

Staff Report

May 14, 2024

TO: Honorable Mayor and Members of the Town Council
FROM: Christy Consolini, Planning Director
RE: Authorizing an Agreement for Installation and Maintenance of Existing and New Landscaping with Costco

Recommendation

Staff recommends that the Town Council adopt a resolution authorizing the Town Manager, to execute an Agreement for Installation and Maintenance of Existing and New Landscaping with Costco for routine maintenance of landscaping on the Costco properties within the Town of Loomis.

Issue Statement and Discussion

Per Condition of Approval #69 for the Conditional Use Permit for the Costco project (Town Council Resolution #22-11), "All landscape areas shall be maintained in a healthy, thriving condition, free from weeds, trash and debris. The Owner [Costco] shall enter into a landscape maintenance agreement prior to receiving final building approval or a certificate of occupancy...." Therefore, an agreement has been drafted based on the Town's standard Landscape Maintenance Agreement form, to comply with Condition of Approval #69.

The term of the agreement remains in effect in perpetuity with the land and the boundaries of the property are identified in the agreement. The properties consist of each of the three Costco parcels comprising the site. Should a new owner occupy the property, the agreement would remain applicable for onsite landscape maintenance.

Approval of an Agreement for Installation and Maintenance of Existing and New Landscaping with Costco will enable the Town to ensure landscaping is installed on the Costco site per the landscaping plans and is routinely maintained per those plans and the requirements of the Conditions of Approval.

CEQA Requirements

The routine maintenance of landscaping and irrigation systems is a Class 1 exempt project under CEQA. Class 1 exemptions for Existing Facilities includes "the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination." The Costco project and landscaping plan were previously evaluated in the Costco EIR (SCH# 2017052077). The landscaping for the project is in the process of being installed and any future maintenance or repair of the landscaped areas is addressed through a Class 1 Exemption.

Financial and/or Policy Implications

If the Town should need to intervene to maintain landscaping, and in doing so incurs costs to restore or maintain the landscaping, the Town may demand repayment for costs incurred by the Town, and may make the costs a lien upon the Costco property if left unpaid.

Attachments

- A. Resolution 24-____
- B. Agreement for Installation and Maintenance of Existing and New Landscaping

TOWN OF LOOMIS

RESOLUTION 24 - _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS AUTHORIZING THE TOWN MANAGER TO EXECUTE A LANDSCAPE MAINTENANCE AGREEMENT WITH COSTCO FOR THE ROUTINE MAINTENANCE OF LANDSPING WITHIN THE COSTCO PROPERTIES

WHEREAS, the Town of Loomis established Conditions of Approval for the Costco project (Town Council Resolution #22-11), which included condition #69 outlining the requirement to establish a landscape management agreement with the Town and to maintain the site in a healthy, thriving condition; and

WHEREAS, the Town of Loomis provided Costco with the Town's standard Agreement for Installation and Maintenance of Existing and New Landscaping; and

WHEREAS, Costco reviewed, signed, and notarized said Agreement; and

WHEREAS, the action is Categorically Exempt from the California Environmental Quality Act as per Section 15301. Existing Facilities and was previously addressed through the Costco Environmental Impact Report (SCH#2017052077).

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Loomis hereby authorizes the Town Manager to execute an Agreement for Installation and Maintenance of Existing and New Landscaping with Costco within the Town of Loomis.

PASSED AND ADOPTED this 14th day of May 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

Stephanie Youngblood, Mayor

ATTEST:

Carol Parker, Deputy Town Clerk



999 Lake Drive, Issaquah, WA 98027

Letter of Transmittal

March 12, 2024

VIA UPS OVERNIGHT MAIL

City of Loomis
Loomis Planning Dept.
3665 Taylor Road
Loomis, CA 95650

RE: Costco – Agreement for Installation and Maintenance of Existing and New Landscaping

To Whom it May Concern:

Enclosed is the Agreement for Installation and Maintenance of Existing and New Landscaping signed by Costco.

Please contact me at hmattsen@costco.com or 425-416-1456 with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Haejin Mattsen".

Haejin Mattsen
Legal Assistant to Rick Jerabek, Corporate Counsel

**AGREEMENT FOR INSTALLATION AND MAINTENANCE OF EXISTING
AND NEW LANDSCAPING**

INSTRUCTIONS

1. This agreement requires an attachment referred to as Exhibit "A". This is a legal description of the property and can usually be found in the Title Report for the subject property.
2. This Agreement requires the property owner or owners to sign it and to have the signature(s) notarized on a separate notary sheet attached to this page. *In order to qualify as a recordable legal document, all names and signatures must match letter-for-letter on all pages.*
3. The property owner needs to complete or confirm the information under item No. 9 "NOTICES."
4. Please return the completed form to the project planner at the Loomis Planning Department, 3665 Taylor Road, Loomis, CA 95650.

Questions regarding this Agreement should be directed to the project planner at the Loomis Planning Department, Tel (916) 652-1840.

NOTE: PLEASE DO NOT fill in the date on the first page. This is the date that the Town Council will consider the Agreement and will completed by town staff.

Record at the request of Town of Loomis

Return to:

Town of Loomis

P.O. Box 1330

Loomis, CA 95650

**AGREEMENT FOR INSTALLATION AND MAINTENANCE OF EXISTING OF
NEW LANDSCAPING**

THIS AGREEMENT IS made this _____ day of _____, 2024, between Property Owner(s) hereafter referred to as "Property Owner," and the TOWN OF LOOMIS, a Municipal Corporation, hereafter referred to as "Town."

RECITALS

THIS AGREEMENT is based upon the following facts:

1. Property Owner is the owner of real property in the Town of Loomis, property address, (Assessor's Parcel Number APN 045-042-072 and 045-042-073 described in Exhibit "A" attached to this Agreement and made a part of it by this reference (the "Property");
2. On May 10, 2022 ("Approval Date"), the Town granted a General Plan and Zoning Code text amendment for accessory uses – addendum to the Environmental Impact Report certification, General Plan and Zoning Code amendments, and a Conditional Use Permit.
3. By the terms of the May 10, 2022 approval, the Property Owner is required to install and maintain landscaping in accordance with Building Permit 22-0586 with a plan approved by the Town on the Approval Date, a copy of which is on file with the Town Office (the "Landscape Plan");
4. Both parties recognize that the installation and maintenance of landscaping is an integral part of the Property Owner's plan for development of the Property, and is necessary to carry out the purpose and intent of the Town's Land Use regulations, and that the development would not have been approved by the Town without the assurance that this Agreement would be executed by Property Owner.

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES, as follows:

1. PURPOSE. The purpose of this Agreement is to ensure (a) installation of the landscaping in accordance with Landscape Plan and (b) continued maintenance and care of the existing and newly installed landscaping.

2. PROPERTY SUBJECT TO AGREEMENT. The property which is the subject of this Agreement is described in Exhibit "A" which is attached to this Agreement and incorporated in it by this reference (the "Property").
3. TOWN PROCEEDINGS. Reference is made to the General Plan and Zoning Code text amendment for accessory uses – addendum to the Environmental Impact Report certification, General Plan and Zoning Code amendments, and a Conditional Use Permit. (Town Council Resolution #22-11) and the landscaping plan for the property, a copy of which is on file in the Town Offices.
4. LANDSCAPING AS A BENEFIT. Property Owner agrees that the landscaping which he/she is obligated to provide to provide will materially benefit his/her property and is necessary to comply with conditions 72 and 73 imposed by the Town as a requirement of the development of the property.
5. DUTY TO INSTALL AND MAINTAIN LANDSCAPING. Property Owner agrees to complete the installation of the landscaping required by the Landscape Plan prior to final building inspection approval, and to diligently to maintain and care for existing and installed landscaping, using generally accepted methods of cultivation and watering consistent with any restrictions duly imposed by the Town or other appropriate authority. Property Owner shall maintain the standard of care necessary to maintain the landscaping in a healthy condition, consistent with all applicable requirements of the Landscape Plan and the ordinances and regulations of the Town of Loomis.
6. TOWN MAY MAINTAIN LANDSCAPING. Property Owner agrees that if the Property Owner fails to comply with the terms of this Agreement, including without limitation the standard of maintenance necessary to keep the landscaping in a healthy condition, the Town will give written notice of the deficiency to the owner who shall have 20 days to make the necessary correction. If the correction is not made within 20 days the Town may elect to take the steps necessary to ensure that the landscaping is maintained and cared for. To do this, the Town's shall provide written notice of its intent to enter the premises for this purpose. The Town shall either personally serve the notice upon the Property Owner or mail a copy of it to the Property Owner address as shown in Paragraph 9 of this Agreement. Notice shall be delivered or mailed at least 20 days in advance of the date when the Town intends to enter the premises. The Town may enter upon the property and perform such work as the Town considers reasonably necessary and proper to restore and maintain the landscaping. The Town may act either through its own employees or through an independent contractor.
7. TOWN'S COSTS OF MAINTENANCE A LIEN. If the Town incurs costs in restoring or maintaining the landscaping after following the procedure set forth in Paragraph 6 above, the Town shall make demand on the Property Owner for payment, if the Property Owner fails to pay the costs incurred by the Town within 20 days of the date demand was made, the Town may make the costs a lien upon

the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Placer County. The notice shall state the fact that the Town has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and that the unpaid balance will draw interest at the rate of 7 percent a year until paid.

8. ADDITIONAL REMEDIES. The Town may as an alternative to the lien procedure set forth above in Paragraph 7, initiate proceedings under Chapter 7.04 of the Loomis Municipal Code and/or bring legal action to collect the sums due as the result of making of expenditures for restoration and maintenance of the landscaping. The Property Owner agrees that if legal action by the Town is necessary to collect the amount expended by the Town, the Property Owner agrees to reimburse the Town for attorney's fees and court costs actually incurred, together with interests from the date which is 20 days after the Town has given its notice, under Paragraph 6 above.
9. NOTICES. Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Town of Loomis:

Planning Director
Town of Loomis
P.O. Box 1330
Loomis, CA 95650.

Property Owner:

Costco Wholesale Corporation
730 Lake Drive
Issaquah, WA 98027
Attn: Legal Department / Property Management
RE: 1371 Loomis

And to:

Costco Wholesale Corporation
4101 Sierra College Blvd.
Loomis, CA 95650
Attn: Warehouse Manager.

Upon transfer of title to the Property, Property Owner may assign the rights and obligations under this Agreement to the new property owner by providing to the Town, in a form acceptable to the Town, an Assignment and Assumption Agreement signed by the Property Owner and its successor in title. Upon doing so,

the successor will be responsible for compliance with the terms of this Agreement.

10. MISCELLANEOUS TERMS AND PROVISIONS:

- (a) If any provision of this contract is adjudicated invalid, the remaining provisions of it are not affected.
- (b) Notice to the Property Owner shall be considered to have been given to him/her when sent to his/her address above stated.
- (c) This Agreement contains a full, final and exclusive statement of the agreement of the parties.
- (d) Property Owner appoints the Town as his/her Attorney-in-fact, to do all acts and things which the Town considers necessary to restore or maintain the landscaping approved under the issued building permit.
- (e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.
- (f) Venue for any legal action related to this Agreement shall be the Superior Court of Placer County.

11. AGREEMENT ATTACHES TO LAND. This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

12. TOWN MAY REQUIRE ADDITIONAL SECURITY. If upon execution of this Agreement or during the course of performance the Town considers that it is necessary to have the Property Owner post additional security of guarantee the performance of his/her obligations, the Town may require the Property Owner to post additional security. The Town may require either a cash deposit or a surety bond guaranteeing performance, signed by sureties, and in a form deemed satisfactory to the Town. The condition of the security shall be that if the Property Owner fails to perform his/her obligations under this Agreement, the Town may in the case of a surety bond require the sureties to perform the obligations of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

TOWN OF LOOMIS:

Mayor, Town of Loomis

PROPERTY OWNER
Costco Wholesale
Corporation

Gail E. Tsuboi
BY: Gail E. Tsuboi
ITS: VP/Assistant Secretary

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

NOTE: Property Owner's signature(s) must be notarized on a separate notary sheet.

ATTACHMENTS:

Exhibit A
LEGAL DESCRIPTION
COSTCO PARCELS

THREE PARCELS OF LAND, BEING REAL PROPERTY SITUATE IN THE TOWN OF LOOMIS, COUNTY OF PLACER, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL ONE:

BEING ALL OF ADJUSTED PARCEL 1 AS DESCRIBED IN THAT LOT LINE ADJUSTMENT, TOWN OF LOOMIS APPLICATION #20-03, RECORDED JANUARY 28, 2021, AS DOCUMENT NO. 2021-0011923, OFFICIAL RECORDS OF PLACER COUNTY.

PARCEL TWO:

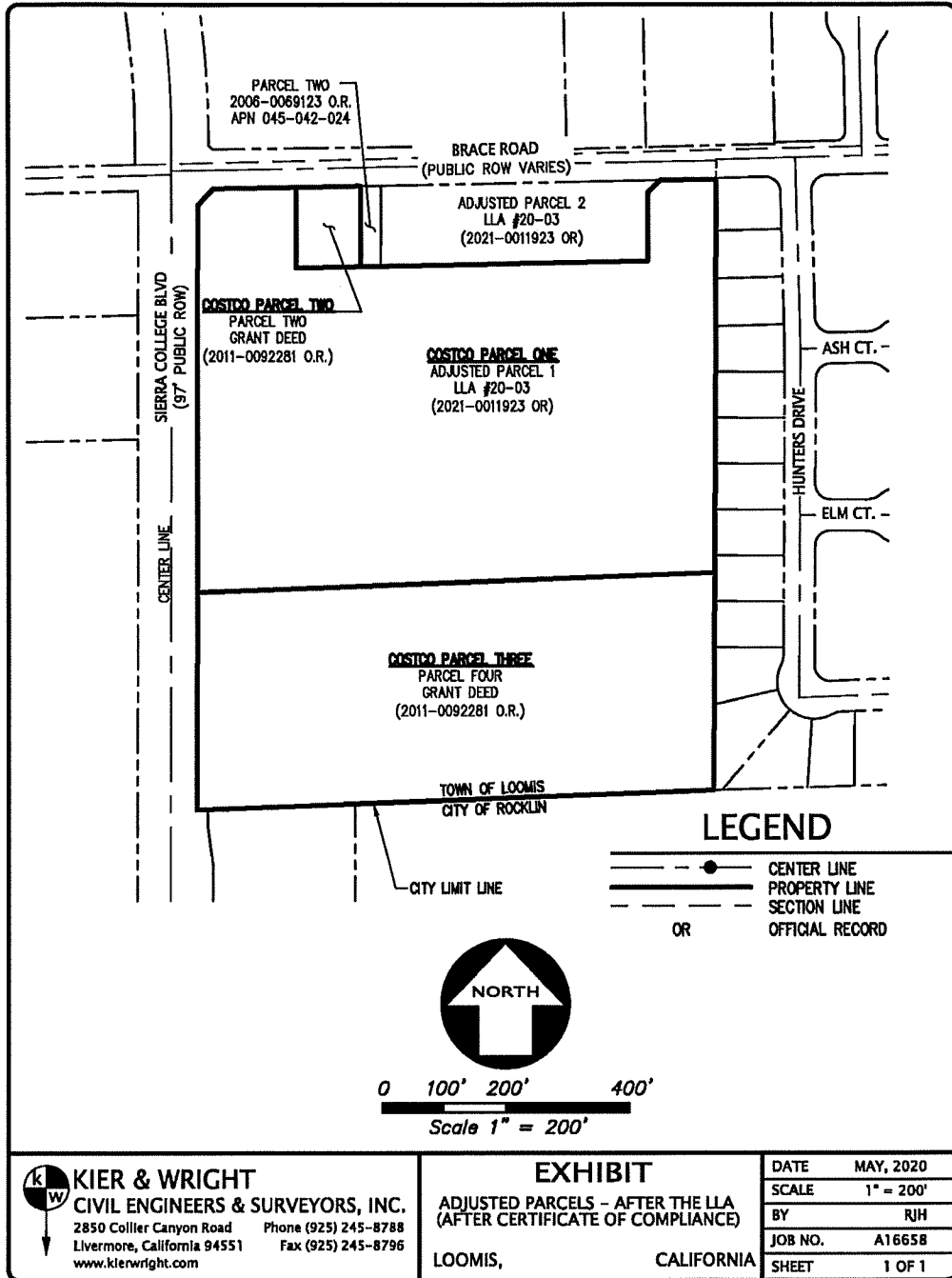
BEING ALL OF PARCEL TWO AS DESCRIBED IN THAT CERTAIN GRANT DEED, RECORDED NOVEMBER 17, 2011, AS DOCUMENT NO. 2011-0092281, OFFICIAL RECORDS OF PLACER COUNTY.

PARCEL THREE:

BEING ALL OF PARCEL FOUR AS DESCRIBED IN THAT CERTAIN GRANT DEED, RECORDED NOVEMBER 17, 2011, AS DOCUMENT NO. 2011-0092281, OFFICIAL RECORDS OF PLACER COUNTY.

KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC.

Exhibit B
PARCEL EXHIBIT



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of Washington }

County of King }

On March 12, 2024, before me, Stephanie Gardner, Notary Public, State of Washington, personally appeared Gail E. Tsuboi, Vice President and Assistant Secretary of Costco Wholesale Corporation, a Washington corporation, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Washington that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



[Seal]

