ITEM 10.C.

MOORPARK CITY COUNCIL
AGENDA REPORT

TO: **Honorable City Council**

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

DATE: **April 3, 2012 (CC Meeting of 04/18/2012)**

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 248 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 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 6, 2011, the City Council accepted the Community Development Director's report and recommendation that, on the basis of substantial evidence, Resmark Equity Partners, LLC had complied in good faith with the terms and conditions of the Agreement, and deemed the annual review process complete for 2011. Resmark Equity Partners, LLC has submitted the necessary application form, related materials, and fee/deposit for the 2012 annual review. The Community Development 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 where residential units exist.
- 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.
- All of the mitigation landscaping has been installed per plan. Staff along with the City's consulting landscape architect completed the final landscaping inspection and approved a final landscaping inspection zoning clearance on February 26, 2009.
- Resmark completed construction of the HOA recreation lot with the tennis and basketball courts and a zoning clearance for final occupancy of the facility was approved on February 2, 2009.
- All of the currently improved Homeowner's Association landscaping has been installed per plan. Following the completion of a 90-day maintenance period, staff completed a final landscaping inspection and approved a zoning clearance for completion of landscaping on January 11, 2011.

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.
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.

NO.	REQUIREMENT	STATUS
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.
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 six 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, 2012. 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 165th 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 50th 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 50th unit. The Affordable Housing Agreement was executed by the applicant and the City and recorded on December 15, 2006.

NO.	REQUIREMENT	STATUS
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.	This fee 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. This fee has been collected with all Zoning Clearances for residential Building Permits to date and upon issuance of final occupancy Zoning Clearances for institutional uses.
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.
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 Final Map, with capacity verified by Ventura County Watershed Protection District. Improvement plans and permits have been issued by VCWPD and construction has been completed. The applicant anticipates that the basin will be accepted by VCWPD within the third or fourth quarter of 2012 and all securities shall be released at that time 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 165th residential unit, including all plan check and inspection costs, and improvement surety.	These improvements were included with project improvement plans and securities.

NO.	REQUIREMENT	STATUS
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. These fees were collected on October 28, 2005 and paid in full with indexing.
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.
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 for connecting to Tract No. 4928, (Country Club Estates).
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.

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 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.

NO.	REQUIREMENT	STATUS
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.
7.	Agreement to appoint affordable housing staff person to oversee the implementation of affordable housing requirements.	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 Community Development 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.

FISCAL IMPACT

None

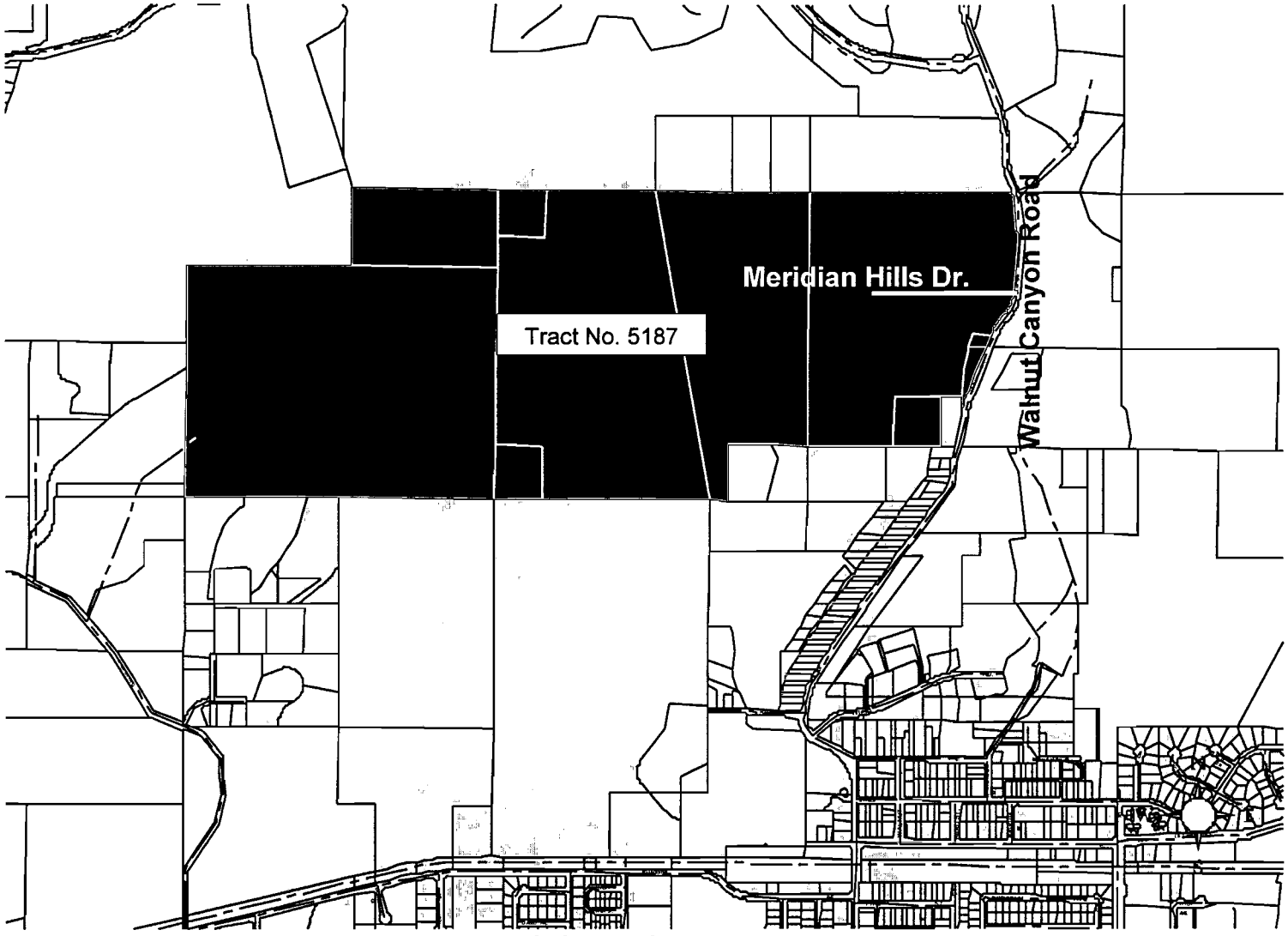
STAFF RECOMMENDATION

1. Accept the Community Development 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:

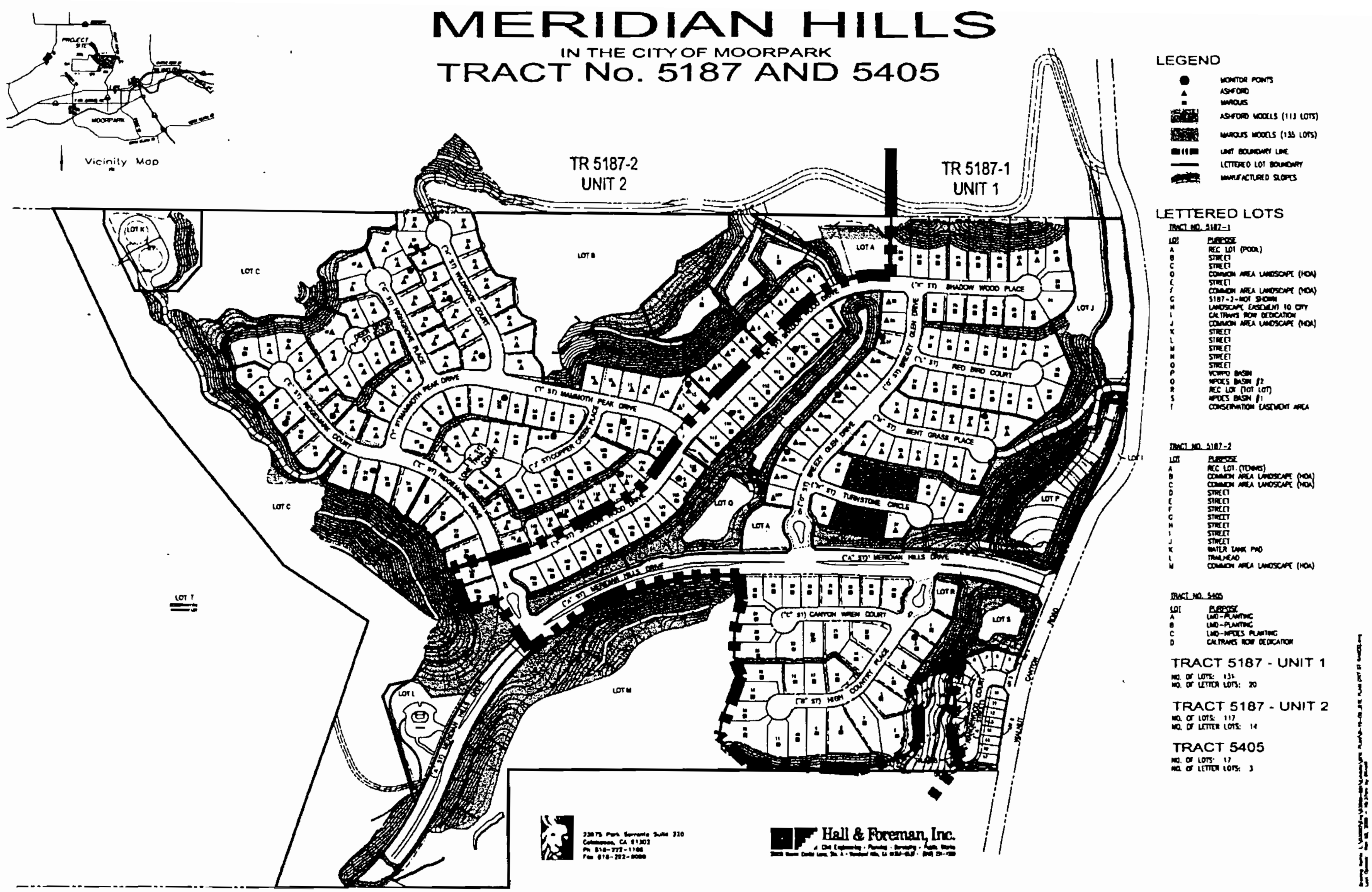
1. Location Map
2. Site Plan
3. Narrative



LOCATION MAP

NORTH

CC ATTACHMENT 1



SITE PLAN

CC ATTACHMENT 2

Development Agreement Annual Review Application Response
RPD 99-01, TTM 5187 TTM 5405
March 14, 2012

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

- Acquisition of approximate 2 –Acre site for the construction of affordable homes
- Submittal of application, fees, and required materials to entitle the affordable housing site:
    - General Plan Amendment
    - Zone Change
    - RPD Permit
    - Tentative Tract Map
- William Lyon Homes, Inc. 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 (formerly, VCFCD) 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
- We successfully entitled TTM 5405 in fulfilling the affordable housing requirements outlined in the Development Agreement.
- Initiate Release Upon Transfer prior to the close of escrow
- Paid outstanding processing costs related to preparation of the Development Agreement, project approval and EIR.
- Processing and recordation of the conservation easement for the open space lot 263 per TTM 5187. Provide design and commence complete landscape and drainage plans for lot 253 (trail staging area)
- Approval GPA, ZC, RPD and TTM by Planning Commission and City Council for the affordable housing site (TTM 5405). Submit all final map and improvement plans into plan check in October, 2003
- Incorporate design of public trail system into improvement and landscape plans submitted into plan check
- Council approval of construction implementation plan
- Execution of early grading agreement, posting of bonds and commencement of grading operations. Conduct erosion control, implement best management practices and maintain SWPPP manual
- Execution of the Affordable Housing Implementation and Resale Restriction Plan
- 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.
- Dedication of open space lots on the tract maps with use restrictions as specifically defined in the DA or as agreed upon

CC ATTACHMENT 3

- Completion of widening improvements on Walnut Canyon Road and conversion of overhead utilities to underground.
- Completion of Meridian Hills Drive
- Completion of LMD landscaping on lots D & J.
- Completion of LMD lots Q, S, F & M.
- Transfer (sale) of 183 lots in Tract 5187 & 17 lots in Tract 5405 was completed to ORA Ashford 94, LLC.
- Pay annual $10,000 open space management fee. Payment now turned over to HOA.
- Paid $300,000 mitigation monitoring fee.
- Paid $20,000 public services and utilities mitigation fees.
- Paid $236,667 in-lieu fee for three affordable units.
- Implementation plan amended and transferred to ORA Ashford 94, LLC. Approved by City Council in May 2008
- $25,000 deposit from ORA Ashford 94, LLC to City of Moorpark was paid in full in 2008.
- Existing wood fencing has been removed from project.
- Final paving cap has been completed on all streets with occupied homes.
- Sports Court Recreation area has been completed.
- Project's Multi-use trail has been completed per plan along Walnut Canyon Road.
- Owner working with city staff and adjacent homeowner (Peters) to approve final plans for public multi-use trail.
- William Lyon Homes, Inc. has completed the installation of the Peter's 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 as-builts.
- Dust and erosion control measures are in full effect.
- $60,000 deposit from ORA Ashford 94, LLC to City of Moorpark was paid in 2009.
- The property is in full compliance with the adopted Fuel Modification plan.
- Tract 5405 Bio Swale, retaining wall and drainage facility has been completed.
- V-ditches and grading has been complete per Implementation Plan.
- All mitigation areas have now been planted (and replanted as needed) per plan including the new east/west gullies and Walnut Canyon North.
- VCWPD Basin P has been completed and is in the process of turnover to VCWPD.
- Bonds have all been replaces in new owners name.
- Security fencing and no trespassing signs has been installed
- Monumentation and Centerline ties have been completed in areas of occupied homes.

- The Walnut Canyon basin has been turned over to the VCWPD for maintenance. Mitigation landscaping within the basin is maintained by the developer and ultimately the HOA.

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

- Multi-use trail connection to Tract 4928 has been designed and initially agreed to by all parties including both land owners and the City. During the last City plan check, City requested the plan get submitted and reviewed by the VCWPD. We are working through design revisions that VCWPD has requested. We will start construction immediately upon approval from the City of Moorpark.
- The City has completed the turnover walks with applicant for the landscape portion of the LMD areas. City staff is preparing a final landscape punchlist for acceptance. Once engineering completes their turnover walks and punchlist, we hope to come to an agreement regarding turnover of the LMD areas and opening of the trails to the public. The ORA entities continue to maintain LMD landscaping, pay for water of LMD landscaping, maintain City storm drain basins, and pay for electricity for the LMD streetlights within the Meridian Hills project while awaiting the City acceptance of these items.
- The owner continues to pay the City LMD fees on each property tax invoice.
- On 12-6-2010 applicant submitted bond exoneration and reduction requests to the City for our $11,854,907 of outstanding bonds. We are awaiting a response from the City.
- We are investigating the feasibility of hiring a contractor builder to build on a portion of our lots (on behalf of the owners), with a goal to have models started by early 2013. Bond exonerations and reductions are a key component to securing financing for this project restart.

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.*

N/A