

RESOLUTION NO. 2004-200

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
APPROVING THE ADDENDUM TO FINAL ENVIRONMENTAL IMPACT REPORT,
AMENDING MITIGATION MEASURE 4.1-1,
APPROVING MITIGATION MEASURE 4.1-1B, ADOPTING FINDINGS OF FACT AS
TO MITIGATION MEASURE 4.1-1B, AND
AMENDING MITIGATION MONITORING PLAN FOR THE
LENT RANCH MARKETPLACE PROJECT**

WHEREAS, on June 27, 2001, the City Council of the City of Elk Grove adopted a General Plan Amendment, General Plan Transportation Diagram Amendment, rezoning and zone text amendment, and approved a tentative subdivision map and development agreement for the for the Lent Ranch Marketplace Project; and

WHEREAS, in accordance with the California Environmental Quality Act (CEQA), on June 27, 2001 the City Council adopted Resolution 2001-42 certifying the Final Environmental Impact Report ("EIR") for the Lent Ranch Marketplace Project, adopted Resolution No. 2001-43 making findings of fact and adopting a statement of overriding considerations and a mitigation monitoring program for the Project; and

WHEREAS, in response to comments relating to mitigation for loss of farmland, and prior to certification of the Final EIR, the Project proponents offered to pay a farmland conservation fee in the amount of \$950 for each acre of farmland developed at the Project site, the City accepted the Project proponent's offer and at a June 27, 2001, public hearing, the City Council voted to include payment of the fee as mitigation for loss of farmland and the measure was added to the Project's Mitigation Monitoring and Reporting Program; and

WHEREAS, this requirement was added to Mitigation Measure 4.1-1 in the Mitigation Monitoring and Reporting Program, which requires the Project applicant to pay a \$950 per acre fee for each acre of farmland to be developed at the 293-acre Project site, with the fee to be used by the City to purchase farmland conservation easements, or similar instruments, within the area bounded by Kammerer Road on the north, the Cosumnes River on the east, the Mokelumne River/Sacramento County Line to the south, and Interstate 5 on the west; and

WHEREAS, litigation against the City was filed in the Sacramento County Superior Court challenging the legal adequacy of the EIR, and on August 13, 2002 the Superior Court entered final judgment determining that the EIR was not legally adequate, in part, because the provision of Mitigation Measure 4.1-1 requiring payment of the \$950 per acre fee for loss of farmland had not been analyzed in the Project EIR circulated for public review; and

WHEREAS, appeals were taken by the City and other interested parties from the Superior Court judgment and, on February 5, 2004, the Third District Court of Appeal reversed the Superior Court judgment on all grounds, and affirmed the

adequacy of the Project EIR and the actions taken by the City based on that EIR, except that the Court determined that the City must undertake additional environmental review with respect to mitigation for the Project's significant farmland impact; and

WHEREAS, the Court of Appeal determined that the City does not need to start the EIR process anew, but that the City may, in its discretion, proceed with an addendum to the EIR, a supplemental EIR, or a subsequent EIR; and

WHEREAS, in response to the direction of the Court of Appeal, the City prepared an Addendum to the Final Project EIR that analyzes two alternative mitigation measures for the Project's significant farmland impact: (1) a fee-based approach that would impose a per acre fee paid by the Project applicant to the City for acquisition of conservation easements or other real property interests preserving farmland within a designated geographic area; and (2) a direct-preservation approach that would require the Project applicant to acquire conservation easements or other real property interests preserving farmland within a designated geographic area and to assign the preservation interest to the City or third party approved by the City; and

WHEREAS, on May 26, 2004 the City submitted the Addendum to the State Clearinghouse and published notice that the Addendum to the EIR would be available for review and comment by the public for a 45-day period ending on July 9, 2004; and

WHEREAS, the City has received and considered written comments on the Addendum and has prepared written responses to those comments, which are attached to the staff report on this matter.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ELK GROVE HEREBY RESOLVES AS FOLLOWS:

A. Adoption and Approval of Addendum.

1. The Addendum, written comments on the Addendum, and responses to comments on the Addendum have been presented to the City Council, and the City Council has reviewed and considered this information, along with the staff report and comments and information provided to the City Council during the public meeting on this matter.

2. The Addendum has been prepared in compliance with CEQA and the decision of the Third District Court of Appeal.

3. The Addendum reflects the City's independent judgment and analysis.

4. The City Council hereby approves and adopts the findings, conclusions and recommendations of the Addendum as its own, and hereby incorporates by reference the discussion and analysis in the Addendum in support of the actions taken by the City Council by this Resolution.

B. Adoption of Amendment to Mitigation Measure 4.1-1 to Revise Farmland Conservation Mitigation

Mitigation Measure 4.1-1 in the Mitigation Monitoring and Reporting Program is hereby amended to delete the requirement that the Project applicant pay a fee of \$950 per acre for loss of agricultural land, open space, greenbelts and other habitat, along with the requirement that such fee be placed into a fund and program to be used by the City for acquisition of conservation easements in the designated geographic area, and are replaced in their entirety by the direct-preservation approach to farmland conservation mitigation set forth in the Addendum's Mitigation Measure 4.1-1b, which is hereby adopted as set forth below:

The Project applicant shall acquire conservation easements or other instruments to preserve Farmland of Statewide Importance or higher quality farmland. The farmland to be preserved shall be located within Sacramento County, outside the City of Elk Grove city limits, within the area bounded by Hood Franklin Road, Kammerer Road, Grant Line Road and the Jackson Highway, by Dillard Road and Clay Station Road, by the Sacramento County line, and by the Sacramento River. The amount of land preserved shall be governed by a 1:1 mitigation ratio for each acre developed at the Project site. In deciding whether to approve the land proposed for preservation by the Project applicant, the City shall consider the benefits of preserving farmlands in proximity to other protected lands. The preservation of off-site farmland may be done at one time, prior to the City's approval of the Project's first grading permit, or may be done in increments with the build-out of the Project, with preservation occurring prior to grading permit approval. In addition, the City shall impose the following minimum conservation easement content standards:

- a) The land to be developed at the Project site is designated as Farmland of Statewide Importance, so the conservation easement(s) acquired shall preserve either Farmland of Statewide Importance or Prime Farmland.
- b) All owners of the agricultural mitigation land shall execute the document encumbering the land.
- c) The document shall be recordable and contain an accurate legal description of the agricultural mitigation land.
- d) The document shall prohibit any activity, which substantially impairs or diminishes the agricultural productivity of the land.
- e) The document shall protect any existing water rights necessary to maintain agricultural uses on the land covered by the document, and retain such water rights for ongoing use on the agricultural mitigation land.
- f) The applicant shall pay to the City an agricultural mitigation fee to

cover the costs of administering, monitoring and enforcing the document in an amount determined by the receiving entity, not to exceed 10% of the easement price paid by the applicant, or a different amount approved by the City Council, not to exceed 15% of the easement price paid by the applicant.

- g) The City shall be named a beneficiary under any document conveying the interest in the agricultural mitigation land to an entity acceptable to the City.
- h) Interests in agricultural mitigation land shall be held in trust by an entity acceptable to the City and/or the City in perpetuity. The entity shall not sell, lease, or convey any interest in agricultural mitigation land, which it shall acquire without the prior written approval of the City.
- i) If any qualifying entity owning an interest in agricultural mitigation land ceases to exist, the duty to hold, administer, monitor and enforce the interest shall be transferred to another entity acceptable to the City or to the City.

Before committing to the preservation of any particular farmland pursuant to this measure, the Project proponent shall obtain the City's approval of the farmland proposed for preservation.


PASSED AND ADOPTED by the City Council of the City of Elk Grove this 4th day of August 2004.


SOPHIA SCHERMAN, MAYOR of the
CITY OF ELK GROVE

ATTEST:


PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:


ANTHONY B. MANZANETTI,
CITY ATTORNEY

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2004-200**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) *ss*
CITY OF ELK GROVE)

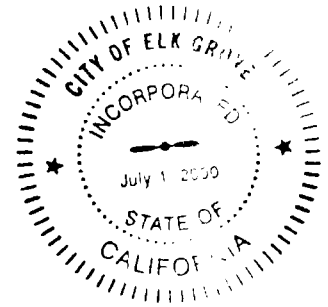
I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on the 4th day of August 2004 by the following vote:

AYES 4: COUNCILMEMBERS: Scherman, Soares, Briggs, Cooper

NOES 0: COUNCILMEMBERS:

ABSTAIN 0: COUNCILMEMBERS:

ABSENT 1: COUNCILMEMBERS: Leary



**Peggy E. Jackson, City Clerk
City of Elk Grove, California**