



IMPLEMENTATION PLAN

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CHAPTER 7 - IMPLEMENTATION PLAN

7.1 SEVERABILITY

This Specific Plan document enables the City of Ontario to facilitate the processing and approval of development plans and implementing permits to build out the MERRILL COMMERCE CENTER. If any regulation, condition, program, or portion of this Specific Plan is held invalid or unenforceable, such portions shall be deemed separate, distinct, and independent provisions, and the invalidity of such portions or provisions shall not affect the validity and enforceability of the remaining provisions contained herein.

7.2 APPLICABILITY

Approval of the MERRILL COMMERCE CENTER Specific Plan indicates acceptance by the City of Ontario City Council of a general framework for the development of the MERRILL COMMERCE CENTER property. Part of that framework establishes specific development standards that constitute the zoning regulations for the Specific Plan (refer to Chapter 5, *Development Standards*). The provisions contained herein are intended to regulate development within the Specific Plan area.

Development within the MERRILL COMMERCE CENTER Specific Plan boundary shall be implemented through the City's approval of tentative and final parcel maps and the Development Plan Review process as established in the City's Development Code. The implementation process described herein provides the mechanisms for review and approval of development projects within MERRILL COMMERCE CENTER.

7.3 INTERPRETATION

Unless otherwise provided, any ambiguity concerning the content or application of the Specific Plan shall be resolved by the City's Planning Director, or his/her designee, in a manner consistent with the goals, policies, purpose, and intent established in this Specific Plan.

7.4 DEVELOPMENT REVIEW PROCESS

7.4.1 Subdivision Maps

Approval of future tentative subdivision maps within the MERRILL COMMERCE CENTER Specific Plan may occur concurrently with or subsequently to the adoption of the Specific Plan. All tentative and final subdivision maps shall be reviewed and approved pursuant to the applicable provisions of the City's Subdivision Ordinance and consistent with the applicable provisions established within the Land Use, Infrastructure, Design Guidelines, and Development Regulations chapters of this Specific Plan.

7.4.2 Development Plan Review

All development within the MERRILL COMMERCE CENTER property shall be subject to the Development Plan Review Process established in the City of Ontario Development Code. Adoption of this Specific Plan by the City includes the design guidelines contained in Chapter 6, which shall be the design criteria by which development projects with the Specific Plan shall be reviewed during Development Plan Review. Topics on which these design guidelines are silent, the applicable design guidelines contained within the City's Development Code shall apply. The design guidelines are intended to be flexible in nature while establishing rudimentary evaluation

criteria for the review by the City of development projects during design review.

7.4.3 Development Agreements

Approval of statutory Development Agreements, per individual property owner, authorized pursuant to California Government Code Sections 65864 et seq., is required as part of the approval of the Specific Plan and prior to approval of the first Final Map. The Development Agreements shall include, but not be limited to, methods for financing, acquisition, and construction of infrastructure. The MERRILL COMMERCE CENTER Development Agreement shall be fully executed prior to the issuance of the first building permits for development within the Specific Plan.

7.4.4 Conditional Use Permits

Uses specified as conditionally permitted uses within Chapter 5, *Development Regulations*, of this Specific Plan shall be reviewed and approved by the City pursuant to the requirements of the City's Development Code, Article 9, "Conditional Use Permits."

7.4.5 Variances

Variances and Administrative Exceptions to the development regulations contained in Chapter 5, *Development Regulations*, of this Specific Plan with respect to the site area, setback dimensions, building heights, distances between buildings, landscape percentage and off-street parking and loading shall be reviewed pursuant to "Variances and Administrative Exceptions" of the City's Development Code.

7.5 SUBSTANTIAL CONFORMANCE

All development under the Specific Plan is subject to a Substantial Conformance Determination, considered and approved ministerially by the Planning Director or designee. The Substantial Conformance Determination is also a mechanism that allows for the approval of ministerial minor modifications for development under the Specific Plan. The City recognizes that modifications to the text and exhibits of this document may be needed over time. Upon direction by the City of Ontario Planning Department, certain modifications to text, exhibits, and/or development standards and design guidelines may not require a formal Specific Plan Amendment (i.e., through public hearing) and occur ministerially. The following minor modifications to this document do not require a formal Specific Plan Amendment and are subject to review and approval by the Planning Director. The Planning Director shall have the discretion to defer any request for modification to the Planning Commission or City Council, either for ministerial direction and guidance, or determination that the required change requires a formal amendment as discussed below in Section 7.6. Ministerial substantial conformance decisions are not subject to CEQA compliance.

- Expansions or reductions of the net acreage covered by a given Planning Area.
- A decrease in development intensity/density (building square footage).
- Modification of design criteria such as architectural details, landscape treatments, fencing, lighting, and entry treatments.
- Changes to the Phasing Plan, provided infrastructure is available to serve the phase as determined by the City Engineer.

- Implementation of alternative landscape materials, wall materials, entry monument design, primary/secondary corner treatments, and streetscape design that are generally consistent with the conceptual design guidelines contained within this Specific Plan.
- Modifications to Architectural Design Guidelines, such as variation of architectural style and variations in materials and colors.
- Final infrastructure facility sizing and precise location of dry utilities, water, sewer, and storm drainage improvements as approved by the City Engineer, OMUC, or San Bernardino Flood Control District.
- Roadway ROW design, when the changes are warranted and approved by the City Engineer.
- Revisions to exhibits which do not substantially change the intent of the Specific Plan.
- Modification, deletions, and additions to the list of permitted and conditional uses.
- Specific modifications of a similar nature to those listed above which are deemed minor by the Planning Director, which are in keeping with the intent of this Specific Plan and which are in conformance with the Policy Plan component of The Ontario Plan.

7.6 FORMAL AMENDMENTS TO THE SPECIFIC PLAN

All modifications to this document which do not meet the criteria of a Substantial Conformance (as defined in the previous subsection) shall be deemed to require a formal Specific Plan Amendment. This document was prepared pursuant to California Government Code

§65450, et. seq. Amendments shall be processed in accordance with the applicable requirements of the law, which include §65450, et. seq. of the California Government Code.

Formal Specific Plan Amendments shall be subject to the review and approval of the City Council. The Planning Commission should first hear and consider all applications for formal Specific Plan Amendments and provide a recommendation to the City Council. As required by the California Government Code, all government agencies significantly affected by the proposed Amendment shall be notified of the proposed action prior to the approval. In addition, and as required by CEQA, formal Specific Plan Amendments shall be appropriately reviewed in accordance with the State CEQA Guidelines, with the City of Ontario serving as the CEQA Lead Agency.

Any formal Specific Plan Amendment initiated by an applicant requires preliminary review by the Planning Director, filing of an official application and required materials supporting the Amendment, submittal of a fee deposit, Planning Commission review and recommendations, and City Council review and final decision.

Amendments also may be initiated by the City Council or Planning Commission by majority vote. All Planning Commission-requested amendments shall be submitted and considered by the City Council and accepted for processing by a majority vote. City staff may initiate an amendment by submitting the requested amendment to the Planning Commission for a vote. Only amendments accepted by a majority vote of the Planning Commission shall be submitted to the City Council for consideration; however, the Applicant shall have the right of appeal to City Council if the Planning Commission fails to approve.

In considering approval or disapproval of formal Specific Plan Amendments, the City Council shall find that the request is:

- Consistent with the Policy Plan component of The Ontario Plan (General Plan) in effect at the time of consideration.
- Compatible with surrounding land uses with respect to use, development standards, density, or issues of health, public safety, and general welfare.
- Consistent with the overall design character and general structure of the MERRILL COMMERCE CENTER as set forth in Chapter 6, *Design Guidelines*, of this Specific Plan.

7.7 APPEALS

Appeals of any determination of the Planning Director, Zoning Administrator or the Planning Commission, may be made by the applicant or any other aggrieved party by filing an application on forms provided by the City of Ontario and accompanied by the appropriate filing fee, where applicable, within ten (10) days following the final date of action for which an appeal is made. Appeals shall be processed consistent with the provisions of Article 5, "Appeals" of the City of Ontario Development Code.

7.8 COMPLIANCE WITH MITIGATION MONITORING AND REPORTING PROGRAM

Certification of an EIR shall be required prior to the approval of the Specific Plan. Development within the MERRILL COMMERCE CENTER Specific Plan shall comply with all approved mitigation measures as described in the MMRP included as part of the EIR.

7.9 PROJECT FINANCING

The financing of construction, operation, and maintenance of public improvements, facilities, and public services shall include funding through a combination of financing mechanisms. Prior to the recordation of final maps, a final determination shall be made by City staff and confirmed by the Planning Director and City Engineer regarding the responsibility for construction and maintenance of public facilities, whether publicly or privately maintained.

Implementation of the MERRILL COMMERCE CENTER Specific Plan may involve financing options including, but not limited to, the following:

7.9.1 Facilities and Services

Construction of public improvements and facilities and the provision of public services may be financed through private capital investment, a Community Facilities District (CFD), or other special district, pursuant to the Mello-Roos Community Facilities District Act of 1982.

7.9.2 Operation and Maintenance

Options for operation and maintenance of public improvements and facilities include, but are not limited to, the following:

- Individual private property owners
- Private Property Owners Association
- CFD or other special district (will be at the City's sole discretion)

7.10 PHASING PLAN

As shown on Figure 7-1, *Conceptual Phasing Plan*, the development of the MERRILL COMMERCE CENTER is expected to occur in three (3) phases in response to market demands and according to a logical and orderly extension of roadways, public utilities, and

infrastructure. Phase A includes Planning Areas 4, 4A, 5 and 5A; Phase B includes Planning Areas 1, 1A, 2, 3 and 3A; and Phase C includes Planning Areas 6 and 6A. These phases may be developed as subphases and may occur either sequentially or concurrently with one another. Phasing of the Specific Plan shall be permitted; however, improvements will be dictated by the City of Ontario's Land Development Section and the approved MERRILL COMMERCE CENTER Development Agreement.

7.11 ADDITIONAL ENTITLEMENT REQUIREMENTS

Currently, there are no existing City utilities, nor any improvement plans for City utilities in the vicinity of the Specific Plan area. Several miles of new infrastructure are required to provide City utility services to the Specific Plan area. In order to ensure orderly expansion of the City utility systems and other City infrastructure, the City has imposed the following requirements all Subdivision Maps and implementing developments within the Specific Plan area.

A. *Utilities System Map (USM)*

Prior to approval of any entitlement application (subdivision maps, Development Plan Reviews, etc.) in the Specific Plan area, as part of the entitlement application a Conceptual Utilities Systems Map (USM) shall be prepared and submitted to the Development Agency Engineering Department and the Utilities Engineering Department for review and approval. The USM is a summary plan sheet exhibit that shows all the public offsite infrastructure requirements and demands for the development project (and/or subdivision), the onsite private infrastructure improvements, and the interaction between the public and private utilities systems. As a Condition of Approval for the development project (and/or subdivision), the Conceptual Utilities Systems Map shall be updated into a Final Utilities Systems Map to reflect the changes that occur between

entitlement and Final Plan and Permit Approval. Reference the Ontario Municipal Utilities Company Utilities Engineering Department's Utilities Systems Map (USM) Requirements for details.

7.11.1 **Integrated Waste Management Report (IWMR) and Solid Waste Handling Plan (SWHP)**

Prior to approval of any entitlement application (subdivision maps, Development Plan Reviews, etc.) in the Specific Plan area, as part of the entitlement application a Conceptual Integrated Waste Management Report (IWMR) and a Conceptual Solid Waste Handling Plan (SWHP) shall be prepared and submitted to the Community Development Agency Engineering Department and the Ontario Municipal Utilities Company for review and approval. The SWHP summary plan sheet exhibit that demonstrates the project site's design conformance with the Integrated Waste Department's requirements, including the requirements for Sizing of Storage, Location of Collection Areas, Accessibility for Collection Vehicles, and Collection of Sorted/Diverted Waste Types. The IWMR is a report that presents project specific information that is not able to be demonstrated within the Solid Waste Handling Plan, including discussions on: project solid waste operations; project compliance with all applicable laws, statutes, policies, and requirements; and, conformance with all the Integrated Waste Department's requirements, including the requirements for Sizing of Storage, Location of Collection Areas, Accessibility for Collection Vehicles, and Collection of Sorted/Diverted Waste Types. As a Condition of Approval for the development project (and/or subdivision), the Conceptual SWHP and the Conceptual IWMR shall be updated into a Final SWHP and Final IWMR to reflect the changes that occur between entitlement and Final Plan and Permit Approval. The SWHP and IWMR may be required to be updated from whenever there are new occupants, new uses or changes to existing uses, Tenant

Improvements, Business Licenses, and Certificates of Occupancy. Reference the Ontario Municipal Utilities Company Utilities Engineering Department's IWMR and SWHP requirements for details.

7.11.2 Conceptual Design Report

Prior to approval of any entitlement application (subdivision maps, Development Plan Reviews, etc.), a conceptual design report shall be prepared and submitted to the Community Development Agency Engineering Department and the Ontario Municipal Utilities Company for review and approval for the established extent of all public improvements required for the project. The study shall identify existing and future rights-of-ways (ROW) and infrastructure improvements and establish all vertical and horizontal alignments for each utility. The report shall include cross-sections, profiles, and any supporting details needed to demonstrate that utilities can be adequately accommodated in the public ROW. The study shall account for all utility conflicts, right-of-way variations, existing obstructions, and the timing of utility installation. Utilities cannot be located along an alignment that conflicts with existing conditions (e.g. electrical poles, private property, etc.) unless that applicant is accepting the responsibility of modifying the existing conditions (e.g. undergrounding, relocation, ROW acquisition, etc.).

A. Western Trunk Sewershed Scope

In order to assure that the Western Trunk Sewer (WTS) is designed to serve its entire Sewer Master Plan Tributary Area, all the Master Plan Trunk Sewers connecting to the WTS and the WTS shall be included in the Conceptual Design Report. This shall include: the Western Trunk Sewer from the Inland Empire Utility Agency's Kimball Interceptor to the Whispering Lakes Pump Station Riverside Drive and

Carpenter Avenue; the Euclid Trunk Sewer from the Western Trunk Sewer in Merrill Avenue to Chino Avenue; the Bon View Trunk Sewer from the Western Trunk Sewer in Merrill Avenue to Chino Avenue; the Grove Trunk Sewer from the Western Trunk Sewer in Merrill Avenue to Chino Avenue; the Walker Trunk Sewer from the Western Trunk Sewer in Schaeffer Avenue to Chino Avenue.

7.11.3 Preliminary Design Report

As a condition of entitlements (subdivision maps, Development Plan Reviews, etc.) within the Specific Plan and prior to submittal of Infrastructure Improvements Plans, a Preliminary Design Report (PDR) for all public infrastructure shall be submitted and approved by the Community Development Agency Engineering Department and the Ontario Municipal Utilities Company. The PDR shall include the following:

A. Conceptual Design Compliance

A discussion modifying or confirming the conceptual design established with the Project's Conceptual Design Report. The study shall confirm all ROW, infrastructure improvements, and vertical and horizontal alignments for each utility.

B. Street Cross Sections and Profiles

Street Cross Sections and Profiles shall be provided for each public street, private street, and Public Utility Easement (PUE) containing a public utility and at any point along the alignments where the ROW varies. The cross-sections shall show the location and size of each utility and shall annotate the property/ROW lines, the type of finished surface material, the distance of each utility from the centerline, the depth from the finished surface to the top of the pipe, and the distance between utilities (outside wall to outside wall).

C. Constructability Review

The report shall include a discussion of the constructability issues along the proposed alignment and identify the recommended construction methods that may be utilized. The study shall perform field investigation (field survey and potholing) in order to identify potential utility conflicts, right-of-way variations, existing obstructions, and constructability issues created by the timing of utility installation.

D. Supporting Details

The PDR shall include any supporting details needed to demonstrate that utilities can be adequately accommodated in the public ROW, including the placement of large appurtenances, clearance from existing obstructions, etc.

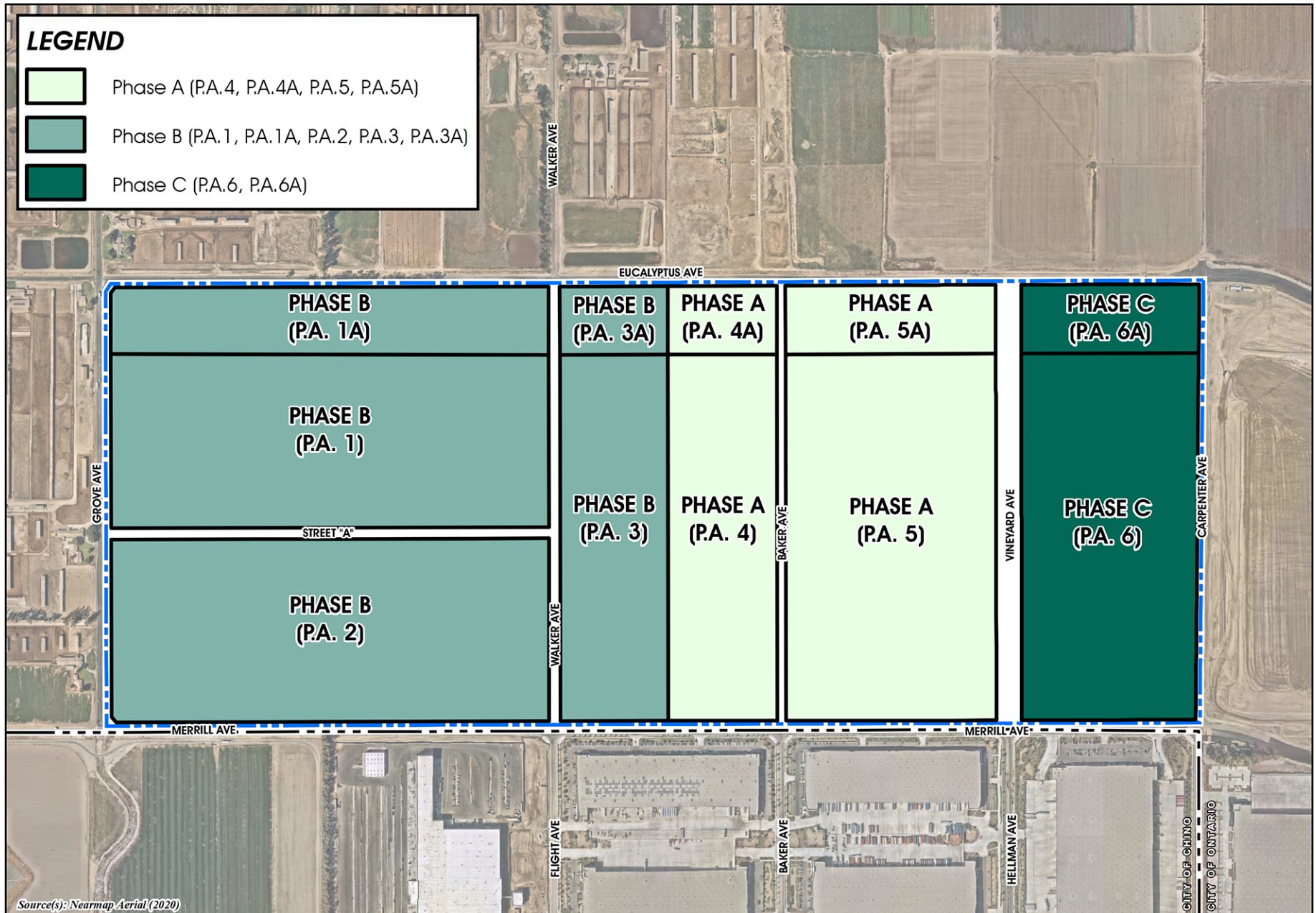
E. 30% Design Drawings

The PDR findings shall be incorporated into a 30% design plan set and included in the PDR.

F. Western Trunk Sewershed Scope

In order to qualify for Development Impact Fees (DIF) and to assure that the Western Trunk Sewer (WTS) is designed to serve its entire Sewer Master Plan Tributary Area, the PDR shall include all the Master Plan Trunk Sewers connecting to the WTS and the WTS. The PDR shall include: the Western Trunk Sewer from the Kimball Interceptor to the Whispering Lakes Pump Station Riverside Drive and Carpenter Avenue; the Euclid Trunk Sewer from the Western Trunk Sewer in Merrill Avenue to Chino Avenue; the Bon View Trunk Sewer from the Western Trunk Sewer in Merrill Avenue to Chino Avenue; the Grove Trunk Sewer from the Western Trunk Sewer in Merrill

Avenue to Chino Avenue; the Walker Trunk Sewer from the Western Trunk Sewer in Schaeffer Avenue to Chino Avenue.



Conceptual Phasing Plan

Figure 7-1



7.12 MAINTENANCE PLAN

The public and private improvements constructed within the MERRILL COMMERCE CENTER shall be maintained through a combination of public and private entities as described in Table 7-1, *Maintenance Responsibilities*. Table 7-1 provides a list of maintenance entity options that may fund and/or maintain facilities within the Specific Plan, however, the ultimate maintenance entity for each facility will be determined by the MERRILL COMMERCE CENTER's Development Agreement. A Property Owners Association (POA) shall be established for the maintenance of common area landscape improvements and private roadways within areas of the MERRILL COMMERCE CENTER. For areas in public ownership (such as public roadway ROWs), municipal maintenance districts may fund the maintenance of these areas.

Table 7-1 Maintenance Responsibilities

| Facility | City and/or CFD | Property Owners Association | Property Owner or Occupant | Public Utility |
|--|-----------------|-----------------------------|----------------------------|----------------|
| Master Plan Roadways (Eucalyptus Avenue, Merrill Avenue, Grove Avenue, Walker Avenue, Baker Avenue, Vineyard Avenue, and Carpenter Avenue) | | | | |
| Curb-to-curb improvements | ✓ | | | |
| Parkways within public right-of-way (ROW) | ✓ | | | |
| Neighborhood Edges, Master Plan Trails and Medians | ✓ | | | |
| Landscape buffer located outside public ROW | | ✓ | | |
| Interior public streets (Street A) | | | | |
| Curb-to-curb improvements | ✓ | | | |
| Parkways within public right-of-way (ROW) | ✓ | | | |
| Sidewalks/Trails | ✓ | | | |
| Landscape buffer located outside public ROW | | ✓ | | |
| Interior private streets located outside of the public ROW (including parkways, landscaping, non-Master Plan Trails, and sidewalks) | | ✓ | | |
| Off-street parking areas | | | ✓ | |
| Traffic signals | ✓ | | | |
| Traffic control signs – in the public ROW | ✓ | | | |

Table 7-1 Maintenance Responsibilities (Cont'd)

| Facility | City and/or CFD | Property Owners Association | Property Owner or Occupant | Public Utility |
|--|-----------------|-----------------------------|----------------------------|----------------|
| Traffic control signs – not in the public ROW | | ✓ | | |
| Street lights – in the public ROW | ✓ | | | |
| Street lights – not in the public ROW | | ✓ | | |
| Public water, sewer, and storm drain improvements within public ROW (excluding laterals) | ✓ | | | |
| On-site landscaping and irrigation | | ✓ | ✓ | |
| Common open space | | ✓ | | |
| Walls and fences | | ✓ | ✓ | |
| Corner and Entry Monuments | | ✓ | | |
| Tenant Signage | | ✓ | ✓ | |
| Off-street lighting | | ✓ | ✓ | |
| Storm Water Drainage/Water Quality Facilities – within the curb-to-curb area of a public street | ✓ | | | |
| Permanent Storm Water Drainage/Water Quality Facilities (swales, basins, biotreatment filters, etc.) – behind the curb line of the public street | | ✓ | | |
| Dry Utilities (electricity, natural gas, communications systems) | | | | ✓ |
| Fiber Optic communication system in the public ROW | ✓ | | | ✓ |