



STAFF REPORT

TOWN COUNCIL MEETING OF MARCH 12, 2013

To: Town Council

From: Town Manager

Subject: Joint Use Agreement between the Town of Loomis and the Placer Union High School District and Investment of \$250,000 by the Town of Loomis for Construction of a new Del Oro Aquatic Center

Date: May 8, 2013

RECOMMENDATION:

Staff recommends the Town Council make and approve the following motions:

1. Approve the Joint Use Agreement substantially in the form attached, authorize the Mayor to execute the Agreement, and authorize the Town Manager to execute and deliver any and all other documents and take any and all actions necessary to consummate the transaction contemplated in the Agreement. (Exhibit A)
2. Authorize the Town Finance Director to take the following actions:
 - a. Reimburse the Town General fund in the amount of \$228,313 from the Town Community Facilities Fund to repay the use of General Funds for the previous purchase of the Town Corporation Yard property;
 - b. Following reimbursement of the aforementioned funds, set aside in a designated account \$250,000 from the General Fund to be given to the Placer Union High School for the construction of an Aquatic Center as set forth in the terms of the approved Joint Use Agreement.

DISCUSSION:

At the March 9, 2013 Town Council meeting an update concerning the 2013 Town Swim Program and the proposed Del Oro Aquatic Center was presented to Town Council. During the presentation on the status of the Aquatic Center, a request was made by the Del Oro Aquatic Center Fundraising Committee for the Town to invest \$250,000 towards the newly redesigned \$2,500,000 Aquatic Center. After discussion and public comment, Town Council directed the Town Manager to work with the Placer Union High School District Assistant Superintendent to develop a Joint Use Agreement (JUA) and directed the Town Finance Director and Town Manager to identify a source of

funds for the requested \$250,000 investment. The JUA was unanimously approved by the Placer Union High School Board on May 7th.

Highlights of Joint Use Agreement:

- The District shall provide the Town of Loomis and the Loomis Basin Dolphins equal priority ahead of all other users except school activities, in scheduling the aquatic center. The Town shall also have exclusive use of two (2) shallow-depth lanes of the 14-lane pool during the summer for the term of this agreement, excluding down times for maintenance, reconstruction or other unforeseen conditions plus the shared use of the Aquatic Center which includes the decking, bathroom, parking, etc.. For the purpose of this section, summer shall be defined as beginning the first Monday after the High School's annual graduation ceremony and shall end 15 days before the start of the high school academic school year. At other times, the Town shall be provided access after school, on weekends and during evening hours for scheduled programs and events.
- The District shall provide use of the Aquatic Center to the Town for one annual community swim event. The event's date and time shall be coordinated with the Town, District and Loomis Basin Dolphins in advance of the summer facility use schedule. There shall be no facility use charge to the Town for this event. Any District staff that are assigned specifically for this event shall be negotiated in advance between the Parties and reimbursed by the Town.
- There shall be an established rental charge to the Town for use of the Aquatic Center pursuant to the District's Board Policy 1330. The Town shall be charged Twenty percent (20%) of the District's established "Direct Cost", which the parties agree represents the share of the District's Direct Costs proportionate to the Town's use of the Aquatic Center (2 of 14 lanes). The Direct Costs shall include the costs for salaries paid to District employees for custodial and other services, maintenance, supplies, utilities, repair, restoration, and refurbishment of the Aquatic Center. Any change to this 2 lane provisional cost shall be negotiated in good faith between the Town and District. Town's use of the Aquatic Center for the purpose of this section shall include the decks, restrooms, parking and other facilities associated with the Aquatic Center. Town shall be billed on an hourly basis at the Direct Cost as defined above.
- The Town shall contribute \$250,000 towards the renovation of the Del Oro Aquatic Center. Payment in full of this contribution shall occur within 30 days **after** construction close-out documents have been submitted and a Notice of Completion has been approved by the District Board of Trustees.

Finance Options:

The Finance Director has evaluated a number of options through which the Town Council could secure the requested \$250,000. Following is a breakdown of the options.

General Fund

- General Fund Current operations. This could cause a deficit in the fiscal year in which the disbursement is made; in which case, the deficit would be funded out of General Fund Unassigned Reserves.
- General Fund Assigned Reserves. At some point in the past, the Council set aside \$50,000 of General Fund Reserves for Parks and \$575,000 from General Fund Reserves for Community Facilities. The pool project loosely fits the descriptions of these two designations.

Ultimately, both options above result in the same net effect on the General Fund balance. These fund reserves have been acquired through years of positive financial activity and may or may not be recovered from future activity.

Special Revenue Funds:

- Park Development Fee funds. These funds have been all but depleted through the Blue Anchor park construction. If the Council chooses to commit future Park Development funds to the pool project, the fund could borrow from the General Fund reserves and repay them as development fees are collected.
- Community Facilities Development Fee funds, option 1. There is more than \$700,000 in this fund and no projects scheduled for the near future. These funds are collected for additional Town Hall space, Corporation Yard space and parking facilities that will be required as the Town reaches "build out." This build out will be many years in the future.
- Community Facilities Development fee funds, option 2. As set forth in the Mitigation Fee report prepared by Tom Sinclair in 2005, the Town established the Community Facilities Development Fee Fund to purchase or construct three projects: Town Hall, Corporation Yard and the Multi Modal Facility. While the Town Hall was completely purchased and remodeled with these funds, the land for the Corporation Yard and the Multi Modal Facility were both purchased with General Funds. Specifically, the Town paid \$228,313 from the General Fund for purchase of the Corporation Yard property. It is possible that this fund could reimburse the \$228,313 of those General Fund expenditures, thus allowing the General Fund to have a substantial portion of money to fund the pool project without creating a substantial General Fund deficit or significantly decreasing the General Fund Reserves as they currently stand. This option would still require \$21,687 of General Fund reserves to be set aside for the Aquatic Center. Because of revenues exceeding expenditures this year, we anticipate that the General Fund reserves will increase by more than \$150,000. Contributing \$250,000 to this project, therefore, will have no negative effect on the current General Fund reserves.

CEQA :

The proposed Joint Use Agreement is exempt from CEQA.

JOINT USE AGREEMENT PLACER UNION HIGH SCHOOL DISTRICT
DEL ORO AQUATIC CENTER

THIS AGREEMENT is made and entered into this ____ day of May, 2013 by and between the TOWN OF LOOMIS, hereinafter referred to as "Town" and the PLACER UNION HIGH SCHOOL DISTRICT, hereinafter referred to as "District".

WITNESSETH:

WHEREAS, Sections 10900 through 10914.5 of the Education Code of the State of California authorizes and empowers public school districts and cities to cooperate with each other, and to that end enter, into Agreements with each other for the purpose of organizing, promoting and conducting programs of community activities and recreation; thereby constructing, improving, maintaining and operating an Aquatic Center to be constructed at Del Oro High School, hereinafter referred to as the "Aquatic Center" (as further described in Exhibit "A" to this Agreement); and

WHEREAS, in accordance with section 10900 of the Education Code, both parties to this Agreement wish to promote and preserve the health and general welfare of the people of the Town and District to cultivate the development of good citizenship by the provision of adequate community programs and recreation and to contribute to the attainment of general educational and recreational objectives for children and adults; and

WHEREAS, the existing pool facilities were built in 1969, and are currently in a very poor to irreparable state, costing thousands of dollars annually to maintain in a useable and safe condition, and

WHEREAS, the Town annually sponsors a summer swim program using the existing pool facilities and desires to continue to provide this program to the community of Loomis, and

WHEREAS, both the Town and District wish to continue to foster a mutually beneficial relationship as demonstrated over the years, and

WHEREAS, both parties to this Agreement have cooperated to assure the construction of the Aquatic Center and now wish to provide for the joint use and operation of the Aquatic Center and associated parking by both parties;

NOW THEREFORE, the Town and the District hereby mutually covenant and agree with each other as follows:

A. **JOINT USE:**

1. The use of the Aquatic Center pursuant to this Agreement shall be granted subject to existing rules and regulations of the District. The Town and the District will consult with each other prior to making changes in the Aquatic Center use policies.
2. The District shall provide the Town of Loomis and the Loomis Basin Dolphins equal priority ahead of all other users except school activities, in scheduling the aquatic center. The Town shall also have exclusive use of two (2) shallow-depth lanes of the 14-lane pool

during the summer for the term of this agreement, excluding down times for maintenance, reconstruction or other unforeseen conditions plus the shared use of the Aquatic Center which includes the decking, bathroom, parking, etc.. For the purpose of this section, summer shall be defined as beginning the first Monday after the High School's annual graduation ceremony and shall end 15 days before the start of the high school academic school year. At other times, the Town shall be provided access after school, on weekends and during evening hours for scheduled programs and events.

3. The District shall provide use of the Aquatic Center to the Town for one annual community swim event. The event's date and time shall be coordinated with the Town, District and Loomis Basin Dolphins in advance of the summer facility use schedule. There shall be no facility use charge to the Town for this event. Any District staff that are assigned specifically for this event shall be negotiated in advance between the Parties and reimbursed by the Town.
4. The Town shall use the Aquatic Center at such times and in such a manner so as not to interfere with its use for regularly scheduled school purposes. All requests for use of this facility by Town shall be submitted in writing Del Oro High School for scheduling and approval. The District shall from time to time appoint a designated contact for Aquatic Center use.
5. There shall be an established rental charge to the Town for use of the Aquatic Center pursuant to the District's Board Policy 1330. The Town shall be charged Twenty percent (20%) of the District's established "Direct Cost", which the parties agree represents the share of the District's Direct Costs proportionate to the Town's use of the Aquatic Center (2 of 14 lanes). The Direct Costs shall include the costs for salaries paid to District employees for custodial and other services, maintenance, supplies, utilities, repair, restoration, and refurbishment of the Aquatic Center. Any change to this 2 lane provisional cost shall be negotiated in good faith between the Town and District. Town's use of the Aquatic Center for the purpose of this section shall include the decks, restrooms, parking and other facilities associated with the Aquatic Center. Town shall be billed on an hourly basis at the Direct Cost as defined above.
 - a. District shall notify Town of any fee increases no later than December of the previous year. The District shall maintain documentation supporting its calculation of "Direct Cost" and Town shall have the right to inspect such documentation during normal District business hours. Town shall be provided an opportunity to review and comment on any proposed increase in the Direct Cost calculation prior to its effective date and to review and comment on documentation supporting any proposed material repair, alternation, modification or improvement to the Aquatic Center if the modification or improvement will likely result in a material increase in the Direct Cost calculation.
 - b. If the Aquatic Center use is for fundraising, where admission fees are charged or contributions are solicited and the net receipts are not expended for the welfare of the pupils or for charitable purposes (which charitable purposes include providing recreational services to residents of the Town), a charge may be levied for the use of the Aquatic Center equal to fair rental value.

6. The Aquatic Center shall be jointly inspected by a Town representative as well as a District representative on a regular agreed-upon schedule to document Aquatic Center condition and note pre-existing damages.
7. Town shall provide qualified personnel to supervise Town sponsored activities conducted in the Aquatic Center. The Town shall be solely responsible for the supervision of its employees, agents or invitees during times of exclusive use. This supervisor, who is under the direction of the Town, shall be an employee, authorized agent, subcontractor, officer, board, or representative, whom shall be responsible to enforce established rules. Town shall ensure this supervisor has successfully completed Department of Justice fingerprinting and are free of any conviction for violence, sex or drugs. The Town may subcontract out the management of their programs to a third party administrator.
8. The Town may set reasonable fees to be charged to the public for activities to be held in the Aquatic Center and may operate food and beverage concessions or other sales and rental services as may be necessary or desirable to the convenience and enjoyment of the public in order to cover activity costs.
9. Town agrees to indemnify, defend and save District, their elected board, authorized agents, officers, representatives and employees harmless from and against any and all liability or loss resulting from claims or court actions whether civil or equity and arising directly out of negligent acts or omissions of Town, its agent, officers, representatives, employees, guests or users of the Aquatic Center as part of Town-sponsored activities being conducted by the Town on this property.
10. District agrees to indemnify, defend and save the Town, their elected boards, authorized agents, officers, representatives and employees harmless from and against any and all liability or loss resulting from claims or court actions whether civil or equity and arising directly out of negligent acts or omissions of District, its agents, officers, representatives, employees, guests, or users of the Aquatic Center as part of school-sponsored activities being conducted by the District on this property.
11. As required by Education Code Section 17077.42, the Aquatic Center shall be used by the parties and community to the maximum extent possible. Both parties shall notify community groups of the availability of the Aquatic Center and work together to schedule such use to the extent feasible.
12. Each Party is encouraged to promptly notify the other Party if it becomes aware that any portion of the Aquatic Center has been vandalized, damaged, is in need of repair, or presents a potential safety hazard for users.

B. FINANCIAL CONTRIBUTION:

The Town shall contribute \$250,000 towards the renovation of the Del Oro Aquatic Center. Payment in full of this contribution shall occur within 30 days after construction close-out documents have been submitted and a Notice of Completion has been approved by the District Board of Trustees. Should all provisions of this Agreement be materially fulfilled by District and Town fails to comply with this

Financial Contribution, District may initiate whatever legal proceedings necessary to recover said monies.

C. OWNERSHIP:

At all times Aquatic Center vest in and be the sole property of District. Nothing in this Agreement shall be construed to create a lease, sale or other disposition of real property of the District, or limit, except as provided herein, the powers of the District with respect to the District's control and disposition of its real and personal property.

D. MAINTENANCE AND OPERATIONS:

1. Activity/Use Staffing: Each party to this Agreement shall be responsible for the staffing and supervision costs of their own scheduled and sponsored uses. The Town and the District may jointly sponsor activities with the staffing costs of each such event to be shared by the parties as may be jointly agreed prior to the activity.
2. Materials Acquisition: The party requesting or requiring specific materials associated with their use of the Aquatic Center shall pay for such materials and their acquisition.
3. Administration: The administration, including scheduling, inspections and evaluations, of the Agreement and uses of the Aquatic Center shall be equally shared by the Town and the District through their designated representatives.
4. Aquatic Center Maintenance: The District shall be responsible for maintenance costs associated with the Aquatic Center, including regular custodial, routine upkeep, and normal preventive maintenance.
5. Operational Costs: The District shall be responsible for the operational costs necessitated by the normal use of the Aquatic Center.
6. Renovation and Major Repairs: The District shall be responsible for renovation and major repairs necessitated by the normal use and wear and tear to be expected in a facility of this type. District shall comply with the notice and documentation requirements in Section 5.a of the "Joint Use" section of this Agreement.

E. LIMITATIONS UPON USE:

The parties shall comply with all federal, state, local and District or Town (as applicable) laws, statutes, codes, ordinances, rules, regulations, policies and requirements ("Law") regarding development, construction and use of the facilities. The parties shall not use, permit, or allow any portion of the Aquatic Center to be used, occupied, or improved under this Agreement in any manner or for any purpose that is in any way in violation of any law. The parties will not permit the possession or consumption of alcohol or any use of tobacco products on District facilities. If any license, permit, or other governmental authorization is required for the lawful use of facilities, the parties shall procure and maintain it to the extent required by law. All materials, equipment, and supplies provided by a party when using the other party's facilities shall fully conform to all applicable law.

F. **SAFETY:**

The parties agree that safety is an important issue as to both District students and individuals attending Town run or sponsored activities at the Aquatic Center. District and Town shall develop and follow safe school requirements and to enforce said rules at all times when using the Aquatic Center.

As noted in the Joint Use Section above, item 8, public access to the Aquatic Center will be limited to non-instructional school hours, including weekends and holiday periods. For community activities that occur within those limitations on instructional days, the following restrictions are imposed to ensure student safety:

1. Community activities will start no earlier than 60 minutes after students are dismissed.
2. Parking in student lots or access to the site is not permitted by members of the community prior to 30 minutes before the start of any activity.

G. **TERM OF AGREEMENT:**

This Agreement shall be in effect for a period of twenty five (25) years from the date of execution by both parties, subject to earlier termination as provided in this Agreement. Notwithstanding the foregoing, this Agreement shall automatically terminate, with no action required by either party, if either: i) the plans for the Aquatic Center are not approved by the California Department of Education, the Division of State Architect, and the Office of Public School Construction within two years after execution of this Agreement; or ii) the District fails to complete construction of the Aquatic Center by June 30, 2015.

H. **TERMINATION:**

1. Termination Without Cause. Either party may terminate this Agreement, without cause, upon one hundred eighty (180) days written notice to the other party.
2. Termination for Cause. In the event of a material breach of this Agreement, the non-breaching party shall give the breaching party thirty (30) days written notice of the non-breaching party's intention to terminate this Agreement. If the breach has not been cured within the thirty (30) day period specified, the Agreement shall terminate upon expiration of the thirty (30) day period. Termination pursuant to this Section is not the non-breaching party's exclusive remedy, but is in addition to any remedies otherwise available. A choice not to terminate the Agreement pursuant to this Section shall not constitute a waiver of the non-breaching party's right to any other remedy for the breach, or to terminate this Agreement at a later date because of the same or a different material breach of this Agreement.
3. Reimbursement to Town. If this Agreement is either i) terminated by the District without cause (Section 1, above), or ii) terminated by the Town for cause (Section 2, above), District shall reimburse Town for the actual amount granted by Town to the District, not to exceed the amount described in the Financial Contribution section of this Agreement, in accordance with the following schedule:

Years in Use	% Reimbursed	Years in use	% Reimbursed
1	96	14	44
2	92	15	40
3	88	16	36
4	84	17	32
5	80	18	28
6	76	19	24
7	72	20	20
8	68	21	16
9	64	22	12
10	60	23	8
11	56	24	4
12	52	25 or more	0
13	48		

District shall not be required to reimburse Town if this Agreement is either i) terminated by Town without cause or ii) terminated by District for cause.

I. INSURANCE:

The District shall maintain in full force throughout the term of the Agreement, at its own expense, a policy of comprehensive liability insurance, which will insure the District and the Town against liability for injury or death of persons and damage to Town property, arising from the District's use of Town property under this Agreement. The policy shall be for not less than \$2,000,000 for any one person injured or killed, and not less than \$2,000,000 for property damage, and shall be maintained on an occurrence basis. The District shall provide the Town with a copy of the policy, including an endorsement that states that the policy shall not be reduced or cancelled without ten business day written notice to the District and the Town. The Town shall be named as an additional insured, and a certificate of insurance shall be provided to the Town. The District may satisfy the insurance requirements of this Agreement through either commercial insurance or through a Joint Powers Authority of which the District is a member.

The Town shall maintain in full force throughout the term of the Agreement, at its own expense, a policy of comprehensive liability insurance, which will insure the District and the Town against liability for injury or death of persons and damage the District property, arising from the Town's use of District property under this Agreement. The policy shall be for not less than \$2,000,000 for any one person injured or killed, and not less than \$2,000,000 for property damage, and shall be maintained on an occurrence basis. The Town shall provide the District with a copy of the policy, including an endorsement that states that the policy shall not be reduced or cancelled without ten business day written notice to the District and the Town. The District shall be named as an additional insured, and a certificate of insurance shall be provided to the district. The Town may satisfy the insurance requirements of this Agreement through either commercial insurance or through a Joint Powers Authority of which the Town is a member.

J. NONDISCRIMINATION:

Subject to applicable laws, rules and regulations, neither party shall discriminate, harass, intimidate or bully in its performance of this Agreement against any protected group as identified under Education Code 200 and 220 and Government Code 11135, including actual or perceived sex, sexual orientation, gender, ethnic group identification, race, ancestry national origin, religion, color, or mental or physical disability, or age or on the basis of a person's association with a person or group with one or

more of these actual or perceived characteristics in any program or activity that receives or benefits from state financial assistance.

K. **TUBERCULOSIS AND FINGERPRINT CLEARANCE:**

Both Parties shall ensure any employee, representative, or consultant providing services shall have been tested and found free of active tuberculosis pursuant to Ed. Code 49406 and have successfully completed fingerprinting and are free of any convictions for violence, sex or drugs pursuant to Ed. Code 45125.1.

L. **AMENDMENTS:**

This Agreement may be amended or modified from time to time by mutual consent of the parties, in writing and adoption by the respective governing boards.

M. **APPLICABLE LAW:**

This Agreement shall be governed by and interpreted under the laws of the State of California applicable to instruments, persons, transactions and subject matter which have legal contacts and relationships exclusively within the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for Placer County.

N. **PREVAILING LAW:**

In the event of any conflict or ambiguity between this Agreement and state or federal law or regulations, the latter shall prevail.

O. **SEVERABILITY:**

If any provision or any part of this Agreement is for any reasons held to be invalid and/or unenforceable or contrary to public policy, law, status, or ordinance by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

P. **ASSIGNMENT:**

Neither party may assign or transfer any of its obligations, rights, or duties under this Agreement without the prior written consent of the other party. Any assignment or transfer made without such written consent shall be void, and at the option of the non-assigning party, shall immediately terminate this Agreement.

Q. **SUCCESSORS AND ASSIGNS:**

The terms and provisions of this Agreement shall extend to and be binding upon and inure to the benefit of the successors of the respective parties.

R. **ENTIRE AGREEMENT:**

This Agreement and its Exhibits constitute the entire Agreement between the parties with respect to

the subject matter hereof, and no prior agreement, statement, promise, or representation made by any party, employee, officer, or agent which is not contained herein shall be binding or valid. Any previous agreements between the District and the Town regarding the property are hereby terminated.

S. **HEADINGS:**

The headings of the sections are for convenience only and are not a part of this Agreement, nor shall they be considered in construing the intent of this Agreement.

T. **INTERPRETATION:**

The language of all parts of this Agreement shall, in all cases, be construed as a whole according to its fair meaning and not in favor of nor against any of the parties as draftsman or otherwise.

U. **WAIVER:**

No waiver of default in any of the terms, covenants, or conditions in this Agreement shall be waiver of any subsequent default of the same or any other terms, covenants or conditions herein contained.

V. **NOTICES:**

All notices, certificates, or other communications hereunder shall be deemed given when personally delivered or mailed by certified mail, postage prepaid, to the parties at the addresses set forth below:

District:

Placer Union High School District
Attn: Assistant Superintendent,
Administrative Services
13000 New Airport Road
Auburn, CA 95603

Town:

Town Manager
P.O. Box 1330
Loomis, CA 95650

EXECUTION BY FACSIMILE OR IN COUNTERPARTS:

This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement. Facsimile signature pages transmitted to other parties to this Agreement shall be deemed equivalent to original signatures on counterparts.

WARRANT OF AUTHORITY:

Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party indicated, and each of the parties by signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by the Loomis Town Council and attested by its Town Clerk; and by the President

of the Placer Union High School District Board of Education and attested by its Superintendent of Schools.

Placer Union High School District

Dave Horsey, Superintendent

Town of Loomis

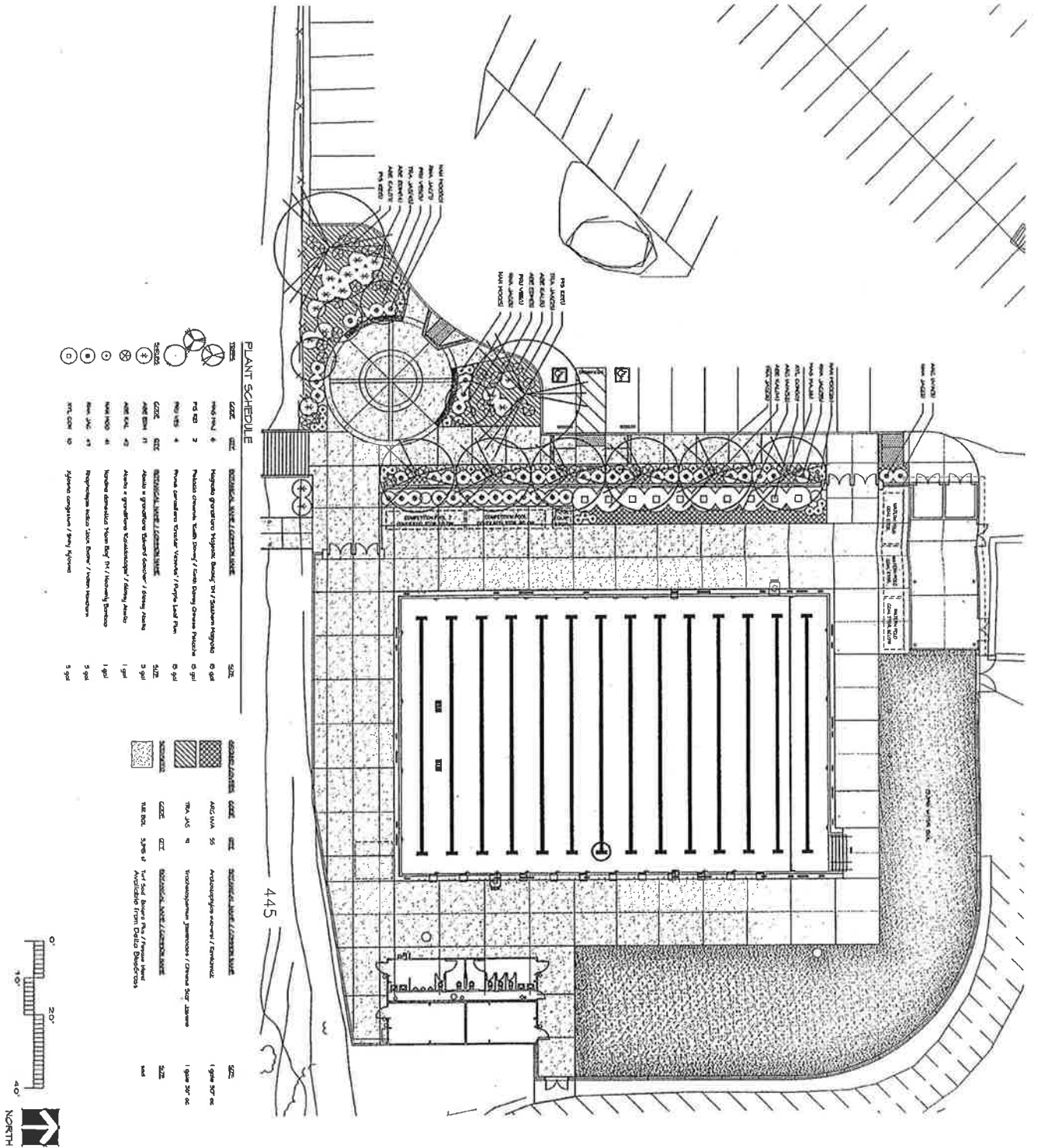
Mayor

Attest:

Loomis Town Clerk

Approved as to form:

Town Attorney



CONSTRUCTION DOCUMENTS

DATE: _____

DRAWN BY: _____

CHECKED BY: _____

SCALE: _____

STATUS: _____

FILED: _____

PROJECT: _____

DATE: _____

SCALE: _____

STATUS: _____

FILED: _____

PROJECT: _____

DATE: _____

SCALE: _____

STATUS: _____

FILED: _____

PROJECT: _____

YAMASAKI

ARCHITECTS

300 TAYLOR ROAD

LOOMIS, CA 95890

TEL: (916) 438-1111

FAX: (916) 438-1112

WWW.YAMASAKIARCHITECTS.COM

williams + paddon

ARCHITECTS // PLANNERS // PEOPLE

1111 11th St, Suite 100, Berkeley, CA 94704

TEL: (415) 863-1111

FAX: (415) 863-1112

WWW.WILLIAMS-PADDON.COM