

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF TOLLING)
AGREEMENT FOR ANDERSEN VILLAGE) Resolution No. 2018-0630
SPECIFIC PLAN ENVIRONMENTAL) Agreement No. 28755
IMPACT REPORT)

UPON MOTION OF SUPERVISOR ENNIS, SECONDED BY SUPERVISOR SHUKLIAN, THE FOLLOWING WAS ADOPTED BY THE BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD JULY 24, 2018, BY THE FOLLOWING VOTE:

AYES: SUPERVISORS CROCKER, VANDER POEL, SHUKLIAN, WORTHLEY, AND ENNIS
NOES: NONE
ABSTAIN: NONE
ABSENT: NONE



ATTEST: MICHAEL C. SPATA
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: Mary Rocello
Deputy Clerk

1. Approved the Tolling Agreement between Consolidated Irrigation District, and Central Kings Groundwater Sustainability Agency ("Petitioners"); County of Tulare ("County"), Steve Hash Farms, and Steven Cecil Hash and Elizabeth McNalley Shafer, as Trustees of the Hash/Shafer Revocable Trust (collectively "Applicants"); and
2. Authorized the Chairman of the Board of Supervisors to sign the Tolling Agreement on behalf of Tulare County.



**RESOURCE
MANAGEMENT AGENCY
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

KUYLER CROCKER
District One

PETE VANDER POEL
District Two

AMY SHUKLIAN
District Three

J. STEVEN WORTHLEY
District Four

MIKE ENNIS
District Five

AGENDA DATE: July 24, 2018

Public Hearing Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Published Notice Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Advertised Published Notice	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
County Counsel Sign-Off	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Meet & Confer Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Personnel Resolution attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
CONTACT PERSON: Celeste Perez PHONE: 559-624-7010		

SUBJECT: Tolling Agreement for Andersen Village Specific Plan Environmental Impact Report

REQUEST(S):

That the Board of Supervisors:

1. Approve the Tolling Agreement between Consolidated Irrigation District, and Central Kings Groundwater Sustainability Agency ("Petitioners"); County of Tulare ("County"), Steve Hash Farms, and Steven Cecil Hash and Elizabeth McNalley Shafer, as Trustees of the Hash/Shafer Revocable Trust (collectively "Applicants"); and
2. Authorize the Chairman of the Board of Supervisors to sign the Tolling Agreement on behalf of Tulare County.

SUMMARY:

On June 26, 2018, the County Board of Supervisors held a public hearing and approved the "Andersen Village (Hash Farms)" Development Project (the "Project"), a 200-unit single family/multi-family residential Project including the Final Environmental Impact Report (EIR). The Notice of Determination (NOD) was filed for the EIR on June 26, 2018. This agreement is to toll the statute of limitations applicable to Petitioners for filing a lawsuit challenging the approval of the Project based upon claimed violations of CEQA from its current date of July 26, 2018 to September 26, 2018.

FISCAL IMPACT/FINANCING:

The applicant cost for a Zone Change is an initial deposit of \$6,451 to the Tulare

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County Resource Management Agency. Additional fees of \$100 per hour are charged if actual cost of processing the application exceeds the deposits. The applicant has an indemnification and cost recovery agreement on file. CEQA documentation and compliance for the Project is also charged at a full cost recovery basis.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

The County's five-year strategic plan includes the "Economic Well Being Initiative - to promote economic development opportunities, effective growth management and a quality standard of living." The requested zone change amendment helps encourage growth consistent with the County General Plan.

ADMINISTRATIVE SIGN-OFF:



Aaron Bock
Interim Assistant Director
Economic Development & Planning



FOR Reed Schenke, P.E.
Director

cc: County Administrative Office

Attachment(s) Attachment A – Tolling Agreement

Attachment "A"

TOLLING AGREEMENT

This Tolling Agreement ("Agreement") is entered into effective July ____, 2018, by and among CONSOLIDATED IRRIGATION DISTRICT, and CENTRAL KINGS GROUNDWATER SUSTAINABILITY AGENCY ("Petitioners"); COUNTY OF TULARE ("County"), STEVE HASH FARMS, and STEVEN CECIL HASH and ELIZABETH MCNALLEY SHAFER, as Trustees of the HASH/SHAFER REVOCABLE TRUST (collectively "Applicants"), each individually referred to as "Party" and collectively referred to as "the Parties".

RECITALS

WHEREAS, on June 26, 2018, in the matter of the "Andersen Village (Hash Farms)" Development Project (the "Project"), a 160-unit single family/multi-family residential complex the County Board of Supervisors held a public hearing and did the following:

(a) Certified the Final Environmental Impact Report (EIR), prepared for the proposed Andersen Village Specific Plan No. SPA 16-001, Change of Zone PZC 16-004, Tentative Subdivision Map TSM 16-002, the Establishment of the Community Facilities District (CFD), and all, or any Fresno Local Agency Formation Commission ("LAFCO") related actions to the Specific Plan (SCH #2016091017); and adopted the Mitigation Monitoring Reporting Program pursuant to 14 California Code Regulations, the California Environmental Quality Act (CEQA), and the State CEQA Guidelines Sections 15090 through 15094;

(b) Adopted the Planning Commission's recommendation to approve the EIR under CEQA Guideline Section 15094 as set forth in Planning Commission Resolution 9464 and determined that there is no substantial evidence that said Specific Plan, Zone Change Amendment, Tentative Subdivision Map and CFD will have a significant effect on the environment with mitigation. The Final EIR reflects the independent judgment of the County and has been completed in compliance with the California Environmental Quality Act of 1970 pursuant to 14 California Code Regulations;

(c) Directed the Environmental Assessment Officer, or designee, of the Tulare Resource Management Agency to file a Notice of Determination with the County Clerk;

(d) Adopted the Planning Commission's recommendations and findings of approval for the Final EIR, Specific Plan No. SPA 16-001, Change of Zone No. PZC 16-004, Vesting Tentative Subdivision Map No. TSM 16-002, and Community Facilities District, the "Andersen Village (Hash Farms) Project", as set forth in the Planning Commission Resolutions 9464 through 9468;

(e) Authorized the Chairman of the Board of Supervisors to execute the Memorandum of Understanding between the City of Kingsburg and the County to be included in Appendix A of Specific Plan No. SPA 16-001;

(f) Waived the final reading and adopted the amendment to Ordinance No. 352, the Tulare County Zoning Ordinance; and

(g) Directed the Clerk of the Board of Supervisors to publish the adopted Ordinance and Amended Zoning Map.

WHEREAS, on or about June 26, 2018, the County filed and recorded a Notice of Determination for the Project with the County Clerk; and

WHEREAS, prior to the County's approval of the Project, Petitioners submitted comments to the County regarding the potential impacts that the Project would have on groundwater and alleging various other legal errors in the County's environmental analysis (collectively "Comments") associated with and located in the County's EIR. More specifically, Petitioners allege that the impacts of the Project to the groundwater were not adequately considered, especially in light of the relevant provisions of the Sustainable Groundwater Management Act ("SGMA"), that the "in lieu" groundwater fee and agreement by and between the Applicants and the City of Kingsburg did not adequately address groundwater impacts of the Project, and that efforts to mitigate those impacts with an agreement not yet in place for the Project was improper deferred environmental mitigation for purposes of CEQA; and

WHEREAS, the County Planning Commission Conditions of Approval were amended, as stated in the record before the County Board of Supervisors hearing on June 26, 2018 to read: "That prior to the issuance of the final map of the first phase of development that the applicant enters into an agreement with the Consolidated Irrigation District. Whereby, the applicant pays recharge fees, which the District and the Central Kings Groundwater Sustainability Agency will then use to build recharge ponds and bring in surface water and offset the demands on the groundwater basin created by this project."; and

WHEREAS, Petitioners allege that the aforementioned amended condition does not satisfy nor cure the various legal errors in the County's environmental analysis associated with and located in the County's EIR nor mitigate, abate or otherwise obviate Petitioners' Comments and concerns regarding the Project impacts to groundwater; and

WHEREAS, Petitioners' allegations in the Comments are collectively referred to in this Agreement as the "Allegations"; and

WHEREAS, the County and Applicants dispute the Petitioners' Allegations;

WHEREAS, the Parties desire to resolve their disputes and any and all other potential issues regarding the County's approvals of the Project; and

WHEREAS, the Parties desire and agree to toll the applicable statute of limitations applicable to Petitioners for filing a lawsuit challenging the approval of the Project based upon claimed violations of CEQA from its current date of July 26, 2018 to September 26, 2018;

NOW THEREFORE, in consideration of the mutual terms, covenants, conditions and promises contained herein, the Parties hereto agree as follows.

TERMS

1. All of the foregoing recitals are incorporated herein by reference.
2. Notwithstanding the specific limitations period set forth in Public Resources Code Section 21167, the statute of limitations applicable to Petitioners for filing a lawsuit challenging approval of the Project based upon claimed violations of CEQA shall be tolled as of the date of this Agreement and shall be tolled until September 26, 2018. This Agreement is not intended to revive and shall not revive any claims that are time barred as of the date this Agreement is executed. This Agreement is entered into by all of the Parties hereto. If no legal action has been filed by the date this Agreement expires or if the terms of this Agreement are not otherwise extended, in writing and signed by the Parties, any and all remaining time under the applicable statutes of limitation shall again begin to run.
3. The Parties recognize that under limited circumstances, certain statutes of limitations enacted for the benefit of the public may not be waived by agreement of the parties to an action. The Parties to this Agreement agree that no such statute of limitations is involved in or implicated by this Agreement. The County and Applicants agree that they will not raise any defense to any action, proceeding, cause of action or motion brought by Petitioners seeking judicial review of the County's approval of the Project based on the ground that a statute of limitation enacted for the benefit of the public may not be waived by agreement of the Parties.
4. This Agreement shall not be construed as an admission of any fact or actual or potential liability on the part of any Party. This Agreement may not be offered as evidence of an admission of any liability or fact in any court proceedings.
5. This Agreement is entered into and is to be performed in Tulare County, California and shall be governed and construed in accordance with the laws of the State of California and is binding upon the Parties.
6. Each of the Parties represents and warrants that it has the authority to execute this Agreement on behalf of itself and its employees and/or clients.
7. This Agreement shall inure only to the benefit of the Parties hereto, and not to any other persons, organizations, or other entities who may file a lawsuit to challenge the approval of the Project. The Parties agree that this Agreement shall not inure to the benefit of any third parties.
8. This Agreement may be executed in any number of counterparts with the same effects as if the Parties had signed the same document. All counterparts shall be construed together and shall constitute one Agreement.
9. The provisions of this Agreement comprise all of the terms, conditions, agreements and representations of the Parties respecting the tolling of statute of limitations for the CEQA claims.

10. This Agreement may not be altered or amended, and no provision hereof may be waived, except by written agreement executed by the Parties, or their representative if notice of counsel is given, to be bound. The Parties hereby agree that terms of this Agreement have not been changed, modified, or expanded by any oral agreements or representations entered into or made prior to or at the execution of this Agreement.

11. This Agreement shall terminate automatically as of midnight on September 26, 2018, unless extended in writing, signed by all the Parties to be bound.

12. The Parties may amend this Agreement, including but not limited to further extending the tolling of the statute of limitations for any action, proceeding, cause of action or motion seeking judicial review under CEQA of the County's approval of the Project by executing an amendment in writing signed by all Parties.

13. The Parties shall not challenge the legitimacy of this Agreement or raise as a jurisdictional issue the validity of this Agreement in any future legal action arising as a result of the termination of this Agreement and/or the filing of any action, proceeding, cause of action or motion seeking judicial review under CEQA of the County's approval of the Project brought by Petitioners.

14. Any further notices shall be delivered to:

a.
PETITIONERS: Lauren D. Layne, Esq.
Baker, Manock & Jensen, PC
5260 N. Palm Ave., Suite 421
Fresno, CA 93704

b.
COUNTY: County of Tulare
Visalia, CA

c.
APPLICANT: Bruce Brown, Esq.

15. Any Party may bring an action to enforce the terms of this Agreement.

DATED: July ____, 2018

FOR PETITIONERS

BAKER MANOCK & JENSEN, PC

By: _____
Lauren D. Layne
Attorneys for CONSOLIDATED
IRRIGATION DISTRICT, and CENTRAL
KINGS GROUNDWATER
SUSTAINABILITY AGENCY

DATED: July ____, 2018

FOR COUNTY OF TULARE

By: _____

DATED: July ____, 2018

FOR APPLICANTS

By: _____
Bruce Brown