



**CITY OF OROVILLE PLANNING COMMISSION
MONDAY, June 14, 2010, 6:00 P.M.
REGULAR MEETING AGENDA**

CITY COUNCIL CHAMBERS
1735 MONTGOMERY STREET, OROVILLE, CA 95965-4897

ALL MEETINGS ARE RECORDED

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, ANY DISABLED PERSON NEEDING SPECIAL ACCOMMODATION TO PARTICIPATE IN THE COMMISSION PROCEEDINGS IS REQUESTED TO CALL THE PLANNING DEPARTMENT, (530) 538-2430, PRIOR TO THE MEETING AND ARRANGEMENTS WILL BE MADE TO ASSIST YOU.

ROLL CALL

Commissioners Adonna Brand, Ronda Brunson, Randy Chapman, Chris Lambert, Hardeep Singh, Vice Chairperson Dan Gordon, Chairperson Damon Robison.

PLEDGE OF ALLEGIANCE

INSTRUCTIONS TO INDIVIDUALS WHO WISH TO SPEAK ON AGENDA ITEMS

This is the time the Chairperson will remind persons in the audience who wish to address the Commission on a matter that is on the agenda to fill out one of the cards located in the lobby and hand it to the clerk of the meeting. The Chairperson will also remind persons in the audience that under Government Code Section 54954.3, the time allotted for each presentation may be limited.

PUBLIC HEARING PROCEDURE

- A. Chairperson asks Staff to introduce agenda item.
- B. Chairperson opens item to public comment (proponents/opponents).
- C. Chairperson closes public comment period.
- D. Commission discussion and action.

PUBLIC HEARINGS

1. ORO BAY DEVELOPMENT AGREEMENT

The Planning Commission will conduct a public hearing and consider a development agreement for the Oro Bay Specific Plan Area between the City and Oro Bay Associates, LLC.

Staff Report: Rick Walls, PE

Staff Recommendation:

1. Adopt Resolution 2010-06 - A RESOLUTION OF THE OROVILLE PLANNING COMMISSION MAKING FINDINGS, AND RECOMMENDING APPROVAL OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OROVILLE AND ORO BAY ASSOCIATES, LLC FOR THE ORO BAY SPECIFIC PLAN AREA (ASSESSORS PARCEL NUMBERS 030-260-053 AND 030-260-054); and
2. Recommend that the City Council approve the Development agreement that has been requested by Oro Bay Associates, LLC.

2. MISSION OLIVE RANCH SUBDIVISION - (GPA 10-02 / ZC 10-01)
THIS ITEM WAS REMOVED FROM THE AGENDA

Staff is requesting that the Planning Commission review the proposed amendment to the General Plan Land Use Map (GPA No. 10-02), Zoning Change (ZC 10-01), and associated Negative Declaration for the property known as the Mission Olive Ranch Subdivision, and make a recommendation to amend the land use designation and zoning of the parcel to allow for the construction of single family homes for which entitlements have previously been granted and improvements have been constructed.

Staff Report: Rick Walls, PE

Staff Recommendation:

1. Adopt Resolution 2010-07 - A RESOLUTION OF THE OROVILLE PLANNING COMMISSION MAKING FINDINGS, ADOPTING A NEGATIVE DECLARATION FOR AND APPROVING GENERAL PLAN AMENDMENT NO. 10-02 AND ZONE CHANGE NO. 10-01 FOR ASSESSORS PARCELS NUMBERS 033-490-006 THROUGH 033-490-024; and
2. Recommend that the City Council should approve GPA 10-02 and ZC 10-01 to allow for the construction of single family homes for which entitlements have previously been granted and improvements have been constructed.

3. DISCUSSION OF SWIMMING POOL SETBACK REQUIREMENTS

The Planning Division is requesting that the Commission review and provide input on the appropriateness of Zoning Ordinance Section 26-13.090 regarding swimming pool setbacks.

Staff Report: Rick Walls, PE

Staff Recommendation:

1. Staff recommends that the Planning Commission review this information; allow the public to provide input, and direct staff regarding a potential change to Section 26-13.090 of the Oroville Zoning Ordinance.

ITEMS FOR CONSIDERATION:

HEARING OF INDIVIDUALS ON NON-AGENDA ITEMS

This is the time the Chairperson will invite anyone in the audience to address the Commission on a matter that is not listed on the agenda to step to the podium, state your name and address for the record, and make your presentation. Presentations will be limited to five minutes. The Commission is prohibited by State law from taking action or possible discussion on any item presented if it is not listed on the agenda, except under special circumstances as defined in the Government Code.

ADJOURN to **MONDAY, JULY 12, 2010** FOR A REGULAR MEETING OF THE OROVILLE PLANNING COMMISSION.

**OROVILLE PLANNING COMMISSION
STAFF REPORT**

TO: CHAIRPERSON AND COMMISSIONERS

FROM: RICK WALLS, P.E.
INTERIM DIRECTOR OF COMMUNITY
DEVELOPMENT AND PUBLIC WORKS

DATE: JUNE 14, 2010

SUBJECT: ORO BAY DEVELOPMENT AGREEMENT

SUMMARY

The Planning Commission will conduct a public hearing and consider a development agreement for the Oro Bay Specific Plan Area between the City and Oro Bay Associates, LLC.

DISCUSSION

The Oro Bay Specific Plan (OBSP) area encompasses approximately 421 acres of land located outside of the City's western limits between Wilbur Road and the existing City limit line. The Oro Bay project site has approximately 3,200 feet of frontage on Hwy 162 and approximately 4,930 feet of frontage on Wilbur Road. Oro Bay Associates, LLC. (hereinafter referred to as "Developer") has a equitable interest in the project site with an intention to develop the land as a master planned community.

On May 8, 2008, the Oroville City Council approved a resolution to certify the Environmental Impact Report for the Oro Bay Specific Plan and Annexation Area, a resolution to amend the City of Oroville General Plan Land Use Element text and diagram for project site, and an ordinance creating a specific plan pre-zoning designation for the project site. On May 20, 2008, the Oroville City Council approved an ordinance that adopted the OBSP as the zoning and development regulations for the OBSP area.

The Developer for the OBSP is seeking a development agreement (DA) pursuant to Government Code sections 65864 through 68869.5. The draft DA attached to this staff report was prepared by the Developer, the City Administrator and the City Attorney. The public hearing was noticed in the Mercury Register on June 4, 2010, with a copy of the notice mailed to the current property owners, to all property owners located with 300-feet of the project site and to other agencies expected to provide essential facilities or services to the project. A copy of the public hearing notice is attached to this staff report.

The main provisions of the DA are summarized as follows:

- Pursuant to Government Code section 65864 et seq., the DA would vest (freeze) the land use entitlements set forth in the Oro Bay Specific Plan adopted on May 8, 2008 (Project). The Project is located west of the City's limits and consists of 421 acres of land (Project Area). The Project would have the potential of including approximately 2,400 potential residential parcels with public on-site and off-site improvements within the Specific Plan. In this context, "vesting" means that only the existing Specific Plan and land use ordinances would apply to the Project. As such, future changes to the City's land use regulations would not apply to the Project if they conflict with the uses in the Specific Plan.
- Since the Project Area is not within the City limits, it would need to be annexed to the City. The term of the DA would be 20 years from the completion of the first annexation of a portion of the Project Area. It should be noted that the first phase of the annexation must be completed no later than December 31, 2018.
- The Project's permitted uses, density and intensity of use, maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public improvements would be set forth in the Specific Plan.
- Future land use approvals for the Project must be compatible with the requirements of the Specific Plan. However, future City land use regulations would be applicable to the Project to the extent they do not conflict with the Specific Plan and existing regulations. In section 4.6, the DA sets forth a list of new City regulations and land use ordinances that would conflict with the Specific Plan and therefore would be inapplicable to the Project. The following is a list of what types of new regulations would be considered inapplicable if they could:
 - (a) Limit or reduce the density or intensity of the Project development or size or buildings;
 - (b) Expand or increase Developer's obligations under the Regulations with respect to the provision of parking spaces, streets, roadways and/or any other public or private improvements or structures;
 - (c) Directly limit public services or facilities with capacity to serve the Project (e.g., water, drainage, sewer or sewage treatment capacity) to, within or available for use by the Project;
 - (d) Limit or control in any manner the timing or phasing of the construction or development of the Project allowed by the Regulations;
 - (e) Limit the location of buildings, structures, grading or other improvements relating to the development of the Project in a manner which is inconsistent with or more restrictive than the Regulations;

- (f) Limit the processing of applications for or procurement of later approvals.
- The DA would require the Project to pay existing and future City-wide development fees, processing fees and building permit fees.
 - The City would have the power to require mitigation measures on future tentative subdivision maps and conditional use permits relating to the implementation of the Specific Plan.
 - The development of the Project would be subject to changes in City regulations that are required by state or federal laws or regulations.
 - The life of a tentative subdivision map within the Project that is approved more than 24 months before the expiration of the DA would be for the same time period as the DA.
 - After written notice from the developer, the City would annually review whether the developer was complying with the DA.
 - The developer would be required to submit within ten years an initial application for a tentative subdivision map relating to the first phase of the Project.
 - The developer would be contractually obligated to comply with the provisions of the Specific Plan and would waive any rights to challenge the approval of the City's existing land use ordinances.
 - The City would agree to cooperate with the developer on the phasing of the annexation of the Project to the City.
 - The developer would have the right to sell, assign or transfer the DA to another entity as approved by the City Attorney in accordance with Exhibit B.
 - The DA would be in default if a party fails to perform any material provision for 45 days after written notice from the other party. If the default is not cured within 45 days from the notice, the DA would be subject to being terminated after a hearing before the City Council.
 - The developer would defend and hold harmless the City and its officers, employees and agents from liability, claims and costs because of the developer's operations under the DA.
 - The developer would also defend, indemnify and hold harmless the City and its officers, employees and agents from liability, claims and costs if the DA is legally challenged.

- Before the DA can be approved by the City, it must be presented to the Planning Commission at a noticed public hearing. The notice needs to include a brief explanation of the DA. Thereafter, the DA must be presented to the City Council at a noticed public hearing. The DA would be adopted as an ordinance after its second reading before the City Council. Thereafter, the DA would be recorded with the County of Butte within ten days and published in a newspaper of general circulation within 15 days. The DA becomes effective 30 days after its adoption.

RECOMMENDATIONS

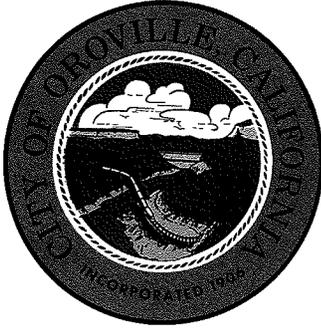
1. Adopt Resolution 2010-06 - A RESOLUTION OF THE OROVILLE PLANNING COMMISSION MAKING FINDINGS, AND RECOMMENDING APPROVAL OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OROVILLE AND ORO BAY ASSOCIATES, LLC FOR THE ORO BAY SPECIFIC PLAN AREA (ASSESSORS PARCEL NUMBERS 030-260-053 AND 030-260-054)
2. Recommend that the City Council approve the Development agreement that has been requested by Oro Bay Associates, LLC.

ATTACHMENTS

Public Hearing Notice

Resolution 2010 - 06

Draft Development Agreement Dated April 6, 2010 (30 Pages)



CITY OF OROVILLE

DEPARTMENT OF COMMUNITY DEVELOPMENT
AND PUBLIC WORKS
1735 MONTGOMERY STREET • OROVILLE, CA 95965-4897

530-538-2401
Fax 530-538-2426

NOTICE OF PUBLIC HEARING BEFORE THE CITY OF OROVILLE PLANNING COMMISSION

NOTICE IS HEREBY GIVEN that the City of Oroville Planning Commission will hold a public hearing on the project described below. The public hearing will be held at 6:00 p.m. on Monday, June 14, 2010, in the City Council Chambers, 1735 Montgomery Street, Oroville, CA. All interested persons are invited to attend or to submit comments in writing.

1. Proposed Development Agreement between the City of Oroville and Oro Bay Associates, LLC

In May 2008, the Oroville City Council adopted resolutions certifying an Environmental Impact Report and approving a general plan amendment approving the Oro Bay Specific Plan and the Oro Bay Specific Plan development regulations. The Oro Bay Specific Plan project site consists of 421 acres of land located west of the existing City limits at the southeast corner of SR 162 and Wilbur Road in unincorporated Butte County. A diagram of the project site is attached to this Notice.

Pursuant to Government Code section 65864 et seq., Oro Bay Associates, LLC ("Developer") has requested that the City consider a Development Agreement (DA) for the Oro Bay Specific Plan area ("Project"). The Developer intends to develop the Project as a master planned community with integrated neighborhoods subject to the Oro Bay Specific Plan. The Specific Plan includes residential neighborhoods with parks, a school facility, neighborhood commercial uses, and various open spaces linked by a trail system that will provide bicycle and pedestrian connections. The DA, if approved by the City, would vest the land use entitlements set forth in the Oro Bay Specific Plan adopted by the City on May 8, 2008, meaning that the entitlements could not be changed by the City while the Agreement is in effect.

Before the DA can be approved by the City, it must be presented to the Planning Commission at a noticed public hearing. Thereafter, the DA must be presented to the City Council at a noticed public hearing. The DA would be adopted as an ordinance after its second reading before the City Council. The DA becomes effective 30 days after adoption by the City Council. A copy of the proposed DA can be viewed at 1735 Montgomery Street, Oroville, CA.

Additional information regarding the Project described in this notice can be obtained from the Oroville Planning Department at 1735 Montgomery Street, Oroville, CA. Anyone desiring to submit information, opinions or objections is requested to submit them in writing to the Planning Department prior to the hearing. In accordance with Government Code Section 65009, if you

Building
Division
530-538-2425

Engineering
Division
530-538-2420

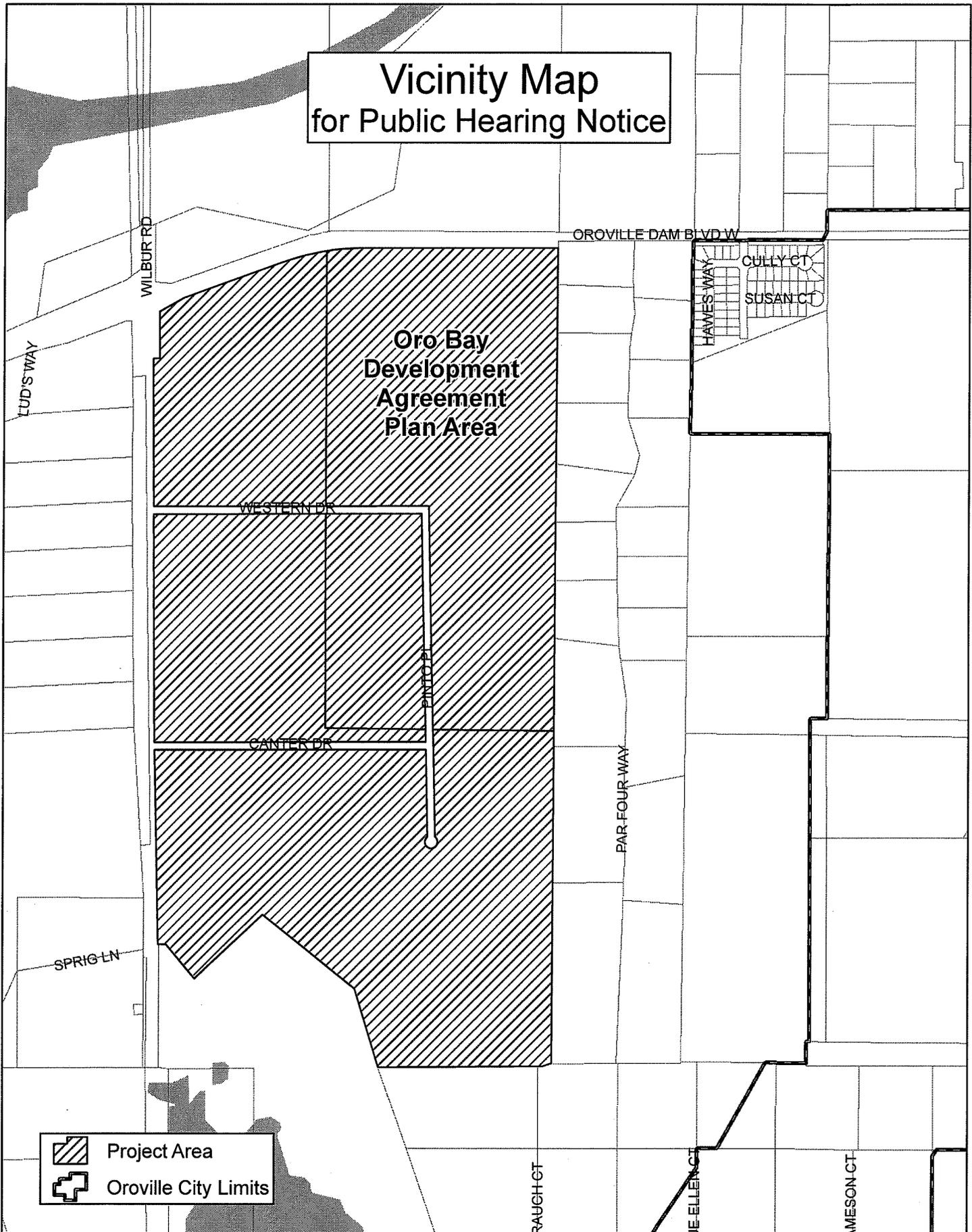
Planning
Division
530-538-2430

challenge action on these projects in court, you may be limited to raising only those issues you or someone else raised at the public meeting described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to, the public meetings.

Rick Walls, Interim Zoning Administrator

Posted/Published: June 4, 2010

Vicinity Map for Public Hearing Notice



 Project Area
 Oroville City Limits



**A RESOLUTION OF THE OROVILLE PLANNING COMMISSION MAKING FINDINGS,
AND RECOMMENDING APPROVAL OF A DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF OROVILLE AND ORO BAY ASSOCIATES, LLC FOR THE
ORO BAY SPECIFIC PLAN AREA (ASSESSORS PARCEL NUMBERS 030-260-053
AND 030-260-054)**

WHEREAS, The Oro Bay Specific Plan Area (OBSPA) encompasses approximately 421 acres of land located outside of the City's western limits between Wilbur Road and the existing City limit line; and

WHEREAS, On May 8, 2008, the Oroville City Council approved a resolution to certify the Environmental Impact Report for the Oro Bay Specific Plan (OBSP) and Annexation Area, a resolution to amend the City of Oroville General Plan land use designation for the OBSPA, and an ordinance creating a specific plan pre-zoning designation for the OSBPA; and

WHEREAS, pursuant to Government Code Section 65864 et seq., Oro Bay Associates, LLC (Developer) desires to enter into a Development Agreement (DA) with the City of Oroville for the OBSP; and

WHEREAS, the DA is exempt from provisions of the California Environmental Quality Act because an Environmental Impact Report was approved for the OBSPA on May 8, 2008; and

WHEREAS, the DA will vest for 20 years the development standards contained in the OBSP dated July 30, 2007; and

WHEREAS, under the terms of the DA, the Developer shall complete the first annexation phase and submit a tentative map application for the first phase of development within 10 years of the effective date of the DA; and

WHEREAS, on June 14, 2010 the Planning Commission held a noticed public hearing to consider the DA and the comments of public agencies and the public.

NOW, THEREFORE, BE IT RESOLVED BY THE OROVILLE PLANNING COMMISSION AS FOLLOWS:

1. Based upon the evidence in the record before it, the Planning Commission makes the following findings:
 - A. There is no evidence in the record before the Commission to support a finding that potentially significant adverse environmental effects are likely to occur as a result of approval of the DA.

- B. The DA complies with all State law and is consistent with the OBSP and the City General Plan governing the use of land.
 - C. Environmental impacts associated with the DA have already been analyzed and mitigation measures have been established in the EIR that was approved by the City Council on May 8, 2008.
2. The DA, as described herein, is recommended for approval by the City Council.
 3. The Zoning Administrator is designated as custodian of the documents and / or other materials which constitute the record of proceedings upon which the decision of the Planning Commission is based, and this record shall be maintained at Oroville City Hall, 1735 Montgomery Street, Oroville.

I HEREBY CERTIFY that the foregoing resolution was duly introduced and passed at a regular meeting of the Planning Commission of the City of Oroville held on the 14th day of June 2010, by the following vote:

AYES: COMMISSIONERS _____

NOES: COMMISSIONERS _____

ABSTAIN: COMMISSIONERS _____

ABSENT: COMMISSIONERS _____

ATTEST:

APPROVE:

SECRETARY

CHAIRMAN

**Recording Requested by
and when recorded, mail to**

City Clerk
City of Oroville
1735 Montgomery Street
Oroville, CA 95965

No Recording Fee

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF OROVILLE AND ORO BAY ASSOCIATES, LLC RELATIVE TO
THE DEVELOPMENT KNOWN AS ORO BAY**

_____, 2010

This document, including exhibits, totals __ pages.
Each page is numbered sequentially.

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into this _____ day of _____, 2010 (the "Effective Date"), by and between Oro Bay Associates, LLC, a limited liability company ("Developer"), and the City of Oroville, a municipal corporation, (the "City"), pursuant to the authority of sections 65864 through 65869.5 of the Government Code of the State of California.

RECITALS

- A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted section 65864 et seq. of the California Government Code (the "Development Agreement Statute").
- B. The Development Agreement Statute authorizes the City to enter into a property development agreement with any person having a legal or equitable interest in real property for the development of such real property in order to establish certain development rights in the real property.
- C. This Agreement is voluntarily entered into in consideration of the benefits to and the rights and obligations of the parties on the basis of the facts cited herein, understanding and intentions of the parties and in reliance upon the various representations and warranties contained herein.
- D. Developer is a limited liability company organized under the laws of the State of California and is in good standing thereunder.
- E. Developer has an equitable interest in that certain parcel of land (the "Subject Property") as more specifically described in **Exhibit A**, attached hereto.
- F. Developer intends to develop the Project Site as a master planned community with integrated neighborhoods subject to the Oro Bay Specific Plan. The Specific Plan includes residential neighborhoods with parks, a school facility, neighborhood commercial uses, and various open spaces linked by a trail system that will provide bicycle and pedestrian connections. Developer will also construct a looped primary collector road with landscape improvements.
- G. The Project Site is located west of the existing City limits and consists of approximately 421 acres of land.
- H. Developer seeks to comply with the conditions of approval and develop the Subject Property in accordance with the land use policies and goals set forth in the City's General Plan and the Oro Bay Specific Plan and with the terms and conditions of this Agreement.

- I. The Application for this Agreement was considered by the City at one or more duly noticed public hearings in accordance with the Development Agreement Statute.
- J. For the reasons recited herein, the City has determined that the Project is a development for which this Agreement is appropriate under the Development Agreement Statute.
- K. This Agreement will eliminate uncertainty in planning for and securing orderly annexation and development of the Project Site, assure progressive installation of necessary improvements, provide public services appropriate to each stage of development of the Project Site, ensure attainment of the maximum effective utilization of resources within the City at the least economic cost to its citizens, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.
- L. In exchange for the benefits to the City contained herein, the City has taken or will take all actions required so that Developer may begin and consummate development of the Project, including the approval, adoption or issuance of necessary development permits, phased annexation of the Subject Property, and the future ministerial approval of building plans and ministerial issuance of final maps, appropriate building permits, lot line adjustments, and other necessary or desired approvals and entitlements that are consistent with development of the Project.
- M. In exchange for the benefits to the City, Developer desires to receive the assurance that it may proceed with the Project in accordance with the existing land use ordinances, subject to the terms and conditions contained in this Agreement and to secure the benefits afforded to Developer by Government Code section 65865.3.
- N. It is the intent of the parties that all acts referred to in this Agreement shall be accomplished in such a way as to fully comply with CEQA, the Development Agreement Statute, and the Oro Bay Specific Plan.
- O. The terms of this Agreement support the vital and best interests of the City by ensuring that development of the Project will provide tax revenue for the City.
- P. The City has an expressed interest in ensuring the provision of regional and community level infrastructure and in pursuing the use of development agreements as a method whereby a level of assurance can be achieved concerning the service demands within planned communities so that long-range plans for needed infrastructure can be developed and implemented.

- Q. This Agreement is made and entered into in consideration of the mutual covenants and in reliance upon the various representations and warranties contained herein. The parties acknowledge that, in reliance on the agreements, representations and warranties contained herein, Developer will take certain actions, including making substantial investments and expenditures of monies, relative to the Project Site and the development thereof.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Statute, and in consideration of the mutual covenants and promises of the parties herein contained, the parties agree as follows:

AGREEMENT

SECTION 1. GENERAL ACKNOWLEDGEMENTS.

The parties acknowledge that: (i) the City, which has adopted a valid General Plan, has entered into this Agreement pursuant to the Development Agreement Statute and its police power in order to address public health and safety and general welfare concerns including those relating to the amount, density, intensity, and timing of development within the Subject Property and the need for public facilities and infrastructure in connection with the Subject Property and other property in the area; (ii) there is a certain authority under the police power to address public health and safety concerns that cannot legally be relinquished or restricted by this Agreement and that such authority is intended to be reserved and hereby is reserved to the City hereunder, provided that to the extent possible it shall be construed as to provide Developer with the assurances intended by this Agreement; (iii) nothing herein shall be construed to limit or restrict the exercise by the City of its power of eminent domain, and (iv) the Recitals stated above are true and correct.

SECTION 2. GENERAL PROVISIONS.

- 2.1 Property Description.** The legal description of the Subject Property is specifically set forth in **Exhibit A** attached hereto and made a part hereof.
- 2.2 Annexation of Subject Property.** The Subject Property is located within the sphere of influence of the City and consists of approximately 421 acres outside the existing City limits and in close proximity to City infrastructure.

The City has formalized its intent to annex the Subject Property, which must be approved by the Butte County Local Agency Formation Commission (“LAFCo”). The Developer’s ability to proceed with development of the Subject Property pursuant to this Agreement will be contingent upon annexation of the Subject Property into the City. As

specifically set forth in Government Code section 65865, subdivision (b), this Agreement:

[S]hall not become operative unless annexation proceedings annexing the Property to the City are completed within the period of time specified by the agreement. If the annexation is not completed within the time specified in the agreement or any extension of the agreement, the agreement is null and void.

For purposes of compliance with Government Code section 65865, subdivision (b), the first annexation phase must be completed no later than December 31, 2018, and the balance of the Property by the end of the Term. Developer reserves the right to annex the Subject Property in phases.

- 2.3 Effective Date.** This Agreement has been entered into by the parties as of the date and year first above-written, and shall be effective as of such date (“Effective Date”).
- 2.4 Term.** Upon annexation of the Subject Property or any portion thereof to the City, the term of this Agreement shall extend for a period of twenty (20) years from the completion of the first annexation, unless such term is terminated, modified, or extended by circumstances set forth in this Agreement or by mutual consent of the parties hereto. This Agreement shall automatically terminate and be of no further force or effect as to any single-family residence, any other residential dwelling unit(s) or any non-residential building, and the lot or parcel upon which such residence or building is located, when it has been approved by the City for occupancy.
- 2.5 Vesting.** During the term of this Agreement, Developer shall have a vested right to construct the Project, subject only to the terms and conditions of this Agreement, notwithstanding a change in rules, regulations, standards, and procedures, whether adopted by the City, its agencies, the City Council, or the voters.
- 2.6 Expiration of Term.** Following the expiration of term set forth in section 2.4 above, this Agreement shall be deemed terminated and of no further force and effect without the need of further documentation from the parties.
- 2.7 Time is of the Essence.** Time is of the essence with respect to this Agreement and of each and every term and condition hereof.
- 2.8 Enforceability of Agreement.** The City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this

Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change(s) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance the Existing Land Use Ordinances (as defined in section 3.12, infra.) or any other land use ordinances or building ordinances, resolutions or ordinances or other regulations adopted by the City which changes, alters or amends the Existing Land Use Ordinances applicable to the development of the Project Site at the time of the approval of this Agreement as provided by Government Code sections 65866 and 65867.5. This Agreement shall not prevent the City from denying or conditionally approving any subsequent development project application by a third party not a successor-in-interest hereto on the basis of such existing or new rules, regulations, and policies.

- 2.9 Further Assurances.** Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.
- 2.10 Singular and Plural; Gender.** As used herein, and except where the context requires otherwise, the singular of any word includes the plural and vice versa, and pronouns inferring the masculine gender shall include the feminine gender and vice versa.
- 2.11 Covenants Run With The Land.** All of the terms, provisions, covenants, and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors, and assigns, and all other persons or entities acquiring all or any portion of the Subject Property, or any interest therein, whether by operation of law or in any manner whatsoever, and the rights thereof shall inure to the benefit of such parties and their respective heirs, successors, and assigns.
- 2.12 Enforcement of Covenants.** Agreement shall be enforceable. All of the provisions of this as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including but not limited to, section 1468 of the Civil Code of the State of California.
- 2.13 Constructive Notice.** Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or the Subject Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Subject Property.

SECTION 3. DEFINITIONS.

Reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term.

- 3.1 Annexation Area.** Between the existing City Limits and the Oro Bay Specific Plan area, are 23 parcels that may be annexed into the City of Oroville along with the Subject Property. These 23 parcels are located south of SR 162 and east of the Subject Property and the Oro Bay Specific Plan area.
- 3.2 Approvals.** Any and all permits or approvals of any kind or character required under the terms of this Agreement to develop the Subject Property in the manner as described herein.
- 3.3 Building Ordinances.** Those building standards, of general application and not imposed solely with respect to the Subject Property, in effect from time to time that govern building and construction standards, including, without limitation, the City's building, plumbing, electrical, mechanical, grading, swimming, pool, sign, and fire codes.
- 3.4 CEQA.** CEQA means the California Environmental Quality Act, (California Public Resources Code § 21000, et seq.), and the CEQA Guidelines, (California Code of Regulations, title 14, section 15000, et seq.), as each is amended from time to time.
- 3.5 City.** City of Oroville, State of California.
- 3.6 Development.** The subdivision or improvement of the Subject Property for purposes of constructing the structures, improvements and facilities comprising the Project including, without limitation: grading, the construction and installation of infrastructure and public facilities related to the Project whether located within or outside the Subject Property; the construction of structures and building; and the installation of landscaping; but not including the maintenance, repair, reconstruction or redevelopment of any structures, improvements or facilities after the construction and completion thereof.
- 3.7 Development Agreement Legislation.** Sections 65864 through 65869.5 of the California Government Code as it exists on the Effective Date.
- 3.8 Development Approval(s).** Site-specific permits and other entitlements to use of every kind and nature approved or granted by the City in connection with the Development including, but not limited to: subdivision approvals (including tentative maps, vesting tentative maps,

final maps, parcel maps, and map waivers), development permits, conditional use permits, variances, oak tree permits, grading permits, building permits, and occupancy permits.

- 3.9 Development Fees.** All City adopted fees and monetary exactions that are designed to pay for new or expanded public facilities needed to serve, or to mitigate the adverse effects of, a given development project and that are imposed by the City as a condition of approval of discretionary or ministerial permits for, or in connection with the implementation of, that development project. The term “Development Fees” does not include processing fees and charges as described in this Agreement. The term “Development Fees” also does not include requirements that the Development be served by a public utility even if that public utility imposes a capital improvement fee or similar charge as a condition of providing service. All Development Fees shall be deposited in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency and expend those fees solely for the purpose for which the fee was collected, pursuant to California Government Code section 66006.
- 3.10 Director.** Director of the Department of Community Development and Public Works for the City.
- 3.11 Exactions.** All exactions, in-lieu of fees or payments, dedication or reservation requirements, obligations for on-site or off-site improvements, construction requirements for public improvements, facilities, or services called in connection with the development of or construction on the Subject Property, whether such requirements constitute subdivision improvements, mitigation measures in connection with environmental review of any project, or impositions made under any applicable ordinance or in order to make a project approval consistent with the anticipated land use policies of the City’s General Plan.
- 3.12 Existing Land Use Ordinances.** The Land Use Ordinances in effect as of the Effective Date.
- 3.13 General Plan.** The City of Oroville General Plan as duly adopted by the City Council.
- 3.14 Land Use Ordinances.** The ordinances, resolutions, codes, rules, standards, regulations, and official policies of City governing the development of the Subject Property, including but not limited to, the permitted uses of land, the density and intensity of use of land, exactions, impact fees, and the timing of development, all as applicable to the development of the Subject Property. Specifically, but, without limiting

the generality of the foregoing, Land Use Ordinances shall include the City's General Plan, the Oro Bay Specific Plan, City's Zoning Code and the City's Subdivision Ordinance. The term "Land Use Ordinances" does not include Regulations relating to the following: the conduct of business, professions and occupations generally; taxes and assessments; the control and abatement of nuisances; encroachment and other permits and the conveyances of rights and interests that provide for the use of or entry upon public property; and any exercise of the power of eminent domain.

- 3.15 Ministerial Approvals.** Approval of building plans and ministerial issuance of final maps, building permits, lot line adjustments, and other necessary or desired approvals and entitlements that are consistent with the development of the Project.
- 3.16 Persons.** As used herein, any reference to or use of the word "person" shall mean, in addition to a natural person, any governmental entity and any partnership, corporation, joint venture or any other form of business entity.
- 3.17 Project.** All uses and on-site and off-site improvements, contemplated by or embodied within the Oro Bay Specific Plan, as the same may hereafter be further refined, enhanced or modified pursuant to the provisions of this Agreement.
- 3.18 Project Site.** As used herein, the term "Project Site" shall have the same meaning as "Subject Property."
- 3.19 Regulations.** Constitutions, statutes, City ordinances and codes, City resolutions, and policies of the City.
- 3.20 Subject Property.** That real property described in **Exhibit A** attached hereto and made a part hereof.
- 3.21 Certain Other Terms.** Certain other terms shall have the meanings set forth for such terms in this Agreement.

SECTION 4. GENERAL DEVELOPMENT OF THE SUBJECT PROPERTY.

- 4.1 General Development.** Any development of the Project on the Project Site shall be conducted in accordance with the terms and conditions of this Agreement.
- 4.2 Permitted Uses.** The permitted uses of the Project Site, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes and

location of public improvements, and other terms and conditions of development applicable to the Project Site shall be those set forth in the Oro Bay Specific Plan as approved on May 8, 2008. The City is bound with respect to the uses permitted by this Agreement, and as set forth in the Oro Bay Specific Plan, insofar as this Agreement and the Oro Bay Specific Plan so provide.

- 4.3 Future Approvals.** The City hereby agrees that land uses set forth in the Oro Bay Specific Plan are approved or will be processed pursuant to the terms of this Agreement, provided that Developer satisfactorily complies with all preliminary procedures, actions, payments and criteria applicable as of the Effective Date and generally required of developers by the City for processing applications for developments at such time. The City agrees to process the necessary land use, zoning, site plan or subdivision approvals, and to grant other approvals and permits, including Ministerial Approvals, that will accomplish or facilitate development of the Project Site for the uses and to the density or intensity of development described and shown in the Oro Bay Specific Plan and/or this Agreement pursuant to those rules, regulation policies and conditions in force on the Effective Date.
- 4.4 Applicable Rules, Regulations and Land Use Ordinances.** Except as otherwise provided in this Agreement, the Developer is fully vested in the Specific Plan, Existing Regulations, and Existing Land Use Ordinances governing the permitted uses of the Project Site, the density or intensity of use, and the design, improvement, construction, building and occupancy standards and specifications applicable to the Project and the Project Site. The City shall have the right to impose reasonable conditions in connection with such subsequent discretionary permit actions which are not deemed Ministerial Approvals, but such conditions and actions shall not prevent development of the Project as contemplated by this Agreement and the Oro Bay Specific Plan.
- 4.5 Amendment to Applicable Ordinances.** In the event the City Zoning Code is amended by the City in a manner which provides more favorable site development standards than those in effect as of the Effective Date, Developer shall have the right to notify the City in writing of its desire to be subject to the new standards for the remaining term of this Agreement. If the City agrees, by resolution of the City Council or by action of a City official whom the City Council may designate, such new standards shall become applicable to the Subject Property. Should the City thereafter amend such new standards, upon the effective date of such amendment, the original new standards shall have no further application to the Subject Property, but Developer may notify the City and the City may agree by resolution to apply such amended new standards to the Subject Property.

4.6 Application of New Regulations and Land Use Ordinances. This Agreement shall not prevent the City in subsequent actions applicable to the Subject Property from applying new Regulations, and Land Use Ordinances that do not conflict with those Regulations, and Existing Land Use Ordinances applicable to the Subject Property and set forth herein; nor shall this Agreement prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new Regulations and Existing Land Use Ordinances .

New Regulations and Land Use Ordinances shall be deemed to be in conflict with Existing Regulations and Existing Land Use Ordinances and shall be deemed to conflict with this Agreement if, either with specific reference to this Subject Property or as part of a general enactment that directly or indirectly applies to this Subject Property, it would or could:

- (a) Limit or reduce the density or intensity of the Project development or otherwise require any reduction in the height, number, size or square footage of lots, structures or buildings;
- (b) Expand or increase Developer's obligations under the Regulations with respect to the provision of parking spaces, streets, roadways and/or any other public or private improvements or structures;
- (c) Directly limit public services or facilities with capacity to serve the Project (e.g., water, drainage, sewer or sewage treatment capacity) to, within or available for use by the Project;
- (d) Limit or control in any manner the timing or phasing of the construction/development of the Project allowed by the Regulations;
- (e) Limit the location of buildings, structures, grading or other improvements relating to the development of the Project in a manner which is inconsistent with or more restrictive than the Regulations;
- (f) Limit the processing of applications for or procurement of later approvals;

Clauses (a) through (f) above are intended as examples, and not as a comprehensive or exclusive list, of new regulations that would or could conflict

with the Regulations, and therefore with this Agreement. This section is written and included specifically to avoid the result in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465.

- 4.7 City Discretion.** Developer acknowledges that in the course of implementing the Project, the City will: (i) have a duty to implement the mitigation measures adopted as part of the Oro Bay Specific Plan and as may be required with subsequent discretionary actions; and (ii) will exercise discretion when acting on approvals such as tentative parcel and subdivision maps and conditional use permits, said discretion to be exercised in a manner as provided for in this Agreement.
- 4.8 Approval of Subsequent Tentative and Final Maps.** Although the Existing Land Use Ordinances shall determine the standards for granting, conditioning, or withholding approval of tentative, vesting tentative, and final tract and parcel maps, the procedures for processing approval of all such maps shall be governed by such ordinances and regulations as may then be applicable.
- 4.9 Changes in State and Federal Rules and Regulations.** Nothing in this Agreement shall preclude the application to the development of the Subject Property of changes in the City's laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in state or federal laws or regulations as provided in Government Code section 65869.5.
- 4.10 Processing Fees.** This Agreement shall not be construed to limit the authority of the City to charge processing fees for land use approvals, building permits or other similar permits or entitlements that are in force and effect on a citywide basis at the time application is made for such permits or entitlements.
- 4.11 Development Fees.** Development of the Subject Property and the Project shall be required to pay existing and future City-wide.
- 4.12 Water Supply Assessment:** Any tentative map for a subdivision, as defined in Government Code section 66473.7, shall comply with the provisions of that section.
- 4.13 Vesting of Later Entitlements** Subsequent approvals such as tentative subdivision maps and conditional use permits shall be fully vested as described herein.
- 4.14 Tentative Subdivision Map** The life of any tentative parcel or subdivision map approved more than twenty four months prior to the

expiration of the Term, shall be for the Term of this Agreement. Tentative maps approved within the last twenty four months of the term shall be valid for a period of time as otherwise provided for in the Subdivision Map Act (Government Code section 66410 et seq.) In the event that this Agreement is terminated at an earlier point in time than the stated Term, the life of any map shall extend for an additional 180 days after the date of early termination. After termination of the Agreement, tentative maps shall be eligible for extension as authorized by the Subdivision Map Act (e.g. Government Code section 66452.6).

SECTION 5. PERIODIC REVIEW.

The City shall conduct a review of this Agreement as set forth in the following subsections.

- 5.1 Annual Review.** After written notice from Developer to City thirty (30) days before the anniversary date of this Agreement, the City shall review the extent of good faith compliance by Developer with the terms of this Agreement at least once every 12-month period from the Effective Date. Failure of the City to conduct the review shall be deemed a finding of good faith compliance.
- 5.2 Procedure.** Such annual review shall be conducted in accordance with the City's duly adopted Development Agreement Procedures.
- 5.3 Notice.** The City shall notify Developer in writing of the date of review at least thirty (30) days prior thereto.
- 5.4 Good-faith Compliance.** During each annual review, Developer is required to demonstrate good faith compliance with the terms of this Agreement.
- 5.5 Production of Documents and Other Evidence.** Developer agrees to furnish such reasonable evidence and adequate documentation of good faith compliance as the City, in the exercise of its reasonable discretion, may require.
- 5.6 Cost of Annual Review.** The costs incurred by the City in connection with the annual review shall be borne by Developer, including reimbursement to the City as required.

SECTION 6. OBLIGATIONS OF AND CONTRIBUTIONS BY DEVELOPER.

- 6.1 **Obligations.** As consideration for this Agreement, the Developer shall comply with the requirements set forth in Section 6 and the Schedule of Performances attached as **Exhibit B**.
- 6.2 **Contributions.** In further consideration of the City entering into this Agreement, Developer has agreed to comply with applicable provisions of the Oro Bay Specific Plan and to perform certain obligations and provide certain contributions set forth therein, that the City acknowledges will have an overall benefit to the public and surrounding area, including but not limited to:
- (a) a variety of passive and active recreational amenities, including three neighborhood parks;
 - (b) an extensive network of trails, parks, and open space linked by a central activity spine;
 - (c) small, defined, individual planning areas or “neighborhoods”;
 - (d) one looped primary community collector road with landscape improvements and design features that provide community identity;
 - (e) preservation of significant existing environmental and drainage features; and
 - (f) enhancement of wetlands and sensitive species habitat.
- 6.3 **Nexus/Reasonable Relationship Challenges.** The Developer consents to, and waives any rights it may have now or in the future, to challenge the legal validity of, the conditions, requirements, policies or programs required by the Existing Land Use Ordinances including, without limitation, any claim that they constitute an abuse of the police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.
- 6.4 **Cooperation By Developer.** Developer will, in a timely, manner provide the City with all documents, applications, plans, and other information necessary for the City to carry out its obligations hereunder, and cause Developer, planners, engineers, and all other consultants to submit in a timely manner all required materials and documents therefore.

- 6.5 Other Governmental Permits.** Developer shall apply in a timely manner for such other permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Subject Property as may be required for the development of, or provision of services to, the Project.
- 6.6 Reimbursement for City's Efforts on Behalf of Developer.** To the extent that the City, at the written request of Developer, attempts to enter into binding agreements with other entities in order to ensure the availability of certain permits and approvals or services necessary for development of the Project as described in this Agreement, Developer shall reimburse City for all costs and expenses incurred in connection with seeking and entering into any such agreement. The City may request a deposit to cover its estimated expenses, and the City shall not undertake any work until such time as City and Developer jointly approve a scope of work and parameters for Developer reimbursement, if appropriate. Any fees, assessments or other amounts payable by the City pursuant to any such agreement described herein shall be borne by Developer except where Developer has notified City in writing, prior to City entering into such agreement, that it does not desire for the City to execute such agreement

SECTION 7. OBLIGATIONS OF THE CITY

In consideration of Developer entering into this Agreement, the City has agreed to the following with respect to the development of the Project Site:

- 7.1 Cooperation in Project Implementation.** Due to market conditions and other considerations, Developer may, in its sole discretion, phase annexation and development of the Project except as provided in the Schedule of Performances attached as **Exhibit B**. The City agrees to cooperate in the phasing and implementation of the Project. This includes:
- (a) the timely review, permitting and inspection of all Development Approvals necessary for Project development;
 - (b) the phasing of annexation in cooperation with Developer,
 - (c) cooperate and assist Developer in making application to LAFCo; and
 - (d) land based financing (i.e., the use of a Community Facilities District to finance Project related infrastructure, including fair share fees as required by the Westside Nexus Study.)
 - (e) timely action to study and implement the Westside Nexus Study.

- 7.2 Processing.** Upon satisfactory completion by Developer of all required preliminary actions and payments of appropriate processing fees, if any, the City shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement and the development by Developer of the Project Site in accordance with the Oro Bay Specific Plan, including, but not limited to, the following:
- (a) the holding of all required public hearings; and
 - (b) the processing and approval of all Ministerial Approvals and related matters as necessary for the completion of the development of the Project. In this regard, Developer will, in a timely manner, provide the City with all documents, applications, plans, and other information necessary for the City to carry out its obligations hereunder as required by the Existing Land Use Ordinances and shall cause Developer's planners, engineers, and all other consultants to submit in a timely manner all required materials and documents therefore as required by the Existing Land Use Ordinances.
- 7.3 Standard of Review.** The rules, regulations, and policies that apply to any Ministerial Approvals which must be secured prior to the construction of any portion of the Project shall be the Existing Land Use Ordinances. Any ministerial approval including, without limitation a building permit, shall be approved by the City within a reasonable period of time after a complete application is received by the City.
- 7.4 Contract Services.** If requested by Developer, at Developer's expense, the City shall obtain outside contractual services as necessary to ensure prompt processing, review, and evaluation of all development approvals; provided that the City shall, in its sole discretion, determine who shall be hired. The City shall use reasonable efforts to select consultants who can perform the services in a competent and timely manner.
- 7.5 Estoppel Certificates.** The City shall, at any time and upon not less than twenty (20) days prior written notice from the Developer, execute, acknowledge and deliver to the Developer, lender, investor, or other party identified by the Developer, an estoppel certificate stating the Developer is in compliance with the provisions of this Agreement.

If the City does not execute, acknowledge and deliver the statement within the time period set forth above, the party requesting such statement shall provide the City with a second notice by telecopy/facsimile transmission. The failure by the City to deliver such statement within ten (10) calendar days after such telecopy/facsimile notice, shall be conclusive evidence that this Agreement is in full force and effect, that there are no

uncured defaults by the Developer in the performance of this Agreement or of any City ordinances, regulations and policies regulating the use and development of the Property subject to this Agreement.

SECTION 8. AMENDMENTS.

8.1 Amendment by Mutual Consent. This Agreement may be amended from time to time by mutual consent of the original parties or their successors in interest, with the City's costs payable by amendment applicants in accordance with the provisions of Government Code section 65867 and 65868 and provided that: (i) any amendment to this Agreement that does not relate to the term, permitted uses, density or intensity of use, height or size of buildings, provisions for reservation and dedication of land, conditions, terms, restrictions and requirements relating to subsequent discretionary actions, monetary contributions by Developer or any conditions or covenants relating to the use of the Subject Property, shall not require notice or public hearing before the parties may execute an amendment hereto; and (ii) any other amendment of this Agreement shall follow the City's adopted procedures and requirements for the consideration of development agreements. Any amendment to this Agreement shall require only the signature of the City and owner or holder of an equitable interest in the real property to which the amendment applies.

8.2 Amendment of Development Permits. Upon the written request of Developer, the Oro Bay Specific Plan and Development Approvals may from time to time be amended or modified in the manner set forth in this Agreement and applicable State and City laws.

SECTION 9. TRANSFERS, ASSIGNMENTS, & MORTGAGEE PROTECTION.

9.1 Assignment and Assumption. Developer shall have the right to sell, assign, or transfer this Agreement with all the rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement. The conditions and covenants set forth in this Agreement and incorporated herein by exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. Developer shall provide the City with a copy of the Assumption Agreement as provided for in Section 9.2 below. Express written assumption by such purchaser, assignee or transferee, to the satisfaction of the City Attorney, of the obligations and other terms and conditions of this Agreement with respect to the Subject Property or such portion thereof sold, assigned or transferred, shall relieve the Developer selling, assigning or transferring such interest of such obligations so expressly assumed. Any such assumption of Developer's obligations under this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form of the Assumption

Agreement attached hereto as **Exhibit C** and incorporated herein by this reference, or such other form as shall be approved by the City Attorney.

- 9.2 Releases.** Developer, and any subsequent landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the City Clerk receives a copy of the Assumption Agreement; and the buyer, assignee, or transferee expressly assumes the obligations under this agreement pursuant to Section 9.1 contained hereinabove.
- 9.3 Mortgagee and Foreclosure Purchaser as Transferee.** No Mortgage (including the execution and delivery thereof to the Mortgagee) or taking of possession by a Mortgagee or acquisition by a Foreclosure Purchaser shall constitute a Transfer. A Mortgagee or a Foreclosure Purchaser shall be a Transferee when such Mortgagee or Foreclosure Purchaser has complied with the provisions of Section 9.1 above.
- 9.4 Mortgage Protection.** This Agreement shall be superior and senior to the lien of any Mortgage encumbering any interest in the Subject Property. Notwithstanding the foregoing, no Event of Default shall defeat, render invalid, diminish, or impair the lien of any Mortgage made for value, but, subject to the provisions of Section 9.5 below, all of the terms and conditions contained in this Agreement shall be binding upon and effective against any person (including any Mortgagee) who acquires title to the Subject Property, or any portion thereof or interest therein or improvement thereon, by foreclosure, trustee's sale, deed in lieu of foreclosure, or termination of the Mortgage.
- 9.5 Mortgagee Not Obligated; Mortgagee as Transferee.** No Mortgagee shall have any obligation or duty under this Agreement, except that nothing contained in this Agreement shall be deemed to permit or authorize any Mortgagee or Foreclosure Purchaser to undertake any new construction or improvement project, or to otherwise have the benefit of any rights of Developer, or to enforce any obligation of the City under this Agreement, unless and until such Mortgagee or Foreclosure Purchaser has become a Transferee in the manner specified in this Section 9.
- 9.6 Notice of Default to Mortgagee; Right of Mortgagee to Cure.** If the City receives notice from a Mortgagee requesting a copy of any notice of an Event of Default given to Developer hereunder and specifying the address for service thereof, then the City shall deliver to such Mortgagee, concurrently with service thereon to the Developer, any notice given with respect to any claim by the City that the Developer has committed an Event of Default. If the City makes a determination of noncompliance under this Agreement, the City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereof on the Developer. Such

Mortgagee shall have the right (but not the obligation) to cure or remedy, or to commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in the City's notice within the applicable time periods for cure specified in this Agreement. If, however, the Event of Default or such noncompliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession of the portion of the Subject Property, if such Mortgagee shall elect to cure such Event of Default, such Mortgagee shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall thereafter remedy or cure the Event of Default or noncompliance as soon as reasonably possible after obtaining possession. So long as such Mortgagee is pursuing cure of the Event of Default or noncompliance in conformance with the requirements of this Section and/or diligently pursuing an action to obtain possession of the Subject Property by receiver or otherwise, the City shall not exercise any right or remedy under this Agreement on account of such Event of Default or noncompliance, but in no case, will the City exercise any rights or remedies in less than one hundred and eighty (180) days of the Event of Default or noncompliance.

SECTION 10. DELAYS IN PERFORMANCE.

10.1 Permitted Delays. In addition to any other provisions of this Agreement with respect to delay, Developer and the City shall be excused for performance of their obligations hereunder during any period of delay caused by acts of God or civil commotion, riots, strikes, picketing, or other labor disputes, or damage to or prevention of work in process by reason of fire, floods, earthquake, or other casualties, acts or neglect of the other party, or restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting provisions of the Constitution or laws of the United States of America or the State of California or any codes, statutes, regulations, or executive mandates promulgated thereunder only to the extent such restrictions preclude the Project from proceeding. Any litigation between Developer and the City shall constitute a Permitted Delay, as well as delays resulting from the City's failure to complete studies required by LAFCo for annexation, which failure interferes with the Developer's ability to complete annexation under this section 10.1.

10.2 Third Party Actions. Any court action or proceeding brought by any third party to challenge this Agreement or any planning entitlements required from the City or any other governmental entity for development of all or any portion of the Project, whether or not Developer is a party to or real party in interest in such action or proceeding, shall constitute a Permitted Delay under this Section.

10.3 Notice of Permitted Delays. If written notice of such delay is given to either party within sixty (60) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

SECTION 11. DEFAULT.

11.1 Events of Default. Subject to any extensions of time by mutual consent in writing, and subject to the provisions of Sections 10.1 and 10.2 regarding permitted delays, the failure or unreasonable delay by either party to perform any material term or provision of this Agreement for a period of forty-five (45) days after the dispatch of a written notice of default from the other party shall constitute a default under this Agreement.

11.2 Notice of Default. Any notice of default given hereunder shall specify in detail the nature of the alleged event of default and the manner in which such event of default may be satisfactorily cured in accordance with the terms and conditions of this Agreement.

11.3 Cure Period. During the time periods herein specified for cure of an event of default, the party charged therewith shall not be considered to be in default for purposes of termination of this Agreement, institution of legal proceedings with respect thereto, or issuance of any building permit with respect to the Project.

11.4 General Default Remedies. After notice and expiration of the forty-five (45)-day period without cure, the non-defaulting party shall have such rights and remedies against the defaulting party as it may have at law or in equity.

11.5 Remedies After Expiration of Cure Period. After notice and expiration of the cure period, if the alleged default has not been cured in the manner set forth in the notice, the other party may at its option:

- (a) institute legal proceedings including but not limited to mandamus, specific performance, injunctive or declaratory relief, or termination of this Agreement; provided, however, that in no event shall the City be subject in any way to the payment of monetary damages; or
- (b) give the other party notice of intent to terminate this Agreement pursuant to Government Code section 65868. In the event that such notice is given, the City shall schedule the matter for public hearing before the City Council to review the matter and make specific written findings regarding the alleged default, such written findings to be issued no later than forty-five (45) days after the expiration of the cure period. Where

Developer is the party alleged to be in default, Developer shall be afforded a reasonable opportunity to respond to all allegations of default at such public hearing. The City shall provide Developer at least thirty (30) days prior written notice of such public hearing, as well as provide Developer copies of all City staff reports prepared in connection herewith, at least five (5) days prior to the public hearing.

- 11.6 Remedies Cumulative.** Any rights or remedies available to non-defaulting party under this Agreement and any other rights or remedies that such party may have at law or in equity upon a default by the other party under this Agreement shall be distinct, separate and cumulative rights and remedies available to such non-defaulting party and none of such rights or remedies, whether or not exercised by the non-defaulting party shall be deemed to exclude any other rights or remedies available to the non-defaulting party. The non-defaulting party may, in its discretion, exercise any and all of its rights and remedies, at once or in succession, at such time or times as the non-defaulting party considers appropriate.
- 11.7 Developer Default.** No building permit shall be issued or building permit application accepted for any structure on the Subject Property after Developer is determined by the City, to be in default of the terms and conditions of this Agreement, and until such default thereafter is cured by Developer or is waived by the City. A default by Developer or successor in interest is not attributable to any other successor in interest.
- 11.8 Waiver.** All waivers must be in writing to be effective or binding upon the waiving party, and no waiver shall be implied from any omission by a party to take any action with respect to such event of default. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party shall not constitute waiver of such party's right to demand strict compliance by such other party in the future.
- 11.9 Scope of Waiver.** No express written waiver of any event of default shall affect any other event of default, or cover any other period of time specified in such express waiver.
- 11.10 Attorneys' Fees.** Should legal action be brought by either party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees; court costs and such other costs as may be fixed by the court. Reasonable attorneys' fees shall be based on comparable fees of private attorneys practicing in Sacramento County.
- 11.11 Venue.** In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the

State courts of the County of Butte or where appropriate, in the United States District Court, Eastern District of California, Sacramento, California.

SECTION 12. TERMINATION.

- 12.1 Effect of Termination.** Upon termination of this Agreement, the rights, duties and obligations of the parties hereunder shall, subject to the following provisions, cease as of the date of such termination.
- 12.2 Termination by City.** If the City terminates this Agreement because of Developers' default, then the City shall retain any and all benefits, including money or land received by the City hereunder.

SECTION 13. RELATIONSHIP OF PARTIES.

- 13.1 Project as a Private Undertaking.** It is specifically understood and agreed by and between the parties hereto that the development of the Project Site is a separately undertaken private development.
- 13.2 Independent Contractors.** The parties agree that the Project is a private development and that neither party is acting as the agent of the other in any respect hereunder.
- 13.3 No Joint Venture or Partnership.** The City and Developer hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Developer joint ventures or partners.
- 13.4 No Third Party Beneficiaries.** The only parties to this Agreement are Developer and the City. Except as to parties assuming this Agreement as specified in Section 9, there are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit, or be enforceable by any other person whatsoever.
- 13.5 Ambiguities or Uncertainties.** The parties hereto have mutually negotiated the terms and conditions of this Development Agreement, resulting in a product of the joint drafting efforts of both parties. Neither party is solely or independently responsible for the preparation or form of this agreement. Therefore, any ambiguities or uncertainties are not to be construed against or in favor of either party.
- 13.6 Cooperation:** The City and Developer recognize that upon annexation of a portion or all of the Subject Property, Developer will incur substantial liabilities in order to implement the Specific Plan. This will, in many cases,

require the Developer to expend funds to complete the final planning and engineering for all of the Subject Property regardless of whether or not all of the Subject Property has been annexed to the City as of that time. City's duty to cooperate expressly includes the duty of cooperation as to the annexation of later phases and Developer may reasonably rely upon City's duty to cooperate.

SECTION 14. APPLICABLE LAW.

This Agreement shall be construed and enforced in accordance with the laws of the State of California.

SECTION 15. SUPERSEDURE OF SUBSEQUENT LAWS OR JUDICIAL ACTION.

The provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with any new state or federal law or decision issued by a court of competent jurisdiction, enacted or made after the Effective Date that prevents or precludes compliance with one or more provisions of this Agreement. Immediately after enactment of any such new law, or issuance of such decision, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. Such modification or suspension shall be limited to just those matters necessary to meet the requirements of the new law or court decision.

SECTION 16. LEGAL CHALLENGE AND COOPERATION.

In the event of any legal or equitable action or other proceeding instituted by any third party (including a governmental entity or official) challenging the validity of any provision of this Agreement or any action taken by Developer or the City in furtherance of the Project, the parties hereby agree to cooperate in defending said action or proceeding at the Developer's expense under Section 18 of this Agreement. The City retains the right to hire its own legal counsel in the event of a legal challenge to this Agreement. Selection of legal counsel shall be at the City's sole discretion, subject the limitation that the fees and costs shall be the same as those charged the City for the performance of other legal services by the attorney, subject further to the limitation that the fees and costs shall not exceed those customarily charged in Sacramento County for like-kind litigation. All costs and fees associated with the City's defense counsel shall be borne by the Developer, which shall receive monthly invoices from the City of all costs and fees.

SECTION 17. HOLD HARMLESS AGREEMENT.

Developer hereby agrees to, and shall defend, save and hold the City and its elected and appointed boards, commissions, officers, agents, and employees harmless from: any and all claims, costs, and liability for any damages, personal injury or death, which may arise, directly or indirectly, from Developer or Developer's contractors, subcontractors, agents or employees, operations under this Agreement, whether such negligent operations by Developer or by any of Developer's contractors, subcontractors, agents or employees.

SECTION 18. INDEMNIFICATION.

Developer shall defend, indemnify and hold harmless the City and its agents, officers and employees against and from any and all liabilities, demands, claims, actions or proceedings and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees) which any or all of them may suffer, incur, be responsible for, or payout as a result of, or in connection with any challenge to the legality, validity or adequacy of this Agreement.

SECTION 19. NOTICES.

Any notice or communication required hereunder between the City or Developer shall be in writing, and may be given either personally or by registered mail, return-receipt requested. Notice, whether given by registered mail or personal delivery, shall be deemed to have been given and received on the actual receipt by any of the addresses designated below as the party to whom notices are to be sent. Any party hereto may at any time, upon written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

To City:

City Administrator
City of Oroville
1735 Montgomery Street
Oroville, CA 95965

Developer:

Oro Bay Associates, LLC
c/o Maracor Development, Inc.
268 Bush Street
San Francisco, CA 94104

SECTION 20. EXHIBITS.

20.1 Designation of Exhibits. The reference to a specified Exhibit in this Agreement is a reference to a certain one of the exhibits listed below, as determined by the accompanying letter designation.

Exhibit A: Subject Property

Exhibit B: Schedule of Performances

Exhibit C: Assignment and Assumption Agreement

20.2 Incorporation by Reference. All exhibits are deemed incorporated by reference into this Agreement.

SECTION 21. SEVERABILITY.

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

SECTION 22. RECORDATION.

In order to comply with Government Code section 65868.5, the parties do hereby direct the City Administrator to cause a copy of this Agreement to be recorded with the County Recorder of the County, within ten (10) days after passage by the City of the ordinance approving this Agreement.

SECTION 23. ENTIRE AGREEMENT.

This Agreement and the Exhibits attached hereto contain all the representations and the entire agreement between the parties with respect to the subject matter, hereof. Except as otherwise specified in this Agreement and the Exhibits hereto, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits hereto.

SECTION 24. COUNTERPARTS.

This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

Executed at _____, California on _____, 2010____.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed as of the dates written above.

CITY OF OROVILLE

DEVELOPER *see notes below

By _____
_____, Mayor

By _____

[Name of Officer, Title]

CONTENT, APPROVED:

CITY OF OROVILLE

DEVELOPER *see notes below

By _____
_____, Mayor

By _____

[Name of Officer, Title]

FORM APPROVED:

By _____
_____, City Attorney

ATTEST:

By _____
_____, City Clerk

*Notes: If the Developer is a Corporation, then this document must be executed by the Corporation's Chief Executive Officer, President or Vice-President, on the one hand and the Corporation's Chief Financial Officer, Treasurer, Assistant Treasurer or Secretary on the other hand.

Developer's signature must be notarized.

Exhibit A

SUBJECT PROPERTY

[to be inserted]

Exhibit B

SCHEDULE OF PERFORMANCES

<u>ACTION</u>	<u>SCHEDULE</u>
1. Developer shall submit an application for tentative map relating to the first phase of the Subject Property	Within 10 years of the Effective Date
2. Developer shall submit a final map for the first phase relating to Subject Property	Within 36 months of tentative map approval

Exhibit C

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter “this Agreement”) is entered into this _____ day of _____, 200 __, by and between _____ (hereinafter called “Owner”) and, _____ (hereinafter “Assignee”).

RECITALS

A) On _____, 200__, the _____ and Owner entered into that certain agreement entitled “Mitigation Development Agreement,” approved by Ordinance (hereinafter “Agreement”), relative to the development known as the _____ (hereinafter “Subject Property”).

B) Owner entered into a purchase and sale agreement whereby a portion of the Subject Property will be sold to Assignee, which portion of the Subject Property is identified and described in Exhibit “A,” attached hereto and incorporated herein by this reference (hereinafter the “Assigned Parcel(s)").

C) Owner desires to assign all of its interests, rights and obligations under the Agreement with respect to the Assigned Parcel(s).

D) Assignee desires to assume all Owner's rights and obligations under the Agreement with respect to the Assigned Parcel(s).

NOW, THEREFORE, Owner and Assignee hereby agree as follows:

1. Owner hereby assigns, effective as of Owner's conveyance of the Assigned Parcel(s) to Assignee, all of the rights, interest, burdens and obligations of Owner under the Agreement with respect to the Assigned Parcel(s). Owner retains all the rights, interest, burdens and obligations under the Agreement with respect to all other property within the Subject Property owned thereby.

2. Assignee hereby assumes all of the burdens and obligations of Owner under the Agreement, and agrees to observe and fully perform all of the duties and obligations of Owner under the Agreement, and to be subject to all the terms and conditions thereof, with respect to the Assigned Parcel(s), it being the express intention of both Owner and Assignee that, upon the execution of this Agreement and conveyance of the Assigned Parcel(s) to Assignee, Assignee shall be come substituted for Owner as the “Developer” under the Agreement with respect to the Assigned Parcel(s).

3. All of the covenants, terms, and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ASSIGNOR / OWNER

By: _____

By: _____

ASSIGNEE

By: _____

By: _____

**OROVILLE PLANNING COMMISSION
STAFF REPORT**

TO: CHAIRPERSON AND COMMISSIONERS

FROM: RICK WALLS, P.E.
INTERIM DIRECTOR OF COMMUNITY DEVELOPMENT AND PUBLIC WORKS

RE: DISCUSSION OF SWIMMING POOL SETBACK REQUIREMENTS

DATE: JUNE 14, 2010

SUMMARY

The Planning Division is requesting that the Commission review and provide input on the appropriateness of Zoning Ordinance Section 26-13.090 regarding swimming pool setbacks.

DISCUSSION

Section 26-13.090 of the Oroville Zoning Ordinance states the following:

In the rear setback area, swimming pools shall maintain a 10-foot setback from all property lines.

Within all residential zone districts, the rear setback is required to be 20 feet from the rear property line, per Development Standards Table 26-30.020-2. Due to ZO Section 26-13.090 (referenced above), if a swimming pool is proposed within the 20 foot rear setback, a 10-foot setback must be maintained on all sides. Due to these standards, staff was required to deny a zoning clearance for a proposed swimming pool because the configuration of the yard was unable to comply with setback standards.

Concern has been expressed to staff that these requirements are stricter than any other pool setback requirements within Butte County. Setbacks requirements for other Butte County jurisdictions are as follows:

- Butte County: 3 feet from all property lines
- Chico: 3 feet from all property lines
- Paradise: 5 feet from all property lines
- Gridley: No required setbacks
- Biggs: 5 feet from all property lines

The necessity to maintain a 10-foot setback reduces the ability for Oroville home owners with smaller parcels to construct swimming pools.

RECOMMENDATION:

1. Staff recommends that the Planning Commission review this information, allow the public to provide input, and direct staff regarding a potential change to Section 26-13.090 of the Oroville Zoning Ordinance.

ATTACHMENT:

Oroville Zoning Ordinance Section 26-13.090 - *Accessory Buildings & Swimming Pools*

26-13.090 Accessory buildings and swimming pools.

A. Detached Accessory Buildings.

1. Height limits for detached accessory buildings are as follows:
 - a. For multi-story detached accessory buildings in which every floor above the ground floor is part of a second dwelling unit, the accessory building shall have a maximum height of 30 feet. However, if the accessory building is located in a required minimum setback, the building's height shall not exceed 15 feet.
 - b. For all other detached accessory buildings, the maximum height shall be 15 feet.
2. Detached accessory buildings shall not occupy more than 50 percent of the required minimum rear setback for main buildings.
3. Required minimum setbacks for detached accessory buildings are as follows:
 - a. Accessory buildings shall not be located in the required minimum front setback for main buildings.
 - b. 1 detached accessory building with no more than 120 square feet of gross floor area may be constructed in a required minimum side setback. For all other detached accessory buildings, the side setback requirements for main buildings shall apply.
 - c. A detached accessory building may be constructed on the rear lot line, provided that the rear lot line abuts an alley. In all other cases, the accessory building shall have a required minimum rear setback of 5 feet.
4. A detached accessory building shall be set back at least 6 feet from the foundation of the main building.

B. Attached Accessory Buildings.

1. Attached accessory buildings shall be allowed in all districts and shall be subject to the same development regulations as the main building.
2. Private garages, carports and other accessory buildings may be attached to and have a common wall with the main building, or may be connected by a breezeway.

C. Swimming Pools. Swimming pools, including lap pools, hot tubs, spas and

related equipment, are subject to the following requirements:

1. Swimming pools and related uses are not allowed in required minimum side setbacks or within any utility or access easement. In the rear setback area, swimming pools shall maintain a 10-foot setback from all property lines. All mechanical equipment associated with swimming pools and related uses shall be located a minimum of 5 feet from property lines and shall be enclosed, covered, or shielded so that it is not visible from adjacent properties or public rights-of-way.
2. Swimming pools and related uses are not included in site coverage unless covered by a roof structure.
3. All swimming pools and related uses shall be fenced as required by the City Building Code.