

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

**FROM: David A. Bobardt, Community Development Director
Prepared By: Joseph Fiss, Principal Planner**



DATE: April 8, 2010 (CC Meeting of 4/21/2010)

SUBJECT: Consider Report of Annual Development Agreement Review, Established in Connection with Moorpark Country Club Estates, Located Approximately 2,700 Feet South of Broadway between Grimes Canyon Road and Walnut Canyon Road (Tract 4928), on the Application of Toll Brothers, 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 May 1, 1996, the Moorpark City Council adopted Ordinance No. 215 (effective May 31, 1996), approving a Development Agreement between the City of Moorpark and Bollinger Development Corporation. The property was subsequently acquired by Toll Brothers, Inc., the developer currently responsible for compliance with the terms and conditions of the Agreement. The Agreement was approved in connection with Moorpark Country Club Estates, a 216 single-family residential development and golf course, located approximately 2,700 feet south of Broadway, between Grimes Canyon Road and Walnut Canyon Road. The Agreement remains in full force and effect for twenty (20) years from the operative date of the Agreement, March 10, 1998, the date that Bollinger Development took title to the property. The twenty (20) year term ends March 10, 2018.

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 May 20, 2009, the City Council accepted the Community Development Director's report and recommendation that, on the basis of substantial evidence, Toll Brothers, Inc. had complied in good faith with the terms and conditions of the Agreement, and deemed the annual review process complete. The developer has submitted the necessary application form, related materials, and fee/deposit for the current annual review. The Community Development Director has reviewed the submitted information, including the project status and provides the following report.

DISCUSSION

Current Project Status

The project status is included in Toll Brother's narrative (CC Attachment 2).

Developer Compliance with Terms of Agreement

The developer's responsibilities are included in Section 6 of the Development Agreement, and include requirements (a) through (j), summarized below. Compliance with the terms and conditions of the Development Agreement occur at various stages of the development process. Action by the developer and other clarifying information has been noted. Where no comment appears, no specific activity has occurred.

No.	Requirement	Status
(a)	(1) through (5) Payments to the City totaling \$5,000,000, on various dates related to the "Golf Course Commencement" date.	A subsequent agreement between the developer and the City has resulted in a single payment of \$3,000,000 by the developer on May 17, 1999.
(b)	Agreement that the golf course(s) shall be open to the public, without requirement for membership, and that twelve hours each week be made available at discount rates for City and school recreational/educational programs.	The clubhouse and related buildings are complete; however, final occupancy of the golf course was delayed pending completion of restroom facilities, storm drain system, erosion control measures and slope failure restoration. Approved slope repair is complete. The restrooms are complete. The City released a \$200,000.00 cash bond upon completion of these improvements, however release of final occupancy has been withheld pending clarification of conditions related to the Arbor Day condition and use of the golf course. City programs for the twelve (12) hours per week for school recreational/educational usage are under consideration.

No.	Requirement	Status
		<p>The new owners of the golf course have agreed to the golf course related provisions of this agreement and subsequent agreements.</p> <p>Condition # 59 of CUP 94-1 requires the golf course operator to maintain an on-site nursery and distribute 200 five-gallon trees to the public at no cost at an annual arbor day event to the satisfaction of the Community Development Director. When Toll Brothers owned the golf course, they maintained the nursery on-site and placed an ad in the paper annually notifying the public of the availability of the trees. The new owners of the golf course have removed the nursery, but have participated in the City's Arbor Day program, annually since March 2007 by providing the required trees from an off-site nursery. The Community Development Director has, since 2007, accepted this as compliance with this condition.</p>
(c)	Agreement that the clubhouse and related facilities shall be available to the public for rent and that the City shall be granted one (1) free rental each year.	The City has no current plans for use.
(d)	Extension of the reclaimed waterline to serve the medians and parkways for "C" Street and any other publicly maintained or common landscape areas.	Construction of the waterline has been completed. Delivery of reclaimed water to the project occurred on September 16, 2003.
(e)	Grant an irrevocable offer of easement dedication for the equestrian (multi-purpose) trails.	<p>Mod. No. 1 relocated this trail to the south side of "C" Street from the south project property line and requires its construction as part of the public improvements. Portions of the trail system have been included in the right-of-way for Championship Drive ("C" Street) per the Final Map for Phase 1.</p> <p>Additional multi-purpose trail dedication has occurred with subsequent map phases.</p>
(f)	Grant a conservation easement to retain various lots in a predominantly Open Space condition except for certain specified trail, golf course and building pad uses.	The requirements for the conservation easement have been resolved, and the final easement document has been recorded.

(g)	Grant an irrevocable offer of dedication for Lot 217 (per Vesting Tentative Tract Map No. 4928) to be used for public purposes, except the portion needed to meet the obligations of the Mitigation Monitoring Program.	Lot Q (formerly lot 217) was irrevocably offered for dedication to the City per the Final Map of Tract No. 4928-2, recorded November 7, 2001. Due to changes to the final map, this lot should have been transferred to the HOA. The staging area for equestrians is currently on HOA property. A lot line adjustment would be needed to add this area to Lot Q.
(h)	Payment of an amount equal to twenty-five cents (\$0.25) per square foot of clubhouse building area to fund park improvements.	The fee has been paid.
(i)	Payment of Air Quality Mitigation Fee per the project Conditions of Approval.	The residential fee has been collected with each zoning clearance for building permit. The three installments of the fee for the golf course have been paid.
(j)	Payment of all outstanding City project processing and environmental impact report costs.	The project processing account balance is current.

City Compliance with Terms of Agreement

The City's responsibilities are contained in Section 7 of the agreement and include provisions (a) through (i), summarized below.

No.	Requirement	Status
(a)	Exempt the project from the provisions of Chapter 17.38 (Hillside Management) of the Moorpark Municipal Code.	The grading plans are exempt from the provisions of Municipal Code Chapter 17.38. The project is subject to all other applicable code provisions and city standards.
(b)	Exempt the project from any growth management ordinance that is adopted.	No growth management ordinance exists at this time.
(c)	Proceed to acquire, if requested, and at developer's sole cost and expense, easements or fee title to land not held by the developer, but required for construction of required improvements.	May need to be used for Grimes Canyon improvements north of Championship Drive. No request has been made at this time.
(d)	Expedite plan check processing whenever possible.	Revised the plot plan review and approval process saving two months of processing time. Implemented on each plan check, whenever possible.
(e)	Authorization for the City Manager to sign an early grading agreement.	The developer entered into an early grading agreement with the City in April 2000.

No.	Requirement	Status
(f)	Agreement that the Los Angeles Avenue Area of Contribution (AOC) for the residential portion of the project shall not be required to be paid until time of issuance of Zone Clearance for the first residential building permit. The AOC Fee for the golf course(s) shall be paid prior to the "Golf Course Commencement" date.	The residential Los Angeles Avenue AOC Fee has been collected with a zoning clearance for each residential unit. The fee for the golf course has been paid.
(g)	Agreement that the Citywide Traffic Mitigation Fee of three thousand dollars (\$3,000) per unit, for the residential portion of the project, shall not be required to be paid until time of issuance of Zone Clearance for the first residential building permit. The Citywide Traffic Mitigation Fee of one hundred fifty-four thousand two hundred twenty-four dollars (\$154,224) for the golf course(s) shall be paid prior to the "Golf Course Commencement" date.	<p>These fees will be adjusted annually (until paid) using the Consumer Price Index (CPI) in accordance with the agreement.</p> <p>Residential Traffic Mitigation fees (as annually adjusted) have been collected with zoning clearance for each residential unit.</p> <p>Traffic Mitigation Fees for the golf course have been paid at the annually adjusted rate.</p>
(h)	Except for fees in lieu of park dedication, all "Development Fees" (not including processing and plan check fees and deposits) shall not be required until Zoning Clearance for the first building permit, unless due at a later time.	Most residential development fees have been, and will be, collected at Zoning Clearance for building permit. Certain development fees are set per settlement agreement, or are tied to "Golf Course Commencement."

No.	Requirement	Status
(i)	<p>Upon effective date of the Agreement, the City shall allow the following:</p> <p>(1) Recordation of the final map in as many as eight (8) phases.</p> <p>(2) Provisions for the preservation, relocation, replacement, and creation of Valley Needle Grassland habitat.</p> <p>(3) Deletion of language from Condition No. 53 related to surety for trail construction.</p> <p>(4) Allow the developer to pay Air Quality Mitigation Fees of Eight Hundred Eleven Dollars (\$811) per dwelling unit prior to Zone Clearance for building permit rather than prior to recordation of the Final Map. Air Quality Mitigation Fees for the golf course to be paid in three installments.</p> <p>(5) Certain streets as identified on the Street Plan, dated April 17, 1996, shall be allowed to be built as private streets.</p> <p>(6) Provisions for specific construction requirements for "C" Street.</p> <p>(7) Initiate consideration of a General Plan Amendment allowing reduced minimum setback from agricultural uses on the northerly side of the project.</p> <p>(8) Provisions for parking and access requirement for the golf course(s) and clubhouse.</p> <p>(9) Extension of time for inauguration for RPD 94-1 from one (1) year to three (3) years.</p> <p>(10) Extension of time for inauguration for CUP 94-1 from one (1) year to three (3) years.</p>	<p>(1) Phases 1, 2 and 3 have been recorded completing the recordation of all lots approved under the tentative map approval.</p> <p>(2) On February 13, 2006, the Developer's consultant, The Planning Associates, provided a report on preservation and restoration activities. Staff continues to monitor status of on-going re-establishment efforts.</p> <p>(3) This Condition is no longer applicable, as trail will be bonded for and constructed as a public improvement.</p> <p>(4) The residential fee has been collected with each zoning clearance for building permit. The three installments of the fee for the golf course have been paid.</p> <p>(5) Streets within Phases 1, 2 and 3 are private.</p> <p>(6) Specific construction requirements for "C" Street (Championship Drive) have been established.</p> <p>(7) The reduction in setback standard required by the Land Use Element of the General Plan was considered by the Planning Commission and recommended for denial on November 8, 1999. The applicant subsequently withdrew the request.</p> <p>(8) Parking provisions for the golf course and clubhouse have been established.</p> <p>(9) RPD 94-1 has been use inaugurated and no extensions are needed.</p> <p>(10) CUP 94-1 has been use inaugurated and no extensions are needed.</p>

Evaluation of Good Faith Compliance

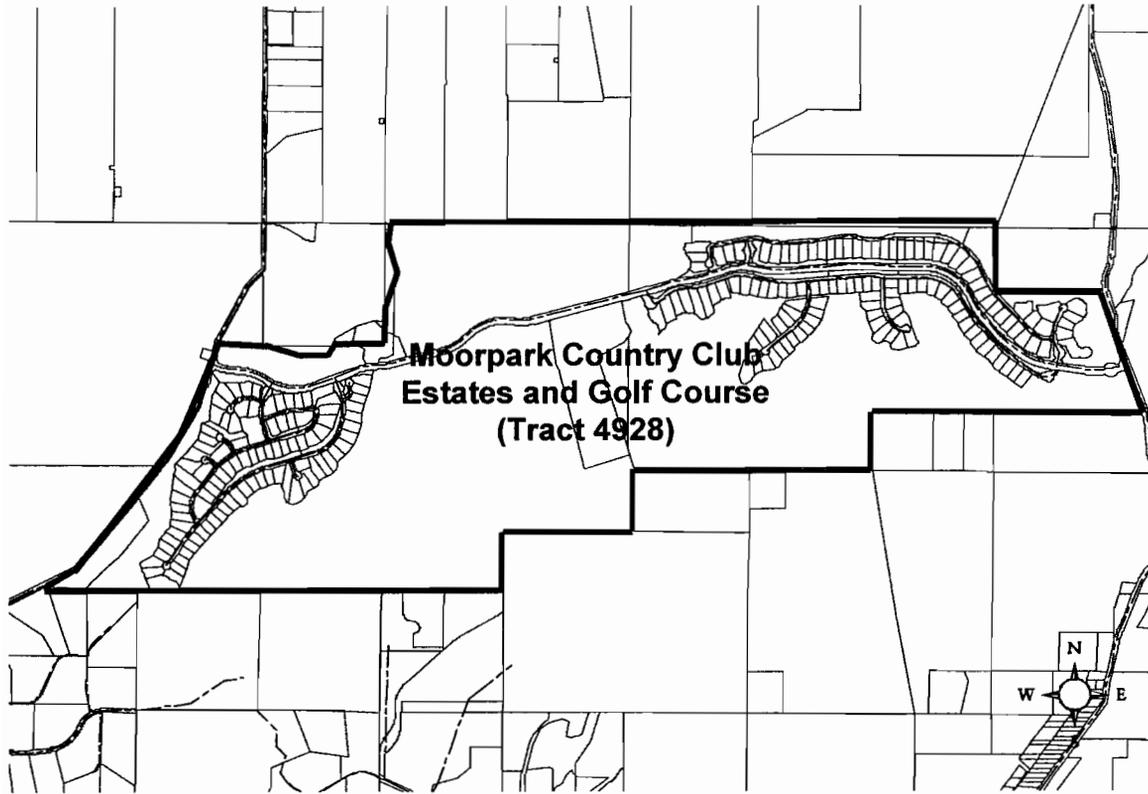
Based on a review of the Development Agreement Annual Review Application and the status of the project, the Community Development Director has determined, on the basis of substantial evidence that Toll Brothers, Inc. has, to date, complied in good faith with the terms and conditions of the agreement.

STAFF RECOMMENDATION

1. Accept the Community Development Director's Report and recommendation that, on the basis of substantial evidence, Toll Brothers Inc. has complied in good faith with the terms and conditions of the agreement.
2. Deem the annual review process complete.

ATTACHMENTS:

1. Location Map / Site Plan
2. Narrative from Toll Brothers, Inc., dated February 10, 2010



LOCATION MAP

CC ATTACHMENT 1

Toll Brothers

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February 10, 2010

Honorable City Council
City of Moorpark
799 Moorpark Ave.
Moorpark, CA 93021

Re.: Annual Review of Development Agreement No. 95-1 (Tract No. 4928)

Dear City Council,

Per the terms of the above referenced Development Agreement, Toll Brothers, Inc. is submitting this letter as narrative to describe the current status of the development including accomplishments made since the last review on April 14, 2008.

The Current Project Status is as follows:

- Final maps have been recorded for the entire development.
- A cumulative total of 216 building permits out of 216 total lots, have been issued for the development.
- Phase 1; has three (3) now occupied model homes and three (3) sold lots which are under construction.
- Phase 2; all 89 lots are occupied and all construction is 100% complete.
- Phase 3; all 121 lots are occupied and all construction is 100% complete.
- Final paving surfaces have been installed at Phase 2, approximately 85% in Phase 3, and the entire length of Championship Drive from Walnut Canyon to Grimes Canyon.
- The common area landscaping of the Championship Drive corridor is complete. The golf course and the Country Club HOA presently maintain 90% of the landscaping. Toll Brothers still maintains the north side of Championship from Walnut Canyon to Sarazen Dr., as well as the north side of Championship from Trevino Dr. to Grimes Canyon Rd. The Landscape Maintenance District was turned over to the City on January 2, 2009. The multi-purpose trail is a part of the LMD, and is maintained by the Landscape Maintenance District.
- The golf course is fully operational, including all 27 holes and the clubhouse facility. The golf course is no longer owned by Toll Brothers. The golf course was sold to J. Won Corp. on 09/30/04.
- Three restrooms are complete and operational.

CC ATTACHMENT 2

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- The Grimes Canyon Road improvements that are required by tract conditions are complete.
- Grimes Canyon road is open to unrestricted traffic via newly constructed bridge #226 by Ventura County Dept. of Transportation.
- The Grimes Canyon Road/118 intersection improvements are complete.
- The reclaimed water tank site is available to Ventura Water Works District for construction at any time. The potable water tank has been constructed and was operational in June '06.

Toll Brothers believes that the Developer Compliance with Terms of Agreement status is as follows:

Section 6 (a) 1-5; Full payment has been made.

Section 6 (b); To be in compliance with Paragraph 3 of the "Second Amendment to Settlement Agreement", the golf course offers greens fee discounts to junior and senior players and also provides free use by teams from Moorpark High School and Moorpark Community College.

Section 6 (c); The requisite free rental event has been available to the City

Section 6 (d); Reclaimed waterline and pump station construction is complete. First delivery of reclaimed water was received on 09/16/03. The full 27-hole course continues to use 8M-10M gallons per month on average, with peak usage at 1M gallons per night during the warmest summer months.

Section 6 (e); The multi-purpose trail easements have been recorded in favor of the City and requires no further action.

Section 6 (f); The conservation easements have been recorded in favor of the City and requires no further action.

Section 6 (g); Lot Q was dedicated with the recordation of the Final Map for Tract No. 4928-2 and requires no further action.

Section 6 (h); The park improvements fee based on \$.25/sf of the clubhouse building was paid prior to receipt of the clubhouse building permit.

Section 6 (i); The Air Quality Mitigation Fee for the residences has been paid at zoning clearance at time of pulling building permit. The final installment for the golf course in the amount of \$45,308- was paid on 09/20/04.

Section 6 (j); All deposits have been paid to Public Works Department. Toll has not been notified of any other deposits needed or that there is any deficient account balances.

Toll Brothers believes that the Second Amendment to Settlement Agreement status is as follows:

Paragraph 1; Paragraph 4 of First Amendment rescinded, no further action necessary

Paragraph 2; The referenced condition was completed to the Director of Community Development's satisfaction.

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- Paragraph 3; The first annual City golf event was held on 09/28/04. No further action by Toll Brothers is necessary
- Paragraph 4; All site improvement plans have been approved by Public Works and the Final Map for Tract 4928-3 was recorded on 09/15/04. No further action by Toll Brothers is necessary
- Paragraph 5; Improvements at Walnut Canyon Road and Championship Drive have been completed and the intersection approved for use by Caltrans. No further action by Toll Brothers is necessary
- Paragraph 6; The right-of-way was acquired and transferred to County of Ventura in March '07. No further action by Toll Brothers is necessary.
- Paragraph 7; The final nine (9) holes were opened for public play at the end of August '04. No further action by Toll Brothers is necessary.
- Paragraph 8; Cable TV and communications services are being provided to the current residents exclusively by Time-Warner Cable, a City Cable Franchisee. No further action by Toll Brothers is necessary.
- Paragraph 9; Toll will cast affirmative ballots for any assessment district increases as needed
- Paragraph 10; The improvements were completed by VCDOT and the signal lights were activated by CalTrans on 03/01/06. No further action by Toll Brothers is necessary.
- Paragraph 11; The completion date for the Grimes/118 intersection per the terms of the agreement is 05/16/06. No further action by Toll Brothers is necessary.
- Paragraph 12; The first, second and third installment payments have all been paid. No further action by Toll Brothers is necessary.
- Paragraph 13; Toll agreed to the fee in-lieu of the equestrian staging area restroom facility. No further action by Toll Brothers is necessary.
- Paragraph 14; The fee referenced in paragraph 13 has been paid. No further action by Toll Brothers is necessary.
- Paragraph 15; Toll agrees to waive the right to payment under protest of any agreement fees. No further action by Toll Brothers is necessary
- Paragraph 16; Plan approvals have been completed with assistance from the Director of Community Development as needed.
- Paragraph 17; City agrees to modify and delete conditions. No further action by Toll Brothers is necessary
- Paragraph 18; Both parties agreed to independent counsel, negotiations, etc. No further action by Toll Brothers is necessary
- Paragraph 19; Settlement Agreement and First Amendment remain in full force and effect. No further action by Toll Brothers is necessary

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Finally, it should be noted that all site improvements are substantially complete at this time.

Sincerely,



Toll CA LP
Dustin Raddatz
Toll Brothers Project Manager