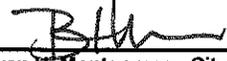




## STAFF REPORT

**Date:** Tuesday, January 27, 2015  
**To:** Bryan H. Montgomery, City Manager  
**From:** Kevin Rohani, Public Works Director/City Engineer

Approved and Forwarded to City Council:

  
Bryan H. Montgomery, City Manager

**SUBJECT:** Subdivision Improvement Agreement with Shea Homes for Public Improvements (Parcels A and Parcel B – Catamaran Park) within Subdivision 8955, Summer Lake, Phase 2

### **Background and Analysis**

Shea Homes is required to develop certain public improvements to the approved Subdivision 8955, Summer Lake, Phase 2, which includes public parks and landscape. The attached Subdivision Improvement Agreement (SIA) outlines the reasonable conditions and responsibilities of the Developer.

Shea Homes is responsible for the full cost of the Catamaran Park construction. When the park and greenbelt improvements have been completed and are in conformance with the approved plans and agreement, the parcels will be dedicated to the City for public use and accepted for maintenance.

### **Fiscal Impact**

There is no fiscal impact associated with this action.

### **Recommendation**

Staff recommends that the City Council adopt the Resolution approving the Subdivision Improvement Agreement for Catamaran Park within Subdivision 8955, Summer Lake, Phase 2 and authorizing the City Manager to execute the Agreement.

### **Attachments**

- 1) Resolution for Catamaran Park
- 2) Agreement for Catamaran Park

RESOLUTION NO. \_\_-15

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY APPROVING THE SUBDIVISION IMPROVEMENT AGREEMENT WITH SHEA HOMES CORPORATION FOR CATAMARAN PARK WITHIN SUBDIVISION 8955**

**WHEREAS**, the City Council of the City of Oakley, California wishes to enter into a Subdivision Improvement Agreement with Shea Homes Corporation for the development and faithful performance of public improvements for work known as Catamaran Park (Parcel A and Parcel B) within Subdivision 8955, Summer Lake, Phase 2; and

**WHEREAS**, this agreement will require the developer to complete approximately \$347,845.00 in public improvements and drainage in accordance with the project conditions of approval and City standard construction design; and

**WHEREAS**, upon satisfactory completion of the work and the plant establishment period, the park and greenbelt will be accepted by the City of Oakley for public maintenance.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED**, by the City Council of the City of Oakley that the Subdivision Improvement Agreement for Catamaran Park within Subdivision 8955 with Shea Homes Corporation is hereby approved in the form attached hereto as Exhibit A and made part of this resolution and that the City Manager is hereby authorized to execute said agreement.

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on the 27<sup>th</sup> of January, 2015 by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTENTIONS:

APPROVED:

ATTEST:

\_\_\_\_\_  
Doug Hardcastle, Mayor

\_\_\_\_\_  
Libby Vreonis, City Clerk

\_\_\_\_\_  
Date

**CITY OF OAKLEY  
SUBDIVISION IMPROVEMENT AGREEMENT  
CATAMARAN PARK, SUMMER LAKE, PHASE II, SUBDIVISION 8955**

This Agreement is made and entered into this 27th day of January, 2015 by and between the CITY OF OAKLEY, a municipal corporation, hereinafter referred to as "CITY", and Shea Homes, Inc. a Delaware Corporation hereinafter referred to as "DEVELOPER".

**RECITALS**

**WHEREAS**, it has been determined by the CITY Council of the CITY of Oakley, State of California, that DEVELOPER desires to improve and dedicate Catamaran Park (Parcel A and Parcel B) of Subdivision 8955, Phase II (hereafter "The Improvements") required by the conditions of approval for Subdivision 7562 as approved by Contra Costa County, attached as Exhibit A, and the City-County Transition Agreement for the project as adopted by the City Council of the City of Oakley via Resolution Number 69-06, attached as Exhibit B, in accordance with the requirements and conditions set forth in approvals, the requirements of the Subdivision Map Act of the State of California, and those certain plans and specifications for said development approved by CITY and titled "Catamaran Park Construction Documents" now on file in the office of the City Engineer, which are hereby referred to for a more definite and distinct description of the work to be performed under this Agreement as though set forth at length herein; and

**WHEREAS**, DEVELOPER intends to satisfactorily complete The Improvements within the time hereinafter specified, and CITY intends to accept DEVELOPER's offer(s) of dedication of The Improvements in consideration for DEVELOPER's satisfactory performance of the terms and conditions of this Agreement:

NOW, THEREFORE, in consideration of the mutual promises, conditions and covenants herein contained, the parties agree as follows:

1. Improvements.

DEVELOPER agrees to install the park and landscaping improvements, signs, lighting, irrigation, benches, and such other improvements (including appurtenant equipment) as required by the conditions of approval for Subdivision 7562, and the subsequent phase Subdivision 8955 governed by the same conditions, as set forth in Exhibits A and B, respectively, to this Agreement, which Exhibits are incorporated herein as if set forth at this point, or as otherwise required in the encroachment ordinance, including without limitation all Improvements. In the event that any provision of this Agreement conflicts with the provisions of the Exhibits, the provisions of the Exhibits shall prevail to the extent that the conflicting provision(s) in the Exhibits requires a greater or more extensive improvement or expenditure, or to the extent that that provision extends DEVELOPER's obligations over a greater period of time than the specific provision set forth herein. Such improvements shall also be made in conformance with the City of Oakley Municipal Code and Contra Costa County Ordinance Code as adopted and enforced by the City of Oakley.

DEVELOPER will commence construction of The Improvements within 30 days following the effective date of this Agreement. DEVELOPER shall complete said work not later than twelve (12) months following said date of commencement in a good workmanlike manner, in accordance with accepted construction practices and in a manner equal or superior to the requirements of the City of Oakley Municipal Code and Contra Costa County Ordinance Code and rulings made thereunder; and where there is a conflict between the improvement plans and the City Municipal Code or County Ordinance Code, the stricter requirements shall govern. It is understood that the City of Oakley was incorporated effective July 1, 1999, and as such continues to rely on certain laws, ordinances and design standards of the County of Contra Costa. References herein to the County Code or County Ordinance Code are understood to refer to such ordinances and codes as if adopted by the City of Oakley.

Time is of the essence in this Agreement. Upon completion, DEVELOPER shall furnish CITY with a complete and reproducible set of final as-built plans of The Improvements, including any authorized modifications.

2. Estimated Cost of Improvements.

The estimated cost of constructing The Improvements required by this agreement as adjusted for inflation is agreed to be \$347,845.00 for Grading and Public Improvements. Said amount includes costs and reasonable expenses and fees which may be incurred in enforcing the obligation secured.

3. Bonds Furnished.

Concurrently with the execution of this Agreement, DEVELOPER shall furnish CITY with the following security in the forms specified in Government Code sections 66499.1 and 66499.2 or in a form satisfactory to the CITY Attorney if different from said Government Code forms:

- a. Faithful Performance. Either a cash deposit, a corporate surety bond issued by a company duly and legally licensed to conduct a general surety business in the State of California, or an instrument of credit equivalent to one hundred percent (100%) of the estimate set forth in Paragraph 2 and sufficient to assure CITY that The Improvements will be satisfactorily completed. A minimum of one percent (1%) of the security shall be a cash deposit.
- b. Labor and Materials. Either a cash deposit, a corporate surety bond issued by a company duly and legally licensed to conduct a general surety business in the State of California, or an instrument of credit equivalent to fifty percent (50%) of the estimate set forth in Paragraph 2 and sufficient to assure CITY that DEVELOPER'S contractors, subcontractors, and other persons furnishing labor, materials, or equipment shall be paid therefor.

CITY shall be the sole indemnitee named on any instrument required by this Agreement. Any instrument or deposit required herein shall conform with the provisions of Chapter 5 of the Subdivision Map Act. DEVELOPER may request that portions or all of the bonds may be substituted by other parties in the event that portions or all of the Project is sold to other parties, and such substitution shall not be unreasonably withheld by CITY.

4. Insurance Required.

Concurrently with the execution hereof, DEVELOPER shall obtain or cause to be obtained and filed with the CITY, all insurance required in Exhibit C, and such insurance shall have been approved by the Finance Director of CITY, or his designee, as to form, amount and carrier. Prior to the commencement of work under this Agreement, DEVELOPER's general contractor shall obtain or cause to be obtained and filed with the Finance Director, all insurance required under this paragraph, and such insurance shall have been approved by the Finance Director of CITY, as to form, amount and carrier. DEVELOPER shall not allow any contractor or subcontractor to commence work on this contract or subcontract until all insurance required for DEVELOPER and DEVELOPER's general contractor shall have been so obtained and approved. Said insurance shall be maintained in full force and effect until the completion of work under this Agreement and the final acceptance thereof by CITY. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

5. Work Performance and Guarantee.

Except as otherwise expressly provided in this Agreement, and excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect, DEVELOPER guarantees all work executed by DEVELOPER and/or DEVELOPER's agents, and all supplies, materials and devices of whatsoever nature incorporated in, or attached to the work, or otherwise delivered to CITY as a part of the work pursuant to the Agreement, to be free of all defects of workmanship and materials for a period of one (1) year after initial acceptance of the entire work by CITY. DEVELOPER shall repair or replace any or all such work or material, together with all or any other work or materials which may be displaced or damaged in so doing, that may prove defective in workmanship or material within said one-year guarantee period without expense or charge of any nature whatsoever to CITY. DEVELOPER further covenants and agrees that when defects in design, workmanship and materials actually appear during the one-year guarantee period, and have been corrected, the guarantee period shall automatically be extended for an additional year to insure that such defects have actually been corrected.

In the event the DEVELOPER shall fail to comply with the conditions of the foregoing guarantee within thirty (30) days time, after being notified of the defect in writing, CITY shall have the right, but shall not be obligated, to repair or obtain the repair of the defect, and DEVELOPER shall pay to CITY on demand all costs and expense of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing guarantee results in a condition which constitutes an immediate hazard to the public health, safety, or welfare, CITY shall have the right to immediately repair, or cause to be repaired, such defect, and DEVELOPER shall pay to CITY on demand all costs and expense of such repair. The foregoing statement relating to hazards to health and safety shall be deemed to include either temporary or permanent repairs which may be required as determined in the sole discretion and judgment of CITY.

If CITY, at its sole option, makes or causes to be made the necessary repairs or replacements or performs the necessary work, DEVELOPER shall pay, in addition to actual costs and expenses of such repair or work, fifty percent (50%) of such costs and expenses for

overhead and interest at the maximum rate of interest permitted by law accruing thirty (30) days from the date of billing for such work or repairs.

6. Inspection of the Work.

DEVELOPER shall guarantee free access to CITY through its City Engineer and his designated representative for the safe and convenient inspection of the work throughout its construction. Said CITY representative shall have the authority to reject all materials and workmanship which are not in accordance with the plans and specifications, and all such materials and or work shall be removed promptly by DEVELOPER and replaced to the satisfaction of CITY without any expense to CITY in strict accordance with the improvement plans and specifications.

7. Agreement Assignment.

This Agreement shall not be assigned by DEVELOPER without the written consent of CITY.

8. Abandonment of Work.

Neither DEVELOPER nor any of DEVELOPER's agents or contractors are or shall be considered to be agents of CITY in connection with the performance of DEVELOPER's obligations under this Agreement.

If DEVELOPER refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extension thereof, or fails to obtain completion of said work within such time, or if DEVELOPER should be adjudged as bankrupt, or should make a general assignment for the benefit of DEVELOPER's creditors, or if a receiver should be appointed, or if DEVELOPER, or any of DEVELOPER's contractors, subcontractors, agents or employees should violate any of the provisions of this Agreement, the CITY through its Public Works Director may serve written notice on DEVELOPER and DEVELOPER's surety or holder of other security of breach of this Agreement, or of any portion, thereof, and default of DEVELOPER.

In the event of any such notice of breach of this Agreement, DEVELOPER's surety shall have the duty to take over and complete The Improvements herein specified; provided, however, that if the surety, within thirty (30) days after the serving upon it of such notice of breach, does not give CITY written notice of its intention to take over the performance of the contract, and does not commence performance thereof within thirty (30) days after notice to CITY of such election, CITY may take over the work and prosecute the same to completion, by contract or by any other method CITY may deem advisable, for the account and at the expense of DEVELOPER and DEVELOPER's surety shall be liable to CITY for any damages and/or reasonable and documented excess costs occasioned by CITY thereby; and, in such event, CITY, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to DEVELOPER as may be on the site of the work and necessary therefor.

All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid.

Notices required to be given to CITY shall be addressed as follows:

Bryan Montgomery, City Manager  
Kevin Rohani, Public Works Director/City Engineer  
City of Oakley  
3231 Main Street  
Oakley, CA 94561

Notices required to be given to DEVELOPER shall be addressed as follows:

David Best, Community Development Manager  
Shea Homes  
2630 Shea Center Drive  
Livermore, CA 94551

Notices required to be given surety of DEVELOPER shall be addressed as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any party or the surety may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

Concurrently with the execution of this Agreement, DEVELOPER has executed and has caused to be acknowledged an abstract of this Agreement. DEVELOPER agrees CITY may record said abstract in the Official Records of Contra Costa County.

9. Use of Streets or Improvements.

At all times prior to the final acceptance of the work by CITY, the use of any or all streets and improvements within the work to be performed under this Agreement shall be at the sole and exclusive risk of DEVELOPER. The issuance of any building or occupancy permit by CITY for units located within the project shall not be construed in any manner to constitute a partial or final acceptance or approval of any or all such improvements by CITY. DEVELOPER agrees that CITY's Building Official may withhold the issuance of building or occupancy permits when the work or its progress may substantially and/or detrimentally affect public health and safety.

10. Safety Devices.

DEVELOPER shall provide and maintain such guards, watchmen, fences, barriers, regulatory signs, warning lights, and other safety devices adjacent to and on the project site as may be necessary to prevent accidents to the public and damage to the property. DEVELOPER shall furnish, place, and maintain such lights as may be necessary for

illuminating the said fences, barriers, signs, and other safety devices. At the end of all work to be performed under this Agreement, all fences, barriers, regulatory signs, warning lights, and other safety devices (except such safety items as may be shown on the plans and included in the items of work) shall be removed from site of the work by the DEVELOPER, and the entire site left clean and orderly.

11. Acceptance of Work.

Upon notice of the completion of the work covered by this agreement, the delivery of a set of final as-built plans, and submittal of a warranty bond in the amount of 10% of the cost of improvements set forth in Section 2 to CITY by DEVELOPER, CITY, through its City Engineer or his designated representative, shall examine the work without delay, and, if found to be in accordance with said plans and specifications and this Agreement, shall recommend acceptance of the work to the City Council and, upon such acceptance, shall notify DEVELOPER or his designated agents of such acceptance. CITY reserves the right to not accept the work until all construction activities, including those related to building construction, within the project boundaries have been completed.

12. Patent and Copyright Costs.

In the event that said plans and specifications require the use of any material, process or publication which is subject to a duly registered patent or copyright, DEVELOPER shall be liable for, and shall indemnify CITY from any fees, costs or litigation expenses, including attorneys' fees and court costs, which may result from the use of said patented or copyrighted material, process or publication.

13. Alterations in Plans and Specifications.

Any alteration or alterations made in the plans and specifications which are a part of this Agreement or any provision of this Agreement shall not operate to release any surety or sureties from liability on any bond or bonds attached hereto and made a part hereof, and consent to make such alterations is hereby given, and the sureties to said bonds hereby waive the provisions of Section 2819 of the Civil Code of the State of California.

14. Liability.

- a. DEVELOPER Primarily Liable. DEVELOPER hereby warrants that the design and construction of The Improvements will not adversely affect any portion of adjacent properties and that all work will be performed in a proper manner. DEVELOPER agrees to indemnify, defend, release, and save harmless CITY, and each of its elective and appointive boards, commissions, officers agents and employees, from and against any and all loss, claims, suits, liabilities, actions, damages, or causes of action of every kind, nature and description, directly or indirectly arising from an act or omission of DEVELOPER, its employees, agents, or independent contractors in connection with DEVELOPER'S actions and obligations hereunder; provided as follows:

1. That CITY does not, and shall not, waive any rights against DEVELOPER which it may have by reason of the aforesaid hold harmless agreement, because of the acceptance by CITY, or the deposit with CITY by DEVELOPER, of any of the insurance policies described in Paragraph 4 hereof.
  2. That the aforesaid hold harmless agreement by DEVELOPER shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this paragraph, regardless of whether or not CITY has prepared, supplied, or approved of plans and/or specifications for the project, or regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.
- b. Design Defect. If, in the opinion of the CITY, a design defect in the work of improvement becomes apparent during the course of construction, or within one (1) year following acceptance by the CITY of the improvements, and said design defect, in the opinion of the CITY, may substantially impair the public health and safety, DEVELOPER shall, upon order by the CITY, correct said design defect at his sole cost and expense, and the sureties under the Faithful Performance and Labor and Materials Bonds shall be liable to the CITY for the corrective work required.
- c. Litigation Expenses. In the event that legal action is instituted by either party to this Agreement, and said action seeks damages for breach of this Agreement or seeks to specifically enforce the terms of this Agreement, and, in the event judgment is entered in said action, the prevailing party shall be entitled to recover its attorneys' fees and court costs. If CITY is the prevailing party, CITY shall also be entitled to recover its attorney's fees and costs in any action against DEVELOPER's surety on the bonds provided under paragraph 3.

15. Recitals.

The foregoing Recitals are true and correct and are made a part hereof.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in duplicate at Oakley, California, the day and year first above written.

APPROVED AS TO FORM:

CITY OF OAKLEY

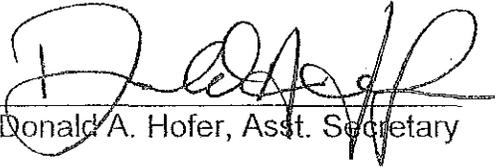
\_\_\_\_\_  
Derek P. Cole, City Attorney

\_\_\_\_\_  
Bryan H. Montgomery, City Manager

ATTEST:

DEVELOPER-SHEA HOMES, INC.  
a Delaware Corporation

\_\_\_\_\_  
Libby Vreonis, City Clerk

By:   
Donald A. Hofer, Asst. Secretary

By:   
David Best, Authorized Agent

- Exhibits:    Exhibit A -    County Conditions of Approval for Subdivision 7562  
                 Exhibit B -    City-County Transition Agreement  
                 Exhibit C -    Insurance Requirements

EXHIBIT A

CONDITIONS OF APPROVAL

CONTRA COSTA COUNTY  
COMMUNITY DEVELOPMENT DEPARTMENT  
REVISED APPROVED PERMIT

APPLICANT:	Shea Homes 2580 Shea Center Drive Livermore, CA 94551	APPLICATION NO.	2918-RZ FDP 3032-90
		ASSESSOR'S PARCEL NO.	032-210-029 032-220-007, 008, 012, 026
		ZONING DISTRICT:	P-I
OWNER:	National Investors Financial Inc. 3151 Airway Avenue, A-1 Costa Mesa, CA 94596	VESTING DATE:	July 2, 1992
		APPROVAL DATE:	April 23, 2001
		EFFECTIVE DATE:	May 3, 2001

This is to notify you that the East County Regional Planning Commission has granted your request for modifications to the final development plan and major subdivision, subject to the attached conditions.

DENNIS M. BARRY, AICP  
Director  
Community Development Department

By:   
Catherine Kutzmis  
Deputy Director

PLEASE NOTE THE EFFECTIVE DATE, as no further notification will be sent by this office.

CONDITIONS OF APPROVAL FOR SUBDIVISION 7562, DEVELOPMENT PLAN 3032-90  
AND REZONING 2918-RZ AS MODIFIED BY THE EAST COUNTY REGIONAL  
PLANNING COMMISSION ON APRIL 23, 2001

- I. The development shall be based on the following submitted exhibits except as modified by the conditions below. These conditions of approval incorporate and are an addition to all approved mitigation measures.
  - A. Revised conformance map and phasing plan dated received January 25, 2001 and original plans dated received July 2, 1992. The number of units approved for this project is 1 330 residential units (excluding second units). A Final map and a final development plan consistent with these plans shall be submitted for plan checking review and approval of the Public Works Department and Zoning Administrator.
  - B. Wetlands Delineation Report done by Huffman & Associates, Inc. dated July 17, 1991.
  - C. Geotechnical and investigation report, Phase 1 study, done by Kleinfelder & Associates dated December, 1 988.
  - D. Informational report for the proposed levee system by Bohley/Maley Associates dated August 20, 1992.
  - E. Preliminary environmental assessment of hazardous sites on the site by Kaldveer Associates dated February 27, 1989.
  - F. Evaluation proposal levee bordering Cypress Lakes Project by Kleinfelder & Associates dated February 2, 1 993.
  - G. Special Status Species Survey done by Huffman & Associates dated October, 1991.
  - H. Draft Habitat Mitigation and Monitoring Plan dated August, 1992.
  - I. Verification of Wetland Delineation by the U.S. Army Corps of Engineers dated September 27, 1991.
  - J. Project Landscape Criteria.
  - K. Landscape Guidelines for Internal Levee.
  - L. Information on Excavation Techniques, Groundwater Monitoring and Subsidence prepared by Kleinfelder & Associates dated October 30, 1 992.
  - M. Groundwater Monitoring Criteria.
  - N. Cultural Resource Evaluations by William Self Associates dated July 30, 1992
  - O. Golf Course Feasibility Study by Golf Management, Inc. dated August 1989.

- P. Energy Conservation Guidelines.
  - Q. Proposed Dynamic Compaction procedure report prepared by Shea Homes dated January 19, 2001.
  - R. Park programming document for Cypress Lakes dated January 23, 2001.
2. The length of approval of the tentative as well as for the accompanying final development plan and rezoning shall be to April 15, 2002 or as may be legally extended by the Subdivision Map Act.
  3. Prior to recording a final map for this project the applicant shall contribute a \$25,000 cash payment to Reclamation District #799 for a special flood control project, the preparation of the second phase of the geotechnical report regarding the upgrading of the existing district levees.

#### Project Phasing

4. The phasing plans is modified for 5 phases instead of the 9 originally approved. Phasing may be modified subject to the review and approval of the Zoning Administrator.
5. The following actions shall take place before various phases of the project are developed:
  - A. The park areas within Phase 1 shall be developed and landscaped prior to occupancy of residences in Phase 1. An acceptable landscape, irrigation and equipment plan, including public restrooms shall be submitted for the Zoning Administrator's administrative approval. Means to finance the parks shall be developed prior to recording the final map for Phase 1 of the subdivision. The park areas within Phase 1 shall be developed and landscaped prior to occupancy of residences. The park areas in Phase 2 shall be developed and landscaped prior to occupancy of residences in Phase 2.
  - B. The beach club, swim club area shall be developed prior to occupancy of residences in Phase 2. This will require a further final development plan approval. The beach and swim clubs shall be open to the public either by reasonable fee or open membership.
  - C. The various neighborhood park areas will be developed prior to occupancy of the various phases in which they are located. The trails connecting the neighborhoods with the small neighborhood park areas shall be developed in the appropriate phase. Trail plans shall be approved by the Public Works Department and the Zoning Administrator.
  - D. The golf course and golf clubhouse site shall be developed prior to occupancy of residences in Phase 3. The golf clubhouse site and driving range will require approval of a further final development plan. The golf course-clubhouse shall be open to the public by payment of a reasonable fee. Any restaurant/bar in the golf clubhouse shall be open to the public.

- E. The levee trails south of Cypress Road extension shall be developed prior to occupancy of residences in Phase 1. The levee trails north of Cypress Road extension shall be developed prior to occupancy of residences in Phase 3 including the development of the trail across the site along the east/west channel. Trails shall be opened to the public.

Levee trails shall be multi-purpose and shall include surfaces appropriate for walking/running, bicycling, and horseback riding, and for vehicle access to the levee top for the levee maintenance authority, if deemed necessary. Access to the levee trails shall be made available to the public from public roads and parks. The levee maintenance authority, the developer, and representatives of the East County Horsemen's Organization (ECHO) jointly shall determine the most appropriate surface for horse trails such that the trail can accommodate horses while maintaining the integrity of the levee surface. ECHO shall sponsor maintenance of the horse trails in regards to collection and disposal of horse manure. The levee maintenance authority would have control over closure of the trail as necessary during the wet winter months or as otherwise needed to maintain the levee.

The day care center and the recreational vehicle/boat storage area will require a further final development plan approval prior to their establishment. The final development plan for the day care center shall be filed prior to recording the Final Map for Phase 2.

#### Street Addressing

Prior to filing the Final Map, plans shall be submitted for review by the Community Development Department, Graphics Section, to obtain addresses and for street name approval (public and private). Alternate street names should be submitted in the event of duplication and to avoid similarity with existing street names. The Final Map cannot be certified by the Community Development Department without the approved street names and the assignment of street addresses.

#### Police Services

7. The owner of the property shall participate in the provision of funding to maintain and augment police services by voting to approve a special tax for the parcels created by this subdivision action. The tax shall be \$200 per parcel annually (with appropriate future Consumer Price Index (CPI) adjustment). The election to provide for the tax must be completed prior to the filing of the final map for phase 1. The property owner shall be responsible for paying the cost of holding the election. The fee for election costs will be due at the time that the election is requested by the owner.

#### EMF Notification

8. Where a lot is located within 300 feet of a high voltage electric transmission line, the applicant shall record the following notice:

"The subject property is located near a high voltage electric transmission line.

Purchasers should be aware that there is ongoing research on possible potential adverse health effects caused by the exposure to a magnetic field generated by high voltage lines. Although much more research is needed before the question of whether magnetic fields actually cause adverse health effects can be resolved, the basis for such an hypothesis is established. At this time no risk assessment has been made."

When a Final Subdivision Public Report issued by the California Department of Real Estate is required, the applicant shall also request that the Department of Real Estate insert the above note in the report.

#### Energy Conservation

9. At least 30 days prior to filing a final map on Phase 1, the applicant shall submit to the Zoning Administrator for the review and approval:
- A. Methods to provide for future passive or natural heating or cooling opportunities within the subdivision and the design of the residences and swimming pools to the extent feasible;
  - B. Evidence that the desirability of participating in the P.O. & E. energy conservation "Incentives for Builders" program has been considered. Should the applicant choose not to participate, the applicant shall indicate in writing the reasons for the decision. Residences energy conservation shall exceed Title 24 requirements by 10%.

#### Farm Operation Notice & Sand mound Levee Use

10. The following statement shall be recorded at the County Recorder's Office for each lot:
- A. "This document shall serve as notification that you have purchased land in an agricultural area where you may regularly find farm equipment using local roads; farm equipment causing dust; crop dusting and spraying occurring regularly; burning associated with agricultural activities; noise associated with farm equipment and aerial crop dusting and certain animals and flies may exist on surrounding properties. This statement is again, notification that this is part of the agricultural way of life in the open space areas of Contra Costa County and you should be fully aware of this at the time of purchase."
  - B. This document shall serve as notification that you have purchased land in close proximity to sand mound levee. Sand mound levee is a private levee, and public recreation on this levee is prohibited.
  - C. This document shall serve as notification that you have purchased land in an area which contains the following existing approved land uses:
    - 1. Dog kennels and mixed animal veterinary services and animal hospital
    - 2. Horse riding rings
    - 3. Horse stables and keeping of cattle and other animals

#### 4. Oil and gas drilling

##### Grading and Dust Control

#### 11. Comply with the following construction, noise, dust and litter control requirements:

- A. Noise generating construction activities, including such things as power generators, shall be limited to the hours of 7:30 A.M. to 5:00 P.M., Monday through Friday, and shall be prohibited on State and Federal holidays. The restrictions on allowed working days may be modified on prior written approval by the Zoning Administrator.
- B. The project sponsor shall require their contractors and subcontractors to fit all internal combustion engines with mufflers which are in good condition and shall locate stationary noise-generating equipment such as air compressors and concrete pumpers as far away from existing residences as possible.
- C. At least one week prior to commencement of grading, the applicant shall post the site and mail to the owners of property within 1,000 feet of the exterior boundary of the project site notice that construction work will commence. The notice shall include a list of contact persons with name, title, phone number and area of responsibility. The person responsible for maintaining the list shall be included. The list shall be kept current at all times and shall consist of persons with authority to indicate and implement corrective action in their area of responsibility. The names of the individual responsible for noise and litter control shall be expressly identified in the notice. The notice shall be reissued with each phase of major grading activity.  
A copy of the notice shall be concurrently transmitted to the community Development Department. The notice shall be accompanied by a list of the names and addresses of the property owners noticed, and a map identifying the area noticed.
- D. A dust and litter control program shall be submitted for the review and approval of the Zoning Administrator. Any violation of the approved program or applicable ordinances shall require an immediate work stoppage. Construction work shall not be allowed to resume until, if necessary, an appropriate construction bond has been posted.
- E. The applicant shall make a good-faith effort to avoid interference with existing neighborhood traffic flows. Prior to issuance of building permits, the proposed roads serving this development shall be constructed to provide access to each lot. This shall include provision for an on-site area in which to park earth moving equipment.

12. At least 30 days prior to filing the Final Map or issuance of grading permits, the applicant shall submit a detailed grading plan for the review and approval of the Zoning Administrator. Prior to issuance of grading permits, the applicant shall have had received the Reclamation District #799 permit.

### TDM Plan

13. Prior to the issuance of building permits, the applicant shall submit a detailed TDM Plan for review and approval by the Zoning Administrator (unless otherwise required by a TDM Ordinance). The approved TDM Plan shall be operative prior to final inspection by the Building Inspection Department.

### Indemnification

14. Pursuant to Government Code Section 66474.9, the applicant (including the subdivider or any agent thereof) shall defend, indemnify, and hold harmless the Contra Costa County Community Development Department and its agents, officers, and employees from any claim, action or proceeding against the agency (the County) or agents, officers or employees to attack, set aside, void, or annul the agency's approval concerning this subdivision map application, which action is brought within the time period provided for in Section 66499.37. The County will promptly notify the subdivider of any such claim, action, or proceedings incorporate fully in the defense.

15. The project applicant shall defend, indemnify, and hold harmless Contra Costa County and its agents, officers, and employees from any claim, action or proceeding against the County or its agents, officers or employees relating to the dewatering activities that will take place as part of the project. The County will promptly notify that applicant of any such claim, action or proceeding and cooperate fully in the defense, in the event a claim, action or proceeding is filed.

### Development Guides

16. A guide for development and use provisions for this site shall be as follows:
  - A. On the lots with widths of less than 80 feet, setbacks of residential units shall be varied between 17 and 20 feet. All garages shall have a setback of at least 17 feet provided vertical garage doors are used. Frontyard setbacks may be reduced to 15 feet for covered porches. The sideyard minimum shall be 5-feet with a total aggregate sideyard of at least 10-feet. Rearyard minimum shall be 15-feet. Height limit shall be 30-feet with a two-story maximum. The R-6 zoning district shall be used as a guide for the height, or lot coverage of the site as well as the location of any detached sheds or outbuildings.
  - B. The setback for residential units on lots wider than 80 feet shall be varied between 20 and 25 feet. All garages shall have a setback of at least 20-feet. Frontyard setbacks may be reduced to 15-feet for covered porches. Sideyard minimum shall be 10-feet with an aggregate sideyard of at least 20-feet. The rearyard minimum shall be 15-feet. Building height limits shall be 30-feet with a two-story maximum. The R-10 zoning district shall be used as a guide for the height or lot coverage of the site as well as the location of any detached sheds or outbuildings.
  - C. Prior to the issuance of building permits on any phase of this site, the applicant shall submit samples of color and exterior materials for the review and approval of the Zoning Administrator. The fences between lots shall be of solid wood and

shall be at least 5-feet high. Rearyard fences shall be 6-feet tall and solid wood. Any fencing along a street shall be 6-feet tall solid wood with cement pilastered every 16-feet. The residences of this development shall be finished in a suitable color that shall be complimentary to each other. Residences located on corner lots shall be single story as often as possible.

- D. At least 15 days prior to issuance of building permits on any phase of this development, a detailed plan showing the location of homes shall be submitted for the Zoning Administrator's administrative review and approval.
17. A homeowners association shall be formed for the maintenance of the neighborhood parks. This shall be accomplished unless a public agency assumes the responsibility for the maintenance of these facilities. The means of maintaining parks and open space areas shall be developed and approved prior to recording the final map for Phase 1.
18. The garage area of each residence shall be wired for electric car recharging subject to the review and approval of the Zoning Administrator, and subject to the adoption of final Board policy.
19. Minimum setbacks along arterial roadways will be at least 60 feet from the centerline of the roadway to the exterior wall of any living space along collector streets (Cypress Road extension). To mitigate for noise and provide an aesthetically pleasing street through the subdivision, there shall be a 40 foot curb to curb street width, (or similar standard of the Public Works Department) 20 foot landscape area with sidewalk, and a masonry wall at the rear yards of the homes. Houses shall observe a 20' rear setback.

#### Utilities - Schools

20. Prior to recording the Final Map for Phase 1 of this development will serve letters from the Oakley Elementary School District and the Liberty Union High School District shall be submitted to the Community Development Department.
21. Sewage service shall be provided by the Ironhouse Sanitary District. Domestic water service shall be provided by the Diablo Water District. The applicant shall annex to these districts prior to recording the final map for Phase 1.
22. Prior to the recording the final map for Phase 1, the applicant shall submit a letter from the local transit agency outlining locations of bus stops for the site. The bus stop shall consist of a proper pull out for the bus along the street as well as a bench and/or covered areas if required by the local transit agency. The bus stops shall be constructed during the various phases of this project as it is developed.
23. The applicant and the Oakley School District are encouraged to enter into a short term funding agreement prior to recordation of the subdivision map for Phase 1. The agreement could ensure that matching funds are provided for the completion of construction documents necessary for the District's application for State funding. The amount of short term funding would be credited to the applicant's full school impact fees which are paid upon issuance of building permits. The school site has been found

acceptable to the Oakley School District, based on their letter dated December 15, 2000.

#### Child Care

24. Provision of a child care facility shall be required for this development. The child care program shall be submitted for the review and approval of the Zoning Administrator prior to filing the Final Map for Phase 1. If possible, it is encouraged that the child care center be developed and constructed prior to occupancy of residences for Phase 2 of this development. The day care facility shall be located within the Community Park as shown on the conformance map received January 25, 2001.

#### Fees

25. The project will voluntarily pay in-lieu affordable housing fee equal to \$3,333 per residential unit. The fee shall be paid at the time of the issuance of building permits for the various phases of this project. As an alternative to the payment of a portion of these fees the developer may provide a spread of affordable housing on site for income categories of "very low", "low", and "moderate" for up to 100% of median income, not to exceed 20% of the total monetary contribution. If this alternative mitigation is selected, the location design of the affordable housing units shall be submitted to the County Zoning Administrator for review and approval prior to filing a final subdivision map for that phase of the development.
26. When established by the Board of Supervisors, a protection fee shall be paid for each residential unit within the project to acquire development rights on agricultural land and/or open space or wetland areas. The fee shall be determined by the County and paid upon issuance of building permits for the various phases of this project. The maximum fee shall be \$25.00 per home subject to a cost of living adjustment.
27. The project will make a voluntary contribution of \$300,000 to the County Homeless Trust Fund. This contribution shall be paid, pro rata upon the issuance of building permits for the various phases of this project.
28. The project applicant shall make a contribution of \$90,000 for east county libraries. This contribution can be utilized for the construction of a new library to serve the Oakley and Bethel Island areas. This contribution shall be paid pro-rata upon the issuance of building permits for the various phases of this project.

#### "In-holding" Properties

29. The project applicant shall offer to enter into the following process for negotiating a purchase price for the three in-holding properties (Coleman, Zauggs, Ogren, Villegas, and Sewell). First, the project applicant shall mail an offer to each in-holding property owner to obtain an appraisal by an MAI certified appraiser. The offer shall contain a reasonable time limit for a response by the in-holding property owners. The in-holding property owner may also obtain an appraisal by an MAI certified appraiser. The purchase price shall be computed as the average of the independent appraisals by the applicant and in-holding property owner or any other mutually agreeable amount. Second, the project applicant shall provide evidence of such offer to the Zoning Administrator prior to filing

the Final Map on Phase 1.

OR

- A. Prior to recording the map for Phase 1, the development shall be redesigned so that Cypress Road avoids the Coleman property. The Coleman property shall have suitable access to Cypress Road or to another public road nearby.
- B. If the Zauggs, Villegas', Sewell's and Ogren's are agreeable, access to their lots may remain with the access road to their property from Cypress Road (old alignment) reversed to access from Cypress Lakes Drive from the east unless amended in the future by action of a public agency. This roadway shall be improved to a rural road standard to Cactus Lane prior to the occupancy of the first home in phase 1. If the Zauggs, Villegas', Sewell's and Ogren's are not agreeable, then the applicant shall build them a 10-foot paved driveway to their garage areas prior to recording the final map for Phase 1. For this option, the applicant shall attempt to adjust the lot lines for the Zauggs, Villegas, Sewell and Ogren properties so that they will front on Cypress Lakes Drive. Required archaeological surveys shall be required prior to any excavation.
- C. Prior to recording the final map for Phase 1, the Zauggs, Villegas, Sewell Ogren and Coleman properties perimeters with this site shall be properly fenced with a 6-foot tall cyclone fence with slats and gates as needed. Alternative fence could be a solid wood fence 6 feet tall.
- D. A letter of consent from the Sewell's for a lot line adjustment of the western corner of their property shall be submitted prior to the recording of the final map for Phase 1 (if the Sewell's don't want to sell their property). Enough property shall be adjusted to allow for a connection between the Community Park and open space area to the south.

#### Wetlands - Lakes

- 30. The project applicant shall prepare a final wetlands habitat mitigation monitoring program. The wetlands mitigation monitoring program shall be reviewed and commented upon its adequacy by the State Department of Fish & Game prior to the review of the County Zoning Administrator.
- 31. Channel crossings underneath the various roads on the site shall be designed so that water fowl and other small animals can cross underneath the road through a suitable pipe structure subject to the review and approval of the California Department of Fish & Game and the County Zoning Administrator.
- 32. The detailed channel enhancement plan shall be based on the draft channel enhancement plan. The plan shall be submitted to Contra Costa County, the California Department of Fish & Game for review and approval prior to approval of the project's final subdivision map for Phase 1.
- 33. The design of road crossings, bridges, and/or culverts to replace along the primary

drainage channel shall be submitted for the review and approval of the Contra Costa County Department of Public Works and the California Department of Fish & Game prior to filing a final map for Phase 1 of this subdivision.

34. A final channel lake operation and maintenance plan shall be submitted for the review and approval of the County and the California Department of Fish & Game prior to recording the final map for Phase 1. The plan shall be based on the applicant's proposed lake channel management plans and utilizing plants, flushing, aerations, and other techniques to maintain water quality without chemicals.
35. The project shall comply with all requirements of the County's NPDES permit requirements. The project applicant shall provide the County with the appropriate documentation regarding compliance with the NPDES requirements prior to the issuance of grading permits for this project.
36. Prior to recording the final map on Phase 1, the design for the community park shall be submitted to the Zoning Administrator for his review and approval. The parking area shall generally be located along Cypress Road adjacent to the daycare center. A second parking area shall be located at the southern access to the park. Drought tolerant landscaping shall be used as much as possible.
37. The Contra Costa Mosquito Abatement District shall be provided the final design plans for the wetland mitigation areas, golf course and lake plan for their review and comment prior to their approval by the Contra Costa County.

#### Golf Course

38. Prior to the development of the golf course on the site, a landscape plan for the golf course shall be submitted for the review and approval of the County Zoning Administrator. The plan shall be accompanied by a landscape maintenance plan outlining how the maintenance of the golf course can be accomplished with an environmentally sensitive and organic maintenance plan as possible.
39. A final maintenance plan for the golf course shall be submitted for the review and approval of the County prior to its development. The golf course may be developed prior to the construction of the levees and houses. The final maintenance plan shall build on the maintenance criteria established in the project plans and identified standard maintenance and management practices to be carried out on the golf course. Specific maintenance procedures shall be identified regarding the use of pesticides, herbicides and fertilizers and these shall be kept to a minimum. An emphasis of the maintenance plan should be to reduce any potential leaching of materials into the local ground water resources. The maintenance and management plan shall also outline specific irrigation practices designed to reduce water consumption.
40. A ground water management plan to address water requirements for irrigating the golf course and parks shall be developed. The ground water management plan shall also address the management of pesticides and measures to be taken to reduce potential impacts on ground water resources. The plan shall identify what areas, and in what

sequence water will be discontinued to portions of the golf course and park in the event of water cut-backs because of drought or substantial lowering of the water table. The plan shall be approved by Contra Costa County prior to filing the final subdivision map for Phase 4 of this development.

41. The golf course shall be designed to use grasses that are drought-tolerant to limit the needed amount of water for irrigation.

#### Levees

42. If Reclamation District 799 does not accept the internal levee, another agency will be requested or formed to maintain the levee. A maintenance district can be formed consisting of the homeowners in the project. Under this district, each homeowner would be assessed a fee to maintain the levee.
43. Levee landscaping shall be subject to the review and approval of RD799. Any exterior areas outside of the levee and maintenance area shall be subject to the review and administrative approval of the Zoning Administrator prior to construction of the levee. This includes the corner of Bethel Island Road and Sandmound Boulevard, and the intersection of Cypress Road & Bethel Island Road. Maintenance of these areas shall be through the homeowners' association or landscape maintenance district. The construction of the site levee shall begin along the westerly portion of the site.
44. The design of the project levee shall be in accordance with the standards and requirements of the Federal Emergency Management Agency for an urban standard levee. Provision shall be designed into the project levee to allow for a future increase in height of 4-feet to allow for the possible greenhouse effect. During the design of the project levee, the crest elevation shall be increased by an amount equivalent to the projected long term settlement. If accepted by Reclamation District #799, levee and drainage systems shall be dedicated to Reclamation District #799.

Prior to issuance of any grading permit for the construction of the project levee, the location of the right of way for the extension of Bethel Island Road south of Cypress Road, shall be reviewed and approved by the Public Works Department, Engineering Services Division. The property owner to the west of the project and south of Cypress Road, and the Archaeological Conservancy, shall be notified and given two weeks to review the grading plans for the levee that may impact the location of the right of way for the extension of Bethel Island Road, up to 465 feet south of existing Cypress Road, and to review the location of the intersections of Cypress Road and Bethel Island Road prior to issuance of the grading permit.

Prior to issuance of a grading permit for the construction of any levee that fronts on a public road, such as Bethel Island Road or Sandmound Boulevard, the grading plans shall be reviewed by the Public Works Department to ensure provision of the ultimate right-of-way.

45. The side slopes of the project levee shall be planted only with native grasses and dust control measures shall be provided in accordance with limitations imposed by FEMA.

46. Adequate easements shall be granted to the maintenance authority in order to provide for maintenance and upgrading of the levee and to prohibit encroachments onto the levee.
47. To minimize the risk of liquefaction beneath the primary levee, the loose clean and silty sand to depth of 10 to 15 feet or whatever depth is required shall be reworked and densified. Deep dynamic compaction may be used for the compaction of the soils. The applicant shall submit the following information for RD 799 approval:
- A. A ground improvement geotechnical design report with plans and specifications for RD 799's approval. Because the District is highly concerned about impacting neighboring improvements and complaints from residents, the ground improvement design report must include a plan for informing the community, managing residents' concerns and insuring against damages. The district will establish limits on ground velocity and displacement to protect the district's existing levee and any adjoining improvements.
  - B. Initial phases of compaction shall commence in an area that is remote from the existing levee and sensitive improvements whereby the effectiveness of the method can be demonstrated, monitored, and evaluated, and the vibration limits can be refined prior to its use approaching the existing levee and developed portion of the District.
48. A detailed emergency evacuation plan based on the project's proposed emergency evacuation plan shall be prepared in cooperation with Reclamation District #799 prior to approval of Phase 1 of the project's subdivision map. Evacuation plan shall include at a minimum the following measures:
- A. Criteria for determining when an emergency exists.
  - B. Methods for notifying and evacuating area residences.
  - C. Identification of agencies and individuals responsible for emergency response and public evacuation.
  - D. Plans for returning evacuees to their home after an emergency has passed.

Any construction of facilities required by the evacuation plan shall be constructed prior to levee construction.

The Evacuation Plan shall be subject to the review of the Public Works Department and the review and approval of Reclamation District 799 and the Zoning Administrator. The Plan shall identify 1) the equipment and facilities necessary to provide safe access to the project, 2) the entity responsible for providing safe access to the project, and 3) the timing of when the equipment and facilities are needed to provide safe access to the project in the event of an emergency. The Plan shall be designed to provide emergency access once the floodwaters have been stabilized and continue to provide safe access until the levee break is repaired and normal access is restored.

There will be no need to provide for emergency access when there is a permanent flood protected access provided on Cypress Road between Jersey Island Road and the project.

49. Prior to recording the map for Phase 1 of this development or prior to issuance of grading permits, a final ground water monitoring plan shall be submitted for the review and approval of the Reclamation District #799 and Contra Costa County prior to filing a final subdivision map. A performance bond may be requested by Reclamation District #799 that will provide the District with protection for its existing levee and drainage Systems.
50. The project's site shall continue to be a part of Reclamation District 799 and shall be prohibited from succeeding from this district, even if removed from the flood hazard zone, by the proposed internal levee system, to provide the district with continue long term sources of funding for maintenance of the existing Reclamation District 799 levee system.
51. Maintenance of the landscaped strip on the side of the levees will be done by the homeowners association or a special district. It will not be the responsibility of the agency that maintains the project levees. Levee landscape guidelines shall be finalized once the public agency responsible for maintaining the levee is determined. The levee landscape guidelines should then be submitted to the public agency responsible for maintenance of the levee for review and approval prior to installation of landscaping on the levees.

#### Recreation Maintenance

52. A landscape maintenance district, or other funding source consisting of the property owners within the project site, shall be established for the proposed project to pay for long term maintenance of public recreational areas within the site. The project applicant shall submit a proposal for the landscape maintenance district to the County for approval prior to recording the final map for Phase 1 of this development. The use of the trail system for horses may be permitted provided that a plan for long term maintenance is prepared by the applicant for approval by the Zoning Administrator, RD799 and the agency maintaining the recreational areas.

#### Construction Parking

53. Prior to construction of any phase of this site, an on-site parking area shall be developed for parking needs of construction crewmembers. This plan shall be submitted to the Zoning Administrator for review and approval prior to construction of residences within the various phases of this development.

#### CC & Rs

54. The CC & R's shall contain information regarding the use of or disposal of undesirable materials such as motor oil, paints, garden pesticides and other household products. The CC & Rs shall state that the existing Hotchkiss Tract levee is private property and cannot be used for public or recreational purposes.
55. Prior to recording the final map for Phase 1, a street sweeping program shall be provided to reduce urban pollution run-off into the proposed lakes and channels. The street

sweeping may be provided by the County through its existing street sweeping program or if this is not feasible alternative measures could include funding of the street sweeping program by the homeowners association. The CC & Rs of the development in regard to levee maintenance shall be acceptable to Reclamation District #799, if the District accepts the levees.

#### Soils - Geology

56. The project shall be required to adhere to the approaches outlined in the Kleinfelder report analyzing the approaches for mitigating liquefaction impacts. The specific approach will depend on site specific conditions and analysis. The project applicant shall follow the review and approve recommendations of the Kleinfelder report. The report documenting the methods used in the field to reduce liquefaction potential shall be submitted to the Public Works Department and to the public agency responsible for maintenance of the levee system for their review and approval. An additional geotechnical report outlining means of protecting the new levees with and without using deep dynamic compaction shall be submitted for review and approval of Reclamation District #799 and Contra Costa County.
57. At least 45 days prior to recording a final map for Phase 1 or any phase, issuance of grading permits, or installation of improvements or utilities, submit a preliminary geologic, soils, and foundation report meeting the requirements of the Subdivision Ordinance Section 94-4.420 for review and approval of the County Zoning Administrator. Improvement, grading and building plans shall carry out the recommendations of the approved report.
58. The report required above shall include evaluation of the potential for liquefaction and seismic settlement.
59. Record a statement to run with deeds to the property acknowledging the approved report by title, author (firm), and date, calling attention to approved recommendations, and noting that the report is available from the seller.
60. At least 45 days prior to issuance of permits to grade and create the lake and channels on the site, a suitable geotechnical report shall be submitted for the review and approval of the Zoning Administrator detailing means to stabilize the lake bank in case of earthquake and to reduce the possibility of liquefaction of this area.
61. The ground settlement monitoring plan shall be finalized and submitted to the Reclamation District #799 and Contra Costa County for review and approval prior to beginning any construction or dewatering activities on the site. Plan shall identify the location of all monitoring wells, and provide specifics on well completion and methods and frequency of monitoring. Plan shall identify settlement plates as well as contingency plans to control subsidence or mitigate subsidence and related damage.
62. Ground water monitoring plans to provide early detection of changes in ground water level and to allow adjustment in the construction techniques if necessary shall be developed. Monitoring wells and settlement plates shall be placed on the project's site and surrounding properties to control ground water levels. The ground water monitoring plan

shall be acceptable to Reclamation District #799 and Contra Costa County.

63. The project owner shall fund an independent geotechnical and drainage engineering review of the project design and construction on behalf of Reclamation District #799. This review shall show the impact and a plan to alleviate the impact of the project on existing drainage pumps and systems. The report shall be acceptable to Reclamation District #799 and Contra Costa County.
64. The project grading plan shall include the following mitigation measures:
  - A. The name and phone number of a designated dust control coordinator will be posted at the construction site. The dust control coordinator will respond to complaints by suspending dust-producing activities or providing additional personnel or equipment for dust control.
  - B. The contractor will implement the following measures:
    - 1) Suspend earthmoving or other dust-producing activities during periods of high winds;
    - 2) Provide equipment and personnel as necessary for watering of all exposed or disturbed soil surfaces. An appropriate dust suppressant, added to water before application, should be utilized;
    - 3) Water or cover stockpiles of debris, soil, sand or other materials that can be blown by the wind;
    - 4) Sweep adjacent streets of all mud and debris, since this material can be pulverized and later resuspended by vehicle traffic;
    - 5) Water, seed, cover or apply dust suppressants to completed cuts or graded areas as soon as grading activities cease;
    - 6) In addition to the dust control measures proposed as part of the project, the project applicant should post the name and phone number (business and non-business hours) for the dust control coordinator along the perimeter of each construction site and provide this information by mail to residents within 1 000 feet of the area of construction;
    - 7) Earthmoving and other dust-producing activities should be suspended when watering and other dust control measures are unable to eliminate visible dust plumes.

#### Fire Station

65. The proposed new fire station on the project site shall be operational prior to the occupancy of the first homes on the site as shown on the conformance map dated January 23, 2001. The station at the North West corner of Cypress Road/Cypress Lakes Drive

shall be build to specifications of the appropriate fire district (Oakley Fire Protection District or Bethel Island Fire Protection District or their successor) and shall be on a parcel of land measuring a minimum of 208 feet x 208 feet.

If the developer is successful in annexing the project to the Bethel Island Fire Protection District the fire station shall be constructed and be in-service at the time of occupancy of the six hundredth home or the beginning of the phase three, whichever occurs first. The following conditions shall also apply and are based upon annexation to the Bethel Island Fire Protection District.

The owner of the property shall participate in the provision of funding to maintain and augment fire services by voting to approve a special tax for the parcels created by this subdivision. The tax shall be \$200 per parcel annually (with appropriate future consumer price index (CPI) adjustment). The election to provide for the tax must be completed prior to the filing of the final map for Phase 1. The property owner shall be responsible for paying the cost of holding the election. The fee for election costs will be due at the time that the election is requested by the owner.

A type one fire engine built to specifications of Bethel Island Fire Protection District, shall be purchased by the developer and be in service prior to the occupancy of the first home.

The developer shall contribute \$95,000 (dollars as of 1-00) to the Bethel Island Fire Protection District for fire station staffing prior to the issuance of the final map of the first phase of the development.

66. Prior to recording the final map for Phase 1, the site shall have been annexed into either the Bethel Island Fire Protection District or the Oakley Fire Protection District or their successor.

#### Landscaping

67. Prior to construction of the various residences on this site, landscaping plans for frontyard landscaping of the residences shall be submitted to the Zoning Administrator for review and approval. The landscaping plan shall include an alternative landscaping with xeriscape landscaping for builder installed front yards. Landscaping of frontyard areas of this site shall be installed prior to occupancy of residences.
68. Comply with the landscape requirements as follows: The following reports are subject to the Zoning Administrator review and approval. Landscaping shall conform to the County's Water Conservation policies in regards to the use of drought-tolerant trees, bushes and ground cover. The project landscaping plan shall include provisions to utilize the East Bay Conservation Corps or similar work program to complete and/or maintain the project landscaping, unless the applicant demonstrates that including such a work program is not reasonably feasible. At least 30 days prior to requesting recording of the final map for Phase 1, submit a street tree planting plan for entire development, all landscape being planned for the site's frontage on Cypress Road extension and Bethel Island Road, and portions of the site fronting on Sandmound Boulevard. The landscape plan shall include typical frontyard landscaping plans for residences on the site. Prior to

recording the final map for Phase 1 of this development submit a detailed trails plan indicating location of trails, their design, and their maintenance on the site. Because of high water table-areas around the lake and channels may be landscaped with native willows, a few native cottonwoods and other California natives suitable for the area. Trees may be 5 gallon size, bushes 1 gallon size.

69. Prior to recording the final map for Phase 1 of this development, the design of the street lights shall be submitted for the review and approval of the County Public Works Department and the County Zoning Administrator. The street lights shall use down focus lights to eliminate to reduce glare to the surrounding area.

#### Archaeological

70. Should archaeological materials be uncovered during grading, trenching or other on-site excavation(s), earthwork within 30 yards of these materials shall be stopped until a professional archaeologist who is certified by the Society for California Archaeology (SCA) and/or the Society of Professional Archaeology (SOPA) has had an opportunity to evaluate the significance of the find and suggest appropriate mitigation(s), if deemed necessary.
71. Any development within the western perimeter of the site within the archaeological sensitive area shall be done in a manner, which reduces ground disturbance to an absolute minimum. The construction activity in this area shall be closely monitored by an on-site archaeologist during any development in these areas. Rubber tired construction vehicles shall be used throughout the site and excavation for landscaping irrigation shall be allowed in fill materials only. Should it be necessary to excavate through native soils an archaeologist shall be present to monitor soil removal to determine if there are any cultural materials.
72. Due to a high level of known archaeological sensitivity, the original site for the new fire station shall be abandoned in favor of a site on the northwest corner of Cypress Road and Cypress Lakes Drive.
73. Lot #10 in Neighborhood 1 has been redrawn in a manner that it avoids the archaeological sensitive areas. Lot #11 in Neighborhood 1 has been redrawn in order to avoid archaeological sensitive areas.
74. The rear lot lines of Lots #29 and #30 in Neighborhood 7 shall be redrawn in a manner that avoid archaeological sensitive areas.
75. An archaeological monitor(s) shall be present when grading, excavation, trenching or other soils disrupting activities are carried out in any of the mapped archaeological sensitive areas. An archaeological monitor(s) shall be on-call when grading, excavation, trenching or other soils disrupting activities are carried out in the project's site. In the event that a prehistoric site, burial or historical resources are encountered during construction of the project, the project engineer will be obligated to temporary stop the relocate construction activities and notify the archaeological monitor immediately. In the event of a significant prehistoric or historic resources are identified no further

construction shall be permitted in that location until a mitigation plan can be formulated and implemented.

76. In the event that human remains are discovered during construction, excavation shall be halted at that location. Any finds of human remains must be reported to the Contra Costa County Coroner's Office. In the event that the find is determined to be prehistoric, the Native American Heritage Commission must be notified within 24 hours to alert them of the find and to permit the designation of a Native American representative. Consultation between the archaeological consultants in charge of monitoring, Contra Costa County and the Native American representative would then determine the course of action to be taken with the burial in question. Ideally, if removal is undertaken time should be allowed for the study of the remains in an associated grave prior to their return to the Native American community for reburial at a location of their selection.
77. The report of findings and analysis of all archaeological data recovered during testing, excavation, monitoring and any mitigation procedures are taken should be prepared by a qualified archaeologist for submittal to Contra Costa County, and proper State agencies.
78. An acceptable (to the County) plan shall be developed for informing construction personnel on the potential for discovering of cultural or human remains, and the need for proper and timely reporting of such finds and the consequences of failure thereof. The plan shall be developed and approved prior to issuance of grading permits.
79. Prior to recording the final map for Phase 1 of this development or the issuance of any grading permits, an agreement shall be reached with the Native American' Heritage Commission (NACH) in Sacramento regarding potential Native American concerns, values and traditional use areas relative to the proposed project site and vicinity. The agreement would specify when, in the event of a discovery, Native American involvement would occur, and the treatment and ultimate disposition of any ancestral remains.
80. The proposed intersection and improvements of the project's entrance and Bethel Island Road has been realigned to the north as much as possible to avoid impacting cultural resource sites.
81. The alignment of any future extension of Bethel Island Road south of Cypress Road shall be between the archaeological site, in that area, taking into consideration safety factors. The project levee along the westerly side may have to be moved up to 50 feet east.

#### Miscellaneous conditions

82. Prior to recording the final map for the various phases of this project, a soils sampling shall be conducted in those areas of the site where heavy equipment has been stored, repaired facilities, or located where above or below ground storage tanks are or were located. Should contaminated soil be identified, removal and remediation of the material shall occur prior to excavation or construction activities commence in these areas. The Contra Costa County Health Services Department shall supervise and authorize any soil sampling procedures and remediation. Prior to recording the final map for various phases of this development, any existing water wells in that area or septic tank leach fields shall

be properly removed under County Health Department authorization.

83. The applicant may construct up to 200 secondary units in addition to the 1,330 units. The units can be duets, or attached or detached units. These units shall be subject to the administrative approval of the Zoning Administrator. These units are exempt from contributions made on a voluntary basis, such as the contributions to the homeless trust fund and affordable housing. Consideration may be given to exemptions from other fees and contribution to keep these units in the affordable price range.

#### Road and Drainage

84. The following requirements pertaining to drainage, road, and utility improvements will require the review and approval of the Public Works Department. For improvements now within the City of Oakley, plans shall also be reviewed and approved by the City of Oakley. In accordance with Section 92-2.006 of the County Ordinance Code, this subdivision shall conform to the provisions of the County Subdivision Ordinance (Title 9). Any exceptions therefrom must be specifically listed in this conditional approval statement.

- A. Install street lights and annex the property to County Service Area L-100 for maintenance of the street lights. The final number and location of the lights shall be determined by the Public Works Department, Transportation Engineering Division.
- B. Underground all utility distribution facilities, including the existing utilities along the Bethel Island Road and Sandmound Boulevard frontages. The undergrounding of utility distribution facilities does not require undergrounding of the 500 KV PG & E facilities.
- C. Submit improvement plans prepared by a registered civil engineer, payment of review and inspection fees, and security for all improvements required by the Ordinance Code or the conditions of approval for this subdivision. These plans shall include any necessary traffic signage and striping plans for review by the Public Works Department, Transportation Engineering Division.

#### DRAINAGE IMPROVEMENTS

- D. Convey all storm waters entering or originating within the subject property (including the outside slopes of the levee), without diversion and within an adequate storm drainage facility, to an adequate, publicly maintained pump station. The pump station location and design shall be subject to the review of the Public Works Department, and the review, approval and acceptance by Reclamation District 799.
- E. The Ordinance Code prohibits discharge of storm waters to roadside ditches. However, as roadside ditches are characteristic of the area, an exception from this requirement is granted provided the applicant verifies the adequacy of the downstream ditch system and constructs any necessary improvements to make this system adequate to a point where the flow will be accepted by Reclamation District 799.

- F. The Ordinance prohibits discharging storm waters into the Contra Costa Canal or any other water conveyance or impounding facility for domestic water consumption.
- G. Install, within appropriate drainage easements, any portion of the drainage system, which conveys run-off from public streets.
- H. The applicant shall submit a lake management plan for review by the Public Works Department, Reclamation District 799, the Health Department and the Zoning Administrator. The plan shall be approved by the Board of Supervisors. The lake management plan shall provide for control of a stable lake level, control of bank erosion due to wave action, control of aquatic plants and algae, desiltation, control of chemicals used within the project, including those used for lake maintenance, households and the golf course. The applicant shall include language in the Covenants, Conditions and Restrictions governing use of household chemicals. The plan shall include a plan for compliance with the NPDES.
- I. Prior to the filing of the first final map the applicant shall provide the Public Works Department with a feasibility study of the proposed drainage system including the proposed detention basin. The study shall address the potential maintenance cost of the system and the reliability of the system taking potential groundwater infiltration and pump failure into account. Other items to consider include: pump failure, lake detention capacity due to water table fluctuation, accelerated siltation of the system due to low velocities, stagnate water, mosquito abatement, odors, and plant and algae growth. Should the maintenance costs exceed the norm in the County, a public entity such as Reclamation District 799 shall provide for perpetual maintenance of the underground drainage facilities. If Reclamation District 799 will not accept the underground storm drain system for maintenance, the on site roads and drainage shall be private facilities and privately maintained. Any detention basin, however, must be maintained by a public entity as required by Ordinance Code. Improvements not to be accepted by Reclamation District 799 shall be subject to the review and approval of the Public Works Department. This study shall be subject to the review of the Public Works Department, Reclamation District 799 and the review and approval of the Zoning Administrator.
- J. Prior to filing of the first final map the applicant shall provide a list of which facilities are proposed to be maintained by which public entity, or by a private entity. The list shall be subject to the review of the Public Works Department, Engineering Services Division, Reclamation District 799 and the review and approval of the Zoning Administrator.
- K. Prevent storm drainage, originating on the property and conveyed in a concentrated manner, from draining across the sidewalks and driveways.

#### LEVEES

- L. The proposed levee system shall be constructed to FEMA, U.S. Army Corps of Engineers, Reclamation District 799 and County standards subject to the review and approval of Reclamation District 799. The trails and other associated planning issues shall be subject to the review and approval of the Zoning Administrator. If Reclamation District 799 does not accept the levee for maintenance, it shall be maintained by another

public entity subject to the review and approval of the Zoning Administrator.

- M. Landscaping of the levees shall be subject to the review of FEMA, Reclamation District 799, and the entity which will accept the levee for maintenance, and the review and approval of the Zoning Administrator.
- N. The applicant shall submit the final groundwater monitoring plan for review by Reclamation District 799 and the review and approval of the Zoning Administrator prior to beginning any construction that requires dewatering to commence.
- O. Observe a 15-foot setback from the as built finished designed landside levee toe. This 15-foot setback shall be an un-encumbered and exclusive access easement in favor of RD799. If there is a levee toe drainpipe the 15-foot setback must be expanded in order to provide adequate room for maintenance of the drainpipe, subject to the review of Reclamation District 799 and the review and approval of the Zoning Administrator.
- P. Grant land rights to Reclamation District 799 pursuant to the standards and requirements of Reclamation District 799, subject to the review and approval of the Zoning Administrator.

#### RIGHT OF WAY DEDICATIONS

- Q. Convey to the County, by Offer of Dedication additional right of way along the project frontage of Bethel Island Road (north of Cypress Road) as required for the planned future half-width of 65 feet. The right of way shall provide for ultimate dual left turn lanes at the Cypress Road-Bethel Island Road intersection.
- R. Convey to the County, by Offer of Dedication, additional right of way along the project frontage of Sandmound Boulevard as required for the planned future half-width of 45 feet. The right of way shall widen at the Bethel Island Road intersection to provide for a left turn lane from westbound Sandmound Boulevard traffic to southbound Bethel Island Road.
- S. Convey to the County, by Offer of Dedication, 55 feet of right of way (or an agreed upon right of way by the Public Works Department and Zoning Administrator) for the planned future road along the westerly property line south of Cypress Road. This 55 feet of right of way will be the easterly half width of a 110 foot right of way for the ultimate extension of Bethel Island Road southerly to Rock Slough. The westerly portion of right way will be acquired with the development to the south or west of this project. The right of way dedicated shall widen to a 60 foot half-width within 300 feet of the intersection of Cypress Road. The alignment shall be to arterial standards, and subject to the review of the Public Works Department and the review and approval of the Zoning Administrator.

The dedication and road alignment described above shall be modified as necessary to protect the cultural resources on the subject property or on the property to the west. This area of concern extends from the North Line of the South half of Sections 27 and 28 (centerline of existing Cypress Road) south 465 feet. South of this point the road alignment shall transition back to centering on the westerly project property line. If the Hotchkiss Mound extends beyond 465 feet south of the centerline of the existing Cypress Road, then the right-of-way shall be designed to allow construction of a road that will

preserve the cultural resource, as recommended in the report discussed below.

Surface and subsurface archaeological testing and reports determining the eastern boundary, between Cypress Road and 465 feet south of Cypress Road, of archaeological site CA-C CO 1 38 (the Hotchkiss Mound) on the property immediately to the west of the project property (Dal Porto property) shall be conducted by the project applicant, and provided to Contra Costa County along with a proposed alignment for the planned future road based on the archaeological reports, within three months of approval of rezoning. Consideration shall be given to an appropriate buffer area and/or barrier to protect the eastern boundary of archaeological site CA-CCO-138. The archaeologist shall be selected and compensated by the project applicant. Given the results of the CA-CCO-138 report and the reports defining the limits of CA-CCO-139 (the Simone Mound) contained in the Cypress Lakes and Country Club EIR, the right-of-way including slope easements, for the planned future road and its intersection with Cypress Road shall be designed to avoid or preserve and to cause the least possible impact, to the cultural resources on the project property and the Dal Porto property to the west. The report shall include recommendations for the design of Bethel Island Road South of Cypress Road to protect the cultural resources as described above. That portion of the approved right-of-way which falls on the project property will be conveyed to the County, by Offer of Dedication.

The archaeological report determining the 465 feet of the eastern boundary of CA-CCO-1 38 and the proposed location of the road right-of-way shall be subject to the review and approval of the Zoning Administrator. The property owner to the west, the California Northwest Archaeological Information Center, the Archaeological Conservancy, the Office of Historic Preservation, and the Native American Heritage Commission shall be notified and given two weeks from the date of receipt by each agency to review and comment upon the report and the right-of-way location prior to its approval.

Depending on these comments, the Zoning Administrator may require a peer review of the archaeological report on CA-CCO-1 38 by another qualified archaeologist. The location of the right-of-way shall be reviewed and approved by the Public Works Department prior to issuance of grading permits for the construction of any portion of the levee that might affect this road alignment, or prior to the filing of any final map that may affect this road alignment, whichever comes first.

- T. Relinquish abutter's rights of access along all proposed public arterial and major collector roads with the exception of access points approved with this project.

#### ON-SITE ROADWAY IMPROVEMENTS

- U. Construct the on-site public roads to County public road standards, and convey to the County, by Offer of Dedication, the corresponding right of way. Roads which shall be private roads shall be constructed to County private road standards, subject to the review of the Public Works Department, Engineering Services Division, and the review and approval of the Zoning Administrator.
- V. On all public roads with longitudinal slopes of eight percent or less, all public pedestrian access ways shall be designed in accordance with Title 24 (Handicap access). This shall include all driveway depressions as well as handicap ramps.

- W. Construct a new three-leg intersection at Cypress Road and Bethel Island Road, and adequate approaches to this intersection. Final intersection configuration shall be to the satisfaction of Public Works Department and Zoning Administrator, and may be altered based on safety and design considerations. The improvements shall provide for two through lanes along each leg in each direction, and shall extend 1,000 feet along each of the three legs of the intersection. The intersection shall have the turn lane requirements shown in Figure 3.2-1 3 of the DEIR. This intersection shall be designed so that it will ultimately be consistent with a future extension to Byron Highway south of the intersection, and any realignment of Cypress Road to a location north of the existing Cypress Road roadway and above the flood plain. The 1,000 foot section of Cypress Road shall also be realigned north of the existing Cypress Road roadway and above the floodplain to match the proposed improvements to Subdivision 7588. The final design of the vertical curvature of Cypress Road where it crosses the levee shall be approved prior to filing of the first final map. Traffic signals shall be installed at this intersection and put into operation prior to issuance of the 500th building permit, or sooner if needed. The need for the signal shall be analyzed by the Public Works Department prior to filing the final map for each phase, and installed if needed prior to issuance of the 500th building permit.

The Zoning Administrator will consider, subject to the review of the Public Works Department, Engineering Services Division, allowing construction of an interim configuration of the intersection if it can be shown to operate in a safe and efficient manner. The applicant will be required to submit a conceptual plan for the interim and ultimate intersection configuration subject to the review of the Public Works Department, Engineering Services Division, and the review and approval of the Zoning Administrator. In any event, the applicant shall construct the ultimate intersection improvements prior to issuance of the 500th building permit.

The location of the Cypress Road-Bethel Island Road intersection shall be subject to the review of the Public Works Department, Transportation Engineering Division, and the review and approval of the Zoning Administrator.

- X. The following design speeds shall be used for the design of the levee crossings of public roads, and the design of off-site roadways. Cypress Road extension: 35 MPH for the easterly levee crossing. The north-south collector: 35 MPH for both the north and south levee crossing. Sandmound Boulevard: 45 MPH. Bethel Island Road and the off-site portion of Cypress Road: 60 MPH. The design speed for the westerly levee crossing of the Cypress Road extension shall be reviewed by the Public Works Department and reviewed and approved by the Zoning Administrator.
- Y. The following design speeds shall be used for the internal road system: 35 MPH for Cypress Road between Cypress Lakes Drive and Sandmound Boulevard, 35 MPH on the north-south collector between Sandmound Boulevard and the southerly property line. The design speed of Cypress Road between Bethel Island Road and Cypress Lakes Drive shall be reviewed by the Public Works Department and reviewed and approved by the Zoning Administrator.
- Z. Construct road improvements along the frontage of the Cypress Road extension.

- I) Construct necessary longitudinal and transverse drainage (longitudinal drainage may be in open drainage ditches), and necessary pavement widening along the frontages will satisfy this requirement. The minimum pavement half-width shall be 20 feet. A ten foot recovery area shall be required between the edge of pavement and the top of bank of the

Prior to issuance of the 1 50th building permit, construct the extension of Cypress Road from Bethel Island Road to Sandmound Boulevard to a minimum width of 28-feet at ultimate line and grade.

- AA. Prior to issuance of the 1000th building permit, construct the proposed north-south collector between Cypress Road and Sandmound Boulevard to provide secondary access.
- AB. Construct turn lanes and tapers on Cypress Road on the east side of Cypress Lakes Drive to Caltrans standards subject to the review and approval of the Public Works Department, Engineering Services Division.
- AC. The proposed compliance plan provides a 60-foot wide right-of-way (and necessary slope easements) for a future roadway connection to the property south of Cypress Lakes and construct the road to the top of the project levee. This roadway connection would be a secondary access to the project to the south. It should be opened for traffic only after Bethel Island Road is extended south to provide the main access to development of the property to the south.
- AD. Provide deed notification to those parcels that abut the road that is to be extended to the property to the south, and install signage at the end of the road, to inform prospective property owners that it may be extended in the future.
- AE. Provide a signal at the proposed Fire Station subject to the review of the Public Works Department, Engineering Services Division and the Fire District. This signal shall be in operation prior to occupancy of the fire station. This signal shall be interconnected to the signal at the intersection of Cypress Road and Bethel Island Road.
- AF. The entrance to the public park containing the ball fields shall be a street-type connection with 20-foot radius curb returns.
- AG. All trail and golf cart crossings of public roads shall be designed for proper stopping sight distance and signed subject to the review and approval of the Public Works Department, Engineering services Division.
- AH. On road bicycle paths shall be provided as shown in Figure 3.9-3 of the DEIR. The required collector road extension to the southerly property line shall be wide enough to accommodate an on-street bicycle path.
- AI. The proposed conformance map shows the intersections of Maple Court and Willow Court and the intersections of Redwood Court and Ash Court with Park Place Circle at least 150 feet apart, consistent with county standards.
- AJ. The 1/2 cul-de-sac on Pasa Tiempo Court shall be eliminated or made into a full cul-de-

sac.

- AK. The alignment of the Cypress Road extension to Sandmound Boulevard shall be subject to the review of the Public Works Department, Engineering Services Division, and the review and approval of the Zoning Administrator. The alignment shall miss the "Not a Part" properties (Coleman, Ogren, Zauggs, Villegas and Sewell properties) within the project limits, or they shall be purchased in whole or in part by the applicant.
- AL. Construct a separated bicycle/pedestrian facility along the frontage of Bethel Island Road. This facility may be located on top of the levee provided all approving agencies allow the placement of a trail facility on top of the levee. Access from the trail shall be provided to the intersection of Bethel Island Road and Sandmound Boulevard and at the at-grade crossings of all public roads. Provide an easement at the southwest corner of the project for a future access from the levee trail to the southerly extension of Bethel Island Road. These access points shall conform to the requirements of the Americans with Disabilities Act.

#### LANDSCAPING

- AM. Install permanent landscaping and automatic irrigation facilities within the parkway and median areas, and install interim landscaping features within the future road areas, if any. All work shall be done in accordance with the guidelines and standards of the County. Funding of, and maintenance of, the new plantings shall be guaranteed by the developer until the expiration of the plant establishment period and until funds are available through a landscaping district.
- AN. Apply to the Public Works Department for annexation to the County Landscaping District AD 1 979-3. (LL-2) for the future maintenance of landscaping and irrigation facilities in median islands, parkways and other areas ("open space" and the levee landscaping is specifically excluded).
- AO. Submit two sets of landscaping plans and an estimate of improvement costs prepared by a licensed landscape architect to the Public Works Department, and pay the plan review and field inspection fees at least six weeks prior to the filing of the first final map. All landscaping and irrigation facilities shall be maintained by the applicant until funds become available for their maintenance by the County after final inspection is cleared.

#### FRONTAGE IMPROVEMENTS

- AP. Construct road improvements along the frontage (east half) of Bethel Island Road.
- 1) Constructing necessary longitudinal and transverse drainage (longitudinal drainage may be in open drainage ditches), necessary pavement widening to obtain the ultimate half-width, and the median island (including surface treatment and/or landscaping and automatic irrigation facilities) along the frontage will satisfy this requirement. A ten foot recovery area shall be required between the edge of pavement and the top of bank of the drainage ditch. These improvements shall be constructed prior to the filing of any final map which takes access from Sandmound Boulevard along the northern portion of the property.

- 2) In lieu of constructing the median island (including surface treatment and/or landscaping and automatic irrigation facilities) the applicant shall place a cash deposit in the Road Improvement Trust (Fund No. 819200-0800) for the future construction of a half width of the median island (including surface treatment and/or landscaping and automatic irrigation facilities) when the other half of Bethel Island Road is improved.

AQ. Construct road improvements along the frontage of Sandmound Boulevard along the northern and eastern project boundaries.

- 1) Construct necessary Longitudinal and transverse drainage (longitudinal drainage may be in open drainage ditches), and necessary pavement widening along the frontages will satisfy this requirement. The minimum pavement half-width shall be 20 feet. A ten foot recovery area shall be required between the edge of pavement and the top of bank of the drainage ditch.
- 2) The road improvements along the northerly Sandmound Boulevard frontage of this property shall be constructed prior to the filing of any final map which provides access to Sandmound Boulevard along the northerly property line.
- 3) The Sandmound Boulevard road improvements along the eastern property line of this property shall be constructed prior to the 150th building permit, subject to the review of the Public Works Department, Engineering Services Division, and the review and approval of the Zoning Administrator.

#### OFF-SITE ROADWAY IMPROVEMENTS

AR. Construct safety improvements at the Cypress Road - Jersey Island Road intersection if the Public Works Department, Engineering Services Division, finds that they are warranted prior to construction by the developer of Subdivision 7588. A condition of approval will be included in the conditions of approval for Subdivision 7588 which will require the developer of Subdivision 7588 to reimburse the developer of subdivision 7562 for intersection work which they performed at the Cypress Road - Jersey Island Road intersection.

AS. The access to the "Boat & RV Storage & HOA maintenance center" off of Sandmound Boulevard should be a minimum of 26 feet wide (14 foot inbound and 12 foot outbound lanes). The entrance to the access road should provide curb returns of sufficient radius to allow vehicles to enter and exit without blocking both lanes of traffic on Sandmound Boulevard.

AT. The applicant shall contribute \$25 per unit to the Road Improvement Trust (Fund No. 819200-0800) designated toward the improvement of the State Highway 4 Cypress Road intersection. The applicant shall perform a traffic signal warrant analysis subject to the review of the Public Works Department, Engineering Services Division, and the review and approval of the Zoning Administrator prior to the completion of each phase of this Subdivision which cumulatively creates each additional 500 unit increment in the Bethel Island Bonus Area to determine if improvements are needed at this intersection. The applicant shall construct the required improvements when needed.

- AU. Contribute \$30,000 to the Road Improvement Trust (Fund No. 819200-0800) designated for the Oakley/North Brentwood Area of Benefit as this projects fair share of improvements to the State Route 4/Neroly Road intersection. \$30,000 is approximately 10% of the estimated cost of improving this intersection as required by mitigation measure 3.2-14 of the project EIR. The \$30,000 shall be paid in \$10,000 increments with the filing of the final maps for the first three phases.
- AV. Contribute \$660 per unit to the Road Improvement Fee Trust (Fund No. 819200-0800) for sub-regional improvements to the Laurel Road Corridor consisting of the applicant's share of construction of the Cypress Road – Laurel Road connection from State Highway 4 to Machado Lane and for widening Laurel Road from State Highway 4 to the proposed State Route 4 Bypass.
- AW. Prior to issuance of the 1500th building permit in the Bethel Island off island bonus area, Cypress Road between State Route 4 and Machado Lane shall be widened to provide two 12-foot lanes with 8-foot paved shoulders. Reimbursement to the developer that constructs this improvement shall come from the Bethel Island Area of Benefit in proportion to the cost of this improvement in the project list of the Area of Benefit's Development Program Report.
- AX. The applicant shall contribute \$1,726 per single family unit to the Road Improvement Fee Trust (Fund No. 819200-0800) designated for the Delta Expressway, to be consistent with the Oakley Area of Benefit, if building permits are issued prior to adoption of a new Delta Expressway fee ordinance.
- If the proposed Delta Expressway fee ordinance is adopted prior to issuance of building permits, the applicant shall instead be responsible for payment of the adopted fee.
- AY. The Bethel Island Road/Sandmound Boulevard intersection shall be improved and widened, and a left turn lanes shall be constructed. Sandmound Boulevard shall be realigned to a right-angle intersection at Bethel Island Road. The realignment shall allow for the extension of Sandmound Boulevard to the west of Bethel Island Road without conflicting with the drainage channel on the west side of Bethel Island Road. These improvements, plus a traffic signal at Sandmound Boulevard and Bethel Island Road, shall be installed prior to the filing of any final map which provides access to Sandmound Boulevard along the northerly property line.
- AZ. Contribute \$340 per dwelling unit to the Road Improvement Fee Trust (Fund No. 819200-0800) for the extension of Byron Highway from Delta Road to the intersection of Cypress Road and Bethel Island Road.
- BA. Prior to issuance of the 100th building permit in the Bethel Island off island bonus area, construct pavement widening for left turn channelization at the intersections of Sellers Avenue and Knightsen Avenue with Cypress Road subject to the review of the Public Works Department and the review and approval of the Zoning Administrator. All pavement shall be at ultimate line and grade.
- BO. Prior to issuance of the 1,000th building permit in the Bethel Island off island bonus area,

install traffic signals at the Sellers Avenue and Knightsen Avenue intersections with Cypress Road, or sooner if needed. The need for the signals shall be analyzed subject to the review of the Public Works Department, and the review and approval of the Zoning Administrator, prior to filing the final map for each phase, and installed if needed, prior to issuance of the 1 000th building permit.

- BC. Prior to issuance of the 1,000th building permit in the Bethel Island off island bonus area widen Cypress Road between Machado Lane and 1,000 feet east of Knightsen Avenue to a four lane arterial with median island. The alignment and geometrics shall be subject to the review of the Public Works Department, Engineering Services Division, and the review and approval of the Zoning Administrator.
- BD. The applicant shall perform a survey of the pavement condition on Cypress Road between State Route 4 and Bethel Island Road prior to the commencement of any work on site, and after completion of each phase. The surveys shall be subject to the review and approval of the Public Works Department. The applicant shall perform any necessary remedial work to the surveyed portion of Cypress Road prior to the filing of the final map for the next phase, subject to the review of the Public Works Department and the review and approval of the Zoning Administrator.
- BE. Submit a sketch plan to the Public Works Department, Transportation Engineering Division, for review showing all off-site public road improvements prior to starting work on the improvement plans. This shall include the improvements at the Cypress Road - Bethel Island Road intersection, the Cypress Road extension through the project and the construction of Sand-mound Boulevard along the northerly and easterly boundaries of this project. The sketch alignment plan shall be to scale and show proposed and future curb-lines, drainage ditches, right of way, lane striping details, lighting and cross sections. The sketch alignment plan shall also include sufficient information to show that adequate sight distance has been provided. The sketch plan shall include an alignment for Cypress Road between State Route 4 and Bethel Island Road which shall be approved by the Zoning Administrator prior to filing the first final map.
- BF. Furnish proof to the Public Works Department, Engineering Services Division, of the acquisition of all necessary rights of way, rights of entry, permits and/or easements for the construction of off-site, temporary or permanent, road and drainage improvements.
- BG. If, after good faith negotiations, the applicant is unable to acquire necessary rights of way and/or easements, he shall enter into an agreement with the County to complete the necessary improvements at such time as the County acquires the necessary interests in accordance with Section 66462 and 66462.5 of the Subdivision Map Act.
- BH. The Zoning Administrator shall determine the amount of credit the developer may receive against the Area of Benefit fee for roadway improvements installed by the developer. Credit may be given for improvements even if they are not programmed in the Capital Improvement Program within three fiscal years after final map approval. If the Zoning Administrator determines that a 100% credit is not allowed, then the developer shall pay the difference in the AOB fee and may receive reimbursement pursuant to a reimbursement agreement. Any credit or reimbursement shall be based on the cost estimates included in the Area of Benefit Development Program Report and only in

proportion to each specific Area of Benefit improvement which the applicant is installing. The developer shall contact the Public Works Department, Transportation Engineering Division, to determine the extent of credit or reimbursement for which the applicant might be eligible. Prior to constructing any public improvements or filing of any final map, the applicant shall execute a credit/reimbursement agreement with the County. No credit or reimbursement will be made for any improvements installed prior to execution of the credit/reimbursement agreement.

The applicant shall be allowed full credit for the portion of the Cypress Road extension between Bethel Island Road and Sandmound Boulevard which the applicant constructs which is included in the Bethel Island sub area of the Countywide Area of Benefit. Full credit will be allowed up to the amount specified in the Area of Benefit project list for the Cypress Road extension.

#### TRANSIT

- BI. Comply with the County TDM Ordinance, and the Growth Management Program, and the Bay Area Air Quality Management District regulations regarding transportation. TDM measures that could be used by the project applicant include the provision of maps showing available transit routes, and providing information on ridesharing and vanpool services to prospective home buyers.
- BJ. Provide for future transit by providing bus turnouts on Cypress Road at the intersection of Cypress Lakes Drive and at appropriate locations along Cypress Lakes Drive, Sandmound Boulevard, Bethel Island Road, Cypress Road, and Country Club Drive. The location of the turnouts shall be subject to the review and approval of Tri-Delta Transit. Deposit sufficient monies, as determined by Tri-Delta Transit, for bus stop shelters, bicycle racks, and bicycle lockers to be installed by Tri-Delta Transit once regular transit service to the area begins. The deposit of monies for the bus stop facilities shall be made with the filing of each final map that constructs a bus turnout.
- BK. All homes shall be wired for telecommuting purposes.
- BL. Provide a park-and-ride lot within the parking area for the ball fields subject to the review of the Public Works Department, and the review and approval of the Zoning Administrator. The park and ride lot shall have a capacity of 65 spaces. Provide adequate parking for the combined use of the park-and-ride lot and the ball field complex. Provide bicycle racks and lockers. The design of the park and ride portion of the parking lot, including bicycle racks and lockers shall be subject to the review and approval of the Zoning Administrator.
- BM. The design of community facilities such as a clubhouse or a community park, shall provide for and encourage the use of bicycles. At a minimum this shall include bicycle racks and bicycle lockers. As an example, providing lockers at the clubhouse to store golf clubs would allow residents to bicycle to the golf course, rather than drive to the golf course with their clubs.

### ADVISORY NOTES

- A. The project lies within the 100-year flood boundary as designated on the Federal Emergency Flood Rate Maps. The applicant should be aware of the requirements of the Federal Flood Insurance Program and the County Flood Plain Management Ordinance (Ordinance No. 90-11 8) as they pertain to future construction of any structures on this property.
- B. This project may be subject to the requirements of the Department of Fish & Game. It is the applicant's responsibility to notify the Department of Fish & Game, 1 701 Nimbus Road, Rancho Cordova, California 95769, of any proposed construction within this development that may affect any fish and wildlife resources, per the Fish & Game Code.
- C. This project may also be subject to the requirements of the Army-Corps of Engineers. The applicant should notify the appropriate district of the Corps of Engineers to determine if a permit is required and if it can be obtained.
- D. The applicant shall be required to comply with all rules, regulations, and procedures of the National Pollutant Discharge Elimination System (NPDES) for municipal, construction and industrial activities as promulgated by the California State Water Resources Control Board, or any of its Regional Water Quality Control Boards (San Francisco Bay - Region II or Central Valley - Region V)
- E. The applicant will be required to comply with the requirements of the Bridge/Thoroughfare Fee Ordinance for the Countywide Area of Benefit, Bethel Island sub area as adopted by the Board of Supervisors.
- F. Comply with the requirements of Reclamation District #799 including but not limited paying permit fees and water quality programs.
- G. Comply with the requirements of the Ironhouse Sanitary District.
- H. Comply with the requirements of the Oakley and/or Bethel Island Fire Protection Districts or their successor.
- I. Comply with the requirements of the Health Services Department, Environmental Health Division.
- J. Comply with the requirements of the Building Inspection Department. Building permits are required prior to the construction of most structures.
- K. Comply with the requirements of the Diablo Water District.
- L. The applicant will be required to pay an environmental review fee of \$875 for the Department of Fish and Game at the end of the appeal period. Failure to do so will result in fines. In addition, the approval is not final or vested until the fee is paid. A check for this fee shall be submitted to Contra Costa County for submittal with the final environmental documents.

- M. The applicant is advised that the tax for the police services district is currently set by the Board of Supervisors at \$200 per parcel annually (with appropriate future Consumer Price Index [CPI] adjustments). The annual fee is subject to modification by the Board of Supervisors in the future. The current fee for holding the election is \$800 and is also subject to modification in the future. The applicable tax and fee amounts will be those established by the Board at the time of voting.
- N. This project is subject to the development fees in effect under County Ordinance as of November 2, 1990, the date the vesting tentative map application was accepted as complete by the Community Development Department. These fees are in addition to any other development fees which may be specified in the conditions of approval.

The fees include but are not limited to the following:

Park Dedication: \$1,350 per unit except as reduced by the provision of public parks.

If the project applicant requests partial or full waiver of park fees for the provision of private or public parks pursuant to Ordinance Code Section 920-8.002, the Board of Supervisors shall be the planning agency that will determine this issue.

ML/kp  
DP903032.coa rev.  
3/20/01

**EXHIBIT B**

**CITY-COUNTY TRANSITION AGREEMENT**

**AGREEMENT BETWEEN CONTRA COSTA COUNTY AND CITY OF OAKLEY  
RELATING TO TRANSITION OF MUNICIPAL SERVICES, COLLECTION OF FEES  
AND MAINTENANCE OF INFRASTRUCTURE UPON ANNEXATION OF THE EAST  
CYPRESS CORRIDOR SPECIFIC PLAN AREA**

This Agreement is entered into between the County of Contra Costa, a political subdivision of the State of California ("County") and the City of Oakley, a municipal corporation ("City"). The above named entities may be known from time to time within this Agreement as the "Parties."

**RECITALS**

- A. In December 2002, the City Council of the City of Oakley approved the Oakley 2020 General Plan ("General Plan") and certified the Environmental Impact Report therefor (Resolution Nos. 76-02 and 75-02, respectively). The General Plan included as an "Expansion Area" the area commonly known as the East Cypress Corridor ("East Cypress Corridor"), which is approximately 2,546<sup>1</sup> acres of land located immediately east of the City of Oakley boundaries in Contra Costa County. The East Cypress Corridor contains vacant land, agricultural land, single-family homes, commercial uses, overhead power lines, natural gas wells, natural gas pipelines, irrigation canals, and Shea Homes' Summer Lake project ("Summer Lake" or "Shea Project"), which is currently under construction. The East Cypress Corridor includes those lands generally east of Jersey Island Road, south of Dutch Slough, west of Sandmound Slough, north of Rock Slough and northeast of the Contra Costa Canal. The City of Oakley General Plan contemplated and planned for annexation of the lands within the East Cypress Corridor to the City.
- B. On August 13, 2003, the Contra Costa Local Agency Formation Commission ("LAFCO") approved Resolution No. 03-16, which included the East Cypress Corridor within the City of Oakley's Sphere of Influence.
- C. In furtherance of the annexation of the East Cypress Corridor, the City of Oakley prepared an East Cypress Corridor Specific Plan ("Specific Plan") and East Cypress Corridor Specific Plan Environmental Impact Report ("EIR"), which analyzed the environmental impacts of the Specific Plan. The Specific Plan proposed planned development of mixed-uses for the 2,546-acre site. The project proposed to allow up to 5,609<sup>2</sup> residential units (detached and attached

<sup>1</sup> The 2,546 acre figure is the acreage referenced in the East Cypress Corridor Specific Plan, Environmental Impact Report, and other documentation. On a technical note, an acreage calculation that includes portions of properties extending into the waterways of Dutch Slough and Sandmound Slough (such as marinas, boat docks, and low-tidelands), would result in a total of 2,607 acres. Annexation acreages to the City, CCWD and DWD are approximate, and subject to refinement through details of the official LAFCO application.

<sup>2</sup> One hundred fifty residential units may replace up to 20 acres of the net 40 acres of the Village Center site, which results in a maximum development of 5,759 residential units.

units), commercial uses, public schools (3 elementary, one middle), man-made lakes, open space/easements, existing and proposed gas well sites, wetlands/dunes, flood-control levees, parks (neighborhood and community), light industrial uses, commercial recreation uses, and a beach club.

- D. For purposes of its annexation application, the City divided the East Cypress Corridor into three areas. The first area ("Area 1") is composed of largely undeveloped parcels in the East Cypress Corridor and is defined in more detail in Oakley City Council Resolution No. 32-06. Area 1 includes the Summer Lake project. The second area ("Area 2") consists of approximately 44.71 acres of largely developed land located east of Jersey Island Road and south of East Cypress Road and is defined in more detail in Oakley City Council Resolution No. 33-06. The third area ("Area 3") consists of 512.30 acres of largely developed land located east of Jersey Island Road, south of Dutch Slough, west of Sandmound Slough and north of Rock Slough and the Contra Costa Canal and is defined in more detail in Oakley City Council Resolution No. 34-06. The proposed annexations of Area 1, Area 2, and Area 3 shall hereinafter be referred to, respectively, as the "Area 1 Annexation," "Area 2 Annexation," and "Area 3 Annexation," and collectively as the "Annexations."
- E. On August 30, 2005, the City distributed the Specific Plan and Draft Environmental Impact Report ("DEIR"), dated August 29, 2005, to interested persons, organizations, and public agencies for a 45-day public review period and invited public comment, with the review period closing October 13, 2005. The City Council held a public hearing on October 10, 2005, at which interested persons were given an opportunity to comment on the DEIR. On December 23, 2005, the City Council issued a "Notice of Availability of Recirculated Portions of Draft Environmental Impact Report (DEIR) for East Cypress Corridor Draft Specific Plan" and recirculated portions of the DEIR to local and regional agencies for review and invited public comment, with the review period closing February 6, 2006. A Final Environmental Impact Report ("FEIR") was distributed to interested persons, organizations, and public agencies on February 24, 2006.
- F. On September 12, 2005, the City Council adopted Resolution No. 89-05 providing Notice of Intent to LAFCO, the Contra Costa Water District ("CCWD"), and the Diablo Water District ("DWD") of the City's plans to initiate boundary reorganization proceedings for the East Cypress Corridor ("Annexation Proceedings") and subsequently provided copies of the preliminary application materials to LAFCO, CCWD and DWD.
- G. The City Planning Commission held a public hearing on February 28, 2006, at which it received a staff report and presentation; heard public testimony; and approved a resolution recommending that the City Council amend the General Plan, adopt the Specific Plan, certify the EIR, and approve an ordinance rezoning the East Cypress Corridor "SP-1".

- H. On March 13, 2006, the City Council conducted a noticed public hearing on the Annexation Proceedings, at which time all interested parties had the opportunity to be heard. The City Council considered the Environmental Impact Report, the City Planning Commission recommendations, and all written and oral testimony submitted at the public hearing. The Council then adopted Resolution No. 30-06, certifying the EIR as adequate and complete pursuant to the California Environmental Quality Act ("CEQA"); adopted Resolution No. 31-06, making findings required by CEQA, amending the General Plan, and approving the Specific Plan; introduced Ordinance No. 03-06 rezoning the East Cypress Corridor "SP-1"; and adopted Resolution Nos. 32-06, 33-06 and 34-06, authorizing the submittal of boundary reorganization applications for the East Cypress Corridor.
- I. If the Annexations are approved, the Parties desire that the transition of municipal services, property and miscellaneous governmental obligations be as smooth as possible with no noticeable reduction in quality of services to residents. In the event that the Area 2 Annexation or Area 3 Annexation is unsuccessful, this Agreement is intended to set forth the obligations and responsibilities of the Parties to provide services to the unincorporated areas within the City's Sphere of Influence.
- J. In anticipation of the Area 1 Annexation, City negotiated a Development Agreement with Shea Homes, which addresses issues such as the payment of fees by Shea Homes, including development impact fees, after the completion of the Annexations. The Summer Lake project is located north and south of East Cypress Road. Shea Homes is processing the southern portion ("Summer Lake South") in three phases, referred to as Unit 1A, Unit 1B, and Unit 2. Shea Homes is presently constructing the project in Units 1A and 1B and is processing its final map for Unit 2. Shea Homes has expressed an interest in amending its tentative map for the portion of Summer Lake north of East Cypress Road ("Summer Lake North") prior to development, if the Area 1 Annexation is approved.
- K. City and County negotiated a property tax exchange agreement in conjunction with the City's Annexation applications. The City Council adopted Resolution No. 18-06, setting forth the City's agreement for property tax exchange for the East Cypress Corridor.
- L. City and County desire to set forth further mutual agreements concerning the above-stated recitals to guide the Parties with respect to major issues concerning the Parties that may occur as a result of the Annexations, including the transition of certain municipal services, real property, maintenance obligations and responsibilities concerning the proposed Annexations. In the event that other such issues arise as a result of the Annexations, the Parties shall cooperate with

each other to resolve those issues and enter into such other agreements as may be necessary to further the purposes of this Agreement.

M. Nothing contained in this Agreement is intended, nor shall it be construed, to amend or supersede any previous tax sharing or other agreements between the Parties, including but not limited to the July 25, 2000, municipal services agreement between County and City, or any amendments to such agreements. In the event of a conflict, the earlier agreement will control unless the Parties otherwise agree in writing.

## **AGREEMENT**

### **Section 1. Recitals**

The foregoing recitals are true and correct and are made a part hereof.

### **Section 2. Continuation of services to un-annexed area**

City and County acknowledge the possibility that a majority of property owners may vote against the Area 2 Annexation or Area 3 Annexation, leaving unincorporated areas adjacent to the City. If this occurs, municipal services shall continue to be provided to such area, either (1) by County or (2) by City, upon request of County. If County requests City to provide these services, City will provide some or all of the municipal services that it would have provided to such area if the voters in such area had voted to annex to the City. Such services may include, but are not limited to, any combination of the following:

- Park and landscaping maintenance;
- Street naming and numbering;
- Street light services in coordination and cooperation with PG&E;
- Business license tax collection services;
- National Pollutant Discharge Elimination System services;
- Building plan check, permit issuance, and code enforcement inspection services;
- Street maintenance services;
- Parking citation; and
- Police services.

If County requests that City provide services to Area 2 and/or Area 3, the Parties agree to confirm these obligations and clarify the details thereof through a separate agreement prior to City providing services.

### **Section 3. Bethel Island Bridge**

A. City Contribution.

City shall contribute \$2.7 million to the construction of the Bethel Island Bridge Replacement Project (County Project #0662-6R4043-02)("Project") to make up a \$2.7 million gap in local matching funds. In no event shall City be obligated to pay the \$2.7 million local matching funds from the City's General Fund.

City has the option to make its contribution as either a one-time payment of \$2.7 million, to be paid at award of the Project contract, or as progress payments, to be paid as needed and based upon actual construction expenditures, not to exceed the \$2.7 million cap. Although County presently expects that funding contributions may be necessary as early as the spring of 2007, County agrees to develop for City a schedule of anticipated funding disbursements and to refine the construction schedule for Project as it proceeds.

B. Rights and Responsibilities.

County shall continue to be lead agency in performing all design, Right of Way ("ROW") acquisition, construction and administration of Bethel Island Bridge. City may review and recommend revisions to all aspects of design, ROW acquisition, construction and administration of the Project related to that portion of Bethel Island Bridge, and its approaches, that it will ultimately maintain.

County has the power to acquire such property interests as are necessary for the Project within City's jurisdiction, including but not limited to through the exercise of the power of eminent domain. City shall cooperate with County in its efforts to acquire such property interests.

C. Joint Exercise of Powers.

The Parties shall negotiate and consider a joint exercise of powers agreement to further define the powers, roles and responsibilities of the Parties with respect to the Project.

**Section 4. Rock Slough Bridge / Byron Highway Extension Construction and Implementation**

The Rock Slough Bridge / Byron Highway Extension is identified in EIR Mitigation Measure 3.13-4 as mitigation for traffic conditions along East Cypress Road.

A. Rights and Responsibilities.

City shall lead all design, ROW acquisition, construction and administration of the Rock Slough Bridge / Byron Highway Extension Project. County may review and recommend revisions to all aspects of design, ROW acquisition, construction and administration of the Rock Slough Bridge / Byron Highway Extension Project related to those portions of

the Rock Slough Bridge and its approaches and the Byron Highway extension that it will ultimately maintain. As described in Mitigation Measure 3.13-4, City shall construct a minimum of two lanes of roadway of the Byron Highway Extension and the Rock Slough Bridge before 20 percent of the residential development contemplated in the Specific Plan, or 800 residential units not including those in the Summer Lake, has been completed. The exact width and configuration of each phase of the highway extension and the Rock Slough Bridge shall be determined through further engineering analysis. City further agrees to widen the Byron Highway Extension to four lanes before 80 percent of the residential development contemplated in the Specific Plan, or 3,100 units, not including Summer Lake, have been completed.

B. Joint Exercise of Powers.

The Parties shall negotiate and consider a joint exercise of powers agreement to further define the powers with respect to the Rock Slough Bridge / Byron Highway Extension Project.

**Section 5. Roadway Enhancements Program**

A. Establishment of Program.

The Parties agree to work cooperatively in good faith to establish a roadway improvement program ("Program") to fund the construction of capacity enhancements at specific intersection and the improvement of certain roadway segments to County Rural Road standards and to encourage other public agencies to participate in the Program. The Parties shall use their best efforts to establish the program within 24 months of the recording of a certificate of completion for the Area 1 Annexation ("Area 1 Annexation Record Date"). Establishment of the Program shall include, but is necessarily limited to, (1) a traffic study of the proportional impacts of new development and associated nexus analysis pursuant to applicable law; (2) development of a list of improvements to be funded by the Program ("Projects"); (3) approvals of resolutions or ordinances establishing development fees to fund the Projects ("Fees"); and (4) approval of a Joint Exercise of Powers Agreement between the Parties, setting forth their respective obligations regarding the collection, transfer, use and management of fee revenues generated for the Projects.

B. Projects.

The Projects shall be determined by County and City in consultation with each other. A preliminary list of Projects is set forth in Exhibit A, incorporated by reference herein. The list may be amended to delete certain improvements from, or add other improvements to, the list of Projects, based on the results of the traffic study which will include a technical analysis of proportional impacts of new development in far East County, including undeveloped and unentitled land within Oakley, Brentwood, and unincorporated Contra Costa County and in any other jurisdiction to the extent that such

development is found to contribute to the need for the Projects ("Program participants"). The City, County and Program participants will collaborate on the relative priorities of the Projects.

C. Incorporation into Existing Fee Programs.

Notwithstanding anything herein to the contrary, the Parties shall seek incorporation of some or all of the Projects into appropriate existing regional fee programs; such as the Regional Transportation Development Impact Mitigation (RTDIM) fee program administered by the East County Regional Fee and Financing Authority (ECCRFFA), provided that, upon such incorporation, the Projects would be scheduled for completion within a timeframe acceptable to the Parties. If all of the Projects are incorporated into one or more existing fee programs, to the satisfaction of the Parties, the Parties shall be automatically relieved of any further obligations under this Section 5.

D. City Obligations. To the extent legally permitted, City shall:

1. Participate in developing the final list of Projects, including planning level cost estimates based on current construction costs, with the County and any other Program participants.
2. Prepare a traffic impact analysis, utilizing a transportation consultant to be agreed upon by the Parties, within six months of the Area 1 Annexation Record Date, which estimates the potential future development in far East County. The analysis will estimate existing traffic deficiencies and assess the proportional impacts of new development in each jurisdiction in order to determine fair share contributions of new development in each agency's jurisdiction for each of the Projects.
3. Identify any existing fee programs, trust accounts, entitled projects, deferred improvement agreements, or other funding sources in the City that may be incorporated into or applied to the Program.
4. Impose conditions of approval or include language in negotiated agreements obligating developments within the East Cypress Corridor Specific Plan Area to (1) pay their fair share of the cost of the Projects or (2) construct improvements on the list of Projects, in which case the fair share contribution shall be based on the Program estimate of the cost of such improvements. The language will include the provision that if any such development requests building permits prior to establishment of Fees, the developer shall satisfy their fair share contribution through construction of improvements on the list of Projects or payment into a trust fund, the funds to be utilized once the Program is established.
5. Until such time that Fees are established, City shall use every means possible to obligate developers to participate in the Program, including adopting resolutions placing the developers on notice regarding the potential for Fees and, with respect to development agreements, establishing trust funds for prepayments.

6. Encourage the City of Brentwood, other interested agencies, and ECCRFFA to participate in the Program.
  7. Consider the adoption of a resolution or ordinance establishing and imposing the Fees.
  8. Participate in preparing a financing plan, and annual updates thereto, which will prioritize projects for construction and include a preliminary schedule of Projects based on forecasted Program revenues.
- E. County Obligations. To the extent legally permitted, County shall:
1. Participate in developing the final list of Projects, including planning level cost estimates based on current construction costs, with the City and any other Program participants.
  2. Review and comment on the traffic analysis to be conducted by CITY.
  3. Identify any existing fee programs, trust accounts, entitled projects, deferred improvements agreements, or other funding sources in the County that may be incorporated into or applied to the Program.
  4. Consider amendments to the East County Area of Benefit ("ECAOB") to require new developments to pay their fair share of the cost of the Projects, within nine months of the Area 1 Annexation Record Date. It is anticipated that such amendments will be interim measures pending establishment of the Program.
  5. Participate in preparing a financing plan, and annual updates thereto, which will prioritize projects for construction and include a preliminary schedule of Projects based on forecasted Program revenues.
  6. Impose conditions of approval or include language in negotiated agreements obligating developments in the unincorporated portion of far East County to pay their fair share of the cost of the Projects. The language will include the provision that if any development in the unincorporated portion of far East County requests building permits prior to the establishment of fees to fund the Projects, the developer shall contribute their fair share through construction of improvements on the list of Projects or payment into a trust fund to be utilized once the Program is established.
  7. Pursue all Regional, State, and Federal grants and transportation funds for which the County may be eligible that may be used to fund the Projects.
  8. Encourage the City of Brentwood, other public agencies, and ECCRFFA to participate in the Program.
  9. Consider the adoption of an ordinance establishing the Fees.
  10. Aggressively pursue the completion of the Projects as funds become available.

## Section 6. Flood Control and Drainage

City shall plan and design a master flood control and storm drainage system for the East Cypress Corridor. City agrees to supervise the development of the drainage master plans in coordination with the Contra Costa County Flood Control and Water Conservation District on a fee for service basis.

**Section 7. East County Habitat Conservation Plan**

City, a member of the East County Habitat Conservation Plan Association ("HCPA"), will consider adoption of the HCP, when it is brought to the City Council for consideration.

City agrees that development in the East Cypress Corridor is not in-fill development, as defined in the HCP. City agrees to support the efforts of East Cypress Corridor developers to enter into an agreement, in advance of the adoption of the HCP, that is mutually beneficial to the HCPA and the developers.

**Section 8. Coordination of Transfer of Shea Homes Summer Lake Project**

**A. Transition of Planning, Engineering and Building Processes**

If the Area 1 Annexation is approved, all planning, engineering, and building permit and plan processing and review for Summer Lake South shall be handled pursuant to the "City-County Summer Lake Transition Matrix," attached hereto as Exhibit B and incorporated herein by reference, as clarified and augmented by this section.

**1. Building Permit and Plan Processing.**

(a) For all building permits already issued upon the date the certificate of completion is recorded for the Area 1 Annexation ("Area 1 Annexation Record Date"), County shall complete inspections of construction and final of permits.

(b) If County is processing building permit applications upon the Area 1 Annexation Record Date, it shall stop processing. County shall direct applicants to resubmit building permit applications to the City.

(c) If County is performing plan check upon the Area 1 Annexation Record Date, County shall stop work and forward its related files and redlined copies to the City for completion of review. City shall issue any related building permits.

(d) City will process all building permit applications submitted after the Area 1 Annexation Record Date and conduct related building inspections.

(e) If City requests proposals for building services from qualified consultants or agencies for Summer Lake South, City will accept and consider in good

faith a proposal from the County to provide to City building-related services, including permit processing, plan check and building inspections.

2. Planning and engineering.

(a) County shall transfer to City processing of planning and engineering applications already initiated upon the Area 1 Annexation Record Date.

(b) City will process all applications for planning and engineering permits and plan reviews submitted after the Area 1 Annexation Record Date, as well as oversee compliance with permits and construction of infrastructure.

B. Transfer of Fees

1. Collection and remittance of County fees by City.

Upon the Area 1 Annexation Record Date, and assumption of control over issuance of building permits, City will collect from Shea and remit to County the following fees, based upon the anticipated 1,330 units in Summer Lake North and South:

(a) Affordable Housing: City shall collect from Shea Homes and remit to County a \$3,333 per-unit affordable housing fee ("Affordable Housing Fee") for all residential building permits that City issues for Summer Lake, pursuant to the conditions of approval. City requests that County set aside 20 percent of the Affordable Housing Fee revenue collected from Shea and provide those funds to City to assist with financing for the development of affordable housing on an 11.3-acre site within the East Cypress Corridor identified in the Specific Plan for affordable housing development (specifically, Planning Area 6-H). County agrees to consider City's request. County further agrees to expend the fee revenues referenced in this paragraph within East Contra Costa County.

(b) Homeless Trust Program: City shall collect from Shea and remit to County \$225.56 per residential unit for the Homeless Trust Program, provided the funds are designated for use within East Contra Costa County. City shall document the distribution in the City's General Plan Housing Element.

(c) Library: City shall collect from Shea \$66.67 per residential unit to augment library services within Oakley.

(d) Open Space / Agricultural Protection Fee: City shall collect from Shea and remit to County \$25.00 per residential unit, subject to annual adjustment for inflation, as provided for in the conditions of approval. County agrees to expend the funds collected within East Contra Costa County.

## 2. Collection of Processing Fees.

As of the Area 1 Annexation Record Date, where applicable, City will charge its then current fees for processing all permit applications and related services, including but not limited to, building permits and inspections, review of engineering plans, and processing of development applications. If City contracts with County for building-related services, City will pay County at agreed-upon rates.

## 3. Accounting for Collected Traffic Impact Fees.

Pursuant to the terms of a joint exercise of powers agreement described in this Paragraph, County shall account for traffic impact fees collected as of the Area 1 Annexation Record Date from Shea Homes and remit to City those development impact fees that were intended for roadway improvement projects related to East Cypress Corridor development, pursuant to the April 21, 2001, revised County conditions of approval: 84.AT (Main/Cypress Intersection); 84.AU (Main/Neroly Intersection); 84.AV (Cypress-Laurel Connector); and 84.AZ (Byron Highway Extension). The parties shall negotiate and consider a joint exercise of powers agreement to define the powers, roles, and responsibilities with respect to the collection, transfer, management, and use of the fee revenues referenced in this paragraph.

### C. Ownership and Maintenance of Infrastructure

The Parties agree to the transition, as of the Area 1 Annexation Record Date, of ownership and all inspection and maintenance obligations for infrastructure constructed as part of or in conjunction with Summer Lake South in accordance with Exhibit B.

The Parties recognize that, if the Area 1 Annexation is approved, as Shea Homes completes build-out of Summer Lake South, questions may arise regarding County and City applicable standards for the design, construction, inspection, and acceptance, identified in Exhibit B. By way of example only, County standards for medians currently under construction on Bethel Island Road and East Cypress Road call for a solid concrete surface, whereas City's standards call for the installation of landscaping and irrigation. The Parties agree to inform each other about their respective standards and the status of the build-out of the Summer Lake South project. The Parties further agree that, as issues arise, they will discuss their respective interests in a good-faith effort to develop mutually agreeable solutions.

**Section 9. Coordination of Transfer of Other Planning, Engineering, and Building Projects and County Records and Files.**

**A. Transition of Planning, Engineering and Building Projects**

As of the date a certificate of completion is recorded for any of the Annexations, the review of planning and engineering submittals, pending planning entitlement and public works applications, building plan check, building permit issuance, and building inspections for projects in the area referenced in such certificate, other than Summer Lake South, shall transition from County to City in the same manner as set forth in Section 8. A. of this Agreement.

**B. Transfer of Planning, Engineering, and Building Files**

Upon request by City, County shall deliver to City within 30 days all records, files and other documents in County's possession or control that relate to the portions of the East Cypress Corridor annexed to the City. The records, files and documents shall be those which are customarily transferred to a City upon annexation.

**Section 10. Notices.**

Whenever notice is required hereunder, it shall be given to the Parties as follows:

City of Oakley:

City Manager  
City of Oakley  
3231 Main Street  
Oakley, CA 94561

County of Contra Costa:

County Administrator  
651 Pine Street, 10th Floor  
Martinez, CA 94553-1291

**Section 11. Entire Agreement.**

This Agreement contains the entire Agreement between the Parties. No promise, representation, warranty, or covenant not included in the Agreement has been or is relied upon by any party hereto.

**Section 12. Effective Date and Term of Agreement.**

This Agreement shall become effective upon the recording of a certificate of completion for any of the Annexations (the "Effective Date").

This Agreement shall remain in effect from the Effective Date until the conditions of this Agreement have been met, to the satisfaction of the Parties (the "Term of Agreement").

**Section 13. Amendment.**

This Agreement may only be amended by a writing signed by both Parties.

**Section 14. No Third Party Beneficiaries**

Nothing contained in this Agreement is intended, nor shall it be construed, to create rights inuring to the benefit of third parties.

**Section 15. Severability**

In the event that any provision herein is held to be invalid by any court of competent jurisdiction, the invalidity of any such provision shall not materially prejudice either County or City in its respective rights and obligations contained in the valid provisions of this Agreement.

**Section 16. Remedies**

The sole remedy for violation of this Agreement shall be the specific performance of this Agreement. County and City waive their respective rights to trial by jury of any claim or cause of action arising out of this Agreement. County and City shall have no liability for damages to one another or to any other person or entity resulting from any violation of this Agreement.

**Section 17. Dispute Resolution**

A. In General. This Section establishes the exclusive process by which disputes between the Parties concerning or relating to this Agreement shall be resolved. The dispute resolution process established herein shall apply to disputes related to the interpretation or enforcement of, or compliance with, the terms and provisions of this Agreement. Disputes that are not alleged to relate to the interpretation of, or compliance with, this Agreement are not subject to this Dispute Resolution Process.

B. Informal Conferral. If a dispute arises as described above in Section 17.A., the Parties will first attempt to resolve it through informal discussions, which may include designated representatives of the staff of the Parties, at their discretion.

C. Mediation. In the event a dispute cannot be resolved through informal conferral within twenty-one (21) calendar days, the aggrieved Party, acting through its governing body, shall give written notice to the other Party, setting forth the nature of and basis for the dispute and facts demonstrating that such Party is materially and adversely affected thereby. The Parties, acting through their designated representatives, including counsel, shall endeavor to settle the dispute by mediation. The Parties shall select a neutral third party with expertise in land use matters to mediate the dispute.

D. Judicial Review. The dispute resolution process described above shall be undertaken in good faith and exhausted prior to resort to judicial review; provided, however, that by agreeing to this dispute resolution process, no Party hereby loses or waives its right to sue under any applicable statute of limitations or loses or waives its right to assert the operation of any applicable statute of limitations as an affirmative defense. In the event that an applicable statute of limitations would run during the pendency of the dispute resolution process described above, the Parties shall agree in writing to toll such statute of limitations for such period as may reasonably be necessary to complete the dispute resolution process, but in no event shall such statute of limitations be tolled for more than ninety (90) calendar days.

E. Conduct of Judicial Review. Should any Party to this Agreement ultimately seek judicial review of a dispute concerning or relating to the implementation, interpretation or enforcement of, or compliance with, the terms and provisions of this Agreement, the Parties will submit to the jurisdiction of a court of competent jurisdiction; provided, however, that the Parties shall cooperate in seeking the appointment of a neutral Judge as defined in California Code of Civil Procedure section 394 to sit in Contra Costa County Superior Court, to preside over and decide any such dispute.

#### **Section 18. Construction**

This Agreement is the product of negotiation and preparation of the Parties. Any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applied to the interpretation of this Agreement.

#### **Section 19. Counterparts**

This Agreement may be executed in counterparts and so executed shall constitute an Agreement which shall be binding upon all Parties hereto. A photocopy of the fully executed Agreement shall have the same force and effect as the original.

#### **Section 20. Voluntary Execution**

The Parties have freely and voluntarily executed this Agreement and are not acting under coercion, fraud, duress, menace, economic compulsion or undue

influence, or because of any supposed disparity of bargaining power, rather, the Parties are freely and voluntarily signing this Agreement for their own benefit.

**Section 21. Signatures**

By affixing his/her signature below, each of the persons signing this Agreement warrants and represents that he/she has read and understands this Agreement, that he/she is authorized to sign this Agreement, and that the party on behalf of whom he/she signs agrees to be bound by its terms:

CITY OF OAKLEY

Brad Nix  
Brad Nix, Mayor  
5/9/2006  
Date

COUNTY OF CONTRA COSTA

[Signature]  
Chair, Board of Supervisors  
5/23/06  
Date

Attest:

Nancy Orenblad  
Nancy Orenblad, City Clerk  
May 9, 2006  
Date

Attest:

John Cullen, Clerk of the Board of Supervisors and County Administrator

By: [Signature]  
Deputy  
5/23/06  
Date

Approved as to Form:

[Signature]  
City Attorney  
6/26/06  
Date

Approved as to Form:

Silvano B. Marchesi  
County Counsel

By: [Signature]  
Deputy  
5/10/06  
Date

## EXHIBIT A

### PRELIMINARY PROJECT LIST

*The Projects to be funded by the roadway enhancement program referenced in Section 5 of the Agreement are as follows. Where applicable, the Mitigation Measures from the East Cypress Corridor Specific Plan FEIR are referenced in parentheses.*

#### *Intersections:*

- (1) Balfour Road/Byron Highway (MM 3.13-13),
- (2) Sellers Avenue/Delta Road (MM 3.13-20),
- (3) Knightsen Avenue/Delta Road (MM 3.13-21),
- (4) Byron Highway/Delta Road (MM 3.13-22),
- (5) Sellers Avenue/Sunset Road (MM 3.13-23),
- (6) Sellers Avenue/Chestnut Avenue (MM 3.13.24),
- (7) Sellers Avenue/Balfour Road (MM 3.13-25),
- (8) Byron Highway/Point of Timber (MM 3.13-26),
- (9) Byron Highway/Camino Diablo (MM 3.13-27),
- (10) Bethel Island Road/Stone Road (MM 3.13-28),
- (11) Byron Highway/State Route 4 (MM 3.13.29), and
- (12) Sellers Avenue/Marsh Creek Road.

#### *Road Segments:*

- (1) Knightsen Avenue from the Oakley limits to Delta Road,
- (2) Byron Highway from Delta Road to Camino Diablo,
- (3) Sellers Avenue from the Oakley limits to Chestnut and the ECCID Canal to Marsh Creek Road,
- (4) Delta Road from Sellers Avenue to Byron Highway,
- (5) Balfour Road from Sellers Avenue to Byron Highway,
- (6) Marsh Creek Road from Walnut Avenue to State Route 4,
- (7) Camino Diablo from Vasco Road to Byron Highway.

**EXHIBIT B**

**CITY OF OAKLEY – CONTRA COSTA COUNTY TRANSITION MATRIX  
SHEA HOMES – SUMMER LAKE PROJECT**

County shall transfer to the City processing of planning and engineering applications already initiated upon the Area 1 Annexation Record Date. Notwithstanding, the County Public Works Department and City Public Works Department may collaborate on an alternative arrangement for the transition of improvements for the Summer Lakes Project under construction in order to facilitate the transition in a more efficient and logical manner for all parties involved. The following matrix represents an example of a logical transition given the construction status and information known at this time.

	Scope of Work – Item Description	Trigger for Turn-Over to City of Oakley
1.	Cypress Road Extension and Cypress/Bethel Intersection, Units 1a, and 1b Infrastructure Improvements.	<p>The County will inspect, sign-off, accept and exonerate bonds (including Warranty Bonds) for all of the improvements included and covered by the County/Shea Homes subdivision improvement agreements. Upon exoneration of the improvement bonds and final acceptance by the County, full oversight and authority will transfer to the City.</p> <p>City requests that medians along East Cypress Road and Bethel Island Road be preserved for landscaping consistent with the East Cypress Corridor Specific Plan. City will review the landscape plans for the medians and commit to initiate a funding mechanism for landscaping and maintaining the medians.</p>
2.	Lake and Levee Grading – Summer Lake South	Upon exoneration of the improvement bonds and final acceptance by the County, full oversight and authority will transfer to the City.
3.	Sandmound Blvd Improvements	County will complete the design approval process, plan check and plan approval (if not already complete at time of annexation), inspect, sign-off, accept and exonerate bonds (including Warranty Bonds) for all of the improvements approved by the County and covered by the County/Shea Homes subdivision improvement agreements. Upon exoneration of the improvement bonds and final acceptance by the County, full oversight and authority will transfer to the City.

4.	<p>Parks and Public Landscaping</p> <ul style="list-style-type: none"> <li>• Main Sports Park</li> <li>• Neighborhood Parks in Phases 1A and 1B</li> <li>• Frontage Landscaping along Cypress Road Extension and Summer Lake Drive.</li> </ul>	<p>County Public Works Department and City Public Works Department will collaborate on logical transition of the improvements.</p>
5.	<p>Parks and Public Landscaping</p> <ul style="list-style-type: none"> <li>• Neighborhood Parks in Phase 2</li> <li>• Through-block Landscaping in Phase 2</li> </ul>	<p>City shall take over processing of Landscape construction documents for the Phase 2 park areas, including all oversight for construction, inspection and acceptance of the landscape improvements. If the annexation schedule is delayed such that Shea Homes must move forward with the design and construction of Parks and Public Landscaping improvements in order to meet the project requirements, this item will be reconsidered. County will continue to process necessary conceptual details as is required to complete the LL-2 landscape maintenance district formation.</p>
6.	<p>Entrance Monumentation</p>	<p>City will take over responsibility for entrance monumentation upon annexation.</p>
7.	<p>Final Map for Unit #2</p>	<p>County Public Works Department and City Public Works Department will collaborate on logical transition of the final map.</p>
8.	<p>Canoe Club (Swim Center/Beach Club)</p>	<p>County will complete design approval process, plan check and plan approval, inspect, sign-off, accept and exonerate bonds (including Warranty Bonds) for all of the improvements included and covered by the County/Shea Homes subdivision improvement agreements. Upon issuance of final inspection (occupancy) by the County, full oversight and authority will transfer to the City.</p>
9.	<p>Daycare Center</p>	<p>Upon annexation, review and approval of the development application and oversight of the Day Care Center project will be turned over to the City.</p>

10.	Building Permits for Models and Production Homes	Any building permits issued as of the date of annexation will be the responsibility of the County. Once occupancy has been granted by the County, oversight will transfer to the City. Building permits that have not been issued will be transferred to the City and reviewed, inspected and provided final occupancy permits by the City.
11.	Model Sales Office Use Permits	Upon annexation, City will require temporary use permits for additional model sales offices.
12.	Levee Design – Summer Lake North	Upon annexation, City will review design documents and issue the grading permit required to complete the levee.
13.	South Pump Station	Upon exoneration of the improvement bonds and final permit sign-off and acceptance by the County, full oversight and authority will transfer to the City.
14.	Other Misc. Permits <ul style="list-style-type: none"> <li>• Electrical Pedestal Permits for Lake Sump Pumps</li> </ul>	<p>Upon exoneration of the improvement bonds and final permit sign-off and acceptance by the County, full oversight and authority will transfer to the City.</p> <p>Upon annexation, any miscellaneous permit applications that have not been submitted will be the responsibility of the City.</p>
15.	Project Theme Walls	County Public Works Department and City Public Works Department will collaborate on logical transition.
16.	WAPA Easement Linear Trail (HOA Owned and Maintained)	County Public Works Department and City Public Works Department will collaborate on logical transition.
17.	Private Landscape (front and rear yards) and Model Homes Landscape and any Landscape Structures	Upon annexation, responsibility shall be transferred to the City.

## EXHIBIT C

### **SPECIFIC INSURANCE REQUIREMENTS AND REQUIRED POLICY LIMITS**

Developer shall procure and maintain for the duration of its project insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the developer, his agents, representatives, employees or subcontractors in types and amounts listed below.

(a) Prior to the commencement of any work, SUBDIVIDER shall furnish to the CITY, a certificate of insurance establishing satisfactory evidence of a **project specific** policy of liability insurance which shall be maintained at all times during the performance of their Agreement and until the acceptance of improvements by the City Council, in form and by a responsible company satisfactory to the CITY, insuring that the CITY, its officers, agents, and employees are held harmless and indemnified against loss or liability arising out of the condition of the premises or any of the work to be performed under this agreement by SUBDIVIDER, including all costs of defending any claim arising as a result thereof. All insurance companies affording coverage to the SUBDIVIDER shall be required to add the City of Oakley as "**additional insured**" under the insurance policy for all work performed in accordance with this Agreement. Said policy or policies shall provide that the coverage afforded thereby shall be primary coverage to the full limit of liability stated in the declarations, and that if any of the CITY insureds have other insurance against the loss covered by said policy or policies, the other insurance shall be excess only. Said policy or policies shall provide for insurance in accordance with CITY requires minimum limits in the amount of Five Million Dollars (\$5,000,000) for bodily injury or death, each person, and Five Million Dollars (\$5,000,000) for bodily injury or death, aggregate, and Five Million Dollars (\$5,000,000) for property damage, aggregate. All insurance companies affording coverage to the SUBDIVIDER shall be insurance organizations authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California acceptable to the City Attorney, preferable with a Best's rating of not less than A:VII. Each policy shall contain an endorsement that said policy shall not be cancelled or coverage reduced except upon thirty (30) days advance written notice thereof to the CITY. Subdivider shall require its general contractor(s) and/or subcontractor(s) to obtain satisfactory insurance (Commercial General Liability) and add the City of Oakley as "additional insured" under the policy. The City of Oakley requires \$2,000,000 commercial general liability for property damage and \$2,000,000 for bodily injury or death, aggregate, and the City shall be sent copies of the insurance certificates and additional insured endorsements for review and file. In addition, it shall be the responsibility of the SUBDIVIDER to

ensure all Contractors and/or Subcontractors compliance with the insurance requirement as outlined in this section.

(b) **Worker's Compensation Insurance.** SUBDIVIDER shall take out and maintain, during the life of this agreement, Workers' Compensation insurance for all SUBDIVIDER'S employees employed at the site of all public Improvements, and in case any work is sublet, SUBDIVIDER shall require any general contractor or subcontractor similarly to provide Workers' Compensation insurance for contractor's or subcontractor's employees, unless such employees are covered by the protection afforded by SUBDIVIDER. In case any class of employees engaged in work under this Agreement at the site of the project is not protected under any Workers' Compensation law, SUBDIVIDER shall provide, and shall cause each contractor and subcontractor to provide, adequate insurance for the protection of employees not otherwise protected. Contractor hereby indemnifies CITY for any damage resulting to it from failure of either SUBDIVIDER, its agents, employees, contractor, or subcontractor to take out or maintain such insurance.

Other insurance provisions

The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of work or operations as performed by or on behalf of contractor; or automobiles owned, leased, hired or borrowed by the contractor.

Waiver of Subrogation: The Workers' Compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses paid under the terms of this policy which arises from the work performed by the named insured for the City.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
<p>Any person or organization whom you have agreed in writing to add as an additional insured, but only to coverage and minimum limits of insurance required by the written agreement, and in no even to exceed either the scope of coverage or the limits of insurance provided in this policy.</p>	
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

# WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

## SCHEDULE

**Name Of Person Or Organization:**

Any person or organization whom you have agreed in writing to add as an additional insured, but only to coverage and minimum limits of insurance required by the written agreement, and in no even to exceed either the scope of coverage or the limits of insurance provided in this policy.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of Section IV – Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

This endorsement is executed by the Liberty Mutual Fire Insurance Company  
Premium \$

Effective Date 08/01/2014 Expiration Date 08/01/2015

For attachment to Policy No. TB2-661-066116-014

Audit Basis

Issued To Shea Homes Limited Partnership

Countersigned by

\_\_\_\_\_  
Authorized Representative

## WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

As required by written contract or agreement

Issued by: Liberty Mutual Fire Insurance Company

For attachment to Policy No WA2-66D-066115-034 Effective Date 08/01/2014 Premium \$0

Issued to: J.F. Shea Co., Inc.