

6/1/2010

JUNE 8, 2010 COUNCIL

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TO: TOWN COUNCIL

FROM: TOWN MANAGER 

RE: HOMEWOOD CONDITIONS AND MITIGATIONS IMPLEMENTATION

ISSUE

Mr. Hamid Noorani asks that the Council approve a different method to satisfy conditions 10 and 105 for the Homewood Relocation Project.

RECOMMENDATION

1. Approve the method to satisfy condition 105 as detailed in this report to replace the method approved in September 2009.
2. Give direction as to how Council wishes to address condition 10.

CEQA

A mitigated negative declaration was approved on the project and mitigation measures are noted with the appropriate conditions. If there are changes to mitigations or conditions then another environmental review could be needed. Neither condition 10 nor 105 had specific mitigation measures.

MONEY

Money is detailed where needed in the text.

DISCUSSION

Last year Homewood proposed the following in order address conditions 10 and 105:

1. To satisfy condition 105 Homewood would enter into an agreement with Restoration Resources to have the restoration work done as described in the "Homewood Lumber Relocation Wetland Mitigation and Monitoring Plan dated September 2009" that Army Corps had found to be in compliance with its requirements. This would include 5 years of monitoring.
2. To satisfy condition 105 Homewood would enter into agreement with Wildlife Heritage Foundation to do the

perpetual stewardship of the restored land area, also in accordance with Army Corps requirements. This would involve Homewood granting the Foundation a "perpetual conservation easement" to the restored land and putting up a certain amount of money in an endowment for the ongoing maintenance.

3. To satisfy condition 10 the Town would do certain road improvement work on Sierra College Blvd (starting at the edge of the driveway closest Taylor Rd) and around the corner on Taylor Road to the limits of the Homewood property along the area to be restored and maintained. This work would be done when the Town determined it was convenient or necessary to accomplish the road improvements in this area.

The foregoing was approved by the Council in September 2009 and allowed Homewood to proceed with grading. The grading could not be done however because of the onset of fall and some early rains.

Since that 2009 approval Mr. Noorani has reviewed the Homewood budget and concluded that there will not be money to do the plan developed by Restoration Resources (estimated at \$300,000) or to do the maintenance program with Wildland Heritage Foundation (cost of endowment \$150,000). Mr. Noorani requests that Council rescind the 2009 approval and accept the following proposal as satisfying conditions 10 and 105:

1. Homewood filed a request with Army Corps to allow wetland mitigation (as noted in Condition 61 and Mitigation Measure 10 - see below) offsite for 0.91 acres. The cost of this mitigation credit is estimated to be \$150,000. On 3/30/10 Staff found from Army Corps that it supports this idea and is working to issue the permit. The credits to be acquired are in the Toad Hill Mitigation Bank located in the Dry Creek drainage basin.

CONDITION 61: The owner shall purchase wetland credits (including on-site as allowed) in an amount necessary to provide no net loss of wetlands, per Mitigation Measure 10.

MITIGATION MEASURE 10: The project applicant shall purchase wetland credits equivalent to the amount of wetlands to be filled by the Proposed Project, based on a wetlands delineation verified by the US Army Corps of Engineers and/or accepted by the Town's consulting biologist. The purchased credits shall be sufficient to replace the impacted wetland acreage, estimated to be 0.442 acres. Evidence of payment, which describes the amount and type of habitat purchased at the wetland mitigation bank, shall be provided to the Town prior to issuance of Improvement Plans or building permits.

2. Homewood would do protection and maintenance work that involves a cleanup of the area addressing the removal over time of invasive species such as blackberries and noxious weeds to address the matter of improving the land. Homewood would do the ongoing maintenance to assure fire safety and a functioning wetland and oak woodland.
3. Homewood would install cable fencing in certain areas along the back side of preserve area to satisfy the fencing requirement of Condition 105.

ANALYSIS

With the changes being proposed by Homewood today, conditions 10 and 105 would be satisfied in a different manner.

CONDITION 10: The Town will take over roadway improvements along Sierra college Blvd starting about 60' north of the Sierra College Blvd entry driveway (See condition) and continue the improvements to Taylor Road and around the turn to the property boundary line on Taylor Road. The Town shall do this work only if an agreement is made for wetland and open space preservation of the 3.6 acre floodway otherwise owner shall do all roadway improvements for the entire length of roadway on Sierra college blvd and Taylor Road.

The Staff report in September 2009 noted that the improvements (curb, gutter, sidewalk, bike lane, signing

and edge landscaping etc) that would be done on the roadways include making a travel lane on Sierra College Blvd and a merge lane on Taylor Road.

When Council approved the plan of restoration and preservation for Condition 105 in September 2009 it was determined that this plan satisfied the agreement noted in Condition 10 and therefore the Town would take on the responsibility of doing the roadway improvements noted above. Those improvements were estimated to cost about \$169,182 in 2008. Mr. Noorani later had an estimate developed by his engineer who found that costs would more likely be around \$75,438 as estimated in October 2008. Costs might even be less today. Cost is not the point however. The point is who will be responsible for doing the road work.

The Town agreed to do the work if an agreement were made. What kind of agreement wasn't specified but there is no doubt that the agreement in condition 10 and the agreement referred to in 105 were connected when Council gave approval for Homewood's submittal in September 2009. Homewood has a different proposal today that does not require an agreement if Homewood simply keeps and maintain the wetland and open space area. The Town policy in that case would be like it is for any other private development. The owner/developer (Homewood) pays for and does the road improvements along the property road frontages when needed.

Mr. Noorani believes otherwise. He is of the opinion that a strict reading of the last sentence in Condition 10 is satisfied by Homewood agreeing to maintain the land as a preserve, which Homewood proposes to do today, and therefore because of this "agreement" the Town would be responsible to pay for the road improvements.

The 3.6 acre land area (see map) is flood plain, wetland and oak preserve. Homewood cannot do development on the property with or without an agreement. Again, last year it was clear that the agreement made for condition 105, in the manner proposed by Homewood, satisfied 105 and condition 10 so the Town would pay for certain road improvements on Sierra College Blvd and Taylor Rd. In the absence of an agreement there is no reason for the Town to pay for road

improvements. The Town would receive no benefit from such an agreement. The benefit in the prior agreement was that the land was set aside for permanent preserve, it would be restored and improved in a manner to be a very useful and functioning wetland and preserve, and it would be maintained in the very useful and functioning manner into perpetuity.

There is a way to resolve this issue. Homewood could dedicate the land to the Town. This would be done through an agreement. The agreement in this case would likely require that Homewood endow an annuity for perpetual maintenance. Last year Homewood agreed to do that through the Wildlife Heritage Foundation and the annuity was estimated to cost \$150,000. Staff talked to the Sacramento Tree Foundation and found that annuities they have required recently ranged in cost between \$8,500 to \$18,000 per acre. It depends on the degree of maintenance required. Mr. Noorani has indicated that he should not have to endow an annuity to pay for maintenance.

In short, there is a stalemate on condition 10 and Council is asked for direction.

CONDITION 105: The owner has agreed to improve and dedicate the approximately 3.6 acre floodway area shown on the Preliminary Site Plan for the Homewood Lumber Relocation project to the Town or to a non-profit agency, in order to allow for the protection and restoration of the oak woodland open space area within the 3.6 acres, in exchange for credits against the owner's tree mitigation and open space development fees. This effort may include a trail and/or a Town entry feature/landscaped area at the corner of Sierra College and Taylor Road. *The owner shall submit a plan and agreement to the Town outlining how the owner proposes to improve and dedicate the 3.6 acres. The plan shall include an ongoing maintenance plan for the 3.6 acres funded through an annuity or similar financing method with any proposed credits limited to tree mitigation fees and open space development fees. The agreement shall be approved by the Town Council prior to any work on site. The plan and agreement shall be approved by the Town Council prior to any work*

on site. Unless Town Council determines otherwise at the time it review the plan, the 3.6 acres shall be enclosed by temporary fencing with a 10 foot buffer during the construction of any improvements included in the plan. Thereafter, unless Town Council determines otherwise at the time it reviews the plan, the 3.6 acres shall be permanently enclosed by a cable fence with permanent 3 foot-tall 4" x 4" redwood posts no more than 25' apart. There shall be no temporary or permanent storage of equipment and no dumping of trash, lawn or garden trimmings, oil, chemicals, or other toxic materials within the 3.6 acres. If the 3.6 acres is deeded to an entity other than the Town, the owner shall assure that the Town is allowed access to the 3.6 acres to maintain the open space and flood plane.

The clauses in Condition 105 would be implemented as follows: (clause followed by method in **bold**):

1. The owner has agreed to improve and dedicate the approximately 3.6 acre floodway area shown on the Preliminary Site Plan for the Homewood Lumber Relocation project to the Town or to a non-profit agency, in order to allow for the protection and restoration of the oak woodland open space area within the 3.6 acres, in exchange for credits against the owner's tree mitigation and open space development fees.

Homewood will keep, protect and maintain the 3.6 acres. No credits for tree mitigation are necessary because tree mitigation has already been determined by an agreement (see below) whereby Homewood will provide 1,057 trees at the rate of 100 per year over a period of 10 or more years according to the terms noted in the agreement. No change is being proposed.

2. This effort may include a trail and/or a Town entry feature/landscaped area at the corner of Sierra College and Taylor Road.

No trail or entry feature/landscaped area is needed at the corner. If a sign is installed then it will follow Town code regulations. Maintenance on vegetation (landscaped area) will be to leave the area fairly natural, as it presently is, and insure that vegetation does not intrude on the road ways or later the sidewalks that Homewood will build along Sierra College and Taylor.

3. *The owner shall submit a plan and agreement to the Town outlining how the owner proposes to improve and dedicate the 3.6 acres. The plan shall include an ongoing maintenance plan for the 3.6 acres funded through an annuity or similar financing method with any proposed credits limited to tree mitigation fees and open space development fees.*

This is unnecessary, see comment under "1" above.

4. *The agreement shall be approved by the Town Council prior to any work on site. The plan and agreement shall be approved by the Town Council prior to any work on site.*

This is unnecessary, see comment under "1" above. Homewood will need to provide the revised letter from Army Corps before starting any work on site.

5. *Unless Town Council determines otherwise at the time it review the plan, the 3.6 acres shall be enclosed by temporary fencing with a 10 foot buffer during the construction of any improvements included in the plan.*

Mr. Noorani proposes to keep a 10 foot buffer.

6. Thereafter, unless Town Council determines otherwise at the time it reviews the plan, the 3.6 acres shall be permanently enclosed by a cable fence with permanent 3 foot-tall 4" x 4" redwood posts no more than 25' apart.

Mr. Noorani proposes to build this type of fence.

7. There shall be no temporary or permanent storage of equipment and no dumping of trash, lawn or garden trimmings, oil, chemicals, or other toxic materials within the 3.6 acres.

Mr. Noorani proposes to abide by this.

8. If the 3.6 acres is deeded to an entity other than the Town, the owner shall assure that the Town is allowed access to the 3.6 acres to maintain the open space and flood plane.

The land is not proposed to be deeded to the Town. Homewood will continue to own the property, so an easement or right of entry will need to be prepared to allow the Town to access the site in order to maintain the open space or the flood plain. The Town would typically do this in the case of emergency or as a preventative measure prior to rainy seasons from year to year. In the normal course however Homewood will be responsible for maintenance.

APPROVED BY PLANNING COMMISSION 9/21/09

**AGREEMENT FOR A TREE RESTORATION PLAN
FOR THE HOMEWOOD RELOCATION PROJECT**

THIS AGREEMENT is made and entered into this ____ day of _____, 2009, by and between Homewood Lumber, a private company organized and operating pursuant to the laws of the State of California (hereinafter referred to as "HOMEWOOD") and the TOWN OF LOOMIS, a California municipal corporation (hereinafter referred to as "TOWN").

RECITALS

- A. HOMEWOOD obtained approval of a development project in August 2007 to relocate the Homewood Lumber facility from Rippey Road to 5251 Brace Road (at the corner of Sierra College Blvd and Brace Road);
- B. HOMEWOOD is required, as a condition of approval and to satisfy mitigation of environmental impacts, to prepare a tree restoration plan;
- C. As a condition of project approval the tree restoration plan requires Planning Commission approval;
- D. The parties have determined that this Agreement, and attached exhibits thereto, will serve as the tree restoration plan;

AGREEMENTS

1. EFFECTIVE DATE: This Agreement will become effective when signed by HOMEWOOD and the TOWN.

2. PROTECTED TREE REMOVAL RESPONSIBILITY: HOMEWOOD agrees, pursuant to the tree replacement mitigation in the Negative Declaration for the Homewood Relocation Project dated December 2006, that it is responsible to replace 132 protected trees that are planned to be removed as part of the construction of its

development project, by providing 1,057 trees or paying in lieu fees at the rate of five hundred dollars (\$500.00) per tree if trees are not planted.

3. TREE RESTORATION PLAN: HOMEWOOD intends to provide to the TOWN 1,057 trees to replace the trees that it will remove, replacement to occur at the rate of 100 trees per year over a period of 10 years or until the total amount of trees has been provided. The obligation to provide trees will begin June 2011, or one year after receipt of HOMEWOOD'S final occupancy permit, whichever is later. Tree types, time and the sites where the trees will be planted shall be determined by the TOWN subject to the following:

- A. Tree types shall be limited to the species listed as "Recommended Trees" in the report entitled "Town of Loomis for Street Tree & Design Recommendations" dated May 31, 2009 and prepared by ABACUS [ABACUS REPORT] unless otherwise agreed to by the parties;
- B. The TOWN shall allow adequate time for HOMEWOOD to provide the required trees, depending on the planting size specified and the growing time for the particular tree; and
- C. If the TOWN cannot make use of the full compliment of trees one year then the amount not taken will be carried forward to the following year.

4. TREE ESTABLISHMENT AND MAINTENANCE: TOWN shall be responsible for, or arrange for someone to take the responsibility for, the planting, maintenance and survival of the trees except for those trees which are planted on HOMEWOOD'S development site which it shall be responsible to maintain and insure survival. Any arrangement for planting, maintenance (including duration), and survival of trees on HOMEWOOD'S site shall be approved by the TOWN before HOMEWOOD enters into any agreement for that kind of work.

5. TREE PLANTING AND STANDARDS: The parties agree that the ABACUS REPORT shall be the tree restoration plan as called for in the HOMEWOOD project conditions of approval (condition # 78).

6. TERM: The term of this Agreement shall be for an initial period of ten (10) years commencing on the ____ day of _____ 2009, and ending on the ____ day of _____, 2019, and shall be renewed for a successive ten (10) year term, or such time as is needed, to insure the maintenance and survival of the trees planted on the HOMEWOOD site in the later years, if any, as agreed by HOMEWOOD and the TOWN.

7. NOTICES: All notices to either party that may be required or authorized by this Agreement shall be in writing and may be personally delivered to the party or may be deposited in the United States Mail, postage prepaid, addressed to the party's main office. The notice shall be effective upon the date of personal delivery or date of mailing.

8. BINDING ON SUCCESSORS: This Agreement shall inure to the benefit of and bind the parties hereto, and their successors or assigns.

9. TERMINATION: This agreement will terminate when all trees have been given by HOMEWOOD to the TOWN. If HOMEWOOD wishes to terminate this agreement it may do so at any time and pay for whatever number of trees are yet to be given at the rate of five hundred dollars per tree (\$500.00/tree) remaining or the then current rate for tree mitigation payment factor whichever is higher.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in Placer County on the date first written above.

HOMEWOOD LUMBER:

TOWN OF LOOMIS

BY: _____

BY: _____

TITLE: _____

TITLE: _____

BY: _____

BY: _____

TITLE: _____

TITLE: _____

Attest:

Attest:

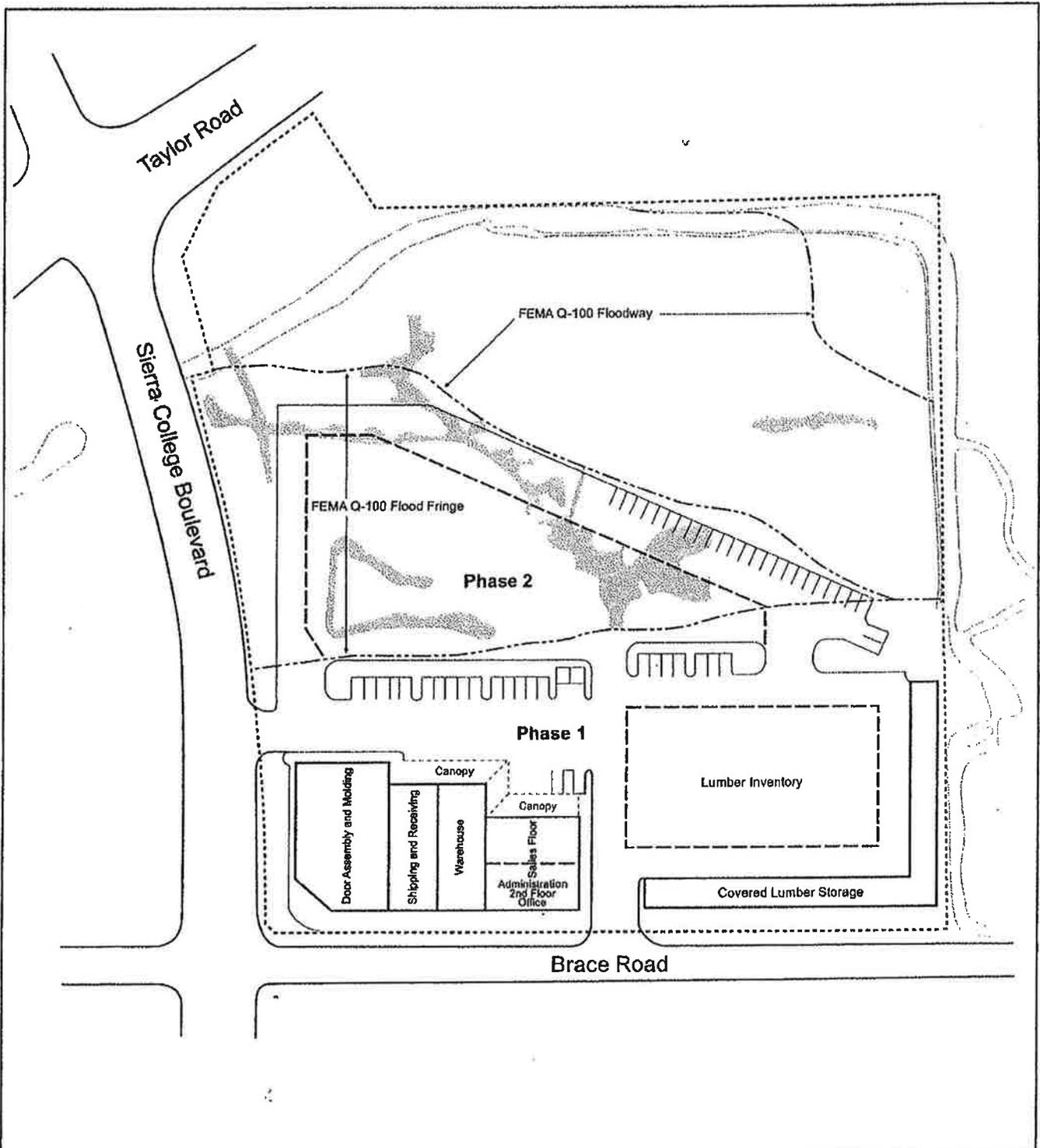
Town Clerk

Approved as to form:

Approved as to form:

Homewood Counsel

Town Attorney



- - - - - Project Boundary
 - - - - - Flood Boundaries
 - - - - - Streamcourses
 [Stippled Box] Wetlands

N
 No Scale

SOURCE: Land Development Services, Inc., Town of Loomis, 2006.

Figure 4
Proposed Site Plan

