows

Beginning at the Southeast corner of said Parcels of land, thence from said point of beginning South 89 degrees 18 minutes 30 seconds West 203 43 feet to a point distant 115 feet Westerly measured at right angles from Engineer's Station "B1" 532+80 10 of the base line of the Department of Public Works' 1950 survey between Oswald Road and Route 15, Road III-SUT-87-8, said point being in the Northerly line of that certain County Road known as Stewart Road, thence leaving said Northerly line North 46 degrees 18 minutes East, 42 43 feet, thence North 7 degrees 00 minutes 38 seconds East 140 70 feet to a point distant 71 feet Westerly measured at right angles from Engineer's Station "B1" 534+50 10 of the base line of said survey, thence parallel with the base line of said survey North 1 degree 18 minutes East 1,634 76 feet to a point in the Northerly line of said Parcels of land, thence along said Northerly line South 89 degrees 20 minutes 03 seconds East 156 43 feet to the Easterly line of said Parcels of land, thence along the Easterly line of said Parcels of land South 0 degrees 55 minutes 57 seconds West 479 42 feet to the one-quarter corner common to Sections 3 and 4, Township 14 North,

Range 3 East, Mount Diablo Base and Meridian, thence continuing along said Easterly line South 1 degree 18 minutes 30 seconds West 1,320 00 feet to the point of beginning

ALSO EXCEPTING THEREFROM all those portions described in Deeds to the State of California, Recorded November 26, 2001 as Instrument Numbers 2001-21592 and 2001-21593

APN 23-010-120

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

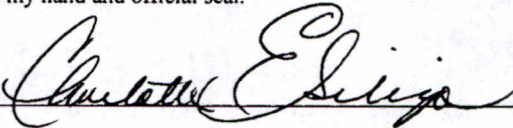
State of California
County of Sacramento

On December 18, 2015, before me, Charlotte E. Siligo, Notary Public personally appeared JASWANT SINGH BAINS and SATWANT KAUR BAINS, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s), is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature




A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Sacramento

On December 18, 2015, before me, Charlotte E. Siligo, Notary Public personally appeared JASWANT SINGH BAINS, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s), is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

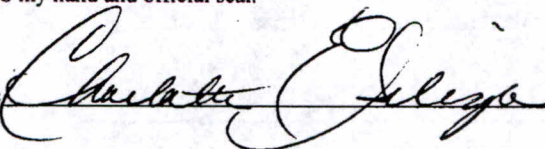
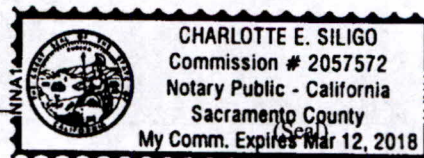



EXHIBIT A

LEGAL DESCRIPTION

The land referred to is situated in the unincorporated area, County of Sutter, State of California, and is described as follows:

Parcel A: Commencing at a point which is North 89 degrees 37 minutes East 1,430.1 feet from an iron pin in the center of a County Road, said pin being set for the center of Section Four (4), Township Fourteen (14) North, Range Three (3) East M.D.B.&M., and running thence North 89 degrees 37 minutes East, 586.0 feet; thence North 1 degree 29 minutes East 498.7 feet; thence North 88 degrees 40 minutes West, 582.3 feet; thence South 1 degree 51 minutes West, 516.41 feet, to the point of beginning.

Parcel B: Commencing at a point which is North 89 degrees 37 minutes East 2,016.1 feet from an iron pin at the center of Section Four (4), Township Fourteen (14) North, Range Three (3) East, M.D.B.&M., and running thence North 89 degrees 37 minutes East 643.5 feet to the East line of said section; thence along said line North 1 degree 36 minutes East 479.42 feet; thence leaving said line North 88 degrees 40 minutes West 644.1 feet to an iron pin; thence South 1 degree 29 minutes West 498.7 feet to the point of beginning.

EXCEPTING THEREFROM all oil, gas and mineral rights as reserved in a Deed from Bank of America National Trust and Savings Association to Robert N. Kells and Norma E. Kells, his wife, dated February 3, 1943, Recorded February 11, 1943, in Book 195 of Official Records, Page 64, Sutter County Records.

APN: 23-010-005

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

BOUTIN JONES INC.

Attorneys at Law
555 Capitol Mall, Suite 1500
Sacramento, CA 95814
Attention: Kent W. Silvester, Esq.

MAIL TAX STATEMENTS TO:

Bains Properties LP
1880 Lorraine Way
Yuba City, CA 95993

2015-0018591

Recorded | REC FEE 25.00
Official Records | CC1 - CONFORME 0.00
County of Sutter
Donna M. Johnston
Clerk Recorder

08:35AM 28-Dec-2015 | CM
Page 1 of 4

APN: 23-010-127

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Grant Deed

The undersigned Grantor(s) declare(s): This is a transfer from a trust and limited liability company to a limited partnership, which results solely in a change in the method of holding title, proportional ownership interests remain the same. CA R & T Code 11925(d).

Documentary transfer tax is \$ None Due.

- ☐ Computed on full value of property conveyed, or
☐ Computed on full value less value of liens and encumbrances remaining at time of sale.
☒ Unincorporated area ☐ City of _____

FOR NO CONSIDERATION,

Jaswant Singh Bains and Satwant Kaur Bains, Trustees of the Jaswant Singh Bains and Satwant Kaur Bains 2005 Family Revocable Trust and Bains Property Management LLC, a California limited liability company

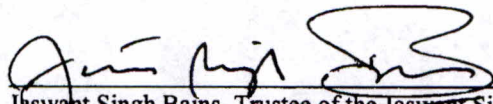
hereby GRANT to

Bains Properties LP, a California limited partnership, all of their right title and interest, in and to the following described real property located in the County of Sutter, State of California:

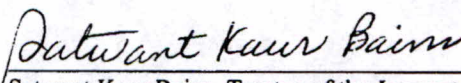
See Exhibit A attached hereto and incorporated herein by this reference.

(Commonly known as Bogue Road 57.76 Acres)

Dated: 12/18/15

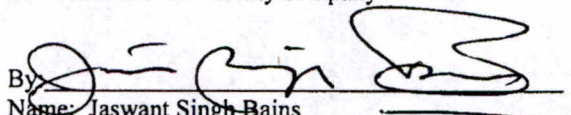

 Jaswant Singh Bains, Trustee of the Jaswant Singh Bains and Satwant Kaur Bains 2005 Family Revocable Trust

Dated: 12/18/15


 Satwant Kaur Bains, Trustee of the Jaswant Singh Bains and Satwant Kaur Bains 2005 Family Revocable Trust

BAINS PROPERTY MANAGEMENT LLC, a
 California limited liability company

Dated: 12/18/15


 By: _____
 Name: Jaswant Singh Bains
 Its: Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

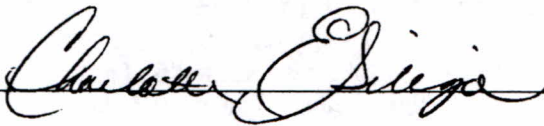
State of California
State of California
County of Sacramento

On December 18, 2015, before me, Charlotte E. Siligo, Notary Public personally appeared JASWANT SINGH BAINS and SATWANT KAUR BAINS, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s), is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature




A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Sacramento

On December 18, 2015, before me, Charlotte E. Siligo, Notary Public personally appeared JASWANT SINGH BAINS, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s), is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

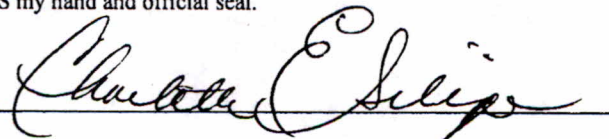



EXHIBIT ALEGAL DESCRIPTION

The land referred to is situated in the unincorporated area, County of Sutter, State of California, and is described as follows:

All that portion of the Northeast quarter of Section 4, Township 14 North, Range 3 East, Mount Diablo Base and Meridian, more particularly described as follows:

Beginning at a point on the East line of said Section 4 from which the Southeast corner of the Northeast quarter of Section 4 bears South 00 degrees 55 minutes 57 seconds West, 479.42 feet; thence from said point of beginning, North 89 degrees 05 minutes 41 seconds West, 1,166.70 feet to the centerline of Gilsizer Slough; thence following the centerline of Gilsizer Slough, North 04 degrees 51 minutes 26 seconds West, 534.20 feet; thence North 03 degrees 10 minutes 37 seconds West, 403.81 feet; thence continuing along the Easterly line of said Parcel, the following Seven (7) consecutive courses: (1) North 00 degrees 32 minutes 22 seconds West, 229.20 feet; (2) North 14 degrees 20 minutes 22 seconds West, 361.40 feet; (3) North 05 degrees 59 minutes 22 seconds West, 244.90 feet; (4) North 01 degrees 16 minutes 38 seconds East, 174.00 feet; (5) North 07 degrees 41 minutes 38 seconds East, 10.30 feet to a point on a curve to the right with a radius of 615.7 feet; thence along said curve (6) An arc distance of 257.01 feet (The long chord is North 19 degrees 38 minutes 08 seconds East, 255.2 feet); thence (7) North 07 degrees 25 minutes 38 seconds East, 36.3 feet to a point on the North line of said Section 4; thence Easterly along said section line North 89 degrees 38 minutes 38 seconds East 1,292.26 feet to the Northeast corner of said Section 4; thence Southerly along the East line of Section 4, South 00 degrees 55 minutes 57 seconds West, 2,245.65 feet to the point of beginning.

EXCEPTING THEREFROM all oil, gas and minerals rights as reserved in the Deeds from Bank of America National Trust and Savings Association, a National Banking Association, to Robert Norman Kells, Jr., dated April 29, 1943 and Recorded May 14, 1943 in Book 197 of Official Records, Page 92; dated February 3, 1943 and Recorded February 11, 1943 in Book 195 of Official Records, Page 64.

ALSO EXCEPTING THEREFROM that portion thereof acquired by the State of California by final decree of condemnation dated August 11, 1954; a certified copy of which decree was Recorded August 18, 1954 in Book 429 of Official Records, Page 36, more particularly described as follows:

All that portion of that certain Parcel of land in the Northeast quarter of Section 4, Township 14 North, Range 3 East, Mount Diablo Base and Meridian, acquired by Robert Norman Kells, Jr., by Deed dated April 29, 1943 and Recorded May 14, 1943 in Book 197 of Official Records, Page 92, more particularly described as follows:

Beginning at a point on the East line of Section 4, distant South 0 degrees 55 minutes 57 seconds West 2,245.65 feet from the Northeast corner thereof; said point being identical with the Southeast corner of said Parcel of land and the Northeast corner of that certain Parcel of land in said Northeast quarter acquired by Robert N. Kells, et ux, by Deed dated February 3, 1943 and Recorded February 11, 1943 in Book 195 of Official Records, Page 64; thence from

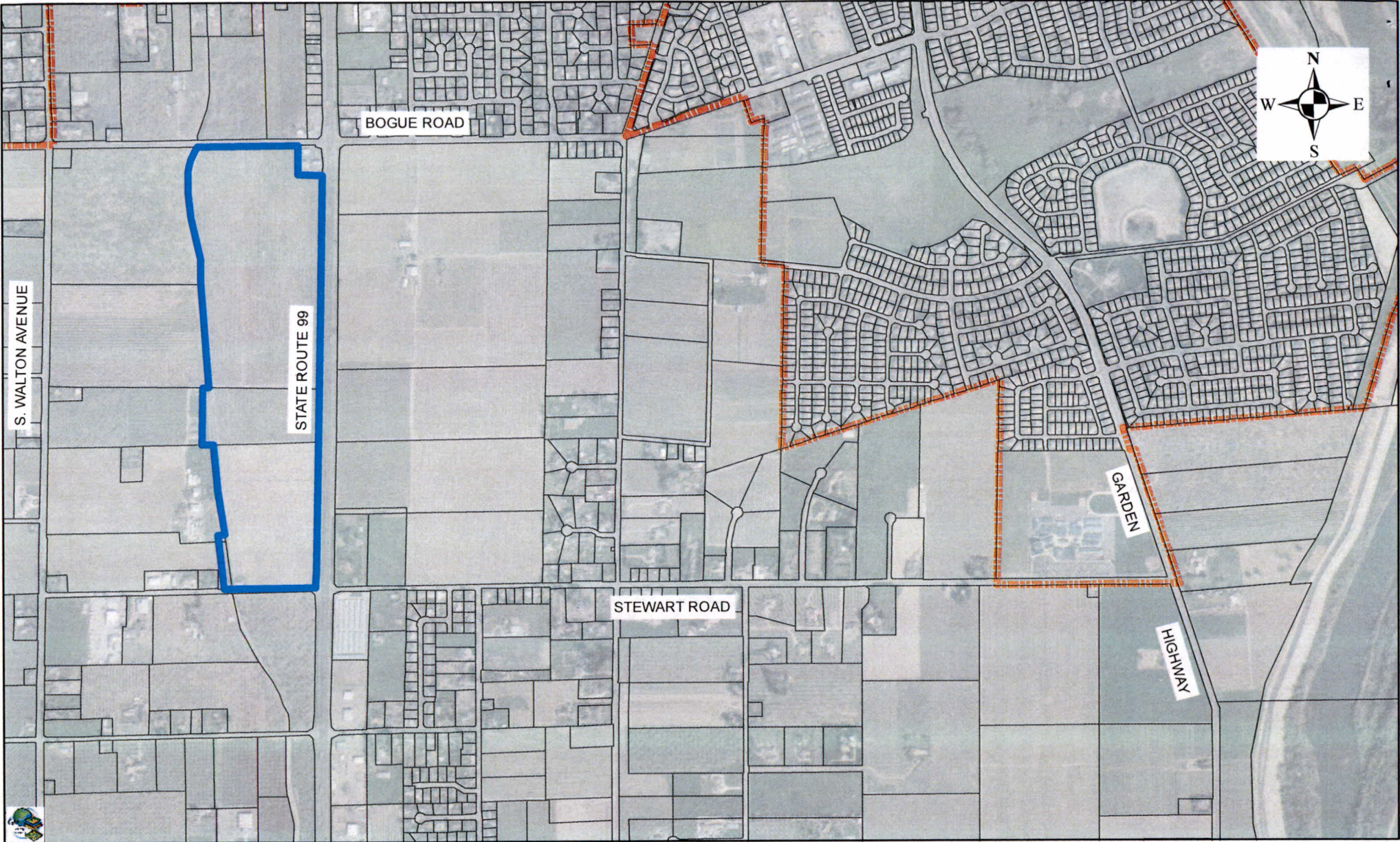
said point of beginning along the line common to said Parcels of land, North 89 degrees 20 minutes 03 seconds West 156.43 feet to a point distant 71 feet Westerly measured at right angles from Engineer's Station "B" 550+84.86 of the Base line of the Department of Public Works' Survey between Oswald Road and Route 15, Road III-SUT-87-B; thence parallel with the baseline of said survey, North 1 degree 18 minutes East 1,978.99 feet; thence North 1 degree 12 minutes 43 seconds East 49.64 feet; thence North 4 degrees 24 minutes 38 seconds West 153.57 feet; thence North 43 degrees 42 minutes West 43.07 feet to a point in the Southerly line of that certain County Road known as Bogue Road, said point being distant 115 feet Westerly measure radially from engineer's station "B1" 572+98.60 of the base line of said survey; thence leaving said Southerly line, North 0 degrees 17 minutes 11 seconds East 30.00 feet to a point on the Northerly line of said section 4; thence along said Northerly line, North 89 degrees 38 minutes 38 seconds East 188.45 feet to the Northeast corner of said Section 4; thence along the Easterly line of said Section 4, South 0 degrees 55 minutes 57 seconds West 2,245.65 feet (this distance being shown in said Deed dated April 29, 1943 as "2,160.58") to the point of beginning.

ALSO EXCEPTING THEREFROM all that real property described as follows:

Point of beginning being South 89 degrees 38 minutes 38 seconds West 188.45 feet from the Northeast corner of said Section 4; thence continue West along the North line of the Northeast quarter 192 feet to the Northwest corner of the within described Parcel; thence South 300 feet to the Southwest corner; thence at a right angle to the before described West line, East to the West line of the Parcel acquired by the State of California by condemnation August 11, 1954; thence in a Northerly direction along said West line of Parcel acquired by the State of California to the point of beginning.



APN: 23-010-127

Vicinity Map



Bogue Stewart Master Plan

EXHIBIT A-2



Kells East Ranch Subdivision

City Limits

1 inch = 1,200 feet

FINAL MASTER PLAN ERRATA

The Bogue Stewart Master Plan (BSMP) and EIR noted that “The Final EIR becomes final upon certification by the City’s decision-making body, consequently, additional modifications to the Final BSMP and Final EIR may be provided up until the time of certification.” (Final EIR, Section 1.1.) This Errata incorporates minor revisions to the BSMP for the sake of document consistency. The City finds that the BSMP Errata merely clarify and amplify the analysis presented in the BSMP document and does not trigger the need to readdress the CEQA analysis, and therefore does not need to recirculate the BSMP EIR per CEQA Guidelines §15088.5(b). Deletions are shown with ~~striketrough~~ and additions are shown with an underline. Where existing text has been omitted and is not shown in ~~striketrough~~, this omitted text shall be considered retained in its current state (such omitted text may be shown as “...”).

Global Edits

The BSMP, is referred to throughout the document as a “Master Plan.” However this reference is for the purpose of naming convenience only, and this errata clarifies that the BSMP is, and will be adopted as, a Specific Plan, and not as a Master Plan. In this regard, the following clarification is made to Section 1.1 of Chapter 1 of the BSMP as follows:

“The Bogue Stewart Master Plan (BSMP), a Specific Plan, guides the orderly and cohesive development of 741.5 acres along the southern edge of Yuba City in a manner consistent with the City’s General Plan and Zoning regulations.”

3.1.1 Land Use Plan

Table 3-1: Development Summary Table – By Land Use Designation and Project Area

See edits to Table 3-1 provided on the next page.

Table 3-2: Development Summary Table – By Parcel

See edits to Table 3-2 provided below.

Table 3-1: Development Summary Table – By Land Use Designation and Project Area

Total Plan Area								Newkom Project Area			Kells East Project Area			Final Phase		
Land Use Designation	Land area (Acres)	Percent Land Allocation	Min/Max Density & Intensity	Assumed Density (du/ac) ¹	Total Proposed Units ²	Assumed Intensity (FAR)	Total Sq.Ft	Total Units	Land Area (Acres)	Total Sq.Ft	Total Units	Land Area (Acres)	Total Sq.Ft	Total Units	Land Area (Acres)	Total Sq.Ft
Residential Neighborhoods																
Low density residential	368.9	50%	2 to 8 du/ac	4.25	1,328			427	95		147	28.9		754	245.7	
Low-Medium density residential	62.6	8%	6 to 14 du/ac	9	430				0			0		430	62.6	
Medium/High density residential	32.0	4%	13 to 36 du/ac	24	759			216	9.0		123	5.3		420	17.7	
Commercial and Employment																
Neighborhood Commercial	7.2	1%	0.5 max. FAR			0.35	82,328		0			0			7.2	82,328
Community Commercial	36.7	5%	0.5 max. FAR			0.25	390,951		21.5	229,779		15.2	161,172		0	
Office & Office Park	8.6	1%	1.0 max. FAR			0.29	108,464		8.6	108,464		0			0	
Business, Technology & Light Industrial	55.8	8%	0.75 max. FAR			0.25	574,992		0			0			55.8	574,992
Public and Quasi-Public																
Parks, Recreation & Open Space	84.2	11%							17.6			36.0			30.6	
Public Facilities ³	27.5	4%	1.0 max. FAR			0.15	131,987		0			0			27.5	
Roads and Circulation	58	8%							18.6			9.8			29.6	
TOTAL	741.5	100%			2,517		1,288,723	643	170.2	338,243	270	95.3	161,172	1,604	475.9	657,320

Note:

1. Average Density and Assumed Intensity relates to the density/FAR assumed for development under each land use category, with the intent that the development does not go below allowed minimum density/FAR or exceed maximum density/FAR per land use.

2. 71 homes currently existing on the site will be included within the total BSMP development, but are not included under “Total Proposed Units” count. Therefore, at full build out the total residential unit count should be 2,588 units including proposed and existing homes.

3. A 20-acre site has been identified for K-8 school. In the event that the parcel is not acquired for the K-8 school, other potential appropriate land uses include single family and multifamily residential, but any changes would require a Master Plan Amendment subject to CEQA review.

Table 3-2: Development Summary Table – By Parcel

Total Plan Area										
Parcel	Land Use Designation	Zoning	Land area (Acres)	Minimum Density / FAR	Maximum Density / FAR	Assumed Density (du/ac)	Assumed Intensity (FAR)	Proposed Units	Proposed Sq. Ft	Notes
1	Public Facilities	PF	21.6		1.0 FAR		0.15 FAR		131,987	Future K-8 School within Yuba City USD. ¹
2	Park	P	2.9							Neighborhood Park
3	Low Density Residential	R-1	26.4	2 du/ac	8 du/ac	4.25 du/ac		113		
4	Business, Technology & Light Industrial	C-2	55.8		0.75 FAR		0.25 FAR		574,992	Three existing homes onsite.
5	Low-Medium Density Residential	R-2	6.4	6 du/ac	14 du/ac	9.22 du/ac		59		
6	Open Space	OS	7.0							Open Space
7	Open Space	OS	10.3							Open Space
8	Open Space	OS	10.6							Open Space
9	Open Space	OS	6.3							9a Open Space, 9b Open Space - One existing home onsite.
10	Community Commercial	C-2	15.2		0.5 FAR		0.25 FAR		161,172	
11	Neighborhood Commercial	C-1	1.4		0.5 FAR					Existing gas station onsite (0.6 FAR - 3,398 sq.ft)
12	Medium-High Density Residential	R-3	5.3	12 du/ac	36 du/ac	23du/ac		122		
13	Low Density Residential	R-1	15.4	2 du/ac	8 du/ac	5.1 du/ac		79		
14	Open Space	PF	12.4							Open Space - Proposed detention pond.
15	Low Density Residential	R-1	13.6	2 du/ac	8 du/ac	5 du/ac		68		
16	Community Commercial	C-2	21.5		0.5 FAR		0.25 FAR		229,779	
17	Low Density Residential	R-1	17.8	2 du/ac	8 du/ac	4.38 du/ac		78		
18	Medium-High Density Residential	R-3	9.0	12 du/ac	36 du/ac	24 du/ac		216		
19	Park	P	2.8							Neighborhood Park
20	Park	P	5.7							Community Park
21	Park	P	5.5							Community Park
22	Open Space	OS	5.3		1.0 FAR					Open Space - Proposed detention pond.
23	Medium-High Density Residential	R-3	11.7	12 du/ac	36 du/ac	24.6 du/ac		288		
24	Office/Office-Park	C-O	8.6		1.0 FAR		0.29 FAR		108,464	
25	Low Density Residential	R-1	7.6	2 du/ac	8 du/ac	6 du/ac		43		
26a	Low-Medium Density Residential	R-2	4.6	2 du/ac	14 du/ac	6.3 du/ac		29		
26b	Park	P	0.5							Neighborhood Park
27	Low Density Residential	R-1	2.2	2 du/ac	8 du/ac					Eight existing homes onsite.
28	Low-Medium Density Residential	R-2	12.6	6 du/ac	14 du/ac	7.78 du/ac		98		Two existing homes onsite.
29a	Low Density Residential	R-1	19.4	2 du/ac	8 du/ac	5 du/ac		96		
29b	Park	P	0.5							Neighborhood Park

Table 3-2: Development Summary Table – By Parcel

Total Plan Area										
Parcel	Land Use Designation	Zoning	Land area (Acres)	Minimum Density / FAR	Maximum Density / FAR	Assumed Density (du/ac)	Assumed Intensity (FAR)	Proposed Units	Proposed Sq. Ft	Notes
30	Low Density Residential	R-1	15.1	2 du/ac	8 du/ac	3.31 du/ac		50		Seven existing homes onsite.
31	Low Density Residential	R-1	45.7	2 du/ac	8 du/ac	3.9 du/ac		180		
32	Low Density Residential	R-1	25.2	2 du/ac	8 du/ac	4.25 du/ac				24 existing homes onsite.
33	Neighborhood Commercial	C-1	5.8		0.5 FAR		0.33 FAR		82,328	
34	Medium-High Density Residential	R-3	6.0	12 du/ac	36 du/ac	22 du/ac		132		
35	Low-Medium Density Residential	R-2	6.9	6 du/ac	14 du/ac	8.3 du/ac		57		
36	Park	P	2.5							Neighborhood Park
37	Public Facilities	PF	3.8		1.0 FAR					Existing PG&E substation.
38	Public Facilities	PF	2.2		1.0 FAR					Proposed water tank.
39	Low Density Residential	R-1	4.8	2 du/ac	8 du/ac	4.17 du/ac		20		
40	Low-Medium Density Residential	R-2	26.0	6 du/ac	14 du/ac	6.31 du/ac		164		
41a	Low Density Residential	R-1	24.4	2 du/ac	8 du/ac	4.3 du/ac		105		One existing home onsite.
41b	Low Density Residential	R-1	1.4	2 du/ac	8 du/ac	4.29 du/ac				
41c	Park	P	0.8							Neighborhood Park
42	Low Density Residential	R-1	21.1	2 du/ac	8 du/ac	0.63 du/ac		13		14 existing homes onsite.
43	Low Density Residential	R-1	16.0	2 du/ac	8 du/ac	3.19du/ac		51		Three existing homes onsite.
44	Low Density Residential	R-1	19.5	2 du/ac	8 du/ac	0.10 du/ac		2		Two planned homes, with five existing homes onsite.
45	Low Density Residential	R-1	19.7	2 du/ac	8 du/ac	3.5 du/ac		69		69 new homes, with two existing homes onsite.
46	Low Density Residential	R-1	26.9	2 du/ac	8 du/ac	4.05 du/ac		109		One existing home onsite
47	Low-Medium Density Residential	R-2	10.7	6 du/ac	14 du/ac	9 du/ac		96		
48	Park	P	2.1							Neighborhood Park
49	Low Density Residential	R-1	42.3	2 du/ac	8 du/ac	4.25 du/ac		180		
50	Open Space	P	9.1							Open Space
	Right-of-way		58.0							
TOTAL			741.5					2,517	1,288,722	

Note:
1. In the event that Parcel 1 is not acquired for the K-8 school, other potential appropriate land uses include single family and multifamily residential, but any changes would require a Master Plan Amendment subject to CEQA review.

Table 3-3: Employment Generation

Total Plan Area						
Land Use Designation	Square Feet (SF)	Percent Retail (%)	Percent Non-retail (%)	SF per Retail Employee	SF per Non-retail Employee	Employees
Newkom Ranch Phase						
Neighborhood Commercial	--	70	30	--	--	--
Community Commercial	229,779	75	25	500	400	488
Office & Office Park	108,464	5	95	400	300	357
Business, Technology & Light Industrial	--	0	100	--	--	--
TOTAL	338,243	--	--	--	--	845
Kells East Ranch Phase						
Neighborhood Commercial	--	70	30	--	--	--
Community Commercial	161,172	75	25	500	400	342
Office & Office Park	--	5	95	--	--	--
Business, Technology & Light Industrial	--	0	100	--	--	--
TOTAL	161,172	--	--	--	--	342
Final Phase						
Neighborhood Commercial	82,328	70	30	500	400	177
Community Commercial	--	75	25	--	--	--
Office & Office Park	--	5	95	--	--	--
Business, Technology & Light Industrial	574,992	0	100	0	750	767
TOTAL	657,320	--	--	--	--	944
FULL BUILDOUT						
Neighborhood Commercial	82,328	70	30	500	400	177
Community Commercial	390,951	75	25	500	400	831
Office & Office Park	108,464	5	95	400	300	357
Business, Technology & Light Industrial	574,992	0	100	0	750	767
TOTAL	1,156,735			3,300		2,132

NOTE:

a. Employee calculations are consistent with those used for the Yuba City General Plan. Employee calculations do not include Public Facilities, a land use designation for which the Yuba City General Plan did not assign employment rates.

SOURCE: City of Yuba City. 2004. Yuba City General Plan. Adopted April 8, 2004, Resolution #04-049. Page 3-8. Table 3-5.

3.1.2 Land Use Designations and Zoning Districts

Edits/Revisions

Low Density Residential

The Low Density Residential (LDR) land use designation allows for single-family homes within a density range of 2 to 8 units per gross acre. In the BSMP Area the highest average density of LDR uses is conservatively assumed to be approximately 6 ~~4.25~~ du/ac. In addition to detached single-family homes on conventional and small lots, this category also provides for second units, parks, recreation, day care, civic, institutional and similar uses determined appropriate in a residential environment. The LDR land use category is implemented by the **Single-family Residential Zoning District (R-1/SP-BSMP)**. Table A-1 in Appendix A provides development standards for the R-1/ SP-BSMP district in the BSMP Area. Permitted uses are as specified in the Yuba City Zoning Code.

Low – Medium Density Residential

The Low – Medium Density Residential (LMDR) land use designation allows for a mix of housing types within a density range of 6 to 14 units per gross acre. In the BSMP Area the highest average density of LMDR uses is conservatively assumed to be approximately 9.22 du/ac. This category provides for a wide range of detached and attached single-family housing types including varied small lot, court-oriented, cluster, duet/halfplex, and townhome designs. Parks, recreation, day care, civic, institutional and similar uses determined appropriate in a residential environment are also permitted. The LMDR land use category is implemented by the **Low-Medium Density Residential Zoning District (R-2/SP-BSMP)**. Table A-2 in AppendixA provides development standards for the R-2/SP-BSMP district in the BSMP Area. Permitted uses are as specified in the Yuba City Zoning Code.

Medium – High Density Residential

The Medium – High Density Residential (MHDR) land use designation allows for a density range of 12 to 36 units per gross acre. In the BSMP Area the highest average density of MHDR uses is conservatively assumed to be approximately 24.6 du/ac and will be consistent with the density requirements of the General Plan. This category accommodates primarily attached housing and higher density detached housing including townhome, row house, courtyard, apartment and condominium designs. Parks, recreation, day care, civic, institutional and similar uses determined appropriate in a residential environment are also permitted. The MHDR land use category is implemented by the **Multi-Family Residential Zoning District (R-3/SP-BSMP)**. Table A-3 in Appendix A provides development standards for the R-3 district in the BSMP Area. Permitted uses are specified in the Yuba City Zoning Code.

Neighborhood Commercial

The Neighborhood Commercial (NC) land use designation allows for small shopping centers containing local retail stores, services, restaurants (excluding drive-thru), offices, gas stations and similar uses intended to cater to the daily convenience needs of the surrounding residential neighborhoods. The scale and design of buildings within the NC district is to be compatible with the neighboring residential uses. In the BSMP the highest average density of LDR uses is conservatively assumed for NC uses is 0.335 FAR. The NC land use category is implemented by the **Neighborhood Convenience Commercial Zoning District (C-1/SP-BSMP)**. Table A-4 in Appendix A provides development standards for the C-1 district in the BSMP Area. Permitted uses are as specified in the Yuba City Zoning Code.

Office and Office Park

The Office and Office Park (O/OP) land use designation allows for professional and medical offices in a low intensity, campus like setting. Small scale support and related services are also allowed. Mixed use development may be permitted subject to the transfer/allocation of residential units as approved by the City. In the BSMP the ~~highest average~~ density of LDR uses is conservatively assumed for O/OP uses is ~~0.29~~ 0.30 FAR. The O/OP land use category is implemented by the **Office Commercial Zoning District (C-O/SP-BSMP)**. Table A-4 in Appendix A provides development standards for the C-O district in the BSMP Area. Permitted uses are as specified in the Yuba City Zoning Code.

Figure 3-2: Zoning Map

See edits to Figure 3-2 provided below. Revisions include updates to zoning categories from Master Plan (MP) to Specific Plan (SP).

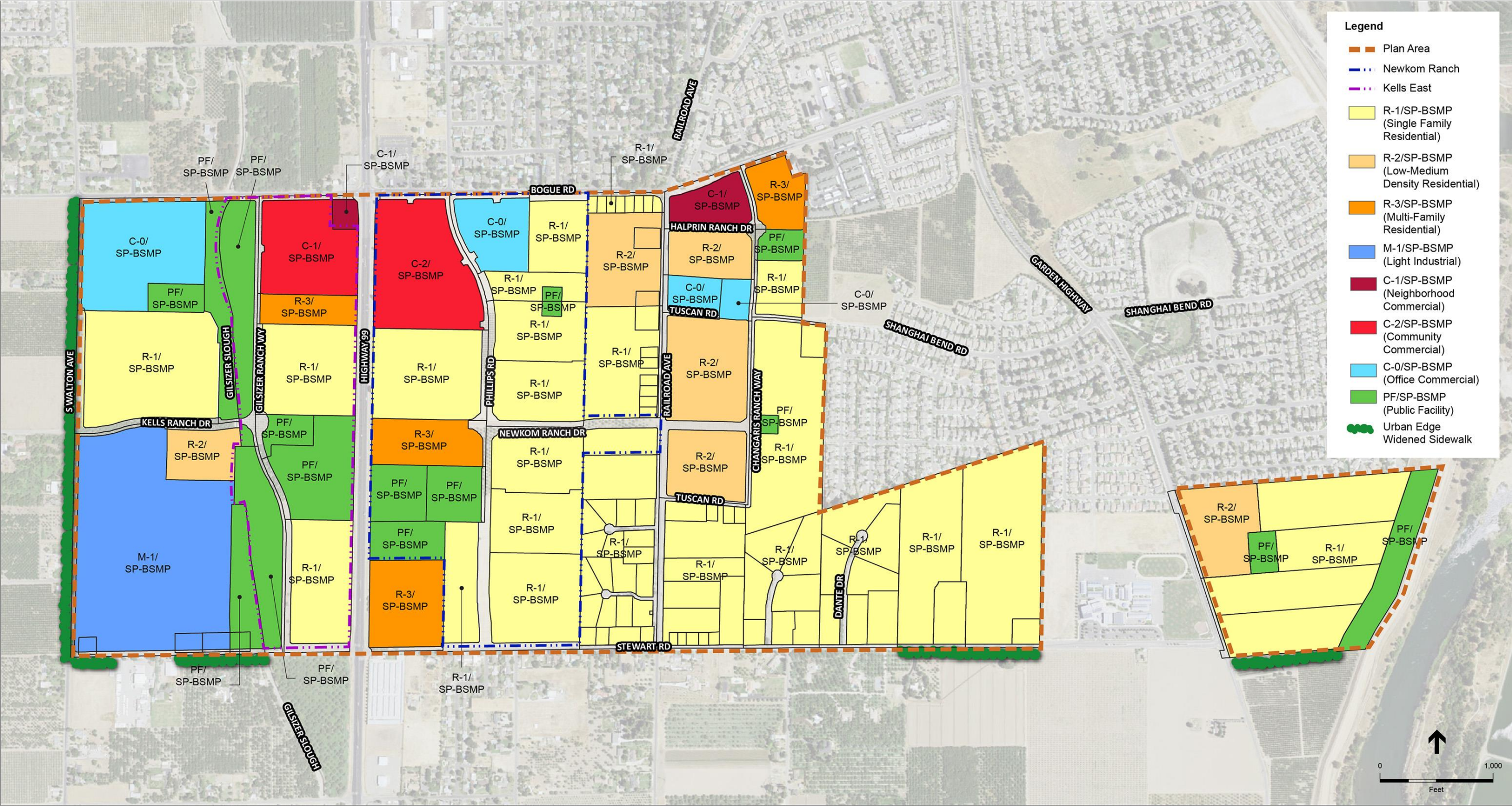


Figure 3-2: Zoning Map

5.2.1 Parks and Open Space

Edits/Revisions

As per Table 5-2 and Table 5-3, the Plan Area achieves the BSMP ~~BMSP~~ 5 acre per 1,000 resident park requirement and provides the required acreage of neighborhood parks. The BSMP does not provide enough on-site community or city park acreage but these requirements will be satisfied via the City's park in-lieu fee pursuant to General Plan policy. In addition, as small lot subdivision maps are developed it is anticipated that various pocket parks, special recreation areas (such as plazas, courtyards) if provided, may be eligible for park and open space credit. These park acreages are eligible for fee credit compensation.

Neighborhood and Pocket Parks

The BSMP includes six neighborhood parks and a variety of pocket parks. The Neighborhood Park category was recognized in the Yuba City General Plan, but following a 2008 update to the Parks, Schools, and Community Facilities Element, this category was removed, but not prohibited. ~~However For the BSMP~~, existing neighborhood park sites will remain in the city park system, and can be included as overall parkland credit. Neighborhood parks must be two acres in size, and may increase in size to accommodate a dual use detention basin. These parks are designed to service residents living within a half mile from the given park, and also cultivate the identity of the community served. Therefore, in the context of the BSMP, neighborhood parks are located close to high density residential areas to capture maximum resident users. Sidewalks and multi-use trails are designed to provide a variety of pedestrian- and bicycle-friendly connections for the surrounding residential community. These parks may be either active or passive, with off-street parking minimized. Final facilities within the neighborhood parks are dependent on the identity and qualities of the surrounding neighborhood. Some of the facilities that could be included in the neighborhood park are children's play structure, basketball courts, multi-use areas with trails, soccer fields, tennis and pickle ball courts, and picnic areas. These parks can also provide stormwater detention facilities.

Pocket parks are open space areas that may be up to three acres in size and located within residential neighborhoods. Pocket parks are intended primarily for passive recreation, such as play areas for small children and seating and picnic areas. The number and location of pocket parks will be determined as part of the small lot subdivision map approval process.

5.4.2 Water, Wastewater, and Drainage

Edits/Revisions

Drainage and Flood Protection

Flood Management

- As the Master Plan develops, developers shall provide an assessment of a project's potential impacts on the local and sub-regional storm drainage systems, so that the City can determine appropriate methods ~~mitigation~~ to ensure that system capacity and peak flow restrictions are not exceeded.

6.5.1 Financing Plan

Edits/Revisions

The BSMP Public Facilities Financing Plan presents a strategy for the financing of backbone infrastructure and public facilities required to serve BSMP, and was adopted concurrent with the adoption of the BSMP. The Financing Plan describes how a variety of major capital improvements needed to serve the BSMP will be funded as it builds out including roadways, wastewater, water, storm drainage, landscaping and neighborhood parks. It also synthesizes the estimated cost and timing of major capital improvements needed to serve new development in the BSMP and documents the funding sources available for those improvements. The Financing Plan will be incorporated into the BSMP, and will be adopted separately.

6.6.5 Amendments to the Master Plan

Edits/Revisions

B. Major Amendments

Major modifications are amendments to exhibits or text that are intended to change the intent and/or development standards or other fundamental provisions of the BSMP. Major amendments require an amendment to the BSMP, and must go through Planning Commission review for recommendations provided to City Council prior to approval. Depending upon the nature of the amendment, a concurrent amendment to the General Plan, Municipal Code, development agreement, or other related City and BSMP documents may be required. Examples of major amendments include, but are not limited to:

- The introduction of a new land use designation not contemplated in the original BSMP;
- Changes to the circulation system or backbone infrastructure which would materially affect a planning concept detailed in the BSMP;
- Any change that would result in a significant and adverse environmental impact.

6.7.1 Effectuation of Entitlements

Edits/Revisions

Prior to or concurrent with final approval of any subsequent development entitlements by the City, a development agreement may ~~shall~~ be approved and executed between the City and subject property owners consenting to the property's participation in the BSMP financing mechanisms, fee updates, land/easement dedications, maintenance and related obligations.

6.7.3 Sphere of Influence Amendment and Annexation

Edits/Revisions

Amendment of the City's SOI and annexation of the BSMP Area will be processed and approved in accordance with Sutter LAFCO Policies and Procedures, along with the expansion of the Gilsizer County Drainage District to include the annexation of land into the District and detachment from County Service Area G. This will include coordination with Sutter LAFCO and Sutter County, updating of the City's Municipal Service Review, preparation of a Plan for Service for the BSMP Area, and other applicable

requirements. The EIR prepared for the BSMP assesses ~~assumes~~ the SOI amendment and subsequent annexation for the BSMP Area in full, and the annexation of land into the Gilsizer County Drainage District, and is intended to serve as the environmental document for such actions.

Appendix A: Development Standards and Guidelines

Edits/Revisions

Administration (Green Callout Box)

Major Modification – The proposed change is inconsistent with the Development Standards and Guidelines. Such modification requires a Master Plan Amendment, and approval by City Council.

Section A-1: Residential Neighborhoods

Edits/Revisions

Low – Medium Density Residential

Table A-2: Low – Medium Density Residential Development Standards

Zoning District	Low-Medium Density Residential Zoning District (R-2/SP-BSMP)	
Density	6.0 – 14.0 dwelling units/gross acre	
Minimum lot size	2,000 s.f. (multifamily allowed and lot size for multifamily will be reviewed during application process)	
Lot configuration	If 2,999 s.f. or below	If 3,000 and above
<i>Interior Lot</i>	2,000 s.f. min	3,000 s.f. min
<i>Corner Lot</i>	2,500 s.f. min	3,500 s.f. min
Lot width		
<i>Interior Lot</i>	40 ft. min	50 ft. min
<i>Corner Lot</i>	45 ft. min	55 ft. min
<i>*Lot width measured at the front property line except for lots on cul-de-sacs where lot width is measured at the front setback</i>		
Lot depth	60 ft. min	75 ft. min
Lot Coverage	N/A	N/A
Building Setbacks		
Front Yard		
<i>Main building</i>	12 ft. min	15 ft. min
<i>Porch/Courtyard</i> <i>(minimum 6 ft. deep by 8 ft. wide)</i>	10 ft. min <i>(A minimum of 60% of all dwelling units shall include)</i>	10 ft. min <i>(A minimum of 60% min. of all dwelling units shall include)</i>
<i>Attached garage</i>	20 ft. min	20 ft. min
<i>Detached garage</i>	20 ft. min	25 ft. min
Side Yard		
<i>Interior</i>	0 ft. (attached)/3 ft. (detached)	0 ft. (attached)/5 ft. (detached)
<i>Corner*</i>	10 ft. min	10 ft. min
<i>*20 ft. minimum if corner side loading garage</i>		
Rear Yard		
<i>Main building</i>	5 ft.	10 ft. min

Zoning District	Low-Medium Density Residential Zoning District (R-2/SP-BSMP)	
Accessory building Alley Loaded garage Detached garage	5 ft. for single-story	5 ft. for single-story
	4 ft. min	4 ft. min
	5 ft. min	5 ft. min
<i>*Front yard is defined as the primary street frontage</i> <i>*Front and street side setbacks measured from back of walk</i> <i>*No interior side yard setbacks required for attached units.</i> <i>*All building setbacks measured from the finished outside building edge (not the studs).</i>		
Distance between building on same lot		
Single-story	10 ft. min	10 ft. min
Two-story	10 ft. min	10 ft. min
<i>*When two building of mixed height are adjacent to each other, the distance for the taller structure applies.</i>		
Building Height		
Main Building	45 ft. max, not to exceed three stories	
Accessory Building	15 ft. max, not to exceed one-story	
<i>*Height exceptions permitted per the Yuba City Zoning Code.</i>		
Parking		
Detached Units	2 spaces per unit (spaces in garage may be tandem or side-by-side)	
Attached Units	Per the Yuba City Zoning Code	

Medium – High Density Residential

Table A-3: Medium – High Density Residential Development Standards

Zoning District	Multi-Family Residential Zoning District (R-3/SP-BSMP)	
Density	12.0 – 36.0 dwelling units/gross acre	
Lot size range	N/A	
Lot configuration	Townhome	Multi-Family Complex
Lot width		
<i>Interior Lot</i>	N/A	N/A
<i>Corner Lot</i>	N/A	N/A
Lot depth	N/A	N/A
Lot Coverage	N/A	N/A
Building Setbacks		
Front Yard		
<i>Main building</i>	10 ft. min	15 ft. min
<i>Porches and Courtyards</i> (minimum 6 ft. deep by 8 ft. wide)	5 ft. min (A minimum of 60% of all dwelling units shall include)	5 ft. min
<i>Garage</i>	20 ft. (if fronting on a public road)	N/A
Side Yard		
<i>Interior</i>	0-3 ft. min	10 ft. min between buildings per story
<i>Corner</i>	10 ft. min	10 ft. min

Rear Yard <i>Main building</i> <i>Accessory building</i> <i>Alley Loaded Garage</i>		
	10 ft. min	10 ft. min
	4 ft. min	4 ft. min
	4 ft. min	4 ft. min
<i>*Front yard is defined as the primary street frontage.</i> <i>*Front and street side setbacks measured from back of walk</i> <i>*All multi-family units to be alley/rear loaded.</i> <i>*No interior side yard setbacks for attached units.</i> <i>*All building setbacks measured from the finished outside building edge (not the studs).</i>		
Distance between building on same lot		
	0 ft. min	10 ft. min per story
Building Height		
	48 ft. max, not to exceed four stories	
<i>*Height exceptions permitted per the Yuba City Zoning Code.</i>		
Common Open Space for Multi-family Units		
	250 s.f. per unit (does not include balcony, porch)	
Parking		
Parking requirements	Per the Yuba City Zoning Code	

Residential Design Guidelines

These design guidelines are in addition to the guidelines set forth in the Citywide Design Guidelines (The City of Yuba City Design Guidelines) addressing single-family and multi-family residential developments, if and when adopted by the City.

The Site and Context Guidelines

Edge Treatments

Apply the buffer guidelines from the Yuba City Urban-Rural Edge report (Appendix B) as reasonably determined appropriate by the City. While this report did not anticipate expansion of the City's boundary to incorporate the BSMP Area, the guidelines establish roadway buffer, access and trail, landscape planting and site furnishing treatments that should be applied to the buffers as shown in Figure 4-5 in Chapter 4, Mobility.

Appendix B: Yuba City Urban-Rural Edge report

Edits/Revisions

This document will be included as Appendix B to the Master Plan.