

AGENDA DATE: August 8, 2006



RESOURCE MANAGEMENT AGENCY

5961 SOUTH MOONEY BLVD.
VISALIA, CA. 93277
PHONE (559) 733-6291
FAX (559) 730-2653

Britt L. Fussel	Engineering
Deborah Kruse	Development Services
Jean P. Brou	Transportation
George Finney	Long Range Planning
Deborah West	Support Services
Roger Hunt	Administrative Services

HENRY HASH, DIRECTOR

THOMAS W. SHERRY, ASSOCIATE DIRECTOR

AGENDA ITEM

ITEM NO. _____
District 2

SUBJECT:

Operation and maintenance agreement with the city of Tulare for Oakmore Street between a quarter mile north of Bardsley Avenue and Tulare Avenue (State Route 137).

REQUEST(S):

Approve and authorize the Chairman to execute an agreement with the city of Tulare for the operation and maintenance of Oakmore Street between a quarter mile north of Bardsley Avenue and Tulare Avenue (State Route 137).

SUMMARY:

On February 2, 2006, the Tulare County Local Agency Formation Commission (LAFCo) approved LAFCo Case Number 1352-T-154, East Tulare No. 29, Reorganization 2005-05 annexing property at the northwest corner of Bardsley Avenue (Avenue 224) and Oakmore Street (Road 124) into the city of Tulare (LAFCo Resolution No. 06-007). The conditions of approval included the requirement that "The Certificate of Completion shall not be recorded until the City of Tulare enters into an operation and maintenance agreement with County of Tulare for the segment of Oakmore Street between the project site and Tulare Avenue. The operation and maintenance agreement will be effective upon the completion of the high school". The action before the Board today is the adoption of an operation and maintenance agreement in compliance with the LAFCo condition of approval.

The County has used this form of agreement in the past with the city of Visalia (four agreements), city of Tulare (three agreements), city of Lindsay (one agreement) and the city of Porterville (two agreements). These agreements serve as an excellent tool to allow cities to proceed with their projects utilizing their

development standards and without County encroachment permits even though the right of way remains in the County.

This agreement is somewhat different than those that have been entered into in the past; this agreement, while being approved today, does not become effective until a point in time in the future. In this case, the agreement becomes effective when 50% of the students attending the new high school, to be located at the northwest corner of Bardsley Avenue and Oakmore Street, are City residents or July 1, 2010, whichever occurs first.

The LAFCo condition of approval is written to require the agreement to become effective upon the completion of the new high school, which is anticipated to be complete in September 2008 for the 2008/09 school year. The city of Tulare posed the argument that since the new high school is on the eastern boundary of the City, the majority of the students would be County residents living within the boundaries of the Tulare Joint Union High School District. Staff believes this argument is valid until the residential development surrounding the new high school (on three sides) begins to build out. To recognize this condition, the agreement has been written to push off the effective date until the students from within the city limits exceed 50% of the student population or July 1, 2010 whichever occurs first. At the latest the agreement will become effective two (2) years after the school opens.

The city of Tulare City Council acted on the agreement at their July 18, 2006 meeting.

FINANCING:

Upon the effective date of the agreement, this segment of Oakmore Street will be removed from the maintained mileage system thereby reducing the amount of state funding received by the County for road maintenance. This would amount to approximately \$1,900 per year.

ALTERNATIVES:

There are no alternatives. The Local Agency Formation Commission required this agreement between the county of Tulare and the city of Tulare as a condition of approval for annexation

INVOLVEMENT OF OTHER DEPARTMENTS OR AGENCIES:

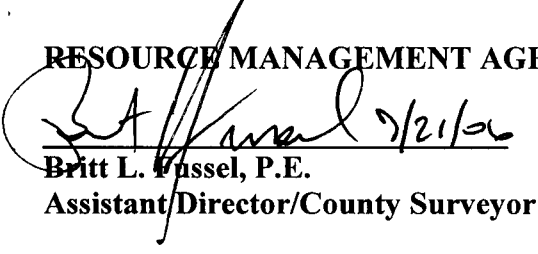
The County Counsel prepared the Agreement. The city of Tulare as a second party to the Agreement.

SIGNATURE REQUIREMENTS:

Chairman of the Board to sign all copies of the Agreement. County Administrative Officer/Clerk of the Board of Supervisors or authorized Deputy to attest to the Resolution.

ADMINISTRATIVE SIGN OFF:

RESOURCE MANAGEMENT AGENCY


Britt L. Fassel, P.E.
Assistant Director/County Surveyor


Henry Hash, Director

BLF

**Attachments: Location Sketch
Agreement Regarding a Portion of Oakmore Street
Resolution**

Submittal Date: July 22, 2006

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

IN THE MATTER OF OPERATIONAL)
JURISDICTION AGREEMENT WITH) RESOLUTION NO.
THE CITY OF TULARE FOR) AGREEMENT NO.
OAKMORE STREET)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS AT AN OFFICIAL MEETING HELD ON AUGUST 8,
2006, BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

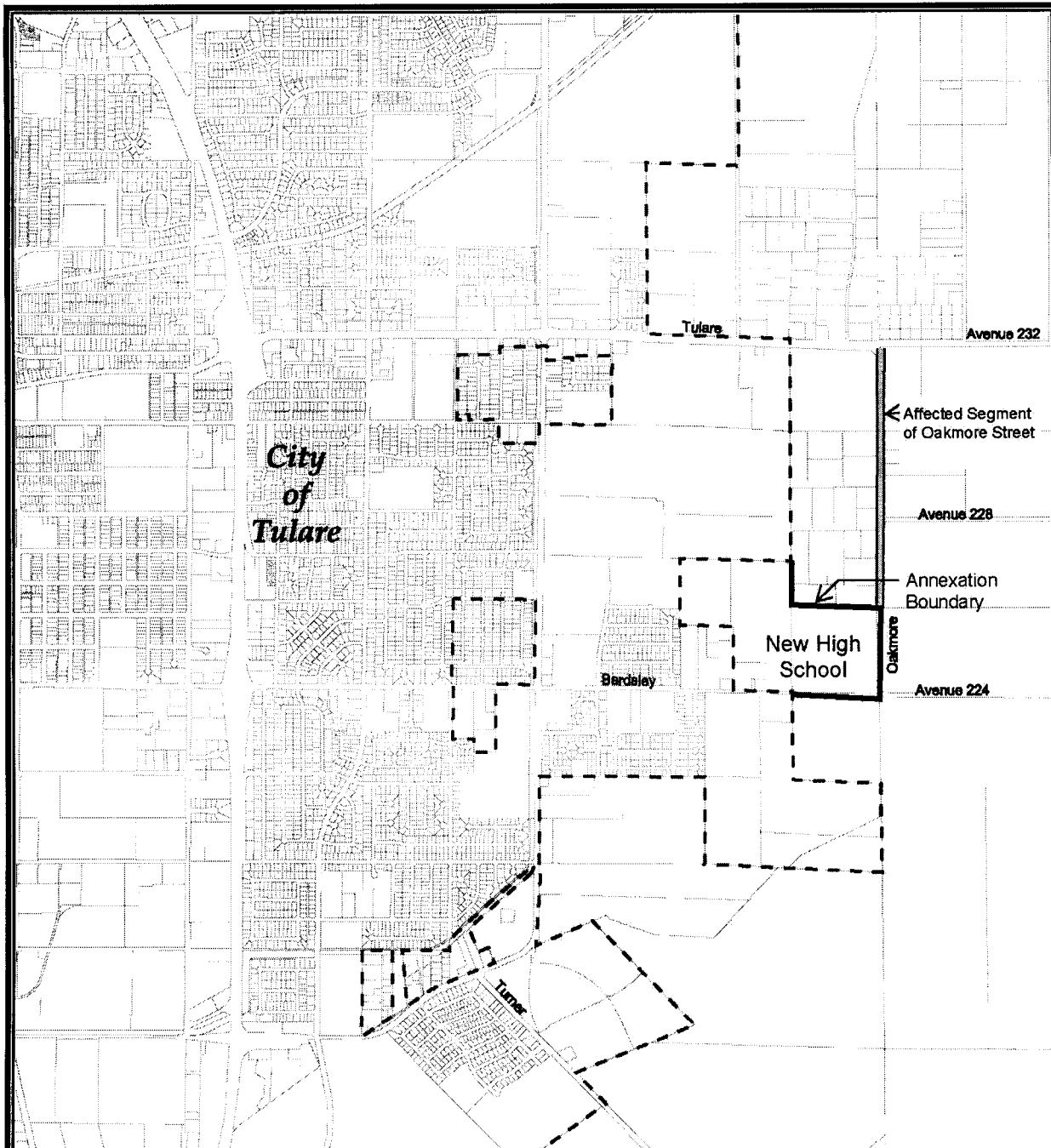
ABSENT:



ATTEST: C. BRIAN HADDIX
COUNTY ADMINISTRATIVE OFFICER/
CLERK OF THE BOARD OF SUPERVISORS

BY _____
Deputy Clerk

* * * * *

Approved and authorized the Chairman to execute an agreement with the city of Tulare for the operation and maintenance of Oakmore Street between a quarter mile north of Bardsley Avenue and Tulare Avenue (State Route 137).



 **City Limits - Tulare**
 **Area Of Interest**

Location Sketch



**AGREEMENT REGARDING A PORTION OF
OAKMORE STREET**

THIS AGREEMENT is entered into this _____ day of _____, 2006, between the COUNTY OF TULARE, referred to as COUNTY, and the CITY OF TULARE, referred to as CITY, with reference to the following:

- A. WHEREAS, Oakmore Street from a quarter mile north of Bardsley Avenue to Tulare Avenue (State Route 137) is a COUNTY-maintained roadway as defined on Exhibit "A" attached hereto; and
- B. WHEREAS, CITY obtained Local Agency Formation Commission (LAFCo) approval to annex approximately 98 acres of land at the northwest corner of Bardsley Avenue and Oakmore Avenue known as East Tulare No. 29, Reorganization No. 2005-05, LAFCo Case Number 1352-T-154; and
- C. WHEREAS, LAFCo Resolution No. 06-007 included the following condition to be adhered to: "8(d) The Certificate of Completion shall not be recorded until the City of Tulare enters into an operation and maintenance agreement with the County of Tulare for the segment of Oakmore Street between the project site and Tulare Avenue (State Route 137). The operation and maintenance agreement will be effective upon the completion of the high school."
- D. WHEREAS, Government Code section 54981 authorizes COUNTY and CITY to contract for the improvement, maintenance, repair and operation by City of streets and highways within COUNTY'S jurisdiction; and
- E. WHEREAS Streets and Highways Code section 1810 allows a city to acquire property outside its boundaries in the unincorporated area of a county if it is necessary to connect or widen existing streets if the county consents to the acquisition.

ACCORDINGLY, IT IS AGREED:

- 1. COUNTY authorizes CITY to undertake, at no risk or expense to COUNTY, any construction reconstruction and/or maintenance of Oakmore Street from a quarter mile north of Bardsley

Tulare County Agreement No. _____

Avenue to Tulare Avenue (State Route 137). The specific portions are more particularly identified in Exhibit "A" which is attached hereto and incorporated herein by this reference.

2. CITY agrees to construct said improvements in accordance with all applicable Federal, State, and local laws, regulations and directives, with the exception of COUNTY'S road standards. CITY shall provide and administer all encroachment permits and other controls required by state and local laws, regulations and ordinances, provided that, in doing so, CITY need not require that said improvements be constructed to COUNTY'S road standards.
3. CITY and COUNTY agree that no authorization, encroachment permits, oversight, input or requirement other than the authority conferred by this Agreement shall be required by COUNTY for any of CITY's responsibilities under this agreement, including the acquisition of additional right of way, and construction of improvements, including traffic signal installations, as deemed necessary by CITY.
4. The term of this Agreement is indefinite and shall continue until such time as the referenced segment of Oakmore Street is annexed to CITY. The indemnity provisions contained in paragraph 7 of this Agreement shall continue in full force and effect beyond expiration by annexation or termination of this Agreement by any other means.
5. CITY hereby agrees to pay all expenses arising out of the design, operation, maintenance, construction and/or upkeep of said portions of Oakmore Street and hereby waives any claim against the COUNTY for any cost of design, operation, maintenance, construction and/or upkeep of said portion of Oakmore Street.
6. This agreement shall become effective when 50% of the students attending the new high school generally located at the northwest corner of Bardsley Avenue and Oakmore Street are CITY residents or July 1, 2010, whichever occurs first. CITY shall endeavor to provide COUNTY with student population information on or about October 1, 2008 and each October 1 thereafter or until the effective date of this agreement.
7. From and after the effective date of this Agreement as noted in paragraph 6 above, CITY shall have all responsibility and liability for all activities and omissions related to the design, construction, upkeep, operation and maintenance of said portion of Oakmore Street, including

its integration with any connecting roads and streets, and CITY shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including, but not limited to court cost and attorney fees, death or injury to any person and/or damage to any property (including COUNTY property), arising out of or related to said design, construction, upkeep, operation, maintenance or integration by CITY, its agents, officers, independent contractors, developers and employees. CITY specifically agrees to hold harmless, defend and indemnify COUNTY for any and all claims arising out of COUNTY'S waiver of COUNTY'S road standards and any actions or omissions by CITY in connection with any encroachment permit or other discretionary permit issued by CITY to facilitate this Agreement. This indemnification obligation shall continue beyond the term of this Agreement or any extension of this Agreement. CITY shall maintain adequate insurance coverage, either through policies issued by insurance companies or through self insurance reserves, to provide said indemnity to the COUNTY.

8. From and after the effective date of this Agreement, CITY shall enforce all traffic and pedestrian safety laws and ordinances and issue encroachment permits on said portions of Oakmore Street and COUNTY shall have no responsibility or liability therefore.
9. CITY shall maintain complete and accurate records with respect to all works of improvement authorized by this Agreement.
10. COUNTY agrees to notify CITY of any applications received to change any land use designation or grant any land use entitlement for properties fronting on that section of Oakmore Street.
11. This Agreement represents the entire agreement between CITY and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force of effect. No part of this Agreement may be modified without the written consent of both parties.
12. Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY: RMA Director
Government Plaza
5961 S. Mooney Blvd.
Visalia, CA 93277

(Fax No.: (559) 730-2653 / Phone No. (559) 733-6291)

CITY: City Manager
411 E. Kern Ave...
Tulare, CA 93274

(Fax No.: (559) 685-2398/ Phone No. (559) 684-4200)

Notice delivered personally or sent by facsimile transmission is deemed to be received upon receipt. Notice sent by first class mail shall be deemed received on the fourth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

13. This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any uncertainty.
14. Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.
15. This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. Any litigation arising out of this Agreement shall be brought in Tulare County California. CITY waives the removal provisions of California code of Civil Procedure Section 394.
16. The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party or either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.
17. The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.
18. This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court of other legal authority, or is agreed by the parties, to be in

conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.

19. Each party agrees to execute any additional documents and to perform any further acts which may be reasonably required to effect the purposes of this Agreement.
20. CITY expressly agrees that it will not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

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THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

BY _____
Chairman, Board of Supervisors

ATTEST: C. Brian Haddix,
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By _____
Deputy Clerk

Approved as to Form
County Counsel

By _____
Deputy

CITY OF TULARE

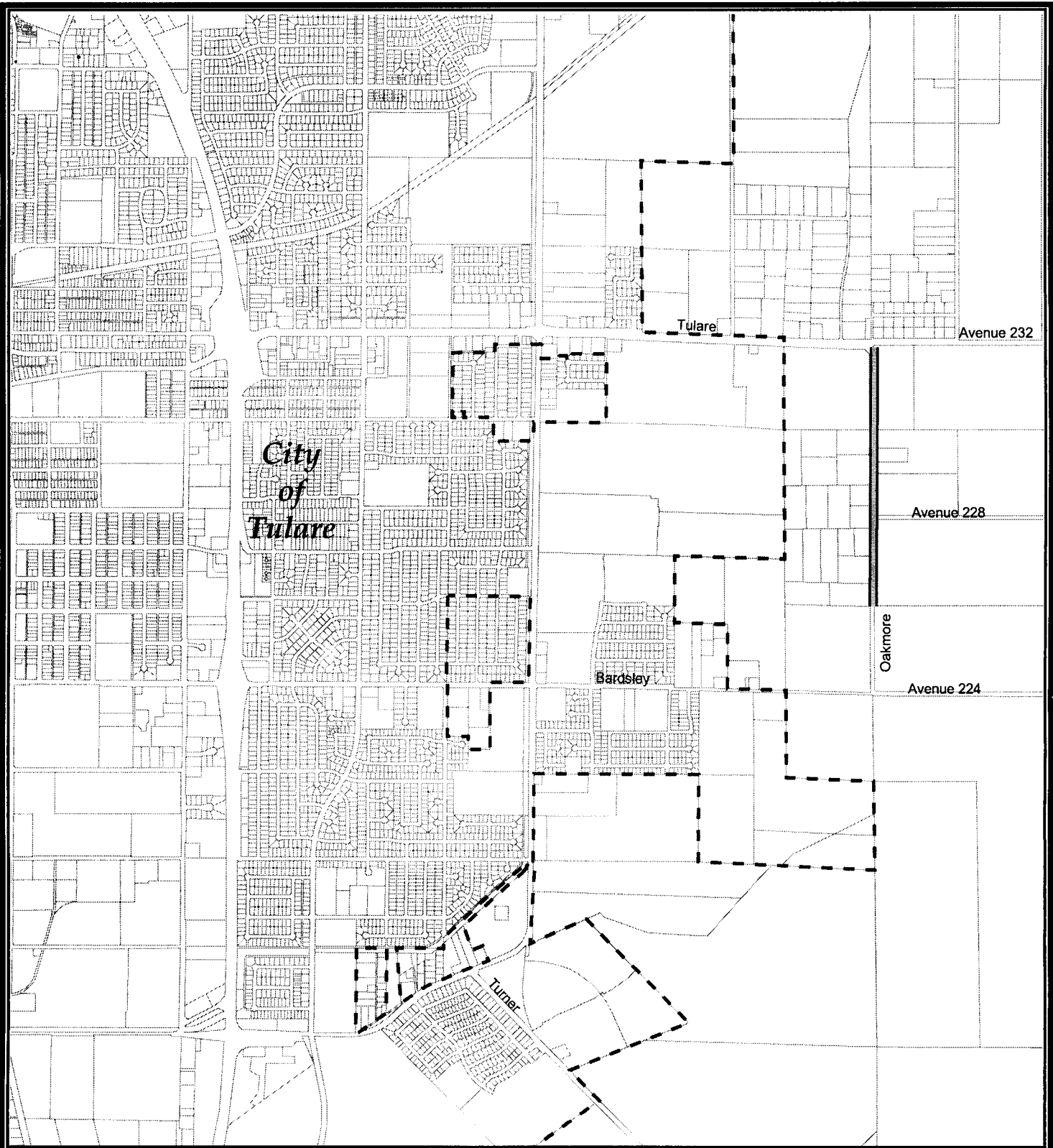
BY _____
Darrel Pyle
City Manager

ATTEST:
Chief Deputy City Clerk of the City of Tulare

BY _____

Approved as to Form

BY _____
City Attorney





 City Limits - Tulare
 Area Of Interest

Exhibit "A"

