



OFFICE OF COUNTY COUNSEL
INTER-DEPARTMENT MEMORANDUM

TO: Board of Supervisors and Planning Commission
FROM: Bre Moebius, Deputy County Counsel BMM
DATE: June 4, 2021
RE: **Section 2.7 of the Proposed Development Agreement for Heritage Carson Creek Village 11**

The purpose of this brief memorandum is to provide the Board of Supervisors and Planning Commission with information regarding Section 2.7 of the proposed Development Agreement with Carson Creek El Dorado, LLC and Lennar Homes of California, Inc. (collectively, “Lennar”). In the current draft of the proposed Development Agreement, Section 2.7 states:

2.7 Waiver of Claims. Developers waive, as to the Property only, any and all existing claims they may have against the County, its agents, employees, and consultants arising out of the adoption and/or application of development requirements and standards, impact fees, the adoption of this Agreement or the Project Approvals, and all of the proceedings, acts, or determinations made prior thereto. The parties agree that this section does not include a waiver of any claims Developers may have related to any claim for reimbursement for construction of Carson Crossing Drive.

With the exception of the second sentence, the County proposed Section 2.7 as a standard term to include in any development agreement. Generally, Section 2.7 is limited to the “Property” covered by the Development Agreement, which includes only the parcels covered by the proposed amendment to the Carson Creek Specific Plan (“CCSP”). However, because the “Property” covered by the proposed Development Agreement is part of the greater CCSP and the “Project Approvals” referred to in Section 2.7 include the CCSP, Lennar raised concerns about whether Section 2.7 could affect a current dispute between the County and Lennar regarding the cost to construct Carson Crossing Drive.

The road that is now Carson Crossing Drive was identified in the CCSP as a “residential collector” road that bisects the CCSP property. Consistent with previous conditions of approval,

Lennar completed construction of Carson Crossing Drive in 2017. While a prior expired development agreement with Lennar from November 1998 contemplated the possibility of Lennar receiving reimbursement for a portion of the improvement, that development agreement established the requirements for any such reimbursement and Lennar did not comply with those requirements. In September 2020, Lennar requested reimbursement for the cost of constructing Carson Crossing Drive. Department of Transportation and our office have reviewed the various grounds upon which Lennar claims a right to reimbursement and concluded that the County is not legally obligated to enter into a reimbursement agreement with Lennar for numerous reasons, including the lack of a reimbursement agreement required under the prior development agreement, Lennar's failure to comply with our TIM reimbursement guidelines, Lennar's failure to publicly bid a portion of the project, and the expiration of the statute of limitations.

Lennar continues to assert a right to reimbursement of approximately \$6.7 million from the County and, in order to preserve its ability to initiate litigation against the County concerning that claim, would not agree to the proposed Development Agreement if Section 2.7 could be construed as a waiver of that claim. As a result, Section 2.7 expressly reserves Lennar's rights to pursue any claims for reimbursement for Carson Crossing Drive. Separate from this Development Agreement and the requested project approvals, staff will be seeking further direction from the Board of Supervisors regarding Lennar's demand for reimbursement.