OWNER: UKIAH LAND LLC – HUGH MORAN
420 MAPLE STREET
REDWOOD CITY, CA 94063

APPLICANT/AGENT: JACK MAY
1751 BOLLINGER LANE
SEBASTOPOL, CA 95472

REQUEST: Recommendation to the Board of Supervisors to certify a Final Environmental Impact Report and approve a Major Subdivision including state density bonus and associated development agreement to create 200 lots on a 46.1 acre project site, including 197 lots for 123 detached single-family dwellings and 74 townhouse dwellings, 2 lots for 2.3 acres of parks, and a remainder parcel.

LOCATION: 2½ miles south of the City of Ukiah, lying on the west side of South State Street (CR# 104A), immediately south of its intersection with Gobalet Lane (private), and extending westerly to Oak Knoll Road; AP# 184-110-28 184-110-29, 184-120-01, and 184-133-15.

TOTAL ACREAGE: 46.1 acres

ZONING: Suburban Residential: Airport Zone Combining District and Rural Residential- 5 acre minimum (SR:AZ and RR-5:L-5)

East: Multi Family Residential: Airport Zone Combining District, Suburban Residential: Airport Zone Combining District (R-3:AZ, SR:AZ)
South: Suburban Residential: Airport Zone Combining District (SR:AZ)
West: Rural Residential- 5 acre minimum: Airport Zone Combining District (RR5:AZ)

GENERAL PLAN: Suburban Residential and Rural Residential- 5 acre minimum (SR and RR 5)

EXISTING USES: Vineyard (28 acres), Remainder: Vacant

SURROUNDING LAND USES: North: Single-family Residential, vineyard
East: Vacant, Industrial
South: Agriculture/Vineyard
West: Vacant, Rural Residential

SURROUNDING LOT SIZES: North: 0.5+- Acres to 3+- Acres
East: 1.8+- Acres to 4.5+- Acres
South: 10.63+- Acres
West: 3.62+- Acres
SUPERVISORIAL DISTRICT: 5

OTHER RELATED APPLICATIONS ON SITE OR SURROUNDING AREA: Boundary Line Adjustment #B 36-2006 created the project site in its current configuration. Rezone #R 2-85 was a County-initiated action for the property located between the project site and South State Street to provide an additional site for multi-family housing in order to implement the County's Housing Element, in which the property was changed from SR (Suburban Residential) to R-3 (Multifamily Residential). Boundary Line Adjustment #22-2008 which would separate the two parcels along the alignment of the proposed entry road to the project site from State Street was approved on June 13, 2008, but has not yet been recorded.

PROJECT BACKGROUND: The Board of Supervisors in 2006 agreed to process the project under the State density bonus law, since the project proposes to include 36 units to be constructed for moderate-income households instead of all market rate houses. This allows a density bonus of 16%. The State density bonus law also allows for reduced development standards for lot size and setbacks in order to make this density feasible, without the need for a General Plan amendment or rezoning.

The EIR process was began in 2007 when a scoping meeting was held in May. Most of the public comments at this meeting were in regard to traffic impacts to the Oak Knoll neighborhood in conjunction with a proposed street connection to that area. The preparation and completion of the EIR was then delayed by the need to complete a traffic model by the MCOG for addressing the cumulative traffic impacts of projected development in the Ukiah Valley concurrent with this project. This model was developed so that it can be used to address other projects and plans such as for the UVAP.

The Draft EIR for this project was published in September, 2008. A 45-day public review period began on September 26 and ended on Nov 12, 2008. A public hearing on the Draft EIR was held by the Planning Commission on November 6, 2008. After the close of the public review period, the EIR consultant, Leonard Charles, prepared a Final EIR to respond to comments. A copy of this Final EIR is attached to this staff report for your review.

While certification of an EIR is usually a responsibility relegated to the Planning Commission prior to approval of major subdivision, consideration of certification of the EIR will be made instead by the Board of Supervisors, since the project cannot be approved except in conjunction with a development or housing affordability agreement as required with the use of the state density bonus law. Therefore, the action to be taken by the Planning Commission for this project is determine adequacy of the responses included in the Final EIR and recommend action by the Board of Supervisors in regard to certification of the EIR. The Planning Commission's responsibility is also to provide a recommendation to the Board of Supervisors in regard to approval of the vesting tentative map and an associated development agreement. An EIR must be certified by the Board of Supervisors prior to making a decision on the project, a modified project, or an alternative. However, it is possible to certify the EIR, yet deny the project.

PROJECT DESCRIPTION: The project is located south of Ukiah, on the west side of South State Street, near the intersection of South State Street and Plant Road. The following summarizes the project description included in the Draft EIR. For more details of the proposed project, including site plans, please refer to that document previously distributed to Commissioners for review prior to the November 6, 2008 meeting and public hearing.

Ukiah Land LLC (the applicant) proposes to develop a master-planned subdivision that would include 197 housing units, of which 36 dwellings would be affordable to moderate-income households, on about 33 acres of the project site. A remainder parcel comprising 13.1 acres would be created to the west in that portion of the site zoned R-R 5. The project is designed to be an owner-occupied residential community with park amenities and other improvements that would be owned and managed by a Homeowner's Association (HOA). The project also includes two lots for parks (0.9 and 1.4 acres each, totaling 2.3 acres). Including the one remainder lot, two lots for parks, and 197 lots for housing units, the subdivision would consist of a total of 200 lots.
Eighteen percent or 36 dwelling units within the Garden's Gate project would be developed as affordable dwellings and would be sold to qualifying moderate-income families. Because the project includes affordable housing, State law allows certain concessions and incentives. For this project, the concession that the applicant selected was to reduce the minimum 6,000 square foot lot size and reduce or eliminate the front, rear and side setbacks required under the zoning ordinance for single-family dwellings in the S-R zoning district. In addition, the applicant requested that the County waive certain subdivision requirements in order to make the project feasible (namely, the requirements regarding Double Lot frontage, Land Division Chapter Section 17-52(J); Flag Lot Access Strip, Section 17-52(L); and Access Easement Width, Section 17-53(B).

Residential Lots

The proposed subdivision includes six different types of residential lots: Hillside, Vineyard, Garden Court, Cottage, Two-Unit Townhouse, and Four-Unit Townhouse. Although all of the lots would be developed with single-family dwellings on separate or fee lots, they differ because some of the dwellings would be traditional detached single-family dwellings (Hillside, Vineyard, and Cottage lots) while others would be attached dwellings (Two-Unit Townhouse, and Four-Unit Townhouse lots). The Garden Court lots would be developed detached dwellings that have garages which share a property line wall with the adjoining garage.

The “Hillside” and “Vineyard” lots are located along the west and north sides of the subdivision. These lots would be developed with larger detached single-family dwellings at a density of six dwelling units per net acre or less. They would be two-story buildings with 2,500 square feet of floor area (not including a 483-square foot two-car garage). The Vineyard lots, which range between 5,000 and 10,000 square feet, are generally consistent with the existing zoning lot standards and are located to serve as a transition between the project and the existing residential lots to the north. The Hillside lots, which are located on the west side of the subdivision, are about the same size as the Vineyard lots, with the exception of Lot 197, which is 20,104 square feet or about 0.43 acre in size. (Note: Lot 197 is the only lot within the site that would include a segment of Cleland Mountain Creek.)

The center of the subdivision would be developed with smaller “Garden Court” and “Cottage” lots at a residential density ranging between 10-12 dwelling units per net acre. The “Cottage” lots would be developed with small one-story detached single-family homes, ranging between 760 and 1,036 square feet. The Garden Court lots would be developed with larger two-story dwellings, ranging between 1,400 and 1,900 square feet. The houses on the interior lots would face garden court areas which run through the block in an easement (15-30 feet wide). The garden courts would be shared by the adjoining residents and maintained by the Homeowner’s Association as semi-private open space areas, with landscaping and walkways. The houses on the exterior lots would face the street. All of the lots would share 20-foot wide driveways that are located within 30-foot access easements, which provide vehicle access to two-car garages facing the rear property line. The location and orientation of the garage towards the rear lot line would provide convenient vehicle access to the house while the front of the house would allow pedestrian access to the front door via the street or the garden court.

The majority of the lots along the east and south side of the subdivision would be developed with two- and four-unit townhouse structures. Although each townhouse dwelling is part of a larger two- or four-unit structure and shares a common wall with the adjoining unit(s), they are all located on separate lots. With the exception of one 775 square foot lot (Lot 191), these lots range between 1,200 and 3,000 square feet. The size of the townhouse dwelling would range between 944 and 1,370 square feet. Many of these dwellings face 20-foot wide shared driveways, which would also serve as an informal outdoor activity area, or they face a public street. In some cases, the townhouse dwelling face a green court as well as have a garage facing the rear yard, accessed by a shared driveway.

Parks and Open Space
The project includes totaling 2.3 acres two parks, that would be owned and maintained by a Home Owners Association (HOA), but open to public use. This would include a 1.4-acre park located near the main entrance, and a smaller 0.9-acre park located at the center of the project site. The project would also include seven “Green Courts”, totaling approximately one acre that would be semi-private, common areas located within the proposed residential blocks, as well as about 3.7 acres of streetscape featuring sidewalks separated by wide parkway strips from streets and intended to encourage residents to walk.

Access and Circulation

The main access to the project would be via a western extension of Plant Road. A roundabout would be constructed at the intersection of Plant Road and South State Street. The proposed 84-foot diameter roundabout would be landscaped with native plants and would include a monument sign signifying the southern gateway to the city. Pedestrian crossings would be striped outside the roundabout travel lanes and raised median strips along each approach road would serve as refuge islands for crossing pedestrians.

As shown on the attached reduction of the proposed vesting tentative map, a number of new streets would connect to the Plant Road extension to provide access to various parts of the site. Road stubs would be constructed to provide for access to possible future development to the south. Alleys would be constructed that cross through the blocks; these alleys are shared driveways that would provide vehicle access to the Garden Court and Townhouse lots.

The project includes a new secondary access to Oak Knoll Road. It would span Cleland Mountain Creek via a new 50-foot long bridge. Another secondary entrance is proposed that would connect to Gobalet Lane, which accesses South State Street just north of the proposed roundabout. Finally, a driveway is proposed to be extended from Oak Court Road to provide access to Lots 194 and 195 and two existing residences.

The project would pay for the construction of a sidewalk on the east side of Oak Knoll Road to North Court Road, a distance of approximately 0.3 mile. This sidewalk would connect to the new sidewalk that the County has completed to the south end of Dora Street (where it ends at North Court Road to continue south as Oak Court Road).

Public Infrastructure and Services

Public water would be provided by Willow County Water District. The Ukiah Valley Sanitation District would provide wastewater collection, treatment, and disposal. The Ukiah Unified School District would provide public education. The Ukiah Valley Fire District would provide fire and emergency medical response. The Mendocino County Sheriff's Department would provide police response.

The proposed subdivision would construct storm drain improvements consisting of landscape swales, drain inlets, underground detention structures and a detention basin. The storm drain system has been designed to detain peak flows on site so that flows leaving the site via a culvert beneath South State Street from a 100-year storm event would not exceed pre-project flows.

Public and shared private facilities within the subdivision would be maintained by a Homeowner's Association (HOA) and funded by parcel assessments (or equivalent funding mechanism).

Phasing

A reduction of the phasing plan is attached. This plan shows that the project would be constructed in eight phases. With the exception of the first phase, which would be built first to establish two entries to the project site and to install key infrastructure improvements, the other phases would be developed as lots are sold.

DEVELOPMENT AGREEMENT
Since this project utilizes the State density bonus, the Board of Supervisors must also approve a development agreement which would set forth how the developer would provide the affordable housing and complete the project, including off site improvements proposed by the applicant or required under mitigation as part of the EIR. The responsibility of the Planning Commission under State law is to provide a recommendation in regards to approval of this proposed development agreement.

A draft of the proposed Development Agreement for this project is attached. This draft document notes under “Findings” in Article 3 that:

“...this Development Agreement and the provisions thereof are consistent with the general plan of the County and any applicable specific plan. County has determined that the Project is a development for which a development agreement is appropriate. A development agreement will eliminate uncertainty in the County's land use planning for the Property and secure orderly development of the Project consistent with the Specific Plan, assure progressive installation of necessary improvements and mitigation appropriate to each stage or phase of development of the Project, insure attainment of the maximum effective utilization of resources within the County at the least economic cost to its citizens, secure public improvements and amenities that could not otherwise be obtained, and otherwise achieve the goals and purposes for which the Development Agreement Resolution was enacted by the County.”

The overall term of the development agreement is proposed to be 15 years from the effective date. Since a vesting tentative map is usually interpreted to limit the exaction of fees and imposition of standards to those in effect at the time the application for a project is deemed complete, the development agreement provides a means of ensuring certain fees are provided in conjunction with this development to provide for mitigation of project impacts as identified in the EIR, as well as to ensure the affordable housing component is maintained for a certain term. In addition, the funding responsibility and timing for constructing off-site improvements by the developer is also addressed in this agreement.

The Development Agreement provides a means of mutually assuring and providing benefits for both the County and for the developer. The following items are public benefits that the Gardens Gate project will provide that would not be otherwise achieved without a development agreement:

- Provision of 36 affordable housing units to be reserved for moderate-income households, for a term of 25 years.
- Payment of traffic impact fees if and when adopted by the County for cumulative traffic impacts.
- Payment of fees for Emergency Medical Services (EMS) if and when adopted by the County.
- Construction of a sidewalk from the project access along the east side of Oak Knoll Road and Oak Court Road to its current south terminus on the latter street with Phase I of this project.
- Contribution to funding to replace and expand the capacity of the existing water storage tank located on Fircrest Drive to ensure adequate pressures within the Ukiah Valley Water District Service Area.
- Providing 2.3 acres of parks that would be owned and maintained by a HOA but open to public use to include a ball or soccer field on the larger park site and a children’s playground on the smaller park site, with Phase I of this project.
- Design, construction and dedication of a traffic roundabout in South State Street at Plant Road to alleviate future traffic congestion and establish a gateway into south Ukiah Valley.
- Requirement that a master building design plan and landscape plan for the project be subject to approval by the County Director of Planning and Building with report to the Planning Commission.

The general benefits sought by the developer from the Development Agreement include:

- Obtaining sufficient certainty and predictability in the development process to justify a substantial up-front investment in the public and private infrastructure for a phased project requiring several years to complete.
- Obtaining the development rights to construct 197 dwelling units, including 161 market rate units, to help to ensure the project is financially feasible.
Concessions including allowing a reduction to the minimum 6,000 square foot lot size and reduction or elimination of the front, rear and side setbacks required under the zoning ordinance for single-family dwellings, as well as waiving of certain subdivision requirements [namely, the requirements regarding Double Lot frontage, Land Division Chapter Section 17-52(J); Flag Lot Access Strip, Section 17-52(L); and Access Easement Width, Section 17-53(B)] in order to make the project feasible pursuant to the State Density Bonus law.

State law requires that a development agreement be consistent with the General Plan (Govt. Code § 65867.5). The application materials submitted for this project included a consistency analysis of the project with the General Plan in order to demonstrate consistency of this project with the County’s adopted Housing Element Staff believes that the proposed agreement is consistent with the General Plan because it would facilitate the development of affordable housing (a goal of the adopted Housing Element) and provides for the residential development of an area designated for such use.

INCLUSIONARY HOUSING AGREEMENT

Since this project is being processed under the State Density bonus and includes a number of concessions and incentives to make it financially feasible to provide, an agreement between the County and the applicant is required to ensure maintenance of affordability in accordance with the State Density Bonus Law. This agreement is attached as Exhibit “D” to the draft Development Agreement described above. This agreement is based on meeting the requirements related to the provision, sale and maintenance of affordable housing in the County’s recently Inclusionary Housing Ordinance as well as State Density Bonus law. Therefore, this agreement refers to the units that will be reserved as affordable to moderate-income households as “inclusionary units”.

Of the total of 197 housing units, 36 units are to be reserved for qualifying moderate-income households. Key provisions of this agreement require that the inclusionary units be constructed concurrently with the market rate units as each phase is completed, and that the inclusionary units be scattered throughout the project and intermingled with the market rate units. The agreement also requires the inclusionary units to be of the same general design and appearance and with the same average number of bedrooms per unit as the market rate units, and that the units, consisting of both detached single family homes and or town homes, to include the following percentages of housing types based on number of bedrooms:

- One-bedroom homes 35%
- Two-bedroom homes 50%
- Three-bedroom homes 15%

ENVIRONMENTAL REVIEW: As noted previously, an Environmental Impact Report (EIR) was prepared for this project. The EIR consists of both a Draft EIR and a Final EIR as briefly described below.

Draft EIR (DEIR)

The DEIR contains an analysis of project impacts, and identifies proposed mitigation measures that would avoid or reduce impacts as well as alternatives to avoid or reduce impacts. The EIR identified a total of 27 potentially significant project-specific environmental impacts and nine cumulative impacts. The DEIR identified feasible mitigation to reduce all of these impacts to a less than significant level, with the exception of the following four significant impacts which would remain significant and unavoidable:

1. Constructing the project will emit at least the equivalent of 7,388 tons of carbon dioxide into the atmosphere. Therefore, the project will be an increment of a significant and unavoidable cumulative impact on Global Climate Change. (Impact 3.6-B)

2. Future residential use of the project will emit the equivalent of approximately 2,589 tons of carbon dioxide per year. The emissions can be reduced by recommended mitigation measures, but the
emissions will remain above the zero net increase significance threshold. Therefore, the project will be an increment of a significant and unavoidable cumulative impact on Global Climate Change. (Impact 3.6-F)

3. The traffic noise generated by the project plus other projected new development will significantly increase average noise levels along Oak Knoll Road, the northernmost block of Oak Court Road, and the south end of South Dora Street. (Impact 3.7-D)

4. The project will convert 31 acres of Prime Farmland and 2 acres of Unique Farmland to non-agricultural use. (Impact 3.10-A)

After certifying the Final EIR but before approving the project, the Board of Supervisors would be required (in accordance with CEQA Guidelines Section 15091) to make one of the following findings for each significant impact of the project: (1) that changes in the project decrease the impact to a level that is less than significant, (2) that such changes are within the jurisdiction of a public agency other than the County, or (3) that mitigation measures and alternatives are infeasible. For impacts that the Board of Supervisors determines cannot be mitigated to a less-than-significant level, the Board of Supervisors would need to issue a Statement of Overriding Considerations (in accordance with CEQA Guidelines Section 15093) that describes how benefits of the project outweigh those impacts. This “Statement of Overriding Considerations”, would need to give the specific reasons why the benefits of the project outweigh its significant impacts as supported by substantial evidence in the project record. Possible findings that could be used for this statement include the following:

1. The benefits of the project in providing housing outweigh the impacts associated with the emission of greenhouse gases during project construction and during future residential use of the project site, since there is no way that any new development could feasibly occur in the County or the State if it was required to have no new emissions.

2. The benefits of the project in providing housing outweigh the impacts associated with the loss of Prime Farmland and Unique Farmland to non-agricultural use since the project site has been designated and zoned for residential use since 1981 and there is little developable land available for the development of new housing to meet demand that does not involve loss of agricultural land in the Ukiah Valley.

3. The benefits of the project in providing housing and a secondary access road connection outweigh potential future cumulative traffic noise impacts on Oak Knoll Road, Oak Court Road and Dora Street in conjunction with future development of both this project and future projects south of the project site, since it would provide street connectivity so that areas within the County are not isolated during emergencies and wildfire events. (Note: This last finding would not be need if an EVA is required in place of a full public street.)

It should be noted that the EIR also includes one mitigation measure that if adopted, would cancel out the need for two other mitigation measure. This measure, as follows, would eliminate proposed Lots 20, 21 and 197 in the vicinity of Cleland Mountain Creek:

Mitigation 3.2-D.2: Per the recommendations of the CDFG, Lots 20, 21 and 197 shall be removed from the project in order to provide the minimum creekside buffer required to filter contaminants, including sediment, from stormwater runoff.

If this measure is adopted, then the following measure would not be needed to mitigate impacts from the project as identified in the EIR:

Mitigation 3.2-A.1: The project shall not cause flooding downstream of the project site, and post-development peak flows discharged from the southern ditch shall not exceed pre-development peak flows. At final project design, the applicant shall calculate the amount of runoff that will be generated by
the developed, southern portions of Lots 20 and 21, and factor that increase into the analysis performed by Sandine and Associates to determine whether peak flow rates will remain below pre-development levels and the risk of flooding in the project site and off-site downstream will not be increased. If the post-project peak flow rates exceed the pre-development levels, the applicant shall increase the volume of the vault system storage and/or detention basin capacity to achieve the target peak flow discharge.

In addition, if Measure 3.2-D.2 is adopted, then the following measure would need to be revised to only reference proposed lot 196, since lots 20, 21 and 197 would be eliminated from the project (as shown modified below with strike-out and underlined text changes):

**Mitigation 3.2-B-1:** The project shall not result in flooding of residences on the project site. To minimize the risk of flooding during the FEMA-designated 100-year base flood, the applicant shall implement one of the following alternatives:

A) Re-design the grading plan for Lots 20-21 and 196-197 in the vicinity of Cleland Mountain Creek so that building finished floor elevations are a minimum of one foot above the land surface elevations inferred by the FIRM Zone A SFHA mapping,

OR

B) Prepare a Letter of Map Revision (LOMR), accompanied by the appropriate technical documentation, and submit it to FEMA (or its sponsored contractor), to petition for a change in the FEMA SFHA designation for the project site. Required technical documentation would include an updated flood backwater profile modeling of Cleland Creek, including the proposed Plant Road bridge crossing, which was excluded from the original HEC-RAS analysis conducted for the project by Sandine Associates. If the modeling results verify that the published FEMA mapping is inaccurate and that Lots 20-21 and 196-197 are outside of the redefined SFHA, then the lots could be developed as proposed, subject to possible regulatory restrictions or conditions imposed by the California Department of Fish and Game (CDFG) and the Mendocino County Water Agency (MCWA) for disturbance of the riparian corridor. If the modeling results verify that the published FEMA flood mapping was accurate, then Alternative A would be required for development of the lots. The same potential regulatory restriction or conditions imposed by CDFG or the MCWA would apply.

The EIR includes three mitigation measures that would be implemented not by the developer of this project but rather the County at some point in the future with funding possibly provided by developers of property to south of project site. These measures would mitigate impacts that would not result from the project alone, but instead would result due to future-cumulative development if the Oak Knoll Road connection is approved for this project as a public street instead of an EVA. As such, these measures would be implemented by the County (with potential funding by future projects south of this project site). Rather than be included as conditions of approval for this project, they would be adopted as part of the mitigation monitoring program by the BOS in conjunction with certification of the EIR. These three measures include the following:

**3.5-K.2:** All future projects proposed between the Garden's Gate site and Highway 253 shall be assessed by a traffic engineer to determine whether that project plus other already constructed or approved projects would generate sufficient cumulative traffic to trigger a significant safety impact between the Garden's Gate access to Oak Knoll Road and South Dora Street. The improvements would be constructed prior to final construction of the project triggering the need for the improvement.

**3.5-L.1:** Widening of Oak Knoll Road shall not cause slope failure or substantial soil erosion. The County shall have a final geotechnical design prepared by a licensed geotechnical expert that describes final retaining wall design and how any cuts and fills will be conducted. The final plan shall also include an erosion control plan. The road shall be widened per the recommendations of this final design.
3.5-L.2: The County shall replace each oak tree removed during widening by replanting and maintaining (for at least 5 years) 3 oaks for each oak removed. The oaks can be planted on the Garden's Gate site or another suitable site.

The Draft EIR also identified and assessed six project alternatives that would avoid or substantially reduce many of the significant impacts of the project, as follows:

- Alternative 1 – No Project
- Alternative 2 – No Project - Current Entitlement
- Alternative 3 – Reduced Density Consistent with Zoning
- Alternative 4 – Reduced Density
- Alternative 5 – Mitigated Project
- Alternative 6 – Off-Site Alternative

Alternatives 2, 3, and 4 involving reduced densities could be interpreted to be counter to State Density Bonus law if it can determined that there are feasible mitigation measures to address significant impacts without resorting to reducing density. The pertinent sections of this law include the following paragraphs or subsections of Government Code Section 65915:

*Government Code 65915 (d) (3):* The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5 upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section that shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific items as minimum lot size, side yard setbacks, and placement of public works improvements.

*Government Code 65915 (e):* In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there

1 Section 65589.5 (d) (2) states the following: The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate-income households. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.
is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

*Section 65589.5 (d) (2): The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate-income households. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

Consistent with CEQA requirements, the EIR identifies an environmentally superior alternative, which in this case, would be Alternative 1 (No Project). However, the EIR acknowledges that this alternative would not meet basic project objectives.

CEQA also requires that an EIR identify an environmentally superior alternative that meets basic project objectives, which in this case would be Alternative 5 (Mitigated Project). Alternative 5 is essentially the project as proposed but mitigated per the measures included in the EIR (including elimination of lots 20, 21 and 197 and use instead as a park/open space), but with an EVA instead of a public street connection with Oak Knoll Road. This alternative assumes that the three units eliminated on lots 20, 21 and 197 could be added to the remaining portion of the site so that the total units would remain 197, although the feasibility of reconfiguring the project to do this has yet to be demonstrated. This alternative would also require a photovoltaic system that would be deployed subdivision-wide for the benefit of the residents. The system would be sized sufficiently so that it offsets 50% of the electrical use on a net-yearly basis.

The DEIR also noted that it would add about $30,000 to the cost of each housing unit. While this alternative would substantially reduce the contribution of greenhouse gas emissions (GHG) resulting from the project, it still would not be sufficient to render the significant impact associated with such increase to less than significant.

In regard to Alternative 6 (Offsite Alternative), the EIR noted that it is speculative that the applicant could acquire control of an alternative site for this project, since none of the possible properties that were described in the EIR are currently listed for sale. In addition, Alternative 6 is considered the least "superior".

Public Review and Planning Commission Hearing

Following the publication of the Draft EIR, a public review period began on September 26, 2008 and ended on November 12, 2008. On November 6, 2008, this document was the subject of a public hearing by the Planning Commission (see minutes included in Chapter 5 of the Final EIR). A summary of verbal comments by Commissioners and the public at this meeting is provided in Chapter 4 of the attached Final EIR.

Final EIR

Following the end of the public review period on November 12, 2008, a Final EIR was prepared by the EIR consultant and is attached to this staff report. The Final EIR consists of the Draft EIR previously distributed to Commissioners, and chapters which include all comments on the Draft EIR, responses to those comments, and revisions to the Draft EIR. The responsibility of the Planning Commission is to provide a recommendation regarding its adequacy under CEQA and certification by the Board of Supervisors of the EIR. Once the Board determines that the EIR is adequate, it will certify the Final EIR. After EIR certification, the Board will consider the merits of the proposed project.

Chapter 1 of the Final EIR includes an Introduction which notes that this report is intended to provide a thorough analysis of the DEIR comments and a response to comments consistent with the requirements of
CEQA. Where comments were received that expressed disagreement with the conclusions of the DEIR, the responses clearly address the issue by modifying the DEIR, providing additional mitigation, or justifying the conclusions that the analysis in the DEIR is correct.

Chapter 2 contains additional information about the project that has been provided by the applicant or the County, including the following: 1) the applicant has requested that the County approve a vesting tentative map as opposed to just a tentative map, and 2) the County has revised the review process for the EIR and project (i.e., the EIR, Vesting Tentative Subdivision Map, and the development agreement will all go the Planning Commission for a recommendation to the Board of Supervisors, who would then certify the FEIR, and take final action on the Vesting Tentative Subdivision Map and the Development Agreement.)

Chapter 3 of this report contains the comment letters received and responses to the comments contained in those letters. The County received 51 comment letters (plus one cover letter from the State Clearinghouse) on the Draft EIR during the public review period. Five of these letters were from public agencies and 46 were from members of the public.

Chapter 4 includes the minutes recorded for the public hearing held on the adequacy of the Draft EIR on November 6, 2008 before the County Planning Commission, which includes a summary of verbal comments by Commissioners, the applicant, and members of the attending public.

Chapter 5 of this report describes the text changes to the Draft EIR needed to complete the Final EIR. These changes were deemed necessary or desirable given certain comments received. These changes include text changes to Mitigation Measure 3.2-A.1 and deletion of Mitigation Measure 3.2-C.2 and the second bulleted section of Mitigation Measure 3.2-D.1 to reflect additional information the applicant provided on the storm drain system in a comment letter on the Draft EIR.

Finally, Chapter 6 includes a Mitigation Monitoring Program. It should be noted, however, that as a result of negotiations by staff involved in the draft Development Agreement, as well as issues related to limitations imposed by the vesting tentative map in regard to fees proposed to provide mitigation and in regard to timing of implementation, staff will revise this Mitigation Monitoring Program to reflect the provisions of the Development Agreement prior to being approved by the Board of Supervisors.

Analysis of Key Issues for Recommendation to the Board of Supervisors

Issue #1 - EVA vs Public Street Connection to Oak Knoll Road

The most contentious and controversial aspect of the project to date has involved the proposed secondary access and public street to connect the west end of the project with Oak Knoll Road, with the potential for increased through traffic in an existing single-family neighborhood en route to Dora Street or used as an alternative north/south route to South State Street. Adamant opposition to this public street connection was expressed during the scoping meeting as well at the Planning Commission public hearing on the Draft EIR. All of the public comment letters on the Draft EIR as well as a petition with 140 signatures (included in the Final EIR) expressed opposition to this street connection. All of the comment letters from the public as well as verbal comments offered at the public hearing proposed that this connection be maintained as an emergency vehicle access (EVA) only instead of a full public street connection, with bollards or barricades to restrict use during non-emergency times. Many letters also proposed that the EVA be constructed as a one-lane only facility so that it could not be expanded or utilized as a full public street in the future, including in conjunction with future development of parcels south of the project site.

In regard to this proposed street connection, the Draft EIR determined that project-generated traffic would cause safety impacts on Oak Knoll Road and South Dora Street. Widening Oak Knoll Road to meet County standards for a local collector street in order to accommodate project and cumulative traffic would result in loss of trees, landscaping, driveways and front yards (though the area that would be lost is within the County’s right-of-way). Mitigation measures described in Section 3.5 of the Draft EIR are proposed to reduce impacts resulting from these conditions and hazards to a less than significant level.
As required by CEQA, the EIR proposes a project alternative to avoid or reduce impacts, which for this project would include impacts associated with the Oak Knoll Road street connection. Alternative 5, as presented in the EIR proposes an EVA instead of a public street in order to avoid significant impacts. If this alternative is approved instead of the project as proposed, four mitigation measures identified in the EIR would not be needed if the project is approved with an EVA instead of a public street. These four mitigation measures include the following:

3.5-K.1: The project applicant and other cumulative projects generating traffic to the new connector shall provide at least 11-foot-wide travel lanes and four-foot-wide shoulders along Oak Knoll Road to its northernmost intersection with Oak Court Road and along the one-block section of Oak Court Road from this intersection to North Court Road. The fair share of the cost shall be based on the percentage of trips generated by the new developments. The Development Agreement will establish a financing process to ensure that the applicant pays its fair share of this improvement.

3.5-K.2: All future projects proposed between the Garden's Gate site and Highway 253 shall be assessed by a traffic engineer to determine whether that project plus other already constructed or approved projects would generate sufficient cumulative traffic to trigger a significant safety impact between the Garden's Gate access to Oak Knoll Road and South Dora Street. The improvements would be constructed prior to final construction of the project triggering the need for the improvement.

3.5-L.1: Widening of Oak Knoll Road shall not cause slope failure or substantial soil erosion. The County shall have a final geotechnical design prepared by a licensed geotechnical expert that describes final retaining wall design and how any cuts and fills will be conducted. The final plan shall also include an erosion control plan. The road shall be widened per the recommendations of this final design.

3.5-L.2: The County shall replace each oak tree removed during widening by replanting and maintaining (for at least 5 years) 3 oaks for each oak removed. The oaks can be planted on the Garden's Gate site or another suitable site.

It should be noted that in the event that a public street instead of an EVA is implemented for this project, the four mitigation measures noted above would need to be adopted, but would not be required as a condition of approval for this project since they would be implemented instead by the County in conjunction with approval of future development of the project site. For that reason, they are not included in attached Exhibit A, but would be included, however, in the mitigation measures to be adopted in certifying the EIR as part of a mitigation monitoring program by the Board of Supervisors.

In addition, since negotiations to date between County staff and the applicant in regard to a Development Agreement has resulting in an agreement by the applicant to pay traffic impact fees if and when adopted by the County for cumulative traffic impacts, Mitigation Measure 3.5-K.1 (shown above) is proposed to be revised by staff (for future implementation by the County if a public street connection to Oak Knoll is provided in conjunction with this project as well as to accommodate future traffic volumes on Oak Knoll Road and Oak Court Road with future development to the south of the project site), as follows:

3.5-K.1: The project applicant and County, in conjunction with the approval of other cumulative projects generating traffic to the new connector, shall provide at least 11-foot-wide travel lanes and four-foot-wide shoulders along Oak Knoll Road to its northernmost intersection with Oak Court Road and along the one-block section of Oak Court Road from this intersection to North Court Road. The fair share of the cost shall be based on the percentage of trips generated by the new developments, or funded through the assessment of traffic impact fees. The Development Agreement will establish a financing process to ensure that the applicant pays its fair share of this improvement.

Approval of a project alternative that includes an EVA only instead of a public street to Oak Knoll Roads would also eliminate a significant and unavoidable cumulative impact on the noise environment along Oak
Knoll Road, the northernmost block of Oak Court Road, and the southernmost section of South Dora Street, that would occur in conjunction with traffic generated by both this project and future new development in the area to the south of the project site. This impact is described in the EIR as follows:

**Impact 3.7-D:** Traffic noise generated by the project plus other projects that would be completed by 2015 would increase noise levels in the area surrounding the project site.

The project plus other new development would increase the average noise level (Ldn) along South State Street by about 1 to 2 dBA and about 8 dBA along Oak Knoll Road, the northernmost block of Oak Court Road, and the southernmost section of South Dora Street. The average noise level in this area would remain below 60 dBA, but it would exceed the significance criterion of a 5 dBA increase in noise level. Along Oak Knoll Road and adjacent streets, the increase would be mainly from the other traffic, the Garden's Gate project would be about 1 dBA of the 8 dBA increase. Because the project's increment of the increase is so small, the project's contribution to noise levels would be considered less than considerable. However, because the proposed project would create this new road connection, the project would be directly responsible for introducing new traffic noise to the area. The project would cause a potentially significant cumulative noise impact.

While approving the project with an EVA instead of a public street would be consistent with public sentiment as expressed in verbal and written comments on the Draft EIR, and also has merits based on the findings and conclusions of the EIR, a counter argument for maintaining a public street connection for this project has been expressed by County Department of Transportation (DOT) staff, which has strongly recommended since first discussions on the project that there should be a through connection from South State Street (CR 104A) to Oak Knoll Road and South Dora Street (CR 209). DOT believes that it is critical to build this connection now so that eventually when the land south of the subject property is built out to Stipp Lane (CR 124B), there will be a parallel connector to South State Street.

At the public hearing, DOT staff noted that it was desirable to have connectivity so that areas within the County were not isolated. DOT staff further noted that it was sound planning to have alternative routes and circulation between developments and that the problem stemmed from the layout and street widths of the original Oak Knoll subdivision, which was not designed with expansion in mind. Regardless of the desirability of having alternative routes and connectivity between developed areas of the County, no future or proposed north/south route along the Dora Street/Oak Knoll Road corridor to connect with Highway 253 was found by staff in a review of the 2003 draft of the UVAP or in the County’s currently adopted General Plan.

In its comment letter on the Draft EIR (as shown on page 23 of the Final EIR), DOT staff noted that it would be agreeable to limiting the connection to Oak Knoll Road to emergency vehicles only and restricted to one lane traffic with bollards and barricades until Phase 4 is constructed and ready for occupancy, provided that the roadway and bridge be constructed to the ultimate two lane dimensions with Phase I.

**Issue #2 - Lots 20, 21 and 197**

Cleland Mountain Creek flows through the northwestern corner of the project site and entirely within proposed Lot 197. Proposed lots 20 and 21 are located just south of the creek, in which the northern property lines would be situated approximately 15 to 20 feet south of the top of bank. The EIR proposes two mitigation measures that would eliminate lots 20, 21 and 197 in and instead maintain this area as open space and as a “riparian enhancement area”. These mitigation measures are intended to mitigate two impacts identified in the Draft EIR as follows:

**Impact 3.2-D:** Project implementation would increase the area devoted to both paved (roadway and driveway) surfaces and maintained landscaping. Episodic discharge of stormwater contaminated with heavy metals could detrimentally affect downstream water quality. Residential lot development would be accompanied by increased application of fertilizers and chemicals (such as herbicides and pesticides).
Implementation of the project would increase the percentage of urbanized watershed for the combined Cleland Mountain Creek and south ditch watersheds. In particular, construction of the project would increase the portion developed as residential use. Accordingly, vehicular use in the area would expand, increasing the yield of petrochemical residues, heavy metals and landscape maintenance chemicals from the site. The project’s proposed underground vault detention storage and detention pond systems would trap some heavy metals such as nickel, lead, copper, mercury, zinc, chromium, cadmium and selenium, particularly those adsorbed onto sediment. Overirrigation combined with accidental spills or releases of fertilizer or pesticides / herbicides could result in downstream migration of contaminated irrigation runoff to the southern drainage ditch, Cleland Mountain Creek and ultimately the Russian River. Heavy metals, petrochemical residues or landscaping contaminants that remained in solute form and not adsorbed onto sediment would not be fully removed by the proposed detention systems. At this Tentative Map stage, the project plans do not include a SWPPP, which would incorporate site sediment controls during construction and post-construction BMPs for water quality maintenance. In the absence of the SWPPP and/or an erosion control plan, the project as proposed would constitute a significant impact on downstream water quality. This would be a potentially significant impact.

In its response to the request for comment to the project Notice of Preparation (NOP), the California Department of Fish and Game outlined several recommendations for protecting aquatic habitat and the riparian corridor, in part based on providing opportunities for filtering of stormwater and its contaminants along stream corridors. One of these recommendations was the inclusion of a 100-foot buffer along Cleland Mountain Creek.

The Mendocino County Water Agency in its response to the NOP recommended that the final design include measures to reduce impervious surfaces, mechanisms to eliminate oil and grease, first flush stormwater monitoring, a landscaping plan that eliminates or greatly reduces the use of chemicals, and a 50-foot creek setback.

**Impact 3.3-B:** Project construction could remove up to 25 oaks. Lots 20-21 and 197 contain several large Oregon white oak and Oregon ash trees. The EIR botanist states "Probably the most significant biotic resource currently in the Project area is the dispersed grove of Oregon white oaks (Quercus garryana) in the same northwestern corner where the creek occurs (see Figures 3 and 4). Situated on the gentle terraces near the stream channel, there are approximately 24 oaks including 14 very large, very old heritage oaks, most of which attain at least 50+ feet in height and have a huge majestic canopy spread. These trees were probably once simply a part of a much more extensive riparian woodland that centered along the creek, but through historic uses and clearing activities, most of the actual riparian vegetation is gone (replaced by annual grassland and weeds). The remaining oaks, however, represent extremely old and exemplary trees, quite likely the largest of this species ever seen by the EIR botanist. If at all possible, these trees should be avoided, completely within their outer driplines, and should be afforded some level of long-term protection, either through deed restrictions if on private lots, or more preferably as part of dedicated ‘open space’ as part of the previously recommended Riparian Enhancement Area."

Table 10 (not shown here) describes the trees on Lots 21, 22, and 197. It is possible that some of these oaks would not be in areas that would be disturbed and could be preserved in the yards of the three lots. However, as a worst case, it is assumed that the trees would be removed or be compromised by landscaping and future irrigation and use that they would all eventually die from project actions. There are some large Oregon ash trees near the creek and outside these lots. There is a large multi-stemmed oak northwest of Lot 197 that could be removed when the road extension is constructed. Removal of the oaks would be conversion of oak woodland, and this would be a potentially significant impact.

The EIR recommends the following mitigation measure to reduce the above noted impacts to less than significant:
Mitigation 3.2-D.2: Per the recommendations of the CDFG, Lots 20, 21 and 197 shall be removed from the project in order to provide the minimum creekside buffer required to filter contaminants, including sediment, from stormwater runoff.

In a comment letter on the Draft EIR dated November 11, 2008 (see comment 8-18 in the Final EIR), the applicant objected to the loss of these lots as a mitigation requirement, stating the following:

The EIR suggests the project’s potential biotic resource impacts call for a Riparian Enhancement Area over Lots 20, 21 and 197. It is inconsistent with the State Density Bonus Law, upon which this project is based. According to this law, the County can require development standards (i.e., setbacks) and mitigation measures only when they are needed to avoid a public safety or health risk, or when they are needed to mitigate a significant environmental impact. The Riparian Enhancement Area is not needed to eliminate a public health and safety risk nor to mitigate a potential environmental impact. The Fish and Game’s 100-foot buffer and the Water Agency 50-foot setback are not regulations but recommended by these agencies as mitigations to reduce potentially significant impacts. However, as previously stated, the project already includes lot design features and storm drain improvements, which will fully mitigate any potential biotic impacts and avoid public health and safety risks. The proposed riparian enhancement and drainage easement will substantially improve the existing habitat and water within and along the creek. Finally, the location of the building envelopes, tree protection during construction, and the extensive tree planting within the project would reduce the project’s potentially significant oak woodland impact to a less than significant level.

While we believe the development of these lots will not have a significant adverse impact on the creek, this area can be retained as a natural setting if the County determines this type of use will mitigate a significant environmental impact. We would propose that this area be developed as a neighborhood park instead, with low impact landscape improvements and playground equipment, if desired, and that the originally proposed neighborhood park be subdivided into four single family dwelling lots. This modification is consistent with the incentives and concessions granted by the Board of Supervisors in accordance with State Density Bonus Law.

In response to this comment, the Final EIR states the following:

This proposed change is similar to Alternative 5, except that the applicant is proposing to eliminate the neighborhood park near the center of the site and subdivide it into four lots. This new proposal would have the following effects besides preserving the area along the creek:

- There would be one additional residential unit that would result in a small increase in traffic and demand for public services.
- There would be a loss of open space in the center of the site.
- The centrally located park facility would be located near the northwest corner of the site, which would not be as accessible to residents.
- Installation of hardscape and/or playground equipment near the creek would adversely affect water quality as stated in Impact 3.3-A.
- The wildlife use of the creek corridor would be decreased by installing playground equipment near the creek.

For these reasons, Alternative 5 will not be revised. The DEIR recommends retaining the proposed neighborhood park and adding the area near the creek as open space. The three displaced lots can be replaced as described on page 243 of the DEIR.

Subsequent to the publication of the Final EIR and in consideration of the concerns noted above, the applicant had the building envelopes staked in the field to determine the location of potential building sites and improvements in relationship to existing native trees on proposed Lots 20, 21 and 197 for review by staff. On two occasions, April 21 and May 14, 2009, staff reviewed the area of these proposed lots. The
opinion of staff based on the results of this field review is that this area does not contain a density of trees that would constitute a “woodland” but rather consist of a few widely scattered, remnant trees in an area that has evidently been subject to significant clearance and vegetation modification over many years. Riparian woodland, with the exception of one young cottonwood along the south side of the creek, is almost entirely absent in this area. On the site of proposed Lot 197, a total of 3 large oaks were found to be located within the building envelope staked on this lot, while one oak was found within the building envelope staked on Lot 20. No trees were found located within the building envelope on Lot 21. Therefore, while it is likely that several trees could be removed or adversely impacted by development of these lots for residential use, staff disagrees with the findings of the EIR that this would result in a “conversion of oak woodland”, and therefore, would not be considered potentially significant impact. While 100-foot or 50-foot setbacks, as recommended by Fish and Game and the Water Agency, respectively, would reduce impacts associated with urban storm runoff/water quality impacts to Cleland Mountain Creek as well as retain a wildlife corridor along the creek, this would effectively render these lots “unbuildable”.

To maintain these lots as “buildable”, Staff believes that modifications to the wording of one mitigation measure to reduce the area for the “riparian enhancement area”, in conjunction with dense, native riparian habitat planting, and the addition of another mitigation measure to ensure the retention of most of the large, native oaks on these lots, could be sufficient to both provide filtering of storm runoff as well as maintain an adequate wildlife corridor along this creek. Staff also believes that the location of the smaller, neighborhood park as now proposed, rather than on this creek, offer a more central location that would be more usable for public functions, such as ball fields and neighborhood-oriented events.

Staff’s intent in recommending these revised and added mitigation measures is to maintain the feasibility and density of the project in regard to enabling the construction of affordable housing, and to address any uncertainty regarding interpretation of State density bonus law, which states that a proposal with reduced or waived development standards can only be rejected where the reduction would have a specific, adverse impact, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

Therefore, to replace Mitigation Measure 3.2-D.2 as shown above, staff recommends the following revisions, with added language shown as underlined, and removed language shown as strike-out, to Mitigation Measure 3.3-A.1 as shown below:

3.3-A.1: The applicant shall preserve water quality in Cleland Mountain Creek. A Riparian Enhancement Area that includes Lots 20, 21, and 197 shall be established to include all areas within a setback of 20 feet from the top of bank of this creek and deed restricted to prohibit grading, tree cutting, trash deposition, landscaping other than natural habitat restoration, storage of materials, filling, structures, dumping of chemicals, or disruptive activities. The applicant shall replant the Riparian Enhancement Area. The planting and maintenance of the plantings shall be conducted per a plan prepared by a qualified biologist. The replanting shall include riparian species along the creek and oaks, bay, and buckeye further from the creek. The plan shall include the planting of at least three replacement trees (of the same species as the tree removed) for each oak, bay, buckeye, and Oregon ash that is removed. Within the 20-foot riparian habitat setback, appropriate native ground covers and shrubs will also be established to filter runoff from developed portions of nearby lots. All plantings established under this plan shall be irrigated and replaced as needed as well as monitored by the plan preparer for a period of no less than 3 years to ensure successful establishment. The Riparian Enhancement Area shall be maintained by the HOA pursuant to this plan. The plan shall identify the entity responsible for maintenance. The County shall have the option of maintaining the area if the plan is not being followed; the HOA will be charged for the County’s maintenance work. The plan shall be reviewed and approved by the California Department of Fish and Game.

Staff also recommends a new mitigation measure be added to ensure the retention of as many existing native oaks as possible on proposed lots 20, 21 and 197:
3.3-B.1: An assessment shall be conducted that determines the area and number of oaks and other
native hardwoods that would be removed or adversely impacted as a result of project development on
Lots 20, 21 and 197. Building envelopes on Lots 20, 21 and 197, as well as driveway and utility
connection locations, shall be adjusted if needed to avoid loss or both short-term and long-term adverse
effects on native trees. The area outside of these building envelopes shall be deed restricted to require
maintenance of existing native trees, and prohibition of lawns and landscaping incompatible with long-
term survival of these trees, while allowing pruning and removal of any dead or dying trees, dead limbs
and brush, and any clearances required as needed to reduce wildland fire hazard. All removed
hardwoods shall be replaced with the same species at a minimum replacement ration of 3:1 within the
20-foot riparian setback zone along the top of the bank of Cleland Mountain Creek. A minimum 3-year
monitoring plan shall track planted trees and replace all that are dead or dying.

**Issue #3 – Fees and Exactions in EIR Mitigation Measures and Proposed Development Agreement**

The EIR identifies several mitigation measures that involve payment of fees as mitigation for the cumulative
impacts of this project, including those related to traffic, parks and other public services. Since the filing of a
“vested tentative map” locks in the fees, rules and regulations in effect at the time an application is complete,
this would otherwise limit the ability of the County to impose mitigation from the EIR that involves payment of
fees not yet adopted or application of regulations not yet adopted by the County. Examples pursuant to this
project include traffic impact fees and application of design review guidelines. The development agreement
includes provisions for such fees and application of standards that may be imposed in the future. The
Planning Commission responsibility under Government Code § 65867 is to hold a public hearing on this draft
Development Agreement and provide a recommendation to the Board of Supervisors in regard to any
changes and/or approval.

**RECOMMENDED MOTION FOR APPROVAL:**

Staff recommends that the Planning Commission, following presentations by staff and the applicant’s
consultant, provide an opportunity for public input. After hearing comments by the public and following any
questions or discussion with staff, the applicant or consultants as needed, staff recommends that the
Planning Commission recommend to the Board of Supervisors the following:

a) Certification of the EIR with adoption of all the mitigation measures included in the EIR as recommended
to be modified or by staff as shown in attached Exhibit A along with a Statement of Overriding
Considerations (with recommended findings as shown on page 8 and 9 of this staff report) for impacts
that are unavoidable or unable to be reduced to less than significant;

b) Approval of the subdivision with Conditions of Approval (as shown below); and

c) Approval of a Development Agreement between the County and the applicant, as well as the attached
Inclusionary Housing Agreement, as shown in the draft agreements attached to this staff report.

**Alternatives Motions for Recommendations to the Board of Supervisors**

**Alternative with EVA Connection with Oak Knoll Drive**

If the Commission would prefer to recommend the project be approved with an EVA instead of a full public
street connection to Oak Knoll Road, staff recommends that the same mitigation measures shown in Exhibit
A be adopted for this project, and that measures 3.5-K-1, 3.5-K-2, 3.5-L.1, and 3.5-L.2 (as shown in the EIR
and also on pages 14 and 15 of this staff report) not be adopted as they would no longer be needed.

**Alternative with Elimination of Lots 20, 21 and 197**
If the Commission would prefer to recommend the project be approved as mitigated in the EIR that would eliminate lots 20, 21 and 197 from the development and instead maintain all of the area included within these proposed lots as open space without the substitute or modified measures proposed by staff, the same recommendations could be made to the Board of Supervisors, except that the mitigation measures recommended for adoption would be the same as now shown in the Final EIR in Chapter 6, with the exception of Mitigation Measure 3.2-A.2, which would not be needed if these lots are not developed as currently proposed. In addition, Mitigation 3.2-B-1 would be revised as shown on pages 9 and 10 of this staff report.

Alternative 5 (as described in EIR)

Finally, the Planning Commission may prefer to recommend Alternative 5 (which eliminates Lots 20, 21 and 197 provides for an EVA connection to Oak Knoll only) be the project to be approved, then the same recommendations could be made to the Board of Supervisors, except that the mitigation measures recommended for adoption would be the same as now shown in the Final EIR in Chapter 6, with the exception of Mitigation Measures 3.2-A.2, 3.5-K-1, 3.5-K-2, 3.5-L.1, and 3.5-L.2, which would no longer be needed. In addition, Mitigation 3.2-B-1 would be revised as shown on pages 7 and 8 of this staff report, and another mitigation measure would need to be added in order to implement this alternative as described in the DEIR as follows:

The applicant shall include a photovoltaic (PV) solar electricity system that will be deployed subdivision-wide for the benefit of the future residents. The system will be sized sufficiently so that it offsets 50% of the electrical use on a net-yearly basis. This equates to the applicant providing a 3.3 kilowatt photovoltaic system for each unit.

However, if this alternative is recommended, then either an new site plan may be needed for approval that shows where the three units displaced by the elimination of lots 20, 21 and 197 would be relocated, or a finding may be necessary in regard to a specific, adverse impact upon health, safety, or the physical environment, and that there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact other than to reduce the density of the project and specifically eliminate lots 20, 21 and 197. It also should be noted that the added cost associated with a requirement that project provide a the subdivision-wide photovoltaic system to offset electrical use to reduce GHG emissions could also be an issue in terms of maintaining affordable housing as part of this project.

RECOMMENDED CONDITIONS OF APPROVAL OF SUBDIVISION:

1. The applicant and/or subsequent grantees shall adhere to all of the mitigation measures as shown in the attached Exhibit A.

2. The applicant and/or subsequent grantees shall either (1) submit to the Division of Environmental Health a letter from the district(s) or agency(s) stating that water and/or sewer services (and main extensions, where required) have been installed to the satisfaction of the district or agency to serve each lot in said subdivision and connected to the system providing the service(s) and has been accepted by the district or agency for maintenance by said district or agency (Mendocino County Code 17.55 & 17.56); or (2) the applicant shall submit a letter to the Division of Environmental Health from the district(s) or agency(s) stating that engineered improvement plans for the future installation of services (and main extensions, where required) for each lot and the connection to the system providing the service are acceptable to the district, including maintenance of the system by the district and the applicant shall submit a letter to Division of Environmental Health from the County Engineer stating that performance bonds or other adequate surety have been secured, to the satisfaction of the county engineer, to cover the cost of the installation of services (and main extensions, where required) for each lot and the connection to the system providing the service per Mendocino County Code Chapter 17 Article VIII.
3. A note shall appear on subsequent Final Maps that “Development within the flood plain as identified on this map, is subject to those restrictions in the Flood Plain Regulations of the Mendocino County Code.”

4. A note shall appear on subsequent Final Maps that the access road, driveway and interior circulation routes be maintained in such a manner as to insure minimum dust generation subject to Air Quality Management District Regulation 1 Rule 430. All grading must comply with Air Quality Management District Regulations Rule 430. Any rock material, including natural rock from the property, used for surfacing must comply with Air Quality Management District regulations regarding asbestos content.

5. A note shall appear on subsequent Final Maps that in the event that archaeological resources are encountered during development of the property, work in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.

6. Prior to recording the final map for any phase, the subdivider shall create an organization capable, in the opinion of County Counsel, of maintaining all storm drainage facilities located outside of street right of ways accepted into the County Maintained Road System as well as all private roads, common driveways, park and common open space areas, streetscape parkways and landscaping, and the riparian enhancement area (including the drainage easement and 20-foot deed restricted setbacks along Cleland Mountain Creek).

7. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of $2043.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to July 17, 2009 (within 5 days of the end of any appeal period). If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if the project is approved) or returned to the payer (if the project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void. The applicant has the sole responsibility to insure timely compliance with this condition.

8. Pursuant to Government Code Section 66492 & 66493, prior to recordation of the Final Map, the subdivider must: (1) Obtain a Certificate from the Mendocino County Tax Collector stating that all current taxes and any delinquent taxes have been paid and; (2) Pay a security deposit (or bond) for taxes that are a lien, but not yet due and payable.

9. Plans for the design of the center of the roundabout in regard to landscaping and any monument sign shall be submitted to the County as well as the City of Ukiah for design review approval prior to the construction of the roundabout.

10. The application along with supplemental exhibits and related material shall be considered elements of this entitlement and that compliance therewith shall be mandatory, unless a modification has been approved by the County Board of Supervisors.

11. Subdivision improvements shall include the extension of water, sewer and public utility (gas, electricity, telephone, cable television) services to each parcel. Street lighting shall also be installed. All utilities within the subdivision shall be placed underground.

12. All roadway and drainage improvements shall be constructed in conformance with Mendocino County Road and Development Standards, typical road sections as shown on the vesting tentative map, and mitigation measures included in the Final Environmental Impact Report and improvement plans.
prepared by a Registered Civil Engineer and approved by the Mendocino County Department of Transportation (MDOT).

13. The proposed bridge over Cleland Mountain Creek shall be designed and constructed to meet AASHTO Standards, HS-20 loading and provide two traffic lanes and a pedestrian walkway as depicted on the Bridge Section B-B of the Vesting Tentative Map. A report prepared by a Civil Engineer shall be filed with the Mendocino County Department of Transportation, verifying the opening beneath the creek crossing has sufficient capacity to accommodate the 100-year flood, and that the bridge can sustain an HS-20 loading and support all combinations of State legal loads. Prior to construction of the creek crossing, subdivider shall obtain any necessary permits from the California Department of Fish and Game, the U.S. Army Corps of Engineers, and any other agencies with jurisdiction. The Civil Engineer shall verify in the report that all necessary permits were obtained.

14. Subdivision improvement plans shall be accompanied by a drainage report prepared by a Registered Civil Engineer. The report shall provide hydrology and hydraulic calculations necessary to support the design, location, and capacity of all proposed drainage facilities necessary for compliance with Mendocino County Road and Development Standards and Section 17-57(C) of the County Division of Land Regulations. This drainage report shall also include the location, capacity analysis and condition assessment of all existing drainage channels and structures receiving runoff from the subdivision to a point east of the NCRA (railroad) right of way.

15. Drainage facilities appurtenant to the subdivision streets shall be designed and constructed in accordance with the following minimum standards:

   a. Culverts, storm drains and detention facilities shall be designed to accommodate a “50-year” storm event (“100-year” storm event when failure will result in lot flooding) using all available head at the inlet;

   b. Minimum culvert and storm drain size shall be minimum 18 inch diameter (24 inch when failure will result in lot flooding);

   c. Curbs and gutters shall be designed to accommodate a “50-year” storm event without encroaching into the traffic lane;

   d. Drainage easements for storm drains shall have a minimum width of 10 feet;

   e. Drainage easements for ditches shall have a minimum width of 20 feet;

   f. Minimum allowable ditch grade shall be 0.5 percent;

   g. Special erosion control measures will be required when the ditch grade exceeds 5 percent.

Drainage improvements shall include design features as needed as needed to adequately conduct runoff from completed phases across future phases to a satisfactory point of disposal.

16. Subdivision improvement plans shall include all storm drainage, detention/retention facilities designed in general conformance with Conceptual Drainage Plan shown on the Vesting Tentative Map dated January 6, 2009. The drainage facilities shall be installed within appropriate easements or dedicated parcels and shall be sufficient to mitigate any increase in runoff from the site. The plans shall be accompanied by calculations prepared by the design engineer to verify this mitigation. Drainage plans shall be subject to the review and approval of the MDOT and Regional Water Quality control Board. A General Construction Activity Storm Water Permit shall be secured.
17. Prior to performing any work within the Russian River Floodplain, subdivider shall secure all applicable permits from the California Department of Fish and Game, the U.S. Army Corps of Engineers, as well as any other agencies which may have control or authority.

18. Pursuant to provisions in Section 17-43(D)(6) of the County Division of Land Regulations, all areas within the subdivision subject to inundation in the event of a “100-year” storm event shall be clearly identified on the final map. Data shown on the final map shall be supported and verified by a report prepared by a registered civil engineer and submitted to the Department of Transportation concurrently with final map check prints. The report shall take into account any grading to be utilized to raise the ground elevation above the base flood elevation.

19. Minimum elevations of building pads shall be on foot above the (100-year) base flood elevation. Building pads are defined as the area inside the building setback lines on each lot.

20. Subdivision improvement roadway plans shall include cross-sections at a maximum interval of 50 feet.

21. Any proposed work within County rights-of-way requires obtaining an encroachment permit from the Mendocino County Department of Transportation.

22. Damage to the County Maintained Road System attributable to hauling of material and equipment in connection with subdivision grading and construction shall be repaired and maintained to the satisfaction of the Director of Transportation.

23. The applicant and/or subsequent grantees shall provide, either through revised subdivision tentative map, or through revised tentative map and approval of Boundary Line Adjustment #B 22-2008, an access strip of a minimum of 60 feet in width, that would extend from South State Street (CR# 104 A), westerly to APN 184-110-29. Further, any additional right of way that may be needed for development of subdivision access improvements along South State Street corridor including frontage improvements, the extension of Plant Road (CR# 142), the Gobalet Lane/South State Street intersection and the Roundabout within the South State Street corridor shall be dedicated to the County in fee simple and/or with all costs borne by the applicant and/or subsequent grantees.

Attachments:

Garden’s Gate Final Environmental Impact Report
CD with application materials
Reductions of Vested Tentative Map
Exhibit A – Garden’s Gate Subdivision Project Mitigation Measures (Staff recommendation)
Draft Development Agreement

June 18, 2009

DATE

Robert Jones, AICP – Contract Planner

RJ/at
June 18, 2009
STAFF REPORT FOR RECOMMENDATION TO THE
BOARD OF SUPERVISORS RE: EIR CERTIFICATION,
MAJOR SUBDIVISION, AND DEVELOPMENT AGREEMENT  

OWNER: UKIAH LAND LLC - MORAN, Hugh
AGENT: MAY, Jack
CASE #: S 3-2005
APNs: 184-030-15, 184-110-28; -29 & 184-120-01

ROAD INTERSECTIONS

Not To Scale
3.1-A.1: A final geotechnical report shall be prepared that incorporates the recommendations set forth in the 2005 RGH Report as modified by mitigation measures recommended in this EIR. The project applicant shall design project structures and foundations to withstand expected seismic forces in accordance with the California Building Code as adopted by the County of Mendocino. Since the project site is located within Seismic Zone 4 it is considered potentially seismically active. The County shall not issue building permits until seismic design criteria are reviewed and approved. During construction adherence to design criteria shall be monitored, and a final report issued documenting conformance prior to occupancy.

3.1-B.1: Potentially unstable surface soils shall be remediated by strengthening the soils during site grading. The strengthening will be achieved by excavating the weak soils and replacing them as properly compacted engineered fill. All site grading and foundation construction shall follow the recommendations of the Geotechnical Engineer of record for the project. The process will include excavation of surface soils and placement of all fill soils at a minimum of 90 percent compaction relative to the maximum dry density near the optimum moisture content as determined in accordance with ASTM D 1557. Site soils will be tested during construction by the Geotechnical Engineer-of–Record or by a Special Inspector to confirm that minimum standards are met. A final report documenting results of fill testing will be submitted to the County of Mendocino Department of Planning and Building Services and will be subject to the review of that department.

3.1-C.1: Cut and fill slopes should be designed and constructed as slope gradients of 2h:1v or flatter, unless otherwise approved by the Geotechnical Engineer-of-record in specified areas. The interior slopes of the retention basin should be inclined no steeper than 3h:1v. If steeper slopes are required, retaining walls shall be used. Fill slopes steeper than 2h:1v will require the use of a Geogrid reinforcing material to increase stability. Fill slopes shall be constructed by over-filling and cutting the slope to final grade. Graded slopes shall be planted with fast-growing, deep-rooted groundcover to reduce sloughing and erosion.

Fills placed on terrain sloping at 5h:1v or steeper shall be continually keyed and benched into firm, undisturbed bedrock or firm soil. The benches shall allow space for the placement of select fill of even thickness under settlement sensitive structural elements supported directly on the fill.

3.1-C.2: Retaining walls shall be designed to retain planned cut slopes for the 10 hillside lots that exceed 2h:1v in slope steepness and for the sidewalk between the project access and Oak Court Road. These cuts are planned to be as great as 13 feet in height. The Geotechnical Engineer-of-record shall provide revised recommendations for retaining walls if needed to meet current building code requirements. All retaining walls shall be designed by a State of California Registered Civil Engineer in accordance with requirements of the 2007 California Building Code including seismic design considerations. Retaining wall design shall be reviewed by the County of Mendocino Department of Planning and Building Services to ensure conformance with state and local building code requirements.

3.1-C.3: Plan Review will be performed by the County of Mendocino Department of Planning and Building Services to ensure conformance with grading and drainage requirements. The Geotechnical Engineer-of-Record shall prepare a geotechnical review letter documenting that plans meet with the intent of geotechnical recommendations.

3.1-C.4: The Geotechnical Engineer-of-Record and/or Special Inspector shall perform construction observation and testing to ensure conformance with design requirements and geotechnical recommendations. Testing and monitoring shall include:

- Verification of compaction requirements for engineered fill and subgrade soils. Unless otherwise stated all engineered fill shall be compacted to at least 90 percent of the maximum dry density at moisture contents above the optimum in accordance with ASTM D 1557 test method. Subgrade beneath foundations and
pavement sections shall be additionally compacted to at least 95 percent of the maximum dry density at moisture contents near the optimum.

- Verification of the installation of subsurface drainage in accordance with project plans and specifications.

- Verification that footings are excavated into stable material and footing excavations are of sufficient depth and breadth to adequately support structures with minimal or no settlement.

- Materials Testing and Special Inspection of concrete, steel, asphalt, wood members and other structural elements to establish conformance with the design standards.

Verification of correct installation of erosion control measures and adherence to the requirements of the approved Stormwater Pollution Plan (SWPPP) for the project.

3.1-D.1: Where spread footings are chosen for foundation support, weak, porous, compressible and locally expansive surface soil shall be excavated to within 6 inches of their entire depth. Excavation of weak, compressible, and locally expansive soils shall extend a minimum of 12 inches below exterior concrete slabs and/or asphalt concrete pavement subgrade. These soils shall be replaced with select fill material. Additionally, excavation of weak, porous, compressible, expansive, creep-prone surface materials shall extend at least 5 feet beyond the outside edge of exterior footings of the proposed buildings and 3 feet beyond the edge of exterior slabs and or pavements. These soils shall also be replaced with select fill material as described below.

Select fill material shall be free of organic matter, have a low expansion potential, and conform in general to the following requirements: 100% passing 6" sieve; 90-100% passing the 4" sieve; 10-60% passing the No. 200 sieve (all percentages by dry weight); LL – 40 max; PI – 15 max; R-value – 20 min. The Geotechnical Engineer-of-Record shall approve imported material prior to use as compacted fill.

3.2-A.1: The project shall not cause flooding downstream of the project site, and post-development peak flows discharged to the 18-inch CMP shall not exceed pre-development peak flows. At final project design, the applicant shall calculate the amount of runoff that will be generated by the developed, southern portions of Lots 20 and 21, and factor that increase into the analysis performed by Sandine and Associates to determine whether peak flow rates will remain below pre-development levels and the risk of flooding in the project site and off-site downstream will not be increased. If the post-project peak flow rates exceed the pre-development levels, the applicant shall increase the volume of the vault system storage and/or detention basin capacity to achieve the target peak flow discharge. The 18-inch storm drain facility beneath South State Street shall be located, inspected by video camera or other method, and a report submitted to the County Department of Transportation at the time of final design of the subdivision storm drainage system, substantiating the adequacy of the existing facility to accommodate the design runoff or recommending improvements necessary to the facility to adequately accommodate project runoff. Those recommendations shall be constructed.

3.2-A.2: As part of the Development Agreement, establish a Homeowners Association (HOA) maintenance agreement that details the provisions for regular monitoring of the status of the vault and detention pond storage capacities, as well as requirements for vault and detention pond cleanouts, when necessary, to maintain design stormwater storage levels. Establish a monitoring protocol that is acceptable to the County that monitors implementation of this maintenance, including a bond or other funding agreement that reimburses the County if the County is required to conduct required maintenance due to the HOA not implementing required maintenance.

3.2-B.1: The project shall not result in flooding of residences on the project site. To minimize the risk of flooding during the FEMA-designated 100-year base flood, the applicant shall implement one of the following alternatives:
A) Re-design the grading plan for Lots 20-21 and 196-197 in the vicinity of Cleland Mountain Creek so that building finished floor elevations are a minimum of one foot above the land surface elevations inferred by the FIRM Zone A SFHA mapping.

OR

B) Prepare a Letter of Map Revision (LOMR), accompanied by the appropriate technical documentation, and submit it to FEMA (or its sponsored contractor), to petition for a change in the FEMA SFHA designation for the project site. Required technical documentation would include an updated flood backwater profile modeling of Cleland Creek, including the proposed Plant Road bridge crossing, which was excluded from the original HEC-RAS analysis conducted for the project by Sandine Associates. If the modeling results verify that the published FEMA mapping is inaccurate and that Lots 20-21 and 196-197 are outside of the redefined SFHA, then the lots could be developed as proposed, subject to possible regulatory restrictions or conditions imposed by the California Department of Fish and Game (CDFG) and the Mendocino County Water Agency (MCWA) for disturbance of the riparian corridor. If the modeling results verify that the published FEMA flood mapping was accurate, then Alternative A would be required for development of the lots. The same potential regulatory restriction or conditions imposed by CDFG or the MCWA would apply.

3.2-C.1: The project shall not cause significant erosion. The applicant shall submit a detailed Erosion Control Plan as part of the Stormwater Pollution Prevention Plan (SWPPP) to the Mendocino County Water Agency (MCWA) and to the State Water Resources Control Board (SWRCB), in conjunction with the filing of a Notice of Intent (NOI) with the SWRCB. The County shall not issue a Grading Permit until the County Water Agency agrees that the plan contains adequate Best Management Practices for controlling erosion. At a minimum, the Erosion Control Plan shall include the following restrictions, guidelines, and measures: (1) grading and earthwork shall be prohibited during the wet season (typically October 15 through April 15) and such work shall be stopped before pending storm events during the spring-fall construction season; (2) erosion control/soil stabilization techniques such as straw or wood mulching, erosion control matting, and hydroseeding, or their functional equivalents shall be utilized in accordance with applicable manufacturers specifications and erosion control Best Management Practices (BMPs) published in the California Stormwater BMP Handbook - Construction (California Stormwater Quality Association 2005) and/or similar proscriptions outlined in the Erosion and Sediment Control Field Manual (SF Bay RWQCB 2002); (3) bales of hay or accepted equivalent methods shall be installed in the flow path of graded areas receiving concentrated flows, as well as around storm drain inlets; (4) installation of silt fencing and other measures to segregate the active flow zone of Cleland Mountain Creek from the near overbank disturbance associated with bridge abutment construction; and (5) post-construction stormwater treatment measures.

These and other erosion control BMPs shall be monitored for effectiveness and shall be subject to inspection by the County. The applicant shall be responsible for implementing any remedial actions recommended by the County. After construction is completed, all drainage facilities shall be inspected for accumulated sediment, and these drainage structures shall be cleared of debris and sediment. Silt fence shall be left in place until the hydroseed has become established.

3.2-D.1: The project shall not cause substantial pollution of Cleland Mountain Creek or the Russian River. The applicant shall prepare an NOI and SWPPP for the project, and incorporate the following additional site-appropriate BMPs or their equivalents for short- and long-term implementation by the Homeowners Association (HOA) and/or individual lot owners, in order to comply with the requirements of the NPDES General Permit and provisions of the Mendocino County Storm Water Management Program. The BMPs will result in stormwater leaving the site at least meeting the NCRWQCB water quality objectives for the Russian River. The SWPPP shall be approved by the Mendocino County Water Agency and the State prior to project construction.

- Impervious surfaces shall be minimized by using such techniques as driveway strips with bordering pervious pavement material (rather than a full paved driveway); using pervious materials for parking areas; directing runoff from rooftops and streets to landscaping buffers and/or recharge trenches.
• These and other BMPs shall be monitored for effectiveness and shall be subject to inspection by the County. The Homeowners Association shall be responsible for implementing any remedial actions recommended by the County. The applicant shall establish a monitoring protocol that is acceptable to the County that monitors implementation of these measures, including a bond or other funding agreement that reimburses the County if the County needs to conduct required maintenance due to the HOA not implementing required maintenance. The County can require that monitoring be done by a third party acceptable to the County; costs of all monitoring and any maintenance will be borne by the Homeowners Association.

Since the objective of erosion control and water quality treatment measures would be to reduce contaminant loading to the maximum extent practicable with implementation of the best available technologies, the recommended BMPs are not fixed. Other measures can be applied as long as the applicant can demonstrate to the satisfaction of MCWA that those measures can provide equivalent levels of reduction in contaminant loading.

The applicant shall prepare a plan that describes the roles and responsibilities of the HOA, lot owners, and/or the County for implementing the BMPs and monitoring the results. If the County will be responsible for monitoring or implementing any actions, then a funding mechanism will be established. The County will review and approve this plan prior to the onset of construction.

3.2-D.2: Per the recommendations of the CDFG, Lots 20, 21 and 197 shall be removed from the project in order to provide the minimum creekside buffer required to filter contaminants, including sediment, from stormwater runoff.

3.3-A.1: The applicant shall preserve water quality in Cleland Mountain Creek. A Riparian Enhancement Area that includes Lots 20, 21, and 197 shall be established to include all areas within a setback of 20 feet from the top of bank of this creek and deed restricted to prohibit grading, tree cutting, trash deposition, landscaping other than natural habitat restoration, storage of materials, filling, structures, dumping of chemicals, or disruptive activities. The applicant shall replant the Riparian Enhancement Area. The planting and maintenance of the plantings shall be conducted per a plan prepared by a qualified biologist. The replanting shall include riparian species along the creek and oaks, bay, and buckeye further from the creek. The plan shall include the planting of at least three replacement trees (of the same species as the tree removed) for each oak, bay, buckeye, and Oregon ash that is removed. Within the 20-foot riparian habitat setback, appropriate native ground covers and shrubs will also be established to filter runoff from developed portions of nearby lots. All plantings established under this plan shall be irrigated and replaced as needed as well as monitored by the plan preparer for a period of no less than 3 years to ensure successful establishment. The Riparian Enhancement Area shall be maintained by the HOA pursuant to this plan. The plan shall identify the entity responsible for maintenance. The County shall have the option of maintaining the area if the plan is not being followed; the HOA will be charged for the County's maintenance work. The plan shall be reviewed and approved by the California Department of Fish and Game.

3.3-B.1: An assessment shall be conducted that determines the area and number of oaks and other native hardwoods that would be removed or adversely impacted as a result of project development on Lots 20, 21 and 197. Building envelopes on Lots 20, 21 and 197, as well as driveway and utility connection locations, shall be adjusted if needed to avoid loss or both short-term and long-term adverse effects on native trees. The area outside of these building envelopes shall be deed restricted to require maintenance of existing native trees, and prohibition of lawns and landscaping incompatible with long-term survival of these trees, while allowing pruning and removal of any dead or dying trees, dead limbs and brush, and any clearances required as needed to reduce wildland fire hazard. All removed hardwoods shall be replaced with the same species at a minimum replacement ratio of 3:1 within the 20-foot riparian setback zone along the top of the bank of Cleland Mountain Creek. A minimum 3-year monitoring plan shall track planted trees and replace all that are dead or dying.
3.4-A.1: If cultural resources are discovered on the site during construction activities, all earthmoving activity in the area of impact shall be halted until the applicant retains the services of a qualified archaeological consultant. These archaeological sites will be documented (by a professional meeting the Secretary of the Interior qualification standards) on DPR forms and evaluated for their eligibility for the California Register. The archaeological consultant shall identify specific measures to mitigate impacts to the resource if it is deemed eligible for the California Register. Mitigation shall include data recovery operations, protection in situ of deposits, and/or archival research, if appropriate. The applicant shall abide by the recommended proposals.

3.4-A.2: In the event that human skeletal remains are discovered, work shall be discontinued in the area of the discovery and the County Coroner shall be contacted. If skeletal remains are found to be prehistoric Native American remains, the Coroner shall call the Native American Heritage Commission within 24 hours. The Commission will identify the person(s) it believes to be the "Most Likely Descendant" of the deceased Native American. The Most Likely Descendant would be responsible for recommending the disposition and treatment of the remains. The Most Likely Descendant may make recommendations to the landowner or the person responsible for the excavation/grading work for means of treating or disposing of the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98.

3.4-B.1: During project grading operations, should any undiscovered evidence of paleontological resources be encountered, work at the place of discovery shall be halted, and a qualified paleontologist shall be consulted to assess the significance of the finds. Prompt evaluations can then be made regarding the finds, and a management plan consistent with CEQA cultural resources management requirements shall be adopted.

3.5-C.1: The project applicant shall design the proposed South State Street/Plant Road roundabout to accommodate all existing and anticipated buses and large trucks. Turning template diagrams shall be provided to the County Department of Transportation for the largest bus and trucks anticipated to be using the roundabout.

3.5-F.1: The proposed bus stop internal to the project site shall be relocated to the outside of the Plant Road curve in order that all patrons will enter/exit by the bus via a sidewalk, and not the middle of the street. The bus stop shall be covered and protected from the wind.

3.5-I.1: The applicant and/or future site developers shall pay the adopted Ukiah Valley Area Transportation Impact Fee at the time that building permits are issued.

3.6-A.1: The project applicant and construction contractor shall for all construction project phases prepare and implement a dust control program to limit construction emissions of PM\textsubscript{10}. The program shall include at least the following provisions from MCAQMD Rule 1-430 Fugitive Dust. Because the site is over one acre in size, a Grading Permit must be approved by MCAQMD, and MCAQMD may require additional mitigations.

a. Covering open bodied trucks when used for transporting materials likely to give rise to airborne dust.

b. The use of water or chemicals for control of dust in the demolition of existing buildings or structures.

c. All visibly dry disturbed soil road surfaces shall be watered to minimize fugitive dust emissions.

d. All unpaved surfaces, unless otherwise treated with suitable chemicals or oils, shall have a posted speed limit of 10 miles per hour.

e. Earth or other material that has been transported by trucking or earth moving equipment, erosion by water, or other means onto paved streets shall be promptly removed.
f. Asphalt, oil, water or suitable chemicals shall be applied on materials stockpiles, and other surfaces that can give rise to dust emissions.

g. All earthmoving activities shall cease when sustained winds exceed 15 miles per hour.

h. The operator shall take reasonable precautions to prevent the entry of unauthorized vehicles onto the site during non-work hours.

i. The operator shall keep a daily log of activities to control fugitive dust.

3.6-F.1: The project shall minimize the emission of greenhouse gases by including at least the following:

• Install solar hot water heaters with a back-up electric water heater.

• The project shall be constructed to incorporate the 2010 Title 24 building standards (or whatever standards have been adopted at the time that building permits are issued).

• The project shall include a photovoltaic (PV) solar electricity system that will be owned and operated by the Homeowner’s Association for the benefit of the future residents. The system will be sized sufficiently so that it totally offsets electrical use from project parks, recreational facilities, and other facilities owned or managed by the Homeowners Association.

• Project residential units shall be oriented for maximum solar access. Roofs shall be constructed to allow easy and efficient retrofitting with roof-top solar panels.

• The project applicant shall ensure that the CC&Rs of the Homeowner’s Association do not preclude the use of energy- or water-saving technologies or practices for aesthetic reasons.

• The Homeowner’s Association shall develop and maintain energy- and water-efficient practices for the common areas of the subdivision and follows a landscaping plan that does not impair the efficient operation of the solar collection facilities.

3.7-A.1: Project-specific acoustical analyses shall be required to confirm that outdoor activity areas are provided with Ldn values at or below 60 dBA, and interior Ldn values will not exceed 45 dBA. Sound insulation measures, including any mechanical ventilation systems needed to permit closed windows, should be designed by an experienced acoustical consultant and incorporated into construction documents submitted for permits.

3.7-C.1: Project construction shall not cause excessive noise. To accomplish this standard, the following measures are required:

• Noise-generating activities at the construction site or in areas adjacent to the construction site associated with the project in any way should be restricted to the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday. No construction activities should occur on weekends or holidays.

• Equip all internal combustion engine driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.

• Unnecessary idling of internal combustion engines should be strictly prohibited.

• Locate stationary noise generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise generating equipment when located near adjoining sensitive land uses.
• Utilize "quiet" air compressors and other stationery noise sources where technology exists.

• Control noise from construction workers’ radios, CD players, etc. to a point that they are not audible at existing residences bordering the project site.

• Designate a "disturbance coordinator" who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and will require that reasonable measures warranted to correct the problem be implemented. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

• Notify existing residents when especially noisy operations are scheduled near their property, allowing the residents to plan activities accordingly. Examples of especially noisy sources: heavy earth moving equipment, jack hammers, pile drivers.

3.8-A.1: The Development Agreement between the County and the applicant shall include a condition that the applicant agrees that final project design and landscape plan shall undergo design review by the County Department of Planning and Building Services and/or the County Planning Commission to ensure consistency with the County General Plan, the Ukiah Valley Area Plan (if adopted at the time the final design is submitted), the County design review guidelines (if adopted at the time the final design is submitted), and the County Code. The final project shall be revised, if requested, to comply with the County's review recommendations.

3.8-A.2: Landscaping will be mature within 15 years of initial project construction (Phase 1). Mature means that perimeter trees shall be at least 20 feet tall. The final landscape plan shall include tree landscaping along the north and east sides of the site using species that fully screen views from the east and screens at least half of the buildings on the north side. The plan shall include specifications for planting, irrigating, fertilizing, and replacing dead trees so that the landscaping will be mature within 15 years.

3.8-F.1: The final design shall include a lighting plan that minimizes light escape from the site. The final plan shall become part of the CC&Rs for the Homeowners Association. This plan shall include the following:

1. Light shielding is required. Except as otherwise exempt, all outdoor lighting fixtures shall be constructed with full shielding. Shielding shall prevent the light source from being visible to adjacent residential properties.

2. Minimum/Maximum Level of Illumination. The minimum and maximum levels of illumination permitted are listed below. A photometric study listing the number, type, height, and level of illumination of all outdoor lighting fixtures shall be required prior to issuance of a building permit or site improvement plans to ensure compliance with these provisions.
   a. Minimum security lighting for sidewalks, walkways, parking areas, and similar areas shall be 1.0 foot-candles, measured at ground level, not to exceed 3.0 foot-candles on average.
   b. In order to minimize light trespass on abutting property, illumination measured on the property line of a subject parcel shall not exceed 0.5 foot-candles, measured on a vertical plane along the property line.
   c. Building-mounted decorative or security lights shall not exceed 5.0 foot-candles, measured a distance of five feet from the light source. All building lighting shall be reviewed and authorized by Mendocino County prior to the initiation of lighting installation.

3. Maximum Height of Outdoor Light Fixtures. The maximum height of freestanding outdoor light fixtures for multi-family residential development and non-residential development abutting a single-family residential zoning district or use shall be 20 feet. Otherwise, the maximum height for freestanding outdoor light fixtures shall be 25 feet.
4. **Type of illumination.** All outdoor lighting fixtures shall be energy efficient. Energy efficient lights include all high-intensity discharge lamps (mercury vapor, high-pressure sodium, low-pressure sodium, and metal halide). The concentrated and/or exclusive use of either low-pressure sodium or metal halide lighting is prohibited.

5. **Hours of illumination.** Automatic timing devices shall be required for all outdoor light fixtures on multi-family residential and non-residential development (e.g., parks) with off hours (exterior lights turned off) between 11:00 p.m. and 6:00 a.m. Exceptions are that outdoor lights may remain on in conjunction with the hours of operation of the corresponding use, for security purposes, or to illuminate walkways, roadways, equipment yards, and parking lots.

6. **Prohibited Lighting.** The following outdoor light fixtures shall be prohibited as specified below.

   a. Lighting of parks for active nighttime recreation.
   b. Uplighting/back-lit canopies or awnings.
   c. The concentrated and/or exclusive use of either low-pressure sodium or metal halide lighting
   d. Neon tubing or band lighting along building structures
   e. Searchlights.
   f. Flashing lights.
   g. Illumination of entire buildings. Building illumination shall be limited to security lighting and lighting of architectural features authorized by the designated Approving Authority in conjunction with the required development permit(s).
   h. Roof mounted lights except for security purposes with motion detection and full shielding so that the glare of the light source is not visible from any public right-of-way.

3.9-C.1: The final project design shall be reviewed by the Sheriff's Office to determine if it provides adequate access, security lighting, and other factors affecting police response. The final map shall incorporate security measures required by the Sheriff's Office.

3.9-F.1: If the County has not adopted additional funding for the Emergency Medical Services (EMS) system at the time of approval of the Development Agreement, then the applicant shall agree within the Development Agreement to pay any fees that the County adopts for EMS funding prior to and/or within five years of approval of the Development Agreement.

3.9-H.1: The applicant shall enter into an agreement with the Willow County Water District to pay a capital improvement fee (estimated at $400,000) to fund the project’s share of the replacement and expansion of the Fircrest Drive water storage tank.

3.9-M.2: Construct a soccer field or ballfields on the larger proposed park. The soccer field/ballfields will be available for public use.

   OR

The project applicant will agree to pay the County’s park in-lieu fee when the County adopts the fee program. If the County has not adopted such a fee by 2012, then the applicant will be required to construct the soccer field or ballfields. The applicant shall notify in writing all future homebuyers on the project that the park may be developed with an active playfield at some point in the future.

3.9-O.1: The project shall be designed and constructed to minimize risk of wildfire destroying residences. The Ukiah Valley Fire District shall review project plans and determine in writing that adequate access, emergency response, and fireflow are available, and that the project complies with the most current State requirements for development in the wildland/urban interface. Final project design shall conform with any changes that the District requires.
3.9-R.1: All potential toxic wastes and materials shall be removed and/or remediated prior to site grading. The applicant shall do the following, as recommended in the Phase I Environmental Site Assessment:

- Abandon any inoperable water supply wells on the site following all the requirements of the Mendocino County Division of Environmental Health.

- Collect soil samples in the area of the former underground storage tank and the aboveground fuel storage tank. The soil samples shall be tested for Total Petroleum Hydrocarbons as gasoline and the constituents benzene, toluene, ethylbenzene, xylenes, fuel oxygenates, lead scavengers, and total lead. Results of the testing shall be provided to the Mendocino County Division of Environmental Health. If the Division determines that additional testing or remediation is required, the applicant shall fulfill all County requirements.

- If volatile organic compounds are discovered on the site, a human health risk assessment will be performed per requirements of the County Division of Environmental Health. That assessment will identify measures needed to ensure that workers and future residents are not exposed to County- and State-defined harmful levels of these compounds.

- Dispose of any waste oil, lubricants, paints, or other liquids in accordance with all applicable regulatory requirements.

- Investigate the fuel source for the prune dryer that formerly was located on the west side of the site to determine its fuel source. If it was gasoline, then conduct soil tests at that site as described above.

- Assess whether the workshop/storage building has the potential for lead paint or asbestos. If so, then demolition shall follow all requirements established by the Mendocino County Division of Environmental Health.