ITEM 10.O.

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 The Masters at Moorpark Country Club Estates, Located on 43.04 Acres North of Championship Drive and East of Grimes Canyon Road (Tract 5463), 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 December 6, 2006, the Moorpark City Council adopted Ordinance No. 346 (effective January 5, 2007), approving a Development Agreement between the City of Moorpark and Toll Brothers, Inc. The Agreement was approved in connection with The Masters at Moorpark Country Club Estates, a 49 single-family residential development, located on 43.04 Acres North of Championship Drive and East of Grimes Canyon Road. The Agreement remains in full force and effect for twenty (20) years from the operative date of the Agreement, January 5, 2007. The twenty (20) year term ends January 5, 2027. On June 20, 2007 the Development Agreement was amended to change Sections 6.9, 6.22, and 6.23, specifically related to Affordable Housing, Grimes Canyon Road Improvements, and Open Space In-Lieu payments. This amendment did not change the operative dates 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 May 20, 2009, the City Council accepted the 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 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 addressed 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 6.1 through 6.29, summarized below. Compliance with the terms and conditions of the Development Agreement occurs 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
6.1	Developer shall comply with this Agreement, Project Approvals, all Subsequent Approvals and the MMRP of the MND and any subsequent or supplemental environmental actions.	Developer is in compliance with all requirements at this time.
6.2	All lands and interests in land dedicated to City shall be free and clear of liens and encumbrances other than easements or restrictions that do not preclude or interfere with use of the land or interest for its intended purpose, as reasonably determined by City.	To be granted at Final Map approval.
6.3	Payment of "Development Fees" of Nine Thousand Five Hundred Dollars ($9,500.00) per residential unit and Forty-Two Thousand Seven Hundred Fifty Dollars ($42,750.00) 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.
6.4	Payment of "Citywide Traffic Fees" of Six Thousand Six Hundred Dollars ($6,600.00) per residential unit, and Twenty-Nine Thousand, Seven Hundred Dollars ($29,700.00) per acre of institutional land.	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.

No.	Requirement	Status
6.5	Payment of "Community Service Fees" of Two Thousand, Four Hundred Dollars ($2,400.00) per residential unit, and Ten Thousand Eight Hundred Dollars ($10,800.00) 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.
6.6	Payment of "Public Facilities Fee" of Twelve Thousand Dollars ($12,000.00) per residential unit and Fifty-Four Thousand Dollars ($54,000) 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.
6.7	Payment of "Public Facilities Fee" of Twenty-Four Thousand Dollars ($24,000.00) for each residential dwelling unit and Fifty Cents ($0.50) per square foot of each building used for institutional purposes.	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.
6.8	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. A reclaimed waterline serving the medians and parkways for Championship Drive and other publicly maintained or common landscape areas currently exists.
6.9	Under this section of the Development Agreement, as amended on June 20, 2007 the developer must provide a total of twelve (12) affordable housing units; eight (8) units for Tract 5463 (four (4) low and four (4) very low) and four (4) units per the Development Agreement for Tract 5464 (two (2) low and two (2) very low). To partially meet this obligation, the Developer agrees to transfer clear title to the approximately 0.34 acre and approximately 0.16 acre parcels known as 396 Charles Street in partial fulfillment of the requirements for affordable housing as indicated in section 6.9 of this Agreement. City will credit Developer five (5) affordable units, consisting of three (3) low income and two (2) very low income units toward the total required by this Agreement and the Development Agreement for Tract 5464. In the event Developer obtains clear title to the approximately 0.34 acre parcel known as 436 Charles Street in further partial fulfillment of the requirements for affordable housing, City will credit Developer three (3) additional affordable units, consisting of one (1) very low	Toll has purchased 396 and 436 Charles Street and transferred the properties the City free and clear for fulfillment of the requirement for eight (8) units for Tract 5463. Toll is not proceeding with Tract 5464 and therefore, no further affordable housing obligation is required.

No.	Requirement	Status
	income and two (2) low income units toward the total required by this Agreement and the Development Agreement for Tract 5463. Prior to the issuance of a grading permit for either Tract or upon receipt of clear title, whichever is earlier, Developer shall transfer the property or properties described above to the City free and clear of any and all encumbrances and structures. Should the grading permit for Tract 5463 precede the grading permit for Tract 5464, the credit for the five (5) or eight (8) (depending on whether Developer has acquired clear title to the 436 Charles Street property) affordable units shall be applied to Tract 5463. Should the grading permit for Tract 5464 precede the grading permit for Tract 5463, the requirement for four (4) affordable units will be fulfilled. At the Developer's option, the credit for the remaining fifth (5th) to eighth (8th) affordable unit(s) may be applied toward the fulfillment of one (1) to four (4) affordable housing unit(s) for Tract 5463.	
6.10	Pay Air Quality Fee in the amount of One Thousand Eight Hundred Dollars ($1,800.00) per residential unit, and for institutional uses at a rate calculated by the Community Development Department.	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.
6.11	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.
6.12	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 owner's association(s) to provide landscape, street lighting and park (if necessary) open space land, trails drainage facilities maintenance and compliance with NPDES requirements.	To date no assessment district has been required.
6.13	Payment of all City capital improvement and processing fees.	Developer is in compliance with all requirements at this time. Fund review ongoing.
6.14	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.
6.15	Provide for a 50-year life, as determined by the City Engineer, for all public street improvements.	To be part of the Street Improvement Plans to be reviewed and approved by the City Engineer.
6.16	Agreement to pay any fees and payments pursuant to this Agreement without reservation.	Developer is in compliance with all requirements at this time.

No.	Requirement	Status
6.17	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.
6.18	Provide deposits for the proceedings and related services for possible formation of a District as referenced in Subsection 7.6	To date no assessment district has been required.
6.19	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.
6.20	Payment of all outstanding City processing costs related to preparation of this Agreement, Project Approvals, and MND.	Developer is in compliance with all requirements at this time. Fund review ongoing.
6.21	Successor index with which the "CPI" and or "referenced Index" are replaced shall be used in order to obtain substantially the same result.	"Referenced Index" and "CPI" continue in use and have not been replaced with a successor index.
6.22	Under this section of the Development Agreement, as amended on June 20, 2007, in the event the County does not improve the remaining unimproved portion of Grimes Canyon Road to the City boundary, then Developer shall improve both sides of Grimes Canyon Road to its ultimate right-of-way from Championship Drive north to the northern City limits except for repair and reconstruction of that portion of Grimes Canyon Road which was damaged by flood waters, the developer must improve both sides of Grimes Canyon Road to its ultimate right-of-way from Championship Drive north to the northern City limits, with the same section as the improvements previously made to the portion of Grimes Canyon Road north of Championship Drive in connection with Tract 4928.	The County has repaired and reopened that portion of Grimes Canyon Road which was damaged by flood waters. Grimes Canyon Road is open to through traffic via a new bridge constructed by Ventura County. Toll submitted conveyancing documents to the County to provide them with the necessary property to reroute Grimes Canyon Road around the road bed damage at the northern City limit. The County has completed the rerouting of Grimes Canyon Road.
6.23	Under this section of the Development Agreement, as amended on June 20, 2007, prior to recordation of the first Final Tract Map for the Property, Developer to purchase and dedicate fee title for seventy-two (72) acres of open space in lieu of providing on-site open space dedication. In lieu of providing open space Developer may pay two million six hundred eighty thousand dollars ($2,680,000.00) to City for open space preservation purposes.	To date, Developer has not recorded first Final Tract Map. If Developer elects to pay fee in lieu of providing open space, the fee shall be adjusted annually and paid as follows: Six hundred seventy thousand dollars ($670,000.00) paid to City no later than the recordation of the Final Map. Subsequent annual payments of six hundred seventy thousand dollars ($670,000.00) shall be made for three years on the anniversary of the first payment. This fee is adjusted annually based on the larger increase of either CPI, Housing Index, or LAIF.
6.24	Prior to the occupancy of the 49th unit Developer shall pay City the cost for installing a minimum two (two) inch rubberized asphalt overlay of Championship Drive from Grimes Canyon Road to Walnut Canyon Road.	To date, development of units has not commenced.

No.	Requirement	Status
6.25	Grant a conservation easement to retain various lots in a predominantly Open Space condition except for certain specified trail and other uses.	The Conservation Easement has been shown on the Tentative Map and will be recorded upon recordation of the Final Map.
6.26	Provide an easement and Twenty-Five Thousand Dollars ($25,000.00) for a City Welcome Sign on the Project site prior to occupancy of the first residential unit.	To date, development of units has not commenced.
6.27	All major construction traffic, heavy equipment, and commercial vehicles shall enter and exit the Project from Grimes Canyon Road.	To date, no major construction has commenced.
6.28	The control and maintenance of all entry monuments to be transferred to the master Homeowner's Association for Country Club Estates (Tract 4928).	Toll has prepared the easement documents and agreements from Toll and the Moorpark Golf Course, and submitted them to the Homeowner's Association for review. The documents are being reviewed by the HOA attorney.
6.29	Provide agricultural buffer fencing along the joint property line between the existing Moorpark Country Club Estates and the adjacent agricultural uses immediately to the north.	To date, development of the project has not commenced.

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
7.1	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.
7.2	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.
7.3	Authorization for the City Manager to sign an early grading permit.	No early grading permit has been requested to date.
7.4	Agreement to process concurrently, whenever possible, all land use entitlements for the same property (so long as deemed complete).	To date, City has complied.
7.5	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.
7.6	Agreement to commence proceedings for Community Facilities District formation and incur bonded indebtedness.	To date no assessment district has been required.

No.	Requirement	Status
7.7	Agreement to appoint affordable housing staff person to oversee the implementation of affordable housing requirements.	The Redevelopment Manager in the Assistant City Manager's Office oversees affordable housing requirements.
7.8	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.
7.9	City agrees that any payments by Developer to meet its obligations per section 6.23 of this Agreement also satisfies subsection 3.1.1-3 of the Mitigation Monitoring Program adopted for the Project and the City further agrees to use said payment for open space preservation purposes within the City, City's Area of Interest or property contiguous thereto.	To date, no payment has been made.

Evaluation of Good Faith Compliance

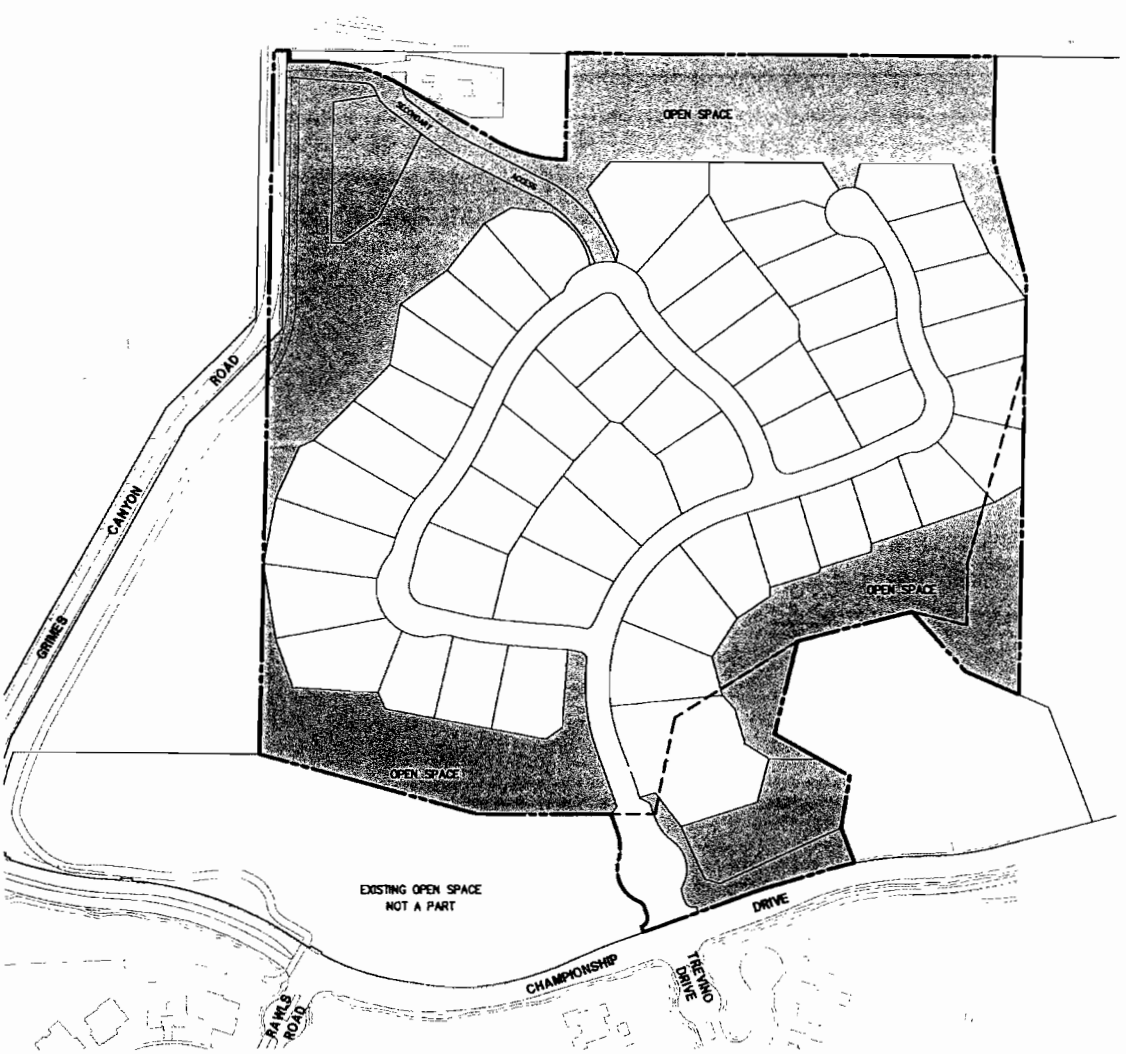
Based on a review of the Development Agreement Annual Review Application and the status of the project, the Community Development Director has determined, on the basis of substantial evidence that Toll Brothers, Inc. has, to date, complied in good faith with the terms and conditions of the agreement.

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
America's Luxury Home Builder™

February 10, 2010

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

Re.: Annual Review of Development Agreement No. 2003-04 (Tentative Tract No. 5463)

Dear City Council,

Per the terms of the above referenced Development Agreement, Toll Brothers, Inc. is submitting this letter as the first annual narrative to describe the current status of the development.

The Current Project Status is as follows:

- A total of 49 lots are being developed on Tract 5463. An additional parcel between the subject tract and Grimes Canyon Road was also acquired by Toll and will be incorporated into the development creating a total of 50 lots on approximately 58 acres of property.

- Grading and site improvement plans were submitted to Public Works in Sept. '07 for first plan check. Comments were received in November and corrections resubmitted in early December. A second round of comments was received in March, and corrections are being completed with re-submittal for 3rd plan check anticipated within 2 weeks. Recent review with Public Works staff indicates that grading permit issuance is feasible at completion of 3rd plan check.

- Grimes Canyon Road is open to thru traffic via a new bridge constructed by Ventura County Dept. of Transportation. Toll has submitted conveyancing documents to VCDOT which will provide them with the necessary property to re-route Grimes Canyon Road around the road bed damage at the northern City limit boundary. VCDOT has completed the re-routing of Grimes Canyon Road.

- Toll acquired parcels of property on Charles St. in order to comply with the affordable housing component requirements. The parcels were conveyed to the City on April 10, 2008. There is no further action required by Toll for this condition.

- Toll has made all review fee payments as requested by City staff to date. There are no other major fees due at this time. The Public Facilities Fee will be due at grading permit issuance, and the School Crossing Guard and the first of four Open Space fee installments will be due at final map approval.

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725 Town and Country Rd., Suite 500, Orange, CA 92868
Telephone: (714) 347-1300 • FAX: (714) 835-9685

CC ATTACHMENT 2

Toll Brothers
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Other than fire clearance and some soils geology inspection, there is no physical work that has been done on the property to date. All future work is pending grading permit approval.

Sincerely,

Toll Brothers, Inc.
Dustin Raddatz
Project Manager

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725 Town and Country Rd., Suite 500, Orange, CA 92868
Telephone: (714) 347-1300 • FAX: (714) 835-9685