

(Submitted by County Counsel at meeting) PC 8-10-17 Item 4 (2 pages)



OFFICE OF COUNTY COUNSEL
INTER-DEPARTMENT MEMORANDUM

TO: Planning Commission
FROM: David A. Livingston, Chief Assistant County Counsel *DL*
DATE: August 9, 2017
RE: Hawk View (DA16-0001) / Bell Woods (DA16-0002) / Bell Ranch (DA16-0003)

I am requesting your consideration of the following proposed revisions to the draft Development Agreements for the above-referenced projects. New text is shown with underlines and deleted text is shown with strikethroughs. I have confirmed with counsel for the Applicant that the Applicant is in general agreement with the proposed revisions, subject to possible minor changes in language that can be addressed prior to final action by the Board of Supervisors.

1.7.1. Revise the first sentence as follows: Except as otherwise provided, and provided that Developer is not in default of this Agreement pursuant to Section 5 herein. Developer shall have the right to assign this Agreement as to the Property....”

1.17. Add new section titled “Counterparts”: “This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.”

1.18. Add new section titled “Signatures”: “Developer and County represent and warrant that the individuals executing this Agreement have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and County.”

3.2.2. Revise the third and fourth sentences as follows: “However, if Developer is unable to acquire the necessary right-of-way through good faith negotiation at or near the appraised value of the interests being acquired, the County agrees that it will commence proceedings to authorize it to exercise ~~use~~ its power of eminent domain to acquire the needed property rights. The County’s agreement to commence proceedings to utilize the ~~use~~ eminent domain process is a reflection of the”

3.2.2. Add the following after the last sentence: “Should Developer require the County’s intervention to acquire the necessary right-of-way, the Parties shall enter into a separate agreement for the funding and reimbursement of acquisition costs, as more specifically described in the Conditions of Approval.”

3.2.4. Revise the second-to-last sentence as follows: “In lieu of the overlay, the Developer, at its option, may pay to the County adequate funding for the Overlay Project (based on a mutually agreed upon engineer’s estimate of costs).”

3.2.5. Revise the first sentence as follows to more accurately reflect the conditions of approval: “For the Bass Lake Road/Highway 50 Interchange Improvements, the Conditions of Approval require a traffic study to be done prior to each a-final map and that the improvements identified in the study need to be constructed prior to the first certificate of occupancy for any lot within that final map the Project.”

3.3. Revise as follows: “With respect to the Country Club Drive Improvements, the Bass Lake Road/Highway 50 Interchange Improvements and any other offsite roadway improvements undertaken by Developer, including those which that are included in the County’s TIM Fee Program, the Parties will enter into a credit and/or reimbursement agreement for such improvements consistent with the terms of this Agreement.”

3.3.1. Replace the sentence at the end of the first paragraph with the following: “County shall not be required to issue credits pursuant to this section if doing so would impair the County’s ability to meet its contractual obligation to make payments pursuant to reimbursement commitments existing as of the effective date of this Agreement.”

3.3.1. Revise the first sentence of the last paragraph (after the “credit/reimbursement example”) as follows: “This example is intended to be illustrative of the process described above and assumes that the proposed TIM Fee Zone amendment referenced below occurs.”

3.6.1. Revise the last sentence as follows: “Accordingly, County agrees to continue to process the proposed amendment to Zone 8 and consider such an proposed amendment in a timely manner with the understanding that County’s discretion with respect to the amendment is not affected by this Section.”

4.1. Add the following after the last sentence: “Upon not less than thirty (30) days’ written notice by the Director of the Planning and Building Department, Developer shall provide such information as may be reasonably requested by the Director and deemed by the Director to be required in order to ascertain compliance with this Agreement. Developer’s failure to provide the requested information within thirty (30) days of the Director’s request shall constitute a default of this Agreement in accordance with Section 5 herein.”

DAL