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Board of Supervisors
County of El Dorado
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RE: West Valley Village Subdivision Improvement Agreements
Units 1B, 3A, 3B, 4, 5A, 6A, 6B, 6C and 7B

Honorable Chairman and Members of the Board of Supervisors:

Background

West Valley Village (now more commonly known as "Blackstone"), located on the south side of Highway 50 in El Dorado Hills, was the first of three villages approved as part of the Specific Plan and Development Agreement approved in 1998. The West Valley Village subdivision map includes 1,143 residential lots and a variety of open space, recreational and commercial lots on 557 acres (TM 99-1359), and is being developed in phases. In 2004, the Developer finalized a map for 48 large lots for financing purposes, creating 10 smaller residential units referred to as Units 1, 2, 3, 4, 5A, 5B, 6, 7, 8 and 18. The 10 residential subdivision units have been further phased and are in varying stages of the map process. Units 1A, 2, and 7A have been completed. Nine phased residential units with final maps and Subdivision Improvement Agreements that are the subject of this agenda item are Units 1B, 3A, 3B, 4, 5A, 6A, 6B, 6C, and 7B. The remaining phased residential subdivision units, Units 3C, 5B, 5C, 7C and 8B, do not yet have final maps. Of the 999 recorded residential lots created by the 10 final maps, approximately 196 residential lots have been, or are being built on, and 803 residential lots are vacant.

The "master developer" ("Master Developer") of the Blackstone project is a limited liability company named West Valley, LLC. Conditions of Approval were placed on West Valley Village, tentative map TM99-1359R, approved January 22, 2004 ("Conditions of Approval"). These Conditions of Approval are conditions to each of the aforementioned final maps. The Conditions of Approval include requirements for standard on-site and off-site improvements, which are the subject of the Subdivision Improvement Agreements, and the requirements for advance funding for and/or construction of major infrastructure improvements which are not yet completed, including advance funding for the Silva Valley Parkway Interchange (Condition 26).

A-12-0026.1

This condition requires the Master Developer to advance environmental, engineering, right-of-way, and other work necessary to complete a bid-ready package and to advance fund the estimated excess construction costs over and above the Silva Valley Parkway Interchange Set-aside account. That advance funding obligation is currently estimated by the County to be in excess of \$20 million dollars. The Master Developer, West Valley, LLC, entered into a Funding, Credit and Reimbursement Agreement Between West Valley, LLC and the County of El Dorado on November 11, 2005, in accordance with County Code section 16.16.080, encompassing the offsite Conditions of Approval inclusive of Condition 26. Successor developers finalized the maps subject to completion of these offsite infrastructure improvements. Successor developers were on notice of these Conditions of Approval and took subject to their satisfaction.

County staff is concerned with the lack of progress related to the completion of public infrastructure required under the Subdivision Improvement Agreements for the West Valley Village. Units 1B, 3A, 3B, 4, 5A, 6A, 6B, 6C, and 7B which are the subject of this agenda item are currently in default.

The Subdivision Improvement Agreements

Landsource Holding Company, LLC, is the owner and successor in interest to the Master Developer, West Valley, LLC for Units 1B, 3A, 3B, 4, 5A, 6A, 6B, 6C, and 7B. Landsource Holding Company, LLC, as owner, and Lennar Communities, Inc., subdivider, entered into multiple Subdivision Improvement Agreements ("Agreement(s)") in the summer and fall of 2007. Each Agreement required that the owner and subdivider to make all those improvements required by Section 16.16.010 of the County Code and as shown or depicted in the improvement plans, specifications and cost estimates included with each Agreement. Completion of the improvements for each Agreement was required within two years, in either the summer or fall of 2009.

Each Agreement was secured with Performance and Labor and Materialmen surety bonds. Units 1B, 3B, 5A, 6A, 6B, and 7B are secured with bonds from National Union Fire Insurance Company, rated "A" by A.M. Best. Units 3A, 4, and 6C were previously guaranteed by Chubb bonds, and in 2008, the developer requested to substitute the Chubb bonds with bonds from Safeco, also rated "A" by A.M. Best. That substitution took place in the fall of 2009.

Also in 2009, National Union Fire Insurance Company made inquiry on the status of work on the units owned by Landsource Holding, LLC and was informed by the County that they were not complete and that progress was not satisfactory. Safeco has not inquired as to the subdivisions progress since substituting in as surety for units 3A, 4, and 6C.

As of this date, none of the units are complete. Unit 1B, 3B, 6B, and 7B have had little to no work performed. Units 3A and 5A are less than 20% complete. Units 4, 6A, and 6C are approximately 70% complete. In all cases, the Department of Transportation has reported that no appreciable work has been performed on any of the units since 2009. Accordingly, Landsource Holding Company, LLC and Lennar Communities, Inc are currently in default of

their contractual obligations to complete the improvements within the two year performance period specified in the agreements, by the end of 2009.

Discussion of Potential Board Actions

The Subdivision Map Act (Government Code sections 66410-66499.37) governs the construction of public purpose improvements such as highways, streets and sewers in conjunction with the subdivision of land. The Subdivision Map Act has three important primary goals. Not only does it encourage the orderly community development by providing for regulation and control of the improvement of the subdivision at the commencement of the process for a map, but it also (i) ensures that the areas within the subdivision, as well as those improvements made conditions of approval of the subdivision and dedicated for public purposes will be properly improved by the owner/subdivider so that they will not become an undue burden on the community; and (ii) it protects the public and individual transferees from fraud and exploitation. [61 Ops. Cal.Atty.Gen. 299, 301 (1978); 77 Ops.Cal.Atty.Gen. 185 (1994).]

Pursuant to Section 66462, when a final map is submitted for approval, if the conditions of approval will not be satisfied until after the filing of the final map, the developer must enter into appropriate agreements providing for the completion of those conditions. The County Code, chapter 16.16, governs improvement and related agreements (i.e. road improvement, and funding/reimbursement agreements) entered into in accordance with conditions of approval for a subdivision map. Each improvement agreement has a time specified for the improvements to be completed. Under an improvement agreement, the subdivider and guarantor are liable until all improvements are completed and accepted; the improvement agreement and security do not "expire".

Section 16.16.040 provides that an improvement agreement will fix the date that the improvements will be completed. Resolution No. 96-95 provides that the initial time period to complete the improvements shall be 24 months from the date of the recording of the final map. Thereafter, any extensions are discretionary. The Director of Transportation may, but is not required to, extend the time for performance for no more than 12 months, if the developer makes a timely request (the request for extension is made not less than 30 days prior to the expiration of the initial 24 months) and submits adequate evidence to justify the extension. Any extension beyond that 12-month extension may only be granted by the Board of Supervisors in its sole discretion.

The Board of Supervisors may: (i) grant an extension; (2) grant an extension upon certain specified conditions; (3) deny the extension and call the bonds or otherwise recover the cash, letter of credit or certificate of deposit to complete the improvements; or (4) initiate proceedings for reversion to acreage as set forth in Section 66499.11.

In consideration of the Board's determination to grant an extension, the Board of Supervisors may require revisions to the engineer's estimates, an increase to the improvement securities, different improvement securities and/or any additional items recommended by the County

Engineer as it may be deemed necessary for the health, safety and welfare of the public. Alternatively, the Board of Supervisors may enforce the obligations under the Agreements by demanding compliance from the guarantor and utilizing the security to complete the infrastructure improvements.

The Board of Supervisors may also, if it chooses, revert subdivided real property back to its original acreage under the Subdivision Map Act section 66499.11 so long as it can make the necessary findings under Section 66499.16. Those findings include that (i) dedications or offers of dedications to be vacated or abandoned by reversion are unnecessary for present or prospective public purposes and (ii) either all owners consent, or improvements have not been made within the time allowed under the improvement agreement, or no lots have been sold within five years from the date such map was filed or recorded.

In order to achieve the Subdivision Map Act's primary goals, the Board, in weighing the Board's options, should examine the specific facts, circumstances and/or unique factors surrounding these final maps.

Here, reversion of one or more of the West Valley Villages' subdivisions may have a corresponding impact on the completion of Conditions of Approval, Condition 26, the advance funding for construction of the Silva Valley Interchange. The Master Developer's, West Valley LLC, is obligated to advance fund and/or complete offsite public infrastructure improvements which are required in the Conditions of Approval to TM99-1339R. These offsite improvements include the Silva Valley Parkway Interchange, which is a vital part of the circulation element necessary for the orderly build out of the West Valley Village subdivisions and essential to address the cumulative traffic effects on El Dorado Hills. The Master Developer, West Valley LLC, filed a certificate of dissolution in November, 2010, and is limited by law to pay existing obligations and to wind up and dissolve its affairs but not conduct new business. Staff is working with the Master Developer to insure that sufficient assets remain on hand to advance fund the Interchange. A reversion to acreage of one or more of the subject residential subdivision units currently in default may impact or reduce the remaining revenue stream available to West Valley, LLC to meet its advance funding obligations for the Silva Valley Parkway Interchange. On the other hand, if one or more of the subdivisions were reverted to acreage, the need for offsite infrastructure including the Silva Valley Parkway Interchange as currently planned may need re-evaluation.

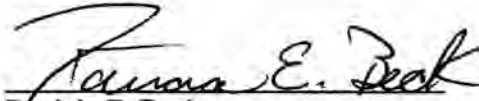
Staff recommends that the Board open the hearing and take testimony from Landsource Holding Company, LLC, as owner, and Lennar Communities, Inc., subdivider, first with respect to their intention on the development and completion of the public infrastructure required under the Subdivision Improvement Agreements, and then take other public testimony. Staff will be on hand to answer any questions that the Board may have on the courses of action that the Board may consider.

Recommendations:

Staff recommends that the Board of Supervisors:

- (1) Hold a hearing relative to West Valley Village Subdivision Improvement Agreements in default;
- (2) Determine if the Board of Supervisors will: (i) grant an extension(s); (ii) grant an extension(s) upon certain specified conditions; (iii) deny the extension(s) call the bonds; (iv) commence proceedings for reversion to acreage as set forth in Section 66499.11; or (v) take action in some combination of the above.

Respectfully submitted,



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