

**MOORPARK CITY COUNCIL
AGENDA REPORT****TO:** Honorable City Council**FROM:** David A. Bobardt, Planning Director 
Prepared By: Joseph R. Vacca, Principal Planner **DATE:** August 19, 2008 (CC Meeting of 9/3/2008)**SUBJECT:** Consider Report of Annual Development Agreement Review, Established in Connection with Meridian Hills Development Project, Tract 5187-1&2, Located on the West Side of Walnut Canyon Road, Approximately 3,500 Feet North of Casey Road, on the Application of Resmark Equity Partners, LLC, (Formerly West Pointe Homes, and William Lyon Homes Inc.)**BACKGROUND**

Government Code Section 65864 and City of Moorpark Municipal Code Section 15.40 provide for Development Agreements between the City and property owners in connection with proposed plans of development for specific properties. Development Agreements are designed to strengthen the planning process, to provide developers some certainty in the development process and to assure development in accordance with the terms and conditions of the agreement.

On February 6, 2002, the Moorpark City Council adopted Ordinance No. 277 (effective March 8, 2002), approving a Development Agreement between the City of Moorpark and West Pointe Homes, Inc. The agreement was approved in connection with the Tract No. 5187/RPD No. 1999-02, a 250 single-family residential development on a portion of a 350-acre site, located on the west side of Walnut Canyon Road, approximately 3,500 feet north of Casey Road. The agreement remains in full force and effect for twenty (20) years from the operative date of the agreement (until March 8, 2022), or until the close of escrow on the initial sale of the last Affordable Housing Unit, whichever occurs last. Resmark Equity Partners, LLC has purchased the property from William Lyon Homes, Inc. (who purchased the property from West Pointe Homes), and as successor in interest they are responsible for compliance with the terms of the agreement.

Provisions of the agreement require an annual review and report to the City Council on the status of completion of all aspects of the agreement. On April 18, 2007, the City Council accepted the Community Development Director's report and recommendation that, on the basis of substantial evidence, William Lyon Homes, Inc. had complied in good faith with the terms and conditions of the Agreement, and deemed the annual review process complete for 2007. Resmark Equity Partners, LLC has submitted the necessary application form, related materials, and fee/deposit for the 2008 annual review. The Planning Director has reviewed the submitted information and the project status and provides the following report.

DISCUSSION

Current Project Status

- Grading has been completed.
- Final Maps have been approved by City Council.
- Tract improvements, including installation of wet and dry utilities and curb, gutter, roadways and storm drains have been completed with the final cap of paving in developed areas anticipated by the end of September 2008.
- Construction of sixty five production housing units has been completed and final occupancies have been granted for all of these units, including the original seven model homes.
- The original implementation plan was approved by the City Council on July 7, 2004, for William Lyon Homes. In January, 2008, Resmark Equity Partners, LLC purchased the project and an amended implementation plan was approved by the City Council on May 21, 2008.

Developer Compliance with Terms of Agreement

The developer's responsibilities are included in Section 6 of the Development Agreement and include twenty-six (26) specific requirements, as summarized below. Compliance with the terms and conditions of the Development Agreement will occur at various stages of the development process. Action by the developer and other clarifying information has been noted.

NO.	REQUIREMENT	STATUS
1.	Developer shall comply with the Agreement, subsequent project approvals and Mitigation Monitoring Program.	Developer is in compliance with all requirements at this time.
2.	All lands and interests in land shall be dedicated free and clear of liens and encumbrances.	All lands and interests in land were dedicated upon recordation of the Final Map.

NO.	REQUIREMENT	STATUS
3.	Payment of "Development Fees" of seven thousand eight-hundred-fifty dollars (\$7,850) per residential unit and thirty-five-thousand three-hundred twenty-five dollars (\$35,325) per gross acre of institutional land.	These fees are adjusted annually (until paid) using the Consumer Price Index (CPI) in accordance with the agreement. Fees must be paid prior to issuance of Zoning Clearance for Building Permit. This fee has been collected with all Zoning Clearances for Building Permit to date.
4.	Payment of "Citywide Traffic Fees" of four-thousand four-hundred twenty dollars (\$4,420) per residential unit and nineteen-thousand eighty dollars (\$19,080) per acre of institutional land.	These fees are adjusted annually (until paid) using the State Highway Bid Price Index in accordance with the agreement. Fees must be paid prior to issuance of Zoning Clearance for Building Permit. This fee has been collected with all Zoning Clearances for Building Permit to date.
5.	Payment of "Community Service Fees" of two-thousand thirty dollars (\$2,030) per residential unit and six-thousand four-hundred twenty-eight dollars (\$6,428) per gross acre of institutional land.	These fees are adjusted annually (until paid) using the Consumer Price Index (CPI) in accordance with the agreement. Fees must be paid prior to issuance of Zoning Clearance for Building Permit. This fee has been collected with all Zoning Clearances for Building Permit to date.
6.	Payment of all outstanding processing costs.	This is an ongoing requirement. At this time the developer is current with all processing costs, including submittal of Annual Review Application and deposit for Development Agreement - Annual Review.
7.	Payment of a fee in lieu of park dedication "Park Fee" of nine-thousand dollars (\$9,000) per residential unit and fifty cents (\$0.50) per square foot of each building used for institutional purposes.	These fees are adjusted annually (until paid) using the Consumer Price Index (CPI) in accordance with the agreement. Fees must be paid prior to issuance of Zoning Clearance for Building Permit. This fee has been collected with all Zoning Clearances for Building Permit to date.
8.	Prior to Final Map recordation, confirmation from Ventura County Waterworks District No. 1 that sufficient recycled water is available to serve public and community owned landscape areas. Design and construction of facilities required to deliver the reclaimed water to the project, and payment of any connection/meter fees required by the District.	If determined necessary, these improvements will be included in the Water Works District No. 1 improvement plan package and will be bonded for prior to recordation of the Final Map. At the present time, no connection points exist within the vicinity of the project.
9.	Greenbelts, open space areas, landscape areas and trails (not covered by any other section) shall be dedicated to the City, or one or more property owners associations as determined by the City.	Included on recorded Final Map.
10. (a)	Irrevocable offer of dedication of Lot 263, for permanent open space preservation purposes on the first Final Map.	Included on recorded Final Map.

NO.	REQUIREMENT	STATUS
10. (b)	Annual Payment of ten-thousand dollars (\$10,000) for permanent management, maintenance, and mitigation monitoring for open space Lot 263. The HOA shall be responsible for this perpetual obligation.	Payment of this fee commences concurrently with recordation of the final map, and annually thereafter on the anniversary of the recordation date, which was October 26, 2006. The first and second installments have been paid. This fee will be adjusted annually using the Consumer Price Index (CPI) in accordance with the agreement and the next payment is due October 26, 2008. These future annual payments have been included in the HOA budget.
10. (c)	Grant conservation easement to retain Lots 254, 255, 257, 258, 259, 260, 261, 262, 264 and 265 in predominantly open space condition. Dedication of Lot 251 to the City for permanent open space preservation and trail staging area. Prior to occupancy of the 165 th residential unit the developer shall improve the trail staging area, provide payment for perpetual maintenance, and provisions for temporary trail staging area within "A" Street right-of-way.	Included on recorded Final Map. Included on recorded Final Map. Staff will work with the applicant on the requirement for this item in the future.
11.	Provide a total of twenty (20) affordable housing units in accordance with the agreement. Payment of an in-lieu fee of seventy-thousand (\$70,000) for each unit less than the required twenty (20) shall be paid prior to occupancy of the 50 th unit. Prior to occupancy of the first residential unit, the developer will enter into an Affordable Housing Agreement with the City, and pay the direct costs for preparation of the agreement up to seven-thousand five-hundred dollars (\$7,500).	Entitlement permits have been approved for seventeen (17) affordable units to be located southerly of the subject development. Improvement plans have been submitted for plan check, and grading is partially completed. On November 15, 2007, the developer paid the \$236,667.53 in-lieu fee for three units required prior to occupancy of the 50 th unit. The Affordable Housing Agreement was executed by the applicant and the city and recorded on December 15, 2006.
12.	Pay Air Quality Fee in the amount of one-thousand four-hundred forty-four dollars (\$1,444) per residential unit, and for institutional uses at a rate calculated by the Community Development Department.	These are be adjusted annually (until paid) using the Consumer Price Index (CPI) in accordance with the agreement. Fees must be paid prior to issuance of Zoning Clearance for Building Permit. This fee has been collected with all Zoning Clearances for Building Permit to date.

NO.	REQUIREMENT	STATUS
13.	Submittal and approval of an Implementation Plan to address requirements for phasing and construction responsibilities.	The original implementation plan was approved by the City Council on July 7, 2004. In January, 2008, Resmark Equity Partners, LLC purchased the project and an amended implementation plan was approved by the City Council on May 21, 2008.
14.	Waiver of any density bonus rights that would increase the number of dwelling units approved to be constructed on the property.	Applicant has not requested density bonus units.
15.	Agreement to cast affirmative ballots for formation of one or more assessment districts for maintenance of parkway and median landscaping and street lighting, including but not limited to all water and electricity costs. Agreement to form property owners association(s) to provide landscape, street lighting and park (if necessary) open space land, trails drainage facilities maintenance and compliance with NPDES requirements.	The required fees were collected by staff and a Landscape Maintenance District formation petition for the formation of an Assessment District has been reviewed and approved by the City Council to inaugurate an Assessment District.
16.	Payment of all City capital improvement and processing fees.	Developer is in compliance with all requirements at this time. Fund review ongoing.
17.	Payment of Los Angeles Avenue Area of Contribution (AOC) Fee.	Fees must be paid prior to issuance of Zoning Clearance for Building Permit. This fee has been collected with all Zoning Clearances for Building Permit to date.
18.	Construction of regional flood control basin (Lot 259) per Walnut/Gabbert Deficiency Study, in lieu of pro rata contribution for Drainage, Sediment Transport and Flood Control Planning Mitigation Measure #4.	Basin is shown on Tract Map, with capacity verified by Ventura County Watershed Protection District. Improvement plans and security have been completed and permits have been issued by VCWPD.
19.	Payment of seventy-thousand dollars (\$70,000) to satisfy Final EIR Biological and Botanical Resources Mitigation Measures.	This fee was paid on April 7, 2006, and deposited to the Open Space Maintenance Fund (2155).
20.	Construct "A" Street from "E" Street to southern boundary prior to occupancy of 165 th residential unit, including all plan check and inspection costs, and improvement surety.	These improvements were included with project improvement plans and securities.
21.	Payment of three-hundred-thousand dollars (\$300,000) to satisfy Mitigation Monitoring Program Traffic and Transportation Mitigation measures. Payment of twenty-thousand (\$20,000) to satisfy Public Services and Utilities Mitigation Measures.	Effective March 1, 2005, the \$300,000 fee shall increase by one-half of one percent (0.5%) per month until paid. This fee was paid on October 28, 2005.
22.	Acquire at sole cost and expense the property needed to improve Walnut Canyon Road.	Plans for the Walnut Canyon improvements have been drafted, and no additional dedication is required. The Walnut Canyon improvements are complete.

NO.	REQUIREMENT	STATUS
23.	Construct public trail system across Walnut Canyon Road frontage of the property to connect to the trail constructed by Tract No. 4928 (County Club Estates). Maintenance to be the responsibility of the property owners association(s).	Trail requirements are per Permit Adjustment No. 2 approved November 19, 2004. Staff continues to work with the applicant on the final trail design and construction, as required in the amended implementation plan.
24.	Agreement to pay any fees and payments pursuant to this Agreement without reservation.	Developer is in compliance with all requirements at this time.
25.	Agreement to comply with requirements for annual review of the Agreement including evaluation of Mitigation Monitoring Program.	To date, the applicant has complied with review requests and Mitigation Monitoring Program requirements.
26.	Agreement to install photovoltaic system for each residential dwelling unit, so long as City adopts a policy and standards prior to January 31, 2004 or approval of the first phase of the Final Map, whichever is later.	On February 18, 2004, City Council adopted standards which provide for voluntary installation of photovoltaic systems.

All requirements of the Development Agreement are considered in the City's review and approval process for all aspects of the development; including but not limited to, subsequent entitlement requests, public and private improvements, Final Maps, and building permits.

City Compliance with Terms of Agreement

The City's responsibilities are included in Section 7 of the agreement and include eleven (11) specific provisions, as summarized below.

#	REQUIREMENT	STATUS
1.	Agreement to commit reasonable time and resources on expedited and parallel processing of application for subsequent applications.	To date, City has complied with any such requests.
2.	If requested, at the developers cost, proceed to acquire easements or fee title to land in order to allow construction of required public improvements.	To date, no such request has been received.
3.	Agreement to authorize the City Manager to sign an early grading permit.	An early grading agreement was executed by the City Manager in August 2004.
4.	Agreement to process concurrently, whenever possible, all land use entitlements for the same property (so long as deemed complete).	Entitlement applications for the affordable housing project were processed concurrently.
5.	Agreement that Park Fee required per section 6.7 meets obligation for park land dedication provisions of state law and local codes.	To date, City has complied.
6.	Agreement to cooperate with developer to allow maximum tax benefits for dedication of Lot 263 for public open space.	Open Space Easement Grant Deed was recorded April 27, 2004; and a conservation easement over this land was dedicated on the recorded Final Map.

#	REQUIREMENT	STATUS
7.	Agreement to appoint affordable housing staff person to oversee the implementation of affordable housing requirements.	The Senior Management Analyst in the Assistant City Manager's Office oversees affordable housing requirements.
8.	Agreement to allow for a variation of five (5') feet maximum in the grades as shown on the Grading Plan exhibit, subject to approval of the Community Development Director/City Council that the overall design and visual quality would not be significantly affected.	To date, no such request has been received.
9.	Agreement to facilitate reimbursement to developer of any costs incurred that be subject to partial reimbursement from other developers.	To date, no such request has been received.
10.	Agreement to process a lot line adjustment to modify the common lot line between Tract 5187 and APN 500-0230-195 (Peters' parcel) to increase Peters' parcel to ten (10) gross acres, not to exceed eight-thousand eight hundred (8,800) square feet. The lot line adjustment must be filed prior to approval of the first final map.	The lot line adjustment has been approved and recorded.
11.	Agreement that affordable unit Development Fee shall be three-thousand dollars (\$3,000) per unit; Park Fee shall be three-thousand six-hundred dollars (\$3,600) per unit, and Air Quality Fee shall be five-hundred dollars (\$500) per unit.	These fees have been included in Conditions of Approval of the affordable housing development. A request for 17 affordable units has been approved and is currently in plan check.

Evaluation of Good Faith Compliance

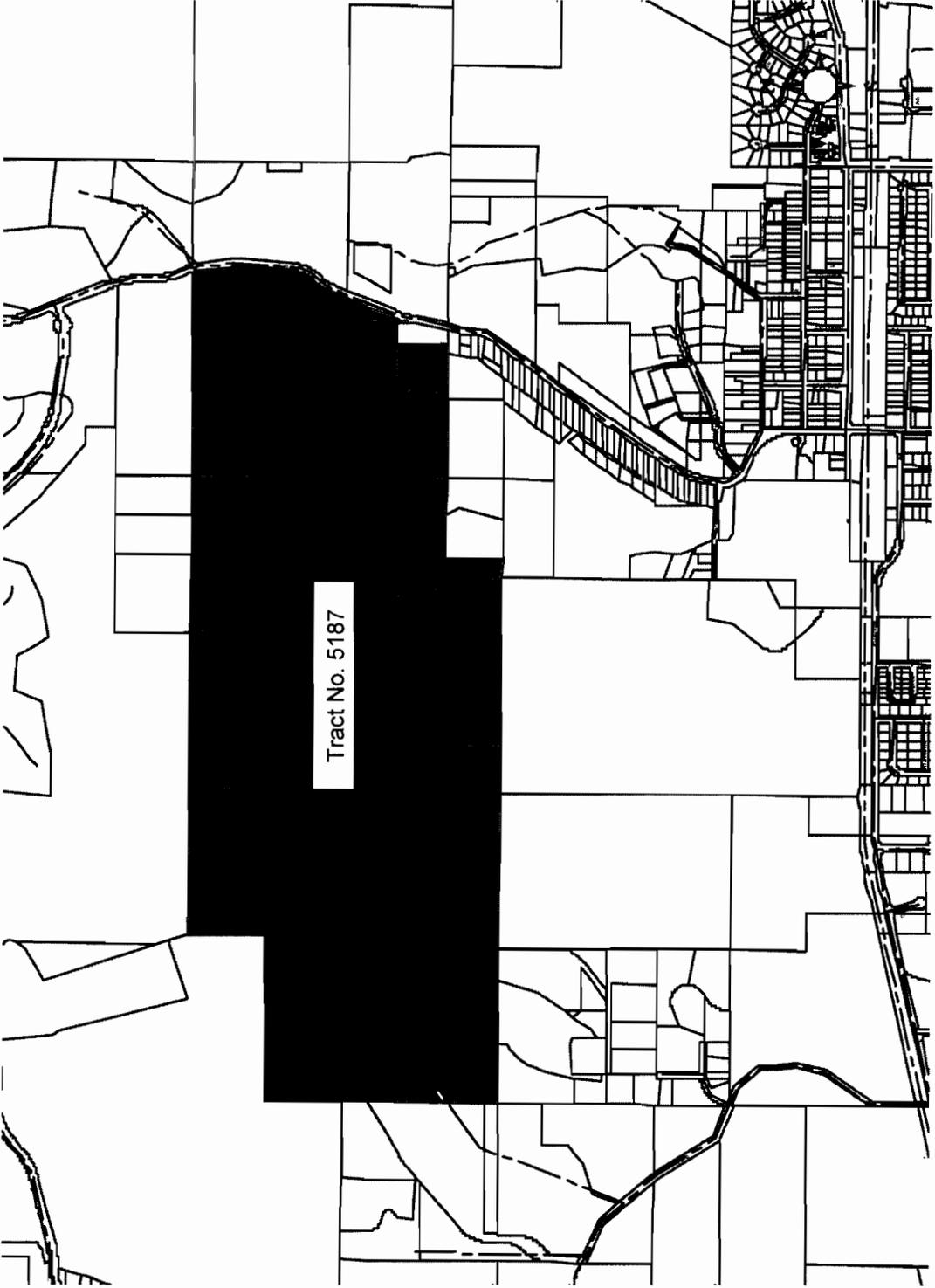
Based on a review of the Development Agreement Annual Review Application and the status of the project, the Planning Director has determined that, on the basis of substantial evidence, Resmark Equity Partners, LLC has to date complied in good faith with the terms and conditions of the agreement.

STAFF RECOMMENDATION

1. Accept the Planning Director's Report and recommendation, and find, on the basis of substantial evidence, that Resmark Equity Partners, LLC has complied in good faith with the terms and conditions of the agreement.
2. Deem the annual review process complete.

ATTACHMENTS:

1. Location Map
2. Site Plan
3. Narrative



Tract No. 5187

LOCATION MAP

↑
NORTH

CC ATTACHMENT 1

1) *Report of those aspects of the agreement completed prior to this review.*

- ORA Ashford 94, LLC; ORA Marquis 89, LLC; ORA Brighton 17, LLC (Resmark) has enlisted the services of professional engineers and consultants to conduct the development of the project in timeframes compliant with the Development Agreement.
- Coordinate with several agencies in conducting this work that includes the City of Moorpark, Cal Trans, Ventura County Watershed Protection Agency and Water Works District No. 1. All work is being conducted to comply with requirements of the Development Agreement and the Conditions of Approval for TTM 5187
- Paid outstanding processing costs related to preparation of the Development Agreement, project approval and EIR.
- Council approval of revised implementation plan
- Conduct erosion control, implement best management practices and maintain SWPPP manual
- Pay and/or plan for fee escalations as outlined in the DA.
- Worked with city departments to form the required Landscape Maintenance District and coordinate responsibilities with HOA in CC&R's.
- Completion of Meridian Hills Drive
- Completion of regional flood control basin
- Completion of LMD landscaping on lots D & J.
- Completion of LMD lots Q, S, F & M.
- Completed DG trail above lot Q
- Added gates per City request

2) *Report on progress made toward completion of all other aspects of the agreement during period prior to this review.*

- Since the last update, the transfer (sale) of 183 lots in Tract 5187 & 17 lots in Tract 5405 was completed from William Lyon Homes to ORA Ashford 94, LLC; ORA Marquis 89, LLC; ORA Brighton 17, LLC.
- Implementation plan amended and transferred to ORA Ashford 94, LLC; ORA Marquis 89, LLC; ORA Brighton 17, LLC Approved by City Council in May 2008.
- Owner working with city staff to approve final R&R for final paving cap on all streets with occupied homes.
- Owner working with city staff and adjacent homeowner (Peters) to approve final plans for public multi-use trail.
- Commencement of plan check and bid for private recreation facility as requested by HOA.

- William Lyon Homes, Inc. working with Peters to approve plans for Peters' driveway.
- Interim fence plan has been approved and is being installed around remaining phases.
- Landscaping enhancements have been completed per plan. Owner working with city staff to approve landscaping.
- Dust and erosion control measures are in full effect.
- \$25,000 deposit from ORA Ashford 94, LLC; ORA Marquis 89, LLC; ORA Brighton 17, LLC to City of Moorpark has been paid in full.
- The property has been brought into full compliance with the adopted Fuel Modification plan, owner seeking compliance certification from fire jurisdiction.
- Existing wood fencing has been removed from project.
- Existing street lighting plans have been reviewed by the City Engineer and are per the approved plans.
- Many landscape mitigation areas are complete and ready to start the 5 year monitoring program
- Submitted for plan check Bio Swale are for Tract 5405, will construct once wall is approved
- Working with City staff to complete R&R work for final paving on streets with occupied homes
- Landscaping contracted for Tank Site location

3) *An explanation with supporting information of aspects of the agreement where good faith compliance has not been achieved with proposals for a corrective action to achieve such compliance.*

None