

PLANNING COMMISSION

Agenda Item No.: G.2
Date: Nov. 12, 2013

TO: Planning Commission

FROM: Planning Staff

SUBJECT: Proposed Development Agreement for Tract 894
(PHG 13-0027)

STAFF RECOMMENDATION:

Recommend Approval of the proposed Development Agreement

PROJECT DESCRIPTION:

A proposed Development Agreement with a five-year term to authorize construction of the previously approved 11-lot, Tract 894 within the North Broadway Deficiency Area. The terms of the agreement would allow the developer to proceed with construction of 11 residences and a cul-de-sac street in return for upgrading existing water infrastructure in the area to include a new 24" water line in Conway Drive from Lehner Avenue to Stanley Avenue. The developer would also be obligated to pay additional deficiency fees towards future construction of regional street and drainage improvements.

LOCATION:

The project site is a 3.15-acre parcel located on the northern side of Lehner Avenue, between Conway Drive and Ash Street, addressed as 1026 Lehner Avenue.

ENVIRONMENTAL REVIEW:

A Mitigated Negative Declaration (ER 2004-31) was issued for the Tract 894 project and a related Development Agreement on June 2, 2006. Pursuant to CEQA Section 15162, no additional environmental review need be prepared for the project since there are no substantial changes in the project that require major revisions to the previous environmental document due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

BACKGROUND:

On August 16, 2006, the City Council approved an 11-lot residential subdivision on 3.15 acres (TR 894) in conjunction with a Development Agreement (2004-57-DA). At the time the project was approved, it was noted that the site was in the North Broadway Deficiency Area and that the Development Agreement was required to address known infrastructure deficiencies per Section 33-1431 of the Escondido Zoning Code. The Development Agreement was approved for a term of five-years and subsequently expired on September 22, 2011. The Tentative Map benefitted from three separate two-year extensions granted by the California State Legislature and now expires on September 22, 2017. The proposed Development Agreement would allow the project to proceed with recording the Final Map and the start of construction.

DISCUSSION:

Proposed Development Agreement Terms

The North Broadway Deficiency Area allows the timely processing and development of residential projects in areas where known infrastructure deficiencies exist when accompanied by a Development Agreement. The Development Agreement facilitates the construction of public infrastructure necessary to upgrade existing deficiencies and/or includes a proportionate share payment towards neighborhood infrastructure. The previously approved Development Agreement (now expired) for Tract 894 obligated the developer to pay \$12,200 per lot to finance street and drainage improvements in the North Broadway area, and pay \$22,246 per lot to finance needed water infrastructure improvements. The City was authorized to withhold residential occupancy until water infrastructure improvements to the City's channel crossing and bridge at Ash Street had been completed, or September 1, 2008, whichever occurred first. In return, the agreement obligated the City to freeze all development fees to 2006 levels through the term of the agreement, guarantee utility connection rights, and allow the developer to grade the site and build up to two model homes prior to approval of a final map.

Several critical infrastructure upgrades have been completed since the time the last Development Agreement was approved for the project. These include the channelization of Reidy Creek at North Broadway, and construction of a 36" water line in El Norte Parkway that enhanced water service in the northern part of the city. The Utilities Department has recently indicated that the water service issues related to the upgrade at the Ash Street bridge over Escondido Creek been alleviated and that water upgrades closer to the project site are now needed.

The proposed Development Agreement would be in effect for five years and would extend the life of the Tentative Map for that same period. The proposed terms in the agreement list specific obligations that are the responsibility of both the developer ("Owner") and the City. The key terms include the following:

1. Owner required to pay current fee rates in effect at the time fees are incurred.
2. Owner agrees to pay City \$17,000 per approved residential lot ("Deficiency Fee") to finance traffic and drainage improvements in the vicinity of the project.
3. City shall allow Owner to perform on-site project grading and off-site road and water line construction prior to approval of a final map, subject to approval of customary plans and bonds.
4. City guarantees sewer connection rights for a period of one year.
5. Owner agrees to construct approximately 750 lineal feet of 24" water line in Conway Drive from Lehner Avenue to Stanley Avenue. A public benefit (valued at approx. \$64,000) occurs from the upgrade to a 24" pipe over the 12" pipe size required for the subdivision.
6. City agrees to provide water connection fee credits to Owner up to the value of the Conway Drive water line public benefit (approx. \$64,311).
7. Owner to construct a pedestrian path on one side of Ash Street from Vista Avenue to Hubbard Avenue.

The \$17,000 per unit Deficiency Fee has recently been evaluated and increased from the \$12,000 fee that was included in the 2006 Development Agreement for the project. The former Water Deficiency Fee (\$22,246/lot) has been eliminated in favor constructing water line improvements. The new Deficiency Fee was established based on a recent cost estimate for the highest priority traffic and drainage improvements in the area that are needed to resolve known deficiencies. Priority drainage needs include construction of the environmental channel for Reidy Creek from Broadway to Centre City Parkway where existing homes lie within the floodway, and construction of a box culvert at Centre City Parkway. Priority street projects needed to resolve vehicular and pedestrian related infrastructure deficiencies include the following segments and intersections:

Segments (Construction to Classification Standards)

- Ash Street Sheridan to Rincon Ave. Local Collector

- | | | |
|------------------|---------------------------|-----------------|
| • Conway Drive | Vista Ave. to Rincon Ave. | Local Collector |
| • Vista Avenue | Conway to Broadway | Collector |
| • Stanley Avenue | Ash Street to Broadway | Local Collector |

Intersections (New Traffic Signals)

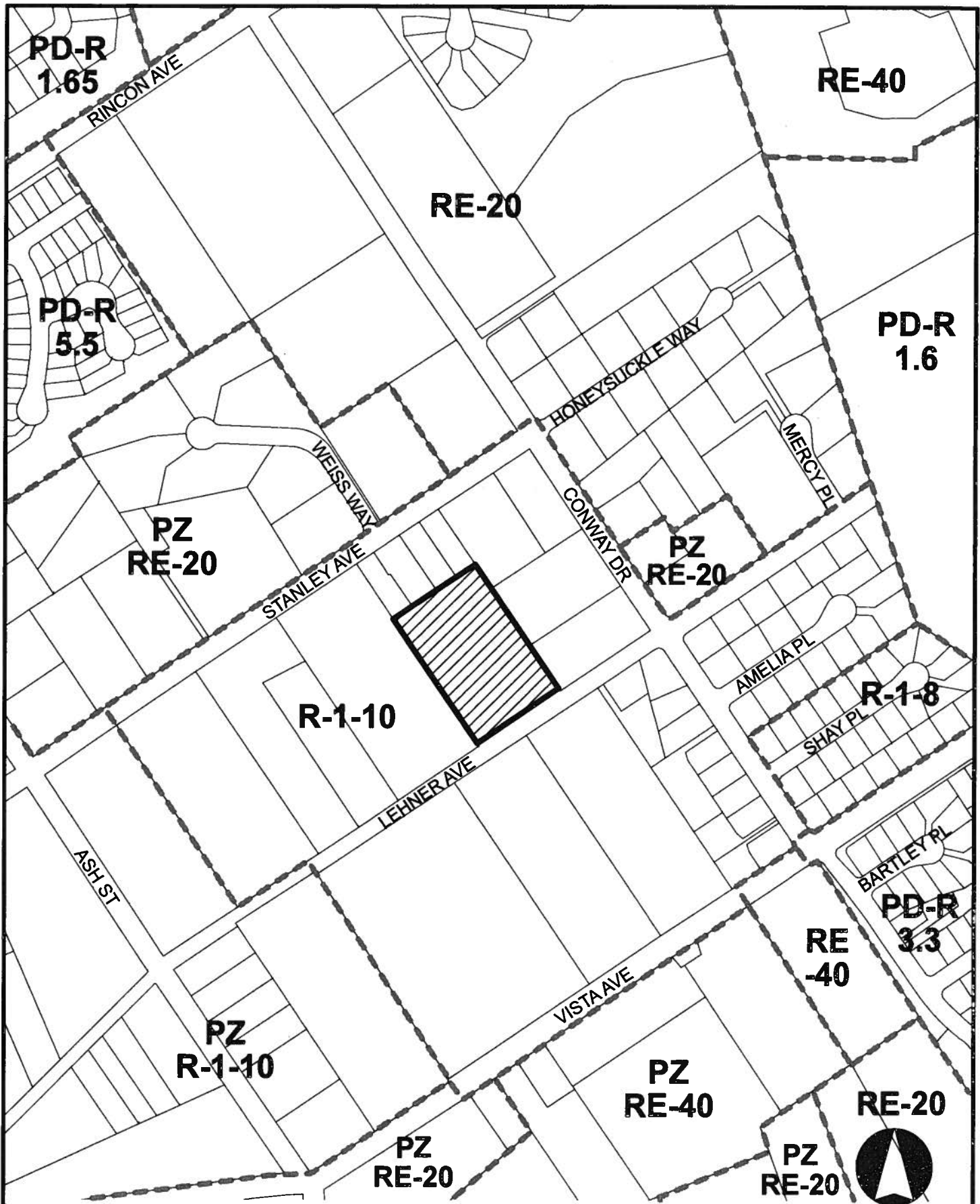
- Rincon Avenue and Conway Drive
- Ash Street and Vista Avenue
- Ash Street and Sheridan Avenue

The total cost for the improvements identified above as high priority street and drainage facilities has been estimated to be approximately \$11.3 million dollars. Based on a General Plan residential yield calculation that indicates approximately 668 potential dwelling units could still be constructed within the North Broadway Deficiency Area, a per unit cost of \$17,000 was established as the Deficiency Fee. This fee will be required in each residential Development Agreement in the area to resolve traffic and drainage infrastructure issues. Staff feels the Deficiency Fee and other terms proposed in the Development Agreement are reasonable and prudent since the agreement will allow the construction of the residential development and water line improvements in a coordinated fashion that will result in reduced costs while maximizing public and private resources to construct necessary public infrastructure at the earliest practicable time.

Respectfully Submitted,



Bill Martin
Principal Planner

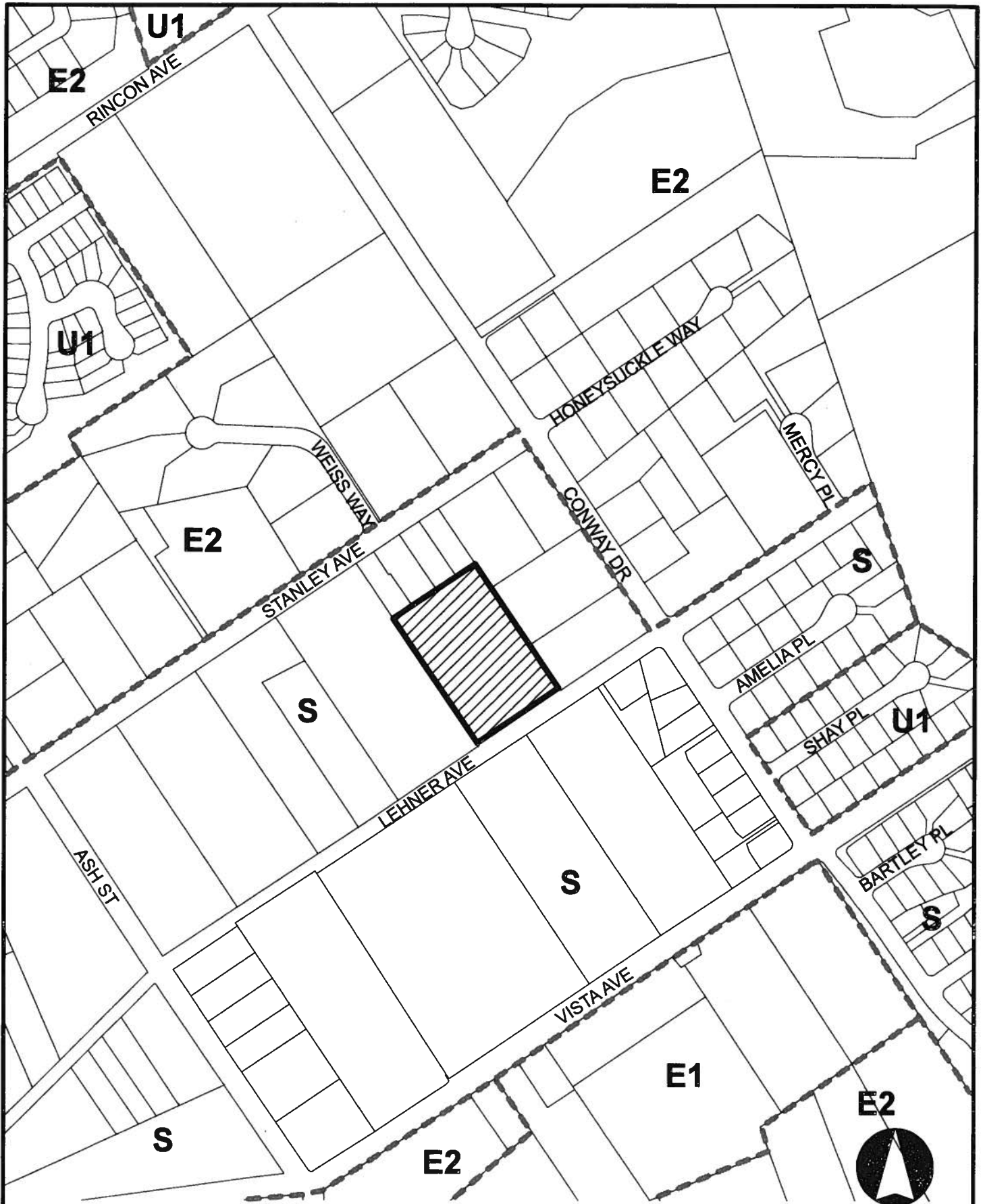


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PROPOSED PROJECT
PHG 13-0027



LOCATION/ZONING



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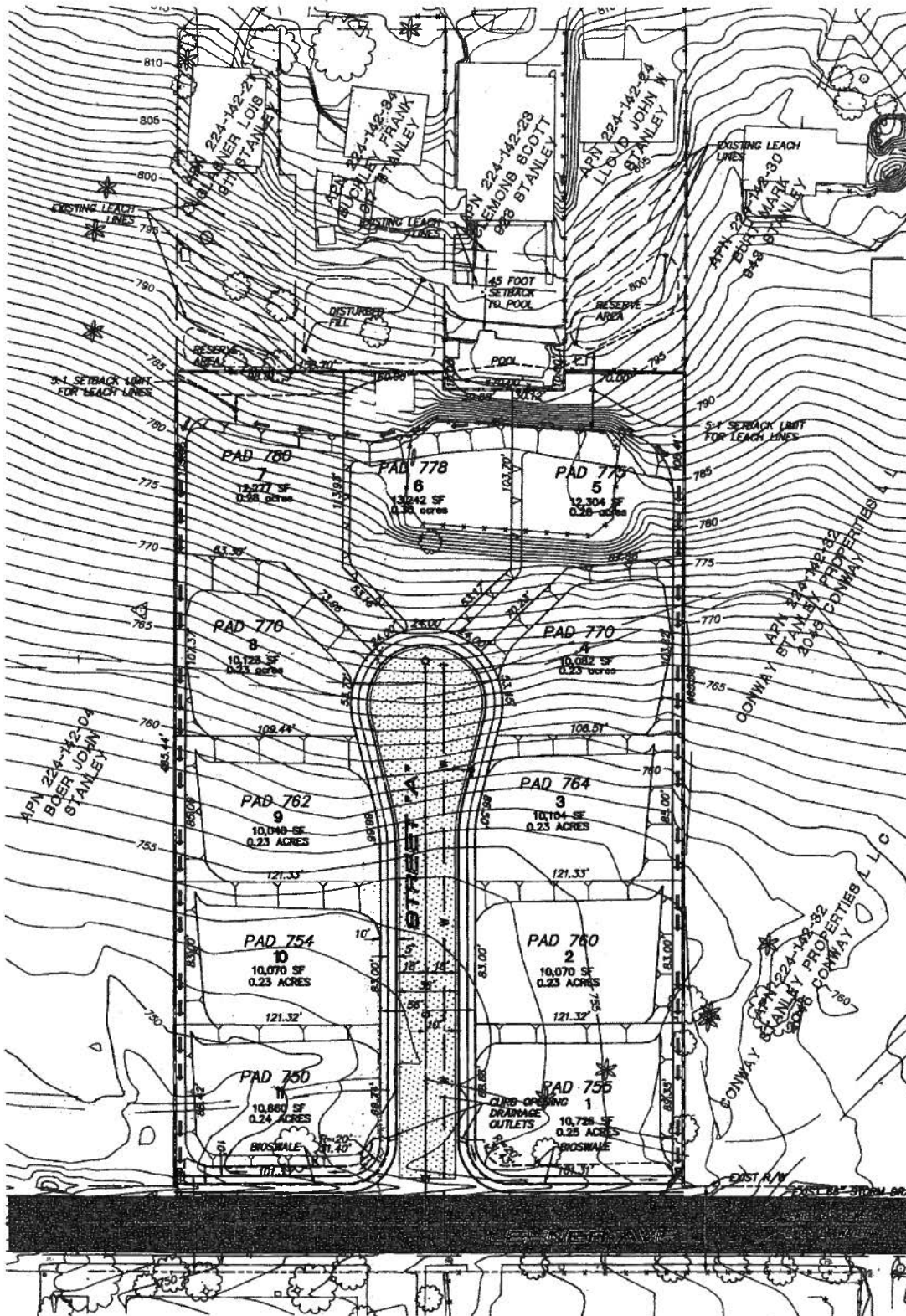
PROPOSED PROJECT PHG 13-0027

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GENERAL PLAN

TR 894 APPROVED TENTATIVE MAP



APN 224-142-08
RINCON ELEMENTARY SCHOOL

GRAPHIC SCALE



**PROPOSED PROJECT
PHG 13-0027**



SITE PLAN

SUPPLEMENT TO STAFF REPORT/DETAILS OF REQUEST

A. SUPPLEMENTAL DETAILS OF REQUEST

1. Property Size: 3.15 acres
2. Number of Lots: 11
3. General Plan Designation: Suburban (up to 3.3 units per acre)
- 3, Residential Density: 3.44 dwelling units per acre (Approved by City Council in conformance with Subdivision Ordinance Section 32.202.03.
4. Lot Size: Minimum of 10,000 SF required. Project lot sizes range from 10,040 SF to 13,242 SF.
5. Lot Width: Minimum of 80 feet required.
6. Required Setbacks:
 - Front: 15 feet (20 feet for front-facing garage)
 - Side: 5 feet one side; 10 feet on the other (10 feet for corner lots).
 - Rear: 20 feet

**FINDINGS OF FACT
PHG 13-0027
EXHIBIT "A"**

Development Agreement

1. The proposed Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan since there are no changes proposed to the General Plan land use designations or policies that affect development of the site, a Citywide Facilities Plan has been adopted to address infrastructure deficiencies on a citywide basis and the agreement has a provision for a community benefit that could not otherwise be required of the developer.
2. The proposed Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the property is located since the General Plan land use designation for the site is Suburban, which allows the number of dwelling units approved for the development in conformance with Subdivision Ordinance Section 32.202.03.
3. The proposed Development Agreement is in conformity with the public convenience and general welfare since the proposed agreement provides for construction of a water line upgrade in Conway Drive and payment of a fee needed to construct future improvements that resolve traffic and drainage infrastructure issues in the North Broadway area.
4. The proposed Development Agreement will not be detrimental to the health, safety and general welfare of the community since the agreement provides for the construction of a 24" water line in Conway Drive from Lehner Avenue to Stanley Avenue and the payment of a deficiency fee need to construct street and drainage improvement in the vicinity of the project site.
5. The proposed Development Agreement will not adversely affect the orderly development of property or the preservation of property values since the project will be developed in conformance with the existing General Plan designation on the property.
6. The proposed Development Agreement is consistent with Government Code Section 65864, which states that the lack of certainty in the approval of development projects can result in a waste of resources and escalated housing costs while discouraging comprehensive planning since the proposed agreement provides for a five-year term and provides certainty as to the payment and construction obligations for associated public improvements.

RECORDING REQUESTED BY:

CITY CLERK, CITY OF ESCONDIDO

WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF ESCONDIDO
201 N. BROADWAY
ESCONDIDO, CA 92025

THIS SPACE FOR RECORDER'S USE ONLY

APN: 224-142-35-00

Recording Fees Exempt Per Government Code Section 27383

**DEVELOPMENT AGREEMENT
for Tract 894
(Buckmaster)**

between

CITY OF ESCONDIDO

and

**MERIT GROUP, INC.,
A California corporation**

_____, 2013

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into by and between the CITY OF ESCONDIDO, a municipal corporation ("City"), and MERIT GROUP, INC., a California corporation ("Owner")(collectively, "the Parties").

ARTICLE I

Recitals

The Agreement is entered into on the basis of the following facts, understanding and intentions of the Parties:

1. **Code Authorization.** Government Code Sections 65864 through 65869.5, Article 58 of the City's Zoning Code (the "Development Agreement Legislation") and Article 68 of the City's Zoning Code ("Growth Management Ordinance") authorize the City to enter into binding development agreements with persons or entities having legal or equitable interests in real property for the purpose of establishing certainty in the development process for both the City and the property owner, and to enable specific terms regarding property development, to be negotiated and agreed upon.
2. **Interest of Owner.** Owner is the legal and/or equitable owner of certain real property totaling approximately 3.19 acres, with the current address of 1026 Lehner Avenue, located in the County of San Diego, State of California (the "Property"), as further described in Exhibit A , and more specifically within the North Broadway Region of Influence identified in the City's Growth Management Ordinance. Owner intends to subdivide the Property into eleven (11) lots for single-family residential units and to construct such other improvements as are required by the conditions of approval of the Entitlements, Future Entitlements and the Agreement (collectively, the "Project").

3. **Sale of Property.** Owner has entered into an agreement to sell the Property to Pacific Land Investors, LLC, ("PLI") and by letter dated July 20, 2013 on file with the City, has authorized Mark Ferraro of PLI to act on its behalf with respect to this Agreement.

4. **Intent of Parties.** By the Agreement, the City and Owner intend to accomplish the following:

a. Eliminate uncertainty in the planning and development of the Project by assuring Owner that it may develop the Property, in accordance with Existing Laws, subject to the terms and conditions contained in the Agreement;

b. Assure the orderly installation of necessary improvements and the provision for public services appropriate for the development of the Project; and

c. Enable the City to obtain substantial public benefits by virtue of the Agreement.

5. **Execution.** The execution of the Agreement by the City and Owner shall constitute conclusive evidence that duly noticed public hearings before the Planning Commission and the City Council required by the Development Agreement Legislation have been held, and that the City Council has introduced (first reading) and adopted (second reading) an Ordinance approving the Agreement and containing the findings required by the Development Agreement Legislation.

6. **Effective Date.** The effective date ("Effective Date") of the Agreement shall be January 10, 2014, which is the date 30 days after the adoption of the development agreement ordinance.

7. **Entitlements.** The City has also approved or certified the following entitlements, attached hereto as Exhibit B, which are necessary to implement the Project:

a. Tentative Subdivision Map, No. 894 (the "Tentative Map"), by City Council Resolution No. 2006-156 on August 16, 2006, including grading exemptions. Owner and the City understand that the Tentative Map has been modified to comply with the stormwater

regulations as stated in Article II, Section 3. Owner and the City agree that the map, as modified, is in substantial conformance with the map as approved by Resolution 2006-156.

b. Mitigated Negative Declaration (Tract 894) ER 2004-31, certified by City Council Resolution No. 2006-156 on August 16, 2006.

8. **Amendment.** The Tentative Map is set to expire on September 22, 2015 pursuant to Article IV, Section 10 of the Development Agreement as extended by California Government Code Sections 66452.22 and 66452.23. The Parties desire to extend the Term of the Tentative Map to align with the term of this Agreement by the terms and conditions herein.

NOW THEREFORE, in consideration of the Recitals and the mutual covenants conditions set forth herein, the Parties agree as follows:

ARTICLE II

Definitions

1. **"Entitlements"** refers to all approvals and permits necessary or incidental to the development of the Project or any portion thereof, whether discretionary or ministerial, including but not limited to, those listed in Article I, Section 6 above, final tract map approvals, whether standard or vesting, project plans, grading permits, building permits, and the Agreement.

2. **"Exaction"** refers to any fee, tax, requirement, condition, dedication, restriction, or limitation imposed by the City upon the development of the Property at any time in accordance with the Existing Laws.

3. **"Existing Laws"** refers to the ordinances, resolutions, codes, rules, regulations, stormwater regulations and official policies of the City governing the development of the Property, including, but not limited to the permitted uses of the Property, the density or intensity of use, the design, improvement and construction standards and specifications for the Project,

including the maximum height and size of proposed buildings, and the provisions for reservation and dedication of land for public purposes, in effect on the Effective Date of this Agreement.

4. **"Future Exaction"** refers to Exactions imposed after the Effective Date, whether by ordinance, initiative, resolution, rule, regulation, policy, order or otherwise.

5. **"Future Laws"** refers to all ordinances, resolutions, codes, rules, regulations, and official policies implemented by the City after the Effective Date, whether by ordinance, initiative, resolution, rule, regulation, policy, order or otherwise. "Future Laws" includes changes to the Existing Laws.

6. **"Future Entitlements"** refers to all Entitlements approved or adopted by the City after the Effective Date.

7. **"General Fees"** refers to all general development fees which the City may levy pursuant to the Government Code Sections 66000 et seq. ("the Mitigation Fee Act"), including, but not limited to, application fees, processing fees, utility connection fees, inspection fees, capital facilities fees, development impact fees, traffic impact fees, park fees and such other similar fees as may be enacted from time to time and generally applied throughout the City.

8. **"General Plan"** refers to the City's General Plan in effect on the Effective Date.

9. **"North Broadway Deficiency Area"** refers to the region specified in the City's Growth Management Ordinance No. 94-16, and to surrounding unincorporated areas within the City's Sphere of Influence, of which the Property is a part.

10. **"Project"** shall mean and refer to all improvements described in the Entitlements, Future Entitlements, and the Agreement.

11. **"Public Benefits"** shall refer to the consideration given by Owner to the City, as described in Exhibit C attached hereto, in return for the City's good faith performance of all applicable terms and conditions in the Agreement.

ARTICLE III

General Provisions

1. **Term of Agreement.** The term of the Agreement (the "Term") shall commence on the Effective Date of this Agreement and shall continue until the fifth (5th) anniversary thereof, January 10, 2019, unless terminated, modified, or extended as permitted by the Agreement.

Following the expiration of the Term, the Agreement shall be deemed terminated and of no further force or effect; provided, however, such termination shall not affect any right or duty arising from the City approvals, including, without limitation, the Entitlements, the Future Entitlements and any reimbursement agreement that may be entered into pursuant to the terms of the Existing Laws or the Agreement.

The Agreement shall terminate with respect to any lot and such lot shall be released and no longer is subject to the Agreement, without the execution or recordation of any further document, when a certificate of occupancy has been issued for the building(s) on the lot.

2. **Assignment.** The rights and obligations of Owner under the Agreement may be assigned by Owner as part of an assignment of all or a portion of the Property. Except for Owner's assignment of the Agreement to PLI, which the City approves by execution of this Agreement, no assignment shall be effective unless (1) such assignment is in writing and expressly provides that the assignment shall be subject to the Agreement; (2) the Assignee assumes all of Owner's rights and obligations with respect to the Property, or portion thereof, assigned; and, (3) the City has determined that the assignment will not affect the timely completion or fulfillment of any

requirements in the Entitlements, the Future Entitlements or the Agreement relating to the Public Benefits. Owner shall provide Thirty (30) days advance written notice to the City of any assignment. In determining whether an assignment will affect the timely completion or fulfillment of any requirements relating to the Public Benefits, the City agrees (a) not to unreasonably withhold its determination that the assignment will not affect the timely completion or fulfillment of requirements relating to the Public Benefits and (b) to approve any assignment where it can reasonably be demonstrated that the proposed assignee has the financial capability to complete in a timely fashion and fulfill any uncompleted requirements relating to the Public Benefits.

During the Term, any assignee shall have all rights, benefits, and obligations of Owner under the Agreement with respect to the portion of the Property assigned. Following an assignment, Owner shall be released from its obligations with respect to the Property which has been assigned. Upon any transfer of any portion of the Property and the express assumption of Owner's obligations under the Agreement by such transferee, the City agrees to look solely to the transferee for compliance by such transferee with the provisions of the Agreement as such provisions relate to the portion of the Property acquired by such transferee. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way Owner's rights hereunder with respect to any portion of the Property not owned by such transferee. The transferee shall be responsible for the reporting and annual review requirements relating to the portion of the Property owned by such transferee, and any amendment to the Agreement between the City and a transferee shall only affect the portion of the Property owned by such transferee.

3. **Amendment of Agreement.** The Agreement may be amended by the mutual consent of the Parties in the manner provided by the Development Agreement Legislation. The Agreement shall include any amendment properly approved and executed. Minor modifications in the manner of performance, including, but not limited to changes which relate to the form or timing of payment of Public Benefits or the design of the Project shall not constitute an Amendment to the Agreement and may be accomplished through an “Operating Memorandum” subject to Article IV, Section 10 of the Agreement.

4. **Enforcement.** Unless amended or terminated as provided herein, the Agreement is enforceable by either Party or its successors and assigns, notwithstanding any Future Laws, which alter or amend the Existing Laws.

5. **Hold Harmless.**

a. Owner agrees to indemnify, hold harmless, and provide and pay all costs for a defense for the City in any legal action filed in a court of competent jurisdiction by a third party challenging the validity of the Agreement. The provisions of this Section shall not apply to the extent such damage, liability, or claim is proximately caused by the intentional or negligent act of the City, its officers, agents, employees, or representatives.

b. Owner shall further indemnify, defend and hold harmless the City and its officers, employees and agents from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, administrative proceedings, damages, fines, penalties, judgments, orders, liens, levies, costs and expenses of whatever nature, including reasonable attorneys’ fees and disbursements, arising out of any violation, or claim of violation of the San Diego Municipal Storm Water Permit (Order No. 2001-01) of the California Regional Water Quality Control Board Region 9, San Diego, as amended or extended, which the City might suffer, incur, or

become subject by reason of or occurring as a result of or allegedly caused by the construction of the Project or the Improvements.

6. **Third Party Challenges.** In the event the validity, applicability, or implementation of the Agreement is challenged by means of legal proceedings by any party other than the City and Owner, it shall be the City's option, at its sole and absolute discretion, whether to undertake the defense of such challenge. If the City determines not to defend such challenge, it shall be the option of Owner, at its sole and absolute discretion, to defend the validity, applicability, or implementation of the Agreement in the proceeding at Owner's expense. If the City opts to defend a challenge against the validity, applicability, or implementation of the Agreement, Owner shall not be responsible for the defense of any of the City's actions brought in such a challenge or for the expense of defending such City actions. The City and Owner agree to cooperate in the defense of any such challenges.

7. **Notices.** All notices or communication between the City and Owner pursuant to the Agreement shall be in writing and shall be given by personal delivery (including commercial express delivery services providing acknowledgments of receipt), registered, certified, express mail, facsimile or telecopy, or telegram to the addresses set forth below. Receipt shall be deemed complete as follows:

- a. For personal delivery, upon actual receipt;
- b. For registered, certified, or express mail, upon the delivery date or attempted delivery date as shown on the return receipt; and
- c. For facsimile, upon transmission of the facsimile or, if transmitted after business hours, then the next business day.

Notices shall be addressed as follows:

To the City: City Clerk
City of Escondido
201 N. Broadway
Escondido, CA 92025
FAX (760) 741-7541

With Copy to: Jeffrey R. Epp, Esq.
City Attorney
City of Escondido
201 N. Broadway
Escondido, CA 92025
FAX (760) 741-7541

To the Owner: Pacific Land Investors, LLC
Attn: Mark Ferraro
101 Pacifica, Ste. 200
Irvine, CA 92618
FAX 949-789-0006

With copy to: David W. Ferguson, Esq.
Lounsbery Ferguson Altona & Peak, LLP
960 Canterbury Place, Suite 300
Escondido, CA 92025
FAX (760) 743-9926

The addresses to which notices shall be sent may be changed by giving Ten (10) days written notice of change of address in the manner set forth above.

8. **Conflict of State or Federal Laws.** If state or federal laws or regulations enacted after the Effective Date prevent compliance with any provision of the Agreement or require changes in the Entitlements or any Future Entitlements, those laws or regulations shall be controlling and the Parties shall make a good faith, reasonable attempt to modify the Agreement to comply both with the intent of the Agreement and with the new laws or regulations.

The City shall timely assist Owner in securing any permits, including permits from other public agencies, which may be required as a result of the modifications, suspensions, or alternate course of action.

ARTICLE IV

Development of the Property

1. **Applicable Rules, Regulations, and Policies.** Owner shall have the vested right, to the fullest extent allowed under the Development Agreement Legislation, to develop the Property in accordance with the Entitlements, Future Entitlements and the Existing Laws. During the Term, the Entitlements, Future Entitlements, Existing Laws and the Agreement shall control the overall design, development and construction of the Project. Notwithstanding the foregoing, nothing in the Agreement shall preclude the City from applying changes occurring from time to time in the uniform codes published in Title 24 of the California Code of Regulations and adopted by the City of Escondido, including local amendments, in effect when the building permits are issued. In the event of any inconsistency between the Existing Laws and the Agreement, the provisions of the Agreement shall control.

2. **Future Laws.** Future Laws shall not apply to the Project except as expressly provided in the Agreement. Owner may give the City written notice of its election to have any Future Law applied to the Property, in which case such Future Law shall be deemed to be an Existing Law.

3. **Future Discretionary Reviews.** Except as set forth in the Agreement, the City shall retain its discretionary rights in reviewing applications for Future Entitlements. Owner's applications for Future Entitlements and the City's review thereof, must comply with the Existing Laws and with the terms and conditions of the Agreement. Upon granting any Future Entitlement, such Future Entitlement shall become part of the Existing Laws. The City shall not

impose any conditions upon any Existing Entitlements that are more restrictive than or inconsistent with the terms of this Agreement or the Existing Laws, except as expressly required (as opposed to permitted) by state or federal law. The City may conduct, in accordance with CEQA and the Existing Laws, an environmental review for Future Entitlements. The City may impose, if required by CEQA, additional mitigation measures to mitigate significant adverse environmental effects that were not previously considered, or were found to be infeasible, to mitigate at the time of approval of this Agreement.

4. **Permitted Uses and Density.** The Agreement shall vest the right to develop the Property to the fullest extent allowed under the Development Agreement Legislation with respect to the permitted uses of land, density and intensity of uses, and timing and phasing of development as described in the Entitlements and Future Entitlements. The permitted uses, density, and intensity of use of the Project, the maximum height and size of proposed buildings and provisions for reservation or dedication of land for public purposes, shall substantially conform to those specified in the Entitlement and Future Entitlement conditions of approval, Existing Laws and the Agreement. All other aspects of the Project that are not specified in the Entitlement or Future Entitlement conditions of approval shall be determined by the Existing Laws, except as expressly provided herein.

To the extent the City retains discretion in the Future Entitlements concerning future permitted land uses, density, and intensity of use(s), the City agrees, absent conditions that the City determines are dangerous to the health or safety of the residents of the City, not to exercise that discretion in such a way as to reduce the allowed number of residential units, alter the timing of development or modify the height and design features of the Project as described in the Entitlements, Future Entitlements and the Agreement.

5. **Application of Future Laws.** Subject to Article V of the Agreement, Future Laws may be applied to the Project if they are not in conflict with the Existing Laws and will not prevent, hinder, delay, or adversely economically impact the Project.

6. **Permitted Fees.** Except as otherwise provided in the Agreement, and specifically excluding fees set by entities not controlled by the City that are collected by the City, the City shall only charge and impose those General Fees and Exactions described as “Processing Fees,” “Permit/Inspection Fees,” “Connection Fees,” and “Development Fees” in the amounts and of the type which are in effect at the time they are incurred by Owner or any successor-in-interest as described in the Escondido Fee Guide For Development Projects. The Project shall be subject to City-wide fees only and nothing in this Agreement shall impose on the Project any additional City special or district fees or taxes that do not currently exist.

Notwithstanding the above, in return for Owner’s construction of Public Benefits in the North Broadway Deficiency Area as described in Exhibit C, the City will waive SIXTY-FOUR THOUSAND, THREE HUNDRED AND ELEVEN DOLLARS and FIFTY CENTS (\$64,311.50) of the total water connection fees.

7. **Required Financial Contribution to City Capital Improvement Projects.** Prior to the City’s grant of the first building permit for the Project, Owner agrees to pay the City SEVENTEEN THOUSAND DOLLARS (\$17,000.00) per approved residential lot (“Deficiency Fee”), which funds the City shall use to finance certain roadway and drainage improvements in the vicinity of the Project.

8. **Time for Construction and Completion of the Project.** Owner cannot predict when or the rate or the order in which the Property or the parcels will be developed, if at all. Such decisions depend upon numerous factors that are not within the control of the Owner, such as

market orientation and demand, interest rates, absorption, completion, and other similar factors. Therefore, Owner or its assignees shall have the right to develop the Property in phases, in such order, at such rate, and at such times as Owner or its assignees deems appropriate in Owner's or its assignees' business judgment, subject only to the provisions of the Agreement. Owner or its assignees shall be entitled to apply for and receive approval of permits, building permits, and other Entitlements and Future Entitlements for use at any time and for any or all portions or phases of the Project, provided that application is made in a manner consistent with the Agreement.

Owner shall be allowed to perform onsite Project grading and offsite road construction and water line installation prior to approval of a Final Map. The City may require, and will process, all customary plans and agreements generally applicable to developers in the City for similar works of onsite or offsite improvements. Once Owner has obtained approval of the Final Map, it may commence construction of the single-family residences.

9. **Moratorium.** No City-imposed moratorium or other limitation (whether relating to the rate, timing or sequencing of the development or construction of all or any part of the Property, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of the City, the electorate, or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative, or final), building permits, occupancy certificates or other entitlements to use or service (including, without limitation, water and sewer) approved, issued or granted within the City, or portions of the City, shall apply to the Property to the extent such moratorium or other limitation is in conflict with the Agreement; provided, however, the provisions of this Section shall not affect the City's compliance with

moratoria or other limitations mandated by other governmental agencies or court-imposed moratoria or other limitations.

10. **Operating Memoranda.** The Parties acknowledge that the provisions of the Agreement require cooperation between the City and Owner, and that the refinements and further development of the Project hereunder may demonstrate that changes are appropriate with respect to the details of performance of the Parties hereunder. The Parties desire, therefore, to retain a certain degree of flexibility with respect to those items covered in general terms under the Agreement. If and when, from time to time during the Term, the Parties find that such changes or adjustments are necessary or appropriate, they shall effectuate such changes or adjustments through Operating Memoranda approved by the Parties, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further changed and amended from time to time as necessary with further approval by the City and Owner. No such Operating Memoranda shall require prior notice or hearing, or constitute an amendment to the Agreement; and in the case of the City, such Operating Memoranda may be acted upon by the City Manager, Director of Community Development or by their designee. Failure of the Parties to enter into any such Operating Memoranda shall not affect or abrogate any of the rights, duties or obligations of the Parties hereunder or the provisions of the Agreement. An Operating Memoranda may be recorded as an Addendum to the Agreement.

11. **Term of Map(s) and Other Project Approvals.** Pursuant to California Government Code Section 66452.6(a), the term of the subdivision map that is processed on all or any portion of the Property and the term of each of the Entitlements and Future Entitlements shall be extended for a period of time through the Term of the Agreement as specified in Article III Section 1.

12. **Infrastructure Capacity.** Subject to Owner's proportionate contribution to infrastructure and the Public Benefits provided by Owner, in accordance with the requirements of the Entitlements and Future Entitlements, the City hereby acknowledges that it will have sufficient capacity in its infrastructure services and utility systems, including, without limitation, traffic circulation, flood control, sewer collection, sewer treatment, sanitation service and, except for reasons beyond the City's control, water supply, treatment, distribution and service, to accommodate the Project. To the extent that the City renders such services or provides such utilities, the City hereby agrees that it will serve the Project and that there shall be no restriction on connections or service for the Project except for reasons beyond the City's control. Notwithstanding the foregoing, the City acknowledges that sufficient capacity for sewer collection, sewer treatment and sanitation service for the Project exists as of the Effective Date. Owner acknowledges that the City cannot guarantee sufficient capacity for sewer collection, sewer treatment and sanitation service during the Term of this Agreement. The City shall guarantee sufficient capacity for sewer collection, sewer treatment and sanitation service for the Project for one (1) year from the Effective Date.

13. **Termination or Modification.** Notwithstanding the provisions of Section 33-1149 of the City's Zoning Code, the City's right to terminate or modify the Agreement may be exercised pursuant to the terms of Section 33-1149 after a public hearing only if the City determines that the failure of the City to terminate or modify the Agreement would place the residents of the City in an immediate condition dangerous to their health or safety. Upon approval of the Agreement by the Escondido City Council, Owner shall have 45 days to sign the Agreement or the Agreement shall automatically expire.

14. **Easements.** Easements dedicated for pedestrian use shall be permitted to include easements for underground drainage, water, sewer, gas, electricity, telephone, cable and other utilities and facilities so long as they do not unreasonably interfere with pedestrian use.

15. **Conditions of Approval.** Owner agrees to construct the following roadway improvements:

<u>STREET</u>	IMPROVEMENT
Street "A" (located within Project)	Full width
Lehner Avenue frontage	Half width plus 10 feet
Ash Street (one side)	Complete pedestrian walkway from Sheridan Avenue to Vista Avenue
Conway	Pedestrian walkway on the east side of Conway from project site to Rincon*

*Remaining pedestrian walkways required by Condition 7 of the Street Improvements and Traffic section of the Conditions Of Approval have been completed.

Work to be performed based upon Escondido Design Standards and Standard Drawings (Effective Date: June 23, 1999).

ARTICLE V

Provision of Public Benefits

1. **Description of Public Benefits.** Owner or its assignees shall compensate the City with the following Public Benefits, as further described in Exhibit C attached hereto, as consideration for the City's good faith performance of all applicable terms and conditions in the Agreement:

- a. Fulfilling long-term economic goals for the City.
- b. Providing fiscal benefits to the City.

- c. Providing short-term construction employment within the City.
- d. Providing housing which will help to satisfy the City's obligation to meet the City's share of regional housing needs.
- e. Advancement of the City's planned construction of roadway and drainage infrastructure needed in the future to serve areas near or surrounding the Project, and Owner's payment of a Community Benefit Fee SEVENTEEN THOUSAND DOLLARS (\$17,000.00) per unit to be developed, pursuant to Article IV, Section 6.

2. **Occupancy Contingent on Construction of Public Improvements.** Owner acknowledges that the City shall not grant a certificate of occupancy for residences constructed on the Property until Owner constructs all Public Benefits listed in Exhibit C. This contingency for occupancy shall survive the termination of the Agreement.

3. **Recordation of Final Map Contingent on Security for Public Benefits.** Prior to recordation of the Final Map, Owner must enter into an "Agreement for Completion of Improvements," which will detail Owner's construction obligations for project-required improvements and the Public Benefits, and will require Owner to provide financial security for completion of construction and shall be in substantially the form attached at Exhibit D.

4. **Other Governmental Bodies.** To the extent that the City, the City Council, the Planning Commission or any other City board, agency or commission that constitutes and sits as any other board, agency or commission, it shall not take any action that conflicts with the City's obligations under the Agreement.

5. **Processing During Third Party Litigation.** The filing of any third party lawsuit(s) against the City or Owner relating to the Agreement, the Entitlements, any Future Entitlements or to other development issues affecting the Property shall not delay or stop the development,

processing or construction of the Project or approval of Future Entitlements, unless the third party obtains a court order preventing the activity. The City shall not stipulate to or cooperate in the issuance of any such order.

ARTICLE VI

Annual Review

1. **City Responsibilities.** At least every twelve (12) months during the Term, the City shall review the extent of good faith substantial compliance by Owner with the terms of the Agreement (the "Annual Review"). At the conclusion of the Annual Review, the City's finding of good faith substantial compliance by Owner with the terms of the Agreement shall be conclusive up to the date of such finding for the purposes of future Annual Reviews or legal action between the Parties.
2. **Owner Responsibilities.** At the annual review, it shall be the responsibility of Owner to demonstrate good faith substantial compliance with the major provisions of the Agreement and to provide, to the best extent possible, the status and timing of development of the Project and related public improvements. If requested by the City, Owner shall provide any additional detail or information necessary to demonstrate good faith compliance with any particular provision of the Agreement identified by the City.
3. **Opportunity to be Heard.** Owner shall be permitted an opportunity to be heard orally and in writing at any noticed public hearing regarding its performance under the Agreement. Owner shall be heard before each appropriate board agency or commission and the City Council at any required public hearing concerning a review of performance under the Agreement.
4. **Information to be Provided to Owner.** The City shall mail to Owner a copy of staff reports and related exhibits concerning Agreement performance, a minimum of ten (10) calendar

days prior to consideration and review by the City Council as required by the Development Agreement Legislation.

5. **Annual Review Letter.** If Owner is found to be in substantial compliance with the Agreement after the Annual Review, the City shall issue, upon written request by Owner, a letter to Owner (the "Review Letter") stating that, based upon information known or made known to the City Council, the City Planning Commission, and/or the City Manager, the Agreement remains in effect and Owner is in compliance. Owner may record the Review Letter in the Official Records of the County of San Diego.

6. **Estoppel Certificates.** Either Party may at any time, and from time to time, deliver written notice to the other Party requesting that the other Party certify in writing that to the knowledge of the certifying Party:

- a. The Agreement is in full force and effect and is a binding obligation of the Parties.
- b. The Agreement has not been amended or modified orally or in writing or, if so amended, identifying the amendments.
- c. There exists no material default in the performance of the requesting Party's obligations under the Agreement or, if in default, the nature and amount of any material default.

A Party receiving a request under this Section shall execute and return a certificate within Thirty (30) days following receipt of the request. The failure to deliver such certificate within such time shall be conclusive upon the party which fails to deliver such certificate that the Agreement is in full force and effect without modification and that there are no uncured defaults in the performance of the requesting party. A certificate given pursuant to this Section may be relied upon by assignees and mortgagees.

7. **Failure of Annual Review.** The City's failure to perform the Annual Review of Owner's substantial compliance with the terms and conditions of the Agreement shall not constitute or be asserted as a default by Owner.

ARTICLE VII

Delay, Default, Remedies, and Termination

1. **Notice and Cure of Default.** In the event of a material default, the Party alleging a default shall give the defaulting Party a notice of default in writing. The notice of default shall specify the nature of the alleged material default, and the manner and period of time of not less than thirty (30) days in which the default must be cured (the "Cure Period"). The Cure Period must provide sufficient and reasonable time for the default to be cured. During the Cure Period, the Party charged shall not be considered in default. If the default is cured within the Cure Period, then no default shall be deemed to exist.

2. **Option to Institute Legal Proceedings or to Terminate.** If a material default is not cured within the Cure Period, the noticing Party may institute legal proceedings as provided in Article VII Section 8 and/or give to the defaulting Party a notice of intent to terminate the Agreement. If a notice of intent to terminate the Agreement is given, the City Council, within thirty (30) days after the giving of the Notice, shall hold a public hearing in the manner set forth in the Development Agreement Legislation, as amended, to consider and review the matter.

3. **Notice of Termination.** Following consideration of the evidence presented before the City Council and its determination that a default exists, the Party alleging a material default by the other Party, at its option, may give written notice of termination of the Agreement to the other Party and the Agreement shall be terminated immediately upon the giving of the Notice. The

validity of the basis for such a termination may be challenged pursuant to Article VII Section 8 by the Party alleged to be in default.

4. **Waiver.** Failure or delay in giving notice of default pursuant to Article VII Section 1 shall not constitute a waiver of any other material default. Except as otherwise expressly provided in the Agreement, a failure or delay in asserting any rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies otherwise available to a Party or deprive a Party of the right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any rights or remedies it may have.

5. **Default by Owner.** An Annual Review may result in amendment or termination of the Agreement provided a material default has been established by substantial evidence and such default has not been cured within the Cure Period.

6. **Default by the City.** Upon a material default by the City, Owner, without limiting any of its other remedies, shall not be obligated to complete any of its obligations under the Agreement. Upon a City default, any resulting delays in Owner's performance shall neither be construed as a material default by Owner nor constitute grounds for termination or cancellation of this Agreement by the City and the Term shall be extended for the period of any such delay.

7. **Enforced Delay, Extension of Time of Performance.** Neither Party shall be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of nature, unavailability of materials, governmental restrictions imposed or mandated by other applicable governmental entities, suspension of rights in accordance with the existence of unforeseen circumstances, litigation, or similar bases for excused performance. If written notice of such delay is given to the other Party following the commencement of such delay, an extension of time for performance shall be granted in writing

for the period of the delay, or longer as may be mutually agreed upon. An extension shall commence to run from time of commencement of the cause of delay.

8. **Institution of Legal Action.** In addition to any other rights or remedies, either Party may institute legal action to cure, correct, or remedy any default, to enforce any provision of the Agreement, to enjoin any threatened or attempted violation of the Agreement, to recover damages for any default, or to obtain any remedies consistent with the purpose of the Agreement. Legal actions shall be instituted in the Superior Court of the County of San Diego, North County Branch, State of California, or in the Federal District Court in the Southern District of California. Pursuant to Code of Civil Procedure Section 638, et seq., all legal actions shall be heard by a referee who shall be a retired judge from either the San Diego County Superior Court, the California Court of Appeal, the United States District Court or the United States Court of Appeals, provided that the selected referee shall have experience in resolving land use and real property disputes. Owner and the City shall agree upon a single referee who shall then try all issues, whether fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before such referee. If Owner and the City are unable to agree upon a referee within ten (10) days of a written request to do so by either party hereto, it will not be considered a material default by Owner nor constitute grounds for termination or cancellation of the Agreement by the City and the Term shall be extended for the period of any such delay, and either party may seek to have a referee appointed pursuant to Code of Civil Procedure Section 640. The cost of such proceeding shall initially be borne equally by the parties. Any referee selected pursuant to this Article VII Section 8 shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution. Notwithstanding the provisions of this Article VII Section 8, either party shall be

entitled to seek declaratory and injunctive relief in any court of competent jurisdiction to enforce the terms of the Agreement, or to enjoin the other party from an asserted breach thereof, pending the selection of a referee as provided in this Article VII Section 8, on a showing that the moving party would otherwise suffer irreparable harm.

ARTICLE VIII

Encumbrances and Releases on Property

1. **Discretion to Encumber.** The Agreement shall not prevent or limit Owner, in any manner, from encumbering the Property or any portion of the Property or any improvement on the Property by any mortgage. The City acknowledges that lenders providing financing may require modifications to the Agreement and the City agrees, upon request, from time to time, to meet with Owner and/or representatives of lenders to negotiate in good faith any lender request for modification. The City agrees that it will not unreasonably withhold its consent to any lender requested modification to the Agreement.
2. **Entitlement to Written Notice of Default.** Any mortgagee and its successors and assigns, upon written request to the City, shall be entitled to receive from the City written notice of any Owner default at the same time Owner is provided with such notice pursuant to Article VII Section 1 above.
3. **Additional Mortgagee Protection.** Any mortgagee of a mortgage or a beneficiary of a deed of trust of the Property shall be entitled to the following rights and privileges:
 - a. Neither entering into the Agreement nor a breach of the Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on the Property made in good faith and for value.

b. Any mortgagee receiving the notice referred to in Article VIII Section 2 above shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under the Agreement. If the default is of a nature which can only be remedied or cured by such mortgagee upon obtaining possession, such mortgagee shall seek to obtain possession with diligence and continuity through foreclosure, a receiver or otherwise, and shall thereafter remedy or cure the default or noncompliance within thirty (30) days after obtaining possession. If any such default or noncompliance cannot, with diligence be remedied or cured within such 30-day period, then such mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such default or noncompliance if such mortgagee commences cure during such 30-day period, and thereafter diligently pursues and completes such cure.

ARTICLE IX

Miscellaneous Provisions

1. **Rules of Construction.** The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.
2. **Severability.** If any non-material provision of the Agreement shall be adjudged by a court of competent jurisdiction to be invalid, void, or illegal, it shall in no way affect, impair, or invalidate any other provision of the Agreement. If any material part of the Agreement is adjudged by a court of competent jurisdiction to be invalid, void, or illegal, the Parties shall take all steps necessary to modify the Agreement to implement the original intent of the Parties in a valid and binding manner. These steps may include the waiver by either of the Parties of their right under the unenforceable provision. If, however, the Agreement objectively cannot be modified to implement the original intent of the Parties and the Party substantially benefited by

the material provision does not waive its rights under the unenforceable provision, the entire Agreement shall become void.

3. **Entire Agreement.** Except as the Agreement expressly refers to and/or incorporates other agreements between the City and Owner, the Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter of the Agreement. The Agreement supersedes all other negotiations and previous agreements between the Parties with respect to that subject matter.

4. **Waivers.** All waivers of the provisions of the Agreement must be in writing and signed by the appropriate agents of the City or of Owner.

5. **Amendments.** All amendments to the Agreement must be in writing signed by the appropriate agents of the City and Owner, in a form suitable for recording in the Official Records of San Diego County, California.

6. **Recording.** The City Clerk shall cause a copy of the Agreement to be recorded with the Office of the County Recorder of San Diego County, California within Ten (10) days following the Effective Date. Upon the completion of performance of the Agreement or its revocation or termination, a statement evidencing completion, revocation, or termination signed by the appropriate agents of Owner and the City shall be recorded in the Official Records of San Diego County, California.

7. **Project as a Private Undertaking.** It is specifically understood by the Parties that the Project is a private development and that Owner shall have the full power and exclusive control of the Property subject to the provisions of the Agreement.

8. **Incorporation of Recitals.** The Recitals set forth in Article I of the Agreement are part of the Agreement.

9. **Captions.** The captions of the Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify or aid in the interpretation, construction or meaning of any of the provisions of the Agreement.

10. **Consent.** Where the consent or approval of a Party is required or necessary under the Agreement, the consent or approval shall not be withheld unreasonably.

11. **The City's Ongoing Statutory Authority.** Except as expressly stated, nothing in this Agreement shall limit the City's authority and responsibility under the California Constitution and applicable California statutes to act in the best interests of the public health, safety, and welfare, and nothing in this Agreement is intended to limit in any way the legislative discretion otherwise afforded the Escondido City Council under state or federal law, as amended.

12. **Covenant of Cooperation.** The Parties shall cooperate with and assist each other in the performance of the provisions of the Agreement including assistance in obtaining permits for the development of the Property which may be required from public agencies other than the City. The covenant of cooperation shall include, to the maximum extent permitted by law, that the City shall use its best efforts to prevent any ordinance, measure, moratorium or other limitation from invalidating, prevailing over or making impossible any provision of the Agreement, and the City shall cooperate with Owner to keep the Agreement in full force and effect. Owner reserves the right to challenge any such ordinance, measure, moratorium, or other limitation in a court of law if it becomes necessary to protect the development rights vested in the Property pursuant to the Agreement.

13. **Further Actions and Instruments.** Each of the Parties shall cooperate with and provide reasonable assistance to the other in the performance of all obligations under the Agreement and the satisfaction of the conditions of the Agreement. Upon the request of either Party, the other

Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of the Agreement to carry out the intent and to fulfill the provisions of the Agreement or to evidence or consummate the transactions contemplated by the Agreement.

14. **Successors and Assigns.** Subject to Article III Section 2 above, the burdens of the Agreement shall be binding upon, and the benefits of the Agreement inure to, all successors-in-interest and assigns of the Parties.

15. **Time of the Essence.** Time is of the essence of the Agreement and of each and every term and condition hereof.

16. **Applicable Laws.** The Agreement shall be construed and enforced in accordance with the laws of the State of California. All statutory references are to California statutes.

17. **No Waiver of Existing Rights or Applicable Laws.** The Agreement shall not constitute a waiver of any of Owner's existing rights or applicable laws, nor shall it limit or expand Owner's right to challenge any General Fee as being contrary to applicable law or to challenge any existing or Future Exaction as being in excess of Exactions permitted by applicable law.

18. **Authorization.** Each person executing this Agreement hereby warrants and represents that he/she has the authority to enter into this Agreement and to bind his/her respective entity to the provisions hereof. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original.

19. **No Third Party Beneficiaries.** This Agreement and each and every provision hereof is for the exclusive benefit of the Parties hereto and not for the benefit of any third party.

SIGNATURE PAGE FOLLOWS

The Agreement has been executed by the Parties as of the dates set forth below:

CITY OF ESCONDIDO

By: _____
Sam Abed
Its: Mayor

CITY OF ESCONDIDO

By: _____
Diane Halverson
Its: Clerk

PACIFIC LAND INVESTORS, LLC
A Delaware limited liability company on behalf of
MERIT GROUP, INC.
A California corporation

By: _____
Its: _____

APPROVED AS TO FORM AND CONTENT:

CITY OF ESCONDIDO

By: _____
Jeffrey R. Epp
Its: City Attorney

LOUNSBERY FERGUSON ALTONA & PEAK, LLP

By: _____
David W. Ferguson, Esq.
Attorney for Pacific Land Investors, LLC.

EXHIBIT A

LEGAL DESCRIPTION

All that certain real property situated in the County of San Diego, State of California, described as follows:

That portion of Parcel 2 as shown on a Parcel Map filed in Book of Parcel Maps on Page 971, being a portion of Lot 1, Block 418 of Rancho Rincon Del Diablo, in the County of San Diego, State of California, according to Map thereof No. 1520, filed in the Office of the County Recorder of San Diego County, January 21, 1913, said portion of Parcel 2 being described as follows:

Beginning at the most Southerly corner of Parcel 1 of said Parcel Map 971; thence North 55°33'17" East 298.69 feet to the most Easterly corner of Parcel 4 of said Parcel Map 971, being also a corner in the boundary of said Parcel 2. as follows:

South 34°23'03" East 475.56 feet; thence South 55°34'37" West 298.63 feet; thence North 34°23'32" West 475.45 feet to the Point of Beginning.

Assessor's Parcel Number: **224-142-35-00**

EXHIBIT B

ENTITLEMENTS

1. Tentative Subdivision Map (Tract 894), No. 894 (the "Tentative Map"), by City Council Resolution No. 2006-156 on August 16, 2006, including grading exemptions. Owner and the City understand that the Tentative Map has been modified to comply with the stormwater regulations as stated in Article II, Section 3. Owner and the City agree that the map, as modified, is in substantial conformance with the map as approved by Resolution 2006-156.
2. Mitigated Negative Declaration (Tract 894) ER 2004-31, certified by City Council Resolution No. 2006-156 on August 16, 2006.

EXHIBIT C

PUBLIC BENEFITS

A. Owner shall pay the City SEVENTEEN THOUSAND DOLLARS (\$17,000.00) per lot shown on the Project's approved Final Map prior to the City's grant of the first building permit for the Project, which funds the City shall use to finance certain roadway and drainage improvements in the vicinity of the Project.

B. Owner shall construct a 24" water line along Conway Drive from Lehner Avenue to Stanley Avenue.

EXHIBIT D

AGREEMENT FOR COMPLETION OF IMPROVEMENTS

This Agreement is made and entered into this ____ day of _____, 20__, by and between the CITY OF ESCONDIDO, a municipal corporation, hereinafter referred to as "CITY," and _____ a _____ hereinafter referred to as "APPLICANT";

WHEREAS, APPLICANT proposes to construct a building, structure or development at _____ in the City of Escondido, County of San Diego, State of California, the "Project"; and

WHEREAS, certain public improvements are required to be constructed and/or installed in the streets and/or easements adjacent to the lot or parcel upon which such the Project is to be constructed or erected; and

WHEREAS, pursuant to the provisions of Ordinance No. 93-2 of the Escondido Municipal Code, it is necessary that certain public improvements as detailed in the plans and specifications on file with the City Engineer of the City of Escondido, the "Improvements", be constructed and/or installed as a condition of and prerequisite to final inspection and acceptance of the Project.

NOW, THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. APPLICANT hereby agrees, at its sole cost and expense, to furnish all labor, equipment and materials to construct the Improvements in a good workmanlike manner and in conformance with the approved plans and specifications on file with the City Engineer. APPLICANT agrees that the Improvements shall be completed within two years from the date of this Agreement. The Improvements shall be completed to the satisfaction of the City Engineer, and shall not be deemed complete until approved and accepted by the CITY. The estimated cost of the Improvements is the sum of \$_____.

2. APPLICANT covenants that all Improvements shall be constructed in a manner that does not damage existing public property. Should any damage occur to public property, including, but not limited to, the Improvements in the public right-of-way as a result of APPLICANT or APPLICANT'S contractor performing construction, APPLICANT shall be responsible for repair or reconstruction of the public property. Such repair or reconstruction shall be at the APPLICANT'S sole expense and shall be completed to the satisfaction of the City Engineer.

3. The CITY and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Indemnitees") shall have no liability to APPLICANT or any other person for, and APPLICANT shall indemnify, defend, protect and hold harmless Indemnitees from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever

nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which Indemnitees may suffer or incur or to which Indemnitees may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by construction of the Improvements. The CITY shall not by its approval of the Project, or any part of it, or by entering into this Agreement, or by granting any permits concerning this Project or Improvements, be deemed an insurer or surety for the design or construction of the Improvements.

If any action or proceeding is brought against Indemnitees by reason of any of the matters against which APPLICANT has agreed to indemnify Indemnitees as provided above, APPLICANT, upon notice from the CITY, shall defend Indemnitees at APPLICANT'S expense by counsel acceptable to the CITY, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to indemnification in order to be so indemnified. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

If a court of competent jurisdiction determines that the CITY has acted with negligence with respect to anything covered in this Agreement, APPLICANT's obligation to indemnify the CITY shall be limited by the provisions of California Civil Code Section 2782(b).

4. APPLICANT shall further indemnify, defend and hold harmless the CITY and its officers, employees and agents from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, administrative proceedings, damages, fines, penalties, judgments, orders, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements, arising out of any violation, or claim of violation of the San Diego Municipal Storm Water Permit (Order No. 2001-01) of the California Regional Water Quality Control Board Region 9, San Diego, which the CITY might suffer, incur, or become subject by reason of or occurring as a result of or allegedly caused by the construction of the Project or the Improvements.

5. It is further agreed that APPLICANT will at all times, prior to CITY acceptance of the Improvements, give good and adequate warning to the traveling public of each and every defective and/or dangerous condition existing in the affected public rights-of-way and/or easements or any of them, and will protect the traveling public from such defective or dangerous conditions. It is understood and agreed that until acceptance of the Improvements, each of the affected public rights-of-way and/or easements not accepted as improved shall be under the charge of APPLICANT for the purposes of this Agreement. APPLICANT may, upon approval of the City Engineer, close all or a portion of any public right-of-way whenever it is reasonably necessary to protect the traveling public during construction of the Improvements. APPLICANT agrees that the provisions of Sections 3 and 4, respecting indemnification, are applicable to the obligations as set forth in this Section 5.

6. APPLICANT hereby agrees to pay for any inspection of streets and/or easements as may be required by CITY ordinances.

7. It is further agreed that APPLICANT shall file with the City Clerk at the time of signing this Agreement a good and sufficient bond or Instrument of Credit in an amount not less than the estimated cost of the Improvements, as specified above, for the faithful performance of the terms and conditions of this Agreement, including payment for all labor and materials furnished in connection therewith and the guarantee and warranty of the Improvements for a period of two years against any defective work or labor or defective materials furnished, and that should the sureties on the bond or either of them become insufficient, APPLICANT agrees to renew the bond with good and sufficient sureties within 10 days after receiving notice that the sureties are insufficient.

8. In lieu of filing a bond as provided above, APPLICANT may deposit with the City Clerk or with a responsible escrow agent, bank, savings and loan or trust company, a sum of money or other form of security acceptable to the City Attorney, not less than the estimated cost of the Improvements as above specified, together with instructions to the escrow agent or bank, savings and loan or trust company for the payment of such money, which instructions shall be subject to the approval of the City Attorney.

9. Upon mutual consent of APPLICANT and the City Engineer, the City Engineer may make such changes, alterations or additions to the plans and specifications for the Improvements as may be determined necessary and desirable by the City Engineer for the proper completion of the Improvements and no such changes, alterations or additions shall relieve the surety or sureties on any bond given for the faithful performance of this Agreement.

10. It is further agreed by and between the parties hereto that, in the event it is deemed necessary to extend the time of completion of the Improvements required under this Agreement, the extension may be granted by the CITY and shall in no way affect the validity of this Agreement, nor shall such extension release the surety or sureties on any bond given for the faithful performance of this Agreement. In accordance herewith, the surety waives the provisions of Section 2819 of the Civil Code of the State of California.

11. It is further agreed by and between the parties hereto that the terms of this Agreement shall run with the land and shall be binding on all parties having or acquiring any right, title, or interest in the above-described land or any part thereof.

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

CITY OF ESCONDIDO

Date: _____ By _____
City Manager

APPLICANT

Date: _____ By _____
Authorized Signature

Address:

(SIGNATURES MUST BE NOTARIZED)

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

City Attorney



CITY OF ESCONDIDO
PLANNING DIVISION
201 NORTH BROADWAY
ESCONDIDO, CA 92025-2798
(760) 839-4671

MITIGATED NEGATIVE DECLARATION

Lehner Avenue Eleven-Lot Residential Subdivision

FILED
Gregory J. Smith, Recorder/County Clerk

Case Number: ER 2004-31, 2004-57-GE/ DA, TR 894

JUN 02 2006

Date Issued: June 2, 2006

Public Review Period: June 2 – June 22, 2006

BY  DEPUTY

Location: The project is located on Lehner Avenue west of Conway Drive, east of North Ash Street and south of Stanley Avenue (APN 224-142-35).

Address: 1026 Lehner Avenue


Project Description: The project involves a proposed 11-lot residential subdivision for a 3.2-acre site located at 1026 Lehner Avenue. The property is located within the North Broadway/Tier 2A designation of the General Plan and has a Land Use Designations of S (Suburban). The project also includes a request for a grading exemption to allow three cut slopes of up to 22 feet in height, and one fill slope up to 12 feet in height. The project also includes a Development Agreement because the proposal is located within the critical infrastructure deficiency area for water.

Applicant: Cornerstone Engineering, Inc.

An Initial Study has been prepared to assess this project as required by the California Environmental Quality Act and Guidelines as well as Ordinances and Regulations of the City of Escondido. The Initial Study is on file at the City of Escondido Planning Division.

Findings: The finding of this review are that the Initial Study identified traffic/circulation, biological, cultural resources and hazardous material impacts that may be potentially significant, but mitigation measures would reduce potential impacts to a less than significant level.


Diana Delgadillo
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Lehner Avenue 11-Lot Subdivision Project
Initial Study Part II
ER 2004-31
Tract 894
2004-57-GE/DA

Project Description:

The following section evaluates the potential environmental impacts associated with 11-lot residential subdivision, grading exemption, and development agreement. The attached environmental Initial Study is consistent with the California Environmental Quality Act (CEQA) Guidelines, and has been used to focus this study on physical factors that may be impacted by the proposed project. This Initial Study will serve to identify and evaluate any effects determined to be potentially significant.

The project involves a proposed 11-lot residential subdivision for a 3.2-acre site located at 1026 North Lehner Avenue. The property is located within the Broadway/Tier 2 designation of the General Plan and has a Land Use Designation of S (Suburban). The subject project is part of an annexation that was initiated by the City Council on The project proposes to construct a small single-family residential tract on a vacant parcel of land adjacent to the Rincon Elementary School. The site consists of gently rolling slope of very mild gradient (approximately 10%). The Prezone of R-1-10 is consistent with the S land use designation.

Environmental Setting:

The approximately 3.2-acre property is vacant with access to the site from Lehner Avenue. The site has a mild gradient with drainage to private drainage easements. Elevations range from approximately 645 to 655 feet above mean sea level. The entire site has a slope gradient of less than 15%. There is a palm tree located near the center of the subject site with disturbed grasses on the remainder of the site. The site is also bordered by pine trees and ornamental shrubs. Adjacent land uses are as follows:

- North: Single-family dwellings (RE-20)
- South: Elementary School (R-1-10)
- West: Vacant (RE-20)
- East: Vacant (RE-20)

I. Land Use and Planning

City of Escondido Significance Criteria

Significant land use impacts would occur if the project substantially conflicted with established uses, disrupted or divided an established community or resulted in a substantial alteration to the present or planned land uses. Consistency with the City of Escondido General Plan and zoning and other applicable environmental plans and policies, is evaluated in making a determination of potential significant land use impacts. Aesthetic impacts would be significant if the project resulted in the obstruction of any scenic view or vista open to the public; damage of significant scenic resources within a designated State scenic highway, create an aesthetically offensive site open to the public, and/or substantial degradation of the existing visual character or quality of the site and its surroundings. Significant aesthetic impacts would also occur if the project generated new sources of light or glare that adversely affected day or nighttime views in the area, including that which would directly illuminate or reflect upon adjacent properties or could be directly seen by motorists or persons residing, working or otherwise situated within sight of the project.

The City of Escondido General Plan designates the proposed site as Suburban, allowing single-family residential development. The objective of the Suburban category is to promote single-family development with a maximum density of 3.3 units/acre and a minimum of lot size 10,000 square feet. This designation promotes a traditional neighborhood character of detached single-family units. Public water and wastewater collection and treatment are required in these areas.

The extent of dwelling units permitted on the proposed development by Suburban is dependent on the topography of the site. The General Plan indicates that the maximum development yield of Suburban lands shall be sensitive to topography and be calculated according to the following slope categories:

0-25%:	2 dwelling units per 1 acre
25-35%	1 dwelling unit per 1 acre
35+	1 dwelling unit per 20 acres

Based on the variable slope provisions of the Suburban designation contained in the City's General Plan, 11 dwelling units would be allowed for the 3.2 acres. The zoning is R-1-10 which is consistent with the General Plan.

The applicants for the project are proposing to develop in accordance with the City's General Plan designation. The project is characterized as "in-fill" because development is planned within an established residential neighborhood and the project is virtually surrounded by development. Because the proposed project would be consistent with existing adopted City of Escondido land use policies, no significant land use impact would occur as a result of the proposed project.

The project site is not located on a ridgeline identified in the Community Open Space/Conservation Element of the General Plan. The site has a slope of approximately 10% and no grading exemptions are proposed.

The subject site is currently zoned R-S-1 within the County of San Diego. This zoning allows for single-family residences with a minimum lot size of one acre. The County designation is for larger lots than what is allowed with the City's General Plan designation; however, the lots to the north of the subject site are approximately 14,000 SF and there are proposals surrounding the subject site of similarly sized lots. The traffic and air quality study has been based on the denser proposal and as such, would be a "worst-case scenario" for these potential impacts. With the proposed mitigation, the traffic study indicates that the project would not create a significant negative impact on the environment.

Residential projects typically do not directly illuminate or reflect glare upon adjacent properties, therefore no significant light or glare impact would result from the proposed project. Development of the proposed project will also not obstruct scenic views or vistas open to the public since neither the City nor the State designates Lehner Avenue as a scenic resource.

II. Agricultural Resources

City of Escondido Significance Criteria

Project impacts to agricultural resources would be significant if they lead to direct or indirect loss of Prime Farmland, Unique Farmland or Farmland of Statewide Importance, defined by the California Department of Conservation, or conflicted with the City's existing agricultural zoning or Williamson Act Contract.

The project site is not listed as Prime Agricultural Lands as identified in the General Plan Final Environmental Impact Report, which was prepared for the City's most recent General Plan revisions in 2000. Although the subject site has been used sporadically for agricultural purposes in the past, such as orchards, these uses may be incompatible with the current surrounding residential community. The property is also not involved in a Williamson Act Contract or other agricultural land contract.

The California Department of Conservation, which publishes farmland conservation reports, classifies the subject area as "Other Land" which is defined as:

"Rural development, marginal agricultural lands, tracts not suitable for grazing, government lands not available for agricultural use, road systems and vacant land surrounded on all sides by urban development."

The development of a residential community on the subject site would therefore not result in significant individual or cumulative impacts to agricultural resources.

III. Transportation/Traffic

City of Escondido Significance Criteria

According to the City of Escondido Environmental Quality Regulation (Article 47, Sec. 33-924), impacts would be considered significant if the project:

- 1. Caused the level of service (LOS) of a circulation element street to fall below a mid-range of LOS "D" and /or added more than 200 ADT to a circulation element street with*

a LOS below the mid-range "D" yet above LOS "F". According to the Escondido General Plan, the minimum acceptable LOS is "C".

2. Exceeded, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads and highways.
3. Resulted in a change of air traffic patterns, including either an increase in traffic levels or in a location that results in substantial safety risks or increased hazards due to a design feature.
4. Results in inadequate emergency access or parking capacity, or the project conflicts with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks).

A traffic impact study for the proposed project was performed on August 11, 2004 and revised April 19, 2006 by Linscott, Law and Greenspan and is summarized below. The scope of the analysis was developed with input from the City of Escondido. The analysis methods and study scenarios are based on Escondido Traffic Impact Study Guidelines and using SANTEC/ITE Guidelines for Traffic Impact studies in the San Diego Region. For a complete description please refer to the consultant document available at the Planning Division in City Hall (201 North Broadway, Escondido).

Access to the site for the proposed 11-unit single-family dwellings will be provided by Lehner Avenue, approximately 265 feet east of the existing Ash Street intersection. The study included the following roadway segments and intersections:

Roadway	Intersection
North Broadway <ul style="list-style-type: none"> • North of Stanley Avenue • Stanley to Vista Avenue 	Broadway / Stanley Avenue
North Ash Street <ul style="list-style-type: none"> • Lehner Avenue to Vista Avenue • South of Vista Avenue 	North Ash Street / Lehner Avenue
Stanley Avenue <ul style="list-style-type: none"> • North Broadway to North Ash Street 	North Ash Street / Vista Avenue

All intersections area calculated to operate at mid LOS D or better during both the AM and PM peak hours except for the following unsignalized intersections:

- North Broadway/Vista Avenue (LOS F during both AM and PM peak hour)
- North Ash Street/Lehner Avenue (LOS F during the AM peak hour)
- North Ash Street/Vista Avenue (LOS F during the AM peak hour)

This is primarily the result of school traffic co-mingling with residential peak hour commuter traffic. The high percentage of turning school-related vehicles at these locations causes the Levels of Service, and the poor operations is limited to directly before and after school. The acceptable PM peak hour Levels of Service demonstrate the capacity of the intersections to accommodate regular

peak hour commuter traffic. Since the project does not contribute a delay by more than 2.0 seconds, there is no significant impact.

The traffic study indicates that all roadway segments within the study area are calculated to operate at LOS C or better.

The project is within the North Broadway Critical Deficiency Area. Mitigation for this infrastructure improvement involves a Development Agreement that specifies a negotiated payment to off-set the future construction of North Broadway between Stanley and Vista Avenues. .

The proposed project site is located near the Rincon Middle School. Since vehicular and pedestrian traffic is heavy in the area surrounding the school directly before and after school, a review of the area was conducted and the mitigation incorporated to the project which would reduce the impacts to a level of insignificance. Construction of the walkways would not have a significant impact since all work would take place within an existing right-of-way, no stream courses would be impacted and any tree removal would be required to be replaced.

Based on the analyses of intersections and segments in the project study area, and the established significance criteria, the intersections of Ash Street/Lehner Avenue, and Broadway/Vista Avenue were considered to have significant impacts. Since each of these locations already operate below City standards (Mid LOS D) under existing conditions, the impacts are considered cumulative and the follow corresponding mitigation measures.

MITIGATION MEASURES:

1. *Install temporary signs on westbound Vista Avenue alerting driver to possible congestion during the 30 minutes directly before and after the school day and suggest alternate routes.*
2. *Provide tubular delineators on Vista Avenue at the school Pickup-Drop-off area to prohibit eastbound to westbound U-turns. This, in conjunction with the school implementing a more stringent one-way traffic pattern, could alleviate some of the existing congestion.*
3. *Provide pedestrian walkways at the following locations:*
 - *Ash Street from Sheridan Avenue to Vista Avenue*
 - *North side of Vista from Ash Street to rear access driveway to Rincon Middle School*
 - *South side of Lehner Avenue from vista Avenue to Ash Street*
 - *East side of Conway from Rincon Avenue to project site.*

IV. Air Quality

City of Escondido Significance Criteria

Project impacts exceeding any of the following South Coast Air Quality Management District (SCAQMD) daily emissions criteria can be considered significant:

- | | |
|--------------------------|----------|
| • Carbon Monoxide | 550 lbs. |
| • Reactive Organic Gases | 55 lbs. |
| • Oxides of Nitrogen | 55 lbs. |

- *Fine Particulate Matter*

150 lbs.

An Air Quality Report was prepared by Recon on August 19, 2004 and analyzes the potential local and regional air quality impacts associated with the proposed Lehner Avenue residential project.

The project area is within the San Diego Air Basin (SDAB). Air quality at a particular location is a function of the kinds and amounts of pollutants being emitted into the air locally, and throughout the basin, and the dispersal rates of pollutants within the region. The major factors affecting pollutant dispersion are wind, speed and direction, the vertical dispersion of pollutants (which is affected by inversions) and the local topography. The air basin currently is designated a state and federal non-attainment area for ozone and particulate matter. However, in the SDAB, part of the ozone contamination is derived from the South Coast Air Basin (located in the Los Angeles area). This occurs during periods of westerly winds (Santa Ana condition) when air pollutants are windborne over the ocean, drift to the south and then, when the westerly winds cease, are blown easterly into the SDAB. Local agencies can control neither the source nor transportation of pollutants from outside the basin. The Air Pollution Control District (APCD) policy therefore, has been to control local sources effectively enough to reduce locally produced contamination to clean air standards.

For long-term emissions, the direct impacts of a project can be measured by the degree to which the project is consistent with regional plans to improve and maintain air quality. Local air-quality impacts are directly related to the number of vehicle trips and operation levels on adjacent streets and intersections. For planning purposes, the APCD assumed the City's General Plan designation of Suburban in calculating air quality impacts. According to CEQA Guidelines, a project normally is considered to have a significant air quality impact if it violates any ambient air quality standard, contributes substantially to an existing or projected air-quality violation or exposes sensitive receptors to substantial pollution concentrations.

Construction emissions were calculated using the URBEMIS2002 computer program assuming that construction would take place in January 2005. The following table depicts the daily emission levels for each criteria pollutant

CONSTRUCTION EMISSIONS
(pounds per day)

Pollutant	Maximum Daily Emissions (pounds)	Average Daily Emissions (pounds)*	City of Escondido Significance Threshold (pounds/day)	APCD Significance Threshold (pounds/day)
CO	81	31	550	550
ROG	10	4	55	--
NO _x	77	31	55	250
SO _x	0.0	0.0	250	--
PM ₁₀	27	4	150	100

AVERAGE DAILY PROJECT EMISSIONS TO THE SAN DIEGO AIR BASIN
(pounds per day)

Season/Pollutant	Area Emissions ¹	Mobile Emissions (vehicle)	Total Emissions ²	City of Escondido Threshold	APCD Threshold	Do Emissions Exceed Thresholds?
Summer						
CO	0.2	16.6	16.8	550	550	No/No
NO _x	0.1	1.6	1.8	55	250	No/No
ROG	9.6	1.3	1.9	55	-	No/-
SO _x ³	0.0	0.01	0.02	250	250	No/No
PM ₁₀	0.0	1.4	1.4	150	100	No/No
Winter						
CO	1.2	18.2	19.4	550	550	No/No
NO _x	0.2	1.5	2.6	55	250	No/No
ROG	1.6	1.5	3.1	55	-	No/-
SO _x ³	0.0	0.01	0.02	250	250	No/No
PM ₁₀	0.2	1.4	1.6	150	100	No/No

Source: San Diego APCD, Rule 20.2 (12/17/98); Escondido Municipal Code § 33-924(a)(1)(G)(i).

¹Area emissions include emissions from on-site stationary sources such as natural gas combustion (e.g., heating systems), landscaping maintenance, etc.

²Totals may differ due to rounding.

³Emissions calculated by URBEMIS2002 are for SO₂.

With respect to criteria air pollutants, no significant air quality impacts are identified for either the construction phase or operation of the proposed project. Accordingly, no mitigation is required.

While the proposed project would have an incremental impact to basin-wide air-quality issues result from the cumulative impacts of thousands of sources, the individual impacts attributed to the proposed project are immeasurably small on a regional scale and will not cause ambient air quality standards to be exceeded. Since the project would not materially degrade the levels of service on adjacent streets and intersections, and would not violate daily emissions thresholds, the project will not have a significant impact on air quality and no mitigation measures are required.

Construction-Related Emissions

Construction-related activities are temporary, short-term sources of air emissions. Sources of construction-related air emission include:

- Fugitive dust from grading activities;
- Construction equipment exhaust;
- Construction-related trips by worker, delivery trucks and material-hauling trucks; and
- Construction-related power consumption.

Dust from grading and other site preparation would generate particulate matter emission. Due to the small amount of grading, and with appropriate use of grading and operation procedures (in conformance with APCD Best Management Practice for dust control), the project would not generate significant particulate matter or dust. The City of Escondido Grading Ordinance and

erosion control requirements include provisions for dust control to reduce impacts to air quality during grading and construction activities. At a minimum, these ordinances and provisions require projects to perform regular watering and timely revegetation of disturbed areas to minimize the dust and airborne nuisance impacts to off-site receptors. Emissions from construction equipment, worker and delivery and material-hauling trucks, and construction-related power consumption would be temporary and would result in an extremely small contribution to the SDAB and therefore would not result in a significant impact.

V. Biological Resources

City of Escondido Significance Criteria

Project impacts upon biological resources may be significant if the project generates impacts that create any of the following results:

- *Substantial direct or indirect-effect on any species identified as a candidate, sensitive, or special status in local/regional plans, policies or regulations, or by the State of California Department of Fish and Game (F & G) or U.S. Fish and Wildlife Service (U.S. FWS);*
- *Substantial effect upon sensitive natural communities identified in local/regional plans, policies, regulations or by the agencies (F & G-U.S. FWS);*
- *Substantial affects (e.g. fill, removal, hydrologic interruption) upon federally protected wetlands under Section 404 of the Clean Water Act;*
- *Substantial interference with movement of native resident or migratory wildlife corridors or impeding the use of native wildlife nursery sites;*
- *Conflict with any local policies/ordinance that protect biological resources (e.g. tree preservation policy or ordinance)*
- *Conflict with provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved habitat conservation plan.*

A biological assessment was conducted for the subject site by Rincon Consultants, Inc. on September 14, 2004. According to the assessment the site is disturbed with non-native vegetation, which is consistent with the vegetation characterization listed for the site on the SanGIS website. The site contains approximately 2.8 acres of mowed and maintained non-native vegetation and 0.4 acres of developed (an abandoned tennis court and shed) land. The undeveloped open space on the site consists primarily of mowed and maintained upland non-native vegetation dominated by common species such as wild oats and ripgut grass and western ragweed and would be consistent with a designation of disturbed land. Numerous non-native Japanese black pines are located along the eastern and southern property boundaries. Two persimmon trees were identified adjacent to the tennis court and shed, and landscape palms and pecan trees are also located in the southeastern corner. Remnant stumps, presumably from the past citrus groves exist adjacent to the tennis court and shed in the northwest portion of the site. No water, riparian vegetation, or Ordinary High Water Mark as defined by the Army Corps of Engineers was apparent in the swale area or at the storm drain inlet at the time of the site visit. In addition, no wetland indicators such as hydrophytic vegetation, inundation, and low chroma soils were present in the vegetated drainage swale or elsewhere onsite. Therefore, no mitigation is required for wetland impacts.

The off-site improvements that are proposed as part of the project would not have any impact on biological resources since the improvement consists of placing a water line on an existing bridge. No disturbances of earth would result from the water line and therefore could not create any biological resource impacts.

Since the site includes several mature trees, a preconstruction bird survey shall be required if construction activities occur between March and September.

MITIGATION MEASURES:

1. *If construction (or grading) is to occur during the nesting season, a preconstruction nesting bird survey shall be conducted.*

VI. Cultural Resources

City of Escondido Significance Criteria

A significant impact to cultural resources would occur if implementation of the project causes substantial change to a historical or archaeological resource pursuant to Section 15064.5 of the California Environmental Quality Act Guidelines, the destruction of unique paleontological resources or unique geologic feature, or disturb any human remains.

A cultural resources study was prepared by Kyle Consulting dated August, 2004. A field survey was conducted on the subject site on August 1, 2004 by Carolyn and Robert Kyle. No cultural resources have been previously identified within the study area. Research included a review of early maps and the 1928 aerial photographs for the area. The presence of old landscaping trees and plants, two small concrete foundations, remnants of an old wooden fence and agate, and an old well shaft suggest that historic buildings may have been present on or within the study area. A citrus orchard and what appears to be a residence is present on the 1928 aerial photograph just to the east of the study area. The 1941 USGS quadrangle map shows a citrus orchard present on the study area and to the west of the parcel.

Based on the presence of what appear to be historic trees and plants, foundations, fencing, and well mechanism and the presence of a citrus orchard in 1941, recommendations for future work include monitoring of construction grading by a qualified archaeologist and historic research. Archaeological monitoring is recommended because of the potential for significant subsurface archaeological deposits that might be present on the parcel. These archaeological deposits may include privies, cisterns, trash deposit, and foundations. If archaeological features are encountered, the area should be identified and the boundaries marked to avoid further ground disturbance. The archaeological remains should then be investigated using traditional excavation techniques and, if determined to have legitimate research potential, an adequate sample for analysis should be removed or, in the case of structural remains, documented. A budget to adequately analyze the material and prepare a professional report should be obtained and analysis and report preparation completed. Copies should be provided to the Escondido City Planning Department, the Pioneer Room of the Escondido City Library, and the Escondido Historical Society.

The off-site improvements that are proposed as part of the project would not have any impact on cultural resources since the improvement consists of placing a water line on an existing bridge. No disturbances of earth would result from the water line and therefore could not create any cultural resource impacts.

MITIGATION MEASURE:

1. *The project applicant shall provide archaeological monitoring for the significant subsurface archaeological deposits that might be present on the parcel. These archaeological deposits may include privies, cisterns, trash deposit, and foundations. If archaeological features are encountered, the area shall be identified and the boundaries marked to avoid further ground disturbance. The archaeological remains should then be investigated using traditional excavation techniques and, if determined to have legitimate research potential, an adequate sample for analysis should be removed or, in the case of structural remains, documented. A budget to adequately analyze the material and prepare a professional report should be obtained and analysis and report preparation completed. Copies should be provided to the Escondido City Planning Department, the Pioneer Room of the Escondido City Library, and the Escondido Historical Society.*

VII. Geology and Soils

City of Escondido Significance Criteria

A significant geologic impact would occur if a project exposed people or structures to major geologic hazards such as earthquake damage (rupture, ground shaking, ground failure, and landslides), slope and/or foundation instability, erosion, soil instability or other problems of a geologic nature.

The site is not located on any active or potentially active fault. The nearest active fault to the site is the Rose Canyon Fault, located approximately 17 miles to the west. The fault with the greatest seismic impact to the site is the Elsinore-Julian fault. Other nearby faults include the Elsinore-Temecula Fault, and the Newport-Inglewood Fault (offshore). According to the geotechnical investigation, the site is not considered to possess a significantly greater seismic risk than that of the surrounding area in general.

The project would be constructed in conformance with the recommendations in the geology reports and therefore a significant geology and soils impact would not occur.

VIII. Hazards and Hazardous Materials

City of Escondido Significance Criteria

A significant impact to the environment and the public associated with hazards and hazardous materials would result from a project if any of the following occurred:

1. *Creation of a significant hazard to the public or the environment through routine transport, use or disposal of hazardous materials or from reasonably foreseeable upset and accident;*

2. *Emission and/or handling of hazardous materials substances or waste within one-quarter mile of an existing or proposed school;*
3. *Location of a project on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5;*
4. *Location within an airport land-use plan or within two miles of a public airport. Or the project is located within the vicinity of a private air strip;*
5. *Impairment/interference with an adopted emergency response plan or emergency evacuation plan; and*
6. *Expose people or structures to a significant risk of loss, injury or death involving wild fires.*

Neither the site nor its adjacent properties mapped within a 1/8-mile radius were listed on the most recent list of identified hazardous waste sites consolidated by the Office of Planning and Research. Additionally, a Phase I and II assessment was performed by Environmental Business Solutions on December 1, 2004. The results of the assessment indicate that with the exception of small retail quantities of paint, paint solvents, gasoline, and pesticides, no obvious indication of the use or storage of hazardous materials or petroleum products were observed at the site at the time of reconnaissance.

According to the research conducted for the Phase I and II assessment there is a moderate likelihood that residual concentrations of organo-chlorine pesticides are present in the shallow surface soil beneath the subject site since it has been used for agricultural purposes. Assuming the legal and permitted application of these pesticides, it is likely that the levels of organo-chlorine pesticides would be de minimis as defined by the American Standard of Testing and Materials. However, since the site is proposed for residential use, soil sampling prior to grading should be conducted to ensure that future occupants of the site, construction workers, or any others be exposed to elevated concentrations of pesticides.

The site is not adjacent or within two miles of an airport. The proposed development would not impair the City's emergency response plan according to discussions with the City Fire Department. The two areas will not expose people or structures to a significant risk of loss, injury or death involving wild fires since the site is in an urban setting and will be irrigated. Therefore, no significant hazards and hazardous materials impact would occur as a result of the project.

MITIGATION MEASURES:

1. *Prior to grading or export of soil, soil sampling shall be performed to determine if unsafe concentrations of pesticides exist in the soil.*
2. *Prior to grading, the observed paint, solvents, etc. observed on-site shall be removed and disposed of by a California licensed hazardous waste recycler.*

IX. Hydrology and Water Quality

City of Escondido Significance Criteria:

Significant impacts associated with hydrology and water quality would result from the project if water quality standards or waste discharge requirements were violated; groundwater and

surface water quality and quantity were substantially altered; drainage patterns were substantially altered so as to increase erosion/siltation and increase surface runoff; increased runoff would exceed the capacity of existing or planned drainage systems or add a substantial source of pollution; the project were located in a 100-year floodplain and cannot be protected; and, if the project exposed people to hydrological hazards, such as flooding or inundation by seiche, tsunami, or mudflow.

The site topography slopes moderately to gently downward to the south and southwest. The site is approximately 3.2 acres and consists of gently slope of very mild gradient (approximately 10%). The drainage flows trend from northeast to southwest across the property. Four existing residences on large (1/3 acre) lots are adjacent to the northern side of the property. Vacant lands are fronting on the east and west frontages. These vacant lands are also, with this property, the subject of a current annexation request to the City of Escondido.

Site grading and drainage improvements maintain the existing drainage pattern of the site which is northeast to southwest, via a combination of overland flow (landscape, hardscape, curbs, gutters etc.) and closed conduit conditions (storm drain piping, inlets, etc.). A small detention basin is proposed to be located at the southwest corner of the property. This basin will control discharges and not exceed the predevelopment drainage condition.

The Engineering Department has determined that runoff from the project would not be considered significant and the project would not materially degrade the existing drainage facilities. The City would provide sewer and water service from mains within the adjacent street or easements; consequently, no significant impact is expected to occur to the groundwater table. The project is outside the 500-year flood plain area as identified on current Flood Insurance Rate Maps (FIRM). Therefore, the project site is not subject to potential flooding, landslides or mudflows.

X. Mineral Resources

Significance Criteria

Impacts to mineral resources would be substantial if the proposed project resulted in the loss of significant state or locally important mineral resources.

The proposed project would not substantially impact mineral resources as only a portion of the small site includes granitic rock. The limited size of the project would not substantially increase the use of, or result in the depletion of any nonrenewable natural resources.

XI. Noise

City of Escondido Significance Criteria

Significant noise impacts would occur if the project; exposed persons to, or generated noise levels in excess of standards established in the local general plan or noise ordinance or applicable standards of other agencies; exposed persons to, or generated excessive ground-borne vibration or ground-borne noise levels. Significant noise effects would also occur if the project resulted in substantial permanent or temporary/periodic increase in ambient noise levels

in the project vicinity above noise levels existing without the project. According the General Plan Noise Policy E1.4, projects that increase noise levels by 5 dB or greater should be considered as generating a significant impact and should be mitigated.

The City's General Plan Noise Element contains noise policies, which outline acceptable noise levels associated with each type of land use. A 60 CNEL exposure is considered normally acceptable for residential land uses based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements. The City requires that noise levels be presented in terms of Community Noise Equivalent Level (CNEL). CNEL is a weighted sound level during a 24-hour period, after the addition of 5 decibels (dB) to average sound levels at evening hours (7 PM to 10 PM) and 10dB to the average night hours (10 PM to 7AM). The addition of 5 and 10 dB is applied to account for noise sensitivity during evening and nighttime hours.

In order to assess future noise generation associated with the improvement of the City's circulation system, a Noise Contour map was prepared for the Noise Element of the General Plan. The Noise Exposure Map-Future Conditions Map contained in the General plan does not depict the subject site as exposed to 60 CNEL or more. The August 2000 Final Environmental Impact Report prepared for the Escondido General Plan Update illustrates existing and future noise contours. Noise levels depicted for Sunset Drive and Juniper Street fall below the 60 CNEL standard contained in the Noise/Land Use Compatibility Guidelines of the General Plan. Therefore no significant noise impact from vehicular traffic would occur.

Grading and construction within the project would create temporary noise impacts. Modern construction equipment, properly used and maintained, meet the noise limits contained in the City's Noise Ordinance. All noise generated by the project would be required to comply with the City's Noise Ordinance. Upon completion of the project, all construction noise from the project will cease. Because construction operations would be required to conform to the City's Noise Ordinance and because construction noise is temporary, no significant impact from construction noise would occur.

XII. Population and Housing

City of Escondido Significance Criteria

Significant population and housing impacts would occur if the proposed project; induced substantial population growth in an area; and, displaced substantial numbers of people or existing housing.

Population within the City would incrementally increase as a result of developing the proposed 11 dwelling units. The City's General Plan anticipates single-family residential use on the project site and the density of the proposal is consistent with the City's General Plan Land Use Designation of Suburban. The proposed development would contribute 11 units toward the goal of 1,110 units in the above moderate-income category identified in the City's Regional Share Housing requirements therefore the project would not result in a significant population and housing impact.

XIII. Public Services

City of Escondido Significance Criteria

Impacts would be significant if the project resulted in demands for wastewater treatment requirements in excess of the capacity of existing facilities. Or if the project triggered the need for construction of new water or wastewater treatment facilities or the expansion of existing facilities, the construction of which could cause significant environmental effects. The project would cause significant impacts if the project required/resulted in, the construction of new storm water drainage facilities or expansion of existing facilities or expansion of existing facilities, the construction of which could cause significant environmental effects. Significant impacts would also occur if the project resulted in a determination by the wastewater treatment provider and/or a landfill operator, which serve, or may serve, the project that capacity of existing facilities to serve the project's projected demand in addition to the provider's existing commitments is inadequate.

Sewer Service – An 8 inch sewer line, which is currently under Lehner Avenue, would be extended to “Street A” serve the project. Interviews with City Public Utilities staff have confirmed that treatment capacity exists at the wastewater treatment plant located on Hale Avenue.

Water Service – The subject site is within the City's Municipal Water District and the North City Critical Water Deficiency Area. To address the issues of water deficiency the project will require a Development Agreement. The Development Agreement includes the provision that the developer be responsible for building the Ash/Channel waterline prior to occupancy. Interviews with City Public Utilities staff have confirmed capacity exists in the City's reservoir and treatment facilities to adequately serve the project once the water line is extended.

Storm Water/Refuse Collection – The Engineering Division indicated the proposed project would not require the construction of significant new storm drain facilities or adversely impact existing facilities. Escondido Disposal currently provides solid waste service to the site and the project would not result in a significant increase in solid waste. The proposed amendment would not result in any individual or cumulative impacts to utilities and service systems.

Fire -The City Fire Department has indicated their ability to adequately serve the proposed project. The project site would be served by Fire Station No. 3, which is located at 2165 Village Road.

Law Enforcement - The City of Escondido Police Department has indicated the ability to provide adequate service to the proposed development. Additional conditions of approval will be made a part of project approvals to improve security.

Schools - The site is within the Escondido Union School District and the Escondido Union High School District. Secondary students would likely attend Escondido High School. Elementary students would likely attend North Broadway School (K-5th) and Rincon Middle School (6th-8th). The incremental impact of the proposed residential developments on the school system would be offset by the impact fees collected upon issuance of building permits.

XIV. Recreation

City of Escondido Significance Criteria

Significant impact would occur if the project resulted in an increase of the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated. A significant impact would also occur if the project includes or requires the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment.

Development of the project would result in an incremental demand on the City's recreational facilities. However the development fees paid by this project would offset the anticipated impact on the existing facilities. The proposed project would not affect existing recreational opportunities since the site is not used for recreational activities and is not listed as a park site in the City's Master Plan of Parks, Trails and Open Space. Therefore no significant impact to recreational resources would occur as a result of the project.

XV. Mandatory Findings of Significance

No significant impacts to the environment as a result of this project have been identified. Approval of the project is not expected to have any significant impacts, either long-term or short-term, nor will it cause substantial adverse effect on human beings, either directly or indirectly.

ATTACHMENT "A"
MITIGATION MONITORING REPORT

PROJECT NAME: David Buckmaster 11-Unit Single-Family Residential Subdivision
PROJECT DESCRIPTION: A Tentative Map, and Development Agreement, for an 11-lot Residential Subdivision
PROJECT LOCATION: Between Conway Drive, Lehnner Avenue, & Stanley Ave.
CONTACT PERSON: Steve Barger, Cornerstone Engineering
PHONE NUMBER: (760) 722-3495

ENVIRONMENTAL CASE NO: ER 2006-08
ASSOCIATED CASE NO: TR 894, 2004-57-DA/GE

APPROVAL BODY/DATE: City Council (TBD)
PROJECT PLANNER: Diana Delgadillo, Associate Planner

No.	Mitigation Measure	Location in Document	Responsibility for Implementation	Signature/Date Completed	Phase of Implementation	Comments
1.	A qualified biologist shall determine if any active raptor nests occur on or in the immediate vicinity of the project site if construction is set to commence or continue into the breeding season of raptors (January 1 to June 15). If active raptor nests are found, their situation shall be assessed based on topography, line of site, existing disturbances and proposed disturbance activities to determine an appropriate distance or temporal buffer.	Biological Resources	Applicant		Prior to issuance of grading permit	
2.	Should any artifacts be found during the grading process, the project applicant shall provide archaeological monitoring for the significant subsurface archaeological deposits that might be present on the parcel. These archaeological deposits may include privies, cisterns, trash deposit, and foundations. If archaeological features are encountered, the area shall be identified and the boundaries marked to avoid further ground disturbance. The archaeological remains should then be investigated using traditional excavation techniques and, if determined to have legitimate research potential, an adequate sample for analysis should be removed or, in the case of structural remains, documented. A budget to adequately analyze the material and prepare a professional report should be	Cultural Resources	Applicant		Prior to issuance of grading permit	

	obtained and analysis and report preparation completed. Copies should be provided to the Escondido City Planning Department, the Pioneer Room of the Escondido City Library, and the Escondido Historical Society.					
3.	Prior to grading or export of soil, soil sampling shall be performed to determine if unsafe concentrations of pesticides exist in the soil.	Hazardous Materials	Applicant		Prior to issuance of grading permit	
4.	Install temporary signs on westbound Vista Avenue alerting driver to possible congestion during the 30 minutes directly before and after the school day and suggest alternate routes.	Traffic/Circulation	Applicant		Prior to issuance of grading permit	
5.	Provide tubular delineators on Vista Avenue at the school Pickup-Drop-off area to prohibit eastbound to westbound U-turns. This, in conjunction with the school implementing a more stringent one-way traffic pattern, could alleviate some of the existing congestion.	Traffic/Circulation	Applicant		Prior to issuance of grading permit	
6.	Provide pedestrian walkways at the following locations: a. Ash Street from Sheridan Avenue to Vista Avenue b. North side of Vista from Ash Street to rear access driveway to Rincon Middle School. c. South side of Lehner Avenue from Vista Avenue to Ash Street. d. East side of Conway from Rincon Avenue to project site.	Traffic/Circulation	Applicant		Prior to issuance of grading permit	

ACKNOWLEDGEMENT OF ENFORCEABLE COMMITMENT

ER 2004-31

2004-57-DA/GE, TR 894 11-Lot Single-Family Residential Subdivision
On Lehnner Avenue Between Conway Drive and Stanley Avenue

The items listed on the attached Mitigation Monitoring Program constitute an enforceable commitment pursuant to Section 21081.6(b) of the California Environmental Quality Act (Public Resources Code Sections 21000-21178.) The applicant will be required to provide and comply with all of the mitigation measures listed herein. These mitigation measures have also been included as conditions of the project approval.

5/30/04

Date

Steve Barger

Applicant's Signature

Steve Barger, Cornerstone Engineering