

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 04-111

AN ORDINANCE AMENDING PROSPER'S ZONING ORDINANCE NO. 84-16; REZONING A TRACT OF LAND CONSISTING OF 5.0 ACRES, MORE OR LESS, SITUATED IN THE COLLIN COUNTY SCHOOL LAND SURVEY, ABSTRACT NO. 147, IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS, HERETOFORE ZONED SINGLE FAMILY-1 (SF-1) IS HEREBY REZONED AND PLACED IN THE ZONING CLASSIFICATION OF PLANNED DEVELOPMENT-COMMERCIAL CORRIDOR (PD-CC); DESCRIBING THE TRACT TO BE REZONED; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVING AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town Council of the Town of Prosper, Texas (the "Town Council") has investigated and determined that Zoning Ordinance No. 84-16 should be amended; and

WHEREAS, the Town of Prosper, Texas ("Prosper") has received a request from Lattimore Materials Company, LP ("Applicant") to rezone 5.0 acres of land, more or less, situated in the Collin County School Land Survey, Abstract No. 147, in the Town of Prosper, Collin County, Texas; and

WHEREAS, the Town Council has investigated into and determined that the facts contained in the request are true and correct; and

WHEREAS, all legal notices required for rezoning have been given in the manner and form set forth by law, and public hearings have been held on the proposed rezoning and all other requirements of notice and completion of such zoning procedures have been fulfilled; and

WHEREAS, the Town Council has further investigated into and determined that it will be advantageous and beneficial to Prosper and its inhabitants to rezone this property as set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Amendments to Zoning Ordinance No. 84-16. Zoning Ordinance No. 84-16 is amended as follows: The zoning designation of the below-described property containing 5.0 acres of land, more or less, situated in the Collin County School Land Survey, Abstract No. 147, in the Town of Prosper, Collin County, Texas, (the "Property") and all streets, roads and alleyways contiguous and/or adjacent thereto is hereby rezoned as Planned Development-Commercial Corridor (PD-CC). The property as a whole and the boundaries for each zoning classification are more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes as if set forth verbatim.

The development plans, standards, and uses for the Property in this Planned Development District shall conform to, and comply with 1) the statement of intent and purpose, attached hereto as Exhibit "B"; 2) the planned development standards, attached hereto as Exhibit "C"; and 3) the Development Schedule, attached hereto as Exhibit "D"; which are incorporated herein for all purposes as if set forth verbatim. Except as amended by this Ordinance, the development of the Property within this Planned Development District must comply with the requirements of all ordinances, rules, and regulations of Prosper, as they currently exist or may be amended.

Three original, official and identical copies of the zoning exhibit map are hereby adopted and shall be filed and maintained as follows:

- a. Two (2) copies shall be filed with the Town Secretary and retained as original records and shall not be changed in any matter.
- b. One (1) copy shall be filed with the building inspector and shall be maintained up-to-date by posting thereon all changes and subsequent amendments for observation, issuing building permits, certificates of compliance and occupancy and enforcing the zoning ordinance. Reproduction for information purposes may from time-to-time be made of the official zoning district map.

Written notice of any amendment to this Planned Development District shall be sent to all property owners within two hundred feet (200') of the specific area to be amended.

SECTION 3: No Vested Interest/Repeal. No developer or property owner shall acquire any vested interest in this Ordinance or in any other specific regulations contained herein. Any portion of this Ordinance may be repealed by the Town Council in the manner provided for by law.

SECTION 4: Unlawful Use of Premises. It shall be unlawful for any person, firm or corporation to make use of said premises in some manner other than as authorized by this Ordinance, and shall be unlawful for any person, firm or corporation to construct on said premises any building that is not in conformity with the permissible uses under this Zoning Ordinance.

SECTION 5: Penalty. Any person, firm, corporation or business entity violating this Ordinance or any provision of Prosper's Zoning Ordinance No. 84-16, or as amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not exceeding Two Thousand Dollars (\$2,000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Prosper from filing suit to enjoin the violation. Prosper retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 6: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Prosper hereby declares that it would have

passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 7: Savings/Repealing Clause. Prosper's Zoning Ordinance No. 84-16 shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the appeal prevent a prosecution from being commenced for any violation if occurring prior to the repealing of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

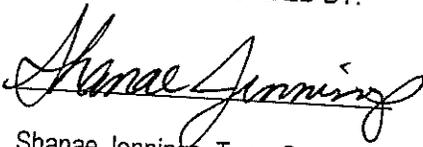
SECTION 8: Effective Date. This Ordinance shall become effective from and after its adoption and publications as required by law.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS ON THIS 14th DAY OF DECEMBER, 2004.

APPROVED AS TO FORM:


Charles Niswanger, Mayor

ATTESTED TO AND
CORRECTLY RECORDED BY:


Shanae Jennings, Town Secretary

DATE OF PUBLICATION: 12/17/04 & 12/18/04, Dallas Morning News – Collin County Addition

Metes and Bounds Description

SITUATED in the State of Texas, County of Collin, being part of the, Collin County School Land Survey, Abstract No. 147, being the resurvey of a 5.00 acre tract of land as recorded in Volume 4895, Page 3342 of the Collin County Land Records with said premises being more particularly described as follows:

BEGINNING at a RPLS 3700 capped iron rod found in the west margin of County Road 27 marking the most easterly southeast corner of said 5.00 acre tract and the northeast corner of a 5.00 acre tract as recorded in Volume 5565, Page 3107 of the Collin County Land Records;

THENCE with a south line of said 5.00 acre tract and the north line of said 5.00 acre tract, North 89°28'40" West, 466.70 feet to a RPLS 3700 capped iron rod found marking an interior corner of said 5.00 acre tract and the northwest corner of said 5.00 acre tract;

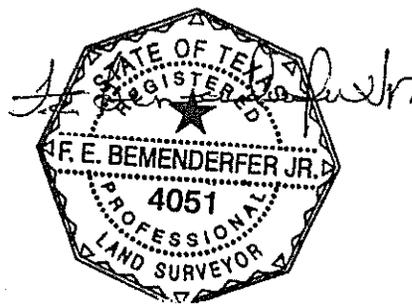
THENCE with an east line of said 5.00 acre tract and the west line of said 5.00 acre tract, South 00°49'48" West, 466.69 feet to a RPLS 3700 capped iron rod found marking the southeast corner of said 5.00 acre tract, the southwest corner of said 5.00 acre tract and being in the north line of a 10.15 acre tract as recorded in Volume 4186, Page 2346 of the Collin County Land Records;

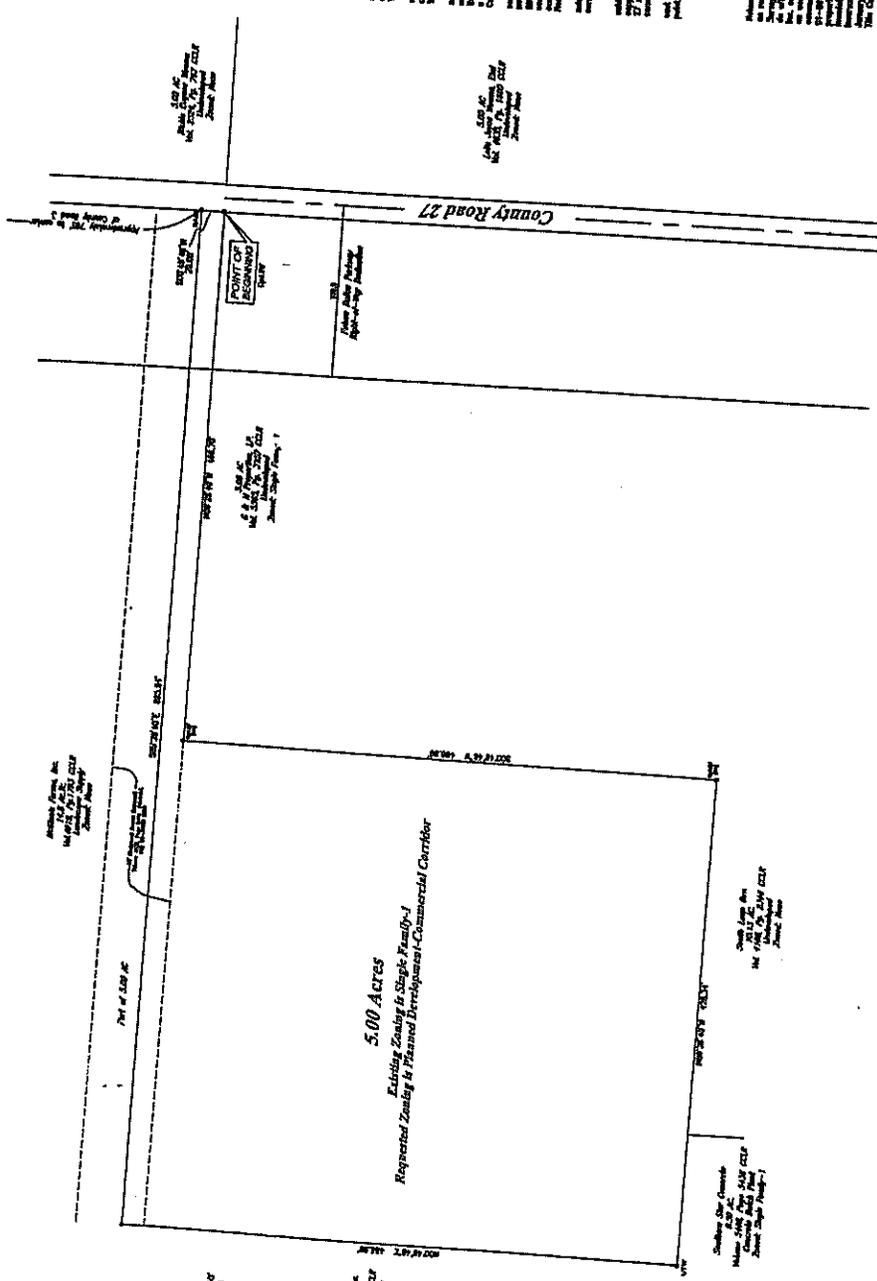
THENCE with the south line of said 5.00 acre tract, the north line of said 10.15 acre tract and the north line of a 9.50 acre tract as recorded under Volume 5468, Page 5436 of the Collin County Land Records, North 89°28'40" West, 428.34 feet to a 1/2-inch iron rod found marking the southwest corner of said 5.00 acre tract and a southeast corner of a 14.8 acre tract as recorded in Volume 4919, Page 1793 of the Collin County Land Records;

THENCE with the west line of said 5.00 acre tract and an east line of said 14.8 acre tract, North 00°49'48" East, 486.69 feet to the northeast corner of said 5.00 acre tract and an interior corner of said 14.8 acre tract;

THENCE with the north line of said 5.00 acre tract and a south line of said 14.8 acre tract, South 89°28'40" East, 895.04 feet to a RPLS 3700 capped iron rod found in the west margin of the aforementioned County Road 27 marking the northeast corner of said 5.00 acre tract and the southeast corner of said 14.8 acre tract;

THENCE with the west margin of County Road 27 and most easterly east line of said 5.00 acre tract, South 00°49'48" West, 20.00 feet to the point of beginning and containing 5.00 gross and net acres of land.





Notes and Remarks:

1. The 5.00-acre tract shown on this exhibit is for illustrative purposes only and does not set the alignment. The alignment will be determined at the time of the final plat.

2. The 5.00-acre tract shown on this exhibit is for illustrative purposes only and does not set the alignment. The alignment will be determined at the time of the final plat.

3. The 5.00-acre tract shown on this exhibit is for illustrative purposes only and does not set the alignment. The alignment will be determined at the time of the final plat.

4. The 5.00-acre tract shown on this exhibit is for illustrative purposes only and does not set the alignment. The alignment will be determined at the time of the final plat.

5. The 5.00-acre tract shown on this exhibit is for illustrative purposes only and does not set the alignment. The alignment will be determined at the time of the final plat.

6. The 5.00-acre tract shown on this exhibit is for illustrative purposes only and does not set the alignment. The alignment will be determined at the time of the final plat.

7. The 5.00-acre tract shown on this exhibit is for illustrative purposes only and does not set the alignment. The alignment will be determined at the time of the final plat.

8. The 5.00-acre tract shown on this exhibit is for illustrative purposes only and does not set the alignment. The alignment will be determined at the time of the final plat.

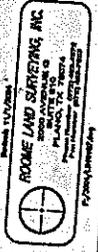
9. The 5.00-acre tract shown on this exhibit is for illustrative purposes only and does not set the alignment. The alignment will be determined at the time of the final plat.

10. The 5.00-acre tract shown on this exhibit is for illustrative purposes only and does not set the alignment. The alignment will be determined at the time of the final plat.

Zoning Case ZDA-19
EXHIBIT "A"
ZONING EXHIBIT
 Collin County School Land Survey
 being a resurvey of a 5.00 acre tract of land
 recorded in Volume 4895, Page 3542
 of the Collin County Land Records
 City of Prosper, Collin County, Texas
 OCTOBER 2004

Surveyor
 Boone Land Surveying
 2000
 Plano, Texas 75074
 (972) 423-4372
 Certified Public Surveyor

Owner
 Lettmore Industries Company, L.P.
 1700
 Dallas, Texas 75201
 (972) 423-4372
 McWherry, Texas 75060-3278



Legend

- Shaded Area
- Survey Boundary
- Proposed Boundary
- Adjacent Property

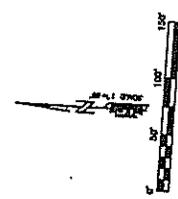
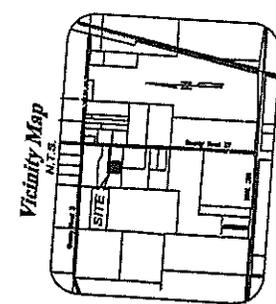


EXHIBIT B
Statement of Intent and Purpose

5 acres Collin County School Land Survey, Abstract 147

The purpose and intent of this zoning change request is to bring the Subject Property to a more compatible zoning classification in line with the Future Land Use Plan as published by the Town of Prosper. The "planned" use in the FLUP is to be Commercial Corridor.

The approval of this zoning change would allow the property, at some future time, be developed to a higher and better use thereby enhancing assessed value and increased tax income to the Town of Prosper.

**Exhibit C
Planned Development Standards**

1.1 Commercial Corridor District:

This property may be developed under the regulations of the Commercial (C) District as outlined in the Town of Prosper Zoning Ordinance 84-16 as it exists or may be amended, subject to the following amendments:

1.2 Permitted Uses:

The following uses shall be permitted in this Planned Development District.

Accessory Building

Administrative, Medical, or Professional Office

Antenna and/or Antenna Support Structure, Commercial – Permitted by Specific Use Permit subject to the following standards:

- a) No commercial antenna shall be located within a distance equal to or less than the height of such tower from any residential structure or from any area zoned residential, or shown as residential on the current Future Land Use Plan. Such distance shall be measured in a straight line from the closest point of the tower to the closest point of such area or residential structure. This requirement does not apply to a stealth antenna.
- b) Additional antennas may be placed on a commercial antenna tower with an existing Specific Use Permit without approval of a separate Specific Use Permit subject to approval of a final plat and site plan (as necessary) for the property.
- c) Satellite dishes, antennas and cellular equipment shall be screened from rights-of-way and adjacent properties.

Antenna and/or Antenna Support Structure, Non-Commercial – Non-commercial antennas shall not interfere with radio or television reception of adjoining property owners, and shall comply with all regulations of the Federal Communications Commission (FCC). In no case shall the height of such antennas exceed forty-five feet (45') and proper guy wire securement shall be followed. In no manner shall the use of such equipment infringe upon adjoining property owners. Roof mounted satellite dishes in excess of fifty (50) pounds shall be approved by a registered architect or professional engineer by written letter to the building official, prior to installation, stating the antenna's stability and support and shall not extend more than six feet (6') above the first story.

Assisted Care or Living Facility

Athletic Stadium or Field, Private – By Specific Use Permit

Athletic Stadium or Field, Public

Automobile Paid Parking Lot/Garage

Automobile Parking Lot/Garage

Automobile Repair, Minor

Automobile Sales, Used – By Specific Use Permit

Automobile Sales/Leasing, New – By Specific Use Permit

Bank, Savings and Loan, or Credit Union

Beauty Salon/Barber Shop

Bottling Works

Bus Terminal – Bus parking and storage areas will be screened with a six-foot ornamental metal fence, three-inch caliper evergreen trees on 20-foot centers, and five-gallon evergreen shrubs on three-foot centers located within a fifteen (15) foot landscape edge.

Business Service

Cabinet/Upholstery Shop

Caretaker's/Guard's Residence

Cemetery or Mausoleum – By Specific Use Permit

Civic/Convention Center

College, University, Trade, or Private Boarding School

Commercial Amusement, Indoor

Commercial Amusement, Outdoor – By Specific Use Permit

Community Center

Concrete/Asphalt Batching Plant – Permitted by right, only when an on-site billing office is included, for five years after the adoption date of this Planned Development Ordinance. At the end of this five-year period, any batch plant in operation shall be required to either have obtained a Specific Use Permit for continued operation, or cease operations.

Dance Hall – By Specific Use Permit

Day Care Center, Adult – By Specific Use Permit

Day Care Center, Child – A public independent school district is not required to obtain a Specific Use Permit for the operation of a Day Care Center, Child in a public school. A Day Care Center, Child not operated by a public independent school district is permitted by Specific Use Permit.

Day Care Center, Incidental – By Specific Use Permit

Dry Cleaning, Minor

Fairgrounds/Exhibition Area – By Specific Use Permit

Farm, Ranch, Stable, Garden, or Orchard

Fraternal Organization, Lodge, Civic Club, Fraternity, or Sorority

General Manufacturing/Industrial Use Complying with Performance Standards

Golf Course and/or Country Club

Governmental Office

Gunsmith

Gymnastics/Dance Studio

Health/Fitness Center

Helistop – By Specific Use Permit

Homebuilder Marketing Center

Hospital

Hotel – Shall be subject to the following development standards:

- a) External balconies and walkways shall be set back two hundred feet (200') from any residential zoning district.
- b) Shall provide staff on-site 24 hours a day.
- c) Shall provide at least four amenities from the list below:
 - Indoor/Outdoor Pool
 - Spa/Sauna
 - Weight Room/Fitness Center
 - Playground
 - Sports Court
 - Plaza/Atrium
 - Game Room
 - Jogging Trail
 - Conference Room (1,000 square foot minimum)
 - Full Service Restaurant (minimum seating capacity of 35)
- d) All room units must be accessed through an internal hallway, lobby, or courtyard.

House of Worship

Household Appliance Service and Repair

Indoor Gun Range – By Specific Use Permit

Insurance Office

Laundromat

Limited Assembly and Manufacturing Use Complying with Performance Standards

Locksmith/Security System Company

Machine Shop

Massage Therapy, Licensed

Mortuary/Funeral Parlor

Motel – Shall be subject to the following development standards:

- a) External balconies and walkways shall be set back two hundred feet (200') from any residential zoning district.
- b) Shall provide staff on-site 24 hours a day.
- c) Shall provide at least four amenities from the list below:
 - Indoor/Outdoor Pool
 - Spa/Sauna
 - Weight Room/Fitness Center
 - Playground
 - Sports Court
 - Plaza/Atrium
 - Game Room
 - Jogging Trail
 - Conference Room (1,000 square foot minimum)
 - Full Service Restaurant (minimum seating capacity of 35)
- d) Shall maintain a minimum separation of fifteen hundred feet (1,500') measured linearly from property line to property line from any other Hotel, Motel, or Residence Hotel property.

Motorcycle Sales/Service – By Specific Use Permit

Municipal Uses Operated by the Town of Prosper

Museum/Art Gallery

Nursery, Major

Office/Showroom

Office/Warehouse/Distribution Center

Open Storage

Park or Playground

Pet Day Care – Permitted by right subject to the following standards:

- a) Hours of operations limited to 6:00 a.m. to 8:00 p.m.
- b) A Pet Day Care must be located a minimum of one hundred (100) feet from restaurants and food preparation establishments (property line to property line).
- c) Overnight boarding of animals and outdoor kennels are prohibited.
- d) Provisions must be made for the sanitary disposal of all animal waste in accordance with the Animal Control Ordinance and Building Codes.

Print Shop, Major

Print Shop, Minor

Private Club – By Specific Use Permit

Private Recreation Center

Private Utility, Other Than Listed

Recycling Center – By Specific Use Permit

Recycling Collection Point

Rehabilitation Care Institution – By Specific Use Permit

Research and Development Center – Any Research and Development Center that includes animal or biological testing will be permitted by Specific Use Permit; otherwise they are permitted by right.

Residence Hotel – Shall be subject to the following development standards:

- a) Not more than 23 room units per acre.
- b) External balconies and walkways shall be set back two hundred feet (200') from any residential zoning district.
- c) Shall maintain laundry facilities on-site for guest use.
- d) Shall provide staff on-site 24 hours a day.
- e) Shall provide at least five amenities from the list below:
 - Indoor/Outdoor Pool
 - Spa/Sauna
 - Weight Room/Fitness Center
 - Playground
 - Sports Court
 - Plaza/Atrium
 - Game Room
 - Jogging Trail
 - Conference Room (1,000 square foot minimum)
 - Full Service Restaurant (minimum seating capacity of 35)
- f) Shall be set back a minimum of one hundred feet (100') from any residential district.

- g) Shall maintain 15% of the lot area as open space, exclusive of required setbacks and parking areas, but including amenities from the above list except for Conference Room and Full Service Restaurant.
- h) Shall maintain a minimum separation of fifteen hundred feet (1,500') measured linearly from property line to property line from any other Hotel, Motel, or Residence Hotel property.
- i) A minimum of 50% of the room units shall contain kitchen facilities.
- j) Shall be permitted only with frontage along University Drive or Dallas Parkway.

Restaurant or Cafeteria

Restaurant, Drive In

Retail/Service Incidental Use

School District Bus Yard – Shall be owned and/or operated by a public Independent School District. Unless otherwise approved by the Planning & Zoning Commission, School District Bus Yards shall be screened using one of the following methods:

Option 1

- A six-foot ornamental metal fence,
- Three-inch caliper evergreen trees on 20-foot centers, and
- Five-gallon evergreen shrubs on three-foot centers.

Option 2

- A six-foot clay-fired brick wall, and
- Three-inch caliper evergreen trees on 20-foot centers.

School, Private or Parochial

School, Public

Sewage Treatment Plant/Pumping Station – By Specific Use Permit

Small Engine Repair Shop

Stealth Antenna, Commercial – Stealth antennas are permitted by right in the non-residential districts. The Director of Planning or his /her designee may approve a request to install a stealth antenna when the proposed stealth antenna is of a type that is specifically listed in the definition of Antenna, Stealth in Chapter 2, Section 1.2. For stealth antenna requests of a type that are not specifically listed in this definition, the Town Council may determine if a proposed commercial antenna is a stealth antenna or not when considering site plan approval for the proposal.

Storage or Wholesale Warehouse

Taxidermist

Telephone Exchange

Theater, Neighborhood

Theater, Regional

Trailer Rental

Transit Center

Utility Distribution/Transmission Facility – By Specific Use Permit

Veterinarian Clinic and/or Kennel, Indoor

Veterinarian Clinic and/or Kennel, Outdoor

Water Treatment Plant – By Specific Use Permit

Winery

**Exhibit D
Development Schedule**

It is anticipated that a Concrete Batch Plant with an on-site billing office will be constructed within one to two years and continue to operate for the next five years. After that the Property will be developed for commercial purposes consistent with the uses permitted in a commercial zoning classification and the adjoining properties.