



Memorandum

June 24, 2009

TO: Planning Commission

FROM: Michael Webb, Principal Planner
Xzandrea Fowler, Planner

SUBJECT: Supplemental Information regarding the Willowbank Park Subdivision Proposal

Development Agreement:

Staff has included for your consideration the Draft Development Agreement document. Please see Attachment 1.

Red Fox:

The City's Wildlife Resource Specialist prepared a memo to address the potential impacts and staff recommendations concerning red fox and the Willowbank Park development. The memo provides background information, initial analysis on of potential impacts, and recommendations for impact minimization measures. See Attachment 2.

Initial Study Analysis:

In light of further analysis of the potential impacts on the existing water system staff believes that the proposed project would result in a less than significant impact on the City water supply. Staff recommends the following changes to the Initial Study, Section IV. Water, page 53 of the staff report:

a)-i) Less Than Significant Impact. The proposed residential development would result in surface runoffs. The project will be required to comply with City requirements for stormwater drainage and discharge as matter of standard practice via conditions of approval. The site improvements will include bioswales for stormwater temporary detention and groundwater recharge to minimize runoff issues. The project will connect to City water system that draws from groundwater supplies. The project will be required to comply with standard water conservation measures for appliances and irrigation. The site is not within a 100 year flood zone. Approval by the City Engineer of grading plans is required.

The proposed project does not result in any new or additional impacts related to hydrology or water quality. There are no water bodies on or near the project site that would be affected. The site is not within the 100 year flood zone. Approval by the City Engineer of grading plans is required. The project would have less than significant impacts on hydrology and water quality.

The proposed change to the Initial Study would result in the elimination of the Mitigation Measure 1. Water Supply.

Attachments:

1. Draft Development Agreement Document
2. Red fox Impact and Recommendation Memorandum

DRAFT**DRAFT**

AGREEMENT
BY AND BETWEEN
THE CITY OF DAVIS AND
DEVELOPER

Relating to the Development
of the Property Commonly Known as Willowbank Park

THIS AGREEMENT is entered into this _____, 2009, by and between the CITY OF DAVIS, a municipal corporation (herein the "City"), and Brix and Mortar Partners LLC., (herein the "Developer"), pursuant to the authority of Sections 65913.4 and 65864 et seq. of the Government Code of the State of California.

RECITALS

To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864 et seq. of the Government Code which authorizes any city, county or city and county to enter into a development agreement with an applicant for a development project, establishing certain development rights in the property which is the subject of the development project application.

The Developer owns in fee or has a legal or equitable interest in certain real property described in Exhibit A attached hereto and incorporated herein by this reference and located in the City of Davis (herein the "Property") which the Developer seeks to develop consistent with the General Plan of the City (herein the "General Plan"), including but not limited to the Project Approvals for the Property, as described in this Agreement.. Development of the Property will include construction of new affordable housing and market rate housing uses.

To offset the impacts of the requested amendments and rezoning the Developer has agreed to pay certain additional fees with respect to development of the Property, in addition to the impacts fees and charges applicable to development within the city, and to pay all other amounts in effect at the time of payment thereof except as set forth herein, and to develop the subject Property in accordance with the City's ordinances, rules, regulations and polices in effect as of the approval of the development by the City of the subject Property.

This Agreement is voluntarily entered into by the Developer in order to implement the General Plan and in consideration of the rights conferred and the procedures specified herein for the development of the Property. This Agreement is voluntarily entered into by the City in the exercise of its legislative discretion in order to implement the General Plan and in consideration of the agreements and undertakings of the Developer hereunder.

Land use entitlements have been approved by the City for the Property. The Land Use entitlements are set forth on Exhibit C, attached hereto and incorporated herein (hereinafter the "Project Approvals"). The Land Use entitlements contain project conditions and mitigations that assure compliance with the General Plan, Specific Plan and zoning regulations and cannot be changed without further entitlement processes.

Developer seeks to comply with the project conditions of approval and develop the Property in accordance with the General Plan and the Project Approvals for the Property. Development of the Property pursuant to the Project approvals is hereinafter called the "Project."

This Agreement will eliminate uncertainty in planning for and securing orderly development of the Project, provide the certainty necessary for Developer to make significant investments in public infrastructure and other improvements, assure compliance with the conditions of approval, assure the timely and progressive installation of necessary improvements, provide public services appropriate to each stage of development, establish phasing for the orderly and measured build-out of the Project consistent with the desires of the City to maintain the City's small city atmosphere and to have development occur at a pace that will assure integration of the new development into the existing community, provide for affordable housing and provide significant public benefits to the City that the City would not be entitled to receive without this Agreement.

In exchange for the benefits to the City, Developer desires to receive the assurance that it may proceed with the Project in accordance with the existing land use ordinances, subject to the terms and conditions contained in this Agreement and to secure the benefits afforded the Developer by Government Code section 65865.3.

AGREEMENTS

IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES OF THE PARTIES, THE CITY AND THE DEVELOPER HEREBY AGREE AS FOLLOWS:

Article I: General Provisions.

[Sec. 100] Property Description and Binding Covenants. The Property is located on the west side of Mace Boulevard, between San Marino Drive and Redbud Drive and is more particularly described in Exhibit A, which consists of a map showing its location and boundaries and a legal description. The Developer represents that it has a legal or equitable interest in the Property and that all other persons holding legal or equitable interests in the Property (excepting owners or claimants in easements) agree to be bound by this Agreement. It is intended and determined that the provisions of this Agreement shall constitute covenants which shall run with said Property, and the burdens and benefits hereof shall bind and inure to all successors in interest to the parties hereto

[Sec. 101] Project Description.

A. The Final Planned Development Permit approval is for a 29 unit residential subdivision. All of the units shall be no greater than two stories or 30-feet in height. Of the 29 units, 23 will be detached, 6 will be duplexes.

There shall be an affordable housing component, which shall be composed of six low-moderate income units. The low-moderate income units will consist of six single-family attached units. Unless modified by City Council at the time of affordable housing plan approval. There is one 4-bedroom/2.5 bathroom unit, and five 3-bedroom/1.5 bathroom units. The affordable housing plan for low and moderate income levels is as defined by the County of Yolo.

The remaining 23 units shall be sold as market rate units. The Final Planned Development Permit approval is for a 29 unit residential subdivisions. All of the units shall be no greater than two stories or 30-feet in height. Of the 29 units, 23 will be detached and 6 will be attached.

[Sec. 102] Term and Effective Date.

A. This Agreement shall commence, and its effective date shall be, thirty days after approval by the City Council. The term of Agreement shall extend for a period

of 10 years from the effective date, unless said term is terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the parties hereto, subject to the provisions of Section 104 hereof.

B. Following the expiration of said term, this Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions of Section 408 hereof.

C. The City shall cause any such written notice of termination to be recorded with the County Recorder within ten (10) days of receipt of such notice.

D. This Agreement shall be deemed terminated and of no further effect upon entry after all appeals have been exhausted of a final judgment or issuance of a final order directing the City to set aside, withdraw or abrogate the city council's approval of this Agreement or the tentative subdivision map;

[Sec. 103] Equitable Servitudes and Covenants Running With the Land; Release upon sale to Homebuyer.

A. Any successors in interest to the City and the Developer shall be subject to the provisions set forth in Government Code sections 65865.4 and 65868.5. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do, or refrain from doing, some act with regard to the development of the Property: (a) is for the benefit of and is a burden upon the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each Party and each successor in interest during ownership of The Property or any portion thereof. Nothing herein shall waive or limit the provisions of Section 104, and no successor owner of the Property, any portion of it, or any interest in it shall have any rights except those assigned to the successor by the Developer in writing pursuant to Section 104. In any event, no owner or tenant of an individual completed residential unit within Project shall have any rights under this Agreement.

B. Release of Obligation Upon Completion of the First Re-sale of a Residential Unit. Without any further action by any party or need to record any additional document, with respect to sale of an individual single family residential lot within the Property, upon completion of first sale for a single family dwelling unit upon such residential lot and conveyance of such improved residential lot by the Developer to a bona-fide good-faith purchaser, in accordance with the terms of this Agreement, the

DRAFT

bona fide good faith purchaser shall have no further obligation with respect to this Agreement. Nothing in this section shall release the Developer from any and all of its obligations under this Agreement.

[Sec. 104] Right to Assign; Non-Severable Obligations.

A. Upon the express written assignment by the Developer and assumption by the assignee of such assignment, City's approval of such assignment pursuant to this Section, and the conveyance of the Developer's interest in the Property related thereto, the Developer shall be released from any further liability or obligation under this Agreement related to the portion of the Property so conveyed and the assignee shall be deemed to be the "Developer" with all rights and obligations related thereto, with respect to such conveyed property.

B. The Developer shall have the right to sell, encumber, convey, assign or otherwise transfer (collectively "assign"), in whole or in part, its rights, interests and obligations under this Agreement to a third Party during the term of this Agreement.

C. No assignment shall be effective until the City, by action of the City Council, approves the assignment. Approval shall not be unreasonably withheld provided:

1) The assignee (or the guarantor(s) of the assignee's performance) has the financial ability to meet the obligations proposed to be assigned and to undertake and complete the obligations of this Agreement affected by the assignment; and

2) The proposed assignee has adequate experience with residential developments of comparable scope and complexity to the portion of the Chiles Ranch Subdivision that is the subject of the assignment.

D. Any request for City approval of an assignment shall be in writing and accompanied by certified financial statements of the proposed assignee and any additional information concerning the identity, financial condition and experience of the assignee as the City may reasonably request; provided that, any such request for additional information shall be made, if at all, not more than fifteen (15) business days after the City's receipt of the request for approval of the proposed assignment. All detailed financial information submitted to the City shall constitute confidential trade secret information if the information is maintained as a trade secret by the assignee and if

such information is not available through other sources. The assignee shall mark any material claimed as trade secret at the time it is submitted to the City. If the City wishes to disapprove any proposed assignment, the City shall set forth in writing and in reasonable detail the grounds for such disapproval. If the City fails to disapprove any proposed assignment within forty-five (45) days after receipt of written request for such approval, such approval shall be deemed to be approved.

E. The City, upon receipt of a written request therefore from a foreclosing Mortgagee, shall permit the Mortgagee to succeed to the rights and obligations of the Developer under this Agreement, provided that all defaults by the Developer under this Agreement that are reasonably susceptible of being cured are cured by the Mortgagee as soon as is reasonably possible. The foreclosing Mortgagee shall comply with all of the provisions of this Agreement. If the City receives notice from a Mortgagee requesting a copy of any notice of default given to the Developer and specifying the address for such notice, the City shall endeavor to deliver to the Mortgagee, concurrently with service thereof to the Developer, all notices given to the Developer describing all claims by the City that the Developer has defaulted hereunder. If the City determines the Developer is not in compliance with this Agreement, the City also shall endeavor to serve notice of noncompliance on the Mortgagee concurrently with service on the developer. Each Mortgagee shall have the right during the same period available to the Developer to cure or remedy, or to commence to cure or remedy, the condition of default claimed, or the areas of noncompliance set forth in the City's notice.

F. The Specific Development Obligations set forth in Article II, Sec. 201, are not severable, and any sale of the Property, in whole or in part, or assignment of this Agreement, in whole or in part, which attempts to sever such conditions shall constitute a default under this Agreement and shall entitle the City to terminate this Agreement in its entirety.

G. Notwithstanding subsection C above, mortgages, deeds of trust, sales and leases-back or any other form of conveyance required for any reasonable method of financing are permitted, but only for the purpose of securing loans of funds to be used for financing the acquisition of the Property, the development and construction of improvements on the Property and other necessary and related expenses. The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof, shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be

bound by all of the terms and conditions of this Agreement. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

H. Nothing in this Section shall be deemed to constitute or require City consent to the approval of any subdivision or parcelization of the Property, in addition to the Subdivision Tentative Map identified in Exhibit B. The parties understand and recognize that any such actions must comply with applicable City laws and regulations and be consistent with the General Plan, and this Agreement.

[Sec. 105] Notices. Formal written notices, demands, correspondence and communications between the City and the Developer shall be sufficiently given if dispatched by certified mail, postage prepaid, to the principal offices of the City and the Developer, as set forth in Article 8 hereof. Such written notices, demands, correspondence and communications may be directed in the same manner to such other persons and addresses as either party may from time to time designate. The Developer shall give written notice to the City, at least thirty (30) days prior to the close of escrow, of any sale or transfer of any portion of the Property and any assignment of this Agreement, specifying the name or names of the transferee, the transferee's mailing address, the amount and location of the land sold or transferred, and the name and address of a single person or entity to whom any notice relating to this Agreement shall be given, and any other information reasonable necessary for the City to consider approval of an assignment or any other action City is required to take under this Agreement.

[Sec. 106] Amendment of Agreement. This Agreement may be amended from time to time by mutual consent of the parties, in accordance with the provisions of Government Code Sections 65867 and 65868.

[Sec. 107] Operating Memoranda. The parties acknowledge that refinement and further implementation of the Project may demonstrate that certain minor changes may be appropriate with respect to the details and performance of the parties under this Agreement. The parties desire to retain a certain degree of flexibility with respect to the details of the Project and with respect to those items covered in the general terms of this Agreement. If and when the parties find that clarifications, minor changes, or minor

adjustments are necessary or appropriate, they shall effectuate such clarifications, minor changes or minor adjustments through operating memoranda approved in writing by the parties. "Minor" as used above shall not include any changes to the Development that is not substantially in conformance with the project approvals for the project and do not include any change to the number or type of units and/or price and resale restrictions for the affordable housing set forth herein. Unless required by law, no such operating memorandum shall require prior notice or hearing, nor shall it constitute an amendment to this Agreement.

[Sec. 108] Estoppel Certificate.

A. Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (i) this Agreement is in full force and effect and a binding obligation of the parties, (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe the nature of such default. The party receiving a request hereunder shall execute and return such certificate within thirty (30) days following receipt. The City acknowledges that the certificate may be relied upon by transferees and mortgagees of the Developer.

Article II: Development of the Property.

[Sec. 200] Permitted Uses and Development Standards. In accordance with and subject to the terms and conditions of this Agreement, the Developer shall have a vested right to develop the Property for the uses and in accordance with and subject to the terms and conditions of this Agreement, and the Project Approvals, including the conditions of approval and the mitigation measures for the Project attached hereto as Exhibit C and incorporated herein by reference, (the "Project Approvals") the Development Standards in effect that the time this Agreement was approved, (i.e. the General Plan, any applicable Specific Plan, etc.), and any amendments to the Project Approvals or Agreement as may, from time to time, be approved pursuant to this Agreement. Developer understands that, no changes or amendments can be made that are inconsistent with the conditions of approval without the approval of such changes or amendments by the City Council.

Developer hereby agrees to develop the Project in accordance with the Project approvals, including the conditions of approval and the mitigation measures for the Project, and the Development Standards and any amendments to the Project Approvals or Agreement as may, from time to time, be approved pursuant to this Agreement. Without limiting the foregoing, Developer understands and agrees that substantial construction must be commenced within eighteen months of approval of this Agreement, unless an extension is granted by the City, as set forth below in Section 202.

[Sec. 201] Specific Development Obligations. In addition to the conditions of approval contained in the Project Approvals, the Developer and the City have agreed that the Development of the Property by the Developer is subject to certain "Specific Development Obligations," described herein. These Specific Development Obligations, together with the other terms and conditions of this Agreement, provide the incentive and consideration for the City entering into this Agreement.

A. Supplemental Residential Fee. In addition to all other fees to be paid by the residential development of the Willowbank Park Subdivision, the Developer shall pay to the City the sum of \$ TBD at or before the issuance of a Building Permit for each and every market-rate residential unit within the Willowbank Subdivision. For purposes hereof, a market-rate residential unit shall mean and refer to a housing unit with the Willowbank Park Subdivision that is not required by the City to be sold at a City-designated price that is affordable to moderate or low income household, as such affordability is defined in the City of Davis Municipal Code, Section 18.06.020.

B. Greenhouse Gas Emissions Reduction Requirement. The project shall meet the greenhouse gas emission reduction standards adopted by the City Council by Resolution #06-166, Series 2008, and Resolution #09-043, Series 2009. The 29 unit project shall mitigate 69.6 MT of CO₂, as follows:

- 1) 2% Credit for Medium Density
- 2) 1% Credit for transit route within one-quarter (3/4) mile radius of the Property.
- 3) The Project shall provide, in the aggregate, 35% above current (2005) Title 24 standards calculated as a total for all buildings within the Project.

4) In addition, the Developer shall install 8kW of household(rooftop) photovoltaics within the Project (approximately five, 1.6 kW photovoltaic systems, the exact size and number of such photovoltaic systems to be determined prior to issuance of building permits and approved by the Building Official). The developer shall identify which lots are planned for such systems prior to issuance of the first Building Permit.

5) In addition, each unit within the Project shall be designed with and the Developer shall install the components necessary to facilitate the future installation of Photovoltaic systems, to the satisfaction and approval of the Building Official

6) The Developer shall make a financial contribution of \$1,000 for each of the 29 units to a community enhancement program (i.e. Carbon Diet Program) to be overseen at the sole discretion of the Parks and General Services Department. This shall be paid at or prior to Certificate of Occupancy.

C. Affordable Housing and Accessibility.

1) Concurrently with the recordation of the final map, Developer shall also record the affordable housing deed restrictions against the affordable housing lots. The deed restrictions shall be approved by the City prior to recordation.

2) The affordable units may be constructed in three phases, with a minimum of two affordable units completed in each phase. When either lots 1 and 2 or lots 3 and 4 are constructed the entire private driveway and parking bays shall be constructed at the same time. Phase 1 shall consist of a minimum of two affordable units. Developer shall commence with construction of the Phase 1 affordable units not later than 24 months after the date of recordation of a Final Map for the Project or prior to the issuance of the 16th building permit for a market rate unit, whichever comes first. Developer shall commence Phase 2 within 90 days of commencement of Phase 1. As used herein, "commencement" means issuance of building permits and initiation of construction of the first unit within each phase.

3) The developer shall provide a marketing plan for the affordable units to the City for review and approval prior to issuance of the first Building Permit.

4) A hardship exemption would be available to extend the period prior to the required construction commencement for 12 additional months if hardship can be reasonably demonstrated by the developer to the City Council.

5) Once construction commences, the developer shall work continuously on construction of each affordable housing phase, consistent with good building practices. The developer shall complete construction of all affordable units within each phase no later than nine (9) months from the issuance of the first building permit for the first affordable unit within each phase.

6) Concurrently with recordation of the final map, a lien will be placed upon all of the affordable (low/moderate) lots to assure that these lots are constructed with affordable units.

7) The Developer shall issue escrow instructions to the escrow officer which would require the officer to report the sales of all market rate lots to City staff so that the City can track when the timing of the construction of affordable units should commence.

8) Two affordable units shall be first-floor accessible.

9) Means accessible standards implemented for entry into the unit from the street (path of travel and zero entry threshold) and throughout the ground floor, and a bathroom (including grab bar backing reinforcements in the bathroom walls) and bedroom to be located on the first floor

10) Standard provisions shall be implemented for disclosure and buyer selection, as established by the Affordable Housing Ordinance and the Social Services Commission. Disclosure documents and the process and standards for buyer selection shall be approved by the city.

D. Architectural Diversity. Small Builder lots shall not be required in the Willowbank Park Subdivision City of Davis Municipal Code, Section 18.01.060(b). The intent of this requirement is to encourage the development of architecturally diverse neighborhoods, with a mix of housing types, densities, prices and rents and designs in each new development area. The General Plan also includes goals, policies and actions (Urban Design) that promote design standards for new single family residential development that create variability of lot sizes, floor area ratios, setbacks, building height floor plans, and architectural styles/treatments within each new development area. The Willowbank Park Subdivision would be consistent with these General Plan goals and policies. The development will include a mix of lot sizes, a variety of setbacks, and alternating heights throughout the subdivision. The Willowbank Park Subdivision will

provide a diverse, yet cohesive neighborhood with complementary housing types, sizes, and elevations. The developer shall provide all of the following in the Willowbank Park Subdivision.

- 1) Detached single family dwellings
- 2) Attached single family dwellings

These units shall provide a minimum of seven diverse elevations, as set forth in the Project Approvals. Such elevations may be modified if necessary during the development of the project, so long as the diversity is maintained, and the modifications are approved by the city.

E. Community Improvements. The City and Developer have agreed that certain improvements to the area in the vicinity of the project site are important to maintaining and improving the quality of life for the community. The developer shall provide the following:

- 1) A pedestrian trail shall be constructed by developer to connect the greenbelt pond adjacent to the Putah Creek channel from the current bike terminus to Mace Boulevard.
- 2) A bicycle path shall be constructed by developer to connect with the current bike adjacent to the greenbelt pond to the Mace Boulevard via the main road in the subdivision.
- 3) A minimum landscaped buffer shall be provided by developer adjacent to both sides of the path and trail only for maintenance.
- 4) The improvement plans for the path and trail shall be developed by the developer and submitted subject to the review and approval of Parks and General Services and Public Works staff prior to the issuance of first building permit for the project. Timing for completion of said improvements for path and trail shall be established within the Improvement Agreement in the Final Map process.
- 5) Developer will contribute \$ TBD to a landscape maintenance endowment to offset the additional maintenance costs to the city

DRAFT

with these improvements. The funds shall be paid prior to the City's acceptance of the pedestrian trail and bicycle path.

F. Fiscal Impacts. The Developer will pay applicable City Development Impacts Fees and Residential Impact Fees as set forth in Section 204. The payment of fees shall be paid at time of issuance of Certificate of Occupancy for each residential unit.

[Sec. 202] Development Timing. Developer shall be obligated to construct the improvements and provide funding at the times set forth in this Agreement. Developer shall also initiate and pursue development of the Project as set forth herein.

A. Initial commencement of development. There is an approved Tentative Map for the Project, a reduced copy of which is attached to this Agreement as part of Exhibit A. The city has also approved a Final Planned Development and Design Review Approvals. Pursuant to these approvals, Developer must commence substantial construction on the Project within eighteen (18) months of the Effective Date of this Agreement which may be extended pursuant to City of Davis Municipal Code, Section 40.32.110.

B. Failure to Proceed in a Timely Manner. After commencement of construction, if the Developer ceases construction of infrastructure improvements for a period exceeding TBD months and/or does not finalize any residential units for occupancy for a period exceeding forty eight (48) months this Agreement shall terminate unless extended by the City as set forth herein. Developer may request an extension of the Agreement and these performance obligations if the City is involved in litigation, initiative or referendum proceedings, or other circumstances that affect the City's ability to provide building permits and/or water or sewer connections, in which case City shall grant an extension for the same time as the time period during which sewer or water connections or building permits are unavailable. In the event the City approves a moratorium on water or sewer hook-ups or building permits or other entitlements necessary for the Project to proceed, then the period during which the moratorium is in effect shall not count towards the forty eight (48) month period. Developer may request and City may not unreasonably withhold approval of extensions not to exceed six months at a time for reasons other than lack of sewer, water, or drainage capacity, or other circumstances affecting the City's ability to provide building permits or sewer, water, or drainage capacity, provided the Developer continues to undertake good faith efforts to proceed with Development and further provided that any extension beyond twelve (12)

months will require that the Development impact fees for the project be adjusted to those in effect at the time of issuance of the building permit.

[Sec. 203] Rules, Regulations and Official Policies.

A. For the term of this Agreement, the rules, regulations, ordinances and official policies governing the permitted uses of land, the density and intensity of use, design, improvement and construction standards and specifications applicable to the development of the Property, including the maximum height and size of proposed buildings, shall be those rules, regulations and official policies in force on the effective date of this Agreement. Except as otherwise provided in this Agreement, to the extent any future changes in the General Plan, zoning codes or any future rules, ordinances, regulations or policies adopted by the City purport to be applicable to the Property but are inconsistent with the terms and conditions of this Agreement, the terms of this Agreement shall prevail, unless the parties mutually agree to amend or modify this Agreement pursuant to Section 106 hereof. To the extent that any future changes in the General Plan, zoning codes or any future rules, ordinances, regulations or policies adopted by the City are applicable to the Property and are consistent with the terms and conditions of this Agreement or are otherwise made applicable by other provisions of this Article 2, such future changes in the General Plan, zoning codes or such future rules, ordinances, regulations or policies shall be applicable to the Property.

1) This section shall not preclude the application to development of the Property of changes in City laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in state or federal laws or regulations. In the event state or federal laws or regulations enacted after the date of this Agreement or action by any governmental jurisdiction other than the City prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, this Agreement shall be modified, extended or suspended as may be necessary to comply with such state or federal laws or regulations or the regulations of such other governmental jurisdiction.

B. To the extent that any actions of federal or state agencies (or actions of regional and local agencies, including the City, required by federal or state agencies) have the effect of preventing, delaying or modifying development of the Property, the City shall not in any manner be liable for any such prevention, delay or modification of said development. The Developer is required, at its cost and without cost to or obligation

on the part of the City, to participate in such regional or local programs and to be subject to such development restrictions as may be necessary or appropriate by reason of such actions of federal or state agencies (or such actions of regional and local agencies, including the City, required by federal or state agencies).

1) Nothing herein shall be construed to limit the authority of the City to adopt and apply codes, ordinances and regulations which have the legal effect of protecting persons or property from conditions which create a health, safety or physical risk.

C. All Project construction and the improvement plans and final maps for the Project shall comply with the rules, regulations and design guidelines in effect at the time the construction, improvements plan or final map is approved. Unless otherwise expressly provided in this Agreement, all city ordinances, resolutions, rules regulations and official policies governing the design and improvement and all construction standards and specifications applicable to the Project shall be those in force and effect at the time the applicable permit is granted. Ordinances, resolutions, rules, regulations and official policies governing the design, improvement and construction standards and specifications applicable to public improvements to be constructed by Developer shall be those in force and effect at the time the applicable permit approval for the construction of such improvements is granted. If no permit is required for the public improvements, the date of permit approval shall be the date the improvement plans are approved by the City, or the date construction for the public improvements is commenced, whichever occurs first.

D. Uniform Codes applicable. This Project shall be constructed in accordance with the provisions of the Uniform Building, Mechanical, Plumbing, Electrical, and Fire Codes, city standard construction specifications and details and title 24 of the California Code of Regulations, relating to Building Standards, in effect at the time of approval of the appropriate building, grading, encroachment or other construction permits for the Project. If no permits are required for the infrastructure improvements, such improvements will be constructed in accordance with the provisions of the codes delineated herein in effect at the start of construction of such infrastructure.

E. The parties intend that the provisions of this Agreement shall govern and control as to the procedures and the terms and conditions applicable to the development of the Property over any contrary or inconsistent provisions contained in Section 66498.1

et seq. of the Government Code or any other State law now or hereafter enacted purporting to grant or vest development rights based on land use entitlements (herein "Other Vesting Statute"). In furtherance of this intent, and as a material inducement to the City to enter into this Agreement, the Developer agrees that:

1) Notwithstanding any provisions to the contrary in any Other Vesting Statute, this Agreement and the conditions and requirements of land use entitlements for the Property obtained while this Agreement is in effect shall govern and control the Developer's rights to develop the Property;

2) The Developer waives, for itself and its successors and assigns, the benefits of any Other Vesting Statute insofar as they may be inconsistent or in conflict with the terms and conditions of this Agreement and land use entitlements for the Property obtained while this Agreement is in effect; and

3) The Developer will not make application for a land use entitlement under any Other Vesting Statute insofar as said application or the granting of the land use entitlement pursuant to said application would be inconsistent or in conflict with the terms and conditions of this Agreement and prior land use entitlements obtained while this Agreement is in effect.

F. This section shall not be construed to limit the authority or obligation of the City to hold necessary public hearings, to limit discretion of the City or any of its officers or officials with regard to rules, regulations, ordinances, laws and entitlements of use which require the exercise of discretion by the City or any of its officers or officials, provided that subsequent discretionary actions shall not conflict with the terms and conditions of this Agreement.

G. Moratorium, Quotas, Restrictions or Other Growth Limitations. Subject to applicable law relating to the vesting provisions of development agreements, the Developer and the City intend that, except as otherwise provided herein, this Agreement shall vest the Entitlements against subsequent City resolutions, ordinances, initiatives and referenda that directly or indirectly limit the rate, timing, or sequencing of development, or prevent or conflict with the permitted uses, density and intensity of uses as set forth in the Entitlements. The Developer shall, to the extent allowed by the laws pertaining to development agreements, be subject to any growth limitation ordinance, resolution, rule regulation or policy which is adopted on a uniformly applied, City-wide or area-wide

DRAFT

basis and directly concerns a public health or safety issue, in which case the City shall treat the Developer in a uniform, equitable and proportionate manner with all properties, public and private, which are impacted by that public health or safety issue. By way of example only, an ordinance which precluded the issuance of a building permit because the City had inadequate sewage treatment capacity to meet the demand therefore (either City-wide or in a designated sub-area of the City) would directly concern a public health issue under the terms of this paragraph and would support a denial of a building permit within the property, so long as the City was also denying City-wide or area-wide all other requests for building permits which require sewage treatment capacity, however, an attempt to limit the issuance of building permits because of a general increase in traffic congestion levels in the City would not directly concern a public health or safety issue under the terms of this paragraph.

H. City Cooperation. The City agrees to cooperate with the Developer in securing all permits which may be required by the City. In the event state or federal laws or regulations enacted after this Agreement has been executed, or actions of any governmental jurisdiction, prevent, delay or preclude compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by the City, the parties agree that the provisions of this Agreement shall be modified, extended or suspended as may be necessary to comply with such state and federal laws or regulations or the regulations of other governmental jurisdictions. Each party agrees to extend to the other its prompt and reasonable cooperation in so modifying this Agreement or approved plans.

[Sec. 204] Fees, Exactions, Conditions and Dedications.

A. Except as provided herein, Developer shall be obligated to pay only those fees, in the amounts and/or with increases as set forth below, and make those dedications and improvements prescribed in the Project Approvals and this Agreement and any Subsequent Approvals.

1) Developer shall pay all City Development Impact Fees and Water and Sewer Connection Fees applicable to the Project in the amounts in effect at the time of payment at or prior to Certificate of Occupancy. Developer shall pay all impact fees imposed by or on behalf of other public agencies, such as the school district or the County of Yolo, in the amounts applicable to the Project on the date the fees are paid.

2) City may charge and Developer shall pay processing fees for land use approvals, building permits, and other similar permits and entitlements which are in force and effect on a citywide basic at the time the application is submitted for those permits, as permitted pursuant to California Government Code section 66014 or its successor sections(s)

3) The Developer shall pay \$277,907 in City Park In-lieu fees in effect on the date of this agreement (\$9,583 per unit). The park in-lieu fee for each residential unit shall be paid at or prior to Certificate of Occupancy for each unit.

4) The Developer shall pay \$TBD for (\$TBD per unit for each and every market rate unit (23 units)). The supplemental fee shall be paid at or prior to Certificate of Occupancy for each residential unit. The contribution will be utilized for the purposes of community enhancements, as determined by the City.

5) The Developer shall be obligated to provide all other Specific Development Obligations described in Section 201, specifically 2(a-e), 3(a-d), 4(a-d) and 5(a-b).

6) Concurrent with recordation of the Final Map, the developer shall record a separate document entitled: "NOTICE OF CITY OF DAVIS FEES DUE PRIOR TO OCCUPANCY" for each and every lot. Said document shall indicate those fees that are due prior to the Certificate of Occupancy and close of escrow. Said document shall be reviewed and approved by the City prior to recordation. As part of the Purchase Agreement for each and every lot and/or unit, the developer shall require that the buyer specifically acknowledge, in writing, receipt of the above notice.

7) Except as specifically permitted by this Agreement or mandated by state or federal law, City shall not impose any additional capital facilities or development impact fees or charges or require any additional dedications or improvements through the exercise of the police power, with the following exception: (a) the City may impose reasonable additional fees, charges, dedication requirements or improvement requirements as conditions of City's approval of an amendment to the Project Approvals or this Agreement, which amendment is either requested by the Developer or agreed to by the Developer; and (b) the City may apply subsequently adopted development exactions to the Project if the exaction is applied uniformly to development either throughout the city or with a defined area of benefit that includes the Property if the

subsequently adopted development exaction does not physically prevent development of the Property for the uses and to the density and intensity of development set forth in this Agreement. In the event that the subsequently adopted development exaction fulfills the same purpose as an exaction or development impact fee required by this Agreement or by the Project Approvals, the Developer shall receive a credit against the subsequently adopted development exaction for fees already paid that fulfill the same purpose.

8) Compliance with Government Code section 66006. As required by Government Code section 65865(e) for development agreements adopted after January 1, 2004, the City will comply with the requirements of Government Code section 66006 pertaining to the payment of fees for the development of the Property.

Article III: Obligations of the Developer.

[Sec. 300] Improvements. The Developer shall develop the Property in accordance with and subject to the terms and conditions of this Agreement as described in Exhibit C, the Project Approvals, and the subsequent discretionary approvals referred to in Section 201, if any, and any amendments to the Project Approvals or this Agreement as, from time to time, may be approved pursuant to this Agreement. The failure of the Developer to comply with any term or condition of or fulfill any obligation of the Developer under this Agreement, the Project Approvals or the subsequent discretionary approvals or any amendments to the Project Approvals or this Agreement as may have been approved pursuant to this Agreement, shall constitute a default by the Developer under this Agreement. Any such default shall be subject to cure by the Developer as set forth in Section 400 hereof.

[Sec. 301] Developer Obligations. Developer shall be responsible, at its sole cost and expense, to make the contributions, improvements, dedications and conveyances set forth in this Agreement, the Project Approvals, and the Additional Developer Requirements.

[Sec. 302] City's Good Faith in Processing.

A. Developer and City shall comply with the time frames set forth in the Subdivision Map Act, and, if applicable, the Permit Streamlining Act, for the processing of parcel and final maps.

B. With City approval, Developer may utilize an expedited plan check process for the review of improvements plans and building plans for the Project. Within

DRAFT

two (2) weeks of a written request by Developer, City shall determine whether expedited plan check is feasible for the requested work. If City determines that expedited plan check is feasible, City shall retain an outside consultant for review of Developer improvement plans and building plans. Such outside consultant shall be at the sole selection of the City and shall be paid for at the sole cost and expense of Developer. Upon written request, Developer shall advance a deposit sufficient to cover the City's estimated costs of retaining the outside consultant. Such deposit shall be replenished as necessary, from time to time, to assure that the City shall not bear any of the cost of the outside consultant.

Article IV: Default, Remedies, Termination.

[Sec. 400] General Provisions. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either party to perform any term or provision of this Agreement shall constitute a default. In the event of default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party not less than thirty (30) days notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During any such thirty (30) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

A. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party to this Agreement may at its option:

- 1) terminate this Agreement, in which event neither party shall have any further rights against or liability to the other with respect to this Agreement or the Property; or
- 2) institute legal or equitable action to cure, correct or remedy any default, including but not limited to an action for specific performance of the terms of this Agreement;

B. In no event shall either party be liable to the other for money damages for any default or breach of this Agreement.

[Sec. 401] Enforcement of Special Conditions. Before any subdivision, parcelization, lot line adjustment or building permit is issued for any residential uses on

the Property; the Developer shall establish and implement a legal mechanism approved by the City to assure enforcement of this Agreement and the Special Conditions, as applicable to such residential property.

[Sec. 402] Developer Default; Enforcement. No building permit shall be issued or building permit application accepted for the building shell of any structure on the Property if the permit applicant owns or controls any property subject to this Agreement and if such applicant or any entity or person controlling such applicant is in default under the terms and conditions of this Agreement unless such default is cured or this Agreement is terminated. The Developer shall cause to be placed in any covenants, conditions and restrictions applicable to the Property, or in any ground lease or conveyance thereof, express provision for an owner of the Property, lessee or City acting separately or jointly to enforce the provisions of this Agreement and to recover attorneys' fees and costs for such enforcement.

[Sec. 403] Annual Review. The City Manager shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Developer with the terms and conditions of this Agreement. Such periodic review shall be limited in scope to compliance with the terms and conditions of this Agreement pursuant to California Government Code Section 65865.1.

A. The City Manager shall provide thirty (30) days prior written notice of such periodic review to Developer. Such notice shall require Developer to demonstrate good faith compliance with the terms and conditions of this Agreement and to provide such other information as may be reasonably requested by the City Manager and deemed by him to be required in order to ascertain compliance with this Agreement. Notice of such annual review shall include the statement that any review may result in amendment or termination of this Agreement. The costs of notice and related costs incurred by the City for the annual review conducted by the City pursuant to this Section shall be borne by Developer.

B. If, following such review, the City Manager is not satisfied that Developer has demonstrated good faith compliance with all the terms and conditions of this Agreement, or for any other reason, the City Manager may refer the matter along with his or her recommendations to the City Council.

C. Failure of the City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

[Sec. 404] Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance. If written notice of such delay is given to the City within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

[Sec. 405] Limitation of Legal Actions. In no event shall the City, or its officers, agents or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed that Developer's sole legal remedy for a breach or violation of this Agreement by the City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.

[Sec. 406] Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Developer acknowledges and agrees that City has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity or meaning of this Agreement shall be that accorded legislative acts of the City. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees; court costs and such other costs as may be fixed by the Court.

[Sec. 407] Invalidity of Agreement.

A. If this Agreement shall be determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment.

B. If any provision of this Agreement shall be determined by a court to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any law which becomes effective after the date of this Agreement and either party in good faith determines that such provision is material to its entering into this Agreement, either party may elect to terminate this Agreement as to all obligations then remaining unperformed in accordance with the procedures set forth in Section 400, subject, however, to the provisions of Section 410 hereof.

[Sec. 408] Effect of Termination on Developer Obligations. Termination of this Agreement shall not affect Developer's obligations to comply with the General Plan and the terms and conditions of any and all land use entitlements approved with respect to the Property, nor shall it affect any other covenants of Developer specified in this Agreement to continue after the termination of this Agreement.

[Sec. 409] Effect of Termination. If this Agreement is terminated following any event of default by the Developer or for any other reason, such termination shall not affect the validity of any building or improvement within the Property which is completed as of the date of termination, provided that such building or improvement has been constructed pursuant to a building permit issued by the City. Furthermore, no termination of this Agreement shall prevent the Developer from completing and occupying any building or other improvement authorized pursuant to a valid building permit previously issued by the City that is under construction at the time of termination, provided that any such building or improvement is completed in accordance with said building permit in effect at the time of such termination.

Article V: Hold Harmless Agreement.

[Sec. 500] Hold Harmless Agreement. Developer hereby agrees to and shall hold the City, its elective and appointive boards, commissions, officers, agents and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage, which may arise from the Developer's or the Developer's contractors', subcontractors', agents' or employees' operations under this Agreement, whether such operations be by the Developer, or by any of the Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by or acting as agent for the Developer or any of the Developer's contractors or subcontractors.

A. In the event of any legal action instituted by a third party or any governmental entity or official arising out of the approval, execution or implementation of this Agreement (exclusive of any such actions brought by Developer), Developer agrees to and shall cooperate fully and join in the defense by the City of such action; provided, however, that the City and Developer shall each bear their own respective costs, if any, arising from such defense. Such agreement by Developer does not include any agreement to indemnify the City and its elective and appointive boards, commissions, officers, agents and employees from any such legal actions.

Article VI: Project as a Private Undertaking.

[Sec. 600] Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Property is a separately undertaken private development. No partnership, joint venture or other association of any kind between Developer and the City is formed by this Agreement. The only relationship between the City and Developer is that of a governmental entity regulating the development of private property and the owner of such private property.

Article VII: Consistency With General Plan.

[Sec. 700] Consistency With General Plan. The City hereby finds and determines that execution of this Agreement is in the best interest of the public health, safety and general welfare and is consistent with the General Plan.

Article VIII: Notices.

[Sec. 800] Notices. All notices required by this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, to the addresses of the parties as set forth below.

Notice required to be given to the City shall be addressed as follows:

City Manager
City of Davis
23 Russell Boulevard
Davis CA 95616

Notice required to be given to the Developer shall be addressed as follows:

Brix and Mortar Partners, LLC
Attn: J. Davis-Taormino

DRAFT

505 Second Street
Davis, CA 95616

Either party may change the address stated herein by giving notice in writing to the other party, or thereafter notices shall be addressed and transmitted to the new address.

Article IX: Recordation.

[Sec. 900] When fully executed, this Agreement will be recorded in the official records of Yolo County, California. Any amendments to this Agreement shall also be recorded in the official records of Yolo County.

Article X: Entire Agreement.

[Sec. 1000] Entire Agreement. This Agreement is executed in duplicate originals, each of which is deemed to be an original. This Agreement consists of **thirty four (34) pages and three (3) exhibits** which constitute the entire understanding and agreement of the parties. Unless specifically stated to the contrary, the reference to an exhibit by designated letter or number shall mean that the exhibit is made a part of this Agreement. Said exhibits are identified as follows:

Exhibit A: Map and Legal Description of the Property

Exhibit B: Tentative Subdivision Map

Exhibit C: Project Approvals and Development Standards

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement as of the date set forth above.

CITY OF DAVIS

By _____
Ruth Asmundson
Mayor

Attest _____
Zoe Mirabile
City Clerk
"CITY"

APPROVED AS TO FORM:

Harriet Steiner
City Attorney

DEVELOPER
BRIX AND MORTAR PARTNERS, LLC

By _____
David Taormino, DEVELOPER

Paul Katsch, DEVELOPER

Jason Taormino, DEVELOPER

EXHIBIT C
PROJECT APPROVALS

The Willowbank Park Subdivision project has obtained the following discretionary actions by the Davis City Council:

- Preliminary Planned Development
- Final Planned Development;
- Design Review;
- Negative Declaration
- Tentative Map Application; and
- Affordable housing plan

Applicable development standards are found in:

- 2001 General Plan Update, approved May 2001, last amended 14 December 2004
- Chapter 40A of the City of Davis Municipal Code (Right to Farm)
- Chapter 40 of the City of Davis Municipal Code (Zoning)
- Chapter 36 of the City of Davis Municipal Code (Subdivisions)
- Article 18.05 of the City of Davis Municipal Code (Affordable Housing)
- Section 8.18.030 of the City of Davis Municipal Code (Grading Permits)
- Parking lot shading guidelines and Master Parking Lot Tree List
- Parking standards adopted May 16, 1981
- Chapter 37 of the City of Davis Municipal Code (Trees)
- PD 4-92, Ordinance No. 1777, Adopted July 20, 1994



Memorandum

June 24, 2009

TO: Planning Commission

CC: Xzandrea Fowler, Planner, CDD

FROM: John T. McNerney, Wildlife Resource Specialist, PW

SUBJECT: Potential Impacts and Recommendations Concerning Red Fox and the Willowbank Park Development

Introduction and Background

Staff has confirmed the occurrence of at least two active red fox (*Vulpes sp.*) dens located on the southern bank of the remnant North Fork of Putah Creek channel, running immediately north of the proposed Willowbank Park development. Unverified reports of red fox activity along this channel suggest they have occurred in the area for at least the last 25 years.

Red fox in the Central Valley were previously presumed to be naturalized subspecies of the eastern red fox (*Vulpes vulpes*), and thus, afforded no regulatory protection or research funding. However, recent genetic research has confirmed that red fox north of the Bay-Delta/ American River watershed are more genetically similar to the native Sierra Nevada red fox (*V.v. necator*) than eastern species. This new data suggests that red fox occurring in the Sacramento Valley, including Yolo County, are a native subspecies.

With the new understanding that the Sacramento Valley red fox are a recently identified native subspecies, many new conservation questions arise. For example, very little is known about the specific population size, status and stressors, habitat needs/ use, diet, or territorial range. A more immediate and relative concern is the lack of knowledge regarding how the foxes respond to development/ habitat loss.

In light of this new information and resulting species conservation concerns, the city should consider implementing protective measure when approving the Willowbank Park or adjacent development projects.

Red Fox Legal Status

The red fox is currently not protected in the State of California and is considered a harvest species. However, the Sierra Nevada red fox subspecies is protected as state threatened.

Current Knowledge of and Potential Impacts on Red Fox in South Davis

Dr. Benjamin Sacks and his students of the UC Davis Canid Diversity and Conservation Lab have been studying red fox at the South Davis den during the last 2 years. Their work with DNA from these foxes, as well as others from the region, is responsible for the recent determination of native subspecies. In addition to the genetic study, the research team has been conducting a basic telemetry study on the foxes. Tracking the movement of the foxes has helped to improve the understanding of local range and foraging habitat use. The foxes feed in open habitats with abundant prey items. Moderate slopes with dense vegetative cover and/ or rocky outcrops provide suitable den habitat. Preferred foraging habitats are those that lack potential predators such as coyote (*Canis latrans*). The Willowbank Park site is considered a preferred foraging habitat used by these fox (see attachment).

Loss of Suitable Foraging Habitat

It is unknown if the loss of the 4.48 acre Willowbank Park portion of the fox foraging habitat will render the area unsuitable for the fox. However, any loss of habitat will lead to a reduction in resource availability, thus reducing overall fitness of the individuals. Loss of habitat on the Willowbank Park site, in combination with the development of the large parcel to the south of Redbud (at Montgomery and Mace) will result in the loss of approximately 40% of the available habitat suitable for foraging.

Construction Disturbance on Reproduction

One of the two den sites used by the South Davis red fox is located within 10 meters of the northwestern property corner. Depending on the time of development, construction related disturbance may cause the den and/ or pups to be abandoned by the adults.

Other Construction Related Impacts

Construction related activity may attract predators or cause entrapment of fox. Food wastes from construction personal may attract coyotes to the area. Foxes may fall into and become trapped in trenches and/ or pits that are 3 feet or greater in depth.

Recommended Impact Minimization Measures

Because very little is known about the state wide population status of this fox, there is currently no regulatory protection. Additionally, the South Davis red fox families are the only known red fox to occur within the Davis planning area, making it a locally rare species. For these reasons it is appropriate to approach development within the South Davis red fox territory with caution and minimize associated impacts. Ideally, red fox foraging habitat should be preserved in its current entirety (i.e. no development). This option is likely not feasible. Furthermore, there is currently not enough data regarding the habitat use/ needs to support a measure involving on-site habitat buffers.

An alternative to habitat preservation may be an impact offset approach via research funding. Data gathered through such an impact offset may not help the foxes locally, but would benefit the statewide population.

The UC Davis Canid Diversity and Conservation Lab is currently looking to continue radio telemetry studies on the local fox. An intensified effort would be possible with the mitigation funding. This would provide more detailed data regarding the habitat use/ needs of the species and help to answer question regarding the effects of urban development on their use of an area.

The following recommended impact minimization measures are considered reasonable actions to help reduce both direct and indirect impacts to the South Davis red fox families:

Minimization Measure 1 –

The project will result in the loss of 4.48 acres of preferred foraging habitat of this subspecies. Feasibility constraints, lack of regulatory protection, and lack of scientific knowledge of the subspecies habitat needs do not support the use of on-site habitat preservation. Therefore, it is recommended that the project proponent offset the impacts via funding scientific research on the South Davis red foxes. An appropriate amount of funding has not yet been identified and would be based on at least 1 year of telemetry study. It is anticipated that the funding amount would be a minimum of \$10,000 to \$15,000 for one year of study. As a reference, the habitat is of similar composition to that of Swainson's hawk (*Buteo swainsoni*) foraging habitat. The current cost to acquire Swainson's hawk mitigation land is \$4,000 to 8,600 per acre.

Minimization Measure 2 –

The project may result in direct disturbance to reproduction. Major construction related disturbance (staging, grading, utility installation) shall not occur during the rearing season (period of gestation and lactation) for the species (May 1 through October 31, annually). Construction fencing shall be installed along the top of channel bank to prevent construction personnel or equipment from encroaching on the den site.

Minimization Measure 3 –

All trenches and pits greater than 3 feet in depth shall be covered with metal plates or plywood sheets at the end of each work day. Trenches and pits shall be inspected each morning for trapped animals. If animals are discovered trapped within the trench or pit, the city wildlife biologist shall be contacted, and work halted until the animal is able to escape.

Xzandrea Fowler

From: Max or Mary Zeigler [mmzig@hotmail.com]
Sent: Tuesday, June 23, 2009 11:29 AM
To: Xzandrea Fowler
Subject: Willowbank Park Development

Xzandrea Fowler,

This is to express our objections to this development as currently proposed.

Our first objection is that the density of this proposed development is incompatible with the adjoining neighborhoods.

Second, the absence of garages at some homes and the large number of lots on the cul de sacs will lead to on-street parking over-flowing into adjoining neighborhoods.

Third, given the proximity of this neighborhood to I-80 and to Sacramento, it will likely not provide a significant increase in affordable housing to those who currently live or work in Davis. It would become a prime area for rentals for Sacramento commuters.

High density housing may be appropriate for areas close to downtown Davis, but certainly not in a neighborhood where many of the lots are ¼ acre or larger. As proposed, this development will become an ongoing affront to those who bought homes in this area expecting the neighborhood to remain somewhat similar to how it was originally developed.

Max and Mary Zeigler
4319 Redbud Place

Hotmail® has ever-growing storage! Don't worry about storage limits. [Check it out.](#)