

December 29, 2016

Jennifer A. MacLean
JMacLean@perkinscoie.com
D. +1.202.434.1648
F. +1.202.654.9665

VIA HAND DELIVERY

Mr. Larry Roberts
Acting Assistant Secretary, Indian Affairs
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Ms. Hilary Tompkins
Solicitor, U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Re: Land-into-Trust Application of Wilton Rancheria to the Bureau of Indian Affairs

Dear Mr. Roberts and Ms. Tompkins:

I am writing on behalf of Stand Up For California!, Elk Grove GRASP, and Committee to Protect Elk Grove Values (collectively, “Stand Up”) to seek your written assurance that BIA will *not* immediately transfer into trust the approximately 36 acres of land located in Elk Grove the Wilton Rancheria recently asked the Secretary to acquire under Section 5 of the Indian Reorganization Act, 25 U.S.C. § 465. As outlined below, it appears that BIA is moving quickly to a final decision, despite multiple legal proceedings related to the proposed land. An immediate transfer of land into trust upon what appears to be a likely approval of the Rancheria’s trust application will disrupt those state proceedings and likely eliminate the rights of our clients under the California Constitution and a variety of State laws.

Our concern stems from what clearly appears to be a rush on the part of BIA to issue a final decision on the Rancheria’s application before January 20, 2017, despite the fact that the Rancheria only recently changed its proposed trust site from a 282-acre parcel of land in Galt, California—which BIA had been reviewing for over three years—to the 36-acre site in Elk Grove last summer. While the Rancheria may have announced its proposal for Elk Grove in June, the first notice BIA provided of the Rancheria’s changed project was its November 17, 2016 Notice of (Gaming) Land Acquisition Application as Sacramento County Assessor’s Parcel Number 134-1010-001-0000 (Portion). Exhibit 1.

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BIA did not inform the general public of the Rancheria's new application and has not responded to comments our clients provided BIA on the changed project in August. Moreover, the first notice BIA provided to the public of the Rancheria's new application came less than 10 days before the Christmas holiday—a time that is extremely busy for most families and least likely to generate a response—when it published a notice of availability of the Final Environmental Impact Statement and a Revised Draft Conformity Determination for the new site. *See* 81 Fed. Reg. 90379-01 (Dec. 14, 2016).

The only reason for issuing these notices of application and final EIS for a controversial casino project in November and December is to allow for final decision before January 20, 2017. BIA cannot issue a final decision on the Rancheria's trust application for 30 days following publication by EPA of the final environmental impact statement. *See* 40 C.F.R. § 1506.10. EPA published its Notice of Availability in the Federal Register on December 16, 2016, which provides "EIS No. 20160300, Final, BIA, CA, Wilton Rancheria Fee-to-Trust and Casino Project, Review Period Ends: 01/17/2017, Contact: John Rydzik 916-978-6051." *See* 81 Fed. Reg. 91169 (Dec. 16, 2016). Thus, by publishing the notice, BIA can make a final decision as soon as January 17, 2017.

As set forth in our comments of August 2016 and in comments we will provide on the final EIS, BIA has failed to comply with the National Environmental Policy Act in reviewing the Rancheria's application. A decision to acquire the Elk Grove site in trust will also violate other federal laws, including the IRA and the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*, and it is likely that we will challenge BIA's decision on the basis of those and possibly other federal laws when BIA issues its record of decision.

Our purpose today, however, is not to address the merits of BIA's trust decision, but rather to ensure that BIA does not effectuate the *transfer* of the land before our clients have the opportunity to seek emergency judicial relief. BIA's "*Patchak* fix" in 25 C.F.R. 151.12—which requires the immediate transfer of land in trust upon final decision by the Secretary or Assistant Secretary—does nothing to address the Supreme Court's decision in *Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians v. Patchak*, 132 S. Ct. 2199 (2012). What it does do is undermine judicial review, which is the rule's obvious intent. There is no reason to immediately transfer land into trust in the most controversial cases, except to make challenging those decisions more difficult and to limit the remedies that might be available to aggrieved parties.

In this case, the harm an immediate transfer of land under 25 C.F.R. 151.12 would cause could be irreparable. As you know, the proposed trust site is encumbered by a 2014 development agreement between the City of Elk Grove and Elk Grove LLC and Howard Hughes Corp. That

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2014 development agreement gives the City the right, among other things, to grant or deny land use approvals; to adopt, increase, and impose regular taxes, utility charges, and permit processing fees applicable on a city-wide basis; to adopt and apply regulations necessary to protect public health and safety; to adopt, increase, or decrease fees, charges, assessments, or special taxes; to adopt and apply regulations relating to the temporary use of land, control of traffic, regulation of sewers, water, and similar subjects and abatement of public nuisances; and to exercise the City's power of eminent domain with respect to any part of the property.¹ BIA is aware of the encumbrances recorded on the deed for the proposed trust land, as BIA informed the City in September that the land could not be acquired in trust prior to those encumbrances being removed. Exhibit 3 at 1.

Upon receiving that information, the City quickly approved an ordinance releasing the proposed trust land from the 2014 development agreement and recorded an agreement to that effect, eliminating the encumbrances on the land prior to the City having legal authority to do so. And the City still does not have legal authority for entering into that agreement. On November 23, 2016, Stand Up sued the City of Elk Grove for approving the ordinance without first complying with the California Environmental Quality Act (CEQA). Although that suit does not immediately stay the effect of the ordinance, our clients did not need to seek an emergency stay because approximately 14,800 citizens of Elk Grove exercised their Constitutional rights by timely filing a petition to referend the ordinance, which automatically prevents it from going into effect. The City has since recorded an acknowledgment that the proposed trust land is still encumbered by the 2014 development agreement (Exhibit 4)—an implicit concession of its illegal action—but the Department appears to be moving forward with the application despite these state proceedings.

The rights set forth in the 2014 development agreement protect the interests of our clients and can only be eliminated consistent with the laws of the State of California. The City has rights in the proposed trust property that establish and protect the priorities of the residents of Elk Grove, and the City cannot eliminate those rights without complying with the legal processes established under the California Constitution and state statutes. A trust transfer, however, would negate those rights by eliminating State and local jurisdiction over the land before our clients have been able to vindicate their rights.

¹ We explained by letter of December 21, 2016, that these encumbrances are not only inconsistent with the federal title standards, they prevent the land from qualifying as "Indian lands" eligible for gaming under IGRA. Exhibit 2.

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Thus, we must seek the Department's commitment that it will not immediately transfer land in trust, in the event of an affirmative decision, to allow our clients the opportunity to seek judicial relief. We ask that you provide written confirmation as soon as possible, given BIA's expedited schedule for resolving the Rancheria's application. Thank you.

Sincerely yours,



Jennifer A. MacLean

cc: U.S. Senator Dianne Feinstein
331 Hart Senate Office Building
Washington, DC 20510

U.S. Senator Barbara Boxer
112 Hart Senate Office Building
Washington, DC 20510

Representative John Garamendi
2438 Rayburn HOB
Washington, DC 20515

Representative Ami Bera
1431 Longworth House Office Building
Washington, DC 20515

U.S. Senator-Elect Kamala Harris
P.O. Box 78393
San Francisco, CA 94107

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Joe Dhillon
Senior Advisor for Tribal Negotiations
Office of the Governor
State Capitol Building, Suite 1173
Sacramento, CA 95814

Sarah J. Drake, Deputy Attorney General
State of California
Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

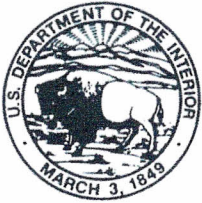
Amy Dutschke, Pacific Regional Director Bureau of Indian Affairs

John Ryzdak, Chief, Environmental Division

Mervel Harris, Realty Officer

Lisa Shalabi, Supervisory Realty Specialist

Exhibit 1



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

NOV 17 2016

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Distribution List:

Enclosed is a copy of our notice of an application seeking acceptance of title to real property “in trust” by the United States of America for the Wilton Rancheria, California.

Said notice is issued pursuant to the Code of Federal Regulations, Title 25, INDIANS, and Parts 151.10 and 151.11. We are seeking your comments regarding the proposed trust land acquisition in order to obtain sufficient data that would enable an analysis of the potential impacts on local government, which may result from the removal of the subject property from the tax roll and local jurisdiction. Pertinent information regarding the proposal is included in the enclosure.

Sincerely,

Regional Director

Enclosure



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

NOV 17 2016

Notice of (Gaming) Land Acquisition Application

Pursuant to the Code of Federal Regulations, Title 25, INDIANS, Part 151.10 and 151.11, notice is given of the application filed by the Wilton Rancheria to have real property accepted "into trust" for said applicant by the United States of America. The determination whether to acquire this property "in trust" will be made in the exercise of discretionary authority which is vested in the Secretary of the Interior, or his authorized representative, U.S. Department of the Interior. To assist us in the exercise of that discretion, we invite your comments on the proposed acquisition. In order for the Secretary to assess the impact of the removal of the subject property from the tax rolls, and if applicable to your organization, we also request that you provide the following information:

- (1) If known, the annual amount of property taxes currently levied on the subject property allocated to your organization;
- (2) Any special assessments, and amounts thereof, that are currently assessed against the property in support of your organization;
- (3) Any government services that are currently provided to the property by your organization; and
- (4) If subject to zoning, how the intended use is consistent, or inconsistent, with current zoning.

We are providing the following information regarding this application:

Applicant:

Wilton Rancheria, California

Legal Land Description/Site Location:

The land referred to herein is situated in the Unincorporated Area, County of Sacramento, City of Elk Grove, State of California, is described as follows:

Being a portion of Lot A as shown on that certain map entitled "Subdivision No. 00-038.00 Lent Ranch Marketplace" filed for record on December 14, 2007 in Book 372 of



Maps, Page 27, located in the City of Elk Grove, County of Sacramento, State of California, more particularly described as follows:

Commencing at a point which is the northeasterly corner of Lot A of said map, being a 3/4" iron pipe with plug stamped L.S. 6815; Thence leaving said point of commencement along the northeasterly line of said Lot A, South 37°55'18" East, a distance of 533.10 feet; Thence leaving said northeasterly line, entering and passing through said Lot A, South 51°30'01" West, a distance of 24.29 feet to the true point of beginning; Thence leaving said Point of Beginning and continuing through said Lot A, South 51°30'01" West, a distance of 1780.56 feet to a point on the southwesterly line of said Lot A, also being a point on the northeasterly right-of-way line of Promenade Parkway as shown on said map;

Thence northwesterly and northerly, respectively, along said right-of-way line, the following Twenty-one (21) arcs, courses and distances:

- 1) from a radial line which bears South 57°17'37" West, along a non-tangent curve concave to the east, having a radius of 1,452.00 feet, northwesterly 564.43 feet along said curve through a central angle of 22°16'20";
- 2) North 79°33'57" East, a distance of 6.00 feet;
- 3) from a radial line which bears South 79°33'57" West, along a non-tangent curve concave to the southeast, having a radius of 25.00 feet, northeasterly 40.55 feet along said curve through a central angle of 92°56'41";
- 4) North 82°30'38" East, a distance of 51.72 feet;
- 5) North 07°29'22" West, a distance of 100.00 feet;
- 6) South 82°30'38" West, a distance of 53.51 feet;
- 7) along a tangent curve concave to the northeast, having a radius of 25.00 feet, northwesterly 40.62 feet along said curve through a central angle of 93°06'07";
- 8) South 85°36'45" West, a distance of 6.00 feet;
- 9) from a radial line which bears South 85°36'45" West, along a non-tangent curve concave to the east, having a radius of 1,454.00 feet, northerly 93.58 feet along said curve through a central angle of 03°41'16";
- 10) North 00°42'00" West, a distance of 147.80 feet;
- 11) North 89°18'00" East, a distance of 6.00 feet;
- 12) from a radial line which bears South 89°18'00" West, along a non-tangent curve concave to the southeast, having a radius of 25.00 feet, northeasterly 39.27 feet along said curve through a central angle of 90°00'00";
- 13) North 89°18'00" East, a distance of 6.00 feet;
- 14) North 00°42'00" West, a distance of 50.00 feet;
- 15) South 89°18'00" West, a distance of 13.34 feet;
- 16) along a tangent curve concave to the northeast, having a radius of 25.00 feet, northwesterly 38.46 feet along said curve through a central angle of 88°08'33";
- 17) South 87°26'33" West, a distance of 6.00 feet;

- 18) North 02°33'27" West, a distance of 51.58 feet;
- 19) North 00°42'00" West, a distance of 563.84 feet;
- 20) North 89°18'00" East, a distance of 6.00 feet;
- 21) from a radial line which bears South 89°18'00" West, along a non-tangent curve concave to the east, having a radius of 25.00 feet, northerly 6.76 feet along said curve through a central angle of 15°30'00" to the northwest corner of said Lot A and a point on the common line between said Lot A and Lot G of said Map;

Thence leaving said northeasterly line, along said common line, the following four (4) arcs, courses and distances:

- 1) North 89°12'25" East, a distance of 86.70 feet;
- 2) along a tangent curve concave to the southwest, having a radius of 330.00 feet, southeasterly 314.08 feet along said curve through a central angle of 54°31'51";
- 3) South 36°15'44" East, a distance of 86.17 feet;
- 4) along a tangent curve concave to the north, having a radius of 25.00 feet, easterly 37.96 feet along said curve through a central angle of 87°00'21";

Thence leaving said common line, entering and passing through said Lot A, the following eight (8) arcs, courses and distances:

- 1) South 32°02'06" East, a distance of 66.91 feet;
- 2) from a radial line which bears North 33°08'11" West, along a non-tangent curve concave to the south, having a radius of 978.00 feet, easterly 417.51 feet along said curve through a central angle of 24°27'35";
- 3) North 81°19'25" East, a distance of 19.83 feet;
- 4) along a tangent curve concave to the south, having a radius of 879.00 feet, easterly 342.73 feet along said curve through a central angle of 22°20'25";
- 5) South 76°20'11" East, a distance of 12.19 feet;
- 6) along a tangent curve concave to the southwest, having a radius of 342.00 feet, southeasterly 157.69 feet along said curve through a central angle of 26°25'03";
- 7) along a compound curve concave to the southwest, having a radius of 342.00 feet, southeasterly 71.04 feet along said curve through a central angle of 11°54'08";
- 8) South 38°01'00" East, a distance of 346.19 feet to the point of beginning.

The Basis of Bearings for this description is the California State Plane Coordinate System, Zone 2, NAD 83, Epoch Date 1997.30 as measured between NGS Station "Eschinger", 1st Order and NGS Station "Keller", 1st Order. Said Bearing is North 20°56'36" West. Distances shown are ground based.

APN: 134-1010-001-0000 (Portion)

The above-described parcel is referred to as Sacramento County Assessor's Parcel Number 134-1010-001-0000 (Portion) containing approximately 35.92 acres, more or less.

Project Description/Proposed Land Use:

The Tribe proposes to develop the site by constructing a casino, hotel, and parking structure. The casino and hotel resort would be approximately 608,756 square feet and include a main gaming hall, food and beverage services, retail space, fitness center, spa and convention center. Several food and beverage facilities are planned, including a buffet, café, center bar and lounge, sports and lobby dining. The resort would include a twelve-story hotel with 302 rooms and a three-level parking garage.

Current Use/Taxes and Zoning:

Secured property tax for fiscal year 2016-2017 for Assessor's Parcel Number 134-1010-001-0000 (Portion) is \$229,588.92.

Existing Easements/Encumbrances:

See attached Schedule B

As indicated above, the purpose for seeking your comments regarding the proposed trust land acquisition is to obtain sufficient data that would enable an analysis of the potential impact on local/state government, which may result from the removal of the subject property from the tax roll and local jurisdiction.

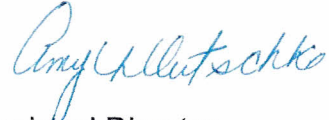
This notice does not constitute, or replace, a notice that might be issued for the purpose of compliance with the National Environmental Policy Act of 1969.

Your written comments should be addressed to the Bureau of Indian Affairs at the address at the top of this notice. Any comments received within thirty days of your receipt of this notice will be considered and made a part of our record. You may be granted an extension of time to furnish comments, provided you submit a written justification requesting such an extension within thirty days of receipt of this letter. An extension of ten to thirty days may be granted. Copies of all comments will additionally be provided to the applicant. You will be notified of the decision to approve or deny the application.

If any party receiving this notice is aware of additional governmental entities that may be affected by the subject acquisition, please forward a copy of this notice to said party or timely provide our office with the name and address of said party.

A copy of the application, excluding any documentation exempted under the Freedom of Information Act, is available for review at the above address. A request to make an appointment to review the application, or questions regarding the application, may be directed to Lorrae Russell, Realty Specialist, at (916) 978-6071.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amy K. Lutschko".

Regional Director

Enclosure: Exhibit "A"
Map

cc: Distribution List

DISTRIBUTION LIST

cc: BY CERTIFIED MAIL – RETURN RECEIPTS REQUESTED TO:

California State Clearinghouse – 7015 3010 0000 3622 0532
Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

Mr. Joe Dhillon – 7015 3010 0000 3622 0549
Senior Advisor for Tribal Negotiations
Office of the Governor
State Capitol Building, Suite 1173
Sacramento, CA 95814

Sarah J. Drake, Deputy Attorney General – 7015 3010 0000 3622 0556
State of California
Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

U.S. Senator Dianne Feinstein – 7015 3010 0000 3622 0563
331 Hart Senate Office Building
Washington, DC 20510

Board of Supervisors – 7015 3010 0000 3622 0570
County of Sacramento
700 H Street #2450
Sacramento, CA 95814

Sacramento County Assessor – 7015 3010 0000 3622 0587
3701 Power Inn Rd., Suite 300
Sacramento, CA 95826-7329

County of Sacramento– 7015 3010 0000 3622 0594
Planning Department
827 7th Street 1st Floor
Sacramento, CA 95814

Sacramento County Sheriff's Department – 7015 3010 0000 3622 0600
711 G Street
Sacramento, CA 95814

City of Sacramento Mayor – 7015 3010 0000 3622 0624
951 I Street #5
Sacramento, CA 95814

Elk Grove City Hall – 7015 3010 0000 3622 0617
8401 Laguna Palms Way
Elk Grove, CA 95758

Elk Grove Police Department – 7015 3010 0000 3622 0686
8400 Laguna Palms Way
Elk Grove, CA 95758

AmyAnn Taylor, Attorney General – 7015 3010 0000 3622 0631
Shingle Springs Band of Miwok Indians
P.O. Box 1340
Shingle Springs, CA 95682

Cheryl Schmit – Director – 7015 3010 0000 3622 0648
Stand Up for California
P.O. Box 355
Penryn, CA 95663

Chairperson – 7015 3010 0000 3622 0662
Ione Band of Miwok Indians
P.O. Box 699
Plymouth, CA 95669

Chairperson – 7015 3010 0000 3622 0679
Buena Vista Rancheria
1418 20th Street, Suite 200
Sacramento, CA 95811

Regular Mail:

Superintendent
Bureau of Indian Affairs
Central California Agency
650 Capital Mall, Suite 8-500
Sacramento, CA 95814

Exhibit 2

Stand Up For California!

“Citizens making a difference”

www.standupca.org

P. O. Box 355
Penryn, CA. 95663

December 21, 2016

VIA Email, Fax and First Class Mail

Larry Roberts
Acting Assistant Secretary—Indian Affairs
Department of the Interior
1849 C Street, NW
Washington, DC 20240

RE: Wilton Rancheria Fee-to-Trust Application for Land in Elk Grove, California

Dear Mr. Roberts:

Stand Up For California! (Stand Up), Elk Grove GRASP, and concerned citizens of Elk Grove are writing in response to the Bureau of Indian Affairs’ (BIA) November 17, 2016 Notice of (Gaming) Land Acquisition Application as Sacramento County Assessor's Parcel Number 134-1010-001-0000 (Portion). Thank you for the extension. At this time, we must request confirmation from BIA that it will not proceed with the trust application until a number of state law questions affecting title to the proposed trust land are resolved.

We explained in our September 27, 2016 comment letter that the proposed casino site could not be acquired in trust because it is encumbered by development agreements approved by the City of Elk Grove. In 2005 and 2014, the City approved by ordinance, executed and recorded development agreements with respect to Parcel Number 134-1010-001-0000 (Portion). BIA is aware of those development agreements, having previously informed the parties that the United States could not acquire Parcel Number 134-1010-001-0000 (Portion) in trust for the proposed purpose until the encumbrances associated with those agreements were removed. Schedule B to the November 17, 2016 application also identifies those encumbrances as exceptions number 13, 14 and 27.

The development agreements expressly reserve to Elk Grove the right, subject to the vested rights, to:

- grant or deny land use approvals;
- approve, disapprove or revise maps;
- adopt, increase, and impose regular taxes, utility charges, and permit processing fees applicable on a city-wide basis;

- adopt and apply regulations necessary to protect public health and safety;
- adopt increase or decrease fees, charges, assessments, or special taxes;
- adopt and apply regulations relating to the temporary use of land, control of traffic, regulation of sewers, water, and similar subjects and abatement of public nuisances;
- adopt and apply City engineering design standards and construction specification;
- adopt and apply certain building standards code;
- adopt laws not in conflict with the terms and conditions for development established in prior approvals; and
- exercise the City’s power of eminent domain with respect to any part of the property.

These encumbrances are not only inconsistent with the federal title standards, they prevent the land from qualifying as “Indian lands” eligible for gaming under the Indian Gaming Regulatory Act (IGRA). 25 U.S.C. § 2703(4). These rights, which are recorded on the deed, establish that the City of Elk Grove has governmental jurisdiction over the site. The City can impose taxes; the City can adopt regulations to protect public health and safety; the City will regulate building codes, engineering design standards, etc.; and the City will regulate land use, sewers, traffic, etc. BIA has previously denied gaming determinations based on development agreements that accord local governments some authority over the proposed gaming sites. *See e.g.*, Letter to Michael Toledo from Assistant Secretary L. Echo Hawk Regarding Trust Application of Pueblo of Jemez (Dec. 1, 2011). Here, the authority is part of the deed itself. The land cannot qualify as “Indian lands” under IGRA.

On November 9, 2016, the City recorded an amendment to a development, which made it appear that these encumbrances had been removed from an approximately 35.92-acre parcel of land. That recordation was premature and of no legal effect.

Under California law, a city must enact an ordinance approving the execution of a development agreement, which is then recorded as an encumbrance on the title to the property.¹ A city must approve amendments to a development agreement by ordinance, as well. California law requires cities to wait for 30 days before any ordinance goes into effect. The purpose of that delay is to allow aggrieved parties to exercise their rights under Section 9 Article II of the California Constitution (i.e., the referendum right) and/or to file claims arising under State law, including the California Environmental Quality Act. Specifically, with respect to the referendum power, Government Code section 36937 and Elections Code section 9235.2 provide that an ordinance approving or amending a development agreement will not take effect for thirty days, during which time the voters of a jurisdiction are entitled to exercise their right of referendum by presenting a petition protesting the ordinance. See Government Code sections 65867.5(a) and 65868 and Elections Code sections 9235 and following.

¹ A development agreement is an agreement between a local jurisdiction and an owner of legal or equitable interest in property that addresses the development of the property it affects. It must specify the duration of the agreement, the permitted uses of property, the density or intensity of use, the maximum height and size of proposed building, and provisions for reservation or dedication of land for public purposes. A development agreement is a legislative act that must be approved by ordinance and is subject to referendum. After a development agreement is approved by ordinance and the City accordingly is enabled to enter into it, the agreement may be executed and recorded with the county recorder, as it was in this case.

The City failed to comply with applicable state laws. On October 26, 2016, the City approved an amendment to the development agreement encumbering Parcel Number 134-1010-001-0000 (Portion) by removing the parcel from the existing development agreement. Although State law imposes a 30-day waiting period before an ordinance goes into effect, the City executed the amendment to the development agreement prior to that date and recorded the amendment on November 9, 2016. The City therefore did not have authority to execute the amendment to the development agreement when it did, nor record that amendment.

On November 21, 2016, approximately 14,800 citizens filed with the City Clerk's office a referendum petition protesting the ordinance authorizing the amendment. The City has until January 6, 2017, to complete an initial verification of their signatures, during which time the effective date of the ordinance is suspended. If the petition is verified, the ordinance will not go into effect until such time as a majority of the voters in Elk Grove approve that ordinance. Accordingly, the City was without authority to execute and record the amendment.

In addition, on November 23, 2016, the undersigned filed a Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief challenging the City's ordinance under the California Environmental Quality Act (CEQA), alleging that approval of the amendment authorizing the removal of Parcel Number 134-1010-001-0000 (Portion) from the development agreement was a discretionary decision subject to review under that Act. In addition, the petitioners allege that by entering into the amendment without an effective ordinance in place and recording that amendment, the City violated statutory law and the right to referend.

Finally, we are concerned that the Regional Director is involved in the decision-making in this case.² The Regional Director, however, shares extensive family ties with members of the Wilton Rancheria. These ties present a clear conflict of interest. Until this matter can be reviewed thoroughly by the incoming Administration, and all ethical concerns are fully addressed, any decision to take land into trust will be inherently tainted and subject to investigation.

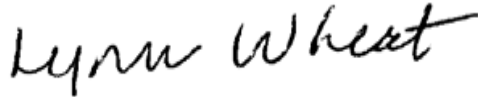
We therefore request that the Bureau of Indian Affairs withdraw the November 17, 2016 Notice of (Gaming) Land Acquisition Application until such time as these matters have been resolved at the State level. If BIA fails to do so, and moves to acquire the land in trust, it will effectively negate the Constitutional right of the citizens of Elk Grove to referend, as well as our right to have our CEQA claims heard. A decision to acquire in trust under these circumstances will negate our rights under State law, and raise serious ethical concerns.

² Letter from Paula Hart, Director of the Office of Indian Gaming, to Raymond Hitchcock, Chairman of the Wilton Rancheria (April 28, 2016).

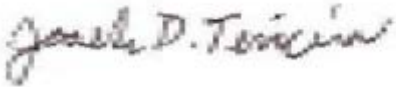
Sincerely,



Cheryl Schmit
Director, Stand Up for California!



Lynn Wheat
Elk Grove GRASP



Joe Teixeira
Committee to Protect Elk Grove Values



Patty Johnson

cc:

Solicitor Hilary Tompkins
Amy Dutschke, Pacific Regional Director
John Ryzdak, Chief, Environmental Division
Mervel Harris, Realty Officer
Lisa Shalabi, Supervisory Realty Specialist

Joe Dhillon
Senior Advisor for Tribal Negotiations
Office of the Governor
State Capitol Building, Suite 1173
Sacramento, CA 95814

Sarah J. Drake, Deputy Attorney General
State of California
Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

U.S. Senator Dianne Feinstein
331 Hart Senate Office Building
Washington, DC 20510

California State Clearinghouse
Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

Exhibit 3



Planning Commission Staff Report

September 15, 2016

PROJECT: The Outlet Collection at Elk Grove
FILE: EG-14-012A
REQUEST: Development Agreement Amendment, Mall Agreement Amendment
LOCATION: 10465 Promenade Parkway
APN: 134-1010-001
STAFF: Christopher Jordan, AICP

PROPERTY OWNER/APPLICANT:

Elk Grove Town Center, L.P.
Howard Hughes Corporation, General Partner
David F. Kautz (Representative)
10801 W. Charleston Blvd.
Las Vegas, NV 89135

AGENT:

Phillips Land Law, Inc.
Kevin Kemper (Representative)
5301 Monserrat Lane
Loomis, CA 95650

Staff Recommendation

Staff recommends that the Planning Commission adopt a Resolution making a recommendation that the City Council:

1. Adopt a finding that no subsequent environmental review is required for The Outlet Collection at Elk Grove (the Project) pursuant to State CEQA Guidelines Section 15162 (Subsequent EIRs and Negative Declarations);
2. Adopt an Ordinance amending the Development Agreement between the City of Elk Grove and Elk Grove Town Center, L.P.; and
3. Adopt a Resolution Amending the Amended and Restated Agreement Regarding Regional Mall, Fees, and Infrastructure.

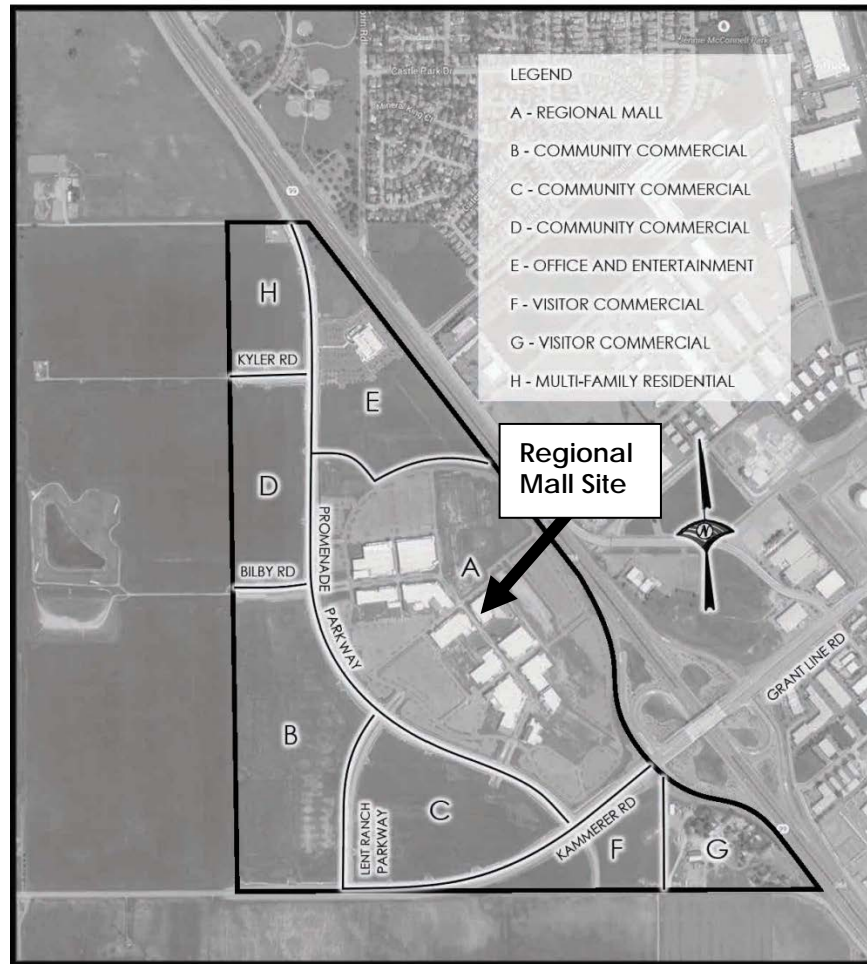
Project Description

The Applicant, Elk Grove Town Center, L.P., is requesting revisions to the Development Agreement and Amended and Restated Agreement Regarding Regional Mall, Fees, and Infrastructure. These agreements were entered into by the City and the Applicant as part of the approval of the Outlet Collection at Elk Grove Project (EG-14-012) in October 2014. Subsequently, the Applicant is considering no longer developing Phase 2 of the Project as additional outlet uses. On May 31 2016, the Applicant entered into an Option Agreement with Wilton Rancheria and Boyd Gaming Corporation for the portion of the property not part of the 2014 approvals. The requested changes to the Agreements reflect the fact that the Bureau of Indian Affairs will not allow the Phase 2 property to be moved from fee to trust status unless the encumbrances such as the Development Agreement are removed from title. The amended agreements do not approve any specific development within the Phase 2 area.

Background

On June 27, 2001, the City Council adopted the Lent Ranch SPA, establishing a 295-acre future commercial area in the southern part of the City, at Grant Line Road and State Route 99. The SPA utilizes five different land use types to divide the 295-acre Lent Ranch site into 8 commercial districts. The five (5) land use types include Regional Mall, Community Commercial, Office and Entertainment, Visitor Commercial, and Multi-Family Residential. The SPA provides allowable use information and development standards for each land use type. The proposed Project is located on the Regional Mall district designated by the SPA.

Figure 1: Lent Ranch SPA Land Use Exhibit



In October 2014, the City entered into two amended agreements with the property owners within the SPA. The first is a Development Agreement (originally approved in 2001 and the second is an Agreement Regarding the Regional Mall, Fees, and Infrastructure (originally approved in 2007). As part of the Infrastructure Agreement, the City and Developer entered into a License Agreement for the parking area of the Mall, which provided “nonexclusive license rights for public parking and access.” It also included use of the Phase 2 area for City events. Both Agreements are being amended to remove the Phase 2 area.

The City also approved a new District Development Plan for the Regional Mall site. Referred to as The Outlet Collection at Elk Grove, the 2014 approvals authorizes the initial construction of up to 750,000 square feet of commercial uses, consisting of retail, dining, and entertainment uses, along with additional development of future pad buildings along Promenade Parkway. A future Phase 2 area was identified at the northern end of the site but was excluded from the project approvals.

Analysis

In May of 2016, the Applicant entered into an Option Agreement for the Phase 2 area of the project site with Wilton Rancheria and Boyd Gaming Corporation. The proposed amendments to the Development Agreement and Amended and Restated Agreement Regarding Regional Mall, Fees, and Infrastructure, as provided in Attachment 1, reflect this potential transfer of property by updating the effective area of the agreements to only cover the portions of the site covered by the 2014 approvals. The Option Agreement, if executed, would result in a transfer of the Phase 2 area to the United States Department of Interior, Bureau of Indian Affairs (BIA) for the benefit of the Wilton Rancheria. Should the Option be exercised, the BIA will not allow the Phase 2 property to be removed from fee to trust for the Wilton Rancheria unless the encumbrances such as the Development Agreement are removed from title. The BIA is in the process of finishing an Environmental Impact Statement that includes analyzing the Phase 2 property as a potential location for an entertainment center including a casino, hotel, and event center. The City is not the land use authority for such project. The result of these amendments is that they will only apply to the property that will continue to be owned by the Howard Hughes Corporation (HHC) and they will not apply to the Phase 2 area.

None of the specific terms and conditions of the agreements are being modified by these changes. Specifically, the following will still apply:

- **Development Agreement**
 - Term: The term of the agreement continues to be four (4) years from the date of approval (the initial life, ending October 2018). In the event the Project is completed (meaning the first 400,000 square feet) the agreement continues to automatically extend for an additional 10 years (the extended life).
 - Vested Right: The agreement continues to provide a vested right to develop the Project during the initial and extended life pursuant to the Project approvals and the regulations in effect at the time of Project approval. Any amendments to City regulations since the approval of the agreement do not affect the Project (unless related to health or safety) until after the completion of the term of the Development Agreement.
 - Phasing and Timing: The agreement continues to not regulate the phasing or timing of development beyond the initial life of the agreement. There is an interest to the Applicant to develop during the vested period of the initial life of the agreement.
 - Fees: The agreement continues to not vest fees for the Project (e.g., development impact fees) but does recognize that some fees have already been paid..
- **Agreement Regarding Regional Mall, Fees, and Infrastructure**
 - Continues to require the Mall to include a minimum of 21 tenants from the tenant list (Exhibit A to the agreement).
 - Continues to guarantee an opening date for the Mall (4 years from the date of the 2014 Development Agreement, being October 2018).

- o Continues to provide the City with a nonexclusive license for public parking, access on-site, and possible event use, provided the parking and access is not in conflict with the Applicant's use of the property.
- o Establishes a process for the City to pay the Applicant for unreimbursed off-site improvements (totaling approximately \$15.6 million) and to compensate the Applicant for the public parking, access license, and potential event space. The funding for these payments will come from the City's portion of the sales tax generated by the Mall, which in 2014 was estimated to be \$1.9 million annually. The structure for calculating the payments has not changed from the 2014 agreement.

The amended agreements do not approve any specific development within the Phase 2 area.

Environmental Analysis

The California Environmental Quality Act (Section 21000, et. seq. of the California Public Resources Code, hereafter CEQA) requires analysis of agency approvals of discretionary "projects." A "project," under CEQA, is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." The proposed Project is a project under CEQA.

The 2001 approval of the Lent Ranch SPA was supported by the certification of an Environmental Impact Report (EIR, State Clearinghouse No. 1997122002). An addendum to the EIR addressing impacts to agricultural resources was prepared and adopted by the City in August 4, 2004. In addition, a mitigation monitoring and reporting program (MMRP) was adopted for the project.

The EIR analyzed full buildout of the SPA as listed in Table 2 below. The Project site was identified with a potential buildout of 1,300,000 square feet of commercial uses. Specifically, page 3.0-8 of the Draft EIR identified the following:

The regional shopping mall would include the eventual development of approximately 1,300,000 square feet of space on approximately 105.8 gross acres within District A. In general, the regional shopping mall structures would be clustered in the center of District A. The structures may be multi-level and enclosed. Tenants that have nationally or regionally recognized logos and color schemes would be allowed to utilize those logos and colors on the exterior of structure facades. The regional shopping mall is envisioned and intended to provide a community gathering place for the City of Elk Grove. It would contain an array of uses including department stores, shops, varied dining opportunities, and entertainment facilities including a possible theater complex.

Table 2: Summary of Buildout Potential of Lent Ranch SPA

SPA Districts	Land Use	Acres (gross)	Estimated Square Footage
A	Regional Mall	105.8	1,300,000
B, C, & D	Community Commercial	112.1	1,172,000
E	Office and Entertainment	30.6	318,000
F & G	Visitor Commercial	31.0	301,000
H	Multi-Family	15.3	(280 dwelling units)
TOTAL		294.8	3,091,000

Source: Lent Ranch DEIR, page 3.0-7

The 2014 approval of the current Development Agreement and Amended and Restated Agreement Regarding Regional Mall, Fees, and Infrastructure were determined to be exempt from further review under CEQA as they reflected the 2014 design for the site, which included uses and a density and intensity of development consistent with the above information from the 2001 EIR.

The proposed amendments to the Development Agreement and Amended and Restated Agreement Regarding Regional Mall, Fees, and Infrastructure narrow the scope of these agreements to just the area covered by the 2014 approvals for the Outlet Collection at Elk Grove Project. That project proposed to develop approximately 750,000 square feet of commercial development, which is less than the 1,300,000 square feet analyzed in the Lent Ranch EIR. While the core development area (approximately 525,000 square feet) will be structured as an outlet center, it will continue to operate with retail tenants consistent with the description for the District included in the Draft EIR. The balance of the commercial center will include space for a movie theater, and locations for future pad buildings that will accommodate other retail and restaurant tenants. This is also consistent with the District A description from the Draft EIR that references “varied dining opportunities, and entertainment facilities including a possible theater complex.” The amendments to the agreements do not alter these project approvals or otherwise modify the Project from that analyzed in the 2001 EIR or as proposed in 2014.

State CEQA Guidelines Section 15162 identifies that when an EIR has been certified for a project, no subsequent EIR shall be prepared for that project unless then lead agency (the City) determines, on the basis of substantial evidence in light of the whole record, one or more of the following:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3. New information of substantial importance, which was not known and could not have been known with exercise of reasonable diligence at the time of the previous EIR was certified as complete shows any of the following:

- a. The project will have one or more significant on discussed in the previous EIR;
- b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
- d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measures or alternative.

Staff has reviewed the Project and analyzed it based upon the above provisions in Section 15162 of the State CEQA Guidelines. As mentioned above, the Project will modify the application of the existing Development Agreement and Amended and Restated Agreement Regarding Regional Mall, Fees, and Infrastructure by narrowing the scope of these agreements to just the area covered by the 2014 approvals for the Outlet Collection at Elk Grove Project. It will not change the characteristics of the approved development. No specific development of the Phase 2 area is approved by these amended agreements. Therefore, there are no substantial changes in the Project from that analyzed in the 2001 EIR and no new significant environmental effects, or substantial increase in the severity of previously identified significant effects. No new information of substantial importance has been identified.

Further, since no changes to the EIR are necessary to support the Project, the City is not required to prepare an Addendum to the EIR as provided by State CEQA Guidelines Section 15164.

Therefore, the prior EIR is sufficient to support the Project and no further environmental review is required.

Recommended Motion

Should the Planning Commission agree with staff's recommendation, the following motion is suggested:

"I move that the Planning Commission adopt a Resolution finding that no subsequent environmental review is required for The Outlet Collection at Elk Grove (the Project) pursuant to State CEQA Guidelines Section 15162 (Subsequent EIRs and Negative Declarations); making a recommendation that the City Council adopt the First Amendment to the Development Agreement between the City of Elk Grove and Elk Grove Town Center, L.P; and making a recommendation that the City Council adopt the First Amendment to the Amended and Restated Agreement Regarding Regional Mall, Fees, and Infrastructure."

Attachments

1. Resolution Recommending Approval to Council
 - Exhibit A- First Amendment to the Development Agreement
 - Exhibit B- First Amendment to the Amended and Restated Agreement Regarding Regional Mall, Fees, and Infrastructure

ATTACHMENT 1

RESOLUTION NO. 2016-XX

September 15, 2016

**A RESOLUTION OF THE CITY OF ELK GROVE PLANNING COMMISSION
RECOMMENDING THAT THE CITY OF ELK GROVE CITY COUNCIL FIND THAT
NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED FOR THE PROJECT;
MAKING A RECOMMENDATION THAT THE CITY COUNCIL ADOPT THE FIRST AMENDMENT TO THE DEVELOPMENT
AGREEMENT BETWEEN THE CITY OF ELK GROVE AND ELK GROVE TOWN CENTER, L.P.;
AND MAKING A RECOMMENDATION THAT THE CITY COUNCIL ADOPT THE FIRST AMENDMENT TO THE AMENDED AND
RESTATED AGREEMENT REGARDING REGIONAL MALL, FEES, AND INFRASTRUCTURE
FOR THE**

**OUTLET COLLECTION AT ELK GROVE
PROJECT NO. EG14-012A
10465 PROMENADE PARKWAY
APN: 134-1010-001**

WHEREAS, on June 27, 2001, the City Council certified the Environmental Impact Report (EIR, State Clearinghouse No. 1997122002) for the Lent Ranch Marketplace Project and adopted the Lent Ranch Special Planning Area, which provided for the development of a regional mall and surrounding retail, office, and entertainment development; and

WHEREAS, on September 5, 2001, the City Council adopted a Development Agreement Between the City of Elk Grove and M&H Realty Partners, Elk Grove Town Center, L.P., ET AL., for the Lent Ranch Marketplace Project (the "2001 Development Agreement"); and

WHEREAS, on July 11, 2007, the City Council adopted an Agreement Regarding the Regional Mall, Fees, and Infrastructure with Elk Grove Town Center, LP regarding the regional mall; and

WHEREAS, on October 8, 2014, the City Council approved a new Development Plan Review for the Regional Mall site (District A) of, and pursuant to, the Lent Ranch Special Planning Area, referred to as the Outlet Collection at Elk Grove, file EG-14-012; and

WHEREAS, as part of the approval of the Outlet Collection at Elk Grove, the City Council entered into a new Development Agreement and an Amended and Restated Agreement Regarding Regional Mall, Fees, and Infrastructure with the Applicant, Elk Grove Town Center, L.P.; and

WHEREAS, the City of Elk Grove received an application on August 30, 2016, from the Applicant requesting amendments to the Development Agreement and an Amended and Restated Agreement Regarding Regional Mall, Fees, and Infrastructure (the "Project") to remove the Phase 2 portion from these agreements; and

WHEREAS, the City determined that the removal of the Phase 2 portion from the Agreements is subject to the California Environmental Quality Act; and

WHEREAS, the Project is located within the Lent Ranch Special Planning Area for which an EIR (State Clearinghouse No. 1997122002) was prepared and certified July 2001; and

WHEREAS, State CEQA Guidelines Section 15162 identifies that when an EIR has been certified for a project, no subsequent EIR shall be prepared for that project unless then lead

agency (the City) determines, on the basis of substantial evidence in light of the whole record, one or more substantial change in the project, circumstances, or information (as defined in the section) have occurred; and

WHEREAS, the Planning Commission held a duly noticed public hearing on September 15, 2016, as required by law to consider all of the information presented by staff, information presented by the Applicant, and public testimony presented in writing and at the meeting;

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of Elk Grove finds that no further environmental review is required under the California Environmental Quality Act for the Project pursuant to State CEQA Guidelines Section 15162 based upon the following finding:

CEQA

Finding: No further environmental review is required under the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15162.

Evidence: The City has reviewed the Project and analyzed it based upon the provisions in Section 15162 of the State CEQA Guidelines. The proposed amendments to the Development Agreement and Amended and Restated Agreement Regarding Regional Mall, Fees, and Infrastructure narrow the scope of these agreements to just the area covered by the 2014 approvals for the Outlet Collection at Elk Grove Project. That project proposed to develop approximately 750,000 square feet of commercial development, which is less than the 1,300,000 square feet analyzed in the Lent Ranch EIR. While the core development area (approximately 525,000 square feet) will be structured as an outlet center, it will continue to operate with retail tenants consistent with the description for the District included in the Draft EIR. The balance of the commercial center will include space for a movie theater, and locations for future pad buildings that will accommodate other retail and restaurant tenants. This is also consistent with the District A description from the Draft EIR that references "varied dining opportunities, and entertainment facilities including a possible theater complex."

The Project will modify the application of the existing Development Agreement and Amended and Restated Agreement Regarding Regional Mall, Fees, and Infrastructure by narrowing the scope of these agreements to just the area covered by the 2014 approvals for the Outlet Collection at Elk Grove Project. It will not change the characteristics of the approved development. No specific development of the Phase 2 area is approved by these amended agreements. Therefore, there are no substantial changes in the Project from that analyzed in the 2001 EIR and no new significant environmental effects, or substantial increase in the severity of previously identified significant effects. No new information of substantial importance has been identified.

Further, since no changes to the EIR are necessary to support the Project, the City is not required to prepare an Addendum to the EIR as provided by State CEQA Guidelines Section 15164. Therefore, the prior EIR is sufficient to support the Project and no further environmental review is required.

AND, BE IT FURTHER RESOLVED, that the Planning Commission of the City of Elk Grove hereby recommends that the City Council adopt the proposed First Amendment to the Development Agreement between the City of Elk Grove and Elk Grove Town Center, L.P, as described in Exhibit A, and adopt the First Amendment to the Amended and Restated

Agreement Regarding Regional Mall, Fees, and Infrastructure, as described in Exhibit B, both incorporated herein by this reference, based upon the following finding:

Development Agreement

Finding #1: The development agreement is consistent with the General Plan objectives, policies, land uses, and implementation programs and any other applicable specific plans.

Evidence: The proposed First Amendment to the Development Agreement is consistent with the General Plan as the General Plan designates the subject property for commercial development and the Development Agreement provides for the development up to the 1,300,000 square feet allocated for District A, consistent with the Special Planning Area. The site is not subject to a specific plan.

Finding #2: The development agreement is in conformance with the public convenience and general welfare of persons residing in the immediate area and will not be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the City as a whole.

Evidence: The Project is in conformity with public convenience, general welfare and good land use practices because it will develop a Regional Mall along the Highway 99 corridor that will accommodate the growing need for such services in the City of Elk Grove and surrounding region. The Project will create a commercial, retail, and entertainment development that is of high quality and fully integrated on one site rather than less desirable piecemeal land uses spread out over several other locations. The Project will provide an expanded economic base for the City of Elk Grove through the generation of significant increased tax revenue. The Development Agreement is necessary in order to obtain the major investment necessary to develop the Project. Absent approval of the Development Agreement, the City would not obtain the benefits of the Project to the community. The Development Agreement will establish land use regulations for a reasonable period to allow project build out in accordance with the approved entitlements for development, and to ensure a cohesive development. The Project will provide the variety of land uses noted above at one attractively designed, well-planned site, located adjacent to major highways and a freeway interchange for maximum public convenience. The Project will also provide these services to the residents of existing and planned residential developments, thereby reducing the number of vehicle miles traveled to obtain these same services at greater distances, and improving air quality. The Project will also create indirect economic benefits and serve as a catalyst for additional economic activity as a result of job creation and the spending of Project wages in the City. Thus, in accordance with good land use practices, the Project will promote a better balance of employment, services and housing, and improve the mix of uses in the community.

The First Amendment to the Development Agreement reflects the project boundaries as contained in the Project Approvals dated October 2014 under File EG-14-102. No other development is approved by the Development Agreement.

Finding #3: The development agreement will promote the orderly development of property or the preservation of property values.

Evidence: The Project site is designated in the General Plan for commercial development. Approval of the Project will result in the development of these lands and

the provision of urban levels of public infrastructure and services to areas within the City. Thus, the uses proposed by the Project are consistent with those envisioned for the area in the General Plan. The Project will contribute to a balance of land uses within the City by providing a diversity of necessary services that respond to the needs of the surrounding community and the region. The Project will be compatible with and preserve (or even increase) the property values of the predominantly residential development proposed or otherwise approved for surrounding areas, by providing necessary and desirable services nearby. The Project, as designed, will be a cohesive, planned multi-use development, and will provide a visually pleasing, safe and attractive gathering place that will encourage community identity. Necessary infrastructure, including sewer, water, and roadways, to serve the Project have been constructed. As a result, the Project will not adversely affect the orderly development of property, and property values will be preserved or increased.

The foregoing Resolution of the City of Elk Grove was passed and adopted by the Planning Commission on the 15th day of September 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Sandy Kyles, SECRETARY

Fedolia "Sparky" Harris, CHAIR of the
PLANNING COMMISSION

**Exhibit A
Outlet Collection at Elk Grove (EG- 14-012A)
First Amendment to the Development Agreement**

OFFICIAL CITY BUSINESS
No recording fee
Government Code Section 6103

RECORDING REQUESTED BY:

City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758
Attn: City Clerk

WHEN RECORDED MAIL TO:

City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758
Attn: City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**FIRST AMENDMENT TO THE
DEVELOPMENT AGREEMENT
BETWEEN THE
CITY OF ELK GROVE,
AND
ELK GROVE TOWN CENTER, LP**

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT

This FIRST AMENDMENT to the Development Agreement ("Amended Agreement") is entered into between the City of Elk Grove ("City"), and Elk Grove Town Center, LP, a Delaware limited partnership ("Developer"). For the purposes of this Agreement, Developer and City are referred to individually as "Party" and collectively as the "Parties."

RECITALS

- A. The City and Developer have heretofore entered into a Development Agreement, approved by City of Elk Grove by Ordinance No. 29-2014, adopted on October 22, 2014 (the "Development Agreement"), and relating to certain Property in the City of Elk Grove upon which Developer desires to develop
- B. Those recitals provided in the Development Agreement are herein incorporated by reference.
- C. In furtherance of the Project, the City and Developer desire to enter into this First Amendment to make certain modifications and amendments to the Development Agreement.

NOW, THEREFORE, the Parties agree as follows:

AMENDED AGREEMENT

1. Section 1.16 is hereby amended to read as follows:

- 1.16 "Property" is that certain real property consisting of approximately 64.423 acres in the City of Elk Grove, being a portion of Assessor's Parcel Number 134-1010-001, and more particularly described in Exhibit A hereto. The term "Property" may include any part of the Property, depending on the context.

Continued on next page

2. EXHIBIT A, Legal Description of the Property, is hereby amended to read as follows:

**EXHIBIT A
LEGAL DESCRIPTION
ELK GROVE PROMENADE
REMAINING PROPERTY**

Being a portion of Lot A as shown on that certain map entitled "Subdivision No. 00-038.00 Lent Ranch Marketplace" filed for record on December 14, 2007 in Book 372 of Maps, Page 27, located in the City of Elk Grove, County of Sacramento, State of California, more particularly described as follows:

All of said Lot A.

EXCEPTING THEREFROM, the following described area:

COMMENCING at a point which is the northeasterly corner of Lot A of said map, being a 3/4" iron pipe with plug stamped L.S. 6815; Thence leaving said **POINT OF COMMENCEMENT** along the northeasterly line of said Lot A, South 37°55'18" East, a distance of 533.10 feet; Thence leaving said northeasterly line, entering and passing through said Lot A, South 51°30'01" West, a distance of 24.29 feet to the **TRUE POINT OF BEGINNING**; Thence leaving said Point of Beginning and continuing through said Lot A, South 51°30'01" West, a distance of 1780.56 feet to a point on the southwesterly line of said Lot A, also being a point on the northeasterly right-of-way line of Promenade Parkway as shown on said map;

Thence northwesterly and northerly, respectively, along said right-of-way line, the following Twenty-one (21) arcs, courses and distances:

- 1) from a radial line which bears South 57°17'37" West, along a non-tangent curve concave to the east, having a radius of 1,452.00 feet, northwesterly 564.43 feet along said curve through a central angle of 22°16'20";
- 2) North 79°33'57" East, a distance of 6.00 feet;
- 3) from a radial line which bears South 79°33'57" West, along a non-tangent curve concave to the southeast, having a radius of 25.00 feet, northeasterly 40.55 feet along said curve through a central angle of 92°56'41";
- 4) North 82°30'38" East, a distance of 51.72 feet;
- 5) North 07°29'22" West, a distance of 100.00 feet;
- 6) South 82°30'38" West, a distance of 53.51 feet;
- 7) along a tangent curve concave to the northeast, having a radius of 25.00 feet, northwesterly 40.62 feet along said curve through a central angle of 93°06'07";
- 8) South 85°36'45" West, a distance of 6.00 feet;
- 9) from a radial line which bears South 85°36'45" West, along a non-tangent curve concave to the east, having a radius of 1,454.00 feet, northerly 93.58 feet along said curve through a central angle of 03°41'16";
- 10) North 00°42'00" West, a distance of 147.80 feet;
- 11) North 89°18'00" East, a distance of 6.00 feet;
- 12) from a radial line which bears South 89°18'00" West, along a non-tangent curve concave to the southeast, having a radius of 25.00 feet, northeasterly 39.27 feet along said curve through a central angle of 90°00'00";
- 13) North 89°18'00" East, a distance of 6.00 feet;
- 14) North 00°42'00" West, a distance of 50.00 feet;
- 15) South 89°18'00" West, a distance of 13.34 feet;
- 16) along a tangent curve concave to the northeast, having a radius of 25.00 feet, northwesterly 38.46 feet along said curve through a central angle of 88°08'33";

- 17) South 87°26'33" West, a distance of 6.00 feet;
- 18) North 02°33'27" West, a distance of 51.58 feet;
- 19) North 00°42'00" West, a distance of 563.84 feet;
- 20) North 89°18'00" East, a distance of 6.00 feet;
- 21) from a radial line which bears South 89°18'00" West, along a non-tangent curve concave to the east, having a radius of 25.00 feet, northerly 6.76 feet along said curve through a central angle of 15°30'00" to the northwest corner of said Lot A and a point on the common line between said Lot A and Lot G of said Map;

Thence leaving said northeasterly line, along said common line, the following four (4) arcs, courses and distances:

- 1) North 89°12'25" East, a distance of 86.70 feet;
- 2) along a tangent curve concave to the southwest, having a radius of 330.00 feet, southeasterly 314.08 feet along said curve through a central angle of 54°31'51";
- 3) South 36°15'44" East, a distance of 86.17 feet;
- 4) along a tangent curve concave to the north, having a radius of 25.00 feet, easterly 37.96 feet along said curve through a central angle of 87°00'21";

Thence leaving said common line, entering and passing through said Lot A, the following eight (8) arcs, courses and distances:

- 1) South 32°02'06" East, a distance of 66.91 feet;
- 2) from a radial line which bears North 33°08'11" West, along a non-tangent curve concave to the south, having a radius of 978.00 feet, easterly 417.51 feet along said curve through a central angle of 24°27'35";
- 3) North 81°19'25" East, a distance of 19.83 feet;
- 4) along a tangent curve concave to the south, having a radius of 879.00 feet, easterly 342.73 feet along said curve through a central angle of 22°20'25";
- 5) South 76°20'11" East, a distance of 12.19 feet;
- 6) along a tangent curve concave to the southwest, having a radius of 342.00 feet, southeasterly 157.69 feet along said curve through a central angle of 26°25'03";
- 7) along a compound curve concave to the southwest, having a radius of 342.00 feet, southeasterly 71.04 feet along said curve through a central angle of 11°54'08";
- 8) South 38°01'00" East, a distance of 346.19 feet to the **TRUE POINT OF BEGINNING.**

TOGETHER WITH, the following described area:

That portion of that certain "Frontage Road" being 46 feet wide, 65 feet wide and of varying width in the City of Elk Grove, County of Sacramento, State of California as described in that certain document entitled "Relinquishment of State Highway, in the County of Sacramento, Road III SAC-4-A,B" recorded in Volume 3710, Page 472, recorded in the County of Sacramento Recorder's Office at the request of the Commissioner of Highways on February 26, 1959, Official Records of said County described as follows:

Bounded on the southeast by the northwesterly prolongation that certain line having a bearing and distance of North 33° 02' 59" West 245.24 feet in the northeasterly line of Lot A as shown on "Subdivision No. 00-038.00, Lent Ranch Marketplace" filed in Book 372, Page 27 of Maps, Records of said County, on the northeast by the northeasterly line of said "Frontage Road", on the northwest by the north line of southeast one-quarter of Section 12, T.6.N., R.5.E., Mount Diablo Baseline and Meridian as shown on said Subdivision Map and on the southwest by the northeasterly lines of Lots A and G as shown on said Subdivision Map.

EXCEPTING THEREFROM that portion of said "Frontage Road" lying northwesterly of the following described line:

Beginning at the easterly terminus in the curved southerly boundary of Lot G, as shown on that certain map entitled "Lent Ranch Marketplace" filed in Book 372, Page 27 of Maps, Records of said County, being a curve concave to the south having a radius of 400 feet, a radial line of said curve to said terminus bears North 24° 22' 51" East; thence from said Point of Beginning North 52° 04' 42" East 46.00 feet to the northeasterly line of said "Frontage Road".

The aforementioned description was abandoned by the City of Elk Grove by Resolution No. 2008-237 recorded November 10, 2008 in Book 20081110, Page 381, Official Records.

Containing 64.423 acres, more or less.

The Basis of Bearings for this description is the California State Plane Coordinate System, Zone 2, NAD 83, Epoch Date 1997.30 as measured between NGS Station "Eschinger", 1st Order and NGS Station "Keller", 1st Order. Said Bearing is North 20°56'36" West. Distances shown are ground based.

June 24, 2016

END OF DESCRIPTION

Continued on next page

IN WITNESS WHEREOF, this Amended Agreement has been executed as of this _____ day of _____, 2016.

CITY OF ELK GROVE

Laura S. Gill, its City Manager

ATTEST:

Jason Lindgren, its City Clerk

APPROVED AS TO FORM:

Johnathan P. Hobbs, its City Attorney

ELK GROVE TOWN CENTER, L.P., a Delaware Limited partnership

By: Elk Grove Town Center, L.L.C., its general partner

By: The Howard Research and Development Corporation, its sole member

By: _____
Grant Hertlitz, its President

EXHIBIT B

Exhibit B

Outlet Collection at Elk Grove (EG- 14-012A)

First Amendment to the Amended and Restated Agreement Regarding Regional Mall, Fees, and Infrastructure

**FIRST AMENDMENT TO THE
AMENDED AND RESTATED AGREEMENT
REGARDING REGIONAL MALL, FEES, AND INFRASTRUCTURE**

This First Amendment to the Amended and Restated Agreement Regarding Regional Mall, Fees and Infrastructure (the “**Amended Agreement**”) is entered into as of _____, 2016 (the “**Effective Date**”) by and between the City of Elk Grove, California, a municipal corporation organized under the laws of the State of California (“**Elk Grove**” or “**City**”), and Elk Grove Town Center, L.P., a Delaware limited partnership (“**EGTC**”).

Recitals

This Amended Agreement is predicated upon the following:

1. October 8, 2016, the City Council of the City of Elk Grove adopted Resolution 2014-239 entering into an Amended and Restate Agreement Regarding Regional Mall, Fees, and Infrastructure (the “**Agreement**”).
2. The Recitals of that Agreement are incorporated herein by this reference.
3. The Parties desire to amend certain sections of the Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. Section 1 of Exhibit B, Form of License Agreement, shall be amended to read as follows:
 1. Grant of Nonexclusive License for Public Parking and Access Purposes. Owner hereby agrees to grant to City and City hereby agrees to accept from Owner a nonexclusive license for public parking and event purposes, as defined herein. Public parking shall include use of the parking lot for a park-and-ride-facility (in the manner set forth herein) and for automobiles and light trucks only over and across the parking lot(s) to be constructed and maintained by Owner on the Site existing from time to time, together with the right of ingress to and egress from the nearest public street and such parking lot(s) on the driveways to be located on the Site from time to time, all pursuant to the 2014 Development Agreement, the Mall Agreement and related approvals, as the same may be amended from time to time, and without any fee or charge to the City or members of the public using the License Areas. Additionally, the license shall include the City’s ability to hold up to four events a year on the Site. Together, these shall be known as the “License Areas” and are shown on Exhibit B.

The foregoing grant is subject to the following specific limitations:

- a. The grant of the nonexclusive license rights for public parking and events and access as provided herein shall become effective as of the date that City issues the first certificate of occupancy for any of the stores or buildings to be provided on the Site.
- b. City shall not use or permit to be used the License Areas for purposes that are inconsistent with either or both:
 - i. The intended primary function of such area as parking for the customers, employees, licensees and invitees of the Mall; or
 - ii. The satisfaction of Owner's off-street parking requirements for the Site.

Not by way of limitation of the foregoing, City shall have no right under this License Agreement to permit the License Areas to be used for parking of vehicles or an event in excess of the time restrictions established by Owner in accordance with subparagraph e.

below, or for a park-and-ride facility or for the satisfaction of off-street parking requirements that apply to other properties in the vicinity of the Site.

- c. City shall have no right to construct, reconstruct, maintain, demolish or remove any structures or improvements or to erect any barriers within the License Areas unless such structures or improvements and barriers are approved by Owner in the exercise of its sole business judgment.
- d. Owner shall have the full right to construct, reconstruct, maintain, demolish or remove structures and improvements, construct a parking structure and improvements (subject to City approvals, as necessary), erect barriers and make other physical changes to the improvements within the License Areas that are consistent with the 2014 Development Agreement, Mall Agreement and related approvals (as the same may be amended from time to time) and other governmental regulations and requirements. City agrees that the area of the Site defined as the License Area on Exhibit B shall be revised as appropriate to reflect subsequent development approvals issued by the City, and to amend Exhibit B as necessary from time to time during the term of this License Agreement.
- e. Owner shall have the full right to promulgate and enforce parking and circulation restrictions and regulations within the License Areas that are consistent with the 2014 Development Agreement, Mall Agreement and related approvals (as the same may be amended from time to time) any reciprocal easement agreement or other recorded instrument governing the use of the Site ("REA"), and applicable governmental regulations and requirements including, without limitation, closure of the License Areas during hours that the businesses on the Site are closed to the public, time restrictions, valet parking programs (including charges for valet customers), designation of parking areas where employees are required to park, designation of handicapped spaces and similar matters.
- f. Owner shall retain full authority to temporarily take parking spaces out of service when Owner reasonably determines that such action is necessary for safety reasons or to effectuate maintenance, repairs, reconstruction or improvement of said portion of the Site or for temporary outdoor sales.
- g. Use of a portion of the License Areas by the City for park-and-ride purposes shall be limited to 24 spaces. These spaces shall be available for park-and-ride use between the hours of 5 A.M. and 11 P.M., Monday through Friday. Park-and-ride spaces shall be non-exclusive, and shall not be limited to use for park-and-ride purposes. Owner may relocate any and all designated park-and-ride spaces within the License Areas, in accordance with its sole business judgment or to facilitate future improvements to the Site. City agrees to indemnify, defend and hold harmless Owner for any claims, liability, damages and losses arising out of City's use of parking spaces for park-and-ride purposes as set forth herein.
- h. Subject to obtaining any necessary governmental permits and approvals, Owner shall retain full authority at any time and from time to time to restripe or relocate parking stalls within the Parking License Areas and make other physical alterations and improvements, provided that not fewer than the minimum number of parking spaces required to satisfy Owner's obligations for off-street parking shall be maintained on a permanent basis in accordance with applicable City ordinances, regulations, rules and official policies.
- i. Owner shall have the right to grant utility easements and easements for private ingress and egress that do not materially interfere with City's use of the Site as set forth herein.
- j. This License Agreement shall replace and supersede that certain license agreement dated November 14, 2007 between City and Owner, recorded on December 14, 2007 in

Book 20071214, Page 752 in the Official Records of Sacramento County, as of the Effective Date.

- k. City will make a written request to Owner at least ninety (90) days in advance to use any portion of the License Areas Site for an event. Within thirty (30) days of the request to Owner for Site use, Owner shall provide a response in which Owner either approves, approves with conditions, or declines the request. Owner shall evaluate each event request in its sole business judgment, with regard to the potential effects on the operations of Owner and its tenants on the Site. Owner shall not unreasonably withhold consent for use of the License Areas for an event. The number of City events held in a single calendar year shall not exceed four, unless specifically approved in writing by Owner on a case-by-case basis. City agrees to indemnify, defend and hold harmless Owner for any claims, liability, damages and losses arising out of City's use of any portion of the License Area for events, as set forth herein. Nothing in this license shall operate to preclude the future development of any portion of the Site by Owner.
- l. Nothing in this License Agreement shall constitute a guarantee or warranty by Owner that the License Areas, or any portion thereof, are suitable for a particular event contemplated or proposed by the City or a third party. Moreover, Owner shall not be required to make any improvements to the License Areas to facilitate an event. To the extent that improvements within the License Areas are necessary to support an event, in the judgment of the City, such improvements are to be made at the sole cost of the City, or a third party under agreement with the City. No improvements shall be made to or installed within the License Areas by the City or a third party without the prior consent of Owner, under Section 1(k). If requested by Owner, the City shall be responsible for removing any improvements made within the License Areas following the conclusion of the event, and to restore the License Areas to their previous condition to the extent practicable. The City shall be responsible for all utilities, sanitation, traffic and parking control, and debris and trash removal associated with events held pursuant to this License Agreement. Unless agreed specifically by Owner in writing, the City shall not utilize the License Areas, or any portion thereof, for parking associated with events held pursuant to this License Agreement.

2. Section 2, Management and Control, of Exhibit B, Form of License Agreement, shall be amended to read as follows:

2. Management and Control. Owner shall retain full management and control of the License Areas, subject only to the nonexclusive rights of City and members of the public to utilize the License Areas as set forth herein.

3. Section 3 of Exhibit B, Form of License Agreement, shall be amended to read as follows:

3. City to Have No Responsibility for Maintenance or Repair or Liability for Injuries or Damage. City shall have no obligation for maintenance, repair, replacement, reconstruction or improvement of all or any portion of the License Areas or any improvements now or hereafter constructed thereon. In addition, and except as provided in Section 1(g) and (k), City shall have no liability by virtue of its property interest in the License Areas for any personal injuries or death, property damage or economic loss arising out of any occurrence on or adjacent to the License Areas, and Owner agrees to indemnify, defend and hold City and its officers, employees, agents, counsel and consultants harmless from and against any claims, liabilities or losses arising from such an occurrence on the Site.

4. Section 4, Term, of Exhibit B, Form of License Agreement, shall be amended to read as follows:

4. Term. This License Agreement and City's rights hereunder shall terminate and become null and void on the date that City makes the final payment due to Owner pursuant to paragraph 5 below.

Upon termination of this License Agreement, City agrees to execute in recordable form such documents as may reasonably be required by Owner or the holder of any security interest in all or any portion of the License Areas to remove the lien or encumbrance of this License Agreement.

5. Section 5(a) of Exhibit B, Form of License Agreement, shall be amended to read as follows:

- a. In consideration for Owner's provision of a license to City allowing public use of the License Areas as set forth in this License Agreement, in order to reimburse Owner for the Unreimbursed Cost of Offsite Improvements, and in consideration of the substantial public benefits to be achieved by the Project during each year of the term hereof, as referenced in Recital G herein, City agrees to make periodic payments ("Payments") to Owner in the amounts, at the times and subject to the terms and conditions set forth herein.

6. Section 6, Restrictions on Assignments, of Exhibit B, Form of License Agreement, shall be amended to read as follows:

6. Restrictions on Assignment. The license rights granted herein shall be personal to City and shall not be appurtenant to any real property owned by City. City shall not assign its rights hereunder to any other person or entity without the express prior written approval of Owner, which approval may be granted, conditioned or withheld in Owner's sole and absolute discretion. It is understood that City holds its rights under this License Agreement for the benefit of the citizens and residents of the City of Elk Grove and persons desiring ingress to and egress from the Site and parking in the License Areas. Subject to the foregoing restrictions on assignment, this License Agreement shall be coupled with an interest in real property, shall not be revocable by Owner (in the absence of a material default and failure to cure by City), and shall bind and inure to the benefit of the successors and assigns of City and Owner.

7. Exhibit A, Legal Description, of Exhibit B, Form of License Agreement, shall be amended to read as follows:

**EXHIBIT A
LEGAL DESCRIPTION
ELK GROVE PROMENADE
REMAINING PROPERTY**

Being a portion of Lot A as shown on that certain map entitled "Subdivision No. 00-038.00 Lent Ranch Marketplace" filed for record on December 14, 2007 in Book 372 of Maps, Page 27, located in the City of Elk Grove, County of Sacramento, State of California, more particularly described as follows:

All of said Lot A.

EXCEPTING THEREFROM, the following described area:

COMMENCING at a point which is the northeasterly corner of Lot A of said map, being a 3/4" iron pipe with plug stamped L.S. 6815; Thence leaving said **POINT OF COMMENCEMENT** along the northeasterly line of said Lot A, South 37°55'18" East, a distance of 533.10 feet; Thence leaving said northeasterly line, entering and passing through said Lot A, South 51°30'01" West, a distance of 24.29 feet to the **TRUE POINT OF BEGINNING**; Thence leaving said Point of Beginning and continuing through said Lot A, South 51°30'01" West, a distance of 1780.56 feet to a point on the southwesterly line of said Lot A, also being a point on the northeasterly right-of-way line of Promenade Parkway as shown on said map;

Thence northwesterly and northerly, respectively, along said right-of-way line, the following Twenty-one (21) arcs, courses and distances:

- 1) from a radial line which bears South 57°17'37" West, along a non-tangent curve concave to the east, having a radius of 1,452.00 feet, northwesterly 564.43 feet along said curve through a central angle of 22°16'20";
- 2) North 79°33'57" East, a distance of 6.00 feet;
- 3) from a radial line which bears South 79°33'57" West, along a non-tangent curve concave to the southeast, having a radius of 25.00 feet, northeasterly 40.55 feet along said curve through a central angle of 92°56'41";
- 4) North 82°30'38" East, a distance of 51.72 feet;
- 5) North 07°29'22" West, a distance of 100.00 feet;
- 6) South 82°30'38" West, a distance of 53.51 feet;
- 7) along a tangent curve concave to the northeast, having a radius of 25.00 feet, northwesterly 40.62 feet along said curve through a central angle of 93°06'07";
- 8) South 85°36'45" West, a distance of 6.00 feet;
- 9) from a radial line which bears South 85°36'45" West, along a non-tangent curve concave to the east, having a radius of 1,454.00 feet, northerly 93.58 feet along said curve through a central angle of 03°41'16";
- 10) North 00°42'00" West, a distance of 147.80 feet;
- 11) North 89°18'00" East, a distance of 6.00 feet;
- 12) from a radial line which bears South 89°18'00" West, along a non-tangent curve concave to the southeast, having a radius of 25.00 feet, northeasterly 39.27 feet along said curve through a central angle of 90°00'00";
- 13) North 89°18'00" East, a distance of 6.00 feet;
- 14) North 00°42'00" West, a distance of 50.00 feet;
- 15) South 89°18'00" West, a distance of 13.34 feet;
- 16) along a tangent curve concave to the northeast, having a radius of 25.00 feet, northwesterly 38.46 feet along said curve through a central angle of 88°08'33";
- 17) South 87°26'33" West, a distance of 6.00 feet;
- 18) North 02°33'27" West, a distance of 51.58 feet;
- 19) North 00°42'00" West, a distance of 563.84 feet;
- 20) North 89°18'00" East, a distance of 6.00 feet;
- 21) from a radial line which bears South 89°18'00" West, along a non-tangent curve concave to the east, having a radius of 25.00 feet, northerly 6.76 feet along said curve through a central angle of 15°30'00" to the northwest corner of said Lot A and a point on the common line between said Lot A and Lot G of said Map;

Thence leaving said northeasterly line, along said common line, the following four (4) arcs, courses and distances:

- 1) North 89°12'25" East, a distance of 86.70 feet;
- 2) along a tangent curve concave to the southwest, having a radius of 330.00 feet, southeasterly 314.08 feet along said curve through a central angle of 54°31'51";
- 3) South 36°15'44" East, a distance of 86.17 feet;
- 4) along a tangent curve concave to the north, having a radius of 25.00 feet, easterly 37.96 feet along said curve through a central angle of 87°00'21";

Thence leaving said common line, entering and passing through said Lot A, the following eight (8) arcs, courses and distances:

- 1) South 32°02'06" East, a distance of 66.91 feet;

- 2) from a radial line which bears North 33°08'11" West, along a non-tangent curve concave to the south, having a radius of 978.00 feet, easterly 417.51 feet along said curve through a central angle of 24°27'35";
- 3) North 81°19'25" East, a distance of 19.83 feet;
- 4) along a tangent curve concave to the south, having a radius of 879.00 feet, easterly 342.73 feet along said curve through a central angle of 22°20'25";
- 5) South 76°20'11" East, a distance of 12.19 feet;
- 6) along a tangent curve concave to the southwest, having a radius of 342.00 feet, southeasterly 157.69 feet along said curve through a central angle of 26°25'03";
- 7) along a compound curve concave to the southwest, having a radius of 342.00 feet, southeasterly 71.04 feet along said curve through a central angle of 11°54'08";
- 8) South 38°01'00" East, a distance of 346.19 feet to the **TRUE POINT OF BEGINNING.**

TOGETHER WITH, the following described area:

That portion of that certain "Frontage Road" being 46 feet wide, 65 feet wide and of varying width in the City of Elk Grove, County of Sacramento, State of California as described in that certain document entitled "Relinquishment of State Highway, in the County of Sacramento, Road III SAC-4-A,B" recorded in Volume 3710, Page 472, recorded in the County of Sacramento Recorder's Office at the request of the Commissioner of Highways on February 26, 1959, Official Records of said County described as follows:

Bounded on the southeast by the northwesterly prolongation that certain line having a bearing and distance of North 33° 02' 59" West 245.24 feet in the northeasterly line of Lot A as shown on "Subdivision No. 00-038.00, Lent Ranch Marketplace" filed in Book 372, Page 27 of Maps, Records of said County, on the northeast by the northeasterly line of said "Frontage Road", on the northwest by the north line of southeast one-quarter of Section 12, T.6.N., R.5.E., Mount Diablo Baseline and Meridian as shown on said Subdivision Map and on the southwest by the northeasterly lines of Lots A and G as shown on said Subdivision Map.

EXCEPTING THEREFROM that portion of said "Frontage Road" lying northwesterly of the following described line:

Beginning at the easterly terminus in the curved southerly boundary of Lot G, as shown on that certain map entitled "Lent Ranch Marketplace" filed in Book 372, Page 27 of Maps, Records of said County, being a curve concave to the south having a radius of 400 feet, a radial line of said curve to said terminus bears North 24° 22' 51" East; thence from said Point of Beginning North 52° 04' 42" East 46.00 feet to the northeasterly line of said "Frontage Road".

The aforementioned description was abandoned by the City of Elk Grove by Resolution No. 2008-237 recorded November 10, 2008 in Book 20081110, Page 381, Official Records.

Containing 64.423 acres, more or less.

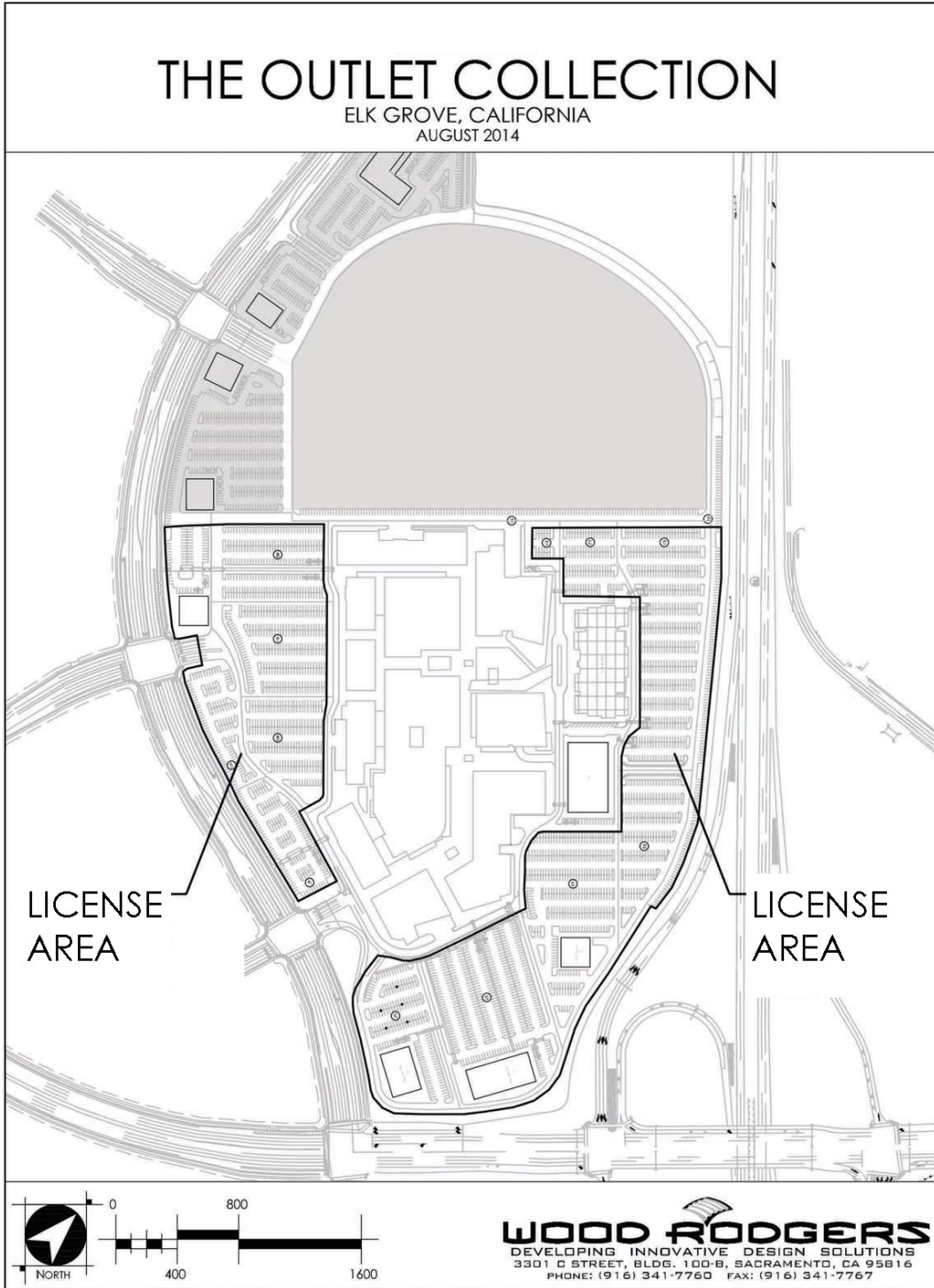
The Basis of Bearings for this description is the California State Plane Coordinate System, Zone 2, NAD 83, Epoch Date 1997.30 as measured between NGS Station "Eschinger", 1st Order and NGS Station "Keller", 1st Order. Said Bearing is North 20°56'36" West. Distances shown are ground based.

June 24, 2016

END OF DESCRIPTION

8. Exhibit B, Parking License Area, of Exhibit B, Form of License Agreement, shall be amended to read as follows:

**EXHIBIT B
LICENSE AREA**



9. Exhibit C, Event License Area, of Exhibit B, Form of License Agreement, shall be deleted.

IN WITNESS WHEREOF, this Amended Agreement has been executed as of this _____ day of _____, 2016.

CITY OF ELK GROVE

Laura S. Gill, its City Manager

ATTEST:

Jason Lindgren, its City Clerk

APPROVED AS TO FORM:

Johnathan P. Hobbs, its City Attorney

ELK GROVE TOWN CENTER, L.P., a Delaware Limited partnership

By: Elk Grove Town Center, L.L.C., its general partner

By: The Howard Research and Development Corporation, its sole member

By: _____
Grant Hertlitz, its President

Lent Ranch - 2500 ft Radius for Owners

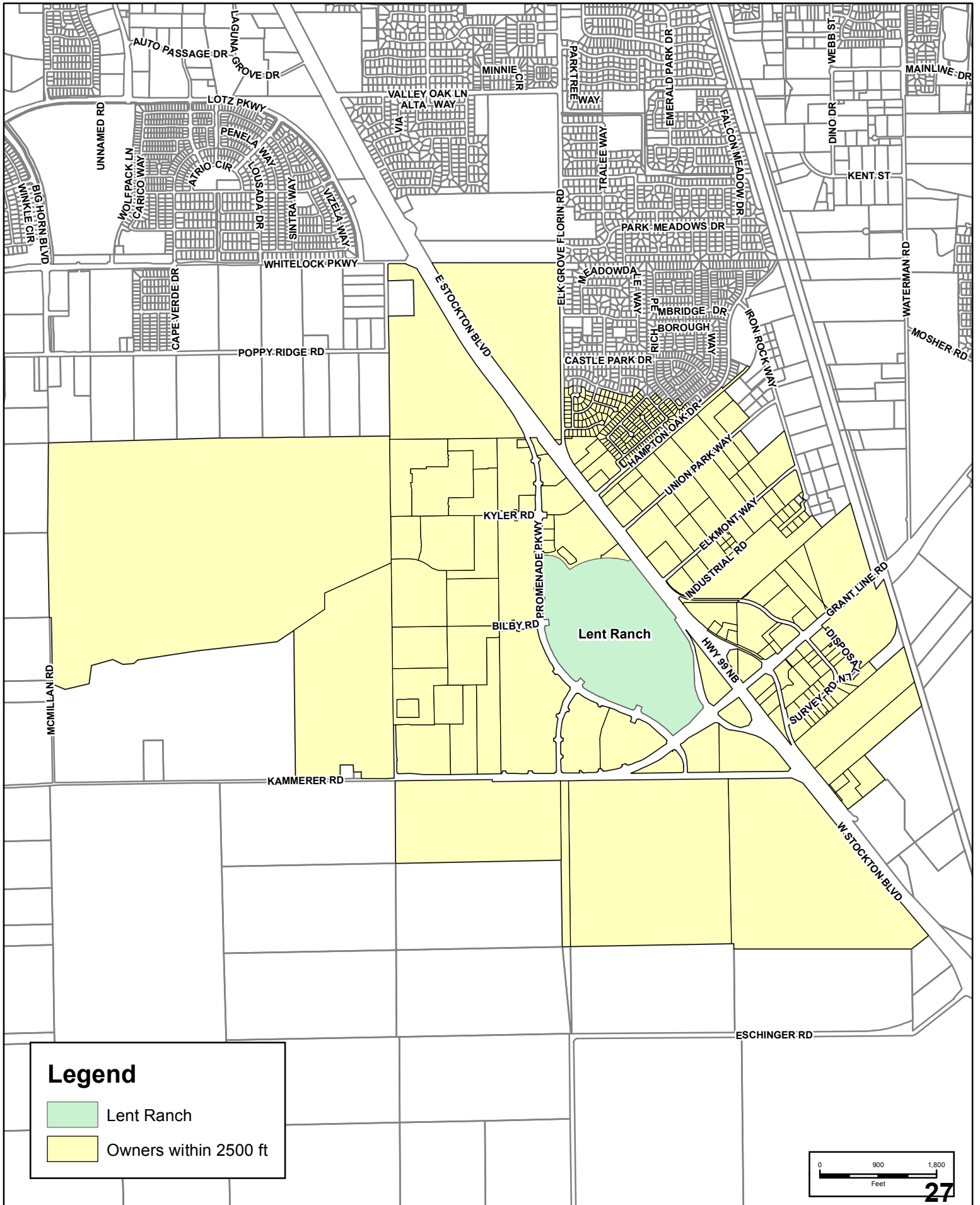


Exhibit 4

OFFICIAL CITY BUSINESS
No recording fee
Government Code Section 6103

Recording Requested By and When
Recorded, Mail To:

CITY OF ELK GROVE
Office of the City Clerk
8401 Laguna Palms Way
Elk Grove, CA 95758



Sacramento County Recorder
Donna Allred, Clerk/Recorder
BOOK **20161216** PAGE **0447**
Friday, DEC 16, 2016 10:00:11 AM
Ttl Pd \$0.00 Rcpt # 0009368564
JER/53/1-2

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**NOTICE RE FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
(ELEC. CODE § 9237; GOV. CODE § 65868.5)**

CITY CONTROL NUMBER: EG-14-012A – Outlet Collection at Elk Grove
ASSESSOR'S PARCEL NUMBER: 134-1010-001 (portion of)

WHEREAS, on October 26, 2016, the City of Elk Grove ("City") adopted Ordinance No. 23-2016 (the "Ordinance") approving a First Amendment to the Development Agreement between City of Elk Grove and Elk Grove Town Center ("Development Agreement Amendment"); and

WHEREAS, on November 9, 2016, the Development Agreement Amendment was recorded with the Sacramento County Recorder in Book 20161109 at Page 1118, amending the Development Agreement recorded with the Sacramento County Recorder on November 13, 2014 in Book 20141113 at Page 0840; and

WHEREAS, on November 21, 2016, the City received a referendum petition, submitted pursuant to California Elections Code sections 9235 et seq., seeking to set aside the Ordinance and the Development Agreement Amendment, which referendum petition, on its face, appears to contain the requisite number of signatures of qualified voters for a referendum petition, but remains subject to certification by the City.

NOW, THEREFORE, pursuant to Elections Code section 9237, pending the disposition of the referendum petition, the effectiveness of the Ordinance and the Development Agreement Amendment is suspended.

By Laura S. Gill Date 12/15/16
Laura S. Gill
City Manager
City of Elk Grove

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIC CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Sacramento)

On DECEMBER 15, 2016 before me, JASON ROLF LINDGREN, Notary Public personally

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

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

WITNESS, my hand and official seal.

Signature Jason Rolf Lindgren (Seal)

