

**SUMMARY: REQUEST TO CITY TO EXECUTE
IRREVOCABLE OFFER TO DEDICATE RIGHT OF WAY**

A. Subdivision 4006, Heather Farms:

1. Final Map (attached) was approved May 18, 1970 by the Walnut Creek City Council and filed with the County Recorder on June 11, 1970. The Final Map created Lot A, a 1' wide by 50' long strip at the end of Kinross Drive (the "Right of Way Strip") as shown on Sheet 7.

2. Tentative Map was approved by the Planning Commission in May 1970. Staff has been unable to locate records of the approval but it seems possible that a condition to the approval of the Final Map was the conveyance of the Right of Way Strip, in fee, to the City.

3. A Grant Deed (attached) was recorded July 24, 1970, conveying the Right of Way Strip to the City. That Grant Deed was accepted by action of the City Council on July 20, 1970.

4. Public Purpose: The City had to have a public purpose in acquiring the Right of Way Strip. It's not clear if the General Plan in 1970 had a policy to ensure future compliance with a policy prohibiting through street access in the development of the adjoining property in the unincorporated area of the County of Contra Costa (the "County Property"). The 1989 General Plan contained in the list of Street Recommendations and Improvements: "Kinross Drive shall not be connected to Seven Hills Ranch Road." The current General Plan, adopted in 2006, in Policy 4.2 carries forward that direction by discouraging through traffic on local streets and collectors that would increase traffic in City residential neighborhoods.

NOTE: The City purpose could not have been to control or direct the entitlement processing on the County Property (beyond ensuring that the Public Street, Kinross Drive, was not connected to Seven Hills Ranch Road). That would have been an invalid and illegal public purpose.

B. Proposed Offer of Dedication:

1. Completion of Actions Started in 1970: Since it was never intended by the City to retain ownership of the Right of Way Strip, the Offer provides a way to complete that course of action. When the conditions are satisfied (a covenant recorded by the owner of the County Property, guarantying in perpetuity that Kinross Drive will not be connected to Seven Hills Ranch Road), then the City will accept the previously recorded offer and create all of the Kinross Drive right of way in the City as a public street. This satisfies the purpose and intent of the City in acquiring the Right of Way Strip.

2. Approval of Development on County Property: The land use entitlement processing will be performed by the County and they will have full and complete discretion to deny any project and to fully mitigate all environmental impacts.

C. No Further CEQA Analysis is Needed for the City to Execute and Record This Offer:

1. The Offer is part of an ongoing project approved by the City in May and June 1970, prior to the enactment of CEQA. Guidelines Section 15621. *Nacimiento Regional Water Management Advisory Commission v. County of Monterey* (1993) 15 Cal.App.4th 200; *Environmental Law Fund, Inc. v. Town of Corte Madera* (1975) 49 Cal.App.3d 158.

2. Execution of the Offer is a ministerial approval exempt pursuant to Guidelines Section 15378; Public Resources Code Section 21080(b)(1). *Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11. The only discretionary action involved in Subdivision 4006 approval was the approval of the tentative map by the Planning Commission. The Offer is simply carrying out a previously approved condition of approval that remains to be implemented.

3. Not a Project. Public Resources Code Section 21065 and Guidelines Section 15378 defines a “project” for which environmental review is required. The execution of the offer is, expressly not a project because it cannot directly or indirectly cause a physical change in the environment. Nor is it an essential part of a larger project, the development of the County Property. That development will be approved by the County (not the City) and the County retains the right and obligation to analyze all impacts of that development and to deny or fully mitigate for impacts. All the City is doing is ensuring that when the development of the County Property is entitled the General Plan Policy against connecting Kinross Drive to Seven Hills Ranch Road is implemented as intended when Subdivision 4006 was approved. *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116; *Delaware Tetra Technologies, Inc. v. County of San Bernardino* (2016) 247 Cal.App.4th 352; *Saltonstall v. City of Sacramento* (2015) 234 Cal.App.4th 549; *Cedar Fair L.P. v. City of Santa Clara* (2011) 194 Cal.App.4th 1150; *McCloud Citizens v. McCloud Community Services District* (2007) 147 Cal.App.4th 181.