

**REPORT TO THE  
SALINAS CITY COUNCIL AND THE  
MONTEREY COUNTY  
BOARD OF SUPERVISORS**

Agenda Item Number  
**S/A-1**

DATE: August 29, 2006  
3:30 p.m.

FROM: Dave Mora, City Manager  
Wayne Tanda, RMA Director *WLT*

*James Della*  
\_\_\_\_\_  
City Attorney Review  
*Lesley Blankenship*  
\_\_\_\_\_  
County Counsel Review  
*A. J.*  
\_\_\_\_\_  
County CAO Approval  
*[Signature]*  
\_\_\_\_\_  
City Manager Approval

SUBJECT:

Joint meeting of the City Council of the City of Salinas and the County of Monterey Board of Supervisors to consider adoption of the Greater Salinas Area Memorandum of Understanding (GSA-MOU). The GSA-MOU will replace the Boronda Area MOU and is intended to assure orderly development in the Greater Salinas Area of the County General Plan and in the City of Salinas. (PD060770).

**BACKGROUND**

The attached draft Greater Salinas Area Memorandum of Understanding (MOU) is submitted to the Board of Supervisors and City Council for review, consideration, and adoption. The MOU establishes a broad policy framework to govern and facilitate land use decisions in the Greater Salinas Area. The MOU must be viewed in its entirety as it is intended to aid the community, the City, and the County in the mutual goal of achieving orderly, consistent, and reasoned land use determinations in the Greater Salinas Area recognizing the responsibilities of both the County and City to assure orderly development in their respective jurisdictions.

The recommended Greater Salinas Area MOU replaces the current Boronda MOU. The Greater Salinas Area MOU will require significant follow-up by both the County and the City as required by State and local laws and regulations. The adoption of the MOU will begin the process to further define and implement the policy directions established in the MOU.

**ISSUE**

Shall the Monterey County Board of Supervisors adopt a resolution approving the attached Greater Salinas Memorandum of Understanding?

Shall the Salinas City Council adopt a resolution approving the attached Greater Salinas Memorandum of Understanding?

**RECOMMENDATION**

In order to complete a condition in the settlement agreement between the City and the County with respect to the Rancho San Juan litigation, to replace the Boronda Area Memorandum of Understanding, and to further establish policy frameworks to assure orderly, cooperative, and responsible land use determinations in the Greater Salinas Area of the County General Plan and in the City of Salinas, it is recommended that:

- a. The Monterey County Board of Supervisors approve the Greater Salinas Area Memorandum of Understanding and authorize the Chair of the Board of Supervisors to execute the MOU on behalf of the County; and
- b. The Salinas City Council adopt the attached resolution approving the Greater Salinas Area Memorandum of Understanding.

**Distribution**

Appropriate City Departments  
Appropriate County Departments

**Attachments**

City Resolution  
Draft Greater Salinas Area MOU

**GREATER SALINAS AREA  
MEMORANDUM OF UNDERSTANDING**

**Preface**

The negotiated terms of the Greater Salinas Area Memorandum of Understanding (MOU) will replace the previous Boronda Memorandum of Understanding between the City of Salinas and the County of Monterey and shall be adopted only after a joint public meeting of the Monterey County Board of Supervisors and the Salinas City Council. In the event of a successful challenge to any provision of this MOU by a third party, such provision shall be removed from the Greater Salinas Area MOU.

This Memorandum of Understanding (MOU), by and between the County of Monterey (County) and the City of Salinas (City), is to set forth certain agreements between the parties to express their intent to jointly pursue action to assure orderly and appropriate land use development in the area designated in the General Plan of Monterey County as the Greater Salinas Area Plan area and in the City of Salinas. Specific objectives to be achieved through the implementation of the land use and associated policies included in this MOU are the preservation of certain agriculture land, the provision of future growth areas, and the provision of adequate financing for the services and facilities of benefit to the residents of the Greater Salinas Area Plan area and the City. It is recognized that, with respect to some of the provisions set forth herein, numerous actions must be taken pursuant to State and local laws and regulations before such policies can be implemented. Such actions include, in some instances, the need to comply with the California Environmental Quality Act (CEQA), the need to hold public hearings and/or otherwise seek public input before reaching binding decisions, and the need to obtain approvals from other agencies such as the Local Agency Formation Commission (LAFCO). For all such provisions, this MOU shall be understood to constitute tentative policy commitments that can only become fully binding after all such legal prerequisites have been satisfied. Even so, both parties agree to make a good faith effort to follow and implement the provisions of this MOU subject to the foregoing.

The City and County do hereby mutually agree to the following:

**City Growth**

1. City and County agree that the future growth direction of the City shall be to the north and east of the current City limits, except as otherwise provided for in this MOU.
2. County supports the City's 2005 Preliminary Sphere of Influence/Annexation Proposal to LAFCO to the north and east of the City's existing City Limits (Exhibit A).
3. County supports the City's 2005 Preliminary Sphere of Influence/Annexation Proposal to LAFCO to the south of the City's existing City Limits (Exhibit A) for the exclusive purpose of agricultural processing and processing capacity (Fresh Express). County further supports future City Sphere of Influence / Annexation proposals to the

— GREATER SALINAS AREA —  
MEMORANDUM OF UNDERSTANDING

south of the City's existing City Limit for the exclusive purpose of agricultural processing and processing capacity (Unikool), subject to the establishment of appropriate agricultural conservation easements.

4. City and County agree to the creation and implementation of agricultural conservation easements in the unincorporated areas to the west and south of the City's Sphere of Influence insofar as the easements are consistent with the adopted General Plans of the two jurisdictions.
5. City and County agree to work cooperatively and in concert with the affected property owners to annex developed unincorporated areas (e.g. Bolsa Knolls) adjacent to or within the City's Sphere of Influence as shown in Exhibit A and to transfer existing County sanitation facilities (e.g. Boronda) upon future City annexation that support these areas subject to the property owners paying any required sanitation system connection fees established by MRWPCA. It is anticipated that an initial effort consistent with this annexation commitment shall be cooperation by all parties to consider and facilitate the proposed Chapin Rogge Road annexation application insofar as the annexation is consistent with the provisions of LAFCO.
6. City and County agree that developments within the City's 2005 Preliminary Sphere of Influence/Annexation Proposal shall only occur after annexation to the City and that the City shall consult with the County in the planning process. City and County also agree that the developments within the area designated by the County General Plan as the Greater Salinas Planning Area shall only occur after consultation with the City in the planning process.
7. City and County agree that the County shall not process any proposals for development in areas contiguous (immediately adjacent) to the City's City Limit if those proposals would require either or both a County General Plan amendment or a rezoning. Proposals for development requiring a General Plan amendment or a rezoning shall be referred to the City for consideration and possible annexation to the City.
8. City and County agree to work cooperatively and expeditiously in annexation matters consistent with this agreement.
9. City and County agree to support fees and taxes needed to mitigate the collective impact of new and existing development on the regional transportation system to the extent that the fees and taxes reflect the overall financing program adopted by TAMC.
10. City and County agree that County will develop a County-wide Traffic Impact fee program for the improvement of major County roads in accordance with the County's adopted General Plan. The County fee program will be developed in consultation with TAMC and Monterey County cities. It is recognized that there

— GREATER SALINAS AREA —  
MEMORANDUM OF UNDERSTANDING

will be development within the City of Salinas related to the anticipated annexation of land to the north and east of the existing City Limits, and it is the desire of both jurisdictions that the County not rely upon the imposition of an ad hoc traffic fee on City development. Therefore the development of the Traffic Impact Fee for the Salinas Area, as shown in Exhibit B, will be a priority and a nexus study and hearing process should be completed within 18 months of adoption of the 2006 County General Plan. The County Traffic Impact Fee will be imposed on development in affected cities and unincorporated areas.

11. City and County agree to work cooperatively on establishing the alignment, phasing and financing of the regional roadway facility commonly referred to as the Westside Bypass and will expedite the completion of a Project Study Report for this future roadway. City and County agree that the ultimate alignment of the future Westside Bypass shall establish the development boundary for the City. It is the intent of both parties to minimize the impact on agricultural land in establishing the Westside Bypass alignment so that the ultimate alignment shall not result in the development of acres of agricultural land in excess of that anticipated in the Westside Bypass alignment as shown in the City of Salinas 2002 adopted General Plan (Exhibit C).
12. City and County agree that future development between the area west of Davis Road and east of the future Westside Bypass, excluding the Boronda Redevelopment Project area, shall be limited to expansion of the City' retail sales capacity and shall take place after annexation.
13. City and County agree to work cooperatively to address the collective impact of current and anticipated land uses in the Reclamation Ditch Watershed Area. There is a recognition that a comprehensive financing program is needed that includes grants, benefit assessments, appropriate development impact fees, and special taxes required to address current and anticipated impacts. The County, in consultation with the City, should complete a nexus study and hearing process, assessing benefit of current and existing land uses, within 36 months of adoption of this MOU. The adopted impact fee will be imposed on current and existing land uses in both the City and unincorporated areas.

**Boronda Redevelopment Project Area**

14. City and County agree that in the undeveloped southern portion of the Boronda Redevelopment Project Area (Exhibit D) the County shall take the lead in the planning, review, and approval process subject to concurrent City review so that the final approved project is consistent with existing City development standards. City recognizes the County's desire and intent to assure development that is consistent with commitments made to the Boronda community regarding required amendments to the current adopted Boronda Community Plan and that the anticipated development is assumed to provide financial benefit (i.e. tax increment) to the Boronda Development Area. City and County will work

GREATER SALINAS AREA  
MEMORANDUM OF UNDERSTANDING

cooperatively to assure that those commitments will result from and through the final approvals for development and annexation to the City of Salinas. City and County further agree that there will be no final development approvals prior to the completion of all requirements (including final LAFCO approval) for annexation of the subject area to the City of Salinas.

City and County agree that infill development in the northern portion of the Boronda Redevelopment Project Area (Exhibit D) will continue to be processed by the County subject to consultation with the City.

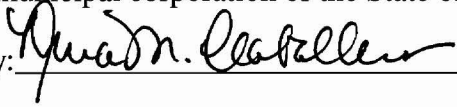

15. City and County agree that property tax generated within the Boronda Redevelopment Area shall continue to accrue to the Boronda Redevelopment Area for implementation of the current (January 1, 2006) adopted Redevelopment Area Plan. Upon completion of the aforementioned Plan, the former Redevelopment Property Tax increment shall be allocated between the City and the County on a 50/50 basis.

**Affordable Housing**

16. City and County agree to support each other's efforts to construct affordable housing throughout the County necessary to achieve the Fair Share Housing Allocation as approved by the Association of Monterey Bay Area Government (AMBAG).
17. City and County agree that if the 100% affordable housing project on Rogge Road approved by the County in 2006 is annexed to the City that the project shall be credited to the County's Fair Share Housing Allocation.

**Other**

18. City and County mutually agree that neither will pursue future development related litigation against the other insofar as the subject development is consistent with this agreement.

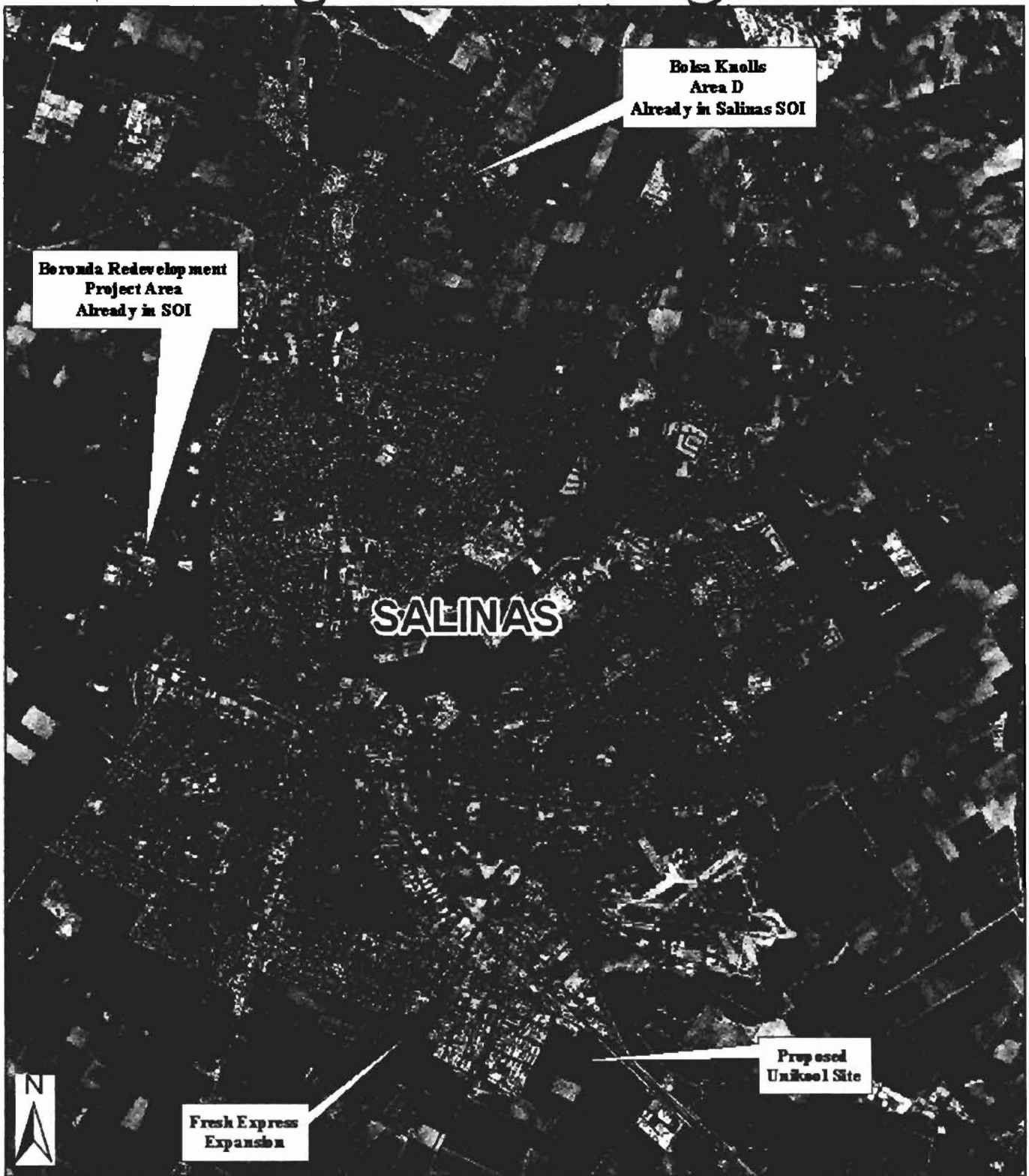
<p>CITY OF SALINAS</p> <p>A municipal corporation of the State of California</p> <p>By: <u></u></p> <p>Anna M. Caballero, Mayor</p> <p>Dated: <u>8-29-06</u></p>	<p>COUNTY OF MONTEREY</p> <p>A political subdivision of the State of California</p> <p>By: <u></u></p> <p>Jerry Smith</p> <p>Chairman of the Board of Supervisors</p> <p>Dated: <u>8-29-06</u></p>
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GREATER SALINAS AREA  
MEMORANDUM OF UNDERSTANDING

ATTESTED TO:

Ann Camel  
City Clerk

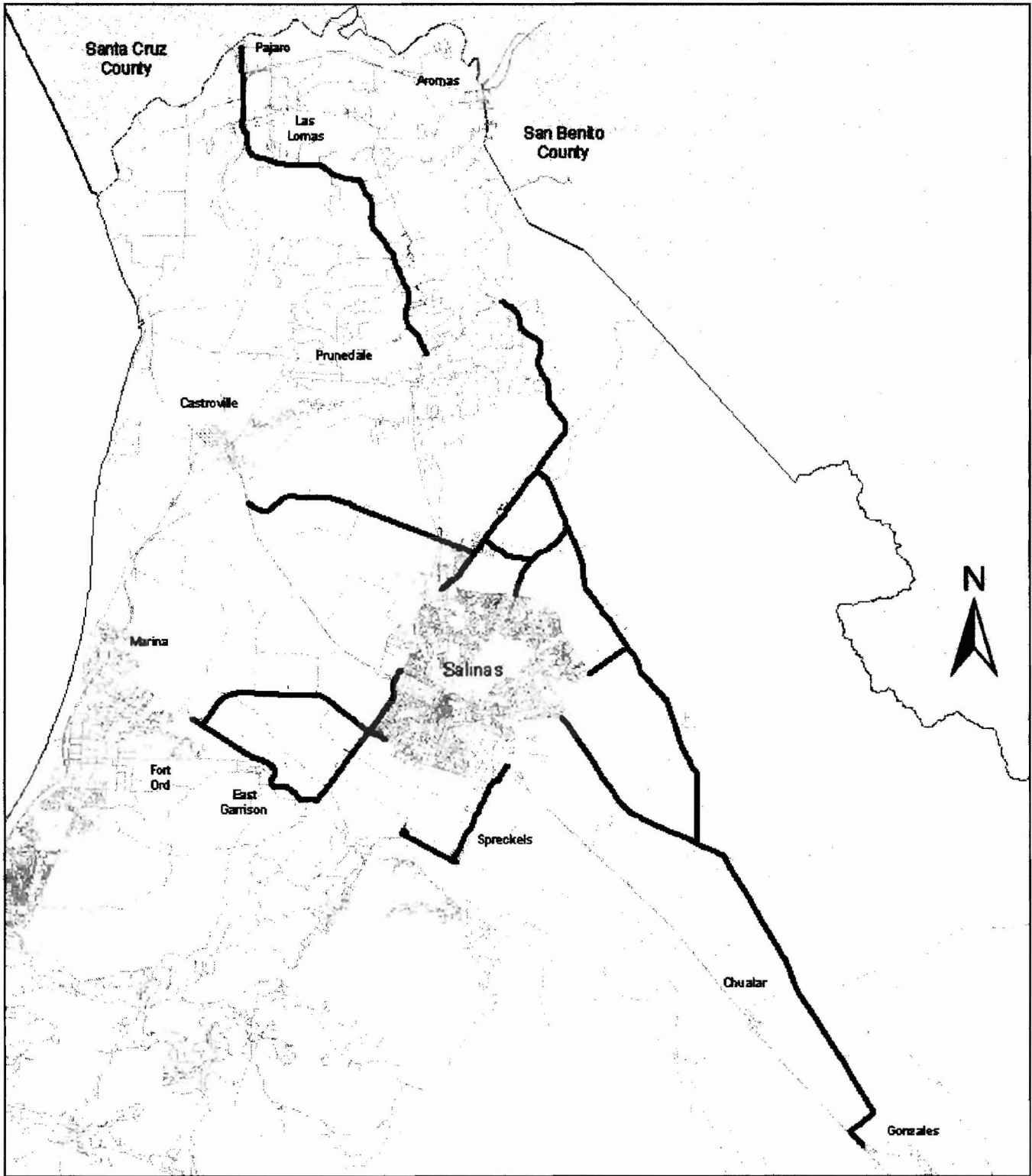
By [Signature] Deputy  
County Clerk



**EXHIBIT A**

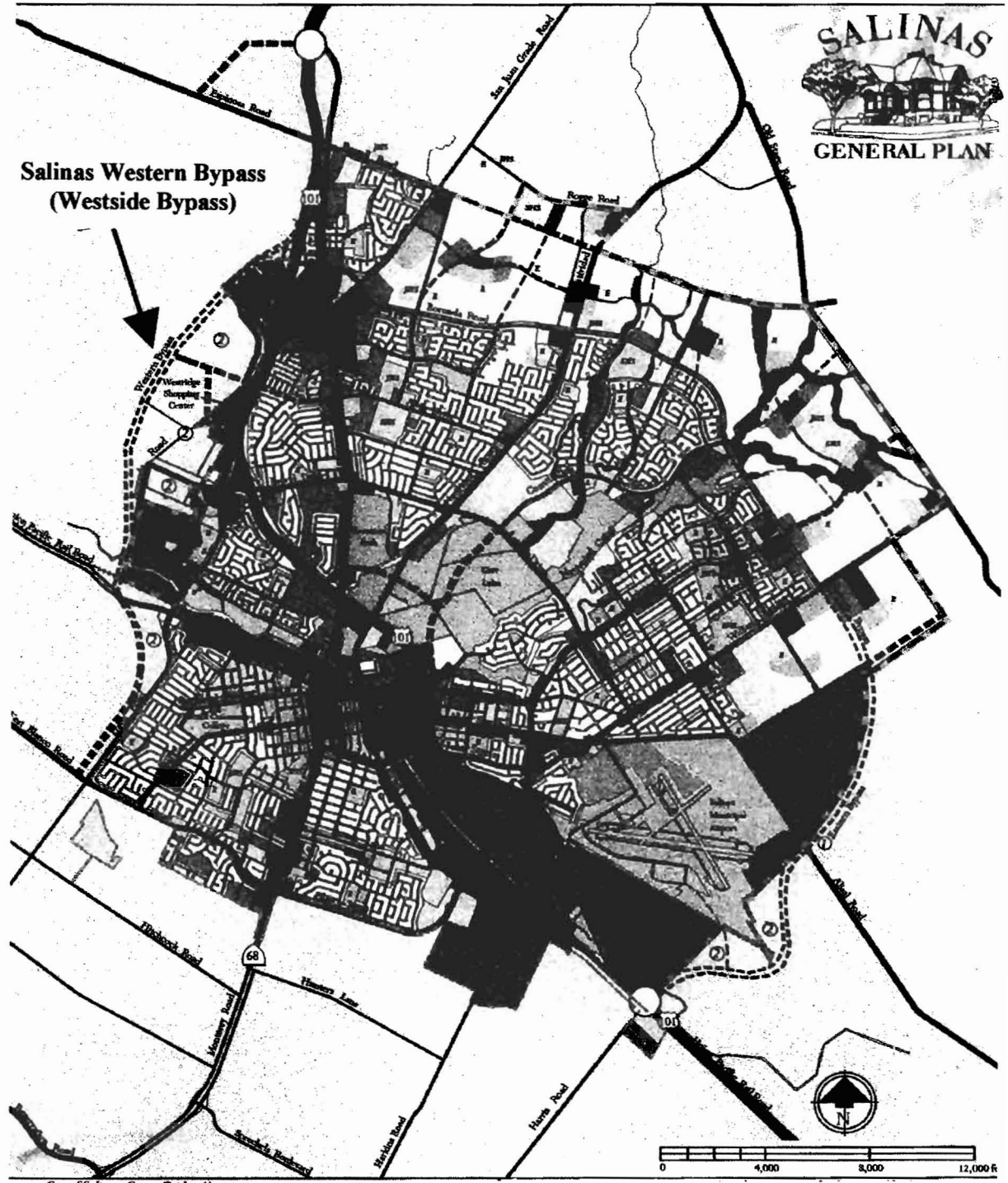
**Salinas 2005 Preliminary Sphere of Influence (SOI)/  
Annexation Proposal Map**





**EXHIBIT B**

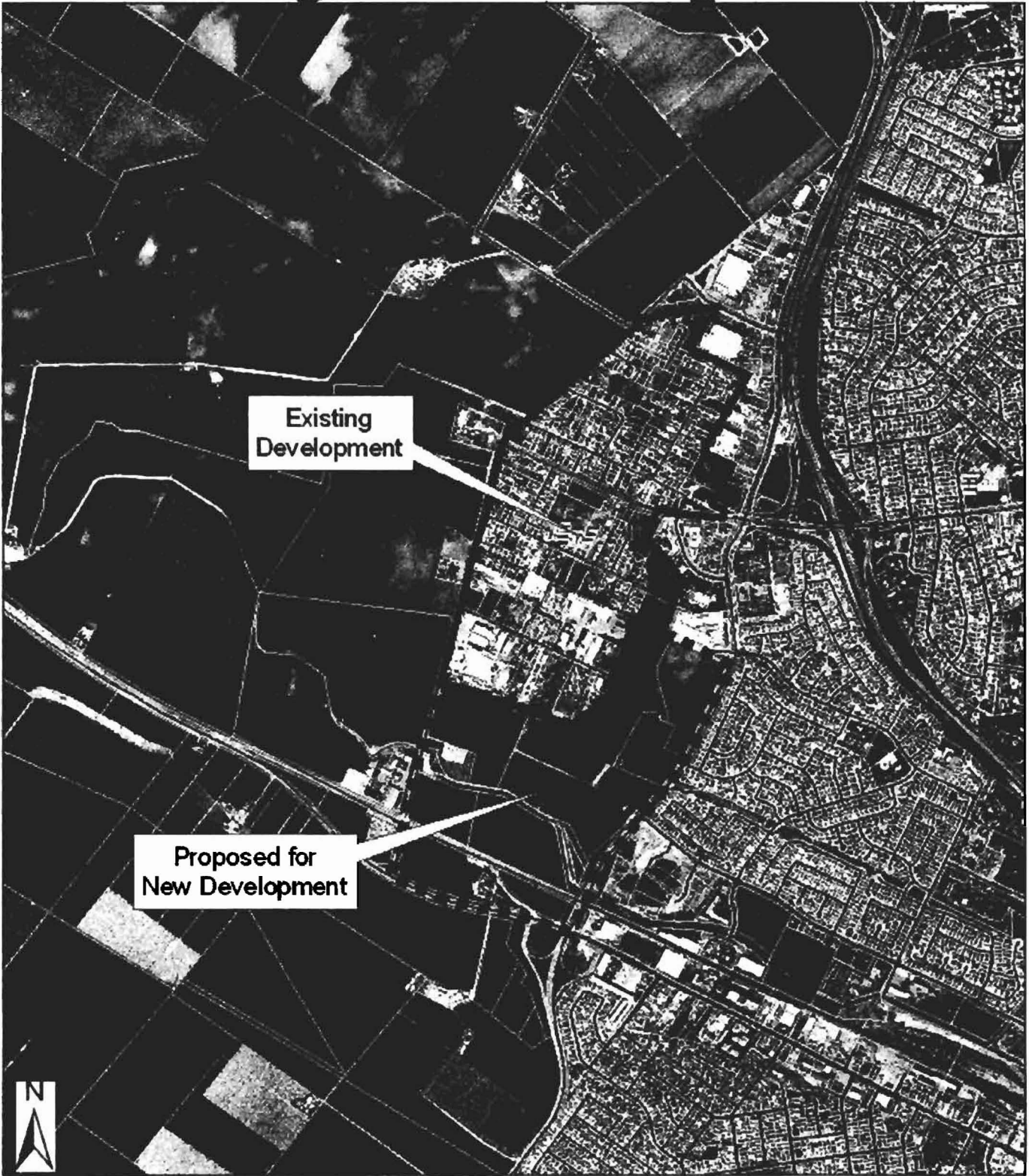
**Salinas Area Traffic Impact Fee  
Affected Major County Roads**



ources: City of Salinas, Grant/Bridges/Associates

**EXHIBIT C**

**Westside Bypass Alignment  
City Salinas 2002 General Plan**



**EXHIBIT D**

**North Boronda Redevelopment Project Area  
South Boronda Redevelopment Project Area**

## **RANCHO SAN JUAN SETTLEMENT AGREEMENT**

This Agreement is entered into by and among the **County of Monterey**, a political subdivision of the State of California ("County"), the **City of Salinas**, a municipal corporation of the State of California ("City"), and **H-Y-H Corporation, a Delaware Corporation** ("H-Y-H") (collectively "the Parties").

### **RECITALS**

This Agreement is entered into with reference to the following facts and circumstances:

A. On December 14, 2004, the County adopted the Rancho San Juan Specific Plan, General Plan amendments, and zoning and subdivision ordinance amendments, and certified a programmatic EIR for the Rancho San Juan Specific Plan and the H-Y-H Property Project, which is located within the Specific Plan area (collectively "Rancho San Juan Project"). The Specific Plan provided for development of approximately 2,600 acres, including the entire Rancho San Juan Area of Development Concentration ("ADC").

B. On January 14, 2005, the City filed a lawsuit in the Superior Court for the County of Monterey, captioned City of Salinas v. County of Monterey et al., Case No. M72983, ("the Rancho San Juan Action"), alleging that the County violated the California Environmental Quality Act ("CEQA") and the State Planning and Zoning Law (Gov. Code §§ 65000 et seq.) in connection with the County's decision to approve the Rancho San Juan Project.

C. On November 7, 2005, the County adopted the Revised Rancho San Juan Specific Plan, General Plan amendments, and zoning amendments, and certified an addendum to the programmatic EIR, limiting development of the Rancho San Juan ADC to only H-Y-H's Butterfly Village Project ("Revised Rancho San Juan Project" or "Butterfly Village Project").

D. On November 8, 2005, the voters of Monterey County approved a referendum (Measure C) by a vote of 75.65 percent to 24.35 percent, repealing the General Plan amendments adopted concurrently with the original Rancho San Juan Specific Plan.

E. On December 5, 2005, the City, the County, and H-Y-H Corporation stipulated to tolling the statute of limitations for the City's challenge to the Revised Rancho San Juan Specific Plan.

- F. The County contends that the County has fully complied with the mandates of CEQA and other applicable laws relating to the approval of the Rancho San Juan Project and Revised Rancho San Juan Project.
- G. The Parties seek to resolve the Rancho San Juan Action and to compromise all future claims related to the Revised Rancho San Juan Project in order to conserve public resources and minimize litigation expenses.
- H. The City and County intend to approve a Greater Salinas Area Memorandum of Understanding ("MOU") which expresses the intent of the City and County to jointly pursue courses of action to assure orderly and appropriate land use development in the area designated in the General Plan of Monterey County as the Greater Salinas Area Plan area and in the City of Salinas. Settlement of the Rancho San Juan Action will be contingent on the adoption of the Greater Salinas Area MOU by the City and County.
- I. This Agreement is a compromise of claims in litigation under California Evidence Code section 1152 and is made without admission of liability.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing recitals, and for the purpose of resolving disputed claims of the Parties and avoiding litigation, the Parties agree as follows:

1. Approval of Greater Salinas Area MOU

This Agreement shall be contingent upon the City and the County entering into the Greater Salinas Area MOU.

2. Rancho San Juan Action Traffic Mitigation Fee

The County's conditions of approval of the Butterfly Village Project require HYH to pay to the County \$16,017,310 in traffic mitigation fees for impacts. The County shall strictly enforce this condition of approval and shall allocate \$.0867 for every dollar collected from said traffic mitigation fees to the City. The traffic mitigation fees received from HYH will be promptly allocated and paid to the City upon receipt of the fees from HYH. Commencing 12 months after the issuance of the first building permit for the Butterfly Village Project the above allocation of \$.0867 for every dollar collected from said traffic mitigation fees shall be increased annually by the California Construction Cost Index.

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3. Dismissal

Within ten days following the adoption of the Greater Salinas Area MOU and this Agreement by the City and the County, the City shall file with the Court a Request for Dismissal of the Rancho San Juan Action (Case No. M72983) with prejudice.

4. No City Challenge to Rancho San Juan Project

The City agrees not to bring any further legal or administrative action or proceeding to challenge the County's approval of the entitlements for Revised Rancho San Juan ("Butterfly Village") Project or to support directly or indirectly any legal or administrative action or proceeding by any other party challenging the County's approval of the entitlements for the Revised Rancho San Juan Project. The City further agrees to pursue no further litigation against any future development approvals by the County for the Butterfly Village Project or the Revised Rancho San Juan Specific Plan.

5. Waiver and Release of Rights and Claims

a) Upon the dismissal of the Rancho San Juan Action, the City and the County, on behalf of themselves and their respective officers, directors, agents, insurers and subrogees, predecessors, successors, affiliated and related entities, sister and subsidiary corporations, and assignors and assignees, shall release, resolve and forever discharge each other party and its respective officers, directors, agents, insurers and subrogees, predecessors, successors, affiliated and related entities, sister and subsidiary corporations, and assignors and assignees, from any and all claims, liabilities, debts and obligations of any kind or nature, known or unknown, that it has had, now has, or may have in the future as to any and all matters of any kind arising out of: (i) the permitting, approval, and environmental review of the Rancho San Juan Project and Revised Rancho San Juan Project; and/or (ii) the violations alleged in the City's Petition and Complaint in Action No. M72983.

b) This waiver and release is a general release. The City and the County are aware of California Civil Code Section 1542, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

To give full force and effect to the above general releases, the City and the County hereby expressly, knowingly, and voluntarily waive all the rights and benefits of Section 1542 and any other similar law of any jurisdiction.

6. Effect of Agreement

This Agreement, including the releases and other agreements contained herein, shall be binding upon, and inure to the benefit of, the heirs of law, predecessors, successors, assigns, employees, principals, agents, officers, directors, partners and attorneys of the Parties.

7. Entire Agreement

This Agreement constitutes the entire agreement of settlement and release among the Parties, and there are no other agreements expanding or modifying its terms. The provisions of this Agreement can only be modified or amended in a writing by all Parties that expressly states that modification or amendment of this Agreement is intended.

8. Warranty Against Assignment of Claims

The City and the County represent and warrant that they have not heretofore, and shall not hereafter, assign, transfer, or purport to assign or transfer, to any other person or entity, any rights, claims, or causes of action herein released or discharged. The City shall defend and indemnify the County from and against any rights, claims, or causes of action which have actually been assigned or transferred contrary to the foregoing warranties and any and all loss, expenses and/or liabilities arising directly or indirectly out of the breach of any of the foregoing representations or warranties. The County shall defend and indemnify the City from and against any rights, claims, or causes of action which have actually been assigned or transferred contrary to the foregoing warranties and any and all loss, expenses and/or liabilities arising directly or indirectly out of the breach of any of the foregoing representations or warranties.

9. Warranty of Authority

Each individual executing this Agreement on behalf of any Party represents that he/she has been authorized by said Party to execute this document, and does so execute this document on behalf of said Party.

10. Advice of Counsel

The Parties have read the entire Agreement and have been given the opportunity to seek advice of counsel prior to executing this Agreement. No

Party shall deny its validity on the basis that the Party did not have the advice of counsel.

11. Ambiguities and Uncertainties

Each Party participated, or had the opportunity to participate, in the preparation of this Agreement. In the event of an ambiguity, the terms of this Agreement shall not be construed against any Party. Accordingly, the Parties hereby waive the benefit of California Civil Code Section 1654 and any successor or amended statute, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the Party who caused the uncertainty to exist.

12. Enforcement

If any Party initiates, or if any Party is required to defend, any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the nonprevailing party in any such action or proceeding its reasonable costs and attorneys fees. The City's or the County's attorneys' fees, if awarded, shall be calculated at the market rate.

13. Choice of Law

This Agreement shall be interpreted and enforced under the laws of the State of California without regard to conflict of laws principles. Any action at law or equity, or other judicial proceeding for the enforcement of this contract or any provision thereof, shall be instituted only in the state court of California, County of Monterey.

14. Good Faith Obligations

The Parties agree to cooperate fully, reasonably, and in good faith in the implementation of this Agreement. The Parties also agree to execute any and all supplemental documents, and to take all additional lawful and reasonable actions, which may be necessary and appropriate to give full force and effect to the basic terms and to fully implement the goals and intent of this Agreement.

15. Headings

The section and paragraph headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit, or extend the scope or intent of the clauses to which they pertain.



16. Recitals

The recitals to this Agreement are incorporated into the terms of this Agreement.

17. Counterparts and Facsimile Signatures

This Agreement may be executed in any number of counterparts, each copy of which shall have the same force and effect as the original Agreement. Facsimile signatures shall have the same force and effect as original signatures.

18. Notices

All notices and other communications provided for under this Agreement shall be in writing and shall be sent via certified mail to the following addresses:

If to City:

City of Salinas  
Office of the City Attorney  
Vanessa W. Vallarta, City Attorney  
200 Lincoln Avenue  
Salinas, CA 93901-2639  
831-758-7256

With a copy to:

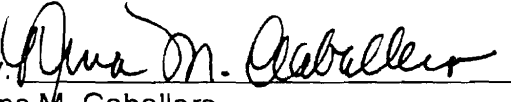

Remy, Thomas, Moose and Manley, LLP  
James G. Moose  
455 Capital Mall, Suite 210  
Sacramento, CA 95814  
916-443-2745

If to County:

Charles J. McKee, County Counsel  
Efren N. Iglesia, Senior Deputy County Counsel  
County of Monterey  
168 W. Alisal Street, 3<sup>rd</sup> Floor  
Salinas, CA 93901-2680  
831-755-5045



IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date set forth next to the signature of the last party executing this Agreement.

<p>CITY OF SALINAS A municipal corporation of the State of California</p> <p>By: <u></u> Anna M. Caballero Mayor</p> <p>Dated: <u>8-29-06</u></p>	<p>COUNTY OF MONTEREY A political subdivision of the State of California</p> <p>By: <u></u> Jerry Smith Chairman of the Board of Supervisors</p> <p>Dated: <u>8-29-06</u></p>
<p>H-Y-H CORPORATION A Delaware Corporation</p> <p>By: _____ Moe Nobari, President</p> <p>Dated: _____</p>	