



MEMORANDUM
COMMUNITY DEVELOPMENT RESOURCE AGENCY
COMMUNITY DEVELOPMENT SERVICES DIVISION
County of Placer

TO: Honorable Board of Supervisors **DATE:** December 6, 2022
FROM: David W. Kwong, Community Development Resource Agency Director
BY: Michele Kingsbury, Deputy Director
SUBJECT: Tier II Fee Deferral Request for the Regional University Specific Plan Community Property

ACTIONS REQUESTED

1. Approve a request for a Tier II Fee deferral by HC Real Estate Holding, Inc., a Michigan Nonprofit Corporation, for Phase 1 of the Regional University Specific Plan Community Property, and authorize the Chair of the Board of Supervisors to execute a Deferred Fee Agreement with HC Real Estate Holding, Inc. a Michigan Nonprofit Corporation.
2. Determine that the proposed action is not a project pursuant to California Environmental Quality Act Guidelines section 15378, and that no changes are needed to the previously approved environmental impact report under section 15162.

BACKGROUND

Placer County, the Cities of Roseville, Rocklin, and Lincoln (Local Jurisdictions) and South Placer Regional Transportation Agency (SPRTA) entered into a Memorandum of Agreement (MOA) dated May 27, 2009, for the future funding of the regional Placer Parkway (Parkway) project. The agencies agreed that a fee (Tier II Fee) would be implemented through development agreements for projects with specific plans within each Local Jurisdiction to support the funding of the Parkway. In Placer County, only the Placer Vineyards, Regional University, and Placer Ranch specific plans are subject to the provisions of the MOA and required to pay the Tier II Fee to support the construction of the Parkway.

As an aftermath to the 2008 recession, the Local Jurisdictions desired to provide an opportunity to facilitate development while balancing the need for adequate and timely funding for the design and construction of the Parkway. As a result of this desire, the first amendment to the MOA was approved by the Board on July 9, 2013. The first MOA amendment allowed for Tier II Fee deferrals up to a 30-year period; however, the deferral program would be terminated if a maximum dollar amount or if a maximum number of dwelling unit equivalents (DUEs) were reached. There were also provisions to reduce the amount eligible for deferral from 50 percent to 30 percent of the Tier II Fee based on a maximum number of DUEs or calendar deadline, whichever came first.

On April 24, 2017, the Board of Supervisors (Board) approved a second MOA amendment. The second MOA amendment simplified deferral provisions and allowed for the deferral program to have a maximum fee deferral of not more than 50 percent of Tier II Fees and set a deferral program termination date of January 1, 2035. Section 2 of the second MOA amendment contains details of the program criteria which kept in place previous provisions that allow developers to defer a portion of the Tier II Fee for 30 years at which time a second tranche bond from a Community Facilities District, or other approved financing mechanism, would then provide the funds to pay off the Tier II Fee deferral.

To implement the Tier II Fee deferral program, the Board adopted on December 1, 2020, Ordinance 6054-B, adding Chapter 15, Article 15.100 (Tier II Development Fee Deferral Program) to the Placer County Code. Chapter 15, Article 15.100, outlined the Tier II Development Fee Deferral Program consistent with the MOA and subsequent amendments.

On December 7, 2021, the Board of Supervisors approved the first Tier II Deferral Agreement with Lennar Homes for Property 1A within the Placer Vineyards Specific Plan. The Property 1A Deferral Agreement covered 1,285 active adult residential units. HC Real Estate Holding, Inc., a Michigan Nonprofit Corporation who owns the Regional University Specific Plan (RUSP) seeks a similar Tier II Fee Deferral Agreement that would be conditioned upon satisfactory formation of a CFD to provide for the primary repayment of the Tier II Fees deferred.

The request before the Board today is to consider a Tier II Fee Deferral Agreement for Phase 1 of the Community Property within the RUSP. On November 4, 2008, the Board of Supervisors approved the RUSP. The Specific Plan was designed as a master planned community with a mixture of land uses including 4,387 residential units, commercial centers, parks, open space, and a regional university on approximately 300 acres. The project divided the 1,159-acre site into two major components: The University and the Community.

The RUSP was amended in 2019 and an Amended and Restated Development Agreement (ARDA) was also approved. The ARDA indicates in Section 3.72 that the “Landowners agree to pay the Tier II Fee in effect at the time of issuance of building permit.” Section 3.7.3 states:

Landowners may pursue a fee deferral option as outlined in the “Second Amendment to the Agreement to Memorandum of Agreement, Tier II Development Fee Program”, effective May 24, 2017 (“Second Amendment to Tier II Fee Program”), provided a County Tier II Fee deferral program has been established and/or is in effect at the time of Landowner’s request for deferral. If Landowners seek to utilize said deferral option within the context of establishment of a CFD, said option is subject to additional review by the South Placer Regional Transportation Authority pursuant to the terms of the Second Amendment to Tier II Fee Program. Payment of deferred Tier II Fees is subject to the terms of the Second Amendment to Tier II Fee Program and subject to the deferred payment provisions of the CFD. Landowners agree the obligation to pay all deferred Tier II Fees shall be Landowners’ sole responsibility. Said obligation shall survive the termination or expiration of this Agreement.

The Board of Supervisors is considering as a separate item on this agenda to approve the First Amendment to the Amended and Restated Development Agreement for RUSP as well as the Large Lot Vesting Tentative Subdivision Map for Phase 1 in the Community Property as well as the Phase 1 Small Lot Vesting Tentative Subdivision Map within the Community Property that will create 973 lots, consisting of 919 low density residential lots (203.7 acres), 54 medium density residential lots (8.3 acres), one commercial lot (15.6 acres), one neighborhood park (10.8 acres), one school site (13.6 acres), three public/quasi-public lots (6.5 acres), five open space drainage lots (37.10 acres), 51.5 acres of major roadways, and 15.26 acres of landscape lots within the previously approved Regional University Specific Plan area.

Based upon current fee charts, the Tier II Fees for the RUSP Community Property Phase 1 are:

Unit Type	Number of Units	Square Footage	Dwelling Unit Equivalent (DUE)	Total DUEs	Fee per DUE (FY 22/23 \$\$)	Total Fees	Deferral Amount (50%) – see notes below
Low Density Residential (LDR)	919		1.0	919	\$8,382.18	\$7,703,223	\$3,851,612
Medium Density Residential (MDR)	54		1.0	54	\$8,382.18	\$452,638	\$226,319
Community Planned Development (CPD)		132,858	1.272	168.995	\$4,542.58	\$767,673	\$383,836.65
Total	973	132,858		1,141.995		\$8,923,534	\$4,461,767

Placer County Code Section 15.100.040, subsection (C), requires a Tier II Development Fee deferral to be acknowledged by an agreement approved by the Board. A copy of the Deferred Fee Agreement for your consideration is included as Attachment A. Key provisions of the Deferred Fee Agreement are noted below:

- Owner is required to pay the Tier II Development Fees in effect at the time of building permit issuance. Developer shall pay the amount equal to 50% of the Tier II Development Fee at the time of issuance of each building permit within the Project but may defer the remaining 50% of the Tier II Development Fees as described below.
- Deferred Tier II Development Fees will be repaid through the collection of either a second bond sale or continuance of max tax collection (as defined in the second amendment to the MOA) until the fees are paid in full consistent with the requirements that all fees be paid within thirty (30) years of the initial deferral. Since RUSP has not set up a CFD that can implement a second bond issuance or continuance of max tax collection (as defined in the second amendment to the MOA) until the deferred Tier II Development Fees are paid in full, any Tier II Fee Deferral shall be contingent upon satisfactory evidence that the Owner has established such a CFD and that SPRTA has provided the County an approval letter.

ENVIRONMENTAL IMPACT

This action is not a project, as defined by California Environmental Quality Act (CEQA) Guidelines section 15378, and no changes are needed to the previously approved environmental impact report under Guidelines section 15162, since it is a funding change for a previously approved project. The Regional University Specific Plan project was the subject of its own Environmental Impact Report which was previously certified in 2008 by the Board of Supervisors. An addendum to the certified Final EIR was adopted by the Board of Supervisors on May 14, 2019. Approval of

the updated Fee Deferral Agreement will not result in the creation of any new environmental effects not previously considered with the certified Environmental Impact Report.

FISCAL IMPACT

RUSP's Phase 1 Community Property total Tier II Fees in FY 22/23 dollars are estimated at \$8,923,534, of which \$4,461,767 or 50% is proposed for deferral. The rates applied to the future commercial square footages will be based on the actual use proposed at the time of building permit issuance and may be different than the assumptions used to estimate these fees. The amount of the deferred fee shall be based upon the amount of the future fee estimated to be charged at the time of payment of the deferred amount.

Section 3 of the second MOA amendment indicates that "All qualifying properties taking advantage of the fee deferral program are obligated to future payment of the deferred fee amount within thirty (30) years from the date of initial deferral. The guarantee of future payment will come in the form of either:

- (1) A second issuance of the CFD which will be collected with either a second bond sale or continuance of max tax collection (defined as the maximum special tax that can be collected as determined in the rate and method of apportionment adopted with a CFD) until the fees are paid in full or;
- (2) Other financing mechanisms as approved by the SPRTA Board until the fees are paid in full. The obligations of the original CFD, which shall run with the land, will specify that the deferred Tier II Development Fees will be paid with proceeds from the second issuance of the CFD or other approved financing mechanism consistent with the requirements that all fees be paid within thirty (30) years of the initial deferral and authorize the city and/or county having jurisdiction to continue to collect taxes."

The primary source of repayment for Deferred Tier II Development Fees is through the collection of either a second bond sale or continuance of max tax collection (as defined in the MOA) until the fees are paid in full consistent with the requirements that all fees be paid within thirty (30) years of the initial deferral. Owner represents that it will establish a CFD with the ability to implement a second bond issuance or continuance of max tax collection (as defined in the MOA) until the deferred Tier II Development Fees are paid in full. In addition, approval of the Tier II Fee Deferred will also be conditioned upon the South Placer Regional Transportation Authority determining that the proposed fee deferral is consistent with the MOA and future CFD can support up to approximately 1,141.995 DUEs for deferral up to 50 percent of the Tier II Fee before January 1, 2035 or when the MOA II as may be amended from time to time expires.

If for whatever reason the second issuance of the CFD or other financing mechanism does not occur, pursuant to the second MOA amendment, the County will be responsible for future payment of the deferred fees at such time as the fees were otherwise due to be paid. This obligation for repayment by the County shall be guaranteed utilizing all lawfully permitted amounts that may be pledged for security and shall survive the expiration of any applicable development agreement County's participation in the MOA. The extended term CFD, with a term loan enough to repay the deferred fees, is required to be established to mitigate any impacts on the County's General Fund.

ATTACHMENT

Attachment A - Deferred Fee Agreement

DEFERRED FEE AGREEMENT

This Deferred Fee Agreement (the "Agreement") is made and entered into this 6th day of December 2022, by and between the COUNTY OF PLACER, a political subdivision of the State of California ("County"), and HC REAL ESTATE HOLDING, INC., a Michigan Nonprofit Corporation ("Landowner").

RECITALS

WHEREAS, Landowner is the owner of that certain real property located in the Regional University Specific Plan (RUSP) area as depicted in Exhibit "A" attached hereto and incorporated herein by this reference (the "Community Property"). The first phase of development within the Community Property consists, in part, of the 919 low density units and 54 medium density units included within that certain small lot vesting tentative subdivision map adopted by Resolution No. _____, dated _____ and 132,858 square feet of commercial uses ("Phase 1").

WHEREAS, County and Landowner's predecessors-in-interest, Placer University Project, LLC, a California limited liability company and Placer University Community Property, LLC, a California limited liability company (collectively, the "LLCs"), previously entered into that certain Amended and Restated Development Agreement Relative to the Regional University Specific Plan, which was recorded on December 13, 2019, as Document No. 2019-0101401-00, in the Official Records of County (collectively with its amendments, the "ARDA").

WHEREAS, the LLCs assigned their respective interests in the ARDA to Landowner pursuant to that certain Assignment and Assumption Agreement Relative to Regional University Specific Plan Development Agreement, which was recorded on November 29, 2021, as Document No. 2021-0145436-00, in the Official Records of County.

WHEREAS, section 3.7.2 of the ARDA requires Landowner to pay the Tier II Fee (as defined therein) in effect at the time of building permit issuance

WHEREAS, Landowner may pursue a fee deferral option as outlined in section 3.7.3 of the ARDA and the Memorandum of Agreement, Tier II Development Fee Program, effective May 27, 2009, entered into between County and the Cities of Roseville, Rocklin, and Lincoln, and the subsequent First and Second Amendments thereto, entered into on September 10, 2013 and May 24, 2017 respectively (collectively, the "MOA").

WHEREAS, on December 1, 2020, County adopted an ordinance which established Chapter 15, Article 15.100 of the Placer County Code pertaining to the Tier II Fee Deferral Program; and

WHEREAS, Placer County Code Section 15.100.040, subsection (C), requires a Tier II Fee deferral to be acknowledged by an agreement approved by County's Board of Supervisors; and

NOW, THEREFORE, in consideration of the mutual promises contained herein, County and Landowner agree as follows:

SECTION 1. TIER II FEES

Landowner is required to pay the Tier II Fees in effect at the time of building permit issuance. Landowner shall pay the amount equal to fifty percent (50%) of the Tier II Fee at the time of issuance of each building permit within Phase 1 but may defer the remaining fifty percent (50%) of the Tier II Fees as described below.

SECTION 2. TIER II FEE DEFERRAL

The remaining balance of Tier II Fees for Phase 1 may be deferred as provided herein. Subject to Landowner's satisfaction of the requirements of Section 3 below, County hereby approves the deferral of fifty percent (50%) of the Tier II Fees for Phase 1, which consists of 973 residential dwelling units and up to 132,858 square feet of non-residential uses for a total dwelling unit equivalent (DUE) of 1,141.995 DUEs as further set forth in Exhibit "B" attached hereto and incorporated herein by this reference.

SECTION 3. PAYMENT OF DEFERRED TIER II FEES

Landowner shall take all steps necessary to form and implement a Community Facilities ("CFD") for Phase 1 with the ability to implement a second bond issuance and/or continuance of max tax collection (as defined in the MOA) until the deferred Tier II Fees are paid in full. Any such formation shall be subject to review by County and the South Placer Regional Transportation Authority pursuant to the terms of the MOA. Deferred Tier II Fees will be repaid through the collection of either a second bond sale or continuance of max tax collection until the fees are paid in full consistent with the requirements that all fees be paid within thirty (30) years of the initial deferral. In the event a CFD for Phase 1 consistent with the requirements of this Section 3 is not formed, Landowner shall not be permitted to defer payment of the Tier II Fees for Phase 1 as provided herein.

SECTION 4. AMOUNT OF DEFERRED TIER II FEE

The amount of the deferred fee shall be fifty percent (50%) of the Tier II Fee at the time of payment of the deferred amount. The calculation of the deferred fee shall be fifty percent (50%) of the Tier II Fee amount in place when the deferred amount is paid, which shall include calculations for inflation based upon consumer price index growth and reasonable factors as outlined in the MOA. Should the Tier II Fee Program be succeeded by another fee program, the amount of the deferred fee shall be fifty percent (50%) of the equivalent fee component in the successor fee program.

SECTION 5. CFD TO PAY DEFERRED FEES

Formation of a CFD for Phase 1 with the authorization and capacity to fund the deferred Tier II Fees as provided herein shall fully satisfy Landowner's obligation to pay the deferred portion(s) of the Tier II Fees.

SECTION 6. INDEMNIFICATION

Landowner, by execution of this Agreement, agrees to indemnify, defend and hold (collectively "indemnification") County, including elective and appointed boards, commissions, officers, agents, employees and consultants (each an "Indemnified Party" and collectively the "Indemnified Parties"), harmless from and against any and all claims, liabilities, losses, damages or injuries of any kind (collectively, "Claims") arising out of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees,

attorneys' fees, and related costs or expenses, and the reimbursement of County, its elected officials, officers, employees, and/or agents for all legal expenses and costs incurred by each of them. Landowner shall defend County as required by California Civil Code Section 2778, and with counsel reasonably acceptable to County. Landowner shall have no right to seek reimbursement from County for the costs of defense.

SECTION 7. THIRD PARTY LIABILITY

County does not assume any liability, duty, or obligation to Landowner's contractors, subcontractors or agents or any person or entity not a party to this Agreement by execution or performance of this Agreement and no contractors, subcontractors, agents, or any parties are third party beneficiaries of this Agreement.

SECTION 8. OBLIGATION TO PAY TIER II FEES

By entering this Agreement and supporting the formation of the CFD with the capacity and authority to pay the deferred portion of the Tier II Fees as provided herein, Landowner is not relieved of the obligation to pay the Tier II Fees in the manner and amount specified in the ARDA, except as otherwise expressly provided herein regarding the right to defer up to fifty percent (50%) of the Tier II Fees at the time of building permit issuance as provided herein.

SECTION 9. GOVERNING LAW AND VENUE

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Placer County, California. Each party waives any federal court removal and/or original jurisdiction rights it may have.

SECTION 10. AMENDMENTS

Amendments or modifications to this Agreement shall be in writing and executed by both parties.

SECTION 11. BINDING ON SUCCESSORS AND ASSIGNS

Each and every provision of this Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto, in the same manner as if such parties had been expressly named herein.

SECTION 12. ATTORNEY'S FEES

If any suit, action or proceeding in law or equity is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable costs and attorneys' fees.

SECTION 13. AUTHORITY TO ENTER INTO AGREEMENT

Landowner and County certify that they have the authority and are legally empowered to enter into this Agreement on behalf of their entity and to bind their party to the performance of its obligations hereunder. Landowner represents that its duly organized, validly existing and in good

standing under the laws of the State of California and has the power to own its property and carry on its business as now being conducted.

SECTION 14. NOTICES

Any notices, requests, demands or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally (FedEx and similar services, each of which is hereinafter called an "Express Courier," shall be considered to be personal service) or by electronic transmission (provided that the sender of the electronic transmission has received confirmation of successful transmission), and upon receipt, if mailed to the party to whom notice is to be given, by first-class mail, registered or certified, postage prepaid, return receipt requested, and properly addressed as follows:

If to County:

County of Placer
Community Development Resource Agency
3091 County Center Drive
Auburn, CA 95603
Attn: Michele Kingsbury
Principal Management Analyst
Email: mkingsbu@placer.ca.gov

If to Landowner:

HC Real Estate Holding, Inc.
33 East College Street
Hillsdale, MI 49242
Attention: Patrick H. Flannery
Email: pflannery@hillsdale.edu

With copies to:

Richard Moorehead
Engineering Manager
3091 County Center Drive
Auburn, CA 95603
Email: rmoorehe@placer.ca.gov

With copies to:

Julie Hanson
Email: jmrhanson@gmail.com

Ryan Claycomb
Email: ryanclaycomb@outlook.com

and

Placer County Counsel
175 Fulweiler Avenue
Auburn, CA 95603
Attn: Counsel
Email: KSchwab@placer.ca.gov

and

Hefner Law
2150 River Plaza Drive, Suite 450
Sacramento, CA 95833-3883
Attn: Chad Roberts
E-mail: croberts@hsmlaw.com

Either party may change its mailing address at any time by giving written notice of such changes to the other party in the manner provided herein.

SECTION 15. TERM

The term of this Agreement shall start on the day and year duly executed by all parties and shall remain in effect until receipt by County of all Tier II Fees payable with respect to such development, and performance of all obligations of County based on such buildout and Tier II Fees collected in accordance with the terms of this Agreement and other agreements. Landowner's deferral of Tier II Fees pursuant to this Agreement shall only be permitted for building

permits issued on or before January 1, 2035 unless such date is extended pursuant to an amendment to the MOA or successor program thereto.

SECTION 16. SEVERABILITY

If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

SECTION 17. EXHIBITS

The Exhibits attached hereto are hereby incorporated herein by this reference.

SECTION 18. ENTIRE AGREEMENT

This Agreement and Exhibits attached hereto constitute the entire understanding of the parties regarding the subject matter hereof.

SECTION 19. EFFECTIVE DATE

The date of execution by County of this Agreement, based in part on County's confirmation of the satisfaction of the foregoing conditions, shall be deemed to be the "**Effective Date**" of this Agreement. Upon execution of this Agreement by County, County shall insert the Effective Date in the Preamble to this Agreement and provide a copy of this fully executed and dated Agreement to Landowner.

SECTION 20. EXECUTION

The person(s) signing this Agreement on behalf of the Landowner each warrants and represents that he or she has the authority to execute this Agreement on behalf of the Landowner and to bind Landowner to the terms and conditions stated herein.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above-written.

COUNTY:

COUNTY OF PLACER,
a political subdivision of the State of California

LANDOWNER:

HC REAL ESTATE HOLDING, INC.,
a Michigan Nonprofit Corporation

By: _____
Its: Chair, Board of Supervisors

By: Patrick H. Flannery
Its: President

ATTEST:

By: _____
Its: County Clerk

APPROVED AS TO FORM:

By: _____
Its: County Counsel

Exhibit A

Depiction of Community Property

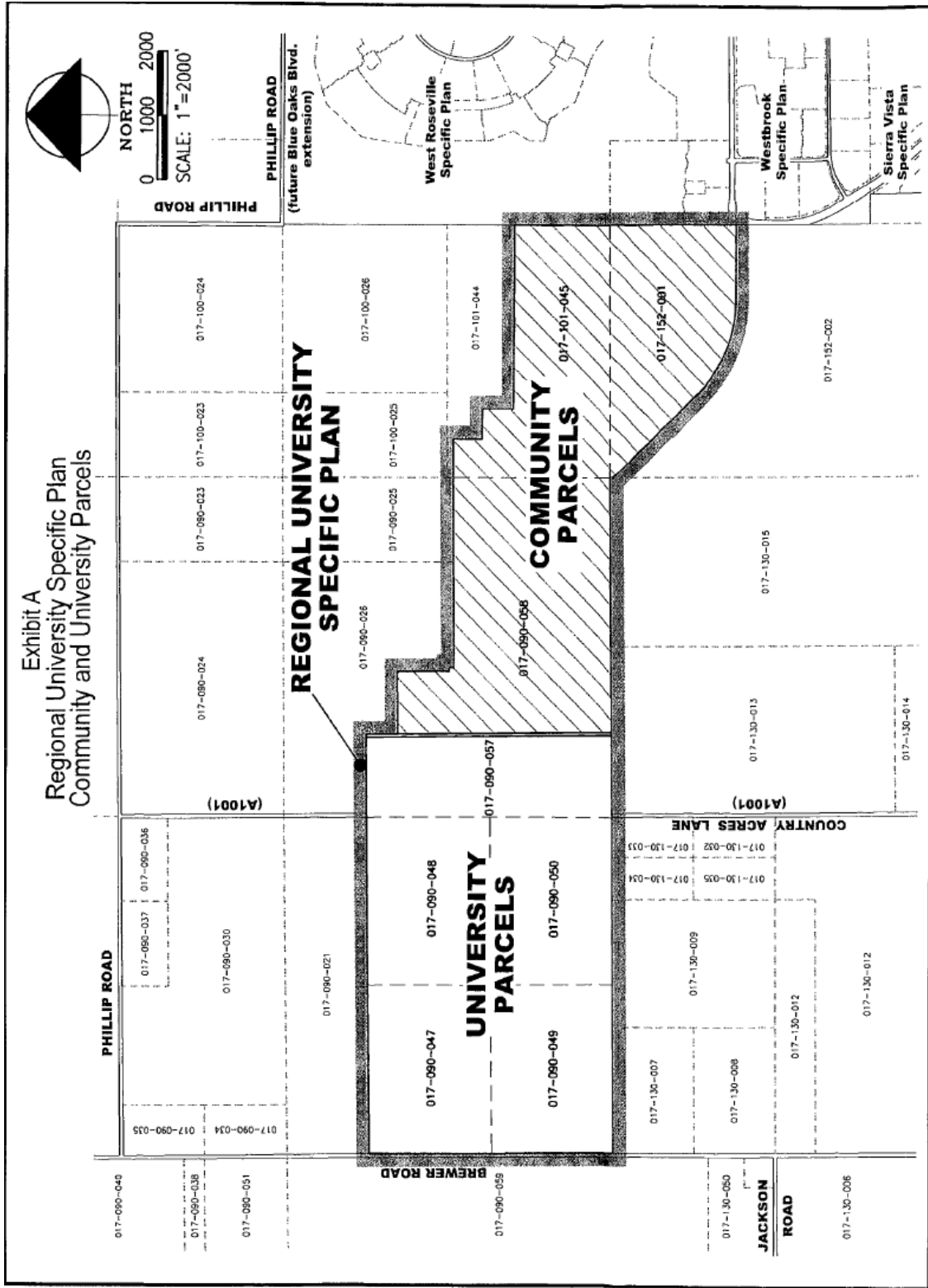


Exhibit B

Dwelling Unit Equivalent Table

Unit Type	Number of Units	Square Footage	Dwelling Unit Equivalent (DUE)	Total DUEs	Fee per DUE (FY 22/23 \$\$)	Total Fees	Deferral Amount (50%) – see notes below
Low Density Residential (LDR)	919		1.0	919	\$8,382.18	\$7,703,223	\$3,851,612
Medium Density Residential (MDR)	54		1.0	54	\$8,382.18	\$452,638	\$226,319
Community Planned Development (CPD)		132,858	1.272	168.995	\$4,542.58	\$767,673	\$383,836.65
Total	973	132,858		1,141.995		\$8,923,534	\$4,461,767

Notes:

1. Tier II Fees are adjusted on an annual basis. The actual amount of the fee is determined at the time of building permit issuance. The amount of the deferred fee shall be based upon the amount of the future fee estimated to be charged at the time of payment of the deferred amount. This calculation shall be made utilizing standard methodologies that include calculations for inflation based upon consumer price index growth and other reasonable factors.
2. The rates applied to the future commercial square footages will be based on the actual use proposed at the time of building permit issuance and may be different than the assumptions included above.
3. The DUEs are based on the ITE Categories assumed in the DEIR (Table 6.12-9) and the adopted Tier II Fee Sheet.