

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

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



DATE: July 30, 2012 (CC Meeting of 9/19/2012)

SUBJECT: Consider Report of 2012 Annual Development Agreement Review, Established in Connection with Planning Area No. 7 of the Moorpark Highlands Specific Plan No. 2, Tract No. 5860, Located at the Southeast Corner of Elk Run Loop and Ridgecrest Drive, on the Application of Pardee Homes

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 July 21, 2010, the Moorpark City Council adopted Ordinance No. 391 (effective August 20, 2010), approving a Development Agreement between the City of Moorpark and Pardee Homes. The agreement was approved in connection with Tract No. 5860/RPD 2009-02, to subdivide the 21.8 acre property into 133 residential lots with private streets, located at the southeast corner of Elk Run Loop and Ridgecrest Drive and a private recreational facility. The agreement remains in full force and effect for ten (10) years from the operative date of the agreement (until August 20, 2020), 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 second annual review of the Development Agreement with Pardee Homes. Tom Mitchell, on behalf of Pardee Homes, 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

- 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.
- The developer obtained approval of an early grading agreement and was permitted to proceed with the rough grading of the site, which has been completed.
- Street improvement plans have been plan checked and approved.
- The developer provided 3 affordable units within the Waverly Place neighborhood (Planning Area No. 5) which were occupied by first home buyers in September 2010.
- The developer submitted a \$10,000 dollar deposit on April 15, 2011 to cover staff preparation of an Affordable Housing Agreement, and has been working on a draft agreement.
- 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.

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.	To be granted at Final Map approval.
3.	Payment of "Development Fees" of eight-thousand-one-hundred-fifty-three dollars (\$8,153.00) per residential unit and thirty-six-thousand-six-hundred-eighty-nine dollars (\$36,689.00) per gross acre of institutional land.	Beginning July 1, 2011, these fees will be adjusted annually (until paid) using the Consumer Price Index (CPI) or Caltrans Highway Bid Price Index, whichever is larger, 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 nine-thousand-five-hundred-forty-one-dollars (\$9,541.00) per residential unit, and forty-two-thousand-nine-hundred-thirty-five dollars (\$42,935.00) per acre of institutional land.	Beginning July 1, 2011, these fees will be adjusted annually (until paid) using the Caltrans 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 six-hundred-forty dollars (\$640.00) per residential unit and two-thousand-eight-hundred-eight-dollars (\$2,880.00) per gross acre of institutional land.	Beginning July 1, 2011, these fees will be adjusted annually (until paid) using the Consumer Price Index (CPI) or Caltrans Highway Bid Price Index, whichever is larger, 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 a fee in lieu of park dedication "Park Fee" of seven-thousand-five-hundred dollars (\$7,500.00) per residential unit.	Beginning July 1, 2011, this fee will be adjusted annually, (until paid) using the Consumer Price Index (CPI) or Caltrans Highway Bid Price Index, whichever is larger, 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.	Prior to the issuance of the building permit for the 100th house, Developer shall improve and dedicate a twelve (12) foot wide multipurpose trail within a minimum twenty-five foot wide easement from Ridgcrest Drive to the Mammoth Highlands Park. The trail improvements shall consist of trail fencing, decomposed granite trail surface, and landscaping on both the east and west sides of the trail consisting of 24-inch box trees and 5-gallon shrubs, along with trees screening the easterly fence of Moorpark Highlands Park. Design of the trail shall be to the satisfaction of the Public Works Director/City Engineer, Parks and Recreation Director, and Community Development Director.	The multipurpose trail easement has been shown on the draft final map for dedication to the City. The draft final map has not yet been completed or presented for final approval of recordation.
8.	This section is intentionally left blank in the adopted Development Agreement	N/A

NO.	REQUIREMENT	STATUS												
9.	<p>Developer shall provide ten (10) housing units affordable to low income households as shown in the table below.</p> <table border="1" data-bbox="305 474 873 894"> <thead> <tr> <th data-bbox="305 474 493 667">Location of Unit</th> <th data-bbox="493 474 683 667">3 Bedroom 2 Bath (1,100 Sq. Ft. Minimum)</th> <th data-bbox="683 474 873 667">4 Bedroom 2 Bath (1,400 Sq. Ft. Minimum)</th> </tr> </thead> <tbody> <tr> <td data-bbox="305 667 493 793">Waverly Place "Carriage Unit"</td> <td data-bbox="493 667 683 793">3</td> <td data-bbox="683 667 873 793">0</td> </tr> <tr> <td data-bbox="305 793 493 856">Tract 5860</td> <td data-bbox="493 793 683 856">2</td> <td data-bbox="683 793 873 856">5</td> </tr> <tr> <td data-bbox="305 856 493 894">TOTAL</td> <td data-bbox="493 856 683 894">5</td> <td data-bbox="683 856 873 894">5</td> </tr> </tbody> </table> <p>Developer further agrees that it shall pay the same processing and development fees in the same amounts for the seven low income units as it is required to pay for the market rate units in Tract 5860.</p> <p>Developer agrees that three (3) affordable units will be provided within Waverly Place neighborhood prior to the issuance of the first residential building permit within Tract 5860, with seven affordable housing units to be provided within Tract 5860 in accordance with the following schedule:</p> <ul style="list-style-type: none"> • Prior to the 31st occupancy in Tract 5860, 2 affordable units in Tract 5860 shall be provided; • Prior to the 49th occupancy in Tract 5860, 1 additional affordable unit in Tract 5860 shall be provided; • Prior to the 68th occupancy in Tract 5860, 1 additional affordable unit in Tract 5860 shall be provided; • Prior to the 85th occupancy in Tract 5860, 1 additional affordable unit in Tract 5860 shall be provided; • Prior to the 106th occupancy in Tract 5860, 1 additional affordable unit in Tract 5860 shall be provided; • Prior to the 133rd occupancy in Tract 5860, 1 additional affordable unit in Tract 5860 shall be provided. 	Location of Unit	3 Bedroom 2 Bath (1,100 Sq. Ft. Minimum)	4 Bedroom 2 Bath (1,400 Sq. Ft. Minimum)	Waverly Place "Carriage Unit"	3	0	Tract 5860	2	5	TOTAL	5	5	<p>The Developer has already paid the applicable processing and development fees for the three (3) low income units in Waverly Place. These 3 Waverly Place units were occupied by first time home buyers September 2010.</p>
Location of Unit	3 Bedroom 2 Bath (1,100 Sq. Ft. Minimum)	4 Bedroom 2 Bath (1,400 Sq. Ft. Minimum)												
Waverly Place "Carriage Unit"	3	0												
Tract 5860	2	5												
TOTAL	5	5												

NO.	REQUIREMENT	STATUS
9 - <i>Cntd</i>	<p>Prior to recordation of the final map the City Council shall approve an Affordable Housing Purchase and Sale Agreement 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.</p> <p>Compliance with requirements for home inspection and completion of necessary repairs, including purchase of standard home warranty policy for a minimum ten year period is required. Developer shall provide an HOA trust for HOA fees in excess of one-hundred-dollars (\$100.00).</p> <p>Developer shall pay closing costs not to exceed six-thousand-five-hundred-eighty-four-dollars (\$6,584.00), which shall be increased annually by any increase in CPI after July 1, 2011.</p> <p>To fulfill a portion of the Affordable Housing requirement the developer shall pay an "Affordable Housing Fee" of four-thousand-five-hundred-eight-dollars (\$4,508.00) shall be paid prior to issuance of the building permit for each dwelling unit in the Project, in lieu of constructing any Very Low Income Affordable Housing Units on site, which shall be increased annually by any increase in CPI after July 1, 2011.</p>	<p>The Developer deposited \$10,000 on April 15, 2011 and staff has prepared a draft Affordable Housing Agreement and completion is underway.</p>
10.	<p>Developer agrees to (i) limit its total reimbursement from the proceeds of Bonds of CFD 2004-01 to twenty-seven-million-dollars (\$27,000,000.00). Developer agrees that no additional public improvements shall be eligible for reimbursement from CFD 2004-01 resulting from development of this property.</p> <p>Developer agrees to include the Property in CFD 2004-01 for purposes of levying the Special Tax for Facilities and Services.</p>	<p>Developer has complied with this requirement.</p>
11.	<p>Payment of the "Transportation System Management Fee" of one-thousand-seven-hundred-nine dollars (\$1,709.00) for each residential unit and twenty-eight cents (\$0.28) per gross square foot of institutional building space.</p>	<p>Beginning July 1, 2011, these fees will be adjusted annually (until paid) using the Consumer Price Index (CPI). Fees must be paid prior to issuance of Zoning Clearance for Building Permit. No Building Permits have been issued.</p>
12.	<p>Waiver of any density bonus rights that would increase the number of dwelling units approved to be constructed on the property.</p>	<p>The applicant has not requested density bonus units.</p>

NO.	REQUIREMENT	STATUS
13.	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.
14.	Payment of all City capital improvement, development and processing fees, including but not limited to, Library, Police and Fire facilities fees, Art in Public Places fees, drainage, entitlement processing fees, and plan check and permit fees for buildings and public improvements.	No fees have been collected to date, fund review ongoing.
15.	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.
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.	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.
19.	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
20.	In the event any of the "referenced Index" or "CPI" are discontinued or revised, such successor index with which the "CPI" and 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.
21.	Prior to building the 100 th house, Developer shall either extend and pave Ridgecrest Drive to Alternate SR-23 or pay the City for the cost of the improvements at the sole discretion of the City. The improvements shall be to the satisfaction of the Public Works Director/City Engineer and Community Development Director and shall consist of concrete curb and gutter, full pavement, concrete sidewalk on the south side of Ridgecrest Drive consistent with the existing improvements on the south side of Ridgecrest Drive.	No Building Permits have been issued.

NO.	REQUIREMENT	STATUS
22.	Developer agrees, effective July 1, 2011, the one-hundred-fifty-thousand dollar (\$150,000.00) payment contained in Section 6.30 of the Development Agreement of Ordinance No. 263 to fund the maintenance of the trail system and the three-hundred-fifty-thousand dollar (\$350,000.00) payment contained in Section 6.9 of the Development Agreement of Ordinance No. 263 to fund the replacement of park amenities shall be increased in the same manner as the CPI increase provided for in Section 6.6 of the Development Agreement of Ordinance No. 263; and fees to be paid once to meet requirements of both the Development Agreements.	The fees have yet not been paid by the Developer.
23.	Developer agrees to provide additional improvements to the Elk Run Loop public right-of-way between Ridgecrest Drive and Grottoes Way in the form of a raised landscaped median street section to the satisfaction of the Public Works Director/City Engineer and Community Development Director.	Developer has incorporated these improvements in the proposed design of the street improvement plans which were reviewed and approved by the Public Works Director/City Engineer and Community Development Director.
24.	Prior to the first building permit, Developer agrees to provide a plan for City review and approval, for improvements that would be completed immediately, should ongoing construction of residential units be suspended at any time and for any reason after the first residential unit is occupied.	The Developer has not yet prepared the plan for City review, nor has a sufficient surety amount been determined or collected.
25.	Developer agrees to withdraw any legal action against City pertaining to the School Site and CFD 2004 01 within one hundred twenty (120) calendar days following the later of (i) the effective date of this Agreement, or (ii) the effective date of all of the project approvals if no legal action or referendum petition has been filed regarding the approval of this Agreement.	No legal actions were filed.
26.	Developer assumes all risk, liabilities and costs including submission of revised plans, or removal, or repair or reconstruction of any improvement, for any model homes, or grading, or other improvements prior to City Council approval of a final map for Tract 5860.	Developer is in compliance with all requirements at this time

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 nine (9) 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.	Early grading permit has been issued.
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.	City agrees to issue building permits for model homes for which an Administrative Permit has been approved and that meet all applicable Building Code requirements prior to the recordation of a Final Map, so long as Developer has executed an agreement in a form approved by the City Attorney and City Manager absolving City of any responsibilities, liabilities and costs for construction of the model homes. No final building permits will be issued by the City to allow for residential occupancy of the model homes unless all applicable conditions for residential occupancy are met.	To date, City has complied.
6.	City agrees that the Park Fee required under subsection 6.6 of this Agreement combined with the trail improvements and dedication required under Subsection 6.7 of this Agreement meet Developer's obligation for park land dedication provisions of state law and City codes.	To date, City has complied.
7.	The City agrees to appoint an affordable housing staff person to oversee the implementation of the affordable housing requirements for the Property required herein for the duration such units are required to be maintained as affordable consistent with the provisions of Subsection 6.9 of this Agreement and the Purchase and Sale Agreement.	The Redevelopment Manager in the Community Development Department 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.

NO.	REQUIREMENT	STATUS
9.	Upon Completion of annexation of the Property into CFD 2004-01, City agrees that funds in the Project Improvement Fund may be disbursed to fund City Fees applicable to such residential units in accordance with the Funding Agreement, upon Developer's submittal of one or more Payment Requests, and Developer may receive a total reimbursement from the Project Improvement Fund in an amount of twenty-seven-million-dollars (\$27,000,000.00), inclusive of any disbursements for such City fees, consistent with subsection 6.10.A.	To date, City has complied.

Evaluation of Good Faith Compliance

Based on a review of the 2012 Development Agreement Annual Review Application and the status of the project, the Community Development Director has determined, on the basis of substantial evidence that Pardee Homes has, to date, complied in good faith with the terms and conditions of the agreement.

FISCAL IMPACT

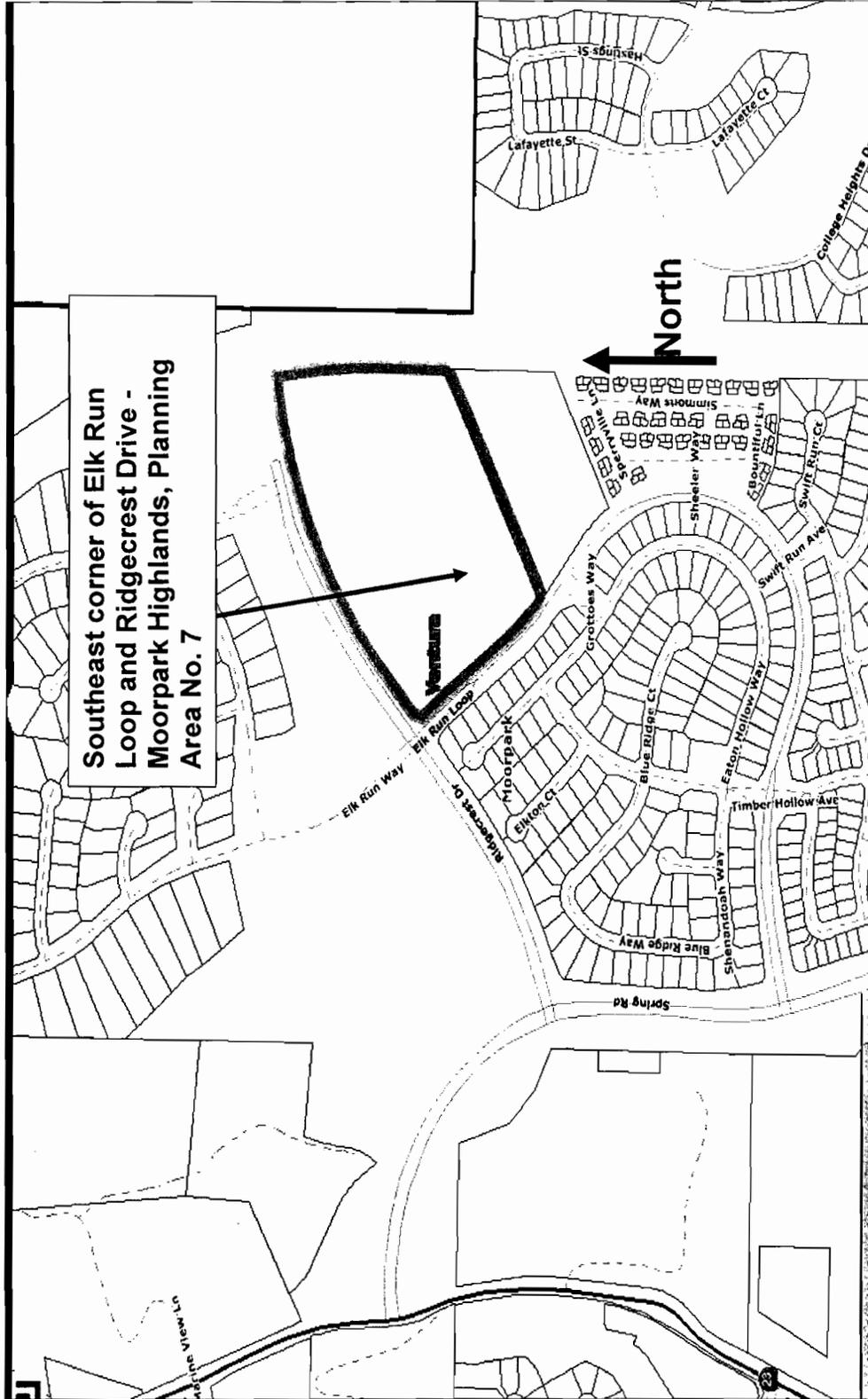
None.

STAFF RECOMMENDATION

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

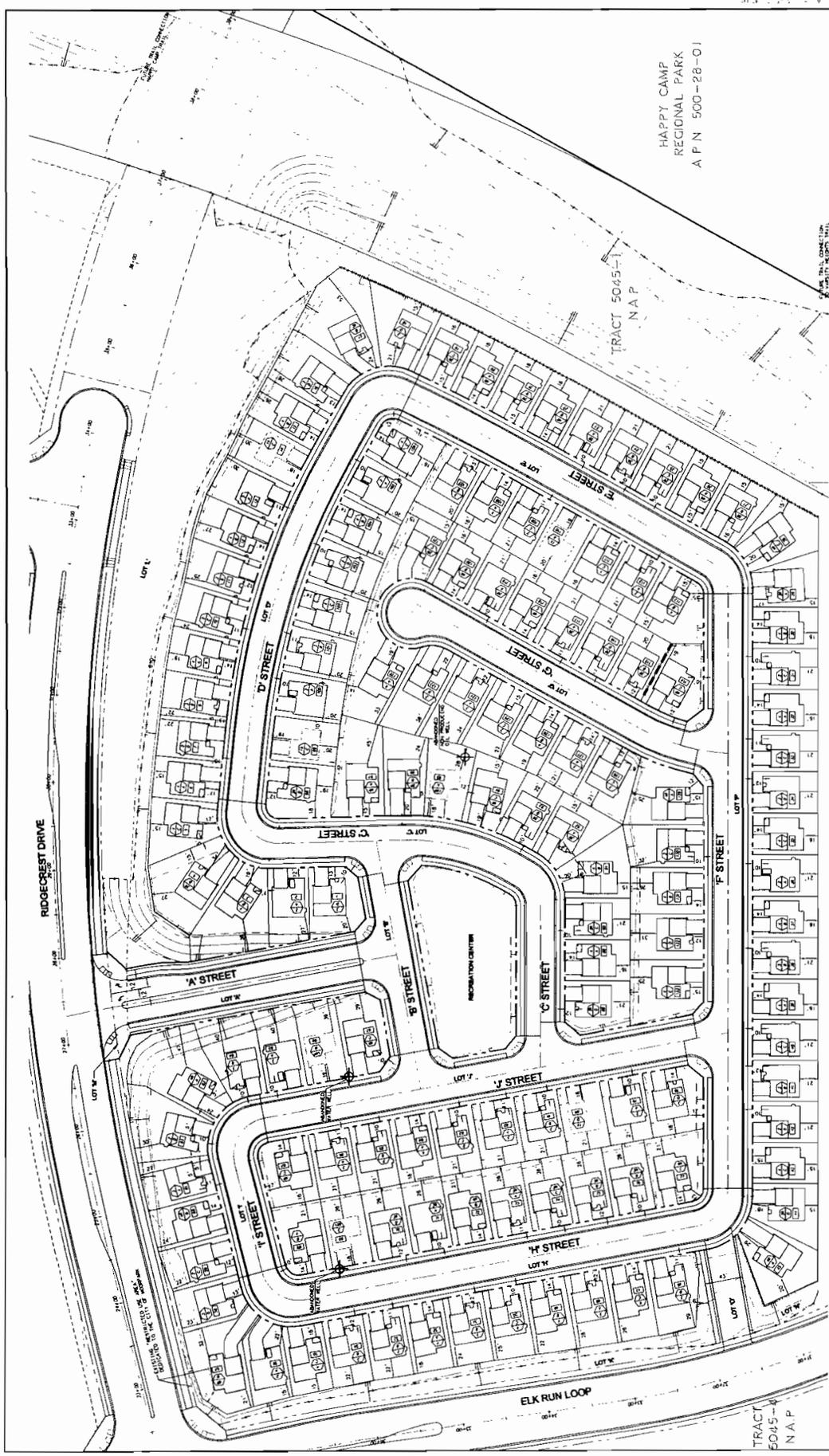
ATTACHMENTS:

1. Location Map
2. Site Map
3. Narrative by Tom Mitchell, on Behalf of Pardee Homes



Location Map

Residential Planned Development Permit No. 2009-02; Tentative Tract Map No. 5860; Amendment No. 1 to Specific Plan No. 2, Zoning Ordinance Amendment No. 2009-01; and, Development Agreement No. 2009-02



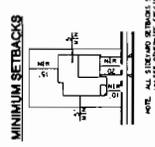
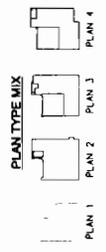
HAPPY CAMP
REGIONAL PARK
A P N 500-28-01

TRACT 5045-4
N A P

SCALE: 1" = 40'

LEGEND

- LOT MARKER
- PROPERTY LINE
- STREET CENTERLINE
- STREET RIGHT-OF-WAY



FLOOR PLAN	ARCHITECTURAL STYLES		TOTAL PLAN	
	A	B	UP	DOWN
1	100	100	200	200
2	100	100	200	200
3	100	100	200	200
4	100	100	200	200
TOTALS	400	400	800	800

DATE 5-28-10

RFP EXHIBIT
FOR
TENTATIVE TRACT NO. 5080

1



 **PardeeHomes**
10880 Wilshire Blvd, Suite 1900
Los Angeles, California 90024
Phone (310) 475-3525
Fax (310) 446-1293

THOMAS W. MITCHELL
Director of Land Development
Phone (310) 475-3525 ext 221
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July 2, 2012

Mr. Dave Bobardt
Community Development Director
City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93012

RECEIVED

JUL 06 2012

CITY OF MOORPARK

RE: Moorpark Highlands Tract 5860 Annual Development Agreement Review

Dear Dave:

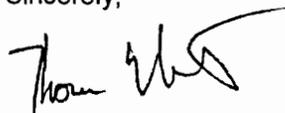
It has come to our attention that the annual review of the Development Agreement for Tentative Tract Map 5860 is due during the month of July. Since the Development agreement was approved in August of 2010, a Development Agreement Extension is not required at this time. Section 19 on page 27 of the agreement states that the agreement "shall remain in full force for a term of ten (10) years commencing on its operative date or until the close of escrow on the initial sale of the last Affordable Housing required by Subsection 6.9, whichever occurs last, unless said term is amended or the Agreement is sooner terminated as otherwise provided herein."

Section 9 on page 23 of the Development Agreement states that "In order to ascertain compliance by developer with the provisions of the Agreement, the Agreement shall be reviewed annually in accordance with Moorpark Municipal Code Chapter 15.40 of City or any successor thereof then in effect. The failure of City to conduct any such annual review shall not, in any manner, constitute a breach of the agreement by the City, diminish, impeded, or abrogate the obligations of Developer or render the agreement invalid or void."

Pardee homes has been working with RBF to construct the project also known as Tract 5860. At this time, RBF Consulting has prepared and obtained approval for grading and improvement plans, the site has been rough-graded, and erosion control has been established. This demonstrates our diligent work efforts towards the inauguration of the permit within the first year of its approval. At this time, we respectfully request to complete the necessary Development Agreement review. Based on the most recent fee schedule approved via Resolution No. 2010-2896, I have enclosed a fee of \$2600, in a check made payable to the City of Moorpark.

Please contact me with questions, and thank you in advance for assisting us through this process.

Sincerely,



Tom Mitchell
Director of Land Development