



COUNTY OF HUMBOLDT


AGENDA ITEM NO.

C-29

For the meeting of: 12/13/2016

Date: 11/18/2016

To: Board of Supervisors

From:  Thomas K. Mattson, Public Works Director

**SUBJECT: ANNUAL REPORT FOR FY 2015/16 REGARDING MILL CREEK
MARKETPLACE DEVELOPMENT IMPACT FEE,
MCKINLEYVILLE AREA (FUND 3703)**


RECOMMENDATION(S): That the Board of Supervisors:

1. Adopts the Resolution accepting the Report and adopting findings related to the Mill Creek Marketplace Development Impact Fee. (Attachment A)

SOURCE OF FUNDING: General Fund

DISCUSSION: On 05/11/1993, the Board of Supervisors adopted Ordinance No. 1998 regarding the financing of public improvements necessary to mitigate the impacts caused by new development in the Mill Creek Marketplace Shopping Center in McKinleyville. This ordinance was codified in County Code Section 329 et seq. (Attachment B). This ordinance set forth the collection of fees related to future development within the Mill Creek Marketplace; a shopping center consisting of approximately nineteen (19) acres of land located near the southwest corner of School Road and Central Avenue. The purpose of the fee is to reimburse the developer for the cost of constructing and installing traffic signal facilities (Attachment C). The fees are to be collected at the time that a building permit is issued.


Assembly Bill 1600 known as the Mitigation Fee Act, codified in Government Code

Prepared by Robert W. Bronkall, Deputy Director 

CAO Approval 

REVIEW:

Auditor 

County Counsel 

Human Resources

Other

TYPE OF ITEM:

☒ Consent
☐ Departmental
☐ Public Hearing
☐ Other


PREVIOUS ACTION/REFERRAL:

Board Order No. C-18

Meeting of: 12/08/2015

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor  Seconded by Supervisor 

Ayes , Fennell, Lovelace, Bohn, Bass
Nays
Abstain
Absent

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated:
By:


Kathy Hayes, Clerk of the Board

Section 66000 et seq., requires that a report on the fee be prepared annually and made available to the public within one hundred and eighty (180) days after the last day of the fiscal year. The Board of Supervisors reviews the information made available to the public at the next regularly scheduled public meeting not less than fifteen (15) days after it is made available to the public. Notice of the time and place of the meeting, including the address where this information may be reviewed, has been publicly posted in accordance with the provisions of the Mitigation Fee Act.

The 2015/16 annual report is Exhibit A to Attachment A to this agenda item and includes the following information in accordance with Government Code 66006(b):

- A. A brief description of the type of fee in the account or fund.
- B. The amount of the fee.
- C. The beginning and ending balance of the account or fund.
- D. The amount of the fees collected and the interest earned.
- E. An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.
- F. An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in Government Code Section 66001(a)(2), and the public improvement remains incomplete.
- G. A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan.
- H. The amount of refunds made pursuant to Government Code Section 66001(e) and any allocations pursuant to Government Code Section 66001(f).

Also, pursuant to Government Code Section 66001(d), every fifth year the local agency shall make all of the following findings with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted:

- (1) Identify the purpose to which the fee is to be put.
- (2) Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.
- (3) Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements identified in Government Code Section 66001(a)(2).
- (4) Designate the approximate dates on which the funding referred to in (3) above is expected to be deposited into the appropriate account or fund.

The county has complied with the general requirements of the Mitigation Fee Act that fees collected are necessary to fund the cost of improvements which benefit or will benefit subject

developments. The funds collected have been segregated from other funds since the outset in compliance with this act. There is one parcel within the impact fee area which has not been developed. After this last parcel is developed and the fee is paid, the developer can then be reimbursed for the final payment. After the final payment to the developer is made, the impact fee is no longer necessary and can be eliminated.

FINANCIAL IMPACT: There is a minimal cost associated with preparing the necessary reporting documents. This will be covered within budget unit 1100166.

This item conforms to the Board of Supervisors' Core Role of providing for and maintaining infrastructure.

OTHER AGENCY INVOLVEMENT: None.

ALTERNATIVES TO STAFF RECOMMENDATIONS: None.

ATTACHMENTS:

- Attachment A: Resolution of the Board of Supervisors of the County of Humboldt, making Government Code Section 66001 findings and accepting Annual Report with respect to the Mill Creek Marketplace Development Impact Fee for the Fiscal Year 2015/16

(The Annual Report for FY 2015/16 is Exhibit A to the Resolution)

- Attachment B: County Code Section 329 et seq.
- Attachment C: Agreement between BDC McKinleyville Associates and the County of Humboldt dated 05/04/1993.
- Attachment D: Accounting summary of Fund No. 3703 Mill Creek Marketplace Development Impact Fee

Attachment A: Resolution of the Board of Supervisors of the County of Humboldt, making Government Code Section 66001 findings and accepting annual report with respect to the Mill Creek Marketplace Development Impact Fee for the Fiscal Year 2015/16

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings, Meeting of December 13, 2016

RESOLUTION NO. 16-139

**RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF HUMBOLDT,
MAKING GOVERNMENT CODE SECTION 66001 FINDINGS AND ACCEPTING ANNUAL
REPORT WITH RESPECT TO THE MILL CREEK MARKETPLACE DEVELOPMENT
IMPACT FEE FOR THE FISCAL YEAR 2015/16**

WHEREAS, on 05/11/1993, the Board of Supervisors adopted Ordinance No. 1998 regarding the establishment of a development impact fee for the Mill Creek Marketplace "Impact Fee;" and

WHEREAS, Ordinance No. 1998 sets forth the purposes of the fee and demonstrates a reasonable relationship between the fee and the purpose for which it is charged; and

WHEREAS, Government Code Section 66006 requires that the Board of Supervisors make available certain information to the public and hold a public meeting within 180 days of the close of the fiscal year detailing the fiscal year collection and expenditures of the Impact Fee; and

WHEREAS, the Annual Report has been available to the public for at least 15 days as required; and

WHEREAS, the Board has received and reviewed the information required by Government Code Section 66006 with respect to fiscal year 2015/16 as pertains to the Impact Fee; and

WHEREAS, pursuant to Government Code Section 66001(d) the use of all existing fee balances are identified in County Code Section 329 *et seq.* and there are no balances in the funds five years or more that are unexpended or uncommitted; and

WHEREAS, the improvements identified in County Code Section 329 *et seq.* have been constructed; and

WHEREAS, no improvements are scheduled for construction at this time; and

WHEREAS, the fees collected are necessary in order to reimburse the developer for the cost of installing the improvements.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. That all of the recitations contained herein above are true and correct.
2. The County of Humboldt hereby accepts the Annual Report for FY 2015/16 regarding the Mill Creek Marketplace Development Impact Fee (attached hereto as Exhibit A and incorporated herein by reference) as being in accordance with applicable State Law.
3. Regarding five year reporting, the County of Humboldt adopts the findings proposed in Section I of the Annual Report.
4. The County of Humboldt finds that no improvements are scheduled for construction at this time.
5. The County of Humboldt finds that fees collected are necessary in order to reimburse the developer for the cost of installing the improvements.

Dated: December 13, 2016



MARK LOVELACE, Chair
Humboldt County Board of Supervisors

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings, Meeting of December 13, 2016

RESOLUTION NO. 16-139

Adopted on motion by Supervisor Fennell, seconded by Supervisor Bass, and the following vote:

AYES:	Supervisors	Sundberg, Fennell, Lovelace, Bohn, Bass
NAYS:	Supervisors	--
ABSENT:	Supervisors	--
ABSTAIN:	Supervisors	--

STATE OF CALIFORNIA)
County of Humboldt)

I, KATHY HAYES, Clerk of the Board of Supervisors, County of Humboldt, State of California, do hereby certify the foregoing to be an original made in the above-entitled matter by said Board of Supervisors at a meeting held in Eureka, California.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Board of Supervisors.



By ANA HARTWELL
Deputy Clerk of the Board of Supervisors of the
County of Humboldt, State of California

Exhibit A: Annual Report for FY 2015/16 regarding the Mill Creek Marketplace Development Impact Fee

A. A brief description of the type of fee in the account or fund.

On 05/11/1993, the Board of Supervisors adopted Ordinance No. 1998 regarding the financing of public improvements necessary to mitigate the impacts caused by new development in the Mill Creek Marketplace in McKinleyville; a shopping center consisting of approximately 19 acres of land located near the southwest corner of School Road and Central Avenue. This Ordinance was codified in County Code Section 329 et seq. and sets forth the collection of fees related to future development within the Mill Creek Marketplace. The purpose of the fee is to reimburse the developer for the cost of constructing and installing traffic signal facilities. The fees are to be collected at the time that a building permit is issued.

B. The amount of the fee.

The amount of the fee is codified in County Code Section 329-4, which is shown below.

329-4 AMOUNT OF FEES.

The Development impact fee is arrived at by taking the total costs of traffic facilities improvements to be constructed as set forth in Section 329-8 and dividing the total construction cost of the improvements (\$152,592.00) by the total building square footage (198,988 square feet) of the previously approved Mill Creek Marketplace. This equates to a per square foot fee of \$.767 per square foot of building floor area for which a building permit is being requested. For example, if someone applied for a building permit for a 5,000 square foot building the Development Impact Fee would be 5,000 square foot x \$.767 = \$3,835.00 fee.

C. The beginning and ending balance of the account or fund.

The fund name is: McKinleyville Development Fee

The beginning balance of fund 3703 as of 07/01/2015 is \$100.00.

The ending balance of fund 3703 as of 06/30/2016 is \$100.00.

D. The amount of the fees collected and the interest earned.

The total amount collected for 2015/16 is \$0.

Interest earned for 2015/16 is \$0.

E. An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.

No fees were expended in 2015/16.

Dated 11/18/2016

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**Exhibit A: Annual Report for FY 2015/16 regarding the Mill Creek
Marketplace Development Impact Fee**

- F. An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in Government Code Section 66001(a)(2), and the public improvement remains incomplete.**

Not Applicable: The improvements have already been constructed. The impact fee is to reimburse the developer for the cost of installing the improvements.

- G. A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan.**

There have been no inter fund transfers or loans from these funds.

- H. The amount of refunds made pursuant to Government Code Section 66001(e) and any allocations pursuant to Government Code Section 66001(f).**

There were no refunds made pursuant to Section 66001 during FY 2015/16.

- I. Fifth Year Special Reporting: The local agency shall make all of the following findings with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted:**

(1) **Identify the purpose to which the fee is to be put.** The purpose for the fee is discussed in Section A above.

(2) **Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.** County Code Section 329-1 sets forth the following findings that establish a relationship between the fee and the purpose of the fee:

(a) The purpose of this fee is to finance the public improvements necessary to mitigate the impacts caused by new development in the Mill Creek Marketplace in McKinleyville.

(b) The fees collected pursuant to this ordinance shall be used to finance the cost of certain traffic facilities and services, the demand for which is directly or indirectly generated by the Mill Creek Marketplace in McKinleyville.

(c) The specific traffic facility improvements to be financed by the fee are as follows: Any and all cost associated with the design, construction and/or relocation of the traffic signal located at the Southwest Corner of School Road and Central Avenue and the new traffic signal to be located at the center driveway of Mill Creek Marketplace located approximately 450 feet south of the intersection of School Road and Central Avenue, and any cost to establish and administer this ordinance.

Dated 11/18/2016

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**Exhibit A: Annual Report for FY 2015/16 regarding the Mill Creek
Marketplace Development Impact Fee**

- (d) There is a demand in the Mill Creek Marketplace area for such facilities which have not been constructed and which is directly or indirectly generated by the Mill Creek Marketplace development as indicated in the Conditions of Approval set forth in Humboldt County Planning Department file Case No. FMS-09-912, CUP-27-912. Said facilities are consistent with the County of Humboldt's General Plan and the Conditions of Approval for the Mill Creek Marketplace.
 - (e) The facts and evidence presented establish that there is a reasonable relationship between the need for the described public facilities and the impacts of the types of development for which the corresponding fee is charged, and, also there is a reasonable relationship between the fee's use and the type of development for which the fee is charged.
 - (f) There is a reasonable relationship between the amount of the fee and the cost of the public facilities. The cost estimates set forth in the Phillippi Engineering study are reasonable cost estimates for constructing these facilities and the fees expected to be generated by new development will not exceed the total of such costs plus the cost of administering the ordinance.
- (3) Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements identified in paragraph (2) of Government Code Section 66001(a).** The improvements are financed entirely with the collection of this impact fee.
- (4) Designate the approximate dates on which the funding referred to in (3) above is expected to be deposited into the appropriate account or fund.** Unknown; the timing at which the shopping center will be fully built-out is not known and is subject to market demand for retail space.

Prepared by:

**Department of Public Works
1106 Second Street
Eureka, CA 95501**

Dated 11/18/2016

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TITLE III - DIVISION 2

CHAPTER 9

DEVELOPMENT IMPACT FEE MILL CREEK MARKETPLACE

ARTICLE 1 - APPLICATION, FINDINGS, DEFINITIONS

329. APPLICATION.

The provisions of this chapter shall apply only in the Mill Creek Marketplace in McKinleyville.

329-1. FINDINGS.

The Board of Supervisors finds as follows:

(a) The purpose of this fee is to finance the public improvements necessary to mitigate the impacts caused by new development in the Mill Creek Marketplace in McKinleyville.

(b) The fees collected pursuant to this ordinance shall be used to finance the cost of certain traffic facilities and services, the demand for which is directly or indirectly generated by the Mill Creek Marketplace in McKinleyville.

(c) The specific traffic facility improvements to be financed by the fee are as follows: Any and all cost associated with the design, construction and/or relocation of the traffic signal located at the Southwest Corner of School Road and Central Avenue and the new traffic signal to be located at the center driveway of Mill Creek Marketplace located approximately 450 feet south of the intersection of School Road and Central Avenue, and any cost to establish and administer this ordinance.

(d) There is a demand in the Mill Creek Marketplace area for such facilities which have not been constructed and which is directly or indirectly generated by the Mill Creek Marketplace development as indicated in the Conditions of Approval set forth in Humboldt County Planning Department file Case No. FMS-09-912, CUP-27-912. Said facilities are consistent with the County of Humboldt's General Plan and the Conditions of Approval for the Mill Creek Marketplace.

(e) The facts and evidence presented establish that there is a reasonable relationship between the need for the described public facilities and the impacts of the types of development for which the corresponding fee is charged, and, also there is a reasonable relationship between the fee's use and the type of development for which the fee is charged.

(f) There is a reasonable relationship between the amount of the fee and the cost of the public facilities. The cost estimates set forth in the Phillippi Engineering study are reasonable cost estimates for constructing these facilities and the fees expected to be generated by new development will not exceed the total of such costs plus the cost of administering the ordinance.

329-2. DEFINITIONS.

For purposes of this chapter the following words and phrases shall have the meaning given below:

(a) "Building Permit" is defined as the permit issued or required for the construction, of any building or shell structure pursuant to and as defined by the County of Humboldt Building Code.

(b) "Costs" is defined as the amount spent in connection with the planning and development of the traffic facilities or services including, but not limited to, the costs of construction, engineering, administration and consulting fees.

(c) "Mill Creek Marketplace" is defined as that certain shopping center consisting of approximately nineteen (19) acres of land to be located at the southwest corner of School Road and Central Avenue in the County of Humboldt which was approved by the Humboldt County Board of Supervisors and known as FMS-09-912 and CUP-27-912.

(d) "Developer/Subdivider" is defined as BDC McKinleyville Associates, a California limited partnership, Browman Development Company, Inc.

(e) "Development Impact Fee" is defined as the fee imposed pursuant to this chapter upon development in the Mill Creek Marketplace.

(f) "Development Impact Fee Fund" is defined as the fund into which all amounts collected under this chapter shall be deposited.

ARTICLE 2 - DEVELOPMENT IMPACT FEES, MILL CREEK MARKETPLACE

329-3. ESTABLISHMENT OF FEES.

The development impact fee for the Mill Creek Marketplace is hereby established in the amounts specified in Section 329-4 of this Chapter.

329-4. AMOUNT OF FEES.

The Development impact fee is arrived at by taking the total costs of traffic facilities improvements to be constructed as set forth in Section 329-8 and dividing the total construction cost of the improvements (\$152,592.00) by the total building square footage (198,988 square feet) of the previously approved

§ 329-4

Mill Creek Marketplace. This equates to a per square foot fee of \$.767 per square foot of building floor area for which a building permit is being requested. For example, if someone applied for a building permit for a 5,000 square foot building the Development Impact Fee would be 5,000 square foot x \$.767 = \$3,835.00 fee.

329-5. PAYMENT OF FEES.

(a) The Development Impact Fee shall be paid by the applicant for a building permit in the Mill Creek Marketplace.

(b) The Development Impact Fee shall be paid when the building permit is issued by the Humboldt County Building and Planning Department.

(c) The County Building Official shall not issue a building permit for any building within the Mill Creek Marketplace until the fee set forth in this Chapter has been paid unless exempt as provided in Section 329.6.

329-6. EXEMPTIONS.

The following are exempt from the requirement to pay the Development Impact Fee and the fee shall not be required if the requested building permit is to perform one of the following:

(a) A building permit for the reconstruction of any building within the Mill Creek Marketplace provided a Development Impact Fee was initially paid as a part of the issuance of a previous building permit and the square footage of the reconstructed building does not exceed the square footage of the original building. The exception is only to the extent that the resultant structure has the same or less ground floor square footage as the original structure; if the ground floor square footage increased, the square footage of the additional ground floor area shall be used to determine the amount of the fee due.

(b) The issuance of a building permit for property not located in the Mill Creek Marketplace as defined in Section 329-2.

329-7. DEVELOPMENT IMPACT FEE FUND.

(a) The County shall create in the County treasury a fund entitled Development Impact Fee Fund into which all amounts collected under this chapter shall be deposited.

(b) The Development Impact Fee shall be expended to reimburse the Developer/Subdivider of the Mill Creek Marketplace for the cost of constructing and installing the traffic signal facilities pursuant to the provisions of this chapter and to pay for the cost to the County for administration of this chapter.

329-8. REIMBURSEMENT FOR CONSTRUCTION OF THE FACILITIES.

(a) The Public Works Director will direct or authorize the developer/subdivider to construct certain facilities specified in the Conditions of Approval, or portions thereof. The developer/subdivider is entitled to a credit or reimbursement of costs in accordance with the provisions of this chapter, if the developer/subdivider: (1) constructs the improvements, or (2) finances the improvement by cash or performance bond or other security acceptable to the Director of Public Works, or (3) a combination of the above. The credit or reimbursement to be provided to the developer/subdivider shall be determined by the terms of this chapter and the Reimbursement Agreement. The construction of the traffic facilities authorized by this section must consist of a usable facility or segment and be approved by the County and constructed in accordance with the County of Humboldt's Public Improvement Design Standards. The developer/subdivider must post a bond or other security in a form acceptable to the Director for the complete performance of the construction before credit is given.

(b) The Development Impact Fee will be paid to developer/subdivider after deducting any administrative cost incurred by the County every quarter once the fees have begun to be collected and the conditions in Section 329-8(a) above have been satisfied. To implement this section, the developer/subdivider and the County shall enter into a reimbursement agreement.

329-9. OTHER AUTHORITY.

This chapter is intended to establish a supplemental method for funding the cost of certain facilities and services, the demand for which will be generated by Mill Creek Marketplace. The provisions of this chapter shall not be construed to limit the power of the County to impose any other fees or extractions or to continue to impose existing ones on development within Humboldt County, but shall be in addition to any requirements which the County of Humboldt is authorized to impose, or has previously imposed, as a condition of approving a plan, rezoning or other entitlement within the County of Humboldt.

329-10. CONFLICTING PROVISIONS.

The provisions of the Chapter shall prevail over any other provisions which are in conflict therewith, but only to the extent of such conflict.

AGREEMENT FOR INSTALLATION OF TRAFFIC SIGNAL

This AGREEMENT is entered into this 4th day of May, 1993, by and between COUNTY OF HUMBOLDT, a political subdivision of the State of California, hereinafter called COUNTY and BDC MCKINLEYVILLE ASSOCIATES, a California limited partnership, hereinafter called SUBDIVIDER.

RECITALS

SUBDIVIDER applied for and received approval of a tentative map for the creation of seven (7) parcels and a conditional use permit for the construction of an approximately 200,000 square foot shopping center on that real property located in McKinleyville and more particularly described in Exhibit "A", attached hereto and incorporated herein by reference. Said projects were filed and are known as Humboldt County Planning and Building Department files' case numbers FMS-09-912; and CUP-27-912.

The shopping center is referred to as the Mill Creek Marketplace Shopping Center.

The conditions of approval of the projects known as FMS-09-912 and CUP-27-912, as approved by the Board of Supervisors of the County of Humboldt, required the completion or security for completion of the Department of Public Works improvements as referenced in a letter to the Planning Department dated June 2, 1992. Said conditions required the SUBDIVIDER to provide the design and relocate the traffic signal at the southwest corner of intersection of Central Avenue and School Road in a manner as directed and approved by the Department of Public Works. A new traffic signal was needed at the main entrance/exit to the shopping center off of Central Avenue. SUBDIVIDER was required to provide the design and construct the new signalization of the main access to the shopping center off of Central Avenue in a manner approved by the Department of Public Works.

SUBDIVIDER would like to be reimbursed for all the costs associated with the installation and design and administration of the traffic signals by the tenants of the Mill Creek Marketplace Shopping Center through a Development Impact Fee Ordinance.

SUBDIVIDER would like to be reimbursed for all costs associated with the creation and administration of the Development Impact Fee Ordinance.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. OBLIGATIONS OF COUNTY: COUNTY agrees to do the following:

A. The County Planning and Building Department shall prepare and submit to the County Board of Supervisors, a Development Impact Fee Ordinance for reimbursement of the costs of the installation and design and administration of the traffic signals required as conditions of approval of the Mill Creek Marketplace Shopping Center.

**Attachment C: Agreement between BDC McKinleyville Associates and
the County of Humboldt dated 05/04/1993**

B. Upon adoption by the Board of Supervisors of a Development Impact Fee Ordinance for the installation of the traffic signals for the Mill Creek Marketplace Shopping Center, the COUNTY will collect the development impact fee from applicants for building permits prior to issuance of a building permit for buildings within the Mill Creek Marketplace Shopping Center.

C. COUNTY shall place the money collected pursuant to the Development Impact Fee Ordinance in a trust account for the benefit of the SUBDIVIDER and shall reimburse the SUBDIVIDER for all the costs associated with installation and construction of the traffic signals from the trust account. Upon completion of the installation and relocation of the traffic signals, the COUNTY shall commence to reimburse the SUBDIVIDER on a quarterly basis and shall reduce the amount paid to the SUBDIVIDER by the cost to the COUNTY of collecting and administering the Development Impact Fee Ordinance. Said costs not to exceed 2% of the cost for installation and construction of the traffic signals.

D. The parties hereby agree the COUNTY shall not be liable for reimbursing the SUBDIVIDER for the cost of installing and constructing or relocating the traffic signals which are not collected pursuant to the Development Impact Fee Ordinance.

E. The parties hereby agree that the COUNTY shall not have any obligations under this AGREEMENT to collect the development impact fee unless and until the Board of Supervisors adopt a Development Impact Fee Ordinance for the Mill Creek Marketplace Shopping Center. This AGREEMENT does not bind or obligate the Board of Supervisors to adopt the Development Impact Fee Ordinance. The COUNTY agrees that nothing contained in this Agreement or subsequent Ordinance shall expand or reduce the obligation of the SUBDIVIDER from those set forth in the tentative approval of the tentative map known as FMS-09-912 or the conditions of approval of the conditional use permit 27-912.

2. OBLIGATIONS OF THE SUBDIVIDER: SUBDIVIDER agrees to do the following:

A. SUBDIVIDER agrees that the COUNTY has met it's obligation of reimbursement when the COUNTY has deposited, postage prepaid, in the United States Mail, addressed to BDC McKinleyville Associates, a California limited partnership, c/o Browman Development Co., Inc., 100 Swan Way, Suite 206, Oakland, CA. 94621-1459, or to such other addresses designated in writing to the COUNTY by the SUBDIVIDER, the quarterly reimbursement.

B. SUBDIVIDER agrees to comply with the conditions of approval regarding the installation and/or relocation of the traffic signals and shall install and relocate the signals as required by the approval of the tentative parcel map and the conditional use permit. SUBDIVIDER agrees to provide Notice to the County of Humboldt upon completion of the installation and relocation of the signals and to provide notice of address for reimbursing the SUBDIVIDER from the fees collected by the issuance of building permits as required by the proposed Development Impact Fee Ordinance.

**Attachment C: Agreement between BDC McKinleyville Associates and
the County of Humboldt dated 05/04/1993**

C. Subdivider shall pay for all costs incurred by the County for the processing, developing and implementing the development impact fee ordinances for the Mill Creek Shopping Center. The cost shall include, but is not limited to, all staff time including County Counsel time in preparing the ordinance, the cost of all public hearings and the cost of implementing and collecting the fee. Upon approval of this agreement, Subdivider shall make a deposit with the County. The amount shall be a total of \$2,000.00 to cover said costs.

D. Attached hereto as Exhibit "B" is an Engineer's Estimate for the installation of the traffic signal for the Mill Creek Marketplace Shopping Center's main entrance together with an estimate for the relocation of the traffic signal at School Road and Central Avenue. It is mutually agreed that this Exhibit "B" is a fair and reasonable estimate for said installation and the cost of administration of all costs and shall be used as the basis for determining the Development Impact Fee, including any and all administration costs for creating the Development Impact Fee Ordinance. Said Fee shall be required to be paid as a development impact fee, payable at the time of issuance of building permits. The amount of the fee is to be calculated by the tenant's building's square footage multiplied by the development impact fee rate, as shown on the attached Exhibit "B".

E. SUBDIVIDER shall indemnify and hold harmless COUNTY and COUNTY's officers, employees, independent contractors and agents from and against:

- (1) Any and all claims, actions and proceedings related to:
 - (a) any breach or default in the performance of, or the omission to perform and obligations imposed upon SUBDIVIDER under this AGREEMENT; and/or
 - (b) any negligent act or omission to act by SUBDIVIDER or SUBDIVIDER's agent, representatives, employees, contractors or subcontractors relating to the performance or omission to performing any term or conditions of this AGREEMENT; and/or
 - (c) any litigation challenging the legal sufficiency or adequacies of the Development Impact Fee Ordinance from the Mill Creek Marketplace Shopping Center which the County may adopt; and

(2) All costs, attorney fees, expenses and liabilities incurred in the defense of any such claim, action or proceeding brought thereon. If any such claim, action or proceeding is brought against the COUNTY or County's officers, employees, independent contractors, and agents, SUBDIVIDER, upon Notice from the COUNTY, shall defend the same at SUBDIVIDER's expense by counsel satisfactory to the COUNTY.

COUNTY shall promptly notify SUBDIVIDER of any claim, action or proceeding against COUNTY or County's officers, employees, independent contractors or agents relating to the performance or omission to perform any term or condition of this AGREEMENT or challenging the Development Impact Fee Ordinance for Mill Creek Marketplace Shopping Center. COUNTY shall cooperate fully in the defense of such claim, action or proceeding.

SUBDIVIDER assumes all risk of damage to property or injury to persons resulting from the performance or omission to perform under this

**Attachment C: Agreement between BDC McKinleyville Associates and
the County of Humboldt dated 05/04/1993**

AGREEMENT by SUBDIVIDER or Subdivider: Agents, representatives, employees, contractors and subcontractors. SUBDIVIDER hereby waives all claims in respect thereof against COUNTY and County's officers, employees, contractors and agents.

F. SUBDIVIDER hereby waives all right or claims against the COUNTY for the cost of installing and constructing the traffic signals incurred by the SUBDIVIDER which are not recovered by the COUNTY through the Development Impact Fee Ordinance for the Mill Creek Marketplace Shopping Center except to the extent that the County Board of Supervisors approve the Development Fee Ordinance but the COUNTY fails to collect the fee in accordance with the terms and conditions of the Development Impact Fee Ordinance.

G. The SUBDIVIDER waives the right to terminate this AGREEMENT until such time as the traffic signals are installed or relocated to the satisfaction of the Department of Public Works. If at such time that the traffic signals are installed and the COUNTY has accepted the improvements, the SUBDIVIDER may terminate this AGREEMENT upon written request to the COUNTY for termination of the AGREEMENT.

3. GENERAL PROVISIONS

A. SUBDIVIDER shall not assign or otherwise transfer his duties, obligations or interests under this AGREEMENT without prior written consent of the COUNTY, which shall not be unreasonably withheld. Any attempted assignment or transfer without such consent shall be void.

B. Subject to any provision concerning assignment, all terms and conditions of this AGREEMENT shall be binding upon, inure to the benefit of, and be enforceable by the parties thereto and their respective legal representatives, successors, and assigns.

C. The failure of the COUNTY at any time to require performance by SUBDIVIDER of any of the provisions of this AGREEMENT shall in no way affect the right of the COUNTY thereafter to enforce same, nor shall waiver by COUNTY of any breach of any of the provisions under this AGREEMENT be taken or held to be a waiver of any succeeding breach of this AGREEMENT.

D. This AGREEMENT contains the entire agreement of the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein.

E. No amendment of this AGREEMENT shall be valid unless made in writing and signed by the parties.

F. Any action to enforce this AGREEMENT shall be governed by the laws of the State of California and shall be tried in court of competent jurisdiction in the County of Humboldt, State of California and the parties hereby waive all provisions of the law provided for a change of venue to any other County or State.

G. Any and all funds collected pursuant to this AGREEMENT or the Development Impact Fee may be used for no other purpose other than the reimbursing of SUBDIVIDER for any of the costs of design, and installation and construction of the traffic signal or the creation or administration of this

**Attachment C: Agreement between BDC McKinleyville Associates and
the County of Humboldt dated 05/04/1993**

AGREEMENT or Development Impact Fee Finance, unless the
AGREEMENT is terminated by both parties.

4. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE

SUBDIVIDER certifies by it's signature below that SUBDIVIDER is not a nuclear weapons contractor and that SUBDIVIDER is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapon systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. SUBDIVIDER agrees to notify the County immediately if it becomes a nuclear weapons contractor as defined above. COUNTY may immediately terminate this AGREEMENT if it determines that the foregoing certification is false or if SUBDIVIDER becomes a nuclear weapons contractor.

IN WITNESS WHEREOF, the parties hereto have set their hands,

MAY - 4 1993

Dated

COUNTY OF HUMBOLDT

Julie Zuber
Chairperson of the Board of
Supervisors, the County of
Humboldt, State of California

ATTEST:

Chris Arnold, Clerk of the Board
of Supervisors of the County of
Humboldt, State of California

By

Lora Frediani
LORA FREDIANI

Assistant Clerk of the Board
SUBDIVIDER:

MAY - 4 1993

BDC, McKinleyville Associates,
California limited partnership

By

Browman Development Company,
Inc., a California Corporation, it's
general partner

By

Darryl Browman
Darryl Browman, President

APPROVED AS TO FORM:
COUNTY COUNSEL

BY

R Zuber

dlh
h570493

**Attachment C: Agreement between BDC McKinleyville Associates and
the County of Humboldt dated 05/04/1993**

McKinleyville,
Shopping Center
Signal Maintenance

EXHIBIT A

All that property situate in the County of Humboldt, State of California, described as follows:

All that portion of the Northeast Quarter of the Southeast Quarter of Section 6, Township 6 North, Range 1 East, Humboldt Meridian described as follows:

COMMENCING at the east quarter section corner of said Section 6; thence North $89^{\circ} 25' 53''$ West on the east-west interior quarter section line of said Section 6, a distance of 773.80 feet; thence leaving said interior quarter section line, South $00^{\circ} 22' 51''$ East, 65.01 feet to the POINT OF BEGINNING of this description; thence South $89^{\circ} 25' 53''$ East, 65 feet south of and parallel to said interior quarter section line, 504.76 feet; thence South $87^{\circ} 31' 16''$ East, 150.00 feet; thence South $89^{\circ} 25' 53''$ East, 65.98 feet to the beginning of a curve concave to the southwest having a radius of 30.00 feet and a central angle of $89^{\circ} 03' 38''$; thence southeasterly on the arc of said curve, 46.63 feet to the west line of Central Avenue; thence South $00^{\circ} 22' 15''$ East on said west line, 971.49 feet; thence leaving said west line, North $89^{\circ} 25' 53''$ West, 749.91 feet; thence North $00^{\circ} 22' 51''$ West, 1,006.01 feet to the the point of beginning.

Containing 17.3 +/- Acres

END OF DESCRIPTION

This description was prepared by me or under my direction:

Date 8-9-93

Gary L. Crawford, L.S. 3843
License Expiration Date 6/30/96



**Attachment C: Agreement between BDC McKinleyville Associates and
the County of Humboldt dated 05/04/1993**

MAJOR CATEGORY TOTALS

AMENITIES & SPECIAL CONSTRUCTION.....	119,000.00
CONSULTANT FEES & SERVICES.....	14,000.00
ORDINANCE ADMINISTRATION, FEES, PERMITS, ETC.....	5,720.00
CONTINGENCIES (10%).....	<u>13,872.00</u>

TOTAL (2) \$152,592.00

Development Impact Fee \$.767 per total building S.F.

NOTES:

1. Since Phillippi Engineering has no control over the cost of labor, materials, or equipment, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, our opinions of probable project cost or construction cost provided for herein are to be made on the basis of our experience and qualifications and represent our best judgment as design professionals familiar with the construction industry. Phillippi Engineering cannot and does not guarantee that proposals, bids, or the construction cost will not vary from opinions of probable cost prepared by the firm.
2. This estimate does not include any costs for landscaping, undergrounding of utilities, or the connection costs for P.G. & E. Telephone or Cable TV and all City fees.
3. The Development Impact Fee is calculated by dividing the total estimated construction cost of \$152,592.00 by the total building square footage of 198,988.

Reviewed and Approved:

COUNTY OF HUMBOLDT
DEPARTMENT OF PUBLIC WORKS

BY _____
Harless McKinley, Associate Engineer

Attachment C: Agreement between BDC McKinleyville Associates and
the County of Humboldt dated 05/04/1993

McKinleyville,
Shopping Center
Signal Maintenance

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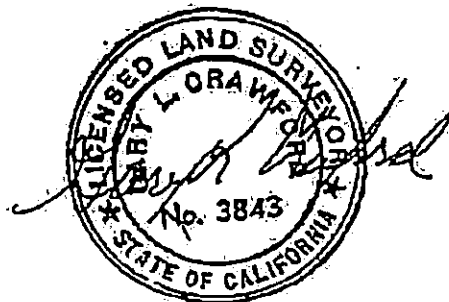
Containing 17.3 +/- Acres

END OF DESCRIPTION

This description was prepared by me or under my direction:

Date 4-9-93

Gary L. Crawford, L.S. 3843
License Expiration Date 6/30/96



**Attachment C: Agreement between BDC McKinleyville Associates and
the County of Humboldt dated 05/04/1993**

MAJOR CATEGORY TOTALS

AMENITIES & SPECIAL CONSTRUCTION.....	119,000.00
CONSULTANT FEES & SERVICES.....	14,000.00
ORDINANCE ADMINISTRATION, FEES, PERMITS, ETC.....	5,720.00
CONTINGENCIES (10%).....	<u>13,872.00</u>
TOTAL (2)	\$152,592.00

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NOTES:

1. Since Phillippi Engineering has no control over the cost of labor, materials, or equipment, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, our opinions of probable project cost or construction cost provided for herein are to be made on the basis of our experience and qualifications and represent our best judgment as design professionals familiar with the construction industry. Phillippi Engineering cannot and does not guarantee that proposals, bids, or the construction cost will not vary from opinions of probable cost prepared by the firm.
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3. The Development Impact Fee is calculated by dividing the total estimated construction cost of \$152,592.00 by the total building square footage of 198,988.

Reviewed and Approved:

COUNTY OF HUMBOLDT
DEPARTMENT OF PUBLIC WORKS

BY _____
Harless McKinley, Associate Engineer

**Attachment D: Accounting summary of Fund No. 3703 Mill Creek
Marketplace Development Impact Fee**

**Accounting Summary of Fund No. 3703
Mill Creek Marketplace Development Impact Fee**

Fund Revenue			
Assessor Parcel Number (APN)	Current Occupant	Fees Collected	Date
508-061-008	Ray's	\$ 35,009.72	1993
508-061-010 (formerly 508-061-001)	Kmart	\$ 72,408.63	1993
508-061-018	RiteAid	\$ 11,150.65	1999
508-061-018	RiteAid	\$ 1,138.22	1999
508-061-013	Denny's	\$ 3,795.88	1996
508-061-014	HealthSPORT	\$ 4,589.72	1996
508-061-017	(vacant property)		
508-061-012	McDonald's	\$ 1,622.97	1995
TOTAL FEES COLLECTED: (A)		\$ 129,715.79	
MAXIMUM FEES TO BE COLLECTED: (C)		\$ 141,816.96	
REMAINING FEES TO BE COLLECTED: (C) - (A)		\$ 12,101.17	

Fund Expense		
To	Reimbursement Amount	Date
Browman	\$ 102,726.54	10/1994
Browman	\$ 12,351.85	04/1997
Budget Unit 166 (County Administration Fee)	\$ 2,000.00	11/1997
Browman	\$ 12,043.08	09/2014
Budget Unit 166 (County Administration Fee)	\$ 494.32	09/2104
TOTAL AMOUNT REIMBURSED: (B)	\$ 129,615.79	

FUND BALANCE: (A) - (B)	\$ 100.00
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