



AGENDA REPORT

Regular Meeting of the San Marcos Planning Commission

MEETING DATE: May 15, 2017

SUBJECT: Consideration of Amendment No. 2 to First Amended and Restated Development Agreement and Owner Participation Agreement for San Elijo Hills Development Project,
Case No. P16-0038: DA 16-002 (former Case No. DA 90-04(03mod))

Recommendation

Approve the attached Resolution recommending that the City Council adopt an ordinance approving Amendment No. 2 to the First Amended and Restated Development Agreement and Owner Participation Agreement between the City of San Marcos and the San Elijo Hills Development Company, LLC (Development Agreement) for the San Elijo Hills project (Project).

It is also recommended that the Planning Commission recommend to the City Council that the existing approved environmental review documents for the Project, consisting of certified San Elijo Ranch Subsequent Environmental Impact Report No. 95-30, State Clearinghouse No. 95051064 (SEIR 95-30) and approved Addendum to the same, already adequately identify, evaluate, and address all potential impacts, and that no subsequent environmental review is required for approval of Amendment No. 2.

Introduction

The Development Agreement was approved in 1997 for a 20-year term by the City, the former San Marcos Redevelopment Agency ("Former RDA"), and San Elijo Ranch, Inc., and envisioned the current San Elijo Hills project ("Project"). Amendment No. 1 was approved by the City, the Former RDA and San Elijo Hills Development Company, LLC (the successor to San Elijo Ranch, Inc.), in 2004 to address infrastructure and mitigation issues. The term of the Development Agreement has not been revised to date, and expires in August of 2017.



After the date of the last amendment, the State of California dissolved all redevelopment agencies. Effective as of February 1, 2012, the City became the Successor Agency to the Former RDA. The proposed Amendment No. 2 recognizes this change in status of the former RDA.

Additionally, the approved Specific Plan for San Elijo Hills permits the development of a maximum of 3,466 units, and the environmental impacts of that density were evaluated and addressed in the San Elijo Hills Specific Plan Amendment (SP 89-18 (2004 Mod)), approved February 22, 2005. The Development Agreement currently references the initial approval limit of 3,398 units, and should be revised to reflect the 3,466 number allowed under the Specific Plan.

The proposed Resolution recommends that the City Council adopt an ordinance authorizing the City Manager and City Attorney to finalize and execute the proposed Amendment No. 2, which implements the above referenced changes to the Development Agreement, and that they be given the authority to make non-substantive modifications to the document prior to execution.

Discussion

The Project is largely complete, with four Planning Areas remaining to be developed. Entitlements have been issued for remaining portions of Areas O, S, T, and C2. Area C2 has remaining development capacity and entitlements have not been granted (upper Town Center area). To facilitate completion of the Project consistent with what has been developed to date, the applicant has requested a three-year extension, to August of 2020.

The Development Agreement and Amendment No. 1 were approved prior to the dissolution of redevelopment agencies by the State of California, which became effective as of February 1, 2012. The City was thereafter designated as the Successor Agency to the former RDA. The proposed Amendment No. 2 recognizes the change in status of the Former RDA.

The Specific Plan for San Elijo Hills initially envisioned two school sites within the Specific Plan Area. For one of these sites, Planning Area V-2, a potential alternative land use of residential was identified. An amendment to the San Elijo Hills Specific Plan in 2005 allowed an increase in the potential density of up to 2% if a school was not constructed in Planning Area V-2. The maximum density for the Project was revised from 3,398 to 3,466, an additional 68 residential units. The City Council approved an Addendum in connection with the Specific Plan Amendment which evaluated the impacts of the higher dwelling unit number.



Environmental Determination

The proposed Resolution has been reviewed for compliance with the California Environmental Quality Act (CEQA), and it has been determined that the existing approved environmental review documents adequately address any potential environmental impact associated with proposed Amendment No. 2.

The proposed Amendment No. 2 will not result in substantial changes to the remainder of the Project, and no substantial changes have been proposed in the remainder of the Project or have occurred with respect to the circumstances under which the remainder of the Project is to be undertaken following certification of SEIR 95-30 and the approval of the Addendum. The environmental issues associated with the change in use from public institutional to residential in Planning Area V-2 were evaluated in connection with the 2005 Specific Plan Amendment, and the approved Addendum associated with that action concluded that all impacts had been identified and appropriately addressed by the prior SEIR 95-30 and mitigation measures.

On review of the proposed Amendment No. 2, staff has determined that no supplement to SEIR 95-30 and/or the Addendum is required because there are no changes or additions to the Project that have not already been previously identified, evaluated and addressed. The provisions of CEQA Guidelines section 15162, which addresses subsequent environmental review documents, have not been triggered.

Attachment(s)

A PC Resolution 17-4626: A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN MARCOS RECOMMENDING CITY COUNCIL APPROVAL OF AMENDMENT NO. 2 TO THE FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND OWNER PARTICIPATION AGREEMENT BETWEEN THE CITY OF SAN MARCOS, AND SAN ELIJAH HILLS DEVELOPMENT COMPANY, LLC

Prepared by:

Wendy L. House

Wendy L. House, Deputy City Attorney



Submitted and approved by:


Karen Brindley, Planning Division Manager



ATTACHMENT A

Resolution PC 17-4626

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RESOLUTION PC 17-4626

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN MARCOS RECOMMENDING CITY COUNCIL APPROVAL OF AMENDMENT NO. 2 TO THE FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND OWNER PARTICIPATION AGREEMENT BETWEEN THE CITY OF SAN MARCOS, AND SAN ELIJU HILLS DEVELOPMENT COMPANY, LLC

Case No. P16-0038
DA 16-002 (former Case No. 90-04(03mod))
San Elijo Hills Development Company, LLC

WHEREAS, the City of San Marcos ("City") entered into that certain First Amended and Restated Development Agreement and Owner Participation Agreement ("Development Agreement") with the former San Marcos Redevelopment Agency and San Elijo Ranch, Inc., for the development of real property into a planned residential community known as San Elijo Ranch ("Project"), which Development Agreement was recorded in the Office of the San Diego County Recorder as Document No. 1997-0395018 on August 15, 1997; and

WHEREAS, Amendment No. 1 to the First Amended and Restated Development Agreement and Owner Participation Agreement ("Amendment No. 1") was entered into by the City, the former San Marcos Redevelopment Agency and San Elijo Hills Development Company, LLC, the successor in interest to San Elijo Ranch, Inc., to clarify responsibilities concerning infrastructure cost and fair share responsibilities, as well as infrastructure thresholds, which Amendment No. 1 was recorded in the Office of the San Diego County Recorder as Document No. 2004-0152379 on February 26, 2004; and

WHEREAS, the City has received a request from San Elijo Hills Development Company, LLC, to extend the term of the Development Agreement, as amended, from August 7, 2017 to August 6, 2020 to permit completion of the Project; and

WHEREAS, the City desires to have the Project completed and to clarify the maximum density as currently allowed by the approved San Elijo Hills Specific Plan; and

WHEREAS, upon the dissolution of redevelopment agencies by the State of California effective as of February 1, 2012, the City became the Successor Agency to the Former RDA, and the proposed Amendment No. 2 recognizes this change in status of the Former RDA; and

WHEREAS Amendment No. 2, a copy of which is attached hereto and incorporated herein by reference, was reviewed pursuant to Chapter 20.08 of the San Marcos Municipal Code and

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California Government Code sections 65864 through 658969.5; and

WHEREAS, the Development Services Department did study and recommend approval of said request together with a revision to the definition of "Development Plan" contained in the Amended and Restated Development Agreement, as amended, to bring the maximum dwelling unit count consistent with the allowable level set forth in the San Elijo Hills Specific Plan; and

WHEREAS, as the impacts of the maximum dwelling unit count were evaluated in an Addendum to the San Elijo Ranch Subsequent Environmental Impact Report (SEIR No. 95-30, State Clearinghouse No. 95051064) ("SEIR 95-30") for the Project, to evaluate changes made to the San Elijo Ranch Specific Plan which included, inter alia, the recognition of an increase in density associated with an alternative land use for Planning Area V-2 from a potential school site to a residential subdivision, which Addendum was adopted by the City Council on September 9, 2003; and

WHEREAS, further modification of the Development Agreement, as provided in the proposed Amendment No. 2, will not result in substantial changes to the Project; that no substantial changes have been proposed in the remainder of the Project or have occurred with respect to the circumstances under which the remainder Project is to be undertaken since certification of SEIR 95-30 and the approval of the Addendum, and no new information of substantial importance exists which was not known and could not have been known with the exercise of reasonable diligence at the time SEIR 95-30 was certified as complete, and at the time the Addendum was approved, which would show that the remainder of the Project would have any significant effects not discussed in SEIR 95-30 and/or the Addendum; that the significant effects previously examined in SEIR 95-30 and/or the Addendum would be substantially more severe than was shown in that SEIR and/or the Addendum; that any mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce a significant effect of the remainder of the Project; or that mitigation measures or alternatives which are considerably different from those analyzed in SEIR 95-30 and/or the Addendum would substantially reduce one or more significant effects the remainder of the Project would have on the environment; likewise, that no supplement to SEIR 95-30 and/or the Addendum is required and that no addendum to SEIR 95-30 is required for Amendment No. 2 because there are no changes or additions necessitating such an addendum; and

WHEREAS, the Planning Commission held a duly noticed public meeting on May 15, 2017, and considered all documents and testimony submitted in connection with this application.

NOW, THEREFORE, the Planning Commission resolves as follows:

1. The foregoing recitations are true and correct.

2. The Planning Commission has considered the adequacy of the evaluation of SEIR 95-30, which relies on the original Findings of Fact and Statement of Overriding Considerations ("Findings and Overrides") and the Mitigation Monitoring and Reporting Program ("MMP"), as well as the 2003 Addendum adopted by the City Council in connection with its approval of an amendment to the San Elijo Ranch Specific Plan, in conjunction with its consideration of this Amendment No. 2, and recommends that the City Council conclude that no subsequent environmental review is required for the approval of said Amendment No. 2.

3. The Planning Commission hereby recommends that the City Council approve Amendment No. 2 to that certain First Amended and Restated Development Agreement and Owner Participation Agreement, including all exhibits thereto.

PASSED, APPROVED AND ADOPTED by the Planning Commission of the City of San Marcos, at a regular meeting held on this 15th day of May, 2017, by the following roll call vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

APPROVED:

Eric Flodine, Chairman

ATTEST:

Lisa Kiss, Office Specialist III

Attachment – Amendment No. 2

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Office of the City Clerk
City of San Marcos
1 Civic Center Drive
San Marcos, CA 92069

Exempt from filing fee per Gov. Code §27383

AMENDMENT NO. 2 TO FIRST AMENDED AND RESTATED DEVELOPMENT
AGREEMENT AND OWNER PARTICIPATION AGREEMENT
BETWEEN
THE CITY OF SAN MARCOS,
AND
SAN ELIJO HILLS DEVELOPMENT COMPANY, LLC

AMENDMENT NO. 2 TO FIRST AMENDED AND RESTATED DEVELOPMENT
AGREEMENT AND OWNER PARTICIPATION AGREEMENT BETWEEN THE CITY
OF SAN MARCOS AND SAN ELIJO HILLS DEVELOPMENT COMPANY, LLC

This Amendment No. 2 to First Amended and Restated Development Agreement and Owner Participation Agreement ("Amendment No. 2") is entered into by and between the City of San Marcos, a municipal corporation ("City"), and San Elijo Hills Development Company, LLC, a Delaware limited liability company ("Owner"), with regard to the development of real property in the City of San Marcos.

RECITALS

A. On August 15, 1997, the parties hereto or their predecessors-in-interest caused to be recorded in the Office of the San Diego County Recorder as Document No. 1997-0395018 that certain First Amended and Restated Development Agreement and Owner Participation Agreement between the City of San Marcos, the San Marcos Redevelopment Agency, and San Elijo Ranch, Inc. ("Development Agreement") concerning the real estate development commonly known as San Elijo Hills located in the City of San Marcos, California, more particularly described therein (the "Project");

B. On February 26, 2004, the City, the former San Marcos Redevelopment Agency and San Elijo Hills Development Company, LLC, the successor in interest to San Elijo Ranch, Inc., caused to be recorded in the Office of the San Diego County Recorder as Document No. 2004-0152379 that certain Amendment No. 1 to the Development Agreement ("Amendment No. 1") concerning the Project;

C. Pursuant to Ordinance No. 2005-1245, adopted on March 8, 2005, the City Council approved and adopted an amendment to the San Elijo Hills Specific Plan which, *inter alia*, corrected the Land Use Plan and tabulation to reflect that the Specific Plan Area would not exceed 3,466 dwelling units;

D. As of February 1, 2012, the State of California dissolved all redevelopment agencies which had been formed pursuant to the Community Redevelopment Law, and the City of San Marcos was designated as the Successor Agency to the Former San Marcos Redevelopment Agency;

E. Section 4.4 of the Development Agreement authorizes its amendment in the manner provided for in Government Code Section 65868, which provision was not modified in Amendment No. 1;

F. This Amendment No. 2 is necessary and desirable to ensure the consistency of the Specific Plan to the Development Agreement and amendments thereto, as well as to ensure the completion of the remainder of the Project consistent with the existing development in San Elijo Hills.

G. The terms and conditions of this Amendment No. 2 have undergone extensive review by the City staff, its Planning Commission and its City Council, and

have been found to be fair, just, reasonable and will advance the health, safety and welfare of San Marcos residents;

H. This Amendment No. 2 is consistent with the San Marcos General Plan and San Elijo Hills Specific Plan;

I. The requirements of the California Environmental Quality Act have been satisfied in connection with this Amendment;

J. All actions taken and approvals given by the City have been made in accordance with applicable legal requirements for notice, public hearings, findings, and other procedural matters; and

K. It is the intention of the parties that this Amendment shall be binding upon those portions of the Project identified in the Specific Plan as Project Planning Areas O, S, T, and C2; developed portions will not be affected ("remainder of the Project:"), as described in Exhibit A, attached hereto and incorporated herein by reference. No other portions of the Project are affected or bound hereby.

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Purpose and Effect. The purpose and effect of this Amendment No. 2 shall be to modify and supplement the provisions of the Development Agreement, but only with respect to the remainder of the Project. Except as modified or supplemented herein, the provisions of the Development Agreement shall remain in full force and effect. In the event of any inconsistency, the terms and conditions of this Amendment No. 2 will prevail. Capitalized terms not otherwise defined in this Amendment No. 2 shall have the meaning ascribed to them in the Development Agreement.

2. City as Conditioned Successor to Former San Marcos Redevelopment Agency. Pursuant to the dissolution of redevelopment agencies by the State of California effective February 1, 2012, and the designation of the City as the Successor Agency to the former San Marcos Redevelopment Agency pursuant to the dissolution law, any references to said San Marcos Redevelopment Agency to Owner in the Development Agreement, Amendment No. 1 and this Amendment No. 2, will now be deemed to refer to its successor, the City in its capacity as the Successor to the former San Marcos Redevelopment Agency with respect to outstanding matters, if any, between the parties hereto. This provision relates only to the authority and obligations of the City and Owner under the Development Agreement, Amendment No. 1 and this Amendment No. 2, and shall not be construed as conferring benefit upon any entity or individual not a party to this Amendment No. 2, and/or relating to any other redevelopment or post-redevelopment obligation or matter involving the former San Marcos Redevelopment Agency.

3. Term of Development Agreement, Amendment No. 1, Amendment No. 2 and Tentative Maps. Section 4.2 of the Development Agreement provided for a term of twenty (20) years following the effective date, defined in Section 1.7 as August 7, 1997. The term provided in Section 4.2 is hereby extended for a period of three (3) additional years for the remainder of the Project, and pursuant to Government Code section 66452.6, any tentative map, vesting tentative map, parcel map, or other map authorized under the Subdivision Map Act and the San Marcos Municipal Code that is existing and/or approved in the future for the remainder of the Project shall be extended so that it will remain valid through August 6, 2020 ("Extended Term"). In addition, every subsequent approval granted for the remainder of the Project, other than ministerial approvals, shall remain valid through the Extended Term.

4. Development Plan Definition. The second sentence of Section 2.10 defines the Project as follows:

All of the above discretionary approvals will permit the Project to include a maximum of 3,398 dwelling units, 272 of which were to be affordable units, a site for neighborhood commercial uses, two elementary school sites, a site for institutional uses, a neighborhood park, a regional park for passive/active recreational use, natural open space, a fire station site, up to five new storage water tanks, and other on and off-site public and private facilities.

Section 5.2 of the Development Agreement also defines the maximum dwelling unit count as 3,398.

The San Elijo Hills Specific Plan allows an increase in density for the Project of up to 2% if a school is not constructed in Project Planning Area V-2, which would permit a maximum of 3,466 units in the Project. As a school was not constructed in Planning Area V-2, and as the previously certified San Elijo Hills Specific Plan environmental review document evaluated the impacts of the higher dwelling unit number, the references to a maximum of 3,398 dwelling units in Sections 2.10 and 5.2 are hereby revised from 3,398 to 3,466.

5. Entire Agreement. This Amendment No. 2, Amendment No. 1 and Development Agreement contain the entire agreement between the Parties with respect to the subject matter thereof, and they collectively supersede all prior or contemporaneous agreements in connection with the subject matter. No amendment or modification of this Amendment No. 2, Amendment No. 1 or the Development Agreement shall be binding unless executed in writing by the Parties hereto. Except as expressly modified herein, the terms and provisions of the Development Agreement and Amendment No. 1 remain in full force and effect.

IN WITNESS WHEREOF, this Amendment No. 2 has been executed by the City of San Marcos, acting by and through its City Manager pursuant to Ordinance No. _____, this _____ day of June 2017.

THE CITY OF SAN MARCOS

By: _____
Jack Griffin, City Manager

OWNER:

SAN ELIJO HILLS DEVELOPMENT
COMPANY, LLC, a Delaware limited
liability company

By: _____
_____, (title)

Attest:

By: _____
Phillip Scollick, City Clerk

Approved as to form:

By: _____
Helen Holmes Peak, City Attorney

Exhibit A

(Insert Legal Description for Remaining Planning Areas)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness.

STATE OF CALIFORNIA)
)
) ss.
COUNTY OF SAN DIEGO)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

[seal]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness.

STATE OF CALIFORNIA)
)
 ss.
COUNTY OF SAN DIEGO)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

[seal]