

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM
3.37
(ID # 9046)

MEETING DATE:

Tuesday, February 26, 2019

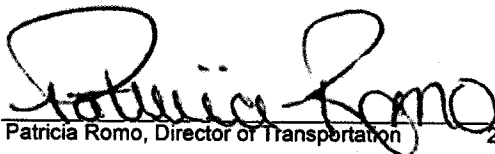
FROM : TLMA-TRANSPORTATION:

SUBJECT: TRANSPORTATION AND LAND MANAGEMENT AGENCY/ TRANSPORTATION:
Approval and Execution of the Newport Road Community Facilities District No. 03-1 Transportation Uniform Mitigation Fee Improvement Credit Agreement between Forestar (USA) Real Estate Group Incorporated, and the County of Riverside associated with Tract No. 30809, District 3. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and Execute the Newport Road Community Facilities District No. 03-1 (Newport Road CFD) Transportation Uniform Mitigation Fee (TUMF) Improvement Credit Agreement between Forestar (USA) Real Estate Group Inc. (Developer) and the County of Riverside (County) associated with Tract No. 30809.

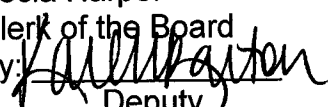
ACTION:Policy


Patricia Romo, Director of Transportation 2/3/2019

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Spiegel, seconded by Supervisor Hewitt and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: February 26, 2019
xc: Transp.

Kecia Harper
Clerk of the Board
By: 
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: Developer funded 100%.			Budget Adjustment: No	
			For Fiscal Year: 18/19	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

Forestar (USA) Real Estate Group Incorporated owns Tract No. 30809 consisting of 123 single family-residential units (Property). The Property is located within the boundaries of the Newport Road CFD, which is administered by the County.

The Newport Road CFD is a funding mechanism that provided a means to finance, in part, the Newport Road/Domenigoni Parkway Extension Improvements from Menifee Road to State Route 79. The construction of the Newport Road/Domenigoni Parkway extension was completed and opened to traffic at the end of 2007.

In addition, the Newport Road/Domenigoni Parkway Extension Improvements have been identified in the TUMF Regional System of Highways and Arterials (RSHA) and are among those facilities whose construction is to be partly financed by the collection of TUMF.

The Developer and the County now desire to enter into this agreement to provide a means by which Developer's participation in the Newport Road CFD is offset against Developer's obligation to pay applicable TUMF for the Property. Each residential unit constructed within the Property will be eligible to receive a TUMF credit in an amount set forth in this Agreement.

Impact on Residents and Businesses

The Developer is responsible for disclosing CFD special assessment to potential buyers of the residential homes as part of their purchase transaction.

ATTACHMENTS:

Vicinity Map

Newport Road CFD TUMF Agreement

SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA



Jason Farin, Senior Management Analyst 2/19/2019



Gregory V. Priaplos, Director County Counsel 2/13/2019



Leila Moshref-Danesh 2/13/2019

**COMMUNITY FACILITIES DISTRICT NO. 03-1
(NEWPORT ROAD)
IMPROVEMENT CREDIT AGREEMENT
TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM**

This IMPROVEMENT CREDIT AGREEMENT (this "Agreement") is entered into this 26th day of February, 2019, by and between the County of Riverside (the "County") and Forestar (USA) Real Estate Group Inc., a Delaware Corporation (the "Developer"). The County and the Developer are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

RECITALS

WHEREAS, the Developer owns Tract No. 30809, for which a Final Map was recorded on September 25, 2007, as Instrument No. 2007-0601870 (*or approved Tract No. 30809*) (the "Property") and is located within Riverside County, California, as shown by Exhibit "A," attached hereto and incorporated herein by this reference;

WHEREAS, Tract No. 30809 consists of 123 single-family residential units;

WHEREAS, the Property was conditioned by the County to participate in some form of funding mechanism, such as a Community Facilities District, that would provide a means of financing the construction of public facilities, which include the full-width arterial improvements of Newport Road from Menifee Road to State Route 79, including associated appurtenances and rights-of-way (the "Newport Road Improvements");

WHEREAS, the public facilities improvements described above had been determined by the Board of Supervisors to be necessary to mitigate the transportation and circulation needs, which the development of the Property will contribute in part;

WHEREAS, the Riverside County Board of Supervisors (the "Board"), on April 15, 2003, adopted Resolution No. 2003-173 establishing Community Facilities District No. 03-1 Newport Road of the County of Riverside ("Newport Road CFD") and authorizing the levy of a special tax to pay for the construction or financing of the Newport Road Improvements and Resolution No. 2003-174 determining the need to incur bonded indebtedness in an aggregate principal amount not to exceed \$24,000,000 to finance the Newport Road Improvements and Resolution No. 2003-175 calling for a special election held on April 15, 2003, for the qualified electors of the Newport Road CFD to consider propositions dealing with the levy of the special tax and the incurrence of bonded indebtedness;

WHEREAS, the Board of Supervisors, on April 15, 2003, canvassed the results of the special election and determined that the qualified electors voted and approved the propositions by more than two-thirds of the votes cast and caused a Notice of Special Tax Lien for the Newport Road CFD to be recorded within fifteen days of the special election certification;

WHEREAS, the County, by the adoption of Ordinance No. 824, as amended from time to time, established the Transportation Uniform Mitigation Fee Program which requires a developer to pay the fee (the "TUMF") which is set by said Ordinance and which is to be paid as a condition of receiving certification allowing for the occupancy of a residential or commercial structure; the TUMF is intended to represent a new structure's fair share of the estimated costs to construct those transportation improvements needed to mitigate the traffic impacts and burdens placed on the Regional System of Highways and Arterials ("RSHA") generated by a residential or commercial development and determined necessary to protect the safety, health and welfare of persons traveling to and from such residential or commercial development using the RSHA;

WHEREAS, the Newport Road Improvements have been identified as part of the RSHA and to be among those facilities whose construction is to be financed, in part, by the collection of the TUMF;

WHEREAS, the Newport Road Improvements have been constructed by the Riverside County Transportation Department in part from funding that includes the proceeds of special taxes levied or the proceeds of special tax bonds issued by the Newport Road CFD;

WHEREAS, the County and Western Riverside Council of Governments (WRCOG) entered into a Memorandum of Understanding (MOU) on October 28, 2014, which provides the mechanism by which developers can be eligible to receive TUMF credits to offset their TUMF fees by participating in the Newport Road CFD;

WHEREAS, the Parties now desire to enter into this Agreement to provide a means by which Developer's participation in the Newport Road CFD is offset against Developer's obligation to pay the applicable TUMF for the Property in accordance with the TUMF Administrative Plan and MOU; and

WHEREAS, the Property is located within the boundaries of the Newport Road CFD, as shown on the Boundary Map of the Newport Road CFD recorded as Instrument No. 2003-217558 on March 28, 2003, or within territory that has been annexed to Newport Road CFD.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, Developer and County hereby agree as follows:

TERMS

1.0 Incorporation of Recitals: The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

2.0 Construction of Improvements: The County has constructed the Newport Road Improvements using, in part, proceeds from the issuance of the special tax bonds by the Newport Road CFD.

3.0 TUMF Credits

3.1 TUMF Credits: By issuance of the special tax bonds by CFD No. 03-1 (the "Bonds"), the Developer is entitled to credit against TUMF fees in an amount equal to the following (the "TUMF Bond Credit"):

- a) \$1,775 for each Single Family Residential Unit (SFDU)
- b) \$2.10 per square foot for Commercial

3.2 TUMF Excess Payment: The Developer, in order to receive a certificate of occupancy for residential or commercial improvements constructed within the Newport Road CFD, shall pay to the County the sum by which the amount of the TUMF then applicable to the Property exceeds the TUMF Bond Credit for such Property.

4.0 Miscellaneous

4.1 Assignment: The Developer may assign all or a portion of its rights pursuant to this Agreement to a purchaser of one or more lots within the Property (an "Assignment"). The Developer and such purchaser and assignee (the "Assignee") shall provide to the County such reasonable proof as it may require that the Assignee is the purchaser of said lots within the Property. Any assignment pursuant to this Section shall not be effective unless and until the Developer and Assignee have executed an assignment agreement with the County in a form reasonably acceptable to County, whereby the Developer and the Assignee agree, except as may be otherwise specifically provided therein, to the following: (i) the Assignee shall receive all or a portion of the Developer's rights pursuant to this Agreement, including the TUMF credit amount for each single-family dwelling unit developed on a lot within the Property or for each multifamily dwelling unit developed on a parcel or commercial development on a plot plan within the Property purchased by the Assignee pursuant to this Agreement and (ii) the Assignee shall be bound by all applicable provisions of this Agreement.

4.2 Relationship between the Parties: All Parties hereby mutually agree that this Agreement shall not operate to create the relationship of partnership, joint venture, or agency between the County and the Developer.

4.3 Indemnification: Developer agrees to protect, indemnify, defend and hold the Community Facilities District, the County, its elected officials, directors, officers, employees, agents and representatives, individually or any combination thereof (the "Indemnified Parties"), harmless from and against any and all claims, including, but not limited to, third-party claims, and against any and all losses, liabilities, expenses, suits, actions, decrees, judgments, awards, reasonable attorney's fees, and court costs which the Indemnified Parties may suffer or which may be sought against or recovered or obtained from the Indemnified Parties, as a result of, or by reason of, or arising out of, or in consequence of (a) the approval of this Agreement, (b) the awarding of credit pursuant to or on account of this Agreement, and/or (c) the untruth or inaccuracy of any representation or warranty made by said Developer in this Agreement. If said Developer fails to do so, the Indemnified Parties shall have the right, but not the obligation, to defend the same and charge all of the direct or incidental costs of such defense, including

reasonable attorney's fees or court costs, to and recover the same from said Developer. The provisions of this Section shall survive the termination discharge or other termination of this Agreement.

4.4 Warranty as to Property Ownership; Authority to Enter Agreement: The Developer hereby warrants that it owns fee title to the Property and that it has the legal capacity to enter into this Agreement. All Parties warrant that the individual(s) who have signed this Agreement on behalf of such Party has the legal power, right, and authority to enter into this Agreement and such individual signing this Agreement has been duly authorized to do so, on behalf of said Party.

4.5 Other Agreements: Nothing contained herein shall be construed as affecting the County's or the Developer's respective duty to perform its respective obligations under other agreements, land use regulations or subdivision requirements relating to the development of the Property, which obligations are and shall remain independent of the Developer's rights and obligations, and the County's rights and obligations, under this Agreement.

4.6 Notices: All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To County: Riverside County Transportation Department
Patricia Romo, Director of Transportation
4080 Lemon Street, 8th Floor
Riverside, CA 92501
Phone No. (951) 955-6740
Fax No. (951) 955-3198

To Developer: Forestar (USA) Real Estate Group Inc.
Attention: Thomas H. Burleson
14755 Preston Road #130
Dallas, TX 75254
Phone No. (972) 341-2907
Fax No. (800) 975-4461

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

4.7 Cooperation; Further Acts: All Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

4.8 Interpretation; References; Captions: It is agreed that the Parties and their agents, including legal counsel, have participated in the preparation of this Agreement, the

language of this Agreement shall be construed simply, according to its fair meaning, and that any ambiguity shall not be construed against any of the Parties as the Party responsible for drafting this Agreement. Any term referencing time, days, or period for performance shall be deemed calendar days and not business days. All references to the Developer include all its officers, personnel, employees, agents and representatives, except as otherwise specified in this Agreement. All references to the County include its elected officials, directors, officers, employees, agents and representatives, except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

4.9 Amendments: This Agreement may only be amended by an instrument in writing executed and delivered by the County and the Developer.

4.10 Waivers: No waiver of, or consent with respect to, any provision of this Agreement by a Party hereto shall in any event be effective unless the same shall be in writing and signed by such Party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

4.11 Binding Effect: Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

4.12 Third Party Beneficiaries: There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

4.13 Invalidity; Severability: The provisions of this Agreement are specifically made severable. If any clause, provision, right and/or remedy provided for herein is unlawful or unenforceable, the remainder of this Agreement shall remain in effect and be enforced as if such clause, provision, right and/or remedy was not contained herein.

4.14 Consent to Jurisdiction and Venue: This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Riverside, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, the Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

4.15 Attorneys' Fees: If any action is instituted to interpret or enforce any of the provisions of this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party thereto reasonable attorney's fees and costs of such suit (including both

prejudgment and post judgment fees and costs) as determined by the court as part of the judgment.


4.16 Counterparts: This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

[Signatures of Parties on Following Pages]

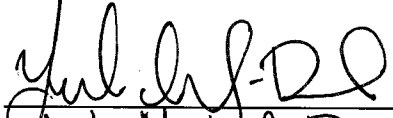
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF RIVERSIDE

RECOMMENDED FOR APPROVAL:

By: 
Patricia Romo
Director of Transportation

APPROVED AS TO FORM:


By: 
Leila Modhri P. Daneah
Deputy County Counsel

APPROVAL BY THE COUNTY BOARD OF SUPERVISORS:

By:  Date: FEB 26 2019
KEVIN JEFFRIES
Chairman, County Board of Supervisors

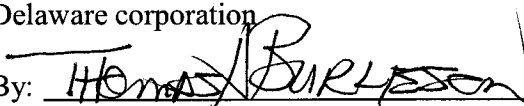
ATTEST:

Kecia Harper-~~them~~
Clerk of the Board

By:  Date: FEB 26 2019
Deputy

DEVELOPER

Forestar (USA) Real Estate Group Inc., a Delaware corporation

By: 
Thomas H. Burlison
Printed Name
Senior Vice President
Title

STATE OF TEXAS

COUNTY OF DALLAS

The foregoing instrument was acknowledged before me this 22nd day of January 2019, by
Thomas H. Burleson, as Senior Vice President of Forestar (USA) Real Estate Group Inc.



A handwritten signature in cursive script, appearing to read "Kristen Carlstrom", written over a horizontal line.

Notary Public

Printed Name: Kristen Carlstrom

My Commission Expires 7/6/2019

EXHIBIT "A"

FINAL MAP AND VICINITY MAP

[ATTACHED BEHIND THIS PAGE]

RECORDERS STATEMENT
FILED THE COUNTY OF RIVERSIDE...

OWNERS STATEMENT
WE THE OWNERS OF THE LAND BELIEVED TO BE THE SUBDIVISION...

NOTARY ACKNOWLEDGMENT
STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

SURVEYOR'S STATEMENT
THIS SURVEY WAS MADE BY ME OR UNDER MY DIRECTION...

ABANDONMENT OF PUBLIC STREET AND PUBLIC EASEMENT
PURSUANT TO SECTIONS 643.3 AND 649.20 1/2 OF SUBDIVISION MAP ACT...

NOTARY ACKNOWLEDGMENT
STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

TAX COLLECTOR'S CERTIFICATE
I HEREBY CERTIFY THAT A BOND IN THE SUM OF \$10,000...

TAX COLLECTOR'S CERTIFICATE
I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS IN THIS OFFICE...

NOTARY ACKNOWLEDGMENT
STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

COUNTY SUPERVISOR'S STATEMENT
THIS MAP CONFORMS WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT...

EASTERN MUNICIPAL WATER DISTRICT ACCEPTANCE STATEMENT
I HEREBY STATE THAT THE EASEMENTS GRANTED ON THIS MAP TO THE EASTERN MUNICIPAL WATER...

NOTARY ACKNOWLEDGMENT
STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

BOARD OF SUPERVISORS STATEMENT
THE COUNTY OF RIVERSIDE, BY ITS BOARD OF SUPERVISORS, HEREBY APPROVES THE TRACT MAP AND ACCEPTS THE EASEMENTS...

NOTICE OF DRAINAGE FEES
NOTICE IS HEREBY GIVEN THAT THIS PROPERTY IS LOCATED IN THE SALT CREEK WILDCRACKER WORTH...

SOILS REPORT
A PRELIMINARY SOILS REPORT HAS BEEN PREPARED BY GEORGIN INGRAM ENGINEERS, INC.

RECORDERS STATEMENT
FILED THE COUNTY OF RIVERSIDE...

NOTARY ACKNOWLEDGMENT
STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

NOTARY ACKNOWLEDGMENT
STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

RECORDERS STATEMENT
FILED THE COUNTY OF RIVERSIDE...

NOTARY ACKNOWLEDGMENT
STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

NOTARY ACKNOWLEDGMENT
STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

0 335 670 1,340 Feet

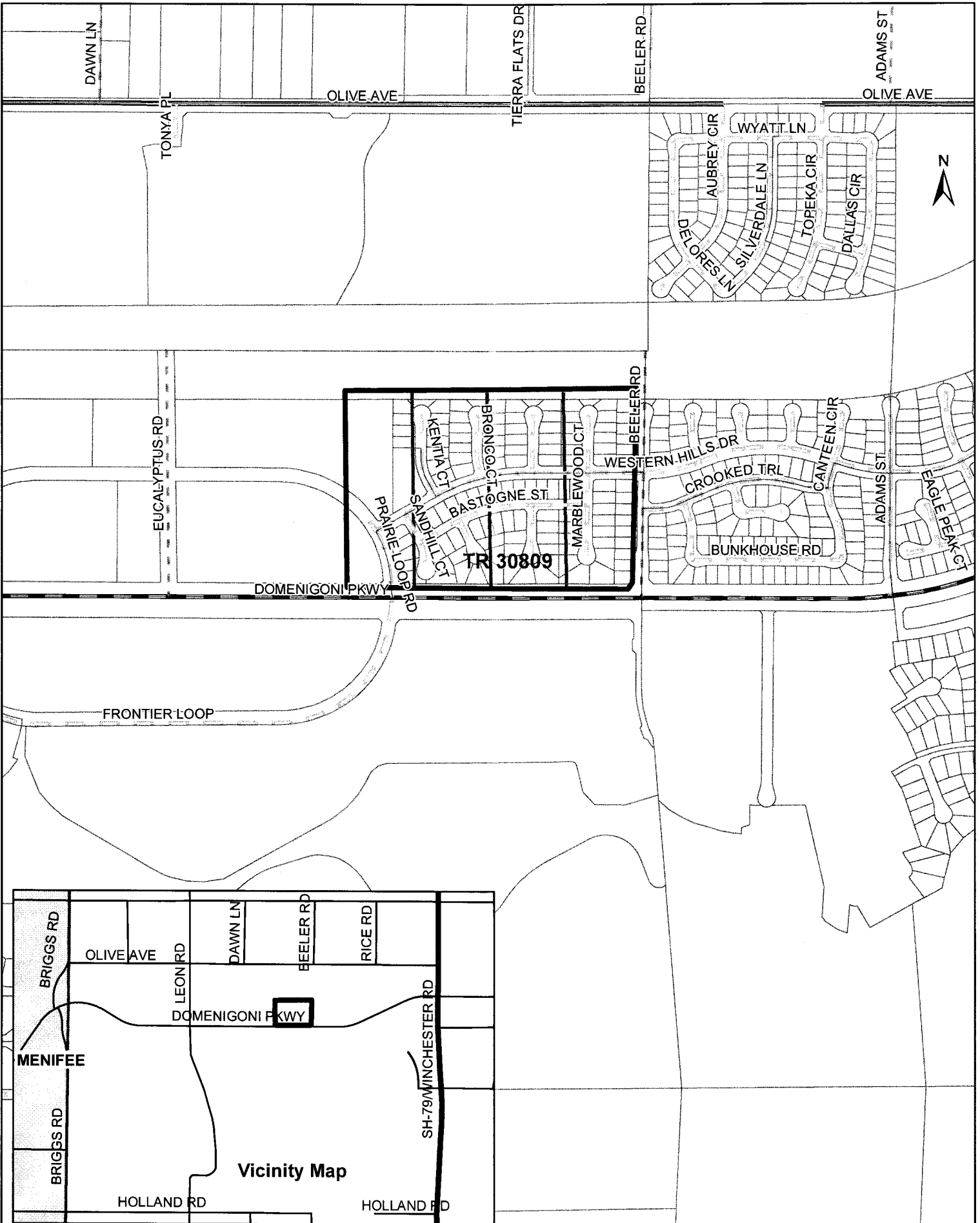
1 inch = 667 feet

Orthophotos Flown 2/11 (WR, CV) or 4/07 (REMAP, Blythe)

Printed by almedina on 1/30/2019

Vicinity Map Tract 30809

The County of Riverside assumes no warranty or legal responsibility for the information contained on this map. Data and information represented on this map is subject to updates, modifications and may not be complete or appropriate for all purposes. County GIS and other sources should be queried for the most current information. Do not copy or resell this map.



Vicinity Map