



# CITY OF ATASCADERO SPECIAL CITY COUNCIL AGENDA

## **MEETING INFORMATION:**

The City Council meeting will be held in the City Council Chambers and in-person attendance will be available at that location.

## **HOW TO OBSERVE THE MEETING REMOTELY:**

To observe remotely, residents can livestream the meeting on [Zoom](#), SLO-SPAN.org, on Spectrum cable Channel 20 in Atascadero, and listen live on KPRL Radio 1230AM and 99.3FM. The video recording of the meeting will repeat daily on Channel 20 at 1:00 am, 9:00 am, and 6:00 pm and will be available through the City's website and on the City's YouTube Channel. To observe remotely using the Zoom platform please visit:

[https://us02web.zoom.us/webinar/register/WN\\_ZwJ7a031S3KXauEym9ehaA](https://us02web.zoom.us/webinar/register/WN_ZwJ7a031S3KXauEym9ehaA)

## **HOW TO SUBMIT PUBLIC COMMENT:**

Public comment may be provided in-person.

Written public comments are accepted at [cityclerk@atascadero.org](mailto:cityclerk@atascadero.org). **Comments should identify the Agenda Item Number in the subject line of the email.** Such comments will be forwarded to the City Council and made a part of the administrative record. **To ensure distribution to the City Council before consideration of an item, please submit comments not later than 12:00 p.m. the day of the meeting.** All correspondence will be distributed to the City Council, posted on the City's website, and be made part of the official public record of the meeting. **Please note, comments will not be read into the record.** Please be aware that communications sent to the City Council are public records and are subject to disclosure pursuant to the California Public Records Act and Brown Act unless exempt from disclosure under applicable law. Communications will not be edited for redactions and will be printed/posted as submitted.

## **AMERICANS WITH DISABILITIES ACT ACCOMMODATIONS:**

Any member of the public who needs accommodations should contact the City Clerk's Office at [cityclerk@atascadero.org](mailto:cityclerk@atascadero.org) or by calling 805-470-3400 at least 48 hours prior to the meeting or time when services are needed. The City will use their best efforts to provide reasonable accommodations to afford as much accessibility as possible while also maintaining public safety in accordance with the City procedure for resolving reasonable accommodation requests.

## **DISCLOSURE OF CAMPAIGN CONTRIBUTIONS:**

Pursuant to Government Code § 84308, City Council Members are disqualified and not able to participate in any agenda item involving contracts (other than competitively bid, labor, or personal employment contracts), franchises, discretionary land use permits and other entitlements if the City Council Member received more than \$250 in campaign contributions from the applicant or contractor, an agent of the applicant or contractor, or any financially interested participant who actively supports or opposes the City's decision on the agenda item since January 1, 2023. Members of the City Council who have received, and applicants, contractors or their agents who have made, campaign contributions totaling more than \$250 to a City Council Member since January 1, 2023, are required to disclose that fact for the official record of the subject proceedings. Disclosures must include the amount of the campaign contribution and identify the recipient City Council Member and may be made either in writing to the City Clerk before the agenda item or by verbal disclosure during consideration.

City Council agendas and minutes may be viewed on the City's website:

[www.atascadero.org/agendas](http://www.atascadero.org/agendas)

Copies of the staff reports or other documentation relating to each item of business referred to on the Agenda are on file in the office of the City Clerk and are available for public inspection on our website, [www.atascadero.org](http://www.atascadero.org). Contracts, Resolutions and Ordinances will be allocated a number once they are approved by the City Council. The Minutes of this meeting will reflect these numbers. All documents submitted by the public during Council meetings that are made a part of the record or referred to in their statement will be noted in the Minutes and available for review by contacting the City Clerk's office. All documents will be available for public inspection by appointment during City Hall business hours.



# CITY OF ATASCADERO CITY COUNCIL

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## NOTICE OF SPECIAL MEETING

### AGENDA

Monday, December 2, 2024

City Hall Council Chambers, Fourth Floor  
6500 Palma Avenue, Atascadero, California

City Council Special Session:

6:00 P.M.

**SPECIAL SESSION – CALL TO ORDER: 6:00 P.M.**

**ROLL CALL:**

Mayor Moreno  
Mayor Pro Tem Funk  
Council Member Bourbeau  
Council Member Dariz  
Council Member Newsom

**A. PUBLIC HEARINGS:**

**1. Newton Development Agreement (DEV24-0075)**

- Fiscal Impact: None
- Recommendation: Planning Commission recommends Council: Introduce for first reading, by title only, Draft Ordinance to approve a Development Agreement between Scott Newton and the City of Atascadero, amend Title 9 to establish development agreement overlay zone DA1, and amend the official zoning map to establish DA1 on the subject property, and certify the proposed Mitigated Negative Declaration prepared for the properties located at 11450 Viejo Camino and 11505 El Camino Real. [Community Development]

**2. Ordinance Increasing the Atascadero Tourism Business Improvement District (ATBID) Assessment from 2% to 2.5%**

- Fiscal Impact: Should there be insufficient protests from the businesses to be assessed, and should the ordinance go into effect, additional ATBID revenues in an estimated amount of \$46,500 through June 30, 2025.
- Recommendation: Council conduct the first reading of the Draft ATBID Assessment Increase Ordinance amending Title 3, Chapter 16, section 3-

16.04, changing the assessment rate under Streets and Highways Code Section 36541(a) for lodging businesses within the Atascadero Tourism Business Improvement District from 2% to 2.5% for the remainder of FY 2024-2025 and setting a public hearing for the second reading of the Ordinance on December 10, 2024. [Community Services and Promotions]

## **ADJOURNMENT**



# CITY OF ATASCADERO

## CITY COUNCIL STAFF REPORT

Item A1

**Department:** Community Development  
**Date:** 12/02/2024  
**Placement:** Public Hearing

**TO:** JAMES R. LEWIS, CITY MANAGER  
**FROM:** PHIL DUNSMORE, COMMUNITY DEVELOPMENT DIRECTOR  
**PREPARED BY:** KELLY GLEASON, PLANNING MANAGER  
**SUBJECT:** Newton Development Agreement (DEV24-0075)

### RECOMMENDATION:

*Planning Commission recommends Council:*

Introduce for first reading, by title only, Draft Ordinance to approve a Development Agreement between Scott Newton and the City of Atascadero, amend Title 9 to establish development agreement overlay zone DA1, and amend the official zoning map to establish DA1 on the subject property, and certify the proposed Mitigated Negative Declaration prepared for the properties located at 11450 Viejo Camino and 11505 El Camino Real.

### REPORT-IN-BRIEF:

The owner of the subject properties, Scott Newton, has requested that the City enter into a Development Agreement to allow for and facilitate future development of the site with up to 42 residential units. A development agreement is a legally binding contract between a property owner and a local government that outlines the terms and conditions for a development project. Under Government Code Section 65867, the Planning Commission was required to conduct a public hearing on development agreements. The Commission reviewed the proposed agreement on October 15, 2024, and voted to recommend the Council adopt the agreement. The Development Agreement will set standards, land uses, and expectations for future site development and acts outside of the existing zoning code but remains consistent with the General Plan.

### DISCUSSION:

#### **BACKGROUND**

The property owner previously submitted use permit applications for a mini-storage development, one in 2018 and one in 2020. Those applications were both denied based on specific findings. In 2024, the owner and City entered into a settlement agreement stemming

from an ongoing court case between the owner and the City. In the settlement agreement, the City agreed to process a Development Agreement that would allow for future development of the site with a residential housing project of up to 42 units. This agreement allows the owner to establish uses that would not otherwise be allowed under existing zoning and sets forth City standards and expectations for future development. The Development Agreement would be valid for a period of 10-years. After such time, if the site has not been developed, use and development standards would revert to those of the underlying zoning district.

The draft development agreement was reviewed by the Planning Commission at the October 15, 2024 meeting. The Planning Commission recommends approval of the agreement on a 7-0 vote.

Construction of up to 42 homes on the lot will provide much needed, entry level, market rate housing for first time homebuyers looking to reside in Atascadero and will create a more compatible development for the neighborhood.

## **ANALYSIS**

The subject site is comprised of 2 parcels, one is vacant and the other contains an existing single-family residence. The current General Plan Designation and zoning is Public. The parcels contain a seasonal drainage that flows during the rainy season. The drainage is a tributary to Paloma Creek and eventually flows to the Salinas River. In order to create developable areas for the site the owner plans to realign this drainage and create a more defined creek channel.

The Development Agreement addresses actions and processes related to this creek realignment as well as other factors related to site development. The key factors are summarized below:

### **1. Creek Realignment**

The existing drainage may be realigned to accommodate a future project. Language in the Development Agreement allows for this to occur prior to submittal of any development plan. This will allow the owner or future developer to go through the FEMA process to shift the floodway and floodplain on-site and create certainty about the area of the site that can be developed. This process also includes City review for flood control and Department of Fish and Wildlife, Army Corps of Engineers, and Regional Water Quality Control Board review for the protection and mitigation related to impacts to any jurisdictional resources.

The permitting process is designed to ensure that all water currently accommodated on-site will remain on-site as part of the modifications to the drainage way. This analysis ensures that no downstream or upstream impacts will occur and that the modified flood plain limits do not impact adjacent properties not under the ownership of the applicant. Additional provisions in the agreement also include naturalization of the creek channel and maintenance of a setback between the realigned top of bank and any structures.

### **2. Future Site Design**

The Development Agreement allows for future development of up to 42 residential units. No formal development plan is submitted for approval as part of the development agreement and the agreement stipulates that all City development standards must be met by any future development, including all Objective Design Standards. The agreement also limits development to a maximum of 42 units and the owner has agreed to not request bonus units through any City or State program. This would also eliminate any State requirement that the City grant concessions for development standards in connection with the future housing project.

### **3. Site Access**

The development site has frontage on both Viejo Camino and El Camino Real. Access from El Camino Real presents challenges in terms of existing road width, traffic management entering and exiting, and slope from the edge of the roadway. Based on these factors, the negotiated Development Agreement stipulates that site access be from Viejo Camino only and requires that the main access driveway align with Bocina Lane to create a safe intersection. The agreement does allow the City Engineer to approve an alternative access location off Viejo Camino should a future developer wish to explore other options, however, Bocina provides the safest alignment and requires the least amount of modification to road improvements to achieve adequate center turn lanes and sight distance. Emergency access could be allowed from El Camino Real should a secondary access be required by the Fire Marshal.

### **4. Frontage Improvements**

The Development Agreement requires full frontage improvements along Viejo Camino, including lane restriping, bike lane, curb, gutter, and sidewalk. The traffic analysis prepared for the project also includes off-site improvements needed for pedestrian connectivity to adjacent commercial uses and the El Camino Real corridor to mitigate impacts to VMT (Vehicle Miles Traveled) through the support of multi-modal options. These improvements include a pedestrian path north to the existing sidewalk at the liquor store frontage and intermittent red curbing to ensure pedestrian safety. Bike lane striping or shared lane sharrow markings are also required along Viejo Camino where gaps in the bike facilities exist. As there is no formal project access from El Camino Real, no frontage improvements are required along this frontage.

### **5. Applicability of City Codes and Policies**

The Development Agreement requires any future project to meet existing City codes and regulations unless specifically clarified or superseded by the agreement. Of particular importance are City standards for annexation into the Community Facilities District (CFD) and consistency with affordable housing policies.

Current City policy requires all residential projects to annex into the existing CFD to offset costs associated with providing park maintenance and emergency service costs to new residents. The Development Agreement requires annexation into the CFD prior to permit

issuance for any residential unit or recordation of any subsequent map, whichever occurs first.

The City currently has an interim affordable housing policy in place that was adopted in 2003. The policy requires that affordable units be incorporated into new developments requiring legislative approval. Since 2003, regional studies have shown that higher density residential developments, by the nature of unit size and communal site amenities, are accessible to moderate and lower-income residents without recordation of a formal deed restriction. As this project will meet those density and design parameters, the project is determined to incorporate affordability by design and will not be required to deed restrict units.

### ***TRAFFIC***

A traffic analysis was completed based on the highest possible intensity of development for the site assuming build-out with the full 42-unit count. The traffic analysis assumed access from Viejo Camino consistent with Development Agreement parameters and determined that the surrounding roads and intersections were built to handle the additional trips with recommendations incorporated. As previously stated, recommendations include restriping for center turn lanes, bike and pedestrian facilities along the Viejo Camino frontage, and red curbs at various locations leading up to the development.

### ***GENERAL PLAN CONSISTENCY***

Because a Development Agreement is essentially at the same level as a zoning ordinance, the proposed development uses and standards do not need to be consistent with existing zoning, but the ultimate project must be consistent with the General Plan designation for the property. As such, pursuant to Government Code Section 65867.5, section 1.3 of the Development Agreement anticipates a future General Plan amendment depending on the nature of the ultimate project to be built. This allows the Development Agreement to be consistent with the General Plan as required by Section 65867.5.

It is also important to note that the draft land use plan for the citywide General Plan Update is contemplating changing these parcels and surrounding parcels from a Public Zone to a Multi-Family zone. The project contemplated by the Development Agreement will likely be consistent with anticipated future uses once the General Plan Update is adopted and zoning is implemented early to mid-next year.

### ***PROPOSED OVERLAY ZONE***

To tie the Development Agreement to the property and ensure that future City staff and developers are aware of the specific property agreement, an overlay zone (DA-1) will be applied to the property. The zone text states that the site is subject to the provisions of a Development Agreement.

### **ENVIRONMENTAL DETERMINATION:**

A Mitigated Negative Declaration (MND) No. 2024-0011 was circulated for public review on October 2, 2024. The MND evaluated maximum development potential outlined in the Development Agreement and addressed any impacts associated with creek realignment. All

mitigation measures identified in the document are incorporated into the Development Agreement as Attachment 1, exhibit "A".

During the public review period, Salinan tribal members requested monitoring during grading activities that involve ground disturbance. A mitigation measure has been added to address this request.

**CONCLUSION:**

- Approval of this Development Agreement provides a path forward for future development of the site in a manner that achieves the goals of both the City and the property owner.
- The Agreement provides certainty as to density and realignment of the creek to ensure that certain development rights and expectations are retained into the future.
- Provisions are included to ensure that all local, State, and federal regulations are followed regarding the realignment of the creek and any other applicable site modifications.

**FINDINGS:**

To approve the Development Agreement and associated actions, the City Council must find that the provisions of the agreement are consistent with the General Plan and any applicable Specific Plan. There are no Specific Plans established on or within the immediate vicinity of the subject development site. The Development Agreement requires that any future project be consistent with the General Plan Land Use Designation -or that the application include an amendment to the General Plan Land Use Designation, if applied for prior to the citywide update.

**ALTERNATIVES:**

1. The City Council may make modifications to the provisions of the Development Agreement.
2. The City Council may determine that more information is needed on some aspect of the project and may refer the item back to the applicant and staff to develop the additional information. The Council should clearly state the type of information that is required. A motion, and approval of that motion, is required to continue the item to a future date.
3. The City Council may not approve the proposed Development Agreement and continue with current litigation proceedings.

**FISCAL IMPACT:**

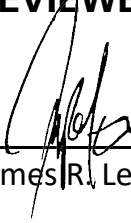
None

**REVIEWED BY OTHERS:**

This report and the draft Development Agreement has been reviewed by the City Attorney, Planning staff, and City Engineer.



## REVIEWED AND APPROVED FOR COUNCIL AGENDA



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James R. Lewis, City Manager

### ATTACHMENTS:

1. Draft Ordinance with attachments
2. Mitigative Negative Declaration #[EDN 2024-0011](#) (document available electronically at [atascadero.org/environmentaldocs](http://atascadero.org/environmentaldocs))

**DRAFT ORDINANCE**

**ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF ATASCADERO, CALIFORNIA, ADOPTING A DEVELOPMENT  
AGREEMENT BETWEEN SCOTT NEWTON AND THE CITY OF  
ATASCADERO, AMENDING TITLE 9 OF THE ATASCADERO  
MUNICIPAL CODE TO ESTABLISH DEVELOPMENT AGREEMENT  
OVERLAY ZONE DA1, AMEND THE OFFICIAL ZONING MAP TO  
ESTABLISH DA1 ON THE SUBJECT PROPERTY, AND CERTIFYING THE  
PROPOSED MITIGATED NEGATIVE DECLARATION PREPARED FOR  
11450 VIEJO CAMINO AND 11505 EL CAMINO REAL**

**NEWTON DEVELOPMENT AGREEMENT  
(DEV24-0075)**

**WHEREAS**, Scott Newton (“Owner”) is the owner of real property located at 11450 Viejo Camino (APN 045-342-009) and 11505 El Camino Real (APN 045-342-010) within the City (the “Property”).

**WHEREAS**, in 2018, Owner applied for a use permit to permit a self-storage facility on the Property (“Project 1”) which was denied by City Council on appeal; and

**WHEREAS**, in 2020, Owner applied for a second use permit to permit a modified self-storage facility on the Property (“Project 2”) which was denied by City Council on appeal; and

**WHEREAS**, Owner subsequently filed litigation against the City, alleging various claims against City over City’s application and hearing process; and

**WHEREAS**, the City Council agreed to accept and process an application for a development agreement (“Project”) as part of a settlement agreement with Owner arising out of the litigation commenced by Owner against the City; and

**WHEREAS**, the settlement agreement provided that the development agreement would be processed pursuant to State law and any applicable local requirements; and

**WHEREAS**, Government Code Section 65865 allows the City to enter into development agreements with any person having a legal or equitable interest in real property; and

**WHEREAS**, Government Code Section 65867.5 requires a development agreement be adopted by ordinance; and

**WHEREAS**, an Overlay Zone is being processed concurrently to tie the development Agreement to the subject Property; and

**WHEREAS**, a timely and properly noticed Public Hearing upon the subject Draft Development Agreement and associated entitlements was held by the Planning Commission of the City of Atascadero at which hearing evidence, oral and documentary, was admitted on behalf of said application; and

**WHEREAS**, The Planning Commission held a duly noticed public hearing to consider the Project on October 15, 2024 and considered testimony and reports from staff and the public.

**WHEREAS**, after due study and deliberation, the Planning Commission found that the draft development agreement is consistent with the General Plan, and that it contains those matters required in a development agreement by State law; and

**WHEREAS**, the laws and regulations relating to the preparation and public notice of environmental documents, as set forth in the State and local guidelines for implementation of the California Environmental Quality Act (CEQA) have been adhered to; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ATASCADERO HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1. Recitals:** The above recitals are true and correct and incorporated herein as if set forth in full.

**SECTION 2. Public Hearings.** The City Council of the City of Atascadero, at a Public Hearing held on December 2, 2024, considered testimony and reports from staff and the public and introduced for first reading, by title only, an Ordinance adopting a Development Agreement, amending Title 9 of the Atascadero Municipal Code and amending the official Zoning Map.

**SECTION 3. Facts and Findings.** The City Council makes the following findings and determinations for approval of the proposed actions:

**A. Findings for Development Agreement:**

1. **FINDING:** The Development Agreement is consistent with the General Plan

**FACT:** The Development Agreement requires that any future development be consistent with the General Plan designation for the property based on proposed use. The Agreement requires that the applicant/owner process a future General Plan Amendment prior to property development should the residential use not be consistent with the General Plan Designation in place at the time of development application.

**B. Findings for Zone Text and Map Amendment:**

1. **FINDING:** The proposed project or use is consistent with the General Plan, and all other applicable ordinances and policies of the City.

**FACT:** The proposed amendments are consistent with the General Plan. The project site is designated Public and the Development Agreement requires any future

residential project to be consistent with the General Plan Designation at the time of application.

2. **FINDING:** The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety, or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use; and

**FACT:** The amendment will not change the use or character of the neighborhood and will not be detrimental to the health, safety, or welfare of the general public or residents within the project.

3. **FINDING:** The proposed project or use will not be inconsistent with the character or the immediate neighborhood or contrary to its orderly development; and

**FACT:** The proposed amendments are consistent with the character of the neighborhood.

4. **FINDING:** The proposed zone change will not create any new significant and unavoidable impacts to traffic, infrastructure, or public service impacts; and

**FACT:** The proposed DA#1 overlay zone will allow for future development of the site with residential units. The corresponding Zoning Map amendment and adoption of a Development Agreement will result in a residential use that will not generate a substantial increase in traffic. The proposed future residential project will generate an insubstantial increase in the volume of traffic.

**SECTION 4. CEQA.** The City of Atascadero prepared an Initial Study to determine if the proposed project would have a significant adverse effect on the environment. The Initial Study found that no impacts of significance were identified. Consequently, a Mitigated Negative Declaration was prepared for the Project. Adoption of Mitigated Negative Declaration No. EDN 2024-0011 will satisfy the requirements of CEQA for the adoption of the Development Agreement and Mitigated Negative Declaration No. EDN 2024-0011 is hereby certified and adopted.

**SECTION 5. Approval.** The Development Agreement attached hereto as Exhibit “A” is hereby approved and the City Manager is directed to execute the Agreement on behalf of the City. The City Manager is further authorized to make such minor amendments to the Development Agreement as are necessary to carry out the intent of the Development Agreement. Not later than ten (10) business days after the effective date of this Ordinance, the City Clerk is directed to record the Development Agreement with the San Luis Obispo County Recorder’s office. The text amendments to Title 9 of the Atascadero Municipal Code attached hereto as Exhibit “B”, and the Zoning Map amendment attached hereto as Exhibit “C”, are approved to establish an Overlay Zone on the Property in substantial conformance with Exhibit A.

**SECTION 6. Interpretation.** This Ordinance must be broadly construed in order to achieve the purposes stated in this Ordinance. It is the City Council’s intent that the provisions of this Ordinance be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Ordinance.

**SECTION 7. Preservation.** Repealing of any provision of the Atascadero Municipal Code or of any previous Code Sections, does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance’s effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

**SECTION 8. Effect of Invalidation.** If this entire Ordinance or its application is deemed invalid by a court of competent jurisdiction, any repeal or amendment of the Atascadero Municipal Code or other City Ordinance by this Ordinance will be rendered void and cause such previous Atascadero Municipal Code provision or other City Ordinance to remain in full force and effect for all purposes.

**SECTION 9. Severability.** If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

**SECTION 10. Notice.** The City Clerk is directed to certify the passage and adoption of this Ordinance, cause it to be entered into the City of Atascadero’s book of original ordinances, make a note of the passage and adoption in the records of this meeting and within fifteen (15) days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

**SECTION 11. Effective Date.** This Ordinance will take effect on the 30th day following its final passage and adoption.

**INTRODUCED** at a special meeting of the City Council held on December 2, 2024, and **PASSED, APPROVED** and **ADOPTED** by the City Council of the City of Atascadero, State of California, on December 10, 2024.

CITY OF ATASCADERO:

\_\_\_\_\_  
Heather Moreno, Mayor

ATTEST:

\_\_\_\_\_  
Lara K. Christensen, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Dave Fleishman, City Attorney

## **NEWTON DEVELOPMENT AGREEMENT**

### **1.0 Recitals**

- 1.1 **Legal Authority for a Development Agreement.** Pursuant to California Government Code sections 65864-65869.5 (the “Development Agreement Statute”) the City of Atascadero (“City”) hereby enters into this Development Agreement (hereinafter "Agreement") with Scott Newton (“Owner”). The effective date of this Agreement (“Effective Date”) shall be the 31<sup>st</sup> day following the date on which the ordinance approving this Agreement is adopted by City.
- 1.2 **Owner’s Interest.** Owner currently holds a legal and/or equitable interest in certain real property located within the City, consisting of approximately 4.32 acres in two legal parcels, and as more particularly described in Exhibit “A” (the “Property”). Owner proposes to develop the Property with a maximum of 42 residential units, with a height of no more than 30 feet with an additional four feet for architectural and enhanced roof design elements, however configured, with associated improvements, drainage and flood control facilities, and modification of a drainage channel on the Property to provide flood control and habitat enhancement (the “Project;” the Project is shown and described in more detail in the plans attached as Exhibit “B”). The Project shall meet all applicable local, state, and federal requirements unless specifically detailed in this Agreement, including Objective Design Standards approved by the City on June 25, 2024.
- 1.3 **Project Approvals.** In connection with the Project, Owner submitted an application on August 20, 2024, which may eventually include a General Plan Amendment (“GPA”) and a Zoning Change, to accommodate the Project, as well as a request for processing of this Development Agreement, which Agreement was approved by the City on December 10, 2024 (“Project Approvals”).
- 1.4 **Scope of Project Approvals.** The permitted uses of the Property, the maximum density and intensity of use, the maximum height, bulk and size of proposed buildings, provisions for reservation or dedication of land for public purposes and location and maintenance of on-site and off-site improvements, location of public utilities, and other terms and conditions of development applicable to the Property, shall be those set forth in this Agreement, the Project Approvals, any

amendments to this Agreement or the Project Approvals, and Applicable Rules as defined herein.

## **2.0 Benefits**

2.1 City. Under the policies, ordinances and regulations in effect at the time Owner submitted the application for the Project, the City was faced with litigation over the development of the Property, the suitability of the existing zoning and General Plan designations, and the development allowed on the Property under the then-existing zoning. The Project described in this Development Agreement provides needed housing for the City, flood control measures, and necessary street improvements to an important City Gateway parcel.

2.2 Owner. Under the ordinances and regulations in existence at the time the Owner submitted the application for the Project, Owner's right to proceed would not fully vest until recordation of final maps and commencement of substantial construction; however, as noted herein, Owner was unwilling to dismiss the litigation without the City's processing of this Agreement. Owner benefitted because such Project Approvals could be immediately vested, and Owner was willing to dismiss the litigation and provide such other benefits to the City as set forth herein.

## **3.0 Obligations of Parties.**

3.1 City. The City agrees that:

3.1.1 Pursuant to this Agreement, Owner has a vested right to develop the Property and the Project in accordance with the policies, rules and regulations of the City in effect on December 10, 2024 ("Applicable Rules"). As set forth herein, "Applicable Rules" shall include, but not be limited to all state and federal statutory and regulatory provisions governing use of the Property, the California Environmental Quality Act ("CEQA") the environmental mitigation measures required for the Project attached as Exhibit C, and the rules, regulations and official policies of City, including the plans, municipal codes,

ordinances, resolutions and other local laws, regulations, fees and policies of City in force and effect on the Effective Date. Owner agrees to participate in and vote to approve the annexation to the City's Community Facilities District No. 2005-1 (Public Services) prior to issuance of any residential permit or recordation of any subsequent subdivision map, whichever occurs first.

3.1.2 Subject to the City's exercise of its police power authority and applicable limitations on development agreements in state law, the Owner shall have a vested right to: (i) receive from the City all future development approvals for the Property that are consistent with the Project Approvals; (ii) not have such approvals be conditioned or delayed for reasons which are inconsistent with this Development Agreement; and (iii) develop the Property in a manner consistent with such future development approvals in accordance with this Development Agreement. Any future development approvals for the Property, including without limitation general plan amendments, zoning changes, or parcel maps or tract maps, shall upon approval of the City be vested in the same manner as provided in this Development Agreement. In furtherance of the foregoing, the Owner retains the right to apportion the uses, intensities and densities, between itself and any other owners of the Property, upon the sale, transfer or assignment of any portion of the Property, so long as such apportionment is consistent with the future entitlements obtained from the City, and this Development Agreement.

3.1.3 City may apply to the Project and the Property any rule, regulation or official policy of City (including any plan, municipal code, ordinance, resolution or other local law, regulation, capital facility fee or policy of City) (each a "City Law") that does not conflict with Applicable Rules or this Agreement. City shall not, however, without the written consent of Owner apply to the Project or the Property (whether by initiative, referendum, imposition of mitigation measures not otherwise required under CEQA or otherwise) any City Law that is in conflict with the Applicable Rules or this Agreement.

3.1.4 Under this Agreement, Owner has a vested right to develop the Project in accordance with this Agreement, the Applicable Rules, and in accordance with the Project Approvals for the Project as described herein, for ten (10) years from the Effective Date of this Agreement ("Term") unless this Term is otherwise terminated or extended as set forth in this Agreement. If any person not party to this Agreement institutes any administrative, legal, or equitable action or other proceeding challenging the validity of any provision of



this Agreement, the Term shall be extended for the period of time required for the administrative, legal, or equitable action or other proceeding to come to a conclusion.

3.1.5 The City and Owner intend that Owner shall have such rights to develop the Project in accordance with the Project Approvals to the full extent provided for in the Development Agreement Statute and case law construing or interpreting Development Agreements, except as expressly modified by this Agreement.

3.1.6 This Agreement shall be subject to all the requirements and obligations of a Development Agreement under the Development Agreement Statute. Nothing herein shall prevent City from applying to the Project standards contained in uniform building, construction, fire or other uniform codes, as the same may be adopted or amended from time to time by City, provided that the provisions of any such uniform code shall: (i) Apply to the Project only to the extent that such code is in effect on a City-wide basis; and (ii) With respect to those portions of any such uniform code that have been adopted by City without amendment, be interpreted and applied consistently with the generally prevailing interpretation and application of such code in California. Nothing herein shall prevent City from applying to the Project those standards and specifications for public improvements (e.g., streets, storm drainage, parking lots, and driveway widths) that are in effect on a City-wide basis, as they are adopted or amended from time to time by City, provided that such standards and specifications shall apply to the Project and the Property only to the extent that they are in effect on a City-wide basis. Notwithstanding the foregoing sentence, Owner shall not be required to modify the existing drainage culvert beneath Viejo Camino unless required by applicable state and/or federal agencies.

3.1.7 City agrees that all impact fees within the control of the City shall be those in effect on the earlier of (a) the effective date of the ordinance approving this Agreement, or (b) the date on which a complete preliminary application is submitted pursuant to Government Code Section 65941.1(a). The impact fees shall be subject to annual adjustment each July 1 during the Term of the Development Agreement by the greater of the CPI-U, Los Angeles-Long Beach-Anaheim, All Urban Consumers, All Items. Owner shall pay any plan check and inspection fees in effect at the time of permit application(s) with exception of any in-lieu affordable housing fees or development agreement processing fees, or requirement of affordable housing units, which are expressly waived under the terms of this Agreement.

3.1.8 Due to the anticipated affordability of units within the Project, the City agrees that affordable housing shall not be required, and no affordable housing in lieu fees shall be assessed against the Project or Owner.

3.1.9 Due to the nature of the project, the City agrees that no traffic improvements shall be required except as required by this Agreement or as may be required to comply with CEQA.

3.1.10 City will allow a grading permit and realignment of the water way before submittal of the development application upon receipt of approvals for water way realignment from applicable state and/or federal agencies.

3.1.11 City Owner may request expedited processing for all construction and building permits at the rates established in the City's master fee schedule and/or direct charges from the outside consulting plan checkers.

3.2 Owner. Owner agrees to the following restrictions and conditions on the Project:

3.2.1 Owner will dismiss the litigation within five business days after the effective date of the ordinance approving this Development Agreement. Owner further agrees to develop the Project in substantial conformity with the application already submitted.

3.2.2 The floodway shall be retained and the creek shall be designed as a natural feature and site amenity. If the creek is realigned, the project shall maintain a naturalized creek alignment and remap the floodway through FEMA. No channelization of the creek is allowed through the use of concrete armoring or other man-made structures. Pursuant to Policy 8.2 of the General Plan, all habitable structures on-site shall maintain a minimum 20-foot setback from the top of bank, or shall be located outside the mapped floodway, whichever is greater. All other structures shall maintain a minimum 10-foot setback from the top of bank.

3.2.3 Owner shall submit the Project's flood control measures and drainage channel improvements on the Property to the California Department of Fish & Wildlife ("CDFW") and other appropriate state and federal agencies, as necessary. Owner shall comply with all requirements imposed and permits issued by such state and federal agencies for flood control measures, drainage channel improvements, and biological remediation on the

Property. City shall not require any modifications to the approvals issued by any state and/or federal agencies.

3.2.4 A hydrology/hydrological drainage report prepared by a licensed civil engineer is required that demonstrates compliance with stormwater runoff rate control and post-construction requirements and that no negative impacts will occur to downstream, upstream, and adjacent properties at time of project submittal.

3.2.5 Access shall be from Viejo Camino and shall align with Bocina Lane to the greatest extent feasible, or other location mutually agreed upon by the City and Owner.

3.2.6 Frontage improvements shall be required on Viejo Camino to include concrete curb, gutter, and sidewalk (5-ft.) to accommodate the existing bike lane (5-ft.).

3.2.7 Street trees will be provided at a maximum spacing of 30-feet on-center to be planted behind sidewalk along Viejo Camino, and along El Camino Real outside the City's current right-of-way. Naturalized tree groupings may be permitted at a distance greater than 30 feet.

3.2.8 The project will design and construct and dedicate a vehicular access and public utilities easement for city maintenance needs unless alternative access to manholes is provided through circulation design of the project. If the easement remains the primary city access, the accessway must be constructed of base and built to carry the weight of the City's sewer cleaning truck. Owner shall dedicate an additional five-foot wide easement immediately adjoining the existing easement, on the southern Property boundary line, to ensure the City has unobstructed access to the existing easement once the floodway realignment has occurred. Owner agrees that the top of bank of the realigned floodway shall be a minimum of seven and one-half (7.5) feet from the City's existing sewer line in the easement.

3.2.9 All new and relocated utilities on the Project site will be undergrounded.

3.2.10 A pedestrian connection across the creek shall be provided internal to the project.

3.2.11 Creek crossings for both vehicles and pedestrians may utilize precast concrete or HDPC culverts and will not be deemed as "channelization."

3.2.12 Except as set forth in Section 4.1, Owner agrees that he shall not develop the Property with more than 42 residential units, nor shall he apply for a density bonus or other

waivers, incentives or concessions pursuant to Government Code Section 65915 or subsequently adopted similar statutes that require a public agency to grant density bonuses for specified reasons.

3.2.13 Owner acknowledges and agrees that the terms and provisions of this Agreement specifically permit City in some instances to impose requirements upon the Project that City would not otherwise be able to impose due to a lack of nexus, rough proportionality or reasonable relationship between the Project and such requirement or other reasons. To the extent any such requirement is imposed by City upon the Project consistently with the terms and provisions of this Agreement, Owner waives any right to challenge the imposition of such requirement by City.

#### **4.0 Project Development**

4.1 Conflicting enactments. Except as otherwise provided herein, any change in the Applicable Rules, including, without limitation, any change in any applicable general, area or specific plan, zoning, subdivision or building regulation, adopted or becoming effective after the Effective Date, including, without limitation, any such change by means of an ordinance, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the City Council, the Planning Commission or any other board, commission or department of City, or any officer or employee thereof, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which would conflict in any way with, be more restrictive, or impose greater obligations or burdens on Owner, than the Applicable Rules (“Subsequent Rules”), shall not be applied by City unless both Owner and City consent in writing. However, should subsequent City action result in an increase in allowable density, and the Project has not been completed, the increased density shall apply to the Project.

4.2 Expiration. Following the expiration of the ten-year Term of this Agreement, this agreement shall be deemed terminated and of no further force and effect except as to actions arising from enforcement of its terms during the Term; provided, however, such termination shall not affect any right or duty arising from City approvals, and provided that any ongoing construction work being performed pursuant to the Project Approvals shall be allowed to be completed pursuant to the Applicable Rules notwithstanding the termination of this Agreement.

4.3 Term of Maps and Other Project Approvals. Pursuant to California Government Code Sections 66452.6(a) and 65863.9, the term of any subdivision or parcel map that may be processed on all or any portion of the Project, and the term of each of the Project Approvals shall be extended for a period of time equal to the Term of this Agreement as set forth in Section 3.1.4.

4.4 Timing of Development. Because the California Supreme Court held in Pardee Construction Co. v. County of Camarillo (1984), 37 Cal.3d 465, that failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Owner shall have the right (without obligation) to develop portions of the Project in such order and at such rate and at such times as Owner deems appropriate within the exercise of its subjective business judgment. City shall not attempt to limit or restrict the timing of development of the Project except in accordance with the terms of this Agreement.

4.5 Owner shall complete the Project not later than twelve (12) years after the Effective Date. Should Owner fail to complete construction on the Project within this time period, absent an agreed-upon extension of this Agreement, which shall not be unreasonably withheld by City, Owner's right to develop the Property as set forth herein shall lapse and be of no further force or effect. Notwithstanding anything to the contrary in Section 4.2, this section shall survive any termination of the Agreement.

4.6 Moratoria/Initiatives. No City-imposed moratorium or other limitation relating to the rate, timing or sequencing of the development or construction of all or any part of the Project, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City Council, the Planning Commission, an agency of City, the electorate, or otherwise, affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, occupancy certificates or other entitlements to use or service (including, without limitation, water and sewer unless such water or sewer moratoria or other limitations are imposed City-wide to protect the public health, safety and welfare) approved, issued or granted within City, or portions of City, shall apply to the Project.

4.7 Vesting of Owner's Rights. The rights to the Applicable Rules and entitlements pursuant to Project Approvals granted to Owner pursuant to this Agreement shall be and constitute "vested rights" or the equivalent of "vested rights" applicable to the

development of land and property and the right of a public entity to regulate or control such development of land or property, including, without limitation, vested rights to land use permits, building permits and certificates of occupancy consistent therewith, unless the City determines that failure to apply a new ordinance or regulation would place the residents of the Project or other residents of the City in a condition of substantial danger to their health or safety, or both. In such an instance, the City may condition or deny an entitlement, permit, extension or approval as may be necessary to comply with later enacted State or Federal laws regulations.

4.8 Future Amendments. In the future, there may be a need to make minor changes to the Modified Project Approvals, which minor changes will not significantly modify the Project, and which may be required to properly implement the Project Approvals. The parties agree that such minor modifications shall not be considered amendments to this Agreement, and they shall be allowed on approval of the Planning Director without notice and public hearings, or placement upon the agenda of the Planning Commission or the City Council. “Minor modification” is defined as any modification to the Project which will just in cost increases of less than \$250,000.00, or any mutually agreed upon modification.

4.9 Cooperation. The provisions of this Agreement require a close degree of good faith cooperation between the City and Owner. Implementation of the Project may require minor modifications of the details of the Project and affect the performance of the parties to this Agreement. The anticipated refinements of the Project and the development of the Property may require that appropriate clarifications and refinements are made to this Agreement with respect to the details of the performance of the City and the Owner which shall be considered by both parties in good faith. The parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement so long as the exercise of such flexibility does not result in a material change to either of the parties’ reasonable expectations consistent with the purpose of this Agreement. Except as the parties may otherwise agree, no amendment of this Development Agreement shall be required in connection with the issuance of any future Project approval. \_\_\_

**5.0 Cooperation of Implementation.**

5.1 Further Assurances: Covenants to Sign Documents. Each party shall take all actions and do all things, and execute, with acknowledgment or affidavit, if required, any and all documents and writings, that may be necessary or proper to achieve the purposes and objectives of this Agreement.

5.2 Processing by City. Upon satisfactory completion by Owner of all required preliminary actions and payments of appropriate processing fees, if any, City shall process the Project subject to all legal requirements, initiate process, complete at a reasonable time all required steps, and grant ministerial approvals or permits necessary for the development by Owner of the Project in accordance with this Agreement, including but not limited to, the processing of applications for and issuing of all ministerial approvals required for the implementation of and the determination of conformance with the Project Approvals, this Agreement, and Applicable Rules as necessary for the completion of the development of the Project (“Ministerial Approvals”).

5.3 Processing during litigation. The filing of any third-party lawsuit(s) against City or Owner relating to this Agreement or to other development issues affecting the Project shall not delay or stop the development, processing or construction of the Project, or issuance of Ministerial Approvals, unless the third party obtains a court order enjoining or otherwise preventing the activity. City shall not stipulate the issuance of any such order.

5.4 Defense of Agreement. Owner shall indemnify, and offer to defend (with counsel jointly selected by Owner and City,) and hold harmless City and its officers, employees and agents from and against any and all losses, liabilities, fines, penalties, costs, claims, demands, damages, injuries or judgments arising out of, or resulting from, City’s approval of this Agreement or either Party’s performance pursuant to this Agreement. Owner shall seek and secure City’s consent to any settlement of such action only if such settlement materially changes the Project or the Property, which consent shall not unreasonably be withheld or delayed. Owner agrees that Owner’s counsel will not disclose any information confidential to the City, gained during such defense, in any future proceedings where City may be adverse to Owner or Owner’s counsel, including quasi-judicial, or administrative proceedings. City further irrevocably agrees not to assert any representation in such defense by Owner’s counsel as a potential conflict of interest in any future quasi-judicial, or administrative proceeding, where City is a permitting agency, not related to the Project, and City hereby irrevocably waives any actual or potential conflict of interest under such circumstances. If this Agreement is adjudicated or determined to be invalid or

unenforceable, City agrees, subject to all legal requirements, to consider modifications to this Agreement to render it valid and enforceable to the extent permitted by applicable law.

5.5 Indemnity Arising From Construction. Owner shall defend and indemnify City from and against any and all damages, claims, costs and liabilities arising out of the personal injury or death of any person, or damage to the property of any person, to the extent such damages, claims, costs or liabilities result from the construction of the Project by Owner or by Owner's contractors, subcontractors, agents or employees, except as caused by the sole negligence, active negligence or willful misconduct of City, its officers, employees, contractors, consultants or agents.

5.6 Failure to Accept Tender of Defense. If Owner should fail to accept City's tender of defense as set forth in Sections 5.4 and 5.5, City shall defend any actions asserted against City and control the defense and/or settlement of such action as City decides in its sole discretion, and City may take any and all actions it deems necessary and appropriate in its sole discretion in connection therewith. Owner shall indemnify City against reasonable fees and costs arising out of the City's defense of such action. In any action or proceeding challenging the approval of this Agreement, the City shall reasonably cooperate with Owner in defending such action or proceeding. Notwithstanding the foregoing, if Owner determines for any reason that it no longer intends to develop the Project, then it may deliver notice of such determination to City, and Owner shall not be liable for any defense costs incurred by City more than 90 days following the delivery of such notice.

5.7 City Cooperation and Discretion. City agrees to cooperate with Owner in obtaining the approval of other public agencies by providing any documents or certificates reasonably required to process and obtain such permits and approvals from other public agencies. City retains full discretion in any future discretionary actions with respect to the Project consistent with the Applicable Rules and section 5.6 herein.

## **6.0 General Provisions**

6.1 Covenants Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, reorganization, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring the Project, or any portion thereof, or any interest therein,



whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors and assigns. All of the provisions of this Agreement shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Civil Code Section 1468.

6.2 Transfer and Assignment. Right to Assign. Owner shall have the right to sell, assign or transfer all or portions of the real property comprising the Project to any person at any time during the Term of this Agreement. Upon the delegation of all duties and obligations and the sale, transfer or assignment of all or any portion of the Property, Owner shall be released from its obligations under this Agreement with respect to the Property, or portion thereof so transferred, arising subsequent to the effective date of such transfer if all of the following are true: (i) Owner has provided to City fifteen (15) business days' written notice of such transfer (ii) the transferee has agreed in writing to be subject to all of the provisions hereof applicable to the portion of the Property so transferred (iii) owner is not in default of this Agreement (iv) no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410 et seq., and (v) the City Council agrees to release the Owner from its duties and obligations under this agreement, which release shall not be unreasonably withheld. As to item (v) above, City's failure to respond within 30 days of the receipt of notice shall be deemed an agreement to release the Owner. Upon any transfer of any portion of the Property and the express assumption of Owner's obligations under this Agreement by such transferee, City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Property acquired by such transferee. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way Owner's rights hereunder with respect to any portion of the Property not owned by such transferee. The transferee shall be responsible for the reporting and annual review requirements relating to the portion of the Property owned by such transferee, and any amendment to this Agreement between City and a transferee shall only affect the portion of the Property owned by such transferee.

6.3 Statement of Compliance. Within sixty days following any written request which either City or Owner may make from time to time, the other shall execute and deliver to the requesting party a statement ("Statement of Compliance") certifying that: (1) this Agreement has not been modified and in full force and effect or, if there have been modifications hereto, that this Agreement is in full force and effect, as modified, and stating the date and nature of such modifications; (2) there are no current known uncured

defaults under this Agreement or specifying the dates and nature of any such defaults; and (3) any other reasonable information requested. The failure to deliver such statement within such time shall be conclusive upon the party which fails to deliver such statement that this Agreement is in full force and effect without modification and that there are no uncured known defaults in the performance of the requesting party. The City Clerk shall be authorized to execute any Statement of Compliance pursuant to this section. City and Owner may make only one request for a Statement of Compliance, respectively, within any twelve-month period beginning at the Effective Date or the date of an immediate past request by the requesting party, whichever occurred last. City shall not be bound by a statement of compliance if a default existed at the time of execution but was concealed from the City.

6.4 Default. Failure by City or Owner to perform any term or provision of this Agreement for a period of sixty days, subject to extensions to time by mutual consent in writing, from the receipt of written notice thereof from the other shall constitute a default under this Agreement. Said notice shall specify in detail the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such 60-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period. Subject to the foregoing, after notice and expiration of the 60-day period without cure, the notifying party, at its option, may institute legal proceedings pursuant to this Agreement and/or give notice of intent to terminate this Agreement, in the manner provided by Government Code Section 65867 for adoption of a development agreement.

6.5 Default Remedies. In addition to that provided for in Section 6.4, in the event either party defaults (as defined in Section 6.4) under the terms of this Agreement, the other party shall have all rights and remedies provided herein or under applicable law, including the specific performance of this Agreement.

6.6 Legal Action. Any party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, or enforce by specific performance the obligations and rights of the parties hereto. Venue in any legal action instituted in the Superior Court of the State of California shall be San Luis Obispo County. Venue in any legal action instituted in United States District Courts shall be in the Central

District of California. Owner hereby consents to personal jurisdiction in these respective courts for that purpose.

6.7 Waiver & Remedies. Failure by City or Owner to insist upon the strict performance of any of the provisions of this Agreement, irrespective of the length of time for which such failure continues, shall not constitute a waiver of the right to demand strict compliance with this Agreement in the future. No waiver by City or Owner of a default or breach of any other party shall be effective or binding upon it unless made in writing, and no such waiver shall be implied from any omission by City or Owner to take any action with respect to such default or breach. No express written waiver of any defaults or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified in such express waiver. One or more written waivers of a particular default or breach under any provision of this Agreement shall not be a waiver of any subsequent default or breach of that provision or the performance of the same or any other term or provision contained in this Agreement. Subject to notice of default and opportunity to cure under Section 6.4, all of the remedies permitted or available under this Agreement, at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

6.8 Non-Recourse. The obligations of Owner under this Agreement shall be without recourse to the assets of the general partners or of any general partner, officer, shareholder, director, unit holder or employee of Owner or any general partner of Owner.

6.9 Permitted Delays & Supersedure By Subsequent Laws.

6.9.1 Permitted Delays. In addition to any specific provisions of this Agreement, performance of obligations hereunder shall be excused and the Term of Agreement shall be similarly extended during any period of delay caused at any time by reason of: acts of God, such as floods, earthquakes, fires, or similar catastrophes; wars, riots or similar hostilities; strikes and other labor difficulties beyond the party's reasonable control (including the party's employment force); the enactment of new laws or restrictions imposed or mandated by other governmental or quasi-governmental entities preventing this Agreement from being implemented; litigation involving this Agreement, the Project Approvals, or the Ministerial Approvals, which directly or indirectly delays any activity contemplated hereunder or other causes beyond the party's reasonable control. City and

Owner shall promptly notify the other party of any delay hereunder as soon as possible after the nature and duration of such delay has been ascertained.

6.9.2 Supersedure by Subsequent Laws. If any federal or state law, made or enacted after the Effective Date prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new law. Immediately after enactment or promulgation of any such new law, City and Owner 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. Owner and City shall have the right to challenge the new law preventing compliance with the terms of this Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect. Owner and City, by mutual consent, may elect to extend the term of this Agreement for the duration of the period during which such new law precludes compliance with the provisions of this Agreement.

6.10 Amendments. This Agreement may be amended from time to time by mutual consent of the parties to this Agreement, in accordance with the provisions of Government Code sections 65867 and 65868, unless compliance with those sections is excused under the terms of Paragraph 4.7, above.

6.11 Annual Review of Agreement. Pursuant to Government Code Section 65865.1, the annual review date for this Agreement (the "Review Date") shall be one year following the Effective Date and the annual anniversary of said date each year thereafter. The City's Planning Department shall initiate the annual review by giving to Owner, no later than sixty (60) days following the Review Date, written notice that the City intends to undertake such review for the annual period ending with the Review Date. Owner shall be required to pay to City such fees as are established by City Council resolution for the annual review of a development agreement, if any. Such fees shall be limited to the reasonable costs incurred by the City in conducting the Annual Review, if any. Owner shall provide evidence of good faith compliance with the terms and conditions of this Agreement to the Planning Department within thirty (30) days following receipt of the Planning Department's notice. The Planning Department shall review the evidence submitted by Owner and shall, within thirty (30) days following receipt of Owner's evidence, make a recommendation to the City Council either (1) that the City Council find that Owner has demonstrated good faith

compliance with the terms and conditions of this Agreement, or (2) that the City Council finds that Owner has not demonstrated good faith compliance with the terms and conditions of this Agreement, setting forth with specificity the basis on which the Planning Department makes its recommendation of a finding of non-compliance. In the event the City Council finds that Owner has not demonstrated good faith compliance with the terms and conditions of this Agreement, City may terminate this agreement pursuant to Government Code Section 65865.1. In the event that City does not initiate an annual review or that the City Council does not make its determination within six months of the Review Date for a given year, then it shall be deemed conclusively that Owner has complied in good faith with the terms and conditions of this Agreement during the period under review.

## **7.0 Miscellaneous Provisions**

7.1 Incorporation of Recitals and Exhibits. *Exhibits A through C* attached hereto and referred to herein are incorporated in this Agreement as though fully set forth in the body hereof.

7.2 Negation of Partnership. The Project constitutes private development, neither City nor Owner is acting as the agent of the other in any respect hereunder, and City and Owner are independent entities with respect to the terms and conditions of this Agreement. None of the terms or provision of this Agreement shall be deemed to create a partnership between or among the parties in the businesses of Owner, the affairs of City, or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise.

7.3 No Third party beneficiary. This Agreement is not intended, nor shall it be construed, to create any third-party beneficiary rights in any person who is not a party, unless expressly otherwise provided.

7.4 Entire Agreement. This Agreement as augmented by the Project Approvals sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

7.5 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order shall in no way affect any

of the other provisions hereof or the application thereof to any other person or circumstance, and the same shall remain 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 and the rights and obligations of the parties hereto.

7.6 Construction. The provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against Owner or City and consistent with the provisions hereof, in order to achieve the objectives and purposes. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine general shall include the feminine or neuter genders, or vice versa.

7.7 Section Headlines. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

7.8 Applicable law. This Agreement shall be construed and enforced in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objective and purposes of the parties hereto and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

7.9 Notice. Any notice shall be in writing and given by delivering the same in person or by sending the same registered, or certified mail, return receipt requested, with postage prepaid, by overnight delivery, or by facsimile to the respective mailing addresses, as follows:

City: Mr. Jim Lewis  
City Manager  
City of Atascadero  
6500 Palma Ave  
Atascadero CA 93422  
Email: jlewis@atascadero.org

Copy to: David Fleishman  
City Attorney  
Richards, Watson & Gershon  
847 Monterey Street, Ste 206  
San Luis Obispo CA  
Email: [dfleishman@rwglaw.com](mailto:dfleishman@rwglaw.com)

Owner: Scott Newton  
215 Santa Fe Ave  
Pismo Beach CA 93449  
Email: [Scott@manyfigs.com](mailto:Scott@manyfigs.com)

Copy to: Kate Neiswender  
Law Office of K.M. Neiswender  
Post Office Box 1225  
Blue Jay CA 92317  
Email: [katelawventura@gmail.com](mailto:katelawventura@gmail.com)

City or Owner may change its mailing address at any time by giving written notice of such change to the other in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made or communicated on the earlier of the date personal delivery is effected or on the delivery date or attempted delivery date shown on the return receipt or air bill. Delivery by email shall not be an effective means of delivering notice; however, any notice provided should, whenever possible, be given by email as well as other means of allowed delivery.

7.10 Time is of the essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

7.11 Recordation. In order to comply with section 65868.5 of the Government Code, the parties do hereby direct the City Clerk to record a copy of this Agreement against the Property with the County Recorder of San Luis Obispo County within ten (10) days after the Effective Date.

7.12 Successors and Assigns. The provisions of this Agreement shall be binding of the parties hereto, and subsequent owner of all or any portion of the property and their respective successors and assigns. Any successors in interest to the City shall be subject to the provisions set forth in sections 65865.4 and 65868.5 of the California Government Code.\_

IN WITNESS WHEREOF, OWNER AND CITY have executed this Agreement as of the date hereinabove written.

**CITY OF ATASCADERO**

\_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

Approved as to Form:  
  
\_\_\_\_\_  
David Fleishman, City Attorney

**OWNER**  
  
\_\_\_\_\_



Scott Newton

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Kate M. Neiswender, Counsel for Owner

## NEWTON DEVELOPMENT AGREEMENT EXHIBIT A: LEGAL DESCRIPTION

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Real property in the City of Atascadero, County of San Luis Obispo, State of California, described as follows:

PARCEL ONE: (A.P.N.: 045-342-009)

That portion of Lot 7 of Block 66 of Atascadero Colony, in the City of Atascadero, County of San Luis Obispo, State of California, according to map recorded October 14, 1914 in [Book 3, Page 97](#) of Maps, and as shown on the record of Survey Map recorded March 26, 1980 in [Book 37, Page 69](#) of Records of Surveys, described as follows:

Beginning at the most Westerly corner of Lot 7, Block 66; thence along the line common to Lots 7 and 8 as shown on said Map, North 42° 17' 08" East, a distance of 495.30 feet to the True Point of Beginning, said point being on the Easterly right of way of El Camino real (old State Highway 101); thence continuing along said common line North 42° 17' 08" East, a distance of 294.14 feet to a point on the Southwesterly right of way of Viejo Camino; thence along said right of way as shown on said Map, South 70° 00' 48" East a distance of 251.26 feet to a point on the line common to Lots 6 and 7; thence along said common line as shown on said Map, South 42° 12' 9" West, a distance of 440.60 feet to a point on the Easterly right of way of before mentioned El Camino Real; thence along said right of way as shown on said Map, North 35° 20' 46" West, a distance of 238.65 feet to the True Point of Beginning.

Excepting therefrom all minerals and oils in, under or upon said land as reserved in deeds from Colony Holding Corporation and from A.P. Kottler recorded September 26, 1919 in [Book 129, Page 125](#) of Deeds and March 24, 1933 in [Book 134, Page 33](#) of Official Records, respectively.

Also excepting therefrom any portion of said land that may lie within the streets, roads or alleys as shown on the map of Atascadero Colony above referred to.

This legal description is made pursuant to that certain Certificate of Compliance recorded November 18, 1981, as Instrument No. [54089](#), Book 2370, Page 143 of Official Records.

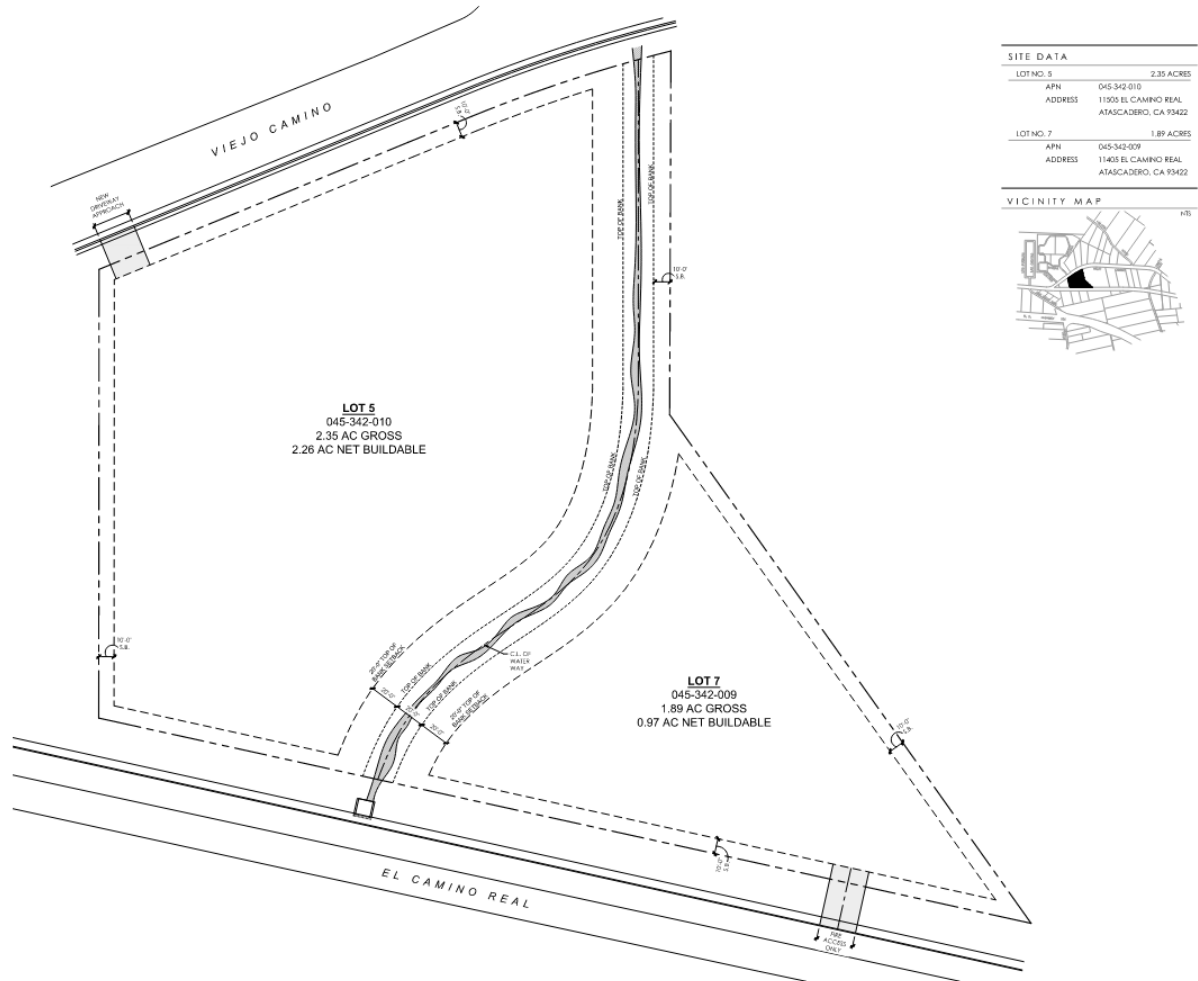
PARCEL TWO: (A.P.N.: 045-342-010)

All that portion of Lots 5 and 6 in Block 66 of Atascadero Colony, in the City of Atascadero, County of San Luis Obispo, State of California, according to map recorded October 21, 1914 in [Book 3 Page 1](#) et seq., of Maps, which was conveyed to Gertrude Hopper, by deed recorded September 13, 1918 in [Book 117, Page 331](#) of Deeds, which lies Northeasterly of the Northeasterly line of the right of way for State Highway purposes conveyed to the State of California, by deed recorded February 24, 1931 in [Book 108, Page 161](#) of Official Records.

Excepting therefrom all minerals and oil, in, under or upon said land.

Also excepting therefrom all streets, road and alleys shown on the map above referred to.

# NEWTON DEVELOPMENT AGREEMENT EXHIBIT B: PROJECT PLAN



**NEWTON DEVELOPMENT AGREEMENT EXHIBIT C: MITIGATION MONITORING PROGRAM**

	<b>MITIGATION MEASURE</b>	<b>TIMING</b>
<b>Aesthetics</b>		
AES-1.1	All site retaining walls shall be constructed or clad in a natural looking material that blends with the surrounding site context. Retaining walls shall be dark colored split face block, rock/stone clad, or similar material and/or color profile.	Prior to Permit Issuance
<b>Air Quality</b>		
AQ 2-1	<p>The project shall comply with the following SLO APCD Standard Mitigation Measures for reducing nitrogen oxides (NOx), reactive organic gases (ROG) and diesel particulate matter (DPM) emissions from construction equipment:</p> <ul style="list-style-type: none"> <li>• Maintain all construction equipment in proper tune according to manufacturer’s specifications;</li> <li>• Fuel all off-road and portable diesel-powered equipment with ARB certified motor vehicle diesel fuel (non-taxed version suitable for use off-road);</li> <li>• Use diesel construction equipment meeting ARB's Tier 2 certified engines or cleaner offroad heavy-duty diesel engines, and comply with the State Off-Road Regulation;</li> <li>• Use on-road heavy-duty trucks that meet the ARB’s 2007 or cleaner certification standard for on-road heavy-duty diesel engines, and comply with the State On-Road Regulation;</li> <li>• Construction or trucking companies with fleets that do not have engines in their fleet that meet the engine standards identified in the above two measures (e.g., captive or NOx exempt area fleets) may be eligible by proving alternative compliance;</li> <li>• All on and off-road diesel equipment shall not idle for more than 5 minutes. Signs shall be posted in the designated queuing areas and or job sites to remind drivers and operators of the 5-minute idling limit;</li> <li>• Diesel idling within 1,000 feet of sensitive receptors is not permitted;</li> <li>• Staging and queuing areas shall not be located within 1,000 feet of sensitive receptors;</li> <li>• Electrify equipment when feasible;</li> </ul>	During construction

	<ul style="list-style-type: none"> <li>• Substitute gasoline-powered in place of diesel-powered equipment, where feasible; and,</li> <li>• Use alternatively fueled construction equipment on-site where feasible, such as compressed natural gas (CNG), liquefied natural gas (LNG), propane or biodiesel.</li> </ul>	
AQ 2-2	<p>The project shall comply with the following SLO APCD Fugitive <i>Dust Mitigation Measures</i> for projects with nearby sensitive receptors and/or earthwork exceeding 4-acres to minimize nuisance impacts and to significantly reduce fugitive dust emissions:</p> <ul style="list-style-type: none"> <li>• Reduce the amount of the disturbed area where possible;</li> <li>• Use of water trucks or sprinkler systems, in sufficient quantities to prevent airborne dust from leaving the site and from exceeding the APCD’s limit of 20% opacity for greater than 3 minutes in any 60-minute period. Increased watering frequency would be required whenever wind speeds exceed 15 mph. Reclaimed (non-potable) water should be used whenever possible. Please note that during drought conditions, water use may be a concern and the contractor or builder shall consider the use of an APCD-approved dust suppressant where feasible to reduce the amount of water used for dust control.</li> <li>• All dirt stock pile areas should be sprayed daily as needed;</li> <li>• Permanent dust control measures identified in the approved project revegetation and landscape plans should be implemented as soon as possible following completion of any soil disturbing activities;</li> <li>• Exposed ground areas that are planned to be reworked at dates greater than one month after initial grading should be sown with a fast germinating, non-invasive grass seed and watered until vegetation is established;</li> <li>• All disturbed soil areas not subject to revegetation should be stabilized using approved chemical soil binders, jute netting, or other methods approved in advance by the APCD;</li> <li>• All roadways, driveways, sidewalks, etc. to be paved should be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used;</li> </ul>	During construction

	<ul style="list-style-type: none"> <li>• Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site;</li> <li>• All trucks hauling dirt, sand, soil, or other loose materials are to be covered or should maintain at least two feet of freeboard (minimum vertical distance between top of load and top of trailer) in accordance with CVC Section 23114;</li> <li>• “Track-Out” is defined as sand or soil that adheres to and/or agglomerates on the exterior surfaces of motor vehicles and/or equipment (including tires) that may then fall onto any highway or street as described in California Vehicle Code Section 23113 and California Water Code 13304. To prevent Track Out, designate access points and require all employees, subcontractors, and others to use them. Install and operate a “track-out prevention device” where vehicles enter and exit unpaved roads onto paved streets. The track-out prevention device can be any device or combination of devices that are effective at preventing track out, located at the point of intersection of an unpaved area and a paved road. Rumble strips or steel plate devices require periodic cleaning to be effective. If paved roadways accumulate tracked out soils, the track-out prevention device may need to be modified.</li> <li>• Sweep streets at the end of each day if visible soil material is carried onto adjacent paved roads. Water sweepers with reclaimed water should be used where feasible;</li> <li>• All of these fugitive dust mitigation measures shall be shown on grading and building plans; and</li> <li>• The contractor or builder shall designate a person or persons to monitor the fugitive dust emissions and enhance the implementation of the measures as necessary to minimize dust complaints, reduce visible emissions below 20% opacity, and to prevent transport of dust offsite. Their duties shall include holidays and weekend periods when work may not be in progress. The name and telephone number of such persons shall be provided to the APCD. Compliance Division prior to the start of any grading, earthwork or demolition.</li> </ul>	
AQ 2-3	<p>The Project shall comply with the following SLO APCD <i>Diesel Idling Restrictions for Construction Phases</i> to reduce air quality impacts to nearby sensitive receptors:</p> <ul style="list-style-type: none"> <li>• Staging and queuing areas shall not be located within 1,000 feet of sensitive receptors;</li> </ul>	Prior to permit issuance

	<ul style="list-style-type: none"> <li>• Diesel idling within 1,000 feet of sensitive receptors is not permitted;</li> <li>• Use of alternative fueled equipment is recommended whenever possible; and,</li> <li>• Signs that specify the no idling requirements must be posted and enforced at the construction site.</li> <li>• <u>Idling Restrictions for On-road Vehicles.</u> Signs must be posted in the designated queuing areas and job sites to remind drivers of the 5-minute idling limit consistent with Section 2485 of Title 13, the California Code of Regulations</li> <li>• <u>Idling Restrictions for off-Road Equipment.</u> Signs shall be posted in the designated queuing areas and job sites to remind off-road equipment operators of the 5-minute idling limit pursuant to Section 2449(d)(3) of the ARB's In-Use off-Road Diesel regulation.</li> </ul>	
<b>Biological Resources</b>		
BIO 1-1	<p><b>Pre Construction Surveys for Roosting Bats:</b> Within 30 days prior to removal of existing structures and/or mature trees, a sunset survey shall be conducted by a qualified biologist to determine if bats are roosting on site. If bats are present, a follow-up acoustic monitoring survey shall be completed to determine, if feasible, which species are present. If roosts of special-status bat species are identified and will be impacted during the proposed project, CDFW will be consulted to determine appropriate measures to be implemented. If it is determined that no special-status bats are present, the project shall proceed under the guidance of a qualified biologist, in a manner that minimizes impacts to individual bats and roosts (e.g., conducting work only during the day or installing one-way exclusions prior to work).</p>	Prior to permit issuance
BIO 1-2	<p><b>Pre Construction Surveys for Nesting Birds:</b> If work is planned to occur between February 1 and September 15, a qualified biologist shall survey the area for nesting birds within one week prior to activity beginning on site. If nesting birds are located on or near the proposed project site, they shall be avoided until they have successfully fledged or the nest is no longer deemed active. A non-disturbance buffer of 50 feet will be placed</p>	Prior to permit issuance

	<p>around non-listed, passerine species, and a 250-foot buffer will be implemented for raptor species. All activity will remain outside of that buffer until a qualified biologist has determined that the young have fledged or that proposed construction activities would not cause adverse impacts to the nest, adults, eggs, or young. If special-status avian species are identified, no work will begin until an appropriate buffer is determined in consultation CDFW, and/or the USFWS.</p>	
<p>BIO 2-1</p>	<p><b>Protection of Hydrologic Resources:</b> Construction within and immediately adjacent to the drainage shall occur only when conditions are dry. For short-term, temporary stabilization, an erosion and sedimentation control plan shall be developed outlining Best Management Practices (BMPs), which shall be implemented to prevent erosion and sedimentation into the channel during construction. Acceptable stabilization methods include the use of weed-free, natural fiber (i.e., nonmonofilament) fiber rolls, jute or coir netting, and/or other industry standards. BMPs shall be installed and maintained for the duration of the construction period. In addition, the following general measures shall be implemented during construction:</p> <ul style="list-style-type: none"> <li>• The limits of disturbance within the existing drainage feature shall be clearly shown on all sites plans and flagged within the drainages prior to project implementation. All construction personnel shall be directed to avoid impacts to the areas immediately upstream and downstream of the proposed development including the existing culvert features located at El Camino Real and Viejo Camino.</li> <li>• All equipment and materials shall be stored out of the streambed at the end of each working day, and secondary containment shall be used to prevent leaks and spills of potential contaminants from entering the stream.</li> <li>• During construction, washing of concrete, paint, or equipment and refueling and maintenance of equipment shall occur only in designated areas a minimum of 50 feet from all drainages and aquatic features. Sandbags and/or sorbent pads</li> </ul>	<p>Prior to permit issuance/During construction</p>



	<p>shall be available to prevent water and/or spilled fuel from entering drainages.</p> <ul style="list-style-type: none"> <li>• Construction equipment shall be inspected by the operator on a daily basis to ensure that equipment is in good working order and no fuel or lubricant leaks are present.</li> </ul>	
BIO 2-2	<p><b>Compensatory Mitigation Plan:</b> A compensatory mitigation plan shall be developed to offset permanent impacts to jurisdictional areas. The exact details and performance criteria of the restoration plan shall be determined during agency coordination with CDFW, RWQCB, and USACE, as necessary. Stabilization and restoration measures may include the installation of BMPs and/or revegetation using native seed mixes and plantings. Prior to project initiation, all applicable agency permits with jurisdiction over the project area (i.e., USACE, CDFW, and RWQCB) should be obtained. Additional mitigation measures required by these agencies would be implemented as necessary. The City shall not impose any additional mitigation measures in addition to or in lieu of agency-required measures without Owner’s consent.</p>	Prior to permit issuance
BIO 2-3	<p><b>Agency Permitting:</b> Prior to issuance of any permits for grading or construction on-site, the applicant shall obtain permits from the following agencies, and any other agencies as necessary:</p> <ul style="list-style-type: none"> <li>• California Department of Fish and Wildlife (CDFW)</li> <li>• US Army Corps of Engineers (USACE)</li> <li>• Regional Water Quality Control Board (RWQCB)</li> </ul> <p>Any mitigation measures required by the above listed permits shall be implemented to their fullest extent. City shall not require any modifications to the approvals issued by any state and/or federal agencies.</p>	Prior to permit issuance
BIO 3-1	<p><b>Creek Channel Naturalization:</b> The realigned creek shall be constructed in a manner which maintains and enhances natural flows and vegetation. A minimum 20-foot setback shall be maintained from the top of creek bank to any structures. Vehicular or pedestrian crossings of the re-aligned creek shall be permitted as part of any future development. Such crossings shall be designed as culvert crossings and shall</p>	Prior to permit issuance/Permit final

	obtain any required permits from agencies prior to construction.	
BIO 3-2	<b>Wetland Restoration:</b> Should wetland impacts occur, and wetland restoration be required on-site, the wetlands shall be monitored for a period of not less than 5-years. Annual reports from a qualified biologist shall be submitted to the City addressing any irrigation modifications or replanting that may be required to ensure successful naturalization of the restored wetland habitat. A contract with a qualified biologist shall be entered into prior to final of the development permit.	Post construction
BIO 4-1	<b>Special Status Species Plant Surveys:</b> Prior ground disturbing activities and when plants with potential to occur are in a phenological stage conducive to positive identification (i.e., usually during the blooming period for the species), a qualified biologist shall conduct surveys for special status plant species within the project site. Valid botanical surveys will be considered current for up to five years; if construction has not commenced within five years of the most recent survey, botanical surveys must be repeated.	Prior to permit issuance
BIO 5-1	<b>Implementation of Best Management Practices:</b> <ul style="list-style-type: none"> <li>• Prior to ground disturbing and/or vegetation removal activities, a setback area of 20-feet from the drainage will be fenced with orange construction fencing and signed to prohibit entry. Fencing should be located a minimum of 20 feet from the OHWM and shall be maintained throughout the construction or until regulatory permits to impact the drainage have been acquired.</li> <li>• To control sedimentation during and after project implementation, appropriate erosion control best management practices (i.e., installation of silt fencing) will be implemented to minimize adverse effects on the drainage. The silt fencing shall be installed prior to commencing construction in adjacent areas and maintained throughout construction or until regulatory permits to impact the drainage have been acquired.</li> <li>• Any substances which could be hazardous to aquatic species resulting from project-related activities will be prevented from entering the drainage. All refueling, maintenance, and staging of equipment and vehicles shall occur at least 50 feet from the drainage and in a location where a potential spill would not drain directly toward the drainage. Prior to the onset of work activities, a plan will be in place for prompt and effective response to any accidental spills.</li> </ul>	During construction

<b>Water Quality and Hydrology</b>		
WQH 1-1	The applicant shall obtain all necessary permits form the Regional Water Quality Control Board.	Prior to permit issuance
WQH 2-1	Prior to issuance of any building permits, a FEMA Conditional Letter of Map Revision (CLOMR) must be issued and received by the City Engineer.	Prior to permit issuance
WQH 2-2	The project design and construction shall comply with the CLOMR. Prior to a final inspection or Occupancy release, the developer must apply for and be issued a FEMA Letter of Map Revision (LOMR) and a copy filed in the Office of the City Engineer.	Prior to C of O
<b>Land Use and Planning</b>		
LUP 1-1	See BIO 3-1 and BIO 5-1	
<b>Transportation / Traffic</b>		
TR 1-1	The primary access shall be from Viejo Camino at Bocina Lane or La Paloma Court as approved by the City Engineer. A left turn lane shall be provided into the project site. Widen street, as needed, to accommodate lane configuration if entrance aligns with La Paloma Court.	Prior to permit issuance
TR 1-2	A Class II bike lane, curb, gutter, and sidewalk shall be installed along the Viejo Camino project frontage.	Prior to C of O
TR 1-3	The travel lanes on Viejo Camino east of El Camino Real shall be reduced to accommodate a bike lane or shared lane markings shall be installed within the existing Class II bike lane gap(s), subject to approval of the City Engineer.	Prior to C of O
TR 1-4	Install red curb at the El Camino Real / Viejo Camino intersections and driveways into the existing commercail development for pedestrian safety to and from the site.	Prior to C of O
TR 1-5	Provide an asphalt pedestrian pathway connection from the project site frontage to the existing sidewalk east of El Camino Real at the existing commercail development.	Prior to C of O
<b>Tribal Cultural Resources</b>		
TCR 1	The owner/developer shall have all natural grade ground disturbing activities monitored by a qualified professional or local tribal monitor. An executed monitoring contract shall be submitted to City staff prior to issuance of any permit involving ground disturbance of the natural grade of the existing site.	Prior to GP/BP

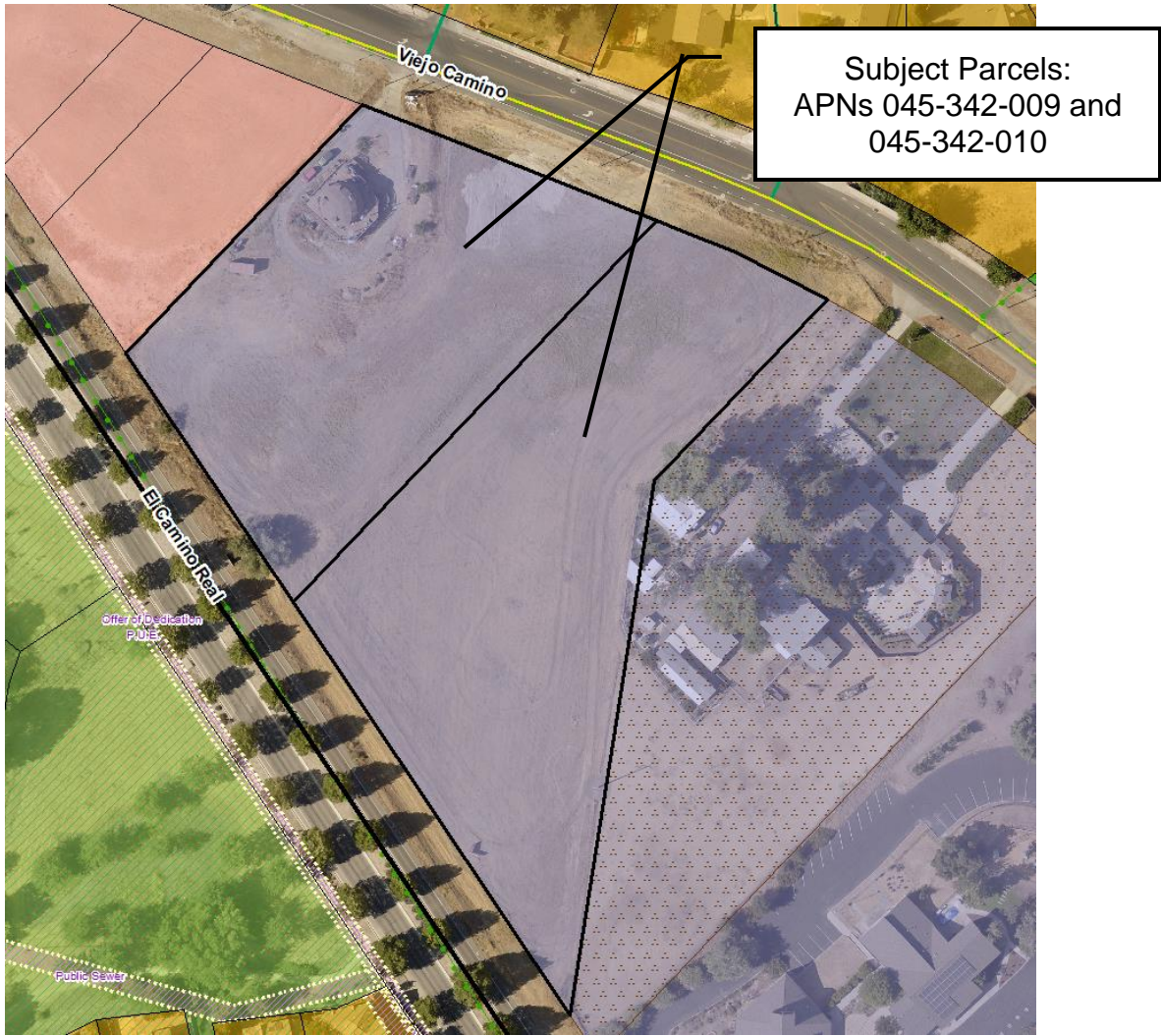
## **Exhibit B: AMC Title 9 Zoning Text Amendment**

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### 9-3.695: Establishment of Development Agreement Overlay No. 1 (DA1)

Development Agreement Overlay Zone No. 1 is established as shown on the Official Zoning Maps (Section 9-1.102 of this title) on parcels APNs 045-342-009 and 045-342-010. The subject properties are subject to the provisions of a Development Agreement recorded against the properties in San Luis Obispo County and on file with the City of Atascadero.

### Exhibit C: Zoning Map Amendment



Current Zoning Designation: Public (P)

Amended Zoning Designation: Public / Development Agreement No. 1  
(P/DA1)



### **Notice of Intent to Adopt Mitigated Negative Declaration**

<b>PROJECT NO.</b>	DEV24-0075	<b>Environmental Document No.</b>	2024-0011	
<b>PROJECT TITLE</b>	Newton Development Agreement and Creek Realignment Concept			
<b>APPLICANT NAME &amp; PHONE NUMBER</b>	Scott Newton 559-285-6214	<b>Email</b>	scott@manyfigs.com	
<b>MAILING ADDRESS:</b>	215 Santa Fe Rd	Pismo Beach, CA	93449	
<b>STAFF CONTACT:</b>	Kelly Gleason	(805) 470-3446	kgleason@atascadero.org	
<b>PROJECT ADDRESS:</b>	11450 Viejo Camino 11505 El Camino Real	Atascadero, CA 93422	<b>APN:</b>	045-342-009 045-342-010

**PROJECT DESCRIPTION:**

The project includes adoption of a Development Agreement and creek realignment concept to facilitate a future multi-family development with up to 42 residential units on a 4.2-acre site. One of the existing properties is currently developed with a single-family residence. The project site is designated with 1.8 acres of wetland habitat; however, recent drought conditions and annual animal grazing have denuded the habitat vegetation. The property contains an identified ephemeral blue-line creek (tributary of Paloma Creek) with a clearly defined flow path. Water enters the site from an existing culvert under El Camino Real and exits through existing culverts under Viejo Camino. The applicant proposes to realign the creek to accommodate the site development and adjust the flood plain designation of the site. The realigned creek channel will be constructed with a naturalized slope on each side. The project requires California Department of Fish and Wildlife, Army Corps of Engineers, Regional Water Quality Control Board, and Federal Emergency Management Agency review.

General Plan Designation: Public Facilities (PUB)

Zoning District: Public (P)

**LEAD AGENCY:** City of Atascadero  
Community Development Department  
6500 Palma Avenue  
Atascadero, CA 93422

**DOCUMENT AVAILABLE ONLINE:** <http://www.atascadero.org/environmentaldocs>

**STATE CLEARING HOUSE REVIEW:**  Yes      NO

**REVIEW PERIOD BEGINS:** 10/03/2024      **REVIEW PERIOD ENDS:** 11/04/2024

**PUBLIC HEARING REQUIRED:**  No       Yes

**PUBLIC NOTICE:** The City of Atascadero is releasing a draft Initial Study and Mitigated Negative declaration for review and comment to all effected agencies, organizations, and interested parties. Reviewers should focus on the content and accuracy of the report and the potential impacts upon the environment. The notice for this project is in compliance with the California Environmental Quality Act (CEQA). Persons responding to this notice are urged to submit their comments in writing. Written comments should be delivered the City (lead agency) no later than 5pm on the date listed as "review period ends". Submittal of written comments via email is also accepted and should be directed to the Staff contact at the above email address. This document may be viewed by visiting the Community Development Department, listed under the lead agency address, or accessed via the City's website.



# CITY OF ATASCADERO

## CITY COUNCIL STAFF REPORT

Item A2

**Department:** Community Services  
& Promotions  
**Date:** 12/2/24  
**Placement:** Public Hearing

**TO:** JAMES R. LEWIS, CITY MANAGER

**FROM:** TERRIE BANISH, DIRECTOR COMMUNITY SERVICES & PROMOTIONS

**PREPARED BY:** TERRIE BANISH, DIRECTOR COMMUNITY SERVICES & PROMOTIONS

**SUBJECT:** Ordinance Increasing the Atascadero Tourism Business Improvement District (ATBID) Assessment from 2% to 2.5%

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### RECOMMENDATIONS:

Council conduct the first reading of the Draft ATBID Assessment Increase Ordinance amending Title 3, Chapter 16, section 3-16.04, changing the assessment rate under Streets and Highways Code Section 36541(a) for lodging businesses within the Atascadero Tourism Business Improvement District from 2% to 2.5% for the remainder of FY 2024-2025 and setting a public hearing for the second reading of the Ordinance on December 10, 2024.

### DISCUSSION:

The City of Atascadero established the Atascadero Tourism Business Improvement District (ATBID) to levy annual assessments under the Parking and Business Improvement Area Law of 1989, by adopting Title 3, Chapter 16 of the Atascadero Municipal Code in April 2013. The activities to be funded by the assessments on lodging businesses within the ATBID, are tourism promotions and marketing programs to promote the City as a tourism destination. The formation and operation of a Tourism Business Improvement District is governed by the California Streets and Highways Code (Section 36500 et. Seq.). The budget for the ATBID is submitted in conjunction with the City's annual budget.

The City Council appointed ATBID Advisory Board Members to serve at the pleasure of the Council. The Advisory Board is made up of lodging business owners or employees, or other representatives holding the written consent of a lodging business owner within the ATBID area.

The Streets and Highways Code requires that the Advisory Board provide a specific report to the City Council annually for the expenditure of funds derived from the assessment paid by lodging businesses within the City. The Advisory Board did so in May, and the Council approved the report.

In September 2024, the ATBID Advisory Board met and approved a request to Council to increase the ATBID assessment from two percent (2%) to two and one-half percent (2.5%) effective January 1, 2025. The purpose of this increase is to help fund improvements and facilities at the Charles Paddock Zoo and adjacent areas with the purpose of providing for larger or more enhanced events thus increasing hotel stays in the City.

Under the revised ATBID annual report, ATBID revenue in fiscal year 2023-24 is expected to be approximately \$419,590, exceeding projected revenue of \$414,120 by \$5,470. In fiscal year 2024-25, revenue was projected to be approximately \$422,400, and expenses were projected to be \$432,470. The ATBID fund balance is projected to be \$749,870 on June 30, 2025. With the proposed increase in assessment from 2% to 2.5%, the anticipated ATBID revenue will increase by approximately \$46,500 through June 30, 2025, assuming collection of such additional assessments begins in early January 2025 following the adoption of the proposed ordinance.

At the City Council meeting on October 8, 2024, the Resolution was adopted and on October 9, 2024, a letter was mailed to each of the lodging owners noticing them of the ATBID Assessment Increase. The change in the assessment rate requires adoption of an ordinance under Streets and Highways Code Section 36541(a), and there are additional procedural steps needed that would not otherwise occur with the annual adoption of the ATBID assessment. Under Government Code Section 54954.6, the City Council must conduct both a public hearing on the proposed assessment increase, and a separate public meeting at which the public may provide testimony regarding the proposed increased assessment. Tonight's meeting is the separate public meeting under Section 54954.6, and the December 10, 2024 second reading of the ordinance will comprise the public hearing required by Section 54954.6

The new ordinance seeks to increase the assessment on lodging businesses within the Atascadero Tourism Business Improvement District from 2% to 2.5% for the physical improvements to the Charles Paddock Zoo and adjacent areas in Atascadero Lake Park to drive events, tourism and additional lodging stays.

### **FISCAL IMPACT:**

Should there be insufficient protests from the businesses to be assessed, and should the ordinance go into effect, additional ATBID revenues in an estimated amount of \$46,500 through June 30, 2025.

### **ALTERNATIVE:**

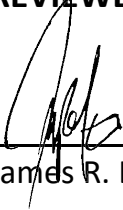
Council may choose to not proceed with the requested increase to the ATBID assessment, in which case the current annual ATBID report would govern the activities to be conducted with ATBID assessments through the end of the current fiscal year.



**REVIEWED BY OTHERS:**

This report has been reviewed by the City Attorney and Deputy City Manager.

**REVIEWED AND APPROVED FOR COUNCIL AGENDA**



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James R. Lewis, City Manager

**ATTACHMENT(S):**

1. Draft Ordinance Amending Section 3-16.04 of the Atascadero Municipal Code

## DRAFT ORDINANCE

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATASCADERO, CALIFORNIA, AMENDING SECTION 3-16.04 OF THE ATASCADERO MUNICIPAL CODE, SETTING THE ASSESSMENT RATE FOR THE ATASCADERO TOURISM BUSINESS IMPROVEMENT DISTRICT

**WHEREAS**, the City of Atascadero (“City”) has formed the Atascadero Tourism Business Improvement District (“ATBID”), pursuant to Section 36500 of the Streets & Highways Code of the State of California; and

**WHEREAS**, the City Council has previously received an annual report pursuant to Section 36533 of said Code; and

**WHEREAS**, the City Council approved said report and adopted a resolution of intention pursuant to Section 36534, setting the assessment at two percent (2%) of the rent charged by the business per occupied room or space per night for transient occupancies; and

**WHEREAS**, on September 11, 2024, the ATBID Advisory Board recommended a request to the City Council to increase the assessment from two percent (2%) to two and one-half percent (2.5%) of the rent charged by the business per occupied room or space per night for transient occupancies to help fund improvements and facilities at the Charles Paddock Zoo and adjacent areas with the purpose of increasing hotel stays in the City; and

**WHEREAS**, pursuant to Government Code Section 54954.6, the City held a public meeting on December 2, 2024 to allow public testimony regarding the proposed modification to the assessment rate; and

**WHEREAS**, on December 10, 2024, the City Council held a public hearing on the proposed increased assessment pursuant to Government Code Section 54954.6, and under Streets and Highways Code Section 36525, there was no majority protest lodged against the proposed assessment by those proposed to be assessed; and

**WHEREAS**, Streets and Highways Code Section 36541(a) provides that the City Council shall modify the basis and method of levying the ATBID assessment by ordinance.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ATASCADERO HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1. Findings.** The Council hereby finds and declares the following:

A. The above recitals are true and correct and are incorporated herein by reference.

**SECTION 2. Approval.** The City Council of the City of Atascadero adopts the proposed text amendments to Section 3-16.04 of Atascadero Municipal Code:

- (a) Assessment. Each lodging business will collect and remit to the City an ATBID assessment equal to 2.5% of the rent charged by the business per occupied room or space per night for transient occupancies.
- (b) New Lodging Business Subject to Assessment. Any new lodging business established within the boundaries of the ATBID subsequent to its formation will be required to collect and remit the applicable ATBID assessment.
- (c) Exemptions. No assessment will be imposed on a lodging business for any rent paid by a transient who is exempt by law from paying any transient occupancy taxes as provided in Section 3-3.04 of this code.
- (d) Extended Stays. No assessment will be imposed on any lodging business for any rent paid by a person who is not deemed a "transient" (as defined in Section 3-3.02 of this code) when such person's stay is longer than 30 consecutive calendar days.
- (e) Payment of Assessments. Each lodging business must remit the assessment at the time the business pays its transient occupancy taxes to the City and must complete and provide such form detailing the applicable rent received and assessment as may be required by the City. The assessment will not be included in gross room rental revenue for the purpose of determining the amount of transient occupancy taxes due.
- (f) Payment Prerequisite to Business License and Penalties and Procedures for Unpaid Assessments.
  - (1) No business license or tax certificate will be issued under Chapter 5 of this title unless the ATBID assessment payment is current.
  - (2) Penalties and interest will be assessed upon any unpaid assessment in manner specified in Section 3-3.08 of this code until such time as the current assessment is paid in full; provided, however, that if there is concurrently a delinquency of the transient occupancy tax as well as the assessment, a single penalty of \$200 will be imposed under Section 3-3.08(a) in addition to the 10% penalty on the amount of the unpaid assessment.
- (g) City Administrative Fee. The City will retain 1% of the collected assessments as and for its administrative fees and costs.

**SECTION 3. CEQA.** Because of the facts set forth in Section 1, the proposed text amendment is exempt from further environmental review under the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq.*, "CEQA") and CEQA Guidelines (14 California Code of Regulations §§ 15000, *et seq.*) because it can be seen with certainty that there is no possibility that the enactment of this Ordinance would have a significant effect on the environment (Pub. Resources Code § 21065; CEQA Guidelines §§ 15378(b)(5), 15061(b)(3).

**SECTION 4. Interpretation.** This Ordinance must be broadly construed in order to achieve the purposes stated in this Ordinance. It is the City Council's intent that the provisions of this Ordinance be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Ordinance.

**SECTION 5. Preservation.** Repealing of any provision of the Atascadero Municipal Code or of any previous Code Sections, does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance's effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

**SECTION 6. Effect of Invalidation.** If this entire Ordinance or its application is deemed invalid by a court of competent jurisdiction, any repeal or amendment of the Atascadero Municipal Code or other City Ordinance by this Ordinance will be rendered void and cause such previous Atascadero Municipal Code provision or other City Ordinance to remain in full force and effect for all purposes.

**SECTION 7. Severability.** If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

**SECTION 8. Notice.** The City Clerk is directed to certify the passage and adoption of this Ordinance, cause it to be entered into the City of Atascadero’s book of original ordinances, make a note of the passage and adoption in the records of this meeting and within fifteen (15) days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

**SECTION 9. Effective Date.** This Ordinance will take effect on the 30th day following its final passage and adoption.

**INTRODUCED** at a special meeting of the City Council held on December 2, 2024, and **PASSED, APPROVED** and **ADOPTED** by the City Council of the City of Atascadero, State of California, on December 10, 2024.

CITY OF ATASCADERO:

\_\_\_\_\_  
Heather Moreno, Mayor

ATTEST:

\_\_\_\_\_  
Lara K. Christensen, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Dave Fleishman, City Attorney