

Meeting Date: June 26, 2007



ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input checked="" type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Richard R. Bryan Agenda Item No. 0-1

Reviewed By: City Manager [Signature] City Attorney [Signature] Finance SW Other (Specify) \_\_\_\_\_

DATE: June 14, 2007

TO: City Council  
Community Development Commission

FROM: Curtis P. Cannon, Community Development Director  
Community Development Department [Signature] *Curtis P. Cannon*  
  
Matthew Winegar, Development Services Director  
Development Services Department

**SUBJECT: Third Amended Owner Participation Agreement (OPA) and Amendments to Related Documents, Assignment and Assumption Agreement of Development Agreement and OPA, and Hotel Option Agreement for the RiverPark Project Located Adjacent to and North of the Highway 101 Freeway, Adjacent to and East of the Santa Clara River, and West of Vineyard Avenue**

**RECOMMENDATION**

That City Council:

1. Approve the form of the Assignment and Assumption Agreement for the Development Agreement (A-6128).
2. Authorize the Mayor to execute the Assignment and Assumption for the Development Agreement (A-6128) upon the Mayor's review and approval of the designated Assignee upon legal formation of the Shea RiverPark assignee entity.

That Community Development Commission (CDC):

1. Approve and authorize the Chairman to execute a Third Amendment to Owner Participation Agreement (A-5965) between the CDC and RIVERPARK A, LLC that authorizes relocating the hotel from a 12 acre site to a 5 acre site and extending the hotel completion date.

2. Approve and authorize the Chairman to execute a Third Amendment to Agreement Containing Covenants Affecting Real Property (A-5966) between the CDC and RiverPark A, LLC.
3. Approve the form of the Assignment and Assumption Agreement for the OPA (A-5965).
4. Authorize the Chairman to execute the Assignment and Assumption for the OPA (A-5965) upon the Chairman's review and approval of the designated Assignee upon legal formation of the Shea RiverPark assignee entity.
5. Approve and authorize the Chairman to execute an Option Agreement for Purchase of Real Property and Joint Escrow Instructions (A-5965) between the CDC and RIVERPARK A, LLC that enables the CDC to assume title to the hotel site in the event of developer default.

## **DISCUSSION**

RiverPark is a 700-acre mixed use community located in the northwest portion of the City. Existing project entitlements include an OPA and two amendments thereto, Development Agreement (DA) and one amendment thereto and a Specific Plan. The Specific Plan consist of 13 Planning Areas. Existing entitlements authorize 900,000 square feet of commercial space and a 320 room hotel on 12 acres in Planning Area C. A portion of the Specific Plan area is located within the Historic Enhancement and Revitalization of Oxnard (HERO) Redevelopment Area.

Shea RiverPark Commercial Developers I, LLC (SRCD) is under contract to purchase approximately 80 acres from RiverPark A, LLC. SRCD desires to relocate the hotel from Planning Area C to Planning Area D in order to: (a) maximize retail efficiencies in Planning Area C, and (b) improve the potential synergistic relationship between hotel and "lifestyle" shopping uses in Planning Area D. SRCD is in the process of creating a new Assignee to assume RiverPark A's obligation under the OPA and DA as related to the 80 acres of RiverPark Commercial Centers being created.

RiverPark A is requesting City Council and CDC approval to modify existing entitlements to accomplish the following: (a) reduce the size of and relocate the hotel from the 12 acre Planning Area C site to a five acre site within Planning Area D, (b) extend the date for completion of the hotel until 2014, and (c) develop Planning Area C for a retail center. A Land Use Plan is included as Attachment #1, a Commercial Center and Hotel Site Plan is included as Attachment #2 and an Existing and Proposed Hotel Location Site Map is included as Attachment #3.

The August 14, 2006 Fiscal Impact Analysis prepared by CB Richard Ellis concluded the proposed plan for the RiverPark Commercial center, which incorporates the proposed hotel relocation, would be expected to generate \$4.2 million in stabilized annual revenue to the CDC/City. This represents an increase of approximately \$700,000 above the original entitled plan. Over a 25-year period the CDC/City is expected to receive \$29 million more than the entitled plan envisioned.

Amendments to the OPA and related documents, and a Hotel Option Agreement are necessary in

order to implement the requested modified project. Key points in the amended and new documents are:

- The existing 12-acre hotel site in Planning Area C will be relocated to a 5-acre site in Planning Area D.
- RiverPark A will be required to:
  - Obtain a building permit, present satisfactory evidence of financing and commence construction of the hotel by December 31, 2011.
  - Diligently prosecute the hotel construction to completion by December 31, 2014.
- If RiverPark A defaults, the CDC has the right to obtain title to the hotel site for \$1 through the hotel option.
- The CDC has 6 months from a default to exercise the hotel option and take title to the hotel site.
- Upon exercising the hotel option and obtaining title, the CDC has 2 years to commence construction of a hotel. Similarly to RiverPark A, the CDC will have three years from commencement to complete construction.
- During the CDC's two-year period to commence construction, the CDC may "put" the hotel site to RiverPark A with 90 days written notice, at which time the developer has to either:
  - Buy the hotel site from the CDC for full fair market value for uses permitted under applicable laws, taking into considerations the Retail Covenants; or,
  - Give up all rights to acquire and develop the hotel site.
- If the CDC does not commence construction of a hotel by the end of the 2-year period, RiverPark A can, for a subsequent 2-year period, buy the property from CDC at full fair market for uses permitted under applicable laws, taking into considerations the Retail Covenants.
- In the event during the 2-year period the developer does not acquire the hotel site then SCRCD will give up any right to acquire and develop the hotel site.
- If the Third Amendment to the OPA is approved, the CDC and RiverPark A will enter into an agreement (that is mutually agreeable) containing covenants restricting retail use of the hotel parcel (Retail Covenants). In the event a hotel is not built, future proposed retail uses could directly (negatively) impact RCC tenants who have committed or are contemplating commitments to the proposed Project. Therefore it is proposed a covenant would "run with the land" on the Hotel parcel prohibiting (a) retail establishments selling prepackaged food items, groceries, prepackaged alcohol for off-premises consumption but excluding a hotel gift shop or hotel convenience store of less than 2,500 square feet, (b) a movie theater complex and (c) other retailers or restaurants that SRCD requests and are approved by the CDC's Executive Director at his or her sole discretion on a case-by-case basis.

Key changes to the delivery of the RiverPark Commercial Center are:

- Extended commercial component commercial delivery dates.

- A combined total of 395,000 square feet of commercial will be completed no later than December 31, 2009.
- A combined total of 425,000 square feet of commercial will be completed no later than December 31, 2010.
- A combined total of 680,000 square feet of commercial will be completed no later than December 31, 2012.
- Certificates of occupancy shall not be issued for a cumulative total of 1,735 market-rate dwelling units before certificates of occupancy have been issued for 140 affordable very low income rental units, 84 affordable housing units and 395,000 square feet of commercial development.
- Certificates of occupancy shall not be issued for a cumulative total of 2,339 market-rate dwelling units before certificates of occupancy have been issued for an additional 82 affordable housing units and 425,000 square feet of commercial development.
- Certificates of occupancy shall not be issued for a cumulative total of 2,413 market-rate dwelling units before certificates of occupancy have been issued for an additional 86 affordable housing units and 680,000 square feet of commercial development.

On July 16, 2002, the City Council adopted Resolution No. 12,209 upholding the Planning Commission's decision certifying the Environmental Impact Report (EIR No. 00-03)(State Clearinghouse No. 2000051046) and adopting findings of fact, statement of overriding considerations and mitigation monitoring and reporting program for the RiverPark Specific Plan. Environmental impact evaluations included Specific Plan hotel and commercial areas. An addendum to EIR No. 00-03 states that the impacts of Specific Plan project are unchanged due to proposed modified project not creating any change in the Specific Plan size, land uses, or intensity of the development.

## **FINANCIAL IMPACT**

Approving the recommendation will not create a financial impact.

Attachment #1 - Land Use Plan: Permitted Uses

#2 - Commercial Center and Hotel Site Plan

#3 - Existing and Proposed Hotel Locations Site Map

#4 - Assignment and Assumption- Development Agreement

#5 - Third Amendment to Owner Participation Agreement with RiverPark A, LLC

#6 - Third Amendment to Agreement Containing Covenants Affecting Real Property

#7 - Assignment and Assumption of OPA and Related Documents

#8 - Hotel Option Agreement

Note: Drafts of the Third Amendment to Owner Participation Agreement, Third Amendment to Agreement Containing Covenants Affecting Real Property, Assignment and Assumption of OPA and related documents, Covenants Affecting Real Property, Hotel Option Agreement and Assignment and Assumption of Development Agreement have been provided to the CDC and

Third Amended Owner Participation Agreement  
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City Council. Copies of the drafts are available for review at the Circulation Desk in the Library after 6:00 p.m. on the Friday prior to the Council meeting and at the City Clerk's Office after 8:00 a.m. on the Monday before the meeting.

rb665rp

**RIVERPARK LAND USE PLAN:  
PERMITTED USES**  
Land Use Plan Date: February 14, 2002

**Planning Districts**

- A** Mixed Use/Office District
- B** West Peripheral Commercial District
- C** Convention/ Hotel District
- D** Town Square Commercial District
- E** East Peripheral Commercial District
- F** Vineyards Neighborhood District
- G** Village Square Neighborhood District
- H** RiverPark Crescent Neighborhood District
- I** RiverPark Loop Neighborhood District
- J** RiverPark Mews Neighborhood District
- K** Lakeside Neighborhood District
- L** Public Facility District
- M** Water Storage/Recharge Basins & Storm Water Control District

**Land Use Legend**

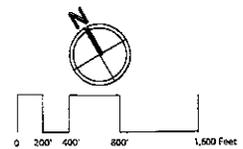
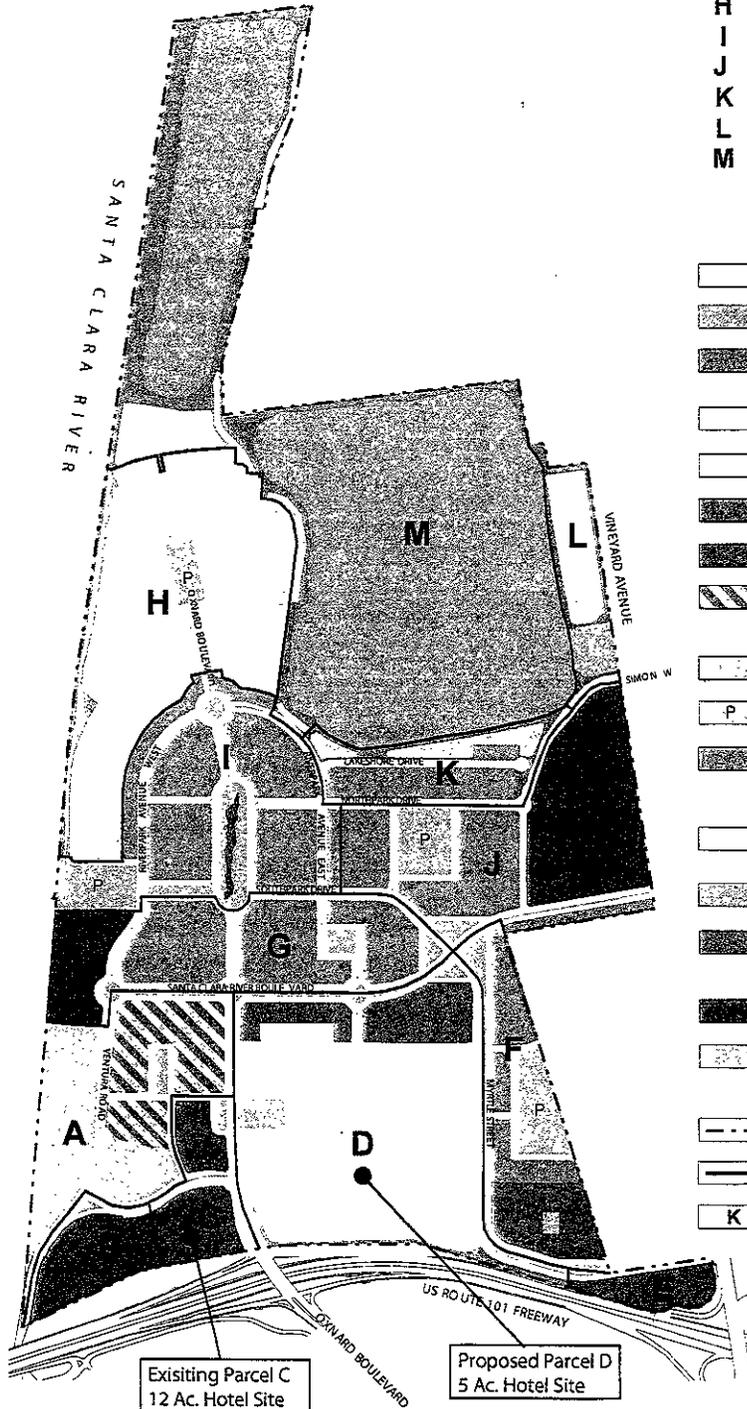
- Residential: Low Medium (6-9 D.U./Ac.)
- Residential: Medium (9-15 D.U./Ac.)
- Residential: High (15-20 D.U./Ac.)
- Commercial: Regional
- Commercial: Office
- Commercial: Convention/ Hotel
- Commercial: Retail/ Office
- Mixed Use: Residential: High/ Commercial: Office
- Open Space: Park Space
- Open Space: Neighborhood Parks
- Open Space: Landscaped Buffer
- Open Space: Miscellaneous: Dry Swales/ Detention Basins
- Open Space: Miscellaneous: Water Storage/ Recharge Basins
- Open Space: Miscellaneous: Water Feature
- Schools/ Community Park
- Public Facilities
- Specific Plan Area
- Planning District Boundary
- Planning District Designation

prepared for **RiverPark Development, LLC** by **AC Martin Partners** with  
 RTPI / EDNA / SARGENT TOWN PLANNING / CRAIN AND ASSOCIATES / HULL-ZOULARS

**LAND USE PLAN: PERMITTED USES**

RiverPark Specific Plan

**2011**  
 exhibit  
 RIVERPARK



**LAND USE PLAN: PERMITTED USES**

RiverPark Specific Plan

**000010**

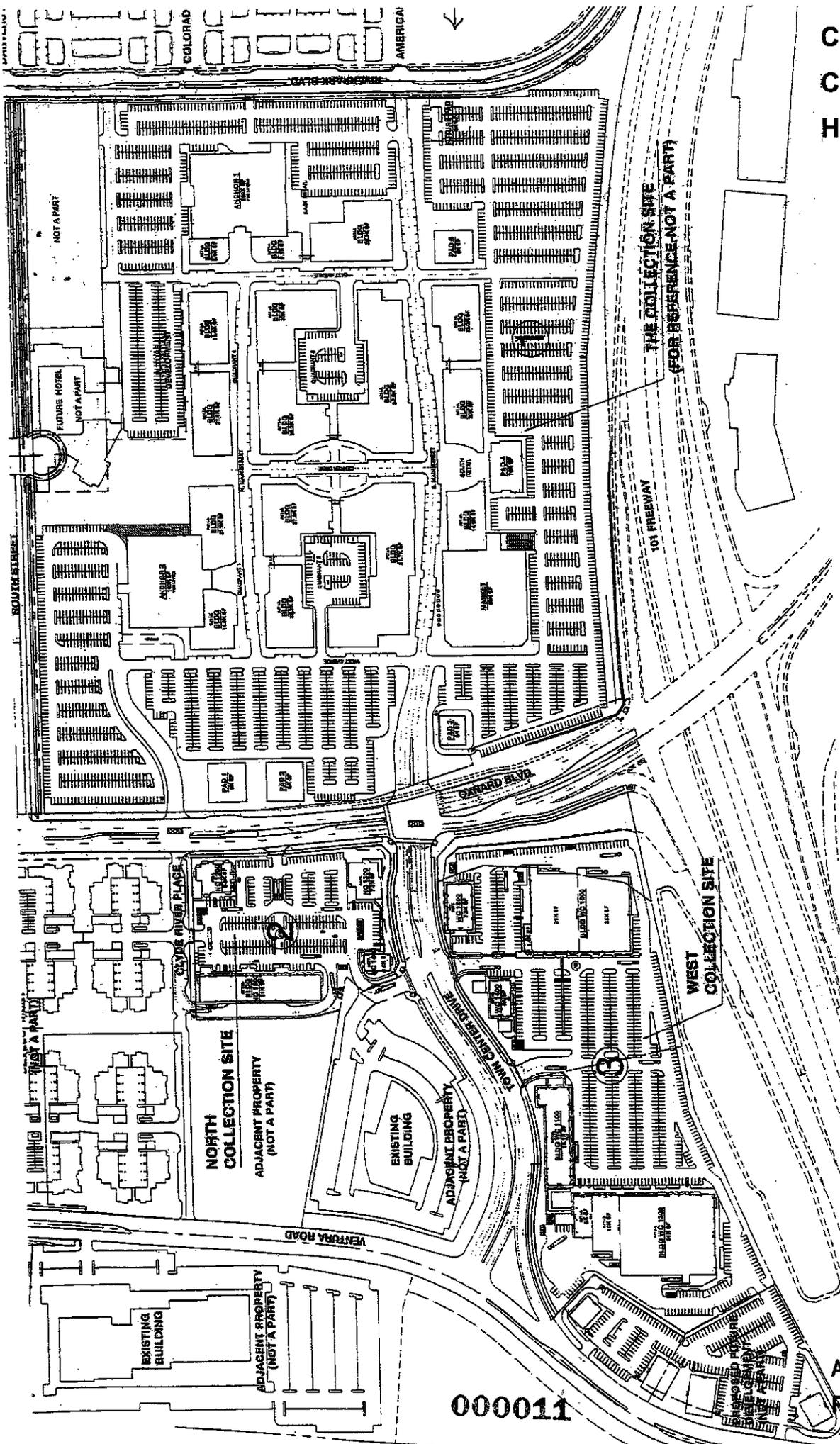
Land Use Plan Date:  
February 14, 2002

Specific Plan Date:  
February 14, 2002

**ATTACHMENT 1**

PAGE **1** OF **1**

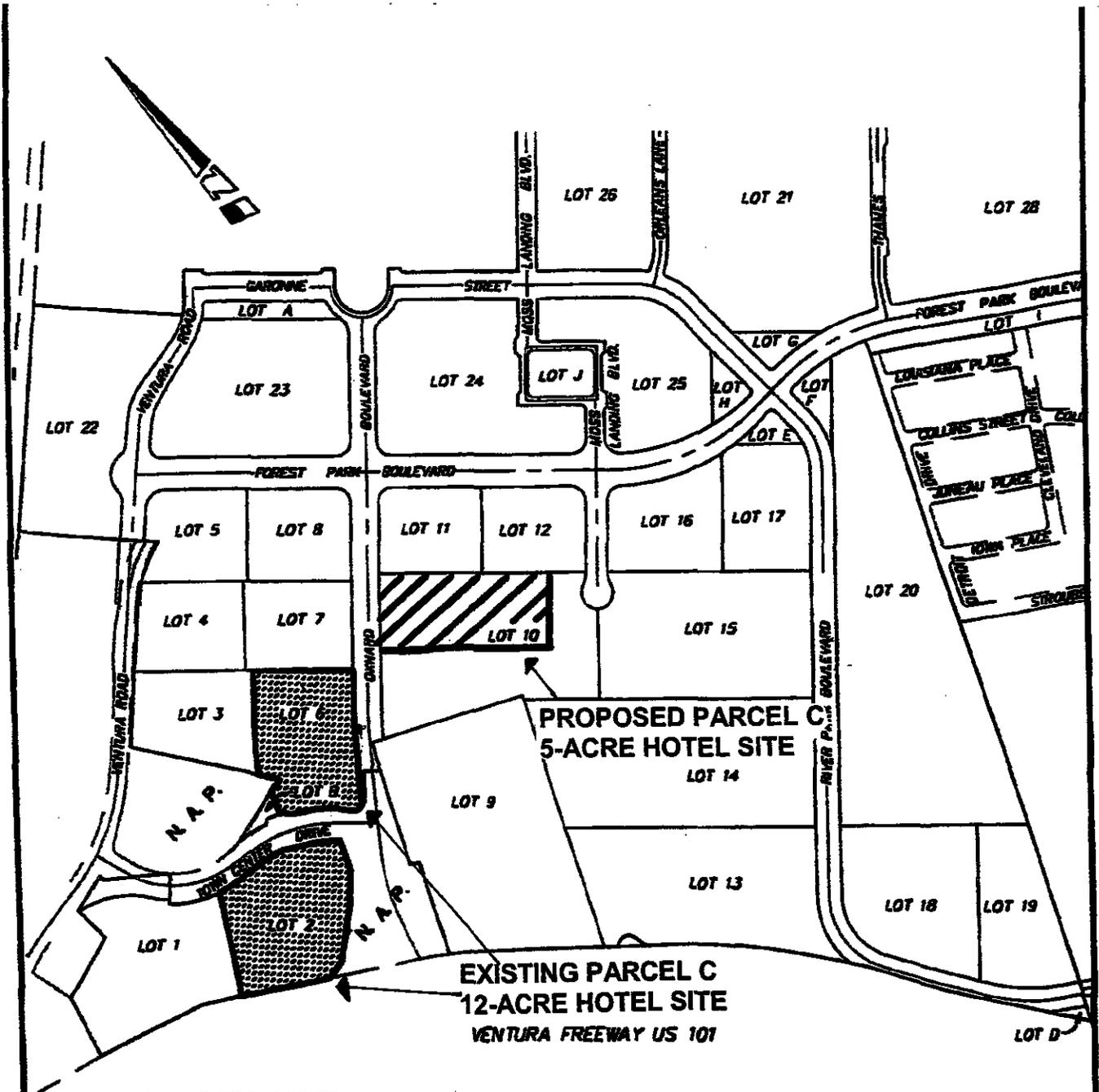
# COMMERCIAL CENTER AND HOTEL SITE PLAN



September 1, 2006

000011

EXISTING AND PROPOSED LOCATIONS SITE MAP



LOT 2 - 5.874 ACRES  
 LOT 6 - 5.232 ACRES  
 TOTAL HOTEL SITE ACREAGE: 11.106 ACRES

TRACT NO. 5352-1

**HUITT-ZOLLARS**  
 Huitt-Zollars, Inc. Irvine  
 430 Exchange, Suite 200, Irvine, CA 92602-515  
 Phone (714) 734-5100 Fax (714) 734-5155

'ORIGINAL HOTEL SITE'

SCALE	1"=600'
DRAWN BY	DAD
CHECKED BY	JLG
DATE	6/7/07
JOB NO.	10-1198-08