CITY OF
CLOVERDALE

AGENDA
REGULAR MEETING OF THE CITY COUNCIL AND
JOINT MEETING OF THE CLOVERDALE COMMUNITY DEVELOPMENT SUCCESSOR AGENCY BOARD OF DIRECTORS

TUESDAY, OCTOBER 25, 2016

CLOSED SESSION 5:30 p.m.
CLOSED SESSION LOCATION: CITY HALL CONFERENCE ROOM, 124 N. CLOVERDALE BLVD. CLOVERDALE, CA 95425

PUBLIC BUSINESS SESSION: 6:30 p.m.
PUBLIC BUSINESS SESSION LOCATION: CLOVERDALE PERFORMING ARTS CENTER, 209 N. CLOVERDALE BLVD., CLOVERDALE, CA 95425

The Cloverdale City Council welcomes you to its meetings that are typically scheduled for the 2nd and 4th Tuesday of the month. Your interest and participation are encouraged and appreciated. ***Please silence all pagers, cellular telephones and other communications devices upon entering the meeting.***

ADDRESSING THE CITY COUNCIL:

When asked to do so by the Mayor, those wishing to address the City Council are asked to step up to the podium. Speak directly into the microphone so everyone in the audience can hear your comments and so they'll be recorded into the official record. State your name and City of Residence for the record. Per City Council Policy, three (3) minutes are typically allotted to each speaker. However, Council may at its discretion revise the amount of time allotted. Public comments will normally be received after staff presentations on an agenda item and before the City Council starts deliberations. A Talking Tips sheet is available for your use.

We may disagree, but we will be respectful of one another.
All comments will be directed to the issue at hand, and addressed to the City Council.
Personal attacks are unacceptable.

DISABLED OR SPECIAL NEEDS ACCOMMODATION: In compliance with the Americans with Disabilities Act, if you need assistance to attend or participate in a City Council meeting, please contact the City Clerk's office at 894-2521. Notification at least 48-hours prior to the meeting will assist the City Clerk in assuring that reasonable accommodations are made to provide accessibility to the meeting.

WAIVER WARNING: If you challenge decisions/directions of the City Council in court, you may be limited to raising only those issues you or someone else raised at public hearings(s) described in this Agenda, or in written correspondence delivered to the City of Cloverdale at, or prior to, the public hearing(s).

CLOSED SESSION

CLOSED SESSION: 5:30 pm

OPENING:

- Call to Order
- Roll Call
- Agenda Review - Closed Session (Changes and/or Deletions)

PUBLIC COMMENTS ON CLOSED SESSION AGENDA:

Prior to adjournment into Closed Session, the public may speak on items to be addressed in Closed Session.

RECESS TO CLOSED SESSION:

CONFERENCE WITH LABOR NEGOTIATOR

(Government Code Section 54957.6)

Labor Negotiator: Paul Cayler, City Manager; David Kelley, Assistant City Manager/Community Development Director; and Jose M. Sanchez, City Attorney

Employee Organizations: Cloverdale Classified Service Employees Association, Cloverdale Police Officers' Association, and Cloverdale Dispatchers' Association.

CONVENE PUBLIC BUSINESS SESSION – 6:30 p.m.

OPENING:

- Call to Order
- Pledge of Allegiance
- Roll Call
- Report out of Closed Session –Actions Taken
- Conflict of Interest Declaration
- Agenda Review – Regular Session (Changes and/or Deletions)

PUBLIC COMMENTS:

Any person wishing to speak to the City Council on any item not listed on the agenda may do so at this time. Members of the public have the right to speak on any items on the Council Agenda during that item. Pursuant to the Brown Act, the City Council is not allowed to consider issues or take action on any item not listed on the agenda. Each person wishing to speak must go to the podium when advised by the Mayor and speak directly into the microphone.

PROCLAMATIONS / PRESENTATIONS: None

CONSENT CALENDAR:

All items under Consent Calendar will be considered together by one action of the Council unless any Council Member or member of the public requests that an item be removed and considered separately.

1. **Minutes of Previous Meeting October 11, 2016** – Moore *(Pages 1-5)*
2. **Action on Resolution No. 081-2016, awarding a contract for the purchase of one police vehicle to the Ford Store of San Leandro**- Cramer *(Pages 7- 21)*
3. **Action on Resolution No. 082-2016, approving the rate adjustments for solid waste, composting and recycling, which will decrease by an average of 4.3%** – Cayler *(Pages 23- 32)*
4. **Review of recent UUT Administrative & Interpretation Rulings**– Cavallari *(Pages 33- 39)*

AB343 Requirements: Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection in the City Hall offices located at 124 N. Cloverdale Blvd., Cloverdale CA 95425 during normal business hours.

5. **Action on Resolution No. 083-2016, authorizing the City Manager to submit a letter to the Department of Alcoholic Beverage Control stating that the Public Convenience or Necessity will be served by the Department's issuance of a type 20 off-sale license for the Grocery Outlet retail store located at 111 Treadway Drive** - Miranda *(Pages 40- 50)*
6. **Action on Resolution No 085-2016, authorizing the execution of a Professional Services Agreement with C&S Companies for the Environmental Assessment to Remove Obstructions at the Cloverdale Municipal Airport as Funded by Federal Aviation Administration (FAA) Airport Improvement Grant** - Cayler *(Pages 51- 76)*
7. **Waive the second reading and readopt Ordinance No. 700-2015 amending the Cloverdale Municipal Code, Title 15 to add Chapter 15.38, "Solar Energy Systems, Expedited Permitting Process For Small Residential Rooftop Solar Systems" in order to comply with the specific requirements of AB 2188 to streamline the permitting and inspection process for residential rooftop solar energy systems**- Kelley *(Pages 77- 89)*
8. **Waive the second reading and readopt Ordinance No. 701-2016 amending the Cloverdale Municipal Code, Title 18 (Zoning Ordinance), Chapter 18.09, to add "Article III Marijuana, Section 18.09.300, Medical Marijuana" and Ordinance No. 702-2016 amending Title 9, Chapter 9.36 "Marijuana" of the Cloverdale Municipal Code Section 9.36.020, "Definitions" and Section 9.36.050 "Outdoor Cultivation of Marijuana Prohibited" to reference the Cloverdale Zoning Ordinance for definitions and regulations related to cultivation of marijuana** - Cramer *(Pages 90- 124)*
9. **Waive the second reading and readopt Ordinance No. 703-2016, amending the Cloverdale Municipal Code, Title 18 (Zoning Ordinance), Chapter 18.08.040, changing development standards for the SP-1 (Specific Plan 1) Zoning District and rezoning a 12.3-acre parcel of land located at the southeast corner of Asti Road and Santana Drive (APN 117-050-026) from the "MP-Business Park" District to the "SP-1-Specific Plan 1 District." And, waive the second reading and readopt Ordinance No. 704-2016 approving a Development Agreement between the City of Cloverdale and Spight Properties II LCC pertaining to the development of the Alexander Valley Resort project** – Kelley *(Pages 125- 215)*
10. **Waive the second reading and readopt Ordinance No. 705-2016 repealing and replacing Cloverdale Municipal Code Chapter 5.24 relating to massage therapy and massage establishments** - Cramer *(Pages 217- 277)*
11. **Waive the second reading and readopt Ordinance No. 706-2016, Amending Cloverdale Municipal Code Chapter 8.08 Related to Smoking in Public Places** - Cramer *(Pages 279- 301)*
12. **Waive the second reading and readopt Ordinance No. 707-2016 amending Cloverdale Municipal Code, Title 3, Chapter 3.04, "Officers Authorized to Sign - Procedure," Section 3.04.020, adding the Assistant City Manager as an officer authorized to sign on behalf of the City** - Cavallari *(Pages 303- 307)*
13. **Waive the second reading of Ordinance No. 710-2016, of the City of Cloverdale amending Title 18 "Zoning" of the Cloverdale Municipal Code, prezoning certain properties containing approximately 42.5-acres of land lying east of Asti Road to a combination of General Industrial, Rural Residential, and Public Institutional. and making certain changes to the standards of the general industrial zoning district to add live work units as a conditionally permitted use in the General Industrial Zoning District** - Kelley *(Pages 309- 418)*

COMMUNICATIONS: None

Council may discuss at this time written communications sent to Council members since the last council meeting. Written communication to be discussed will be listed below, if any.

PUBLIC HEARINGS: None

NEW BUSINESS: None

AB343 Requirements: Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection in the City Hall offices located at 124 N. Cloverdale Blvd., Cloverdale CA 95425 during normal business hours.

SUBCOMMITTEE ITEMS:

14. **Action on Resolution No. 084-2016, approving a revised Reserve Policy and General Fund Surplus Policy –** Cavallari *(Pages 419- 430)*

Recommendation: Staff recommends adopting Resolution No. 084-2016, approving a revised Reserve Policy and General Fund Surplus Policy for the City of Cloverdale.

15. **Review of General Fund Preliminary Fiscal Year 15/16 Revenues, Expenditures, and Fund Balance, and approve allocation of surplus revenues to reserves** – Cavallari *(Pages 431-436)*

Recommendation: Receive the report of Preliminary FY 15-16 General Fund Revenues and Expenses and by Minute Order, approve the allocation of surplus revenues to reserves.

SUBCOMMITTEE REPORTS:

- Airport (Chair, Councilmember Cox and Vice Mayor Wolter) - Next Meeting, TBA
- Finance, Administration & Police (Chair, Mayor Brigham and Vice Mayor Wolter) - Next Meeting: December 8, 2016, 2:00 p.m.
- Planning & Community Development (Chair, Vice Mayor Wolter and Mayor Brigham) - Next Meeting: December 20, 2016, 4:00 p.m.
- Public Works (Chair, Councilmember Russell and Councilmember Cox) - Next Meeting: November 29, 2016, 10:30 a.m.
- Joint City/Fire District (Chair, Councilmember Palla and Mayor Brigham) - Next Meeting: TBA.
- Joint City/School District (Chair, Councilmember Palla and Councilmember Cox) – Next Meeting: November 28, 2016, 5:00 p.m.

COUNCIL REPORTS (INCLUDING STUDENT LIAISON): (VERBAL REPORTS: 15 minutes)

LEGISLATIVE REPORT:

CITY MANAGER/CITY ATTORNEY REPORT:

COUNCIL DIRECTION ON FUTURE AGENDA ITEMS:

ADJOURNMENT: Adjourn to a regular meeting of the City Council and Cloverdale Community Development Successor Agency, Tuesday, November 8, 2016, for Closed Session at 5:30 p.m. (at the City Hall Conference Room 124 N. Cloverdale Blvd., Cloverdale, CA 95425) and Public Business Session at 6:30 p.m. (at the Cloverdale Performing Arts Center 209 N. Cloverdale Blvd., Cloverdale, CA 95425).

The City does not transcribe its proceedings. Anyone who desires a verbatim record of this meeting should arrange for attendance by a court reporter or for other acceptable means of recordation. Such arrangements will be at the sole expense of the individual requesting the recordation. Questions about this agenda should be directed to City Hall at 707/894-2521. State of California, County of Sonoma, City of Cloverdale. CERTIFICATION I, David Kelley, do hereby declare under penalty of perjury that the foregoing agenda was posted on the outdoor bulletin board at the City Hall, 124 N. Cloverdale Blvd., Cloverdale, California, and made available for public review, prior to or on this 20th day of October, 2016, at or before 5:00 p.m.

David J. Kelley

David Kelley, Assistant City Manager

AB343 Requirements: Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection in the City Hall offices located at 124 N. Cloverdale Blvd., Cloverdale CA 95425 during normal business hours.

DRAFT MINUTES
REGULAR MEETING OF THE CITY COUNCIL AND
JOINT MEETING OF THE CLOVERDALE COMMUNITY DEVELOPMENT SUCCESSOR AGENCY BOARD OF DIRECTORS

TUESDAY, OCTOBER 11, 2016

PUBLIC BUSINESS SESSION: 6:30 p.m.
PUBLIC BUSINESS SESSION LOCATION: CLOVERDALE PERFORMING ARTS CENTER, 209 N. CLOVERDALE BLVD., CLOVERDALE, CA 95425

CONVENE PUBLIC BUSINESS SESSION – 6:30 p.m.
OPENING:
- Call to Order: Mayor Brigham called the meeting to order at 6:30 p.m.
- Pledge of Allegiance
- Roll Call: Present-Councilmember Palla, Vice Mayor Wolter, Councilmember Cox, Councilmember Russell, and Mayor Brigham
- Conflict of Interest Declaration: None
- Agenda Review – Regular Session (Changes and/or Deletions): None

PUBLIC COMMENTS: None

PROCLAMATIONS / PRESENTATIONS:

1. **Commercial cannabis manufacturing presentation –**

Matthew VanBenschoten, with TC Labs Management/ Extract Outfitters, gave a PowerPoint presentation on commercial cannabis manufacturing, noting that extraction and manufacturing provides the consumer with a consistent, clean, pure, measured dosage. He discussed the cannabis business model, which includes cultivation, lab testing, manufacturing, and the store front. He emphasized the importance of safety and regulating the industry. He also discussed tax revenues and jobs that would be generated in Cloverdale by the presence of a cannabis manufacturing business.

Brian Elliott, with Fire and Emergency Services Consulting, stated there are adequate standards and regulations in place already to manage this industry. He commented that there are currently other businesses that use chemicals and volatiles in their operations, such as auto body shops and cabinet shops, adding that these businesses are governed by and work within established regulations.

Discussion ensued about butane and other volatiles and safety precautions.

PUBLIC COMMENTS:
Jeanne Cox, Cloverdale, asked about State regulation. Mr. VanBenschoten responded that the State has until 2018 to establish regulations for the industry but local agencies may begin creating local regulations sooner. Melanie Bagby, Cloverdale, asked about air quality standards and if Cloverdale standards are lower than that of Santa Rosa. Assistant City Manager/Community Development Director, David Kelley responded that Cloverdale is under the California guidelines and standards for air quality as well as the local air quality board. Mr. Elliott added that the standards concerning some paint products are stricter in Santa Rosa than in Cloverdale, but that will not impact this industry.

Shawn Bovee, Cloverdale, questioned the intent to limit the number of allowable cannabis manufacturing businesses in Cloverdale as well as dispensaries and the plan to address business already in operation. Discussion ensued with Councilmembers stating that these details will need to be determined later, mostly likely in January or February after an ad hoc committee has had opportunity to research and discuss options.

CONSENT CALENDAR:

2. **Minutes of Previous Meeting:** August 23, 2016
3. **Minutes of previous Meeting:** September 27, 2016
4. **Adoption of Resolution No. 074-2016, adopting the City of Cloverdale Five-Year Strategic Plan for 2016-2021**
5. **Adoption of Ordinance No. 711-2016, amending the Zoning Map and Zoning Ordinance, to Rezone a 0.52 acre property from "P-D/15 Rink Mixed use" to "R-2 Two-Family Residential" for the Rink Parcel Map Project located at 531 N. Cloverdale Boulevard**

Action: Motion was made by Councilmember Russell, to approve the consent calendar; seconded by Councilmember Cox. The motion passed by roll call vote (5-ayes – Councilmember Palla, Vice Mayor Wolter, Councilmember Cox, Councilmember Russell, and Mayor Brigham; 0-noes).

COMMUNICATIONS: None.

PUBLIC HEARINGS:

6. **Proposed Annexation, General Plan Amendment, Prezoning and CEQA document for an approximate 42.5-acre area lying east of existing City boundaries in an unincorporated portion of Sonoma County. The properties all lie within the City of Cloverdale Sphere of Influence and City's Urban Growth Boundary. The Project also includes consideration of a Conditional Use Permit and Major Design Review for Nu Forest Products, Inc. on approximately 26.85 acres of the overall annexation area**

Assistant City Manager/Community Development Director, David Kelley, presented this item requesting the Council take the below actions:

1) Open the public hearing and take testimony.
2) Adopt City Council Resolution No. 075-2016, adopting a Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP) for the Project.
3) Adopt City Council Resolution No. 076-2016, directing City staff to file an annexation application with Sonoma County Local Agency Formation Commission (LAFCO) for the Nu Forest Products and adjacent properties to the City of Cloverdale.
4) Adopt City Council Resolution No. 077-2016, approving an amendment to the Cloverdale General Plan relating to five properties lying adjacent to the Nu Forest site.
5) Adopt City Council Resolution No. 078-2016, approving the Conditional Use Permit and Major Design Review for Nu Forest Products.
6) Introduce and waive the first reading of Ordinance No. 710-2016, of the City Council of the City of Cloverdale amending Cloverdale Municipal Code zoning, making certain changes to Chapters 18.06 and Chapter 18.09 to add live work units as a conditionally permitted use in the M--1 District and zoning approximately 42.5-acres of land lying generally east of Asti Road, west of the Russian River, south of existing City limits and north of the City of Cloverdale wastewater treatment plant and corporation yard (APNs 116-260-04, -030, -033, -045, -046 -050 & -55) as a combination of M-1 (General Industrial), R-R (Rural Residential) and P-1 (Public Institutional).

Mr. Kelley acknowledged and introduced Jerry Haag as the lead consultant on the project, who presented the details of the annexation. Mr. Haag introduced Sharmaine Ege, a representative for Nu Forest. She discussed the history and goals of Nu Forest. She commented that Nu Forest is happy to be coming to Cloverdale and intends to be an active supporter in the community, noting that they have already joined the Chamber of Commerce.

City Attorney, Jose Sanchez, commented that City Staff is hopeful that there will be unanimous support by the involved property owners; however, one protest can force LAFCO to a protest hearing, which may delay the annexation process.

Mayor Brigham opened and closed the Public Hearing with no public comments received.

Action: Motion was made by Councilmember Palla to approve Resolution No. 075-2016, adopting a Mitigated Negative declaration and Mitigation Monitoring and Reporting Plan for the Nu Forest Annexation and Development Project on approximately 42.5 acres of land lying generally east of Asti Road, west of the Russian River, south of existing City limits and north of the City of Cloverdale wastewater treatment plant and corporation yard (APNs 116-260-004, -030, -033, -045, -046 -050 & -55; seconded by Vice Mayor Wolter. The motion passed by roll call vote (5-ayes – Councilmember Palla, Vice Mayor Wolter, Councilmember Cox, Councilmember Russell, and Mayor Brigham; 0-noes).

Action: Motion was made by Vice Mayor Wolter to approve Resolution No. 076-2016, directing staff to file annexation application for Cloverdale Reorganization No. 2016-01, for the Nu Forest Product properties consisting of approximately 42.5 acres of land lying generally east of Asti Road, west of the Russian River, south of existing City limits and north of the City of Cloverdale wastewater treatment plant and corporation yard (APNs 116-260-004, -030, -033, -045, -046 -050 & -55; seconded by Councilmember Cox. The motion passed by roll call vote (5-ayes – Councilmember Palla, Vice Mayor Wolter, Councilmember Cox, Councilmember Russell, and Mayor Brigham; 0-noes).

Action: Motion was made by Councilmember Cox to approve Resolution No. 077-2016, approving an amendment to the General Plan for five properties on approximately 11.27 acres of land lying generally east of Asti Road, west of the Russian River, south of existing City limits and north of the City of Cloverdale wastewater treatment plant and corporation yard (APNs 116-260-030, -033, -045, -046 & -050; seconded by Councilmember Russell. The motion passed by roll call vote (5-ayes – Councilmember Palla, Vice Mayor Wolter, Councilmember Cox, Councilmember Russell, and Mayor Brigham; 0-noes).

Action: Motion was made by Councilmember Russell to approve Resolution No. 078-2016, approving a Conditional Use Permit (File No. CUP 029-2015), and a Major Design Review (File No. DR 029-2015) for Nu Forest Products, Inc. Located at 280 Asti Road (APSs 116-260-004 & -055); seconded by Councilmember Palla. The motion passed by roll call vote (5-ayes – Councilmember Palla, Vice Mayor Wolter, Councilmember Cox, Councilmember Russell, and Mayor Brigham; 0-noes).

Action: Motion was made by Councilmember Palla to introduce and waive the first reading of Ordinance 710-2016, amending Title 18, " Zoning", of the City Municipal Code, prezoning certain properties containing 42.5 acres of land lying generally east of Asti Road, west of the Russian River, south of existing City limits and north of the City of Cloverdale wastewater treatment plant and corporation yard to a combination of Rural Residential (RR), General Industrial (M-1) and Public Institutional (P-I) Districts and making certain changes to the standards of the General Industrial Zoning District to allow live-work units with the issuance of a Conditional Use Permit (APNs 116-260-004, -030, -033, -045, -046 -050 & -55); seconded by Councilmember Cox. The motion passed by roll call vote (5-ayes – Councilmember Palla, Vice Mayor Wolter, Councilmember Cox, Councilmember Russell, and Mayor Brigham; 0-noes).

NEW BUSINESS:

7. **Action on Resolution No. 079-2016, opposing Proposition 57 ("The Public Safety and Rehabilitation Act of 2016")**

Chief Cramer discussed the many concerns of Proposition 57, stating that it would undo four decades of Criminal Justice Reform by allowing the early release of criminals convicted of "non-violent" felonies and reduced incarceration of career criminals, drug dealers and gang members. He provided a list of crimes that would be

considered "non-violent," noting that he, and most members of the public, would disagree that the crimes listed are "non-violent." Chief Cramer recommended Council adopt the Resolution opposing Proposition 57 and supporting the "No on Proposition 57" campaign. Councilmember Palla discussed the unanimous vote of the California League of Cities to oppose Proposition 57.

PUBLIC COMMENTS: None

Action: Motion was made by Councilmember Palla to adopt Resolution No. 079-2016, opposing Proposition 57 and supporting the "No on Proposition 57" campaign; seconded by Councilmember Cox. The motion passed by roll call vote (5-ayes – Councilmember Palla, Vice Mayor Wolter, Councilmember Cox, Councilmember Russell, and Mayor Brigham; 0-noes).

8. **Action on a Resolution No. 080-2016, authorizing the City Manager to execute an agreement amendment for professional services with RRM Design Group for professional services for additional engineering services related to trailhead and pre-engineered trail bridge construction documents, and trail design details for the Clover Springs Open Space Preserve**

City Manager, Paul Cayler, gave the background on the project, and recommended the City Council review the RRM Design Group proposal for Clover Springs Open Space engineering and permitting services, and adopt the resolution, authorizing the execution of an amendment to the professional service agreement with RRM Design Group. Mr. Cayler explained that the City would also be partnering with the Sonoma County Trails Council to organize volunteers to work on the project. He introduced Ken Wells, Director of Sonoma County Trails Council, who shared background information on the Council and himself, commenting that he is happy to be working with the City on this project.

PUBLIC COMMENTS: None

Action: Motion was made by Councilmember Russell to adopt Resolution No. 080-2016, authorizing the City Manager to execute an agreement amendment for professional services with RRM Design Group for professional services for additional engineering services related to trailhead and pre-engineered trail bridge construction documents, and trail design details for the Clover Springs Open Space Preserve; seconded by Councilmember Palla. The motion passed by roll call vote (5-ayes – Councilmember Palla, Vice Mayor Wolter, Councilmember Cox, Councilmember Russell, and Mayor Brigham; 0-noes).

SUBCOMMITTEE REPORTS:

- Airport (Chair, Councilmember Cox and Vice Mayor Wolter) - Next Meeting, TBA
- Finance, Administration & Police (Chair, Mayor Brigham and Vice Mayor Wolter) - Next Meeting: October 13, 2016, 2:00 p.m.
- Planning & Community Development (Chair, Vice Mayor Wolter and Mayor Brigham) - Next Meeting: October 12, 2016, 4:00 p.m.
- Public Works (Chair, Councilmember Russell and Councilmember Cox) - Next Meeting: November 29, 2016, 10:30 a.m.
- Joint City/Fire District (Chair, Councilmember Palla and Mayor Brigham) - Next Meeting: TBA.
- Joint City/School District (Chair, Councilmember Palla and Councilmember Cox) – Next Meeting: November 28, 2016, 5:00 p.m.

COUNCIL REPORTS:

Councilmember Russell provided an update and information on Sonoma County Transportation Authority and, Regional Climate Protection Authority, and SMART. She announced the availability of shirts supporting SMART and encouraged those present to order.

Councilmember Cox reported that he attended the 3rd Annual State of the Latino Community in Sonoma County at Sonoma State and the 4C's (Community Child Care Council of Sonoma County) Cloverdale Preschool Open House at their new facility, 330 N. Washington Street. He stated that he and his wife also participated in the National Walk and Roll to School Day.

Councilmember Palla discussed items covered at the last REMIF meeting, including the accreditation process; the addition of 16 licenses, which will allow access to a wide array of safety videos through the workers' compensation carrier; the fact that FAA considers drones as "commercial", which means REMIF will not be covering them; and upcoming trainings offered. He also provided an update regarding appointments of Executive Officers for the League of California Cities.

LEGISLATIVE REPORT: None

CITY MANAGER/CITY ATTORNEY REPORT: City manager Cayler informed the Council that the Mayor's and Councilmembers Association has requested that Councilmembers submit topics of interest regarding programs for the upcoming year. Assistant City Manager/Community Development Director Kelley reported that Keith's BBQ was issued a Temporary Occupancy and opened yesterday.

COUNCIL DIRECTION ON FUTURE AGENDA ITEMS: None

ADJOURNMENT: Mayor Brigham adjourned the meeting at 9:05 p.m. to a regular meeting of the City Council and Cloverdale Community Development Successor Agency, Tuesday, October 25, 2016, for Closed Session at 5:30 p.m. (at the City Hall Conference Room 124 N. Cloverdale Blvd., Cloverdale, CA 95425) and Public Business Session at 6:30 p.m. (at the Cloverdale Performing Arts Center 209 N. Cloverdale Blvd., Cloverdale, CA 95425).

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CITY OF CLOVERDALE

City Council
Agenda Item Summary

Agenda Item:	2
Meeting Date:	10/25/16

Agenda Section	**Staff Contact**
Consent	Stephen Cramer, Police Chief

Agenda Item Title

Requesting that Council award the contract for the purchase of one police vehicle to the Ford Store of San Leandro and authorizing the City Manager, or his designee, to purchase one 2017 Ford Explorer Police Interceptor Utility Model police vehicle, and associated necessary equipment, in an amount not to exceed sixty thousand dollars ($60,000), using funds from the Public Safety Impact Fee Fund.

Summary

Prior to 2015, the Finance, Administration, and Police Sub-Committee previously approved the purchase of Chevy Tahoes for purposes of police patrol. In our previous efforts to find a bid for the Chevy Tahoe, the department learned that there were no current bids available, and that most agencies are transitioning to the Ford Police Interceptor.

On September 13, 2016, City Council authorized the purchase of a 2017 Ford Explorer Police Interceptor Utility Model police vehicle. Currently, the Cloverdale Police Department has fourteen (14) vehicles in service, including one (1) patrol vehicle dedicated as a K9 service vehicle. Of those, five (5) vehicles are in critical need of replacement due to excessive mileage and expensive repairs.

Several of our current patrol vehicles have accumulated in excess of 90,000-100,000 miles. In addition, these vehicles have experienced significant mechanical problems and wear & tear over the past two years. Two vehicles in particular, both 2003 Ford Crown Victorias, have in excess of 116,487 & 103,300 miles respectively and are in dire need of replacement. In addition, with the addition of our tenth police officer, we are in need of adding an additional patrol vehicle to our fleet. The purchase of one new Ford Explorer will supplement and upgrade our fleet of marked patrol vehicles, allow for more pro-active visibility, increase officer safety, and alleviate budgetary impacts due to vehicle maintenance.

Our department last purchased a new Ford Explorer Police Interceptor patrol vehicle in 2015. Recently, City Council authorized the purchase of a 2017 Ford Explorer Interceptor Utility Model police vehicle, however, that vehicle and associated equipment are currently in the assembly process and will not be ready for daily use until January of 2017. The department sought competitive bids from qualified vendors. The County of Sonoma uses the Alameda County patrol car bid through the Ford Store of San Leandro. The Ford Store of San Leandro had the lowest quote at $31,741.16. (Refer to attached quote #1). The 2017 Ford Explorer Police Interceptor Utility Model police vehicle comes equipped with complete wiring and transmission upgrades.

Currently, we contract with the County of Sonoma's Fleet Operations for installation of patrol vehicle equipment and parts. The County quoted our agency $18,155.62 as the cost estimate for essential equipment and parts installation, including labor. (Refer to attached quote #2).

In searching for open bids, we found that the following Sonoma County police agencies purchase and maintain their vehicles through the County of Sonoma's Fleet Operations Division: City of Healdsburg, City of Windsor, City of Sebastopol, City of Sonoma, City of Cotati, and Santa Rosa Junior College, to name a few. Further analysis revealed that the County always receives a lower bid than the State bid for these vehicles, and the County's maintenance division has a quick turnaround, as well as reduced service fees. The County's Fleet Operations Division is positioned well to provide Pursuit Vehicle Build-Ups that will meet the needs of the Sonoma County Law Enforcement Agencies. The Division is a Zero-Net-Cost government business entity and as such, costs are controlled for all of the Division's internal and external customers.

The Fleet Operations Division is a specialist in providing emergency response vehicle set up, repair, and maintenance services. The Division has been performing Pursuit Vehicle Build Up work for more than twenty-five years and the work accounts for approximately 20-25% of the Division's annual work load.

The effort that the Fleet Operations Division exerts in meeting the needs of its customers is evident in its most recent ranking of one of the 100 Best Fleets in North America in June of 2013. The Division ranked 14th out of all of the government fleets that applied for the award and out of an estimated total of 38,000 government fleets in North America. The team effort and drive to be one of the best Fleet Operations in North America also ensures that the Division's customers are receiving the best service and highest quality of work at a reasonable cost.

Assembly Line Processing of Set-Up Work:

They utilize a system of 6 individual task stations in an assembly line process that results in consistency and a high level of quality work. They rotate their technicians once or twice a year between the different work stations to ensure that each technician is competent throughout the entire set-up process. The organization of the work flow in this manner prevents mistakes being made due to monotony and also ensures that each technician can set up a Patrol car from start to finish and maintain the same level of quality work. Each vehicle is set up just like the previous vehicle which aids in the ability to diagnose problems and repair vehicles efficiently.

Volume Parts Pricing:

Late in 2010, the County entered into a contract for all of their parts needs to be managed and supplied through a single source vendor. The contract resulted in a reduction in the cost of parts and expanded the number resources available to further control costs. They were also able to take advantage of better pricing for emergency vehicle set-up equipment by having the contract vendor establish wholesale pricing accounts with the vendors they were purchasing parts from and pass the savings onto the County. The savings experienced by the County are passed on to each of their customers because they operate under a Zero-Net-Cost business model. Historically, the County has had challenges with local General Motors and Chrysler Dealerships responding to vehicle procurement bids and providing support for their products. And, Ford has had a better Fleet pricing program for their patrol vehicles as compared to other manufactures which lowers the asset acquisition costs. An estimate to purchase and set up one black and white 2017 Ford Explorer Police Interceptor police vehicle ranged from $55,000 to $60,000, depending on equipment needed.

In speaking with officers from the County and Cities of Sebastopol and Healdsburg, they all prefer the Ford Interceptor and find it to be easier on brakes, good maneuverability, reliable, a lot of leg room for prisoners and passengers, and less downtime for maintenance.

Public Safety Impact Fees Fund:

Currently, the City of Cloverdale has $458,132.16 in its Public Safety Impact Fee Fund.

On Thursday, 10/13/16, staff presented this issue to the Finance, Administration, Police Sub-Committee.

Options

(1) Adopt the attached Resolution awarding the contract for the purchase of one police vehicle to the Ford Store of San Leandro and authorizing the City Manager, or his designee, to purchase one 2017 Ford Explorer Police Interceptor Utility Model police vehicle, and associated necessary equipment, in an amount not to exceed sixty thousand dollars ($60,000), using funds from Public Safety Impact Fee Fund; or

(2) Reject the attached Resolution and decline to authorize the City Manager, or his designee, to purchase one 2017 Ford Explorer Police Interceptor Utility Model police vehicle using Police Impact Fees, and associated necessary equipment.

Budget/Financial Impact

Total cost of the requested vehicle not to exceed $60,000. Staff time to arrange for the purchase and equipment installation.

Subcommittee Recommendation

This agenda item was presented to the Finance, Administration, and Police Sub-Committee on October 13, 2016, which recommended the purchase of a new patrol vehicle.

Recommended Council Action

The Cloverdale Police Department and the City Manager recommend that the Cloverdale City Council adopt Resolution No. 081-2016, which would award the contract for the purchase of one police vehicle to the Ford Store of San Leandro and authorize the City Manager, or his designee, to purchase one 2017 Ford Explorer Police Interceptor Utility Model police vehicle, and associated necessary equipment, in an amount not to exceed sixty thousand dollars ($60,000), using funds from the Public Safety Impact Fee Fund.

Attachments:

1. Quote #1 from The Ford Store (2017 Ford Explorer Police Interceptor Utility Model police vehicle
2. Quote #2 from Sonoma County Fleet Operations (equipment)
3. Appendix “A” – additional essential equipment costs
4. Resolution No. 081-2016

2720893.1

The Ford Store San Leandro

1111 Marina Blvd.
San Leandro, CA 94577
(510) 352-2000

Buyer:	Co Buyer:	Deal #:
CITY OF CLOVERDALE		Deal Date: 08/04/2016
CA		Print Time: 01:17pm
Home #:	Home #:	
Work #:	Work #:	Salesperson:

Vehicle

New ☒				
Used ☐	Stock #:	Description:	VIN:	Mileage:
Demo ☐		2017 FORD POLICE UTILITY		

Trade

Aftermarkets:		
AFTERMARKET 1	$	0.00
Total Aftermarkets:	**$**	**0.00**

Our List Price:	$	37,635.00
Discount Savings:	$	8,321.00
Sale Price After Rebate:	$	29,314.00
Total Financed Aftermarkets:	$	0.00
Total Trade Allowance:	$	0.00
Trade Difference:	**$**	**29,314.00**
Documentary Fee:	$	0.00
State & Local Taxes:	$	2,418.41
Total License and Fees:	$	8.75
Total Cash Price:	**$**	**31,741.16**
Total Trade Payoff:	$	0.00
Delivered Price:	**$**	**31,741.16**
Cash Down Payment + Deposit:	$	0.00
Unpaid Balance:	**$**	**31,741.16**

Bill Lazar
Commercial Account Manager

MAIN: 510-352-2000
DIRECT: 510-347-4138
CELL: 925-640-7471
FAX: 510-347-4194
EMAIL: BLazar@sanleandroford.com

1111 Marina Blvd, San Leandro, California 94577
www.sanleandroford.com

LINCOLN

CNGP530 VEHICLE ORDER CONFIRMATION 08/04/16 15:51:28

==> _____ _____ Dealer: F72018

2017 EXPLORER 4-DOOR Page: 1 of 2

Order No: 9999 Priority: J3 Ord FIN: QQ167 Order Type: 5B Price Level: 725

Ord Code: 500A Cust/Flt Name: CLOVERDALE PO Number:

		RETAIL
K8A	4DR AWD POLICE	$31510
	.112.6" WB	
G1	SHADOW BLACK	
YZ	POLICE WHITE	
9	CLTH BKTS/VNL R	
W	EBONY BLACK	
500A	EQUIP GRP	
	.PREM SINGLE CD	
99R	.3.7L V6 TIVCT	NC
44C	.6-SPD AUTO TRAN	NC
52P	DR LOCK PLUNGER	160
53M	SYNC SYSTEM	295
	CA BOARD FEES	NC
17T	CARGO DOME LAMP	50
18W	RR WINDOW DEL	25

		RETAIL
18X	100 WATT SIREN	$300
21W	POCKET WRN LGT	640
422	CALIF EMISSIONS	NC
43L	SILENT MODE	20
47C	WIRING KIT-FRT	105
51Z	DUAL SPOT LAMPS	350
549	PWR MIRR HTD	60
60R	NOISE SUPPRESS	100

TOTAL BASE AND OPTIONS 37635

TOTAL 37635

THIS IS NOT AN INVOICE

* MORE ORDER INFO NEXT PAGE *

F8=Next

CNGP530 VEHICLE ORDER CONFIRMATION 08/04/16 15:51:36

==> _____ _____ Dealer: F72018

2017 EXPLORER 4-DOOR Page: 2 of 2

Order No: 9999 Priority: J3 Ord FIN: QQ167 Order Type: 5B Price Level: 725

Ord Code: 500A Cust/Flt Name: CLOVERDALE PO Number:

		RETAIL
63B	SD MARKER LGHTS	$290
66A	FRONT HDLMP PKG	850
	.GRILL WIRING	
66B	TAIL LAMP PKG	425
66C	REAR LIGHT PKG	455
76R	REVERSE SENSING	275
85R	RR MOUNT PLATE	35
86T	RR TAILLAMP HSG	NC
87R	RR VIEW MIR/CAM	NC
91C	VINYL PACKAGE 3	700
942	DAYTIME RUN LMP	45
153	FRT LICENSE BKT	NC
	SP DLR ACCT ADJ	
	SP FLT ACCT CR	
	FUEL CHARGE	

		RETAIL
B4A	NET INV FLT OPT	NC
	PRICED DORA	NC
	DEST AND DELIV	945

TOTAL BASE AND OPTIONS 37635

TOTAL 37635

THIS IS NOT AN INVOICE

F7=Prev

F1=Help F2=Return to Order F3/F12=Veh Ord Menu

F4=Submit F5=Add to Library

S099 - PRESS F4 TO SUBMIT

CITY OF CLOVERDALE
POLICE DEPARTMENT
ORDER SPECIFICATIONS AND OPTION PACKAGES, MOTOR VEHICLE
2017 FORD UTILITY POLICE INTERCEPTOR 500A AWD
BLACK IN COLOR WITH WHITE ROOF AND FRONT DOORS

SPECIFICATION DATA	Option Code	Meets Requirements	
		Yes	No
Vehicle Series	**500A**	✓	
Utility Police Interceptor AWD (Incl. D&D)	K8A	✓	
3.7L V6 Ti-VCT FFV with 6-Speed Automatic Transmission	99R / 44C	✓	
Front Headlamp Lighting Solution	66A	✓	
Police Wire Harness Connector Kit - Front	47C	✓	
License Plate Bracket - Front	153	✓	
Lamps: Dome Lamp - Red/White in Cargo Area	17T	✓	
Lamps: Pre-Wiring for grille LED lights, siren and speaker	60A	✓	
Forward Indicator Pocket Warning LED Lights - Warn, Park, Turn (driver side - Red / Passenger side - Blue)	21W	✓	
Tail Lamp Lighting Solution	66B	✓	
Rear Lighting Solution	66C	✓	
Police Silent Mode	43L	✓	
Daytime Running Lamps	942	✓	
Side Market LED - Side view Mirrors (driver side - Red / passenger side - Blue)	63B	✓	
Audio / Video: SYNC Basic	53M	✓	
Doors / Locks:Hidden Door-Lock Plunger w/Rear-door handles inoperable	52P	✓	
Windows: Rear-window power delete, operable from front driver side switches	18W	✓	
Flooring / Seats: Rear Console Plate	85R	✓	
Safety & Security: Mirrors - Heated Side view	549	✓	
Safety & Security: Reverse Sensing	76R	✓	
Spot Lamp Prep Kit, Dual	51W		✓
Spot Lamp - Incandescent Bulb - Dual	51Z	✓	
Misc.: Noise Suppression Bonds (Ground Straps)	60R	✓	
Misc.: 100 Watt Siren/Speaker (Includes bracket and pigtail)	18X	✓	
Cloth Front Bucket Seats / Vinyl Rear Interior Color: Charcoal Black	9W	✓	
Paint Color: Shadow Black	G1	✓	
Vinyl Wrap -- Two-Tone Vinyl Package #3, Roof, RH/LH Doors Only White (YZ)	91C	✓	
California Emission System	422	✓	
Four Sets of Simple Fleet Keys (without microchip) Per Vehicle		✓	
Five (5) Year/100,000 mile drive train extended warranty. No Deductible		✓	
Dealer Add: Front push bar, installed, Setina Body Guard 16 " (PB100 Steel Construction)		✓	

Other Requirements:

FOB:
County of Sonoma
Fleet Operations
2688 Ventura Avenue Room 105-S
Santa Rosa, CA 95403

Attn: Janice Samuelson

Documentation prepared as follows:
City of Cloverdale
124 N. Cloverdale Boulevard
Cloverdale Ca. 95425

NOTE: If "YES" is checked that means "as specified". If "NO" is checked that means the specification is different. If "NO" is checked, then a separate sheet of paper must accompany your bid package explaining the exception to the specification.

A signature is required on every specification sheet:

Company Name: THE FORD STORE SAN LEANDRO

Signature: Bill Z

Print Name: BILL LAZAR

99167

THE Ford STORE
SAN LEANDRO

EXCEPTIONS & CLAIRIFICATIONS

CITY OF CLOVERDALE – 2017 FORD POLICE UTILITY

OPTION 51W **This option is a prep kit only (No Spots) and is not compatible with 51Z. 51Z is prep and Spots.**

EQUIPMENT GROUP CONTRACT $26,578.00

Series	Option Code	Police Interceptor 500A
Utility Police Interceptor AWD (incl. D&D)	K8A	S
3.7L V6 Ti-VCT FFV with 6-Speed Automatic Transmission	99R / 44C	S
3.5L V6 EcoBoost® – (131mph Top Speed)	99T / 44C	$3,417.00
EQUIPMENT GROUP		
Interior Upgrade Package – 1st and 2nd Row Carpet Floor Covering – Cloth Seats – Rear – Center Floor Console less shifter w/unique Police console finish plate – Includes Console – Top Plate – Finish 3 (incl. 2 cup holders) – Floor Mats, front and rear (carpeted) – Deletes the standard console mounting plate (85D) **Note:** Not available with options: 67G, 67H, 67U	65U	$375.00
Front Headlamp / Police Interceptor Housing Only – Pre-drilled hole for side marker police use, does not include LED installed lights (eliminates need to drill housing assemblies) – Pre-molded side warning LED holes with standard twist lock sealed capability (does not include LED installed lights) **Note:** Not available with options: 66A and 67H	86P	$121.00
Front Headlamp Lighting Solution – Includes base LED Low beam/Incandescent (Halogen) High beam headlamp with High Beam Wig-wag function and two (2) white rectangular LED side warning lights – Includes pre-wire for grille LED lights, siren and speaker (60A) – Wiring, LED lights included. Controller "not" included **Note:** Not available with option: 67H **Note:** Recommend using Cargo Wiring Upfit Package (67G) or Ultimate Wiring Package (67U)	66A	$818.00
★Tail Lamp / Police Interceptor Housing Only – Pre-existing holes with standard twist lock sealed capability (does not include LED installed lights) (eliminates need to drill housing assemblies) **Note:** Not available with options: 66B and 67H	86T	$59.00
Tail Lamp Lighting Solution – Includes base LED lights plus two (2) rear integrated hemispheric lighthead white LED side warning lights in taillamps – LED lights only. Wiring, controller "not" included **Note:** Not available with option: 67H **Note:** Recommend using Cargo Wiring Upfit Package (67G) or Ultimate Wiring Package (67U)	66B	$408.00
Rear Lighting Solution – Includes two (2) backlit flashing linear high-intensity LED lights (driver's side red / passenger side blue) mounted to inside liftgate glass – Includes two (2) backlit flashing linear high-intensity LED lights (driver's side red / Passenger side blue) installed on inside lip of liftgate (lights activate when liftgate is open) – LED lights only. Wiring, controller "not" included **Note:** Not available with option: 67H **Note:** Recommend using Cargo Wiring Upfit Package (67G) or Ultimate Wiring Package (67U)	66C	$438.00
Cargo Wiring Upfit Package – Rear console plate (85R) – contours through 2nd row; channel for wiring – Wiring overlay harness with lighting and siren interface connections – Vehicle Engine Harness: o Two (2) light connectors – supports up to six (6) LED lights (engine compartment) o Two (2) grille light connectors o Two (2) 50 amp battery ground circuits in right hand rear-quarter power distribution junction block o One (1) 10-amp siren/speaker circuit (engine to cargo area) – Whelen Lighting PCC8R Control Head – Whelen PCC8R Light Relay Center (mounted behind 2nd row seat) – Light Controller / Relay Center Wiring (jumper harness) – Whelen Specific Cable (console to cargo area) Connects PCC8R to Control Head – Pre-wiring for grille LED lights, siren and speaker (60A) – Does "not" include LED lights o Recommend Police Wire Harness Connector Kits 47C and 21P **Note:** Not available with options: 65U, 67H and 67U	67G	$1,286.00
Ready for the Road Package: **All-in Complete Package – Includes Police Interceptor Packages: 66A, 66B, 66C, plus** – Whelen Cencom Light Controller Head with dimmable backlight – Whelen Cencom Relay Center / Siren / Amp w/Traffic Advisor (mounted behind 2nd row seat) – Light Controller / Relay Cencom Wiring (wiring harness) w/additional input/output pigtails – High current pigtail – Whelen Specific WECAN Cable (console to cargo area) connects Cencom to Control Head – Pre-wiring for grille LED lights, siren and speaker (60A) – Rear console plate (85R) – contours through 2nd row; channel for wiring – Grille linear LED Lights (Red / Blue) and harness – 100-Watt Siren / Speaker – Hidden Door-Lock Plunger / Rear-Door Handles Inoperable (52P) – Wiring Harness: o Two (2) 50 amp battery and ground circuits in RH rear-quarter **Note:** Not available with options: 66A, 66B, 66C, 67G, 67U and 65U	67H	$3,277.00

★ = New for this model year

P = Included in Equipment Group, S = Standard Equipment, O = Optional

EQUIPMENT GROUP

EQUIPMENT GROUP		
Upfitter Wiring		
Ultimate Wiring Package Includes the following: – Rear console mounting plate (85R) – contours through 2nd row; channel for wiring – Pre-wiring for grille LED lights, siren and speaker (60A) – Wiring harness I/P to rear cargo area (overlay) o Two (2) light cables – supports up to six (6) LED lights (engine compartment/grille) o Two (2) 50-amp battery and ground circuits in RH rear-quarter o One (1) 10-amp siren/speaker circuit engine cargo area – Rear hatch/cargo area wiring – supports up to six (6) rear LED lights – Does "not" include LED lights, side connectors or controller o Recommend Police Wire Harness Connector Kits 47C and 21P **Note:** Not available with options: 65U, 67G, 67H	67U	$529.00
Police Wire Harness Connector Kit – Front For connectivity to Ford PI Package solutions includes: • (2) Male 4-pin connectors for siren • (5) Female 4-pin connectors for lighting/siren/speaker • (1) 4-pin IP connector for speakers • (1) 4-pin IP connector for siren controller connectivity • (1) 8-pin sealed connector • (1) 14-pin IP connector **Note:** See Upfitters guide for further detail www.fordpoliceinterceptorupfit.com	47C	$100.00
Police Wire Harness Connector Kit – Rear For connectivity to Ford PI Package solutions includes: • (1) 2-pin connector for rear lighting • (1) 2-pin connector • (6) Female 4-pin connectors • (6) Male 4 pin connectors • (1) 10-pin connector **Note:** See Upfitters guide for further detail www.fordpoliceinterceptorupfit.com	21P	$126.00
KEY EXTERIOR OPTIONS		
Engine Block Heater	41H	$87.00
License Plate Bracket – Front	153	NC
Lamps		
Auto Headlamp	86L	$109.00
Dark Car Feature – Courtesy lamp disable when any door is opened	43D	CONTRACT
Daytime Running Lamps	942	$43.00
Dome Lamp – Red/White in Cargo Area	17T	$50.00
★Front Warning Auxiliary Light (Driver side – Red / Passenger side – Blue) **Note:** Requires 60A	21L	$529.00
★Forward Indicator Pocket Warning Light – Warn, Park, Turn (Driver side – Red / Passenger side – Blue) **Note:** Requires 60A	21W	$614.00
Pre-wiring for grille LED lights, siren and speaker $50.00	60A	O / P-66A / P-67G / P-67H / P-67U
Side Marker LED – Sideview Mirrors (Driver side – Red / Passenger side – Blue) – Located on backside of exterior mirror housing – LED lights only. Wiring, controller "not" included. **Note:** Requires 60A **Note:** Recommend using Cargo Wiring Upfit Package (67G), Ready for the Road Package (67H) or Ultimate Wiring Package (67U)	63B	$280.00
Rear Quarter Glass Side Marker Lights (Driver side – Red / Passenger side – Blue)	63L	$552.00
Spot Lamp Prep Kits		
Spot Lamp Prep Kit, Driver Side **Note:** Does not include spot lamp housing and bulb	51P	$134.00
Spot Lamp Prep Kit, Dual Side **Note:** Does not include spot lamp housing and bulbs	51W	$270.00
Spot Lamp – Incandescent Bulb		
Driver Only	51Y	$206.00
Dual (driver and passenger)	51Z	$337.00
Spot Lamp – LED Bulb		
Driver Only (Unity)	51R	$380.00
Driver Only (Whelen)	51T	$403.00
Dual (driver and passenger) (Unity)	51S	$595.00
Dual (driver and passenger) (Whelen)	51V	$638.00
Body		
Glass – Solar Tint 2nd Row, Rear Quarter and Liftgate Window (Deletes Privacy Glass)	92G	$116.00
Glass – Solar Tint 2nd Row Only, Privacy Glass on Rear Quarter and Liftgate Window	92R	$83.00

★ = New for this model year

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EQUIPMENT GROUP

EQUIPMENT GROUP		
Body (continued)		
Roof Rack Side Rails -- Black	68Z	$150.00
Deflector Plate (Standard on EcoBoost® engine)	76D	$322.00
VINYL/WRAP OPTIONS		
Two-Tone Vinyl Package #1 • Roof Vinyl • RH/LH Front-Doors Vinyl • RH/LH Rear-Doors Vinyl • White (YZ) Only **Note:** Not available with the following options: 91C, 91D, 91E, 91F, 91G, 91H, 91J	91A	$807.00
Two-Tone Vinyl Package #3 • Roof Vinyl • RH/LH Front-Doors Only Vinyl • White (YZ) Only **Note:** Not available with the following options: 91A, 91D, 91E, 91F, 91G, 91H, 91J	91C	$673.00
Two-Tone Vinyl -- Roof • Roof Vinyl • White Only **Note:** Not available with the following options: 91A, 91C	91H	$471.00
Two-Tone Vinyl -- RH/LH Front-Doors • White Only **Note:** Not available with the following options: 91A, 91C, 91D, 91E, 91F, 91G	91J	$293.00
Vinyl Word Wrap -- POLICE "non-reflective" • White (YZ) lettering located on LH/RH sides of vehicle **Note:** Not available with the following options: 91A, 91C, 91E, 91F, 91G, 91J	91D	$764.00
Vinyl Word Wrap -- POLICE "reflective" • Black lettering located on LH/RH sides of vehicle **Note:** Not available with the following options: 91A, 91C, 91D, 91F, 91G, 91J	91E	$764.00
Vinyl Word Wrap -- POLICE "reflective" • White lettering located on LH/RH sides of vehicle **Note:** Not available with the following options: 91A, 91C, 91D, 91E, 91G, 91J	91F	$764.00
Vinyl Word Wrap -- SHERIFF "non-reflective" • White lettering located on LH/RH sides of vehicle **Note:** Not available with the following options: 91A, 91C, 91D, 91E, 91F, 91J	91G	$764.00
Wheels		
Wheel Covers (18" Full Face Wheel Cover) **Note:** Only available with the standard Police wheel, not available with 64E	65L	$59.00
18" Painted Aluminum Wheel **Note:** Spare wheel is an 18" conventional (Police) black steel wheel	64E	$457.00
Audio/Video		
Rear View Camera (Includes Electrochromic Rear View Mirror -- Video is displayed in rear view mirror) **Note:** This option would replace the camera that comes standard in the 4" center stack area. **Note:** Camera can only be displayed in the 4" center stack (std) "OR" the rear view mirror (87R)	87R	NC
SYNC® Basic (Voice-Activated Communication System) -- Includes single USB port and single auxiliary audio input jack	53M	$284.00
Remappable (4) switches on steering wheel (less SYNC®)	61R	$150.00
Remappable (4) switches on steering wheel (with SYNC®)	61S	$150.00
Doors / Locks (Select only one Lock)		
Rear-Door Handles Inoperable / Locks Operable[1]	68L	$33.00
Rear-Door Handles Inoperable / Locks Inoperable[1]	68G	$33.00
Hidden Door-Lock Plunger w/Rear-door handles operable[1]	52H	$135.00
Hidden Door-Lock Plunger w/Rear-door handles inoperable[1]	52P	$154.00 / P-67H
Windows		
Windows -- Rear-window power delete, operable from front driver side switches	18W	$25.00
Flooring / Seats		
1st and 2nd row carpet floor covering (includes floor mats, front and rear)	16C	$121.00 / P-65U
2nd Row Cloth Seats	88F	$59.00 / P-65U
★Power passenger seat (6-way) w/manual recline and lumbar (Late Availability)	87P	$313.00 O
Front Console Plate -- Delete **Note:** Not available with option: 67G, 67H, 67U, 85R	85D	NC / P-65U
Rear Console Plate **Note:** Not available with option: 65U, 85D	85R	$33.00 / P-67G / P-67H / P-67U
Keys (Note: Not compatible with Remote Keyless Entry - 59U)		
Keyed Alike -- 1435x	59E	$50.00

[1] Options 68L, 68G, 52H and 52P not available in any combination

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P = Included in Equipment Group, S = Standard Equipment, O = Optional

2016 UTILITY POLICE INTERCEPTOR
EQUIPMENT GROUP

EQUIPMENT GROUP		
Keys: Note: Not Compatible with Remote Keyless-Entry Fob (continued)		
Keyed Alike – 1284x	59B	$50.00
Keyed Alike – 0135x	59D	$50.00
Keyed Alike – 0576x	59F	$50.00
Keyed Alike – 1111x	59J	$50.00
Keyed Alike – 1294x	59C	$50.00
Keyed Alike – 0151x	59G	$50.00
Safety & Security		
Ballistic Door-Panels – Driver Front-Door Only	90D	-1,245.00 credit
Ballistic Door-Panels – Driver & Pass Front-Doors	90E	contract
BLIS® – Blind Spot Monitoring with Cross-traffic Alert (Requires 54Z) **Note:** Includes manual fold-away mirrors, w/heat, w/o memory, w/o puddle lamps	55B / 54Z	$523.00
Lockable Gas Cap for Easy Fuel® Capless Fuel-Filler	19L	$19.00
Mirrors – Heated Sideview	549	$59.00
Perimeter Anti-Theft Alarm – Activated by Hood, Door or Liftgate – Requires Key Fob (595)	593	$116.00
Remote Keyless-Entry Key Fob (w/o Keypad, less PATS) **Note:** Not available with Keyed Alike	595	$250.00
Reverse Sensing	76R	$264.00
Misc		
Aux Air Conditioning **Note:** Not available with Cargo Storage Vault (63V)	17A	$586.00
Badge Delete – Deletes the "Police Interceptor" badging on rear liftgate – Deletes the "Interceptor" badging on front hood (EcoBoost®)	16D	NC
Cargo Storage Vault (includes lockable door and compartment light) **Note:** Not available with Aux Air Conditioning (17A)	63V	$235.00
Scuff Guards – Protective wrap edging located on front edge of both rear-doors – Top surface of rear bumper (help protect the upper surface from paint damage that can occur while loading and unloading of cargo)	55D	$87.00
My Speed Fleet Management – Allows dealer or fleet administrator to lower the maximum vehicle speed and the maximum audio system volume using a Ford authorized IDS diagnostic service tool – Allows the VMAX speed to be set in 5mph increments (between 90 – 131 mph) **Note:** See Upfitter's Guide for further detail www.fordpoliceinterceptorupfit.com	43S	$59.00
Noise Suppression Bonds (Ground Straps)	60R	$96.00
Enhanced PTU Cooler – Power Transfer Unit – Recommended Usage: EVOC Training; Continuous / Extended Track Usage **Note:** This PTU Cooler is not required for day to day patrol usage **Note:** Requires the 3.5L V6 EcoBoost® Engine (99T)	52B	$2,809.00
100 Watt Siren/Speaker (includes bracket and pigtail)	18X	$289.00 / P-67H

★ = New for this model year

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2017 FORD ADDITIONAL EQUIPMENT		
VENDOR	EQUIPMENT	COST
Fisher Wireless	Radio	$ 2,937.55
Blac-Rac	Rifle rack w/adapter	$ 504.51
Setina	Truck vault	$ 921.62
KLH	Mobile Data Computer	$ 4,079.32
	TOTALS	$ 8,443.00

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CITY OF CLOVERDALE

CITY COUNCIL

RESOLUTION NO. 081-2016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE AWARDING A CONTRACT FOR PURCHASE OF A SECOND POLICE VEHICLE TO THE FORD STORE OF SAN LEANDRO AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO PURCHASE ONE 2017 FORD EXPLORER POLICE INTERCEPTOR UTILITY MODEL POLICE VEHICLE, AND ASSOCIATED NECESSARY EQUIPMENT, IN AN AMOUNT NOT TO EXCEED SIXTY THOUSAND DOLLARS ($60,000), USING FUNDS FROM THE PUBLIC SAFETY IMPACT FEES FUND

WHEREAS, the Cloverdale Police Department currently has fourteen (14) vehicles in service, including one (1) patrol vehicle dedicated as a K9 service vehicle; and

WHEREAS, of the fourteen (14) vehicles, five (5) are in critical need of replacement due to excessive mileage and expensive repairs due to age of the vehicles, with several vehicles having accumulated in excess of 100,000 miles; and

WHEREAS, the purchase of a new vehicle will supplement and upgrade our fleet of marked patrol vehicles, allow for more pro-active visibility, increase officer safety, and alleviate budgetary impacts due to vehicle maintenance; and

WHEREAS, the Police Department sought competitive bids from qualified vendors; and

WHEREAS, the Ford Store of San Leandro was the lowest responsible bidder and had the lowest quote at THIRTY ONE THOUSAND SEVEN HUNDRED FORTY ONE DOLLARS AND 16/100 ($31,741.16); and

WHEREAS, the City currently contracts with the County of Sonoma's Fleet Operations for installation of patrol vehicle equipment and parts and it is estimated that the cost estimate for essential equipment and parts installation, including labor, is estimated at EIGHTEEN THOUSAND ONE HUNDRED FIFTY FIVE THOUSAND DOLLARS AND 62/100 ($18,155.62); and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CLOVERDALE FINDS AND RESOLVES AS FOLLOWS:

1. The foregoing recitals are true and correct.

2. The Contract for the purchase of one 2017 Ford Explorer Police Interceptor Utility Model Police Vehicle, shall be awarded to the Ford Store of San Leandro.

3. The City Manager, or his designee, is authorized to purchase one 2017 Ford Explorer Police Interceptor Utility Model Police Vehicle, and associated necessary equipment, in an amount not to exceed sixty thousand dollars ($60,000) using funds from the Public Safety Impact Fee Fund.

It is hereby certified that the foregoing Resolution No. 081-2016, was duly introduced and duly adopted by the City Council of the City of Cloverdale at its regular meeting held on the 25th day of October, 2016 by the following roll call vote: (-)

AYES
NOES:
ABSENT:
ABSTAIN:

APPROVED: ATTESTED:

_____ _____

MaryAnn Brigham, Mayor Linda Moore, Deputy City Clerk

2720897.1

CITY OF CLOVERDALE

City Council/Successor Agency Agenda Item Summary

Agenda Item:	3
Meeting Date:	October 25, 2016

Agenda Section	**Staff Contact**
Consent Calendar	Paul Cayler, City Manager

Agenda Item Title

Resolution No. 082-2016, of the City Council Approving the Maximum Allowable Solid Waste, Composting and Recycling Rates under the Solid Waste Collection Franchise Agreement between the City and Redwood Empire Disposal, Inc., and Repealing the Rate Schedule Adopted under Resolution No. 059-2015

Summary

Solid waste collection in Cloverdale is established by Chapter 8.12 of the Municipal Code, which was reformed in 2011. In March 2011, the City of Cloverdale and Redwood Empire Disposal, Inc. (RED) entered into a new solid waste and recycling collection franchise agreement for the exclusive right to perform collection services in Cloverdale. The franchise agreement is a detailed contract which sets forth the types of solid waste and recycling services. In return for the exclusive right to collect solid waste in Cloverdale, RED pays the City a franchise fee. Per the Municipal Code and franchise agreement, the City Council approves the maximum allowable rates that RED may charge by resolution. The last time that the City Council adjusted the maximum allowable rates was in December 2014. Per Section 6.5 of the franchise agreement, RED may submit an annual rate adjustment application for the effective date of September 1st. The provisions of the annual rate adjustment specify a method based on the Refuse Rate Index (RRI) which looks to cost category changes in labor, fuel, and vehicle maintenance. The franchise agreement permits that the City is reimbursed for the review of the rate adjustment calculation. Therefore, the City Manager retained R3 Consulting Group, Inc. to conduct a review of RED's RRI calculation. R3 Consulting Group is an independent consultant that specializes in advising municipal government on solid waste issues. R3 Consulting Group previously worked for the City of Cloverdale during the development of the franchise agreement, and they conducted the RRI review for the past four years. Please find R3 Consulting Group's letter report attached to this agenda item, wherein it is found that RED's rate adjustment calculation is properly done and consistent with the City Municipal Code and franchise agreement.

There are two components in the rate calculations to consider for this year's solid waste rate adjustment.

- The Collection Component impacts cost categories, such as labor, fuel, vehicle replacement and maintenance. This Collection Component of the RRI is estimated to be a -4.33% decrease. Please note that this component has decreased this year by -3.67%. The greatest decrease in the cost categories in the past year is fuel, which has decreased by -5.19%
- The Disposal Component impacts the tipping fee cost category, and current rates include for this adjustment already include a landfill tipping fee increase from $126.45 to $127.95 per ton that was effective April 1, 2016.
- The Compostable Materials Processing Fee Component reflects a green waste tipping fee decrease from $77.10 to $76.16 per ton that was effective October 1, 2016.
- The Franchise Fee Component is unchanged, and equals 11% of the total customer rate.

The customer rates proposed by RED effective October 1, 2015 result in the following percentage increases over current rates due to the components listed above:

- Residential Carts – Decreases of between -2.48% and -3.14% (depending on size). The total monthly adjustments range from -$0.40 to -$1.34 per month.

- Commercial Carts – Decreases of between -2.56% and -3.32% (depending on size).
- Commercial Bins – Decreases of between -0.21% and 1.9% (depending on size and collection frequency).
- Commercial Debris Boxes – Decreases of between 1.42% and 4.30% (depending on size and material type).
- Bulky Items Handling – Increases of between 0.16% and 0.67% (depending on material type).

Options

The primary options are: 1) Adopt the proposed resolution, approving the annual rate adjustment; or 2) Refer the proposed resolution for more study and return the matter to the City Council meeting.

Budget/Financial Impact

There is no immediate impact on City finances due to the rate adjustment. Cloverdale residential and commercial customer will be modestly impacted by this savings depending on the size and frequency of solid waste collection.

Subcommittee Recommendation

On October 13, 2015, the Finance, Administration and Police Subcommittee reviewed the RED rate adjustments. The subcommittee recommended that the rate adjustment resolution be placed on the City Council's Consent Calendar for adoption at the October 25, 2015, Regular Meeting.

Recommended Council Action

The City Manager recommends that the City Council approve the proposed resolution for the following reasons: 1) The requested annual rate adjustment is consistent with the franchise agreement; 2) The RRI calculations have been reviewed by a qualified consultant and have been found to be accurate; and 3) On average, the adjusted rates are going down by -4.33%.

Attachments:

1. Proposed Resolution No. 082-2016, with Exhibit A.
2. Letter Report from R3 Consulting dated October 5, 2016.

cc:

CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 082-2016

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE APPROVING MAXIMUM ALLOWABLE SOLID WASTE, COMPOSTING AND RECYCLING RATES AND REPEALING RATE SCHEDULES ADOPTED UNDER RESOLUTION NO. 059-2015

WHEREAS, on February 23, 2011, the City Council adopted Ordinance No. 677-2011 repealing Cloverdale Municipal Code Chapter 8.12, and adding a new Chapter 8.12, entitled, "Collection, Disposal and Processing of Solid Waste Recyclables and Compostable Materials and Related Activities" to the Cloverdale Municipal Code; and

WHEREAS, on March 23, 2011, the City Council approved Resolution No. 021-2011 adopting a new franchise agreement with Redwood Empire Disposal Inc. (RED) that, among other things, established a new franchise term provided for amendment of franchise rates, and provided for new services to be provided by RED to the City and to its residents; and

WHEREAS, on December 10, 2014 the City Council approved Resolution No. 080-2014 which authorized adjusted maximum allowable rates for consideration of an increased franchise fee; and

WHEREAS, Section 6.5 of the franchise agreement sets forth provisions for an annual rate adjustment effective each September 1 using the Refuse Rate Index (RRI) and changes in the disposal and compostable fees; and

WHEREAS, RED submitted an annual rate adjustment application per the provisions of Section 6.5 of the franchise agreement; and

WHEREAS, Section 6.5 of the franchise agreement further sets forth that the City, or designee, may review the cost data for reasonableness, and that the City's cost to perform the review shall be reimbursed by RED; and

WHEREAS, the City retained the R3 Consulting Group, a qualified independent consultant specializing in solid waste rate review, to conduct a review of RED's RRI calculations; and

WHEREAS, R3 Consulting Group completed their review of RED's annual rate adjustment application and found the RRI calculations set forth therein to be accurate and calculated in accordance with the terms of the franchise agreement; and

WHEREAS, Section 8.12.090 (Rates) of the Cloverdale Municipal Code sets forth: "The city council may by resolution from time to time amend the maximum rates that contractors may impose for the collection, disposal, and processing of solid waste, recyclable materials and compostable materials and related services within the city."; and

WHEREAS, The proposed annual rate adjustment is consistent with the franchise agreement and municipal code, said RRI calculations have been reviewed for accuracy by a qualified consultant, and further routine annual rate adjustments according to an incremental index increase are prudent public policy in order that the rate structure remains competitive over the franchise agreement term thereby preventing large rate adjustments which cause customer dissatisfaction.

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

1. The above recitals are true and correct and are hereby incorporated into this resolution as findings of the Cloverdale City Council.

2. The City Council of the City of Cloverdale approves the maximum allowable rate schedule shown in **Exhibit A** attached hereto, to be effective October 1, 2016.

3. Resolution No. 080-2015 is hereby repealed.

It is hereby certified that the foregoing Resolution No. 082-2016 was duly introduced and duly adopted by the City Council of the City of Cloverdale at its regular meeting held on October 25, 2016, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED:	ATTESTED:
_____	_____
Mary Ann Brigham, Mayor	Linda Moore, Deputy City Clerk

Exhibit A
City of Cloverdale
Customer Rates Effective October 1, 2016

Rate Category	Customer Rates Effective October 1, 2016
A. RESIDENTIAL SCHEDULE	
Cans (weekly collection)	
1-20 GAL	$15.72
1-32 GAL	$21.33
1-64 GAL	$33.26
1-96 GAL	$43.46
Road Charge (private road)	$6.28
Extra Pick-up	$9.90
Carry charge per cart (walk in service)	$1.74
Low Income Discount Cans/Carts (weekly collection)	
1-32 GAL	$19.43
1-64 GAL	$30.17
1-96 GAL	$39.45
Extra Pick-up	$5.64
Carry charge per cart (walk in service)	$1.57
B. COMMERCIAL SCHEDULE	
1.5 Cubic Yd Bin	
1 x week	$169.61
2 x week	$299.40
3 x week	$426.91
Extra Pick-up	$59.28
2 Cubic Yd Bin	
1 x week	$213.29
2 x week	$376.15
3 x week	$539.37
Extra Pick-up	$73.52
3 Cubic Yd Bin	
1 x week	$270.48
2 x week	$492.00
Extra Pick-up	$91.34
4 Cubic Yd Bin	
1 x week	$324.35
2 x week	$583.28
3 x week	$835.69
Extra Pick-up	$106.91
6 Cubic Yd Bin	
1 x week	$471.76
2 x week	$787.38
Extra Pick-up	$148.58
Carts	
1 - 35 Gal Cart 1xw	$28.52
1 - 64 Gal Cart 1xw	$55.54
1 - 96 Gal Cart 1xw	$82.38
Extra Pick-up	$13.06
Commercial Solid Waste Compactor Special Services	
Backyard Charge	$28.30
Sideyard for Fee Service	$28.30
Key Charges (1)	$11.34
Enclosure Charges (2)	$28.30
Gate Service Charges (3)	$11.34
Long Walk Charge (4)	$28.30
Commercial Overage per Cubic Yard	$50.97
4 yd Cleanup Bin (3 days)	$200.90
Contaminated Recycle, yard waste or food scrap:	
Cart	$20.25
Bin (plus $84.20 per yard)	$20.25
Cleaning Fee for food scrap Bin/Cart in excess of 1 per year	$50.60
Replacement Cart after 1/year	$78.92
Replacement Bin after 1/year	$133.56
Same day return trip for Bin/Cart blocked or not at curb	$16.70

Exhibit A
City of Cloverdale
Customer Rates Effective October 1, 2016

Rate Category	Customer Rates Effective October 1, 2016
Fee to reinstate account closed for nonpayment	$25.28
Add'l Recycle or Yard Waste Cart (after 2)	$16.70
Commercial Solid Waste Debris Box Service:	
20 yard or less	$423.67
30 yard & 40 yard	$451.98
Disposal per ton over 2 tons	$143.76
C&D Debris Box containing >10% recyclables (2 tons charged when delivered; excess billed)	
20 yard or less	$423.67
30 yard & 40 yard	$451.98
Wood (disposal billed separately @ $33.37 per ton based on tag)	
20 yard or less	$117.78
30 yard & 40 yard	$129.99
Brush (disposal billed separately @ $40.64 per ton based on tag)	
20 yard or less	$117.78
30 yard & 40 yard	$129.99
Recycling	
20 yard or less	$129.99
30 yard & 40 yard	$129.99
Concrete - half-full box allowed (disposal billed separately @ $5.62 per ton based on tag)	
20 yard or less	$129.99
Dirt - half-full box allowed (disposal billed separately @ $22.47 per ton based on tag)	
20 yard or less	$259.99
Compactor Solid Waste Compactors	
3 yard once/week	$525.74
3 yard twice/week	$1,051.40
3 yard three times/week	$1,576.16
Other sized compactors (disposal billed separately @ $128.09 per tag)	
20 yard or less compactor	$226.44
25 yard compactor	$283.04
30 yard compactor	$339.65
C. BULKY ITEMS	
Furniture	
Twin Bed	$69.69
Double/ Full Bed	$69.69
Queen Bed	$69.69
King Bed	$69.69
Bed Frame	$51.88
Couch (under 6 feet)	$51.88
Upholstered Chairs	$51.88
Wooden Chairs	$51.88
Dinette Tables	$51.88
Household Items	
Rug (9' X 12')	$51.88
Vacuum	$51.88
Appliances	
Water Heater - up to 100 gallon	$51.88
Oven	$57.81
Oven (stove top)	$57.81
Oven (stove unit)	$57.81
Microwave	$51.88
Garbage Compactor	$51.88
Refrigerator	$66.87
Freezer	$69.69
Air Conditioner	$69.69
Washing Machine	$57.81
Dryer	$57.81
Building Materials	
Household Doors	$51.88

Exhibit A City of Cloverdale Customer Rates Effective October 1, 2016	
Rate Category	**Customer Rates Effective October 1, 2016**
Sink	$51.88
Toilets	$51.88
Windows (less than 3' X 4')	$51.88
Windows (larger than 3' X 4')	$72.99
Yard & Garden	
Gas Mower (must be drained of gas and oil)	$51.88
BBQ	$51.88
Ping Pong Table	$51.88
Exercise Bike	$51.88
Swing Sets	$51.88
Bike	$51.88
Electronics	
Computer Monitor or Computer Tower/CPU	$51.88
Television	$51.88
Large Screen Television	$61.83
Console Television	$61.83
Stereo Equipment	$51.83
VCR/Home Entertainment	$51.83
Printer/Fax	$51.83
Copier (table top)	$51.83
Copier (small stand alone)	$128.80
Oversize office equipment + disposal costs	$35.39
Car Parts	
Engine Block (must be completely drained of fluid)	$51.88
Car Seat	$51.88
Bumper/Grill, etc.	$51.88
Passenger Vehicle Tire	$51.88
Truck or Tractor Tire – special pricing applies	$0.00
-Additional Items	
Items under 60 pounds	$51.88
Items over 60 pounds + disposal cost	$50.60
Items requiring special handling/disposal + disposal cost	$50.60

R3 CONSULTING GROUP, INC.
RESOURCES. RESPECT. RESPONSIBILITY.

1512 Eureka Road, Suite 220
Roseville, CA 95661
Tel: 916-782-7821
Fax: 916-782-7824
www.r3cgi.com

To: Mr. Paul Cayler, City Manager

From: Richard Tagore-Erwin, Mekdem Wright

Date: October 5, 2016

Subject: Redwood Empire Disposal Annual Rate Adjustment Request

Attachment: Attachment A –Proposed Rates Effective October 1, 2016

R3 Consulting Group (R3) was engaged by the City of Cloverdale (City) to review Redwood Empire Disposal, Inc. (Redwood) request rate adjustment for rates effective October 1, 2016, 2016.

This memorandum presents the findings of our review of Redwood's rate adjustment. Attachment A contains a comparison of:

- Current customer rates (which include the landfill fee of $127.95 per ton adopted by the Sonoma County Waste Management Agency effective April 1, 2016),
- Proposed customer rates effective October 1, 2016, and
- R3's corrections of Redwood's proposed customer rates.

Summary Findings

- Redwood's rate adjustment application was submitted in partial non-conformance with the terms and conditions of the franchise agreement. Specifically, R3 identified one error in Redwood's calculation of the RRI adjustment to the Collection Component, as follows:
    - **Collection Component:** Redwood's annual rate adjustment application included a 0.00% change in the collection component of the customer rates. However, R3 calculated a 4.30% decrease is required based on the five approved price indices published by the U.S. Bureau of Labor Statistics (BLS).
- We identified no other errors in Redwood's calculation methodology. Specifically, Redwood's requested annual rate increase includes the following adjustments to the individual customer rate components:
    - **Disposal Component:** No increase, due to no change in the current landfill tipping fee of $127.95 per ton); and
    - **Compostable Materials Processing Fee Component:** 1.22% decrease, due to a decrease in the green waste tipping fee from $77.10 to $76.16 per ton.
        - This decreased green waste tipping fee is applied as a pass-through to

customer rates.

- The corrected customer rate adjustments calculated by R3 effective October 1, 2016 result in the following percentage adjustments over current rates:
  - **Residential Carts** – Total decreases of between 2.72% and 4.40% (i.e., monthly decreases of between $0.08 and $1.37 depending on size);
  - **Commercial Carts** – Total decreases of between 2.66% and 2.78% (i.e., monthly decreases of between $0.78 and $2.36 depending on size);
  - **Commercial Bins** – Total decreases of between 0.21% and 1.91% (i.e., monthly decreases of between $1.69 and $7.33 depending on size and collection frequency);
  - **Commercial Debris Boxes** – Total decreases of between 1.42% and 4.30% (i.e., decreases of between $5.29 and $11.67 depending on size and material type); and
  - **Bulky Items Handling** – Total decreases of between 1.03% and 4.33% (i.e., decreases of between $1.34 and $2.67 depending on material type).

Refuse Rate Index Adjustments

The rate application has four separate components that comprise the total customer rates. The proposed adjustments to these components are summarized below.

R3 identified one error in Redwood's calculation of the RRI adjustment to the Collection Component, detailed below.

Disposal Component

- Redwood's current customer rates that are used as the basis for this 2016 annual rate adjustment have already included the previous landfill tipping fee increase from $126.45 to $127.95 per ton effective April 1, 2016. Therefore, no additional increase is necessary as part of this 2016 annual rate adjustment.

Compostable Materials Processing Fee Component

- Green waste tipping fees decreased from $77.10 to $76.16 per ton effective October 1, 2016. This represents a decrease of 1.22% over the current Compostable Materials Processing Fee Component.

Franchise Fee Component

- This component is adjusted so as to always equal 11.00% of the total customer rate.

Collection Component

- The franchise agreement specifies that the Collection Component of the total rate be

calculated using changes in five price indices produced by the U.S. Bureau of Labor Statistics (BLS). Changes in these indices are applied to Redwood's collection cost categories as specified in the franchise agreement. This is shown in Table 1 below.

- Redwood's rate application used the incorrect methodology in its Collection Component calculations. Specifically, Redwood's requested annual rate increase included a 0.00% change in the collection component of the customer rates. However, R3 calculated a 4.30% decrease is required based on the five approved price indices published by the U.S. Bureau of Labor Statistics (BLS).

Table 1
Collection Component Calculations

Cost Category	Redwood Collection Cost	% Weight of Total Cost	% Change in BLS Index	Weighted % Change
Labor	$284,884	23.72%	2.03%	0.48%
Fuel	$157,901	13.15%	-39.45%	-5.19%
Vehicle Replacement[1]	$270,649	22.53%	0.78%	0.18%
Vehicle Maintenance	$82,697	6.89%	2.76%	0.19%
All Other	$404,920	33.71%	0.12%	0.04%
TOTAL	**$1,201,051**			**-4.30%**

Recommendations

The City should adopt the revised customer rates that results in a small decrease.

Customer Rate Sheets

Attachment A contains a comparison of:

- Current customer rates (which include the landfill fee of $127.95 per ton adopted by the Sonoma County Waste Management Agency effective April 1, 2016), and
- R3's corrections of Redwood's proposed customer rates to be used for customer rates effective October 1, 2016.

[1] The franchise agreement specifies an index for Vehicle Replacement (Series ID: PCU3362113362111) that is no longer being published. An updated index (Series ID: WPU141301) has been used as a replacement in the past for the 2013, 2014, and 2015 rate adjustments, and Redwood has also used this updated index for the 2016 rate adjustment.

CITY OF CLOVERDALE

City Council/Successor Agency Agenda Item Summary

Agenda Item:	4
Meeting Date:	October 25, 2016

Agenda Section	**Staff Contact**
Consent	Joanne Cavallari, Finance Manager

Agenda Item Title

Review of recent UUT Administrative & Interpretation Rulings

Summary

At the November 2014 election, the voters of the City of Cloverdale approved a 3% Utility Users Tax. The City contracted with MuniServices for consulting services to assist us with the implementation of the tax. In January of 2015 notices were sent to over 400 utility service providers advising them that they were required to begin collecting and remitting the tax to the City no later than May of 2015.

The UUT ordinance allows the Tax Administrator (Finance Manager) to issue "administrative rulings" from time to time to provide guidance to the tax collecting utilities of their responsibility to collect the City's UUT. We have been advised by MuniServices to amend our Administrative Ruling #1 that was issued at the time the tax was approved, and to add new rulings #3 and #4. The rulings are provided to the Council for informational purposes.

<u>Administrative Ruling and Interpretation #1</u>
Section A of Administrative Ruling #1 provides guidance on determining the sourcing of charges for the use of private communication services.

Section B interprets the term "prepaid telecommunication services" to include prepaid mobile telephony services, which is subject to the tax.

<u>Administrative Ruling and Interpretation #3</u>
This Ruling clarifies which bundled services are subject to, or exempt from, the UUT.

<u>Administrative Ruling and Interpretation #4</u>
The City's voter-approved Utility Users Tax (UUT) applies to "video programming" regardless of the technology used to deliver such programming. Traditionally, "video services" only involved cable TV. However, during the last decade or so, "video programming" similar to those programs provided by cable have been provided by a variety of companies using new technologies, including over satellite and broadband. Under federal law, "satellite TV" is exempted from local taxes.

Two of the largest telecom providers, Verizon and AT&T began offering cable-like services over their broadband networks (FIOS TV and U-verse). These two companies were successful in getting state legislation that provided for state video franchises in lieu of a local franchise (**THE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006 – PUC Sec. 440 et seq).**

More recently, a variety of companies are now offering similar video services over the internet, called "over the top TV" or OTT.

When the City sought voter approval of a Utility User Tax ordinance in 2014, the ballot measure specifically indicated that new definitions of taxable services would be technology-neutral so that users of such utility services would be treated the same, regardless of technology.

During the past several months, numerous UUT cities with similar UUT ordinances that apply to "video services, including video programming" have discussed the need to issue an administrative ruling to providers of OTT "video programming services" (e.g., Hulu, Netflix, Sling TV, Fullscreen Media), and on advice of MuniServices (the City's UUT consultant).

Administrative Ruling #4 was issued to assure that all "video programming" is treated the same, regardless of technology or service supplier. See definition of "video programming" below. The ruling interprets the existing language of the City's UUT ordinance, and applies it to OTT effective January 1, 2017.

"Video programming" means those programming services commonly provided to subscribers by a "video service supplier" including but not limited to basic services, premium services, audio services, video games, pay-per-view services, video on demand, origination programming, or any other similar services, regardless of the content of such video programming, or the technology used to deliver such services, and regardless of the manner or basis on which such services are calculated or billed."

On September 29, 2016 the City Manager and Finance Manager participated in a conference call with MuniServices' legal advisor, Don Maynor, and representatives from about 20 other cities. The topic of discussion was the application of Utility Users Tax to video streaming services. It is anticipated that there will be controversy about the application of the UUT to the video streaming services, and we will keep the Council informed as this issue progresses. Presently the tax is set to be collected and remitted to the City effective January 1, 2017. However, we are considering deferring that date to April 1, 2017 to assess how this application of the tax will be received by the public.

Please feel to let us know of any questions you might have or receive.

Information about the City's Utility Users Tax, including all administrative rulings, is located at www.uutinfo.org.

Options

Information purposes only.

Budget/Financial Impact

None.

Subcommittee Recommendation

The Admin, Finance, and Police Subcommittee reviewed the Administrative Rulings at the October 13th meeting, and recommended that the rulings be provided to the full City Council for information purposes only.

Recommended Council Action

None required. Informational purposes only.

Attachments:

1. Administrative Ruling #1
2. Administrative Ruling #3
3. Administrative Ruling #4

cc:

CITY OF CLOVERDALE UTLITY USERS' TAX
ADMINISTRATIVE RULING AND INTERPRETATION (1.0)

Authority. Pursuant to Section 3.40.170(b) of the City of Cloverdale Utility Users' Tax Ordinance, the Tax Administrator hereby adopts the following administrative ruling and interpretation of Sections 3.40.020 and 3.40.050:

A. Administrative Ruling (Private Communication Services). The sourcing of charges for the use of private communication services shall be as follows:

> *1. Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.*
> *2. Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.*
> *3. Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.*
> *4. Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.*

B. Administrative Interpretation. To facilitate the accurate application, collection and remittance of the City's "telecommunication users tax", this Interpretation is adopted with the intent of providing the following general guidance to the tax-collecting utilities and their agents:

> *1. "Prepaid telecommunication service" shall include "prepaid mobile telephony services" as defined in California Revenue and Tax Code Section 42004(k), and shall be collected and remitted as provided in California Revenue and Tax Code Section 42010 et seq.*

Limitation. This Ruling and Interpretation is intended to give general guidance and should not be viewed as providing a definite answer to all factual situations, as the exact application of the tax will depend on the nature of the service, the manner in which it is billed (*e.g.,* bundled or unbundled), and other factors that could bear on whether the telecommunications tax is applied or not applied.

Effective and Expiration Dates. This Ruling and Interpretation shall automatically expire on January 1, 2020, so that the conditions then existing may be reviewed, and the Administrative Ruling and Interpretation may be thereafter revised, as appropriate, and then re-adopted. Nothing herein, however, shall preclude the Tax Administrator from revising or rescinding this Administrative Ruling and Interpretation at any time.

City of Cloverdale Finance Manager and UUT Tax Administrator

Joanne Cavallari

Joanne Cavallari
Date: September 21, 2016

CITY OF CLOVERDALE
ADMINISTRATIVE RULING AND INTERPRETATION (3.0)
(Bundling of Taxable and Non-taxable Telecommunication and Video Services)

Authority. Pursuant to Sections 3.40.170(b) of the City of Cloverdale Utility Users Tax Ordinance, the Tax Administrator hereby adopts the following administrative ruling and administrative interpretation of Sections 3.40.050, 3.40.090, and 3.40.100:

A. Administrative Ruling (Bundling of Taxable and Non-taxable Telecommunication and Video Services, including Internet Access).

1. **Internet Access Only**. If a service supplier offers broadband service that includes internet access (as defined by the federal Permanent Internet Tax Freedom Act or PITFA), and the internet access is not bundled under a single charge with <u>any</u> other taxable service (*e.g.,* VoIP or video programming), then the entire charge shall be deemed exempt pursuant to PITFA.

2. **Internet Access Bundled with Taxable Services.** If a service supplier offers broadband service that includes internet access (as defined by the federal Permanent Internet Tax Freedom Act or PITFA), and which is bundled under a single charge with <u>any</u> other taxable service (*e.g.,* VoIP or video programming), then the entire charge shall be subject to the UUT. *See* ***Section 1106 "Accounting Rule" of PITFA***. *See also* ***Revenue and Taxation Code Section 42018(a)*** *establishing a similar rule for prepaid mobile telephony services that are sold in combination with mobile data services or any other services or products for a single price.*

3. **Internet Access with Taxable Services "Unbundled" by Service Supplier for Taxation Purposes.** If a service supplier offers broadband service with internet access (as defined by the federal Permanent Internet Tax Freedom Act or PITFA), along with <u>any</u> other taxable service (e.g., VoIP or video programming) under a single charge, and the service supplier wishes to "unbundle" the package of services for taxation purposes, the tax shall be applied based on the reasonable values of <u>each</u> of the various taxable and non-taxable services, regardless of the pricing of such services listed on the customer invoice. The service supplier has the burden of proving the reasonableness of such assigned values.

   a. **Per se Reasonable.** If the service supplier assigns a value to a taxable service that is not less than the price of such service on a stand-alone basis (including the network service), such assigned value shall be deemed per se reasonable.

b. **Other Factors of Reasonableness.** The following are other factors that may be considered by the Tax Administrator in determining reasonable valuations of unbundled services: i) the price of each service as offered by the service supplier on a stand-alone basis (including the network service); and, ii) current market price for a comparable service on a stand-alone basis (including the network service) offered by competitors. Note: relative usage of network bandwidth is not a reasonable basis for tax valuation purposes.

4. If a service supplier provides "private communication services" including T-1 or higher bandwidth, and such service is bundled with internet access, the value of the taxable T-1 service shall not be less than the value of such service if offered on a stand-alone basis (without internet access).

5. The service supplier will have the burden of proving the reasonableness of its values and allocation of values with respect to bundled and unbundled offerings. A service supplier may submit its proposed values and allocation of values to the Tax Administrator for prior review for "reasonableness".

Limitation. This Ruling and Interpretation is intended to give general guidance and should not be viewed as providing a definite answer to all factual situations, as the exact application of the tax will depend on the nature of the service, the manner in which it is billed (*e.g.,* bundled or unbundled), and other factors that could bear on whether the telecommunications tax is applied or not applied.

Effective and Expiration Dates. This Ruling and Interpretation shall automatically expire on January 1, 2020, so that the conditions then existing may be reviewed, and the Administrative Ruling and Interpretation may be thereafter revised, as appropriate, and then re-adopted. Nothing herein, however, shall preclude the Tax Administrator from revising or rescinding this Administrative Ruling and Interpretation at any time.

City of Cloverdale Finance Manager and UUT Tax Administrator

Joanne Cavallari

Joanne Cavallari, UUT Tax Administrator
Date: September 21, 2016

CITY OF CLOVERDALE
ADMINISTRATIVE RULING AND INTERPRETATION (4.0)
(Video Services)

Authority. Pursuant to Section 3.40.170(b) of the City of Cloverdale Utility Users Tax (UUT) Ordinance, the Tax Administrator hereby adopts the following administrative ruling and administrative interpretation of Sections 3.40.020 and 3.40.090:

A. Administrative Ruling (regarding video programming, video services and video service suppliers)

1. In response to the recent growth of "video services" using new technologies and marketing methods, the Tax Administrator interprets and applies the existing UUT ordinance definitions below in the following manner to such "video services":

   a. The utility users tax (UUT) shall apply to charges for "video services" that include, but are not limited to, "video programming" such as: i) **recurring subscription**; ii) **subscription on-demand** (allowing subscribers to select and watch television programs, movies, and/or other video content whenever they request to view the content without having to pay an additional fee beyond their recurring subscription fee); or, iii) **one-time or non-recurring on-demand** (with consumers charged on a per event, per-episode, per-season, or per-movie basis to rent the content for a specific period of time or to download the content for storage on a hard drive for viewing at any time one time and not recurring subscription fee basis).

   b. The utility users tax (UUT) shall apply to charges for "video services" described in a) above, regardless of the technology used to deliver such services, including but not limited to such technologies as cable, IP-TV, wireless, and others [including over the top TV (OTT) which is simply the delivery of video programming via a broadband or internet connection whether it is wired, wireless, microwave or any other technology used to access the internet].

   c. The utility users tax (UUT) on "video services" described above shall be collected and remitted to the City by all "video service suppliers" providing such "video services" to customers in the City, including service suppliers using cable, wireless, IP-TV, and other internet-based distributors (including OTT). *See Section 3.40.110 regarding "nexus".*

B. Implementation Date. "Video services" that are provided by a "video service provider" pursuant to a local cable franchise or state franchise (*PUC Section 5800 et seq.*) are due upon the effective date as provided by the UUT ordinance. For "video services" that are not provided by a video service provider pursuant to a local cable franchise or state franchise (*PUC Section 5800 et seq.*), this Ruling shall be implemented by no later than January 1, 2017.

Limitation. This Ruling and Interpretation is intended to give general guidance and should not be viewed as providing a definite answer to all factual situations, as the exact application of the tax will depend on the nature of the service, the manner in which it is billed (*e.g.,* bundled or unbundled), and other factors that could bear on whether the telecommunications tax is applied or not applied.

Effective and Expiration Dates. This Ruling and Interpretation shall automatically expire on January 1, 2020, so that the conditions then existing may be reviewed, and the Administrative Ruling and Interpretation may be thereafter revised, as appropriate, and then re-adopted. Nothing herein, however, shall preclude the Tax Administrator from revising or rescinding this Administrative Ruling and Interpretation at any time.

City of Cloverdale Finance Manager and CUT Tax Administrator

Joanne Cavallari

Joanne Cavallari
Date: September 21, 2016

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CITY OF CLOVERDALE

City Council/Successor Agency Agenda Item Summary

Agenda Item: 5
Meeting Date: October 25, 2016

Agenda Section	**Staff Contact**
Consent	Rafael Miranda, Associate Planner

Agenda Item Title

Action to approve Resolution No. 083-2016, of the City Council of the City of Cloverdale authorizing the City Manager to submit a letter to the Department of Alcoholic Beverage Control (ABC) stating that the Public Convenience or Necessity will be served by the Departments issuance of a type 20 off-sale license for the Grocery Outlet retail store located at 111 Treadway Drive.

Summary

On May 3, 2016 the Planning Commission approved a Design Review, Plot Plan and Planned Sign Program Permit application to allow for the construction of a new Grocery Outlet retail store located at 111 Treadway Drive. Presently, the project is under construction and Grocery Outlet recently applied for a type 20 alcohol license from the Department of Alcoholic Beverage Control (ABC), to allow for the sale of beer and wine at the store for consumption off the premises (off-sale beer and wine license). Grocery Outlet subsequently submitted a request for a finding of Public Convenience or Necessity to the City of Cloverdale as required by the ABC pursuant to § 23958.4 of the Business and Professions Code.

ABC administers the issuance of various types of licenses that allow for the manufacture and/or sale of alcoholic beverages within the State of California. In cases where an overconcentration of such licenses exist within a particular census tract, ABC may still issue a new license if the local governing body or its designated subordinate officer or body determines that public convenience or necessity would be served by the issuance of an ABC license.

For the purpose of off-sale retail license applications, the term “undue concentration” is defined by the ratio of off-sale retail licenses to population in the census tract or census division in which the premises are located exceeds the ratio of off-sale retail licenses to population in the county in which the premises are located. As indicated on the attached Location Map/Census Tract Map, the City is divided into two census tracts including Tract No. 1542.01 and Tract No. 1542.02. In Census Tract No. 1542.02, six (6) off-sale licenses is considered by ABC to be an over concentration for the population of the tract. Currently, there are ten (10) existing off-sale ABC licenses issued by ABC within this Census Tract.

Staff has determined that the sale of beer and wine for off-site consumption from a grocery store such as Grocery Outlet is considered to be ancillary to the primary general retail use of the site. Furthermore, the use and operation of the site as a general retail use will assist in the generation of additional sales and use tax revenues to the City, as well as, assist in the creation and maintenance of additional jobs and economic opportunities for the residents of the City. Therefore, it is in the opinion of staff that the public convenience or necessity would be served by the proposed sale of beer and wine for off-premises consumption in conjunction with the operation of the Grocery Outlet general retail store located at 111 Treadway Drive.

Options

1) Adopt Resolution No. 083-2016, determining that the public convenience or necessity would be served by the issuance of an off-sale beer and wine license (type 20 alcoholic beverage control license) for the premises located at 111 Treadway Drive.
2) Modify the proposed Draft Public Convenience or Necessity letter.

3) Deny the application and require staff to return with a resolution denying the public convenience or necessity letter request.

Budget/Financial Impact

The sale of beer and wine from the Grocery Outlet general retail store will assist in the generation of additional sales tax revenues to City.

Subcommittee Recommendation:

None

Recommended Council Action:

Staff recommends adoption of Resolution No. 083-2016, authorizing the City Manager to submit a letter to the Department of Alcoholic Beverage Control (ABC) stating that the Public Convenience or Necessity will be served by the Departments issuance of a type 20 off-sale license for the Grocery Outlet retail store located at 111 Treadway Drive.

Attachments:

1. Grocery Outlet request for a finding of Public Convenience or Necessity date stamped received September 28, 2016
2. Location Map/Census Tract Map.
3. Resolution No. 083-2016, authorizing the City Manager to submit a letter to the Department of Alcoholic Beverage Control (ABC) stating that the Public Convenience or Necessity will be served by the Departments issuance of a type 20 off-sale license for the Grocery Outlet general retail store located at 111 Treadway Drive
4. Draft Public Convenience or Necessity Letter

X:\Agenda Development\COUNCIL\2016 REPORTS\10.25.16\B. Consents\05- PCN -Groc Outlet\CC SR for Grocery Outlet PCN letter.docx

City of Cloverdale
Community Development Department
Received
9-28-16

September 19, 2016

Planning Department
Cloverdale, CA

Grocery Outlet offers fantastic bargains and deals on a variety of products including grocery, frozen foods, deli items, vitamins, health and beauty items, housewares, gift items and much, much more. Brand names for less is the name of the game and smart shoppers get incredible savings over regular store prices every day when they shop Grocery Outlet. Grocery Outlet gets products by searching the nation's major manufacturers for amazing one-time buys resulting from excess production, packaging/design changes, and special promotions. Grocery Outlet's assortment of product changes frequently because of the nature of the one-time buys.

As such, Grocery Outlet stores are "destination stores". Although the beer and wine sales are only about four percent of the business, the customers desire the convenience of being able to purchase beer and wine together with the typical grocery items. This convenience is imperative to Grocery Outlet's ability to serve and attract customers. Moreover, Grocery Outlet believes that offering a full assortment is beneficial to the neighborhood and city. As a destination store, Grocery Outlet typically has customers who shop from other cities. A full product offering maximizes sales tax revenue for the City.

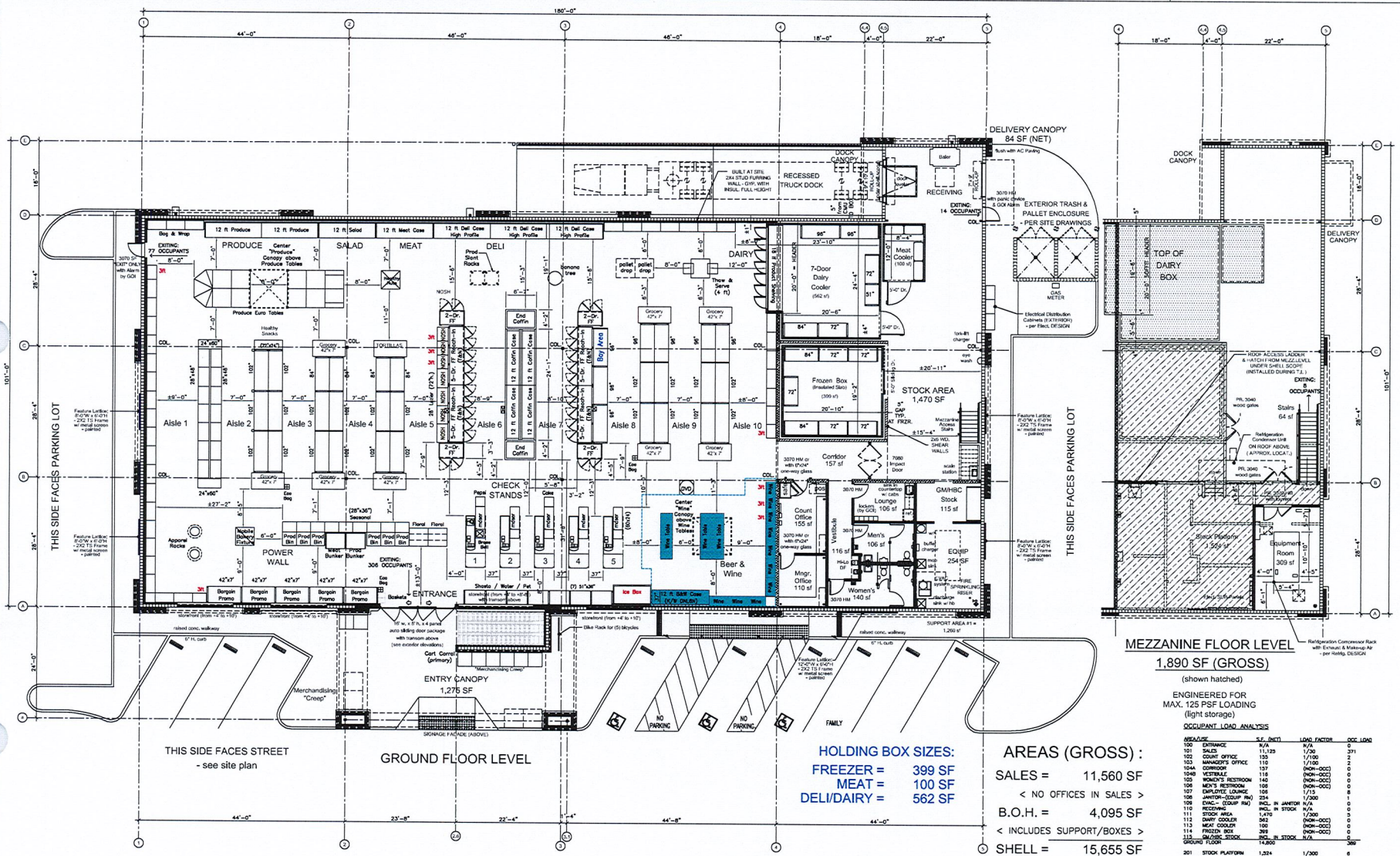
Grocery Outlet owns over 100 stores in California with off sale alcohol licenses. Operators and their employees of all of the locations are careful to make sure the store is always clean, neat and free from debris. Grocery Outlet has had no significant issues raised by local law enforcement agencies with respect to alcoholic products or public disturbances. Grocery Outlet has a history of service to the California community and will continue to operate in a conscientious and thoughtful way with sensitivity to any possible detriment to those residents that might be affected. Grocery Outlet is fully aware of the unique responsibilities of operating a store associated with alcoholic beverage sales.

The store will be open no earlier than 7:00AM and no later than 10:00PM 7 days a week. Grocery Outlet expects the store will be staffed with approximately 35-40 employees. As related to beer/wine sales, all register clerks will be trained in proper alcoholic beverage sales rules, including use of point of sale required identification age verification. All of the clerks will have read and signed the Alcoholic Beverage Control's Clerk's Affidavit. These affidavits will be kept on file by the store operator. For security, Grocery Outlet will install a minimum of a 16 camera system which has a view of all parts of the store, especially the alcoholic beverage display area. The video system has a 30-day retrieval function which can track previous days' activity.

As noted above, the sale of beer and wine will constitute only about four percent of total sales. Given the "one-time buy" nature of our business, the amount of sales area devoted to alcoholic beverages will vary. The beer and wine display area is depicted on the floor plan attached to this application.

Grocery Outlet has opened escrow to purchase a type-20 off-sale beer/wine license from within the County of Sonoma and will transfer the license to Grocery Outlet's new Cloverdale store. A Letter of Public Convenience or Necessity is required due to over-concentration of licenses within the census tract.

Grocery Outlet appreciates your consideration and looks forward to opening this new store in the City of Cloverdale.



HOLDING BOX SIZES:

FREEZER =	399 SF
MEAT =	100 SF
DELI/DAIRY =	562 SF

AREAS (GROSS) :

SALES =	11,560 SF
< NO OFFICES IN SALES >	
B.O.H. =	4,095 SF
< INCLUDES SUPPORT/BOXES >	
SHELL =	15,655 SF

STORE AREAS :

SALES (NET) =	11,125 SF
STOCK (NET) =	1,470 SF
BOXES (NET) =	1,061 SF
STRUCT. & MISC. (GROSS) =	1,999 SF
SHELL (GROSS) =	15,655 SF
MEZZ. (GROSS) =	1,890 SF
TOTAL FLOOR (GROSS) =	17,545 SF

OCCUPANT LOAD ANALYSIS

AREA/USE	S.F. (NET)	LOAD FACTOR	OCC LOAD
100 ENTRANCE	N/A	N/A	0
101 SALES	11,125	1/30	371
102 COUNT OFFICE	155	1/100	2
103 MANAGER'S OFFICE	110	1/100	2
104A CORRIDOR	157	(NON-OCC)	0
104B VESTIBULE	116	(NON-OCC)	0
105 WOMEN'S RESTROOM	140	(NON-OCC)	0
106 MEN'S RESTROOM	106	(NON-OCC)	0
107 EMPLOYEE LOUNGE	106	1/15	8
108 JANITOR-(EQUIP RM)	254	1/300	1
109 EVAC.-(EQUIP RM)	INCL. IN JANITOR	N/A	0
110 RECEIVING	INCL. IN STOCK	N/A	0
111 STOCK AREA	1,470	1/300	5
112 DAIRY COOLER	562	(NON-OCC)	0
113 MEAT COOLER	100	(NON-OCC)	0
114 FROZEN BOX	399	(NON-OCC)	0
115 GM/HBC STOCK	INCL. IN STOCK	N/A	0
GROUND FLOOR	14,800		389
201 STOCK PLATFORM	1,524	1/300	6
202 EQUIPMENT ROOM	309	1/300	2
MEZZANINE FLOOR	1,833		8
TOTAL	16,633		397

GROUND FLOOR NON-OCCUPANT SPACE 855 SF
MEZZANINE NON-OCCUPANT SPACE 57 SF

EXITING
TOTAL FLOOR AREA (GROSS) = 17,545 S.F.
TOTAL OCCUPANTS = 397 OCCUPANTS
MINIMUM TOTAL EXIT WIDTH REQUIRED = 397 x 0.15 = 59.55 INCHES
EXITS REQUIRED = 2
EXITS PROVIDED = 3
EXIT WIDTH PROVIDED (SALES) = 192"(#1) + 36"(#2) = 228"
EXIT WIDTH PROVIDED (B.O.H.) = 36" (#3) = 36"

BEER & WINE	DESCRIPTION/REMARK:
36 SF	CHILLED B & W	12 LF MULTI-DECK
74 SF	B & W GONDOLAS	37 LF – PER PLAN
75 SF	WINE TABLES	3 UNITS – PER PLAN
	PALLET DROP	– PER PLAN
187 SF	= TOTAL FIXTURES - B&W
89 LF	= TOTAL FIXTURE LENGTH - B&W
700 SF	= ALLOCATED FLOOR AREA - B&W
6.3%	= B&W RATIO TO TOTAL SALES FLOOR

WALL LEGEND:
- = Shell Structural Walls (8" CMU)
- = Bearing / Shear Walls (2x6 Studs U.N.O.)
- = T.I. FULL HT. (6" Mtl. Studs)
- = T.I. Partitions (4" Mtl. Studs)
- = T.I. COOLER Walls (manuf.)

INT. SIGNAGE: use 4'-0" package	Wine Perimeter	Candy Perimeter
Lighting ● +14'-0"	Base Decks 24"	Base Decks 24"
	Shelves 20"	Shelves 20"
	Black Color	Saraha Color
HBC Perimeter	**Seasonal**	**General Merch**
Base Decks 24"	Base Decks 28"	Base Decks 28"
Shelves 24"	Shelves 24"	Shelves 24"
Sahara Color	Saraha Color	Saraha Color

- ☒ = Brass Bell (at Chkstand #1)
- ⊞ = Eco Bag Grids (3 per plan)
- ○ = ABS Broom Holders (_ per plan at Cleaner Aisle)
- BUMP = Bump-Out Sections (__ @ HBC - per plan)

Security cameras
- = single dir.
- = 360 deg.

NORTH (TRUE) NORTH (REFERENCE)

SCALE: 1/8 = 1'-0"

FLOOR PLAN - MERCHANDISING LAYOUT

FILE: GO-CLVRDL-SHELL_PLANNING_SHT-3_FIXTURE_2016-04-01

GROCERY OUTLET bargain market

BEST DEVELOPMENT GROUP
2580 SIERRA BLVD., SUITE # E
SACRAMENTO, CA 95825
PAGE 45

PROPOSED TENANT:
GROCERY OUTLET INC.
5650 HOLLIS STREET
EMERYVILLE, CA 94608

SHELL DESIGN FOR:
STORE # ___
CLOVERDALE
111 TREADWAY DRIVE
CLOVERDALE, CA 95425

PLANNING SUBMITTAL

HMR ARCHITECTS

FIXTURE PLAN

DRAWN BY: PAUL S. KASTNER
CHECKED BY: RANDY G. REEVES

HMR JOB #15163
APR. 1, 2016
SHEET 3

Attachment 2

Grocery Outlet - Census Tract Map

Legend

- Urban Growth Boundary
- City Boundary
- Creek
  - Unknown
  - Surface
  - Subsurface
- Park
  - Park
  - Community Space
  - Historic
  - Open Space
  - Trail
- Rail Road
- Parcels
- Census Tracts

Public Convenience or Necessity Request by Grocery Outlet

Notes

Address:
111 Treadway Drive Cloverdale, CA

10/19/2016

Scale 1: 2,400

0 Miles 0.04

CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 083-2016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE FINDING AND DETERMINING THAT THE PUBLIC CONVENIENCE OR NECESSITY WOULD BE SERVED BY THE ISSUANCE OF AN OFF-SALE BEER AND WINE LICENSE (TYPE-20 ALCOHOLIC BEVERAGE CONTROL LICENSE) FOR THE PREMISES LOCATED AT 111 TREADWAY DRIVE, CLOVERDALE CALIFORNIA (GROCERY OUTLET APN 117-040-083)

WHEREAS, pursuant to applicable provisions of the Business and Professions Code of the State of California, the Department of Alcoholic Beverage Control (hereinafter the "ABC") is charged with the responsibility of reviewing applications and issuance of licenses ("license") for the sale and/or manufacture of alcoholic beverages in the State of California; and

WHEREAS, Section 23958 of the Business and Professions Code provides that the ABC shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses, except as provided in Section 23958.4 of said Business and Professions Code; and

WHEREAS, Section 23958.4 of the Business and Professions Code provides that, notwithstanding the limitations of Section 23958, the ABC shall issue a license if the applicant shows that public convenience or necessity would be served by the issuance of such license; and

WHEREAS, pursuant to Section 23958.4 of the Business and Professions Code, the local governing body in this case, the "City Council," has the discretion to determine when public convenience or necessity would be served by allowing an alcohol license in an area where there is an over concentration of licenses or where there is high crime; and

WHEREAS, Cloverdale GOBDG LLC, DBA Grocery Outlet ("Applicant") located at 111 Treadway Drive has petitioned the ABC for Off-Sale Beer and Wine (Type 20) License to augment their primary operations as a general retail grocery store; and

WHEREAS, Under state law Section 23790 of the Business and Professions Code, the ABC may not issue a liquor license if it violates an existing local zoning ordinance; and

WHEREAS, the subject site is located in the Service Commercial (S-C) Zoning District on the City's adopted Zoning Map and General Retail uses 1,501 square-feet and larger are an allowed use in the S-C Zoning District subject to approval of a Plot Plan; and

WHEREAS, the ancillary sale of beer and wine at a general retail or grocery store is considered to be an ancillary use to the primary General Retail use of the site; and

WHEREAS, on May 3, 2016, the Planning Commission adopted Resolution No. 08-2016 approving a Major Design Review, Plot Plan and Planned Sign Program Permit application to allow for the construction of the new Grocery Outlet retail store at 111 Treadway Drive; and

WHEREAS, the subject business is located in Census Tract 1542.02 with population such that the ABC may permit up to six (6) off-sale licenses before an undue concentration of liquor licenses would exist; and

WHEREAS, there are currently ten (10) off-sale liquor license in Census Tract 1542.02; and

WHEREAS, the request for Determination of Public Convenience or Necessity, hereinafter ("project") is exempt from California Environmental Quality Act (CEQA) review under §15061(b)(3) of the CEQA Guidelines because a Determination of Public Convenience or Necessity will not with reasonable certainty have any possible effect on the environment; and

WHEREAS, the City of Cloverdale has prepared a Letter of Public Convenience or Necessity provided as EXHIBIT "A" attached hereto.

NOW, THEREFORE, the City Council of the City of Cloverdale resolves as follows:

SECTION 1. The foregoing Recitals are incorporated herein and made a part hereof.

SECTION 2. That the public convenience or necessity would be served by the proposed sale of beer and wine for off-premises consumption in conjunction with the operation of a general retail grocery store.

SECTION 3. The City Council does further find and determine that the use and operation of the site as contemplated will assist in the generation of additional sales and use tax revenues to City, as well as, assist in the creation and maintenance of additional jobs and economic opportunities for the residents of the City.

SECTION 4. The City Council does hereby find and determine that adoption of this Resolution is expressly predicated upon applicant's successful compliance with the Major Design Review, Plot Plan and Planned Sign Program Permit application (DR/PP/PSP 004-2016) including each and all of the conditions set forth therein. Should any such conditions, or any part thereof, be declared invalid or unenforceable by the final judgment of any court of competent jurisdiction, or should the applicant fail to maintain compliance with the Major Design Review, Plot Plan and Planned Sign Program Permit application, then this Resolution, and any approvals herein contained, shall be deemed null and void.

SECTION 5. Pursuant to §15061(b)(3) of the CEQA Guidelines, an activity is covered by the general rule that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA review. Making a Determination of Public Convenience or Necessity will not bring about any physical change to the environment. Therefore, in light of the whole record, it can be seen with certainty that the project has no potential to cause a significant effect on the environment. As such, the City finds that the project is exempt from the provisions of CEQA pursuant to CEQA Guidelines Section 15061(b)(3) ("general rule exemption").

SECTION 6. The request for Public Convenience or Necessity Determination is hereby approved.

SECTION 7. The City Manager and his authorized designees are authorized to transmit Exhibit A to the ABC and take any other necessary actions, sign any other documents or instruments, as may be necessary, to implement, and affect this Resolution on behalf of the City.

It is hereby certified that the foregoing Resolution No. 083-2016, was duly introduced and duly adopted by the City Council of the City of Cloverdale at its regular meeting held on October 25, 2016, by the following roll call vote: (Ayes- ; Noes-).

Ayes:
Noes:
Absent:
Abstain:

APPROVED:

_____
Mary Ann Brigham, Mayor

ATTESTED:

_____
Linda Moore, Deputy City Clerk

Exhibit A - Public Convenience or Necessity Determination Letter

X:\Agenda Development\COUNCIL\2016 REPORTS\10.25.16\B. Consents\05- PCN -Groc Outlet\Attachment 3 - City Council Resolution 083-2016 - PCN for Grocery Outlet.docx

CITY OF
CLOVERDALE

October 26, 2016

Department of Alcoholic Beverage Control
50 D Street, Rm. 130
Santa Rosa, CA 95404

Re: PCN Letter for Grocery Outlet – 111 Treadway Drive (APN 117-040-083)

Dear ABC:

On October 25, 2016 the City Council of the City of Cloverdale adopted a resolution authorizing me as the City Manager to submit this letter regarding the public convenience or necessity to be served to allow for a Type 20 off-sale beer and wine license for the Grocery Outlet retail store located at 111 Treadway Drive (APN 117-040-083) within the Service Commercial (S-C) Zoning District.

The Type 20 off-sale beer and wine license represents a viable economic asset to the community which will contribute tax revenues to the local economy. The Grocery Outlet retail store is intended to be residential serving and provide the surrounding residential neighborhood with the convenience of a variety of groceries including food and beverages. Beer and wine sales are related to the functionality of this retail establishment and are allowed within the City of Cloverdale's S-C zoning district.

The proximity of the proposed licensed premises to sensitive land uses and the effect that existing and the proposed ABC license may have on such sensitive land uses has been considered. The subject property is located on Treadway Drive, across the street from the Furber Ranch Plaza shopping center and behind the Chevron gas station located at the corner of Treadway Drive and South Cloverdale Boulevard. The Seventh Day Adventist church is located more than 700 feet away on the other side of the Furber Ranch Plaza shopping center. The store will not have a significant impact on this sensitive land use or other land uses in the vicinity.

For these reasons, the City Council of the City of Cloverdale supports the issuance of the Type 20 off-sale license for beer and wine for the Grocery Outlet store located at 111 Treadway Drive in the City of Cloverdale.

Sincerely

Paul Cayler
City Manager

X:\Community Development\Applications\2016\DR PP PSP 004-2016 Grocery Outlet - 111 Treadway Dr\PCN Letter\PCN letter for Grocery Outlet - 111 Treadway Dr.docx

CITY OF CLOVERDALE

City Council/Successor Agency Agenda Item Summary

Agenda Item:	6
Meeting Date:	October 25, 2016

Agenda Section	**Staff Contact**
Consent	Paul Cayler, City Manager

Agenda Item Title

Action on Resolution No. 085-2016, of the City Council of the City of Cloverdale Authorizing the City Manager to Execute a Professional Services Agreement with C&S Companies for the Environmental Assessment to Remove Obstructions at the Cloverdale Municipal Airport as Funded by Federal Aviation Administration (FAA) Airport Improvement Grant

Summary

On August 23, 2016, the City Council authorized a grant agreement with the Federal Aviation Administration to provide a 90 percent of the cost for preparation for the Cloverdale Municipal Airport's environmental assessment to further obstruction removal to comply with the National Environmental Policy Act (NEPA). The total project reimbursement provided by the FAA grant is $137,169. The City's grant match will be $8,383, and the State of California should provide $6,858 through their aviation grant funding. The total estimated project cost is $152,410 including a $3,000 administrative FAA reimbursement to the City of Cloverdale, therefore the total contract amount with C&S Companies equals $149,410. The proposed grant project consists of further work to remove obstructions that are located on and off the airport property with some obstructions in close proximity to the Russian River. Several of the obstructions are located in the river bank itself. The location of these obstructions necessitate increased scrutiny pertaining to removal methods, and mitigation options that may include replanting and other restoration in the riverbank areas. The project is recommended in the Airport Layout Plan (ALP) currently under FAA review. The preparation of an Environmental Assessment (EA) for obstruction removal is required to assess potential impacts on cultural resources, wetlands, and Federally listed threatened and endangered species. The EA must be in compliance with the National Environmental Protection Act (NEPA). In 2014, C&S Companies were selected as the City's airport consultant through a Statement of Qualification process (SOQ).

Options

The primary options are: 1) Adopt the proposed resolution that authorizes the professional services agreement for the environmental assessment to further obstruction removal at the airport; or 2) Reject the proposed resolution.

Budget/Financial Impact

The total estimated project cost is $152,410 including a $3,000 administrative FAA reimbursement to the City of Cloverdale, therefore the total contract amount with C&S Companies equals $149,410.

Subcommittee Recommendation

None.

Recommended Council Action

The City Manager recommends that the City Council adopt the resolution and authorize a professional service agreement with C&S Companies for the environmental assessment to remove obstructions at the Cloverdale Municipal Airport.

Attachments:

1) Proposed Resolution.
2) Proposed Professional Service Agreement.

P.O. Box 217 • 124 North Cloverdale Blvd. • Cloverdale, CA 95425-0217 • Telephone (707) 894-2521 • FAX (707) 894-3451

CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 085-2016

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH C&S COMPANIES FOR THE PREPARATION OF THE ENVIRONMENTAL ASSESSMENT FOR CLOVERDALE MUNICIPAL AIRPORT OBSTRUCTION REMOVAL

WHEREAS, the City of Cloverdale and the Federal Aviation Administration are parties to the federal Airport Improvement Program (AIP) grant number 3-06-0045-010-2016 for the preparation of the environmental assessment for obstruction removal, and the FAA will grant fund $137,169 of the total estimated project cost; and

WHEREAS, in 2014, the City conducted a consultant selection process and selected C&S Companies to be the City's airport consultant; and

WHEREAS, in 2016, the City negotiated the attached scope of services and fee with C&S Companies and coordinated this effort with the Federal Aviation Administration (FAA) to ensure the project scope and fee are consistent with the FAA's expectations and requirements; and

WHEREAS, the total estimated project cost is $152,410 including a $3,000 administrative reimbursement to the City of Cloverdale, therefore the total contract amount with C&S Companies equals $149,410.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Cloverdale does hereby authorize the City Manager to execute a professional services agreement with C&S Companies for the preparation of the Environmental Assessment for Obstruction Removal Project for an amount not to exceed $149,410.00.

It is hereby certified that the foregoing Resolution No. 085-2016 was duly introduced and duly adopted by the City Council of the City of Cloverdale at its regular meeting held on October 25 12, 2016, by the following vote:

AYES in favor of:
NOES:
ABSENT:
ABSTAIN:

APPROVED: ATTESTED:

_____ _____
Mary Ann Brigham, Mayor Linda Moore, Deputy City Clerk

CITY OF CLOVERDALE
PROFESSIONAL SERVICES AGREEMENT

AGREEMENT

This Agreement is made and entered into this _____ day of_____ , 2016, by and between the City of Cloverdale, a California Municipal Corporation, 124 North Cloverdale Boulevard, Cloverdale, California, 95425, hereinafter referred to as "City," and C&S Engineers, Inc., a New York Corporation authorized to do business in California, hereinafter referred to as "Consultant."

RECITALS

WHEREAS, the legislative body of the City on October 25, 2016, by Resolution No. XXX-2016 authorized execution of this Agreement on behalf of the City in accordance with Chapter 3.08 of the City Municipal Code and/or other applicable law;

NOW, THEREFORE**,** City and Consultant, for the consideration hereinafter described, mutually agree as follows:

1. DESCRIPTION OF SERVICES

The services to be performed under this Agreement (the “Services”) are as follows: study, report and design services for the Taxiway Reconstruction Project. The Services are further described in Consultant’s proposal (the “Proposal”), which is attached to and made a part of this Agreement as Exhibit A.

2. TERM

The Agreement term will commence on the date of execution of this Agreement and expire on August 31, 2018, unless the Agreement term is amended or the Agreement is terminated in accordance with its terms.

3. PAYMENT TERMS AND NOT TO EXCEED AMOUNT

City agrees to pay Consultant for Services that are actually performed in accordance with this Agreement. To be eligible for payment, Consultant invoices must be submitted not more often than monthly to the City and list the Services performed and the amounts to be paid according to the cost categories and prices in Exhibit A. In no event will the City’s obligation to pay the Consultant under this Agreement exceed $149,410.00 (the “Not to Exceed Amount”), unless this Agreement is first modified in accordance with its terms. Where the Proposal provides for compensation on a lump sum basis, Consultant must maintain adequate records to permit inspection and audit of Consultant's time and material charges under this Agreement. Consultant will make such records available to

City during normal business hours upon reasonable notice. In accordance with California Government Code section 8546.7, if the "Not to Exceed Amount" exceeds TEN THOUSAND DOLLARS ($10,000.00), this Agreement and the Consultant's books and records related to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

4. TIME OF COMPLETION

Consultant must commence performance of the Services upon receipt of written direction to proceed from City. Consultant shall devote such time to the performance of Services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 7 below and to satisfy Consultant's obligations hereunder. Consultant will complete the Services in accordance with this Agreement by August 31, 2018 (the "Time of Completion"). The Time of Completion may only be modified by an amendment of the Agreement in accordance with its terms.

5. INDEPENDENT CONTRACTOR

Consultant and City agree that the Consultant will perform the Services as an independent contractor and not as an employee or agent of the City. Persons employed or utilized by Consultant in the performance of the Services will not be employees or agents of the City. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

6. SUBCONTRACTING

Consultant may subcontract portions of the Services upon the prior written approval of the City. By signing this Agreement, the City approves any subconsultants set forth in Exhibit A. The Consultant will be solely responsible for payment for such subcontract services. No contractual relationship will exist between any such subcontractors of the Consultant and the City.

7. STANDARD OF PERFORMANCE

A. Consultant will perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession and will prepare all work products required by this Agreement in the usual and customary professional manner. Consultant will comply with federal, state and local laws applicable to performance of the Services, including but not limited to, the California Building Standards Code as in effect in the City, the Americans with Disabilities Act, any environmental laws or regulations, air pollution control laws and regulations applicable to Consultant and/or the Services, and any laws and regulations related to any copyright, patent, trademark or other intellectual property right involved in performance of the

services. Consultant's Failure to comply with any law(s) or regulation(s) applicable to the performance of the services hereunder shall constitute a material breach of this agreement.

B. Consultant shall assign only competent personnel to perform Services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

8. PREVAILING WAGES

This Agreement is subject to the requirements of the California Prevailing Wage Law, California Labor Code Section 1720 et seq., and the Services as described in Exhibit A will be performed in accordance with all applicable requirements of the California prevailing Wage Law, including, but not limited to, all applicable requirements contained in Exhibit B, which is attached to and made a part of this Agreement.

9. OTHER GOVERNMENTAL REGULATIONS

To the extent that the Services may be funded by or otherwise subject to the authority of another governmental entity or entities, Consultant and any subcontractors shall comply with all applicable rules and regulations of such other governmental entity or entities including those contained in Exhibit B and incorporated by referenced herein.

10. USE OF RECYCLED PRODUCTS

Consultant shall endeavor to prepare and submit all reports, written studies, and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

11. INDEMNITY

To the maximum extent permitted by law, Consultant shall, at its own expense, indemnify, defend with counsel acceptable to the City (which acceptance shall not be unreasonably withheld), and hold harmless City and its officers, officials, employees, and agents("Indemnitees") from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorney's fees, and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with the Services or Consultant's failure to comply with any of the terms of this Agreement., regardless of any fault or alleged fault of the Indemnitees. The foregoing obligation of Consultant shall not apply when (1) an injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, or agents

and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law.

The Consultant's obligation to indemnify, defend and hold harmless under this provision shall not be excused because of the Consultant's inability to evaluate Liability, or because the Consultant evaluates Liability and determines that the Consultant is not or may not be liable. The Consultant must respond within 30 calendar days to any tender for defense and indemnity by the City, unless the time for responding has been extended by an authorized representative of the City in writing. The Consultant waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of the Consultant arising out of or in connection with the Services or Consultant's failure to comply with any of the terms of this Agreement.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code section 2783, as may be amended from time to time, Consultant's duty to indemnify under this provision shall not apply when to do so would be prohibited by California Civil Code section 2782, as may be amended from time to time.

Notwithstanding the foregoing, to the extent that the Services include design professional services subject to California Civil Code section 2782.8, as amended from time to time, Consultant's duty to indemnify shall only be to the maximum extent permitted by Civil Code section 2782.8.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing Services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

12. INSURANCE

A. Before commencing performance of the Services, Consultant, at its own cost and expense, must: (a) procure "occurrence coverage" insurance of the kinds and in the amounts specified below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services hereunder by the Consultant or its agents, representatives, employees, or subcontractors; and (b) submit to the City certificates of insurance and endorsements evidencing insurance coverage that meets the requirements of this section. Consultant must maintain the insurance policies required by this section throughout the Agreement term. The cost of such insurance must be included in the Consultant's proposal. Consultant may not allow any subcontractor to commence work on the Services until Consultant and/or the subcontractor have obtained all insurance required by this Agreement for the Agreement for the subcontractor(s) and

submitted certificates of insurance and endorsements evidencing such coverage to the City.

B. Consultant must, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. Workers' Compensation Insurance as required by the State of California, with coverage providing Statutory Limits, and Employer's Liability Insurance with limits of not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence must be provided. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance must be provided with limits of not less than ONE MILLION DOLLARS ($1,000,000.00) per accident. The insurance must be endorsed to waive all rights of subrogation against the City and its officials, officers, employees, and volunteers for loss arising from or related to the Services.

C. Consultant, at its own cost and expense, must maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence, TWO MILLION DOLLARS ($2,000,000.00) aggregate, and combined single limit coverage for risks associated with Services. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Services or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include, but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

D. Required commercial general coverage shall be comparable to Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage must be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement may be attached limiting the coverage.

E. Except for Workers' Compensation insurance and professional liability insurance, all other insurance coverage required pursuant to this Agreement must include or be endorsed to include the following:

1. City and its officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage may contain no special limitations on the scope of protection afforded to City or its officials, officers, employees, agents, or volunteers.

2. Required insurance coverage must be primary insurance with respect to the City and its officials, officers, employees and volunteers. No insurance or self-insurance maintained by the City may be called upon to contribute to a loss under the coverage.

F. All insurance coverage required pursuant to this Agreement must include or be endorsed to include the following:

1. Required insurance coverage may not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days' prior written notice by mail, return receipt requested, has been given to the City or a ten (10) day-notice for nonpayment of premium.

G. Professional liability insurance may be provided on a “claims-made” basis, but the policy must be maintained in effect, and the City must be provided satisfactory evidence of the policy being maintained in effect, for a period of five years following the expiration or termination of this Agreement.

H. Consultant, at its own cost and expense, must maintain for the period covered by this Agreement professional liability insurance in an amount not less than ONE MILLION DOLLARS ($1,000,000.00) covering errors and omissions and containing a cross liability or severability of interest clause acceptable to the City. Any deductible or self-insured retention under the required professional liability insurance may not exceed $200,000.00 per claim.

I. All insurance required under this Agreement must be placed with insurers with a Best’s rating of no less than A:VII unless otherwise approved by the City.

J. The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the City interests are otherwise fully protected.

13. NON-DISCRIMINATION

During the performance of this Agreement, Consultant will not discriminate against any employee of the Consultant or applicant for employment because of race, religion, creed, color, national origin, sex, or age. Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, creed, color, national origin, sex or age.

14. BUSINESS LICENSE

Before the City will issue a notice to proceed with the Services, to the extent the requirements of Chapter 5.04 of the Cloverdale Municipal Code apply, Consultant and any subcontractors subject to the requirements of Chapter 5.04 of the City Municipal Code must acquire at their sole expense a business license from the City in accordance with that chapter. Such licenses must be kept valid throughout the Agreement term.

15. OWNERSHIP OF WORK PRODUCTS AND TREATMENT DOCUMENTS

All plans, specifications, reports, designs and other documents prepared by Consultant pursuant to this Agreement shall be and remain the property of the City. Any modification or reuse of such documents by the City without Consultant's prior written consent will be at the City's sole risk. Except as may be otherwise required by law, Consultant will disclose no data, plans, specifications, reports or other documents pertaining to the Services without the prior written consent of the City.

16. TERMINATION AND REMEDIES

A. City may terminate this Agreement for convenience at any time upon giving written notice to Consultant specifying the termination effective date. Upon receipt of such notice, Consultant may continue performance of the Services through the date of termination. City shall pay Consultant for all Services actually performed in accordance with this Agreement through the termination effective date.

B. If Consultant materially breaches any term of this Agreement, in addition to any other remedies the City may have at law or equity, the City may:

1. Terminate the Agreement by notice to the Consultant specifying the termination effective date;

2. Retain, and/or recover from the Consultant at no additional cost to the City, the plans, specification, drawings, reports and other design documents and work products prepared by Consultant, whether or not completed;

3. Complete the unfinished Services itself or have the unfinished Services completed, and/or;

4. Charge Consultant, or deduct from monies that may be due or become due the Consultant under this Agreement, the difference between the cost of completing the unfinished Services pursuant to this Agreement and the amount that would otherwise be due Consultant had Consultant completed the Services in accordance with this Agreement.

17. BINDING EFFECT AND ASSIGNMENT PROHIBITION

This Agreement is binding upon City, Consultant, and their successors. Except as otherwise provided herein, neither City nor Consultant may assign, sublet or transfer its interest in this Agreement or any part thereof without the prior written consent of the other, and any purported assignment without such consent will be void.

18. REPRESENTATIVES

A. The City representative for purposes of this Agreement will be Michael Morrissey. The Consultant representative for purposes of this Agreement will be Jessica Mullen. The parties' designated representatives will be the primary contact persons regarding the performance of the Services. The parties intend that their designated representatives will cooperate in all matters regarding this Agreement and in such manner so as to achieve performance of the Services in a timely and expeditious fashion.

B. Notices:

Any written notice to Consultant shall be sent to:

Jessica Bryan
C&S Engineers, Inc.
8950 Cal Center Drive, Ste 112
Sacramento, CA 95826
916 364-1470

Any written notice to City shall be sent to:

Paul Cayler
City of Cloverdale
124 N. Cloverdale Blvd.
Cloverdale, California 95425
707 894-1710

19. INTEGRATION AND AMENDMENT

This Agreement represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations or agreements, whether written or oral. If a discrepancy, disagreement, ambiguity, inconsistency or difference in interpretation of terms arises as between terms or provisions of this Agreement and any exhibit(s) made a part of this Agreement, this Agreement shall control and shall be deemed to reflect the intent of the Parties with respect to the subject matter hereof.
This Agreement may only be amended by a writing signed by a representative authorized to bind the Consultant and a representative authorized to bind the City.

20. CONFLICT OF INTEREST PROHIBITION

City and Consultant will comply with the requirements of the City's Conflict of Interest Code adopted pursuant to the provisions of California Government Code section 87300 and following, the Political Reform Act (California Government Code section 81000 and following), the regulations promulgated by the Fair Political Practices Commission (Title 2, section 18110 and following of the California Code of Regulations), California Government Code section 1090 and following, and any other ethics laws applicable to the performance of the Services and/or this Agreement. Consultant may be required to file with the City Clerk a completed Form 700 before commencing performance of the Services pursuant to City's Conflict of Interest Code. Form 700 forms are available from the City Clerk.

Consultant may not perform Services for any other person or entity that, pursuant to any applicable law or regulation, would result in a conflict of interest or would otherwise be prohibited with respect to Consultant's obligations pursuant to this Agreement. Consultant agrees to cooperate fully with City and to provide any necessary and appropriate information requested by City or any authorized representative concerning potential conflicts of interest or prohibitions concerning Consultant's obligations pursuant to this Agreement.

Consultant may not employ any City official, officer or employee in the performance of the Services, nor may any official, officer or employee of City have any financial interest in this Agreement that would violate California Government Code section 1090 et seq. Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of City. If Consultant was an employee, agent, appointee, or official of City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code section 1090 et seq., the entire Agreement is void and Consultant will not be entitled to any compensation for Consultant's performance of the Services, including reimbursement of expenses, and Consultant will be required to reimburse City for any sums paid to Consultant under this Agreement. Consultant understands that, in addition to the foregoing, penalties for violating Government Code section 1090 may include criminal prosecution and disqualification from holding public office in the State of California.

Any violation by the Consultant of the requirements of this provision will constitute a material breach of this Agreement, and the City reserves all its rights and remedies at law and equity concerning any such violations.

21. APPLICABLE LAW

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and the interpretation of this Agreement. Any action or proceeding that is initiated or undertaken to enforce or interpret any provision,

performance, obligation or covenant set forth in this Agreement shall be brought in a state court in Sonoma County.

22. RECOVERY OF ATTORNEY'S FEES

If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret any term of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

23. SEVERABILITY

If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged will remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

IN WITNESS HEREOF, the parties have caused their authorized representative to execute this Agreement on this _____ day of_____,_____.

CITY

By: _____

Paul Cayler, City Manager

CONSULTANT

By:_____

Its:_____

(Attach Notary Page)

ATTEST:

By:_____

Linda Moore, Deputy City Clerk

APPROVED AS TO FORM:

By: _____

Jose Sanchez, City Attorney

EXHIBIT A
FINAL SCOPE OF SERVICES

Project Name: Environmental Assessment (EA) for Obstruction Mitigation
Airport Name: Cloverdale Municipal Airport
Services Provided: Environmental Planning Services - National Environmental Policy Act (NEPA)

Overview of Services

C&S Engineers, Inc. (CONSULTANT) will provide the required professional services to prepare an Environmental Assessment (EA) for the proposed *Mitigating Objects Affecting Navigable Airspace* project at Cloverdale Municipal Airport (SPONSOR). This project will also include the following:

- Preliminary engineering
- Agency coordination
- Delineation of wetlands
- Preparation of biological assessment
- Preparation of environmental documentation

Proposed Action

The SPONSOR recently completed an Obstruction Evaluation and Obstruction Mitigation Report. Twenty-one obstructions have been identified within the Threshold Siting Surface (TSS) and require mitigation. The obstructions are located both on and off the airport property with some within close proximity to the Russian River. Several of the obstructions are located on the river bank itself.

Due to the fact that these obstructions are located within close proximity to the river, additional consideration will be given to potential environmental impacts associated with their potential removal. The location of these obstructions will necessitate increased scrutiny pertaining to removal methods, and potential mitigation options that may include replanting and other forms of restoration within riverbank areas.

The project has been recommended in the Airport Layout Plan (ALP) currently under Federal Aviation Administration (FAA) review. The preparation of an EA for the removal of obstructions is required to assess impacts to the environment; including cultural resources, wetlands, and federally listed threatened and endangered species.

Guidelines for EA Preparation

The EA, as defined by Council on Environmental Quality (CEQ) regulations, will be a concise public document for which a federal agency is responsible that serves to briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact (FONSI).

The EA will be prepared in a manner that is consistent with the following guidance documents:

- FAA Order 5050.4B, *National Environmental; Policy Act (NEPA) Implementing Instructions for Airport Actions*
- FAA Order 1050.1F, *Environmental Impacts, Policies and Procedures;* and local rules and regulations
- *Environmental Desk Reference for Airport Actions*

Administration Phase

The Project will be performed by the SPONSOR with grant assistance from the FAA Airport Improvement Program. The specific services to be provided by CONSULTANT as part of this phase are as follows:

- Preparation of reimbursement request packages, coordination of their execution by the SPONSOR, and submission to the funding agencies.
- Assist SPONSOR in coordination with FAA and other regulatory agencies.
- Consistent with CEQ and FAA requirements, CONSULTANT will assist the SPONSOR in announcing the availability of the FONSI through appropriate media in the area. The announcement will indicate the availability of the document for examination and note the appropriate location of general public access where the document may be found (e.g., your office, local libraries, public buildings, etc.). A copy of the announcement will be sent to the FAA when it is issued.

Environmental Assessment Preparation

The EA process generally comprises the following five steps:

1. Statement of purpose and need;
2. Description of existing conditions;
3. Description of proposed actions;
4. Consideration of alternatives;
5. Measurement of significant changes; and
6. Minimization of unavoidable impacts.

The major components of the EA are:

Purpose and Need

Identify the Project to be assessed, the requested Federal action, and the timeframe for such action. The following items will be discussed:

- Description of Project.
- Relevant information regarding the purpose and need for the Project.

Alternatives

A full range of conceptual alternatives (up to three, including the no-action alternative) will be developed by CONSULTANT with support from SPONSOR. The results of the alternative analysis will be the basis for preparation of the alternative development section of the EA. The

alternatives phase will include development, and a description, of a “No-Action” alternative in accordance with CEQ regulations.

Preliminary Design - to assist in the preparation of the alternatives analysis CONSULTANT will complete a preliminary design on proposed project elements. This will include a review of obstruction mitigation options that are best suited to accomplish the Project. Although recommended mitigation measures were identified in the Obstruction Survey and Obstruction Mitigation Plan further evaluation is necessary to determine if they are feasible based on their potential environmental impacts and accessibility. Alternative mitigation measures maybe proposed to reduce impacts.

In support of the alternatives development, CONSULTANT will conduct an arborist survey of tree obstructions in areas that will be impacted by the proposed project and prepare a site plan that depicts the location of all protected trees greater than nine inches (9″) diameter-at-breast-height and their protected perimeters. The survey is necessary to determine the appropriate mitigation options for their removal.

Affected Environment

A review of existing conditions at the Project site will be conducted. This task involves collecting all relevant data necessary to determine the environmental conditions of the potentially affected geographic area. Due to the Projects location and potential impacts this task will include the following environmental resource studies:

1. Jurisdictional Delineation of Waters of the U.S. and State – due to the close proximity of the Russian River tributaries relative to the Project study area the CONSULTANT will conduct a wetland delineation using the U.S. Army Corps of Engineers’ (USACE) Wetlands Delineation Manual (USACE 1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0; USACE 2008); in addition, CONSULTANT will consider the California Department of Fish and Wildlife (CDFW) and draft State Water Resources Control Board (SWRCB) guidelines as they relate to the project site/conditions. CONSULANT will prepare a preliminary jurisdictional delineation report presenting the results of the delineation. The jurisdictional boundaries identified during the delineation will be subject to verification by the applicable resource agencies.

2. Biological Resources Evaluation – CONSULTANT will visit the project area to document and describe vegetation types and other habitat features potentially important to species listed under the Endangered Species Act of 1973, as amended (ESA), and other special-status species. In addition, an inventory of dominant plant and animal species will be recorded. Based on this site reconnaissance and available sources of information on habitat requirements and distribution, the project area will be assessed for the potential presence of such species. CONSULTANT will then prepare Biological Assessments (BA) for aquatic and terrestrial species to comply with the ESA, which is a requirement for Clean Water Act (CWA) Section 404 permitting, as well as for use in the EA. This evaluation, at a minimum, will include an introduction, a description of field reconnaissance methods, a summary of vegetation communities and other habitat features, narrative descriptions of federally and state listed species that have the potential to occur in or near the project area, and a rationale for why other listed species were eliminated from more detailed consideration.

3. Cultural Resources Investigations Report - CONSULTANT will prepare a cultural resources technical report for project area. The technical report will document the results of the literature review, Native American Heritage Commission (NAHC) search, and field survey as well as provide management recommendations for resources within or near the project area. The reports will meet the Secretary of Interior's Standards and Guidelines and will follow Archaeological Resource Management Reports: Recommended Contents and Format guidelines. The report will include maps depicting the area surveyed for cultural resources. If the locations of sensitive archaeological sites or Native American cultural resources will be depicted or described in the report, it will be considered confidential; the report may not be distributed to the public. In order to protect these sensitive resources, the confidential technical report shall be made available only to qualified cultural resources personnel, the landowner, and project management personnel on a "need-to-know" basis. The report shall be prepared compliant with Section 106 of the National Historic Properties Act.

Environmental Consequences – Specific Impact Categories

This part of the EA involves examining the Project's potential environmental impact areas and determining if they may be significant. During this process, specific consultation with environmental agencies will be accomplished. The following impact categories, as specified in FAA Order 1050.1F, will be addressed:

Air Quality

The City of Cloverdale is located in the Northern Sonoma County Air Pollution Control District. According to the EPA GreenBook published June 17, 2016, Sonoma County is listed as a nonattainment area for 8-hour ozone (2008), PM2.5, and maintenance for carbon monoxide. Due to these designations, an emissions inventory will be prepared to determine if the proposed project will meet state air quality standards and not create an exceedance of EPA mandated de-minimis threshold levels. Potential emissions sources anticipated to be impacted by the proposed project include construction equipment. The emissions inventory will be prepared using the guidance set forth under Aviation Emissions and Air Quality Handbook, Version 3.

Biological Resources

Using information provided in the Biological Assessments, the EA will review the potential of the proposed project to have an effect on federally or state listed threatened or endangered species. If listed species are observed or site conditions suggest that the proposed project may affect habitat critical to or occupied by listed species, the BA may contain recommendations for species-specific surveys or general mitigation measures. Additionally, other federal, state, and local regulations concerning the biological environment of the project area will be addressed.

Climate

Although the FAA has not established a significance threshold to address potential impacts a project may have on the climate the increase in greenhouse gas emissions created from the project should be evaluated and reported. Due to the Projects low potential to increase greenhouse gas emissions, no impact from this category is expected.

Coastal Resources

As applicable, any coastal zone management programs or coastal barriers affected by the proposed actions will be identified. Given the location of the proposed actions (*i.e.*, not in proximity to Coastal Resources), no impact from this category is expected.

Department of Transportation Section 4(f)
The EA will identify and consider publicly-owned land (including public parks, recreation areas, wildlife and waterfowl refuges, or historic sites) that could be affected by the proposed actions. Any areas affected will be identified and measures to minimize impacts will be recommended.

Farmlands
This part of the EA will identify the effects of converting farmland to non-agricultural uses and involves determining if the farmland is protected by the Farmland Protection Policy Act (FPPA). Farmland protected by the FPPA is either prime farmland which is not already committed to urban development or water storage, unique farmland, or farmland which is of state or local importance.
The U.S. Soil Conservation Service and other applicable agencies will be contacted to determine whether the FPPA is applicable to the Projects. No impact from this category is expected.

Hazardous Materials, Solid Waste, and Pollution Prevention
A general review to determine the likelihood of encountering land that may contain hazardous substances or may be contaminated will be undertaken. Airport development actions do not normally have any direct relationship to solid waste collection, control, or disposal other than that associated with construction itself. A preliminary review will indicate if the projected quantity or type of solid waste generated by or method of collection or disposal of waste related to, the Project will be appreciably different than would be the case today.

Historic, Architectural, Archeological, and Cultural Resources
An investigation will be conducted to determine if the proposed project will have an effect upon any properties in, or eligible for inclusion in, the National Register of Historic Places, and whether there is any reason to believe that significant scientific, prehistoric, historic, archaeological, or paleontological resources would be lost or destroyed as a result of the proposed project.

In compliance with Section 106 of the National Historic Preservation Act, the CONSULTANT will prepare documentation for the FAA to use to determine if any effects will occur and to consult with the California State Historic Preservation Officer (SHPO). This will include the preparation of a technical report (see Affected Environment) for the Area of Potential Effect (APE). If artifacts are found, possible adverse effects will be identified and recommendations will be provided for possible mitigation measures. If the SHPO concurs that the artifacts are not eligible, then mitigation will not be required.

Land Use
Any impacts exceeding thresholds of significance that have land use ramifications, such as disruption of communities, relocation of residences or businesses, or impacts to natural resource areas, will be identified. The compatibility of land uses in the vicinity of the airport will also be reviewed to ensure those uses do not adversely affect safe aircraft operations.

Natural Resources and Energy Supply
Energy requirements associated with the Project include assessing the following impacts:

- Those which relate to changed demands for stationary facilities (*e.g.*, airfield lighting). Any major changes in stationary facilities' demands, which would have a measurable effect on local supplies, will be identified; and
- Those which involve the movement of air and ground vehicles.

Noise and Compatible Land Use
It is assumed by the CONSULTANT that a noise analysis is not needed. The Project will not result in any of the following:

- No induced increase in aircraft operations (outside of forecasted growth);
- No chance in the physical location of the runway thresholds;
- No induced change in flight procedure either through changes to flight tracks or the introduction of new technology;
- No change in the fleet mix of aircraft operating at the airport; and
- No introduction of new aircraft types or categories operating at the airport.

If a noise analysis is needed, it will require an amendment to this scope of services. No impact from this category is expected.

Socioeconomic Impacts, Environmental Justice, and Children's Environmental Health and Safety Risks
This section of the EA will consider the magnitude of potential economic and social impacts associated with the proposed actions. The effect of the proposed action upon the social and community aspects of the area will be described in terms of the numbers of people and businesses affected and available forms of relocation assistance. Road closures and surface transportation disruptions will be identified and described, as appropriate. Environmental justice is concerned with a variety of public policy efforts to ensure that adverse human health or environmental effects of governmental activities do not fall disproportionately upon minority populations and low-income populations. In the realm of aviation, environmental justice means that transportation system changes, such as runway extensions, are studied carefully to determine the nature, extent, and incidence of probable impacts, both favorable and adverse. The EA will also identify and assess environmental health risks and safety risks of the proposed actions that may disproportionately affect children.

Visual Effects
Consideration will be given as to the extent to which any lighting or visual impacts associated with the Project will create an annoyance among people in the vicinity of the Project.

Water Resources
The potential effects of the Project on water resources will be discussed in detail. This section of the

EA will include the following topics:

- Wetlands – using information provided by the wetlands delineation prepared in support of the EA, impacts of the Project upon wetlands will be assessed to ensure consistency with appropriate regulations and standards. If necessary, a conceptual mitigation plan will be prepared to reduce impacts to wetlands. However, this scope of services does not include preparation of a final mitigation plan or design of that mitigation.

- Floodplains - the Flood Insurance Rate Map or the Flood Insurance Study Report will be reviewed to determine if the Project is located within a flood plain. The presence or absence of flood plains and the potential for impacts will be documented.

- Surface Waters - the potential effects of the Project on water quality will be discussed. The U.S. Department of the Interior will be contacted to determine the presence or absence of Wild and Scenic Rivers that could be impacted by the Project.

  If necessary, potential impacts will be identified and mitigation measures will be recommended. The following factors will be considered:

  - Erosion controls to prevent siltation;
  - Designs to preserve existing drainage or to minimize dredge and fill; and
  - Location with regard to an aquifer or sensitive ecological areas, such as wetlands.

  Measures to minimize water pollution and run-off effects will be identified to demonstrate that State water quality standards, as well as federal and local requirements, can be met.

Cumulative Impacts
CEQ Regulation 1500.7 states that "cumulative impact" is the impact on the environment which results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions. Cumulative impacts are defined as existing or baseline (no build) impacts on the environment, plus the incremental direct effect of the proposed actions, plus the actions' indirect/secondary impacts. These will be assessed to determine the environment's ability to sustain such impacts.

Anticipated Permits or Approvals
Required environmental permits (if any) will be identified but this scope of services does not include their preparation which will be the responsibility of the SPONSOR. Mitigation measures that will need to be taken to avoid or minimize significant impact on a particular resource will be identified. Any impacts that cannot be mitigated, or that cannot be mitigated below the threshold of significance identified in FAA Order 1050.1F, will be discussed.

Public Involvement
Due to the scope and nature of the proposed project, public outreach outside of the required 30 day public review period is not anticipated. A public workshop/hearing is not included as part of this Scope of Services. C&S will plan and attend meetings with representatives of the adjacent property

owners to discuss the alternatives, impacts, and mitigation related to obstruction removals on their properties.

EA Report Preparation
An EA will be prepared that summarizes the results of the foregoing tasks. Five copies of the Draft Environmental Assessment (DEA) and of the Final Environmental Assessment (FEA) documents will be prepared for distribution. The distribution list will include the SPONSOR, the FAA, and other environmental agencies. Additionally, copies of the FEA will be made available in print form at various public locations and, if needed, will also be posted on a web site in PDF format for access by the public and agencies.

Schedule
CONSULTANT agrees to complete the services identified herein in a manner satisfactory to the SPONSOR within 16 months after receiving a written Notice to Proceed from the SPONSOR, or within such extended periods as are agreed to by the SPONSOR.

Assumptions made by CONSULTANT and agreed to by the SPONSOR:

- The Project will be funded under the Federally-sponsored Airport Improvement Program (AIP) authorized under the Investment and Reform Act for the 21st Century (AIR-21). AIP funding for environmental efforts are provided by "planning" grants. As such, amendments to increase the budget above the original amount are not allowable.
- CONSULTANT will endeavor to complete the EA Scope of Services identified herein within 16 months after receiving the written Notice to Proceed. However, if circumstances beyond the control of the CONSULTANT (including but not limited to, review by involved governmental agencies) prevent the CONSULTANT from completing the work within the agreed upon time frame, then the CONSULTANT may request an extension of time to complete the work based on remaining effort anticipated and agreed to in advance by the SPONSOR and FAA.
- The CONSULTANT's fee associated with this Scope of Services was developed based upon an assumption that preparation of an Environmental Impact Statement (EIS) will not be necessary for the Project.
- Up to two on-site meetings are included in the EA Scope of Services to conduct a site walk over and to address any potential issues directly with the SPONSOR or FAA. If additional meetings require attendance by the CONSULTANT, it is agreed that this is additional work and that, if necessary, a supplemental agreement will be executed and funded by the SPONSOR.
- All necessary data, resources, and materials will be provided on a timely basis to allow the CONSULTANT sufficient opportunity to complete the EA (and associated technical studies) in the proposed schedule. Should required information or resources be delayed, then the CONSULTANT assumes the right to adjust the schedule accordingly to meet the requirements necessary for preparing the items identified under the scope of work.
- Public outreach is limited to what is described in this EA Scope of Services.
- Due to the potential impacts associated with the proposed project. It is assumed that a noise analysis is not required.

- At SPONSOR request, CONSULTANT will prepare an individual Section 404 permit application for submittal to the USACE. If a Section 404 permit or additional analysis is required, it is agreed that this is additional work and that a supplemental agreement will be executed and funded by the SPONSOR.

CONSULTANT recognizes that these assumptions may be subject to change by the SPONSOR during the course of the project. While such changes would not necessarily result in modification of the scope, schedule, or cost, CONSULTANT must reserve the right to propose such modifications in the event of such changes.

Fee Estimate – Workplan

PHASE NO.	TASK	ADMN ASST	GRANT ADM	STAFF PLAN	PLAN	MAN PLAN	DEPT MGR	MAN ENG	DIRECT COSTS	SERVICES BY	TOTALS	TOTAL HOURS PER
100	PROJECT ADMINISTRATION (PLN)		16			50	12				$12,329	78
101	MEETINGS	8			12	28	8				$8,222	56
102	PURPOSE & NEED DEVELOPMENT			8	12	16	6	8			$7,709	50
103	ALTERNATIVES DEVELOPMENT			12	38	24	10	8			$13,222	92
104	AFFECTED ENVIRONMENT			40	24	12					$8,216	76
105	ENVIRONMENTAL CONSEQUENCES			80	64	28		8			$20,613	180
106	REPORT PREPARATION	12		24	24	12	8	8			$11,115	88
107	QUALITY ASSURANCE/QUALITY					16	4				$3,475	20
700	SBO - WETLAND									$60,000.00	$60,000	
900	DIRECT EXPENSES (ALL)								$4,508.00		$4,508	
		20	16	164	174	186	48	32	$4,508.00	$60,000.00	$149,410	640

Planning
COST SUMMARY
SCHEDULE "B"
PLANNING PHASE

PROJECT NAME: EA FOR OBSTRUCTION REMOVAL
PROJ DESCRIPTION: ENVIRONMENTAL PLANNING

DATE: 05-Jul-16
A/E: C & S ENGINEERS, INC.
PROJECT NO: K24

CLIENT: CITY OF CLOVERDALE
CLIENT MANAGER: PAUL CAYLER

C&S CONTACT: Ralph Redman

I. DIRECT SALARY COSTS:

	TITLE	BILLI	@	HOURS		COST
A.	MANAGING ENGINEER	$213.20	X	32	=	$6,822.00
B.	ADMINISTRATIVE ASSISTANT	$68.00	X	20	=	$1,360.00
C.	DEPARTMENT MANAGER	$224.00	X	48	=	$10,752.00
D.	MANAGING PLANNER	$161.20	X	186	=	$29,983.00
E.	PLANNER	$114.40	X	174	=	$19,906.00
	TOTAL ESTIMATED DESIGN COST:					$84,902.00

II. ESTIMATE OF DIRECT EXPENSES:

A.	TRAVEL, RENTAL CAR:							
	2	DAYS @	1	RENTAL RATE @	$100.000	=	$200.00	
B.	TRAVEL, BY AIR:							
	2	TRIPS @	2	PERSONS @	$500.00	=	$2,000.00	
C.	TRAVEL, PER DIEM:							
	2	DAYS @	3	PERSONS @	$40.00	=	$240.00	
D.	TRAVEL, MILEAGE:							
	2	ROUND TRIPS @	400	MILES/RATE @	$0.550	=	$440.00	
D.	TRAVEL, HOTEL:							
	4	DAYS @	1	ROOM RATE @	$135.000	=	$540.00	
E.	MISCELLANEOUS: (printing)					=	$500.00	
							$3,920.00	
				TOTAL ESTIMATE OF DIRECT EXPENSES 15%:				$4,508.00

III. SUBCONSULTANTS

	NAME	TASK
A.	HELIX ENVIRONMENTAL RESOURCES $60,000.00	SBO - WETLAND DELINEATION/BIOLOGICAL ASSESSMENT/CULTURAL

IV. TOTALS:

A. ESTIMATE OF TOTAL COST FOR DESIGN SERVICES, AGREEMENT TOTAL & FAA ELIGIBLE: $149,410

EXHIBIT B

HOURS OF WORK:

A. In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the Services shall constitute a legal day's work under this Agreement.

B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the Services is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815; which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.

C. The Consultant and its subconsultants shall forfeit as a penalty to the City $25 for each worker employed in the performance of the Services for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one calendar day, or more than forty (40) hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the Services are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file with the City and shall be made available on request. The Consultant and subconsultants engaged in the performance of the Services shall pay no less than these rates to all persons engaged in performance of the Services.

B. In accordance with Labor Code Section 1775, the Consultant and any subconsultants engaged in performance of the Services shall comply Labor Code Section 1775 which establishes a penalty of up to $50 per day for each worker engaged in the performance of the Services that the Consultant or any subconsultant pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the

Consultant or subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subconsultant in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Consultant or subconsultant had knowledge of their obligations under the California Labor Code. The Consultant or subconsultant shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subconsultant worker engaged in performance of the Services is not paid the general prevailing per diem wages by the subconsultant, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The Agreement executed between the Consultant and the subconsultant for the performance of part of the Services shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subconsultant by periodic review of the subconsultant's certified payroll records.
3. Upon becoming aware of a subconsultant's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subconsultant for performance of the Services.
4. Prior to making final payment to the subconsultant, the Consultant shall obtain an affidavit signed under penalty of perjury from the subconsultant that the subconsultant has paid the specified general prevailing rate of per diem wages employees engaged in the performance of the Services and any amounts due pursuant to California Labor Code Section 1813.

C. In accordance with California Labor Code Section 1776, the Consultant and each subconsultant engaged in performance of the Services, shall keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the Services. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

1. The information contained in the payroll record is true and correct.

2. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any Services performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subconsultants engaged in performance of the Services, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

E. In case it becomes necessary for the Consultant or any subconsultant engaged in performance of the Services to employ on the Services any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Consultant shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to Services to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

CITY OF CLOVERDALE

City Council
Agenda Item Summary

Agenda Item:	7
Meeting Date:	October 25, 2016

Agenda Section	**Staff Contact**
Consent	David Kelley, Assistant City Manager/Community Development Director

Agenda Item Title

Waive second reading and readopt Ordinance No. 700-2015 amending the Cloverdale Municipal Code, Title 15 to add Chapter 15.38, "Solar Energy Systems, Expedited Permitting Process For Small Residential Rooftop Solar Systems" in order to comply with the specific requirements of AB 2188 to streamline the permitting and inspection process for residential rooftop solar energy systems.

Summary

California Government Code section 36933 requires that within 15 days after the adoption of an ordinance, a city publish a copy of the ordinance and the Council vote in a newspaper of general circulation. The Section also allows a city to only publish a summary of the ordinance instead of the entire document, if the City publishes such summary 5 days prior the adoption, and again within 15 days after the adoption, including the names of those city council members voting for and against the ordinance.

Ordinance No. 700-2015 was adopted by the City Council on October 14, 2015. Due to transitions of staff members, the City inadvertently did not publish a summary of the ordinance in the newspaper at least 5 days prior to the adoption and again within 15 days of the action.

In order to comply with the publishing requirements of Government Code section 36933, and to avoid publishing the entire ordinance, Ordinance No. 700-2015 is being placed before the City Council again for re-adoption. This is simply a re-adoption of the Ordinance. No changes to the substance of the Ordinance has been made.

Options

Waive second reading and readopt Ordinance 700-2015.

Recommended Council Action

Waive the second reading and readopt Ordinance No. 700-2015 amending the Cloverdale Municipal Code, Title 15 to add Chapter 15.38, "Solar Energy Systems, Expedited Permitting Process For Small Residential Rooftop Solar Systems."

Attachments:

1. Ordinance
2. Adopted Ordinance No. 700-2015

cc:

2720984.2

P.O. Box 217 • 124 North Cloverdale Blvd. • Cloverdale, CA 95425-0217 • Telephone (707) 894-2521 • FAX (707) 894-3451

(Rev. 02/12)

CITY OF CLOVERDALE
ORDINANCE NO. 700-2015

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE ADDING CHAPTER 15.38 TO TITLE 15 OF THE CLOVERDALE MUNICIPAL CODE TO PROVIDE AN EXPEDITED, STREAMLINED PERMITTING PROCESS FOR SMALL RESIDENTIAL ROOFTOP SOLAR SYSTEMS

WHEREAS, the City Council of the City of Cloverdale seeks to implement AB 2188 (Chapter 521, Statutes 2014) through the creation of an expedited, streamlined permitting process for small residential rooftop solar energy systems; and

WHEREAS, the Council wishes to encourage and advance the use of solar energy by all of its citizens, businesses and industries; and

WHEREAS, the Council seeks to meet the climate action goals set by the City of Cloverdale and the State; and

WHEREAS, solar energy creates local jobs and economic opportunity; and

WHEREAS, the Council recognizes that rooftop solar energy provides reliable energy and pricing for its residents and businesses; and

WHEREAS, it is in the interest of the health, welfare and safety of the people of Cloverdale to provide an expedited permitting process to assure the effective deployment of solar technology.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLOVERDALE DOES ORDAIN AS FOLLOWS:

Section 1. **Recitals Made Findings.** The above recitals are hereby declared to be true and correct and findings of the City Council of the City of Cloverdale.

Section 2. **Amendment.** Cloverdale Municipal Code, Title 15, is hereby amended to add Chapter 15.38, to read as follows:

CHAPTER 15.38
SOLAR ENERGY SYSTEMS, EXPEDITED PERMITTING PROCESS FOR SMALL RESIDENTIAL ROOFTOP SOLAR SYSTEMS

15.38.10 Purpose.
The purpose of this Chapter is to promote timely and cost-effective installations of small residential rooftop solar energy systems by establishing an expedited, streamlined solar permitting process, in accordance with the provisions of Section 65850.5 of the Government Code and applicable requirements of the "Solar Rights Act of 1978" (as amended). By enacting

this Chapter, the City intends to encourage use of solar energy systems by removing unreasonable barriers, minimizing costs to property owners and the City, and expanding the ability of property owners to install solar energy systems, while protecting the public health and safety.

15.38.20 Applicability.
Except as otherwise provided in this section, this Chapter shall apply to the permitting of all small residential rooftop solar energy systems in the City.

Small residential rooftop solar energy systems legally established or permitted prior to the effective date of this Chapter are not subject to the requirements herein, unless physical modifications or alterations are undertaken that materially change the size, type, or components of a small rooftop energy system in such a way as to require new permitting. Routine operation and maintenance shall not require a permit.

15.38.30 Definitions.
For purposes of this Chapter, the following definitions shall apply:

"*Association*" means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

"*Common interest development*" means any of the following:
a. A community apartment project
b. A condominium project
c. A planned development
d. A stock cooperative

"*Electronic submittal*" means the utilization of one or more of the following:
a. Email
b. Internet; or
c. Facsimile

"*Feasible method to satisfactorily mitigate or avoid adverse impact*" means any cost-effective method, condition, or mitigation imposed by the City on another similarly situated application in a prior successful application for a permit; or such other reasonable method or condition as may be determined cost-effective for mitigating or avoiding specific adverse impact(s).

"*Reasonable restrictions*" on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

For solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, "*significantly*" means an amount exceeding 10 percent of the cost of

the system, but in no case more than one thousand dollars ($1,000), or decreasing the efficiency of the solar energy system by an amount exceeding 10 percent, as originally specified and proposed.

For photovoltaic systems that comply with state and federal law, "*significantly*" means an amount not to exceed one thousand dollars ($1,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 10 percent as originally specified and proposed.

"*Small residential rooftop solar energy system*" means all of the following:
a. A solar energy system that is no larger than 10 kilowatts alternating current nameplate rating or 30 kilowatts thermal.
b. A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the City of Cloverdale and all state and City of Cloverdale health and safety standards.
c. A solar energy system that is installed on a single or duplex family dwelling.
d. A solar panel or module array that does not exceed the maximum legal building height as defined by the City of Cloverdale.

"*Solar energy system*" means either of the following:
a. Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.
b. Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

"*Specific, adverse impact*" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

15.38.40 Solar Energy System Requirements.
All solar energy systems shall meet applicable health and safety standards and requirements imposed by the state and the City, and local fire district.

Solar energy systems for heating water in single-family residences and for heating water in commercial or swimming pool applications shall be certified by an accredited listing agency as defined by the California Plumbing and Mechanical Code.

Solar energy systems for producing electricity shall meet all applicable safety and performance standards established by the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

15.38.50 Duties of the City Building Department and Building Official.
The City Building Department ("Department") shall ensure that all documents required for the submission of an expedited solar energy system permit application are made available on the publicly accessible City website.

Electronic submittal of the required permit application and documents shall be made available to all small residential rooftop solar energy system permit applicants. An applicant's electronic signature shall be accepted on all forms, applications, and other documents in lieu of a wet signature.

The Department shall adopt and update as necessary a standard plan and checklist of all requirements with which small residential rooftop solar energy systems shall comply to be eligible for expedited review. The small residential rooftop solar system permit process, standard plan(s), and checklist(s) shall substantially conform to recommendations for expedited permitting, including the checklist and standard plans contained in the most current version of the *California Solar Permitting Guidebook* adopted by the Governor's Office of Planning and Research.

All fees prescribed for the permitting of small residential rooftop solar energy systems must comply with Government Code Section 65850.55, Government Code Section 66015, Government Code Section 66016, and State Health and Safety Code Section 17951.

15.38.60 Permit Review and Inspection Requirements.
The Department shall adopt an administrative, nondiscretionary review process to expedite approval of small residential rooftop solar energy systems within 30 days of the adoption of this Chapter. The Department shall issue a building permit or other nondiscretionary permit the same day for over-the-counter applications, or for electronic applications, within 1-3 business days of receipt of a complete application that meets the requirements of the approved checklist and standard plan. Review of the application shall be limited to the Building Official's verification that the application meets local, state, and federal health and safety requirements.

The Building Official (Official) may require an applicant to apply for a conditional use permit if the Official finds, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health and safety. Applicants may appeal such decisions in accordance with Section 2.36.030 of this Code.

If a conditional use permit is required, the Department may deny an application for the conditional use permit if the Official makes written findings based upon substantive evidence in the record that the proposed installation would have a specific, adverse impact upon public health or safety and there is no feasible method to satisfactorily mitigate or avoid the adverse impact. Such findings shall include the basis for the rejection of the potential feasible alternative for preventing the adverse impact. Such decisions may be appealed in accordance with Section 2.36.030 of this Code.

Any condition imposed on an application shall be designed to mitigate the specific, adverse impact upon health and safety at the lowest possible cost.

The Department shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code defining restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance.

The Department shall not condition approval of an application on the approval of an association, as defined in Section 4080 of the Civil Code.

If an application is deemed incomplete, a written correction notice detailing all deficiencies in the application and any additional information or documentation required to be eligible for expedited permit issuance shall be sent to the applicant for resubmission.

Only one inspection shall be required and performed by the Department for small residential rooftop solar energy systems eligible for expedited review. If the Department and the Cloverdale Fire Protection District (Fire District) have entered into an agreement allowing the Department to perform fire safety inspections of eligible rooftop solar energy systems on behalf of the Fire District, a separate fire inspection of the system is not required.

The inspection shall be done in a timely manner and should include consolidated inspections. An inspection will be scheduled within one (1) business days of a request and provide a two (2)-hour inspection window.

If a small residential rooftop solar energy system fails inspection, a subsequent inspection is authorized but need not conform to the requirements of this section."

Section 3. **CEQA.** The City Council finds that this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 21080.35 (a) of the Public Resources Code (rooftop solar energy systems are statutorily exempted from CEQA requirements), and Sections 15307 (the activity is a regulatory action taken by the City of Cloverdale pursuant to its police power for the maintenance and protection of a natural resource) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations).

Section 4. **Severability.** If any provision of this Ordinance or the application thereof to any person or circumstances is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Cloverdale declares that it would have passed this ordinance and each and every section, subsection, sentence, clause or phrase hereof not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

Section 5. **Effective Date and Publication.** This Ordinance of the City of Cloverdale shall be effective thirty (30) days after the date of its passage. Before expiration of fifteen (15) days after its passage, this ordinance or a summary thereof as provided in Government Code Section 36933, shall be published at least once in a newspaper of general circulation published and circulated in the City of Cloverdale, along with the names of the City Council members voting for and against its passage.

It is hereby certified that the foregoing Ordinance No. 700-2015 was introduced before the City Council of the City of Cloverdale at a regular meeting thereof on the 25th day of September 2015 and passed and adopted upon its second reading on the 25th day of October 2016 by the following voice vote: (Ayes - X; Noes - X; Absent - X).

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved: Attested:

_____ _____

Mary Ann Brigham, Mayor Linda Moore, Deputy City Clerk

CITY OF CLOVERDALE
ORDINANCE NO. 700-2015

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15.38.20 Applicability.
Except as otherwise provided in this section, this Chapter shall apply to the permitting of all small residential rooftop solar energy systems in the City.

Small residential rooftop solar energy systems legally established or permitted prior to the effective date of this Chapter are not subject to the requirements herein, unless physical modifications or alterations are undertaken that materially change the size, type, or components of a small rooftop energy system in such a way as to require new permitting. Routine operation and maintenance shall not require a permit.

15.38.30 Definitions.
For purposes of this Chapter, the following definitions shall apply:

"*Association*" means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

"*Common interest development*" means any of the following:
a. A community apartment project
b. A condominium project
c. A planned development
d. A stock cooperative

"*Electronic submittal*" means the utilization of one or more of the following:
a. Email
b. Internet; or
c. Facsimile

"*Feasible method to satisfactorily mitigate or avoid adverse impact*" means any cost-effective method, condition, or mitigation imposed by the City on another similarly situated application in a prior successful application for a permit; or such other reasonable method or condition as may be determined cost-effective for mitigating or avoiding specific adverse impact(s).

"*Reasonable restrictions*" on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

For solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, "*significantly*" means an amount exceeding 10 percent of the cost of

the system, but in no case more than one thousand dollars ($1,000), or decreasing the efficiency of the solar energy system by an amount exceeding 10 percent, as originally specified and proposed.

For photovoltaic systems that comply with state and federal law, "*significantly*" means an amount not to exceed one thousand dollars ($1,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 10 percent as originally specified and proposed.

"*Small residential rooftop solar energy system*" means all of the following:
a. A solar energy system that is no larger than 10 kilowatts alternating current nameplate rating or 30 kilowatts thermal.
b. A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the City of Cloverdale and all state and City of Cloverdale health and safety standards.
c. A solar energy system that is installed on a single or duplex family dwelling.
d. A solar panel or module array that does not exceed the maximum legal building height as defined by the City of Cloverdale.

"*Solar energy system*" means either of the following:
a. Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.
b. Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

"*Specific, adverse impact*" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

15.38.40 Solar Energy System Requirements.
All solar energy systems shall meet applicable health and safety standards and requirements imposed by the state and the City, and local fire district.

Solar energy systems for heating water in single-family residences and for heating water in commercial or swimming pool applications shall be certified by an accredited listing agency as defined by the California Plumbing and Mechanical Code.

Solar energy systems for producing electricity shall meet all applicable safety and performance standards established by the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

15.38.50 Duties of the City Building Department and Building Official.
The City Building Department ("Department") shall ensure that all documents required for the submission of an expedited solar energy system permit application are made available on the publicly accessible City website.

Electronic submittal of the required permit application and documents shall be made available to all small residential rooftop solar energy system permit applicants. An applicant's electronic signature shall be accepted on all forms, applications, and other documents in lieu of a wet signature.

The Department shall adopt and update as necessary a standard plan and checklist of all requirements with which small residential rooftop solar energy systems shall comply to be eligible for expedited review. The small residential rooftop solar system permit process, standard plan(s), and checklist(s) shall substantially conform to recommendations for expedited permitting, including the checklist and standard plans contained in the most current version of the *California Solar Permitting Guidebook* adopted by the Governor's Office of Planning and Research.

All fees prescribed for the permitting of small residential rooftop solar energy systems must comply with Government Code Section 65850.55, Government Code Section 66015, Government Code Section 66016, and State Health and Safety Code Section 17951.

15.38.60 Permit Review and Inspection Requirements.
The Department shall adopt an administrative, nondiscretionary review process to expedite approval of small residential rooftop solar energy systems within 30 days of the adoption of this Chapter. The Department shall issue a building permit or other nondiscretionary permit the same day for over-the-counter applications, or for electronic applications, within 1-3 business days of receipt of a complete application that meets the requirements of the approved checklist and standard plan. Review of the application shall be limited to the Building Official's verification that the application meets local, state, and federal health and safety requirements.

The Building Official (Official) may require an applicant to apply for a conditional use permit if the Official finds, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health and safety. Applicants may appeal such decisions in accordance with Section 2.36.030 of this Code.

If a conditional use permit is required, the Department may deny an application for the conditional use permit if the Official makes written findings based upon substantive evidence in the record that the proposed installation would have a specific, adverse impact upon public health or safety and there is no feasible method to satisfactorily mitigate or avoid the adverse impact. Such findings shall include the basis for the rejection of the potential feasible alternative for preventing the adverse impact. Such decisions may be appealed in accordance with Section 2.36.030 of this Code.

Any condition imposed on an application shall be designed to mitigate the specific, adverse impact upon health and safety at the lowest possible cost.

The Department shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code defining restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance.

The Department shall not condition approval of an application on the approval of an association, as defined in Section 4080 of the Civil Code.

If an application is deemed incomplete, a written correction notice detailing all deficiencies in the application and any additional information or documentation required to be eligible for expedited permit issuance shall be sent to the applicant for resubmission.

Only one inspection shall be required and performed by the Department for small residential rooftop solar energy systems eligible for expedited review. If the Department and the Cloverdale Fire Protection District (Fire District) have entered into an agreement allowing the Department to perform fire safety inspections of eligible rooftop solar energy systems on behalf of the Fire District, a separate fire inspection of the system is not required.

The inspection shall be done in a timely manner and should include consolidated inspections. An inspection will be scheduled within one (1) business days of a request and provide a two (2)-hour inspection window.

If a small residential rooftop solar energy system fails inspection, a subsequent inspection is authorized but need not conform to the requirements of this section."

Section 3. **CEQA.** The City Council finds that this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 21080.35 (a) of the Public Resources Code (rooftop solar energy systems are statutorily exempted from CEQA requirements), and Sections 15307 (the activity is a regulatory action taken by the City of Cloverdale pursuant to its police power for the maintenance and protection of a natural resource) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations).

Section 4. **Severability.** If any provision of this Ordinance or the application thereof to any person or circumstances is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Cloverdale declares that it would have passed this ordinance and each and every section, subsection, sentence, clause or phrase hereof not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

Section 5. **Effective Date and Publication.** This Ordinance of the City of Cloverdale shall be effective thirty (30) days after the date of its passage. Before expiration of fifteen (15) days after its passage, this ordinance or a summary thereof as provided in Government Code Section 36933, shall be published at least once in a newspaper of general circulation published and circulated in the City of Cloverdale, along with the names of the City Council members voting for and against its passage.

It is hereby certified that the foregoing Ordinance No. 700-2015 was introduced before the City Council of the City of Cloverdale at a regular meeting thereof on the 23rd day of September 2015 and passed and adopted upon its second reading on the 14th day of October 2015 by the following voice vote: (Ayes - 3; Noes - 0; Absent - 2).

AYES: Councilmember Palla, Councilmember Wolter, and Mayor Cox
NOES: None
ABSENT: Vice Mayor Brigham, Councilmember Russell
ABSTAIN: None

Approved: Attested:

Robert M. Cox, Mayor

Linda Moore, Deputy City Clerk

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CITY OF CLOVERDALE

City Council
Agenda Item Summary

Agenda Item:	8
Meeting Date:	October 25, 2016

Agenda Section	**Staff Contact**
Consent	Stephen Cramer, Police Chief

Agenda Item Title

Waive second reading and readopt Ordinance No. 701-2016 amending the Cloverdale Municipal Code, Title 18 (Zoning Ordinance), Chapter 18.09, to add "Article III Marijuana, Section 18.09.300, Medical Marijuana" and Ordinance No. 702-2016 amending Title 9, Chapter 9.36 "Marijuana" of the Cloverdale Municipal Code Section 9.36.020, "Definitions" and Section 9.36.050 "Outdoor Cultivation of Marijuana Prohibited" to reference the Cloverdale zoning Ordinance for definitions and regulations related to cultivation of marijuana

Summary

California Government Code section 36933 requires that within 15 days after the adoption of an ordinance, a city publish a copy of the ordinance and the Council vote in a newspaper of general circulation. The Section also allows a city to only publish a summary of the ordinance instead of the entire document, if the City publishes such summary 5 days prior the adoption, and again within 15 days after the adoption, including the names of those city council members voting for and against the ordinance.

Ordinance No. 701-2016 and Ordinance No. 702-2016 were adopted by the City Council on January 26, 2016. Due to transitions of staff members, the City inadvertently did not publish a summary of the ordinances in the newspaper at least 5 days prior to the adoption and again within 15 days of the action.

In order to comply with the publishing requirements of Government Code section 36933, and to avoid publishing the entire ordinances, Ordinance No. 701-2016 and Ordinance No. 702-2016 are being placed before the City Council again for re-adoption. This is simply a re-adoption of the Ordinances. No changes to the substance of the Ordinance has been made.

Options

Readopt Ordinance No. 701-2016 and Ordinance No. 702-2016.

Recommended Council Action

1. Waive second reading and readopt Ordinance No. 701-2016 amending the Cloverdale Municipal Code, Title 18 (Zoning Ordinance), Chapter 18.09, to add "Article III Marijuana, Section 18.09.300, Medical Marijuana"; and

2. Waive second reading and readopt Ordinance No. 702-2016 amending Title 9, Chapter 9.36 "Marijuana" of the Cloverdale Municipal Code Section 9.36.020, "Definitions" and Section 9.36.050 "Outdoor Cultivation of Marijuana Prohibited" to reference the Cloverdale zoning Ordinance for definitions and regulations related to cultivation of marijuana.

Attachments:

1. Ordinance 701-2016
2. Ordinance 702-2016
3. Adopted Ordinance 701-2016
4. Adopted Ordinance 702-2016

cc:

2721036.1

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 701-2016

AN ORDINANCE OF THE CITY COUNCIL OF CLOVERDALE AMENDING CLOVERDALE MUNICIPAL CODE TITLE 18 (ZONING ORDINANCE), CHAPTER 18.09, TO ADD "ARTICLE III. MARIJUANA," SECTION 18.09.300, "MEDICAL MARIJUANA," PROHIBITING COMMERCIAL MARIJUANA (CANNABIS) ACTIVITIES AND REGULATING THE CULTIVATION OF MEDICAL MARIJUANA BY QUALIFIED PATIENTS AND PRIMARY CAREGIVERS AND THE DELIVERY OF MEDICAL MARIJUANA WITHIN THE CITY

WHEREAS, in 1996 voters in the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and entitled "The Compassionate Use Act of 1996" or the "CUA"); and

WHEREAS, the primary purpose of the CUA was to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief; and

WHEREAS, in 2004, the State of California also enacted Senate Bill 420 (codified as California Health and Safety Code section 11362.7 et seq. and referred to as "The Medical Marijuana Program" or the "MMP") to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill ("AB") 2650 (2010), and Assembly Bill 1300 (2011), amended the MMP to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances; and

WHEREAS, despite voter approval of the CUA, various problems and uncertainties in the Act impeded law enforcement's ability to interpret and enforce the law, and the uncertainties also hindered persons eligible to use marijuana for medical purposes from accessing marijuana, while many persons took advantage of the Act to use marijuana for recreational and not medical purposes; and

WHEREAS, the CUA is limited in scope, in that it only provides a defense from State criminal prosecution for possession and cultivation of marijuana to qualified patients and their primary caregivers; and

WHEREAS, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon local governments to allow, authorize or sanction the establishment and the operation of facilities cultivating, distributing, or processing medical marijuana; and

WHEREAS, in 2008, the City Council adopted Ordinance 660-2008, adding Chapter 9.36 to the City of Cloverdale's Municipal Code, which prohibited outdoor cultivation within the City limits of Cloverdale. Chapter 9.36 was adopted to promote the public health, safety and welfare by protecting City residents from the offensive odor and unreasonable risk of crime from outdoor cultivation of

marijuana. Chapter 9.36 also prohibited dispensaries within the City limits of Cloverdale. The Ordinance was written to protect citizens from the secondary impacts associated with medical marijuana dispensaries, including, but not limited to, increased public consumption of marijuana and the potential for increased marijuana DUIs, illegal resale of marijuana obtained at low cost from dispensaries, loitering, fraud in obtaining or using medical marijuana identification cards, robbery, assaults, and other crimes; also preventing increased demands for police response resulting from activities at medical marijuana dispensaries and parcels where outdoor marijuana cultivation occurs, thereby avoiding reduction of the ability of the City's public safety officers to respond to other calls for service; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land…". Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App. 4th 975, the Court of Appeal held that "there is no right-and certainly no constitutional right-to cultivate medical marijuana…". The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority; and

WHEREAS, in October of 2015, the State of California enacted AB 243, AB 266, and Senate Bill ("SB") 643 in 2015 (commonly and collectively referred to as the Medical Marijuana Regulation and Safety Act or the "MMRSA"). The MMRSA establishes regulation of medical cannabis cultivation, manufacturing, and transportation, as well as create local and state-level licensing systems in California. The MMRSA allows a city to prohibit, through land use regulations or ordinances, the cultivating, delivering, distributing, or processing medical marijuana; and

WHEREAS, the City Council finds that commercial medical marijuana (cannabis) activities, as well as cultivation for personal medical use as allowed by the CUA, MMP and the MMRSA can adversely affect the health, safety, and well-being of City residents. Citywide prohibition of commercial cultivation and regulation of personal cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, under the Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., the use possession and cultivation of marijuana, medical or otherwise, is unlawful and subject to federal prosecution; and

WHEREAS, the limited immunity from specified State marijuana laws provided by the CUA and the MMP does not confer a land use right or the right to create or maintain a public nuisance; and

WHEREAS, the MMRSA contains language that requires a city to prohibit cultivation uses by March 1, 2016, either expressly or otherwise under the principles of permissive zoning or the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if a city wishes to prohibit deliveries; and

WHEREAS, the Planning Commission held a duly noticed public hearing on December 16, 2015, at which time it considered all evidence presented, both written and oral and at the end of the hearing voted to adopt a resolution recommending that the City Council adopt the Ordinance with recommendations for changes to Section 18.09.300 E (d) (allow cultivation in R-3 zones on parcels with detached single-family dwelling) and 18.09.300 F(1) (cultivation of three (3) plants per parcel) and 18.09.300 F(3)(allow cultivation in R-3 zones on parcels with detached single-family dwelling); and

WHEREAS, the City Council held a duly noticed public hearing to consider this Ordinance on January 12, 2016, at which time the City Council considered all evidence presented, both written and oral.

NOW, THEREFORE, the City Council of the City of Cloverdale does ordain as follows:

SECTION 1. Amendment. Amendment of Title 18, Zoning Regulations: Chapter 18.09 is amended to add 18.09.300 and read as follows:

"**Article III. Marijuana**

18.09.300. Medical Marijuana

A. Purpose and Intent.

It is the purpose and intent of this ordinance to:

1. Assist law enforcement agencies in performing their duties effectively and in accordance with California law.

2. Acknowledge that the cultivation of medical marijuana is illegal under Federal law while granting limited immunity from local prosecution to those medical marijuana cultivation activities that do not violate the restrictions and limitations set forth in this Ordinance.

3. Ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets.

4. Implement State law by providing an equitable approach for regulating the cultivation of medical marijuana in a manner that is consistent with State law and balances the needs of medical patients and their caregivers with the health, safety, morals and general welfare of the residents and businesses within the City.

5. Require that medical marijuana be cultivated in appropriately secured, enclosed, and ventilated structures, so as not to be visible to the public domain, to provide for the health, safety and welfare of the public, to prevent odor created by marijuana plants from impacting adjacent properties, and to ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets.

B. Definitions.

1. "Cannabis" shall have the same meaning as set forth in Business & Professions Code § 19300.5(f) as the same may be amended from time to time.

2. "Caregiver" or "primary caregiver" shall have the same meaning as set forth in Health & Safety Code § 11362.7 as the same may be amended from time to time.

3. "Commercial marijuana activity" shall have the same meaning as that set forth in Business & Professions Code § 19300.5(k) as the same may be amended from time to time.

4. "Cooperative/Collective" shall mean two (2) or more persons collectively or cooperatively cultivating, distributing, using, transporting, possessing, administering, delivering or making available medical marijuana (cannabis), with or without compensation.

5. "Cultivation" shall have the same meaning as set forth in Business & Professions Code § 19300.5(l) as the same may be amended from time to time.

6. "Cultivation site" shall have the same meaning as set forth in Business & Professions Code § 19300.5(x) as the same may be amended from time to time.

7. "Delivery" shall have the same meaning as set forth in Business & Professions Code § 19300.5(m) as the same may be amended from time to time.

8. "Dispensary" shall have the same meaning as set forth in Business & Professions Code § 19300.5(n) as the same may be amended from time to time. For purposes of this Chapter, "Dispensary" shall also include a cooperative/collective.

9. "Dispensing" shall have the same meaning as set forth in Business & Professions Code § 19300.5(o) as the same may be amended from time to time.

10. "Distribution" shall have the same meaning as set forth in Business & Professions Code § 19300.5(p) as the same may be amended from time to time.

11. "Distributor" shall have the same meaning as set forth in Business & Professions Code § 19300.5(q) as the same may be amended from time to time.

12. "Manufacturer" or "Manufacturing" shall have the same meaning as set forth in Business & Professions Code § 19300.5(y) as the same may be amended from time to time.

13. "Manufacturing site" shall have the same meaning as set forth in Business & Professions Code § 19300.5(af) as the same may be amended from time to time.

14. "Marijuana" shall have the same meaning as cannabis as set forth in Business & Professions Code § 19300.5(f) as the same may be amended from time to time.

15. "Medical cannabis," "medical cannabis product," or "cannabis product" shall have the same meanings as set forth in Business & Professions Code § 19300.5(ag) as the same may be amended from time to time.

16. "Medical Marijuana Regulation and Safety Act" or the "MMRSA" shall mean the following bills signed into law on October 9, 2015 as the same may be amended from time to time: AB 243, AB 246, and SB 643.

17. "Nursery" shall have the same meaning as set forth in Business & Professions Code § 19300.5(ah) as the same may be amended from time to time.

18. "Person" shall have the same meaning as set forth in Business & Professions Code § 19300.5(aj) as the same may be amended from time to time.

19. "Personal cultivation" or "Cultivation for Personal Use" shall mean cultivation by a qualified patient or primary caregiver for the personal use by the qualified patient or the patients cared for by the primary caregiver.

20. "Parcel" shall mean property assigned a separate parcel number by the Sonoma County assessor.

21. "Qualifying patient" or "Qualified patient" shall have the same meaning as set forth in Health & Safety Code § 11362.7 as the same may be amended from time to time.

22. "School" shall mean any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

23. "Structure" shall mean a building completely enclosed and detached from a residence that complies with the California Building Code, as adopted by the City, and has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. Walls and roof must be constructed of solid materials that cannot be easily broken through. Exterior walls must be constructed with non-transparent material. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

24. "Testing laboratory" shall have the same meaning as set forth in Business & Professions Code § 19300.5(z) as the same may be amended from time to time.

25. "Transportation" or "Transport" shall have the same meaning as set forth in Business & Professions Code § 19300.5(am) as the same may be amended from time to time.

26. "Transporter" shall have the same meaning as set forth in Business & Professions Code § 19300.5(aa) as the same may be amended from time to time.

C. Commercial Marijuana Activity Prohibited

Commercial marijuana activities or commercial medical marijuana activities of all types including, but not limited to, dispensaries, collectives, cooperatives, transportation, distribution, cultivation, manufacturing, testing and processing are expressly prohibited in all zoning districts, planned developments and all specific and master plan areas in the City of Cloverdale. However, deliveries of medical marijuana conducted in compliance with subsection 18.09.300(H) of this Section shall be exempt.

D. Cultivation of Marijuana Prohibited

All cultivation of marijuana and medical marijuana, both indoor and outdoor, is prohibited in all zoning districts, planned developments and all specific master plan areas in the City, except as authorized under Section 18.09.300(E) and Section 18.09.300(F) for qualified patients and primary caregivers.

E. Qualified Patient/Primary Caregiver Cultivation in Detached Structure – Cultivation Permit Required

1. A qualified patient or primary caregiver may cultivate medical marijuana in a detached structure subject to all of the following requirements:

a. Cultivation shall occur inside one (1) detached structure (as defined in Section 18.09.300(B)(23)) in an area not exceeding one-hundred (100) square feet.

b. Cultivation inside the detached structure shall not exceed thirty (30) marijuana plants (three (3) pounds processed marijuana) regardless of how many qualified patients or primary caregivers reside on the parcel.

c. Cultivation of marijuana shall only occur on parcels with a detached single-family dwelling. Parcels containing duplexes or multi-family dwellings, such as apartment buildings, shall not be allowed to cultivate medical marijuana.

d. Cultivation of marijuana shall only occur on parcels with a detached single-family dwelling, located in an area of the City zoned for Residential Use, Planned Development, and Planned Unit Development (R-1, R-2, R-3, R-R, PD and PUD as set forth in Title 18).

e. The qualified patient or primary caregiver shall reside full-time on the premises where the cultivation of marijuana occurs.

f. If the qualified patient or primary caregiver is a tenant on the parcel where he/she wishes to cultivate marijuana, the qualified patient or primary caregiver shall obtain written permission with a signature of the owner of the property authorizing the qualified patient or primary caregiver to cultivate marijuana on the property.

g. No cultivation of marijuana shall occur within six hundred (600) feet of any school. The six hundred (600) feet shall be measured from the closest property line of the school to the closest property line of the cultivating parcel.

h. The detached structure in which cultivation of marijuana will occur must comply with all of the following:

i. All applicable California Building, Electrical and Fire Codes as adopted by the City.

ii. No gas products, including without limitation, CO2, butane, propane and natural gas) or generators shall be used within the structure.

iii. Structure shall maintain a minimum of a ten (10) foot setback from any property line.

iv. Structure shall not utilize grow lights that exceed 1200 Watts.

v. Structure shall be locked whenever the person responsible for cultivating is not present.

i. No marijuana growth shall be visible from the right of way.

j. Any qualified patient or primary caregiver cultivating marijuana shall maintain an identification card with the State of California for medical marijuana use.

k. Cultivation shall be for personal use ("cultivation for personal use") and no commercial cultivation of marijuana shall be permitted in any zones.

l. All cultivated marijuana shall use only certified organic residual pesticides, herbicides, and fungicides.

2. Any qualified patient or primary caregiver cultivating marijuana as allowed in this Section 18.09.300(E) of this Chapter (cultivation in detached structure) shall obtain a Cultivation Permit from the Chief of Police, or his/her designee pursuant to Section 18.09.300(G) of this Chapter.

F. Qualified Patient/Primary Caregiver Cultivation – Small Grow Exception – No Cultivation Permit Required

Any qualified patient or primary caregiver who cultivates three (3) or less marijuana plants for medical purposes shall not be subject to the provisions of Section 18.09.300(E) of this Chapter and shall not be required to obtain a Cultivation Permit from the Chief of Police, or his/her designee pursuant to Section 18.09.300(G) if all of the following requirements are met:

1. Cultivation of three (3) or less marijuana plants, per parcel, either indoors or outdoors, regardless of how many qualified patients or primary caregivers reside on the parcel.

2. Cultivation of marijuana shall only occur on parcels with a detached single-family dwelling. Parcels containing duplexes or multi-family dwellings, such as apartment buildings, shall not be allowed to cultivate medical marijuana.

3. Cultivation of marijuana shall only occur on parcels with a detached single-family dwelling, located in an area of the City zoned for Residential Use, Planned Development, and Planned Unit Development (R-1, R-2, R-3, R-R, PD and PUD, as set forth in Title 18).

4. The qualified patient or primary caregiver shall reside full-time on the premises where the cultivation of marijuana occurs.

5. If the qualified patient or primary caregiver is a tenant on the parcel where he/she wishes to cultivate marijuana, the qualified patient or primary caregiver shall obtain written permission with a signature of the owner of the property authorizing the qualified patient or primary caregiver to cultivate marijuana on the property.

6. No marijuana growth shall be visible from the right of way.

7. Any outdoor cultivation shall maintain a minimum of a ten (10) foot setback from any property line.

8. If cultivation occurs inside the residence, the residence must be in full compliance with all City codes and regulations, including the Building Code and Fire Code.

9. Cultivation shall remain at all times a secondary or accessory use of the residence and the primary purpose of the residence shall at all times be as a dwelling.

10. Any qualified patient or primary caregiver cultivating marijuana shall maintain an identification card with the State of California for medical marijuana use.

11. Cultivation shall be for personal use ("cultivation for personal use") and no commercial cultivation of marijuana shall be permitted in any zones.

12. All cultivated marijuana shall use only certified organic residual pesticides, herbicides, and fungicides.

G. Cultivation Permit from Chief of Police – Only for Cultivation Under Section 18.09.300(E)

Any qualified patient or primary caregiver wishing to cultivate marijuana pursuant Section 18.09.300(E) this Chapter shall obtain a Cultivation Permit from the Chief of Police, or his/her designee.

1. The Cultivation Permit Application shall include the following and the Chief of Police, or his/her designee shall consider:

a. The name of each qualified patient or primary caregiver who participates in the cultivation and their identification number and expiration date of all identification cards issued by the State of California and/or Sonoma County for medical marijuana use.

b. The qualified patient or primary caregiver shall show proof of ownership of the parcel where cultivation is to occur or if the qualified patient or primary caregiver is a tenant, written consent of the owner, which has been notarized by a public notary.

c. The physical site address where the cultivation will occur.

d. The number of plants and square footage of the area that will be cultivated.

e. A waste disposal plan that conforms to the requirements of this Chapter.

f. A signed consent form, authorizing inspections by the Cloverdale Police Department or City Code Enforcement to enter and inspect the structure where marijuana cultivation occurs.

g. The potential risk of crime or violence associated with the location and cultivation.

h. If the qualified patient or primary caregiver cannot meet the regulations set forth in Section 18.09.300 (E) of this Chapter, the Chief of Police may consider additional information and may issue a Permit for Cultivation with specific exemptions.

2. The Chief of Police, or his/her designee, shall charge a fee according to the City's master fee schedule, for the Cultivation Permit. The fee shall be paid at the time the Application for Cultivation Permit is provided to the Chief of Police, or his/her designee.

3. The Permit shall be issued in two (2) year increments and can be renewed thereafter unless the Permit is suspended or revoked.

4. The Cultivation Permit may be suspended or revoked for any violation of local or State law. If the Permittee is issued a Notice of Violation ("NOV"), the following process may occur to suspend or revoke the Cultivation Permit which shall conform to the appeal process set forth in Chapter 1.14 of the Cloverdale Municipal Code:

a. The Chief of Police, or his designee, shall send written notice of the suspension or revocation which shall be served on the Permittee whose Cultivation Permit is to be revoked or suspended by certified mail with the legal violation and supporting facts. The notice shall contain an advisement of the right to request an appeal pursuant to Cloverdale Municipal Code 1.14.070.

b. Any appeal requested pursuant to Cloverdale Municipal Code 1.14.070 shall include an appeal processing fee as set forth in the City's master fee schedule, as that schedule shall be amended from time to time, and shall include a deposit in advance the amount of any penalty. No appeal shall proceed without payment of the fee and deposit of the penalty with the City Clerk at the time the appeal is filed; provided, however, that the City Manager may waive or defer the appeal fee upon written request for good cause shown. Good cause may include severe economic hardship, significant attempts to comply with the notice of violation, and other factors indicating good faith attempts to comply.

c. Suspension or revocation issued pursuant to subsection (4) shall be stayed pending the appeal which is properly and timely filed, unless the City obtains an order from a court of competent jurisdiction requiring or authorizing the abatement of the condition that is the subject of the City's enforcement efforts pursuant to Cloverdale Municipal Code 1.14.080.

d. The appeal hearing shall be conducted in conformance with Cloverdale Municipal Code 1.14.090.

e. The decision and order of the hearing officer shall be issued in conformance with Cloverdale Municipal Code 1.14.100.

f. Any responsible party who is aggrieved by a decision of a hearing officer and who has exhausted the administrative remedies provided in the Cloverdale Municipal Code, or any other applicable law, shall have the right to seek judicial review of such decision by filing a petition for writ of mandate in accordance with Code of Civil Procedure Section 1094.5 in conformance with Cloverdale Municipal Code 1.14.110.

H. Delivery of Marijuana

Deliveries of marijuana into the City of Cloverdale shall be permitted so long as the delivering dispensary obtains a business license pursuant to Chapter 5.04 of the Cloverdale Municipal Code for delivery of marijuana and shall be in conformance with all of the following:

1. The delivery of marijuana shall be to a qualified patient or primary caregiver.

2. The amount of marijuana delivered to any qualified patient or primary caregiver shall not exceed eight (8) ounces for any single delivery.

3. Deliveries can only be conducted between the hours of 8 a.m. to 8 p.m.

4. Deliveries shall be from a point of origin outside of the City to a residence in the City.

5. A dispensary wishing to make deliveries must obtain a State license issued pursuant to Business and Professions Code Chapter 3.5, when such license is made available by the State, to conduct deliveries.

6. Deliveries shall be made by an employee of the dispensary and said employee shall carry with him/her at all times a physical copy of the City Business License and State license issued pursuant to Business and Professions Code Chapter 3.5, when such a license is available, and the shipping manifest pursuant to Business and Professions Code Section 11362.777, when such manifests are available.

I. Marijuana Dispensaries Prohibited

The establishment, operation or maintenance of medical marijuana dispensaries in the City of Cloverdale is unlawful and prohibited pursuant to this Section and Chapter 9.36 of the Municipal Code. No permit or any other applicable license or entitlement for use, including but not limited to the issuance of a business license, shall be approved or issued for the establishment, maintenance or operation of a medical marijuana dispensary at any permanent location within the city limits of the city of Cloverdale.

J. Disposal of Marijuana Related Substances

1. All excess marijuana not utilized by the qualified patient or primary caregiver must be disposed of in accordance with the applicable State and local statutes and regulations.

2. Marijuana solid and liquid waste must be stored, secured, managed and disposed of in accordance with the applicable State and local statutes and regulations.

3. Marijuana plant matter waste must be rendered unusable prior to leaving a Permittee's premises. Allowable methods are by grinding and incorporating the marijuana waste with non-consumable, solid waste so the resulting mixture is at least fifty percent (50%) non-marijuana waste.

K. Nuisance

Any use that does not conform with this Chapter, within the City limits of the City of Cloverdale, is unlawful and hereby declared a public nuisance.

1. It is hereby declared to be unlawful and a public nuisance for any person or persons owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City to cultivate medical marijuana except as provided for in this Chapter. Such violations may be abated in accordance with the procedures and remedies in Title 1, Chapter 6 of this code, including the appeal procedure contained therein.

2. Any person who violates a provision of this Chapter is subject to administrative penalties (pursuant to Title 1, Chapter 6 of this code), and any available civil remedies.

3. Any person who violates a provision of this chapter is liable for civil penalties of not less than Two Hundred Fifty Dollars ($250.00) or more than Twenty-Five Thousand Dollars ($25,000.00) for each day the violation continues.

L. Enforcement

Any violation of this Chapter shall be enforced by any applicable laws or ordinances, including, but not limited to, Chapter 8.02 of the Cloverdale Municipal Code.

SECTION 2. California Environmental Quality Act ("CEQA").

The City Council hereby finds that the adoption of this Ordinance is exempt from California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15061(b)(3) of the State CEQA Guidelines. Specifically, this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment because it does not authorize the construction of any new large structures or other physical changes resulting in impacts to the environment. This Ordinance would also limit the number of outdoor plants to a limited amount so there will be no potential for significant water impacts and pesticide application impacts. The larger amounts would need to be in a detached structure therefore would also not result any water impacts or pesticide application impacts. Further, cultivation in detached structures would not be visible and would not result in significant odor issues.

SECTION 3. No Mandatory Duty of Care.

This Ordinance is not intended to, and shall not be construed or given effect in a manner that imposes upon the City or any officer, agent, employee or volunteer, thereof a mandatory duty of care towards

persons and property, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 4. Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION 5. Effective Date.

This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Council Members voting for or against the same, in a newspaper of general circulation published in the County of Sonoma, State of California.

I hereby certify that the foregoing is a true and complete copy of an ordinance duly and regularly adopted by the City at a regular meeting thereof held on October 25, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 25th day of October, 2016 by the following roll call vote: (Ayes-X; Noes-X; Absent-X)

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved: Attested:

_____ _____

Mary Ann Brigham, Mayor Linda Moore, Deputy City Clerk

2571511.2

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 702-2016

ORDINANCE AMENDING TITLE 9, CHAPTER 9.36, "MARIJUANA" OF THE CLOVERDALE MUNICIPAL CODE, SECTION 9.36.020, "DEFINITIONS," AND SECTION 9.36.050, "OUTDOOR CULTIVATION OF MARIJUANA PROHIBITED" TO REFERENCE THE CLOVERDALE ZONING ORDINANCE FOR DEFINITIONS AND REGULATIONS RELATED TO CULTIVATION OF MARIJUANA

WHEREAS, in 1996 voters in the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and entitled "The Compassionate Use Act of 1996" or the "CUA"); and

WHEREAS, the primary purpose of the CUA was to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief; and

WHEREAS, in 2004, the State of California also enacted Senate Bill 420 (codified as California Health and Safety Code section 11362.7 et seq. and referred to as "The Medical Marijuana Program" or "MMP") to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010), and Assembly Bill 1300 (2011), amended the MMP to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances; and

WHEREAS, despite voter approval of the CUA, various problems and uncertainties in the Act impeded law enforcement's ability to interpret and enforce the law, and the uncertainties also hindered persons eligible to use marijuana for medical purposes from accessing marijuana, while many persons took advantage of the Act to use marijuana for recreational and not medical purposes; and

WHEREAS, the CUA is limited in scope, in that it only provides a defense from state criminal prosecution for possession and cultivation of marijuana to qualified patients and their primary caregivers; and

WHEREAS, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon local governments to allow, authorize or sanction the establishment and the operation of facilities cultivating, distributing, or processing medical marijuana; and

WHEREAS, in 2008, the City Council adopted Ordinance 660-2008, adding Chapter 9.36 to the City of Cloverdale's Municipal Code, which prohibited outdoor cultivation within the City limits of Cloverdale. Chapter 9.36 was adopted to promote the public health, safety and welfare by protecting City residents from the offensive odor and unreasonable risk of crime from outdoor cultivation of marijuana. Chapter 9.36 also prohibited dispensaries within the City limits of Cloverdale.

The Ordinance was written to protect citizens from the secondary impacts associated with medical marijuana dispensaries, including, but not limited to, increased public consumption of marijuana and the potential for increased marijuana DUIs, illegal resale of marijuana obtained at low cost from dispensaries, loitering, fraud in obtaining or using medical marijuana identification cards, robbery, assaults, and other crimes; also preventing increased demands for police response resulting from activities at medical marijuana dispensaries and parcels where outdoor marijuana cultivation occurs, thereby avoiding reduction of the ability of the City's public safety officers to respond to other calls for service; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land…". Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App. 4th 975, the Court of Appeal held that "there is no right-and certainly no constitutional right-to cultivate medical marijuana…". The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority; and

WHEREAS, in October of 2015, the State of California enacted Assembly Bill ("AB") 243, AB 266, and Senate Bill 643 in 2015 (commonly and collectively referred to as the Medical Marijuana Regulation and Safety Act or the "MMRSA"). The MMRSA establishes regulation of medical cannabis cultivation, manufacturing, and transportation, as well as create local and State-level licensing systems in California. The MMRSA allows a city to prohibit, through land use regulations or ordinances, the cultivating, delivering, distributing, or processing of medical marijuana; and

WHEREAS, the City Council finds that commercial medical marijuana (cannabis) activities, as well as cultivation for personal medical use as allowed by the CUA, MMP and the MMRSA can adversely affect the health, safety, and well-being of City residents. Citywide prohibition of commercial cultivation and regulation of personal cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, the limited immunity from specified State marijuana laws provided by the CUA and MMP does not confer a land use right or the right to create or maintain a public nuisance; and

WHEREAS, the MMRSA contains language that requires a city to prohibit cultivation uses by March 1, 2016, either expressly or otherwise under the principles of permissive zoning or the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if a city wishes to prohibit deliveries; and

WHEREAS, as a result of the MMRSA, City staff drafted proposed a Zoning Ordinance entitled an "Ordinance of the City Council of Cloverdale Amending Cloverdale Municipal Code Title 18 (Zoning Ordinance), Chapter 18.09, to Add "Article III. Marijuana," Section 18.09.300, "Medical Marijuana ," Prohibiting Commercial Marijuana (Cannabis) Activities and Regulating the Cultivation

of Medical Marijuana By Qualified Patients and Primary Caregivers and the Delivery of Medical Marijuana Within the City."

WHEREAS, the Planning Commission held a duly noticed public hearing on December 16, 2015, at which time it considered all evidence presented, both written and oral and at the end of the hearing voted to adopt a resolution recommending that the City Council adopt the Ordinance with recommendations for changes to Section 18.09.300 E (d) (allow cultivation in R-3 zones on parcels with detached single-family dwelling) and 18.09.300 F(1) (cultivation of three (3) plants per parcel) and 18.09.300 F(3)(allow cultivation in R-3 zones on parcels with detached single-family dwelling); and

WHEREAS, on January 12, 2016, the City Council will hold a duly noticed public hearing to consider the adoption of the proposed Zoning Ordinance entitled an "Ordinance of the City Council of Cloverdale Amending Cloverdale Municipal Code Title 18 (Zoning Ordinance), Chapter 18.09, to Add "Article III. Marijuana," Section 18.09.300, "Medical Marijuana ," Prohibiting Commercial Marijuana (Cannabis) Activities and Regulating the Cultivation of Medical Marijuana By Qualified Patients and Primary Caregivers and the Delivery of Medical Marijuana Within the City." . Portions of that Zoning Ordinance conflict with Title 9, Chapter 9.36 of the Cloverdale Municipal Code; and

WHEREAS, it is necessary to amend Title 9, Chapter 9.36 so as to avoid any conflict and to harmonize those portions of the Municipal Code that address marijuana. This Ordinance makes minor amendments to Chapter 9.36 of the Cloverdale Municipal Code, referencing the new Zoning Ordinance provisions regulating the cultivation of medical marijuana.

NOW, THEREFORE, the City Council of the City of Cloverdale does ordain as follows:

SECTION 1. Amendment to Section 9.36.020. Chapter 9.36, "Marijuana," Section 9.36.020, "Definitions," of the Cloverdale Municipal Code is hereby amended to read as follows:

"9.36.020. Definitions.
The Definitions that shall be utilized in this Chapter shall be the same Definitions set forth in Title 18, Section 18.09.300(B) that relate to marijuana."

SECTION 2. Amendment to Section 9.36.050. Chapter 9.36, "Marijuana," Section 9.36.050, "Outdoor Cultivation of Marijuana Prohibited," of the Cloverdale Municipal Code is hereby retitled "Cultivation of Marijuana Prohibited," and amended to read as follows:

"9.36.050. Cultivation of Marijuana prohibited.
All cultivation of marijuana and medical marijuana, both indoor and outdoor, is prohibited in all zoning districts, planned developments and all specific master plan areas in the City, except as authorized under Section 18.09.300(E) and Section 18.09.300(F) of the Cloverdale Municipal Code for qualified patients and primary caregivers."

SECTION 3. California Environmental Quality Act ("CEQA").

The City Council hereby finds that the adoption of this Ordinance is exempt from California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15061(b)(3) of the State CEQA Guidelines. Specifically, this Ordinance will not result in a direct or reasonably foreseeable

indirect physical change in the environment because it does not authorize the construction of any new large structures or other physical changes resulting in impacts to the environment. This Ordinance would also limit the number of outdoor plants to a limited amount so there will be no potential for significant water impacts and pesticide application impacts. The larger amounts would need to be in a detached structure and therefore, would also not result any water impacts or pesticide application impacts. Further, cultivation in detached structures would not be visible and would not result in significant odor issues.

SECTION 4. No Mandatory Duty of Care.

This Ordinance is not intended to, and shall not be construed or given effect in a manner that imposes upon the City or any officer, agent, employee or volunteer, thereof a mandatory duty of care towards persons and property, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 5. Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION 6. Effective Date.

This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Council Members voting for or against the same, in a newspaper of general circulation published in the County of Sonoma, State of California.

I hereby certify that the foregoing is a true and complete copy of an ordinance duly and regularly adopted by the City at a regular meeting thereof held on October 25, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 25th day of October 2016, by the following roll call vote: (Ayes-X; Noes-X; Absent-X)

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved: Attested:

_____ _____

Mary Ann Brigham, Mayor Linda Moore, Deputy City Clerk

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 701-2016

AN ORDINANCE OF THE CITY COUNCIL OF CLOVERDALE AMENDING CLOVERDALE MUNICIPAL CODE TITLE 18 (ZONING ORDINANCE), CHAPTER 18.09, TO ADD "ARTICLE III. MARIJUANA," SECTION 18.09.300, "MEDICAL MARIJUANA," PROHIBITING COMMERCIAL MARIJUANA (CANNABIS) ACTIVITIES AND REGULATING THE CULTIVATION OF MEDICAL MARIJUANA BY QUALIFIED PATIENTS AND PRIMARY CAREGIVERS AND THE DELIVERY OF MEDICAL MARIJUANA WITHIN THE CITY

WHEREAS, in 1996 voters in the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and entitled "The Compassionate Use Act of 1996" or the "CUA"); and

WHEREAS, the primary purpose of the CUA was to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief; and

WHEREAS, in 2004, the State of California also enacted Senate Bill 420 (codified as California Health and Safety Code section 11362.7 et seq. and referred to as "The Medical Marijuana Program" or the "MMP") to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill ("AB") 2650 (2010), and Assembly Bill 1300 (2011), amended the MMP to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances; and

WHEREAS, despite voter approval of the CUA, various problems and uncertainties in the Act impeded law enforcement's ability to interpret and enforce the law, and the uncertainties also hindered persons eligible to use marijuana for medical purposes from accessing marijuana, while many persons took advantage of the Act to use marijuana for recreational and not medical purposes; and

WHEREAS, the CUA is limited in scope, in that it only provides a defense from State criminal prosecution for possession and cultivation of marijuana to qualified patients and their primary caregivers; and

WHEREAS, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon local governments to allow, authorize or sanction the establishment and the operation of facilities cultivating, distributing, or processing medical marijuana; and

WHEREAS, in 2008, the City Council adopted Ordinance 660-2008, adding Chapter 9.36 to the City of Cloverdale's Municipal Code, which prohibited outdoor cultivation within the City limits of Cloverdale. Chapter 9.36 was adopted to promote the public health, safety and welfare by protecting City residents from the offensive odor and unreasonable risk of crime from outdoor cultivation of

marijuana. Chapter 9.36 also prohibited dispensaries within the City limits of Cloverdale. The Ordinance was written to protect citizens from the secondary impacts associated with medical marijuana dispensaries, including, but not limited to, increased public consumption of marijuana and the potential for increased marijuana DUIs, illegal resale of marijuana obtained at low cost from dispensaries, loitering, fraud in obtaining or using medical marijuana identification cards, robbery, assaults, and other crimes; also preventing increased demands for police response resulting from activities at medical marijuana dispensaries and parcels where outdoor marijuana cultivation occurs, thereby avoiding reduction of the ability of the City's public safety officers to respond to other calls for service; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land…". Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App. 4th 975, the Court of Appeal held that "there is no right-and certainly no constitutional right-to cultivate medical marijuana…". The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority; and

WHEREAS, in October of 2015, the State of California enacted AB 243, AB 266, and Senate Bill ("SB") 643 in 2015 (commonly and collectively referred to as the Medical Marijuana Regulation and Safety Act or the "MMRSA"). The MMRSA establishes regulation of medical cannabis cultivation, manufacturing, and transportation, as well as create local and state-level licensing systems in California. The MMRSA allows a city to prohibit, through land use regulations or ordinances, the cultivating, delivering, distributing, or processing medical marijuana; and

WHEREAS, the City Council finds that commercial medical marijuana (cannabis) activities, as well as cultivation for personal medical use as allowed by the CUA, MMP and the MMRSA can adversely affect the health, safety, and well-being of City residents. Citywide prohibition of commercial cultivation and regulation of personal cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, under the Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., the use possession and cultivation of marijuana, medical or otherwise, is unlawful and subject to federal prosecution; and

WHEREAS, the limited immunity from specified State marijuana laws provided by the CUA and the MMP does not confer a land use right or the right to create or maintain a public nuisance; and

WHEREAS, the MMRSA contains language that requires a city to prohibit cultivation uses by March 1, 2016, either expressly or otherwise under the principles of permissive zoning or the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if a city wishes to prohibit deliveries; and

WHEREAS, the Planning Commission held a duly noticed public hearing on December 16, 2015, at which time it considered all evidence presented, both written and oral and at the end of the hearing voted to adopt a resolution recommending that the City Council adopt the Ordinance with recommendations for changes to Section 18.09.300 E (d) (allow cultivation in R-3 zones on parcels with detached single-family dwelling) and 18.09.300 F(1) (cultivation of three (3) plants per parcel) and 18.09.300 F(3)(allow cultivation in R-3 zones on parcels with detached single-family dwelling); and

WHEREAS, the City Council held a duly noticed public hearing to consider this Ordinance on January 12, 2016, at which time the City Council considered all evidence presented, both written and oral.

NOW, THEREFORE, the City Council of the City of Cloverdale does ordain as follows:

SECTION 1. Amendment. Amendment of Title 18, Zoning Regulations: Chapter 18.09 is amended to add 18.09.300 and read as follows:

"Article III. Marijuana

18.09.300. Medical Marijuana

A. Purpose and Intent.

It is the purpose and intent of this ordinance to:

1. Assist law enforcement agencies in performing their duties effectively and in accordance with California law.

2. Acknowledge that the cultivation of medical marijuana is illegal under Federal law while granting limited immunity from local prosecution to those medical marijuana cultivation activities that do not violate the restrictions and limitations set forth in this Ordinance.

3. Ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets.

4. Implement State law by providing an equitable approach for regulating the cultivation of medical marijuana in a manner that is consistent with State law and balances the needs of medical patients and their caregivers with the health, safety, morals and general welfare of the residents and businesses within the City.

5. Require that medical marijuana be cultivated in appropriately secured, enclosed, and ventilated structures, so as not to be visible to the public domain, to provide for the health, safety and welfare of the public, to prevent odor created by marijuana plants from impacting adjacent properties, and to ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets.

B. Definitions.

1. "Cannabis" shall have the same meaning as set forth in Business & Professions Code § 19300.5(f) as the same may be amended from time to time.

2. "Caregiver" or "primary caregiver" shall have the same meaning as set forth in Health & Safety Code § 11362.7 as the same may be amended from time to time.

3. "Commercial marijuana activity" shall have the same meaning as that set forth in Business & Professions Code § 19300.5(k) as the same may be amended from time to time.

4. "Cooperative/Collective" shall mean two (2) or more persons collectively or cooperatively cultivating, distributing, using, transporting, possessing, administering, delivering or making available medical marijuana (cannabis), with or without compensation.

5. "Cultivation" shall have the same meaning as set forth in Business & Professions Code § 19300.5(l) as the same may be amended from time to time.

6. "Cultivation site" shall have the same meaning as set forth in Business & Professions Code § 19300.5(x) as the same may be amended from time to time.

7. "Delivery" shall have the same meaning as set forth in Business & Professions Code § 19300.5(m) as the same may be amended from time to time.

8. "Dispensary" shall have the same meaning as set forth in Business & Professions Code § 19300.5(n) as the same may be amended from time to time. For purposes of this Chapter, "Dispensary" shall also include a cooperative/collective.

9. "Dispensing" shall have the same meaning as set forth in Business & Professions Code § 19300.5(o) as the same may be amended from time to time.

10. "Distribution" shall have the same meaning as set forth in Business & Professions Code § 19300.5(p) as the same may be amended from time to time.

11. "Distributor" shall have the same meaning as set forth in Business & Professions Code § 19300.5(q) as the same may be amended from time to time.

12. "Manufacturer" or "Manufacturing" shall have the same meaning as set forth in Business & Professions Code § 19300.5(y) as the same may be amended from time to time.

13. "Manufacturing site" shall have the same meaning as set forth in Business & Professions Code § 19300.5(af) as the same may be amended from time to time.

14. "Marijuana" shall have the same meaning as cannabis as set forth in Business & Professions Code § 19300.5(f) as the same may be amended from time to time.

15. "Medical cannabis," "medical cannabis product," or "cannabis product" shall have the same meanings as set forth in Business & Professions Code § 19300.5(ag) as the same may be amended from time to time.

16. "Medical Marijuana Regulation and Safety Act" or the "MMRSA" shall mean the following bills signed into law on October 9, 2015 as the same may be amended from time to time: AB 243, AB 246, and SB 643.

17. "Nursery" shall have the same meaning as set forth in Business & Professions Code § 19300.5(ah) as the same may be amended from time to time.

18. "Person" shall have the same meaning as set forth in Business & Professions Code § 19300.5(aj) as the same may be amended from time to time.

19. "Personal cultivation" or "Cultivation for Personal Use" shall mean cultivation by a qualified patient or primary caregiver for the personal use by the qualified patient or the patients cared for by the primary caregiver.

20. "Parcel" shall mean property assigned a separate parcel number by the Sonoma County assessor.

21. "Qualifying patient" or "Qualified patient" shall have the same meaning as set forth in Health & Safety Code § 11362.7 as the same may be amended from time to time.

22. "School" shall mean any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

23. "Structure" shall mean a building completely enclosed and detached from a residence that complies with the California Building Code, as adopted by the City, and has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. Walls and roof must be constructed of solid materials that cannot be easily broken through. Exterior walls must be constructed with non-transparent material. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

24. "Testing laboratory" shall have the same meaning as set forth in Business & Professions Code § 19300.5(z) as the same may be amended from time to time.

25. "Transportation" or "Transport" shall have the same meaning as set forth in Business & Professions Code § 19300.5(am) as the same may be amended from time to time.

26. "Transporter" shall have the same meaning as set forth in Business & Professions Code § 19300.5(aa) as the same may be amended from time to time.

C. Commercial Marijuana Activity Prohibited

Commercial marijuana activities or commercial medical marijuana activities of all types including, but not limited to, dispensaries, collectives, cooperatives, transportation, distribution, cultivation, manufacturing, testing and processing are expressly prohibited in all zoning districts, planned developments and all specific and master plan areas in the City of Cloverdale. However, deliveries of medical marijuana conducted in compliance with subsection 18.09.300(H) of this Section shall be exempt.

D. Cultivation of Marijuana Prohibited

All cultivation of marijuana and medical marijuana, both indoor and outdoor, is prohibited in all zoning districts, planned developments and all specific master plan areas in the City, except as authorized under Section 18.09.300(E) and Section 18.09.300(F) for qualified patients and primary caregivers.

E. Qualified Patient/Primary Caregiver Cultivation in Detached Structure – Cultivation Permit Required

1. A qualified patient or primary caregiver may cultivate medical marijuana in a detached structure subject to all of the following requirements:

a. Cultivation shall occur inside one (1) detached structure (as defined in Section 18.09.300(B)(23)) in an area not exceeding one-hundred (100) square feet.

b. Cultivation inside the detached structure shall not exceed thirty (30) marijuana plants (three (3) pounds processed marijuana) regardless of how many qualified patients or primary caregivers reside on the parcel.

c. Cultivation of marijuana shall only occur on parcels with a detached single-family dwelling. Parcels containing duplexes or multi-family dwellings, such as apartment buildings, shall not be allowed to cultivate medical marijuana.

d. Cultivation of marijuana shall only occur on parcels with a detached single-family dwelling, located in an area of the City zoned for Residential Use, Planned Development, and Planned Unit Development (R-1, R-2, R-3, R-R, PD and PUD as set forth in Title 18).

e. The qualified patient or primary caregiver shall reside full-time on the premises where the cultivation of marijuana occurs.

f. If the qualified patient or primary caregiver is a tenant on the parcel where he/she wishes to cultivate marijuana, the qualified patient or primary caregiver shall obtain written permission with a signature of the owner of the property authorizing the qualified patient or primary caregiver to cultivate marijuana on the property.

g. No cultivation of marijuana shall occur within six hundred (600) feet of any school. The six hundred (600) feet shall be measured from the closest property line of the school to the closest property line of the cultivating parcel.

h. The detached structure in which cultivation of marijuana will occur must comply with all of the following:

i. All applicable California Building, Electrical and Fire Codes as adopted by the City.

ii. No gas products, including without limitation, CO2, butane, propane and natural gas) or generators shall be used within the structure.

iii. Structure shall maintain a minimum of a ten (10) foot setback from any property line.

iv. Structure shall not utilize grow lights that exceed 1200 Watts.

v. Structure shall be locked whenever the person responsible for cultivating is not present.

i. No marijuana growth shall be visible from the right of way.

j. Any qualified patient or primary caregiver cultivating marijuana shall maintain an identification card with the State of California for medical marijuana use.

k. Cultivation shall be for personal use ("cultivation for personal use") and no commercial cultivation of marijuana shall be permitted in any zones.

l. All cultivated marijuana shall use only certified organic residual pesticides, herbicides, and fungicides.

2. Any qualified patient or primary caregiver cultivating marijuana as allowed in this Section 18.09.300(E) of this Chapter (cultivation in detached structure) shall obtain a Cultivation Permit from the Chief of Police, or his/her designee pursuant to Section 18.09.300(G) of this Chapter.

F. Qualified Patient/Primary Caregiver Cultivation – Small Grow Exception – No Cultivation Permit Required

Any qualified patient or primary caregiver who cultivates three (3) or less marijuana plants for medical purposes shall not be subject to the provisions of Section 18.09.300(E) of this Chapter and shall not be required to obtain a Cultivation Permit from the Chief of Police, or his/her designee pursuant to Section 18.09.300(G) if all of the following requirements are met:

1. Cultivation of three (3) or less marijuana plants, per parcel, either indoors or outdoors, regardless of how many qualified patients or primary caregivers reside on the parcel.

2. Cultivation of marijuana shall only occur on parcels with a detached single-family dwelling. Parcels containing duplexes or multi-family dwellings, such as apartment buildings, shall not be allowed to cultivate medical marijuana.

3. Cultivation of marijuana shall only occur on parcels with a detached single-family dwelling, located in an area of the City zoned for Residential Use, Planned Development, and Planned Unit Development (R-1, R-2, R-3, R-R, PD and PUD, as set forth in Title 18).

4. The qualified patient or primary caregiver shall reside full-time on the premises where the cultivation of marijuana occurs.

5. If the qualified patient or primary caregiver is a tenant on the parcel where he/she wishes to cultivate marijuana, the qualified patient or primary caregiver shall obtain written permission with a signature of the owner of the property authorizing the qualified patient or primary caregiver to cultivate marijuana on the property.

6. No marijuana growth shall be visible from the right of way.

7. Any outdoor cultivation shall maintain a minimum of a ten (10) foot setback from any property line.

8. If cultivation occurs inside the residence, the residence must be in full compliance with all City codes and regulations, including the Building Code and Fire Code.

9. Cultivation shall remain at all times a secondary or accessory use of the residence and the primary purpose of the residence shall at all times be as a dwelling.

10. Any qualified patient or primary caregiver cultivating marijuana shall maintain an identification card with the State of California for medical marijuana use.

11. Cultivation shall be for personal use ("cultivation for personal use") and no commercial cultivation of marijuana shall be permitted in any zones.

12. All cultivated marijuana shall use only certified organic residual pesticides, herbicides, and fungicides.

G. Cultivation Permit from Chief of Police – Only for Cultivation Under Section 18.09.300(E)

Any qualified patient or primary caregiver wishing to cultivate marijuana pursuant Section 18.09.300(E) this Chapter shall obtain a Cultivation Permit from the Chief of Police, or his/her designee.

1. The Cultivation Permit Application shall include the following and the Chief of Police, or his/her designee shall consider:

a. The name of each qualified patient or primary caregiver who participates in the cultivation and their identification number and expiration date of all identification cards issued by the State of California and/or Sonoma County for medical marijuana use.

b. The qualified patient or primary caregiver shall show proof of ownership of the parcel where cultivation is to occur or if the qualified patient or primary caregiver is a tenant, written consent of the owner, which has been notarized by a public notary.

c. The physical site address where the cultivation will occur.

d. The number of plants and square footage of the area that will be cultivated.

e. A waste disposal plan that conforms to the requirements of this Chapter.

f. A signed consent form, authorizing inspections by the Cloverdale Police Department or City Code Enforcement to enter and inspect the structure where marijuana cultivation occurs.

g. The potential risk of crime or violence associated with the location and cultivation.

h. If the qualified patient or primary caregiver cannot meet the regulations set forth in Section 18.09.300 (E) of this Chapter, the Chief of Police may consider additional information and may issue a Permit for Cultivation with specific exemptions.

2. The Chief of Police, or his/her designee, shall charge a fee according to the City's master fee schedule, for the Cultivation Permit. The fee shall be paid at the time the Application for Cultivation Permit is provided to the Chief of Police, or his/her designee.

3. The Permit shall be issued in two (2) year increments and can be renewed thereafter unless the Permit is suspended or revoked.

4. The Cultivation Permit may be suspended or revoked for any violation of local or State law. If the Permittee is issued a Notice of Violation ("NOV"), the following process may occur to suspend or revoke the Cultivation Permit which shall conform to the appeal process set forth in Chapter 1.14 of the Cloverdale Municipal Code:

a. The Chief of Police, or his designee, shall send written notice of the suspension or revocation which shall be served on the Permittee whose Cultivation Permit is to be revoked or suspended by certified mail with the legal violation and supporting facts. The notice shall contain an advisement of the right to request an appeal pursuant to Cloverdale Municipal Code 1.14.070.

b. Any appeal requested pursuant to Cloverdale Municipal Code 1.14.070 shall include an appeal processing fee as set forth in the City's master fee schedule, as that schedule shall be amended from time to time, and shall include a deposit in advance the amount of any penalty. No appeal shall proceed without payment of the fee and deposit of the penalty with the City Clerk at the time the appeal is filed; provided, however, that the City Manager may waive or defer the appeal fee upon written request for good cause shown. Good cause may include severe economic hardship, significant attempts to comply with the notice of violation, and other factors indicating good faith attempts to comply.

c. Suspension or revocation issued pursuant to subsection (4) shall be stayed pending the appeal which is properly and timely filed, unless the City obtains an order from a court of competent jurisdiction requiring or authorizing the abatement of the condition that is the subject of the City's enforcement efforts pursuant to Cloverdale Municipal Code 1.14.080.

d. The appeal hearing shall be conducted in conformance with Cloverdale Municipal Code 1.14.090.

e. The decision and order of the hearing officer shall be issued in conformance with Cloverdale Municipal Code 1.14.100.

f. Any responsible party who is aggrieved by a decision of a hearing officer and who has exhausted the administrative remedies provided in the Cloverdale Municipal Code, or any other applicable law, shall have the right to seek judicial review of such decision by filing a petition for writ of mandate in accordance with Code of Civil Procedure Section 1094.5 in conformance with Cloverdale Municipal Code 1.14.110.

H. Delivery of Marijuana

Deliveries of marijuana into the City of Cloverdale shall be permitted so long as the delivering dispensary obtains a business license pursuant to Chapter 5.04 of the Cloverdale Municipal Code for delivery of marijuana and shall be in conformance with all of the following:

1. The delivery of marijuana shall be to a qualified patient or primary caregiver.

2. The amount of marijuana delivered to any qualified patient or primary caregiver shall not exceed eight (8) ounces for any single delivery.

3. Deliveries can only be conducted between the hours of 8 a.m. to 8 p.m.

4. Deliveries shall be from a point of origin outside of the City to a residence in the City.

5. A dispensary wishing to make deliveries must obtain a State license issued pursuant to Business and Professions Code Chapter 3.5, when such license is made available by the State, to conduct deliveries.

6. Deliveries shall be made by an employee of the dispensary and said employee shall carry with him/her at all times a physical copy of the City Business License and State license issued pursuant to Business and Professions Code Chapter 3.5, when such a license is available, and the shipping manifest pursuant to Business and Professions Code Section 11362.777, when such manifests are available.

I. Marijuana Dispensaries Prohibited

The establishment, operation or maintenance of medical marijuana dispensaries in the City of Cloverdale is unlawful and prohibited pursuant to this Section and Chapter 9.36 of the Municipal Code. No permit or any other applicable license or entitlement for use, including but not limited to the issuance of a business license, shall be approved or issued for the establishment, maintenance or operation of a medical marijuana dispensary at any permanent location within the city limits of the city of Cloverdale.

J. Disposal of Marijuana Related Substances

1. All excess marijuana not utilized by the qualified patient or primary caregiver must be disposed of in accordance with the applicable State and local statutes and regulations.

2. Marijuana solid and liquid waste must be stored, secured, managed and disposed of in accordance with the applicable State and local statutes and regulations.

3. Marijuana plant matter waste must be rendered unusable prior to leaving a Permittee's premises. Allowable methods are by grinding and incorporating the marijuana waste with non-consumable, solid waste so the resulting mixture is at least fifty percent (50%) non-marijuana waste.

K. Nuisance

Any use that does not conform with this Chapter, within the City limits of the City of Cloverdale, is unlawful and hereby declared a public nuisance.

1. It is hereby declared to be unlawful and a public nuisance for any person or persons owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City to cultivate medical marijuana except as provided for in this Chapter. Such violations may be abated in accordance with the procedures and remedies in Title 1, Chapter 6 of this code, including the appeal procedure contained therein.

2. Any person who violates a provision of this Chapter is subject to administrative penalties (pursuant to Title 1, Chapter 6 of this code), and any available civil remedies.

3. Any person who violates a provision of this chapter is liable for civil penalties of not less than Two Hundred Fifty Dollars ($250.00) or more than Twenty-Five Thousand Dollars ($25,000.00) for each day the violation continues.

L. Enforcement

Any violation of this Chapter shall be enforced by any applicable laws or ordinances, including, but not limited to, Chapter 8.02 of the Cloverdale Municipal Code.

SECTION 2. California Environmental Quality Act ("CEQA").

The City Council hereby finds that the adoption of this Ordinance is exempt from California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15061(b)(3) of the State CEQA Guidelines. Specifically, this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment because it does not authorize the construction of any new large structures or other physical changes resulting in impacts to the environment. This Ordinance would also limit the number of outdoor plants to a limited amount so there will be no potential for significant water impacts and pesticide application impacts. The larger amounts would need to be in a detached structure therefore would also not result any water impacts or pesticide application impacts. Further, cultivation in detached structures would not be visible and would not result in significant odor issues.

SECTION 3. No Mandatory Duty of Care.

This Ordinance is not intended to, and shall not be construed or given effect in a manner that imposes upon the City or any officer, agent, employee or volunteer, thereof a mandatory duty of care towards

persons and property, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 4. Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION 5. Effective Date.

This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Council Members voting for or against the same, in a newspaper of general circulation published in the County of Sonoma, State of California.

I hereby certify that the foregoing is a true and complete copy of an ordinance duly and regularly adopted by the City at a regular meeting thereof held on January 26, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 26th day of January, 2016 by the following roll call vote: : (Ayes-4; Noes-0; Absent-1)

AYES:	Councilmember Palla, Councilmember Cox, Councilmember Russell, and Mayor Brigham
NOES:	
ABSENT:	Vice Mayor Wolter
ABSTAIN:	

APPROVED:

MaryAnn Brigham, Mayor

ATTEST:

Paul Cayler, City Clerk

2571511.2

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 702-2016

ORDINANCE AMENDING TITLE 9, CHAPTER 9.36, "MARIJUANA" OF THE CLOVERDALE MUNICIPAL CODE, SECTION 9.36.020, "DEFINITIONS," AND SECTION 9.36.050, "OUTDOOR CULTIVATION OF MARIJUANA PROHIBITED" TO REFERENCE THE CLOVERDALE ZONING ORDINANCE FOR DEFINITIONS AND REGULATIONS RELATED TO CULTIVATION OF MARIJUANA

WHEREAS, in 1996 voters in the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and entitled "The Compassionate Use Act of 1996" or the "CUA"); and

WHEREAS, the primary purpose of the CUA was to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief; and

WHEREAS, in 2004, the State of California also enacted Senate Bill 420 (codified as California Health and Safety Code section 11362.7 et seq. and referred to as "The Medical Marijuana Program" or "MMP") to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010), and Assembly Bill 1300 (2011), amended the MMP to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances; and

WHEREAS, despite voter approval of the CUA, various problems and uncertainties in the Act impeded law enforcement's ability to interpret and enforce the law, and the uncertainties also hindered persons eligible to use marijuana for medical purposes from accessing marijuana, while many persons took advantage of the Act to use marijuana for recreational and not medical purposes; and

WHEREAS, the CUA is limited in scope, in that it only provides a defense from state criminal prosecution for possession and cultivation of marijuana to qualified patients and their primary caregivers; and

WHEREAS, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon local governments to allow, authorize or sanction the establishment and the operation of facilities cultivating, distributing, or processing medical marijuana; and

WHEREAS, in 2008, the City Council adopted Ordinance 660-2008, adding Chapter 9.36 to the City of Cloverdale's Municipal Code, which prohibited outdoor cultivation within the City limits of Cloverdale. Chapter 9.36 was adopted to promote the public health, safety and welfare by protecting City residents from the offensive odor and unreasonable risk of crime from outdoor cultivation of marijuana. Chapter 9.36 also prohibited dispensaries within the City limits of Cloverdale.

The Ordinance was written to protect citizens from the secondary impacts associated with medical marijuana dispensaries, including, but not limited to, increased public consumption of marijuana and the potential for increased marijuana DUIs, illegal resale of marijuana obtained at low cost from dispensaries, loitering, fraud in obtaining or using medical marijuana identification cards, robbery, assaults, and other crimes; also preventing increased demands for police response resulting from activities at medical marijuana dispensaries and parcels where outdoor marijuana cultivation occurs, thereby avoiding reduction of the ability of the City's public safety officers to respond to other calls for service; and

WHEREAS, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land…". Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal.App. 4th 975, the Court of Appeal held that "there is no right-and certainly no constitutional right-to cultivate medical marijuana…". The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority; and

WHEREAS, in October of 2015, the State of California enacted Assembly Bill ("AB") 243, AB 266, and Senate Bill 643 in 2015 (commonly and collectively referred to as the Medical Marijuana Regulation and Safety Act or the "MMRSA"). The MMRSA establishes regulation of medical cannabis cultivation, manufacturing, and transportation, as well as create local and State-level licensing systems in California. The MMRSA allows a city to prohibit, through land use regulations or ordinances, the cultivating, delivering, distributing, or processing of medical marijuana; and

WHEREAS, the City Council finds that commercial medical marijuana (cannabis) activities, as well as cultivation for personal medical use as allowed by the CUA, MMP and the MMRSA can adversely affect the health, safety, and well-being of City residents. Citywide prohibition of commercial cultivation and regulation of personal cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells and indoor electrical fire hazards that may result from such activities. Further, as recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, the limited immunity from specified State marijuana laws provided by the CUA and MMP does not confer a land use right or the right to create or maintain a public nuisance; and

WHEREAS, the MMRSA contains language that requires a city to prohibit cultivation uses by March 1, 2016, either expressly or otherwise under the principles of permissive zoning or the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if a city wishes to prohibit deliveries; and

WHEREAS, as a result of the MMRSA, City staff drafted proposed a Zoning Ordinance entitled an "Ordinance of the City Council of Cloverdale Amending Cloverdale Municipal Code Title 18 (Zoning Ordinance), Chapter 18.09, to Add "Article III. Marijuana," Section 18.09.300, "Medical Marijuana ," Prohibiting Commercial Marijuana (Cannabis) Activities and Regulating the Cultivation

of Medical Marijuana By Qualified Patients and Primary Caregivers and the Delivery of Medical Marijuana Within the City."

WHEREAS, the Planning Commission held a duly noticed public hearing on December 16, 2015, at which time it considered all evidence presented, both written and oral and at the end of the hearing voted to adopt a resolution recommending that the City Council adopt the Ordinance with recommendations for changes to Section 18.09.300 E (d) (allow cultivation in R-3 zones on parcels with detached single-family dwelling) and 18.09.300 F(1) (cultivation of three (3) plants per parcel) and 18.09.300 F(3)(allow cultivation in R-3 zones on parcels with detached single-family dwelling); and

WHEREAS, on January 12, 2016, the City Council will hold a duly noticed public hearing to consider the adoption of the proposed Zoning Ordinance entitled an "Ordinance of the City Council of Cloverdale Amending Cloverdale Municipal Code Title 18 (Zoning Ordinance), Chapter 18.09, to Add "Article III. Marijuana," Section 18.09.300, "Medical Marijuana ," Prohibiting Commercial Marijuana (Cannabis) Activities and Regulating the Cultivation of Medical Marijuana By Qualified Patients and Primary Caregivers and the Delivery of Medical Marijuana Within the City." . Portions of that Zoning Ordinance conflict with Title 9, Chapter 9.36 of the Cloverdale Municipal Code; and

WHEREAS, it is necessary to amend Title 9, Chapter 9.36 so as to avoid any conflict and to harmonize those portions of the Municipal Code that address marijuana. This Ordinance makes minor amendments to Chapter 9.36 of the Cloverdale Municipal Code, referencing the new Zoning Ordinance provisions regulating the cultivation of medical marijuana.

NOW, THEREFORE, the City Council of the City of Cloverdale does ordain as follows:

SECTION 1. Amendment to Section 9.36.020. Chapter 9.36, "Marijuana," Section 9.36.020, "Definitions," of the Cloverdale Municipal Code is hereby amended to read as follows:

"9.36.020. Definitions.
The Definitions that shall be utilized in this Chapter shall be the same Definitions set forth in Title 18, Section 18.09.300(B) that relate to marijuana."

SECTION 2. Amendment to Section 9.36.050. Chapter 9.36, "Marijuana," Section 9.36.050, "Outdoor Cultivation of Marijuana Prohibited," of the Cloverdale Municipal Code is hereby retitled "Cultivation of Marijuana Prohibited," and amended to read as follows:

"9.36.050. Cultivation of Marijuana prohibited.
All cultivation of marijuana and medical marijuana, both indoor and outdoor, is prohibited in all zoning districts, planned developments and all specific master plan areas in the City, except as authorized under Section 18.09.300(E) and Section 18.09.300(F) of the Cloverdale Municipal Code for qualified patients and primary caregivers."

SECTION 3. California Environmental Quality Act ("CEQA").

The City Council hereby finds that the adoption of this Ordinance is exempt from California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15061(b)(3) of the State CEQA Guidelines. Specifically, this Ordinance will not result in a direct or reasonably foreseeable

indirect physical change in the environment because it does not authorize the construction of any new large structures or other physical changes resulting in impacts to the environment. This Ordinance would also limit the number of outdoor plants to a limited amount so there will be no potential for significant water impacts and pesticide application impacts. The larger amounts would need to be in a detached structure and therefore, would also not result any water impacts or pesticide application impacts. Further, cultivation in detached structures would not be visible and would not result in significant odor issues.

SECTION 4. No Mandatory Duty of Care.

This Ordinance is not intended to, and shall not be construed or given effect in a manner that imposes upon the City or any officer, agent, employee or volunteer, thereof a mandatory duty of care towards persons and property, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 5. Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION 6. Effective Date.

This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Council Members voting for or against the same, in a newspaper of general circulation published in the County of Sonoma, State of California.

I hereby certify that the foregoing is a true and complete copy of an ordinance duly and regularly adopted by the City at a regular meeting thereof held on January 26 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 26th day of January 2016 by the following roll call vote: (Ayes-4; Noes-0; Absent-1)

AYES: Councilmember Palla, Councilmember Cox, Councilmember Russell, and Mayor Brigham
NOES:
ABSENT: Vice Mayor Wolter
ABSTAIN:

APPROVED:

MaryAnn Brigham, Mayor

ATTEST:

Paul Cayler, City Clerk

CITY OF CLOVERDALE

City Council/Successor Agency Agenda Item Summary

Agenda Item:	9
Meeting Date:	October 25, 2016

Agenda Section	**Staff Contact**
Consent	David Kelley, Assistant City Manager/ Community Development Director

Agenda Item Title

Waive the second reading and readopt Ordinance No. 703-2016, amending the Cloverdale Municipal Code, Title 18 (Zoning Ordinance), Chapter 18.08.040, changing development standards for the SP-1 (Specific Plan 1) Zoning District and rezoning a 12.3-acre parcel of land located at the southeast corner of Asti Road and Santana Drive (APN 117-050-026) from the "MP-Business Park" District to the "SP-1-Specific Plan 1 District." And, waive the second reading and readopt Ordinance No. 704-2016 approving a Development Agreement between the City of Cloverdale and Spight Properties II LCC pertaining to the development of the Alexander Valley Resort project.

Summary

California Government Code section 36933 requires that within 15 days after the adoption of an ordinance, a city publish a copy of the ordinance and the Council vote in a newspaper of general circulation. The Section also allows a city to only publish a summary of the ordinance instead of the entire document, if the City publishes such summary 5 days prior the adoption, and again within 15 days after the adoption, including the names of those city council members voting for and against the ordinance.

Ordinance No. 703-2016 and Ordinance No. 704-2016 were adopted by the City Council on February 23, 2016. Due to transitions of staff members, the City inadvertently did not publish a summary of the ordinances in the newspaper at least 5 days prior to the adoption and again within 15 days of the action.

In order to comply with the publishing requirements of Government Code section 36933, and to avoid publishing the entire ordinances, Ordinance No. 703-2016 and Ordinance No. 704-2016 are being placed before the City Council again for re-adoption. This is simply a re-adoption of the Ordinances. No changes to the substance of the Ordinance has been made.

Options

Waive second readings and readopt Ordinances 703-2016 and 704-2016.

Recommended Council Action

1) Waive the second reading and adopt Ordinance No. 703-2016 amending Title 18, "Zoning" of the Municipal Code, making certain changes to the standards of the SP-1 District and rezoning one parcel of land (APN 117-050-026) to the SP-1 District.
2) Waive the second reading and adopt Ordinance No. 704-2016 approving a Development Agreement between the City of Cloverdale and Spight Properties II LLC pertaining to the Alexander Valley Resort project generally located on approximately 267 acres of land located east of Asti Road, west of the Russian River, south of Santana Drive and north of Cloverdale Municipal Airport.

Attachments: Ordinance No. 703-2016
Ordinance No. 704-2016
Adopted Ordinance No. 703-2016
Adopted Ordinance No. 704-2016

2606635.1

P.O. Box 217 • 124 North Cloverdale Blvd. • Cloverdale, CA 95425-0217 • Telephone (707) 894-2521 • FAX (707) 894-3451

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO.703-2016

AN ORDINANCE OF THE CITY OF CLOVERDALE AMENDING TITLE 18, "ZONING," OF THE CITY MUNICIPAL CODE, MAKING CERTAIN CHANGES TO THE STANDARDS OF THE SP-1 (SPECIFIC PLAN) ZONING DISTRICT AND REZONING ONE PARCEL OF LAND TO THE SPECIFIC PLAN-1 (SP-1) ZONING DISTRICT WITHIN THE ALEXANDER VALLEY RESORT PROJECT, (APNs 116-260-012, 116-310-013 & -014, 117-050-010, -011, 012, -017, -024, -026, -027, -028 & -029)

THE CITY COUNCIL OF THE CITY OF CLOVERDALE HEREBY ORDAINS AS FOLLOWS:

SECTION 1. RECITALS

A. The Alexander Valley Resort Project ("Project"), is generally located south of Santana Drive, east of Asti Road, west of the Russian River and north of Cloverdale Municipal Airport.

B. The Project was originally approved by the City Council in 2009. The Project consisted of a resort, golf course, resort mixed-use site and housing. Tyris Corporation/Spight Properties II LLC (the "Applicant"), has requested certain changes to the Project.

C. The Applicant is requesting a General Plan Amendment to change the land use designation of 12.3 acre site on the southeast corner of Asti Road and Santana Drive owned by the applicant from "BP-Business Park" to "DSC-Destination Commercial" and other minor amendments to the Cloverdale General Plan, including but not limited to allowing a golf course within the Project as an optional recreational use, not a mandatory feature, and other minor amendments to ensure internal consistency within the General Plan.

D. The application also includes a request for an amendment to the Alexander Valley Resort Specific Plan, a Zoning Ordinance amendment rezoning the 12.3 acre site, which would now be included within the Specific Plan, from "MP-Industrial Park" to "Specific Plan-SP-1," and a Development Agreement. The Zoning Ordinance amendment designating the 12.3 acre site as Specific Plan-SP-1 would allow resort-oriented uses to be developed on the 12.3 acre site.

E. The California Environmental Quality Act ("CEQA"), together with the State Guidelines and City environmental regulations, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared. To comply with CEQA, the City prepared an Addendum to the environmental impact report that

was certified by the City in 2009, Alexander Valley Resort Project Environmental Impact Report, State Clearinghouse No. 2003072142 (the "2009 EIR").

F. The City Council has makes the following findings related to (1) the rezoning the parcel of land described as County Assessor's Parcel Number (APN) 117-050-026 to the SP-1 district; (2) the amendment to Section 18.08.040 of the Zoning Ordinance to add a "Resort Mixed-Use" category to the SP-1 district; (3) adding a list of permitted and conditional uses for the Resort Mixed-Use category; and (4) establishing development standards for future buildings within the Resort Mixed-Use land use category:

1. The proposed change of zone is consistent with the goals, objectives, policies and programs of the Cloverdale General Plan and is necessary and desirable to implement the provisions of the General Plan.

    a. *The proposed rezoning to the SP-1 zoning district for the 12.3 acre parcel located on the southeast corner of Asti Road and Santana Drive is consistent with the Alexander Valley Resort Specific Plan, which implements portions of the General Plan.*

    b. *Proposed development standards will provide guidance to the City, project owners and future developers as to the intent of the City to allow the orderly development of the affected property.*

2. The proposed change of zone will not adversely affect the public health, safety and welfare, or result in an illogical land use pattern.

    a. *The 2004 draft Alexander Valley Resort Environmental Impact Report has evaluated the public health, safety and welfare issues, and mitigation measures and the Addendum's Mitigation Monitoring and Reporting Program have provisions for eliminating or mitigating all such issues.*

    b. *The land use pattern proposed for the Project is consistent with the General Plan. The proposed option of an 18-hole golf course, Resort Hotel and other land uses are envisioned within the Area II Destination Commercial land use designations contained in the General Plan.*

3. The proposed change of zone is consistent with the purpose and intent of Chapter 18.03 of the Cloverdale Zoning Ordinance.

    a. *The proposed rezoning and revisions to the SP-1 District meets the Zoning Ordinance purpose of implementing the General Plan. The General Plan requires Specific Plan zoning for the Project site, and the Specific Plan and zoning provide for such land uses.*

4. The potential environmental impacts of the proposed rezoning are less-than-significant.

    a. *The rezoning will not adversely affect public health, safety or welfare as demonstrated by the analysis of public health and safety conditions contained in the draft 2004 Alexander Valley Resort EIR and Recirculated* DEIR (the "EIR"). *The EIR analyzed potential public health impacts, airport land use compatibility impacts, traffic safety impacts, geotechnical safety impacts, air quality and greenhouse gas emissions, potential flooding and safety impacts, impacts to public safety providers, and impacts related to soil and groundwater contamination. The EIR concludes that, with adherence to mitigation measures as set forth in the two DEIR documents including the Addendum, all safety impacts and conditions will be less than significant. The Mitigation Monitoring and Reporting Program will assure that all EIR mitigation measures are implemented.*

G. On February 9, 2016, the City Council held a properly noticed public hearing regarding this Zoning Ordinance Amendment and considered all comments received in writing and all testimony received at the public hearing.

SECTION 1. PURPOSE AND INTENT

The purpose and intent of these changes is to amend the Zoning Ordnance Text to rezone the 12.3 acre parcel at the southeast corner of Asti Road and Santana Drive to the SP-1 District and to amend the SP-1 District to add a "Resort Mixed-Use" land use category with a listing of permitted and conditional uses and development standards as shown on Exhibit 1.

SECTION 2. FINDINGS

The above recitals are hereby declared to be true and correct and hereby incorporated herein as the required Findings of the City Council of the City of Cloverdale.

SECTION 3. AMENDMENTS TO TITLE 18 OF THE CLOVERDALE MUNICIPAL CODE

Section 18.08.040, SP-1 Alexander Valley Resort, is amended to read as set forth in Exhibit A.

SECTION 4. RECLASSIFIED PROPERTIES

Title 18, "Zoning," of the City of Cloverdale Municipal Code is hereby amended by amending the "Zoning Map of the City of Cloverdale" so as to reclassify the 12.3 acre site on the southeast corner of Asti Road and Santana Drive to the Specific Plan 1 (SP-1) zoning district, as shown in Exhibit 1.

SECTION 5. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION 6. EFFECTIVE DATE

This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Council Members voting for or against the same, in a newspaper of general circulation published in the County of Sonoma, State of California.

I hereby certify that the foregoing is a true and complete copy of an ordinance duly and regularly adopted by the City at a regular meeting thereof held on October 25, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 25rd day of October, 2016 by the following vote: (Ayes-X; Noes-X; Absent-X)

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved:	Attested:
_____	_____
Mary Ann Brigham, Mayor	Linda Moore, Deputy City Clerk

Attached: Exhibit 1- Amended Zoning

Section 18.08.040 Alexander Valley Resort Specific Plan Zoning District Development Standards

A. SP-1 Alexander Valley Resort Specific Plan

This Section provides regulations and standards for the development of the Alexander Valley Resort Project site and the SP-1 Zoning District. All capitalized terms used in this Section 18.08.040 that are not specifically defined herein shall have the meanings set forth in the Alexander Valley Resort Specific Plan, as amended.

B. Precise Development Plan Required

1. A Precise Development Plan ("PDP") shall be required prior to any development in each of the six (6) land use areas in this Plan: Resort/Resort Residential, Recreation/Open Space, Single-Family Residential, Estate Residential, Entry Commercial, and Resort Mixed-Use. Each PDP shall be consistent with the General Plan, the Alexander Valley Resort Specific Plan, and this Section 18.08.040. For purposes of Section 18.03.100A of this Title, the Alexander Valley Resort Specific Plan is deemed to be, and shall be considered as, the approved Preliminary Development Plan that would otherwise be required, and no other Preliminary Development Plan shall be required for development in the Alexander Valley Resort Specific Plan area.

2. A visual "gateway" or entrance theme shall be submitted by the Developer and approved by the City prior to or with the first PDP approval. A visual analysis of the rough grading plan for the site, including the grading for the proposed western hill with the serpentine outcropping shall be prepared prior to or with the first PDP, together with the proposed "gateway" theme.

3. A PDP amendment, in accordance with this Section, shall be required for any change to the approved PDP, except for minor changes in golf course design and alignment, if applicable.

4. PDPs for all phases of the development may be submitted and approved simultaneously, provided that no temporary or permanent occupancy permits for the Resort Residential, Single-Family Residential and Estate Residential Units shall be issued until (i) the Resort is substantially complete, as determined by the Director of Community Development, and (ii) a PDP has been submitted to the City for the Recreation/Open Space Area that describes the Developer's proposal for use of the Recreation/Open Space.

5. Construction of any golf course (either a Regulation Course or a Nine-Hole Course) is dependent on the availability of Recycled Water and transportation of that water to the west side of the NWP tracks.

   If the Developer is unable to obtain sufficient Recycled Water to develop any golf course, or if Developer elects not to develop any golf course, Developer shall propose an alternate use for the remaining acreage as provided herein. Such use may require an amendment to the Alexander Valley Resort Specific Plan.

C. Relationship to the Zoning Ordinance

All otherwise applicable provisions of this Title shall apply in the SP-1 Zoning District, except as specifically modified by this Section. In the event of a conflict between other provisions of this Title and the provisions of this Section, the provisions of this Section shall prevail.

D. Pedestrian/Bicycle Trails

Each PDP shall provide for a linked pedestrian/bicycle trail to connect the various development areas of the Specific Plan, and to connect the Specific Plan area to the remainder of the City.

E. Resort/Resort Residential Area

1. The 100-150 room hotel and a full-service spa facility will function together as a wine country destination resort ("Resort") and as the anchor of the Alexander Valley Resort Project. Amenities will include those normally found in a resort complex, including, but not limited to, a restaurant, conference center and gift shop. The Resort shall be consistent with all aspects of the Cloverdale General Plan Destination Commercial land use designation and applicable goals of the Land Use Element.
2. The Resort will be sited on a knoll overlooking Resort/Resort Residential and Recreation/Open Space Areas, capitalizing on Alexander Valley/Russian River vistas. The Resort is assigned a visually prominent location on the Project site and shall be designed to quality resort style standards.
3. The mass of the building(s) shall be broken up by favoring terraced roofs and offsets in wall planes. The maximum height of buildings for the Resort complex shall be 62 feet above ground level, including towers and similarly distinct architectural elements.
4. The spa shall be confined within the Resort complex. Outdoor facilities, to include a swimming pool and other recreational activity areas, shall be sited and buffered to reduce noise intrusion on the Resort.
5. Parking areas shall be off-street, landscaped and screened from view. The Resort complex, the Resort Residential Units and the Recreation/Open Space Area facilities may share parking areas, based on and subject to a shared parking analysis, using Urban Land Institute or similar methodologies, that has been approved by the City's Community Development Department Director.
6. Resort Residential Units shall meet the requirements of the R-2 or R-3 Multi-Family Residential Zoning Districts as they exist or may be modified.
7. The PDP for the Resort/Resort Residential Area shall conform to Specific Plan policies to mitigate impacts from the adjoining industrial area.
8. An Acoustic Study shall be submitted with the PDP for the Resort Residential Units, and building assemblies shall be designed so that interior noise levels shall not exceed 45dBA inside all living units.

F. Recreation/Open Space Area

1. The Recreation/Open Space Area may be developed with a golf course (either a Regulation Course or a 9-Hole Course as described in Section II.B.13 of the

Alexander Valley Resort Specific Plan), or with an alternate recreation use approved by the City Council, or preserved as open space.

2. If the Recreation/Open Space Area is developed with a Regulation Course, it should include multiple tee areas providing varying lengths up to 6,500 yards, a clubhouse, practice facilities, and maintenance areas. Any golf course should be open to golf club members, guests of the Resort and the general public on a daily fee basis.

3. Recreation/Open Space Area uses and building structures

   a. Maximum height of the any Recreation/Open Space Area building shall be 35 feet.

   b. Allowable uses are golf course facilities, including golf course management offices, pro shop, men and women's locker rooms, restaurant and banquet facilities, and golf cart storage; picnic areas; other resort-compatible uses that the City Council may approve subject to a conditional use permit; and preserved open space. Any expansion or change after PDP approval shall require a PDP amendment.

   c. The PDP shall provide adequate parking to serve peak demand for banquet or similar activities, if applicable. The Recreation/Open Space Area may share parking areas with the Resort complex and the Resort Residential Area based on and subject to a shared parking analysis, using Urban Land Institute or similar methodologies, that has been approved by the City's Community Development Department Director.

4. Maintenance facilities:

   a. Maximum height of any maintenance building structures shall be 24 feet.

   b. All maintenance and activity equipment storage shall be within enclosed buildings, except for sand, gravel and similar bulk construction materials, which shall be screened from public view with fences, landscaping, buildings or similar features.

5. The Natural Resource Preserve Area shall meet all applicable requirements of the Alexander Valley Resort Specific Plan.

6. Accessory structures, including snack shop, restrooms and a maintenance building shall be allowed.

7. All improvements shall conform to the "gateway" design concept.

8. A minimum 20-foot front setback with City-approved landscaping is required for all development along Asti Road.

G. Single-Family Residential

1. Single-Family Residential Units shall meet the requirements of the R-2 Zoning District, as it exists or may be amended, except that lot sizes may be reduced to 4,000 square feet and the lot width, depth and setback requirements reduced based on the Zoning Ordinance PUD Permit provisions in Section 18.03.130. No more than one dwelling unit may be built on each lot.

2. A visual analysis shall be submitted with the PDP application for the Single-Family Residential Area. Steps to minimize views of houses from the City shall be detailed.

3. Site and building design shall conform to the gateway design concept.

4. A PDP amendment shall be required for any addition to or expansion of housing units after initial construction, including accessory structures.

H. Estate Residential

1. Estate Residential Units shall meet the requirements of the R-1 Zoning District, except that setbacks and lot sizes may be modified to save significant trees and oak forest groupings.

2. A visual analysis shall be submitted with the PDP application for the Estate Residential Area. Steps to minimize views of houses from the City and Alexander Valley shall be detailed.

3. An arborist report shall be provided with PDP submittal. The report shall identify significant individual trees and significant groupings of trees (oak forest). Houses and lots shall be sited to preserve trees and forest groupings to the extent possible.

4. A PDP amendment shall be required for any addition to, or expansion of, housing units after initial construction, including accessory structures and removal of significant trees identified in the arborist report.

I. Entry Commercial

1. An entry design theme and visual analysis shall be submitted with the PDP application for the Entry Commercial Area. Design shall include a visual buffer, such as landscape and berms, between Asti Road and the development on the site.

2. Design shall conform to the "gateway" design concept.

3. Entry Commercial development shall meet the requirements of the G-C Zoning District, except that minimum 20-foot front, side, and rear setbacks with City-approved landscaping are required for all development along Asti Road. Additionally, the following uses shall be permitted by right:

   a. Administrative and Executive Offices

   b. Clerical and Professional Offices

   c. Restaurants (with alcoholic beverage service; with indoor and outdoor seating; with catering operations; no on-site entertainment without City approval)

   d. Wine Tasting Facility

   Service stations, drive-through uses and internally illuminated signs shall not be allowed.

4. A PDP amendment shall be required for any expansion of buildings after initial construction. A use permit shall be required for any uses that require a use permit in the G-C Zoning District (or any successor zoning district), with the exception of the permitted uses listed in the preceding subsection I.3 of this Section.

J. Resort Mixed-Use

1. A design compatibility analysis shall be submitted with the PDP application for development in the Resort Mixed-Use Area, to ensure that development in the Resort Mixed-Use Area is compatible with the Resort/Resort Residential and Entry Commercial Areas.

2. Uses.

   A. The following uses shall be permitted by right in the Resort Mixed-Use Area, subject to the PDP requirement set forth in subsection B.1 above:

      i. Automobile rental agencies (excluding outdoor storage of vehicles not for on-site rental)

      ii. Educational Institutions involving culinary, viticulture and brewing arts, schools and instructional programs

      iii. Gymnasiums, Athletic and Health Clubs, Spas and similar commercial recreation uses

      iv. Hotels (13 rooms or more)

      v. Restaurants with Bar/Cocktail Lounges (but not including fast-food restaurants or drive-thru restaurants)

      vi. Specialty grocery markets and food stores up to 5,000 square feet

   B. In addition, and except as otherwise set forth above, those uses set forth in Table 18.06.030-A of Chapter 18.06 of the City of Cloverdale Zoning Code for the Industrial Park (M-P) Zoning District shall be permitted in the Resort Mixed-Use Area, subject to applicable conditional use permit requirements as set forth therein. Where a Plot Plan is required for any use allowed under the M-P zoning requirements, the PDP required under this SP-1 zoning designation shall serve as the required Plot Plan, and no other Plot Plan shall be required.

   C. In addition, and except as otherwise set forth above, the following uses shall also be permitted subject to the limitations set forth in Table 18.05.030-A of the City of Cloverdale Zoning Code for the General Commercial (G-C) Zoning District, and subject to applicable conditional use permit requirements as set forth therein:

      i. Antique collections and shops

      ii. Arts and crafts stores

      iii. Artist and photographic studios and galleries (including the accessory sale of artwork)

      iv. Bakeries

      v. Barber and beauty shops

      vi. Bicycle shops

      vii. Book shops and stationary stores

      viii. Candy stores

ix. Clothing stores

x. Commercial recreation facilities (outdoor)

xi. Flower shops

xii. Furniture and home goods

xiii. Gift shops

xiv. Jewelry stores

xv. Liquor stores

xvi. Medical Services

xvii. Off-Street Parking Facilities (subject to conditional use permit)

xviii. Outside Sales or Display Areas (for uses allowed in the underlying Zoning District)

xix. Toy stores

xx. Transportation terminals and providers, including livery and shuttle services (subject to conditional use permit)

xxi. Wine/Beer Tasting/Sampling and Sales

xxii. Accessory uses (located on the same site as a permitted use)

xxiii. Other uses similar to, and no more objectionable than the uses identified above, as determined by the Planning Commission

Where a Plot Plan is required for any of the above uses under the G-C zoning requirements, the PDP required under this SP-1 zoning designation shall serve as the required Plot Plan, and no other Plot Plan shall be required.

D. The following uses are NOT permitted in the Resort Mixed-Use Area:

i. Automobile Service Stations/Gasoline Service Stations

ii. Sales and repair of automobiles, light trucks, boats, campers, and motorcycles; car washes; tire sales & service

iii. Bar/Cocktail Lounges without food service

iv. Bowling alleys

v. Drive-In Restaurants

vi. Drive Through Facilities

vii. Hardware stores

viii. Internally-illuminated signs

ix. Motion picture theaters

x. Multi-line traditional shopping centers with major anchor tenants

xi. Multi-tenant, freeway-oriented strip mall type facilities

xii. Drug Store/Pharmacies not related to medical, dental or related health

services permitted above

xiii. Residential (temporary lodging permitted as provided herein)

xiv. Variety superstores and big box stores

3. The development standards for the Resort Mixed-Use Area shall be those set forth below in Table 18.08.040-A of the City of Cloverdale Zoning Code. Where the applicable development standard is set forth below as a range, the applicable standard shall be a specific standard within the range, as determined by the City Council at the time of approval of the required PDP.

Table 18.08.040-A
Site Development Standards for Resort Mixed-Use District

Lot Area (minimum)	6,000 – 20,000
Lot Width (minimum)	60' – 100'
Lot Depth (minimum)	100'
Front Setback (minimum) • Asti Road (must include City-approved landscaping)	15' 20'
Side Setback (minimum) • Interior • Street Side • Asti Road (must include City-approved landscaping)	 0' 10' – 15' 20'
Rear Setback (minimum) • Asti Road (must include City-approved landscaping)	10' 20'
Lot Coverage (maximum)	60%
Building Height (maximum)	35' – 50'

4. A PDP amendment shall be required for any expansion of buildings after initial construction.

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 704-2016

AN ORDINANCE OF THE CITY OF CLOVERDALE APPROVING A DEVELOPMENT AGREEMENT WITH SPIGHT PROPERTIES II LLC PERTAINING TO THE DEVELOPMENT OF THE ALEXANDER VALLEY RESORT PROJECT LOCATED ON APPROXIMATELY 267 ACRES OF LAND LYING EAST OF ASTI ROAD, WEST OF THE RUSSIAN RIVER, SOUTH OF SANTANA DRIVE AND NORTH OF CLOVERDALE MUNICIPAL AIRPORT (APNs 116-260-012; 116-310-013 AND -014; 117-050-010, -011, -012, -017, -024, -026, -027, -028, AND -029)

THE CITY COUNCIL OF THE CITY OF CLOVERDALE HEREBY ORDAINS AS FOLLOWS:

SECTION 1. RECITALS

A. In order to strengthen the public land use planning process, to encourage private participation in comprehensive planning, to reduce the economic risk of development and to reduce the waste of resources, the Legislature of the State of California adopted the "Development Agreement Statute" (Government Code Section 65864 et seq.). The Development Agreement Statute authorizes the City and an applicant for a development project, having legal or equitable interest in the real property, to enter into a development agreement establishing certain development rights in, and obligations with respect to, the property which is the subject of a development project application. Pursuant to the Development Agreement Statute, the City adopted rules and regulations establishing procedures and requirements for consideration of development agreements on January 5, 1987 ("Development Agreement Resolution"). City staff and representative of Tyris Corporation/Spight Properties II LLC (the "Landowner") have processed, considered and executed a Development Agreement in accordance with those City rules and regulations.

B. The Development Agreement Statute permits cities and counties to contract with private interests for their mutual benefit in a manner not otherwise available to the contracting parties. Such agreements, as authorized by the Development Agreement Statute, can assure property owners and developers that development approvals granted by public agencies will not change during the period of development of their projects. Cities and counties are equally assured that costly infrastructure such as roads, sewers, schools, fire protection facilities, etc., will be available at the time development projects come on line.

C. Landowner is the owner of approximately 267 acres in the City of Cloverdale more particularly described in Exhibit A of the attached Development Agreement.

D. On June 10, 2009, the City Council of the City took the following actions with respect to the Property (collectively, the "2009 Approvals"):

1. By Resolution 027-2009, approved a Water Supply Assessment for the Alexander Valley Resort Project;

2. By Resolution 028-2009, certified the Final Environmental Impact Report consisting of a 2004 Draft Environmental Impact Report, a 2008 Recirculated Draft Environmental Impact Report and a 2009 Final Environmental Impact Report (collectively the "FEIR") and adopted a Mitigation Monitoring and Reporting Program for the Alexander Valley Resort Project;
3. By Resolution No. 029-2009, adopted the Alexander Valley Resort Specific Plan (the "2009 Specific Plan") and directed staff to file an annexation application for the Alexander Valley Resort Project; and
4. By Ordinance No. 671-2009, amended Chapter 18 of the City of Cloverdale Zoning Ordinance and prezoned the Property to the SP-1 Zoning District for the Alexander Valley Resort Project.

E. On February 10, 2010, the City Council of the City, by Resolution No. 014-2010, approved a revised Mitigation Monitoring and Reporting Program (the "MMRP") for the Alexander Valley Resort Project.

F. On April 7, 2010, the Sonoma County Local Agency Formation Commission, by Resolution No. 2579, approved a Sphere of Influence Amendment and a Reorganization of Territory designated as Cloverdale Reorganization No. 2009-001 (Alexander Valley Resort) approving the annexation of the Property to the City of Cloverdale. Such approval resulted in confirmation of the SP-1 zoning.
Since then, Landowner has completed the clean closure of the 22-acre wood waste landfill area which contained approximately 600,000 cubic yards of non-hazardous wood chips, bark, sawdust, soil and rock. Owner's clean closure has accomplished the following: (1) removal of potential future environmental liability associated with groundwater and surface water quality issues; (2) elimination of future monitoring and maintenance activities associated with the disposal site cap and drainage controls; (3) removal of the wood waste landfill from regulatory oversight; (4) reuse of the materials for beneficial purposes; and (5) preparation of the site for future uses, including the Project. The North Coast Regional Water Quality Control Board ("RWQCB") issued the final Waste Discharge Requirements ("WDRs"), Order No. R1-2005-0032, in June 2005, and Owner received clean closure certification in June 2012.

H. Landowner also completed extensive soil and groundwater remediation activities for the petroleum hydrocarbon-affected soil and groundwater east of the former head rig and for the affected soil south of the former mechanic shop in order to remove the source of petroleum hydrocarbons and to minimize future impacts to groundwater. PES Environmental, Inc. ("PES"), performed these remediation activities and has requested that the RWQCB consider "no further action" with regard to the hydrocarbons in soil and groundwater in these areas.

I. In addition, International Paper, Inc., as the successor in interest to Masonite Corporation, a former site operator, has been working with the RWQCB to investigate and remediate groundwater contamination at the site, including contamination of a deep aquifer under a portion of the Site. In August 2013, the RWQCB concurred with International Paper's proposed final cleanup remedy of Monitored Natural Attenuation ("MNA") for shallow and bedrock groundwater in certain areas of the Property. The Remedial Action Work Plan

approved by the RWQCB includes: (1) verification groundwater monitoring until the site groundwater achieves the cleanup goals; (2) deed restriction on a portion of the site where residual levels of wood treatment chemicals are present in soil; (3) a restricted area where groundwater use is prohibited; (4) destruction of certain groundwater monitoring wells and an old water supply well; and (5) a soil management plan to identify and address any contamination found during redevelopment. In accordance with Monitoring and Reporting Program No. R1-2013-0057, different MNA processes are occurring in different areas on the Property and reports are to be submitted to the RWQCB semi-annually. The five (5) remaining monitoring wells on the Property are not expected to impact Project development.

J. In 2015, Landowner applied to the City for certain revisions to the City's General Plan, the 2009 Specific Plan, and the Zoning Ordinance, and, as contemplated by the 2009 Specific Plan, Landowner also applied to the City for a Development Agreement to govern future development of the Property (collectively, the "Proposal"). The Proposal requests revision of the Specific Plan to make the golf course component an allowed rather than required use, and to provide for the possibility of an alternate recreation use if approved by the City Council. The Proposal also seeks to re-introduce a 12.3 acre parcel into the planning area that had been part of the original project assessed by the Draft Environmental Impact Report, and provides land use development standards for those 12.3 acres consistent with the existing zoning (M-P, Industrial Park) and the originally-proposed zoning (G-C, General Commercial).

K. In response to the 2015 application, the City undertook review of the FEIR prepared for the 2009 Approvals and determined that an addendum to the FEIR was appropriate for consideration and action on the 2015 application ("2015 Addendum").

L. On December 2, 2015 and January 5, 2016, at a duly-noticed public hearing, the City's Planning Commission considered the FEIR and the 2016 Addendum, Landowner's application for certain General Plan, 2009 Specific Plan, and Zoning Ordinance amendments; and this Agreement. Following due consideration, by Resolutions No. 00-2016, No. 003-2016, and No. 004-2016, the Planning Commission recommended to the City Council that the City Council not approve Landowner's application, although the Commission did support the preparation of the CEQA Addendum. The Landowner appealed the Planning Commission's action to the City Council.

M. On February 9, 2016, at a duly-noticed public hearing, the City Council of the City took the following actions relating to the Landowner's application:

1. By Resolution No. 013-2016, approved and adopted the 2015 Addendum to the FEIR;
2. By Resolution No. 014-2016, amended the City of Cloverdale General Plan;
3. By Resolution No. 015-2016, amended the 2009 Specific Plan (as amended, the "Specific Plan"); and
4. By Ordinance No703-2016, amended Chapter 18 of the City of Cloverdale Zoning Ordinance. Approvals 2, 3, and 4 above are collectively referred to herein as the "Project Approvals."

N. Landowner desires to sell the Property to a developer with the qualifications, expertise, and experience to develop the Property in accordance with the Project Approvals and as

contemplated in the draft Development Agreement. The development of the Property in accordance with the draft Development Agreement and the Project Approvals will provide for orderly growth within the City, consistent with the goals, policies, and other provisions of the City's General Plan and the Specific Plan.

O. The City recognizes that the economic success of the Project depends greatly upon the certainty and timing of the City's regulations and fees.

P. As contemplated by the Specific Plan, the City and Landowner desire to enter into the attached Development Agreement to identify and assign key implementing responsibilities, including but not limited to, vesting of entitlements, the construction of infrastructure, and continuing maintenance responsibilities and agreements.

Q. For the reasons recited herein, Landowner and the City have determined that the Project is the type of development for which the attached Agreement is appropriate. The Development Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property and otherwise achieve the goals and purposes for which the Development Agreement Statute and the Development Agreement Resolution were enacted.

R. In exchange for these benefits to the City, together with the public benefits that will result from the development of the Property pursuant to the Project Approvals, Landowner desires to receive the assurance that it may proceed with development of the Property, including receipt of building permits and all other permits and approvals required to complete construction of the Project in accordance with the terms and conditions of the draft Development Agreement.

S. On February 9, 2016, the City Council, as the legislative body for purposes of Development Agreement approval, held a properly noticed public hearing pursuant to Government Code section 65867 regarding the Development Agreement, and considered all comments received in writing and all testimony received at the public hearing.

SECTION 2. FINDINGS.

Therefore, on the basis of: (a) the foregoing recitals, which are hereby incorporated herein; (b) the City of Cloverdale's General Plan; and (c) the Alexander Valley Resort Project FEIR and Addendum to said FEIR, the City Council finds and determines that:

A. Pursuant to Government Code section 65867.5, the Development Agreement is consistent with the objectives, policies, general land uses and programs specified and contained in the City's General Plan and the approved Alexander Valley Resort Special Plan in that the property is designated for a destination resort hotel project that includes a spa, restaurant and conference center along with a major open space use, residential use and related commercial uses.

B. The Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use area in which the real property is located and

entitlements associated with such land use area, is consistent with the overall zoning for the site, Alexander Valley Resort Specific Plan and General Plan.

C. The Development Agreement is in conformity with public convenience, general welfare and good land use policies in that the Development Agreement will continue to implement land use guidelines set forth in the General Plan and help ensure a successful development that meets community and market needs. The Development Agreement is consistent with the policies of the Housing Element within the applicable General Plan, in that it allows for future construction of dwelling units as part of the resort development.

D. The Development Agreement will not be detrimental to the health, safety and general welfare in that the Project will proceed in accordance with the programs and policies of the General Plan and other Project Approvals.

E. The Development Agreement will not adversely affect the orderly development of the property, or the preservation of property values, in that the amendment is consistent with the applicable General Plan and the Alexander Valley Resort Specific Plan, and there is no evidence to suggest that this Project will lower property values.

F. The Development Agreement is consistent with and includes the substantive elements of Government Code sections 65864 through 65869.5, and has been processed consistent with all the procedural requirements thereof.

SECTION 3. APPROVAL OF DEVELOPMENT AGREEMENT

The City Council hereby approves the Development Agreement between the City of Cloverdale and Spight Properties attached to this ordinance as Exhibit 1, and authorizes the City Manager to execute the Development Agreement. Within ten (10) days after the Development Agreement is executed by the City Manager and Spight Properties, the City Clerk shall submit the Development Agreement to the County Recorder for recordation.

SECTION 4. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE

This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Council Members

voting for or against the same, in a newspaper of general circulation published in the County of Sonoma, State of California.

I hereby certify that the foregoing is a true and complete copy of an ordinance duly and regularly adopted by the City at a regular meeting thereof held on October 25, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 25th day of October, 2016 by the following vote: (Ayes-X; Noes-X; Absent-X)

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved:

_____
Mary Ann Brigham, Mayor

Attested:

_____
Linda Moore, Deputy City Clerk

Attachment: Exhibit 1-Development Agreement between City of Cloverdale and Spight Properties II, LLC

CITY OF CLOVERDALE

RECORDING REQUESTED BY:
City Clerk
City of Cloverdale
124 N. Cloverdale Blvd.
Cloverdale, CA 95425

RECEIVED
APR 18 2016

AND WHEN RECORDED MAIL TO:
City of Cloverdale
124 Cloverdale Blvd.
Cloverdale, CA 95425
Attn: City Manager

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lliam F. Rousseau
03/23/2016 09:49 AM
CLOVERDALE CITY
AGM 64 Pgs
Fee: $0.00

APN: 116-260-012

APN: 116-310-013
APN: 116-310-014

APN: 117-050-010
APN: 117-050-011
APN: 117-050-012
APN: 117-050-017
APN: 117-050-024
APN: 117-050-026
APN: 117-050-027
APN: 117-050-028
APN: 117-050-029

Space Above for Recorder's Use

This Agreement is recorded at the request and for the benefit of the City of Cloverdale and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383

DEVELOPMENT AGREEMENT

between

CITY OF CLOVERDALE

and

SPIGHT PROPERTIES II LLC

ALEXANDER VALLEY RESORT

[Ordinance No.704-2016, Adopted on February 23, 2016]

DEVELOPMENT AGREEMENT
between
CITY OF CLOVERDALE
and
SPIGHT PROPERTIES II LLC

This DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into on this 22 day of March, 2016, by and between the CITY OF CLOVERDALE, a political subdivision of the State of California ("**City**") and SPIGHT PROPERTIES II LLC, a California limited liability corporation ("**Landowner**"). Landowner and City each may be referred to herein individually as a "Party" and collectively as the "Parties." This Agreement is entered into with reference to the following facts:

RECITALS

A. In order to strengthen the public land use planning process, to encourage private participation in comprehensive planning, to reduce the economic risk of development and to reduce the waste of resources, the Legislature of the State of California adopted the "**Development Agreement Statute**" (Government Code Section 65864 et seq.). The Development Agreement Statute authorizes the City and an applicant for a development project, having legal or equitable interest in the real property, to enter into a development agreement establishing certain development rights in, and obligations with respect to, the property which is the subject of a development project application. Pursuant to the Development Agreement Statute, the City adopted rules and regulations establishing procedures and requirements for consideration of development agreements on January 5, 1987 ("**Development Agreement Resolution**"). This Agreement has been processed, considered, and executed in accordance with those City rules and regulations.

B. The Development Agreement Statute permits cities and counties to contract with private interests for their mutual benefit in a manner not otherwise available to the contracting Parties. Such agreements, as authorized by the Development Agreement Statute, can assure property owners and developers that development approvals granted by public agencies will not change during the period of development of their projects. Cities and counties are equally assured that costly infrastructure such as roads, sewers, schools, fire protection facilities, etc. will be available at the time development projects come on line.

C. Pursuant to Government Code Section 65865(a), Landowner is the owner of approximately 267 acres in the City of Cloverdale more particularly described in **Exhibit A** hereto.

D. On June 10, 2009, the City Council of the City took the following actions with respect to the Property (collectively, the "**2009 Approvals**"):

1. By Resolution 027-2009, approved a Water Supply Assessment for the Alexander Valley Resort Project;

2. By Resolution 028-2009, certified the Final Environmental Impact Report consisting of a 2004 Draft Environmental Impact Report, a 2008 Recirculated Draft Environmental Impact Report and a 2009 Final Environmental Impact Report (collectively the "**FEIR**") and adopted a Mitigation Monitoring and Reporting Program for the Alexander Valley Resort Project;

3. By Resolution No. 029-2009, adopted the Alexander Valley Resort Specific Plan (the "**2009 Specific Plan**") and directed staff to file an annexation application for the Alexander Valley Resort Project; and

4. By Ordinance No. 671-2009, amended Chapter 18 of the City of Cloverdale Zoning Ordinance and prezoned the Property to the SP-1 Zoning District for the Alexander Valley Resort Project.

E. On February 10, 2010, the City Council of the City, by Resolution No. 014-2010, approved a revised Mitigation Monitoring and Reporting Program (the "**MMRP**") for the Alexander Valley Resort Project.

F. On April 7, 2010, the Sonoma County Local Agency Formation Commission, by Resolution No. 2579, approved a Sphere of Influence Amendment and a Reorganization of Territory designated as Cloverdale Reorganization No. 2009-001 (Alexander Valley Resort) approving the annexation of the Property to the City of Cloverdale. Such approval resulted in confirmation of the SP-1 zoning.

G. Since then, Landowner has completed the clean closure of the 22-acre wood waste landfill area which contained approximately 600,000 cubic yards of non-hazardous wood chips, bark, sawdust, soil, and rock. Owner's clean closure has accomplished the following: (i) removal of potential future environmental liability associated with groundwater and surface water quality issues; (ii) elimination of future monitoring and maintenance activities associated with the disposal site cap and drainage controls; (iii) removal of the wood waste landfill from regulatory oversight; (iv) reuse of the materials for beneficial purposes; and (v) preparation of the site for future uses, including the Project. The North Coast Regional Water Quality Control Board ("**RWQCB**") issued the final Waste Discharge Requirements ("**WDRs**"), Order No. R1-2005-0032, in June 2005, and Owner received clean closure certification in June 2012.

H. Landowner also completed extensive soil and groundwater remediation activities for the petroleum hydrocarbon-affected soil and groundwater east of the former head rig and for the affected soil south of the former mechanic shop in order to remove the source of petroleum hydrocarbons and to minimize future impacts to groundwater. PES Environmental, Inc. ("**PES**") performed these remediation activities and has requested that the Regional Water Quality Control Board consider "no further action" with regard to the hydrocarbons in soil and groundwater in these areas.

I. In addition, International Paper, Inc., as the successor in interest to Masonite Corporation, a former site operator, has been working with the RWQCB to investigate and remediate groundwater contamination at the site, including contamination of a deep aquifer under a portion of the Site. In August 2013, the RWQCB concurred with International Paper's proposed

final cleanup remedy of Monitored Natural Attenuation ("**MNA**") for shallow and bedrock groundwater in certain areas of the Property. The Remedial Action Work Plan approved by the RWQCB includes: (1) verification groundwater monitoring until the site groundwater achieves the cleanup goals; (2) deed restriction on a portion of the site where residual levels of wood treatment chemicals are present in soil; (3) a restricted area where groundwater use is prohibited; (4) destruction of certain groundwater monitoring wells and an old water supply well; and (5) a soil management plan to identify and address any contamination found during redevelopment. In accordance with Monitoring and Reporting Program No. R1-2013-0057, different MNA processes are occurring in different areas on the Property and reports are to be submitted to the RWQCB semi-annually. The five (5) remaining monitoring wells on the Property are not expected to impact Project development.

J. In 2015, Landowner applied to the City for certain revisions to the City's General Plan, the 2009 Specific Plan, and the Zoning Ordinance; and, as contemplated by the 2009 Specific Plan, Landowner also applied to the City for a development agreement to govern future development of the Property (collectively, the "**Proposal**"). The Proposal requests revision of the Specific Plan to make the golf course component an allowed rather than required use, and to provide for the possibility of an alternate recreation use if approved by the City Council. The Proposal also seeks to re-introduce a 12.3-acre parcel into the planning area that had been part of the original project assessed by the Draft Environmental Impact Report, and provides land use development standards for those 12.3 acres consistent with the existing zoning (M-P, Industrial Park) and the originally-proposed zoning (G-C, General Commercial).

K. In response to the 2015 application, the City undertook review of the FEIR prepared for the 2009 Approvals and determined that an addendum to the FEIR was appropriate for consideration and action on the 2015 application ("**2015 Addendum**").

L. On January 5, 2016, at a duly-noticed public hearing, the City's Planning Commission considered the FEIR and the 2015 Addendum; Landowner's application for certain General Plan, 2009 Specific Plan, and Zoning Ordinance amendments; and this Agreement. Following due consideration, by Resolution Nos. 001-2016, 002-2016, 003-2016, 004-2016, the Planning Commission made recommendations to the City Council regarding each component of Landowner's application.

M. On February 9, 2016, at a duly-noticed public hearing, the City Council of the City took the following actions relating to the Landowner's application:

1. By Resolution No. 013-2016, approved and adopted the 2015 Addendum to the FEIR;

2. By Resolution No. 014-2016, amended the City of Cloverdale General Plan;

3. By Resolution No. 015-2016, amended the 2009 Specific Plan (as amended, the "**Specific Plan**"); and

4. By Ordinance No. 703-2016, amended Chapter 18 of the City of Cloverdale Zoning Ordinance.

5. By Ordinance No. 704-2016, approved this Agreement.

Approvals 2, 3, 4, and 5 above are collectively referred to herein as the "**Project Approvals**."

N. Landowner desires to sell the Property to a developer with the qualifications, expertise, and experience to develop the Property in accordance with the Project Approvals and as contemplated in this Agreement. The development of the Property in accordance with this Agreement and the Project Approvals will provide for orderly growth within the City, consistent with the goals, policies, and other provisions of the City's General Plan and the Specific Plan.

O. City recognizes that the economic success of the Project depends greatly upon the certainty and timing of the City's regulations and fees.

P. As contemplated by the Specific Plan, the City and Landowner desire to enter into a Development Agreement to identify and assign key implementing responsibilities, including but not limited to, vesting of entitlements, the construction of infrastructure, and continuing maintenance responsibilities and agreements.

Q. For the reasons recited herein, Landowner and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property and otherwise achieve the goals and purposes for which the Development Agreement Statute and the Development Agreement Resolution were enacted.

R. In exchange for these benefits to the City, together with the public benefits that will result from the development of the Property pursuant to the Project Approvals, Landowner desires to receive the assurance that it may proceed with development of the Property, including receipt of building permits and all other permits and approvals required to complete construction of the Project in accordance with the terms and conditions of this Agreement.

S. The Parties shall cooperatively collect this Agreement, all documents mentioned in Recital M and elsewhere in this Agreement, and place them in a three ring binder to be maintained at all times by the City Clerk. Two (2) true and correct conformed copies of such binder shall be prepared and given to Landowner and to the Director of Community Development of the City. The Parties shall rely on the documents in such binder to determine the approvals granted by the City and the ordinances, policies and regulations in effect on the Effective Date of this Agreement, as defined below.

NOW, THEREFORE, it is agreed by and between the Parties as follows:

ARTICLE 1
GENERAL PROVISIONS

1.1. The Property. Landowner represents and warrants that it owns the fee interest in that certain real property consisting of approximately 267 acres, located in the City of Cloverdale and Sonoma County, and more particularly described in Exhibit A attached hereto (the "**Property**").

1.2. The Project. The Landowner proposes to develop, and the Parties desire to provide for the development, subject to the provisions of this Agreement and the Specific Plan, of a project (the "**Project**") on the Property that includes:

- A multi-story, 100-150 room resort hotel with a restaurant, other retail facilities complimentary to the destination resort theme, conference and meeting facilities, and a full-service spa (the "**Resort**");

- Approximately 218 acres of recreational and/or open space uses compatible with the Resort, which may include a golf course, an alternate recreation use, or preserved open space. Development of an alternate recreation use is not a vested right under this Agreement and is subject to such review and approval as described in Section II.B of the Specific Plan;

- Up to 40 attached residential units adjacent to the Resort area (the "**Resort Residential Units**");

- Up to 105 single-family detached residential units (the "**Single Family Residential Units**");

- Up to 25 Estate Residential units (the **"Estate Residential Units**");

- An entry commercial parcel at the main entry to the Project which may include a wine tasting facility, related food service uses, and retail uses complimentary to the destination resort theme and associated uses pursuant to the process outlined in the Specific Plan (the "**Entry Commercial Area**"); and

- A mixed-use parcel at the main entry to the Project immediately to the north of the Entry Commercial Area, which may include resort-compatible commercial and/or light industrial uses pursuant to the process outlined in the Specific Plan (the "**Resort Mixed-Use Area**").

1.3. Definitions

Unless the context requires otherwise, any word or phrase defined by the introductory paragraph and Recitals of this Agreement, the following words and phrases hereinafter defined shall apply throughout the Agreement:

"Administrative Amendment" means: (1) any change to an exhibit to this Agreement; and (2) any amendment to this Agreement which does not relate to (a) the term of the Agreement, (b) the permitted uses of the Property, (c) the reservation or dedication of land, (d) the location and maintenance of off-site improvements, (e) the density or intensity of uses of the Property, (f) the maximum height or size of proposed buildings, (g) the fees payable by Landowner as provided in Section 2.10 of this Agreement, (h) monetary contributions by Landowner required by this Agreement; or (i) the phasing or timing of development and construction of the improvements.

"**Certificate of Occupancy**" means a certificate issued after inspections by City authorizing a person or persons in possession of residential property to dwell or otherwise use a specified building or dwelling unit.

"**CEQA**" means the California Environmental Quality Act, Sections 21000, et seq., of the Public Resources Codes of the State of California, and its implementing regulations, Title 14, Chapter 3, Sections 15000, et seq., of the California Code of Regulations (also referred to as the "**CEQA Guidelines**").

"**City Council**" shall mean the duly elected legislative body governing the City of Cloverdale, CA.

"**Development Impact Fees**" means those fees that are set forth in City's "2015 Development Impact Fee Schedule- Effective July 1, 2015," attached hereto as **Exhibit B**, with any adjustments required pursuant to this Agreement.

"**Development Notice**" has the meaning described in Section 2.5 of this Agreement.

"**Director of Community Development**" shall mean the acting Director of the Community Development Department for the City of Cloverdale.

"**Effective Date**" shall mean the 30th day following (a) the date of adoption by the City Council of the ordinance approving this Agreement, (b) publication of the ordinance pursuant to Government Code Section 25214, or (c) date upon which this Agreement is executed by Landowner and by the City, whichever is later.

"**Existing Standards**" means the ordinances, resolutions and regulations adopted by the City Council of the City of Cloverdale in effect and applicable to the Property on the Effective Date, including the adopted ordinances that govern the permitted uses of land, the density and intensity of use, the timing of development, and the design, improvement, construction standards, the General Plan, the zoning ordinance and all other ordinances, codes, rules, and regulations of the City establishing subdivision standards, park regulations, impact or development fees and building standards, but subject to the limitations set forth in Section 2.3.1 and only to the extent that such ordinances, resolutions and regulations are not inconsistent with this Agreement and the Specific Plan. Existing Standards do not include design and/or construction requirements for public improvements or improvements to be acquired by a public entity, except where such requirements are explicitly addressed by the Specific Plan. Existing Standards do not include non-land use regulations, which include taxes. Existing Standards do not include prior CEQA review.

"**General Plan**" means the General Plan of the City of Cloverdale including the text and maps, as amended in connection with the Project.

"**Infrastructure Improvements**" are the water, recycled water, sewer, drainage and street improvements, necessary to serve the Project area as set forth in the Specific Plan and Section 2.8 of this Agreement.

"**Landowner**" means Spight Properties II LLC and any "Transferees" as defined in Section 8.5.1 of this Agreement.

"**Mortgagee**" means the holder of any mortgage or the beneficiary of any deed of trust covering all or part of the Property or any successor or assignee of any such mortgage holder or beneficiary, identified by name and mailing address in a written notice received by City by personal delivery or overnight mail, mailing costs prepaid. Such notice shall state whether such mortgagee desires to receive a notice of default as provided by this Agreement.

"**Planning Commission**" means the Planning Commission of the City of Cloverdale, California.

"Project" means the development of the Property as described in Section 1.2 of this Agreement.

"Project Approvals" has the meaning described in Recital M of this Agreement.

"Regulatory Processing Fees" means any and all fees, costs and charges adopted or otherwise imposed by City as a condition of regulatory approval of the Project for the purpose of defraying City's actual costs incurred or to be incurred in the processing and administration of any form of permit, approval, license, entitlement, or formation of a financing district or mechanism, or any and all costs adopted or otherwise imposed by City for the purpose of defraying City's actual costs of periodically updating its plans, policies, and procedures, including, without limitation, the fees and charges referred to in Government Code Section 66014.

"**Resort**" has the meaning set forth in Section 1.2 of this Agreement.

"**Specific Plan**" means the amended Alexander Valley Resort Specific Plan adopted by the Cloverdale City Council by Resolution No. 015-2016 on February 9, 2016.

"**Term**" has the meaning set forth in Section 1.6 of this Agreement, and includes any extension of the initial Term agreed to by the Parties in accordance with the requirements of this Agreement.

"Transferee" has the meaning described in Section 8.5.1 of this Agreement.

"Vested Components" has the meaning described in Section 1.15 of this Agreement.

1.4. Incorporation of Recitals and Exhibits. The Parties agree that the Recitals and Exhibits to this Agreement are true and correct and are incorporated into the Agreement as if they were set forth in the Agreement. In the event of inconsistency between the Recitals and the provisions of Articles 1 through 9, the provisions of Articles 1 through 9 shall prevail.

1.5. Public Benefits. The completion of the Project will provide long-term benefits for the residents of the City and its visitors in furtherance of the planning objectives contained in the City's General Plan, and will, in conjunction with other approved developments within the City: (a) maintain an economic and social balance between housing supply and employment opportunities; (b) provide to the City additional revenues to pay expenditures necessary to provide an adequate level of municipal services; (c) promote tourism to the area; and (d) establish a balance of land uses on the Property that will enable the City to provide municipal services not only to the Property, but to all residents of the City.

1.6. Term. The term of this Agreement shall commence on the Effective Date and shall extend for a term of fifteen (15) years thereafter ("**Term**") unless otherwise terminated, modified, or extended as provided by this Agreement.

1.7. Project is a Private Undertaking. It is agreed among the Parties that the Project is a private development and that City has no interest therein except as authorized in the exercise of governmental functions. Nothing in this Agreement shall preclude the Landowner from forming any form of investment entity for the purpose of completing any portion of the Project.

1.8. Consistency with General Plan. City hereby finds and declares that this Agreement furthers the public health, safety, and general welfare of the community and that the provisions of this Agreement and all Project Approvals are consistent with the General Plan and the Specific Plan.

1.9. Orderly Growth and Development. Development of the Project pursuant to the terms and conditions of this Agreement and the Project Approvals will provide for orderly growth and development consistent with the General Plan and the City's other developmental policies and programs.

1.10. Need for Services and Facilities. Development of the Project pursuant to this Agreement will create a need for municipal services and facilities, some of which services and facilities will be provided by the City, subject to the performance of Landowner's obligations hereunder.

1.11. Exercise of City Contracting Authority. The City, by electing to enter into this Agreement, acknowledges that the obligations of the City shall survive beyond the term or terms of the present City Council and that such action will serve to bind the City and future city councils to the obligations thereby undertaken. By approving this Agreement, the City Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by both the City and the City Council and have been found to be fair, just and reasonable, and the City has concluded that the pursuit of the Project will serve the best interests of its citizens, and the public health, safety and welfare will be best served by entering into this obligation.

1.12. Development Agreement Regulations. City and Landowner have taken all actions mandated by, and fulfilled all requirements set forth in, the Development Agreement Statute and the Development Agreement Resolution.

1.13. Substantial Costs to the Parties. The Parties, at their sole cost and expense, have incurred and will incur substantial costs in order to process the Project Approvals, to comply with conditions of approval and environmental mitigation measures of the Project Approvals, and to assure development of the Property in accordance with the Project Approvals and the terms of this Agreement.

1.14. Priority of Enactment. In the event of conflict between the Agreement and the Existing Standards, the Parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval superior to the approvals listed thereafter: (1) the General Plan, as existed on the Effective Date; (2) this Agreement, the other Project Approvals, and all other exhibits attached hereto, and (3) the Existing Standards.

1.15. Vested Rights of Landowner. During the Term of this Agreement, and any extension or modification thereto, the Project Approvals and the Existing Standards are declared fully vested in the Landowner and Transferees and are referred to herein as the "**Vested Components**." No part of the Vested Components, including without limitation, the applicable Fees as set forth in Section 2.10, may be modified or changed by the City during the duration of this Agreement without the express consent of the Landowner of the Property to which the modification or change is applicable thereto, except as provided in Sections 2.3, 2.8 and 2.10 herein. The Vested Components shall be effective against, and shall not be amended by, any subsequent ordinance or regulation, whether adopted or imposed by the City Council or through initiative or referendum. Nothing herein shall be construed to limit the City's power of eminent domain.

1.16. Assignment and Transfer of Development Rights. Subject to the provisions of Section 8.5, this Agreement shall not prevent the Landowner from assigning or delegating, in any way, its rights and duties under this Agreement in connection with the sale, assignment, or other transfer of the Property, in whole or in part, with all its right, title and interest therein to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement. Landowner shall provide City with notice of the assignment and delegation within thirty (30) days of such sale or delegation as provided for in the Notice provisions of this Agreement. Landowner shall be deemed relieved of the rights assigned, and released from the duties delegated, under an assignment and assumption agreement, provided that the City Clerk receives a copy of the express written assignment and assumption agreement by such purchaser, assignee or transferee of the benefits and obligations of this Agreement.

1.17. Successors in Interest/Covenants Run With Land. The conditions and covenants set forth in this Agreement and incorporated herein shall run with the land and the benefits and burdens shall bind and inure to the benefit of the Parties. Each and every purchaser, assignee, or transferee of an interest in the Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a Party thereto, but only with respect to the Property, or such portion thereof, sold, assigned, or transferred to it. Any such purchaser, assignee, or transferee shall observe and fully perform all duties and obligations of a Landowner contained in this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned, or transferred to it. Provided, however, notwithstanding anything to the contrary above, if any such sale, assignment or transfer is related to a completed residential unit that is not owned and operated by the Resort operator and that has been approved

by the City for occupancy, the automatic termination provisions of Section 8.3.2 herein shall apply thereto and the rights and obligations of Landowner hereunder shall not run with respect to such portion of the Property sold, assigned, or transferred in connection with such completed residential unit and shall not be binding upon such purchaser, assignee or transferee.

1.18. Amendment.

a) This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the Parties or their successors in interest, after notice and public hearing in conformance with, and pursuant to, the provisions of Government Code Section 65868. Any duly adopted amendment or change shall be in written form, executed with the same formalities as this Agreement, and attached to the original Agreement to maintain continuity.

b) Notwithstanding the provisions of subsection a) above, the Director of Community Development shall have authority, in its sole and exclusive discretion, to approve and agree to Administrative Amendments to this Agreement, which shall not require a noticed public hearing and shall not require approval of the Planning Commission, the City Council, or any further City approval; all other changes to the Agreement shall require approval of the City Council.

1.19. Recordation. Pursuant to Government Code Section 65868.5, the Clerk of the City Council shall record a copy of this Agreement with the Office of the County Recorder no later than ten (10) days after the ordinance approving this Agreement takes effect.

ARTICLE 2
PROJECT DEVELOPMENT

2.1. General Permitted Uses. Consistent with the requirements of Government Code Section 65865.2, the Project's permitted uses, density and intensity of use, the maximum height and size of the proposed buildings, provisions for reservations and dedications of land, payment of fees, payment of fees in lieu of dedications for public purposes, the location, construction, installation and extension of public improvements and utilities, and other terms and conditions of development applicable to the Project shall be those set forth in this Agreement and the Project Approvals, as they pertain to the Project, and any amendments thereto, as permitted herein.

2.2. Subsequent Approvals. The Parties acknowledge that in order to develop the Project on the Property, Landowner will need to obtain various ministerial and discretionary approvals from City in the future (**"Subsequent Approvals"**), which may include, without limitation, subdivision improvement plan review, tentative and final subdivision maps, parcels maps, lot line adjustments, use permits and conditional use permits, precise development plans, development review, site plan review, building permits, grading permits, encroachment permits, specific plan amendments and certificates of occupancy. For any Subsequent Approval proposed by Landowner, Landowner shall file an application with City for the Subsequent Approval at issue in accordance with the Existing Standards, and shall pay such Regulatory Processing Fees as are in effect at the time of the application except as expressly provided herein. Provided that such application(s) are in a proper form and include all required information and payment of any applicable Regulatory Processing Fees in the amount in effect at time of payment, City shall diligently and expeditiously process each such application in accordance with the Existing

Standards, the Project Approvals, and this Agreement, and shall exercise any discretion City has in relation thereto in accordance with the terms and conditions of this Agreement. In reviewing and approving such applications, the City reserves the right to exercise its discretion as set forth in the City's General Plan and Municipal Code in effect on the Effective Date.

2.3. Subsequently Enacted Standards.

2.3.1. Application of Subsequently Enacted Standards. City may apply to the Property and the Project such new or modified rules, regulations and policies adopted after the Effective Date (**"Subsequently Enacted Standards"**), only to the extent that such Subsequently Enacted Standards are generally applicable to other similar residential and non-residential (as applicable) developments in the City of Cloverdale and only to the extent that such Subsequently Enacted Standards:

(a) Are not in conflict with Existing Standards and would not prevent or delay development of the Project or increase the cost of development or building; or

(b) Are consistent with the most recent version of the California Building Standards Codes, Title 24, California Code of Regulations as adopted by the California Building Standards Commission and as adopted in an unmodified form by the City; or

(c) Are subsequent city-wide changes to construction or technical design standards or specifications for public improvements which are reasonably and directly related to durability or longevity of the public improvements; or

(d) Are changes in City laws, regulations, plans, or policies, the terms of which are specifically mandated and required by changes in state or federal law or regional application thereof;

(e) Are properly-adopted updates to city-wide utility infrastructure master plans, in which case each Precise Development Plan submitted to the City for development of the Project shall be consistent with the most recent version of the applicable city-wide utility infrastructure master plan, as reasonably determined by the City Engineer; or

(f) Are otherwise unambiguously and expressly authorized in this Agreement.

Upon discovery of a subsequently enacted federal or state law which may require changes pursuant to subsection (d), City shall provide Landowner with written notice of the state or federal law or regulation, provide a copy of the law or regulation, and a written statement of conflicts with the provisions of this Agreement. Promptly thereafter, City and Landowner shall meet and confer in good faith in a reasonable attempt to determine whether a modification or suspension of this Agreement, in whole or in part, is necessary to comply with such federal or state law or regulation. In such conferences, City and Landowner agree to preserve the terms of this Agreement and the rights of Landowner as

derived from this Agreement to the maximum feasible extent while resolving the conflict. City and Landowner agree to cooperate in resolving the conflict. Consistent with the provisions of section 2.8.1, the provisions of this Section 2.3.1 will not prevent, restrict or affect the City from applying the requirements of any properly-adopted City-wide Master Plan upon the Property or the Project.

2.3.2. Future Growth Control Ordinances, Policies, Etc. Except as otherwise expressly provided in Section 2.3.1 herein or other provision of this Agreement which unambiguously and expressly authorize the City to make such pertinent changes, no ordinance, policy, rule, regulation, decision, or any other City action, or any initiative or referendum voted on by the City's electorate, which would otherwise be applicable to the Project and would affect in any way the rate of development and construction of the Project, alter construction standards relating to the Project, limit the number of building permits issued by the City for the Project, including, but not limited to, development no-growth or slow-growth moratoria, and/or limit the Project's ability to connect to the City's sewer system, water system, storm drainage system or recycled water system, or to receive any other City service, shall be applicable to any portion of the Project during the term of this Agreement, whether such action is by ordinance, enactment, resolution, approval, policy, rule, regulation, decision or other action of City or by public initiative or referendum by the City's electorate. To the extent allowed by the laws pertaining to development agreements, however, Landowner will be subject to any growth limitation ordinance, resolution, rule, regulation, or policy which is adopted on a uniformly applied, city-wide basis, and directly concerns an imminent public health or safety issue, in which case City shall treat in a uniform, equitable and proportionate manner all properties, public and private, which are impacted by that public health or safety issue. If Landowner becomes subject to any such growth limitation, the Term of this Agreement shall be tolled for the duration of the effect of such growth limitation, such that the length of time such growth limitation remains in effect shall be added to and become part of the Term of this Agreement.

2.3.3. Subsequent Zoning Ordinance Amendment. If the City's zoning ordinance is amended after the Effective Date to authorize greater densities and intensity of use or greater maximum height and size of buildings, the amended provisions may be applied to the development of the Property at the option of the Landowner.

2.4. Police Power and Taxing Power. The City, through the exercise of either its police power or its taxing power, whether by direct City Council action or initiative or referendum by the City's electorate, shall not establish, enact or impose any additional conditions, dedications, fees, and other exactions, policies, standards, laws or regulations which relate or apply, directly or indirectly, to the Project except as provided in Section 2.3.1 herein or other provision of this Agreement which unambiguously and expressly allows the City to make such changes. Further, the City shall not approve a financing district designed to impose bonded indebtedness on any portion of the Project without Landowner's prior written approval, which approval may be given or withheld in Landowner's sole and absolute discretion. Nothing herein prohibits the Project from being subjected to a (i) city-wide bond issue, (ii) city-wide special or general tax, or (iii) special assessment for the construction or maintenance of a city-wide facility as may be voted on by the electorate or otherwise enacted, provided that such tax, assessment or measure is city-wide in

nature, does not discriminate against the Property, and does not distinguish between developed and undeveloped parcels.

2.5. Phasing of Development. The Parties hereby agree that the Landowner shall have the right to develop the Project at such times and at such rates as the Landowner deems appropriate in its sole and subjective business judgment, subject to the terms, conditions and provisions of the Project Approvals and this Agreement. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties, and that without such a right, the development of the Project would be subject to the very uncertainties sought to be avoided by the Development Agreement Statute, the City's Development Agreement Resolution, and this Agreement. Because the Project Approvals provide that no occupancy permits may be issued for the Project's residential units until the Resort is substantially complete, as further described herein and in the Specific Plan, the City agrees that the timing, sequencing and phasing of the Project's residential units is appropriately left to the discretion of, and shall be the sole responsibility of, the Landowner, and shall not be subject to the provisions of the City's Residential Growth Management Program - Cloverdale Municipal Code Section 18.02.100 (the "**GMP**"). The Landowner shall give the City at least sixty (60) days written notice prior to commencing the first phase of the development hereunder, with such notice being the "**Development Notice**."

2.6. Growth Management Allocations. As stated in Section 2.5 above, the City and the Landowner agree that the construction of the Single-Family Residential Units, the Estate Residential Units and the Resort Residential Units, including model units, will not be subject to the requirements of the City's GMP. Except as otherwise provided herein, each building permit for a Single-Family Residential Unit, an Estate Residential Unit and/or a Resort Residential Unit shall be issued pursuant to the City's policies and procedures governing building permits, as such policies and procedures may, from time-to-time, be amended by the City, provided that any such amendment shall not be applied to any developer of the Single-Family Residential Units, the Estate Residential Units or the Resort Residential Units in a manner that deprives such developer of any material right or other benefit under this Agreement.

2.7. Affordable Housing Requirement. In light of the unique nature of the Project as a destination resort and its potential to promote tourism in the City and the region, and its location outside of the City's downtown core and distant from the City's existing affordable housing projects and neighborhoods, and in consideration of the potential employment opportunities and other benefits provided by this Agreement, the City has determined that Landowner's compliance with the requirements of Chapter 18.13 of the Cloverdale Municipal Code may take any of the following forms, including but not limited to a combination thereof:

- Provision of on-site affordable units;
- Provision of off-site affordable units; and
- Payment of in-lieu fees.

Not later than the City's issuance of the fifth (5th) building permit for a residential unit in the Estate Residential Area and/or the Single-Family Residential Area, Landowner shall submit to the City's Planning Director, for the Planning Director's reasonable approval, an Inclusionary Housing

Compliance Plan setting forth Landowner's proposed compliance with Chapter 18.13, consistent with this Section 2.7. Landowner's compliance with an approved Inclusionary Housing Compliance Plan consistent with this Section 2.7 shall constitute Landowner's and the Project's full and complete satisfaction of all of the requirements of Chapter 18.13 as they relate to the provision of affordable housing. Accordingly, the City shall not condition any Subsequent Approval on further compliance with Chapter 18.13 of the Cloverdale Municipal Code or impose on the Project any other requirement for the provision of affordable housing.

2.8. Provisions for Infrastructure Improvements.

2.8.1. Conformance with Applicable City-Wide Infrastructure Master Plans. Subject to the credit and reimbursement provisions of Section 2.10 below, all development of the Project on the Property shall conform to the applicable city-wide utility infrastructure master plan(s) in effect at the time the Precise Development Plan describing such development is submitted to the City.

2.8.2. Dedication of Public Infrastructure Improvements. Title to, and ownership of, all public infrastructure improvements (and easements in favor of the City therefore) shall be offered for dedication to the City. Each final map shall delineate the areas for the related public infrastructure improvements and shall include an offer to dedicate such areas to the City for public use. The City agrees to accept any such offer of dedication that is made in compliance with applicable law and the provisions of this Agreement at such time as (i) the City approves such final map (if such public infrastructure improvements are then completed); or (ii) such public infrastructure improvements are completed in accordance with the subdivision improvement agreement for such final map, as reasonably determined by the City(if such public infrastructure improvements are not completed when such final map is approved).

From and after the Landowner's completion of each component of the public infrastructure improvements in accordance with the requirements of the related subdivision improvement agreement and this Agreement, and the City's acceptance thereof, such component of the public infrastructure improvements shall become public facilities and thereafter be operated, maintained and repaired by the City except during any warranty period during which the Landowner is required to undertake any required repairs or maintenance.

2.8.3. Zone 1 Water Reservoir/Tank. The Landowner shall, at Landowner's sole cost and expense, but subject to the credit and reimbursement provisions of Sections 2.10 below, design and construct on the Property a water reservoir/tank system ("**Water Tank System**") as described in the Specific Plan and as provided below.

After Landowner gives the Development Notice, Landowner shall promptly cause: (i) its architect and/or civil engineer to design the Water Tank System; and (ii) its engineers to complete the design of the related equipment and systems. The design of, and construction plans for, the Water Tank System shall be in accordance with the City's Water System Master Plan in effect at the time Developer gives the Development Notice, as reasonably determined by the City Engineer.

The Landowner shall, following the City's approval of the construction plans and design documents therefore, cause the Water Tank System to be constructed in connection with, and as part of, the construction of the Domestic Water System. The Parties hereto acknowledge and agree that the subdivision improvement agreement to be entered into with respect to the Landowner's construction of the Domestic Water System (including without limitation the warranty provisions thereof) shall apply to and include the Landowner's construction of the Water Tank System.

The Landowner shall, within 30 days after the first date on which the Landowner has completed, and the City has accepted, the Water Tank System, offer to the City dedication of an easement for the land on which the Water Tank System is located, including access thereto subject to the reasonable approval of the City Engineer. From and after the Landowner's completion, and the City's acceptance, of the Water Tank in accordance with the requirements of any subdivision improvement agreement and this Agreement, the Water Tank shall thereafter be operated, maintained and repaired by the City (subject to any warranty obligations of the Landowner and/or the constructor).

2.8.4. Recycled Water System. The Landowner may, at the Landowner's sole cost and expense, design and construct a recycled water system to serve the Project as described below.

(a) Recycled Water System Required to Serve Golf Course. If Landowner elects to construct a golf course as part of the Project, then Landowner shall construct and install, at Landowner's sole cost and expense, a force main, supply pipeline, and such other infrastructure as necessary to transfer sufficient treated effluent from the City's wastewater treatment plant to the Property to meet the demands of the golf course (the "**Recycled Water System**"). Design of the Recycled Water System, including the locations of connection points and delivery infrastructure, shall first be approved by the City, and permits and all costs related to the Recycled Water System shall be Landowner's sole responsibility (subject to the City's obligation to cooperate as set forth in Section 4.5). If Landowner constructs a golf course and Recycled Water System, the City shall provide, at no cost to Landowner, (a) sufficient treated effluent produced by the City's wastewater treatment plant in compliance with the City's waste discharge requirements, as needed from time-to-time by the Landowner to meet the demands of the golf course; or (b) if the City's wastewater treatment plant does not produce sufficient treated effluent to meet the demands of the golf course, all such effluent produced by the wastewater treatment plant.

(b) Termination of City's Obligation to Provide Recycled Water. If the City has not approved a Precise Development Plan ("PDP") within five (5) years of the Effective Date of this Agreement that provides for the construction of a golf course in the Recreation/Open Space Area (as defined in the Specific Plan) and the associated Recycled Water System on a schedule approved by the City, then the City's obligation to provide treated effluent to serve the Project on the Property, as set forth in Section 2.8.4(a) above, shall be terminated. At any time during the first 5-year period following the Effective Date, or at any time thereafter if the City's

obligation to provide treated effluent to serve the Project terminates according to this Section 2.8.4(b), City shall consider any proposal from Landowner to construct a recycled water system to meet the demands of any alternate proposed use in the Recreation/Open Space Area and, if such alternate use is approved by the City, in its sole and exclusive discretion, City shall provide the lesser of (a) sufficient, and (b) so much as is available, treated effluent to meet the demands of the approved alternate use at no cost to Landowner.

2.8.5. (c) Secondary Project Access. If Landowner constructs a Recycled Water System, the City shall grant Landowner an easement from Asti Road through and across a portion of the City-owned property surrounding the City's wastewater treatment plant (Assessor's Parcel Number 116-260-044) for the purpose of: (i) construction and maintenance of elements of the Recycled Water System; and (ii) access to the eastern portion of the Property by maintenance equipment too large to pass through the Project's below-grade crossing of the Northwestern Pacific rail line.

2.8.6. Traffic Infrastructure. Landowner shall, at Landowner's sole cost and expense, but subject to the credit and reimbursement provisions of Sections 2.10 and 2.11 below, design and construct traffic infrastructure to serve the Project as described below.

(a) Private Roads. Landowner shall design and construct the private roads ("**Private Roads**") shown on the Private and Public Trail/Road Map attached hereto as **Exhibit C**, which Private Roads may be subject to mutually agreeable modifications during the processing and approval of the final map(s). The exact locations of the Private Roads shall be: (i) generally consistent with the approximate locations shown on Exhibit C, subject to mutually agreeable modifications; (ii) determined based on consideration of topography, drainage, existing vegetation and other physical constraints; and (iii) shown on the final plans and specifications as approved by the City. Landowner shall cause the Private Road labeled as "Hotel Entry Road" on Exhibit C to be completed and open for use not later than the issuance of the first Certificate of Occupancy for the Resort.

Title to and ownership of the Private Roads shall remain with the owner(s) of the Resort and owner of the Recreation/Open Space Area and the City shall not have any easement, license or other interest therein (other than the right to enforce the requirement that there be public access to the Resort and the Recreation/Open Space Area during normal and customary business hours). If not one and the same, the owner of the Resort shall share responsibility for the maintenance, repair and replacement of the Private Road with the owner of the Recreation/Open Space Area, provided, however, that such owner shall have the right, to be exercised in such owner's sole discretion, to delegate such maintenance, repair and replacement to any owner or association that agrees in writing by recorded agreement or covenant (with a copy of such fully signed writing being provided by such owner to the City) to assume such maintenance, repair and replacement responsibility.

(b) Public Roads. Landowner shall design and construct the public roads (**"Public Roads"**) as shown on the Private and Public Trail/Road Map

attached hereto as Exhibit C, which Public Roads may be subject to mutually agreeable modifications during the processing and approval of the improvement plans prepared for the final map(s). The exact locations of the Public Roads shall be: (i) generally consistent with the approximate locations shown on Exhibit C, subject to mutually agreeable modifications; (ii) determined based on consideration of topography, drainage, existing vegetation and other physical constraints; and (iii) shown on the final plans and specifications as approved by the City. The Public Roads shall be designed and constructed in accordance with City Standards as provided in any City approved subdivision improvement agreements between Landowner and the City, and the then applicable City Public Works Department standards, including but not limited to applicable city-wide master plans as described in Section 2.8.1 above.

Title to the Public Roads shall be dedicated to the City by final subdivision map(s). Each such final map shall delineate the areas for the related Public Roads for such final map, and shall include an offer to dedicate such areas to the City for public use. The City agrees to accept any such offer of dedication that is made in compliance with applicable law and the provisions of this Agreement at such time as such roads are completed in accordance with the subdivision improvement agreement for each such final map and this Agreement.

The City and Landowner acknowledge that: (i) the Hotel Entry Road shall be subject to one or more easements for the benefit of the Project components; (ii) such easements will allow the use of such public roadway area for access to and from such lands; (iii) Landowner will be required, in order to dedicate title to such public roadway areas to the City as contemplated herein, to cause such easements to remain; and (iv) the owners of such lands may require that the owners and occupants of such land have the right to use such roadway areas (in common with the public) for access to and from such lands (including without limitation, by vehicles transporting supplies and products). Accordingly, Landowner shall cause the roadway to be constructed on such public roadway area to be designed and constructed in a manner that complies with all applicable City standards and is also sufficient to accommodate such use, and the final map by which such public roadway area is dedicated to the City shall include notations and provisions, reasonably acceptable to both the City and Landowner, acknowledging and providing for such use of such roadway.

(c) Off-Site Circulation Improvements (South Cloverdale Boulevard/Highway 101). A number of Mitigation Measures in the FEIR require certain circulation improvements at the South Cloverdale Boulevard/Highway 101 interchange including the installation of traffic signals and certain widening improvements, which shall be implemented as provided in the MMRP as reasonably determined by the City Engineer.

2.8.7. Park and Recreation Facilities. Landowner shall, at Landowner's sole cost and expense but subject to the credit provisions of Section 2.10.4 herein, design and construct the following recreational facilities on the Property:

(a) Private Trail. Landowner shall, as part of the construction of the Project, and at Landowner's sole cost and expense, design and construct a private pedestrian trail from the Resort to the Public Trail described in Section 2.8.7(b) below (the "**Private Trail**"). The exact location of the Private Trail shall be determined based on consideration of topography, drainage, existing vegetation and other physical constraints, and shown in the final plans and specifications therefor as approved by the City. Landowner shall cause the Private Trail to be completed and open for use not later than the opening of the Resort for business, but Landowner shall have the right to keep the Private Trail closed for purposes of public safety during construction activity on the Property and after sunset.

Title to, and ownership of, the Private Trail shall remain with the owner(s) of the underlying land, and the City shall not have any other easement, license or other interest therein (other than the right to enforce the requirement that there be public access to the Public Trail described in Section 2.8.7(b) below, during normal and customary business hours). The owner of the land underlying any portion of the Private Trail shall be responsible for the maintenance, repair and replacement of such portion of the Private Trail provided, however, that such owner shall have the right to delegate such maintenance, repair and replacement to any other owner of land underlying any portion of the Private Trail, or to any owner or similar association created for such purpose.

(b) Public Trail. Landowner shall, at Landowner's sole cost and expense, design, construct and dedicate to the City a public pedestrian/bicycle trail on its Property located along the levee adjacent to the Russian River (the "**Public Trail**"), in the approximate location shown on the Public Trail/Road Map attached hereto as Exhibit C, subject to mutually agreeable modifications. The exact location of the Public Trail shall be: (i) generally consistent with the approximate location shown on Exhibit C attached hereto, subject to mutually agreeable modifications; (ii) determined based on consideration of topography, drainage, existing vegetation and other physical constraints; and (iii) shown in the final plans and specifications as approved by the City.

Landowner shall cause the Public Trail to be directly connected to the Private Trail described above and shall have the right subject to prior City approval, which shall not be unreasonably withheld, to keep the Public Trail closed for purposes of public safety during construction activity on the Property, if and for so long as safety concerns warrant closure. Upon completion and dedication to the City of the Public Trail, the Public Trail shall be open to the public 24 hours per day, 7 days per week or in accordance with the City's policies, rules and regulations.

From and after the date on which the Public Trail is completed, dedicated to the City, and opened for public use, the City shall maintain and repair the Public Trail or cause the Public Trail to be maintained and repaired by a third party selected by the City. The City shall cause any such maintenance and repair to be performed in accordance with the City's normal maintenance and repair policies

and procedures and only during such hours and in such manner as complies with the City's then-applicable noise ordinances.

2.8.8. Statewide Community Infrastructure Program. The Parties acknowledge that portions of the infrastructure for the Project may qualify for the Statewide Community Infrastructure Program, and the City shall, at the Landowner's request and at no out-of-pocket cost to, and with no obligation being undertaken by, the City, cooperate with the Landowner in obtaining such financing.

2.9 Dedications. Landowner shall offer, and the City shall accept, such dedications for all required public lands upon completion of the improvements to be installed therein to the City's reasonable satisfaction, or when otherwise provided herein, as follows:

2.9.1. Public Trail. Subject to the provisions of Section 4.5 below, upon completion, Landowner shall dedicate to the City, at no cost to the City but subject to the credit and reimbursement provisions of Section 2.10 herein, the Public Trail described in Section 2.8.7(b) above.

2.9.2. Recreation/Open Space Area Improvements. Any dedications of land designated as "Recreation/Open Space" under the Specific Plan, and any dedication of improvements on such land, shall be credited by the City, to the maximum extent allowed under the applicable ordinance, against Landowner's obligations under Chapter 17A.16, 17A.20 and Chapter 17.20, and to the extent that such Landowner dedications exceed Landowner's minimum obligations under Chapter 17A.16, 17A.20 and 17.20, then Landowner shall be entitled to credits against any and all other applicable fees based on the value of the excess dedications as reasonably determined by the City and Landowner.

2.9.3. Rights-of Way. Landowner shall dedicate its interest in any and all public road rights-of-way, at no cost to the City or any other public agency, and the City shall accept such dedication upon the recordation of the final map for the corresponding subdivision but only after satisfaction of any subdivision improvement agreement or deferred improvement requirements.

2.9.4. Public Utility Easements and Improvements. Landowner shall dedicate to City (i) all improvements shown on plans approved by the City to be constructed by Landowner for public utility purposes, including, but not limited to, water lines, water tanks, sewer lines, public storm drains, , and other public utilities for public utility purposes, and (ii) sufficient easements for operation and maintenance of such public utility improvements, as such improvements and easements may be required by the City or the applicable public utility service provider. All such dedications shall be in a form approved by City's Engineer or the applicable public utility service provider, and shall be made at no cost to the City or any other public agency. All utility easements shall be effective upon recordation of said form.

2.9.5. All Dedications. All easements, rights-of-way, other property interests, and improvements and facilities to be dedicated to the City pursuant to the Project

Approvals and this Agreement shall be delivered by Landowner free of any liens, encumbrances, special taxes, or assessments, not approved by City, and shall be excluded from any covenants, conditions and restrictions on the Property. City shall accept each and all such dedications within ninety (90) days of Landowner's offer of dedication or completion by Landowner to the City's reasonable satisfaction, whichever occurs last.

2.10 Fees, Credits and Reimbursements

2.10.1. Fees. Except as otherwise expressly provided herein, Landowner shall pay the following fees:

- School district fees;
- Regulatory Processing Fees; and
- Development Impact Fees (as defined herein), subject to the limitations of this Section 2.10, and subject to such exemptions as are expressly set forth in this Agreement.

Where Landowner is required to pay Development Impact Fees under this Section 2.10, Landowner shall pay such fees in the following amounts:

- For the first five (5) years following the Effective Date of this Agreement, Landowner shall pay such fees in the amounts in effect on the Effective Date of this Agreement;
- For the second five (5) years following the Effective Date of this Agreement, Landowner shall pay such fees in the amounts in effect on the fifth (5th) anniversary of the Effective Date of this Agreement;
- For the third five (5) years following the Effective Date of this Agreement, Landowner shall pay such fees in the amounts in effect on the tenth (10th) anniversary of the Effective Date of this Agreement.

2.10.2. City and Landowner further acknowledge and agree that Landowner's payment of school fees, Regulatory Processing Fees, and Development Impact Fees, subject to and consistent with the provisions of this Section 2.10, shall constitute Landowner's full and complete compliance with the fee payment requirements of Title 17A of the Cloverdale Municipal Code, and no further fee obligations shall be imposed on Landowner's development of the Project on the Property during the Term of this Agreement.

2.10.3. Limited Waiver of Storm Drain Fees. Based on the preliminary storm drain infrastructure designs which were the basis of the City's 2009 Project approvals, Landowner has demonstrated that the Project may be developed and operated in a manner that would not generate any increase in pre-project storm

water runoff to neighboring properties and would not impact the City's existing and planned storm drain system. To the extent the Project may be developed in a manner that would not impact the City's existing and planned storm drain system, development of the Project on the Property should not be subject to payment of the City of Cloverdale Storm Drain Fee (Municipal Code Chapter 17A.28). Therefore, with each PDP submitted for development of the Property, City shall determine, in its reasonable discretion, whether operation of the development described in such PDP will result in the generation of storm water runoff that will flow to the City's storm water system, as it exists at the time of such PDP submittal. To the extent that the operation of such development will not result in storm water runoff flowing to the City's existing storm water system, such development will not be subject to payment of the City's Storm Drain Fee. The scope of any waiver of the Storm Drain Fee granted under this Section 2.10.3 shall be determined on "per acre" or "per unit" basis, as applicable, consistent with the categories of development described in the City's Development Impact Fees Fee Schedule in effect at the time and consistent with the limitations on fees described in this Section 2.10.

2.10.4. Fee Credits for Park Fees. In addition to Landowner's eligibility for fee credits and reimbursements under other provisions of this Agreement, Landowner shall be eligible for credit against the following City fees, as set forth below:

- Cloverdale Park Land Acquisition Fee (Non-Quimby Act) (Municipal Code Chapter 17A.16), except as provided in Section 2.9 above;

- Parks and Recreation Facilities Construction Fee (Municipal Code Chapter 17A.20), except as provided in Section 2.9 above;

- Quimby Act Parkland Acquisition Fee (Municipal Code Chapter 17.20), except as provide in Section 2.9 above; and

Landowner's credit(s) against the above-listed fees (collectively, the "Park Fees") shall be equal to the mutually-agreed upon value of the following dedications and improvements provided by Landowner:

- The value of the dedications and improvements provided by Landowner for the Private Trail, as provided in Section 2.8.7(a) above (the "**Private Trail Credits**");

- The value of the improvements provided by Landowner for the Public Trail, as provided in Section 2.8.7(b) above (the "**Public Trail Credits**"); and

- The value of any additional improvements provided by Landowner on lands designated as Recreation/Open Space in the Specific Plan (in addition to the Private Trail) plus the value of all dedications provided by Landowner of lands designated as Recreation/Open

Space in the Specific Plan, as provided in Section 2.9.2 above (together, the "**R/OS Area Credits**").

Landowner shall become eligible for the Private Trail Credits immediately upon Landowner's substantial completion, as reasonably determined by the City's Planning Director, of the Private Trail as provided in Section 2.8.7(a).

Landowner shall become eligible for the Public Trail Credits immediately upon Landowner's submittal to City of an offer to dedicate the Public Trail, as provided in Section 2.8.7(b).

Landowner shall become eligible for R/OS Area Credits immediately upon (a) the City's approval of a Precise Development Plan ("PDP") describing Landowner's use of the balance of the Recreation/Open Space Area (beyond the completion of the Private Trail), including the proposed improvements and land dedications thereon, if any, in sufficient detail to allow the Parties to calculate the value of Landowner's R/OS Area Credits, and (b) Landowner's provision to the City of security to ensure the completion of such improvements (such security may take the form of bonds as described in Government Code Sections 66499 through 66499.2, or any other form of security reasonably acceptable to the City). The City shall take action on Landowner's proposed PDP for the Recreation/Open Space Area not later than ninety (90) days following submittal by Landowner. Such City action shall either approve the PDP, or notify Landowner of modifications sought by the City that will result in City's approval of the PDP. If the City has not approved a PDP for the Recreation/Open Space Area at the time Landowner has applied to the City for the first building permit for a residential unit in the Estate Residential Area and/or the Single-Family Residential Area, then Landowner shall pay the Park Fees applicable for each such residential unit prior to the issuance of, and the City shall issue, building permits for such residential units, consistent with the terms of this Agreement.

Landowner's eligibility for fee credits for the Private Trail and for any additional improvements provided by Landowner on lands designated as Recreation/Open Space in the Specific Plan under this Section 2.10.4 shall be subject to the Private Trail and such additional improvements in the Recreation/Open Space lands being open and accessible to the public during normal and customary business hours in compliance with Objective R/OS1 and Policy R/OS1.1 of the Specific Plan.

2.10.5. Credits and Reimbursements. For each "public facility" (as that term is used in Title 17A of the Cloverdale Municipal Code) designed and/or constructed by Landowner pursuant to this Agreement, Landowner shall, pursuant to and so long as consistent with the provisions of Chapter 17.25 of the Cloverdale Municipal Code, be entitled to a credit against the applicable Development Impact Fee in an amount equal to the estimated cost of the public facility used by the City to adopt the applicable Development Impact Fee, less the Project's fair share of the costs of the public facility, as reasonably determined by the City based on the City-wide benefits provided by such public facility. If the total costs incurred by Landowner

to design and construct (as applicable) the public facility exceed the total amount of applicable Development Impact Fees due from Landowner for development of the Project on the Property, then Landowner shall be entitled to reimbursement of the difference (after application of all fee credits) as provided in Title 17A of the Cloverdale Municipal Code and Section 2.11 of this Agreement.

2.10.6. Changes in Fees and Construction Costs. If any subsequent change in local ordinance, state law or by court decision causes any city-wide fee (including, but not limited to school fees) applicable to the Project to be reduced or eliminated, or a subsequent change in local city-wide ordinance, state law or by court decision change building and/or construction requirements so that those requirements make building and/or construction less expensive to Landowner as determined by Landowner, then the subsequent change shall apply to this Agreement. Provided, however, that no such change shall apply to this Agreement with respect to facilities already financed, under construction, or constructed, unless such change contains a specific provision calling for the retroactive implementation of the change.

2.11 TOT Revenue Sharing. Landowner shall be entitled to share in transient occupancy tax ("**TOT**") revenues generated by the Project on the Property, at the Landowner's election, as follows. If Landowner elects to share in TOT revenues as provided herein, Landowner and the City shall enter into a separate TOT sharing agreement consistent with this Section 2.11.

During the first calendar quarter during which TOT revenues are payable to the City, Landowner (or the Resort operator acting on behalf of Landowner under the TOT Agreement) shall collect and remit to the City or retain for itself TOT revenues generated from the Project as follows:

- Fifty percent (50%) of such TOT revenues shall be paid to the City; and
- Fifty percent (50%) of such TOT revenues shall be retained by the Landowner.

During the second, third, fourth and fifth calendar quarters during which TOT revenues are payable to the City, Landowner or the Resort operator shall collect and remit to the City or retain for itself TOT revenues generated from the Project as follows and in the following order of priorities:

- The first thirty-one thousand two hundred fifty dollars ($31,250.00) of such quarterly TOT revenues shall be paid to the City;
- To the extent that Landowner is entitled to reimbursement of expenditures made to fund the design and construction of public facilities under Section 2.10.5 above, Landowner shall retain all additional TOT revenues generated from the Project necessary to fully reimburse Landowner for such expenditures; and
- To the extent that such quarterly TOT revenues exceed the amounts necessary to meet the above two priorities, then Landowner shall remit fifty percent (50%) of such excess quarterly TOT revenues to the City, and shall retain the balance of such excess quarterly TOT revenues.

During the sixth, seventh, eighth and ninth calendar quarters during which TOT revenues are payable to the City, Landowner or the Resort operator shall collect and remit to the City or retain for itself TOT revenues generated from the Project as follows:

- The first sixty-two thousand five hundred dollars ($62,500.00) of such quarterly TOT revenues shall be paid to the City;

- To the extent that Landowner is entitled to reimbursement of expenditures made to fund the design and construction of public facilities under Section 2.10.5 above, Landowner shall retain all additional TOT revenues generated from the Project necessary to fully reimburse Landowner for such expenditures; and

- To the extent that such quarterly TOT revenues exceed the amounts necessary to meet the above two priorities, then Landowner shall remit fifty percent (50%) of such excess quarterly TOT revenues to the City, and shall retain the balance of such excess quarterly TOT revenues.

During the tenth, eleventh, twelfth, and thirteenth calendar quarters during which TOT revenues are payable to the City, Landowner or the Resort operator shall collect and remit to the City or retain for itself TOT revenues generated from the Project as follows:

- The first ninety-three thousand seven hundred fifty dollars ($93,750.00) of such quarterly TOT revenues shall be paid to the City;

- To the extent that Landowner is entitled to reimbursement of expenditures made to fund the design and construction of public facilities under Section 2.10.5 above, Landowner shall retain all additional TOT revenues generated from the Project necessary to fully reimburse Landowner for such expenditures; and

- To the extent that such quarterly TOT revenues exceed the amounts necessary to meet the above two priorities, then Landowner shall remit fifty percent (50%) of such excess quarterly TOT revenues to the City, and shall retain the balance of such excess quarterly TOT revenues.

During the fourteenth, fifteenth, sixteenth and seventeenth calendar quarters during which TOT revenues are payable to the City, Landowner or the Resort operator shall collect and remit to the City or retain for itself TOT revenues generated from the Project as follows:

- The first one hundred twenty-five thousand dollars ($125,000.00) of such quarterly TOT revenues shall be paid to the City;

- To the extent that Landowner is entitled to reimbursement of expenditures made to fund the design and construction of public facilities under Section 2.10.5 above, Landowner shall retain all additional TOT revenues generated from the Project necessary to fully reimburse Landowner for such expenditures; and

- To the extent that such quarterly TOT revenues exceed the amounts necessary to meet the above two priorities, then Landowner shall remit fifty percent (50%) of such excess quarterly TOT revenues to the City, and shall retain the balance of such excess quarterly TOT revenues.

During the eighteenth, nineteenth, twentieth and twenty-first calendar quarters during which TOT revenues are payable to the City, Landowner or the Resort operator shall collect and remit to the City or retain for itself TOT revenues generated from the Project as follows:

- The first one hundred fifty-six thousand two hundred fifty dollars ($156,250.00) of such quarterly TOT revenues shall be paid to the City;

- To the extent that Landowner is entitled to reimbursement of expenditures made to fund the design and construction of public facilities under Section 2.10.5 above, Landowner shall retain all additional TOT revenues generated from the Project necessary to fully reimburse Landowner for such expenditures; and

- To the extent that such quarterly TOT revenues exceed the amounts necessary to meet the above two priorities, then Landowner shall remit fifty percent (50%) of such excess quarterly TOT revenues to the City, and shall retain the balance of such excess quarterly TOT revenues.

During each subsequent calendar quarter during which TOT revenues are payable to the City and Landowner is entitled to reimbursement of expenditures made to fund the design and construction of public facilities under Section 2.10.5 above, Landowner or the Resort operator shall collect and remit to the City or retain for itself TOT revenues generated from the Project as follows:

- The first one hundred fifty-six thousand two hundred fifty dollars ($156,250.00) of such quarterly TOT revenues shall be paid to the City; and

- The remaining TOT revenues shall be retained by Landowner to the extent necessary to fully reimburse Landowner for such expenditures.

Landowner's right to reimbursement of oversizing costs from TOT revenues under this Section 2.11 shall survive the expiration of the DA, to the extent that Landowner remains entitled to reimbursements under Section 2.10.5 above. City and Landowner shall cooperate to determine Landowner's eligibility for reimbursements under Section 2.10.5 above on a sufficiently timely basis to enable Landowner to realize its share of TOT revenues on a quarterly basis as provided in this Section 2.11, and Landowner shall provide City with documentation sufficient, to the reasonable satisfaction of City, to support Landowner's retention of excess quarterly TOT revenues as described above. Any report to the City required to be made by the Landowner or the Resort operator pursuant to Chapter 3.44 of the Cloverdale Municipal Code or the TOT agreement provided for herein shall include detailed information to support the amount of TOT so retained during that reporting period.

2.12 Public Services Requirements.

2.12.1. Fire Protection Requirements. Landowner shall contribute its fair share to a dedicated fund to purchase fire-fighting apparatus necessary to protect buildings more than 27 feet in height, if and when, such a fund is created by the City or the Cloverdale Fire Protection District.

2.12.2. Police Protection Requirements. Landowner shall pay its fair share of the capital costs of adding two sworn officers and one half-time community service officer to the Cloverdale Police Department prior to the recordation of the first final subdivision map. To facilitate Landowner's payment under this Section 2.12.2, the City shall determine, based on a reasonably detailed analysis supported by substantial evidence, (i) the capital costs of adding two sworn officers and one half-time community service officer to the Cloverdale Police Department, and (ii) Landowner's fair share of such capital costs. The City shall complete such study not later than one (1) year from the date the Development Notice is given. Upon completion of such study, the City shall notify Landowner of Landowner's payment obligation under this Section 2.12.2, and Landowner shall have ninety (90) days to pay its fair share of the above-described capital costs, based on the City's analysis; provided, however, that during such 90-day period, Landowner may request that City reduce Landowner's payment obligation under this Section 2.12.2 if Landowner reasonably determines, based on substantial evidence, that Landowner's fair share of such capital costs is less than the amount of the payment obligation set forth in the City's notice to Landowner. If, at the end of such 90-day period, the Parties are unable to agree on the amount of Landowner's payment obligation under this Section 2.12.2, then the Parties shall submit their disagreement to a mutually-agreeable third-party arbitrator for a binding determination of Landowner's payment obligation.

2.13 Notice of Completion. Landowner shall execute, acknowledge and record in the manner provided by law, a notice of completion of the Infrastructure Improvements and/or other public improvements required as a condition to this Agreement and/or the Project Approvals within ten (10) days after the Department of Public Works for the City provides written notice to the Landowner that the Infrastructure Improvements and/or other public improvements required as a condition to this Agreement and/or the Project Approvals have passed the final inspection. Upon completion of the Infrastructure Improvements or other public improvements, the Landowner's engineer shall supply the City with one set of "as built" drawings. These drawings shall be certified on each page by a Registered Civil Engineer as being "as built" drawings, pursuant to Business and Professions Code Section 6735.6 as may be amended from time-to- time.

2.14 Certificate of Occupancy. After satisfactory completion of each Single-Family Residential Unit, Estate Residential Unit and Resort Residential Unit in the Project, as reasonably determined by the City's Building Official, the City shall provide Landowner with a Certificate of Occupancy for that Unit. The Certificate of Occupancy is conclusive determination that the obligations of the Landowner under this Agreement have been met as to that Unit. The certification

shall be in such form as will enable it to be recorded in the official records of the Sonoma County Recorder by the Landowner.

ARTICLE 3
GENERAL OBLIGATIONS OF LANDOWNER

In consideration of the City entering into this Agreement, Landowner agrees and acknowledges as follows:

3.1 Compliance with Agreement and Project Approvals. Landowner agrees that it will comply with this Agreement and all of the Project Approvals.

3.2 Infrastructure Improvements. Landowner acknowledges and agrees that an express condition to the City's issuance of any permits to or for the benefit of the Project shall be the financing and construction by Landowner of the Infrastructure Improvements set forth in the Specific Plan and Section 2.8 of this Agreement.

3.3 Public Services and Facilities Contributions. Landowner agrees that it will contribute to the costs of certain public services and facilities in the manner described and as required herein to mitigate impacts on the community of the development of the Project, and to provide additional benefits to the City. The City agrees to provide such public services and facilities in the manner described and as required herein to assure that the Landowner may proceed with and complete the development of the Project as contemplated by, and in accordance with, the terms of this Agreement, except as may otherwise be precluded by operation of law or applicable regulations.

ARTICLE 4
GENERAL OBLIGATIONS OF CITY

4.1. City Processing and Review. The City is bound to permit the uses on the Property that are permitted by this Agreement and the Vested Components. Subject to the applicable regulations and the Project Approvals, City agrees it will accept for processing and expeditious review and action, applications for the Subsequent Approvals or other entitlements necessary to accomplish the goals and purposes set forth in the Project Approvals, without restriction as to number as set forth in this Article. City agrees that, at Landowner's request and at Landowner's sole cost and expense, City shall hire a dedicated planner or administrator for the sole purpose of reviewing and processing applications for Subsequent Approvals and otherwise facilitate the expeditious planning and permitting of the Project. City and Landowner shall work together in good faith to mutually agree upon said planner or administrator, and neither Party shall unreasonably delay or withhold its consent to the planner's or administrator's hiring. With respect to such Subsequent Approvals, City shall not seek to impose or require any conditions or exactions that are not expressly set forth in the Project Approvals, the Existing Standards, and this Agreement (or otherwise provided for herein), except to the extent necessary to mitigate environmental impacts that have not been identified and addressed in the FEIR and 2015 Addendum or as may be required to comply with State or Federal laws or as otherwise allowed pursuant to Section 2.3. Notwithstanding any other provisions contained herein to the contrary, failure to meet any of the time lines set forth in this Article shall not be deemed to be a breach of this Agreement by City

and shall not relieve Landowner of any obligations under this Agreement, provided that City is operating in good faith hereunder.

4.2. Tentative Subdivision Maps. City shall process in a timely fashion and schedule for approval by the City, all tentative map applications filed by Landowner relating to the Property.

4.3. Final Maps/Improvement Plans. City shall process in a timely fashion and approve any and all improvement plans for any portion of the Property. City shall schedule final maps for City Council approval after satisfactory submission of all materials necessary to City processing as reasonably determined by the City Engineer.

4.4. Building Permits/Other Entitlements. City shall process in a timely fashion and approve all building permit applications in compliance with applicable laws and this Agreement. City shall inform Landowner, upon request of Landowner, of the necessary submission requirements for each application for a building permit or other entitlement for use, in advance and review said application and schedule the application for review by the appropriate authority not later than 30 days following submission of all materials necessary to issuance of the requested building permit or other entitlement.

4.5. Cooperation Between City and Landowner. The City agrees to cooperate with Landowner in securing all approvals, authorizations, permits, and/or agency action which may be required by the City and/or any other impacted agencies, including but not limited to Sonoma County, the State Water Resources Control Board and its related agencies, the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the U.S. Fish & Wildlife Service, the California Department of Fish & Wildlife, the North Coast Railroad Authority, and the Sonoma-Marin Area Rail Transit agency for development of the Project consistent with this Agreement and the Specific Plan. The City further agrees that it shall, in cooperation with the Landowner, and at Landowner's sole expense, complete all necessary studies and reports, make all necessary determinations, and establish all necessary mechanisms to implement the credit and reimbursement provisions of Section 2.10, above consistent with the requirements of Chapter 17A of the Cloverdale Municipal Code and subject to Landowner's compliance with the terms and conditions of this Agreement. Consistent with the foregoing, the Parties hereby agree that, to the extent that any of Landowner's obligations under this Agreement require any approvals, authorizations, permits and/or other action by any public agency other than the City (collectively, "**Other Agency Approvals**"), including but not limited to Landowner's obligations under Section 2.8.7(b) and Landowner's obligations relating to development of the Recreation/Open Space Area, such Landowner obligations shall be subject to Landowner's obtaining the necessary Other Agency Approvals. In all such cases, Landowner shall make diligent and good faith efforts to obtain all such Other Agency Approvals in a timely manner, and City shall cooperate with Landowner in securing all such Other Agency Approvals. If Landowner is unable to obtain the necessary Other Agency Approvals in a timely manner, despite having made a diligent and good faith effort, then City shall not withhold any approvals or permits (including but not limited to Certificates of Occupancy for residential units) required for construction and completion of the Project based on Landowner's inability to satisfy such Landowner obligations in accordance with this Agreement and the Specific Plan.

4.6. Annual Review. The City shall review the extent of good faith compliance by Landowner, or its successor(s)-in-interest, with the terms of this Agreement at least every twelve (12) months from and after the Effective Date, at which time the Landowner, or successor(s)-in-interest thereto, shall be required to demonstrate good faith compliance with the terms of this Agreement. The City Council, after a public hearing, shall determine on the basis of substantial evidence whether or not the Landowner has, for the period under review, complied in good faith with the terms and conditions of this Agreement. The failure of any review or annual review of the Agreement to occur shall not terminate, void, make voidable, or otherwise adversely affect this Agreement.

The City shall provide, via electronic mail, to the Landowner a copy of all staff reports and related exhibits concerning Landowner's compliance with this Agreement at least ten (10) days prior to such periodic review. Landowner shall be permitted an opportunity to be heard orally and in writing regarding its performance under this Agreement before the City Council and, if the matter is referred to the Planning Commission, before said Planning Commission.

If the City determines after the hearing that Landowner has not complied in good faith with the terms and conditions of this Agreement, the City shall provide written notice thereof to Landowner. Said notice shall specify the nature of the alleged failure and, where appropriate, the manner and period of time in which the failure might be satisfactorily cured. If the nature of the alleged failure is such that it cannot reasonably be cured within three (3) months, the commencement of the cure within such time period and diligent prosecution to completion of the cure shall be deemed a cure.

During any period of curing, the Landowner shall not be considered in default for the purposes of termination or institution of legal proceedings.

ARTICLE 5
MORTGAGE PROTECTION

5.1. Encumbrances on the Property. The Parties hereto agree that this Agreement shall not prevent or limit the Landowner, in any manner, at the Landowner's sole and absolute discretion, from encumbering the Property or any portion thereof or any improvements thereon with any mortgage or deed of trust securing financing with respect to the construction, development, use or operation of the Project. The City acknowledges that Mortgagee may request certain modifications to this Agreement, and the City agrees, upon request, from time to time, to meet with Landowner and/or any representatives of such Mortgagee to negotiate in good faith any such request for modification. The City further agrees that it will not unreasonably withhold its consent to any such requested modification to this Agreement provided the proposed modification is consistent with the overall intent of the Specific Plan and the Project Approvals and with any agreements between the City and the Landowner. Any Mortgagee and its successor and assigns shall be entitled to the rights and privileges set forth in this section.

5.2. Mortgage Protection. This Agreement shall be superior and senior to the lien of any mortgage or deed of trust. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust made in good

faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof by a Mortgagee (whether pursuant to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination or otherwise) shall be subject to all of the terms and conditions of this Agreement. However, notwithstanding these provisions, no Mortgagee shall have any obligation or duty under this Agreement to perform the obligations of the Landowner or other affirmative covenants of Landowner hereunder, or to guarantee such performance, except that, to the extent that any covenant to be performed by the Landowner is a condition to the performance of a covenant by the City, the performance thereof shall continue to be a condition precedent to the City's performance hereunder.

5.3. Mortgagee Not Obligated. Notwithstanding Section 5.2 above, no Mortgagee shall have any obligation or duty under this Agreement, before obtaining title to the Property by foreclosure or deed in lieu of foreclosure, to construct or complete the construction of any improvements, public or private, described or required herein, or to guarantee such construction or completion, or to pay, perform or provide any fee, cost, charge, dedication, or other exaction or imposition with respect to the Project; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the Project Approvals or by this Agreement.

5.4. Mortgagee Notice and Right to Cure Default. If the City receives written notice from a Mortgagee requesting a copy of any notice of any claimed event of default, or any suspension, cancellation or termination of this Agreement, given to the Landowner hereunder and specifying the Mortgagee's address, then City shall deliver to such Mortgagee, concurrently with service of any such notice to the Landowner, a copy of such notice. Each Mortgagee shall have the right, during the same period available to Landowner, to cure, correct or remedy, or to commence to cure, correct or remedy, the claimed event of default set forth in the City's notice. Upon the request of the Landowner or a Mortgagee, the City, through its City Manager, may extend the cure period for a given claimed event of default for not more than an additional 60 days.

ARTICLE 6
ESTOPPEL CERTIFICATE

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 known to be in default of the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. If either Party fails to execute and deliver such statement to the requesting Party within such time, the requesting Party shall submit a second request in which the other Party to this Agreement shall have ten (10) days to execute and deliver to the requesting Party a statement certifying the above listed information.

The City acknowledges that a certificate hereunder may be relied upon by assignees and other persons having an interest in the Property, including Mortgagees. The failure to deliver such

a certificate within the time limits set forth in this Article shall constitute a conclusive presumption against the Party which fails to deliver such certificate that this Agreement is in full force and effect without modifications and a binding obligation of the Parties and that there are no uncured defaults in the performance of the requesting Party, except as may have been represented by the requesting Party in this written request for the certificate.

Landowner shall be entitled to one estoppel certificate per year without any fee being assessed by the City. For any additional estoppel certificates requested in a single year the City may charge Landowner a reasonable fee directly related to the actual cost to prepare the certificate.

ARTICLE 7
INSURANCE

At all times that Landowner is constructing any improvements that will become public improvements, Landowner shall take out and maintain, or shall have maintained, insurance policies with coverage at least as broad as follows:

a) **General Liability.** Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than Two Million Dollars ($2,000,000) per incident or occurrence and a deductible of not more than Twenty Thousand Dollars ($20,000.00) per claim. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Landowner under this Agreement or the general aggregate limit shall be twice the required occurrence limit. Such policy shall name the City as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

b) **Workers' Compensation Insurance.** Workers' Compensation insurance as required by the California Labor Code. In signing this Agreement, Landowner certifies under section 1861 of the Labor Code that the Landowner is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self- insurance in accordance with the provisions of that code, and that the Landowner will comply with such provisions before commencing the performance of the work of this Agreement.

c) **Evidence of Insurance.** Prior to commencement of construction of any improvements which will become public improvements, the Landowner shall furnish the City satisfactory evidence of the insurance coverage (including for additional insured's required hereunder) and evidence that the insurer is required to give the City at least fifteen (15) days prior written notice of the cancellation or reduction in coverage of a policy [ten (10) days in the event of nonpayment of any premium].

ARTICLE 8
EXTENSIONS, CANCELLATION, TERMINATION, DEFAULT, ENFORCEMENT AND REMEDIES

8.1. Automatic Extensions

8.1.1. Automatic Extension of Term Upon Legal Challenge. If any litigation affecting the Property or Project is filed challenging this Agreement, any Project Approval, or any Subsequent Approval granted pursuant to this Agreement (including but not limited to any environmental determinations relating to any of the foregoing), or otherwise raising issues of the validity and binding nature of this Agreement, the Term of this Agreement, or any extension of the Term then in effect, shall be extended for the period of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or final entry of judgment, and the Landowner and City shall execute an amendment to this Agreement setting forth the period of any such extension and may record a notice to such effect.

Additionally, the Term, as may be modified or extended, shall be extended by the amount of time development of the Project is delayed by the required compliance with federal or state laws or regulations in accordance with Government Code Section 65869.5.

The filing of any third party lawsuit(s) against City or Landowner relating to this Agreement, the Project Approvals, or any Subsequent Approvals shall not delay or stop the development, processing or construction of the Project or approval of any Subsequent Approvals, unless enjoined by a court of competent jurisdiction. City shall not stipulate to the issuance of any such order.

8.1.2. Automatic Extension-Force Majeure. Neither Party shall be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the City, enactment of conflicting state or federal laws or regulations, or new or supplementary environmental regulation enacted by the state or federal government or litigation. An extension of time for such cause shall be granted in writing by City for the period of the enforced delay or longer, as may be mutually agreed upon.

8.1.3. Term of Subdivision Maps, Vested Components and Permits.

(a) The term of any parcel map, tentative subdivision map, vesting parcel map or vesting tentative subdivision map, any subdivision improvement agreement related to the development of the Property or any portion thereof, and all Vested Components shall automatically be extended, consistent with Government Code Section 66452.6(a)(1), for the longer of:

(i) The Term and any extension of the Term established under Section 8.1.1; or

(ii) The term of the particular map otherwise allowed under the Subdivision Map Act (Government Code Section 66410 et seq.) and the City's subdivision ordinance.

(b) The term of any use permits or other entitlements for development for all or any part of the Property shall be extended, consistent with Government Code Section 65863.9, for the longer of:

(i) The Term and any extension of the Term established under Section 8.1.1;

(ii) The term of that permit or entitlement; or

(iii) The term of a subdivision map or parcel map relating to that portion of the Property that is the subject of the permit or other entitlement.

8.2. Cancellation. This Agreement may be canceled in whole or in part, by mutual consent of the Parties to the Agreement or their successors in interest in conformance with Government Code section 65868.

8.3. Termination

8.3.1. Termination Date. This Agreement shall be deemed terminated ("**Termination Date**") and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the Term or any extended Term; or

(b) Entry, after all appeals have been exhausted, of a final court judgment or issuance of a final court order directed to the City to set aside, withdraw, or abrogate the City's approval of this Agreement or any material part thereof; or

(c) The effective date of a Party's election to terminate the Agreement as provided in this Agreement; or

(d) When the Property has been fully developed and all of the Landowner's obligations in connection therewith are satisfied as determined by the City.

8.3.2. Recordation Upon Termination. Upon termination of this Agreement pursuant to Section 8.3.1, the City shall record a notice of such termination in a form satisfactory to the City Attorney. This Agreement shall automatically terminate and be of no further force or effect as to any lot or parcel containing a structure for which the City has issued a Certificate of Occupancy, provided that all public infrastructure and facilities necessary to serve such structure have been completed and offered for dedication to the City, as reasonably determined by the City.

8.3.3. Effect Upon Termination on Landowner Obligations. Termination of this Agreement as to the Landowner of the Property or any portion thereof shall not affect any of the Landowner's obligations to comply with the General Plan and the terms and conditions of any applicable zoning, or subdivision map or other land use entitlements approved with respect to the Property, nor shall it affect any other covenants or any other development requirements specified in this Agreement to continue after the termination of this Agreement, or obligations to pay assessments, liens, fees or taxes.

8.3.4. Effect of Termination on Vested Rights. Upon any termination of this Agreement as to any portion of the Property, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the portion of the Property affected by such termination. However, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall remain vested and in effect for those portions of the Property not affected by such termination. Notwithstanding the foregoing, vesting of such entitlements, conditions or fee limitations may nonetheless be established for such portion of the Property affected by the termination pursuant to then-existing planning and zoning law and common law, as applicable.

8.4. Default

8.4.1. Default by Landowner. Failure or unreasonable delay by Landowner to perform any term, provision, or condition of this Agreement, or creation by Landowner of a condition or circumstance which will render such performance impossible, for a period of three (3) months after written notice thereof from the City shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Said notice shall specify the nature of the alleged default and, where appropriate, the manner and period of time in which said default might be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such three (3) month period, the commencement of the cure within such time period and the good faith diligent pursuit to completion of the cure shall be deemed a cure within such period. During any cure period, the Landowner shall not be considered in default for the purposes of termination or institution of legal proceedings, and City shall continue to process in good faith development applications relating to the Property during any cure period, but need not approve any such application if it relates to a proposal on the Property with respect to which there is an alleged default hereunder. If the default is cured, then no default shall exist and the noticing Party shall take no further action.

Subject to the foregoing, after notice and expiration of the three (3) month period without cure or commencing to cure, the City, at its option, may institute legal proceedings pursuant to this Agreement and/or give notice of intent to terminate the Agreement pursuant to Government Code Section 65868. Following such notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council in the manner set forth in Government Code Sections 65865, 65867, and 65868.

Following consideration of the evidence presented in said review before the City Council, and a determination by the City Council based thereon, the City, at its option, may

give written notice of termination of this Agreement to the Landowner by personal delivery, or overnight mail, mailing costs prepaid.

8.4.2. Default by City. In the event City does not accept, review, approve, or issue development permits, entitlements, or other land use or building approvals for use in a timely fashion as provided in this Agreement or as otherwise agreed to by the Parties, or the City otherwise defaults under the terms of this Agreement, Landowner shall have all rights and remedies provided herein or under applicable law or equity (except as limited herein). Landowner shall provide City with written notice of the default and the City shall have ten (10) days to notify Landowner of City's initial action to cure the default and thirty (30) days from receipt of the Landowner's notice to cure the default.

8.4.3. Waiver of Default. Waiver of any default or breach of any provision of this Agreement by a Party shall not be deemed to be waiver of any subsequent default or breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided herein. Either Party's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of that Party's consent to, or approval of, any subsequent act by either Party.

8.4.4. Remedies; No Money Damages. In the event either Party is in default under the terms of this Agreement, the non-defaulting Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies, and/or (iii) pursue judicial remedies consistent with this Agreement.

(a) Except as otherwise specifically stated in this Agreement, either Party may institute legal action to cure, correct, or remedy a default by the other Party to this Agreement, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation hereunder or to seek specific performance. For purposes of instituting a legal action under this Agreement, any City Council determination under this Agreement as it relates to an alleged default hereunder shall be deemed a final agency action.

(b) The Parties hereby acknowledge and agree that they would not have entered into this Agreement if doing so would subject either Party to the risk of incurring liability in money damages, either for breach of this Agreement, anticipatory breach, repudiation of the Agreement, or for any actions with respect to its negotiation, preparation, implementation or application. The Parties further acknowledge that money damages and remedies at law generally are inadequate, and specific performance is the most appropriate remedy for the enforcement of this Agreement and should be available to all Parties for the following reasons:

(1) Money damages are excluded;

(2) Due to the size, nature, and scope of the Project, it may not be practical or possible to restore the Property to its original condition once implementation of this Agreement has begun, and after such

implementation, Landowner may be foreclosed from other choices it may have had to utilize the Property or portions thereof. Landowner has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate Landowner for such efforts.

(c) Therefore, the Parties hereby acknowledge and agree that it is a material part of each Party's consideration to the other Party that neither Party shall be at any risk whatsoever to liability for money damages relating to or arising from this Agreement, and except for non-damages remedies, including the remedy of specific performance, City, on the one hand, and Landowner, on the other hand, for themselves, their successors and assignees, hereby release one another's officers, trustees, directors, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth and Fourteenth Amendments of the United States Constitution, or any other law or ordinance which seeks to impose any money damages, whatsoever, upon the Parties because the Parties entered into this Agreement, because of the terms of this Agreement, or because of the manner of implementation or performance of this Agreement.

8.5. Transfers and Assignments.

8.5.1. Transfers Generally. No sale, transfer or assignment of this Agreement, or of any right or interest under this Agreement ("**Transfer**"), shall release Landowner from its obligations under this Agreement without the prior written consent of the City Manager, which consent may not be unreasonably withheld, conditioned or delayed. Within ten (10) days prior to any such sale, transfer or assignment of this Agreement, Landowner shall notify City of such pending sale, transfer or assignment and the name of the purchaser, transferee or assignee ("**Transferee**"), and shall provide to City an executed Assignment and Assumption Agreement in substantially the form of **Exhibit D** to this Agreement, specifying the obligations and requirements to be assumed by Transferee and the effective date of the proposed Transfer. City may request Landowner provide additional information relating to the Transfer or to the proposed Transferee. The City Manager shall review and approve or disapprove, in writing, Landowner's request for City's consent to release Landowner from its obligations under this Agreement within thirty (30) days following Landowner's satisfactory provision of any such additional information requested by City. Factors that the City Manager may consider with respect to any proposed Transfer may include, without limitation, the financial ability of the proposed Transferee to satisfy the Landowner's obligations under this Agreement, and the experience of the proposed Transferee in developing, constructing, operating and maintaining development projects similar to the Project. If the City Manager does not approve Landowner's request and refuses to grant the consent to the proposed Transfer, the

written refusal shall state the reasons therefor and the corrections to be made to obtain such consent.

8.5.2. Effect of Transfer. If Landowner has provided City with the executed Assignment and Assumption Agreement described in Section 8.5.1 above, then immediately upon the City Manager's issuance of the written approval and consent to the proposed Transfer, Landowner shall be released from any further liability or obligation under this Agreement related to any transferred Property as specified in the Assignment and Assumption Agreement, and the Transferee shall be deemed to be the Landowner under this Agreement with all rights and obligations related thereto, with respect to such Transferred Property.

8.5.3. Rights of Landowner. The provisions in this Section 8.5 shall not be deemed to prohibit or otherwise restrict Landowner from (i) granting easements or licenses to facilitate development of the Property, (ii) encumbering the Property or any portion thereof or of the improvements thereon by any mortgage, deed of trust, or other devise securing financing with respect to the Property or Project, (iii) granting a leasehold interest in portions of the Property, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, or (v) transferring all or a portion of the Property pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a mortgage.

8.5.4. Binding on Successors. Subject to the limitations on sales, transfers and assignments set forth in Section 8.5.1 above, the burdens of this Agreement shall be binding on, and the benefits of this Agreement shall inure to, all successors-in-interest to the City and Landowner pursuant to Government Code section 65868.5.

8.6. No Agency, Joint Venture or Partnership

8.6.1. No Relationship Created. It is specifically understood and agreed to by and between the Parties hereto that:

(a) the subject development is a private development;

(b) except for City projects, the City has no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that the City formally accepts the dedication of such improvements;

(c) the Landowner shall have full power over, and exclusive control of, the Project and the Project site, subject only to the limitations and obligations of Landowner under Project Approvals and this Agreement; and

(d) the City and Landowner hereby renounce the existence of any form of agency relationship, partnership, joint venture, or a joint powers agreement under Government Code Section 6000 et seq., or otherwise, between the City and Landowner and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the City and Landowner.

8.6.2. Representations by Landowner. Landowner shall not represent and conduct itself as an employee, agent, representative, or independent contractor of the City at any time during the term of this Agreement.

8.6.3. Authority of Parties. Landowner shall not have the authority, express or implied, to act on behalf of, bind or obligate the City or any City department, City agent or City employee in any way without the written consent of the City. City shall not have the authority, express or implied, to act on behalf of, bind or obligate Landowner, or any Landowner agent or Landowner employee in any way without the written consent of Landowner.

8.7. Indemnification

8.7.1. Indemnity. To the fullest extent permitted by law, including the provisions of Government Code section 66474.9(a), Landowner shall indemnify, hold harmless and defend the City and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with, the performance of this Agreement by the Landowner or Landowner's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Notwithstanding the foregoing, Landowner's obligation to indemnify the City and its agents, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the Landowner in contributing to such claim, damage, loss and expense, and shall not extend to claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees (i) arising out of or resulting from the sole negligence or willful misconduct of the City or its officers, employees, agents, or (ii) relating to the maintenance, repair or condition of any improvement after dedication and acceptance of such improvement by the City or any other public agency (except as provided in an improvement agreement or warranty bond).

8.7.2. Attack of Proceedings. To the fullest extent permitted by law, Landowner shall defend, indemnify, and hold harmless the City and its agents, officers, and employees from any claim, action, or proceeding against the local agency or its agents, officers, or employees to attack, set aside, void, or annul, an approval of the local agency, advisory agency, appeal board, or legislative body concerning a subdivision, which action is brought within the time period provided for in Section 65009.

8.7.3. Effect of Insurance. Landowner's obligation to defend, indemnify and hold the City and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Landowner to procure and maintain a policy of insurance.

8.7.4. Defense of Claim. If any such claim, action, or proceeding is brought against City or City's officers, officials, employees, independent contractors, or agents,

Landowner, upon notice from City, shall defend the City at Landowner's expense by counsel satisfactory to City.

8.7.5. Notice of Claim. City shall promptly notify Landowner of any claim, action, or proceeding against City or City's officers, officials, employees, independent contractors, volunteers, or agents relating to the performance, or failure to perform, any term or condition of this Agreement. City shall cooperate fully in the defense of such claim, action, or proceeding.

8.8. Governing Law and Venue. This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Sonoma, State of California.

8.9. Cumulative Remedies. In addition to any other rights or remedies, City and Landowner may institute legal or equitable proceedings to cure, correct or remedy any default, to specifically enforce any covenant or agreement herein (including, without limitation, the timely processing and approval of any Subsequent Approval), to enjoin any threatened or attempted violation of the provisions of this Agreement.

8.10. California Tort Claims Act. Notwithstanding any term or condition of this Agreement, the provisions of the California Tort Claims Act [Division 3.6 (commencing at Section 810) of Title 1 of the Government Code] are not waived by the City and shall apply to any claim against City arising out of any acts or conduct by any Party under the terms and conditions of this Agreement

8.11. Third Party Legal Actions. If there are any third party administrative, legal or equitable actions challenging any of the Project Approvals, including, without limitation, this Agreement and all CEQA processes and actions by City relating to the Project, Landowner shall defend and indemnify City against any and all fees and costs arising out of the defense of such actions, including the reasonable fees and costs of City's own in-house or special counsel retained to protect City's interests. Each Party is entitled to legal counsel of its choice, at Landowner's expense. The Parties and their respective counsel shall cooperate with each other in the defense of any such actions, including in any settlement negotiations. If a court in any such action awards any form of money damages to such third party, or any attorneys' fees and costs to such third party, Landowner shall bear full and complete responsibility to comply with the requirements of such award, and hereby agrees to timely pay all fees and costs on behalf of City.

8.12. Cooperation in the Event of Legal Challenge. If any part of this Agreement, any Project Approval, or any Subsequent Approval is held by a court of competent jurisdiction to be invalid, the Parties shall cooperate and use their best efforts, to the extent permitted by law, to cure any inadequacies or deficiencies identified by the court in a manner consistent with the purposes of this Agreement.

ARTICLE 9
MISCELLANEOUS PROVISIONS

9.1. Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(ies), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

9.2. Advice of Attorney. Each Party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

9.3. Construction

9.3.1. Captions. Headings or captions to the provisions of this Agreement are solely for the convenience of the Parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both Parties had in fact drafted this Agreement.

9.3.2. Numbers and Gender. In this Agreement, the neuter gender includes the feminine and masculine, and the singular includes the plural, the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

9.3.3. Mandatory and Permissive. "Shall" and "will" and "agrees" are mandatory. "May" is permissive.

9.4. Time Is Of the Essence. Time is of the essence regarding each provision of this Agreement as to which time is an element.

9.5. Conflict of Interest. Neither a City employee whose position in the City enables such employee to influence the award or administration of this Agreement or any competing Agreement, nor a spouse or economic dependent of such an employee, shall be employed, hired or retained in any capacity, either directly or indirectly, by the Landowner, or have any other direct or indirect financial interest in this Agreement, during the term of this Agreement and for a period of two (2) years after the termination of this Agreement.

9.6. No Third Party Beneficiary. Nothing herein shall be construed to create any right of a third party to enforce this Agreement or to seek any benefit therefrom.

9.7. Notice. Any notice, demand, correspondence, communication, amendment, addition or deletion to this Agreement, including change of address of either Party during the term of this Agreement, which Landowner or City shall be required or may desire to make shall be in

writing and may be personally served or, alternatively, sent via overnight mail, mailing costs prepaid, to the respective Parties as follows:

To City:	CITY OF CLOVERDALE 124 N. Cloverdale Blvd. Cloverdale, CA 95425 Attn: City Manager
With a copy to:	Cloverdale City Attorney c/o Meyers Nave 401 Mendocino Avenue, Suite 100 Santa Rosa, CA 95401
To Landowner:	SPIGHT PROPERTIES II LLC c/o Tyris Corporation 1220 Diamond Way, Suite 100 Concord, CA 94520 Attn: Andrew Zamberlin
With a copy to:	Jarvis, Fay, Doporto & Gibson, LLP 492 Ninth Street, Suite 310 Oakland, CA 94607 Attn: Daniel P. Doporto

Each such notice, demand, approval, consent, or other communication shall be deemed given and received upon delivery. A Party may change or supplement the addresses given above, or designate additional addressees, for purposes of this Agreement by giving the other Party written notice of the new address in the manner set forth above.

9.8. Severability. Except as otherwise provided herein, if any provision of this Agreement is subsequently held or determined to be invalid, the remainder of this Agreement shall not be affected, except as necessarily required by the invalid provision, and such remainder of this Agreement shall remain in full force and effect, unless amended or modified in writing by the mutual consent of the Parties. However, if any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive either Party of an essential benefit of its bargain hereunder, then either Party shall have the option to terminate this entire Agreement, effective from and after such determination, by written notice of termination given by the terminating Party to the other Party.

9.9. Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between any of the Parties herein with respect to the subject matter hereof and contains all the agreements between the Parties with respect to such matter. Each Party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any Party, or anyone acting on behalf of any Party, which is not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

9.10. Form of Agreement; Exhibits. This Agreement shall be executed in two (2) duplicate originals, each of which is deemed to be an original. The following documents are referred to in this Agreement and are attached hereto and incorporated herein as though set forth in full:

Exhibit A	**Property Legal Description**
Exhibit B	**Development Impact Fee Schedule - Effective July 1, 2015**
Exhibit C	**Private and Public Trail/Road Map**
Exhibit D	**Assignment and Assumption Agreement**

In Witness Whereof, the Parties have executed this Agreement on the day and year first hereinabove written.

CITY OF CLOVERDALE

By: _____
Paul Cayler
Its: City Manager

SPIGHT PROPERTIES II LLC

By: _____
Elena R. Spight
Its: Manager

Attest:
CLOVERDALE CITY CLERK

By: _____
Linda Moore
Its: Deputy City Clerk

Approved as to Form:
CITY ATTORNEY

By: _____
Jose M. Sanchez
Its: City Attorney

NOTARY ACKNOWLEDGEMENTS TO DEVELOPMENT AGREEMENT
ALEXANDER VALLEY RESORT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CA

County of CONTRA COSTA

On 3.16.16 before me, LINDA M. GRANIERO, NOTARY personally appeared ELENA R. SPIGHT, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacities, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Linda M. Graniero

Signature of Notary Public

2513301.1

LINDA M. GRANIERO
Commission # 2028991
Notary Public - California
Contra Costa County
My Comm. Expires Jun 14, 2017

EXHIBIT A

EXHIBIT A (Page 1 of 10)
to Development Agreement (Alexander Valley Resort)
between City of Cloverdale and Spight Properties II LLC

THE LAND HEREIN REFERRED TO IS SITUATED IN THE CITY OF CLOVERDALE, COUNTY OF SONOMA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

Being a portion of the Musalacon Rancho, described as follows:

Commencing at an iron pin at the southeast corner of the 52.42 acre tract formerly owned by John W. Caldwell, et ux, by Deed recorded April 26, 1921 in Book 399 of Deeds, Page 35, Sonoma County Records, said point being on the northerly line of the 12.13 acre tract of F. Chiocciora; thence along the easterly line of said Caldwell tract North 0°10' East 36.30 feet to the southwest corner of the lands formerly of George Brush; thence along the southerly line of the lands formerly of Brush, North 81°15' East 100 feet, more or less, to a point which bears North 3°30' East from the northeasterly corner of the 39.40 acre tract described in the Deed of Joseph Lile recorded in Book 226 of Official Records, Page 464; thence South 3°30' West 280 feet, more or less, to the northeasterly corner of said Lile, thence along the northwesterly line of Lile South 57°30' West 120 feet, more or less, to a point which bears South 0°10' West from the point of commencement; thence North 0°10' East 300 feet more or less, to the point of commencement.

A.P. NO. 116-260-012

PARCEL TWO:

Commencing at a 6"x6" concrete monument on the easterly right of way of the Healdsburg-Cloverdale Highway opposite Engineers Station "L" 349+21.36; thence northerly along said right of way line, curving to the right with a radius of 970 feet 128.23 feet to an iron pipe monument; thence North 47°54' East 2740 feet to an iron pipe monument, the point of beginning; thence North 47°54' East 1318.41 feet to an iron pipe monument on the bank of the Russian River; thence along said bank downstream South 38°39'30" East, 1142.02 feet to an iron pipe monument; thence South 59°20'10" West and along the northerly line of the lands conveyed to Edward C. Emmons, and Wife, by Deed dated October 8, 1934 and recorded January 15, 1935 in Book 377 of Official Records, Page 271, Serial No. A-55713, 986.74 feet to an iron pipe monument on the westerly right of way line of the Northwestern Pacific Railroad; thence South 48°03'45" West 288.45 feet to an iron pipe monument; thence North 42°06' West 948.67 feet to the point of beginning. Being all that certain property described in that certain Deed from Dorothy C. Roundy and others to Vernon Arthur Lile and Francis Charles Lile by Deed dated March 31, 1949 recorded in Book 879 of Official Records, Page 180, in the office of the County Recorder, County of Sonoma, State of California.

Excepting therefrom that portion lying northeasterly of a line described as follows:

Beginning on the Northwesterly line of the lands conveyed to Edward C. Emmons and wife, by Deed dated October 8, 1934 and recorded January 15, 1935 in Book 377 of Official Records, Page 271, Sonoma County Records, at a post marked "Point #1, Proposed Property Line", which post is North 59°20' East 655 feet, more or less, measured along the said property line from the centerline of the Northwestern Pacific Railroad Track; thence North 22 1/2° West 417 feet, more or less, to a 10" Willow Tree marked "Point #2, Proposed Property Line", thence North 49 1/4° West 396 feet, more or less, to a 10" Cottonwood Tree marked "Point #3, Proposed Property Line", thence South 87 3/4° West 390 feet, more of less; thence North 36°36' West 40 feet to a point on the southeasterly line of the lands of Clifford I. Lile, which point is located South 47°54' West 100.5 feet from the former most easterly corner of the Clifford I. Lile property, and North 47°54' East 485 feet, more or less, measured along the said southeasterly line of Clifford I. Lile's property from the centerline of the Northwestern Pacific Railroad Track.

Also excepting therefrom that portion lying southwesterly of the northeasterly boundary of the Northwestern Pacific Railroad.

A.P. NO. 116-310-013

PARCEL THREE:

PARCEL A:

A strip of land 100 feet in width lying along and adjacent to the entire easterly boundary of that certain parcel of real property which is described as follows:

Being a portion of the Musalacon Rancho and a portion of the lands conveyed to Joseph A. Lile by Deed recorded May 11, 1929 in Book 226 of Official Records, Page 464, under Recorder's Serial No. 92289, Sonoma County Records, and by Deed recorded September 17, 1919 in Book 375 of Deeds, Page 20, Sonoma County Records, and more particularly described as follows:

Commencing at a point on the west side of a concrete bridge on a railroad over Porterfield Creek between said lands of the above mentioned Joseph A. Lile and the lands of Frank Chiocciora as conveyed to him by deed dated March 1, 1948 and recorded April 30, 1948 under Recorders Serial No. C-66364, Sonoma County Records; thence crossing said railroad North 66°45' East 1.55 chains to the east side of said bridge and railroad and the true point of beginning of the lands to be herein described; thence from said true point of beginning along the line as established in that Boundary Line Agreement between Kate E. Leist George E. Lile, recorded July 9, 1917 in Book 35 of Maps, at Page 6, Sonoma County Records, North 61°45' East 5.75 chains to a point; thence continuing along said line North 57°30' East 22.62 chains to a point, said point being the most northerly corner of the Lile Ranch as shown in Book 35 of Maps, Page 6; thence from said point and along the above mentioned Boundary Line Agreement between George E. Lile and Melville and Ingram South 3°30' west a distance of 6.75 chains to the most northerly corner of the lands conveyed to Joseph A. Lile by Deed dated August 13, 1919 and recorded September 17, 1919 in Book 375 of Deeds, Page 20, Sonoma County Records; thence continuing along said Boundary Line Agreement South 3°30' West a distance of 6.10 chains to a point; thence South 36°30' East a distance of 2.40 chains to the northerly corner of the former Markell Ranch and later owned by Clifford Lile and wife by Deed recorded December 7, 1943, Book 596 Page 299 under Recorder's Serial No. B-70017, Sonoma County Records; thence along the line between Joseph A. Lile and Clifford Lile, South 47°28' West a distance of 13.12 chains, more or less to the easterly line of the railroad; thence northerly along the easterly line of said railroad to the point of beginning.

Said 100 foot strip of land shall commence at the north on the southerly boundary of the lands of Frank Chiocciora and terminate at the south on the Northerly boundary of the lands of Clifford I. Lile.

PARCEL B:

A strip of land 100 feet in width lying along and adjacent to the entire northeasterly boundary of that certain parcel of real property which is described as follows:

Lying within Rancho Rincon De Musalacon and being a portion of the lands conveyed to Clifford Lile and wife by Deed recorded December 7, 1943, in Book 600 of Official Records, Page 8, Recorder's Serial No. B-70019, Sonoma County Records, said portion being described as follows:

Beginning at a 2" iron pipe monument marking the point of intersection of the northeasterly line of the right of way of the Northwestern Pacific Railway Company with division line between said lands conveyed to Clifford Lile and wife and the lands of Joseph A. Lile and wife and from which point a White Oak Tree 10" in diameter and marked "D.L.J.S.O. BT" bears South 58°30' East a distance of 85 Links; thence from said point of beginning North 47°28' East and along said division line 13.12 chains; more or less, to the common easterly corner of said lands of Clifford Lile and wife and Joseph A. Lile and wife; thence south 36°30' East and along the easterly line of said lands conveyed to Clifford Lile and wife 15.40 chains, more or less, to the Southeasterly corner thereof; thence

South 47°40' West and along the southerly line of said lands 5.31 chains, more or less, to the most easterly corner of the 27.50 acre tract conveyed to the United states of America by Deed recorded March 28, 1921 in Book 398 of Deeds, Page 280, Sonoma County Records; thence North 59°15' West and along the northeasterly line of said 27.50 acre tract 6.07 1/2 chains, more or less, to the southeasterly line of said lands conveyed to Clifford Lile and wife; thence South 47°28' West and along the southeasterly line of said lands of Lile 3 chains, more or less, to the northeasterly line of the right of way of the Northwestern Pacific Railway Company; thence North 58°06'15" West and along the northeasterly line of said right of way a distance of 10 chains, more or less, to the point of beginning.

Said 100 foot strip of land shall commence at the northwest on the Southeasterly boundary of the lands of Joseph A. Lile and terminate at the southeast on the northwesterly boundary of the lands of Francis Charles Lile, Vernon Arthur Lile and Dorothy C. Roundy.

PARCEL C:

All that portion of the tract of land of Dorothy C. Roundy, et al, described below, lying northeasterly of a line described as follows:

Beginning on the Northwesterly line of the lands conveyed to Edward C. Emmons, et ux, by Deed dated October 8, 1934 and recorded January 15, 1935 in Book 377 of Official Records, Page 271, Sonoma County Records, at a post marked "Point #1, Proposed Property Line", which post is North 59°20' East 655 feet, more or less, measured along the said property line from the centerline of the Northwestern Pacific Railroad Track; thence North 22 1/2° West 417 feet, more or less, to a 10" Willow Tree marked "Point #2, Proposed Property Line", thence North 49 1/4° West 396 feet, more or less, to a 10" Cottonwood Tree marked "Point #3, Proposed Property Line", thence South 87 3/4° 390 feet, more of less; thence North 36°36' West 40 feet to a point on the southeasterly line of the lands of Clifford I. Lile, which point is located South 47°54' West 100.5 feet from the former most easterly corner of the Clifford I. Lile property, and North 47°54' East 485 feet, more or less, measured along the said southeasterly line of Clifford I. Lile's property from the centerline of the Northwestern Pacific Railroad Track.

The tract of land of Dorothy C. Roundy, et al, hereinabove referred to is that certain parcel of land described as follows:

Commencing at a 6" x 6" concrete monument on the easterly right of way line of the Healdsburg-Cloverdale Highway opposite Engineer's Station "L" 349+21.36; thence northerly along said right of way line, curving to the right with a radius of 970 feet, 128.23 feet to an iron pipe monument; thence North 47°54' East 2740 feet to an iron pipe monument, the point of beginning; thence North 47°54' East 1318.41 feet to an iron pipe monument on the bank of the Russian River; thence along said bank downstream South 38°39'30" East, 1142.02 feet to an iron pipe monument; thence South 59°20'10" West and along the northerly line of the lands conveyed to Edward C. Emmons, et ux, by Deed dated October 8, 1934 and recorded January 15, 1935 in Book 377 of Official Records, Page 271, Recorders Serial No. A-55713, Sonoma County Records, 986.74 feet to an iron pipe monument on the westerly right of way line of the Northwestern Pacific Railroad; thence South 48°03'45" West 288.45 feet to an iron pipe monument; thence North 42°06' West 948.67 feet to the point of beginning and as described in that certain Deed from Dorothy C. Roundy, et al, to Vernon Arthur Lile and Francis Charles Lile by Deed dated March 21, 1949, recorded in Volume 879 of Official Records, Page 180, in the office of the County Recorder, County of Sonoma, State of California.

A.P. NO. 116-310-014

PARCEL FOUR:

Commencing at the northeasterly corner of the underpass on the Northwestern Pacific Railroad Company right of way at or near Engineers Station 4323/12; thence North 61°56' East 100 feet; thence South 28°04' East 200 feet; thence South 61°56' West 100 feet to the easterly line of said right of way; thence northerly along the easterly line of said right of way to the point of commencement.

A.P. NO. 117-050-010

PARCEL FIVE:

Those two 10 foot strips of land designated (c) in the Deed from Edward C. Emmons, et ux, to Molalla Forest Products, Inc., a California corporation, dated October 31, 1964 and recorded May 21, 1965 under Sonoma County Recorder's Serial No. J-44872.

A.P. NO. 117-050-011 & 012

PARCEL SIX:

Commencing at the point of intersection of the northerly line of the 240.17 acre tract conveyed by Marie L. Dehay to Edward C. Emmons, et ux, by Deed recorded January 15, 1935 in Book 377 of Official Records, Page 271; with the easterly line of the 80 foot strip conveyed to the Northwestern Pacific Railroad Company, recorded in Book 41 of Deeds, Page 97; thence along the northerly line of said 240.17 acre tract North 58°59' East 1113.28 feet; thence South 50°31' East 691.68 feet; thence South 21°46' East 896.28 feet; thence North 81°08' East 326.70 feet; thence South 6°12' East 1799.82 feet to Station 8 of the Dehay Estate; thence South 77°38' West 928 feet, more or less, to the easterly right of way line of said Northwestern Pacific Railroad Company at or near Engineer's Station 4307/37.40; thence along the easterly line of said right of way northerly and northwesterly to the point of commencement.

Excepting therefrom the following:

(a) Commencing at the northeasterly corner of the underpass on the Northwestern Pacific Railroad Company right of way at or near Engineer's Station 4323/12; thence North 61°56' East 100 feet; thence South 28°04' East 200 feet; thence South 61°56' West 100 feet to the easterly line of said right of way; thence northerly along the easterly line of said right of way to the point of commencement, together with a right to use the above described underpass for access to one-half acre tract and to maintain the delivery main and appurtenant facilities;

(b) A 10 foot strip along the entire northerly line of the above described premises and another 10 foot strip along the entire southerly line of said premises.

A.P. NO. 117-050-017

PARCEL SEVEN: (ADJUSTED PARCEL 3 - 2011 LLA)

Lying within the County of Sonoma, State of California and being portions of Tract D, Tract F, and Tract E of the Lands of Spight Properties II LLC, as described by Deed recorded December 31, 2001 under Document No. 2001-181126 and as shown on that Record of Survey filed for record in Book 634 of Maps, Page 41 through 46, both Sonoma County Records, said portions being combined to form one parcel of land more particularly described as follows:

COMMENCING at the most southerly corner of Parcel Two of said Tract F, of said lands of Spight Properties II, said corner being marked by a 1/2 iron pipe and tagged LS 5759 as shown on said Record of Survey; thence along the common line of said lands and the lands conveyed to the State of California by Deed recorded January 15, 1974 in Book 2830 of Official Records, Page 566, Sonoma County Records, North 43°50'54" West, 373.32 feet to a ½ iron pipe tagged LS 5759; thence continuing along said common line, North 38°59'32" West, 243.56 feet; thence continuing along said common line, on a curve to the right having a radius 2960.00 feet, through a central angle of 0°29'49", a length of 17.92 feet to the POINT OF BEGINNING; thence continuing along said curve to the right with a radius of 2960.00 feet, through a central angle of 1°05'19", a length of 56.25 feet; thence leaving said westerly line North 46°32'39" East, 6.72 feet; thence on a curve to the left with a radius of 21.00 feet, through a central angle of 65°45'31", a length of 24.10 feet; thence North 19°12'52" East, 63.16 feet; thence on a curve to the right with a radius of 329.00 feet, through a central angle of 27°28'30", a length of 157.76 feet; thence North 08°15'38" East 790.62 feet; thence North 38°38'14" East, 240.97 feet; thence on a non tangent curve to the left, from a tangent that bears South 45°32'28" East, with a radius of 209.24 feet, through a central angle of 10°59'40", a length of 40.15 feet; thence South 57°36'55" East, 661.42 feet; thence on a curve to the left with a radius of 175.00 feet, through a central angle of 9°48'07", a length of 29.94 feet; thence South 67°32'05" East, 61.00 feet; thence North 47°29'21" East, 121.75 feet; thence South 71°29'47" East, 168.85 feet; thence South 33°37'06" East, 133.99 feet; thence South 52°26'43" East, 91.95 feet; thence South 64°51'35" East, 93.31 feet; thence South 70°34'14" East, 66.20 feet; thence North 90°00'00" East, 24.24 feet; thence South 22°51'50" East, 119.62 feet; thence, on a non tangent curve to the left from a tangent that bears North 67°39'59" East, with a radius of 180.16 feet, through a central angle of 11°57'20", a length of 37.59 feet; thence North 55°33'36" East, 35.13 feet; thence North 27°12'15" West, 107.17 feet; thence North 54°20'22" East, 70.51 feet; thence North 22°28'40" West, 218.68 feet; thence North 26°53'15" West, 121.81 feet; thence North 60°41'21" East, 78.42 feet; thence on a non tangent curve to the right, from a tangent that bears North 7°01'02" West with a radius of 58.33 feet, through a central angle of 100°45'25", a length of 102.58 feet; thence North 03°34'42" East, 117.68 feet; thence South 74°39'04" East, 108.16 feet; thence South 51°25'51" East, 88.31 feet; thence South 27°43'56" East, 48.93 feet; thence South 9°57'04" East, 123.89 feet; thence South 22°56'00" East, 139.49 feet; thence South 30°53'38" East, 170.23 feet; thence South 70°28'31" East, 288.55 feet; thence South 29°22'25" East, 135.15 feet; thence South 9°21'16" West, 122.01 feet; thence North 73°21'05" West, 97.36 feet; thence on a curve to the right from a tangent that bears South 49°50'53" West, with a radius of 95.92 feet through a central angle of 117°14'58", a length of 196.28 feet; thence North 69°55'51" West, 170.96 feet; thence North 87°47'33" West, 45.06 feet; thence South 62°24'32" West, 64.80 feet; thence South 58°44'36" West 165.93 feet; thence South 68°19'45" West, 65.60 feet; thence South 87°18'03" West, 77.94 feet; thence North 86°07'25" West, 86.87 feet; thence North 71°27'59" West, 122.40 feet; thence North 65°57'19" West, 90.08 feet; thence North 82°26'55" West, 67.13 feet; thence South 83°17'39" West, 100.58 feet; thence South 72°07'52" West, 95.69 feet; thence South 64°11'32" West, 101.17 feet; thence South 59°29'35" West, 114.24 feet; thence North 85°44'05" West, 148.04 feet; thence North 12°52'25" West, 105.40 feet; thence North 70°34'22" West, 255.92 feet; thence on a curve to the left with a radius 80.00, through a central angle of 18°55'02", a length of 26.41 feet; thence North 89°29'24" East, 117.51 feet; thence on a curve to the left having a radius of 80.00 feet, through a central angle of 40°09'42", a length of 56.08 feet; thence South 50°20'54" West, 45.00 feet; thence on a curve to the left with a radius of 180.00 feet, through a central angle of 42°05'16", a length of 132.22 feet; thence South 08°15'38" West, 88.00 feet; thence on a curve to the left having a radius of 273.00 feet, through a central angle of 27°28'30", a length of 130.91 feet; thence South 19°12'52" East, 63.16 feet; thence on a curve to the right having a radius of 77.00 feet, through a central angle of 65°45'31", a length of 88.37 feet; thence South 46°32'39" West, 11.65 feet to the Point of Beginning.

A.P. No. 117-050-024

Basis of Bearings being North 43°50'31" West, 674.97 feet between found centerline well monuments per Record of Survey filed in Book 634 of Maps, Pages 41-46, Sonoma County Records.

Pursuant to that certain Lot Line Adjustment (LLA 36-09) Lot Line Adjustment Grant Deed recorded July 26, 2011, Instrument No. 2011062704, Official Records.

PARCEL EIGHT: (ADJUSTED PARCEL A - 2012 LLA)

Lying within the City of Cloverdale, State of California, within the Rancho Musalacon, being a portion of Tract I, Parcel Two of the lands of Spight Properties II, LLC as said lands are described in that certain deed recorded in the Office of the Sonoma County Recorder under Document Number 2001-181126, and a portion of the lands of Spight Properties II, LLC, as said lands are described in that deed recorded in the Office of the Sonoma County Recorder under Document Number 2011-062705, both Official Records of Sonoma County, said portions being combined to form one parcel of land more particularly described as follows:

Commencing at the common southerly corner of said lands of Spight Properties II and the lands of the State of California as described in that deed recorded in the Office of the Sonoma County Recorder in Book 2787, Page 130, Official Records of Sonoma County; thence, along the common line of said lands, North 22°54'09" East 17.06 feet to the beginning of a 940.00 foot radius non- tangent curve, concave westerly; thence, northwesterly along said curve, from a tangent bearing of North 9°22'43" West, through a central angle of 5°00'42" a length of 82.22 feet to the Point of Beginning; thence, continuing along said common line, continuing along said 940 foot radius curve, through a central angle of 22°47'30" for a length of 373.92 feet; thence North 37°10'55" West 373.83 feet to the beginning of a curve having a radius of 1560.00 feet, concave easterly; thence, northwesterly along said curve through a central angle of 3°16'22" a length of 89.11 feet to the most southerly corner of that parcel described in the deed to the City of Cloverdale recorded in the Office of the Sonoma County Recorder under Document Number 2003-210020, Official Records of Sonoma County; thence, along the southeasterly line of last said parcel the following three courses: (1) North 48°18'39" East 461.96 feet lying South 48°18'39" West 79.00 feet from the northeasterly line (produced) of said lands of Spight Properties II to the beginning of a curve having a radius of 20.00 feet; (2) on a 20.00 foot radius curve, concave southerly, through a central angle of 90°00'00" for an arc length of 31.42 feet; (3) North 48°18'39" East 59.03 feet to the most easterly corner of said lands of the City of Cloverdale and the northeasterly line of said lands of Spight Properties II; thence, along said easterly line, South 41°41'56" East 890.39 feet to a ½ inch iron pipe, tagged LS5759 as shown on the Record of Survey filed for record in the Office of the Sonoma County Recorder in Book 649 of Maps at Page 31, Official Records of Sonoma County and the north line of the aforesaid lands of Spight Properties II (Document Number 2011-062705); thence, along the common line of said lands of Spight Properties II, South 49°02'48" West 307.47 feet to a point distant thereon 425.78 feet northeasterly of the most southerly corner of said Tract I, Parcel 2; thence, leaving said common line, South 11°11'52" West 99.07 feet to the northerly line of the lands of Spight Properties II as described in that deed recorded under Document Number 2011-062703; thence, along last said line the following two courses: (1) North 78°48'08" West 73.00 feet to the beginning of a curve having a radius of 168.00 feet, concave southerly; (2) thence northwesterly along said curve, through a central angle of 1°22'14", for an arc length of 4.02 feet to the southeasterly line of Parcel 2 of Tract I, distant thereon 300.26 feet northeasterly of the southerly terminus thereof; thence, continuing northwesterly along said 168 foot radius curve, through a central angle of 50°21'55", for an arc length of 147.68 feet; thence South 49°27'43" West 59.54 feet to the beginning of a curve concave northeasterly having a radius of 72.00 feet; thence, northwesterly along said curve, through a central angle of 27°15'46", an arc length of 34.26 feet; thence South 76°43'29" West 37.93 feet to the Point of Beginning.

A.P. No. 117-050-026 formerly portions of A.P. No. 116-310-068 and A.P. No. 117-050-025.

Basis of bearings being South 43°50'31" East between found state well monuments 184 and 186, as calculated from the coordinate values listed on the State of California monument map S-66.11 "Cloverdale Bypass" (12/1994).

Pursuant to that certain Lot Line Adjustment (LLA 027-2011) Lot Line Adjustment Grant Deed recorded November 2, 2012, Instrument No. 2012109610, Official Records and Lot Line Adjustment Grant Deed (Corrected) recorded April 1, 2013, Instrument No. 2013033143, Official Records.

PARCEL NINE: (ADJUSTED PARCEL B - 2012 LLA)

Lying within the City of Cloverdale, County of Sonoma, State of California and being a portion of the lands of Spight Properties II, LLC, as described in that certain deed recorded in the Office of the Sonoma County Recorder under Document Number 2011-062705, Official Records of Sonoma County, said portion being more particularly described as follows:

Commencing at a point on the common line of said Tract D and Parcel Two of Tract I of said lands of Spight Properties II, LLC, distant thereon North 49°02'48" East 300.26 feet from the southerly terminus of said common line; thence, leaving said common line along a curve to the right from a tangent that bears North 80°10'22" East, with a radius of 168.00 feet, through a central angle of 01°22'14", a length of 4.02 feet; thence South 78°48'08" East, 73.00 feet to the Point of Beginning; thence, continuing along said common line, North 83°02'34" East 27.00 feet to the beginning of a curve to the left with a radius of 72.00 feet; thence easterly along said curve, through a central angle of 32°15'29", a length of 40.54 feet; thence North 68°56'23" East, 111.62 feet; thence on a curve to the right having a radius of 248.00 feet, through a central angle of 28°01'03", a length of 121.27 feet; thence South 83°02'34" East, 82.62 feet; thence North 52°25'22" East, 650.96 feet; thence South 38°32'38" East, 51.79 feet; thence South 29°40'05" East, 45.13 feet; thence South 03°20'04" East, 74.94 feet; thence South 04°24'06" West, 132.20 feet; thence South 09°56'16" West, 144.08 feet; thence South 02°28'39" West, 151.92 feet; thence South 00°28'32" East, 290.25 feet; thence South 15°24'52" West, 42.84 feet; thence South 54°52'57" West, 46.46 feet; thence South 88°12'09" West, 39.35 feet; thence North 63°42'22" West, 56.69 feet; thence North 54°43'16" West, 96.30 feet; thence North 48°46'54" West, 298.64 feet; thence North 41°00'36" West, 148.55 feet; thence North 14°27'31" West, 101.63 feet; thence North 83°02'34" West, 57.70 feet; thence on a curve to the left having a radius of 192.00 feet, through a central angle of 28°01'03", a length of 93.89 feet; thence South 68°56'23" West, 111.62 feet; thence on a curve to the right having a radius of 128.00 feet, through a central angle of 32°15'29", a length of 72.07 feet; thence North 78°48'08" West, 78.00 feet; thence South 11°11'52" West 68.96 feet; thence, southerly and southeasterly along a curve to the left with a radius of 148.00 feet, through a central angle of 55°00'00", a length of 142.07 feet; thence South 43°48'08" East 102.95 feet; thence South 51°23'55" West 414.50 feet to the westerly line of said Tract D and the easterly line of the lands conveyed to the State of California by deed recorded January 15, 1974 in Book 2830 of Official Records, Page 566, Sonoma County Records; thence along the common line of said lands South 09°43'53" East 97.64 feet; thence South 01°30'08" West 193.41 feet; thence southerly and southeasterly along a curve to the left with a radius of 1160 feet, through a central angle of 33°44'14" a length of 683.04 feet to a point of compound curvature; thence southeasterly from a radial bearing of South 57°45'46" West along a curve to the left with a radius of 2960 feet through a central angle of 05°19'11"; a length of 274.83 feet; thence leaving said westerly line North 46°32'39" East, 6.72 feet; thence on a curve to the left with a radius of 21.00 feet, through a central angle of 65°45'31", a length of 24.10 feet; thence North 19°12'52" East, 63.16 feet; thence on a curve to the right with a radius of 329.00 feet, through a central angle of 27°28'30", a length of 157.76 feet; thence North 08°15'38" East 790.62 feet; thence North 38°38'14" East, 240.97 feet; thence on a non tangent curve to the left, from a tangent that bears South 45°32'28" East, with a radius of 209.24 feet, through a central angle of 10°59'40", a length of 40.15 feet; thence South 57°36'55" East, 661.42 feet; thence on a curve to the left with a radius of 175.00 feet, through a central angle of 9°48'07", a length of 29.94 feet; thence South 67°32'05" East, 61.00 feet; thence North 47°29'21" East, 121.75 feet; thence South 71°29'47" East, 168.85 feet; thence South 33°37'06" East, 133.99 feet; thence South 52°26'43" East, 91.95 feet; thence South 64°51'35" East, 93.31 feet; thence South 70°34'14" East, 66.20 feet; thence North 90°00'00" East, 24.24 feet; thence South 22°51'50" East, 119.62 feet; thence, on a non tangent curve to the left from a tangent that bears North 67°39'59" East, with a radius of 180.16 feet, through a central angle of 11°57'20", a length of 37.59 feet; thence North 55°33'36" East, 35.13 feet; thence North 27°12'15" West, 107.17 feet; thence North 54°20'22" East, 70.51 feet; thence North 22°28'40" West, 218.68 feet; thence North 26°53'15" West, 121.81 feet; thence North 60°41'21" East, 78.42 feet; thence on a non tangent curve to the right, from a tangent that bears North 07°01'02" West with a radius of 58.33 feet, through a central angle of 100°45'25", a length of 102.58 feet; thence North 03°34"42" East, 117.68 feet;

thence South 74°39'04" East, 108.16 feet; thence South 51°25'51" East, 88.31 feet; thence South 27°43'56" East, 48.93 feet; thence South 9°57'04" East, 123.89 feet; thence South 22°56'00" East, 139.49 feet; thence South 30°53'38" East, 170.23 feet; thence South 70°28'31" East, 288.55 feet; thence South 29°22'25" East, 135.15 feet; thence South 9°21'16" West, 122.01 feet; thence North 73°21'05" West, 97.36 feet; thence on a curve to the right from a tangent that bears South 49°50'53" West, with a radius of 95.92 feet through a central angle of 117°14'58", a length of 196.28 feet; thence North 69°55'51" West, 170.96 feet; thence North 87°47'33" West, 45.06 feet; thence South 62°24'32" West, 64.80 feet; thence South 58°44'36" West 165.93 feet; thence South 68°19'45" West, 65.60 feet; thence South 87°18'03" West, 77.94 feet; thence North 86°07'25" West, 86.87 feet; thence North 71°27'59" West, 122.40 feet; thence North 65°57'19" West, 90.08 feet; thence North 82°26'55" West, 67.13 feet; thence South 83°17'39" West, 100.58 feet; thence South 72°07'52" West, 95.69 feet; thence South 64°11'32" West, 101.17 feet; thence South 59°29'35" West, 114.24 feet; thence North 85°44'05" West, 148.04 feet; thence North 12°52'25" West, 105.40 feet; thence North 70°34'22" West, 255.92 feet; thence on a curve to the left with a radius 80.00, through a central angle of 18°55'02", a length of 26.41 feet; thence North 89°29'24" East, 117.51 feet; thence on a curve to the left having a radius of 80.00 feet, through a central angle of 40°09'42", a length of 56.08 feet; thence South 50°20'54" West, 45.00 feet; thence on a curve to the left with a radius of 180.00 feet, through a central angle of 42°05'16", a length of 132.22 feet; thence South 08°15'38" West, 88.00 feet; thence on a curve to the left having a radius of 273.00 feet, through a central angle of 27°28'30", a length of 130.91 feet; thence South 19°12'52" East, 63.16 feet; thence on a curve to the right having a radius of 77.00 feet, through a central angle of 65°45'31", a length of 88.37 feet; thence South 46°32'39" West, 11.65 feet to the aforesaid common line of the lands of Spight Properties II, LLC and the State of California; thence along said common line, southeasterly along a curve to the left with a radius of 2960 feet, from a radial bearing of North 36°42'51" West, through a central angle of 00°29'49", a length of 17.92 feet; thence South 38°59'32" East 243.56 feet; thence South 43°50'54" East 373.32 feet to the most westerly corner of said lands of Spight Properties II, LLC; thence leaving said common line, along the southerly line of said lands of Spight Properties II, LLC, North 50°08'14" East 718.82 feet and North 78°08'32" East 1606.74 feet to the most easterly corner said Tract E of said lands of Spight Properties II, LLC and the westerly line of the Northwest Pacific Railroad right-of-way (80 feet wide); thence along the common line of said Tract E and Tracts A and C and said railroad right-of-way the following four courses: From a tangent bearing of North 22°28'24" West, northerly along a curve to the left with a radius of 3730.77 feet, through a central angle of 02°47'23" a length of 181.65 feet to a point of compound curvature; thence northerly along a curve to the left with a radius of 6406.99 feet, through a central angle of 01°45'56" a length of 197.44 feet; thence North 27°34'54" West 2130.30 feet to railroad survey station 4332+27.7B.C.; thence northerly along a curve to the left with a radius of 3862.89 feet, through a central angle of 06°37'25" a length of 454.35 feet to the most easterly common corner of Tract D of said lands of Spight Properties II and the lands of Rege as described by deed recorded April 23, 2004 under Document Number 2004059349, Official Records of Sonoma County; thence along the northwesterly line of said Tract D, South 48°42'10" West 277.84 feet; thence continuing along said northwesterly line, South 48°42'54" West 1017.94 feet to the most easterly corner of aforesaid Tract Two of Tract I of said lands of Spight Properties II, LLC; thence, continuing along said northwesterly line, South 49°02'48" West 307.47 feet to a point distant thereon 125.52 feet northeasterly of the Point of Commencement; thence, South 11°11'52" West 99.07 feet to the Point of Beginning.

A.P. No. 117-050-027 formerly portion of A.P. No. 117-050-025.

Basis of bearings being South 43°50'31" East between found state well monuments 184 and 186, as calculated from the coordinate values listed on the State of California monument map S-66.11 "Cloverdale Bypass" (12/1994).

Pursuant to that certain Lot Line Adjustment (LLA 027-2011) Lot Line Adjustment Grant Deed recorded November 2, 2012, Instrument No. 2012109611, Official Records and Lot Line Adjustment Grant Deed (Corrected) recorded April 1, 2013, Instrument No. 2013033144, Official Records.

PARCEL TEN: (ADJUSTED PARCEL C - 2012 LLA)

Lying within the City of Cloverdale, County of Sonoma, State of California and being a portion of the lands of Spight Properties II, LLC, as described in that deed recorded December 31, 2001 in the Office of the Sonoma County Recorder under Document Number 2001-181126 and the lands of Spight Properties II, LLC, as described in that deed recorded July 26, 2011 under Document Number 2011-062703, both Official Records of Sonoma County, said portions being combined to form one parcel of land more particularly described as follows:

Commencing at a ½" Iron Pipe tagged PLS 5759, marking an angle point in the northerly line of the lands of Spight Properties II as shown on said Record of Survey at the intersection of those courses shown as South 41°07'45" East and North 48°42'54" East; thence along the common line of said Tract D and Parcel 2 of Tract I of said lands of Spight Properties II South 49°02'48" West 432.99 feet to the Point of Beginning; said Point of Beginning bears North 49°02'48" East 300.26 feet along said common line from the southwesterly terminus thereof; thence, leaving said common line along a curve to the right from a tangent that bears North 80°10'22" East, with a radius of 168.00 feet, through a central angle of 01°22'14", a length of 4.02 feet; thence South 78°48'08" East, 100.00 feet; thence on a curve to the left having a radius of 72.00 feet, through a central angle of 32°15'29", a length of 40.54 feet; thence North 68°56'23" East, 111.62 feet; thence on a curve to the right having a radius of 248.00 feet, through a central angle of 28°01'03", a length of 121.27 feet; thence South 83°02'34" East, 82.62 feet; thence North 52°25'22" East, 650.96 feet; thence South 38°32'38" East, 51.79 feet; thence South 29°40'05" East, 45.13 feet; thence South 03°20'04" East, 74.94 feet; thence South 04°24'06" West, 132.20 feet; thence South 09°56'16" West, 144.08 feet; thence South 02°28'39" West, 151.92 feet; thence South 00°28'32" East, 290.25 feet; thence South 15°24'52" West, 42.84 feet; thence South 54°52'57" West, 46.46 feet; thence South 88°12'09" West, 39.35 feet; thence North 63°42'22" West, 56.69 feet; thence North 54°43'16" West, 96.30 feet; thence North 48°46'54" West, 298.64 feet; thence North 41°00'36" West, 148.55 feet; thence North 14°27'31" West, 101.63 feet; thence North 83°02'34" West, 57.70 feet; thence on a curve to the left having a radius of 192.00 feet, through a central angle of 28°01'03", a length of 93.89 feet; thence South 68°56'23" West, 111.62 feet; thence on a curve to the right having a radius of 128.00 feet, through a central angle of 32°15'29", a length of 72.07 feet; thence North 78°48'08" West, 100.00 feet; thence on a curve to the left having a radius of 112.00 feet, through a central angle of 33°40'18", a length of 65.82 feet to the said common line of Tract D and Parcel 2 of Tract I, distant thereon North 49°02'48" East 205.61 feet from the southwesterly terminus thereof; thence continuing northwesterly along said 112 foot radius curve through a central angle of 18°03'51" an arc length of 17.80 feet; thence, South 49°27'43" West 59.59 feet to the beginning of a curve to the right with a radius of 128.00 feet; thence, westerly along said curve through a central angle of 27°15'46" an arc length of 60.91 feet; thence, South 76°43'29" West 38.51 feet to the common line of said Parcel 2 of Tract I and the lands of the State of California as described in that deed recorded in the Office of the Sonoma County Recorder in Book 2787, Page 130, Official Records of Sonoma County; thence along last said line on a 940 foot radius curve to the left from a tangent bearing of North 9°22'43" West, through a central angle of 3°24'51" an arc length of 56.01 feet; thence leaving said common line, North 76°43'29" East 37.93 feet to the beginning of a curve to the left with a radius of 72.00 feet; thence northeasterly along said curve through a central angle of 27°15'46" an arc length of 34.26 feet; thence North 49°27'43" East 59.59 feet to the beginning of a curve to the right with a radius of 168.00 feet; thence northeasterly and easterly along said curve, through a central angle of 50°21'55" an arc length of 147.68 feet to the Point of Beginning.

A.P. No. 117-050-028 formerly portion of A.P. No. 116-310-068 and A.P. No. 117-050-023

Basis of bearings being South 43°50'31" East between found state well monuments 184 and 186, as calculated from the coordinate values listed on the State of California monument map S-66.11 "Cloverdale Bypass" (12/1994).

Pursuant to that certain Lot Line Adjustment (LLA 027-2011) Lot Line Adjustment Grant Deed recorded November 2, 2012, Instrument No. 2012109612, Official Records.

PARCEL ELEVEN: (ADJUSTED PARCEL D - 2012 LLA)

Lying within the City of Cloverdale, County of Sonoma, State of California and being a portion of Parcel 2 of Tract I of the lands of Spight Properties II, LLC, as described by deed recorded December 31, 2001 under Document Number 2001-181126 and the lands of Spight Properties II, LLC, as described in that deed recorded July 26, 2011 in the Office of the Sonoma County Recorder under Document Number 2011-062702, both Sonoma County Records, said portions being combined to form one parcel of land more particularly described as follows:

Beginning at the southwesterly terminus of the common line of said lands of Spight Properties, II (Document Number 2011-062702) and Parcel Two of Tract I of said lands of Spight Properties II, LLC, said Point of Beginning being the most northerly corner of the parcel of land conveyed to the State of California by deed recorded January 15, 1974 in Book 2830 of Official Records, Page 563, Sonoma County Records; thence, along the westerly line of said Tract D and the easterly line of last said parcel, South 22°54'18" East 148.85 feet; thence, continuing along last said line, South 09°43'53" West 261.53 feet; thence leaving said line, North 51°23'55" East 414.50 feet; thence North 43°48'08" West 102.95 feet to the beginning of a 148.00 foot radius curve to the right; thence northwesterly and northeasterly along said curve, through a central angle of 55°00'00", a distance of 142.07 feet; thence North 11°11'52" East 68.96 feet; thence North 78°48'08" West 22.00 feet to the beginning of a 112.00 foot radius curve to the left; thence westerly along said curve, through a central angle of 33°40'18", for a distance of 65.82 feet to the aforesaid common line of Tract D and Tract I, Parcel 2, distant thereon North 49°02'48" East 205.61 feet (Deed: North 48°07' East) from the southerly terminus thereof; thence, continuing westerly and southwesterly along said 112.00 foot radius curve to the left through a central angle of 18°03'51" an arc length of 35.31 feet; thence South 49°27'43" West 59.59 feet to the beginning of a 128.00 foot radius curve to the right; thence westerly along said curve, through a central angle of 27°15'46" an arc length of 60.91 feet; thence South 76°43'29" West 38.51 feet to the common line of Spight Properties II, LLC, as described in that deed recorded in the Office of the Sonoma County Recorder under Document Number 2001-181126 and the lands of the State of California as described in that deed recorded in the Office of the Sonoma County Recorder in Book 2787, Page 130, both Official Records of Sonoma County; thence South 22°54'09" East 17.06 feet to the Point of Beginning.

A.P. No. 117-050-029 formerly A.P. No. 117-050-022 and portion of A.P. No.116-310-068

Basis of bearings being South 43°50'31" East between found state well monuments 184 and 186, as calculated from the coordinate values listed on the State of California monument map S-66.11 "Cloverdale Bypass" (12/1994).

Pursuant to that certain Lot Line Adjustment (LLA 027-2011) Lot Line Adjustment Grant Deed recorded November 2, 2012, Instrument No. 2012109613, Official Records.

EXHIBIT B

Exhibit B

2015 DEVELOPMENT IMPACT FEES

Effective July 1, 2015

DEVELOPMENT IMPACT FEE PROGRAM	2015 FEE
Public Facilities Development Impact Fee	
Single Family Residential	$4,895
Multi-family Residential	$3,613
Mobile Home	$3,946
Commercial (per 1,000 square feet)	$799
Industrial (per 1,000 square feet)	$559
Parks and Recreation Facilities	
Single Family Residential	$3,674
Multi-family Residential	$2,712
Mobile Home	$2,962
Quimby Act Parkland Acquisition	
Single Family Residential	$6,172
Multi-family Residential	$4,556
Non-Quimby Act Parkland Acquisition	
Single Family Residential	$6,172
Multi-family Residential	$4,556
Mobile Home	$4,976
Administration	
Single Family Residential	$587
Multi-family Residential	$434
Mobile Home	$474
Commercial (per 1,000 square feet)	$95
Industrial (per 1,000 square feet)	$67
Water Capacity	
Single Family Residential	$6,147
Multi-family Residential	$4,536
Mobile Home	$4,955
Commercial (per gallon)[1]	$18.90
Industrial (per gallon)[1]	$18.90
Wastewater Capacity	
Single Family Residential	$9,538
Multi-family Residential	$7,039
Mobile Home	$7,690
Commercial (per gallon)[1]	$58.66
Industrial (per gallon)[1]	$58.66
Street and Thoroughfare	
Single Family Residential 4 Bedroom	$2,689
Single Family Residential 3 Bedroom	$2,188
Single Family Residential 2 Bedroom	$1,743
Multi-family Residential 4 Bedroom	$2,177
Multi-family Residential 3 Bedroom	$1,686
Multi-family Residential 2 Bedroom	$1,213
Downtown Commercial (Per 1,000 sf)	$3,245
Service Commercial (per 1,000 sf)	$3,454
Destination Commercial (per 1,000 sf)	$3,245
General Industrial (per 1,000 sf)	$2,586
Public (per acre)	$5,935
Business Park (per 1,000 sf)	$4,089
Mixed Use Commercial (per 1,000 sf)	$3,245
Airport (per 1,000sf)	$1,714
Storm Drainage	
Single Family Residential	$218
Multi-family Residential	$58
Commercial (per Acre)	$1,051
Industrial (per Acre)	$1,051
Fire Facilities	
Single Family Residential	$1,284
Multi-family Residential	$1,255
Mobile Home	$1,118
Commercial (per 1,000 square feet)	$944
Industrial (per 1,000 square feet)	$661
Health Care	
Single Family Residential	$97
Multi-family Residential	$95
Mobile Home	$85
Commercial (per 1,000 square feet)	$72
Industrial (per 1,000 square feet)	$50

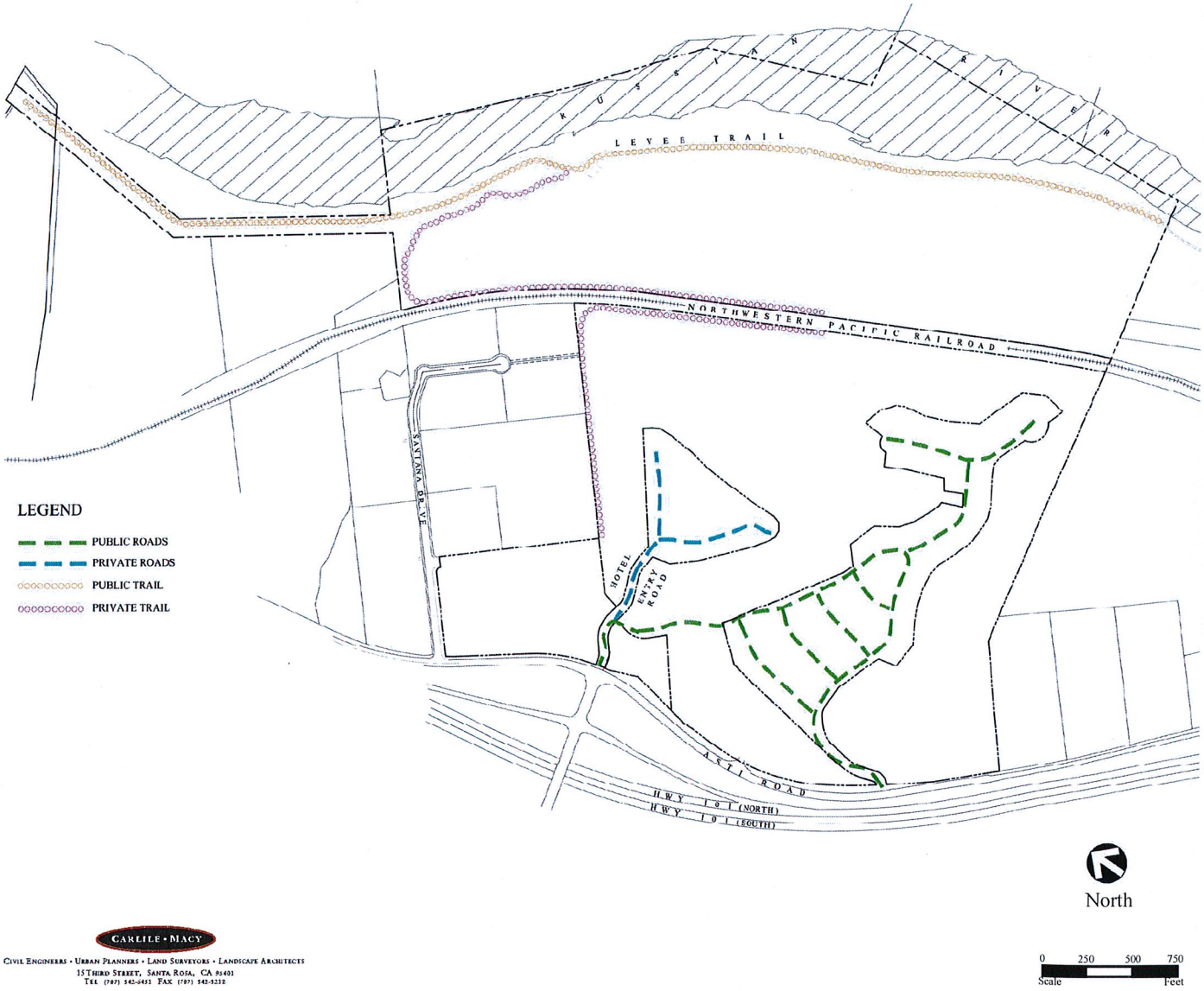
1. The actual amounts of the Water and Wastewater Capacity Fees for non-residential projects shall be calculated on a case-by case basis from the average daily water use and wastewater production for the project based on a water and wastewater use study prepared by a Registered Civil Engineer and subject to approval by the City Engineer.

Approved:

Paul Cayler, City Manager

EXHIBIT C

Exhibit C



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TEL (707) 542-6493 FAX (707) 542-5232

ILLUSTRATIVE PRIVATE AND PUBLIC TRAIL/ROAD MAP

ALEXANDER VALLEY RESORT SPECIFIC PLAN

NOVEMBER, 2015

EXHIBIT D

EXHIBIT D

FORM OF ASSIGNMENT

OFFICIAL BUSINESS Document entitled to free recording Government Code Section 6103 RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO: City of Cloverdale	

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

ASSIGNMENT AND ASSUMPTION AGREEMENT
RELATIVE TO ALEXANDER VALLEY RESORT PROJECT
(Parcel(s) ___ of the _____ Property)

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter, the "Agreement") is entered into this _____ day of _____, 201_, by and between _____, a _____(hereinafter "Assignor"), and _____, a _____ (hereinafter "Assignee").

RECITALS

On_____, 2015, the City of Cloverdale and entered into that certain agreement entitled "Development Agreement By and Between the City of Cloverdale and Spight Properties II LLC for the Alexander Valley Resort Project (hereinafter the "Development Agreement")." Pursuant to the Development Agreement, Assignor agreed to develop certain property more particularly described in the Development Agreement (hereinafter, the "Subject Property"), subject to certain conditions and obligations as set forth in the Development Agreement. The Development Agreement was recorded against the Subject Property in the Official Records of Sonoma County on _____, 201__, as Instrument No. 201__-_____.

Assignor intends to convey [all/a portion] of the Subject Property to Assignee, commonly referred to as Parcel(s) _____, and more particularly identified and described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter the "Assigned Parcel(s)").

Assignor desires to assign and Assignee desires to assume all right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Assigned Parcel(s).

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, Assignor and Assignee hereby agree as follows:

Assignor hereby assigns, effective as of Assignor's conveyance of the Assigned Parcel(s) to Assignee, all of the rights, title, interest, burdens and obligations under the Development Agreement with respect to the Assigned Parcel(s). Assignor retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other property within the Subject Property owned by Assignor, if any.

Assignee hereby assumes all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Assigned Parcel(s), and agrees to observe and fully perform all of the duties and obligations of Assignor under the Development Agreement with respect to the Assigned Parcel(s). The parties intend hereby that, upon the execution of this Agreement and conveyance of the Assigned Parcel(s) to Assignee, and so long as Assignor has paid City any and all fees or amounts due to City arising out of the Development Agreement, the processing of the Entitlements, and the development of the Assigned Parcel(s), Assignee shall become substituted for and as the "Developer" under the Development Agreement with respect to the Assigned Parcel(s), and Assignor shall be released of and from any obligations or liabilities under the Development Agreement with respect to the Assigned Parcel(s).

All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

The Notice Address described in Section 9.7 of the Development Agreement with respect to the Assigned Parcel(s) shall be:

_____

_____

_____

Attn: _____

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written. This Agreement may be signed in identical counterparts.

ASSIGNOR:	ASSIGNEE:
_____	_____
_, a _____	_, a _____
By: _____	By: _____
Print Name:_____	Print Name:_____
Title: _____	Title: _____

CONFIRMATION OF PAYMENT OF OUTSTANDING FEES
RELATED TO DEVELOPMENT OF ASSIGNED PARCEL

Upon request of _____, the Assignor of the Assigned Parcel(s) described herein, and based on the review of the City's files related to the development of the Assigned Parcel(s) and the obligations allocable thereto, the undersigned, as the City Community Development Director or designated representative thereof, hereby confirms that the Assignor appears to have paid to the City any and all fees or amounts allocable to the Assigned Parcel(s) and presently due to the City under or arising out of the Development Agreement, the processing of the Entitlements, and/or the development of the Assigned Parcel(s). This confirmation may be relied upon by Assignor to relieve Assignor of any continuing obligation as Assignor with respect to the Assigned Parcel(s) upon this Assignment becoming effective; provided, however, in the event of any mistake or error by the City in making this determination, the City shall not be prohibited or limited hereby from enforcing the obligation to pay any such fees or amounts allocable to the Assigned Parcel(s) subsequently determined to be due with respect thereto.

_____
By:_____
Title:_____

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO.703-2016

AN ORDINANCE OF THE CITY OF CLOVERDALE AMENDING TITLE 18, "ZONING," OF THE CITY MUNICIPAL CODE, MAKING CERTAIN CHANGES TO THE STANDARDS OF THE SP-1 (SPECIFIC PLAN) ZONING DISTRICT AND REZONING ONE PARCEL OF LAND TO THE SPECIFIC PLAN-1 (SP-1) ZONING DISTRICT WITHIN THE ALEXANDER VALLEY RESORT PROJECT, (APNs 116-260-012, 116-310-013 & -014, 117-050-010, -011, 012, -017, -024, -026, -027, -028 & -029)

THE CITY COUNCIL OF THE CITY OF CLOVERDALE HEREBY ORDAINS AS FOLLOWS:

SECTION 1. RECITALS

A. The Alexander Valley Resort Project ("Project"), is generally located south of Santana Drive, east of Asti Road, west of the Russian River and north of Cloverdale Municipal Airport.

B. The Project was originally approved by the City Council in 2009. The Project consisted of a resort, golf course, resort mixed-use site and housing. Tyris Corporation/Spight Properties II LLC (the "Applicant"), has requested certain changes to the Project.

C. The Applicant is requesting a General Plan Amendment to change the land use designation of 12.3 acre site on the southeast corner of Asti Road and Santana Drive owned by the applicant from "BP-Business Park" to "DSC-Destination Commercial" and other minor amendments to the Cloverdale General Plan, including but not limited to allowing a golf course within the Project as an optional recreational use, not a mandatory feature, and other minor amendments to ensure internal consistency within the General Plan.

D. The application also includes a request for an amendment to the Alexander Valley Resort Specific Plan, a Zoning Ordinance amendment rezoning the 12.3 acre site, which would now be included within the Specific Plan, from "MP-Industrial Park" to "Specific Plan-SP-1," and a Development Agreement. The Zoning Ordinance amendment designating the 12.3 acre site as Specific Plan-SP-1 would allow resort-oriented uses to be developed on the 12.3 acre site.

E. The California Environmental Quality Act ("CEQA"), together with the State Guidelines and City environmental regulations, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared. To comply with CEQA, the City prepared an Addendum to the environmental impact report that

was certified by the City in 2009, Alexander Valley Resort Project Environmental Impact Report, State Clearinghouse No. 2003072142 (the "2009 EIR").

F. The City Council has makes the following findings related to (1) the rezoning the parcel of land described as County Assessor's Parcel Number (APN) 117-050-026 to the SP-1 district; (2) the amendment to Section 18.08.040 of the Zoning Ordinance to add a "Resort Mixed-Use" category to the SP-1 district; (3) adding a list of permitted and conditional uses for the Resort Mixed-Use category; and (4) establishing development standards for future buildings within the Resort Mixed-Use land use category:

1. The proposed change of zone is consistent with the goals, objectives, policies and programs of the Cloverdale General Plan and is necessary and desirable to implement the provisions of the General Plan.

    a. *The proposed rezoning to the SP-1 zoning district for the 12.3 acre parcel located on the southeast corner of Asti Road and Santana Drive is consistent with the Alexander Valley Resort Specific Plan, which implements portions of the General Plan.*

    b. *Proposed development standards will provide guidance to the City, project owners and future developers as to the intent of the City to allow the orderly development of the affected property.*

2. The proposed change of zone will not adversely affect the public health, safety and welfare, or result in an illogical land use pattern.

    a. *The 2004 draft Alexander Valley Resort Environmental Impact Report has evaluated the public health, safety and welfare issues, and mitigation measures and the Addendum's Mitigation Monitoring and Reporting Program have provisions for eliminating or mitigating all such issues.*

    b. *The land use pattern proposed for the Project is consistent with the General Plan. The proposed option of an 18-hole golf course, Resort Hotel and other land uses are envisioned within the Area II Destination Commercial land use designations contained in the General Plan.*

3. The proposed change of zone is consistent with the purpose and intent of Chapter 18.03 of the Cloverdale Zoning Ordinance.

    a. *The proposed rezoning and revisions to the SP-1 District meets the Zoning Ordinance purpose of implementing the General Plan. The General Plan requires Specific Plan zoning for the Project site, and the Specific Plan and zoning provide for such land uses.*

4. The potential environmental impacts of the proposed rezoning are less-than-significant.

   a. *The rezoning will not adversely affect public health, safety or welfare as demonstrated by the analysis of public health and safety conditions contained in the draft 2004 Alexander Valley Resort EIR and Recirculated* DEIR (the "EIR"). *The EIR analyzed potential public health impacts, airport land use compatibility impacts, traffic safety impacts, geotechnical safety impacts, air quality and greenhouse gas emissions, potential flooding and safety impacts, impacts to public safety providers, and impacts related to soil and groundwater contamination. The EIR concludes that, with adherence to mitigation measures as set forth in the two DEIR documents including the Addendum, all safety impacts and conditions will be less than significant. The Mitigation Monitoring and Reporting Program will assure that all EIR mitigation measures are implemented.*

G. On February 9, 2016, the City Council held a properly noticed public hearing regarding this Zoning Ordinance Amendment and considered all comments received in writing and all testimony received at the public hearing.

SECTION 1. PURPOSE AND INTENT

The purpose and intent of these changes is to amend the Zoning Ordnance Text to rezone the 12.3 acre parcel at the southeast corner of Asti Road and Santana Drive to the SP-1 District and to amend the SP-1 District to add a "Resort Mixed-Use" land use category with a listing of permitted and conditional uses and development standards as shown on Exhibit 1.

SECTION 2. FINDINGS

The above recitals are hereby declared to be true and correct and hereby incorporated herein as the required Findings of the City Council of the City of Cloverdale.

SECTION 3. AMENDMENTS TO TITLE 18 OF THE CLOVERDALE MUNICIPAL CODE

Section 18.08.040, SP-1 Alexander Valley Resort, is amended to read as set forth in Exhibit A.

SECTION 4. RECLASSIFIED PROPERTIES

Title 18, "Zoning," of the City of Cloverdale Municipal Code is hereby amended by amending the "Zoning Map of the City of Cloverdale" so as to reclassify the 12.3 acre site on the southeast corner of Asti Road and Santana Drive to the Specific Plan 1 (SP-1) zoning district, as shown in Exhibit 1.

SECTION 5. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION 6. EFFECTIVE DATE

This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Council Members voting for or against the same, in a newspaper of general circulation published in the County of Sonoma, State of California.

I hereby certify that the foregoing is a true and complete copy of an ordinance duly and regularly adopted by the City at a regular meeting thereof held on February 9, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 23rd day of February, 2016 by the following vote: (Ayes-4; Noes-1; Absent-0)

AYES: Councilmember Palla, Vice Mayor Wolter, Councilmember Russell, and Councilmember Cox

NOES: Mayor Brigham

ABSENT: None

ABSTAIN: None

Mary Ann Brigham, Mayor

ATTEST:

Linda Moore, Deputy City Clerk

Attached: Exhibit 1- Amended Zoning

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 704-2016

AN ORDINANCE OF THE CITY OF CLOVERDALE APPROVING A DEVELOPMENT AGREEMENT WITH SPIGHT PROPERTIES II LLC PERTAINING TO THE DEVELOPMENT OF THE ALEXANDER VALLEY RESORT PROJECT LOCATED ON APPROXIMATELY 267 ACRES OF LAND LYING EAST OF ASTI ROAD, WEST OF THE RUSSIAN RIVER, SOUTH OF SANTANA DRIVE AND NORTH OF CLOVERDALE MUNICIPAL AIRPORT (APNs 116-260-012; 116-310-013 AND -014; 117-050-010, -011, -012, -017, -024, -026, -027, -028, AND -029)

THE CITY COUNCIL OF THE CITY OF CLOVERDALE HEREBY ORDAINS AS FOLLOWS:

SECTION 1. RECITALS

A. In order to strengthen the public land use planning process, to encourage private participation in comprehensive planning, to reduce the economic risk of development and to reduce the waste of resources, the Legislature of the State of California adopted the "Development Agreement Statute" (Government Code Section 65864 et seq.). The Development Agreement Statute authorizes the City and an applicant for a development project, having legal or equitable interest in the real property, to enter into a development agreement establishing certain development rights in, and obligations with respect to, the property which is the subject of a development project application. Pursuant to the Development Agreement Statute, the City adopted rules and regulations establishing procedures and requirements for consideration of development agreements on January 5, 1987 ("Development Agreement Resolution"). City staff and representative of Tyris Corporation/Spight Properties II LLC (the "Landowner") have processed, considered and executed a Development Agreement in accordance with those City rules and regulations.

B. The Development Agreement Statute permits cities and counties to contract with private interests for their mutual benefit in a manner not otherwise available to the contracting parties. Such agreements, as authorized by the Development Agreement Statute, can assure property owners and developers that development approvals granted by public agencies will not change during the period of development of their projects. Cities and counties are equally assured that costly infrastructure such as roads, sewers, schools, fire protection facilities, etc., will be available at the time development projects come on line.

C. Landowner is the owner of approximately 267 acres in the City of Cloverdale more particularly described in Exhibit A of the attached Development Agreement.

D. On June 10, 2009, the City Council of the City took the following actions with respect to the Property (collectively, the "2009 Approvals"):

1. By Resolution 027-2009, approved a Water Supply Assessment for the Alexander Valley Resort Project;

2. By Resolution 028-2009, certified the Final Environmental Impact Report consisting of a 2004 Draft Environmental Impact Report, a 2008 Recirculated Draft Environmental Impact Report and a 2009 Final Environmental Impact Report (collectively the "FEIR") and adopted a Mitigation Monitoring and Reporting Program for the Alexander Valley Resort Project;
3. By Resolution No. 029-2009, adopted the Alexander Valley Resort Specific Plan (the "2009 Specific Plan") and directed staff to file an annexation application for the Alexander Valley Resort Project; and
4. By Ordinance No. 671-2009, amended Chapter 18 of the City of Cloverdale Zoning Ordinance and prezoned the Property to the SP-1 Zoning District for the Alexander Valley Resort Project.

E. On February 10, 2010, the City Council of the City, by Resolution No. 014-2010, approved a revised Mitigation Monitoring and Reporting Program (the "MMRP") for the Alexander Valley Resort Project.

F. On April 7, 2010, the Sonoma County Local Agency Formation Commission, by Resolution No. 2579, approved a Sphere of Influence Amendment and a Reorganization of Territory designated as Cloverdale Reorganization No. 2009-001 (Alexander Valley Resort) approving the annexation of the Property to the City of Cloverdale. Such approval resulted in confirmation of the SP-1 zoning.
Since then, Landowner has completed the clean closure of the 22-acre wood waste landfill area which contained approximately 600,000 cubic yards of non-hazardous wood chips, bark, sawdust, soil and rock. Owner's clean closure has accomplished the following: (1) removal of potential future environmental liability associated with groundwater and surface water quality issues; (2) elimination of future monitoring and maintenance activities associated with the disposal site cap and drainage controls; (3) removal of the wood waste landfill from regulatory oversight; (4) reuse of the materials for beneficial purposes; and (5) preparation of the site for future uses, including the Project. The North Coast Regional Water Quality Control Board ("RWQCB") issued the final Waste Discharge Requirements ("WDRs"), Order No. R1-2005-0032, in June 2005, and Owner received clean closure certification in June 2012.

H. Landowner also completed extensive soil and groundwater remediation activities for the petroleum hydrocarbon-affected soil and groundwater east of the former head rig and for the affected soil south of the former mechanic shop in order to remove the source of petroleum hydrocarbons and to minimize future impacts to groundwater. PES Environmental, Inc. ("PES"), performed these remediation activities and has requested that the RWQCB consider "no further action" with regard to the hydrocarbons in soil and groundwater in these areas.

I. In addition, International Paper, Inc., as the successor in interest to Masonite Corporation, a former site operator, has been working with the RWQCB to investigate and remediate groundwater contamination at the site, including contamination of a deep aquifer under a portion of the Site. In August 2013, the RWQCB concurred with International Paper's proposed final cleanup remedy of Monitored Natural Attenuation ("MNA") for shallow and bedrock groundwater in certain areas of the Property. The Remedial Action Work Plan

approved by the RWQCB includes: (1) verification groundwater monitoring until the site groundwater achieves the cleanup goals; (2) deed restriction on a portion of the site where residual levels of wood treatment chemicals are present in soil; (3) a restricted area where groundwater use is prohibited; (4) destruction of certain groundwater monitoring wells and an old water supply well; and (5) a soil management plan to identify and address any contamination found during redevelopment. In accordance with Monitoring and Reporting Program No. R1-2013-0057, different MNA processes are occurring in different areas on the Property and reports are to be submitted to the RWQCB semi-annually. The five (5) remaining monitoring wells on the Property are not expected to impact Project development.

J. In 2015, Landowner applied to the City for certain revisions to the City's General Plan, the 2009 Specific Plan, and the Zoning Ordinance, and, as contemplated by the 2009 Specific Plan, Landowner also applied to the City for a Development Agreement to govern future development of the Property (collectively, the "Proposal"). The Proposal requests revision of the Specific Plan to make the golf course component an allowed rather than required use, and to provide for the possibility of an alternate recreation use if approved by the City Council. The Proposal also seeks to re-introduce a 12.3 acre parcel into the planning area that had been part of the original project assessed by the Draft Environmental Impact Report, and provides land use development standards for those 12.3 acres consistent with the existing zoning (M-P, Industrial Park) and the originally-proposed zoning (G-C, General Commercial).

K. In response to the 2015 application, the City undertook review of the FEIR prepared for the 2009 Approvals and determined that an addendum to the FEIR was appropriate for consideration and action on the 2015 application ("2015 Addendum").

L. On December 2, 2015 and January 5, 2016, at a duly-noticed public hearing, the City's Planning Commission considered the FEIR and the 2016 Addendum, Landowner's application for certain General Plan, 2009 Specific Plan, and Zoning Ordinance amendments; and this Agreement. Following due consideration, by Resolutions No. 00-2016, No. 003-2016, and No. 004-2016, the Planning Commission recommended to the City Council that the City Council not approve Landowner's application, although the Commission did support the preparation of the CEQA Addendum. The Landowner appealed the Planning Commission's action to the City Council.

M. On February 9, 2016, at a duly-noticed public hearing, the City Council of the City took the following actions relating to the Landowner's application:

1. By Resolution No. 013-2016, approved and adopted the 2015 Addendum to the FEIR;
2. By Resolution No. 014-2016, amended the City of Cloverdale General Plan;
3. By Resolution No. 015-2016, amended the 2009 Specific Plan (as amended, the "Specific Plan"); and
4. By Ordinance No703-2016, amended Chapter 18 of the City of Cloverdale Zoning Ordinance. Approvals 2, 3, and 4 above are collectively referred to herein as the "Project Approvals."

N. Landowner desires to sell the Property to a developer with the qualifications, expertise, and experience to develop the Property in accordance with the Project Approvals and as

contemplated in the draft Development Agreement. The development of the Property in accordance with the draft Development Agreement and the Project Approvals will provide for orderly growth within the City, consistent with the goals, policies, and other provisions of the City's General Plan and the Specific Plan.

O. The City recognizes that the economic success of the Project depends greatly upon the certainty and timing of the City's regulations and fees.

P. As contemplated by the Specific Plan, the City and Landowner desire to enter into the attached Development Agreement to identify and assign key implementing responsibilities, including but not limited to, vesting of entitlements, the construction of infrastructure, and continuing maintenance responsibilities and agreements.

Q. For the reasons recited herein, Landowner and the City have determined that the Project is the type of development for which the attached Agreement is appropriate. The Development Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property and otherwise achieve the goals and purposes for which the Development Agreement Statute and the Development Agreement Resolution were enacted.

R. In exchange for these benefits to the City, together with the public benefits that will result from the development of the Property pursuant to the Project Approvals, Landowner desires to receive the assurance that it may proceed with development of the Property, including receipt of building permits and all other permits and approvals required to complete construction of the Project in accordance with the terms and conditions of the draft Development Agreement.

S. On February 9, 2016, the City Council, as the legislative body for purposes of Development Agreement approval, held a properly noticed public hearing pursuant to Government Code section 65867 regarding the Development Agreement, and considered all comments received in writing and all testimony received at the public hearing.

SECTION 2. FINDINGS.

Therefore, on the basis of: (a) the foregoing recitals, which are hereby incorporated herein; (b) the City of Cloverdale's General Plan; and (c) the Alexander Valley Resort Project FEIR and Addendum to said FEIR, the City Council finds and determines that:

A. Pursuant to Government Code section 65867.5, the Development Agreement is consistent with the objectives, policies, general land uses and programs specified and contained in the City's General Plan and the approved Alexander Valley Resort Special Plan in that the property is designated for a destination resort hotel project that includes a spa, restaurant and conference center along with a major open space use, residential use and related commercial uses.

B. The Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use area in which the real property is located and

entitlements associated with such land use area, is consistent with the overall zoning for the site, Alexander Valley Resort Specific Plan and General Plan.

C. The Development Agreement is in conformity with public convenience, general welfare and good land use policies in that the Development Agreement will continue to implement land use guidelines set forth in the General Plan and help ensure a successful development that meets community and market needs. The Development Agreement is consistent with the policies of the Housing Element within the applicable General Plan, in that it allows for future construction of dwelling units as part of the resort development.

D. The Development Agreement will not be detrimental to the health, safety and general welfare in that the Project will proceed in accordance with the programs and policies of the General Plan and other Project Approvals.

E. The Development Agreement will not adversely affect the orderly development of the property, or the preservation of property values, in that the amendment is consistent with the applicable General Plan and the Alexander Valley Resort Specific Plan, and there is no evidence to suggest that this Project will lower property values.

F. The Development Agreement is consistent with and includes the substantive elements of Government Code sections 65864 through 65869.5, and has been processed consistent with all the procedural requirements thereof.

SECTION 3. APPROVAL OF DEVELOPMENT AGREEMENT

The City Council hereby approves the Development Agreement between the City of Cloverdale and Spight Properties attached to this ordinance as Exhibit 1, and authorizes the City Manager to execute the Development Agreement. Within ten (10) days after the Development Agreement is executed by the City Manager and Spight Properties, the City Clerk shall submit the Development Agreement to the County Recorder for recordation.

SECTION 4. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE

This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Council Members

voting for or against the same, in a newspaper of general circulation published in the County of Sonoma, State of California.

I hereby certify that the foregoing is a true and complete copy of an ordinance duly and regularly adopted by the City at a regular meeting thereof held on February 9, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this xx day of February, 2016 by the following vote: (Ayes-4; Noes-1; Absent-0)

AYES: Councilmember Palla, Vice Mayor Wolter, Councilmember Russell, and Councilmember Cox
NOES: Mayor Brigham
ABSENT: None
ABSTAIN: None

Mary Ann Brigham, Mayor

ATTEST:

Linda Moore, Deputy City Clerk

Attachment: Exhibit 1-Development Agreement between City of Cloverdale and Spight Properties II, LLC

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CITY OF CLOVERDALE

City Council/Successor Agency Agenda Item Summary

Agenda Item:	10
Meeting Date:	October 25, 2016

Agenda Section	**Staff Contact**
Consent	Stephen Cramer, Police Chief

Agenda Item Title

Waive second reading and readopt Ordinance No. 705-2016 Repealing and Replacing Cloverdale Municipal Code Chapter 5.24 Relating to Massage Therapy and Massage Establishments

Summary

California Government Code section 36933 requires that within 15 days after the adoption of an ordinance, a city publish a copy of the ordinance and the Council vote in a newspaper of general circulation. The Section also allows a city to only publish a summary of the ordinance instead of the entire document, if the City publishes such summary 5 days prior the adoption, and again within 15 days after the adoption, including the names of those city council members voting for and against the ordinance.

Ordinance No. 705-2016 was adopted by the City Council on March 22, 2016. Due to transitions of staff members, the City inadvertently did not publish a summary of the ordinance in the newspaper at least 5 days prior to the adoption and again within 15 days of the action.

In order to comply with the publishing requirements of Government Code section 36933, and to avoid publishing the entire ordinance, Ordinance No. 705-2016 is being placed before the City Council again for re-adoption. This is simply a re-adoption of the Ordinance. No changes to the substance of the Ordinance has been made.

Options

Waive second reading and readopt Ordinance 705-2016.

Recommended Council Action

Waive the second reading and readopt Ordinance 705-2016, repealing and replacing Cloverdale Municipal Code Chapter 5.24 relating to massage therapy and massage establishments

Attachments:

1. Ordinance 705-2016
2. Adopted Ordinance 705-2016

cc:

2721061.1

P.O. Box 217 • 124 North Cloverdale Blvd. • Cloverdale, CA 95425-0217 • Telephone (707) 894-2521 • FAX (707) 894-3451

ORDINANCE NO. 705-2016
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE REPEALING AND REPLACING CLOVERDALE MUNICIPAL CODE CHAPTER 5.24 RELATING TO MASSAGE THERAPY AND MASSAGE ESTABLISHMENTS

WHEREAS, there is substantial research that indicates that the skillful practice of massage can provide many health benefits including relief of pain from disease, injury and other sources, and that massage can be a valuable component of a wellness program; and

WHEREAS, the City of Cloverdale has an interest in the safe operation and licensing of massage businesses in the City; and

WHEREAS, in 1975, the City Council adopted Cloverdale Municipal Code Chapter 5.24, establishing regulations governing massage therapy businesses and practitioners; and

WHEREAS, on September 27, 2008, the Governor approved Senate Bill 731 ("SB 731"), which sanctioned Business and Professions Code sections 4600 et seq., known as the Massage Therapy Act, to the California Business and Professions Code, which provided for the formation of a nonprofit "Massage Therapy Organization" to oversee a State-sanctioned program of certification for massage therapy practitioners; and

WHEREAS, pursuant to SB 731, the "California Massage Therapy Council" was formed and established a scheme for a voluntary certification process for persons wishing to practice massage therapy in California, with the intention of enabling persons so certified to practice massage therapy in any city within the State without being required to obtain a local permit to practice; and

WHEREAS, SB 731 included a sunset clause, expiring on January 1, 2015, to allow the State to review the law and its impacts; and

WHEREAS, on September 18, 2014, Governor Brown signed Assembly Bill 1147 ("AB 1147"), effective January 1, 2015, which substantially changed Business and Professions Code sections 460, 4600-4621, and Government Code section 51034, by significantly revising existing laws regulating certified massage professionals and gave cities and counties some regulatory authority over massage establishments; and

WHEREAS, there have been significant changes to State laws relating to massage therapy and to the landscape of massage businesses in the City of Cloverdale, since the City of Cloverdale enacted Cloverdale Municipal Code Chapter 5.24; and

WHEREAS, a revision to the Cloverdale Municipal Code relating to massage therapy and massage establishments will streamline licensing procedures while promoting those businesses that provide legitimate and important health and therapeutic services to the community and prohibiting those businesses that conduct illicit activity; and

WHEREAS, a revision to Municipal Code Chapter 5.24 will also bring the City's local ordinance into compliance with uniform statewide regulations enacted by AB 1147; and

WHEREAS, this Ordinance is enacted pursuant to Government Code Sections 51030-51034 and Business and Professions Code Sections 4600 et seq., as amended by AB 1147.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLOVERDALE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Cloverdale Municipal Code Title 5, "Business Taxes, Licenses and Regulations," Chapter 5.24 entitled "Massage Parlors," as presently written, is hereby repealed in its entirety.

SECTION 2. New Chapter 5.24 entitled "Massage Therapy and Massage Establishments" is hereby incorporated into Title 5, "Business Taxes, Licenses and Regulations" and adopted to read as follows:

"Chapter 5.24

MASSAGE THERAPY AND MASSAGE ESTABLISHMENTS

5.24.010 Purpose and Intent.

It is the purpose and intent of this Chapter to provide for the orderly regulation of individuals and businesses providing massage therapy services, and to prevent and discourage the misuse of massage therapy as a front for prostitution, human trafficking, and related activities in violation of State law while protecting the interests of the public health, safety and welfare of the community by providing certain minimum standards for health and safety, building, sanitation, education, and operation standards for massage therapists and businesses.

It is the further intent of this Chapter to update and streamline local massage therapy permitting procedures, while still facilitating and advancing the ethical practice of massage therapy. It is also the intent of the City Council that this Chapter apply to any business, location or individual that provides massage services regardless of the business name or individual's title or position.

5.24.020. Definitions.

For the purpose of this Chapter, unless the context clearly requires a different meaning, the words, terms and phrases set forth in this Section shall have the meanings given them in this section:

A. "Applicant" shall mean the individual or individuals applying for a Massage Therapist Permit or a Massage Establishment Permit. Only an owner(s) may apply for a Massage Establishment Permit.

B. “California Massage Therapy Council” or “CAMTC” shall mean the non-profit organization created to regulate the massage industry set forth Chapter 10.5 of Division 2 of the Business and Professions Code of the State of California (commencing with Section 4600).

C. “CAMTC Certificate” shall mean a current and valid certificate issued by the California Massage Therapy Council to a massage practitioner pursuant to Business and Professions Code section 4601(b) or (c) or any later enacted amendment.

D. “CAMTC certified” shall mean any individual, certified by the CAMTC and possessing a valid CAMTC Certificate and is licensed to practice or administer massage, in exchange for any form of compensation within the City of Cloverdale. All persons certified by CAMTC shall have the right to perform or engage in the practice of massage consistent with the Massage Therapy Act, the qualifications established by his or her certification and the provisions of this Chapter stated herein.

E. “Chair massage” shall mean any massage given to a person who is fully clothed and sitting in an upright position on a professional bodywork seat, stool, office seat, wheelchair or other chair-like device.

F. “City” shall mean the City of Cloverdale.

G. “Client” shall mean the customer or patron who pays for or receives massage services.

H. “Compensation” means the payment, loan, advance, donation, contribution, deposit, exchange or gift of money or anything of value.

I. “Disqualifying offense” shall mean any offense which disqualifies an Applicant from obtaining a Permit pursuant to this Chapter. Disqualifying offenses are any of the following:

1. The Applicant has provided materially false information in his/her application.

2. Within five (5) years immediately preceding the date of the filing of the application, the Applicant has been convicted of, or pled guilty to, any of the following offenses: violation of Penal Code sections 243.4, 261, 266a through 266j, inclusive, 267, 288, 314 to 316 inclusive, 318, 647a, 647b,647d, 647i, 647j, any offenses requiring registration under Penal Code section 290 or Health and Safety Code section 11590; any felony offense involving the possession for sale, sale, transportation, furnishing or giving away of a controlled substance specified in Health and Safety Code sections 11054 to 11058, inclusive, as amended; violation of any charge related to human trafficking including United States Code Title 18, Chapter 77, Sections 1590, 1591 or 1592; any offense in another state which if committed in California, would have been punishable as one or more of the offenses mentioned here; any offense

involving the use of force or violence upon the person of another, or any offense involving theft, embezzlement or moral turpitude.

3. Any violation of any provision of this Chapter resulting in a suspension or revocation of any Permit issued under this Chapter, or a violation of a similar law in any other jurisdiction, which resulted in a suspension or revocation of a permit under that law.

J. "Employs or retains" shall mean a person that is a directly paid employee of the massage establishment; or an independent contractor who receives compensation for massage therapy provided to patrons of the massage establishment; or a person that receives a referral of patrons from the massage establishment and, at any time before or after the referral, arranges in any way for compensation to flow to the massage establishment operator (regardless of whether the parties involved acknowledge that compensation is flowing in exchange for the referral, or whether such parties record such compensation in their financial records).

K. "Employee" shall mean any person employed by a massage business who may render any service to the business and who receives any form of compensation from the business. For the purposes of this Chapter, the term "Employee" shall include independent contractors, agents and volunteers.

L. "Home occupation massage therapist" shall mean a massage therapist that practices massage within his or her own residence. All home occupation massage therapists are subject to the requirements for home occupation permits as set forth in Section 18.03.190 of the Cloverdale Municipal Code and no more than two (2) massage therapists may operate as home occupation massage therapists in any single residence.

M. "Inspector" shall mean the person or persons designated by the permit authority to conduct any inspections required or permitted under this Chapter.

N. "Manager" shall mean a person who supervises, manages, directs, organizes, controls, or in any other way is responsible for, or in charge of the conduct of, the activities within a massage business. Evidence of management includes, but is not limited to, evidence that the individual has power to direct or hire and dismiss employees, control hours of operation, create policy or rules or purchase supplies. A manager may also be an owner.

O. "Massage," and "Massage Therapy," for purposes of this Chapter are used interchangeably and shall mean the skillful application of touch, and any method of treating the external parts of the body for remedial, health or hygienic purposes for any form of compensation by means of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating, of the external parts of the body with hands or other parts of the body by a practitioner to produce increased awareness, relaxation, pain relief, injury rehabilitation or neuromuscular reeducation, with or without the aid of any mechanical or electrical apparatus or appliances; or with or without such supplementary aids as rubbing alcohol, liniments, antiseptic, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice; or by baths, including but not limited to Turkish,

Russian, Swedish, Japanese, vapor, shower, electric tub, sponge, mineral, mud, fermentation or any other type of bath.

P. "Massage business" shall mean any business that offers massage in exchange for compensation, whether at a fixed place of business or at a location designated by the customer or client through outcall or on-site massage services. The term "massage business" includes a Massage Therapist Permit holder or CAMTC certificate holder who is the sole owner, operator and employee of a massage business operating as a sole proprietorship and also includes home occupation massage therapists. For the purposes of this Chapter, the term "massage business" shall include those businesses that provide separate massage services, such as spas and day spas, but shall not apply to massages performed to limited areas of the neck, face and/or scalp, hands or feet of the clients when that massage is accessory to and within the scope of a barber's, cosmetologist's and esthetician's state license.

Q. "Massage establishment" shall mean any business or establishment that offers massage therapy in exchange for compensation at a fixed place of business. Any business or establishment that offers any combination of massage therapy and bath facilities including, but not limited to, showers, baths, wet and dry heat rooms, pools and hot tubs, shall be deemed a massage establishment under this Chapter. For the purposes of this Chapter, the term "massage establishment" shall include those businesses that provide separate massage services, such as spas and day spas, but shall not apply to massages performed to limited areas of the neck, face and/or scalp, hands or feet of the clients when that massage is an accessory to and within the scope of a barber's, cosmetologist's, and esthetician's state license.

R. "Massage establishment owner" or "owner of a massage establishment" or "owner" shall mean and include any of the following persons:

1. The sole proprietor of a sole proprietorship operating a massage establishment.

2. Any general partner of a general or limited partnership that owns a massage establishment.

3. Any person who has a ten percent (10%) or greater ownership interest in a corporation that owns a massage establishment.

4. Any person who is a member of a limited liability company that owns a massage establishment.

5. Any person who has a ten percent (10%) or greater ownership interest in any other type of business association that owns a massage business.

S. "Massage Establishment Permit," or "Permit holder" means the City-issued permit required by this Chapter to operate a massage establishment. Only an owner(s) may apply for a Massage Establishment Permit.

T. “Massage Therapist Permit,” or “Permit holder” means the City-issued permit required by this Chapter to operate as a massage therapist.

U. “On-site massage” shall mean a massage given to an individual who remains fully clothed during the massage and at a location other than a massage business, and is limited to massages that take place at malls, business offices, sports complexes, convention centers and public events.

V. “Operator” or “massage establishment operator” or “massage business operator” shall mean any and all owners or managers of a massage establishment.

W. “Out-call massage service” shall mean the engaging in or carrying on of massage therapy for compensation at a location other than a duly licensed massage establishment that has been permitted pursuant to this Chapter.

X. “Patron” shall mean an individual on the premises of a massage establishment for the purpose of receiving massage therapy.

Y. “Permit authority” means the Chief of Police, or his or her designee, charged with the administration of this Chapter.

Z. “Person” shall mean any individual, firm, association, partnership, corporation, joint venture, limited liability company or combination of individuals.

AA. “Reception and waiting area” shall mean the area immediately inside the main entry door of the massage establishment, dedicated to the reception and waiting of patrons, clients and visitors of the massage establishment, which is not a massage therapy room or otherwise used for the provision of massage therapy services.

BB. “Recognized school” shall mean a school of massage which entails the following:

1. Teaches the theory, ethics, practice including anatomy and physiology, profession and work of massage; and

2. Requires a residence course of study to be given and completed before the student is furnished with a diploma, certificate of learning or completion or degree in massage; and

3. The massage program provides an organized plan of study of massage and related subjects for a minimum of 300 hours and has been approved by the State of California Consumer Bureau, or the Department of Consumer Affairs or an accredited college, university or junior college established pursuant to Education Code 100850, or if said school is not located in California, has complied with the standards commensurate with those of a school of equal or greater training that is approved by the corresponding agency in another state, or accredited by an agency recognized by the United States Department of Education.

CC. "Sole-Proprietorship" shall mean a massage business where the owner owns one-hundred percent (100%) of the business, is the only person who provides massage services for compensation for that business, and has no other employees or independent contractors that perform massage therapy services for the business.

DD. "Spa" or "Day Spa" shall mean a business that offers a variety of services intended to meet personal needs of individuals such as skin treatment, manicures and pedicures and massage.

EE. "Visitor" shall mean any individual not retained or employed by the massage establishment and not receiving or waiting to receive massage therapy services, but excluding law enforcement personnel or governmental officials performing governmental business.

5.24.030. Exemptions.

The provisions of this Chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties in their respective professions:

A. Physicians, surgeons, chiropractors, osteopaths, podiatrists, acupuncturists, physical therapists, nurses or any other person duly licensed to practice any healing art and/or their respective profession under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code when engaging in such practice within the scope of his or her license.

B. Persons operating or employed at hospitals, nursing homes, sanitariums or any other health facility duly licensed by the State of California.

C. Trainers of any amateur, semi-professional or professional athlete or athletic team, so long as such persons' do not practice massage therapy as their primary occupation at any location where they provide such services in the City, and the practice of massage is limited to such athletes and athletic teams.

D. Barbers, cosmetologists or estheticians who are duly licensed under the laws of the State of California, while engaging in practices within the scope of their licenses, so long as the barber, cosmetologist or esthetician limits any massages he/she performs in the course of his/her professional duties to the neck, face and/or scalp, hands or feet of the clients when that massage is accessory to and within the scope of the barber's, cosmetologist's and esthetician's state license.

E. Enrolled students of a school of massage when they are performing massage within the City as part of a formal, supervised, internship or training program operated by the school, without compensation other than school credit, on the premises of a massage establishment duly authorized to operate pursuant to the terms of this Chapter; and provided that the operator of the massage establishment has first notified the permit authority in writing of the name, residence address and school of the students and the dates of the trainings.

F. Persons performing a therapeutic modality for which the State does not offer licenses or certification under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code and the modality is performed with minimal touching and the client remains fully clothed at all times, such as Reiki, Reflexology that is performed only to the hands, feet and neck area of a patron's body, or the Bowen Technique and/or somatic practitioners who use no physical touch of any kind at any time in their practice.

G. Persons administering massages or health treatments at single-occurrence athletic, recreational or educational events.

5.24.040. Minimum Requirements for All Massage Therapists and Massage Establishments.

A. Massage Therapists. It shall be unlawful for any person to perform or engage in the practice of massage therapy for compensation within the City unless that person possesses one (1) of the following:

1. A current, valid, unsuspended and unrevoked CAMTC certificate as defined in Section 5.24.020(C); or

2. A current, valid, unsuspended and unrevoked Massage Therapist Permit pursuant to Section 5.24.100

B. Massage Establishments. It shall be unlawful for any massage business or establishment, owner or manager, to employ or retain any person to practice massage therapy for compensation, or to allow any person to perform massage therapy for compensation, unless that person possesses either a CAMTC certificate or a Massage Therapist Permit.

C. Massage Establishments. It shall be unlawful for any massage establishment to operate without possessing a current, valid, unsuspended and unrevoked Massage Establishment Permit pursuant to Section 5.24.080.

5.24.050 Business License Required.

In addition to the minimum requirements set forth in Section 5.24.040, it shall be unlawful to transact and carry on any business, trade, profession, calling or occupation relating to massage without first having procured a business license from the City to transact or carry on said business, trade, profession, calling or occupation, pursuant to Chapter 5.04 of the Cloverdale Municipal Code and the definitions stated therein.

The fee for a City Business License shall be assessed pursuant to Cloverdale Municipal Code 5.04.170, as amended by Council from time to time.

5.24.060. Time For Compliance With Minimum Requirements.

A. Upon application for a Business License pursuant to Chapter 5.04 of the Cloverdale Municipal Code or renewal of an existing Business License for a massage business, the Applicant shall show proof of compliance with Section 5.24.040.

B. All persons, massage businesses or establishments, including its owners, operators, managers and employees shall comply with all other applicable sections of this Chapter upon its effective date.

5.24.070 Home Occupation Massage Therapist.

Any massage therapist conducting, performing, engaging in or giving massages at their residence is deemed a home occupation massage therapist and must obtain a home occupation permit pursuant to Cloverdale Municipal Code 18.03.190 and comply with the standards set forth in Cloverdale Municipal Code 18.09.120. The massage therapist conducting, performing, engaging in or giving massages shall also comply with the requirements of Section 5.24.040(A) of this Chapter.

5.24.080. Massage Establishment Permit – Required for Massage Establishments.

A. Valid Permit Required. It is unlawful and a violation of this Chapter for any person, firm, association, corporation, limited partnership, limited liability company or other entity to own, operate, engage in, conduct, permit or carry on in any way, a massage establishment without a valid, unsuspended, unrevoked, Massage Establishment Permit.

B. Single Permit for Each Location. Only one (1) Massage Establishment Permit shall be granted for each fixed location where any of the massage therapy occurs. The owner of the massage establishment, as defined in this Chapter, shall hold the Permit. If there are multiple owners, the Chief of Police, or his or her designee, will issue the Permit to one of the owners.

C. Permit Not Issued if Disqualifying Offenses Committed. A Massage Establishment Permit shall not be issued to any massage establishment where any owner(s), operator(s), manager(s), employee(s), massage therapist(s), or any other individual associated with the massage establishment has committed a disqualifying offense as defined in Section 5.24.020(K).

5.24.090. Massage Establishment Permit – Requirements, Denial, Suspension and Revocation and Due Process.

A. Application. Any Applicant wishing to obtain a Massage Establishment Permit, shall personally appear at the Police Department and file an application on a form provided by the Chief of Police, or his or her designee. The application shall include the following information:

1. The name, address and telephone number of the Applicant and all persons to be directly or indirectly interested in the Permit, such as other owner(s), if issued;

2. A copy of the Applicant's government issued identification card;

3. The name, address and telephone number, of the massage establishment;

4. The form of business under which the Applicant will be conducting the massage establishment, *i.e.*, corporation, general or limited partnership, limited liability company, or other form. If the Applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors, and each shareholder holding more than ten percent (10%) of the stock of the corporation. If the Applicant is a general or limited partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one (1) or more of the partners is a corporation, the provisions of this Section pertaining to a corporate applicant shall apply. If the Applicant is a limited liability company, the application shall set forth the name and residence address of each of the members. If one (1) or more of the members is a partnership, limited liability company, or corporation, the provisions of this Section pertaining to a partnership, limited liability company or corporate Applicant shall apply, as applicable;

5. The name and address of the owner of the real property upon, in or from which the massage establishment is to be operated. In the event the Applicant is not the legal owner of the property, the application shall be accompanied by a copy of any written lease between the Applicant and the property owner authorizing use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a written, notarized acknowledgment from the property owner that the property owner has been advised that a massage establishment will be operated by the applicant upon, in or from the property owner's property;

6. A description of the proposed massage establishment, including the type of treatments to be administered;

7. The name and address of all persons currently employed or intended to be employed, the nature of work each employee is intended to perform and for each person that the massage establishment does or will employ or retain to perform massage therapy for compensation, whether on-site or out-call, a copy of each massage therapists' current government issued identification card and a copy of either their CAMTC certificate or their Massage Therapist Permit;

8. Whether any license or permit has ever been issued to the Applicant by any jurisdiction under the provisions of any ordinance or statute governing massage or somatic practice, and as to any such license or permit, the name and address of the issuing authority, the effective dates of such license or permit, whether such license or permit was ever suspended, revoked, withdrawn or denied; and copies of any documentary materials relating to such suspension, revocation, withdrawal or denial;

9. Whether the Applicant or any other owner(s), employee(s) or intended employee(s), has within the five (5) years immediately preceding the date of application been convicted in any state of any felony;

10. Whether the Applicant or any other owner(s), employee(s) or intended employee(s), is currently required to register under the provisions of Section 290 of the California Penal Code;

11. The Applicant's business, occupation and employment history for five (5) years preceding the date of application, and the inclusive dates of same;

12. One (1) set of fingerprints and photographs of the Applicant and any other person interested in the Permit, such as any other owner(s), in a form satisfactory to the Chief of Police, or his or her designee. At the time of the fingerprinting, the Applicant shall pay the Police Department the fingerprinting fee and the cost of obtaining criminal history information and conducting a background investigation. Fees are set forth in the City's fee schedule in amounts established by resolution of City Council and may be amended by Council from time to time. Any Applicant who is CAMTC certified shall not be subject to a background check or fingerprinting and shall be exempt from this subsection 5.24.090(A)(12);

13. A written statement that neither the Applicant nor any persons to be directly or indirectly interested in the Permit, if granted, have knowingly made any false, misleading, or fraudulent statement of facts in the application for the Permit or in any other document required by the City of Cloverdale;

14. Certification, under penalty of perjury, that neither the Applicant, nor any other owner(s), employee(s) or intended employee(s), have committed any disqualifying offenses as defined by Section 5.24.020(K);

15. Such other information as may be required by the Chief of Police, or his or her designee, or any other City Official to determine compliance with any other eligibility requirements for issuance of the Permit as specified by Federal, State or local law.

B. Application Fee. An application for a Massage Establishment Permit shall be accompanied by a fee as established by the City's Master Fee Schedule.

C. Issuance. The Chief of Police, or his or her designee, shall grant a Massage Establishment Permit to an Applicant who has satisfied the requirements of this Section and all other applicable laws, including, but not limited to, the City's building, zoning and health regulations. The Massage Establishment Permit shall be non-transferrable and cannot be sold.

D. Denial. The Chief of Police, or his or her designee, shall determine, based on the background investigation, fingerprints and the information submitted with the application, whether a Massage Establishment Permit shall be issued. If the Chief of Police, or his or her designee, determines that the Applicant is disqualified due to a disqualified offense, the Chief of

Police, or his or her designee, shall inform the Applicant in writing and specify the reasons for the denial.

E. Notice of Denial-Appeal-Judicial Review. If an application for a Massage Establishment Permit is denied, the Chief of Police, or his or her designee, shall serve on the Applicant, in a manner that conforms to Section 1.14.020 (B) of this Code, a written notice of denial which shall specify the grounds for the denial.

1. Any Applicant aggrieved by the decision of the Chief of Police, or his or her designee, may appeal that decision to the City Manager, or his or her designee, by filing a notice of appeal within ten (10) days of being notified of the decision.

2. The City Manager, or his designee, shall schedule a hearing within thirty (30) days and provide written notice of the time, date and location of the hearing to the appellant. The hearing shall be conducted pursuant to Cloverdale Municipal Code 1.14.090. The City Manager, or his or her designee, shall render a decision within thirty (30) days of the conclusion of the hearing, unless the parties agree otherwise.

3. The written decision of the City Manager, or his or her designee may be appealed and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

F. Display of Permit. Each holder of a Massage Establishment Permit shall display that Permit in an open and conspicuous place on the premises visible from the main entry door and/or reception and waiting area of the massage establishment. The home address of any employee need not be displayed.

G. Term. A Massage Establishment Permit issued pursuant to the terms of this Chapter shall be valid for a term of one (1) year from the date of issuance, and, unless suspended or revoked, must be renewed by the Applicant annually so long as the Applicant is operating within the City. A Massage Establishment Permit may not be renewed or amended by the Applicant unless and until all due and unpaid citations issued to the owner, operator, manager or any employee of the establishment, pursuant to this Chapter, are paid in full. Citations shall not be deemed to be due and unpaid until the thirty (30)-day period for appeal of the citation has passed.

H. Amendments. Whenever the information provided in the application for a Massage Establishment Permit on file with the City changes, for example by a change in employees, the Applicant shall, within ten (10) business days after such change, file with the Chief of Police, or his or her designee, an application for amendment to the Massage Establishment Permit to reflect such change. An application for an amendment to a Massage Establishment Permit shall be accompanied by a fee as established by the City's Master Fee Schedule. It shall be unlawful and a violation of this Chapter for any owner or manager to allow any person to perform massage therapy for compensation unless and until an amended Massage Establishment Permit has been issued by the Chief of Police, or his or her designee.

I. Grounds for Suspension or Revocation. For the purpose of enforcing the requirements of this Chapter, the massage establishment owner, operator and/or manager shall be responsible for the conduct of all massage establishment employees, agents, independent contractors or other representatives while such persons are on the premises of the massage establishment or providing outcall massage services on behalf of the massage establishment.

1. In addition to any other remedy available to the City, any Massage Establishment Permit issued pursuant to this Chapter may be suspended or revoked by the Chief of Police, or his or her designee, after a hearing, where it is found by a preponderance of the evidence, that one (1) or more of the following have occurred on even a single occasion:

a. The Permit holder, or any person employed or retained by the massage establishment, has been found to have violated any provision of this Chapter; or

b. The Permit holder, or any person employed or retained by the massage establishment has been convicted in a court of competent jurisdiction of having violated, or has engaged in conduct constituting a violation of a provision or provisions of this Chapter or the Massage Therapy Act or some other State or Federal law, including any of the following violation(s) of Penal Code sections 243.4, 261, 266a through 266j, inclusive, 267, 288, 314 to 316 inclusive, 318, 647a, 647b,647d, 647i, 647j, any offenses requiring registration under Penal Code section 290 or Health and Safety Code section 11590; any felony offense involving the possession for sale, sale, transportation, furnishing or giving away of a controlled substance specified in Health and Safety Code sections 11054 to 11058, inclusive, as amended; any offense in another state which if committed in California, would have been punishable as one or more of the offenses mentioned here, any offense involving the use of force or violence upon the person of another, or any offense involving the use of force or violence upon the person of another, or any offense involving theft, embezzlement or moral turpitude; or

c. The Permit holder, or any person employed or retained by the massage establishment, has been subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to this Municipal Code, or Section 11225 through 11235 of the California Penal Code, or any similar provision of law in any jurisdiction outside the State of California; or

d. The Permit holder, or any person employed or retained by the massage establishment, has engaged in fraud or misrepresentation or has knowingly made a misstatement of material fact while working in or for the massage establishment; or

e. A Massage Establishment Permit was obtained with fraudulent or deceitful information; or

f. The Permit holder has continued to operate or conduct massages after the Massage Establishment Permit was suspended; or

g. Massage treatments are or have been performed on the premises of the massage establishment, with or without the Permit holder's actual knowledge, by any person who does not possess a CAMTC certificate or a Massage Therapist Permit; or

h. The massage establishment is not being maintained in compliance with the provisions of this Chapter, the Massage Therapy Act (Business & Professions Code Sections 4600-4621, any other provision of the Cloverdale Municipal Code or any other local, State or Federal law and the Permit holder has failed to promptly remedy any deficiency for which they have received notice; or

i. There have been one (1) or more acts prohibited under California Penal Code Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 taking place on the premises of the massage establishment, whether or not any criminal prosecution has been pursued or conviction obtained for such acts, and whether or not they occurred with or without the actual knowledge of the Permit Holder.

j. The Permit holder has committed a disqualifying offense pursuant to Section 5.24.020(K).

2. Upon revocation of a Massage Establishment Permit, the Permit holder shall ensure that the massage establishment immediately ceases any operation or business related to massage.

J. Process of Suspension or Revocation.

1. The Chief of Police, or his or her designee, before revoking or suspending any Massage Establishment Permit, shall serve the Permit holder and/or the massage establishment owner(s), operator(s) and/or manager(s) with written Notice of Revocation or Suspension in a manner that conforms to Section 1.14.020(B) of this Code and a date for the hearing on the matter. The Notice shall state the basis for the potential revocation or suspension and the date and time for the hearing.

2. The hearing shall be conducted by the Chief of Police, or his or her designee, and shall be an informal proceeding. The Chief of Police, or his or her designee, shall consider the facts and evidence and shall make a determination, based upon a preponderance of the evidence, whether the Massage Establishment Permit should be revoked or suspended.

3. The Chief of Police, or his or her designee, shall serve the Permit holder and/or the massage establishment owner(s), operator(s) and/or manager(s) with written Notice of Revocation or Suspension in the manner set forth in Section 1.14.090 of this Code. The Notice shall state the grounds for revocation or suspension.

4. Any Permit holder aggrieved by the decision of the Chief of Police, or his or her designee, may appeal that decision to the City Manager, or his or her designee, by filing a notice of appeal within ten (10) days of being notified of the decision.

5. The City Manager, or his or her designee, shall schedule a hearing within thirty (30) days and provide written notice of the time, date and location of the hearing to the appellant. The hearing shall be conducted pursuant to Cloverdale Municipal Code 1.14.090 and 1.14.100. The City Manager, or his or her designee, shall render a decision within thirty (30) days of the conclusion of the hearing, unless the parties agree otherwise.

6. The written decision of the City Manager, or his or her designee may be appealed and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

5.24.100. Massage Therapist Permit – Required for Massage Therapists.

A. Valid Permit Required. It is unlawful and a violation of this Chapter for any person, who is not CAMTC certified, to perform or engage in the practice of massage therapy in the City of Cloverdale without a valid, unsuspended, unrevoked, Massage Therapist Permit.

B. Permit Not Issued if Disqualifying Offenses Committed. A Massage Therapist Permit shall not be issued to any massage therapist where the Applicant has committed a disqualifying offense as defined in Section 5.24.020(K).

C. Any massage therapist who possesses a CAMTC certificate shall be exempt from the requirements of this Section.

5.24.110. Massage Therapist Permit-Minimum Educational Requirements.

A. Massage therapist Applicants must provide the Chief of Police, or his or her designee, with evidence that they possess at least two (2) of the following minimum qualifications before a Massage Therapist Permit may be issued:

1. An original copy of a diploma, certificate or academic transcript that demonstrates completion of three hundred (300) hours of in-class instruction from a recognized school; or

2. Satisfactory passage of the Board Certification Examination, or its equivalent, offered by the National Certification Board for Therapeutic Massage & Bodywork ; or

3. Membership in good standing in a national professional massage organization or association that requires its members to have the following:

a. Substantiation of at least one hundred (100) hours of massage training or education;

b. Possession of practitioner's liability insurance coverage in the minimum amount of one million dollars ($1,000,000) per event;

c. Adherence to a code of ethics; and

d. Renewal of membership at a minimum of once every two (2) years; or

4. The Applicant has a long-standing (over twenty (20) years) history of conducting massages in the City without any complaints or Municipal Code violations.

5.24.120. Massage Therapist Permit - Requirements, Denial, Suspension and Revocation and Due Process.

A. Application. Any Applicant wishing to obtain a Massage Therapist Permit, shall personally appear at the Police Department and file an application on a form provided by the Chief of Police, or his or her designee. The application shall include the following information:

1. If the Applicant is a U.S. citizen, his or her social security number, driver's license number, birth certificate, address and telephone number;

2. If the Applicant is not a U.S. citizen, his or her original Immigration and Naturalization Service documents, to be verified by the Chief of Police, or his or her designee;

3. The name, address and telephone number, of the massage establishment where the Applicant intends to be employed or if the Applicant is a sole-proprietorship or the owner of a business then, the name, address and telephone number of that business;

4. The form of business under which the Applicant will be conducting the massage, *i.e.*, solo practitioner, corporation, general or limited partnership, limited liability company, or other form. If the Applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors, and each shareholder holding more than ten percent (10%) of the stock of the corporation. If the Applicant is a general or limited partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one (1) or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply. If the Applicant is a limited liability company, the application shall set forth the name and residence address of each of the members. If one (1) or more of the members is a partnership, limited liability company, or corporation, the provisions of this section pertaining to a partnership, limited liability company, or corporate Applicant shall apply, as applicable;

5. The name and address of the owner of the real property upon, in, or from which the massage establishment is to be operated. In the event the Applicant is not the legal owner of the property, the application shall be accompanied by a copy of any written lease between the Applicant and the property owner authorizing use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a written, notarized acknowledgment from the property owner that the property owner has been advised that a

massage establishment will be operated by the applicant upon, in, or from the property owner's property;

6. A description of the types of massage and services that the massage therapist is qualified to offer;

7. The name, address, telephone number of places of residence and employment of the Applicant for the last five (5) years;

8. Whether any license or permit has ever been issued to the Applicant by any jurisdiction under the provisions of any ordinance or statute governing massage or somatic practice, and as to any such license or permit, the name and address of the issuing authority, the effective dates of such license or permit, whether such license or permit was ever suspended, revoked, withdrawn, or denied; and copies of any documentary materials relating to such suspension, revocation, withdrawal, or denial;

9. Whether the Applicant has, within the five (5) years immediately preceding the date of application, been convicted in any state of any felony;

10. Whether the Applicant is currently required to register under the provisions of Section 290 of the California Penal Code;

11. One (1) set of fingerprints and photographs for each Applicant in a form satisfactory to the Chief of Police, or his or her designee. At the time of the fingerprinting, the Applicant shall pay the Police Department a fingerprinting fee and the cost of obtaining criminal history information and conducting a background investigation. Fees are set forth in the City's fee schedule in amounts established by resolution of City Council and may be amended by Council from time to time;

12. A written statement that neither the Applicant nor any persons to be directly or indirectly interested in the permit, if granted, have knowingly made any false, misleading, or fraudulent statement of facts in the application for the permit or in any other document required by the City of Cloverdale;

13. Certification, under penalty of perjury, that the Applicant has not committed any disqualifying offenses as defined by Section 5.24.020(K);

14. Such other information as may be required by the Chief of Police, or his or her designee, or any other City Official to determine compliance with any other eligibility requirements for issuance of the Permit as specified by Federal, State, or local law. The Chief of Police, or his or her designee, may waive any of the requirements of this section;

15. Any original documents demonstrating the fulfillment of the minimum educational requirements for massage therapists that are not CAMTC certified, as set forth in Section 5.24.110.

B. Home Occupation Massage Therapist. An Application by a person conducting, performing, engaging in or giving massages at their residence is deemed a home occupation massage therapist and must indicate in the Application for a Massage Therapist Permit such an intent to operate as such.

C. Application Fee. An application for a Massage Therapist Permit shall be accompanied by a fee as established by the City's Master Fee Schedule.

D. Issuance. The Chief of Police, or his or her designee, shall grant a Massage Therapist Permit to an Applicant who has satisfied the requirements of this Section and all other applicable laws, including, but not limited to, the City's building, zoning, and health regulations. The Massage Therapist Permit shall be non-transferrable and cannot be sold.

E. Denial. The Chief of Police, or his or her designee, shall determine, based on the background investigation, fingerprints and the information submitted with the application, whether a Massage Therapist Permit shall be issued. If the Chief of Police, or his or her designee, determines that the Applicant is disqualified due to a disqualified offense. The Chief of Police, or his or her designee, shall inform the Applicant in writing and specify the reasons for the denial.

F. Notice of Denial-Appeal-Judicial Review. If an application for a Massage Therapist Permit is denied, the Chief of Police, or his or her designee, shall serve on the Applicant, in a manner that conforms to Section 1.14.020(B) of this Code, a written notice of denial which shall specify the grounds for the denial.

1. Any Applicant aggrieved by the decision of the Chief of Police, or his or her designee, may appeal that decision to the City Manager, or his or her designee, by filing a notice of appeal within ten (10) days of being notified of the decision.

2. The City Manager, or his or her designee, shall schedule a hearing within thirty (30) days and provide written notice of the time, date and location of the hearing to the appellant. The hearing shall be conducted pursuant to Cloverdale Municipal Code 1.14.090. The City Manager, or his or her designee, shall render a decision within thirty (30) days of the conclusion of the hearing, unless the parties agree otherwise.

3. The written decision of the City Manager, or his or her designee may be appealed and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

G. Display of Permit. Each holder of a Massage Therapist Permit shall display that Permit in an open and conspicuous place on the premises visible from the main entry door and/or reception and waiting area of the massage establishment. The home address of any employee need not be displayed.

H. Term. A Massage Therapist Permit issued pursuant to the terms of this Chapter shall be valid for a term of one (1) year from the date of issuance, and, unless suspended or

revoked, must be renewed by the Applicant annually so long as the Applicant is operating within the City. A Massage Therapist Permit may not be renewed or amended by the Applicant unless and until all due and unpaid citations issued to the owner, operator, manager or any employee of the establishment, pursuant to this Chapter, are paid in full. Citations shall not be deemed to be due and unpaid until the thirty (30)-day period for appeal of the citation has passed.

I. Amendments. Whenever the information provided in the application for a Massage Therapist Permit on file with the City changes, for example by a change in address or telephone number, the Applicant shall, within ten (10) business days after such change, file with the Chief of Police, or his or her designee, an application for amendment to the Massage Therapist Permit to reflect such change. An application for an amendment to a Massage Therapist Permit shall be accompanied by a fee as established by the City's Master Fee Schedule. It shall be unlawful and a violation of this Chapter for any owner or manager to allow any person to perform massage therapy for compensation unless and until an amended Massage Therapist Permit has been issued by the Chief of Police, or his or her designee. A Massage Therapist Permit may not be renewed or amended by the Applicant unless and until due and unpaid citations issued to the operator pursuant to this Chapter are paid in full. Citations shall not be deemed to be due and unpaid until the thirty (30)-day period for appeal of the citation has passed.

J. Grounds for Suspension or Revocation.

1. In addition to any other remedy available to the City, any Massage Therapist Permit, issued pursuant to this Chapter, may be suspended or revoked by the Chief of Police, or his or her designee, after a hearing, where it is found by a preponderance of the evidence, that one (1) or more of the following have occurred on even a single occasion:

a. The Permit holder, or any person employed or retained by the Permit holder, has been found to have violated any provision of this Chapter; or

b. The Permit holder, or any person employed or retained by the Permit holder has been convicted in a court of competent jurisdiction of having violated, or has engaged in conduct constituting a violation of a provision or provisions of this Chapter or the Massage Therapy Act or some other state or federal law, including any of the following violation(s) of Penal Code sections 243.4, 261, 266a through 266j, inclusive, 267, 288, 314 to 316 inclusive, 318, 647a, 647b,647d, 647i, 647j, any offenses requiring registration under Penal Code section 290 or Health and Safety Code section 11590; any felony offense involving the possession for sale, sale, transportation, furnishing, or giving away of a controlled substance specified in Health and Safety Code sections 11054 to 11058, inclusive, as amended; any offense in another state which if committed in California, would have been punishable as one or more of the offenses mentioned here, any offense involving the use of force or violence upon the person of another, or any offense involving the use of force or violence upon the person of another, or any offense involving theft, embezzlement, or moral turpitude; or

c. The Permit holder, or any person employed or retained by the Permit holder, has been subject to a permanent injunction against the conducting or maintaining

of a nuisance pursuant to this Municipal Code, or Section 11225 through 11235 of the California Penal Code, or any similar provision of law in any jurisdiction outside the State of California; or

d. The Permit holder, or any person employed or retained by the Permit holder, has engaged in fraud or misrepresentation or has knowingly made a misstatement of material fact while working in or for the massage establishment; or

e. A Massage Therapist Permit was obtained with fraudulent or deceitful information; or

f. The Permit holder has continued to operate or conduct massages after the Massage Therapist Permit was suspended; or

g. Massage treatments are or have been performed, by any person who does not possess a CAMTC certificate or a Massage Therapist Permit; or

h. The Permit holder is not complying with the provisions of this Chapter, the Massage Therapy Act (Business & Professions Code Sections 4600-4621, any other provision of the Cloverdale Municipal Code or any other local, state or federal law and the Permit holder has failed to promptly remedy any deficiency for which they have received notice; or

i. There have been one (1) or more acts prohibited under California Penal Code Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 taking place on the premises of the massage establishment, whether or not any criminal prosecution has been pursued or conviction obtained for such acts, and whether or not they occurred with or without the actual knowledge of the Permit holder.

j. The Permit holder has committed a disqualifying offense pursuant to Section 5.24.020(K).

2. Upon revocation of a Massage Therapist Permit, the Permit holder shall ensure that he or she immediately ceases any performance or engagement in massage therapy.

K. Process of Suspension or Revocation.

1. The Chief of Police, or his or her designee, before revoking or suspending any Massage Therapist Permit, shall serve the Permit holder and/or the massage establishment owner(s), operator(s) and/or manager(s) with written Notice of Revocation or Suspension in a manner that conforms to Section 1.14.020(B) of this Code and a date for the hearing on the matter. The Notice shall state the basis for the potential revocation or suspension and the date and time for the hearing.

2. The hearing shall be conducted by the Chief of Police, or his or her designee, and shall be an informal proceeding. The Chief of Police, or his or her designee, shall

consider the facts and evidence and shall make a determination, based upon a preponderance of the evidence, whether the Massage Therapist Permit should be revoked or suspended.

3. The Chief of Police, or his or her designee, shall serve the Permit holder and/or the massage establishment owner(s), operator(s) and/or manager(s) with written Notice of Revocation or Suspension in the manner set forth in Section 1.14.090 of this Code. The Notice shall state the grounds for revocation or suspension.

4. Any Permit holder aggrieved by the decision of the Chief of Police, or his or her designee, may appeal that decision to the City Manager, or his or her designee, by filing a notice of appeal within ten (10) days of being notified of the decision.

5. The City Manager, or his or her designee, shall schedule a hearing within thirty (30) days and provide written notice of the time, date and location of the hearing to the appellant. The hearing shall be conducted pursuant to Cloverdale Municipal Code 1.14.090 and 1.14.100. The City Manager, or his or her designee, shall render a decision within thirty (30) days of the conclusion of the hearing, unless the parties agree otherwise.

6. The written decision of the City Manager, or his or her designee, may be appealed and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

5.24.130. Out-call Massage and On-Site Massage Restrictions.

A. No person or massage business shall perform either on-site massage or out-call massage for compensation without possessing either a CAMTC certificate or a Massage Therapist or Establishment Permit in conjunction with a valid City Business License and any other City permits that may be necessary.

B. Out-call massage and on-site massage shall only be conducted between the hours of 7:00 a.m. and 10:00 p.m.

C. Out-call massage or on-site massage shall not be conducted in a hotel/motel room or any other similar location used primarily for transitory habitation purposes.

5.24.140. Health and Safety Requirements for All Massages.

Except as otherwise specifically provided in this Chapter, all massage business owners, operators, employees, sole proprietors, independent contractors, home occupation massage therapists, and any person performing massage within the City shall comply with all of the following health and safety requirements. The Chief of Police, or his or her designee, may waive any of the requirements of this section if the Chief of Police, or his or her designee, determines that such a waiver will have no impact on public safety or neighborhood quality of life. The Chief of Police, or his or her designee, will also take into consideration whether compliance with

the requirements of this Section would place an undue financial burden on or would be physically infeasible.

A. The massage establishment and massage therapists shall at all times be equipped with an adequate supply of clean sanitary towels, non-disposable coverings, and linens, and all massage tables shall be covered with a clean sheet or other clean covering for each patron. After a towel, covering, or linen has been used once, it shall be deposited in a closed receptacle and not used again until properly laundered and sanitized. Towels, non-disposable coverings, and linens shall be laundered either by regular commercial laundering, or by a noncommercial laundering process that includes immersion in water at least one hundred forty (140) degrees Fahrenheit for not less than fifteen (15) minutes during the washing or rinsing operation. Clean towels, coverings, and linens shall be stored in closed, clean cabinets when not in use. Towels, non-disposable coverings, and linens shall not be used on more than one (1) client, unless they have first been laundered and disinfected. Disposable towels and disposable coverings shall not be used on more than one (1) client. Soiled linens and paper towels shall deposited in separate receptacles.

B. In a massage establishment, all massage therapy rooms or cubicles, wet and dry heat rooms, toilet rooms, steam or vapor rooms or cabinets, shower compartments, bathrooms, hot tubs, whirlpool baths and pools shall be thoroughly cleaned and disinfected as needed, and at least once each business day when the premises have been or will be open and such facilities in use, with a hospital-grade disinfectant. All bathtubs shall be thoroughly cleaned and disinfected after each use, with a hospital-grade disinfectant. All walls, ceilings, floors and other physical facilities for the establishment shall be in good repair and maintained in a clean and sanitary condition.

C. All equipment used for massage shall be maintained in a clean and sanitary condition. Instruments utilized in performing massage techniques shall not be used on more than one (1) client unless they have been sterilized, using standard sterilization methods.

D. All liquids, creams or other preparations used on or made available to patrons shall be kept in clean and closed containers. Powders may be kept in clean shakers. All bottles and containers shall be distinctly and correctly labeled to disclose their contents. When only a portion of a liquid, cream or other preparation is to be used on or made available to a patron, it shall be removed from the container in such a way as not to contaminate the remaining portion.

E. No invasive procedures shall be performed on any patron. Invasive procedures include, but are not limited to:

1. Application of electricity that contracts the muscle;

2. Penetration of the skin by metal needles;

3. Removal of skin by means of any razor-edged instrument or other device or tool; and

4. Other similar procedures.

F. All bathrobes, bathing suits, and/or other garments that are provided for the use of patrons shall be fully disposable and not used by more than one (1) patron, or shall be laundered after each use pursuant to subsection (C) of this Section.

G. All combs, brushes, and/or other personal items of grooming or hygiene that are provided for the use of patrons shall be either fully disposable and not used by more than one (1) patron, or shall be fully disinfected after each use.

H. No patrons shall be allowed to use any shower facilities unless such patrons are wearing slip-resistant sandals or flip-flops while in the shower compartment. All footwear such as sandals or flip-flops that are provided for the use of patrons either shall be fully disposable and not used by more than one (1) patron, or shall be fully disinfected after each use.

I. No massage shall be given unless the client's genitalia and female breasts are, at all times, fully covered. Genitalia shall include the genitals, anus, and perineum of any person. The patron's genitals, pubic area, anus, and areola must be fully draped at all times while any individual employed or retained by the massage establishment to practice massage for compensation, or any other employee or operator of the massage establishment, is in the massage therapy room or cubicle with the patron. No massage therapy shall be provided for sexual gratification by intentional contact, or occasional and repetitive contact, with the genitals, pubic area, anus, or areola of a patron, either covered or uncovered.

J. No massage establishment shall have any alcohol for consumption or illegal controlled substance on the premises at any time except for those massage establishments who obtain authorization from the Chief of Police, or his or her designee, and any necessary licenses from the State of California that may be necessary to provide minimal quantities of alcohol to a client as a part of the establishment's services for specific occasions throughout the year such as Mother's Day, Easter, etc.

K. No massage shall be given by any massage therapist who is consuming, or under the influence of, any alcoholic beverage or illegal controlled substance.

L. The following attire and physical hygiene requirements shall be applicable to all employees and any other persons who work permanently or temporarily on the premises, of a massage establishment within the City, including, but not limited to, all persons who are employed or retained to practice massage for the massage establishment and any person performing massage:

1. No person shall dress in:

a. attire that is transparent, see-through, or substantially exposes the person's undergarments;

b. swim attire, if not providing a water-based massage modality approved by the California Massage Therapy Council;

c. a manner that exposes the person's breasts, buttocks, or genitals; and

d. a manner that constitutes a violation of Section 314 of the California Penal Code.

2. No massage establishment operator, employee, or visitor shall, while on the premises of a massage establishment or while performing any outcall massage service, and while in the presence of any patron, customer, employee or visitor, expose his or her genitals, buttocks or chest.

M. All massage therapists shall thoroughly wash their hands with soap and water or any equally effective cleansing agent immediately before providing massage therapy to a patron. No massage therapy shall be provided upon a surface of the skin or scalp of a patron where such skin is inflamed, broken (e.g., abraded or cut), or where a skin infection or eruption is present.

N. No massage therapist or massage establishment shall place, publish or distribute or cause to be placed, published or distributed any advertising material that depicts any portion of the human body that would reasonably suggest to prospective customers that services prohibited by this Chapter are available. nor shall any massage therapist or massage establishment employ language in any advertising text or business name that would reasonably suggest to a prospective client that any service is available that is prohibited under this Chapter.

O. A massage therapist shall not violate the provisions of Sections 647(a) (soliciting to engage in lewd or dissolute conduct in a public place) and 647 (b) (soliciting to engage in or engaging in any act of prostitution) of the California Penal Code, or any other State law involving a crime of moral turpitude, and such practices shall not be allowed or permitted by the massage business.

5.24.150. Operating Requirements for Massage.

Except as otherwise specifically provided, the following operational requirements shall be applicable to all massage establishments located within the City. The Chief of Police, or his or her designee, may waive any of the requirements of this section if the Chief of Police, or his designee, determines that such a waiver will have no impact on public safety or neighborhood quality of life. The Chief of Police, or is or her designee, will also take into consideration whether compliance with the requirements of this Section would place an undue financial burden on or would be physically infeasible.

A. The CAMTC certificate or the Massage Therapist Permit shall be displayed in the reception area or in the area where massage is to be performed for all massage therapists performing or engaging in massage for the massage establishment or anyone performing or engaging in massage as an out-call, or a home occupation massage therapist. CAMTC certificates or the Massage Therapist Permit of former employees, independent contractors, volunteers shall be removed as soon as those massage therapists are no longer performing

massage at a massage establishment. No owner, operator or manager of a massage establishment shall allow or permit a person to administer massage for such establishment unless the practitioner possesses a valid CAMTC certificate or a Massage Therapist Permit.

B. Massage performed at a massage establishment shall only be performed between the hours of 7:00 a.m. and 10:00 p.m.. No massage business shall be open and no massage shall be provided between 10:00 p.m. and 7:00 a.m. A massage commenced prior to 10:00 p.m. shall terminate prior to 10:00 pm. and all clients shall exit the massage establishment prior to 10:00 pm. The hours of operation of the massage establishment shall be displayed in a conspicuous, public, place in the reception and waiting area and in any front window clearly visible from outside of the massage establishment.

C. Patrons and visitors shall be permitted in the massage establishment only during the hours of operation.

D. During the hours of operation, patrons shall be permitted in massage therapy rooms only if at least one (1) duly authorized massage therapist is present on the premises of the massage establishment.

E. During the hours of operation, visitors shall not be permitted in massage therapy rooms of massage establishments except as follows:

1. The parents or guardian of a patron who is a minor child may be present in the massage therapy room with that minor child;

2. The minor child of a patron may be present in the massage therapy room with the patron when necessary for the supervision of the child; or

3. The conservator, aid, or other caretaker of a patron who is elderly or disabled may be present in the massage therapy room with that elderly or disabled person.

F. During the hours of operation, except as otherwise provided herein, no visitors shall be permitted in massage therapy rooms, dressing rooms, showers, or any other room or part of the massage establishment premises other than the reception and waiting area or the restrooms.

G. Except for a patron who is inside a massage therapy room for the purpose of receiving a massage, no patrons or visitors shall be permitted in or on the massage establishment premises at any time who are less than fully clothed in outer garments of nontransparent material, or who display or expose themselves in underclothing or similar intimate apparel.

H. A list of services available and the cost of such services shall be posted in an open and conspicuous public place on the premises, such as the reception area within the massage establishment, or provided to patrons before services are rendered as an out-call massage therapist or a home occupation massage therapist. The services shall be described in English and may also be described in such other languages as may be convenient. Outcall service providers

shall provide such a list to clients in advance of performing any service. No massage establishment operator, owner, or manager shall permit, and no massage therapist shall offer to perform any service other than those posted or listed, as required herein, nor shall an owner, manager, or operator nor a massage therapist offer or charge a fee for any service other than those on the list of available services posted in the reception area or provided to the client in advance of any services.

I. One (1) main entry door shall be provided for patron entry to the massage establishment, which shall open to an interior patron reception and waiting area immediately. All patrons and any persons other than individuals employed or retained by the massage establishment shall be required to enter and exit through the main entry door. Unless the massage establishment is a sole proprietorship, the main entry door shall be unlocked at all times during business hours.

J. No massage establishment located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs, blurs, or unreasonably darkens the view into the premises.

K. All interior doors of a massage establishment, including massage therapy rooms or cubicles, but excluding individual dressing rooms and toilet rooms, shall be incapable of being locked and shall not be blocked to prevent opening. Draw drapes, curtain enclosures, or accordion-pleated closures in lieu of doors are acceptable on all inner massage therapy rooms or cubicles.

L. Minimum lighting equivalent to at least one (1) 40-watt light shall be provided in any area, cubicle, or room where massage is to be performed.

M. A massage table shall be used for all massage therapy, with the exception of "Thai," "Shiatsu," and similar forms of massage therapy, which may be provided on a padded mat on the floor, provided the patron is fully attired in loose clothing, pajamas, scrubs or similar style of garment. Massage tables shall have a minimum height of eighteen (18) inches.

N. Beds, floor mattresses, and waterbeds are not permitted on the premises of the massage establishment, and no massage establishment, shall be used for residential or sleeping purposes.

O. All locker facilities that may be provided to patrons at a massage establishment shall be fully secured for the protection of the patrons' valuables, and each patron shall be given control of the key or other means of access.

P. The massage establishment shall meet and be maintained in a condition to comply with all applicable building standards and fire code requirements (as adopted by Title 15 of this Code), including, but not limited to, those related to the safety of structures, adequacy of the plumbing, lighting, heating, ventilation, waterproofing of rooms in which showers, water or steam baths are used, and the health and cleanliness of the facility.

Q. Clients of the massage establishment shall be furnished with a private dressing room. Dressing rooms need not be separate from the room in which the massage is being performed.

R. Toilet facilities shall be provided in convenient locations within the massage establishment and shall consist of at least one (1) unisex toilet with lavatories or wash basins provided with soap and both hot and cold running water either in the toilet room or vestibule.

S. A minimum of one (1) wash basin shall be available at all times for massage therapists performing massage. The basin shall be located within or as close as practicable to the area devoted to performing of massage services. Soap and sanitary towels shall also be available at each basin.

T. All records of employees, independent contractors, volunteers who have performed massage for a massage establishment shall be retained for a period of two (2) years and shall be made available to any City Inspector upon request.

U. Massage therapists shall be fully clothed at all times. Clothing shall be of a fully opaque, non-transparent material and said garments shall not expose their genitals, pubic areas, buttocks or breasts.

V. Every massage business, including home occupation massage therapists, shall keep a written or electronic record of the date and hour of each treatment administered, the name and address of each patron, the name of the massage therapist administering treatment, and the type of treatment administered. Such written or electronic record shall be available for inspection by the City inspector. Such records shall be kept for a period of two (2) years and shall be open to inspection by the City.

W. No massage establishment shall simultaneously operate as a school of massage or share facilities with a school of massage.

X. No massage establishment shall allow any person to reside within the massage establishment or in any attached structures owned, leased or controlled by the massage establishment owners. This section does not apply to those businesses that have been properly permitted as a home occupation.

Y. All massage establishments must comply with all State and Federal laws and regulations pertaining to disabled clients.

Z. All massage establishments must comply with the City's Sign Ordinance pursuant to Title 18, Chapter 12 of the Cloverdale Municipal Code.

5.24.160. Inspection of Massage Establishment by Officials.

A. The investigating and enforcing officials of the City, including but not limited to, the Chief of Police, or his or her designees, Chief Building Official, or his or her designees, the Chief of the Fire Department, or his or her designee, shall have the right to enter the massage establishment premises, from time to time, during regular business hours, without a search or inspection warrant, for the purpose of making reasonable inspections to observe and enforce compliance with applicable laws, statutes and regulations, and with the provisions of this Chapter. The Chief Building Official and/or the Chief of the Fire Department may charge a fee for any safety inspections, which shall be established by Council.

B. The violator shall take immediate action to correct each violation noted by the City inspector. A re-inspection will be performed within thirty (30) days, or sooner as determined by the City official, to ensure that each violation noted by the City inspector has been corrected.

5.24.170. Exchange of Information.

The City may, from time to time, request information from CAMTC pertaining to any person who possesses a CAMTC certificate and who is engaging in the practice of massage in the City. The requested information may include, but need not be limited to, the current status of a person's CAMTC certificate, any history of disciplinary action(s) taken against the person, the home and work addresses of the CAMTC certificate holder and any other information that may be necessary to verify fact relevant to administering the provisions of this Chapter.

5.24.180. Nuisance.

Any massage business or establishment operated, conducted or maintained contrary to the provisions of this Chapter shall be unlawful and a public nuisance, and the City Attorney may, in the exercise of his or her discretion, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinment thereof, in any manner provided by the Cloverdale Municipal Code and by law. All remedies provided for in this Chapter are cumulative.

5.24.190. Prosecutorial Discretion.

Pursuant to the City Attorney's prosecutorial discretion, the City may enforce violations of this Chapter as criminal, civil and/or administrative violations utilizing administrative remedies. All remedies provided for in this Chapter are cumulative.

5.24.200. Criminal Prosecution.

A violation of any of the provisions or failing to comply with any of the mandatory requirements of this Chapter shall constitute a misdemeanor and at the discretion of the City Attorney, a violation of any provision of this Chapter may be prosecuted in a criminal court. Any violation of this Chapter prosecuted as a misdemeanor shall be punishable by a fine of not

more than one thousand dollars ($1,000.00), per violation or by imprisonment in the County Jail for a period of not more than six (6) months, or by both fine and imprisonment. All remedies provided for in this Chapter are cumulative.

5.24.210. Administrative Fines.

A violation of any of the provisions or failing to comply with any of the mandatory requirements of this Chapter, may result in the issuance of an administrative citation and the City may, at its discretion, seek an administrative fine of up to one thousand dollars ($1,000.00).

A. Each violation of any provision of this Chapter shall constitute a separate and distinct violation for each and every day during which any violation of any provision of this Chapter is committed, continued or permitted by such person.

B. Notice of the assessed fine shall be served by certified mail with the legal violation and supporting facts in accordance with Section 1.14.020 of the Cloverdale Municipal Code. The notice shall contain an advisement of the right to file an appeal and the process for contesting the imposition of the fine with the City. The appeal process and timeline shall follow those procedures and timelines set forth in Section 1.14.020 through 1.14.140 of the Municipal Code.

C. If an appeal is not filed and the fine is not paid within thirty (30) days from the date of the notice of fine or a notice of determination from the Hearing Officer, the fine may be referred to a collection agency within or external of the City.

D. Any outstanding amounts owed to the City may be recovered through a lien against any real property owned by the offending party or a personal obligation lien against the offending party.

5.24.220. Applicability of Other Ordinances.

Nothing contained in this Chapter shall be construed to exempt any person from complying with the provisions of any other applicable ordinance, rule, or regulation, or to exempt a massage establishment or massage therapist from the provisions of any zoning, licensing or other building ordinance, rule or regulation.

5.24.230. Unlawful Business Practices May Be Enjoined.

Any massage establishment or business operated, conducted, or maintained contrary to the provisions of this Chapter shall constitute an unlawful business practice pursuant to Business & Professions Code section 17200 et seq., and the City Attorney and/or District Attorney may, in the exercise of discretion, in addition to or in lieu of taking any other action permitted by this Chapter, commence an action or actions, proceeding or proceedings in an appropriate court of jurisdiction, seeking an injunction prohibiting the unlawful business practice and/or any other remedy available at law, including but not limited to fines, attorneys' fees and costs."

SECTION 3. California Environmental Quality Act ("CEQA"). This Ordinance is exempt from the California Environmental Quality Act pursuant to the State CEQA Guidelines and does not constitute the approval of a "project" under CEQA, pursuant to section 15060(c)(2) and (3), 15061(b)(3), 15262, and 15378 of the State CEQA Guidelines. Specifically, it can be seen with certainty that there is no possibility that this Ordinance, containing amendments to the registration, inspection and revocation processes for permits for massage establishments and massage therapists, or its implementation, would have a significant effect on the environment and is covered by the general rule, pursuant to 14 Cal. Code Regulations Section 15061(b)(3).

SECTION 4. No Mandatory Duty of Care. This Ordinance is not intended to, and shall not be construed or given effect in a manner that imposes upon the City or any officer, agent, employee or volunteer, thereof a mandatory duty of care towards persons and property, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 5. Severability. If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION 6. Effective Date. This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Council Members voting for or against the same, in a newspaper of general circulation published in the County of Sonoma, State of California.

I hereby certify that the foregoing is a true and complete copy of an ordinance duly and regularly adopted by the City at a regular meeting thereof held on October 25, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 25th day of October, 2016 by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved: Attested:

_____ _____

Mary Ann Brigham, Mayor Linda Moore, Deputy City Clerk

2618332.4

ORDINANCE NO. 705-2016
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE REPEALING AND REPLACING CLOVERDALE MUNICIPAL CODE CHAPTER 5.24 RELATING TO MASSAGE THERAPY AND MASSAGE ESTABLISHMENTS

WHEREAS, there is substantial research that indicates that the skillful practice of massage can provide many health benefits including relief of pain from disease, injury and other sources, and that massage can be a valuable component of a wellness program; and

WHEREAS, the City of Cloverdale has an interest in the safe operation and licensing of massage businesses in the City; and

WHEREAS, in 1975, the City Council adopted Cloverdale Municipal Code Chapter 5.24, establishing regulations governing massage therapy businesses and practitioners; and

WHEREAS, on September 27, 2008, the Governor approved Senate Bill 731 ("SB 731"), which sanctioned Business and Professions Code sections 4600 et seq., known as the Massage Therapy Act, to the California Business and Professions Code, which provided for the formation of a nonprofit "Massage Therapy Organization" to oversee a State-sanctioned program of certification for massage therapy practitioners; and

WHEREAS, pursuant to SB 731, the "California Massage Therapy Council" was formed and established a scheme for a voluntary certification process for persons wishing to practice massage therapy in California, with the intention of enabling persons so certified to practice massage therapy in any city within the State without being required to obtain a local permit to practice; and

WHEREAS, SB 731 included a sunset clause, expiring on January 1, 2015, to allow the State to review the law and its impacts; and

WHEREAS, on September 18, 2014, Governor Brown signed Assembly Bill 1147 ("AB 1147"), effective January 1, 2015, which substantially changed Business and Professions Code sections 460, 4600-4621, and Government Code section 51034, by significantly revising existing laws regulating certified massage professionals and gave cities and counties some regulatory authority over massage establishments; and

WHEREAS, there have been significant changes to State laws relating to massage therapy and to the landscape of massage businesses in the City of Cloverdale, since the City of Cloverdale enacted Cloverdale Municipal Code Chapter 5.24; and

WHEREAS, a revision to the Cloverdale Municipal Code relating to massage therapy and massage establishments will streamline licensing procedures while promoting those businesses that provide legitimate and important health and therapeutic services to the community and prohibiting those businesses that conduct illicit activity; and

WHEREAS, a revision to Municipal Code Chapter 5.24 will also bring the City's local ordinance into compliance with uniform statewide regulations enacted by AB 1147; and

WHEREAS, this Ordinance is enacted pursuant to Government Code Sections 51030-51034 and Business and Professions Code Sections 4600 et seq., as amended by AB 1147.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLOVERDALE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Cloverdale Municipal Code Title 5, "Business Taxes, Licenses and Regulations," Chapter 5.24 entitled "Massage Parlors," as presently written, is hereby repealed in its entirety.

SECTION 2. New Chapter 5.24 entitled "Massage Therapy and Massage Establishments" is hereby incorporated into Title 5, "Business Taxes, Licenses and Regulations" and adopted to read as follows:

"Chapter 5.24

MASSAGE THERAPY AND MASSAGE ESTABLISHMENTS

5.24.010 Purpose and Intent.

It is the purpose and intent of this Chapter to provide for the orderly regulation of individuals and businesses providing massage therapy services, and to prevent and discourage the misuse of massage therapy as a front for prostitution, human trafficking, and related activities in violation of State law while protecting the interests of the public health, safety and welfare of the community by providing certain minimum standards for health and safety, building, sanitation, education, and operation standards for massage therapists and businesses.

It is the further intent of this Chapter to update and streamline local massage therapy permitting procedures, while still facilitating and advancing the ethical practice of massage therapy. It is also the intent of the City Council that this Chapter apply to any business, location or individual that provides massage services regardless of the business name or individual's title or position.

5.24.020. Definitions.

For the purpose of this Chapter, unless the context clearly requires a different meaning, the words, terms and phrases set forth in this Section shall have the meanings given them in this section:

A. "Applicant" shall mean the individual or individuals applying for a Massage Therapist Permit or a Massage Establishment Permit. Only an owner(s) may apply for a Massage Establishment Permit.

B. "California Massage Therapy Council" or "CAMTC" shall mean the non-profit organization created to regulate the massage industry set forth Chapter 10.5 of Division 2 of the Business and Professions Code of the State of California (commencing with Section 4600).

C. "CAMTC Certificate" shall mean a current and valid certificate issued by the California Massage Therapy Council to a massage practitioner pursuant to Business and Professions Code section 4601(b) or (c) or any later enacted amendment.

D. "CAMTC certified" shall mean any individual, certified by the CAMTC and possessing a valid CAMTC Certificate and is licensed to practice or administer massage, in exchange for any form of compensation within the City of Cloverdale. All persons certified by CAMTC shall have the right to perform or engage in the practice of massage consistent with the Massage Therapy Act, the qualifications established by his or her certification and the provisions of this Chapter stated herein.

E. "Chair massage" shall mean any massage given to a person who is fully clothed and sitting in an upright position on a professional bodywork seat, stool, office seat, wheelchair or other chair-like device.

F. "City" shall mean the City of Cloverdale.

G. "Client" shall mean the customer or patron who pays for or receives massage services.

H. "Compensation" means the payment, loan, advance, donation, contribution, deposit, exchange or gift of money or anything of value.

I. "Disqualifying offense" shall mean any offense which disqualifies an Applicant from obtaining a Permit pursuant to this Chapter. Disqualifying offenses are any of the following:

1. The Applicant has provided materially false information in his/her application.

2. Within five (5) years immediately preceding the date of the filing of the application, the Applicant has been convicted of, or pled guilty to, any of the following offenses: violation of Penal Code sections 243.4, 261, 266a through 266j, inclusive, 267, 288, 314 to 316 inclusive, 318, 647a, 647b,647d, 647i, 647j, any offenses requiring registration under Penal Code section 290 or Health and Safety Code section 11590; any felony offense involving the possession for sale, sale, transportation, furnishing or giving away of a controlled substance specified in Health and Safety Code sections 11054 to 11058, inclusive, as amended; violation of any charge related to human trafficking including United States Code Title 18, Chapter 77, Sections 1590, 1591 or 1592; any offense in another state which if committed in California, would have been punishable as one or more of the offenses mentioned here; any offense

involving the use of force or violence upon the person of another, or any offense involving theft, embezzlement or moral turpitude.

3. Any violation of any provision of this Chapter resulting in a suspension or revocation of any Permit issued under this Chapter, or a violation of a similar law in any other jurisdiction, which resulted in a suspension or revocation of a permit under that law.

J. "Employs or retains" shall mean a person that is a directly paid employee of the massage establishment; or an independent contractor who receives compensation for massage therapy provided to patrons of the massage establishment; or a person that receives a referral of patrons from the massage establishment and, at any time before or after the referral, arranges in any way for compensation to flow to the massage establishment operator (regardless of whether the parties involved acknowledge that compensation is flowing in exchange for the referral, or whether such parties record such compensation in their financial records).

K. "Employee" shall mean any person employed by a massage business who may render any service to the business and who receives any form of compensation from the business. For the purposes of this Chapter, the term "Employee" shall include independent contractors, agents and volunteers.

L. "Home occupation massage therapist" shall mean a massage therapist that practices massage within his or her own residence. All home occupation massage therapists are subject to the requirements for home occupation permits as set forth in Section 18.03.190 of the Cloverdale Municipal Code and no more than two (2) massage therapists may operate as home occupation massage therapists in any single residence.

M. "Inspector" shall mean the person or persons designated by the permit authority to conduct any inspections required or permitted under this Chapter.

N. "Manager" shall mean a person who supervises, manages, directs, organizes, controls, or in any other way is responsible for, or in charge of the conduct of, the activities within a massage business. Evidence of management includes, but is not limited to, evidence that the individual has power to direct or hire and dismiss employees, control hours of operation, create policy or rules or purchase supplies. A manager may also be an owner.

O. "Massage," and "Massage Therapy," for purposes of this Chapter are used interchangeably and shall mean the skillful application of touch, and any method of treating the external parts of the body for remedial, health or hygienic purposes for any form of compensation by means of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating, of the external parts of the body with hands or other parts of the body by a practitioner to produce increased awareness, relaxation, pain relief, injury rehabilitation or neuromuscular reeducation, with or without the aid of any mechanical or electrical apparatus or appliances; or with or without such supplementary aids as rubbing alcohol, liniments, antiseptic, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice; or by baths, including but not limited to Turkish,

Russian, Swedish, Japanese, vapor, shower, electric tub, sponge, mineral, mud, fermentation or any other type of bath.

P. "Massage business" shall mean any business that offers massage in exchange for compensation, whether at a fixed place of business or at a location designated by the customer or client through outcall or on-site massage services. The term "massage business" includes a Massage Therapist Permit holder or CAMTC certificate holder who is the sole owner, operator and employee of a massage business operating as a sole proprietorship and also includes home occupation massage therapists. For the purposes of this Chapter, the term "massage business" shall include those businesses that provide separate massage services, such as spas and day spas, but shall not apply to massages performed to limited areas of the neck, face and/or scalp, hands or feet of the clients when that massage is accessory to and within the scope of a barber's, cosmetologist's and esthetician's state license.

Q. "Massage establishment" shall mean any business or establishment that offers massage therapy in exchange for compensation at a fixed place of business. Any business or establishment that offers any combination of massage therapy and bath facilities including, but not limited to, showers, baths, wet and dry heat rooms, pools and hot tubs, shall be deemed a massage establishment under this Chapter. For the purposes of this Chapter, the term "massage establishment" shall include those businesses that provide separate massage services, such as spas and day spas, but shall not apply to massages performed to limited areas of the neck, face and/or scalp, hands or feet of the clients when that massage is an accessory to and within the scope of a barber's, cosmetologist's, and esthetician's state license.

R. "Massage establishment owner" or "owner of a massage establishment" or "owner" shall mean and include any of the following persons:

1. The sole proprietor of a sole proprietorship operating a massage establishment.

2. Any general partner of a general or limited partnership that owns a massage establishment.

3. Any person who has a ten percent (10%) or greater ownership interest in a corporation that owns a massage establishment.

4. Any person who is a member of a limited liability company that owns a massage establishment.

5. Any person who has a ten percent (10%) or greater ownership interest in any other type of business association that owns a massage business.

S. "Massage Establishment Permit," or "Permit holder" means the City-issued permit required by this Chapter to operate a massage establishment. Only an owner(s) may apply for a Massage Establishment Permit.

T. "Massage Therapist Permit," or "Permit holder" means the City-issued permit required by this Chapter to operate as a massage therapist.

U. "On-site massage" shall mean a massage given to an individual who remains fully clothed during the massage and at a location other than a massage business, and is limited to massages that take place at malls, business offices, sports complexes, convention centers and public events.

V. "Operator" or "massage establishment operator" or "massage business operator" shall mean any and all owners or managers of a massage establishment.

W. "Out-call massage service" shall mean the engaging in or carrying on of massage therapy for compensation at a location other than a duly licensed massage establishment that has been permitted pursuant to this Chapter.

X. "Patron" shall mean an individual on the premises of a massage establishment for the purpose of receiving massage therapy.

Y. "Permit authority" means the Chief of Police, or his or her designee, charged with the administration of this Chapter.

Z. "Person" shall mean any individual, firm, association, partnership, corporation, joint venture, limited liability company or combination of individuals.

AA. "Reception and waiting area" shall mean the area immediately inside the main entry door of the massage establishment, dedicated to the reception and waiting of patrons, clients and visitors of the massage establishment, which is not a massage therapy room or otherwise used for the provision of massage therapy services.

BB. "Recognized school" shall mean a school of massage which entails the following:

1. Teaches the theory, ethics, practice including anatomy and physiology, profession and work of massage; and

2. Requires a residence course of study to be given and completed before the student is furnished with a diploma, certificate of learning or completion or degree in massage; and

3. The massage program provides an organized plan of study of massage and related subjects for a minimum of 300 hours and has been approved by the State of California Consumer Bureau, or the Department of Consumer Affairs or an accredited college, university or junior college established pursuant to Education Code 100850, or if said school is not located in California, has complied with the standards commensurate with those of a school of equal or greater training that is approved by the corresponding agency in another state, or accredited by an agency recognized by the United States Department of Education.

CC. "Sole-Proprietorship" shall mean a massage business where the owner owns one-hundred percent (100%) of the business, is the only person who provides massage services for compensation for that business, and has no other employees or independent contractors that perform massage therapy services for the business.

DD. "Spa" or "Day Spa" shall mean a business that offers a variety of services intended to meet personal needs of individuals such as skin treatment, manicures and pedicures and massage.

EE. "Visitor" shall mean any individual not retained or employed by the massage establishment and not receiving or waiting to receive massage therapy services, but excluding law enforcement personnel or governmental officials performing governmental business.

5.24.030. Exemptions.

The provisions of this Chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties in their respective professions:

A. Physicians, surgeons, chiropractors, osteopaths, podiatrists, acupuncturists, physical therapists, nurses or any other person duly licensed to practice any healing art and/or their respective profession under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code when engaging in such practice within the scope of his or her license.

B. Persons operating or employed at hospitals, nursing homes, sanitariums or any other health facility duly licensed by the State of California.

C. Trainers of any amateur, semi-professional or professional athlete or athletic team, so long as such persons' do not practice massage therapy as their primary occupation at any location where they provide such services in the City, and the practice of massage is limited to such athletes and athletic teams.

D. Barbers, cosmetologists or estheticians who are duly licensed under the laws of the State of California, while engaging in practices within the scope of their licenses, so long as the barber, cosmetologist or esthetician limits any massages he/she performs in the course of his/her professional duties to the neck, face and/or scalp, hands or feet of the clients when that massage is accessory to and within the scope of the barber's, cosmetologist's and esthetician's state license.

E. Enrolled students of a school of massage when they are performing massage within the City as part of a formal, supervised, internship or training program operated by the school, without compensation other than school credit, on the premises of a massage establishment duly authorized to operate pursuant to the terms of this Chapter; and provided that the operator of the massage establishment has first notified the permit authority in writing of the name, residence address and school of the students and the dates of the trainings.

F. Persons performing a therapeutic modality for which the State does not offer licenses or certification under the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code and the modality is performed with minimal touching and the client remains fully clothed at all times, such as Reiki, Reflexology that is performed only to the hands, feet and neck area of a patron's body, or the Bowen Technique and/or somatic practitioners who use no physical touch of any kind at any time in their practice.

G. Persons administering massages or health treatments at single-occurrence athletic, recreational or educational events.

5.24.040. Minimum Requirements for All Massage Therapists and Massage Establishments.

A. Massage Therapists. It shall be unlawful for any person to perform or engage in the practice of massage therapy for compensation within the City unless that person possesses one (1) of the following:

1. A current, valid, unsuspended and unrevoked CAMTC certificate as defined in Section 5.24.020(C); or

2. A current, valid, unsuspended and unrevoked Massage Therapist Permit pursuant to Section 5.24.100

B. Massage Establishments. It shall be unlawful for any massage business or establishment, owner or manager, to employ or retain any person to practice massage therapy for compensation, or to allow any person to perform massage therapy for compensation, unless that person possesses either a CAMTC certificate or a Massage Therapist Permit.

C. Massage Establishments. It shall be unlawful for any massage establishment to operate without possessing a current, valid, unsuspended and unrevoked Massage Establishment Permit pursuant to Section 5.24.080.

5.24.050 Business License Required.

In addition to the minimum requirements set forth in Section 5.24.040, it shall be unlawful to transact and carry on any business, trade, profession, calling or occupation relating to massage without first having procured a business license from the City to transact or carry on said business, trade, profession, calling or occupation, pursuant to Chapter 5.04 of the Cloverdale Municipal Code and the definitions stated therein.

The fee for a City Business License shall be assessed pursuant to Cloverdale Municipal Code 5.04.170, as amended by Council from time to time.

5.24.060. Time For Compliance With Minimum Requirements.

A. Upon application for a Business License pursuant to Chapter 5.04 of the Cloverdale Municipal Code or renewal of an existing Business License for a massage business, the Applicant shall show proof of compliance with Section 5.24.040.

B. All persons, massage businesses or establishments, including its owners, operators, managers and employees shall comply with all other applicable sections of this Chapter upon its effective date.

5.24.070 Home Occupation Massage Therapist.

Any massage therapist conducting, performing, engaging in or giving massages at their residence is deemed a home occupation massage therapist and must obtain a home occupation permit pursuant to Cloverdale Municipal Code 18.03.190 and comply with the standards set forth in Cloverdale Municipal Code 18.09.120. The massage therapist conducting, performing, engaging in or giving massages shall also comply with the requirements of Section 5.24.040(A) of this Chapter.

5.24.080. Massage Establishment Permit – Required for Massage Establishments.

A. Valid Permit Required. It is unlawful and a violation of this Chapter for any person, firm, association, corporation, limited partnership, limited liability company or other entity to own, operate, engage in, conduct, permit or carry on in any way, a massage establishment without a valid, unsuspended, unrevoked, Massage Establishment Permit.

B. Single Permit for Each Location. Only one (1) Massage Establishment Permit shall be granted for each fixed location where any of the massage therapy occurs. The owner of the massage establishment, as defined in this Chapter, shall hold the Permit. If there are multiple owners, the Chief of Police, or his or her designee, will issue the Permit to one of the owners.

C. Permit Not Issued if Disqualifying Offenses Committed. A Massage Establishment Permit shall not be issued to any massage establishment where any owner(s), operator(s), manager(s), employee(s), massage therapist(s), or any other individual associated with the massage establishment has committed a disqualifying offense as defined in Section 5.24.020(K).

5.24.090. Massage Establishment Permit – Requirements, Denial, Suspension and Revocation and Due Process.

A. Application. Any Applicant wishing to obtain a Massage Establishment Permit, shall personally appear at the Police Department and file an application on a form provided by the Chief of Police, or his or her designee. The application shall include the following information:

1. The name, address and telephone number of the Applicant and all persons to be directly or indirectly interested in the Permit, such as other owner(s), if issued;

2. A copy of the Applicant's government issued identification card;

3. The name, address and telephone number, of the massage establishment;

4. The form of business under which the Applicant will be conducting the massage establishment, *i.e.*, corporation, general or limited partnership, limited liability company, or other form. If the Applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors, and each shareholder holding more than ten percent (10%) of the stock of the corporation. If the Applicant is a general or limited partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one (1) or more of the partners is a corporation, the provisions of this Section pertaining to a corporate applicant shall apply. If the Applicant is a limited liability company, the application shall set forth the name and residence address of each of the members. If one (1) or more of the members is a partnership, limited liability company, or corporation, the provisions of this Section pertaining to a partnership, limited liability company or corporate Applicant shall apply, as applicable;

5. The name and address of the owner of the real property upon, in or from which the massage establishment is to be operated. In the event the Applicant is not the legal owner of the property, the application shall be accompanied by a copy of any written lease between the Applicant and the property owner authorizing use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a written, notarized acknowledgment from the property owner that the property owner has been advised that a massage establishment will be operated by the applicant upon, in or from the property owner's property;

6. A description of the proposed massage establishment, including the type of treatments to be administered;

7. The name and address of all persons currently employed or intended to be employed, the nature of work each employee is intended to perform and for each person that the massage establishment does or will employ or retain to perform massage therapy for compensation, whether on-site or out-call, a copy of each massage therapists' current government issued identification card and a copy of either their CAMTC certificate or their Massage Therapist Permit;

8. Whether any license or permit has ever been issued to the Applicant by any jurisdiction under the provisions of any ordinance or statute governing massage or somatic practice, and as to any such license or permit, the name and address of the issuing authority, the effective dates of such license or permit, whether such license or permit was ever suspended, revoked, withdrawn or denied; and copies of any documentary materials relating to such suspension, revocation, withdrawal or denial;

9. Whether the Applicant or any other owner(s), employee(s) or intended employee(s), has within the five (5) years immediately preceding the date of application been convicted in any state of any felony;

10. Whether the Applicant or any other owner(s), employee(s) or intended employee(s), is currently required to register under the provisions of Section 290 of the California Penal Code;

11. The Applicant's business, occupation and employment history for five (5) years preceding the date of application, and the inclusive dates of same;

12. One (1) set of fingerprints and photographs of the Applicant and any other person interested in the Permit, such as any other owner(s), in a form satisfactory to the Chief of Police, or his or her designee. At the time of the fingerprinting, the Applicant shall pay the Police Department the fingerprinting fee and the cost of obtaining criminal history information and conducting a background investigation. Fees are set forth in the City's fee schedule in amounts established by resolution of City Council and may be amended by Council from time to time. Any Applicant who is CAMTC certified shall not be subject to a background check or fingerprinting and shall be exempt from this subsection 5.24.090(A)(12);

13. A written statement that neither the Applicant nor any persons to be directly or indirectly interested in the Permit, if granted, have knowingly made any false, misleading, or fraudulent statement of facts in the application for the Permit or in any other document required by the City of Cloverdale;

14. Certification, under penalty of perjury, that neither the Applicant, nor any other owner(s), employee(s) or intended employee(s), have committed any disqualifying offenses as defined by Section 5.24.020(K);

15. Such other information as may be required by the Chief of Police, or his or her designee, or any other City Official to determine compliance with any other eligibility requirements for issuance of the Permit as specified by Federal, State or local law.

B. Application Fee. An application for a Massage Establishment Permit shall be accompanied by a fee as established by the City's Master Fee Schedule.

C. Issuance. The Chief of Police, or his or her designee, shall grant a Massage Establishment Permit to an Applicant who has satisfied the requirements of this Section and all other applicable laws, including, but not limited to, the City's building, zoning and health regulations. The Massage Establishment Permit shall be non-transferrable and cannot be sold.

D. Denial. The Chief of Police, or his or her designee, shall determine, based on the background investigation, fingerprints and the information submitted with the application, whether a Massage Establishment Permit shall be issued. If the Chief of Police, or his or her designee, determines that the Applicant is disqualified due to a disqualified offense, the Chief of

Police, or his or her designee, shall inform the Applicant in writing and specify the reasons for the denial.

E. Notice of Denial-Appeal-Judicial Review. If an application for a Massage Establishment Permit is denied, the Chief of Police, or his or her designee, shall serve on the Applicant, in a manner that conforms to Section 1.14.020 (B) of this Code, a written notice of denial which shall specify the grounds for the denial.

1. Any Applicant aggrieved by the decision of the Chief of Police, or his or her designee, may appeal that decision to the City Manager, or his or her designee, by filing a notice of appeal within ten (10) days of being notified of the decision.

2. The City Manager, or his designee, shall schedule a hearing within thirty (30) days and provide written notice of the time, date and location of the hearing to the appellant. The hearing shall be conducted pursuant to Cloverdale Municipal Code 1.14.090. The City Manager, or his or her designee, shall render a decision within thirty (30) days of the conclusion of the hearing, unless the parties agree otherwise.

3. The written decision of the City Manager, or his or her designee may be appealed and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

F. Display of Permit. Each holder of a Massage Establishment Permit shall display that Permit in an open and conspicuous place on the premises visible from the main entry door and/or reception and waiting area of the massage establishment. The home address of any employee need not be displayed.

G. Term. A Massage Establishment Permit issued pursuant to the terms of this Chapter shall be valid for a term of one (1) year from the date of issuance, and, unless suspended or revoked, must be renewed by the Applicant annually so long as the Applicant is operating within the City. A Massage Establishment Permit may not be renewed or amended by the Applicant unless and until all due and unpaid citations issued to the owner, operator, manager or any employee of the establishment, pursuant to this Chapter, are paid in full. Citations shall not be deemed to be due and unpaid until the thirty (30)-day period for appeal of the citation has passed.

H. Amendments. Whenever the information provided in the application for a Massage Establishment Permit on file with the City changes, for example by a change in employees, the Applicant shall, within ten (10) business days after such change, file with the Chief of Police, or his or her designee, an application for amendment to the Massage Establishment Permit to reflect such change. An application for an amendment to a Massage Establishment Permit shall be accompanied by a fee as established by the City's Master Fee Schedule. It shall be unlawful and a violation of this Chapter for any owner or manager to allow any person to perform massage therapy for compensation unless and until an amended Massage Establishment Permit has been issued by the Chief of Police, or his or her designee.

I. Grounds for Suspension or Revocation. For the purpose of enforcing the requirements of this Chapter, the massage establishment owner, operator and/or manager shall be responsible for the conduct of all massage establishment employees, agents, independent contractors or other representatives while such persons are on the premises of the massage establishment or providing outcall massage services on behalf of the massage establishment.

1. In addition to any other remedy available to the City, any Massage Establishment Permit issued pursuant to this Chapter may be suspended or revoked by the Chief of Police, or his or her designee, after a hearing, where it is found by a preponderance of the evidence, that one (1) or more of the following have occurred on even a single occasion:

a. The Permit holder, or any person employed or retained by the massage establishment, has been found to have violated any provision of this Chapter; or

b. The Permit holder, or any person employed or retained by the massage establishment has been convicted in a court of competent jurisdiction of having violated, or has engaged in conduct constituting a violation of a provision or provisions of this Chapter or the Massage Therapy Act or some other State or Federal law, including any of the following violation(s) of Penal Code sections 243.4, 261, 266a through 266j, inclusive, 267, 288, 314 to 316 inclusive, 318, 647a, 647b,647d, 647i, 647j, any offenses requiring registration under Penal Code section 290 or Health and Safety Code section 11590; any felony offense involving the possession for sale, sale, transportation, furnishing or giving away of a controlled substance specified in Health and Safety Code sections 11054 to 11058, inclusive, as amended; any offense in another state which if committed in California, would have been punishable as one or more of the offenses mentioned here, any offense involving the use of force or violence upon the person of another, or any offense involving the use of force or violence upon the person of another, or any offense involving theft, embezzlement or moral turpitude; or

c. The Permit holder, or any person employed or retained by the massage establishment, has been subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to this Municipal Code, or Section 11225 through 11235 of the California Penal Code, or any similar provision of law in any jurisdiction outside the State of California; or

d. The Permit holder, or any person employed or retained by the massage establishment, has engaged in fraud or misrepresentation or has knowingly made a misstatement of material fact while working in or for the massage establishment; or

e. A Massage Establishment Permit was obtained with fraudulent or deceitful information; or

f. The Permit holder has continued to operate or conduct massages after the Massage Establishment Permit was suspended; or

g. Massage treatments are or have been performed on the premises of the massage establishment, with or without the Permit holder's actual knowledge, by any person who does not possess a CAMTC certificate or a Massage Therapist Permit; or

h. The massage establishment is not being maintained in compliance with the provisions of this Chapter, the Massage Therapy Act (Business & Professions Code Sections 4600-4621, any other provision of the Cloverdale Municipal Code or any other local, State or Federal law and the Permit holder has failed to promptly remedy any deficiency for which they have received notice; or

i. There have been one (1) or more acts prohibited under California Penal Code Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 taking place on the premises of the massage establishment, whether or not any criminal prosecution has been pursued or conviction obtained for such acts, and whether or not they occurred with or without the actual knowledge of the Permit Holder.

j. The Permit holder has committed a disqualifying offense pursuant to Section 5.24.020(K).

2. Upon revocation of a Massage Establishment Permit, the Permit holder shall ensure that the massage establishment immediately ceases any operation or business related to massage.

J. Process of Suspension or Revocation.

1. The Chief of Police, or his or her designee, before revoking or suspending any Massage Establishment Permit, shall serve the Permit holder and/or the massage establishment owner(s), operator(s) and/or manager(s) with written Notice of Revocation or Suspension in a manner that conforms to Section 1.14.020(B) of this Code and a date for the hearing on the matter. The Notice shall state the basis for the potential revocation or suspension and the date and time for the hearing.

2. The hearing shall be conducted by the Chief of Police, or his or her designee, and shall be an informal proceeding. The Chief of Police, or his or her designee, shall consider the facts and evidence and shall make a determination, based upon a preponderance of the evidence, whether the Massage Establishment Permit should be revoked or suspended.

3. The Chief of Police, or his or her designee, shall serve the Permit holder and/or the massage establishment owner(s), operator(s) and/or manager(s) with written Notice of Revocation or Suspension in the manner set forth in Section 1.14.090 of this Code. The Notice shall state the grounds for revocation or suspension.

4. Any Permit holder aggrieved by the decision of the Chief of Police, or his or her designee, may appeal that decision to the City Manager, or his or her designee, by filing a notice of appeal within ten (10) days of being notified of the decision.

5. The City Manager, or his or her designee, shall schedule a hearing within thirty (30) days and provide written notice of the time, date and location of the hearing to the appellant. The hearing shall be conducted pursuant to Cloverdale Municipal Code 1.14.090 and 1.14.100. The City Manager, or his or her designee, shall render a decision within thirty (30) days of the conclusion of the hearing, unless the parties agree otherwise.

6. The written decision of the City Manager, or his or her designee may be appealed and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

5.24.100. Massage Therapist Permit – Required for Massage Therapists.

A. Valid Permit Required. It is unlawful and a violation of this Chapter for any person, who is not CAMTC certified, to perform or engage in the practice of massage therapy in the City of Cloverdale without a valid, unsuspended, unrevoked, Massage Therapist Permit.

B. Permit Not Issued if Disqualifying Offenses Committed. A Massage Therapist Permit shall not be issued to any massage therapist where the Applicant has committed a disqualifying offense as defined in Section 5.24.020(K).

C. Any massage therapist who possesses a CAMTC certificate shall be exempt from the requirements of this Section.

5.24.110. Massage Therapist Permit-Minimum Educational Requirements.

A. Massage therapist Applicants must provide the Chief of Police, or his or her designee, with evidence that they possess at least two (2) of the following minimum qualifications before a Massage Therapist Permit may be issued:

1. An original copy of a diploma, certificate or academic transcript that demonstrates completion of three hundred (300) hours of in-class instruction from a recognized school; or

2. Satisfactory passage of the Board Certification Examination, or its equivalent, offered by the National Certification Board for Therapeutic Massage & Bodywork ; or

3. Membership in good standing in a national professional massage organization or association that requires its members to have the following:

a. Substantiation of at least one hundred (100) hours of massage training or education;

b. Possession of practitioner's liability insurance coverage in the minimum amount of one million dollars ($1,000,000) per event;

c. Adherence to a code of ethics; and

d. Renewal of membership at a minimum of once every two (2) years; or

4. The Applicant has a long-standing (over twenty (20) years) history of conducting massages in the City without any complaints or Municipal Code violations.

5.24.120. Massage Therapist Permit - Requirements, Denial, Suspension and Revocation and Due Process.

A. Application. Any Applicant wishing to obtain a Massage Therapist Permit, shall personally appear at the Police Department and file an application on a form provided by the Chief of Police, or his or her designee. The application shall include the following information:

1. If the Applicant is a U.S. citizen, his or her social security number, driver's license number, birth certificate, address and telephone number;

2. If the Applicant is not a U.S. citizen, his or her original Immigration and Naturalization Service documents, to be verified by the Chief of Police, or his or her designee;

3. The name, address and telephone number, of the massage establishment where the Applicant intends to be employed or if the Applicant is a sole-proprietorship or the owner of a business then, the name, address and telephone number of that business;

4. The form of business under which the Applicant will be conducting the massage, *i.e.*, solo practitioner, corporation, general or limited partnership, limited liability company, or other form. If the Applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors, and each shareholder holding more than ten percent (10%) of the stock of the corporation. If the Applicant is a general or limited partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one (1) or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply. If the Applicant is a limited liability company, the application shall set forth the name and residence address of each of the members. If one (1) or more of the members is a partnership, limited liability company, or corporation, the provisions of this section pertaining to a partnership, limited liability company, or corporate Applicant shall apply, as applicable;

5. The name and address of the owner of the real property upon, in, or from which the massage establishment is to be operated. In the event the Applicant is not the legal owner of the property, the application shall be accompanied by a copy of any written lease between the Applicant and the property owner authorizing use of the premises for a massage establishment, or, alternatively, if there is no written lease, then a written, notarized acknowledgment from the property owner that the property owner has been advised that a

massage establishment will be operated by the applicant upon, in, or from the property owner's property;

6. A description of the types of massage and services that the massage therapist is qualified to offer;

7. The name, address, telephone number of places of residence and employment of the Applicant for the last five (5) years;

8. Whether any license or permit has ever been issued to the Applicant by any jurisdiction under the provisions of any ordinance or statute governing massage or somatic practice, and as to any such license or permit, the name and address of the issuing authority, the effective dates of such license or permit, whether such license or permit was ever suspended, revoked, withdrawn, or denied; and copies of any documentary materials relating to such suspension, revocation, withdrawal, or denial;

9. Whether the Applicant has, within the five (5) years immediately preceding the date of application, been convicted in any state of any felony;

10. Whether the Applicant is currently required to register under the provisions of Section 290 of the California Penal Code;

11. One (1) set of fingerprints and photographs for each Applicant in a form satisfactory to the Chief of Police, or his or her designee. At the time of the fingerprinting, the Applicant shall pay the Police Department a fingerprinting fee and the cost of obtaining criminal history information and conducting a background investigation. Fees are set forth in the City's fee schedule in amounts established by resolution of City Council and may be amended by Council from time to time;

12. A written statement that neither the Applicant nor any persons to be directly or indirectly interested in the permit, if granted, have knowingly made any false, misleading, or fraudulent statement of facts in the application for the permit or in any other document required by the City of Cloverdale;

13. Certification, under penalty of perjury, that the Applicant has not committed any disqualifying offenses as defined by Section 5.24.020(K);

14. Such other information as may be required by the Chief of Police, or his or her designee, or any other City Official to determine compliance with any other eligibility requirements for issuance of the Permit as specified by Federal, State, or local law. The Chief of Police, or his or her designee, may waive any of the requirements of this section;

15. Any original documents demonstrating the fulfillment of the minimum educational requirements for massage therapists that are not CAMTC certified, as set forth in Section 5.24.110.

B. Home Occupation Massage Therapist. An Application by a person conducting, performing, engaging in or giving massages at their residence is deemed a home occupation massage therapist and must indicate in the Application for a Massage Therapist Permit such an intent to operate as such.

C. Application Fee. An application for a Massage Therapist Permit shall be accompanied by a fee as established by the City's Master Fee Schedule.

D. Issuance. The Chief of Police, or his or her designee, shall grant a Massage Therapist Permit to an Applicant who has satisfied the requirements of this Section and all other applicable laws, including, but not limited to, the City's building, zoning, and health regulations. The Massage Therapist Permit shall be non-transferrable and cannot be sold.

E. Denial. The Chief of Police, or his or her designee, shall determine, based on the background investigation, fingerprints and the information submitted with the application, whether a Massage Therapist Permit shall be issued. If the Chief of Police, or his or her designee, determines that the Applicant is disqualified due to a disqualified offense. The Chief of Police, or his or her designee, shall inform the Applicant in writing and specify the reasons for the denial.

F. Notice of Denial-Appeal-Judicial Review. If an application for a Massage Therapist Permit is denied, the Chief of Police, or his or her designee, shall serve on the Applicant, in a manner that conforms to Section 1.14.020(B) of this Code, a written notice of denial which shall specify the grounds for the denial.

1. Any Applicant aggrieved by the decision of the Chief of Police, or his or her designee, may appeal that decision to the City Manager, or his or her designee, by filing a notice of appeal within ten (10) days of being notified of the decision.

2. The City Manager, or his or her designee, shall schedule a hearing within thirty (30) days and provide written notice of the time, date and location of the hearing to the appellant. The hearing shall be conducted pursuant to Cloverdale Municipal Code 1.14.090. The City Manager, or his or her designee, shall render a decision within thirty (30) days of the conclusion of the hearing, unless the parties agree otherwise.

3. The written decision of the City Manager, or his or her designee may be appealed and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

G. Display of Permit. Each holder of a Massage Therapist Permit shall display that Permit in an open and conspicuous place on the premises visible from the main entry door and/or reception and waiting area of the massage establishment. The home address of any employee need not be displayed.

H. Term. A Massage Therapist Permit issued pursuant to the terms of this Chapter shall be valid for a term of one (1) year from the date of issuance, and, unless suspended or

revoked, must be renewed by the Applicant annually so long as the Applicant is operating within the City. A Massage Therapist Permit may not be renewed or amended by the Applicant unless and until all due and unpaid citations issued to the owner, operator, manager or any employee of the establishment, pursuant to this Chapter, are paid in full. Citations shall not be deemed to be due and unpaid until the thirty (30)-day period for appeal of the citation has passed.

I. Amendments. Whenever the information provided in the application for a Massage Therapist Permit on file with the City changes, for example by a change in address or telephone number, the Applicant shall, within ten (10) business days after such change, file with the Chief of Police, or his or her designee, an application for amendment to the Massage Therapist Permit to reflect such change. An application for an amendment to a Massage Therapist Permit shall be accompanied by a fee as established by the City's Master Fee Schedule. It shall be unlawful and a violation of this Chapter for any owner or manager to allow any person to perform massage therapy for compensation unless and until an amended Massage Therapist Permit has been issued by the Chief of Police, or his or her designee. A Massage Therapist Permit may not be renewed or amended by the Applicant unless and until due and unpaid citations issued to the operator pursuant to this Chapter are paid in full. Citations shall not be deemed to be due and unpaid until the thirty (30)-day period for appeal of the citation has passed.

J. Grounds for Suspension or Revocation.

1. In addition to any other remedy available to the City, any Massage Therapist Permit, issued pursuant to this Chapter, may be suspended or revoked by the Chief of Police, or his or her designee, after a hearing, where it is found by a preponderance of the evidence, that one (1) or more of the following have occurred on even a single occasion:

a. The Permit holder, or any person employed or retained by the Permit holder, has been found to have violated any provision of this Chapter; or

b. The Permit holder, or any person employed or retained by the Permit holder has been convicted in a court of competent jurisdiction of having violated, or has engaged in conduct constituting a violation of a provision or provisions of this Chapter or the Massage Therapy Act or some other state or federal law, including any of the following violation(s) of Penal Code sections 243.4, 261, 266a through 266j, inclusive, 267, 288, 314 to 316 inclusive, 318, 647a, 647b,647d, 647i, 647j, any offenses requiring registration under Penal Code section 290 or Health and Safety Code section 11590; any felony offense involving the possession for sale, sale, transportation, furnishing, or giving away of a controlled substance specified in Health and Safety Code sections 11054 to 11058, inclusive, as amended; any offense in another state which if committed in California, would have been punishable as one or more of the offenses mentioned here, any offense involving the use of force or violence upon the person of another, or any offense involving the use of force or violence upon the person of another, or any offense involving theft, embezzlement, or moral turpitude; or

c. The Permit holder, or any person employed or retained by the Permit holder, has been subject to a permanent injunction against the conducting or maintaining

of a nuisance pursuant to this Municipal Code, or Section 11225 through 11235 of the California Penal Code, or any similar provision of law in any jurisdiction outside the State of California; or

d. The Permit holder, or any person employed or retained by the Permit holder, has engaged in fraud or misrepresentation or has knowingly made a misstatement of material fact while working in or for the massage establishment; or

e. A Massage Therapist Permit was obtained with fraudulent or deceitful information; or

f. The Permit holder has continued to operate or conduct massages after the Massage Therapist Permit was suspended; or

g. Massage treatments are or have been performed, by any person who does not possess a CAMTC certificate or a Massage Therapist Permit; or

h. The Permit holder is not complying with the provisions of this Chapter, the Massage Therapy Act (Business & Professions Code Sections 4600-4621, any other provision of the Cloverdale Municipal Code or any other local, state or federal law and the Permit holder has failed to promptly remedy any deficiency for which they have received notice; or

i. There have been one (1) or more acts prohibited under California Penal Code Sections 266, 266a, 266e, 266f, 266g, 266h, 266i, 266j, 315, 316, 318, 647(b), or 653.22 taking place on the premises of the massage establishment, whether or not any criminal prosecution has been pursued or conviction obtained for such acts, and whether or not they occurred with or without the actual knowledge of the Permit holder.

j. The Permit holder has committed a disqualifying offense pursuant to Section 5.24.020(K).

2. Upon revocation of a Massage Therapist Permit, the Permit holder shall ensure that he or she immediately ceases any performance or engagement in massage therapy.

K. Process of Suspension or Revocation.

1. The Chief of Police, or his or her designee, before revoking or suspending any Massage Therapist Permit, shall serve the Permit holder and/or the massage establishment owner(s), operator(s) and/or manager(s) with written Notice of Revocation or Suspension in a manner that conforms to Section 1.14.020(B) of this Code and a date for the hearing on the matter. The Notice shall state the basis for the potential revocation or suspension and the date and time for the hearing.

2. The hearing shall be conducted by the Chief of Police, or his or her designee, and shall be an informal proceeding. The Chief of Police, or his or her designee, shall

consider the facts and evidence and shall make a determination, based upon a preponderance of the evidence, whether the Massage Therapist Permit should be revoked or suspended.

3. The Chief of Police, or his or her designee, shall serve the Permit holder and/or the massage establishment owner(s), operator(s) and/or manager(s) with written Notice of Revocation or Suspension in the manner set forth in Section 1.14.090 of this Code. The Notice shall state the grounds for revocation or suspension.

4. Any Permit holder aggrieved by the decision of the Chief of Police, or his or her designee, may appeal that decision to the City Manager, or his or her designee, by filing a notice of appeal within ten (10) days of being notified of the decision.

5. The City Manager, or his or her designee, shall schedule a hearing within thirty (30) days and provide written notice of the time, date and location of the hearing to the appellant. The hearing shall be conducted pursuant to Cloverdale Municipal Code 1.14.090 and 1.14.100. The City Manager, or his or her designee, shall render a decision within thirty (30) days of the conclusion of the hearing, unless the parties agree otherwise.

6. The written decision of the City Manager, or his or her designee, may be appealed and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

5.24.130. Out-call Massage and On-Site Massage Restrictions.

A. No person or massage business shall perform either on-site massage or out-call massage for compensation without possessing either a CAMTC certificate or a Massage Therapist or Establishment Permit in conjunction with a valid City Business License and any other City permits that may be necessary.

B. Out-call massage and on-site massage shall only be conducted between the hours of 7:00 a.m. and 10:00 p.m.

C. Out-call massage or on-site massage shall not be conducted in a hotel/motel room or any other similar location used primarily for transitory habitation purposes.

5.24.140. Health and Safety Requirements for All Massages.

Except as otherwise specifically provided in this Chapter, all massage business owners, operators, employees, sole proprietors, independent contractors, home occupation massage therapists, and any person performing massage within the City shall comply with all of the following health and safety requirements. The Chief of Police, or his or her designee, may waive any of the requirements of this section if the Chief of Police, or his or her designee, determines that such a waiver will have no impact on public safety or neighborhood quality of life. The Chief of Police, or his or her designee, will also take into consideration whether compliance with

the requirements of this Section would place an undue financial burden on or would be physically infeasible.

A. The massage establishment and massage therapists shall at all times be equipped with an adequate supply of clean sanitary towels, non-disposable coverings, and linens, and all massage tables shall be covered with a clean sheet or other clean covering for each patron. After a towel, covering, or linen has been used once, it shall be deposited in a closed receptacle and not used again until properly laundered and sanitized. Towels, non-disposable coverings, and linens shall be laundered either by regular commercial laundering, or by a noncommercial laundering process that includes immersion in water at least one hundred forty (140) degrees Fahrenheit for not less than fifteen (15) minutes during the washing or rinsing operation. Clean towels, coverings, and linens shall be stored in closed, clean cabinets when not in use. Towels, non-disposable coverings, and linens shall not be used on more than one (1) client, unless they have first been laundered and disinfected. Disposable towels and disposable coverings shall not be used on more than one (1) client. Soiled linens and paper towels shall deposited in separate receptacles.

B. In a massage establishment, all massage therapy rooms or cubicles, wet and dry heat rooms, toilet rooms, steam or vapor rooms or cabinets, shower compartments, bathrooms, hot tubs, whirlpool baths and pools shall be thoroughly cleaned and disinfected as needed, and at least once each business day when the premises have been or will be open and such facilities in use, with a hospital-grade disinfectant. All bathtubs shall be thoroughly cleaned and disinfected after each use, with a hospital-grade disinfectant. All walls, ceilings, floors and other physical facilities for the establishment shall be in good repair and maintained in a clean and sanitary condition.

C. All equipment used for massage shall be maintained in a clean and sanitary condition. Instruments utilized in performing massage techniques shall not be used on more than one (1) client unless they have been sterilized, using standard sterilization methods.

D. All liquids, creams or other preparations used on or made available to patrons shall be kept in clean and closed containers. Powders may be kept in clean shakers. All bottles and containers shall be distinctly and correctly labeled to disclose their contents. When only a portion of a liquid, cream or other preparation is to be used on or made available to a patron, it shall be removed from the container in such a way as not to contaminate the remaining portion.

E. No invasive procedures shall be performed on any patron. Invasive procedures include, but are not limited to:

1. Application of electricity that contracts the muscle;

2. Penetration of the skin by metal needles;

3. Removal of skin by means of any razor-edged instrument or other device or tool; and

4. Other similar procedures.

F. All bathrobes, bathing suits, and/or other garments that are provided for the use of patrons shall be fully disposable and not used by more than one (1) patron, or shall be laundered after each use pursuant to subsection (C) of this Section.

G. All combs, brushes, and/or other personal items of grooming or hygiene that are provided for the use of patrons shall be either fully disposable and not used by more than one (1) patron, or shall be fully disinfected after each use.

H. No patrons shall be allowed to use any shower facilities unless such patrons are wearing slip-resistant sandals or flip-flops while in the shower compartment. All footwear such as sandals or flip-flops that are provided for the use of patrons either shall be fully disposable and not used by more than one (1) patron, or shall be fully disinfected after each use.

I. No massage shall be given unless the client's genitalia and female breasts are, at all times, fully covered. Genitalia shall include the genitals, anus, and perineum of any person. The patron's genitals, pubic area, anus, and areola must be fully draped at all times while any individual employed or retained by the massage establishment to practice massage for compensation, or any other employee or operator of the massage establishment, is in the massage therapy room or cubicle with the patron. No massage therapy shall be provided for sexual gratification by intentional contact, or occasional and repetitive contact, with the genitals, pubic area, anus, or areola of a patron, either covered or uncovered.

J. No massage establishment shall have any alcohol for consumption or illegal controlled substance on the premises at any time except for those massage establishments who obtain authorization from the Chief of Police, or his or her designee, and any necessary licenses from the State of California that may be necessary to provide minimal quantities of alcohol to a client as a part of the establishment's services for specific occasions throughout the year such as Mother's Day, Easter, etc.

K. No massage shall be given by any massage therapist who is consuming, or under the influence of, any alcoholic beverage or illegal controlled substance.

L. The following attire and physical hygiene requirements shall be applicable to all employees and any other persons who work permanently or temporarily on the premises, of a massage establishment within the City, including, but not limited to, all persons who are employed or retained to practice massage for the massage establishment and any person performing massage:

1. No person shall dress in:

a. attire that is transparent, see-through, or substantially exposes the person's undergarments;

b. swim attire, if not providing a water-based massage modality approved by the California Massage Therapy Council;

c. a manner that exposes the person's breasts, buttocks, or genitals; and

d. a manner that constitutes a violation of Section 314 of the California Penal Code.

2. No massage establishment operator, employee, or visitor shall, while on the premises of a massage establishment or while performing any outcall massage service, and while in the presence of any patron, customer, employee or visitor, expose his or her genitals, buttocks or chest.

M. All massage therapists shall thoroughly wash their hands with soap and water or any equally effective cleansing agent immediately before providing massage therapy to a patron. No massage therapy shall be provided upon a surface of the skin or scalp of a patron where such skin is inflamed, broken (e.g., abraded or cut), or where a skin infection or eruption is present.

N. No massage therapist or massage establishment shall place, publish or distribute or cause to be placed, published or distributed any advertising material that depicts any portion of the human body that would reasonably suggest to prospective customers that services prohibited by this Chapter are available. nor shall any massage therapist or massage establishment employ language in any advertising text or business name that would reasonably suggest to a prospective client that any service is available that is prohibited under this Chapter.

O. A massage therapist shall not violate the provisions of Sections 647(a) (soliciting to engage in lewd or dissolute conduct in a public place) and 647 (b) (soliciting to engage in or engaging in any act of prostitution) of the California Penal Code, or any other State law involving a crime of moral turpitude, and such practices shall not be allowed or permitted by the massage business.

5.24.150. Operating Requirements for Massage.

Except as otherwise specifically provided, the following operational requirements shall be applicable to all massage establishments located within the City. The Chief of Police, or his or her designee, may waive any of the requirements of this section if the Chief of Police, or his designee, determines that such a waiver will have no impact on public safety or neighborhood quality of life. The Chief of Police, or is or her designee, will also take into consideration whether compliance with the requirements of this Section would place an undue financial burden on or would be physically infeasible.

A. The CAMTC certificate or the Massage Therapist Permit shall be displayed in the reception area or in the area where massage is to be performed for all massage therapists performing or engaging in massage for the massage establishment or anyone performing or engaging in massage as an out-call, or a home occupation massage therapist. CAMTC certificates or the Massage Therapist Permit of former employees, independent contractors, volunteers shall be removed as soon as those massage therapists are no longer performing

massage at a massage establishment. No owner, operator or manager of a massage establishment shall allow or permit a person to administer massage for such establishment unless the practitioner possesses a valid CAMTC certificate or a Massage Therapist Permit.

B. Massage performed at a massage establishment shall only be performed between the hours of 7:00 a.m. and 10:00 p.m.. No massage business shall be open and no massage shall be provided between 10:00 p.m. and 7:00 a.m. A massage commenced prior to 10:00 p.m. shall terminate prior to 10:00 pm. and all clients shall exit the massage establishment prior to 10:00 pm. The hours of operation of the massage establishment shall be displayed in a conspicuous, public, place in the reception and waiting area and in any front window clearly visible from outside of the massage establishment.

C. Patrons and visitors shall be permitted in the massage establishment only during the hours of operation.

D. During the hours of operation, patrons shall be permitted in massage therapy rooms only if at least one (1) duly authorized massage therapist is present on the premises of the massage establishment.

E. During the hours of operation, visitors shall not be permitted in massage therapy rooms of massage establishments except as follows:

1. The parents or guardian of a patron who is a minor child may be present in the massage therapy room with that minor child;

2. The minor child of a patron may be present in the massage therapy room with the patron when necessary for the supervision of the child; or

3. The conservator, aid, or other caretaker of a patron who is elderly or disabled may be present in the massage therapy room with that elderly or disabled person.

F. During the hours of operation, except as otherwise provided herein, no visitors shall be permitted in massage therapy rooms, dressing rooms, showers, or any other room or part of the massage establishment premises other than the reception and waiting area or the restrooms.

G. Except for a patron who is inside a massage therapy room for the purpose of receiving a massage, no patrons or visitors shall be permitted in or on the massage establishment premises at any time who are less than fully clothed in outer garments of nontransparent material, or who display or expose themselves in underclothing or similar intimate apparel.

H. A list of services available and the cost of such services shall be posted in an open and conspicuous public place on the premises, such as the reception area within the massage establishment, or provided to patrons before services are rendered as an out-call massage therapist or a home occupation massage therapist. The services shall be described in English and may also be described in such other languages as may be convenient. Outcall service providers

shall provide such a list to clients in advance of performing any service. No massage establishment operator, owner, or manager shall permit, and no massage therapist shall offer to perform any service other than those posted or listed, as required herein, nor shall an owner, manager, or operator nor a massage therapist offer or charge a fee for any service other than those on the list of available services posted in the reception area or provided to the client in advance of any services.

I. One (1) main entry door shall be provided for patron entry to the massage establishment, which shall open to an interior patron reception and waiting area immediately. All patrons and any persons other than individuals employed or retained by the massage establishment shall be required to enter and exit through the main entry door. Unless the massage establishment is a sole proprietorship, the main entry door shall be unlocked at all times during business hours.

J. No massage establishment located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area shall block visibility into the interior reception and waiting area through the use of curtains, closed blinds, tints, or any other material that obstructs, blurs, or unreasonably darkens the view into the premises.

K. All interior doors of a massage establishment, including massage therapy rooms or cubicles, but excluding individual dressing rooms and toilet rooms, shall be incapable of being locked and shall not be blocked to prevent opening. Draw drapes, curtain enclosures, or accordion-pleated closures in lieu of doors are acceptable on all inner massage therapy rooms or cubicles.

L. Minimum lighting equivalent to at least one (1) 40-watt light shall be provided in any area, cubicle, or room where massage is to be performed.

M. A massage table shall be used for all massage therapy, with the exception of "Thai," "Shiatsu," and similar forms of massage therapy, which may be provided on a padded mat on the floor, provided the patron is fully attired in loose clothing, pajamas, scrubs or similar style of garment. Massage tables shall have a minimum height of eighteen (18) inches.

N. Beds, floor mattresses, and waterbeds are not permitted on the premises of the massage establishment, and no massage establishment, shall be used for residential or sleeping purposes.

O. All locker facilities that may be provided to patrons at a massage establishment shall be fully secured for the protection of the patrons' valuables, and each patron shall be given control of the key or other means of access.

P. The massage establishment shall meet and be maintained in a condition to comply with all applicable building standards and fire code requirements (as adopted by Title 15 of this Code), including, but not limited to, those related to the safety of structures, adequacy of the plumbing, lighting, heating, ventilation, waterproofing of rooms in which showers, water or steam baths are used, and the health and cleanliness of the facility.

Q. Clients of the massage establishment shall be furnished with a private dressing room. Dressing rooms need not be separate from the room in which the massage is being performed.

R. Toilet facilities shall be provided in convenient locations within the massage establishment and shall consist of at least one (1) unisex toilet with lavatories or wash basins provided with soap and both hot and cold running water either in the toilet room or vestibule.

S. A minimum of one (1) wash basin shall be available at all times for massage therapists performing massage. The basin shall be located within or as close as practicable to the area devoted to performing of massage services. Soap and sanitary towels shall also be available at each basin.

T. All records of employees, independent contractors, volunteers who have performed massage for a massage establishment shall be retained for a period of two (2) years and shall be made available to any City Inspector upon request.

U. Massage therapists shall be fully clothed at all times. Clothing shall be of a fully opaque, non-transparent material and said garments shall not expose their genitals, pubic areas, buttocks or breasts.

V. Every massage business, including home occupation massage therapists, shall keep a written or electronic record of the date and hour of each treatment administered, the name and address of each patron, the name of the massage therapist administering treatment, and the type of treatment administered. Such written or electronic record shall be available for inspection by the City inspector. Such records shall be kept for a period of two (2) years and shall be open to inspection by the City.

W. No massage establishment shall simultaneously operate as a school of massage or share facilities with a school of massage.

X. No massage establishment shall allow any person to reside within the massage establishment or in any attached structures owned, leased or controlled by the massage establishment owners. This section does not apply to those businesses that have been properly permitted as a home occupation.

Y. All massage establishments must comply with all State and Federal laws and regulations pertaining to disabled clients.

Z. All massage establishments must comply with the City's Sign Ordinance pursuant to Title 18, Chapter 12 of the Cloverdale Municipal Code.

5.24.160. Inspection of Massage Establishment by Officials.

A. The investigating and enforcing officials of the City, including but not limited to, the Chief of Police, or his or her designees, Chief Building Official, or his or her designees, the Chief of the Fire Department, or his or her designee, shall have the right to enter the massage establishment premises, from time to time, during regular business hours, without a search or inspection warrant, for the purpose of making reasonable inspections to observe and enforce compliance with applicable laws, statutes and regulations, and with the provisions of this Chapter. The Chief Building Official and/or the Chief of the Fire Department may charge a fee for any safety inspections, which shall be established by Council.

B. The violator shall take immediate action to correct each violation noted by the City inspector. A re-inspection will be performed within thirty (30) days, or sooner as determined by the City official, to ensure that each violation noted by the City inspector has been corrected.

5.24.170. Exchange of Information.

The City may, from time to time, request information from CAMTC pertaining to any person who possesses a CAMTC certificate and who is engaging in the practice of massage in the City. The requested information may include, but need not be limited to, the current status of a person's CAMTC certificate, any history of disciplinary action(s) taken against the person, the home and work addresses of the CAMTC certificate holder and any other information that may be necessary to verify fact relevant to administering the provisions of this Chapter.

5.24.180. Nuisance.

Any massage business or establishment operated, conducted or maintained contrary to the provisions of this Chapter shall be unlawful and a public nuisance, and the City Attorney may, in the exercise of his or her discretion, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinment thereof, in any manner provided by the Cloverdale Municipal Code and by law. All remedies provided for in this Chapter are cumulative.

5.24.190. Prosecutorial Discretion.

Pursuant to the City Attorney's prosecutorial discretion, the City may enforce violations of this Chapter as criminal, civil and/or administrative violations utilizing administrative remedies. All remedies provided for in this Chapter are cumulative.

5.24.200. Criminal Prosecution.

A violation of any of the provisions or failing to comply with any of the mandatory requirements of this Chapter shall constitute a misdemeanor and at the discretion of the City Attorney, a violation of any provision of this Chapter may be prosecuted in a criminal court. Any violation of this Chapter prosecuted as a misdemeanor shall be punishable by a fine of not

more than one thousand dollars ($1,000.00), per violation or by imprisonment in the County Jail for a period of not more than six (6) months, or by both fine and imprisonment. All remedies provided for in this Chapter are cumulative.

5.24.210. Administrative Fines.

A violation of any of the provisions or failing to comply with any of the mandatory requirements of this Chapter, may result in the issuance of an administrative citation and the City may, at its discretion, seek an administrative fine of up to one thousand dollars ($1,000.00).

A. Each violation of any provision of this Chapter shall constitute a separate and distinct violation for each and every day during which any violation of any provision of this Chapter is committed, continued or permitted by such person.

B. Notice of the assessed fine shall be served by certified mail with the legal violation and supporting facts in accordance with Section 1.14.020 of the Cloverdale Municipal Code. The notice shall contain an advisement of the right to file an appeal and the process for contesting the imposition of the fine with the City. The appeal process and timeline shall follow those procedures and timelines set forth in Section 1.14.020 through 1.14.140 of the Municipal Code.

C. If an appeal is not filed and the fine is not paid within thirty (30) days from the date of the notice of fine or a notice of determination from the Hearing Officer, the fine may be referred to a collection agency within or external of the City.

D. Any outstanding amounts owed to the City may be recovered through a lien against any real property owned by the offending party or a personal obligation lien against the offending party.

5.24.220. Applicability of Other Ordinances.

Nothing contained in this Chapter shall be construed to exempt any person from complying with the provisions of any other applicable ordinance, rule, or regulation, or to exempt a massage establishment or massage therapist from the provisions of any zoning, licensing or other building ordinance, rule or regulation.

5.24.230. Unlawful Business Practices May Be Enjoined.

Any massage establishment or business operated, conducted, or maintained contrary to the provisions of this Chapter shall constitute an unlawful business practice pursuant to Business & Professions Code section 17200 et seq., and the City Attorney and/or District Attorney may, in the exercise of discretion, in addition to or in lieu of taking any other action permitted by this Chapter, commence an action or actions, proceeding or proceedings in an appropriate court of jurisdiction, seeking an injunction prohibiting the unlawful business practice and/or any other remedy available at law, including but not limited to fines, attorneys' fees and costs."

SECTION 3. California Environmental Quality Act ("CEQA"). This Ordinance is exempt from the California Environmental Quality Act pursuant to the State CEQA Guidelines and does not constitute the approval of a "project" under CEQA, pursuant to section 15060(c)(2) and (3), 15061(b)(3), 15262, and 15378 of the State CEQA Guidelines. Specifically, it can be seen with certainty that there is no possibility that this Ordinance, containing amendments to the registration, inspection and revocation processes for permits for massage establishments and massage therapists, or its implementation, would have a significant effect on the environment and is covered by the general rule, pursuant to 14 Cal. Code Regulations Section 15061(b)(3).

SECTION 4. No Mandatory Duty of Care. This Ordinance is not intended to, and shall not be construed or given effect in a manner that imposes upon the City or any officer, agent, employee or volunteer, thereof a mandatory duty of care towards persons and property, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 5. Severability. If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION 6. Effective Date. This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Council Members voting for or against the same, in a newspaper of general circulation published in the County of Sonoma, State of California.

I hereby certify that the foregoing is a true and complete copy of an ordinance duly and regularly adopted by the City at a regular meeting thereof held on March 22, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 22 day of March, 2016 by the following roll call vote:

AYES: Councilmember Palla, Vice Mayor Wolter, Councilmember Russell, Councilmember Cox, and Mayor Brigham

NOES:

ABSTAIN:

ABSENT:

APPROVED: ATTEST:

MaryAnn Brigham, Mayor Paul Cayler, City Clerk

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City Council/Successor Agency
Agenda Item Summary

Agenda Item:	11
Meeting Date:	October 25, 2016

Agenda Section	Staff Contact
Consent Calendar	Stephen Cramer, Police Chief Jose M. Sanchez, City Attorney

Agenda Item Title

Waive second reading and readopt Ordinance No. 706-2016, Amending Cloverdale Municipal Code Chapter 8.08 Related to Smoking in Public Places.

Summary

California Government Code section 36933 requires that within 15 days after the adoption of an ordinance, a city publish a copy of the ordinance and the Council vote in a newspaper of general circulation. The Section also allows a city to only publish a summary of the ordinance instead of the entire document, if the City publishes such summary 5 days prior the adoption, and again within 15 days after the adoption, including the names of those city council members voting for and against the ordinance.

Ordinance No. 706-2016 was adopted by the City Council on April 12, 2016. Due to transitions of staff members, the City inadvertently did not publish a summary of the ordinance in the newspaper at least 5 days prior to the adoption and again within 15 days of the action.

In order to comply with the publishing requirements of Government Code section 36933, and to avoid publishing the entire ordinance, Ordinance No. 706-2016 is being placed before the City Council again for re-adoption. This is simply a re-adoption of the Ordinance. No changes to the substance of the Ordinance has been made.

Options

Waive second reading and readopt Ordinance 706-2015.

Recommended Council Action

Waive the second reading and readopt Ordinance No. 706-2016, an Ordinance of the City Council of Cloverdale Amending Cloverdale Municipal Code Chapter 8.08, “Smoking in Public Places,” to Align Regulations with Current Law and to Prohibit Smoking at Outdoor Public Events.

Attachments:

1. Ordinance No. 706-2016.
2. Adopted Ordinance No. 706-2016

2721064.1

P.O. Box 217 • 124 North Cloverdale Blvd. • Cloverdale, CA 95425-0217 • Telephone (707) 894-2521 • FAX (707) 894-3451

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 706-2016

AN ORDINANCE OF THE CITY COUNCIL OF CLOVERDALE AMENDING CLOVERDALE MUNICIPAL CODE CHAPTER 8.08, "SMOKING IN PUBLIC PLACES," TO ALIGN REGULATIONS WITH CURRENT LAW AND TO PROHIBIT SMOKING AT OUTDOOR PUBLIC EVENTS

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health challenge, as evidenced by the following:

- Tobacco-related illness is the leading cause of preventable death in the United States, accounting for about 443,000 deaths each year;[1] and
- Scientific studies have concluded that tobacco use can cause chronic lung disease, coronary heart disease and stroke, in addition to cancer of the lungs, larynx, esophagus, and mouth;[2] and
- Some of the most common types of cancers, including stomach, liver, uterine, cervix, and kidney are related to tobacco use;[3] and

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke;[4] and
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure;[5] and

1 US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation's Leading Killer*. 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

2 US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation's Leading Killer*. 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

3 Leistikow B, Zubair K, Connolly GN, et al. "Male Tobacco Smoke Load and Non-Lung Cancer Mortality Associations in Massachusetts." *BMC Cancer,* 8:341, 2008. Available at: www.biomedcentral.com/1471-2407/8/341.

4 US Department of Health and Human Services, Office of the Surgeon General. *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basisfor Smoking-Attributable Disease: A Report ofthe Surgeon General*. 2010, p. 9. Report highlights available at: www.surgeongeneral.gov/library/tobaccosmoke/factsheet.html.

5 Resolution 06-01, Cal. Air Resources Bd. (2006) at 5. Available at: www.arb.ca.gov/regact/ets2006/res0601.pdf; *see also* California Environmental Protection Agency, Air Resources Board. *News Release, California Identifies Secondhand Smoke as a "Toxic Air Contaminant."* Jan. 26, 2006. Available at: www.arb.ca.gov/newsrel/nr012606.htm.

- The California Environmental Protection Agency included secondhand smoke on the Proposition 65 list of chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm;[6] and

WHEREAS, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Secondhand smoke is responsible for as many as 3,000 deaths from lung cancer and 46,000 deaths from heart disease among nonsmokers each year in the United States;[7]and
- Exposure to secondhand smoke increases the risk of coronary heart disease by approximately thirty percent;[8] and
- Secondhand smoke exposure causes lower respiratory tract infections, such as pneumonia and bronchitis, in as many as 300,000 children in the United States under the age of 18 months each year, and exacerbates childhood asthma;[9] and

WHEREAS, tobacco use and exposure to secondhand smoke impose great social and economic costs, as evidenced by the following:

- The total annual economic burden of smoking in the United States is $193 billion;[10] and
- From 2001-2004, the average annual health care expenditures attributable to smoking were approximately $96 billion;[11] and
- The medical and other costs to nonsmokers due to exposure to secondhand smoke were estimated at over $10 billion per year in the United States in 2005;[12] and

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6 California Environmental Protection Agency, Office of Environmental Health Hazard Assessment. *Chemicals Known to the State to Cause Cancer or Reproductive Toxicity*. 2006, p. 8 & 17. Available at: www.oehha.ca.gov/prop65/prop65list/files/P65single081106.pdf.

7 US Department of Health and Human Services, Centers for Disease Control and Prevention. ***Tobacco Use: Targeting the Nation's Leading Killer***. 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/TobaccoAAG2011508.pdf .

8 Barnoya J and Glantz S. "Cardiovascular Effects of Secondhand Smoke: Nearly as Large as Smoking." *Circulation*, 111: 2684-2698, 2005. Available at: www.circ.ahajournals.org/cgi/content/full/111/20/2684.

9 US Department of Health and Human Services, Centers for Disease Control and Prevention. ***Tobacco Use: Targeting the Nation's Leading Killer***. 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/TobaccoAAG2011508.pdf .

10 US Department of Health and Human Services, Centers for Disease Control and Prevention. ***Fact Sheet – Economic Facts about U.S. Tobacco Production and Use***. Available at: www.cdc.gov/tobacco/datastatistics/factsheets/economics/econfacts/index.htm#costs (last updated March 9, 2011).

11 US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Economic Facts about U.S. Tobacco Production and Use,* www.cdc.gov/tobacco/datastatistics/factsheets/economics/econfacts/index.htm#costs (last updated March 9, 2011).

12 Behan DF, Eriksen MP and Lin, Y. ***Economic Effects ofEnvironmental Tobacco Smoke***. Schaumburg, IL: Society of Actuaries, 2005, p. 2. Available at:

(footnote continued)

- California's Tobacco Control Program saved the state and its residents $86 billion in health care expenditures between the year of its inception, 1989, and 2004, with savings growing yearly;[13] and

- Indoor smoking bans have been attributed with reductions in calls for ambulances and reductions in deaths attributed to heart attacks;[14] and

WHEREAS, exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke does occur at significant levels outdoors, as evidenced by the following:

- Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on the direction and amount of wind and number and proximity of smokers;[15] and

- Irritation from secondhand smoke begins at levels as low as 4 micrograms per cubic meter, and in some outdoor situations this level can be found as far away as 13 feet from the burning cigarette;[16] and

- Smoking cigarettes near building entryways can increase air pollution levels by more than two times as compared to background levels, with maximum levels reaching the "hazardous" range on the US EPA's Air Quality Index;[17] and

www.soa.org/files/pdf/ETSReportFinalDraft(Final%203).pdf; *see also* US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Fast Facts,* www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/index.htm (last updated March 9, 2011).

13 Lightwood JM, Dinno A and Glantz SA. "Effect of the California Tobacco Control Program on Personal Health Care Expenditures." *PLoS Med,* 5(8): e178, 2008. Available at: www.plosmedicine.org/article/info:doi/10.1371/journal.pmed.0050178.

14 Franklin D. *Smoking Ban Tilts Odds Against Ambulance Calls from Casinos.* Available at: http://www.npr.org/blogs/health/2013/08/05/209149956/smoking-ban-in-casinos-linked-to-fewer-caller-for-ambulances; Shute N. *After Smoking Is Banned, Heart Attacks Drop.* Available at http://www.npr.org/blogs/health/2012/10/29/163889012/after-smoking-is-banned-heart-attacks-drop.

15 Klepeis NE, Ott WR, and Switzer P. *Real-Time Monitoring of Outdoor Environmental Tobacco Smoke Concentrations: A Pilot Study.* San Francisco: University of California, San Francisco and Stanford University, 2004, p. 80, 87. Available at: http://exposurescience.org/pub/reports/OutdoorETSFinal.pdf; *see also* Klepeis NE, Ott WR and Switzer P. "Real-Time Measurement of Outdoor Tobacco Smoke Particles." *Journal ofthe Air & Waste Management Association,* 57: 522534, 2007. Available at: www.ashaust.org.au/pdfs/OutdoorSHS0705.pdf.

16 Junker MH, Danuser B, Monn C, et al. "Acute Sensory Responses of Nonsmokers at Very Low Environmental Tobacco Smoke Concentrations in Controlled Laboratory Settings." *Environmental Health Perspectives,* 109(10):1045-1052, p. 1049-51, 2001. Available at: www.pubmedcentral.nih.gov/picrender.fcgi?artid=1242082&blobtype=pdf; Repace JL. "Benefits Ordinance No. of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles." *William Mitchell Law Review,* 34(4): 1621-1638, p. 1626, 2008. Available at: www.repace.com/pdf/RepaceCh15OutdoorSmoke.pdf.

17 Kaufman P, Zhang, B, Bondy S, et al. "Not just 'a few wisps': real-time measurement of tobacco smoke at entrances to office buildings." *Tobacco Control*. Published Online First: 21 December 2010. doi:10.1136/tc.2010.041277. Abstract available at: http://tobaccocontrol.bmj.com/content/early/2010/12/21/tc.2010.041277.abstract.

- To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move nearly 25 feet away from the source of the smoke, about the width of a two-lane road;[18] and

WHEREAS, cigarette butts pose a health threat to young children and are a major and persistent source of litter; and

WHEREAS, laws restricting the use of tobacco products have recognizable benefits to public health and medical costs, as evidenced by the following:

- Cities with smoke-free laws see an appreciable reduction in hospital admittances for heart attacks in the months and years after such laws are passed;[19] and
- Smoking bans help people reduce the number of cigarettes they smoke or to quit altogether;[20] and
- Strong smoking regulations for restaurants decrease the number of children who transition from experimenting with smoking to becoming actual smokers;[21] and

WHEREAS, the safety and efficacy of electronic cigarettes is still unknown and electronic cigarettes deliver an unknown mix of potentially carcinogenic and toxic compounds, as evidenced by the following: a) nicotine content labeling is not accurate with some electronic cigarette manufacturers;[22] b) nicotine related impurities content in cartridges and refills vary by electronic cigarette manufacturer;[23] and c) the concentrations of some metal and silicate particles in electronic cigarette aerosol were higher than or equal to the levels contained in conventional cigarette smoke;[24] and

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18 Repace JL. "Benefits of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles." *William Mitchell Law Review,* 34(4): 1621-1638, p. 1626, 2008. Available at: www.repace.com/pdf/RepaceCh15OutdoorSmoke.pdf.

19 US Department of Health and Human Services, Centers for Disease Control and Prevention. "Reduced Hospitalizations for Acute Myocardial Infarction After Implementation of a Smoke-Free Ordinance – City of Pueblo, Colorado, 2002 – 2006." *Morbidity and Mortality Weekly Report,* 57(51&52): 1373-1377, 2009. Available at: www.cdc.gov/mmwr/preview/mmwrhtml/mm5751a1.htm; Glantz SA. "Meta-Analysis ofthe Effects of Smokefree Laws on Acute Myocardial Infarction: An Update." *Preventive Medicine,* 47(4): 452-453, 2008. Abstract available at: www.ncbi.nlm.nih.gov/pmc/articles/PMC2927851/?tool=pubmed.

20 Neighmond P. "Smoking Bans Help People Quit, Research Shows." *National Public Radio,* October 25, 2007, www.npr.org/templates/story/story.php?storyId=15610995.

21 Siegel M, Albers AB, Cheng DM, et al. "Local Restaurant Smoking Regulations and the Adolescent Smoking Initiation Process: Results of a Multilevel Contexual Analysis Among Massachusetts Youth." *Archives of Pediatrics and Adolescent Medicine,* 162(5): 477-483, 2008. Available at: http://archpedi.ama-assn.org/cgi/reprint/162/5/477.pdf.

22 Trehy ML, Ye W, et al. "Analysis of Electronic Cigarette Cartridges, Refill Solutions, and Smoke for Nicotine and Nicotine Related Impurities." Journal of Liquid Chromatography & Related Technologies, 34:1442–1458, 2011.

23 *Id.*

24 Williams M, Villarreal A, Bozhilov K, Lin S, Talbot P (2013) Metal and Silicate Particles Including Nanoparticles Are Present in Electronic Cigarette Cartomizer Fluid and Aerosol. PLoS ONE 8(3): e57987. doi:10.1371/journal.pone.0057987

WHEREAS, the U.S. Food and Drug Administration conducted laboratory analysis of electronic cigarette samples and found them to contain carcinogens and toxic chemicals to which users and bystanders could potentially be exposed,[25] suggesting that the same concerns present with secondhand smoke from conventional cigarettes may exist with electronic cigarettes; and

WHEREAS, it is unlawful to sell or furnish electronic cigarettes to minors,[26] however minors are still able to obtain access to electronic cigarette products. A national survey revealed that between 2011 and 2012, middle school students who reported ever using electronic cigarettes increased from 1.4% to 2.7% and current use of electronic cigarettes increased from 0.6% to 1.1%.[27] The same survey found that high school students who reported ever using electronic cigarettes increased from 4.7% to 10.0% while current use increased from 1.5% to 2.8%; and

WHEREAS, state law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions;[28] and state law prohibits smoking within 20 feet of entryways and operable windows of government buildings;[29] and

WHEREAS, there is no Constitutional right to smoke;[30] and

WHEREAS, it is the intent of the City Council, in enacting this Ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking and tobacco use around non-tobacco users, especially children; by protecting the public from exposure to secondhand smoke where they live, work and play; by reducing the potential for children to wrongly associate smoking and tobacco use with a healthy lifestyle; and by affirming and promoting a healthy environment in the City.

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25 US Food and Drug Administration. *News Release, FDA and Public Health Experts Warn About Electronic Cigarettes*. July 22, 2009. Available at: www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm.

26 Cal. Health & Safety Code § 119405 (West 2013).

27 Centers for Disease Control and Prevention. Electronic Cigarette Use Among Middle and High School Students—United States, 2011-2012. *Morbidity and Mortality Weekly Report*. September 6, 2013 (survey results are available at http://www.cdc.gov/tobacco/datastatistics/surveys/nyts.)

28 Cal. Health & Safety Code § 104495 (West 2008).

29 Cal. Gov't Code § 7597 (West 2008).

30 Public Health Law & Policy, Technical Assistance Legal Center. *There Is No Constitutional Right to Smoke*. 2005. Available at www.phlpnet.org/tobacco-control/products/there-no-constitutional-right-smoke.

NOW, THEREFORE, the City Council of the City of Cloverdale does ordain as follows:

SECTION 1. Amendment of Code. Chapter 8.08 of the Cloverdale Municipal Code is amended to read as follows:

Chapter 8.08

SMOKING IN PUBLIC PLACES

Sections:

8.08.010 Purpose of provisions.
8.08.020 Definitions.
8.08.030 City-owned facilities regulated.
8.08.035 Public events regulated.
8.08.040 Enclosed places where smoking is prohibited.
8.08.050 Places of employment regulated.
8.08.060 Areas exempt from restrictions.
8.08.070 Posting requirements.
8.08.080 Reserved.
8.08.090 Enforcement of provisions.
8.08.100 Retaliation prohibited.
8.08.110 Chapter provisions not exclusive.
8.08.120 Violation—Penalty.

8.08.010 Purpose of provisions.
The purpose of this chapter is to protect the public health and welfare by regulating smoking in public places and places of employment and to strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers to breath smoke-free air, and to recognize that, when these needs conflict, the need to breathe smoke-free air shall have priority.

8.08.020 Definitions.
The following words and phrases, whenever used in this chapter, shall be construed as defined in this section, unless it is apparent from the context that they have a different meaning:

"Bar" means an area which is devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.
"City" means the city of Cloverdale, state of California.

"Electronic smoking device" means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances.

"Electronic smoking device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. "Electronic smoking device"

does not include any product specifically approved by the United States Food and Drug Administration for the use in the mitigation, treatment, or prevention of disease.

"Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

"Employer" means any person, partnership, corporation, including municipal corporation, who employs the services of more than three persons.

"Enclosed" means closed in by roof and four walls with appropriate openings for ingress and egress.

"Place of employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to, work areas, employee lounges, conference rooms, and employee cafeterias or eating places. A private residence is not a place of employment for purposes of this chapter, unless it is used as a child care or health care facility.

"Smoke" means" the gases, particles or vapors released into the air by combustion, electronic ignition or vaporization when the apparent or usual purpose of the combustion, electronic ignition or vaporization is human inhalation of the resulting combustion products, including but not limited to tobacco smoke, cigarette smoke, marijuana smoke, and gases, aerosol or vapor released by the ignition of e-cigarettes or electronic smoking devices. "Smoke" does not include the product of combustion of incense or similar products when used solely for olfactory purposes and not containing tobacco or nicotine.

"Smoking" means the carrying or holding of a lighted pipe, cigar, cigarette of any kind, including an electronic cigarette or electronic or battery-operated smoking device, or any other lighted smoking equipment or the lighting or emitting or exhaling the smoke or vapor of a pipe, cigar, or cigarette of any kind.

"Sports arena" means the enclosed sports pavilions, gymnasiums, health spas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition or witness sports events.

8.08.030 City-owned facilities regulated.
All enclosed facilities and transit buses owned, leased, or operated by the city or under control of the city council shall be subject to the provisions of this chapter.

8.08.035 Public events regulated.
Smoking shall be prohibited in enclosed and unenclosed public places, when being used for a public event, including but not limited to a farmers' market, concert, parade, craft fair, festival, bazar, or any other event which may be attended by the general public, provided that Smoking is permitted at least twenty (20) feet from the event area on streets and sidewalks being used in a traditional capacity as pedestrian or vehicular thoroughfares, unless otherwise prohibited by this Chapter or other law.

8.08.040 Enclosed places where smoking is prohibited.
Smoking shall be prohibited in the following places within all areas of the city:

A. All enclosed areas within businesses available to and customarily used by the general public including, but not limited to, retail stores, hotels and motels, pharmacies, banks, attorneys' offices and other offices;

B.Within all restaurants.

C.Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices, except that health facilities shall also be subject to the provisions of Section 8.08.050 of this chapter regulating smoking in places of employment;

D. Elevators, public restrooms, indoor service lines, buses, taxicabs, public airports, and other means of public transit under the authority of the city, and in ticket, boarding, and waiting areas of public transit depots;

E. In public areas of museums and galleries;

F.Enclosed seating areas of theaters, auditoriums, and halls which are used for motion pictures, stage dramas and musical performances, ballets or other exhibitions, except when smoking is part of any such production;

G. Enclosed sports arenas, convention, church, social and auditorium halls;

H. Retail food marketing establishments, including grocery stores and supermarkets;

I. Public schools and other public facilities under the control of another public agency, which are available to and customarily used by the general public, to the extent that the same are subject to the jurisdiction of the city;

J. Notwithstanding any other provisions of this chapter, any owner, operator, manager or other person who controls any establishment subject to this chapter may declare that entire establishment as a nonsmoking establishment.

8.08.050 Places of employment regulated.
A. It shall be the responsibility of employers to make reasonable effort to provide smoke-free area for nonsmokers within existing facilities.

B.Within ninety days of the effective date of the ordinance codified in this chapter, each employer and each place of employment located within the city, shall adopt, implement, make known to employees and public, and maintain a written smoking policy, which shall contain at a minimum the following requirements:

1. Prohibition of smoking in conference and meeting rooms, classrooms, restrooms, medical facilities, hallways and elevators and all other areas as required by state or federal law;

2. Any employee in a place of employment shall be given the right to designate his/her immediate work area as a nonsmoking area and to post the same with an appropriate sign or signs, to be provided by the employer. The policy adopted by the employer shall include a reasonable definition of the term "immediate work area";

C.Reserved.

D. The smoking policy shall be communicated to all employees within three weeks of its adoption, and at least annually thereafter. All new employees shall be informed of the policy during initial orientation and in no case later than three weeks after employment;

E. Notwithstanding the provisions of subsection A of this section, every employer shall have the right to designate any place of employment, or portion thereof, as a nonsmoking area.

8.08.060 Areas exempt from restrictions.
Notwithstanding any other provision of this chapter, the following areas shall not be subject to the smoking restrictions of this chapter:

A. Private residences, unless the residence is used as a child care or a health care facility;

B.Reserved.

C.Hotel or motel rooms rented to guests, as allowable under state law;

D. Retail stores that deal primarily in the sale of tobacco and smoking paraphernalia;

E. Restaurants, hotel and motel conference or meeting rooms, and public and private assembly rooms while these places are being used for private functions, so long as no food is being served;

F.A private enclosed space occupied exclusively by smokers, even though such a place may be visited by nonsmokers, and private enclosed offices, excepting places in which smoking is prohibited by the fire agency of jurisdiction or by any other law, ordinance or regulation.

8.08.070 Posting requirements.
"Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than one inch in height or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is controlled by this chapter, by the owner, operator, manager or other person having control of such building or other places.

8.08.080 Reserved.

8.08.090 Enforcement of provisions.

A. Any owner, manager, operator or employer of any establishment subject to this chapter shall have the responsibility to inform any apparent violator, whether public or employee, about any smoking restrictions in the establishment, and shall attempt at all times to obtain voluntary compliance by any apparent violator.

B. Any citizen who desires to register a complaint under this chapter may initiate the complaint by filing a written complaint with the police department.

C. While an establishment is undergoing otherwise mandated inspections, a "self-certification" will be required from the owner, manager, operator or other person having control of such establishment that all requirements of this chapter have been complied with.

8.08.100 Retaliation prohibited.
No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter.

8.08.110 Chapter provisions not exclusive.
This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

8.08.120 Violation—Penalty.
A. It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to this chapter to fail to:

1. Properly post signs required hereunder,
2. To provide signs for the use of employees in designating their areas;
3. To properly set aside "No Smoking" areas;
4. To adopt a smoking restriction policy; or
5. To comply with any other requirements of this chapter.

B. It is unlawful for any person to smoke in any area restricted by the provisions of this chapter.

C. Any person or business that violates subsections A or B or any other provisions of this chapter shall be guilty of an infraction, punishable by:

1. A fine, not exceeding one hundred dollars for first violation;
2. A fine, not exceeding two hundred dollars for a second violation of this chapter within one year,
3. A fine, not exceeding five hundred dollars for each additional violation of this chapter within five years.

SECTION 2. California Environmental Quality Act ("CEQA").

The City Council hereby finds that the approval of the amendments in this Ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines section 15061(b)(3) that CEQA only applies to projects that have the potential

for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that this Ordinance will have a significant effect on the environment.

SECTION 3. No Mandatory Duty of Care.

This Ordinance is not intended to, and shall not be construed or given effect in a manner that imposes upon the City or any officer, agent, employee or volunteer, thereof a mandatory duty of care towards persons and property, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 4. Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION 5. Effective Date.

This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Council Members voting for or against the same, in a newspaper of general circulation published in the County of Sonoma, State of California.

I hereby certify that the foregoing is a true and complete copy of an ordinance duly and regularly adopted by the City at a regular meeting thereof held on October 25, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 25th day of October 2016, by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved: Attested:

_____ _____

Mary Ann Brigham, Mayor Linda Moore, Deputy City Clerk

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 706-2016

AN ORDINANCE OF THE CITY COUNCIL OF CLOVERDALE AMENDING CLOVERDALE MUNICIPAL CODE CHAPTER 8.08, "SMOKING IN PUBLIC PLACES," TO ALIGN REGULATIONS WITH CURRENT LAW AND TO PROHIBIT SMOKING AT OUTDOOR PUBLIC EVENTS

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health challenge, as evidenced by the following:

- Tobacco-related illness is the leading cause of preventable death in the United States, accounting for about 443,000 deaths each year;[1] and
- Scientific studies have concluded that tobacco use can cause chronic lung disease, coronary heart disease and stroke, in addition to cancer of the lungs, larynx, esophagus, and mouth;[2] and
- Some of the most common types of cancers, including stomach, liver, uterine, cervix, and kidney are related to tobacco use;[3] and

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke;[4] and
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure;[5] and

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[1] US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation's Leading Killer*. 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

[2] US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation's Leading Killer.* 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

[3] Leistikow B, Zubair K, Connolly GN, et al. "Male Tobacco Smoke Load and Non-Lung Cancer Mortality Associations in Massachusetts." *BMC Cancer,* 8:341, 2008. Available at: www.biomedcentral.com/1471-2407/8/341.

[4] US Department of Health and Human Services, Office of the Surgeon General. *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General.* 2010, p. 9. Report highlights available at: www.surgeongeneral.gov/library/tobaccosmoke/factsheet.html.

[5] Resolution 06-01, Cal. Air Resources Bd. (2006) at 5. Available at: www.arb.ca.gov/regact/ets2006/res0601.pdf; *see also* California Environmental Protection Agency, Air Resources Board. *News Release, California Identifies Secondhand Smoke as a "Toxic Air Contaminant."* Jan. 26, 2006. Available at: www.arb.ca.gov/newsrel/nr012606.htm.

- The California Environmental Protection Agency included secondhand smoke on the Proposition 65 list of chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm;[6] and

WHEREAS, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Secondhand smoke is responsible for as many as 3,000 deaths from lung cancer and 46,000 deaths from heart disease among nonsmokers each year in the United States;[7]and
- Exposure to secondhand smoke increases the risk of coronary heart disease by approximately thirty percent;[8] and
- Secondhand smoke exposure causes lower respiratory tract infections, such as pneumonia and bronchitis, in as many as 300,000 children in the United States under the age of 18 months each year, and exacerbates childhood asthma;[9] and

WHEREAS, tobacco use and exposure to secondhand smoke impose great social and economic costs, as evidenced by the following:

- The total annual economic burden of smoking in the United States is $193 billion;[10] and
- From 2001-2004, the average annual health care expenditures attributable to smoking were approximately $96 billion;[11] and
- The medical and other costs to nonsmokers due to exposure to secondhand smoke were estimated at over $10 billion per year in the United States in 2005;[12] and

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[6] California Environmental Protection Agency, Office of Environmental Health Hazard Assessment. *Chemicals Known to the State to Cause Cancer or Reproductive Toxicity.* 2006, p. 8 & 17. Available at: www.oehha.ca.gov/prop65/prop65_list/files/P65single081106.pdf.

[7] US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation's Leading Killer*. 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

[8] Barnoya J and Glantz S. "Cardiovascular Effects of Secondhand Smoke: Nearly as Large as Smoking." *Circulation*, 111: 2684-2698, 2005. Available at: www.circ.ahajournals.org/cgi/content/full/111/20/2684.

[9] US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation's Leading Killer*. 2011, p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

[10] US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Economic Facts about U.S. Tobacco Production and Use.* Available at: www.cdc.gov/tobacco/data_statistics/fact_sheets/economics/econ_facts/index.htm#costs (last updated March 9, 2011).

[11] US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Economic Facts about U.S. Tobacco Production and Use,* www.cdc.gov/tobacco/data_statistics/fact_sheets/economics/econ_facts/index.htm#costs (last updated March 9, 2011).

[12] Behan DF, Eriksen MP and Lin, Y. *Economic Effects of Environmental Tobacco Smoke*. Schaumburg, IL: Society of Actuaries, 2005, p. 2. Available at:
(footnote continued)

- California's Tobacco Control Program saved the state and its residents $86 billion in health care expenditures between the year of its inception, 1989, and 2004, with savings growing yearly;[13] and

- Indoor smoking bans have been attributed with reductions in calls for ambulances and reductions in deaths attributed to heart attacks;[14] and

WHEREAS, exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke does occur at significant levels outdoors, as evidenced by the following:

- Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on the direction and amount of wind and number and proximity of smokers;[15] and

- Irritation from secondhand smoke begins at levels as low as 4 micrograms per cubic meter, and in some outdoor situations this level can be found as far away as 13 feet from the burning cigarette;[16] and

- Smoking cigarettes near building entryways can increase air pollution levels by more than two times as compared to background levels, with maximum levels reaching the "hazardous" range on the US EPA's Air Quality Index;[17] and

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www.soa.org/files/pdf/ETSReportFinalDraft(Final%203).pdf; *see also* US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Fast Facts,* www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/index.htm (last updated March 9, 2011).

[13] Lightwood JM, Dinno A and Glantz SA. "Effect of the California Tobacco Control Program on Personal Health Care Expenditures." *PLoS Med,* 5(8): e178, 2008. Available at: www.plosmedicine.org/article/info:doi/10.1371/journal.pmed.0050178.

[14] Franklin D. *Smoking Ban Tilts Odds Against Ambulance Calls from Casinos.* Available at: http://www.npr.org/blogs/health/2013/08/05/209149956/smoking-ban-in-casinos-linked-to-fewer-caller-for-ambulances; Shute N. *After Smoking Is Banned, Heart Attacks Drop.* Available at http://www.npr.org/blogs/health/2012/10/29/163889012/after-smoking-is-banned-heart-attacks-drop.

[15] Klepeis NE, Ott WR, and Switzer P. *Real-Time Monitoring of Outdoor Environmental Tobacco Smoke Concentrations: A Pilot Study.* San Francisco: University of California, San Francisco and Stanford University, 2004, p. 80, 87. Available at: http://exposurescience.org/pub/reports/Outdoor_ETS_Final.pdf; *see also* Klepeis NE, Ott WR and Switzer P. "Real-Time Measurement of Outdoor Tobacco Smoke Particles." *Journal of the Air & Waste Management Association,* 57: 522-534, 2007. Available at: www.ashaust.org.au/pdfs/OutdoorSHS0705.pdf.

[16] Junker MH, Danuser B, Monn C, et al. "Acute Sensory Responses of Nonsmokers at Very Low Environmental Tobacco Smoke Concentrations in Controlled Laboratory Settings." *Environmental Health Perspectives,* 109(10):1045-1052, p. 1049-51, 2001. Available at: www.pubmedcentral.nih.gov/picrender.fcgi?artid=1242082&blobtype=pdf; Repace JL. "Benefits Ordinance No. of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles." *William Mitchell Law Review,* 34(4): 1621-1638, p. 1626, 2008. Available at: www.repace.com/pdf/Repace_Ch_15_Outdoor_Smoke.pdf.

[17] Kaufman P, Zhang, B, Bondy S, et al. "Not just 'a few wisps': real-time measurement of tobacco smoke at entrances to office buildings." *Tobacco Control.* Published Online First: 21 December 2010. doi:10.1136/tc.2010.041277. Abstract available at: http://tobaccocontrol.bmj.com/content/early/2010/12/21/tc.2010.041277.abstract.

- To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move nearly 25 feet away from the source of the smoke, about the width of a two-lane road;[18] and

WHEREAS, cigarette butts pose a health threat to young children and are a major and persistent source of litter; and

WHEREAS, laws restricting the use of tobacco products have recognizable benefits to public health and medical costs, as evidenced by the following:

- Cities with smoke-free laws see an appreciable reduction in hospital admittances for heart attacks in the months and years after such laws are passed;[19] and
- Smoking bans help people reduce the number of cigarettes they smoke or to quit altogether;[20] and
- Strong smoking regulations for restaurants decrease the number of children who transition from experimenting with smoking to becoming actual smokers;[21] and

WHEREAS, the safety and efficacy of electronic cigarettes is still unknown and electronic cigarettes deliver an unknown mix of potentially carcinogenic and toxic compounds, as evidenced by the following: a) nicotine content labeling is not accurate with some electronic cigarette manufacturers;[22] b) nicotine related impurities content in cartridges and refills vary by electronic cigarette manufacturer;[23] and c) the concentrations of some metal and silicate particles in electronic cigarette aerosol were higher than or equal to the levels contained in conventional cigarette smoke;[24] and

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[18] Repace JL. "Benefits of Smoke-Free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles." *William Mitchell Law Review,* 34(4): 1621-1638, p. 1626, 2008. Available at: www.repace.com/pdf/Repace_Ch_15_Outdoor_Smoke.pdf.

[19] US Department of Health and Human Services, Centers for Disease Control and Prevention. "Reduced Hospitalizations for Acute Myocardial Infarction After Implementation of a Smoke-Free Ordinance – City of Pueblo, Colorado, 2002 – 2006." *Morbidity and Mortality Weekly Report,* 57(51&52): 1373-1377, 2009. Available at: www.cdc.gov/mmwr/preview/mmwrhtml/mm5751a1.htm; Glantz SA. "Meta-Analysis of the Effects of Smokefree Laws on Acute Myocardial Infarction: An Update." *Preventive Medicine,* 47(4): 452-453, 2008. Abstract available at: www.ncbi.nlm.nih.gov/pmc/articles/PMC2927851/?tool=pubmed.

[20] Neighmond P. "Smoking Bans Help People Quit, Research Shows." *National Public Radio,* October 25, 2007, www.npr.org/templates/story/story.php?storyId=15610995.

[21] Siegel M, Albers AB, Cheng DM, et al. "Local Restaurant Smoking Regulations and the Adolescent Smoking Initiation Process: Results of a Multilevel Contexual Analysis Among Massachusetts Youth." *Archives of Pediatrics and Adolescent Medicine,* 162(5): 477-483, 2008. Available at: http://archpedi.ama-assn.org/cgi/reprint/162/5/477.pdf.

[22] Trehy ML, Ye W, et al. "Analysis of Electronic Cigarette Cartridges, Refill Solutions, and Smoke for Nicotine and Nicotine Related Impurities." Journal of Liquid Chromatography & Related Technologies, 34:1442–1458, 2011.

[23] *Id.*

[24] Williams M, Villarreal A, Bozhilov K, Lin S, Talbot P (2013) Metal and Silicate Particles Including Nanoparticles Are Present in Electronic Cigarette Cartomizer Fluid and Aerosol. PLoS ONE 8(3): e57987. doi:10.1371/journal.pone.0057987

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WHEREAS, it is unlawful to sell or furnish electronic cigarettes to minors,[26] however minors are still able to obtain access to electronic cigarette products. A national survey revealed that between 2011 and 2012, middle school students who reported ever using electronic cigarettes increased from 1.4% to 2.7% and current use of electronic cigarettes increased from 0.6% to 1.1%.[27] The same survey found that high school students who reported ever using electronic cigarettes increased from 4.7% to 10.0% while current use increased from 1.5% to 2.8%; and

WHEREAS, state law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions;[28] and state law prohibits smoking within 20 feet of entryways and operable windows of government buildings;[29] and

WHEREAS, there is no Constitutional right to smoke;[30] and

WHEREAS, it is the intent of the City Council, in enacting this Ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking and tobacco use around non-tobacco users, especially children; by protecting the public from exposure to secondhand smoke where they live, work and play; by reducing the potential for children to wrongly associate smoking and tobacco use with a healthy lifestyle; and by affirming and promoting a healthy environment in the City.

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[25] US Food and Drug Administration. *News Release, FDA and Public Health Experts Warn About Electronic Cigarettes.* July 22, 2009. Available at: www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm.

[26] Cal. Health & Safety Code § 119405 (West 2013).

[27] Centers for Disease Control and Prevention. Electronic Cigarette Use Among Middle and High School Students—United States, 2011-2012. *Morbidity and Mortality Weekly Report.* September 6, 2013 (survey results are available at http://www.cdc.gov/tobacco/data_statistics/surveys/nyts.)

[28] Cal. Health & Safety Code § 104495 (West 2008).

[29] Cal. Gov't Code § 7597 (West 2008).

[30] Public Health Law & Policy, Technical Assistance Legal Center. *There Is No Constitutional Right to Smoke.* 2005. Available at www.phlpnet.org/tobacco-control/products/there-no-constitutional-right-smoke.

NOW, THEREFORE, the City Council of the City of Cloverdale does ordain as follows:

SECTION 1. Amendment of Code. Chapter 8.08 of the Cloverdale Municipal Code is amended to read as follows:

Chapter 8.08

SMOKING IN PUBLIC PLACES

Sections:

8.08.010 Purpose of provisions.
8.08.020 Definitions.
8.08.030 City-owned facilities regulated.
8.08.035 Public events regulated.
8.08.040 Enclosed places where smoking is prohibited.
8.08.050 Places of employment regulated.
8.08.060 Areas exempt from restrictions.
8.08.070 Posting requirements.
8.08.080 Reserved.
8.08.090 Enforcement of provisions.
8.08.100 Retaliation prohibited.
8.08.110 Chapter provisions not exclusive.
8.08.120 Violation—Penalty.

8.08.010 Purpose of provisions.

The purpose of this chapter is to protect the public health and welfare by regulating smoking in public places and places of employment and to strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers to breath smoke-free air, and to recognize that, when these needs conflict, the need to breathe smoke-free air shall have priority.

8.08.020 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section, unless it is apparent from the context that they have a different meaning:

"Bar" means an area which is devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.
"City" means the city of Cloverdale, state of California.

"Electronic smoking device" means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances.

"Electronic smoking device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. "Electronic smoking device"

does not include any product specifically approved by the United States Food and Drug Administration for the use in the mitigation, treatment, or prevention of disease.

"Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

"Employer" means any person, partnership, corporation, including municipal corporation, who employs the services of more than three persons.

"Enclosed" means closed in by roof and four walls with appropriate openings for ingress and egress.

"Place of employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to, work areas, employee lounges, conference rooms, and employee cafeterias or eating places. A private residence is not a place of employment for purposes of this chapter, unless it is used as a child care or health care facility.

"Smoke" means" the gases, particles or vapors released into the air by combustion, electronic ignition or vaporization when the apparent or usual purpose of the combustion, electronic ignition or vaporization is human inhalation of the resulting combustion products, including but not limited to tobacco smoke, cigarette smoke, marijuana smoke, and gases, aerosol or vapor released by the ignition of e-cigarettes or electronic smoking devices. "Smoke" does not include the product of combustion of incense or similar products when used solely for olfactory purposes and not containing tobacco or nicotine.

"Smoking" means the carrying or holding of a lighted pipe, cigar, cigarette of any kind, including an electronic cigarette or electronic or battery-operated smoking device, or any other lighted smoking equipment or the lighting or emitting or exhaling the smoke or vapor of a pipe, cigar, or cigarette of any kind.

"Sports arena" means the enclosed sports pavilions, gymnasiums, health spas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition or witness sports events.

8.08.030 City-owned facilities regulated.
All enclosed facilities and transit buses owned, leased, or operated by the city or under control of the city council shall be subject to the provisions of this chapter.

8.08.035 Public events regulated.
Smoking shall be prohibited in enclosed and unenclosed public places, when being used for a public event, including but not limited to a farmers' market, concert, parade, craft fair, festival, bazar, or any other event which may be attended by the general public, provided that Smoking is permitted at least twenty (20) feet from the event area on streets and sidewalks being used in a traditional capacity as pedestrian or vehicular thoroughfares, unless otherwise prohibited by this Chapter or other law.

8.08.040 Enclosed places where smoking is prohibited.
Smoking shall be prohibited in the following places within all areas of the city:

A. All enclosed areas within businesses available to and customarily used by the general public including, but not limited to, retail stores, hotels and motels, pharmacies, banks, attorneys' offices and other offices;

B. Within all restaurants.

C. Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices, except that health facilities shall also be subject to the provisions of Section 8.08.050 of this chapter regulating smoking in places of employment;

D. Elevators, public restrooms, indoor service lines, buses, taxicabs, public airports, and other means of public transit under the authority of the city, and in ticket, boarding, and waiting areas of public transit depots;

E. In public areas of museums and galleries;

F. Enclosed seating areas of theaters, auditoriums, and halls which are used for motion pictures, stage dramas and musical performances, ballets or other exhibitions, except when smoking is part of any such production;

G. Enclosed sports arenas, convention, church, social and auditorium halls;

H. Retail food marketing establishments, including grocery stores and supermarkets;

I. Public schools and other public facilities under the control of another public agency, which are available to and customarily used by the general public, to the extent that the same are subject to the jurisdiction of the city;

J. Notwithstanding any other provisions of this chapter, any owner, operator, manager or other person who controls any establishment subject to this chapter may declare that entire establishment as a nonsmoking establishment.

8.08.050 Places of employment regulated.
A. It shall be the responsibility of employers to make reasonable effort to provide smoke-free area for nonsmokers within existing facilities.

B. Within ninety days of the effective date of the ordinance codified in this chapter, each employer and each place of employment located within the city, shall adopt, implement, make known to employees and public, and maintain a written smoking policy, which shall contain at a minimum the following requirements:

1. Prohibition of smoking in conference and meeting rooms, classrooms, restrooms, medical facilities, hallways and elevators and all other areas as required by state or federal law;

2. Any employee in a place of employment shall be given the right to designate his/her immediate work area as a nonsmoking area and to post the same with an appropriate sign or signs, to be provided by the employer. The policy adopted by the employer shall include a reasonable definition of the term "immediate work area";

C. Reserved.

D. The smoking policy shall be communicated to all employees within three weeks of its adoption, and at least annually thereafter. All new employees shall be informed of the policy during initial orientation and in no case later than three weeks after employment;

E. Notwithstanding the provisions of subsection A of this section, every employer shall have the right to designate any place of employment, or portion thereof, as a nonsmoking area.

8.08.060 Areas exempt from restrictions.
Notwithstanding any other provision of this chapter, the following areas shall not be subject to the smoking restrictions of this chapter:

A. Private residences, unless the residence is used as a child care or a health care facility;

B. Reserved.

C. Hotel or motel rooms rented to guests, as allowable under state law;

D. Retail stores that deal primarily in the sale of tobacco and smoking paraphernalia;

E. Restaurants, hotel and motel conference or meeting rooms, and public and private assembly rooms while these places are being used for private functions, so long as no food is being served;

F. A private enclosed space occupied exclusively by smokers, even though such a place may be visited by nonsmokers, and private enclosed offices, excepting places in which smoking is prohibited by the fire agency of jurisdiction or by any other law, ordinance or regulation.

8.08.070 Posting requirements.
"Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than one inch in height or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is controlled by this chapter, by the owner, operator, manager or other person having control of such building or other places.

8.08.080 Reserved.

8.08.090 Enforcement of provisions.

A. Any owner, manager, operator or employer of any establishment subject to this chapter shall have the responsibility to inform any apparent violator, whether public or employee, about any smoking restrictions in the establishment, and shall attempt at all times to obtain voluntary compliance by any apparent violator.

B. Any citizen who desires to register a complaint under this chapter may initiate the complaint by filing a written complaint with the police department.

C. While an establishment is undergoing otherwise mandated inspections, a "self-certification" will be required from the owner, manager, operator or other person having control of such establishment that all requirements of this chapter have been complied with.

8.08.100 Retaliation prohibited.
No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter.

8.08.110 Chapter provisions not exclusive.
This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

8.08.120 Violation—Penalty.
A. It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to this chapter to fail to:

1. Properly post signs required hereunder,
2. To provide signs for the use of employees in designating their areas;
3. To properly set aside "No Smoking" areas;
4. To adopt a smoking restriction policy; or
5. To comply with any other requirements of this chapter.

B. It is unlawful for any person to smoke in any area restricted by the provisions of this chapter.

C. Any person or business that violates subsections A or B or any other provisions of this chapter shall be guilty of an infraction, punishable by:

1. A fine, not exceeding one hundred dollars for first violation;
2. A fine, not exceeding two hundred dollars for a second violation of this chapter within one year,
3. A fine, not exceeding five hundred dollars for each additional violation of this chapter within five years.

SECTION 2. California Environmental Quality Act ("CEQA").

The City Council hereby finds that the approval of the amendments in this Ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines section 15061(b)(3) that CEQA only applies to projects that have the potential

for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that this Ordinance will have a significant effect on the environment.

SECTION 3. No Mandatory Duty of Care.

This Ordinance is not intended to, and shall not be construed or given effect in a manner that imposes upon the City or any officer, agent, employee or volunteer, thereof a mandatory duty of care towards persons and property, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 4. Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION 5. Effective Date.

This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Council Members voting for or against the same, in a newspaper of general circulation published in the County of Sonoma, State of California.

I hereby certify that the foregoing is a true and complete copy of an ordinance duly and regularly adopted by the City at a regular meeting thereof held on April 12, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 12th day of April, 2016 by the following roll call vote:

AYES: **Councilmember Palla, Vice Mayor Wolter, Councilmember Russell, Councilmember Cox, and Mayor Brigham**
NOES: **None**
ABSTAIN: **None**
ABSENT: **None**

APPROVED: **ATTEST:**

MaryAnn Brigham, Mayor **Paul Cayler, City Clerk**

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CITY OF CLOVERDALE

City Council/Successor Agency
Agenda Item Summary

Agenda Item:	12
Meeting Date:	October 25, 2016

Agenda Section	**Staff Contact**
Consent Calendar	Joanne Cavallari, Finance Manager

Agenda Item and Title

Waive second reading and readopt Ordinance No. 707-2016 amending Cloverdale Municipal Code, Title 3, Chapter 3.04, "Officers Authorized to Sign - Procedure," Section 3.04.020, adding the Assistant City Manager as an officer authorized to sign on behalf of the City.

Summary

California Government Code section 36933 requires that within 15 days after the adoption of an ordinance, a city publish a copy of the ordinance and the Council vote in a newspaper of general circulation. The Section also allows a city to only publish a summary of the ordinance instead of the entire document, if the City publishes such summary 5 days prior the adoption, and again within 15 days after the adoption, including the names of those city council members voting for and against the ordinance.

Ordinance No. 707-2016 was adopted by the City Council on May 24, 2016. Due to transitions of staff members, the City inadvertently did not publish a summary of the ordinance in the newspaper at least 5 days prior to the adoption and again within 15 days of the action.

In order to comply with the publishing requirements of Government Code section 36933, and to avoid publishing the entire ordinance, Ordinance No. 707-2016 is being placed before the City Council again for re-adoption. This is simply a re-adoption of the Ordinance. No changes to the substance of the Ordinance has been made.

Options

Waive second reading and readopt Ordinance No. 707-2016 amending Municipal Code, Title 3, Chapter 3.04.

Recommended Council Action

Waive the second reading and readopt Ordinance No. 707-2016, amending the Cloverdale Municipal Code, Title 3, Chapter 3.04, Section 3.04.020 "Officers Authorized to Sign - Procedure".

Attachment:

Ordinance No. 707-2016

Adopted Ordinance No. 707-2016

2721066.1

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 707-2016

AN ORDINANCE OF THE CITY OF CLOVERDALE AMENDING CLOVERDALE MUNICIPAL CODE CHAPTER 3.04, "OFFICERS AUTHORIZED TO SIGN - PROCEDURE," SECTIONS 3.04.020 ADDING THE ASSISTANT CITY MANAGER AS AN OFFICER AUTHORIZED TO SIGN ON BEHALF OF THE CITY

THE CITY COUNCIL OF THE CITY OF CLOVERDALE DOES ORDAIN AS FOLLOWS:

SECTION 1. Amendment to Section 3.04.020.

The Cloverdale Municipal Code, Chapter 3.04, "Officers authorized to sign - Procedure," Section 3.04.020 is amended as follows:

3.04.020 Officers authorized to sign - Procedure.

A. The following city officers are authorized to sign on behalf of the city warrants drawn on the city treasury, checks, and appropriate bank signature cards:

1. City manager;

2. Assistant City Manager;

3. Mayor;

4. Vice mayor.

SECTION 2. Severability.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The City Council hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION 3. Effective Date.

This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Council Members voting for or against the same, in a newspaper of general circulation published in the County of Sonoma, State of California.

I hereby certify that the foregoing is a true and complete copy of an ordinance duly and regularly adopted by the City at a regular meeting thereof held on October 25, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 25 day of October 2016, by the following roll call vote: Ayes – X; Noes- X

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved:

_____
Mary Ann Brigham, Mayor

Attested:

_____
Linda Moore, Deputy City Clerk

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 707-2016

AN ORDINANCE OF THE CITY OF CLOVERDALE AMENDING CLOVERDALE MUNICIPAL CODE CHAPTER 3.04, "OFFICERS AUTHORIZED TO SIGN - PROCEDURE," SECTIONS 3.04.020 ADDING THE ASSISTANT CITY MANAGER AS AN OFFICER AUTHORIZED TO SIGN ON BEHALF OF THE CITY

THE CITY COUNCIL OF THE CITY OF CLOVERDALE DOES ORDAIN AS FOLLOWS:

SECTION 1. Amendment to Section 3.04.020.

The Cloverdale Municipal Code, Chapter 3.04, "Officers authorized to sign - Procedure," Section 3.04.020 is amended as follows:

3.04.020 Officers authorized to sign - Procedure.

A. The following city officers are authorized to sign on behalf of the city warrants drawn on the city treasury, checks, and appropriate bank signature cards:

1. City manager;

2. Assistant City Manager;

3. Mayor;

4. Vice mayor.

SECTION 2. Severability.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The City Council hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION 3. <u>Effective Date</u>.

This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Council Members voting for or against the same, in a newspaper of general circulation published in the County of Sonoma, State of California.

I hereby certify that the foregoing is a true and complete copy of an ordinance duly and regularly adopted by the City at a regular meeting thereof held on May 24, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 24 day of May 2016 by the following roll call vote: Ayes – 5; Noes- 0

AYES:	**Councilmember Palla, Vice Mayor Wolter, Councilmember Cox, Councilmember Russell, and Mayor Brigham**
NOES:	**0**
ABSENT:	**0**
ABSTAIN:	**0**

APPROVED:

Mary Ann Brigham, Mayor

ATTEST:

Linda Moore, Deputy City Clerk

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CITY OF CLOVERDALE

City Council/Successor Agency Agenda Item Summary

Agenda Item: 13
Meeting Date: October 25, 2016

Agenda Section	**Staff Contact**
Consent	David Kelley, Assistant City Manager/ Community Development Director

Agenda Item Title

Waive the second reading of Ordinance No. 710-2016, of the City of Cloverdale amending Title 18 "Zoning" of the Cloverdale Municipal Code, prezoning certain properties containing approximately 42.5-acres of land lying east of Asti Road, south of existing City limits, generally west of the Russian River and north of the City of Cloverdale wastewater treatment plant and corporation yard (APNs 116-260-004, -030, -033, -045, -046 -050 & -055) to a combination of General Industrial (M-1), Rural Residential (R-R) and Public Institutional (P-I). and making certain changes to the standards of the general industrial zoning district to add live work units as a conditionally permitted use in the General Industrial (M-1) Zoning District.

Summary

On October 11, 2016, the City Council held a Public Hearing to consider the proposed Annexation, General Plan Amendment, Prezoning and CEQA Initial Study/Mitigated Negative Declaration for an approximate 42.5-acre area lying east of existing City boundaries in an unincorporated portion of Sonoma County. The properties all lie within the City of Cloverdale Sphere of Influence and City's Urban Growth Boundary. Attachments No. 1-4 identify the location of the property, the annexation area, proposed general plan land use designations and proposed prezoning districts. The Project also involved consideration of a Conditional Use Permit and Major Design Review for Nu Forest Products, Inc. on approximately 26.85 acres of the overall annexation area.

During the public hearing the City Council introduced and waived the first reading of Ordinance No. 710-2016, amending Title 18 "Zoning" of the Cloverdale Municipal Code, prezoning certain properties containing approximately 42.5-acres of land lying east of Asti Road, south of existing City limits, generally west of the Russian River and north of the City of Cloverdale wastewater treatment plant and corporation yard (APNs 116-260-004, -030, -033, -045, -046 -050 & -055) to a combination of General Industrial (M-1), Rural Residential (R-R) and (Public Institutional P-I), and making certain changes to the standards of the general industrial zoning district to add live work units as a conditionally permitted use in the General Industrial (M-1) Zoning District. On a vote of 5-0, the City Council waived the first reading and introduced the ordinance.

The Ordinance amends the Cloverdale Municipal Code by adding text to the M-1 zoning district in Chapter 18.06 of the Zoning Ordinance to allow "live-work" uses subject to the issuance of a Conditional Use Permit by the Planning Commission and adds Section 18.090.300 to Chapter 18.09 of the Zoning Ordinance by providing specific standards for live-work units. In addition, the Ordinance provides zoning designations for the properties included in the proposed annexation.

<u>Proposed Zoning Designations</u>: Each of the subject properties within the annexation area would be prezoned under the Ordinance. The proposed zoning designations were assigned to the seven properties in the annexation area based on discussions with each of the owners, existing Sonoma County land use property designations and regulations along with existing site conditions. The proposed prezoning is identified on Attachment 4.):

1. *Nu Forest Properties*: These two properties are proposed to be prezoned as General Industrial (M-1). The M-1 zoning district allows lumber mills as a conditional use and a CUP has been requested by NFP.
2. *Cerasoli Property*: General Industrial M-1 zoning based on property owner desire and existing residential and light industrial use on the site.
3. *Schwartzler Trust Property*: Rural Residential (RR), based on an existing residence and property owner desire.
4. *Matovich Trust Property*: Rural Residential (RR), based on property owner desire.
5. *Poustinchian Property*: General Industrial (M-1), based on property owner desire.
6. *PG&E Property*: Proposed for Public Institutional (P-I), consistent with the existing electrical substation on the site.

Background

Nu Forest Products Inc. has requested City support to file an annexation application with Sonoma County Local Agency Formation Commission (LAFCO) in order to obtain City services. Annexation of Nu Forest's property requires that the City Council approve prezoning of the property prior to filing an application for annexation to LAFCO. Nu Forest Products desires to relocate their existing lumber operations from Healdsburg and consolidate all facilities in Cloverdale. Five additional parcels/property owners have been included in the proposed annexation to preclude creation of an unincorporated "County island." All of the subject property owners have requested modification of their General Plan Land Use Designations. On July 26, 2016, the City Council adopted City Council Resolution No 058-2016, initiating a General Plan Amendment on the subject properties. The proposed entitlements were also reviewed by the Planning Commission. The Planning Commission held a public Hearing on September 6, 2016, and all of the project components were unanimously recommended for City Council approval.

Discussion

As previously noted, Nu Forest Products Inc. has requested annexation to the City of Cloverdale to receive municipal services to support the proposed lumber and planing mill. Prezoning of the annexation area is required by State annexation law known as the Cortese Knox Hertzberg Local Government Reorganization Act. Proposed prezoning districts are consistent with the proposed GPA, as required by other portions of state law. After preliminary land use applications have been acted on by the City, annexation requires review and approval by LAFCO. A formal application for annexation will be submitted to LAFCO upon completion of review and approval by the City Council. Prezoning will become effective upon adoption of the Ordinance by the City Council. The actual zoning and associated entitlements including the Conditional Use Permit and Major Design Review for Nu Forest Properties Inc. become effective when the annexation becomes effective upon approval by LAFCO pursuant to Government Code Section 65859(a).

Environmental Assessment. In accordance with CEQA Guidelines section 15063, an Initial Study was prepared to evaluate the potential impacts of the project on the environment and surrounding properties. Based on the result of the Initial Study, a Mitigated Negative Declaration was prepared. A Mitigating Monitoring and Reporting Program was also prepared for reporting on and monitoring of all of the proposed mitigation measures included in the Mitigated Negative Declaration. All mitigation measures and requirements as listed in the Mitigation Monitoring and Reporting Program for the project are incorporated as Conditions of Approval for the project. At the close of the Public Hearing on October 11, 2016, City Council adopted Resolution No. 075-2016 (Attachment 5) adopting a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the project.

Annexation, General Plan Amendment, Conditional Use Permit and Major Design Review. At the close of the Public Hearing on October 11th, the City Council also adopted the following resolutions:

1. City Council Resolution No. 076-2016 (Attachment 6), directing City staff to file an annexation application with Sonoma County Local Agency Formation Commission (LAFCO) for the Nu Forest Products site and adjacent properties to the City of Cloverdale.
2. City Council Resolution No. 077-2016 (Attachment 7), approving an amendment to the Cloverdale General Plan relating to five properties lying adjacent to the Nu Forest site.
3. City Council Resolution No. 078-2016 (Attachment 8), approving the Conditional Use Permit and Major Design Review for Nu Forest Products

Ordinance. City staff recommends waiving the second reading of Ordinance No. 710-2016 (Attachment 9), amending Title 18 "Zoning" of the Cloverdale Municipal Code, prezoning certain properties containing approximately 42.5-acres of land lying east of Asti Road, south of existing City limits, generally west of the Russian River and north of the City of Cloverdale wastewater treatment plant and corporation yard (APNs 116-260-004, -030, -033, -045, -046 -050 & -055) to a combination of General Industrial (M-1), Rural Residential (R-R) and (Public Institutional P-I). and making certain changes to the standards of the general industrial zoning district to add live work units as a conditionally permitted use in the General Industrial (M-1) District.

Options

1. Adopt Ordinance No. 710-2016, of the City of Cloverdale amending Title 18 "Zoning" of the Cloverdale Municipal Code, prezoning certain properties containing approximately 42.5-acres of land lying east of Asti Road, south of existing City limits, generally west of the Russian River and north of the City of Cloverdale wastewater treatment plant and corporation yard (APNs 116-260-004, -030, -033, -045, -046 -050 & -055) to a combination of General Industrial (M-1), Rural Residential (R-R) and (Public Institutional P-I). and making certain changes to the standards of the general industrial zoning district to add live work units as a conditionally permitted use in the General Industrial (M-1) District.
2. Provide alternative direction to Staff.

Budget/Financial Impact

If approved, there would be no immediate fiscal (budgetary or financial) impact associated with the project. Upon final annexation of the property to the City of Cloverdale by LAFCO, the project is expected to generate net positive general fund revenue based on an increase in local property tax revenues associated with an increase in the assessed valuation of the property as well as a potential increase in local sales tax revenue.

Subcommittee Recommendation

None.

Recommended Council Action

Waive the second reading and adopt Ordinance No. 710-2016 amending Cloverdale Municipal Code, making certain changes to Chapters 18.06 and Chapter 18.09 to add live work units as a conditionally permitted use in the General Industrial (M-1) District and zoning approximately 42.5-acres of land lying east of Asti Road, south of existing City limits, generally west of the Russian River and north of the City of Cloverdale wastewater treatment plant and corporation yard (APNs 116-260-004, -030, -033, -045, -046 -050 & -055) as a combination of General Industrial (M-1), Rural Residential (R-R) and (Public Institutional P-I).

Attachments:

1. Project Location Map
2. Proposed Annexation Area Map Exhibit
3. Proposed General Plan Designation Map Exhibit
4. Proposed Prezoning Districts Map Exhibit
5. City Council Resolution City Council Resolution No. 075-2016 adopting an Initial Study/Mitigated Negative Declaration and Mitigation Monitoring & Reporting Plan (MMRP).
6. City Council Resolution No. 076-2016, directing Staff to File an Annexation application with LAFCO.
7. City Council Resolution No. 077-2016, approving a General Plan Amendment.
8. City Council Resolution No. 078-2016, approving a Conditional Use Permit & Major Design Review for the Nu Forest Products Project Inc.
9. Ordinance No. 710-2016

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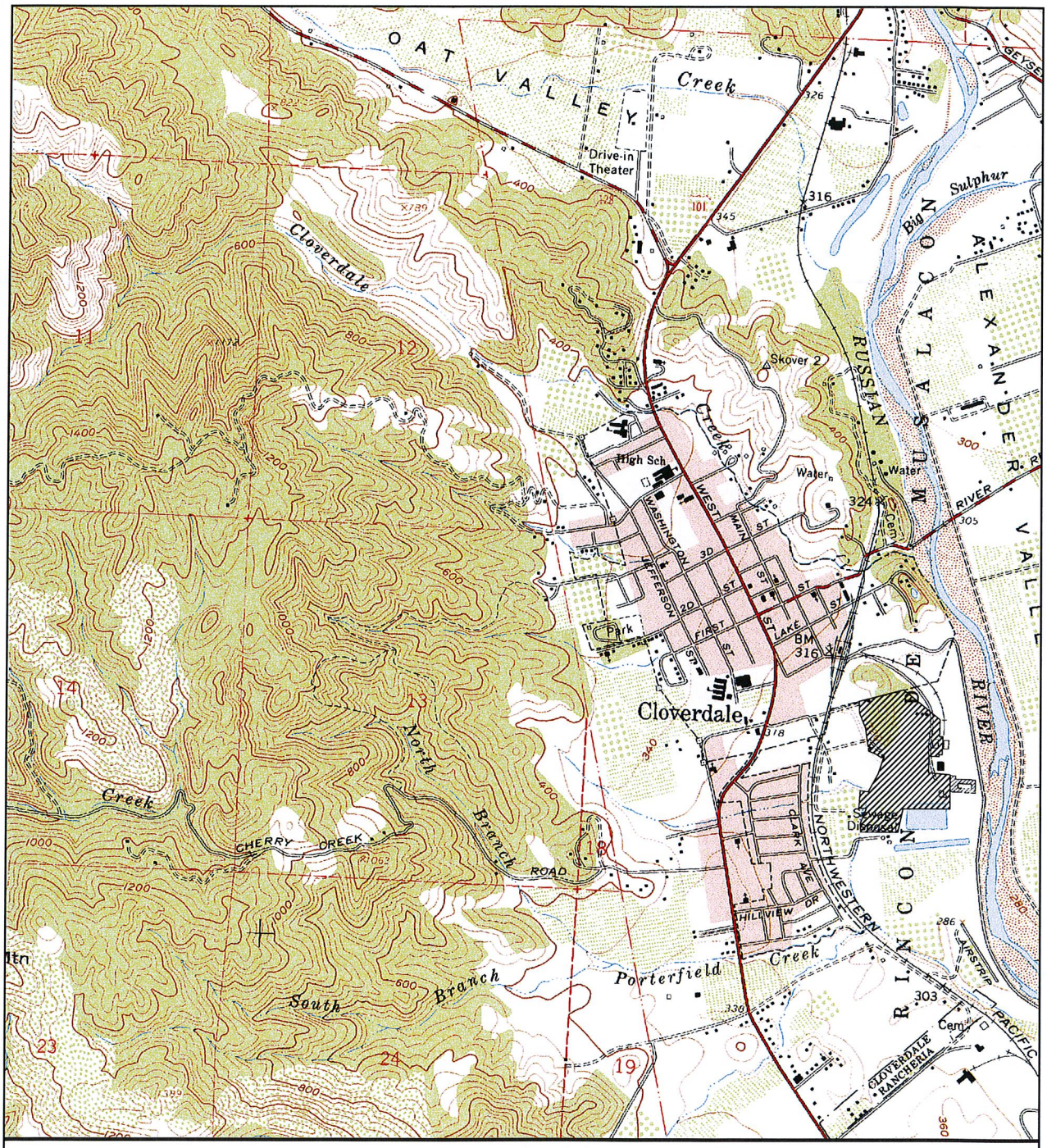
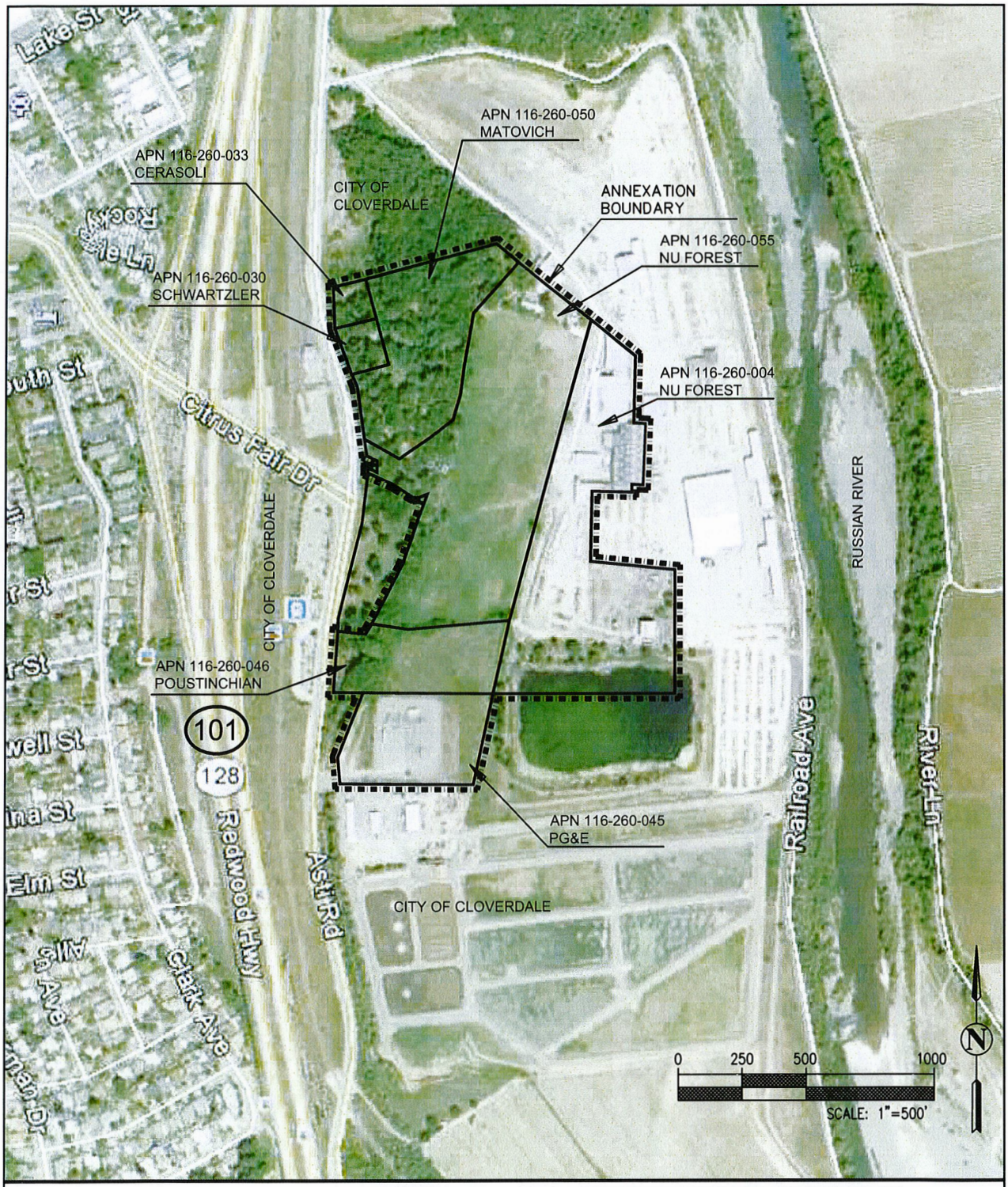


Attachment 1
Project Location

0 1000 2000 4000

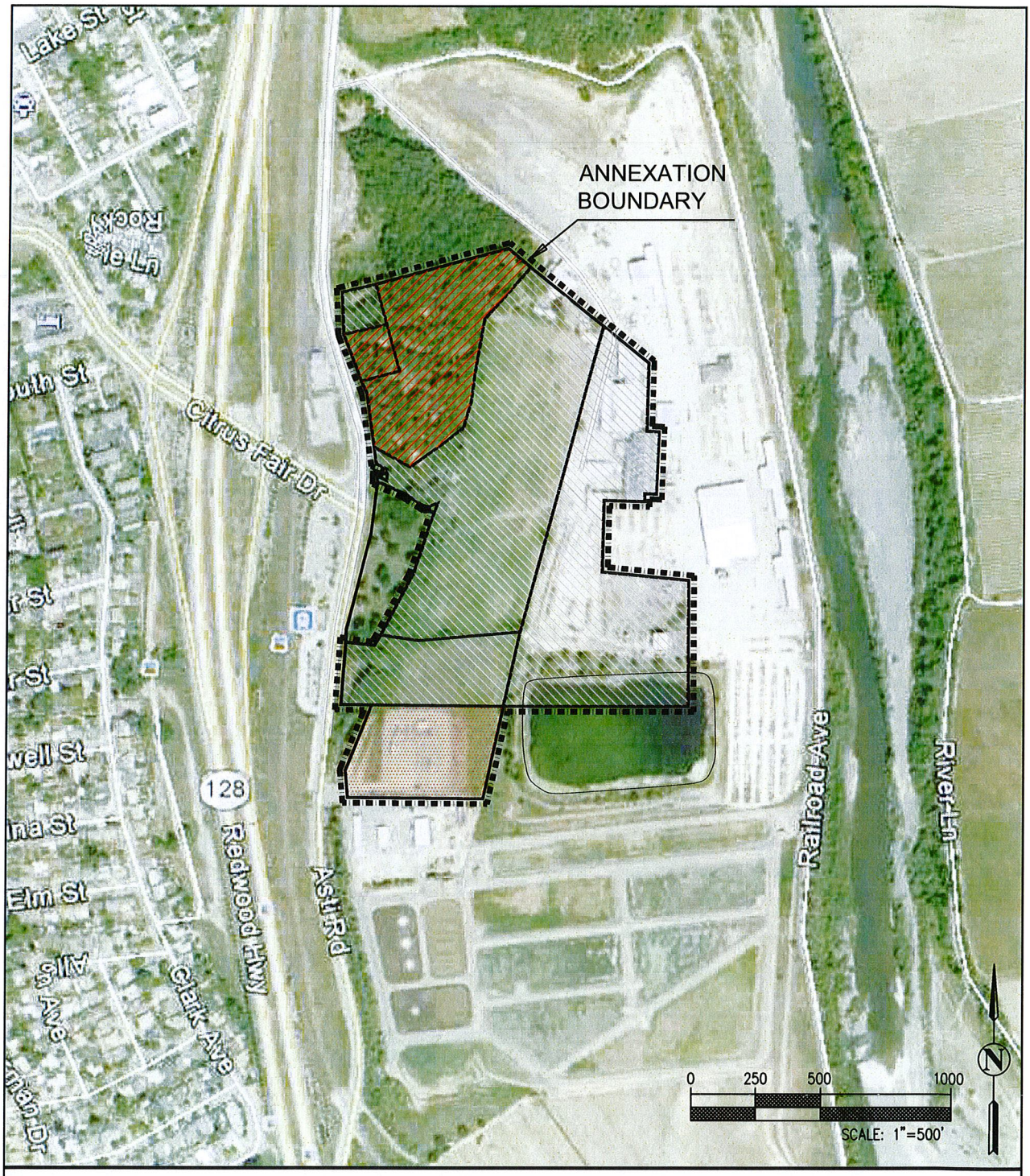
SCALE: 1"=2000'

N



APN	Owner	Area (per AP Map)
116-260-004	Nu Forest Products	12.17 acres
116-260-030	Schwartzler	0.73 acres
116-260-033	Cerasoli	0.45 acres
116-260-045	PG&E	4.05 acres
116-260-046	Poustinchian	4.07 acres
116-260-050	Matovich	6.30 acres
116-260-055	Nu Forest Products	14.68 acres

Attachment 2
Annexation Area



Legend:

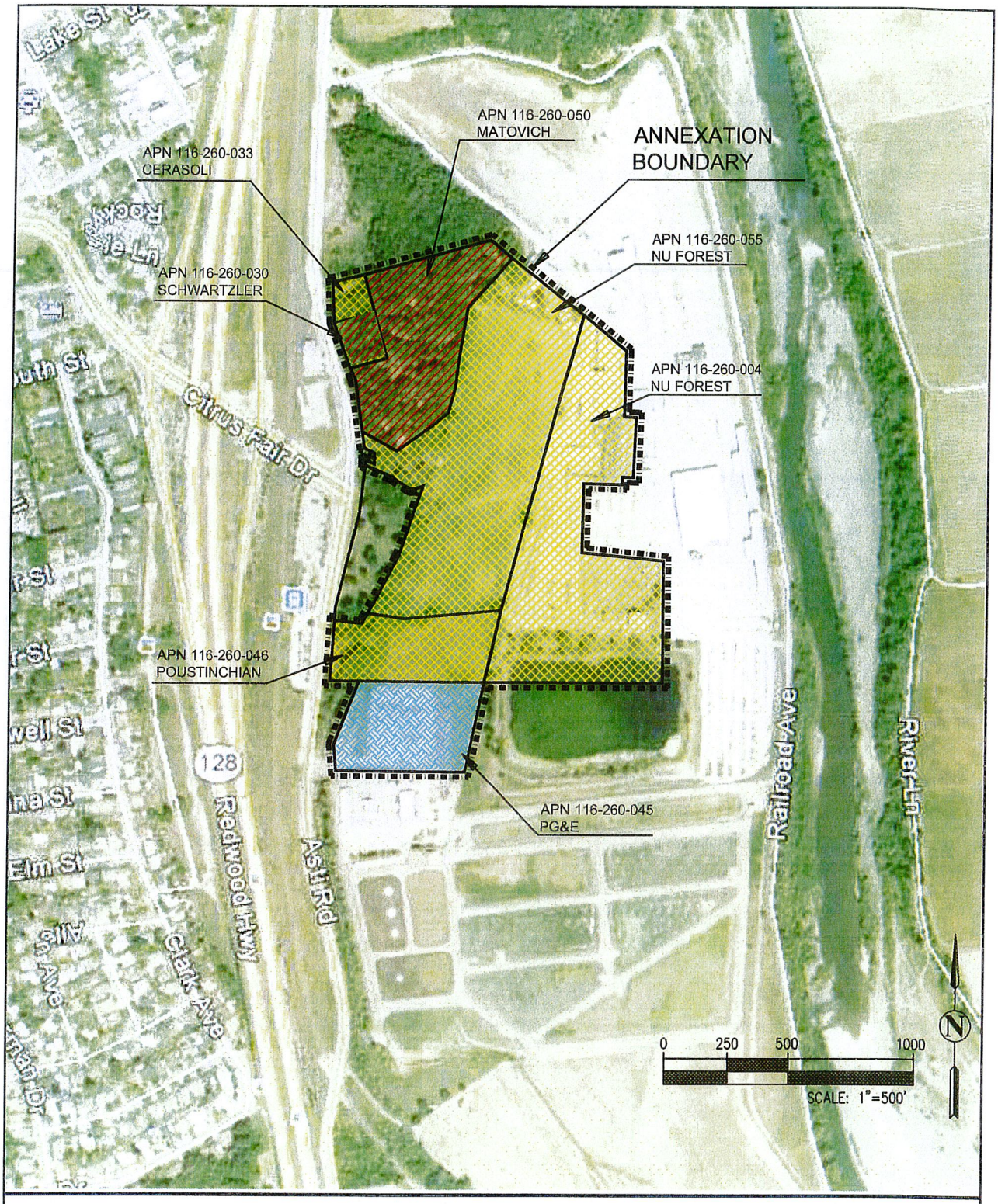
Proposed General Plan

RR – Rural Residential

GI – General Industrial

P – Public, Quasi-Public, Infrastructure

Attachment 3
Proposed General Plan Designations



Legend:

Proposed Use

GI – General Industrial

RR – Rural Residential

P–I – Public Institutional

Attachment 4

Proposed Prezoning Districts

CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 075-2016

RESOLUTION OF THE CITY COUNCIL ADOPTING A MITIGATED NEGATIVE DECLARATION (MND) AND MITIGATION MONITORING AND REPORTING PLAN (MMRP) FOR THE NU FOREST ANNEXATION AND DEVELOPMENT PROJECT ON APPROXIMATELY 42.5 ACRES OF LAND GENERALLY LYING EAST OF ASTI ROAD, WEST OF THE RUSSIAN RIVER, SOUTH OF EXISTING CITY BOUNDARIES AND NORTH OF THE CLOVERDALE WASTEWATER TREATMENT FACILITY AND CORPORATION YARD (APNs 116-260-004, -030, -033, -045, -046 -050 & -055)

WHEREAS, the City of Cloverdale desires to annex approximately 42.5 acres of land into the City, all located within the City's sphere of influence, Urban Growth Boundary and Urban Service Area; and

WHEREAS, the City has undertaken a General Plan Amendment and associated prezoning for the affected properties, that includes a mix of General Industrial (M-1), Rural Residential (R-R) and Public Institutional (PI) districts that are generally compatible with existing County of Sonoma zoning for the properties and current area development patterns; and

WHEREAS, the largest property owner within the annexation area, Nu Forest Products, desires to expand and existing lumber milling and related uses on the site. Other uses that would be permitted on certain properties in the annexation area after the effective date of the prezoning would include a single family dwellings and light industrial and live-work units; and

WHEREAS, CEQA, together with the State Guidelines and City environmental regulations, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared; and

WHEREAS, the City caused an Initial Study to be prepared to assess the impacts of the project, which is identified as the "Nu Forest Annexation and Development Project Initial Study/Mitigated Negative Declaration, Cloverdale, Sonoma County, California" dated June 2016 (Exhibit 1); and

WHEREAS, the Initial Study analyzed all of the environmental topics required in Appendix G of the CEQA Implementing Guidelines; and

WHEREAS, the Initial Study identified potentially significant impacts with respect to the following topics: aesthetics, biological resources, hazards and hazardous materials and noise; and

WHEREAS, the Initial Study also sets forth a number of mitigation measures to reduce all potentially significant impacts to a less-than-significant level; and

WHEREAS, since the Initial Study determined that all potentially significant impacts can be reduced to a less-than-significant level, adoption of a Mitigated Negative Declaration has been recommended to satisfy CEQA requirements for the Nu Forest Annexation and Development Project; and

WHEREAS, the Initial Study/Mitigated Negative Declaration was circulated for public review for a 30-day period between June 3, 2016 and July 6, 2016; and

WHEREAS, the City received two comments during the review period that did not raise any new issues or require additional analysis that was not included in the Initial Study; and

WHEREAS, on September 6, 2016, the Planning Commission held a properly noticed public hearing on the Project, at which time all interested parties had the opportunity to be heard; and

WHEREAS, a Staff Report dated September 6, 2016, and incorporated herein by reference described and analyzed the Project and related CEQA documentation for the Planning Commission and recommended City Council adoption of the Mitigated Negative Declaration and MMRP by adoption of Planning Commission Resolution No. 013-2016; and

WHEREAS, the Planning Commission considered the Initial Study and Mitigated Negative Declaration and all above-referenced reports, recommendations, and testimony before making a recommendation on the Project; and

WHEREAS, on October 11, 2016, the City Council held a properly noticed public hearing on the MND and MMRP and the related Project, at which time all interested parties had the opportunity to be heard; and

WHEREAS, a Staff Report dated October 11, 2016, and incorporated herein by reference described and analyzed the Project and related MND and MMRP for the City Council and recommended adoption of the MND and MMRP and approval of the Project by the City Council.

WHEREAS, following the close of the public comment period, the City has made a number of small technical changes to the text of the Initial Study that do not materially change the scope or effectiveness of the Mitigation Measures or the level or severity of impacts identified in the Initial Study. No new impacts have been identified after the close of the CEQA comment period. These are included as Exhibit 2 to this Resolution; and

WHEREAS, the City of Cloverdale has prepared a Mitigation Monitoring and Reporting Program as required by CEQA (Exhibit 3) that includes the updated Mitigation Measures as well as agencies and organizations responsible for implementing the various mitigation measures; and

NOW, THEREFORE BE IT RESOLVED that the foregoing recitals are true and correct and are part of this resolution.

BE IT FURTHER RESOLVED that the City Council makes the following findings to support the determination that a Mitigated Negative Declaration is required under CEQA for the proposed project. These findings are based on information contained in the Initial Study, the staff report, and all other information contained in the record before the City Council. These findings constitute a summary of the information contained in the entire record. The detailed facts to support the findings are set forth in the Mitigated Negative Declaration and elsewhere in the record. Other facts and information in the record that support each finding that are not included below are incorporated herein by reference:

1. The City Council has reviewed and considered the Initial Study/Mitigated Negative Declaration, the associated staff report and other associated material pertinent to the project.

2. The Initial Study/Mitigated Negative Declaration adequately described the environmental impacts of the proposed project. On the basis of the whole record before it, the Planning Commission finds that there is no substantial evidence that the project, as mitigated, will have a significant effect on the environment.

3. The Initial Study/Mitigated Negative Declaration and MMRP have been completed in compliance with CEQA and the CEQA Guidelines.

4. The Initial Study/Mitigated Negative Declaration and MMRP are complete, adequate and reflects the City's independent judgment and analysis as to the environmental effects of the proposed project.

BE IT FURTHER RESOLVED that the City Council of the City of Cloverdale does hereby adopt a Mitigated Negative Declaration for the Nu Forest Annexation and Development Project as noted in the recitals above. A Mitigation Monitoring and Reporting Program (MMRP) is also adopted, which lists all mitigation measures, the time frame for compliance and the agency or organization responsible for implementation.

It is hereby certified that the foregoing Resolution No. 075-2016 was duly introduced and duly adopted by the City Council of the City of Cloverdale at its regular meeting held on October 11, 2016, by the following roll call vote: (Ayes-5; Noes-0)

AYES: Councilmember Palla, Councilmember Russell, Councilmember Cox, Vice Mayor Wolter, and Mayor Brigham
NOES: 0
ABSENT: 0
ABSTAIN: 0

APPROVED:

Mary Ann Brigham, Mayor

ATTESTED:

Linda Moore, Deputy City Clerk

Exhibits Attached:
Exhibit 1 - Nu Forest Annexation and Development Project CEQA Initial Study/Mitigated Negative Declaration
Exhibit 2 - Corrections and Modifications to Initial Study/Mitigated Negative Declaration
Exhibit 3 - CEQA Mitigation Monitoring and Reporting Program

Resolution - Exhibit 2

Corrections and Modifications to the Nu Forest Annexation & Development Project

Initial Study/Mitigated Negative Declaration (IS/MND)

August 5, 2016

The following changes are made by reference into the Initial Study document dated June 2016. None of the changes to the project would change any of the impact analyses or conclusions of the Initial Study document.

1) The General Plan land use designation for the Schwartzler Trust property (APN 116-260-030) is proposed to be changed from "CF-Conservation Feature" to "RR-Rural Residential. The Initial Study described the proposed General Plan Amendment from "CF-Conservation Feature" to "GI-Light Industrial." After further discussions with the property owner, the owner desires a Rural Residential land use designation.

Since the property currently is developed with a single family dwelling and the proposed RR designation would continue to allow this use, the proposed General Plan change would result in fewer and less intensive environmental impacts in terms of traffic generation, noise, air quality and similar impacts.

2) The General Plan land use designation for the PG&E property (APN 116-260-45) is proposed to be changed from "TOD-Transit Oriented Development" to "Public/Quasi-Public" to reflect the existing PG&E electric substation. There would be no changes to the environmental analysis contained in the Initial Study since there would be no changes to the status of the substation. The intent of the project is to include this property in the annexation to avoid creating a county island.

Exhibit 3

City of Cloverdale
Nu Forest Annexation & Development Project
Mitigation Monitoring and Reporting Program

September 2016

Mitigation Measure	Implementing Responsibility	Monitoring Responsibility	Monitoring Schedule	Verification
Aesthetics-1. Future grading and/or development on any parcels of land fronting on Asti Road in the annexation area shall be reviewed by a California-certified arborist to identify methods to provide for maximum tree protection. These methods shall be reflected in final development plans. If mature trees cannot be protected, replacement native trees shall be planted on the site at a 2:1 ratio with adequate measures to ensure successful growth of the replacement trees. No Certificate of Occupancy shall be granted on any lot with required replacement tree plantings until tree replantings are reviewed and approved by the Cloverdale Community Development Department.	Project Applicant(s)	Cloverdale Planning Department	Prior to approval of grading plans for parcels of land fronting on Asti Road	
Aesthetics-2. Future development on parcels of land in the annexation area with substantial tree cover shall include measures identified by a California-certified arborist that ground disturbing activities will not significantly impact native trees on the lot. This	Project Applicant(s)	Cloverdale Planning & Building Departments	Prior to approval of grading plans and during grading and construction for parcels of land fronting on Asti Road	

Mitigation Measure	Implementing Responsibility	Monitoring Responsibility	Monitoring Schedule	Verification
shall include installation of exclusion fencing at locations approved by the arborist during project construction, provision of adequate irrigation of trees during construction, limitations on grading within exclusion areas and limitations of use (e.g. no storage of construction materials) under tree drip lines and other protection measures as may be recommended by the arborist.				
Aesthetics-3. Future development on parcels of land fronting on Asti Road should be screened from view to the fullest extent feasible by landscape buffers or fences that limit views of new development from adjacent streets and roadways._	Project Applicant(s)	Cloverdale Planning Department	Prior to issuance of building permits	
Aesthetics-4. The design of future structures on properties fronting on Asti Road shall exclude use of highly reflective materials, including but not limited to window glass, porch railings or other accent materials. Other exterior building materials shall be of neutral colors and tones to minimize visibility.	Project Applicant(s)	Cloverdale Planning Department	Prior to approval of building permits for parcels of land fronting on Asti Road	
BIO-1. Prior to issuance of a grading and/or a building permit for parcels located on the east side of Asti Road, a site-specific biological reconnaissance shall be completed by a qualified biological firm as approved by the Cloverdale Community Development Department. The reconnaissance shall include a literature search and site inspection of the presence of special-status plants or wildlife. If no special-status species are identified, no further action is required. If special-status species are identified, the biologist shall recommend an action plan to ensure that any special-status species are fully protected.	Project Applicant(s)	Cloverdale Planning Department	Prior to approval of grading plans for parcels of land fronting on Asti Road	

Mitigation Measure	Implementing Responsibility	Monitoring Responsibility	Monitoring Schedule	Verification
Protective actions may include first, avoiding the species during construction and post –construction or relocation of the species to an alternative suitable site. Any relocation actions shall occur in consultation with the California Department of Fish & Wildlife and/or the U.S. Fish & Wildlife Service. Necessary permits and approvals shall be obtained prior to relocation. No work on portions of the affected site may occur until clearances are granted by the City of Cloverdale, the California Department of Fish & Wildlife or the U. S. Fish & Wildlife Service, as appropriate.				
BIO-2. Prior to issuance of a grading and/or a building permit for any parcel of land in the project area, a qualified wetland biologist as approved by the Cloverdale Community Development Department shall survey the site for the potential presence of wetlands, other waters or riparian habitat. If none is found, no further action shall be required. If wetlands, other waters or riparian habitat is identified, the wetland biologist shall prepare an action plan for the approval of the City of Cloverdale. These methods may include, but are not limited to, preparing a formal wetland delineation, permanent on-site protection of wetlands or off-site relocation of wetlands to an approved alternative site. If relocated off-site, the applicant or property owner shall obtain necessary permits and approvals from the Regional Water Quality Control Board, the California Department of Fish & Wildlife, the U. S. Army Corps of Engineers or other agencies. No construction near wetlands, other waters or riparian	Project Applicant(s)	Cloverdale Planning Department	Prior to approval of grading plans for app parcels of land in project area	

Mitigation Measure	Implementing Responsibility	Monitoring Responsibility	Monitoring Schedule	Verification
habitat areas may proceed until the approval action plan is approved and implemented.				
GEO-1. Prior to issuance of a grading and/or a building permit for any parcel of land in the annexation area where no recent soils or geotechnical report has been prepared, a qualified California-registered engineering geologist or equivalent, as approved by the Cloverdale Community Development Department, shall prepare a report analyzing soil and geologic conditions on that particular property. The report shall include specific construction methods to be undertaken to reduce potential soil hazards to a less-than-significant level, including but not limited to landslides, ground failure and other potential hazards. The recommendations of the soils and geotechnical report shall be incorporated into all project grading and construction plans to ensure that future hazards from landsliding or similar hazards are reduced to a standard level of care.	Project Applicant(s)	Cloverdale Public Works Department	Prior to issuance of a grading or building permit, whichever is first	
HAZ-1. Prior to issuance of a demolition permit for any existing residence or other major structure in the annexation area (as determined by the Cloverdale Building Official), a licensed contractor shall determine the presence or absence of lead based paints or asbestos material on the site. If found in quantities at or above actionable levels as determined by the Cloverdale Building Department or Fire District, these materials shall be safely removed consistent with the Occupational Safety and Health Administration (OSHA) and other applicable standards and disposed of in an appropriate location.	Project Applicant(s)	Cloverdale Building Department	Prior to issuance of a demolition permit, if needed, or demolition of existing structures, if no demolition permit needed	

Mitigation Measure	Implementing Responsibility	Monitoring Responsibility	Monitoring Schedule	Verification
Necessary permits and approvals shall be secured from appropriate regulatory agencies.				
Noise-1. Prior to issuance of a building permit for future residential and major industrial uses in the annexation area, a qualified acoustical consultant as approved by the City of Cloverdale shall conduct a site-specific analysis to ensure that future uses and site activities comply with City standards set forth in the Noise Element of the Cloverdale General Plan and other applicable local noise regulations. Each analysis shall contain, at minimum, a summary of recent 24-hour noise measurements and specific measures to be incorporated into final building plans and specifications to reduce exterior and interior noise to City standards.	Project Applicant(s)	Cloverdale Planning Department	Prior to approval of building permits	
Noise-2. All future construction activities for properties in the annexation area shall be limited to the hours of 7 a.m. to 6 p.m. Monday through Saturdays. No construction shall occur on state or federal holidays. Exceptions to these restrictions may be granted by the Cloverdale Community Development Director for unusual or emergency conditions.	Project Applicant(s)	Cloverdale Building Department	During all phases of project construction	

Initial Study/
Mitigated Negative Declaration

Project:
Nu Forest Products Annexation & Development

Lead Agency:
City of Cloverdale

June 2016

1. **Project title**:	Nu Forest Products Annexation and Development Project
2. **Lead agency name and address**:	City of Cloverdale 124 N. Cloverdale Boulevard Cloverdale, CA 95425
3. **Contact person and phone number**:	Jerry Haag, Consulting Planner
4. **Project location**:	East side of Asti Road, south of current City limits, north of the City's Corporation Yard and west of the Russian River. Assessor's Parcels 116-260-004, -030, -033, -046, -046 -050 & -55. Exhibit 1 shows the regional location of the project area and Exhibit 2 shows the area in relation to the City of Cloverdale. (Note: All exhibits are attached to the back of this Initial Study.)
5. **Project sponsors name and address**:	Nu Forest Products PO Box 727 Healdsburg CA 95448 Attn: Sharmaine Ege
6a. Existing General Plan designations	*Sonoma County*: LI-Light Industrial AR- Agricultural Residential
6b. Proposed General Plan designations:	*City of Cloverdale*: CF-Conservation Features (proposed to be deleted) RR-Rural Residential (proposed to be added) GI-General Industrial (proposed to be expanded) P-Public
7a. Existing Zoning:	*County of Sonoma*: L-I, Light Industrial AR, Agricultural Residential
7b. Proposed Pre-Zoning:	*City of Cloverdale:* M-1, Light Industrial RR, Rural Residential P, Public

8. Description of project:

Overview. Proposed General Plan Amendment, Prezoning, Conditional Use Permit/Design Review and annexation to the City of Cloverdale for an approximate 42.6-acre area lying east of existing City boundaries. The properties all lie within the City of Cloverdale Sphere of Influence and City's Urban Growth Boundary. See Exhibit 3 that depicts the annexation area and affected property ownerships iproposed for annexation.

The major property owner in the annexation area, Nu Forest Products, currently operates a lumber mill, wood drying yard and lumber storage facility in south Healdsburg. NuForest also operates a lumber storage yard with no milling or other industrial use on the eastern portion of the annexation area. The Nu Forest owner is seeking annexation to Cloverdale consolidate operations within the proposed annexation area.

Major elements of the project include a General Plan Amendment, Prezoning, Design Review for the proposed relocation and expansion of the Nu Forest operation and annexation of the Nu Forest site and adjacent properties to the City of Cloverdale. These elements are described below.

General Plan Amendment: Changes are proposed to the City of Cloverdale General Plan land use map from CF (Conservation Features) and TOD (Transit Oriented Development) land use designations to the following land use designations GI, General Industrial, RR, Rural Residential and P, Public. Existing General Plan land use designations are shown on Exhibit 4A and proposed amendments to the General Plan Land Use Map are shown on Exhibit 4B. The amendments have been proposed based on existing site conditions, development patterns and property owner sentiment.

Prezoning: the City proposes to prezone the various properties comprising the project to the following zoning districts: M-1, General Industrial, RR, Rural Residential and P, Public. If approved by the Cloverdale City Council, the zoning would become effective upon completion of the annexation process. The proposed prezoning would allow for the expanded use of the existing Nu Forest Products operation to allow the milling, processing, offices and increased storage of wood products on the site. The approved zoning would allow for one single family and associated accessory structures to be built on the Grace Matovich Trust property (AP 116-260-050), future light industrial uses on the Cerasoli (AP 115-260-033), Schwartzler Trust (AP 116-260-030) and Poustinchian (AP 116-260-046) properties. The existing PG&E substation on the southern portion of the site (AP 116-260-045) would remain in its current condition and would be zoned P-Public. If approved, proposed zoning would be consistent with the amended General Plan Land Use Map.

Part of the proposed zoning would include revising the text of the City's M-1 District to allow live-work development to occur in this District subject to the issuance of a conditional use permit by the Cloverdale Planning Commission.

Exhibit 5 shows proposed City of Cloverdale prezoning districts.

Conditional Use Permit & Major Design Review (Nu Forest): A part of the application includes a Conditional Use Permit and Major Design Review approval for Nu Forest to expand current storage and administrative office uses on the site. In addition to wood storage, future operations would include wood milling and processing. Table 18.06.030-A of the Cloverdale Zoning Code requires approval of a conditional use permit for heavy manufacturing uses in the M-1 District. The Zoning ordinance further defines heavy manufacturing to include planing mills, sawmills and wood products. Section 18.03.150 of the Zoning Code requires Major Design Review for industrial development projects that includes review of overall building design, use of materials and similar features.

The proposed Nu Forest site plan is shown on Exhibit 6. Proposed improvements would include demolition of a number of older structures on the site and construction of four 100-ft x 100-ft industrial canopy structures on a portion of the property, totalling up to 40,000 square feet. Each canopy structure would have a concrete foundation and floor, a solid roof supported by large uprights and beams but would not include surrounding walls. Lumber milling, planing and related activities would occur under the canopy structures. A portion of the site would be devoted to open storage of raw and milled lumber, awaiting shipment. Milling activities would generate sawdust and "slash," another milling by-product. Both products would be temporarily stored on site and trucked to off-site recycled materials businesses for reuse.

Large semi-trucks would be used to haul logs onto the site and transport finished material to customers. Preliminarily, it is estimated that up to 8 truck trips per day would be generated.

Other improvements on the Nu Forest site would include paved parking areas on portions of the site and construction of a water quality and drainage basin on the south side of site. Existing office uses on the site would continue. Upon completion of the annexation process, the City water and sewer lines would be extended to the site to support the expansion of lumber operations. The precise location of water and sewer extensions to serve the annexation properties is being determined; however, it is anticipated that a water line would be extended in an easterly direction from Asti where an existing 16-in. diameter line currently exists to connect to an existing City water line on the All-Coast property to the west, providing a looped water system. A sewer line is anticipated to be constructed from the approximate center of the Nu Forest site in a western direction to Asti Road, then south to connect to the City's wastewater treatment plant. The sewer line extension is anticipated to require construction of one lift (pumping) station on the Nu Forest site.

Stormwater runoff would be directed to an onsite water quality and retention pond located on the south side of the Nu Forest site to accommodate stormwater and release it into the nearby Russian River via an open swale. The pond would also be designed to provide water quality features per City of Cloverdale standards prior to release into the river.

An existing pond exists in the easterly portion of the annexation area. This pond is jointly owned by Nu Forest Products and the property owner to the east, All-Coast and was constructed to provide a reservoir for fire suppression purposes. The pond is primarily owned and maintained by All-Coast and may remain after construction of planned improvements on the Nu Forest site.

At build out, the Nu Forest facility would have up to 73 full-time and seasonal employees on the site (including millworkers and office staff) and would operate 5 days per week (plus two Saturdays per month during the peak summer season), from 7 a.m. to 3:30 p.m. During peak summer months, work may commence at 6 a.m. Maintenance of machinery generally would occur during non-production hours.

Prior to development, other properties in the annexation area (excluding Nu Forest) would be required to complete Plot Plan Reviews, Design Reviews, Conditional Use Permits and other municipal review procedures prior required by the Cloverdale Zoning Code prior to building permit issuance by the City, following completion of the annexation process.

Annexation to the City of Cloverdale: The Nu Forest property owner has requested annexation to the City of Cloverdale. The Cloverdale City Council will be requested to adopt a resolution formally requesting this action. Five adjacent properties are proposed to be included in the annexation in order to avoid creating a "county island" which would be properties within an unincorporated portion of the County surrounded by properties within the City.

See Table 1 with a summary of Assessor's Parcels, ownership and approximate acreage for properties included in the annexation.

Table 1. Ownerships and Characteristics of Annexation Area

Assessor Parcel No.	Site Address	Owner	Acres	Existing Use	Proposed Use
116-260-033	340 Asti Road	Cerasoli	0.45 acre	single family dwelling	Single family dwelling & light industrial
116-260-030	29550 Ivy Dell Ln.	Schwartzler Trust	0.45 acre	single Family dwelling	Single family dwelling
116-260-050	428 Asti Road	Matovich Trust	6.3 acres	vacant	Single family dwelling
116-260-046	(no address)	Poustinchian	4.07 acres	vacant	Light industrial
116-260-055	428 Asti Road	Nu Forest	14.68 acres	Single family dwelling	Lumber Mill
116-260-004	280 Asti Road	Nu Forest	12.17 acres	Lumber Storage	Lumber Mill
116-260-045	650 Asti Road	PG&E	4.5 acres	Power substation	No change

Source: City of Cloverdale, 2016

Adjacent properties are located on the east side of Asti Road and range in size from approximately one-half acre to 6.3 acres in size. The annexation would also include an existing PG&E substation located in the southern portion of the annexation area. No changes are proposed to PG&E's substation.

Upon completion of the annexation process, City water and sewer service could be extended to all properties within the annexation area as well as police services from the Cloverdale Police Department. All affected properties are currently within the boundary of the Cloverdale Fire Protection District (CFPD) and the annexation would not affect CFPD boundaries or operations. No changes are proposed to the boundaries of the Cloverdale Unified School District, since the affected properties already lie in this District. All other municipal services provided by the City would be extended to the properties included in the annexation.

9. Surrounding land uses and setting: The eastern portion of the project site is used by Nu Forest lumber mill operations that are proposed to be expanded by this project, with the

western portion of the Nu Forest site vacant. Smaller properties on the east side of Asti Road under various ownerships are either vacant or have been developed with a single family detached residence. These properties on the western side of the annexation area generally have moderate to steep topography with significant tree cover. A drainage course generally runs in a north-south direction on the east side of Asti Road. A PG&E unmanned substation exists on the southern portion of the annexation area.

Properties to the north of the annexation area are located within the City of Cloverdale and are vacant. The property east and north of the annexation area is developed with All-Coast Forest Products, Inc., a mill operation similar to the Nu Forest facility and is located in the unincorporated portion of Sonoma County. The Russian River lies further east of the All-Coast lumber mill site. Properties south of the annexation area lie in the City of Cloverdale and are developed with City infrastructure facilities. The 101 freeway is located west of the site as well as existing railroad tracks, a SMART train station (currently unused) and train maintenance facility, all of which are within the City of Cloverdale.

10. Other public agencies whose approval is required:

- Local Agency Formation Commission (annexation)
- City of Cloverdale (demolition & building permits, utility extensions & easements, encroachment permits)
- State Department of Fish & Wildlife (creeks and wetlands, possible)
- North Coast Regional Water Quality Control Board (wetlands, possible)
- Army Corps of Engineers (wetlands, possible)
- Northern Sonoma County Air Pollution Control District (air quality permits)
- State Water Resources Control Board (Notice of Intent)

Environmental Factors Potentially Affected

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "potentially significant impact" as indicated by the checklist on the following pages.

X	Aesthetics	-	Agricultural Resources	-	Air Quality
X	Biological Resources	-	Cultural Resources	X	Geology/Soils
-	Greenhouse Gas Emissions	X	Hazards and Hazardous Materials	-	Hydrology/Water Quality
-	Land Use/ Planning	-	Mineral Resources	X	Noise
-	Population/Housing	-	Public Services	-	Recreation
-	Transportation/ Circulation	-	Utilities/Service Systems	-	Mandatory Findings of Significance

Determination (to be completed by Lead Agency):

On the basis of this initial evaluation:

____ I find that the proposed project **could not** have a significant effect on the environment and a **Negative Declaration** will be prepared.

_X_ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described on an attached sheet have been added to the project. A **Mitigated Negative Declaration** will be prepared.

___ I find that although the proposed project **may** have a significant effect on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on earlier analysis as described on the attached sheets, if the effect is a "potentially significant impact" or "potentially significant unless mitigated." An **Environmental Impact Report** is required, but must only analyze the effects that remain to be addressed.

___ I find that although the proposed project could have a significant effect on the environment, there **will not** be a significant effect in this case because all potentially significant effects (a) have been analyzed adequately in an earlier EIR pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR, including revisions or mitigation measures that are imposed on the proposed project.

Signature: David J. Kelley Date: 6/1/16

Printed Name: David J. Kelley For: City of Cloverdale

Evaluation of Environmental Impacts

1) A brief explanation is required for all answers except "no impact" answers that are adequately supported by the information sources a lead agency cites in the parenthesis following each question. A "no impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g. the project falls outside a fault rupture zone). A "no impact" answer should be explained where it is based on project-specific factors as well as general factors (e.g. the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).

2) All answers must take account of the whole action, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

3) "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect is significant. If there are one or more "potentially significant impact" entries when the determination is made, an EIR is required.

4) "Negative Declaration: Less-Than-Significant Unless Mitigation Incorporated" implies elsewhere the incorporation of mitigation measures has reduced an effect from "potentially significant effect" to a "less than significant impact." The lead agency must describe the mitigation measures and briefly explain how they reduce the effect to a less than significant level.

5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration Section 15063(c) (3)(D). In this case, a brief discussion should identify the following:

   a. Earlier Analysis Used. Identify and state where they are available for review.
   b. Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
   c. Mitigation Measures. For effects that are "Less-Than-Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

6) Lead Agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

8) This is a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.

9) The explanation of each agency should identify: (a) the significance criteria or threshold, if any, used to evaluate each question; and (b) the mitigation measure identified, if any, to reduce the impact to a less than significant level.

V. ENVIRONMENTAL CHECKLIST

The following Environmental Checklist form is used to describe the impacts of the proposed project, as detailed in the Project Description. Potential environmental impacts are described as follows:

Potentially Significant Impact: An environmental impact that could be significant and for which no feasible mitigation is known. If any potentially significant impacts are identified in this Checklist, an Environmental Impact report (EIR) must be prepared.

Potentially Significant Unless Mitigated: An environmental impact that requires the incorporation of mitigation measures to reduce that impact to a less-than-significant level.

Less-Than-Significant-Impact: An environmental impact may occur, however, the impact would not be considered significant based on CEQA environmental standards.

No Impact: No environmental impacts would occur.

1. Aesthetics

Environmental Setting

The annexation area consists of two smaller subareas. Properties fronting along the east side of Asti Road contain moderate to steep slopes with a generally dense canopy of native and introduced trees. Three homes and out buildings have been constructed along this frontage (the Cerasoli property, Nu Forest property and the Schwartzler Trust property). The Matovich Trust property and the Poustinchian properties are currently vacant.

The eastern portion of the annexation area, the Nu Forest Products property, is partially developed with an existing lumber storage area and office space. A portion of the Nu Forest property contains a pond used to store fire suppression water (shared with the neighboring All-Coast Lumber operation) with the remainder currently vacant.

An existing PG&E substation is located in the southern portion of the annexation area.

A number of existing security lights have been installed on the existing Nu Forest property, existing residences and the PG& E substation.

Asti Road that forms the western boundary of the site is not designated as a State or local scenic highway based on the General Plan EIR (source: http://www.dot.ca.gov/hq/LandArch/16_livability/scenic_highways/.)

Surrounding uses include US 101 Freeway and Asti Road west of the site, vacant land north of the site, All-Coast Lumber Mill and the Russian River east of the site and the City of Cloverdale Corporation Yard and Water Treatment Plant south of the site.

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the Proposal:				
a. Have a substantial adverse effect on a scenic vista?				X
b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a		X		

state scenic highway?				
c. Substantially degrade the existing visual character or quality of the site and its surroundings?		X		
d. Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?			X	

Discussion

a) No impact. The annexation area generally contains private properties with no public vistas, public parks, playgrounds, overlooks or other public gathering places that would constitute a vista. There would be no impact with respect to this topic.

b) Less-Than-Significant with Mitigation. Future development that could occur on the parcels of land fronting on the east side of Asti Road could remove or damage mature native and introduced trees to allow the development of new residences, live-work units, industrial buildings, driveways, parking lots, pedestrian paths and other improvements. Such activities could result in Loss of tree cover or damage to mature trees. This would be a potentially significant impact but would be reduced to a less-than-significant level by adherence to the following measures.

Mitigation Measure Aesthetics-1: Future grading and/or development on any parcels of land fronting on Asti Road in the annexation area shall be reviewed by a California-certified arborist to identify methods to provide for maximum tree protection. These methods shall be reflected in final development plans. If mature trees cannot be protected, replacement native trees shall be planted on the site at a 2:1 ratio with adequate measures to ensure successful growth of the replacement trees. No Certificate of Occupancy shall be granted on any lot with required replacement tree plantings until tree replantings are reviewed and approved by the Cloverdale Community Development Department.

Mitigation Measure Aesthetics-2: Future development on parcels of land in the annexation area with substantial tree cover shall include measures identified by a California-certified arborist that ground disturbing activities will not significantly impact native trees on the lot. This shall include installation of exclusion fencing at locations approved by the arborist during project construction, provision of adequate irrigation of trees during construction, limitations on grading within exclusion areas and limitations of use (e.g. no storage of construction materials) under tree drip lines and other protection measures as may be recommended by the arborist.

c) Less-Than-Significant with Mitigation. Future development that could occur on the parcels of land fronting on the east side of Asti Road could significantly degrade the existing visual quality and character of the site by removing existing tree cover, changing existing topography and constructing a number of residences and light industrial buildings where none currently exist. A number of these properties are currently vacant and are visible from Asti Road and from the nearby 101 freeway. Future proposed development on the Nu Forest site would be located behind a small hill and would not be significantly visible from either Asti Road or the 101 freeway.

Potential impacts to the existing visual character for properties fronting on Asti Road could be a potentially significant impact as a result of constructing new structures and other improvements where none are current visible. Use of reflective building materials could result in a potentially significant impact on passers-by. This impact would be reduced to a less-than-significant level by adherence to the following mitigation measures.

Mitigation Measure Aesthetics-3: Future development on parcels of land fronting on Asti Road should be screened from view to the fullest extent feasible by landscape buffers or fences that limit views of new development from adjacent streets and roadways.

Mitigation Measure Aesthetics-4: The design of future structures on properties fronting on Asti Road shall exclude use of highly reflective materials, including but not limited to window glass, porch railings or other accent materials. Other exterior building materials shall be of neutral colors and tones to minimize visibility.

d) Less-than-Significant impact. Construction of future improvements within the project area would include the addition of new exterior lights associated with proposed industrial development on the Nu Forest site and new buildings on properties fronting on Asti Road. However, new development in the annexation area will be subject to General Plan Policy UL 1-2 (Minimize light spillage that carries off the property where lights are located). Adherence to this Policy when individual Plot Plans are reviewed by the City will ensure this impact will be less-than-significant.

2. Agricultural and Forestry Resources

Environmental Setting

No portion of the project area is used for or zoned for agricultural production. No Williamson Act contract or Timber Preserve contract exists in the area. The western portion of the site contains a significant tree cover of native and introduced species.

Project Impacts:

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?				X
b. Conflict with existing zoning for agricultural use, or a Williamson Act contract?				X
c. Conflict with existing zoning for, or cause rezoning of forest land (as defined by PRC Sec. 12220(g), timberland (as defined in PRC Sec. 4526), or timberland zoned Timberland Production (as defined in PRC Sec. 51104 (g)?				X
d. Result in the loss of forest land or conversion of forest land to non-forest use?		X		
e. Involve other changes in the existing environment which, due to their location or nature, could result in conversion of farmland to a non-				X

agricultural use or conversion of forest land to a non-forest use?				

Discussion

a-c) No impact. There would be no impact to agricultural resources since the project area has been developed with a lumber mill facility and scattered residences. No portion of the site is used for agricultural production, no Williamson Act contracts exist on the site and the site is not zoned for agricultural uses. No impacts would therefore result.

d) Less-than-Significant with Mitigation. The western portion of the site contains a moderate to dense cover of mature native and introduced trees. Future development on these properties that could be allowed under the amended General Plan and zoning could have a potentially significant impact on these resources. Adherence to Mitigation Measures Aesthetics 1 and 2 (see above) will reduce impacts to trees and forest resources to a less-than-significant impact.

e) No impact. There would be no impact with respect to other changes in the environment that would result conversion of farmland to a non-agriculture use or the conversion of forestland to a non-forest use since the predominance of development associated with the project would occur on the eastern, vacant portion of the project area. This is where the expansion of the Nu Forest lumber mill and associated operations would occur.

3. Air Quality

Environmental Setting

The City of Cloverdale is located at the northern end of Sonoma County and lies within the Northern Sonoma County Air Pollution Control District (NSCAPCD) jurisdiction. The NSCAPCD develops rules and regulations, and establishes permitting requirements, inspects emissions sources, and enforces such measures through educational programs or fines when necessary.

Major air pollutants regulated by federal, state and local air quality authorities include ozone, particulate matter (PM 10 and 2.5), toxic air contaminants (airborne substances that may cause cancer) and odors.

Minimal air pollutants are found in the annexation area since a majority of the properties are vacant. A portion of the Nu Forest property is used for office space and lumber storage. No milling or similar operations currently occur on this site. Similarly, no sensitive air receptors are located near the annexation area, including but not limited to hospitals, convalescent care facilities, schools, parks or similar land uses.

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the Proposal:				
a. Conflict with or obstruct implementation of the applicable air quality plan?				X
b. Violate any air quality standard or contribute substantially to an existing or projected air quality violation?			X	
c. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?			X	
d. Expose sensitive receptors to substantial pollutant concentrations?				X
e. Create objectionable odors affecting a substantial number of people?				X

Discussion

a-e) Less-than-Significant/No Impact. Air pollution concerns for the City of Cloverdale were addressed in the Environmental Impact Report (EIR) for the General Plan update completed in 2009. According to the General Plan EIR, due to the temporary nature of construction related impacts and required compliance with NSCAPCD rules and regulations, these impacts will not result in the generation significant air pollutants or

cause excess exposure of pollutants to sensitive receptors and are considered to be less than significant.

The NSCAPSD is currently in attainment for all criteria pollutants and any increase in criteria emissions is already accommodated for by the air district. As a result, the area will remain in attainment for criteria pollutants and any impacts from increased emissions from the City of Cloverdale are considered less than significant.

The primary land use proposed in the annexation area, Nu Forest Products, would be a relocation of existing lumber milling, storage and similar operations already occurring elsewhere in the NSCAPCD in the City of Healdsburg. Therefore, there could be a very small net increase in criteria pollutants following expansion of the Nu Forest site proposed for annexation to Cloverdale. Minimal other development is proposed for the annexation that could significantly impact local or regional air quality.

4. Biological Resources

Environmental Setting

The western portion of the project site is partially developed with Nu Forest lumber storage and offices. This portion of the project site has been highly disturbed for a number of years as a result of historic light industrial operations and does not contain any special-status or protected plant or wildlife species.

The eastern portion of the site is largely vacant and contains an extensive cover of native and introduced tree species and groundcover. Although the City's 2009 General Plan EIR does not indicate these properties contain special-status or protected plant or wildlife species (see Figure 4.10-3), it is possible that these properties have the potential to provide habitat for special-status bird, mammal, reptile and plant species. A site-specific biological resource reconnaissance was not conducted as part of this Initial Study.

Figure 4.10-2 contained in the General Plan EIR notes the presence of two potential wetlands on or adjacent to the annexation area. The first is a pond in located on a portion of the Nu Forest ownership, on the southeast corner of the annexation area, used as a reservoir for fire protection and co-owned with the All-Coast property owner. The second is an unnamed intermittent stream that flows through the annexation area, along the western boundary of the Nu Forest property. This tributary flows to the Russian River to the east.

Based on information contained in the General Plan EIR, no portion of the annexation area is located within a Habitat Conservation Plan or Natural Community Conservation Plan area.

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal result:				
a. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?		X		
b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?		X		
c. Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?		X		

d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?			X	
e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?			X	
f. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?				X

Discussion

a) Less-than-Significant with Mitigation. Future grading operations and development of parcels of land fronting Asti Road for residential, live-work or industrial uses could significantly impact nesting or roosting birds, including special-species birds, as well as decrease bird habitat in this portion of Cloverdale. Future development could also impact other special-status wildlife and/or plants, although no such species are identified in the General Plan EIR. To ensure this impact is reduced to a less-than-significant level, future development on parcels of land fronting on the east side of Asti Road shall implement Mitigation Measure BIO-1 and BIO-2 to reduce impacts to candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service to a level less than significant.

Mitigation Measure BIO-1: Prior to issuance of a grading and/or a building permit for parcels located on the east side of Asti Road, a site-specific biological reconnaissance shall be

completed by a qualified biological firm as approved by the Cloverdale Community Development Department. The reconnaissance shall include a literature search and site inspection of the presence of special-status plants or wildlife. If no special-status species are identified, no further action is required. If special-status species are identified, the biologist shall recommend an action plan to ensure that any special-status species are fully protected. Protective actions may include first, avoiding the species during construction and post – construction or relocation of the species to an alternative suitable site. Any relocation actions shall occur in consultation with the California Department of Fish & Wildlife and/or the U.S. Fish & Wildlife Service. Necessary permits and approvals shall be obtained prior to relocation. No work on portions of the affected site may occur until clearances are granted by the City of Cloverdale, the California Department of Fish & Wildlife or the U. S. Fish & Wildlife Service, as appropriate.

b,c) Less-than-Significant with Mitigation. Future development on the eastern portion of the Nu Forest property or other properties fronting on Asti Road could impact wetlands, other waters and/or riparian habitats. Such impacts could include installing sewer and/or water line extensions through potential wetland area, full or partial fill of wetlands or discharge of polluted runoff into wetland areas. Such actions would be a potentially significant impact. This impact would be reduced to a less-than-significant level.

Mitigation Measure BIO-2: Prior to issuance of a grading and/or a building permit for any parcel of land in the project area, a qualified wetland biologist as approved by the Cloverdale Community Development Department shall survey the site for the potential presence of wetlands, other waters or riparian habitat. If none is found, no further action shall be required. If wetlands, other waters or riparian habitat is identified, the wetland biologist shall prepare an action plan for the approval of the City of Cloverdale. The action plan shall identify specific steps to be taken to ensure that any future impacts to wetlands, other waters or riparian habitat is less-than-significant. These methods may include, but are not limited to, preparing a formal wetland delineation, permanent on-site protection of wetlands or off-site relocation of wetlands to an approved alternative site. If relocated off-site, the applicant or property owner shall obtain necessary permits and approvals from the Regional Water Quality Control Board, the California Department of Fish & Wildlife, the U. S. Army Corps of Engineers or other agencies. No construction near wetlands, other waters or riparian habitat areas may proceed until the approval action plan is approved and implemented.

d) Less-than-Significant. Several parcels in the annexation area are fenced to preclude wildlife migration or are developed with lumber storage uses. A major wildlife and fish corridor exists east of the site along the Russian River. This impact would be less-than-significnt.

e) Less-than-Significant. Proposed development on all parcels of land proposed for annexation to the City of Cloverdale will be required to comply with all municipal requirements protecting local biological resources, including but not limited to tree

protection ordinances. Compliance will be required at the time development is proposed in the City and this impact would ne less-than-significant.

f) No Impact. No Habitat Conservation Plans or Natural Community Conservation Plans have been adopted within the City of Cloverdale and no impact would occur with respect to this topic.

5. Cultural Resources

Environmental Setting

The City of Cloverdale General Plan EIR (2009) does not identify the presence of any historic, prehistoric, paleontological or Native American resources within the annexation area. Major historic resources within the Cloverdale Planning area, as identified in the General Plan EIR, include the Isaac Shaw building, the Pinschower house, an historic bridge over the Russian River and the Gould Shaw house. None are located within the annexation area.

The General Plan EIR concluded, based on a records search at the University of California, Berkeley Museum of Paleontology, that no paleontological resources have been identified in Cloverdale.

Although the General Plan EIR did not identify the presence of buried prehistoric resources or Native American resources in or near the annexation area, the close proximity of the area to the Russian River may result in a moderate to high potential to encounter such resources within the area. Typically Native American settlements were located near major bodies of water, such as rivers, creeks and streams.

As part of the CEQA process, City staff initiated an SB 18 Native American Tribal Consultation with the State of California Native American Heritage Commission in February 2016.

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal result: in: impacts to:				
a. Cause a substantial adverse change in the significance of a historical resource as defined in Sec. 15064.5?				X

b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to Sec. 15064.5?			X	
c. Directly or indirectly destroy a unique paleontolgical resource or site or unique geologic feature?			X	
d. Disturb any human remains, including those interred outside of formal cemeteries?			X	

Discussion

a) No Impact. Based on the General Plan EIR and site observations, no above-ground historic resources are present within the annexation area and no impacts would result with respect to this topic.

b-d) Less-Than-Significant Impact. The relatively close proximity of the annexation area to the Russian River may be linked to historic Native American or other historic settlements in this location. Although future construction and ground-disturbing activities could impact buried cultural, Native American and/or paleontological resources, adherence to General Plan implementing Measure CDO 4-2.a ("Maintain standard conditions of approval for CEQA and project review of development projects including agricultural conversion that require cultural resources studies where applicable and require that work be halted and studies conducted if cultural or archeological resources are discovered; require that such studies be conducted by qualified historians or archeologists; and require notification pursuant to law if human remains are discovered") and Implementing Measure CDO 4.2b ("Coordinate with the Native American Heritage Commission and local tribal members to determine if the study area or developments contain any artifacts or areas used for religious purposes."). As required by the General Plan, future specific development proposals in the annexation area will be conditioned to implement the above-referenced General Plan Implementing Measures to ensure that future impacts to Native American, historic, paleontological and similar resources will be less-than-significant.

6. Geology and Soils

Environmental Setting

This section of the Initial Study is based on an analysis of local geologic conditions conducted by the firm of PJC & Associates Inc dated November 5, 2015, which is incorporated by reference

into this Initial Study. The PJC report is available for review at the Cloverdale Planning Department during normal business hours.

The eastern portion of the annexation area is relatively flat with the western portion characterized by moderate to steeply sloping areas. The entire annexation area is located in the Coast Ranges Geomorphic Province of California that includes many separate mountain ranges, hills and valleys located between the Pacific Ocean and the Great Valley to the east.

Flatter portions of the annexation area are underlain by alluvial deposits with layers of sand, gravel, silt and clay with a top covering of alluvium.

It is likely that the western portion of the annexation area is underlain by harder geologic material that has not eroded due to action of the nearby Russian River.

The PJC & Associates report notes that the site is not within an Alquist-Priolo Earthquake Fault Study zone. Three active fault zones have been identified near the annexation area: the Maacama (South), the Maacama (central) and the Collayomi Faults. These are located from 2.7 miles to approximately 13.9 miles from the project area. Existing and future development on the project area is and would continue to be subject moderate to severe ground shaking as a result of earthquake activity on one of these fault zones. The risk of ground rupture is considered low due to lack of identified faults in the general area.

The eastern portion of the project site is considered to have very high liquefaction potential. Liquefaction is a seismic hazard where there is a rapid, temporary loss of soil strength that could damage structures on that site.

The PJC & Associates report finds that the risk of lateral spreading, soil lurching or the presence of expansive (high shrink-swell potential) soils is low.

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:		X		
i) Rupture of a known earthquake fault, as			X	

	delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.			
	ii) Strong seismic ground shaking?			X
	iii) Seismic-related ground failure, including liquefaction?			X
	iv) Landslides?		X	
b.	Result in substantial soil erosion or the loss of topsoil?			X
c.	Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?		X	
d.	Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?			X
e.	Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available			X

for the disposal of waste water?				

Discussion

a) Less-than-Significant with Mitigation. The site geotechnical report concludes that the annexation area is not located within an Alquist-Priolo Earthquake Fault Zone or State of California Earthquake Fault Studies Zone, and there are no active faults in the annexation area. There is a potential for strong seismic shaking on the site from nearby active faults. Future buildings in the annexation area will be designed in accordance with the California Building Code standards adopted for the City that includes strict seismic safety design standards to resist the effects of groundshaking and building failure.

No preliminary soils reports have been prepared for properties located in the eastern portion of the annexation area. These properties exhibit moderate to steep slopes and future structures could be subject to landslide potential. Future landslides or soil failure could be a potentially significant impact for project properties and for other nearby properties as well. Adherence to the following will reduce this impact to a less-than-significant level.

Mitigation Measure GEO-1: Prior to issuance of a grading and/or a building permit for any parcel of land in the annexation area where no recent soils or geotechnical report has been prepared, a qualified California-registered engineering geologist or equivalent, as approved by the Cloverdale Community Development Department, shall prepare a report analyzing soil and geologic conditions on that particular property. The report shall include specific construction methods to be undertaken to reduce potential soil hazards to a less-than-significant level, including but not limited to landslides, ground failure and other potential hazards. The recommendations of the soils and geotechnical report shall be incorporated into all project grading and construction plans to ensure that future hazards from landsliding or similar hazards are reduced to a standard level of care.

b) Less-than-Significant Impact. Future improvements within the annexation area will be subject to City of Cloverdale construction and post-construction erosion control and water quality protection requirements, including placement of silt fences and desilting basins to trap construction erosion and placement of water quality ponds to filter erosion from parking lots and landscaped areas. This impact would be less-than-significant with adherence to City standards.

c) Less-than-Significant with Mitigation. Future construction of parcels of land located on the eastern side of the annexation area could be subject to landslide potential and other soil-related hazards. Adherence to Mitigation Measure GEO-1 will reduce this impact to a less-than-significant level.

d) Less-than-Significant Impact. The PJC & Associates report prepared for the Nu Forest property within the annexation area determined that the risk of liquefaction on future site improvements is considered low. Other properties within the annexation area are located on moderate to steeply sloping areas that are generally not prone to liquefaction.

e) Less-than-Significant Impact. A number of properties in the annexation area use septic systems. Upon completion of the annexation area, all properties would be allowed to connect to the City of Cloverdale wastewater system. However, if wastewater facilities are not proximate to individual properties, existing septic systems may be allowed to continue. All existing septic systems are under the jurisdiction of the Sonoma County Permit and Resource Management Department of Sonoma County.

7. Greenhouse Gas Emissions

Environmental Setting

The annexation area is partially developed with existing Nu Forest Products operations that include storage and transport of milled lumber, company offices and a number of existing single-family residences. Greenhouse gasses are currently emitted into the atmosphere from passenger vehicles, trucks and forklift operations on the Nu Forest property.

Greenhouse Gasses include carbon dioxide, methane, nitrous oxides, perflorocarbons, sulphur hexafluoride and hydroflorocarbons. It is generally recognized that greenhouse gasses trap heat and moisture near the earth's surface, increasing the ambient temperature, also known as global warming. Effects of global warming, include changing of ocean circulation patterns, a reduction of global ice coverage and general changes to climatic conditions.

Sonoma County has taken the lead in preparing a County-wide Climate Action Plan (CAP) with the intent of reducing the amount of greenhouse gasses for all cities in the County, including Cloverdale. The amount of targeted reduction is 25% below the 1990 emission level by the year 2020.

The draft CAP estimates that the City of Cloverdale emitted 57,300 metric tons of carbon monoxide in 1990 and 59,000 metric tons in 2010, the most recent estimate available.

Project Impacts:

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Generate greenhouse gas emissions, either directly or indirectly, that may have a			X	

significant impact on the environment?			
b. Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?		X	

Discussion:

a) Less-than-significant. Proposed annexation, development and operation of the Nu Forest lumber mill and other uses proposed for the annexation area would increase the amount of greenhouse gas emissions into the atmosphere as a result of increased traffic, operations of the expanded lumber mill and other operations that would be included in the annexation area. In terms of potential greenhouse gas emissions, the major land use change proposed for the annexation area, the Nu Forest lumber mill, would not be a new land use in the local air basin, but would be a relocation from its existing operation in Healdsburg. Thus there would not be a significant net increase in the amount of greenhouse gasses emitted into the atmosphere from approval and implementation of this project. Although replacement land uses on the existing Healdsburg site could generate greenhouse gasses, future uses of the Healdsburg site are unknown and beyond the jurisdiction of the City of Cloverdale. Future uses on the existing Nu Forest site in Healdsburg will be required to complete CEQA review for GHG emissions at the time such new use or uses are proposed.

b) Less than Significant Impact. Neither the City of Cloverdale nor Sonoma County have an adopted Climate Action Plan (CAP), although such a draft plan has been prepared is being considered for adoption by the County and the various incorporated cities in the County, including Cloverdale. The CAP includes a goal of reducing county greenhouse gas emissions by 25 percent below 1990 levels by 2015, but has no mandatory provisions that would apply to the project. In addition to the CAP, the State of California has adopted regulations that apply to the project that will help the County achieve its reduction goal. The proposed project will be conditioned by the City of Cloverdale to comply with the California Green Building Standards Code, which includes requirements to increase recycling, reduce waste, reduce water use, increase bicycle use, and other measures that will reduce greenhouse gas emissions. Motor vehicle emissions associated with the project would be reduced through compliance with state regulations on fuel efficiency and fuel carbon content. The regulations include the Pavley fuel efficiency standards that require manufacturers to meet increasing stringent fuel mileage rates for vehicles sold in California and the Low Carbon Fuel Standard that requires reductions in the average carbon content of motor vehicle fuels. Emissions related to electricity consumption by the project would be reduced as the electric utility complies with the Renewable Portfolio Standard, which requires utilities to increase its mix of renewable energy sources to 33 percent by 2020. The project would not conflict with the Sonoma

County CAP and regulations adopted by the State of California to reduce greenhouse gas emissions.

The representative from Nu Forest Products, the largest owner and future user within the annexation area, have committed to operating an employee shuttle from Healdsburg to the annexation area site to reduce vehicle trips. The owners are also exploring the placement of on-site solar collectors to reduce dependency on the electric grid. Waste material generated by milling are operations are recycled rather than deposited in a local landfill. These actions would reduce air quality and greenhouse gas emissions below normal business as usual and would serve to reduce overall GHG emissions from vehicle trips from the annexation area.

No impacts are anticipate with respect to this topic.

8. Hazards

Environmental Setting

Portions of the annexation area have been developed with single-family residences (along Asti Road) and a lumber storage and office operation on the eastern portion of the site.

Earlier environmental analyses for the Nu Forest site determined that portions of the site were contaminated by previous deposits of diesel fuel and motor oil in the local groundwater above the Environmental Screening Levels adopted by the San Francisco Regional Water Quality Control Board (see "Expanded Phase I Environmental Site Assessment" by Anchor Environmental Consultants, Inc. dated September 21, 2008 and "Limited Phase II Subsurface Investigation" prepared by AEI Consultants dated November 6, 2014). These two documents are hereby incorporated by reference into this document and are available for review at the City of Cloverdale Community Development Department during normal business hours.

A follow-on subsurface investigation of the site was completed by SCS Engineers in November , 2015 ("Report of Limited Subsurface Investigation, 280 Asti Road, Cloverdale California"). This document is also incorporated by reference into this Initial Study and is available for review at the City of Cloverdale Community Development Department during normal business hours.

The project site is located to the north of Cloverdale Municipal Airport and is outside the jurisdiction of the Comprehensive Airport Land Use Plan for the airport (http://www.sonoma-county.org/prmd/docs/airport/ch8-excerpt.htm).

Based on a recent discussion with representatives of the Cloverdale Fire Protection District, the annexation area lies outside of an urban/wildland high fire hazard area (source: B. Elliott, Cloverdale Fire Protection District, 3/14/16).

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?			X	
b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?		X		
c. Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?				X
d. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?				X
e. For a project located				

within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?				X
f. For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?				X
g. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?				X
h. Expose people or structures to a significant risk of loss, injury or death involving wildland fire, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?				X

Discussion

a) Less-than-Significant Impact. Future industrial and potential agricultural uses (on the Matovich Trust property, proposed for Rural-Residential prezoning) within the annexation area would likely involve the transport, use, storage and disposal of potentially hazardous materials, including but not limited fuels and lubricants for forklifts, potential servicing of trucks, other industrial solvents that would be used in the proposed Nu Forest lumber mill. Future residential uses could involve the transport, use and storage of normal and customary quantities of household paints and solvents and yard and garden care substances. Transport, use, storage and disposal of potentially hazardous materials is strictly regulated and controlled by a variety of local state and federal laws and regulations. The proposed expansion of Nu Forest Products and associated use of

potentially hazardous materials would be approximately the same as other, similar industrial uses in Cloverdale. Future transport, use, storage and disposal of potentially hazardous materials will be subject to review and inspection by the Cloverdale Fire Protection District and other regulatory agencies, including but not limited to the California Highway Patrol and OSHA, to ensure this impacts will be less-than-significant.

b) Less-than-Significant With Mitigation. Proposed demolition of older structures within the annexation area could release lead based paints and/or asbestos containing material into the environment. Adherence to the following measure will mitigate this impact to a less-than-significant level.

Mitigation Measure HAZ-1: Prior to issuance of a demolition permit for any existing residence or other major structure in the annexation area (as determined by the Cloverdale Building Official), a licensed contractor shall determine the presence or absence of lead based paints or asbestos material on the site. If found in quantities at or above actionable levels as determined by the Cloverdale Building Department or Fire District, these materials shall be safely removed consistent with the Occupational Safety and Health Administration (OSHA) and other applicable standards and disposed of in an appropriate location. Necessary permits and approvals shall be secured from appropriate regulatory agencies.

c) No Impact. No public schools are located within a one-quarter radius of the project site (source: Cloverdale Unified School District website, http://www.cusd.org/Page/1) so there would be no impact with respect to this topic.

d) No Impact. None of the properties included in the annexation area are listed on the State of California Cortese List as of March 16, 2016. No impacts are therefore anticipated with respect to this topic.

e,f) No Impact. As identified in the Environmental Setting section of this Initial Study, the annexation area is located north of the Cloverdale Municipal Airport and lies outside of the applicable airport land use plan. No impacts would result with respect to this topic.

g) No Impact. Proposed improvements that could be constructed within the annexation area would be built on private properties and would not block public roads or other public accessways used for emergency access. Future buildings constructed in the annexation area will be reviewed for adequate access by the Cloverdale Police Department and the Cloverdale Fire Protection District prior to approval by the City. This will ensure that no impacts would occur with respect t interference with emergency evacuation.

h) No Impact. Based on a discussion with the Cloverdale Fire Protection District, the annexation area does not lie in a wildland/urban interface area and no impact would occur.

9. Hydrology and Water Quality

Environmental Setting

The project area is located near and to the west of the Russian River. One major property, All-Coast Lumber, is located between the annexation area and the River. A local intermittent creek flows through the approximate center of the annexation area. A second hydrologic feature is an existing pond in the southern portion of the annexation area that is used to store fire suppression water for the Nu Forest and All-Coast lumber operations.

A number of existing uses have been constructed within the annexation area, including lumber storage facilities on a portion of the Nu Forest property, single-family dwellings on three other properties and a small number of uninhabited outbuildings. All existing residences and industrial uses (Nu Forest offices) are served by private on-site septic systems.

The easterly portion of the annexation area lies within the 100-year flood hazard area as mapped by FEMA (source: Eric Janzen, City of Cloverdale, 3/9/16).

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Violate any water quality standards or waste discharge requirements?			X	
b. Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level?			X	
c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would			X	

result in substantial erosion or siltation on-or off-site?				
d. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on-or off-site?			X	
e. Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?			X	
f. Otherwise substantially degrade water quality?			X	
g. Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?				X
h. Place within a 100-year flood hazard area structures which would impede or redirect flood flows?				X
i. Expose people or structures to a significant risk of loss, injury or death			X	

involving flooding, including flooding as a result of the failure of a levee or dam?				
j. Inundation by seiche, tsunami, or mudflow?				X

Discussion

a) Less-than-Significant Impact. A primary concern of storm water runoff is the potential amount of pollution associated with the construction and development within the annexation area, following completion of the annexation. Sediment from grading and excavation activities, oil and grease from equipment and vehicles, fertilizers and herbicides associated with landscaping are all considered non-point source (NSP) pollutants. As part of the normal and customary development review process, the City of Cloverdale will require the preparation and approval of an Erosion Control Plan for all future development projects in the annexation area. The Erosion Control Plan must document that development will not increase the flow or intensity of flow of rainwater runoff from the existing conditions. Low Impact Development (LID) measures are to be added to offset the impact of new impervious surfaces as required by NPDES No. CA0025054 and Cloverdale Municipal Code Section 16.10.160, which invoke the Santa Rosa LID Manual as adopted by the City of Cloverdale. The plan will be required to be submitted and approved by the Engineering Department prior to issuance of grading permits on all annexation properties.

In terms of the City's Wastewater Treatment Plant discharge and water quality standards, future annexation and development of properties within the annexation area would increase flows into the City's wastewater treatment plant. The Wastewater Treatment plant currently experiences an average daily inflow of 0.55 mgd (million gallons per day) during dry weather conditions and is approved by the North Coast Water Resources Control Board to process up to 1.0 mgd during dry weather. As of October 2014, the plant had a surplus capacity of 0.45 mgd (source: City of Cloverdale 2014 Infrastructure audit, 2014). The maximum design capacity during wet weather conditions is 8.25 mgd with average inflows of 4.10 mgd as of 2014, leaving a surplus capacity of 4.15 mgd.

Development under the proposed annexation could generate up to 4,680 gallons of wastewater per day that would need to be treated at the City's wastewater plant (see Table 2). The amount of wastewater demand to be added to the City's municipal wastewater as a result of project build out could be accommodated in the City's wastewater treatment and disposal system. As a part of the proposed annexation and development project, property owners and/or future developers would generally be required to construct a wastewater collection system sized to accommodate future wastewater flows to connect to the City's system.

Table 2. Annexation Build Out Wastewater Demand

Land Use Type	Wastewater Use Factor	Land Use/Amount	Wastewater Generation (gpd)
Light Industrial/ Nu Forest	50 gal/day/employee	73 employees[1]	3650
Other Light Industrial	same as above	3 employees[2]	150
Single Family Residential	220/gpd/dwelling[3]	4	880
Estimated Water Demand	--		**4680**

Notes:
1. Based on future Nu Forest build out per Nu Forest estimate
2. Based on 1 employee per 1,000 square feet
3. Based on City of Cloverdale estimate
Source: City of Cloverdale, 2016

b) Less-than-Significant Impact. Properties within the annexation area that have been developed (including a portion of the Nu Forest property, the Cerasoli property and the Schwartzler property) rely on on-site private wells for domestic water. Following annexation, all properties would be allowed to connect to the City's municipal water supply, although it would be the responsibility of individual owners to install necessary infrastructure to connect to the City system, including but not limited to sewer laterals. Since existing private wells in the annexation area rely on approximately the same groundwater resources as the municipal water system, no significant impacts are anticipated with respect to depletion of groundwater resources. Construction of new buildings in the City of Cloverdale following annexation would be required to comply with water conservation features required in the California Building Code, so that future water use could be less under City jurisdiction than is currently used in the unincorporated County.

c-e) Less-than-Significant Impact. Construction of future improvements within the annexation area would increase the amount of impervious surfaces which, in turn, would increase the amount of stormwater runoff. Impervious surfaces that would be created on the Nu Forest property would include building areas, paved parking areas and driveways. Additional construction on other properties would also increase the amount of impervious surfaces, including but not limited to a new single-family dwellings on the Matovich Trust property, live-work buildings on the Cerasoli property, light industrial building(s) on the Poustinchian property as well as driveways and other paved surfaces on some or all of the properties. No specific development applications have been submitted to the City for these non-Nu Forest properties; however, future development on the Nu Forest properties would be limited to single family residences and small industrial buildings that would not result in a significant impact with respect to this topic.

Future development projects in the annexation area will be required to submit grading plans and have these plans approved by the Cloverdale Public Works Department. Based on the City's NPDES permit granted by the Regional Water Quality Control Board, grading plans must demonstrate that proposed future development would not increase the flow or intensity of flow of storm water runoff over the existing conditions. Low Impact Development (LID) measures must be included in each development project to offset the impact of new impervious surfaces as required by NPDES No. CA0025054 and Cloverdale Municipal Code Section 16.10.160, which invoke the Santa Rosa LID Manual as adopted by the City of Cloverdale. Typical measures implementing this requirement include use of detention or retention ponds to store excess peak flows to ensure that existing or planned downstream drainage facilities will not be significantly impacted. It is anticipated that, due to the relatively small size of properties included in the annexation, the courses of local creeks or streams within or adjacent to the annexation area would not be significantly changed or altered. A water quality pond is proposed to be constructed on the southwest portion of the Nu Forest site that would also detain stormwater prior to discharge into the Russian River.

Similarly, the City will require the submittal and approval of site-specific erosion control plans to limit the amount of polluted runoff from each property to a less-than-significant level when future developments are proposed. Future erosion control plans must cover both construction and post-construction operations of each future development project.

Additionally, the standard conditions require payment of development impact fees, targeted for construction of citywide public infrastructure projects, including water and drainage improvements that address the cumulative impacts of development.

Overall, future impacts related to drainage, stream course alteration and the generation of significant quantities of polluted runoff will be less-than-significant.

g-j) Less-than-Significant Impact. The eastern portion of the annexation area is located within a 100-year flood hazard area (an "AE" zone) and would be subject to inundation on the event of a 100-year storm. The western portion of the annexation area is at a higher topographic elevation and lies above the AE flood hazard zone.

Future development that could occur on the eastern portion of the annexation area would consist of the expansion of the existing Nu Forest Products lumber mill, wood processing and storage operations. No future housing would be located in a flood hazard area and improvements constructed within the annexation area would meet flood construction methods and materials required by the California Building Code, as enforced by the City of Cloverdale. Portions of the annexation area would be subject to inundation by water in the event of a dam failure upstream of the site along the Russian River. This is documented on Figure PS-1f contained in the Public Safety Element of the

Sonoma County General Plan 2020 (http://www.sonoma-county.org/prmd/gp2020/fig-ps1f.pdf). It is likely such portions of the site would be limited to the flatter eastern portion closest to the Russian River. Future potential flooding of this portion of the area would likely be the same as the impact experienced from a 100-year flood event and would be less-than-significant as discussed above.

10. Land Use

Environmental Setting

The annexation area consists of a mix of developed properties (portions of the Nu Forest site), three single-family residences, older barns and other accessory buildings. Surrounding uses include light industrial uses to the west (All-Coast Forest Products) under County jurisdiction, City of Cloverdale wastewater treatment facilities and a corporation yard to the south within the City of Cloverdale, a train station/maintenance structure and the 101 freeway to the west (in the City of Cloverdale) and vacant land to the north in the City of Cloverdale.

Project Impacts:

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Physically divide an established community?				X
b. Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?				X
c. Conflict with any applicable habitat conservation plan or natural community conservation plan?				X

Discussion

a-c) No Impact. If approved, the proposed annexation would change the status of the affected properties from the unincorporated portion of Sonoma County to the City of Cloverdale. Other than the proposed expansion of operations on the Nu Forest site, no other land use changes would immediately occur in the annexation area. However, under the proposed General Plan Amendment and prezoning, future development would be allowed on all properties, which would generally be consistent with development patterns that would be allowed under existing Sonoma County land use regulations. No impacts are anticipated with respect to this topic.

None of the properties included in the proposed annexation lie within a Habitat Conservation Plan or a Natural Community Conservation Plan.

11. Mineral Resources

Environmental Setting

No significant mineral resources exist in the project area based on the Land Use Diagram of the Cloverdale General Plan.

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?				X
b. Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?				X

Discussion

a-b) The General Plan notes no deposits of minerals on or adjacent to the annexation area and no impacts would result.

12. Noise

Environmental Setting

The project area is located on the east side of the 101 freeway, a major noise generator in this portion of Cloverdale. Another source of localized noise is lumber mill operations from the existing Nu Forest storage yard (primarily truck and forklift noise) on the eastern portion of the annexation area and lumber mill, truck and forklift operations to the east on the All-Coast property.

Noise is currently generated by vehicle traffic using Asti Road that forms the western boundary of the area. Based on limited traffic on this roadway, local roadway noise from Asti Road is not considered significant. The General Plan EIR does not identify any major sources of stationary (non-vehicular) noise on or adjacent to the annexation area.

The annexation area is located a significant distance north of Cloverdale Municipal Airport and is not subject to significant noise from this source (see Figure 4.7-1 contained in the Cloverdale General Plan EIR).

Project Impacts and Mitigation Measures

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?		X		
b. Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?			X	
c. A substantial permanent increase in ambient noise levels in the				X

	project vicinity above levels existing without the project?			
d.	A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?		X	
e.	For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?			X
f.	For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?			X

Discussion

a) Less-than-Significant with Mitigation. The project involves the expansion of the existing Nu Forest lumber mill on the east side of the annexation area and the construction of other light industrial facilities and one dwelling within the area. Operation of these uses could have the effect of exposing existing and future residents near the annexation area to levels of noise above the 65 dB level. In addition future dwellings constructed on the site either in the proposed General Industrial zoning district or the proposed Rural Residential district could be subject to significant noise either from future traffic, especially trucks, using Asti Road or from future lumber mill operation on the Nu Forest site. Pursuant to the California Building Code, interior noise levels for residences cannot exceed 45 decibels (Ldn/CNEL). Consistency with this requirement will be confirmed during review of site-specific building plans for future residences. Exceedances of City of Cloverdale exterior noise levels of 65 decibels (Ldn/CNEL) could occur with respect to

future dwellings that could be constructed within the annexation area and on surrounding properties as a result of future operational noise related to Nu Forest operations. This would be a potentially significant and would be reduced to a less-than-significant level by adherence to the following measure.

Mitigation Measure Noise-1: Prior to issuance of a building permit for future residential and major industrial uses in the annexation area, a qualified acoustical consultant as approved by the City of Cloverdale shall conduct a site-specific analysis to ensure that future uses and site activities comply with City standards set forth in the Noise Element of the Cloverdale General Plan and other applicable local noise regulations. Each analysis shall contain, at minimum, a summary of recent 24-hour noise measurements and specific measures to be incorporated into final building plans and specifications to reduce exterior and interior noise to City standards.

b) Less-than-significant. None of the proposed improvements within the annexation area would generate significant groundborne vibration since normal construction techniques would be used. No unusually tall buildings are proposed that could require pile driving or similar construction methods that would generate significant levels of vibration. The one property that could potentially generate vibration would be the proposed expansion of Nu Forest Products. However, no significant receptors currently exist or are proposed immediately adjacent to the Nu Forest site. The closest use to Nu Forest is the All Coast lumber mill. located immediately west of the Nu Forest site, that would be an equivalent use and would not be a sensitive receptor. This impact would be less-than-significant.

c) Less-than-Significant. No significant noise above existing ambient level of noise would be created in the project location without annexation and future construction of project improvements. This impact would be less-than-significant.

d) Less-than-Significant with Mitigation. Future construction of residential and light industrial uses within the annexation area could result in potentially significant noise during normally quiet times of the day, which is evening and night time periods. This would be a potentially significant on existing and future residences that could be allowed in the annexation area. Adherence to the following measure will ensure this impact will be reduced to a less-than-significant level.

Mitigation Measure Noise-2: All future construction activities for properties in the annexation area shall be limited to the hours of 7 a.m. to 6 p.m. Monday through Saturdays. No construction shall occur on state or federal holidays. Exceptions to these restrictions may be granted by the Cloverdale Community Development Director for unusual or emergency conditions.

e, f) No Impact. The project area is not located within an approved land use plan or near the Cloverdale Municipal Airport, the closest public or private airport to the area. No impacts would occur with respect to this topic.

13. Population and Housing

Environmental Setting

The annexation area is currently partially developed with Nu Forest lumber operations, three single-family dwellings and a PG&E electric substation. Surrounding uses include vacant land to the north (within the City of Cloverdale), a lumber mill and the Russian River to the east (unincorporated County territory), City of Cloverdale infrastructure and a corporation yard to the south (within the City) and the 101 freeway, a train station/maintenance shed and railroad right-of-way to the west (within the City).

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?				X
b. Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?				X
c. Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?				X

Discussion

a) No Impact. The proposed project would have no impact on substantial population growth within the City of Cloverdale since the project would allow for the development of one new single family dwelling within the annexation area.

b-c) No Impact. The proposed project could result in removal of one existing dwelling within the annexation area on the Nu Forest property and would allow construction of one dwelling on the Matovich Trust property. No impact would result with respect to this topic.

14. Public Services

Environmental Setting

Essential public services to the project area are provided as follows:

- *Fire Protection.* Fire protection services are provided by the Cloverdale Fire Protection District, which is headquartered at 451 S. Cloverdale Boulevard. A fire station is located at the district headquarters. The District also provides emergency rescue and fire code inspection services and maintains a variety of fire suppression apparatus at the headquarters Fire Station. The District maintains automatic aid agreements with the Geyserville Fire District and City of Healdsburg Fire Department (source: B. Elliott, Cloverdale Fire Protection District, 3/4/16).

- *Police Protection.* Police and security protection is provided by the Sonoma County Sheriff's Department based on Santa Rosa. The Sheriff's Department provides five deputies to patrol northern Sonoma County, including the annexation area, on a 24-hour per day basis (source: Al Tupman, Sheriff Department, 3/28/16). The City of Cloverdale Police Department maintains a mutual aid agreement with the County Sheriff, so that Cloverdale personnel may be the first responder to the annexation area in the event of an emergency (source: S. Cramer, Cloverdale Police Department, 3/28/16).

- *Schools.* Public educational services for residents of the project site are provided by the Cloverdale Unified School District. The District provides K-12 educational services for residents of Cloverdale and the surrounding unincorporated area. Private schools are also available in the greater Cloverdale area.

  Local schools serving the project site include Jefferson Elementary School, Washington Middle School and Cloverdale High School.

- *Library Service.* Sonoma County Library provides library service to Cloverdale as well as the greater Sonoma County. Numerous branch libraries are located in both incorporated cities and unincorporated communities throughout the County. The library administrative headquarters is located in Santa Rosa. The branch library closest to the annexation area is located at 401 N. Cloverdale Boulevard in Cloverdale.

- *Maintenance*. Maintenance of local streets, roads and other governmental facilities within the unincorporated portion of the County are the responsibility of the County of Sonoma.

- *Energy*. Residents of Cloverdale receive electrical power from Pacific Gas & Electric Company (PG&E), a regulated public utility serving northern and central California.

- *Communication facilities*. Major communication facilities in Cloverdale are provided by AT&T although other providers are also available.

Project Impacts

	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
Fire protection?				X
Police protection?				X
Schools?				X
Parks?				X

Other public facilities?				X

Discussion

a) No Impact. The proposed annexation and subsequent development that would be allowed under City of Cloverdale jurisdiction would not adversely impact the level of service provided by the Cloverdale Fire Protection District, the Cloverdale Unified School District or the Sonoma County Library, since there would be no change to the status of these providers upon annexation or their respective boundaries. Representatives from the Cloverdale Fire Protection District have indicated that no new or expanded facilities would be needed to serve the proposed annexation and future development (source: B. Elliott, CFPD)

Should the annexation be approved, police protection services would be provided by the City of Cloverdale Police Department instead of the County Sheriff. Based on discussions with the Cloverdale Police Chief, the City's Police Department could provide an enhanced level of emergency and non-emergency response times to calls for service from properties in the annexation area, since the Cloverdale Police Department is located closer to the area than the County Sheriff's office and provides a higher level of staffing than the County Sheriff than is currently available to the affected properties.

Upon future development within the annexation area, property owners or developers would be required to pay development impact fees that support these City Departments and special districts, such as the Cloverdale Fire Protection District.

Maintenance of local roads and other public facilities would be provided by the City of Cloverdale and would be funded by City property taxes and fees paid by future residents. Library service to the project area would continue to be provided by the Sonoma County Library system.

No changes to the boundary of the Cloverdale Unified School District is proposed as part of this project.

There would be no changes to annexation area properties in terms of electrical, natural gas or telecommunication services since such services are not affected by local municipal boundaries.

Overall, impacts to public services would be less-than-significant.

For impacts to parks, refer to item 15, below.

15. Recreation

Environmental Setting

The annexation area is partially developed with much of the area vacant. No parks, playgrounds or similar uses are present on the project area.

The closest public parks are south of the site on West Second Street and West First Street. City Park is located at 450 W. Second and the City pool is located at 205 West First Street.

The City of Cloverdale and Sonoma County Regional Parks Department operate Cloverdale River Park located at 31820 McCray Road on the west bank of the Russian River, north of the annexation area.

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?				X
b. Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?				X

Discussion

a-b) No Impact. The proposed annexation project would not significantly impact the existing City of Cloverdale recreational facilities or regional park facilities, such that the facilities

would be substantially degraded. If annexed into the City, future development that would be allowed would be subject to City of Cloverdale Parks and Recreation Facilities development impact fees which are used for City wide park projects relating to community needs.

Future development within the annexation area could include construction of one new dwelling and the removal of one dwelling, which would have no impact on City or regional park facilities.

16. Traffic and Transportation

Environmental Setting

Primary local access to the annexation area is provided by Asti Road, a collector road extending through the City of Cloverdale in a north-south direction. Regional access is provided by the US 101 freeway immediately west of the annexation area.

Access to individual properties within the annexation area is via a number of driveways off of Asti Road. Access to the Nu Forest property is provided via a private drive north of the annexation area that also serves the All-Coast Lumber mill to the east.

The 2008 General Plan EIR analyzed the intersection of the US 101 freeway northbound and southbound at Citrus Fair Drive under AM and PM peak hour conditions. This intersection is the closest to the annexation area. The EIR documents that existing and build out peak hour operations of this intersection would be Level of Service (LOS) A, which is the highest level of service. LOS A is characterized by minimal delay and minor, if any, congestion.

Public transportation to the City of Cloverdale and the annexation area is provided by the Sonoma County Transit Agency (SCTA). SCTA provides regional service to communities to the south and an intercity Cloverdale Shuttle for local trips.

Existing railroad tracks are located just west of the annexation area and west of Asti Road, These tracks are presently not in use but are planned for future SMART train operations. A station has been constructed along the tracks just west of the annexation area but is not currently used.

No bicycle paths or sidewalks are located along Asti Road adjacent to the annexation area.

No public or private airports or airstrips exist on or adjacent to the annexation area.

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the proposal:				
a. Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?			X	
b. Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?			X	
c. Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?				X
d. Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?				X

e. Result in inadequate emergency access?				X
f) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?				X

Discussion

a, b) Less-than-Significant Impact. As noted in the Environmental Setting section of this Initial Study, existing and future operations of the nearest major intersection to the annexation area, Citrus Fair Drive and the 101 north and south bound freeway ramps, is expected to operate at an acceptable level of service through the build-out of the General Plan, which is 2025. Table 4.5-8 contained in the General Plan EIR documents that the Highway 101 on- and off-ramps at Citrus Fair Drive are expected to operate at LOS A or C during both A.M. and P.M. peak hour periods.

The following table (Table 3) estimates the number of total and peak hour trips that could be generated in the annexation area. The table shows that up to 133 daily trips could be generated as a result of annexation and build out of the subject properties. There would be up to 120 peak trips during the morning peak period and up to 112 peak trips in the pm peak.

Table 3. Annexation Build Out Estimated Trip Generation

Land Use Type	Amount	Total Daily Trips	AM Peak	PM Peak
Nu Forest (existing)[1]	--	12		
Nu Forest – proposed[1]	--	71		
Subtotal Nu Forest trips	--	*59*	*54*	*57*
Industrial[2]	3,000 SF	21	19	20
Single Family Residential (*existing & proposed*)[3]	3	29	22	29
Total Trips	--	**133**	**120**	**112**

Notes:

1. Existing and proposed Nu Forest trip generation based on field observation and future estimates provided by project applicant.
2. Future industrial uses include up to 1,000 square foot live-work industrial space on Cerasoli site & up to 2,000 square foot industrial space on Poustinchian property

3. Existing dwellings on Cerasoli, Schwartzler & Nu Forest properties, per property owners.
4. Proposed dwelling on Matovich Family trust property, per landowner representative.
Trip rates per ITE Trip Generation Manual, 9th Edition, 2012

The addition of anticipated project trips on the local transportation system near the project site is not expected to significantly increase congestion or conflict any local or regional transportation plan or policy dealing with transportation. The primary landowner in the annexation area, Nu Forest Products, is considering the operation of an employee shuttle to and from Healdsburg for mill employees. If implemented, the shuttle would reduce overall and peak hour trips as identified in the above table.

Furthermore, the City of Cloverdale Streets and Thoroughfare Development Impact Fee will be collected before any project in the annexation area is developed. These fees provide for cumulative improvements of the roadway system to accommodate citywide traffic needs at ultimate General Plan build out.

c) No Impact. As noted in the Environmental Setting section of this Initial Study, no public or private airports or airstrips exist on or adjacent to the annexation area. The area is not located within the airport land use plan for Cloverdale Municipal Airport, so there would be no impacts with respect to this topic.

d, e) No Impact. Properties included in the annexation area are all served by private driveways from Asti Road. If no changes to current structures are proposed, existing driveways may remain as they currently exist. New development proposals will be reviewed by the City of Cloverdale Community Development Department, Public Works Department and Fire Department to ensure consistency with City standards and to ensure there would be no hazards or impediments to emergency vehicle access. Future development proposals would also be reviewed by the Cloverdale Fire Protection District to ensure that District design criteria are met in terms of emergency access. No impact would result with respect to this topic.

f) No Impact. The proposed annexation and future development would be consistent with the Cloverdale General Plan, as amended by the project. There would be no impacts with respect to potential conflicts with alternative modes of transportation.

17. Utilities and Service Systems

Environmental Setting

The annexation area received public utilities from the following sources:

- *Water supply*. Private on-site wells.
- *Sewage collection*. Private on-site septic systems.
- *Sewage treatment and disposal*. Private on-site septic systems
- *Storm drainage*. Sheet flow from individual properties and private open channels.
- *Solid waste service*. Private disposal.

Project Impacts

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
Would the project				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board			X	
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?			X	
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?			X	
d) Have sufficient water supplies available to serve the project from existing water entitlements and resources, or are new or expanded entitlements needed?			X	
e) Result in a determination by			X	

the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the providers existing commitments?				
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?			X	
g) Comply with federal, state and local statutes and regulations related to solid waste?			X	

Discussion

a) Less-than-Significant. Upon annexation to the City of Cloverdale, all properties would be eligible to connect to the City's wastewater collection, treatment and disposal system. Property owners would be responsible for constructing sewer lines and other related facilities to connect to the City's system. Any extensions on public land would be required to be designed to City engineering standards, encroachment permit(s) from the City would be required and easements over private properties obtained, as needed. Preliminarily, a sewer line would be extended west from the approximate center of the Nu Forest property to Asti Road, then south to connect to the City's wastewater treatment plant. The extension would be sized to accommodate the anticipated maximum build-out of uses in the annexation area, but could be oversized to accommodate other unserved properties in the annexation area, as determined by the Cloverdale City Engineer.

A report prepared by the City of Cloverdale in late 2014 (2014 Infrastructure and Public Service Audit, 10/15/14) documented that the City's wastewater treatment plant, located just south of the annexation area, is permitted by the Regional Water Quality to treat up to 1.0 million gallons of wastewater per day (mgd) during average-day dry weather periods. The peak treatment capacity is permitted to be 2.2 mgd. The City is permitted up to treat 8.25 mgd during wet weather periods. As of late 2014, the treatment plant was processing 0.55 mgd on an average day and 1.4 mgd during peak conditions. The peak wet weather flow was documented at 4.1 mgd during the same time period. Treated wastewater is transported to municipal ponds adjacent to the Russian River where treated effluent can percolate into the soil or evaporate into the atmosphere. Disposal of treated wastewater is based on the City's permitted treatment capacity and there is currently no issue with disposal capacity.

Build-out of the proposed annexation would be estimated to generate 4,230 gallons per day of wastewater. This is based on information provided in Table 2, in the Hydrology section.

Based on the above information, future development that could be accommodated in the annexation area could be served by the City of Cloverdale wastewater treatment system with out exceeding the requirements of the Regional Water Quality Board and a less-than-significant impact would result.

The City of Cloverdale may allow continued use of septic systems for future development if such development would be located 300 feet or greater from a sewer collection line.

b) Less-than-Significant. Property owners in the project area would have the ability to be connected to the City's municipal water system upon completion of the annexation process. Nu Forest Products has proposed to extend a municipal water line from their property to connect to the City's water system in Asti Road, west of the annexation area. Other properties may also connect to the City system. All costs to extend municipal water would be at the expense of individual owners.

The same 2014 Infrastructure and Pubic Services Audit referenced in subsection "a," above, notes that the City recently completed two new water wells as of 2014. New wells were financed by the US Department of Agriculture. Improvements were also made to the City's water system to "de-aerate" water prior to entering the City's water treatment plans that improved the efficiency of the treatment plant. Water system improvements are now on-line and a part of the municipal water system which includes five wells. The 2014 Infrastructure Audit reported that with the recently completed improvements, the daily capacity of the municipal water system is approximately 3.69 mgd. The 2014 estimated maximum demand for water was approximately 2.55 mgd, with 28,000 gallons/day allocated to other pending development projects This would leave approximately 392,000 gallons per day for future development in the community, including development proposed in the annexation area.

Table 4 provides an estimate based on City information regarding the estimated quantity of water to be used by build-out of proposed land uses in the annexation area. The estimated maximum use of water 5,128 gpd, is less that the estimated 392,000 gpd that is currently available to serve future development so there would be an adequate long-term supply of water available for the proposed annexation and development of future uses.

The City of Cloverdale will also require, as a normal and customary condition of development approval for future buildings in the annexation area, that builders install high water efficiency fixtures and appliances to minimize water use to the fullest extent. Such improvements may likely include but will not be limited to use of low-flow toilets

and showers, possible use of non-water urinals, use of water efficient appliances, limitations on installation of landscaping and similar features.

Table 4. Annexation Build Out Water Demand

Land Use Type	Water Use Factor	Land Use/Amount	Water Use (gpd)
Light Industrial/Nu Forest	50 gallons/day/employee	73	3,650
Other Light Industrial	same as above	3	150
Single Family Residential	332/gpd/dwelling	4	1,328
Estimated Water Demand	--	--	**5,128**

Source: City of Cloverdale, 2016

c) Refer to the Hydrology section of this Initial Study for a discussion of drainage facilities.

f, g) Construction of future development within the project area would result in a slight increase in the amount of solid waste generated by the project that would be accommodated in local and regional landfill facilities. Upon annexation, the City's franchised waste hauler, Redwood Empire Disposal, would collect solid waste and recyclables .A representative of Redwood Empire Disposal (Mike Lockwood) has confirmed there will be no impacts to the company. The proposed project would have no impact with regard to federal, state or local statutes or laws governing solid waste.

18. Mandatory Findings of Significance

Environmental Issue	Potentially Significant Impact	Potentially Significant Unless Mitigated	Less Than Significant Impact	No Impact
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the				X

number of or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?				
b) Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals?				X
c) Does the project have impacts that are individually limited, but cumulatively considerable?				X
d) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?				X

Discussion

a-b) The project does not have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory. The project is located on property not involving a creek, stream or other waterway, nor is the area identified as having populations of wildlife.

c) Cumulative impacts have been reviewed in the annual infrastructure audit. There are sufficient public facilities to serve the proposed future development.

d) The project will not have direct nor indirect environmental effects on human beings. Noise and other impacts from the development will be minimal and within the thresholds set forth in the General Plan.

Initial Study Preparers

Jerry Haag, Consulting Planner

City of Cloverdale staff
Paul Cayler, City Manager
David Kelley, Assistant City Manager/Community Development Director
Vanessa Apodaca, PE, City Engineer
Eric Janzen, Engineering Technician
Rafael Miranda, Associate Planner
Stephen Cramer, Police Chief

Cloverdale Fire Protection District
Brian Elliott

Local Agency Formation Commission
Mark Bramfitt, Executive Director
Carole Cooper, Assistant Executive Director

Redwood Empire Disposal
Mike Lockwood

Applicant Team
Sharmaine Ege, Nu Forest Products
Kurt Kelder, civil engineer

References

CEQA Guidelines, Bay Area Air Quality Management District, May 2011

General Plan Update Environmental Impact Report, City of Cloverdale 2009

Cortese List, California Department of Toxic Substances Control, March, 2016

Design Level Geotechnical Investigation, 280 Asti Road, PJC & Associates, November 2015

Draft EIR for Climate Action 2020: Community Climate Action Plan, ICF International, March 2016

California Department of Water Resources (http://wdl.water.ca.gov)

Report of Limited Subsurface Investigation, 280 Asti Road, Cloverdale CA, SCS Engineers, November 2015

Infrastructure and Public Services Audit, City of Cloverdale, October 2014

Exhibits

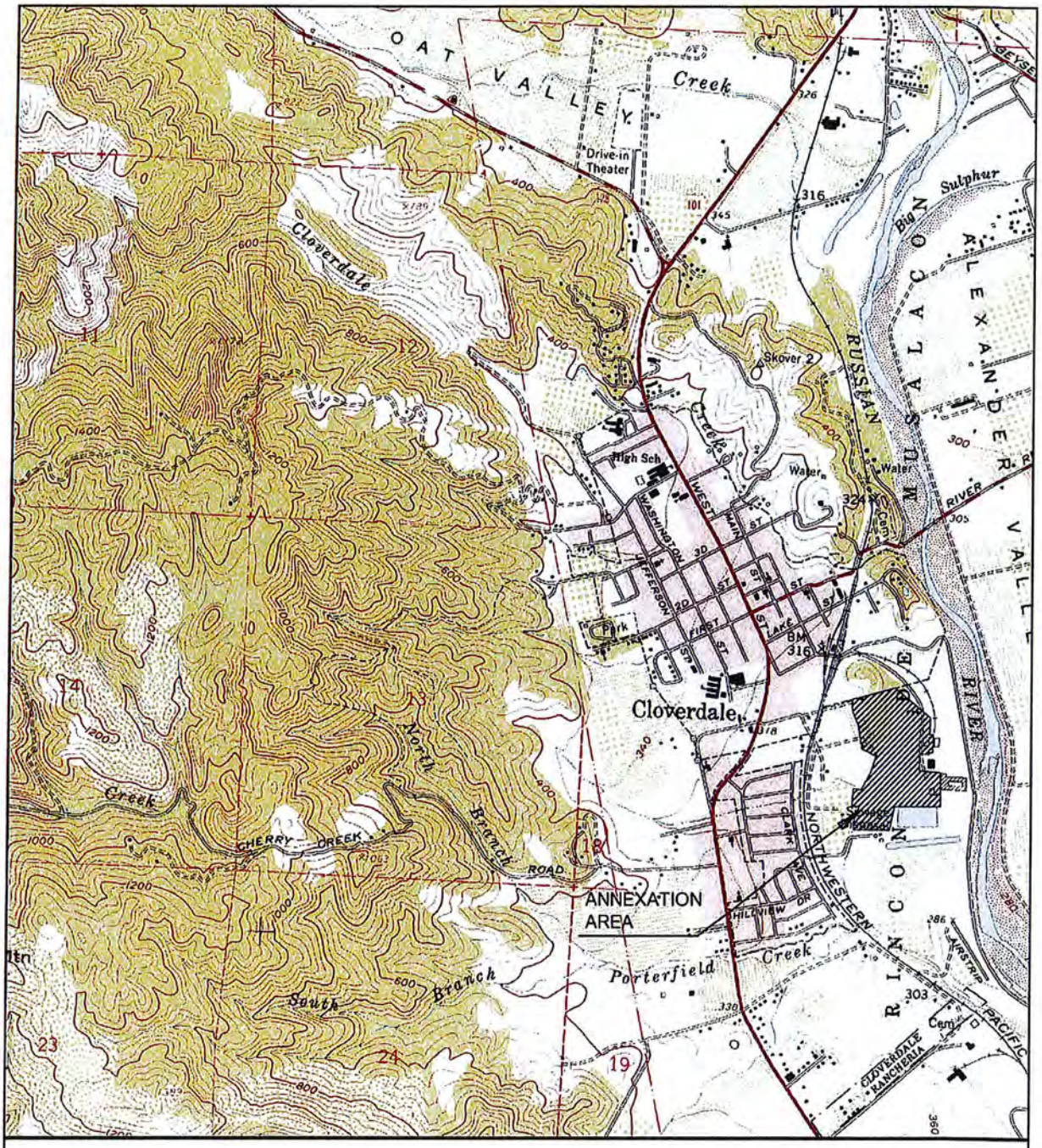
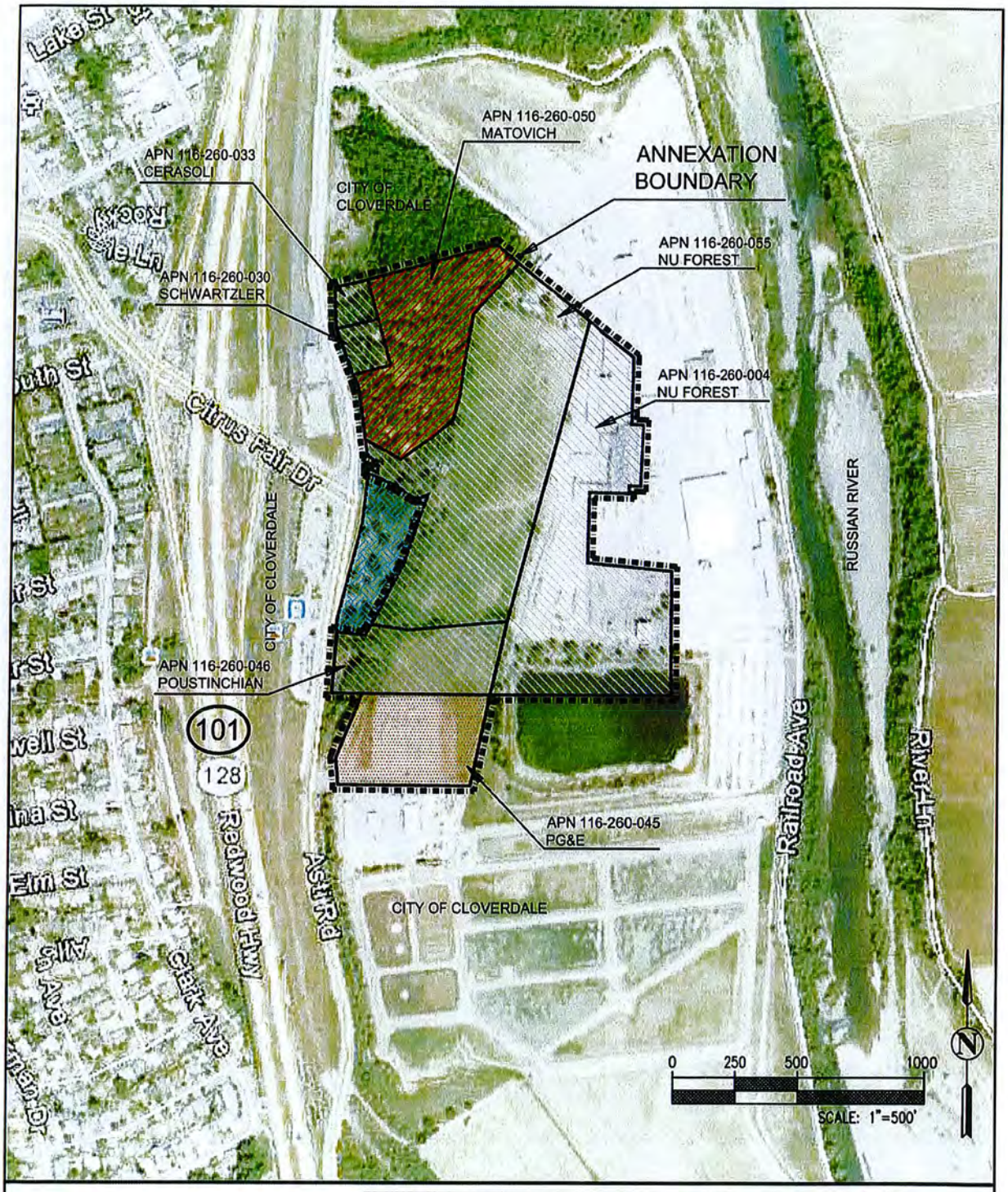


EXHIBIT 2
LOCAL CONTEXT

0 1000 2000 4000

SCALE: 1"=2000'

N



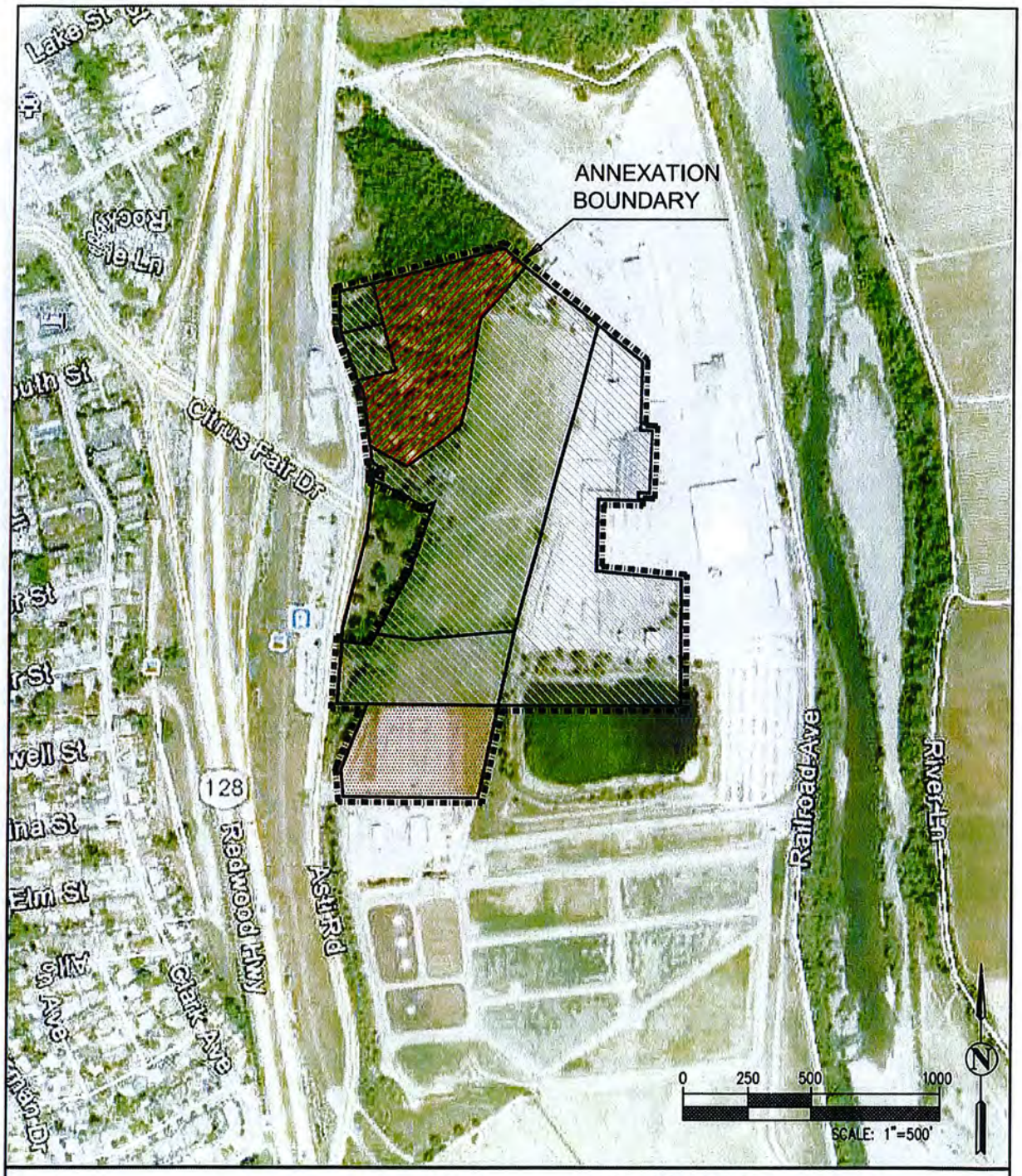
APN	Owner	Area (per AP Map)
116-260-004	Nu Forest Products	12.17 acres
116-260-030	Schwartzler	0.73 acres
116-260-033	Cerasoli	0.45 acres
116-260-045	PG&E	4.05 acres
116-260-046	Poustinchian	4.07 acres
116-260-050	Matovich	6.30 acres
116-260-055	Nu Forest Products	14.68 acres

Exhibit 3
City of Cloverdale
Proposed Annexation

Legend: Existing General Plan

- CF – Conservation Feature
- GI – General Industrial
- TOD – Transit Oriented Development
- P – Public

Exhibit 4A
City of Cloverdale
Existing General Plan
Land Use Designation



Legend:

Proposed General Plan

RR – Rural Residential

GI – General Industrial

P – Public

Exhibit 4B
City of Cloverdale
Proposed General Plan
Land Use Designation

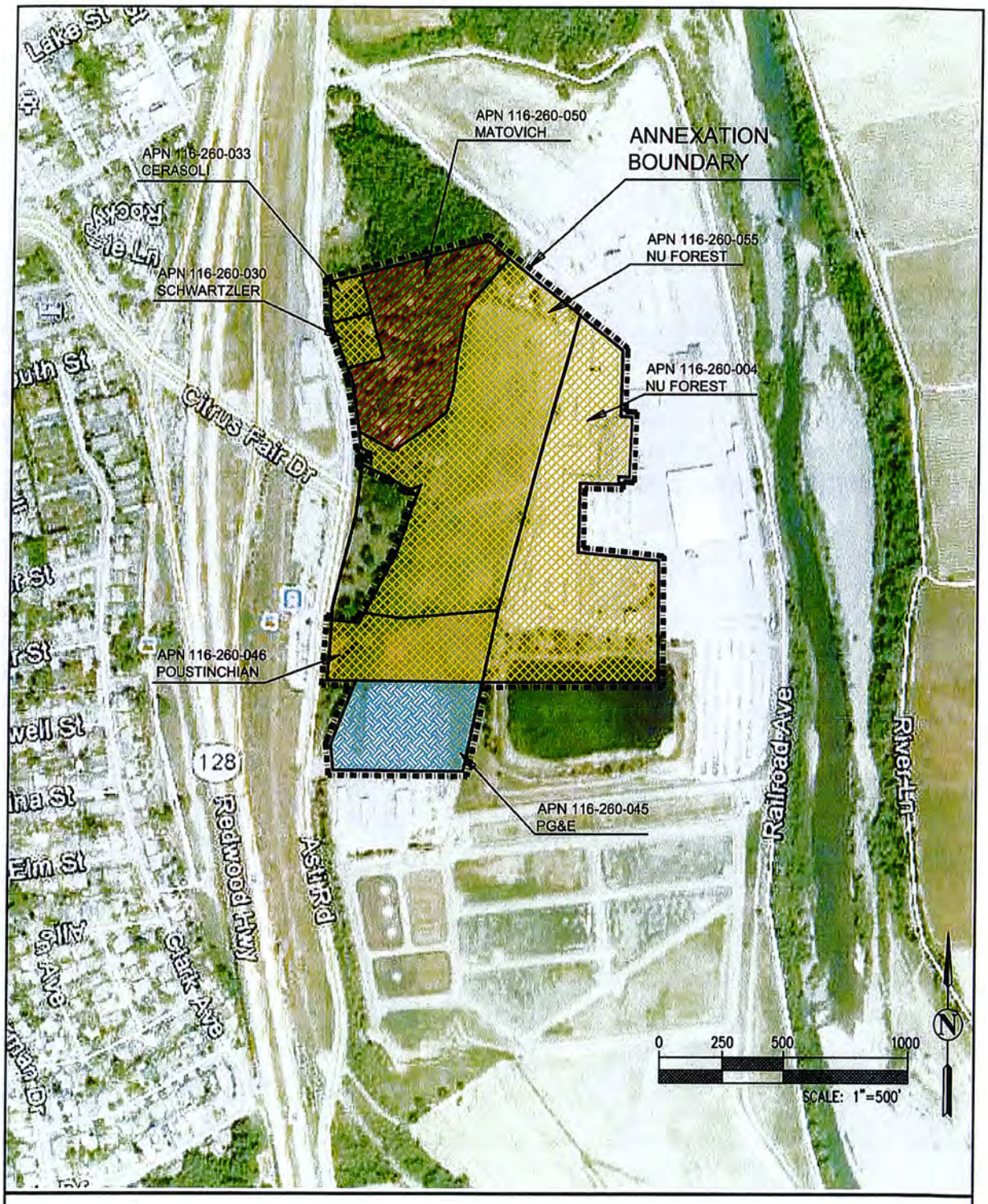


Exhibit 5
City of Cloverdale
Prezoning Map

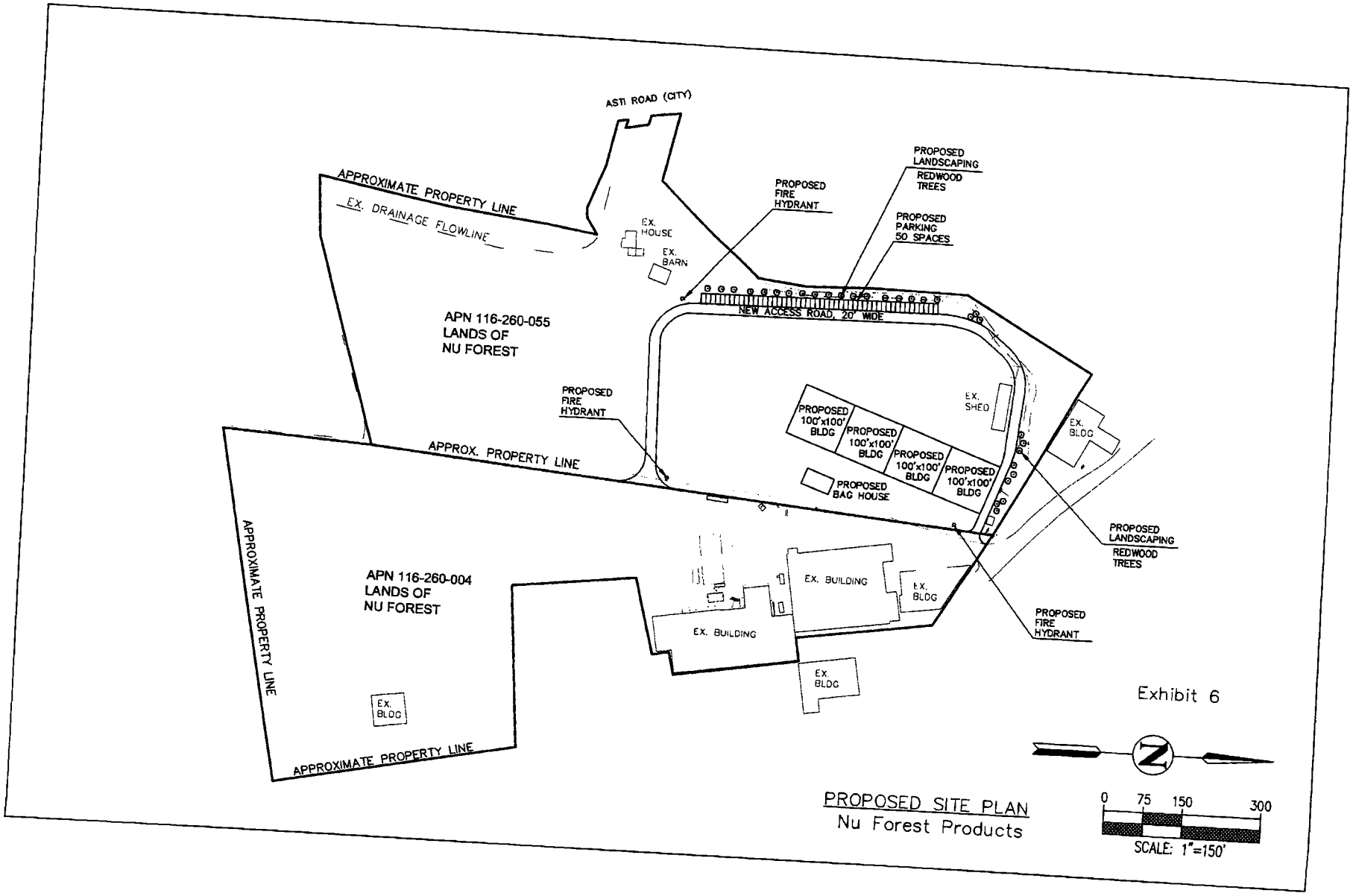
Legend:

Proposed Use

GI – General Industrial

RR – Rural Residential

P–I – Public Institutional


ASTI ROAD (CITY)
APPROXIMATE PROPERTY LINE
EX. DRAINAGE FLOWLINE
EX. HOUSE
EX. BARN
APN 116-260-055
LANDS OF
NU FOREST
PROPOSED FIRE HYDRANT
PROPOSED LANDSCAPING
REDWOOD TREES
PROPOSED PARKING 50 SPACES
NEW ACCESS ROAD, 20' WIDE
PROPOSED FIRE HYDRANT
APPROX. PROPERTY LINE
PROPOSED 100'x100' BLDG
PROPOSED 100'x100' BLDG
PROPOSED 100'x100' BLDG
PROPOSED 100'x100' BLDG
PROPOSED BAG HOUSE
EX. SHED
EX. BLDG
PROPOSED LANDSCAPING
REDWOOD TREES
PROPOSED FIRE HYDRANT
APPROXIMATE PROPERTY LINE
APN 116-260-004
LANDS OF
NU FOREST
EX. BLDG
APPROXIMATE PROPERTY LINE
EX. BUILDING
EX. BUILDING
EX. BLDG
EX. BLDG
Exhibit 6
PROPOSED SITE PLAN
Nu Forest Products
0 75 150 300
SCALE: 1"=150'

CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 076-2016

RESOLUTION OF THE CITY COUNCIL DIRECTING STAFF TO FILE ANNEXATION APPLICATION FOR "CLOVERDALE REORGANIZATION NO. 2016-01 (NU FOREST) FOR THE NU FOREST PRODUCTS PROPERTIES AND ADJACENT PROPERTIES CONSISTING OF APPROXIMATELY 42.5 ACRES OF LAND GENERALLY LYING EAST OF ASTI ROAD, WEST OF THE RUSSIAN RIVER, SOUTH OF EXISTING CITY BOUNDARIES AND NORTH OF THE CLOVERDALE WASTEWATER TREATMENT FACILITY AND CORPORATION YARD (APNs 116-260-004, -030, -033, -045, -046, -050 & -055)

WHEREAS, the Applicant, Nu Forest Products, has requested annexation of two adjacent properties owned by them lying east of the current boundary of the City of Cloverdale (APNs 116-260-004 & -055) to the City; and

WHEREAS, to create a more logical boundary to the City, several other properties lying west of the Nu Forest properties and between the Nu Forest properties and the current City boundary are also proposed for annexation to the City. These additional properties include:

- Cerasoli (0.45 acre), APN 116-260-033
- Schwartzler Trust (0.45 acre), APN 116-260-030
- Matovich Trust (6.3 acres), APN 116-260-050
- Poustinchian (4.07 acres), APN 116-260-046
- PG & E (4.05 acres), APN 116-260-045; and

WHEREAS, all of the properties proposed for annexation to the City are shown on the attached Attachment 1, which is hereby incorporated by reference into this resolution; and

WHEREAS, all of the properties proposed for annexation to the City lie within the Sphere of Influence and Urban Service Boundary of the City of Cloverdale; and

WHEREAS, the California Environmental Quality Act (CEQA), together with the State Guidelines and City environmental regulations, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared; and

WHEREAS, to comply CEQA, the City of Cloverdale prepared an Initial Study/Mitigated Negative Declaration for this project, including annexation of properties and development of the Nu Forest Products site, with the finding that all potentially significant impacts associated with the project could be mitigated to a less-than-significant level and would be subject to mitigation measures identified in the initial study that will be made project conditions of approval; and

WHEREAS, the City of Cloverdale has determined that all requisite municipal services can be provided to the Nu Forest site and adjacent properties; and

WHEREAS, on September 6, 2016, the Planning Commission held a properly noticed public hearing on the Project, at which time all interested parties had the opportunity to be heard; and

WHEREAS, a Staff Report to the Planning Commission dated September 6, 2016, and incorporated herein by reference described and analyzed the proposed annexation to the City of Cloverdale; and

WHEREAS, on September 6, 2016, the Planning Commission adopted Resolution No. 013-2016, recommending that the City Council adopt a Mitigated Negative Declaration for the Project and Resolution No. 014-2016 which recommends that City staff file the Nu Forest annexation with the Sonoma County Local Agency Formation Commission, both resolutions are incorporated herein by reference and is available for review at City Hall during normal business hours; and

WHEREAS, on October 11, 2016, the City Council held a properly noticed public hearing on the proposed annexation and other related Project applications, at which time all interested parties had the opportunity to be heard; and

WHEREAS, prior to taking action on the annexation, the City Council approved City Council Resolution No. 075-2016, adopting a Mitigated Negative Declaration for the annexation of the Nu Forest properties and related properties to the City of Cloverdale as well as other related applications; and

NOW, THEREFORE BE IT RESOLVED that the foregoing recitals are true and correct and made a part of this resolution.

BE IT RESOLVED that the City Council makes the following findings and directs City staff to file the Nu Forest Annexation with the Sonoma County Local Agency Formation Commission:

1. The proposed annexation area lies within the City of Cloverdale LAFCO-approved Sphere of Influence and the City's Urban Service Area as identified in the Cloverdale General Plan and the Urban Growth Boundary area.

2. Future development of the annexation area will be consistent with the Cloverdale General Plan, as amended as part of this project.

3. The annexation action and City of Cloverdale prezoning is not in conflict with any City or County policies.

It is hereby certified that the foregoing Resolution No. 076-2016 was duly introduced and duly adopted by the City Council of the City of Cloverdale at its regular meeting held on October 11, 2016, by the following roll call vote: (Ayes-5; Noes-0)

AYES: Councilmember Palla, Councilmember Russell, Councilmember Cox, Vice Mayor Wolter, and Mayor Brigham
NOES: 0
ABSENT: 0
ABSTAIN: 0

APPROVED:

Mary Ann Brigham, Mayor

ATTESTED:

Linda Moore, Deputy City Clerk

CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 077-2016

RESOLUTION OF THE CITY COUNCIL APPROVING AN AMENDMENT TO THE GENERAL PLAN FOR FIVE PROPERTIES ON APPROXIMATELY 11.27 ACRES OF LAND GENERALLY LYING EAST OF ASTI ROAD, WEST OF THE RUSSIAN RIVER, SOUTH OF EXISTING CITY BOUNDARIES AND NORTH OF THE CLOVERDALE WASTEWATER TREATMENT FACILITIES AND CORPORATION YARD (APNs 116-260-030, -033, -045 -046 & -050)

WHEREAS, on July 26 2016, by Resolution No 058-2016, the City Council initiated a General Plan Amendment to change the land use designation for approximately 11.27 +/- acres of land located on the east side of Asti Drive approximately at the easterly terminus of Citrus Fair Drive and north of the City Corporation Yard and wastewater treatment plant from "CF-Conservation Features," "General Industrial" and "Transit Oriented Development" to a combination of "General Industrial" and "Rural Residential" within the proposed Nu Forest Annexation and Development project area; and

WHEREAS, the five properties are identified by the following property owner names and Assessor Parcel Numbers (APNs): Richard Cerasoli - APN 116-260-033, Charles Schwartzler Trust - APN 116-260-030, Gladys Matovich Trust - APN 116-260-050, M. Poustinchian - APN 116-260-046 and PG&E - APN 116-260-045; and

WHEREAS, Exhibit 1 shows existing City of Cloverdale General Plan land use designations and Exhibit 2 shows proposed General Plan land use designations and both Attachments are hereby incorporated by reference into this Resolution; and

WHEREAS, the project area consists of five parcels of record containing approximately 11.27 acres of land located east of Asti Road, south of existing City of Cloverdale limits, generally west of the Russian River and north of the City of Cloverdale corporation yard and wastewater treatment plan; and

WHEREAS, the California Environmental Quality Act (CEQA), together with the State Guidelines and City environmental regulations, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared. To comply with CEQA, the City prepared an Initial Study and Mitigated Negative Declaration with the finding that all potentially significant environmental impacts can be reduced to a less-than-significant level by adherence to mitigation measures included in the IS/MND; and

WHEREAS, on September 6, 2016, the Planning Commission held a properly noticed public hearing on the Project, at which time all interested parties had the opportunity to be heard; and

WHEREAS, a Staff Report dated September 6, 2016 and incorporated herein by reference described and analyzed the Project and related Mitigated Negative Declaration for the Planning Commission and recommended adoption of the General Plan Amendment for the Project; and

WHEREAS, on September 6, 2016, the Planning Commission adopted Resolution No. 013-2016, recommending that the City Council adopt a Mitigated Negative Declaration for the Project, and Resolution No. 015-2016 recommending that the Cloverdale City Council approve the requested General Plan Amendment, both resolutions are incorporated herein by reference and is available for review at City Hall during normal business hours; and

WHEREAS, on October 11th, 2016, the City Council held a properly noticed public hearing on the requested General Plan Amendment at which time all interested parties had the opportunity to be heard; and

WHEREAS, prior to taking action on the General Plan Amendment, the City Council approved City Council Resolution No. 075-2016, adopting a Mitigated Negative Declaration for the General Plan Amendment and the associated Nu Forest Annexation and Development Project; and

WHEREAS, based on the staff report, public testimony and other relevant information available to the City Council, the Council voted to approve the General Plan Amendment for the Project that would change land use designations from "CF-Conservation Features," "General Industrial" and "Transit Oriented Development" to a combination of "General Industrial" and "Rural Residential" within the proposed Nu Forest Annexation and Development project area.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Cloverdale, that the City Council hereby makes the following findings and determination with respect to the approval of the General Plan Amendment:

1. That approval of the General Plan Amendment would not make the General Plan internally inconsistent as demonstrated in City Council staff report dated October 11, 2016 and incorporated by reference into this Resolution.

2. That approval of the General Plan Amendment would not be detrimental to the public health, safety or welfare of the City because potential public health and safety issues associated with the Project were fully examined and mitigated to a level of less-than-significance where needed as documented in the Initial Study and Mitigated Negative Declaration prepared for the project. In terms of providing positive effects of welfare to Cloverdale, the proposed Project will result in employment opportunities for local residents as well as increasing tax revenues to the City.

3. The Project site is physically suitable for the proposed General Plan Amendment because the proposed Amendment would allow uses similar to what is currently found on the properties included in the Amendment.

NOW, THEREFORE, BE IT FURTHER RESOLVED, by the City Council, that the City Council hereby approves the General Plan Amendment for a portion of the Nu Forest Products Annexation and Development project area, site generally located east of Asti Road, south of existing City limits along the All-Coast/Nu Forest access road, west of the Russian River and north of the City of Cloverdale wastewater treatment plant and corporation yard attached hereto as Attachments 1 and 2.

It is hereby certified that the foregoing Resolution No. 077-2016 was duly introduced and duly adopted by the City Council of the City of Cloverdale at its regular meeting held on October 11, 2016, by the following roll call vote: (Ayes-5; Noes-0)

AYES: Councilmember Palla, Councilmember Russell, Councilmember Cox, Vice Mayor Wolter, and Mayor Brigham
NOES: 0
ABSENT: 0
ABSTAIN: 0

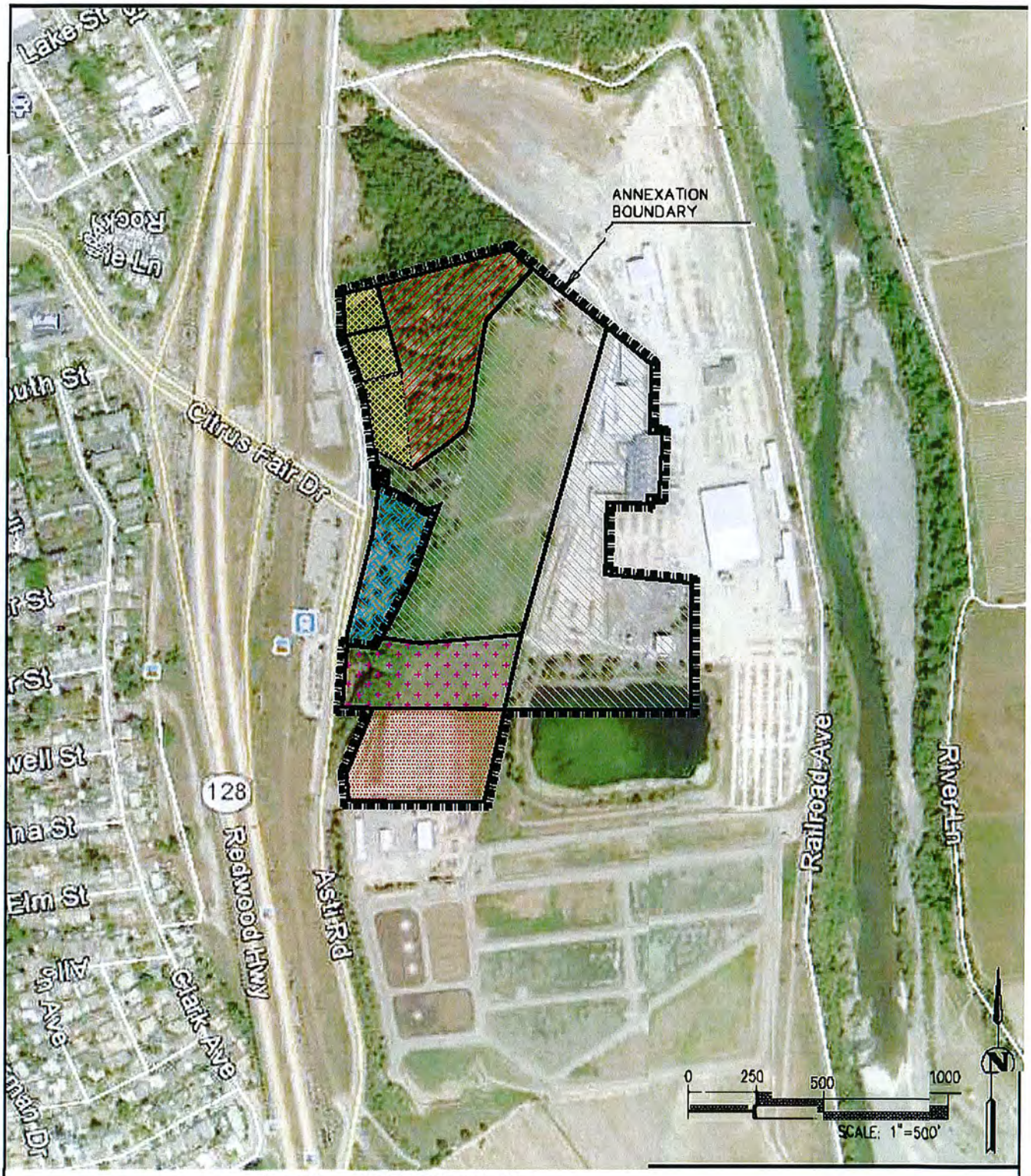
APPROVED:

Mary Ann Brigham, Mayor

ATTESTED:

Linda Moore, Deputy City Clerk

Exhibits Attached:
Exhibit 1 – Existing General Plan Designations
Exhibit 2 – Proposed General Plan Designations



Legend: Existing General Plan

- CF – Conservation Feature
- CF – Conservation Feature
- GI – General Industrial
- GI – General Industrial
- TOD Transit Oriented Development
- TOD – Transit Oriented Development
- TOD – Existing Transit Oriented Development

Exhibit 1
City of Cloverdale
Existing General Plan
Land Use Designation

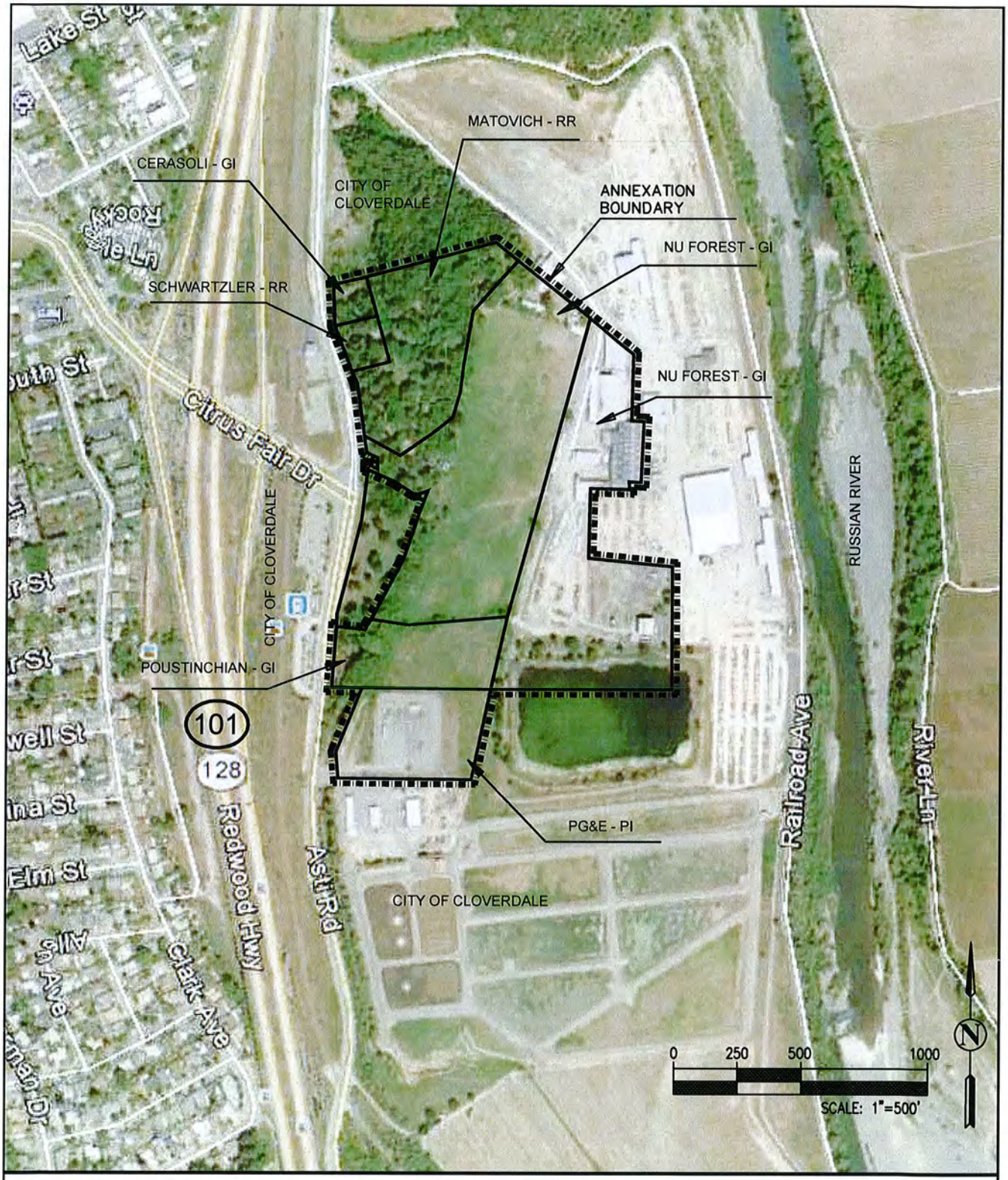


Exhibit 2
City of Cloverdale Proposed
General Plan Designations

Property Owner	Current General Plan	Proposed General Plan
Cerasoli	Conservation Feature (CF)	General Industry (GI)
Schwartlzer	Conservation Feature (CF) General	Rural Residential (RR)
Matovich	Industry (GI)	Rural Residential (RR)
Poustinchian	Transit Oriented Development (TOD)	General Industry (GI)
PG&E	Transit Oriented Development (TOD)	Public/Quasi-Public (PI)

CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 078-2016

RESOLUTION OF THE CITY COUNCIL APPROVING A CONDITIONAL USE PERMIT (FILE NO. CUP 029-2015) AND A MAJOR DESIGN REVIEW (FILE NO. DR 029-2015) FOR NU FOREST PRODUCTS, INC. LOCATED AT 280 ASTI ROAD (APNs 116-260-004 & -055)

WHEREAS, Nu Forest Products submitted an application to the City of Cloverdale to expand their current limited lumber mill and wood storage operations on a 26.85-acre site located west of the Russian River, north of the City's wastewater treatment plant, and east of Asti Road in the unincorporated portion of Sonoma County; and

WHEREAS, Nu Forest Products has requested annexation to the City of Cloverdale and the City Council has adopted a Resolution (Resolution No. 076-2016) directing the Cloverdale City staff to file an annexation application with the Sonoma County Local Agency Formation Commission (LAFCO); and

WHEREAS, the Nu Forest site is designated General Industrial (GI) on the City's adopted General Plan Land Use Map. The property owner has requested prezoning of the property to the General Industrial (M-1) district, which permits heavy manufacturing uses such as lumber and planing mills with the approval of a Conditional Use Permit (see Zoning Ordinance Table 18.06.030-A); and

WHEREAS, the property owner also desires to expand existing lumber storage and office on the site to include lumber milling and planing, lumber storage, administrative offices, parking, solar collectors and related uses within a maximum of four 10,000 square foot open canopy structures and related uses including but not limited to open parking lots and a water quality and retention pond and similar ancillary uses, which require City approval of Major Design Review pursuant to Zoning Ordinance Section 18.03.150.C.1; and

WHEREAS, the proposed Conditional Use Permit and Major Design Review long with all other project components, including a General Plan Amendment, prezoning, and annexation are considered a project under the California Environmental Quality Act (CEQA) and CEQA Guidelines and the City has prepared an Initial Study/Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program (MMRP) for the proposed project; and

WHEREAS, as required by California Government Code Section 65091, the Planning Commission of the City of Cloverdale gave legal notice of a public hearing on the Conditional Use Permit and Major Design Review applications; and

WHEREAS, the Planning Commission held a public hearing on September 6, 2016, for the purpose of reviewing the application for a Conditional Use Permit and Major Design Review for the proposed expansion of the Nu Forest lumber mill and considered all written and verbal communication, including the staff report; and

WHEREAS, the applicant and members of the public were present to speak on the application; and

WHEREAS, on September 6, 2016, the Planning Commission adopted Resolution No. 013-2016, recommending that the City Council adopt a Mitigated Negative Declaration and Mitigated Monitoring and Reporting Program for the Project, and this resolution is incorporated herein by reference and is available for review at City Hall during normal business hours; and

WHEREAS, the Planning Commission has determined that the findings required for the Conditional Use Permit required by Section 18.03.110 of the Zoning Ordinance have been met. Based on the application information and the information contained in the staff report, the following findings have been made:

1. The proposed use is conditionally permitted within the M-1 District pursuant to the provisions of this Section (18.03.110) and complies with all the applicable provisions of this ordinance, goals and objectives of the Cloverdale General Plan, applicable Industrial Development Guidelines and other development policies and standards of the City.

   According to Chapter 18.14 (Zoning Ordinance Definitions) of the Zoning Ordinance, the proposed expansion of the Nu Forest operation is considered as a "heavy manufacturing use" and requires Conditional Use Permit approval. The proposed use is consistent with the General Industrial General Plan land use designation in that this designation allows for employment opportunities in Cloverdale and specifically identifies lumber mills as an allowed land use. Therefore, approval of the proposed project would be consistent with the General Plan, the Zoning Ordinance, the City's Industrial Development Guidelines and other development policies of the City.

2. The proposed use would not impair the integrity and character of the Zoning District in which it is to be established or located.

   The proposed use is compatible with the proposed M-1 (General Industrial) zoning district, which conditionally permits lumber mills in this district. To ensure that the proposed lumber and planing mill would not impair the integrity or character of the M-1 district as applied to the subject site, the City has completed an environmental analysis pursuant to the California Environmental Quality Act and has determined that all potentially significant impacts can be reduced to a less-than-significant level. Therefore, the proposed use would not impair the integrity or character of the M-1 District in which the use will be located.

3. The site is suitable for the type and intensity of use or development that is proposed.

   The project site is generally flat and currently contains exiting storage facilities and offices for Nu Forest Products, Inc. Approximately one-half of the property is vacant, contains no significant stands of trees and could accommodate the proposed Nu Forest expansion. Another lumber facility, All Coast Forest Products, is established immediately east of the Nu Forest property.

4. There are adequate provisions for water, sanitation and public utilities and services to ensure public health and safety.

   The proponent of the annexation, Nu Forest Products, has agreed to extend municipal water, wastewater and drainage facilities. Adequate provisions for water, sanitation, storm drainage and other public utilities and services exist to ensure public health and safety. Installation of such facilities will be required prior to occupancy for future buildings in the annexation area.

5. The proposed use will not be detrimental to the public health, safety, or welfare or materially injurious to properties and improvements in the vicinity.

   The proposed expanded lumber mill is located in a remote portion of Cloverdale with few sensitive receptors near the project site. An existing lumber mill (All Coast Forest Products) is located immediately adjacent to the Nu Forest site and the City of Cloverdale is unaware of any complaints regarding health, safety or the general welfare from nearby property owner or

residents. In addition, the City has conducted a thorough analysis of potential environmental effects of the proposed project consistent with the California Environmental Quality Act and has determined that all potentially significant.

WHEREAS, the Planning Commission has also determined that the findings required for the Major Design Review required by Section 18.03.150 (E) of the Zoning Ordinance have been met. Based on the application information and the information contained in the staff report, the following findings have been made:

1. The proposal is consistent with the general plan, any applicable specific plan and the provisions of this title, including but not limited to development standards and design review standards for the zoning district in which the property is located and with the design guidelines for the City of Cloverdale and/or design guidelines in which the project is located.

   The proposed expansion of the Nu Forest Products lumber mill is consistent with the General Plan land use designation of "General Industry" that specifically notes that lumber mills, warehousing and distribution are allowed uses in this designation. Review of the Nu Forest site plan and building elevations indicate that the proposed facility is consistent with City development standards and with applicable design guidelines.

2. The proposal will not be detrimental to the health, safety, comfort and general welfare of the persons residing or working in the neighborhood of the proposed project.

   The proposed expanded lumber mill is located in a remote portion of Cloverdale with few sensitive receptors near the project site. An existing lumber mill (All Coast Forest Products) is located immediately adjacent to the Nu Forest site and the City of Cloverdale is unaware of any complaints regarding health, safety or the general welfare from nearby property owner or residents. In addition, the City has conducted a thorough analysis of potential environmental effects of the proposed project consistent with the California Environmental Quality Act and has determined that all potentially significant impacts can be reduced to a less-than-significant level.

3. The general appearance of the proposal is in keeping with the character of the neighborhood.

   The proposed general appearance of the expanded Nu Forest Products facility would be generally consistent with current Nu Forest uses on the site as well as being consistent with a similar use to the east on the All Coast Forest Products site. Therefore, the appearance of the expanded facility would be in keeping with the appearance of the neighborhood.

WHEREAS, the City Council of the City of Cloverdale gave legal notice of a public hearing on the Conditional Use Permit and Major Design Review applications; and

WHEREAS, the City Council held a public hearing on October 11, 2016, for the purpose of reviewing the application for a Conditional Use Permit and Major Design Review for the proposed expansion of the Nu Forest lumber mill and considered all written and verbal communication, including the staff report; and

WHEREAS, the applicant and members of the public were present to speak on the application.

WHEREAS, the City Council concurs with the findings made by the Planning Commission on September 6, 2016 for the Conditional Use Permit and Major Design Review required by Cloverdale Zoning Ordinance; and

NOW, THEREFORE BE IT RESOLVED the above recitals are true and correct and incorporated herein by reference; and

NOW, THEREFORE BE IT FURTHER RESOLVED that the City Council of the City of Cloverdale does hereby approval a Conditional Use Permit and Major Design Review for a lumber and planing mill consisting of up to 40,000 square feet of canopy space, lumber storage, parking areas, a water quality pond with solar collectors and other ancillary buildings on approximately 26.85 acres of land located on Assessors Parcels 116-200-004 & -055 to take effect when the zoning of the site to M-1 becomes effective pursuant to Government Code section 65859(a), with the further recommendation that the Conditional Use Permit and Major Design Review be made subject to the attached Conditions of Approval attached hereto in Exhibit A, which is incorporated herein by reference.

It is hereby certified that the foregoing Resolution No. 078-2016 was duly introduced and duly adopted by the City Council of the City of Cloverdale at its regular meeting held on October 11, 2016, by the following roll call vote: (Ayes-5; Noes-0)

AYES: Councilmember Palla, Councilmember Russell, Councilmember Cox, Vice Mayor Wolter, and Mayor Brigham

NOES: 0
ABSENT: 0
ABSTAIN: 0

APPROVED:

Mary Ann Brigham, Mayor

ATTESTED:

Linda Moore, Deputy City Clerk

Attached Exhibit:
Exhibit A – Nu Forest Conditions of Approval

EXHIBIT A - CONDITIONS OF APPROVAL
Nu Forest Products Inc,
280 Asti Road
APNs 116-200-04 & -055

Planning:

1. A Conditional Use Permit approval is granted to allow expansion and continued operation of a lumber mill, lumber storage and office complex at the site identified above. Development shall be in substantial conformance with the plans submitted to the City of Cloverdale dated 9/31/16. The applicant shall adhere to the Conditional Use Permit conditions of approval as set forth in this resolution. Any deviation from the conditions of approval requires Community Development Department or Planning Commission approval.

2. All conditions of this Conditional Use Permit are necessary to protect the general health, safety and welfare, and to minimize or eliminate adverse environmental effects of the project. If any condition of this permit is held to be invalid by a court, then the entire permit shall be invalid. The Planning Commission specifically declares that it would not have issued this permit unless all of the conditions herein are held as valid.

3. This permit shall be subject to revocation or modification by the Planning Commission if the Commission finds that there has been a) noncompliance with any of the foregoing conditions, or b) the Commission finds that the use for which this permit is hereby granted is so exercised as to be substantially detrimental to persons or property in the neighborhood of the use. Any such revocation shall be preceded by a public hearing noticed and heard pursuant to the City of Cloverdale Municipal Code.

4. This Conditional Use Permit shall expire, and become null and void, two years from the date of approval unless exercised through the commencement of the business operations or a written request for an extension of time is submitted to the Community Development Department prior to the expiration date and an extension is granted by the Planning Commission.

5. The approval of this permit shall be subject to the latest adopted ordinances, resolutions, policies and fees of the City of Cloverdale. Applicant shall be responsible for any and all costs associated with any required special inspections and environmental monitoring necessary for the project.

6. The applicant and property owner shall defend, indemnify, and hold harmless the City of Cloverdale and its agents, officers, and employees from any claim, action, or proceeding against the City of Cloverdale or its agents, officers, or employees to attack, set aside, void, or annul an approval of the City of Cloverdale or its advisory agency, appeal board, Planning Commission, City Council, Community Development Director, or any other department, committee, or agency of the City to the extent such actions are brought within the time period required by Government Code Section 66499.37 or other applicable law; provided, however, that the Developer's duty to so defend, indemnify,

and hold harmless shall be subject to the City's promptly notifying the applicant and property owner of any said claim, action, or proceeding and the City's full cooperation in the defense of such actions or proceedings.

7. The future on-site sawdust hopper shall be limited to a height of 65 feet above the final grade. The hopper is subject to City administrative design review regarding the location, design and exterior color of the hopper. Final approval may be referred to the Planning Commission, at the Director's discretion.

8. The location and design of the future propane fueling facility, solar collectors and refuse/recycling facilities shall be consistent with existing City of Cloverdale standards (Zoning Ordinance section 18.09.240 for solar collectors and Section 18.05.050 for lighting are subject to administrative design review by the City of Cloverdale. Final approval may be referred to the Planning Commission, at the Director's discretion.

9. Building and other necessary permits and approvals shall be obtained for the sawdust hopper, fueling facility and solar collector array prior to installation of these facilities.

10. Hours of lumber milling operation shall be limited to 6 am to 8 pm during spring and summer months and from 7 am to 5 pm during fall and winter months (October – March). Delivery and shipping of products, administrative office use and maintenance of equipment are not included in these hour limitations.

11. A final landscape plan shall be submitted for City of Cloverdale Community Development Department review and approval, prior to issuance of a building permit. The final permit shall include:

    a. All material shall be native plant material and identified as "drought tolerant." Appropriate decorative hardscaping may also be used in lieu of plantings.

    b. A minimum 150 square feet of landscape/hardscape material, or equivalent decorative material, shall be provided at the site's main entrance along the private access road.

12. Freestanding light poles shall be limited to a height of 25 feet above final grade. Light fixtures shall be directed in a downward direction to minimize spill over of light and glare from the site.

13. All exterior lights shall be turned off when the facility is closed, except for any security lighting required by the Cloverdale Police Department.

14. All permits and approvals granted by the City and all activities undertaken by the applicant on the Property shall implement and be subject to the following mitigation measures each of which shall be continuing conditions of approval for any and all uses made at the Property from and after the date of the approval of this CUP and Major Design Review. City costs associated with administering the MMRP shall be reimbursable to the City. Mitigation measures include:

    Mitigation Measure Aesthetics-1: Future grading and/or development on any parcels of land fronting on Asti Road in the annexation area shall be reviewed by a

California-certified arborist to identify methods to provide for maximum tree protection. These methods shall be reflected in final development plans. If mature trees cannot be protected, replacement native trees shall be planted on the site at a 2:1 ratio with adequate measures to ensure successful growth of the replacement trees. No Certificate of Occupancy shall be granted on any lot with required replacement tree plantings until tree replantings are reviewed and approved by the Cloverdale Community Development Department.

Mitigation Measure Aesthetics-2: Future development on parcels of land in the annexation area with substantial tree cover shall include measures identified by a California-certified arborist that ground disturbing activities will not significantly impact native trees on the lot. This shall include installation of exclusion fencing at locations approved by the arborist during project construction, provision of adequate irrigation of trees during construction, limitations on grading within exclusion areas and limitations of use (e.g. no storage of construction materials) under tree drip lines and other protection measures as may be recommended by the arborist.

Mitigation Measure Aesthetics-3: Future development on parcels of land fronting on Asti Road should be screened from view to the fullest extent feasible by landscape buffers or fences that limit views of new development from adjacent streets and roadways.

Mitigation Measure Aesthetics-4: The design of future structures on properties fronting on Asti Road shall exclude use of highly reflective materials, including but not limited to window glass, porch railings or other accent materials. Other exterior building materials shall be of neutral colors and tones to minimize visibility.

Mitigation Measure BIO-1: Prior to issuance of a grading and/or a building permit for parcels located on the east side of Asti Road, a site-specific biological reconnaissance shall be completed by a qualified biological firm as approved by the Cloverdale Community Development Department. The reconnaissance shall include a literature search and site inspection of the presence of special-status plants or wildlife. If no special-status species are identified, no further action is required. If special-status species are identified, the biologist shall recommend an action plan to ensure that any special-status species are fully protected. Protective actions may include first, avoiding the species during construction and post –construction or relocation of the species to an alternative suitable site. Any relocation actions shall occur in consultation with the California Department of Fish & Wildlife and/or the U.S. Fish & Wildlife Service. Necessary permits and approvals shall be obtained prior to relocation. No work on portions of the affected site may occur until clearances are granted by the City of Cloverdale, the California Department of Fish & Wildlife or the U. S. Fish & Wildlife Service, as appropriate.

Mitigation Measure BIO-2: Prior to issuance of a grading and/or a building permit for any parcel of land in the project area, a qualified wetland biologist as approved by the Cloverdale Community Development Department shall survey the site for the potential presence of wetlands, other waters or riparian habitat. If none is found, no further action shall be required. If wetlands, other waters or riparian habitat is identified, the wetland biologist shall prepare an action plan for the approval of the City of Cloverdale. The action plan shall identify specific steps to be taken to ensure that any future impacts to wetlands, other waters or riparian habitat is less-than-significant. These methods may include, but are not limited to, preparing a formal wetland delineation, permanent on-site protection of wetlands or off-site relocation of wetlands to an approved alternative site. If relocated off-site, the applicant or property owner shall obtain necessary permits and approvals from the Regional Water Quality Control Board, the California Department of Fish & Wildlife, the U. S. Army Corps of Engineers or other agencies. No construction near wetlands, other waters or riparian habitat areas may proceed until the approval action plan is approved and implemented.

Mitigation Measure GEO-1: Prior to issuance of a grading and/or a building permit for any parcel of land in the annexation area where no recent soils or geotechnical report has been prepared, a qualified California-registered engineering geologist or equivalent, as approved by the Cloverdale Community Development Department, shall prepare a report analyzing soil and geologic conditions on that particular property. The report shall include specific construction methods to be undertaken to reduce potential soil hazards to a less-than-significant level, including but not limited to landslides, ground failure and other potential hazards. The recommendations of the soils and geotechnical report shall be incorporated into all project grading and construction plans to ensure that future hazards from landsliding or similar hazards are reduced to a standard level of care.

Mitigation Measure HAZ-1: Prior to issuance of a demolition permit for any existing residence or other major structure in the annexation area (as determined by the Cloverdale Building Official), a licensed contractor shall determine the presence or absence of lead based paints or asbestos material on the site. If found in quantities at or above actionable levels as determined by the Cloverdale Building Department or Fire District, these materials shall be safely removed consistent with the Occupational Safety and Health Administration (OSHA) and other applicable standards and disposed of in an appropriate location. Necessary permits and approvals shall be secured from appropriate regulatory agencies.

Mitigation Measure Noise-1: Prior to issuance of a building permit for future residential and major industrial uses in the annexation area, a qualified acoustical consultant as approved by the City of Cloverdale shall conduct a site-specific analysis to ensure that future uses and site activities comply with City standards set forth in the Noise Element of the Cloverdale General Plan and other applicable local noise

regulations. Each analysis shall contain, at minimum, a summary of recent 24-hour noise measurements and specific measures to be incorporated into final building plans and specifications to reduce exterior and interior noise to City standards.

Mitigation Measure Noise-2: All future construction activities for properties in the annexation area shall be limited to the hours of 7 a.m. to 6 p.m. Monday through Saturdays. No construction shall occur on state or federal holidays. Exceptions to these restrictions may be granted by the Cloverdale Community Development Director for unusual or emergency conditions.

15. No City of Cloverdale permits or approvals shall be effective until the annexation to the City of Cloverdale is complete and the associated prezoning ordinance has taken legal effect in accordance with Government Code Section 65859(a).

16. Prior to issuance of a Certificate of Occupancy, the applicant shall have received approval of a Transportation Demand Management (TDM) program by the Cloverdale Community Development Department. The contents of the TDM may include but shall not be limited to implementation of an employee shuttle, encouragement of employee ridesharing and other techniques to reduce peak hour commute trips.

Public Works/Engineering:

Prior to issuance of a building permit, the following conditions shall be satisfied:

17. The applicant shall submit to the City of Cloverdale for review and approval, grading and utility plans prepared by a Registered Civil Engineer; and shall post sufficient surety guaranteeing the construction of any public improvements.

18. The applicant shall submit to the City of Cloverdale for review and approval, a detailed Soils Report certified by a Geotechnical Engineer registered in the State of California and qualified to perform geotechnical investigations. The report shall include a minimum of geotechnical investigation with regard to liquefaction, bearing capacity, compressibility, expansive soils, and seismic safety. The grading and foundation plans shall incorporate the recommendations of the approved Soils Report.

19. The applicant shall submit the applicable FIRM map and hydrology and hydraulic calculations with the improvement plans per current City and Sonoma County Water Agency Standards.

20. The applicant shall submit to the City of Cloverdale for review and approval, drainage plans and hydraulic calculations prepared by a Registered Civil Engineer; shall enter into an agreement with the City of Cloverdale to complete the improvement and shall post sufficient surety guaranteeing the construction of the improvements. The drainage plans and calculations shall indicate the following conditions:

    a. Post development runoff shall be limited to predevelopment levels. Post-development storm drain flows shall be limited to pre-development flows. Any facilities needed to accommodate this (i.e. oversized pipes, detention basins,

etc.) shall be installed within the development and be privately owned and maintained.

21. The applicant shall design the project to include storm water post-construction low-impact development (LID) best management practices (BMPs), CMC Section 16.10 et. seq. Refer to the City of Santa Rosa Low-Impact Development Manual and calculator for details. Both references are available online at:

    http://srcity.org/departments/utilities/stormwatercreeks/swpermit/Pages/swLIDtecManual.aspx

22. The applicant shall submit to the City of Cloverdale for review and approval, evidence of provisions for ongoing maintenance of LID BMPs.

23. The applicant shall indicate, in writing, to the City of Cloverdale the disposition of any water well(s) and any other water that may exist within the site. If any wells are proposed to be abandoned, or if they are abandoned and have not been properly sealed, they must be destroyed per Sonoma County Environmental Health Standards and/or Department of Health Services.

24. All haul routes shall be approved by the City Director of Public Works.

25. Handicap ramps and parking shall be provided as required by State of California Title 24.

<u>In conjunction with issuance of the Building Permit, the following conditions shall be satisfied:</u>

26. The applicant shall offer to dedicate to the City of Cloverdale for public use, all new sewer service mains constructed to serve the parcel(s) and located in the public right-of-way.

<u>During Construction, the following shall apply:</u>

27. That prior to any work being conducted within the public right-of-way, the applicant shall obtain an Encroachment Permit from the appropriate agency.

28. If any hazardous waste is encountered during the construction of this project, all work shall be immediately stopped and the Sonoma County Environmental Health Department, the Fire Department, the Police Department, and the City Inspector shall be notified immediately. Work shall not proceed until clearance has been issued by all of these agencies.

29. Prior to final preparation of the subgrade and placement of base materials, all underground utilities shall be installed and service connections stubbed out behind the sidewalk. Public utilities, Cable TV, sanitary sewers, and water lines, shall be installed in a manner which will not disturb the street pavement, curb, gutter and sidewalk, when future service connections or extensions are made.

30. The California Construction General Permit requires preparation of a storm water pollution prevention plan (SWPPP) for the project. SWPPP must be prepared by a State licensed QSD and implemented by a State licensed QSD or QSP.

31. If grading is to take place between October 15 and April 15, both temporary and permanent erosion control plans shall be submitted for review and approval along with the grading plan. Permanent erosion control measures shall include hydro- seeding of all graded slopes within 60 days of completion of grading.

32. The developer shall keep adjoining public streets free and clean of project dirt, mud, materials, and debris during the construction period, as is found necessary by the City Director of Public Works.

33. If any street damage occurs during construction of this project, applicant shall be responsible for repair at no cost to the City.

34. The applicant shall perform dust control at the project site to the City's satisfaction.

35. Where soil or geologic conditions encountered in grading operations are different from that anticipated in the soil and/or geologic investigation report, or where such conditions warrant changes to the recommendations contained in the original soil investigation, a revised soil or geologic report shall be submitted for approval by the City Engineer. It shall be accompanied by an engineering and geological opinion as to the safety of the site from hazards of land slippage, erosion, settlement, and seismic activity.

36. Prior to placing the final lift of asphalt, all public sanitary sewer lines shall be video inspected at the expense of the contractor/developer. All video tapes shall be submitted to the City. If any inadequacies are found, they shall be repaired prior to the placement of the final lift of asphalt.

37. Work hours are limited to Monday through Friday from 7:00 a.m. to dark, but in no case shall work continue later than 7:00 p.m. Work hours on Saturdays shall be from 8:00 a.m. to 5:00 p.m. No work shall occur on Sundays. Inspection will be available Monday through Thursday from 1:00 p.m. to 4:00 p.m. Contractors shall schedule inspections 48 hours in advance by calling the Building Department at (707) 894-1725.

38. Prior to acceptance of public improvements and bond exoneration, the following conditions shall be satisfied:

38. Sufficient surety (maintenance bond) guaranteeing public improvements constructed for the proposed project for a period of one year shall be provided by the applicant.

40. If substantial changes in the size, alignment, grades, etc. during construction, original "as-built" plans on the standard size sheets will be certified by the Civil Engineer and returned to the City Engineering Department.

<u>Other special conditions:</u>

STREETS

41. If any damage occurs to existing City streets during construction, the contractor/developer shall be responsible for repair at no cost to the City. All repairs shall meet current City Standards.

STORM DRAIN

42. Lot-to-lot drainage will not be permitted without adequate easements. Drainage facilities constructed for the proposed project shall be designed to intercept any drainage and route it into an approved storm drain system.

43. All storm drain systems will be sized for the 10-year storm event, except for overland 100-year overflows. 100-year overflows shall be provided between the necessary lots and permanent structures shall be prohibited from being built within the overflow area. No regarding of overflows will be allowed. 100-year overflow easement shall be shown on the final map.

GRADING

44. Erosion control plan must be submitted with the grading plan. All measures must be implemented no later than Oct. 1of any given year.

45. Dust control must be maintained to the City's satisfaction for the duration of the project.

WATER

46. Any existing valve or newly installed valve in the water system shall not be turned by the contractor. All valves connected to the public system must be operated by City Water Department personnel. Applicant shall include this condition on the improvement plans.

47. Testing of all water improvements must be observed by City water department.

48. All on-site water improvements shall be privately owned and privately maintained. Backflow devices shall be installed as close as practical to the connection points with the City water mains.

49. The applicant shall submit with the improvement plans a water analysis demonstrating that the size of service lateral(s) proposed for the project are adequate for fire protection. Plans and calculations shall be submitted to both the City and Cloverdale Fire Protection District (CFPD).

50. Water lines for the project shall connect to the existing 16-inch water main in Asti Road.

51. Water meter(s) shall be located in the public right-of-way.

52. Fire hydrant requirement and placement shall be per the Cloverdale Fire Protection District (CFPD). If any new hydrants are required on the site, they shall be privately owned and maintained.

SEWER

53. The proposed development may require the construction of a private force main. All private force mains shall empty into a private manhole and gravity feed into the public portion of the sewer system. The private system shall be considered private until its entrance into the City's sewer main.

54. All force main sewer line lateral(s) serving the parcel(s) shall be privately owned and privately maintained. The maintenance of these lines shall be specified in either a maintenance agreement recorded with each parcel or in the CC&R's.

55. If any non-gravity systems require pumps to lift the sewage from the lot into the City's main, the design of the pump stations shall be submitted to the City for review and approval. Improvement plans shall include volume and flow calculations, pump sizes, etc.

56. Sewer stub(s) shall be provided where the new sewer lateral enters the public right-of-way on Asti Road to permit future connection from developments located north of the Nu Forest parcel(s).

57. New sewer segment constructed under Asti Road shall be sized to accommodate anticipated future development on parcels located north of the proposed project.

58. The City shall consider the formation of an Area of Benefit for any benefiting properties to pay back costs associated with the oversizing costs associated with construction of the new gravity sewer main under Asti Road. Any reimbursements shall be in accordance with the City's policies.

Building Department:

59. The applicant shall submit a plot plan with setbacks from property line and adjacent structures

60. The plot plan shall identify the occupancy group/ construction type for proposed structures.

61. A foundation plan with structural details shall be submitted to the Cloverdale Building Department.

62. A roof framing plan with structural details shall be submitted to the Cloverdale Building Department.

63. Submitted plans shall include building elevations, structural sections and ADA accessibility details (i.e., pedestrian parking path of travel and other accommodations).

Fire District:

64. Fire Department access and water supply is required per Chapter 5 of the adopted CA Fire Code.

65. Provide premise identification on the building and at the connection of private drives to public streets for the benefit of first responders.

66. New buildings shall be equipped with automatic fire sprinklers per Chapter 9 of the adopted CA Fire Code.

67. A water supply test (hydrant flow) shall be performed on nearest available fire hydrant to determine the capability of the water system to supply fire protection water for this project.

68. A fire flow analysis of the proposed building (total build out) is needed to determine the project demand.
69. The on-site fire protection water supply system shall comply with NFPA 24 "Private Fire Service Mains"
70. The access road shall comply with Chapter 5 of the adopted CA Fire Code and a fire department "Knox" padlock shall be provided on gates across fire department access roads.
71. The relocated LPG tank shall comply with Chapter 61 of the adopted CA Fire Code.
72. The facility shall comply with Chapter 28 of the adopted CA Fire code "Lumber Yards & Woodworking Facilities."
73. The fueling station shall comply with the adopted CA Fire Code Chapter 23 on "Motor Vehicle (fleet) Fuel Dispensing" and Chapter 57 for "Flammable Liquids" and Chapter 27 for "Hazardous Materials."
74. Ground mount or solar canopy photovoltaic installations shall comply with Section 605.11 of the adopted CA Fire Code.
75. Permits Required for:
    a. Private fire main installation
    b. Automatic fire sprinkler installation
    c. Fire alarm (sprinkler monitoring) installation
    d. Liquid Petroleum Gas installation
    e. Lumber Yards & Woodworking
    f. Above-ground fuel storage & fuel dispensing

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ATTACHMENT 9

CITY OF CLOVERDALE
CITY COUNCIL
ORDINANCE NO. 710- 2016

AN ORDINANCE OF THE CITY OF CLOVERDALE AMENDING TITLE 18, "ZONING," OF THE CITY MUNICIPAL CODE, PREZONING CERTAIN PROPERTIES CONTAINING APPROXIMATELY 42.5 ACRES OF LAND GENERALLY LOCATED EAST OF ASTI ROAD, WEST OF THE RUSSIAN RIVER AND NORTH OF THE CITY OF CLOVERDALE CORPORATION YARD (APNs 116-260-004, -030, -033, -045, -046 -050 & -055) TO A COMBINATION OF RURAL RESIDENTIAL (RR), GENERAL INDUSTRIAL (M-1) AND PUBLIC INSTITUTIONAL (P-I) DISTRICTS AND MAKING CERTAIN CHANGES TO THE STANDARDS OF THE GENERAL INDUSTRIAL ZONING DISTRICT TO ALLOW LIVE-WORK UNITS WITH THE ISSUANCE OF A CONDITIONAL USE PERMIT

THE CITY COUNCIL OF THE CITY OF CLOVERDALE HEREBY ORDAINS AS FOLLOWS:

SECTION 1. RECITALS

A. The owner of the Nu Forest Products property (APNs 116-260-004 & -055), containing approximately 26.85 acres of land located in unincorporated Sonoma County territory has requested annexation to the City of Cloverdale.

B. As required by California State Law, California Government Code Sec. 56375 (a) (7), all requests for annexation must not create "county islands" which would not promote the local or efficient expansion of communities in California. In this instance, other properties lying west of the Nu Forest Products land and east of the current boundary of the City of Cloverdale to ensure that a logical municipal boundary is created. Smaller properties included in the proposed annexation in addition to the Nu Forest ownership include the following:

- APN 116-260-033, Cerasoli, 0.45 acre (proposed M-1 zoning);
- APN 116-260-030, Schwartlzler Fam. Trust, 0.73 acre (proposed RR zoning);
- APN 116-260-050, Matovich Trust, 6.3 acres (proposed RR zoning).
- APN 116-260-046, Poustinchian, 4.07 acres (proposed M-1 zoning);
- APN 116-260-045, PG &E, 4.05 acres (proposed P-I zoning); and
- APNs 116-260-004 &-055, Nu Forest, 26.85 acres (proposed M-1 zoning).

C. As mandated by state law and Sonoma County Local Agency Formation Commission (LAFCO) requirements, the City of Cloverdale is obligated to prezone the affected properties identified above prior to annexation. Proposed prezoning includes

classifying individual properties within the annexation area to a combination of Rural Residential (RR), General Industrial (M-1) and Public Institutional (P-I) districts as summarized above and as shown on Exhibit 1, which is hereby incorporated by reference to this ordinance.

D. The ordinance also includes revisions to Chapter 18.06 of the Cloverdale Municipal Ordinance conditionally permitting "live-work units" in the M-1 District, amending Chapter 18.09 of the Cloverdale Municipal Code to provide development standards for live-work land uses and amending Chapter 18.14 of the Cloverdale Municipal Code to include a definition of the term "live-work" as summarized and shown on Exhibit 2, which is hereby incorporated by reference to this ordinance

E. The California Environmental Quality Act ("CEQA"), together with the State guidelines and City environmental regulations, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared. To comply with CEQA, the City prepared a Mitigated Negative Declaration for this project with the finding that with adherence to mitigation measures included in the Initial Study for the project, there would be no significant or potentially significant impacts associated with the project.

F. The City Council has makes the following findings related to (1) the prezoning the properties, described as County Assessor's Parcel Numbers (APNs) 116-260-033, 116-260-046, 116-260-004 & 116-260-055 to the General Industrial (M-1) District; APNs 116-260-030 and 116-260-050 to the Rural Residential (RR) District; and APN 116-260-045 to the Public-Institutional (P-I) District; (2) amending Chapter 18.06 of the Municipal Code to add a "Live-Work units" as a conditionally approved use in the M-1 District; (3) amending Chapter 18.09 of the Municipal Code to provide development standards for live-work units in the M-1 District; and (4) amending Chapter 18.14 of the Municipal Code to add a definition of "live-work in the Municipal Code:

1. The proposed prezoning is consistent with the goals, objectives, policies and programs of the Cloverdale General Plan and is necessary and desirable to implement the provisions of the General Plan.

    a. *The proposed prezoning of properties within the Nu Forest annexation area, as described above and shown on Exhibit 1, is consistent with the amended Land Use Map of the Cloverdale General Plan.*

    b. *Proposed development standards to be added to the M-1 District will expand opportunities for future employment opportunities in the community as well as potentially increasing available places for artists in the community to maximize studio and living spaces.*

2. The proposed prezoning will not adversely affect the public health, safety and welfare or result in an illogical land use pattern.

    a. *The Initial Study/Mitigated Negative Declaration prepared for this project has evaluated the public health, safety and welfare issue, and mitigation measures included in the Initial Study will eliminate or mitigate all such impacts to a less than significant level.*

    b. *The land use pattern proposed for the annexation is generally consistent with existing development patterns within the annexation area and with existing County of Sonoma zoning as applied to these properties.*

3. The proposed prezoning is consistent with the purpose and intent of Chapter 18.03.080.D of the Cloverdale Municipal Code, as follows.

    a. *The proposed prezoning has been requested prior to annexation of the properties requested for annexation to the City of Cloverdale and will not become effective until the annexation process is complete.*

4. The proposed prezoning is consistent with the purpose and intent of Chapter 18.03.080.E of the Cloverdale Municipal Code, as follows.

    a. *The proposed prezoning is consistent with the Cloverdale General Plan, as amended by this project.*

    b. *The proposed project is consistent with all other provisions of the Cloverdale Municipal Code, as revised by this project to include live-work units as a conditionally permitted use in the M-1 zoning district.*

    c. *The proposed prezoning will not be detrimental to the public health, safety or welfare to the use of land in the annexation area or adjacent lands as documented by finding #2, above.*

    d. *The properties proposed for prezoning are suitable for the proposed used that will be allowed by the City of Cloverdale zoning districts with the application of certain CEQA mitigation measures contained in the Initial Study/Mitigated Negative Declaration prepared for this project.*

G. On October 11, 2016, the City Council held a properly noticed public hearing regarding this Zoning Ordinance Amendment and considered all comments received in writing and all testimony received at the public hearing.

SECTION 1. PURPOSE AND INTENT

The purpose and intent of these changes is to amend the City of Cloverdale Zoning Map (18.01.060 (b) CMC) to prezone the approximately 42.5-acre area lying east of Asti Road, south of the current City limits in this portion of Cloverdale, generally west of the Russian River and north of the City's wastewater treatment plant and corporation yard to General Industrial (M-1), Rural Residential (RR) and Public Institutional (P-I) Districts as shown on Exhibit 1, which prezoning will become effective when the zoning of the sites becomes effective upon completion of the annexation process pursuant to Government Code section 65859(a) and to amend the M-1 District Zoning Ordinance text to add a "live-work units" as a conditionally permitted use in the M-1 District, adding appropriate definitions to the Municipal Code and development standards as shown for this land use on Exhibit 2.

SECTION 2. FINDINGS

The above recitals are hereby declared to be true and correct and hereby incorporated herein as the required Findings of the City Council of the City of Cloverdale.

SECTION 3. AMENDMENTS TO TITLE 18 OF THE CLOVERDALE MUNICIPAL CODE

Sections 18.14.030, Definitions, is amended as set forth in Exhibit 2, Section 18.060.30, is amended by revising Table 18.06.030-A to conditionally allow live-work units in the M-1 District and Chapter 18.090 is amended to establish Section 18.090.300 - Development Standards for live-work units, as set forth in Exhibit 2.

SECTION 4. RECLASSIFIED PROPERTIES

The City of Cloverdale Zoning Map (18.01.060 (b) CMC) is hereby amended so as to zone individual properties located east of Asti Road, south of current City boundaries, generally west of the Russian River and north of the City of Cloverdale Corporation Yard and Wastewater Treatment Plant General Industrial (M-1), Rural Residential (RR) and Public Institutional (P-I) zoning districts, each property to be zoned as shown in Exhibit 1. Pursuant to the provisions of Government Code section 65859, the zoning established for the properties by this ordinance shall become effective at the same time that the annexation becomes effective.

SECTION 4. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or

phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE

This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Council Members voting for or against the same, in a newspaper of general circulation published in the County of Sonoma, State of California. Said zoning shall not be deemed effective until completion of the annexation pursuant to Government Code Section 65859(a).

I hereby certify that the foregoing ordinance was introduced before the City Council of the City of Cloverdale at a regular meeting thereof on the 11th day of October 2016 and duly and regularly adopted by the City at a regular meeting thereof held on October 25, 2016, by the following vote:

PASSED, APPROVED AND ADOPTED this 25 day of October 2016, by the following roll call vote: Ayes – X; Noes- X

AYES:
NOES:
ABSENT:
ABSTAIN:

Approved: Attested:

_____ _____

Mary Ann Brigham, Mayor Linda Moore, Deputy City Clerk

Exhibits Attached:

Exhibit 1 – Prezoning Districts
Exhibit 2 – Section 18.090.300 of the Municipal Code establishing development standards for live-work units

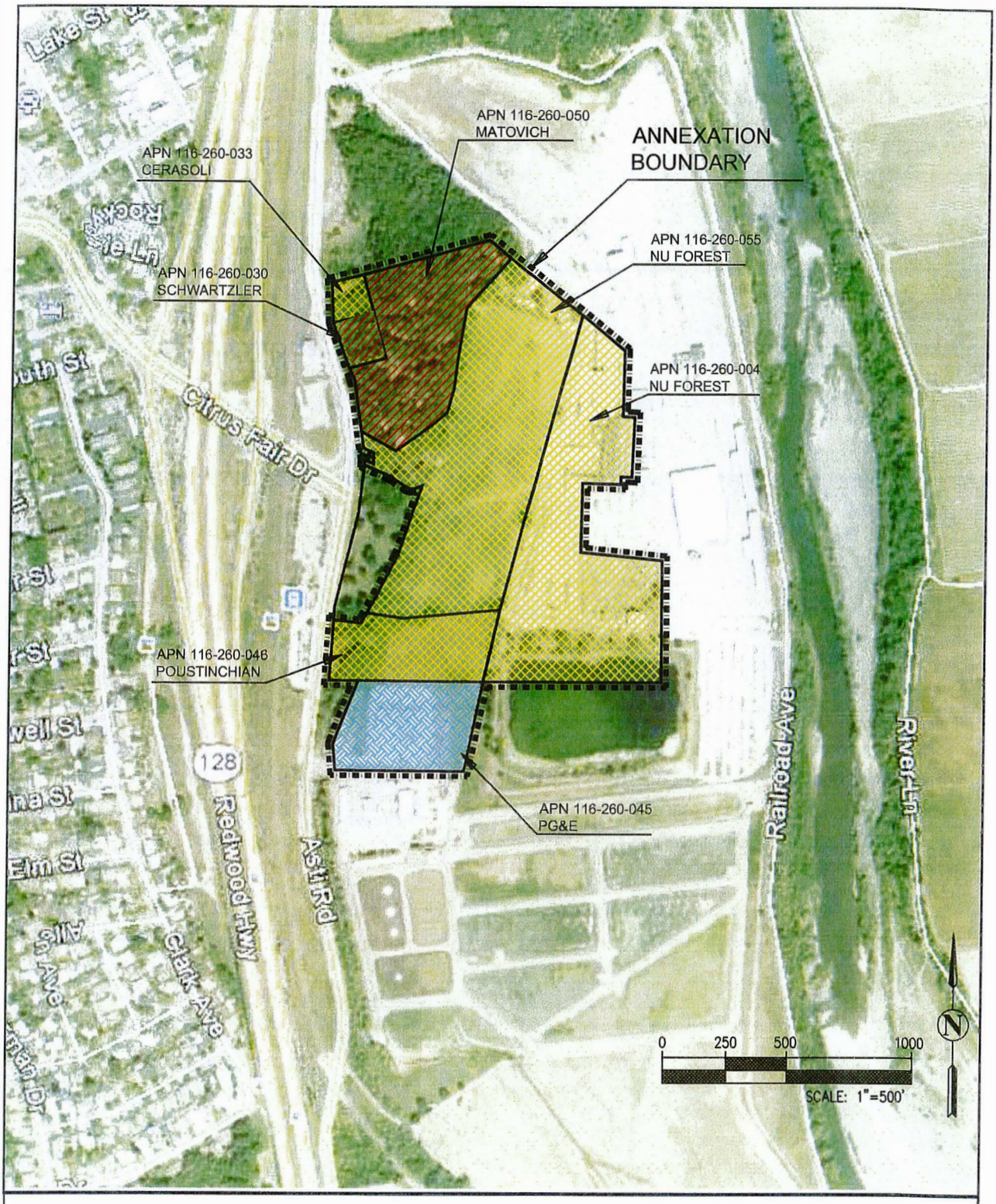

Exhibit 1 -
Prezoning Districts

Legend:

Proposed Use

GI – General Industrial

RR – Rural Residential

P–I – Public Institutional

Exhibit 2 - Nu Forest Prezoning Ordinance No. 710-2016

Definitions. Section 18.14.030 of the Cloverdale Municipal Codes is amended as follows to add a definition for "live-work" uses as follows:

> **"Live-work unit"** or **"live-work space"** means a building or spaces within a building used jointly for commercial and residential purposes where the residential use of the space is secondary or accessory to the primary use as a place of work.
>
> **"Live-work unit"** means a structure or portion of a structure:
> (a) That combines a commercial or manufacturing activity allowed in the zone with a residential living space for the owner of the commercial or manufacturing business, or the owner's employee, and that person's household;
> (b) Where the resident owner or employee of the business is responsible for the commercial or manufacturing activity performed; and
> (c) Where the commercial or manufacturing activity conducted takes place subject to a valid business license and applicable zoning permit(s) associated with the premises.

Uses Permitted: Section 18.060.30 is amended by revising Table 18.06.030-A, as follows:

> "Add Live-Work units as a conditionally permitted use (C) in the M-1 District."

Land Uses	**M-1**	**M-P**	**Reference**
Accessory Uses	M-1	M-P	Reference
Work-Live Unit	C	NP	18.090.300

Development Standards. Chapter 18.090 is hereby amended by adding Section 18.090.300 – Special Development Standards for Live-Work Units.

> "Live-work units may be allowed on property zoned as M-1 (General Industrial) subject to the following minimum standards to minimize land use interface impacts. Additional standards may be imposed through the conditional use permit process.
>
> 1. Maximum Lot Coverage. Maximum Lot Coverage shall be sixty (60) percent of a lot for live-work uses, which shall include both residential and work (industrial) components.
>
> 2. Residential Area Requirements. A maximum of 50 percent of a live-work total square footage shall be devoted to residential use.
>
> 3. Location of living and working space. Living and working spaces on individual lots may either be integrated or two separate structures. Proper

separation shall be provided as required by the California Building Code. Live/Work units containing 2,000 square feet of gross square feet or greater shall have a minimum of two exits as defined by the Uniform Building Code.

4. Occupancy. A live-work unit shall be occupied and used by the operator of the business on the site or at least one member of a household shall be the business operator. No portion of a live-work unit shall be rented or sold separately. Up to two persons may be employed within a live-work business who do not live on the site, unless more restrictive requirements are imposed as a condition of the conditional use permit issued pursuant to Section 18.03.110 of the Cloverdale Municipal Code.

5. Parking. Parking shall be provided on a live-work site based on the parking requirements in Table 18.11.050-A of the Cloverdale Municipal Code. Parking requirements for uses not specifically set forth in Table 18.11.050-A shall be based upon similar uses, or evidence of actual demand bases on traffic engineering or planning data or as approved through the conditional use permit process.

6. Building Sizes, Height and Setbacks. Structures constructed for the purpose of housing live-work occupancies shall conform to all building requirements of the M-1 zoning district.

7. Required Findings. Approval of a conditional use permit for a live-work unit shall require the Planning Commission to make the following findings in addition to the normally required findings as set forth in Section 18.03.110 (D) of the Cloverdale Municipal Code.

    a. The proposed residential use of a property does not detract from the primary industrial use of the property or interrupt the continuity of businesses n an industrial area.

CITY OF CLOVERDALE

City Council/Successor Agency Agenda Item Summary

Agenda Item:	14
Meeting Date:	October 25, 2016

Agenda Section	**Staff Contact**
Subcommittees	Joanne Cavallari, Finance Manager

Agenda Item Title

Adoption of Resolution No. 084-2016, of the City Council of the City of Cloverdale approving a revised Reserve Policy and General Fund Surplus Policy.

Summary

In January of 2005 the City Council adopted a Reserve Policy which provided for unappropriated fund balance or working capital reserve balances of 25% of expenditures in the General, Water, and Sewer Funds.

In December of 2011, by motion order, the City revised its policy to comply with the Governmental Accounting Standards Board (GASB) Statement #54, which requires that General Fund balances be categorized into five components identifying any constraints on the purposes for which the funds can be spent. Those categories are:

- Non-spendable Funds (non-cash items such as prepaid expenses and inventories)
- Restricted Funds (externally enforceable legal restrictions)
- Committed Funds (limitations imposed by the City Council)
- Assigned Funds (intended to provide a source of funds for various needs)
- Unassigned Funds (net resources in excess of what is classified in one of the other categories)

The total of the amount in the last three categories (where the only constraint on spending, if any, is imposed by the government itself) is termed unrestricted (unappropriated) fund balance.

At the 16/17 Budget Workshop in May, staff projected a General Fund surplus at the end of FY 15/16. The City Council directed that 30% of any surplus, up to $100,000, be deposited into a new strategic reserve to be used only with the approval of the City Council.

It is important to remember that the intent of reserves is to address *unanticipated, one-time needs*. Changing economic conditions and ongoing funding requirements should be addressed through the budget cycle rather than through the use of reserves/fund balance.

Use of any reserve will require repayment to be determined by the City Council at the time of usage approval, with a recommended target repayment period of no more than three years.

To avoid any conflict with existing policy, and to provide clear direction to staff, we have developed the attached draft Reserve Policy and General Fund Surplus Policy.

Under the revised Reserve Policy, the 25% target working capital reserve set by the 2006 policy has been divided into two committed reserve funds; the new strategic reserve, or Emergency Reserve Fund, and the Contingency Reserve Fund. The target amount for the Contingency was set at 17%, based on recommendations from the Government Finance Officers Association (GFOA). The target for the Emergency Reserve was set at 8%, the difference between the 25% set in 2006, and the 17% recommended by GFOA.

One important component of a reserve policy is to define the conditions that warrant the use of the reserve funds. In the attached policy, the new Emergency Reserve Fund would be used, upon approval of the City Council, for unforeseen and non-recurring events that pose a safety risk to staff or the community. The 8% target, when achieved, would equal about $465,000.

The Contingency Reserve fund would be used for cash flow requirements, legal requirements as a part of debt financing, and economic uncertainties, including downturns in the local or national economy. At present spending levels, the 17% Contingency Reserve Fund target is about $983,000.

The other reserves that were established in 2006 have been included in this revised policy. Also attached for the Council's consideration is a General Fund Surplus Policy. This policy will provide guidance to staff regarding the order in which General Fund surplus is allocated to the reserves.

Options

1. Adopt the attached policies, with or without revision
2. Provide direction to staff and revise for adoption at a future meeting
3. Maintain present policy adopted in 2006

Budget/Financial Impact

None.

Recommended Council Action

Adopt Resolution No. 084-2016, of the City Council of the City Of Cloverdale approving a revised Reserve Policy and General Fund Surplus Policy for the City of Cloverdale.

Attachments:

1. Resolution No. 084-2016, approving a revised Reserve Policy and General Fund Surplus Policy for the City of Cloverdale
2. Revised Reserve Policy - Exhibit A
3. General Fund Surplus Policy - Exhibit B
4. Present policy adopted by Resolution No. 007-2005
5. GASB 54 Policy adopted by motion order in 2011

CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 084--2016

A RESOLUTION OF THE CITY OF CLOVERDALE CITY COUNCIL ADOPTING A REVISED RESERVES POLICY AND A GENERAL FUND SURPLUS POLICY

WHEREAS, the City of Cloverdale desires to establish and follow written fiscal and budgetary policies; and

WHEREAS, the City Council of the City of Cloverdale approved a reserve policy in October of 2000; and

WHEREAS, the Reserve Policy was revised in 2005 and 2011; and

WHEREAS, staff met with the City Council Administration, Finance, and Police Subcommittee and developed the attached Reserve Policy and General Fund Surplus Policy, and

WHEREAS, the Subcommittee directed staff to present the attached Reserve Policy and General Fund Surplus Policy to the City Council for consideration.

NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CLOVERDALE hereby adopts the Reserve Policy attached as Exhibit "A" and the General Fund Surplus Policy attached as Exhibit "B" and hereby made a part of this resolution.

Resolution No. 084-2016 was duly adopted on this the 25th day of October 2016, by the following roll call vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Approved: Attested:

_____ _____
Mary Ann Brigham, Mayor Linda Moore, Deputy City Clerk

EXHIBIT A

CITY OF
CLOVERDALE

RESERVE POLICY

The purpose of this policy is to provide guidance on maintaining reasonable levels of reserves in the City's General, Water, and Sewer Funds.

The General Fund Balance in the City's financial statements is comprised of five categories:

- Non-spendable Funds *(non-cash items such as prepaid expenses and inventories)*
- Restricted Funds *(externally enforceable legal restrictions)*
- Committed Funds *(limitations imposed by the City Council)*
- Assigned Funds *(intended to provide a source of funds for various needs)*
- Unassigned Funds *(net resources in excess of what is classified in one of the other categories)*

This policy incorporates all previous City Council policies regarding General Fund reserves and the requirements of Governmental Accounting Standards Board (GASB) Statement No. 54. It will help guide current and future allocation levels to various reserve categories in the General Fund by setting out specific target amounts for the Committed and Assigned categories of the General Fund balance.

Committed Fund Balances

Emergency Reserve Fund: The City of Cloverdale shall maintain an Emergency Reserve Fund for any of the unforeseen and non-recurring events listed below that create significant financial difficulty for the City:

a. Sudden and unexpected significant facility or infrastructure failures that pose a safety risk to staff or the community;

b. Declaration of a State of Emergency by the Governor;

c. Unanticipated expenditures or reduction in revenues as a result of legislative changes from State/Federal governments in the current fiscal year;

d. Acts of Terrorism declared by the Governor or the President of the United States;

e. Acts of Nature which are infrequent in occurrence;

f. Other catastrophic events which are infrequent in occurrence.

The target maximum reserve amount to be carried in the Emergency Reserve account shall be equal 8% of annual General Fund expenditures. For purposes of this section, expenditures shall include transfers out but not anticipated litigation expenses, reimbursed developer expenses or routine capital outlays which are all discretionary. Emergency Reserve Funds shall only be used upon approval of the City Council by a simple majority vote.

DRAFT

Contingency Reserve Fund: The City of Cloverdale shall maintain a Contingency Reserve Fund equal to 17% of expenditures in the General Fund. For purposes of this section, expenditures shall include transfers out but not anticipated litigation expenses, reimbursed developer expenses or routine capital outlays which are all discretionary. Reserves of 17% are considered by to be a good level at which to maintain the City's credit worthiness, based on widely used and accepted best practices. The purposed of these reserves is to provide for:

a. Cash flow requirements
b. Legal requirements as part of debt financing
c. Economic uncertainties including downturns in the local or national economy

Assigned Fund Balances

Equipment Replacement Fund: The City of Cloverdale shall maintain a General Fund equipment replacement reserve to provide for the replacement of vehicles, heavy equipment, computer equipment, and other capital equipment items costing greater than $10,000. This replacement reserve will also be established in the Water and Sewer funds.

Vehicle Replacement Reserves: The City of Cloverdale shall maintain a General Fund vehicle replacement reserve to provide sufficient replacement funding for vehicle capital items costing greater than $10,000. This replacement reserve will also be established in the Water and Sewer funds.

Facility Replacement Reserves: The City of Cloverdale shall maintain a General Fund facility replacement reserve to provide sufficient replacement funding for facility capital improvements costing greater than $10,000. This replacement reserve will also be established in the Water and Sewer funds.

Compensated Absences Reserves: The City of Cloverdale shall maintain a General Fund compensated absences reserve equal to 10% of the estimated non-current employee compensated absences payable. Additional increments of 10% will be set aside each year until 50% of the non-current compensated balance is reached.

DRAFT

EXHIBIT B

CITY OF
CLOVERDALE

GENERAL FUND SURPLUS POLICY

It is in the best interest of the citizens of the City of Cloverdale who rely upon the City for public access and services that the City should prioritize allocation of General Fund resources towards critical, core municipal services that are in alignment with the City Council's goals. Therefore, the City Council shall authorize the establishment of the General Fund Surplus Policy to broadly define how future surpluses should be dedicated.

This policy shall be defined by the General Fund's Fiscal Year audited, final results and shall begin with Fiscal Year ended June 30, 2016. Allocation of any annual General Fund surplus shall be made in the following priority order:

1) 30% of any surplus, up to $100,000 per year, shall be set aside into the Emergency Reserve Fund, up to the target level of 8% of annual General Fund expenditures.

2) Any remaining General Fund surpluses shall first be used to maintain the Contingency Reserve, up to the target level of 17% of annual General Fund expenditures.

3) Any remaining surplus in excess of the amounts stated above shall be allocated as follows:

a. Equipment Replacement Reserves. The annual contribution to these reserves will be equal to the annual depreciation expense plus 5% to provide sufficient replacement funding for equipment capital items costing greater than $10,000.

b. Vehicle Replacement Reserves. The annual contribution to these reserves will be equal to the annual depreciation expense plus 5% to provide sufficient replacement funding for vehicle capital items costing greater than $10,000.

c. Facility Replacement Reserves. The annual contribution to these reserves will be equal to the annual depreciation expense plus 5% to provide sufficient replacement funding for facility capital improvements costing greater than $10,000.

d. Compensated Absences Reserve. The annual contribution to these reserves will be equal to 10% of the estimated non-current employee compensated absences payable. Additional increments of 10% will be set aside each year until 50% of the non-current compensated balance is reached.

DRAFT

CITY OF CLOVERDALE
CITY COUNCIL
RESOLUTION NO. 7-2005

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE APPROVING A REVISION OF THE RESERVE POLICY

WHEREAS, the City Council approved a reserve policy in October 2000; and

WHEREAS, staff desired to have more comprehensive policy direction; and

WHEREAS, staff met with the City Council Finance Sub-Committee, discussed the current needs of the City and in October 2004, presented a revised reserve policy; and

WHEREAS, the City Council Finance Sub-Committee directed staff to present the revised reserve policy to the full City Council for consideration; and

NOW, THEREFORE BE IT RESOLVED THAT the City Council hereby approve the revised reserve policy as presented in Attachment 1.

It is hereby certified that the foregoing resolution No. 7-2005 of the City Council was duly introduced and duly adopted by the City Council of the City of Cloverdale at its regular meeting held on the 25th day of January 2005, by the following roll call vote: (4-0)

Ayes in favor: Councilmembers Raymond, Wolter, Jehn, and Mayor Pardini-Plass.
Noes: None
Absent: Councilmember Brigham
Abstain: None

Approved:

Gail C. Pardini-Plass

Gail Pardini-Plass, Mayor

Attest:

Michele P. Winterbottom, City Clerk

City of Cloverdale
Reserve Policy

Contingency Reserve

The City of Cloverdale shall maintain unappropriated fund or working capital reserve balances equal to 25% of expenditures in the General, Water, and Sewer Funds. For purposes of this section, expenditures shall include transfers out but not anticipated litigation expenses, reimbursed developer expenses or routine capital outlays which are all discretionary. Reserves of 25% are considered by staff to be a good level at which to maintain the City's credit worthiness. To allow time to accumulate sufficient resources and manage the budget in these key funds, it is recommended that implementation of reserve levels be phased in as follows: 15% in fiscal years 2006 and 2007; 20% in fiscal years 2008 and 2009; and 25% thereafter.

The purpose of these reserves is to provide for:

- cash flow requirements
- economic uncertainties including downturns in the local or national economy
- legal requirements as part of debt financing
- unforeseen catastrophic costs

Reserves will be reviewed every year during the budget process. If reserves fall below implementation schedule targets, a plan will be presented to increase the reserves to the target level. This plan may be accomplished over a multiple year period.

Equipment Replacement Funds

The City of Cloverdale shall maintain a general fund equipment replacement reserve to provide for the replacement of vehicles, heavy equipment, computer equipment, and other capital equipment items costing greater than $10,000. This replacement reserve will also be established in the water and sewer funds.

The annual contribution to these reserves will be equal to the annual depreciation expense plus five percent in order to provide sufficient replacement funding. The accumulated funds will be credited with interest earnings at the average annual Local Agency Investment Fund (LAIF) rate at the close of each year. Funding for this reserve will begin in fiscal year 2006-07. In order to accumulate resources in this reserve, expenditures will not be authorized until fiscal year 2009-10 without specific overriding needs as determined by the City Council. Reserves will be capped at 110% of accumulated depreciation of qualifying items.

Other Reserves and Designations

Beginning in fiscal year 2005-06, the City will maintain a designated balance in the general fund equal to 10% of the estimated non-current portion of employee compensated absences payable. Additional increments of 10% will be set aside each year until 50% of the non-current compensated balance is reached. This will set aside funding for a liability that is otherwise not accounted for in the General Fund.

AGENDA ITEM

January 25, 2005

APPROVED BY:

DATE: 1/26/05

AGENDA ITEM #: E.1

FILE TITLE:

TO: Jennifer Murray, City Manager

FROM: Barry Whitley, Finance Director

SUBJECT: Revising the City Financial Reserve Policy

RECOMMENDATION:

The City Council, by resolution, approve the revised reserve policy

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BACKGROUND:

In October 2000, the City Council appointed a Finance Advisory Committee to review current City policies and to recommend new financial policies to strengthen and improve the City's finances. The Committee consisted of three members of the general public and two members of the City Council. In March 2001, the Finance Advisory Committee provided their final report which consisted of nine areas which included the reserve policy. The report was subsequently approved by the City Council. The approved reserve policy was:

Establish Cash Reserve contingency fund equal to 5% of the annual operating budget

Staff reviewed this reserve policy with the City Council Finance Sub-Committee over several meetings in an effort to obtain more comprehensive policy direction. In October 2004, after further discussions with the Sub-Committee, staff presented a draft of a revised reserve policy (See Attachment 1) which included contingency reserves, equipment replacement fund reserves, and other reserves and designations. The Finance Sub-Committee reviewed the draft reserve policy, discussed it in detail, and agreed to its presentation at the City Council meeting in January for Council's consideration.

FINANCIAL CONSIDERATIONS:

This policy is designed to improve the financial condition of the City.

NOTIFICATION:

None

ALTERNATE ACTIONS:

1. Do not revise the reserve policy.
2. Change the draft policy reserve requirements.

RECOMMENDATION:

The City Council, by resolution, approve the revised reserve policy.

Respectfully submitted,

Barry K. Whitley

Barry Whitley
Finance Director

Attachments:

1. Reserve Policy
2. Resolution

CITY OF
CLOVERDALE

FUND BALANCE POLICY

This policy establishes the procedures for reporting, within the annual financial statements, unrestricted fund balance (comprised of Committed, Assigned, and Unassigned categories) within the City's governmental funds: General Fund, Special Revenue Funds, Debt Service Fund, and Capital Projects Funds.

Definitions

Fund balance is the difference between the assets and liabilities reported in the City's governmental funds. There are generally limitations on the purpose for which all or a portion of the resources of a governmental fund may be used. The force behind these limitations can vary significantly, depending upon their source. Consequently, the fund balance reported in the annual financial statements is categorized into five components whereby each component identifies the extent to which the City is bound to honor constraints on the specific purposes for which amounts in the fund can be spent. The five components of fund balance are as follows:

- Nonspendable: Resources that are 1) not in spendable form, such as inventories, prepaids, long-term receivables, or non-financial assets held for resale, or 2) required to be maintained intact such as an endowment.

- Restricted: Resources that are subject to externally enforceable legal restrictions; these restrictions would be either 1) externally imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments or 2) imposed by law through constitutional provisions or enabling legislation.

- Committed: Resources that are constrained to specific purposes by a formal action of the City Council such as an ordinance or resolution. The constraint remains binding unless removed in the same formal manner by the City Council. Council action to commit fund balance must occur within the fiscal reporting period while the amount committed may be determined subsequently.

- Assigned: Resources that are constrained by the City's intent to be used for specific purposes, but that are neither restricted nor committed.

- Unassigned: Within the General Fund, the residual resources, either positive or negative, in excess of what can be properly classified in one of the other four fund balance categories. Within all other governmental funds, the negative residual resources in excess of what can be properly classified as nonspendable, restricted, or committed.

Policy

1. When expenditures are incurred for purposes for which both restricted and unrestricted (committed, assigned, or unassigned) fund balances are available, the City's policy is to first apply restricted fund balance. When expenditures are incurred for purposes for which committed, assigned, or unassigned fund

balances are available, the City's policy is to first apply committed fund balance, then assigned fund balance, and finally unassigned fund balance.

2. This policy delegates to the City Manager the authority to assign unrestricted fund balance amounts where the City's intent is for those amounts to be used for specific purposes. This delegation of authority is for the sole purpose of reporting these amounts in the annual financial statements.

3. The City has established a reserve fund balance policy which says in part "The City of Cloverdale shall maintain unappropriated fund or working capital reserve balances equal to 25% of expenditures in the General, Water, and Sewer Funds. For purposes of this section, expenditures shall include transfers out but not anticipated litigation expenses, reimbursed developer expenses or routine capital outlays which are all discretionary. Reserves of 25% are considered by staff to be a good level at which to maintain the City's credit worthiness." This target amount has been established in order to provide a reasonable level of assurance that the City's day-to-day operations will be able to continue for a period of three months, even if circumstances occur where revenues are insufficient to cover expenditures. The purpose of these reserves is to provide for:

- cash flow requirements
- economic uncertainties including downturns in the local or national economy
- legal requirements as part of debt financing
- unforeseen catastrophic costs

The General Fund's reserve fund balance policy is reported in the notes to the annual financial statements. The reserve fund balance will be shown in the annual financial statements as committed fund balance.

4. The City Council, as the highest level of decision-making authority, may commit fund balance for specific purposes pursuant to constraints imposed by formal actions taken, such as an ordinance or resolution. These committed amounts cannot be used for any other purpose unless the City Council removes or changes the specified use through the same type of formal action taken to establish the commitment. City Council action to commit fund balance needs to occur within the fiscal reporting period; but the amount, if any, which will be subject to the constraint, may be determined at a subsequent period.

This policy has been prepared in accordance with Governmental Accounting Standards Board (GASB) Statement No. 54. No other policy or procedure supersedes the authority and provisions of this policy.

CITY OF CLOVERDALE

City Council Agenda Item Summary

Agenda Item:	15
Meeting Date:	October 25, 2016

Agenda Section	**Staff Contact**
Subcommittees	Joanne Cavallari, Finance Manager

Agenda Item Title

Review of General Fund Preliminary Fiscal Year 15/16 Revenues, Expenditures, and Fund Balance, and Approve the Allocation of Surplus Revenues to Reserves.

Summary

At the May 17th Budget workshop, staff presented the FY 16/17 draft budget with a projected 15/16 fiscal year end General Fund Balance gain of $234,479. Now that the final numbers for FY 15/16 are in (although not audited) it appears that the General Fund will have a surplus of revenues over expenditures of about $770,500.

Attachment 1 to this report compares the Revenues and Expenses we projected in May with the preliminary FY 15/16 actuals.

Property Tax and Utility Users Tax were above projections. Charges for Services were also above projections due to an increase in plan check revenue from new development. Several funds were closed into the General Fund at year end, and Transfers In were higher because of the Redevelopment Property Tax Trust Fund administration allowance.

General Fund Expenses were fairly close to the projections in the City Administration departments, with the exception of Finance which was over due to the writing off of uncollectable accounts (Dog License penalties).

The Police Department expenses were higher than projected, and slightly over budget due to improvements made in the Dispatch center.

Parks and Recreation expenses came in under what we expected due to the delay of the City Park paving project.

Planning Department expenses were below what we estimated they would be in the Spring.

Salaries and Benefits were over projections and Service and Supplies were under. Overall, the total difference in spending between the May projections and the ending numbers was $53,000 below our estimates.

All of the above factors resulted in a General Fund Balance gain of $770,553, bringing the ending fund balance to $1,650,229 which is 29% of annual expenditures.

Staff is recommending that the surplus 15/16 revenues be allocated according to the Fund Balance Reserve and Surplus policies. Attachment 2 shows how the proposed reserves are calculated and Attachment 3 shows the resulting Fund Balances by category after the proposed allocations.

The charts in Attachment 4 show the General Fund Balance trends from Fiscal Year 10/11 to Fiscal Year 15/16. The downturn in the economy and redevelopment dissolution brought the General Fund Balance down to as little as $177,000, or 3% of expenditures, at the end of Fiscal Year 12/13.

Thanks to the sound leadership of the City Council, and the voters of the City of Cloverdale who approved Measure O, we have been able to bring our General Fund reserves back to the level necessary to protect our citizens against the future risk of economic uncertainty and reduction in service levels.

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Options

None recommended.

Budget/Financial Impact

None.

Subcommittee Recommendation

The Administration, Finance and Police Subcommittee reviewed the proposed Fund Balance allocations at their October 13th meeting, and recommended that they be brought to the full City Council for discussion.

Recommended Council Action

1.) Receive report of Preliminary FY 15-16 General Fund Revenues and Expenses.
2.) By Motion Order, approve the allocation of surplus revenues to the reserve as proposed by Staff and as set forth in attachment number 3.

Attachments:

1. Report of Preliminary General Fund Revenues and Expenses
2. General Fund Reserves Calculation
3. Proposed General Fund Reserve allocations
4. General Fund Balance Charts

cc:

ATTACHMENT 1

CITY OF CLOVERDALE
PRELIMINARY GENERAL FUND REVENUES AND EXPENSES
FISCAL YEAR 2015/2016

GENERAL FUND REVENUES	15-16 ADOPTED BUDGET	WORKSHOP PROJECTED	FY 15-16 ACTUAL	OVER (UNDER) PROJECTION
Property Taxes	$1,958,057	$1,977,741	$2,038,967	$61,226
Utility Users Tax	375,000	390,180	438,653	48,473
Other Taxes	1,440,990	1,462,163	1,478,630	16,467
Licenses & Permits	98,000	159,189	160,388	1,199
Intergovernmental Revenues	149,600	150,867	151,669	802
Charges for Services	81,120	232,251	263,429	31,178
Fines & Special Assessments	36,000	32,119	39,401	7,282
Loan Proceeds (offset by Capital Outlay)	0	0	54,168	54,168
Miscellaneous Revenues	269,500	502,016	516,201	14,185
Close out Transit Fund	0	0	57,128	57,128
Close out Surface Transportation Fund 221	0	0	17,441	17,441
Accounts Receivable Adjustments	0	0	24,354	24,354
Revenue from Successor Agency payment	0	0	40,467	40,467
Operating Transfers In	1,398,536	1,504,429	1,613,366	108,937
	$5,806,803	$6,410,955	$6,894,262	$483,307

GENERAL FUND EXPENDITURES BY DEPT	15-16 ADOPTED BUDGET	WORKSHOP PROJECTED	FY 15-16 ACTUAL	OVER (UNDER) PROJECTION
City Council	$58,576	$54,419	$53,106	(1,313)
City Manager	390,583	402,099	364,646	(37,453)
City Clerk	68,188	89,500	93,083	3,583
Community Support	28,350	27,604	27,602	(2)
Human Resources	236,799	224,044	230,198	6,154
Risk Management	145,000	165,500	166,680	1,180
Finance	244,924	238,567	268,655	30,088
General Services	317,005	274,868	280,957	6,089
	1,489,425	1,476,601	1,484,927	8,326
Police Administration	632,468	598,782	617,780	18,998
Police Operations	1,627,198	1,516,759	1,585,604	68,845
Police Communications/Records	755,324	820,495	834,772	14,277
Police Auxiliary	118,764	117,792	122,103	4,311
	3,133,754	3,053,828	3,160,259	106,431
Facilities Maintenance	75,958	68,787	71,839	3,052
Streets	252,640	281,216	287,661	6,445
Storm Drains	28,897	67,065	51,415	(15,650)
Parks & Recreation	273,972	315,690	267,834	(47,856)
	631,467	732,758	678,749	(54,009)
Planning Commission	1,420	689	261	(428)
Current Planning	121,085	190,809	148,525	(42,284)
Long Range Planning	42,548	22,415	23,210	795
Engineering & Building Services	45,571	266,825	212,702	(54,123)
Plan Check & Inspection	117,264	351,430	277,005	(74,425)
	327,888	832,168	661,703	(170,465)
Capital Outlay (Offset by Loan Proceeds)	0	0	$54,168	54,168
Debt Service	61,701	61,701	61,701	-
Transfers Out	0	19,420	22,202	2,782
				-
Total Expenses and Transfers Out	$5,644,235	$6,176,476	$6,123,709	(52,767)

GENERAL FUND EXPENSES BY TYPE	15-16 ADOPTED BUDGET	WORKSHOP PROJECTED	FY 15-16 ACTUAL	OVER (UNDER) PROJECTION
Salaries & Benefits	3,716,530	3,366,611	3,495,878	129,267
Services and Supplies	1,866,004	2,728,744	2,489,760	(238,984)
Capital Outlay	0	0	54,168	54,168
Debt Service	61,701	61,701	61,701	-
Transfers Out	0	19,420	22,202	2,782
General Fund Expenses	5,644,235	6,176,476	$6,123,709	(52,767)
Fund Balance Gain (Loss)	**$162,568**	**$234,479**	**$770,553**	**$536,074**
Fund Balance Beginning			$879,676	
Fund Balance Ending 06/30/16			**$1,650,229**	

ATTACHMENT 2

RESERVES CALCULATION
JUNE 30, 2016

FY 15/16 General Fund Expenses and Transfers Out		$ 6,123,709.37
Less Capital Outlay		(54,167.76)
Less Reimbursed Developer Expenses		(72,959.77)
Less Transfer in from Gas Tax		(213,061.20)
Net Expenses used for Reserve Calculation		$ 5,783,520.64
Target Contingency Reserve of 17%		$ 983,198.51
Equipment Replacement Reserves, as per Policy		
Annual Depreciation Expense, Machinery & Equipment	28,406.00	
Amount to be set aside for Capital =		
Annual Depreciation Expense plus 5%		$ 29,826.30
Annual Depreciation Expense, Vehicles	28,260.00	
Amount to be set aside for Capital =		
Annual Depreciation Expense plus 5%		$ 29,673.00
General Fund Compensated Absences Payable 06/30/16	371,037.19	
Amount to be set aside for Compensated Absences=		
10% of Compensated Absences Payable		$ 37,103.72

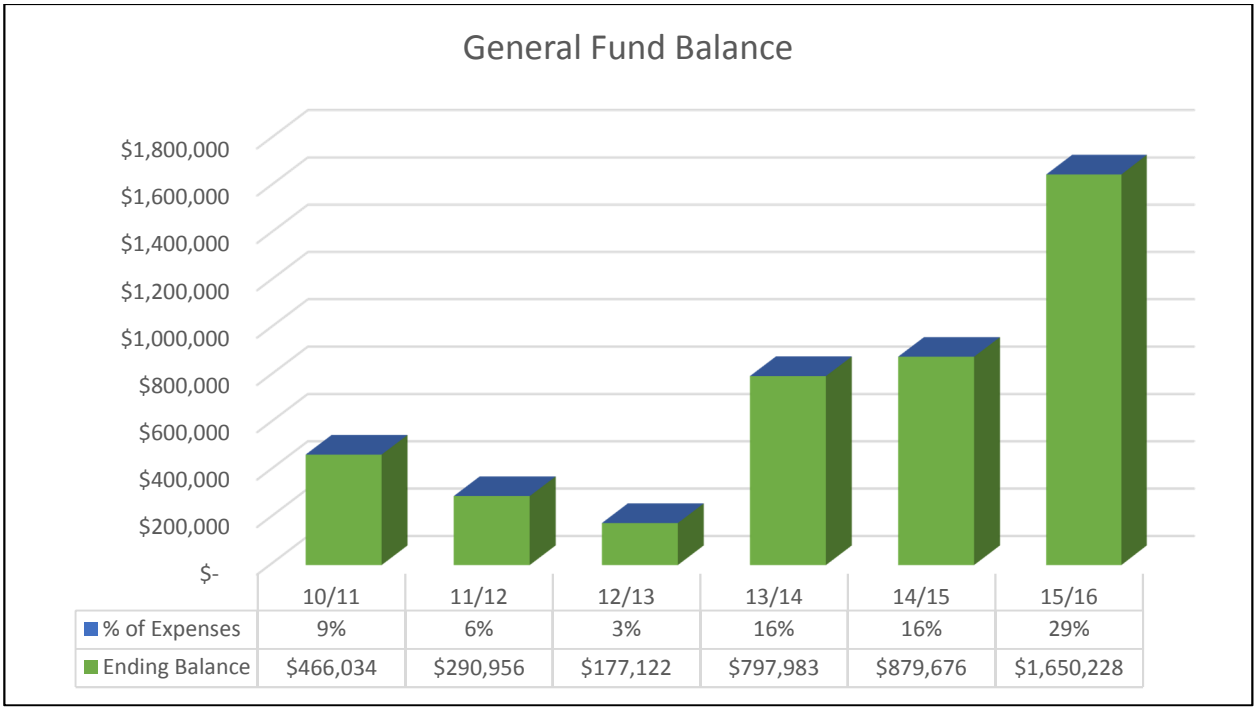
ATTACHMENT 3

Proposed Allocation of Unassigned Fund Balance
Based Draft Fund Balance and Surplus Policies
June 30, 2016

	Preliminary Balance 06/30/16	Proposed Allocations	Ending Balance 06/30/16
Non Spendable - Prepaid Expenses	$ 14,576.89	-	$ 14,576.89
Committed - Alexander Valley View Homes	64,435.16	-	64,435.16
Committed - Emergency Reserve		100,000.00	100,000.00
Committed - Contingency Reserve (17%)		983,198.51	983,198.51
Assigned - Traffic Safety	84,599.45	-	84,599.45
Assigned - Equipment Replacement	28,049.45	59,499.30	87,548.75
Assigned - Furber Signalization	30,808.40	-	30,808.40
Assigned - Compensated Absences		37,103.72	37,103.72
Unassigned	1,427,758.68	(1,179,801.53)	247,957.15
Total Fund Balance 06/30/16	$ 1,650,228.03		$ 1,650,228.03

ATTACHMENT 4

GENERAL FUND BALANCE AS PERCENTAGE OF ANNUAL EXPENDITURES



YEAR-TO-YEAR CHANGE IN GENERAL FUND BALANCE

		Beginning Fund Balance		Ending Fund Balance		Increase (Decrease)		Percentage of Increase (Decrease)
June 30, 2011		451,207.00		466,034.00		14,827.00		3%
June 30, 2012		466,034.00		290,956.00		(175,078.00)		-38%
June 30, 2013		290,956.00		177,122.00		(113,834.00)		-39%
June 30, 2014		177,122.00		797,983.00		620,861.00		351%
June 30, 2015		797,983.00		879,676.00		81,693.00		10%
June 30, 2016		879,676.00		1,650,228.00		770,55.00		88%