City of Wheatland

111 C Street Street – Wheatland, California 95692
Tel (530) 633-2761 – Fax (530) 633-9102

CITY COUNCIL MEETING **Date: October 26, 2010**
STAFF REPORT **Agenda Item:**

Subject: Consideration for approval of amendments to the Development Agreement between the City of Wheatland and Wheatland Heritage Oaks, LLC (Heritage Oaks East – Single Family Residential).

Prepared by: Tim Raney, Community Development Director

Recommendation

Staff recommends that the City Council approve the amendments to the Development Agreement between the City of Wheatland and Wheatland Heritage Oaks, LLC (Heritage Oaks East – Single Family Residential). Due to a transfer of the ownership of the property, Lewis Operating Company now controls the property and is listed as a party to the agreement.

Discussion

At the March 9, 2010 meeting, the Wheatland City Council conducted a public hearing to consider the termination of the Development Agreements related to the Jones Ranch and Heritage Oaks East projects and voted to continue the hearing to the June 8, 2010 City Council meeting. The Council granted the 90-day extension based on the request of the current property owners in order to allow them to work with City staff to correct the Development Agreement deficiencies. On June 9, 2010, the City Council granted the property owners an additional 30-day extension and continued the hearing to the July 13, 2010 Council meeting. One final 30-day extension was granted by the City Council, which continued the hearing to August 10, 2010. At the August 10, 2010, the City Council authorized the establishment of an Ad Hoc committee of the council to

review the tentative agreements negotiated by staff with the Lewis Operating Company representatives.

Based on the original Development Agreement, the residential portion of Heritage Oaks East project currently owes the City a share of the Main Street signal as well as other identified costs. At the June 9, 2010 meeting, Mr. Doug Mull, representing the Lewis Operating Company, indicated that his company was in negotiations with US Bank to purchase the residential portion of Heritage Oaks East. Lewis Operating Company is now under contract with US Bank for the property and will pay the monies due according to a payment plan. This payment plan requires Lewis Operating Company to pay the Main Street Signal costs once the City Council formally discontinues the consideration of the Development Agreement default. The remainder of the monies due will be paid once the property is transferred to Lewis Operating Company. This payment plan will eliminate the Development Agreement default for the residential portion of Heritage Oaks East.

Since March 2010, City staff has met on many occasions with the representatives of Lewis Operation Company. Through these meetings, staff has developed tentative agreements that have served as the basis for the Development Agreement Amendment. A sub-committee of the City Council reviewed these tentative agreements and provided direction to staff to have the City Attorney prepare the Development Agreement Amendment. The Development Agreement Amendment is attached for consideration by the City Council. As required by state law, the City Planning Commission conducted a hearing and provided recommendation to the Council on the Development Agreement Amendments prior to the City Council meeting.

Alternatives

The City Council could choose to not approve the amendments to the Development Agreement between the City of Wheatland and Wheatland Heritage Oaks, LLC (Heritage Oaks East – Single Family Residential). The City Council could also continue the public hearing to a future meeting date and direct staff to further revise the Development Agreement.

Recording requested by and
When recorded return to:

City of Wheatland
111 C Street
Wheatland, CA 95692

Exempt from recording fees (Government Code sections 6103 & 27383)

AMENDMENT NO. 2 TO
CITY OF WHEATLAND DEVELOPMENT AGREEMENT
CONCERNING HERITAGE OAKS ESTATES-EAST SUBDIVISION

This Amendment No. 2 to Development Agreement (the "**Amendment**") is made and entered into _____, 2010, by and between the City of Wheatland, a general law city ("**City**"), and Wheatland Heritage Oaks, LLC, a California limited liability company ("**Developer**"), who agree as follows:

1. **Recitals**. This Agreement is made with reference to the following background recitals:

1.1 On February 28, 2006, the parties entered into the *City of Wheatland Development Agreement Concerning Heritage Oaks Estates-East Subdivision* (the "**Agreement**"), a copy of which is on file in the City Clerk's office. The Agreement was recorded in the Yuba County Recorder's Office on April 18, 2006 as Document No. 2006R-007610. On December 21, 2007, Premier Homes Properties, Inc., Developer, and Trivest Land Co., Inc. entered into the *Assignment and Assumption Agreement for City of Wheatland Development Agreement Concerning Heritage Oaks Estates-East Subdivision* (the "**Assignment**"), which substituted Trivest Land Co. as a party to the Agreement in place of Premier Homes Properties, and which was recorded on December 31, 2007 as Document No. 2007R-021806. On June 28, 2008, the City, Developer and Trivest entered into Amendment No. 1 to the Agreement ("**Amendment No. 1**") which was recorded in the Yuba County Recorder's Office on September 11, 2008 as Document No. 2008R-014196. The parties acknowledge that Amendment No. 1 became effective pursuant to Amendment No. 1, section 3(b). The term "Agreement" as used herein includes the Assignment and Amendment No. 1.

1.2 Developer is in escrow to sell the Residential Property (as described in Exhibit "A" hereto and as so referenced in the Assignment) to Lewis Investment Company, LLC, a California limited liability company ("**Lewis**").

1.3 Developer and Lewis desire that the Agreement be amended as to the Residential Property only, as permitted by Section 2.3.3 of the Agreement, to accommodate the new plan for development of the Residential Property proposed by Lewis in order to make such development feasible in the current recessed real estate market.

1.4 The City is willing, subject to Developer curing its current default under the Agreement as set forth in Exhibit "B" hereto (the "**Default**"), to amend the Agreement as set forth herein.

1.5 All capitalized terms used in this Amendment shall have the same meaning given those terms in the Agreement unless otherwise expressly defined in this Amendment.

2. **Condition Precedent; Termination**. In the event that the Default is not cured as required in Exhibit "B", then this Amendment shall automatically terminate and be of no further force or effect five (5) business days after written notice of termination is delivered to Developer by City if the Default remains uncured by the end of that five-business day period.

3. **Amendments to Agreement**. The Agreement is hereby amended as follows:

3.1 Sewer Connection Rights. City agrees that, by reason of the Assignment, the allocation of sewer treatment and disposal capacity of 498 single-family dwelling units (each a "**Unit**") of the remaining sewer treatment and disposal capacity in the City's existing wastewater treatment plant (the "**Wheatland Heritage Capacity Allocation**") provided by the Agreement to Heritage Oaks East (Premier and Woodside) under Exhibits "C" and "D" and Sections ~~3.63~~ 3.6.3 to ~~3.65~~ 3.6.5 and ~~3.82~~ 3.8.2 of the Agreement, and the rights and obligations under Sections 3.6.3 to 3.6.5 and 3.8.2 of the Agreement with regard to the Wheatland Heritage Capacity Allocation~~s~~, are attached solely to the Residential Property and not the Non-Residential Property (as described in Exhibit "A" attached hereto and as so referenced in the Agreement). The Non-Residential Property shall have no right to use any of the Wheatland Heritage Capacity Allocation and no rights or obligations under Sections 3.6.3 to 3.6.5 and 3.8.2 of the Agreement with regard to the Wheatland Heritage Capacity Allocation. The Wheatland Heritage Capacity Allocation of 498 Units is fixed ~~and permanent~~ for the Residential Property and no other person or entity may use the Wheatland Heritage Capacity Allocation ~~except by written assignment executed by Developer in its sole and absolute discretion~~. Developer acknowledges and agrees that the Wheatland Heritage Capacity Allocation is subject to the following terms of the Agreement: Section 2.3.1 (as amended below), Commencement, Expiration; Section 2.5, Exception, Application of Changes; and, Section 2.6, Moratorium, Quotas, Restrictions and Other Growth Limitations~~, in the Agreement~~. No further payments to the City by Developer are required to complete and fix this permanent allocation of the Wheatland Heritage Capacity Allocation for the Residential Property. Developer is also still required to install the sewer collection system improvements for the Project in accordance with the Sewer System Plan as described at section 3.6.1 of the Agreement.

3.2 Levee Project.

3.2.1 Levee Agreements. City and Developer are parties to or otherwise involved in the following agreements ~~(the "Levee Agreements")~~:

(i) RD 2103 Cost Sharing Agreement in Regard to Bear River Phase 1 Flood Protection Project and Advance Funding and Reimbursement Agreement dated May 14, 2007;

~~(i)~~(ii) City of Wheatland – RD 2103 Grant Agreement dated April 8, 2008; and

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(iii) Bear River Phase 1 Flood Protection Project and Advance Funding and Reimbursement Agreement dated October 10, 2006, all as referred to in Amendment No. 1 (collectively the "**Levee Agreements**"). City acknowledges and agrees that Developer has no remaining obligations under the Levee Agreements except to pay the future City levee improvement fee (the "**Levee**

Fee") in accordance with Section 3.14 of the Agreement and Sections 2.4 to 2.8 of Amendment No. 1 and as reflected in Exhibit B.

3.2.2 Levee Fee Study/Levee Reimbursement. City agrees that Developer, by curing the Default, has satisfied all of its obligations to reimburse to the City its pro-rated share of the City's costs and expenses to analyze, prepare and adopt the levee improvement development fee study and ordinance (the "**Levee Fee Study**"), including fee consultant, engineering, attorney and City staff time and expenses, as required in the Levee Agreements and Amendment No. 1, except for additional Levee Fee Study funding that may be necessitated if the City's cost estimate and Developer's and other developer's advance funding amounts are insufficient. Upon receipt of Developer's and other developer's advance funding amounts sufficient to cover the anticipated costs of the Levee Fee Study and related work, City agrees to promptly commence and complete the Levee Fee Study and adopt the Levee Fee ordinance which will determine the amount of the reimbursement, if any, (the "**Reimbursement**") due Developer (or Lewis if Developer assigns its Reimbursement rights to Lewis in the recorded assignment of the Agreement executed by Developer and Lewis as set forth in Section 3.5 below), for funds previously paid or later paid by Developer for the Levee Project in excess of Developer's "fair share" obligation as determined by the Levee Fee Study, including Developer's payment of the Initial Grant Amount Repayment described below, which benefits other properties in the City (the "**Benefited Properties**") in accordance with the Agreement and the Levee Agreements. The Levee Fee Study shall identify the Benefited Properties and the amount of the Reimbursement to Developer, if any, from each of those Benefited Properties and that Reimbursement shall be collected by City from the owners of the Benefited Properties no later than the issuance of a grading permit to each of the Benefited Properties for development of those properties. Developer acknowledges that, pursuant to Amendment No. 1, the City Grant Amount (as defined in Amendment No. 1) shall be repaid first to City by Developer's payment of the Initial Grant Amount Repayment in accordance with Section 3.2.3 of this Amendment and the balance from the Levee Fees paid by the other Benefited Properties prior to the Reimbursement being paid to Developer or its assignee as such Reimbursement is collected by the City from the Benefited Properties. In lieu of accepting payment of the Reimbursement, Developer may elect to apply that Reimbursement as it is collected by the City as a further pre-payment of the DIF Fee under Section 3.4 below and the DIF Fee shall then be reduced by the amount of that pre-payment.

3.2.3 Levee Fee/$1,000,000 City Reimbursement. The $1,000,000 (plus interest) repayment to the City set forth in Amendment No. 1 is referred to herein as the "**Initial Grant Amount Repayment**". City agrees that the sum of (i) $3,000 from each DIF Fee payment paid to City as each building permit for a Unit is issued for the Residential Property plus (ii) all Levee Fees paid by Developer will be credited by City toward the repayment of the Initial Grant Amount Repayment until the Initial Grant Amount Repayment is paid in full whereupon, as set forth in Amendment No. 1, the Residential Property shall cease to have any obligation to make any more Levee Fee payments.

3.3 Term. The term of the Agreement set forth in Section 2.3.1 of the Agreement shall be amended to extend for a period of ten (10) years from the recordation date of this Amendment. This extension is made in accordance with Section 2.3.1 of the Agreement due to material delays in the completion and Federal agency certification of the Levee Project which delayed the development of the Project.

3.4 Development Impact Fees. Except for the Levee Fee and as set forth in Section 3.8 of this Amendment, City agrees that the total amount of City Development Fees which remain to be paid by Developer for the development of the Residential Property under Section 2.8 of the Agreement and Section 2.3 of Amendment No. 1, is $18,000 per Unit (as adjusted annually commencing January 1, 2007

by the ENR index pursuant to section 2.8.2.1 of the Agreement) for the first 312 Units in the Project and $28,000 per Unit (as adjusted annually commencing January 1, 2007 by the ENR index pursuant to section 2.8.2.1 of the Agreement)for the remaining Units in the Project (the "**DIF Fee**"). Except as set forth in Section 2.8.2.2 of the Agreement, those DIF Fees (as reduced for any Reimbursement applied by Developer to the DIF Fee as set forth in Section 3.2.2 of this Amendment) will satisfy Developer's payment of all of those City Development Fees in Exhibit "B" of the Agreement, including all of the current City Development Fees charged by the City for development listed on Schedule 2.8 attached hereto, and that the DIF Fee shall not increase (except for the ENR index adjustment in Section 2.8.2.1 of the Agreement) in the event the City increases those fees listed in Schedule 2.8 or adopts new City Development Fees not listed in Schedule 2.8 or in Exhibit "B" to the Agreement. City agrees that the $18,000 DIF Fee per Unit for the initial 312 Units was determined by reducing the DIF Fee of $28,000 per Unit set forth in Section 2.3 of Amendment No. 1, by payments made to City by or for Developer in the aggregate amount of $3,129,000 under Section 3.6.3 of the Agreement.

3.5 Assignment. City hereby approves the assignment of the Agreement to Lewis upon the sale of the Residential Property by Developer to Lewis effective upon the closing of that sale in accordance with Section 8.2 of the Agreement.

3.6 Dedication. Developer agrees to dedicate a portion of Lot C of Final Tract Map No. 2006-0019 ("**Lot C**") identified on Schedule 3.7 attached hereto to the City which the City intends to use for expansion of the Wastewater Treatment Plant (the "**WTP Expansion**"), rather than for park purposes. The WTP Expansion site will be dedicated at the time of the final map for the first subdivision phase adjacent to the site. City agrees that the total acreage of this park land within Lot C dedicated will, despite its use by the City for the WTP Expansion, be credited against the improved park acreage dedication requirements set forth in Section 3.2.2 of the Agreement and no additional park land dedication or park improvements will be required for the Project to replace any of this park land within Lot C used for the WTP Expansion. Nothing in this Section 3.6 shall affect the remainder of the park land within Lot C to be improved and dedicated by Developer for park use pursuant to section 3.2 of the Agreement.

3.7 Section 3.2.1.2 of the Agreement is amended to change the dates for installation and completion of the North Neighborhood Park and South Neighborhood Park to prior to the 50th certificate of occupancy in Village 3 for the South Neighborhood Park and prior to the 50th certificate of occupancy in Village 4 for the North Neighborhood Park.

3.8 Section 3.72 and 3.73 of the Agreement are each amended by adding the following at the end of each Section:

> "Notwithstanding the requirements set forth in ~~this~~ these Sections to construct the traffic signal improvements, the City agrees that Developer shall not be required to construct the traffic signal improvements until City prepares and submits a warrant study for the Project to the State Department of Transportation ("Caltrans") and ~~if~~ Caltrans ~~does not require and~~ approves such construction based on the warrant study. ~~after Developer (or Lewis if it purchases the Residential Property) prepares and submits a warrant study for the Project to Caltrans; provided,~~ Developer also agrees that it will pay its fair share of the cost of such traffic signal improvements ~~by~~ through a City development fee for such improvements if such a fee ordinance ~~an increase in its DIF Fee if such increase~~ is adopted by the City in accordance with Government Code Sections 66000 to

66008, et seq. ~~prior to the City's issuance of the 300th building permit in the Project.~~ If City adopts such a fee ordinance and thereafter a warrant study is approved by Caltrans triggering Developer's obligation to construct the traffic signal improvements, then (a) Developer's obligation to pay the new development fee shall cease upon City demand to construct the improvements based on the Caltrans-approved warrant study, and (b) for any such development fees paid by Developer prior to the City demand, City shall contribute those collected fees toward the construction costs. "

4. **No Effect on Other Provisions**. Except for the amendments in Section 2, the remaining provisions of the Agreement shall be unaffected and remain in full force and effect.

CITY OF WHEATLAND

By:_____
Name:_____
City Manager

WHEATLAND HERITAGE OAKS, LLC,
a California limited liability company

By:_____
Hugh Scheffy, Liquidating Trustee of the Alameda Liquidating Trust, successor-in-interest to Alameda Investments, LLC, Its Member

READ AND APPROVED:

LEWIS INVESTMENT COMPANY, LLC,
a California limited liability company

By: LEWIS OPERATING CORP.,
a California corporation
Its Sole Manager

By:_____
Name:_____
Title:_____

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STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT "A"
DESCRIPTION OF RESIDENTIAL PROPERTY

The real property referred to in this Agreement as the "Residential Property" is located in Yuba County, California, and is legally described as follows:

All of Large Lot Final Map Tract No. 2006-0019 filed at the Yuba County Recorder's Office in the Official Book of Maps, Book 88, at Pages 27-32, excepting Lots 3, 6, and 7. Lots 3, 6, and 7 of Tract No. 2006-0019 are collectively the "Non-Residential Property".

EXHIBIT "B"
ESTOPPEL CERTIFICATE

[Has this certificate been finalized and signed? If yes, then this exhibit should be replaced with the final document.]

CITY OF WHEATLAND
HERITAGE OAKS ESTATES – EAST SUBDIVISION

ESTOPPEL CERTIFICATE

The undersigned City of Wheatland ("**City**") hereby agrees and certifies as of the date stated below (the "**Effective Date**") the following which concerns that certain City of Wheatland Development Agreement Concerning Heritage Oaks Estates-East Subdivision dated February 28, 2006 and recorded in the Yuba County Recorder's Office on April 18, 2006 as Document No. 2006R-007610, and Amendment No. 1 thereto dated June 10, 2008 and recorded on September 11, 2008 as Document No. 2008R-014196 (collectively the "**Agreement**"):

1. The Agreement is in full force and effect and a binding obligation of the City, Wheatland Heritage Oaks, LLC ("**Developer**"), and Trivest Land Co., Inc. ("**Trivest**").

2. The Agreement has not been amended or modified except as set forth in Amendment No. 1 described above.

3. There are no uncured defaults in Developer's performance of its obligations under the Agreement except as identified in Exhibit "A" attached hereto which default will be deemed cured in full provided the following payments are made to the City by or on behalf of Developer:

   (a) $16,000 within two (2) business days after the Effective Date;

   (b) $52,400 on or before the earlier of (i) two (2) business days after the close of Developer's pending sale of the Property to Lewis Investment Company, LLC, a California limited liability company ("**Lewis**"), or (iii) October 30, 2010.

4. There are no uncured defaults in Trivest's performance of its obligations under the Agreement except as set forth in Exhibit "A" attached hereto and in the event Trivest fails to cure its default, City agrees that any termination of the Agreement or other action by City to remedy the default of Trivest shall only affect the Agreement as to Trivest and the non-residential portion of the property covered by the Agreement owned by Trivest, and the Agreement shall remain in full force and effect as to the residential portion of the property covered by the Agreement owned by Wheatland (or owned by Lewis in the event Lewis purchases the residential property from Wheatland).

CITY OF WHEATLAND

By: _____

(Name)_____

City Manager

Dated:_____

HOE - East

City of Wheatland

111 C Street Wheatland, California 95692
TELEPHONE (530) 633-2761
FAX (530) 633-9102

December 9, 2009

Mr. Brian Cutting
Mr. John Stewart
Wheatland Heritage Oaks, LLC
111 Woodmere Drive, Suite 190
Folsom, CA 95630

Mr. Brian Cutting
Mr. John Stewart
Wheatland Heritage Oaks, LLC
8205 Sierra College Boulevard, Ste. 100
Roseville, CA 95661

Mr. Milo Terzich
Premier Homes
8205 Sierra College Boulevard, Ste. 100
Roseville, CA 95661

Re: Wheatland Heritage Oaks Estates Development Agreement: City of Wheatland **Notice of Default**

Gentlemen:

Pursuant to section 5.1.1 of the Development Agreement between the City of Wheatland ("City") and Wheatland Heritage Oaks, LLC ("Heritage Oaks") for the Heritage Oaks Estates Development, as amended, (the "Development Agreement"), this letter constitutes the City's Notice of Default.

The nature of Heritage Oaks' default consists of each of the following:

Heritage Oaks has Failed to Reimburse the City for Heritage Oaks' Pro-Rata Share of the Highway 65/Main Street Signal Improvements. Heritage Oaks is responsible for its pro-rata share of these improvement costs pursuant to section 3.7.1 of the Development Agreement. The outstanding balance of Heritage Oaks' obligation under section 3.7.1 of the Development Agreement is $15,968.10. Heritage Oaks has failed to reimburse the City for the balance of its pro-rata share of these improvements.

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Heritage Oaks has Failed to Fund the Levee Development Fee Study. Amendment No. 1 to the Development Agreement, which was executed on June 10, 2008 and recorded on September 11, 2008, obligates Heritage Oaks to fund in advance its pro-rata share of the City's project costs for the City's Levee Development Fee Study, which amounts to $18,484.46. Heritage Oaks has failed to provide the City advance funding for this fee study.

Heritage Oaks has Failed to Reimburse the City for City Entitlement and Processing Charges. Heritage Oaks is required to pay all applicable City entitlement and processing fees and charges pursuant to section 2.8.1 of the Development Agreement, and City Resolution 01-07 provides for full cost billing and reimbursement. Heritage Oaks is now $25,227.09 delinquent in its fee obligations. These charges are almost entirely engineering charges for the project that were incurred during the 2007-2008 fiscal year. Heritage Oaks has failed to reimburse the City for these fees and charges.

Heritage Oaks' default may be satisfactorily cured by: (1) reimbursing the City in the amount of $15,968.10 for Heritage Oaks' pro-rata costs of the Highway 65/Main Street Signal Improvements; (2) advancing the City funds in the amount of $18,484.46 to satisfy Heritage Oaks' pro-rata share of the City's Levee Development Fee Study; and (3) reimbursing the City for fees and charges in the amount of $25,227.09.

Heritage Oaks has 30 days from the date of this Notice of Default to satisfactorily cure its default. If Heritage Oaks fails to cure its default within 30 days after the date of this Notice of Default, then the City intends to terminate the Development Agreement, as amended, in the manner set forth in sections 5.1.2 and 5.1.3 of the Development Agreement, Chapter 17.49 of the Wheatland Municipal Code (Ordinance No. 330), Government Code sections 65864 through 65869.5 and other applicable law.

Sincerely,

STEPHEN L. WRIGHT
City Manager

Cc: Richard Shanahan
City Attorney

City of Wheatland

313 Main Street– Wheatland, California 95692
Tel (530) 633-2761 – Fax (530) 633-9102

CITY COUNCIL MEETING **March 9, 2010**
STAFF REPORT **Agenda Item: 4.1**

Prepared by: Richard P. Shanahan, City Attorney

Agenda Entry: Consideration of termination of development agreements between the City and: (1) Lakemont Overland Crossing, LLC; (2) Wheatland Heritage Oaks, LLC; and (3) Trivest Land Co., Inc.

Background, Purpose and Ordinance Summary:

The City is a party to development agreements with Lakemont Overland Crossing, LLC ("Lakemont"), Wheatland Heritage Oaks, LLC ("Heritage Oaks") and Trivest Land Company, Inc. ("Trivest"). As explained below, Lakemont, Heritage Oaks and Trivest have defaulted on their obligations under those development agreements. This staff report explains each developer's default and the City's response to that default. The City Council may now consider whether to terminate each development agreement. The attached ordinance: (1) recites all of the relevant findings that the City Council would be required to make in order to terminate each development agreement; (2) terminates each development agreement; and (3) provides that any sewer capacity shall remain assigned to the property that was subject to one of the development agreements, but allows the City to reassign that capacity to satisfy future demand and to reimburse the developer for its cost of that sewer capacity.

A. Lakemont's Default

On December 27, 2005, the City and Lakemont entered into a development agreement for the Jones Ranch subdivision. (Development Agreement, Exhibit A.) Lakemont has defaulted on its obligations under the development agreement by: (1) failing to reimburse the City for Lakemont's unpaid pro-rata share of the City's Highway 65/Main Street Signal Improvements in the amount of $66,826.49 (Exhibit A § 3.7.1); (2) failing to reimburse the City for Lakemont's unpaid pro-rata share of the City's Levee

Development Fee Study in the amount of $22,492.57 (Amend. No. 1 to Development Agreement, Exhibit B); and (3) failing to comply with sections 3.2.1.2 and 3.2.4 of the development agreement. (See Exhibit A, §§ 3.2.1.2 & 3.2.4.)

B. Heritage Oaks' Default

On February 26, 2006, the City and Heritage Oaks entered into a development agreement for the Heritage Oaks Estates-East subdivision. (Development Agreement, Exhibit C.) Heritage Oaks has defaulted on its obligations under the development agreement by: (1) failing to reimburse the City for Heritage Oaks' unpaid pro-rata share of the City's Highway 65/Main Street Signal Improvements in the amount of $15,968.10 (Exhibit C § 3.7.1); (2) failing to reimburse the City for Heritage Oaks' unpaid pro-rata share of the City's Levee Development Fee Study in the amount of $18,484.46 (Amend. No. 1 to Development Agreement, Exhibit D); and (3) failing to reimburse the City for Heritage Oaks' unpaid fee obligations, pursuant to Resolution 07-01, which requires full cost billing and reimbursement.

C. Trivest's Default

In 2007, Trivest acquired the non-residential portion of the Heritage Oaks property, specifically lots 3, 6 and 7 of the large lot final map. As part of this transaction, there was a partial assignment of the Heritage Oaks development agreement to Trivest. The sewer capacity rights of the development agreement were not assigned to Trivest. Trivest has defaulted on its obligations under the development agreement by failing to reimburse the City for Trivest's unpaid pro-rata share of the City's Highway 65/Main Street Signal Improvements in the amount of $218,076.22.

D. The City's Response

On December 9, 2009, the City Manager mailed the City's Notices of Default to Lakemont, Heritage Oaks and Trivest. (Exhibit E.) Lakemont, Heritage Oaks and Trivest were required to cure their respective defaults within 30 days after the City sent this notice, or by January 8, 2010. As of February 26, 2010, Lakemont, Heritage Oaks and Trivest had not cured their respective defaults.

In accordance with section 5.1.2 of each development agreement, on February 26, 2010, the City Manager mailed a Notice of Intent to Terminate the development agreements that the City entered into with Lakemont, Heritage Oaks and Trivest. (Developers' Notices, Exhibit F.) These notices included all of the information required by Government Code section 65094 and each development agreement.

Section 5.1.2 of each development agreement requires the City Council to consider terminating the development agreement within 30 days after the date on which the City mailed its Notice of Intent to Terminate the development agreements to Lakemont, Heritage Oaks and Trivest. Government Code sections 65867 and 65868 requires this notice to be provided at least 10 days prior to the date of the City Council's

hearing regarding terminating of the development agreements. The City Council's March 9, 2010 hearing is more than 10 days but fewer than 30 days after the City Manager mailed each Notice of Intent to Terminate.

Pursuant to Government Code section 65091, subdivision (a)(4), on February 26, 2010, the City timely mailed a notice of its hearing at which it would consider terminating Lakemont's, Heritage Oaks' and Trivest's development agreements to each landowner owning property located within 300 feet of any property that is subject to one of these development agreements. (Exhibit G.) This notice included all of the information required by Government Code section 65094.

Pursuant to Government Code sections 6061, 65867, 65868 and 65090, subdivision (a), on February 26, 2010, the City timely published a notice of its public hearing at which it would consider terminating Lakemont's, Heritage Oaks' and Trivest's development agreements in the Marysville Appeal-Democrat, which is a newspaper of general circulation within the City. (Exhibit K (Notice and Proof of Publication).) This notice included all of the information required by Government Code section 65094.

Termination of a development agreement must be approved by ordinance. A proposed ordinance is attached. If, following the public hearings, the City Council desires to proceed with the termination, then it should introduce the ordinance.

In terminating the development agreements, there is a question about how to handle the sewer connection charge advances that have been paid under the agreements. We have concluded that the City may terminate the development agreement and retain the sewer connection charge advances. However, if the City retains the advance payments, then the developer also is entitled to retain some sewer connection credits emanating from those advances.

Accordingly, if the City terminates the development agreement, we recommend that the termination provide that: (1) the City retain the advance payments; (2) the advance payment amount stays with the development land as a credit toward sewer connection charges that may be due upon future development of the property; (3) the property no longer has long-term sewer connection rights (i.e., sewer capacity will be determined by the conditions prevailing at the time of development and application for connection); (4) if another developer in the City is ready and willing and able to utilize the sewer capacity and enter into an agreement with the City and pay the same sewer connection charge advances, then the City will collect the sewer connection charge advance payment from, and transfer the defaulting developer's sewer units to, the other developer; and (5) if the City is able to transfer the sewer units to another developer, then, upon payment of the advance by the other developer, the City will refund to the defaulting developer its sewer connection charge advances (without interest). These provisions are incorporated in the proposed ordinance.

Jenny Taylor

From: Tim Raney
Sent: Thursday, May 27, 2010 11:42 AM
To: Jenny Taylor
Subject: Fw: Wheatland Heritage Oaks amounts Due

----- Original Message -----
From: Rex Miller <Rmiller@wheatland.ca.gov>
To: Tim Raney
Cc: Steve Wright <SWright@wheatland.ca.gov>
Sent: Wed May 19 15:39:38 2010
Subject: Wheatland Heritage Oaks amounts Due

What I am showing as due from the single family residential portion of Heritage Oaks East is
:

Hiway 65/Main Street Signal and Improvements $ 16,007.65 (includes interest thru 5/31/10)

Levee Development Fee Study
18,484.46

City Entitlement and Processing Charges 28,894.67

Deposit for Future Entitlement and Processing 5,000.00

Sub-total
$ 68,386.78

Legal Fees that need to allocated to:

HOE - Woodside

HOE - Trivest

Jones Ranch

Based on acreage. $ 8,718.50

1

Please let me know what that breakdown is.

Rex Miller

SCHEDULE 2.8
DEVELOPMENT IMPACT FEES (AS OF 9/15/10)

SCHEDULE 3.5
SUMMARY OF DIF FEE PAYMENTS

South Area Developers Wastewater Treatment Facility Improvements Advance Funding Schedule per Section 3.6.3 of HOE Development Agreement

Installment	Payment Amount	Due Date	JV's % Share	JV's Portion	
1	$ 200,000	January 1, 2006	44.7%	89,400	PAID
2	$ 200,000	February 1, 2006	44.7%	89,400	PAID
3	$ 200,000	March 1, 2006	44.7%	89,400	PAID
4	$ 200,000	April 1, 2006	44.7%	89,400	PAID
5	$ 200,000	May 1, 2006	44.7%	89,400	PAID
6	$ 2,000,000	October 1, 2006	44.7%	894,000	PAID
7	$ 2,000,000	January 1, 2007	44.7%	894,000	PAID
8	$ 1,000,000	April 1, 2007	44.7%	447,000	PAID
9	$ 1,000,000	July 1, 2007	44.7%	447,000	PAID
Total	**$ 7,000,000**			**3,219,000**	

Municipal Administration Funding per Section 3.8.2 of the HOE Development Agreement

Installment	Payment Amount	Due Date	JV's % Share	JV's Portion	
1	$ 62,500	March 1, 2006	44.7%	27,938	PAID
2	$ 62,500	July 1, 2006	44.7%	27,938	PAID
3	$ 62,500	October 1, 2006	44.7%	27,938	PAID
4	$ 62,500	January 1, 2007	44.7%	27,938	PAID
5	$ 62,500	April 1, 2007	44.7%	27,938	PAID
6	$ 62,500	July 1, 2007	44.7%	27,938	PAID
7	$ 62,500	October 1, 2007	44.7%	27,938	PAID
8	$ 62,500	January 1, 2008	44.7%	27,938	PAID
Total	**$ 500,000**			**223,500**	

Total Fees **$223,500**

SCHEDULE 3.7
MAP OF DEDICATION PARCEL