

City of Woodland

REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR
AND CITY COUNCIL

DATE: February 19, 2008

SUBJECT: **Approve Payment Plan for Utility Connection Fees for 1534
Hutchison Valley Drive**

Report in Brief

The property owner for 1534 Hutchison Valley Drive (Paul Hutchison) has requested to connect to City water and sanitary sewer services. Due to his limited financial resources he has requested that the City accept payment over time and provide a payment plan for the connection fees. The connection fees for water and sewer service are \$8,147. As the connection to City water and sanitary sewer supports public health and safety, the City has been supportive of previous requests from residents to pay connection fees through a payment plan under the conditions described herein.

Staff recommends that the City Council approve the connection of City water and sanitary sewer to the residence at 1534 Hutchison Valley Drive with the fees financed through a payment plan as stipulated in the attached Promissory Note secured through a Deed of Trust as described herein.

Background

For many years Hutchison Valley Drive has been an underdeveloped area of the City with a few houses on a dirt road served by a private well and septic system. Recently a private development has purchased most of the land surrounding the dirt road and constructed public improvements to serve a number of lots for the construction of new houses (approximately 22 single family dwellings and duplexes). There is one remaining resident and property owner along Hutchison Valley Drive (Paul Hutchison) who is still on a private well and septic systems which are substandard, old and failing. There are now functional sewer and water mains on Hutchison Valley Drive that are readily available to the property.

The property owner has requested to connect to the City water and sanitary sewer, however, due to his limited income (retired on fixed income), and the cost to improve the plumbing within his home to connect to the water and sewer, he has requested a five year payment plan. Total connection fees associated with the utility service are \$8,147.

In response to this request the City Attorney has prepared a Promissory Note secured by a Deed of Trust to record against the property. The payment plan includes an annual interest rate of 6% with a payment schedule prepared by the Finance Department. The payment plan and Promissory Note and lien document requires the City Council's approval in order to be implemented.

Discussion

It is required by City ordinance (section 23C of the Municipal Code) for properties within the City to connect to City utilities when facilities are available. Furthermore, it is in the best interests of safe, clean ground water and general public health to eliminate well and septic systems within the City.

The Public Works Department and the Finance Department are supportive of this arrangement to facilitate this property owner's connection to City water and sewer. With the note recorded against the property (lien deed of trust) and a 6% interest on the payment, the City's cost to administer the payment plan is covered and the financial risk is minimal.

If the City Council approves the payment plan, Promissory Note and Deed of Trust, staff will finalize the document and accept it upon execution of the agreement by the property owner. Payments will start upon connection to the City's utility system.

Fiscal Impact

The total connection fees to be financed over the five years are \$8,147. These fees are charged against the City Water and Sewer Enterprise Funds. Interest charges of 6% associated with the payment plan will offset City administrative costs. Providing the Promissory Note secured by the Deed of Trust minimizes the financial risk to the City.

Public Contact

Posting of the City Council agenda Staff has met in person with the property owner and discussed the terms of the agreement.

Alternative Courses of Action

1. Approve the connection of City water and sanitary sewer to the residence at 1534 Hutchison Valley Drive with the fees financed through a payment plan as stipulated in the attached Promissory Note and Deed of Trust as described herein.
2. Approve a payment plan for the property owner and not require a Promissory Note and Deed of Trust.
3. Require the property owner make a lump sum payment of \$8,147.00 upon connection.

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Recommendation for Action

Staff recommends that the City Council approve Alternative No. 1.

Prepared by: Bruce Pollard
Senior Civil Engineer

Reviewed by: Barry Munowitch
Assistant City Manager

Mark G. Deven
City Manager

Attachments
Location Map
Draft Promissory note

DRAFT
PROMISSORY NOTE
SECURED BY DEED OF TRUST

Woodland, California

To be filled in upon execution, 2008

For value received, the undersigned (herein "Borrower", whether one or more), promises to pay to the CITY OF WOODLAND, a municipal corporation ("Lender"), to the attention of the City Engineer at 300 First Street, Woodland, California 95695, or at any other place that may be designated in writing by Lender, the principal sum of eight thousand one hundred forty-seven dollars (\$8,147.00) with interest from the date hereof on unpaid principal at the per annum rate of six percent (6.00%). In no event shall this interest rate exceed the rate allowed under the usury law then in effect in the State of California. Any delinquent payments shall bear interest at the same rate. All sums due are payable in lawful money of the United States of America.

This Promissory Note ("Promissory Note") is secured by a Deed of Trust of the same date as this Note, executed by Borrower, as Trustor, in favor of Lender, as Beneficiary ("Deed of Trust"), and encumbering the real property described in the Deed of Trust ("Property"). The holder of this Note will be entitled to the benefits of the security provided by the Deed of Trust and will have the right to enforce the covenants and agreements of Borrower contained in the Deed of Trust.

Borrower shall pay to Lender the principal amount of this Promissory Note in Sixty successive monthly principal and interest payments of one hundred fifty seven dollars and fifty cents (\$157.50), commencing thirty (30) days from the date first written above and continuing on the first of each month until _____, 20__, at which time the entire outstanding

principal balance of this Promissory Note, together with all accrued and unpaid interest, shall be due and payable.

If Borrower fails to make any required payment on or before ten (10) days following the date upon which it becomes due, Borrower shall pay a late charge equal to ten percent (10%) of the amount of the unpaid payment. All payments on this Promissory Note will be applied first to the payment of any costs, fees, late charges, or other charges incurred in connection with the indebtedness evidenced by this Promissory Note; next, to the payment of accrued interest; then to the reduction of the principal balance.

If:

- (a) Borrower fails to pay when due any sum payable under this Promissory Note; or,
- (b) Borrower fails to pay any indebtedness secured by, or fails to perform any covenant or agreement under, the Deed of Trust; or,
- (c) Borrower agrees to or actually sells, conveys, transfers, disposes of, or further encumbers the Property, or any part thereof, or any interest therein, without first obtaining the written consent of the holder of this Promissory Note,

then Borrower shall pay to Lender all sums owing under this Promissory Note without deduction, offset, or counterclaim of any kind. The relationship of Borrower and Lender under this Promissory Note is solely that of borrower and lender, and the loan evidenced by this Promissory Note and secured by the Deed of Trust will in no manner make Lender the partner or joint venturer of Borrower.

In the event of a dispute arising under this Promissory Note, the prevailing party shall be entitled to reasonable attorneys fees and costs in accordance with California Civil Code § 1717. For purposes of this Promissory Note, a dispute shall be construed as arising under this Promissory Note if its subject matter pertains to one or more terms of the Promissory Note, the Deed of Trust, or any other document(s) pertaining to the indebtedness that is evidenced by this Promissory Note. Should either party be entitled to attorneys fees as the result of a dispute arising under this Promissory Note or the Deed of Trust, that party shall also be entitled to interest at a rate of ten percent (10%) per annum which shall begin to accrue as of the date of the demand and shall continue until paid.

No previous waiver, failure or delay by Lender in acting with respect to the terms of this Promissory Note or the Deed of Trust shall constitute a waiver of any breach, default, or failure of condition under this Promissory Note or the Deed of Trust. A waiver of any term of this Promissory Note or the Deed of Trust must be made in writing and will be limited to the express written terms of the waiver. All notices required or permitted in connection with this Promissory Note will be in writing and will be given at the place provided in the Deed of Trust for the giving of notices.

Borrower may make principal prepayments on any installment due date in addition to the regularly scheduled payment mentioned above with no penalty for such prepayment.

If any term or provision of this Promissory Note is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provision or part thereof shall be stricken from this Promissory Note and such provision shall not affect the legality, enforceability, or validity of the remainder of this Promissory Note.

If any provision or part of this Promissory Note is stricken in accordance with the provisions of this paragraph, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

Time is of the essence with respect to every provision of this Promissory Note. This Promissory Note will be construed and enforced in accordance with California law, except to the extent that Federal laws preempt State law, and all persons and entities in any manner obligated under this Note consent to the jurisdiction of any Federal or State Court within California having proper venue and also consent to service of process by any means authorized by California or Federal law.

Borrower acknowledges that this Promissory Note and the Deed of Trust have been prepared by Best Best & Krieger, LLP (“BBK”) and that BBK has acted solely as Lender’s counsel in preparing the Promissory Note and Deed of Trust and negotiating the transactions evidenced thereby.

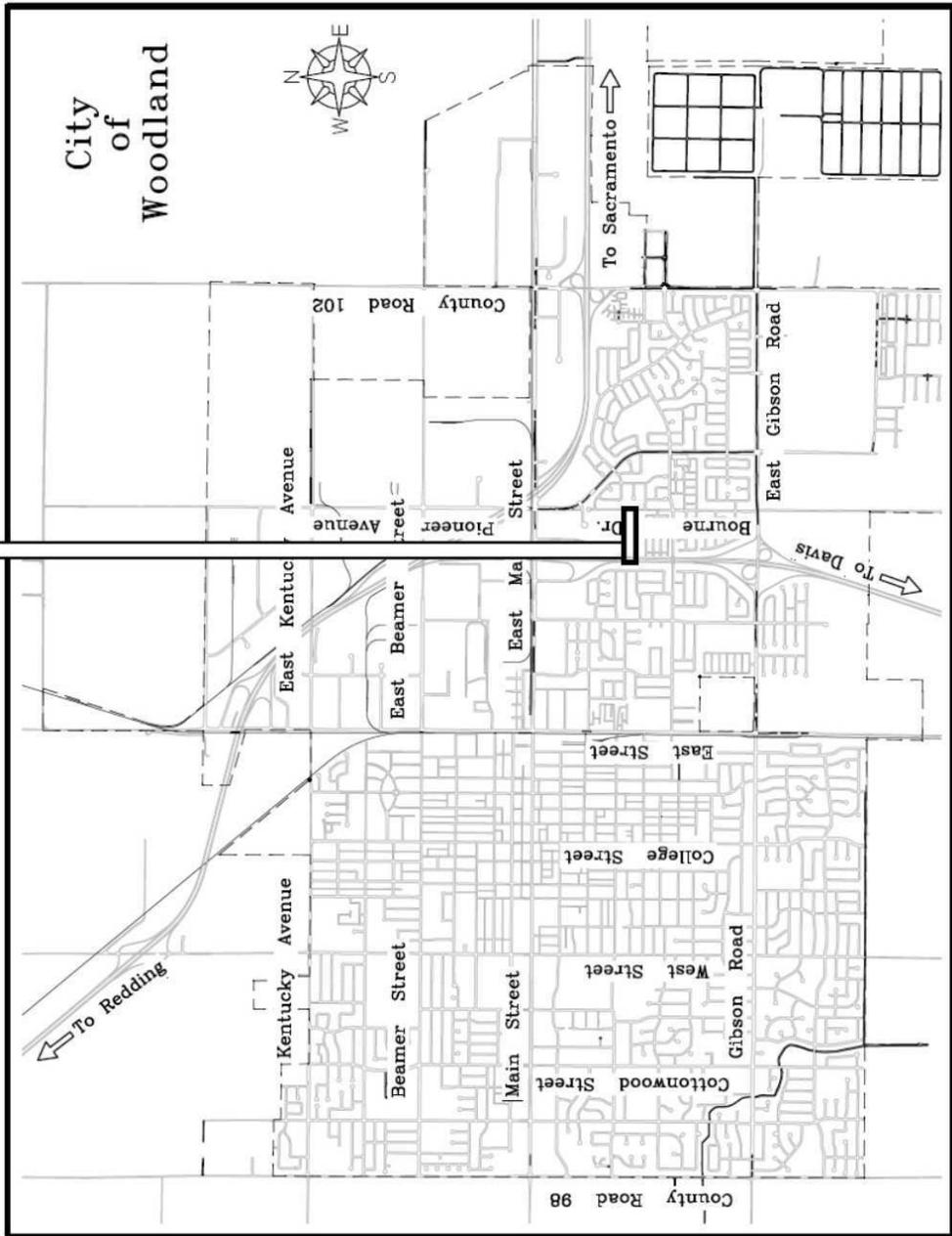
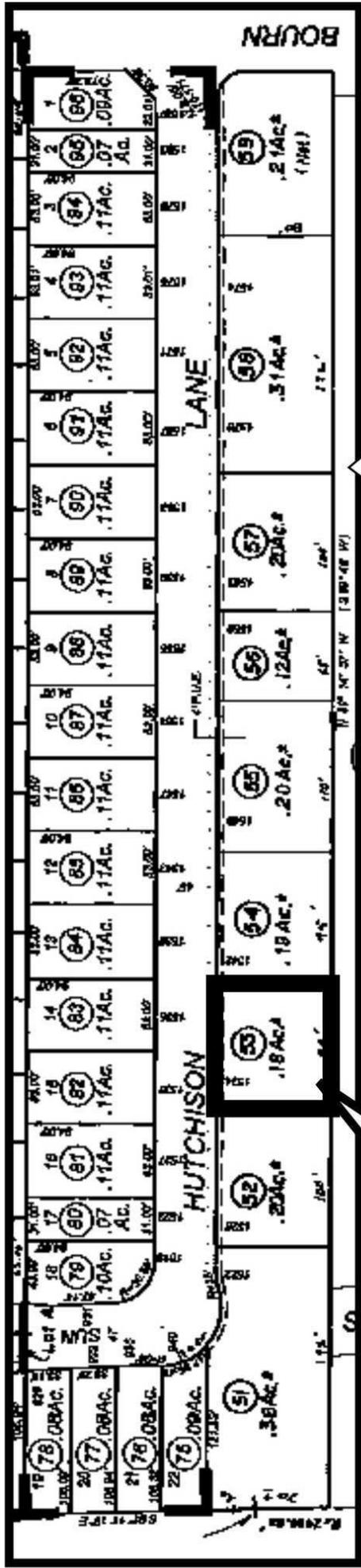
Borrower further acknowledges that Borrower has been informed of and has waived its right to be represented by separate, independent counsel in the negotiation and preparation of the Promissory Note and Deed of Trust and that the contents and effect of those instruments are acknowledged, understood, and accepted in full by Borrower.

Dated: _____, 2008

HUTCHISON FAMILY TRUST

By: _____
Paul B. Hutchison, Trustee

By: _____
Edna L. Hutchison, Trustee



**1534 Hutchison
Valley Lane**