

RESOLUTION NO. 2006-201

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
ACCEPTING THE ELK GROVE COMMUNITY SERVICE DISTRICT'S REQUEST FOR
AN AGREEMENT AUTHORIZING MAINTENANCE OF CERTAIN LANDSCAPED
MEDIANS WITHIN STREET RIGHTS OF WAY IN THE CITY OF ELK GROVE**

WHEREAS, when the City of Elk Grove was incorporated in 2000, all of the roads and streets within the City limits were transferred to the City from the County of Sacramento, and

WHEREAS, the County historically had the Elk Grove Community Services District (CSD) maintain the landscaping in the median islands which are located within public street rights of way within the boundaries of the City, and

WHEREAS, The funds for the maintenance of the City's medians come from assessments paid by property owners, thorough a CSD created a Landscape and Lighting Assessment District (L&LD) which funds which were designated by the CSD and approved by the voters to pay the costs of maintaining the landscape improvements in the median, and

WHEREAS, the CSD and the County had an agreement, a copy of which is attached (Exhibit 1), in which the CSD agreed to maintain the medians that provided that if the CSD decided to stop maintaining the medians, it would provide the funds collected from property owners for that purpose to the county, and

WHEREAS, the City and the CSD were working on the finalization of such an agreement modeled very closely on the county agreement with the CSD's previous General Manager and a draft agreement had been prepared, tracking very closely with the county agreement, and presented to the previous General Manager, and

WHEREAS, When the new General Manager of the CSD was hired, the draft agreement was presented with an explanation of the history, the status and the City's readiness to enter into the negotiated agreement, and

WHEREAS, the CSD announced it would no longer maintain the medians and would be diverting the property owner paid assessments to other purposes.

WHEREAS, in 2001 the CSD's Board of Directors issued an "Official Assessment Ballot" for the Elk Grove Community Services District – District wide Landscape and Lighting District which told the voters that the assessment money would be used for "maintenance and operation of the...medians" among other facilities.

WHEREAS, the voters and property owners were told that "A Yes Vote Means:" the district "will have sufficient revenues to keep ...medians...well maintained."

WHEREAS, on Tuesday, July 11, 2006, the CSD Board of Directors reversed the CSD's policy of no longer maintaining the medians and diverting the property owner paid assessments to other purposes.

WHEREAS, the CSD has requested and presented to the City a different proposed draft agreement, and

WHEREAS, the Community at large wishes to insure future misunderstandings are avoided, insure that the medians are maintained beyond the summer of 2007, insure the medians are maintained at a level at least that they were at the time of the publication of the "Official Assessment Ballot" in 2001, insure that the assessment monies are use for median maintenance regardless of which agency does the maintenance,

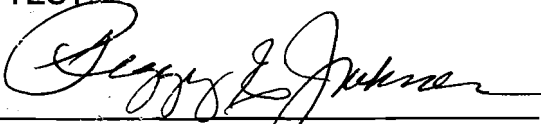
IT IS NOW RESOLVED, that the City of Elk Grove shall accept the CSD's request to enter into a median Maintenance agreement and the City Council hereby directs staff to execute the agreement attached to this resolution and to transmit it to the Board of Directors of the CSD for its approval and execution.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 26th day of July 2006.



RICK SOARES, MAYOR

ATTEST:



PEGGY E. JACKSON
CITY CLERK

APPROVED AS TO FORM:



ANTHONY B. MANZANETTI,
CITY ATTORNEY

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2006-201**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on July 26, 2006 by the following vote:


AYES : **COUNCILMEMBERS:** **Soares, Briggs, Cooper, Leary**

NOES : **COUNCILMEMBERS:** **None**

ABSTAIN : **COUNCILMEMBERS:** **None**

ABSENT: **COUNCILMEMBERS:** **Scherman**





**Peggy E. Jackson, City Clerk
City of Elk Grove, California**

APR-22-03 TUE 4:49 PM COLTON INSURANCE ASSO.

FAA NO. 310 000 1000

Apr 22 2003 6:43AM ELK GROVE CSD

97 355216

P-2

SENT BY: SPECIAL PROJEC GROUP;

918 638 9287;

APR-21-03 1:28PM;

PAGE 9

Exhibit 1

**AN AGREEMENT FOR MAINTENANCE OF LANDSCAPED MEDIANS
WITHIN STREET RIGHTS OF WAY OF THE
COUNTY OF SACRAMENTO, LAGUNA COMMUNITY FACILITIES DISTRICT**

THIS AGREEMENT is made and entered into this 14th day of July, 1987 by and between the County of Sacramento, a political subdivision of the State of California, hereinafter referred to as COUNTY; and Elk Grove Community Services District, a political subdivision of the State of California, hereinafter referred to as DISTRICT with reference to the following facts:

WHEREAS, Developers have installed landscaping and sprinkler systems in the median islands which are located within certain dedicated public street rights of way within the boundaries of the County of Sacramento Laguna Community Facilities District, and

WHEREAS, DISTRICT has created an assessment district pursuant to the provision of the Landscaping and Lighting Assessment District Act of 1972, the funds from which would be available to the DISTRICT to pay the cost of maintaining the landscape improvements in the median islands, and

WHEREAS, COUNTY desires DISTRICT to provide maintenance services to the landscaped median islands, and DISTRICT is willing to furnish such services on the terms and conditions set forth herein.

NOW, THEREFORE, the parties agree:

1. As of the date of this Agreement, COUNTY has established improvement standards for the medians within the boundaries of the Laguna Community Facilities District as are evidenced by the plans and specifications for the construction of Laguna Boulevard approved by COUNTY. DISTRICT approves of the development standards and shall maintain median improvements within the boundaries of the Laguna Community Facilities District which conform to those development standards. Should COUNTY desire to modify those development standards, such modification should be brought about through mutual agreement with DISTRICT. If DISTRICT and COUNTY cannot agree upon the revised development standards, DISTRICT may elect not to maintain and service those improvements affected by the modification.
2. By its acceptance of the work, COUNTY shall have the final authority and responsibility to assure that all construction work in the medians has been completed in accordance with development standards adopted by COUNTY for the Laguna Community Facilities District. During the installation of median landscaping, COUNTY shall inform DISTRICT of the date, time, and place when inspections are to be conducted so that DISTRICT may participate with COUNTY in the inspections and assist COUNTY with the determination that the work has been completed in accordance with development standards.
3. Upon notice, confirmed in writing, of the acceptance of the landscape improvements by COUNTY, DISTRICT shall commence its responsibility to provide all labor, materials, equipment, supplies, utilities and management as required to maintain, repair, replace and service the landscaping and related equipment installed in the median islands. All work shall be performed in accordance with maintenance

APR-22-03 TUE 4:50 PM COLTON INSURANCE ASSO.

FAX NO. 916 838 1000

Apr 22 2003 6:49AM ELK GROVE CSO

9: 355216

P. 3

SPECIAL PROJED QADD;

916 838 8287;

APR-21-03 1:29PM;

PAGE 4/8

specifications adopted by the Department of Public Works of the County of Sacramento and any revisions thereto, a copy of which is attached hereto and marked exhibit A.

4. COUNTY acknowledges that DISTRICT intends to perform its obligations under this Agreement with the use of its own work force as well as landscape subcontractors. DISTRICT alone shall be responsible for the direct management, supervision and control of all work performed in the maintenance and servicing of the landscaping within the median islands.
5. The cost of the work to be performed by DISTRICT pursuant to this Agreement shall be borne by assessments levied by DISTRICT pursuant to the Laguna Creek Landscaping and Lighting Assessment District and shall be performed at no expense to COUNTY. Should at any time the ability of DISTRICT to levy such assessments be restricted or impaired by operation of law, DISTRICT may terminate its obligation hereunder to maintain the landscape medians.
6. At DISTRICT'S request, COUNTY shall cause its personnel familiar with the development standards and maintenance applications of the Laguna Community to be present at all public hearings concerning the levy of assessments to answer any questions of the property owners concerning the reasoning behind the development standards and maintenance specifications, as well as the cost of their implementation.
7. Should DISTRICT fail or refuse to maintain and service the median landscaping in accordance with COUNTY'S maintenance specifications following thirty (30) day written notice and the opportunity for DISTRICT to rectify the deficiency, COUNTY may terminate DISTRICT'S rights and obligations to perform the maintenance and servicing of the median landscaping and shall thereafter undertake such maintenance and servicing by the use of COUNTY'S selected landscape subcontractors under the direct supervision of the COUNTY.
8. A termination of DISTRICT'S rights and obligations pursuant to Paragraph 7 above shall not terminate DISTRICT'S obligation to levy assessments to pay the cost of maintaining and servicing the landscaped medians. In the event of termination, COUNTY, through its own public bidding procedure may select a landscape subcontractor to perform the duties and obligations of DISTRICT. DISTRICT shall then enter into a contract with the subcontractor selected by COUNTY. Said contract shall provide that all management and supervision of the subcontractor shall be the responsibility of COUNTY. The term of any such contract shall provide that the contract terminates June 1 of each year. COUNTY may elect to perform the duties and obligations of DISTRICT contained herein by the use of employees of COUNTY. In this event DISTRICT shall pay to COUNTY all costs and expenses incurred by COUNTY in maintaining and servicing the subject improvements.
9. If COUNTY is administering the award of the landscape contract, then by May 1 of each year COUNTY shall inform DISTRICT in writing of the cost of providing the landscaped maintenance for the medians as well as the incidental expenses incurred by COUNTY for the twelve-month period commencing June 1 of each year. This information will be utilized by DISTRICT in establishing the annual assessments.

APR-22-03 TUE 4:51 PM COLTON INSURANCE ASSU.

PAA NO. 310 003 1000

Apr 22 2003 6:44AM ELK GROVE CSD

9: 355216

P. 4

SENT BY: SPECIAL PROJEC GROUP;

916 639 8297;

APR-21-03 1:27PM;

PAGE 4/5

10. The dates set forth herein relative to the levy of assessments are based upon the procedures set forth in current statutes governing the levy of assessments. If these procedures should change, COUNTY agrees to amend this Agreement where applicable so as to accommodate any new procedures.

11. It is understood and agreed that COUNTY and DISTRICT are acting as independent contractors in the performance of this agreement and that no agency relationship is created hereby.

It is further understood and agreed by the parties hereto that DISTRICT in the performance of its obligations hereunder is subject to the control or direction of the COUNTY merely as to the result to be accomplished by the services hereunder agreed to be rendered and performed and not as to the means and methods for accomplishing the results.

Furthermore, if, in the performance of this agreement, any third persons are employed as employees of DISTRICT, such persons shall be employed by and shall be entirely and exclusively under direction, supervision, and control of said DISTRICT. All terms of employment of said persons, including hours, wages, working conditions, discipline, hiring and discharging or any other terms of employment or requirements of law, shall be determined by DISTRICT; any COUNTY shall have no right or authority over such persons or the terms of such employment.

12. DISTRICT shall assume the defense of, indemnify, including the payment of reasonable attorney fees, and hold harmless COUNTY, its officers, employees, and agents, and each and every one of them, from against all actions, damages, claims, losses, or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from, the maintenance operations of DISTRICT or of DISTRICTS employees and/or agents within the public roads and easements located within the boundaries of the County of Sacramento Laguna Community Facilities District during the term of this Agreement.

13. COUNTY shall assume the defense of, indemnify, including the payment of reasonable attorney fees, and hold harmless DISTRICT, its officers, employees, and agents and each and every one of them from and against all action, damages, claims, losses, or expenses of every type and description to which they may be subject or put by reason of or resulting from the development standards or maintenance specifications adopted by COUNTY, its employees, or agents for operation within the boundaries of the County of Sacramento Laguna Community Facilities District during the term of this Agreement.

14. All notices or other communication made pursuant hereto shall be in writing and shall be deemed properly delivered, given or served when (i) personally served, or (ii) mailed by certified or registered mail postage prepaid to the parties at the following addresses:

Elk Grove Community Services District
6780 Elk Grove Boulevard
Elk Grove, CA 95624
Attention: General Manager

Director
Department of Public Works
Highways and Bridges Division
827 7th Street, Room 304
Sacramento, CA 95814

8

APR-22-03 TUE 4:51 PM COLTON INSURANCE ASSU.

FRA NO. 310 003 1000

APR 22 2003 6:46AM ELK GROVE CSD

9 355216

P.5

SENT BY: SPECIAL PROJEC GROUP;

916 638 8287;

APR-21-03 11:27PM;

PAGE 5/5

- 15. This Agreement shall not be assignable to any other party unless written consent is obtained from the non-assigning party and the assignee agrees in writing to assume and perform all of the liabilities and duties of the assignor set forth herein.
- 16. This Agreement may only be amended by a written document signed by each of the parties hereto.
- 17. This Agreement shall be construed and interpreted under and governed and enforced according to the laws of the State of California, County of Sacramento.
- 18. This Agreement contains the entire agreement of the parties hereto with respect to the matters covered hereby, and supersedes all prior arrangements, understandings of agreements between the parties, and no other Agreement, statement or promises made by either party hereto which is not contained herein shall be binding or valid.
- 19. All exhibits attached hereto and referred to in the Agreement are hereby incorporated by this reference as though they were fully set forth herein.

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

The County of Sacramento,
Political Subdivision of the
State of California

By *[Signature]*
Chairman of the Board of Supervisors

ATTEST:

By *[Signature]*
Clerk of the Board of Supervisors

Elk Grove Community Services District,
a political subdivision of the State of
California

By *[Signature]*
Gerald Bert

APR-22-03 TUE 4:52 PM COLTON INSURANCE ASSO.
Apr 22 2003 8:47AM ELK GROVE CSD

EXA NO. 310 000 1000
9 355216

T-403 P.006/006 F-264
P. 6

SENT BY: SPECIAL PROJEC GROUP;

918 838 8287;

APR-21-03 1:26PM;

PAGE 2

FILED

JUL 14 1987

BOARD OF SUPERVISORS
CLERK OF THE BOARD

COUNTY OF SACRAMENTO

RESOLUTION NO. 87-1003

LAGUNA COMMUNITY FACILITIES DISTRICT

The foregoing is a correct copy of a resolution adopted by the Board of Supervisors, Sacramento County, California

on July 14, 1987

Dated Aug 3, 1987

By Holly A. Donaldson
Deputy

**AGREEMENT FOR MAINTENANCE OF LANDSCAPED MEDIANS WITHIN STREET RIGHTS OF WAY
OF THE
LAGUNA COMMUNITY FACILITIES DISTRICT**

BE IT RESOLVED AND ORDERED that the Chairman of the Board of Supervisors be and he is hereby authorized and directed to execute an agreement in the form hereto attached, on behalf of the COUNTY OF SACRAMENTO, a political subdivision of the State of California, with the ELK GROVE COMMUNITY SERVICES DISTRICT, a political subdivision of the State of California, pertaining to the maintenance of landscaped medians within public street rights of way in the Laguna Community Facilities District, and to do and perform everything necessary to carry out the purpose and intent of this Resolution.

On a motion by Supervisor I. COLLIN, seconded by Supervisor T. JOHNSON, the foregoing resolution was passed and adopted by the BOARD OF SUPERVISORS OF THE COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, this 14th day of July, 1987, by the following vote, to wit:

AYES: SUPERVISORS Collin, G. Johnson, Smoley, Streng, T. Johnson
NOES: SUPERVISORS None
ABSENT: SUPERVISORS None

Toby Johnson
Chairman of the Board of Supervisors

ATTEST:

BY: Bundy G. Williams
Clerk of the Board of Supervisors

RECEIVED
JUL - 5 1987

In accordance with Section 25302 of the Government Code, the Board of Supervisors is hereby advised that this document has been filed with the County Clerk of the County of Sacramento, County of Sacramento.

JUL 14 1987

Holly A. Donaldson

10-0301

AN AGREEMENT FOR MAINTENANCE OF CERTAIN LANDSCAPED MEDIANS
WITHIN STREET RIGHTS OF WAY IN THE CITY OF ELK GROVE

This Agreement ("Agreement") is made and entered into this 26th day of JULY, 2006 by and between the Elk Grove Community Services District ("District"), a political subdivision of the State of California, and the City of Elk Grove ("City"), a California municipal corporation (all parties referred to herein collectively as "Parties" and individually as "Party").

TERMS

In consideration of, the mutual understandings contained in this Agreement, and other good, valuable and sufficient consideration, the Parties hereto agree as follows:

1. **TERM.** This Agreement shall be effective as of July 1, 2006 and have a term of one year ending on June 30, 2007. This Agreement may be extended by mutual written agreement of the Parties.

2. **DISTRICT OBLIGATIONS.**

(a) **Median Maintenance.** District shall provide all labor, materials, equipment, supplies, utilities and management as required to maintain, repair, replace and service the landscaping and related equipment installed in the medians identified in Exhibit "A." District services provided pursuant to this Section shall be in accordance with District standards.

3. **CITY OBLIGATIONS.**

(a) **Median Assessment.** City shall pay District an assessment of one hundred dollars (\$100) per median maintained pursuant to Section 2(a).

(b) **Median Work.** City shall give District seven (7) days notice of any City or third-party work to be conducted within any median maintained pursuant to Section 2(a). Notwithstanding Section 2(a), repair of the damage, if any, to the median landscaping and related equipment due to such work is not covered by Section 2(a). Upon request of City, District, in its sole discretion, may conduct the necessary repairs in exchange for reimbursement of costs.

(c) **Permit and Plan Review.** City shall review District encroachment permit applications and traffic control plans within forty-eight (48) hours of submittal. City shall not charge District any fees for review or permit issuance.

4. **INDEMNIFICATION.** City agrees to defend, indemnify and hold harmless District, its officers, agents, employees and volunteers from and against any and all claims, costs, demands, expenses (including attorneys' fees), losses, damages, injuries and liabilities arising from any accident, death or injury whatsoever or however caused to any person or property because of, arising out of, or related to the performance of this Agreement except to the extent District is negligent.

District agrees to defend, indemnify and hold harmless City, its officers, agents, employees and volunteers from and against any and all claims, costs, demands, expenses

(including attorneys' fees), losses, damages, injuries and liabilities arising from any accident, death or injury whatsoever or however caused to any person or property because of, arising out of, or related to the performance of this Agreement except to the extent City is negligent.

5. ENTIRE AGREEMENT. This Agreement embodies the entire understanding and agreement between the Parties pertaining to the matters described herein and supersedes and cancels all prior oral or written agreements between the Parties with respect to these matters. Each Party acknowledges that no party, agent or representative of the other party has made any promise, representation or warranty, express or implied, not expressly contained in this Agreement, that induced the other Party to sign this document.

IN WITNESS HEREOF, the Parties hereto have executed this Agreement the day and year first above written.

Elk Grove Community Services District

City of Elk Grove

By: _____
Board President

By: _____
Mayor

ATTEST:

ATTEST:

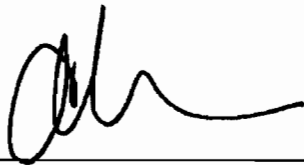
By: _____
District Secretary

By: _____
City Clerk

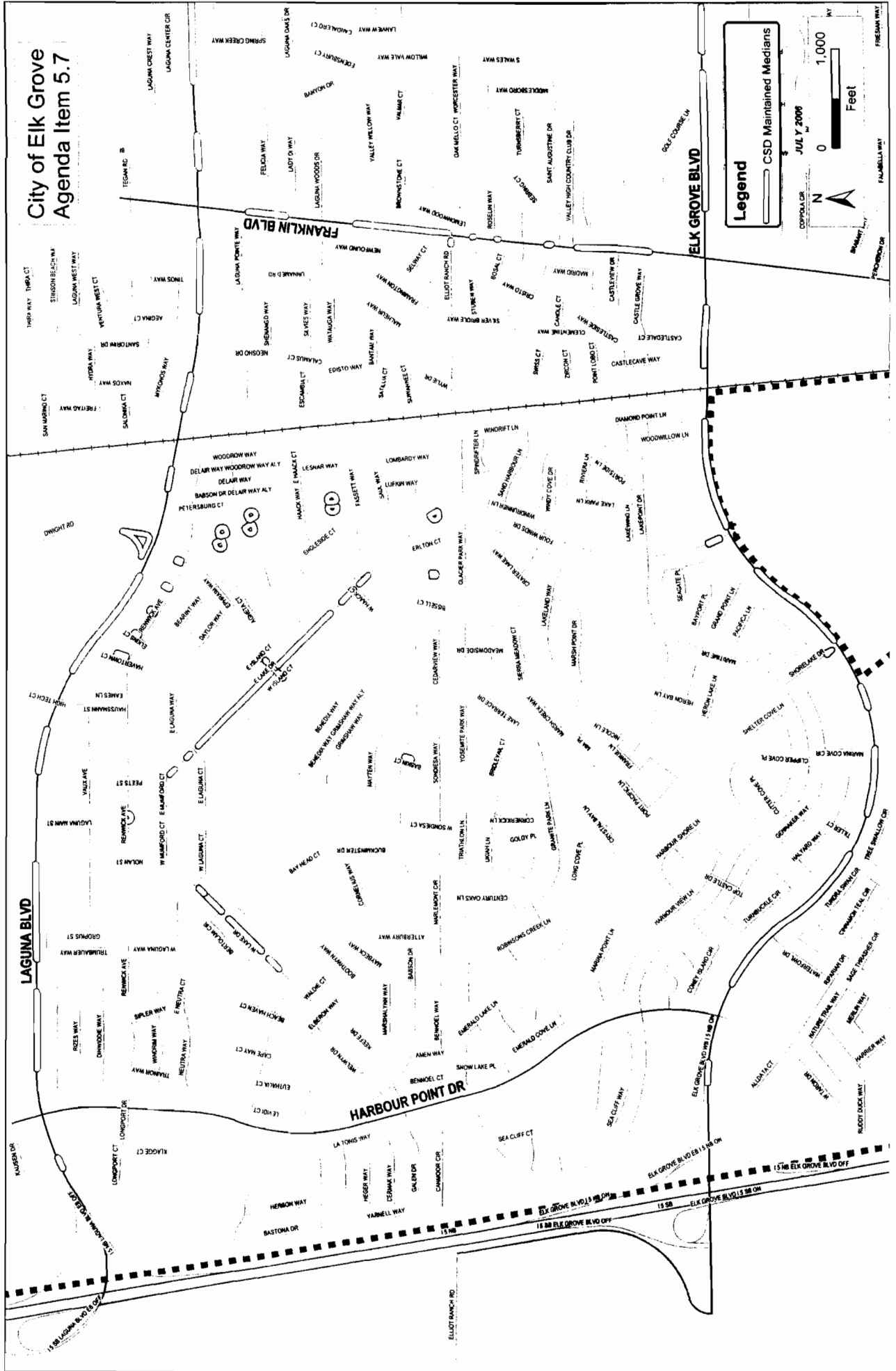
APPROVED AS TO FORM:

APPROVED AS TO FORM:

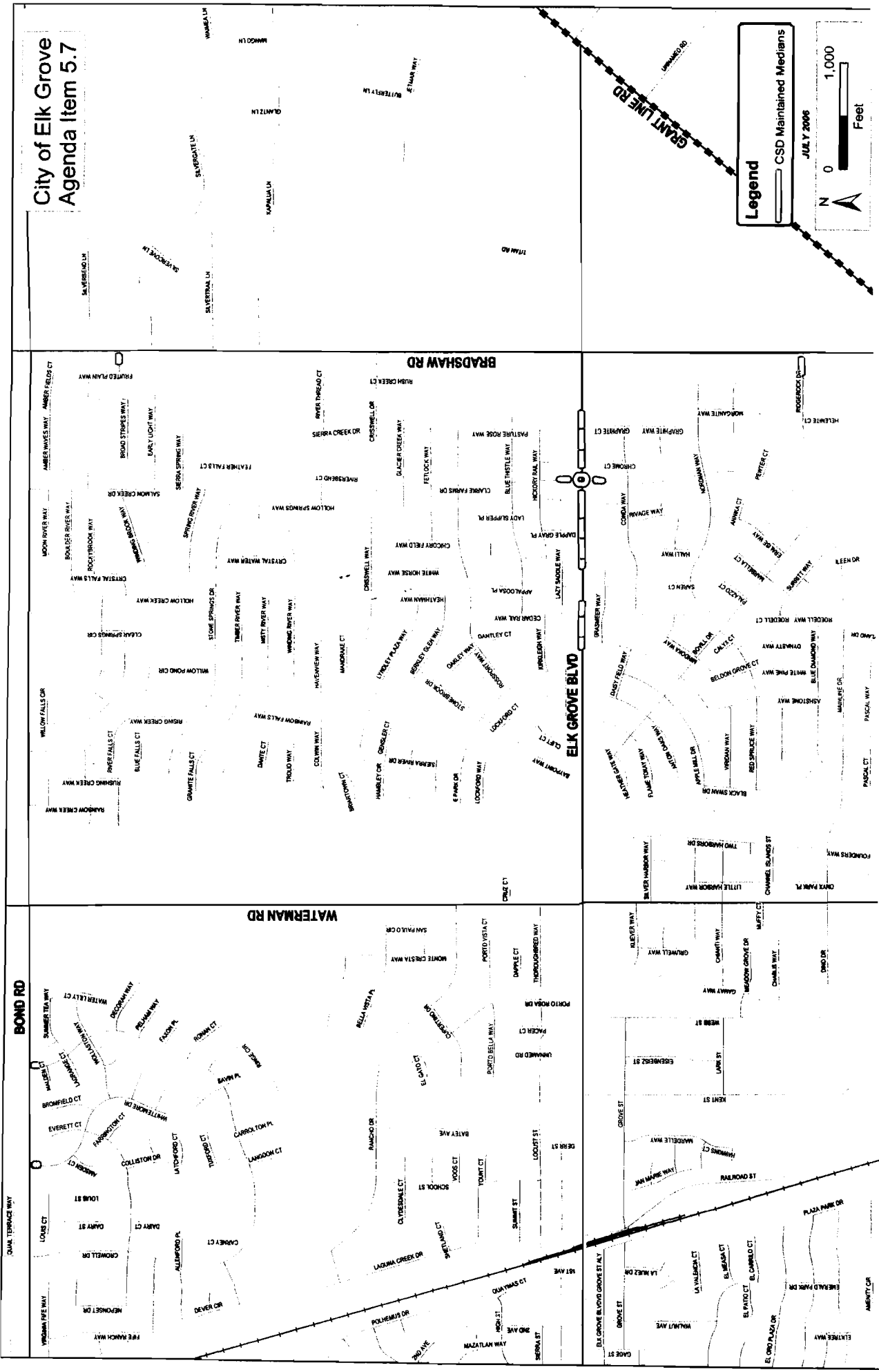
By: _____
General Counsel

By:  _____
City Attorney

City of Elk Grove Agenda Item 5.7



City of Elk Grove
Agenda Item 5.7

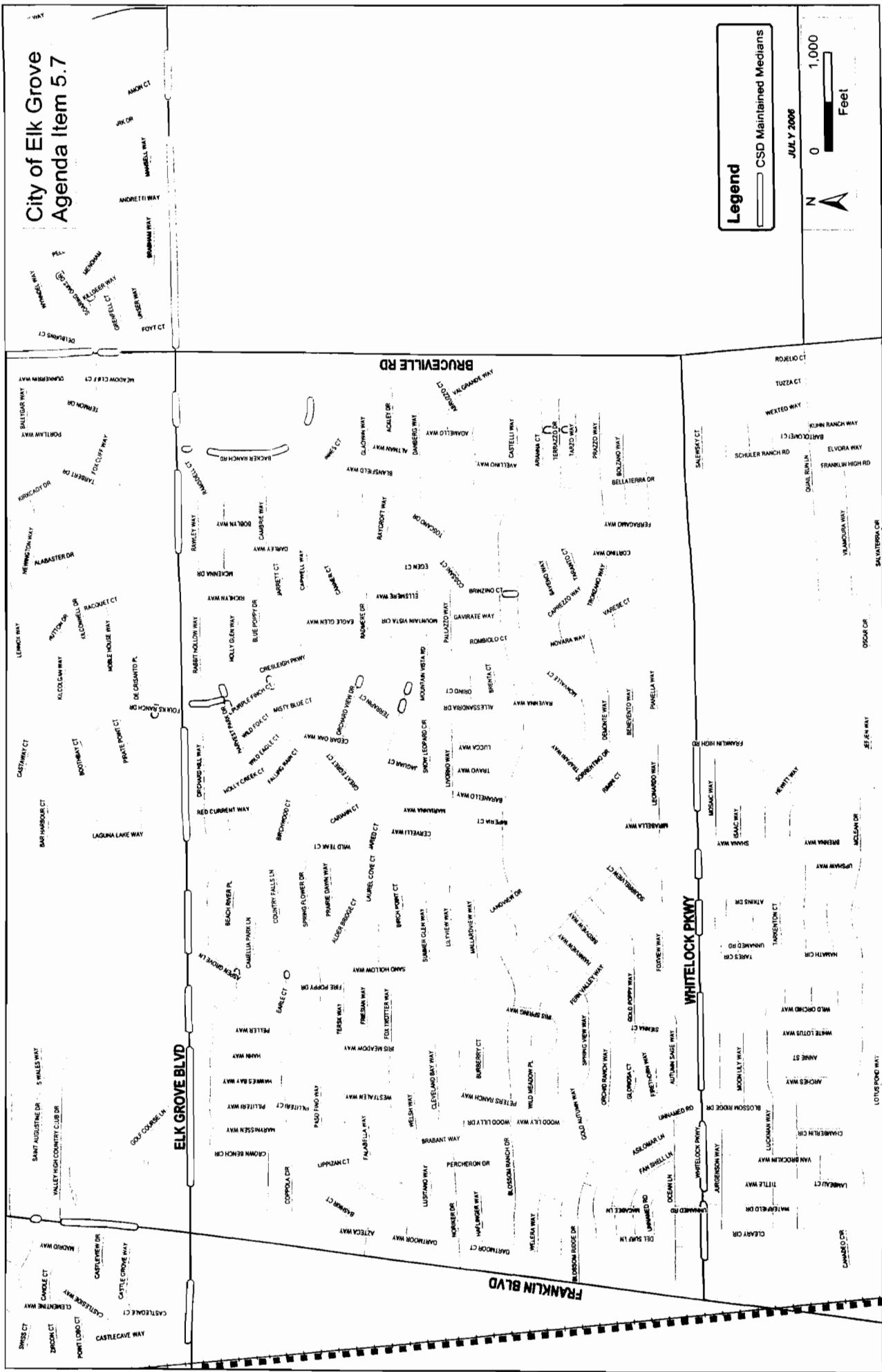


City of Elk Grove Agenda Item 5.7

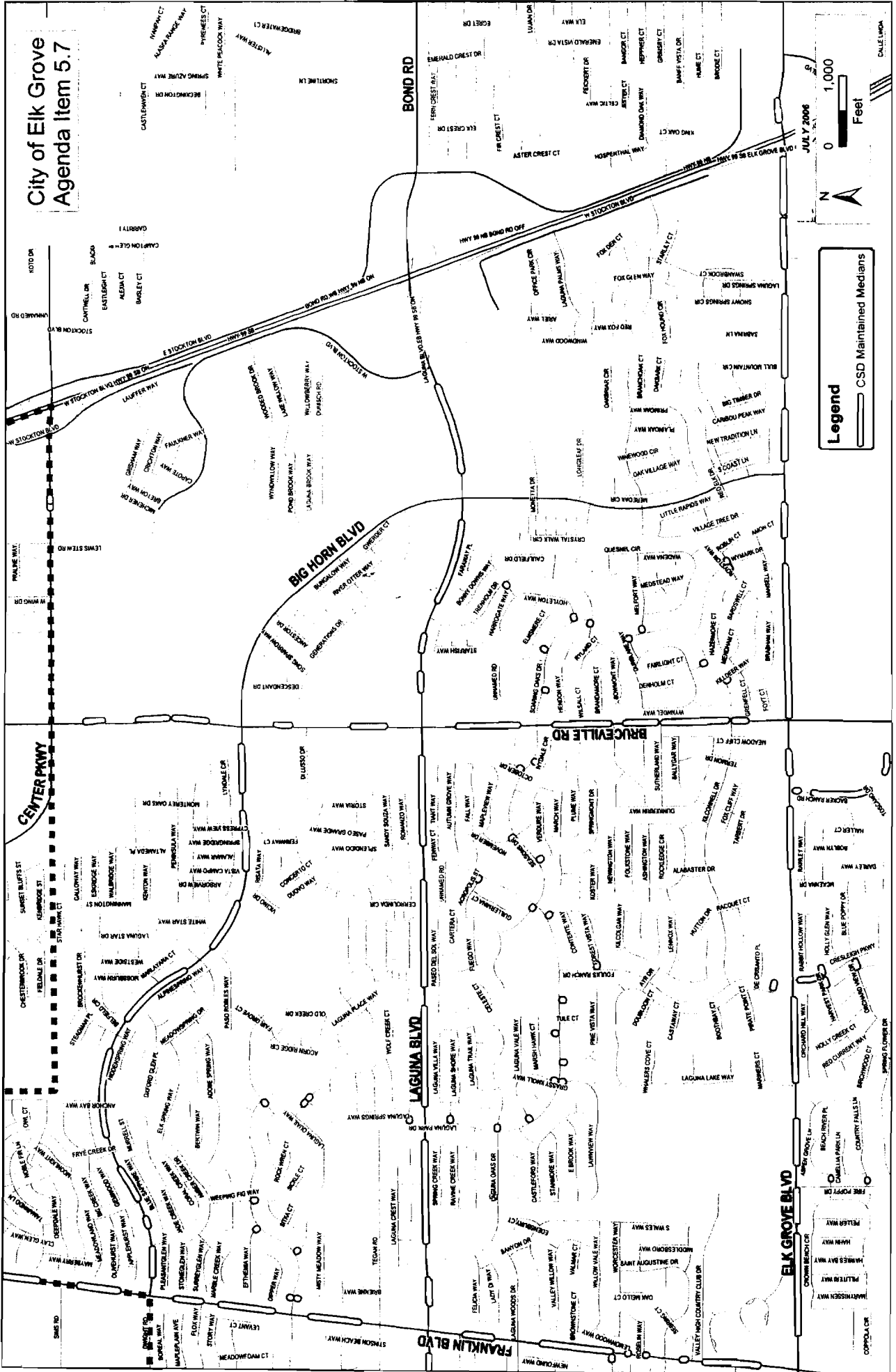
Legend

— CSD Maintained Medians

JULY 2006



City of Elk Grove Agenda Item 5.7



Legend
CSD Maintained Medians

JULY 2006

DALE LIPKA

