

Visalia City Council Agenda



For the special meeting of: Monday, July 25, 2005

Location: Visalia Convention Center

Mayor: Bob Link
Council Member: Walter T. Deissler
Council Member: Jesus J. Gamboa
Council Member: Greg Kirkpatrick
Council Member: Donald K. Landers

All items listed under the Consent Calendar are considered to be routine and will be enacted by one motion. If anyone desires discussion on any item on the Consent Calendar, please contact the City Clerk who will then request that Council make the item part of the regular agenda.

PLANNING COMMISSION APPLICANT FINALIST INTERVIEWS, DISCUSSION, & SELECTION

4:00 p.m.

4:00 p.m. Adam Peck
4:20 p.m. George Shelton
4:40 p.m. Steve Farnsworth
5:00 p.m. Shawn Smith
5:20 p.m. Jim Runyon
5:40 p.m. Larry Segrue

REGULAR ITEM

6:00 p.m. (Or, immediately following Planning Commission Interviews)

2. Authorize the City Manager to execute the Airline Lease Agreement between the City of Visalia and Scenic Airlines for approximately 2792 square feet in the Airport Terminal Building. *(At the discretion of the Council, this Item may be heard at the end of the evening session.)*

CLOSED SESSION

6:30 p.m. (Or, immediately following Item 1 or Planning Commission Interviews)

Item 6 - Continued from July 18, 2005, Agenda

Conference with Real Property Negotiators

Property: located north of Goshen Avenue and west of Roeben Street, portion of APNs 077-100-034 and 077-100-019

Under Negotiation: price, terms, conditions of purchase for storm drain acquisition

Negotiators: Steve Salomon, Michael Olmos, David Jacobs, Fred Machado

Pursuant to subdivision (b) of Section 54956.9 G.C.

3. Conference with Labor Negotiator
Employee Groups: Group M
Agency Negotiator: Jim Harbottle, Eric Frost, Janice Avila
4. Conference with Legal Counsel – Existing Litigation (1)
Name of Case: City of Visalia v. Harrah, TCSC Case No. 04-210016
5. Public Employee Performance Evaluations
Title: City Manager

REGULAR SESSION

7:00 p.m.

Continued Regular Meeting of Monday, July 18, 2005, as to Item 16 (Annexation No. 2004-17) and Item 19 (Elliott) as numbered on that Agenda.

PLEDGE OF ALLEGIANCE

INVOCATION -

SPECIAL PRESENTATIONS/RECOGNITION

CITIZENS REQUESTS - This is the time for members of the public to comment on any matter within the jurisdiction of the Visalia City Council. This is also the public's opportunity to request that a Consent Calendar item be removed from that section and made a regular agenda item for discussion purposes. Comments related to Regular or Public Hearing Items listed on this agenda will be heard at the time the item is discussed or at the time the Public Hearing is opened for comment. The Council Members ask that you keep your comments brief and positive. Creative criticism, presented with appropriate courtesy, is welcome. The Council cannot legally discuss or take official action on citizen request items that are introduced tonight. In fairness to all who wish to speak tonight, each speaker from the public will be allowed three minutes (speaker timing lights mounted on the lectern will notify you with a flashing red light when your time has expired). Please begin your comments by stating and spelling your name and providing your address.

AGENDA ITEM 16 - CONTINUED PUBLIC HEARING opened & continued from JULY 18, 2005 - for the initiation of proceedings of Annexation No. 2004-17 (Linwood-Ferguson): a request by American, Inc. to annex 15 parcels and right-of-way totaling 57.90 acres into the City of Visalia. The project is located on the east side of Linwood Street between Riggin Avenue and Ferguson Avenue in the County of Tulare. (APN: 077-180-001 through 008; 077-190-001 through 004, 006, 009, 010). **Resolution 2005-102 required.**

AGENDA ITEM 19 - PUBLIC HEARING continued from July 18, 2005 -

- a) Certification of the Final Environmental Impact Report, prepared for the Elliott and Vander Weerd properties. The project area for the EIR is located east of Shirk Street and south of the Tulare Avenue alignment between Shirk Street and Roeben Avenue. State Clearinghouse No. 2004061090. **Resolution No. 2005-104 required.**
- b) Initiation of Proceedings for Annexation No. 2003-08 (Elliott East): A request to annex approximately 80 acres into the City of Visalia. **Resolution No. 2005-105 required.**
- c) General Plan Amendment No. 2003-20: A request to change the General Plan land use

designation from Agriculture to Low Density Residential on 80 acres. **Resolution 2005-106 required.**

The projects are located east of Shirk Street and south of the Tulare Avenue alignment Between Shirk Street and Roeben Avenue in the City of Visalia (APN: 087-010-005, 006, 008) Centex Homes, applicant. Quad Knopf, agent.

(At the discretion of the Council, Item 2 from the afternoon session may be heard at the end of the evening session.)

REGULAR ITEM - Authorize the City Manager to execute the Airline Lease Agreement between the City of Visalia and Scenic Airlines for approximately 2792 square feet in the Airport Terminal Building.

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

REPORT OF CLOSED SESSION MATTERS FINALIZED BETWEEN COUNCIL MEETINGS

Upcoming Council Meetings

Monday, August 1, 2005
Monday, August 15, 2005
Work Session 4:00 p.m.
Regular Session 7:00 p.m.
City Hall Council Chambers
707 West Acequia Avenue

In compliance with the American Disabilities Act, if you need special assistance to participate in meetings call (559) 713-4512 48-hours in advance of the meeting. For Hearing-Impaired - Call (559) 713-4900 (TDD) 48-hours in advance of the scheduled meeting time to request signing services.

City of Visalia Agenda Item Transmittal

Meeting Date: July 25, 2005

Agenda Item Number (Assigned by City Clerk): 2

Agenda Item Wording: Authorize the City Manager to execute the Airline Lease Agreement between the City of Visalia and Scenic Airlines for approximately 2792 square feet in the Airport Terminal Building.

Deadline for Action: July 25, 2005

Submitting Department: Administrative Services

Contact Name and Phone Number: Mario Cifuentez, II
738-3201

For action by:

- City Council
- Redev. Agency Bd.
- Cap. Impr. Corp.
- VPFA

For placement on which agenda:

- Work Session
- Closed Session
- Regular Session:
 - Consent Calendar
 - Regular Item
 - Public Hearing

Est. Time (Min.): 30

Department Recommendation and Summary:

Executive Summary:

City Staff recommends that Council authorize the City Manager to execute a new Airline Lease Agreement with Scenic Airlines for the use of terminal space at the Visalia Municipal Airport. The term of the new agreement is for three (3) years to coincide with the length of their Essential Air Service (EAS) contract for Visalia.

Background:

On April 28, 2005, the Department of Transportation (DOT) issued an Order Selecting Carrier, choosing Scenic Airlines to provide the essential air service for Visalia. Under the proposal submitted to the DOT, Scenic airlines will provide a minimum of ten (10) flights per week from Visalia to the North Las Vegas airport.

The new service is scheduled to begin September 1, 2005, operating a pressurized 19-passenger Beechcraft 1900 aircraft from the North Las Vegas Airport, located approximately 15 minutes from the Las Vegas Strip and McCarran International Airport. Fares will start at \$89 one-way. Flights can be booked online at www.scenic.com or by calling 800-634-6801 or 702-638-3300. The first flight will depart Visalia at 7 pm on September 1st after the New Service Kick-off event. There will be a seamless transition in air service providers at Visalia as SkyWest Airlines will have its last flight on August 31, 2005.

As previously stated in Council work sessions, Scenic Airlines intends to partner with the community to grow our air service. The air carrier is confident that our market will support a growth in service over time and eventually the opportunity will be there to add additional markets and improve connections to the national transportation system for the entire Tulare/Kings county area.

Scenic Airlines began business as a tour operator and still operates daily tours to the Grand Canyon, Hoover Dam and other locations in Nevada, Utah and California. The air service provided to Visalia will also present great opportunities for the local tourism community to tie into the diverse group of people that visit Las Vegas.

This agreement was drafted by the City Attorney and has been reviewed by the City's Risk Management Division as well.

Prior Council/Board Actions:

December 1, 1997 - Council authorized the execution of this same agreement with West Air Commuter Airlines.

May 4, 1998 - Council authorized the execution of this same agreement with SkyWest Airlines.

June 16, 2003 - Council adopted Resolution 2003-79 authorized staff to submit an application for the Small Community Air Service Development Grant.

Committee/Commission Review and Actions:

The Airport Advisory Committee recommends that the City Council approve the agreement with Scenic Airlines to allow the new service to begin.

Alternatives: Not execute this lease.

Attachments: Airline Lease Agreement, Order Selecting Carrier

City Manager Recommendation:

Recommended Motion (and Alternative Motions if expected): Move to Authorize the City Manager to execute an Airline Lease Agreement between the City of Visalia and Scenic Airlines for approximately 2792 square feet in the Airport Terminal Building.

Copies of this report have been provided to:

Financial Impact

Funding Source:

Account Number: _____ (Call Finance for assistance)

Budget Recap:

Total Estimated cost: \$250,000	New Revenue:	\$
Amount Budgeted: \$-0-	Lost Revenue:	\$
New funding required:\$50,000	New Personnel:	\$
Council Policy Change: Yes_____ No_____		

Environmental Assessment Status

CEQA Review:

Required? Yes No

Review and Action: Prior:
Required:**NEPA Review:**

Required? Yes No

Review and Action: Prior:
Required:

Tracking Information: (*Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date*)

Review and Approval - As needed:**Department Head Review (Signature):****Risk Management Review (Signature):****City Attorney Review (Signature):****Administrative Services Finance Review (Signature):**

Others:

AIRLINE LEASE AGREEMENT

THIS LEASE is made this _____ day of _____, 2005, between the City of Visalia, a Municipal Corporation, hereinafter referred to as "LESSOR" and Scenic Airlines, Inc., a Nevada corporation, hereinafter referred to as "LESSEE."

1. LEASE

For and in consideration of the payment of rent, taxes, and other charges and of performances of the covenants and conditions hereinafter set forth, LESSOR hereby leases to LESSEE and LESSEE hereby leases from LESSOR the Premises hereafter described. In addition, LESSEE shall have the right of landing commercial aircraft.

2. DEMISED PREMISES

A. Definition - Except as expressly provided to the contrary in this LEASE, reference to the "Premises" is the described land plus any described appurtenance, including any improvements now or hereafter located on the Premises.

B. Description - The Premises consist of that portion of the Visalia Municipal Airport Terminal Building as indicated in Exhibit A, attached hereto, which is approximately twenty-seven hundred ninety-two (2792) square feet. In addition, LESSEE has the right to use the common areas of the Premises as designated by the Airport Manager.

3. TERM

The term of this LEASE shall be for a period of three (3) years commencing on the first day of September, 2005 and ending on the thirty-first day of August, 2008, unless sooner extended or terminated as provided for herein.

4. PERFORMANCE STANDARDS

- A. LESSOR has been awarded a Small Community Air Service Development Program grant of two hundred fifty thousand dollars (\$250,000) from the U.S. Department of Transportation, including the LESSOR's matching funds, to offset the initial operating costs, and the marketing and advertising of new nonstop air service between Visalia and Las Vegas in the first year of service.
- B. LESSOR will pay LESSEE a maximum subsidy of \$871.15 per one way flight between Visalia and Las Vegas and Las Vegas and Visalia until the grant of monies have been exhausted or until one year from the start of service, whichever occurs first, subject to the following performance standards, notwithstanding any other requirement in this LEASE:
- (1) LESSEE will provide ten (10) round trip nonstop flights per week in the Visalia-Las Vegas market with Beech 1900 Aircraft configured with nineteen (19) seats for ninety-three percent (93%) or more of the flights, and utilizing a de Havilland Twin Otter for any non-Beech 1900 flights. If less than ninety-three percent (93%) but more than eighty-three percent (83%) of the total flights per month are operated using the Beech 1900 Aircraft, LESSOR may reduce the maximum subsidy for such month by up to five percent (5%). If less than eighty-three percent (83%) of the total flights per month are operated using the Beech 1900 Aircraft, LESSOR may reduce the maximum subsidy for such month by up to ten percent (10%).
 - (2) LESSEE will provide fare levels that are competitive with existing fares in the Merced-Las Vegas market.
 - (3) LESSEE will commence service on or before the first day of September, 2005.
 - (4) LESSEE will report to LESSOR by the tenth of each month:

- (a) the number of flights flown between Visalia and Las Vegas and Las Vegas and Visalia; and
- (b) the number of one-way passengers carried in each direction; and
- (c) the amount of revenue collected for the month; and
- (d) the On Time (defined below) performance.

For each day after the tenth of the month that LESSEE fails to provide such a report, LESSOR may reduce the maximum subsidy available for said month by up to one percent (1%).

- (5) More than ninety percent (90%) of LESSEE's flights per month will depart On Time. If less than 90% but more than 80% of the departures per month are On Time, LESSOR may reduce the maximum subsidy per such month by up to five percent (5%). If less than 80% of the departures per month are On Time, LESSOR may reduce the maximum subsidy per such month by up to ten percent (10%). For purposes of this Agreement, an On Time departure refers to (a) any flight that departs within twenty (20) minutes of its scheduled departure time; (b) any flight that departs more than twenty (20) minutes after its scheduled departure time as a result of delays caused by ground transportation, air traffic control, deicing, FAA regulations or directives, maintenance, weather, accidents, acts of God, acts of terrorism, fire, explosion, riot, looting, civil commotion, or any other similar circumstances of whatsoever kind and howsoever caused beyond LESSEE's control (excluding, however, in all cases, financial inability); and (c) any flight that departs more than twenty (20) minutes after its scheduled departure time as a result of an immediately preceding delayed flight.

5. LEASE RENT

A. INITIAL MINIMUM RENT - LESSEE shall pay without abatement, deduction, or affect except as noted in Part 5 Section B, a net minimum annual rent of twenty thousand four hundred dollars (\$20,400) beginning on the first day of September, 2005, due on the first day of each month, and continuing thereafter throughout the entire term of this agreement.

B. RENT ADJUSTMENTS – The annual rent owed by LESSEE shall be waived by LESSOR until such time that LESSEE establishes a fifty-five percent (55%) load factor or ten (10) of eighteen (18) passenger seats are sold per flight, as demonstrated by monthly reports submitted by LESSEE to LESSOR (Section 5, Part D). At such time as the load factor reaches fifty-five percent (55%), the annual rent owed by LESSEE shall be ten thousand eight hundred dollars (\$10,800), calculated at nine hundred dollars (\$900) per month. At such time as the load factor reaches sixty percent (60%), the annual rent owed by LESSEE shall be thirteen thousand two hundred dollars (\$13,200), calculated at eleven hundred dollars (\$1,100) per month. At such time as the load factor reaches sixty-five percent (65%), the annual rent owed by LESSEE shall be fifteen thousand six hundred dollars (\$15,600), calculated at thirteen hundred dollars (\$1,300) per month. At such time as the load factor reaches seventy percent (70%), the annual rent owed by LESSEE shall be eighteen thousand dollars (\$18,000), calculated at fifteen hundred dollars (\$1,500) per month. At such time as the load factor reaches seventy-five percent (75%), the annual rent owed by LESSEE shall be the agreed upon twenty thousand four hundred dollars (\$20,400), calculated at seventeen hundred dollars (\$1,700) per month.

Once the load factor reaches seventy-five percent, the minimum annual rent shall be adjusted each and every year, beginning on the first anniversary date of the LEASE term and continuing thereafter throughout the entire LEASE term, to reflect the percentage change in the Consumer Price Index. For purposes of this agreement, the Consumer Price Index shall be the California Consumer Price Index (all urban consumers, all items) as released by the California Division of Labor Statistics and Research. Said adjustment shall be calculated as follows:

The minimum annual rent charged for the twelve month period being concluded shall be multiplied by the percentage increase in the Consumer Price Index for the last month released prior to each anniversary date of this LEASE. The new minimum annual rent shall thereafter be paid in twelve (12) equal monthly installments for each twelve (12) month period in accordance with subdivision A herein. In no event shall the minimum annual rent be decreased.

The Consumer Price Index as used herein is based on the 1982-84=100 index. Should the Division of Labor Statistics and Research change the 1982-84=100 index, the above referenced formula shall be converted to reflect said change.

C. LANDING FEES - As and for additional rent, and for the right to land commercial aircraft, LESSEE shall pay a landing fee as established and from time to time adjusted, by action of the City Council of the City of Visalia, and set forth in the LESSOR's "Fees and Charges Document." However, the annual landing fee shall be waived by LESSOR until such time that LESSEE has established a fifty-five percent (55%) load factor or ten (10) of eighteen (18) passenger seats are sold per flight, as demonstrated by monthly reports submitted by LESSEE to LESSOR (Section 5, Part D). At such time as the load factor reaches fifty-five percent (55%), the annual landing fees owed by LESSEE shall be calculated at ten cents (.10) per thousand pounds of Maximum Gross Landing Weight (MGLW) for the Aircraft. At such time as the load factor reaches sixty percent (60%), the annual landing fees owed by LESSEE shall be calculated at twenty cents (.20) per thousand pounds of Maximum Gross Landing Weight (MGLW). At such time as the load factor reaches sixty-five percent (65%), the landing fees owed by LESSEE shall be calculated at thirty cents (.30) per thousand pounds of Maximum Gross Landing Weight (MGLW). At such time as the load factor reaches seventy percent (70%), the landing fees owed by LESSEE shall be calculated at forty cents (.40) per thousand pounds of Maximum Gross Landing Weight (MGLW). At such time as the load factor reaches seventy-five percent (75%), the landing fees owed by LESSEE shall be calculated at fifty cents (.50) per thousand pounds of Maximum Gross Landing Weight (MGLW).

D. MONTHLY INFORMATION REQUIRED BY LESSEE – By the tenth day of each month, LESSEE shall provide LESSOR with the following information for the prior month:

(1) Number of passengers enplaned (revenue and non-revenue, identified separately)

(2) Number of passenger deplaned (revenue and non-revenue, identified separately)

(3) Type(s) of aircraft utilized

(4) Each aircraft maximum gross landing weight

(5) Number of landings for each aircraft

Utilizing this information, LESSOR will adjust rent and landing fees owed by LESSEE.

6. USE OF PREMISES

The use of the Premises shall be for the operation of a commercial airline and for no other purpose except with the written consent of the LESSOR.

7. ASSIGNING OR SUBLETTING

The LESSEE may not assign or sublet this LEASE or any part of said Premises without the prior written consent of the LESSOR.

8. LESSEE'S MAINTENANCE

LESSEE shall maintain the Premises to the reasonable satisfaction of the LESSOR and in such a manner as to be neat and well kept in appearance and a credit to the Visalia Municipal Airport. This shall include, but not be limited to, cleaning of carpets, waste disposal, etc.

LESSEE shall further perform minor janitorial maintenance of the common areas after each of LESSEE'S flights, including, but not limited to, the removal of litter and waste and/or any foreign object which may pose a hazard to the public.

9. LESSOR'S MAINTENANCE

LESSOR shall perform all other routine maintenance including major structural, janitorial of the common areas, and servicing and repair of all electrical and plumbing fixtures. Any question concerning responsibility of maintenance not expressly stated herein shall be directed to the Airport Manager for final determination.

10. BUSINESS LICENSE

LESSEE shall obtain, and renew the same for any extensions of this LEASE, a business license as paid by all businesses in similar circumstances.

11. INSURANCE - LIABILITY

Throughout the term and any extensions thereof, at LESSEE'S sole cost and expense, LESSEE shall keep or cause to be kept in force, liability insurance as follows:

A. Aircraft Liability insurance with limits of at least twenty million dollars (\$20,000,000) bodily injury, including personal injury and property damage combined each occurrence, including passenger and occupants;

B. General Liability insurance limits of at least twenty million dollars (\$20,000,000) bodily injury, including personal injury and property damage, combined each occurrence; and

C. Insurance in the full replacement value of all LESSEE's personal property, equipment, and trade fixtures on the leased premises.

12. INSURANCE - WORKERS' COMPENSATION

LESSEE shall maintain Workers' Compensation insurance with statutory limits, and employer's liability insurance with limits of not less than one million dollars (\$1,000,000.00) per accident or occurrence.

13. INSURANCE - GENERAL REQUIREMENTS

All insurance required by express provisions of this LEASE shall be carried only in responsible insurance companies approved to do business in the State of California. All such policies shall be nonassessable and shall contain language, to the extent obtainable or to the extent such language does not void any provision or coverage under such policies, to the effect that

- A. Any loss shall be payable notwithstanding any act or negligence of LESSOR that might otherwise result in a forfeiture of the insurance.
- B. The insurer waives the right of subrogation against LESSOR and against LESSOR's agents and representatives.
- C. The policies are primary and noncontributing with any insurance that may be carried by LESSOR.
- D. They cannot be canceled or materially changed except after **thirty (30)** days notice (except ten (10) days with respect to non-payment of premium) by the insurer to LESSOR or LESSOR's designated representative.
- E. LESSEE shall furnish LESSOR with copies of all such policies promptly on receipt of them, or with certificates evidencing the insurance. Before commencement of the LEASE, LESSEE shall furnish LESSOR with certificates of insurance demonstrating all insurance requirements by this LEASE. LESSEE may effect for its own account any insurance not required under this LEASE. LESSEE may provide by blanket insurance covering the Premises

and any other location or locations any insurance required or permitted under this LEASE provided it is acceptable to LESSOR. LESSEE shall deliver to LESSOR, in the manner required for notices, copies of certificates of all insurance policies required by this LEASE, together with evidence satisfactory to LESSOR of payment required for procurement and maintenance of the policy, within the following time limits:

- (1) For insurance required at the commencement of this LEASE, within 30 days after execution of this LEASE;
- (2) For insurance becoming required at a later date, at least **fifteen (15)** days before the requirement takes effect, or as soon thereafter as the requirement, if new, takes effect;
- (3) For any renewal or replacement of a policy already in existence, at least 5 days before expiration or other termination of the existing policy.

F. LESSOR, and LESSOR's elected and appointed officials, agents, representatives, and employees are to be named as additional insureds as respects operations of the named insured and as their interests may appear under the policy.

If LESSEE fails or refuses to procure or to maintain insurance as required by this LEASE or fails to furnish LESSOR with required proof that the insurance has been procured and is in force and paid for, LESSOR shall have the right, at LESSOR's election and on five (5) days notice to LESSEE, to procure and maintain such insurance. The premiums paid by LESSOR shall be treated as added rent due from LESSEE with interest at the rate of eighteen percent (18%) per year, to be paid on the first day of the month following the date on which the premiums were paid. LESSOR shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer or insurers, and interest shall run from the date of the notice.

14. INDEMNIFICATION

LESSEE agrees to and shall defend and indemnify LESSOR and LESSOR's elected and appointed officials, agents, representatives and employees against all claims, liability, loss and expense caused or incurred by reason of injury to person or property, or both, including without limitation, injury to the person or property of LESSEE, its agents, officers and employees, arising out of the condition of the leased Premises or any operations thereof conducted thereupon or therefrom caused by any act or omission or commission by LESSEE, its agents, officers, employees, or invitees, or any other cause whatsoever, or caused by LESSOR, its agents, officers, employees, or invitees, or any other cause whatsoever, specifically to include the sole active negligence of LESSOR, its agents or employees.

LESSOR agrees to and shall defend and indemnify LESSEE and LESSEE's officers, directors, agents, representatives and employees against all claims, liability, loss and expense caused or incurred by reason of injury to person or property, or both, including without limitation, injury to the person or property of LESSOR arising out of the condition of the leased Premises or any operations thereof conducted thereupon or therefrom caused by any act or omission or commission by LESSOR, its agents, officers, employees, or invitees, or any other cause whatsoever, or caused by LESSEE, its agents, officers, employees, or invitees, or any other cause whatsoever, specifically to include the sole active negligence of LESSEE, its agents or employees.

15. TAXES AND ASSESSMENTS: "PUBLIC CHARGES"

A. Obligations of LESSEE:

LESSEE understands and acknowledges that this LEASE creates a possessory interest, and LESSEE is subject to taxation by the County of Tulare and other taxing authorities. From and after the date of execution of this LEASE, LESSEE shall pay or cause to be paid all real estate taxes, assessments, and other governmental charges, general and special, ordinary and

extraordinary, of any kind and nature whatsoever applicable to the possessory interest of LESSEE in the leased Premises, as created and established by this LEASE, and the building improvements thereon, including but not limited to assessments for public improvements or benefits which shall for any period subsequent to the execution of this LEASE and during the term hereof be laid, assessed, levied or imposed upon or become due and payable and a lien upon said possessory interest and building and improvements thereon (specifically excepting therefrom any and all surface rights, if any, held or used by others who may have or claim any of the same, LESSEE assuming no liability whatsoever for the taxes, general and special assessments or other charges levied or assessed thereon), all of which taxes, assessments, levies and other governmental charges to be paid by LESSEE are referred to in this LEASE as "public charges;" provided however, that if by law any such public charges are payable or may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such public charge), LESSEE may make such payments in installments as the same respectively become due and before any fine, penalty, or cost may be added thereto for the non-payment of any such installment; and provided further that any public charge relating to a fiscal period of the taxing authority expiring after the termination or expiration of this LEASE, any part of which fiscal period is included within the time prior to termination or expiration of this LEASE, shall (whether or not during the period prior to termination or expiration of this LEASE such public charge shall be paid, assessed, levied or posed upon or become due and payable) be apportioned between the parties.

B. Time of Payment:

All payments to be made by LESSEE pursuant to the provisions hereof shall be made before any fine, penalty, interest or cost may be added thereto for the non-payment thereof; and the LESSEE shall furnish LESSOR within sixty (60) days after the dates when the same are payable, as herein provided, with official receipts or other evidence satisfactory to LESSOR that

such public charges or excise on rents or other tax or assessments in lieu thereof as aforesaid has, to the extent of the aforesaid, been paid.

C. Contest:

LESSEE may contest the legal validity or amount of any public charges for which LESSEE is responsible under this LEASE and may institute such proceedings as LESSEE considers necessary. If LESSEE contests any such public charges, LESSEE may withhold or defer payment or pay under protest but shall protect LESSOR and the Premises from any lien by adequate surety bond or other appropriate security.

LESSOR appoints LESSEE as LESSOR's attorney in fact for the purposes of making all payments to any taxing authorities and for the purpose of contesting any such public charge.

D. Exclusions:

LESSEE's obligation to pay public charges levied or charged against said possessory estate or buildings or improvements or against specified personal property, shall not include the following whatever they may be called: business income or profit taxes levied or assessed against LESSOR by federal, state or other governmental agencies; estate, succession, inheritance, or transfer taxes of LESSOR; or corporation, franchise, or profit taxes imposed on any owner of the fee title of the Premises.

E. Evidence of Payment

The certificate, advise or bill of the appropriate official designated by law to make or issue the same and to receive payment of any such public charge shall be prima-facie evidence that such public charge is due and unpaid at the time of the making or issuance of such certificate, advise, or bill; and the written receipt of such official shall be prima-facie evidence that the public charge therein described has been paid. LESSOR shall authorize and instruct the assessing authority to forward to LESSEE all bills covering such public charge.

16. UTILITIES

Water, electricity and natural gas are paid for by LESSOR. Any additional utilities required by LESSEE are to be paid for by LESSEE.

17. SIGNS

LESSEE shall not erect, maintain or display any signs on the Airport or the Premises without the prior written approval of the City. Prior to the erection, construction or placing of any such sign, LESSEE shall submit drawings, sketches, designs and dimensions of such signs to City for approval. All such signs shall be consistent with the over-all sign ordinance of the City of Visalia. Any condition, restriction or limitation with respect to the use of such signs as may be stated by the City in writing, shall become part of this LEASE. The term "signs" as used herein means any advertising signs, billboards, identification signs or symbols, posters or other similar devices.

18. BOARDING ASSISTANCE FOR SMALL AIRCRAFT

LESSOR and LESSEE acknowledge that 49 CFR 27.72 is to be complied with at all times, that 49 CFR 27.72 does not apply to the dev Havilland Twin Otter Aircraft, and that 49 CFR 27.72(c)(3)(iii) provides that boarding assistance is not required in the Beech 1900 Aircraft

19. DEFAULT

The LESSEE agrees that if a default shall be made in the payment of rent or if any of the covenants of this LEASE are violated by LESSEE, LESSOR shall give notice to LESSEE of default. If any default by LESSEE continues for more than ten (10) days or a reasonable period of time, agreed to by LESSOR and LESSEE, after said notice, LESSOR may at LESSOR'S election terminate this LEASE by giving LESSEE thirty (30) days written notice of termination. Thirty (30) days from the giving of the written notice, all LESSEE'S rights in the Premises and in all improvements shall terminate. Promptly thirty (30) days after notice of termination, LESSEE

(1) No person on the grounds of race, color, sex, age or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of said facilities;

(2) That in the construction of any improvements on, over or under such land and the furnishing or services thereon, no person on the grounds of race, color, sex, age or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and

(3) That the LESSEE shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted programs of the Department of Transportation, and as said Regulations may be amended.

C. It is understood and agreed that nothing contained herein shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

D. LESSEE agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided, that LESSEE may make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

E. The LESSOR reserves the right (but shall not be obligated to LESSEE) to maintain and keep in repair the landing area of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of the LESSEE in this regard.

F. The LESSOR reserves the right to further develop or improve the landing area and all publicly owned air navigation facilities of the airport as it sees fit, regardless of the desires or views of the LESSEE, and without interference or hindrance by LESSEE

G. The LESSOR reserves the right to take any action it considers necessary to protect aerial approaches of the airport against obstructions, together with the right to prevent LESSEE

from erecting, or permitting to be erected, any building or other structure on the airport which in the opinion of the LESSOR would limit the usefulness of the airport or constitute a hazard to aircraft.

H. During the time of war or national emergency the LESSOR shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly owned air navigation facilities and/or other areas or facilities of the airport. If any such agreement is executed, the provisions of this LEASE, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.

I. It is understood and agreed that the rights granted by this LEASE will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the airport.

J. There is hereby reserved to the LESSOR, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for passage of aircraft in the airspace above the surface of the Premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on or about the airport.

K. The LEASE shall become subordinate to provisions of any existing or future agreement between the LESSOR and the United States of America, or any agency thereof relative to the operation, development, or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the airport.

22. ADDITIONS OR MODIFICATIONS

A. LESSEE agrees that any additions or modifications structurally on the leasehold Premises by LESSEE can only be instituted by first obtaining the written approval of the LESSOR.

B. LESSEE agrees that LESSOR may from time to time make alterations, additions and modifications structurally to the Premises which may require LESSEE to be temporarily inconvenienced and/or relocated. LESSOR agrees to pay for actual reasonable expenses incurred by LESSEE as a result of any temporary relocation.

23. TERMINATION

In addition to any other provision in this LEASE, this LEASE may be canceled or terminated upon the following:

A. This LEASE, all rights and obligations established by this LEASE, including but not limited to the obligations to pay subsidies as established by Paragraph 4 above, and the tenancy hereby granted may be terminated or canceled, in part or whole, at any time by either party hereto by giving to the other party not less than ninety (90) days prior written notice, excepting Part B of Section 23 below.

B. This LEASE shall terminate automatically if either party hereto fails to remedy any breach or any term or condition of this LEASE within thirty (30) days after receiving written demand from the other party to do so. If however, either party is diligently proceeding in good faith to eliminate such default, then the period for correction shall be extended for such length of time as is reasonably necessary to complete such correction.

C. LESSEE agrees at the end of the LEASE term or in the event of an early termination, as provided for herein, to quit and deliver up said Premises in as good condition as they are now, broom clean, ordinary wear and tear expected.

24. NON-WAIVER OF RIGHTS

No failure by LESSOR to insist upon the strict performance of any covenant, agreement, term or condition of this LEASE or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rents or fees during the continuance of any such breach, shall constitute a waiver of any breach or of such covenant, agreement, term or condition.

No receipt of monies by LESSOR from LESSEE after the termination of this LEASE, or after the giving of any notice of termination of this LEASE (unless such receipt cures the event of default which was the basis for the notice) shall reinstate, continue or extend the term or effect any notice theretofore given to LESSEE, or operate as a waiver of the right of LESSOR to enforce the payment of rents or fees payable by LESSEE hereunder or thereafter falling due, or operate as a waiver of the right of LESSOR to recover possessions of the Premises by proper remedy.

25. ATTORNEYS' FEES

If either party brings any action or proceeding to enforce, protect, or establish any right or remedy, the prevailing party shall be entitled to recover reasonable attorneys' fees.

26. AFFECT OF ILLEGALITY

The invalidity or illegality of any provision of this LEASE shall not affect the remainder of the LEASE.

27. BINDING ON SUCCESSORS

Subject to the provisions of this LEASE on assignment and subletting, each and all of the covenants and conditions of this LEASE shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties.

28. SURRENDER ON TERMINATION

At the expiration or earlier termination of the term, LESSEE shall surrender to LESSOR the possession of the Premises. Surrender or removal of improvements, fixtures, and trade fixtures shall be as directed by the airport manager at termination of all or part of this LEASE. LESSEE shall leave the surrendered Premises and any other property in good and broom-clean condition except as provided to the contrary in provisions of this LEASE on maintenance and repair of improvements. All property that LESSEE is required to surrender shall become LESSOR's property at the termination of the LEASE. All property that LESSEE is not required to surrender but that LESSEE does abandon shall, at LESSOR's election, become LESSOR's property at termination. If LESSEE fails to surrender the Premises at the expiration or sooner termination of this LEASE, LESSEE shall defend and indemnify LESSOR from all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding tenant founded on or resulting from LESSEE's failure to surrender.

29. HOLDOVER

This LEASE shall terminate without further notice at expiration of the LEASE term. Any holding over by LESSEE after either expiration or termination shall not constitute a renewal or extension, or give LESSEE any rights in and to the Leased Premises, unless as provided in paragraph 2B above. If LESSEE, with LESSOR's consent, remains in possession of the leased Premises after expiration or termination of the term or after the date in any notice given by LESSOR to LESSEE terminating this LEASE, such possession by LESSEE shall be deemed to be a month-to-month tenancy terminable on thirty (30) days' notice given at any time by either party. During any such month-to-month tenancy, LESSEE shall continue to pay all rent required

by this LEASE. All other provisions of this LEASE, except those pertaining to term, shall apply to the month-to-month tenancy.

30. TIME IS OF THE ESSENCE

Time is of the essence of each and all of the terms and provisions of this LEASE and this LEASE shall inure to the benefit of and be binding upon the parties hereto and any successors or LESSEE as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this LEASE shall extend to and bind any assigns and sublessees of LESSEE.

31. ACCEPTANCE OF PREMISES

By signing this LEASE, LESSEE represents and warrants that LESSEE has independently inspected the Premises and made all tests, investigations and observations necessary to satisfy itself of the condition of the Premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations and observations in making this LEASE. LESSEE further acknowledges that the Premises are in the condition called for by this LEASE, and that LESSEE does not hold LESSOR responsible for any defects in the Premises.

32. CURRENT AND FUTURE AIRPORT REGULATIONS

This LEASE and all rights conferred thereby shall at all times be subject to current and future regulations governing any and all activities at the Visalia Municipal Airport to the same extent that such current and future regulations govern the activities of all persons using the facilities of the Visalia Municipal Airport and occupying structures thereon.

33. ENTIRE AGREEMENT

This LEASE contains the entire AGREEMENT between the parties. No promise, representation, warranty, or covenant not included in this LEASE has been or is relied on by either party. Each party has relied on his own examination of this LEASE, counsel of his own advisors and the warranties, representations, and covenants in the LEASE itself. The failure or refusal of either party to inspect the Premises or improvements, to read the LEASE or other documents, or to obtain legal or other advise relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection or advise.

34. VENUE

This contract is to be construed by the laws of the State of California with venue only in Tulare County, or the United States District Court for the Eastern District of California.

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IN WITNESS WHEREOF, the parties have executed this LEASE as of the date first above written.

SCENIC AIRLINES, LESSEE

Dated: _____, 2005 by: _____

Chad E. Dixon, President

CITY OF VISALIA, LESSOR

Dated: _____, 2005 by: _____

Steven M. Salomon, City Manager

APPROVED AS TO FORM:

Dated: _____, 2005 by: _____

Dan Dooley, City Attorney

Dated: _____, 2005 by: _____

Charlotte Dunn, Risk Management

City of Visalia

Memo



ITEM 16

To: City Council and City Manager

From: Fred Brusuelas, AICP
Assistant Director
Community Development & Public Works Department

CC: Michael Olmos

Date: July 20, 2005

Re: Continued Public Hearing-Initiation of proceedings for Annexation No. 2004-17 (Linwood-Ferguson)

This item was reviewed and continued by the City Council at the regularly scheduled meeting of July 18, 2005. The City Council directed Staff to provide additional maps and information regarding the Annexation proposal to indicate property owners consenting or opposed to the Annexation request. Additionally, it was requested that information be provided that pertains to the future of public street improvements along Linwood Avenue. Information from the Engineering Division indicates that Linwood Avenue is a collector street that will have a street median design to save the majority of Oak Trees in the areas north of Ferguson. The portion of Linwood Avenue nearest Riggin is substantially improved. The balance of Linwood Avenue will be fully improved after annexation.

A letter of correspondence has been prepared and sent to Dr. Sorensen, who has objected to the Annexation. Staff has tried to call Mr. Sorensen to discuss his concerns, but has not had success contacting him. Mr. Sorensen's concerns seem to primarily focus on keeping his animals on the property after Annexation. He was informed that he would be allowed to continue the raising of his animals and maintain the same number of animals over time. If his property is annexed into the City, the raising of animals would constitute a "legal-nonconforming use", and his animals can stay at the current number. Mr. Sorensen has been asked to provide us with the number of animals he presently has.

Attached herewith are the maps and drawings that have been requested. Shown inside the Annexation area is the proposed "Peters" Subdivision. Proposed are nine new lots and an irregular shaped lot for the existing home site. Along Riggan Avenue and along the east side of the Annexation boundary is the proposed "Valley Palms Subdivision". This residential subdivision project is a Planning Commission approved Tentative Map. All subdivision maps are "Tentative" until approved by the City Council. The final map must be approved by the City Council at a future date. The attached color map (support/opposed map) identifies the affected property owners. The green area shows property owners in support of the Annexation. The yellow indicates neutral, meaning they do not consent and they do not object. The red color indicates opposition to the Annexation by property owners Sorensen and Gilcrest. The blue indicates no response for support, opposition or neutral. The black line represents the Annexation boundary.

There is an east-west segment of a non-functional (to be abandoned) irrigation ditch that bisects the Annexation area. The former Modoc Ditch runs parallels along the southerly portion of Linwood Avenue and then easterly through the center of the Annexation area. The channel of this ditch exists in the Annexation area; however, it has been backfilled upstream and downstream of the Annexation area due to surrounding Urban Development.

**City of Visalia
Agenda Item Transmittal**

Meeting Date: July 18, 2005 (Continued from 7/18/05 to 7/25/05)

Agenda Item Number (Assigned by City Clerk): 16

Agenda Item Wording: Public hearing for the initiation of proceedings of Annexation No. 2004-17 (Linwood-Ferguson): a request by American, Inc. to annex 15 parcels and right-of-way totaling 57.90 acres into the City of Visalia. The project is located on the east side of Linwood Street between Riggin Avenue and Ferguson Avenue in the County of Tulare. (APN: 077-180-001 through 008; 077-190-001 through 004, 006, 009, 010). Resolution No. 2005-____required.

For action by:

City Council
 Redev. Agency Bd.
 Cap. Impr. Corp.
 VPFA

For placement on which agenda:

Work Session
 Closed Session
Regular Session:
 Consent Calendar
 Regular Item
 Public Hearing

Est. Time (Min.): 10

Deadline for Action: None

Submitting Department: Community Development and Public Works Dept. - Planning

Contact Name and Phone Number: Brandon Smith, Associate Planner 713-4636

Department Recommendation and Summary:

Staff is recommending that the City Council initiate a 57.90-acre annexation that will bring existing single-family residences and vacant land planned for the development of single-family residences into the City limits. If approved by Council, Staff would then file an application for annexation with the Local Agency Formation Commission (LAFCO).

Description of Site

Annexation No. 2004-17 (Linwood-Riggin) is an approximately 57.90-acre annexation of privately-owned property and the right-of-ways for portions of Riggin Avenue and Linwood Street. Currently, there are 12 rural single-family residences on the subject site, which are developed at not less than 1 unit per 2 acres of land. Some of the residences have extensive grounds and mature landscaping, and contain accessory structures such as guest houses, swimming pools, tennis courts, and pens for horses and cows. In addition to the mature landscaping, there are oak trees scattered throughout the subject area.

There are also approximately 20 acres of contiguous, undeveloped property located on the northwest corner of the subject site (the southeast corner of Riggin Ave. and Linwood St.). Project applicant American Inc. and property owner Tony Peters both intend to further develop this vacant land consistent with the underlying designation of Low Density Residential on the

site. To date, Staff has formally received an application for a Tentative Subdivision Map for a 6.42-acre site owned by Mr. Peters. The Map proposes to subdivide the 6.42-acre parcel into ten parcels (see attachment). A public hearing date has not yet been set for the Tentative Subdivision Map. No conceptual plans have been received for the remaining portion of the vacant area represented by American, Inc.

If the Council has any comments pertaining to the subdivision map as shown, Staff requests that the Council refer these comments to Planning Staff. Concerns expressed by Council will be considered as part of the tentative subdivision map process.

The site is within the City's current Urban Development Boundary. The City's General Plan designates approximately 24 acres of the annexation site for Residential Low Density land use designation (R-1-6 zone), approximately 12 acres of the site for Residential Medium Density land use designation (R-M-2 zone), and approximately 20 acres of the site for Rural Residential land use designation (R-A zone). Both the Residential Medium Density and Rural Residential designations are developed and are not anticipated to be further developed. The current City limit line is located on the south boundary and on portions of the west and east boundaries of the site. The site does not contain any land that is under a Williamson Act Land Conservation Contract.

County Islands

The subject annexation originally came to Staff as an annexation with only 38 acres of consented land. Staff saw that the annexation as proposed would create a largely developed county island to the west and a largely undeveloped area substantially surrounded by City limits to the east. In response, Staff sent out letters to property owners in the County jurisdiction surrounding the site. These letters included a survey, polling whether property owners would support, oppose, or be neutral to annexation if the City were to pursue annexation of these areas. Based on the responses, it was determined that there would not be significant support to include both potential county islands with the request. Since LAFCO policy allows for a limited amount of unconsented properties to be included in an annexation request (the assessed valuation of the unconsented properties must be less than that of the consented properties), Staff extended the boundaries of the annexation and included properties to make the boundaries of the annexation flush with Linwood Street and Riggin Avenue. However, Staff could not prevent the creation of two County islands through this annexation.

The westerly County island is a 61-acre island generally located on the north side of Ferguson Avenue between Linwood and Akers Streets. This island would be comprised of 17 contiguous parcels ranging in size from 1 to 5 acres each, with the exception of a 24-acre parcel containing a horse ranch with stables. Properties inside this County island are rural residential in character, each containing a single residence.

The easterly County island is an 83-acre island generally bound by Riggin Avenue, Demaree Street, and Ferguson Avenue. This island would be comprised of 5 contiguous parcels that are largely undeveloped, containing orchards, row crops, and oak trees. There are five rural residences scattered throughout the area. A majority of the area within this County island is land that is actively under the Williamson Act. At the time of its establishment, the City formally protested the creation of the preserve, though only a portion of the area was within one mile of the City limits at the time of protest. If the island is created, the County would continue to manage the agriculture preserve and land conservation contract on the site.

Prior to moving forward with this annexation, City Staff met with LAFCO Staff to discuss the creation of these islands. While LAFCO Staff did express concern over the resulting County islands, LAFCO did not oppose City Staff moving forward with the annexation. A pre-consultation notice for the annexation was subsequently sent to LAFCO for consideration, though LAFCO Staff did not have any comments regarding the annexation.

Annexation Agreement

Staff has determined that project will be subject to the General Plan Maintenance Fee. American Inc., who represents 14 acres of land projected for development, will be invoiced \$4,060 in fees. Tony Peters, who represents 5 acres of land proposed for development, will be invoiced for \$1,450. These fees must be paid upon approval of the annexation by LAFCO. Staff has included a condition that the applicants shall sign and enter into an annexation agreement with the City to memorialize the General Plan Maintenance Fee, groundwater mitigation fees, and other impact fees applicable to the annexation. The signed agreement must be returned to Staff before the City will lodge an application for annexation to LAFCO.

Environmental Findings

When initiating an annexation, the Council is required to make an environmental finding, in accordance with the California Environmental Quality Act (CEQA). Staff is recommending that the Council certify Negative Declaration No. 2005-063, which was prepared for the annexation and for subsequent development on the vacant areas represented by the applicants. The Negative Declaration document is attached.

If Council adopts the resolution, Staff will prepare an annexation application and file it with LAFCO.

Prior Council/Board Actions: None.

Committee/Commission Review and Actions: On July 11, 2005, the Planning Commission found that the annexation is consistent with the General Plan.

Alternatives: As an alternative, Council has the option of not initiating the annexation process.

Attachments:

- Resolution for Annexation
- Annexation Map
- Proposed Subdivision Map on portion of Annexation area
- Pre-Consultation Comments by Tulare County LAFCO
- Negative Declaration No. 2005-063
- Location Sketch

City Manager Recommendation:

Recommended Motion (and Alternative Motions if expected):

I move to adopt Resolution No. 2005-____, certifying Negative Declaration No. 2005-063, initiating Annexation 2004-17 (Linwood-Ferguson), and authorizing Staff to make application to the Tulare County Local Agency Formation Commission.

Financial Impact

Funding Source:

Account Number: None. Annexation application fees are being paid by the property owner.

Budget Recap:

Total Estimated cost: \$	New Revenue: \$
Amount Budgeted: \$	Lost Revenue: \$
New funding required: \$	New Personnel: \$
Council Policy Change: Yes____	No_X__

Copies of this report have been provided to:

Environmental Assessment Status

CEQA Review:

Required? Yes

Review and Action: Prior:

Required: Negative Declaration No. 2005-063 must be certified in conjunction with initiation of the annexation.

NEPA Review:

Required? No

Review and Action: Prior:

Required:

Tracking Information: *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

Signed resolution for Annexation to Tulare Co. LAFCO:

Deliver to contact person by Monday, July 25, 2005

Review and Approval - As needed:

Department Head Review (Signature):

Risk Management Review (Signature):

City Attorney Review (Signature):

Administrative Services Finance Review (Signature):

Others:

RESOLUTION NO. 2005-_____

A RESOLUTION OF APPLICATION BY THE CITY OF
VISALIA REQUESTING THE TULARE COUNTY LOCAL
AGENCY FORMATION COMMISSION TO TAKE PROCEEDINGS
FOR ANNEXATION 2004-17 (LINWOOD-FERGUSON)

WHEREAS, the City Council of the City of Visalia, desires to initiate proceedings for annexation to said city of territory described on the attached legal description; and

WHEREAS, the Council of the City of Visalia desires to annex said territory to the City of Visalia for the following reasons: The annexation will contribute to and facilitate orderly growth and development of both the City and the territory proposed to be annexed; will facilitate and contribute to the proper and orderly layout, design and construction of streets, gutters, sanitary and storm sewers and drainage facilities, both within the City and within the territory proposed to be annexed; and will provide and facilitate proper overall planning and zoning of lands and subdivision of lands in said City and said territory in a manner most conducive of the welfare of said City and said territory; and

WHEREAS, this proposal is made pursuant to the Cortese-Knox-Hertzburg Local Government Reorganization Act of 2000, commencing with Section 56000 of the Government Code of the State of California; and

WHEREAS, the territory proposed to be annexed is inhabited; and

WHEREAS, the Visalia Planning Commission reviewed this proposal on July 11, 2005, and found it to be consistent with the General Plan; and

WHEREAS, the City Council hereby makes the following findings with regard to the project:

1. The annexation is consistent with the policies and intent of the General Plan.
2. There is no evidence before the Planning Commission that the proposed project will have any potential for adverse effects on wildlife resources, as defined in Section 711.2 of the Department of Fish and Game Code.
3. An Initial Study was prepared for this project, consistent with CEQA, which disclosed that environmental impacts are determined to be not significant, and Negative Declaration No. 2005-063 is hereby certified.
4. The site is within the Sphere of Influence of Visalia and within Visalia's current Urban Development Boundary.
5. The site is not located within an agricultural preserve or Land Conservation Contract.
6. The Council finds that the General Plan Maintenance Fee for this annexation will be \$5,510.00 which shall be paid upon approval of the annexation by LAFCo.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Visalia as follows:

1. The potential environmental effects of the proposed annexation have been reviewed and the Environmental Coordinator of the City of Visalia has determined that the proposal falls within the scope of issues and impacts addressed in Negative Declaration No. 2005-063, and that no mitigation measures are required.
2. Application is hereby made to the Executive Officer of the Local Agency Formation Commission, County of Tulare, State of California, as proposed in the Proposal Questionnaire, as described in the legal description entitled "Annexation No. 2004-17 (Linwood-Ferguson)", and as illustrated in the map entitled "Annexation No. 2004-17 (Linwood-Ferguson)".
3. Proceedings shall be taken for this annexation proposal pursuant to Title 5, Division 3, Part 3 of the California Government Code and other relevant provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.
4. Upon annexation, the territory shall be zoned R-1-6, R-M-2, and R-A, consistent with the pre-zonings designated by the General Plan Land Use Map.
5. The City Clerk of the City of Visalia is authorized and directed to file a certified copy of this resolution with the Executive Officer of Tulare County LAFCO.
6. Prior to City lodging an application to LAFCO on behalf of applicant(s), applicant(s) shall enter into an annexation agreement with City which memorializes the required fees, policies, and conditions applicable to the annexation.

City of Visalia

Memo



ITEM 19

To: City Council and City Manager

From: Fred Brusuelas, AICP
Assistant Director
Community Development & Public Works Department

CC: Michael Olmos

Date: July 20, 2005

Re: Continued Public Hearing-Elliot and Vander Weerd Properties

This item was continued by the City Council at the regularly scheduled meeting of July 18, 2005. The Staff will be making a full presentation of the project to the City Council for public review and City Council consideration.

**City of Visalia
Agenda Item Transmittal**

Meeting Date: July 18, 2005 (Continued from 7/18/05 to 7/25/05)

Agenda Item Number (Assigned by City Clerk): 19

Agenda Item Wording:

CONTINUED ITEM FROM JUNE 20, 2005:

a) Certification of the Final Environmental Impact Report, prepared for the Elliott and Vander Weerd properties. The project area for the EIR is located east of Shirk Street and south of the Tulare Avenue alignment between Shirk Street and Roeben Avenue. State Clearinghouse No. 2004061090. Resolution No. 2005-104 required.

b) Initiation of Proceedings for Annexation No. 2003-08 (Elliott East): A request to annex approximately 80 acres into the City of Visalia. Resolution No. 2005-105 required.

c) General Plan Amendment No. 2003-20: A request to change the General Plan land use designation from Agriculture to Low Density Residential on 80 acres. Resolution No. 2005-106 required.

The projects are located east of Shirk Street and south of the Tulare Avenue alignment between Shirk Street and Roeben Avenue in the City of Visalia (APN: 087-010-005, 006, 008)

Centex Homes, applicant. Quad Knopf, agent.

Deadline for Action: None

Submitting Department: Community Development and Public Works Dept. - Planning

Contact Name and Phone Number:

Brandon Smith, Associate Planner – 713-4636

Fred Brusuelas, Assistant Director of Community Development and Public Works – 713-4364

For action by:

- City Council
- Redev. Agency Bd.
- Cap. Impr. Corp.
- VPFA

For placement on which agenda:

- Work Session
- Closed Session
- Regular Session:
- Consent Calendar
- Regular Item
- Public Hearing

Est. Time (Min.): 30 min

DEPARTMENT RECOMMENDATION AND SUMMARY:

The Planning Commission recommends that the City Council certify the Environmental Impact Report (EIR) prepared for the Elliott and Vander Weerd Property Project. The Planning Commission also recommends that the City Council approve General Plan Amendment No. 2003-20, and initiate proceedings for Annexation No. 2003-08 (Elliott East).

PROJECT SUMMARY

The project described within the EIR is the development of a 232-unit mixed product residential subdivision and a 5.3-acre City Park on an 80-acre site at the southwest corner of Roeben Street and Tulare Avenue. The EIR Certification, General Plan Amendment, and Annexation are the first entitlements needing approval to facilitate the development of the entire 80-acre site. The General Plan Amendment is a request to change the General Plan land use designation on the entire project site from Agriculture to Low Density Residential. The Low

Density Residential designation would be consistent with the entire project's proposed residential and park uses. The Annexation is a request to annex the entire project area considered in the EIR, including the right-of-way for Shirk Street which borders the project area. Altogether, the annexation area consists of approximately 80 acres. On May 23, 2005, the Planning Commission made a recommendation of approval and finding of consistency for the General Plan Amendment and Annexation, and recommended that the Council certify the EIR which applies to the entire 80 acre site. The conceptual site plan for the entire 80 acre site is shown on Exhibit "A".

Subsequent entitlements needed for the project after certification of the EIR include the Cancellation of a Williamson Act Contract covering 60 acres of the project site, Tentative Subdivision Maps for the creation of 206 residential lots, and Conditional Use Permit(s) for the allowance of duplexes on corner lots, for a Planned Residential Development with private gated streets, and for the proposed parks. These entitlements will require approval by the Planning Commission and/or City Council before ground may be broken on the project. Specific details regarding the two subdivisions and park proposed by the project and shown conceptually in Exhibit "A" would be discussed and evaluated in future staff reports.

The project is being requested by Centex Homes, who represent 60 acres of the project site (the area with the exclusion of the northeast quarter), owned by Margaret Elliott. Centex Homes has filed for a 185-unit subdivision entitled "The Summit" on the 60 acres, which would be processed upon certification of the EIR. A 47-unit subdivision entitled "Rose Estates" is planned for the remaining 20 acres of the project site owned by Ron and Rosalinda Vander Weerd. This subdivision, consisting of 24 ½-acre gated lots and 23 townhouses would be developed separately. Quad Knopf was contracted by Centex Homes to prepare the EIR that considers the entire 80-acre area, for which the City of Visalia would act as the lead agency. The EIR was reviewed and revised by in-house staff and CEQA consultant Heidi Tschudin hired by the City to ensure that the document is a comprehensive environmental analysis meeting the requirements of the City Environmental Guidelines and CEQA.

Currently, the site is in agricultural use, and contains croplands and tree orchards. The Persian Irrigation Ditch crosses through the southeast portion of the site. This ditch will not be modified by the project, and will be preserved by the surrounding development of a City Park. On the north, the site includes a meandering portion of Packwood Creek, with some native oak trees scattered along both sides of the creek. Two residences are located between the ditch and Roeben Street, and will be removed with the project.

GENERAL PLAN AMENDMENT

The proposed General Plan Amendment will change approximately 80 acres of land use designation from Agriculture to Low Density Residential. The proposed conceptual plan shown as Exhibit "A" demonstrates how the proposed Low Density Residential designation is consistent with specific goals and policies of the Land Use Element as it pertains to the proposed residential development.

Following are selected objectives and policies which the General Plan Amendment encourages:

2.1 PRESERVATION OF NATURAL FEATURES

Objective

- A. Preserve and enhance natural and rural features such as waterways, Valley Oaks, and agriculture as significant assets and community resources.

Implementing Policies

- 2.1.1 Preserve selected waterways as identified in the Conservation, Open Space, Recreation & Parks Element for flood protection, irrigation water conveyance, riparian habitat, and open space, where possible, for active and passive outdoor recreation.

2.2 RESOURCE CONSERVATION

Implementing Policies

- 2.2.1 Require new developments to incorporate flood water detention basins into project designs where consistent with the Storm Drainage Master Plan. Large basins shall serve as wetland habitat for extended periods where appropriate.

Analysis: The subject site includes a portion of Persian Ditch, which is identified in the Conservation, Open Space, Recreation & Parks Element as a community waterway. Approval of the General Plan Amendment would allow for the preservation and enhancement of this portion of the ditch, and would allow for the creation of a City Park around the ditch, acting as a permanent open space around the ditch. The City Park would incorporate a low flow pond, along with a pump that would transfer storm water to an existing retention basin on Walnut Avenue. Also, three Valley Oaks on the site will be preserved and maintained in accordance with the City's oak tree preservation ordinance. One displaced tree will be replaced per the City's protected rate in the general area of displacement.

4.1 RESIDENTIAL LAND DEVELOPMENT AND LAND USE

Objectives

- A. Ensure adequate land area is available for future housing needs.
 - B. Encourage efficient residential development.
 - C. Encourage development of comprehensively planned, compact, well-integrated areas for single-family and multi-family residential development using schools, neighborhood parks, and open space conservation facilities as key planning components.
 - D. Provide new residential areas that offer a variety of housing densities, types, sizes, costs and locations to meet projected demand throughout the community.
 - E. Identify locations for multi-family developments which are accessible to major transportation routes, mass transit facilities, commercial areas, schools, and recreation facilities.
- 4.1.2 Encourage the use of site development techniques which ensure that a good mix of housing types is provided through such methods as inclusion of duplexes in low density areas where they can be made to be compatible with surrounding development.
- 4.1.7 Ensure that natural and open space features such as Valley Oak trees and community waterways are treated as special site amenities which are to be preserved and enhanced in conformity with the Open Space, Conservation, Recreation and Parks Element.

Analysis: Approval of the General Plan Amendment for Low Density Residential land would allow for the sustaining of land for future housing needs. The conceptual plan shown in the EIR, which shows the future development plan for the Low Density Residential site, directly integrate

the objectives and policies which are stated above, such as including a mix of housing types and inclusion of duplexes on corner lots.

4.1.17 Rural Residential areas shall be designated to provide opportunities for residential dwellings in conjunction with small-scale farming and animal husbandry or in a semi-rural setting ... Densities of up to 2 units per acre may be permitted by conditional use permit in the following locations:

b. West side of Roeben Road between Tulare and Walnut.

Analysis: The excerpt of the General Plan Policy above gives an allowed location for rural residential land use designations at a density of 2 units per acre, but does not state that the area must be used exclusively for rural residential purposes. Existing rural residential subdivisions south of the site (i.e. Savannah Heights) have developed in accordance with this policy. Thus, the proposed general plan amendment would not be inconsistent with this policy.

ADDITION OF RESIDENTIAL UNITS IN NON-DESIGNATED AREAS TOWARDS UDB

The General Plan Amendment and Change of Zone, if approved, will include the creation of residential units in an area not previously identified or designated for Residential land uses. Over the past few years, the City Council has approved other General Plan Amendments which have converted areas not cited for residential growth to residential designations in various locations around the City. Examples of this include the conversion of Business Research Park (BRP) designations at Highway 198/McAuliff and Shirk/Riggin, and the Quasi-Public designation at Akers/Caldwell being considered with tonight's agenda. When such General Plan Amendments are approved, they contribute towards reaching the 129,000 population criteria for the City's Urban Development Boundary, but do not promote the buildout of existing residential designations at an equal pace.

Staff recommends that this issue shall be addressed as a prelude to the General Plan Land Use Element Update which is proposed to begin in 2006. Specifically, Staff would conduct a review of the land use changes over the past several years which have created new residential land be compiled, and calculate the estimated population increase in these new areas. The figure would be added to the population milestones set for the expansion of the 129,000 and 165,000 Urban Development Boundaries (UDB). This would extend the period of time that the current UDB will be effective, and enable the City to delay moving to the next growth ring due to additional units being provided in the current UDB.

ANNEXATION

Staff finds that annexation of the land into the City would be consistent with City policies, as the site is within the City's current Urban Development Boundary and adjacent to City limits on the east side and a portion of the south side of the site.

If the Council takes the recommended action of certifying the EIR and initiating the annexation, Staff would be lodging an application for annexation to the Tulare County LAFCO (Local Agency Formation Commission). Before Staff will file the application with LAFCO, property owners will be required to sign a Pre-Annexation Agreement which will memorialize the following conditions applicable to the annexation:

- Payment of all associated impact fees at the time that final subdivision maps are recorded and/or building permits are issued in association with the proposed project;
- Compliance with the policies and fees contained within the Groundwater Mitigation Ordinance if adopted by City Council;

- Payment of the General Plan Maintenance Fees upon approval of the annexation by Tulare County LAFCO. Staff has determined that a total of \$22,620 in fees would be associated with the Elliott East Annexation based on 28 acres of developable land in the annexation area;
- Indemnification of the property owners and its successors to the City, its officers, elected officials, employees, and agents with respect to the cancellation of the Williamson Act Contracts covering the site.

FUTURE IMPROVEMENTS TO SHIRK STREET

The annexation will include a portion of the Shirk Street right-of-way; however the City has already entered into an Agreement with Tulare County on November 23, 2004 which allows the City to maintain and improve Shirk Street between Highway 198 and Caldwell Avenue while the street is still under County jurisdiction.

As stated in the EIR, the project will contribute to an increase of daily trips on Shirk Street. Moreover, the addition of 232 residential units by the project will generate transportation impact fees that will accelerate the need for improvements for the segments of Shirk Street located outside of the project area to the north and south. The Circulation Element identifies Shirk Street as an Arterial-status street, and is therefore able to be improved through the use of transportation impact fees.

ENVIRONMENTAL IMPACTS

In accordance with the California Environmental Quality Act (CEQA), an Environmental Impact Report (EIR) was prepared to determine whether the comprehensive project would result in any significant environmental impacts. A Draft EIR was delivered to the State Clearinghouse and mailed out to agencies, organizations and interested individuals on December 20, 2004 for an initial 45-day public review period. A notice was also published in the Visalia Times Delta notifying the public of the availability of the Draft EIR and soliciting review and comments. After further public noticing, the review period was extended 13 days to allow for a public hearing for verbal or written comments before the Planning Commission. The public hearing was held before the Planning Commission on February 15, 2005 to obtain comments on the Draft EIR. The public review period ended coinciding with the Planning Commission public hearing on February 15, 2005.

The Draft EIR evaluated the impacts resulting from the proposed project. Impacts to Aesthetics, Biological Resources, Cultural Resources, Hazards / Hazardous Materials, Hydrology / Water Quality, Land Use, Noise, Traffic, and Utilities and Service Systems were all found to be less than significant or had no impact before any mitigation measures were introduced.

Impacts to the following resources were determined to be less than significant with the implementation of mitigation measures, as described on page ES-5 of the Draft EIR:

- | | |
|----------------------|-----------------------------|
| ◆ Aesthetics | ◆ Hydrology / Water Quality |
| ◆ Air Quality | ◆ Noise |
| ◆ Cultural Resources | ◆ Public Service |
| ◆ Geology / Soils | ◆ Transportation / Traffic |

The Draft EIR determined that unavoidable significant impacts will result from the project in the following areas, as described on page ES-24 of the Draft EIR:

- ◆ Agriculture – Loss of prime farmland (unavoidable and cumulative significant impacts)
- ◆ Agriculture – Conversion of 80 acres of farmland to non-agricultural use (significant impacts)
- ◆ Air Quality – Operational Air Emissions (unavoidable and cumulative)

The impacts to the above environmental resources were not able to be reduced or eliminated to a level of less than significant. As lead agency, the City of Visalia may determine that the benefits of the proposed project outweigh the unavoidable adverse effects. In order to make this determination, a Statement of Overriding Considerations must be prepared and included in the record of project approval. The Statement of Overriding Considerations has been prepared and is included in the resolution certifying the EIR (see attached).

A Final EIR has also been prepared which responds to all comments received on the Draft EIR in writing and verbally at the public hearing. In accordance with CEQA, the Final EIR was made available to all persons, agencies, and organizations commenting on the Draft EIR on May 13, 2005 for a ten day review period prior to the certification of the EIR by the City Council.

MITIGATION MEASURES FOR LOSS OF AGRICULTURAL LAND

The Final EIR states that the loss of prime agricultural farmland is a significant unavoidable impact generated from the project, and that no mitigation measure(s) can reduce the impacts to a less than significant level. In describing possible mitigation for this field, the Draft EIR (on page 3-15 of the document) makes reference to strategies contained in the EIR for the Visalia General Plan Land Use Element Update, but does not require pursuing any specific mitigation. (See "Errata" Section below regarding page 3-15 of the Draft EIR.)

One such strategy was for the City to initiate a program for the long-term preservation of prime farmland through the establishments of easements on prime farmland outside of the City's Urban Development Boundaries. Such program would be coordinated through a regional planning agency such as a Council of Governments or other body formed by a Joint Powers Agreement. To date, no such program has been formally adopted.

When Council certifies the Final EIR, a Statement of Overriding Conditions will be adopted that states that the public benefits of the project outweigh the unavoidable adverse environmental effects of the project.

If the Council desires that a form of mitigation for the loss of agricultural land be carried out, the Council could require the purchase of conservation easements in the region of the project site as mitigation for the proposed project. Such mitigation would be carried out either by establishing a per-acre impact fee assessed to new development, or requiring that the applicant purchase the conservation easements directly from a land conservation organization. The mitigation measure, if recommended, would have to be added to the project's Final EIR, and must be specified in Council's recommendation to certify the EIR.

The Planning Commission, at their May 23, 2005 public hearing to consider the Elliott EIR, did consider the mitigation option but did not make any recommendation on requiring additional mitigation to compensate for the loss of agricultural land. The Commission recommended adoption of a Statement of Overriding Considerations for agricultural land impacts.

ERRATA SHEET

After the public circulation of the Final EIR to the Elliott Property, it came to Staff's attention that the strategies for agricultural mitigation contained in the Final EIR of the Land Use Element

Update were inappropriately referenced in the Elliott EIR. The strategies included on page 3-15 in the Elliott EIR were the strategies listed in the Draft EIR for the Land Use Element Update, and were not the adopted strategies in the Final EIR (see Exhibit "B"). Staff is therefore recommending that the City Council certify the Environmental Impact Report prepared for the Elliott and Vander Weerd Property with an Errata Sheet that conforms the strategies for agricultural mitigation to those contained in the Final EIR of the Land Use Element Update.

CORRESPONDENCE RECEIVED AFTER COMMENT PERIOD

Following the close of the public comment period for the Elliott and Vander Weerd EIR, correspondence was received by Staff from the Visalia Unified School District (VUSD) and from Councilmember Kirkpatrick.

Correspondence from VUSD dated June 3, 2005 (see Exhibit "C") requests that the City of Visalia consider adding a designation for an elementary school site in a half-square mile area that includes the project site. The correspondence dated June 3, 2005 was not written directly in response to the Elliott EIR, even though the 320-acre area referenced by the letter includes the 80-acre project site. However, this recent correspondence provides more detail than the written correspondence prepared by VUSD on February 1, 2005 for the Elliott EIR during its public comment period. The February 1 commenting letter states that the elementary school serving the area (Veva Blunt Elementary School) is currently at capacity enrollment. The recent June 3 letter details the critical overcrowding conditions at the school warranting the construction of another school in the area. In response to the more recent letter, the City will be considering placement of an elementary school site in the surrounding vicinity when study commences on the future West 198 Area Land Use Plan, which includes the critical area identified by VUSD. Staff has discussed the upcoming West Highway 198 Comprehensive Plan with VUSD Staff, and the City and VUSD have agreed that school facilities for this area should be considered as part of the comprehensive plan process.

Correspondence from Councilmember Kirkpatrick addresses several questions with regard to mitigation for farmland and the future Williamson Act contract cancellation (see Exhibit "D"). Further discussion on these topics is addressed in the following paragraphs.

The Elliott EIR does not specifically recommend a mitigation measure that preserves an equivalent amount of agricultural land lost by this project alone. The Elliott EIR acknowledges that the effects of the loss of prime agricultural land were previously discussed in the General Plan Land Use Element Update EIR, and states that the mitigation measures included in the Land Use Element Update EIR (see Exhibit "B") are suitable strategies for the loss of agricultural land by the Elliott project, and therefore should be recommended. These strategies have been followed as City policy since the 2020 Plan was adopted.

The Land Use Element Update EIR contains a Mitigation Monitoring Program for the measures, specified for Agriculture Resources. In 2003, the City successfully implemented Measure 4.2-4 with the approval of the Urban Development Boundary (UDB) expansion to the 129,000 growth ring. This measure relied on using UDBs and buildout thresholds to carry out phased development concentric from the City's core. It should be noted that that expansion to the 129,000 growth ring did not occur until late 2003 instead of 2000 as anticipated in the 2020 Plan, due to slowed population growth in the 1990s.

Measure 4.2-1, which calls for the creation of a Prime Farmland Preservation Program to be coordinated through a regional planning agency and implemented together by the City and Tulare County, would be implemented once thresholds for certain criteria were met. According

to the Mitigation Monitoring Program, these criteria include the rate of prime farmland conversion within the Urban Growth Boundaries (UGB), availability of lands outside of the UGB, and success of farming efforts on alternate sites. As previously discussed, this program has not been initiated as of yet. Council could consider directing staff to contact TCAG and Tulare County to initiate discussions on this subject.

Measure 4.2-2, which speaks towards increasing residential densities, which can be completed within an open time-frame based on the inventory of area with adequate public utilities and services and based on the rate of farmland conversion. In more recent years, the City has seen this mitigation fulfilled in several different circumstances. Most notably, the City has been experiencing a trend of small-lot subdivisions in the R-1 zone that typically average 7 units per acre – many of them at infill locations. Such subdivisions currently under construction include Avalon by Centex (Demaree/Riggin), Turnberry Place by Bill Beneyan (Akers/Caldwell), and Bella Serra by Mangano Homes (Akers/Goshen). The City has now responded to this growing trend by drafting a Small Lot Subdivision Ordinance to address standards of setbacks, parking, and open space. In addition to responding to this trend, the City has allowed for increased residential densities on several sites not previously cited for residential use, such as the former BRP zones. Also, the City in coordination with other local entities has taken various actions to encourage and sustain a viable housing market in the downtown. These actions include but are not limited to the downtown expansion of the Kaweah Delta Hospital, the construction of the Oak Meadows senior apartments, and approving mixed use development downtown.

The Elliott site, along with other undeveloped parcels in the area identified for the West 198 Land Use Study area between Goshen and Walnut Avenues, have been inside the 98,700 UDB since the Land Use Element Update was adopted in 1991. These lands, which contain a General Plan land use designation of Agriculture, were not offered as mitigation for farmland conversion in the Land Use Element Update EIR. Rather, these properties were protected by mitigation and a land use policy which called for a Right-to-Farm ordinance.

WILLIAMSON ACT CONTRACT

If upon adoption of the Elliott EIR the subject annexation is approved by the Tulare County LAFCO, the City will succeed to 60 acres of Williamson Act contracted land on the site. Prior to any development on the site, this Williamson Act Contract and Agriculture Preserve must be removed from the site. As indicated in the Elliott EIR, the project applicant intends to cancel the Contract and Preserve by means of Govt. Code Sections 51280 through 51287, in which the applicant will be responsible for paying a cancellation fee equal to 12.5% of the fair market value of the property as determined by the County Assessor. The Govt. Code requires that specific findings must be made to the Department of Conservation if an applicant petitions to cancel a contract (see page 3-16 of the Draft EIR). Upon receiving the findings by the City, the Department of Conservation (DOC) must evaluate and respond to these findings. The Code also requires that the Council or other approving body must consider the findings before making final action towards removing the contract.

It is important to note that if the General Plan Amendment towards Low Density Residential land uses is approved and the property is annexed into the City, the site cannot be developed consistent with the underlying zoning until the Council authorizes the cancellation of the Williamson Act Contract and disestablishment of the Agricultural Preserve. These requests would likely come before the Council in Fall 2005 if the EIR is adopted. If findings to cancel the Williamson Act Contract cannot be made, the site will remain in agricultural use until the contract expires in 2014 pursuant to the Notice of Non-Renewal recorded on June 10, 2003.

The Elliott EIR has been prepared to consider impacts associated with the development of a proposed residential project on the site and the entitlements needed to facilitate the project. Impacts related to the Cancellation of a Williamson Act Contract on 60 acres within the project area are considered in the EIR; however the EIR is not required to evaluate the specific findings which must be made to the DOC to support the removal of lands from contract. The Elliott EIR only briefly discusses these findings; a more detailed analysis will be prepared for consideration by the DOC.

In 2004, the DOC was noticed of the preparation of the Elliot EIR, which included the removal of contracted lands in its project description. The DOC responded in writing to the Draft EIR in a letter dated February 4, 2005; the letter along with a response is contained in the Final EIR.

Not considering the land located inside the West 198 Land Use Study Area, there is no land equivalent in size to the project site either west of Akers Street or in the southwest quadrant of the City that is available for residential development at this time. Several acres of non-contracted land are located inside the West 198 Area; however these areas are bordered on one or less sides by existing residential development. Staff cannot confirm that the non-contracted land to the north of the project site is "earmarked" for development. To date, no site plan reviews have been received for this area. Additionally, development of the land to the north and west can only occur consistent with the future comprehensive land use study cited for this area authorized by Council.

Prior Council/Board Actions: In January 2004, the City Council held a work session which included discussion about processing applications for general plan amendment in the West 198 Scenic Corridor Area. At the work session, the Council directed Staff to allow the Elliot and Vander Weerd project and the Tiffany Ranch Phase II project to proceed, and that any future projects received in the area would not be processed until a comprehensive land use study was completed for the area.

On June 20, 2005, the City Council moved on a 5-0 vote to continue this item to July 18, 2005. A public hearing was not opened for the item.

Committee/Commission Review and Actions:

The Planning Commission held a public hearing for the above listed actions on May 23, 2005. Following the hearing the Planning Commission voted to recommend to the City Council that the EIR be certified, the General Plan Amendment be approved, and that the annexation be initiated on a 4-0 vote (Salinas - absent).

During the public hearing, six individuals spoke to the item. Gary Brookshire, a neighboring resident who lives on Shirk Street, voiced concern on the increased traffic count on Shirk Street. John Schouten, a resident of the Savannah Heights subdivision located south of the site, stated that he was led to believe the area would develop at 2 units per acre according to General Plan Land Use Policy 4.1.17b, and voiced dissatisfaction with the density of the project. Mr. Schouten also questioned the future of the subdivision wall which divides his property and the project site. The wall on the north side of the Savannah Heights subdivision was constructed 5 feet south of the property line to allow for an easement to agricultural operations on the subject site. David Anderson, a resident of the Savannah Heights subdivision, also voiced concern regarding traffic and the location of the subdivision wall between his property and the project site.

In response to concerns related to traffic, Assistant Community Development & Public Works Director Fred Brusuelas explained how development impact fees paid through the construction of the project would progress the development of the overall City circulation system consistent with the Circulation Element. Mr. Brusuelas also noted that Shirk, Tulare, and Roeben frontages along the site would be constructed to City standards for arterials and collectors, and that construction of the project may displace Shirk St. traffic south of Tulare Ave. by improving overall circulation.

Mike Knopf and Harry Tow, both from Quad Knopf, and Cliff Ronk from Centex Homes, all spoke in favor of the project. Mike Knopf demonstrated to the Commission through aerial photos how the proposed project would be consistent with existing residential development to the north and south that extends as far west as Shirk Street.

After the close of the public hearing, Commissioner Perez made a motion to recommend certification and approval of the items to the City Council. Commissioner Thompson seconded the motion.

Alternatives:

1. The City Council may continue the item until the Council approves a comprehensive land use plan for the West Hwy. 198 area. Council had recently directed the Open Space Task Force to begin meeting and develop recommendations for open space and setbacks along the scenic corridor, in response to the survey presentation made to Council on June 6, 2005. Council also directed that a task force be formed to help formulate a comprehensive land use plan for the Agriculture-designated lands along West Hwy. 198 between Goshen and Walnut Avenues. The plan will establish a comprehensive land use pattern and development policies for the area including infrastructure needs (schools, fire facilities, etc.), and will include a financing plan to cover the costs for the placement of city infrastructure, and other public improvements serving the area.
2. The City Council may modify the recommendations of the Planning Commission.
3. The City Council may deny the requested actions.

Exhibits:

Resolutions

Exhibit "A" - Overall Conceptual Plan

Exhibit "B" - "Agricultural Mitigation Measures" from the Final EIR of the General Plan Land Use Element Update

Exhibit "C" – Correspondence from Visalia Unified School District, June 3, 2005

Exhibit "D" – Correspondence from Councilmember Kirkpatrick

Location Map

City Manager Recommendation:

Recommended Motion (and Alternative Motions if expected):

1. I move to certify the Environmental Impact Report prepared for the Elliott and Vander Weerd Property, Resolution No. 2005-104.
2. I move to approve General Plan Amendment No. 2003-20, Resolution No. 2005-105
3. I move to initiate proceedings on Annexation No. 2003-08 (Elliott East), Resolution No. 2005-106

Copies of this report have been provided to:

Environmental Assessment Status

Financial Impact

Funding Source:

Account Number: _____ (Call Finance for assistance)

Budget Recap:

Total Estimated cost: \$	New Revenue: \$
Amount Budgeted: \$	Lost Revenue: \$
New funding required: \$	New Personnel: \$
Council Policy Change: Yes_____ No_____	

CEQA Review:

Required? Yes

Review and Action: Prior:

The Draft and Final copies of the Environmental Impact Report for the Elliott and Vander Weerd Property, State Clearinghouse No. 2004061090, have been circulated for public review consistent with CEQA Guidelines. On May 23, 2005, the Planning Commission recommended that the EIR be certified by the City Council.

Required: Certification of the EIR is required by the City Council.

NEPA Review:

Required? No

Review and Action: Prior:

Required:

Tracking Information: *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

Signed resolution for Annexation to Tulare Co. LAFCO:

Deliver to contact person by Tuesday, July 5, 2005

Review and Approval - As needed:

Department Head Review (Signature):

Risk Management Review (Signature):

City Attorney Review (Signature):

Administrative Services Finance Review (Signature):

Others:

RESOLUTION NO. 2005-104

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VISALIA CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE ELLIOTT AND VENDER WEERD PROPERTY PROJECT.

STATE CLEARINGHOUSE # 2004061090

WHEREAS, The City Council of the City of Visalia has reviewed and considered the Final Environmental Impact Report prepared for the Elliott and Vander Weerd Property Project; and,

WHEREAS, the Draft Environmental Impact Report (Draft EIR) was released on December 20, 2004 for circulation; and,

WHEREAS, the Planning Commission of the City of Visalia, after ten (10) days published notice did hold a public hearing to obtain public comment for the Draft Environmental Impact Report on February 15, 2005; and

WHEREAS, the Final Environmental Impact Report was released on May 13, 2005, and consists of the Draft EIR and the revisions of, and additions to, the Draft EIR; the written comments and recommendations received on the Draft EIR; the written responses of the City of Visalia to significant environmental points raised in the review and consultation process; errata to the foregoing; and other information added by the City of Visalia as specified in the record; and

WHEREAS, the Planning Commission of the City of Visalia, after ten (10) days notice held a second public hearing for the Final Environmental Impact Report on May 23, 2005; and

WHEREAS, the Planning Commission of the City of Visalia did recommend that the City Council of the City of Visalia certify the Environmental Impact Report prepared for the Elliott and Vander Weerd Property, SCH# 2004061090, on May 23, 2005 in conjunction with recommending the approval of General Plan Amendment No. 2003-20 and recommending the initiation of proceedings for Annexation No. 2003-08 (Elliott East); and,

WHEREAS, the California Environmental Quality Act (CEQA) required that, in connection with the approval of a project for which an EIR has been prepared which identified one or more significant effects, the decision making body make certain findings regarding those effects.

NOW, THEREFORE, BE IT RESOLVED, that the City Council finds that the Elliott and Vander Weerd Property Project Environmental Impact Report, SCH# 2004061090 was prepared consistent with the California Environmental Quality Act and City of Visalia Environmental Guidelines.

BE IT FURTHER RESOLVED that the City Council certify the Elliott and Vander Weerd Property Project Environmental Impact Report, SCH# 2004061090 based on the following specific findings and based on the evidence presented:

1. That full and fair public hearings have been held on the Environmental Impact Report and the City Council having considered all comments received thereon, said Environmental Impact Report is hereby determined to be adequate and complete; and said Environmental Impact Report is hereby incorporated herein by reference.
2. That the City Council hereby determines, in connection with the recommended adoption of the proposed General Plan Amendment and Annexation for the Elliott and Vander Weerd Property Project, that the Final Environmental Impact Report (FEIR) for those actions has been prepared in compliance with the California Environmental Quality Act (CEQA) and the state and local

environmental guidelines and regulations; that it has independently reviewed and analyzed the information contained therein, including the written comments received during the EIR review period and the oral comments received at the public hearing; and that the Final EIR represents the independent judgment of the City of Visalia, as Lead Agency for the project.

3. That the City Council does hereby find and recognize that the Final EIR contains additions, clarifications, modifications and other information in its responses to comments on the Draft EIR and also incorporates text changes to the EIR based on information obtained by the City since the Draft EIR was issued. The City Council does hereby find and determine that such changes and additional information are not significant new information as that term is defined under the provisions of the California Environmental Quality Act because such changes and additional information do not indicate that any new significant environmental impacts not already evaluated would result from the project and they do not reflect any substantial increase in the severity of any environmental impact; no feasible mitigation measures considerably different from those previously analyzed in the Draft EIR have been proposed that would lessen significant environmental impacts of the project; and no feasible alternatives considerably different from those analyzed in the Draft EIR have been proposed that would lessen the significant environmental impacts of the project.
4. That there is no evidence before the City Council that the proposed project will have any potential for adverse effects on wildlife resources, as defined in Section 711.2 of the Department of Fish and Game Code.
5. That the City Council does hereby make the following findings with respect to the unavoidable significant effects on the environment resulting from the project, as identified in the Final Environmental Impact Report, with the stipulation that all information in these findings is intended as a summary of the full administrative record supporting the Final Environmental Impact Report.

Agriculture

1. **Impact:** The project will result in the loss of prime farmland and will convert eighty acres of farmland to non-agriculture use. (Significant Unavoidable)
2. **Mitigation:** No feasible mitigation available.
3. **Finding:** There is no feasible mitigation measure available that would reduce or avoid the significant loss of agricultural land if the project is implemented. The proposed project will result in a loss of approximately eighty acres of prime farmland.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be significant and unavoidable.

The proposed project will change the zoning on the property from agriculture to residential and result in a loss of approximately eighty acres of prime farmland. The impact of conversion of agricultural land to urban use is a significant unavoidable impact. This impact was identified in both the City's Land Use Element Update EIR and the West Visalia Specific Plan for which the City Council adopted a Statement of Overriding Considerations. No mitigation measures are feasible to reduce this impact to less than significant. These facts support the City's finding to adopt a Statement of Overriding Considerations.

Air Quality

1. **Impact:** Operational Air Emissions (Significant Unavoidable)
2. **Mitigation:** The mitigation measures found in the table entitled Enhanced and Additional Control Measures for Construction Emissions of PM10, provided by the San Joaquin Valley Air Pollution Control District (Table 3.3-6 of the Draft EIR), and those found in the results of the CARB URBEMIS 2002 for Windows 7.4.2 Report (Appendix D of the Draft EIR) shall be implemented. With mitigation, the impacts cannot be reduced to a level of less than significant, therefore remain a significant unavoidable impact.

3. **Finding:** Long-term operation air quality impacts from the proposed project will not exceed the threshold of significance of ten tons per year for individual projects with the mitigation measures identified. However, the project will generate emissions that contribute to the existing non-attainment status of ozone and PM10, which is considered a cumulatively significant impact.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be significant and unavoidable.

Impacts from operational activities associated with the proposed project (vehicles) are 3.7 tons per year of reactive organic gas and 4.1 tons per year of nitrous oxide. These levels are below the ten tons per year threshold determined by the San Joaquin Valley Unified Air Pollution Control District and are therefore not significant. However, the project will generate emissions that contribute to the existing non-attainment status of ozone and PM10, which is considered a cumulatively significant impact. Although the project provides for mitigation, no amount of mitigation measures would eliminate the impact to air quality. These facts support the City's finding to adopt a Statement of Overriding Considerations.

6. That environmental, economic, social, and other consideration and benefits derived by development of the project override the unavoidable environmental effects of the project and make infeasible the project alternatives which would eliminate or further reduce adverse impacts on the displacement of existing residents and businesses. A summary of the comparisons of the project alternatives is listed below and in Chapter 4 of the Environmental Impact Report is hereby incorporated herein by reference.

No Project Alternative

Description: The No Project Alternative consists of not building at the subject site and the site would remain designated and zoned Agriculture. There would be no project related impacts with this alternative.

Comparison: The “No Project” No Development alternative would leave the project site in its present condition. Existing agricultural operations would remain along with the two existing residences. With the exception of water consumption, none of the impacts associated with construction and operational activities would occur if the no project alternative were selected. No additional vehicle trips would be generated over present conditions, nor would noise and air quality impacts occur with selection of this alternative. In addition, this alternative would have no impact with regard to visual resources, land use, public services (except water consumption), energy, utilities, land use, hazardous materials, biological resources, or cultural resources.

Regarding water demand, the proposed project would result in a lesser amount of on-site water consumption than does the site under agricultural production. Consequently, from the perspective of water consumption, the proposed project is environmentally superior to the No Development Alternative.

Finding: This alternative is environmentally superior to the proposed project in all respects but water consumption. However, the No Development Alternative would not meet any of the project objectives.

Alternative Design – Higher Density Alternative

Description: The Higher Density Alternative consists of constructing the same number of dwelling units on half of the acreage (40 acres). This alternative site would consist of the eastern half of the project site.

Comparison: The Higher Density Alternative would result in lesser levels of impacts in many of the categories. Development of the project on less acreage would require less land to be removed from agricultural use, less lineal feet of infrastructure, and lower levels of stormwater runoff. Impacts to

traffic would be similar to those associated with the project, except that traffic volumes would be redistributed as a result of the alternative. Roeben Road would serve as the primary entry and exit point for the project, and therefore LOS on nearby streets and intersections would be higher, requiring more mitigation measures. For the remaining impact categories, the impacts would be similar under the higher density alternative and the proposed project.

Finding: This alternative would result in less environmental impacts in many of the environmental categories while failing to reduce only one of the unavoidable significant impacts. This alternative would meet most of the basic project objectives including: single-family residential, multifamily residential and duplex units and parkland.

Alternative Design – Alternative Site

Description: This alternative is the construction of the project on three parcels approximately three miles northeast of the proposed project site. The three parcels, approximately 80 acres in size, are located in a County island south of Riggins and east of Mooney.

Comparison: Locating the project on a site of similar size would result in no change of most of the impact categories, such as population, noise, air quality, hydrology, biological resources, cultural resources, and infrastructure. Land use impacts would be different based on the alternative land use designations, jurisdiction, and Williamson Act contract status. This particular site would also require a General Plan Amendment and Annexation, but would not require cancellation of any Williamson Act contract. Traffic impacts are found to be similar to the proposed project, and would not place any intersections at a failing LOS based on current levels.

Finding: This alternative would result in similar environmental impacts in most of the environmental categories. This alternative would also attain most of the basic project objectives including: single-family residential, multifamily residential and duplex units and parkland.

Alternative Design – Infill Site Alternative

Description: This alternative is similar in size to the proposed project at approximately 76 acres. This site is located on the eastern side of town within the City limits. The site consists of nine parcels and is between Douglas and Goshen 1,250 feet east of Ben Maddox.

Comparison: Like the alternative site described above, locating the project on an “infill” site would result in no change in many of the impact categories, such as noise, air quality, hydrology, biological resources, cultural resources, and infrastructure. Land use impacts would be less than those associated with the proposed project, since no entitlements for a change in land use status are needed. Tentative Subdivision Maps and Conditional Use Permits would be needed. Impacts to traffic would be worse at this site, and would require mitigation to the intersections at Ben Maddox/Goshen and Lovers Lane/Goshen to account for the increase in LOS.

Finding: This alternative would result in similar environmental impacts in most of the environmental categories while reducing two of the unavoidable significant project impacts. Only one impact (traffic) is worse under this alternative. This alternative attains most of the basic project objectives including: single-family residential, multifamily residential and duplex units and parkland.

7. MITIGATION MONITORING PROGRAM:

Attached to this Resolution as “Attachment “A”, and incorporated and adopted as part of this Resolution herein is the Mitigation Monitoring Program for the Elliott and Vander Weerd Property Project. The program identifies impacts of the Project and corresponding mitigation, and designates responsibility for monitoring the implementation of the identified mitigation measures to ensure they are carried out as intended.

BE IT FURTHER RESOLVED that the City Council adopts the following Statement of Overriding Considerations for the Elliott and Vander Weerd Property Project:

STATEMENT OF OVERRIDING CONSIDERATIONS

The City of Visalia City Council hereby finds that this project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant unavoidable impacts resulting from the project are acceptable in light of environmental, economic, social or other considerations set forth herein because the benefits of the project outweigh the significant and adverse effects of the project to Agriculture and Air Quality identified in the findings.

The City Council has considered the Environmental Impact Report, the public record of the proceedings on the proposed project as well as oral and written testimony received, and does hereby determine that implementation of the project as specifically provided in the project documents would result in the following substantial public benefits:

1. Regional Housing Needs – Development of the site, which would yield a total of 232 new dwelling units, would allow the City to further its goal of meeting State-mandated Regional Housing Needs for multiple income levels.
2. Implement and Reinforce the City’s Concentric Growth Strategy – The development of the subject site for residential use will assist in the preservation of land to be converted to residential use farther from the core area of the City and located outside of the City’s Urban Growth Boundaries. This is consistent with the concentric growth policies of the City.
3. High Quality Design Standards – The high design standards to be adopted as part of the proposed project will ensure the continued development of quality residential projects which further the objectives and policies contained in the City’s Land Use Element.
4. Provide needed Recreation and Open Space Areas to the Community – The community has identified the need for recreational services for the City’s diverse population as a priority. The 5.3-acre City Park will provide a quality facility which also preserves and enhances a portion of a community waterway located on the project site.

The City Council has weighed the above benefits of the proposed project against its unavoidable environmental risks and adverse environmental effects identified in the Environmental Impact Report and hereby determines that those benefits outweigh the risks and adverse environmental effects and further determines that those risks and environmental effects are acceptable.

BE IT FURTHER RESOLVED that the City Council hereby determines that the Final Environmental Impact Report prepared for the Elliott and Vander Weerd Property Project is adequate and complete pursuant to the requirements of the California Environmental Quality Act, and so certifies it.

Mitigation Monitoring Plan

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
Aesthetics							
3.1.2.1	Scenic Vistas or Scenic Highway	3-6	3.1.2.1	<p>Landscaping plans for the proposed project shall be developed and designed to preserve existing features of the surrounding development and internal components of the project consistent with the City's General Plan and the West Visalia Specific Plan policies. The applicant shall consult with the City and the plans shall be reviewed and approved by the City of Visalia Community Development Department prior to approval of project site grading plans.</p> <p>If solid fence and walls are used, the color and material used will blend with the features of the surrounding area.</p>	Less Than Significant	City Engineering Department	Pre-Construction

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				Continuous fences and walls shall be softened with landscaping. Solid fence and wall designs will be included in landscaping plans.			
3.1.2.2	Removal of One Mature Valley Oak Tree	3-7	3.1.2.2	<ul style="list-style-type: none"> ▪ Replacement of the mature valley oak will be at a rate of three trees of at least 15-gallon size for each six inches of diameter breast height (DBH) for each tree removed. Those replacement trees will be placed along Shirk Road to the extent possible. 	Less Than Significant	City Engineering Department	Construction
Agricultural Resources							
3.2.2.1	Prime Farmland	3-15	3.2.2.1	The City's strategies for mitigating these impacts are contained in the FEIR for the Visalia General Plan Land Use Element update (reference Section 4.2.4, Page 4-42). These include the following:	Significant Unavoidable and Cumulatively Significant	City of Visalia Community Development Department	Pre-Construction

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				<ul style="list-style-type: none"> <li data-bbox="926 367 1241 898">▪ The city should adopt a program of prime farmland conservation which provides for purchase of equivalent acreages of conservation easements over prime lands outside the UGB. The costs of the program could be recovered through impact fees assessed to new development. <li data-bbox="926 935 1241 1398">▪ Increase residential density by allowing corner duplexes or similar measures to reduce the need for acres of prime land for urbanization. Pursue a program of long-term regional farmland preservation in cooperation with farming interests, Tulare County and 			

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				<p>surrounding communities to purchase development rights and establish easements for equivalent acreage outside of the Urban Growth Boundary to compensate for development on prime agricultural land within the Urban Growth Boundary.</p> <ul style="list-style-type: none"> ▪ A Right-to-Farm Ordinance should be adopted. ▪ Implement a growth management system which would utilize phased development and focus on protecting large blocks of agriculturally productive land. <p>Several additional potential mitigation measures have been</p>			

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				referenced by the State Department of Conservation, including establishment of permanent agricultural conservation easements, or payment of mitigation fees to local, required or statewide organizations for farmland conservation. One of these above potential mitigation measures could be used to reduce the severity of the impact but would not reduce it to a level of insignificance.			
3.2.2.2	Agricultural Zoning and Williamson Act	3-16	None	None	No Impact	None	N/A
Air Quality							
3.3.2.1	Construction Emissions	3-26	3.3.2.1	Air quality impacts shall be mitigated with implementation of the SJVAPCD Regulation VIII Control Measures in effect at the time of construction. To further	Less Than Significant	San Joaquin Valley Air Pollution Control District	Construction

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				<p>reduce construction equipment-related and construction traffic-related impacts, the mitigation measures found in Table 3.3-6 shall be implemented. The project will also be constructed in phases and take between four and five years to complete. The construction related mitigation measures are as follows:</p> <p>Soil Disturbance: Apply soil stabilizers to inactive areas Soil Disturbance: Replace ground cover in disturbed areas quickly Soil Disturbance: Water exposed surfaces – 2x daily Off-road Diesel Exhaust: Use aqueous diesel fuel Off-Road Diesel Exhaust: Use diesel</p>			

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				particulate filter Off-Road Diesel Exhaust: Use cooled exhaust gas recirculation (EGR) On-Road Diesel Exhaust: Use aqueous diesel fuel On-Road Diesel Exhaust: Use diesel particulate filter On-Road Diesel Exhaust: Use cooled exhaust gas recirculation (EGR) Stockpiles: Cover all stock piles with tarps Unpaved Roads: Water all haul roads 2x daily Unpaved Roads: Reduce speed on unpaved roads to < 15 mph Worker Trips: Use shuttle to retail establishments @ lunch Off-Road Diesel Exhaust: Use aqueous diesel fuel Off-Road Diesel Exhaust: Use diesel particulate filter			

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				Off-Road Diesel Exhaust: Use cooled exhaust gas recirculation (EGR) Off-Road Diesel Exhaust: Use aqueous diesel fuel Off-Road Diesel Exhaust: Use diesel particulate filter Off-Road Diesel Exhaust: Use cooled exhaust gas recirculation (EGR) On-Road Diesel Exhaust: Use aqueous diesel fuel On-Road Diesel Exhaust: Use diesel particulate filter On-Road Diesel Exhaust; Use cooled exhaust gas recirculation (EGR) Worker Trips: Use shuttle to retail establishments @ lunch Worker Trips: Use shuttle to retail establishments @ lunch Worker Trips: Use			

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				shuttle to retail establishments @ lunch			
3.3.2.2	Operational Air Emissions	3-29	3.3.2.2	The mitigation measures found in Table 3.3-6, and those found in Appendix D shall be implemented.	Significant Unavoidable and Significant Cumulative	San Joaquin Valley Air Pollution Control District	Construction
Biological Resources							
3.4.2.1	Impact to Special Status Species	3-34	3.4.2.1	The <i>Dissemination of Standard Recommendations for the Protection of the San Joaquin kit fox Prior to or During Ground Disturbance</i> (USFWS June 29, 1999 #1-1-99-TA-1534) will be followed.	Less Than Significant	City of Visalia Community Development Director	Construction
3.4.2.2	Impact to Nesting Raptors	3-34	3.4.2.2	The following measures are proposed in the event that hawks establish nests within the 11 valley oaks prior to or during project construction. <ul style="list-style-type: none"> ▪ Red-tail hawk breeding begins in March and 	Less Than Significant	City of Visalia Community Development Department	Construction

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				<p>continues through June. Eggs are generally laid March through April with incubation lasting 28 to 32 days and the young hawks fledging 40 to 45 days later. Prior to any activity that will impact valley oaks on the project site, a biologist should evaluate the trees to determine if nesting is occurring.</p> <ul style="list-style-type: none"> ▪ If nesting raptors are detected on the project site, an appropriate construction buffer will need to be established around the nest tree(s). Typical buffers for nesting raptors can be upwards of 250 feet or significantly more from the nest tree. The actual size of the buffer 			

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				<p>would depend on the species of hawk, topography, and type of construction activity that would occur in the vicinity of the nest.</p> <ul style="list-style-type: none"> ▪ Removal of the nest tree will not be allowed until all young hawks have fledged. 			
Cultural Resources							
3.5.2.1	Cultural Resources	3-37	3.5.2.1	<p>Prior to construction of the project, a qualified professional archaeologist shall conduct a field survey to determine if cultural resources exist. Additionally, should buried cultural resources be discovered during construction, the project contactor shall immediately halt all work within 50-feet of the find until a qualified professional</p>	Less Than Significant	City of Visalia Community Development Department	Pre-Construction

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				<p>archaeologist can be consulted to evaluate the find and implement appropriate mitigation measures. Should human skeletal remains be encountered, State law requires immediate notification of the County Coroner. Should the County Coroner determine that such remains are in an archaeological context, the Native American Heritage Commission in Sacramento shall be notified immediately, pursuant to State law, to arrange for Native American participation in determining the disposition of such remains.</p>			
Geology/Soils							
3.6.2.1	Seismicity, Soil Instability or Incompatible Soil Types	3-41	3.6.2.1	<ul style="list-style-type: none"> ▪ The project shall be designed in compliance with Title 24 of the Uniform Building Code, Earthquake 	Less Than Significant	City of Visalia Community Development Department	Construction

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				<p>Requirements for Seismic Zone Three, and shall be inspected by City building inspectors during the construction phase.</p> <ul style="list-style-type: none"> ▪ The project shall be designed by a registered engineer to resist any seismic-related impacts, including liquefaction. ▪ Infrastructure shall either be re-covered and compacted with native soils as existing or trenched in paved right-of-way and re-covered with pavement. ▪ The project shall be designed for the appropriate soil type by a registered engineer to resist spreading, subsidence, or 			

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				collapse.			
Hydrology and Water Quality							
3.8.2.2	Construction Water Quality Impacts	3-46	3.8.2.2	Prior to the issuance of grading permits, the project applicant shall prepare a SWPPP to be administered through all phases of grading and project construction. The SWPPP shall incorporate BMPs (i.e., stabilize site entrances and access roads, install inlet protection at down gradient inlets, install perimeter sediment controls, etc.) to ensure that potential water quality impacts during construction phases are minimized. The SWPPP shall address spill prevention and include countermeasure pans describing measures to ensure proper collection and disposal of all pollutants handled or produced on the site during construction, including sanitary	Less Than Significant	City of Visalia Community Development Department	Pre-Construction

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				wastes, cement, and petroleum products. The SWPPP shall be submitted to the Central Valley Regional Water Quality Control Board and to the City for review and approval. In addition, a Notice of Intent will be submitted to the State Water Resources Board to obtain a General Storm Water Permit for construction activities.			
3.8.2.3	Operational Surface Water Quality	3-47	3.8.2.3	The project applicant shall implement BMPs to ensure that long-term water quality is protected. The BMPs shall be designed, constructed and maintained to meet a performance standard established by the City. The City or project applicant shall retain a qualified specialist to monitor the effectiveness of the BMPs selected. Monitoring activities,	Less Than Significant	City of Visalia Community Development Department	Construction

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				<p>along with funding for monitoring, shall be established and shall include (but not be limited to) initial setup, yearly maintenance, and yearly monitoring.</p> <p>During project operation, the project (applicant) shall implement actions and procedures established to reduce the pollutant loadings in storm drain systems. The two main categories of these BMPs are "source control" and "treatment control." Source control BMPs are usually the most effective and economical in preventing pollutants from entering storm and non-storm runoff. Source control BMPs that are relevant to the project and shall be implemented include:</p> <p>a) Public</p>			

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				<p>Education/Participation activities. Information shall be provided to new project residents and tenants regarding pollution prevention.</p> <p>b) Materials Use Controls, which include good housekeeping practices (storage, use and cleanup) when handling potentially harmful materials, such as cleaning materials, fertilizers, paint, and where possible using, safer alternative products.</p> <p>c) Material Exposure Controls, which prevent and reduce pollutant discharge to storm water by minimizing the storage of hazardous materials</p>			

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				<p>(such as pesticides) on site, storing materials in a designated area, installing secondary containment, conducting regular inspections, and training employees and subcontractors.</p> <p>d) Material Disposal and Recycling, which includes storm drain system signs and stenciling with language to discourage illegal dumping of unwanted materials. Residents shall be notified of household hazardous waste and used oil recycling at collection centers and round-up activities conducted by the City.</p> <p>e) Spill Prevention and</p>			

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				<p>Cleanup activities which are directed toward reducing the risk of spills during the outdoor handling and transport of chemicals, and toward developing plans and programs to contain and rapidly clean up spills before they get into a storm drain system. This BMP also deals with the prevention and reduction of pollution from vehicle leaks and spills from vehicles during transport, as well as aboveground storage tanks.</p> <p>f) Illegal Dumping controls. The Covenants, Conditions, and Restrictions (CC&R's) for the project shall include</p>			

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				<p>a prohibition on the dumping of waste products (solid waste/liquid waste and yard trash) into storm drain systems, open space areas, and creeks.</p> <p>g) Stormwater pollution source controls shall be conditioned to provide a permanent storm drain message “No Dumping – Flows to Creek” or other approved message at each storm drain inlet. This may be accomplished with a stamped concrete impression (for curbs) or manufactured colored tiles, which are epoxied in place adjacent to the inlet (for parking lots and areas without curbs).</p>			

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				<p>h) Street and storm drain maintenance activities. These activities control the movement of pollutants and remove them from pavements through catch basin cleaning, storm drain flushing, street sweeping, and by regularly removing illegally dumped material from storm channels and creeks. (The City of Visalia would be responsible for regular storm drain maintenance within the public right-of-way; grease traps and other stormwater quality control devices on private property shall be maintained by the property owners.)</p>			

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
Noise							
3.11.2.1	Construction Noise	3-60	3.11.2.1	Noise producing equipment used during construction shall be restricted to the hours from 7:00 a.m. to 7:00 p.m., Monday through Friday, and 9:00 a.m. to 6:00 p.m. on Saturday and Sunday. Also, effective mufflers shall be fitted to gas- and diesel-powered equipment.	Less Than Significant	City of Visalia	Operations
3.11.2.2	Roadway Traffic Noise	3-61	3.11.2.2	<i>A 7-foot concrete masonry block wall will be built around the perimeter of the project site (including landscaping) to minimize noise impacts from each roadway. Two-story residence noise is addressed by ensuring compliance with a 45 db interior.</i>	Less Than Significant	City of Visalia	Construction
Public Service							
3.13.2.3	Public Schools	3-67	3.13.2.3	Funding for schools and impacts for school	Less Than Significant	City of Visalia	Pre-Construction

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				<p>facilities impacts is preempted by State law (Proposition 1A/SB 50, 1998, Government Code Section 65996) which governs the amount of fees that can be levied against new development. These fees are used to construct new schools. Payment of fees authorized by the statute is deemed "full and complete mitigation." Project proponents will pay school impact fees per School District standards.</p>			
Transportation/Traffic							
3.15.2.1	Traffic Increases by 500 Vehicles Per Day	3-75	3.15.2.1	<p>It is recommended that as part of the project, the project's frontages along Shirk, Tulare and Roeben be constructed to City standard for arterials or collectors as appropriate. In addition, the project will pay its fair share of the development of the</p>	Significant Unavoidable	City of Visalia and Caltrans	Pre-Construction

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				<p>overall city and state circulation system through the payment of the City's Development Impact Fee. This fee is to be paid to the City at the time of the issuance of building permits and is used by the City to make improvements to city and state highway facilities within the community. Pursuant to City policy, some portions of the improvements to the proposed project's frontages along Shirk, Tulare and Roeben are eligible for reimbursement credit with respect to the Development Impact Fees. Those credits, if any, will be determined at the time the Tentative Map is approved by the City.</p>			
3.15.2.2	Result in a Level of Service below LOS D for any street segment	3-75	3.15.2.2	<p>The implementation of mitigation measure #3.15.2.1. Furthermore, it is clear</p>	Significant and Unavoidable	City of Visalia and Caltrans	Pre-Construction

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
	or intersection in the City or its Sphere of Influence			<p>from the analysis of 2030 conditions that the intersection of Shirk Road at the SR 198 eastbound ramp will fall below City and Caltrans LOS standards with the build out of the City's General Plan. The City has plans to improve Shirk Road through the interchange area as part of its long range Circulation Element. Those improvements should be planned to maximize the capacity through the interchange, and if possible, remediate the projected conditions at the eastbound ramp intersection. According to the Traffic Impact Study, Caltrans had originally undersized the interchange. Suggested design considerations could include an additional lane to the off-ramp, dual southbound left</p>			

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				<p>turn lanes or additional north/south through lanes through the interchange. The proposed project will, with any of these options, mitigate the impact to LOS to less than significant and pay its prorated share of the necessary improvements to the interchange through its payment of the City's Development Impact Fees. The City's updated Circulation Element has planned for upgrades to this intersection and the project proponents will contribute their prorated fair share towards the upgrades with payment of the City's development impact fees.</p> <p>According to Caltrans, the SR 198 interchange at Shirk Avenue was designed to</p>			

Impact Number	Impact	EIR Page #	Mitigation Number	Mitigation Measure	Level of Significance After Mitigation	Monitoring Agency	Timing
				<p>accommodate rural land uses and will require improvements such as signalization or bridge widening in the future. Caltrans recommends establishing a “pro-rata share” based on land use generation to be included as a condition of the Tentative Subdivision Map approval since the interchange is not listed in the City’s Transportation Impact list of projects. Caltrans recommended that the City also include the interchange in the City’s traffic impact fee program for these or other future improvements.</p>			

RESOLUTION NO. 2005-106

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VISALIA, APPROVING GENERAL PLAN AMENDMENT NO. 2003-20, A REQUEST TO CHANGE THE GENERAL PLAN LAND USE DESIGNATION FROM AGRICULTURE TO LOW DENSITY RESIDENTIAL ON 80 ACRES LOCATED EAST OF SHIRK STREET AND SOUTH OF THE TULARE AVENUE ALIGNMENT BETWEEN SHIRK STREET AND ROEBEN AVENUE IN THE CITY OF VISALIA (APN: 087-010-005, 006, 008). CENTEX HOMES, APPLICANT; QUAD KNOPF, AGENT.

WHEREAS, an application has been filed by Centex Homes (Quad Knopf, agent) for General Plan Amendment No. 2003-20, a request to change the General Plan land use designation from Agriculture to Low Density Residential on 80 acres. The site is located east of Shirk Street and south of the Tulare Avenue alignment between Shirk Street and Roeben Avenue in the City of Visalia (APN: 087-010-005, 006, 008); and

WHEREAS, a Draft Environmental Impact Report (Draft EIR) for the Elliott and Vander Weerd Property Projects, was released on December 20, 2004 for circulation considering the impacts of the General Plan Amendment; and

WHEREAS, the Planning Commission of the City of Visalia, after ten (10) days published notice did hold a public hearing to obtain public comment for the Draft Environmental Impact Report on February 15, 2005; and

WHEREAS, the Final Environmental Impact Report was released on May 13, 2005, and consists of the Draft EIR and the revisions of, and additions to, the Draft EIR; the written comments and recommendations received on the Draft EIR; the written responses of the City of Visalia to significant environmental points raised in the review and consultation process; errata to the foregoing; and other information added by the City of Visalia as specified in the record; and

WHEREAS, the Planning Commission of the City of Visalia, after ten (10) days notice held a second public hearing for the Final Environmental Impact Report on May 23, 2005; and

WHEREAS, the Planning Commission of the City of Visalia found General Plan Amendment to be in accordance with Section 17.54.070 of the Zoning Ordinance of the City of Visalia based on the evidence contained in the staff report and testimony presented at the public hearing on May 23, 2005; and

WHEREAS, the City Council of the City of Visalia, after ten (10) days published notice held a public hearing before said Council on June 20, 2005; and

WHEREAS, the City Council certified that the Final Environmental Impact Report for the Elliott and Vander Weerd Property Project, SCH 2004061090, was prepared consistent with the California Environmental Quality Act (CEQA) and City of Visalia Environmental Guidelines on June 20, 2005; and

WHEREAS, the California Environmental Quality Act (CEQA) required that, in connection with the approval of a project for which an EIR has been prepared which identified one or more significant effects, the decision making body make certain findings regarding those effects; and

WHEREAS, the City Council adopted a statement of over-riding considerations for the project; and

WHEREAS, the City Council of the City of Visalia finds the General Plan Amendment to be in accordance with Section 17.54.070 of the Zoning Ordinance of the City of Visalia based on the evidence contained in the staff report and testimony presented at the public hearing on June 20, 2005.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of Visalia approves the proposed General Plan Amendment based on the following specific findings and based on the evidence presented:

1. That an Environmental Impact Report, SCH# 2004061090, prepared for the Elliott and Vander Weerd Property Project, has been prepared in response to actions on the property, including a request for General Plan Amendment to change the land use designation of the site from Agriculture to Low Density Residential.
2. That the change in the land use designation from Agriculture to Low Density Residential is consistent with the intent of the Land Use Element of the General Plan.

BE IT FURTHER RESOLVED that the City Council of the City of Visalia approves the General Plan Amendment described herein, in accordance with the terms of this resolution under the provisions of Section 17.54.070 of the Ordinance Code of the City of Visalia and based on the above findings.

RESOLUTION NO. 2005-105

A RESOLUTION OF APPLICATION BY THE CITY OF
VISALIA REQUESTING THE TULARE COUNTY LOCAL
AGENCY FORMATION COMMISSION TO TAKE PROCEEDINGS
FOR ANNEXATION 2003-08 (ELLIOTT EAST)

WHEREAS, the City Council of the City of Visalia, desires to initiate proceedings for annexation to said city of territory described on the attached legal description; and

WHEREAS, the Council of the City of Visalia desires to annex said territory to the City of Visalia for the following reasons: The annexation will contribute to and facilitate orderly growth and development of both the City and the territory proposed to be annexed; will facilitate and contribute to the proper and orderly layout, design and construction of streets, gutters, sanitary and storm sewers and drainage facilities, both within the City and within the territory proposed to be annexed; and will provide and facilitate proper overall planning and zoning of lands and subdivision of lands in said City and said territory in a manner most conducive of the welfare of said City and said territory; and

WHEREAS, this proposal is made pursuant to the Cortese-Knox-Hertzburg Local Government Reorganization Act of 2000, commencing with Section 56000 of the Government Code of the State of California; and

WHEREAS, the territory proposed to be annexed is uninhabited; and

WHEREAS, the Visalia Planning Commission reviewed this proposal on May 23, 2005, 2005, and found it to be consistent with the General Plan; and

WHEREAS, a Final Environmental Impact Report (EIR) (State Clearinghouse No. 2004061090) was prepared and certified by the Visalia City Council on June 20, 2005 for the Elliott and Vander Weerd Property Project, which includes the proposed annexation, consistent with the California Environmental Quality Act and City of Visalia Environmental Guidelines.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Visalia approves the proposed Annexation based on the following specific findings and based on the evidence presented:

1. The annexation area is within the current Urban Development Boundary and is designated for urban development by the City Land Use Element.
2. The annexation area is within Visalia's Urban Development Boundary and is designated for urban development by the County of Tulare Land Use Element.
3. The annexation area is within the City of Visalia Sphere of Influence.
4. The annexation is consistent with the policies and intent of the General Plan.
5. The annexation area is uninhabited.
6. Portions of the site are currently in an agricultural preserve and under a Land Conservation Contract. The owner of the site has filed a notice of nonrenewal with the County of Tulare.
7. The Council finds that the General Plan Maintenance Fee for this annexation will be \$22,620.00 which shall be paid upon approval of the annexation by LAFCo.

8. That on June 20, 2005, the City Council certified that the Final Environmental Impact Report for the Elliott and Vander Weerd Property Project (State Clearinghouse No. 2004061090) was prepared consistent with the California Environmental Quality Act (CEQA) and City of Visalia Environmental Guidelines.
9. That there is no evidence before the Council that the proposed project will have any potential for adverse effects on wildlife resources, as defined in Section 711.2 of the Department of Fish and Game Code.

BE IT FURTHER RESOLVED that the Council of the City of Visalia requests the following actions:

1. That application is hereby made to the Executive Officer of the Local Agency Formation Commission (LAFCO), County of Tulare, State of California, as proposed in the Proposal Questionnaire, as described in the legal description entitled "Annexation No. 2003-08 (Elliott East)", and as illustrated in the map entitled "Annexation No. 2003-08 (Elliott East)".
2. That proceedings shall be taken for this annexation proposal pursuant to Title 5, Division 3, Part 3 of the California Government Code and other relevant provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.
3. The City Clerk of the City of Visalia is authorized and directed to file a certified copy of this resolution with the Executive Officer of Tulare County LAFCO.
4. That upon annexation, the entire territory excluding public right-of-ways shall be zoned Single-family Residential, 6,000 square feet minimum lot size (R-1-6) consistent with the General Plan Land Use Element.
5. The Council hereby succeeds to the agricultural preserve contract encumbering portions of the site.
6. The Council hereby requests waiver of the conducting authority proceedings in accordance with Government Code Section 56663(c).
7. Upon annexation and subsequent development of the site, the project developer shall comply with any water acquisition policies and fees which are subject to the property.
8. Upon approval of the annexation by the Tulare County LAFCO, the property owner shall pay the General Plan Maintenance Fees which are subject to the property.
9. The property owners agree to indemnify, defend (at City's option), and hold harmless the City of Visalia and their officers, employees, and agents (including attorney's fees and costs) from any action brought against the City regarding its administration of the agricultural preserve and related Williamson Act contracts as they relate to the property being annexed.
10. Prior to City lodging an application to LAFCO on behalf of applicant(s), applicant(s) shall enter into an annexation agreement with City which memorializes the required fees, policies, and conditions applicable to the annexation.