



COUNTY OF HUMBOLDT
PLANNING AND BUILDING DEPARTMENT

3015 H Street Eureka CA 95501
Phone: (707)445-7541 Fax: (707) 268-3792

Hearing Date: February 03, 2022

To: Humboldt County Planning Commission

From: John Ford, Director, Planning and Building Department

Subject: **North McKay Subdivision Project Development Agreement**
Case Number PLN-9902-GPA
Assessor Parcel Numbers: 017-032-003, 017-071-004, 017-071-009,
017-072-002, 017-072-003, 017-073-007, 017-073-009 and 303-012-020

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Please contact Desmond Johnston at (707) 441-2622, or by email at djohnston@co.humboldt.ca.us if you have any questions about the scheduled public hearing item.

AGENDA ITEM TRANSMITTAL

Hearing Date February 03, 2022	Subject Development Agreement	Contact Desmond Johnston
--	---	------------------------------------

Project Description: The applicant requests at this time that the County proceed with action on a Development Agreement which outlines mutual and respective obligations between the developer and the County.

Project Location: The project site is located immediately south of the City of Eureka and surrounding the Cutten Ballfields at the eastern terminus of Redwood Street and Arbutus Street, with an additional access at the eastern terminus of Manzanita Avenue. The proposed water storage tank would be located approximately 2.5 miles south, near Ridgewood, in proximity to HCSD's existing water storage tank.

Present Plan Land Use Designations: Residential Low Density (RL), Density: Range is 1 to 7 units per acre, Eureka Community Plan (ECP), 2017 General Plan; Timberland (T) 2017 General Plan.

Present Zoning: Residential Low Density (RL), Density: Range is 1 to 7 units per acre, Eureka Community Plan (ECP), 2017 General Plan; Timberland (T) 2017 General Plan

Case Numbers: PLN-9902-GPA

Assessor Parcel Numbers: 017-032-003, 017-071-004, 017-071-009, 017-072-002, 017-072-003, 017-073-007, 017-073-009 and 303-012-020

Applicant
Kramer Properties, Inc.
1589 Myrtle Ave, Suite B
Eureka, CA 95501

Owner
same

Agent
same

Environmental Review: Project requires environmental review. The Humboldt County Planning Commission adopted a resolution recommending that the Board of Supervisors certify the environmental impact report prepared for the North McKay Ranch Subdivision Project (SCH #2019049166).

State Appeal Status: Project is not appealable to the California Coastal Commission

Major Issues: None

North McKay Ranch Subdivision Project Development Agreement
Case Number PLN-9902-GPA
Assessor Parcel Numbers 017-032-003, 017-071-004, 017-071-009,
017-072-002, 017-072-003, 017-073-007, 017-073-009 and 303-012-020

Recommended Planning Commission Action

1. Describe the application as a Public Hearing.
2. Request that staff present the project.
3. Open the public hearing and receive testimony;
4. Close the hearing and take the following action:

Make all the required findings for approval of the Development Agreement based on evidence in the staff report and public testimony, and adopt the Resolution recommending the Board of Supervisors approve the North McKay Ranch Subdivision Project Development Agreement.

Executive Summary:

The North McKay Ranch Subdivision project applications came before the Planning Commission January 6, 2022, and the Commission adopted resolutions recommending the Board of Supervisors certify the EIR and approve the project. The applicant requests at this time that the County proceed with action on a Development Agreement which outlines mutual and respective obligations between the developer and the County. Section 65864 et seq. of the California Government Code, Planning and Zoning, allows for development agreements for this purpose. All development will comply with the Eureka Community Plan requirements and the development standards.

Pursuant to Section 65864 et seq. of the Government Code and Section 2171-1 et seq. of the Humboldt County Code, the applicant is seeking to enter into a Development Agreement with the County. Development agreements are contracts negotiated between project applicants and public agencies that govern allowable land uses for development consistent with zoning and land use policies. These agreements are intended to serve as a tool to strengthen a community's commitment to comprehensive land use planning. The appropriate use of development agreements can provide the County with public benefits by requiring the developer to provide certain public improvements and benefits that would not otherwise be obtained through applicable development approval processes. The development agreement provides a developer with greater certainty in the development approval process by vesting certain development rights.

The applicant and the Planning Director have entered into negotiations and have reached a tentative agreement on the terms of the North McKay Ranch Project Development Agreement. In return for recognizing certain vested rights and avoiding future conflicting enactments for a period of 20 years that would limit or reduce density, expand developers' obligations, alter the development standards for roads and improvements, among other terms, the developer has committed to certain public benefits including the approximately 22 acres to remain as undeveloped open space that would be dedicated to the County for future trail management or conveyed in fee, the placement of an off-site water storage tank that would be dedicated to and managed by the Humboldt Community Services District (HCSD), and adding to the supply of both multi-family and single-family housing in the County, as well as retail and office commercial space in close proximity, at least 25 bicycle storage racks, four bicycle lockers, a transit stop, and other improvements and dedications described in the conditions of approval.

The Planning Commission is charged with reviewing the proposed Development Agreement for consistency with findings in Section 2171-14 of County Code and making a recommendation on its adoption to the Board of Supervisors. The findings require: 1) consistency with the General Plan and Local Coastal Plans, 2) consistency with the zoning regulations; 3) conformity with the public interest and general welfare; 4) not being detrimental to public health, safety or welfare of persons residing the vicinity; 5) not adversely affecting the orderly development of the property; and consistency with state law governing Development Agreements. Staff believes that the findings can be made based on the Applicant's submitted evidence (Attachment 1 of the staff report) and that the Planning Commission should recommend that the Board of Supervisors approve the Development Agreement.

Alternative: The Planning Commission could recommend denial of the proposed Development Agreement if the Commission finds that the submitted evidence does not support making all of the required findings. However, based on this staff report, planning staff believes the submitted evidence does support making all of the required findings and does not recommend further consideration of this alternative.

**RESOLUTION OF THE PLANNING COMMISSION
OF THE COUNTY OF HUMBOLDT**

Resolution Number 22-XX

Case Number PLN-9902-GPA

Assessor Parcel Numbers 017-032-003, 017-071-004, 017-071-009, 017-072-002, 017-072-003,
017-073-007, 017-073-009 and 303-012-020

Makes the required findings for approval of the North McKay Ranch Subdivision Development Agreement.

WHEREAS, Kramer Properties, Inc. submitted an application and evidence in support of approving a General Plan Amendment, Zone Reclassification, Planned Unit Development, Tentative Subdivision Map, and Special Permit for the phased subdivision of the North McKay Ranch Subdivision Project encompassing approximately 81 acres in the unincorporated area of Cutten in the Eureka Community Plan area; and

WHEREAS, the County Planning Division has reviewed the submitted application and evidence and has referred the application and evidence to involved reviewing agencies for site inspections, comments and recommendations; and

WHEREAS, the project is subject to environmental review pursuant to of the California Environmental Quality Act (CEQA); and

WHEREAS, on January 6, 2022 the Planning Commission found that:

1. An environmental impact report has been completed in compliance with CEQA for the Project (Case Number PLN-9902-GPA) which addressed the phased tentative subdivision map including a Development Agreement pursuant to Section 2171.1 et seq. of the Humboldt County Code; and
2. the environmental impact report reflects the lead agency's independent judgment and analysis; and

WHEREAS, on January 6, 2022 the Planning Commission recommended that the Board of Supervisors certify the environmental impact report in accordance with the requirements of the CEQA; and

WHEREAS, pursuant to Section 65864 et seq. of the Government Code, the applicant has proposed entering into a Development Agreement with the County to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs of development;

NOW, THEREFORE, be it resolved, determined, and ordered by the Planning Commission that:

1. The Development Agreement complies with the provisions of the State CEQA Guidelines and no further environmental review is required; and
2. Based on the applicant's submitted evidence listed in Attachment 2 of the Planning Division staff report for Case Number PLN-9902-GPA supporting approval of the Project including the Development Agreement, and as required by Section 2171-14 of the Humboldt County Code the Planning Commission finds the Development Agreement:

- a. is consistent with the objectives, policies, general land uses and programs specified in the County's general plan, any certified local coastal program, any applicable area plan, any applicable specific plan or such general plan amendments or changes in rules, regulations, ordinances, and official policies as are to be adopted for or concurrently with the adoption of the development agreement;
- b. is compatible with the uses authorized in, and the regulations prescribed for, the proposed zoning districts in which the real property is located;
- c. is in conformity with the public interest, general welfare and county land use planning policies;
- d. will not be detrimental to the public health, safety and welfare of persons residing in the immediate area nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the County as a whole;
- e. will not adversely affect the orderly development of property; and,
- f. is consistent with the provisions of Government Code Sections [65864](#) through [65869.5](#) , the State law governing development agreements.
- g. The Planning Commission recommends the Board of Supervisors approve the proposed Development Agreement with Kramer Properties, Inc., as recommended and considered in the Planning Division Staff Report for Case Number PLN-9902-GPA.

BE IT FURTHER RESOLVED that the Planning Commission recommends that the Board of Supervisors of the County of Humboldt:

1. Hold a public hearing in the manner prescribed by law.
2. Adopt the necessary findings prepared by Planning Staff.
3. Approve the Development Agreement.
4. Adopt Resolution No. 22-XX recommending that the Board of Supervisors adopt the Development Agreement between the Kramer Properties, Inc. and the County of Humboldt.

DECISION

Adopted after review and consideration of all the evidence on **February 03, 2022**.

The motion was made by COMMISSIONER and seconded by COMMISSIONER and the following ROLL CALL vote:

AYES: Commissioners:

NOES: Commissioners:

ABSTAIN: Commissioners:

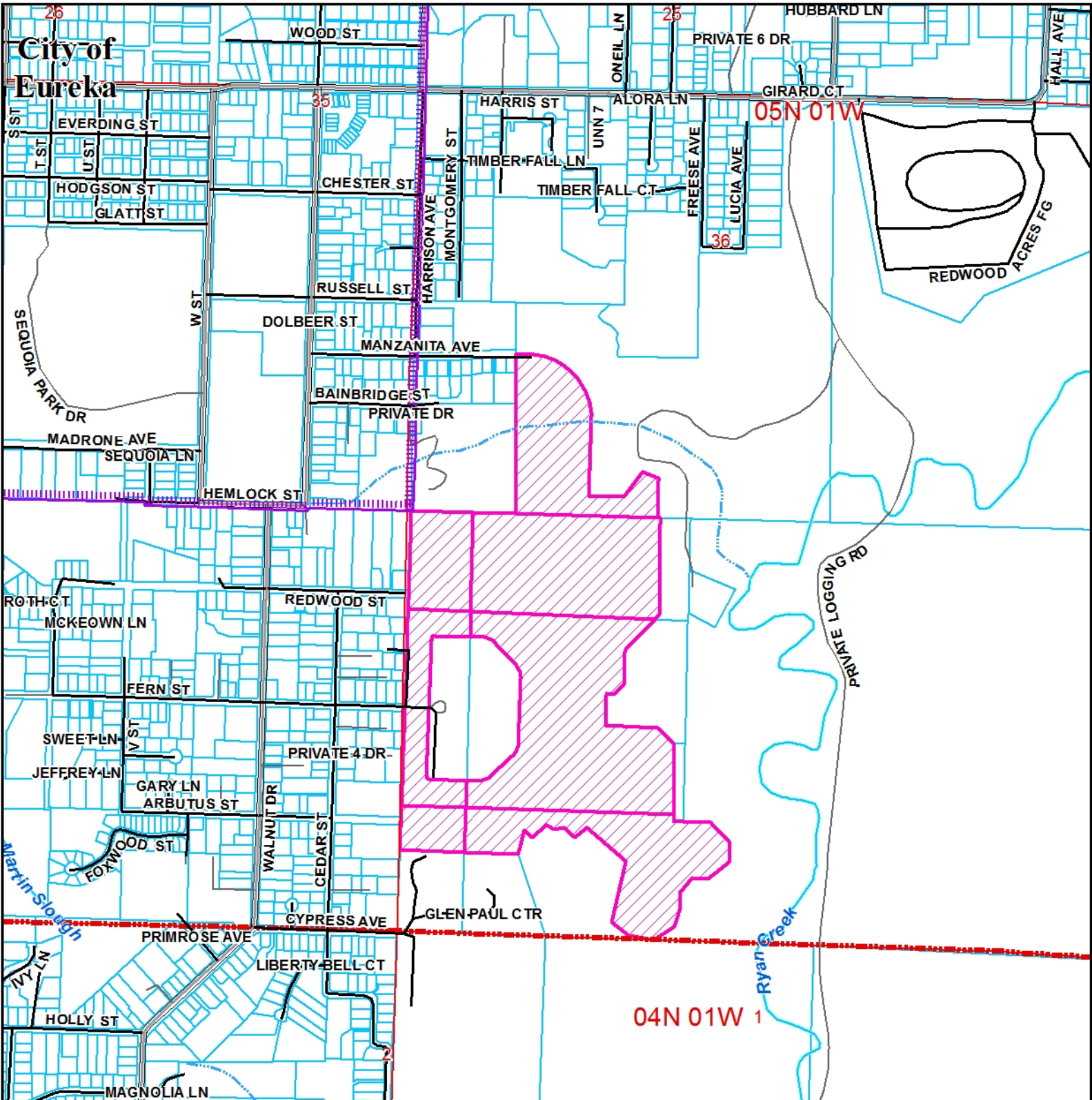
ABSENT: Commissioners:

DECISION:

I, John Ford, Secretary to the Planning Commission of the County of Humboldt, do hereby certify the foregoing to be a true and correct record of the action taken on the above-entitled matter by said Commission at a meeting held on the date noted above.

John H. Ford, Director,
Planning and Building Department

City of
Eureka

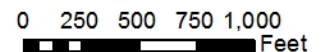


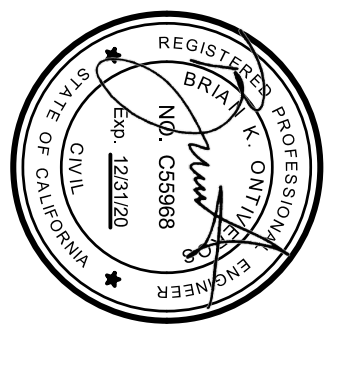
Project Area = 

LOCATION MAP

**PROPOSED KRAMER PROPERTIES INC
 GENERAL PLAN AMENDMENT, FINAL MAP SUBDIVISION,
 ZONE RECLASSIFICATION & PLANNED DEVELOPMENT PERMIT
 CUTTEN/EUREKA AREA
 FMS-15-004/ZR-15-008/GPA-15-005/PDP-15-001
 APN:017-032-003 et seq
 T05N R01W S36 HB&M (Eureka)**

This map is intended for display purposes and should not be used for precise measurement or navigation. Data has not been completely checked for accuracy.





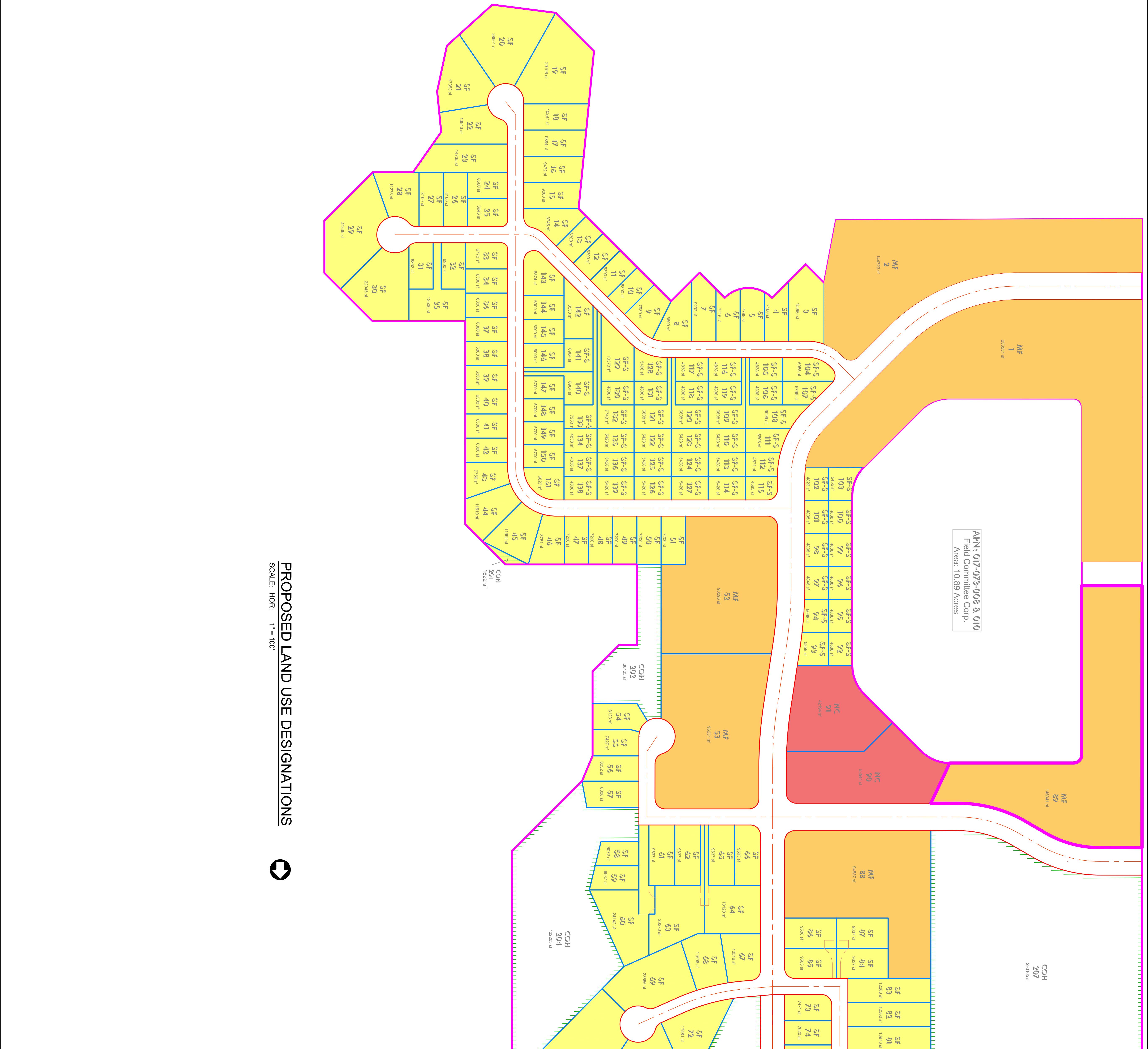
DEVELOPER:
Kramer Investment Corp.
 1589 myrtle avenue suite b
 eureka, ca 95501
 (707)444-2919 office
 (707)444-2396 fax
Contacts: Kurt Kramer
Chris Mikkelsen

McKAY RANCH SUBDIVISION
 TENTATIVE MAP FOR a
 PLANNED DEVELOPMENT
 HUMBOLDT COUNTY
 APN's 017-032-003, 017-071-004 & 009, 017-072-002 & 003, 017-073-007 & 009

PROPOSED LAND USE DESIGNATIONS

LOT INFORMATION	REVISIONS	MARK DATE DESCRIPTION	PROJECT NO.	DATE	DRAWN BY:	CHECK BY:	SUBMITTAL STATUS	PLANNING NOP REVIEW	SHEET
OGDONVILLE SUBDIVISION/COMMERCIAL/RESIDENTIAL 14.1173 4/27/19 BKO/BKO 14.1173 BKO 14.1173 BKO			14.1173	04/17/19	BKO/BKO	BKO	PLANNING NOP REVIEW		2 OF 5

Lot Type	Zoning Designation/Color	Plan Designation
Single Family	R-1 P, GO	Residential, Low Density (RL), 1 - 6 units/acre
Multi Family Lots 1, 8 & 9	R-4 P, GO	Residential, Multiple Family (RM), 7 - 16 units/acre
Commercial Lots 4	C-1 P, GO	Commercial General (CG)
	Neighborhood Commercial (C-1) w/Planned Development (P), and Greenway and Open Space (GO) Combining Zones. C-1/P, GO	



PROPOSED LAND USE DESIGNATIONS
 SCALE: HOR. 1" = 100'

10' Wide Easement shall be constructed along the south side of Arbutus Street between Walnut Street and Cedar Street.

CEAR ST. (60' RW)

Arbutus Street from Cedar Street to the subdivision shall be constructed to the width of 46' with 6' wide sidewalks on each side.

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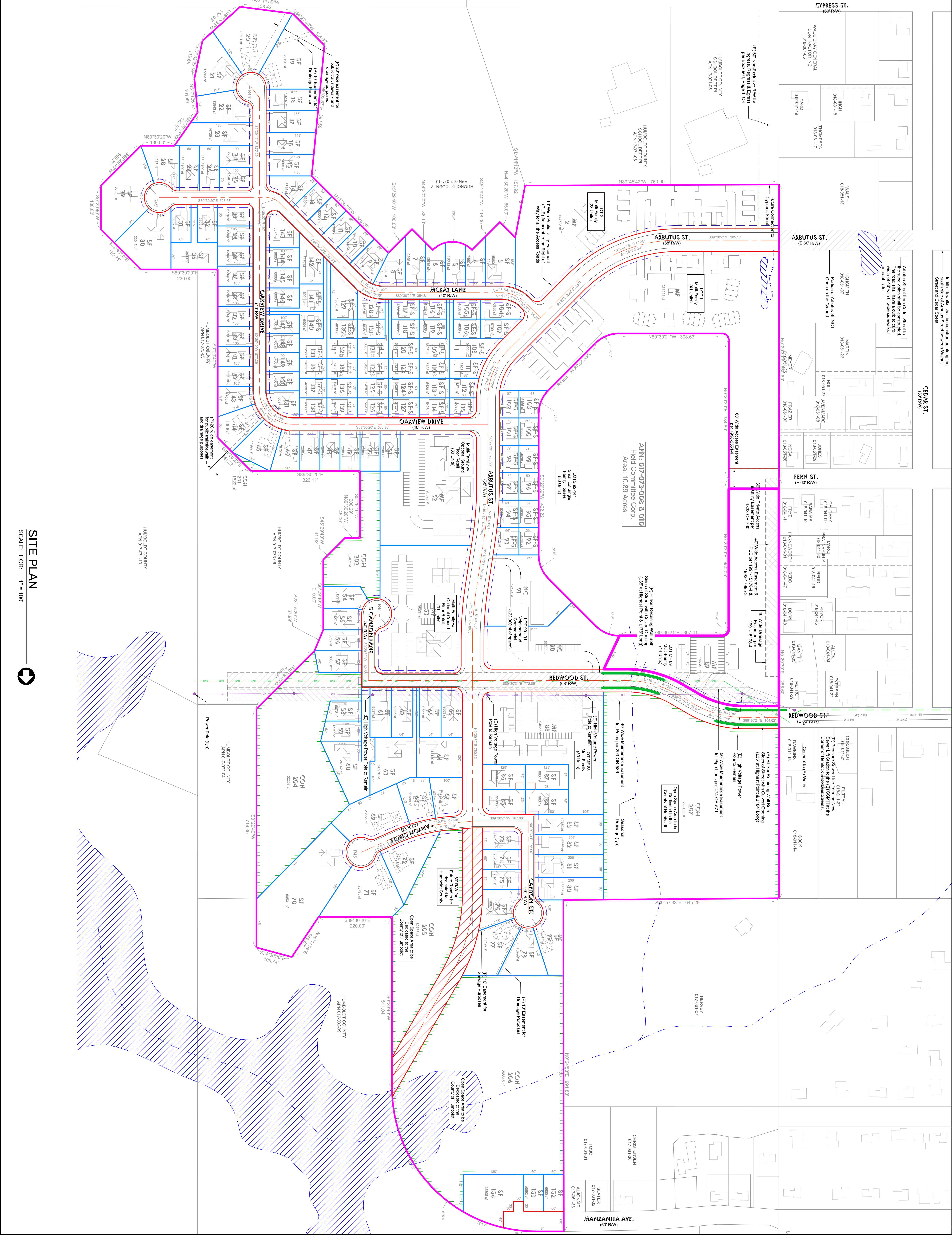
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SITE PLAN
SCALE: HOR. 1" = 100'

O&A
ONTVEROS & ASSOCIATES
CONSULTING ENGINEERS AND SURVEYORS
4424 Feland Blvd. • Folsom, CA 95650
Phone: (925) 752-7410 • Fax: (925) 752-7411
Ontveros@oandassociates.com

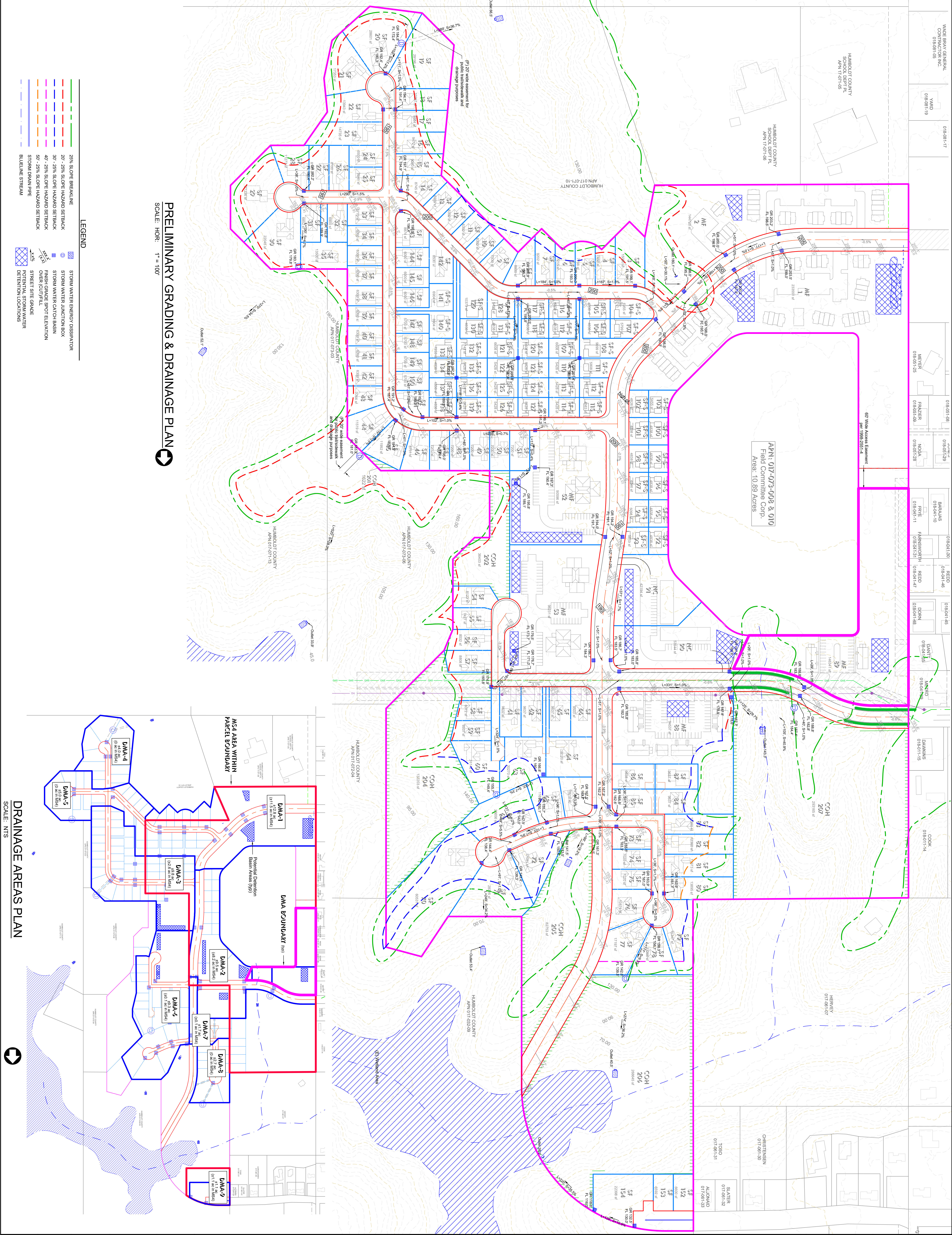
PROJECT NAME
Kramer Investment Corp.
1889 Myrtle Avenue suite b
Eureka, CA 95501
(707) 444-2919 office
(707) 444-2966 fax
Contacts:
Kurt Kramer
Chris Mikkelson

McKAY RANCH SUBDIVISION
TENTATIVE MAP FOR a
PLANNED DEVELOPMENT
HUMBOLDT COUNTY
APN's 017-032-003, 017-071-004 & 009, 017-072-002 & 003, 017-073-007 & 009

MARK	DATE	DESCRIPTION
PROJECT NO.	14-102	
DATE	04/17/19	
DRAWN BY:	BROBBO	
CHECK BY:	BKO	
STATUS	PLANNING NOP REVIEW	

PLANNING NOP REVIEW

SHEET 3 OF 5

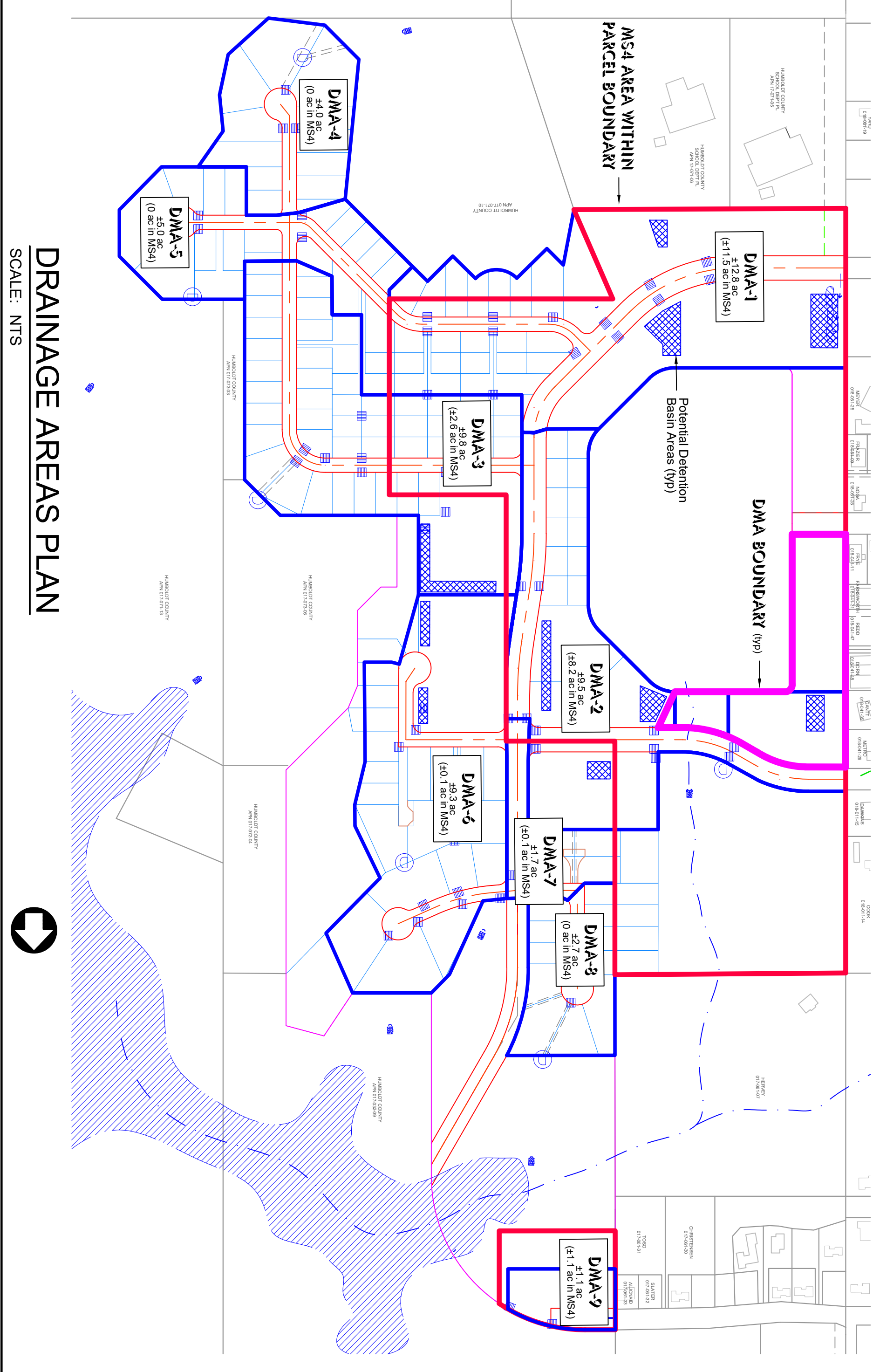


PRELIMINARY GRADING & DRAINAGE PLAN

SCALE: HOR. 1" = 100'

LEGEND

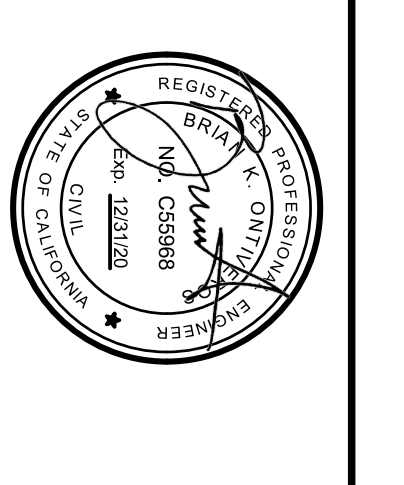
- 25% SLOPE BREAKLINE
- 20' - 25% SLOPE HAZARD SETBACK
- 30' - 25% SLOPE HAZARD SETBACK
- 40' - 25% SLOPE HAZARD SETBACK
- 50' - 25% SLOPE HAZARD SETBACK
- STORM DRAIN PIPE
- BLUE LINE STREAM
- STORM WATER ENERGY DISSIPATOR
- STORM WATER JUNCTION BOX
- STORM WATER CATCH BASIN
- FINISH GRADE SPOT ELEVATION
- OVER/CUT/FILL
- STREET SITE GRADE
- POTENTIAL STORM WATER DETENTION LOCATIONS



DRAINAGE AREAS PLAN

SCALE: NTS

<p>O&A ONTVEROS & ASSOCIATES CONSULTING ENGINEERS AND SURVEYORS 44th N. Folsom Blvd. • Folsom, CA 95650 Phone: (927) 752-2410 • Fax: (927) 752-2411 Ontveros@ontveros.com</p>	<p>McKAY RANCH SUBDIVISION TENTATIVE MAP FOR a PLANNED DEVELOPMENT HUMBOLDT COUNTY</p> <p>APN's 017-032-003, 017-071-004 & 009, 017-072-002 & 003, 017-073-007 & 009</p>	<p>DESIGNER: kramer investment corp. 1569 myrtle avenue suite b eureka, ca 95501 (707) 444-2919 office (707) 444-2396 fax Contacts: Kurt Kramer Chis Mikkelson</p>	<p>PROJECT NAME: SLATER ALLONDA</p>	<p>PLANNING NTP REVIEW</p> <p>DATE: 04/17/19</p> <p>DRAWN BY: BROGBO</p> <p>CHKD BY: BKO</p>
<p>C3.0</p> <p>SHEET 4 OF 5</p>				



DESIGNER:
Kramer Investment Corp.
1589 myrtle avenue suite b
eureka, ca 95501
(707)444-2919 office
(707)444-2396 fax
Contacts: Kurt Kramer
Chris Mikkelson

PROJECT NAME

McKAY RANCH SUBDIVISION
TENTATIVE MAP FOR a
PLANNED DEVELOPMENT
HUMBOLDT COUNTY
APN's 017-032-003, 017-017-004 & 009, 017-072-002 & 003, 017-073-007 & 009

SHEET TITLE

PRELIMINARY UTILITY PLAN

PLANT INFORMATION

OWNER: KRAMER INVESTMENT CORP.
PROJECT NO: 14-102
DATE: 04/17/19
DRAWN BY: BROGBO
CHKD BY: BKO

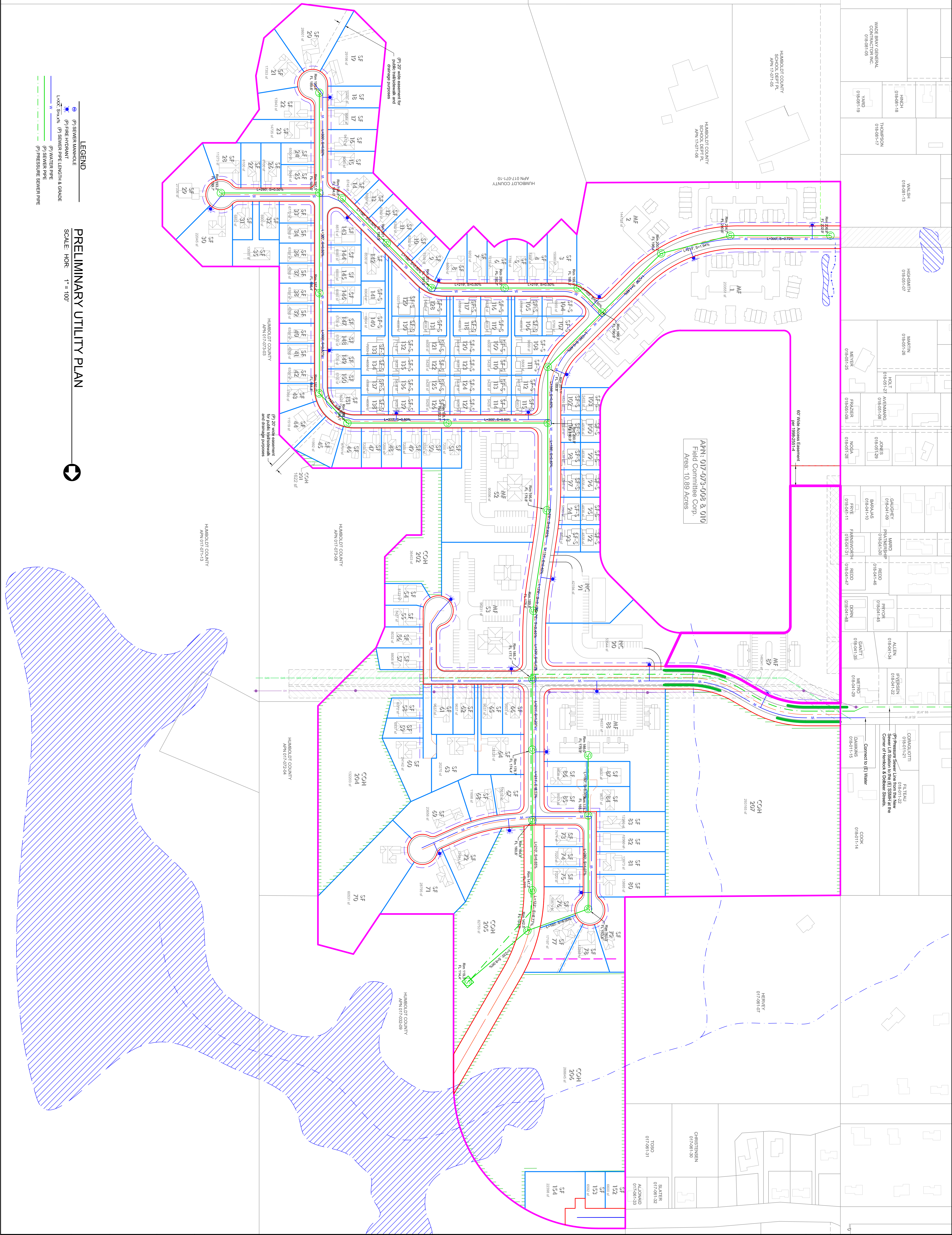
REVISIONS

MARK DATE DESCRIPTION

PLANNING NOP REVIEW

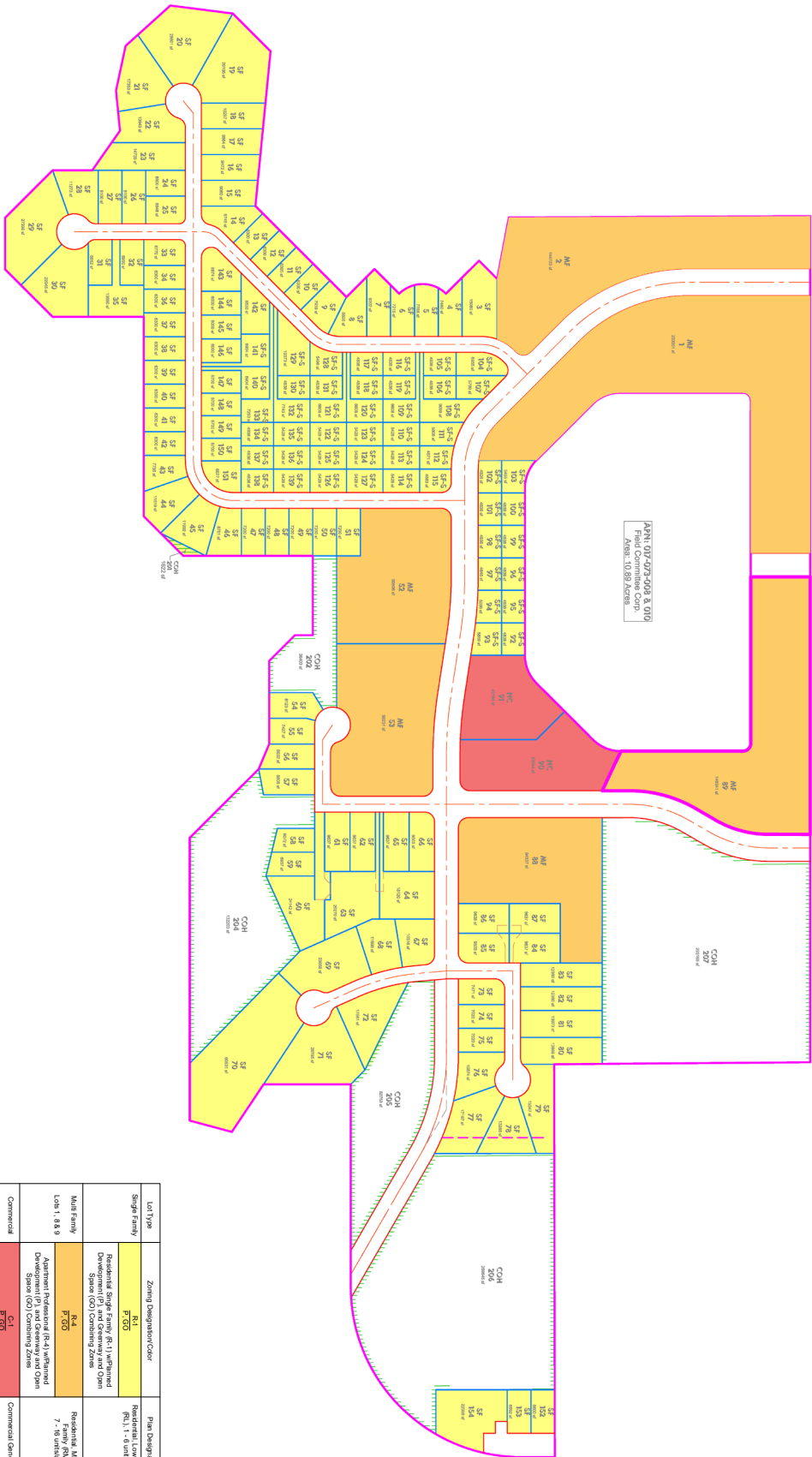
C4.0

SHEET 5 OF 5



ATTACHMENT 1
Applicant's Evidence in Support of the Required Findings

- Application Form (On file)
- Fee Schedule (On File)
- Preliminary Subdivision Maps (**Attached**)
- McKay Ranch Modified Layout showing 100-foot defensible space (**Attached**)
- Grant deed and Title Report (On file)
- Biological Report (On file and in EIR)
- Wetland Delineation (On file and in EIR)
- Wetland Mitigation Report (On file and in EIR)
- R-1 Geo-Technical Report (On file and in EIR)
- Traffic Study (On file and in EIR)
- Hydrology and Drainage Report (On file and in EIR)
- Sketch showing proposed connector trails (**Attached**)
- Rezone Justification Statement from Eureka Community Plan (**Attached**)
- Cultural Resources Report (On file and confidential)
- Timberland Conversion Permit (**Attached**)



Lot Type	Zoning Designation/Code	Prop. Description
Single Family	Residential Single Family (R-1) with Planned Development (PD) and Greenway and Open Space (GO) Combining Zone	Residential Single Family (R-1) with Planned Development (PD) and Greenway and Open Space (GO) Combining Zone
Multi-Family	R-4 P-GO	Residential, Multiple Family (RM), 7-9 Units/lot
Commercial	Neighborhood Commercial (C-1) with Planned Development (PD) and Greenway and Open Space (GO) Combining Zone, C-1P, GO	Commercial General (CG)
Commercial	Commercial (CO)	Commercial General (CG)

Source: Ontiveros & Associates, May 2019

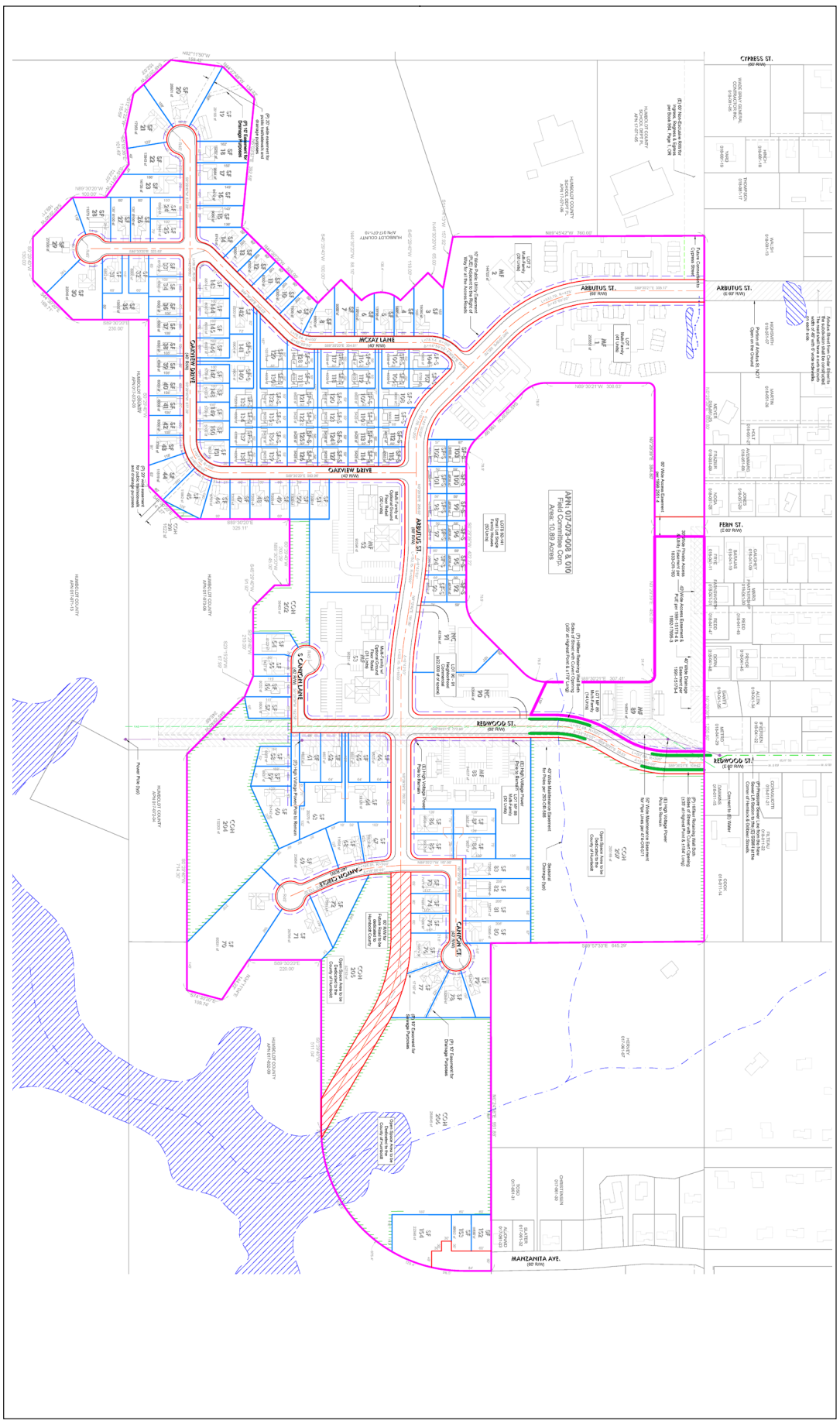


Project Location: Humboldt County, CA Prepared by: KI on 2020/04/28

Client/Project: North McKay Ranch Subdivision Project IR by: GS on 2020/04/28

Figure No. 2-3

Title: Proposed Land Use Designations

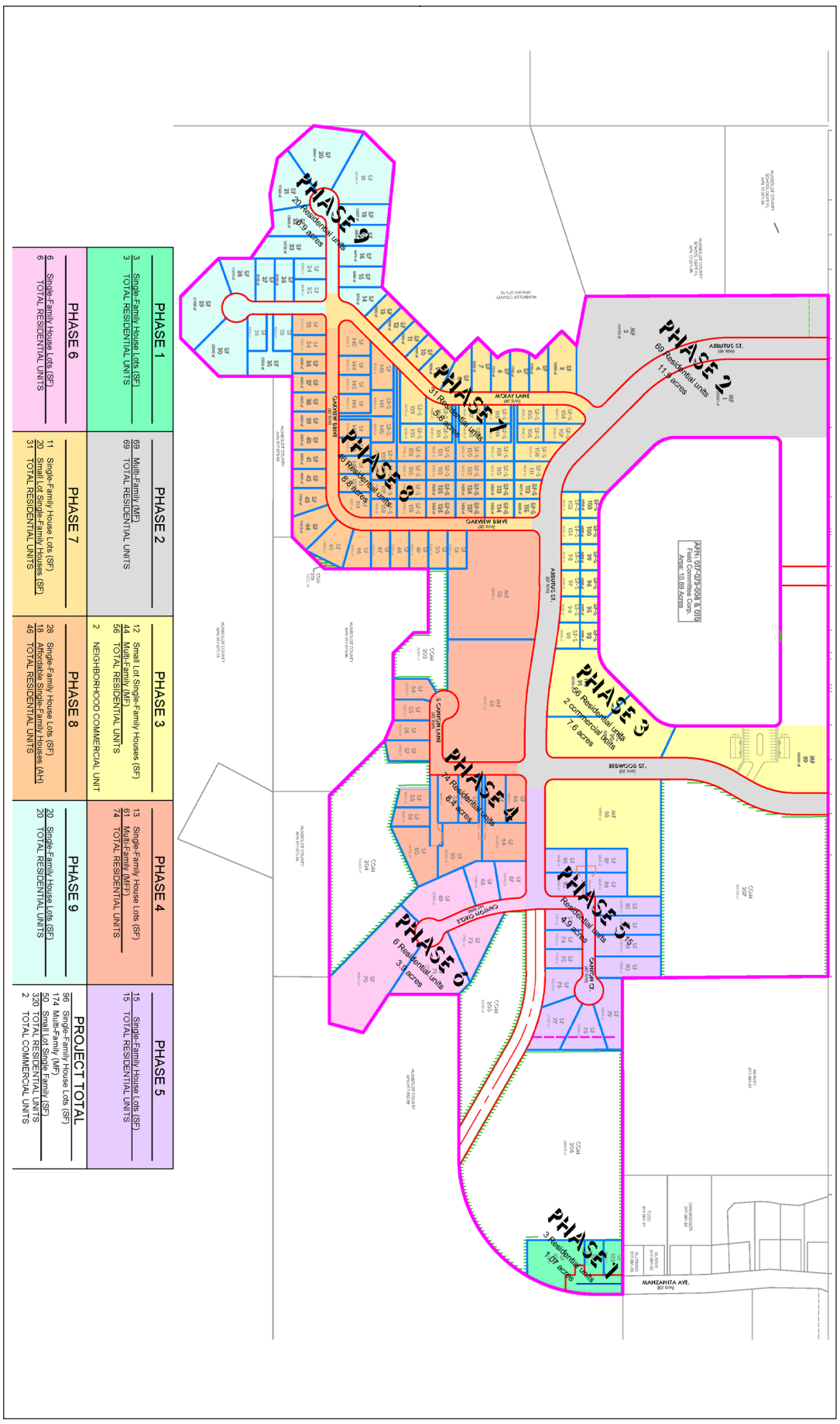


Source: Ontiveros & Associates, May 2019



Project Location
 Humboldt County, CA
 Client/Project
 North McKay Ranch Subdivision Project
 Prepared by KJ on 2020.04.28
 IR by GC on 2020.04.28

Figure No.
 2-4
 Title
 Preliminary Site Plan



Source: Ontiveros & Associates, May 2019



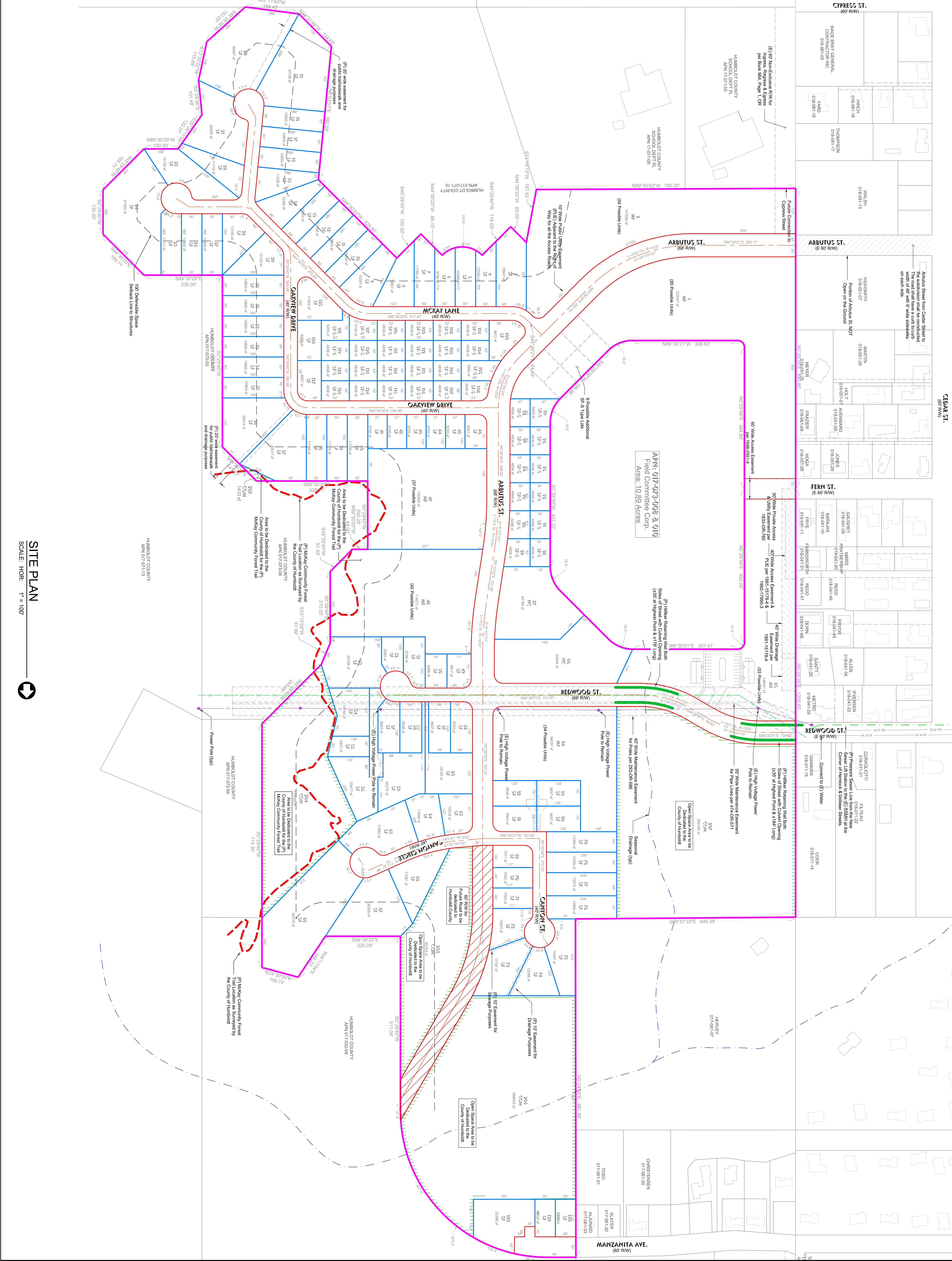
Project Location:
Humboldt County, CA
Prepared by: KJ on 2020-04-28
IR by: GS on 2020-04-28

Client/Project:
North McKay Ranch Subdivision Project

Figure No.
2-5

Title
Proposed Phasing Plan

Final platting shall be completed along the south side of Arbutus Street between Walnut Street and Cedar Street.



PLANNING INFORMATION		
DATE	02/22/2020	
PROJECT NO.	14-102	
DRAWN BY:	BKOBAB	
CHECK BY:	BKO	
STATUS	PLANNING NOP REVIEW	
REVISIONS		
NO.	DATE	DESCRIPTION
1		
NOT INFORMATION		
COURTESY OF HUMBOLDT COUNTY, HUMBOLDT COUNTY PLANNING DEPARTMENT		
DATE: 02/22/2020		
DRAWN BY: BKOBAB		
CHECK BY: BKO		
STATUS: PLANNING NOP REVIEW		
MARK DATE DESCRIPTION		
PROJECT NO. 14-102		
DATE: 02/22/2020		
DRAWN BY: BKOBAB		
CHECK BY: BKO		
STATUS: PLANNING NOP REVIEW		
SHEET		
C2.0a		
SHEET 3 OF 5		



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Eureka, CA 95501
(707) 444-2395 fax
(707) 444-2395 office
Kait Krarmer
Chris Mikkelsen

PROJECT NAME
McKAY RANCH SUBDIVISION

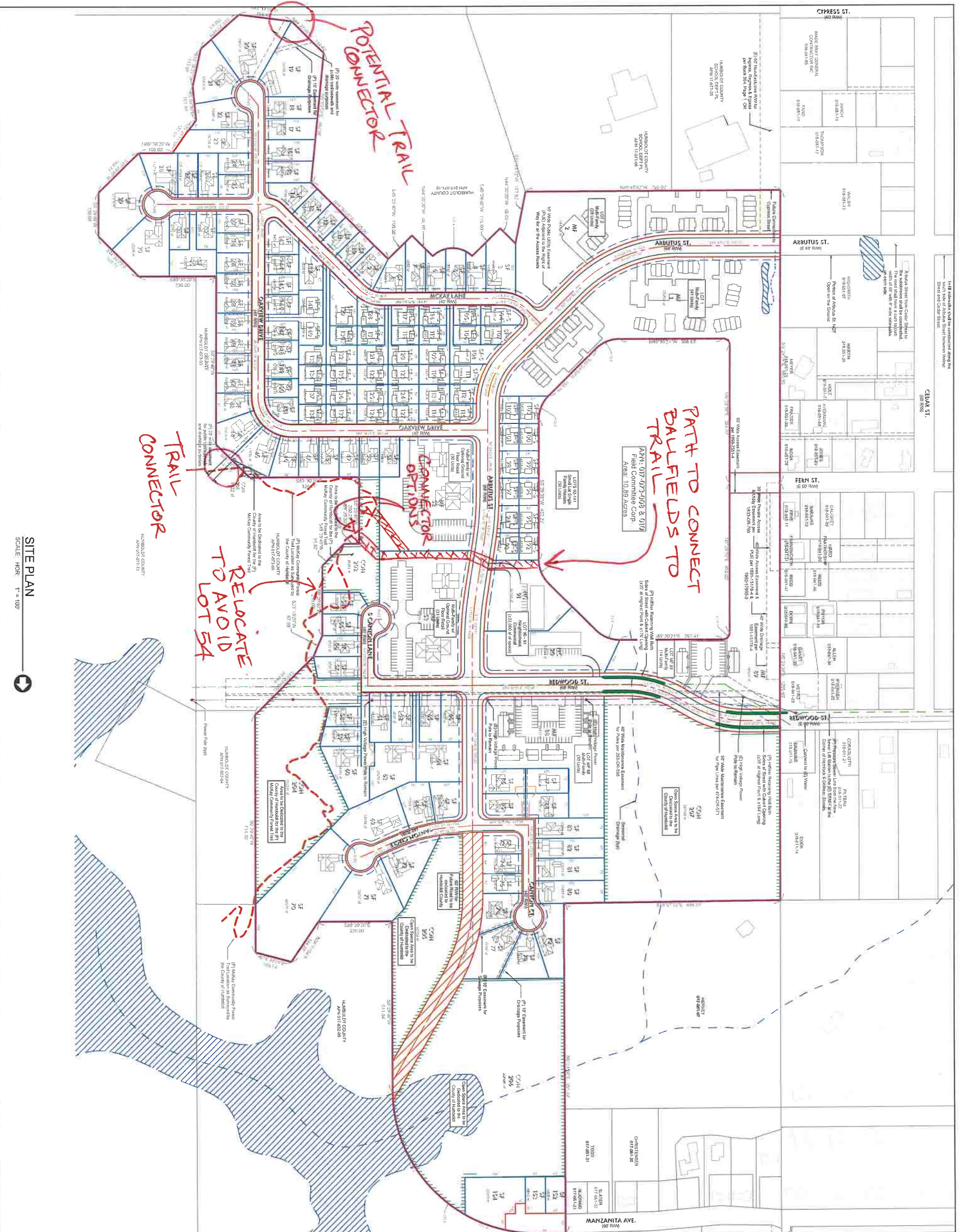
TENTATIVE MAP FOR a PLANNED DEVELOPMENT
HUMBOLDT COUNTY
APN's 017-032-003, 017-071-004 & 009, 017-072-002 & 003, 017-073-007 & 009

SITE PLAN

REVISION	DATE	DESCRIPTION

PROJECT NO. 18447
DATE: 04/17/22
DRAWN BY: BJD/MS
CADD BY: BMD
SUBMITTAL STATUS: PLANNING NOP REVIEW

C2.0
SHEET 3 OF 3



SITE PLAN
SCALE HOR. 1" = 100'

- Potential habitat loss due to urban encroachment will be mitigated by clustering development in the less sensitive areas of the site, specifically the plateau area above the 30% slope break.
- The North McKay plateau was clearcut in 1989, and the area will not have harvestable lumber for another 60 years. Since the North McKay area is already slated for a ten-year phaseout, waiting out that ten year period would not result in any new harvests. Therefore, the North McKay Immediate Rezoning would not diminish timber resources.
- The prime agricultural lands, or timberlands, in the area surrounding the North McKay project area will remain undeveloped since they are located within the large greenway / gulch area of the tract and will remain in timber production. Further, planting of the Ryan Creek bottomlands is occurring, and Right to Harvest provisions will be placed on all grant deeds in the project.
- The open space protection of the proposed project is substantial, including; a 10-acre public park/ballfield, multiple pedestrian and bicycle trails meandering through wide open space buffers along the existing residential neighborhood and the newly created lots, and preservation of the Ryan Creek riparian habitat and wooded steep slopes on the side.
- The Humboldt Community Services District is presently operating at one-half its sewer capacity and is planning to expand its facilities to meet future needs. Development of the North McKay Tract will involve extension of the District's sewer lines, and sewer connection fees will be paid to ensure future capacity can be met.
- Roadway improvements are planned for Harrison Street, Walnut Street and Cypress Street, which are important roads that will serve the North McKay Tract. These improvements will occur either before or at the time of subdivision and phased according to County Public Works Department approval.

VII. JUSTIFICATION FOR TPZ PUBLIC INTEREST FINDINGS

The purpose of the Timber Preserve Zoning is to maintain a supply of timberland for growth and harvesting and to discourage the premature conversion of timberland to urban uses. The North McKay Immediate Rezoning request will be reviewed by the California Department of Forestry (CDF) who will recommend an action according to a set of findings that would demonstrate that the rezoning of lands zoned for TPZ to urban uses is not premature and is in the public interest, subject to a set of strict findings contained within the State Government Timberlands Code 51132.

The process involved with an Immediate Rezoning requires the submittal of a request for a zone change to the Board of Supervisors. The Board of Supervisors then reviews the request for consistency with its General Plan policies, and environmental determination of the request is completed. As described in Section VI of this report, the Eureka Community Plan EIR has provided the environmental review and documentation for this Immediate Rezoning Request.

Therefore, the Planning Commission and the Board of Supervisors are now in the position to act upon this request. If the Planning Commission and Board of Supervisors approve this request as part of the Eureka Community Plan Update, it will constitute tentative approval of the rezoning. Once that tentative approval is obtained, the request must then be reviewed by the California State Department of Forestry (CDF). CDF will consider the request as to its consistency with State Government Timberlands Code 51132.

Goals of the State Timberland Code

To summarize the intent of the State Timberlands Code, there are four principal goals. These goals -- *and our justification for meeting these goals with the North McKay Tract Immediate Rezoning* -- are outlined below.

1. The rezone is not inconsistent with Section 51102, policy A, which requires that the State maintain a limited supply of timberland to ensure continued growth and harvesting of timber.
 - *The North McKay Tract Immediate Rezoning will remove only 1% of the 7,000-acre McKay Tract from timber production.*
 - *The North McKay Tract would logically conclude the development of this portion of Cutten in a manner that would not allow for eastward urban expansion into the more productive zones of the McKay Tract.*
 - *The Eureka Community Plan Update has already designated the North McKay Tract for a ten-year phase out. As such, there will be no harvestable material on the North McKay Tract plateau within that ten-year timeframe.*
 - *Louisiana-Pacific is presently in the process of planting the Ryan Creek bottomlands area to expand its timber resources in the area.*
 - *At the time of subdivision, there will be provisions included to buffer development areas from timber production, and requiring future residents in the project to sign right-to-harvest provisions for the area surrounding the North McKay Tract.*

2. **The State will discourage premature or unnecessary conversion of timberland to urban and other uses.**
 - *The North McKay area is one of four areas on the McKay Tract designated for conversion to urban uses.*
 - *In response to CDF's earlier concern expressed in its review of the McKinney Rezone in 1991 that a master plan should be provided to show the areas that would be reserved for future production and those that would be ultimately converted to urban uses has been done by the Eureka Community Plan. This plan has been completed in a way that clearly delineates the development areas and preserves the vast majority of the McKay Tract in TPZ zoning.*
 - *North McKay Tract has been logged over four times, and was most recently clearcut in 1989. As such there would not be any appreciable amounts of timber in this area for 50-60 years.*
 - *The North McKay Tract Immediate Rezoning would conclude development of this section of Cutten in a way that would not allow any further eastward urban expansion into the McKay Tract.*
3. **The State will discourage expansion of urban services into timberlands.**
 - *Humboldt Bay Community Services District boundaries already contain the North McKay Tract, and sewer and water services are adequate to serve this part of the community with the development envisioned in the Site Plan.*
 - *Provisions will be made at the time of subdivision not to allow any further expansion of urban services that would induce any further urban growth to the east of the North McKay Tract.*
4. **The State will encourage investment in timberlands based on reasonable expectation of timber harvest.**
 - *Louisiana-Pacific remains committed to keeping the vast majority of the McKay Tract in timber production.*
 - *Louisiana-Pacific is investing in plantings in the Ryan Creek bottomlands to increase their timber resources to the immediate east of the North McKay Tract.*
 - *Urban development has already encroached onto the North McKay Tract, and it is highly likely that further future timber harvests adjacent to urban areas would be fought by neighboring residents.*

- *At the time of development, Louisiana-Pacific will include right to harvest provisions for all new lot owners on the North McKay Tract.*

Required TPZ Conversion: Public Interest Findings

To support the goals outlined above, CDF requires that any request from TPZ to another urban use meet the following public interest findings. These findings and our justifications for making them (*in italics*) are as follows:

1. **The rezoning must be in the public interest.**
 - *The rezoning would be consistent with the Eureka Community Plan and EIR.*
 - *The rezoning will facilitate the donation of a much needed park site for the Redwood Empire Little League Association for its ultimate development as a ballfield complex. No other logical sites in the region could serve this purpose.*
 - *Urbanization and urban services are already in place to the immediate west of the McKay rezoning site.*
 - *The areas to the immediate east and north of the North McKay plateau will remain in TPZ and be subject to an Open Space Easement that would permit the select harvesting of timber.*
 - *The plan would provide for pedestrian/bicycle path connections in the neighborhoods to the north, west, and south of the site.*
2. **The rezoning must not have a substantial and unmitigated adverse affect on the continued timber growing use or open space of other lands zoned for timber production within one mile of the exterior boundary of the land proposed for the rezoning.**
 - *The North McKay Tract development would logically conclude the development of any further urbanization of this part of the Cutten area.*
 - *The development area would be buffered from timber operations to the east that would remain in TPZ zoning and be further covered by an Open Space Easement that would allow for timber harvesting.*
 - *Residents of the future neighborhood would be required to sign right to harvest provisions promising not to oppose future timber harvest operations in the region in the future.*

3. Ensure that soil slopes and water constraint conditions of the property would be suitable for the proposed uses.
- *The Eureka Community Plan Update has designated the North McKay Tract low density residential development and the EIR for that planning effort has concluded that the North McKay area is appropriate for development.*
 - *The North McKay Tract is a logical extension of the urbanization that has already occurred to the west of the site.*
 - *Development would respect the Eureka Community Plan's provisions not allowing development on slopes in excess of 30%.*
 - *Services are already in place to serve the proposed project.*

On a final note, earlier rezoning requests approved by Humboldt County in 1991 in the McKinney rezone classification, prompted comments from CDF that there needed to be an overall Master Plan on the McKay Ranch to clearly show CDF what areas would ultimately be reserved for timber production, and those areas that would ultimately be converted to urban use. Since 1991, Humboldt County is now on the brink of completing its Eureka Community Plan that accomplishes just that purpose. The North McKay Tract is one of four areas in the overall McKay Tract that is designated for ultimate urban development. This Immediate Rezoning request only affects the 78-acre North McKay Tract, and does not address the other development areas envisioned in the plan. These other areas -- Freese Avenue, Mid McKay, and South McKay -- would be developed only after ten-year phase outs of TPZ zoning that the County will be initiating shortly after approving its Community Plan in September of 1994.

z/kg-mckay.ps

DEPARTMENT OF FORESTRY AND FIRE PROTECTION

P. O. Box 944246
SACRAMENTO, CALIFORNIA 94244-2460
(916) 653-9422



RECEIVED
BOARD OF SUPERVISORS

August 21, 1995

AUG 28 1995

AM PM
7|8|9|10|11|12|1|2|3|4|5|6

Honorable Bonnie Neely
Chairperson, Board of Supervisors
Humboldt County
235 Fourth Street, Suite F
Eureka, California 95501

RECEIVED

AUG 28 1995

HUMBOLDT COUNTY
PLANNING COMMISSION

Dear Ms. Neely:

The Louisiana-Pacific Corporation has applied for a Timberland Conversion Permit and has submitted a certified copy of your proceedings for April 25, 1995 relative to your request for removal of 89 acres of forest land from the Timberland Production Zone (TPZ).

According to authority delegated to me by the Board of Forestry, I concur in your findings that:

1. The conversion would be in the public interest.
2. The proposed change is consistent with the County's General Plan.
3. The immediate rezoning is not inconsistent with the intent of the state TPZ policies.
4. The immediate rezoning is not inconsistent with the purposes of subdivision (j) of Section 3 of Article XIII of the State Constitution.
5. The conversion would not have a substantial or unmitigated adverse effect upon continued timber growing use, nor upon open space use of other land zoned timberland production within one mile of the land on which the immediate rezoning is proposed.
6. The soils, slopes, and watershed conditions would be suitable for the uses proposed.

Honorable Bonnie Neely
August 21, 1995
Page Two

Therefore, I hereby approve the rezoning of the 89 acres from the TPZ and have issued a Timberland Conversion Permit to the Louisiana-Pacific Corporation for the project.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Wilson". The signature is fluid and cursive, with a large loop at the beginning and a long horizontal stroke at the end.

Richard A. Wilson
Director

bjm

cc: CDF - Santa Rosa
Humboldt- Del Norte Ranger Unit
Ray Jerland, Humboldt Assessor

**COUNTY OF HUMBOLDT
PLANNING DIVISION**

3015 "H" Street, Eureka, CA. 95501

MEMO:

PLEASE EXPEDITE

DATE: October 17, 1995

TO: County Assessor
 County Auditor
 County Tax Collector

FROM: Kevin Caldwell, Senior Planner

SUBJECT: Immediate rezone of TPZ lands in the North McKay Tract as part of the Eureka Community Plan

Ray Jerland requested that I review the status of the Immediate rezone of TPZ lands in the North McKay Tract as part of the Eureka Community Plan. The Board of Supervisors, as part of the Eureka Community Plan approval and adoption, approved the immediate rezone of 89 acres in the Cutten area, known as the North McKay Tract. The approval and adoption of Ordinance 2069 (copy attached) contains language that the Ordinance is "...effective upon notification by the State Board of Forestry of certification of the applicable Timber Conversion Permit."

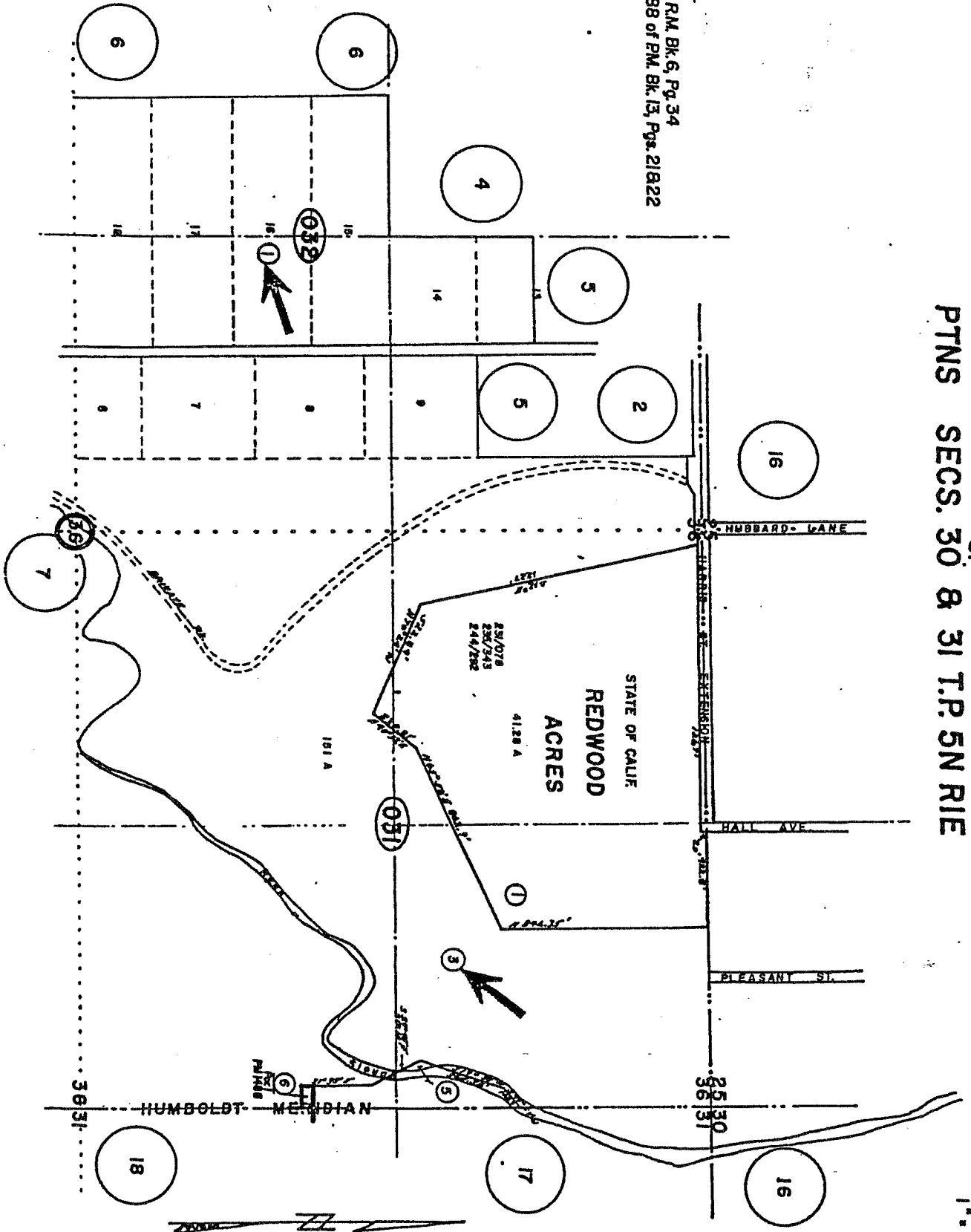
The Board of Forestry, as indicated their letter dated August 21, 1995 (copy attached), has approved the immediate rezone and necessary Timberland Conversion Permit. The notification (letter) was received by the Board of Supervisors on August 28, 1995. Therefore, the zone reclassification became effective upon notification, August 28, 1995.

Pursuant to Section 51142 of the California Government Code (C.G.C.) a tax recoupment fee is imposed on the owner of the land (LP). Within 90 days following the rezoning the **County Assessor** reassess the rezoned land on the basis of the value of the property in its rezoned use. After the **Assessor** certifies the amount to the owner and **County Auditor**, the **Auditor** within 10 days (if no appeal is filed), computes the tax recoupment fee and certifies the amount to the **Tax Collector**. The **Tax Collector** is required to notify the owner in writing of the amount and due date of the fee. Fees are due within 60 days after receipt of notification. The fees are due and payable to the State of California and are placed in the Timber Tax Fund pursuant to Section 38903 of the Revenue and Taxation Code.

If you have any questions or need additional information, please feel free to call me at 445-7541, extension 30.

N1/2 SEC. 36 T.P. 5N. R1W.
 PTNS SECS. 30 & 31 T.P. 5N R1E

McKay Tract, R.M. Bk. 6, Pg. 34
 For P.M. No. 1488 of P.M. Bk. 13, Pgs. 21&22



17-03
 TCA 81-009
 1" = 400'

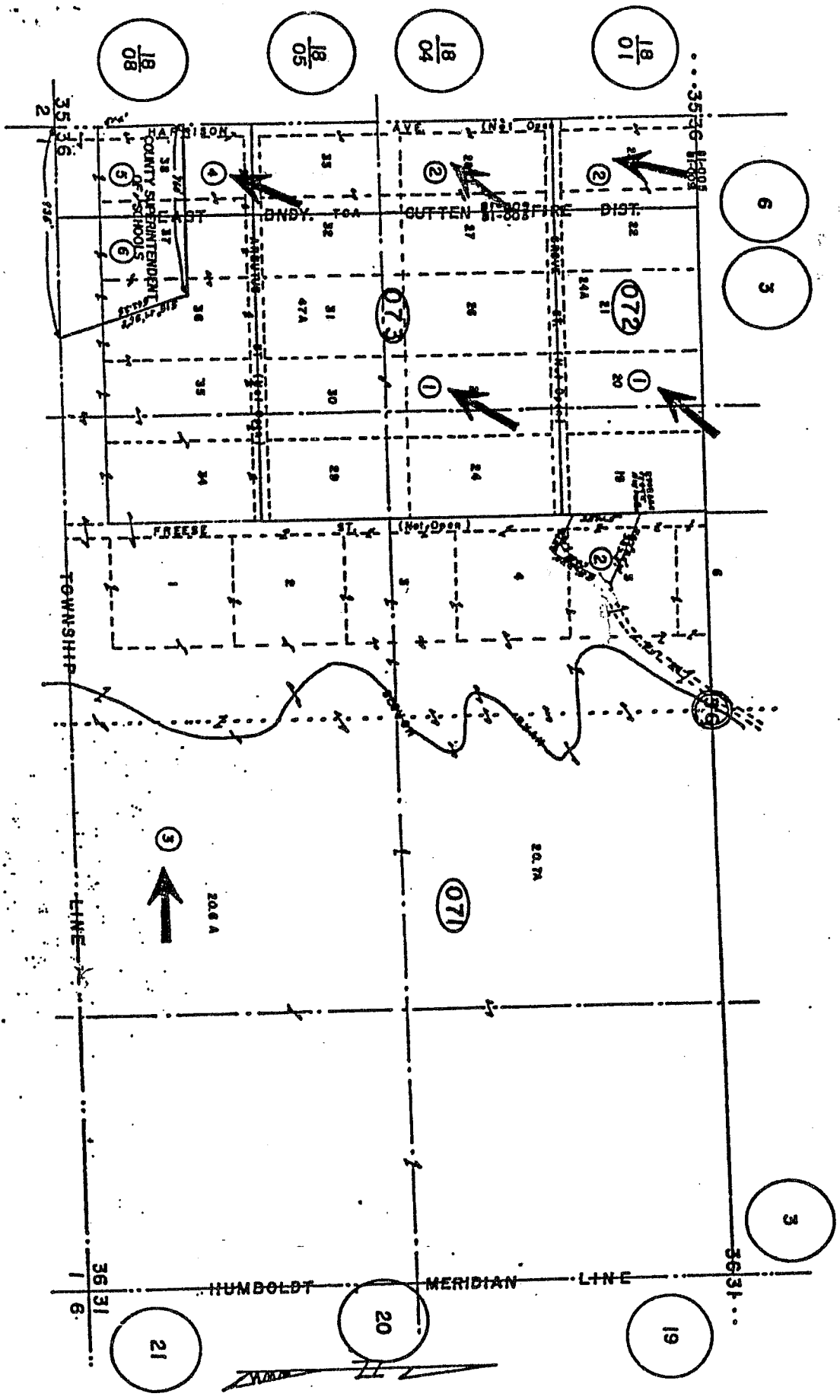
REDU

SCALE IN 1/10 OF AN INCH

S. 1/2 SEC 36 T.P. 5N. R1W

17-07
TCA81-005
81-009
1"=400'

Mekey Tract 6-34



Telecom with Mari Wilson, Assessor
5-13-13

She reports that their records show a April 9, 1996 memo from Assessor Ray Jerland to Neil Price of the Auditor/Controllers office affirming that a tax recoupment fee in the amount of \$290,874 for **93.35** acres of TPZ lands had been paid by L-P Corporation to the County. This covered APNs:

017-071-04, 017-072-02 and 017-073-03 (Whole)
017-031-03, 017-071-03, 017-072-01 and 017-073-01 (Portion)

This would appear to confirm the full extent of the lands rezoned as the 1997 Record of Survey Map prepared for the L-P Corporation LLA that reconfigured four parcels including the Redwood/Cutten Fields ballpark and the current Kramer residential development parcel. The other two parcels of the LLA created full TPZ zoned parcels. The size of the total area per the LLA for the ballpark and Kramer parcel was calculated at **91.98** acres.

Mari has the memo but would like to have her counsel approve its release if needed.

ATTACHMENT 2

Development Agreement and Governing Statutes

January 2022

DEVELOPMENT AGREEMENT BY AND BETWEEN THE COUNTY OF HUMBOLDT AND KRAMER PROPERTIES RELATING TO THE NORTH MCKAY SUBDIVISION PROJECT

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into this ____ day of _____, 2022, by and between the County of Humboldt, organized under the laws of the State of California (“**County**”), Kramer Properties, Inc. a California limited liability company (“**Landowner**”), a California corporation, (collectively referred to as “**Developer**”), pursuant to the authority of Sections 65864 through 65869.4 of the Government Code of the State of California and Title II, Division 17, Chapter 1 of the Humboldt County Code. Developer and County are, from time to time, hereinafter referred to individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs of development, the Legislature of the State of California adopted Section 65864 et seq. of the Government Code (the “**Development Agreement Statute**”), which authorizes the County to enter into a development agreement with any person/entity having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein.

B. Pursuant to Government Code Section 65865(c), the County has adopted rules and regulations establishing procedures and requirements for consideration of development agreements. This Development Agreement has been processed, considered, and executed in accordance with those County rules and regulations. (See Humboldt County Code, Title II, Div. 17 (Development Agreements).) The use of a Development Agreement is appropriate under the stated intent of the relevant provisions of the County Code and the circumstances of the North McKay Subdivision project (“**Project**”) that is the subject of this Agreement.

C. On February 22, 2022 in Resolution No. 22- ____ the County Board of Supervisors (“**Board**”) certified as adequate a Final Environmental Impact Report prepared for the Project pursuant to the California Environmental Quality Act (“**CEQA**”), and conditionally approved the proposed Project, including the related General Plan Amendment and Zone Reclassification.

D. This Agreement relates to the development of the Project pursuant to the approved General Plan Amendment, Zone Reclassification and Tentative Map, including the densities, intensities and uses of the Project Site as depicted on the County Approvals (“**County Approvals**”) and consistent with the Humboldt County General Plan (Plan) approved by the County Board of Supervisors on October 17, 2017.

E. Developer has a legal interest in those certain parcels of land making up the Project site and encompassing approximately 81 acres as diagramed in Exhibit “A” attached hereto, and more particularly described in Exhibit “B,” subdivision map and Exhibit “C,” legal description, attached hereto and incorporated herein (the “**Project Site**” or “**Property**”). Developer represents that it has an equitable and legal interest in the Project Site and that all other persons holding legal

January 2022

or equitable interests in the Project Site are to be bound by this Agreement. The subject of this Agreement is the development of those certain parcels of land within the Project Site.

F. Planning for the Project began in 2008, when a General Plan Petition went before the Board of Supervisors on August 26, 2008. The Board of Supervisors adopted Resolution 08-72 to allow a portion of the project site to change from Residential Low Density (RL) to Residential Medium Density (RM) and Commercial General (CG). Thereafter, the County Planning Division released a Draft EIR prepared pursuant to CEQA for public review and comment (State Clearinghouse No. 2019049166).

G. At its January 6, 2022 meeting, the Planning Commission adopted Resolution No. 22-002 recommending the Board certify the environmental impact report (EIR), and Resolution No. 22-003 recommending the Board approve the proposed Project and related entitlements.

H. On February 22, 2022, the Board certified the Final EIR for the Project and conditionally approved the proposed General Plan Amendment, Zone Reclassification, Tentative Subdivision Map, Planned Unit Development, and Special Permit.

I. Ordinance Number _____ amending Section 311-7 of the Humboldt County Code for the approximate 81-acre Project that is within the Eureka Community Plan Area (Eureka CPA), rezoning of parcels from R-1, with combining zones indicating P, R, and GO, to R-1, R, GO, Apartment Professional (R-4), and C-1 with a Planned Unit Development overlay. The water storage tank location would remain zoned as TPZ, as generally depicted in the Eureka CPA Zoning Map, attached as Exhibit ____.

The County Approvals are attached hereto as Exhibits “D” and are the subject of this Agreement.

J. Based on the County Approvals, the maximum potentially allowable levels of development for the Project Site include up to 146 new single-family residences and 174 multi-family units and 22,000 square feet of commercial and office space.

K. On May 15, 2020, the County Planning Division released a draft Environmental Impact Report (DEIR) prepared pursuant to CEQA for public review and comment (State Clearinghouse No. 2019049166). The public comment period on the DEIR closed on June 29, 2020, and responses to comments were prepared. On October 18, 2021, the County Planning Division released a partially Recirculated Draft Environmental Impact Report (RDEIR) for the project. The public comment period on the RDEIR closed on December 1, 2021, and responses to comments were prepared. On January 6, 2022, the Planning Commission following a duly noticed public hearing recommended the Board certify the EIR and adopt a Statement of Overriding Considerations.

L. On February 3, 2022, the County Planning Commission held a duly noticed public hearing to consider this Agreement and issue a recommendation to the Board pursuant to Government Code Section 65867 and County Code section 2171-13. On February 22, 2022, the Board also held a duly noticed public hearing as required by County Code section 2171-14, made

January 2022

the findings for approval required therein, and voted to adopt this Agreement by Ordinance No. _____.

M. Development Agreement Ordinance. County and Developer have taken all actions mandated by and fulfilled all requirements set forth in the Development Agreement Ordinance of the County (County Code, Title II, Division 17, Section 2171-1 et seq.).

N. The Parties have, in good faith, negotiated the terms hereinafter set forth which carry out the Legislature’s purpose, as set forth in Government Code section 65864 et seq., above and assure the Parties to this Agreement realize a mutually desirable development of the Project Site.

O. Development of the Project will result in significant public benefits as described in the McKay Project approvals attached as Exhibits “D” and as additionally described hereinafter, including, without limitation:

- Comply with the Humboldt County Local Agency Formation Commission (LAFCo) policy to create a more logical service boundary and provide more effective delivery of municipal services by annexing all existing unincorporated islands zoned for development in the HCSD.
- Ensure new residents receive the same level of service as current residents.
- Ensure existing service levels to current County residents are not reduced in order to provide services to the HCSD service area.
- Promote economic vitality by maintaining and expanding small businesses and local services for residents.
- Assist County in meeting housing needs to accommodate forecasted population growth.
- Incorporate parks and open space, including trails, into the project design in a manner that would provide community connectivity and is aesthetically pleasing.
- Promote economic growth through new capital investment for an expanded population and increased tax base.
- Provide a diversity of housing choices in one development that would cater to various segments of the community, including low-cost, single-family homes.
- Provisions for contribution to infrastructure, open space, affordable housing, or other public improvements and amenities of benefit to the County, including reservation, dedication, and improvement of land for public purpose.

P. Development of the Project will necessitate the financing and/or construction of significant improvements that will not only benefit the Project but will benefit the County generally. The County recognizes that the success of the Project depends greatly upon the certainty and timing of further approvals and/or actions by the County necessary to implement the Project,

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including approval of final subdivision maps, conditional use permits, encroachment permits, memoranda of understanding, and design review. Such further approvals and/or actions by the County are referred to herein collectively as (“**Subsequent County Approvals**”). Nothing in this Agreement is intending to bind Non-County Responsible Agencies to issue subsequent permits or approvals which may be needed in the future (“**Non-County Subsequent Approvals**”), including LAFCo action related to Humboldt CSD annexation, CDFW LSAA, CESA and ESA compliance, Section 404 and Section 401 permits, etc..

Q. For the reasons recited herein, Developer and County have determined that the Project is the type of development for which this Agreement is appropriate. The Agreement will eliminate uncertainty in planning and provide for the orderly development of the Project and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

In exchange for these benefits to the County, together with the public benefits that will result from the development of the Project, Developer desires to receive the assurance that it may proceed with the Project in accordance with the County Approvals, Subsequent County Approvals and this Agreement and the ordinances, resolutions, policies, and regulations of the County in effect on the Effective Date of this Agreement, as hereinafter defined, pursuant to the terms and conditions contained in this Agreement. The Parties shall cooperatively collect all documents mentioned in this recital and place them in a three-ring binder to be maintained at all times by the County Clerk. Two true and correct conforming copies of the binder shall be prepared and given to the Developer and Planning Director of the County respectively. The Parties shall rely on the documents in the binder to determine the approvals granted by the County and the ordinances, policies and regulations in effect at the Effective Date of the Agreement.

Now, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the Parties agree as follows:

AGREEMENT

Section 1. General Provisions.

1.A. Incorporation of Recitals, Exhibits. The Recitals set forth above, the introductory paragraph preceding the Recitals, all defined terms set forth in both, and all Exhibits referred to in this Agreement are hereby incorporated into this Agreement as if set forth herein in full.

1.B. Covenants. Each and every purchaser, assignee, or transferee of an interest in the Project Site, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Project site sold, assigned, or transferred to it. Provided, however, notwithstanding anything to the contrary above, if any such sale, assignment or transfer relates to a completed residential or commercial unit or non-residential

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building or a portion thereof, which has been approved by County for occupancy, the automatic termination provisions of Section 6 herein shall apply thereto, and the rights and obligations of Developer hereunder shall not run with respect to such portion of the Project Site sold, assigned or transferred and shall not be binding upon such purchaser, assignee or transferee. Any such sale, assignment or transfer shall constitute a release from this Agreement of Developer as to that Property approved for occupancy except with regard to conditions, covenants, and restrictions imposed on individual properties which are required to effectuate the regulatory actions of County with respect to the Project.

1.C. Effective Date. This Agreement shall become effective upon the recordation of the Agreement, which shall be no later than two months after County's approval of this Agreement. This Agreement shall be recorded against the Property at Developer's expense not more than ten (10) days after County enters into this Agreement, as required by California Government Code section 65868.5 and County Code.

1.D. Term. The term of this Agreement shall commence upon the Effective Date and shall extend 20-years until December 31, 2042, or ninety (90) days following the "**Project Build-out**" as hereinafter defined, whichever is earlier. This Agreement may be extended by the mutual consent of the Parties hereto. For purposes of this Agreement, "Project Build-out" shall mean the date on which the permit final inspection (or comparable instrument) is completed for the last Project improvement or residential home or other structure to be constructed pursuant to the Eureka Community Plan as amended October 23, 2017. Following the expiration of said term, except as otherwise provided for in this Agreement, this Agreement shall be deemed terminated and of no further force and effect. However, Developer's right to receive reimbursement as provided for infrastructure improvements and County's promise to form or impose reimbursement mechanisms, if any, shall survive the term of this Agreement until full reimbursement is received by Developer or for ten (10) additional years, whichever occurs first.

1.E. Priority Enactment. In the event of conflict between the Development Agreement and the County Approvals, the Parties agree that the County Approvals are superior to the Agreement.

1.F. Amendment to Agreement. This Agreement may be amended from time to time by mutual written consent of County and Developer (and/or any successor owner of any portion of the Property to which the benefit or burden of the amendment would apply), in accordance with the provisions of the Development Agreement Statute. If the proposed amendment affects the approved Eureka Community Plan land use designation or zoning of less than the entirety of the Property, then such amendment need only be approved by the owner(s) in fee of the portion(s) of the Property that is subject to or affected by such amendment. If the proposed amendment or minor modification would significantly reduce the amount of revenue anticipated to be received by the County to the extent that County is unable to fund or maintain facilities and/or service commitments to the Property, Developer agrees County may adjust or modify any fee or assessment to mitigate the impact.

January 2022

1.G. Operating Memorandum. County and Developer may implement or clarify provisions of this Agreement through the execution of an “Operating Memorandum” approved by County and Developer, from time to time during the Term. Any such Operating Memorandum shall be automatically deemed a part of this Agreement, but approval, implementation and/or amendment thereof shall not constitute or require an amendment to the Agreement or require public notice or hearing. In the event a provision of any Operating Memorandum conflicts with this Agreement, the Agreement shall control. Such memorandums shall be used for agreed upon extensions of time to perform under this agreement.

1.H. Agreement is Between Developer and County. This Agreement is between Developer and County. Unless otherwise provided by law or provisions of this Agreement, this Agreement does not apply to other governmental agencies not party to this Agreement and whose permit or approval authority is not exercised through, by, or on behalf of County. This Agreement has no effect on the rules, regulations, and fees of other governmental agencies that may have independent permit or approval authority over the Project, including but not limited to, other Non-County Responsible Agencies, and whose permit or approval authority is not exercised through, by, or on behalf of County.

1.I. Project is a Private Undertaking. It is agreed among the Parties that the Project is a private development and the County has no interest therein except as authorized in the exercise of its governmental functions.

1.J. Assignment and Assumption. From and after recordation of this Agreement against the Property, Developer and Developer’s successors in interest shall have the full right to assign this Agreement as to the Property, or any portion thereof, in connection with any sale, transfer or conveyance thereof, and upon the express written assignment by Developer, or its successors in interest, as applicable, and assumption by the assignee of such assignment in the form attached hereto as Exhibit “E”, and the conveyance of Developer’s interest in the Property related thereto, Developer shall, subject to the County’s approval, not to be unreasonably withheld, conditioned, or delayed, be released from any further liability or obligation hereunder related to the portion of the Property so conveyed and the assignee shall be deemed to be the Developer, with all rights and obligations related thereto, with respect to such conveyed property. Developer shall remain subject to that portion of the Agreement that is not so assigned. In determining whether to grant or deny such approval, County shall review the experience and financial resources of the proposed assignee for the purpose of determining the assignee’s ability to implement the Project in conformance with the County Approvals and this Agreement.

1.K. Dispute Resolution. In the event there is a dispute between the parties regarding the County’s administrative interpretation of the Development Agreement, the following process shall be used to resolve such disputes:

The parties shall first attempt to resolve a dispute informally. The Developer shall notify the County of such dispute in writing. Such written notice shall include a description of the contested interpretation of the Development Agreement. Within five (5) working days after notification, an informal meeting shall be held with the Planning Director or his or her designee,

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the Developer or his designee, and the County Administrative Officer or his or her designee, for the purpose of resolving the dispute. If resolved at the informal stage, the parties shall jointly prepare and sign a memorandum setting forth the terms and conditions of the resolution.

If the parties do not resolve the dispute at the informal stage, the Developer shall have ten (10) working days from the date the informal dispute resolution took place to appeal the action to the Board of Supervisors by filing an appeal with the Planning Department. The standard Planning and Building form for appeal shall be used and shall state the grounds for appeal. The fee for an appeal shall apply. The matter shall be placed before the Board of Supervisors as soon as practicable, and within sixty (60) days of the appeal being filed. Notice shall be given by publication on the Board of Supervisor's agenda and the notice provisions in Humboldt County Code section 312-8 do not apply. The Rules of Procedure for the Board of Supervisors shall apply to the appeal hearing. The decision of the Board is final.

Section 2. Definitions.

In this Agreement, unless the context otherwise requires:

2.A. "County" shall mean the County of Humboldt, agencies under its jurisdiction, and agents, officers, employees, representatives and/or any others acting for, by or under the direction of the County. County does not refer to Non-County Responsible Agencies, as defined in this Agreement.

2.B. "Develop" or "Development" shall mean to improve or the improvement of the Property for the purpose of completing the structures, improvements, and facilities comprising the Project, including but not limited to: grading; the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of all of the private improvements and facilities comprising the Project; the preservation or restoration, as required of natural and man-made or altered open space areas; and the installation of landscaping. The terms "Develop" and "Development," as used herein, do not include the maintenance, repair, reconstruction, replacement, or redevelopment of any structure, improvement, or facility after the initial construction and completion thereof.

2.E. "Development Plan" shall mean all of the land use entitlements, approvals, and permits approved by the County for the Project Site on or before the Agreement Date, as the same may be amended from time to time consistent with this Agreement.

2.F. "Development Standards" shall mean the Development Agreement and County Approvals, including but not limited to the General Plan Amendment, including the amendment of the Eureka Community Plan land use map, Zone Reclassification, Tentative Subdivision Map, Planned Unit Development and Special Permit.

2.G. "General Plan" shall mean the Humboldt County General Plan, including the text, maps.

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2.H. “Non-County Responsible Agencies” or “Non-City Responsible Agency” or “Trustee Responsible Agencies,” means any governmental agency or agencies with remaining approval or appeal authority over some aspect of the Project, including but not limited to the Humboldt Local Agency Formation (“LAFCO”) and the California Regional Water Quality Control Board. Non-County Responsible Agencies are not bound by this Agreement for purposes of issuing any remaining permit or approval which may be otherwise required by law.

2.I. “Non-County Subsequent Approvals” shall mean those permits and approvals necessary to implement the Project Approvals that have not been conferred or delegated to the County as of the Effective Date of this Agreement, with the understanding that except as expressly set forth herein, Non-County Responsible Agencies reserve the right to issue permits and approvals which remain within their discretion.

2.J. “Project” shall include all on-site and off-site improvements approved for implementation of the North McKay Ranch Subdivision Project that Developer is authorized and/or required to construct with respect to each parcel of the Property, as provided in this Agreement and the Development Regulations, as the same may be modified or amended from time to time consistent with this Agreement and applicable law.

2.K. “Subsequent County Approvals” shall mean those County approvals necessary to implement the Project Approvals that have not been conferred as of the Effective Date of this Agreement.

Section 3. Development of the Project Site.

3.A. Vested Right to Develop. It is agreed that the development rights, obligations, terms and conditions specified in this Agreement are fully vested in the Developer and may not be changed, modified, invalidated or otherwise limited by County, whether by administrative action, legislative action, or, to the extent allowed by law, vote of the electorate through initiative, referenda and/or other voting process, except as may be expressly permitted by and in accordance with the terms and conditions of the Development Standards or as expressly consented to by Developer.

Should such vested rights not be exercised during the term of this Agreement by Developer by undertaking and completing the contemplated Project, then such vested rights shall not survive beyond the term of this Agreement and any applicable extensions. Should, in the future within the term of this Agreement, any or all of the Project be destroyed by fire, earthquake, or other similar causes, then the Developer, or its successors, shall have a continuing vested right to rebuild or repair such damaged or destroyed structures, infrastructure, public and private facilities and Property as allowed by law within the term of this Agreement and to continue the vested uses granted hereunder.

3.B. Permitted Uses and Development Standards. The Project shall be developed in accordance with the Development Standards. The maximum permitted uses, density and intensity of use, the maximum height and size of proposed buildings, the construction, installation and

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extension of public and private improvements, subdivision standards, development guidelines and standards, implementation program for processing of Subsequent County Approvals, and other conditions of development for the Project Site shall be those set forth in the Development Standards.

3.C. Life of Parcel Maps, Subdivision Maps, County Approvals, Subsequent County Approvals and Permits. Except as otherwise required by law, any discretionary land use approval for the Project, including tentative maps, shall be automatically extended for the Term of this Agreement, by the County, if not otherwise vested by substantial construction. The Term of this Agreement and of any parcel map, subdivision map, tentative map, vesting tentative map, final map, or any other map or any other Subsequent County Approvals shall not include any periods of time during which the Project is delayed by unforeseen circumstances beyond the control of the Developer, including, but not limited to, development or building moratoria, or other governmental restrictions of development or building, or lawsuits adverse to the Developer and/or the Project, including any lawsuits which may be filed under the California Environmental Quality Act, the Subdivision Map Act, or the Planning and Zoning Law. In the event of termination, any tentative subdivision map or tentative parcel map shall remain in effect for twenty-four (24) months. Such tentative subdivision and parcel maps shall also otherwise be eligible for extensions as may be provided for by statute.

3.D. Timing of Development and Phasing; Effect of *Pardee* Decision. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, that failure of the parties to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the intent of the Developer and County to cure that deficiency by acknowledging and providing that Developer shall have the right (without the obligation) to develop the Property in such order and at such rate and at such time as it deems appropriate within the exercise of its subjective business judgment, subject to the terms of this Agreement. Phasing shall be in accordance with the County approvals as may be amended. Developer may apply for final subdivision maps as the Developer determines in its sole discretion, provided the timing of the application for final subdivision maps complies or is not inconsistent with the Policies of the Eureka Community Plan as adopted by the Board of Supervisors and which may be amended by the Board. The County may not impose additional restrictions on the phasing of final maps except as permitted by the Subdivision Map Act.

3.E. Compliance with CEQA. The Parties acknowledge that the Final EIR prepared for the Project complies with CEQA. The Parties further acknowledge that (i) the DEIR and Final EIR contain a thorough analysis of the Project and possible alternatives to the Project, (ii) the Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (iii) the Board of Supervisors adopted a statement of overriding considerations in connection with the Project, pursuant to CEQA Guidelines Section 15093, for those significant impacts that could not be mitigated to a less than significant level. The DEIR and Final EIR for the Project is intended to be used in connection with each of the Subsequent County Approvals needed for the Project consistent with the Public Resources Code and the CEQA Guidelines, which streamlines the review of the Project and reduces the need to

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prepare repetitive environmental studies. Consistent with the CEQA policies and requirements applicable to the DEIR and FEIR, the EIRs will be used to the fullest extent allowed by law in connection with the processing of any Subsequent County Approval. Additional environmental review may only be required by County, in strict conformity with the terms and intent of the Public Resources Code and the CEQA Guidelines. (Pub. Resources Code, § 21166; CEQA Guidelines, § 15163).

3.F. Changes to Development Standards. Only the following changes to the Development Standards shall apply to the development of the Project Site.

3.F.1. Development of the Project Site shall be subject to the rules, regulations, ordinances, and official policies applicable to such development on the Effective Date of Agreement or as will become effective pursuant to the Development Standards and Subsequent County Approvals. To the extent any future changes in the plans, zoning, ordinances, or any future rules, ordinances, regulations, or policies adopted by County purport to be applicable to the Project, the terms of the Agreement shall prevail, unless the Parties thereto mutually agree to amend or modify the Agreement. All improvements that will be dedicated to the City of Eureka or County of Humboldt shall be constructed to the most current federal and state ADA requirements at the time that the improvement is constructed. Traffic signals shall be constructed to the most current standards of the City of Eureka at the time that the improvement is constructed.

3.F.2. The Agreement shall not prevent the County, in subsequent actions applicable to the Property, from applying new rules, regulations, and policies which do not conflict with the terms and conditions of the Agreement, nor shall the Agreement prevent the County from denying or conditionally approving any subsequent development application on the basis of such existing or new rules, regulations, and policies.

3.F.3. In the event State or federal laws or regulations enacted after the effective date of the Agreement prevent or preclude compliance with one or more provisions of the Agreement, such provisions of the Agreement shall be modified or suspended as may be necessary to comply with such State or federal laws or regulations. Said modification or suspension shall be noticed and heard in accordance with the procedures set forth in Section 2171-12 of the County Code. The Agreement shall not preclude County from applying to those changes in County plans, regulations and policies which are specifically mandated by changes in State or federal laws or regulations. Provided, however, that said changes shall not be applied to the Project Approvals where County has discretion how to comply with said directives so as to not affect the Project and this Agreement.

3.F.4. Authority of County. This Agreement shall not be construed to limit the authority or obligation of County to hold necessary public hearings, or to limit discretion of County or any of its officers or officials with regard to rules, regulations, ordinances, laws and entitlements of use which require the exercise of discretion by County or any of its officers or officials, provided that subsequent discretionary actions shall comply with the Applicable Rules and shall not unreasonably prevent or delay development of the Property. Nothing in this Agreement shall

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preclude the County from taking those actions it deems necessary and essential to protect public health and safety; to the extent such actions are inconsistent with the County Approvals, however, the County's actions shall be narrowly tailored to address the identified public health and safety concern, and the County shall minimize any inconsistency with the County Approvals. No official or employee of COUNTY shall be personally liable for any default or liability under this Agreement.

Section 4. Obligations of Developer.

In consideration of County entering into this Agreement, Developer agrees that it will comply with this Agreement and County Approvals. The Parties acknowledge that the execution of this Agreement by County is a material consideration for both Developer's acceptance of, and agreement to comply with, the terms and conditions of this Agreement and County Approvals.

4.A. Development and Connection Fees. Except as otherwise specifically provided in this Agreement, any and all required payments of development and connections by developer shall be made at the time and in the amount specified by County ordinances in effect as of the Effective Date.

4.B. Costs. Developer shall bear all costs associated with applying for and obtaining any necessary Non-County Responsible Agency approvals. Developer, at no cost to the County that is not a cost approved by the County, shall be solely responsible for complying with any Non-County Responsible Agency approval(s) and any and all conditions or restrictions imposed as part of a Non-County Responsible Agency approval, whether the conditions are on the Project Site or outside the Project Site. Developer shall have the right to appeal or contest any condition in any manner permitted by law imposed under any Non-County Responsible Agency approval, but only with the prior consent of County if the County is a co-applicant or co-permittee or the appeal impacts the rights, obligations, or potential liabilities of the County. If Developer demonstrates to the County's satisfaction that an appeal would not affect the County's rights, obligations, or potential liabilities, County shall not unreasonably withhold or delay its consent. In all other cases, County shall have the right to give or withhold its consent in its sole discretion. Developer must pay or otherwise discharge any fines, penalties, or corrective actions imposed as a result of Developer's failure to comply with any Non-County Responsible Agency approval(s), and Developer shall indemnify County for all losses relating to Developer's failure to comply with any Non-County Responsible Agency approvals.

4.C. McKay Community Forest Trail. Within ninety (90) calendar days from the date that this Agreement is fully executed, Developer shall deliver to County a fully executed easement deed fulfilling the trail dedication set forth in Public Works Condition of Approval 1.6(e).

Section 5. Obligations of County.

In consideration of Developer entering into this Agreement, County agrees that it will comply with this Agreement, and County Approvals, and will proceed with processing any and all Subsequent County Approvals in accordance with and consistent with the terms of this Agreement

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and with the County Approvals. The Parties acknowledge that the execution of this Agreement by County is a material consideration for both Developer's acceptance of, and agreement to comply with, the terms and conditions of this Agreement and County Approvals.

5.A. Vested Rights. Developer is assured, and County agrees, that development rights, terms and conditions as specified in the Development Standards are fully vested in Developer and may not be changed or modified by County except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, or as expressly consented thereto by Developer to the extent such proposed change or modification is applicable thereto.

5.B. No Conflicting Enactments. Other than a referendum overturning this Agreement initiated and passed by the voters of Humboldt County, neither County, nor any agency of County, shall recognize, enact and apply to the Project Site any ordinance, resolution or other measure of any type which would have the effect of invalidating or otherwise limiting the vested rights granted by this Agreement. Except as provided for in this Agreement and the County Approvals no such action or enactment shall dictate any particular sequence, timing or phasing of the Project. By way of example and without limiting the foregoing general statement, and for all purposes pursuant to this Agreement generally, and this Section specifically, an ordinance, resolution or other measure, including an initiative shall be deemed to conflict with this Agreement if the ordinance, resolution or other measure seeks to accomplish any one or more of the following results, either with specific reference to the Project Site or as part of a general enactment that applies to the Project Site:

(a) Limit or reduce the density or intensity of the Project development as set forth in the Development Standards or otherwise require any reduction in the height, number, size or square footage of lots, structures, or buildings;

(b) Expand or increase Developer's obligations under the Development Standards with respect to the provision of streets, roadways, and/or any other public or private improvements or structures;

(c) Limit or control in any manner the timing or phasing of the construction/development of the Project within any phase of the Development allowed by the County Approvals and this Agreement;

(d) Limit the location of buildings, structures, grading or other improvements relating to the development of the Project in a manner which is inconsistent with or more restrictive than the Development Standards;

(e) Limit the processing of applications for, or procurement of Subsequent County Approvals;

(f) Establish, enact or increase in any manner applicable to the Project, or impose against the Project, any fees, taxes (including, without limitation, general, special, and excise taxes), assessments, liens or other financial obligations other than those specifically

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permitted by this Agreement as increased from time to time in order to offset inflationary cost adjustments as determined by County;

(g) Initiate, support or establish any assessment district or other public financing mechanism that would include or otherwise burden or affect the Project or the Project Site that has not been established under this Agreement, other than such mechanisms which would apply county-wide and not to the Project specifically.

5.C. Police Power and Taxing Power. County, through the exercise of either its police power or its taxing power, whether by direct County action or initiative or referendum, shall not establish, enact or impose any additional conditions, dedications, fees, and other exactions, policies, standards, laws or regulations which directly relate to the Project development. Further, County shall not approve a Mello-Roos assessment, or other type of district to cause bonded indebtedness on any portion of the Project without Developer's prior written approval, which approval may be given or withheld in Developer's sole and absolute discretion. Nothing herein prohibits the Project from being subject to a (i) County-wide bond issue, (ii) County-wide special or general tax, (iii) special –assessment for the construction or maintenance of a County-wide facility as may be voted on by the electorate or otherwise enacted; provided that such tax, assessment or measure is Countywide in nature, does not discriminate against the Land, and does not distinguish between developed and undeveloped parcels, or (iv) increases in land use fees based on an inflation or cost of construction in formula that was adopted as of the effective date, provided that such revised fees apply generally to similar projects or works within the County.

This Agreement shall not be construed to limit the authority of County to charge processing fees for land use approvals, building permits as they relate to plumbing, mechanical, electric or fire code permits, or other similar permits and entitlements which are in force and effect on a County-wide basis at the time those permits are applied for except to the extent any such processing regulations would be inconsistent with this Agreement.

5.D. Credits and Reimbursements.

5.D.1. Credits and Reimbursements. Developer may, pursuant to this Agreement, finance the construction of certain improvements which would otherwise be paid by the County or other parties and which serve other properties or which would be financed by existing County fees. County and Developer agree that, except as otherwise provided in this Agreement, Developer shall be entitled to grants, credits and/or reimbursement for the construction of improvements costing in excess of its fair share for such improvements consistent with the terms of each separate reimbursement/credit or grant program.

5.D.2. Reimbursement by Third Parties. In the case of public improvements, if any, which abut property owned by third persons or for other public improvements that are oversized or extended to benefit property owned by third persons, as analyzed in the environmental impact report and as approved by the County, Developer shall be entitled to receive a reimbursement from the benefited property's owner (and not the County) for the pro rata cost of the improvements which exceed Developer's obligation. Reimbursement may be provided directly

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from the owner abutting such improvements or from a community facilities district or any such other infrastructure financing district if such a district is formed by or includes such properties and includes monies for the construction of said improvements.

County shall use its best efforts, to the extent County has the authority to do so, to impose the obligation to pay said reimbursement, as a condition of development of such benefited property, at the time such property owner requests a discretionary approval or other such entitlement from County for development of the benefited property whereby such condition can be imposed. Such reimbursement shall be due and payable on the earlier of issuance of a building permit on the benefited property, recordation of a final parcel or subdivision map for the benefited property or receipt of funds from an infrastructure financing district that is formed by or includes such benefited property. County's obligation to impose such condition and collect such reimbursement shall terminate upon any termination of this Agreement. County shall have no obligation to make any payments to Developer unless and until it receives any such reimbursement amount from a third-party source.

5.D.3. Reimbursable Hard Costs. The hard costs of construction to be reimbursed to Developer by the County or a third party or to be paid by Developer to any third party in accordance with the terms of this Agreement shall consist of the identifiable and commercially reasonable costs of the design, engineering and construction as actually incurred by Developer or such third party for the reimbursable work.

5.D.4. Interest on Reimbursements. In each case in which this Agreement provides that Developer is entitled to receive reimbursement for improvements from third parties or is required to pay reimbursement to third parties, Developer shall be entitled to receive, or be obligated to pay, interest on the amount to be reimbursed as determined by the Board of Supervisors on a case-by-case basis.

5.D.5. Term for Credits and Reimbursements. County's obligation to provide any credits or to pay any reimbursements to Developer that accrue hereunder shall remain and continue during the term of this Agreement.

5.D.6. Not a Limitation. Nothing in this section 5.D. is intended to or shall be construed to limit Developer from receiving, in consideration of the improvements to be constructed by Developer hereunder, any other credits or reimbursements from County otherwise provided under the existing County policy, rule, regulation or ordinance.

5.D.7. Attribution of Development Fee Credits. County and Developer agree and understand that any fee credits obtained by Developer for Development Fee programs as a result of expenditures of Developer on public infrastructure improvements may be transferred or assigned by Developer to another subsequent landowner or other third party within the Project, but only in the manner provided for in each County reimbursement program that provided for the credit. The transfer of credits shall be in compliance with the requirements and provisions of this Agreement or of the credit agreements, if any, entered into between the County and Developer that granted the fee credits in the first instance.

5.E. Applications for Permits and County Approvals.

5.E.1. Timely Processing. County agrees that it will accept, in good faith, for processing review and action, all complete applications for development permits or other entitlements for use of the Property in accordance with the County Approvals and this Agreement, and shall exercise its best efforts to act upon such applications in an expeditious manner. Accordingly, to the extent that the applications and submittals are in conformity with the County Approvals, applicable law, and this Agreement, County agrees to diligently and promptly accept, review and take timely action on all Subsequent County Approvals and any environmental review required thereon in furtherance of the Project. Similarly, County shall promptly and diligently review and approve improvement plans, conduct construction inspections and accept completed facilities.

5.E.2. Cooperation to Obtain Permits. The Parties acknowledge that implementation and development of the Project will require approval of Non-County Responsible Agencies. The County will cooperate with reasonable requests by Developer to obtain permits, agreements, or approvals from Non-County Responsible Agencies. The County's commitment to Developer under this Agreement is subject to the following conditions:

(a) Throughout the approval or appeal process for any Non-County Responsible Agency approval or appeal, Developer shall consult and coordinate with County, and County shall cooperate reasonably with Developer.

(b) Developer shall not agree to conditions or restrictions in any Non-County Responsible Agency approvals that could create any obligations on the part of the County, unless County agrees to assume such obligations.

5.F. Overriding Federal and State Laws and Regulations.

5.F.1 Federal and state laws and regulations that override Developer's vested rights set forth in this Agreement, shall apply to the Property, together with any non-discriminatory County ordinances, resolutions, regulations, and official policies that are necessary to enable County to comply with the provisions of any such overriding federal or state laws and regulations, provided that (i) Developer does not waive its right to challenge or contest the validity of any such purportedly overriding federal, state, or County law or regulation; and (ii) upon the discovery of any such overriding federal, state, or County law or regulation that is not consistent with the provisions of this Agreement or otherwise prevents or precludes compliance with any provision of this Agreement, County or Developer shall provide to the other Party a written notice identifying the federal, state, or County law or regulation, together with a copy of the law or regulation and a brief written statement of the conflict(s) between that law or regulation and the provisions of this Agreement. Promptly thereafter County and Developer shall meet and confer in good faith in a reasonable attempt to determine whether a modification or suspension of this Agreement, in whole or in part, is necessary to comply with such overriding federal, state, or County law or regulation. In such negotiations, County and Developer agree to preserve the terms of this Agreement to the

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maximum feasible extent while resolving the conflict. County also agrees to process in a prompt manner Developer's proposed changes to the Project and any of the Development Regulations as may be necessary to comply with such overriding federal, state, or County law or regulation; provided, however, that the approval of such changes by County shall be subject to the discretion of County, consistent with this Agreement.

Section 6. Default, Enforcement, Termination.

6.A General Provisions. Subject to extensions of time by mutual consent in writing, failure or delay by either County, Developer or member of Developer not released from this Agreement to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any term or condition of this Agreement, the Party alleging such default or breach shall give the other Party or Developer not less than thirty (30) days' notice in writing specifying the nature of the alleged default and the manner in which said default may be cured. During any such thirty (30) day period, the Party or Developer charged shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice and expiration of the thirty (30) 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 or Developer to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement or give notice of its intent to terminate this Agreement pursuant to California Government Code Section 65868 and any regulations of the County implementing said Government Code section. Following notice of intent to terminate, the matter shall be scheduled for consideration and review in the manner set forth in Government Code Sections 65865, 65867 and 65868 and County regulations implementing said sections by County within thirty (30) calendar days.

Following consideration of the evidence presented in said review before County and an additional 30-day period to cure, either party alleging the default by the other party or member of Developer may institute legal proceedings or may give written notice of termination of this Agreement to the other party.

Evidence of default may also arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code Section 65865.1. If either party determines that a party is in default following the completion of the normally scheduled periodic review, said party may give written notice of termination of this Agreement specifying in said notice the alleged nature of the default, and potential actions to cure said default where appropriate, if the alleged default is not cured in thirty (30) days or within such longer period specified in the notice, or the defaulting party waives its right to cure such alleged default, this Agreement may be terminated by County or Developer.

6.B. Annual Review. County shall review the extent of good faith compliance by Developer with the terms of this Agreement at least every twelve (12) months from the date this Agreement is entered into. Such periodic review shall be limited in scope to compliance with the

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terms of this Agreement pursuant to Section 65865.1 of the Government Code, Section 2171-17 of Title II, Division 17 of the County Code, and the monitoring of mitigation in accordance with Section 21081.6 of the Public Resources Code of the State of California. Notice of such annual review shall include a statement that any review of obligations of Developer as set forth in this Agreement may result in termination of this Agreement. The Planning Commission, after a public hearing, shall determine on the basis of substantial evidence whether or not the Developer has, for the period under review, complied in good faith with the terms and conditions of this Agreement. A finding by the Planning Commission of good faith compliance by Developer with the terms of this Agreement shall be conclusive with respect to the performance of Developer during the period preceding the review.

Upon not less than sixty (60) days' notice by the County, Developer shall provide evidence at least thirty (30) days prior to the scheduled hearing in order to prove compliance with this Agreement.

6.C. Enforced Delay: Extension of Time Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walk-outs, riots, floods, force of nature, earthquakes, fires, or similar basis for excused performance which is not within the reasonable control of the party to be excused. Litigation attacking the validity of this Agreement, any of the County Approvals, Subsequent County Approvals, or any permit, ordinance, entitlement or other action of a governmental agency necessary for the development of the Project pursuant to this Agreement shall be deemed to create an excusable delay as to Developer. Upon the request of either party hereto, 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 by Developer and the County Administrative Officer.

6.D. Permitted Extensions by County. The County, in its reasonable discretion, may extend the time for performance by Developer of any obligation hereunder during the term of this Agreement. Any such extension shall not require an amendment to this Agreement, so long as such extension only involves the time for performance thereof and does not change the obligations to be performed by Developer as a condition of such extension.

6.E. Applicable Law/Venue/Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Humboldt, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court. If either party shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any provision of this Agreement to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees, including the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal, if applicable. As used herein,

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“prevailing party” means the party who dismisses an action or proceeding in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

6.F Termination.

6.F.1. Termination Upon Completion of Development. This Agreement shall terminate upon the expiration of the Term or when the Project Site has been fully developed and all of Developer’s obligations in connection therewith are satisfied as determined by County. This Agreement shall automatically terminate and be of no further force or effect as to any single-family residence, any other residential dwelling unit(s) or any non-residential building, and the lot or parcel upon which such residence or building is located, when it has been approved by County for occupancy. Further, this Agreement shall automatically terminate upon entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement or upon the adoption of a referendum measure overriding or repealing the ordinance approving this Agreement. Upon termination of this Agreement, in whole or in part, County shall record a notice of termination in a form, which may be reasonably required by a title company.

6.F.2. Effect of Termination upon Developer Obligations. If this Agreement is terminated following any event of default of Developer or for any other reason, such termination shall not affect the validity of any building or improvement within the Property which is completed as of the date of termination, provided that such building or improvement has been constructed pursuant to a building permit issued by the County. Furthermore, no termination of this Agreement shall prevent Developer from completing and occupying any building or other improvement authorized pursuant to a valid building permit previously issued by the County that is under construction at the time of termination, provided that any such building or improvement is completed in accordance with said building permit in effect at the time of such termination.

6.F.3. Effect of Termination upon County. Upon any termination of this Agreement as to Developer of the Project Site, or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the Project Site affected by such termination (provided vesting of such entitlements, conditions or fees may then be established for such property pursuant to then-existing planning and zoning laws) and the County shall no longer be limited, by this Agreement, to make any changes or modifications to such entitlements, conditions or fees applicable to the Project Site or any portion thereof.

7. Miscellaneous Provisions.

7.A. Enforceability. The County agrees that, except as otherwise provided in this Agreement (specifically Section 6, above), unless this Agreement is amended or canceled pursuant

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to the provisions of this Agreement and the adopting ordinance, this Agreement shall be enforceable according to its terms by any party hereto notwithstanding any change hereafter in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance or building regulation adopted by County, or by initiative, which changes, alters or amends the rules, regulations and policies applicable to the Project at the time of approval of this Agreement, as provided by Government Code Section 65866.

7.B. Notices. Any notice or communication required hereunder between County or Developer must be in writing and may be given either personally or by registered or certified mail, return receipt requested, or by overnight or other courier service. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent or (ii) five (5) days after refusal of delivery of a registered or certified letter containing such notice, properly addressed, with postage prepaid. If personally delivered, a notice shall be deemed to have been given when delivered to the party or refused by 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. Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted to the new address. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to County, to:

Humboldt County Planning and Building Department
3105 H Street
Humboldt, California 95501
Attn: Planning Director

If to Developer, to:

Kramer Properties, Inc.
1589 Myrtle Ave, Suite B
Eureka, CA 95501

7.B. Estoppel Certificate. Within forty-five (45) days following any written request which either party may make from time to time, the other party to this Agreement shall execute and deliver to the requesting party a statement certifying that: (i) This Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modification; (ii) There are no current uncured defaults under this Agreement or specifying the dates and nature of any such default; and (iii) Any other reasonable information requested.

The failure to deliver such a statement within such time shall constitute a conclusive presumption against the party which fails to deliver such statement that this Agreement is in full

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force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting parties, and as to such other information reasonably requested by the requesting party. Developer shall be entitled to one estoppel certificate per year without any fee being assessed by County. For any additional estoppel certificates requested in a single year County may charge Developer a reasonable fee directly related to the actual cost to prepare the certificate. County acknowledges that a certificate hereunder may be relied on by transferees and mortgages of Developer.

7.C. Mortgagee Protection. The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. County acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. County will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee, has submitted a request in writing to the County in the manner specified herein for giving notices, shall be entitled to receive written notification from County of any default by Developer in the performance of Developer's obligations under this Agreement.

(c) If County timely receives a request from a Mortgagee requesting a copy of any notice of default given to Developer under the terms of this Agreement, County shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Developer. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement.

7.D. Third Party Beneficiary. Nothing herein shall be construed to create any right of a third party to enforce this Agreement or to seek any benefit therefrom.

7.E. Third Party Challenger. Developer shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless County, its officers, agents, employees, and

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independent contractors from any claim, action or proceeding against County, its officers, agents, employees, or independent contractors to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. County shall promptly notify Developer of any such claim, action or proceeding, and County shall cooperate in the defense. If County fails to promptly notify Developer of any such claim, action or proceeding, or if County fails to cooperate in the defense, Developer shall not thereafter be responsible to defend, indemnify, or hold harmless County. County may in its discretion participate in the defense of any such claim, action or proceeding.

7.F. Indemnity. In addition to the provisions of 7.E. above, Developer shall indemnify and hold County, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of Developer, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (Developer's employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, failure and conveyance of the public improvements, save and except claims for damages arising through the sole active negligence or sole willful misconduct of County. Developer shall defend, at its expense, including attorneys' fees, County, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions. County may in its discretion participate in the defense of any such legal action.

7.G. General Insurance Requirements. Without limiting the parties' indemnification obligations hereunder, each party shall maintain in full force and effect, at its own expense, any and all appropriate insurance policies including, but not limited to: comprehensive general liability insurance, comprehensive automobile insurance, workers' compensation, and professional liability policies.

7.H. Environment Assurances. Developer shall indemnify and hold County, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of Developer, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, and OWNER shall defend, at its expense, including attorneys' fees, County, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. County may in its discretion participate in the defense of any such action.

7.I. Reservation of Rights. With respect to Sections 7.E., 7.F., and 7.H. herein, County reserves the right to either (1) approve the attorney(s) which Developer selects, hires or otherwise engages to defend County hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense, provided, however, that Developer shall reimburse County forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor.

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7.J. Survival. The provisions of Sections 6 and 7.E. through 7.I. inclusive, shall survive the termination of this Agreement.

7.K. Consistency with General Plan. County hereby finds and determines that execution of this Agreement furthers the public health, safety, and general welfare of the community and that the provisions of this Agreement are consistent with the General Plan, as amended by the Project.

7.L. Invalidity of Agreement/Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid or unenforceable, or, if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of California which became effective after the Effective Date of the adopting ordinance, and either party in good faith determines such provisions are substantial material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

7.M. Other Necessary Acts. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

7.N. Conflict Between Agreement and Exhibits. If a conflict exists between the terms of the Agreement and the Exhibits, the Agreement shall control over the inconsistent portion of any exhibit, except to the extent the exhibits are County Approvals in which case the County Approvals shall control.

7.O. Captions. The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

7.P. Entire Agreement: Counterparts and Exhibits. This Agreement is executed in three (3) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of _____ pages and exhibits A through E which constitute, in full, the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

7.Q. Binding Effect and Recordation of Development Agreement. The burden of this Agreement shall bind, and its benefits shall inure to the successors-in-interest of the County and Developer. No later than ten (10) days after County enters into this Agreement, the County Clerk shall at Developer's expense record an executed copy of this Agreement in the Official Records of the County of Humboldt.

7.R. Authority to Execute. Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this

January 2022

Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.

DRAFT

January 2022

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto on the day and year first above written.

First Corporate Officer

By _____
Name and Title

Second Corporate Officer

By _____
Name and Title

County:
County of Humboldt

By: _____
Chairman, Board of Supervisors

ATTEST: County Clerk

By: _____
Its: _____

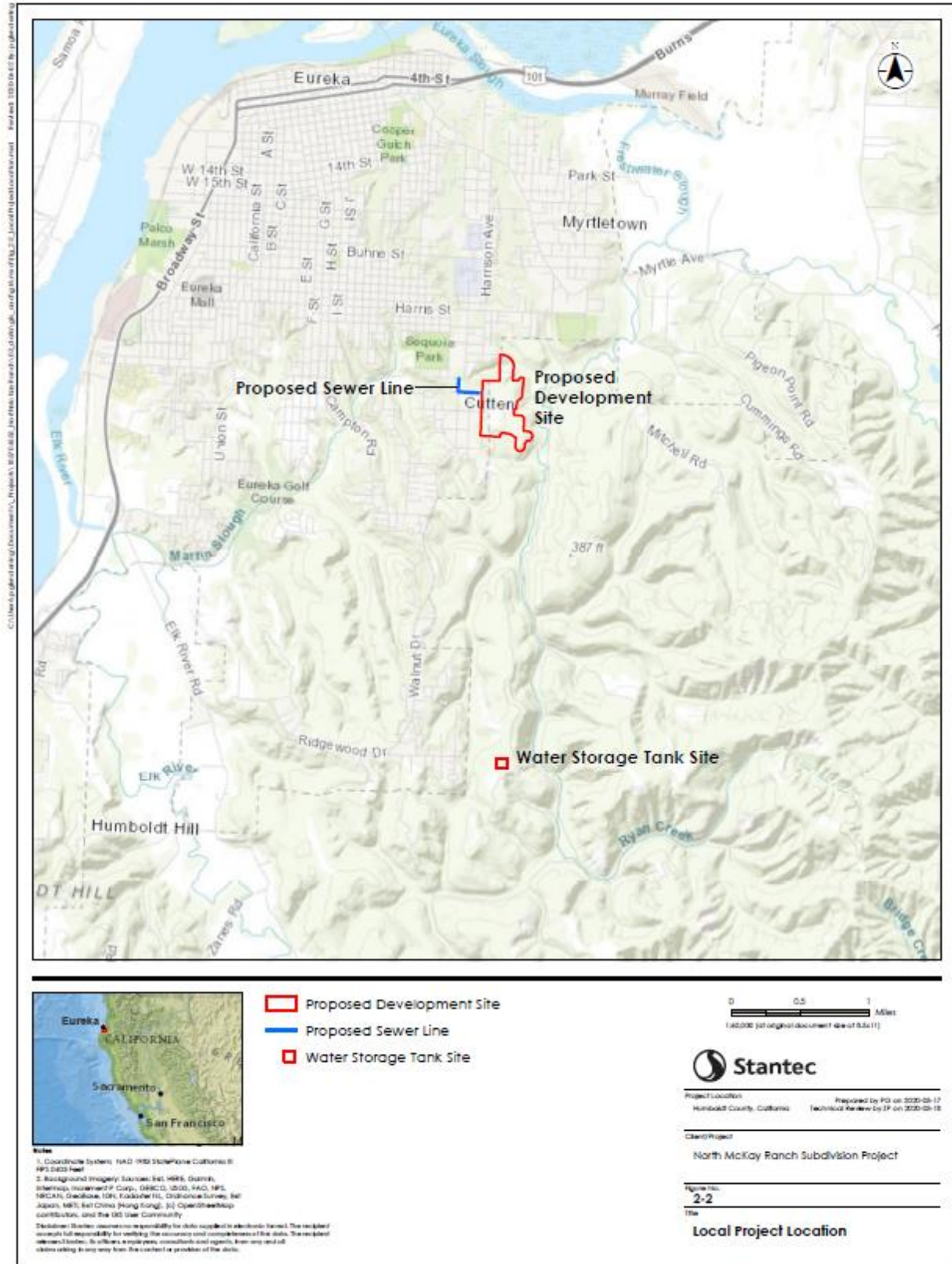
APPROVED AS TO FORM

County Counsel

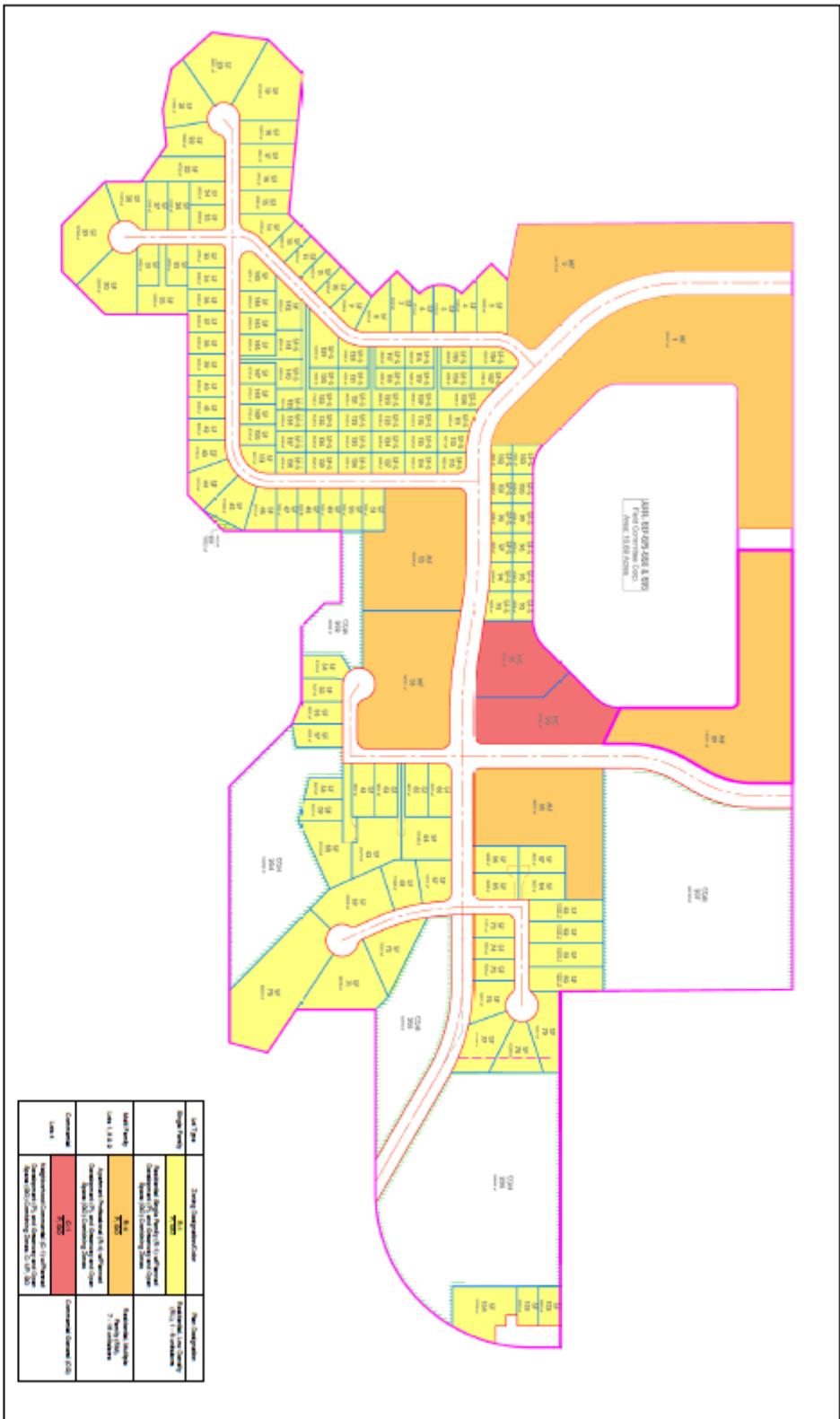
By _____

Exhibits A through E

DRAFT



Source: Onfiveros & Associates, May 2019



PROJECT LOCATION
 Humboldt County, CA
 PROJECT NO. 2020-04-03
 DATE: 05/15/2020

CLIENT
 North McKay Ranch Subdivision Project

FIGURE NO.
 2-3

PROPOSED LAND USE DESIGNATIONS

DESCRIPTION

That real property situate in the County of Humboldt, State of California, described as follows:

PARCEL A:

That portion of the West Half of Section 36, Township 5 North, Range 1 West, and of the Northwest Quarter of Section 1, Township 4 North, Range 1 West, Humboldt Meridian, in the County of Humboldt, State of California, as described in the Deed to Louisiana-Pacific Corporation, recorded February 2, 1978 in Volume 1468 of Official Records, Page 335, in the Office of the Humboldt County Recorder, described as follows:

BEGINNING at the Northwest corner of the property conveyed to Humboldt County Schools by the Deed recorded in Book 964 of Official Records, Page 1, said point being on the West line of said Section 36;

- thence North 00 degrees 29 minutes 39 seconds East, 2136.41 feet to the West Quarter Corner of said Section 36;
- thence South 89 degrees 57 minutes 33 seconds East, 645.29 feet to the Southwest corner of the East Half of the Southwest Quarter of the Northwest Quarter of said Section;
- thence along the West line of said East Half of the Southwest Quarter of the Northwest Quarter of Section 36, North 00 degrees 24 minutes 58 seconds East, 991.88 feet;
- thence South 89 degrees 30 minutes 20 seconds East, 84.36 feet to the beginning of a curve concave to the Southwest having a radius of 430.00 feet;
- thence Easterly, Southeasterly and Southerly, 675.44 feet along said curve through a central angle of 90 degrees 00 minutes 00 seconds;
- thence South 00 degrees 29 minutes 40 seconds West, 511.04 feet;
- thence South 89 degrees 30 minutes 20 seconds East, 220.00 feet;
- thence North 34 degrees 11 minutes 04 seconds East, 144.22 feet;
- thence South 74 degrees 30 minutes 20 seconds East, 109.74 feet;
- thence South 00 degrees 29 minutes 40 seconds West, 714.30 feet;
- thence South 45 degrees 29 minutes 40 seconds West, 245.68 feet;
- thence South 23 degrees 15 minutes 29 seconds West, 67.99 feet;
- thence South 00 degrees 29 minutes 40 seconds West, 210.00 feet;
- thence South 45 degrees 29 minutes 40 seconds West, 91.92 feet;
- thence North 89 degrees 30 minutes 20 seconds West, 45.00 feet;
- thence South 00 degrees 29 minutes 40 seconds West, 200.29 feet;
- thence South 89 degrees 30 minutes 20 seconds East, 326.11 feet;
- thence South 44 degrees 30 minutes 20 seconds East, 141.27 feet;
- thence South 00 degrees 29 minutes 40 seconds West, 503.62 feet;
- thence South 89 degrees 30 minutes 20 seconds East, 230.00 feet;
- thence South 44 degrees 30 minutes 20 seconds East, 169.71 feet;
- thence South 00 degrees 29 minutes 40 seconds West, 130.00 feet;
- thence South 45 degrees 29 minutes 40 seconds West, 169.71 feet;
- thence North 89 degrees 30 minutes 20 seconds West, 100.00 feet;
- thence South 35 degrees 29 minutes 11 seconds West, 122.07 feet;
- thence South 05 degrees 09 minutes 36 seconds East, 101.49 feet;
- thence South 12 degrees 32 minutes 22 seconds West, 115.69 feet;
- thence South 48 degrees 25 minutes 38 seconds West, 152.03 feet;
- thence North 82 degrees 11 minutes 50 seconds West, 158.42 feet;
- thence North 44 degrees 27 minutes 49 seconds West, 134.72 feet;
- thence North 06 degrees 03 minutes 57 seconds East, 392.58 feet;
- thence North 44 degrees 30 minutes 20 seconds West, 325.00 feet;
- thence South 45 degrees 29 minutes 40 seconds West, 100.00 feet;
- thence North 44 degrees 30 minutes 20 seconds West, 88.10 feet to a non-tangent curve concave to the North, having a radius of 83.00 feet and to which a radial line bears North 44 degrees 30 minutes 20 seconds West;
- thence Southwesterly, Westerly and Northwesterly, 130.38 feet along said curve, through a central angle of 90 degrees 00 minutes 00 seconds;
- thence on a radial line, South 45 degrees 29 minutes 40 seconds West, 118.00 feet;
- thence North 44 degrees 30 minutes 20 seconds West, 65.00 feet;

PARCEL A: CONTINUED ...

thence South 11 degrees 14 minutes 13 seconds West, 157.92 feet to the Northeast corner of said property conveyed to Humboldt County Schools;
thence North 89 degrees 45 minutes 42 seconds West, 760.00 feet along the North line of said property to said point of beginning.

EXCEPTING therefrom the following described property:

That portion of the Southwest Quarter of Section 36, Township 5 North, Range 1 West, Humboldt Meridian, in the County of Humboldt, State of California, described in the Deed to Louisiana-Pacific Corporation recorded February 2, 1978 in Volume 1468 of Official Records, Page 335, in the Office of the Humboldt County Recorder, described as follows:

COMMENCING at a point on the West line of said Section 36, said point being North 00 degrees 29 minutes 39 seconds East, 1394.80 feet from the Southwest corner of said Section 36;
thence South 89 degrees 30 minutes 21 seconds East, 149.95 feet to the point of beginning;
thence parallel with said West section line, North 00 degrees 29 minutes 39 seconds East, 450.05 feet to the beginning of a curve concave to the Southeast, having a radius of 20.00 feet;
thence Northerly, Northeasterly and Easterly 31.42 feet along said curve, through a central angle of 90 degrees 00 minutes 00 seconds;
thence South 89 degrees 30 minutes 21 seconds East, 307.41 feet to beginning of a curve concave to the Southwest, having a radius of 100.00 feet;
thence Easterly and Southeasterly, 78.54 feet along said curve, through a central angle of 45 degrees 00 minutes 00 seconds;
thence South 44 degrees 30 minutes 21 seconds East, 200.71 feet to the beginning of a curve concave to the Southwest, having a radius of 100.00 feet;
thence Southeasterly and Southerly, 78.54 feet along said curve, through a central angle of 45 degrees 00 minutes 00 seconds;
thence South 00 degrees 29 minutes 30 seconds West, 422.22 feet to the beginning of a curve concave to the Northwest, having a radius of 100.00 feet;
thence Southerly and Southwesterly, 78.54 feet along said curve, through a central angle of 45 degrees 00 minutes 00 seconds;
thence South 45 degrees 29 minutes 39 seconds West, 198.99 feet to the beginning of a curve concave to the Northwest, having a radius of 100.00 feet;
thence Southwesterly and Westerly, 78.54 feet along said curve, through a central angle of 45 degrees 00 minutes 00 seconds;
thence North 89 degrees 30 minutes 21 seconds West, 308.63 feet to the beginning of a curve concave to the Northeast, having a radius of 20.00 feet;
thence Westerly, Northwesterly and Northerly, 31.42 feet along said curve, through a central angle of 90 degrees 00 minutes 00 seconds;
thence North 00 degrees 29 minutes 39 seconds East, 414.80 feet to said point of beginning.

ALSO BEING the property described as:

Parcel 1 of Lot Line Adjustment in that certain Notice of Lot Line Adjustment and Certificate of Subdivision Compliance recorded November 12, 1997 as Instrument Number 1997-28279-6, Official Records.

PARCEL B:

A non-exclusive right of way and easement for ingress, regress and egress over, upon and across an area sixty (60) feet in width located East of and adjacent to the West boundary line of the parcel of land conveyed to Glen W. Paul, County Superintendent of Schools of the County of Humboldt, by Deed recorded June 10, 1968 in Book 964, Page 1, Humboldt County Official Records.

BEING the same right reserved in said Deed recorded June 10, 1968 in Book 964, Page 1, Humboldt County Official Records.

EXHIBIT D
COUNTY APPROVALS

To be inserted following BOS action

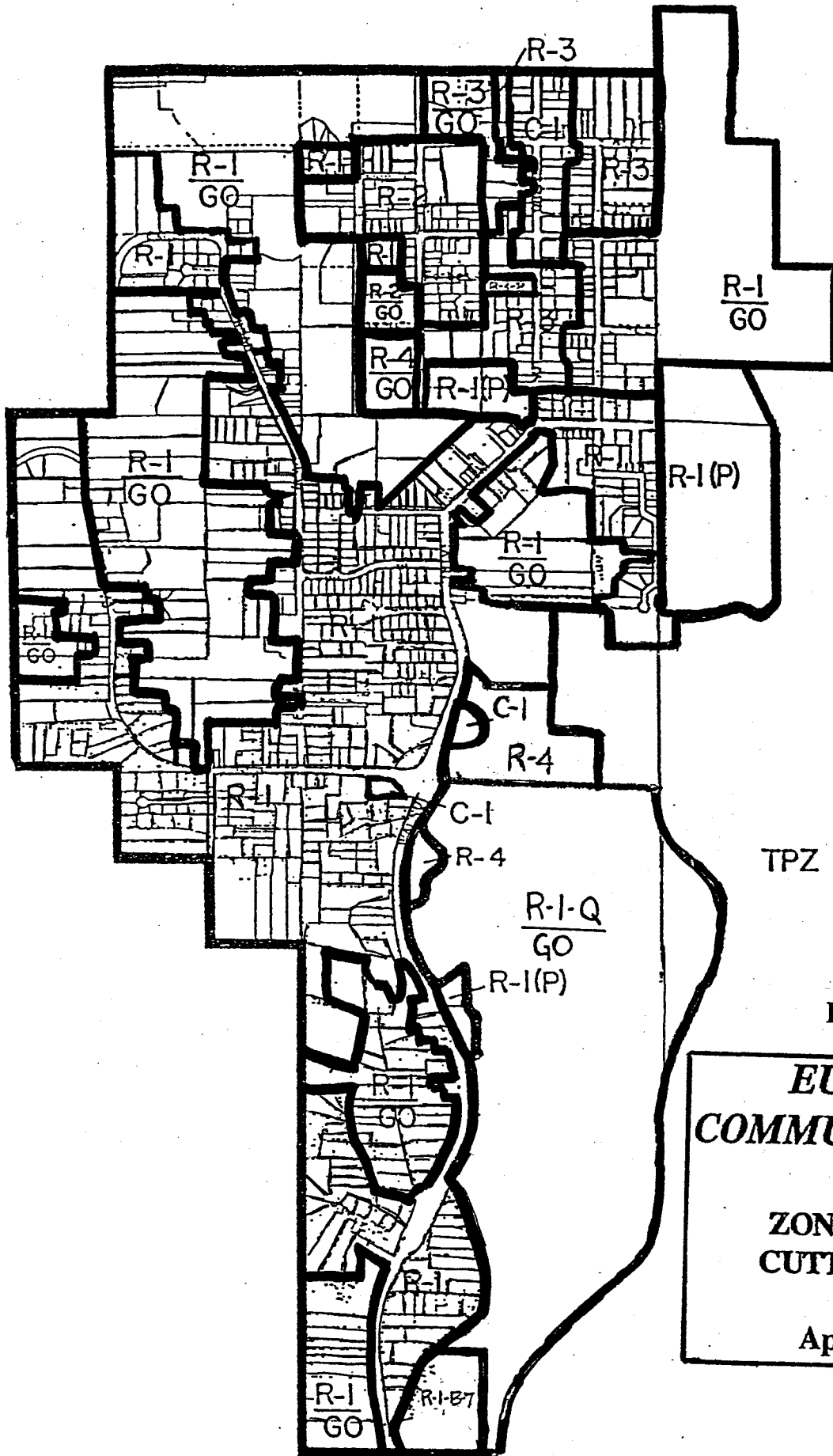


FIGURE 9

**EUREKA
COMMUNITY PLAN**

**ZONING MAP
CUTTEN AREA**

April 1995