

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** Honorable City Council

**FROM:** David A. Bobardt, Community Development Director 

**DATE:** June 23, 2014 (CC Meeting of 7/6/2016)

**SUBJECT:** Consider Approval of the Proposed Third Amendment to the Implementation Plan for Improvements Associated with Tract Nos. 5187-1&2 and 5405, the Meridian Hills Residential Development Project, on the Application of K. Hovnanian Companies of Southern California, Located on Meridian Hills Drive, West of Walnut Canyon Road

**BACKGROUND**

As a requirement of the Development Agreement for Tract No. 5187, the Meridian Hills residential development project, the applicant is required to submit for approval to the City Council an implementation plan for the construction of on-site and off-site improvements, prior to the issuance of a grading permit. On July 7, 2004, William Lyon Homes received the City Council's approval of an Implementation Plan for the project.

On January 10, 2008, William Lyon Homes verbally informed City staff that their company's interests in the unbuilt portions of the Meridian Hills project (183 lots in Tract 5187 and 17 lots in Tract 5405) had been completely transferred to ORA Ashford 94, LLC. Resmark Equity Partners, LLC (Resmark) is the sole managing entity of the Meridian Hills project on behalf of ORA Ashford 94, LLC. This transaction took place in violation of the terms of the Development Agreement for this project, which requires City Council approval of an amendment to the Implementation Plan to address the responsibilities of a new owner prior to the transfer of ownership. On March 25, 2008, William Lyon Homes submitted a formal application to the City seeking approval of an amendment to the Implementation Plan. A draft Implementation Plan was presented to the City Council at its April 16, 2008 meeting, at which time the item was continued to allow additional time for the residents to review the plan. On May 21, 2008, Resmark received the City Council's approval of an Amended Implementation Plan for the project.

On June 13, 2014, Resmark verbally informed City staff that K. Hovnanian Homes had entered into an exclusive negotiation escrow to acquire the unbuilt portions of the Meridian Hills project (183 lots in Tract 5187 and 17 lots in Tract 5405). A second amendment to the Implementation Plan was approved by the City Council on July 16, 2014 to recognize K. Hovnanian as developer along with ORA Ashford 94, LLC.

K. Hovnanian Homes is currently pursuing a financing arrangement with Hearthstone, Inc, by which Hearthstone would purchase 61 lots in the next phases of development from K. Hovnanian and then sell those lots back to K. Hovnanian as they are ready to be developed. Subsection 6.13 of the Development Agreement for Tract 5187 states:

Prior to approval of the first grading permit for the Property, or approval of the first final map of Tract 5187, whichever occurs first, Developer shall submit and gain approval from City Council of an Implementation Plan. The Implementation Plan shall address the requirements for phasing and construction responsibilities of Developer and any successors including sureties for performance for all grading, construction of storm drains and utilities, private and public streets, and other private and public improvements on or offsite required by Tract 5187, RPD 99-2, and this Agreement. The Implementation Plan shall also address the entities responsible and method and timing of guarantee for each component of Developer's obligations pursuant to Tract 5187, RPD 99-2, and this Agreement and Developer's obligation for a Trail Staging area as referenced in Subsection 6.9 of this Agreement. The approval of the Implementation Plan and any Amendments thereto shall be at the City Council's sole discretion. Prior to sale or transfer of ownership of any portion of Tract 5187 (except individual lots after construction of houses), Developer shall seek City approval of an amendment to the Implementation Plan to address the responsibilities of each entity.

Since Hearthstone will take title to the lots, as opposed to just carrying a trust deed, the Implementation Plan needs to be amended to recognize their role in the ownership of this project and responsibility for constructing certain improvements and accompanying sureties to guarantee such construction. The current construction and grading sureties are shown in the following table. All have been provided by K. Hovnanian Homes, except for two as noted, which have been provided by William Lyon Homes and Resmark. The work under these two sureties is expected to be completed over the next two months.

<b>Surety Type</b>	<b>Bond No.</b>	<b>Bond Amount</b>
Tract 5187-1 Performance and Payment	SN04002559	\$1,000,000
Tract 5187 Grading	SN04002556	\$1,000,000
Tract 5187-2 Performance and Payment	SN04002560	\$1,000,000
Tract 5187 Performance and Payment – Multi use trail	SN04002557	\$509,975.40
Tract 5187-2 Monuments	SN04002553	\$167,013.29
Tract 5187-1 Monuments	SN04002554	\$189,929.87
Tract 5405 Performance and Payment	SN04002558	\$149,941.34
Tract 5405 Monuments	SN04002555	\$22,418.23
ADA Trail-Rework (Resmark)	0611348	\$84,909.61
Peter's Driveway (William Lyon)	PB03010401303	\$611,096.93
Water Tank Access Road and Storm Drain Performance and Payment	1134432	\$350,741.68
Water Tank Access Road and Storm Drain Grading	1134433	\$13,663.98

**DISCUSSION**

The intent of an implementation plan is to identify responsibility for grading and improvements associated with the development of Tract 5187 and Tract 5405. In support of this, the plan establishes a method for ensuring that sureties remain in place and improvements are provided in the event that the developer sells portions of the project to other developers prior to the installation of these improvements. The required implementation plan will ensure a smooth transition of rights and responsibilities in the event that an unforeseen change results in the sale of any or all of the project to another entity.

The proposed Draft Third Amendment to the Implementation Plan for the Meridian Hills Residential Development Project is provided in legislative format. The key components are the same as approved with the second amendment on July 16, 2014. Other than recognition of Hearthstone as developer, the only change to the responsibilities is the date for completion of the multi-use trail along the Peters' driveway. A new deadline of September 30, 2016 is proposed, as the work is almost completed at this time, with a few corrections that have been requested of City staff to better accommodate drainage.

**FISCAL IMPACT**

All surety bonds originally posted for all of the improvements required as part of the subdivision remain in place and are sufficient to ensure completion of the tract improvements.

Several deposits have been submitted to City of Moorpark for condition compliance to cover staff costs associated with monitoring progress related to administering the Implementation Plan. Also, deposits have been submitted to City of Moorpark for the Modification No. 1 to Residential Planned Development Permit No. 1999-02 to cover staff costs associated review of the entitlement application. The fund is current but, as the fund account becomes depleted, additional money will need to be deposited by the Developer to cover staff costs, consistent with the Development Agreement and conditions of approval.

**STAFF RECOMMENDATION**

Approve the draft Third Amendment to the Implementation Plan for improvements to Tract Nos. 5187-1&2 and 5405, subject to review of final language and determination of satisfactory financial capacity by the City Manager and City Attorney.

**ATTACHMENT:**

Draft Third Amendment to the Implementation Plan for the Meridian Hills Residential Development Project Tract Nos. 5187-1&2, and 5405

**SECOND DRAFT THIRD AMENDMENT TO THE IMPLEMENTATION PLAN  
MERIDIAN HILLS RESIDENTIAL DEVELOPMENT PROJECT  
TRACT 5187-1&2 AND 5405  
PART ONE**

**Introduction**

Subsection 6.13 of the Development Agreement for Tract 5187 states:

Prior to approval of the first grading permit for the Property, or approval of the first final map of Tract 5187, whichever occurs first, Developer shall submit and gain approval from City Council of an Implementation Plan. The Implementation Plan shall address the requirements for phasing and construction responsibilities of Developer and any successors including sureties for performance for all grading, construction of storm drains and utilities, private and public streets, and other private and public improvements on or offsite required by Tract 5187, RPD 99-2, and this Agreement. The Implementation Plan shall also address the entities responsible and method and timing of guarantee for each component of Developer's obligations pursuant to Tract 5187, RPD 99-2, and this Agreement and Developer's obligation for a Trail Staging area as referenced in Subsection 6.9 of this Agreement. The approval of the Implementation Plan and any Amendments thereto shall be at the City Council's sole discretion. Prior to sale or transfer of ownership of any portion of Tract 5187 (except individual lots after construction of houses), Developer shall seek City approval of an amendment to the Implementation Plan to address the responsibilities of each entity.

This ~~Second-Third~~ Amendment to the Implementation Plan is between the City of Moorpark (the "City") and ORA Ashford 94, LLC, managed by Resmark Equity Partners, LLC, based in Los Angeles, until such time as Hearthstone, Inc. K. Hovnanian Homes or K. Hovnanian Homes acquires ORA Ashford 94, LLC's interests in Tract Nos. 5187-1 & 2 and 5405 (the "Property"), and upon the effective date or dates of those acquisitions, shall be between City and Hearthstone, Inc. and K. Hovnanian Homes, respectively, and thereafter with a limited liability corporation formed and held exclusively by K. Hovnanian Homes to hold the Property, as acquired by K. Hovnanian Homes. Each of these entities (ORA Ashford, 94, LLC, Hearthstone, Inc. and K. Hovnanian Homes) shall be defined as "Developer" during the time that any one or more of these entities have an ownership interest in the Property. In the event that neither e-event K. Hovnanian Homes nor Hearthstone, Inc. does not acquires ORA Ashford 94, LLC's interest in the Property, ORA Ashford 94, LLC shall remain responsible for carrying out the obligations and responsibilities of this Third Second Amendment to the Implementation Plan and shall remain the "Developer".

This Third Second-Amendment to the Implementation Plan will supersede the Second Amendment to the Implementation Plan, approved by the City Council of the City of Moorpark on July 16, 2014 ~~Amended Implementation Plan~~ between the City of Moorpark

and ORA Ashford 94, LLC, originally approved by the City of Moorpark City Council on May 21, 2008. This ~~Third~~ Second Amendment to the Implementation Plan for Tract Nos. 5187-1&2 and 5405 addresses the following matters as required by subsection 6.13 of Development Agreement between the City of Moorpark and West Pointe Homes, Inc. dated January 23, 2003:

- Construction Phasing and Responsibilities by K. Hovnanian Homes, Developer, as successor to ORA Ashford 94, LLC., William Lyon Homes, and West Pointe Homes, and any subsequent single successor.
- Sureties for performance for all grading, construction of storm drains, sewer, water and other utilities, private and public streets and other private and public improvements on or offsite as required by the Development Agreement and Conditions of Approval for Tract 5187-1&2 and Tract 5405.
- Entities responsible, and method and timing of guarantee for each component of Tract Nos. 5187-1&2 and 5405 RPD Permits 1999-02 and 2003-01 (Project).

### **Transfer of Responsibility**

Developer will be responsible for the remaining obligations as required by the Development Agreement, Conditions of Approval, and Affordable Housing Purchase and Sale Agreement for Tract Nos. 5187-1&2 and 5405, notwithstanding the fact that Developer does not own all of the lots in the Tracts identified in the Development Agreement. If Developer, chooses to sell all of its ~~any~~ remaining portion of the Project, the Surety Bonds securing completion of the noted improvements for Tract 5187-1&2 and 5405 are to remain the obligation of Developer, until an amendment to the Implementation Plan is approved by the City Council and the Surety Bonds are thereafter replaced, reduced, or exonerated to the satisfaction of the City Council. Any current owners of the property covered by the Development Agreement and any successors in interest to all or part of the Project understand that construction of and/or occupancy permits for units may be withheld, regardless of whether Developer owns the units at issue, if Developer or its successors to this Implementation Plan have not completed the improvements associated with such units.

Developer will be responsible for the required improvements for Tract Nos. 5187-1&2 and 5405, including, but not limited to:

1. Enhancement of all common landscaping areas that are visible from public Rights of Way, per the approved landscaping plans on file, to the satisfaction of the Community Development Director, Parks and Recreation Director, and City Engineer/Public Works Director.
2. Provision of sureties for performance for all requirements for grading, construction of storm drains, sewer, water, and other utilities, private and public streets and other private and public improvements on or offsite as required by the

Development Agreement, Conditions of Approval, and Affordable Housing Agreement for Tract Nos. 5187-1&2 and 5405.

3. Completion of required improvements to Walnut Canyon Road including the installation of the multi-use trail and complete corrections of sidewalk to demonstrate full compliance of accessibility requirements.
4. Completion of required improvements associated with the construction of Meridian Hills Drive.
5. Provision of required Open Space dedications per the Development Agreement.
6. Installation of required Common Landscaping throughout the Project.
7. Completion of grading within the Project area, to establish areas graded to an average elevation, consistent with the approved plans, in preparation for fine grading prior to construction of structures, and a spine network of streets to serve those areas including improvements within Tract 5187.
8. Completion of required Multi-use Trail and Public Trailhead improvements.
9. Completion and maintenance of EIR mitigation measures for the Project.
10. Maintenance of common areas until such time as these areas are accepted by the Homeowners Association or other applicable governing agencies.
11. Completion of construction and maintenance of the required flood control and other drainage improvements.
12. Continuation of meeting and complying with requirements for the design, installation, monitoring, and maintenance of facilities to meet NPDES requirements.
13. Completion of all required public improvements in Tract 5405 including but not limited to streets, soil nail wall, retaining walls, and sound walls; and maintain the main lines for the wet and dry utilities which have been installed to ensure they are in a good state of repair.
14. Construction of the improvements for the trail staging area per section 6.10c of the Development Agreement to be completed prior to occupancy of the 165th residential unit for Tract No. 5187.
15. Compliance with section 6.11 of the Development Agreement and its related requirements set forth in the Affordable Housing Purchase and Sale Agreement recorded on December 15, 2006.

16. Provision of a site security program which includes the 24-hour response and dissemination of security telephone number to the existing residents and City staff.
17. Any additional improvements associated with the development of the Project, as deemed necessary by the City Engineer/Public Works Director or Community Development Director to protect the public health, safety and welfare.

**SECOND DRAFT THIRD AMENDMENT TO THE IMPLEMENTATION PLAN MERIDIAN HILLS  
RESIDENTIAL DEVELOPMENT PROJECT TRACT 5187-1&2 AND 5405 PART TWO-A**

The following community enhancements and improvements within the Meridian Hills Community are in progress and/or will be performed by the Developer within the timeframes below:

<b>Tract 5187*( Items originally presented to applicant in a City Engineering Memo dated March 5, 2008)</b>		<b>Required Completion Date**</b>
<b>1</b>	General Clean up of onsite and offsite trash and removal of all illegal dumping debris Site shall be cleaned -up immediately	ongoing
<b>2</b>	Clean up of debris within all V-ditches	ongoing
<b>3</b>	Replace BMP's, remove all broken sand bags Remove all silt at chevrons, clean streets with street sweeper	ongoing
<b>4</b>	Gate to Ventura County Watershed Protection District basin shall be secured immediately and shall remain locked at all times	ongoing
<b>5</b>	All gates for access areas shall be secured each and every day Gate to HOA basin along Walnut Canyon Road shall be secured immediately	ongoing
<b>6</b>	Any and all other conditions, bonds, and/or timing of improvements for the property per the Development Agreement and Conditions of Approval	ongoing

**\*All items are to be completed to the satisfaction of either the City Engineer and Community Development Director.**

**\*\*All dates are subject to inspections and collaboration with the various governing agencies.**

**SECOND DRAFT THIRD AMENDMENT TO THE IMPLEMENTATION PLAN MERIDIAN  
HILLS RESIDENTIAL DEVELOPMENT PROJECT TRACT 5187-1&2 AND 5405  
PART TWO-B**

<b>Tract 5187*( Items originally presented to applicant in a Letter from Planning Director and attached City Engineering Memo, both dated March 13, 2008)</b>		<i>Required Completion Date**</i>
<b>1</b>	Correct and complete the installation of the multi-use trail along Peters' driveway and landscaping along the R.O W of Walnut Canyon Rd per City requirements	<del>7/30/2015</del> <u>9/30/2016</u>
	a slope failure & erosion problem along Peters' driveway requires immediate attention	
	b. install safety guardrail fencing along additional portions of the driveway	
	c modify the existing concrete block entry monument to comply with "line of sight"	
	d install a neighborhood mailbox unit	
<b>2</b>	Need to bond for construction of multi-use trail at 150% of estimated cost of construction	ongoing
<b>3</b>	The property must be in full compliance with the adopted Fuel Modification plan on file.	ongoing

**\*All items are to be completed to the satisfaction of either the City Engineer and Community Development Director.**

**\*\*All dates are subject to inspections and collaboration with the various governing**