

TO: Honorable City Council

DATE: October 26, 2011

FROM: Cindy Siegfried, City Planner 
Thomas A. Parilo, Contract Planner

SUBJECT: Proposed Affordable Housing Plan for Nevada City Tech Center, LLC, 12.9 acres on 210 Providence Mine Road

RECOMMENDATION: Accept the affordable housing plan as recommended by the Planning Commission with any modifications.

SUMMARY

The staff report and the minutes from the Planning Commission's August 16, 2011, meeting is attached. The applicant's proposed affordable housing plan is included with the July 21, 2011 staff report.

Program 5 and Ordinance 2009-07 (Section 16.04.054, Title 16, Subdivisions) requires that housing for moderate income and below households be accommodated either through deed restrictions or an affordable housing plan. The affordable housing plan proposes affordability through unit size restrictions and second units. The applicant desires concurrence from the City prior to incurring the significant expense of preparing a detailed site plan, tentative map and architectural drawings.

While the Planning Commission accepted the provisions of the affordable housing plan proposed by the applicant, they also had a discussion whether the unit sizes would in fact result in affordable units for moderate and below income households. It was concluded, however that the acceptance of the affordable housing plan was a starting point and that the actual design would more than likely result in smaller units, especially on the two acre, R2 site.

RECOMMENDATION

Accept the Planning Commission's recommendation to support the affordable housing plan with the following provisions:

1. The number of size-restricted units is adequate to ensure long term "affordability by design," and realizing the final design will be reviewed by the Planning Commission.
2. The base, 18 size-restricted, units must be located within the R3 zone
3. The tentative map for the R3 zone site shall be accompanied with units that will reflect at least one unit type with a studio/or one bedroom, two bedrooms and three or more bedrooms.
4. The R3 site shall accommodate 32 dwelling units.
5. Concur with the 12, second unit proposal.

ATTACHMENTS

1. August 16, 2011, Planning Commission minutes
2. July 21, 2011 staff report with attachments

3. The sign colors shall match the existing hotel sign colors. Prior to final approval, Commissioner John Parent and the City Planner shall approve the color scheme.

MOTION CARRIED by Vote of 5:0.

PLANNING COMMISSION REVIEW OF PROPOSED AFFORDABLE HOUSING PLAN

1. **210 Providence Mine Road – Nevada City Tech Center, LLC (Robert Upton); Planning Consultant Thomas Parilo** - Review of proposed affordable housing plan for the 12.9 acre site. The affordable housing plan proposes that 59 dwelling units be offered for-sale through a tentative map process and the applicants seeks comments and recommendation of the plan prior to official submittal.

Mr. Thomas Parilo, Planning Consultant for the City, was present, as well as Mr. Robert Upton (Owner) and Mr. Andrew Cassano, Nevada City Engineering (Representative).

Mr. Parilo provided a history of the Housing Element and the resulting rezoning of this property to R3, High Density Multiple Family, with a density of 16 units per acre. The applicant has requested a review of their proposed housing plan which is consistent with the R3 zoning and the City's subdivision ordinance. The subdivision ordinance requires that with subdivisions, 30% of new residential units be housing of 1500 square feet or smaller and that 20% of units shall be second units.

Mr. Parilo reviewed the proposed housing plan which proposes two acres of the 12.9 acre site to be R3 zoning, which will create 32 units, and additional units for the remainder of the property, totaling 59 dwelling unit. The Tech Center housing plan proposes three primary features, being 1) 20 percent of all units (12) will be less than 1,500 square feet; 2) An additional 10 percent (6) of all units will be restricted to be less than 1,250 square feet, and 3) 12 second dwelling units will be provided.

Discussion ensued on consideration of the plan and if it achieves the goals of the city, meets the City's housing element, and Mr. Parilo suggested that the 18 size-restricted units be included in the R3 zone. The Commission's recommendation would be to the City Council on the plan.

Mr. Robert Upton and Mr. Cassano reviewed the plan. Mr. Upton states the Housing Element provides for the affordable housing and their plan provides for affordability by design. He cited the several disadvantages to deed restricted units based on income levels versus that of size of the units.

Mr. Cassano stated the proposed plan exceeds what is required by the City and smaller units will provide affordability.

Commissioner Parent stated he was impressed with the plan and the information provided and was happy to see this proposal proceed. Commissioners Wolters, Sullivan and Wright agreed, stating the plan was well-reasoned and logical.

Chair Phelps asked for clarification and agreed that income-based deed restrictions are difficult, but was concerned that perhaps the 1500 and 1250 square foot homes may not prove to be affordable. She cited the approval of the Glenn Christ subdivision on Gracie Road which had various sizes of homes such as 900 square foot duplexes and 500 square foot studios. She felt that a variety of units, and smaller units would provide more affordability. She stated the City's population is mixed and includes single-parents, elderly couples, and young people, and all needing a range of homes in various sizes.

Chair Phelps stated her desire would be to see that the 18 size-restricted homes a variety of sized homes, most being under 1,000 square feet in size. The second units, which are 630 square feet in size, have proven to be affordable and are a great asset to the City.

(OVER)

attachment 1

Chair Phelps stated she would recommend that of the 18 affordable units in the R3 zone, that 6 of them be under 1200 square feet in size, with all of the 18 being under 1200 square feet in size.

Mr. Upton stated he hopes to keep the plan as flexible as he can, realizing the plan is being proposed and the final numbers will be determined as his team places 32 units on the R3, 2-acre site. Flexibility will be dependent on the market but felt that smaller units will be desired in the future.

Commissioner Wright stated the proposed plan is based on assumptions and when the final plan is submitted to the Commission, further review will be provided. He had no problem with the conceptual plan as presented.

Chair Phelps stated it was the consensus of the Commission that income-restricted units are not desired, but size restricted units are a better choice. She wanted to ensure that affordability is truly provided and preferred a range of units.

Further discussion ensued.

MOTION by Wright, Second by Parent and **CARRIED** to concur with the applicant's affordable housing plan as presented, and to forward the plan to the City Council, based on the following actions:

1. The Planning Commission determines the number of size-restricted units is adequate to ensure long term "affordability by design," and realizing the final design will be reviewed by the Planning Commission.
2. Specifies that the base, 18 size-restricted, units be located within the R3 zone
3. The submitted tentative map for the R3 zone be accompanied with units that will reflect at least one unit type with a studio/or one bedroom, two bedrooms and three or more bedrooms.
4. The R3 site shall accommodate 32 dwelling units.
5. Concur with the 12, second unit proposal.
6. Recommend that the City council consider and adopt the affordable housing plan

VOTE: 5-0.

PUBLIC WORKSHOP: Review of the Re-Sign Committee presentation of proposed signage throughout the City, and discuss prioritizing the "top 10" signs in the Historic District and Seven Hills Business District. Staff will also provide a brief review of proposed directional signage in the Historic District. (Verbal Presentation)

Planner Siegfried provided a verbal presentation of directional signage that would be incorporated into the downtown area. Mr. Denis Kutch and Kathy Hills, members of the Re-Sign Committee, were present and Mr. Kutch provided a listing of the committee's top-10 signs that would be desired. Planner Siegfried stated that in discussions with Public Works Director Verne Taylor, the staff can construct signs that would match the existing signs, which could be placed throughout the downtown. Most of these signs would be simple, stated the words "SHOPS" or "PARKING" and have an arrow. They would be located on existing signs, with the approval of the Public Works Director, and provide direction for the public to Commercial and Spring Streets. The locations and proposals were provided by Planner Siegfried.

Mr. Kutch provided a review of the committee's top-10 signs that would direct people to the most asked areas, such as "how do I get to a grocery store?" and "how do I get to the Freeway?"

The matter will be continued to the meeting of September 15, 2011 and Planner Siegfried asked each Commissioner to review the top 10 list and return with ideas of changes or recommendations. Staff will do the



City of Nevada City

DATE: July 21, 2011
TO: Planning Commission
FROM: Tom Parilo, Contract Planner
RE: **Proposed Affordable Housing Plan for Nevada City Tech Center, LLC, 12.9 acres on 210 Providence Mine Road**

BACKGROUND

As a key implementing feature of the 2009 Housing Element, on January 12, 2011, the City Council approved a General Plan amendment and rezone for the subject property. The General Plan Amendment and Rezone would accommodate up to a maximum of 59 residential units. The City Council actions consisted of the following specific features for the 12.9 acre site features:

1. A 2.0 acre portion was zoned to R3, High Density Multiple Family Residential. This site would yield a maximum of 32 units.
2. A 10.9 acre portion was zoned R2-PD-SP, Multiple Family Residential with Planned Development and Site Performance Combining District, allowing a maximum of primary dwelling 27 units

Future development of the 2-acre portion could proceed with a ministerial approval by the City Planner or through a discretionary development should the site not achieve the maximum density of 16 upa or if a tentative map (for sale project) is submitted. Development of the 10.9 acre site would require a discretionary application in the form of a tentative map or site plan review.

As part of the adoption of the Housing Element, the City Council adopted Program 5 and Ordinance 2009-07 (Section 16.04.054, Title 16, Subdivisions). This program and ordinance requires that tentative map developments provide that 30 percent of the total new units have housing units of 1500 square feet or smaller. It further states that these units shall be affordable to moderate and below income households. This plan shall be accomplished through deed restrictions or through an affordable housing plan that includes moderate and below income housing opportunities accomplished through a variety of mechanisms including, but not limited to size restrictions, rental units, second units, etc. The plan shall be approved by the Planning Commission and/or City Council.

Further, Section 16.04.056 requires that twenty (20) percent of all new single family lots created contain a second dwelling unit.

AFFORDABLE HOUSING PLAN

The applicant proposes an affordable housing plan for the subject 12.9 acre site. That plan proposes that each of the 59 dwelling units be offered for-sale through the submission of a tentative map application. Prior to submitting a detailed application, the applicant is requesting

consideration of its affordable housing plan before undertaking this time consuming and expensive planning work. As such, the applicant would like to make sure that it has the City's concurrence of an affordable housing plan.

The proposed affordable housing plan relies on size restrictions to accomplish affordability. Each size-restricted unit will include a deed restriction to preclude the units from being enlarged in the future thereby keeping them at a size that will always be relatively affordable in any market. The applicant has represented that a project that would include sales or resale prices deed restrictions could not be completed. The goal is to propose affordability by design, instead of complicated and unworkable price controlling deed restrictions.

The affordable housing plan includes three primary features, as follows:

1. Twenty (20) percent of all units (12) will be less than 1,500 square feet.
2. An additional 10 percent (6) of all units will be further restricted to be less than 1,250 square feet.
3. Twelve (12) second dwelling units will be provided.

With one minor variation, the three above referenced affordable housing plan elements meet the minimum required for tentative maps according to the Municipal Code. The additional six units that are restricted to 1,250 square feet constitute the only exceedances of the minimum standards, although it falls within the 30 percent requirement for size restrictions. The smaller unit restriction is also below the 1,500 square foot maximum unit size.

STAFF COMMENTS

The affordable housing plan does not include a demonstration that these units will be affordable to moderate and below households. It does offer, however, long term affordability in any market. Appendix 3 of the 2009 Housing Element assessed all newly constructed units in Nevada City from the time period of 2001 through 2008. The rationale for size restrictions in the proposed affordable housing plan is based on the assumptions used for the new home construction provided in Appendix 3 of the Housing Element. The Appendix 3 table represented that new dwellings constructed between 2001 and 2008 ranged in size between 975 square feet through 6,125 square feet. That Housing Element analysis also indicated that 9 out of 36 units constructed in that time period could be affordable to moderate and below households. These units ranged in size between 975 (one) and 2,449 square feet. The affordability determination was based on the assumption that units less than 2,500 square feet would have been available to moderate income households and those units smaller than 1,200 square feet would have been available to low income households. Four of the nine units were equal to or smaller than the 1,500 maximum lot size included in the Municipal Code standard. The data from the 2009 Housing Element bears out the claim that smaller units could be "affordable" in any market. Since income affordability is not a part of the plan, staff suggests that the Planning Commission carefully review the plan to determine if additional size restricted units are warranted.

In order to satisfy the Housing Element's affordability assumptions, the R3 zone must be developed to achieve the 16 unit per acre density (32 units in this case). Should a project under achieve the density; it would be subject to a Conditional Use Permit. Staff recommends that the future development project fully achieve the density on the R3 site.

The R3, High Density Multiple-Family Residential Zone requires that each development consist of units that have at least one unit type with a studio/or one bedroom, two bedrooms and three or more bedrooms. The affordable housing plan does not reflect this requirement, but it is understood that these unit types will need to be accommodated within the 2- acre, R3 portion of the project. Under the State's method of determining the household income category, the number of bedrooms is a key component to determining household size. As a result, units with more bedrooms will be potentially more affordable to moderate and below households while also providing housing for larger families (households).

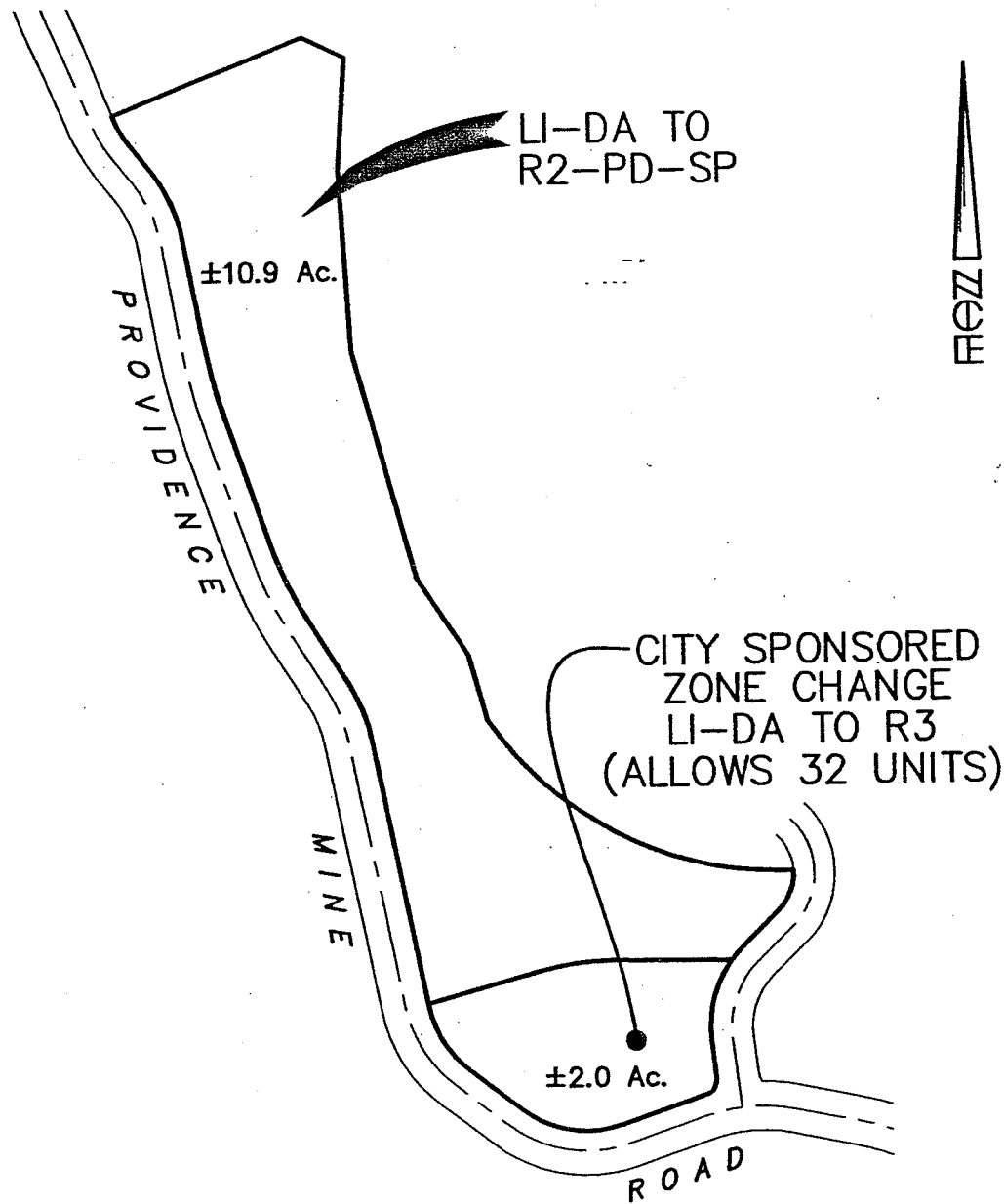
Staff has requested that the applicant provide a sketch or other indication for the Planning Commission meeting demonstrating conceptually how the affordable housing plan will be accomplished on the development site and where the size-restricted units would be located. Staff recommends that the size restricted units be provided within the R3 zone site as this area has the greatest Housing Element association with "affordability."

PLANNING COMMISSION ACTION

1. The Planning Commission should specifically determine whether the number of size-restricted units is adequate to ensure long term "affordability by design."
2. Specify that the base, 18 size-restricted, units be located within the R3 zone.
3. The submitted tentative map for the R3 zone be accompanied with units that will reflect at least one unit type with a studio/or one bedroom, two bedrooms and three or more bedrooms.
4. The R3 site shall accommodate 32 dwelling units.
5. Concur with the 12, second unit proposal.
6. Recommend that the City council consider and adopt the affordable housing plan

Attachments:

1. Maps (zoning, conceptual site plan, conceptual elevations)
2. Applicant's affordability housing plan



ZONE CHANGE MAP

FOR

CITY OF NEVADA CITY + NEVADA CITY TECHNOLOGY CENTER

WITHIN A PORTION OF

SECTION 13, T. 16 N., R. 8 E., M.D.M.

WITHIN THE INCORPORATED TERRITORY OF THE CITY OF

NEVADA CITY

CALIFORNIA

SCALE: 1" = 300'

AUGUST, 2010

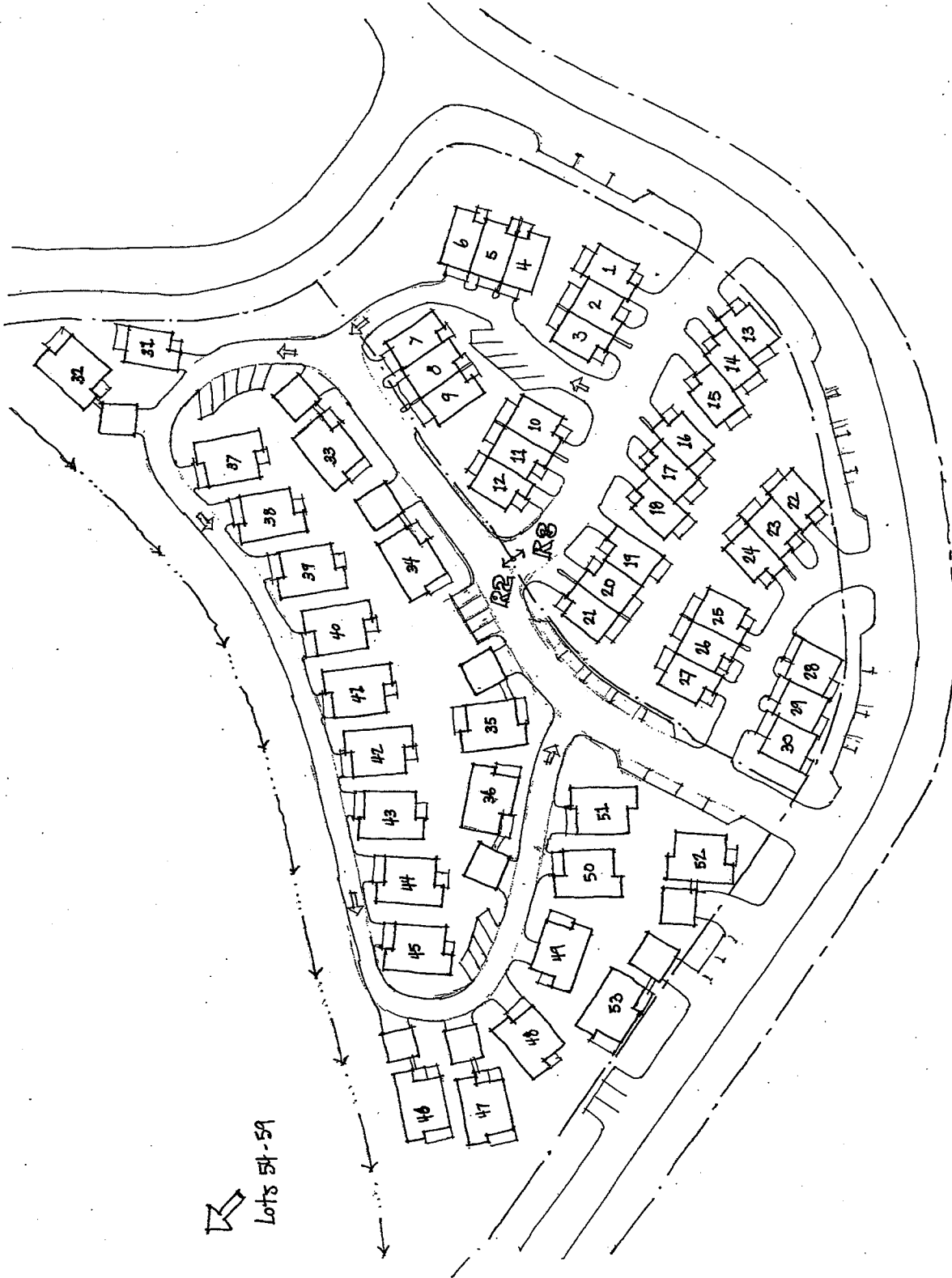
NEVADA CITY ENGINEERING, INC.

505 COYOTE STREET * P.O. BOX 1437 * NEVADA CITY * CALIFORNIA

SHEET 1 of 1

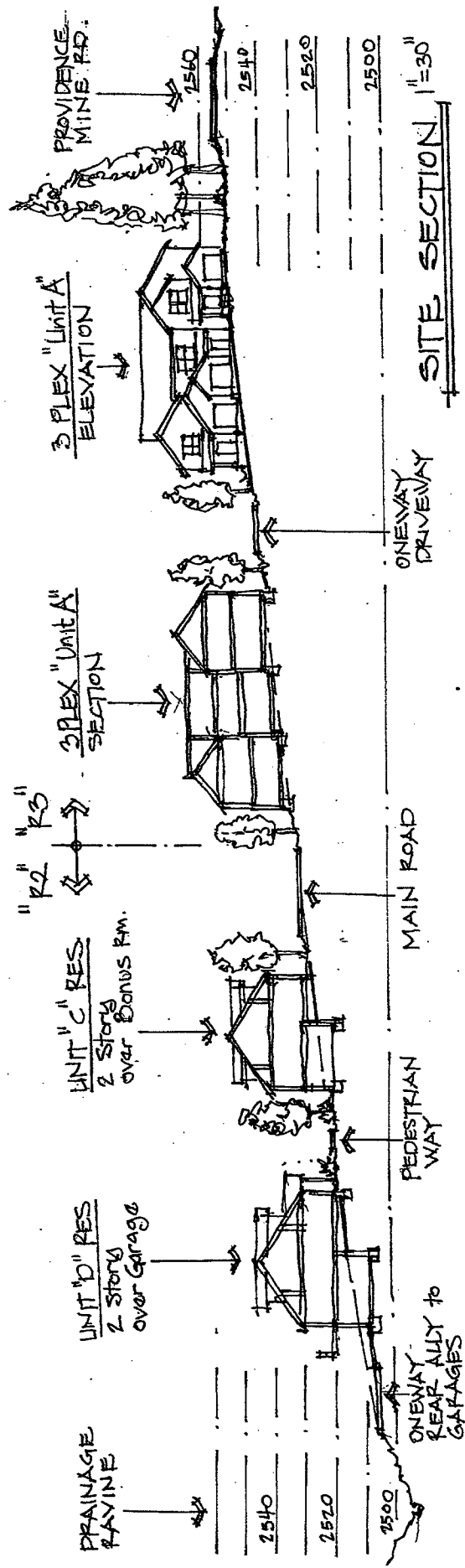
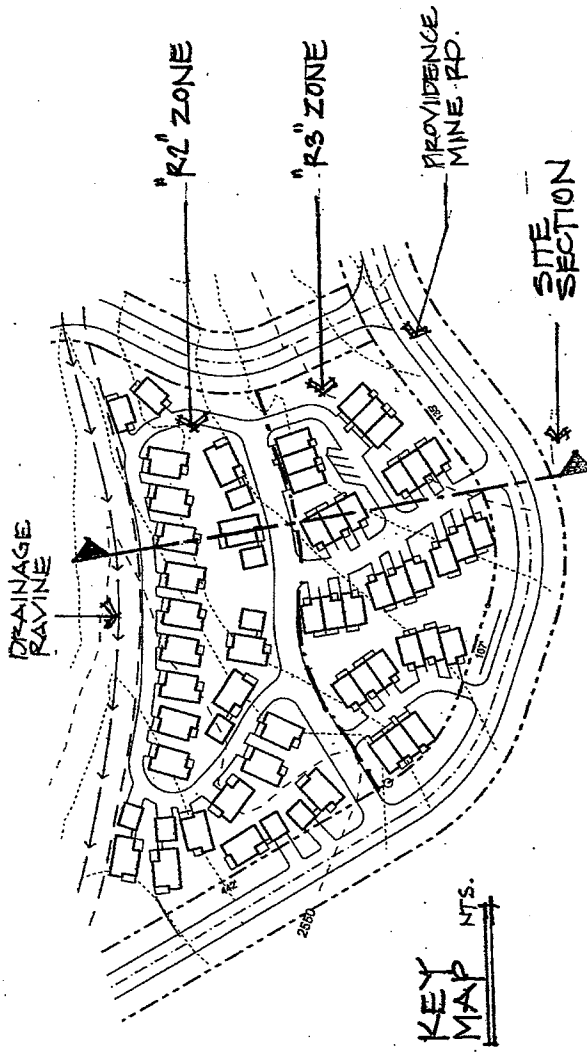
05-145

Attachment 1



↖
Lots 51-59

attach 1



attach 1

ANDREW R. CASSANO
Land Surveyor/Land Planner

THOMAS L. LOTT
Civil Engineer

JOHN E. BAKER
Survey Coordinator

WILLIAM D. GREEN
Civil Engineer

NEVADA CITY ENGINEERING, INC.

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NEVADA CITY, CALIFORNIA 95959 • TELEPHONE (530) 265-6911 • FAX (530) 265-8058

6/1/11
pcvd

Engineering • Surveying • Planning

May 31, 2011

Planning Commission
CITY OF NEVADA CITY
317 Broad Street
Nevada City, CA 95959

REGARDING: Nevada City Tech Center Housing Component – Request to Review and Approve Affordable Housing Plan

Honorable Commissioners:

My client, Robert Upton, and I have enjoyed working with you over the last couple of years as you completed the housing element and then the rezoning actions to implement housing policies. It was great to complete the rezoning process recently at the City Council with not a single public objection or concern, thanks to the thoughtful and collaborative approach of the City.

Although the housing market remains depressed now, it takes time to design and process a formal housing project development plan through the City, so we would like to get started. While the work to date relied on conceptual drawings, field walks, and general design guidelines, we are now entering into the specific application stage and this will be expensive to prepare and submit. Our development plan will include obtaining a detailed topographic and tree survey, preparing preliminary grading and drainage plans, creation of residential unit floor plans and exterior designs, and identification of all of the related details. The plan will also require detailed evaluation of the sustainability and energy efficiency of the units.

Before beginning this time consuming and expensive planning work, we would like to make sure that we have the City's blessing on our mandatory affordable housing plan. Therefore, we are asking for agenda time at our expense for you to formally consider and adopt the affordable housing plan for the Tech Center.

Attachment 2

Throughout our participation in the housing element update and implementing rezoning, we spoke a number of times about our inability to complete a project that would include deed restricted initial prices and restricted resale prices.

We continue to propose affordability by design, instead of complicated and unworkable price controlling deed restrictions. Robert Upton's enclosed housing affordability plan describes this approach in more detail. The plan recognizes the excellent provisions of the City's subdivision ordinance in helping to provide both affordable resale and rental units.

These provisions include the requirement that 30% of all housing units be no larger than 1,500 square feet. Further, the City's subdivision ordinance requires that 20% of all new single family units include a second unit of between 350 and 640 square feet in size. Our plan embraces these requirements and even goes further in limiting some of the units to even smaller sizes. For such units, we are willing to record a deed restriction stating that the units cannot be enlarged, thereby keeping them at a size that will always be relatively affordable in any market.

So, in summary, we would like to discuss the enclosed affordable housing plan with you, refine it as needed after discussion, and then we would appreciate your positive recommendation to the City Council to adopt our plan. With this step completed, we will feel comfortable beginning to plan the details of our housing for your future review. Thank you.

Respectfully submitted,



Andrew R. Cassano
City and Regional Planner

cc: Robert Upton
Enc.
/arc

NCTC Affordable Housing Plan**May 2011**

<u>Municipal Code Standard</u>	<u>This Project Requires</u>	<u>Project Meets or Exceeds Standard</u>
30% of new lots have homes that are 1500 sq ft or less and deed restricted	18 units	20% will be less than 1,500 sq ft 12 units will be less than 1,500 sq ft See below for remaining units exceeding City standard
No requirement for units to be less Than 1,200 sq ft	0 units	10 % units will be less than 1,250 sq ft 6 units will be less than 1,250 sq ft exceeding City standard
20% of single-family lots Contain 2 nd Dwelling unit	12 units	12 units with 2 nd dwelling units meeting City standard

Affordable Housing Plan Nevada City Tech Center Residential Units

May 2011

Introduction

The City Council, as part of the implementation of the Housing Element, adopted Ordinance 2009-07 in September 2009 which provides for affordability to be achieved through an approved Affordable Housing Plan. This Ordinance was a response to concerns raised by the three property owners, who while agreeing to an R3 designation on their property felt strongly that artificial income restrictions are an ineffective way to secure affordability. The Council therefore agreed that affordability would be achieved through an 'Affordable Housing Plan' to be approved by the Planning Commission and City Council.

Overview

Any plan for affordable housing needs to balance the goals of three stakeholders:

1. the State.
2. the City and local community
3. the property owners.

To be effective the 'affordable' plan must be practical, recognize market realities, be simple to understand and easy to implement. It should require minimal monitoring and policing from City Staff. The plan will remain in effect for many years and should continue to meet these criteria throughout its life.

Stakeholder 1 - The State

City Staff has achieved approval by the State of the Housing Element by using a combination of second units and a new R3 zone.

The State establishes a 'default density' for each jurisdiction based on its analysis of local conditions. The default density for Nevada City requires zoning at 16 dwelling units per acre (the R3 zone). Once a sufficient amount of land is zoned at the default density the State deems the affordability criteria satisfied, provided that these lots can be approved ministerially. **No further restrictions are required by the State.**

Stakeholder 2 -The City / Local Community

The City may refine the State criteria to ensure "affordability" in the local context.

Stakeholder 3 - The Property Owners

The Property Owner's concerns are whether restrictions are workable in reality and will allow a reasonable return on investment. Failure to meet these criteria will preclude development.

The subsequent Property Owner's (ie Home Owner's) concerns are whether the benefits of buying a restricted unit are sufficient to accept the restrictions.

Current Status

The City currently has a number of criteria that a new development has to meet

1. 20% of the units must have a second unit
2. 30% of the units must be less than 1,500 sf
3. certain units must be 'income restricted'

Commentary

Nevada City Tech Center (NCTC) is very keen to build housing and sees a big advantage from adding a residential component in both retaining existing commercial tenants and attracting new ones. NCTC also believes the designated site is an ideal housing opportunity being walkable to not only employment but also schools, shops and transit. The site offers a remarkable opportunity to create a sustainable Traditional Neighborhood Development that embodies all the recognized principles of 'Smart Development'.

NCTC has supported the City's efforts to create an R3 zone to provide a variety of housing types within a diverse residential neighborhood. As the Housing Element process evolved NCTC agreed to increase the number of R3 units from 15 to 32.

NCTC believes that the most practical way to achieve affordability, both immediately and in the long term is "Affordability by Design". Affordability by Design can be accomplished very simply by limiting the size of certain units – this is the approach used for some time by Nevada City in requiring that there be 20% of units with 2nd units (ie small units) and 30% of units be no more than 1,500 square feet.

The problems associated with income restrictions in 'for sale' units are well documented in numerous jurisdictions. These include:

- Impractical in smaller developments.
- Impractical where there is minimal price difference between restricted and unrestricted units. Why would someone buy a restricted unit with almost no potential for appreciation and which will be very difficult to sell?
- Extremely difficult for the City to provide oversight and monitoring, either short or long term.
- Confusion and complication for the home buyer.
- At today's prices the 'affordable prices' based on income restrictions can exceed market values!

In contrast 'Affordability by Design' is simple and effective:

- A smaller unit will always be more affordable than a larger one.
- Implementation is simple – a deed restriction prohibits expansion.
- Easily understood by everyone. Easily enforced.

NCTC is committed to building a quality project with as many sustainable and energy saving features as possible. Through a careful design process with skilled consultants the Tech Center believes that it will be possible to create a model project which could become a blueprint for others to follow. Incorporating these features (and indeed the design process itself) requires additional investment which could never be recovered if

some units are artificially restricted in price. The home owners will benefit from this approach, they will own a low maintenance high quality home with energy costs significantly lower than a typical property. This is true long term affordability.

The outcome if artificial income restrictions are imposed is most likely no project at all. If a project were to proceed the motivation would become to build the cheapest possible units to reduce the impact of lower sale prices. Cutting corners to cheapen the product is inconsistent with NCTC's basic principles.

Conclusion

The many pitfalls of income restrictions are well known, particularly in smaller 'for sale' projects in communities with market pricing that is modest at least relative to high priced metro areas. Affordability by Design can produce reasonably priced homes with low energy and maintenance costs and avoids the stigma of "low income housing".

NCTC requests approval of the following Affordable Housing Plan that addresses these concerns and builds on the current Nevada City Ordinance;

1. 20% of units must have a 2nd unit as defined in the current Ordinance.
2. 20% of units must have less than 1,500 square feet of living area. Expansion to be prohibited by deed restriction.
3. 10% of units must have less than 1,250 square feet of living area. Expansion to be prohibited by deed restriction.



City of Nevada City

Staff Memorandum for City Council Meeting of October 26, 2011

TO: Honorable City Council
FROM: Dave Brennan, City Manager
SUBJECT: Consideration of Terminating Raw Water Supply Contract with NID

Recommendation: Send letter notifying NID of the City's intent to terminate the Raw Water Supply Agreement effective January 1, 2012

Background: On January 1, 1983, the City entered into an agreement (attached) with NID to purchase raw water to supplement the city's supply of raw water during the summer and fall months. The agreement refers to the sale of raw water that is surplus to NID's use and available for sale. There is no provision that secures the water supply in case of drought conditions. The agreement includes a provision (4) that obligates the city to pay the water rates as established by the Board and a minimum quantity to be paid monthly for 30 acre feet regardless of usage. Purchases in excess of 30 acre feet in any one month are not credited against future or past monthly payments when 30 acre feet are not delivered.

The agreement provides that during drought years, the District may impose surcharges and reduce deliveries as they deem appropriate considering water supply conditions. It would appear that a reduction in availability does not excuse the City from continued payments for the minimum 30 acre feet.

Recent data shows that often 6 months of the year, the city does not draw raw water, but still pays the current \$6,136.80 monthly cost for 30 acre feet.

Discussion: Staff has had some discussions with NID staff over the past 18 months on this subject and topics related to the purchase of treated water in lieu of raw water. While no viable alternatives to the current arrangement have been reached, it is appropriate to reconsider the raw water agreement after 28 years. In the letter to the NID, I would indicate the urgency of reaching a new agreement prior to the end of April. Staff would provide regular reporting to the Council as progress is made.

Attached is the latest payment and delivery of water schedule for the 2010 calendar year. The City paid for 245.75 acre feet of water at a cost of \$48,225.02 that was not drawn down by the city.

Canceling the current contract and engaging in contract negotiations with NID can result in a variety of opportunities for cost reductions and cost avoidance. Should the Council want to consider treated water purchases, the cost of the imminent water treatment plant upgrade could be avoided.

Financial Impact: Negotiating a new agreement with NID may lead to significant cost savings for the water fund.

CONTRACT BETWEEN NEVADA IRRIGATION DISTRICT
AND CITY OF NEVADA CITY
FOR A RAW WATER SUPPLY

THIS AGREEMENT, made and entered into this 1st day of January, 1983, by and between NEVADA IRRIGATION DISTRICT, an irrigation district organized and existing under and by virtue of the laws of the State of California, First Party, hereinafter referred to as "District", and the CITY OF NEVADA CITY, a municipal corporation, organized and existing under and by virtue of the laws of the State of California, Second Party, hereinafter referred to as "City",

W I T N E S S E T H:

WHEREAS, District has surplus raw water that can be sold to City: and

WHEREAS, City wishes to purchase raw surplus water from District and treat same at its sole cost, expense and responsibility to supply its municipal requirements:

NOW, THEREFORE, the parties hereto agree as follows:

1. This Agreement shall be effective as of its date and shall continue in effect until January 1, 1986, and from year to year thereafter; provided, either party may terminate it on the anniversary by giving thirty (30) days prior written notice to the others.

2. District agrees to sell and deliver to City, during the term of this Agreement, such surplus water as may be ordered by City, subject to the availability of surplus water and capa-

city in District's existing conduits, for use within the present boundaries of City's service area (present service areas being shown in Exhibit "A" attached hereto and made a part of this Agreement). Any extension of City's water service area shall not be made without prior written approval of District. It being further understood and agreed that the parties to this Agreement shall not encroach or overlap each other's service area without the written permission of the other.

3. District shall measure and deliver the water sold to City through an existing measuring station located at the 4.5 mile post (500 ± upstream of Flume No. 17) on District's D. S. Canal, situate in the Canada Hill area Southeast of said City limits. Said measuring station will be maintained and operated by District.

Requests for changes in water deliveries shall be submitted to District at least 6 hours in advance of the time the change is to become effective. Actual regulation of, or changes in, deliveries shall be made by District personnel only during normal working hours.

4. City shall pay District at its Municipal Rate as established by District's Board of Directors from time to time for all water delivered. City guarantees District, during the term of this Agreement, a minimum monthly payment equivalent to District's Municipal Rate for thirty (30) acre feet of water, if less than 30 acre feet of water is requested or delivered in any month. Said minimum monthly charge shall not create a

credit for future deliveries of water.

It is understood and agreed that in a year which is considered or deemed to be a drought year or in a year which in the estimation of District requires rationing or curtailment of use of water, District at its discretion may impose a drought surcharge, reduce or restrict the raw water service to City, in proportion to any reduction, limitation or curtailment of use of water within the District, and in addition thereto, may add any other surcharges as may be deemed appropriate.

5. Water sold and delivered hereunder is untreated water which has flowed in open canals, conduits and flumes and which has been stored in reservoirs and, insofar as District is concerned, such water is not potable and District does not represent or guarantee that it is fit for domestic purposes. City shall be solely responsible at its sole cost and expense for any treatment of said water as may be required to make it safe for human consumption, and City agrees to hold District free and harmless from any and all injuries and damages that may result from the use of said water.

City shall indemnify District, its officers, agents and employees against all loss, damage, expense and liability resulting from injury to or death to any person or persons or injury to property, arising out of the use of raw water, or in any way arising out of or connected with the performance of this Agreement. City shall, on District's request, defend any suit

asserting any claim covered by this indemnity. City shall pay any costs that may be incurred by the District in enforcing this indemnity. Without in any way limiting this indemnity and in accordance with the terms hereof, City shall indemnify District against all damages claimed by other water users on the theory that water diverted for City was not owned by City.

6. City agrees on or before the 15th day of each and every month during the term of this Agreement to pay District in lawful money of the United States all sums due and owing for water furnished during the preceding month by District to City pursuant to this Agreement.

7. City agrees that for the period of this Agreement, any return flow from water served the City shall be District's property if of a quality and quantity deemed usable by District.

8. District agrees to use reasonable diligence to maintain service without interruption but it is realized that snow or ice blockages, ditch or flume breaks, and other causes may prevent such service. The parties hereto agree that District shall not be liable for damages and shall be covered under the indemnity set forth in Paragraph 5 for said damages as a result of any such interruption or in the event City or its water users suffer damages from not receiving water under this Agreement, or an inadequate amount.

9. This Agreement shall be effective January 1, 1983, and shall supersede any other Agreement between the parties hereto of a prior date relating to the subject matter hereof and/or

rights of City to receive water from District.

10. This Agreement shall not create or convey any right, title or interest, legal or equitable, in or to the property, ditches, water or water rights of District, nor interfere with or obstruct the full, free and unobstructed use and disposition thereof by District; and District shall have full control of the distribution of water through its system, and the right to establish and enforce such rules and regulations as it may deem expedient; and the furnishing of water hereunder shall not become the basis of a permanent right.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinbefore written.

CITY OF NEVADA CITY

Cathy Wilcox-Barnes
Mayor

Paul J. Matsen

Glenda Zane

John Rankin

APPROVED AS TO FORM:

[Signature]
City Attorney

ATTEST:

Maureen Ryan
City Clerk

NEVADA IRRIGATION DISTRICT

Chas. E. Gahuf
President

Dorothy P. Miller
Secretary

NEVADA IRRIGATION DISTRICT MONTHLY MUNICIPAL SALES

RECORD OF: CITY OF NEVADA CITY

METER TYPE: AF METER

YEAR: 2010

CONTRACT MINIMUM

30 AF

		DATE:	READING: 188.09	Annual Fixed Fee	393.56	
JANUARY	2/2/2010		188.09			POSTED BY:
		DIFF.=	0	+	\$ 30.00 AF	CHECKED BY:
			0.00 AF	=	\$ 204.56 PER/AF	
				=	\$ 6,136.80	
				+	\$ -	
				+	\$ 6,136.80 TOTAL	
FEBRUARY	3/1/2010		188.09			POSTED BY:
		DIFF.=	0	+	\$ 30.00 AF	CHECKED BY:
			0.00 AF	=	\$ 204.56 PER/AF	
				=	\$ 6,136.80	
				+	\$ -	
				+	\$ 6,136.80 TOTAL	
MARCH	4/5/2010		188.09			POSTED BY:
		DIFF.=	0	+	\$ 30.00 AF	CHECKED BY:
			0.00 AF	=	\$ 204.56 PER/AF	
				=	\$ 6,136.80	
				+	\$ 393.56	
				+	\$ 6,530.36 TOTAL	
APRIL	5/3/2010		188.09			POSTED BY:
		DIFF.=	0	+	\$ 30.00 AF	CHECKED BY:
			0.00 AF	=	\$ 204.56 PER/AF	
				=	\$ 6,136.80	
				+	\$ -	
				+	\$ 6,136.80 TOTAL	
MAY	6/1/2010		188.09			POSTED BY:
		DIFF.=	0	+	\$ 30.00 AF	CHECKED BY:
			0.00 AF	=	\$ 204.56 PER/AF	
				=	\$ 6,136.80	
				+	\$ -	
				+	\$ 6,136.80 TOTAL	
JUNE	7/1/2010		188.09			POSTED BY:
		DIFF.=	0	+	\$ 30.00 AF	CHECKED BY: <i>NA</i> <i>AS 7/6/10</i>
			0.00 AF	=	\$ 204.56 PER/AF	
				=	\$ 6,136.80	
				+	\$ -	
				+	\$ 6,136.80 TOTAL	

ORIG: CUST SERV
cc: CUST SERV, OP TECH FILE

**NEVADA IRRIGATION DISTRICT
MONTHLY MUNICIPAL SALES**

RECORD OF: CITY OF NEVADA CITY

METER TYPE: AF METER

YEAR:

CONTRACT MINIMUM

30 AF

STATE MANDATED FEE

	<u>DATE:</u> 7/1/2010	<u>READING:</u> 188.09			<u>POSTED BY:</u>
JULY	<u>8/2/2010</u>	<u>238.61</u>		<u>50.52</u> AF	
		DIFF.= 50.52	*	\$ 204.56 PER/AF	
		<u>50.52 AF</u>	=	\$ 10,334.37	
			+	\$ -	
				\$ <u>10,334.37</u> TOTAL	
AUGUST	<u>9/7/2010</u>	<u>314.76</u>		<u>76.15</u> AF	<u>POSTED BY:</u>
		DIFF.= 76.15	*	\$ 204.56 PER/AF	<u>CHECKED BY:</u>
		<u>76.15 AF</u>	=	\$ 15,577.24	
			+	\$ -	
				\$ <u>15,577.24</u> TOTAL	
SEPTEMBER	<u>10/4/2010</u>	<u>400.79</u>		<u>86.03</u> AF	<u>POSTED BY:</u>
		DIFF.= 86.03	*	\$ 204.56 PER/AF	<u>CHECKED BY:</u>
		<u>86.03 AF</u>	=	\$ 17,598.30	
			+	\$ -	
				\$ <u>17,598.30</u> TOTAL	
OCTOBER	<u>11/1/2010</u>	<u>420.16</u>		<u>30.00</u> AF	<u>POSTED BY:</u>
		DIFF.= 19.37	*	\$ 204.56 PER/AF	<u>CHECKED BY:</u>
		<u>19.37 AF</u>	=	\$ 6,136.80	
			+	\$ -	
				\$ <u>6,136.80</u> TOTAL	
NOVEMBER	<u>12/2/2010</u>	<u>435.04</u>		<u>30.00</u> AF	<u>POSTED BY:</u> <i>NA 12-2-10</i>
		DIFF.= 14.88	*	\$ 204.56 PER/AF	<u>CHECKED BY:</u> <i>SA 12-10-10</i>
		<u>14.88 AF</u>	=	\$ 6,136.80	
			+	\$ -	
				\$ <u>6,136.80</u> TOTAL	
DECEMBER				<u>30.00</u> AF	<u>POSTED BY:</u>
		DIFF.= -435.04	*	\$ 204.56 PER/AF	<u>CHECKED BY:</u>
		<u>-435.04 AF</u>	=	\$ 6,136.80	
			+	\$ -	
				\$ <u>6,136.80</u> TOTAL	

ORIG: CUST SERV
cc: CUST SERV, OP TECH FILE