

## ITEM 4.16

### CITY MANAGER'S REPORT OCTOBER 9, 2023 CITY COUNCIL REGULAR MEETING

**ITEM:** CREATE CIP PK 24-26, EAGLE'S LANDING PARK, APPROVE REIMBURSEMENT AGREEMENT WITH D.R. HORTON, AND APPROVE A RELATED BUDGET AMENDMENT FOR NEIGHBORHOOD PARK WITHIN TRACT 4151

**RECOMMENDATION:** Adopt Resolution Creating CIP PK 24-26, Eagle's Landing Park, Approving Reimbursement Agreement with D.R. Horton, and Approving a Related Budget Amendment for Neighborhood Park Within Tract 4151

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#### **SUMMARY:**

D.R. Horton BAY, Inc. (DRH), the developer for the Eagle's Landing Neighborhood (Tract 4151), is required to construct a neighborhood park for Tract 4151 (Park) pursuant to the Subdivision Improvement Agreement (SIA) for Tract 4151 and the Mossdale Landing South Land Use Plan.

The City's General Plan mandates a specific park area based on the number of anticipated residents added by the project. However, the designated park size in the Mossdale Landing South Land Use Plan is notably larger than the park size required for this specific developer project.

Since the size of the park is significantly larger than required of the developer, DRH initially suggested limiting the Park amenities to offset the disproportional park area and reduce the cost to be more in line with the required park area. To maintain City park design standards, including amenities such as concrete paths, irrigated turf, rubberized play surfaces, and to maintain aesthetics considering the park's visibility from the future Golden Valley Parkway, staff recommends that Council approve CIP PK 24-26, a Reimbursement Agreement and a budget amendment to reimburse costs in excess of DRH's fair share up to \$1,250,000 to be funded from the Culture & Leisure Neighborhood Park Capital Facility Fee fund.

#### **BACKGROUND:**

On October 14, 2022, City Council approved the Vesting Tentative Map 22-100 (VTM-22-100) to create 85 residential lots and 3.5 acres of park on 19.98 acres of land. On June 6, 2023, the Community Development Director made a finding of substantial conformance for VTM-22-100, which increased the lot count from 85 to 95, reduced the park size by one (1) acre, and extended the "Street B" by approximately 120 feet.

**OCTOBER 9, 2023 CITY COUNCIL REGULAR MEETING  
CREATE CIP PK 24-26, EAGLE'S LANDING PARK, APPROVE REIMBURSEMENT  
AGREEMENT WITH DR HORTON, AND APPROVE A RELATED BUDGET  
AMENDMENT FOR NEIGHBORHOOD PARK WITHIN TRACT 4151**

On August 14, 2023, City Council approved the Final Map for Tract 4151, establishing 95 single-family lots. Pursuant to the Lathrop Municipal Code Chapter 16.16, all final maps must include a SIA to guarantee specific offsite and onsite improvements. The construction of the Park improvements is a requirement of the SIA for Tract 4151 and the work is to be complete under an encroachment permit since the Park land was dedicated to the City with the 4151 Final Map.

The Mossdale Landing South Land Use Plan designates a park area that far exceeds DRH's project requirement outlined in the City's General Plan. Given the variance in park area and cost considerations, DRH has proposed to construct the entire park with minimal features to mitigate additional costs. However, the City's preference is to adhere to its established park design standards. These standards encompass essential amenities such as irrigated turf, rubberized play surfaces, enriched play structures, and thematic elements that mirror Lathrop's characteristic park offerings. Given the park's visibility from the future Golden Valley Parkway, a vital gateway to the River Islands Project and the Mossdale Area, prioritizing aesthetics is imperative. DRH has offered to construct the Park pursuant to City standards if the City agrees to reimburse DRH for the cost beyond their responsibility.

Therefore, staff requests Council create CIP PK 24-26, designated as Eagle's Landing Park, and approve a reimbursement agreement and a budget amendment transferring \$1,250,000 from the Culture & Leisure Capital Facility Fee to fund the excess costs of the proposed park enhancements.

A reimbursement agreement is necessary to clarify the conditions and expectations of potential reimbursement. Therefore, staff also requests Council approve the proposed Reimbursement Agreement (Attachment "B") which authorizes reimbursements to DRH for expenses incurred in excess \$1,233,854.61, but not to exceed a reimbursement amount of \$1,250,000. City shall reimburse DRH portion of the total cost as outlined in Attachment B upon completion of the Park to City Specification, dedication of such improvements to the City with lien releases and warranty bond, and City Council acceptance of the dedicated improvements.

DRH will provide a cost estimate for the Park and secure an encroachment permit. DRH will also provide the City a performance bond for the amount of 120% of the estimate. DRH will pay the entire costs of the Park to the contractors and provide proof of payment. City staff would then inspect the work, and if deemed complete by the City engineer and built to the current City's standards, request a warranty bond and lien releases from DRH. Upon receipt of the warranty bond and lien releases, staff will return to Council to request Council's acceptance of the subject public improvements and authorize distribution of the reimbursement.

**OCTOBER 9, 2023 CITY COUNCIL REGULAR MEETING  
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AGREEMENT WITH DR HORTON, AND APPROVE A RELATED BUDGET  
AMENDMENT FOR NEIGHBORHOOD PARK WITHIN TRACT 4151**

**REASON FOR RECOMMENDATION:**

The City standards for parks prioritize key features like irrigated turf, rubberized play areas, enhanced play structures, and thematic elements that reflect Lathrop's typical park offerings. This emphasis on aesthetics is crucial due to the park's visibility from the future Golden Valley Parkway, a significant gateway to the River Islands Project and the Mosssdale Area. Therefore, staff is requesting Council approve reimbursement for the amount beyond what DRH is required to pay to improve the Park.

**FISCAL IMPACT:**

Staff also requests City Council approve a budget amendment transferring \$1,250,000 from the Culture & Leisure Capital Facility Fee (2260) to the CIP Project Fund (3010) as follows:

<u>Increase Transfer Out</u>		
2260-9900-990-90-10		\$1,250,000
<u>Increase Transfer In</u>		
3010-9900-393-00-00	PK 24-26	\$1,250,000
<u>Increase Expense</u>		
3010-8000-440-50-00	PK 24-26	\$1,250,000

**ATTACHMENTS:**

- A. Resolution Creating CIP PK 24-26, Eagle’s Landing Park, Approving Reimbursement Agreement with D.R. Horton and Budget Amendment
- B. Public Park Reimbursement Agreement with D.R. Horton BAY, Inc.
- C. Project Location Map – CIP PK 24-26, Eagle’s Landing Park

**CITY MANAGER'S REPORT** **PAGE 4**  
**OCTOBER 9, 2023 CITY COUNCIL REGULAR MEETING**  
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**AGREEMENT WITH DR HORTON, AND APPROVE A RELATED BUDGET**  
**AMENDMENT FOR NEIGHBORHOOD PARK WITHIN TRACT 4151**

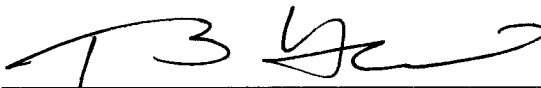
**APPROVALS**

  
\_\_\_\_\_  
Bellal Nabizadah  
Assistant Engineer

9/27/23  
Date

  
\_\_\_\_\_  
Brad Taylor  
City Engineer

9/28/2023  
Date

 FOR C)  
\_\_\_\_\_  
Cari James  
Finance Director


9/28/2023  
Date

  
\_\_\_\_\_  
Michael King  
Assistant City Manager

9-28-2023  
Date

  
\_\_\_\_\_  
Salvador Navarrete  
City Attorney

9.27.2023  
Date

  
\_\_\_\_\_  
Stephen J. Salvatore  
City Manager

10-4-23  
Date

**RESOLUTION NO. 23-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LATHROP CREATING CIP PK 24-26, EAGLE'S LANDING PARK, APPROVING PUBLIC PARK REIMBURSEMENT AGREEMENT WITH D.R. HORTON BAY, INC. AND APPROVING A RELATED BUDGET AMENDMENT FOR NEIGHBORHOOD PARK WITHIN TRACT 4151**

**WHEREAS**, on October 14, 2022, City Council approved the Vesting Tentative Map 22-100 (VTM-22-100) to create 85 residential lots and 3.5 acres of park on 19.98 acres of land; and

**WHEREAS**, on June 6, 2023, the Community Development Director made a finding of substantial conformance for VTM-22-100, which increased the lot count from 85 to 95, reduced the park size by one (1) acre, and extended the "Street B" by approximately 120 feet; and

**WHEREAS**, on August 14, 2023, City Council approved the D.R. Horton BAY, Inc. (DRH) Final Map for Tract 4151, establishing 95 single-family lots. Pursuant to the Lathrop Municipal Code Chapter 16.16, all final maps must include a Subdivision Improvement Agreement (SIA) to guarantee specific offsite and onsite improvements; and

**WHEREAS**, the construction of the Neighborhood Park for Tract 4151 (Park) improvements is a requirement of the SIA for Tract 4151 and the work is to be complete under an encroachment permit; and

**WHEREAS**, the Mossdale Landing South Land Use Plan designates a park area that far exceeds the requirement outlined in the City's General Plan for DRH's project; and

**WHEREAS**, given the variance in park area and cost considerations, DRH has proposed constructing the entire park with minimal features to mitigate additional costs, however, the City's preference is to adhere to its established park design standards; and

**WHEREAS**, these standards encompass essential amenities such as irrigated turf, rubberized play surfaces, enriched play structures, and thematic elements that mirror Lathrop's characteristic park offerings. Given the park's visibility from the future Golden Valley Parkway, a vital gateway to the River Islands Project and the Mossdale Area, prioritizing aesthetics is imperative; and

**WHEREAS**, DRH has offered to construct the Park pursuant to City standards if the City will reimburse DRH for the cost beyond their responsibility; and

**WHEREAS**, staff requests Council create CIP PK 24-26, designated as Eagle's Landing Park; and

**WHEREAS,** Staff also requests City Council approve a budget amendment transferring \$1,250,000 from the Culture & Leisure Capital Facility Fee (2260) to the CIP Project Fund (3010) as follows:

<u>Increase Transfer Out</u>		
2260-9900-990-90-10		\$1,250,000
<u>Increase Transfer In</u>		
3010-9900-393-00-00	PK 24-26	\$1,250,000
<u>Increase Expense</u>		
3010-8000-440-50-00	PK 24-26	\$1,250,000
; and		

**WHEREAS,** staff further requests City Council approve the proposed Reimbursement Agreement with D.R. Horton BAY, Inc. for a cost to the City not to exceed \$1,250,000.

**NOW, THEREFORE, BE IT RESOLVED,** that the City Council of the City of Lathrop hereby creates Capital Improvement Project (CIP) PK 24-36, Eagle’s Landing Park; and

**BE IT FURTHER RESOLVED,** that the City Council of the City of Lathrop also approves a budget amendment transferring \$1,250,000 from the Culture & Leisure Capital Facility Fee (2260) to the CIP Project Fund (3010) as detailed above; and

**BE IT FURTHER RESOLVED,** that the City Council of the City of Lathrop also approves the proposed Reimbursement Agreement with D.R. Horton BAY, Inc. to reimburse D.R. Horton BAY, Inc. up to \$1,250,000 upon Council acceptance of a fully improved 2.5 acre park as specified therein.

**PASSED AND ADOPTED** by the City Council of the City of Lathrop this 9<sup>th</sup> day of October 2023 by the following vote:

AYES:

NOES:

ABSTAIN:

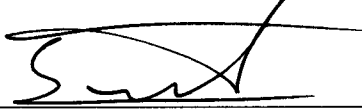
ABSENT:

\_\_\_\_\_  
Sonny Dhaliwal, Mayor

**ATTEST:**

\_\_\_\_\_  
Teresa Vargas, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Salvador Navarrete, City Attorney

CITY OF LATHROP

**PUBLIC PARK REIMBURSEMENT AGREEMENT WITH D.R. HORTON  
BAY, INC. FOR CAPITAL IMPROVEMENT PROJECT (CIP) PK 24-26  
EAGLE'S LANDING PARK**

This Public Park Reimbursement Agreement Relating to CIP PK 24-26, Eagle's Landing Park ("**Agreement**") is made and entered into this **9th day of October, 2023** ("**Effective Date**") by and between the City of Lathrop, a municipal corporation of the State of California ("**City**"), and D.R. Horton Bay, Inc. ("**Developer**"). City and Developer may be collectively referred to herein as the "**Parties**" or individually as a "**Party**".

**RECITALS**

A. Lathrop Municipal Code (LMC) 3.22 provides a mechanism to reimburse developers for certain public improvements as detailed therein.

B. The "**Project**," as referenced in this Agreement, consists of constructing a neighborhood park for Tract 4151 pursuant to the subdivision improvements agreement (SIA) for Tract 4151, as show in **Exhibit A**.

C. The City's General Plan mandates a specific park area based on the number of residents, and the designated park size in the Mossdale Landing South Land Use Plan is notably larger.

D. Developer initially proposed limited park amenities to offset the disproportional park area and reduce the cost to be more relevant with the required park area. To maintain City park design standards, including amenities such as concrete paths, irrigated turf, rubberized play surfaces, and to maintain aesthetics given the park's visibility from the future Golden Valley Parkway, City Council approved CIP PK 24-26 and this Agreement to fund up to \$1,250,000 from the Culture & Leisure Capital Facility Fee for the additional amenities.

E. Developer will pay expenses for the Project and is entitled to a partial reimbursement from the City of Lathrop ("Reimbursement"). The purpose of this Agreement is to detail the mechanisms for the payment of Reimbursement to Developer only for those public improvements detailed in the approved plans for Encroachment Permit (E.P.) 2023-132.

F. Upon completion of the Project, the City agrees to pay a portion of the total Project expenses paid by Developer, with Reimbursement not to exceed \$1,250,000, as detailed in Section 2 of this Agreement.

NOW, THEREFORE, for good and valuable consideration, City and Developer agree as follows:



## AGREEMENT

1. Recitals. The recitals set forth above are true and correct and made a part of this Agreement.

2. City and Developer Obligations.

(a) City Obligations:

(i) City shall accept the subject public improvements from the Developer following Developer's satisfaction of all obligations as listed in Section 2(b) of this Agreement.

(ii) City shall reimburse Developer for a portion of the total Project cost not to exceed \$1,250,000 following City's acceptance of the public improvements contemplated by this Agreement.

(b) Developer Obligations:

(i) Developer has submitted Project plans and specifications to the City pursuant to LMC 3.22.010E as part of its application for E.P 2023-132.

(ii) Developer has provided a Performance Bond and Certificate of Insurance required by E.P. 2023-132

(iii) Developer will complete all construction of the Project in compliance with the approved plans for E.P. 2023-132.

(iv) Developer shall provide reasonable documentation of the actual costs incurred (which may include, among others, unconditional lien releases, invoices, proof of payment, conformance with all applicable laws including but not limited to state requirements for prevailing wage and certified payroll, confirmation on letterhead from relevant contractor(s)/subcontractor(s) of payment, and/or any other reasonable documentation similar in detail and content as has been previously provided to City); City shall then have the right, but not the obligation, to reasonably review and audit said documentation, to the extent it determines reasonably appropriate, with any such audit being completed within thirty (30) days. No later than thirty (30) days of either (a) the receipt of said documentation, or (b) the completion of any audit.

(v) Developer shall pay all costs required to complete improvements. After completion of Subsection (iv) of Section 2b of this Agreement, City shall reimburse expenses incurred in excess of \$1,233,854.61, but not to exceed a reimbursement amount of \$1,250,000.

3. Reimbursement.

(a) Timing of Reimbursement.

- (i) Timing of Reimbursement to Developer shall occur within a reasonable time after City Engineer's approval of the work pursuant to LMC 3.22.010 and acceptance of the public improvements detailed in the approved plans for E.P. 2023-132 by City Council pursuant to LMC 16.16.160. City is under no obligation to accept or reimburse for partial completion of public improvements. City shall deliver such Reimbursement to the address set forth in Section 10 below.

4. Term of Agreement; Termination.

- (a) This Agreement shall commence on the Effective Date and shall terminate on the sooner of (i) one year after the date of execution or (ii) when Developer has received Reimbursement.

5. Indemnification. Developer agrees to protect, defend, indemnify and hold City, its City Council members, officers, employees, engineer, and construction manager harmless from and against any and all claims, demands, liabilities, losses, damages, costs, expenses, liens, penalties, suits, or judgments, arising in whole or in part, directly or indirectly, at any time from any injury to or death of persons or damage to property as a result of the willful or negligent act or omission of Developer or its Contractors, or which results from Developer's noncompliance with any Law respecting the condition, use, occupation or safety of the Project site, or any part thereof, or which arises from conduct in the performance of or failure to perform the terms and conditions of this Agreement, except as may arise from the sole willful or negligent act or omission of City or any of its City Council members, officers, employees. This indemnification shall extend to any and all claims, demands, or liens made or filed by reason of any construction, renovation, or remodeling work performed by Developer under this Agreement at any time during the term of this Agreement, or arising thereafter.

6. Governing Law. This Agreement shall be governed by the laws of the State of California.

7. Binding Effect. This Agreement is for the benefit of and shall be binding upon both Parties and their respective successors, heirs, executors, administrators, permitted assigns and successors in interest.

8. Assignment. Not Applicable.

9. Notices. For purposes of this Agreement, "*notice*" means any notice, demand, request, or other communication to be provided under this Agreement. All notices shall be in writing and shall be sent to the below addresses or at such other addresses as either Party may later specify for that purpose. All notices required or permitted under this Agreement shall be

personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid or by a nationally recognized overnight courier, such as FedEx or UPS, with charges prepaid for next business day delivery, addressed to the Parties as follows:

If to City: City of Lathrop  
390 Towne Centre Drive  
Lathrop, CA 95330  
Attn: City Clerk  
Email: [website\\_cco@ci.lathrop.ca.us](mailto:website_cco@ci.lathrop.ca.us)

With a concurrent copy to: City of Lathrop  
390 Towne Centre Drive  
Lathrop, CA 95330  
Attn: Salvador Navarrete, City Attorney  
Email: [snavarrete@ci.lathrop.ca.us](mailto:snavarrete@ci.lathrop.ca.us)

If to Developer: D.R. Horton BAY, Inc.  
3000 Executive Parkway, Suite 100  
San Ramon, CA 94588  
Attn: Michael Mandell  
Email: [MDMandell@drhorton.com](mailto:MDMandell@drhorton.com)

The date of any notice shall be the date of receipt, provided that rejection or other refusal to accept or the inability to deliver because of a change in address of which no notice was given shall be deemed to constitute receipt of the notice sent. Either Party may change its address for notice by giving notice to the other Party in accordance with this Section 9.

10. Payments to Developer. All payments due to Developer hereunder shall be sent to the following address or at such other address (or wiring instructions) as Developer shall from time to time specify in writing to City:

D.R. Horton BAY, Inc.  
3000 Executive Parkway, Suite 100  
San Ramon, CA 94588  
Attn: Michael Mandell

11. Amendments. Any modifications to this Agreement shall be in writing and signed by authorized representatives of both Parties.

12. Attorney's Fees and Venue. In the event of a dispute arising under this Agreement between the Parties, the prevailing Party shall be entitled to an award against the other Party of reasonable and actual attorney's fees and costs incurred in connection with the dispute. The venue for any litigation shall be in San Joaquin County, California.

13. Cumulative Rights; Waiver. The failure by either Party to exercise, or delay in exercising any rights under this Agreement, shall not be construed or deemed a waiver thereof, nor shall any single or partial exercise by either Party preclude any other or future exercise thereof or the exercise of any other right. Any waiver of any provision or any waiver of any breach of any

provision of this Agreement must be in writing, and any waiver by either Party of any breach of any provision of this Agreement shall not operate as or be construed as a waiver of any other breach of that provision or of any breach of any other provision of this Agreement.

14. Severability. If any provision of this Agreement is deemed by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be deemed to be severed or deleted from this Agreement and the balance of this Agreement shall remain in full force and effect notwithstanding such invalidity, illegality or unenforceability.

15. Headings. All headings herein are inserted only for convenience and ease of reference and are not considered in the construction or interpretation of any provision of this Agreement.

16. Signing Authority. The individuals signing this Agreement represent and agree that they have full and actual authority to bind their respective Parties to this Agreement.

17. Entire Agreement. This Agreement constitutes the entire agreement between the Parties regarding its subject. This Agreement supersedes all proposals, oral and written, and all negotiations, conversations or discussions heretofore and between the Parties related to the subject matter of this Agreement.

18. No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the Parties. In particular, and without limitation, no merchant builder or other purchaser of land from Developer shall have any right to enforce this Agreement.

19. Minor Modifications. Not applicable.

20. Counterparts; Electronic Signatures. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument. Signatures may be given by facsimile, emailed PDF, or other electronic means with the same force and effect as signed, wet originals.

[Signatures to follow on next page]

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the Effective Date.

**CITY:**

CITY OF LATHROP,  
A California municipal corporation

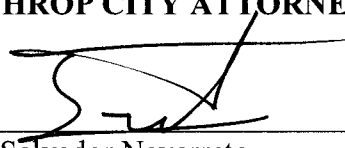
By: \_\_\_\_\_  
Stephen J. Salvatore  
City Manager

**ATTEST:**

City Clerk of and for the City  
of Lathrop, State of California

By: \_\_\_\_\_  
Teresa Vargas, City Clerk

**APPROVED AS TO FORM BY THE CITY OF  
LATHROP CITY ATTORNEY:**

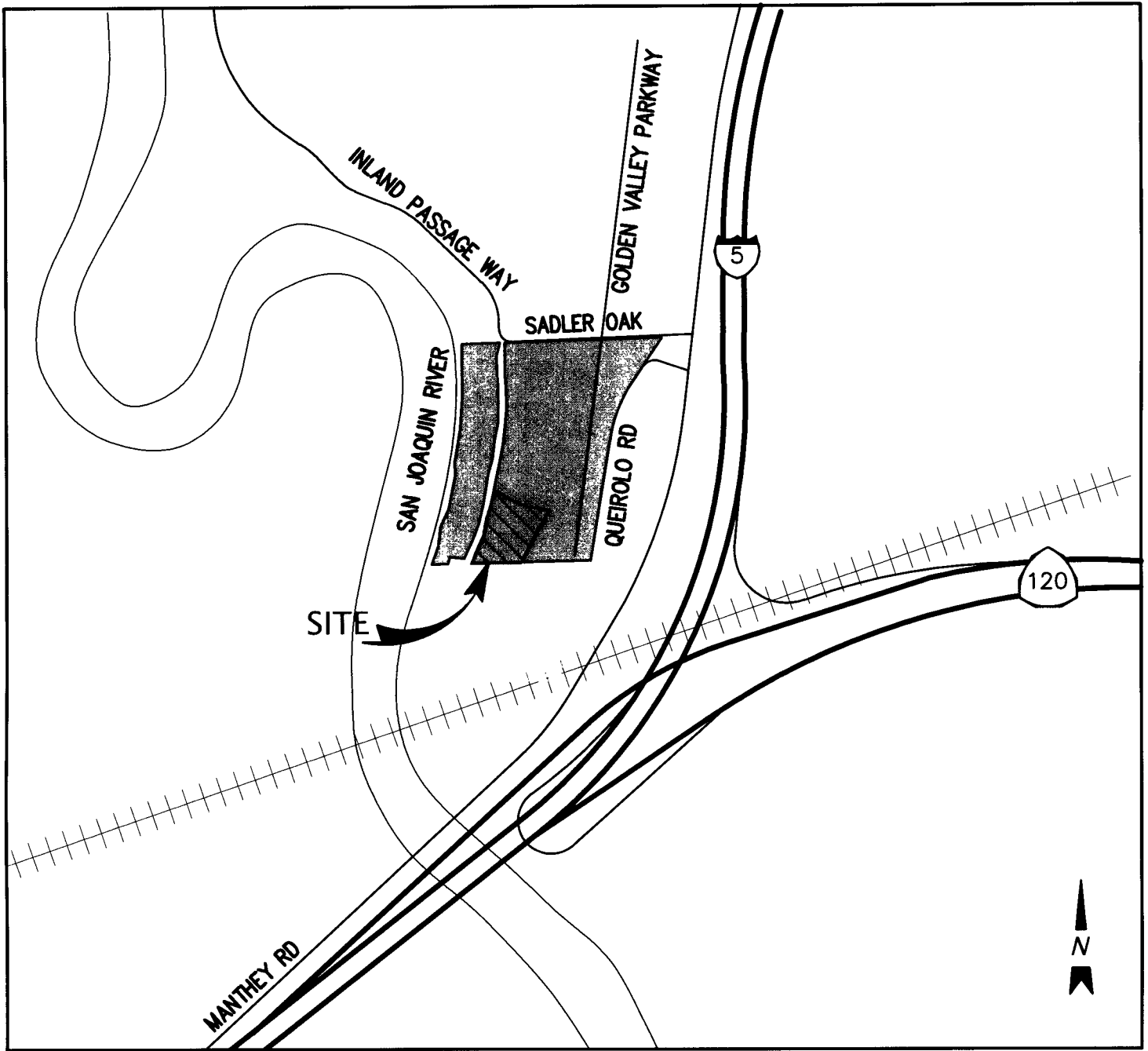
By:   
\_\_\_\_\_  
Salvador Navarrete  
City Attorney

**DEVELOPER:**

D.R. Horton Bay, Inc.  
a Delaware Corporation

By: \_\_\_\_\_  
Chris Zaballos                      Date  
Vice President

**EXHIBIT A**  
**DEPICTION OF PROJECT SITE**



VICINITY MAP

NOT TO SCALE



KIER+WRIGHT

3350 Scott Boulevard, Building 22  
Santa Clara, California 95054

Phone: (408) 727-6665  
[www.kierwright.com](http://www.kierwright.com)

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