



Visalia City Council Agenda

For the regular meeting of: MONDAY, May 4, 2009

Location: Convention Center, 303 E. Acequia, Visalia CA 93291

Mayor: Jesus J. Gamboa
 Vice Mayor: Bob Link
 Council Member: Greg Collins
 Council Member: Donald K. Landers
 Council Member: Amy Shuklian

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.

WORK SESSION AND ACTION ITEMS (as described)

4:00 p.m.

Public Comment on Work Session and Closed Session Items -

- 4:00 p.m. 1. Updated discussion on the Business Research Park (BRP) zone and potential moratorium on BRP-zoned land in the vicinity of Plaza Drive, north of Hwy 198.
- 4:30 p.m. 2. Progress Report on the Housing Element Update and Recommended Strategies for Increasing the Affordable Housing Land Inventory.
- 5:00 p.m. 3. Update on the Recreation Park Stadium Right Field Improvements Project, Dugout Reconstruction and Regrading of the Playing Field. (Project #0017-15152-720000-0-8037)
- 5:30 p.m. 4. Presentation and acceptance of the Sequoia Shuttle Visitor’s Center Design and authority to enter into a contract with Taylor Teter to develop working drawings.

The time listed for each work session item is an estimate of the time the Council will address that portion of the agenda. Members of the public should be aware that the estimated times may vary. Any items not completed prior to Closed Session may be continued to the evening session at the discretion of the Council.

ITEMS OF INTEREST

CLOSED SESSION

6:00 p.m. (Or, immediately following Work Session)

- 5. Conference with Legal Counsel – Existing Litigation (Subdivision (a) of Section 54956.9) LaBerge v. City of Visalia TCSC # 08-227856

6. Conference with Labor Negotiators (GC 54957.6)
Agency Designated Representatives: Eric Frost, Steve Salomon, Janice Avila
Employee Organization: All Employee Groups
7. Conference with Legal Counsel - Existing Litigation (Subdivision (a) of Section 54956.9)
City of Visalia Retirees v. City of Visalia TCSC #09-232173
8. Conference with Legal Counsel - Anticipated Litigation - Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: one potential case
9. Conference with Real Property Negotiators
Property: 309 N. Santa Fe (APN 094-284-006)
Under Negotiation: Authority to negotiate terms of sale
Negotiating parties for City: Steve Salomon, Mike Olmos, Cliff Ronk
Negotiating parties for Seller: Harry Foster & Ruben Chavez with Family Healthcare Network

REGULAR SESSION

7:00 p.m.

PLEDGE OF ALLEGIANCE

INVOCATION - Pastor Arthur Escobedo, Praise Center Church

SPECIAL PRESENTATIONS/RECOGNITION

Proclamation declaring May 9, 2009 - "Happy Hearts Day"

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 street name and city.

10. **INFORMATION ITEMS** - (No action required)

- a) Receive Planning Commission Action Agenda for the meeting of April 27, 2009.

CHANGES TO THE AGENDA/ITEMS TO BE PULLED FOR DISCUSSION

11. **CONSENT CALENDAR** - Consent Calendar items are considered routine and will be enacted by a single vote of the Council with no discussion. For a Consent Calendar item to be discussed, or voted upon individually, it must be removed at the request of the Council.

- a) Authorization to read ordinances by title only.
 - b) Adopt a new Disadvantaged Business Enterprise (DBE) Race Conscious Implementation Agreement.
 - c) Second reading and adoption of Ordinance 2009-03 authorizing the execution of a grant of utility easement over a small area on the northwest corner of the Acequia Parking Structure property to Southern California Edison. **Ordinance 2009-03 required.**
 - d) Second reading and adoption of Ordinance 2009-04 amending Ordinance 2007-13 to reduce Council salaries during the 2009-2010 budget year. **Ordinance 2009-04 required.**
 - e) Request authorization to file a Notice of Completion for Kaweah Gardens Subdivision, containing 21 lots, located at the southeast corner of Pinkham Street and Cherry Avenue.
 - f) Authorization for staff to prepare the grant application for the 2009 Assistance to Firefighter Grant (AFG) in the amount of \$840,000 from FEMA with emphasis on three categories; Equipment, Apparatus and Training.
12. Report on FEMA's revised Flood Insurance Study and Flood Insurance Rate Maps for Tulare County to be effective on June 16, 2009.

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

REPORT OF CLOSED SESSION MATTERS FINALIZED BETWEEN COUNCIL MEETINGS

Upcoming Council Meetings

- Tuesday, May 5, 2009, 6:00 p.m. Joint Meeting City Council and Visalia Unified School District Board of Trustees, 5000 West Cypress Avenue
- Monday, May 18, 2009, 4:00 pm. Joint Meeting City Council and Planning Commission, Convention Center, 303 W. Acequia
- Monday, May 18, 2009, 7:00 p.m. Regular Meeting, Convention Center, 303 W. Acequia

Note: Meeting dates/times are subject to change, check posted agenda for correct details.

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.

Any written materials relating to an item on this agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the Office of the City Clerk, 425 E. Oak Street, Visalia, CA 93291, during normal business hours.

City of Visalia
City Council Worksession Agenda Item Transmittal

Meeting Date: May 4, 2009

Agenda Item Number (Assigned by City Clerk): 1

Agenda Item Wording: Updated discussion on the Business Research Park (BRP) zone and potential moratorium on BRP-zoned land in the vicinity of Plaza Drive, north of Hwy 198.

Deadline for Action: None.

Submitting Department: Community Development, Planning

Contact Name and Phone Number:

Michael Olmos, AICP, Assistant City Manager, 713-4332
Alex Peltzer, Esq., City Attorney, 636-0200
Paul Scheibel, AICP, Planning Services Manager 713-4369

DEPARTMENT RECOMMENDATION:

Staff recommends that the City Council:

1. Incorporate the BRP land use analysis and market study of the BRP-zoned land inventory into the scope of work of the forthcoming comprehensive General Plan update;
2. New projects proposed in the BRP zone before completion of the General Plan update be reviewed under guidelines developed with the development standards approved for the Fresno Pacific University and Plaza Business Park Conditional Use Permits (CUP); and,
3. Use the definition and criteria of "master plan" as contained in the Pre-annexation policies directive as the content requirements of "master plans" in the BRP zone.
4. Receive the information on moratoriums contained in this report (please see the "Questions Concerning Moratoriums" discussion on page 6, and Exhibit 3 of this transmittal); staff recommends that a zoning moratorium not be implemented at this time and continue to utilize the current process for master plans (conditional use permits) to manage development on BRP property (with final decision making by the Council) while the General Plan update is underway.

SUMMARY

This item was reviewed and discussed at the Worksession on April 20, 2009. During the Worksession, there was discussion on the possibility of instituting a moratorium on future development in the BRP on the basis that a development proposal could be premature and

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.): 60

Review:

Dept. Head _____
(Initials & date required)

Finance _____
City Atty _____
(Initials & date required or N/A)

City Mgr _____
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

exclusive of potential revisions of the BRP provisions that would come out of the General Plan Update.

In addition, the City Council directed staff to consider a modification to Recommendation 1, above, and research the possible advantages of analyzing the BRP zone issues outside of the scope of the comprehensive General Plan update. The City Council continued the Worksession discussion and directed the City Attorney and Planning staffs to research and report on the options and potential consequences of instituting a moratorium on the remaining BRP-zoned land.

Staff's discussion and recommendations on analyzing the BRP zone separately from the rest of the comprehensive General Plan update and the moratorium issue are provided in the respective portions of this report, and are *highlighted in italicized font*. Recommendations 1 through 3, above, are as previously presented to the City Council.

QUESTIONS REGARDING MORATORIUMS

During the April 20th Worksession, three specific questions were raised concerning the process and potential consequences of imposing a moratorium over the remaining un-entitled portions of the BRP-zoned area. The City Attorney's response is enumerated fully in the Discussion portion of this transmittal, beginning on page 6.

In short, the City Attorney has affirmed the City's authority to impose a zoning moratorium pursuant to Government Code section 65858, but within limited time constraints of generally two years or less. A moratorium passed as an urgency ordinance has the added requirement of establishing the moratorium is necessary in response to an "urgent threat" to the public health, safety or welfare. With regard to imposing a moratorium in response to a pending application, the courts have generally ruled against cities in this regard. Finally, if a moratorium is imposed, it would necessitate accelerating analysis and adoption of appropriate new provisions of the general plan and zoning policies that precipitated the moratorium. This would degrade the continuity of community-wide analysis needed in the General Plan Update.

BACKGROUND

This report is to follow up on the issues the City Council and Planning Commission discussed at the March 10, 2008, Joint Worksession. Included in the Worksession item, the City Council voted to allow the Plaza Business Park project to proceed to public hearing. The Plaza Business Park project was ultimately approved by the Planning Commission, with subsequent review of the architectural design (per VMC section 17.24.220F) by the City Council. In addition, CUP 2007-36 for the Fresno Pacific University Visalia campus was conditionally approved by the Planning Commission on October 22, 2007. Fresno Pacific University is currently under construction on the Plaza Business Park site.

The March 10, 2008, Worksession resulted in three directives by the City Council to staff:

- Define "large-scale" (VMC section 17.24.010B) particularly with regard to office buildings;
- Establish criteria for "master plans" to adequately substitute for "specific plans" ; and,
- Establish criteria and standards to manage competing projects and types of otherwise allowed uses in the BRP zone.

There have been three directly relevant events concerning the BRP zone provisions since the March 10, 2008, Joint Worksession. First, the approval of the Plaza Business Park Master Conditional Use Permit (CUP 2007-39) on April 14, 2008. Second, the application of the

definition of “master plan” by the City Council’s adoption of the policies for pre-annexations on October 20, 2008. Third, is Site Plan Review (SPR 2008-120) for a proposed stand-alone convenience store/service station.

Plaza Business Park (CUP 2007-39): In approving CUP 2007-39 by adoption of Resolution No. 2008-26, the Planning Commission made affirmative findings relative to the above-noted questions, including:

- Minimum Office Building Size of 10,000sq.ft.
- Master plan need apply only to the land controlled by the applicant (in this case 29.4 acres)
- Acceptable Mix Of Uses That Are Of A Typically Highway Commercial Nature (project includes one convenience store/service station, one hotel, two sit-down restaurants, and one fast-food restaurant pad)

The approval stood through the City Council’s subsequent review of the project’s architectural design review. However, in approving the project, the City did not set quantifiable criteria on which answered the questions posed in the Joint Worksession, or on which to evaluate the acceptability of future projects in the BRP zone. The 10,000 sq.ft. minimum office building size is being endorsed for future projects because it established an acceptable balance of market feasibility and the City Council’s policy goals. However, the minimum office size (10,000sq.ft.) threshold should be re-examined in the larger policy context of the comprehensive General Plan Update.

Pre-Annexation policy definition and criteria of “master plan”: The Zoning Ordinance references “master plan” but provides no definition for the term. The City Council included the following content and criteria as a definition for the term when it initiated the pre-annexation policies on October 20, 2008:

A Specific Plan or master plan shall address and describe the following, as applicable:

- a. Plan boundaries;
- b. Proposed land uses including residential densities, mixed uses, commercial, office, parks, and schools;
- c. Proposed transportation modes (all forms) and locations of transportation infrastructure;
- d. Proposed public improvements and infrastructure;
- e. Identification of means for financing public improvements;
- f. Project phasing;
- g. Demonstrated connectivity and compatibility with adjacent roadways and surrounding land uses;
- h. Plan for energy conservation;
- i. Plan for water conservation;
- j. An analysis of consistency with all applicable General Plan policies;

- k. Detailed sub-plans for energy and water conservation and management of air quality and climate change impacts incorporating best management practices available at the time of development.

Along with the existing “master plan” or Specific Plan content requirements contained in VMC section 17.24.050 B (which includes architectural theme, pedestrian and vehicular access, parking and common open space), the list of items to be contained in a BRP-zone “master plan” will form the basis of a master CUP for the site.

Staff would require a BRP-zone project’s “master plan” to be reviewed by the City Council as part of the architectural review requirement of VMC section 17.30.220 F. This procedure was done with the Plaza Business Park project (CUP 2007-39).

Site Plan Review (SPR) 2008-120: This is a conceptual project that has recently been reviewed at the City staff level. It is for a 4,100sq.ft. convenience store/service station on a triangular 1.66-acre parcel located on the northwest corner of Plaza Dr. at Hurley Ave. It is also representative of other potential project proposals in the remaining 53 acres in the BRP zone.

The item has not been given a “Revise and Proceed” determination by the SPR Committee as of September 9, 2008, due to several technical problems such as access restrictions on Plaza Drive, setbacks, and onsite circulation. Consequently, a CUP application has not been filed.

If a CUP application is filed at a future date, the CUP may be problematic due to the interpretive nature of the BRP zone development criteria, including the appropriateness of one or more additional convenience stores or drive-thru retail establishments in the BRP-zone area (in addition to the service station/convenience store approved for the Plaza Business Park project). The policy direction recommended in this report will help provide a path to address these issues during the discretionary review process.

DISCUSSION

The course of deliberations of the three past development projects the City has considered in the BRP zone area (Fresno Pacific University, Plaza Business Park, and Orthopedic Associates) has made it evident that many of the key BRP-zone provisions are subjective in nature, which results in uncertainty for both private investors and the City. The City Council recognized this situation in its direction to prepare more objective development and use standards for the remaining 55.5 acres of BRP lands. At the March 10, 2008, Worksession, the City Council directed staff to prepare more quantifiable code standards, as previously noted.

Recommendations: Staff has analyzed the results of the body of work to date concerning the BRP zone. Staff’s recommendations are to:

1. Incorporate the BRP land use analysis and market study of the BRP-zoned land inventory into the scope of work of the forthcoming comprehensive General Plan update.

This is based on the conclusion that doing so will provide for the greatest degree of integration and consistency with other possible land use revisions stemming from a holistic review of the General Plan that has been commissioned by the City Council. Additionally, if the City Council also authorizes a market study of the BRP-zoned land, it will yield a higher degree of relevance in light of current and future economic trends, and ensure for more certainty of success for the resulting BRP land use and zoning policy changes as a key component of the overall non-residential land use vision that may flow from the General Plan update.

Staff does not recommend embarking on a specialized study of the BRP zone or placing an early priority on it during the comprehensive General Plan update (GP update) process. Staff's recommendation is based on the conclusion that doing so would compromise the potential value being gained by taking an integrated and holistic look at the BRP zone relative to other pertinent land use, transportation, and economic development issues that will be undertaken with the GP update. Further, doing so would tend to encourage the tendency for some interests to press the City to also consider their parochial interests in similar fashion, thus compromising the goal of producing a comprehensive General Plan update.

2. New projects proposed in the BRP zone before completion of the General Plan update be reviewed under guidelines developed with the development standards approved for the Fresno Pacific University and Plaza Business Park Conditional Use Permits (CUP).

Based on the analysis, conditions and findings in the previous City Council actions on the BRP zone and particularly on the CUP projects considered in public hearings, staff has concluded that future projects can and should be considered primarily in light of the decisions made for previous projects approved in the BRP zone, as noted by the findings and conditions included in the previous project approvals. The following criteria for projects in the BRP zone are enumerated as follows:

1. 10,000sq.ft. as the minimum office building size for BRP-zoned projects, as was applied to the Plaza Business Park (PBP) project.
2. Office, business research, technology, and industrial uses in fully enclosed buildings shall constitute the majority of uses and building space within a given development project.
3. Thematic architectural and landscaping designs shall be incorporated throughout the project.
4. Sustainable design features shall be incorporated in the site and architectural plans, including bio-swales, water conserving landscaping, and buildings that achieve high energy efficiency.
5. Multi-story buildings shall constitute the majority of buildings in the development project.
6. The entire project site shall be "master planned". This includes approval of design, uses, and timing of the order that the uses or phases of the site's development can be inaugurated. Master planning can also specify allowances as well as restrictions on further parcelization within the project site. This feature can avoid the commonly seen experience of spinning off more lucrative portions of the entitlement (such as a fastfood restaurant) in the first phase, while a more desirable use or portions of the site that carry higher improvement costs are left for indeterminate future phases.

If the City Council concurs with the criteria enumerated above including "master plan" criteria, and design and use standards (Items 1 thru 6, above), they will be provided to prospective developers as guidelines representing the City's expectations as the project goes thru the entitlement process.

The City Council has final discretionary approval authority (per VMC section 17.24.220F) over development applications in the BRP zone. This authority provides an effective tool to manage the outcome of a given development proposal without imposing a moratorium on the BRP zone. Staff concludes that until the General Plan Update is completed, the necessary tools to manage and control land use actions are already in place and enjoy precedent, and that a zoning moratorium at this time would provide no significant added benefit.

Other BRP-zone development criteria: Unfortunately, no quantifiable formula for the most appropriate mix of non-industrial or office uses for a given project, or for the BRP zone as an entity, has been established. However, it appears that the intent at this time is to emphasize non-retail uses in the BRP zone, and subordinate retail and highway commercial uses to accessory use status. Staff recommends that the City Council establish a general criteria that retail and highway commercial uses be clearly subordinate to office and industrial uses (Item 2, above) in both proportion and construction timing. These can be enforced through the “master plan” criteria.

3. Use the definition and criteria of “master plan” as contained in the Pre-annexation policies directive as the content requirements of “master plans” in the BRP zone.

As noted in Item 6, above, the City’s ability to require a “master planned” project retains a higher degree of authority throughout a project’s development. This ensures that the goals the City and developer agreed to at the approval stage are met as the project is built out over time.

City Attorney’s Analysis Regarding Moratoriums on BRP-zone Lands: *Three questions were raised at the last City Council meeting that required further discussion and analysis from the City Attorney. The City Attorney has provided the following analysis:*

1) *What are the general requirements for a moratorium under State Code, and can these requirements be met in light of the current plans for the BRP zone revisions under the General Plan Update?*

State law (Government Code Section 65858) provides authority to implement an “interim ordinance” for the purpose of “prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time.” Such an interim ordinance can be adopted without the normal notice that is required of zoning ordinance changes (including publication in the newspaper and actual mailed notice to affected parcels, where appropriate 60 days prior to adoption), and may go into effect immediately. The interim ordinance would require a four-fifths vote of the legislative body, and would be effective immediately.

However, the ordinance is short-lived – it is only effective initially for 45 days, and can be extended for up to a total of two years, provided the later extensions are approved following appropriate notice, again with four-fifths voting requirement. Further extension of the interim ordinance is authorized only if a new “urgent threat” to public health, safety or welfare is identified.

Government Code 65858 also requires that in adopting the ordinance, the legislative body be able to make the following finding: That there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.

Although not expressly stated in the ordinance, it can be implied that in order to satisfy this finding, the legislative body should be able to predict that the contemplated change in zoning or land use designation can be accomplished within the time limits given for the interim ordinance – there can be little justification for an interim ordinance that would expire before the revised zoning can be implemented. Currently, refinement of the BRP zone and general plan policies is scheduled to be considered and adopted as part of the General Plan update, which is expected to take longer than two years.

Further, the statute authorizes a ban on only those uses that are in conflict with the contemplated update; other uses presumably must be allowed to go forward. If the details of that contemplated update are not yet known, then it will be impossible to determine which uses would be prohibited as conflicting the updated permitted uses, and which would not. Therefore, it would appear that a moratorium on uses in this manner should only be implemented after the contemplated plan has matured to a certain degree of specificity, which the current effort of refining the BRP definitions has not yet reached.

2) Is it possible to adopt a moratorium in some way other than through the statutorily defined “urgency interim ordinance,” for the primary purpose of having it last longer than the statutorily defined moratorium?

As noted above, the state statute provides for an “urgency interim ordinance,” which can be adopted without the usual notice, and that can go into effect immediately. The statute does not prohibit a city from adopting, in some other manner, a different type of ordinance, using the usual notice and going into effect after a period of time rather than immediately. On zoning matters, cases have held that although general law cities are limited to the powers that specified in state statutes, a charter city has additional powers and may have additional authority under its charter to adopt zoning laws outside of those set forth in state statutes.

Therefore, as a charter City, the City of Visalia could conceivably adopt a “non urgency” interim ordinance in a manner different from that spelled out in state law, and could conceivably approve a moratorium for longer than the two years provided in state law. However, the power of even a charter city to adopt such a moratorium is tempered by Constitutional limits related to private property rights. A city cannot eliminate all use of private property permanently; how long a moratorium may be in effect and pass Constitutional challenge is undefined, and depends on the circumstances. The state law discussed above is a statutory attempt to define the conditions under which a moratorium can be imposed and under what terms and still comply with the state and federal constitutional provisions on private property rights. There may be other conditions and terms that could pass Constitutional limits, but the cases on this matter are varied and there is no simple, clear cut answer as to when and how such a moratorium may be imposed.

Nevertheless, one rule of thumb can be generalized: It is likely that if a given situation does not lend itself to the Government Code method of implementing a moratorium, it is questionable whether any other attempt to establish a moratorium (for a longer period of time, for example) could withstand Constitutional challenge.

3) Can the city “wait and see” if development occurs, let the General Plan update progress, and only act on a statutory “urgency interim” moratorium if a development proposal materializes, or will it be too late by then?

One of the individuals who spoke at the last council meeting suggested that the Council wait to adopt an urgency moratorium under the above-noted state law until an actual “threatening” development proposal materializes. Although the statute quoted above does not, by its express terms, prohibit retroactive application of a locally adopted moratorium, it is not likely that in the factual setting of Visalia’s BRP zone, such retroactive application would withstand challenge.

There has been one case reported in which an urgency moratorium, which was adopted after a development proposal was submitted, was allowed to be applied to that prior-submitted project such that it was prevented from going forward. However, in that case, the change in zoning plan was nearly ready to be adopted, the project application was in its early stages, and the

moratorium had been proposed before the application and was adopted as a matter of course without reference to the specific project. The court specifically found that the moratorium was not adopted “in reaction” to the project, and implied that if it had been, then the moratorium could not have been retroactively applied to stop that project.

In light of this, retroactive application of a moratorium adopted in reaction to a specific development proposal does not appear to be legally sustainable.

Prior Council/ Board Actions:

Joint Work Session March 10, 2008

Annexation Policies October 20, 2008

Committee/Commission Review and Actions:

**City of Visalia
City Council Agenda Item Transmittal**

Meeting Date: May 4, 2009

Agenda Item Number (Assigned by City Clerk): 2

Agenda Item Wording: Progress Report on the Housing Element Update and Recommended Strategies for Increasing the Affordable Housing Land Inventory

Deadline for Action: The Housing Element Update is mandated by state law to be completed and certified by the State Department of Housing and Community Development (HCD) before August 31, 2009. The Land Inventory is one of several critical components of the Housing Element Update.

Submitting Department: Community Development, Planning

Contact Name and Phone Number:

Paul Scheibel, AICP, Planning Services Manager 713-4369

DEPARTMENT RECOMMENDATION:
Staff recommends that the City Council:

1. Consider the information provided in the progress report on the Housing Element Update, including the compliance with the process timeline and the proposed scenarios for meeting the Land Inventory requirements; and,
2. Direct that Scenario No.2 for a moderately aggressive approach be pursued to achieve the Land Inventory requirements that will meet the Regional Housing Needs Assessment (RHNA) affordable housing goals.

This recommendation is based on the conclusion that Scenario No. 2 provides the most effective means to meet the RHNA requirements with minimal disruption of existing City policies and land uses. City staff and the consultant will begin to incorporate this alternative into the draft Housing Element.

Scenario No. 2 is the recommended course of action from among three alternatives that range in degrees of difficulty to implement following adoption and certification of the new Housing Element. The three scenarios and their respective strategies are discussed in greater detail in this transmittal and in the slide presentation included as Exhibit 4 of this report.

On April 27, 2009, the Planning Commission voted to recommend that Scenario No. 2 for a moderately aggressive approach be pursued. On April 21, 2009, the Housing Element Advisory Committee (HEAC) also made this endorsement.

BACKGROUND

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__

Review:

Dept. Head _____
(Initials & date required)

Finance _____
City Atty _____
(Initials & date required or N/A)

City Mgr _____
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

The Housing Element is one of seven state-mandated elements of the General Plan, and is the only element that has a schedule for periodic updates established by the state. The Housing Element comprises the City's plan for meeting the needs of the community for all income categories, and for certain special needs groups (seniors, handicapped, homeless, and others). The number of housing units to be planned for is established by the Regional Housing Needs Assessment (RHNA) that originates at the state, and is implemented through the Tulare County Association of Governments (TCAG).

The 2005 Housing Element is mandated by state law to be updated by August 31, 2009. Based on the current Regional Housing Needs Assessment Plan (RHNA), the City was assigned responsibility for 13,835 total housing units. Of this total, 4,156 units are assigned for Low, Very Low, and Extremely Low categories (please see Exhibit 1). By comparison, under the 2005 Housing Element, the City was required to facilitate 8,650 affordable units, including 3,960 Low and Very Low units, in accordance with the 2001 to 2008 RHNA Plan.

Table 1

REGIONAL HOUSING NEEDS ALLOCATION BY INCOME						
Visalia						
January 1, 2007 to June 30, 2014						
	Extremely Low	Very Low	Low	Moderate	Above Moderate	TOTAL
RHNA	1,154	1,154	1,848	2,279	7,400	13,835
Percent of Total	10.5%	10.5%	15.6%	19.9%	43.4%	100.0%

The RHNA allocations are requirements passed on from the state Department of Housing and Community Development (HCD) to the various sub-regional councils of governments (COGs). The COG for our area is the Tulare County Association of Governments (TCAG). The allocations are expressed as housing units that fall into several income categories, as noted in Table 1, above.

The allocations are derived from calculating existing and forecasted conditions that affect housing availability in an area, such as population growth trends, employment forecasts, land availability and market forces. The result is a set of housing unit goals that TCAG negotiated with the various cities and Tulare County. The housing unit goals by category in Table 1 represents the agreed upon fair share portion of the TCAG RHNA requirements assigned to the City.

The Housing Element Advisory Committee (HEAC), comprised of Planning Commissioner Roland Soltesz and four representatives of City-wide housing advocacy/ stakeholders assisted in the selection of the consultant to assist in the preparation of the Housing Element Update. Based on the Committee's recommendation, on November 3, 2008, the City awarded the consulting contract in the amount of \$90,850 to MintierHarnish Planning Consultants.

From December 2008 to the present, City staff and the consultant have been actively collecting background data and analyses of the City's overall affordable housing status relative to the previous and new RHNA Plans. This includes the January 27, 2009, Stakeholder's Workshop to receive input on affordable housing needs (please see Exhibit 1). The background data and analyses have been completed as of mid-April. The next step in the Housing Element Update process is for the City Council to select a basic scenario and set of strategies to meet the new RHNA land inventory requirements. The timeline for meeting the August 31, 2009, state certification deadline is provided as Exhibit 2.

Land Inventory Strategies and Scenarios

Summary: The good news is that the City can comfortably meet the new RHNA allocations with land currently in the City limits and within the 129,000 UDB. However, the City will need to increase its medium and high density residential zoned land inventory to meet the RHNA requirements. This can be achieved through a combination of up-zoning existing residential lands, converting some non-residential lands to medium or high density residential, and capitalizing on mixed-use high density development potential in the Downtown and East Downtown areas. These are identified as the seven strategies shown below. The strategies have been combined under the three Land Inventory Scenarios (please see Exhibit 3). However, the Scenarios are not mutually exclusive. It is possible to mix and match the various Strategies to create a hybrid Scenario.

Strategies: The seven basic strategies that can be pursued to meet the RHNA land inventory requirements:

1. Maximize Vacant Medium and High Density Land within City Limits
2. Redevelop Underutilized Sites
3. East Downtown Infill/Redevelopment
4. Second Units
5. Rezone Non-Residential Sites
6. Rezone Existing Residential Sites to Higher Densities
7. Mixed-Use Corridor Rezone (South Mooney Blvd.)

Scenarios: Scenarios 2 or 3 can meet the City's affordable housing land inventory requirements. Scenario 1 could meet the RHNA land inventory totals, but would fail to meet the lower income requirements. As such, it would likely not be certified by the State. Therefore, this report focuses on Scenarios 2 and 3.

Scenario 2: Is the moderately aggressive approach for combining the seven strategies above. Key points of this scenario are:

- Assumes the densities are the same as those outlined in the East Downtown Strategic Plan. Assumes development of EDT Neighborhoods 1, 2, and 4 at 40 du/ac
- Assumes a new set of aggressive policies/programs to encourage second dwelling units.
- Assumes rezones only on two city-owned parcels (NE Corner of County Center and Visalia Parkway, and current surface parking lot at NW corner of Stevenson and Mineral King), and one parcel where the developer has already expressed an interest in rezoning the parcel (NE corner of Visalia Parkway and Stonebrook).
- Assumes re-designation/rezone of eleven sites totaling 78 acres distributed throughout the City from RLD (Low Density Residential) to RMD (Medium Density Residential).
- Assumes 292 units would be developed on Mooney Blvd. under the current mixed-use planned unit development (PUD) zoning ordinance provisions between 2009 and 2014.
- Has a surplus of 841 moderate and low-income units

Scenario 3: Is a very aggressive approach that would substantially exceed the RHNA land inventory requirements, summarized as follows:

- Assumes higher densities than those outlined in the East Downtown Strategic Plan. Assumes development of EDT Neighborhoods 1, 2, and 4 at 80 du/ac
- Assumes new set of very aggressive policies/programs to encourage second units. Assumes deed restrictions on a third of the units to bring them into the low income category
- Assumes rezones on all parcels identified in the inventory of sites with potential for rezoning
- Assumes re-designation/rezone of eleven sites totaling 78 acres distributed throughout the City from RLD (Low Density Residential) to RHD (High Density Residential).
- Assumes 468 units would be developed on Mooney Blvd. under the current mixed-use planned unit development (PUD) zoning ordinance provisions between 2009 and 2014.
- Has a surplus of 4,525 affordable units in inventory

Other Policies:

In addition, several Housing and Land Use policies revisions will need to accompany the land inventory totals to complete the Housing Element Update in a form acceptable for certification by the State Department of Housing and Community Development (HCD). These policies may include raising the threshold of multi-family projects permitted by right above the present 40-unit minimum, amending the size and location criteria of high density projects, and providing further allowances for second dwelling units. The proposed policy revisions will be presented subsequent to re-calculating the land inventory based on the Scenario preferred by the City decision makers.

Next Steps:

The HEAC and Planning Commission comments and recommendation are being forwarded for formal review and recommendation by the City Council at the regularly scheduled meeting on May 4, 2009. The City Council's direction will be incorporated into the draft Housing Element. Staff and the consultant will then begin work on the Housing Element policies that will complete the draft Housing Element.

The completed draft Housing Element Update and accompanying environmental document will be presented to stakeholders, the Planning Commission and ultimately to the City Council for approval. The approved Housing Element will finally be presented to the State HCD department for certification.

Recommended Motion (and Alternative Motions if expected):

I move to direct that Scenario No.2 for a moderately aggressive approach be pursued to achieve the Land Inventory requirements that will meet the Regional Housing Needs Assessment (RHNA) affordable housing goals.

or; alternatively,

I move to direct that Scenario No.2 with modification of one or more of the seven associated strategies be pursued.

or; alternately

I move to direct that (either Scenario No.1 or No. 3) be pursued to achieve the Land Inventory requirements that will meet the Regional Housing Needs Assessment (RHNA) affordable housing goals.

Environmental Assessment Status

CEQA Review: The environmental document will be prepared when the draft Housing Element update is completed. It will be circulated for public review and consideration of adoption by the City Council at that time.

NEPA Review: None 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)*

Exhibits:

- 1- Minutes of Stakeholder's Workshop, January 27, 2009
- 2- Housing Element Update Timeline
- 3- Scenario/Strategy Spreadsheet
- 4- PowerPoint Presentation
- 5- Minutes of the April 21, 2009, HEAC Meeting

6- Minutes of the April 27, 2009, Planning Commission Meeting

Copies of this report have been provided to:

Planning Commission

HEAC

**City of Visalia
Agenda Item Transmittal**

Meeting Date: May 4, 2009

Agenda Item Number (Assigned by City Clerk): 3

Agenda Item Wording: Update of the Recreation Park Stadium Right Field Improvements Project, Dugout Reconstruction and Regrading of the Playing Field. (Project # 0017-15152-720000-0-8037)

Deadline for Action: None

Submitting Department: Community Development

Contact Name and Phone Number:

Adam Ennis – 713-4323
Greg Dais – 713-4164

Department Recommendation:

Staff recommends that City Council receive and accept this update of the Recreation Park Right Field Improvements, Dugout Reconstruction and Regrading of the Playing Field.

Summary:

By mid to late March the City's portion of the playing field work was completed and the field was turned over to the Rawhide Ball Club for completion of their portion of the playing field work prior to arrival of the players on April 4, 2009. In addition the team offices, storage and ticket offices were turned over to the Rawhide Baseball Club for their moving in and set-up in the latter portion of March 2009. On April 15, 2009, the Right Field Improvements, Dugouts, and Playing Field was substantially complete and turned over to the Rawhide Baseball Club for use on their opening night, April 16, 2009 and during their 2009 Season. The project is being delivered slightly under budget and met the required schedule for the Rawhide Baseball Club.

Background

Right Field Improvements: The Recreation Park Stadium Right Field Improvement Project was approved by City Council on February 19, 2008, with an \$11.6 million dollar budget. The project consisted of construction of a 19,994 sq. ft two story building with 344 permanent seats in the right field box and elevated grass berm seating. Within the building, there is a Hall Of Fame Club, with 52 outdoor permanent seats, a concession stand, team souvenir store, restrooms, team offices, ticket booth and 1433 sq. feet of leasable space.

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.): 20

Review:

Dept. Head _____
(Initials & date required)

Finance _____
City Atty _____
(Initials & date required or N/A)

City Mgr _____
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

The construction began on March 17, 2008 with the intent to construct the Right Field Improvements during the 2008 playing season and complete/open the new right field improvements for the 2009 playing season. Construction of the Right Field Improvement Project progressed through the 2008 playing season with good progress and within budget. During the construction the groundskeeping barn to be located in the right field fence line in the original design was changed to a Tuff Shed in order to lower costs. However, the Rawhide Baseball Club felt that the "Barn" style groundskeeping shed and inclusion in the right field fence line was important to the Club and took on the groundskeeping barn as a project between them and Habitat for Humanity. Therefore, the barn was eliminated from the City portion of the project and was coordinated between the ball club and the city project by the City project management team.

Repair and maintenance work for the existing stadium lighting was also included with the project to provide the lighting required by the Minor League and the Arizona Diamondbacks.

Dugout Reconstruction: Due to strict fiscal management and minimal change orders during construction up through September 2008, the project budget appeared to have the capacity to add reconstruction of the dugouts to the project. Reconstruction of the dugouts, which included the addition of increased seating capacity, restrooms and handicap lifts, was a priority improvement to meet Arizona Diamondbacks and Minor League Baseball standards. Due to the relatively short time frame remaining for construction, the additional work was added to the current construction project. On October 6, 2008, the City Council approved a change order for \$715,000 to the general contractor already under contract for the Right Field Improvements to increase the scope of their contract to include the New Dugout Construction.

Regrading Of Playing Field: Regrading of the playing field was a priority requested by the Arizona Diamondbacks due to concerns for player safety. The field had many areas with an uneven surface and poor drainage. Due to the relocation of an Arizona Diamondbacks affiliate that was located close to the major league team, the Arizona Diamondbacks are anticipating sending their rehabilitating players to the Rawhide Club at Recreation Park during their rehabilitation since Visalia is now the closest affiliate. This also contributed to their concerns for player safety at the Recreation Park field. The playing field regrading was not included in the \$7.74 million Right Field Improvement construction contract that was awarded on February 19, 2008, because it was not clear if there would be sufficient funding remaining in the original budget approved by City Council to cover this expense. However, due to efforts by the design team, the contractor and the City staff to control costs on the construction, there was sufficient funding for this improvement with sufficient contingency available for all of the remaining work.

During the month of October 2008 estimates for stripping, regrading, repairing/adjusting sprinklers and re-sodding the playing field were obtained and were approximately \$250,000. Based on the budget and the actual costs of the project at that time, regrading of the playing field was recommended as an additional scope to be added to the project with no additional funding required. On November 17, 2008 City Council approved a change order to the current construction contract to include the regrading of the playing field. The Rawhide Baseball Club took on the responsibility for installing new warning track material, infield material, bases and pitchers mound.

Update

Construction of the Right Field Improvement Project continued through the recent winter months along with reconstruction of the dugouts. The right field structures and dugouts were substantially enclosed prior to the rainy season in late January through February which allowed the progress on these structures to continue even through periods of rain. Regrading of the playing field was somewhat delayed through rainy periods; however, progress was made in preparation for the work such as pre-mixing of amendments to the proposed 6,000 yards of import soil needed for the field and lowering sprinkler components in preparation of stripping the existing grass from the playing field.

In late February and through March 2009 the rainy season began to slow and work on the playing field began in full force. By mid to late March the City's portion of the playing field work was completed and the field was turned over to the Rawhide Ball Club for completion of their portion of the playing field work prior to arrival of the players on April 4, 2009. In addition the team offices, storage and ticket offices were turned over to the Rawhide Baseball Club for their moving in and set-up in the latter portion of March 2009. On April 15, 2009, the Right Field Improvements, Dugouts, and Playing Field was substantially complete and turned over to the Rawhide Baseball Club for use on their opening night, April 16, 2009 and during their 2009 Season.

The new stadium was met with much anticipation and was received with much enthusiasm on opening night by a sold out crowd of about 2600. The Rawhide Baseball Club, the Arizona Diamondbacks, the players and the fans expressed many compliments on the new improvements.

Currently the contractor is working on "punch-list" items to satisfy final inspections and providing a graffiti coating to the right field structure. Completion of these items is anticipated within the next couple of weeks. Total project costs have not been finalized; however, the project is slightly under budget and change orders to the general contractor for construction costs appear to be around 3.6% (excluding increased scope of work change orders, i.e. dugout re-construction and playing field regrading). Once all items are completed staff will return to the City Council with final costs and for approval of the Notice Of Completion.

Conclusion

Construction of the right field improvements, along with the new dugouts, regrading of the playing field and repairing the existing stadium lighting, are a significant improvement to the stadium and achieved the priority improvements required by the Minor League. It has increased the capacity of the stadium and provided facilities, such as the VIP banquet room, that were not previously on site. Recreation Park Stadium is a historic and cultural asset to the community and the renovation has made the stadium a modern baseball facility, a new venue for community events and a catalyst for increased investment in the neighborhood.

Prior Council/Board Actions:

February 19, 2008 - City Council approved the Right Field Improvement Budget of \$11.6 million dollars and the construction agreement with Seals/Biehle in the amount of \$7.74 million dollars. On October 6, 2008, City Council approved issuing a change order to Seals/Biehle in an amount of up to \$715,000 to add the dugout construction to their scope of work (within the existing budget). On November 17, 2008 City Council approved a change order to the current construction contract to include the regrading of the playing field (within the existing budget).

Committee/Commission Review and Actions:

Alternatives: None Recommended

Attachments:

Recommended Motion (and Alternative Motions if expected):

I move to receive and accept this update of the Recreation Park Stadium Right Field Improvements Project.

Environmental Assessment Status

CEQA Review: Environmental Document 2007- 45- Categorically Exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15332 (infill project) of the Guidelines for Implementation of the California Environmental Quality Act

NEPA Review:

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)*

Copies of this report have been provided to:

**City of Visalia
Agenda Item Transmittal**

Meeting Date: May 4, 2009

Agenda Item Number (Assigned by City Clerk): 4

Agenda Item Wording: Presentation and approval of the initial Sequoia Shuttle Visitor's Center Design.

Deadline for Action: N/A

Submitting Department:

Contact Name and Phone Number: Leslie Caviglia, 713-4317, Monty Cox, 713-4591, Wally Roeben, 713-4004

Department Recommendation

It is recommended that the City Council review and approve the initial design for the Sequoia Shuttle Visitors Center. The next step is to have and authorize staff to enter into a contract with Taylor Teter to develop working drawings. Funding for this architectural work has been set aside in the transit fund from the state Local Transportation Funding.

Department Discussion

In November, the Visalia City Council authorized staff to enter into a contract with TaylorTeter to design a Sequoia Shuttle Visitors Center adjacent to the Convention Center. The initial design concept and floor plan has been completed and is the subject of this presentation. The next step is to complete the working drawings. The funding for design was already authorized by Council in November and has been set aside in the Transit Fund.

While no specific funding has been identified for the construction of this building, there continues to be opportunities to qualify for Federal stimulus funding for projects that are "shovel ready" (fully designed). Staff hopes that by continuing with the working drawings, the project may become eligible for future funding that may become available as part of the economic recovery process.

Interested parties were invited to work with the Architect to design the building. Among those invited to participate in the process were representatives from:

- Sequoia Kings Canyon National Park
- Sequoia Natural History Association
- Seven Sycamores Ranch
- Visalia Chamber of Commerce
- Visalia Visitors and Convention Center
- Downtown Visalians

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.): _____

Review:

Dept. Head LBC 42809

Finance

City Atty

City Mgr

The group met several times with Russ Taylor and his TaylorTeterdesign team to discuss both the function and the form of the building. There are four distinct focal points to the design of the proposed 7,000 sq. ft. building: Display space, office space, external design and Plaza redesign.

Visitor Space:

The group was interested in display and exhibit space that would be very open and could be readily changed to accommodate new opportunities. To meet this interest, the plan includes a very open floorplan downstairs. New exhibits and displays can be moved into the facility to create new interest, keep the information fresh, and change with the seasons. There is a welcome desk and general information center near the front, and a section where pull-down maps can be featured so visitors can readily be shown the many features of the area that they can enjoy. Included in the design is a refrigerator case where local ag products can be displayed for sale. There is also a plan to include new technology, including screens in the lower section of the glass tower where videos and information can be constantly displayed, and a kiosk can be added so visitors can access information via a computer on a 24-hour, 7 day a week basis.

Office Space:

There was interest in having offices that could be used by entities that promote Visalia and the area. The Visitors and Convention Bureau will definitely be housed in the facility, and other entities, including the National Park, have indicated they may be interested in space in the future. The design includes space for up to 14 people in two distinct upstairs office spaces that could be independently locked for security reasons.

External Design:

The building was designed to be very separate and distinct from the Convention Center. It is meant to be a focal point/attraction on it's own, as well as to be very functional. The architect was encouraged to think how future exterior changes could be made to give the Convention Center a facelift that would coordinate with the Shuttle Center, while still retaining it's unique feel. The architect will discuss how the design team foresees this occurring in the future. The Committee was also interested in including an artistic feature to the building. On the west side, there is a curving wall that will provide a unique and interesting backdrop for an artistic feature. It may include a water feature that interfaces with the reflection pond at the base of the wall, and perhaps become part of a multi-media art presentation. Or, the wall could become the canvas for a mural or etching. The architect will continue to work with the Committee on the use of the wall as art during the working drawing development.

Plaza Development:

The Committee was also interested in retaining the Convention Center Plazas for community use, but perhaps with a different feel that would encourage more use of the outside areas for events. The design team studied the current uses at the Center to make sure that events such as home shows could be accommodated. The new design endeavors to make the open space area into two Plazas that will create a better sense of space on a more intimate level. Given the success of the Garden Street Plaza, which is very small but enjoys great success as a venue, it is hoped that the ultimate design of these Plazas will encourage similar usage. The Plaza development will be designed to be phased in as funding permits.

Cost:

Initial cost estimates were calculated based on the preliminary design. As noted, the full project is designed to be phased in. These costs estimates are very preliminary, but are helpful when applying for funding opportunities. The initial construction cost is estimated to be \$2.3 million,

plus permits and fees. With the completed Plaza work and the fountain, the total cost is estimated at \$2.8 million, plus permits and fees. Total cost for the remainder of the plans should not exceed \$245,000.

Construction Funding:

As noted when staff brought this item to the City Council in December, no specific funding has been identified for this project. Given the amount of Federal stimulus money that is being distributed, staff was hopeful that this project might qualify. While nothing specific has developed, staff continues to pursue funding through a number of sources including the Economic Development Administration, transportation grants, and other federal avenues. In addition, there are two future sources of Transit funding that may become available in future years. While it could take several years before enough funding can be accumulated to fund this project, staff is confident that even if stimulus funding is not forthcoming, there are other long term sources that can be used to fund the Sequoia Shuttle Center.

Prior Council/Board Actions:

Committee/Commission Review and Actions:

Alternatives:

Attachments:

Recommended Motion (and Alternative Motions if expected):

I move to authorize staff to enter into a contract with Taylor Teter to develop working drawings for the Sequoia Shuttle Center.

Environmental Assessment Status

CEQA Review:

NEPA Review:

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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*)

Proclamation Declaring Happy Hearts Day

WHEREAS, Children's Hospital Central California cares for the health and welfare of children throughout a primary service area of 60,000 square miles, including California's San Joaquin Valley; and

WHEREAS, lead by the desire of its founders to help children in need, Children's Hospital Central California has been empowered by the commitment of all those who support their vision and expend their services throughout the valley; and

WHEREAS, Children's Hospital Central California is continuing to support the 7th Annual Happy Hearts Program; and

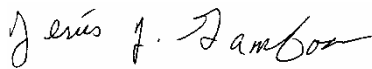
WHEREAS, The Happy Hearts Program has raised over \$362,000.00 these past 6 years; and

WHEREAS, The Happy Hearts Program fundraising proceeds directly benefit the Children's Hospital Central California Pediatric Intensive Care Unit (PICU); and

WHEREAS, The Happy Hearts Program continues to solicit volunteers and funding for the continued success benefitting the children throughout the San Joaquin Valley.

***NOW THEREFORE,** I, Mayor Jesus Gamboa, the Mayor of the City of Visalia do hereby proclaim May 4, 2009 as Happy Hearts Day in the City of Visalia, and I commend the participants and organizers for their efforts in a very worthwhile cause.*

DATE: May 4, 2009


Jesus Gamboa, Mayor

ACTION

PLANNING COMMISSION AGENDA

CHAIRPERSON:
Lawrence Segrue



VICE CHAIRPERSON:
Adam Peck

COMMISSIONERS PRESENT: Lawrence Segrue, Adam Peck, Terese Lane, Roland Soltesz, Vincent Salinas

MONDAY APRIL 27, 2009; 7:00 P.M., CITY HALL WEST, 707 WEST ACEQUIA, VISALIA CA

- | | |
|--|---|
| 7:00 TO 7:00 | 1. THE PLEDGE OF ALLEGIANCE |
| 7:00 TO 7:01
No one spoke | 2. CITIZEN'S REQUESTS - The Commission requests that a 5-minute time limit be observed for requests. Please note that issues raised under Citizen's Requests are informational only and the Commission will not take action at this time. |
| 7:01 TO 7:01 | 3. CITY PLANNER AGENDA COMMENTS – No comments |
| 7:01 TO 7:02 | 4. CHANGES TO THE AGENDA –Item 6 to be moved to last item and Item 10 to be continued to a date undetermined. |
| 7:02 TO 7:02 | 5. CONSENT CALENDAR - All items under the consent calendar are to be considered routine and will be enacted by one motion. For any discussion of an item on the consent calendar, it will be removed at the request of the Commission and made a part of the regular agenda. <ul style="list-style-type: none"> • No items on consent calendar |
| 8:14 TO 9:16
Approved Staff
recommendations to City
Council (Soltesz, Lane)
5-0 | 6. REGULAR ITEM – Paul Scheibel

Consideration of the Land Inventory Strategies for the 2009 Housing Element update. Recommendations to the City Council |
| 7:02 TO 7:11

Approved As
recommended
(Salinas, Pecks) 5-0

Open: 7:12
Close: 7:16
Spoke:
1. Pat Teter
2. George Ouzounian | 7. PUBLIC HEARING – Brandon Smith <ol style="list-style-type: none"> a. Tentative Parcel Map No. 2009-01: A request by Ouzounian Investments I & II (Lane Engineers, Inc., agent), to create six air-space parcels and three common area parcels on the site of an existing office building in the C-DT (Central Business District Retail) zone. The site is located at 525 W. Main Street, on the east side of Willis Street between Main Street and Acequia Avenue. APN: 093-195-001. b. Conditional Use Permit No. 2009-21: A request by Ouzounian Investments I & II (Lane Engineers, Inc., agent), to allow a condominium conversion with common area parcels on the site of an existing office building in the C-DT (Central Business District Retail) zone. The site is located at 525 W. Main Street, on the east side of Willis Street between Main Street and Acequia Avenue. APN: 093-195-001. |

7:17 TO 7:49

Approved as recommended (Salinas, Lane) 4-1
Soltesz voted no

Open:7:27

Close: 742

Spoke:

- 1. Mike Williams
- 2. Jeff Tanielian
- 3. Amy Shuklian
- 4. Glen Morris
- 5. Dru Quesnoy

8. PUBLIC HEARING – Andy Chamberlain

Variance No. 2009-04: A request by Kaweah Delta Medical Center (Michael Williams, agent) to add 770 square feet of building signage to the new six story addition on the Acequia Avenue frontage. The site is in the CDT and P-A (Commercial Downtown and Professional/Administrative Office) zones. The site is located on the south side of Acequia Avenue east of Floral Street. (APNs: 094-312-001, 094-312-002, 094-312-003, 094-312-004, 094-312-005, 094-312-010, 094-312-017, 094-311-016).

7:49 TO 7:54

Approved as recommended (Salinas, Soltesz) 5-0

Open: 7:51

Close: 7:52

Spoke:

- 1. Bob Buhl

9. PUBLIC HEARING – Paul Bernal presented by Andy Chamberlain

Variance No. 2009-05: A request by Buhl Construction to allow an encroachment into a yard setback required by Design District J for a proposed clean air separator in the C-CM (Community Commercial) zone. The site is located at 3717 W. Caldwell Ave. APN: 119-340-012

8:10 TO 8:14

Continued to a date undetermined (Soltesz, Salinas) 5-0

10. PUBLIC HEARING – Paul Bernal

Conditional Use Permit No. 2009-23: A request by Visalia Development Holdings, to amend Conditional Use Permit No. 2007-10, by increasing the overall retail building space from 154,500 sq. ft. of building area to 160,585 sq. ft. of building area in the C-N (Neighborhood Commercial) zone. The amendment also includes the relocation of the gasoline service station and reconfiguration of the grocery store tenant space. The site is located at the southeast corner of Demaree Street and Houston Avenue. (APN: N/A)

7:54 TO 7:58

Approved as recommended (Peck, Soltesz)

Open:7:56

Close: 757

Spoke:

- 1. Mike Triplett

11. PUBLIC HEARING – Teresa Nickell

Conditional Use Permit No. 2009-22: A request by the Milan Institute (Michael L. Triplett, AIA, agent) to allow an after-hours academic education facility in a 22,000 sq. ft. portion of an existing building in the C-SO (Shopping/Office Commercial) zone. The site is located at 6500 South Mooney Boulevard. (APN: 126-340-010)

Break:

7:58 TO 8:10

12. DIRECTOR'S REPORT/PLANNING COMMISSION DISCUSSION:

9:16 TO 9:16

The Planning Commission meeting may end no later than 11:00 P.M. Any unfinished business may be continued to a future date and time to be determined by the Commission at this meeting. The Planning Commission routinely visits the project sites listed on the agenda.

For the hearing impaired, if signing is desired, please call (559) 713-4359 twenty-four (24) hours in advance of the scheduled meeting time to request these services. For the visually impaired, if enlarged print or Braille copy is desired, please call (559) 713-4359 for this assistance in advance of the meeting and such services will be provided as soon as possible following the meeting.

**THE NEXT REGULAR MEETING WILL BE HELD ON MONDAY, MAY 11, 2009
AT THE VISALIA CONVENTION CENTER, 303 E. ACEQUIA, VISALIA**

9:16 TO 9:16
Motion to Adjourn (Segrue, Soltesz) 5-0

**City of Visalia
Agenda Item Transmittal**

Meeting Date: May 4, 2009

Agenda Item Number (Assigned by City Clerk): 11b

Agenda Item Wording: Authorization to execute Disadvantaged Business Enterprise (DBE) Race Conscious Implementation Agreement

Deadline for Action: June 1, 2009

Submitting Department: Finance/Engineering/Transit

Contact Name and Phone Number:

Renee Nagel, Finance Manager/Purchasing Agent, 713-4375
Chris Tavarez, Management Analyst, 713-4540
Carmen Quevedo, Senior Administrative Analyst, 713-4592

Recommendation:

Staff recommends Council authorization to execute a DBE Race Conscious Implementation Agreement and any supplemental forms with Cal Trans and other agencies as needed to secure Federal and State Transportation Funding; authorize the City's Purchasing Agent (Finance) to serve as the City's 'Disadvantaged Business Liaison Officer (DBELO)' and to sign and execute the agreement.

Background:

On February 17, 2009, the President signed into law the American Recovery and Reinvestment Act of 2009 (ARRA). ARRA provides \$27.5 billion supplemental funding to Federal Highway Administration (FHWA) to be apportioned to the states. California's share is estimated to be \$2.57 billion. The City of Visalia will get \$6.4 million for funding of the Ben Maddox / 198 overcrossing and \$796,000 in road rehabilitation funding for major overlays. Transit is currently projected to receive approximately \$2.7 million in ARRA funding for capital improvements. The deadline to have funds obligated (authorized by the state/fed) to the City by the Federal government is within 180 days for Phase 1 projects and 365 days for Phase 2 projects from the date the president signed the ARRA into law.

Starting June 2, 2009 the U.S. Department of Transportation through Cal Trans will begin enforcement of a new DBE for 2009. As part of the City's responsibilities for obtaining federal funding, a new Race Conscious DBE Program needs to be adopted by the above deadline or projects will not be approved to receive federal funding.

The main purpose of the new DBE program is to "never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by Department of Transportation (DOT), CFR 49, Part 26 on the basis of race, color, sex, or national origin". Policies must include:

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts.

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.): 1.

Review:

Dept. Head 4/20/09
(Initials & date required)

Finance 4/20/09
City Atty AP 4/22/09
(Initials & date required or N/A)

City Mgr _____
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

- To create a level playing field on which DBE's can compete fairly for DOT-assisted contracts.
- To ensure that their annual overall DBE participation percentage is narrowly tailored, in accordance with applicable law.
- To ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
- To help remove barriers to the participation of DBEs in DOT-assisted contracts.
- To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Discussion:

Council must adopt a new DBE Implementation Agreement that satisfies federal requirements for funding authorization. Attached to this report is the required agreement that needs to be signed and submitted to Cal Trans that will show the City's adoption of a new program. This requirement applies to the entire City organization and will involve the participation of multiple departments at least on an annual basis. With delegated authority from Council, the DBELO will insure that the new program is in place and the necessary forms are signed by an authorized representative as required by Cal Trans and other Federal and State agencies. Many of the requirements for a race conscious DBE program already exist within the City's normal purchasing practices including; pre-bid meetings, public notice of bids and allowing free and public process to bidding processes.

An updated anticipated annual DBE percentage goal will be required annually by June 1 of each year for the City's procurement of recognized DBEs. Duties of the DBELO as outlined in the DBE Implementation Agreement are:

1. Gathers and reports statistical data and other information as required.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to determine projected Annual Anticipated DBE Participation Level.
4. Ensures that bid notices and requests for proposals are made available to DBEs in a timely manner.
5. Analyzes DBE participation and identifies ways to encourage participation through race-neutral means.
6. Participates in pre-bid meetings.
7. Advises management on DBE matters and DBE race-neutral issues.
8. Provides DBEs with information and recommends sources to assist in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to fully advise them of contracting opportunities.

After the agreement is signed by the City it will be forwarded to Cal Trans Local Assistance for final acceptance. All forms seeking federal or state funding and contract templates with federal or state money will be revised in compliance with the new DBE agreement guidelines.

Prior Council/Board Actions:

n/a

Attachments:

Local Assistance Procedure Manual Exhibit 9A – DBE Implementation Agreement

Recommended Motion (and Alternative Motions if expected):

I move to authorize execution of the attached DBE Implementation Agreement as required for the City's acceptance of Federal and State Funding and to authorize the Purchasing Agent authority to serve as the Disadvantaged Business Liaison Officer and to sign the DBE Implementation Agreement and other necessary forms needed to secure funding for the City.

Environmental Assessment Status

CEQA Review: N/A

NEPA Review: N/A

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)*
none

Copies of this report have been provided to:

CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE
PROGRAM
IMPLEMENTATION AGREEMENT
FOR
LOCAL AGENCIES

CALIFORNIA DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISE IMPLEMENTATION AGREEMENT

For the City of Visalia/County of Tulare, hereinafter referred to as "RECIPIENT."

I Definition of Terms

The terms used in this agreement have the meanings defined in 49 CFR § 26.5.

II OBJECTIVE/POLICY STATEMENT (§26/1. 26/23)

The RECIPIENT intends to receive federal financial assistance from the U. S. Department of Transportation (DOT) through the California Department of Transportation (Caltrans), and as a condition of receiving this assistance, the RECIPIENT will sign the California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement (hereinafter referred to as Agreement). The RECIPIENT agrees to implement the State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan (hereinafter referred to as the DBE Program Plan) as it pertains to local agencies. The DBE Program Plan is based on U.S. Department of Transportation (DOT), 49 CFR, Part 26 requirements.

It is the policy of the RECIPIENT to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also their policy:

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
- To create a level playing field on which DBE's can compete fairly for DOT-assisted contracts.
- To ensure that their annual overall DBE participation percentage is narrowly tailored, in accordance with applicable law.
- To ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
- To help remove barriers to the participation of DBEs in DOT-assisted contracts.
- To assist the development of firms that can compete successfully in the market place outside the DBE Program.

III Nondiscrimination (§26.7)

RECIPIENT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR, Part 26 on the basis of race, color, sex, or national origin. In administering the local agency components of the DBE Program Plan, the RECIPIENT will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

IV Annual DBE Submittal Form (§26.21)

The RECIPIENT will provide to the Caltrans District Local Assistance Engineer (DLAE) a completed *Local Agency DBE Annual Submittal Form* (Exhibit 9-B) by June 1 of each year for the following Federal Fiscal Year (FFY). This form includes an Annual Anticipated DBE Participation Level (AADPL), methodology for establishing the AADPL, the name, phone number, and electronic mailing address of the designated DBELO, and the choice of Prompt Pay Provision to be used by the RECIPIENT for the following FFY.

V Race-Neutral Means of Meeting the Overall Statewide Annual DBE Goal (§26.51)

RECIPIENT must meet the maximum feasible portion of its AADPL by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).

Race-neutral means include, but are not limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of types of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

VI Race Conscious Means of Meeting the Overall Statewide Annual DBE Goal (§26.51(d))

RECIPIENT must establish contract goals for Underutilized Disadvantaged Business Enterprises (UDBEs) to meet any portion of your AADPL you do not project being able to meet using race-neutral means. UDBEs are limited to these certified DBEs that are owned and controlled by African Americans, Native Americans, Women, and Asian Pacific Americans.

VII Quotas (§26.43)

RECIPIENT will not use quotas or set-asides in any way in the administration of the local agency component of the DBE Program Plan.

VIII DBE Liaison Officer (DBELO) (§26.25)

RECIPIENT has designated a DBE Liaison Officer. The DBELO is responsible for implementing the DBE Program Plan, as it pertains to the RECIPIENT, and ensures that the RECIPIENT is fully and properly advised concerning DBE Program Plan matters. [Specify resources available to the DBELO; e.g., the DBELO has a staff of two professional employees assigned to the DBE program on a full-time basis and two support personnel who devote a portion of their time to the program.] The name, address, telephone number, electronic mail address, and an organization chart displaying the DBELO's position in the organization are found in Attachment 'A' to this Agreement. This information will be updated annually and included on the DBE Annual Submittal Form.

The DBELO is responsible for developing, implementing, and monitoring the RECIPIENT's requirements of the DBE Program Plan in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to determine projected Annual Anticipated DBE Participation Level.
4. Ensures that bid notices and requests for proposals are made available to DBEs in a timely manner.
5. Analyzes DBE participation and identifies ways to encourage participation through race-neutral means.
6. Participates in pre-bid meetings.
7. Advises the CEO/governing body on DBE matters and DBE race-neutral issues.
8. Provides DBEs with information and recommends sources to assist in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to fully advise them of contracting opportunities.

IX Federal Financial Assistance Agreement Assurance (§26.13)

RECIPIENT will sign the following assurance, applicable to and to be included in all DOT-assisted contracts and their administration, as part of the program supplement agreement for each project.

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract, or in the administration of its DBE Program, or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR, Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.). [Note – this language is to be used verbatim, as it is stated in §26.13(a).]

X DBE Financial Institutions (§26.27)

It is the policy of the RECIPIENT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

Information on the availability of such institutions can be obtained from the DBELO. The Caltrans' Disadvantaged Business Enterprise Program may offer assistance to the DBELO.

XI Directory (§26.31)

RECIPIENT will refer interested persons to the Unified Certification Program DBE directory available from the Caltrans Disadvantaged Business Enterprise Program's website at www.dot.ca.gov/hq/bep.

XII Required Contract Clauses (§§26.13, 26.29)

RECIPIENT ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:

A. CONTRACT ASSURANCE

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as recipient deems appropriate.

[Note – This language is to be used verbatim, as is stated in §26.13(b). See Caltrans Sample Boiler Plate Contract Documents on the Internet at www.dot.ca.gov/hq/LocalPrograms under "Publications."]

B. PROMPT PAYMENT

Prompt Progress Payment to Subcontractors

The local agency shall require contractors and subcontractors to be timely paid as set forth in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Prompt Payment of Withheld Funds to Subcontractors

The local agency shall ensure prompt and full payment of retainage from the prime contractor to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed and accepted. This shall be accompanied by including either (1), (2), or (3) of the following provisions [local agency equivalent will need Caltrans approval] in their federal-aid contracts to ensure prompt and full payment of retainage [withheld funds] to subcontractors in compliance with 49 CFR 26.29.

1. No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the

violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

2. No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

3. The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

XIII Local Assistance Procedures Manual

The RECIPIENT will advertise, award and administer DOT-assisted contracts in accordance with the most current published Local Assistance Procedures Manual (LAPM).

XIV Transit Vehicle Manufacturers (§ 26.49)

If FTA-assisted contracts will include transit vehicle procurements, RECIPIENT will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26, Section 49.

XV Bidders List (§26.11(c))

The RECIPIENT will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its DOT-assisted contracts. The bidders list will include the name, address, DBE/nonDBE status, age, and annual gross receipts of the firm.

XVI Reporting to the DLAE

RECIPIENT will promptly submit a copy of the Local Agency Bidder/Proposer-UDBE Commitment (Consultant Contract), (Exhibit 10-O(1) "Local Agency Bidder/Proposer-DBE Commitment (Consultant

Contract”) or Exhibit 15-G(1) “Local Agency Bidder-UDBE Commitment (Construction Contract) to the DLAE at the time of award of the consultant or construction contracts.

RECIPIENT will promptly submit a copy of the Local Agency Bidder-DBE Information (Exhibit 15-G(2) “Local Agency Bidder-DBE (Construction Contracts) – Information” or Exhibit 10-O(2) “Local Agency Proposer/Bidder-DBE (Consultant Contracts)-Information” of the LAPM) to the DLAE at the time of execution of consultant or construction contract.

RECIPIENT will promptly submit a copy of the Final Utilization of DBE participation to the DLAE using Exhibit 17-F “Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors” of the LAPM immediately upon completion of the contract for each consultant or construction contract.

XVII Certification (§26.83(a))

RECIPIENT ensures that only DBE firms currently certified by the California Unified Certification Program will participate as DBEs on DOT-assisted contracts.

XVIII Confidentiality

RECIPIENT will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information consistent with federal, state, and local laws.

By _____
(Signature)

(Print Name and Title) ADMINISTERING AGENCY
(Authorized Governing Body Representative)

Phone Number: _____

This California Department of Transportation’s Disadvantaged Business Enterprise Program Implementation Agreement is accepted by:

[Signature of DLAE]

Date: _____

[Print Name of DLAE]

Distribution: (1) Original – DLAE
(2) Signed copy by the DLAE – Local Agency

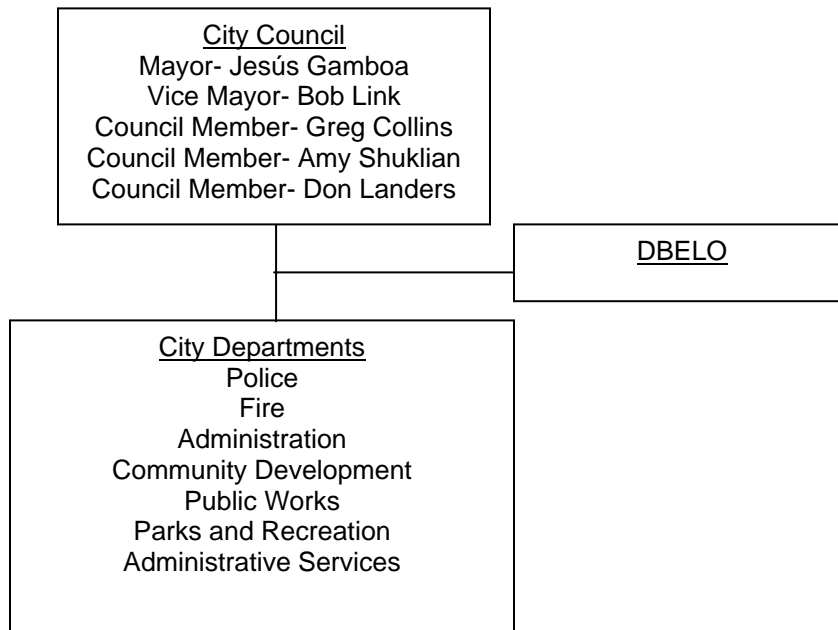
(Updated: March 4, 2009)

ATTACHMENT 'A'

Disadvantaged Business Enterprise Liason Officer

Renee Nagel
(559) 713-4375
rnagel@ci.visalia.ca.us
City of Visalia
707 W. Acequia
Visalia, CA 93291

Personnel resources available to the DBELO are designated employees that devote a portion of their time to the program in each department (at least one in each department) that receives Federal funding.



MEMORANDUM

DANIEL M. DOOLEY
RETIRED FROM THE PRACTICE OF LAW

LEONARD C. HERR

ALEX M. PELTZER

KENNETH J. RICHARDSON

To: Visalia City Council

From: Alex Peltzer, City Attorney
Dooley, Herr, Peltzer & Richardson, LLP

Date: April 30, 2009

Re: **Second Reading,**
Grant of Right of Way for Electric Utility
Our File No: 701-01-003

KRIS B. PEDERSEN

MATTHEW F. BAHR

RON STATLER

RACHELE BERGLUND BAILEY

JAMES D. KOONTZ

This is the second reading of the same ordinance introduced at the April 6, 2009, council meeting, with one change. The City Engineering staff requested that the easement allow the utility to install underground facilities only, and not allow surface structures without further agreement by the City. The remainder of the easement and the following staff report is identical to the item as introduced.

The attached ordinance authorizes the City to grant to Southern California Edison a utility easement over a small (20x13.5 feet) area on the northwest corner of the Acequia Parking Structure property. This easement is required by Edison in order to bring an electrical conduit from property west of the parking structure (the Hecht office building) to a new service panel for the former Buckman Mitchell property to the north and east. The new service panel and new electric lines are necessary for a project at the former Buckman Mitchell offices.

The Edison easement area does not interfere with any City improvements, and any work done in the area will require the standard encroachment permit.

The easement is being offered as an accommodation, and no compensation is being sought by the City.

Staff recommends the Council introduce and conduct the first reading of the ordinance authorizing the granting of the easement at the meeting of April 6, with final adoption at the meeting of May 4.

100 WILLOW PLAZA,
SUITE 300
VISALIA, CA 93291

TELEPHONE:
(559) 636-0200

FACSIMILE:
(559) 636-9759

WWW.DHLAW.NET

Ordinance No. 2009-__

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VISALIA AUTHORIZING
THE EXECUTION OF A GRANT OF EASEMENT TO SOUTHERN CALIFORNIA
EDISON**

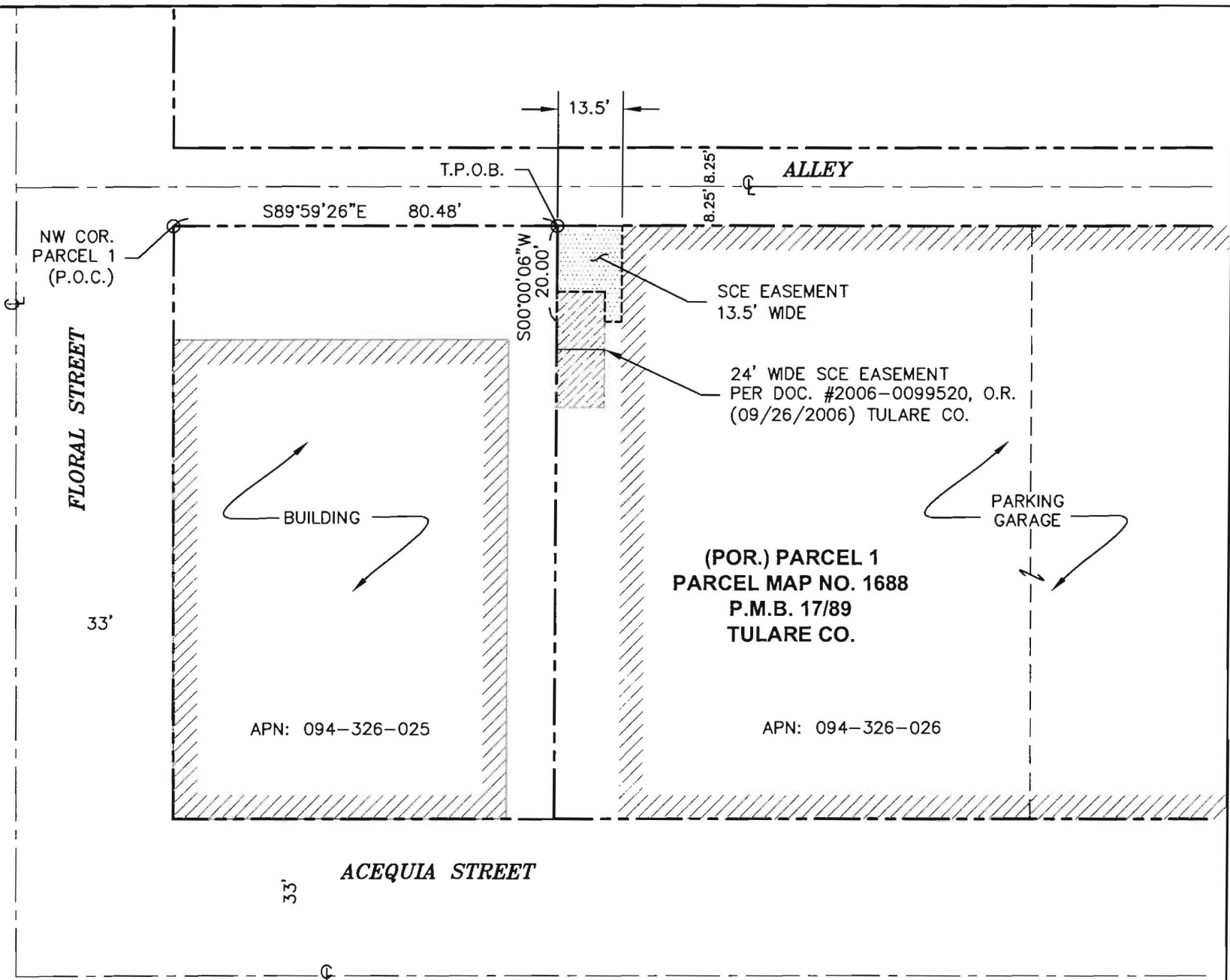
BE IT ORDAINED by the City Council of the City of Visalia as follows:

Section 1. The City manager for the City of Visalia is hereby authorized to execute a Grant of Easement in the form as attached hereto as Exhibit "A".

Section 2. This Ordinance shall go into effect thirty (30) days after passage thereof.

Section 3. A summary of this Ordinance shall be published once in the *Visalia Times-Delta*, a newspaper of general circulation in the City of Visalia

PASSED AND ADOPTED:



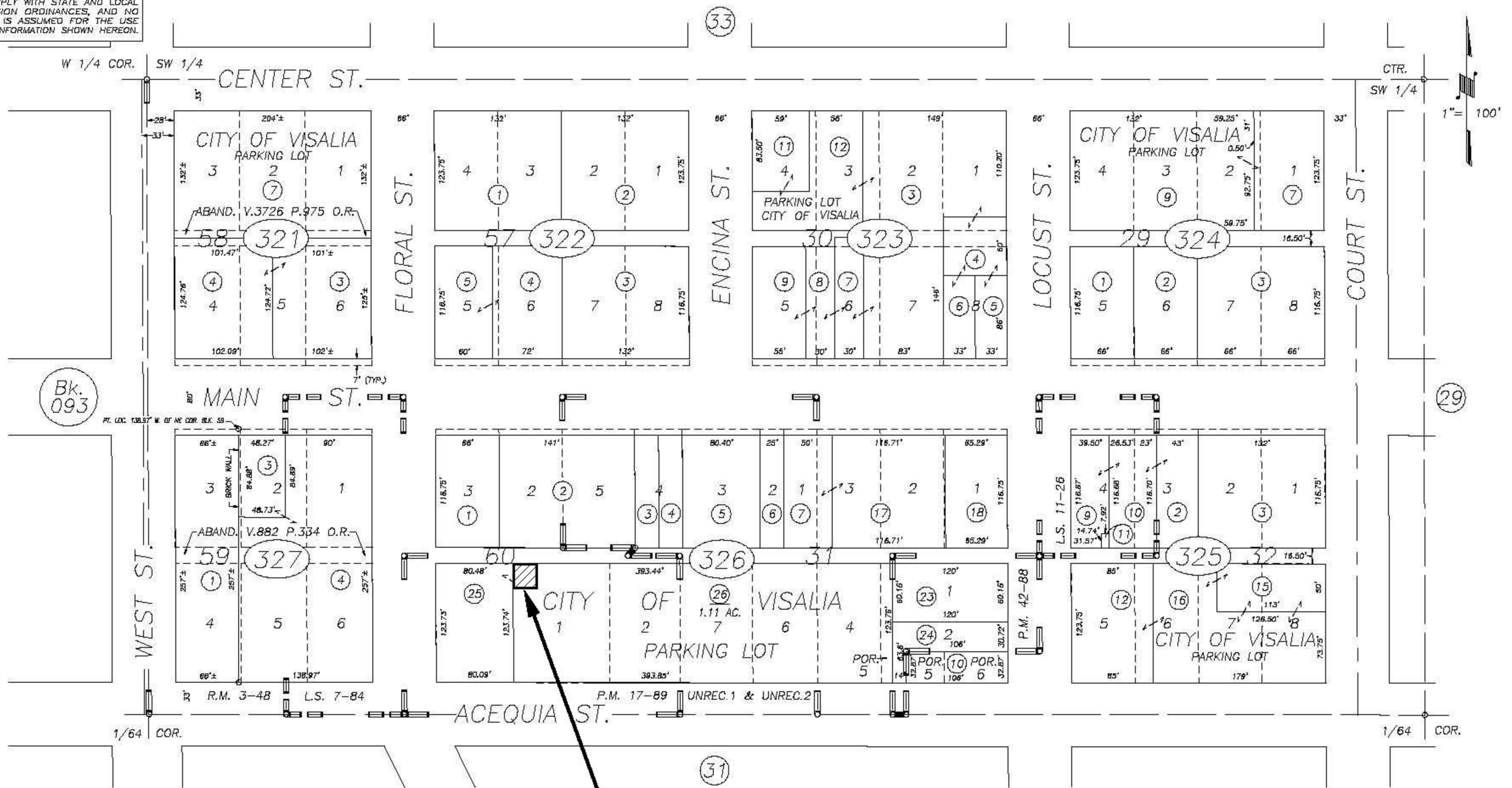
(POR.) PARCEL 1
PARCEL MAP NO. 1688
P.M.B. 17/89
TULARE CO.

APN: 094-326-025

APN: 094-326-026

SCE EASEMENT		
DSE800246319	6451-2040	8-2379
TD# 320680	SLS/BT	02/27/09

DISCLAIMER
THIS MAP WAS PREPARED FOR LOCAL PROPERTY ASSESSMENT PURPOSES ONLY AND THE PARCELS SHOWN HEREON MAY NOT COMPLY WITH STATE AND LOCAL SUBDIVISION ORDINANCES, AND NO LIABILITY IS ASSUMED FOR THE USE OF THE INFORMATION SHOWN HEREON.



POR. PLAT OF VISALIA, R.M. 3-48
POR. BAKER GRANT, UNREC. 1
RECORD OF SURVEY, L.S. 11-26
PARCEL MAP NO. 1688, P.M. 17-89
PARCEL MAP NO. 4184, P.M. 42-88
CITY OF VISALIA SURVEY, UNREC. 2
RECORD OF SURVEY, L.S. 7-84

RECORD OF SURVEY, L.S. 9-23 (BLK. 59, ETC.)

**EASEMENT
LOCATION**

CITY OF VISALIA
ASSESSOR'S MAPS BK. 094 , PG. 32
COUNTY OF TULARE, CALIFORNIA, U.S.A.

NOTE: Assessor's Parcel Numbers Shown in Circles (1) (123)
Assessor's Block Numbers Shown in Elipses

2003-0128382	04/03/2006	KMS
REVISION	DATE	TECH

RECORDING REQUESTED BY



WHEN RECORDED MAIL TO
SOUTHERN CALIFORNIA EDISON COMPANY

Corporate Real Estate
14799 Chestnut Street
Westminster, CA 92683-5240

Attn: Distribution/TRES

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT OF EASEMENT

DOCUMENTARY TRANSFER TAX \$ NONE (VALUE AND CONSIDERATION LESS THAN \$100.00)	DISTRICT	WORK ORDER	IDENTITY	MAP SIZE
	San Joaquin Valley	6451-2040 TD# 320680	8-2379	
SCE Company	FIM 70-18A-2	APPROVED: CORPORATE REAL ESTATE	BY	DATE
SIG. OF DECLARANT OR AGENT DETERMINING TAX FIRM NAME	APN : 094-326-026		SLS/BT	02/27/09

CITY OF VISALIA, a municipal corporation (hereinafter referred to as "Grantor"), hereby grants to SOUTHERN CALIFORNIA EDISON COMPANY, a corporation, its successors and assigns (hereinafter referred to as "Grantee"), an easement and right of way to construct, use, maintain, operate, alter, add to, repair, replace, reconstruct, inspect and remove at any time and from time to time underground electrical supply systems and communication systems (hereinafter referred to as "systems"), consisting of wires, underground conduits, cables, vaults, manholes, handholes, ~~and including above-ground enclosures, markers and concrete pads and other appurtenant fixtures and~~ equipment necessary or useful for distributing electrical energy and for transmitting intelligence by electrical means, in, on, over, under, across and along that certain real property in the County of Tulare, State of California, described as follows:

A 13.50 FOOT WIDE STRIP OF LAND LYING WITHIN PARCEL 1 OF PARCEL MAP NO. 1688, AS PER MAP FILED IN BOOK 17, PAGE 89 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, THE WESTERLY LINE OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID PARCEL 1; THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 1, SOUTH 89°59'26" EAST 80.48 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE SOUTH 00°00'06" WEST 20.00 FEET TO A POINT OF ENDING.

THE EASTERLY SIDELINE OF SAID STRIP IS TO BE SHORTENED TO TERMINATE NORTHERLY IN SAID NORTHERLY LINE OF PARCEL 1.

EXCEPTING THEREFROM THAT PORTION LYING WITHIN THAT CERTAIN 24.00 FOOT WIDE STRIP OF LAND DESCRIBED IN THE GRANT OF EASEMENT, RECORDED ON SEPTEMBER 26, 2006 AS DOCUMENT NO. 2006-0099520, OF OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER.

EXCEPT any portion thereof lying within any existing building or any building presently under construction.

This legal description was prepared pursuant to Sec. 8730(c) of the Business & Professions Code.

Grantor agrees for himself, his heirs and assigns, not to erect, place or maintain, nor to permit the erection, placement or maintenance of any building, planter boxes, earth fill or other structures except walls and fences on the above described real property. The Grantee, and its contractors, agents and employees, shall have the right to trim or cut tree roots as may endanger or interfere with said systems and shall have free access to said systems and every part thereof, at all times, for the purpose of exercising the rights herein granted; provided, however, that in making any excavation on said property of the Grantor, the Grantee shall make the same in such a manner as will cause the least injury to the surface of the ground around such excavation, and shall replace the earth so removed by it and restore the surface of the ground to as near the same condition as it was prior to such excavation as is practicable.

EXECUTED this ____ day of _____, 20__.

GRANTOR

CITY OF VISALIA, a municipal corporation

Signature

Print Name

Title

State of California)
)
County of _____)

On _____ before me, _____, personally
(here insert name and title of the officer)

appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____

(This area for notary stamp)

GRANTEE SOUTHERN CALIFORNIA EDISON COMPANY, a corporation

By: _____
Emmanuel P. Hyppolite, Supervisor of ECS & Distribution,
Corporate Real Estate Department

Date: _____

State of California)
)
County of _____)

On _____ before me, _____, personally
(here insert name and title of the officer)

appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed
the instrument.

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

WITNESS my hand and official seal.

Signature _____

(This area for notary stamp)

City of Visalia Agenda Item Transmittal

Meeting Date: May 4, 2009

Agenda Item Number (Assigned by City Clerk): 11d

Agenda Item Wording: Second reading of Ordinance 09-04 amending Ordinance 07-13 to reduce Council salaries during the 2009-2010 budget year. **(Second reading of Ordinance 09-04 required)**

Deadline for Action: N/A

Submitting Department:

Contact Name and Phone Number: Alex Peltzer, City Attorney, 636-0200; Leslie Caviglia, Deputy City Manager, 713-4317.

Recommendation

It is recommended that the Council approve the second reading of Ordinance 09-04 relating to Council compensation.

Department Discussion

In light of the fact that Council is asking employees to not accept the 4% raise this budget year per the current employee bargaining group contracts and in response to the current economic recession, the Council is considering taking a 4% decrease in compensation during the 2009-2010 fiscal year.

Background:

In June 2007, at the recommendation of the Citizens Advisory Committee, the City Council approved the first increase to Council compensation since 1991. The Council salaries were raised from \$500 to \$800, with the elimination of a \$60 stipend. In addition, an automatic inflator that is compounded annually based on the California Consumer Price Index (CPI) was added. According to the current ordinance, after the November, 2009 election, the three newly elected Council Members would be eligible for \$800, plus an automatic compounded inflator based on the California CPI. Based on the California CPI for 2007 and 2008, the increase would be approximately \$26.40 (3.3%) for 2007 and \$28.93 (3.5%) for 2008 for a total of approximately \$855.32 (based on projected CPI for the year, actual figures will be calculated when appropriate.)

Since City Charter prohibits Council Members from raising their own salaries, only the Council members that were elected in November, 2007, (Council Members Link and Shuklian) receive the \$800. They will not receive any further increase unless they are reelected in 2011.

In light of the fact that Council is asking employees to not accept the 4% raise that many are entitled to this budget year per the current contract, Council Member Collins asked Council

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.): _____

Review:

Dept. Head LBC 41509

Finance

City Atty

City Mgr

Members to not accept any compensation increases for the 2009-2010 fiscal year. At the last meeting, the Council introduced an ordinance that would decrease all Council salaries by 4% following the election. As written, the appropriate salaries for newly elected and reelected Council Members would go into effect as approved in 2007, with a 4% decrease during the remainder of the fiscal year. Current Council Members (Link and Shuklian) would also take a 4% decrease beginning in November through the remainder of the fiscal year.

Prior Council/Board Actions:

July 16, 2007 – Adopted new Council salary as recommended by the Citizens Advisory Committee.

Committee/Commission Review and Actions:

Alternatives:

Attachments:

Recommended Motion (and Alternative Motions if expected):

I move to approve the second reading of Ordinance 2009-04.

Environmental Assessment Status

CEQA Review:

NEPA Review:

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)*

ORDINANCE 2009 – 04

This document last revised: 4/30/09 11:54:00 AM

By author: Leslie Caviglia

File location and name: H:\(1) AGENDAS for Council - DO NOT REMOVE\2009\050409\Item 11d council compensation.doc

AMENDING SECTION 2.02.080 OF THE ORDINANCE CODE RELATED TO COUNCIL MEMBER COMPENSATION AND PRESCRIBING THE EFFECTIVE DATES THEREOF

WHEREAS the Visalia City Council monthly compensation schedule was amended in 2007; and

WHEREAS the change was based upon a recommendation from the Citizens Advisory Committee which conducted a salary survey, and based on that information, recommended that the proposed increase be adopted; and

WHEREAS the current compensation schedule includes an inflationary factor to keep Council compensation in line with inflation; and

WHEREAS, the Council intends that any increase in monthly compensation be applied only at the commencement of a Council member's term, in conformance with provisions of the Visalia Charter; and

WHEREAS, given the current economic circumstances, the Council has asked City employees to forego contracted salary increases for 2009-2010; and

WHEREAS, the City Council is interested in demonstrating their commitment to the community and its fiscal health by postponing any automatic salary increases in Council salary for fiscal year 2009-2010.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF VISALIA:

Section 1: Section 2.04.080 (Council Compensation) of Chapter 2.04 of Title 2 of the Visalia Municipal Code is hereby amended to read:

SECTION 2.04.080 (COUNCIL COMPENSATION)

- A. The compensation amount in effect at the commencement of a Council member's term shall be the maximum compensation amount received by that Council member for the duration of that term (except as provided below), and no increase in monthly compensation shall be applied during a Council member's term.
- B. Effective November 2007, the monthly compensation for Council Members shall be determined at the commencement of each new term, according to the following formula: \$800 multiplied by a fraction equal to the CPI (as defined below) for the month preceding the commencement of the Council Member's term divided by the CPI for December 1, 2007. The CPI shall be the Consumer Price Index for Western Region - All Items, All Urban Consumers (1982-84 = 100), as maintained by U.S. Department of Labor, Bureau of Labor Statistics.
- C. Following the November, 2009, Council Elections, the effective compensation rate for Council Members elected or reelected in that election shall be calculated

as provided in Paragraph B. above, but as a temporary cost saving measure, compensation for all Council Members shall be reduced by 4%. Such temporary reduction shall be in effect until July 1, 2010, at which time the compensation rate shall revert to the rate as calculated pursuant to Paragraph A and B.

Section 2: Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstances, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not effect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Visalia hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 3: Effective Date. This Ordinance shall take effect thirty days after its adoption.

Section 4: Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

PASSED AND ADOPTED:

Jesus Gamboa, Mayor

ATTEST:

Steve Salomon, City Clerk

APPROVED AS TO FORM
BY CITY ATTORNEY:

Alex M. Peltzer, City Attorney

**City of Visalia
Agenda Item Transmittal**

Meeting Date: May 4, 2009

Agenda Item Number (Assigned by City Clerk): 11e

Agenda Item Wording: Request authorization to file a Notice of Completion for Kaweah Gardens Subdivision, containing 21 lots (a mix of single-family residential and multi-family units), located at the southeast corner of Pinkham Street and Cherry Avenue.

Deadline for Action: May 4, 2009

Submitting Department: Community Development/
Engineering Division

Contact Name and Phone Number:
Chris Young, Assistant Community Dev. Director – 713-4392

Department Recommendation:
City staff recommends that City Council give authorization to file a Notice of Completion for the Kaweah Gardens Subdivision.

Summary/background:
All the necessary improvements for this subdivision have been completed and are ready for acceptance by the City of Visalia. The subdivision contains a mix of single family residential and multi-family units and was developed by Pioneer Properties and Ritchie Enterprises, Inc. who has submitted a maintenance bond in the amount of \$29,476.99 as required by the Subdivision Map Act to guarantee the improvements against defects for one year. The completed improvements include landscaping which will be maintained by the City through Landscape and Lighting District No. LO305.

Prior Council/Board Actions: Final Map and Landscape and Lighting District formation recording was approved at Council meeting of June 2, 2003.

Committee/Commission Review and Actions: The tentative subdivision map for Kaweah Gardens was approved by Planning Commission on October 14, 2002.

Alternatives: N/A

Attachments: Vicinity Map and Developer Disclosure Form

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.): 1 Min.

Review:

Dept. Head _____
(Initials & date required)

Finance _____
City Atty _____
(Initials & date required or N/A)

City Mgr _____
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

Recommended Motion (and Alternative Motions if expected):

I hereby authorize filing a Notice of Completion for Kaweah Gardens Subdivision.

Environmental Assessment Status

CEQA Review: Environmental finding completed for tentative subdivision map.

NEPA Review: N/A

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)*

Copies of this report have been provided to:

City of Visalia Agenda Item Transmittal

Meeting Date: May 4, 2009

Agenda Item Number (Assigned by City Clerk): 11f

Agenda Item Wording: Authorization for staff to submit a grant application for the 2009 Assistance to Firefighter Grant (AFG) in the amount of \$840,000 from FEMA with emphasis on three categories; Equipment, Apparatus and Training.

Deadline for Action: May 20, 2009

Submitting Department: Fire

Contact Name and Phone Number:
Kevin Gildea @ 713.4225, Mark Nelson @ 713.4218

Department Recommendation:

It is recommended that Council authorize staff to develop an application for the Assistance to Firefighter Grant (AFG) with emphasis on three categories: Equipment, Apparatus and Training.

Summary/background: This is an annual grant that is funded by FEMA. The deadline for submission is May 20, 2009. Our recommendation is to apply for three categories within the grant. The following will define the Equipment, Apparatus and Training needs. This grant requires a 20% local match in all categories. The total local match will be \$168,000. Of this amount, \$88,000 is proposed to be funded from the General Fund, which should be fully reimbursed within one (1) year as described below. The remaining match amount (\$80,000) will be funded as an allowed expenditure through Measure T.

Category 1 - Apparatus

Type III Wildland Fire Engine. There is currently a need to gain access to open/undeveloped areas within and around the City of Visalia. The recommended Type III engine will have four wheel drive capability and additional ground clearance compared to our existing engines. This unit would be used in all areas of the City of Visalia where access is limited due to the terrain and clearance for our existing type of fire apparatus (Type I). There are large undeveloped sections of property around the airport, and surrounding the St. Johns River that are not accessible. Additionally, there are other areas in the City which our current units cannot make access. Our solution up till now has been to use very long hose lays into the fire, or call surrounding departments with Type III engines through a Mutual Aid request. The major

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.): _____

Review:

Dept. Head _____
(Initials & date required)

Finance _____
City Atty _____
(Initials & date required or N/A)

City Mgr _____
(Initials Required)

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challenge with both of these solutions is the extra time it takes to implement an effective fire attack. . It is important to remember, a fire can double in size each minute it is allowed to burn. A timely fire attack means that we will have greater success to mitigate the incident. This unit would also be available for OES Strike Team assignments throughout the State of California.

The cost of this unit and equipment is \$300,000. The matching portion of the grant for the City of Visalia is 20%, \$60,000.

Category II – Equipment

Microwave Communication Link. There has been an on-going issue of communication failure with the current AT&T radio and repeater system. Currently, our system relies on AT&T phone lines to communicate to our stations and apparatus. This type of system is vulnerable due to the antiquated 40 year old phone line system which links our dispatch center directly to our radio repeaters. The new recommended microwave data system would provide a more reliable communication link and eliminate the need for a phone line based system. The annual cost savings of not having to lease phone lines from AT&T would be approximately \$36,000 to \$60,000. It is important to note that this microwave data system would benefit both Fire and Police communications.

The cost of this unit and equipment is \$140,000. The matching portion of this grant for the City of Visalia would be 20%, \$28,000.

Category III - Training:

Training Props for Station 55. We are recommending that we add three training props to our new training facility. The props that are being recommended were cut from the original project to help reduce the cost of the building project. We now have the opportunity to apply for a grant that will fund the lion's share of the training props. The three types of props are: Confined Space Rescue, Trench Rescue and an Aircraft Firefighting Prop.

These props are used to drill on scenarios we may encounter during emergency calls. The more realistic the training is the better our personnel will learn how to mitigate these types of situations when they occur.

1. Trench Rescue Prop: This is used to train on below grade rescues. We have special equipment that is used to stabilize the soil when personnel work below ground level. This prop will enable our staff to utilize a safe area to learn various skills and become proficient with the use of our tools.
2. Collapse Prop: In certain types of emergencies, such as fires, it is quite common for structures to collapse, or partially collapse. It also may occur when a building's structural integrity is compromised when a vehicle is involved with a collision into the structure. Additionally, we may see collapse of substandard building construction during earthquakes and storms. This prop would allow personnel to simulate a building collapse and practice safe removal of victims.
3. Airline Prop: This would allow personnel to train in and around aircraft. Crews would utilize this prop for live fire simulations as well as for various rescue techniques. Currently, fire personnel must travel out of the area for this type of training.

The cost of this unit and equipment is \$400,000. The matching portion of the grant for the City of Visalia is 20%, \$80,000.

Funding

The funding sources for these three grants will be the General Fund and Measure T. The matching portion is 20%. Each of these grants, however, pay for themselves fairly quickly as follows:

Category 1, Fire Apparatus – (General Fund Match \$60,000). This match will be repaid by reducing the wear and tear on the City's engines and through reimbursements from mutual aid strike force call out. By having the Type III apparatus, the City will send the lighter apparatus to battle grassland fires, avoiding potential damage and wear which sometimes occurs with the City's more expensive engines.

The real payback, however, comes from responding to State calls for mutual aid. The City essentially receives back \$1.60 for each \$1 of overtime cost. Thus, for \$100,000 of mutual aid cost, the City will receive \$160,000 of reimbursement. Last year, the City had costs of \$300,000 and received reimbursements of \$480,000. With this apparatus the City could avoid any wear and tear on our more expensive apparatus and still respond to calls for mutual aid. Fire and Finance believes the payback period is less than one year.

Category II, Microwave Equipment – (General Fund Match \$28,000). The lease cost for the current AT&T radio repeaters can vary from \$36,000 to \$60,000 a year. With this equipment, this ongoing cost can be avoided. Fire and Finance believe the payback period is less than one year.

Category III, Training Props for Station 55 – (Measure T Match \$80,000). Measure T allowed the City to build a training facility for Fire. The original facility was scaled back because costs were higher than expected. However, the plan was always to purchase those props when funding allowed. The grant buys down these prop costs by 80%, making the purchase much more affordable and implements a goal of Measure T. Fire Measure T has these funds available.

Further, the department now trains on all these props out of the area. The estimated annual training cost for these three props in staff time and fees is approximately \$20,000. Thus, the payback period is 4 years, which suggests a 25% return on investment. Because the props were part of the original Measure T plan and the payback period is still very reasonable, staff recommends pursuing this grant.

Prior Council/Board Actions:

n/a

Committee/Commission Review and Actions:

n/a

Alternatives:

To not submit the Assistance to Firefighter Grant application.

Attachments:

Assistance to Firefighters Grant Document

Recommended Motion (and Alternative Motions if expected):

I move to authorize staff to prepare the grant application for the Assistance to Firefighters grant (AFG) with the emphasis on the Equipment, Training and Apparatus categories.

Environmental Assessment Status

CEQA Review:

n/a

NEPA Review:

n/a

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)*

Copies of this report have been provided to:

Steve Salomon
Eric Frost

**City of Visalia
Agenda Item Transmittal**

Meeting Date: May 4, 2009

Agenda Item Number (Assigned by City Clerk): 12

Agenda Item Wording: Report on FEMA's revised Flood Insurance Study and Flood Insurance Rate Maps for Tulare County to be effective on June 16, 2009.

Deadline for Action: N/A

Submitting Department: Community Development/
Engineering Division

Contact Name and Phone Number:

Chris Young, Assistant Community Dev. Director - 713-4392
Doug Damko, Senior Civil Engineer - 713-4268

Introduction: Council directed staff to develop options and recommendations regarding the upcoming implementation of the FEMA Flood Insurance Rate Maps (FIRMs). Staff has met with County Officials and County Engineers, and had numerous conversations with FEMA representatives and engineers. Staff has also had discussions with local engineers, surveyors, developers, residents, and others as part of an ongoing process aimed at providing the most effective and appropriate recommendations to Council regarding the upcoming implementation of the FEMA FIRMs.

Department Recommendations and Options:

- 1) Authorize the City Engineer to determine areas of the City that existing survey data and as-built information could be used to identify, and possibly remove, areas from a designated Special Flood Hazard Areas (SFHA) by the submittal of Letters of Map Revision (LOMRs) and to partner with local engineers and developers who have, or are currently preparing, LOMRs applications. In other words, identify areas within the community that could be shown to be above the Base Flood Elevations (BFEs). The BFE is the elevation shown on the Flood Insurance Rate Map that indicates the water surface elevation resulting from a flood that has a one percent chance of equaling or exceeding that level in any given year.
- 2) For those areas within the City where sufficient survey data and as-built information does not exist, authorize the City Engineer to solicit proposals from engineering firms to provide the appropriate data (at competitive costs) to citizens seeking to determine whether or not their properties are above the BFE. It is hoped that providing this work "in volume" would reduce the costs to our residents.

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.): _____

Review:

Dept. Head _____
(Initials & date required)

Finance _____
City Atty _____
(Initials & date required or N/A)

City Mgr _____
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

- 3) Direct the City Engineer to prepare a scope of work and solicit proposals from qualified engineering firms to evaluate the various FEMA breach scenarios and identify all potential cost effective options to prevent or reduce the impact of potential flooding thereby possibly removing additional parcels within the City of Visalia from the SFHA. The consultant would be directed to look “outside the box” and consider all flood control options that can “improve” local floodplain conditions.
- 4) Work with Tulare County officials toward potentially sharing of staff resources and costs to accomplish item #2.
- 5) Work with the County to explore the possibility of “activating” the existing levee districts (Exhibit “D” – Levee District Map – Green Tab) by making appointments to their board of directors or by creating a new or different type of flood protection agency that can effectively govern the management of the levees and other flood control structures.
- 6) Establish a local working group of engineers, and other interested residents that have related knowledge or expertise in this field of study to act as an informal steering committee regarding floodplain related issues. The group should include a representative from the Kaweah Delta Water Conservation District.
- 7) Direct staff to write a letter, on behalf of the Mayor and City Council, to Senators Boxer and Feinstein, and Congressman Nunes asking them to sponsor legislation establishing a mechanism to “return” a portion of the flood insurance premiums to fund local flood control projects.

At the end of March, the City of Visalia and Tulare County hosted three public meetings to inform property owners how the high-risk flood zones on the new FEMA flood maps may or may not require them to purchase flood insurance. At these informational meetings, City and County engineers and FEMA representatives discussed the changes in the flood zones that would determine if property owners would either have to purchase or no longer needed flood insurance policies. FEMA’s insurance representative also discussed their "grandfathering rule" that potentially greatly reduces flood insurance premiums for property owners who purchase flood insurance before the new FEMA flood maps take effect on June 16. The rule provides an opportunity to avoid the A zone policy and obtain a perpetual X zone policy with a special low rate preferred risk policy for the first year. As a result of these presentations, a number of questions and concerns have been raised regarding the FEMA Map Modernization Program and Process.

Some residents have requested that the City contact FEMA to request a delay in the implementation of the FIRMs. In a letter dated April 14, 2009, Congressman Devin Nunes wrote to FEMA requesting clarification regarding several issues raised by his constituents. A copy of the letter along with FEMA’s response is attached (see Exhibit “A” – Yellow Tab). FEMA’s Acting Administrator, Nancy Ward, responded in part, “While FEMA cannot extend or reopen the appeals period, we will review all requests for floodplain changes at any time after the new DFIRM becomes effective based on submittals of new scientific or technical data. After the review, FEMA can revise the DFIRM, as appropriate.” The Acting Administrator’s statement is consistent with FEMA’s guide regarding the appeals process.

Potential for Legal Challenge to, or Stay of, Implementation of FIRMS

Regarding the potential for a legal challenge to, or stay of, implementation of the FIRMs, the City Attorney’s Office has found that Federal law and regulation proscribe the administrative and judicial steps that are available for affected property owners to challenge FEMA determinations regarding the flood elevation data used to create the Flood Insurance Rate Maps.

In short, federal law and regulations provide a 90-day administrative appeal period, followed by a 60-day period in which it is possible to seek judicial review of FEMA's determination of the appeal by filing a law suit in federal court. No court action can be filed in the 60-day period unless an administrative appeal was first filed in the 90-day period. A city or county can join an administrative appeal filed by a private property owner within its jurisdiction, and can also seek judicial review following the outcome of that administrative appeal, but without a private property appeal, a city or county does not appear to have independent standing to file an appeal or a court action on its own initiative.. FEMA's document entitled "Appeals and Protests to Flood Insurance Rate Maps" is attached (see Exhibit "B" – Blue Tab).

The administrative appeal period was provided in the case of the Visalia FIRMs in March of 2008, and no appeal was filed by any private property owner. Various protests, related to the specific elevations of specific parcels or developments, were received by the City, and then forwarded to, and acted on by FEMA. Because no appeal of the overall flood elevation data was filed within either the 90 or 60 day periods, a court action challenging that data at this time is not an option.

Summary of FEMA Flood Insurance Study

The consultant hired by FEMA to conduct the study was Northwest Hydraulic Consultants (NHC – see attached study) located in Sacramento, CA. The consultant utilized a combination of LIDAR, orthophotography and ground surveys to develop base field data. They referenced and analyzed the most recent hydraulic and hydrological information developed by the U.S. Army Corps of Engineers. The consultant developed complex hydraulic models to aid in the evaluation of potential and historic storm events. The modeling methodology developed and followed seems to provide results utilizing a series of "worst case scenarios" of cumulative "perfect storm" events. The consultant's report states that the hydraulic modeling did include consideration of the raising of the Terminus Dam by 23 feet. The dam was not raised to the "100-year" storm level (it was raised to approximately the 75-year storm level). FEMA defines the 100-year storm as that storm event that has a one percent chance of occurrence in any given year. It should be noted that there are no flood control structures on either Dry Creek or Yokohl Creek.

According to NHC's report, the most significant sources of local flooding are flood flows from unregulated tributaries downstream of the Terminus Dam, such as Dry Creek and Yokohl Creek. The study also states that potential widespread shallow flooding also results from land leveling, potential breaches in the St. John's Levees, railroad and road berms, and drainage ditches. The consultant evaluated five different flood modeling scenarios. The scenarios are listed below:

- 1) No breach of the levee
- 2) Southern Pacific Railroad berm breach
- 3) Saint John's River upper reach breach
- 4) Saint John's River mid reach breach
- 5) Saint John's River lower reach breach

The modeled breach of the Southern Pacific Railroad berm (east of the City) resulted in significant flooding due to the overland flow of water. The flooding effects from a simulated breach in the lower reach of the Saint John's River (to the west) were far less severe than those resulting from an upper reach or mid reach breach. A focus of any further hydraulic analysis and modeling should consider the impacts of localized improvements to the Southern Pacific Railroad berm and the upper and mid reaches of the Saint John's River levees. A copy of

NHC's report entitled "FEMA Flood Insurance Study, Visalia California - Hydraulic Analyses" is attached (see Exhibit "C" – Pink Tab).

Summary: FEMA's funding of their Map Modernization Program to accomplish a nationwide FIRM update began in 2003. This process involved the updating and upgrading of all FIRMs to the Digital Flood Insurance Rate Maps (DFIRMs). It should be noted that FEMA applies the same processes, practices and procedures regarding Flood Insurance Studies and map implementation on a nationwide basis. The DFIRMs provide digital mapping upgrades for all of the original paper maps. The City of Visalia's request for an update in December, 2003 coincided with FEMA's funding of their Map Modernization Program. The request and partial funding of the area study expedited the FIRM update by approximately one year. It is important to note that this study and remapping of the FIRMs would have taken place regardless and independent of any earlier requests made by the City of Visalia.

Currently, the existing FEMA flood maps recognize the St. John's River levees as flood control structures that contain the 100-year flood within the river channel. Under their new policy (dated August, 2005), FEMA will no longer recognize the levees because they are "uncertified" (not built to the standards of the U.S. Army Corps of Engineers) and not maintained. City staff has met with County Officials and engineers to discuss St. John's Levees. Estimates for the removal and reconstruction of the entire levee vary widely, but the cost would certainly be many millions of dollars. Approximately 3.5 miles (out of a total of 26 miles) are located within the City Limits of Visalia. The two existing levee districts are now virtually "defunct" with no board members serving on either district board.

The following is a breakdown of how the approximately 41,700 parcels within the City of Visalia will be impacted upon the implementation of the FIRMs:

- Approximately 8,900 parcels formerly out of the Special Flood Hazard Area (SFHAs) will be moving into the SFHA
- Approximately 7,900 parcels formerly in a SFHA will be moving out of the SFHA
- Approximately 3,700 parcels in a SFHA will remain in a SFHA
- Approximately 21,200 parcel will that were out of the SFHA will remain out of the SFHA
- After effective date of the new maps, approximately 29,100 out of 41,700 parcels (70%) in the City of Visalia will be out of the SFHA

It is clear that the impact of FEMA's Map Modernization Program is significant. Although the timeframes for the appeal and protests have passed, City staff believes that substantial areas within the City can still be removed from the Special Floodplain Hazard Areas following FEMA's Letter of Map Revision process. The LOMR process can be initiated at any time once the maps become effective. The City will continue to work with engineers, professional land surveyors, developers and residents to ensure that FEMA has the most accurate and up-to-date information with which to make their map amendment decisions.

Background

Initial Study Phase

On December 15, 2003 Council authorized the Mayor to send a letter to FEMA requesting that the City's flood maps be updated. This letter was sent in response to numerous citizen inquires on why they had to pay flood insurance when the flood zones in Visalia should be improved because of the Lake Kaweah enlargement project and the Highway 198 project that extended the underground design of the highway west of Woodland Street to Akers Street. FEMA

responded to this request by indicating that a restudy of the flood maps for the City would require that the City make enter into a Cooperating Technical Partners Memorandum of Agreement. This agreement requires both parties to commit appropriate human, technical and available financial resources. Initially, FEMA indicated that a \$60,000 contribution by the City would suffice. Subsequently, FEMA requested that the contribution be increased to \$100,000 to reflect a 20% share of the estimated restudy cost of \$500,000. On April 19, 2004 Council authorized \$100,000 to be submitted to FEMA for the update of the City's flood maps and authorized the City Manager to sign FEMA's Cooperating Technical Partners Memorandum of Agreement.

FEMA conducted a meeting on September 28, 2004 at City Hall East to kick-off the update. FEMA announced that Northwest Hydraulic Consultants was their consultant selected to perform the technical hydraulic analysis report. FEMA explained that the basis for the hydraulic analysis would be a digital terrain model developed from a topographic study that was to be performed using a combination of LiDAR, orthophotography and ground surveys. The area covered by the topographic study covered a 180-square mile area extending from Terminus Dam to Highway 99. FEMA stated at this meeting that the study would also include an evaluation of the St. John's River levee in regards to certification and its inclusion in the hydraulic analysis. Northwest Hydraulic Consultants completed the final report dated August 30, 2006 and titled, "FEMA Flood Insurance Study, Visalia, California, Hydraulic Analyses". This report was submitted to FEMA and went through a process of multiple reviews by FEMA and other FEMA consultants.

FEMA submitted the Revised Preliminary Flood Insurance Study and Flood Insurance Rate Maps dated December 28, 2007 to the City. In paper form, there are 15 Flood Insurance Rate Maps. FEMA initiated the 90-day public appeal period on March 21, 2008 when they published a notice of proposed Base (1% annual chance) Flood Elevations (BFEs) for the community of Visalia in the Visalia Times Delta. In late March of 2008, the City issued a press release to all media outlets in the Visalia area stating that the preliminary FEMA flood maps were available for review and comment by the public. Several newspaper articles were written in the local newspapers regarding the flood maps. During the 90-day public appeal period, these maps were made available to the public along with a city wide GIS produced flood zone map using the digital GIS layer data provided by FEMA.

FEMA Map Modernization Program

The Map Modernization Program is a 5-year, \$1 billion program that was supported by the President and Congress with a priority of creating a digital flood layer for the entire nation. This vision was formalized in 1997 and subsequently updated and refined in 1999 and 2001. The Map Modernization Program intended to achieve this goal by leveraging program resources through partnerships with other Federal agencies and State and local governments involved in the National Flood Insurance Program (NFIP). In 2003, funding for the Map Modernization Program was initially appropriated and since then FEMA has been implementing the program consistent with that described in the 2001 progress report.

The goals of the Map Modernization Program in 2001 as stated in, "Modernizing FEMA's Flood Hazard Mapping Program: A Progress Report", were to convert approximately 80 percent of existing paper map panels to digital format with a high-quality base map, update 20 percent of the existing panels with new flood risk information while converting them to digital format, and add 13,700 completely new panels (also in digital format) to cover previously unmapped communities. This digital conversion of paper map panels is referred to as a DFIRM conversion.

As the Map Modernization Program reached the halfway point, FEMA performed a mid-program evaluation that considered input from Congress, the U.S. Government Accountability Office (GAO), the Department of Homeland Security's Inspector General (IG), and other stakeholders. As a result of this evaluation, FEMA implemented changes that resulted in a preference to focus on developing flood maps that meet new higher standards for mapping and for a greater allocation of resources to those communities at greatest flood risk. This mid-program change resulted in a delay in lower-risk communities' receiving a new map. This change also provided for more resources for engineering analysis.

This mid-program evaluation of the Map Modernization Program resulted in the City receiving a letter dated April 17, 2006 from the FEMA Region IX office located in Oakland, California. This letter informed the City that FEMA Headquarters had issued "Memo 34, Interim Guidance for Studies Including Levees". This memo mandated that levee evaluations be included in communities undergoing map changes including communities that were undergoing the conversion of their existing paper map panels to digital format. The final outcome of this memo is that Tulare County would have its levees evaluated and restudied using more rigorous, detailed engineering study methods beginning in FY 2007.

Impacts on Properties in Visalia

When the final flood maps become effective on June 16, 2009, approximately 8,900 properties will move fully or partially into a high-risk A zone. All of these properties with mortgages for the structures on the property will be required to carry flood insurance. For properties moving partially in, they may be able to avoid flood insurance but they will need to show evidence of where the structures on the property are located in relation to the high-risk A zone boundary line passing through the property. FEMA is offering a "grandfathering rule" for these properties that allows a flood insurance policy to be purchased based on the current flood zone, which is the X zone. A standard X zone policy covering only the structure is \$850 a year. FEMA is offering a 1-year introductory policy referred to as a Preferred Risk Policy (PRP) that is \$350 for the first year and then converts to the standard X zone policy for the following years. A "grandfathered" insurance policy can remain in place perpetually as long as the policy is continually renewed with no lapse in coverage. The policy can also be transferred to new property owners.

- Approximately 8,900 parcels formerly out of the Special Flood Hazard Area (SFHAs) will be moving in
- Approximately 7,900 parcels formerly in a SFHA will be moving out of a SFHA
- Approximately 3,700 parcels in a SFHA will remain in a SFHA
- Approximately 21,200 parcels that were not in a SFHA and will remain out of a SFHA

Prior Council/Board Actions:

- December 15, 2003: Authorized the Mayor to send a letter to FEMA requesting that the City's flood maps be updated.
- April 19, 2004: Authorized \$100,000 to be submitted to FEMA for the update of the City's flood maps and authorized the City Manager to sign a Cooperating Technical Partners Memorandum of Agreement with FEMA.

Committee/Commission Review and Actions: N/A

Attachments: Exhibit "A" –Yellow Tab - Congressman Nunes' letter to FEMA

Exhibit "B" – Blue Tab - FEMA's response to Congressman Nunes with attachment

Exhibit “C” – Pink Tab - FEMA’s document “Appeals and Protests”
Exhibit “D” Green Tab - Levee District Map
Floodplain maps (folded and attached) – Purple Tab
NHC study “FEMA Flood Insurance Study – Visalia” (attached) – Orange Tab

Recommended Motion (and Alternative Motions if expected):

The motion is to have City Council receive this report and give staff direction.

Environmental Assessment Status

CEQA Review: N/A

NEPA Review: N/A