NOTE: This hearing was opened and closed on August 31, 2004, with action to be taken on 9/14/04.

TO: Mayor and City Council

FROM: James E. Glaser, Secretary
City Planning Commission

SUBJECT: PUBLIC HEARING: REQUESTS OF HOLMAN INVESTORS, LLC REGARDING FINAL ENVIRONMENTAL IMPACT REPORT (EIR1-03) AND CEQA FINDINGS AND MITIGATION MONITORING/REPORTING PROGRAM FOR THE CANNERY PARK MIXED USE PROJECT; GENERAL PLAN AMENDMENT TO COMMERCIAL, LOW/MEDIUM-DENSITY RESIDENTIAL, HIGH-DENSITY RESIDENTIAL, OPEN SPACE, REMOVE ONE OF THE TWO PROPOSED ELEMENTARY SCHOOL SYMBOLS AND ADD TWO PROPOSED NEIGHBORHOOD PARK SYMBOLS (GPA1-03); AMENDMENT TO EIGHT MILE ROAD SPECIFIC PLAN (SPA1-03); PREZONING TO M-1, LIGHT INDUSTRIAL DISTRICT, C-2, GENERAL BUSINESS DISTRICT, R-3, APARTMENT DISTRICT, R-1, SINGLE-FAMILY DISTRICT, AND P-L, PUBLIC LANDS DISTRICT (Z-1-03); DEVELOPMENT AGREEMENT (DA2-03); AND ANNEXATION TO THE CITY OF STOCKTON AND DETACHMENT FROM THE WATERLOO-MORADA FIRE DISTRICT AND THE SAN JOAQUIN COUNTY RESOURCE CONSERVATION DISTRICT (A-03-1) FOR PROPERTY LOCATED AT THE SOUTHWEST QUADRANT OF STATE ROUTE 99 AND EIGHT MILE ROAD

RECOMMENDATION

It is recommended that the City Council adopt four resolutions and two ordinances, as follows:

1. Resolution certifying the Final Environmental Impact Report (EIR1-03) and adopting related CEQA Findings and Mitigation Monitoring/Reporting Program for the Cannery Park Mixed Use Project, dated July 2004;

2. Resolution amending the General Plan from Administrative-Professional to Commercial; Industrial to Low/Medium-Density Residential; Low/Medium-Density Residential to High-Density Residential and Commercial and High-Density Residential to Commercial; add Open Space for Bear Creek, remove one of the two Proposed Elementary School symbols and add two Proposed Neighborhood Park symbols (GPA1-03);

3. Resolution amending the Eight Mile Road Specific Plan (SPA1-03);

4. Resolution authorizing and directing the City Manager to file with the Local Agency Formation Commission (LAFCO) the annexation, City Services Plan, and Detachment from the Waterloo-Morada Fire District and San Joaquin County

AGENDA ITEM 9.06
Resource Conservation District (A-03-1) and execute the Agreement for Property Tax Allocation Upon Annexation with San Joaquin County.

5. Ordinance approving a prezoning to M-1, Light-Industrial District, C-2, General Business District, R-3, Apartment District, R-1, Single-Family District, and P-L, Public Lands District (Z-1-03); and

6. Ordinance approving a Development Agreement to facilitate the annexation, General Plan amendment, prezoning, Specific Plan amendment, and tentative subdivision maps for the Cannery Park Mixed Use Project (DA2-03), for property located at the southwest quadrant of State Route 99 and Eight Mile Road.

Findings for each of the above-recommended actions have been incorporated into the respective resolutions and ordinances that are attached to this newsletter.

DISCUSSION

Background

At its regular meeting of August 12, 2004, the City Planning Commission considered and recommended approval of the requests of Holman Investors, LLC for: certification of the Final Environmental Impact Report (EIR1-03) and adoption of the related CEQA Findings and Mitigation Monitoring/Reporting Program for the Cannery Park Mixed Use Project; approval of a General Plan amendment (GPA1-03); an amendment to the Eight Mile Road Specific Plan (SPA1-03); a prezoning (Z-1-03); and a Development Agreement to facilitate the annexation, General Plan amendment, prezoning, Specific Plan amendment, and tentative subdivision maps for the Cannery Park Mixed Use Project (DA2-03), for approximately 448 acres of property located at the southwest quadrant of State Route 99 and Eight Mile Road.

At the same meeting, the Planning Commission considered and approved two related tentative maps (TM8-04A and TM8-04B) to subdivide the 448+ acre project site. TM8-04A subdivides the site into approximately 1,100 single-family lots, up to 50 industrial/commercial lots, five lots for school/park and fire station sites, landscaping lots, slope easement lots, one multi-family residential lot, and various accessory use lots. TM8-04B subdivides the site into 17 “large lots” to facilitate the Final Map process and the ultimate sale of larger blocks of land within the project site.

In addition, Holman Investors, LLC have requested that the City Council authorize and direct the City Manager to file with the Local Agency Formation Commission (LAFCO) the Annexation, City Services Plan, and Detachment from the Waterloo-Morada Fire District and San Joaquin County Resource Conservation District (A-03-1) for an annexation area of approximately 490 acres (including adjacent Eight Mile Road and State Route 99 West Frontage Road) and execute the Agreement for Property Tax Allocation Upon Annexation with San Joaquin County.
Present Situation

Environmental Clearance (EIR1-03)

The environmental consequences of developing this site are analyzed in Final Environmental Impact Report (EIR1-03), which must be considered and certified prior to approval of any related discretionary applications. Final EIR1-03 was prepared in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the City of Stockton Guidelines for the Implementation of CEQA. In addition, the mitigation monitoring/reporting provisions and related CEQA findings are included in the related “Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project,” dated July 2004 (CEQA Findings). The City Council must adopt all applicable mitigation measures identified in Final EIR1-03 and the related CEQA Findings in conjunction with approval of any related discretionary authorizations. Information related to the environmental clearance required for the project is provided in the staff report to the Planning Commission (Environmental Exhibit 1). The Recirculated Draft EIR, Final EIR, and CEQA Findings for the Cannery Park Mixed Use Project are attached as Environmental Exhibits 2, 3, and 4, respectively. A land use attorney representing the Morada Area Association (MAA) also submitted written comments in opposition to the certification of the Final EIR and the Stockton East Water District submitted written informational comments regarding the Water Supply Assessment contained in the Draft EIR1-03 (attached as Environmental Exhibits 5 and 6).

General Plan Amendment (GPA1-03)

The General Plan amendment (GPA1-03) would re-designate the site from Administrative-Professional to Commercial; Industrial to Low/Medium-Density Residential; Low/Medium-Density Residential to High-Density Residential and Commercial and High-Density Residential to Commercial; and, add Open Space for Bear Creek and Proposed Neighborhood Park symbols. Information about the proposed General Plan amendment is included in the Staff Report to the Planning Commission, attached as General Plan Amendment/Prezoning Exhibits 1-6. A summary of the Planning Commission’s public hearing discussion of the General Plan amendment request is provided below.

Amendment to Eight Mile Road Specific Plan (SPA1-03)

Holman Investors, LLC, is requesting an amendment to the Eight Mile Road Specific Plan to relocate one driveway and add three new right turn-in/right turn-out only driveways, and a full access intersection at Eight Mile Road and Collector “A” (SPA1-03). Information about the proposed amendment to the Eight Mile Road Specific Plan is included in the Staff Report to the Planning Commission, attached as Specific Plan Amendment Exhibits 1-3. A summary of the Planning Commission’s public hearing discussion of the General Plan amendment request is provided below.
PUBLIC HEARING: REQUESTS OF HOLMAN INVESTORS, LLC – Page 4

Prezoning (Z-1-03)

The prezoning request (Z-1-03) is for approximately: 75 acres to M-1, Light-Industrial District; 88 acres to C-2, General Business District; 11.7 acres to R-3, Apartment District; 218.4 acres to R-1, Single-Family District; and 28.4 acres to P-L, Public Lands District (Bear Creek corridor). The remaining properties are roadway right-of-ways, which will remain unzoned. It should be noted that the proposed M-1, C-2, R-3, R-1, and P-L prezoning classifications will be reclassified to IL (Industrial, Limited), CG (Commercial, General), RH (Residential, High Density), RL (Residential, Low Density), and PF (Public Facilities), respectively, under the City’s recently adopted Development Code. Information about the proposed prezoning is included in the Staff Report to the Planning Commission attached as General Plan Amendment/Prezoning Exhibits 1-6. A summary of the Planning Commission's public hearing discussion of the prezoning request is provided below.

Development Agreement (DA2-03)

The applicant is requesting approval of a Development Agreement (DA2-03) in order to facilitate the development of the proposed Cannery Park Mixed Use Project by restricting the type and extent of land uses permitted on the 448+ acre project site to those land uses, densities, and intensities as described in the Development Agreement and as analyzed in the Final EIR (EIR1-03) for the project. Specifically, the project is limited to the development of not more than 1,116 single-family detached housing units, 210 multi-family housing units, 1,452,508 square feet of light industrial business park land use, and 1,078,763 square feet of commercial use land use. The Development Agreement also addresses other issues such as the applicability of new laws and/or City ordinances, fees, credits, processing of amendments, and the effective time period of the agreement, which is 20 years. Additional information about the proposed Development Agreement is included in the Staff Report to the Planning Commission, attached as Development Agreement Exhibits 1-2. A summary of the Planning Commission’s public hearing discussion of the Development Agreement request is provided below.

Annexation (A-03-1)

The unincorporated area of Stockton is served by the County of San Joaquin. When development is proposed adjacent to the City, the annexation of the property to the City of Stockton is encouraged. If City services are to be provided, either annexation is required or a Conditional Sewer Service Agreement must be signed requiring annexation at a time determined by the City.

An annexation is defined as the addition of territory to the City. If two or more changes of jurisdictions or districts are initiated in a single proposal, it is defined as a Reorganization. Detachment refers to the removal of a territory from a district. All annexation requests have to be reviewed by the Local Agency Formation Commission (LAFCO). LAFCO was established by the State Legislature to encourage orderly growth and logical boundaries. LAFCO has full authority to approve, disapprove, or amend annexation and/or detachment proposals.
Holman Investors, LLC have requested that the City Council authorize and direct the City Manager to file with LAFCO the annexation, City Services Plan, and Detachment from the Waterloo-Morada Fire District and San Joaquin County Resource Conservation District (A-03-1) for an annexation area of approximately 490 acres (including adjacent Eight Mile Road and State Route 99 West Frontage Road). LAFCO will conduct a public hearing to hear the annexation request and make a determination. City staff will attend the public hearing in support of the annexation. The table below provides a summary of the annexation data.

<table>
<thead>
<tr>
<th>Area</th>
<th>489.40 + acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Land Use</td>
<td>Vacant land, agricultural land, vacant industrial buildings, new office building, Bear Creek, and irrigation canals</td>
</tr>
<tr>
<td>Proposed Development</td>
<td>Single-family homes, high-density residential units, commercial uses, light industrial/business park uses, open space corridors, elementary school, and neighborhood parks</td>
</tr>
<tr>
<td>Current City General Plan</td>
<td>Administrative Professional, Industrial, Low/Medium-Density Residential, High-Density Residential, and Commercial</td>
</tr>
<tr>
<td>Proposed General Plan</td>
<td>Low/Medium-Density Residential, High-Density Residential, and Commercial, and Industrial</td>
</tr>
<tr>
<td>Current County Zoning</td>
<td>AU-20, Agricultural Urban Reserve, and I-L, Industrial Limited</td>
</tr>
<tr>
<td>Proposed City Zoning</td>
<td>R-1, Single-Family District; R-3, Apartment District; C-2, General Business District, M-1, Light Industrial District, and P-L, Public Lands District</td>
</tr>
</tbody>
</table>

Community Development Department staff have analyzed the annexation request and, in consultation with the applicable City departments, coordinated the preparation of the City Services Plan. Staff is of the opinion that the requested annexation is a logical annexation since the area is adjacent to existing City limits and the City will be able to extend services to the area.

The Development Review Committee recommended to the City Manager that this annexation be processed on the basis that it is adjacent to existing City limits, that it is a logical annexation to the City, that the area is designated for urban services, and that no City department expressed an objection to the annexation. A copy of the City Services Plan and a map of the proposed annexation area are attached to this staff report as Annexation Exhibits 1-2.
PUBLIC HEARING: REQUESTS OF HOLMAN INVESTORS, LLC – Page 6

Property Tax Allocation

Under the Cortese-Knox-Hertzberg Local Reorganization Act of 2000, the City and County are required to have a tax sharing agreement in place prior to an annexation of property. Until September 2003, the City and San Joaquin County had a property tax allocation agreement. That agreement has expired and the County and City are currently in negotiation for a new property tax agreement. Until such time as an agreement is reached, the property tax split will be negotiated on a project by project basis. For the Cannery Park Project, the proposed Agreement for Property Tax Allocation Upon Annexation is proposed to allocate the property taxes based on a 10% City and 90% County split, which was the agreement that was in place prior to September 2003. The City Council approved the tax sharing agreement for the Cannery Park project on August 10, 2004. The noted tax sharing agreement has been forwarded to San Joaquin County Board of Supervisors for their consideration.

Tentative Maps (TM8-04A and TM8-04B)

As noted above, the Planning Commission also considered and approved two related tentative maps (TM8-04A and TM8-04B) for the project site, subject to the City Council’s approval of the General Plan amendment, Specific Plan amendment, Development Agreement, and prezoning and LAFCO’s approval of the annexation/detachment. TM8-04A subdivides the site into approximately 1,100 single-family lots, up to 50 industrial/commercial lots, five lots for school/park and fire station sites, landscaping lots, slope easement lots, one multi-family residential lot, and various accessory use lots. TM8-04B subdivides the site into 17 “large lots” to facilitate the Final Map process and the ultimate sale of larger blocks of land within the project site. Additional information about the approved tentative maps is included in the Staff Report to the Planning Commission attached as Tentative Map Exhibits 1, 2, 3A, and 3B. Since the tentative map applications were not appealed to the City Council, these exhibits are being transmitted only for informational purposes.

Public Hearing Discussion

Staff presented the project to the Planning Commission, including corrections to the staff report for the Eight Mile Road Specific Plan Amendment and changes to Proposed Condition Nos. 32 and 36 for the Tentative Maps. Following the staff presentation, the applicant’s land use attorney, the applicant’s water rights attorney, and the applicant appeared at the public hearing and presented testimony in support of the proposed project applications. The Commissioners asked several questions of staff, of the applicant, and of the applicant’s representatives regarding water supply and traffic issues. Three residents from the unincorporated residential area located west of State Route 99, on or near Waller Road, and a land use attorney representing the Morada Area Association (MAA) expressed various concerns about the project including, but not limited to:
PUBLIC HEARING: REQUESTS OF HOLMAN INVESTORS, LLC – Page 7

- Significant adverse traffic impacts at the State Route 99 interchanges at Eight Mile Road and Morada Lane, on the State Route 99 West Frontage Road, and on Waller Lane;
- Significant adverse effects on existing ground water supplies in the vicinity of the project site and the potential that existing water wells will go dry as a result of increased pumping from new City wells to serve the proposed project;
- Inadequate assessment and verification of sufficient water supply for the proposed project;
- Increased noise levels generated during and after project construction and from project traffic;
- Increased quantities of dust during project construction;
- Displacement of wildlife that currently reside or use the project site;
- Potential adverse flooding and storm drainage impacts on the Waller Road area residents as a result of project development; and
- Perceived adverse effects on the Waller Road residents from the proposed development of higher density residential uses in the project area.

The land use attorney representing the Morada Area Association (MAA) also submitted written comments in opposition to the certification of the Final EIR (EIR1-03) and in opposition to the related project applications and the Stockton East Water District submitted written informational comments regarding the Water Supply Assessment contained in the Draft EIR1-03 (attached as Environmental Exhibits 5 and 6). Following the testimony of the opponents, the applicant’s water rights attorney rebutted the comments raised by the land use attorney representing the Morada Area Association and assured the Commission that the Water Supply Assessment is consistent with State law, that adequate water supplies will be available for the proposed project, and that prior industrial uses on the project site actually used more groundwater than the proposed uses.

Planning Commission Action

Following the public hearing and their deliberation, the Planning Commission voted unanimously (7 to 0) to recommend that the City Council:

1) Certify the Final Environmental Impact Report (EIR1-03) and adopt the related CEQA Findings and Mitigation Monitoring/Reporting Program for the Cannery Park Mixed Use Project;

2) Approve the General Plan amendment request (GPA1-03);

3) Approve an amendment to the Eight Mile Road Specific Plan (SPA1-03);

4) Approve the proposed prezoning request (Z-1-03); and

5) Approve the proposed Development Agreement (DA2-03).
In addition, the Planning Commission Certified FEIR1-03 and approved the two related tentative maps (TM8-04A and TM8-04B), including modifications to Conditions Nos. 32 and 36. The tentative maps were not appealed and, therefore, are not under consideration by the City Council.

Public Notification

Notice in the local newspaper at least one time, ten (10) days prior to the public hearing; and notice to owners of record as shown on the last equalized tax roll and addresses within 300 feet of the site at least ten (10) days prior to the public hearing (Stockton Municipal Code Sections 16-124 and 16-109).

Votes Required

Four (4) votes of the City Council are necessary to approve the noted requests.

JAMES E. GLASER, SECRETARY
CITY PLANNING COMMISSION

APPROVED BY CITY MANAGER

JEG:MMN:DJS:cl

Attachments

cc: City Attorney w/attachments
    City Clerk w/attachments
    City Manager w/attachments
    Deputy City Manager Gordon Palmer w/attachments

::ODMA\GRPWISE\COS.CDD.CDD_Library:40546.1
HOLMAN INVESTORS, LLC

ENVIRONMENTAL
EXHIBITS 1-6

EIR1-03
Item E-3(a): ENVIRONMENTAL CLEARANCE – Certification of Final Environmental Impact Report and Adoption of CEQA Findings/Statement of Overriding Considerations/Mitigation Monitoring Program
Case No. FEIR1-03, Holman Investors, LLC

Data: At its regular meeting of August 12, 2004, the Planning Commission will accept oral comments on and consider the certification of the Final Environmental Impact Report (FEIR1-03) for the Cannery Park Mixed Use Project. The Commission will also consider the recommended “Findings, Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project” (“Findings”). The Final EIR1-03 (which incorporates the Draft EIR, Exhibit 2; the Final EIR, Exhibit 3; and the Findings and Mitigation Monitoring and Reporting Program, Exhibit 4 by reference) must be considered prior to taking action on the project. The "Findings" as recommended or as amended, must be adopted in order for the Commission to recommend approval of the related General Plan amendment, prezoning, Specific Plan amendment, Development Agreement and tentative maps on this same agenda [Items E-1(b), (c), (d), (e), (f)].

Discussion: This Final Environmental Impact Report (FEIR1-03) addresses the environmental impacts of the General Plan amendment, prezoning, Specific Plan amendment, Development Agreement and tentative maps related to the development of the Cannery Park Mixed Use Project.

The Planning Commission must independently review, consider and certify the Final EIR as to its adequacy and compliance with the State and City CEQA Guidelines prior to approving or recommending that the City Council approve any related discretionary authorizations as applicable. Pursuant to Sections 15091 and 15093 of the State CEQA Guidelines (“Findings”), the City is prohibited from approving or carrying out a project for which a Final EIR has been completed which identifies one or more significant environmental effects of the project unless the City makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding.

As identified in the Findings report regarding significant impacts of the project implementation cumulatively contributes to several significant unavoidable impacts for which a "Statement of Overriding Considerations" must be adopted for any project approval, in accordance with Section 15093 of the State CEQA Guidelines.
The Draft EIR (Exhibit 2 – Chapter 19) identified and compared the relative environmental merits of a range of reasonable alternatives to the proposed project. The findings for rejecting the project alternatives in favor of the proposed project are provided in the Findings document (Exhibit 4).

Recommendation: It is recommended that the Planning Commission certify the Final Environmental Impact Report (FEIR1-03) and adopt the "Findings, Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project" ("Findings"), prior to, or in conjunction with any related discretionary actions for which the Commission is the final decision-making body. Similarly, the Planning Commission should recommend that the City Council certify Final EIR1-03 and adopt the related Findings prior to, or in conjunction with, any applicable discretionary approvals for this project, based on the following findings:

1. The Final EIR has been completed in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the City of Stockton Guidelines for the Implementation of CEQA.

2. The Final EIR has been reviewed and considered prior to any related project approvals, reflects the City's independent judgement and has been found to be adequate for said approvals.

3. The anticipated benefits of the proposed project outweigh the unavoidable or unresolved adverse environmental effects as supported by the "Findings, Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project."

4. Based on the significant and/or potentially significant environmental effects identified in the Environmental Impact Report for the Cannery Park Mixed Use Project (FEIR1-03) and pursuant to Sections 15091 and 15093 of the State CEQA Guidelines, all applicable approvals are based on, and subject to, the adopted findings, mitigation/measures and mitigation monitoring/reporting provisions, as specified in the "Findings, Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project," dated July 2004.

July 2, 2004

Note: Staff reports are prepared well in advance of the Planning Commission consideration of the proposal and reflect the staff's view based on the best available information at the time the report was formulated. Evidence submitted during the course of the public meeting may require a re-evaluation of the staff's position.

This staff report has been prepared by Senior Planner David Stagnaro, AICP.
EXHIBIT 2

RECIRCULATED PUBLIC REVIEW DRAFT ENVIRONMENTAL IMPACT REPORT

FOR

CANNERY PARK DEVELOPMENT
Eight Mile Road and SR 99
Stockton, CA

Annexation File: A 03-01
General Plan Amendment GPA 1-03
Prezoning Z-1-03
Development Agreement DA 2-03
Specific Plan Amendment SPA 1-03
EIR File: EIR 1-03

May 04

InSite

Community Development Department
Planning Division
345 N. El Dorado Street
Stockton, CA 95202
(209) 937-8266

A copy of this document is available for review in its entirety at the Community Development Department, Planning Division, Permit Center, 345 North El Dorado Street, Stockton, CA.
FINAL ENVIRONMENTAL IMPACT REPORT
FOR
CANNERY PARK MIXED USE DEVELOPMENT
Eight Mile Road and SR 99
Stockton, CA

Annexation File: A 03-01
General Plan Amendment GPA 1-03
Prezoning Z-1-03
Development Agreement DA 2-03
Specific Plan Amendment SPA 1-03
EIR File: EIR 1-03
State Clearinghouse No: 2003042022

August 4, 2004

Prepared for:
CITY OF STOCKTON
Community Development Department
Planning Division
345 N. El Dorado Street
Stockton, CA 95202
(209) 937-6266

A copy of this document is available for review in its entirety at the Community Development Department, Planning Division, Permit Center, 345 North El Dorado Street, Stockton, CA.
EXHIBIT 4

FINDINGS AND
MITIGATION MONITORING/REPORTING PROGRAM
for

CANNERY PARK MIXED USE DEVELOPMENT
Stockton, CA

Annexation File: A 03-01
General Plan Amendment PA 1-03
Prezoning Z-1-03
Development Agreement DA 2-03
Specific Plan Amendment SPA 1-03
EIR File: EIR 1-03
State Clearinghouse No: 2003042022

July 8, 2004

Prepared for:

CITY OF STOCKTON
Community Development Department
Planning Division
345 N. El Dorado Street
Stockton, CA 95202
(209) 937-8266
August 11, 2004
Dr. Emily J. Bruce, Chair
City of Stockton Planning Commission
345 N. El Dorado Street
Stockton, California 95202

Re: Hearing Comments for Cannery Park Development DEIR

Dear Dr. Bruce:

The purpose of this letter is to provide district comments for the record regarding the above referenced DEIR. We appreciate your cooperation in including these comments in the Planning Commission record.

The district provided comments dated June 15, 2004 on the re-circulated DEIR referenced above. Responses to these comments were provided to the district in a July 2, 2004 letter from InSite Environmental.

The district’s primary issue with the above referenced DEIR is the content of the incorporated January 2, 2004 Cannery Park Water Supply Assessment (WSA) completed by the City of Stockton MUD. The district objects to some of the assumptions in the WSA document and the promotion of the City’s Delta Water Supply Project (DWSP) as the only long-term water supply planning necessary for the City. The district does not dispute the conclusion of the WSA that the local water supply for the Cannery Park Development can be adequately and reliably met using groundwater. The district’s current plans provide a bridge for the near-term, and a supplement to the City’s DWSP in the long-term. In order to address the needs of our common groundwater basin, completion of both the DWSP and the district’s current plans is essential.

The mission of Stockton-area water suppliers, which includes both the district and the City of Stockton, is to develop average annual supplemental surface water supplies of approximately 220,000 acre-feet (AF) to address the needs of our common groundwater basin. Our common groundwater basin needs include preventing further saline intrusion and overdraft that have resulted from over 50-years of groundwater mining. Our goal should be to restore and stabilize our common groundwater basin.

The district believes this letter summarizes our position regarding the above referenced DEIR, and the City of Stockton’s WSA. Should you have any questions regarding this letter, please contact our General Manager, Kevin Kauffman. Thank you for your consideration of these comments.

Very truly yours,

Thomas McGurk
President

cc: H.D. Arnaiz Corporation
     Mark Madison, MUD Director

Distributed to P.C. at meeting of 08-12-04 um
FACSIMILE TRANSMISSION

TO: Emily Bruce, Chair & Members
City of Stockton Planning Commission

FAX NUMBER: (209) 937-8893
FROM: Bill Yeates
DATE: August 12, 2004

I AM SENDING 8 PAGES, INCLUDING COVER

COMMENTS:

(Original to be delivered at tonight's Planning Commission Hearing)

ORIGINAL WILL FOLLOW BY GUARANTEED OVERNIGHT MAIL: No
ORIGINAL WILL FOLLOW BY REGULAR MAIL: No

**WARNING TO RECIPIENT**

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS CONFIDENTIAL INFORMATION AND MAY BE ATTORNEY/CLIENT PRIVILEGED. IT IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY ME BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO ME AT 8002 CALIFORNIA AVENUE, FAIR OAKS, CA 95628 VIA THE U.S. POSTAL SERVICE.

9066
Distributed to P.C. at meeting of 08-12-04 10am
August 12, 2004

Via Facsimile and Hand Deliver (08-12-04)

Emily Bruce, Chair and Members
City of Stockton Planning Commission
c/o Community Development Department
345 North El Dorado Street - Permit Center
Stockton, CA 95202-1997
Facsimile No: (209) 937-8893 (without attachment)

Re: August 12, 2004 Planning Commission Meeting Agenda – Agenda Item E-3) Public hearing regarding the requests of Holman Investors, LLC, for the Cannery Park Project

Dear Chair Bruce and Members of the City of Stockton Planning Commission:

On behalf of the residents of the Morada Area Association ("MAA"), I submitted written comments on June 17, 2004, on the Public Review Draft Environmental Impact Report ("EIR") for the Cannery Park development project. I received responses to my comments from the EIR consultant, and responses to comments made by the Stockton East Water District and William Van Amber Fields, a member of MAA. While I appreciate the prompt responses, and making them available to my office directly, the responses in many instances, which I will highlight below, fail to address the concerns MAA has with the adequacy of the EIR. Fundamentally, MAA believes that the City has simply failed to fully evaluate the environmental consequences of the proposed Cannery Park project on the adjacent MAA properties. Because the EIR has failed to provide the detailed information about the environmental consequences of the proposed project, the document fails to identify mitigation measures or alternatives to the project that will reduce or avoid the significant adverse environmental effects the proposed Cannery Park project will have on the MAA residents and their properties.

This letter focuses on the inadequacies of the water supply assessment ("WSA"), verification of an adequate water supply, and the EIR's reliance on these inadequate water supply measures.

Inadequate Assessment and Verification of Sufficient Water Supply

A water supply assessment ("WSA") appears to have been prepared for the City of Stockton Metropolitan Area ("COSMA") to satisfy the requirements of Senate Bill 610.\(^1\) In order to satisfy the water supply verification requirements of Senate Bill 221,\(^2\) it appears the water

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\(^1\) See Wat. Code, § 10910, \textit{et seq}.

\(^2\) See Bus. & Prof. Code, § 11010, subd.(b)(6); Gov. Code, § 66473.7.
supply verification relies on this “metropolitan area-focused WSA.” The response to our earlier comments about the scope of the WSA does not clarify this situation. So, we now raise the point to the Planning Commission that we do not believe the City has followed the law.

Senate Bills 221 and 610 were enacted by the California Legislature in 2001 to protect existing water supplies for people, business, industry, and agriculture, recognizing the extraordinary demands on California’s water supply systems. In Senate Bill 610 the Legislature declared: “[t]he length and severity of droughts in California cannot be predicted with any accuracy;” “it is not possible to guarantee a permanent water supply for all water users in California in the amounts requested;” and, “California’s overall water delivery system has become less reliable over the last 20 years because demand for water has continued to grow while new supplies have not been developed in amounts sufficient to meet the increased demand.” “Therefore,” the Legislature determined, “it is critical that California’s water agencies carefully assess the reliability of their water supply and delivery systems.”

The Legislature’s enactment of these important water supply bills came coincidentally after the Third District Court of Appeal’s decision in Planning and Conservation League v. Department of Water Resources (“PCL”) (2000) 83 Cal.App.4th 892. The PCL decision involved the reliability of the State Water Project (“SWP”) and introduced the concept of “paper water” into the lexicon of California water law. With regard to the SWP’s ability to meet contracted water demands, the PCL court observed, “there is a huge gap between what is promised and what can be delivered.” The Court of Appeal dismissed the contractors’ argument that they were entitled to any actual water and stated that the term “entitlement” in this circumstance was a misnomer. According to the PCL court, an entitlement to SWP water supplies was nothing more than the “unfulfilled dreams” of the state water contractors.

Just as the Legislature acknowledged when later enacting Senate Bills 221 and 610, the PCL court noted the significant adverse environmental consequences that could occur when a local land use agency relies upon “paper water” entitlements.

Thus, where land use planning determinations can be made on the basis of entitlement rather than real water, development can outpace the availability of water, leading to detrimental environmental consequences, excessive groundwater pumping, and pressure to develop additional water supplies.

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3 See CA Dept. of Water Resources, Guidebook for Implementation of Senate Bill 610 and Senate Bill 221 of 2001 (Oct. 2003), Introduction, p. iii (“DWR’s Guidebook”). (I will be providing a copy of DWR’s Guidebook to the Planning Commission at August 12, 2004 public hearing.)
5 PCL, supra, 83 Cal.App.4th at page 908, fn. 5.
6 Id. at page 914, fn. 7.
7 Ibid.
8 Id. at page 914; see Stats. 2001, ch. 643, § 1(a)(9).
Reliance by a public land use agency on "paper water" entitlements came to light in the Santa Clarita Valley area of northern Los Angeles County. In Santa Clarita Organization for Planning the Environment v. County of Los Angeles ("SCOPE") (2003) 106 Cal.App.4th 715, the Second District Court of Appeal confronted a land use agency's claim based on SWP entitlements that there was a sufficient supply of water to serve a large new development in both wet and dry years. Although the agency's reliance on SWP entitlements was criticized by opponents to the proposed development project, the agency's EIR simply dismissed these concerns. Considering what was at stake, the SCOPE court criticized the agency's dismissal of these concerns:

It is only in response to comments and submissions by project opponents such as SCOPE that the EIR obliquely acknowledges that the entitlements may not be all they seem. Instead of undertaking a serious and detailed analysis of SWP supplies, the EIR does little more than dismiss project opponents' concerns about water supply. Water is too important to receive such cursory treatment.

The SCOPE court determined that the agency's EIR was legally inadequate because it failed "to undertake an adequate analysis of how much water the SWP can actually deliver in wet, average and dry years."

This criticism of the EIR under review in SCOPE applies as well to the present EIR and WSA the City of Stockton has prepared for the proposed Cannery Park project.

State law requires relevant information about actual water deliveries.

The clear message that the City of Stockton should take from the Legislature's enactment of the water supply assessment and verification laws and the recent judicial decisions about the adequacy of water supplies is that strict compliance with Senate Bills 221 and 610, and CEQA is critical and necessary before approving the proposed Cannery Park project. Relevant information about actual water deliveries and groundwater overdraft conditions must be made available within the EIR, in order for the public and their decision-makers to "assess the reliability of [the City's] water supply" and be provided the substantial evidence to support an informed decision.

We submitted comments on the EIR because we did not understand, or agree with, some of the conclusions in the EIR about the proposed Cannery Park project's significant adverse effect on existing groundwater users and the adequacy of the City's water supply to serve existing needs and still meet the new demands of this proposed development project. In response, we were told:

Through detailed technical studies, which are available for review at the City of Stockton Department of Municipal Utilities, the sustainable yield of the basin was

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9 SCOPE, supra, 106 Cal.App. 4th at pages 721-723.
10 Id. at page 723.
11 Ibid.
12 Id. at page 724.
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identified based on actual measured data and through the use of existing
groundwater models of the entire San Joaquin County groundwater basin and
beyond to the basin's natural recharge and boundary conditions. The study
concludes that the basin underlying the COSMA is no longer critically
overdrafted and has recovered and stabilized over the past 15 years.\textsuperscript{14}

This is simply an invalid and inadequate response. Why has the information, which has been
kept in the Department of Municipal Utilities, not been made available to the public? The public
has a right to see the relevant information and analysis that was used to form the City's
conclusion about the adequacy of the water supply. As a recent Court of Appeal decision states,

An adequate EIR requires more than raw data; it requires also an analysis that will
provide decision makers with sufficient information to make intelligent decisions.\textsuperscript{15}

The Cannery Park EIR fails to provide the analysis required by CEQA. In addition to this
fundamental criticism of the EIR and the WSA, we have the following comments to submit to
the Planning Commission.

Additional Comments on Cannery Park EIR and WSA

The WSA does not meet the requirements SB 610. The deficiencies can be characterized as
follows:

a. The WSA fails to comply with Water Code (WC) Sections 10910 (f) (2), (3), and (5).
   No detailed description or analysis of the groundwater basin has been provided in
   accordance with this Section, even though sufficient data is available to the City to
   provide this information. No reference is made to an applicable groundwater
   management plan. No mention is made of the regional groundwater overdraft which
   has been extensively documented. Any actions contemplated to address the
   groundwater overdraft are not mentioned. No description and analysis of amount and
   location of groundwater pumped by the City during the last five years is given.

b. The WSA fails to comply with the requirements of WC Section 10910 (c) (3). No
   projection of water demand is provided that estimates the City’s planned future uses,
   agricultural and manufacturing uses. Demands are not projected in five-year
   timeframes as required.

c. The WSA fails to comply with the requirements of WC Section 10910 (c) (2).
   Estimates of supply availability are not provided for the 4 climatological year types
   (wet, normal, dry, and critical) as required. Water demand during normal, single dry,
   and multiple dry years for each identifiable water usage sector must be estimated and
documented.

\textsuperscript{14} Response No. 4 to Stockton East Water District’s Comment No. 4 and MAA’s (LOJWY) Comment No. 16.
\textsuperscript{15} County of Amador v. El Dorado County Water Agency (1999) 76 Cal.App.4\textsuperscript{th} 931, 955.
The WSA also does not meet the requirements SB 221. The deficiencies can be characterized as follows:

a. Government Code (GC) Section 66473.7 (a)(2) requires an analysis of the availability of water supplies over a historical record of at least 20 years. This information is not included.

b. GC Section 66473.7 (d) requires copies of a capital improvement program for financing the delivery of sufficient water supplies that has been adopted by the governing body be provided in the WSA. These items are not included.

Other discrepancies noted in the WSA are:

a. The WSA fails to account for the demands of agriculture within the urban services area. This is a significant demand which will result in a higher net municipal groundwater extraction rate than claimed. As noted in the WSA, 27,585 acres of irrigated agricultural lands lie within the urban services area. The City’s Delta Water Project Feasibility Report, at page 2-9, estimates this total demand at approximately 17,000 acre feet per year, with an average unit demand of 1.2 acre feet/acre/year. This additional demand factor must be estimated and added to the project demand in order to determine the total anticipated extraction rate.

b. In its discussion of groundwater beginning at page 7, the WSA fails to mention that the Eastern San Joaquin Basin has been declared by the Department of Water Resources in its Bulletin 118-80 to be in a state of critical overdraft. A current estimate of basin overdraft is given by San Joaquin County in its Eastern San Joaquin County Groundwater Master Plan (Plan) (at page 69) at 160,000 acre feet per year. Other water authorities within San Joaquin County place this value at 200,000 acre feet/year or higher.

c. At page 8 and following, the WSA provides several well hydrographs which purport to show that the groundwater basin is recovering. The WSA omits reference to the numerous hydrographs shown in the Plan and statements made in Section 2.3.3 at page 45 and following which indicate that the groundwater basin elevations are continuing to decline.

d. At page 7, the WSA declares that the demands of this project will be met from a combination of surface water and groundwater, while at page 16, the WSA states “The water demands of this project will be met with groundwater.” The WSA therefore fails to make clear what source(s) of supply will be utilized to serve this project.

e. Since surface water supplies available to the COSMA are fixed (i.e. no new sources of surface water supply are immediately on the horizon, the WSA misleads by indicating that the mix of supply for this project will be 40% groundwater, 60% surface water. The City knows that no new surface water will be available to serve this project, that it will have to rely totally on groundwater, and that therefore, as the area continues to develop, the ratio of surface water usage to groundwater usage will decline (or that the proportion of groundwater use will increase).
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f. That the proposal of the City to serve this project from groundwater will constitute a problem is evidenced from the following quotation from the Plan at page 71:

"Groundwater flow in the Basin now converges on the depression with relatively steep groundwater gradients eastward from the Delta toward the cone of depression as depicted in Figures 2-3 and 2-4. The eastward flow from the Delta area is significant because of the typically poorer quality water now moving eastward in the Stockton area. Increased lateral inflow from the west is undesirable, as this water is typically higher in TDS and chloride levels and causes the degradation of water quality in the Basin. Figure 2-9 illustrates the approximate location of the 300 mg/L isochlor as measured in 2000. Projections indicate that the rate of eastward migration of the saline front is approximately 150 to 250 feet per year. Figure 2-9 also shows the projected 2030 location of the 300 mg/L isochlor under no-action conditions. Degradation of water quality due to TDS or chloride contamination threatens the long-term sustainability of a very important water resource for San Joaquin County, since water high in TDS and/or chloride is unusable for either urban drinking water needs or for irrigating crops. Damage to the aquifer system could for all practical purposes be irreversible due to saline water intrusion, withdrawal of groundwater from storage, and potentially subsidence and aquifer consolidation."

g. The WSA states that, although the safe yield of the groundwater basin as a whole is given as 0.75 acre feet/acre/year, because of “additional planning level studies”, the City has concluded that the safe yield of the groundwater basin in the newly developing areas can be increased to 0.92 acre feet/acre/year. The WSA fails to include these “planning level studies” or even to explain them so that a reviewer can determine what they consist of. Without providing this documentation, the WSA should not rely on this increased yield to serve the newly developing areas. Further, the WSA states that the project will be served by relying on the groundwater yield of 0.92 acre feet/acre/year, and the remaining customer demand of 0.68 acre feet/acre/year will be met from surface water. As noted in e. above, since no new surface water is available to meet the requirements of this project and other projects planned for this area, all of the demand of these project will have to be met from groundwater, creating an additional overdraft of either 85 acre feet/acre/year or .68 acre feet/acre/year, whether you accept the City’s arbitrary yield number or not. At any rate, there will in fact be an additional overdraft created by this and other projects slated for this area.

h. At page 14, the WSA presents the conclusions of a “spreadsheet model” that was developed to evaluate the groundwater use for projects in this area. Without access to this “model”, which is stated to be located in the City’s Department of Municipal Utilities, it is impossible for a reviewer to determine if the City’s conclusions regarding groundwater use are reasonable or accurate. The WSA should provide a copy of the model or details concerning the construction and operation of this spreadsheet model.

i. Table 2 of the WSA presents an estimate of future water demands based upon unit demand factors (acre feet/acre/year). Since the COSMUD (with the exception of the County Service areas which constitute less than 5% of urban demand) are, and have been fully metered for decades, why doesn’t the City utilize actual meter data in projecting future water use? Is the
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City concerned that the use of actual local data would show a higher value for these uses? This could conceivably result in an even higher contribution to the groundwater overdraft from the proposed projects. Actual data, which is readily available to the City, should be used in the WSA.

Due to the inadequacies in the EIR and WSA, MAA opposes any recommendation by the Planning Commission that would approve the Cannery Park project. On behalf of the residents of MAA, I request that the Planning Commission do the following:

- remand the EIR and the WSA to the Community Development Department;
- direct the Community Development Department to revise the EIR and WSA by providing all the relevant information about the City’s water supply; and,
- recirculate the revised DEIR and WSA for an additional 45-day public review period.

I am sending these written comments by facsimile (without DWR’s Guidebook) in advance; but, I will submit the letter and DWR Guidebook at the hearing this evening.

Sincerely,

Bill Yeates

Attachment
HOLMAN INVESTORS, LLC

GENERAL PLAN AMENDMENT (GPA1-03)
AND
PREZONING (Z-1-03)

EXHIBITS 1-6
Items E3(b) and (e): PUBLIC HEARING - General Plan amendment and prezoning Case Nos. GPA1-03 and Z-1-03, Holman Investors, LLC.

Data: Holman Investors, LLC, is requesting approval of General Plan amendment and prezoning applications for property located at the southwest corner of Eight Mile Road and State Route (SR) 99.

The requests consist of the following:

1. A General Plan amendment to amend the General Plan from Administrative-Professional to Commercial; Industrial to Low/Medium-Density Residential; Low/Medium-Density Residential to Commercial and High-Density Residential to Commercial, undesignated to Open Space, remove one of the two existing proposed elementary school symbols and add two Proposed Neighborhood Park symbols; and

2. Prezone to R-1, Single-Family District; R-3, Apartment District; C-2, General Business District; P-L, Public Lands District; and M-1, Light-Industrial District.

The applicant has concurrently filed applications for: an Eight Mile Road Specific Plan amendment (SPA1-03); two tentative maps (TM8-04A and TM8-04B); and a Development Agreement (DA2-03) to facilitate the development and restrict the types and extent of land uses allowed on the subject site (see Items E-1 (d), (e) and (f) on this agenda). In addition, the General Plan amendment and prezoning applications are tied to the approval of the related annexation (A-03-1) application by the San Joaquin County Local Agency Formation Commission (LAFCO).

The General Plan designations surrounding the project site are:

- Agriculture Limited to the north (County General Plan);
- Low/Medium-Density Residential to the south and east; and
- Industrial and Low/Medium-Density Residential to the west.

The northwest portion of the project site is occupied by vacant buildings, which are the remainder of the former Tri-Valley Growers Plant No. 4/Signature Fruit cannery facility, and a recently constructed office building south of Eight Mile Road with the balance of the area either vacant or used for agricultural purposes. The site is currently zoned for agriculture, and industrial uses within the County and is bounded to the:
north across Eight Mile Road by rural residential uses and farmland within the jurisdiction of San Joaquin County;

east across SR99 by freeway commercial uses and rural residential uses within the jurisdiction of San Joaquin County;

south by single-family residential uses within the City of Stockton zoned R-1, Single Family District; and

west across the Union Pacific Railroad tracks by farmland within the jurisdiction of San Joaquin County (Zoning Map pages 5, 6 and 8). See attached exhibits.

General Plan: The General Plan designates this site for Low/Medium-Density Residential, High Density Residential, Commercial, Industrial, and Administrative-Professional uses. The proposal is to amend the General Plan from Administrative-Professional to Commercial; Industrial to Low/Medium-Density Residential; Low/Medium-Density Residential to Commercial and High-Density Residential to Commercial, undesignated to Open Space, remove one of the two existing proposed elementary school symbols and add two proposed neighborhood park symbols. The proposed General Plan amendment and prezoning to allow residential, commercial and industrial uses will be consistent with the City's Residential, Commercial and Industrial Land Use Goals and Policies as contained in the City's General Plan Policy Document (last amended November 3, 1998) provided that the owners, developers and successors-in-interest comply with all the identified mitigation measures and conditions for the Cannery Park Mixed Use Project.

Environmental Clearance: The environmental consequences of developing this site are analyzed in EIR1-03, which must be considered and certified prior to approval of the General Plan amendment (GPA1-03), and prezoning (Z-1-03). In addition, all applicable mitigation measures identified in Final EIR1-03, and the mitigation monitoring/reporting provisions included in the related Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project, must be adopted in conjunction with approval of General Plan amendment (GPA1-03) and prezoning (Z-1-03) applications.

Discussion: The applicant is requesting to amend the General Plan designation for the project site from Administrative-Professional to Commercial; Industrial to Low/Medium-Density Residential; Low/Medium-Density Residential to Commercial and High-Density Residential; High-Density Residential to Commercial, undesignated to Open Space, remove one of the two existing Proposed Elementary school symbols, and add two proposed neighborhood park symbols. The applicant is concurrently proposing to prezone the site to R-1, Single-Family District; R-3,
Apartment District; C-2, General Business District; P-L, Public Lands District; and M-1, Light Industrial District.

The proposed Commercial, Low/Medium-Density Residential, High-Density Residential and Open Space General Plan designations are consistent with the existing Commercial, Low/Medium-Density Residential and High-Density Residential designations within the project as well as those General Plan designations that are to the south and west of the project site (Exhibit 3). In addition, the applicant is proposing to retain a portion of the existing Industrial General Plan land use designation in the northwestern area of the project which is consistent with the Industrial designation to the west across the Union Pacific Railroad tracks.

The proposed R-1 and R-3 prezoning represents a logical extension of the existing residential zoning and General Plan designations to the south (Exhibit 4). The proposed prezoning to P-L along the Bear Creek corridor is compatible with the proposed Open Space General Plan designation. The proposed C-2 prezoning request is generally consistent with, although larger than, the existing Commercial General Plan designation within the project boundary on the northeast corner of Eight Mile Road and SR99. The M-1 prezoning request is consistent with the Industrial General Plan designation on this site and to the west across the Union Pacific Railroad tracks. Finally, the proposed uses on the project site are expected to be compatible with surrounding land uses.

For the Commission's information, if the requested General Plan amendment and prezoning applications, as well as the latest draft of the Development Code, are approved by the City, the R-1, R-3, C-2, P-L and M-1 zoning districts will be converted to the R-L (Residential, Low-Density), R-H (Residential, High-Density), C-G (Commercial, General), P-F (Public Facilities), and I-G (Industrial, General) zoning districts respectively. Although the noted zoning designations will be changed upon the adoption of the Development Code, the allowed land uses and development standards for the new zoning designations are essentially the same. As a result, the environmental analysis that has been prepared for the proposed General Plan amendment and prezoning requests is adequate.

City departments, outside agencies and the surrounding neighborhood have been notified of the subject requests and, to date, no specific opposition has been registered regarding the General Plan amendment and prezoning requests. However, various comments were submitted concerning the Environmental Impact Report (EIR1-03) for the proposed project and responses to those comments are contained in the Final EIR1-03 [(Item E-1 (a) on this same agenda).

Recommendation: Adopt a resolution recommending approval of the proposed General Plan amendment and recommend approval of an ordinance for the prezoning of the subject site, based on the following findings:
Findings for GPA1-03:

1. The proposal conforms to existing City of Stockton General Plan Policies for the location and development of Low/Medium-Density Residential, High-Density Residential, Commercial, Open Space and Industrial uses.

2. The land uses allowed under the proposed General Plan designation are expected to be compatible with existing and proposed land uses surrounding the subject site.

3. The proposed General Plan amendment will not endanger, jeopardize or otherwise constitute a hazard to the public convenience, health, interest, safety or general welfare of persons residing or working in the City.

4. The environmental consequences of the proposed General Plan amendment request were considered in EIR1-03, which has been certified by the Planning Commission. In addition, all applicable mitigation measures identified in EIR1-03, including the related Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project have been adopted. EIR1-03 and related environmental documents were prepared in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City of Stockton Guidelines for the Implementation of CEQA.

5. The anticipated benefits of the proposal outweigh the unavoidable or unresolved adverse environmental effects for the project as supported by the Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project, dated July 2004.

6. Pursuant to Sections 15091 and 15093 of the State CEQA Guidelines, this approval is subject to the adopted Findings and Mitigation Monitoring and Reporting Program, respectively, as specified in the Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project.

Findings for Z-1-03:

1. The proposed prezoning to the R-1, R-3, C-2, P-L and M-1 District zoning designations is consistent with the proposed Low/Medium-Density Residential, High-Density Residential, Commercial, Open Space and Industrial General Plan designations for the site.

2. The uses permitted in the proposed zone are similar to and compatible with existing and proposed land uses to the south of the project site.
3. The proposed prezoning will not endanger, jeopardize or otherwise constitute a hazard to the public convenience, health, interest, safety or general welfare of the persons residing or working in the City.

4. The environmental consequences of the proposed prezoning request were considered in EIR1-03, which has been certified by the Planning Commission. In addition, all applicable mitigation measures identified in EIR1-03, including the related Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project have been adopted. EIR1-03 and related environmental documents were prepared in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City of Stockton Guidelines for the Implementation of CEQA.

5. The anticipated benefits of the proposal outweigh the unavoidable or unresolved adverse environmental effects for the project as supported by the Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project, dated July 2004.

6. Pursuant to Sections 15091 and 15093 of the State CEQA Guidelines, this approval is subject to the adopted Findings and Mitigation Monitoring and Reporting Program, respectively, as specified in the Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project.

July 1, 2004

Note: Staff reports are prepared well in advance of the Planning Commission consideration of the proposal and reflect the staff's view based on the best available information at the time the report was formulated. Evidence submitted during the course of the public hearing may require a re-evaluation of the staff's position.

This Staff Report has been prepared by Senior Planner David Stagnaro, AICP.
HOLMAN INVESTORS, LLC

SPECIFIC PLAN AMENDMENT (SPA1-03)

EXHIBITS 1-3
Item E-3(c): PUBLIC HEARING – Specific Plan Amendment
Case No. SPA1-03, Holman Investors, LLC

Data: Holman Investors, LLC, is requesting an amendment to the Eight Mile Road Specific Plan to relocate an existing driveway and add three new right turn-in/right turn-out only driveways, and a full access intersection at Eight Mile Road and Collector “A.” The proposed Cannery Park Mixed Use project provides the basis of the applicant’s request for additional access to Eight Mile Road [see related agenda Items E-1(a), (b), (d), (e), and (f)]. The project site has frontage on Eight Mile Road, for which the City and County have jointly adopted the Eight Mile Road Specific Plan. Eight Mile Road will be within the City’s jurisdiction (corporate boundaries) should the related annexation (A-03-1) application for the Cannery Park Project be approved by the San Joaquin County Local Agency Formation Commission (LAFCO). The project site is bounded to the:

- north across Eight Mile Road by residential uses and farmland within the jurisdiction of San Joaquin County;
- east across SR99 by freeway commercial uses and rural residential uses within the jurisdiction of San Joaquin County;
- south by single-family residential uses within the City of Stockton zoned R-1, Single-Family District; and
- west across the Union Pacific Railroad tracks by farmland within the jurisdiction of San Joaquin County (Zoning Map pages 5, 6 and 8). See attached exhibits.

General Plan: The General Plan designates Eight Mile Road as a major east-west arterial.

Environmental Clearance: The environmental consequences of developing this site are analyzed in EIR1-03, which must be considered and certified prior to approval of the Specific Plan Amendment (SPA1-03). In addition, all applicable mitigation measures identified in Final EIR1-03, and the mitigation monitoring/reporting provisions included in the related Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project, must be adopted in conjunction with approval of the Specific Plan amendment (SPA1-03).

Development Review Committee: The Development Review Committee recommended approval of this Specific Plan amendment subject to the findings and conditions listed in the staff report.
Discussion: The applicants are requesting an amendment to the Eight Mile Road Specific Plan in order to facilitate the development of the Cannery Park Mixed Use Project. Specifically, the applicant is requesting the amendment in order to relocate an existing driveway and add three new right turn-in/right turn-out only driveways, and a full access intersection at Eight Mile Road and Collector "A." The Eight Mile Road Specific Plan currently allows a signalized full access intersection at the future Holman Road/existing Micke Grove Road. In addition, the Eight Mile Road Specific Plan allows for one right turn-in/right turn out only driveway east of the Golfview Road intersection with Eight Mile Road.

The Specific Plan amendment has been reviewed and analyzed by staff from various City departments. Recommended conditions from the Public Works Department regarding the proposal have been incorporated into the staff report's proposed Conditions of Approval. As of the writing of this staff report, no specific negative responses have been received with respect to the Specific Plan amendment application from either City departments or the surrounding neighborhood.

Recommendation: It is recommended that the Planning Commission recommend to the City Council that it approve the amendment to the Eight Mile Road Specific Plan (SPA1-03), based on the following findings:

1. The proposed project is consistent with the City's 1990 General Plan Land Use and Circulation Diagram for the area.

2. The proposed Specific Plan amendment is appropriate and reasonable and will provide for improved access to facilitate the proposed development.

3. The environmental consequences of this proposed Specific Plan amendment were considered in EIR1-03, which has been certified by the Planning Commission. In addition, all applicable mitigation measures identified in EIR1-03, including the related Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project have been adopted. EIR1-03 and related environmental documents were prepared in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City of Stockton Guidelines for the Implementation of CEQA.

4. The anticipated benefits of the proposal outweigh the unavoidable or unresolved adverse environmental effects for the project as supported by the Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project, dated July 2004.

5. Pursuant to Sections 15091 and 15093 of the State CEQA Guidelines, this approval is subject to the adopted Findings and Mitigation Monitoring and Reporting Program, respectively, as specified in the Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project.
Proposed Conditions:

1. Comply with all applicable Federal, State, County and City codes, regulations and adopted standards and pay all applicable fees.

2. Pursuant to Sections 15091 and 15093 of the State CEQA Guidelines, the project shall be subject to all applicable mitigation measures identified in the City-adopted “Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project.”

3. The Project driveway(s) on Eight Mile Road shall be limited to a total of four (three new) driveways and shall be limited to right-turn in/right-turn out. Driveways shall be spaced a minimum distance of 300 feet from any intersection, driveway or creek and shall be a minimum of 750 feet from the Union Pacific Railroad tracks. Project driveway(s) shall be designed and constructed to prevent on-site cross traffic for a minimum distance of 100 feet from the future property line along Eight Mile Road.

4. A full access intersection shall be allowed at Eight Mile Road and Collector “A”, located 1,000 feet west of the west frontage road and a traffic signal shall be installed by the proponent prior to the use of this access.

5. A continuous 11’ minimum width acceleration/deceleration lane shall be provided on Eight Mile Road from 300 feet west of Holman Road easterly to Bear Creek. An 11’ minimum width deceleration lane shall be provided on Eight Mile Road for a minimum of 200 feet west of the driveway located approximately 800 feet east of the Union Pacific Railroad (formerly the SPRR). These acceleration/deceleration lanes shall be installed on Eight Mile Road to accommodate the additional driveway/intersection access; said lane shall in addition to the 72-foot half street section.

6. If the improvements allowed by this Specific Plan amendment (SPA1-03) are not constructed within five years, this Specific Plan amendment (SPA1-03) shall be null and void.

7. This Specific Plan amendment (SPA1-03) shall not be effective until the effective date of annexation (A-03-1).

July 2, 2004

Note: Staff reports are prepared well in advance of the Planning Commission consideration of the proposal and reflect the staff’s view based on the best available information at the time the report was formulated. Evidence submitted during the course of the public hearing may require a re-evaluation of the staff’s position.

This Staff Report has been prepared by Senior Planner David Stagnaro, AICP.
HOLMAN INVESTORS, LLC

DEVELOPMENT AGREEMENT (DA2-03)

EXHIBITS 1-2
Item E-3(d): PUBLIC HEARING – Development Agreement  
Case No. DA2-03, Holman Investors, LLC

Data: Holman Investors, LLC is requesting a Development Agreement to facilitate the development of the Cannery Park Project, located at the southwest quadrant of Eight Mile Road and SR99. This Development Agreement is contingent upon the approval of the concurrent General Plan amendment (GPA1-03), Specific Plan amendment (SPA1-03), prezoning (Z-1-03) and tentative map (TM8-04A and TM8-04B) applications which are on this same agenda as Items E-1 (b), (c), (e) and (f), respectively. In addition, this Development Agreement is contingent upon the approval of the related annexation (A-03-1) application by the San Joaquin County Local Agency Formation Commission (LAFCo).

General Plan: The General Plan currently designates this site for Low/Medium-Density Residential, High-Density Residential, Commercial, Administrative Professional and Industrial uses. A concurrent General Plan amendment request has been filed (GPA1-03) and the Staff Report is included as Agenda Item E-1 (b).

Environmental Clearance: The environmental consequences of developing this site are analyzed in EIR1-03, which must be considered and certified prior to approval of the Development Agreement (DA2-03). In addition, all applicable mitigation measures identified in Final EIR1-03, and the mitigation monitoring/reporting provisions included in the related Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project, must be adopted in conjunction with approval of DA2-03 application.

Discussion: Development Agreements are normally multifaceted contractual agreements intended to address a wide variety of issues under which a particular development will occur. Customarily, each party that enters into the Development Agreement is the recipient of some type of benefit. In this case, the applicant is requesting approval of a Development Agreement in order to facilitate the development and restrict the type and extent of land uses of the proposed 448+ acre site for residential, commercial, industrial and open space purposes (Exhibit 2).

This Development Agreement is necessary to facilitate the consideration and approval of the applicant’s proposed General Plan amendment, prezoning Specific Plan amendment, and tentative map applications and related Environmental Impact...
Report (EIR1-03), as amended, because the environmental document addressed only the specific project, as described in the applicant's request. The Final EIR did not analyze the potential effects of a "worst case" build-out scenario for the entire 448±acre site. In other words, EIR1-03 analyzed only the potential traffic, noise, air quality and other environmental effects for the proposed project as described.

The City Attorney's office has opined that a Development Agreement is the appropriate means to protect and safeguard existing land uses and limit future environmental effects. Under the provisions of CEQA, absent approval of the Development Agreement, EIR1-03 would be considered inadequate to cover the potential development of the remainder of the parcels. It should also be noted that the Development Agreement addresses other issues such as the applicability of new laws and/or City ordinances, fees, credits, processing of amendments and the effective time period of the agreement, which in this case is 20 years.

Recommendation: Approval of the proposed Development Agreement application based on the following findings:


2. The proposed Development Agreement is consistent with and necessary for the consideration and approval of the related General Plan amendment (GPA1-03), Specific Plan amendment (SPA1-03), rezoning (Z-1-03) and tentative maps (TM8-04A and TM8-04B) applications for the subject site.

3. Execution of this Development Agreement is in the best interest of the public health, safety and general welfare and is consistent with the site's proposed General Plan designation and related goals and policies in the City's General Plan Policy Document. In addition, this conclusion is supported by and subject to the approval of the related EIR1-03, which has been certified by the Planning Commission. In addition, all applicable mitigation measures identified in EIR1-03, including the related Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project have been adopted. EIR1-03 and related environmental documents were prepared in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City of Stockton Guidelines for the Implementation of CEQA.

4. The anticipated benefits of the proposal outweigh the unavoidable or unresolved adverse environmental effects for the project as supported by the Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project, dated July 2004.
5. Pursuant to Sections 15091 and 15093 of the State CEQA Guidelines, this approval is subject to the adopted Findings and Mitigation Monitoring and Reporting Program, respectively, as specified in the Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project.

Proposed Conditions:

1. Pursuant to Sections 15091 and 15093 of the State CEQA Guidelines, the project shall be subject to all applicable mitigation measures identified in the City-adopted “Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project.”

2. This Development Agreement (DA2-03) shall not be effective until the effective date of the General Plan amendment (GPA1-03), rezoning (Z-1-03), Specific Plan amendment (SPA1-03), tentative maps (TM8-04A and TM8-04B), and annexation (A-03-1) for this project.

July 2, 2004

Note: Staff reports are prepared well in advance of the Planning Commission consideration of the proposal and reflect the staff’s view based on the best available information at the time the report was formulated. Evidence submitted during the course of the public hearing may require a re-evaluation of the staff’s position.

This Staff Report has been prepared by Senior Planner David Stagnaro, AICP.
Recording Requested By:
MICHAEL D. HAKEEM, ESQ.

When Recorded Return To:
MICHAEL D. HAKEEM, ESQ.
HAKEEM, ELLIS & MARENKO
3414 BROOKSIDE ROAD, SUITE 100
STOCKTON, CA 95219

CANNERY PARK
DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF STOCKTON
AND HOLMAN INVESTORS, LLC
A CALIFORNIA LIMITED LIABILITY COMPANY
DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF STOCKTON
AND HOLMAN INVESTORS, LLC
A CALIFORNIA LIMITED LIABILITY COMPANY

This Development Agreement (herein the “Agreement”) is entered into this _____ day of
_______, 2004, by and between the City of Stockton, a Municipal Corporation (herein the
“City”), and Holman Investors, LLC, a California Limited Liability Company, (herein the
“Developer”) (City and Developer are collectively referred to as the “Parties”), pursuant to the

RECITALS

A. In order to strengthen the public planning process, encourage private
participation in comprehensive planning and reduce the economic risk of development, the
Legislature of the State of California adopted Government Code Sections 65864 et seq. (herein
the “Development Agreement Statute”), which authorize any city, county, or city and county to
enter into a development agreement with an applicant for a development project establishing
certain development rights in the property which is the subject of the development project
application.

B. In accordance with Government Code Sections 65864 et seq., the City has
adopted Stockton Municipal Code Chapter 16, incorporated herein by this reference, establishing
rules, regulations, procedures and requirements, including fees, for consideration of development
agreements (herein the “Enabling Ordinance”).

C. The Developer is the owner of approximately 450 +/- acres of land located at the
southwest corner of State Route 99 and Eight Mile Road, in the County of San Joaquin (the
“Subject Property”), as described in Exhibit “A” and depicted on Exhibit “B” attached hereto
and incorporated herein by reference. The Developer intends to annex the Subject Property into
the City of Stockton for commercial and residential land uses (the “Project”) in accordance with
this Agreement.

D. The purpose of this Agreement is to facilitate the implementation of the General
Plan through the development of the Project, thereby realizing the public benefits to City and
private benefits to Developer described in these Recitals. The development of the Project
requires a major investment by the Developer in public facilities, substantial front-end
investment in on-site and off-site improvements, dedications of land, participation in other
programs for public benefit and purposes, and substantial commitments of the resources to
achieve both private benefits of the Project for the Developer and the public purposes and
benefits of the Project for the City. The Developer will be unable to make and realize the benefits
from such commitments of land and resources without the assurances of a realized Project
provided by this Agreement. City has determined that the granting of such assurances is
necessary to enable the Developer to undertake the development of the Project and thereby achieve the public purposes and benefits of the Project.

E. The general benefits to be received by the City from the implementation of the Project include, without limitation:

(1) Implementation of the General Plan and furthering its goals to create additional commercial development for job creation and additional sales tax revenue and, in addition, to provide for a diversity of housing types and densities.

(2) Creation of an urban environment as envisioned in the General Plan for City of Stockton residents.

(3) Providing the Developer with sufficient certainty and predictability in the development process to induce the Developer to incur substantial commitments to public infrastructure and amenities.

(4) Insuring that the Developer provides the herein referenced public improvements, facilities, fees and services.

F. The general benefits to be received by the Developer from the implementation of the Project include, without limitation, obtaining sufficient certainty and predictability in the development process to justify the required substantial up-front capital investment for a Project which will require multiple years to build out.

G. The City has determined that the Project implements the goals and policies of the General Plan applicable to the Project and imposes appropriate standards and requirements with respect to the development of the Property as to maintain the overall quality of life and of the environment within the City. As part of the process of approving the Project, the City has, in accordance with CEQA, undertaken the required analyses of the environmental effects which would be caused by the Project. An Environmental Impact Report will be certified in connection with the Project. The City has imposed, and the Developer has accepted, a series of mitigation measures in connection with the development of the Project to eliminate the anticipated adverse impacts on the City's traffic conditions and on the levels of public services and facilities within the City.

H. In exchange for providing these benefits to the City, the Developer desires to receive the assurance that it may proceed with the development of the Project.

I. The parties agree that this Agreement will promote and encourage the development of the Project by providing the Developer and any future owners and lenders with a greater degree of certainty of the Developer's ability to expeditiously and economically complete the development effort, and that the consideration to be received by the City pursuant to this Agreement and the rights secured to the Developer hereunder constitute sufficient consideration to support the covenants and agreements of the City and the Developer.
J. The City, by electing to enter into this contractual agreement, acknowledges that the obligations of the City shall survive beyond the term or terms of the present City Council and that such action will serve to bind the City and future councils to the obligations thereby undertaken. By approving this Agreement, the City Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by both the City and its Council and have been found to be fair, just and reasonable, and the City has concluded that the pursuit of the Project will serve the best interests of its citizens, and the public health, safety and welfare will be best served by entering into this obligation.

K. This Agreement is intended to be, and should be construed as, a Development Agreement within the meaning of the Development Agreement Statute and the Enabling Ordinance. The City and the Developer have taken all actions mandated by and have fulfilled all requirements set forth in the Development Agreement Statute and the Enabling Resolution.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which is hereby acknowledged, the City and the Developer hereby agree as follows:

Article 1. Project and Property Subject to and Term of this Agreement.

Section 1.1 Incorporation of Recitals

The parties agree the foregoing Recitals are true and correct.

Section 1.2 Project and Property Subject to this Agreement.

All of the Project and the Subject Property shall be subject to this Development Agreement. Except as modified herein, the permitted uses, the density and intensity of use, the location of uses, the maximum height and size of proposed buildings, and other standards of project design applicable to the Project shall be as set forth in the Stockton Municipal Code, as amended from time to time.

Section 1.3 Term.

a. Term. The term of this Agreement shall commence upon the Effective Date and shall extend for a period of twenty (20) years thereafter unless terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the Parties thereto, subject to the amendment provisions of this Agreement (the “Term”). The Term has been established by the Parties as a reasonable estimate of the time required to carry out the Project, develop the Subject Property, and obtain the public benefits of the Project. City finds that a term of such
duration is reasonably necessary to assure City of the realization of the public benefits from the Project. In establishing and agreeing to such term, City has determined that this Agreement incorporates sufficient provisions to permit City to monitor adequately and respond to changing circumstances and conditions in granting permits and approvals and undertaking actions to carry out the Project.

b. **Extension of Term Upon Legal Challenge.** If any litigation affecting the Subject Property is filed challenging any of the approvals granted pursuant to this Agreement (including but not limited to any environmental determinations relating to any of the foregoing), or otherwise raising issues of validity and binding nature of this Agreement, the Term of this Agreement shall be extended for the period of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or final entry of judgment, and the Developer and City shall execute an amendment to this Agreement setting forth the period of any such extension and may record a notice to such effect. The extension of time shall not be applicable if the Developer is the plaintiff or petitioner in the litigation unless a court of competent jurisdiction orders an extension.

c. **Term of Subdivision Maps.** The term of any Parcel Map or Tentative Map approved for the Project or of any amendment to any such map shall automatically be extended (pursuant to Government Code Section 66452.6(a)) for the life of this Agreement.

**Section 1.4 Definitions.**

As used in this Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

a. "Agreement" means this Development Agreement by and between the City and the Developer.

b. "Applicable Law" means the terms and conditions of this Agreement; the rules, regulations, and official policies of the City (including the plans, municipal codes, ordinances, resolutions, and other local laws, regulations, and policies of City) in force and effect at the time of application for the specific relevant project approvals or as provided in this Agreement.

c. "Builder" means those successors in interest who acquire land from the Developer in reliance upon the rights and obligations under this Agreement and for the purpose of constructing certain "in-tract" site improvements.

d. "CEQA" means the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.).

e. "City" means The City of Stockton, California, which is a Charter City.

f. "City Council" means the City Council of the City of Stockton, California.
g. "Developer" means the Holman Investors, LLC, and the permitted successors and assigns.

h. "Effective Date" means the thirty-first (31st) day following the date the ordinance approving this Agreement is adopted or upon annexation of the entire Subject Property into the City of Stockton as shown by the recordation of the Certificate of Completion by the LAFCO executive officer pursuant to Government Code section 57202, whichever occurs last.

i. "Mortgage" means a mortgage, deed of trust, sale and leaseback arrangement or other transaction in which the Subject Property, or a portion thereof or interest therein, is pledged as security, contracted for in good faith and for fair value.

j. "Mortgagee" means the holder of the beneficial interest under a Mortgage, or the owner of the Subject Property, or interest therein, under a Mortgage.

k. "Project" means the development of the Subject Property, as well as the construction of other improvements and infrastructure located within or outside of the Subject Property in accordance with this Agreement.

l. "Project Approvals" means any existing or necessary land use, zoning, site plan or subdivision approvals and all other approvals and entitlements required for the development of the Project, including, but not limited to, General Plan amendments, zone changes, zone variances, conditional use permits, grading permits, building permits, lot line adjustments, encroachment permits, business licenses, site plan approvals, parcel maps, tentative subdivision maps and subdivision improvement agreements and any accompanying conditions of approval that will accomplish the goals, objectives, policies and plans referenced, described, implied and shown in this Agreement.

m. "Reserved Discretionary Approvals" means any discretionary land use entitlements which Developer may seek from City after the date of this Agreement, and for which City is authorized by law (including, but not limited to, the state Planning and Zoning Law (Government Code Section 65000-66037) and the Stockton Municipal Code) to exercise discretion. Reserved Discretionary Approvals may include, inter alia, General Plan Amendments, zone reclassifications, Specific Plan amendments and use permits. Reserved Discretionary Approvals does not include Final Maps for all or any portion of the Project.

m. "Subject Property" means that certain real property consisting of approximately 450 +/- acres as legally described on Exhibit "A" and depicted on Exhibit "B".
Article 2. **Covenants Run With The Land.**

Section 2.1 **Covenants Run With The Land.**

All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entity acquiring the Subject Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Subject Property hereunder, or with respect to any City owned property or property interest: (i) is for the benefit of such properties and is a burden upon such property, (ii) runs with such properties, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each party and its property hereunder, and each other person or entity succeeding to an interest in such properties.

Article 3. **Rights and Obligations of the Parties.**

Section 3.1 **Rights Generally.**

a. During the term of this Agreement, Developer shall have a right to develop the Project and use the Subject Property in a manner consistent with the provisions of this Agreement and Applicable Law.

b. During the term of this Agreement, City shall have a right to regulate the development and use of the Subject Property in a manner consistent with the provisions of this Agreement and Applicable Law.

Section 3.2 **Obligations of Developer.**

a. Developer shall faithfully and timely provide the on- and off-site improvements as required by this Agreement, Existing Approvals and Reserved Discretionary Approvals, including the payment of any fees, implementation of any mitigation measures, and completion of any conditions placed on a tentative subdivision map.

b. Developer shall maintain the insurance required under Article 7.

c. Notwithstanding any provision of this Agreement or the applicable laws of
the City of Stockton, Developer shall limit development of the site to a total of not more than one thousand one hundred and sixteen (1,116) units of single family detached housing and two hundred and ten (210) units of multi-family housing and one million four hundred fifty two thousand five hundred and eight (1,452,508) square feet of light industrial business park land use and one million seventy eight thousand seven hundred and sixty three (1,078,763) square feet of commercial land use. (See attached Exhibit “B” Land Use Summary). However, Developer shall be entitled to allocate the single family detached housing units and the multi-family housing units on any parcel subject only to the extent that same does not exceed the maximum density for the zoning designation and the maximum units provided for herein.

Section 3.3 Obligations of City.

a. Provided that Developer is not in default under this Agreement, City agrees that it will accept, in good faith, for processing, review and action, all applications for zoning, conditional use permits, development permits, subdivision maps or other entitlements for use of the Subject Property in accordance with the terms and conditions of this Agreement. The City shall inform the Developer, upon request, of the necessary submission requirements for a complete application for each entitlement for use of the Subject Property, and shall review said application and schedule the application for review by the appropriate authority.

b. The City shall exercise reasonable diligence to expedite the processing of the Reserved Discretionary Approvals for the development of the Project. If City is unable to timely process any of Developer’s permit applications, upon request by Developer, City will engage outside consultants to aid in such processing, provided that Developer shall be required to advance all charges to be incurred by City for such outside consultants. In this regard, the Developer, in a timely manner, will provide the City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and will cause the Developer’s planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefore.

Article 4. Application of Other Laws

Section 4.1 No Conflicting City Laws. City may apply to the Project and to the Subject Property any rule, regulation, or official policy of City (including any plan, municipal code, ordinance, resolution, or other local law, regulation, or policy of City) that does not conflict with this Agreement. City shall not, however, apply to the Project or the Subject Property (whether by initiative, referendum, imposition of mitigation measures under CEQA, or otherwise) any law or regulation that is in conflict with this Agreement. If City attempts to apply a law or regulation to the Project or to the Subject Property, which Developer believes to conflict with this Agreement, Developer shall provide to City in writing a notice describing a legal and factual basis for Developer’s position. The parties shall meet and confer within thirty (30) days after the date of such written notice with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. If no mutually acceptable solution can be reached, either party may take action as may be permitted under Article 5 below.
Section 4.2 Uniform Codes and Standard Specifications. Except as otherwise provided for in this Agreement, nothing herein shall prevent City from applying to the Project standards contained in uniform building, construction, fire, or other uniform codes as the same may be adopted from time to time by City. Moreover, nothing herein shall prevent City from applying to the Project standards (specifications for public improvements, e.g., streets, storm drainage, parking lot standards, driveway widths) for those improvements off-site as the same may be adopted or amended from time to time by City, provided that the provisions of any such standards and specifications shall apply only to the extent that they are in effect on a city-wide basis.

Section 4.3 Other Conditions and Approvals. Nothing herein shall prevent the City from approving and enforcing additional new conditions on Project Approvals including, but not limited to, new tentative maps not inconsistent with the terms of this Agreement.

Section 4.4 Fees. Nothing herein shall prevent the City from imposing upon the Project and the Subject Property any new or increased public facilities fees, processing fees, building permit fees, plan check fees, inspection fees, or any other fees, taxes, or charges which are in force and effect on a City-wide basis at the time application is submitted for those permits; provided, however, the City shall not impose on the Project or the Subject Property any new fee identified or imposed as a county-wide traffic impact mitigation fee, or any fee or exaction not in compliance with Government Code sections 66000 et seq.

Section 4.5 State and Federal Law. Nothing herein shall prevent City from applying to the Project any change in law or regulation to the extent that the application of such change is required by (1) state or federal laws or regulations; or (2) any regional governmental agency that, due to the operation of state law (and not the act of City through a memorandum of understanding, joint exercise of powers authority, or otherwise that is undertaken or entered into following the Effective Date), has binding legal authority on City. If the application of such changes prevents or precludes performance of one or more provisions of this Agreement, City and Developer shall take any and all such actions as may be necessary or appropriate to ensure that the provisions of this Agreement shall be implemented to the maximum extent practicable.

Article 5. Default, Remedies, Termination.

Section 5.1 General Provisions.

a. Developer shall be in default under this Agreement upon the happening of one or more of the following events or conditions:

(1) If a material warranty, representation, or statement made or furnished by Developer to the City is false or proves to have been false in any material respect when it was made;

(2) A finding and determination by the City Council made following a
periodic review, that upon the basis of substantial evidence, Developer has not complied in good faith with a material requirement of this Agreement;

(3) An express repudiation, refusal, or renunciation of this Agreement, if the same is made in writing and signed by the Developer; or

b. The City shall be in default under this Agreement upon the happening of one or more of the following events or conditions:

(1) The City fails to comply in good faith with a material requirement of this Agreement regarding the permitted development standards and density of uses specified herein; or

(2) An express repudiation, refusal, or renunciation of this Agreement, if the same is made in writing and signed by the City.

c. In the event of a default and subject to extensions of time by mutual consent in writing:

(1) If a defaulting party does not cure such default within ninety (90) days following written notice of default from the other party, where such failure is of a nature which can be cured within such ninety (90) day period; or

(2) If such failure is not of a nature which can be cured within such ninety (90) day period, and the defaulting party does not within such ninety (90) day period commence reasonable efforts to cure such default, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such default, after notice and expiration of the ninety (90) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party to this Agreement may at its option institute legal proceedings pursuant to this Agreement or give notice of intent to terminate this Agreement in the manner provided herein.

d. During any ninety (90) day period specified in subsection (c) above, the party charged shall not be considered in default for the purposes of termination or institution of legal proceedings. Any notice of default given hereunder shall specify in detail the nature of the failures in performance which the noticing party claims constitutes the default and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Development Agreement.

Section 5.2 Developer Default: City Remedies.

In the event Developer is in default under the terms of this Agreement, City shall have the right to exercise any of the following remedies:
a. To waive in its sole and absolute discretion such default as not material;

b. To refuse processing of an application for, or the granting of any permit, approval, or other land use entitlement for, development or construction of the Subject Property or portion thereof owned or controlled by Developer, including, but not limited to, the withholding of grading, excavation, building, and occupancy permits;

c. To pursue available legal remedies provided for in Section 4.6 hereof;

d. To terminate this Agreement as provided in Section 4.8;

e. To delay or suspend City performance under the Agreement;

f. To cure and charge back costs to the Developer in emergency situations imposing, in the good faith determination of City, an immediate danger to the health or safety or persons or danger to property, with such prior notice to the Developer as is appropriate under the circumstances; and

g. Forfeiture of security under any secured agreement (i.e. subdivision improvement agreement).

Nothing in this section herein shall be deemed to supersede or preclude City’s rights and remedies under the terms of any permit, approval, or land use entitlement granted for the development and use of the Subject Property.

Section 5.3 Default by the City: Developer Remedies.

In the event City is in default under the terms of this Agreement, Developer shall have the right to exercise any of the following remedies:

a. To waive in its sole and absolute discretion such default as not material;

b. To pursue legal remedies provided for in Section 4.6 hereof;

c. To terminate this Agreement as provided in Section 4.8 hereof; and

d. To delay or suspend Developer performance under the Agreement which is delayed or precluded by the default of the City.

Section 5.4 Annual Review.

The Enabling Ordinance provides for annual review of Developer’s good faith compliance with the terms of this Agreement. City shall initiate each such periodic review by written notice to Developer. Upon receipt of such written notice, Developer shall comply with such requirements of the Enabling Ordinance and shall furnish City in connection with each
annual review a comprehensive report demonstrating good faith compliance by Developer with the terms of this Agreement. Following any such periodic review, if the Developer is determined to be in good faith compliance with the terms of this Agreement, the City will furnish the Developer upon Developer’s request a certification of compliance in recordable form.

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

Section 5.5  Enforced Delay, Extension of Times of Performance.

In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental entities other than City, its departments, agencies, boards and commissions, enactment of conflicting State or Federal laws or regulations, new or supplementary environmental regulation, litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement, whether instituted by the Developer, the City, of any other person or entity) or similar bases for excused performance. If written notice of such delay is given to the other party after the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

Section 5.6  Legal Actions.

In addition to any other rights or remedies, a party may institute legal action to cure, correct, or remedy any default by any other party to this Agreement, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation hereunder. In no event shall the City, or its officers, agents, or employees, be liable for monetary or other damages for any breach or violation of this Agreement, it being expressly understood and agreed that the sole legal remedy available to developer for a breach or violation of this Agreement by the City shall be a legal action in mandamus, specific performance, or other injunctive or declaratory relief to enforce the provisions of this Agreement.

Section 5.7  Applicable Law and Attorneys’ Fees.

This Agreement shall be construed and enforced in accordance with the laws of the State of California. The Developer acknowledges and agrees that the City has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of the City. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys’ fees, court costs, and such other costs as may be fixed by the court. For purposes of this Agreement, reasonable attorneys’ fees of the City Attorney’s Office shall be based on comparable fees of private attorneys practicing in the County of San Joaquin.
Section 5.8  Events and Manner of Termination.

Because of the substantial reliance of both Developer and City on the provisions of this Agreement in implementing the development of the Project, both Developer and City desire to avoid termination of this Agreement when other appropriate remedies or procedures to resolve disputes or problems exist. Prior to termination, City and Developer will meet and confer with the objective of attempting to arrive at a mutually acceptable alternative to termination, which substantially advances the objectives of both in entering into this Agreement. Accordingly this Agreement may be terminated by a party only under any one or more of the following circumstances and in each case subject to the condition that the City has been materially deprived of a bargained for public benefit of this Agreement:

a. By expiration of its term, as provided in Section 1.3 hereof;

b. By operation of Section 5.9 hereof;

c. By operation of Section 5.10 hereof; or

d. By a material default hereunder by a party for which the non-defaulting party in the good faith exercise of its judgment determines that other remedies hereunder are inadequate or not available to correct such default or provide substantial relief to the non-defaulting party provided, however, that the non-defaulting party desiring to terminate this Agreement shall first give written notice to the defaulting party of its intent to terminate this Agreement, the matter shall be scheduled for consideration and review by the City Council within sixty (60) days after such notice of intent to terminate is delivered to the defaulting party, and if the default is not then resolved to the mutual satisfaction of the Parties, termination shall be effective upon thirty (30) days following such consideration and determination by the City Council. Said single ninety (90) day period shall be a final resolution regarding the particular material default for which written notice was given.

Section 5.9  Severability.

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect. However, if such invalidity or unenforceability would have a material adverse impact on the Project, the Developer may terminate this Agreement by providing written notice thereof to the City.

Section 5.10  Termination Upon Completion of Development.

Except as otherwise provided herein, this Agreement shall terminate when the Subject Property has been fully developed and all of the Developer's obligations in connection with the Project are satisfied as mutually determined by the City and the Developer. For purposes hereof,
all obligations of Developer hereunder shall be deemed discharged and fulfilled with respect to lots or parcels shown on duly filed final subdivision maps upon final inspection and occupancy, subject to compliance with (i) the conditions imposed in connection with such filing, and (ii) the conditions imposed in connection with issuance of the building permits.

Section 5.11 Effect of Termination on Developer Obligations.

Termination of this Agreement as to the Developer or the Subject Property or any portion thereof shall not affect any requirements to comply with the terms and conditions of the applicable zoning, any development plan approvals, approval and acceptance of infrastructure improvements, any applicable permit(s), or any subdivision map or other land use entitlements approved with respect to the Subject Property, nor shall it affect any other covenants of the Developer specified in this Agreement to continue after the termination of this Agreement.

Section 5.12 Estoppel Certificate.

Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party: (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (iii) the requesting party is not known to be in default of the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. The City acknowledges that a certificate hereunder may be relied upon by Permitted Assignees and other persons having an interest in the Subject Property, including holders of mortgages and deeds of trust.

Article 6. Assignments and Transfer of Ownership.

Section 6.1 Right to Assign.

Developer shall have the right to assign (by sale, transfer, or otherwise) its rights, duties and obligations under this Agreement as to any portion of the Subject Property subject to the provisions contained in this Article 6; provided, however, this Agreement and any portion thereof shall not be assigned, nor shall any of the Developer’s duties be delegated, without the written consent of the City, which consent shall not be unreasonably withheld. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force and effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.

Section 6.2 Consent to Assignment: Release Upon Assignment.

Upon assignment, in whole or in part, of Developer’s rights and interests under this Agreement, Developer/Assignor shall be released from its obligations with respect to the Subject Property, lot, parcel, or portion thereof so assigned, to the extent arising subsequent to the effective date of such assignment, if: (i) Developer (or Assignor) was not in default under this
Agreement at the time of the assignment, and (ii) Developer has provided to City written request for consent to assignment, and (iii) the Assignee is a qualified applicant as determined by City in its sole discretion, and (iv) the Developer and the party to whom the rights are assigned ("Assignee") have signed an Assignment and Assumption Agreement in a form and content acceptable to the City Attorney and (v) the City Council has consented in its sole and absolute discretion, to such assignment, and (vi) with respect to assignment of any lot or parcel that is not shown on a duly filed final subdivision map, the Assignee has signed all required agreements, and posted required bonds and insurance, to complete all required subdivision improvements.


Section 7.1 Encumbrances on the Subject Property.

The parties hereto agree that this Agreement shall not prevent or limit the Developer, in any manner, at the Developer's sole and absolute discretion, from encumbering the Subject Property (other than property to be offered for dedication) or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use or operation of the Project. The City acknowledges that Mortgagee may require certain modifications to this Agreement, and the City agrees, upon request, from time to time, to meet with Developer and/or representatives of any such Mortgagee to negotiate in good faith any such request for modification. The City further agrees that it will not unreasonably withhold its consent to any such requested modification to this Agreement provided such modifications are processed in accordance with the procedures for amendment of this Agreement. Any Mortgagee and its successors and assigns shall be entitled to the rights and privileges set forth in this section.

Section 7.2 Mortgagee Protection.

This Agreement shall be superior and senior to the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Subject Property or any portion thereof by a Mortgagee (whether pursuant to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination or otherwise) shall be subject to all of the terms and conditions of this Agreement.

Section 7.3 Mortgagee Not Obligated.

Notwithstanding the provisions of this Section, no Mortgagee will have any obligation or duty under this Agreement to perform the obligations of the Developer or other affirmative covenants of Developer hereunder, or to guarantee such performance, except that, to the extent that any covenant to be performed by the Developer is a condition to the performance of a covenant by the City, the performance thereof shall continue to be a condition precedent to the City’s performance hereunder.
Section 7.4  Notice of Default to Mortgagee: Right of Mortgagee to Cure.

Each Mortgagee shall be entitled to receive written notice from the City of results of periodic review and any default by Developer under this Agreement, provided such Mortgagee has informed the City of its address for notices. Each Mortgagee shall have a further right, but not an obligation, to cure such default within one hundred twenty (120) days after receipt of such notice, or, if such default can only be remedied or cured by such Mortgagee upon obtaining possession of the Subject Property, such Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure such default within one hundred twenty (120) days after obtaining possession, and the City may not exercise any of its remedies under this Agreement until expiration of such one hundred twenty (120) day period; provided, that in the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within such one hundred twenty (120) day period, the Mortgagee shall have such additional time as is reasonably necessary to remedy or cure such default. Any Mortgagee who comes into possession of the Subject Property or any portion thereof or any improvement thereon, pursuant to foreclosure, trustee’s sale, deed in lieu of foreclosure, lease termination or otherwise shall take the Subject Property or such portion thereof or improvements thereon free and clear of any claims for payment or charges against the Subject Property or improvements pursuant to this Agreement which accrue prior to the time such Mortgagee comes into possession of the Subject Property.

Article 8.  Hold Harmless and Indemnification: Insurance.

Section 8.1  Hold Harmless and Indemnification.

a.  The Developer hereby agrees to and shall hold the City, its elective and appointive boards, commissions, officers, agents, and employees harmless from any liability for the Developer’s negligence or willful misconduct or other action or inaction (including but not limited to strict liability) resulting in damage or claims for damage for personal injury, including death, as well as from claims for property damage, which may arise from the Developer’s or the Developer’s contractors’, sub-contractors’, agents’, or employees’ operations under this Agreement, other than liability or claim based on City’s gross negligence or willful misconduct, whether such operations be by the Developer, or by any of the Developer’s contractors, subcontractors, or by any one or more persons directly or indirectly employed by or acting as agent for the Developer or any of the Developer’s contractors or subcontractors; provided, however, that the foregoing indemnity provision shall be void to the extent it violates applicable laws or would constitute a joint venture, partnership, or other participation in the business affairs of Developer by City.

b.  In the event of any legal action instituted by a third party or any governmental entity or official arising out of the approval, execution, or implementation of this Agreement (exclusive of any such actions brought by the Developer), the Developer agrees to and shall cooperate fully and join in the defense of the City of such action. The City at its sole option may
elect to tender the defense of any legal action to the Developer, and in such event, Developer shall hold the City harmless from, indemnify and defend the City from all costs and expenses incurred in the defense of such matter.

Section 8.2 Insurance.

a. Commercial General Liability Insurance. Developer shall, at all times during the term of this Agreement when development and/or construction is actually occurring on the Subject Property, maintain or cause to be maintained commercial general liability and property damage insurance covering the risks of bodily injury and/or death, property damage, and personal injury liability, with total limits of not less than One Million Dollars ($1,000,000.00). The Parties shall mutually review the insurance limits hereunder on each anniversary of the term of this Agreement, and upon the granting of an extension of the term of this Agreement with the objective that such insurance limits shall be adjusted at such times to conform to then prevailing City standards. Each policy of insurance hereunder shall name the City as an additional insured and shall provide for blanket contractual liability coverage.

b. Workers' Compensation Insurance. Developer shall also provide, or cause to be provided, during periods when development and/or construction is actually occurring on the Subject Property, Workers' Compensation insurance as required by law, together with a contingent employer's liability endorsement in favor of City, covering employees of Developer, employees of any contractor, subcontractor, agent, or representative of Developer.

c. General Requirements for Insurance. If available, each policy of insurance carried by Developer hereunder shall provide that it may not be canceled without at least thirty (30) days prior written notice to the City. Upon request of City, Developer shall furnish to City a copy of each policy of insurance carried hereunder, or a certificate thereof, stating that such insurance is in full force and effect and, in the case of the public liability insurance, showing City named as an additional insured. Any insurance required to be maintained by Developer hereunder may be maintained under a so-called "blanket policy" insuring other Parties and other locations, so long as the amount of insurance required to be provided hereunder is not thereby diminished.

Section 8.3 No Supersede.

The provisions of this Article 8 shall not supersede and shall not be in addition to any requirements contained in any Existing Approval.
Article 9. General Provisions.

Section 9.1 Exhibits.

The following documents are referred to in this Agreement, attached hereto and made a part hereof by this reference:

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;A&quot;</td>
<td>Legal Description of the Project</td>
</tr>
<tr>
<td>&quot;B&quot;</td>
<td>Depiction of the Project</td>
</tr>
</tbody>
</table>

References herein to “this Agreement” shall include all of the foregoing exhibits.

Section 9.2 Developer’s Interest.

The Developer represents that the Subject Property is owned by Developer and that the Developer has control of the Subject Property described in Exhibits “A” & “B”.

Section 9.3 Amendments of Agreement.

a. In General. This Agreement may be amended from time to time only upon the mutual written consent of City and Developer; provided, however, that in connection with the transfer of any portion of Developer’s rights of obligations under this Agreement to another Developer, Developer and City may agree that the signature of such other Developer may be required to amend this Agreement insofar as such amendment would materially alter the rights or obligations of such other Developer hereunder.

b. Minor Amendments. Any amendment of this Agreement which does not relate to the term of this Agreement, permitted uses of the Project Site, provisions for the reservation or dedication of land, construction of improvements, the conditions, terms, restrictions, and requirements relating to discretionary Approvals or other discretionary actions or monetary exactions of Developer may, to the extent permitted by law, be approved and executed on behalf of City by the City Manager without the need for notice or public hearing.

Article 10. Miscellaneous.

Section 10.1 Project as a Private Undertaking.

It is specifically understood and agreed by and between the Parties hereto that the development of the Subject Property is a separately undertaken private development. No partnership, joint venture, or other association of any kind between the Developer, on the one hand, and the City on the other, is formed by this Agreement. The only relationship between the
City and the Developer is that of a governmental entity regulating the development of private property and the owners of such private property.

Section 10.2 Consistency with Stockton General Plan.

The City hereby finds and determines that execution of this Agreement is in the best interest of the public health, safety, and general welfare and is consistent with the Stockton General Plan.

Section 10.3 Construction.

This Agreement shall be subject to and construed in accordance and harmony with the Stockton Municipal Code, as it may be amended, provided that such amendments do not substantially alter the rights granted to the Parties by this Agreement.

Section 10.4 Obligations.

All the obligations of this Agreement are the essence of the Agreement.

Section 10.5 Notices.

Any notice or communication required hereunder between the City and the Developer must be in writing and may be given either personally, by overnight courier or by registered or certified mail, return receipt requested. If given by overnight courier or registered or certified mail, the same shall be deemed to have been given and received on the date of actual receipt by the addressee designated below as the party to whom the notice is sent. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days’ written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to the City:

City of Stockton
425 North El Dorado Street
Stockton, CA. 95202
Attn: City Clerk
Telephone: (209) 937-8458
Facsimile: (209) 937-8447
With a Copy To:

City of Stockton
345 N. El Dorado Street
Stockton, CA 95202
Attn: Community Development Director
Telephone: (209) 937-8444
Facsimile: (209) 937-8893

If to Developer:

HOLMAN INVESTORS, LLC
P.O. Box 8596
Stockton, CA 95208
Attn: Matt Arnaiz
Telephone: (209) 956-9303
Facsimile (209) 956-5936

With a Copy To:

ARNAIZ DEVELOPMENT CO., INC.
Attn: Richard K. Denhalter Esq.
General Counsel
3400 Eight Mile Road
Stockton, CA 95212
Telephone: (209) 931-9740
Facsimile: (209) 931-9741

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

Any notice given to the Developer as required by this Agreement shall also be given to all other signatory Parties hereto and any lender which requests that such notice be provided. Any signatory party or lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

Section 10.6 Recordation.

No later than ten (10) days after the Effective Date of this Agreement, the Clerk of the City shall record a copy of this Agreement in the Official Records of the Recorder's Office of San Joaquin County. The Developer shall be responsible for all recordation fees, if any.
Section 10.7  Construction.

As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

Section 10.8  Jurisdiction and Venue.

The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

Section 10.9  No Obligation to Develop.

It is understood that Developer’s development of the Project depends upon a number of factors including, but not limited to, the housing, commercial and industrial markets, the availability of financing, and the general economic climate of the area. Nothing in this Agreement shall be construed as requiring Developer to develop the Project, and any failure to develop the Project shall not be deemed a default of Developer under this Agreement. However, once Developer has begun actual construction of the Project, Developer shall diligently pursue completion of the Project.

Section 10.10  Waivers.

Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

Section 10.11  Entire Agreement.

This Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Agreement consists of 22 pages and Exhibits “A”, “B” and “C”, inclusive, which constitute the entire understanding and agreement of the Parties.

Section 10.12  Signatures.

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Developer and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
IN WITNESS WHEREOF, the City and the Developer have executed this Agreement as of the date first set forth above.

"CITY"

CITY OF STOCKTON,
A Municipal Corporation

City Manager

Attest: ____________________________
City Clerk

Approved as to Form:

City Attorney

"DEVELOPER"

HOLMAN INVESTORS, LLC
A California Limited Liability Company

By: ________________________________
   Name: Matt Arnaiz
   Title: Managing Member

Approved as to Form:

Developer's Attorney

(ACKNOWLEDGMENTS ATTACHED)
EXHIBIT "A"
CANNERY PARK ANNEXATION
TO THE CITY OF STOCKTON,
SAN JOAQUIN COUNTY, CALIFORNIA

All that portion of Sections 1, 2, 11 and 12, Township 2 North,
Range 6 East, Mount Diablo Base and Meridian, more particularly
described as follows:

BEGINNING at the southwest corner of said Section 1, said point
being on the existing City Limit Line of the City of Stockton;

1) thence along said City Limit Line, South 89°59'55" West 393.61
feet to the westerly line of Southern Pacific Railroad
Company's 100-foot wide right-of-way;

2) thence leaving said City Limit Line, along said westerly line
of the Southern Pacific Railroad Company's 100-foot wide
right-of-way North 03°44'08" East 5323.85 feet to the north
line of said Section 1;

3) thence continue North 03°44'08" East 40.06 feet to the
northerly right-of-way line of 80-foot wide Eight Mile Road;

4) thence along said northerly right-of-way line, 40.00 feet
northerly of, measured at right angle to, the north line of
said Section 1, South 89°29'36" East 2445.82 feet;

5) thence continue along said northerly right-of-way line, 40.00
feet northerly of, measured at right angle to, the north line
of said Section 1, South 89°30'08" East 2537.34 feet;

6) thence South 04°02'00" East 1055.53 feet;

7) thence South 06°36'46" East 281.25 feet to an angle point on
the easterly right-of-way line of 47.50 foot wide South 99
Frontage Road, as shown on the Relinquishment Map recorded
June 24, 1966, in Book 15, Page 27, State Highway Map Book,
San Joaquin County Records;

8) thence along said easterly line, South 02°50'27" East 1347.66
feet to a point of intersection with the easterly prolongation
of the southerly line of that certain 111.694 Acre parcel of
land as shown on the Map of Survey, filed in Book 25 of
Surveys, at Page 42, San Joaquin County Records;

9) thence along said easterly prolongation, and the southerly
line of said 111.694 Acre parcel, North 89°53'31" West 1263.24
feet to the northeast corner of that certain 74.910 Acre
parcel of land as shown on the Map of Survey, filed in Book 22
of Surveys, at Page 40, San Joaquin County Records said corner
being on the centerline of the 60-foot wide Woodbridge
Irrigation District right-of-way, as described in Book "A" of
Deeds, Volume 58, at Page 215, San Joaquin County Records;
10) thence along said centerline, South 02°55'07" East 1227.53 feet to the existing City Limit Line of the City of Stockton;
11) thence along the existing City Limit Line, South 89°57'40" West 2657.21 feet;
12) thence continue along the existing City Limit Line, South 02°35'56" East 1408.96 feet to the south line of said Section 1;
13) thence continue along the existing City Limit Line, also being the south line of said Section 1, North 89°53'54" West 1318.18 feet to the point of beginning.

Containing 489.40 Acres more or less.

Bearings used in this description are based on the California Coordinate System-83, Zone III.
HOLMAN INVESTORS, LLC

ANNEXATION (A-03-1)

EXHIBITS 1-2
EXHIBIT "A"

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TO THE CITY OF STOCKTON,
SAN JOAQUIN COUNTY, CALIFORNIA

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Containing 489.40 Acres more or less.

Bearings used in this description are based on the California Coordinate System-83, Zone III.
**LINE TABLE:**

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<th>LINE</th>
<th>BEARING</th>
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</tr>
</thead>
<tbody>
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</tr>
<tr>
<td>2</td>
<td>N 3°44'08&quot; E</td>
<td>5323.85'</td>
</tr>
<tr>
<td>3</td>
<td>N 3°44'08&quot; E</td>
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<tr>
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</table>
HOLMAN INVESTORS, LLC

TENTATIVE MAPS (TM18-04A & B)

EXHIBITS 1,2, 3A, 3B
Item E-3(f): PUBLIC HEARING - Tentative Map
Case Nos. TM8-04A & B, Holman Road Investors, LLC

Data: Holman Road Investors, LLC is requesting approval of two tentative map applications, 1) **TM8-04A**: to subdivide a 448+ acre site into approximately 1,100 single-family lots, up to 50 industrial/commercial lots, five lots for school/park and fire station sites, landscaping lots, slope easement lots, one multi-family residential lot, and various accessory use lots, and 2) **TM8-04B**: to subdivide the project site of 448+ acres into 17 “large lots” to facilitate the Final Map process and the ultimate sale of larger blocks of land within the project boundaries. The project is located at the southwest quadrant of State Route 99 and Eight Mile Road. The applicant has concurrently filed applications for: a General Plan Amendment (GPA1-03) to Commercial, Industrial, Open Space, Low/Medium Density Residential and High Density Residential and to add two Neighborhood Park symbols; rezoning (Z-1-03) to M-1, Light Industrial District, C-2, General Business District, P-L, Public Lands District, R-1, Single Family District, and R-3, Apartment District; Eight Mile Road Specific Plan Amendment (SPA1-03); and a Development Agreement (DA2-03) to facilitate the development and restrict the types and extent of land uses allowed on the subject site (see Items E-1 (b), (c), (d), and (e) on this agenda). In addition, these Tentative Map applications are tied to, and dependent upon, the approval of the related Annexation (A-03-1) application by the San Joaquin County Local Agency Formation Commission (LAFCO). The site is bordered on the:

- north across Eight Mile Road by residential uses and farmland within the jurisdiction of San Joaquin County;
- east across SR99 by freeway commercial uses and rural residential uses within the jurisdiction of San Joaquin County;
- south by single-family residential uses within the City of Stockton zoned R-1, Single Family District; and
- west across the Union Pacific Railroad tracks by farmland within the jurisdiction of San Joaquin County (Zoning Map pages 5, 6 and 8). See attached exhibits.
General Plan: The General Plan designates this site for Low/Medium-Density Residential, High Density Residential, Commercial, Industrial, and Administrative-Professional uses. The proposal is to amend the General Plan from Administrative-Professional to Commercial; Industrial to Low/Medium-Density Residential; Low/Medium-Density Residential to Commercial and High-Density Residential; High-Density Residential to Commercial, undesignated to Open Space, and add Proposed Neighborhood Park symbols.

Environmental Clearance: The environmental consequences of developing this site are analyzed in EIR1-03, which must be considered and certified prior to approval of Tentative Maps (TM8-04A&B). In addition, all applicable mitigation measures identified in Final EIR1-03, and the mitigation monitoring/reporting provisions included in the related Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project, must be adopted in conjunction with approval of Tentative Maps (TM8-04A&B).

Development Review Committee: The Development Review Committee recommended approval of these tentative map applications subject to the proposed findings and conditions of approval contained in the staff report.

Discussion: The applicant is requesting approval of two tentative map applications, 1) TM8-04A: to subdivide a 448+ acre site into approximately 1,100 single-family lots, up to 50 industrial/commercial lots, five lots for school/park and fire station sites, landscaping lots, slope easement lots, one multi-family residential lot, and various accessory use lots, and 2) TM8-04B: to subdivide the project site of 448+ acres into 17 “large lots” to facilitate the Final Map process and the ultimate sale of larger blocks of land within the project boundaries. The proposed Tentative Maps will facilitate the construction of a mixed use development consisting of low density and high density residential uses (single-family, multi-family), commercial uses (shopping center, office), industrial uses (light manufacturing, business park) and project amenities such as the Bear Creek corridor and WID Parkway (which include public access to along waterways and public parks, bike and pedestrian paths, landscaping, fencing, public parks, etc.).

Recommendation: Approval of TM8-04A & B based on the following findings:

1. Tentative Maps (TM8-04A&B) comply with applicable Federal, State, County and City codes, regulations and adopted standards, as determined by the City of Stockton.
2. None of the grounds for denial as stipulated in Section 66474 of the State of California Subdivision Map Act are applicable on Tentative Maps (TM8-04A&B).

3. The proposed project is consistent with the City's Low/Medium Density Residential, High Density Residential, Open Space, Commercial and Industrial General Plan designations which are proposed for the project site.

4. The environmental consequences of proposed tentative maps (TM8-04A&B) were considered in EIR1-03, which has been certified by the Planning Commission. In addition, all applicable mitigation measures identified in EIR1-03, including the related Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project have been adopted. EIR1-03 and related environmental documents were prepared in compliance with the provisions of the California Environmental Quality Act (CEQA) and the City of Stockton Guidelines for the Implementation of CEQA.

5. The anticipated benefits of the proposal outweigh the unavoidable or unresolved adverse environmental effects for the project as supported by the Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project, dated July 2004.

6. Pursuant to Sections 15091 and 15093 of the State CEQA Guidelines, this approval is subject to the adopted Findings and Mitigation Monitoring and Reporting Program, respectively, as specified in the Findings, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project.

Proposed Conditions TM8-04A&B:

1. Comply with all applicable Federal, State, County, and City codes, regulations, and adopted standards and pay all applicable fees.

2. Pursuant to Section 15091 and 15093 of the State CEQA Guidelines, the project shall be subject to all applicable mitigation measures, monitoring and reporting provisions identified in EIR1-03 and the City-adopted "Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program for the Cannery Park Mixed Use Project."

3. The owners, developers and/or successors-in-interest (ODS) shall prepare and have approved a master plan to demonstrate that sewage generation by the proposed project can be accommodated within planned collection system
improvements. The ODS shall design and construct all necessary improvements to the system to accommodate anticipated sewage generation and transmission.

4. The ODS shall demonstrate to the satisfaction of the City Engineer that the storm water runoff generated by the proposed project can be accommodated with the planned storm water collection system improvements, as provided by the City's Standard Plans and Specifications. The ODS shall provide an alternative storm water collection plan if the proposed storm water collection system is determined to not have sufficient capacity.

5. The ODS shall dedicate right-of-way and install frontage improvements, including but not limited to curb, gutter, sidewalk, pavement widening and street lighting along Eight Mile Road to provide a minimum 72-foot half street section. Improvements shall be installed upon recordation of the first final map or as identified in an improvement/development phasing plan. Should the ODS choose to phase these improvements, the ODS shall prepare an improvement/development phasing plan to determine the level of project development that can occur within established level of service standards prior to completion of said improvements. Said plan shall be approved by the City and identified improvement timing shall be binding on the ODS.

6. The ODS shall comply with all conditions of the Specific Plan Amendment (SPA1-03) and shall install all improvements required by said amendment.

7. Access to Holman Road, Collectors "A" and "B" within the non-residential area shall be restricted within 300 feet from any street intersection, driveway or creek. Any access within 500 feet from a street intersection/traffic signal shall be right-in/right-out only. Access to Holman Road, Arterial "A" and Collector "B" shall be restricted except at public street intersections within residential areas.

8. The ODS shall conduct a queuing and traffic access analysis at proposed signalized intersections to determine appropriate intersection location and required turn pocket/lane length.

9. The ODS shall dedicate 50 feet of right-of-way along the State Highway Route 99 West Frontage Road, from Collector "B" to the south property line at Lot F, and install frontage improvements, including but not limited to curb, gutter, sidewalk, and street lighting along the property frontage of Lot F.

10. The ODS shall be responsible for 100 percent of the design and construction costs of on-site roadway and intersection improvements and roadway extensions and public utilities identified on the tentative map and/or included in the project EIR, project description or as mitigation measures.
Improvements include but are not limited to all sewer, water and storm drain lines, traffic signals, street lighting, street paving, curb, gutter and sidewalk.

11. The ODS shall construct the Holman Road connection between the southern boundary of the subdivision and Eight Mile Road including the Bear Creek Bridge prior to any final building permit inspection for residential or non-residential structures or as identified in an improvement/development phasing plan. Should the ODS choose to phase these improvements, the ODS shall prepare an improvement/development phasing plan to determine the level of project development that can occur within established level of service standards prior to completion of said improvements. Said plan shall be approved by the City and identified improvement timing shall be binding on the ODS.

12. The ODS shall dedicate access rights to the City of Stockton along the following streets, except at public street intersections:

- Eight Mile Road, entire length, except as allowed by the Specific Plan and associated amendment. Existing points of access shall remain unrestricted until such time as the Eight Mile Road improvements are constructed or until an adjacent parcel is developed.

13. The ODS shall be responsible for design and construction costs and installation of off-site roadway and intersection improvements at the following locations as identified in the Existing Plus Approved Projects (EPAP) plus Project section in the Environmental Impact Report (EIR1-03) and Eight Mile Road Specific Plan:

- Morada Lane/Holman Road
- Eight Mile Road/West Lane
- Eight Mile Road/Ham Lane
- Eight Mile Road/Leach Road
- Eight Mile Road/Pearson Road
- Eight Mile Road/Micke Grove Road
- Eight Mile Road/Collector A
- Eight Mile Road/West Frontage Road
- East Frontage Road/SR99 Northbound Ramps
- Eight Mile Road/East Frontage Road
- Morada Lane/West Frontage Road
- Morada Lane/East Frontage Road.

The traffic signals shall be installed when warranted or at the discretion of the Public Works Director. All other improvements shall be installed with the first parcel or final map for this project as identified in an improvement/development phasing plan. Should the ODS choose to phase
these improvements, the ODS shall prepare an improvement/development phasing plan to determine the level of project development that can occur within established level of service standards prior to completion of said improvements. Said plan shall be approved by the City and identified improvement timing shall be binding on the ODS.

14. The ODS shall conduct a project phasing analysis to determine the timing and level of project development that can occur before degrading the operational level of service at the Eight Mile Road/State Highway Route 99 interchange and Morada Lane/State Highway Route 99 interchange below level of service that conforms with State Urban Highway Standards. Said study shall be approved by the City and identified improvement timing shall be binding on the ODS.

15. The ODS shall be responsible for their proportionate share, based on traffic loadings, of the costs for Project Study Reports (PSRs) and Project Reports (PRs) and necessary improvements described in the PSRs/PRs for the State Route 99 mainline system, the Morada Lane/State Route 99 overcrossing-interchange, and Eight Mile Road/State Route 99 overcrossing-interchange to provide a level-of-service that conforms with State Urban Highway Standards. The ODS shall participate in a funding mechanism including, but not limited to: an assessment district (AD); area of benefit (AOB); or equivalent, and the ODS shall prepare and enter into an agreement with the City to establish the financing, design, construction, and timing of the PSRs, PRs and necessary improvements as identified. Said agreement shall be subject to the approval of the City Manager.

16. The ODS shall be responsible for their proportionate share of the design and construction costs for the following improvements, based on traffic loadings, to reduce the significance of the cumulative impacts at the following intersections as identified in the Environmental Impact Report for this project:

Arterial A/West Lane
Morada Lane/Holman Road
Eight Mile Road/East State Route 99 Frontage Road
Eight Mile Road/Collector A/West State Route 99 Frontage Road
Eight Mile Road/West Lane
Eight Mile Road/SR99 SB Ramps
Eight Mile Road/SR99 NB Ramps
East Frontage Road/SR99 NB Ramps at Morada Lane
SR99 SB Ramps/Morada Lane
Morada Lane/East Frontage Road

17. Bus turnouts shall be installed at Future Holman Road and Eight Mile Road, Future Holman Road and Arterial "A", Eight Mile Road and Collector A, Future Holman Road and Collector B and any other location deemed
appropriate by the Public Works Director in consultation with the San Joaquin Regional Transit District.

18. A 10-foot easement shall be dedicated from the existing toe of the levee along Bear Creek for maintenance of all levee slopes.

19. The ODS shall be responsible for their proportionate share, based on traffic loadings, of the design and construction of a future grade separation at Eight Mile Road and the Union Pacific Railroad (formerly SPRR).

20. The ODS shall design and pay their proportionate share of all grade separation improvements at Arterial “A” and the Union Pacific Railroad (formerly SPRR). All associated improvements within the boundary of this tentative map shall be constructed with the first phase of development proximate to the railroad crossing area. The ODS shall install and maintain “Future Facilities” signs identifying the future grade separation, the size, location and text of said signs shall be approved by the City Engineer and the Community Development Director. Each residential buyer, new and resale, shall be notified about the future grade separation upon entering into contract to purchase, said notification shall be recorded with the sale and a copy provided to the City. The ODS may request that an area of benefit (AOB) be established to reimburse the ODS for any related design and construction costs exceeding their proportionate share.

21. The ODS shall participate in any Transportation Systems Management (TSM) programs established by the City of Stockton and provide a permanent area for a park and ride facility as a part of the development of Lots A, B, C or D or a combination thereof. Lot G is considered an interim park & ride location that will eventually be eliminated with the reconstruction of the State Highway Route 99/Eight Mile Road interchange. The Park and Ride facility may be a stand-alone designated lot or may consist of designated spaces within a parking area in the above referenced lots. The required number of park & ride spaces shall be determined by the Public Works Director in consultation with Caltrans.

22. All crossings of Holman Road proposed for bikeway/pedestrian purposes (i.e. “Parkway" and Bear Creek) shall be grade separated or occur at pedestrian actuated (midblock) signals.

23. The ODS shall install a barricade to terminate project connection to Waller Road per City standards.

24. Provide non-exclusive access easements within the industrial and commercial areas as necessary to provide all required lot accesses.
25. The ODS shall comply with all requirements of agencies having jurisdiction over Bear Creek and Woodbridge Irrigation District (WID).

26. Prior to recordation of any part of these Tentative Maps (TM8-04A&B) as a Final Map (Parcel Map/Subdivision Map), the ODS shall enter into a Master Agreement to identify the timing/phasing of improvements and provide for appropriate improvement securities.

27. Two (2) sites shall be dedicated to the City, exclusively for water wells and subject to the approval of the MUD Director.

28. The property owners, developers, and/or successors-in-interest shall conduct an engineering analysis, acceptable to the Director of Municipal Utilities, that demonstrates that the water system improvements to be constructed within the City of Stockton water service area are sufficient to meet the following conditions:

For ultimate build-out of the subdivision:

a. With a given system pressure of 45 psi at all future points of connection to the City water system and no wells on within the subdivision, the internal water system improvements shall be sized to provide at least 40 psi pressure at any location during the period of peak hour demand (peak hour demands shall be calculated at 175 percent of maximum daily demands),

b. With a given system pressure of 45 psi at all future points of connection to the City water system and no wells on within the subdivision, the internal water system improvements shall be sized to provide at least 20 psi pressure at any location during the period of maximum day demand (maximum day demands shall be calculated at 210 percent of the average day demands) combined with a fire flow of 2,000 gpm out of any fire hydrant in the residential portion of the subdivision.

c. With a given system pressure of 45 psi at all future points of connection to the City water system and no wells on within the subdivision, the internal water system improvements shall be sized to provide at least 20 psi pressure at any location during the period of maximum day demand combined with a fire flow of 3,000 gpm out of any fire hydrant in the commercial and industrial areas of the subdivision.

For phased developments of units within a subdivision (interim development):
d. With a given system pressure of 45 psi at the existing points of connection to the City water system and no wells on within the subdivision, the internal water system improvements shall be sized to provide at least 20 psi pressure at any location during the period of maximum day demand combined with a fire flow of 1,500 gpm out of any fire hydrant in the subdivision (maximum day demands shall be calculated at 210 percent of the average day demands).

29. Appropriately sized utilities and 3-phase electrical service shall be provided for all City owned or operated facilities.

30. Prior to recordation of any Final Map, the Owner, Developer, successor-in-interest (ODS) shall form a new zone of the Stockton Consolidated Landscape Maintenance District 96-2, and approve an assessment providing for the subdivision's proportionate share of the costs to maintain public parks within the service area for this subdivision or serving this subdivision.

31. Prior to recordation of any Final Map, the ODS shall establish a maintenance entity acceptable to the Community Development Director, the Parks and Recreation Director and the Public Works Director to provide funding for the maintenance of improvements including, but not limited to, common area landscaping, landscaping in the right-of-way, sound walls and/or back-up walls, constructed for the special benefit of this subdivision.

32. The ODS shall prepare a master plan for the non-potable irrigation system for the withdrawal and use of non-potable water from the Woodbridge Irrigation District (WID) canal system that passes through the project site. The system will consist of an intake structure, pump and mains, etc. that would distribute non-potable water to parks, open space, streetscape, landscaping adjoining and within commercial and industrial areas within the project area. System operation will be coordinated by the City with financing provided by a maintenance district. The master plan shall be subject to the approval of the Municipal Utilities Director. The ODS shall construct the approved system to the satisfaction of the Director of Public Works and the Director of the Parks and Recreation Department.

33. The ODS shall provide an accessible 10-foot wide maintenance/access easement or license agreement from UPRR for access purposes along the westerly side and a 3-foot wide maintenance/access easement along the easterly side of the masonry soundwall/fence constructed on the west side of the project.

34. The maps (TM8-04A&B) shall show the class one bike path and access point dedications along the south side of Bear Creek as well as the path layout.
All access points will need to be separate lots acquired and improved by the ODS. All plans and improvements shall be subject to approval by the City Parks and Recreation Department, the City Police Department and the City Public Works Department.

35. The ODS shall be responsible for removal of any trash, fill debris, etc. from lots K and V until the acceptance of the park sites by the City.

36. Access shall be provided to Lot K (park site) from Lot L. ODS shall construct a minimum twelve (12) foot wide bicycle/pedestrian bridge over the WID (Lot EE) for such access. Any existing structures intended to serve for such access (i.e., foot bridge) shall be refurbished and upgraded as necessary by the ODS to provide proper access to Lot K to the satisfaction of the City Parks and Recreation Department. ODS shall install a six (6) foot high masonry wall along the easterly and westerly sides of Lot L. The City will seek an indemnification agreement for the Parkway if such a facility is proposed to be located within the WID easement.

37. A six (6) foot tall masonry wall shall be constructed by the developer of Lot W between Lot W and Lot V (park site) if Lot W is no longer going to be a public school site. Such wall shall be on Lot W.

38. The ODS shall dedicate and the City shall provide reimbursement for park sites at the rate established for land cost by the public facilities fee program based on net acreage.

39. Lots U and T shall be landscaped by the developer to the satisfaction of the City Parks Facility Planner / Landscape Architect. Lots U and T shall be incorporated into and maintained by the consolidated landscape maintenance district. If the design of the of the grade separation does not utilized sloped landscape areas, the lots and associated landscaping are not required.

40. All lots to serve as common open space areas (Lots U, T, X, parkways, landscape corridors, corridors, EVAs, landscape easements, landscape lots, lots for bike paths, including Bear Creek, and other public open space areas within the project) shall be landscaped by the ODS as approved by the City and in coordination with any other controlling Agency. The Bear Creek corridor shall include a minimum 12-foot wide asphalt or concrete bike path to be designed and improved by the ODS as indicated in the project environmental documents. Bike path/pedestrian path/maintenance road construction shall include appropriate signage, bollards and trash cans. The ODS shall provide an engineer's estimate of probable annual maintenance costs associated with the above areas and improvements, to be maintained by a consolidated maintenance district.
41. Right of ways and/or lot layouts shall be reconfigured as necessary to accommodate traffic calming measures required by City Standard including, but not limited to, roundabouts and traffic circles.

42. The following fire safety requirements shall be fulfilled:

   a. The owners, developers and successors-in-interest (ODS) shall dedicate a net 2.0 acre fire station site to the City of Stockton at the location indicated on this map.

   b. Reimbursement for the fire station site shall be at the rate established for land cost by the Public Facilities Fee Program, based on net acreage.

   c. The ODS shall be responsible for the construction of all frontage improvements for the fire station site and shall be reimbursed for said frontage improvements pursuant to the Public Facilities Fee Administrative Guidelines.

   d. The ODS shall be responsible for up to one-half of the operating costs, not to exceed $900,000 per year, of a single engine company fire station for the first three years of said fire station operation at the discretion of the City Manager.

   e. A Community Facilities District (CFD) or other financing mechanism for the appropriate reimbursement of costs associated with the operation of the fire station shall be created by the ODS. Said creation of a CFD or other financial mechanism, shall be established at the discretion of the City Manager.

43. The ODS shall disclose to all prospective home buyers as a condition of sale and prior to the opening of escrow, the existence of any present or former remediation site (lead or any other contaminant) within the project boundaries.

44. These Tentative Maps (TM8-04A&B) shall not be effective until the execution of the Annexation Memorandum of Understanding (MOU) by the applicant and the City, the effective date of the General Plan Amendment (GPA1-03), prezoning (Z-1-03) Specific Plan Amendment (SPA1-03) and Development Agreement (DA2-03) for this site, and the recodification of the Annexation (A-03-1) of this site to the City of Stockton. If annexation is not completed within two (2) years of the approval of the tentative map by the Planning Commission, this map shall be null and void.
45. The ODS shall be responsible for the establishment of Covenants, Conditions and Restrictions (CC&Rs) for the maintenance of landscaping, structures and fences on the private properties and review of architectural design for residential structures within the subdivision area. The CC&Rs shall be subject to review and approval by the City Attorney and the Community Development Director prior to the issuance of the first residential building permit. The owners, developers and/or successors-in-interest shall be responsible for recordation of the CC&Rs and payment of recording expenses. The City shall be declared to be a third-party beneficiary of the CC&Rs and shall be entitled, without obligation, to take appropriate legal action to enforce the CC&Rs.

46. Removal of Oak trees shall be avoided whenever feasible. The owners, developers, and/or successors-in-interest shall coordinate the layout of project plans with the City Arborist and City Parks Facility Planner/Landscape Architect to minimize or eliminate Oak tree removals. If removal of an Oak tree cannot be avoided, the owners, developers, and/or successors-in-interest shall be responsible for replacement of Oak trees on site, as approved by the City Parks and Recreation Department representatives. If on-site planting is not possible, the owners, developers, and/or successors-in-interest shall pay the City Parks and Recreation Department the estimated cost (as determined by the City Arborist or Parks Facility Planner/Landscape Architect) for the City to have the replacement Oak trees planted by private contract on a site deemed appropriate by the City Parks and Recreation Department representative in accordance with the mitigation measures identified in the Final Environmental Impact Report (EIR1-03), as amended, and in the related CEQA Findings, Statement of Overriding Considerations, and Mitigation Monitoring/Reporting Program for the Cannery Park Mixed Use Project.

47. Masonry sound walls shall be constructed by the ODS along the east and west sides of Holman Road at a minimum height of seven feet, subject to design approval by the Community Development Director.

48. The ODS shall designate and install a minimum 10-foot wide landscaped area (Parkway) consisting of a pedestrian walkway and landscaping within or adjacent to the WID Canal easement (Lots EE, UU, II, TT, GG). The ODS shall provide a Master Plan for the “Parkway” and the Bear Creek corridor prior to approval of the Final Map. The Master Plan shall contain but not be limited to the following component plans: public access, bike/ped paths, landscaping, fencing, security (including hours of operation), and maintenance (including litter removal). The Parkway shall be improved with landscaping at appropriate locations (e.g. the intersection with Holman Road, at Canal access points [e.g. Lots S, WW and L]) and/or as indicated by the location of existing trees by the ODS consistent with the Master Plan. The
width of the WID easement and/or Parkway may vary to accommodate landscaping and existing trees as needed. The City will seek an indemnification agreement for the Parkway if such a facility is proposed to be located within the WID easement. A consolidated maintenance district will be responsible for litter clean-up for the Bear Creek/Parkway/WID Canal easement area. The master plan shall be subject to review and approval by the Community Development Director and the Parks and Recreation Director.

August 5, 2004

Note: Staff reports are prepared well in advance of the Planning Commission consideration of the proposal and reflect the staff's view based upon the best available information at the time the report was formulated. Evidence submitted during the course of the public hearing may require a re-evaluation of the staff's position.

Staff Report was prepared by Senior Planner David Stagnaro, AICP.