

**ORDINANCE NO. 2342**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS  
APPROVING A DEVELOPMENT AGREEMENT REGARDING THE  
CHILES RANCH SUBDIVISION PROJECT**

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* (the "Development Agreement Statute") which authorizes cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property; and

WHEREAS, in accordance with the Development Agreement Statute, the City of Davis (the "City") has enacted regulations (the "Development Agreement Regulations") to implement procedures for the processing and approval of development agreements in accordance with the Development Agreement Statute; and

WHEREAS, on July 16, 2009, the City certified the Mitigated Negative Declaration #1-08 for the Chiles Ranch Subdivision; and

WHEREAS, the developer of the site desires to carry out the development of the Property consistent with the General Plan, as amended and the Development Agreement; and

WHEREAS, the Development Agreement will assure both the City and the Developer of the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction of the Project and promote the achievement of the private and public objectives of the Project; and

WHEREAS, pursuant to Section 65867 of the Government Code, the Planning Commission held a duly notices public hearing on May 27, 2009 on Planning Application #55-07, and the Development Agreement, during which public hearing the Planning Commission received comments from the Developer, City staff, and members of the general public; and

WHEREAS, the City Council held a duly noticed public hearing on June 16, 2009, on Planning Application #55-07, and the Development Agreement, during which the public hearing the City Council received comments from the Developer, City staff, and members of the general public.

THE CITY COUNCIL OF THE CITY OF CITY OF DAVIS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. This Ordinance incorporates, and by this reference makes a part hereof, the Development Agreement attached hereto as Exhibit A, subject to the provisions of Section 5 hereof.

SECTION 2. This Ordinance is adopted under the authority of Government Code Section 65864 et seq., and pursuant to “Development Agreement Regulations”.

SECTION 3. In accordance with the Development Agreement Regulations, the City Council hereby finds and determines, as follows:

- (a) The Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, in that it establishes certain development rights, obligations and conditions for the implementation of the Chiles Ranch Subdivision;
- (b) The Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the general plan designations which will apply to the Property;
- (c) The Development Agreement is in conformity with public convenience, general welfare and good land use practice;
- (d) The Development Agreement will not be detrimental to the public health, safety and general welfare;
- (e) The Development Agreement will not adversely affect the orderly development of property or the preservation of property values; and
- (f) The Development Agreement is consistent with the provisions of Government Code Sections 65864 through 65869.5.

SECTION 4. The foregoing findings and determinations are based upon the following:

- (a) The Recitals set forth in this Ordinance, which are deemed true and correct;
- (b) The City's General Plan as amended;
- (c) All City staff reports (and all other public reports and documents) prepared for the Planning Commission, City Council, or others relating to Mitigated Negative Declaration #1-08, Planning Application #55-07, including General Plan Amendment #5-07, the Development Agreement and other actions relating to the Property;
- (d) All documentary and oral evidence received at public hearings or submitted to the Planning Commission, or City during the comment period relating to the Mitigated Negative Declaration, the Development Agreement, the General Plan Amendment, and other actions relating to the Property; and
- (e) All other matters of common knowledge to the Planning Commission and City Council, including, but not limited to the City's fiscal and financial status; City policies and regulations; reports, projections and correspondence related to

development within and surrounding the City; State laws and regulations and publications.

SECTION 5. The City Council hereby approves the Development Agreement, attached hereto as Exhibit A, subject to the provisions of Section 6 hereof, and subject further to such minor, conforming and clarifying changes consistent with the terms thereof as may be approved by the City Manager, in consultation with the city Attorney prior to execution thereof, including completion of references and status of planning approvals, and completion and conformity of all exhibits thereto, and conformity to the General Plan, as amended, as approved by the City Council and the voters.

SECTION 6. Upon the effective date of this Ordinance as provided in Section 10 hereof, the Mayor and City Clerk are hereby authorized and directed to execute the Development Agreement on behalf of the City of Davis

SECTION 7. The City Manager is hereby authorized and directed to perform all acts authorized to be performed by the City Manager in the administration of the Development Agreement pursuant to the terms of the Development Agreement.

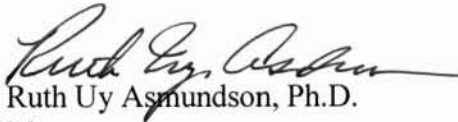
SECTION 8. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 9. This Ordinance shall be in full force and effect thirty (30) days after its passage and adoption; provided, however, that if all of the actions referred to in Section 6 hereof are not effective on such date, then the effective date of this Ordinance shall be the date on which all of said actions become effective, as certified by the City Clerk.

INTRODUCED on the 30th day of June, 2009 and PASSED AND ADOPTED by the City Council of the City of Davis this 7th day of July, 2009 by the following vote:

AYES: Saylor, Souza, Asmundson

NOES: Greenwald, Heystek

  
Ruth Uy Asmundson, Ph.D.  
Mayor

ATTEST:



Zoe S. Mirabile, CMC  
City Clerk

**AGREEMENT  
BY AND BETWEEN  
THE CITY OF DAVIS AND  
NEW URBAN DEVELOPMENT, LLC  
Relating to the Development  
of the Property Commonly Known as Chiles Ranch**

THIS AGREEMENT is entered into this \_\_\_\_\_, 2009, by and between the CITY OF DAVIS, a municipal corporation (herein the "City"), and NEW URBAN DEVELOPMENT, LLC (herein the "Developer"), pursuant to the authority of Sections 65913.4 and 65864 et seq. of the Government Code of the State of California.

RECITALS

To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864 et seq. of the Government Code which authorizes any city, county or city and county to enter into a development agreement with an applicant for a development project, establishing certain development rights in the property which is the subject of the development project application.

The Developer owns in fee or has a legal or equitable interest in certain real property (ies) described in Exhibit A attached hereto and incorporated herein by this reference and located in the City of Davis (herein the "Property"). The Developer desires to amend the General Plan Use Land Designation of the Property from "Residential Low-Density" to "Residential Medium-Density" to develop consistent with the General Plan of the City (herein the "General Plan"), including but not limited to the Project Approvals for the Property, as described in this Agreement. The Developer also desires to rezone the Property from a mix of Agriculture (A) and Residential One and Two Family (R-2) zoning to a residential Planned Development (PD) to permit the development of a residential subdivision on the Property. Development of the Property will include construction of new affordable housing and market rate housing.

To offset the impacts of the requested amendments and rezoning the Developer has agreed to pay certain additional fees with respect to development of the Property, in addition to the impacts fees and charges applicable to development within the city, and to pay all other amounts in effect at the time of payment thereof except as set forth herein, and to develop the

subject Property in accordance with the City's ordinances, rules, regulations and polices in effect as of the approval of the development by the City of the subject Property.

This Agreement is voluntarily entered into by the Developer in order to implement the General Plan and in consideration of the rights conferred and the procedures specified herein for the development of the Property. This Agreement is voluntarily entered into by the City in the exercise of its legislative discretion in order to implement the General Plan and in consideration of the agreements and undertakings of the Developer hereunder.

Land use entitlements have been approved by the City for the Property. The Land Use entitlements are set forth on Exhibit C, attached hereto and incorporated herein (hereinafter the "Project Approvals"). The Land Use entitlements contain project conditions and mitigations that assure compliance with the General Plan and zoning regulations and cannot be changed without further entitlement processes.

Developer seeks to comply with the project conditions of approval and develop the Property in accordance with the General Plan and the Project Approvals for the Property. Development of the Property pursuant to the Project approvals is hereinafter called the "Project."

This Agreement will eliminate uncertainty in planning for and securing orderly development of the Project, provide the certainty necessary for Developer to make significant investments in public infrastructure and other improvements, assure compliance with the conditions of approval, assure the timely and progressive installation of necessary improvements, provide public services appropriate to each stage of development, establish phasing for the orderly and measured build-out of the Project consistent with the desires of the City to maintain the City's small city atmosphere and to have development occur at a pace that will assure integration of the new development into the existing community, provide for affordable housing and provide significant public benefits to the City that the City would not be entitled to receive without this Agreement.

In exchange for the benefits to the City, Developer desires to receive the assurance that it may proceed with the Project in accordance with the existing land use ordinances, subject to the terms and conditions contained in this Agreement and to secure the benefits afforded the Developer by Government Code section 65865.3.

AGREEMENTS

IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES OF THE PARTIES, THE CITY AND THE DEVELOPER HEREBY AGREE AS FOLLOWS:

Article I: General Provisions.

[Sec. 100] Property Description and Binding Covenants. The Property is located north of E. Eighth Street, south of Regis Drive, east of the Davis Cemetery, and west of Mesquite Drive and is more particularly described in Exhibit A, which consists of a map showing its location and boundaries and a legal description. The Developer represents that it has a legal or equitable interest in the Property and that all other persons holding legal or equitable interests in the Property (excepting owners or claimants in easements) agree to be bound by this Agreement. It is intended and determined that the provisions of this Agreement shall constitute covenants which shall run with said Property, and the burdens and benefits hereof shall bind and inure to all successors in interest to the parties hereto.

[Sec. 101] Project Description.

A. The Project is a 108 unit residential subdivision. Of the 108 units, 76 will be detached dwellings, 10 will be attached dwellings; and 22 will be condominium units.

There is an affordable housing plan that applies to the Project which requires 22 low/moderate income units. The low/moderate income units will consist of the 22 condominium units. As set forth in the affordable housing plan, the affordable units will be a mixture of two-bedroom units; three-bedroom units, and 1 one-bedroom units. The remaining 86 units are market rate units.

[Sec. 102] Term and Effective Date.

A. This Agreement shall commence, and its effective date shall be, thirty days after approval by the City Council. The term of Agreement shall extend for a period of 10 years from the effective date, unless said term is terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the parties hereto, subject to the provisions of Section 104 hereof.

B. Following the expiration of said term, this Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions of Section 408 hereof.

C. The City shall cause any such written notice of termination to be recorded with the County Recorder within ten (10) days of receipt of such notice.

D. This Agreement shall be deemed terminated and of no further effect upon entry after all appeals have been exhausted of a final judgment or issuance of a final order directing the City to set aside, withdraw or abrogate the city council's approval of this Agreement or the tentative subdivision map;

[Sec. 103] Equitable Servitudes and Covenants Running With the Land; Release upon sale to Homebuyer.

A. Any successors in interest to the City and the Developer shall be subject to the provisions set forth in Government Code sections 65865.4 and 65868.5. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do, or refrain from doing, some act with regard to the development of the Property: (a) is for the benefit of and is a burden upon the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each Party and each successor in interest during ownership of The Property or any portion thereof. Nothing herein shall waive or limit the provisions of Section 104, and no successor owner of the Property, any portion of it, or any interest in it shall have any rights except those assigned to the successor by the Developer in writing pursuant to Section 104. In any event, no owner or tenant of an individual completed residential unit within Project shall have any rights under this Agreement.

B. Release of Obligation Upon Completion of the First Re-sale of a Residential Unit. Without any further action by any party or need to record any additional document, with respect to sale of an individual single family residential lot within the Property, upon completion of first sale for a single family dwelling unit upon such residential lot and conveyance of such improved residential lot by the Developer to a bona-fide good-faith purchaser, in accordance with the terms of this Agreement, the bona fide good faith purchaser shall have no further obligation with respect to this Agreement. Nothing in this section shall release the Developer from any and all of its obligations under this Agreement.

[Sec. 104] Right to Assign; Non-Severable Obligations.

A. Upon the express written assignment by the Developer and assumption by the assignee of such assignment, City's approval of such assignment pursuant to this Section, and the conveyance of the Developer's interest in the Property related thereto, the Developer shall be released from any further liability or obligation under this Agreement related to the portion of the

Property so conveyed and the assignee shall be deemed to be the "Developer" with all rights and obligations related thereto, with respect to such conveyed property.

B. The Developer shall have the right to sell, encumber, convey, assign or otherwise transfer (collectively "assign"), in whole or in part, its rights, interests and obligations under this Agreement to a third Party during the term of this Agreement.

C. No assignment shall be effective until the City, by action of the City Council, approves the assignment. Approval shall not be unreasonably withheld provided:

1) The assignee (or the guarantor(s) of the assignee's performance) has the financial ability to meet the obligations proposed to be assigned and to undertake and complete the obligations of this Agreement affected by the assignment; and

2) The proposed assignee has adequate experience with residential developments of comparable scope and complexity to the portion of the Chiles Ranch Subdivision that is the subject of the assignment.

D. Any request for City approval of an assignment shall be in writing and accompanied by certified financial statements of the proposed assignee and any additional information concerning the identity, financial condition and experience of the assignee as the City may reasonably request; provided that, any such request for additional information shall be made, if at all, not more than fifteen (15) business days after the City's receipt of the request for approval of the proposed assignment. All detailed financial information submitted to the City shall constitute confidential trade secret information if the information is maintained as a trade secret by the assignee and if such information is not available through other sources. The assignee shall mark any material claimed as trade secret at the time it is submitted to the City. If the City wishes to disapprove any proposed assignment, the City shall set forth in writing and in reasonable detail the grounds for such disapproval. If the City fails to disapprove any proposed assignment within forty-five (45) days after receipt of written request for such approval, such approval shall be deemed to be approved.

E. The City, upon receipt of a written request therefore from a foreclosing Mortgagee, shall permit the Mortgagee to succeed to the rights and obligations of the Developer under this Agreement, provided that all defaults by the Developer under this Agreement that are reasonably susceptible of being cured are cured by the Mortgagee as soon as is reasonably possible. The foreclosing Mortgagee shall comply with all of the provisions of this Agreement. If the City receives notice from a Mortgagee requesting a copy of any notice of default given to



the Developer and specifying the address for such notice, the City shall endeavor to deliver to the Mortgagee, concurrently with service thereof to the Developer, all notices given to the Developer describing all claims by the City that the Developer has defaulted hereunder. If the City determines the Developer is not in compliance with this Agreement, the City also shall endeavor to serve notice of noncompliance on the Mortgagee concurrently with service on the developer. Each Mortgagee shall have the right during the same period available to the Developer to cure or remedy, or to commence to cure or remedy, the condition of default claimed, or the areas of noncompliance set forth in the City's notice.

F. The Specific Development Obligations set forth in Article II, Sec. 201, are not severable, and any sale of the Property, in whole or in part, or assignment of this Agreement, in whole or in part, which attempts to sever such conditions shall constitute a default under this Agreement and shall entitle the City to terminate this Agreement in its entirety.

G. Notwithstanding subsection C above, mortgages, deeds of trust, sales and leases-back or any other form of conveyance required for any reasonable method of financing are permitted, but only for the purpose of securing loans of funds to be used for financing the acquisition of the Property, the development and construction of improvements on the Property and other necessary and related expenses. The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof, shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

H. Nothing in this Section shall be deemed to constitute or require City consent to the approval of any subdivision or parcelization of the Property, in addition to the Subdivision Tentative Map identified in Exhibit B. The parties understand and recognize that any such actions must comply with applicable City laws and regulations and be consistent with the General Plan, and this Agreement.

[Sec. 105] Notices. Formal written notices, demands, correspondence and communications between the City and the Developer shall be sufficiently given if dispatched by certified mail, postage prepaid, to the principal offices of the City and the Developer, as set forth in Article 8 hereof. Such written notices, demands, correspondence and communications may be directed in

the same manner to such other persons and addresses as either party may from time to time designate. The Developer shall give written notice to the City, at least thirty (30) days prior to the close of escrow, of any sale or transfer of any portion of the Property and any assignment of this Agreement, specifying the name or names of the transferee, the transferee's mailing address, the amount and location of the land sold or transferred, and the name and address of a single person or entity to whom any notice relating to this Agreement shall be given, and any other information reasonable necessary for the City to consider approval of an assignment or any other action City is required to take under this Agreement.

[Sec. 106]     Amendment of Agreement. This Agreement may be amended from time to time by mutual consent of the parties, in accordance with the provisions of Government Code Sections 65867 and 65868.

[Sec. 107]     Operating Memoranda. The parties acknowledge that refinement and further implementation of the Project may demonstrate that certain minor changes may be appropriate with respect to the details and performance of the parties under this Agreement. The parties desire to retain a certain degree of flexibility with respect to the details of the Project and with respect to those items covered in the general terms of this Agreement. If and when the parties find that clarifications, minor changes, or minor adjustments are necessary or appropriate, they shall effectuate such clarifications, minor changes or minor adjustments through operating memoranda approved in writing by the parties. "Minor" as used above shall not include any changes to the Development that is not substantially in conformance with the project approvals for the project and do not include any change to the number or type of units and/or price and resale restrictions for the affordable housing set forth herein. Unless required by law, no such operating memorandum shall require prior notice or hearing, nor shall it constitute an amendment to this Agreement.

[Sec. 108]     Estoppel Certificate.

A.       Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (i) this Agreement is in full force and effect and a binding obligation of the parties, (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe the nature of such default. The party receiving a request hereunder shall execute and return such certificate within thirty (30)

days following receipt. The City acknowledges that the certificate may be relied upon by transferees and mortgagees of the Developer.

Article II: Development of the Property.

[Sec. 200] Permitted Uses and Development Standards. In accordance with and subject to the terms and conditions of this Agreement, the Developer shall have a vested right to develop the Property for the uses and in accordance with and subject to the terms and conditions of this Agreement, and the Project Approvals, including the conditions of approval and the mitigation measures for the Project attached hereto as Exhibit C and incorporated herein by reference, ( the "Project Approvals") the Development Standards in effect that the time this Agreement was approved, (i.e. the General Plan, any applicable Specific Plan, etc.), and any amendments to the Project Approvals or Agreement as may, from time to time, be approved pursuant to this Agreement. Developer understands that, no changes or amendments can be made that are inconsistent with the conditions of approval without the approval of such changes or amendments by the City Council.

Developer hereby agrees to develop the Project in accordance with the Project approvals, including the conditions of approval and the mitigation measures for the Project, and the Development Standards and any amendments to the Project Approvals or Agreement as may, from time to time, be approved pursuant to this Agreement. Without limiting the foregoing, Developer understands and agrees that substantial construction must be commenced within eighteen months of approval of this Agreement, unless an extension is granted by the City, as set forth below in Section 202.

[Sec. 201] Specific Development Obligations. In addition to the conditions of approval contained in the Project Approvals, the Developer and the City have agreed that the Development of the Property by the Developer is subject to certain "Specific Development Obligations," described herein. These Specific Development Obligations, together with the other terms and conditions of this Agreement, provide the incentive and consideration for the City entering into this Agreement.

A. Supplemental Residential Fee. In addition to all other fees to be paid by the residential development of the Chiles Ranch Subdivision, the Developer shall pay to the City the sum of \$3,000 at or before the issuance of a Certificate of Occupancy for each and every market-rate residential unit with the Chiles Ranch Subdivision. For purposes hereof, a market-rate residential unit shall mean and refer to a housing unit with the Chiles Ranch Subdivision that is

not required by the City to be sold at a City-designated price that is affordable to moderate or low income household, as such affordability is defined in the City of Davis Municipal Code, Section 18.06.020.

1) Up to 15% of the \$3,000 per unit may be used to offset, in whole or in part, the cost of the additional tree mitigation program, required as condition 54 of the Conditions of Approval. Given the timing of the tree mitigation relative to the timing of certificates of occupancy the 15% may be a credit against costs already incurred or a payment to the City, as determined by the city. If the offset is by way of a credit against the fees, the Developer shall provide cost verification to the City's Arborist for his approval in order for the costs to be eligible for offset.

B. Greenhouse Gas Emissions Reduction Requirement. The project shall meet the greenhouse gas emission reduction standards adopted by the City Council by Resolution #06,166, Series 2008, and Resolution #09-043, Series 2009. The 108 unit project shall mitigate 259.2 MT of CO<sub>2</sub>, consistent with the "Chiles Ranch Mitigation Scenario" set forth on Exhibit D, attached hereto, as follows:

- 1) 2% Credit for Medium Density
- 2) 5% Credit for transit route within one-quarter (1/4) mile radius of the Property
- 3) The Project shall provide, in the aggregate, 35% above current (2005) Title 24 standards calculated as a total for all buildings within the Project.
- 4) In addition, the Developer shall install 37kW of household(rooftop) photovoltaics within the Project (approximately 18, 2.05 kW photovoltaic systems, the exact size and number of such photovoltaic systems to be determined prior to issuance of building permits and approved by the Building Official)
- 5) In addition, each unit within the Project shall be designed with and the Developer shall install the components necessary to facilitate the future installation of Photovoltaic systems, to the satisfaction and approval of the Building Official

C. Tree Appraisal and Mitigation Fees. The Property was surveyed in July 2007 by a certified arborist. The Tree Summary Report included and identified 265 trees on the site. The report identified trees to remain and trees to be removed. Subsequently, in March 2008, a "Tree

Appraisal Summary" was provided indicating species, condition and appraisal value of the 265 trees. Consistent with City of Davis Municipal Code, Chapter 37.03.070, Tree Planting, Preservation and Protection, the loss of trees on the Property shall be mitigated through the planting of trees on site and/or off site. An inch for inch credit is given for each tree planted towards the total inches of trees removed. If in the City Urban Forest Manger determines that no feasible alternative exists to fully mitigate the impact, or there are other considerations for alternative mitigation, the applicant shall pay into the Tree Preservation Fund an amount determined by the Director Based on the appraisal value of the trees to be removed. In total 221 trees would be removed and approximately 217 new trees would be planted. Based upon the Tree Survey Report, the appraisal value of the trees to be removed is \$175,150.

The city recognizes that the Property is unique. The site was formerly a farm and orchard. The ordinance is intended to mitigate the loss of heritage trees and trees of significance for very large projects, and for smaller project which typically contain only a small number of trees. The Property contains significantly more trees than any other similarly sized parcel in the city, some marginal and near the end of their life span; others deformed and providing little canopy. The new trees to be planted would be geared toward species suitable for the climate to ensure longevity. The number of trees to be planted would over time provide canopy to mitigate loss of canopy of the trees slated for removal. Accordingly, the otherwise required fee has been modified as shown below.

- 1) The Developer shall provide tree mitigation in the amount of \$50,000, as follows:
  - (a) The value of the new trees to be planted in the Chiles Ranch Subdivision, as shown in the Landscape Plan, per the Conditions of Approval, shall be credited towards amount set forth in section C(1) in the amount of \$28,210.
  - (b) The remaining \$21,790 shall be paid by the Developer to the city and deposited into the city's Tree Planting, Protection and Preservation Fund Developer prior to issuance of any Demolition Permit.
  - (c) The Developer shall also make a contribution to Tree Davis in the amount of \$3,500 prior to issuance of Demolition Permit.

D. Architectural Diversity. Small Builder lots shall not be required in the Chiles Ranch Subdivision City of Davis Municipal Code, Section 18.01.060(b). The intent of this requirement is to encourage the development of architecturally diverse neighborhoods, with a mix of housing types, densities, prices and rents and designs in each new development area. The General Plan also includes goals, policies and actions (Urban Design) that promote design standards for new single family residential development that create variability of lot sizes, floor area ratios, setbacks, building height floor plans, and architectural styles/treatments within each new development area. The Chiles Ranch Subdivision would be consistent with these General Plan goals and polices. The development will include a mix of lot sizes, a variety of setbacks, and alternating heights throughout the subdivision. The Chiles Ranch Subdivision will provide a diverse, yet cohesive neighborhood with complementary housing types, sizes, and elevations. The developer shall provide all of the following in the Chiles Ranch Subdivision.

- 1) Detached single family dwellings
- 2) Attached single family dwellings
- 3) Condominium units

These units shall provide a minimum of fifteen diverse elevations, as set forth in the Project Approvals. Such elevations may be modified if necessary during the development of the project, so long as the diversity is maintained, and the modifications are approved by the city.

E. Roadway Improvements. The Developer shall provide the following roadway improvements.

1) Street Gutter Modification. The Developer shall modify the gutter at the intersection at Mesquite Drive and E. Eighth Street to provide for a potential future bus route on E. Eighth Street. The modifications will entail reducing the grade-change to accommodate a bus traversing gutter. The edges of the new gutters will match existing pavement grades. No other paving modifications are proposed. The Developer obligation shall be limited to gutter modification proposal submitted to the Community Development Department on December 11, 2008, or modifications substantially similar in scope and anticipated Developer costs. The gutter modification is subject to review and approval by the Public Works Department and the City Engineer.

2) Traffic Calming. The Developer shall provide up to two traffic calming features, such as radar speed box(es) or speedtable(s) in the vicinity of the project in consultation

with the Public Works Department. The total cost to the Developer for traffic calming measures shall not exceed \$15,000. Final determination of method(s) and placement(s) of potential traffic calming measures shall be subject to review and approval of the Public Works Director and/or City Engineer.

F. Fiscal Impacts. The Developer will pay applicable City Development Impacts Fees and Residential Impact Fees as set forth in Exhibit C-5. The payment of fees shall be paid at time of issuance of Certificate of Occupancy for each residential unit.

G. Community Improvements. The City and Developer have agreed that certain improvements to the area in the vicinity of the project site are important to maintaining and improving the quality of life for the community. Therefore the Developer and the City have agreed to provide improvements to the project site and vicinity in accordance with the improvements described in Exhibit C-7.

[Sec. 202] Development Timing. Developer shall be obligated to construct the improvements and provide funding at the times set forth in this Agreement. Developer shall also initiate and pursue development of the Project as set forth herein.

A. Initial commencement of development. There is an approved Tentative Map for the Project, a reduced copy of which is attached to this Agreement as part of Exhibit A . The city has also approved a Final Planned Development and Design Review Approvals. Pursuant to these approvals, Developer must commence substantial construction on the Project within eighteen (18) months of the Effective Date of this Agreement which may be extended pursuant to City of Davis Municipal Code, Section 40.32.110.

B. Failure to Proceed in a Timely Manner. After commencement of construction, if the Developer ceases construction of infrastructure improvements for a period exceeding forty eight (48) months and/or does not finalize any residential units for occupancy for a period exceeding forty eight (48) months this Agreement shall terminate unless extended by the City as set forth herein. Developer may request an extension of the Agreement and these performance obligations if the City is involved in litigation, initiative or referendum proceedings, or other circumstances that affect the City's ability to provide building permits and/or water or sewer connections, in which case City shall grant an extension for the same time as the time period during which sewer or water connections or building permits are unavailable. In the event the City approves a moratorium on water or sewer hook-ups or building permits or other entitlements necessary for the Project to proceed, then the period during which the moratorium is

in effect shall not count towards the forty eight (48) month period. .Developer may request and City may not unreasonably withhold approval of extensions not to exceed six months at a time for reasons other than lack of sewer, water, or drainage capacity, or other circumstances affecting the City's ability to provide building permits or sewer, water, or drainage capacity, provided the Developer continues to undertake good faith efforts to proceed with Development and further provided that any extension beyond twelve (12) months will require that the Development impact fees for the project be adjusted to those in effect at the time of issuance of the building permit.

[Sec. 203]     Rules, Regulations and Official Policies.

A.     For the term of this Agreement, the rules, regulations, ordinances and official policies governing the permitted uses of land, the density and intensity of use, design, improvement and construction standards and specifications applicable to the development of the Property, including the maximum height and size of proposed buildings, shall be those rules, regulations and official policies in force on the effective date of this Agreement. Except as otherwise provided in this Agreement, to the extent any future changes in the General Plan, zoning codes or any future rules, ordinances, regulations or policies adopted by the City purport to be applicable to the Property but are inconsistent with the terms and conditions of this Agreement, the terms of this Agreement shall prevail, unless the parties mutually agree to amend or modify this Agreement pursuant to Section 106 hereof. To the extent that any future changes in the General Plan, zoning codes or any future rules, ordinances, regulations or policies adopted by the City are applicable to the Property and are consistent with the terms and conditions of this Agreement or are otherwise made applicable by other provisions of this Article 2, such future changes in the General Plan, zoning codes or such future rules, ordinances, regulations or policies shall be applicable to the Property.

1)     This section shall not preclude the application to development of the Property of changes in City laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in state or federal laws or regulations. In the event state or federal laws or regulations enacted after the date of this Agreement or action by any governmental jurisdiction other than the City prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, this Agreement shall be modified, extended or suspended as may be necessary to comply with such state or federal laws or regulations or the regulations of such other governmental jurisdiction.



B. To the extent that any actions of federal or state agencies (or actions of regional and local agencies, including the City, required by federal or state agencies) have the effect of preventing, delaying or modifying development of the Property, the City shall not in any manner be liable for any such prevention, delay or modification of said development. The Developer is required, at its cost and without cost to or obligation on the part of the City, to participate in such regional or local programs and to be subject to such development restrictions as may be necessary or appropriate by reason of such actions of federal or state agencies (or such actions of regional and local agencies, including the City, required by federal or state agencies).

1) Nothing herein shall be construed to limit the authority of the City to adopt and apply codes, ordinances and regulations which have the legal effect of protecting persons or property from conditions which create a health, safety or physical risk.

C. All Project construction and the improvement plans and final maps for the Project shall comply with the rules, regulations and design guidelines in effect at the time the construction, improvements plan or final map is approved. Unless otherwise expressly provided in this Agreement, all city ordinances, resolutions, rules regulations and official policies governing the design and improvement and all construction standards and specifications applicable to the Project shall be those in force and effect at the time the applicable permit is granted. Ordinances, resolutions, rules, regulations and official policies governing the design, improvement and construction standards and specifications applicable to public improvements to be constructed by Developer shall be those in force and effect at the time the applicable permit approval for the construction of such improvements is granted. If no permit is required for the public improvements, the date of permit approval shall be the date the improvement plans are approved by the City, or the date construction for the public improvements is commenced, whichever occurs first.

D. Uniform Codes applicable. This Project shall be constructed in accordance with the provisions of the Uniform Building, Mechanical, Plumbing, Electrical, and Fire Codes, city standard construction specifications and details and title 24 of the California Code of Regulations, relating to Building Standards, in effect at the time of approval of the appropriate building, grading, encroachment or other construction permits for the Project. If no permits are required for the infrastructure improvements, such improvements will be constructed in accordance with the provisions of the codes delineated herein in effect at the start of construction of such infrastructure.

E. The parties intend that the provisions of this Agreement shall govern and control as to the procedures and the terms and conditions applicable to the development of the Property over any contrary or inconsistent provisions contained in Section 66498.1 et seq. of the Government Code or any other State law now or hereafter enacted purporting to grant or vest development rights based on land use entitlements (herein "Other Vesting Statute"). In furtherance of this intent, and as a material inducement to the City to enter into this Agreement, the Developer agrees that:

1) Notwithstanding any provisions to the contrary in any Other Vesting Statute, this Agreement and the conditions and requirements of land use entitlements for the Property obtained while this Agreement is in effect shall govern and control the Developer's rights to develop the Property;

2) The Developer waives, for itself and its successors and assigns, the benefits of any Other Vesting Statute insofar as they may be inconsistent or in conflict with the terms and conditions of this Agreement and land use entitlements for the Property obtained while this Agreement is in effect; and

3) The Developer will not make application for a land use entitlement under any Other Vesting Statute insofar as said application or the granting of the land use entitlement pursuant to said application would be inconsistent or in conflict with the terms and conditions of this Agreement and prior land use entitlements obtained while this Agreement is in effect.

F. This section shall not be construed to limit the authority or obligation of the City to hold necessary public hearings, to limit discretion of the City or any of its officers or officials with regard to rules, regulations, ordinances, laws and entitlements of use which require the exercise of discretion by the City or any of its officers or officials, provided that subsequent discretionary actions shall not conflict with the terms and conditions of this Agreement.

G. Moratorium, Quotas, Restrictions or Other Growth Limitations. Subject to applicable law relating to the vesting provisions of development agreements, the Developer and the City intend that, except as otherwise provided herein, this Agreement shall vest the Entitlements against subsequent City resolutions, ordinances, initiatives and referenda that directly or indirectly limit the rate, timing, or sequencing of development, or prevent or conflict with the permitted uses, density and intensity of uses as set forth in the Entitlements. The Developer shall, to the extent allowed by the laws pertaining to development agreements, be subject to any growth limitation ordinance, resolution, rule regulation or policy which is adopted

on a uniformly applied, City-wide or area-wide basis and directly concerns a public health or safety issue, in which case the City shall treat the Developer in a uniform, equitable and proportionate manner with all properties, public and private, which are impacted by that public health or safety issue. By way of example only, an ordinance which precluded the issuance of a building permit because the City had inadequate sewage treatment capacity to meet the demand therefore (either City-wide or in a designated sub-area of the City) would directly concern a public health issue under the terms of this paragraph and would support a denial of a building permit within the property, so long as the City was also denying City-wide or area-wide all other requests for building permits which require sewage treatment capacity, however, an attempt to limit the issuance of building permits because of a general increase in traffic congestion levels in the City would not directly concern a public health or safety issue under the terms of this paragraph.

H. City Cooperation. The City agrees to cooperate with the Developer in securing all permits which may be required by the City. In the event state or federal laws or regulations enacted after this Agreement has been executed, or actions of any governmental jurisdiction, prevent, delay or preclude compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by the City, the parties agree that the provisions of this Agreement shall be modified, extended or suspended as may be necessary to comply with such state and federal laws or regulations or the regulations of other governmental jurisdictions. Each party agrees to extend to the other its prompt and reasonable cooperation in so modifying this Agreement or approved plans.

[Sec. 204] Fees, Exactions, Conditions and Dedications.

A. Except as provided herein, Developer shall be obligated to pay only those fees, in the amounts and/or with increases as set forth below, and make those dedications and improvements prescribed in the Project Approvals and this Agreement and any Subsequent Approvals.

1) Developer shall pay all City Development Impact Fees and Water and Sewer Connection Fees applicable to the Project in the amounts in effect at the time of the issuance of Certificate of Occupancy for each unit. Developer shall pay all impact fees imposed by or on behalf of other public agencies, such as the school district or the County of Yolo, in the amounts applicable to the Project on the date the fees are paid.

2) City may charge and Developer shall pay processing fees for land use approvals, building permits, and other similar permits and entitlements which are in force and effect on a citywide basic at the time the application is submitted for those permits, as permitted pursuant to California Government Code section 66014 or its successor sections(s)

3) The Developer shall pay \$855,518.76 in City Park In-lieu fees in effect on the date of this agreement (\$7,921.47 per unit). The park in-lieu fee for each residential unit shall be paid at Certificate of Occupancy for each unit.

4) The Developer shall pay \$258,000 for (\$3,000 per unit for each and every market rate unit (86 units)). The supplemental fee shall be paid at Certificate of Occupancy for each residential unit. The contribution will be utilized for the purposes of community enhancements, as determined by the City.

5) The Developer shall be obligated to provide all other Specific Development Obligations described in Section 201, specifically 2(a-e), 3(a-d), 4(a-d) and 5(a-b).

6) Except as specifically permitted by this Agreement or mandated by state or federal law, City shall not impose any additional capital facilities or development impact fees or charges or require any additional dedications or improvements through the exercise of the police power, with the following exception: (a) the City may impose reasonable additional fees, charges, dedication requirements or improvement requirements as conditions of City's approval of an amendment to the Project Approvals or this Agreement, which amendment is either requested by the Developer or agreed to by the Developer; and (b) the City may apply subsequently adopted development exactions to the Project if the exaction is applied uniformly to development either throughout the city or with a defined area of benefit that includes the Property if the subsequently adopted development exaction does not physically prevent development of the Property for the uses and to the density and intensity of development set forth in this Agreement. In the event that the subsequently adopted development exaction fulfills the same purpose as an exaction or development impact fee required by this Agreement or by the Project Approvals, the Developer shall receive a credit against the subsequently adopted development exaction for fees already paid that fulfill the same purpose.

7) Compliance with Government Code section 66006. As required by Government Code section 65865(e) for development agreements adopted after January 1, 2004, the City will comply with the requirements of Government Code section 66006 pertaining to the payment of fees for the development of the Property.

Article III: Obligations of the Developer.

[Sec. 300] Improvements. The Developer shall develop the Property in accordance with and subject to the terms and conditions of this Agreement as described in Exhibit C, the Project Approvals, and the subsequent discretionary approvals referred to in Section 201, if any, and any amendments to the Project Approvals or this Agreement as, from time to time, may be approved pursuant to this Agreement. The failure of the Developer to comply with any term or condition of or fulfill any obligation of the Developer under this Agreement, the Project Approvals or the subsequent discretionary approvals or any amendments to the Project Approvals or this Agreement as may have been approved pursuant to this Agreement, shall constitute a default by the Developer under this Agreement. Any such default shall be subject to cure by the Developer as set forth in Section 400 hereof.

[Sec. 301] Developer Obligations. Developer shall be responsible, at its sole cost and expense, to make the contributions, improvements, dedications and conveyances set forth in this Agreement, the Project Approvals, and the **Additional Developer Requirements.**

[Sec. 302] City's Good Faith in Processing.

A. Developer and City shall comply with the time frames set forth in the Subdivision Map Act, and, if applicable, the Permit Streamlining Act, for the processing of parcel and final maps.

B. With City approval, Developer may utilize an expedited plan check process for the review of improvements plans and building plans for the Project. Within two (2) weeks of a written request by Developer, City shall determine whether expedited plan check is feasible for the requested work. If City determines that expedited plan check is feasible, City shall retain an outside consultant for review of Developer improvement plans and building plans. Such outside consultant shall be at the sole selection of the City and shall be paid for at the sole cost and expense of Developer. Upon written request, Developer shall advance a deposit sufficient to cover the City's estimated costs of retaining the outside consultant. Such deposit shall be replenished as necessary, from time to time, to assure that the City shall not bear any of the cost of the outside consultant.

Article IV: Default, Remedies, Termination.

[Sec. 400] General Provisions. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either party to perform any term or provision of this Agreement

shall constitute a default. In the event of default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party not less than thirty (30) days notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During any such thirty (30) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

A. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party to this Agreement may at its option:

- 1) terminate this Agreement, in which event neither party shall have any further rights against or liability to the other with respect to this Agreement or the Property; or
- 2) institute legal or equitable action to cure, correct or remedy any default, including but not limited to an action for specific performance of the terms of this Agreement;

B. In no event shall either party be liable to the other for money damages for any default or breach of this Agreement.

[Sec. 401] Enforcement of Special Conditions. Before any subdivision, parcelization, lot line adjustment or building permit is issued for any residential uses on the Property; the Developer shall establish and implement a legal mechanism approved by the City to assure enforcement of this Agreement and the Special Conditions, as applicable to such residential property.

[Sec. 402] Developer Default; Enforcement. No building permit shall be issued or building permit application accepted for the building shell of any structure on the Property if the permit applicant owns or controls any property subject to this Agreement and if such applicant or any entity or person controlling such applicant is in default under the terms and conditions of this Agreement unless such default is cured or this Agreement is terminated. The Developer shall cause to be placed in any covenants, conditions and restrictions applicable to the Property, or in any ground lease or conveyance thereof, express provision for an owner of the Property, lessee or City acting separately or jointly to enforce the provisions of this Agreement and to recover attorneys' fees and costs for such enforcement.

[Sec. 403] Annual Review. The City Manager shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by

Developer with the terms and conditions of this Agreement. Such periodic review shall be limited in scope to compliance with the terms and conditions of this Agreement pursuant to California Government Code Section 65865.1.

A. The City Manager shall provide thirty (30) days prior written notice of such periodic review to Developer. Such notice shall require Developer to demonstrate good faith compliance with the terms and conditions of this Agreement and to provide such other information as may be reasonably requested by the City Manager and deemed by him to be required in order to ascertain compliance with this Agreement. Notice of such annual review shall include the statement that any review may result in amendment or termination of this Agreement. The costs of notice and related costs incurred by the City for the annual review conducted by the City pursuant to this Section shall be borne by Developer.

B. If, following such review, the City Manager is not satisfied that Developer has demonstrated good faith compliance with all the terms and conditions of this Agreement, or for any other reason, the City Manager may refer the matter along with his or her recommendations to the City Council.

C. Failure of the City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

[Sec. 404] Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance. If written notice of such delay is given to the City within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

[Sec. 405] Limitation of Legal Actions. In no event shall the City, or its officers, agents or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed that Developer's sole legal remedy for a breach or violation of this

Agreement by the City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.

[Sec. 406] Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Developer acknowledges and agrees that City has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity or meaning of this Agreement shall be that accorded legislative acts of the City. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the Court.

[Sec. 407] Invalidity of Agreement.

A. If this Agreement shall be determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment.

B. If any provision of this Agreement shall be determined by a court to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any law which becomes effective after the date of this Agreement and either party in good faith determines that such provision is material to its entering into this Agreement, either party may elect to terminate this Agreement as to all obligations then remaining unperformed in accordance with the procedures set forth in Section 400, subject, however, to the provisions of Section 410 hereof.

[Sec. 408] Effect of Termination on Developer Obligations. Termination of this Agreement shall not affect Developer's obligations to comply with the General Plan and the terms and conditions of any and all land use entitlements approved with respect to the Property, nor shall it affect any other covenants of Developer specified in this Agreement to continue after the termination of this Agreement.

[Sec. 409] Effect of Termination. If this Agreement is terminated following any event of default by the Developer or for any other reason, such termination shall not affect the validity of any building or improvement within the Property which is completed as of the date of termination, provided that such building or improvement has been constructed pursuant to a building permit issued by the City. Furthermore, no termination of this Agreement shall prevent the Developer from completing and occupying any building or other improvement authorized pursuant to a valid building permit previously issued by the City that is under construction at the



time of termination, provided that any such building or improvement is completed in accordance with said building permit in effect at the time of such termination.

Article V: Hold Harmless Agreement.

[Sec. 500] Hold Harmless Agreement. Developer hereby agrees to and shall hold the City, its elective and appointive boards, commissions, officers, agents and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage, which may arise from the Developer's or the Developer's contractors', subcontractors', agents' or employees' operations under this Agreement, whether such operations be by the Developer, or by any of the Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by or acting as agent for the Developer or any of the Developer's contractors or subcontractors.

A. In the event of any legal action instituted by a third party or any governmental entity or official arising out of the approval, execution or implementation of this Agreement (exclusive of any such actions brought by Developer), Developer agrees to and shall cooperate fully and join in the defense by the City of such action; provided, however, that the City and Developer shall each bear their own respective costs, if any, arising from such defense. Such agreement by Developer does not include any agreement to indemnify the City and its elective and appointive boards, commissions, officers, agents and employees from any such legal actions.

Article VI: Project as a Private Undertaking.

[Sec. 600] Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Property is a separately undertaken private development. No partnership, joint venture or other association of any kind between Developer and the City is formed by this Agreement. The only relationship between the City and Developer is that of a governmental entity regulating the development of private property and the owner of such private property.

Article VII: Consistency With General Plan.

[Sec. 700] Consistency With General Plan. The City hereby finds and determines that execution of this Agreement is in the best interest of the public health, safety and general welfare and is consistent with the General Plan.

Article VIII: Notices.

[Sec. 800] Notices. All notices required by this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, to the addresses of the parties as set forth below.

Notice required to be given to the City shall be addressed as follows:

City Manager  
City of Davis  
23 Russell Boulevard  
Davis CA 95616

Notice required to be given to the Developer shall be addressed as follows:

New Urban Development, LLC  
c/o Don Fouts and Steve Sherman  
1930 E. Eighth Street, Suite 100  
Davis, CA 95616

Either party may change the address stated herein by giving notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

Article IX: Recordation.

[Sec. 900] When fully executed, this Agreement will be recorded in the official records of Yolo County, California. Any amendments to this Agreement shall also be recorded in the official records of Yolo County.

Article X: Entire Agreement.

[Sec. 1000] Entire Agreement. This Agreement is executed in duplicate originals, each of which is deemed to be an original. This Agreement consists of **thirty six (36) pages and four (4) exhibits** which constitute the entire understanding and agreement of the parties. Unless specifically stated to the contrary, the reference to an exhibit by designated letter or number shall mean that the exhibit is made a part of this Agreement. Said exhibits are identified as follows:

Exhibit A: Map and Legal Description of the Property

Exhibit B: Tentative Subdivision Map

Exhibit C: Project Approvals and Development Standards

Exhibit D. Carbon Mitigation Scenario

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement as of the date set forth above.

CITY OF DAVIS

By \_\_\_\_\_  
Ruth Asmundson  
Mayor

Attest \_\_\_\_\_  
Zoe Mirabile  
City Clerk  
"CITY"

APPROVED AS TO FORM:

\_\_\_\_\_  
Harriet Steiner  
City Attorney

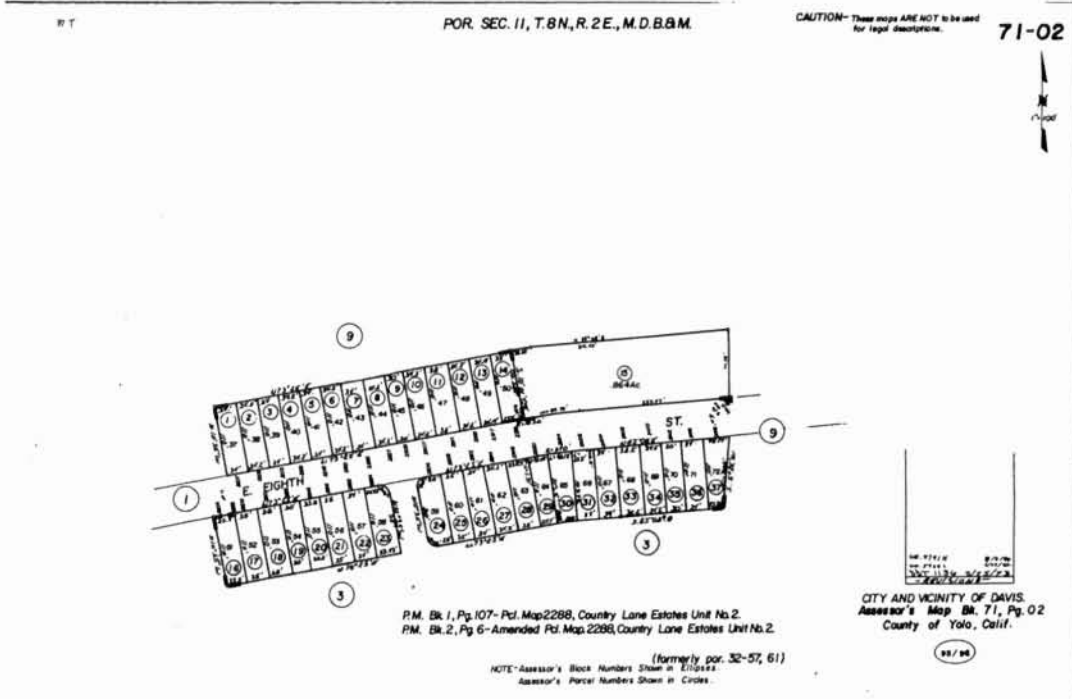
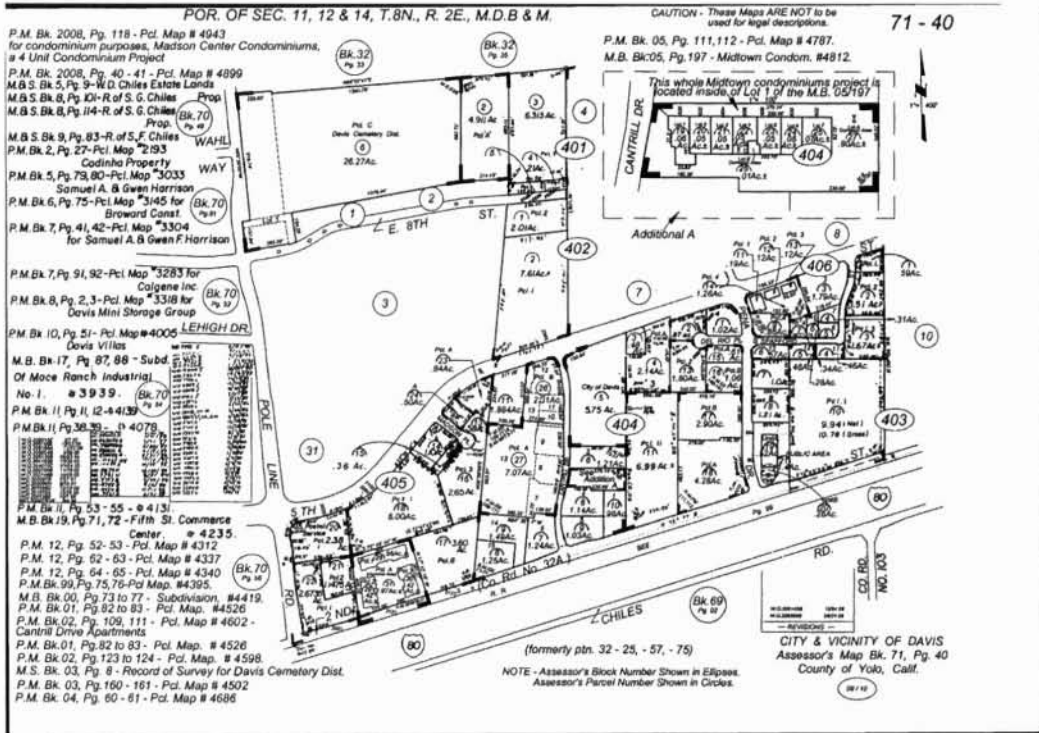
DEVELOPER  
NEW URBAN DEVELOPMENT

By \_\_\_\_\_  
Don Fouts, DEVELOPER

\_\_\_\_\_  
Steve Sherman, DEVELOPER

EXHIBIT A

MAP AND LEGAL DESCRIPTION



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# Fidelity National Title Company OF CALIFORNIA

**ISSUING OFFICE:** 3075 Prospect Park Drive, Suite 130 • Rancho Cordova, CA 95670  
916 853-7600 • FAX 916 638-1285

**FOR SETTLEMENT INQUIRIES, CONTACT:** Fidelity National Title Company of California - Davis  
408 Second Street • Davis, CA 95616  
530 756-0322 • FAX 530 756-8736

## PRELIMINARY REPORT

Title Officer: Ramon Veloz  
Escrow Officer: Laurie A. Bueche  
Escrow No.: 08-2005076-LAB

Title No.: 08-2005076-RV  
Locate No.: CAFNT0957-0957-0002-0002005076

TO: Fouts Landscape  
1949 5th Street, Suite 107  
Davis, CA 95616

ATTN: Donald L. Fouts

SHORT TERM RATE: Yes

**PROPERTY ADDRESS:** APN 071-020-15; 071-401-02; 071-401-03, Davis, California

**EFFECTIVE DATE: July 23, 2008, 07:30 A.M.**

The form of policy or policies of title insurance contemplated by this report is:

Subdivision Map Guarantee

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:  
  
A FEE as to Parcel(s) One, Two and Three;  
AN EASEMENT more fully described below as to Parcel(s) Four
2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:  
  
**New Urban Development - Davis, LLC, a California limited liability company**
3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:  
  
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

BO\BO 08/04/2008

Title No. 08-2005076-RV  
 Locate No. CAFNT0957-0957-0002-0002005076

**LEGAL DESCRIPTION**

**EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF DAVIS, COUNTY OF YOLO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

**Parcel One:**

Beginning at a point which is North 72° 59'-1/2' East 1231.38 feet, North 05° 26' East 2699.79 feet, North 00° 09'-1/2' East 687 feet, North 85° 08' East 361.50 feet and North 78° 59' 50" East 21.02 feet from the Southwest corner of the W.D. Chiles Estate Lands as shown on Map filed in Book 5 of Maps and Surveys at Page 9, in the Office of the Yolo County Recorder; thence from said point of beginning, South 78° 59' 50" West 21.02 feet; thence South 85° 08' West 361.50 feet; thence South 00° 09'-1/2' West 687 feet; thence South 05° 26' West 36.74 feet to the Southeast corner of that easement for road purposes called Parcel "B" on the Map filed in Book 8 of Maps and Surveys at Page 114, in the Office of the Yolo County Recorder; thence North 85° 08' East 361.50 feet; thence North 78° 59' 50" East to the intersection with a line that bears South 00° 15' 12" West from the point of beginning; thence North 00° 15' 12" East to the point of beginning.

APN: 071-401-03

**Parcel Two:**

All that certain real property situated in the City of Davis, County of Yolo, State of California, being a portion of Section 11, Township 8 North, Range 2 East, Mount Diablo Base and Meridian, more particularly described as follows:

Beginning at the Southwest corner of the property of the First Southern Baptist Church of Davis, California, being also the Southwest corner of Parcel Three as same appears of record on that certain Record of Survey filed in Maps and Surveys, Book 8, Page 87, Yolo County Records; thence, along the South line of said Parcel Three North 80° 20' 30" East 285.13 feet to the Southeast corner thereof; thence, along the East line of Parcels Three, Two and One of said Record of Survey North 06° 21' 30" West 459.07 feet to the Southeast corner of the Catholic Cemetery property as same appears of record on that certain Record of Survey filed in Maps and Surveys, Book 8, Page 114, Yolo County Records; thence, North 08° 33' 30" West along the East line of said cemetery property 197.23 feet to the North line of the 40 foot wide road easement as shown on said Record of Survey, being the South line of the Davis Cemetery Property; thence, along said North line of said easement North 79° 25' 00" East 1127.12 feet to the true point of beginning of this description; thence, from said true point of beginning South 10° 01' 42" East 110.05 feet; thence, along an arc of a curve to the right from a tangent which bears North 79° 58' 18" East with a radius of 1030.00 feet through a central angle of 05° 09' 42" an arc distance of 92.79 feet; thence, tangent to the preceding curve, North 85° 08' 00" East 237.57 feet to a point in the Westerly line of the lands of ARMCO Steel Corporation; thence, along a Westerly line North 05° 26' 00" East 71.13 feet to the Southwesterly corner of that certain Parcel of land conveyed by ARMCO Steel Corporation to Mary Simmons by Deed recorded in Book 790 of Official Records, Page 549, Yolo County Records; thence, along the Westerly line of said Parcel conveyed to Simmons, North 05° 26' 00" East 36.74 feet and North 00° 09' 30" East 3.88 feet; thence, leaving said Westerly line South 85° 08' 00" West 314.12 feet to the Southeasterly corner of said Davis Cemetery property; thence, along the South line of said Davis Cemetery Property" South 79° 25' 00" West 45.88 feet to the true point of beginning of this description.

APN: 071-020-15

**Parcel Three:**

Parcel A as shown on that certain Record of Survey of a portion of the George Chiles property in Section 11, Township 8 North, Range 2 East, Mount Diablo Base and Meridian, filed for record in the Office of the Yolo County Recorder on October 21, 1960, in Book 8 of Maps and Surveys, Page 101.

APN: 071-401-02

EXHIBIT "A" (continued)

Title No. 08-2005076-RV  
Locate No. CAFNT0957-0957-0002-0002005076

**Parcel Four:**

A non-exclusive easement for access, drainage, utilities and incidental purposes thereto, over, across, under and through the following described parcel:

**Parcel 1:**

Beginning at the Southwest corner of Parcel 3, of Parcel Map No. 4005, filed January 15, 1992 in Book 10 of Parcel Maps, Page 50, Yolo County Records; thence along the Westerly line of Parcel 3, North 05° 36' 10" West 66.79 feet to the Northwest corner of Parcel 3; thence along the Northerly line of Parcel 3, North 85° 05' 59" East 12.50 feet; thence South 05° 36' 10" East 66.63 feet to the Southerly line of Parcel 3; thence along said Southerly line 84° 23' 50" West 12.50 feet to the point of beginning.

**Parcel 2:**

Beginning at the Southeast corner of Parcel 4 of Parcel Map No. 4005, referred to in Parcel 1 above; thence along the Southerly line of said Parcel 4 South 84° 23' 50" West 12.50 feet; thence North 05° 36' 10" West 66.94 feet to the Northerly line of Parcel 4; thence along said Northerly line North 85° 05' 59" East 12.50 feet to the Northeast corner of Parcel 4; thence along the Easterly line of Parcel 4, South 05° 36' 10" East 66.79 feet to the point of beginning.

**EXHIBIT B**  
**SUBDIVISION TENTATIVE MAP**



TENTATIVE SUBDIVISION MAP NO. 4953 <b>CHILES RANCH</b> <b>CONCEPTUAL LAYOUT</b>		ENGINEER NAME ADDRESS CITY AND STATE	ARCHITECT NAME ADDRESS CITY AND STATE	SURVEYOR NAME ADDRESS CITY AND STATE	DATE SHEET NO. TOTAL SHEETS
		CIVIL ENGINEER NAME ADDRESS CITY AND STATE	LANDSCAPE ARCHITECT NAME ADDRESS CITY AND STATE	PLANNING NAME ADDRESS CITY AND STATE	AS SHOWN



**EXHIBIT C**  
**PROJECT APPROVALS**

**Findings and Conditions of Approval**

**Chiles Ranch Subdivision**  
**E. Eighth Street**  
(APN# 71-020-15; 71-401-02; 71-401-03)

Planning Application #55-07: Mitigated Negative Declaration #1-08, General Plan Amendment #5-07, Rezone/Preliminary Planned Development #8-07, Development Agreement #04-08, Tentative Subdivision Map #3-08, Final Planned Development #12-07, Affordable Housing Plan #1-08, Design Review #7-08:

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**I. FINDINGS:**

- 1. PROJECT DEVELOPMENT TIME LIMIT.** The property owner can commence substantial construction within eighteen months from the date of the final planned development approval and intends to complete the construction with a reasonable time. (FPD, DR)
  
- 2. CONFORMANCE TO REQUIREMENTS.**  
**General Plan.** The proposed planned development, with adoption of the proposed General Plan Amendment, will comply with the land use designation of Residential Medium-Density for the parcel currently designated Residential Low-Density General Plan. This allows for a consistent land use designation and zoning for the parcel, which would facilitate the development of the proposed project. (GPA, PPD, FPD, DR)

**General Plan Greenbelt Consistency.** While the project does not meet the strict General Plan policy requirement for 10 percent greenbelt, the City finds this acceptable in light of the infill nature of the site, the small size of the site, and its location surrounded by existing residential uses. Furthermore, it is impractical for the project to provide the average 100 feet greenbelt width and to design an acceptable residential layout and density project for the site. The project provides, in aggregate, over 25 percent greenbelt/common open space, not including private yards. The project is consistent with General Plan goals to provide linkages, corridors and other connectors to provide an aesthetically pleasing and functional network of parks, open space areas, greenbelts and bike paths throughout the city. The project would be one of several infill projects recently approved by the City Council that do not provide the General Plan requirement for greenbelt. Furthermore, the city recognizes the unique circumstances and limitations of this site and other infill sites within the city and is in the process of developing policies to allow flexibility for greenbelt requirements for smaller infill projects with which this project would comply.

**Zoning.** The proposed project, with the adoption of the proposed rezone, will be consistent with the Zoning Ordinance, as the purpose of the planned development district is to allow diversification in the relationship of various buildings and structures and provide relief from the rigid standards of conventional zoning in order to allow for new and compatible housing development with surrounding residential uses. The proposed project will provide for an integrated and harmonious residential environment and creative relationship with adjacent residential uses. It will allow for and encourage architectural variation while maintaining the residential character within the area. (GPA, PPD, FPD, DR)

**Infill Guidelines.** The proposed development has been shown to comply with the General Interim Infill Guidelines in the analysis of the staff report to the Planning Commission dated May 21, 2009, and as may be amended herein. The public necessity, convenience and general welfare require adoption of the proposed amendment, given that the proposed project is an infill project that will address the housing needs of the city. (GPA, PPD, FPD, DR)

3. **CIRCULATION.** The auto, bicycle and pedestrian traffic system shall be adequately designed to meet anticipated traffic and has been designed to provided the minimum amount of interference with each other in that, the proposed project has considered pedestrian and bicycle circulation in developing the site plan and meets the City's standards for private driveways, circulation, and number of parking spaces. (FPD, TM, DR)
4. **ENVIRONMENTAL.** Mitigated Negative Declaration #1-08 prepared for this project. It declares that impacts associated with the project have been adequately addressed through city standard conditions of approval and mitigation measures recommended for adoption, and that pertinent measures in the General Plan would apply to the development of the subject site. . No environmental impact report (EIR) is needed.. (FPD, DR, ND)
5. **ADEQUACY OF THE DEVELOPMENT.** The residential development constitutes a residential environment of sustained desirability and stability in harmony with the character of the surrounding neighborhood. As conditioned, the proposed development is consistent with the requirements of the new Planned Development #8-07 (R-1). The development is appropriate in area, location and overall planning for the purpose intended. (FPD, DR)
6. **COMPATIBILITY.** The proposed project will constitute a residential environment of sustained desirability and stability in harmony with the character of the surrounding neighborhood. The proposed project is suitable for the site as it will comply with the

standards in the zoning district, PD #8-07 (R-1), and the scale of the buildings will be consistent with within the district given the applicable development standards. As conditioned, the project will not have significant adverse effect on surrounding properties in that the plan incorporates standards for the site established as a means to minimize impacts on surrounding properties. (FPD, DR)

7. **CONSISTENCY WITH THE SUBDIVISION ORDINANCE.** In accordance with Section 36.06.080 of the City's Subdivision Ordinance, the proposed subdivision of land complies with requirements as to area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection, and other requirements of the Subdivision Map Act, the City's Subdivision Ordinance, the Municipal Code, and the General Plan. (TM)
8. **CLIMATE CHANGE & SUSTAINABILITY.** The project, as conditioned, complies with the city's Green Building Ordinance; adopted thresholds for greenhouse gas emission reduction. The project building and site features are consistent with General Plan and city policies to ensure long term sustainability of the project, water and conservation, and greenhouse gas emission reduction. (FPD, DR)
9. **FINAL MAP.** A subsequent Final Map shall be filed with the City to merge three exiting lots, and subdivide the merged parcel into single family residential lots; condominium parcel; city street; city greenbelt; private drives; and common open space parcels. (TM)
10. **COMPLIANCE WITH THE AFFORDABLE HOUSING ORDINANCE.** In accordance with Chapter 18.05 of the Davis Municipal Code the project complies with all of the requirements for affordable housing. (AHP)
11. **APPROPRIATE DESIGN.** The proposed architecture, site design, and landscape are suitable for the purposes of the building and the site and will enhance the character of the neighborhood and community. (FPD, DR)
12. **COMPATIBLE WITH EXISTING CONTEXT.** The architectural design of the proposed project is compatible with the existing properties and anticipated future developments within the neighborhood in terms of such elements as height, mass, scale and proportion; in that the project does not change the longstanding existing character of the neighborhood. The materials, colors, and architectural elements of the dwelling will be compatible with existing development within the project vicinity. (DR)

13. **ENVIRONMENTAL CONSIDERATION.** The location, climate, and environmental conditions of the site are adequately considered in determining the use of appropriate construction materials and methods. Sufficient conditions are included with the approval to ensure the long-term maintenance of the project. (DR)

## **II. CONDITIONS OF APPROVAL:**

1. **APPROVAL.** The entitlements approved for the project are: 1) General Plan Amendment changing the Land Use Designation from “Residential Low-Density” to “Residential Medium-Density”; 2) Preliminary Planned Development rezoning three vacant parcels (APN #s from a mix of Agriculture (A) and Residential One and Two Family (R-2) to Planned Development #8-07; 3) Tentative Subdivision Map; 4) Final Planned Development; 5) Affordable Housing Plan to govern the affordable housing component of the development; 5) Design Review for site plan and architectural review of proposed building elevations; and 6) Development Agreement between the City of Davis and the Developer.

The approval will allow for the development of a 108 unit subdivision; public street, city greenbelt, private open space and private drives on 12.1 (ALL)

2. **SUBSTANTIAL CONFORMANCE.** The project shall be completed in substantial conformance to the plans contained within the staff report and date stamped November 21, 2008, except as modified herein. Design changes that require modifications to uses, elevations or site features shall be submitted for review and approval through the planning review process such as Design Review, or Minor Modification, whichever is applicable. Prior to issuance of Certificate of Occupancy, all conditions of approval and required improvements shall be completed to the satisfaction of the city. (FPD, DR)
3. **TIME LIMITS FOR FINAL PLANNED DEVELOPMENT AND DESIGN REVIEW.** The approval period for Final Planned Development #12-07, Design Review #7-08 shall become null and void after a period of 18 months from the approval date if substantial construction in good faith reliance on the approval has not commenced subsequent to such approval. The Community Development Director may extend the expiration date for one or more periods not exceeding a total of 18 months upon a showing that the circumstances and conditions upon which the approval was based have not changed. A written request for a time extension, application, required exhibits and plans, and applicable fees must be submitted at least thirty days prior to the expiration. (FPD, DR)
4. **RUN WITH THE LAND.** The terms and conditions of this approval shall run with the land and shall be binding upon and be to the benefit of the heirs, legal representatives, successors, and assignees of the property owner. (ALL)
5. **DEVELOPMENT AND MAINTENANCE.** The site shall be developed and maintained in accordance with the approved plans which include site plans, architectural elevations, landscaping and grading on file in the Community Development Department, the

conditions contained herein, Municipal Code regulations, and PD #8-07. (PD, FPD, DR)

6. **INDEMNIFICATION.** The applicant shall defend, indemnify, and hold harmless the City of Davis, its officers, employees, or agents to attack, set aside, void, or annul any approval or condition of approval of the City of Davis concerning this approval, including but not limited to any approval of condition of approval of the City Council, Planning Commission, or Community Development Director. The City shall promptly notify the applicant of any claim, action, or proceeding concerning the project and the City shall cooperate fully in the defense of the matter. The City reserves the right, at its own option, to choose its own attorney to represent the City, its officers, employees and agents in the defense of the matter. (ALL)
7. **OTHER APPLICABLE REQUIREMENTS.** The project approval is subject to all applicable requirements of the Federal, State and City of Davis, and any other affected governmental agencies. Approval of this request shall not waive compliance with all other applicable sections of the Municipal Code, all other applicable City Ordinances, and applicable Community or Specific Plans or Design Guidelines in effect at the time of building permit issuance. The duty of inquiry as to such requirements shall be upon the applicant. (ALL)
8. **CONFLICTS.** When exhibits and/or written conditions of approval are in conflict, the written conditions shall prevail. (PPD, FPD, DR)
9. **APPLICANT'S RESPONSIBILITY TO INFORM.** The applicant shall be responsible for informing all subcontractors, consultants engineers, or other business entities providing services related to the project of their responsibilities to comply with all pertinent requirements herein in the City of Davis Municipal Code, including the requirement that a business license be obtained by all entities doing business in the City as well as hours of operation requirements in the City. (ALL)
10. **SUBSEQUENT MODIFICATION.** Any proposed subsequent modification of the subject site or structure thereon, including but not limited to the following actions, shall first be reported to the city for a review and determination of consistency with this permit. Actions affecting how people or materials move on, off or around the site; the physical appearance of the site or structures thereon (including but not limited to signing, architecture, landscaping, paving, etc.) the type of activity(ies) on land use(s) pursued thereon; the number of people employed thereon or otherwise involved with on-site activities or land uses; etc shall first be reported to the city for a review and determination of consistency with this permit. (FPD, DR)
11. **SCHOOL IMPACT FEES.** The owner shall cooperate with the School District to the extent authorized by State law in establishing school funding mechanisms for new subdivisions and in-fill development to ensure that the impacts of such development on school facilities are fully mitigated.. (FPD)

- 12. PROJECT DEVELOPMENT IMPACT FEES.** Payment of project development impact fees; water and sewer connection fees; and Quimby fees shall be payable at Certificate of Occupancy for each unit, in accordance with the provisions of the Development Agreement. (TM).
- 13. PLAN CHECK FEES.** A plan check fee shall be required by the Community Development Department when an application for a building permit is submitted. The plan check hours shall be billed to the building permit application, unless advised otherwise by the applicant/developer. (FPD, DR)
- 14. CONSTRUCTION TIMES AND NOISE.** The developer/applicant shall be responsible for informing all subcontractors and construction crews about construction start and finish times including appropriate ambient noise impacts consistent with city code and of all applicable mitigation measures. (FPD)
- 16. FINAL PLANNED DEVELOPMENT APPROVAL.** The Final Planned Development approval is for a 108 unit residential subdivision providing single family market rate lots and low/moderate income affordable condominium units. A maximum of ten second dwelling units are permitted in the development. The lot layout shall be in substantial compliance with the Final Planned Development Map date stamped November 21, 2008, except as modified herein. (FPD, DR)
- 17. DEVELOPMENT STANDARDS:** The final development standards for the project shall be substantially in compliance with the development standards shown on the Final Planned Development Plan, and detailed in the Chiles Ranch Lot Matrix, date stamped November 21, 2008. Any significant changes to the Final Planned Development shall require an additional discretionary action for approval subject to the determination of the appropriate process by the Community Development Department staff. (FPD, DR)
- 18. FINAL PLANNED DEVELOPMENT SET.** Prior to issuance of building permits the applicant shall submit a reproducible copy of the Final Development Plan set and Chiles Ranch Lot Matrix, with all conditions of approval incorporated or clearly listed on the plans. The plan set shall not be accepted as the Final Planned Development Set until the Community Development Director has signed and dated the set. The applicant shall provide two prints of the signed set to the Community Development Department. Electronic copies are recommended. (FPD)
- 19. LOT / SITE PLAN REVISIONS.** The following changes will be incorporated into the Final Development Plan and Final Map.

  - a. The east property line on lots 14, 17, 18, 60, 61, and 88 will be revised from zero to three feet three inches.

- b. The west property line on lots 1 and 2, and the east property line on lots 3-4 will be revised from zero to three feet three inches.

The CC&Rs shall incorporate provisions to prohibit structures or debris visible from public view outside the fence on lots located adjacent to the east greenbelt. (PPD, FPD, TM)

- 20. BUILDING HEIGHT / STORIES.** (FPD, DR). Maximum building height shall not exceed 30 feet / two stories, with the following exceptions:
  - a. Lots 14 and 17 shall be restricted to single story.
  - b. Lots 1-13 shall be restricted to one and a-half story.
- 21. REQUIRED PARKING.** The number of parking spaces shall be provided in accordance with the requirements of Section 40.25.090 of the Zoning Ordinance. One additional parking on site parking space shall be provided for a second dwelling unit. Garage, carport and parking space dimensions shall be as shown on the Final Planned Development Plan (FPD, DR)
- 22. GARAGES.** (PPD, FPD, DR)
  - a. Garage conversions (partial or whole) shall not be permitted under this Final Planned Development.
  - b. Required parking spaces within garages shall remain clear for parking. Enforcement shall be the responsibility of the Homeowners' Association.
- 23. SECOND DWELLING UNITS.** A maximum of ten second dwelling units shall be permitted within the development at time of initial construction. Future second dwelling units shall be prohibited. (FPD, DR)
- 24. FUTURE CHANGES.** No building expansion shall be allowed under this Final Planned Development. The owner of any unit shall disclose this condition to future buyers prior to the sale. (FPD, DR)
- 25. MAINTENANCE OF EASTERN SIDE YARDS.** Structures or debris visible from public view shall be prohibited on side yards located adjacent to the greenbelt. Provisions to ensure compliance shall be incorporated in the project CC&Rs.
- 26. VISITABILITY / ACCESSIBILITY.** The applicant/developer shall provide visitability / accessibility features consistent with city policies for market rate units. The development would provide 62 first floor only accessible units; 2 single story accessible units, and 11 visitable units. Eleven units within the development will be neither visitable nor accessible due to slopes that exceed ADA requirements. (FPD, DR)

The low/moderate condominium units are exempt from the visitability/accessibility requirement due to exceeding a density threshold of 1.25 units per net acre.

However, two condominium units will be visitable and nine condominium units will be accessible. (AHP, FPD, DR)

**27. PRODUCT PLACEMENT.** The total number of each house plan constructed within the development shall be consistent with that shown on the Final Planned Development. No more than two houses of the same plan shall be permitted to be located side by side. Exterior paint colors shall differ, and where possible exterior materials shall vary. Any plan change proposed on any lot shall be subject to review and approval by the Community Development Director. (FPD, DR)

**28. FIRE DEPARTMENT REQUIREMENTS.** Prior to the issuance of building permits, the applicant/developer shall obtain approval from the fire department that all necessary public services, including water service and fire hydrants, meet fire department standards. The number and flow capability of the fire hydrants for the subdivision must meet requirements of the California Fire Code for water supply. Hydrant placement may need to be increased due to the design of the subdivision. Hydrants and water mains shall be equivalent to City of Davis Specifications. (FPD, DR).

- a. Prior to the issuance of the first Certificate of Occupancy in Phase I, a secondary emergency vehicle access, a minimum of 20 feet in width, shall be installed in the northeast portion of the development through the existing easement located off Wellesley Avenue and shall meet the following specific requirements:
  - i. The vehicle access shall support a two axle, 40,000 pound vehicle and shall be surfaced to provide all weather driving capabilities.
  - ii. Final specifications shall subject to review and approval of the Fire Chief, City Engineer, and Community Development Director. The access road shall be all weather surface maintained by Homeowner's Association, except for the portion located in the city greenbelt.
  - iii. It shall be the obligation of the developer/applicant to acquire all necessary access rights of way and/or easements to affect the emergency vehicle access. In the event that the applicant/developer is not able to acquire this right-of-way through negotiation, and upon demonstrating to the City's satisfaction that all reasonable efforts have been made to do so, the applicant may request that the City acquire the right-of-way through eminent domain. If the latter is pursued, the applicant/developer shall be responsible to reimburse the City for all costs of acquisition, including but not limited to all staff, legal, engineering, and appraisal fees.
- b. Vehicle access shall be sufficient to accommodate fire department equipment as follows:
  - i. The minimum public street in the subdivision will be 20 feet.
  - ii. A clear driving width a minimum of 16 feet shall be provided and maintained on all private drives for emergency vehicle access.
  - iii. Parking will be limited to one side of the street only, except for section of street located east of lots 21-24, and west of Lots 15, Lot J, and Lot 20, as shown in the Parking Exhibit submitted to the Community Development Department and date stamped November 21, 2008.



- iv. Streets or segments of streets that do not provide provisions for parking shall have "No Parking" signs posted in accordance with vehicle code.
  - v. On street parking shall not encroach into the required minimum width required for emergency vehicle access.
  - vi. Parking shall not be permitted on private drives. Enforcement shall be the responsibility of the Homeowner's Association.
  - vii. Maintaining clear access on fire apparatus roads is essential to the emergency operations. It shall be the responsibility the Homeowner's Association to provide a mechanism to enforce parking, 24 hours a day, 7 days a week on private drives. A parking enforcement plan must be provided to the Fire Department for approval to demonstrate how this will be achieved.
- c. Residential sprinklers shall be required on Lot 14.
  - d. On building plans that indicate a fence with a gate between the street and front door. The gate must be operable at all times and not removed. The gate must be distinguishable from the fence. If addresses are not visible from the street additional addressing shall be required to be posted on the gate.

**29. POLICE SAFETY REQUIREMENTS.** Plans shall be submitted to the Police Department for review and approval prior to issuance of building permits. All new development shall comply with the City Building and Security Ordinance and other safety recommendations and requirements regarding building security as well as employee and patron security, prior to issuance of building permits.

It is recommended that a minimal number of medium growing shrubs be planted well back from bicycle paths. Tree should be selected with canopies that will provide a clear view underneath to allow bicyclist to see clearly for a distance and to reduce areas that restrict visibility. (PPD, DR)

**30. RESIDENTIAL EMERGENCY ACCESS.** For emergency response purposes, each dwelling unit shall have an identifiable "front" door that has a reasonable connection to the street to which it is addressed. Reasonably connected means a dwelling must have a door visible from (usually in the same plane) as the paved surface adjacent to the building. The Fire Department will determine whether exterior doors and adjacent paved surfaces are reasonably connected. (FPD, DR)

**31. RESIDENTIAL ADDRESSING.** Each dwelling unit address shall correspond to a street or private drive. No unit shall be addressed to the common area or driving surface that is not a named street or alley. Names for the private drives and addressing shall be subject to the review and approval of the City Engineer. (TM, FPD, DR)

- a. Dwellings unit numbers must be visible from the street.

- b. Dwellings located on private drive shall provide addresses on both the front and rear of the dwelling. Address number shall comply with Section 505 of the California Fire Code, 2007 edition, "Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of 4 inches (102 mm) high with a minimum stroke width of 0.5 inch (12.7mm)."
  - c. Addresses for all dwellings shall also be shown together on centrally located signage, in such a position that numbers are easily visible to approaching emergency vehicles.
  - d.. In locations where end paved areas serve several dwellings, a prominent sign shall be provided at each entrance to the paved areas.
  - e. Signs shall display address number of the dwellings on that paved area.
  - f. Signage design and location are subject to review and approval of Police and Fire Department and the Community Development Department.
- 32. TRAFFIC CALMING.** The developer/applicant shall work with the City to install up to two traffic calming measures along E. Eighth Street in the project vicinity. Traffic calming measures to be considered are speed box(es) and/or speed table(s). The total cost to the Developer for traffic calming measures shall not exceed \$15,000. Final determination of method(s) and placement(s) of potential traffic calming measures shall be subject to review and approval of the Public Works Director and/or City Engineer. (TM, FPD, DR)
- 33. STREET GUTTER MODIFICATION.** The Developer shall modify the gutter at the intersection at Mesquite Drive and E. Eighth Street to provide for a potential future bus route on E. Eighth Street. The modifications proposed entail reducing the grade-change to accommodate a bus traversing gutter. The edges of the new gutters will match existing pavement grades, and no other paving modifications are proposed. The Developer obligation shall be limited to gutter modification proposal submitted to the Community Development Department on December 11, 2008, or modifications substantially similar in scope and anticipated Developer costs. The gutter modification is subject to review and approval by the Public Works Department and the City Engineer. (TM, FPD, DR)
- 34. GREEN CONSTRUCTION.** The project shall comply with the city's Green Building Ordinance. (FPD, DR)
- 35. FENCING.** Concurrently with application for the first building permit, developer shall submit a plan showing the location and design details for all fences proposed in the project subject to review and approval of the Community Development Department

and Parks and General Services. The developer shall install all fencing within the development consistent with the following requirements. (FPD, DR)

- a. *Greenbelt*. All fencing design, material and construction details adjacent to public or private open space, roads, or bicycle paths, shall subject to review Parks and General Services Director or designee for review and approval. All fencing adjacent to public property shall be placed fully on private property. The property owner will be responsible for maintenance and repair. The Homeowner's Association shall be responsible for ensuring property maintenance of fences through CC&Rs.
- b. *Greenbelt Fence Modification*. Any future fence or gate modification along a public greenbelt or public street shall be subject to review and approval, in writing, by the Parks and General Services Superintendent designee and shall comply with the city's Park and Greenbelt Gate and Fence Guidelines.
- c. *Common Area Fencing*. All fencing design, material and construction details for common area fencing shall be subject to review and approval of the Community Development Director or designee. All fencing within the HOA common area shall be located fully on common area property. The Homeowner's Association shall own and be responsible for maintenance and repair of all fencing located in common area(s).
- d. *Residential Lots*. All fencing design, material and construction details for residential lots shall be subject to review of the Community Development Director or designee. Fencing shall conform to the City of Davis Standard Fence, Wall and Hedge requirements. Residential fencing shall be fully located on private property. The property owner will be responsible for maintenance and repair. The Homeowner's Association shall be responsible for ensuring property maintenance of fencing through CC&Rs.

**36. RESIDENTIAL TREE PLANTING.** Trees shall be a minimum of 15 gallons in size. All trees shall be planted and staked in accordance with Parks and General Services standards. (DR)

**37. TREE MAINTENANCE.** All trees planted or preserved in Homeowner's Association common area trees and any multi-family zoned property within the subdivision in accordance with this approval shall be trimmed and maintained per guidelines established and approved by the International Society of Arboriculture (ISA). Any pruning of the trees, other than light pruning of no more than 25 percent of the foliage within any one growing season, requires review and approval of a Tree Modification Permit prior to the commencement of the work. Trees planted in the private drive or public access streets or common space lots with the subdivision are to be privately maintained. (DR)

38. **RESIDENTIAL LANDSCAPING.** The applicant/developer shall install all front yard landscaping and irrigation. Landscaping design shall be reviewed and approved prior to issuance of permits (FPD, DR)
39. **ACCENT LANDSCAPING.** The applicant/developer shall install common area landscaping and irrigation. Landscaping and irrigation shall be maintained by Homeowner's Association. Landscaping design shall be reviewed and approved prior to issuance of permits. (FPD)
40. **IRRIGATION SYSTEMS.** All plant materials, including ground cover shall be serviced with an automatic irrigation system. All irrigation systems shall be subject to review and approval by the Community Development Department, Parks and General Services, and/or the Public Works Department prior to issuance of permits. (FPD, DR)
41. **MAINTENANCE STATEMENT.** The following statement shall be included on the final landscape plan set: "All common space landscaped areas shall be maintained in perpetuity upon completion and kept free from weeds and debris and maintained in a healthy, growing condition and shall receive regular pruning, fertilizing, mowing and trimming. Any damaged, dead, diseased, or decaying plant material or tree shall be replaced within 30 days. Significant trimming or pruning will not be permitted without prior City approval. (FPD, DR)
42. **APPROVED BUILDING DESIGN.** No substantive deviations from the approved building design may be permitted without another Design Review approval. Minor changes may be approved through the minor improvement application process. (DR)
43. **COVENANTS CODES AND RESTRICTIONS.** A detailed set of CC&Rs including but not necessarily limited to explicit use, maintenance and repair, replacement of private street, private drives, common area, shared walls and roofs; and utilities if located within the reciprocal access easement; methods and process for allocating and collecting costs associated with the maintenance, repair, and/or replacement of shall be submitted and shall be reviewed and approved by the Community Development Department, City Engineer and/or the City Attorney prior to recordation of the Final Map for the project. The CC&Rs shall be recorded no later than the first sale of any lot. Issuance of building permits shall not be granted until the CC&Rs have been submitted in a form determined to be adequate by the city based on review by the Community Development Director and the City Attorney. Enforcement of the CC&Rs shall be the responsibility of the Homeowner's Association via private proceedings. (FPD, TM)
44. **REQUIRED UNITS.** Twenty-two low/moderate affordable income units shall be provided by the project. All units will be developed concurrently with the project's market rate units. Certificates of occupancy will not be provided until on the last twenty market rate units in the project until all low/moderate units have been issued a certificate of occupancy. (FPD, AHP)

- 45. AFFORDABLE UNIT SALE PRICES.** The affordable ownership units shall be sold at prices affordable to low/moderate income households, as defined in Article 18.05.020 and 18.06.060 of the City of Davis Municipal Code. All low/moderate income units shall be advertised and sold in accordance with the City's Buyer Selection Guidelines. A marketing and buyer selection plan shall be submitted to the City's housing staff for review and approval. All low/moderate income units shall have their prices adjusted downward from the City's standard pricing in order to account for the project's monthly Homeowner's Association fees. (AHP)
- 46. INCOME ELIGIBILITY ON AFFORDABLE FOR-SALE UNITS.** Households purchasing the low/moderate income units shall have a gross annual income that is at or below 120% of Area Median Income for Yolo County, adjusted for household size, at the time of purchasing a low-moderate income unit. (AHP)
- 47. AFFORDABILITY REQUIREMENTS.** Required affordable low/moderate income units shall remain affordable over time and continue to ensure affordable housing opportunities for future income eligible households. The following requirements shall be established in a City-provided deed restriction recorded to the low/moderate income units and shall be subject to review and approval by the City Manager's Office prior to sale of the unit: (AHP)
- a. Owner-Occupancy Requirement, the Project developer agrees to record this requirement to each affordable unit, using the City's standard deed in accordance with Section 18.04 of Davis Municipal Code.
  - b. Resale of the low/moderate income units shall be administered under the City's Right of First Refusal Program. The Right of First Refusal, including the 1% administrative fee for carrying out this right allows the City of Davis the opportunity to either purchase the unit upon resale or present a buyer for the unit within 60 days of a notice from the seller indicating their intent to sell, closing escrow on the unit within 90 days of notice or as agreed upon by buyer and seller. In cases where the city gives up its right or does not provide a buyer in 90 days, the owner of the unit shall also have a 90 day deadline to sell the unit before the Right of First Refusal goes back into effect. Sustained Affordability, in accordance with Section 18.05.050 of the Davis Municipal Code, which should specifically include an appreciation cap through a restriction recorded to the deeds of the affordable units.
  - c. Resale Report requirement will be recorded to the deed for each affordable unit, as part of the City's standard deed to be used that all future owners of the affordable units clear the City of Davis resale report prior to the close of escrow in future sells of the unit, in all circumstances where the unit is not exempt from the city's resale inspection. No findings in the city's resale report shall be transferred to the subsequent buyer of the unit.
- 48. AFFORDABLE HOUSING DISCLOSURE.** Developer shall provide written notice to all purchasers of lots or homes within the subdivision of the location and zoning for the affordable housing units until construction on these units is complete. The disclosure

shall explicitly note that the affordable housing units are to be developed for low and moderate income households. Wording is subject to review and approval by the Community Development Department prior to occupancy. (AHP)

- 49. RESALE RESTRICTION.** Project developer agrees to record the City's required resale restriction to the deed of each low/moderate income unit upon its initial sale. (AHP)
- 50. PROPERTY MAINTENANCE.** The following statement shall be included on the site plan: "Applicants are responsible for maintaining all common area landscaping and irrigation, signs, structures, fences, bicycle and pedestrian paths, private drives, and other improvements in such a manner that does not detract from the appearance of the surrounding area. Parking lots shall be maintained in an attractive and suitable fashion with any potholes, significantly cracked or uneven paving and any other significant damage repaired in a timely fashion throughout the life of the project." (DR)
- 51. PROJECT LANDSCAPING.** The developer shall be responsible for installing landscaping and irrigation for the project including east greenbelt, north buffer, common open space, and private front yards in substantial conformance to the conceptual landscape plan dated April 2008. Final landscaping plan including tree and plant selection shall be subject to review and approval of Planning, Parks and General Services and Public Works department prior to issuance of the building permits. Installation of landscape areas within its respective phase shall occur prior to issuance of first Certificate of Occupancy in that phase. Landscape and irrigation plans shall specify the following: (FPD, DR)
- a. Location, size and quantity of all plant materials.
  - b. A plant legend specifying species type (botanical and common names) container size, maximum growth habit, and quantity of all plant materials.
  - c. Landscaping shall include drought tolerant landscaping features. Landscaping shall be drought tolerant (minimum 50%) and incorporate inactive vegetation to the maximum extent feasible. Use of turf shall be minimized and restricted to areas of passive recreation only to reduce water consumption.
  - d. Location of all pavements, fencing, buildings, accessory structures, parking lot light poles, property lines, and other pertinent site plan features;
  - e. Planting and installation details and notes including soil amendments;
  - f. Existing trees on site shall be identified. Identification shall include species type, trunk diameter at 4'-6" above adjacent grade, and location on site. Trees planned for removal or relocation shall be marked on the plans, methodology to preserve trees in place shall be provided on the plans;
  - g. Details of all irrigation (drip and sprinkler) as well as all equipment such as backflow, controller and controller and meter devices identified.
- 52. PARKING LOT SHADING.** The project shall comply with the city's the Parking Lot Shading Guidelines for the condominium parcel lot and "Lot O". A parking lot shading plan and related shade calculations shall be submitted to the Community Development Department demonstrating compliance.

- 53. PRECONSTRUCTION SURVEY AND TREE REPORT.** Prior to issuance of grading, diskings or building permit, and prior to commencing any improvement activities or construction on the site the developer/applicant shall commission a preconstruction survey of the site and provide a detailed map of trees to be preserved and removed. An arborist report shall be submitted to the Parks and General Services Director or designee for review and approval and shall provide the condition and appraisal value of each tree to be removed.
- 54. TREE MITIGATION PROGRAM.** The project shall include an additional tree mitigation program, which shall be subject to the review and approval of the City's Arborist. The additional tree mitigation program shall be designed to save as many trees as possible, in addition to the trees that are already designated to be saved and/or retained on site. The tree mitigation program shall be completed and approved prior to any grading on the site and the tree relocations shall be completed at the appropriate time prior to grading or otherwise disturbing the additional trees to be saved. The additional trees to be saved shall be deemed healthy by the city's Arborist, or an arborist approved by the city's Arborist, and capable of relocation, and may be retained on site at a different location, or relocated off-site, as set forth in the tree mitigation plan. Fifteen percent (15%) of the \$3,000 supplemental residential fee per market rate unit, provided for in the Development Agreement, may be utilized to offset all, or a portion, of the cost of the additional tree mitigation, not to exceed the actual costs of the additional tree mitigation program.
- 55. TREE MODIFICATION PLAN.** A Tree Modification Permit shall be required for the tree removal proposed for the project (FPD, DR)
- 56. TREE PROTECTION PLAN.** A Tree Protection plan shall be required for any existing trees on the property and any street trees adjacent to the project. The plan shall include a grading plan with the trees plotted on the plan. Compliance with the tree preservation plan is required before and during any site disturbance and construction activity and prior to issuance of building permits. (FPD,DR)
- 57. CITY STREET/GREENBELT TREES.** The developer shall provide an updated list of tree species for the street and greenbelt trees to be planted. Location of street tree easements and tree selection shall be subject to review and approval by Parks and General Services prior to recordation of Final Map.

Pursuant to the applicable provisions of the City of Davis Tree Planting, Preservation and Protection Ordinance and the East Davis Specific Plan, in-lieu fees shall be paid for each single family lot that does not contain a street tree prior to issuance of Certificate of Occupancy for that unit. Section 37.10.020 of the Municipal defines a street tree, as “...any tree planted and/or maintained by the city, or recorded as a street tree, adjacent to a street or within a city easement or right-of-way on private property, within the street tree easement.” (TM, FPD, DR)

- 58. AFFORDABLE HOUSING DISTRIBUTION.** Prior to issuance of building permits, the developer shall submit a plan for marketing the affordable units and selecting and qualifying the buyers, subject to review and approval by the City Manager's Office and the City Attorney. Developer shall recognize that any commitments for sale of the units without City approval are invalid and are counter to this affordable housing plan approval. This plan shall be in compliance with the City of Davis Buyer/Tenant Selection Guidelines and the city's "workforce" preference system. (AHP, FPD)
- 59. REVISED PLANS.** Prior to issuance of building permits, revised plans incorporating all conditions of approval for this project shall be coordinated and submitted to the Community Development Department as one package in accordance with plan check requirements. The revised plans shall show any lot modified, herein. All plans including site, grading, landscape, irrigation, mechanical and street improvement plans shall be coordinated for consistency prior to issuance of any permits (such as grading, encroachment, building, etc.) Any changes to the size, elevation, design or location of any structure on site, or other site or landscape improvements shall not be made without prior City approval. (DR)
- 60. EXTERIOR LIGHTING.** Exterior lighting shall be directed so as to not adversely impact adjacent sites or traffic. Light standards shall not exceed 15 feet in total height and shall comply with the provisions of the City's Outdoor Lighting Control Ordinance as well as the City's Security Ordinance. A detailed on-site lighting plan, including a photometric diagram and details of all exterior light fixtures shall be reviewed and approved by the Community Development Department prior to the issuance of permits. (DR)
- 61. SHADING.** South and West facing windows shall generally be shaded from the summer sun by using shade trees on the south and west building exposures. Landscaping shall be planted adjacent to a building face to the landscaping extent possible to help reduce heat and glare. (DR)
- 62. LANDSCAPE WATER CONSERVATION.** The project shall comply with the Landscape and Water Conservation requirements (Section 40.26.190 of the Davis Municipal Code). Verification of compliance with this ordinance shall be to the satisfaction of the Public Works Department and shown on the building permit plans set with the irrigation plan. The plant list shall incorporate native species whenever possible throughout the site. (PPD, PFD, DR)
- 63. LANDSCAPE ARCHITECT VERIFICATION OF WATER CONSERVATION.** The landscape architect for the approved plan shall submit a signed statement to the City upon installation confirming that the landscape irrigation and water conservation measures have been installed consistent with the approved plans and specifications. (DR)
- 64. CONSTRUCTION MANAGEMENT PLAN.** Prior to issuance of any permit or inception of any construction activity on the site, the developer shall submit a construction impact management plan including a project development schedule and "good neighbor"



information for review and approval by the Community Development and Public Works Departments. The plan shall include, but is not limited to, public notice requirements for periods of significant impacts (noise/vibration/street or parking lot closures, etc.), special street posting, construction vehicle parking plan, hours of construction activity, noise limits, dust control measures, and security fencing and temporary walkways. Work and/or storage of material or equipment within a City right-of-way may require the separate receipt of an Encroachment Permit. (DR)

- 65. CONSTRUCTION WASTE RECYCLING.** The project shall comply with the city's Construction and Demolition Ordinance. (DR)
- 66. GOOD NEIGHBOR RELATIONS.** The applicant shall provide e-mail and telephone listing for community concerns, names of persons who can be contacted report concerns and correct problems report concerns. A copy of the contact information shall be provided to the Community Development Department. (DR)
- 67. ENCROACHMENT PERMIT REQUIRED.** All work within the public right-of-way, including but not limited to utilities and grading, shall be explicitly noted with the subdivision plans. The applicant shall receive all necessary encroachment permits from the City of Davis Public Works Department prior to issuance of building permits for such structures or uses requiring to be permitted to encroach within or over the public right-of-way, including, but not limited to, patios, bike racks, water meters, backflow devices, signs and curb/gutter/sidewalk improvements. (TM, DR)

***Prior to the Final Map***

- 68. EASEMENTS.** The developer shall prepare the necessary easements and/or other documents such as CC&Rs) to provide reciprocal access and use for any portion of any lot to be used by another, including but not necessarily common access, drainage, landscaping, utilities, and shared driveway(s). The language of said easements shall and/or other documents shall be subject to the review and approval of the Community Development Director, City Engineer &/or City Attorney prior to recordation of the Final Map(s) and prior to issuance of building permits. All improvements other than public sidewalk, curb, gutter, street and designated street trees in the public right of way shall be the responsibility of the abutting property owner or Homeowner's Association to maintain (ie landscaping strips, landscaping, trees, bioswales, etc). Provisions for maintenance by abutting property owners and/Homeowner's Association shall be subject to the approval of Community Development Director City Engineer and/or City Attorney. (TM, FPD, DR)
- 69. GREENBELT.** Subdivider shall dedicate and improve approximately six percent (.70 acres) of the project site as city greenbelt. The greenbelt, currently shown on the tentative map as "Lot C" shall be identified as a new separate parcel. The greenbelt shall be in substantial conformance to the portion of "Lot C" shown on the tentative map and described generally as beginning at the north edge of the emergency access road; continuing south to "Lot R"; west between Lots 15-17 and 13-14 (not including

Lot Q), and ending at the back of the public sidewalk north of Lot 12. (TM, PPD, FPD, DR)

- 70. IMPROVEMENT PLANS REQUIRED FOR IMPROVEMENTS TO GREENBELT.** Subdivider shall provide for the design of, and construction drawings for grading, pathway (including lighting), and landscaping improvements for the greenbelt bicycle and pathway system, subject to the review and approval of the Parks and General Services Director and the City Engineer. (TM, PPD, FPD, DR)
- 71. BICYCLE PATH ADVISORY REVIEW.** Bicycle and pedestrian connections from the eastern greenbelt to the public streets shall be reviewed by the Bicycle Advisory Commission. Any review by the commission shall provide opportunity for the neighborhood to participate and comment on the design concepts for the greenbelt/street connections. (TM, PPD, FPD, DR)
- 72. BUFFER.** The northern portion of “Lot C” as shown on the tentative map shall be redrawn to exclude the area acceptable to the city as dedicated greenbelt generally described above as “**GREENBELT.**” The parcel shall be shown on the Final Map as “Homeowner’s Association. (TM, PPD, DPS DR)
- 73. BUFFER / FUTURE BICYCLE CONNECTION.** (TM, PPD, FPD, DR). For purposes of providing a potential future bicycle connection from Chiles Ranch through the Cemetery District property, the city would consider accepting the north buffer as city greenbelt under the following conditions:
- a. The successor in interest, (ie. Homeowner’s Association) provides the city with written agreement from the Davis Cemetery District dedicating an easement through their property to northwest portion of the Chiles property for purposes of providing bicycle connectivity into the cemetery road/path system.
  - b. The developer would make an Irrevocable Offer of Dedication to the city for the greenbelt. The IOD would include the area in the northwest corner identified as community garden. The IOD would initially be rejected, offer to open. The offer would not be accepted unless further action by the Cemetery Board, creating an easement/right of way for bicycle/pedestrian purposes, occurred.
  - c. The IOD may be accepted by the city if, and at the time a bicycle/pedestrian path connection is provided through the cemetery.
  - d. The developer (Homeowner’s Association) shall develop and maintain this area until and unless the IOD is accepted by the city.
  - e. The greenbelt and greenbelt improvements shall be built to city standards or refurbished to city standards prior to City’s acceptance of IOD.
- 74. LOT A.** The developer shall prepare the necessary easements and/or other documents such as CCR&s to provide access to a portion of “Lot A” to the Davis Cemetery District for future vehicle access to the south portion of their property. The language of said easements and/or other documents shall include provisions for access, maintenance, repair, and replacement and shall be subject to the review and approval of the Community Development Director or prior to recordation of the Final Map(s)

and prior to issuance of building permits. All Provisions for maintenance by abutting property owners and/or Homeowner's Association shall be subject to the approval of Community Development Director City Engineer and/or City Attorney. (PPD, FPD, DR, TM)

The language of said easement shall include the following provisions:

- a. Lot A will be landscaped in Phase I.
- b. After a period of twenty-five years, but not before, the Davis Cemetery District may improve the lot for vehicle access.
- c. Access will be for funerals processions. Vehicle use of the access by the public shall only be during processions.
- d. The cemetery shall install a gate that is similar to the gate located on Pole Line. Gate is to be kept lock at all times except during funeral use.
- e. During the first 25 years, the only acceptable use of the easement would be a bicycle path.

- 75. Lot N.** "Lot N", shown on the tentative map as "Greenbelt" shall be shown with the changes reflected in "Concept A" on the Final Map as "Homeowner's Association." The parcel and all improvements including but not limited to resident garden, landscaping, irrigation, pedestrian paths gathering structure, trees, and other amenities or features located within the parcel shall be owned and maintained by the Homeowner's Association. (TM, FPD, DR)
- 76. Lot P.** "Lot P" shown on the tentative map as "Greenbelt" shall be shown on the Final Map as Homeowner's Association. (TM, FPD, DR)
- 77. LOT R.** "Lot R" improvements, including but not limited to resident garden, landscaping, irrigation, trees, and fences shall be owned and maintained by the Homeowner's Association. (TM, FPD, DR)
- 78. UTILITY IMPROVEMENT PLAN REVIEW.** All sizes, locations and grades of the utilities to serve this project are subject to the review and approval of the City Engineer. (TM, FPD, DR)
- 79. PUBLIC / ROADWAY IMPROVEMENTS.** (TM, FPD, DR)
- a. All curb, gutter and sidewalk improvements shall be monolithic construction except as permitted by the City Engineer.
  - b. All existing sidewalk curb, and gutter improvements abutting the subdivision shall be brought up to 'first-class' condition, subject to the review and approval of the city Engineer.

- 80. PROVISION OF RIGHT OF WAY IMPROVEMENTS.** The design and construction of all public improvements to serve the subdivision shall be subject to the review and approval of the City Engineer. (TM, FPD, DR)
- 81. COMMUNITY FACILITIES DISTRICT.** Subdivider shall annex the project into the city's Community Facilities District 1990-1 (East Davis Area of Benefit), prior to, or concurrently with the recordation of the first Final Map for the project. (TM)

***Prior to Certificate of Occupancy***

- 82. GREENBELT IMPROVEMENTS.** Subdivider shall install greenbelt landscaping, bicycle/pedestrian pathway and fire access improvements (including lighting) to city standards concurrently with the other public improvements to serve the subdivision, subject to the review and approval of the Parks and General Services Director or designee and the City Engineer. The bicycle path shall be Portland Cement Concrete or such other material as may be approved by the City Engineer and constructed to city standards, subject to the review and approval of the Parks and General Services Director or designee and the City Engineer. The greenbelt shall be installed in the first phase of development prior to issuance of the first Certificate of Occupancy (TM, PPD, FPD DR).
- 83. BUFFER IMPROVEMENTS.** The subdivider shall install the north buffer in Phase II of the development prior to the issuance of first Certificate of Occupancy for Phase II. Tree and plant selection shall be provided on the final landscape plan, subject to the review and approval of Planning, Parks and General Services and Public Works. The buffer, including all amenities including but not limited to resident garden, landscaping, irrigation, pedestrian paths and trees shall be owned and maintained by the Homeowner's Association. (TM, PPD, FPD, DR).

***Prior to Issuance of Grading***

- 84. BIOLOGICAL SURVEY REQUIRED.** Prior to issuance of a grading, or disking, or any ground disturbance, or building permit or other improvement activities on the site, the applicant/developer shall obtain approval from the City regarding biological survey commissioned by the applicant, which has a 30 day expiration. The study shall be consistent with City Ordinance and shall address whether there are endangered and/or protected species on the site. This study will be a follow up to the study recently conducted for the entitlement applications hearing. (DR)
- 85. GRADING PLAN.** Prior to issuance of a grading, or disking, or any ground disturbance, or building permit or other improvement activities on the site a grading plan of the project shall be prepared by a registered Civil Engineer, for the review and approval of the City Engineer. (TM, DR)
- 86. BUILDING PERMIT GRADING PLAN.** Prior to issuance of a grading, or disking, or any ground disturbance, or building permit or other improvement activities on the site the applicant shall submit a final grading plan concurrent with the initial building plan check submittal to the Community Development Department. All accessibility

features and bicycle access routes are to be clearly shown on the site plan and grading plan. (DR)

- 87. DRAINAGE PLAN REQUIRED.** An on-site drainage plan shall be submitted for review and is subject to the approval of the City of Davis Public Works Department prior to the issuance of permits. (DR)
- 88. UTILITY PLAN.** Prior to issuance of a grading, or disking, or any ground disturbance, or building permit or other improvement activities on the site A utility plan shall be approved by all applicable utility providers. This plan, with an approval stamp from the City of Davis Community Development Department, shall be submitted by the applicant to the utility provider for review. Any necessary changes or deviations from the approved utility location and/or screening shall be reviewed by the Community Development Department prior to installation and may be subject to discretionary Design Review processing and fees by the Community Development Department. (DR)
- 89. STREET LIGHTING.** Final street lighting design, including location and number of fixtures, are subject to the review and approval of the City Engineer. (TM, FPD, DR)
- 90. ENCROACHMENT PERMIT REQUIRED.** All work within the public right-of-way, including but not limited to utilities and grading, shall be explicitly noted with the building plans. The applicant shall obtain all necessary encroachment permits from the City of Davis Public Works Department prior to issuance of building permits for all work and construction that encroach within or over the public right-of-way, including, but not limited to, balconies, fire ladders, water meters, backflow devices, signs and curb/gutter/sidewalk improvements. (DR)

***Prior to Construction***

- 91. PRECONSTRUCTION MEETING.** Prior to the start of any work on-site, the applicant shall request and attend a preconstruction meeting to include project superintendent, architect, subcontractors, as well as City representatives including Community Development and/or Public Works. (DR, TM)

***During Construction Activities***

- 92. UNDEVELOPED SITE MAINTENANCE.** The applicant shall be responsible for the ongoing maintenance and upkeep of undeveloped portions of the project site in accordance with the City of Davis Municipal Code. All building pads shall be seeded and irrigated for erosion control. (DR)
- 93. SIDEWALK MAINTENANCE.** Owners shall maintain the sidewalk in clean condition free of litter, spilled food and stains. The sidewalk shall be pressure washed by the owners on a regular basis. (FPD, DR)
- 94. TRASH MAINTENANCE.** The entire site shall be kept free of trash or debris at all times. (FPD, DR)

- 95. BACKFLOW EQUIPMENT.** Backflow prevent valve wheels and stems shall be maintained in a manner which enables inspection in order to determine whether or not the valve is open. (DR)
- 96. NATURAL VENTILATION.** All of the south facing windows on the upper floor(s) of the building(s) shall be operable to allow natural ventilation of units/tenant spaces. Adequate natural ventilation must be demonstrated prior to issuance of occupancy for all units. (DR)
- 97. RECYCLING.** An appropriate recycling storage area and containers shall be provided within each unit in the project to the satisfaction of the Community Development Department. (DR)
- 98. SOILS.** Prior to the issuance of permits, the applicant shall have a soils investigation report prepared and the applicant shall comply with all recommendations contained within the report (DR)
- 99. CONSTRUCTION TIMES AND NOISE IMPACTS/MITIGATION MEASURES.** The developer/applicant shall be responsible for informing all subcontractors and construction crews about construction start and finish times including appropriate ambient noise impacts consistent with city code and of all applicable mitigation measures. (DR)
- 100. THE AIR QUALITY DURING CONSTRUCTION.** The following actions shall be taken during construction to minimize temporary air quality impacts (dust): (DR)
- a. An effective dust control program should be implemented whenever earth-moving activities occur on the project site. In addition, all dirt loads exiting a construction site within the project area should be well watered and/or covered after loading.
  - b. Apply water or dust palliatives on exposed earth surfaces as necessary to control dust emissions. Construction contracts shall include dust control treatment in late morning and at the end of the day, of all earth surfaces during clearing, grading, earth moving, and other site preparation activities. Non-potable water shall be used, where feasible. Existing wells shall be used for all construction purposes where feasible. Excessive watering will be avoided to minimize tracking of mud from the project onto streets.
  - c. Grading operations on the site shall be suspended during periods of high winds (i.e. winds greater than 15 miles per hour).
  - d. Outdoor storage of fine particulate matter on construction sites shall be prohibited.
  - e. Contractors shall cover any stockpiles of soil, sand and similar materials.
  - f. Construction-related trucks shall be covered and installed with liners and on the project site shall be swept at the end of the day.
  - g. Revegetation or stabilization of exposed earth surfaces shall be required in all inactive areas in the project.
  - h. Vehicle speeds shall not exceed 15 miles per hour on unpaved surfaces.

**101. OZONE PRECURSORS DURING CONSTRUCTION.** In order to minimize the release of ozone precursors associated with construction, the following standard requirements developed by the Yolo/Solano APCD shall be implemented: (DR)

- a. Construction equipment and engines shall be properly-maintained.
- b. Vehicle idling shall be kept below ten minutes.
- c. Construction activities shall utilize new technologies to control ozone precursor emissions, as they become available and feasible.
- d. During smog season (May through October), the construction period shall be lengthened so as to minimize the number of vehicles and equipment operating at the same time.

**102. EXCAVATION.** If subsurface paleontological, archaeological or historical resources or remains, including unusual amount of bones, stones, shells or pottery shards are discovered during excavation or construction of the site, work shall stop immediately and a qualified archaeologist and a representative of the Native American Heritage Commission shall be consulted to develop, if necessary, further measures to reduce any cultural resource impact before construction continues. (TM, DR)

**103. NOISE REDUCTION PRACTICES.** The applicant shall employ noise-reducing construction practices. The following measures shall be incorporated into contract specifications to reduce the impact of construction noise. (DR)

- a. All equipment shall have sound-control devices no less effective than those provided on the original equipment. No equipment shall have an un-muffled exhaust.
- b. As directed by the City, the developer shall implement appropriate additional noise mitigation measures including, but no limited to, changing the location of stationary construction equipment, shutting off idling equipment, rescheduling construction activity, notifying adjacent residents in advance of construction work, or installing acoustic barriers around stationary construction noise sources.

**104. HOURS OF CONSTRUCTION.** During all project construction, hours of construction shall be as follows:

- a. Monday through Friday 7:00a.m. to 5:00 p.m.
- b. Saturday 8:00 a.m. to 3:00 p.m
- c. Construction activities shall not be permitted Sunday
- d. Construction activities shall not be permitted on Federal Holidays
- e. Construction activities shall not be permitted after 12:00 noon on December 24

***Prior to Certificate of Occupancy***

**105. FINAL INSPECTION.** An on-site final inspection of the photometric standards shall be conducted by the electrical engineering consultant to confirm that all lights were correctly installed according to the approved photometric plan. There should be an evening inspection to confirm proper installation. (DR)

- 106. COMPLIANCE WITH CONDITIONS.** Prior to any use of the project site or business activity being commenced thereon, all Conditions of Approval shall be completed to the satisfaction of the City of Davis Community Development Department. The site and buildings shall be inspected for compliance prior to the issuance of a certificate of occupancy. (ALL)
- 107. FENCING.** The applicant/developer shall install all fencing required for Phase I and Phase II prior to issuance of first Certificate of Occupancy for each phase. (FPD, DR).
- 108. LANDSCAPING.** The Developer shall restore/repair all existing landscaping that is damaged due to construction of the project prior to the issuance of a certificate of occupancy. (FPD)

**III. ENVIRONMENTAL:**

The following mitigation measures and standard conditions apply to the new Planned Development District.

**MITIGATED NEGATIVE DECLARATION #1-08**

**MITIGATION MEASURES:**

**BIOLOGICAL:**

**1. Mitigation Measure. Loss of Swainson's Hawk Nesting Habitat**

- None of the trees proposed for removal by the project currently contain active nests. However, Swainson's hawk nesting has occurred on the site in the past and may support nesting in the future. Swainson's hawks are known to nest within one-quarter mile of the proposed project. Implementation of the proposed project could result in the loss of nesting habitat or lead to the failure of active nests, which would be considered potentially significant. The following mitigation measure would be necessary to reduce the adverse effects to Swainson's hawk nesting habitat to a less than significant level.
- a) If avoidance of project activity (demolition of existing structures, grading or new construction) during the breeding season is not feasible, a qualified biologist shall conduct a pre-construction survey to determine the nesting status of Swainson's hawk on site and within one-quarter mile of the project site. This shall be a condition of any grading permit. The survey shall be conducted no less than 14 days and no more than 20 days before the beginning of construction (including equipment and materials staging) between the months of April and early September. If no active nests are found during the survey, no further mitigation for nesting Swainson's hawk shall be required.
  - b) If during the focused survey active Swainson's hawk nests are identified on-site or within one-quarter mile of the proposed, no construction shall be allowed until a qualified biologist determines that the young have fledged (able to forage independently from adults), or that the nest has failed and becomes inactive. Any trees containing nests that must be removed as a result of the proposed project



shall only be removed during the non-breeding season (September to March). Additional mitigation measures may be necessary in this instance as dictated by the California Department of Fish and Game.

**2. Mitigation Measure. Loss of 11.9 Acres of Suitable Swainson's Hawk Foraging Habitat**

The Chiles Ranch contains approximately 12.1 acres. As identified above, the project site has a history of Swainson's hawk nesting. Active Swainson's hawk nests occur within one-quarter mile of the site. Swainson's hawks, as well as other raptors, have been observed foraging on the project site. Approximately 0.22 acres of existing structures occur on the proposed site and are considered non suitable habitat for Swainson's hawk foraging. The 11.9 acres associated with the project would result in loss of suitable foraging habitat and would be considered potentially significant. One of the following mitigation measures would be necessary to reduce the adverse effects to Swainson's hawk nesting habitat to a less than significant level.

- i. The Yolo County HCP/NCCP Joint Power Association (JPA) entered into agreement with the California Department of Fish and Game regarding mitigation for impacts to Swainson's hawk foraging habitat. The agreement requires that 1 acre of habitat management lands be acquired for each 1 acre of Swainson's hawk foraging habitat lost. Prior to the issuance of grading permits, the project applicant shall pay the appropriate fee for 11.9 acres of foraging habitat affected; or
- ii. Prior to commencement of construction-related activities for the project including, but not limited to, grading, staging of materials, or earthmoving activities, the project proponent shall place and record one or more Conservation Easements that meet the foraging habitat mitigation acreage requirement. The conservation easement(s) shall be executed by the project proponent and a Conservation operator. The conservation easement(s) shall be reviewed and approved in writing by California Department of Fish and Game prior to recordation for the purpose of confirming consistency. The purpose of the conservation easement(s) shall be to preserve the value of the land as foraging habitat for the Swainson's hawk. The proponent shall provide the City with a copy of the DFG consistency finding, and a receipt of conservation easement acquisition prior to the start of construction.

**3. Mitigation Measure - Impacts to Other Potentially Occurring Sensitive Species**

White-tailed kites, barn owls, burrowing owls, bats, yellow-billed magpie and western bluebird have been identified to nest or roost on or within the immediate vicinity of the proposed project site. Direct or indirect impacts to nests or individuals of these species may occur as a result of construction, and would therefore be considered potentially significant. The following mitigation measures would be necessary to reduce potential direct and indirect impacts to nesting white-tailed kites, burrowing owl, barn owl, yellow-billed magpie, and western bluebird, or roosting bats to a less than significant level.

- a) If avoidance of project activity (demolition of existing structures, grading, or new construction) during the breeding season is not feasible, a qualified biologist shall conduct pre-construction survey(s) to determine the nesting status of white-tailed kites, barn owls, burrowing owls, yellow-billed magpies and western bluebird, and roosting bats on site and within 250 feet of the project site. This shall be a condition of any grading permit. The survey shall be conducted no less than 14 days and no more than 20 days before the beginning of construction (including equipment and materials staging) between the months of March and early September. If no active nests or roosts are found during the survey, no further mitigation for nesting/ roosting of aforementioned species shall be required.
- b) If during the focused survey(s) active nests or bat roosts are identified on-site or within 250 feet of the proposed, no demolition of existing structures or construction shall be allowed until a qualified biologist determines that the young have fledged (able to forage independently from adults), or that the nest has failed and becomes inactive. In the case of bats roosting in existing structures, exclusion shall be the only option prior to demolition. The existing structures and trees containing nests that must be removed as a result of the proposed project shall only be removed during the non-breeding season (September to March).

**STANDARD CONDITIONS:**

**AESTHETICS:**

1. Prior to building permit issuance, a final lighting plan for all exterior lighting, including a photometric plan, shall be submitted to the Community Development Department for review and approval. All exterior lighting shall comply with the city's outdoor lighting control ordinance.

**AIR QUALITY:**

2. An effective dust control program should be implemented whenever earthmoving activities occur on the project site. In addition, all dirt loads exiting a construction site within the project area should be well watered after loading.
3. Apply water or dust palliatives on exposed earth surfaces as necessary to control dust emissions. Construction contracts shall include dust control treatment in late morning and at the end of the day, of all earth surfaces during clearing, grading, earthmoving, and other site preparation activities. Non-potable water shall be used, where feasible. Existing wells shall be used for all construction purposes where feasible.
4. Grading operations on the site shall be suspended during periods of high winds (i.e. winds greater than 15 miles per hour).
5. Haul trucks shall be equipped with tarpaulins and other effective covers. Public streets shall be swept at the end of the day and cleared of any deposits caused by construction activities.
6. Outdoor storage of fine particulate matter on construction sites shall be prohibited.
7. Contractors shall cover any stockpiles of soil, sand and similar materials.
8. Construction-related trucks shall be covered and installed with liners and on the project site shall be swept at the end of the day.

9. Throughout the construction period, streets adjacent to the project shall be swept at the end of the day and cleared of any deposits caused by construction activities.
10. Revegetation or stabilization of exposed earth surfaces shall be required in all inactive areas in the project.
11. Vehicle speeds shall not exceed 15 miles per hour on unpaved areas.
12. Construction equipment and engines shall be properly maintained.
13. Construction activities shall utilize new technologies to control ozone precursor emissions, as they become available and feasible.
14. 14. Vehicle idling shall restricted to 5 minutes.

**CULTURAL RESOURCES:**

15. If subsurface archaeological or historic remains, including unusual amounts of bones, stones, shells or pottery shards, are discovered during excavation or construction of the site, work shall stop immediately and a qualified archaeologist and a representative of the Native American Heritage Commission shall be consulted to develop, if necessary, further mitigation measures to reduce any archaeological impact to a less than significant level before construction continues.

**NOISE:**

16. All windows and sliding glass doors should be weather stripped or mounted in low air-infiltration design frames meeting ANSI air infiltration standards. Standard energy-conserving building practices will satisfy this requirement.
17. Noise insulation features shall be incorporated into building construction and site improvement as may be necessary to ensure interior noise levels on greater than 45 dBA and a maximum exterior noise level of 60 dBA.
18. All construction activity and equipment shall be in compliance with the City of Davis Noise Ordinance.

**EXHIBIT D**

**CHILES RANCH MITIGATION SCENARIO**

Chiles Ranch - Carbon Mitigation Scenario  
 New Urban Development, LLC  
 Prepared 04/28/09, revised 05/07/09

	MT per	Units	Total CO2 in Metric Tons	In Pounds
<b>Step 1 - Project Size</b>				
Greater than 26 units	5.5	108	594	1,309,176
Target 1990	3.1	108	334.8	737,899
Carbon reduction required	2.4	108	259.2	571,277
<b>Step 2 - Credits</b>				
Medium Density Project Credit (2%)	-0.11	108	(11.9)	(26,184)
Transit - less than 1/4 mi (5%)	-0.275	108	(28.7)	(65,459)
<b>Total Credits</b>			<b>(41.6)</b>	<b>(91,642)</b>
<b>Step 3 - Project Calculations</b>				
108 unit medium density project on transit line			259.2	571,277
Balance to mitigate			(41.6)	(91,642)
			<b>217.6</b>	<b>479,634</b>
<b>Step 4 - Mitigation Measures</b>				
35% above Title 24 (2005)	-1.89	108	(203.9)	(449,495) Note 1
Household PV (total 37kW)	-13.84	1	(13.8)	(30,503) Note 2
Total Reduction due to Mitigation			(217.8)	(479,999)
<b>Net Carbon Reduction (credit)</b>			<b>(0.2)</b>	<b>(364.9)</b>

Notes  
 1 4,162 lbs as per City of Davis accepted mitigation measure (MT amount per unit has been rounded)  
 2 Total amount of PV output. Equal to 18 - 2.05 kW systems. However, size and quantity of PV systems to be determined