
**CITY COUNCIL
REGULAR
MEETING**



**JULY 12, 2011
7:00 PM**

AGENDA

L. Allan Songstad, Jr., Mayor

**Melody Carruth, Mayor Pro Tempore
Randal Bressette, Council Member**

**Barbara Kogerman, Council Member
Joel Lautenschleger, Council Member**

Location: City Council Chamber, 24035 El Toro Road, Laguna Hills, California 92653

CALL TO ORDER

Resolution No. 96-04-09-1 established rules of decorum for public meetings held by the City of Laguna Hills. Resolution No. 96-04-09-1 is available on the table at the back of the City Council Chamber.

PLEDGE OF ALLEGIANCE: COUNCIL MEMBER BRESSETTE

ROLL CALL OF CITY COUNCIL MEMBERS

1. PRESENTATIONS AND PROCLAMATIONS

1.1 FIFTEEN YEAR ANNIVERSARY AWARDS (0500-25)

RECOMMENDATION: That Mayor Songstad recognize Jan Thomas Frainie, Parks Supervisor, and Janice Reyes, Finance Manager, for fifteen years of service to the City of Laguna Hills, and present Certificates of Recognition and gifts to Jan Thomas Frainie and Janice Reyes.

2. PUBLIC COMMENTS

This is the appropriate time for members of the public to make comments regarding items listed on the Consent Calendar and issues not listed on the Agenda. Any person wishing to address the City Council on any matter, whether or not it appears on this Agenda, is asked to complete a "Request to Speak" form available on the table at the back of the Chamber. The completed form is to be submitted to the City Clerk prior to an individual being heard by the City

Council. No action will be taken on any items not on the Agenda unless the City Council makes a determination that an emergency exists or that the need to take action on the item arose subsequent to posting of the Agenda.

There will be a time limitation of three minutes per person, an overall time limit of ten minutes for any one subject, and a time limit of thirty minutes for the Public Comments portion of the Agenda.

3. MINUTES

3.1 REGULAR MEETING, JUNE 28, 2011 (0410-50)

RECOMMENDATION: That the City Council approve the minutes of the June 28, 2011, regular meeting.

4. CONSENT CALENDAR

All matters listed under "CONSENT CALENDAR" are considered to be routine and will be enacted by one motion approving the recommendation listed on the Agenda. There will be no separate discussion unless Members of the City Council or Staff request specific items be removed from the Consent Calendar.

4.1 MOTION TO APPROVE THE READING BY TITLE OF ALL ORDINANCES AND RESOLUTIONS, SAID TITLES, WHICH APPEAR ON THE PUBLIC AGENDA, SHALL BE DETERMINED TO HAVE BEEN READ BY TITLE AND FURTHER READING WAIVED

RECOMMENDATION: That the City Council waive reading of Ordinances and Resolutions.

4.2 APPROVAL OF WARRANT REGISTER FOR PERIOD ENDED JULY 12, 2011 (0300-30)

RECOMMENDATION: That the City Council approve the Warrant Register in the amount of \$551,559.79.

4.3 EXTENSION OF TENTATIVE PARCEL MAP NO. 2009-104 (0600-20)

RECOMMENDATION: That the City Council approve an extension of Tentative Parcel Map No. 2009-104 for two (2) years.

4.4 SOLID WASTE AND RECYCLING CONSULTING SERVICES AGREEMENT WITH ECONOMICS, INC. (0400-10)

RECOMMENDATION: That the City Council authorize the City Manager to execute the Consulting Services Agreement with EcoNomics, Inc., approved as to form by the City Attorney.

4.5 AMENDMENT NO. 1 TO CITYWIDE LANDSCAPE MAINTENANCE CONTRACT SERVICES AGREEMENT WITH NIEVES LANDSCAPE, INC. (0400-10)

RECOMMENDATION: That the City Council approve Amendment No. 1 to Citywide Landscape Maintenance Contract Services Agreement with Nieves Landscape, Inc., and authorize the Mayor to sign the Amendment and the City Clerk to attest thereto.

4.6 2011-12 CIVIC CENTER BUDGET (0710-15)

RECOMMENDATION: That the City Council approve the 2011-12 Civic Center Budget.

4.7 CLAIM OF RALPH COLOMBO FOR DAMAGES TO REAL PROPERTY (0180-15)

RECOMMENDATION: That the City Council reject the claim and direct the City Clerk to send the standard rejection letter.

4.8 CLAIM OF RALPH COLOMBO AND APPLICATION FOR LEAVE TO FILE A LATE CLAIM (0180-15)

RECOMMENDATION: That the City Council:

1. Deny the Application for Leave to File a Late Claim submitted by Claimant Ralph Colombo on the grounds that the criteria established in Government Code Section 911.6 for excusing the Late Claim are not met; and
2. Direct the City Clerk to provide written notice prior to August 14, 2011, to Claimant Ralph Colombo that his Application is denied and that his underlying claim, to the extent that the Claim is for personal injury, damage to personal property, and/or other non-real property related damage, is again returned as untimely.

ITEMS REMOVED FROM THE CONSENT CALENDAR

5. PLANNING AGENCY

5.1 ROLL CALL OF PLANNING AGENCY MEMBERS

5.2 PUBLIC COMMENTS

This is the appropriate time for members of the public to make comments regarding issues not listed on the Agenda. Any person wishing to address the Planning Agency on any matter, whether or not it appears on this Agenda, is asked to complete a "Request to Speak" form available on the table at the back of the Chamber. The completed form is to be submitted to the City Clerk prior to an individual being heard by the Planning Agency.

5.3 PLANNING AGENCY MINUTES

RECOMMENDATION: That the Planning Agency approve the minutes of the June 28, 2011, regular meeting as referenced in Item 3.1 beginning on Page 5.

5.4 PLANNING AGENCY PUBLIC HEARINGS

- 5.4.1. CONDITIONAL USE PERMIT APPLICATION NO. 3-11-1915, A REQUEST TO ESTABLISH A K - 2ND GRADE CHARTER SCHOOL WITHIN THE ALICIA OFFICE PARK AT 25201 PASEO DE ALICIA IN THE (NMU) NEIGHBORHOOD MIXED USE ZONING DISTRICT (0610-55)

RECOMMENDATION: That the Planning Agency accept the applicant's request for withdrawal of Conditional Use Permit No. 3-11-1915.

- 5.4.2. SITE DEVELOPMENT PERMIT/MASTER SIGN PROGRAM/CONDITIONAL USE PERMIT NO. 3-11-1917, A REQUEST BY THE HODGDON GROUP, ON BEHALF OF ASHLEY FURNITURE, TO REDEVELOP THE EXISTING COMMERCIAL PROPERTY, LOCATED AT 24001 EL TORO ROAD IN THE VILLAGE COMMERCIAL (VC) ZONING DISTRICT (0600-30)

RECOMMENDATION: That the Planning Agency:

1. Conduct a Public Hearing; and
2. Adopt a Resolution entitled:

A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ADOPTING A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM AND APPROVING SITE DEVELOPMENT PERMIT/MASTER SIGN PROGRAM/CONDITIONAL USE PERMIT NO. 3-11-1917, A REQUEST BY HODGDON GROUP, ON BEHALF OF ASHLEY FURNITURE, TO REDEVELOP THE EXISTING COMMERCIAL PROPERTY, LOCATED AT 24001 EL TORO

ROAD IN THE VILLAGE COMMERCIAL (VC) ZONING DISTRICT.

PLANNING AGENCY ADJOURNMENT

6. CITY COUNCIL PUBLIC HEARINGS

6.1 CONFIRMATION OF 2011 WEED ABATEMENT COST REPORT (0240-50)

RECOMMENDATION: That the City Council:

1. Conduct a Public Hearing; and
2. Adopt a Resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, CONFIRMING THE 2011 WEED ABATEMENT COST REPORT AND PROVIDING FOR THE COLLECTION OF WEED ABATEMENT ASSESSMENTS ON THE NEXT REGULAR TAX BILL LEVIED AGAINST THE SUBJECT PARCEL FOR MUNICIPAL PURPOSES.

7. ADMINISTRATIVE REPORTS

7.1 City Manager

7.2 Assistant City Manager

7.2.1. 2011-13 SALARY AND BENEFITS RESOLUTION (0520-10)

RECOMMENDATION: That the City Council adopt a Resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, REGARDING EMPLOYMENT AND ESTABLISHING SALARY RANGES AND BENEFITS FOR CLASSES OF EMPLOYMENT WITH THE CITY AND RESCINDING RESOLUTION NO. 2009-06-23-2.

7.3 City Clerk

7.3.1. DESIGNATION OF VOTING DELEGATE FOR LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE (0140-10)

RECOMMENDATION: That the City Council appoint Mayor Songstad as the voting delegate and appoint Council Member Lautenschleger as the voting alternate for the League of California Cities Annual Conference.

8. OTHER BUSINESS**8.1 APPOINTMENT OF LABOR NEGOTIATOR (0400-10)**

RECOMMENDATION: The City Council has the option to select and appoint a designated representative(s) for purposes of conducting a Closed Session regarding the compensation of the City Manager, an unrepresented employee.

9. MATTERS PRESENTED BY MAYOR AND COUNCIL MEMBERS**10. CLOSED SESSION**

The City Council shall convene in Closed Session, in the City Hall Conference Room, to consider the following matters:

10.1 CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION

RECOMMENDATION: Significant exposure to litigation pursuant to subdivisions (c) of Government Code Section 54956.9 - 1 potential case.

Reconvene in regular session in the City Council Chamber.

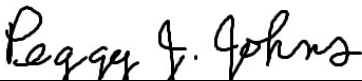
Report on whether any reportable action was taken on matters considered during Closed Session.

ADJOURNMENT

The July 26, 2011, and the August 9, 2011, Regular City Council meetings will not be held. The next Regular Meeting of the City Council will be August 23, 2011, at 7:00 p.m., in the City Council Chamber, located at 24035 El Toro Road, Laguna Hills, California.

CERTIFICATION

I, PEGGY J. JOHNS, City Clerk of the City of Laguna Hills, do hereby certify that a copy of the foregoing Agenda was posted at Laguna Hills City Hall, Laguna Hills Community Center, and La Paz Center by July 8, 2011, at 5:00PM.



PEGGY J. JOHNS, CITY CLERK

July 8, 2011

DATE

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, you should contact the office of the City

Clerk at (949) 707-2635. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.

Materials related to an item on this Agenda submitted to the City Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office at 24035 El Toro Road, Laguna Hills, California, during normal business hours.

CITY OF LAGUNA HILLS

AGENDA REPORT CITY CLERK'S DEPARTMENT

ISSUE: FIFTEEN YEAR ANNIVERSARY AWARDS

SUMMARY:

At this meeting, Mayor Songstad will recognize Jan Thomas Frainie, Parks Supervisor, and Janice Reyes, Finance Manager, for fifteen years of service to the City of Laguna Hills. Jan began service as a full time City employee on July 1, 1996, and Janice began service as a full time City employee on August 12, 1996.

Employees are recognized when they are with the City for five years with a Certificate of Recognition and Laguna Hills Pen and Pencil set. Employees with ten and fifteen years of service are recognized at a City Council meeting, with the Mayor presenting a Certificate of Recognition and a gift.

RECOMMENDATION: THAT MAYOR SONGSTAD RECOGNIZE JAN THOMAS FRAINIE, PARKS SUPERVISOR, AND JANICE REYES, FINANCE MANAGER, FOR FIFTEEN YEARS OF SERVICE TO THE CITY OF LAGUNA HILLS AND PRESENT CERTIFICATES OF RECOGNITION AND GIFTS TO JAN THOMAS FRAINIE AND JANICE REYES.

ATTACHMENTS:

- Certificates of Recognition

0500-20/110712 Rep Fifteen Year Awards.doc

CERTIFICATE OF RECOGNITION

JAN THOMAS FRAINIE

Fifteen Year Service Award

WHEREAS, Jan Thomas Frainie has served as a full time employee for the City of Laguna Hills since July 1, 1996; and

WHEREAS, it is the policy and practice of the City of Laguna Hills to attract and retain highly qualified and motivated people; and

WHEREAS, Jan Thomas Frainie has served the City of Laguna Hills in a professional, caring, and conscientious manner for fifteen years; and

WHEREAS, such service has greatly contributed to the overall success of the City in its efforts to provide quality local government services, programs, and projects to the residents and businesses of Laguna Hills; and

WHEREAS, it is an honor to recognize the length and quality of your service to the City.

NOW, THEREFORE, I, L. Allan Songstad Jr., Mayor, on behalf of the City Council, do hereby express appreciation to Jan Thomas Frainie for fifteen years of service to the City of Laguna Hills.

Dated this 12th day of July 2011.

L. ALLAN SONGSTAD, JR., MAYOR

CERTIFICATE OF RECOGNITION

JANICE REYES

Fifteen Year Service Award

WHEREAS, Janice Reyes has served as a full time employee for the City of Laguna Hills since August 12, 1996; and

WHEREAS, it is the policy and practice of the City of Laguna Hills to attract and retain highly qualified and motivated people; and

WHEREAS, Janice Reyes has served the City of Laguna Hills in a professional, caring, and conscientious manner for fifteen years; and

WHEREAS, such service has greatly contributed to the overall success of the City in its efforts to provide quality local government services, programs, and projects to the residents and businesses of Laguna Hills; and

WHEREAS, it is an honor to recognize the length and quality of your service to the City.

NOW, THEREFORE, I, L. Allan Songstad Jr., Mayor, on behalf of the City Council, do hereby express appreciation to Janice Reyes for fifteen years of service to the City of Laguna Hills.

Dated this 12th day of July 2011.

L. ALLAN SONGSTAD, JR., MAYOR

**CITY OF LAGUNA HILLS, CALIFORNIA
CITY COUNCIL/PLANNING AGENCY REGULAR MEETING
MINUTES
JUNE 28, 2011**

CALL TO ORDER

Mayor Songstad called the Regular Meeting of the City Council of the City of Laguna Hills, California, to order at 7:00 PM in the Laguna Hills City Council Chamber, 24035 El Toro Road, Laguna Hills.

PLEDGE OF ALLEGIANCE: Council Member Lautenschleger

ROLL CALL OF CITY COUNCIL MEMBERS

Present: Mayor Songstad, Mayor Pro Tempore Carruth, Council Member Bressette, Council Member Kogerman, and Council Member Lautenschleger

STAFF PRESENT: Bruce Channing, City Manager; Donald White, Assistant City Manager; Peggy Johns, City Clerk; Greg Simonian, City Attorney; Ken Rosenfield, Public Services Director/City Engineer; Vern Jones, Community Development Director; Steve Doan, Chief of Police Services; David Reynolds, Deputy City Manager; Art Nevarez, Battalion Chief, Orange County Fire Authority; Melissa Au-Yeung, Senior Management Analyst; Dan Meehan, Community Services Superintendent; and Sandi Mogan, Deputy City Clerk.

1. PRESENTATIONS AND PROCLAMATIONS

There were no Presentations and Proclamations.

2. PUBLIC COMMENTS

PUBLIC COMMENTS PROCEDURES

Paul Stanislaw, Laguna Hills, inquired about the correct procedures when asking questions or commenting on an item on the Agenda.

3. MINUTES

3.1 REGULAR MEETING, JUNE 14, 2011 (0410-50)

Motion to approve the minutes of the June 14, 2011, regular meeting, by m/Council Member Bressette, s/Mayor Pro Tempore Carruth.

Approved by a vote of 5-0.

4. CONSENT CALENDAR

Motion to approve the Consent Calendar with Council Member Kogerman removing Items No. 4.8 and No. 4.11, by m/Mayor Pro Tempore Carruth, s/Council Member Bressette.

Approved by a vote of 5-0.

- 4.1 MOTION TO APPROVE THE READING BY TITLE OF ALL ORDINANCES AND RESOLUTIONS, SAID TITLES, WHICH APPEAR ON THE PUBLIC AGENDA, SHALL BE DETERMINED TO HAVE BEEN READ BY TITLE AND FURTHER READING WAIVED

Waived reading of Ordinances and Resolutions.

- 4.2 APPROVAL OF WARRANT REGISTER FOR PERIOD ENDING JUNE 28, 2011 (0300-30)

Approved the Warrant Register in the amount of \$806,911.42.

- 4.3 RECORDS RETENTION MANAGEMENT (0170-50)

Adopted Resolution No. 2011-06-28-1, a Resolution of the City Council of the City of Laguna Hills, California, authorizing and directing the City Clerk to no longer retain certain City records and documents, with a disposal date of June 29, 2011, pursuant to the Government Code of the State of California.

- 4.4 ADOPTION OF ANNUAL APPROPRIATIONS LIMIT FOR FY 2011-2012 (0330-60)

Adopted Resolution No. 2011-06-28-2, a Resolution of the City Council of the City of Laguna Hills, California, determining and adopting an Appropriations Limit for Fiscal Year 2011/12 in accordance with Article XIII B of the Constitution of the State of California, and Section 7910 of the Government Code.

- 4.5 RENEWED MEASURE M (M2) COMPLIANCE REPORTING TO OCTA (0820-25)

Adopted Resolution No. 2011-06-28-3, a Resolution of the City Council of the City of Laguna Hills, California, concerning the consistency of the Circulation Element for the City of Laguna Hills with the Master Plan of Arterial Highways.

4.6 FIRST AMENDMENT TO JOINT COOPERATIVE AGREEMENT FOR THE PILOT COMMERCIAL FOOD WASTE DIVERSION PROGRAM (0400-10)

Authorized the Mayor to execute the first Amendment to Joint Cooperative Agreement for the Pilot Commercial Food Waste Diversion Program.

4.7 GOVERNMENTAL ACCOUNTING STANDARDS BOARD (GASB) STATMENT NO. 54 COMPLIANCE (0480-60)

Adopted Resolution No. 2011-06-28-4, A Resolution of the City Council of the City of Laguna Hills, California, delegating the authority to assign amounts to be used for specific purposes as defined in City Council Policy No. 105 to the City Manager for the purpose of reporting these amounts in the Annual Financial Statements in compliance with Governmental Accounting Standards Board (GASB) Statement No. 54.

4.9 SPORTS COMPLEX SNACK BAR AGREEMENT WITH THE LAGUNA HILLS HIGH SCHOOL MUSIC BOOSTERS (0400-10)

Authorized the City Manager to send a letter to the Laguna Hills High School Music Boosters confirming a one-year extension of the Concession Agreement for Snack Bar at the Laguna Hills Sports Complex.

4.10 ORANGE COUNTY TRANSPORTATION AUTHORITY SENIOR MOBILITY PROGRAM FUNDS FOR THE DIAL-A-TAXI TRANSPORTATION PROGRAM FOR SENIORS (0400-10)

Authorized the Mayor to execute the Cooperative Agreement C-1-2478 between the Orange County Transportation Authority and the City of Laguna Hills for Senior Mobility Program.

4.12 LICENSE AGREEMENT WITH THE SOUTHERN CALIFORNIA EDISON COMPANY TO ALLOW THE ATTACHMENT OF CITY SIGNS TO STREETLIGHT POLES (0400-10)

Approved the License Agreement with the Southern California Edison Company authorizing the City to install non-electrified traffic regulating signs and related equipment on streetlight poles and authorized the Mayor to sign the Agreement and the City Clerk to attest thereto.

4.13 FY 2011-2012 TRAUMA INTERVENTION PROGRAM AGREEMENT (0400-10)

Authorized the Mayor to execute the FY 2011-2012 Agreement between the City of Laguna Hills and Trauma Intervention Programs, Inc.

ITEMS REMOVED FROM THE CONSENT CALENDAR**4.8 CITY VIEWS PUBLICATION CONSULTING SERVICES AGREEMENT WITH FAUBEL PUBLIC AFFAIRS (0400-10)**

Council Member Kogerman stated that during budget discussions the City Council had discussed the desirability of using social media networks in addition to City Views to notify citizens of events in the community. Assistant City Manager White reported that back at the March and April Council workshops the idea of exploring the utilization of social media instead of just print media was discussed, as it could be less expensive and more effective. Following those discussions, questions were added to the citizen survey regarding social media and City Views. Assistant City Manager White explained that the residents enjoyed receiving City Views and most residents indicated they did not want to utilize social network. The City would continue to monitor the option, but for the next two years the City would be printing its typical quarterly City Views publication.

**Motion to approve the Consulting Services Agreement with Faubel Public Affairs and authorized the City Manager to execute the Agreement, by m/Council Member Kogerman, s/Mayor Pro Tempore Carruth.
Approved by a vote of 5-0.**

4.11 PROGRESS PAYMENT NO. 3 FOR LA PAZ ROAD WIDENING AT I-5 IMPROVEMENT PROJECT, CIP NO. 159 (0400-10)

Council Member Kogerman requested in consideration of Change Orders for this project, that an update from Public Services Director Rosenfield regarding the contaminated soil issue be provided. Public Services Director Rosenfield provided an update on the issue.

**Motion to approve Contract Change Order Nos. 1 and 2 and Progress Payment No. 3, in the net amount of \$133,699.74, to SEMA Construction, Inc., for the La Paz Road Widening at I-5 Improvement Project, CIP No. 159, by m/Council Member Kogerman, s/Council Member Bressette.
Approved by a vote of 5-0.**

5. PLANNING AGENCY

Mayor Songstad recessed the City Council meeting and acting in the capacity of Chair, called the regular meeting of the Planning Agency of the City of Laguna Hills, California, to order at 7:16 PM.

5.1 ROLL CALL OF PLANNING AGENCY MEMBERS

Present: Chair Songstad, Vice Chair Carruth, Agency Member Bressette, Agency Member Kogerman, and Agency Member Lautenschleger

5.2 PUBLIC COMMENTS

There were no Public Comments.

5.3 MINUTES OF THE JUNE 14, 2011, REGULAR MEETING (0120-10)

Motion to approve the minutes of the June 14, 2011, regular meeting as referenced in Item 3.1 beginning on Page 4, by m/Vice Chair Carruth, s/Agency Member Kogerman.

Approved by a vote of 5-0.

5.4 PLANNING AGENCY PUBLIC HEARINGS

5.4.1. CONDITIONAL USE PERMIT APPLICATION NO. 3-11-1915, A REQUEST TO ESTABLISH A K - 2ND GRADE CHARTER SCHOOL AT 25201 PASEO DE ALICIA IN THE (NMU) NEIGHBORHOOD MIXED USE ZONING DISTRICT (0160-55)

Motion to approve the continuation of this agenda item to the regular meeting of July 12, 2011, by m/Agency Member Lautenschleger, s/Vice Chair Carruth.

Approved by a vote 5-0.

PLANNING AGENCY ADJOURNMENT

Mayor Songstad reconvened the City Council meeting at 7:17 PM. All Council Members were present.

6. CITY COUNCIL PUBLIC HEARINGS

There were no Public Hearings.

7. ADMINISTRATIVE REPORTS

7.1 City Manager

The City Manager made no reports.

7.3 Public Services Director/City Engineer

7.3.1. SANTA MARIA AVENUE IMPROVEMENT PROJECT (0860-50)

This item was taken out of order on the agenda.

Ed Kraus, Laguna Hills, spoke on the Santa Maria Avenue Improvement Project.

Motion to receive and file the report, by m/Council Member Lautenschleger, s/Mayor Pro Tempore Carruth.

Approved by a vote of 5-0.

7.2 Assistant City Manager

7.2.1. FINAL COMPENSATION REPORT (0520-10)

William Enholm, Laguna Hills, spoke on the Final Compensation Report.

Motion to receive and file the Compensation Report, by m/Mayor Pro Tempore Carruth, s/Council Member Lautenschleger.

Approved by a vote of 4-1 (Council Member Kogerman voting no).

8. OTHER BUSINESS

8.1 COUNCIL MEMBER KOGERMAN

8.1.1. APPOINTMENT OF LABOR NEGOTIATOR(S) (0520-10)

Motion to direct the City Attorney to return with three possible labor negotiators and a procedure for City Manager contract discussions to a future meeting, by m/Council Member Kogerman, s/Council Member Bressette. Approved by a vote of 3-2 (Council Member Lautenschleger and Mayor Songstad voting no).

9. MATTERS PRESENTED BY MAYOR AND COUNCIL MEMBERS

COUNCIL MEMBER LAUTENSCHLEGER

Council Member Lautenschleger reported on his attendance at the Orange County Council of Governments Meeting.

10. CLOSED SESSION

Mayor Songstad recessed the meeting into Closed Session at 10:24 PM.

10.1 CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivisions (b)(1) and (b)(3)(C) of Section 54956.9 of the California Government Code: (1) potential case.

10.2 CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivisions (b)(1) and (b)(3)(A) of Section 54956.9 of the California Government Code: (1) potential case.

Mayor Songstad reconvened the meeting at 11:10 PM. All Council Members were present.

City Attorney Simonian indicated that no reportable action was taken by the City Council in Closed Session.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Songstad declared the meeting adjourned at 11:11 PM.

PEGGY J. JOHNS, CITY CLERK

ATTEST:

L. ALLAN SONGSTAD, JR., MAYOR

APPROVED AT MEETING OF _____

CITY OF LAGUNA HILLS
AGENDA REPORT
ADMINISTRATIVE SERVICES DEPARTMENT

**ISSUE: APPROVAL OF WARRANT REGISTER FOR PERIOD ENDED
 JULY 12, 2011.**

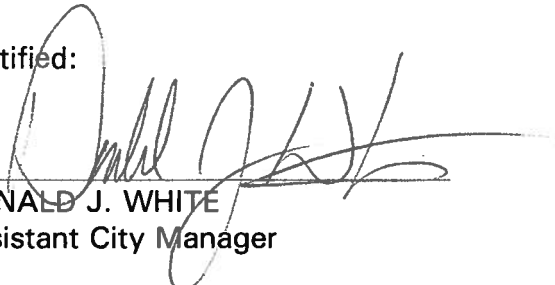
SUMMARY:

In accordance with Government Code Section 37202, the Finance Manager prepares the attached warrant register, which reflects the disbursements of the City of Laguna Hills for the period reported thereon. The Assistant City Manager certifies that funds are available for the payment thereof. These warrants are hereby submitted to the City Council for approval of payment.

Prepared by:

JANICE MATEO REYES
Finance Manager

Certified:


DONALD J. WHITE
Assistant City Manager

6/30/11
DATE

FISCAL IMPACT:

The warrant register total is \$ 551,559.79

**RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE WARRANT REGISTER
IN THE AMOUNT OF \$ 551,559.79.**

ATTACHMENTS:

1. **Warrant Register**

CITY OF LAGUNA HILLS
WARRANT REGISTER
July 12, 2011

VENDOR	DESCRIPTION	CHECK NO.	AMOUNT
PREPAID WARRANTS:			
AT&T	Communication Expense, Administrative Services Fax Line, Jun '11	8801533 \$	83.53
AT&T-CALNET 2	Communication Expense, Alarm System, 2-Way Line, Switchboard, Modem, Frame Relay, T-1 Line and Traffic Control, Jun '11	8801556	1,767.89
CARLSEN, SANDY	Mileage Reimbursement, City Clerk, Apr - Jun '11	8801566	36.72
CHEVRON	Vehicle Fuel, Jun '11	8801568	2,229.11
CMTA	Employee Training, Administrative Services, Jul '11	8801570	75.00
EL TORO WATER DISTRICT	Water Usage, Parks, May '11	8801534	13,187.84
EVERBANK COMMERCIAL FINANCE	Lease - Copier, City Hall, Jun 11	8801535	223.09
HOME DEPOT	Program Supplies, Community Services, Apr '11	8801536	77.13
HOOTAN AND ASSOCIATES	Refund, SDPA Fees, CR # 42569	8801537	125.00
LAGUNA HILLS TEAM DARK HORSE	Socks Program & 5K Half Marathon Donation Remittance and Community Assistance Funding of 3/5 Support Committee	8801584	3,257.62
MOGAN, SANDI	Mileage Reimbursement, City Clerk, Apr '11	8801587	9.18
NEXTEL COMMUNICATION	Communication Expense, Community Services, May '11	8801538	324.05
OROS CONSULTING SERVICES, LLC	Professional Fees, Computer Consulting Services, Jun '11	8801539	4,517.50
REFUND, FACILITY RENTAL DEPOSIT	K. Collier, V# 2002068.002	8801540	500.00
REFUND, FACILITY RENTAL DEPOSIT	Laguna Hills High School, V#2002067.002	8801541	500.00
REFUND, FACILITY RENTAL DEPOSIT	A. Luther, V# 2002063.002	8801542	500.00
REFUND, FACILITY RENTAL DEPOSIT	G. Winder, V# 2002066.002	8801543	500.00
REFUND, FACILITY RENTAL DEPOSIT	VanDamme Education, V# 2002071.002	8801598	500.00
REFUND, FACILITY RENTAL DEPOSIT	Valencia Elementary PTA, V# 2002073.002	8801599	500.00
REYES, JANICE MATEO	Petty Cash Replenishment, Jun '11	8801550	622.43
SADDLEBACK FAMILY & URGENT CARE	Pre-employment Physicals, Feb - Jun '11	8801544	305.00
SAN DIEGO GAS & ELECTRIC	Electric Usage, Street Lights and Parks, May '11	8801545	20,931.95
SIRE TECHNOLOGIES	Employee Training, City Clerk, Jun '11	8801532	250.00

CITY OF LAGUNA HILLS
WARRANT REGISTER
July 12, 2011

VENDOR	DESCRIPTION	CHECK NO.	AMOUNT
SOUTHCO PROPERTIES, LP	Refund, SDPM Fees, CR# 41971	8801546	850.00
SOUTHERN CALIFORNIA EDISON	Electric Usage, Street Lights and Traffic Control, May '11	8801547	626.32
SOUTHERN CALIFORNIA EDISON	Electric Usage, Street Lights and Parks, Jun '11	8801606	1,550.37
THE GAS COMPANY	Gas Usage, Community Center, May '11	8801548	70.30
TIME MANAGEMENT	Program Supplies, 1/2 Marathon and 5K Event, Community Services, May '11	8801607	9,165.17
TOTALFUNDS BY HASLER	Postage Replenishment, Jun '11	8801549	1,000.00
	Total Prepaid Warrants:		\$ 64,285.20
REGULAR WARRANTS:			
AGE WELL SENIOR SERVICES	Florence Sylvester Senior Center Rehabilitation Project, CDBG, May '11	8801551	\$ 50,029.00
ALEXANDER, AMY	Contract Instructor Fee, CPR Class Spring Session, Community Services	8801552	220.50
ALL CITY MANAGEMENT, INC.	Crossing Guard Services, 05/22/11 - 06/18/11	8801553	6,498.00
AMERICAN SHIELD PRIVATE	Program Expense, 1/2 Marathon and 5K Event, Community Services, May '11	8801554	270.00
ATHALYE CONSULTING ENGINEERING	Professional Fees, La Paz Widening @ I-5 CIP # 159	8801557	55,930.84
BIG TOP RENTALS	Program Expense, 1/2 Marathon and 5K Event, Community Services, May '11	8801558	3,167.10
BUREAU VERITAS NORTH AMERICA	Professional Fees, Costeau & Stockport Playground Renovation CIP # 239, Sports Complex Renovations CIP # 514 and On-Call Inspections, May '11	8801559	7,395.00
C & A ATHLETICS	Uniforms and Program Supplies, Community Services, Jun - Jul '11	8801560	1,944.45
C&D ELECTRIC, INC.	Lighting Inspection and 1/2 Marathon 5K Event Expense, Community Services, May '11	8801561	630.69
C2 REPROGRAPHICS	Printing Expense, Engineering, Jun '11	8801562	56.99
CALIF PARK & REC SOCIETY, INC.	Membership, Parks, FY 11/12	8801563	140.00
CALIFORNIA OFFICE SYSTEMS	Usage - Copier, Community Center, Jun '11	8801564	501.34
CALIFORNIA YELLOW CAB	Dial-a-Taxi, Senior Transportation Program, May '11	8801565	310.00
CDW GOVERNMENT, INC.	Computer Hardware, Council, May '11	8801567	871.35
CITY OF LAKE FOREST	City's Share, ABX4-26 SERAF Payment & 09/10 Final Payment	8801569	27,516.27
CODE PUBLISHING COMPANY, INC.	Online Municipal Code Update, City Clerk, Jun '11	8801571	1,473.30

**CITY OF LAGUNA HILLS
WARRANT REGISTER
July 12, 2011**

VENDOR	DESCRIPTION	CHECK NO.	AMOUNT
COMPLETE OFFICE OF CALIFORNIA	Office Supplies, Community Center, Jun '11	8801572	982.00
CROSTOWN ELECTRICAL & DATA,	Professional Fees, Alicia Parkway Signal Coordination CIP # 173	8801573	1,000.00
ELKINS, CHRISTINA	Contract Instructor Fee, Dancing Spring Session, Community Services	8801574	343.00
ENVIRONMENTAL SYS RESEARCH, INST	Software Updates, GIS System, Jun '11	8801575	11,898.75
EXCLUSIVE RISK MANAGEMENT AUTH	Insurance Premium, Property and Municipal Liability FY 11/12	8801576	154,231.18
GREEN MART, INC.	Operating Supplies, Parks, Jun 11	8801577	342.56
GUADAGNO & SONS AMUSEMENTS	Program Expense, 4th of July Event, Community Services, Jul '11	8801578	9,000.00
HANSEN, MARIA	Contract Instructor Fee, Zumba Spring Session, Community Services	8801579	336.00
HARTZOG & CRABILL, INC.	Professional Fees, La Paz Signal Synchronization CIP # 174 and Traffic Engineering Services	8801580	5,354.74
IGI'S LANDSCAPE SERVICES	Professional Services, Weed Abatement, Jun '11	8801612	31,885.62
IRV SEAVER MOTORCYCLES	Motorcycle Maintenance, Police Services, Jun '11	8801581	38.30
JAMEY CLARK, INC.	Miscellaneous Park Repairs and Graffiti Removal, Jun '11	8801582	537.51
JOE A. GONSALVES & SON	Professional Fees, Legislative Services, Jul '11	8801583	2,900.00
LINDY OFFICE PRODUCTS	Operating Supplies, Jun '11	8801585	40.56
MARTIN LOCK & SAFE CO.	Parks Maintenance, Lock Services, Jun '11	8801586	38.69
NIEVES LANDSCAPE, INC.	Other Assorted Landscape Services, May - Jun '11	8801588	5,940.00
NIMMO, DAVID	Contract Instructor Fee, Clog Dancing Spring Session, Community Services	8801589	28.00
OFFICE SOLUTIONS	Computer, Office and Operating Supplies, Jun '11	8801591	632.86
ORANGE COUNTY TREASURER	Road Maintenance, May '11	8801603	25,842.80
PACIFIC TRAFFIC CONTROL, INC.	Program Expense, 1/2 Marathon and 5K Event, Community Services, May '11	8801592	13,500.00
PACK, DWAYNE	Event Promotional Services, 1/2 Marathon and 5K Event, Community Services, May '11	8801593	175.00
PROFORMA GRAPHICS & AD SPECIAL	Uniforms, Community Services, Jun '11	8801594	1,021.89
QUIKSILVER COURIER	Delivery Expense, Jun '11	8801595	29.64
R.E.S.S.	Flags, City Hall, Jun '11	8801596	429.67
RALPH ANDERSEN & ASSOCIATES	Professional Fees, Compensation Study Services, Partial Payment, May '11	8801597	4,900.00
RENEGADE RACING	Event Management Services, 1/2 Marathon and 5K Event, May '11, Final Payment	8801601	12,353.08

CITY OF LAGUNA HILLS
WARRANT REGISTER
July 12, 2011

VENDOR	DESCRIPTION	CHECK NO.	AMOUNT
RICHARD FISHER ASSOCIATES	Professional Fees, Sports Complex Renovations CIP # 514 and Moulton Widening / Santa Maria CIP # 137	8801602	9,434.90
RPW SERVICES, INC.	Rodent Control, Parks, May '11	8801604	1,560.00
SOUTHERN CALIFORNIA MUN ATHLETIC	Membership, Community Services, FY 10/11	8801605	70.00
WEST COAST ARBORISTS, INC.	Tree Trimming, May '11	8801608	1,136.00
WILLDAN	Professional Fees, Annual Street Maintenance CIP # 101	8801609	16,025.00
WOODRUFF, SPRADLIN & SMART	Professional Fees, Legal Services, May '11	8801610	17,822.00
XEROX CORPORATION	Lease - Copier, City Hall, Jun '11	8801611	490.01
Total Regular Warrants:			\$ 487,274.59
**WARRANT REGISTER TOTAL **			\$ 551,559.79

CITY OF LAGUNA HILLS

AGENDA REPORT COMMUNITY DEVELOPMENT DEPARTMENT

ISSUE: EXTENSION OF TENTATIVE PARCEL MAP NO. 2009-104

SUMMARY:

On September 8, 2009, the Planning Agency approved Tentative Parcel Map/Conditional Use Permit/Parking Use Permit/Site Development Permit (TPM/CUP/PUP/SDP) No. 01-09-1184, a request (by Dave Ball of CT Realty Corporation) to subdivide a single parcel for office condominium purposes and make related physical improvements, including expanded parking, new landscaping, and new parking lot lighting, in a two-phased implementation process. The subject site currently houses the Superior Court, and other office uses, and is located at 23141 Moulton Parkway. Phase I of the project has been completed and Phase II is contingent upon the Superior Court abandoning this particular location. The Tentative Parcel Map has been assigned the following number by the County of Orange - Tentative Parcel No. 2009-104. As of this date, the Superior Court is still operating at the site and currently has no definitive plans to abandon the site. Therefore, the applicant is requesting a two-year extension of Tentative Parcel Map No. 2009-104.

Condition No. 9 (of the project's Resolution of Approval) provides that Tentative Parcel Map No. 2009-104 shall expire unless a final map is recorded within 24 months from the approval action date for the subject application, and prior to the sale or lease of any unit, unless the tentative map is extended pursuant to Government Code Section 66452.6. Staff supports the extension request since the Phase I improvements were implemented in a timely manner and the Phase II improvements (medical office conversion, expanded parking area, and additional related landscaping) are still considered to have a positive impact on the subject site and surrounding community.

DISCUSSION:

The initial project approval allows the applicant to subdivide a single parcel of approximately 1.7 acres, containing an existing two-story, 40,374 square foot office building (currently housing the Superior Court), for condominium purposes. Once condominium ownership is established through the recordation of a final map, the applicant intends to market for sale and convert the existing general office space in the

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE AN EXTENSION OF TENTATIVE PARCEL MAP NO. 2009-104 FOR TWO (2) YEARS.

subject building for occupancy/ownership by medical offices. However, the applicant will only be able to carry out the sale of the condominiums upon vacation of the building by the Court and County offices. The applicant does not have a precise schedule for when that will occur. Therefore, they proposed that the site improvements to the parking lot areas and landscaping occur in two phases, to accommodate this potential lapse in timing related to the current leasing arrangements and to coincide with the actual sale of condominium units. Correspondingly, the request for joint use of the parking facilities between the properties would be phased and the reciprocal agreements amended in phases as necessary to coordinate with the physical improvements. See attached Staff Report and Resolution of Approval for TPM/CUP/PUP/SDP No. 01-09-1184.

Government Code Section 66452.6(e) allows the granting of an extension of time for the two-year period, as requested by the applicant. Staff believes the subject project is still a good one and supports the applicant's request for a two-year extension to September 8, 2013.

FISCAL IMPACT:

The applicant has paid all costs associated with the processing of this application.

CEQA FINDINGS:

On September 8, 2009, the Planning Agency found this project (TPM/CUP/PUP/SDP No. 01-09-1184) to be Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) based upon a Class 1 - Existing Facilities and Class 15 - Minor Land Division (CEQA Guidelines Section 15301 and 15315) exemption.

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE AN EXTENSION OF TENTATIVE PARCEL MAP NO. 2009-104 FOR TWO (2) YEARS.

ATTACHMENTS:

- Staff Report and Resolution of Approval for TPM/CUP/PUP/SDP No. 01-09-1184.
- Letters of Justification dated May 19, 2011 and June 23, 2011
- Planning Application
- Site Plan of Phase II Improvements

CITY OF LAGUNA HILLS

PLANNING AGENCY AGENDA REPORT COMMUNITY DEVELOPMENT DEPARTMENT

ISSUE: TENTATIVE PARCEL MAP/CONDITIONAL USE PERMIT/PARKING USE PERMIT/SITE DEVELOPMENT PERMIT NO. 01-09-1184, A REQUEST BY CTF5-LAKE HILLS LLC, TO ESTABLISH A SINGLE LOT SUBDIVISION FOR CONDOMINIUM PURPOSES CONVERTING EXISTING GENERAL OFFICE SQUARE FOOTAGE TO MEDICAL OFFICE SUITES; TO MODIFY THE USE OF AND UPGRADE THE RECIPROCAL PARKING LOT AREAS; AND TO CONSTRUCT RELATED SITE IMPROVEMENTS AT 23141 MOULTON PARKWAY

SUMMARY:

Dave Ball, Senior Vice-President of Development with CT Realty Corporation, representing the ownership of the building located at 23141 Moulton Parkway, is requesting approval of a tentative parcel map (TPM 2009-104) for the purposes of creating condominium ownership of office space to allow for the conversion of the existing building square footage from general office to medical office on a property within the MXU Mixed Use District. In order to meet the parking requirements associated with the proposed medical office use, the applicant is also requesting approval of a conditional use permit/parking use permit to allow for modifications to the existing Reciprocal Easement Agreement (includes parking) between the subject property and the two properties immediately east that share driveway access and have been improved with office buildings; and the Lake Hills Community Church property,

RECOMMENDATION: THAT THE PLANNING AGENCY: (1) CONDUCT A PUBLIC HEARING; AND (2) ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP/CONDITIONAL USE PERMIT/PARKING USE PERMIT/SITE DEVELOPMENT PERMIT NO. 01-09-1184, A REQUEST BY CTF5-LAKE HILLS LLC, TO ESTABLISH A SINGLE LOT SUBDIVISION FOR CONDOMINIUM PURPOSES CONVERTING EXISTING GENERAL OFFICE SQUARE FOOTAGE TO MEDICAL OFFICE SUITES; TO MODIFY THE USE OF AND UPGRADE THE RECIPROCAL PARKING LOT AREAS; AND TO CONSTRUCT RELATED SITE IMPROVEMENTS AT 23141 MOULTON PARKWAY."

which is located immediately south and west. Additionally, the request for approval of a conditional use permit/parking use permit includes a proposal to maintain the restricted access (gated) to a portion of the parking lot area, which has been serving as designated employee parking spaces for the subject property and the properties located immediately east. A site development permit approval is also sought to allow for upgrades to parking lot areas and landscaping throughout the project site to bring it into conformance with current Development Code requirements and to permit the medical office use.

Staff reviewed the Development Code requirements as well as the General Plan issues, goals, and strategies; evaluated the potential for environmental impacts in accordance with the California Environmental Quality Act (CEQA); and determined that the proposed project, subject to conditions of approval, will not result in any significant adverse environmental impacts and will not detrimentally impact the public health, safety, and general welfare. Therefore, staff is recommending approval of Tentative Parcel Map/Conditional Use Permit/Parking Use Permit/Site Development Permit No. 01-09-1184.

AUTHORITY:

Chapter 9-86 of the Development Code provides for the general regulations related to subdivision requests, specifically Section 9-86.040 requires compliance with the Subdivision Manual. Further, Sections 9-86.050 and 9-86.060 require that all subdivision proposals be found consistent with the City's adopted General Plan and any applicable zoning and development standards. Table 9-30.020 of the Development Code permits medical offices within the MXU Mixed Use District subject to the approval of a site development permit. Table 9-44.A of the Development Code requires a medical office to provide parking at a minimum ratio of one stall per 150 square feet of gross floor area, while a general office space is required to only provide one stall per 300 square feet of gross floor area; therefore the proposal requires access or improvements to additional parking facilities to allow for the change in land use. Section 9-44.070 of the Development Code provides for the consideration of "Joint Use of Parking Facilities" by the City in those instances where multiple uses on multiple building sites with one or more parking areas, thereby permitting shared parking based upon specific criteria and subject to approval of a Parking Use Permit. Section 9-92.080 (E) requires that the findings for a Conditional Use Permit be made in conjunction with specific findings for a Parking Use Permit. Table 9-92.030 of the Development Code establishes the applicable reviewing body for various discretionary approvals required by the Development Code. While the City's Subdivision Committee, consisting of the Community Development Director and Public Services Director, would have purview over the requested subdivision since it is a parcel map for condominium

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purposes, the Planning Agency has purview over a conditional use permit/parking use permit and site development permit requests. Therefore, the entire application is subject to the Planning Agency as the Review Body.

BACKGROUND:

The subject property is approximately 1.7 acres developed with a two-story office building of 40,374 square feet (noted on site plan as Building C), sharing an access driveway from Moulton Parkway and parking lot areas with the parcels immediately abutting on the east, west and south. The building is currently leased and serves as the Harbor Justice Center, Laguna Hills Facility of the Superior Court of California – Orange County; handling traffic, minor offenses, and limited civil and small claims. The County's Probation and Sheriff Departments also maintain offices in the building. Patrons to this building are directed to parking lot areas located immediately west of (behind) the building on two surface lots that have approximately a five-foot change in elevation between them, and are under ownership of the Lake Hills Community Church, which also abuts the subject property on its south side. A drive aisle, located on the subject building's southwest side, currently connects these two parking lot areas to additional parking lot areas near the church's sanctuary building and administrative offices, providing additional overflow parking for the courts during weekdays. The two parcels abutting the east have been developed with single story office buildings of 9,918 square feet, addressed as 23151 Moulton Parkway occupied by professional offices (noted on site plan as Building B); and 7,564 square feet, addressed as 23161 Moulton Parkway occupied by Saddleback Eye Center (noted on site plan as Building A). The three buildings (A, B & C) that comprise Lake Hills Professional Plaza (the Plaza) contain 91 parking stalls, where 193 would be required per the City's parking ratio regulations to serve the current occupancies. The Plaza has access to another 211 parking stalls on weekdays that are located on the church property, some of which are compact in size. There is very little use by the church during weekdays of its parking lot areas since the largest generator for parking occurs during weekend services in the sanctuary. This reciprocal use of parking lot areas was agreed to through a formal Reciprocal Easement Agreement, the first of which was recorded between the property owners in August, 1985, which has since been amended to reflect changes in use and improvements on the properties since that time. The buildings within the Plaza are all served by a non-signalized drive entrance that runs between Buildings A and B, and has its underlying ownership with the subject parcel containing Building C. The parcel containing Building B has a secondary driveway intersecting with Moulton Parkway at its most northeast portion. Lake Hills Community Church access is served by a signalized intersection with Moulton Parkway. Immediately surrounding properties have been similarly developed with combinations of offices, retail and light industrial uses.

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7/12/2011 ITEM NO. 4.3

PROJECT DESCRIPTION:

The proposal is to subdivide a single parcel of approximately 1.7 acres containing an existing two-story, 40,374 square foot office building for condominium purposes, as shown on **Attachment 4**. Once condominium ownership is established through the recordation of a final map, the applicant intends to market for sale and convert the existing general office space in the subject building for occupancy/ownership by medical offices. However, the applicant will only be able to carry out the sale of the condominiums upon vacation of the building by the Courts and County offices. The applicant does not anticipate the vacancy to occur for several years. Therefore, they are proposing various site improvements to the parking lot areas and landscaping in two phases, to accommodate this potential lapse in timing related to the current leasing arrangements and to coincide with the actual sale of condominium units. Correspondingly, the request for joint use of the parking facilities between the properties would be phased and the reciprocal agreements amended in phases as necessary to coordinate with the physical improvements.

Phase I - The applicant is proposing to upgrade all parking lot areas to satisfy the minimum standards for stall size, aisle widths, striping, landscaping and lighting within the first phase. This includes the addition of landscaping to the main entry drive and the completion of ADA access to the public sidewalk, which the properties do not currently have. All of the improvements shown for this phase and as outlined on the submitted site plan provided as **Attachment 5** are to be carried out whether the sale of any medical office condominium ever occurs. Upon completion of these improvements, a combined total of 315 standard and handicapped sized parking stalls would be provided for reciprocal use. With this phase, the applicant will also update the overall required parking tabulations by calculating Building A (Saddleback Eye Center) at the medical office parking ratio, rather than as a clinic, which has the same required ratio as general office. Although this change in calculations results in a 25-stall increase in the total required parking resulting in an overall requirement for 218 stalls to serve the existing Plaza occupancies; there remains a theoretical residual supply of 97 stalls taking into account the Plaza's access to church parking lot areas. In addition to the physical improvements to the properties, this phase seeks to validate the existing restricted access (gated) to the parking lot area located on the subject parcel that is immediately east of (behind) Building B. This area contains 31 parking stalls that are allocated by the ownerships of each of the three buildings to specific employees of the tenants to ensure that parking remains the most convenient for patron use by freeing up parking stalls located at each of the respective building entrance points. This concept is outlined as part of **Attachment 3**.

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Phase II - Should the Courts and the County offices terminate their lease and vacate the subject building, the applicant intends to begin the sale of condominium ownerships within the building as medical offices. Therefore, the improvements outlined for the second phase shown on the site plan provided as **Attachment 6**, are primarily focused on improvements needed to accommodate the increase in the number of required parking stalls due to the conversion from general office to medical office use. Submitted plans for this phase of improvements, which occur primarily in the most western portion of the project site (owned by the church), show the following improvements: (1) an expansion of the lower parking lot area; (2) the construction of a retaining wall (in the landscaped slope area that separates the upper and lower parking areas) to increase the number of parking spaces (in the lower parking area); and (3) the construction of covered parking stalls. No additional improvements are proposed to the main parking lot areas of the church closest to the sanctuary and administrative offices; however, 25 additional parking spaces located in this area will be formally added to the reciprocal parking agreement. The proposed improvements combined with the additional reciprocation of spaces will result in a total of 354 parking stalls being available on weekdays for the occupancies in the Plaza, where a total of 352 would be required with the converted office space in Building C. The church would retain its use of the parking stalls for weekend services. There would be no change to the existing restricted access (gated) parking lot area that provides 31 parking stalls for employees of the Plaza as they are specifically allocated by the three building owners. The applicant has indicated that the new covered parking being provided in the most westerly portion of the church-owned parking lot area would be marketed to the medical office condominium owners and their employees to retain the parking stalls that are closest to Building C's primary entrance point (west elevation) for patron use. These concepts are outlined as part of **Attachment 3** in support of the "Joint Use of Parking Facilities."

DISCUSSION & ANALYSIS:

Land Use – The City's General Plan Land Use Element has designated the subject site as Mixed Use. The primary purpose of the areas with this designation is to provide for an area in the City where a variety of goods and services can be obtained within an overall planned environment. Appropriate land uses include administrative and professional office uses, institutional and government uses, business support uses, eating and drinking establishments, personal services, and retail sales of durable goods and general retail sales. The subject site and the three adjacent parcels that share access and parking facilities are currently developed with a mix of uses. The proposed conversion of the general office square footage within Building C to medical office

remains consistent with the list of appropriate land uses anticipated by the General Plan.

Compatibility with Adjacent Uses – A change from general office to medical office will not affect the operating hours that are established for the Plaza's employees or patrons, and will not affect the church's ability to utilize the parking lot areas for their weekend services in the sanctuary. The peak hours of demand for the use of the reciprocal parking lot areas between the Plaza and the church remain unchanged. The improvements proposed in Phase I, which will occur regardless of whether the general office space in Building C is converted to medical office, will result in upgrades to the portions of the parking lot areas that are in use reciprocally, benefiting both the Plaza and the church. Compatibility issues for the proposed change to medical office typically only impact the number of (and convenience to) parking stalls. In order to ensure that visitors to the Plaza will have access to parking stalls that are closest to each of the respective building entrances, staff is recommending that the applicant accept several parameters to be imposed upon the new medical office condominium owners and their tenants/employees. **Condition No. 29** addresses the requirements to be included in a Parking Management Plan which shall (a) *require the continued assignment of the 31 spaces within the restricted access (gated) portion of the Lake Hills Professional Plaza (the Plaza) to the building owner's and their tenants and/or employees to maintain the parking lot areas closest to each of the respective building frontages to remain available for visitors;* (b) *require that the medical office condominium owners and their tenants and/or employees be assigned to park within the covered parking area of the most westerly portion of the parking lot areas;* and (c) *require that if each of the assigned areas described in item (a) and (b) are full, that employees of the building located at 23141 Moulton Parkway park in the 25 parking spaces located near the sanctuary and the administrative offices of the Lake Hills Community Church to ensure that visitor parking is made available to those portions of the parking lot areas closest to each of the three Plaza building frontages.* Further, as has been imposed upon similar requests to jointly share parking, staff has included **Condition No. 31** in the event that complaints or problems arise from implementation of the Parking Use Permit. This condition requires that the applicant be required to conduct a parking study in the future at the request of the City should it be determined that demand and utilization of parking stalls with the proposed change in occupancy from general office to medical office use is found to be impacting the amount of available parking. Staff believes that the proposal together with the conditions are adequate to serve the proposed medical office use conversion in conjunction with the existing tenants on the property without impacting them or the other adjacent parcels.

Site Suitability – The site is suitable to the conversion of general office uses to medical office uses since the applicant is proposing to upgrade the parking lot areas to bring

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them into conformance with current City requirements prior to any conversion in use to ensure that there is an adequate number of parking stalls. The proposed improvements to the site would remove compact sized stalls and replace them with regular sized stalls, replace existing substandard landscaping with new trees that will provide greater shading, and update lighting (and fixtures) to meet City security standards. The parking lot areas are distributed throughout the site. Ingress/egress to the subject property and the surrounding properties is existing and reciprocal, and the submitted plans show that an ADA compliant sidewalk will be added to connect the buildings through the parking lot areas to the public right-of-way sidewalk. No additional improvements to the site are required to support the proposed use.

Project Phasing – The applicant has indicated within their project justification letter (provided as **Attachment 2**) a desire to phase site improvements based upon the timing related to the vacation of Building C by the Courts and the County offices. They have listed the specific improvements that would occur within two phases on the submitted plans provided as **Attachments 5 & 6**. Typically, with a tentative map request, the City would require the completion of all improvements prior to the acceptance and recordation of a final map. This is to ensure that before units are sold and occupied that any required site improvements, such as providing the adequate number of parking stalls, are in place before an individual owner or tenant tries to gain a Certificate of Occupancy for their specific use. However in this instance, the applicant is concerned about the uncertainty of the lease termination with the Courts and the County offices that currently occupy Building C of the Plaza, and how this relates to their ability to reasonably time the marketing and selling of medical office condominiums. Further, some of the site improvements that would need to occur (to accommodate the increase in the number of parking stalls provided to support medical office use) are more costly and will require grading and construction activities that would preclude the use of certain areas of the parking lot for a period of time. This disruption and uncertainty as to timing is the basis of the applicant's request for a phased improvement plan. In return, the applicant has agreed (and submitted plans) to upgrade the existing jointly used parking facilities to the benefit of the current occupants and the City (by bringing existing non-conforming circumstances into compliance with the City's existing Development Standards). Section 9-92.090 of the Development Code provides the Planning Agency with full discretion in considering phased project approvals by allowing certain conditions of approval to be placed upon projects to regulate, among other items, the "specified time period in which to implement the use." Therefore, based upon the improvements outlined on the submitted plans for each phase, staff believes that it is reasonable to accommodate the timing being sought by the applicant and allow a certain vesting to occur for the project's recordation of a final map, which would then allow the sale of condominium ownerships. In order to safeguard the City's interest in seeing the completion of the improvements in a timely

fashion and relative to occupancies within the buildings, **Condition Nos. 7 through 12** have been included in the attached Resolution to outline the various steps that must be followed by the applicant. In addition, the Reciprocal Easement Agreement will need to be updated to reflect the entitlements granted through this application. Staff has added **Condition Nos. 32 and 33** to require the City's review updated of any updated/amended Reciprocal Easement Agreement.

Signs – The applicant has not included a sign proposal with their application, but it is anticipated that it will be submitted at a later date, as part of the Building Plan Check process for conversion of the general office space to medical office use. **Condition No. 30** has been included as a courtesy to remind the applicant to obtain the requisite City approvals prior to installation of any signage in conformance with Section 9-42 of the Development Code.

PUBLIC COMMENT:

A total of 22 public hearing notices were mailed to surrounding property owners and business owners within a 300-foot radius of the subject site. No comments were received as of the preparation of this report.

CONCLUSION:

Staff believes that potential impacts of the proposed conversion of general office use to medical office use through the sale of condominium ownership has been adequately addressed by the existence of the Reciprocal Easement Agreement between the affected properties and the Conditions of Approval listed in the Resolution, specifically **Condition Nos. 7 through 12, and 29 through 33**. Therefore, Staff is recommending approval of TPM/CUP/PUP/SDP No. 01-09-1184, subject to the conditions of approval as listed in the attached Resolution of Approval.

CEQA FINDINGS:

It is recommended that the Planning Agency find TPM/CUP/PUP/SDP No. 01-09-1184 to be Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) based upon a Class 15 Minor Land Division and Class 1 Existing Facilities (CEQA Guidelines Section 15315 and 15301) exemption because:

- (1) It involves the subdivision of property in an urbanized area zoned for both commercial and industrial uses into four or fewer parcels in conformance with the General Plan and zoning requirements; and

SEPTEMBER 8, 2009, ITEM NO. 5.2

- (2) It occurs on property with existing facilities involving minor improvements to accommodate the proposed use.

RECOMMENDATION: THAT THE PLANNING AGENCY: (1) CONDUCT A PUBLIC HEARING; AND (2) ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP/CONDITIONAL USE PERMIT/PARKING USE PERMIT/SITE DEVELOPMENT PERMIT NO. 01-09-1184, A REQUEST BY CTF5-LAKE HILLS LLC, TO ESTABLISH A SINGLE LOT SUBDIVISION FOR CONDOMINIUM PURPOSES CONVERTING EXISTING GENERAL OFFICE SQUARE FOOTAGE TO MEDICAL OFFICE SUITES; TO MODIFY THE USE OF AND UPGRADE THE RECIPROCAL PARKING LOT AREAS; AND TO CONSTRUCT RELATED SITE IMPROVEMENTS AT 23141 MOULTON PARKWAY."

ATTACHMENTS:

1. Resolution of Approval
2. Letter of Justification
3. Parking Use Permit Proposal
4. Tentative Parcel Map No. 2009-104
5. Phase I Improvement Plan & Parking Use Permit, dated July 14, 2009
6. Phase II Improvement Plan & Parking Use Permit, dated July 14, 2009
7. Landscape Plans & Details, dated July 14, 2009

RESOLUTION NO. PA2009-09-08-1

A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP/CONDITIONAL USE PERMIT/PARKING USE PERMIT/SITE DEVELOPMENT PERMIT NO. 01-09-1184, A REQUEST BY CTF5-LAKE HILLS LLC, TO ESTABLISH A SINGLE LOT SUBDIVISION FOR CONDOMINIUM PURPOSES CONVERTING EXISTING GENERAL OFFICE SQUARE FOOTAGE TO MEDICAL OFFICE SUITES; TO MODIFY THE USE OF AND UPGRADE THE RECIPROCAL PARKING LOT AREAS; AND TO CONSTRUCT RELATED SITE IMPROVEMENTS AT 23141 MOULTON PARKWAY

The Planning Agency of the City of Laguna Hills, California, hereby finds, determines, declares, and resolves as follows:

WHEREAS, an application for Tentative Parcel Map/Conditional Use Permit/Parking Use Permit/Site Development Permit No. 01-09-1184 has been received to establish a single lot subdivision for condominium purposes converting existing general office square footage to medical office suites; to modify the use of and upgrade the reciprocal parking lot areas; and to construct related site improvements at 23141 Moulton Parkway; and

WHEREAS, Tentative Parcel Map/Conditional Use Permit/Parking Use Permit/Site Development Permit No. 01-09-1184 is found to be Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) based upon Class 15 and Class 1 exemptions (CEQA Guidelines Section 15315 and 15301); and

WHEREAS, the Planning Agency has considered evidence presented by the Community Development Department, the applicant, and other interested parties with respect to the subject application at a public hearing held on September 8, 2009.

NOW, THEREFORE, THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The above recitals are true and correct, and are incorporated herein by reference.

SECTION 2. That the required findings by the City for approval of Tentative Parcel Map/Conditional Use/Parking Use Permit/Site Development Permit No. 01-09-1184 have been met and made as follows:

Tentative Parcel Map

1. The proposed map is consistent with applicable General and Specific Plans in that the proposal is to establish condominium ownership of an existing general office building for the purpose of establishing medical office suites, an allowable land use type within the General Plan Land Use Element designation of Mixed Use.
2. The design or improvement of the proposed subdivision is consistent with applicable General and Specific Plans in that the subdivision is for a single parcel to establish condominium ownership for an existing building where improvements to the subdivided space is limited to primarily the interior of the building; and where adjoining parcels contain parking lot areas and reciprocal agreements that support the uses within the subdivision proposal to allow for medical office use.
3. The site is physically suitable for the type of development in that the subject property has been improved with an office building, street access, and where sidewalk improvements will be provided in conformance with ADA requirements to the right-of-way.
4. The site is physically suitable for the proposed density of development in that the subject property of this subdivision has been developed with an existing office that has reciprocal access for ingress/egress and reciprocal use of parking lot areas within the immediately surrounding parcels to support a conversion from general office to medical office.
5. The design of the proposed improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat in that the subdivision is proposed within an entirely urbanized area.
6. The design of the subdivision or type of improvements is not likely to cause serious public health problems in that the design and improvements within the subdivided space will be limited to minor tenant improvements within the existing building and is subject to standard building, fire and health regulations and permitting.
7. The design of the subdivision or the type of the improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision in that the subdivision is proposed on privately owned property where any such improvements or easements will not be affected and any required dedications are existing.

Conditional Use Permit

8. The proposed use is consistent with the General Plan in that the use subject to the conditional use permit requirement is for shared parking facilities between various parcels containing office and institutional developments consistent with those anticipated under the adopted Land Use Element of the General Plan for a Mixed Use land use designation.
9. The nature, condition, and development of adjacent uses, buildings, and structures have been considered and the proposed conditional use will not adversely affect or be materially detrimental to the adjacent uses, buildings, or structures in that reciprocal ingress/egress and reciprocal use of parking lot areas has already been established between four parcels and the subject proposal is to continue and expand the shared parking facilities in the favor of the adjacent uses and buildings in addition to the request of the project proponent.
10. The proposed site is adequate in size and shape to accommodate the use and integrate it with the existing and planned uses in the vicinity in that the first phase of improvements under the shared use of parking facilities will upgrade existing parking lot areas to current City requirements and increase the number of provided parking stalls; and the second phase will further improve and expand the parking facilities to accommodate the nominal change in land use from general office to medical office.
11. All required development standards prescribed by the Laguna Hills Development Code can be achieved in that both phases for improvements to the parking lot areas supporting the existing uses and the proposed uses will be upgraded to current requirements for striping, stall size, landscaping and lighting.
12. The conditions and limitations placed upon the use are necessary to insure compatibility with adjacent or abutting uses and the preservation of the public health, safety, and welfare in that conditions have been included specifically to address timing of improvements in consideration of the surrounding uses that share the parking facilities, and that conditions secure the purposes of the City's Development Code, including guarantees and evidence of compliance with conditions that are made part of this approval.

Parking Use Permit

13. The proposed joint parking use permit is consistent with the intent and purpose of the Development Code in that the proposal

provides for the continuation of multiple uses on multiple building sites maintaining joint use of their parking facilities where the peak hours of the uses consisting of a church and offices are opposite each other, allowing for each type of land use to utilize the full area of the parking lots during these respective operating hours.

14. The joint parking use permit provides a reasonable and enforceable means for all uses to share parking facilities in that the hours of operation differ between the participants, with the church requiring weekend use of the facilities and the offices requirement weekdays; and the second phase of improvements will provide covered parking areas in a location that is furthest away from the building as a means to encourage the use of these stalls by the medical office owners and their employees to maintain unrestricted parking closest to the office building entrances.
15. The requirement for parking established by the joint parking use permit shall assure that parking demands for the participating uses are continually met in that the existing reciprocal parking agreements will be amended as necessary between the parties to reflect consistency with the phasing of the improvements and ultimate conversion of the subject building from general office to medical office.

Site Development Permit

16. The site design complies with standards of the Development Code in that medical office use within the MXU Mixed Use District is an allowable use through the approval of a site development permit, and both phases of improvements proposed will upgrade existing site improvements to be consistent with parking lot, landscaping and lighting design criteria.
17. The site is suitable for the proposed development in that medical office can be accommodated within the existing office building through tenant improvements and site improvements are included to address non-conforming circumstances on the subject parcel as it relates to the parking lot areas supporting the medical office use.
18. The project is consistent with the General Plan and applicable design guidelines in that the site improvements proposed will enhance an existing office development that was approved prior to the City's incorporation in both the near term, and at the time of condominium sales further establishing the City's Mixed Use land use designation and design standards in this area of the City.

19. The site design and structural components are appropriate for the site and function of the proposed uses in that the general site layout, the location of buildings and parking lot areas of the site, will remain unchanged, has been serving the existing offices and church uses adequately, where the change from general office to medical office can also be accommodated through certain site and building improvements which are included in this development proposal.

NOW, THEREFORE, based upon the above findings, the Planning Agency of the City of Laguna Hills does hereby approve Tentative Parcel Map/Conditional Use Permit/Parking Use Permit/Site Development Permit No. 01-09-1184, subject to the following conditions:

1. This approval constitutes approval of the proposed project only to the extent that it complies with the City's Development Code and any other applicable zoning regulations. Approval does not include any action or findings as to compliance or approval of the project regarding any other applicable ordinance, regulation, or requirement.
2. Failure to abide by and faithfully comply with any and all conditions of approval contained herein shall constitute grounds for revocation of said permit by the Laguna Hills Planning Agency.
3. As a condition of issuance of this approval, the applicant hereby agrees, at its sole cost and expense and to the fullest extent permitted by law, to defend, indemnify, and hold harmless the City, its officers, employees, agents, and consultants, from any claim, action, or proceeding brought by a third party against the City, its officers, employees, agents, and consultants, which seeks to attack, challenge, set aside, void, or annul an approval of the City Council, Planning Agency, or other decision-making body, or staff action concerning this project. The City agrees to promptly notify the applicant of any such claim filed against the City and to fully cooperate in the defense of any such action. The City may, but is not obligated to, at its sole cost and expense, elect to participate in the defense of any such action under this condition.
4. The applicant/owner shall agree in writing to these conditions of approval within 30 days of the Planning Agency's action.
5. The applicant/owner shall reimburse the City for any outstanding staff time spent on the processing of Tentative Parcel Map/Conditional Use Permit/Parking Use Permit/Site Development Permit No. 01-09-1184 within 60 days of Planning Agency action.

6. Within 48 hours from project approval, the applicant shall submit to the City a check in the amount of \$50.00, made payable to the Orange County Clerk-Recorder, for filing the Notice of Exemption.
7. The applicant/owner shall implement all Phase I improvements within one year from the approval action date for the subject application. Implementation shall include the submittal, review, and staff approval of any required plans and specifications; the issuance of any required permits; and the construction, including any necessary final inspection, of said improvements. Approval of the subject application shall expire and be of no further force or effect if the implementation of the improvements, as listed and shown on plans dated 07/14/09 for Phase I, are not carried out within this one year time frame. Completion of Phase I improvements within this stated time frame shall secure the applicant's vesting to initiate the Phase II improvements, as listed and shown on plans dated 07/14/09 for Phase II, and the medical office use conversion, if such can occur within the stated time limits as established by the City and State laws for subdivisions, including any allowable extensions.
8. Phase I and II improvements shall consist of the items noted on plans dated 07/14/09 including any additional modifications, included herein, and made a part of the City's approval actions for the subject applications.
9. The tentative parcel map shall expire unless a final map is recorded within 24 months from the approval action date for the subject application, and prior to the sale or lease of any unit, unless the tentative map is extended pursuant to Government Code Section 66452.6. A final map shall be submitted to the City Engineer and the County Surveyor for plan check. The applicant shall pay all fees for this plan check to each agency. The applicant shall have completed the implementation of all Phase I improvements prior to recordation of the final map. Prior to the approval of the final maps, the applicant/owner shall submit to the City Engineer and the Community Development Director, for review and approval, Covenants, Conditions, and Restrictions (CC&R's) addressing (at a minimum) property maintenance, access, parking, uses utility easements, fire access and fire lanes, solid waste, landscaping, and relevant conditions of approval set forth in this resolution.
10. The applicant/owner shall cause and provide proof of the recordation on the titles of the affected properties, a copy of the signed resolution, including conditions of approval, of the City's approval action on the subject applications within 30 days receipt of a copy of the signed resolution from the City.

11. The applicant/owner shall give notice in writing to the City Manager, Community Development Director, and Public Services Director of the termination date of any leases with the County for their occupancy of the building located at 23141 Moulton Parkway prior to said termination and potential vacancy of the building, which would allow for the medical office conversion and condominium map portion of the subject applications to be implemented, pending any expiration of the original tentative map approvals, including any extensions.
12. The applicant/owner shall implement all Phase II improvements prior to the close of escrow on the first condominium unit sale. Implementation shall include the submittal, review, and staff approval of any required plans and specifications; the issuance of any required permits; and the construction, including any necessary final inspection, of said improvements. The applicant shall give written notice to the Community Development Director that an escrow has been opened for the sale of the first condominium unit within 14 days of said escrow's opening.
13. Prior to the commencement of any medical office use within the building located at 23141 Moulton Parkway, the applicant shall obtain a Certificate of Use and Occupancy from the City.
14. The applicant/owner shall secure applicable building permits, as required by section 105 of the 2007 California Building Code.
15. Plans shall be accurately labeled and reflect all work, as required by section 106 of the 2007 California Building Code, (construction documents).
16. The applicant/owner shall secure any required approvals from Orange County Fire Authority (OCFA), Engineering and Planning Department prior to issuance of a building permit.
17. The applicant/owner shall submit Construction and Demolition Waste Recycling Program paperwork if applicable, as required by the City of Laguna Hills Ordinance No. 2003-9 and to comply with mandates of the California Integrated Waste Management Board (CIWMB).
18. The applicant/owner shall comply with the Santa Ana Regional Water Quality Control Board Water Quality Permits, the Statewide General Construction Water Quality Permits and the City of Laguna Hills Ordinance No. 2003-12.
19. The applicant/owner shall comply with California Disabled Accessibility requirements as required by Chapter 11 of the

California Building Code including providing an accessible pathway to Moulton Parkway that is raised and separated from the entry drive aisle by a curb

20. The applicant/owner shall comply with all California Energy requirements as required by the California Energy Commission.
21. All construction shall comply with 2007 CBC codes in regards to mixed occupancy's.
22. Prior to the issuance of a building permit for the conversion of general office to medical office, the applicant shall submit plans for the review and approval of the Fire Chief per the "Orange County Fire Authority Plan Submittal Criteria Form." The applicant may contact OCFA at (714) 573-6100 for a copy of the Site/Architectural Notes to be placed on the plans prior to submittal.
23. The applicant/owner shall install "Smart" landscape irrigation controllers, low precipitation-rate sprinkler heads, and water efficient edgescaping throughout all areas of improvements shown on the conceptual landscape plans, dated July 14, 2009, provided as Attachment 7 to the City's Agenda Report for the subject application.
24. Any work performed in the public right-of-way by the applicant/owner or his or her agents shall require the issuance of an encroachment permit by the City Engineer. It shall be the applicant's responsibility to protect-in-place existing public improvements. Public improvements that are damaged as a result of the proposed construction shall be the responsibility of the applicant and/or contractor of record to repair or replace to the satisfaction of the City Engineer. Existing driveway access points shall be reconstructed by the applicant/owner to comply with ADA access standards. The access drive width of 28' shall not be reduced within the public right of way.
25. The trash enclosure located on the same parcel as the subject building addressed as 23141 Moulton Parkway shall be appropriately sized, and constructed per the City of Laguna Hills standards, including a roof and sewer connection to the satisfaction of the City Engineer.
26. If site disturbance is equal to or greater than one acre, the applicant/owner shall submit a copy of the Notice of Intent (NOI) indicating that coverage has been obtained under the National Pollutant Discharge Elimination System (NPDES) State General Permit for Storm Water Discharges Associated with Construction Activity from the State Water Resources Control Board. Evidence

that the NOI has been obtained shall be submitted to the Public Services Department. Project subject to this requirement shall prepare and implement a Stormwater Pollution Prevention Plan (SWPPP). A copy of the current SWPPP shall be submitted to the City Engineer, and an additional copy shall be kept at the construction site at all times.

27. Phase II improvements shall require the applicant/owner to provide a Water Quality Management Plan (WQMP) for review and approval by the City Engineer if 5,000 square feet or more of earthwork or improvements are proposed.
28. The applicant/owner shall submit an Erosion Control Plan to the City Engineer for approval. The Erosion Control Plan shall depict Best Management Practices (BMPs) to be implemented during construction.
29. Prior to the issuance of a Certificate of Use and Occupancy for medical offices in the building addressed as 23141 Moulton Parkway, the applicant shall submit to the Community Development Director a Parking Management Plan that acknowledges the shortfall of onsite parking spaces in conjunction with the conversion of the building from general office use to medical office use. The Parking Management Plan shall (a) require the continued assignment of the 31 spaces within the restricted access (gated) portion of the Lake Hills Professional Plaza (the Plaza) to the building owner's and their tenants and/or employees to maintain the parking lot areas closest to each of the respective building frontages to remain available for visitors; (b) require that the medical office condominium owners and their tenants and/or employees be assigned to park within the covered parking area of the most westerly portion of the parking lot areas; and (c) require that if each of the assigned areas described in item (a) and (b) are full, that employees of the building located at 23141 Moulton Parkway park in the 25 parking spaces located near the sanctuary and the administrative offices of the Lake Hills Community Church to ensure that visitor parking is made available to those portions of the parking lot areas closest to each of the three Plaza building frontages.
30. All signage, including any required approvals and permits, shall comply with L.H.M.C. Chapter 9-42. Signs shall be maintained to prevent deterioration, disrepair and shall be legible and in good condition.
31. At the discretion of the Community Development Director, the applicant may be required to pay for and conduct a parking study in

the future to ensure that the parking ratios required under the City's parking code are being met at the subject site.

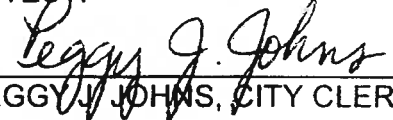
32. The applicant/property owner shall amend the Reciprocal Easement Agreement to reflect the entitlements granted with this application. Said amendments shall be submitted to the City for review and approval prior to recordation.
33. The applicant/property owner shall notify the City in writing at least sixty (60) days in advance of recording any proposed agreement or other instrument that seeks to terminate or amend the Reciprocal Easement Agreement.

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PASSED, APPROVED, AND ADOPTED this 8th day of September 2009.


JOEL LAUTENSCHLEGER, CHAIR

ATTEST:


PEGGY J. JOHNS, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

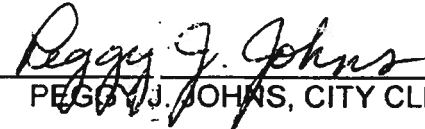
I, Peggy J. Johns, City Clerk of the City of Laguna Hills, California, DO
HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution
No. PA2009-09-08-1 adopted by the Planning Agency of the City of Laguna Hills,
California, at a Regular Meeting thereof held on the 8th day of September, 2009, by the
following vote:

AYES: Agency Members Carruth, Scott, Vice Chair Bressette, and
Chair Lautenschleger

NOES: None

ABSENT: Agency Member Songstad

ABSTAIN: None


PEGGY J. JOHNS, CITY CLERK



65 Enterprise
Aliso Viejo · CA 92656
949-330-5770
CTRealtyInvestors.com

May 19, 2011

Mr. Verona Jones
Planning Director
City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653

Re: Tentative Parcel Map/Conditional Use Permit/Parking Use Permit/Site
Development Permit No. 01-09-1184

Dear Mr. Jones:

LETTER OF JUSTIFICATION

On September 8 2009, CT Realty secured approval from the Planning Agency of the City of Laguna Hills for a Tentative Parcel Map, Conditional Use Permit, Parking Use Permit and Site Development Permit No. 01-09-1184 for condominium purposes converting existing general office to medical office suites and to construct related site improvements at 23141 Moulton Parkway.

The condition of approval required the implementation of all Phase I improvements and completion within a one year period. Condition No. 7

Condition No. 9 required the Tentative Parcel Map to be recorded within 24 months or expire unless extended pursuant to Governmental Code Section 6645.2.

All site construction required under Phase I improvements were completed. CT Realty is requesting a two year extension of the Tentative Map due to unforeseen economic conditions which make the conversion unfeasible at the current time.

Should question arise regarding the above, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read 'David L. Ball', written over the word 'Sincerely'.

David L. Ball AIA
Senior Vice President
CT Realty Corporation



65 Enterprise
Aliso Viejo · CA 92656
949-330-5770
CTRInvestors.com

RECEIVED

JUN 23 2011

CITY OF LAGUNA HILLS

June 23, 2011

Mr. Vernon Jones
Planning Director
CITY OF LAGUNA HILLS
24035 El Toro Road
Laguna Hills, CA 92653

Re: Tentative Parcel Map / Conditional Use Permit / Parking Use Permit / Site Development Permit
No. 01-09-1184

Dear Mr. Jones:

On May 19, 2011, I wrote you a letter requesting a two-year extension of the referenced Tentative Parcel Map. As a follow-up to that letter I am now writing to clarify and expand upon the reason for this request.

In the letter dated May 19, 2011, I stated that the request was being made due to "unforeseen economic conditions which make the conversion unfeasible at the current time." One specific and significant "unforeseen economic condition" is building's current tenant's inability to commit to stay either as a long term tenant or as a short term tenant. The building's occupant is the Judicial Council of California, Administrative Office of the Court (the "AOC"). Due to budgetary issues at the State of California, and whatever other issues may be present within the AOC, the tenant is not yet in a position to be able to commit to stay long term or to vacate the property within a set period of time.

As owner of the property, we anticipated that the AOC would decide by now whether it would stay or go. That has not occurred and as owner we are both unable and unwilling to simply terminate the lease. We are seeking time to allow the AOC to complete its planning effort.

Please let me know if this helps clarify my letter dated May 19, 2011.

Sincerely,
CT REALTY CORPORATION

David L. Ball, AIA
Senior Vice President

PLANNING APPLICATION

Date Received: 5/20/11
By: C. Dominguez

Receipt #: 42486
Case #: EXTM-5-11-1971

APPLICATION TYPE	FEE	DEPOSIT	CASE NUMBER
PRELIMINARY APPLICATION PROJECT REVIEW	\$600		PA
CHANGED PLAN (Minor)	\$600		CP
CHANGED PLAN (Major)		\$2,000	CP
APPEAL	\$600		APL
GENERAL PLAN AMENDMENT		\$6,000	GPA
ZONE CHANGE		\$6,000	ZC
VARIANCE		\$3,500	VA
CONDITIONAL USE PERMIT	Typical	\$4,000	CUP
	Modified	\$2,000	CUP
SITE DEVELOPMENT PERMIT (Major)	Typical	\$4,000	SDP
	Master Sign Program	\$4,000	MSP
SITE DEVELOPMENT PERMIT (Minor)	Typical	\$800	SDP
	Sign Program Amendment/Retaining Wall	\$800	SDP
ENVIRONMENTAL	Negative Declaration	\$3,000	
	Environmental Impact Report (EIR)	\$10,000	
TENTATIVE PARCEL MAP		\$4,500	TPM
TENTATIVE TRACT MAP (\$1,000 screen check fee plus)		\$6,000	TTR
LOT LINE ADJUSTMENT		\$1,000	LLA
OTHER - <u>Extension of Time</u>		<u>\$1,000</u>	
PERMANENT RECORD RETENTION FEE (All applications)	\$30		
FIRE PLAN CHECK	\$387.20		

DEPARTMENT USE ONLY ABOVE THIS LINE

APPLICANT TO COMPLETE

PROJECT INFORMATION TENTATIVE PARCEL MAP / CONDITIONAL USE PERMIT / PARKING PERMIT NO
PROJECT NAME: LAKE HILLS PROFESSIONAL PLAZA 01-09-1184
PROJECT ADDRESS/LOCATION: 23141 Moulton Parkway, Laguna Hills, CA 92653
ASSESSORS' PARCEL NUMBER 588.081.23 TRACT/PARCEL MAP & LOT #: PBK 224, PG. 39 PAR 3
ZONING: GENERAL PLAN DESIGNATION:
PROJECT DESCRIPTION: REQUEST FOR TIME EXTENSION ON / FOR TENTATIVE MAP.

APPLICANT: DAVID BALL CONTACT PERSON: DAVID BALL PHONE: 949.330.5713
ADDRESS/CITY: 65 ENTERPRISE, ALISO VIEJO STATE: CA ZIP: 92656
BILL TO: (person/company to receive refund or invoice for additional fees due)
DAVID BALL PHONE: 949.330.5713
ADDRESS/CITY: 65 ENTERPRISE, ALISO VIEJO STATE: CA ZIP: 92656
PROPERTY OWNER: CTFS - LAKE HILL, LLC PHONE: 949.330.5710
ADDRESS/CITY: 65 ENTERPRISE, ALISO VIEJO STATE: CA ZIP: 92656

MAILING LIST CERTIFICATION:

In accordance with Section 9-92 of the City of Laguna Hills Development Code, I certify that the property owners list included with this application contains the names of all legal owner and tenants of all parcels of land within (300) feet of the exterior boundaries of the attached legally described parcel of land, as shown on the latest adopted Orange County Tax Roll

APPLICANT'S SIGNATURE: [Signature] DATE: 5.20.2011
OWNER'S SIGNATURE: [Signature] DATE: 5.20.2011

The Attachment referenced in
Agenda Report:

Attachment 4. Site Plan
of Phase II Improvements,

are available for review in the
City Clerk's Department.

CITY OF LAGUNA HILLS
AGENDA REPORT
COMMUNITY SERVICES DEPARTMENT

**ISSUE: SOLID WASTE AND RECYCLING CONSULTING SERVICES
 AGREEMENT WITH ECONOMICS, INC.**

SUMMARY:

The current solid waste and recycling consulting services agreement with EcoNomics expires on June 30, 2011. Staff conducted a search for a solid waste and recycling consultant for a new agreement term by issuing a Request for Proposal. Three firms were selected to participate in an interview process based on proposal evaluations of the five proposals received. Staff is recommending that the City continue to contract with EcoNomics for a new agreement term beginning on July 13, 2011, and ending on June 30, 2013. The not-to-exceed cost of the new agreement is \$70,000 and is funded by the City's recycling funds.

BACKGROUND:

EcoNomics, Inc. serves as the City's recycling consultant and assists the City with solid waste franchise administration, compliance reporting to the State, and recycling program implementation. The current Consulting Services Agreement with EcoNomics expired on June 30, 2011.

Staff issued a Request for Proposal document on April 28, 2011, for solid waste and recycling consulting services. By the proposal deadline, five consulting firms¹ submitted proposals. After staff evaluation of the proposals, three firms (EcoNomics, HF&H Consultants, and SCS Engineers) were selected to participate in interviews. These firms were selected because of their overall experience, acceptance of the City's standard Consulting Services Agreement, and proposed project costs. A representative from the City of Mission Viejo and a representative from CR&R joined staff on the interview panel. Overall, EcoNomics was favored by the interview panel because of its

¹ Five firms that submitted a proposal: EcoNomics, Charles Abbott Associates, SCS Engineers, HF&H Consultants, and SloanVazquez.

**RECOMMENDATION: THAT THE CITY COUNCIL AUTHORIZE THE CITY
MANAGER TO EXECUTE THE CONSULTING SERVICES AGREEMENT WITH
ECONOMICS, INC., APPROVED AS TO FORM BY THE CITY ATTORNEY.**

familiarity with the City's solid waste and recycling contract with CR&R, its experience in the industry, and its competitive cost proposal.

Staff is requesting approval of the proposed contract with EcoNomics for solid waste and recycling consulting services commencing on July 13, 2011, and ending on June 30, 2013. The not-to-exceed cost during the contract term is \$70,000 and is funded by the City's recycling funds.

FISCAL IMPACT:

There is no impact to the City's General Fund for payment of EcoNomics' services because the City's Recycling Funds account for these types of expenses.

RECOMMENDATION: THAT THE CITY COUNCIL AUTHORIZE THE CITY MANAGER TO EXECUTE THE CONSULTING SERVICES AGREEMENT WITH ECONOMICS, INC., APPROVED AS TO FORM BY THE CITY ATTORNEY.

ATTACHMENTS:

- EcoNomics Solid Waste & Recycling Consulting Services Agreement

CONSULTING SERVICES AGREEMENT
EcoNomics Recycling Consulting Services

THIS AGREEMENT FOR CONSULTING SERVICES (the "Agreement") is made and entered into this __ day of July, 2011, by and between the City of Laguna Hills, a municipal corporation organized and existing under the laws of the State of California ("City"), and EcoNomics, Inc., a Colorado Corporation doing business in California as Ecal/Nomics, Inc. ("Consultant").

RECITALS

A. City requires the services of EcoNomics, Inc. for Solid Waste and Recycling services ("Project").

B. Consultant has submitted to City a proposal to provide Solid Waste and Recycling services to City pursuant to the terms of this Agreement.

C. Based on its experience, education, training, and reputation, Consultant is qualified to provide the necessary services to City for the Project and desires to provide such services.

D. City desires to retain the services of Consultant for the Project.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, City agrees to retain and does hereby retain Consultant and Consultant agrees to provide services to the City as follows:

AGREEMENT

1. CONSULTANT SERVICES

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant shall provide Solid Waste and Recycling services to City as described in the Scope of Services/Work attached to this Agreement as Exhibit "A" and incorporated herein by reference (the "services" or "work"), which includes the agreed upon schedule of performance and the schedule of fees. Consultant warrants that all services and work shall be performed in a competent, professional, and satisfactory manner in accordance with all standards prevalent in the industry. In the event of any inconsistency between the terms contained in the Scope of Services/Work and the terms set forth in the main body of this Agreement, the terms set forth in the main body of this Agreement shall govern.

1.2 Compliance with Law. All services rendered under this Agreement shall be provided by Consultant in accordance with all applicable federal, state, and local laws, statutes, and ordinances and all lawful orders, rules, and regulations promulgated thereunder.

1.3 Licenses and Permits. Consultant shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by this Agreement.

1.4 Familiarity with Work. By executing this Agreement, Consultant warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this Agreement.

2. TIME FOR COMPLETION.

The time for completion of the services to be performed by Consultant is an essential condition of this Agreement. Consultant shall prosecute regularly and diligently the work of this Agreement according to the agreed upon schedule of performance set forth in Exhibit "A". Consultant shall not be accountable for delays in the progress of its work caused by any condition beyond its control and without the fault or negligence of Consultant. Delays shall not entitle Consultant to any additional compensation regardless of the party responsible for the delay.

3. COMPENSATION OF CONSULTANT

3.1 Compensation of Consultant. For the services rendered pursuant to this Agreement, Consultant shall be compensated and reimbursed, in accordance with the schedule of fees set forth in Exhibit "A," which total contract amount shall not exceed seventy thousand dollars (\$70,000).

3.2 Method of Payment. In any month in which Consultant wishes to receive payment, Consultant shall no later than the first working day of such month, submit to City in the form approved by City's finance manager, an invoice for services rendered prior to the date of the invoice. Payments shall be based on the hourly rates as set forth in Exhibit "A" for authorized services performed. City shall pay Consultant for all expenses stated thereon, which are approved by City consistent with this Agreement, within thirty (30) days of receipt of Consultant's invoice.

3.3 Changes. In the event any change or changes in the Scope of Services/Work is requested by City, the parties hereto shall execute a written amendment to this Agreement, setting forth with particularity all terms of such amendment, including, but not limited to, any additional fees. An amendment may be entered into:

A. To provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product, or work;

B. To provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Consultant's profession.

3.4 Appropriations. This Agreement is subject to and contingent upon funds being appropriated therefore by the Laguna Hills City Council for each fiscal year covered by the Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to City.

4. PERFORMANCE SCHEDULE

4.1 Time of Essence. Time is of the essence in the performance of this Agreement.

4.2 Schedule of Performance. All services rendered pursuant to this Agreement shall be performed pursuant to the agreed upon schedule of performance set forth in Exhibit "A". The extension of any time period must be approved in writing by the Contract Officer.

4.3 Force Majeure. The time for performance of services to be rendered pursuant to this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, including, but not limited to, acts of God or of a public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, and unusually severe weather if Consultant shall within ten (10) days of the commencement of such condition notify the Contract Officer who shall thereupon ascertain the facts and the extent of any necessary delay, and extend the time for performing the services for the period of the enforced delay when and if in the Contract Officer's judgment such delay is justified, and the Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

4.4 Term. Unless earlier terminated in accordance with Section 8.5 of this Agreement, this Agreement shall continue in full force and effect commencing on July 13, 2011, and ending on June 30, 2013, unless extended by mutual written agreement of the parties.

5. COORDINATION OF WORK

5.1 Representative of Consultant. The following principal of Consultant is hereby designated as being the principal and representative of Consultant authorized to act in its behalf with respect to the services and work specified herein and make all decisions in connection therewith: William O'Toole, President. It is expressly understood that the experience, knowledge, education, capability, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. The foregoing principal may not be changed by Consultant without prior written approval of the Contract Officer.

5.2 Contract Officer. The Contract Officer shall be the City Manager, or his/her designee. It shall be the Consultant's responsibility to keep the Contract Officer, or his/her designee, fully informed of the progress of the performance of the services and Consultant shall refer any decisions that must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer.

5.3 Prohibition Against Subcontracting or Assignment. The experience, knowledge, education, capability, and reputation of Consultant, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Consultant shall not contract with any other individual or entity to perform in whole or in part the services required hereunder without the express written approval of City. In addition, neither this

Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City.

5.4 Independent Contractor. Neither City nor any of its employees shall have any control over the manner, mode, or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. Consultant shall perform all services required herein as an independent contractor of City and shall not be an employee of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role; however, City shall have the right to review Consultant's work product, result, and advice. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City.

5.5 Personnel. Consultant agrees to assign the following individuals to perform the services set forth herein. Consultant shall not alter the assignment of the following personnel without the prior written approval of the Contract Officer. Acting through the City Manager, the City shall have the unrestricted right to order the removal of any personnel assigned by Consultant by providing written notice to Consultant.

<u>Name:</u>	<u>Title:</u>
William O'Toole	President
Cerene St. John	Vice President
Trevor Blythe	Director, Project Implementation

6. INSURANCE AND INDEMNIFICATION

6.1 Insurance. Consultant shall procure and maintain, at its sole cost and expense, and submit concurrently with its execution of this Agreement, in a form and content satisfactory to City, public liability and property damage insurance against all claims for injuries against persons or damages to property resulting from Consultant's performance under this Agreement. Consultant shall also carry workers' compensation insurance in accordance with California workers' compensation laws. Such insurance shall be kept in full force and effect during the term of this Agreement, including any extension thereof, and shall not be cancelable without thirty (30) days written notice to City of any proposed cancellation. Certificates of insurance evidencing the foregoing and designating the City, its elected officials, officers, employees, agents, and volunteers as additional insureds by original endorsement shall be delivered to and approved by City prior to commencement of services. The procuring of such insurance and the delivery of policies, certificates, and endorsements evidencing the same shall not be construed as a limitation of Consultant's obligation to indemnify City, its elected officials, officers, agents, employees, and volunteers.

6.1.1 Minimum Scope of Insurance. The minimum amount of insurance required hereunder shall be as follows:

A. Comprehensive general liability and personal injury with limits of at least one million dollars (\$1,000,000.00) per occurrence, two million dollars (\$2,000,000.00) in the general aggregate, and one million dollars (\$1,000,000.00) for products and completed operations; the commercial general liability policy shall name the City of Laguna Hills as an

additional insured in accordance with standard ISO additional insured endorsement form CG2010(1185) or equivalent language;

B. Automobile liability insurance with limits of at least one million dollars (\$1,000,000.00) per occurrence;

C. Workers' Compensation insurance in the statutory amount as required by the State of California, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000.00) per accident for bodily injury or disease.

For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects City and its respective elected officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by City and its respective elected officials, officers, employees, agents, and volunteers shall be in excess of Consultant's insurance and shall not contribute with it. For Workers' Compensation and Employer's Liability Insurance only, the insurer shall waive all rights of subrogation and contribution it may have against City, its elected officials, officers, employees, agents, and volunteers.

6.1.2 Sufficiency of Insurers. Insurance required herein shall be issued by a licensed company authorized to transact business in the state by the Department of Insurance for the State of California with a current rating of A-VII or better (if an admitted carrier), or a current rating of A:X or better (if offered by a non-admitted insurer listed on the State of California List of Eligible Surplus Lines Insurers (LESLI), by the latest edition of A.M. Best's Key Rating Guide, except that the City will accept workers' compensation insurance from the State Compensation Fund.

6.1.3 Verification of Coverage. Consultant shall furnish City with both original certificates of insurance and endorsements, including additional insured endorsements, effecting all of the coverages required by this Agreement. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All proof of insurance is to be received and approved by the City before work commences. City reserves the right to require Consultant's insurers to provide complete, certified copies of all required insurance policies at any time. Additional insured endorsements are not required for Workers' Compensation policies.

6.1.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected officials, officers, employees, agents, and volunteers; or, Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

6.1.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers.

6.2 Indemnification. To the fullest extent permitted by law, Consultant shall defend (at Consultant's sole cost and expense), indemnify, protect, and hold harmless City, its elected officials, officers, directors, employees, agents, and volunteers (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (Consultant's employees included), for damage to property, including property owned by City, from any violation of any federal, state, or local law or ordinance, which Claims arise out of or are related to Consultant's performance under this Agreement. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Consultant's indemnification obligation or other liability hereunder.

7. RECORDS AND REPORTS

7.1 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require.

7.2 Records. Consultant shall keep such books and records as shall be necessary to properly perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

7.3 Ownership of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights or ownership of the documents and materials hereunder. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein.

7.4 Release of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer.

7.5 Cost Records. Consultant shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred while performing under this Agreement and shall make such materials available at its offices at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment for inspection by City and copies thereof shall be promptly furnished to City upon request.

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8. ENFORCEMENT OF AGREEMENT

8.1 California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

8.2 Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of City shall be deemed to waive or render unnecessary City's consent to or approval of any subsequent act of Consultant. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.3 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

8.4 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, a declaratory judgment, or any other remedy consistent with the purposes of this Agreement.

8.5 Termination Prior to Expiration of Term. City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Consultant, except that where termination is due to the fault of Consultant and constitutes an immediate danger to health, safety, and general welfare, the period of notice shall be such shorter time as may be determined by the City. Upon receipt of the notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Consultant shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Contract Officer thereafter.

8.6 Attorney Fees. In the event any dispute between the parties with respect to this Agreement results in litigation or any non-judicial proceeding, the prevailing party shall be entitled, in addition to such other relief as may be granted, to recover from the non-prevailing party all reasonable costs and expenses, including but not limited to reasonable attorney fees, expert consultant fees, court costs and all fees, costs, and expenses incurred in any appeal or in collection of any judgment entered in such proceeding.

9. CITY OFFICERS AND EMPLOYEES; NON-DISCRIMINATION

9.1 Non-Liability of City Officers and Employees. No officer, director, official, or employee of City shall be personally liable to the Consultant, or any successor-in-interest, in the

event of any default or breach by City or for any amount which may become due to the Consultant or its successor, or for breach of any obligation of the terms of this Agreement.

9.2 Covenant Against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination or segregation in the performance of or in connection with this Agreement regarding any person or group of persons on account of race, color, creed, religion, sex, marital status, disability, sexual orientation, national origin, or ancestry.

10. MISCELLANEOUS PROVISIONS

10.1 Notice. Any notice, demand, request, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by pre-paid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

To City:

City of Laguna Hills
Attention: City Manager
24035 El Toro Road
Laguna Hills, CA 92653

To Consultant:

EcoNomics
Attention: William O'Toole, President
PO Box 2790
Del Mar, CA 92014

10.2 Integrated Agreement. This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement.

10.3 Amendment. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

10.4 Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder.

10.5 Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

**“CITY”
City of Laguna Hills**

Date: _____

By: _____
Bruce E. Channing,
City Manager

APPROVED AS TO FORM:

ATTEST

By: _____
Gregory E. Simonian,
City Attorney

By: _____
Peggy J. Johns,
City Clerk

**“CONSULTANT”
EcoNomics, Inc.**

Date: _____

By : _____
William O’Toole

President

Date: _____

By : _____
Cerene St. John

Vice President

EXHIBIT “A”

CONSULTANT’S SCOPE OF SERVICES/WORK

Including,

Schedule of Fees

And

Schedule of Performance

SCHEDULE OF FEES &

SCOPE OF WORK

A. SCHEDULE OF FEES

Consultant will bill time and material (T&M) and Consultant will invoice City for consulting services at the beginning of every month for services rendered the previous month.

a. The hourly rate for Consultant personnel is as follows:

i. Principal (President and Vice President)	\$175.00
ii. Project Manager	\$150.00
iii. Project Supervisor	\$120.00
iv. Director, Project Implementation	\$100.00
v. Computer & Field	\$ 80.00
vi. Clerical	\$ 50.00

b. All invoices will be itemized to show work from Consultant personnel as identified in (a) above.

c. All expenses are included in hourly rates (a) above except for travel beyond a 250-mile radius. Travel expenses for business conducted for the benefit of City that exceed 250 miles, will be itemized on each monthly invoice.

d. The billings shall be sent to:

David Reynolds
Deputy City Manager
City of Laguna Hills
24555 Alicia Parkway, CA 92653

B. PROVIDE RECYCLING/SOLID WASTE ASSISTANCE TO CITY STAFF

The schedule of performance for the following tasks will be determined by the City.

Task B1. Provide California Integrated Waste Management Board (CIWMB) Support.

Consultant will represent the City in regards to CIWMB questions and concerns in relation to the City's diversion activity. Consultant's assistance with the CIWMB shall include:

- a. Work with CIWMB staff to answer and document any questions or concerns in regards to both residential and non-residential programs. Consultant shall respond to City's request to contact CIWMB for any issue or concern.
- b. Assist in the preparation of any required CIWMB reports for City review. Assistance shall include the collection of all required data from the franchise holder and the operators of any other recycling programs in the City (e.g. supermarket back hauling of organics and cardboard) and from local recycling facilities including Tierra Verde, other private recyclers, and any other data collection required for CIWMB reports.

Task B2. Provide Technical and Field Support for the Administration of the City's Solid Waste and Recycling Franchise Agreement.

Consultant shall provide support to the City with the administration of the City's 10-year franchise agreement with CR&R including the following activity:

- a. Maintain a checklist of all contract requirements and due dates contained in the new contract. Support the City in periodic meetings with CR&R to review the contract requirements and to coordinate with CR&R concerning public education items, writing of brochures and public education materials, placement of customer communications on the CR&R web site, implementation and enhancement of programs, and other coordination issues. Perform additional work items as assigned by the City.
- b. Coordinate with City and CR&R staff to accompany CR&R representatives to meetings with local businesses to assist in implementation of recycling programs at each business. Provide technical support to City staff making site visits to local businesses to discuss recycling programs.
- c. Review reports and correspondence submitted by CR&R, track recycling program implementation for AB 939 reporting purposes, and perform additional work items as assigned by the City.
- d. Conduct waste audits of CR&R and the residential and business communities as requested by the City.
- e. Assist the City in reviewing the Disposal Recording System to resolve any errors in assignment of tonnage to the City of Laguna Hills.
- f. Assist the City with processing any request for a rate increase or other requests pursuant to the contract requirements.
- g. Consultant will periodically perform site visits to determine the condition of bins. Bins will be checked for missing lids, broken wheels, graffiti, condition of paint,

and placement of appropriate decal(s) and signage. In addition, bins will be checked for floors that are rusted and/or leaking, damaged arm sleeves, or dented sides.

Task B3. Provide Technical Recycling Assistance to Local Restaurants and Businesses to Maintain and Develop Recycling Programs.

In addition to the work in Task B2, Consultant shall provide technical recycling assistance to individual restaurants and businesses in the City to implement and/or expand recycling programs, training materials and employee training, assistance with recyclables storage container selection, assistance in identifying which materials can be recycled, and technical recycling assistance to business groups as directed by the City.

EcoNomics will work to identify and verify legitimate source reduction efforts that are occurring in the City of Laguna Hills.

- a. Provide assistance to the Laguna Hills Mall with its recycling programs.
- b. Assist with the implementation and support of a food waste recycling program.

Task B4. Attend Progress Meetings and Prepare Monthly Progress Reports.

Consultant shall attend a monthly progress meeting with City staff to discuss the status of all tasks in progress, problems encountered, schedules, etc. Prepare a written monthly progress report to the City for submittal with each month's invoice.

Task B5. Perform Other Duties As Assigned by the City.

Consultant shall perform other duties as assigned by the City for AB 939 compliance and to assist the City with administration of the solid waste collection contract, Department of Conservation beverage recycling programs, and other recycling activity within the City of Laguna Hills.

CITY OF LAGUNA HILLS

AGENDA REPORT PUBLIC SERVICES DEPARTMENT

**ISSUE: AMENDMENT NO. 1 TO CITYWIDE LANDSCAPE MAINTENANCE
CONTRACT SERVICES AGREEMENT WITH NIEVES LANDSCAPE,
INC.**

SUMMARY:

The City entered into the Citywide Landscape Maintenance Contract Services Agreement (Contract Agreement) with Nieves Landscape, Inc. (Nieves), for citywide landscape maintenance services effective July 1, 2009. Nieves has performed all of their contractual obligations in a professional and highly satisfactory manner. In reviewing the Contract Agreement; however, staff has determined there was an inadvertent cap placed upon the total compensation value in the Contract Agreement that is inconsistent with the intended scope of work and regular practices of the City. Specifically, the Contract Agreement used the base service cost as the maximum compensation of the Contract Agreement which did not take into account such regular expenses as the addition of new landscape areas for routine maintenance, non-recurring extra work as needed, and a contemplated cost of living adjustment in this fiscal year. All of the costs above the base service cost are within the adopted budget, and staff proposes to amend the Contract Agreement to account for the routine administration of citywide landscape maintenance services.

BACKGROUND:

Following a request for proposal process in early 2009, the City selected Nieves as the contractor to perform citywide landscape maintenance services and entered into the Contract Agreement effective July 1, 2009. A copy of the Contract Agreement, not including the extensive exhibits which are on file with the City Clerk, is provided as an attachment to this report. The scope of work called for in the Contract Agreement included a "base contract services" cost for all existing routine and recurring landscape maintenance services in place at the time of the proposal submittal plus unit costs for

**RECOMMENDATION: THAT THE CITY COUNCIL APPROVE AMENDMENT NO. 1
TO THE CITYWIDE LANDSCAPE MAINTENANCE CONTRACT SERVICES
AGREEMENT WITH NIEVES LANDSCAPE, INC., AND AUTHORIZE THE CITY
MANAGER TO SIGN THE AMENDMENT AND THE CITY CLERK TO ATTEST
THERETO.**

any extra work that may be ordered by the City as necessary for the administration of a good quality landscape maintenance program.

The base contract services compensation included in the Nieves proposal of \$869,998.92 was incorporated into Paragraph 3.1 of the Contract Agreement, "Compensation of Contractor," which was further defined in that paragraph as the "Maximum Contract Amount." However, the base contract services compensation should not have been defined as the Maximum Contract Amount in the Contract Agreement as it does not take into account the efficient administration of landscape maintenance services including such regular expenses as the addition of new landscape areas for routine maintenance, non-recurring extra work as needed, and a contemplated cost of living adjustment in this fiscal year. To correct the inadvertent cap placed upon the Contract Agreement with Nieves, staff proposes the City Council approve the attached Amendment No. 1 to the Contract Agreement.

The proposed Amendment No. 1 to the Contract Agreement re-sets the maximum contract amount, establishes a task order system for directing of extra work, and directly incorporates the cost of living adjustment specification into the Contract Agreement. The compensation of the Contract Agreement is capped by the City Council adopted budget.

FISCAL IMPACT:

Citywide landscape maintenance is included in the current Fiscal Year Budget in the total amount of \$1,120,000. This value consists of \$925,000 of landscape maintenance services, \$175,000 of tree maintenance services, and \$20,000 of rodent and pest control services.

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE AMENDMENT NO. 1 TO THE CITYWIDE LANDSCAPE MAINTENANCE CONTRACT SERVICES AGREEMENT WITH NIEVES LANDSCAPE, INC., AND AUTHORIZE THE CITY MANAGER TO SIGN THE AMENDMENT AND THE CITY CLERK TO ATTEST THERETO.

ATTACHMENTS:

- Agreement
- Amendment No. 1

CITYWIDE LANDSCAPE MAINTENANCE CONTRACT SERVICES AGREEMENT

THIS AGREEMENT FOR CITYWIDE LANDSCAPE MAINTENANCE CONTRACT SERVICES (the "Agreement") is made and entered effective this 1st day of July, 2009, by and between the City of Laguna Hills, a municipal corporation organized and existing under the laws of the State of California ("City"), and Nieves Landscape, Inc., a California corporation ("Contractor"). City and Contractor are sometimes hereinafter individually referred to as "Party" and are hereinafter collectively referred to as the "Parties".

RECITALS

A. City requires the services of a professional landscaping company to perform regularly scheduled citywide landscape maintenance services in order to maintain the various landscaped areas owned by the City in a manner acceptable to the City (the "Project").

B. Contractor has submitted to City a written proposal to provide such services to the City, which proposal is dated April 22, 2009, pursuant to the terms of this Agreement.

C. Based on its experience, education, training, licensure, and reputation, Contractor is qualified to provide the necessary citywide landscape maintenance services to City for the Project and desires to provide such services.

D. City desires to retain the landscape maintenance services of Contractor for the Project.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, City agrees to retain and does hereby retain Contractor and Contractor agrees to provide landscape maintenance services to the City as follows:

AGREEMENT

1. CONTRACTOR SERVICES

1.1 **Scope of Services.** In compliance with all terms and conditions of this Agreement, Contractor shall provide the required landscape maintenance services to the City for the Project as described in the Requests for Proposals issued by the City dated March 25, 2009, which includes the Scope of Work General Provisions, Special Provisions, and Appendices ("Scope of Work"), the Schedule of Services and the Schedule of Fees, which is attached to this Agreement as Exhibit "A" and incorporated herein by reference (the "services" or "work"). Contractor warrants that all services and work shall be performed in a competent, professional, and satisfactory manner in accordance with all standards prevalent in the industry. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that Contractor is a provider of first class work and professional services and that Contractor is experienced in performing the work and services contemplated herein and, in light of such status and experience, Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder. For purposes of this Agreement, the

phrase "highest professional standards" shall mean those standards of practice recognized as high quality among well-qualified and experienced contractors performing similar work under similar circumstances.

1.2 Contract Documents. The Agreement between the Parties shall consist of the following: (1) this Agreement; (2) the City's Request for Proposals, including the Scope of Work; and (3) the Contractor's signed, original proposal dated March 25, 2009, submitted to the City (Exhibit "B"), which shall all be referred to collectively hereinafter as the "Contract Documents." The above-referenced exhibits are each attached to this Agreement and are hereby incorporated by reference and are made part of this Agreement. Should any conflict or inconsistency exist in the Contract Documents, the conflict or inconsistency shall be resolved by applying the provisions in the highest priority document, which shall be determined in the following priority: (1st) the provisions of the City's Request for Proposals, including the Scope of Work; (2nd) the terms of this Agreement; and, (3rd) the provisions of the Contractor's Proposal.

1.3 Compliance with Law. All services rendered under this Agreement shall be provided by Contractor in accordance with all applicable federal, state, and local laws, statutes, and ordinances and all lawful orders, rules, and regulations promulgated thereunder.

1.4 Licenses and Permits. Contractor represents and warrants to City that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession and perform the work and services required by this Agreement. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, qualification, or approval that is legally required for Contractor to perform the work and services under this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the work and services required by this Agreement, and shall indemnify, defend, and hold harmless City against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against City hereunder.

1.5 Familiarity with Work. By executing this Agreement, Contractor warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this Agreement.

1.6 Care of Work. Contractor shall adopt reasonable methods during the term of the Agreement to furnish continuous protection to the work and the equipment, materials, papers, documents, plans, studies, and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by the City, except such losses or damages as may be caused by City's own negligence.

1.7 Further Responsibilities of Parties. Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement.

1.8 Additional Services. City shall have the right at any time during the performance of the work or services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Work or make changes by altering, adding to, or deducting from such work or services. No such extra work or services may be undertaken unless a written order is first given by the City to the Contractor, incorporating therein any adjustment in (i) the Maximum Contract Amount, as defined below, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Contractor. It is expressly understood by Contractor that the provisions of this section shall not apply to the services specifically set forth in the Scope of Work or reasonably contemplated therein, regardless of whether the time or materials required to complete any work or service identified in the Scope of Work exceeds any time or material amounts or estimates provided therein.

2. TIME FOR COMPLETION.

The time for completion of the services to be performed by Contractor is an essential condition of this Agreement. Contractor shall prosecute regularly and diligently the work of this Agreement according to the agreed upon Schedule of Services set forth in Exhibit "A". Contractor shall not be accountable for delays in the progress of its work caused by any condition beyond its control and without the fault or negligence of Contractor. Delays shall not entitle Contractor to any additional compensation regardless of the party responsible for the delay.

3. COMPENSATION OF CONTRACTOR

3.1 Compensation of Contractor. For the services rendered pursuant to this Agreement, Contractor shall be compensated and reimbursed, in accordance with the Schedule of Fees set forth in Exhibit "A," which total amount shall not exceed \$869,998.92 per year ("Maximum Contract Amount"), except as may be provided pursuant to Section 1.8 above. The method of compensation shall be as set forth in Schedule of Fees. Contractor hereby acknowledges that it accepts the risk that the services identified in the Scope of Work may be more costly and/or time-consuming than Contractor anticipates, that Contractor shall not be entitled to additional compensation therefore, and that the provisions of Section 1.8 shall not be applicable to the work or services identified in the Scope of Work and Schedule of Services. The maximum amount of City's payment obligation under this section is the amount specified herein. If the City's maximum payment obligation is reached before the Contractor's services or work under this Agreement are completed, Contractor shall nevertheless complete the work without liability on the City's part for further payment beyond the Maximum Contract Amount.

3.2 Method of Payment. In any month in which Contractor wishes to receive payment, Contractor shall no later than the first working day of such month, submit to City in the form approved by City's Finance Manager, an invoice for services rendered prior to the date of the invoice. Such requests shall be based upon the amount and value of the services performed by Contractor and accompanied by such reporting data including an itemized breakdown of all costs incurred and tasks performed during the period covered by the invoice, as may be required by the City. Payments shall be based on the rates as set forth in the Schedule of Fees for authorized services performed. City shall use reasonable efforts to make payments to Contractor

within forty-five (45) days after receipt of the invoice or a soon thereafter as is reasonably practical.

3.3 Changes in Scope. In the event any change or changes in the Scope of Work is requested by the City, the Parties shall execute a written amendment to this Agreement, setting forth with particularity all terms of such amendment, including, but not limited to, any additional professional fees. An amendment may be entered into: (a) to provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product, or work; and/or (b) to provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Contractor's profession.

3.4 Appropriations. This Agreement is subject to and contingent upon funds being appropriated therefore by the Laguna Hills City Council for each fiscal year covered by the Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to City.

4. PERFORMANCE SCHEDULE

4.1 Time of Essence. The time for completion of the services to be performed by Contractor is an essential condition of this Agreement. Contractor shall prosecute regularly and diligently the services and work of this Agreement within the time period(s) established in the Scope of Work and Schedule of Services (Exhibit "A") (such time periods are referred to collectively herein as the "schedule of performance"). Failure to perform the work or services in compliance with the schedule of performance shall subject Contractor to penalties in accordance with the Performance Deficiency Deduction set forth in the Scope of Work General Provisions, a copy of which is attached hereto and incorporated herein by reference.

4.2 Schedule of Services. All services rendered pursuant to this Agreement shall be performed pursuant to the Scope of Work and the agreed upon Schedule of Services set forth in Exhibit "A". The extension of any time period must be approved in writing by the Contract Officer.

4.3 Force Majeure. The time for performance of services to be rendered pursuant to this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including, but not limited to, acts of God or of a public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, and unusually severe weather if Contractor shall within ten (10) calendar days of the commencement of such condition notify the Contract Officer who shall thereupon ascertain the facts and the extent of any necessary delay, and extend the time for performing the services for the period of the enforced delay when and if in the Contract Officer's judgment such delay is justified, and the Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

4.4 Term. Unless earlier terminated as provided elsewhere in this Agreement, this Agreement shall commence on the effective date of this Agreement and continue in full force and effect for a period of five (5) years. In the discretion of the City Manager, and upon mutual written agreement of the Parties, this Agreement may be extended for one additional five year term; however, in no event shall the total contract term of this Agreement exceed ten (10) years.

5. COORDINATION OF WORK

5.1 Representative of Contractor. The following principal of Contractor is hereby designated as being the principal and representative of Contractor authorized to act in its behalf with respect to the services and work specified herein and make all decisions in connection therewith: Greg Nieves. It is expressly understood that the experience, knowledge, education, capability, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. The foregoing principal may not be changed by Contractor without prior written approval of the Contract Officer.

5.2 Contract Officer. The Contract Officer shall be the City Manager, or his/her designee. It shall be the Contractor's responsibility to keep the Contract Officer, or his/her designee, fully informed of the progress of the performance of the services and Contractor shall refer any decisions that must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer.

5.3 Prohibition Against Subcontracting or Assignments. The experience, knowledge, capability, expertise, and reputation of Contractor, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Contractor shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, voluntarily or by operation of law, without the prior written consent of City, except as may be expressly permitted under the Scope of Work. Contractor shall not contract with any other entity to perform the Services required without prior written consent of City. If Contractor is permitted to subcontract any part of this Agreement by City, Contractor shall be responsible to City for the acts and omissions of its subcontractor(s) in the same manner as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the Work will be considered employees of Contractor. City will deal directly with and will make all payments to Contractor. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written consent of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release Contractor or any surety of Contractor from any liability hereunder without the express written consent of City.

5.4 Independent Contractor.

A. The legal relationship between the Parties is that of an independent contractor, and nothing herein shall be deemed to make Contractor a City employee. During the performance of this Agreement, Contractor and its officers, employees, and agents shall act in an independent capacity and shall not act as City officers or employees. The personnel performing the Services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Contractor or any of its officers, employees, or agents, except as set forth in this Agreement. Contractor, its officers, employees, or agents shall not maintain an office or any other type of fixed business location at City's offices. City shall have no voice in the selection, discharge, supervision, or control of Contractor's employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service. Contractor shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, including but not limited to social security income tax withholding, unemployment compensation, workers' compensation, and other similar matters. City shall not in any way or for any purpose be deemed to be a partner of Contractor in its business or otherwise a joint venturer or a member of any joint enterprise with Contractor; however, City shall have the right to review Contractor's work product, result, and advice. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City.

B. Contractor shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

C. No City benefits shall be available to Contractor, its officers, employees, or agents in connection with the performance of any work or services performed under this Agreement. Except for professional fees paid to Contractor as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Contractor for the performance of work or services under this Agreement. City shall not be liable for compensation or indemnification to Contractor, its officers, employees, or agents, for injury or sickness arising out of performing the work or services hereunder. If for any reason any court or governmental agency determines that the City has financial obligations, other than pursuant to Section 3 and Subsection 1.8 herein, of any nature relating to salary, taxes, or benefits of Contractor's officers, employees, servants, representatives, subcontractors, or agents, Contractor shall indemnify City for all such financial obligations.

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5.5 Personnel. Contractor agrees to assign the following individuals to perform the services set forth herein. Contractor shall not alter the assignment of the following personnel without the prior written approval of the Contract Officer. Acting through the City Manager, the City shall have the unrestricted right to order the removal of any personnel assigned by Contractor by providing written notice to Contractor.

<u>Name:</u>	<u>Title:</u>
Greg Nieves	President
Anne Cashman	Office Manager
Walter Sato	Business Development

6. INSURANCE

6.1 Types of Insurance. Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, the insurance described herein for the duration of this Agreement, including any extension thereof, or as otherwise specified herein, against claims which may arise from or in connection with the performance of the work or services hereunder by Contractor, its agents, representatives, or employees. Insurance required herein shall be provided by an authorized insurance company and admitted in the State of California and having a minimum A.M. Best's Guide Rating of A-, Class VII or better, unless such requirements are waived in writing by the City Manager or his/her designee due to unique circumstances. In the event the City Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City Manager or his/her designee. Contractor shall immediately substitute any insurer whose A.M. Best rating drops below the levels specified herein. Contractor shall provide City certificates of insurance in a form acceptable to City indicating the deductible and self-insured retention amounts and the expiration date of the policy, and shall provide renewal certificates not less than ten (10) days prior to the expiration of the policy. All insurance provided pursuant to this Agreement shall be on an occurrence basis. The minimum amount of insurance required hereunder shall be as follows:

A. **Workers' Compensation Insurance.** Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, workers' compensation insurance in at least the minimum statutory amounts, and in compliance with all other statutory requirements, as required by the State of California. Contractor agrees to waive and obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

B. **Commercial General Liability Insurance.** Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of commercial general liability insurance written on a per occurrence basis with a combined single limit of at least One Million Dollars (\$1,000,000.00) bodily injury and property damage including coverages for

contractual liability, personal injury, independent contractors, broad form property damage, products and completed operations.

(1) The commercial general liability policy shall name the City of Laguna Hills as an additional insured in accordance with standard ISO additional insured endorsement form CG2010(1185) or equivalent language.

(2) Contractor shall either: (a) certify in writing to the City that Contractor is unaware of any liability claims made against Contractor, and is unaware of any facts which may lead to such a claim against Contractor; or (b) if Contractor does not provide the certification pursuant to (a), Contractor shall procure from the commercial general liability insurer an endorsement providing that the required limits of the policy shall apply separately to occurrences during the rendition of services pursuant to this Agreement.

C. Business Automobile Insurance. Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of business automobile liability insurance written on a per occurrence basis with a single limit liability in the amount of One Million Dollars (\$1,000,000.00) bodily injury and property damage. The policy shall include coverage for owned, non-owned, leased, and hired cars.

D. Employer Liability Insurance. Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of employer liability insurance written on a per occurrence basis with a policy limit of at least One Million Dollars (\$1,000,000.00) for bodily injury or disease.

6.2 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager prior to commencing any work or services under this Agreement. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, employees, agents or volunteers; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

6.3 Other Insurance Requirements. The following provisions shall apply to the insurance policies required of Contractor pursuant to this Agreement:

6.3.1 The required commercial general, business automobile, and employer liability policies shall be endorsed to state that City and its officers, council members, officials, employees, agents, and volunteers shall be covered as additional insureds with respect to liability arising out of all work or services performed by Consultant pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to additional insureds. Additional insured endorsements are not required for the professional liability and workers' compensation policies.

6.3.2 For any claims related to this Agreement, Contractor's coverage shall be primary insurance as respects City and its officers, council members, officials, employees,

agents, and volunteers. Any insurance or self-insurance maintained by the City and its officers, council members, officials, employees, agents, and volunteers shall be in excess of Contractor's insurance and shall not contribute with it. In the alternative, the insurer shall waive all rights of subrogation and contribution it may have against the City, its officers, council members, officials, employees, agents, and volunteers, and their respective insurers.

- 6.3.3 Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City and its officers, council members, officials, employees, agents, and volunteers.
- 6.3.4 Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.
- 6.3.5 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or modified by either Party, or reduced in coverage or in limits, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been provided to the City. Notwithstanding the foregoing in this subsection, if coverage is to be suspended, voided, or cancelled because of Contractor's failure to pay the insurance premium, the notice provided to City shall be by ten (10) days prior written notice.
- 6.3.6 All insurance coverage and limits provided by Contractor and available or applicable to this Agreement are intended to apply to each insured, including additional insured's, against whom a claim is made or suit is brought to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations shall limit the application of such insurance coverage.
- 6.3.7 None of the insurance coverages required herein will be in compliance with these requirements if they include any limiting endorsement which substantially impairs the coverages set forth herein (e.g., elimination of contractual liability or reduction of discovery period), unless the endorsement has first been submitted to the City Manager and approved in writing.
- 6.3.8 Contractor agrees to require its insurer to modify insurance endorsements to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the endorsements. Certificates of insurance will not be accepted in lieu of required endorsements, and submittal of certificates without required endorsements may delay commencement of the Project. It is Contractor's obligation to ensure timely compliance with all insurance submittal requirements as provided herein.

- 6.3.9 Contractor agrees to ensure that subcontractors, and any other parties involved with the Project who are brought onto or involved in the Project by Contractor, provide the same minimum insurance coverage required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with subcontractors and others engaged in the Project will be submitted to the City for review.
- 6.3.10 Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with any insurance requirement in no way imposes any additional obligations on the City nor does it waive any rights hereunder in this or any other regard.
- 6.3.11 Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. Endorsements as required in this Agreement applicable to the renewing or new coverage shall be provided to City no later than ten (10) days prior to expiration of the lapsing coverage.
- 6.3.12 Requirements of specific insurance coverage features or limits contained in this section are not intended as limitations on coverage, limits, or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
- 6.3.13 The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this section.
- 6.3.14 Contractor agrees to provide immediate notice to City of any claim or loss against Contractor arising out of the work or services performed under this Agreement and for any other claim or loss which may reduce the insurance available to pay claims arising out of this Agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City, or to reduce or dilute insurance available for payment of potential claims.
- 6.3.15 Contractor agrees that the provisions of this section shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages resulting from the Contractor's activities or the activities of any person or person for which the Contractor is otherwise responsible.

6.4 Verification of Coverage. Contractor shall furnish City certificates of insurance and original endorsements, including additional insured endorsements, in a form acceptable to the City, affecting all of the coverages required by this section. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Contractor shall provide to City all certificates and endorsements required by this section before commencing any work on the Project.

7. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall indemnify, defend (at Consultant's sole cost and expense), protect and hold harmless City and its officers, council members, officials, employees, agents and volunteers and all other public agencies whose approval of the Project is required, (individually "Indemnified Party"; collectively "Indemnified Parties") against any and all liabilities, claims, judgments, arbitration awards, settlements, costs, demands, orders, and penalties (collectively "Claims"), including but not limited to Claims arising from injuries or death of persons (Consultant's employees included) and damage to property, which Claims, including alleged Claims, arise out of, pertain to, or are related to Contractor's performance of the work and services under this Agreement.

Contractor shall reimburse the Indemnified Parties for any reasonable expenditures, including reasonable attorneys' fees, expert fees, litigation costs, and expenses that each Indemnified Party may incur by reason of Indemnified Claims. Upon request by an Indemnified Party, Contractor shall defend with legal counsel reasonably acceptable to the Indemnified Party all Claims against the Indemnified Party that may arise out of, pertain to, or relate to Indemnified Claims, whether or not Contractor is named as a party to the Claim proceeding. The determination whether a Claim "may arise out of, pertain to, or relate to Indemnified Claims" shall be based on the allegations made in the Claim and the facts known or subsequently discovered by the Parties. In the event a final judgment, arbitration award, order, settlement, or other final resolution expressly determines that Claims did not arise out of, pertain to, nor relate to Contractor's performance of the work and services under this Agreement to any extent, then City shall reimburse Contractor for the reasonable costs of defending the Indemnified Parties against such Claims, except City shall not reimburse Contractor for attorneys' fees, expert fees, litigation costs, and expenses that were incurred defending Contractor or any parties other than Indemnified Parties against such Claims.

Contractor's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until all actions against the Indemnified Parties for such matters indemnified hereunder are fully and finally barred by the applicable statute of limitations or, if an action is timely filed, until such action is final. This provision is intended for the benefit of third party Indemnified Parties not otherwise a party to this Agreement.

8. PERFORMANCE BOND

Contractor shall prior to the start of the work and services under this Agreement, submit to the City for its acceptance and approval a Faithful Performance Bond in the same format as set forth in Exhibit "C" entitled "Faithful Performance Bond," a copy of which is attached hereto and incorporated herein by reference. The Faithful Performance Bond shall be issued from an

admitted surety in the State of California. The bond shall be in the amount of 100% of the yearly value of this Agreement as set forth in Section 3.1 above.

Prior to approval of the bond, the City shall verify that the surety is an admitted surety in the State of California. If requested by City, the Contractor shall provide other information specified in Code of Civil Procedure Section 995.660 to enable City to verify the sufficiency of the bond. Should the bond become insufficient, the Contractor shall correct the insufficiency within ten (10) calendar days after receiving notice from the City. The Contractor shall provide the City evidence of said correction within ten (10) calendar days of said correction. Should any surety at any time be unsatisfactory to the City, written notice will be given to the Contractor to that effect. No further payments shall be deemed due or will be made under the Agreement until the Contractor submits an acceptable bond from a surety or sureties accepted by the City. Changes in the work or extensions of time made pursuant to the Agreement shall in no way release the Contractor or the surety from its obligations. Notice of such changes or extensions shall be waived by the surety.

If Contractor is unable to secure a single performance bond for the full five (5) year term of this Agreement, Contractor may, with the approval of the City, submit a single performance bond meeting all applicable requirements that is either renewable at the beginning of each year of the five (5) year term and any extension thereof, or may submit a new performance bond meeting all the applicable requirements at the beginning of each year of the five (5) year term of this Agreement and any extension thereof. Failure to submit the required bond at the beginning of each year of the five (5) year term of the Agreement and any extension thereof shall be deemed a breach of the Contractor's obligations under the Agreement and may result in termination of said Agreement. Nonetheless, no payments shall be deemed due or will be made under the Agreement and Contractor shall not perform any work hereunder until the Contractor submits an acceptable bond to the City. The performance bond shall remain in full force and effect during the entire term of the Agreement and any extension thereof.

9. RECORDS AND REPORTS

9.1 Accounting Records. Contractor shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Contractor shall keep such books and records as shall be necessary to properly perform the services required by this Agreement and to enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

9.2 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of the work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of such fact, circumstance,

technique, or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

9.3 Ownership of Documents. All drawings, specifications, reports, records, documents, memoranda, correspondence, computations, and other materials prepared by Contractor, its employees, subcontractors, and agents in the performance of this Agreement shall be the property of City and shall be promptly delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder. Any use of such completed documents for other projects and/or use of incomplete documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and the City shall indemnify the Contractor for all damages resulting there from. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. Contractor shall ensure that all its subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting there from.

9.4 Release of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Contractor in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer. All information gained by Contractor in the performance of this Agreement shall be considered confidential and shall not be released by Contractor without City's prior written authorization. Contractor, its officers, employees, agents or subcontractors shall not without written authorization from the City or unless presented by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work or services performed under this Agreement or relating to any project or property location within City. Response to a subpoena or court order shall not be considered "voluntary" for the purposes of this Section, provided Contractor gives City proper notice of such subpoena or court order. Contractor shall properly notify City of any summons, complaints, subpoenas, notice of deposition, request for documents, interrogatories, requests for admissions or other discovery requests received by Contractor, its officers, employees, agents or subcontractors, related to services performed pursuant to this Agreement. City retains the right, but has no obligation, to represent Contractor and/or be present at any deposition, hearing, or similar proceeding, the cost of which shall be borne by Contractor. Contractor agrees to cooperate fully with City and to provide City with an opportunity to review and respond to discovery requests provided by Contractor, arising out of Services performed pursuant to this Agreement. However, City's right to review any such request or response does not imply or mean City has the right to control, direct, write or rewrite said response.

9.5 Audit and Inspection of Records. After receipt of reasonable notice and during the regular business hours of City, Contractor shall provide City, or other agents of City, such access to Contractor's books, records, payroll documents, and facilities as City deems necessary to examine, copy, audit, and inspect all accounting books, records, work data, documents, and activities directly related to Contractor's performance under this Agreement. Contractor shall

maintain such books, records, data, and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during the term of this Agreement and for a period of three (3) years from the date of final payment by City hereunder.

10. ENFORCEMENT OF AGREEMENT

10.1 California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

10.2 Interpretation. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. The terms of this Agreement are contractual and the result of negotiation between the Parties. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification purposes only and shall not be deemed to limit, expand, or define the contents of the respective sections or paragraphs.

10.3 Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of City shall be deemed to waive or render unnecessary City's consent to or approval of any subsequent act of Contractor. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

10.4 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

10.5 Legal Action. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, a declaratory judgment, or any other remedy consistent with the purposes of this Agreement.

10.6 Termination Prior to Expiration of Term. City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Contractor, except that where termination is due to the fault of Contractor and constitutes an immediate danger to public health, safety, and general welfare, the period of notice shall be such shorter time as may be determined by the City. Upon receipt of the notice of termination, Contractor shall immediately cease all work and services hereunder except such as may be

specifically approved by the Contract Officer. Contractor shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Contract Officer thereafter. Contractor may terminate this Agreement, with or without cause, upon ninety (90) days written notice to City.

10.7 Default of Contractor.

A. Contractor's failure to comply with any provision of this Agreement or the Contract Documents shall constitute a default.

B. If the City Manager determines that Contractor is in default in the performance of any of the terms or conditions of this Agreement, he/she shall notify Contractor in writing of such default. Contractor shall have ten (10) days, or such longer period as City may designate, to cure the default by rendering satisfactory performance. In the event Contractor fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice of any remedy to which City may be entitled at law, in equity, or under this Agreement. Contractor shall be liable for any and all reasonable costs incurred by City as a result of such default. Compliance with the provisions of this Section shall not constitute a waiver of any City right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit City's right to terminate this Agreement without cause pursuant to Section 10.6.

C. If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 10.7.B, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the Services required hereunder exceeds the total yearly amount set forth in Section 3.1 (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated. The withholding or failure to withhold payments to Contractor shall not limit Contractor's liability for completion of the services as provided herein.

10.8 Attorney Fees. In the event any dispute between the Parties with respect to this Agreement results in litigation or any non-judicial proceeding, the prevailing Party shall be entitled, in addition to such other relief as may be granted, to recover from the non-prevailing Party all reasonable costs and expenses, including but not limited to reasonable attorney fees, expert consultant fees, court costs and all fees, costs, and expenses incurred in any appeal or in collection of any judgment entered in such proceeding. To the extent authorized by law, in the event of a dismissal by the plaintiff or petitioner of the litigation or non-judicial proceeding within thirty (30) days of the date set for trial or hearing, the other Party shall be deemed to be the prevailing Party in such litigation or proceeding.

11. CITY OFFICERS AND EMPLOYEES; NON-DISCRIMINATION

11.1 Non-Liability of City Officers and Employees. No officer or employee of City shall be personally liable to the Contractor, or any successor-in-interest, in the event of any

default or breach by City or for any amount which may become due to the Contractor or its successor, or for breach of any obligation of the terms of this Agreement.

11.2 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his/her financial interest or the financial interest of any corporation, partnership, or association in which he/she is, directly or indirectly, interested in violation of any state statute or regulation. Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration in exchange for obtaining this Agreement.

11.3 Covenant Against Discrimination. In connection with its performance under this Agreement, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, ancestry, or national origin. Contractor shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, marital status, ancestry, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

12. MISCELLANEOUS PROVISIONS

12.1 Notice. Any notice, demand, request, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by pre-paid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

To City:

City of Laguna Hills
Attention: City Manager
24035 El Toro Road
Laguna Hills, California 92653

To Contractor:

Greg Nieves
Nieves Landscape, Inc.
1629 E. Edinger Avenue
Santa Ana, CA 92705-5015

12.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, arrangements, agreements, representations, and understandings, if any, made by or among the Parties with respect to the subject matter hereof. No amendments or other modifications of this Agreement shall be binding unless executed in writing by both Parties hereto, or their respective successors, assigns, or grantees.

12.3 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be determined to be invalid by a final judgment or decree of a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of that provision, or the remaining provisions of this Agreement unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

12.4 Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

12.5 Third Party Beneficiary. Except as may be expressly provided for herein, nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as a third-party beneficiary or otherwise, upon any entity or person not a party hereto.

12.6 Recitals. The above-referenced Recitals are hereby incorporated into the Agreement as though fully set forth herein and each Party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

12.7 Corporate Authority. Each of the undersigned represents and warrants that (i) the Party for which he or she is executing this Agreement is duly authorized and existing, (ii) he or she is duly authorized to execute and deliver this Agreement on behalf of the Party for which he or she is signing, (iii) by so executing this Agreement, the Party for which he or she is signing is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the Party for which he or she is signing is bound.

12.8 Prevailing Wages. Notice is hereby given that in accordance with California Labor Code Section 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 16000, *et seq.*, ("Prevailing Wage Laws"), the Contractor is required to pay not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work or services pursuant to this Agreement are performed and not less than the general prevailing rate of per diem wages for holiday and overtime work. In that regard, the Director of the Department of Industrial Relations of the State of California is required to and has determined such general prevailing rates of per diem wages. Copies of the State prevailing wage rates and the latest revisions thereto are available on the Internet at www.dir.ca.gov. Contractor agrees to fully comply with all applicable federal and state labor laws (including, without limitation, if applicable, the Prevailing Wage Laws).

///

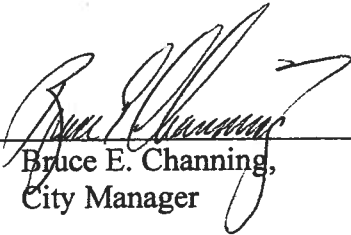
///

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

"CITY"

City of Laguna Hills

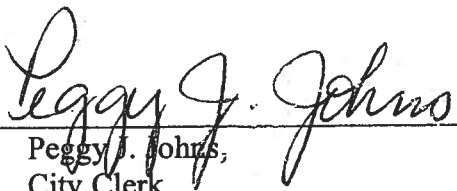
Date: June 15, 2009

By: 
Bruce E. Channing,
City Manager

APPROVED AS TO FORM:

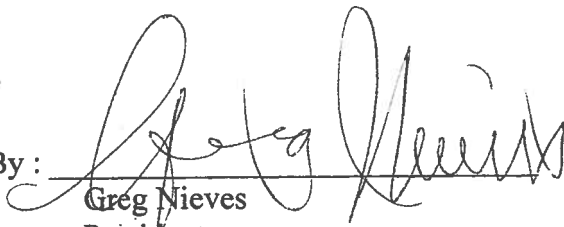
ATTEST

By: 
Gregory E. Simonian,
City Attorney

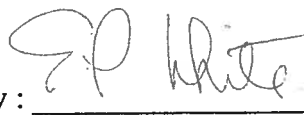
By: 
Peggy J. Johns,
City Clerk

"CONTRACTOR"

Date: June 8, 2009

By: 
Greg Nieves
President

Date: June 8, 2009

By: 
E. P. White
Secretary

[APPLY CORPORATE SEAL]

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Orange

On June 8, 2009 before me, Anne Elizabeth Cashman, Notary Public
(Here insert name and title of the officer)

personally appeared Greg Nieves (President) and R.P. White (Secretary)

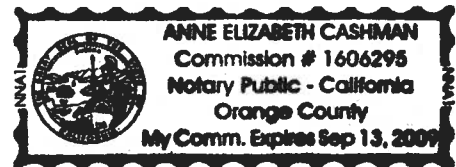
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),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

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

WITNESS my hand and official seal.

Anne Elizabeth Cashman
Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

City of Laguna Hills

(Title or description of attached document)

Landscape Maintenance Contract

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

☐ Individual (s)

☒ Corporate Officer

President and Secretary
(Title)

☐ Partner(s)

☐ Attorney-in-Fact

☐ Trustee(s)

☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

**AMENDMENT NO. 1
TO CITYWIDE LANDSCAPE MAINTENANCE
CONTRACT SERVICES AGREEMENT
(Nieves Landscape, Inc.)**

THIS AMENDMENT NO. 1 to the Citywide Landscape Maintenance Contract Services Agreement (the "Amendment") is made and entered into to be effective this ____ day of July 2011, by and between the CITY OF LAGUNA HILLS, a California general law city and municipal corporation, (hereinafter referred to as "City") and NIEVES LANDSCAPE, INC., a California corporation, (hereinafter referred to as Contractor"). City and Contractor are sometimes hereinafter individually referred to as "Party" and are hereinafter collectively referred to as "Parties".

RECITALS

A. City and Contractor previously entered into a Citywide Landscape Maintenance Contract Services Agreement for professional landscaping services for regularly scheduled citywide landscape maintenance services to maintain landscaped areas owned by the City (the "Agreement"), which was made and entered into on July 1, 2009, and which may be duly amended, in writing, from time to time by the Parties.

B. The original Schedule of Fees for the Agreement included a "Base Proposal Price" in the amount of \$869,998.92 per year for all existing routine and recurring landscape maintenance services based on a preset inventory of landscape maintenance areas and provided for unit costs for any extra work that may be ordered by the City as necessary for the administration of the landscape maintenance program.

C. The original Compensation of Contractor as set forth in Section 3.1 of the Agreement specifies that "Contractor shall be compensated and reimbursed in accordance with the Schedule of Fees set forth in Exhibit "A," which total amount shall not exceed \$869,998.92 per year ("Maximum Contract Amount"), except as provided pursuant to Section 1.8 above."

D. Section 1.8 of the Agreement provides as follows:

"1.8 Additional Services. City shall have the right at any time during the performance of the work or services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Work or make changes by altering, adding to, or deducting from such work or services. No such extra work or services may be undertaken unless a written order is first given by the City to the Contractor, incorporating therein any adjustment in (i) the Maximum Contract Amount, as defined below, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Contractor. It is expressly understood by Contractor that the provisions of this section shall not apply to the services specifically set forth in the Scope of Work or reasonably contemplated herein, regardless of whether the time or materials required to complete any work

or service identified in the Scope of Work exceeds any time or material amounts or estimates provided therein."

E. Under the Scope of Work General Provisions for Citywide Landscape Maintenance Services, the section entitled COMPENSATION provides:

"Annually beginning July 1, 2010, the Contractor may request an adjustment to the compensation to this Agreement equal to the lagging 12 months of the Consumer Price Index published through April and as selected by the City. A change in annual compensation shall not exceed five (5) percent regardless of the CPI or any other cost factors and is subject to the budgeting of funds by City."

F. In order to clearly capture the intended Scope of Work and compensation contemplated, the Parties desire to amend the Agreement to clarify the Maximum Contract Amount, establish a task order system for the Additional Services referenced in Section 1.8 of the Agreement, and incorporate a Consumer Price Index adjustment into the Agreement.

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

AGREEMENT

1. Amendment to Section 1.2 of the Agreement, entitled "Contract Documents."

Section 1.2 is hereby deleted in its entirety and replaced with the following:

"1.2 Contract Documents. The Agreement between the Parties shall consist of the following: (1) this Agreement, attachments, and any amendments thereto; (2) the Scope of Services; (3) the Contractor's signed, original proposal dated March 25, 2009, submitted to the City (Exhibit "B"); and (4) any written task orders as provided in Section 1.8 and 3.5, which may be issued from time to time, which shall all be referred to collectively hereinafter as the "Contract Documents." The above-referenced exhibits are each attached to this Agreement and are hereby incorporated by reference and are made part of this Agreement. Should any conflict or inconsistency exist in the Contract Documents, the conflict or inconsistency shall be resolved by applying the provisions in the highest priority document, which shall be determined in the following order of priority: (1st) the terms of this Agreement and any amendments thereto; (2nd) the provisions of the City's Request for Proposals, including the Scope of Services; (3rd) the provisions of the Contractor's Proposal; and (4th) any written task orders as provided in Section 1.8 and 3.5, which may be issued from time to time."

2. Amendment to Section 1.8 of the Agreement entitled "Additional Services."

Section 1.8 of the Agreement is hereby deleted in its entirety and replaced with the following:

"1.8 Additional Services. City shall have the right at any time during the performance of the work or services, without invalidating this Agreement, to order extra work as provided for in the Scope of Work and Schedule of Fees or make changes by altering, adding to, or deducting from such work or services. No such extra work or services may be undertaken unless a written task order is first given by the City to the Contractor as provided in section 3.5 herein, incorporating therein any adjustment in (i) the Maximum Contract Amount, as defined below, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Contractor and the City Manager or the City Manager's designee. It is expressly understood by Contractor that the provisions of this section shall apply only to the services identified as "Extra Work" in the Scope of Work and Schedule of Fees and shall not apply to the remaining services specifically set forth in the Scope of Work and Schedule of Fees for the Base Proposal Price or reasonably contemplated herein, regardless of whether the time or materials required to complete any work or service identified in the Scope of Work and Schedule of Fees for the Base Proposal Price exceeds any time or material amounts or estimates provided therein."

3. Amendment to Section 3.1 of the Agreement entitled "Compensation of Contractor."

Section 3.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

"3.1 Compensation of Contractor. Except as may be provided pursuant to section 1.8 and 3.5 herein, for the Services rendered pursuant to this Agreement, Contractor shall be compensated and reimbursed, in accordance with the Schedule of Fees set forth in Exhibit "A," which total amount identified in the Schedule of Fees as the Base Proposal Price shall not exceed \$869,998.92 per year plus an annual adjustment beginning July 1, 2010, if requested in writing by Contractor, equal to the lagging 12 months of the Consumer Price Index (CPI) as provided in the Contract Documents herein ("Maximum Contract Amount"). The method of compensation shall be set forth in the Schedule of Fees. Contractor hereby acknowledges that it accepts the risk that the services identified in the Scope of Services and Schedule of Fees for the Base Proposal Price may be more costly and/or time-consuming than Contractor anticipates, that Contractor shall not be entitled to additional compensation therefore, and that the provisions of Section 1.8 and 3.5 shall not be applicable to the services identified in the Scope of Services and Schedule of Fees for the Base Proposal Price. The maximum amount of City's payment obligation under this section is the amount specified herein. If the City's maximum payment obligation is reached before the Contractor's Services under this Agreement are completed, Contractor shall nevertheless complete the Work without liability on the City's part for further payment beyond the Maximum Contract Amount.

For services rendered based on the issuance of a written task order as provided pursuant to Section 1.8 and 3.5 herein, Contractor shall be compensated in accordance with the Schedule of Fees as it relates to the "Add in Optional Work," "Unit Prices for Work Added or Deleted from This Contract," and "Unit Work Costs for Extra Work,"

whichever is applicable. The compensation for "Add in Optional Work," "Unit Prices for Work Added or Deleted from This Contract," and "Unit Work Costs for Extra Work" shall hereinafter be collectively referred to as "Compensation for Additional Services."

The annual Maximum Contract Amount and Compensation for Additional Services shall, in no event, exceed the specified amount approved in the City's Fiscal Year Budget without prior City Council authorization."

4. Addition of Section 3.5 to the Agreement, entitled "Written Task Orders."
Section 3.5 is hereby added to the Agreement as follows:

"3.5 Written Task Orders. Contractor hereby agrees and acknowledges that any and all Additional Services as provided in section 1.8 herein shall be based upon the issuance of a written task order by the City, approved by Contractor and the City Manager, or the City Manager's designee. Further, Contractor agrees and acknowledges that the execution of this Agreement by the City does not in any way guarantee that a task order for such work will be issued to Contractor. Moreover, execution of this Agreement by the City shall not entitle Contractor to any form of payment or compensation from the City for Additional Services without City first having issued a written task order."

4. Full Force and Effect. This Amendment is supplemental to the Agreement and is by reference made part of said Agreement. All of the terms, conditions, and provisions, thereof, unless specifically modified herein, shall continue in full force and effect. In the event of any conflict or inconsistency between the provisions of this Amendment and any provisions of the Agreement, the provisions of this Amendment shall in all respects govern and control.
5. Corporate Authority. The persons executing this Amendment on behalf of the Parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment on behalf of said party, (iii) by so executing this Amendment, such party is formally bound to the provisions of this Amendment, and (iv) the entering into this Amendment does not violate any provisions of any other agreement to which said party is bound.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed and entered into this Amendment to the Agreement as of the date first written above.

NIEVES LANDSCAPE, INC.

By: _____
Name: Greg Nieves
Its: President

By: _____
Name: E.P. White
Its: Secretary

CITY OF LAGUNA HILLS

By: _____
Bruce E. Channing,
City Manager

ATTEST:

By: _____
Peggy J. Johns,
City Clerk

APPROVED AS TO FORM:

By: _____
Gregory E. Simonian,
City Attorney

CITY OF LAGUNA HILLS

AGENDA REPORT ADMINISTRATIVE SERVICES DEPARTMENT

ISSUE: 2011-12 CIVIC CENTER BUDGET

SUMMARY:

Prior to this City Council meeting, the Civic Center Management Committee reviewed the proposed 2011-12 Civic Center budget. If any amendments are made to the proposed budget by the Committee, the item will be pulled from the Consent Calendar for discussion. The budget projects net income of \$107,427 and an overall positive net impact on the General Fund of \$372,629.

BACKGROUND:

Attached to this memorandum is the preliminary budget for Fiscal Year 2011-12. This budget is based on the following leasing assumptions:

- Suite 200 will lease effective January 1, 2012.
- Suite 301 will remain vacant after August, 2011.
- Executive suite 320A will lease effective October 1, 2011.
- Executive suite 320C will lease effective March, 2012.
- Suites 100 and 205 will remain vacant throughout the year.
- The existing tenant in Suite 330 will renew his lease in May, 2012.

These assumptions are significant since they can trigger not only the start of a revenue stream, but also tenant improvement and leasing commission costs. Budgeted tenant improvement costs and leasing commissions total \$26,270 and \$9,087, respectively.

There are no capital projects slated for this fiscal year.

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE 2011-12 CIVIC CENTER BUDGET.

FISCAL IMPACT:

The budgeted net income is \$107,427. It should be noted that the proposed 2011-12 budget does not require any contribution from the City's General Fund. In fact, the net operating impact to the City's General Fund from Civic Center operations is projected to be a positive \$372,629 in 2011-12.

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE 2011-12 CIVIC CENTER BUDGET.

ATTACHMENTS:

- 2011-12 Civic Center Budget

Laguna Hills Civic Center
2011-12 Budget

	Adopted Budget 2010-11	Estimated Actuals 2010-11	Proposed Budget 2011-12
Rental Income	1,118,889	1,071,077	1,096,102
Contra Revenue	(549,965)	(549,965)	(549,965)
CAM Income	59,866	58,172	54,606
Contra CAM	(52,936)	(46,897)	(50,594)
CAM Rec Revenue	-	(7,499)	-
Other	-	4,653	3,115
Total Revenue	575,854	529,541	553,264
Direct Operating Expenses	(435,873)	(429,441)	(429,557)
Net Operating Income	139,981	100,100	123,707
Indirect Operating Expenses	(15,270)	(24,657)	(16,280)
Net Income	124,711	75,443	107,427
Capital Expenses	(102,857)	(81,200)	(35,357)
Net Cash Flow After Capital	21,854	(5,757)	72,070
General Fund Contribution	-		
Capital Reserve Fund	-	65,000	
Grant Monies	65,000		
Enterprise Fund Cash	-		
Distribution to General Fund	(75,000)	(75,000)	(75,000)
Civic Center Net Cash Flow	11,854	(15,757)	(2,930)
General Fund Impact			
Add Back Contra Revenue	602,901	596,862	600,559
Less Debt Service	(300,000)	(300,000)	(300,000)
Add Back GF Distribution	75,000	75,000	75,000
Net General Fund Impact + (-)	\$ 389,755	\$ 356,105	\$ 372,629

CITY OF LAGUNA HILLS

AGENDA REPORT CITY CLERK'S DEPARTMENT

ISSUE: CLAIM OF RALPH COLOMBO FOR DAMAGES TO REAL PROPERTY

SUMMARY:

On June 8, 2011, the City received a Claim for Damages to Person or Property, which was hand-delivered, from Ralph Colombo, 11 Hinterland Way, Ladera Ranch, CA 92694 ("Claimant" and "Claim"). As phrased, the Claim appears to assert damages to real property arising out of the alleged submission of a false declaration by the Community Development Director to the court, which allegedly resulted in the demolition of improvements at 25582 Saddle Rock Place, Laguna Hills.

The Claim for damages to real property is for unlimited civil case (more than \$25,000) as a result of damages to real property at 25582 Saddle Rock Place allegedly sustained on April 21, 2011. Based on the information provided in the Claim and in the Claimant's June 29, 2011, letter, the cause of action for damages to real property accrued at least eleven months ago, if not earlier. A claim for damages to real property can be presented as late as one year after the cause of action accrues. A copy of the Claim is attached hereto as Attachment "A".

The Claim has been reviewed by the City Clerk, the Claims Administrator, and the City Attorney. Staff recommends that the City Council deny the Claim. Based on staffs' factual investigation, the Claim has no merit. The City Manager has the authority to reject claims in amounts less than \$50,000. Because the Claim is for unlimited civil case, the Claim is required to be presented to the City Council.

RECOMMENDATION: THAT THE CITY COUNCIL REJECT THE CLAIM AND DIRECT THE CITY CLERK TO SEND THE STANDARD REJECTION LETTER.

ATTACHMENTS:

Attachment "A"	June 8, 2011 Claim for Damages
Attachment "B"	June 29, 2011 Application for Leave to File Late Claim
Attachment "C"	July 7, 2011 Notice of Return of Claim Due to Its Lateness

CITY OF LAGUNA HILLS

CLAIM FOR DAMAGES To Person or Property

1. Claims for death or injury to person or to personal property must be filed not later than six months after the occurrence (Government Code Section 911.2). Be sure your claim is against the City of Laguna Hills, not another public entity.
2. Claims for damages to real property must be filed not later than one year after the occurrence (Government Code Section 911.2).
3. Read the entire claim before filing.
4. See page four for the diagram upon which to locate the place of the accident.
5. This claim form must be signed on page three at the bottom.
6. Attach separate sheets, if necessary, to give full details. SIGN EACH SHEET.
7. Claims must be filed with the City Clerk (Government Code Section 915a).

Reserve for Date Stamp

LGHCC JUN08'11 AM11:44

Claim No. C1110

Received by pg

Via: U.S. Mail _____
Hand Delivered X

THE UNDERSIGNED RESPECTFULLY SUBMITS THE FOLLOWING CLAIM AND INFORMATION RELATIVE TO DAMAGE TO PERSONS AND/OR PERSONAL PROPERTY PURSUANT TO THE PROVISIONS OF SECTIONS 900 THROUGH 915.2 OF THE GOVERNMENT CODE:

Completed claims must be mailed or delivered to:

City of Laguna Hills
City Clerk
24035 El Toro Road
Laguna Hills, CA 92653

CLAIMANT INFORMATION

Name: Ralph Colombo

Address: 11 Hinterland Way

Ladera Ranch, CA 92694

Phone: Daytime (949) 521-4162

Evening (949) 521-4162

Date of Birth: 1-29-1935

Driver's License No. [REDACTED]

State: CALIFORNIA

1. Name, telephone number, and address to which claimant desires notices to be sent, if other than above:
2. **WHEN** did damage or injury occur? (Give exact date and hour) **DAMAGES TO REAL PROPERTY OCCURRED ON OR ABOUT APRIL 21, 2011.**

y dm 6/8/11

act City Manager
City atty
Comm Development
Director

7/12/2011 ITEM NO. 4.7

3. **WHERE** did damage or injury occur? (State specific location and locate on diagram on page four, where appropriate. Give street names and addresses and measurements from landmarks.)
25582 SADDLE ROCK PLACE, LAGUNA HILLS, CALIFORNIA 92653
4. **HOW** did damage or injury occur? (Give full details) BY MAKING FALSE DECLARATION UNDER PENALTY OF PERJURY; ABUSE OF POSITION; INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.
5. What particular act or omission by the City. or its employees. caused the alleged damage or injury? CITY'S EMPLOYEE PROVIDED TO THE COURT A FALSE TESTIMONY BY WAY OF DECLARATION MADE UNDER PENALTY OF PERJURY WITH INTENT TO INFLICT DAMAGES TO THE CLAIMANT; CITY'S EMPLOYEE ABUSE OF POSITION CAUSED IRREPARABLE DAMAGES TO CLAIMANT'S REAL PROPERTY.
6. Give a description of the injury, property damage, or loss, so far as is known at the time of filing this claim. If there were no injuries, state, "No injuries."
UNREASONABLE DEMOLITION OF IMPROVEMENTS AT 25582 SADDLE ROCK PLACE LOCATED IN THE CITY OF LAGUNA HILLS
7. Give the name(s) of the City employee(s) causing the damage or injury:
VERNON JONES
8. Give names and addresses of any other persons injured:
9. Give names and addresses of owners of any damaged property:
RALPH COLOMBO, 11 HINTERLAND WAY, LADERA RANCH CALIFORNIA 92694

10. Give names and addresses of all witnesses, hospitals, doctors, etc.:

11. Damages claimed:

- a. Amount claimed as of this date: \$ _____
- b. Estimated amount of future costs \$ _____
- c. Total amount claimed: \$ _____
- d. Basis for computation of amounts claimed (include copies of all bills, invoices, estimates, etc.):

THIS CLAIM IS FOR UNLIMITED CIVIL CASE

12. Expenditures made on account of accident or injury: (Date – Item)

13. Insurance payments received, if any, and name(s) of Insurance Company(ies):

14. Any additional information that might be helpful in considering this claim:

I HAVE READ THE MATTERS AND STATEMENTS MADE IN THE ABOVE CLAIM AND KNOW THE SAME TO BE TRUE OF MY OWN KNOWLEDGE. EXCEPT AS TO THOSE MATTERS STATED UPON INFORMATION OR BELIEF AND AS TO SUCH MATTERS I BELIEVE THAT SAME TO BE TRUE. I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Signed this 8th day of JUNE 2011 at LADERA RANCH
(City)

CALIFORNIA
(State)


Claimant's Signature

Ralph Colombo
11 Hinterland Way
Ladera Ranch, CA 92694
Tel. (949) 521-4162

June 29, 2011

City of Laguna Hills
City Clerk
24035 El Toro Road
Laguna Hills, CA 92653

Reserve for Date Stamp	
LGHCC JUN30'11 PM 12:21	
Claim No.	<u>C1110</u>
Received by	<u>P. Johns</u>
Via:	HAND DELIVERED <u>6/30/11</u>

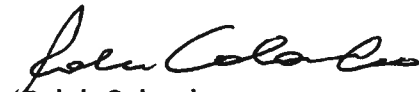
APPLICATION FOR LEAVE TO FILE LATE CLAIM

On or about April 2011, the claimant Ralph Colombo learned that he was subjected to slander by City staff, Mr. Vernon Jones. The slander was intentional made to damage the claimant.

On July 13, 2010 Mr. Vernon Jones subscribed a testimony by way of a Declaration made under penalty of perjury to the Superior Court of the State of California, County of Orange, Central Justice Center in connection with Case Number 06CC02010 Nellie Gail Ranch Owners Association v. Ralph Colombo.

The claimant submits this claim for unlimited civil case.

Very truly yours,


Ralph Colombo,
Claimant

*PJ 6/30/11 via E-mail
L. Simonian
D. White
V. Jones
Carl Warren
to PMcNulty*



CITY OF LAGUNA HILLS

City Clerk

July 7, 2011

Ralph Colombo
11 Hinterland Way
Ladera Ranch, California 92694

Re: Claim for Damages to Person or Personal Property
Notice of Return of Claim Due to Its Lateness

Dear Mr. Colombo:

The claim you presented to the City of Laguna Hills on June 8, 2011, a copy of which is attached hereto, has been reviewed by the City Clerk, the Claims Administrator, and the City Attorney. To the extent that your claim is for personal injury, damage to personal property, and/or other non-real property related damages or injuries, the claim is being returned because it was not presented within six (6) months after the event or occurrence as required by law. (See, Sections 901 and 911.2 of the Government Code.) Based on the information you provided in support of your claim, the cause of action for damage to person or personal property accrued at least eleven months ago, if not earlier. To the extent that the claim is for personal injury, damage to personal property, and/or other non-real property related damages or injuries, the claim was not presented within the time allowed by law, and no action will be taken on that aspect of the claim.

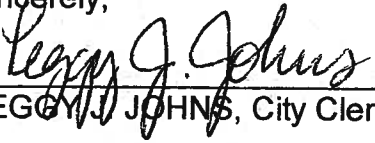
Pursuant to the Government Tort Claims Act, you may submit an application for leave to file a late claim with the City. (See, Sections 911.4 and 912.2, inclusive, and Section 946.6 of the Government Code.) Under certain statutorily limited circumstances, leave to present a late claim will be granted. (See, Section 911.6 of the Government Code.) It is noted that you submitted a June 29, 2011, letter to the City Clerk, which was hand-delivered on June 30, 2011, entitled "Application for Leave to File Late Claim," wherein you added additional factual information to support your claim.

To the extent that your claim is for damage to real property, the claim will be presented to the City Council, as will your June 29, 2011, letter to the City Clerk entitled, "Application for Leave to File Late Claim."

Ralph Colombo
July 7, 2011
Page Two

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Sincerely,



PEGGY J. JOHNS, City Clerk

Enclosure

cc: City Manager
Assistant City Manager
Claims Administrator
City Attorney



City of Laguna Hills PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF LAGUNA HILLS)

I am employed in the County aforesaid, I am over the age of eighteen years; my business address is:

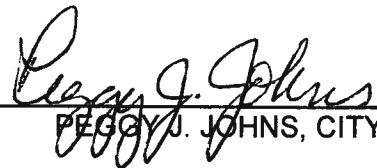
Laguna Hills City Hall
24035 El Toro Road
Laguna Hills, California 92653

On July 7, 2011, I served the within NOTICE OF RETURN OF CLAIM DUE TO ITS LATENESS by placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Laguna Hills, California, addressed as follows:

Ralph Colombo
11 Hinterland Way
Ladera Ranch, California 92649

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 7, 2011, at Laguna Hills, California.



PEGGY J. JOHNS, CITY CLERK

cc: City Attorney
Assistant City Manager
Carl Warren & Company

CITY OF LAGUNA HILLS

AGENDA REPORT CITY CLERK'S DEPARTMENT

**ISSUE: CLAIM OF RALPH COLOMBO AND APPLICATION FOR LEAVE TO
FILE A LATE CLAIM**

SUMMARY:

On June 30, 2011, the City Clerk received a letter from Ralph Colombo entitled "Application for Leave to File Late Claim" ("Application"). No claim was attached to the application for leave to file late claim. No information was provided in the letter in support of the application for leave to file late claim. Rather, the letter entitled "Application for Leave to File Late Claim" provided additional, more detailed factual information in support of Mr. Colombo's previously filed June 8, 2011 Claim for Damages to Person or Personal Property. Applications for leave to file late claims are required to be presented to the City Council. It is recommended that the City Council deny the Application for Leave to File Late Claim on the grounds that the statutory criteria for excusing the filing of a late claim was not established by the Claimant.

BACKGROUND:

On June 8, 2011, the City received a Claim for Damages to Person or Property, which was hand-delivered, from Ralph Colombo, 11 Hinterland Way, Ladera Ranch, CA 92694 ("Claimant" and "Claim"). As phrased, the Claim appears to assert damage for personal injury, damage to personal property, and/or potentially other non-real property related damages and injuries, as well as damage to real property arising out of the alleged submission of a false declaration by the Community Development Director to

RECOMMENDATION: THAT THE CITY COUNCIL: (1) DENY THE APPLICATION FOR LEAVE TO FILE A LATE CLAIM SUBMITTED BY CLAIMANT RALPH COLOMBO ON THE GROUNDS THAT THE CRITERIA ESTABLISHED IN GOVERNMENT CODE SECTION 911.6 FOR EXCUSING THE LATE CLAIM ARE NOT MET; AND (2) DIRECT THE CITY CLERK TO PROVIDE WRITTEN NOTICE PRIOR TO AUGUST 14, 2011, TO CLAIMANT RALPH COLOMBO THAT HIS APPLICATION IS DENIED AND THAT HIS UNDERLYING CLAIM, TO THE EXTENT THAT THE CLAIM IS FOR PERSONAL INJURY, DAMAGE TO PERSONAL PROPERTY, AND/OR OTHER NON-REAL PROPERTY RELATED DAMAGE, IS AGAIN RETURNED AS UNTIMELY.

Agenda Report

Claim of Ralph Colombo and Application for Leave to File Late Claim

Page 2

the Court, which allegedly resulted in the demolition of improvements at 25582 Saddle Rock Place, Laguna Hills. A copy of the Claim is attached hereto as Attachment "A".

While the Claim was under review, the Claimant subsequently sent a letter to the City Clerk, dated June 29, 2011 and hand-delivered on June 30, 2011, wherein additional, more detailed factual information concerning the Claim was provided for the review and consideration by the City, including additional alleged damages involving slander and damage to personal reputation, as well as specific factual assertions indicating that the cause of action giving rise to the Claim accrued at least 11 months ago, if not earlier. However, the Claimant's June 29, 2011, letter was also entitled, "APPLICATION FOR LEAVE TO FILE LATE CLAIM." A copy of the Claimant's Application for Leave to File Late Claim letter is attached hereto as Attachment "B".

Thereafter, the City Clerk's Office sent a letter to the Claimant, dated July 7, 2011, wherein the City Clerk's Office returned the Claim as late, to the extent that the Claim is for for personal injury, damage to personal property, and/or other non-real property related damages or injuries. The Claim was returned as late because it was not presented within six (6) months after the event or occurrence as required by law. (See, Sections 901 and 911.2 of the Government Code.) Based on the information provided by the Claimant in support of his Claim, the cause of action for damage to person or personal property accrued at least eleven months ago, if not earlier. To the extent that the Claim is for personal injury, damage to personal property, and/or other non-real property related damages or injuries, the Claim was not presented within the time allowed by law, and no action was taken on that aspect of the Claim. To the extent that the Claim is for damage to real property, the Claim will be presented to the City Council for action under separate cover.

ANALYSIS:

Pursuant to the Government Tort Claims Act, the City Council must take action on the Claimant's pending June 29, 2011 Application for Leave to File a Late Claim, to the extent that the Claim is for personal injury, damage to personal property, and/or other non-real property related damages or injuries.

An application for leave to present a late claim must be presented to the public entity within a reasonable time not to exceed one year after the accrual of the cause of action, must state the reason for the delay in presenting the claim, and the proposed claim must be attached. Cal. Gov't Code § 911.4. The Claimant has not stated any reasons for the delay in presenting the Claim, nor did the Claimant attach a copy of the Claim to the Application. The public entity must grant the application where one or more of the following is applicable: (1) the claim was not presented in a timely fashion because of mistake, inadvertence, surprise or excusable neglect, but only if the public entity would not be prejudiced in its defense by the failure to have presented a timely claim; (2) the claimant was a minor throughout the claim period; (3) the claimant was physically or

Agenda Report

Claim of Ralph Colombo and Application for Leave to File Late Claim

Page 3

mentally incapacitated throughout the claim period; (4) the claimant died before the expiration of the claims period. Cal. Gov't Code § 911.6. These are the same grounds upon which a petition to be relieved from the claims requirement can be granted. Cal. Gov't Code §§ 911.6, 946.6. The burden is on the claimant to establish the grounds for relief by a preponderance of the evidence. *Toscano v. County of Los Angeles*, 92 Cal. App. 3d 775, 155 Cal. Rptr. 146 (1979); *El Dorado Irrigation District v. Superior Court*, 98 Cal. App. 3d 57, 62-63, 159 Cal. Rptr. 267 (1979). See also CEB, California Government Tort Liability Practice §§ 7.31 - 7.39 (4th ed. 2003). Based on staff's review of the June 29, 2011 letter, the Claimant has not met this burden.

A late claim is excused when the delay was due to "mistake, inadvertence, surprise or excusable neglect" and the public entity will not be prejudiced in its defense of the claim by this delay. Cal. Gov't Code § 911.6(b)(1). The standard for showing mistake, inadvertence, surprise or excusable neglect is the same standard as under Cal. Civ. Proc. Code § 473. *City of Fresno v. Superior Court*, 104 Cal. App. 3d 25, 32, 163 Cal. Rptr. 807 (1980). A mistake must be reasonable to justify delay. The California Supreme Court has defined "excusable neglect" as "neglect that might have been the act or omission of a reasonably prudent person under the same or similar circumstances." *Ebersol v. Cowan*, 35 Cal. 3d 427, 197 Cal. Rptr. 601 (1983).

Prejudice to the public entity is not an issue unless the claimant establishes excusable neglect. In other words, prejudice is an additional reason to deny an application but lack of prejudice is not a reason to grant a petition. *Rojas v. Riverside General Hospital*, 203 Cal. App. 3d 1151, 1163, 205 Cal. Rptr. 435 (1988), overruled on other grounds, *Passavanti v. Williams*, 225 Cal. App. 3d 1602, 275 Cal. Rptr. 887 (1990); *Hasty v. County of Los Angeles*, 61 Cal. App. 3d 623, 131 Cal. Rptr. 347 (1976). The claimant's ignorance of the claims filing requirement, standing alone, does not constitute excusable neglect. *El Dorado Irrigation District v. Superior Court*, 98 Cal. App. 3d 57, 159 Cal. Rptr. 267 (1979).

As stated above, the Claimant has failed to establish any of the statutory criteria under the Government Tort Claims Act for excusing the filing of the late claim, to the extent that the Claim is for personal injury, damage to personal property, and/or other non-real property related damages or injuries. Therefore, it is recommended that the City Council deny the Application.

FISCAL IMPACT:

There is minimal fiscal impact associated with the recommended action. The only fiscal impact to the City would occur if the Claimant were to appeal the City's denial of the Application to the Superior Court.

RECOMMENDATION: THAT THE CITY COUNCIL: (1) DENY THE APPLICATION FOR LEAVE TO FILE A LATE CLAIM SUBMITTED BY CLAIMANT RALPH COLOMBO ON THE GROUNDS THAT THE CRITERIA ESTABLISHED IN GOVERNMENT CODE SECTION 911.6 FOR EXCUSING THE LATE CLAIM ARE NOT MET; AND (2) DIRECT THE CITY CLERK TO PROVIDE WRITTEN NOTICE PRIOR TO AUGUST 14, 2011, TO CLAIMANT RALPH COLOMBO THAT HIS APPLICATION IS DENIED AND THAT HIS UNDERLYING CLAIM, TO THE EXTENT THAT THE CLAIM IS FOR PERSONAL INJURY, DAMAGE TO PERSONAL PROPERTY, AND/OR OTHER NON-REAL PROPERTY RELATED DAMAGE, IS AGAIN RETURNED AS UNTIMELY.

ATTACHMENTS:

Attachment "A"	June 8, 2011 Claim for Damages
Attachment "B"	June 29, 2011 Application for Leave to File Late Claim
Attachment "C"	July 7, 2011 Notice of Return of Claim Due to Its Lateness

CITY OF LAGUNA HILLS

CLAIM FOR DAMAGES To Person or Property

1. Claims for death or injury to person or to personal property must be filed not later than six months after the occurrence (Government Code Section 911.2). Be sure your claim is against the City of Laguna Hills, not another public entity.
2. Claims for damages to real property must be filed not later than one year after the occurrence (Government Code Section 911.2).
3. Read the entire claim before filing.
4. See page four for the diagram upon which to locate the place of the accident.
5. This claim form must be signed on page three at the bottom.
6. Attach separate sheets, if necessary, to give full details. SIGN EACH SHEET.
7. Claims must be filed with the City Clerk (Government Code Section 915a).

Reserve for Date Stamp

LGHCC JUN08'11 AM11:44

Claim No. C1110

Received by pg

Via: U.S. Mail _____
Hand Delivered X

THE UNDERSIGNED RESPECTFULLY SUBMITS THE FOLLOWING CLAIM AND INFORMATION RELATIVE TO DAMAGE TO PERSONS AND/OR PERSONAL PROPERTY PURSUANT TO THE PROVISIONS OF SECTIONS 900 THROUGH 915.2 OF THE GOVERNMENT CODE:

Completed claims must be mailed or delivered to:

City of Laguna Hills
City Clerk
24035 El Toro Road
Laguna Hills, CA 92653

CLAIMANT INFORMATION

Name: Ralph Colombo

Address: 11 Hinterland Way

Ladera Ranch, CA 92694

Phone: Daytime (949) 521-4162

Evening (949) 521-4162

Date of Birth: 1-29-1935

Driver's License No. [REDACTED]

State: CALIFORNIA

1. Name, telephone number, and address to which claimant desires notices to be sent, if other than above:
2. **WHEN** did damage or injury occur? (Give exact date and hour) **DAMAGES TO REAL PROPERTY OCCURRED ON OR ABOUT APRIL 21, 2011.**

y dm 6/8/11

asst City Manager
City atty
Comm Development
Director

7/12/2011 ITEM NO. 4.8

3. **WHERE** did damage or injury occur? (State specific location and locate on diagram on page four, where appropriate. Give street names and addresses and measurements from landmarks.)
25582 SADDLE ROCK PLACE, LAGUNA HILLS, CALIFORNIA 92653
4. **HOW** did damage or injury occur? (Give full details) BY MAKING FALSE DECLARATION UNDER PENALTY OF PERJURY; ABUSE OF POSITION; INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.
5. What particular act or omission by the City. or its employees. caused the alleged damage or injury? CITY'S EMPLOYEE PROVIDED TO THE COURT A FALSE TESTIMONY BY WAY OF DECLARATION MADE UNDER PENALTY OF PERJURY WITH INTENT TO INFLICT DAMAGES TO THE CLAIMANT; CITY'S EMPLOYEE ABUSE OF POSITION CAUSED IRREPARABLE DAMAGES TO CLAIMANT'S REAL PROPERTY.
6. Give a description of the injury, property damage, or loss, so far as is known at the time of filing this claim. If there were no injuries, state, "No injuries."
UNREASONABLE DEMOLITION OF IMPROVEMENTS AT 25582 SADDLE ROCK PLACE LOCATED IN THE CITY OF LAGUNA HILLS
7. Give the name(s) of the City employee(s) causing the damage or injury:
VERNON JONES
8. Give names and addresses of any other persons injured:
9. Give names and addresses of owners of any damaged property:
RALPH COLOMBO, 11 HINTERLAND WAY, LADERA RANCH CALIFORNIA 92694

10. Give names and addresses of all witnesses, hospitals, doctors, etc.:

11. Damages claimed:

- a. Amount claimed as of this date: \$ _____
- b. Estimated amount of future costs \$ _____
- c. Total amount claimed: \$ _____
- d. Basis for computation of amounts claimed (include copies of all bills, invoices, estimates, etc.):

THIS CLAIM IS FOR UNLIMITED CIVIL CASE

12. Expenditures made on account of accident or injury: (Date – Item)

13. Insurance payments received, if any, and name(s) of Insurance Company(ies):

14. Any additional information that might be helpful in considering this claim:

I HAVE READ THE MATTERS AND STATEMENTS MADE IN THE ABOVE CLAIM AND KNOW THE SAME TO BE TRUE OF MY OWN KNOWLEDGE. EXCEPT AS TO THOSE MATTERS STATED UPON INFORMATION OR BELIEF AND AS TO SUCH MATTERS I BELIEVE THAT SAME TO BE TRUE. I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Signed this 8th day of JUNE 2011 at LADERA RANCH
(City)

CALIFORNIA
(State)


Claimant's Signature

Ralph Colombo
11 Hinterland Way
Ladera Ranch, CA 92694
Tel. (949) 521-4162

June 29, 2011

City of Laguna Hills
City Clerk
24035 El Toro Road
Laguna Hills, CA 92653

Reserve for Date Stamp	
LGHCC JUN30'11 PM 12:21	
Claim No.	<u>C1110</u>
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Via:	HAND DELIVERED <u>6/30/11</u>

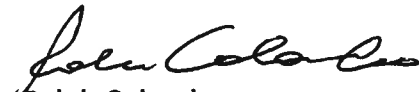
APPLICATION FOR LEAVE TO FILE LATE CLAIM

On or about April 2011, the claimant Ralph Colombo learned that he was subjected to slander by City staff, Mr. Vernon Jones. The slander was intentional made to damage the claimant.

On July 13, 2010 Mr. Vernon Jones subscribed a testimony by way of a Declaration made under penalty of perjury to the Superior Court of the State of California, County of Orange, Central Justice Center in connection with Case Number 06CC02010 Nellie Gail Ranch Owners Association v. Ralph Colombo.

The claimant submits this claim for unlimited civil case.

Very truly yours,


Ralph Colombo,
Claimant

*Pj 6/30/11 via E-mail
L. Simonian
D. White
V. Jones
Carl Warren
to P McNulty*



CITY OF LAGUNA HILLS

City Clerk

July 7, 2011

Ralph Colombo
11 Hinterland Way
Ladera Ranch, California 92694

Re: Claim for Damages to Person or Personal Property
Notice of Return of Claim Due to Its Lateness

Dear Mr. Colombo:

The claim you presented to the City of Laguna Hills on June 8, 2011, a copy of which is attached hereto, has been reviewed by the City Clerk, the Claims Administrator, and the City Attorney. To the extent that your claim is for personal injury, damage to personal property, and/or other non-real property related damages or injuries, the claim is being returned because it was not presented within six (6) months after the event or occurrence as required by law. (See, Sections 901 and 911.2 of the Government Code.) Based on the information you provided in support of your claim, the cause of action for damage to person or personal property accrued at least eleven months ago, if not earlier. To the extent that the claim is for personal injury, damage to personal property, and/or other non-real property related damages or injuries, the claim was not presented within the time allowed by law, and no action will be taken on that aspect of the claim.

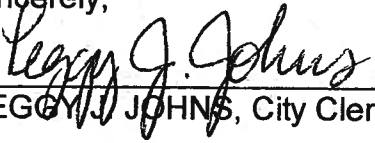
Pursuant to the Government Tort Claims Act, you may submit an application for leave to file a late claim with the City. (See, Sections 911.4 and 912.2, inclusive, and Section 946.6 of the Government Code.) Under certain statutorily limited circumstances, leave to present a late claim will be granted. (See, Section 911.6 of the Government Code.) It is noted that you submitted a June 29, 2011, letter to the City Clerk, which was hand-delivered on June 30, 2011, entitled "Application for Leave to File Late Claim," wherein you added additional factual information to support your claim.

To the extent that your claim is for damage to real property, the claim will be presented to the City Council, as will your June 29, 2011, letter to the City Clerk entitled, "Application for Leave to File Late Claim."

Ralph Colombo
July 7, 2011
Page Two

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Sincerely,



PEGGY J. JOHNS, City Clerk

Enclosure

cc: City Manager
Assistant City Manager
Claims Administrator
City Attorney



City of Laguna Hills PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF LAGUNA HILLS)

I am employed in the County aforesaid, I am over the age of eighteen years; my business address is:

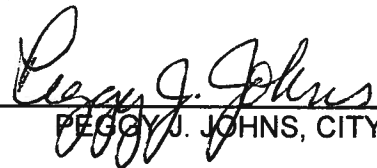
Laguna Hills City Hall
24035 El Toro Road
Laguna Hills, California 92653

On July 7, 2011, I served the within NOTICE OF RETURN OF CLAIM DUE TO ITS LATENESS by placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Laguna Hills, California, addressed as follows:

Ralph Colombo
11 Hinterland Way
Ladera Ranch, California 92649

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 7, 2011, at Laguna Hills, California.



PEGGY J. JOHNS, CITY CLERK

cc: City Attorney
Assistant City Manager
Carl Warren & Company

CITY OF LAGUNA HILLS

AGENDA REPORT COMMUNITY DEVELOPMENT DEPARTMENT

ISSUE: CONDITIONAL USE PERMIT APPLICATION NO. 3-11-1915, A REQUEST TO ESTABLISH A K-2ND GRADE CHARTER SCHOOL WITHIN THE ALICIA OFFICE PARK AT 25201 PASEO DE ALICIA IN THE (NMU) NEIGHBORHOOD MIXED USE ZONING DISTRICT.

SUMMARY:

Jeremy Cavallaro, representing Community Roots Academy (CRA), filed a Conditional Use Permit application to establish a K-2nd grade charter school at 25201 Paseo de Alicia in the Neighborhood Mixed Use (NMU) zoning district. The school was proposed to occupy an existing building at Alicia Office Park that was previously occupied by another school, the VanDamme Academy, which operated with an enrollment of approximately ninety (90) students. CRA proposed to enroll up to one hundred (100) students in three (3) grade levels and to operate from 7:00 AM to 6:00 PM (including after school programs), Monday through Friday.

Following public notice of this project for the June 28, 2011, Planning Agency hearing date, the applicant requested to continue this application to the July 12, 2011, meeting. The applicant indicated that CRA is subject to decisions made by a steering committee, and that the school was waiting on a decision from this committee on an important "business issue." The Planning Agency voted favorably to continue the application to allow time for the CRA steering committee to render a decision on the business issue. On June 30, 2011, staff received a letter (see attached) from Brad Shapiro, a steering committee member for CRA. This letter explained that the school decided to occupy an alternative site within the Capistrano Unified School District which will better serve their needs, and requested withdrawal of their Conditional Use Permit application.

Therefore, staff is recommending that the Planning Agency accept the applicant's request for withdrawal of Conditional Use Permit No. 3-11-1915.

RECOMMENDATION: THAT THE PLANNING AGENCY ACCEPT THE APPLICANT'S REQUEST FOR WITHDRAWAL OF CONDITIONAL USE PERMIT NO. 3-11-1915.

ATTACHMENT:

1. Letter from Community Roots Academy dated June 30, 2011



June 30, 2011

Chris Dominguez
Planning & Code Enforcement Aide
City of Laguna Hills
Community Development Department
24035 El Toro Road
Laguna Hills, CA 92653

Re: **Community Roots Academy Application for Conditional Use Permit**

Dear Chris:

Last evening the Capistrano Unified School District Board approved a lease for Community Roots Academy in one of their elementary schools. This space will serve our needs much better than the proposed site in Laguna Hills. In view of the foregoing we are withdrawing our application effective immediately.

We would appreciate a return of any unused funds from our deposit.

Thank you very much.

Sincerely,

Brad J. Shapiro
Steering Committee Member

cc: Tom Austin
Jeremy Cavallaro

CITY OF LAGUNA HILLS

PLANNING AGENCY AGENDA REPORT COMMUNITY DEVELOPMENT DEPARTMENT

ISSUE: SITE DEVELOPMENT PERMIT/MASTER SIGN PROGRAM/CONDITIONAL USE PERMIT NO. 3-11-1917, A REQUEST BY THE HODGDON GROUP, ON BEHALF OF ASHLEY FURNITURE, TO REDEVELOP THE EXISTING COMMERCIAL PROPERTY, LOCATED AT 24001 EL TORO ROAD IN THE VILLAGE COMMERCIAL (VC) ZONING DISTRICT

SUMMARY:

The Hodgdon Group, on behalf of Ashley Furniture (Applicant), has filed an application to redevelop the existing commercial property at 24001 El Toro Road in the Village Commercial (VC) zoning district. The subject site is located on El Toro Road at the corner of Avenida de la Carlota and Paseo de Valencia, just northeast of the Civic Center. The site currently has one 45,502 square-foot building, formerly Circuit City, and associated surface parking.

The request includes a remodel and 5,949 square-foot addition (to the existing building), a new 4,000 square-foot drive-thru restaurant, new on-site signage, and new landscaping. The remodeled and expanded building will be divided into two tenant spaces, one for a new Ashley Furniture store (the property owner) and the other for a tenant, yet to be determined. The new drive-thru restaurant will be located at the corner of El Toro Road and Regional Center Drive. The planned tenant for this space is a Chick-fil-A Restaurant. A total of 9,949 square feet of new restaurant and retail space will be added to the site, and the parking provided meets the requirements of the Urban Village Specific Plan (UVSP). The new landscaping will have a much more uniform, and well-designed, appearance than the existing landscaping on the site. Currently, the site is non-conforming in terms of landscaping and the proposal decreases these non-conformities. A new Master Sign Program (MSP) is also proposed with the project.

RECOMMENDATION: THAT THE PLANNING AGENCY: (1) CONDUCT A PUBLIC HEARING; AND (2) ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ADOPTING A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM AND APPROVING SITE DEVELOPMENT PERMIT/MASTER SIGN PROGRAM/CONDITIONAL USE PERMIT NO. 3-11-1917, A REQUEST BY HODGDON GROUP, ON BEHALF OF ASHLEY FURNITURE, TO REDEVELOP THE EXISTING COMMERCIAL PROPERTY, LOCATED AT 24001 EL TORO ROAD IN THE VILLAGE COMMERCIAL (VC) ZONING DISTRICT."

Several aspects of the proposed signage exceed standards in the Laguna Hills Municipal Code (LHMC); however, deviations to sign standards may be granted by the Planning Agency.

Staff has reviewed the Development Code requirements as well as General Plan issues, goals, and strategies, and has determined that the proposed project, subject to conditions of approval, will not result in any significant adverse impacts to the public health, safety, and general welfare.

AUTHORITY:

The LHMC Sections 9-92.080 C, G, and H grant the Planning Agency the authority to approve applications such as this for Conditional Use Permits, Site Development Permits, and Master Sign Programs, respectively. A Conditional Use Permit is required for drive-thru businesses in the Village Commercial Zoning District, and Site Development Permits are required for new development projects, and are also specifically required in conjunction with a Master Sign Program. Deviations to sign requirements may be granted by the Planning Agency based on design quality, creativity, and compatibility of the signage with the building architecture and surrounding land uses (LHMC 9-42.180).

PROJECT DESCRIPTION AND ANALYSIS:

Site Plan

As shown on the attached site plan, the Applicant is proposing to add 5,949 square feet to the existing building and divide it into two tenant spaces. Ashley Furniture will occupy the larger of the two spaces (33,306 square feet) and a tenant, yet to be determined, will occupy the smaller space (18,145 square feet). A new drive-thru restaurant (4,000 square feet) will be constructed near the corner of El Toro Road and Regional Center Drive; Chick-fil-A is the planned occupant. All requirements of the Development Code and the Urban Village Specific Plan with regard to development standards (setbacks, height limits, lot coverage, etc) and parking are met.

Access to the site will continue to be provided via Regional Center Drive and an existing driveway (at the rear of the subject site) from Paseo de Valencia. In addition, a new driveway from El Toro Road, to be shared by the subject parcel and the adjacent Chevron station, is proposed. **Condition 25** has been added to ensure that if no agreement is reached with the adjacent property for installation of this driveway, the Applicant will be required to finish this area of the site with a curb and planter area and/or striped parking spaces.

Landscaping and Lighting

All landscaping on site will be significantly enhanced, with nearly all landscaping being completely replaced. Due to the Avenida de la Carlota ("Carlota") widening project, grading on the northeast side of the building necessitates complete replacement of all

landscaping between the existing building and Carlota. New landscaping will consist of a more uniform landscaping palette, especially in terms of trees used. Carrotwood trees will be used for parking lot shade trees; Bottle trees and Palm trees will also be used. Lawn areas will be replaced with a variety of drought tolerant species of ground cover. Of particular note is the special landscaping area at the southeast corner of the parking lot (near the proposed driveway to the Chevron station). This landscape area satisfies requirements for onsite stormwater retention. The plant material used is specially designed to aid in capturing stormwater runoff from the site, which allows the stormwater to percolate back into the ground instead of being flushed into the storm drains.

Landscaping is an integral component of the UVSP. One component of the landscaping plans for the UVSP area are the “entry features.” The entry features consist of stone columns or monuments with specified landscaping. In addition to providing an overall attractive landscape scheme throughout the property, the Applicant will participate in the UVSP landscape plan by installing the corner monumentation and landscape to match the other corners of the intersection (**Condition 49**). Following installation, the Applicant will grant a landscape easement over this corner of the property to the City (**Condition 51**). The easement will relieve the applicant of ongoing landscape maintenance associated with the corner monument area as well as ensure maintenance of this corner is consistent with the maintenance of the other corners of the intersection.

Typical parking lot lighting is included in this proposal. Parking lot lighting meets the minimum requirements of the Code (LHMC 9-44.060 I). **Condition 18** requires that all exterior lighting is required to prevent glare or direct illumination from intruding into any off-site areas (LHMC 9-44.060 I).

Building Design

Many of the design elements of the two buildings (i.e. drive-thru restaurant and expanded Ashley Furniture structure) will complement each other and will blend with surrounding buildings in the Urban Village. The exterior of both buildings will have a (primarily) stucco finish with identical earth-tone paint colors and similar tiled roofs. Ledgestone details (matching that of the monuments located in the median of El Toro Road) will be used on both buildings. The drive-thru restaurant will have red awnings, a signature of Chick-fil-A Restaurants. Overall, staff supports the layout and design of the buildings, with one reservation concerning the design of the “tower element” at the front of the Ashley Furniture tenant space, which extends above the building’s roof parapet wall.

Specifically, staff has concerns with the size and “look” of the tower, which has been designed by Ashley Furniture (using a unique multiple-gabled roof) to both call attention to the building and serve as a placeholder for large wall signs that cumulatively are nearly five times larger than is provided by the City’s Sign Code. Although staff understands and respects the business’ desire to “stand out” from their competition and

other surrounding businesses, the City's Development Code provides the following *Design Considerations* relative to new development:

- Proposed signage and landscaping shall be an integral architectural feature, which does not overwhelm or dominate the structure or property.
- Any new building or structure, any addition to an existing building or structure, and the installation or construction of any site improvements shall be designed to create a unified, functional and comprehensive site plan with an integrated architectural theme that is compatible with and will complement and enhance the subject and surrounding properties
- Nearly vertical roofs (A-frames) and piecemeal mansard roofs (used on a portion of the structure perimeter only) are prohibited.

In addition, the UVSP Design Guidelines include the following objectives:

- A variety of massing and building heights and various types of fenestration to create a pedestrian character.
- Roof lines with varied levels and special shapes at key locations to enhance the character of a commercial project and minimize the massiveness of large buildings.
- Vertical elements should be included on certain elevations where needed to define key points or minimize wall mass.
- Signs should be located on the building area specifically intended for signage or where such signage will appear to be integral to the building design.

While the UVSP encourages diversity in building styles, it also states that “*architectural design should be compatible with and complement existing developments on the same site or adjacent parcels.*” Staff's concern with Ashley Furniture's tower element is that it:

1. Is inconsistent with the design of the rest of the building;
2. Promotes excessive signage and sets a precedent allowing nearly five (5) times the wall signage permitted by Code;
3. Is so unique (to Ashley Furniture) that it will not be transferable should Ashley Furniture eventually abandon and/or sell the site to another business.

The height of the building is not staff's primary concern; the height of the building alone is not inconsistent with building heights in the Urban Village (see chart below). Rather, the height of the structure combined with its mass and design is the issue with this tower. The Laguna Hills Civic Center, for example, is taller than the Ashley building, but there are several characteristics which differentiate the Civic Center building from the Ashley building: (1) Civic Center is a three story building, while Ashley is one story; (2) the tallest point of the Civic Center (67') is the pinnacle of a small dome-like structure, while the Ashley tower is 41 feet wide by 41 feet long; and (3) the height of the Civic Center building is proportional to the overall design of the building, while the Ashley tower has no such proportional relationship.

	Ashley Furniture	Macy's	Civic Center	St. George's Bell Tower
MAX BUILDING HEIGHT	62'	56'	67'	54'6"

As mentioned earlier, staff is supportive of all the design elements of the main building below the perimeter roofline, but has concerns over the look of the Ashley Furniture tower element. Staff is of the opinion that the best way to address the design disconnect (inconsistency) between the Ashley tower element and the rest of the building is to eliminate the tower and make use of a proportionally larger entry façade that would be similar to the entry façade used for the major tenant. While staff has expressed this viewpoint to the applicant, Ashley Furniture maintains that the proposed design is consistent with their corporate image and an important aspect of the building. As such, staff has proposed a modification that addresses some of staff's concerns with the design while allowing Ashley to maintain most of the same design elements, consistent with their national branding. It involves replacing the "double gable" roof with a single, standard gable roof. This will reduce some of the massiveness of the tower and promote a more typical architectural style that is more consistent with the design of the Major Tenant. It will also effectively reduce the amount of wall signage by nearly half, bringing the amount of signage to a much more reasonable level (see MSP discussion, below). **Condition 27** requires the applicant to submit revised plans for the tower element to the Community Development Director for his review and approval. The revised plans will replace the "double gable" roof with a single, standard roof. By including this specific re-design requirement through **Condition 27**, it allows the applicant to proceed with the approval process without requiring a subsequent review by the Planning Agency (which, due to the summer recess, would delay the project).

Master Sign Program

A new MSP is proposed with the objective of providing attractive coordinated signage for the site. Three new double-sided monument signs are proposed (to replace the two old Circuit City monuments that will be removed). The monuments will be located on El Toro Road, Paseo de Valencia, and Avenida de la Carlota, respectively, and will meet Code requirements for size and height at 40 square feet and 4 feet high. They will be finished in ledgerstone and have space for all three tenants (Code typically permits two tenant panels).

Wall signs are also proposed for each of the tenants. All wall signage will be individually-illuminated channel letters. Staff is supportive of the style of signs proposed; however, the applicant is requesting some deviations from standard Code requirements that staff believes are not consistent with what has been approved for similar-sized buildings in the surrounding area. The chart below has been provided for reference and to aid in the following sign discussion.

	Wall Signs Area	Maximum Letter Height	Overall Sign Height
Major Tenant (as proposed)	632 square feet (sf)	5'0"	5'0"
Ashley Furniture (as proposed)	w/Blue: 1938 sf w/o Blue: 1355 sf	4'5"	23'0"
Macy's (at LH Mall)	752 sf	6'0"	6'0"
Nordstrom Rack (at LH Mall)	300 sf	3'3"	8'7"
Total Woman Gym	148 sf	2'6"	8'0"
Former Circuit City	750 sf	2'3" – 4'3"	8' – 12' (diameter)

New Drive-thru Restaurant

The new drive-thru restaurant will have four wall signs (one on each side of the building). The size of these signs meets code requirements. Additional signage associated with the drive-thru also includes two menu boards, both of which are located at the rear of the building. All of these proposed signs comply with the City's Sign Code.

New "Major Tenant"

Signage proposed for the unidentified tenant ("Major Tenant") includes two (2) square feet of signage for each lineal foot of building frontage, i.e. 632 square feet for all wall signs. The City's Sign Code provides for one (1) square foot of wall signs for each lineal foot of building frontage, or 316 square feet of signs. More sign area is sometimes approved for large buildings with fairly large tenants. While staff does believe that this amount of signage is unnecessary, this is not of primary concern to staff and is not necessarily out of character with other approved signage in the area. Staff's primary concern is the maximum letter height proposed for the primary and secondary wall signage. The five foot maximum letter height is unnecessarily large and out of character for most signage in the area; however a five foot maximum sign envelope height for primary signs is fairly typical. Staff believes a maximum letter height of four feet for the primary signs and two feet for any secondary signs is appropriate. The maximum sign envelope for primary signs could remain at five feet high to accommodate a logo or multiple lines of copy, if desired by the tenant. This change to the MSP shall be submitted to the Community Development Director for review and approval (**Condition 28**).

Ashley Furniture Store

Signage for the “Anchor Tenant” (Ashley Furniture Homestore) proposes 4.8 square feet of signage for each lineal foot of building frontage (1,938 square feet for all wall signs). The tower building element is designed with space for four signs, one on each side of the tower. Each of these signs is 444 square feet and 23 feet tall. There is one additional smaller sign located on the wall of the building on Avenida de la Carlota near the I-5 freeway exit.

The definition of a sign in the LHMC includes any object, devise, display, or structure, which is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event, or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination, or projected images. The LHMC also states that “where a sign structure or support is designed in a manner to make the sign more noticeable or appear larger, as determined by the Community Development Director, the area of the structure shall be included in overall sign area” (LHMC 9-42.190 (A5)). These Code sections would apply to the four large Ashley Furniture signs, which all have a blue background. While it is painted on the tower structure, it is still included in sign area. Staff has included the following table to demonstrate the size of Ashley Furniture signs taking into account the blue (background) area, as well as not including the blue area:

	Sign Type A (x4)	Sign Type B (x1)	Total Sign Area	Signage Ratio* (sign sf / lineal foot of bldg frontage)
With background	443.80 sf	162.92 sf	1938.12 sf	4.8 / 1*
Without background	298.12 sf	162.92 sf	1355.4 sf	3.4 / 1*

*One square foot of sign area per one lineal foot of building frontage is permitted by Code (LHMC 9-42.090).

The wall signage proposed for Ashley Furniture is nearly five (5) times what is permitted by Code. Staff believes this would set an unsubstantiated precedent in regards to the amount of signage approved for any other building in the City of Laguna Hills. Instead, staff recommends that two (2) of the signs be removed from the tower element (on each side elevation, Sign A2 and A3). If the tower element is redesigned per staff recommendation (see Building Design section, page 5 and Condition 27) these façade areas would be removed anyway. This would leave one (1) sign each on the front and back of the tower (Sign A1 and A4) and one (1) sign on the east elevation (sign B).

If the blue background is removed from these signs, the sign area ratio (with the elimination of Signs A2 and A3) would be decreased to two square feet of sign area per one lineal foot of building frontage, the sign height reduced from 23 feet to 16’7”, and the sign area decreased to 759 square feet (which is approximately the sign area approved for the former Circuit City business). This amount of signage is much more

consistent with signage permitted for other large tenants in the area. Although staff does not believe that the blue background makes the sign more attractive (or compatible with the design theme of the building), we feel it a reasonable compromise to allow the applicant to retain that portion of their branding component. **Condition 28** requires the applicant to submit a revised MSP to the Community Development Director for his review and approval. The revised MSP would (1) remove signs A2 and A3 and (2) address any other changes as directed by the Planning Agency.

	Sign Type A (x2)	Sign Type B (x1)	Total Sign Area	Signage Ratio (sign sf / lineal foot of bldg frontage)
With blue background	443.80 sf	162.92 sf	1050.52 sf	2.6 / 1
Without blue background	298.12 sf	162.92 sf	759.20 sf	1.9 / 1

CEQA FINDINGS:

Pursuant to Sections 15070(b)(1) and 15070(b)(2) of the CEQA Guidelines, set forth in the California Code of Regulations, Title 14, a Mitigated Negative Declaration has been prepared and is being considered for adoption in conjunction with this project. Environmental impacts have been determined to be less than significant in all categories, except that a single mitigation measure is proposed to reduce potential Hazards and Hazardous Materials impacts to a less than significant level (see Attachment 5, page 19). A Mitigation Monitoring and Reporting Program has been prepared, and the mitigation measure has been included in the Conditions of Approval (**Condition 29**). Pursuant to CEQA Guidelines Sections 15072(a) and 15072(b), a Notice of Intent to adopt a Mitigated Negative Declaration was prepared and distributed to the public, and a public review period for the Draft Mitigated Negative Declaration was held from June 3, 2011 through June 26, 2011.

PUBLIC COMMENT:

Public hearing notices were mailed to surrounding property owners within a 300-foot radius of the subject site, surrounding cities, and other entities as required by law. A Notice of Intent to adopt a Mitigated Negative Declaration was prepared and distributed to the public, and a public review period for the Draft Mitigated Negative Declaration was held from June 3, 2011, through June 26, 2011.

Staff received three comments on the Draft Mitigated Negative Declaration. A letter was received from the City of Laguna Woods on June 23, 2011, raising concerns over traffic, noise, and air quality. The City also received two letters following the close of the public comment period for the Draft Mitigated Negative Declaration. A letter received on

July 5, 2011, on behalf of the Golden Rain Foundation raised concerns over the notification process and a related request to extend the public comment period for the MND. Another letter received on July 6, 2011, on behalf of United Laguna Hills Mutual raised concerns over traffic, air quality, and aesthetics/light and glare. All comment letters and staff's responses are included in the Mitigated Negative Declaration, attached to this report (Attachment 5, Appendix E). Staff is confident that we have complied with all noticing requirements pursuant to State law and that all environmental impact concerns were fully addressed in the Initial Study and Draft Mitigated Negative Declaration.

CONCLUSION:

Overall the project makes a positive improvement in a key commercial area of the City. The addition of retail and restaurant tenant space on the existing commercial property re-energizes under-utilized space in the City's "downtown." Although the project complies with most Code standards, certain components of the project's building and signage elements do exceed Code requirements. For example, the tower element associated with the Ashley Furniture tenant space is inconsistent with the design of the rest of the building and requests almost five (5) times the amount of sign area otherwise allowed by Code, setting a precedent for future signage programs. While staff understands the importance of using a corporate and nationally recognized logo and design feature, staff believes some redesign of the tower element (and the resulting reduction of wall sign area) will result in a project that better satisfies the design guidelines set forth by the City while still retaining some important branding elements desired by the applicant.

Staff's perspective concerning the inconsistent design elements on the Ashley Furniture building is influenced by the location of the site in the Urban Village setting. If the furniture store was located within Furniture Row, for example, where unique design elements and promotional events occur on a regular basis, staff would have significantly less concern (with the unique design elements and branding associated with the Ashley Furniture store).

RECOMMENDATION: THAT THE PLANNING AGENCY: (1) CONDUCT A PUBLIC HEARING; AND (2) ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ADOPTING A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM AND APPROVING SITE DEVELOPMENT PERMIT/MASTER SIGN PROGRAM/CONDITIONAL USE PERMIT NO. 3-11-1917, A REQUEST BY HODGDON GROUP, ON BEHALF OF ASHLEY FURNITURE, TO REDEVELOP THE EXISTING COMMERCIAL PROPERTY, LOCATED AT 24001 EL TORO ROAD IN THE VILLAGE COMMERCIAL (VC) ZONING DISTRICT."

ATTACHMENTS:

1. Resolution of Approval
2. Letter of Justification
3. Colors and materials
4. Color elevations
5. Mitigated Negative Declaration with Mitigation Monitoring and Reporting Program
6. Plans
7. Master Sign Program

RESOLUTION NO. PA2011-

A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ADOPTING A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM AND APPROVING SITE DEVELOPMENT PERMIT/MASTER SIGN PROGRAM/CONDITIONAL USE PERMIT NO. 3-11-1917, A REQUEST BY HODGDON GROUP, ON BEHALF OF ASHLEY FURNITURE, TO REDEVELOP THE EXISTING COMMERCIAL PROPERTY, LOCATED AT 24001 EL TORO ROAD IN THE VILLAGE COMMERCIAL (VC) ZONING DISTRICT

The Planning Agency of the City of Laguna Hills, California, hereby finds, determines, declares, and resolves as follows:

WHEREAS, an application for Site Development Permit/Master Sign Program/Conditional Use Permit (SDPM/MSP/CUP) No. 3-11-1917 has been received to redevelop the existing commercial property, located at 24001 El Toro Road in the Village Commercial (VC) Zoning District; and

WHEREAS, a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program has been prepared for SDPM/MSP/CUP No. 3-11-1917 in accordance with the requirements of the California Environmental Quality Act, Public Resources Code Sections 21000 *et seq.*, and its implementing guidelines, California Code of Regulations, Title 14, Sections 15000 *et seq.* (CEQA); and

WHEREAS, the Planning Agency has considered the Mitigated Negative Declaration, Mitigation Monitoring and Reporting Program, and evidence presented by the Community Development Department, the applicant, and other interested parties with respect to the subject application at a public hearing held on July 12, 2011.

NOW, THEREFORE, THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The above recitals are true and correct, and are incorporated herein by reference.

SECTION 2. The Planning Agency finds on the basis of the Initial Study and in light of the whole record before it, including public comments, that there is no substantial evidence that this project will have a significant effect on the environment. The Planning Agency further finds that the Mitigated Negative Declaration reflects the Planning Agency's independent judgment and evaluation as required by CEQA. Therefore, the Planning Agency adopts the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program. The Mitigated Negative Declaration and other materials that constitute the record of proceedings upon which this decision is based are available for public review at the Community Development Department at the City of Laguna Hills, City Hall, located at 24035 El Toro Road.

SECTION 3. That the required findings by the City for approval of SDPM/MSP/CUP No. 3-11-1917 have been met and made as follows:

Site Development Permit

1. The site design complies with standards of the development code in that:
The project meets and/or exceeds the development code and/or Urban Village Specific Plan standards relative to height, building setbacks, and parking.
2. The site is suitable for the proposed development in that:
The site is an existing commercial property. The proposed expansion of the commercial use from one to three tenants, including a drive-thru restaurant makes better use of an important site within the Urban Village Specific Plan area.
3. The project is consistent with the general plan and applicable design guidelines in that:
According to the General Plan, the purpose of this area is to develop a community core with a wide variety of uses with a goal of ensuring development is compatible with neighboring uses. Not only are retail establishments and restaurants permitted in this area, but they are also compatible with neighboring uses due to the Urban Village setting with nearby commercial uses and close proximity of the site to the freeway. While the design guidelines are somewhat subjective, with the design modifications required in the conditions of approval which seek to balance the needs of the applicant with the design guidelines of the City, staff believes the project is consistent with applicable design guidelines.
4. The site design and structural components are appropriate for the site and function of the proposed uses in that:
There is adequate space on the existing site for the expanded commercial uses proposed in this project and the parking required for such uses. The site design makes use of existing driveways, requiring no new entrances or exits onto surrounding arterials. The buildings are typical for retail and restaurant uses and will be constructed consistent with the 2010 California Building Code. Circulation around the site complies with all applicable standards. Therefore the site design and structural components are appropriate for the site and function of the proposed uses.

Master Sign Program

1. The design and application of the sign criteria required by the Development Code are satisfied by the proposed sign program in that:
With adoption of the Resolution of Approval and associated conditions of approval, the building and monument signage will comply with the Development Code.

2. The sign program provides a compatible and harmonious design between advertising, landscaping, and building design in that:

Monument signs are finished in materials that complement the buildings on site and are placed in landscaped areas that will accent the monument signs without detracting from their effectiveness. Wall signs make use of quality materials and construction and are proportional to the building façade to which they are attached. Therefore, with the conditions of approval, the sign program provides a compatible and harmonious design between advertising, landscaping, and building design.

Conditional Use Permit

1. The proposed use is consistent with the General Plan in that:

The General Plan designates the site as Village Commercial (VC). This General Plan designation provides for the development and maintenance of medium intensity commercial uses that serve the needs of the motoring public in the local community and the regional area, and that take advantage of the access and visibility provided by Interstate 5. Drive-thru restaurants are considered medium intensity commercial uses and are therefore consistent with the Village Commercial designation.

2. The nature, condition and development of adjacent uses, buildings, and structures have been considered and the proposed conditional use will not adversely effect or be materially detrimental to the adjacent uses, buildings, or structures in that:

The proposed drive-thru restaurant is located on a commercial property within the Urban Village area. The drive-thru is surrounded by commercial properties including the Laguna Hills Mall and is not immediately adjacent to any sensitive land uses. The drive-thru restaurant will not have adverse effects on the adjacent commercial land uses, and in many ways will complement adjacent uses such as the mall, in addition to providing another convenient restaurant choice for local residents and individuals who work in the Urban Village area. Given the fact that surrounding development consists of a wide variety of building styles, the design of the proposed project will be compatible with surrounding development. The proposed drive-thru restaurant, therefore, will not adversely affect or be materially detrimental to the adjacent uses, buildings, or structures.

3. The proposed site is adequate in size and shape to accommodate the use and integrate it with the existing and planned uses in the vicinity in that:

The proposed drive-thru restaurant is located in an underused corner of an existing commercial site. The surrounding parking and drive-aisles have been modified to create adequate space for the drive-thru restaurant, and adequate stacking areas for cars in the drive-thru line are provided. Even with the addition and remodel of the existing current building, the site has enough residual space for the drive-thru and associated parking for all three uses. Additionally, existing access points to the site will be used; no additional entry or exit drives directly from adjacent streets are required. Therefore, the proposed site is adequate in size and shape to

accommodate the use and integrate it with existing planned uses in the vicinity.

4. All required development standards prescribed by the Laguna Hills Development Code can be achieved in that:

The proposed development complies with the height, parking, and building setback provisions of the Urban Village Specific Plan. No deviations from the Development Code or the Urban Village Specific Plan are required to accommodate the drive-thru restaurant.

5. The conditions and limitations placed upon the use are necessary to insure compatibility with adjacent or abutting uses and the preservation of the public peace, safety, and welfare in that:

The conditions imposed on the project approval are intended to insure compatibility with adjacent uses and the preservation of public safety and welfare.

NOW, THEREFORE, based upon the above findings, the Planning Agency of the City of Laguna Hills does hereby approve SDPM/MSP/CUP No. 3-11-1917 subject to the following conditions:

General

1. This approval constitutes approval of the proposed project only to the extent that it complies with the City's Development Code and any other applicable zoning regulations. Approval does not include any action or findings as to compliance or approval of the project regarding any other applicable ordinance, regulation, or requirement.
2. Failure to abide by and faithfully comply with any and all conditions of approval shall constitute grounds for revocation of said Site Development Permit by the Laguna Hills Planning Agency.
3. As a condition of issuance of this approval, the applicant/owner, hereby agrees, at its sole cost and expense and to the fullest extent permitted by law, to defend, indemnify, and hold harmless the City, its officers, employees, agents, and consultants, from any claim, action, or proceeding brought by a third party against the City, its officers, employees, agents, and consultants, which seeks to attack, challenge, set aside, void, or annul an approval of the City Council, Planning Agency, or other decision-making body, or staff action concerning this project. The City agrees to promptly notify the applicant of any such claim filed against the City and to fully cooperate in the defense of any such action. The City may, but is not obligated to, at its sole cost and expense, elect to participate in the defense of any such action under this condition.
4. The applicant/owner shall agree in writing to these conditions of approval within 30 days of the Planning Agency's approval.

5. The applicant/owner shall reimburse the City for any outstanding staff time spent on the processing of SDPM/MSP/CUP No. 3-11-1917 within 60 days of the Planning Agency's approval.
6. The Conditional Use Permit and associated entitlements shall expire and be of no further force or effect if the permit is not implemented within two years from July 12, 2011.
7. Within 48 hours from project approval, the applicant/owner shall submit to the City a check in the amount of \$2,094, made payable to the Orange County Clerk-Recorder, for filing the Notice of Determination.
8. Pursuant to Government Code Section 66020, the applicant/owner is informed that the 90-day period in which the applicant/owner may protest any fees, dedications, reservation or other exaction imposed in connection with this project through these conditions of approval begins on the date that the Planning Agency adopts its resolution approving this project and related permits.

Building

9. The applicant/owner shall secure applicable building permits, as required by Section 105 of the 2010 California Building Code (see work exempt from permits).
10. Any required plans shall be accurately labeled and reflect all work, as required by Section 107 of the 2010 California Building Code (construction documents).
11. The applicant/owner shall secure any required approvals from OCFA, El Toro Water District, Orange County Health Department, and City Planning and Engineering Departments prior to issuance of any required building permit.
12. The applicant/owner shall comply with the California Disabled Accessibility requirements, as required by Chapter 11 of the California Building Code.
13. The applicant/owner shall comply with all California Energy requirements, as required by the California Energy Commission.
14. All construction shall comply with applicable building codes including the 2010 California Building, Plumbing, Mechanical, Electrical, and Green Building Codes, in regard to applicable occupancy types, including mixed occupancies and A-2 occupancies.
15. The applicant/owner shall submit Construction and Demolition Waste Recycling Program paperwork, if applicable, as required by the City of Laguna Hills Ordinance No. 2003-9 and to comply with mandates of the California Integrated Waste Management Board (CIWMB).

16. As applicable, the applicant/owner shall comply with all general construction Water Quality Ordinances, as required by the City of Laguna Hills, and Ordinance No. 2003-12.

OCFA

17. Prior to issuance of Building Permits, the applicant/owner shall submit to Orange County Fire Authority for review and approval all plans as directed by OCFA. Plans required may include Architectural Plans (Service Codes PR200-PR285), Fire Sprinkler System Plans (Service Codes PR430-PR455), and Hood and Duct Extinguishing System Plans (Service Code PR335). All facets of the project shall comply with regulations of the Orange County Fire Authority. The applicant may contact OCFA at (714) 573-6133 for additional information.

Planning

18. Outdoor security and other lighting, including illuminated signs, shall be designed and maintained so as not to illuminate beyond the project boundary. Exterior lights shall be focused inward and away from surrounding uses.
19. Sign A4 (as shown on the MSP submitted 6/16/2011) shall be turned off at or prior to 10:00 PM each night.
20. Site signage identified as sign A2 shall not encroach into the public right-of-way. The placement of sign A3 shall not encroach into the public right-of-way and may only encroach into the City landscape easement along El Toro Road subject to the approval of an Encroachment Agreement as prepared and approved by the City.
21. The proposed transformer along the frontage of Paseo de Valencia shall be no less than ten feet from the edge of the public right-of-way and shall be screened from view.
22. All signage (temporary and permanent), including any required approvals and permits, shall comply with L.H.M.C. Chapter 9-42. Signs shall be maintained to prevent deterioration, disrepair and shall be legible and in good condition.
23. The applicant/owner shall not park any commercial vehicles, including trucks, vans, and trailers with advertising signage, within fifty (50) feet of the rights-of-way of El Toro Road, Paseo de Valencia, or Avenida de la Carlota.
24. The ledgerstone installed as a part of this project (all buildings and monument signs) shall be dry stacked with tight-fitted joints (no visible mortar joints).
25. In the event that no agreement can be reached with the adjacent property owner for the installation of the driveway connecting the two properties (as shown on the site plan), the applicant/owner shall be responsible for installing a curb and planter and/or parking in this

- location. Such curb and planter and/or parking shall be installed prior to building and planning final inspections, and/or subject to other terms agreed to by the Community Development Director.
26. All noise generated by the project, including construction noise and other noise, including but not limited to exterior speakers utilized by the drive-thru restaurant, shall meet noise requirements pursuant to L.H.M.C. Chapter 5-24. Should the City receive complaints regarding the noise of external speakers associated with the drive-thru restaurant, the restaurant shall work with the City to modify the volume of the speakers as directed by the Community Development Director.
 27. Prior to issuance of building permits, the applicant/owner shall submit to the Community Development Director for his review and approval plans for the revised Ashley Furniture tower design. The plans shall replace the double gable roof with a single, standard gable roof, or as otherwise directed by the Planning Agency.
 28. Prior to issuance of building permits, the applicant/owner shall submit to the Community Development Director for his review and approval updated plans and Master Sign Program details for the Major Tenant and Ashley signage. The updated signage plans should (1) remove signs A2 and A3; (2) reduce the Major Tenant primary sign letter height to four feet (with five foot high envelope) and reduce the secondary sign envelope to two feet high; and (3) make any other changes as directed by the Planning Agency.
 29. Mitigation Measure H-1 shall be implemented as prescribed in the Mitigation Monitoring and Reporting Program, adopted as part of this project.
 30. If at any time the number of cars in the drive-thru exceeds the space provided for car stacking (11 cars), the tenant shall implement a program in which an employee is assigned to take orders remotely (to expedite the process through the drive-through lane).
 31. Deliveries to the Ashley Furniture and Major tenant building shall not occur between the hours of 10:00 PM and 7:00 AM.

Public Services

32. Prior to issuance of any grading or building permits, the applicant/owner shall submit for approval by the Community Development Department and Public Services Department a Water Quality Management Plan (WQMP) specifically identifying Best Management Practices (BMPs) that will be used on-site to control predictable pollutant run-off. This WQMP shall identify Low Impact Development (LID) BMPs and routine structural and non-structural measures specified in the current Orange County Drainage Area Management Plan (DAMP) and the Santa Ana Regional Water Quality Control Board requirements. This WQMP must also:

- a. Address site design BMPs (as applicable) such as minimizing impervious areas, maximizing permeability, minimizing directly connected impervious areas, creating reduced or “zero discharge” areas, conserving natural areas, preserve trees, and retaining existing site hydrology to the maximum extent practicable;
 - b. Include a design goal to maintain or replicate the pre-development hydrologic functions through site preservation, infiltration, retention, detention, evapotranspiration, and filtration treatment systems;
 - c. Incorporate applicable routine source control BMPs as defined in the DAMP and provide a detailed description of their implementation;
 - d. Incorporate applicable treatment control BMPs as defined in the DAMP to the satisfaction of the City Engineer;
 - e. Implement Low Impact Development (LID) BMPs to reduce runoff to the maximum extent practicable;
 - f. Include an Operation and Maintenance (O&M) plan that identifies the mechanism(s) by which long-term O&M of all post construction BMPs will be provided and funded.
33. Prior to issuance of grading permits, the applicant/owner shall submit a copy of the Notice of Intent (NOI) indicating that coverage has been obtained under the National Pollutant Discharge Elimination System (NPDES) State General Permit for Storm Water Discharges Associated with Construction Activity from the State Water Resources Control Board. Evidence that the NOI has been obtained shall be submitted to the Public Services Department. Projects subject to this requirement shall prepare and implement a Stormwater Pollution Prevention Plan (SWPPP). A copy of the current SWPPP shall be kept at the project site and be available for City review on request. In addition, the applicant shall include notes on the grading plans indicating that the project will be implemented in compliance with the Statewide Permit for General Construction Activities.
34. The applicant/owner shall submit a final grading plan and erosion control plan to the City Engineer with hydrology calculations, both prepared by a registered civil engineer. The grading plan shall show street, sewer, water, storm drain facility, and all proposed grading. The plans shall show the extent of topography of the grading plan and shall be sufficient to determine drainage impacts to the surrounding area. All grading shall be designed and constructed in accordance with the City’s Grading and Excavation Code. The final grading plan shall be approved by the City Engineer prior to the issuance of a building permit. No drainage shall be allowed onto driveways or sidewalks and shall be conveyed to the street via a storm drain pipeline or culvert, as applicable.

35. The applicant/owner shall submit a preliminary soils/geotechnical report of site conditions to include an evaluation of seismic hazard mapping zones.
36. Prior to the grading permit close out or the issuance of a certificate of use and occupancy, the applicant/owner shall demonstrate compliance with the WQMP in a manner meeting the satisfaction of the City Engineer, including:
 - a. Demonstrates that all structural BMPs described in the Project WQMP have been implemented, constructed, and installed in conformance with approved plans and specifications;
 - b. Demonstrates that the applicant has complied with and/or is prepared to implement all non-structural BMPs described in the Project WQMP;
 - c. Demonstrates that an adequate number of copies of the project's approved Project WQMP are available for the future occupants;
 - d. Demonstrates that the applicant has agreed to recorded CC&Rs, an agreement, or another legal instrument approved by the City Attorney that shall require the property owner, successors, tenants (if applicable), and assigns to operate and maintain in perpetuity the post-construction BMPs described in the Project WQMP;
 - e. The Community Development Department and Public Services Department shall determine whether any proposed change in use requires an amendment to an approved Project WQMP and/or recorded document or agreement.
37. Trash/recycling enclosures shall be constructed per the City of Laguna Hills standards including a roof and sewer connection.
38. The applicant/owner shall install "Smart" landscape irrigation controllers, low precipitation-rate sprinkler heads, and water efficient landscaping throughout the property in conformance with Municipal Code Chapter 9-47.
39. The utilization of Best Management Practices for storm water run-off and pollutant control shall not preclude a joint access with the adjacent parcel known as the Chevron Gas Station, 23991 El Toro Road, Laguna Hills.
40. The applicant/owner shall not grant any easements or license over any portion of the property subject to a requirement of dedication, irrevocable offer of dedication, or reservation to the City unless such easements or licenses are expressly made subordinate to easements to be offered for dedication to the City. Prior to granting such an easement, the applicant shall submit a copy of the proposed easement, or license, to the City Engineer for approval.
41. Prior to issuance of any building, grading, or encroachment permits, the applicant/owner shall pay all applicable City fees to the

satisfaction of the City Engineer and Community Development Director, including but not limited to the Urban Village Traffic Impact Mitigation Fees (LHMC §9-102) and the Public Art In-lieu Fee (UVSP Ch. 5 pg. 36).

42. Project improvement plans and related documents shall be reviewed and approved by the City Engineer; said plans shall be prepared by a registered civil engineer and shall conform to City standards.
43. No work shall be performed within the public right-of-way, by the applicant/owner or his or her agents until a public property encroachment permit is issued by the City Engineer.
44. The applicant/owner shall provide an Americans with Disabilities Act (ADA) site review of existing pathways, sidewalks and access ramps for both on-site access and adjacent to the site access along the accessible pathways. The accessible pathway shall not include a path within any drive aisle, except as necessary to cross a drive aisle at 90° to the drive aisle. The report shall be prepared by a professional whose expertise lies in the field and shall include an implementation plan to correct all deficiencies noted.
45. The two access ramps at the intersection of Paseo de Valencia and the project site driveway shall be removed and replaced to City standards, including driveway reconstruction, if needed.
46. Construction traffic shall not access or depart the site during morning or evening peak periods, which are 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., Monday through Friday. The applicant shall provide a construction vehicle routing plan for approval by the City Engineer prior to any demolition or construction work.
47. It shall be the applicant/owner's responsibility to protect-in-place existing public improvements. Public improvements that are damaged as a result of the proposed construction shall be the responsibility of the applicant/owner and/or contractor of record to repair or replace to the satisfaction of the City Engineer.
48. All parking lots and drives shall be constructed of asphalt concrete over crushed aggregate base over subgrade, or equal, and compacted to a relative compaction of 95% or equivalent. The structural pavement thickness shall be no less than 4" AC over 4" AB, or more, and as required by the project soils engineer and approved by the City Engineer.
49. The northeast corner of El Toro Road at Regional Center Drive shall be reconstructed to match the City provided plans for the entry corner treatment as shown on those certain plans labeled, "El Toro Road Streetscape Package, CIP No. 313" and to the Satisfaction of the City Engineer.
50. Prior to issuance of building permits the applicant/owner shall grant to City a grant of public right-of-way as may be required to match the

standard “corner cut-off” detail of a public intersection for the northeast corner of El Toro Road at Regional Center Drive consistent with the entry corner treatment and as approved by the City Engineer.

51. Prior to issuance of a Certificate of Use and Occupancy the applicant/owner shall grant a landscape easement to City for maintenance of the area of the entry monument at the northeast corner of El Toro Road at Regional Center Drive as may exist outside of the public right-of-way as approved by the City Engineer.
52. Prior to issuance of any permit the applicant/owner shall grant a right of entry/permit to enter and use of property along the Avenida de la Carlota frontage for a ten-foot width, as deemed necessary by City for the City’s widening improvement project of Avenida de la Carlota from Paseo de Valencia to El Toro Road, CIP No. 164. For valuable consideration of the removal of excess soil within said right of entry area, the applicant/owner shall grant the right of entry at no cost to City and as approved by the City Engineer.

(Remainder of page intentionally left blank)

PASSED, APPROVED, AND ADOPTED this 12th day of July, 2011.

L. ALLAN SONGSTAD, JR., CHAIR

ATTEST:

PEGGY J. JOHNS, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Peggy J. Johns, City Clerk of the City of Laguna Hills, California, DO
HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution
No. PA2011- adopted by the Planning Agency of the City of Laguna Hills, California, at
a Regular Meeting thereof held on the 12th day of July, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

PEGGY J. JOHNS, CITY CLERK



**HODGDON-MIANK
CONSTRUCTION INC**

CA LICENSE #844866 | CLASS A & B

www.hodgdongroup.com 1461 East Cooley Drive, Suite 230 Colton, California 92324 T: 909.783.3020 F: 909.783.3026

March 25, 2011

Katie Crockett
City of Laguna Hills
Planning Division
24035 El Toro Road
Laguna Hills, CA 92653

RE: 24001 El Toro Road – Former Circuit City
Ashley Furniture Development

Dear Katie,

Enclosed herewith is our submittal package for the redevelopment of the former Circuit City project for Ashley Furniture, a future retail co-tenant and a Chick-fil-A restaurant.

The development shall include the following which is allowed per current zoning:

- The entire building will be remodeled with a new façade, the creation of a separate entrance for the future co-tenant, the addition of a number of windows and building enhancements and new tenant improvements.
- The addition of approximately 5,750 square feet to the existing building including a new truck dock and well.
- The building will be demised to accommodate two tenants – Ashley Furniture which will utilize approximately 33,000 square feet and a future co-tenant for 18,000 square feet.
- The addition of a Chick-fil-A restaurant and drive thru in the parking lot
- Enhancement and maintenance of the site landscape
- Master Sign Program

We look forward to working with you and your team to create a successful venture.

Sincerely,

A handwritten signature in black ink, appearing to read 'Aaron W. Hodgdon', is written over a horizontal line.

Aaron W. Hodgdon

USE PERMIT JUSTIFICATION

Proposed Chick-fil-A Laguna Hills, CA

The proposed project meets the following required criteria:

1. The proposed use is consistent with the General Plan.

The property designation is Village Commercial. The intent of this designation is to establish a community core where commercial uses are appropriate. The proposed Chick-fil-A restaurant is consistent with this intent and compatible with the surrounding commercial uses. This convenient and high quality food service meets the objectives of the General Plan.

2. The nature, condition and development of adjacent uses, buildings and structures have been considered and the proposed conditional use will not adversely effect or be materially detrimental to the adjacent uses, buildings or structures.

This proposed use will not adversely effect or be materially detrimental to the adjacent uses, buildings or structures.

Chick-fil-A provides a convenient, quality, healthy, quick service dining experience. Quality food service is an amenity for local shoppers, employees of the area businesses, and the Laguna Hills community at large.

The existing site improvements will be modified to fully integrate the Chick-fil-A drive-thru and parking lot modifications with the existing parking lot, drive aisles and access drives.

3. The proposed site is adequate in size and shape to accommodate the use and integrate it with the existing and planned uses in the vicinity.

The layout, access and integration of the Chick-fil-A building into the existing parking lot is adequate in size and shape to accommodate the restaurant and drive-thru use.

There are no changes proposed to the existing site access and City roadways - the primary onsite traffic circulation also remains the same. The drive-thru lane is well isolated from public streets and thoroughfares.

The use is not detrimental to the character of the area-wide commercial development or the immediate neighborhood. The project as proposed will integrate with the existing regional commercial development.

4. All required development standards prescribed by the Laguna Hills Development Code and be achieved.

The project complies with all other regulations, conditions and policies imposed by the Zoning Code and the General Plan.

The building and site layout comply with City set back requirements, height restrictions, the parking ordinance and provides architectural interest using warm earth tones, stone accents and building articulation.

5. The conditions and limitations placed upon the use are necessary to insure compatibility with adjacent or abutting uses and the preservation of the public peace, safety and welfare.

The conditions and limitations placed upon the use, if reasonably applied, will allow for the operation of a successful business as well as preserve the public peace, safety and welfare.

Chick-fil-A is an Atlanta based, family owned, privately held corporation. With more than 1500 locations, each restaurant is corporate owned, yet run by an "owner/operator" whose sole job is to run and operate that location's business. Chick-fil-A is very active in local events and charities in communities in which they are located. Chick-fil-A was named "Best Drive Thru in America" by QSR magazine (Quick Serve Restaurant) once again last year. They are consistently recognized as best drive-thru for their speed of service, quality of service and accuracy of the orders.



**Operations Statement
Proposed Chick-fil-A
Northeast corner of El Toro Rd and Regional Center Dr.
Laguna Hills, Ca 92653**

Chick-fil-A Company Profile

Chick-fil-A is a 'quick service' restaurant specializing in chicken sandwiches, nuggets and tenders, salads and other assorted side dishes and soft drinks.

Chick-fil-A is an Atlanta based, family owned, privately held corporation – in 2009, sales topped \$3 billion. Chick-fil-A opened its first brand restaurant in 1967, its first drive-thru concept in 1986 and currently has over 1,500 stores, with 36 restaurants open and operating in California selling the "Original Chicken Sandwich."

Truett Cathy, the company's founder, opened his first restaurant, The Dwarf House, in Hapeville, GA in 1946. He remains a respected business and community leader at 90 years old and is still active as Chairman and Chief Executive Officer. His eldest son, Dan Cathy, is the Company's President and Chief Operating Officer.

Each location is run by an "owner/operator" whose sole job is to run and operate that location's business. Chick-fil-A is well known for its philanthropy both nationally and locally.

Chick-fil-A is a family friendly restaurant and prides itself in its "Second Mile Service." Raving fans are located throughout the United States!

Chick-fil-A has adopted most Leed Certification design elements including the following:

- Energy Management Controls for efficient HVAC and lighting
- Energy Star rated equipment
- Efficient building systems
- Solar reflective roof

Operations

Store Hours:

Monday thru Thursday:	6 a.m. to 10 p.m.
Friday & Saturday:	6 a.m. to 11 p.m.
Sunday:	Closed

Seating:

Indoor:	118 Seats
Patio:	8 tables (Four chairs each)

Employees: Approximately 15 employees per shift



Exterior Plaster - Paint **101**
 Sherwin Williams #SW6142
 "Macadamia"



Accent Paint **102**
 Sherwin Williams #SW6140
 "Moderate White"



Exterior Plaster - Paint **103**
 Sherwin Williams #SW6108
 "Latte"



Exterior Plaster - Paint **104**
 Sherwin William #SW2823
 "Rockwood Clay"



Stone Veneer **105**
 Sepulveda
 Bear Canyon Quartz Ledge -
 Cinnamon Colored Quartzite
 With A Dark Silver Body



Metal Awning **106**
 Berridge Tee-Panel
 "Deep Red"



Clay Barrel Roof Tile **107**
 Monier Lifetile
 "Marbled Terra Cotta"



COLOR & MATERIAL
LAGUNA HILLS, CA

3/22/2011

C · R · H · O

Architecture Interiors Planning

195 South "C" Street Suite 200

Tustin, California 92780

714 832 1834

FAX 714 832 1910

PAINT/MATERIAL COLORS



B
1



B
2



B
3



B
4



A
5



C
6

EXTERIOR MATERIALS

A
-

SIMULATED CLAY TILE METAL ROOF

B
-

EXTERIOR CEMENT PLASTER, PAINTED

C
-

QUARTZ LEDGE STONE

D
-

ANODIZED ALUMINUM STOREFRONT

E
-

EXIST'G. METAL DOOR, PAINTED

EXT. COLORS & FINISHES

-
1

"MODERATE WHITE", #SW 6140
BY SHERWIN WILLIAMS

-
2

"MACADAMIA", #SW 6142
BY SHERWIN WILLIAMS

-
3

"LATTE", #SW 6108
BY SHERWIN WILLIAMS

-
4

"ROCKWOOD CLAY", #SW 2823
BY SHERWIN WILLIAMS

-
5

METRO ROMAN TILE, COLOR: MISSION
GOLD-44-ES

-
6

BEAR CANYON LEDGESTONE #BCQL -
DRYSTACK BY SEPULVEDA BUILDING
MATERIALS

COLOR MATERIAL BOARD

ASHLEY FURNITURE REMODEL - LAGUNA HILLS
LAGUNA HILLS, CALIFORNIA



DATE: MAY 11, 2011
NADEL JOB#: 10139

NADEL STUDIO ONE, INC.
3080 BRISTOL STREET, SUITE 500
COSTA MESA, CA 92626
714.540.5000 F.714.755.3013
WWW.NADELARC.COM





DRAFT INITIAL STUDY/MITIGATED NEGATIVE DECLARATION

Ashley Furniture Redevelopment Project

SDPM/MSP/CUP No. 3-11-1917

Prepared By:

**City of Laguna Hills
Planning Department
24035 El Toro Road
Laguna Hills, CA 92653**

**June 3, 2011
Revised June 21, 2011**

Section 1: Project Description

1.1 – Project Title

Ashley Furniture redevelopment

1.2 – Lead Agency Name and Address

City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653

1.3 – Contact Person and Phone Number

Katie Crockett
Planning Aide
City of Laguna Hills
Phone: 949.707.2672
Fax: 949.707.2633
Email: kcrockett@ci.laguna-hills.ca.us

1.4 – Project Location

24001 El Toro Road
Laguna Hills, CA 92653

1.5 – Project Sponsor's Name and Address

Aaron Hodgdon
Hodgdon Group
1461 East Cooley Drive
Colton, CA 92324

1.6 – General Plan Land Use Designation

This property is designated in the City of Laguna Hills General Plan as "Village Commercial."

1.7 – Zoning District

This property is zoned "Village Commercial" in the City of Laguna Hills, which is implemented by the Urban Village Specific Plan. Adjacent properties to the south, east, and west are all zoned "Village Commercial." Properties to the north, across Paseo de Valencia, are in the City of Laguna Woods.

1.8 – Project Description

In accordance with the California Environmental Quality Act (CEQA) Public Resources Code Section 21000-21177, the attached Initial Study has been prepared for the proposed project to determine potential significant impacts upon the environment. In accordance with Section 15063 of the State CEQA Guidelines (14 CCR 15063), this Initial Study is a preliminary analysis prepared by the Lead Agency, the City of Laguna Hills, in consultation with other jurisdictional agencies and technical consultant resources to determine whether a Negative Declaration or Environmental Impact Report (EIR) is

required for the proposed Site Development Permit/Conditional Use Permit for the Ashley Furniture site redevelopment project. The purpose of this Initial Study is to inform decision-makers, affected agencies and the public of potential environmental impacts associated with the implementation of the proposed project. Following completion of the Initial Study, a formal determination is rendered as to whether the project would or would not have significant immitigable environmental impacts. A determination that the project would have less than significant effects would result in the preparation of a Negative Declaration.

Through the Initial Study for the proposed project, the City has determined that the project would not have significant environmental effects with appropriate mitigation measures in place and has prepared a Mitigated Negative Declaration for the project.

The Initial Study and Draft Mitigated Negative Declaration will undergo a 20-day public review period. During this review, public review comments on the document relative to environmental issues should be addressed to the City of Laguna Hills. Following review of any comments received, the City of Laguna Hills will consider these comments as part of the project's environmental review, and include them with the Initial Study document for the consideration by the City of Laguna Hills Planning Agency.

1.9 – Project History

The applicant is requesting a Site Development Permit/Master Sign Program/Conditional Use Permit for redevelopment of an existing commercial site at 24001 El Toro Road in the Village Commercial (VC) zoning district. The existing site consists of a single tenant box store (formerly Circuit City) with associated parking. The proposed project involves adding 5,949 square feet to the existing building and subdividing into two tenant spaces, one for the Ashley Furniture Homestore and the other for a future tenant, yet to be determined. Additionally, a 4,000 square foot pad space for a drive-thru restaurant (Chick-fil-A) will be added to the site. Overall, 9,949 square feet of retail and restaurant space will be added to the site.

Parking will be reconfigured to accommodate the new building footprints and to meet current ADA accessibility standards and Chapter 11 of the California Building Code. The amount of parking provided meets the requirements for parking in the Urban Village Specific Plan.

A new master sign program is also proposed with the project to accommodate the two new tenant spaces as well as some unique signage requests for the Ashley Furniture store. Unique signage is encouraged by the Urban Village Specific Plan and deviations to the signage requirements in the Laguna Hills Municipal Code may be granted by the Planning Agency.

A new landscaping plan is proposed making use of existing plant materials where feasible and desirable, and proposing new plant materials to create a more uniform look throughout the site. All landscaping will be compliant with current codes, including requirements for water efficiency.

1.10 – Surrounding Land Uses

Northeast:	Village Commercial (St. George's Episcopal Church and Academy)
Northwest:	City of Laguna Woods (residential)
West:	Village Commercial (Civic Center and Laguna Hills Lodge)

East: Village Commercial (Shell and Chevron Gas Stations) and I-5 Freeway
South: Village Commercial (Laguna Hills Mall)

1.11 – Required Public Agency Approvals

Agency	Approval
City of Laguna Hills	Entitlement approval
City of Laguna Hills	Project design and construction plans

Section 2: Determination

2.1 – Environmental Factors Potentially Affected

- | | | |
|--|---|---|
| ☐ Aesthetics | ☐ Agriculture Resources | ☐ Air Quality |
| ☐ Biological Resources | ☐ Cultural Resources | ☐ Geology / Soils |
| ☐ Hazards & Hazardous Materials | ☐ Hydrology / Water Quality | ☐ Land Use / Planning |
| ☐ Mineral Resources | ☐ Noise | ☐ Population / Housing |
| ☐ Public Services | ☐ Recreation | ☐ Transportation / Traffic |
| ☐ Utilities / Service Systems | ☐ Mandatory Findings of Significance | |

2.2 – Determination

☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☒ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.



Katie Crockett

City of Laguna Hills, Planning Aide

6/13/11
Date

Section 3: Evaluation of Environmental Impacts

3.1 Aesthetics

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☒
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☒
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	☐	☐	☒	☐
d) Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?	☐	☐	☒	☐

- a) **No Impact.** The project site is already developed with a commercial building and is located in an urbanized area. There are no scenic vistas within the project limits. Therefore the project would not have an adverse effect on a scenic vista. No mitigation measures are required.
- b) **No Impact.** The project is already developed with a commercial building and is located in an urbanized area. There are no state scenic highways in or around the project area. Therefore the project would not have an adverse impact on a state scenic highway. No mitigation measures are required.
- c) **Less Than Significant Impact.** The project site is already developed with a commercial building. The project site is in the "Urban Village" area of Laguna Hills, which acts as a downtown area for the City, and is built out with existing commercial developments, including the Mall, Oakbrook Village, and the Civic Center. The maximum height of this structure is comparable to other buildings in the area including the mall and the Civic Center building. Further, the building finishes are to be in character with other buildings in the area. Therefore, the visual character of the site and its surroundings will not be degraded in any significant way.
- d) **Less Than Significant Impact.** All exterior building or site lighting shall be shielded so as not to shine directly onto neighboring properties. The final lighting plan shall be reviewed and approved by the Planning Department, Building & Safety Department and Police Department prior to issuance of permits. No additional mitigation measures are required.

3.2 – Agriculture and Forest Resources

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	☐	☒
b) Conflict with existing zoning for agriculture use, or a Williamson Act contract?	☐	☐	☐	☒
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by PRC section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	☐	☐	☐	☒
d) Result in loss of forest land or conversion of forest land to non-forest use?	☐	☐	☐	☒
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use?	☐	☐	☐	☒

a) No Impact. No agricultural activities occur in the vicinity of the project area.¹ Therefore, there will be no impact on Farmlands or conversion of Farmlands to non-agricultural use.

b) No Impact. The site is not zoned for agriculture and there are no Williamson Act contracts in the vicinity.² Therefore, there will be no impact on agricultural uses or Williamson Act contracts.

c) No Impact. No areas on or around the project area are zoned for forest land or timberland.³ Therefore, the project will not conflict with the existing zoning for, or cause rezoning of forest land or timberland.

¹ City of Laguna Hills. Laguna Hills Environmental Impact Report, 2009. Pg 5.2-1 to 5.2-2.

² California Department of Conservation. Williamson Act Program, 2004.

³ California Department of Forestry and Fire Protection. Land Cover Mapping and Monitoring Program: Orange County, 2005.

- d) No Impact.** There is no forest land in or around the project site. Therefore, the project will not result in the loss of forest land or conversion of forest land to non-forest use.
- e) No Impact.** There are no areas on or around the project area that contain Farmland or forest land. Therefore, the project will not involve any changes that could impact or result in the conversion of Farmland or forest land to non-agricultural or non-forest uses.

3.3 – Air Quality

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☐	☒
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	☐	☐	☒	☐
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors)?	☐	☐	☒	☐
d) Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☒	☐
e) Create objectionable odors affecting a substantial number of people?	☐	☐	☒	☐

a) No Impact. The project site is located in the South Coast Air Basin, which is under the jurisdiction of the South Coast Air Quality Management District (SCAQMD). The most recent applicable air quality plan for this area is the 2007 Air Quality Management Plan completed by the SCAQMD. Consistency with the AQMP is determined by examining whether a project would violate or contribute to violations of an air quality standard or otherwise impede attainment of air quality improvement goals and objectives, and whether a project would exceed the local growth forecasts accounted for in the AQMP. As discussed in the following responses 3.3B and 3.3c, this project would not generate significant levels of air pollutants and would not conflict with the air quality improvement strategies in the AQMP. The employment generated by the proposed Ashley Furniture store, another retail tenant, and fast-food/drive-thru restaurant would be well within forecasts of near-term employment growth in Laguna Hills, as identified in the Regional Transportation Plan from which the AQMP emissions projections were developed. This project would not conflict with the AQMP.

b) Less Than Significant Impact. Any impacts to air quality related to this project are either (1) short term construction impacts or (2) long-term emissions from project operations, i.e., the emissions associated with ongoing business activities within the main commercial structure and the fast-food/drive-thru business. These would include exhaust emissions from project-related traffic as well as emissions associated with building energy consumption and regular landscape maintenance activities. Construction period emissions would be minor, since the scale of proposed construction is small and little grading or paving would be

required. Further, construction emissions would be highly localized, dissipating quickly beyond the immediate construction footprint. The project site is an existing commercial development to which 9,949 square feet of additional retail and dining will be added. This is a relatively small intensification in the site and such intensification has been planned for through the General Plan EIR (2009). Therefore, the project is not expected to violate any air quality standard or contribute substantially to an existing or projected air quality violation.

- c) **Less Than Significant Impact.** The South Coast Air Basin is currently in non-attainment for both the CA and Federal ambient air quality standards for O₃, PM₁₀, and PM_{2.5}. Long-term emissions associated with the proposed business operations, including mobile and stationary sources, have been calculated with the CALFEEMOD software program (see Appendix D). Emissions of criteria pollutants would be well below the SCAQMD's daily thresholds for all criteria pollutants. This project would not result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard.
- d) **Less Than Significant Impact.** Sensitive receptors in the vicinity of the project area include the Laguna Hills Lodge (immediately to the west), Laguna Woods Village residences (the closest residence is approximately 200 feet to the northwest), and St. George's Episcopal Academy (approximately 250 feet to the northeast). Construction emissions are expected to be short-lived, highly localized, and dissipate quickly beyond construction limits. Therefore sensitive receptors in the area will not be exposed to substantial pollutant concentrations. Re-occupancy of the existing commercial building, with a small floor area expansion, as proposed, would not introduce any activities involving generation of emissions into the atmosphere. Operation of the fast food-drive through business also would be an indoor activity, with no processes that would generate atmospheric emissions, except for routine, filtered ventilation of cooking areas. As noted in the preceding response, traffic exhaust emissions would not be significant. This project would not result in any significant air pollutant concentrations at sensitive receptors in this area.
- e) **Less Than Significant Impact.** The long-term implementation of this project will not result in any objectionable odors, because no outdoor storage or other outdoor activities are proposed and neither building will generate atmospheric emissions laden with odors. However, there could possibly be odors generated that some people may find objectionable related to the construction of the project. Any odors associated with the construction of the project would be odors typical to any construction project and would only occur during the construction of this project. Therefore, while some objectionable odors may be generated during the construction phase of the project, they will be minor short-term impacts only that will be eliminated once the project is completed.

3.4 – Biological Resources

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☐	☐	☒
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or US Fish and Wildlife Service?	☐	☐	☐	☒
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	☐	☐	☒
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☐	☐	☒
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☐	☐	☒
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	☐	☐	☐	☒

- a) No Impact.** The project site is already developed and is surrounded by urban development. No significant natural habitat exists on-site or in close proximity to the project site. Therefore, the proposed project would not have the potential to directly or indirectly affect any sensitive species.
- b) No Impact.** The project site is already developed and is surrounded by urban development. No significant riparian habitat or sensitive natural community exists on-site or in close proximity to the project site.

Therefore, the proposed project would not have the potential to directly or indirectly affect any riparian habitat or sensitive natural community.

- c) **No Impact.** The project site is already developed and is surrounded by urban development. No federally protected wetlands exist on-site or in close proximity to the project site.⁴ Therefore, the proposed project would not have the potential to directly or indirectly affect any federally protected wetlands.
- d) **No Impact.** The project site is already developed and is surrounded by urban development. No wildlife migratory corridors or wildlife nursery sites exist on-site or in close proximity to the project site. Therefore, the proposed project would not have the potential to directly or indirectly interfere with the movement or migration of wildlife.
- e) **No Impact.** The City has no tree preservation policy affecting trees on private property. The applicant has been required to submit a landscape plan as a part of this project. Where feasible and desirable, existing trees will be utilized.
- f) **No Impact.** The project site is already developed and is surrounded by urban development. No sensitive habitats exist on-site or in close proximity to the project site. No conservation plans have been adopted to govern the use of any land in this highly urbanized area. Therefore, the proposed project would not have the potential to conflict with provisions of any habitat conservation plan.⁵⁶

⁴ U.S. Fish & Wildlife Service Website. National Wetlands Inventory Wetlands Online Mapper. Accessed May 2011.

⁵ California Department of Fish and Game Website. Natural Community Conservation Planning. Accessed May 2011.

⁶ U.S. Fish & Wildlife Service Website. Habitat Conservation Plans: Regional Summary Report. Accessed May 2011.

3.5 – Cultural Resources

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	☐	☐	☐	☒
b) Cause a substantial adverse change in the significance of an archeological resource pursuant to § 15064.5?	☐	☐	☐	☒
c) Directly or indirectly destroy a unique paleontological resource or site or unique geological feature?	☐	☐	☐	☒
d) Disturb any human remains, including those interred outside of formal cemeteries?	☐	☐	☐	☒

- a) **No Impact.** Neither the site nor areas around the site are considered a historical resource. Therefore, the project will have no potential to impact the significance of a historical resource.
- b) **No Impact.** There are no known archaeological resources in the vicinity. Therefore, the project will have no potential to impact a known archeological resource.
- c) **No Impact.** There are no known paleontological resources or unique geological features in the vicinity. Therefore, the project will have no potential to impact a known paleontological resource or unique geological resource.
- d) **No Impact.** There are no known human remains in the vicinity and the ground will not be disturbed beyond what has previously been disturbed in prior development of the site. Therefore, the project will have no impact on areas with known human remains.

3.6 – Geology and Soils

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☐	☐	☐	☒
ii) Strong Seismic ground shaking	☐	☐	☒	☐
iii) Seismic-related ground failure, including liquefaction?	☐	☐	☐	☒
iv) Landslides?	☐	☐	☐	☒
b) Result in substantial soil erosion or the loss of topsoil?	☐	☐	☐	☒
c) Be located on a geologic unit or soil that is unstable, or would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	☐	☐	☒
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	☐	☐	☒	☐
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	☐	☐	☐	☒

a)

- i) **No Impact.** There are no known earthquake faults or Alquist-Priolo zones within the vicinity of the project.⁷ Therefore there will be no impact on the project due to the rupture of a known earthquake fault.
- ii) **Less Than Significant Impact.** The project site is not located in an earthquake zone; however, Southern California as a whole is subject to potential ground shaking in the event of an earthquake.⁸ All development plans and specifications will be required to comply with guidelines and standards mandated by the City as specified by the California Building Code (CBC) and the seismic design parameters of the Structural Engineers Association of California (SEAC). Therefore, the proposed project would not expose people to significant adverse effects due to ground shaking, and any adverse effect would be similar to that already existing on the developed site and surrounding developed sites.
- iii) **No Impact.** The subject site is not located within any liquefaction hazard zones and due to the fact that no known earthquake faults are located on or around the project area, potential seismic related ground failure is unlikely.⁹
- iv) **No Impact.** The subject site is not located in any landslide hazard zones and there are no slope areas on or around the subject site. Therefore, the project would not expose people or structures to potential significant impacts from landslides.

b) **No Impact.** The project site is already developed with impervious surfaces and landscape planters; therefore there is no potential for soil erosion with current conditions. Once the project is completed, the site will again contain impervious surfaces and contained landscape area, posing no potential for soil erosion impacts.

c) **No Impact.** See section 3.8 a and b, above.

d) **Less Than Significant Impact.** The project area may be located on expansive soils. However, if unsuitable expansive soil materials are found, they will be replaced with suitable engineered materials. Furthermore, the project would not involve a change in land use that could expose people or structures to expansive soils beyond those currently experienced under existing conditions. Impact would be less than significant.

e) **No Impact.** The project does not involve the use of septic tanks. All wastewater will continue to be conveyed off-site via connections to the sanitary sewer system.

⁷ City of Laguna Hills. Laguna Hills General Plan, 2009. pg s-5 and s-7.

⁸ City of Laguna Hills. Laguna Hills General Plan, 2009. pg s-5 and s-7.

⁹ City of Laguna Hills. Laguna Hills General Plan, 2009. Pg s-4.

3.7 – Greenhouse Gas Emissions

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	☐	☐	☒	☐
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gasses?	☐	☐	☐	☒

Since the adoption of AB 32, there has been little regulatory guidance regarding quantification of potential greenhouse gas (GHG) impacts. Given the complexity of the overall interactions between various global and regional scale air emissions, it is difficult to determine whether any proposed project would alter any existing conditions. No statewide, regional, or local significance threshold has been adopted with application in Laguna Hills. Although the South Coast Air Quality Management District has adopted interim guidance on GHG analysis, this guidance only applies to stationary sources.

The recently revised CEQA Guidelines indicate that the lead agency should use careful judgment in assessing potential GHG impacts. Pursuant to the Guidelines, the lead agency may, in its discretion, rely on a quantitative or qualitative analysis for these purposes.

- a) Less Than Significant Impact.** Temporary GHG emissions would occur during construction activities from vehicle and equipment exhausts, paving emissions, etc. Impacts related to GHG emissions are cumulative, resulting from the accumulation of GHGs in the atmosphere over the long-term; therefore, short-term, temporary GHG emissions from construction activities would not contribute substantially to long-term climate change.

The proposed project does have some operational components that could contribute additional GHG emissions above those emissions in the existing environmental setting. The additional emissions would come from added auto trips to the site and idling caused by the proposed drive-thru, along with indirect emissions generated from remote natural gas and electricity power sources that supply building energy needs. Total annual recurring operational GHG emissions from this project, including mobile and stationary sources, are estimated at 3,650 metric tons/year CO₂eq (see Appendix D calculations). Approximately 88% of the total emissions would be from project-related vehicular traffic. This represents a minor increase compared to the current site conditions, which are not generating GHGs. In the context of world-wide or statewide climate change, it is reasonable to conclude that these emissions would have a less than significant effect.

- b) No Impact.** No plans, policies, or regulations have been adopted to limit GHG emissions from an individual land use project. Buildings must be designed to comply with California's building energy efficiency standards, set forth in Title 24 of the California Administrative Code; this will reduce total building-related GHG emissions.

3.8 – Hazards and Hazardous Materials

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☒	☐	☐
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☒	☐	☐
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☐	☐	☐	☒
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would create a significant hazard to the public or the environment?	☐	☐	☐	☒
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☒
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☒
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	☐	☒
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	☐	☐	☐	☒

a-b) Short-Term Construction Period Impacts – Less Than Significant Impact with Mitigation Incorporation.

Soil and groundwater remediation activities have been conducted at the adjacent Chevron gas station under

the regulatory oversight of the State of California Regional Water Quality Control Board, Santa Ana Region (RWQCB-SAR). This is an indication that there is a potential to encounter soil contaminated with hydrocarbons during project construction. Because it is also possible that no contaminated soils will be encountered, no mitigation will be required prior to commencement of the project. However, during excavation and/or grading activities, construction personnel will visually observe the condition of the soil to assess whether hydrocarbon-impacted or contaminated soil is present. Depending on the soil type, the following observations may indicate the presence of petroleum contaminated soil:

- Staining – ranging in color from greenish gray (gasoline) to black or dark grayish brown (oil)
- Odor – petroleum/hydrocarbon scent (e.g. oil, diesel, gasoline).

If any such evidence of hydrocarbon contaminated soil is encountered during construction activities, the applicant will be required to immediately stop work in the affected areas, conduct a soil test to determine whether there is contamination, and if so, prepare a Soil Management Plan that requires contaminated soils to be removed and disposed of appropriately. The Soil Management Plan, if required, shall be submitted to the City for review and approval by the Community Development Director, who will be responsible for ensuring that such Soil Management Plan is implemented. With implementation of a Soil Management Plan, if needed, any impacts to the public or the environment from hydrocarbon contaminated soil will be less than significant.

Mitigation Measure H-1: During excavation and/or grading activities, construction personnel will visually observe the condition of the soil to assess whether evidence of hydrocarbon-impacted or contaminated soil is present (indications include staining of the soil and petroleum odor). If contaminated soil is suspected, work in the affected area shall be stopped immediately, soils tested to confirm contamination, and a Soil Management Plan shall be prepared and submitted to the City for review and approval by the City Engineer.

Long-Term Operation Impacts – No Impact. With regard to long-term impacts, the project does not propose or facilitate any activity involving the use, routine transport, or disposal of hazardous substances. No impact would occur.

- c) **No Impact.** While St. George Academy is within one-quarter mile of the project, the project would not emit hazardous emissions. The project involves no long-term use, transport, or disposal of hazardous substances therefore no impact would occur. Any short term hazardous materials due to potentially contaminated soils are already addressed in item 3.8 a-b, above and with Mitigation Measure H-1.
- d) **No Impact.** According to records maintained by the California Environmental Protection Agency (EPA) known as the Cortese List, no area within the project limits are:
- listed as hazardous waste and substance site by the Department of Toxic Substances Control (DTSC),
 - listed as a hazardous solid waste disposal site by the State Water Resources Control Board (SWRCB), or
 - currently subject to a Cease and Desist Order or a Cleanup and Abatement Order as issued by the SWRCB.

As noted earlier, the Chevron station adjacent to the project site is listed as having an open case with a leaking underground storage tank (LUST) by the SWRCB.¹⁰ The cleanup status is listed as Open-Remediation. However, with implementation of Mitigation Measure H-1 identified above, any contaminated soils found will be properly handled and disposed of; thus avoiding significant impacts.

- e-f) No Impact.** The project is not located within an airport land use plan or within the vicinity of a public or private airport. Therefore no impacts would occur.
- g) No Impact.** The site is already a commercially developed site. The development resulting from the project will not interfere with the implementation of or physically interfere with an emergency response or evacuation plan.
- h) No Impact.** The project site and surrounding areas are developed areas and contain no wildlands. Further the project site is not located within or adjacent to any High Fire Hazard Zones.¹¹ Therefore, there is no potential for this project to expose people or structures to significant impacts involving wildland fires.

¹⁰ California Environmental Protection Agency Website. Cortese List Data Resources. Accessed May 2011.

¹¹ City of Laguna Hills. Laguna Hills General Plan, 2009. pg s-11.

3.9 – Hydrology and Water Quality

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Violate any water quality standards or waste discharge requirements?	☐	☐	☒	☐
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate or pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	☐	☐	☐	☒
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream river, or substantial runoff in a manner, which would result in flooding on- or off-site?	☐	☐	☐	☒
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner, which would result in flooding on- or off-site?	☐	☐	☐	☒
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	☐	☐	☐	☒
f) Otherwise substantially degrade water quality?	☐	☐	☐	☒
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	☐	☐	☐	☒
h) Place within a 100-year flood hazard area structures, which would impede or redirect flood flows?	☐	☐	☐	☒
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	☐	☐	☐	☒

j) Inundation by seiche, tsunami, or mudflow?	☐	☐	☐	☒
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- a) **Less Than Significant Impact.** This area is already developed with a commercial building and a paved parking lot. The proposed re-occupancy of the vacated Circuit City building and development of a 4,000 square foot fast food/drive-thru restaurant business would have a negligible effect on the composition and volume of the site's existing urban runoff characteristics. The proposed project will prepare a Water Quality Management Plan ("WQMP") prior to issuance of building or grading permits to ensure there is no degradation of established water quality standards as a result of construction activities or the proposed development plan.¹²
- b) **No Impact.** The project includes nothing that would deplete groundwater supplies or interfere with groundwater recharge. The site is currently developed with a commercial building and parking lot, which are largely impermeable. The proposed project will not substantially change the current circumstances; however, additional landscape area and stormwater recharge area in accordance with stormwater best management practices ("BMPs") will be incorporated. Therefore, no impact to groundwater supplies will occur.
- c-d) **No Impact.** The proposed project will not substantially alter the existing drainage pattern of the site or area. Additionally, there are no surface drainage features such as streams in the vicinity. No substantial change in the amount of surface runoff from the site will result due to the project implementation from what currently exists at the site.
- e) **No Impact.** The amount of runoff produced by the implementation of this project would not exceed the amount of runoff produced by the current development existing at the site, because there would be no increase in the amount of impervious surface coverage. Therefore runoff from this project will not exceed the capacity of the existing stormwater drainage systems. The project would not generate any additional sources of pollution that do not currently exist on site.
- f) **No Impact.** Overall water quality is not expected to be negatively impacted by the implementation of this project as it is similar in nature and scope to the existing development on site. No other potential water pollutant sources would occur, beyond the urban runoff discussed in previous responses.
- g-h) **No Impact.** The FEMA Flood Insurance Rate Map, Number 06059C0427J.D1, dated December 3, 2009, indicates that the project area has less than a 0.2% annual chance of flooding. Therefore, no impact would occur.
- i) **No Impact.** The project limits are not located within a flood zone. The Flood Hazards Map (Figure S-3) of the City's General Plan Safety Element indicates that no flood hazards exist in or near the project limits.¹³

¹² City of Laguna Hills Municipal Code, Chapter 5-36.

¹³ City of Laguna Hills. Laguna Hills General Plan, 2009. pg s-8.

- j) **No Impact.** Due to its inland location, the project limits will not be affected by tsunamis. There are no enclosed water bodies in the immediate vicinity where a seiche could form. The proposed project is located in a relatively flat and fully developed area, and thus, not an area subject to mudflow. No tsunami, seiche, or mudslide impacts would occur.

3.10 – Land Use and Planning

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Physically divide an established community	☐	☐	☐	☒
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☐	☒
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	☐	☐	☐	☒

- a) **No Impact.** This project proposes redeveloping an existing commercial site in a developed, urbanized area; it does not cause any physical division in the community.
- b) **No Impact.** The Laguna Hills General Plan and Municipal Code designate this area as Village Commercial and is in the Urban Village Specific Plan area. Commercial developments such as the proposed project are in conformance with the above-mentioned texts.
- c) **No Impact.** The site is not located within an NCCP or habitat conservation plan. Therefore, no impact is possible.

3.11 – Mineral Resources

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	☒
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☒

a) **No Impact.** The project site is already developed in an urbanized area. No additional ground area will be affected by this project beyond what was already developed. Further, there are no known mineral resources of value on the project site.¹⁴ Therefore no mineral resources will be affected by this project.

b) **No Impact.** There are no locally important mineral resource recovery areas located in the project area.¹⁵ Therefore, there will be no impact.

¹⁴ City of Laguna Hills. Laguna Hills General Plan Environmental Impact Report, 2009. pg 5.6-13.

¹⁵ City of Laguna Hills. Laguna Hills General Plan Environmental Impact Report, 2009. pg 5.6-13.

3.12 – Noise

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☐	☒	☐
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	☐	☐	☒	☐
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☒	☐
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☒	☐
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☒
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☒

a) Short-Term Construction Impacts – Less Than Significant Impact. The project will conform with standard conditions for noise abatement listed in the City of Laguna Hills General Plan EIR. Specifically, all construction activity will comply with the limits (maximum noise levels, hours, and days of allowed activity) established in City noise regulations to reduce impacts associated with temporary construction noise to the extent feasible. The City's Noise Control Ordinance exempts all noise sources associated with construction, repair, remodeling, or grading of any real property that do not take place between the hours of 8:00 P.M. and 7:00 A.M. on weekdays, 8:00 P.M. and 8:00 A.M. on Saturday, or at any time on Sunday or a Federal holiday.¹⁶ This requirement will be included in the project's Conditions of Approval and therefore requires no additional mitigation measures.

Long-Term Project Impacts – Less Than Significant Impact. Since the project site is and has been vacant, this project would result in an increase in ambient noise levels, mainly associated with the automotive traffic

¹⁶ Laguna Hills Municipal Code Chapter 5-24.070
SDPM/MSP/CUP-3-11-1917
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generated by the two commercial buildings. This noise would be masked by noise from other local sources, primarily traffic noise along the I-5 Freeway, El Toro Road, Paseo de Valencia and Avenida de la Carlota, and automobile traffic in and out of nearby parking lots. In this context, project-related noise would be less than significant.

- b) Short-Term Construction Impacts – Less Than Significant Impact.** Project construction can generate varying levels of groundborne noise and vibration, depending on the type of construction and equipment. Groundborne noise and vibration would typically occur at the highest level during any concrete removal and grading activities. These items will again be restricted to the construction hours prescribed by the Noise Ordinance (see 3.12a, above). Temporary noise and vibration impacts during construction would be less than significant.

Long-Term Project Impacts – Less Than Significant Impact. See Checklist Response 3.12a, above.

- c) Less Than Significant Impact.** See Checklist Response 3.12a, above.
- d) Less Than Significant Impact.** Construction-related activities and equipment would result in temporary and/or periodic increases in ambient noise levels above existing conditions. These activities will be limited to normal construction hours, so impacts will be less than significant (see 3.12a, above).
- e-f) No Impact.** Project site is not located within an airport land use plan or within two miles of a public airport or public use airport. The project site is not located within the vicinity of a private airstrip. There would be no impact with regard to airport/airstrip noise.

3.13 – Population and Housing

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	☐	☐	☐	☒
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒

a) No Impact. The project does not include the addition of residential units. Additionally, the site was already developed as a commercial property. The amount of commercial area will increase from one tenant and 45,502 square feet to three tenants and 55,451, a net gain of 9,949 square feet. This additional commercial square footage would not have any significant impact on population growth. No new infrastructure facilities would be required to provide wet or dry utility services for this project; thus there would be no growth-inducing effects related to infrastructure capacity.

b-c) No Impact. There are no existing housing units on the subject site. Therefore, the project will not displace any housing units or any number of people.

3.14 – Public Services

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
a) Fire protection?	☐	☐	☐	☒
b) Police protection?	☐	☐	☐	☒
c) Schools?	☐	☐	☐	☒
d) Parks?	☐	☐	☐	☒
e) Other public facilities?	☐	☐	☐	☒

a-b) No Impact. The project would not result in a substantial increase in the demand for fire or police protection services beyond what is currently needed at the subject site, as it is already a developed commercial site and the amount of area added is not significant when considered in the context of the project area.

c-d) No Impact. No housing is being added in this project, nor will the project directly or indirectly contribute to an increase in housing in the area. Therefore, no students or residents will be added or lost and no impact to schools or parks will occur.

e) No Impact. The project will not have any significant impacts on any other public facilities or services.

3.15 – Recreation

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☒
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment?	☐	☐	☐	☒

- a) **No Impact.** The project will not increase the use of existing neighborhood and regional parks or other recreational facilities because the project will not directly or indirectly result in the creation of additional housing or population and will not generate any additional users for the parks or recreational facilities.
- b) **No Impact.** The project is redevelopment of an existing commercial site and does not include recreational facilities or expansion of existing recreational facilities.

3.16 – Transportation and Traffic

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths and mass transit)?	☐	☐	☒	☐
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	☐	☐	☒	☐
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	☐	☐	☐	☒
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☒	☐
e) Result in inadequate emergency access?	☐	☐	☐	☒
f) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	☐	☐	☐	☒

- a) **Less Than Significant Impact.** A traffic study performed by Austin-Faust Associates, dated May 4, 2011 ("traffic study") was conducted. The traffic study evaluated current traffic conditions and the impact on traffic with project implementation (particularly at intersections in the vicinity of the project site). The traffic study states that the intersection surrounding the project are currently operating at a level of service (LOS) "D" or better during the AM and PM peak hours. The City of Laguna Hills defines significant project impact as an increase of 0.01 or more at a study intersection location that reached LOS "E" or "F" during the peak hour. The traffic study concluded that the project will have no significant impact on the study intersections, and the study intersections will continue to operate at LOS "D" or better during the AM and PM peak hours.¹⁷ A potential driveway connection to the adjacent Chevron station was also analyzed and no adverse impacts to the study area intersections were identified. This project would not significantly affect the performance of the local transportation system.

¹⁷ Austin-Faust Associates, Inc. "Ashley Furniture Laguna Hills Traffic Study," May 4, 2011.

- b) **Less Than Significant Impact.** El Toro Road is a CMP arterial, and CMP intersections in the vicinity are at the I-5 freeway ramps at El Toro Road. Orange County CMP sets a LOS "E" standard for CMP intersections. Since the existing and existing+project LOS at the affected CMP intersections is "D," the project impact would be less than significant.
- c) **No Impact.** The existing retail building and proposed fast-food restaurant building would not intrude into any air traffic space and would not affect any air traffic patterns.
- d) **Less Than Significant Impact.** The project site is an established commercial site and will remain commercial in nature and not result in any hazards associated with incompatible uses. The site has existing ingress and egress access points to Paseo de Valencia and El Toro Road. The traffic study evaluated truck access to the existing commercial building, which is the same as it was when the Circuit City operated here, and determined that this truck access and circulation would not result in adverse impacts to the local streets. Queuing in the proposed drive-thru restaurant was also evaluated; the proposed stacking capacity of 11 vehicles was determined to be sufficient, and adverse impacts to the adjacent street are not anticipated.
- e) **No Impact.** The project site is an existing commercial site. Existing access into the site and all other emergency access requirements (e.g. fire lanes, etc) will be met. Therefore there will be adequate emergency access into the site.
- f) **No Impact.** The project would not affect existing OCTA bus service along El Toro Road and would not affect any existing sidewalks or bicycle paths. This project would not conflict with any adopted policies, plans, or programs supporting alternative transportation.

3.17 – Utilities and Service Systems

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	☐	☐	☒	☐
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☒
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☒
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	☐	☐	☒	☐
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it had adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☒	☐
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☐	☒	☐
g) Comply with federal, state, and local statutes and regulations related to solid waste?	☐	☐	☐	☒

- a) Less Than Significant Impact.** The Santa Ana Regional Water Quality Control Board has addressed the obligation to implement the Clean Water Act by issuing "Waste Discharge Requirements for the County of Orange, Orange County Flood Control Areawide Urban Storm Water Runoff Orange County Order No. R8-2002-0010 (NPDES No. CAS618030)," often referred to as the National Pollution Discharge Elimination System permit or "NPDES permit." The City is participating as a "co-permittee" under the NPDES permit, and adopted Chapter 5-36 of the City of Laguna Hills Municipal Code, to establish local procedures to ensure compliance with their co-permittee obligations to control runoff into the local storm drainage system. Required compliance with Chapter 5-36 of the City of Laguna Hills Municipal Code will be included in the conditions of approval for this project. Therefore less than significant impact will occur and no further mitigation measures are required.

- b) **No Impact.** The project adds a relatively small amount of commercial space when taken in context of the project site and surrounding urbanized area. Therefore there will be no significant increase in demand for water or wastewater treatment. Therefore it will not require or result in the construction of new or expansion of existing wastewater treatment facilities.
- c) **No Impact.** The project will not increase the surface area of non-permeable surface as the current site is commercially developed with a building and parking lot. Therefore there will not be increase runoff associated with the project or the project site. Further, the applicant has been required to demonstrate that adequate area has been preserved to maintain the “first flush” of any stormwater on-site. Bio-swale area has been incorporated to this end and a condition of approval will require that such area for this purpose be maintained in good, functioning condition.
- d) **Less Than Significant Impact.** The project site is an existing commercial site that has a connection to the City’s water supply system that was utilized when the Circuit City electronics store operated here some years ago. The re-occupancy of this building with a furniture store and another retailer, along with a small fast food/drive through business would result in a minor and less than significant increase in water demand. No additional water supply resources would be required.
- e) **Less Than Significant Impact.** The project site is an existing developed commercial site that has a connection to the City’s sewer system that was utilized when the Circuit City electronics store operated here some years ago. The re-occupancy of this building with a furniture store and another retailer, along with a small fast food/drive through business would result in a minor and less than significant increase in wastewater generation. Sewer mains and wastewater treatment facilities would not be significantly affected by this project.
- f) **Less Than Significant Impact.** The re-occupancy of the vacated former Circuit City building with a furniture store and another retailer, along with a small fast food/drive-thru business would result in a minor and less than significant increase in solid waste generation from this site. Regional landfills have existing capacity to accommodate the City’s waste for the foreseeable future.¹⁸ Therefore potential impacts on landfill capacity will be less than significant.
- g) **No Impact.** Contractors are obliged under the terms of their licensing to comply with applicable laws and regulations, including those concerning construction waste disposal. Routine observations by the City’s Building Inspector will ensure that this project’s solid wastes from construction activities are properly disposed of. Any solid waste generated by the project in the long term will be typical to any retail/restaurant site and will comply with local ordinances such as Laguna Hills Municipal Code Chapter 5-32, which regulates the disposal of solid waste.

¹⁸ City of Laguna Hills. Laguna Hills General Plan Environmental Impact Report, 2009. pg. 5.12-9 and 5.12-23.

3.18 – Mandatory Findings of Significance

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☐	☐	☒	☐
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☐	☒	☐
c) Does the project have environmental effects, which will cause substantial adverse effects on human beings, whether directly or indirectly?	☐	☒	☐	☐

- a) **Less Than Significant Impact.** The results of the environmental impact analysis presented in the responses to the preceding 17 questions determined that this project would not result in impacts to individuals or communities of sensitive plants or wildlife, or any impact to prehistoric or historic resources. There would be some impact to the visual quality or character of the environment; however, the area is already an urbanized area and no scenic highways or vistas will be affected so impacts will be less than significant.
- b) **Less Than Significant Impact.** There are no other large commercial projects that have recently been approved or are in the process of gaining approval. Any future projects in the area have been limited by and planned for through the adoption of the Laguna Hills General Plan EIR and Urban Village Specific Plan. Therefore impacts will be less than significant and overall development is limited for this area.
- c) **Less Than Significant Impact with Mitigation Incorporation.** Responses to checklist questions concerning air quality impacts, noise impacts, traffic impacts, geology and soils, and hazards due to flooding, or transport, use, storage or disposal of hazardous materials determined that there will be no significant effects on human beings, directly or indirectly, as a result of this project. There could potentially be impacts on human beings from exposure to hydrocarbon contaminated soils that may be present at the project site; however, with the adoption and implementation of Mitigation Measure H-1, significant impacts will be avoided.

Section 4: References

4.1 – List of Preparers

Katie Crockett, Planning Aide, City of Laguna Hills

Randy Nichols, Director of Environmental Planning, Hogle-Ireland, Inc.

4.2 – Bibliography

Austin-Faust Associates, Inc. "Ashley Furniture Laguna Hills Traffic Study," May 4, 2011.

California Department of Conservation. Williamson Act Program, 2004.

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Section 5: Summary Mitigation Measures

Mitigation Measure H-1: During excavation and/or grading activities, construction personnel will visually observe the condition of the soil to assess whether evidence of hydrocarbon-impacted or contaminated soil is present (indications include staining of the soil and petroleum odor). If contaminated soil is suspected, work in the affected area shall be stopped immediately, soils tested to confirm contamination, and a Soil Management Plan shall be prepared and submitted to the City for review and approval by the City Engineer.

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Appendix Materials

Appendix A: Vicinity

Appendix B: Site Plan

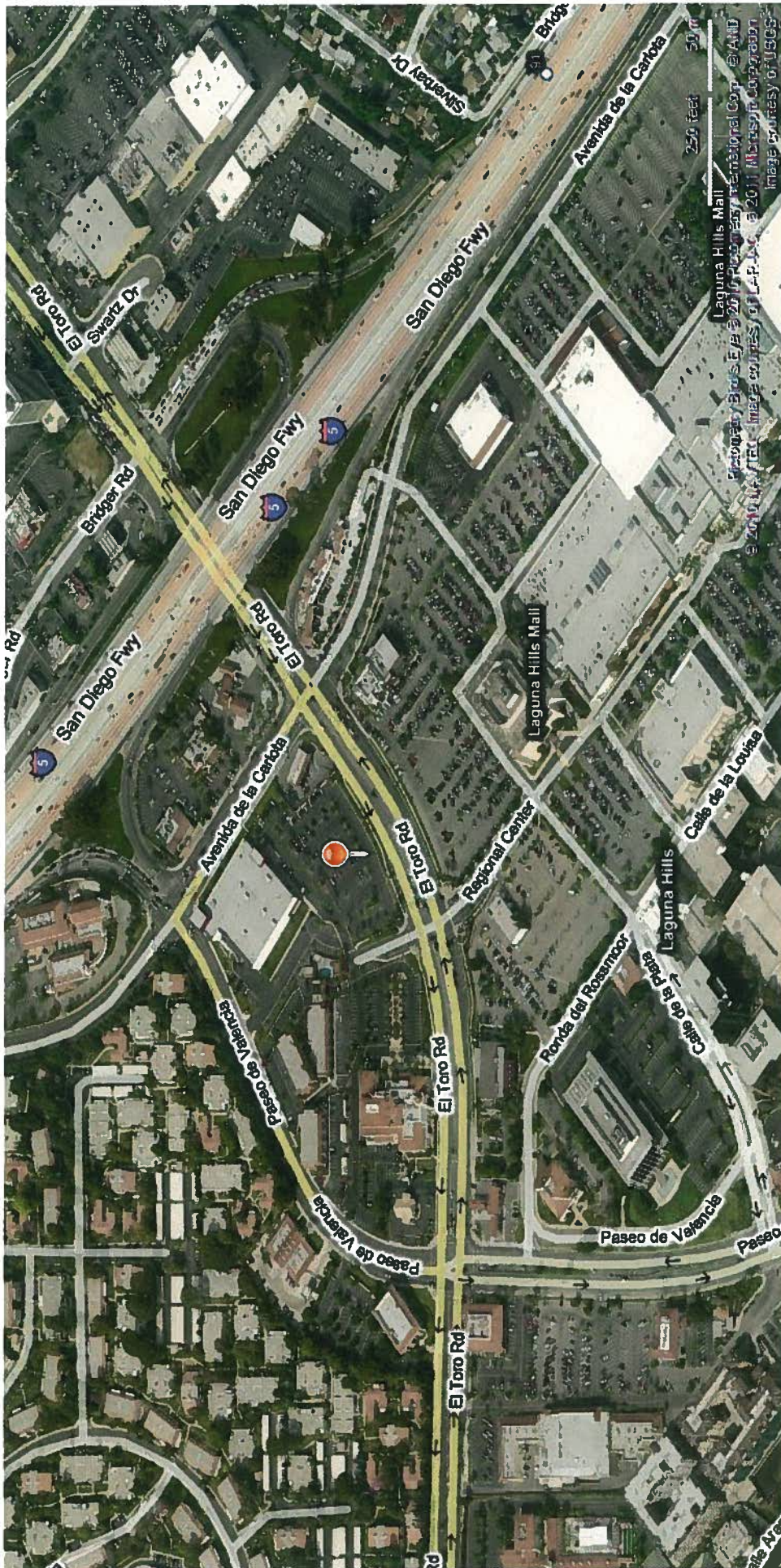
Appendix C: Elevations

Appendix D: Air Quality/GHG Data

Appendix E: Public Response(s) to Draft Initial Study/MND

Appendix F: Mitigation Monitoring and Reporting Program

Appendix A: Vicinity



(Image: Bing Maps ©2011 Microsoft)

Appendix B: Site Plan

7/12/2011 ITEM NO. 5.4.2

Appendix C: Elevations

SOUTH ELEVATION
SCALE: 1/16" = 1'-0"

EAST ELEVATION
SCALE: 1/16" = 1'-0"

NORTH ELEVATION
SCALE: 1/16" = 1'-0"

WEST ELEVATION
SCALE: 1/16" = 1'-0"

EXTERIOR MATERIALS

A	SMALLER CLAY TILE METAL ROOF
B	CRIMSON COOK PLATED, PAINTED COLOR AS INDICATED
C	CHERRY LOGGING YOKER
D	AMCZYSTY ALUMINUM SKOTKONT
E	METAL DOOR, PAINTED

EXTERIOR MATERIALS

[illegible]

REVISED:	05.12.11
DATE:	03.28.11
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CONSTRUCTION INC.**



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group

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Appendix D: Air Quality/GHG Data

Source	ROG	NO_x	CO	SO₂	PM¹⁰	PM^{2.5}
<i>Summer</i>						
Area Sources	1.45	0.00	0.00	0.00	0.00	0.00
Energy Demand	0.03	0.31	0.26	0.00	0.02	0.02
Mobile Sources	18.61	33.30	180.91	0.24	28.06	2.10
<i>Summer Total</i>	<i>20.09</i>	<i>33.61</i>	<i>181.17</i>	<i>0.24</i>	<i>28.08</i>	<i>2.12</i>
<i>Winter</i>						
Area Sources	1.45	0.00	0.00	0.00	0.00	0.00
Energy Demand	0.03	0.31	0.26	0.00	0.02	0.02
Mobile Sources	19.58	36.59	181.96	0.23	28.06	2.11
<i>Winter Total</i>	<i>21.06</i>	<i>36.90</i>	<i>182.22</i>	<i>0.23</i>	<i>28.08</i>	<i>2.13</i>
Threshold	55	55	550	150	150	55
Substantial?	No	No	No	No	No	No

Ashley Furniture/Chick-Fil-A Orange County, Annual

1.0 Project Characteristics

1.1 Land Usage

Land Uses	Size	Metric
Fast Food Restaurant with Drive Thru	4	1000sqft
Shopping Center	18.15	1000sqft
Furniture Store	33.31	1000sqft

1.2 Other Project Characteristics

Urbanization Urban Wind Speed (m/s) Utility Company Southern California Edison

Climate Zone 8 Precipitation Freq (Days) 2.2

1.3 User Entered Comments

Project Characteristics -

Land Use - Specify Project Data: Ashley Furniture (33,306), Chick-Fil-A (4,000), General Retail (18,145)

Construction Phase - No Construction Activity Modeled

Vehicle Trips - Adjust per ITE trip generation

2.0 Emissions Summary

2.1 Overall Construction

Unmitigated Construction

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Year																
Total																

Mitigated Construction

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Year																
Total																

2.2 Overall Operational

Unmitigated Operational

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NBio- CO2	Total CO2	CH4	N2O	CO2e
Category																
Area	0.26	0.00	0.00	0.00		0.00	0.00		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Energy	0.01	0.06	0.05	0.00		0.00	0.00		0.00	0.00	0.00	299.21	299.21	0.01	0.01	301.08
Mobile	2.65	4.85	26.43	0.03	3.51	0.17	3.68	0.13	0.17	0.30	0.00	3,191.73	3,191.73	0.17	0.00	3,195.40

Mitigated Operational

Category	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio-CO2	NEio-CO2	Total CO2	CH4	N2O	CO2e
tons/yr																
Area	0.26	0.00	0.00	0.00		0.00	0.00		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Energy	0.01	0.06	0.05	0.00		0.00	0.00		0.00	0.00	0.00	299.21	299.21	0.01	0.01	301.08
Mobile	2.65	4.85	26.43	0.03	3.51	0.17	3.68	0.13	0.17	0.30	0.00	3,191.73	3,191.73	0.17	0.00	3,195.40
Waste						0.00	0.00		0.00	0.00	54.28	0.00	54.28	3.21	0.00	121.64
Water						0.00	0.00		0.00	0.00	0.00	26.89	26.89	0.15	0.00	31.46
Total	2.92	4.91	26.48	0.03	3.51	0.17	3.68	0.13	0.17	0.30	54.28	3,517.83	3,572.11	3.54	0.01	3,649.58
MT/yr																

3.0 Construction Detail

None

4.0 Mobile Detail

4.1 Mitigation Measures Mobile

Category	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio-CO2	NEio-CO2	Total CO2	CH4	N2O	CO2e
tons/yr																
MT/yr																

Mitigated	2.65	4.85	26.43	0.03	3.51	0.17	3.68	0.13	0.17	0.30	0.00	3,191.73	3,191.73	0.17	0.00	3,195.40
Unmitigated	2.65	4.85	26.43	0.03	3.51	0.17	3.68	0.13	0.17	0.30	0.00	3,191.73	3,191.73	0.17	0.00	3,195.40
Total	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

4.2 Trip Summary Information

Land Use	Average Daily Trip Rate			Unmitigated Annual VMT	Mitigated Annual VMT
	Weekday	Saturday	Sunday		
Fast Food Restaurant with Drive Thru	1,986.00	2,900.00	2180.00	3,279,827	3,279,827
Shopping Center	816.75	1,016.40	798.60	2,018,405	2,018,405
Furniture Store	266.48	299.79	266.48	1,145,100	1,145,100
Total	3,079.23	4,216.19	3,245.08	6,443,332	6,443,332

4.3 Trip Type Information

Land Use	Miles			Trip %		
	H-W or C-W	H-S or C-C	H-O or C-NW	H-W or C-W	H-S or C-C	H-O or C-NW
Fast Food Restaurant with Drive Thru	8.90	13.30	7.40	2.20	78.80	19.00
Shopping Center	8.90	13.30	7.40	12.20	68.80	19.00
Furniture Store	8.90	13.30	7.40	13.20	67.80	19.00

5.0 Energy Detail

5.1 Mitigation Measures Energy

Category	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NEio- CO2	Total CO2	CH4	N2O	CO2e
	tons/yr										MT/yr					
Electricity Mitigated						0.00	0.00		0.00	0.00	0.00	237.35	237.35	0.01	0.00	238.84
Electricity Unmitigated						0.00	0.00		0.00	0.00	0.00	237.35	237.35	0.01	0.00	238.84

NaturalGas	0.01	0.06	0.05	0.00		0.00	0.00	0.00	0.00	0.00	0.00	61.86	61.86	0.00	0.00	62.24
Mitigated																
NaturalGas	0.01	0.06	0.05	0.00		0.00	0.00	0.00	0.00	0.00	0.00	61.86	61.86	0.00	0.00	62.24
Unmitigated																
Total	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

5.2 Energy by Land Use - NaturalGas

Unmitigated

Land Use	NaturalGas Use kBtu	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio-CO2	NBio-CO2	Total CO2	CH4	N2O	CO2e
Fast Food Restaurant with Free-Standing Discount Store	1.05372e+006	0.01	0.05	0.04	0.00		0.00	0.00		0.00	0.00	0.00	56.23	56.23	0.00	0.00	56.57
Free-Standing Discount Superstore	37207.5	0.00	0.00	0.00	0.00		0.00	0.00		0.00	0.00	0.00	1.99	1.99	0.00	0.00	2.00
Free-Standing Discount Superstore	68286.5	0.00	0.00	0.00	0.00		0.00	0.00		0.00	0.00	0.00	3.64	3.64	0.00	0.00	3.67
Total		0.01	0.05	0.04	0.00		0.00	0.00		0.00	0.00	0.00	61.86	61.86	0.00	0.00	62.24

Mitigated

Land Use	NaturalGas Use kBtu	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio-CO2	NBio-CO2	Total CO2	CH4	N2O	CO2e
Fast Food Restaurant with Drive Thru Shopping Center	1.05372e+006	0.01	0.05	0.04	0.00		0.00	0.00		0.00	0.00	0.00	56.23	56.23	0.00	0.00	56.57
Furniture Store	37207.5	0.00	0.00	0.00	0.00		0.00	0.00		0.00	0.00	0.00	1.99	1.99	0.00	0.00	2.00
Furniture Store	68286.5	0.00	0.00	0.00	0.00		0.00	0.00		0.00	0.00	0.00	3.64	3.64	0.00	0.00	3.67
Total		0.01	0.05	0.04	0.00		0.00	0.00		0.00	0.00	0.00	61.86	61.86	0.00	0.00	62.24

5.3 Energy by Land Use - Electricity

Unmitigated

Land Use	Electricity Use kWh	ROG	NOx	CO	SO2	Total CO2	CH4	N2O	CO2e

Fast Food Restaurant with Drive Thru	157320							45.76	0.00	0.00	46.05
Shopping Center	232320							67.58	0.00	0.00	68.00
Furniture Store	426368							124.02	0.01	0.00	124.80
Total								237.36	0.01	0.00	238.85

Mitigated

Land Use	Electricity Use kWh	ROG	NOx	CO	SO2	Total CO2	CH4	N2O	CO2e
Fast Food Restaurant with Drive Thru	157320					45.76	0.00	0.00	46.05
Shopping Center	232320					67.58	0.00	0.00	68.00
Furniture Store	426368					124.02	0.01	0.00	124.80
Total						237.36	0.01	0.00	238.85

6.0 Area Detail

6.1 Mitigation Measures Area

Category	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio- CO2	NEIO- CO2	Total CO2	CH4	N2O	CO2e
Mitigated	0.26	0.00	0.00	0.00		0.00	0.00		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Unmitigated	0.26	0.00	0.00	0.00		0.00	0.00		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

6.2 Area by SubCategory

Unmitigated

SubCategory	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio-CO2	NBio-CO2	Total CO2	CH4	N2O	CO2e
tons/yr																
Architectural Coating	0.06					0.00	0.00		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Consumer Products	0.20					0.00	0.00		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Landscaping	0.00	0.00	0.00	0.00		0.00	0.00		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total	0.26	0.00	0.00	0.00		0.00	0.00		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Mitigated

SubCategory	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total	Bio-CO2	NBio-CO2	Total CO2	CH4	N2O	CO2e
tons/yr																
Architectural Coating	0.06					0.00	0.00		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Consumer Products	0.20					0.00	0.00		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Landscaping	0.00	0.00	0.00	0.00		0.00	0.00		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total	0.26	0.00	0.00	0.00		0.00	0.00		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

7.0 Water Detail

7.1 Mitigation Measures Water

	ROG	NOx	CO	SO2	Total CO2	CH4	N2O	CO2e
Category	tens/yr				MT/yr			
Mitigated					26.89	0.15	0.00	31.46
Unmitigated					26.89	0.15	0.00	31.46
Total	NA	NA	NA	NA	NA	NA	NA	NA

7.2 Water by Land Use

Unmitigated

Land Use	Indoor/Outdoor Use Mgal	ROG	NOx	CO	SO2	Total CO2	CH4	N2O	CO2e
Fast Food Restaurant with Free-Standing Discount Store	1,214,131 / 0,077,498					4.86	0.04	0.00	5.96
Free-Standing Discount Store	1,344,442 / 0,823,997					7.77	0.04	0.00	9.00
Free-Standing Discount Superstore	2,487,361 / 1,512,225					14.26	0.08	0.00	16.51
Total						26.89	0.16	0.00	31.47

Mitigated

Land Use	Indoor/Outdoor Use Mgal	ROG	NOx	CO	SO2	Total CO2	CH4	N2O	CO2e
Fast Food Restaurant with Free-Standing Discount Store	1,214,131 / 0,077,498					4.86	0.04	0.00	5.96
Free-Standing Discount Store	1,344,442 / 0,823,997					7.77	0.04	0.00	9.00
Free-Standing Discount Superstore	2,487,361 / 1,512,225					14.26	0.08	0.00	16.51
Total						26.89	0.16	0.00	31.47

8.0 Waste Detail**8.1 Mitigation Measures Waste**Category/Year

	ROG	NOx	CO	SO2	Total CO2	CH4	N2O	CO2e
	tons/yr				MT/yr			
Mitigated					54.28	3.21	0.00	121.64
Unmitigated					54.28	3.21	0.00	121.64
Total	NA	NA	NA	NA	NA	NA	NA	NA

8.2 Waste by Land UseUnmitigated

	Waste Disposed	ROG	NOx	CO	SO2	Total CO2	CH4	N2O	CO2e
	tons	tons/yr				MT/yr			
Land Use									
Fast Food Restaurant with Drive Thru	48.08					9.35	0.55	0.00	20.96
Shopping Center	78.06					15.85	0.94	0.00	35.51
Furniture Store	143.26					28.08	1.72	0.00	65.17
Total						54.28	3.21	0.00	121.64

Mitigated

	Waste Disposed	ROG	NOx	CO	SO2	Total CO2	CH4	N2O	CO2e
Land Use	tons	tons/yr			M/yr				
Fast Food Restaurant with Drive Thru	46.08					9.35	0.55	0.00	20.96
Shopping Center	78.06					15.85	0.94	0.00	35.51
Furniture Store	143.26					28.08	1.72	0.00	65.17
Total						54.28	3.21	0.00	121.64

9.0 Vegetation

Appendix E: Public Response(s) to Draft Initial Study/MND



CITY of LAGUNA WOODS

Bert Hack
Mayor

Cynthia Conners
Mayor Pro Tem

Marty Rhodes
Councilmember

Bob Ring
Councilmember

Milt Robbins
Councilmember

Leslie A. Keane
City Manager

June 23, 2011

Mr. Vern Jones
Community Development Director
City of Laguna Hills
24035 El Toro Road
Laguna Hills CA. 92653

RE: SDPM/MSP/CUP No. 3-11-1917, Ashley Furniture Commercial
Development

Dear Mr. Jones:

The City of Laguna Woods would like to thank you for the opportunity to comment on the intent to adopt a mitigated negative declaration for the project SDPM/MSP/CUP No. 3-11-1917, Ashley Furniture Commercial Development, that addresses modifications and additional development of the property at 24001 El Toro Road, being considered for approval by the Laguna Hills Planning Agency on July 12, 2011. Staff has reviewed the documents and has the following comments:

The City of Laguna Woods has previously noted our concerns over impacts from further intensification of use in the Urban Village area, per our February 23, 2011 letter concerning modifications to the Urban Village Specific Plan (UVSP) and July 2009 letter providing comments on the City of Laguna Hills Draft General Plan update and Draft PEIR. The City of Laguna Woods continues to note these concerns as projects are developed. The project for which the mitigated negative declaration has been drafted adds a 4,000 square foot drive-thru restaurant at the corner of El Toro Road and Regional Center Drive, which will increase average daily trips in the area and particularly on El Toro Road, with the corresponding additional traffic, noise, and air quality impacts that could affect residents and businesses in the City of Laguna Woods.

We believe that it is critical that the City of Laguna Hills carefully monitor and track the changes in land use and new development that are approved within the Urban Village Specific Plan, such as this project, and that you ensure that related impacts (increased average daily trips, air quality, noise, parking) remain within the established limits of the UVSP.

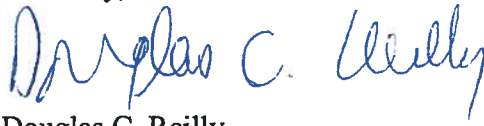
The City of Laguna Woods appreciates this opportunity to review and comment, as previously requested, on specific development projects in Laguna Hills that could

Vern Jones
June 23, 2011
Page 2

impact Laguna Woods. We are especially concerned with the potential health and welfare impacts on residents living along Paseo de Valencia, El Toro Road, and Laguna Hills Drive from future development and increased traffic, as well as with the additional peak hour trips on Moulton Parkway that could affect implementation of our General Plan.

If you have any questions about the comments provided please contact me at 949 639-0561

Sincerely,

A handwritten signature in blue ink that reads "Douglas C. Reilly". The signature is fluid and cursive, with the first name "Douglas" being the most prominent part.

Douglas C. Reilly
Assistant City Manager



CITY OF LAGUNA HILLS

Community Development

5 July 2011

Mr. Douglas C. Reilly
Assistant City Manager
City of Laguna Woods
24264 El Toro Road
Laguna Woods, CA 92653

Subject: Response to your letter dated June 23, 2011 concerning SDPM/MSP/CUP No. 3-11-1917, Ashley Furniture Commercial Development

Dear Mr. Reilly,

Thank you for your comments concerning the Draft Mitigated Negative Declaration prepared for the project referenced in your letter as Ashley Furniture Commercial Development (SDPM/MSP/CUP-3-11-1917), citing concerns about increased traffic in the area, as well as potential noise and air quality issues arising from any increased traffic.

The letter specifically cited increases in trips generated by the addition of a 4,000 square foot drive-thru restaurant. The project in its entirety was evaluated for potential traffic impacts. As stated in the Initial Study and Draft Mitigated Negative Declaration ("Draft MND"), the intersections surrounding the project (including El Toro/Moulton) are currently operating at a level of service (LOS) "D" or better during peak hours and will continue to operate at LOS "D" or better after project implementation. Since the City of Laguna Hills defines significant project impact as an increase of 0.01 or more at intersections that reach LOS "E" or "F" the project was determined not to have significant traffic impacts.

The draft MND also analyzed the project's potential air quality and noise impacts. Noise and air quality can both be impacted by increased traffic; however, the analyses of both of these types of impacts in the Draft MND found any such impacts to be less than significant.

The City is actively tracking all projects in the Urban Village Specific Plan area to ensure development remains within the scope of the approved Urban Village Specific Plan and accompanying Environmental Impact Report.

If you have further questions, please feel free to contact me at (949) 707-2600.

Sincerely,

Vernon A. Jones, AICP
Community Development Director



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JUL 05 2011
CITY OF LAGUNA HILLS

July 2, 2011

Ms. Katie Crocket
Planning Aide
City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653

**RE: Ashley Furniture Redevelopment Project (SDPM/MSP/CUP No. 3-11-1917)
24001 El Toro Road, Laguna Hills
Mitigated Negative Declaration
Request for extension of the 20-day Public Review Period**

Dear Ms. Crocket:

On behalf of the Golden Rain Foundation (GRF), I am respectfully requesting that you extend the 20-day Public Review Period for the Mitigated Negative Declaration for the Ashley Furniture Redevelopment Project and thereby also continue the City Council public hearing on this matter that is currently scheduled for July 12, 2011.

We believe GRF has a legal right to request this extension and continuance on this matter as it was never notified of the commencement of the public review period for this Mitigated Negative Declaration for this project which is part of the Urban Village Specific Plan. We also note in the public hearing notice that the public review commenced on June 3, 2011 and concluded on June 26th, 2011. This review timeframe doesn't coincide with the Mitigated Negative Declaration itself which shows the document was issued on June 3, but revised on June 21, 2011. It would seem that based on the revision to the document, the 20 day review period should commence on June 21, 2011. This would inherently mandate the review period couldn't conclude on June 26th which is only three days after the final revisions were made.

July 2, 2011

Ms. Katie Crocket

Ashley Furniture Redevelopment Project (SDPM/MSP/CUP No. 3-11-1917)

Additionally, per the city's records, we had requested that we be notified on any items pertaining to the Urban Village Specific Plan and subsequent projects within the planning area. We placed these requests both in writing per our correspondence to the city on February 28, 2011, and in our public testimony in front of the City Council on April 12th, 2011.

Given these factors, we respectfully request this item be continued until proper notification and review has been given.

Sincerely,

A handwritten signature in black ink, reading "Coralee S. Newman". The signature is fluid and cursive, with the first name "Coralee" being more prominent and the last name "Newman" following in a similar style.

Coralee S. Newman
Government Relations Consultant to
Golden Rain Foundation

CC: Cris Robinson
Legal Affairs Manager
Golden Rain Foundation

Vernon A. Jones, A.I.C.P.
Community Development Director
City of Laguna Hills



CITY OF LAGUNA HILLS

July 6, 2011

Coralee S. Newman
Government Relations Consultant to
Golden Rain Foundation
1 San Joaquin Plaza, Suite 230
Newport Beach, CA 92660

RE: July 2, 2011 Letter Received for Ashley Furniture Project (SDPM/MSP/CUP No. 3-11-1917); 24001 El Toro Road

Dear Ms. Newman:

The City of Laguna Hills is in receipt of your letter dated July 2, 2011, on behalf of the Golden Rain Foundation (GRF), requesting a 20-day Public Review Period extension of the Mitigated Negative Declaration (MND) prepared for the Ashley Furniture Project (SDPM/MSP/CUP No. 3-11-1917). As stated in your letter, your request is based on: (1) revisions to the MND dated June 21, 2011; and (2) and GRF's failure to receive notice of commencement of the public review period for this project.

In essence, your first request seeks recirculation of the MND based on revisions to the MND. The California Environmental Quality Act (CEQA) Guidelines, Section 15073.5, only requires the recirculation of a MND when the document must be *substantially revised* after public notice of its availability has previously been given pursuant to Section 15072, but prior to its adoption. Recirculation is not required "when new information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration." See the complete Section 15073.5, which is attached to this letter. The June 21, 2011 revisions do not constitute a *substantial revision* of the MND in that they do not: (1) identify a new avoidable significant impact, or (2) propose/add a new mitigation measure based on a determination that the previously proposed mitigation measures will not reduce potential effects to less than significance. The revisions added by staff merely clarify or make insignificant modifications to the MND.

In regards to the representation that GRF previously requested "that we be notified on any items pertaining to the Urban Village Specific Plan (UVSP) and subsequent projects

within the planning area," the referenced February 28, 2011 letter (see attached) does not make such a request and the public testimony at the April 12, 2011 Planning Agency/City Council Meeting does not constitute a request in writing for notice as required by Public Resources Code Section 21092.2. Therefore, the City of Laguna Hills does not have a written request from the GRF "to be notified on any items pertaining to the UVSP and subsequent projects within the planning area." Therefore, staff does not support GRF's request to extend the Public Review Period beyond the June 26, 2011 date, or the request to continue the Ashley Furniture Project item.

Staff would hope that GRF appreciates the fact that, noticing and procedural issues aside, the City of Laguna Hills is faithfully documenting all new construction and intensification projects occurring within the UVSP area in regards to trip generation and is doing so in a cumulative way so that the total trip budget analyzed in the City's General Plan Program EIR for the UVSP area is not exceeded. The referenced February 28, 2011 letter urges the City of Laguna Hills to "implement the policies outlined in the 2009 General Plan FEIR and work with the City of Laguna Woods to address any traffic issues generated by new development." The City of Laguna Hills has been responsive in working with the City of Laguna Woods and is implementing the policies outlined in the 2009 General Plan FEIR.

Finally, staff would note that the City of Laguna Hills could have applied at least two (2) categorical exemptions (Class 3 – New Construction or Conversion of Small Structures and Class 32 – Infill Development Projects) provided by CEQA to the Ashley Furniture Project, but instead chose to take a very conservative approach by preparing a Negative Declaration.

Please let me know if you would like to discuss any of the communication provided above. Staff looks forward to working with GRF on current and future projects occurring within the UVSP area, and on GRF projects that may occur in the future in the City of Laguna Woods.

Sincerely,



Katie Crockett
Planning Aide

Attachments

CC: City Attorney
City Manager



ATTACHMENT 5

CITY OF LAGUNA Hills

~~February 28, 2011~~

Ms. Julie Molloy
Senior Planner
City of Laguna Hills
Community Development Department
24035 El Toro Road
Laguna Hills, Ca 92653

RE: City of Laguna Hills
Urban Village Specific Plan
Ordinance Update

Dear Ms. Molloy:

On behalf of the Golden Rain Foundation (GRF), I have reviewed the Notice of the City of Laguna Hills Urban Village Specific Plan (UVSP) and associated documents. On February 23, 2011, I also met with both yourself and Vernon Jones, Community Development Director, and discussed the proposed Ordinance Update.

Per my discussions with your offices, it is my understanding that the Ordinance Update is to amend the UVSP to allow for an additional 117,000 square feet of retail uses. This is the only land use intensification that is occurring via this Ordinance Update. Additionally, the Ordinance Update provides for a trip budget increase which is reflective of those trips found in the July 2009 General Plan. As we understand it, the revised UVSP trip budget will provide for and additional 1,243 AM peak hour trips and 2,272 PM peak hour trips. These trips will become part of the trip budget allocated for the Urban Village which regulates the overall development intensity.

Per your notice (p. 35) and my understanding of the allocation of these trips, each new Urban Village development project will be required to "prepare a traffic analysis report to determine trip generation that would occur as the result of the development. This insures that the maximum build out trip levels evaluated in the General Plan Program EIR are not exceeded as a result of the new development projects." The notice further clarifies this program (p.35) by stipulating "It should be noted that the Specific Plan includes provisions for flexibility in development options, so that there could be more retail uses and less office uses established, or vice-versa, as long as the trip budgets are not exceeded. The trip budget debiting process is

based upon the addition or subtraction of the "vehicle trips", not land use type or size of project (even though land use type and size are used as parameters for calculating the trip generation potential of a particular project)". This being said, it is my understanding that this trip budget will be allocated on a "first come first serve" basis and that once the trips are fully utilized, no new development, even if allowed under the Urban Village, could occur without an amendment to the General Plan.

Further, based on my discussion with Mr. Jones, it is my understanding that each new Urban Village project will require a traffic analysis, and depending on its size and scale, environmental analysis, including, in some cases, an full Environmental Impact Report. From GRF's perspective, this analysis is imperative to fully understand each development's traffic impacts and proposed mitigation measures. We remain concerned that those impacts have never been fully analyzed from a cumulative standpoint and therefore want to stress our interest in ensuring that each project can fully mitigate its impacts.

GRF wants to stress that it continues to be very concerned that the traffic generated from any new development be fully mitigated, particularly those impacts that affect the City of Laguna Wood's circulation system. Of specific concern is any new traffic that would directly impact El Toro Road and Moulton. Your General Plan provides policies (as noted below) that ensure and require your continued coordination with adjacent cities, which we believe will be necessary to fully mitigate the cumulative impacts of the future UV developments.

In the response to comments to the 2009 General Plan FEIR (response 11-5) it notes that: "The General Plan does not propose any specific development projects or entitle any specific development project". And, with regard to potential impacts to surrounding communities (response 11-10), the document notes: "Furthermore, the Mobility Element also contains policies and implementation programs that address traffic issues outside of the City of Laguna Hills. Policy M-1 states "consider and address regional traffic generation and impacts from development in surrounding communities when planning improvements to the local circulation system." Policy M-1.4 states "work with neighboring cities to address impacts of new development that cross jurisdictional boundaries." The General Plan also contains specific implementation programs that implement these policies. Implementation Program M-1 requires, in part, "... the City will coordinate with location jurisdictions to reduce the impacts of development in Laguna Hills on adjacent jurisdictions."

We urge you to implement the policies outlined in the 2009 General Plan FEIR and work with the City of Laguna Woods to address any traffic issues generated by any new development. Thank you for considering our comments and please notify us of your upcoming public hearings on this matter which are tentatively proposed to occur on either March 22, 2011 or April 12, 2011.

Sincerely,

A handwritten signature in black ink that reads "Coralee S. Newman" followed by a small, stylized mark that appears to be "LBS".

Coralee S. Newman
Government Relations Consultant to
Golden Rain Foundation

CC: Cris Robinson
Legal Affairs Manager
Golden Rain Foundation

Vernon A. Jones, A.I.C.P.
Community Development Director
City of Laguna Hills



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CITY OF LAGUNA HILLS

July 2, 2011

Ms. Katie Crocket
Planning Aide
City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653

RE: Ashley Furniture Redevelopment Project (SDPM/MSP/CUP No. 3-11-1917)
24001 El Toro Road, Laguna Hills
Mitigated Negative Declaration

Dear Ms. Crocket:

On behalf of the United Laguna Hills Mutual ("United"), please let the following serve as their comments on the MND for the Ashley Furniture Redevelopment Project. It is important to note that we are very concerned with the time for which we've been given to review this important document.

As you are aware, United is one of four corporations within the Village of Laguna Woods, which is the senior residential community located directly across Paseo de Valencia behind the Ashley Furniture Project. United's closest residents live approximately 200 feet from the proposed project. While we fully understand that the Ashley Furniture project, in part, is replacing the existing vacant Circuit City building, there is an addition of 5,949 square feet being purposed to be added to the existing building along with a new 4,000 square foot fast food drive-thru Chick-Fil-A restaurant.

First, we note that the documents forwarded to the public didn't include the traffic analysis completed for the MND by Austin-Faust Associates dated May 4, 2011. In order for us to fully understand the implications of the analysis contained in the MND, it is important that we obtain a copy of this traffic report as soon as possible.

Secondly, we are concerned that the MND in its analysis of impacts essentially ignores the existing Laguna Woods Village senior residential community across Paseo de Valencia. It should be noted that the MND does recognize that Laguna Woods Village is considered a "sensitive receptor" area. We are particularly concerned that this community is being ignored as it

relates to aesthetic impacts, air quality, light and glare impacts, and potentially traffic impacts. The MND refers to the site as an "already developed with a commercial building". While a building does exist, it has been vacant now for a number of years, thereby making the site deemed "vacant" as it relates to CEQA and should not be referred to as an existing operational commercial facility. Additionally, the MND refers to the Urban Village area of Laguna Hills as "built out". Based on the plans for extensive redevelopment of the Urban Village per the Urban Village Specific Plan, the term "built out" is not applicable to this area which anticipates substantial redevelopment and growth.

Our specific comments are as follows:

Aesthetics/Light & Glare: It appears that there is a sizeable extension in the height of the existing building which Ashley Furniture is replacing. From reviewing the reduced elevations in the MND, it appears as if there is new signage on an architectural feature that is quite tall (unable from plans to determine exact height of the elevation) which will face the residents living along Paseo de Valencia. It is important for us to understand the exact dimensions of this architectural feature and signage and their impacts on the adjacent residential community. Exterior building or site light may also be intrusive, as it appears the signage and associated lighting will be much higher than currently exists.

It is noted that a new master sign program is also proposed with the project to accommodate the two new tenant spaces as well as some unique signage request for the Ashley Furniture store. We would like the opportunity to review the new sign program and its associated conditions to be sensitive to the Laguna Woods Village residents.

Air Quality: We are concerned with the emissions coming from the fast food restaurant and believe that mitigation measures should have been included to ensure this restaurant mitigates its air quality impacts.

Traffic: As noted above, it is difficult for us to have extensive comments on traffic without review of the traffic report. We are concerned in general about the cumulative impacts of adding new retail square footage to the area with no traffic mitigations.

Finally, we agree with the City of Laguna Woods' letter dated June 23, 2011 from Assistant City Manager, Douglas C. Reilly, which states:

"The project for which the mitigated negative declaration has been drafted adds a 4,000 square foot drive-thru restaurant at the corner of El Toro Road and Regional Center Drive, which will increase average daily trips in the area and particularly on El Toro Road, with the corresponding additional traffic, noise, and air quality impacts that could affect residents and businesses in the City of Laguna Woods".

July 2, 2011

Ms. Katie Crocket

Ashley Furniture Redevelopment Project (SDPM/MSP/CUP No. 3-11-1917)

"We believe it is critical that the City of Laguna Hills carefully monitor and track the changes in land use and new development that are approved with the Urban Village Specific Plan, such as this project, and that you ensure that related impacts (increase average daily trips, air quality, noise, and parking) remain within the established limits of the UVSP."

Thank you for considering our concerns and requests to review both the Traffic Analysis and the Architectural Concept Plans in advance of public hearings on this matter.

Sincerely,

A handwritten signature in black ink that reads "Coralee Newman". The signature is written in a cursive, flowing style.

Coralee S. Newman
Government Relations Consultant to
United Laguna Hills Mutual

CC: Cris Robinson
Legal Affairs Manager
United Laguna Hills Mutual

Vernon A. Jones, A.I.C.P.
Community Development Director
City of Laguna Hills



CITY OF LAGUNA HILLS

July 7, 2011

Coralee S. Newman
Government Relations Consultant to
United Laguna Hills Mutual ("United")
1 San Joaquin Plaza, Suite 230
Newport Beach, CA 92660

RE: Letter Received July 6, 2011 (dated July 2, 2011) for Ashley Furniture Project (SDPM/MSP/CUP No. 3-11-1917); 24001 El Toro Road; Mitigated Neg. Dec.

Dear Ms. Newman:

The City of Laguna Hills is in receipt of your letter dated July 2, 2011, on behalf of the United Laguna Hills Mutual ("United"), providing comments on the Initial Study and proposed Mitigated Negative Declaration (MND) prepared for the Ashley Furniture Project (SDPM/MSP/CUP No. 3-11-1917). Your letter: (1) expresses concern with the time given to review the MND, (2) expresses concern with the proximity of the project to United's residents, (3) makes a request to review the project's traffic study, (4) expresses concern that the Laguna Woods Village ("Village") residential community "is being ignored as it relates to aesthetic impacts, air quality, light and glare impacts, and potentially traffic impacts," (5) provides specific comments regarding Aesthetics/Light and Glare, Air Quality, and Traffic, and (6) notes agreement with the City of Laguna Woods' comment letter dated June 23, 2011.

Regarding the time provided to review the MND, the City of Laguna Hills provided notice as required by State law. On June 3, 2011 the City published its Notice of Intent to Adopt a Mitigated Negative Declaration (NOI). The NOI indicated that the public comment period for the MND was June 3, 2011 through June 23, 2011. Subsequent to this, the public review period was extended three days to June 26, 2011, and was recorded as such with the Orange County Clerk-Recorder. Although United's comments were received after the close of the public comment period, we are still acknowledging and responding to United's comments and will forward United's comments to the City of Laguna Hills Planning Agency.

In regards to the proximity of the project to Village residents, no building is being added that will be closer to the Village residents than the 200 foot estimated distance referenced in your letter. The new Chick-fil-A Restaurant will be constructed at least 500 feet away from Village residents and will be largely blocked from the residents view by the Ashley Furniture building and the Laguna Hills Lodge. In addition, I would note that the segment of Paseo de Valencia ("PDV") nearest the subject project is lined with large trees that provide somewhat of a visual barrier looking in either direction, i.e. toward the project or toward the Village residents.

Also as required by State law, the NOI specified the address where a copy of all documents referenced in the MND were available for review (CEQA Guidelines Section 15072 (g)(4)). Per your request, however, the traffic study has been provided to you earlier today (July 7, 2011) via email.

With regard to the concern that the Village is being ignored as it relates to aesthetic impacts, air quality, light and glare impacts, and potentially traffic impacts, that is clearly not the case. The MND properly considered all potential on-site and off-site impacts, including the project's potential aesthetic, air quality, light and glare, and traffic impacts (See MND, pp. 6; 9-10; and 31-32). As noted in the MND, each of those environmental factors was analyzed and determined to have a less than significant impact. Because mitigation measures are only required for significant impacts under CEQA, no mitigation measures were required in the impact categories identified in your letter (CEQA Guidelines Section 15126.4 (a)(3)).

You have also noted that the MND describes the site as "already developed with a commercial building" and have stated that the commercial building should not be characterized as operational because it is currently vacant. The MND, however, does not characterize the commercial building as operational. The MND simply notes that the existing setting for the proposed project includes a standing commercial building on the site.

On a similar note, your letter also states "...the term 'built out' is not applicable to this area which anticipates substantial redevelopment and growth." The term "built out" is not meant to indicate that no new redevelopment in the area will occur; rather, it is meant to indicate that the entire area is already developed.

In regards to United's specific Aesthetic/Light & Glare, Air Quality, and Traffic comments, staff provides the following information/responses:

Aesthetics/Light & Glare – The Ashley Furniture building does propose a tower element extension (62 feet in height) on the front portion of the building closest to El Toro Road. The tower element is 40 feet by 40 feet and is located on the building more than 300 feet away from the nearest Village residents. The Urban Village Specific Plan (“UVSP”) maximum height standard is 75 feet, so the tower element is 13 feet below that allowed by the UVSP. For comparison purposes, the tower element on the City of Laguna Hills Civic Center building is 67 feet in height. The rest of the Ashley Furniture building will remain at the existing height of 28 feet, and the maximum height of the Chick-fil-A Restaurant building is 27 feet.

The proposed development is consistent with the type and intensity of development contemplated in the City’s General Plan, General Plan EIR, the Urban Village Specific Plan, and the Urban Village Specific Plan Mitigated Negative Declaration. The proposed project is also consistent with the historical commercial use of the property. Further, all sign and light features at the site are required to comply with existing City development standards, including the standard that requires that “all exterior lighting be shielded or recessed so that direct glare and reflections are contained within the boundaries of the parcel, and shall be directed downward and away from adjoining properties and public rights-of-way” (See Laguna Hills Municipal Code Sections 9-40.170 and 9-42.060). On this basis, the MND concluded that the project’s potential aesthetic impacts are less than significant.

Air Quality – The air quality impacts of the proposed project were identified and analyzed in the MND, which concluded that all potential impacts were less than significant and no mitigation was required. The project will not conflict with the Air Quality Management Plan in place for this area, and emissions of criteria pollutants would be well below the South Coast Air Quality Management District’s daily thresholds for all criteria pollutants (see MND pp. 9-10 and Appendix D Air Quality Data, analyzed and assembled by Hogle-Ireland, Inc.).

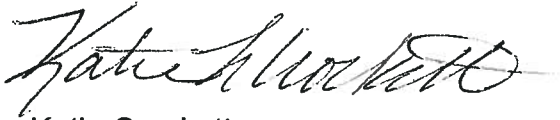
Traffic – As indicated above, we have provided you with a copy of the traffic study (prepared by the professional transportation/planning firm of Austin-Foust, Inc.), although the traffic analysis is clearly summarized in the MND. The traffic study analyzed the project’s potential traffic impacts, and, based on the City’s applicable significance thresholds, concluded that the traffic impacts resulting from the project are less than significant. Therefore, no mitigation measures were necessary.

Finally, the City of Laguna Hills has been responsive in working with the City of Laguna Woods and is implementing the policies outlined in the 2009 General Plan FEIR, including monitoring and tracking the changes in land use and new development that

are approved within the UVSP, as referenced in the City of Laguna Woods' June 23, 2011 letter. The care with which the City has conservatively complied with the requirements of the California Environmental Quality Act is evidence of the City's commitment.

We look forward to meeting with you tomorrow, at which time you may review all documents associated with the Project. Staff looks forward to working with United on current and future projects occurring within the UVSP area.

Sincerely,

A handwritten signature in black ink, appearing to read "Katie Crockett", written in a cursive style.

Katie Crockett
Planning Aide

CC: City Attorney
City Manager

Appendix F: Mitigation Monitoring Program



CITY OF LAGUNA HILLS

MITIGATION MONITORING AND REPORTING PROGRAM

Ashley Furniture Redevelopment Project SDPM/MSP/CUP No. 3-11-1917

MITIGATION MONITORING AND REPORTING PROGRAM

The Mitigation Monitoring and Reporting Program (MMRP) identifies the mitigation measures that will be implemented to offset the impacts resulting from the proposed Ashley Furniture redevelopment project. Section 21081.6 of CEQA and section 15097 of the CEQA Guidelines requires the public agency to adopt a monitoring program of mitigation measures to ensure the enforceability of the mitigation measures identified in the CEQA document. These provisions also identify guidelines for implementation of a monitoring and reporting program. The monitoring and reporting program is required to be completed prior to certification of the Mitigated Negative Declaration.

The following MMRP identifies all the mitigation measures identified in the Mitigated Negative Declaration along with the party responsible for completing the mitigation measures and the timeframe for implementation. This MMP satisfies the requirements of Section 21081.6 of CEQA and section 15097 of the CEQA Guidelines.

CITY OF LAGUNA HILLS – ASHLEY FURNITURE REDEVELOPMENT
24001 El Toro Road

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures	Period of Implementation	Responsible Party	Reporting Procedure	Initials	Date	Comments
HAZARDS AND HAZARDOUS MATERIALS						
Mitigation Measure H-1: During excavation and/or grading activities, construction personnel will visually observe the condition of the soil to assess whether evidence of hydrocarbon-impacted or contaminated soil is present (indications include staining of the soil and petroleum odor). If contaminated soil is suspected, work in the affected area shall be stopped immediately, soils tested to confirm contamination, and a Soil Management Plan shall be prepared and submitted to the City for review and approval by the City Engineer.	During excavation and/or grading activities	City Engineer and/or his designee	The soils engineer shall report to the City Engineer every 10 working days on the status of the soils on the project site. If contaminated soil is suspected, work in the affected area shall be stopped immediately and the soils engineer shall report such findings to the City Engineer. If the soil is found to be contaminated, a Soil Management Plan shall be prepared and submitted to the City engineer for review and approval prior to commencement of work in the affected area. Any contaminated soil will be removed, transported to an approved disposal location, and remediated according to State law.			

The Attachments referenced in
the Agenda Report:

4. Color Elevations

6. Plans

7. Master Sign Program

are available for review in the
City Clerk's Department.

CITY OF LAGUNA HILLS

AGENDA REPORT PUBLIC SERVICES DEPARTMENT

ISSUE: CONFIRMATION OF 2011 WEED ABATEMENT COST REPORT

SUMMARY:

In accordance with Government Code Section 39560, et seq., this is the time and place that has been fixed by Resolution of the City Council to receive and consider an accounting of the costs associated with weed abatement on each separate parcel of land where removal work has been performed, which report is required by law to be submitted to the City Council for confirmation of all itemized abatement costs. The City Council must conduct a Public Hearing to receive any public comments, complaints, or objections from property owners liable to be assessed for the abatement in connection with the Fiscal Year 2010-2011 Weed Abatement Program prior to adopting a Resolution accepting the cost report associated with the clearing of properties as authorized. It is recommended that the City Council conduct the Public Hearing and confirm the Cost Report.

BACKGROUND:

The objective of the Weed Abatement Program is to declare by Resolution as a public nuisance and abate all weeds, rubbish, refuse, and dirt upon the streets, sidewalks, parkways, or private property in the City, as identified and described in the 2011 Weed Abatement List. This is done for the purpose of health and safety, management of fire hazards, and to provide a reasonable degree of fire safety to both improved and unimproved properties. The Weed Abatement Program is administered by the Public Services Department under the direction of the Director of Public Services/City Engineer. The City Council adopted Resolutions No. 2011-04-26-1 and No. 2011-05-24-2 in April and May of this year, respectively, which authorized the annual Weed Abatement Program.

RECOMMENDATION: THAT THE CITY COUNCIL: (1) CONDUCT A PUBLIC HEARING; AND (2) ADOPT A RESOLUTION ENTITLED: “A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, CONFIRMING THE 2011 WEED ABATEMENT COST REPORT AND PROVIDING FOR THE COLLECTION OF WEED ABATEMENT ASSESSMENTS ON THE NEXT REGULAR TAX BILL LEVIED AGAINST THE SUBJECT PARCEL FOR MUNICIPAL PURPOSES.”

Approximately 550 property owners were identified as having properties containing materials needing abatement under this program and were notified by letter in April 2011, to clear their properties by June 3, 2011. Extensive public relations efforts were made by staff to reduce the number of properties to be cleared by the City contractor. Property owners that did not timely respond to the first notice to abate weeds were contacted by an additional reminder letter and multiple door hanger notifications, as needed, to further encourage voluntary abatement compliance. One property owner did not abate their weeds and the City was forced to perform the necessary weed abatement.

The contractor-incurred costs, along with an administrative charge, will be added to the owner's property tax bill when the City Council adopts the attached Resolution. The administrative charge is used towards the cost of the inspector's time during the Weed Abatement Program, computer time, printing and mailing costs, and related expenditures associated with the Weed Abatement Program.

Weed Abatement on public parcels has been completed by the City Contractor. In addition, removal of a section of pampas grass groves along the north side of the La Paz Road open space easterly of Alameda Avenue is scheduled for this month. The pampas grass removal will occur incrementally with each annual weed abatement program.

FISCAL IMPACT:

The total cost to be assessed for the single property abated is \$415.15. This cost is comprised of direct contractor charges and a \$352 per parcel administrative charge. The City will be reimbursed for the \$415.15 in costs through property tax collection procedures. The total Weed Abatement Program costs are budgeted in Fiscal Year 2010-2011 in the amount of \$40,000.00 to cover both abatement of private and public properties.

RECOMMENDATION: THAT THE CITY COUNCIL: (1) CONDUCT A PUBLIC HEARING; AND (2) ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, CONFIRMING THE 2011 WEED ABATEMENT COST REPORT AND PROVIDING FOR THE COLLECTION OF WEED ABATEMENT ASSESSMENTS ON THE NEXT REGULAR TAX BILL LEVIED AGAINST THE SUBJECT PARCEL FOR MUNICIPAL PURPOSES."

ATTACHMENTS:

- Resolution
- Weed Abatement Cost Report

RESOLUTION NO. 2011-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, CONFIRMING THE 2011 WEED ABATEMENT COST REPORT AND PROVIDING FOR THE COLLECTION OF WEED ABATEMENT ASSESSMENTS ON THE NEXT REGULAR TAX BILL LEVIED AGAINST THE SUBJECT PARCEL FOR MUNICIPAL PURPOSES

WHEREAS, on April 26, 2011, the City Council adopted Resolution No. 2011-04-26-1, thereby commencing the Weed Abatement Program for 2011 in accordance with the requirements and procedures set forth in Government Code Section 39560 *et seq.*, the objective of the Weed Abatement Program is to declare by Resolution as a public nuisance and abate all weeds growing upon the streets, sidewalks, or private property in the City, and all rubbish, refuse, and dirt upon parkways, sidewalks, or private property in the City, as identified and described in the 2011 Weed Abatement List, for health and safety purposes, for management of fire hazards, and to provide a reasonable degree of fire safety to both improved and unimproved properties; and,

WHEREAS, Resolution No. 2011-04-26-1 commenced the 2011 Weed Abatement Program by declaring the weeds, rubbish, refuse and/or dirt on specified parcels of land identified in the 2011 Weed Abatement List to be a public nuisance and authorized the City Clerk to send written notice of the proposed public nuisance abatement to all persons owning property identified and described in the 2011 Weed Abatement List and advising them to remove any and all weeds, rubbish, refuse and/or dirt that, when dry, become a fire hazard; and,

WHEREAS, on April 27, 2011, the City sent the legally required notice to destroy weeds and remove rubbish, refuse, and dirt to all affected property owners identified on the 2011 Weed Abatement List; the notice provided that if the public nuisance is not abated and removed by the owners of the affected parcels of land by June 3, 2011, such nuisances will be abated and removed by City authorities in accordance with the abatement procedures set forth in Government Code Section 39560 *et seq.*, in which case the cost of such removal shall be assessed upon the parcel of lands from which or in front of which such weeds, rubbish, refuse, and/or dirt are removed and that upon confirmation such cost will be constitute a lien upon such parcel or lands until paid; and,

WHEREAS, the legally required mailed notice sent to the affected property owners provided that the City Council would hear and consider all property owner objections and protests to the proposed public nuisance abatement as part of a Public Hearing process conducted on May 24, 2011; and,

WHEREAS, during the May 24, 2011, Public Hearing, the City Council was to have heard and considered all objections and protests presented by property owners

and other interested parties to the proposed public nuisance abatement and removal of all weeds, rubbish, refuse, and/or dirt on specified parcels identified and described in the 2011 Weed Abatement List; however, no public testimony was received.

WHEREAS, on May 24, 2011, the City Council adopted Resolution No. 2011-05-24-2, thereby: (1) determining not to allow any objections; (2) issuing an abatement order and authorizing the Director of Public Services/City Engineer to abate and remove by use of City authorities all weeds, rubbish, refuse, and/or dirt on specified parcels as identified and described in the 2011 Weed Abatement List; (3) acquiring jurisdiction to proceed and perform the work of weed, rubbish, refuse, and/or dirt removal on specified parcels; (4) declaring that it is the intention of the City Council to assess the amount of the City's cost for the abatement of the public nuisances upon the specified parcels of land identified and described on the 2011 Weed Abatement List, which assessments against the respective parcels of land shall constitute a lien; and (5) ordering the Director of Public Services/City Engineer to keep an accounting of the cost of abatement on each separate parcel of land where removal work is performed and to submit to the City Council for confirmation an itemized written report showing such abatement costs.

WHEREAS, pursuant to Resolutions No. 2011-04-26-1 and No. 2011-05-24-2, the Director of Public Services/City Engineer did abate such nuisances and/or caused the same to be abated by having such weeds removed; and

WHEREAS, the Director of Public Services/City Engineer kept an accounting of the cost of such abatement in front of and on each separate parcel of land in the form of an itemized cost report submitted this date to the City Council showing the cost of removing the weeds on or in front of each separate lot, parcel, or piece of land, or both, said report having been posted in the manner and for the time required by law; and

WHEREAS, the 2011 Weed Abatement Cost Report was duly considered by the City Council on this 12th day of July 2011.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The City Council has received and considered the 2011 Weed Abatement Cost Report prepared by the Director of Public Services/City Engineer, which is attached hereto as Exhibit "A", and hereby confirms the report without modification.

SECTION 2. The City Clerk is hereby directed for each subject parcel, to record this Resolution in the office of the County Recorder and also to promptly forward a certified copy of this Resolution confirming the 2011 Weed Abatement Cost Report along with a certified copy of the 2011 Weed Abatement Cost Report to the Orange County Auditor-Controller and County Tax Collector, who shall add the amount of the

assessments to the next regular tax bill levied against the subject parcels for municipal purposes.

PASSED, APPROVED, AND ADOPTED this 12th day of July 2011.

L. ALLAN SONGSTAD, JR., MAYOR

ATTEST:

PEGGY J. JOHNS, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF LAGUNA HILLS)

I, Peggy J. Johns, City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 2011- adopted by the City Council of the City of Laguna Hills, California, at a regular meeting thereof, held on the 12th day of July 2011, by the following vote:

AYES:

NOES:

ABSENT:

(SEAL)

PEGGY J. JOHNS, CITY CLERK

2011 Weed Abatement Cost Report

Exhibit A

(Privately Owned Parcels)

<u>AP Number:</u>	<u>Address:</u>	<u>Area</u>	<u>Hand Work</u>	<u>Mow Work</u>	<u>Admin.</u>	<u>Mowing</u>	<u>Hand</u>	<u>Total Charged:</u>	<u>City/District</u>
620-401-08	25241 Barents	<u>Size:</u>	<u>Cleared</u>	<u>Cleared</u>	<u>Fee:</u>	<u>Charges:</u>	<u>Charges:</u>	<u>\$415.15</u>	<u>Code:</u>
		B	(sf):	(sf):	\$352.00	\$ -	\$63.15		081
			2,114	0					

CITY OF LAGUNA HILLS

AGENDA REPORT ADMINISTRATIVE SERVICES DEPARTMENT

ISSUE: 2011-13 SALARY AND BENEFITS RESOLUTION

SUMMARY:

As part of the biennial budget process, the City Council confers over recommended adjustments to employee salaries and other compensation in keeping with City Council policy. There is no collective bargaining agreement, which governs employee wages and benefits; therefore, all such conditions of employment are set forth in the attached Salary and Benefits Resolution. This year, the Salary and Benefits Resolution follows on the heels of the City's recently completed Compensation Study and includes most of the recommendations made by the City's consultant. All expenditures associated with the proposed Salary and Benefits Resolution is within the proposed 2011-2013 Biennial Budget.

BACKGROUND:

City Council Policy 105.H.1 states that "The City of Laguna Hills has an established employee compensation program that is designed to attract and retain highly qualified individuals who are capable of delivering a high level of service in a streamlined organization. The City will continue this commitment to competitive, market based compensation and pay for performance." In conjunction with the development of the Biennial Budget, and in keeping with this City Council Policy, staff traditionally conducts a market survey based on the latest Benchmark Salary Survey of Orange County Cities. This year, the City Council commissioned Ralph Andersen & Associates to conduct a Compensation Study of all full-time employees. The consultant made a preliminary presentation to the City Council at the May 10, 2011, City Council meeting and a final presentation at the June 28, 2011, City Council meeting. A copy of the Compensation

RECOMMENDATION: THAT THE CITY COUNCIL ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, REGARDING EMPLOYMENT AND ESTABLISHING SALARY RANGES AND BENEFITS FOR CLASSES OF EMPLOYMENT WITH THE CITY AND RESCINDING RESOLUTION NO. 2009-06-23-2.

Study is available on the City's web site and a copy of the consultant's powerpoint presentation is attached hereto as Exhibit A. Based on the Compensation Study, the consultant made the following recommendations:

- Maintain 5% above market average position
- Monitor health insurance costs and market trends
- Consider administrative leave for management positions
- Monitor market changes in retirement formulas as agencies introduce tiers for new employees.

The first recommendation is consistent with City Council Policy No. 105.H.2, which states in part that, "The City will strive to maintain a highly competitive salary and benefits program which sets the top step of salary ranges at 5% above the County average for each comparable position." The only difference is that instead of using the County average, the consultant recommends using the City Council approved comparator agency average.

For the most part, the consultant's recommendations have been followed in preparing the Salary and Benefits Resolution (see Exhibit C) with a few exceptions that are explained below. Please note that the outline of this report follows sequentially the sections in the Salary and Benefits Resolution in Exhibit C. It is important to keep in mind that the adjustments to salary ranges discussed below do not translate into actual increases in salaries for employees. As stated in past reports, any changes recommended in the Compensation Study are expected to be implemented over a reasonable period of time to avoid any undue disruption or hardship to the City or its employees. Therefore, staff is recommending that cost-of-living adjustments be granted to all non-management and extended part-time employees based on their current salaries and retroactive to July 1, 2011. The actual cost-of-living adjustment will be the percentage listed in column D of Exhibit B. The maximum adjustment is 2%. The cost of this adjustment for Fiscal Year 2011-12 is \$23,402, which is under the \$54,432 budgeted for such purposes. Any future, potential increases in salary will be subject to annual performance evaluations and be based on merit and budgetary constraints.

Section 2 – Salary Ranges

This section lists the proposed monthly salary ranges for full-time employees and the hourly ranges for extended part-time and part-time positions. Staff is recommending that all full-time, non-management salary ranges be benchmarked to the consultant's recommendation of 5% above the market average. For management employees, staff is recommending that benchmark adjustments be deferred for two years. These recommendations and other changes to the Resolution are discussed in more detail below.

Full-Time Positions – Non-Management

There are 21 full-time, non-management employees. Of these, 13 employees were below the 5% above the comparator agency mean (hereafter, “5% benchmark”) and are therefore recommended for a benchmark adjustment. Exhibit B to this report contains a salary range adjustment worksheet for all full-time, non-management positions. It lists the current top step (column A), with the recommended percentage adjustment to bring them to the 5% benchmark (column B). The benchmark adjustment has been capped at 10%. Those 8 positions with a 0.00% adjustment in column B are either currently at or above the 5% benchmark. The adjustment in column B brings the other positions, other than those capped at 10%, in alignment with the 5% benchmark as of May 2011. As stated on page 11 of the Compensation Study, in order for competitive 2011-12 salaries to be implemented, the salary ranges may need to be adjusted further. If a cost-of-living adjustment is not granted, then all but two non-management positions will likely fall below the 5% benchmark. The April Consumer Price Index for the Los Angeles-Riverside-Orange County regions was 3.9% and for May it was 3.7%. At this point it is unknown what cost-of-living adjustments will be granted among the City’s comparator agencies. Staff is proposing a maximum 2% cost-of-living adjustment to the 2010-11 benchmark adjusted salaries in column C of Exhibit B. In the six cases where the adjustment is below 2%, the 2010-11 top steps were higher than the 5% benchmark adjusted salaries. With the cost-of-living adjustments in column D, all but two non-management positions will be at the 5% benchmark. These two positions are 4.11% and 0.42% over the benchmark. Staff is confident that over the next two years, both of these positions will be brought into alignment with the 5% benchmark. The monthly salary figures in column E of Exhibit B correspond to the top salary step in the Salary and Benefits Resolution in Exhibit C.

It should be noted that during the course of the Compensation Study, one position appeared to be working out of classification; Assistant City Engineer. As a result, staff is recommending a reclassification to Associate Engineer and a corresponding benchmark adjustment of 10%.

Full-Time Positions – Management

The adopted 2011-13 Biennial Budget by all measures continues the budget austerity imposed over the last two years. Even though the Compensation Study supports benchmark adjustments for four of the six management positions and cost-of-living adjustments for all six, staff is recommending that any benchmark adjustments for management be deferred for two years and any cost-of-living adjustments be deferred for one year. There has been no benchmark or cost-of-living adjustments for management staff since July 1, 2008.

Extended Part-Time Positions

The hourly ranges for these positions have been increased by a 2% cost-of-living adjustment, with the exception of the Administrative Assistant I. The range for this position has been increased by 0.66% in keeping with the adjustment of the full-time Administrative Assistant I.

Part-Time Positions

The hourly ranges for Community Services Leader I and II have not been adjusted. The part-time position of Administrative Intern has been added to provide assistance in Administration during an upcoming maternity leave.

Section 2 of the Resolution also deals with discretionary and cost-of-living adjustments during the two year budget cycle. Since the Compensation Study commissioned by the City provides up to date benchmark comparisons, the provision in the Resolution allowing the City Manager the discretion to grant up to a 5% salary adjustment for employees who have reached their top step has been deleted. Historically speaking, this provision has rarely been exercised and its removal is not likely to create any problems, but it could limit the City Manager's ability to dissuade a valued employee from leaving for greener pastures. Additionally, the City Manager's authority to grant both salary and cost-of-living adjustments for the second year of the budget cycle, has been revised to simply allow the City Manager the discretion to grant cost-of-living adjustments based solely on the April 2012 consumer price index.

Section 3.I – Retirement

In the Compensation Study the consultant conducted a net present dollar analysis of future retirement benefits to take into account the City's lower retirement formula on labor market competitiveness. This analysis included the City's supplemental defined contribution plan. When retirement differences were translated into current dollar impacts, the analysis demonstrated that the City is 11.8% below the market average of the comparator agencies. Consequently, there are no recommended changes to the City's retirement plans.

Section 3.II – Insurance

The Compensation Study found that the cost of the City's expenditure for employee insurance benefits is generally higher than the comparator agencies. However, the consultant also pointed out that differences in insurance rates do not mean richer benefits. The consultant noted that, "Insurance benefit comparisons need to be conducted over multiple years to best understand market trends..." The consultant therefore recommended monitoring health insurance costs and market trends. Given this recommendation and the \$187,000 annual savings already achieved in health

insurances, staff is recommending that no changes be made to this section. Staff will monitor costs and trends over the next two years.

Sections 3.III, 3.IV, and 3.V – Vacation, Holidays and Leaves of Absence

The Compensation Study included a detailed survey of leave benefits, which include holidays, sick leave, administrative leave and vacation. The consultant found that while the City's holiday and sick leave practices are consistent with the comparator agencies, on average, the City is 7.4% below the average for vacation and administrative leave. This is largely due to the fact that the City does not have administrative leave. The actual variation ranges by classification from 19.4% below average to 1.6% above average. Only five positions are slightly above the average. Even though the consultant recommended that the City consider implementing administrative leave for management positions, staff is not recommending any changes to the City's overall leave package at this time.

Section 3.VI.A – Additional Compensation (Auto Allowance)

City employees that do not have an employment agreement with the City are often required to use a vehicle to perform their duties. They either use a City pool vehicle or their own personal vehicle. When they use their personal vehicle, they are either reimbursed at the prevailing standard mileage rate established by the IRS, or they are given an auto allowance. Based on classification and usage, four employees are given a monthly auto allowance ranging from \$300 to \$650. These rates have not changed since July 1, 2009. The Compensation Study found that auto allowances average \$375 a month among comparator agencies and that 76% of private employers have an auto allowance ranging from \$500 to \$842 a month. Staff is recommending no changes to the auto allowances granted to the four positions listed in the attached Resolution.

Section 3.VI.B – Additional Compensation (Management Incentive Program)

The Management Incentive Program, which was implemented in 1992 and allowed management employees to earn 0% to 10% of their annual salary for outstanding performance, was defunded in the City's adopted Biennial Budget.

FISCAL IMPACT:

The expenditures associated with the adoption of this Resolution are appropriated in the 2011-13 Biennial Budget. The total budgeted personnel costs are \$4,525,904 in 2011-12 and \$4,690,156 in 2012-13. These amounts represent 27% of the operating budget. As stated previously in this report, the adopted Budget allowed for an across-the-board cost-of-living adjustment of 2%, which amounted to \$54,432. Since 2% is the maximum recommended for any one position, and given that no adjustments are recommended for management, the actual fiscal impact in 2011-12 will be \$23,402. It is worth noting

that the attached Salary and Benefits Resolution continues to minimize long-term liabilities and risks. This includes Other Post-Employment Benefits (OPEB), of which, the City has none.

RECOMMENDATION: THAT THE CITY COUNCIL ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, REGARDING EMPLOYMENT AND ESTABLISHING SALARY RANGES AND BENEFITS FOR CLASSES OF EMPLOYMENT WITH THE CITY AND RESCINDING RESOLUTION NO. 2009-06-23-2.

ATTACHMENTS:

- Exhibit A – Compensation Study Report Presentation – Ralph Andersen & Associates
- Exhibit B – 2011-12 Full Time, Non-Management Employees Salary Range Adjustments Worksheet
- Exhibit C - Proposed Salary and Benefits Resolution

EXHIBIT A

Compensation Study Report

By

Ralph Andersen & Associates

Compensation Study

Report Presentation

City of Laguna Hills

Doug Johnson, Vice President
Ralph Andersen & Associates

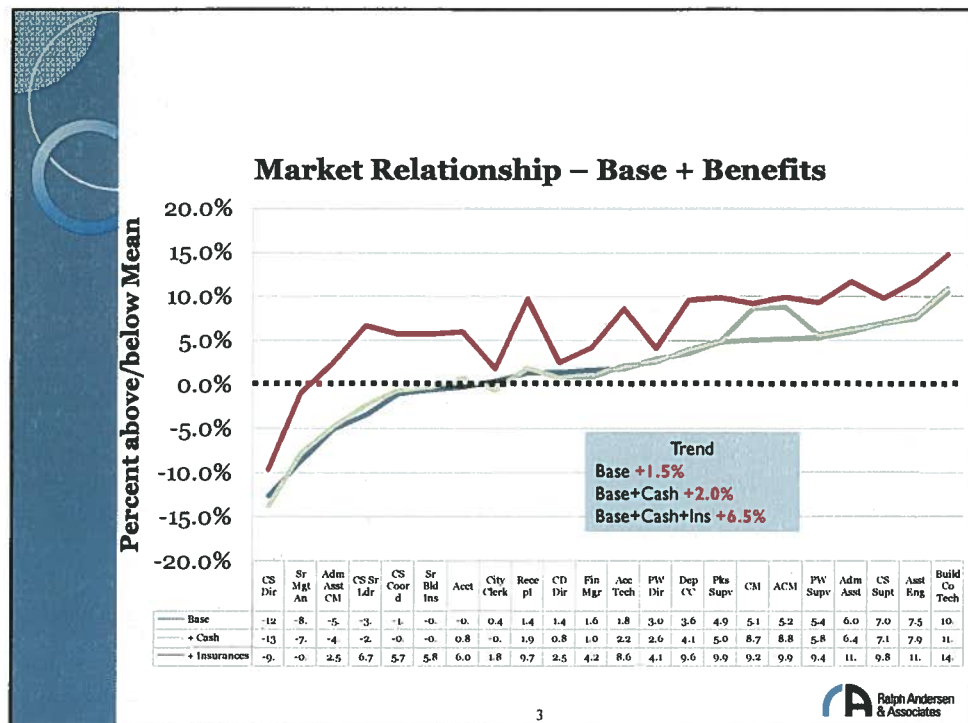
1

Total Compensation

- Primary Elements
 - Base salary
 - Cash benefits
 - Insurances
- Retirement
 - Net Present Dollar Value
- Other
 - Car allowance
 - Retiree health
 - Leave

NOT an employee cost model

2



Cash + Insurance Benefit Findings

- City's cash benefits are consistent with market
- City's insurance benefits are higher than market
- Differences in insurance rates do not mean "richer" benefits
- Retirement, retiree health, car allowance, and leave benefits should be looked at separately due to differences in the mechanics of providing these benefits

4

Ralph Andersen & Associates

Survey Agency	Emp. Ret. 2010/11	Retirement Formula
Brea	9.6%	2%@55
Buena Park	11.2%	2.5%@55
Cypress	10.3%	2%@55
Dana Point	9.0%	2%@55
Fountain Valley	14.8%	2.5%@55
Irvine	18.5%	2.7%@55
Laguna Beach	12.0%	2.5%@55
Laguna Niguel	9.5%	2%@55
Lake Forest	11.3%	2%@55
Mission Viejo	14.2%	2.7%@55
Newport Beach	8.4%	2.5%@55
Orange	14.5%	2.7%@55
Rancho Santa Margarita	13.3%	2%@60
San Clemente	11.8%	2%@55
San Juan Capistrano	24.8%	2.7%@55
Tustin	9.0%	2%@55
Yorba Linda	12.6%	2%@55
Laguna Hills	10.3%	2%@55

5

 Ralph Andersen
& Associates

Retirement Rate Factors

- Payout formula
- Enhancements
- Workforce demographics
- CalPERS policies
- Investment performance
- Workforce size
- Cash or bond “buy-downs”
- CalPERS re-rating/assessment

6

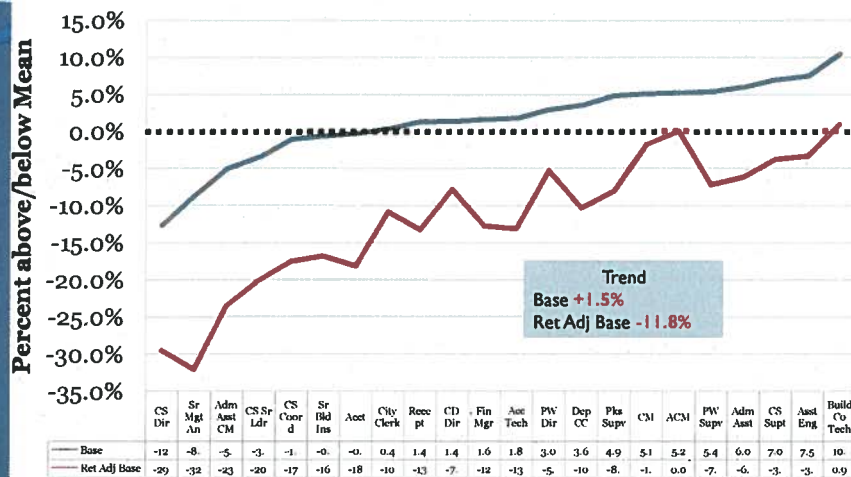
 Ralph Andersen
& Associates

Retirement – Employee Value

- Retirement age
- Formula multiplier
- Enhancements
- Lifetime benefits payout
- Impact on recruitment/retention

Net present value attempts to capture this in current base equivalent dollars

Market Relationship – Retirement Adjusted



Retirement Findings

- Only a handful of cities have a 2%@60 CalPERS formula
- City's PARS benefit provides a balance of "defined benefit" and "defined contribution" plans
- City has minimized long term liabilities and risk
- Market is headed towards what Laguna Hills has done over the next several years
- If retirement adjusted base salaries are used, LH's Base + Cash market deviation is -2.4%

9



Base Pay Range Comparison

- Control Point to Control Point
- Analysis of each survey agency/source
- Most cities, C.P. = Range Max
- Most Private, C.P. = 50% to 67% range progression
- "apples to apples" comparison

10



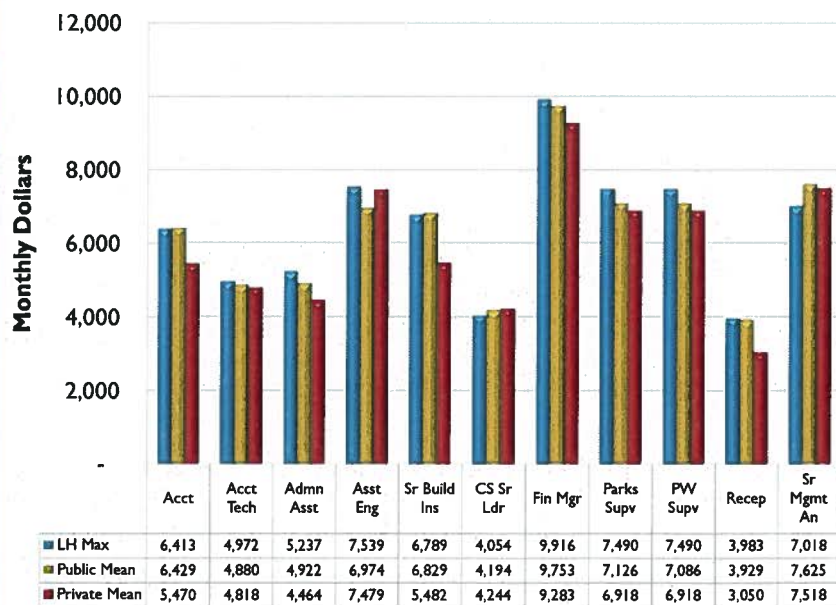
Private Sector Data

- Limited number of comparisons
- Wider pay ranges
- Performance driven range progression
- More flexible initial range placement
- Excludes bonus payments
- No 2011 benefit data

11



Public vs Private Data



12



Labor Market Position Factors

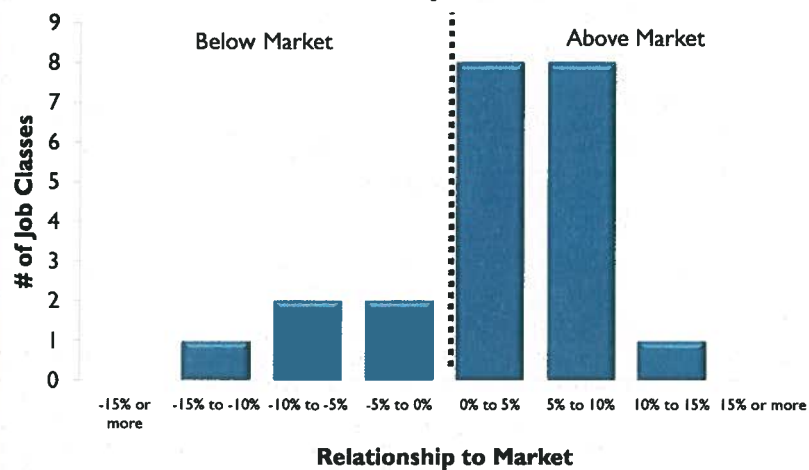
- Historical practices
- Recruitment/retention needs/goals
- Labor relations environment
- +/- of other benefits
- Pay range structure
- Ability to pay

13



Overall, LH base is at the market 62nd Percentile; 1.5% above mean.

Base Survey Trends



14



Auto Allowance

- Several market mechanisms
 - Monthly allowance
 - Assigned vehicle
 - Auto pool
 - Mileage reimbursement
- 12 agencies have an auto allowance at \$375 average dollar amount
- 76% of private employers have an auto allowance at \$500 to \$842 depending on level*
- Laguna Hills is at \$650/600
- Mostly a cost/efficiency benefit

* 2008 WorldatWork Survey



15

Leave Benefits

- Holidays = market practices
- Sick days = market practices
- Admin Leave
 - All but one survey city provides benefit
 - Average of 8 days
- Vacation
 - 4 fewer days at maximum accrual



16

Leave Benefit Findings

- No issues with Holidays and Sick Leave
- The city does not have an Admin Leave benefit (equates to 3% in pay)
- Maximum vacation accrual is lower (equates to 1.5% in pay)
- All agencies have some form of sick leave cash-out (cash, retirement payout, retiree health)

17



Market Trends

- Modest COLAs (3+% CPI)
- Multi-tier retirement formulas
 - Will take many years
 - Union organization very resistant
- Reduced long-term liabilities
- Pending changes in healthcare

Laguna Hills is “already there”

18





Recommendations

- Maintain 5% above market average position
- Monitor health insurance costs and market trends
- Consider Administrative Leave for exempt positions
- Monitor market changes in retirement formulas as agencies introduce tiers for new employees

EXHIBIT B

2011-12

Full-Time, Non-Management Employees

Salary Range Adjustments

Worksheet

City of Laguna Hills
2011-12 Full-Time Employees
Salary Range Adjustment Worksheet

Position Title	A	B	C	D	E
	2010-11 Monthly Top Step	Benchmark Adjustment	2010-11 Adjusted Top Step	COLA Adjustment for 2011-12	2011-12 Monthly Top Step
Receptionist/Secretary (2)	3,983	3.58%	4,126	2.00%	4,208
Community Services Senior Leader (2)	4,054	8.63%	4,404	2.00%	4,492
Planning Aide/Code Enforcement Officer (2)	4,368	0.00%	4,368	2.00%	4,455
Accounting Technician (1)	4,972	3.06%	5,124	2.00%	5,227
Administrative Assistant I (2)	5,237	0.00%	5,237	0.66%	5,272
Administrative Assistant II (0)	5,498	0.00%	5,498	0.66%	5,534
Building Counter Technician (1)	5,456	0.00%	5,456	0.00%	5,456
Deputy City Clerk (1)	5,498	1.26%	5,567	2.00%	5,679
Administrative Assistant - City Manager (1)	5,619	10.00%	6,181	2.00%	6,305
Community Services Coordinator (1)	5,663	6.08%	6,007	2.00%	6,127
Accountant (1)	6,413	5.26%	6,750	2.00%	6,885
Asst. Building Official/Senior Building Inspector (1)	6,789	5.62%	7,171	2.00%	7,314
Senior Management Analyst (1)	7,018	10.00%	7,720	2.00%	7,874
Public Works Supervisor (1)	7,490	0.00%	7,490	1.90%	7,632
Park Supervisor (1)	7,490	0.00%	7,490	1.90%	7,632
Associate Engineer (1) *	7,539	10.00%	8,293	2.00%	8,459
Community Services Superintendent (1)	9,554	0.00%	9,554	0.00%	9,554
Finance Manager (1)	9,916	3.27%	10,240	2.00%	10,445

*Reclassified from Assistant City Engineer

EXHIBIT C

Proposed

2011-13 Salary and Benefits Resolution

RESOLUTION NO. XXXX-XX-XX-X

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, REGARDING EMPLOYMENT AND ESTABLISHING SALARY RANGES AND BENEFITS FOR CLASSES OF EMPLOYMENT WITH THE CITY AND RESCINDING RESOLUTION NO. 2009-06-23-2.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. This Resolution rescinds Resolution No. 2009-06-23-2 and is the official plan of compensation for the City.

SECTION 2. The following salary ranges are assigned to the listed classes of employment.

FULL-TIME POSITIONS – NON-MANAGEMENT	MONTHLY RANGE	
Accountant (1)	\$5,665	\$6,885
Accounting Technician (1)	\$4,300	\$5,227
Administrative Assistant I (2)	\$4,337	\$5,272
Administrative Assistant II (0)	\$4,554	\$5,534
Administrative Assistant –City Manager (1)	\$5,187	\$6,305
Asst Bldg Official/Senior Bldg Inspector (1)	\$6,017	\$7,314
Associate Engineer (1)	\$6,959	\$8,459
Building Counter Technician (1)	\$4,491	\$5,456
Planning Aide/Code Enforcement Officer (2)	\$3,665	\$4,455
Community Services Coordinator (1)	\$5,041	\$6,127
Community Services Senior Leader (2)	\$3,695	\$4,492
Community Services Superintendent (1)	\$7,860	\$9,554
Deputy City Clerk (1)	\$4,672	\$5,679
Finance Manager (1)	\$8,594	\$10,445
Senior Management Analyst (1)	\$6,478	\$7,874
Parks Supervisor (1)	\$6,279	\$7,632
Public Works Supervisor (1)	\$6,279	\$7,632
Receptionist/Secretary (2)	\$3,462	\$4,208

FULL-TIME POSITIONS – MANAGEMENT		
Assistant City Manager (1)	\$13,251	\$16,108
City Clerk (1)	\$ 8,374	\$10,180
City Engineer/Public Works Director (1)	\$11,634	\$14,141
City Manager (1)	\$19,466	\$19,466
Community Development Director (1)	\$11,145	\$13,546
Deputy City Manager (1)	\$ 9,322	\$11,331

EXTENDED PART-TIME POSITIONS	HOURLY RANGE	
Administrative Assistant I	\$25.03	\$30.41
Clerical Assistant	\$17.05	\$20.74
General Services Clerk	\$17.05	\$20.74
Community Services Leader III	\$15.59	\$18.95
Records Imaging Technician	\$21.40	\$26.01
Senior Planner	\$37.79	\$45.93

PART-TIME POSITIONS		
Administrative Intern	\$15.00	\$15.00
Community Services Leader I	\$ 9.00	\$11.50
Community Services Leader II	\$11.50	\$14.00

The City Manager, at his discretion, may grant a cost-of-living adjustment up to the annual percentage change between the April 2011 and April 2012 Consumer Price Index for the Urban Wage Earners and Clerical Workers, Los Angeles-Riverside-Orange County, CA region effective July 1, 2012.

SECTION 3. The City of Laguna Hills shall provide the following benefits:

I. RETIREMENT

- A. The City shall participate in the California Public Employees Retirement System's (Cal PERS) 2% @ 60 Program and pay all employees' contributions to PERS as deferred income. Additional benefits provided through Cal PERS shall include the following:

One-Year Final Compensation
Post-Retirement Survivor Allowance
Pre-Retirement Survivor Allowance
1959 Survivor Benefits, including Third Level Benefits
Extension of Reciprocity Rights for Elective Officers

- B. The City shall provide a supplemental retirement program as set forth in Resolution No. 99-05-04-1.
- C. The City shall provide a retiree health savings plan as set forth in Resolution No. 2001-12-11-2.
- D. The City shall make available to all employees, the ICMA Retirement Corporation's Section 457 Deferred Compensation Plan. This is a voluntary program and will be funded at the sole cost of each participating employee.

II. INSURANCE

- A. The City will provide and pay for a medical insurance plan for all full-time employees, including elected members, and their dependents.
- B. The City will provide and pay for a dental insurance plan for all full-time employees, including elected members, and their dependents.
- C. The City will provide and pay for a vision insurance plan for all full-time employees, including elected members, and their dependents.
- D. The City will provide and pay for a group life and accidental death and dismemberment insurance to all full-time employees on the basis of 100% of the employee's annual salary to the next highest \$1,000.00 increment up to a maximum of \$200,000.
- E. The City will provide and pay for a short and long-term disability plan for all full-time employees.
- F. The City will provide and pay for one-half the premium for a single person for health insurance for extended part-time employees.

III. VACATION

- A. Full-time non-management employees accrue vacation leave according to the following schedule:

Years of Service	Rate
0-3	10 days/year or 6.667 hours/month
4-9	15 days/year or 10 hours/month
10+	20 days/year or 13.334 hours/month

- B. Full-time management employees accrue vacation leave according to the following schedule:

Years of Service	Rate
0-3	15 days/year or 10 hours/month
4+	20 days/year or 13.334 hours/month

- C. Extended part-time employees accrue vacation leave of 40 hours per year or 3.34 hours per month.
- D. Upon termination or retirement, all employees shall be compensated at their current pay scale for their accrued vacation leave balance. No employee

shall be allowed to carryover more than 320 hours of vacation leave from one fiscal year to the next.

- E. For management employees, upon completion of ten years of full-time employment with the City, the City will make a one-time allotment of 40 hours of vacation leave to the employee's vacation leave balance.

IV. HOLIDAYS

- A. The City will provide full-time employees 96 paid hours per fiscal year for holidays.
- B. The City will observe certain fixed holidays during which City Hall will be closed. These include:

New Year's Day
Presidents Day
Memorial Day
Independence Day
Labor Day
Thanksgiving
Day After Thanksgiving
Christmas Day

- C. Full-time employees shall receive 8 hours pay for these holidays. In order to receive holiday pay, an employee must have received pay for all of both the regularly scheduled work assignment immediately prior to a holiday and the regularly scheduled working assignment immediately after that holiday.
- D. Extended part-time employees shall receive a maximum of 48 hours for observed holidays. A maximum of 16 hours may be used as discretionary holiday leave subject to supervisor approval.
- E. Holidays falling on Sunday shall be observed on the following Monday. Holidays falling on Saturday shall be observed on the preceding Friday unless this, too, is a holiday and then one day sooner.
- F. In lieu of closing City Hall for the observation of Columbus Day, Veteran's Day, and Martin Luther King Day, employees will be able to use their remaining holiday time from paragraph IV.A above for discretionary, floating holiday time subject to their supervisor's approval.
- G. Holiday hours must be taken during each fiscal year and cannot be carried over to the succeeding fiscal year.

V. LEAVES OF ABSENCE

- A. All full-time employees shall accrue annual sick leave at a rate of 8 hours per month.
- B. All extended part-time employees shall accrue annual sick leave at a rate of 4 hours per month.
- C. All full-time employees prior to completing ten years of service as full-time employees, (hereafter, "ten-year anniversary") shall be eligible, if they so desire, each quarter (October 1, January 1, April 1, and July 1) to convert unused personal sick leave in excess of 160 hours at a rate of 8 hours of vacation for every 24 hours of personal sick leave. Upon honorable retirement or resignation from the City prior to their ten-year anniversary, a full-time employee who has personal sick leave in excess of 160 hours may convert the excess hours to vacation at a rate of eight hours of vacation for every 24 hours of personal sick leave. In this situation, the vacation accrual limits under paragraph III.D above can be exceeded to a maximum of 480 hours.
- D. For all full-time employees who have completed their ten-year anniversary, sick leave accumulation and balances will be governed by Resolution No. 2001-12-11-2. As part of the Retirement Health Services (RHS) plan, employees upon ten years of service may convert any vacation hours over 80 hours to sick leave on a 1 to 1 basis.
- E. All full-time and extended part-time employees shall receive 3 days bereavement leave for absence necessitated by the death of immediate family members. An immediate family member shall be defined as the spouse, children, parents, brothers, sisters, grandparents, parents-in-law, or other individuals whose relationship to the employee is that of a dependent or near dependent. Where such death has occurred and upon request of the Assistant City Manager, the employee shall furnish satisfactory evidence of such death.

VI. ADDITIONAL COMPENSATION

- A. The following positions, at the discretion of the City Manager, may be eligible for a monthly automobile allowance in lieu of mileage reimbursement:

City Engineer/Director of Public Services	-	\$ 650
Community Development Director	-	\$ 600
City Clerk	-	\$ 300
Asst Bldg Official/Senior Bldg Inspector	-	\$ 500

All other employees shall be paid at the prevailing standard mileage rates established by the IRS.

- B. The City's Management Incentive Program for management employees has been defunded for FY 2011/2012 and FY 2012/2013.

SECTION 4. MISCELLANEOUS PROVISIONS

- I. The City Manager may authorize special adjustments to avoid or eliminate inequities resulting from the strict application of any provision of this Resolution.
- II. The City Manager is authorized to issue written administrative personnel regulations designed to augment or clarify the provisions of this Resolution.
- III. In the event of any conflict between the provisions of the City Manager's Employment Agreement or the Assistant City Manager's Employment Agreement and this Resolution, the Agreements prevail.

SECTION 5. EFFECTIVE DATE

- I. Except as otherwise specified to the contrary in this Resolution, all provisions shall be effective July 1, 2011.

PASSED, APPROVED, AND ADOPTED this 12th day of July 2011.

L. ALLAN SONGSTAD, MAYOR

Attest:

PEGGY J. JOHNS, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Peggy J. Johns, City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. XXXX-XX-XX-X adopted by the City Council of the City of Laguna Hills, California, at a Regular Meeting thereof held on the 12th day of July 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

PEGGY J. JOHNS, CITY CLERK

CITY OF LAGUNA HILLS

AGENDA REPORT CITY CLERK'S DEPARTMENT

**ISSUE: DESIGNATION OF VOTING DELEGATE FOR LEAGUE OF
CALIFORNIA CITIES ANNUAL CONFERENCE**

SUMMARY:

The Annual Conference for the League of California Cities is scheduled for Wednesday, September 21, 2011, through Friday, September 23, 2011, in San Francisco. An important part of the Annual Conference is the Annual Business Meeting, scheduled for 2:30 p.m. on Friday, September 23, at the San Francisco Moscone West Convention Center. At this meeting, the League membership will consider and take action on resolutions that establish League policy. The attached memo from the League of California Cities describes the process and provides procedures for voting at the Annual Conference.

In order to vote at this Annual Business Meeting, the City Council must designate a Voting Delegate and a Voting Delegate alternate, who may vote in the event that the designated voting delegate is unable to serve in that capacity. The Voting Delegate Form must be returned to the League of California Cities no later than Friday, August 26, 2011. The League By-Laws provide that each City is entitled to one vote in matters affecting municipal or League policy. At its December 14, 2010, meeting, the City Council reconfirmed the appointment of the Mayor as the Voting Delegate and the Mayor Pro Tempore as the alternate. Mayor Songstad has indicated that he plans to attend the Annual Conference; therefore, the City Council should appoint Mayor Songstad as the Voting Delegate. Mayor Pro Tempore Carruth on the other hand, does not plan to attend the conference. Therefore, the City Council will need to designate another Council Member, who will be attending the League Conference, as the Voting Alternate. Council Member Joel Lautenschleger has indicated he plans on attending the Conference.

**RECOMMENDATION: THAT THE CITY COUNCIL APPOINT MAYOR SONGSTAD
AS THE VOTING DELEGATE AND APPOINT COUNCIL MEMBER
LAUTENSCHLEGER AS THE VOTING ALTERNATE FOR THE LEAGUE OF
CALIFORNIA CITIES ANNUAL CONFERENCE.**

ATTACHMENTS:

- June 9, 2011, League of California Cities Memo

Council Action Advised by August 26, 2011

June 9, 2011

TO: Mayors, City Managers and City Clerks

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES
League of California Cities Annual Conference – September 21–23, San Francisco**

The League's 2011 Annual Conference is scheduled for September 21-23 in San Francisco. An important part of the Annual Conference is the Annual Business Meeting (*at the closing General Assembly*), scheduled for 2:30 p.m., Friday, September 23, at the San Francisco Moscone West Convention Center. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity.

Please complete the attached Voting Delegate form and return it to the League's office no later than Friday, August 26, 2011. This will allow us time to establish voting delegate/alternates' records prior to the conference.

Please note the following procedures that are intended to ensure the integrity of the voting process at the Annual Business Meeting.

- **Action by Council Required.** Consistent with League bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates must be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. To register for the conference, please go to our website: www.cacities.org. In order to cast a vote, at least one person must be present at the Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up

-more-

the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.

- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.
- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the San Francisco Moscone West Convention Center, will be open at the following times: Wednesday, September 21, 8:30 a.m. – 6:00 p.m.; Thursday, September 22, 7:30 a.m. – 4:00 p.m.; and September 23, 7:30–10:00 a.m. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but not during a roll call vote, should one be undertaken.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to the League office by Friday, August 26th. If you have questions, please call Mary McCullough at (916) 658-8247.

Attachments:

- 2011 Annual Conference Voting Procedures
- Voting Delegate/Alternate Form



1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

Annual Conference Voting Procedures 2011 Annual Conference

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to League policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the League Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in his or her possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.

CITY OF LAGUNA HILLS

AGENDA REPORT CITY ATTORNEY DEPARTMENT

ISSUE: APPOINTMENT OF LABOR NEGOTIATOR(S)

SUMMARY:

This item has been continued from the June 28, 2011, City Council meeting and was originally agendized at the request of Council Member Kogerman. Pursuant to Government Code §54957.6, the City Council is authorized to select and appoint an individual(s) to serve as its designated representative for purposes of conducting a Closed Session meeting with its authorized labor negotiator(s) to discuss compensation of the City Manager, an unrepresented employee.

As a practical matter, a City Council designated labor negotiator can be a City Council Member(s), agency counsel, human relations staff, professional facilitator / labor negotiator, or special labor counsel. At the June 28, 2011, City Council meeting, the City Council directed that the City Attorney's office research and return with the names of three qualified labor negotiators that may serve to facilitate future Council-Manager negotiations concerning compensation.

DISCUSSION/ANALYSIS:

Government Code §54957.6 allows the City Council to select and identify its designated representative(s) for purposes of conducting a Closed Session meeting with its authorized labor negotiator(s) regarding the compensation of the City Manager, an unrepresented employee. To do so, however, the City Council must first place the appointment of a labor negotiator on the open and public session of the agenda and select a labor negotiator prior to discussing compensation in Closed Session. Under the Brown Act, however, the City Council must take "final action" on changes to salary or other compensation, if any, in open session after conferring with the Council-designated representative(s) during Closed Session.

RECOMMENDATION: THE CITY COUNCIL HAS THE OPTION TO SELECT AND APPOINT A DESIGNATED REPRESENTATIVE(S) FOR PURPOSES OF CONDUCTING A CLOSED SESSION REGARDING THE COMPENSATION OF THE CITY MANAGER, AN UNREPRESENTED EMPLOYEE.

The law firm of Liebert, Cassidy, and Whitmore specializes in labor relations and negotiation services. Based on research conducted by the City Attorney, the following three attorneys, who specialize in labor relations, are available to be retained by the City Council and are offered for your consideration: (1) Daniel C. Cassidy; (2) Mark Meyerhoff; and (3) Jeffrey C. Freedman. Copies of their resumes are attached hereto for your review.

FISCAL IMPACT:

The City Council has the option of appointing a City Council Member(s), agency counsel, qualified labor / management facilitator, or special labor counsel to serve as the City Council's designated representative. The professional hourly rate for the law firm of Liebert, Cassidy and Whitmore is \$300 per hour. In the event the City Council votes to retain special labor counsel, it is recommended that the City Council also authorize the City Attorney to execute a retainer Agreement for special counsel services.

RECOMMENDATION: THE CITY COUNCIL HAS THE OPTION TO SELECT AND APPOINT A DESIGNATED REPRESENTATIVE(S) FOR PURPOSES OF CONDUCTING A CLOSED SESSION REGARDING THE COMPENSATION OF THE CITY MANAGER, AN UNREPRESENTED EMPLOYEE.

ATTACHMENTS:

- Resumes



Daniel C. Cassidy
Partner

Los Angeles

dcassidy@lcwlegal.com

Tel: 310.981.2000

Fax: 310.337.0837

Dan Cassidy is among the most experienced and accomplished practitioners in the fields of public sector labor relations, negotiations and employment law. For more than 30 years, he has effectively advocated on behalf of counties, cities, special districts, community colleges and school districts in negotiations, arbitrations and in civil service commission and other administrative hearings. Dan, a founding partner of Liebert Cassidy Whitmore, has negotiated hundreds of labor agreements for his public agency clients, and various public safety, general, professional, and supervisory units. He has also represented public agencies as a presenter and panel member in numerous interest arbitrations and fact-finding proceedings.

Prior to founding the Firm, Dan served as Chief of the Labor Relations Division of the Los Angeles County Counsel's Office, where he gained first-hand knowledge of the needs of his public agency clients.

A well-established and widely respected authority on labor relations, Dan has also lectured widely on labor relations - at the National College of District Attorneys at the University of Houston School of Law, at the University of Southern California School of Public Administration, at California State University at Long Beach and before numerous other professional and educational organizations.

Education

JD, Loyola Marymount University School of Law
BS, University of Southern California

Legal Expertise

Employment Law
Labor Relations and
Negotiation Services

Daniel C. Cassidy

Affiliations

Los Angeles County Bar Association, 1969-2010

California Bar Association Public Sector Labor Law Section, Since Formed

American Bar Association, 1969-2010

American Bar Association Public Sector Labor Law Section

Awards

Selected for inclusion in *Southern California Super Lawyers 2006-2010*

Benno Brink Memorial Award



Jeffrey C. Freedman

Partner

Los Angeles

jfreedman@lcwlegal.com

Tel: 310.981.2000

Fax: 310.337.0837

Jeff Freedman has forty years of experience representing public agencies as well as private companies in all areas of labor and employment relations law. Jeff joined Liebert Cassidy Whitmore in 2002 after having been a partner in his own labor law firm for more than twenty years and in a large national firm.

His areas of practice include representing clients in state and federal court litigation, before the EEOC, Fair Employment and Housing Commission, California OSHA, the NLRB, and other state and federal regulatory agencies.

He is also experienced in representing public agency clients in the meet and confer process, disciplinary and grievance matters, arbitrations, wage and hour matters, and in interpreting and applying laws such as Title VII, the Americans with Disabilities Act, the Fair Employment and Housing Act and the Family and Medical Leave Act. Jeff has developed a detailed understanding of both the employment and public access provisions of the ADA.

Jeff has published several dozen articles on various employment law issues and has frequently spoken before employer groups on labor and employment law matters. He has been involved in helping improve the judicial system as a member of many court and bar association committees, and has served as a member of the Board of Trustees of the Los Angeles County Bar Association and as President of the Century City Bar Association. He presently serves as a mediator for the Los Angeles County Superior Court and as arbitrator in attorney-client fee disputes for the L.A. County Bar Association.

He is also a contributor to the firm's [California Public Agency Labor & Employment Blog](#).

He was a California Deputy Attorney General for five years.

Education

JD, University of California, Los Angeles School of Law
BA, Occidental College

Legal Expertise

Education Law
Employment Law
Investigations
Labor Relations and
Negotiation Services
Litigation Services
Public Safety
Retirement
Wage and Hour

Jeffrey C. Freedman

Representative Matters

Litigation:

Professional Peace Officers of Los Angeles v. County of Los Angeles (2010) - Pursuant to the Los Angeles County Code, supervisors must earn at least one dollar more per hour than their subordinates under certain criteria. At the direction of the County's Chief Executive Office, the Sheriff's' Department issued specific eligibility guidelines that clarified existing practice and criteria contained in the County Code and County Interpretive Manual. PPOA filed suit for back pay, injunctive and declaratory relief alleging that the guidelines included additional criteria than was required to earn the bonus pay and were an unreasonable interpretation of the County Code. The court found that the guidelines were a reasonable interpretation of and were consistent with the County Code. Judge Brazile denied relief on all causes of action and entered costs in favor of the County.

Affiliations

Los Angeles County Bar Association, 1985, Board of Trustees

Century City Bar Association, 1981 (President), 1976-1985 (Board Member)

Century City Chamber of Commerce, 1985 (President), 1981-1990 (Board Member)

Awards

Selected for inclusion in *Southern California Super Lawyers 2007-2009*

Publications

Overtime Pay For Off-Duty Cell Phone Calls And Text Messages?, *Los Angeles/San Francisco Daily Journal*, June 2011

Federal Court of Appeals in Chicago Finds Software Account Manager Exempt from Overtime Under FLSA's Administrative Exemption, June 2011

Complaining About Harassment To The Perpetrator May Be Enough To Put The Employer On Notice, April 2011

Court Of Appeal Issues Second Decision Holding Anti-Strike Injunction Statutes Invalid, February 2011

Court Of Appeal Holds That Company Lawfully Read Employees Emails To Her Attorney Written On Company Computer, February 2011

Faith, Fashion, And The American Workplace, *Los Angeles/San Francisco Daily Journal*, September 2010

Faith, Fashion, and the American Workplace: An Employee's Appearance May Be Protected By Religion, September 2010

Court Of Appeal Strikes Down As Unconstitutional Two California Laws Which Prohibited Injunctions In Labor Disputes, August 2010

Jeffrey C. Freedman

New Jersey Company Unlawfully Accesses Employee's E-mails, *Los Angeles/San Francisco Daily Journal*, April 2010

Does FBOR Require "Transactional Immunity"?, *Employee Relations Department Newsletter*, February 2010

Firefighters: Immunized To What Extent?, *Los Angeles/San Francisco Daily Journal*, December 2009

Pay for Commuting And 'Off-the-Clock' Work, *Los Angeles/San Francisco Daily Journal*, October 2009

Are Your Layoffs Legal?, *Los Angeles/San Francisco Daily Journal*, February 2009, with Oliver Yee



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Mark represents clients in all types of civil litigation, administrative proceedings and arbitrations. Mark regularly advises and represents clients in all aspects of employment and traditional labor relations matters.

Mark utilizes his employment law and litigation experience and expertise for the benefit of our firm's clients in such matters as discipline and termination arbitrations and hearings; state and federal court actions involving harassment, civil rights, discrimination, writs of mandate relating to meet and confer disputes, Public Safety Officer Procedural Bill of Rights issues, administrative charges of harassment and discrimination brought before the DFEH and EEOC and several court of appeal arguments.

Notably, Mark has successfully tried a federal court case involving civil rights and retaliation claims. Mark has also worked on two matters which resulted in two published decisions, including a recent decision in which the California Supreme Court elaborated upon the scope of meet and confer obligations for public sector entities. Mark has also successfully litigated numerous other administrative and court proceedings on behalf of the firm's clients.

In addition to his litigation expertise, Mark continuously counsels clients on a variety of labor relations matters, including major labor disputes and strikes, unfair labor practice charges, bargaining unit disputes, collective bargaining agreement interpretations and union organizing issues. Mark also develops and updates personnel rules, policies and ordinances for public sector clients and routinely presents training programs and workshops for supervisors and managers.

Prior to joining Liebert Cassidy Whitmore in 2001, Mark represented employers in labor and employment law for a national employment law firm. Mark litigated several cases in both state and federal court, including claims for wrongful termination, harassment, discrimination, labor relations, wage and hour issues, privacy and trade secret disputes.

Education

JD, Loyola Marymount University School of Law
BA, University of California, Santa Barbara

Legal Expertise

Class Action Litigation
Employment Law
Investigations
Labor Relations and
Negotiation Services

Mark Meyerhoff

Litigation Services
Public Safety

Representative Matters

Appellate:

Lewitt v. Lavin (2009) - In an unpublished opinion, the California Court of Appeal, Second District agreed with the Sixth District's *Gilbert v. City of Sunnyvale* ruling, holding that an interrogated officer's discovery rights under the Public Safety Officers Procedural Bill of Rights Act are limited to the investigation reports and complaints only, and only after the officer has been interrogated and further proceedings are contemplated or prior to a further interrogation.

Litigation:

Jeong Ko v. City of La Habra (2011) - Represented the City on a discrimination suit. Plaintiff alleged the City discriminated against him by violating the federal military leave law, USERRA. Summary judgment granted in favor of City. Plaintiff's cross-motion for summary judgment denied. The court correctly determined that USERRA does not entitle an employee while on leave to automatically receive promotions or pay increases which are generally based on merit. The court distinguished job advancement based solely on seniority as opposed to merit. With pure seniority the employee receives promotion and pay increases "automatically" while on leave.

Batts et al. v. City of Los Angeles, et al. (2010) - LCW successfully defended the City of Los Angeles, the Los Angeles Police Department, Chief William Bratton, and other high-level Police Department command staff in a retaliation action brought by nine police department sergeants who alleged they had suffered adverse employment actions because of their participation in a wage and hour litigation against the City. The alleged adverse actions included disciplinary investigations, relief from duty, suspension, transfer, and denial of promotion. Plaintiffs attempted to bring the matter as a class action, but the Court dismissed the class allegations. Following depositions of each Plaintiff, of Chief Bratton, and some individual defendants, LCW brought nine summary judgment motions, one for each Plaintiff. The Court granted all the motions, resulting in a defense victory on all claims.

Justin Tackett v. County of Imperial (2007) - Summary judgment was awarded in this lawsuit brought by a Sheriff Deputy claiming retaliation and race discrimination.

Ho v. City of Azusa (2007) - Obtained a summary judgment on behalf of the city in this case brought by the union president alleging first amendment retaliation.

Bohacik v. City of Hermosa Beach (2006) - Obtained summary judgment in favor of the City in this Public Safety Officers' Procedural Bill of Rights Act case involving internal affairs investigation.

Lewitt v. City of Hermosa Beach (2006) - Successful in obtaining a summary judgment in this law enforcement investigation case.

Claremont Police Officers Ass'n v. City of Claremont (2006) - In a case handled by LCW at the superior court level, the Supreme Court adopts the lower court ruling by determining that a Police Department's implementation of racial profiling study is not subject to meet and confer requirements.

Ware v. City of Pasadena and Chief Bernard Melekian (2004) - Wrongful termination and Freedom of Speech case in a Federal Court jury trial. We won a defense verdict on the wrongful termination claim and, based on the juror's answers to proposed questions, the Judge held that the balance was in favor of the City on the freedom of speech claim. The Judge granted a motion for judgment as a matter of law on all of the claims on behalf of the Defendants.

Publications

Mark Meyerhoff

A Supervisor's Discriminatory Intent Can Be Source Of Liability For Agencies, *California Special District Association (CSDA) Magazine, Volume 6, Issue 3, May 2011*, with Frances Rogers

Understanding and Utilizing the 2009 Amendments to the Family Medical Leave Act, *IPMA-HR | HR News Magazine, March 2011*, with Lauren Liebes

Public Agencies Should Take The Time To Examine Workplace Violence Policies, *California Special District Association (CSDA) Magazine, Volume 6, Issue 2, March 2011*, with Frances Rogers

Ethics, Conflicts of Interests, and California Law, *California Special District Association (CSDA) Magazine, Volume 6, Issue 7, January 2011*, with Frances Rogers

Your Rights Under FERPA, *Campus Safety Magazine, January 2011*, with Alex Wong

The Top 5 FLSA Mistakes Special Districts Make, *California Special District Association (CSDA) Magazine, Volume 5, Issue 5, September 2010*, with Connie C. Almond

The Top 10 FLSA Mistakes Public Employers Make, *IPMA-HR | HR News Magazine, July 2010*, with Lauren Liebes

Bargaining During Lean Economic Times: The Duty to Meet and Confer, *The Public Law Journal, June 2010*

Tuning Into Your Employees: Video Surveillance in the Workplace, *Publication of the California Special Districts Association, May 2010*, with Connie C. Almond

The Impact Of AT&T V. Hulteen, *LAW360, June 2009*

Ruling Encourages Diligent Work on Evidence Early in Litigation, *Los Angeles/San Francisco Daily Journal, September 2006*

US Supreme Court and CA Supreme Court Establish Materiality as Standard for What Constitutes Adverse Employment Actions in Retaliation Cases, *Employment Practices Monthly, August 2006*

The California Supreme Court alters the Employment Law Landscape: The Shifando and McGinnis decisions, February 2004

Presentations

Employees and Driving - Ventura/Santa Barbara ERC - Webinar - April 18, 2012

Preventing Workplace Harassment, Discrimination and Retaliation - Rancho Simi Recreation & Park District - Simi Valley - November 8, 2011

Mitigating Employment Liability Risks for Law Enforcement - ERMA - Banning - October 19, 2011

Hiring and Keeping Great Employees - California Special Districts Association Annual Conference - Monterey - October 13, 2011

Employees & Driving - East Inland Empire - Fontana - October 6, 2011

Code of Ethics - Superior Court of California, County of Orange - Santa Ana - September 30, 2011

FBOR - Santa Barbara County Fire Department - Santa Barbara - June 23, 2011

Mark Meyerhoff

Developing and Organizing Effective Agency Policies - Special District and Local Government Institute
Administrator Seminar - San Diego - June 10, 2011

Preventing Workplace Harassment, Discrimination and Retaliation - Food Services International - Los Angeles -
June 6, 2011

Legal Issues Regarding Hiring - City of Glendale - Glendale - May 24, 2011

Supervisory Skills for the First Line Supervisor/Manager - City of La Mesa - La Mesa - May 19, 2011

Supervisory Skills for the First Line Supervisor/Manager - City of La Mesa - La Mesa - May 18, 2011

Ethics in Public Service - City of Baldwin Park - Baldwin Park - May 17, 2011

Freedom of Speech and Right to Privacy - Labor Relation Information System - LRIS - Las Vegas - May 13, 2011

12 Steps to Avoiding Liability - LA County Management Attorneys Consortium - Los Angeles - May 12, 2011

Supervisory Skills for the First Line Supervisor/Manager - East Inland Empire ERC - Fontana - May 5, 2011

Crucial Personnel Issues for Managers - Imperial County - El Centro - May 4, 2011

Code of Ethics - Superior Court of California, County of Orange - Santa Ana - April 28, 2011

Preventing Workplace Harassment, Discrimination and Retaliation - Entertainment Partners - Burbank - April 21,
2011

12 Steps to Avoiding Liability and Finding the Facts: Disciplinary and Harassment Investigations - City of
Beverly Hills - Beverly Hills - April 14, 2011

Preventing Workplace Harassment, Discrimination and Retaliation - Housing Authority for the City of Los
Angeles - HACLA - Torrance - April 11, 2011

"Performance Management: Evaluation, Documentation and Discipline" - Gateway Public ERC - Huntington
Park - April 7, 2011

Employees and Driving - Coachella Valley ERC - Cathedral City - April 5, 2011

Ethical Decision Making - Coachella Valley ERC - Cathedral City - April 5, 2011

Public Meeting Law (the Brown Act) and the Public Records Act - Monterey Bay ERC - Webinar - March 31,
2011

The Meaning of At-Will, Part-Time & Contract Employment - Orange County Human Resources Consortium - San
Clemente - March 24, 2011

Prevention and Control of Absenteeism and Abuse of Leave & Super Manager or Super Spy - City of Beverly
Hills - Beverly Hills - March 11, 2011

Prevention and Control of Absenteeism and Abuse of Leave and Super Manager or Super Spy - City of Beverly
Hills - Beverly Hills - March 10, 2011

Supervisory Skills for the First Line Supervisor/Manager - Allan Hancock College - Santa Maria - March 4, 2011

Mark Meyerhoff

Exercising Your Management Rights - South Bay ERC - Torrance - March 2, 2011

What You Need To Know About Local Government Law - Special District Institute - Anaheim - February 18, 2011

A No Holds Barred Approach to Employee Body Piercing, Tattoos and Dress Codes - West Inland Empire ERC - Chino Hills - January 27, 2011

FBOR - Pasadena Fire Department - Pasadena - January 24, 2011

Disaster Service Workers - Imperial County - El Centro - November 30, 2010

Ethics in Public Service - SCCCDC ERC - Webinar - November 5, 2010

Performance Management: Evaluation, Documentation and Discipline - Central Valley ERC - Clovis - November 4, 2010

Generational Diversity and Succession Planning: Opportunities for Building a Stronger Workforce - Central Valley ERC - Clovis - November 4, 2010

Generational Diversity and Succession Planning: Opportunities for Building a Stronger Workforce - West Inland Empire ERC - Upland - November 3, 2010

Introduction To Public Service - West Inland Empire ERC - Upland - November 3, 2010

Depositions and Trial Testimony - Independent Cities Risk Management Authority - ICRMA - Cerritos - October 28, 2010

Ethical Decision Making - Los Angeles County Human Resources Consortium - Los Angeles - October 21, 2010

Ethics in Public Service - City of La Mesa - La Mesa - October 19, 2010

Code of Ethics - Superior Court of California, Orange County - Santa Ana - October 8, 2010

Preventing Workplace Harassment, Discrimination and Retaliation - Ventura Regional Sanitation District - Santa Paula - October 5, 2010

FBOR - City of Arcadia - Arcadia - September 28, 2010

FBOR - City of Arcadia - Arcadia - September 27, 2010

Ensuring Brown Act Compliance - Update - California Special Districts Association Annual Conference - Newport Beach - September 22, 2010

Must Have Communication Protocols for District Staff & Board Members - California Special Districts Association Annual Conference - Newport Beach - September 21, 2010

Issues and Challenges Regarding Drugs and Alcohol in the Workplace - Imperial Valley ERC - El Centro - September 16, 2010

Ethics in Public Service - Imperial Valley ERC - El Centro - September 16, 2010

Preventing Workplace Harassment, Discrimination and Retaliation - Ventura Regional Sanitation District - 1st session - Oxnard & other sessions - Ventura - September 15, 2010

Handling Grievances - San Gabriel Valley ERC - Alhambra - September 8, 2010

Mark Meyerhoff

Annual Audit of Your Personnel Rules - Gateway Public ERC - La Mirada - September 2, 2010

Trial and Deposition Testimony - Independent Cities Risk Management Authority Meeting - Downey - August 18, 2010

Freedom of Speech and Right to Privacy for Firefighters - Labor Relation Information System - LRIS - Las Vegas - July 16, 2010

