

COUNTY OF SAN BENITO
OFFICE OF THE COUNTY COUNSEL

MATTHEW W. GRANGER
County Counsel

481 Fourth Street, 2nd Floor
Hollister, CA 95023
(831) 636-4040 Office
(831) 636-4044 Fax

Assistant County Counsel
BARBARA J. THOMPSON

Deputies
SHIRLEY L. MURPHY
IRMA F. VALENCIA

Date: August 18, 2016
To: Board of Supervisors
From: Barbara Thompson
Re: Background for Agenda Item

Background:

In the San Juan Oaks, project, the Developers agreed to pay a “Community Benefit Fee,” which totaled Five Million Five Hundred and Fifty Nine Thousand Dollars (\$5,559,000) at certain designated points during the development process. Pulte was to pay One Million Dollars toward the Community Benefit Fee within five (5) days of the County’s approval of the first final map that covers the Active Adult Units. San Juan Oaks was to pay Five Hundred and Five Thousand Nine Hundred and Ten Dollars (\$505,910), which left \$4,053,090 to be paid by Pulte in three separate installments. The calculation for the amount of each of these three equal installments was incorrect in the original approval documents.

Specifically, the Development Agreement and the Conditions of Approval in the San Juan Oaks project had a typographical error in them, which needs to be corrected. The Applicant agreed to pay a total of Five Million, Five Hundred Fifty-Nine Thousand Dollars (\$5,559,000) as a “Community Benefit Fee.” The final payment of this Community Benefit fee, in the amount of \$4,053,090 was to be paid in three equal installments each due upon recordation of the first (1st), second (2nd) and third (3rd) final maps that cover the Adult Active Units; or at the time a final map was filed covering all such units.

Scott Fuller has brought to the County's attention that the breakdown of the final three equal payments was incorrect in the final documents. When \$4,053,090 is divided into three equal payments, each of the final three payments should total \$1,351,030, not \$1,684,363 as written.

The Board is asked to recognize and approve staff's interpretation so that future potential partners in this development project can have clarity as to their obligations.

The total amount that Applicant has agreed and is obligated to pay is not changed by this action.

Redlined changes of Development Agreement and Conditions of Approval:

CONDITION OF APPROVAL 43.

43. Community Benefit Fee. The Applicant(s) shall pay to the County the total amount of Five Million Five Hundred and Fifty Nine thousand dollars (\$5,559,000) "Community Benefit Fee", which shall be used in the County's sole and absolute discretion as it deems appropriate for the benefit of the County, which may include: general community benefits, street improvements, affordable housing, public safety services, library services, and communications.

Pursuant to Section 2.6(a) of the Development Agreement, Owners shall pay the Community Benefit Fee as follows: (1) Pulte or its successor(s)-in-interest shall pay the amount of One Million Dollars (\$1,000,000) within five (5) days of County's approval of the Project's first (1st) final map that covers all or any portion of the Active Adult Units; (2) San Juan Oaks or its successor(s)-in-interest shall pay the total amount of Five Hundred and Five Thousand Nine Hundred and Ten Dollars (\$505,910), which may be divided into two (2) equal installments of Two Hundred Fifty Two Thousand Nine Hundred and Fifty Five Dollars (\$252,955), each due upon recordation of the first (1st) and second (2nd) final maps that cover all or any portion of the Conventional Units; provided, however, that if only one (1) final map is recorded for all of the Conventional Units, then the total amount of \$505,910 shall be due upon recordation of said map; and (3) Pulte or its successor(s)-in-interest shall pay the total amount of Four Million Fifty Three

Thousand and Ninety Dollars (\$4,053,090), which may be divided in three (3) equal payments of ~~One Million Six Hundred Thousand Eighty Four and Three Hundred Sixty Three~~ One Million, Three Hundred Fifty One Thousand, and Thirty Dollars (\$1,351,030,684,363), each due upon recordation of the first (1st), second (2nd) and third (3rd) final maps that cover the Adult Active Units; provided, however, that if fewer than three (3) final maps are recorded for all of the Adult Active Units, then the total amount of \$4,053,090 shall be due upon recordation of the final map that covers all such units.

Development Agreement, Paragraph 2.6(a)(i)

(i) Community Benefit Fee. Pay to the County the total amount of Five Million Five Hundred and Fifty Nine Thousand dollars (\$5,559,000) “**Community Benefit Fee**”, which shall be used in the County’s sole and absolute discretion as it deems appropriate for the benefit of the County, which may include: general community benefits, street improvements, affordable housing, public safety services, library services, and communications.

(A) Owners shall pay the Community Benefit Fee as follows:

(1) Pulte shall pay the amount of One Million Dollars (\$1,000,000) within five (5) days of County’s approval of the Project’s first (1st) final map that covers all or any portion of the Active Adult Units; (2) SJO shall pay the total amount of Five Hundred Five Thousand Nine Hundred and Ten Dollars (\$505,910), which may be divided into two (2) equal installments of Two Hundred Fifty Two Thousand Nine Hundred and Fifty Five Dollars (\$252,955), each due upon recordation of the first (1st) and second (2nd) final maps that cover all or any portion of the Conventional Units; provided, however, that if only one (1) final map is recorded for all of the Conventional Units, then the total amount of \$505,910 shall be due upon recordation of said map; and (3) Pulte shall pay the total amount of Four Million Fifty Three Thousand and Ninety Dollars (\$4,053,090), which may be divided in three equal payments of One Million Three Hundred Fifty One Thousand and Thirty Dollars ~~One Million Six Hundred Thousand Eighty Four and Three Hundred Sixty Three Dollars (\$1,351,030), 1,684,363)~~ each due upon the recordation of the first, second, and third final maps that cover the Adult Active Units; provided, however, that if fewer than three (3) final maps are recorded for all of the Adult Active Units, then the total amount of \$4,053,090 shall be due upon recordation of the final map that covers all such units.

Notwithstanding anything to the contrary in this Section 2.6(a)(i)(A), if full payment of the Community Benefit Fee has not occurred within seven and one half (7-1/2) years from the Effective Date, then the remaining balance shall be immediately due and payable by Owners at the time and the County shall have the right to withheld issuance of any further Building permits for the Project until full payment has been received.

Recommended Action:

It is recommended that the Board of Supervisors:

Accept and approve of staff's interpretation as set forth above of the Conditions of Approval and Development Agreement to correct a typographical error in the original documents.