

PLANNING COMMISSION MEETING

In compliance with Americans with Disabilities Act, If you need special assistance to participate in this meeting, please contact the Planning Secretary at (805) 524-1500 ext. 113, 48 hours prior to the meeting in order for the City to make reasonable arrangements to ensure accessibility to this meeting (28 CFR 35.102-35.104 ADA Title II).

No New Business will be Considered by the Planning Commission after the Hour of 11:00 p.m. unless a Majority of the Planning Commission Determines to Continue beyond that Hour.

Memorandums: Memorandums relating to agenda items are on file in the Planning Department. If you have questions regarding the agenda, you may call the Planning Dept. (805) 524-1500 ext. 113 or visit the Planning Dept. in City Hall for information. Materials related to an item on this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the Planning Dept. in City Hall during normal business hours.

AGENDA

ITEM

REFERENCE

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ORAL COMMUNICATIONS

This is the opportunity for citizen presentations or comments not related to agenda items, but within responsibility of the Planning Commission (please do not exceed 5 minutes per topic).

4. CONSENT CALENDAR – None

5. PUBLIC HEARING

5a. Modifications to Four Projects Within the Business Park.

Memo

Request to Modify Conditions of Approval by Revising Condition E5.

- Condition E5 states: Public Improvements shall be completed prior to the City's acceptance of improvements. Occupancy shall not occur on any lot that is within the 100-year flood plain.

APPLICANTS' PROPOSAL

- Revise Condition E5 to read as: Public Improvements shall be completed prior to the City's acceptance of improvements. Occupancy shall not occur on any lot that is not in compliance with the City's Flood Damage Prevention Ordinance, Chapter 6.16 of the Municipal Code.

Revise Condition E5 for the Following Projects:

1. Modification #4 to TTR 5785, DP 07-01
2. Modification #2 to TTR 5784, DP 07-02
3. Modification #2 to TTR 5803
4. Modification #3 to DP 07-03, CUP 08-03, LLA 08-02

Request to Modify Condition H of Conditions of Approval to Grant a One-Year Time Extension For the Following Project:

Modification #3 to DP 07-03

Purpose of Public Hearing: Consider the requests and receive public testimony.

PROJECTS:

1. **Project Title:** Mod #4 to TTR 5785, DP 07-01 (a.k.a. Perry Ranch).

APN's: 046-0-050-160; 046-0-050-170.

Applicant: Fillmore Riverview, LLC, 660 Newport Center Drive, Ste. 930, Newport Beach, CA 92660.

Recommendation: Adopt Planning Commission Resolution No. 10-849
Recommend the City Council approve the Modification to the Conditions of Approval for TTR 5785, DP 07-01 by revising the language of Condition E5:

**Reso
(att 5)**

E5a. Public Improvements shall be completed prior to the City Council acceptance of the public improvements.

E5b. Prior to Building Permit issuance, the project shall comply with the Fillmore Municipal Code, Chapter 6.16, Flood Damage Prevention Ordinance.

2. **Project Title:** Mod #2 to TTR 5784, DP 07-02 (a.k.a. Coe Property).

APN: 046-0-060-110.

Applicant: Fillmore Industrial Park, Attn: KDF Communities, 660 Newport Center Dr., Ste.930, Newport Beach, CA 92660.

Recommendation: Adopt Planning Commission Resolution No. 10-850
Recommend the City Council approve the Modification to the Conditions of Approval for TTR 5784, DP 07-02 by revising the language of Condition E5:

**Reso
(att 6)**

PLEASE NOTE: If you challenge the actions of the Planning Commission in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in the public notice, or in written correspondence delivered to the Planning Commission at, or prior to, the public hearing (Calif. Gov't Code § 65009).

Any legal action by an applicant seeking to obtain judicial review of the Planning Commission's decision on a hearing listed on this agenda may be subject to the 90-day filing period of, and governed by, Code of Civil Procedure Section 1094.6.

E5a. Public Improvements shall be completed prior to the City Council acceptance of the public improvements.

E5b. Prior to Building Permit issuance, the project shall comply with the Fillmore Municipal Code, Chapter 6.16, Flood Damage Prevention Ordinance.

3. Project Title: Mod #2 to TTR 5803 (a.k.a. Maxwell Property).

APN's: 046-0-060-010; 046-0-060-160.

Applicant: Sespe Creek Properties, LLC, 1253 Coast Village Rd., Ste. 105, Santa Barbara, CA 93108.

Recommendation: Adopt Planning Commission Resolution No. 10-851
Recommend the City Council approve the Modification to the Conditions of Approval for TTR 5803, by revising the language of Condition E5:

**Reso
(att 7)**

E5a. Public Improvements shall be completed prior to the City Council acceptance of the public improvements.

E5b. Prior to Building Permit issuance, the project shall comply with the Fillmore Municipal Code, Chapter 6.16, Flood Damage Prevention Ordinance.

4. Project Title: Mod #3 to DP 07-03, CUP 08-03, LLA 08-02 (a.k.a. The Stop).

APN's: 052-0-160-010; 052-0-0160-070.

Applicant: T S A F, LLC, 2812 Kelly Johnson Dr., #275, Valencia, CA 91355.

Recommendation: Adopt Planning Commission Resolutions:

Planning Commission Resolution 10-852
Recommend the City Council approve the Modification to the Conditions of Approval for DP 07-03, CUP -08-03.by revising the language of Condition E5:

**Reso
(att 8)**

E5a. Public Improvements shall be completed prior to the City Council acceptance of the public improvements.

E5b. Prior to Building Permit issuance, the project shall comply with the Fillmore Municipal Code, Chapter 6.16, Flood Damage Prevention Ordinance.

Planning Commission Resolution 10-853
Planning Commission approves a one-year Time Extension for DP 07-03.

**Reso
(att 9)**

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6. BUSINESS ITEMS -None

7. REPORTS and COMMUNICATIONS

7a. Community Development Director

Oral

7b. Planning Commission

Oral

8. ADJOURNMENT

8a. The Planning Commission adjourns to the next regular Planning Commission meeting scheduled for August 18, 6:30 p.m., in the City Council Chambers, 250 Central Ave., Fillmore, CA 93015.

**Next Regular City Council Meeting
July 13, 2010**

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Any legal action by an applicant seeking to obtain judicial review of the Planning Commission's decision on a hearing listed on this agenda may be subject to the 90-day filing period of, and governed by, Code of Civil Procedure Section 1094.6.



CITY OF FILLMORE

CENTRAL PARK PLAZA
250 Central Avenue
Fillmore, California 93015 -1907
(805) 524-3701 • FAX (805) 524-5707

Item 5a.

July 12, 2010

TO: Planning Commission

FROM: Kevin McSweeney,
Community Development Director 

SUBJECT: **Public Hearing: Modifications to Four projects within the Business Park: (1) Modification #4 to TTR 5785, DP 07-01, (2) Modification #2 to 5784, DP 07-02, (3) Modification #2 to TTR 5803, and (4) Modification #3 to DP 07-03, CUP 08-03, LLA 08-02**

SUMMARY:

The owners of four Business Park properties have filed applications to modify City Council approved Conditions for their projects. Because the City Council approved the Conditions and is considered as the Final Review Authority per the Zoning Ordinance Section 6.04.5005 (Multiple Permit Applications), City staff and the Planning Commission do not have the authority to revise the conditions. The Planning Commission is a recommending body on this request.

The request to modify two conditions consists of the following;

1. Revise Condition of Approval #E5 to refer to the City's Flood Damage Prevention Ordinance, Chapter 6.16 of the Municipal Code.
2. Revise Condition of Approval #H, to provide a one-year time extension to Development Permits for one property

RECOMMENDATION:

The Planning Department staff recommends the Planning Commission take the following actions:

Perry Ranch:

1. Adopt Resolution 10-849, recommending the City Council approve Modification #4 to Development Permit (DP) 07-01 and Tentative Tract Map (TTR) 5785 for "Perry Ranch" site subject to the revised conditions of approval.

Coe:

2. Adopt Resolution 10-850, recommending the City Council approve Modification #2 to DP 07-02 and TTR 5784 for the "Coe" property subject to the revised conditions of approval.

Maxwell:

3. Adopt Resolution 10-851, recommending the City Council approve Modification #2 to TTR 5803 for the "Maxwell" property subject to the revised conditions of approval.

The Stop:

4. Adopt Resolution 10-852, recommending the City Council approve Modification #3 to DP 07-03, CUP 08-03, LLA 08-02 for the "Stop".
5. Adopt Resolution 10-853, recommending the City Council approve a one-year time extension to DP 07-03 associated with the "Stop" property.

BACKGROUND:

The Planning Department received applications on June 22, 2010 and on that day, the City Council directed staff to expedite the review of the modification applications with the goal to have Council consider the applications at the July 13, 2010 meeting. Due to calendar and public noticing constraints it was agreed that the earliest the applications could be reviewed by Planning Commission was on July 12th and the City Council meeting would be at a special meeting held on July 20th, 2010.

The Business Park Master Plan, seven (7) projects, and the Environmental Impact Report (EIR) were all approved on March 11, 2008.

The project area is made up of two phases encompassing a total of 90 acres. Phase I is broken into five properties totaling about 82 acres, including the new Water Recycling Plant, while Phase II involves the remainder of the plan area.

The five projects of Phase I are comprised of the following properties: Perry Ranch (approximately 25.8 acres in size); Maxwell (approx. 17.7 acres); Coe (approx. 10.5 acres); Stop (approx. 9.5 acres); and the Epic Group site (approx. 6.3 acres).

Flood Plain Status:

The Flood Analysis in the Business Park EIR indicates that with the newly constructed levee along the Sespe Creek, the Business Park is no longer within the 100 year flood plain except for a small portion of the Coe property along the Santa Clara River.

Three (3) months after the Business Park EIR was certified and the Entitlements were approved FEMA released the preliminary flood insurance rate maps (FIRM) on May 8, 2008 indicating the Business Park would fall within the 100 flood plain if FEMA adopted the preliminary maps.

After FEMA released the draft FIRMs, the City of Fillmore issued a formal document stating its disagreement with the flood zones depicted on the draft FEMA maps. On July 8, 2008, the City Council adopted an Addendum to the Business Park EIR concluding that the preliminary draft FIRM did not constitute new information, and because the draft map was not, and still is not, the official/adopted map, even if considered new information, the draft map does not cause the project to have significant effects that were not discussed in the EIR, nor does the draft map cause significant effects previously examined to be substantially more severe than shown in the EIR.

The Addendum concluded that, because the draft FIRMs have not been adopted, and are undergoing revisions, the City had no basis for identifying a new significant environmental impact and the City could not conclude that the severity of an environmental impact had increased. The Ventura County Local Agency Formation Commission agreed with the City's analysis when it approved the annexation of the Business Park properties into the City. Unless the draft map becomes FEMA's official map, the draft map has no regulatory "power" and the City is not required to administer it nor is an applicant required to abide by it.

Expiration of Permits:

All projects approved in the Business Park were approved with Condition of Approval #H that identifies an expiration date of March 11, 2010. Section 6.04.6635 of the Fillmore Municipal Code provides that a development permit becomes null and void subsequent to its expiration date, unless the applicant has commenced construction. The Perry Ranch Project is the only project that has made progress with public improvements, and grading. Therefore, the Perry Ranch development permit has not expired.

Except for Perry Ranch all other projects face expiration of their respective Development Permits. However, section 6.04.6635 states that, if the application for the Development Permit also involves the approval of a tentative map, the permit must be exercised prior to the expiration of the companion tentative map. The State Legislature extended the expiration of tentative maps, including those issued for the Business Park, until 2012. Consequently, the Development Permits for those projects within the Business Park that also have approved tentative maps, have not expired and will not expire until the expiration of the companion tentative map.

The "Stop" project does not have a tentative map but submitted a letter requesting an extension prior to the expiration date. Therefore, the Development Permit for the Stop project can be extended for one more year. in accordance with the Fillmore Municipal Code

ANALYSIS:

Flood Plan Analysis:

The Business Park owners are concerned that they have been placed in "limbo" between the EIR analysis indicating no flood plain issues (except Coe) and FEMA's possible future analysis in 2012 when FEMA is scheduled to adopt the FIRMs. This situation negatively affects construction loans and timing of construction if applicants desire to proceed with development now. Therefore, the applicants desire clarification to Condition E5, which pertains to flooding, to provide them with some assurance that they can proceed with development now if they so desire.

Condition E5 states:

E5. "Public Improvements shall be completed prior to the City's acceptance of improvements. Occupancy shall not occur on any lot that is within the 100 year flood plain".

The applicant proposes the following modification:

"Public Improvements shall be completed prior to the City's acceptance of improvements. Occupancy shall not occur on any lot that is not in compliance with the City's Flood Damage Prevention Ordinance, Chapter 6.16 of the Municipal Code."

City Staff recommends the following modification to Condition E5:

E5a. "Public Improvements shall be completed prior to the City Council acceptance of the public improvements.

E5b. Prior to Building Permit issuance, the project shall comply with the Fillmore Municipal Code Chapter 6.16 Flood Damage Prevention Ordinance.

City staff believes that the original Condition #E5 has 2 requirements and the City should separate the requirements. One requirement pertains to the timing of accepting public improvements and the second requirement is about the floodplain. For this reason, there should be 2 separate conditions: E5a. E5b.

To better clarify the flood plain conditions, City staff drafted condition E5b which requires flood analysis prior to *building permit* issuance. As it is written in the original condition, the flood analysis will occur at Occupancy, which is after the building is completed. Flood analysis based upon Chapter 6.16 of the FMC should occur before building permits because the requirements in Chapter 6.16 will influence the design of the building.

The City's "Flood Prevention Ordinance" is administered by the City Engineer and is the City's regulatory tool to ensure the health and safety of human life and protection of public and private property from flooding. New development inside the flood plain is required to comply with the standards contained in the Flood Ordinance to protect them from possible inundation.

Presently, the Business Park is not in the 100-year plain (refer to Attachment 1, Figure 4.8-1 of EIR). Section 4.8.1 (c), page 4.8-2 of the EIR studied the areas of the Business Park that intersected the flood plain boundary. The northwest corner of Perry Ranch and the southeast corner of the Coe property were identified to intersect the 100-year flood boundary, however, these areas were removed from possible inundation. Completion of the Sespe Creek levee now protects the Perry Ranch site and the future building pad in the southern portion of the Coe site is required to be raised, so as to bring the building outside the flood plain. Therefore, as approved, the construction standards for new development inside the 100-year plain as provided in Chapter 6.16 of the FMC do not apply to the Business Park, because the project area is outside of the flood plain – as of today.

However, if prior to the issuance of building permits for the Business Park, FEMA adopts a new map showing the project area inside the flood plain, development in the project area would be required to comply with the provisions of the Flood Damage Prevention Ordinance, including but not limited to Sections 6.16.140 "Standards of Construction" and 6.16.160 "Standards for storage of materials and equipment". The applicants would be required to submit construction plans for review showing compliance with these provisions before building permits could be issued.

Expiration of Permit Analysis:

According to the Conditions of Approval H, all projects with the Entitlement Development Permit expire if there is no due diligence.

Perry Ranch:

Since the approval of the Business Park Master Plan, Perry Ranch submitted plan check, constructed public improvements, rough graded and proceeded with various modifications to the application. These actions demonstrate "due diligence" and the project is currently not in jeopardy of expiring. The Tentative Tract Map 5785 has not been recorded and it is due to expire on March 11, 2012 as per state Govt. Code 66452.22(a).

The "Coe" Property

The Development Permit for "Coe" was set to expire on March 11, 2010. However, the tentative map 5784 is due to expire on March 11, 2012 as per state Govt. Code 66452.22(a). Consequently, the Development Permit will continue until the expiration of the tentative map.

The "Maxwell" Property

Tentative Map 5803 was the only approval issued for the "Maxwell" property on March 11, 2008 and is due to expire on March 11, 2012 as per state Govt. Code 66452.22(a).

The "Stop" Property

The "Stop" Development Permit and Conditional Use Permit expired on March 11, 2010. There is no tentative map associated with the Stop project. Consequently, the Development Permit and Conditional Use Permit are null and void.

Indemnification

As a condition to approval of the requested modifications to conditions E5, each property owner will be required to execute an indemnity and hold harmless agreement for the benefit of the City.

Entitlements Needed & Review Authority

As provided in Section 6.04.5001 Table IV-1 of the FMC the Community Development Director does not have the authority to amend the conditions of a project that originally received approval from the City Council. The four Business Park properties requesting a modification must obtain approval from the City Council, who originally approved and imposed the conditions on the projects. Therefore, the applications must go through the proper City review process to amend the projects' conditions as proposed by having the Planning Commission review the requests and forward a recommendation to the City Council for final determination.

California Environmental Quality Act (CEQA)

As proposed, the amendment to condition E5 for each project does not require further CEQA review, because the proposal conforms to the EIR Addendum dated July 8, 2008 and does not constitute "new information" that would result in a new or substantially more severe environmental effect prompting further environmental analysis as provided in Section 15162 of *CEQA Guidelines*.

Kevin McSweeney,
Community Development Director

Attachments:

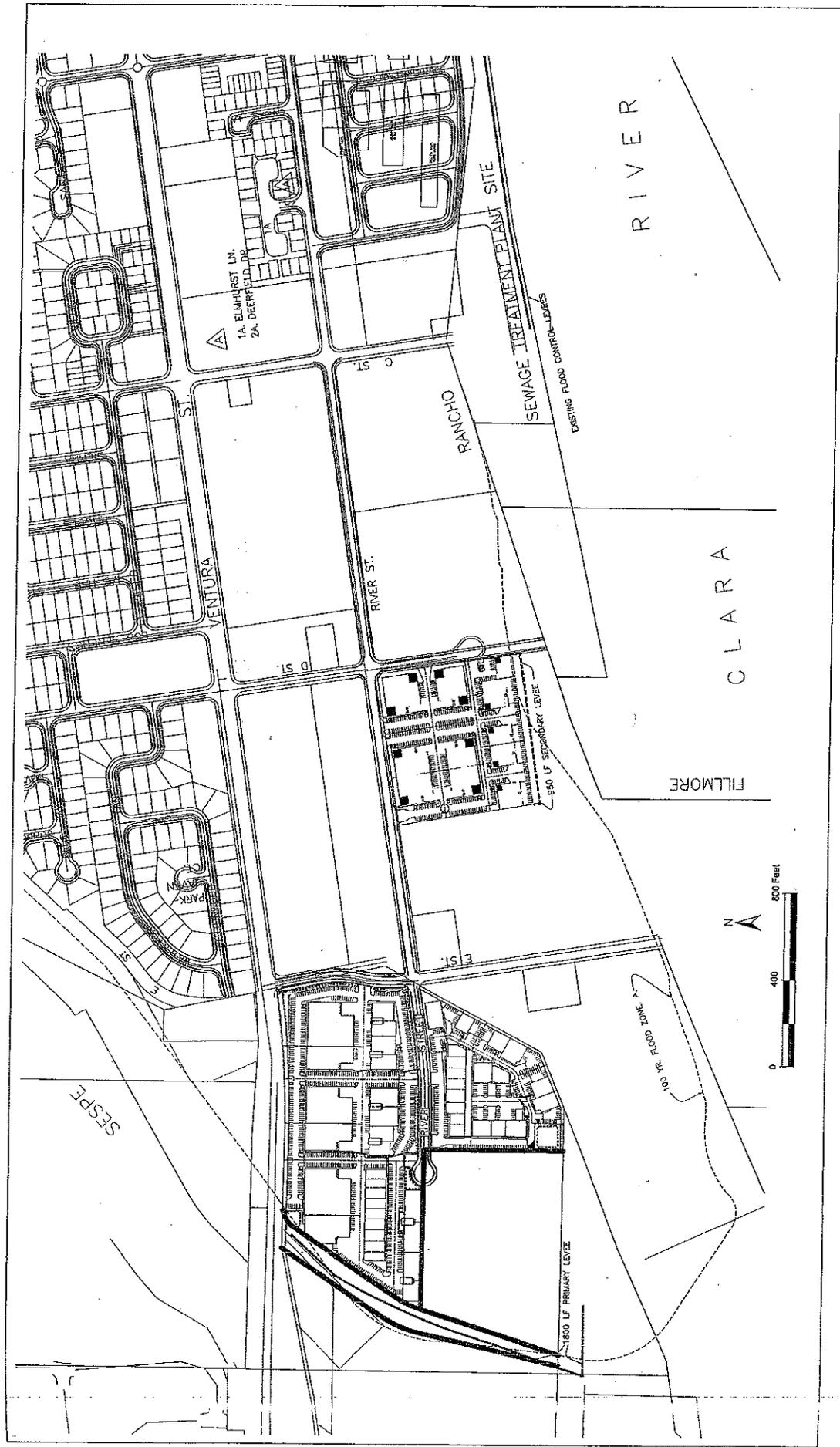
1. Business Park EIR Figure 4.8-1 "Flood Plain Map"
2. Chapter 6.16 of the FMC, "Flood Damage Prevention"

3. Addendum to EIR dated July 8, 2008
4. Existing and Revised Condition of Approval "E5"
5. Resolution 10-849, Modification #4 to TTM 5785, DP 07-01, Perry Ranch site
6. Resolution 10-850, Modification #2 to TTM 5784, DP 07-02, "Coe" site
7. Resolution 10-851, Modification #2 to TTM 5803, "Maxwell" site
8. Resolution 10-852, Modification #2 to DP 07-03, LLA 08-02, "Stop" site
9. Resolution 10-853, Modification #2 to DP 07-03, LLA 08-02, "Stop" site

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ATTACHMENT 1

Fillmore Business Park, Master Plan, EIR
 Section 4.8 Hydrology and Water Quality



100 Year Flood Zone
 Figure 4.8-1
 City of Fillmore

Source: *Development Resource Consultants, Inc., September, 2007.*

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Chapter 6.16

FLOOD DAMAGE PREVENTION

Sections:

- 6.16.010 Findings of fact.
 6.16.020 Statement of purpose.
 6.16.030 Methods of reducing flood losses.
 6.16.040 Definitions.
 6.16.050 Lands to which this chapter applies.
 6.16.060 Basis for establishing the areas of special flood hazard.
 6.16.070 Compliance.
 6.16.080 Abrogation and greater restrictions.
 6.16.090 Interpretation.
 6.16.100 Warning and disclaimer of liability.
 6.16.110 Establishment of development permit.
 6.16.120 Designation of the Administrator.
 6.16.130 Duties and responsibilities of the Administrator.
 6.16.140 Standards of construction.
 6.16.150 Standards for alluvial fans.
 6.16.160 Standards for storage of materials and equipment.
 6.16.170 Standards for utilities.
 6.16.180 Standards for subdivisions.
 6.16.190 Standards for manufactured homes.
 6.16.200 Floodways.
 6.16.210 Flood-related erosion-prone areas.
 6.16.220 Appeal Board.
 6.16.230 Conditions for variances.
 6.16.240 Letter of map amendment.
- 6.16.010 Findings of fact.
 a. The flood hazard areas of the City of Fillmore are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
 b. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights

and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss. (Ord. 602 § 1 (part), 1988)

6.16.020 Statement of purpose.

It is the purpose of this chapter to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- a. To protect human life and health;
- b. To minimize expenditure of public money for costly flood-control projects;
- c. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- d. To minimize prolonged business interruptions;
- e. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
- f. To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future blight areas;
- g. To ensure that potential buyers are notified that property is in an area of special flood hazard; and
- h. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions. (Ord. 602 § 1 (part), 1988)

6.16.030 Methods of reducing flood losses.

In order to accomplish its purposes, this chapter includes methods and provisions for:

- a. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion, flood heights or velocities;
- b. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- c. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
- d. Controlling filling, grading, dredging, and other development which may increase flood damage; and

e. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas. (Ord. 602 § 1 (part), 1988)

6.16.040 Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

(1) "Alluvial fan" means an area subject to flooding when the floodplain is comprised of low flow channels where sediment accompanies the shallow flooding and the unstable soils scour and erode during a flooding event.

(2) "Appeal" means a request for a review of floodplain administrator's interpretation of any provision of this chapter or a request for a variance.

(3) "Area of shallow flooding" means a designated AO Zone on the flood insurance rate map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident.

(4) "Base flood" means the flow having a one-percent chance of being equaled or exceeded in any given year.

(5) "Basement" means any area of the building having its floor subgrade—i.e., below ground level—on all sides.

(6) "Breakaway walls" means any type of walls, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic or any other suitable building material which is not part of the structural support of the building and which is so designed as to break away under abnormally high tides or wave action without damage to the structural integrity of the building on which they might be carried by floodwaters. A breakaway wall shall have a safe design loading resistance of not less than ten and no more than twenty pounds per square foot. Use of breakaway walls must be certified by a registered engineer or architect and shall meet the following conditions:

(A) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and

(B) The elevated portion of the building shall not incur any structural damage due to the effects of wind and water loads acting simultaneously in the event of the base flood.

(7) "Development" means any manmade change to improved or unimproved real estate, filling, grading,

paving, excavation or drilling operations located within the area of special flood hazard.

(8) "Existing manufactured home park or subdivision" means a manufactured home park for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed before the effective date of the ordinance codified in this chapter.

(9) "Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets).

(10) "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(A) The overflow of inland or tidal floodwaters; and/or

(B) The unusual and rapid accumulation of runoff of surface water from any source.

(11) "Flood boundary floodway map" means the official map on which the Federal Insurance Administration has delineated both the areas of flood hazard and the floodway.

(12) "Flood insurance rate map (FIRM)" means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

(13) "Flood insurance study" means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the flood insurance rate map (FIRM), the flood boundary floodway map, and the water surface elevation of the base flood.

(14) "Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood-control works and floodplain management regulations.

(15) "Floodproofing" means any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved property, water and sanitary facilities, structures and their contents.

(16) "Flood-related erosion" means a condition that exists in conjunction with a flooding event that

alters the composition of the shoreline or bank of a watercourse; a condition that increases the possibility of loss due to the erosion of the land area adjacent to the shoreline or watercourse.

(17) "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. The floodway is delineated on the flood boundary floodway map. Also referred to as "regulatory floodway."

(18) "Hazard mitigation plan" means a plan that incorporates a process whereby the potential of future loss due to flooding can be minimized by planning and implementing alternatives to floodplain management community-wide.

(19) "Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

(20) "Lowest floor" means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area (see "Basement") is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter. (Note: This definition allows attached garages to be built at grade. Below-grade garages are not allowed as they are considered to be basements.)

(21) "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than one hundred eighty consecutive days.

(22) "Mean sea level" means the mean sea level elevation as established by the Ventura County Surveyor.

(23) "New construction" means structures for which the "start of construction" commences on or after the effective date of the ordinance codified in this chapter.

(24) "New manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale, for which the construction of facilities for servicing the lot (including, at the minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of

streets) is completed on or after the effective date of the ordinance codified in this chapter.

(25) "Special flood hazard area (SFHA)" means an area having special flood or flood-related erosion hazards, and shown on the FIRM as Zone A, AO, A1—30, AE, A99 or AH.

(26) "Start of construction" includes substantial improvement, and is the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within one hundred eighty days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

(27) "Structure" means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

(28) "Substantial improvement" means any repair, reconstruction or improvement to a structure, the cost of which equals or exceeds fifty percent of the market value of the structure either:

(A) Before the improvement or repair is started; or

(B) If the structure has been damaged and is being restored, before the damage occurred.

For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term does not, however, include either:

(i) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or

(ii) Any alteration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places.

(29) "Variance" means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by

this chapter. (Ord. 735 § 1, 1998; Ord. 602 § 1 (part), 1988)

6.16.050 Lands to which this chapter applies.

This chapter shall apply to all areas of special flood hazards within the jurisdiction of the city of Fillmore. (Ord. 602 § 1 (part), 1988)

6.16.060 Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Insurance Administration, through the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for the City of Fillmore," dated February 1, 1984, with an accompanying flood insurance rate map, and all subsequent amendments and/or revisions, are adopted by reference and declared to be a part of this chapter. The Flood Insurance Study is on file at the City Hall, 250 Central Avenue, Fillmore, California 93015. This Flood Insurance Study is the minimum area of applicability of this chapter and may be supplemented by studies for other areas which allow implementation of this chapter and which are recommended to the city of Fillmore by the floodplain administrator. (Ord. 735 § 2, 1998; Ord. 602 § 1 (part), 1988)

6.16.070 Compliance.

It is unlawful for any person to construct, locate, extend, convert or alter any structure without full compliance with the terms of this chapter and other applicable regulations. (Ord. 602 § 1 (part), 1988)

6.16.080 Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this chapter and/or other ordinances, easements, covenants or deed restrictions conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 602 § 1 (part), 1988)

6.16.090 Interpretation.

In the interpretation and application of this chapter, all provisions shall be:

- (a) Considered as minimum requirements;
- (b) Liberally construed in favor of the governing body; and
- (c) Deemed neither to limit nor repeal any other powers granted under state statutes. (Ord. 602 § 1 (part), 1988)

6.16.100 Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city of Fillmore, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder. (Ord. 602 § 1 (part), 1988)

6.16.110 Establishment of development permit.

A development permit shall be obtained before construction or development begins within any area of special flood hazards established in Section 6.16.060. Application for a development permit shall be made on forms furnished by the floodplain administrator and may include, without limitation: plans in duplicate drawn to scale showing the nature, location, dimensions and elevation of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- (a) Proposed elevation, in relation to mean sea level, of the lowest habitable floor (including basement) of all structures; in Zone AO, elevation of highest adjacent grade and proposed elevation of lowest habitable floor of all structures;
- (b) Proposed elevation in relation to mean sea level to which any structure will be floodproofed;
- (c) All appropriate certifications listed in Section 6.16.130(c)(1) of this chapter;
- (d) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. (Ord. 602 § 1 (part), 1988)

6.16.120 Designation of the Administrator.

The city engineer is appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions. (Ord. 602 § 1 (part), 1988)

6.16.130 Duties and responsibilities of the Administrator.

The duties and responsibilities of the Administrator shall include, without limitation:

- (a) Permit Review.

(1) Review of all development permits to determine that the permit requirements of this chapter have been satisfied;

(2) Ensure that all other required state and federal permits have been obtained;

(3) Review of all development permits to determine that the site is reasonably safe from flooding;

(4) Review of all development permits to determine whether the proposed development adversely affects the flood-carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this chapter, "adversely affects" means that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will increase the water surface elevation of the base flood more than one foot at any point.

(b) Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 6.16.060, Basis for establishing the areas of special flood hazard, the floodplain administrator shall obtain, review and reasonably utilize the base flood data available from any source, federal, state, or other, such as high-water mark(s), floods of record, or private engineering reports, and provide the developer with an estimated base flood elevation. Any such information shall be submitted to the city of Fillmore for adoption.

(1) Single parcels will be required to elevate the lowest floor of any residential structure to no less than two feet above natural grade when base flood data does not exist. Nonresidential structures may be required to elevate or floodproof to meet this standard.

(2) Multiple parcels (five or more) will be required to have all proposals establish the one-hundred-year base flood elevation before consideration of the preliminary plan for development. The floodplain administrator may require standards exceeding those identified in Section 6.16.180.

(c) Information to be Obtained and Maintained.

The floodplain administrator shall obtain and maintain for public inspection and make available as needed for flood insurance policies:

(1) The certification required in Sections 6.16.140 (c)(1); 6.16.140(c)(2); 6.16.140 (c)(3)(F); 6.16.140 (c)(4)(A) or 6.16.140(c)(4)(B); 6.16.180(b); and 6.16.200(a); and

(2) Certification of the elevation of the lowest floor, floodproofed elevation, or the elevation of the structure's lowest horizontal member is required at that point where the footings are set and slab poured. Failure to submit elevation certification shall be cause to issue a stop-work order for the project. As-built

plans certifying the elevation of the lowest adjacent grades are also required.

(3) If fill is used to elevate a structure above the base flood elevation, the permit holder may wish to apply for a Letter of Map Amendment (LOMA), as set forth in Section 6.16.240 of this chapter.

(d) Alteration of Watercourses. It is the responsibility of the floodplain administrator to:

(1) Notify adjacent communities and the state of California Department of Water Resources prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration:

(2) Require that the flood-carrying capacity of the altered or relocated portion of such watercourse be maintained.

(e) Interpretation of flood insurance rate map (FIRM) boundaries. The floodplain administrator will provide interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 6.16.220 of this chapter.

(f) Maintenance of Flood Protection Measures. The floodplain administrator shall maintain all city-owned flood protection structures (levees, dikes, dams, or reservoirs) within the city of Fillmore where such structures provide protection. If such structures are privately owned, an operation or maintenance plan will be required of the owner to be on file with the floodplain administrator. The community is required to acknowledge all maintenance plans by the adoption of such plans by ordinance. If such structures are owned by outside governmental agencies the administrator shall coordinate with the agencies to assure that the structures are properly maintained.

(g) Hazard Mitigation Plan. The local agency or board responsible for reviewing all proposals for new development shall weigh all requests for future floodplain development against the community's General Plan.

Consideration of the following elements is required before approval:

(1) Determination whether a proposed development is in or affects a known floodplain;

(2) Informing the public of the proposed activity;

(3) Determination as to whether there is a practicable alternative or site for the proposed activity;

(4) Identification of impact of the activity on the floodplain;

(5) Provision of a plan to mitigate the impact of the activity with provisions in Section 6.16.130(a)(4) of this chapter. (Ord. 602 § 1 (part), 1988)

6.16.140 Standards of construction.

In all areas of special flood hazard, the following standards are required:

(a) Anchoring.

(1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(2) All manufactured home units shall meet the anchoring standards of Section 6.16.190 of this chapter.

(b) Construction Materials and Methods.

(1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(2) All new construction and substantial improvements shall use methods and practices that minimize flood damage.

(3) All elements that function as a part of the structure, such as furnace, hot water heater, air conditioner, etc., shall be elevated to or above the base flood elevation or depth number specified on the flood insurance rate map (FIRM).

(4) Within Zones AH or AO, adequate drainage paths shall be required around structures on slopes to guide floodwaters around and away from proposed structures.

(c) Elevation and Floodproofing.

(1) New construction and substantial improvements of any structure shall have the lowest floor or basement floor elevated to one foot above the base flood elevation or the most current one hundred year flood elevation as determined by the Ventura County Flood Control District, whichever is higher. Existing portions of structures shall be raised or protected from this highest flood elevation when substantial improvements are made. Nonresidential structures will meet the standards in Section 6.16.140(c)(3) of this chapter. Upon completion of the structure the elevation of the lowest floor, including the basement, shall be certified by a registered professional engineer or surveyor or verified by the local building inspector that the elevation requirements have been met. Notification of compliance shall be recorded as set forth in Section 6.16.130(c) of this chapter.

(2) New construction and substantial improvement to any structure in a Zone AO shall have the lowest floor or basement floor elevated to or above the depth

number specified on the flood insurance rate map (FIRM). If there is no depth number on the flood insurance rate map (FIRM), the bottom of the lowest floor beam or basement floor shall be elevated to a depth of two feet above the highest adjacent grade. Nonresidential structures will meet standards in Section 6.16.140(c)(3) of this chapter. Upon completion of the structure, compliance to the elevation requirement shall be certified by a registered professional engineer or surveyor or verified by the local building inspector. Notification of compliance shall be recorded as set forth in Section 6.16.130(c)(2) of this chapter.

(3) Nonresidential construction shall either be elevated in conformance with Section 6.16.140(c)(1) or (c)(2), or, together with attendant utility and sanitary facilities, be floodproofed to the base flood elevation. Examples of floodproofing include, but are not limited to:

(A) Installation of watertight doors, bulkheads and shutters;

(B) Reinforcement of walls to resist water pressure;

(C) Use of paints, membranes or mortars to reduce seepage through walls;

(D) Addition of weight to the structure to resist flotation;

(E) Armor protection of all fill materials from scour and/or erosion;

(F) Certification by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in subsection (c)(1) of this section.

(4) New construction and substantial improvements with fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Design for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed either of the following minimum criteria:

(A) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters; or

(B) Be certified to comply with a local floodproofing standard approved by the Federal Insurance Administration.

(5) Manufactured homes shall meet the above standards and also the standards of this section. (Ord. 735 § 3, 1998; Ord. 602 § 1 (part), 1988)

6.16.150 Standards for alluvial fans.

Areas subject to alluvial fan flooding have irregular flow paths that result in erosion of existing channels and the undermining of fill material. Those areas are identified on the flood insurance rate map (FIRM) as AO Zones with velocities.

(a) All structures must be securely anchored to minimize the impact of the flood and sediment damage.

(b) All new construction and substantial improvements must be elevated on pilings, columns, or armored fill so that the lowest floor is elevated at or above the depth number.

(c) Use of all fill materials must be armored to protect the material from the velocity of the flood flow.

(d) All proposals for subdivision development must provide a mitigation plan that identifies the engineering methods used to:

(1) Protect structures from erosion and scour caused by the velocity of the flood flow:

(2) Capture or transport flood and sediment flow through the area of development to a safe point of disposition.

(e) All manufactured homes shall be prohibited within the identified hazard area except within existing manufactured home parks or subdivisions. (Ord. 602 § 1 (part), 1988)

6.16.160 Standards for storage of materials and equipment.

(a) The storage or processing of materials that are, in time of flooding, buoyant, flammable, explosive, or could be injurious to human, animal or plant life, is prohibited.

(b) Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning. (Ord. 602 § 1 (part), 1988)

6.16.170 Standards for utilities.

(a) All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from systems into floodwaters.

(b) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding. (Ord. 602 § 1 (part), 1988)

6.16.180 Standards for subdivisions.

(a) All preliminary subdivision proposals shall identify the flood hazard area and the elevation of the base flood.

(b) All final subdivision plans will provide the elevation of proposed structure(s), pads and adjacent grade. If the site is filled above the base flood, the final pad elevation shall be certified by a registered professional engineer or surveyor and provided to the floodplain administrator as set forth in Section 6.16.130(c)(1) of this chapter.

(c) All subdivision proposals shall be consistent with the need to minimize flood damage.

(d) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

(e) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage as set forth in Section 6.16.130 (a)(1) of this chapter. (Ord. 602 § 1 (part), 1988)

6.16.190 Standards for manufactured homes.

All new and replacement manufactured homes and additions to manufactured homes shall:

(a) Be elevated so that the lowest floor is at or above the base flood elevation; and

(b) Be securely anchored to a permanent foundation system to resist flotation, collapse or lateral movement. (Ord. 602 § 1 (part), 1988)

6.16.200 Floodways.

Located within areas of special flood hazard established in Section 6.16.060 of this chapter are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwater which carry debris, potential projectiles and erosion potential, the following provisions apply:

(a) Encroachments, including fill, new construction, substantial improvements, and other development shall be prohibited unless certification by a registered professional engineer or architect is provided, demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(b) If no floodway is identified, the permit holder shall provide an engineering study for the project area that establishes a setback where no encroachment of any new development will be allowed that would increase the water surface elevation of the base flood, plus one foot; or establish a setback from the stream bank equal to five times the width of the stream at

the top of the bank or twenty feet on each side from the top. (Ord. 602 § 1 (part), 1988)

6.16.210 Flood-related erosion-prone areas.

(a) The floodplain administrator shall require permits for proposed construction and other development with all flood-related erosion-prone areas as known to the community.

(b) Such permits shall be reviewed to determine whether the proposed site alteration and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing hazard.

(c) If a proposed improvement is found to be in the path of flood-related erosion or would increase the erosion hazard, such improvement shall be relocated or adequate protective measures shall be taken to avoid aggravating the existing erosion hazard.

(d) Within Zone E on the flood insurance rate map, a setback is required for all new development from the ocean, lake, bay, riverfront or other body of water to create a safety buffer consisting of a natural vegetative or contour strip. This buffer shall be designated according to the flood-related erosion hazard and erosion rate, in relation to the anticipated "useful life" of structures, and depending upon the geologic, hydrologic, topographic and climatic characteristics of the land. The buffer may be used for suitable open space purposes, such as for agricultural, forestry, outdoor recreation and wildlife habitat areas, and for other activities using temporary and portable structures only. (Ord. 602 § 1 (part), 1988)

6.16.220 Appeal Board.

(a) The city council shall hear and decide appeals and requests for variances from the requirements of this chapter.

(b) The city council shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the floodplain administrator in the enforcement or administration of this chapter.

(c) The applicant or any taxpayer aggrieved by the decision of the city council may appeal such decision to the Superior Court, as provided in Section 1094.5 of the Code of Civil Procedures of the State of California.

(d) In passing upon such applications, the city council shall consider all technical evaluations, all relevant factors, standards, etc., specified in other sections of this chapter, and:

(1) The danger that materials may be swept onto other lands to the injury of other;

(2) The danger to life and property due to flooding or erosion damage;

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(4) The importance of the services provided by the proposed facility to the community;

(5) The necessity to the facility of a waterfront location, where applicable;

(6) The availability of alternative locations, for the proposed uses that are not subject to flooding or erosion damage;

(7) The compatibility of the proposed use with existing and anticipated development;

(8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(9) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(10) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site;

(11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water system, and streets and bridges.

(e) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing all items in subsection (d) of this section have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(f) Upon consideration of the factors of subsection (d) of this section and the purpose of this chapter, the city council may attach such conditions to the granting of variances as it deems necessary to further the purpose of this chapter.

(g) The floodplain administrator will maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to the Federal Insurance Administration, Federal Emergency Management Agency. (Ord. 735 § 4, 1998; Ord. 602 § 1 (part), 1988)

6.16.230 Conditions for variances.

(a) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State

Inventory of Historic Places, without regard to the procedures set forth in the remainder of this article.

(b) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(c) Variances shall be issued only upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(d) Variances shall be based only upon:

(1) A showing of good and sufficient cause such as renovation, rehabilitation or reconstruction. Variances issued for economic considerations, aesthetics, or because variances have been used in the past, are not good and sufficient cause;

(2) A determination that failure to grant the variance would result in exceptional hardship to the applicant;

(3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization to the public, or conflict with existing local laws or ordinances.

(e) Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the provisions of subsection (a) through (d) of this section are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(f) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a specified lowest flood elevation below the base flood elevation and that the cost of flood insurance will be as high as twenty-five dollars for one hundred dollars of insurance coverage. A copy of the notice shall be recorded by the floodplain administrator in the office of the Ventura County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land. (Ord. 735 § 5, 1998; Ord. 602 § 1 (part), 1988)

6.16.240 Letter of map amendment.

There are two methods of appeal that exempt a structure from the purchase of flood insurance: both must be supported by the items listed below:

(a) Appeal to elevation requirements:

(1) An actual stamped copy of the recorded plat map of the property showing official recordation and proper citation, or a photocopy of property's legal description (e.g., lot, block and plot number, etc.);

(2) A copy of the flood hazard boundary map (FHBM) and/or flood insurance rate map (FIRM). Both must identify the location of the property;

(3) A certification by a registered professional engineer or land surveyor or verification by the community building official stating:

(A) The type of structure,

(B) The elevation of the lowest finished grade adjacent to the structure,

(C) The elevation of the lowest floor.

(b) Appeal of location:

(1) An actual stamped copy of the recorded plat map of the property showing official recordation and proper citation, or a photocopy of property's legal description (e.g., lot, block and plot number, etc.);

(2) A copy of the flood hazard boundary map (FHBM) and/or flood insurance rate map (FIRM). Both must identify the location of the property as not within Zone A;

(3) Verification by local building official as to the property's location. (Ord. 602 § 1 (part), 1988)

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ATTACHMENT 3

FILLMORE BUSINESS PARK MASTER PLAN FINAL ENVIRONMENTAL IMPACT REPORT

ADDENDUM

July 8, 2008

This document is an addendum to the Fillmore Business Park Final Environmental Impact Report (EIR). The Addendum has been prepared in accordance with the relevant provisions of the California Environmental Quality Act (CEQA) of 1970 (as amended) and the *State CEQA Guidelines* as implemented by the City of Fillmore.

According to Section 15164 of the *CEQA Guidelines*, an addendum to a previously certified EIR or Negative Declaration is the appropriate environmental document in instances when "only minor technical changes or additions are necessary" and when the new information does not involve new significant environmental effects beyond those identified in the certified EIR.

The purpose of this Addendum is to address potential concerns relating to proposed revisions to the Federal Emergency Management Agency's (FEMA's) Flood Insurance Rate Map (FIRM) for Fillmore. The proposed preliminary map revisions relate to changes in FEMA assumptions regarding potential flows in Sespe Creek and the Santa Clara River during a 100-year storm event and associated changes to the flood zone in portions of Fillmore, including portions of the proposed Fillmore Business Park Master Plan area.

Fillmore Business Park Final EIR Flooding Analysis

The Fillmore City Council certified the Fillmore Business Park Final EIR in March 2008. Section 4.8, *Hydrology and Water Quality*, of the Final EIR discusses impacts relating to flooding and Figure 4.8-1 of the Final EIR shows the published 100-year flood zone within the Plan Area. The flooding discussion incorporates by reference three separate studies that analyzed flooding issues along Sespe Creek and the Santa Clara River: (1) the Fillmore Water Recycling Plant FEIR, certified by the City Council on May 24, 2005; (2) the Fillmore Water Recycling Plant Supplemental FEIR, certified by the City Council on February 27, 2007; and (3) Pacific Advanced Civil Engineering, Inc.'s (PACE) detailed hydraulic studies of the Santa Clara River for the Heritage Valley Parks Specific Plan, which evaluated the effects of levee system extensions that would reduce the potential for flooding on the northern side of the Santa Clara River (dated April 26, 2004, and January 2006). All of these documents were part of the CEQA environmental documentation for the Fillmore Business Park and were made available for review at Fillmore City Hall.

The Final EIR notes that the Plan Area intersects FEMA's published 100-year flood zone on properties 1 and 3. The northwestern corner of Property 1 (Perry Ranch) in the northwestern portion of the Plan Area was identified as intersecting the 100-year flood zone, but the EIR notes that the levee extension currently under construction along Sespe Creek to protect the proposed Water Recycling Plant would provide flood protection for that property. The southern portion of Property 3 (Coe) was also identified as being within the 100-year flood zone, but proposed grading for that site would raise the elevation of the site outside the 100-year flood zone. The Final EIR notes that modification of the Coe property to raise it above the 100-year flood zone could cause an incremental rise in flood elevations at adjacent properties. However, because the adjacent properties (the site of a planned 22-acre park and a property in agricultural production) do not include structures or facilities that would be damaged by flooding, the impact with respect to modification of the flood zone boundary was found to be less than significant. It is noted that one residence is situated west of Property 3 (Coe), along E Street; however, the incremental displacement of flood water (about 41,613 cubic feet of water = about 0.95 acre foot = about the same volume as is contained in an Olympic size pool that is three feet deep) spread out over the area of the park (22 acres) plus the adjacent agricultural land (more than 40 acres) and the floodway would be minimal (<0.2 inches of water). Thus, the impact with respect to increased flooding potential due to raising the elevation of Property 3 above the 100 year flood elevation is less than significant.

Background on FEMA Map Revisions

FEMA is in the process of updating the FIRMs to meet new modeling standards and higher estimates of 100-year flow rates. The Santa Clara watershed flows through the region that includes the City of Fillmore. The waterway of primary interest is Sespe Creek, which is a tributary of the Santa Clara River. In 1980, the Army Corps of Engineers approved and oversaw the construction of the Sespe Creek levee, which was certified in accordance with FEMA flood control standards. As a result, FEMA revised the flood maps in 1984 to recognize that the City of Fillmore is outside the 100-year flood zone.

FEMA is updating the flood insurance maps in the Fillmore area with a two step process. First they are preparing a Digital Flood Insurance Rate Map (DFIRM) that only includes an update to the Flood Plain and insurance zones. Second, they are updating the Flood Insurance Study for the Santa Clara River and its tributaries, which will update the Floodplains and Floodways.

As part of the first step, FEMA published a new DFIRM on May 30, 2008 with comments due on August 30, 2008. This map updates the Floodplain and flood zones but not the Floodways and is anticipated to be adopted and become final in the spring of 2009.

The second step is the preparation of an updated Flood Insurance Study. On May 8, 2008 FEMA held a meeting at the County Government Center and released Preliminary Flood Insurance Study (FIS) maps and Draft Technical Support Data Notebooks. These

preliminary draft maps showed a possible Floodway inside the existing residential and commercial areas of Fillmore. The draft FIS maps are scheduled for preliminary review release in early 2009 for formal comments and final adoption sometime in 2010.

The preliminary draft FIS map shows three Floodway branches for the Sespe Creek: (1) one in the west branch, west of the Sespe Creek levee; (2) one in the east branch, west of the Sespe Creek levee; and (3) one through the middle of the existing City, east of the Sespe Creek levee.

The preliminary draft FEMA Flood Insurance Study Work map assumes that the Sespe levee will not have adequate freeboard for the new 100-year flow. The preliminary draft map fails to take into account the realities of the existing levee and assumes that, because the flood water may encroach into the freeboard, the levee is not certified. Based on this assumption, the map assumes that the levee does not exist and that flood waters would be allowed to freely flow into the City. As a result, the preliminary draft map depicts a Sespe Floodway flowing through the center of Fillmore, subjecting property owners to new regulatory compliance standards.

As indicated on the attached map, the preliminary draft flood zone map shows large portions of Fillmore, including much of the Fillmore Business Park Master Plan area, as being within the 100-year flood zone (1% annual chance of flood).

City of Fillmore Position Regarding Draft FEMA Map

The City of Fillmore has issued a formal position paper stating its disagreement with the flood zones depicted on the draft FEMA maps. This position paper identifies several specific deficiencies with the proposed flood zone map revision, which are summarized below:

1. A two-dimensional model such as FLO-2D should be used to estimate the overflow hydraulics of Sespe and Pole Creek. A two-dimensional model has the capability to more accurately estimate the limits and depths of flooding and the complex flow routes that occur in urban areas located on alluvial fans such as the City of Fillmore.
2. The actual hydrograph (unsteady state model) should be used to estimate the overflow discharges on Sespe and Pole Creek. The floodplain studies prepared by FEMA for Sespe Creek use a steady state (fixed) flow rate to estimate the discharges overtopping the channel banks. This method overestimates the overflow discharge because it assumes that the 100-year peak flow rate is constant, whereas the actual 100-year peak flow rate is instantaneous. A typical storm event in Ventura County and most of southern California consists of light to moderate precipitation for up to several days, followed by short periods of high intensity rainfall. The resulting flood hydrograph from a typical storm is very flashy and periods of high flow occur during a short period of time. The overflow discharges should be modeled using un-steady state flow data that takes into account the

timing of the hydrograph. Assuming coincidental peak of the tributary watershed and main stem is not realistic and overly conservative.

3. The amount of overflow on Sespe Creek is not sufficient to delineate separate floodways through the urbanized overbank areas. The FEMA study assumes that the 100-year peak flow rate is constant when estimating the overflow discharges. This incorrect assumption (see general comment #2) results in extremely high overflow discharges. The actual overflow volume can be accurately estimated from the hydrographs generated by Ventura County Watershed Protection District (VCWPD) and would result in a much smaller area of overbank flooding. The FEMA study delineates the floodway and floodplain through the City of Fillmore using HEC-RAS cross sections spaced over 700 feet apart. In other words, the model assumes the overflow discharge will flow directly through dozens of homes at a uniform depth, direction and velocity for multiple city blocks located on an alluvial fan. Due to the reality of the topography and structures existing in Fillmore, the actual flow direction, depth, and velocity through Fillmore will be anything but uniform and will likely be concentrated to the streets because of reduced flow resistance and higher hydraulic capacity available in the street rights-of-way.
4. The Santa Clara River flow rates used in the FEMA study are not consistent with the flow rates outlined in the Santa Clara River 2006 Hydrology Update. Along the portion of the Santa Clara River adjacent to Fillmore, FEMA used a 100-year flow rate of 150,057 cfs, which is 38% larger than the 100-year flow rate of 108,400 cfs listed in the most recent 2006 Hydrology Update. The Santa Clara River 2006 Hydrology Update was prepared by the Ventura County Watershed Protection District (VCWPD) in conjunction with the Los Angeles Department of Public Works (LADPW) and the U.S. Army Corps of Engineers, Los Angeles District. This study used actual stream gage data from the Santa Clara River and the FEMA floodway and floodplain delineation should be revised using the correct 100-yr flow rate of 108,400 cfs. It does not appear that hydrology used in the FEMA floodplain update is a realistic representation of the 100-year flow rate and procedures utilizing actual stream gauge record should provide a reliable value.

The City believes that the proposed FEMA map revision is not based on accurate data and should be reconsidered for the following reasons:

- The current, provisionally certified, Sespe levee has substantial proven capacity (121,000 cfs) and has performed during every storm event since its certification. These include the unprecedented flows of the 1998 and 2005 events.
- The current levee is in the process of being recertified and, during 2009, it will be known if any improvements to the levee are needed. If the current levee requires capacity improvements, they will most likely be minor in scope as such to increase the freeboard or "safety factor" (as discussed below). These improvements can be completed within a short time frame.

On June 12, 2008 RBF Consultants reported to the VCWPD that the FEMA analysis showed a slight encroachment into the 3-foot freeboard at two locations on the Sespe

Creek Levee: one at the Railroad Bridge and one at the upstream end of the levee. RBF also reported that the encroachments into the freeboard were small and that insertion of additional cross sections, thus making the FEMA hydraulic analysis more precise, would likely eliminate the two encroachments.

FEMA is using the new 100-year flow of 135,000 cfs, while the U.S. Army Corps of Engineers used a design flow of 121,000 cfs for the Levee in 1983. This is only a 12% change so it is not surprising that the conservative Corps of Engineers levee is likely to be sufficient or may need only a minor retrofit, such as raising the Sespe Creek levee by a few inches or a foot. It is anticipated that any retrofit of the levee would constitute a minor repair or alteration, which would not be expected to create any significant environmental impacts and, therefore, would not be subject to separate review under CEQA.

Draft FEMA Map in the Fillmore Business Park EIR Process

City of Fillmore staff were unaware of the preliminary draft FEMA map during the preparation of the Fillmore Business Park Master Plan EIR. However, the preliminary draft map was not (and still has not been) officially published by FEMA and, as such, currently has no regulatory relevance. The published FEMA flood zone maps, as depicted on Figure 4.8-1 of the Final EIR, were at the time of Final EIR certification, and continue to be, the official FEMA flood zone maps for the City.

As noted above, the accuracy of the draft FEMA maps was and continues to be uncertain. Because it was not, and still is not, known whether and in what form any revised maps may be formally published by FEMA, it would have been, and would still be, speculative for the City to make any assumptions about the validity of the maps. Section 15145 of the *CEQA Guidelines* discourages agencies from engaging in idle speculation about possible environmental effects.

Although there was no reason to include discussion of the draft FEMA maps in the Fillmore Business Park EIR analysis, it should be recognized that the issue of the increased 100-year flow did arise during the public hearings on the project. At the March City Council hearing at which the Final EIR was certified, the issue of the increased 100-year flow was raised by a member of the public and discussion between City/consultant staff and the City Council ensued. Because the draft Flood Insurance Study and its maps did not (and still do not) represent formal FEMA policy, the City Council determined that incorporation of any information relating to the maps into the Final EIR was not warranted.

Current Relevance of the Draft FEMA Map to CEQA

Based on Section 15162 of the *CEQA Guidelines*, the relevant question with respect to what kind of CEQA document is needed to address the FEMA map issue is whether new information of substantial importance, which was not known and could not have been known at the time the EIR was certified, shows any of the following:

1. That the project will have one or more significant effects not addressed in the EIR.
2. That a significant effect previously examined would be substantially more severe than shown in the EIR.
3. That mitigation measures or alternatives previously found to be infeasible would in fact be feasible, but the project proponents decline to adopt the measure or alternative.
4. That mitigation measures or alternatives that are substantially different than those analyzed in the EIR reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

If the answer to any of the above questions is "yes," then preparation of a subsequent EIR would be warranted. Otherwise, per 15164 of the *CEQA Guidelines*, an addendum is the appropriate document under CEQA.

First, the draft maps do not constitute new information that "could not have been known" prior to the certification of the EIR because the data that was used to create the draft maps *was* known at the time that the EIR was certified. Both FEMA and the Ventura County Watershed Protection District had the information and data that underlies these maps. According to Bert Rapp, Public Works Director, FEMA had been working on Flood Insurance Study since mid 2007, with the first preliminary draft released at the May 8, 2008 meeting. Both FEMA and the Ventura County Watershed Protection District received the Draft EIR and were given an opportunity to comment prior to the EIR's certification in March 2008. Neither agency included comments regarding the increased 100-year flow rate or related potential flood issues associated with the increased flow rate.

Second, even if the draft map constitutes new information that could not have been known at the time the EIR was certified, that information does not trigger the requirement of preparing a subsequent EIR pursuant to the *CEQA Guidelines*. Items 3 and 4, above, do not apply since additional alternatives or mitigation measures are not being considered at this time. As noted above, the City would implement any minor retrofits to the Sespe Creek levee that may be needed if a final determination that the flood zone encroaches into the 3-foot levee freeboard is made.

Therefore, the key question remaining is whether the information regarding the draft FEMA maps would result in a new or substantially more severe environmental effect under CEQA. As noted above, the draft maps have not been formally published by FEMA and the City of Fillmore, together with the cities of Oxnard, Santa Paula, Ventura, and the County of Ventura, have gone on record questioning their accuracy. This consortium of agencies within Ventura County, in coordination with the Ventura County Watershed Protection District, is currently undertaking its own studies to determine the validity of the draft FEMA flood maps.

For the above reasons and because the published FEMA flood zone maps, as depicted in the Fillmore Business Park Final EIR, remain the official maps depicting the 100-year flood zone in Fillmore, the City has no basis for identifying a new significant impact or concluding that the severity of the impact has increased. To do so would constitute

engaging in speculation based on a possible future revision to FEMA's published flood zone maps. As noted above, Section 15145 of the *CEQA Guidelines* discourages agencies from engaging in speculation.

Summary/Conclusions

FEMA has prepared a preliminary draft Flood Insurance Study Work map that shows a large portion of Fillmore, including much of the Fillmore Business Park Master Plan area as being within a Floodway and the 100-year flood zone for Sespe Creek. However, this map has not been formally published to date and the City and other agencies in Ventura County believe that the new FEMA models upon which the draft map is based contain incomplete and erroneous data and require further analysis. Therefore, it is speculative to assume that the final published FIRM will include a Floodway through the Business Park or a flood plain as substantial as presently shown. Therefore, the draft FEMA map does not represent new information of substantial importance triggering the requirement to prepare a subsequent EIR under CEQA.

ATTACHMENT 4

Condition "E5"

Original Condition:

~~"Public Improvements shall be completed prior to the City's acceptance of improvements. Occupancy shall not occur on any lot that is within the 100-year flood plain."~~

Recommended Modification:

E5a. Public Improvements shall be completed prior to the City Council acceptance of the public improvements.

E5b. Prior to Building Permit issuance, the project shall comply with the FMC Chapter 6.16 "Flood Damage Prevention".

ATTACHMENT 5

**CITY OF FILLMORE
PLANNING COMMISSION
RESOLUTION 10-849**

**RECOMMENDING TO THE CITY COUNCIL
APPROVAL OF MODIFICATION #4
(AMENDMENT TO CONDITION "E5")
TO DEVELOPMENT PERMIT 07-01, TTM 5785, PERRY RANCH**

FILLMORE RIVERVIEW, LLC., APPLICANT

WHEREAS, The Planning Commission has been petitioned to recommend approval of Modification #4 to Development Permit 07-01 and Tentative Map 5785 by amending Condition of Approval "E5" that was previously approved on March 11, 2008 by City Council Resolution 08-3100 (not yet constructed) located at the southwest corner of Ventura Street and E Street; and

WHEREAS, The Community Development Director caused a notice of date, hour and place for a public hearing before the Planning Commission on July 12, 2010, to be published in the Fillmore Gazette and mailed to the applicant and all property owners within 300 feet of the exterior boundaries of the subject property in accordance with Section 6:04.80 of the Fillmore Zoning Ordinance; and

WHEREAS, Based upon the evidence presented, the Planning Commission makes the following findings of fact:

1. The subject property is identified as APN 046-0-050-170 and 046-0-050-160.
2. The properties are currently owned Fillmore Riverview, LLC., 660 Newport Ctr. Dr., Suite 930, Newport Beach, CA 92660.
3. The proposed modification has been reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA) and has been determined to be consistent with the Joint Program and Project Level Final Environment Impact Report for the Fillmore Business Park Master Plan and for Phase 1 and Phase 2 project development within the boundaries of the Fillmore Business Park Master Plan Area as certified by the Fillmore City Council on March 11, 2008.
4. The proposed modification was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA) and has been determined that modification of Condition "E5" does not require further CEQA review, because it conforms to the EIR certified by the City Council on March 11, 2008 and the Addendum to the EIR dated July 8, 2008.
5. The proposed modification to Condition "E5" is in conformance with the adopted elements of the General Plan (1988 & 2003).

6. The proposed modification to Condition "E5" is in substantial compliance with the Fillmore Business Park Master Plan (Approved March 11, 2008).
7. The proposed modification to Condition "E5" conforms to the applicable zoning regulations contained in the Business Park §6.04.12 of the Zoning Code incorporated in Ordinance 08-805 adopted March 11, 2008; Ordinance 08-812 adopted on November 15, 2008; and the City's Flood Damage Prevention Ordinance, Chapter 6.16 of the FMC.
8. Condition "E5" is requested to be amended as follows:

~~"Public Improvements shall be completed prior to the City's acceptance of improvements. Occupancy shall not occur on any lot that is within the 100-year flood plain."~~

E5a. "Public Improvements shall be completed prior to the City Council acceptance of the public improvements".

E5b. "Prior to Building Permit issuance, the project shall comply with the FMC Chapter 6.16 "Flood Damage Prevention".

9. The Development Permit (07-01) and Tentative Map (5785) were authorized pursuant to the provisions contained in the Zoning Ordinance Section 6.04.66 and Subdivision Ordinance, Chapter 6.08 of the FMC, and the proposed modification conforms to these provisions as identified below:
 - a. The proposed modification is permitted within the subject zoning district and complies with all of the applicable provisions of the Zoning Ordinance, and complies with the Business Park Master Plan Design Guidelines development standards.
 - b. The proposed modification is consistent with the intent of the General Plan, in that the project land uses are permitted in the Business Park (BP-2) designation;
 - c. The proposed modification of the project would be harmonious and compatible with existing and future developments within the zoning district and general area, as well with the land uses adjacent to the subject property, in that the project is designed and conditioned to ensure compatibility with adjacent land uses;
 - d. The proposed modification is in compliance with the requirements of the California Environmental Quality Act (CEQA), in that a Program/Project Environmental Impact Report (EIR) with a Statement of Overriding Considerations was reviewed and approved per CEQA on March 11, 2008 and Addendum to the EIR was approved on July 8, 2008 and March 18, 2009;

- e. There will be no potential significant negative effects upon environmental quality and natural resources that could not be properly mitigated and monitored, in that the project is not on or adjacent to environmentally sensitive areas;
- f. The subject site is physically suitable for the type and density/intensity of the approved land use, in that the building scale is compatible with the adjacent residential and commercial developments;
- g. There are adequate provisions for public access, water, sanitation and services to ensure that the proposed modification would not be detrimental to public health and safety, in that services are existing in and adjacent to the site, and
- h. The design, location, size and operating characteristics of the use with the modification are compatible with the existing and future land uses and will not create significant noise, traffic or other conditions or situations that may be objectionable or detrimental to other permitted uses operating nearby or adverse to the public interest, health, safety, convenience or welfare of the City, in that the site is properly conditioned and in compliance with all zoning and General Plan requirements, and is compatible, with the surrounding neighborhood.

NOW, THEREFORE, BE IT RESOLVED, based on the above-mentioned information and documentation, the Planning Commission recommends the City Council approve Modification #4 to Development Permit 07-01 subject to Exhibit "COA" (Revised Condition of Approval).

PASSED AND ADOPTED by the Planning Commission this 12th day of July 2010, by the following votes:

Ayes:

Noes:

Abstain:

Absent:

Doug Tucker, Chair
Planning Commission

ATTEST:

Denise Beauduy
Planning Secretary

Exhibit "COA"

PREFACE:

Tentative Tract Map 5785 and Development Permit 07-01 (This Permit) was approved by the City Council March 11, 2008 per City Council Resolution 08-3100.

- 1. Modification #1 of this Permit was modified on July 8, 2008 per City Council Resolution 08-3152 to modify Condition of Approval S8a*
- 2. Modification #2 consists of increasing the project by 0.52 acres and increasing the size of the building by 16,482 sq.ft.*
- 3. Modification #3, a proposal to phase the project was filed, but review of the application was placed on hold at the request of the Applicant.*
- 4. Modification #4 is a request to modify to Condition E5.. The Conditions of Approval below represent the combinations of the following: a) originally approved project (March 11, 2008), b) Modification #1(July 8, 2008), c) Modification #2(April 22, 2009), d) Modification #4 (July XX, 2010)*

Condition "E5" is hereby revised as follows:

~~"Public Improvements shall be completed prior to the City's acceptance of improvements. Occupancy shall not occur on any lot that is within the 100-year flood plain."~~

E5a. Public Improvements shall be completed prior to the City Council acceptance of the public improvements.

E5b. Prior to Building Permit issuance, the project shall comply with the FMC Chapter 6.16 "Flood Damage Prevention".

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ATTACHMENT 6

**CITY OF FILLMORE
PLANNING COMMISSION
RESOLUTION 10-850**

**RECOMMENDING TO THE CITY COUNCIL
APPROVAL OF MODIFICATION #2
(AMENDMENT TO CONDITION "E5")
TO DEVELOPMENT PERMIT 07-02, TTM 5784, "COE" PROPERTY
FILLMORE RIVERVIEW, LLC., APPLICANT**

WHEREAS, The Planning Commission has been petitioned to recommend approval of Modification #2 to Development Permit 07-02 and Tentative Map 5784 by amending Condition of Approval "E5" that was previously approved on March 11, 2008 by City Council Resolution 08-3104 (not yet constructed) located between D and E Streets, south of State Route 126; and

WHEREAS, The Community Development Director caused a notice of date, hour and place for a public hearing before the Planning Commission on July 12, 2010, to be published in the Fillmore Gazette and mailed to the applicant and all property owners within 300 feet of the exterior boundaries of the subject property in accordance with Section 6.04.80 of the Fillmore Zoning Ordinance; and

WHEREAS, Based upon the evidence presented, the Planning Commission makes the following findings of fact:

1. The subject property is identified as APN 046-0-060-110.
2. The properties are currently owned by Fillmore Riverview, LLC, 660 Newport Center Drive, Suite 930, Newport Beach, CA 92660.
3. The proposed modification has been reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA) and has been determined to be consistent with the Joint Program and Project Level Final Environment Impact Report for the Fillmore Business Park Master Plan and for Phase 1 and Phase 2 project development within the boundaries of the Fillmore Business Park Master Plan Area as certified by the Fillmore City Council on March 11, 2008.
4. The proposed modification was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA) and has been determined that modification of Condition "E5" does not require further CEQA review, because it conforms to the EIR certified by the City Council on March 11, 2008 and the Addendum to the EIR dated July 8, 2008.
5. The proposed modification to Condition "E5" is in conformance with the adopted elements of the General Plan (1988 & 2003).

6. The proposed modification to Condition "E5" is in substantial compliance with the Fillmore Business Park Master Plan, approved March 11, 2008.
7. The proposed modification to Condition "E5" conforms to the applicable zoning regulations contained in the Business Park §6.04.12 of the Zoning Code incorporated in Ordinance 08-805 adopted March 11, 2008; Ordinance 08-812 adopted on November 15, 2008; and the City's Flood Damage Prevention Ordinance, Chapter 6.16 of the FMC.

8. Condition "E5" is requested to be amended as follows:

~~"Public Improvements shall be completed prior to the City's acceptance of improvements. Occupancy shall not occur on any lot that is within the 100-year flood plain."~~

E5a. "Public Improvements shall be completed prior to the City Council acceptance of the public improvements".

E5b. "Prior to Building Permit issuance, the project shall comply with the FMC Chapter 6.16 "Flood Damage Prevention".

9. The Tentative Map (TTM) 5784 and Development Permit 07-02 were authorized pursuant to the provisions contained in the Zoning Ordinance Section 6.04.66 and Subdivision Ordinance, Chapter 6.08 of the FMC and the proposed modification conforms to these provisions as identified below:
 - a. The proposed modification is permitted within the subject zoning district and complies with all of the applicable provisions of the Zoning Ordinance, including prescribed development/site standards/guidelines and any applicable design guidelines, and complies with the Business Park Master Plan Design Guidelines development standards;
 - b. The proposed modification is consistent with the intent of the General Plan, in that the project land uses are permitted in the Business Park (BP-2) designation;
 - c. The proposed modification of the project would be harmonious and compatible with existing and future developments within the zoning district and general area, as well with the land uses adjacent to the subject property, in that the project is designed and conditioned to ensure compatibility with adjacent land uses;
 - d. The proposed modification is in compliance with the requirements of the California Environmental Quality Act (CEQA), in that a Program/Project Environmental Impact Report (EIR) with a Statement of Overriding Considerations was reviewed and approved per CEQA on March 11, 2008, an Addendum to the EIR was approved on July 8, 2008 and March 18, 2009;

- e. There will be no potential significant negative effects upon environmental quality and natural resources that could not be properly mitigated and monitored, in that the project is considered infill and is not adjacent to environmentally sensitive areas;
- f. The subject site is physically suitable for the type and density/intensity of the approved use, in that the building scale is compatible with the adjacent residential and commercial developments;
- g. There are adequate provisions for public access, water, sanitation and services to ensure that the proposed modification would not be detrimental to public health and safety, in that services are existing in and adjacent to the site, and
- h. The design, location, size and operating characteristics of the use with the modification are compatible with the existing and future land uses and will not create significant noise, traffic or other conditions or situations that may be objectionable or detrimental to other permitted uses operating nearby or adverse to the public interest, health, safety, convenience or welfare of the City, in that the site is properly conditioned and in compliance with all zoning and General Plan requirements, and is compatible, with the surrounding neighborhood.

NOW, THEREFORE, BE IT RESOLVED, based on the above-mentioned information and documentation, the Planning Commission recommends the City Council approve Modification #2 to Development Permit 07-02 and Tentative Map 5784 subject to Exhibit "COA" (revised Conditions of Approval).

PASSED AND ADOPTED by the Planning Commission this 12th day of July 2010, by the following votes:

Ayes:
Noes:
Abstain:
Absent:

Doug Tucker, Chair
Planning Commission

ATTEST:

Denise Beauduy
Planning Secretary

Exhibit "COA"

PREFACE:

Tentative Tract Map 5784 and Development Permit 07-02 (This Permit) was approved by the City Council March 11, 2008 per City Council Resolution 08-3104.

- 1. Modification #1 of this Permit was modified on July 8, 2008 per City Council Resolution 08-3152 to modify Condition of Approval S5a.*
- 2. Modification #2 consists of modifying Condition E5. The Conditions of Approval below represents the combinations of the following: a) originally approved project (March 11, 2008), b) Modification #1(July 8, 2008), and c) Modification #2(July XX, 2010).*

Condition "E5" is hereby revised as follows:

~~"Public Improvements shall be completed prior to the City's acceptance of improvements. Occupancy shall not occur on any lot that is within the 100-year flood plain."~~

E5a. Public Improvements shall be completed prior to the City Council acceptance of the public improvements.

E5b. Prior to Building Permit issuance, the project shall comply with the FMC Chapter 6.16 "Flood Damage Prevention".

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ATTACHMENT 7

CITY OF FILLMORE PLANNING COMMISSION RESOLUTION 10-851

RECOMMENDING TO THE CITY COUNCIL APPROVAL OF MODIFICATION #2 (AMENDMENT TO CONDITION "E5") TO TENTATIVE MAP 5803, "MAXWELL" PROPERTY

SESPE CREEK PROPERTIES, LLC., APPLICANT

WHEREAS, The Planning Commission has been petitioned to recommend approval of Modification #2 to Tentative Map 5803 by amending Condition of Approval "E5" that was previously approved on March 11, 2008 by City Council Resolution 08-3106 (not yet constructed) located between D and E Streets, south of State Route 126; and

WHEREAS, The Community Development Director caused a notice of date, hour and place for a public hearing before the Planning Commission on July 12, 2010, to be published in the Fillmore Gazette and mailed to the applicant and all property owners within 300 feet of the exterior boundaries of the subject property in accordance with Section 6.04.80 of the Fillmore Zoning Ordinance; and

WHEREAS, Based upon the evidence presented, the Planning Commission makes the following findings of fact:

1. The subject property is identified as APN 046-0-060-010 and 046-0-060-160.
2. The properties are currently owned by Sespe Creek Properties, LLC, 1253 Coast Village Road, Suite 105, Santa Barbara, CA 93108.
3. The proposed modification has been reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA) and has been determined to be consistent with the Joint Program and Project Level Final Environment Impact Report for the Fillmore Business Park Master Plan and for Phase 1 and Phase 2 project development within the boundaries of the Fillmore Business Park Master Plan Area as certified by the Fillmore City Council on March 11, 2008.
4. The proposed modification was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA) and has been determined that modification of Condition E5 does not require further CEQA review, because it conforms to the EIR certified by the City Council on March 11, 2008 and the Addendum to the EIR dated July 8, 2008.
5. The proposed modification to Condition "E5" is in conformance with the adopted elements of the General Plan (1988 & 2003).
6. The proposed modification to Condition "E5" is in substantial compliance with the

Fillmore Business Park Master Plan (Approved March 11, 2008).

7. The proposed modification to Condition "E5" conforms to the applicable zoning regulations contained in the Business Park §6.04.12 of the Zoning Code incorporated in Ordinance 08-805 adopted March 11, 2008; Ordinance 08-812 adopted on November 15, 2008; and the City's Flood Damage Prevention Ordinance, Chapter 6.16 of the FMC.

8. Condition "E5" is requested to be amended as follows:

~~"Public Improvements shall be completed prior to the City's acceptance of improvements. Occupancy shall not occur on any lot that is within the 100-year flood plain."~~

E5a. "Public Improvements shall be completed prior to the City Council acceptance of the public improvements".

E5b. "Prior to Building Permit issuance, the project shall comply with the FMC Chapter 6.16 "Flood Damage Prevention".

9. The Tentative Map (TTM) 5308 was authorized pursuant to the provisions contained in the Subdivision Ordinance, Chapter 6.08 of the FMC and the proposed modification conforms to these provisions as identified below:
 - a. The proposed modification is permitted within the subject zoning district and complies with all of the applicable provisions of the Zoning Ordinance, and complies with the Business Park Master Plan Design Guidelines development standards.
 - b. The proposed modification is consistent with the intent of the General Plan, in that the project land uses are permitted in the Business Park (BP-1) designation;
 - c. The proposed modification of the project would be harmonious and compatible with existing and future developments within the zoning district and general area, as well with the land uses adjacent to the subject property, in that the project is designed and conditioned to ensure compatibility with adjacent land uses;
 - d. The proposed modification is in compliance with the requirements of the California Environmental Quality Act (CEQA), in that a Program/Project Environmental Impact Report (EIR) with a Statement of Overriding Considerations was reviewed and approved per CEQA on March 11, 2008, an Addendum to the EIR was approved on July 8, 2008 and March 18, 2009;
 - e. There will be no potential significant negative effects upon environmental quality and natural resources that could not be properly mitigated and monitored, in that the project is not on or adjacent to environmentally

sensitive areas;

- f. The subject site is physically suitable for the type and density/intensity of the approved use, in that the building scale is compatible with the adjacent residential and commercial developments;
- g. There are adequate provisions for public access, water, sanitation and services to ensure that the proposed use would not be detrimental to public health and safety, in that services are existing in and adjacent to the site, and
- h. The design, location, size and operating characteristics of the approved use with the modification are compatible with the existing and future land uses and will not create significant noise, traffic or other conditions or situations that may be objectionable or detrimental to other permitted uses operating nearby or adverse to the public interest, health, safety, convenience or welfare of the City, in that the site is properly conditioned and in compliance with all zoning and General Plan requirements, and is compatible, with the surrounding neighborhood.

NOW, THEREFORE, BE IT RESOLVED, based on the above-mentioned information and documentation, the Planning Commission recommends the City Council approve Modification #2 to Tentative Map 5803 subject to Exhibit "COA" (revised Condition of Approval).

PASSED AND ADOPTED by the Planning Commission this 12th day of July 2010, by the following votes:

Ayes:

Noes:

Abstain:

Absent:

Doug Tucker, Chair
Planning Commission

ATTEST:

Denise Beauduy
Planning Secretary

Exhibit "COA"

PREFACE:

Tentative Tract Map 5308 (This Permit) was approved by the City Council March 11, 2008 per City Council Resolution 08-3106.

- 1. Modification #1 of this Permit was approved on July 8, 2008 per City Council Resolution 08-3152 to modify Condition of Approval S8a.*
- 2. Modification #2 consists of modifying Condition E5.. The Conditions of Approval below represent the combinations of the following: a) originally approved project (March 11, 2008), b) Modification #1(July 8, 2008) and c) Modification #2 (July XX, 2010)*

Condition "E5" is hereby revised as follows:

~~"Public Improvements shall be completed prior to the City's acceptance of improvements. Occupancy shall not occur on any lot that is within the 100-year flood plain."~~

E5a. Public Improvements shall be completed prior to the City Council acceptance of the public improvements.

E5b. Prior to Building Permit issuance, the project shall comply with the FMC Chapter 6.16 "Flood Damage Prevention".

ATTACHMENT 8

**CITY OF FILLMORE
PLANNING COMMISSION
RESOLUTION 10-852**

**RECOMMENDING TO THE CITY COUNCIL
APPROVAL OF MODIFICATION #3
(AMENDMENT TO CONDITION "E5")
TO DEVELOPMENT PERMIT 07-03, LLA 08-02, "STOP" PROPERTY**

T.S.A.F, LLC., APPLICANT

WHEREAS, The Planning Commission has been petitioned to recommend approval of Modification #3 to Development Permit 07-03 and LLA 08-02 by amending Condition of Approval "E5" that was previously approved on March 11, 2008 by City Council Resolution 08-3101 and by the Planning Commission on September 17, 2008 by Resolution 08-824 respectively (not yet constructed) at the southwest corner of Ventura Street and C Street; and

WHEREAS, The Community Development Director caused a notice of date, hour and place for a public hearing before the Planning Commission on July 12, 2010, to be published in the Fillmore Gazette and mailed to the applicant and all property owners within 300 feet of the exterior boundaries of the subject property in accordance with Section 6.04.80 of the Fillmore Zoning Ordinance; and

WHEREAS, Based upon the evidence presented, the Planning Commission makes the following findings of fact:

1. The subject property is identified as APN 052-0-160-010, 052-0-160-012 and 052-0-160-070.
2. The properties are currently owned by T.S.A.F, LLC, 5220 Fourth Street #13, Irwindale, CA 91706
3. The proposed modification has been reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA) and has been determined to be consistent with the Joint Program and Project Level Final Environment Impact Report for the Fillmore Business Park Master Plan and for Phase 1 and Phase 2 project development within the boundaries of the Fillmore Business Park Master Plan Area as certified by the Fillmore City Council on March 11, 2008.
4. The proposed modification was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA) and has been determined that modification of Condition "E5" does not require further CEQA review, because it conforms to the EIR certified by the City Council on March 11, 2008 and the Addendum to the EIR dated July 8, 2008.
5. The proposed modification to Condition "E5" is in conformance with the adopted

elements of the General Plan (1988 & 2003).

6. The proposed modification to Condition "E5" is in substantial compliance with the Fillmore Business Park Master Plan, approved March 11, 2008.
7. The proposed modification to Condition "E5" conforms to the applicable zoning regulations contained in the Business Park §6.04.12 of the Zoning Code incorporated in Ordinance 08-805 adopted March 11, 2008; Ordinance 08-812 adopted on November 15, 2008; and the City's Flood Damage Prevention Ordinance, Chapter 6.16 of the FMC.

8. Condition "E5" is requested to be amended as follows:

~~"Public Improvements shall be completed prior to the City's acceptance of improvements. Occupancy shall not occur on any lot that is within the 100-year flood plain."~~

E5a. "Public Improvements shall be completed prior to the City Council acceptance of the public improvements".

E5b. "Prior to Building Permit issuance, the project shall comply with the FMC Chapter 6.16 "Flood Damage Prevention".

9. The Development Permit (07-03) and Lot Line Adjustment (08-02) were authorized pursuant to the provisions contained in the Zoning Ordinance Section 6.04.66 and Subdivision Ordinance, Chapter 6.08 of the FMC and the proposed modification conforms to these provisions as identified below:
 - a. The proposed modification is permitted within the subject zoning district and complies with all of the applicable provisions of the Zoning Ordinance, including prescribed development/site standards/guidelines and any applicable design guidelines, and complies with the Business Park Master Plan Design Guidelines development standards;
 - b. The proposed modification is consistent with the intent of the General Plan, in that the project land uses are permitted in the Business Park (BP-1) designation;
 - c. The proposed modification of the project would be harmonious and compatible with existing and future developments within the zoning district and general area, as well with the land uses adjacent to the subject property, in that the project is designed and conditioned to ensure compatibility with adjacent land uses;
 - d. The proposed modification is in compliance with the requirements of the California Environmental Quality Act (CEQA), in that a Program/Project Environmental Impact Report (EIR) with a Statement of Overriding Considerations was reviewed and approved per CEQA on March 11, 2008,

an Addendum to the EIR was approved on July 8, 2008 and March 18, 2009;

- e. There will be no potential significant negative effects upon environmental quality and natural resources that could not be properly mitigated and monitored, in that the project is not on or adjacent to environmentally sensitive areas;
- f. The subject site is physically suitable for the type and density/intensity of the approved use, in that the building scale is compatible with the adjacent residential and commercial developments;
- g. There are adequate provisions for public access, water, sanitation and services to ensure that the proposed use would not be detrimental to public health and safety, in that services are existing in and adjacent to the site, and
- h. The design, location, size and operating characteristics of the approved use with the modification are compatible with the existing and future land uses and will not create significant noise, traffic or other conditions or situations that may be objectionable or detrimental to other permitted uses operating nearby or adverse to the public interest, health, safety, convenience or welfare of the City, in that the site is properly conditioned and in compliance with all zoning and General Plan requirements, and is compatible, with the surrounding neighborhood.

NOW, THEREFORE, BE IT RESOLVED, based on the above-mentioned information and documentation, the Planning Commission recommends the City Council approve Modification #3 to Development Permit 07-03 and Lot Line Adjustment 08-02 subject to Exhibit "COA" (revised Condition of Approval).

PASSED AND ADOPTED by the Planning Commission this 12th day of July 2010, by the following votes:

Ayes:

Noes:

Abstain:

Absent:

Doug Tucker, Chair
Planning Commission

ATTEST:

Denise Beauduy
Planning Secretary

Exhibit "COA"

PREFACE:

Development Permit 07-03 (This Permit) was approved by the City Council March 11, 2008 per City Council Resolution 08-3101.

- 1. Modification #1 of this Permit was approved on July 8, 2008 per City Council Resolution 08-3152 to modify Condition of Approval S8a.*
- 2. Modification #2 consists of adding two thru lanes, approving a Conditional Use Permit to allow alcohol, and approving a Lot Line Adjustment and was approved by the Planning Commission per Resolutions 08-822, 08-823, 0824 respectively.*
- 3. Modification #3 is a modification to Condition of Approval E5.. The Conditions of Approval below represents the combinations of the following: a) originally approved project (March 11, 2008), b) Modification #1(July 8, 2008), c) Modification #2 (September 17, 2008), d) Modification #3 (July XX, 2010)*

Condition "E5" is hereby revised as follows:

~~"Public Improvements shall be completed prior to the City's acceptance of improvements. Occupancy shall not occur on any lot that is within the 100-year flood plain."~~

E5a. Public Improvements shall be completed prior to the City Council acceptance of the public improvements.

E5b. Prior to Building Permit issuance, the project shall comply with the FMC Chapter 6.16 "Flood Damage Prevention".

ATTACHMENT 9

PLANNING COMMISSION RESOLUTION 10-853

GRANTING A ONE-YEAR TIME-EXTENSION OF DEVELOPMENT PERMIT 07-03 T.S.A.F, LLC, APPLICANT (THE "STOP" PROPERTY)

WHEREAS, The Planning Commission has been petitioned to act on a request for a one year time extension to Development Permit 07-03, an entitlement for a commercial project within the Business Park Master Plan; and

WHEREAS, The Community Development Director caused a notice of date, hour and place for a public hearing on July 12, 2010 before the Planning Commission to be published in the Fillmore Gazette and mailed to the applicant and all property owners within 300 feet of the exterior boundaries of the subject property in accordance with Section 6.04.80 of the Fillmore Zoning Ordinance; and

WHEREAS, Based upon the evidence presented, the Planning Commission makes the following findings of fact:

1. The subject property is approximately 9.5 acres and is identified as Assessor Parcel Numbers 052-0-160-010, 052-0-160-012, 052-0-160-070.
2. The property owner is T.S.A.F, LLC, 5220 Fourth Street, #13, Irwindale, CA 91706.
3. The Applicant is T.S.A.F, LLC, 5220 Fourth Street, #13, Irwindale, CA 91706.
4. The project site is currently undeveloped land.
5. The approved project, DP 07-03, Business Park Master Plan, EIR were approved by the City Council on March 11, 2008 (Council Resolutions 08-3101, 08-3096, 08-3095), subject to Conditions of Approval and incorporation of mitigation measures as identified in Exhibit "MMRP", Mitigation Monitoring Reporting Plan which was prepared pursuant to the provisions of the California Environmental Quality Act (CEQA).
6. The Planning Commission reviewed the request for a time extension to DP 07-03 at a special meeting held on July 12, 2010, to ensure that the project is still consistent with the City's current Zoning Ordinance provisions.
7. The project consists of a 15,000 square-foot drugstore, 3,500 square-foot bank pad, and two commercial buildings of size 6,650 square-feet and 14,330 square-feet for restaurant, office, and retail land uses on the northern parcel and four (4) office buildings totaling approximately 72,300 square-feet on the southern parcel.
8. A one year time extension is permitted per 1994 Zoning Ordinance Section 6.04.6650, Time Extension.

9. A one year time extension is permitted subject to the following findings,
- a. A planning permit application for a time extension is to be filed at least one day prior to expiration and for good cause, the Review Authority may grant one time extension not to exceed one year. The applicant submitted a time extension application on June 22, 2010, 104 days after the permit expiration date of March 11, 2010, however, the City may still consider the extension and if approved, it would be issued from the date of expiration not the date of issuance.
 - b. The Review Authority shall ensure that the Development Permit complies with all current Ordinance provisions. The Zoning Ordinance standards applicable to this project have not changed from the date of approval therefore the project is in compliance with all current Ordinance provisions.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission does hereby approve a one-year time extension to Development Permit 07-03, based on the above-mentioned information, public review, documentation, and subject to Exhibit "COA" (Revised Conditions of Approval).

PASSED AND ADOPTED by the Planning Commission this 12th day of July 2010, by the following votes:

Ayes:
Noes:
Abstain:
Absent:

Douglas Tucker, Chair
Planning Commission

ATTEST:

Denise Beauduy
Planning Secretary

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CITY OF FILLMORE
CENTRAL PARK PLAZA
250 Central Avenue
Fillmore, California 93015-1907
(805) 524-3701 • FAX (805) 524-5707

July 12, 2010

TO: Planning Commission

FROM: Kevin McSweeney, Community Development Director

THROUGH: Yvonne Quiring, City Manager
Ted Schneider, City Attorney
Bert Rapp, Public Works Director

SUBJECT: The Intent of the Business Park Owners regarding Flood Plain status.

Intent of the Business Park Owners:

The Business Park Entitlements were approved on March 11, 2008 with an EIR analysis indicating that the Business Park is not within the 100 year flood plain except for a portion of the Perry Ranch project and a portion of the Coe project. The EIR also states that with the construction of the new levee along Sespe Creek for the Water Recycling Plant, the Perry Ranch project was removed from the 100 year flood plain.

Preliminary draft Flood Insurance Rate Maps (FIRMs) were submitted to the City of Fillmore after the project approval indicating the entire Business Park was in the flood plain. However, those Preliminary maps were withdrawn to allow more time for accurate flood studies.

The Business Park property owners are concerned that in the future Building Permits will be withheld because of a possible future change in factual circumstances resulting from FEMA's adoption of the FIRM map, placing the business park in the flood plain. Therefore, the Business Park owners want it clarified that they are only accountable to the flood analysis of the Business Park EIR and EIR Addendum to the Tentative Tract Maps approved by the City Council on March 11, 2008.

In other words, the Business Park owners essentially want the City to guarantee that even if FEMA places the business park in the floodplain, the City will not impose the conditions required of the Fillmore Flood Damage Prevention Ordinance (FMC Chapter 6.16) during the Certificate Occupancy stage of projects.

The applicant attempted to reach this clarification of flood issues by requesting a modification to Condition of Approval #E5 by adding language that applicants are to comply with FMC Chapter 6.16 Flood Damage Prevention. But, this Chapter requires improvements to the "Buildings" and these improvements can only occur in the design phase and plan check phase of the projects, and not during Certificate of Occupancy.

For instance, Chapter 6.16 requires anchoring of the foundation, creating floating foundation, sealing the foundation and etc. All of these requirements can not happen during the Certificate of Occupancy stage a project. It would be too late.

Consequently, City staff recommends and the applicant concurs that Condition of Approval #5b should read,

E5b. "The applicant shall comply with Chapter 6.16 of the F.M.C. Flood Damage Prevention."