

## **PLANNING COMMISSION**

TO: Planning Commission

FROM: Planning Staff

SUBJECT: Proposed Development Agreement and Finding of Substantial Conformance for Tract 889 (PHG 13-0028)

### STAFF RECOMMENDATION:

Recommend Approval of the proposed Development Agreement and Finding of Substantial Conformance to the City Council.

### PROJECT DESCRIPTION:

A proposed Development Agreement with a five-year term to authorize construction of the previously approved 16-lot, Tract 889 within the North Broadway Deficiency Area. The terms of the agreement would allow the developer to proceed with construction of 16 residences and a cul-de-sac street in return for upgrading existing water infrastructure in the area to include a new 12" water line in Stanley Avenue from Conway Drive to Ash Street. The developer would also be obligated to pay additional deficiency fees towards future construction of regional street and drainage improvements. The project also includes a finding of substantial conformance for proposed modifications to the Tentative Map that include changing the proposed street in the development from a through-street to a cul-de-sac.

### LOCATION:

The project site is a 4.63-acre parcel located on the southern side of Stanley Avenue and northern side of Lehner Avenue, between Conway Drive and Ash Street, addressed as 733 Stanley Avenue.

### ENVIRONMENTAL REVIEW:

A Mitigated Negative Declaration (ER 2004-24) was issued for the Tract 889 project and Development Agreement on August 26, 2004. 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 February 8, 2006, the City Council approved a 16-lot residential subdivision on 4.63 acres (TR 889) in conjunction with a Development Agreement (2004-44-DA). The City Council approval also authorized annexation of the subject property as part of a larger 22-acre annexation area. 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 March 24, 2011. The Tentative Map benefitted from three separate two-year extensions granted by the California State Legislature and now expires on March 24, 2017. The proposed Development Agreement would allow the project to proceed with recording the Final Map and the start of construction.

Tract 889 is a rectangular property with frontage on both Stanley Avenue and Lehner Avenue. The approved Tentative Map includes eight lots on each side of a public street that connects Stanley Ave. to Lehner Ave. The applicant is proposing a change to the project design through the Substantial Conformance process that would change the through-street to a cul-de-sac. A Finding of Substantial Conformance can be authorized by the Director of Community Development, or elevated to the Planning Commission for decision. The Director has opted to package the Substantial Conformance request with the proposed Development Agreement for review by the Planning Commission.

**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 889 obligated the developer to construct 1,700 lineal feet of off-site water line improvements on Sheridan Avenue in exchange for a waiver of certain fees. The developer was also obligated to pay an infrastructure deficiency fee of \$12,000 per lot that was to be

used to fund future street and drainage improvements in the North Broadway area.

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 previously-required water line in Sheridan Avenue have been alleviated and that water upgrades closer to the project site are now needed. The proposed Development Agreement would relieve the developer of the Tentative Map condition to construct the Sheridan water line in return for constructing off-site water line upgrades on Stanley Avenue.

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 off-site 12" water line from project eastern boundary to Conway Drive.
6. City agrees to include a requirement in future Development Agreements for any property on Stanley Avenue between Conway Drive and Ash Street, for each of those properties to reimburse Owner for its proportionate share of the 12" water line (estimated to be approx. \$3,555/unit).
7. City agrees that the modified Tentative Map is in substantial conformance with the Tentative Map approved by City Council Resolution 2006-23.

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 new fee was established based on a current 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.

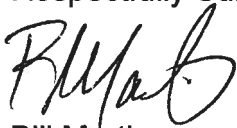
***Finding of Substantial Conformance***

The 4.63-acre, Tract 889 development was designed with a single new street that connects Stanley Avenue on the northern side of the property to Lehner Avenue on the southern side. Modifications to the approved project design are now required to address storm water treatment standards that have changed since the Tentative Map was approved. A more intensive on-site treatment system for runoff must now be incorporated into the project design to treat the water before it discharges into the storm drain.

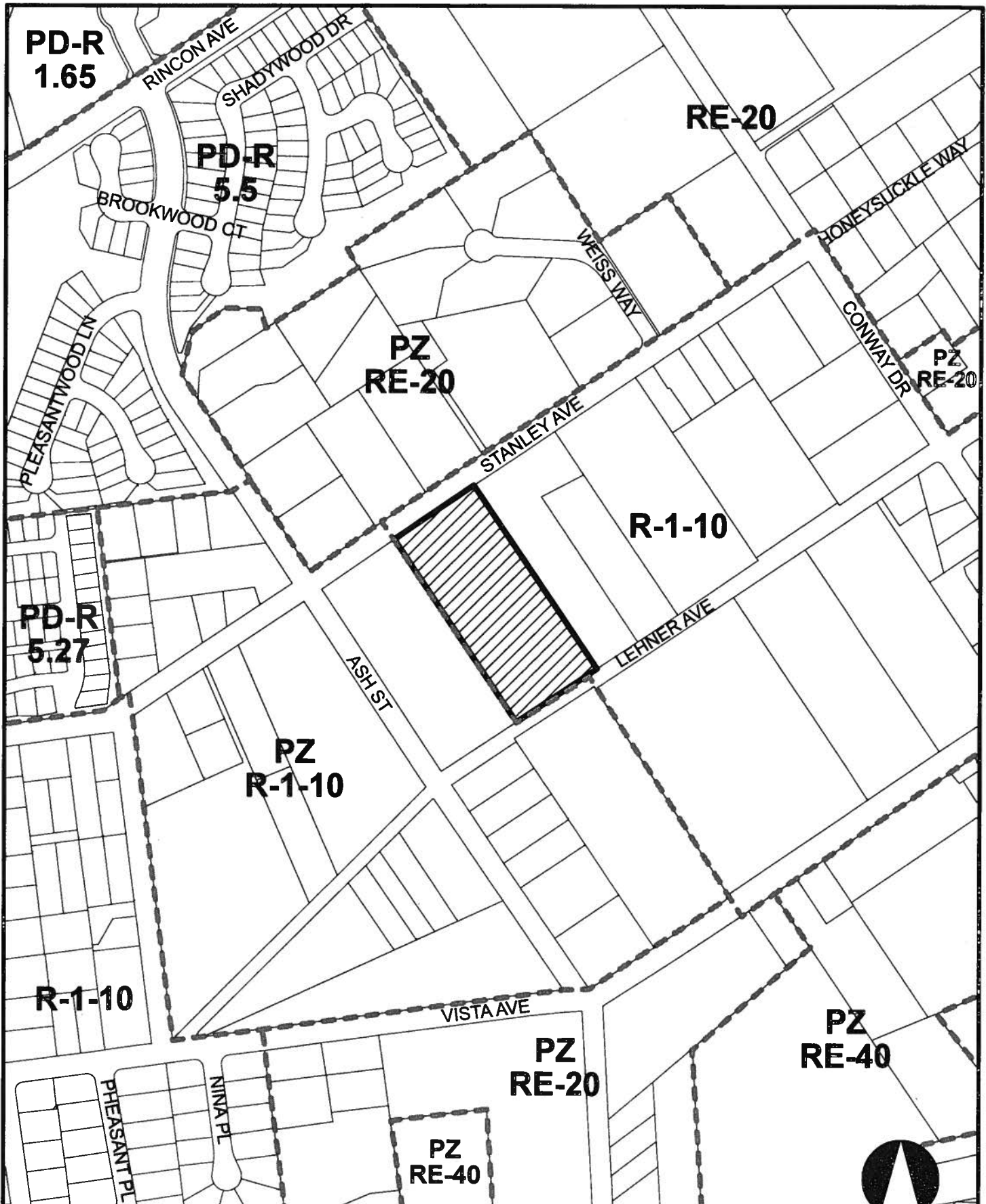
The applicant is proposing to treat storm water in two 2,700 SF detention basins placed at the lower end of the property adjacent to Lehner Avenue. This would constrain Lots 8 and 9 under the current Tentative Map design to the point where a smaller building footprint may have to be developed specifically for those lots. The applicant is proposing to address this issue by modifying the project design to increase the size of Lots 8 and 9 by installing a cul-de-sac with access from Stanley Avenue. The increased area for Lots 8 and 9 can then be utilized for the detention basins. A secondary benefit of the cul-de-sac design is that it eliminates potential cut-through trips during school hours at Rincon Middle School. The applicant is requesting that these changes to the project design be accepted through the Substantial Conformance process.

The Subdivision Ordinance states a determination of Substantial Conformance can be made when a modified Tentative Map complies with all the conditions of approval and where no additional grading exemptions, units, property or parcels are involved. The approved minimum lot size must also be maintained and the revisions must be consistent with the character of the original approval. Staff feels the proposed modification meets these standards and would be in conformance with the approved conditions of approval. The same number of residential lots and minimum lot size would be maintained and the approved grading exemption would not increase in height. The proposed cul-de-sac design enhances the neighborhood and allows current storm water requirements to be met. Staff therefore recommends that a Finding of Substantial Conformance be issued.

Respectfully Submitted,

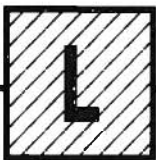


Bill Martin  
Principal Planner

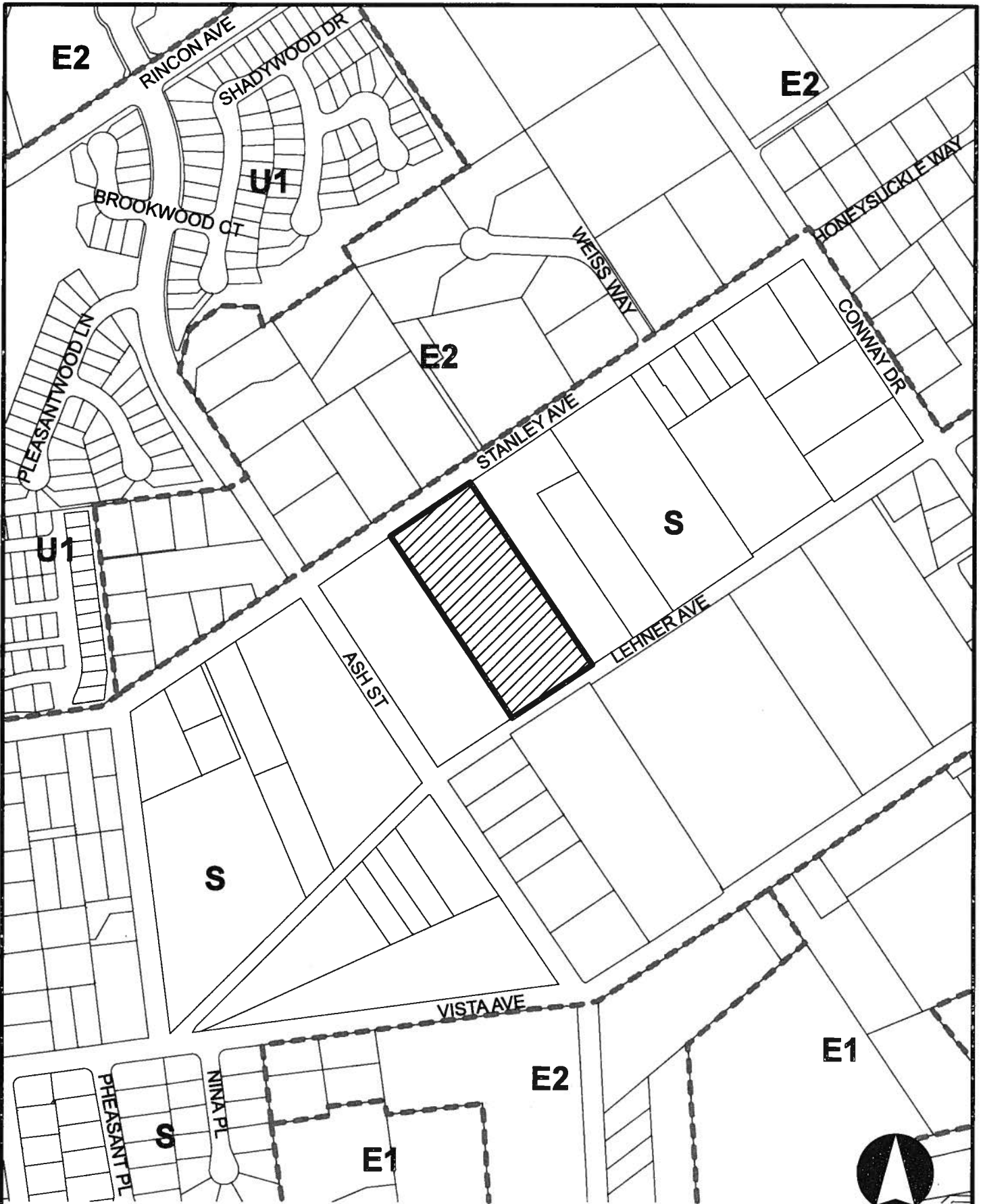


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**PROPOSED PROJECT**  
**PHG 13-0028**



LOCATION/ZONING



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**PROPOSED PROJECT**  
**PHG 13-0028**



**OWNER'S CERTIFICATE**  
 I, the undersigned, being the owner of the above described property, do hereby certify that the information herein is true and correct to the best of my knowledge and belief, and that the same has been prepared by a duly qualified and licensed professional engineer or architect, and that I have no objection to the same being used for the purposes herein stated.

BY: *[Signature]*  
 DATE: \_\_\_\_\_

**ENGINEER OF WORK**  
*[Signature]*  
 DATE: \_\_\_\_\_

**ASSESSOR'S PARCEL NO.**  
 241-142-02

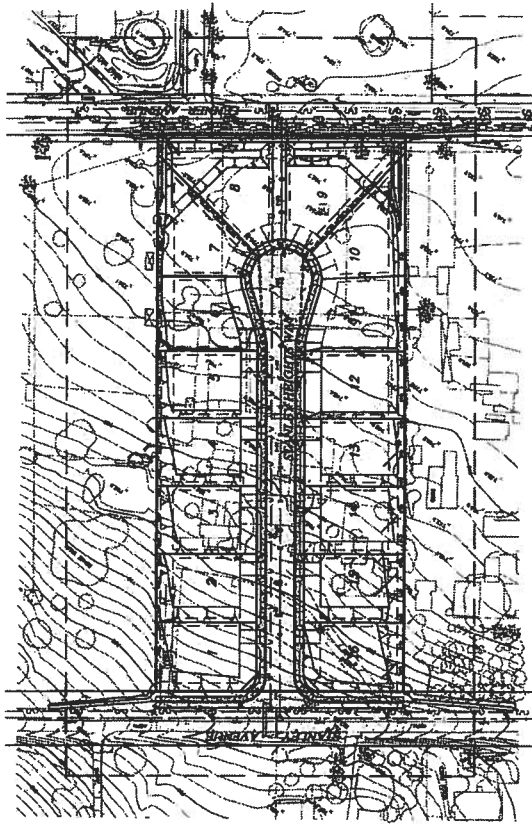


**LEGAL DESCRIPTION**  
 LOT 1, IN BLOCK 418 OF THE RECREATION OF BLOCK 418 AND 419 OF THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, CALIFORNIA, AS SHOWN ON THE COUNTY RECORDS OF THE COUNTY OF SAN DIEGO, CALIFORNIA, MAP NO. 142, DATED 11/22/1954.

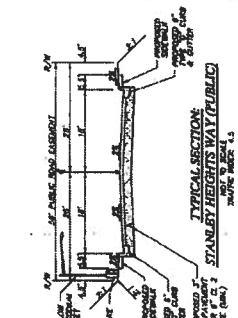
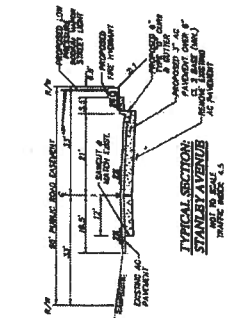
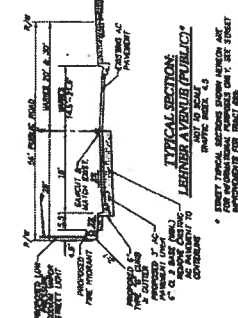
**GENERAL NOTES**  
 ALL DIMENSIONS ARE PUBLIC.  
 GRADING AND IMPROVEMENTS SHALL BE IN ACCORDANCE WITH CITY OF ESCONDIDO STANDARDS.  
 ALL UTILITIES SHALL BE DEEPENED TO THE SATISFACTION OF ALL APPLICABLE AGENCIES.  
 ALL UTILITIES SHALL BE CONFORMANT WITH NETWORK UTILITY COMPANIES.  
 ALL UTILITIES SHALL BE ADJUSTED TO FIT EXISTING AND PROPOSED UTILITIES.  
 TOTAL AREA OF SUBMISSION: 4.67 AC. DROSS  
 TOTAL LOTS: 18  
 TOTAL AREA: 1.17 AC. DROSS  
 PUBLIC UTILITY BENCH MARK: 45  
 GENERAL PLAN: SUBDIVISION  
 EARTHWORK  
 ALL: 1,300 CY



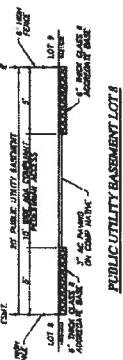
**CITY OF ESCONDIDO TRACT NO. 889  
 TENTATIVE SUBDIVISION MAP**



KEY MAP



- LEGEND**
- SHEET NUMBER (NOT MAP)
  - PROPOSED FIRE HYDRANT
  - PROPOSED WATER MAIN
  - PROPOSED SEWER
  - PROPOSED STREET MARGINS
  - PROPOSED LOT NUMBER
  - PROPOSED PAD ELEVATION
  - PROPOSED SLOPE DIMENSIONS (S:1 MAX)
  - PROPOSED DIT / FILL LINE
  - PROPOSED CROSS UTILITY
  - PROPOSED EASEMENT
  - EXISTING EASEMENT (PLATTABLE)
  - EXISTING CONTOUR
  - EXISTING WATER LINE
  - EXISTING GROUND LINE
  - EXISTING GAS LINE
  - EXISTING AND UTILITIES
  - PROPOSED STEP SLOPE
  - PROPOSED SHADE TREATMENT



**PROPOSED PROJECT  
 PHG 13-0028**

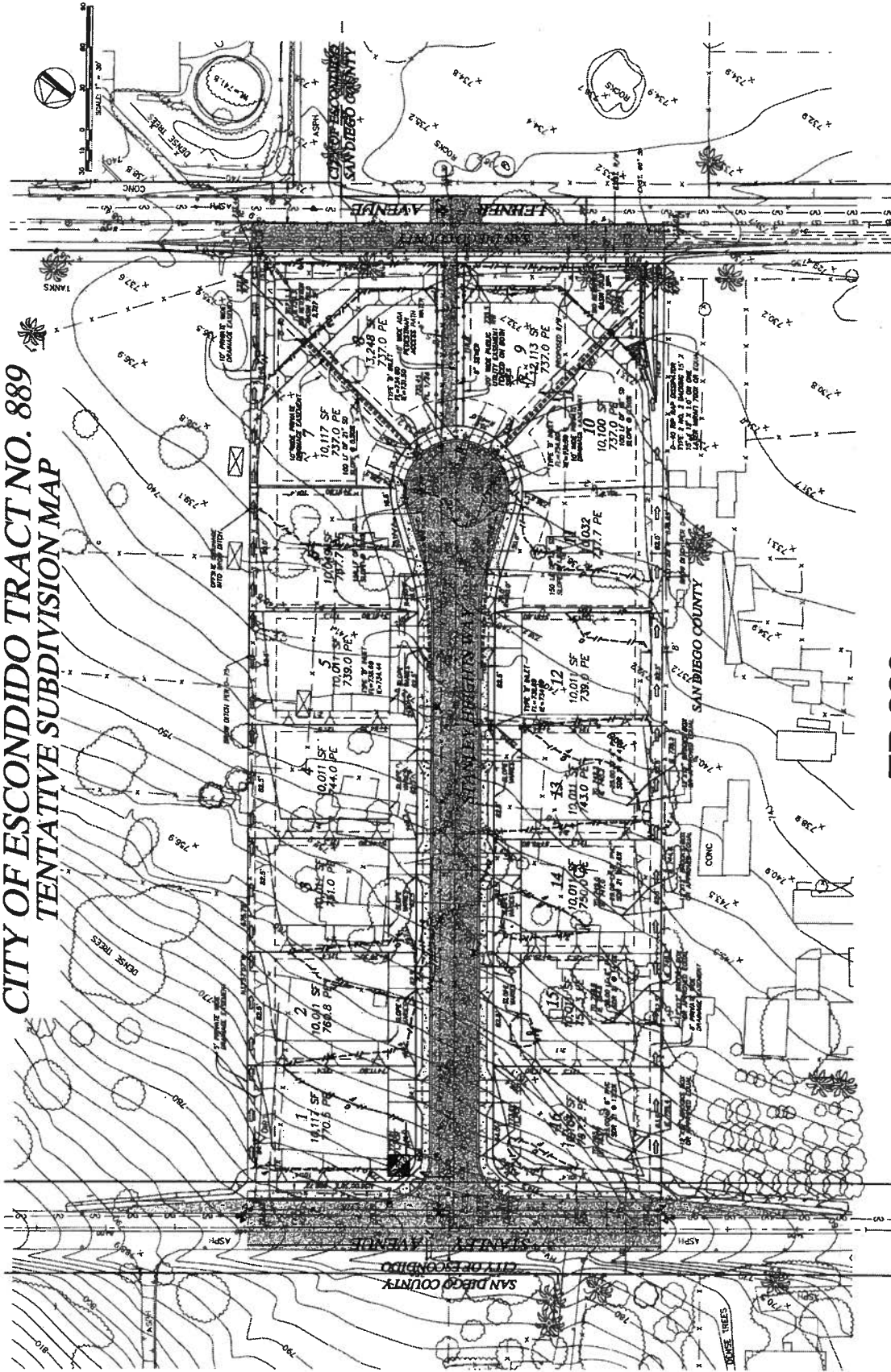


SITE PLAN

**TR 889  
 PROPOSED SUBSTANTIAL CONFORMANCE TENTATIVE MAP**



**CITY OF ESCONDIDO TRACT NO. 889  
TENTATIVE SUBDIVISION MAP**



**TR 889  
PROPOSED SUBSTANTIAL CONFORMANCE TENTATIVE MAP**

**PROPOSED PROJECT  
PHG 13-0028**



SITE PLAN





## **SUPPLEMENT TO STAFF REPORT/DETAILS OF REQUEST**

### **A. SUPPLEMENTAL DETAILS OF REQUEST**

1. Property Size: 4.63 acres
2. Number of Lots: 16
3. General Plan Designation: Suburban (up to 3.3 units per acre)
3. Residential Density: 3.45 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 10,011 SF to 13,248 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 13-0028  
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 Stanley Avenue 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 12" water line in Stanley Avenue from Conway Drive to Ash Street 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.

**Substantial Conformance**

1. The proposed modifications to the approved Tentative Map are in compliance with all of the conditions of approval, except for the requirement to provide a water line in Sheridan Avenue, which is no longer needed and has been modified to provide an alternative public benefit through the Development Agreement.
2. The proposed modifications to the approved Tentative Map are in substantial conformance with the approved project design because the modified Tentative Map would be graded in a similar fashion and no additional grading exemptions or increased slope heights are proposed, the same number of residential lots and minimum lot size would be maintained, no additional property or parcels have been included into the development, and the revisions are consistent with the character of the original approval.

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: 224-142-02

**Recording Fees Exempt Per Government Code Section 27383**

**DEVELOPMENT AGREEMENT  
for Tract 889**

**between**

**CITY OF ESCONDIDO**

**and**

**BG LIHTC, LLC  
A California limited liability company**

\_\_\_\_\_, 2013

## DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into by and between the CITY OF ESCONDIDO, a municipal corporation ("City"), and BG LIHTC, LLC, a California limited liability company ("Owner")(collectively, "the Parties").

### ARTICLE I

#### Recitals

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

1. **Code Authorization.** Government Code Sections 65864 through 65869.5, Article 58 of City's Zoning Code (the "Development Agreement Legislation") and Article 68 of the City's Zoning Code (Growth Management Ordinance) authorize 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 4.63 acres, located in the County of San Diego, State of California (the "Property"), as described in Exhibit A attached hereto, 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 sixteen (16) 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 18, 2013 on file with 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 the 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 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. 889 (the "Tentative Map"), by City Council Resolution No. 2006-23 on February 8, 2006, including grading exemptions. Owner and City understand that the Tentative Map has been modified to comply with the stormwater regulations

as stated in Article II, Section 3. Owner and City agree that the map, as modified, is in substantial conformance with the map as approved by Resolution 2006-23.

b. Mitigated Negative Declaration (Tract 889) ER2004-24, certified by City Council Resolution No. 2006-23 on February 8, 2006.

8. **Amendment**. The Tentative Map is set to expire on February 8, 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 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 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 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 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 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 (5<sup>th</sup>) 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 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, 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, 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 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 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 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 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. 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.  
Lounsbury 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 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 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 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. 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. City may conduct, in accordance with CEQA and the Existing Laws, an environmental review for Future Entitlements. 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), 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 City that are collected by City, 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 the 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.

7. **Required Financial Contribution to City Capital Improvement Projects.**

Prior to City’s grant of the first building permit for the Project, Owner agrees to pay City SEVENTEEN THOUSAND DOLLARS (\$17,000.00) per approved residential lot (“Deficiency Fee”), which funds 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 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 City, or portions of 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 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 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 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 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 Memorandum may be recorded as an Addendum to the Agreement.

11. **Term of Map(s) and Other Project Approvals.** Pursuant to California Government Code Sections 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, 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 City's control, water supply, treatment, distribution and service, to accommodate the Project. To the extent that City renders such services or provides such utilities, 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 City's control. Notwithstanding the foregoing, 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 City cannot guarantee sufficient capacity for sewer collection, sewer treatment and sanitation service during the Term of this Agreement. 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 City's Zoning Code, 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 City determines that the failure of City to terminate or modify the Agreement would place the residents of 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:

**STREET**

**IMPROVEMENT**

Street "A"

Full Width

Lehner Avenue Half width plus 10 feet

Stanley Avenue Half width plus 10 feet

Owner shall construct a 12" water line along Stanley Avenue, from Ash Street to the Property's eastern boundary.

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 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 City.
- b. Providing fiscal benefits to City.
- c. Providing short-term construction employment within the City.
- d. Providing housing which will help to satisfy City's obligation to meet 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 and surrounding the Property, and Owner's payment of a Community Benefit Fee of SEVENTEEN THOUSAND DOLLARS (\$17,000.00) per unit to be developed, pursuant to Article IV, Section 6.

2. **Reimbursement by Future Development Projects.** In return for Owner's construction of the twelve inch (12") water line along Stanley Avenue as described in Exhibit C and the conditions of approval, City shall include a requirement in future development agreements for

development of any property on Stanley Avenue between Conway Drive and Ash Street, for each of those properties to reimburse Owner \$3,555 per unit for that property's proportionate share of the 12" water line. This provision shall expire ten years after the Effective Date.

3. **Occupancy Contingent on Construction of Public Benefits.** 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.

4. **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.

5. **Other Governmental Bodies.** To the extent that 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 City's obligations under the Agreement.

6. **Processing During Third Party Litigation.** The filing of any third party lawsuit(s) against 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. 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, 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 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.** 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, 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.** 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 City.** Upon a material default by 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 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 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 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 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. City acknowledges that lenders providing financing may require modifications to the Agreement and 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. 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 City, shall be entitled to receive from 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 City or of Owner.

5. **Amendments.** All amendments to the Agreement must be in writing signed by the appropriate agents of 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 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. **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 City. The covenant of cooperation shall include, to the maximum extent permitted by law, that 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 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: \_\_\_\_\_

Its: Mayor

CITY OF ESCONDIDO

By: \_\_\_\_\_

Its: Clerk

PACIFIC LAND INVESTORS, LLC  
A Delaware limited liability company on behalf of

BG LIHTC, LLC  
A California limited liability company

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.  
Attorneys for Pacific Land Investors, LLC.

**EXHIBIT A**

**LEGAL DESCRIPTION**

Lot "L" in Block 418 of the Resubdivision of Block 418 and 419 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.

APN 224-142-02

**EXHIBIT B**

**ENTITLEMENTS**

1. Tentative Subdivision Map (Tract 889), No. 889 (the "Tentative Map"), by City Council Resolution No. 2006-23 on February 8, 2006, including grading exemptions. Owner and City understand that the Tentative Map has been modified to comply with the stormwater regulations as stated in Article II, Section 3. Owner and City agree that the map, as modified, is in substantial conformance with the map as approved by Resolution 2006-23.
2. Mitigated Negative Declaration (Tract 889) ER-2004-24, certified by City Council Resolution No. 2006-23 on February 8, 2006.

**EXHIBIT C**

**PUBLIC BENEFITS**

- A. Owner shall pay City SEVENTEEN THOUSAND DOLLARS (\$17,000.00) per lot shown on the Project's approved Final Map prior to City's grant of the first building permit for the Project, which funds City shall use to finance certain roadway and drainage improvements in the vicinity of the Project.
  
- B. Owner shall construct a 12" water line along Stanley Avenue, from the Property's eastern boundary to Conway Drive.

**EXHIBIT D**

**AGREEMENT FOR COMPLETION OF IMPROVEMENTS**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between 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 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. 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. 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 CITY, shall defend Indemnitees at APPLICANT'S expense by counsel acceptable to 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 CITY shall be limited by the provisions of California Civil Code Section 2782(b).

4. APPLICANT shall further indemnify, defend and hold harmless 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 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 paragraph nos. 3 and 4, respecting indemnification, are applicable to the obligations as set forth in this paragraph no.

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 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

## Lori Pike

---

**From:** Adam C. Phillips  
**Sent:** Wednesday, November 06, 2013 5:56 PM  
**To:** Macedo, Julie@Waterboards (Julie.Macedo@waterboards.ca.gov)  
**Cc:** Christopher W. McKinney  
**Subject:** Response to Proposed Penalty: NOV R9-2013-0081  
**Attachments:** Letter.Response.11.6.13.pdf

Julie,

Attached please find the City of Escondido's initial response to the proposed penalty concerning NOV R9-2013-0081. We look forward to discussing our requests with you and your staff on November 14<sup>th</sup>, 2013. I wanted to see if it were possible for you and I to touch base this Friday (November 8) to discuss the logistics for a teleconference on the 14<sup>th</sup> in addition to any follow up on the part of the City that would assist in your consideration of the City's response. In the meantime, please let me know if you have any questions or concerns. Thank you for your consideration and attention in this matter.

Sincerely,

Adam C. Phillips  
Deputy City Attorney  
City of Escondido  
(760) 839-4608 (Main)  
(760) 839-4328 (Direct)



Confidentiality Statement: This communication contains information that may be confidential, and it may also be legally privileged or otherwise exempt from required disclosure. If you are not the intended recipient, please do not read, distribute or copy this communication and please delete the message from your computer.



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

## AMENDED MITIGATED NEGATIVE DECLARATION

### Stanley Avenue / Conway Annexation Tract 889, 2004-44-GE/DA, 2004-02-AN

**Case Number:** ER 2004-24, Tract 889, 2004-44-GE/DA, 2004-02-AN

**Date Issued:** December 15, 2005

**Public Review Period:** December 16, 2005 – January 4, 2006

**Location:** Tract 889 is located between Stanley and Lehner Avenues approximately 300 feet east of Ash Street. Additional areas to be annexed include properties immediately east of proposed Tract 889 to Conway Drive and at the northwest corner of Stanley Avenue and Conway Drive.

**Addresses:** 733, 839, 923, 942 Stanley Avenue, 926, 1026 Lehner Avenue, 2019, 2045, 2229 Conway Drive, vacant parcel (Assessor Parcel Number 224-142-04 between Stanley and Lehner Avenues.

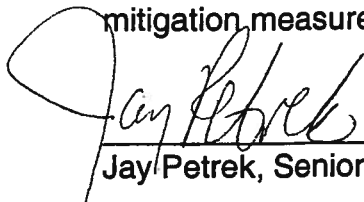
**Project Description:**

The project includes a 16-lot residential subdivision on 4.63 acres (Tract 889) with grading exemptions for peripheral fill slopes up to 13.5 feet high and construction of a replacement 25" diameter waterline with a 30" diameter waterline on Sheridan Avenue between Conway Drive and Ash Street. A reorganization of the development is also proposed that includes contiguous areas totaling 9 properties on 22 acres. The reorganization consists of annexation to the City of Escondido and detachment from County Service Area 135 (Regional 88 MHZ Radio) and Rincon del Diablo-Improvement District E (Fire Protection).

**Applicant:** RMCI Development 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, Biology, Hazardous Materials and Public Services impacts that may be potentially significant, but mitigation measures would reduce potential impacts to a less than significant level.

  
Jay Petrek, Senior Planner

**Initial Study Part II**  
**ER 2004-24 (Amended)**  
**Stanley Avenue Tract 889**  
**Grading Exemption, Development Agreement, Annexation**  
**Case Numbers: Tract 889, 2004-44-GE/DA, 2004-02-AN**

**Original Project Description:**

The following section evaluates the potential environmental impacts associated with a 15-lot residential subdivision on 4.63 acres and re-organization of the subject site as well as nine other contiguous areas totaling approximately 22 acres. The reorganization consists of annexation to the City of Escondido and detachment from County Service Area 135 (Regional 88 MHZ Radio) and Rincon del Diablo-Improvement District E (Fire Protection). 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. As provided by CEQA, the San Diego Local Agency Formation Commission (LAFCO) will act as a responsible agency because of their role in reviewing and potentially approving the reorganization. Approval of a re-organization for areas 1 and 2 has already been initiated by the City of Escondido City Council.

- Area 1 (Tract 889): RMCI Development Inc. has submitted a Tentative Tract Map for a proposed development consisting of 15 single-family residences on minimum 10,000 square foot lots and associated public infrastructure improvements such as circulation, franchise utilities, storm drains, and water and sewer lines. This part of the project (Area 1) would include the demolition and removal of an existing home, barn, out buildings and horse corrals to create the proposed streets and home building sites. Grading Exemptions are proposed for peripheral fill slopes up to 13.5 feet in height where the ordinance allows a maximum of 10 feet. The approximately 4.62 – acre site is comprised of one Assessor Parcel Number (224-142-02) fronting on Stanley and Lehner Avenues. The proposed project is located within an unincorporated neighborhood in the Lehner Valley area between Ash and Conway Streets and has been pre-zoned R-1-10.
- Area 2 (Stanley/Conway Annexation): The second area includes nine properties totaling 22 acres adjacent to Tract 889 proposed for annexation with no development plans submitted at this time. Assessor Parcel Numbers 224-241-23 & 25 (6.79 acres) are pre-zoned R-E-20 and the remaining properties are pre-zoned R-1-10. Development of these areas will require separate environment review prior to construction

**Amended Project Description:**

**Subsequent discussions and negotiations with the applicant regarding the Development Agreement have resulted in physical changes to the proposal involving:**

- 1) Adding one additional residential lot to the subdivision increasing the number of units from 15 to 16; and,
- 2) Upgrading a 1,700 foot long, 25" diameter potable water pipeline to 30" diameter in the Sheridan Avenue right of way between Conway Drive and Ash Street. The pipeline constitutes a portion of a longer potable water pipeline totaling 10,200 feet that extends along Sheridan Avenue, Ash and Stanley Avenue to serve the Lehner Valley Area.

This amended environmental initial study evaluates the impact of adding one additional unit to the project as well as the constructing the proposed pipeline on a project level and cumulative level. All modifications proposed in this environmental study are incorporated with underlined text.

## **Environmental Setting:**

### **Area 1 (Tract 889):**

The approximately 4.63-acre property, referred to as Tract 889, has been disturbed by agricultural activities and contains one single-family house in the northwest portion of the site. The home does not have historic value and will be removed as part of the development of the property. Primary access to the site is from Stanley Avenue secondary access from Lehner Avenue. Portions of the site are used for equestrian and agriculture purposes. The entire site is particularly disturbed from residential, equestrian and agricultural activities. Elevations on the site range from approximately 730 in the south to 780 feet in the north above mean sea level with topographic features including mild slopes. Vegetation includes fragmented non-native grasses, mature ornamental trees and shrubs, agriculture, disturbed and developed area.

### **Area 2 (Stanley / Conway Annexation):**

The adjacent nine properties are generally vacant or underdeveloped with approximately 6 single family units, various out-buildings, horse corrals and barns on 8 parcels (APN 224-241-23 & 25, 224-142-04, 13, 14, 23, 31, 32, & 35) ranging from 0.32 – 4.7 acres. The properties are accessed from Conway Drive, Stanley and Lehner Avenues. Elevations on the site range from approximately 735 in the south to 800 feet in the north above mean sea level with topographic features including mild slopes. Vegetation includes fragmented southern riparian forest, disturbed wetland, non-native grasses, mature ornamental trees and shrubs, eucalyptus woodland, agriculture, disturbed and developed area.

### **Area proposed for waterline installation:**

The area proposed for the water line replacement installation includes a 1,700 foot length of Sheridan Avenue between Conway Drive and Ash Street. This area is entirely within the right of way and beneath paved roadway surfaces. Bordering this length of Sheridan Avenue are single family developments in residential neighborhoods.

Adjacent land uses are summarized below:

**North:** Developed single-family dwellings with an Estate II land use designation.

**South:** Developed single-family dwellings and a public Middle School with a Suburban land use designation.

**West:** Developed single-family dwellings and agricultural uses with a Suburban and Estate II land use designation

**East:** Developed single-family dwellings and agricultural uses with a Suburban and Estate II land use designation

## **I. Land Use**

### ***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.*

**Area 1:** The City of Escondido General Plan designates Area 1 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 per acre on relatively large lots with minimum 10,000 sq. ft. lot sizes. This designation is often applied in transitional areas between more intensive urban and less intensive estate and rural development. 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%:	3.3 dwelling units per 1 acre
25-35%	1.5 dwelling unit per 1 acre
35+	1 dwelling unit per 20 acres

The minimum lot size shall be 10,000 square feet, unless the development is clustered. Based on the variable slope provisions of Suburban contained in the City's General Plan, 15.3 dwelling units would be allowed for Tract 889, which is consistent with the proposed 15-unit subdivision. The pre-zoning, which was adopted approximately 15 years ago as part of a previous annexation, is R-1-10, which is consistent with the General Plan.

Area 1 is within the County of San Diego's North County Metropolitan Subregional Plan and is designated Residential 6 (4.3 du/ac). The existing County zoning is RS-4. The applicants for Area 1 are proposing to develop in accordance with the City's General Plan designation. While the project is surrounded by vacant and/or underdeveloped land to the east and west, there is a public Middle School across Lehner Avenue and single family development across Stanley Avenue to the north.

From a zoning "plan to plan" analysis, the current county zoning for the 4.63 acres would allow approximately 19 single family units. This is an increase of 4 units more than the City's pre-zoning and General Plan and consequently would not constitute a significant impact since four fewer units would be less intrusive.

From a “plan to ground” analysis, the proposal would add an additional 15 units more than currently exist on the 4.63-acre site. This is not considered significant since 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 addition of one additional dwelling unit is proposed since all lots within the development will maintain a minimum of 10,000 square feet in size, which will conform to the underlying City pre-zoning of PZ R-1-10. Section 32.202.03 of the City’s Zoning Ordinance allows development involving constrained lands or limited street dedications on the property may be considered in conformance with the General Plan, if the Director of Planning and Building determines that the proposed project satisfies each of the following criteria:

- A. The Tentative Subdivision or Parcel Map proposes lot sizes which conform with the standards of the current zoning designation and such zoning conforms with the current land use category of the General plan.
- B. The proposed lot sizes conform with the minimum size specified in the General Plan Land Use Category in which it is located.
- C. The proposed map is infill in nature and the proposed lot sizes are compatible with the size and design of surrounding properties; and,
- D. The map design conforms with other General Plan goals regarding the preservation of wetlands, riparian areas, steep slopes, and sensitive habitat areas.

The addition of one additional dwelling unit is not considered significant since it will not substantially alter the overall appearance or intensity of the proposed development and will be consistent with other R-1-10 style development in the area.

From an individual and cumulative perspective, the 1,700-foot long pipeline proposed for development as part of the subject site as well as the 10,200-foot overall pipeline length will not have land use impacts since the amount of water that will be delivered to the area will only serve development that has already been planned and/or anticipated for the build-out of the community.

Area 2: The City of Escondido General Plan designates Area 2 as Suburban for properties located between Stanley and Lehner Avenues and Estate II for areas north of Stanley Avenue. Both land use designations allow single-family residential development. The objective of the Suburban category is described above. The objective of the Estate II category is to promote single-family development with a maximum density of 2 units per acre on relatively large lots with minimum 20,000 sq. ft. lot sizes. This designation is often applied in transitional areas between Suburban and less intensive rural development. 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

The minimum lot size shall be 20,000 square feet, unless the development is clustered.

Based on the variable slope provisions of Suburban and Estate II designations contained in the City's General Plan, 71 dwelling units would be allowed for the 22 acres. The pre-zoning, which was adopted approximately 15 years ago as part of a previous annexation, is R-1-10 and R-E-20, which is consistent with the General Plan.

Area 2 is within the County of San Diego's North County Metropolitan Subregional Plan and is designated Residential 6 (4.3 du/ac). The existing County zoning is RS-4. The applicants for Area 2 would require separate environmental review conducted prior to development occurring on the site. While the project is surrounded by vacant and/or underdeveloped land to the east and west, there is a public Middle School across Lehner Avenue and single family development across Stanley Avenue to the north.

From a zoning "plan to plan" analysis, the current county zoning for the 22 acres would allow approximately 94 single family units. This is an increase of 23 units more than the City's pre-zoning and General Plan and consequently would not constitute a significant impact since 23 fewer units would be less intrusive.

From a "plan to ground" analysis, the proposal would add an additional approximately 66 units more than currently existing in the 22-acre area. This is not considered significant since any future project would be consistent with existing adopted City of Escondido land use policies, no significant land use impact would occur.

## **II. Aesthetics**

### **City of Escondido Significance Criteria:**

*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.*

Areas 1 and 2 are not located on a ridgeline identified in the Community Open Space/Conservation Element of the General Plan. Grading exemptions are being requested for slopes within Area 1 up to 13 feet in height along the periphery of the project. The applicants have submitted findings describing the various reasons why each exemption is necessary. The slopes are minor in nature and will not block significant views. .

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 Area 1 and future development of area 2 will also not obstruct scenic views or vistas open to the public since neither the City nor the State designates Lehner / Stanley Avenues or Conway Drive as a scenic resource.

The addition of one additional dwelling unit is not considered significant since it will not substantially alter the overall appearance or intensity of the proposed development and will be consistent with other R-1-10 style development in the area.

From an individual and cumulative perspective, the 1,700-foot long pipeline proposed for development as part of the subject site as well as the 10,200-foot overall pipeline length will not have an aesthetic impact since the pipeline will be completely buried under the existing street right of way.

### **III. 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 both areas have been used sporadically for agricultural purposes, such as orchards, grazing, and corralled animals, some of these existing uses may be incompatible with the 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 Area 1 (The Estates) 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 within both areas would therefore not result in significant individual or cumulative impacts to agricultural resources.

The addition of one additional dwelling unit is not considered significant since it will not substantially alter the overall appearance or intensity of the proposed development and will not involve agricultural lands. The entire lot will be graded in either the 15 or 16 lot scenario and will be consistent with other R-1-10 style development in the area.

From an individual and cumulative perspective, the 1,700-foot long pipeline proposed for development as part of the subject site as well as the 10,200-foot overall pipeline length will not have an agricultural impact since the pipeline will be completely buried under the existing street right of way and involve no agricultural resources.

### **IV. Transportation**

#### **City of Escondido Significance Criteria:**

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

1. Causes the level of service (LOS) of a circulation element street to fall below a mid-range of LOS "D" and /or adds 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. Exceeds, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads and highways.
3. Results 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 conflicts with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks).

General Plan Circulation Policy D2.3 states that:

*"... Due to the physical design characteristics, environmental resource considerations, existing development, freeway interchange impacts and incomplete system improvements, level of service "C" may not be feasible in all areas at all times. However, level of service "C" should be pursued in the ultimate implementation of the circulation system."*

A traffic impact study for the proposed project was performed on June 15, 2004 by Linscott, Law and Greenspan and further updated and 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. For a complete description please refer to the consultant document.

Access to the site for the proposed 15 unit single family units (Area 1) will be provided Stanley Avenue and Lehner Avenue, approximately 265 feet east of the existing Ash Street intersection. Area 2 will access these streets as well as Conway Drive. The study included the following roadway segments and intersections:

<i>Roadway</i>	<i>Intersection</i>
North Broadway <ul style="list-style-type: none"> <li>• North of Stanley Avenue</li> <li>• Stanley to Vista Avenue</li> <li>• South of Vista Avenue</li> </ul>	North Broadway / Stanley Avenue (two-way stop)
North Ash Street <ul style="list-style-type: none"> <li>• Lehner Avenue to Vista</li> <li>• South of Vista Avenue</li> </ul>	North Broadway / Vista Avenue (two-way stop)
Stanley Avenue <ul style="list-style-type: none"> <li>• North Broadway to North Ash Street</li> </ul>	North Ash Street / Lehner Avenue (all-way stop)
	North Ash Street / Vista Avenue (all-way stop)

### Summary

The project is calculated to add traffic to the intersection of North Broadway/Vista Avenue. This intersection is currently operating at Level of Service (LOS) "F" with the addition of project traffic. The project contribution to the other poorly operating intersections in the area is less than the permissible 2.0 seconds. Therefore, no other cumulative impacts are calculated.

The project is within the North Broadway Bridge 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 project is also recommended to make half-width improvements along the project frontage on Stanley Avenue, which is classified as a Local Collector on the City's Circulation Element. This would result in 42-feet of paved roadway in 66 feet of right-of-way and has been incorporated into the current project description.

The addition of one additional dwelling unit is not considered significant since it will not substantially alter the overall traffic generation of the proposed development. The addition of a single unit will increase the number of vehicle trips generated by the project by 20 and the increases in delay time experienced at intersections and on street segments will be negligible.

From an individual and cumulative perspective, the 1,700-foot long pipeline proposed for development as part of the subject site as well as the 10,200-foot overall pipeline length will generate construction trip traffic that will be intermittent and temporary during the installation of the pipeline. Traffic control measure will be incorporated into the construction plan as required by local city policies so as to not disrupt neighborhood traffic.

## V. 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.
- Sox 250 lbs.
- Lead 3.2 lbs.

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 Los Angeles area South Coast Air Basin during periods of westerly winds when air pollutants are windborne over the ocean, drift to the south and eventually 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.

For long-term emissions, the direct impacts of a project can be measured by the project's consistency 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 and Estate II 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.

Emissions resulting from developing Area 1 would be directly related to the amount of vehicular traffic generated by the project. The increase 15 units would have an incremental impact to the basin-wide air-quality. Considering the cumulative impacts of thousands of sources, the impact attributed to the project is immeasurably small on a regional scale and will not cause ambient air-quality standards to be exceeded. Area 2 proposes no development at this time and annexation to the City will not affect air emissions. Since annexation and development 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.

Maximum daily emissions of NO<sub>x</sub> during construction periods are not projected to exceed City thresholds or APCD standards based on similar studies performed for similar size grading operations. Since construction is a one-time temporary activity, and because average daily construction emissions are projected to be below thresholds of significance, operation of equipment during project construction is not anticipated to result in substantial air quality impacts. Dust from grading and other site preparation would generate particulate matter emission; however, with appropriate use of grading and operation procedures as described in the attached mitigation measures (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 re-vegetation 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.

Emissions resulting from developing one additional unit and installing a portion of the pipeline or the complete improvement would be directly related to the amount of vehicular traffic generated by the unit and the construction related to installing the pipeling. The increase 1 unit and the construction related to installing the pipeline section (or cumulatively) would have an incremental impact to the basin-wide air-quality. Considering the cumulative impacts of thousands of sources, the impact attributed to the project is immeasurably small on a regional scale and will not cause ambient air-quality standards to be exceeded.

## **VI. 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.*

Area 1: A biological report for Tract 889 dated June 11, 2004 was prepared by Helix Environmental Planning. The report concludes that the 4.6 acres parcel supports five vegetation communities: non-native grassland (0.2 acre), non-native vegetation (0.1 acre), extensive agriculture (2.9 acres), disturbed habitat (1.1 acre), and developed land (0.3 acre). There were no sensitive plant or animal species observed or detected on site. There are a total of 21 mature ornamental trees located on the property. The report concludes that development of the site and removal of existing habitat would not require mitigation, however indirect impacts are potentially significant for any nesting raptors on-site (though none were detected at the time). Mitigation is recommended regarding the timing of construction to ensure raptors are not impacted.

Area 2: The June 11<sup>th</sup> biological report also reviewed Area 2 and determined that the parcels supported approximately 0.2 acre of southern riparian forest, 0.1 acre of disturbed wetland, 11.8 acres of non-native grassland, 2.1 acres of eucalyptus woodland, 1.4 acre of non-native vegetation, 3.8 acres of extensive agriculture, 0.2 acre of disturbed habitat and 2.7 acres of developed land. Annexation of this area will not impact biological resources since no development is proposed at this time and separate environmental review would be required for impacts associated with biological disturbance.

The addition of one additional dwelling unit is not considered significant since it will not substantially alter the overall appearance or intensity of the proposed development and will not involve sensitive biological resources. The entire lot will be graded in either the 15 or 16 lot scenario and will be consistent with other R-1-10 style development in the area.

From an individual and cumulative perspective, the 1,700-foot long pipeline proposed for development as part of the subject site as well as the 10,200-foot overall pipeline length will not have an biological impact since the pipeline will be completely buried under the existing street right of way and involve no biological resources.

**MITIGATION MEASURE:**

1. In accordance with the City's tree preservation ordinance, the removal of "mature trees" shall be mitigated at a ratio of 1:1. The removal of 21 "mature trees" shall be mitigated by installing 21 ornamental with a minimum 24-inch box size throughout the project prior to final occupancy. If said trees shall be planted as street trees they shall conform to the selected species on the City's street tree list.
2. The breeding season for nesting birds occurs approximately February 15 through August 31; however, raptors may begin breeding as early as January. Vegetation clearing, brushing, and grading should occur outside the bird breeding season. If construction occurs (within the cleared portion of the project site but adjacent to habitat on or off site) during the bird breeding season, a qualified biologist should conduct a pre-construction survey of the remaining habitat to determine whether there are active bird nests in the area, including raptors and ground nesting birds. The survey should begin not more than three days prior to the beginning of construction activities. If an active nest is observed, a minimum 300-foot buffer (500 feet for raptors) should be established using temporary fencing. The buffer should be in effect as long as construction is occurring and until the nest is no longer active.

**VII. Cultural Resources**

***City of Escondido Significance Criteria:***

*A significant impact to cultural resources would occur if implementing 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.*

Area 1 is completely disturbed with residential, agricultural and equestrian uses. Both Areas 1 and 2 are not listed on the Archaeological Resources Site; therefore the proposed annexation and development would have less than significant impact on cultural resources.

The addition of one additional dwelling unit is not considered significant since it will not substantially alter the overall appearance or intensity of the proposed development since the lot will be graded in either the 15 or 16 lot scenario and will be consistent with other R-1-10 style development in the area.

From an individual and cumulative perspective, the 1,700-foot long pipeline proposed for development as part of the subject site as well as the 10,200-foot overall pipeline length will not have an cultural impact since the pipeline will be completely buried under the existing street right of way, which already contains disturbed soils.

## **VIII. 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 deepest cut areas are 9 feet deep along the side of the lot adjacent to Stanley Avenue in the northern portion of the project. The Phase I Environmental Assessment identified Area 1 to be underlain by older deposits and at a depth by weathered granitic bedrock. The alluvium is described as unconsolidated to locally poorly consolidated sand and gravel deposits. Based on the soil types found on site it is reasonably anticipated that conventional grading practices can be utilized to develop the site without the need for blasting. If blasting is required it would be limited to the northern portion of the site and the contractor will be required to obtain the necessary permits and follow all City of Escondido procedures.

The site is not located on any active or potentially active fault trace as defined by the California Division of Mines and Geology. The nearest active fault to the site is the Rose Canyon Fault, located approximately 14.5 miles to the west. Other nearby faults include the Elsinore-Julian Fault and the Newport-Inglewood Fault. The site is not considered to possess a significantly greater seismic risk than that of the surrounding area based on accounts from other geotechnical investigations for projects developed in the area; therefore a significant geology and soils impact would not occur.

## **IX. 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.*

Research for Area I has been conducted with the County Department of Environmental Health and is not identified on the County's list of hazardous waste sites. The County Department of Environmental Health regulates the storage and on-site use of any potential hazardous materials such as fuel oil, motor oil, paints and hazardous cleaning materials to prevent the accidental release of, proper prevention of pollution of the environment. The site was not used to store hazardous chemicals.



Both Area 1 and 2 are not adjacent or within two miles of an airport. Any proposed development would not impair the City's emergency response plan according to discussions with the City Fire Department. The 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.

Pesticides, herbicides, and/or insecticides may have been historically been applied to Area 1 since it has been used for agricultural purposes. Rincon Consultants, Inc. performed a Phase I Soil Sampling and Analysis (dated July 12, 2002) that noted is a potential recognized environmental condition (REC). If agricultural chemicals were used as part of the agricultural activity, residual pesticides and herbicides may be present in soil and could be of concern to future residents. Area 2 proposes no development at this time and will require future soil sampling to assess conditions prior to development. The following Mitigation Measures are included:

**MITIGATION MEASURE:**

- 1 Soil sampling and analysis shall be conducted prior to grading or Final Map to evaluate for the potential presence of agricultural chemicals in the northwestern corner of the site and other constituents of concern in the main horse arena area at the site.
- 2 All containers of chemical products and trash and debris shall be removed from the site and properly disposed prior to grading or Final Map.

## **X. Hydrology and Water Quality**

**City of Escondido Significance Criteria:**

*Significant impacts associated with hydrology and water quality would result from a 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, the project exposed people to hydrological hazards, such flooding or inundation by seiche, tsunami, or mudflow.*

The property is relatively level, rising moderately from Lehner Avenue at the south to Stanley Avenue in the north (generally less than 15% slope) and primarily drains north to south. The amount of run-off from the site would be expected to incrementally increase upon development of Area 1 due to impervious surfaces associated with the development of the residences and paved surfaces. The project would be required to comply with National Pollution Discharge Elimination System (NPDES) standards; consequently, 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 100-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. Area 2 is not proposed for development at this time and will undergo separate environmental review upon submittal of a project application.

## **XI. Mineral Resources**

### **City of Escondido 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 in Area 1 based on the soil study and analysis prepared by the applicant. Area 2 proposes no development at this time 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.

## **XII. 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 that which outline acceptable noise levels associated with each type of land use. A 60 dBA CNEL exposure is considered normally acceptable for exterior residential land uses and 45 dBA CNEL for interior levels 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 the site fall below the 60 CNEL standard contained in the Noise/Land Use Compatibility Guidelines of the General Plan.

Grading and construction within Area 1 and along the pipeline alignment during construction 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

### **XIII. 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 15 dwelling units within Area. 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 incrementally contribute to the City's Regional Share Housing requirements. The development of Area 1 would not be considered growth inducing since the project site is located within an established community. The displacement of the one existing home within Area 1 is not considered significant. Therefore, the project would not result in a significant population and housing impact. Area 2 is not proposed for development at this time and will require separate environmental review

### **XIV. Public Services**

#### **City of Escondido Significance Criteria:**

*Impacts to public services would occur if there was a substantial increase on the demand for the services (fire protection, schools, parks or other public facilities) by the project, which would also cause a reduction in existing service levels.*

**Sewer Service** – There currently exists a public sewer line in City streets immediately off-site that would accommodate Areas 1 and 2. Interviews with City Public Utilities staff have confirmed that treatment capacity exists at the wastewater treatment plant located on Hale Avenue.

**Water Service** – Areas 1 and 2 ~~are~~ were within the City's Municipal Water District and the North City Critical Water Deficiency Area. Currently inadequate water delivery is available from water lines in adjacent streets to accommodate significant amounts of development until an existing water line in El Norte Parkway between Escondido Creek and La Honda Drive is up-sized to 36" diameter (approximately 1 mile in length). The proposed project can be accommodated provided a 25" diameter waterline in Sheridan between Conway Drive and Ash Street is up-sized to 30" diameter, which is included as part of the project description. Until this improvement is installed development in Areas 1 and 2 will be delayed. Design of the infrastructure within El Norte Parkway has been submitted to the City for plan check and construction of the water line is anticipated within the next four months. 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 proposed project (Area 1) includes the construction of new storm drain facilities and water detention facilities, in concert with the NPDES standards to meet state and federal requirements. Escondido Disposal currently provides solid waste service to the site and the project would not result in a significant increase in solid waste. The proposal 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 closest Fire Station is located at 2665 Village Road; approximately 1.3 miles from the site.

**Law Enforcement** – The City’s Police Department currently serves the area and has included the property within a patrol beat area. The Department has not expressed concerns regarding its ability to serve the site.

**Schools** - The site is within the Escondido Union School District and the Escondido Union High School District. Secondary students would likely attend North Broadway Elementary School, Rincon Middle School and Escondido High School. 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 area 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; consequently 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 when considering the mitigation measures included as part of the development plan. 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 provided all mitigation measures and normal project conditions are followed.

# MITIGATION MONITORING REPORT

Mitigated Neg. Dec. No.: ER 2004-24

Page 1 of 2

**PROJECT NAME:** Tract 889, Stanley Avenue development, water pipeline reconstruction and annexation  
**PROJECT DESCRIPTION:** 16-lot residential subdivision & annexation on 4.6 acres; annexation of 9 additional properties on 22 acres  
**ASSOCIATED CASES:** Tract 889, 2004-44-GE/DA, 2004-04-AN  
**PROJECT LOCATION:** Property between Ash Street and Conway Drive along Stanley Avenue  
**APPROVAL BODY/DATE:**  
**PROJECT MANAGER / CONTACT PERSON:** Jay Petrek, Senior Planner (760) 839-4556

NATURE OF IMPACT	MITIGATION MEASURE and timeline for Implementation	IDENTIFICATION. NO. LOCATION IN DOC.	Responsibility for Implementation	CERTIFIED INITIAL/DATE	COMMENTS
<p><b>BIOLOGY</b></p> <p>The project will remove several mature trees on the site.</p>	<p>In accordance with the City's tree preservation ordinance, the removal of "mature trees" shall be mitigated at a ratio of 1:1. The removal of 21 "mature trees" shall be mitigated by installing 21 ornamental with a minimum 24-inch box size throughout the project. If said trees shall be planted as street trees they shall conform to the selected species on the City's street tree list.</p> <p>Timeline for implementation: prior to final occupancy.</p>	<p>Biological Resources</p>	<p>Planning Div.</p>		
<p>Project will have a direct impact on foraging habitat for raptors in the area.</p>	<p>The breeding season for nesting birds occurs approximately February 15 through August 31; however, raptors may begin breeding as early as January. Vegetation clearing, brushing, and grading should occur outside the bird breeding season. If construction occurs (within the cleared portion of the project site but adjacent to habitat on or off site) during the bird breeding season, a qualified biologist should conduct a pre-construction survey of the remaining habitat to determine whether there are active bird nests in the area, including raptors and ground nesting</p>	<p>Biological Resources</p>	<p>Planning Div.</p>		

# MITIGATION MONITORING REPORT

Amended Mitigated  
Neg. Dec. No.:  
ER 2004-24  
Page 2 of 2

## HAZARDS

Project will potentially impact health due to previous use of pesticides

70

Project will potentially impact health due to previous use of pesticides

birds. The survey should begin not more than three days prior to the beginning of construction activities. If an active nest is observed, a minimum 300-foot buffer (500 feet for raptors) should be established using temporary fencing. The buffer should be in effect as long as construction is occurring and until the nest is no longer active.

Timeline for implementation: prior to grading.

Soil sampling and analysis shall be conducted to evaluate for the potential presence of agricultural chemicals in the northwestern corner of the site and other constituents of concern in the main horse arena area at the site.

Timeline for implementation: Prior to grading or Final Map

All containers of chemical products and trash and debris shall be removed from the site and properly disposed.

Timeline for implementation: Prior to grading or Final Map

Hazardous Materials

Engineering Dept.

Public Services

Engineering Dept.