



City of Woodland

REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR
AND CITY COUNCIL

DATE: October 7, 2008

SUBJECT: Loan Agreement with Woodland Development Company for
Purchase of Conservation Easement

Report in Brief

Woodland Development Company is required to purchase a conservation easement for mitigation of the loss of Swainson's hawk habitat in association with the development of the Gateway Market Place. The developer has proposed to fund the \$322,885 purchase price of the land through a loan from the City utilizing part of the allocation set aside for the City's purchase of the right-of-way property for the on ramp from County Road 102 to southbound I-5. These funds are included in the project budget with an expected purchase price of \$1.5 to \$1.9 million. The attached loan agreement summarizes the terms and conditions of the loan, including the accumulation of interest that would accrue to the City.

Staff recommends that the City Council approve the loan agreement with Woodland Development Company, LLC for the loan of \$322,885 utilizing the funds set aside for the City's purchase of the right-of-way property to facilitate the developer's purchase of the Swainson's hawk conservation easement.

Background

The City's existing 2006 development agreement with Woodland Development Company calls for the City to acquire a piece of property from the developer for conveyance to Caltrans for use as right-of-way. The City and the developer expect to finalize negotiations shortly concerning the purchase price of the approximate four acre site to be used as right-of-way. However, in the meantime, the developer needs funds to purchase a conservation easement in order to provide mitigation for the loss of Swainson's hawk habitat as part of the development of the Gateway Market Place project.

The developer has found suitable land to mitigate the loss of the Swainson's hawk habitat near Woodland within the County. In order to fund \$322,885 purchase price, the developer has proposed to utilize part of the funds allocated by the City to purchase the right-of-way property. Staff felt this request could be accommodated if an appropriate loan agreement was developed that would protect

the City and provide interest on the funds loaned to the developer. The attached agreement was developed in order to meet these conditions.

Discussion

The proposed loan agreement would provide Woodland Development Company with funds needed to purchase the conservation easement. The developer is required to repay the loan when the City tenders payment for the right-of-way land, which is expected to occur within the next two months. At this time the City and the developer are in the process of completing the appraisal of the property. While the appraisal is not yet completed, the purchase price for the approximate four acre property should range from \$1.5 to \$1.9 million. These funds are included in the project budget for the on ramp.

The attached agreement includes appropriate conditions that protect the City. The City can demand immediate repayment if the City is ready to pay for the right-of-way land and the developer has not provided clean title to the land by January 31, 2009. The loan will bear interest at 5%, and will be secured by a pledge of the developer's interest in the right-of-way property. This action will not have an adverse impact on the schedule for completion of the on ramp. Construction of the on ramp is expected to begin in Spring 2009 and be completed by the end of Summer 2011.

Fiscal Impact

Making this loan should have a small positive fiscal impact to the City, since the interest rate on the loan is slightly higher than the interest rate the City receives on its funds.

Recommendation for Action

Staff recommends that the City Council authorize the Mayor to execute the attached loan agreement and that City staff disburse the loan funds.

Prepared by: Andrew J. Morris
City Attorney

Reviewed by: Barry Munowitch, AICP
Assistant City Manager

Mark G. Deven
City Manager

Attachment: Loan Agreement

LOAN AGREEMENT

This Loan Agreement (“Agreement”) is entered into this _____ day of _____, 2008 by and between the City of Woodland (“City”) and Woodland Development Company, LLC (“Developer”). City and Developer may be referred to in this Agreement as “Party” or “Parties” as the context may require.

RECITALS

A. The Parties are parties to that certain Restated and Amended Development Agreement, dated August 10, 2006 (the “Development Agreement”), under which City is obligated to purchase from Developer certain real property bearing Yolo County Assessor’s parcel number 27-300-86 (the “Onramp Property”) to be subsequently re-conveyed to the California Department of Transportation.

B. The Development Agreement calls for the purchase price for the Onramp Property to be determined through a specified valuation process, which is not yet complete.

C. Developer has requested that City provide a loan of funds which Developer intends to use to purchase a conservation easement to satisfy Developer’s obligation to mitigate to for the loss of Swainson’s Hawk habitat resulting from the development of the Gateway Market Place project within City limits.

D. The Parties wish to enter into this Agreement to establish the terms and conditions under which City will lend Developer the requested funds.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby agree as follows:

AGREEMENT

1. RECITALS. The Parties acknowledge that the Recitals are true and correct and incorporate by reference those Recitals into this Agreement.

2. LOAN AMOUNT. City hereby agrees to make one or more loans to Developer on the terms and conditions set forth herein, in a principal amount of Three Hundred Twenty-Two Thousand Eight Hundred Eighty-Five Dollars (\$322,885.00) (collectively, the "Loan"). The Loan may be disbursed in one or several installments, as may be mutually agreed to by the Parties. The Parties acknowledge and intend that although the eventual price of the Onramp Property may be offset by the then-current outstanding Loan amount, the Loan is not intended to represent prepayment for the Onramp Property.

3. INTEREST. The Loan shall accrue interest at the annual rate of five per cent (5%) from the date of its disbursement (or the disbursement of each installment or portion thereof) until paid.

4. PAYMENT. The entire balance of unpaid principal and accrued interest shall be due and payable on the date City pays Developer the agreed upon purchase price for the Onramp Property; provided that, City shall have the right to accelerate such payment and demand immediate payment in full if (i) City has conditionally tendered the purchase price determined under the valuation process specified in Recital B, above (less the outstanding balance of the Loan, and conditioned upon the provision by Developer of title to the Onramp Property free and clear of all encumbrances except encumbrances specifically permitted by the Development Agreement), and Developer has not provided City with title to the Onramp Property, free and clear of all encumbrances except any encumbrances specifically permitted by the Development Agreement, by 5:00 pm on January 31, 2009; or (ii) Developer breaches any obligation it has under the Development Agreement.

5. BREACH. Developer acknowledges that its breach of any obligation under this Agreement shall constitute a material breach and default of Developer's obligations under the Development Agreement.

6. PLEDGE OF SECURITY. For so long as the Loan or any portion thereof remains outstanding, Developer hereby pledges, as security for the repayment of the Loan, to the extent allowed by law, its interest in the Onramp Property as of the date of this Agreement. Upon request from City, Developer shall execute a promissory note, deed of trust, and/or such other documents as City may request to evidence the pledge contained herein.

7. USE OF LOAN FUNDS. Developer agrees that so long as the Loan is outstanding, it will use the Loan funds solely for the purpose stated in Recital C above.

8. CITY'S RIGHTS AND REMEDIES. City shall at all times have the rights and remedies of a secured party under the California Commercial Code ("Code") in addition to the rights and remedies provided herein or in any other agreement or document executed by Developer. The rights and remedies of City under this Agreement shall not be exhausted by the exercise of any of the rights or remedies of City pursuant to this Agreement or any other agreement between Developer and City or any action, proceeding or any number of successive actions or proceedings, unless and until all of the sums owing City by Developer shall be fully paid, performed and discharged. All rights and remedies afforded to City pursuant hereto or under any other agreement at any time in effect between Developer and City (whether or not there are other parties in addition to Developer and City) shall be separate and cumulative and in addition to any and all rights or remedies available at law, in equity or otherwise, and no one of such rights or remedies, whether exercised or not, shall be deemed to be in exclusion of any other right or remedy available and shall in no way limit or prejudice any other right

or remedy. The exercise of any one of such rights or remedies shall not be deemed a waiver of, or an election not to exercise, any other right or remedy.

9. INDEMNIFICATION. Developer shall indemnify, hold harmless and defend City from and against any and all claims, losses, liabilities, damages, costs, and expenses, including interest, penalties, and reasonable attorneys' fees and costs, incurred or suffered, which arise, result from, or relate to its breach of or failure to perform any of its agreements, covenants, obligations, representations, or warranties contained herein. Such indemnity shall survive the termination or discharge of this Agreement.

10. ENFORCEMENT. In the event of a breach of this Agreement, the Parties have the full range of legal and equitable remedies available at law, including injunctive relief and specific performance, to enforce the terms of this Agreement. The Parties shall meet and confer and attempt to resolve their differences informally before commencing any action to enforce this Agreement.

11. AUTHORITY TO EXECUTE AGREEMENT. The Parties each represent, warrant and agree that: (1) each party has made such investigation of the facts and matters pertaining to this Agreement that it deems necessary; (2) each party has had an opportunity to consult with its attorney regarding the contents of this Agreement, the advisability of making the settlement provided for herein, and the advisability of executing this Agreement; (3) each party or the responsible agent of the party has read this Agreement and understands the contents thereof; (4) each party has not assigned, transferred, or granted, or purported to assign, transfer, or grant, any of the claims, rights, causes of action, damages, liabilities, losses, or costs disposed of by this Agreement; and (5) each person signing this Agreement has the full authority to sign this Agreement on behalf of the party for which he or she is signing and also has the ability to bind that party to the obligations and commitments set forth in this Agreement. This Agreement shall be effective immediately upon its execution by all of

the Agreeing Parties. The Agreeing Parties agree to execute and deliver any other instrument or document convenient or necessary to carry out the terms of this Agreement.

12. WAIVER. Failure of any party to insist upon strict observance of, or compliance with, all of the terms of this Agreement in one or more instances, shall not be deemed to be a waiver of a party's right to insist upon such observance or compliance with the other terms of this Agreement.

13. SEVERABILITY. Should any provision of this Agreement be deemed void, unlawful, invalid, or otherwise unenforceable, that provision shall be severed, and the remaining provisions shall continue to be valid and fully enforceable.

14. SUCCESSORS AND ASSIGNS. This Agreement shall bind and inure to the benefit of the parties hereto and their respective representatives, affiliates, heirs, executors, administrators, successors, and assigns.

15. ATTORNEYS' FEES AND COSTS. If any party brings an action or other proceeding to interpret or enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover costs and expenses, including reasonable attorneys' fees, in such amounts as may be determined by the Court, in addition to any other relief awarded.

16. APPLICABLE LAW AND VENUE. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of California, and any action to interpret or enforce this Agreement shall be brought and maintained exclusively in the courts of and for Yolo County, California.

17. NO THIRD PARTY BENEFICIARIES. This Agreement is not intended to, and will not be construed to, create any right on the part of any third party to bring an action to enforce any of its terms.

18. ENTIRE AGREEMENT; MODIFICATION. This Agreement is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. Each party has cooperated in the drafting and preparation of this Agreement, and this Agreement shall not be construed against any party on the basis of drafting. This Agreement may be amended only by an agreement in writing, signed by each of the parties hereto.

CITY OF WOODLAND

By _____
Marlin "Skip" Davies, Mayor

Date: _____

Attest:

By _____
Sue Vannucci, City Clerk

Approved as to Form:

By _____
Andrew J. Morris, City Attorney

WOODLAND DEVELOPMENT COMPANY, LLC

By _____
Paul S. Petrovich, Managing Member

Date: _____