ITEM 10.K.

MOORPARK CITY COUNCIL
AGENDA REPORT

TO: **Honorable City Council**

FROM: **David A. Bobardt, Planning Director** DB
Prepared By: Joseph R. Vacca, Principal Planner

DATE: **June 16, 2009 (CC Meeting of 7/01/2009)**

SUBJECT: **Consider Report of Annual Development Agreement Review, Established in Connection with Canyon Crest Ranch Partners-Moorpark, LLC (Birdsall), Located on Approximately 42.4 Acres East of Walnut Canyon Road at Championship Drive (Tentative Tract Map 5437), on the Application of Canyon Crest Ranch Partners-Moorpark, LLC (Birdsall)**

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 June 7, 2006, the Moorpark City Council adopted Ordinance No. 336 (effective July 8, 2006), approving a Development Agreement between the City of Moorpark and Canyon Crest Ranch Partners-Moorpark, LLC (Birdsall). The agreement was approved in connection with the Tract No. 5437/RPD 2004-05, to develop sixteen (16) homes, five (5) custom home lots and one (1) open space lot on approximately 42.4 acres east of Walnut Canyon Road at Championship Drive. The agreement remains in full force and effect for twenty (20) years from the operative date of the agreement (until July 8, 2026), or until the close of escrow on the initial sale of the last affordable housing unit, whichever occurs last. 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.

This is the third annual review of the Development Agreement with Canyon Crest Ranch Partners-Moorpark, LLC. John Newton, on behalf of Canyon Crest Ranch Partners-Moorpark, LLC, has submitted the necessary application form, related materials, and fee/deposit for the 2009 annual review. The Planning Director has reviewed the submitted information and the project status and provides the following report.

DISCUSSION

Current Project Status

- The developer has established the project's water service meter size with Water Works District No. 1 for the purposes of obtaining the necessary District Release letter from Water Works District No. 1 for approval of water and sanitation plans.
- The developer has provided condition compliance deposits and has submitted the final map, grading plans, and drainage and street improvement plans for engineering plan check.
- Efforts to obtain reciprocal drainage easements and right of entry permission and shared Homeowner's Association pro-rata cost responsibilities are on-going with KB Home, who is developing Planning Areas 8 and 9, of the northern portion of the adjacent Moorpark Highlands development area.
- The developer has acquired vacant property on the north side of Charles Street for the purposes of building two affordable housing units to satisfy the affordable housing requirements of the project. A lot line adjustment was approved as part of the land acquisition to add approximately 1,400 sq. ft. of land area to the project in order to accommodate one additional market rate unit to be included in the affordable housing project.
- Necessary weed abatement and erosion control efforts have been maintained on site.
- Processing of a Landscape Maintenance District will be required as part of the final map review and approval process.
- The Residential Planned Development Permit No. 2004-05, associated with the overall project, has expired and the developer anticipates filing for a new Residential Planned Development permit at some point in 2009 or early 2010.

Developer Compliance with Terms of Agreement

The developer's responsibilities are included in Section 6 of the Development Agreement and include twenty-one (21) 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.	To be granted at Final Map approval.
3.	Payment of "Development Fees" of nine-thousand-two-hundred-ninety-one dollars ($9,291.00) per residential unit and forty-one thousand-eight-hundred-twelve dollars ($41,812.00) per gross acre of institutional land.	These fees will 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. No Building Permits have been issued.
4.	Payment of "Citywide Traffic Fees" of six-thousand-five-hundred-thirty one dollars ($6,531.00) per residential unit and twenty-nine-thousand-three-hundred-ninety-one dollars ($29,391.00) per acre of institutional land.	Beginning January 1, 2008, these fees will be 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. No Building Permits have been issued.
5.	Payment of "Community Service Fees" of two-thousand-three-hundred-forty-nine dollars($2,349.00) per residential unit and seven-thousand-four-hundred-thirty-six dollars ($7,436) per gross acre of institutional land.	Beginning January 1, 2008, these fees will 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. No Building Permits have been issued.
6.	Payment of "Public Facilities" fee of ten-thousand dollars ($10,000) per residential unit.	Beginning July 8, 2007, and annually thereafter, this fee will be adjusted, (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. No Building Permits have been issued.
7.	Payment of a fee in lieu of park dedication "Park Fee" of fifteen-thousand-three-hundred-forty-eight-thousand dollars ($15,348.00) per residential unit and fifty cents ($0.50) per square foot of each building used for institutional purposes.	Beginning July 8, 2007, and annually thereafter, this fee will be adjusted, (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. No Building Permits have been issued.
8.	Provided that prior to Final Map recordation, or March 31, 2008, confirmation from Ventura County Waterworks District No. 1 that sufficient recycled water is available to serve public and community owned landscape areas. Developer shall design and construct facilities required to deliver the reclaimed water to the project, and provide 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.

NO.	REQUIREMENT	STATUS
9.	To fulfill a portion of the Affordable Housing requirement the developer shall pay a Thirty-Thousand Dollar ($30,000.00) Affordable Housing Fee, which shall be indexed annually using the Housing Index. Payment shall be completed prior to the occupancy of the 15th residential unit in Tract 5437. Developer shall also provide one (1) four (4) bedroom and two bath single family detached unit with a minimum of 1,200 sq. ft. for low income (80 percent or less of median income); and one (1) four (4) bedroom and two (2) bath single family detached unit with a minimum of 1,200 sq. ft. to be sold to a buyer who meets the criteria for very low income (50 percent or less of median income). The units shall include amenities as specified in the agreement. Prior to recordation of the final map the City Council shall approve an Affordable Housing Implementation and Resale Restriction Plan and prior to the occupancy of the first residential unit of the project the developer shall execute an Affordable Housing Agreement with the City Council. The developer shall pay up to a maximum of ten-thousand dollars ($10,000) for City's direct costs for preparation of the Plan and Agreement. One (1) low income unit and one (1) very low income unit shall be provided by the Developer and occupied by qualified buyers prior to occupancy of the 15th residential unit in Tract 5437. Compliance with requirements for home inspection and completion of necessary repairs, including purchase of standard home warranty policy for a three year period is required. No shake or wood shingle roofs shall be approved. Developer shall provide an HOA trust for HOA fees in excess of $100.00. Compliance with purchase price requirements of the agreement is required. Developer shall pay closing costs not to exceed six-thousand-three hundred dollars $6,300.00, which shall be increased by any increase in CPI after March 1, 2008.	The Affordable Housing Fee shall be paid prior to occupancy of the 15th residential unit in Tract 5437. No fees have been collected to date for affordable housing activities.

NO.	REQUIREMENT	STATUS
10.	Pay Air Quality Fee in the amount of one-thousand-seven-hundred-nine dollars ($1,709.00) per residential unit, and for institutional uses at a rate calculated by the Community Development Director.	Beginning January 1, 2007, and annually thereafter, this fee will be adjusted, (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. No Building Permits have been issued.
11.	Waiver of any density bonus rights that would increase the number of dwelling units approved to be constructed on the property.	The applicant has not requested density bonus units.
12.	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.	Formation of a Landscape Maintenance District is in process.
13.	Payment of all City capital improvement and processing fees.	No fees have been collected to date, fund review ongoing.
14.	Payment of Los Angeles Avenue Area of Contribution (AOC) Fee.	Fees must be paid prior to issuance of Zoning Clearance for Building Permit. No Building Permits have been issued.
15.	Street improvements designed and constructed for a 50-year life.	To be included with project improvement plans.
16.	Agreement to pay any fees and payments pursuant to this Agreement without reservation.	Fees must be paid prior to issuance of Zoning Clearance for Building Permit. No Building Permits have been issued.
17.	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.
18.	Provide cash deposit for costs related to formation of Community Facilities District.	No fees have been collected to date, fund review ongoing.
19.	Agreement that any property to be acquired by eminent domain shall be at City's discretion and after compliance with all legal requirements.	No request for property to be acquired by eminent domain has been submitted to date.
20.	Payment of all outstanding fees related to preparation of this agreement, project approval and MND.	Developer is in compliance with all requirements at this time.
21.	In the event any of the "referenced Index" or "CPI" are discontinued or revised, such successor index with which the "CPI" or "referenced Index" are replaced shall be used in order to obtain the same result as would otherwise have been obtained.	To date, the "referenced Index" or "CPI" remain in place for appropriate indexing as required.

All requirements of the Development Agreement will be 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 eight (8) specific provisions, as summarized below.

NO.	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 developer's 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.	Authorization for the City Manager to sign an early grading permit.	No early grading permit has been requested to date.
4.	Agreement to process concurrently, whenever possible, all land use entitlements for the same property (so long as deemed complete).	To date, City has complied.
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 commence proceedings for Community Facilities District formation and incur bonded indebtedness.	To date, City has complied.
7.	Agreement to appoint affordable housing staff person to oversee the implementation of affordable housing requirements. Agreement to respond within thirty (30) days on acceptance or rejection of proposed affordable housing unit per subsection 6.11. Agreement that Developer may construct rather than purchase affordable housing units required per subsection 6.9.	The Redevelopment Manager in the Assistant City Manager's Office oversees affordable housing requirements.
8.	Agreement to facilitate reimbursement to developer of any costs incurred that may be subject to partial reimbursement from other developers.	To date, no such request has been received.

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, on the basis of substantial evidence that Canyon Crest Ranch Partners-Moorpark, LLC (Birdsall) has, to date, complied in good faith with the terms and conditions of the agreement.

FISCAL IMPACT

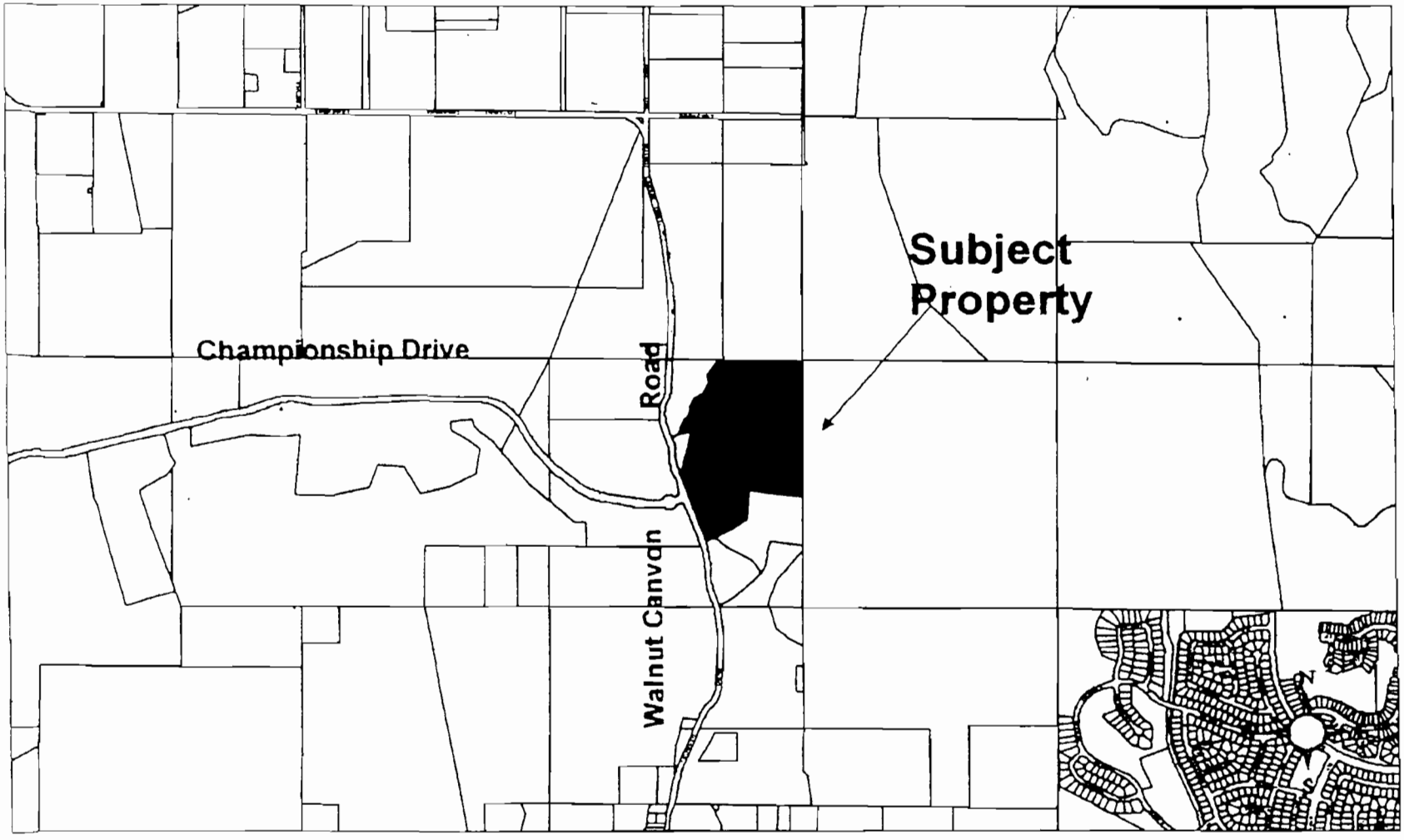
None.

STAFF RECOMMENDATION

1. Accept the Planning Director's report and recommendation, on the basis of substantial evidence, that Canyon Crest Ranch Partners-Moorpark, LLC (Birdsall), has complied in good faith with the terms and conditions of the agreement.
2. Deem the annual review process complete.

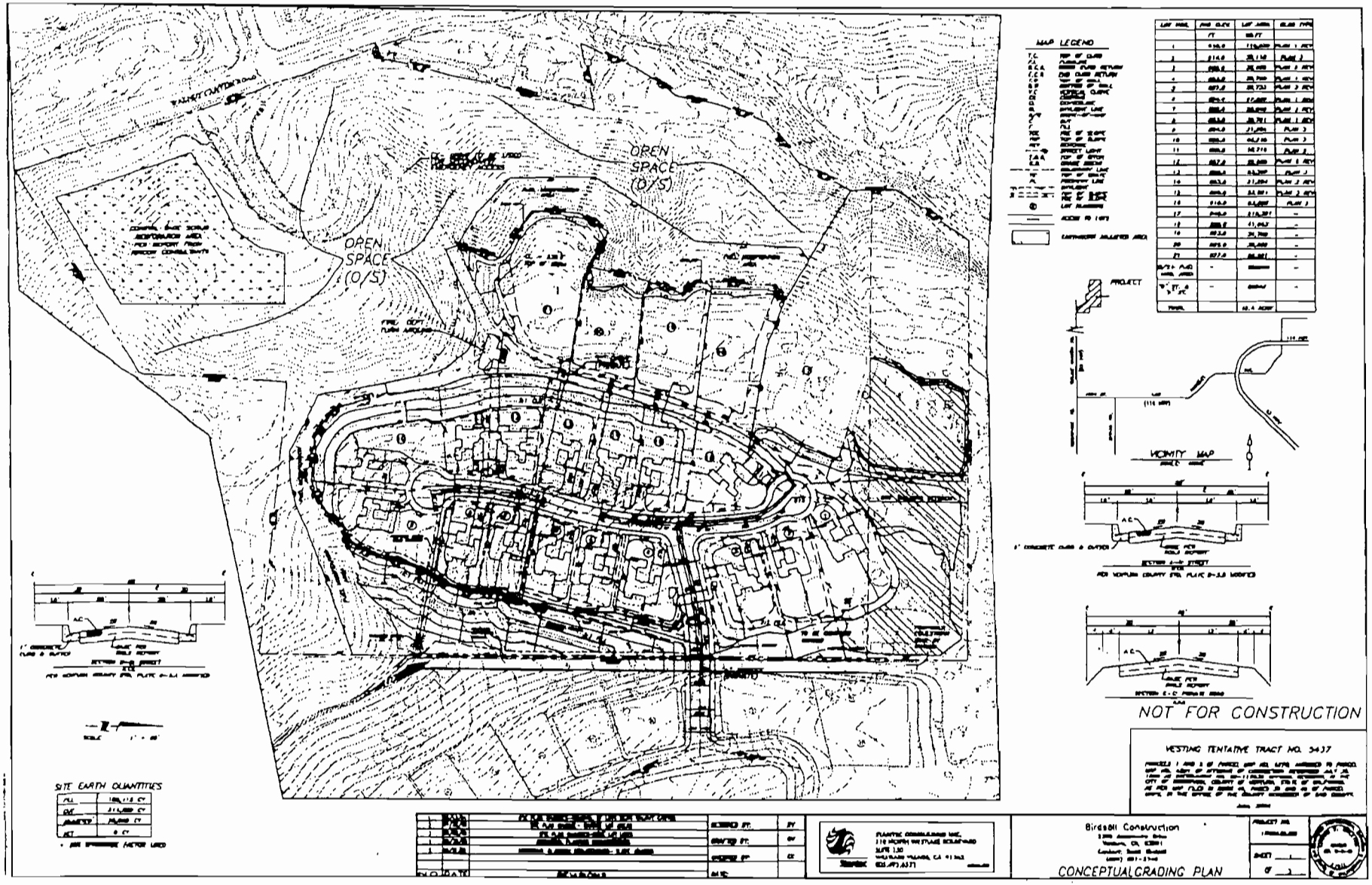
ATTACHMENTS:

1. Location Map
2. Site Map
3. Narrative by John Newton, on Behalf of Canyon Crest Ranch Partners-Moorpark, LLC (Birdsall).



NORTH

LOCATION MAP
CC ATTACHMENT 1



CC ATTACHMENT 2

NARRATIVE

The Applicant has established the project's water service meter size with WW#1, and provided same to CMWD for purposes of obtaining the necessary District Release letter for WW#1 approval of water & sanitation plans.

The Applicant continues negotiating with KB Homes for reciprocal easements for off-site drainage facilities, access and the HOA joint maintenance agreement. KB Homes has all of the information they have requested, but have been slow to respond due, apparently, to turn over of personnel and KB's slow progress on their project.

Improvement Plans continue to be in the final stages of approval, however, the Applicant has not pursued final approval and payment of fees due to the economic downturn. Current projections are to initiate grading in late 2010 – early 2011 and construction in 2012, depending on residential market conditions and construction financing availability.

Finally, the Applicant has received staff confirmation that the Development Agreement, Section 5.4, supersedes the TT5437 Timing conditions and the additional time provided by the recent passage of SB1185. TT5437 will not expire until May 17, 2016.