

STAFF REPORT

PROJECT INFORMATION:

Application: First Amendment of the Development Agreement By and Among the County of San Benito, Pulte Homes Corporation and San Juan Oaks, LLC.

Date of Hearing: March 20, 2019

Applicant/Owner: San Juan Oaks, LLC; Ken Gimelli and Scott Fuller

File Number: PLN190013

Location: The San Juan Oaks Specific Plan District

APNs: 018-190-023, 018-190-033, 018-190-034, 018-200-058, 021-140-046, 021-140-053, 018-200-056, 018-200--057, 021-140-054, 021-190-017, 021-190-006, 021-090-030, 021-190-031, 021-190-032, and 023-010-074

General Plan: Planned Development and Agricultural Rangeland

Zoning: San Juan Oaks Specific Plan District

Project Staff: Barbara Thompson, County Counsel
Taven M. Kinison Brown, Principal Planner:

PROJECT BACKGROUND AND HISTORY:

The Original Development Description

The approved San Juan Oaks LLC Project (formerly known as the Dell Webb proposal of 2015) at full build out includes up to 1,084 active adult and market rate residential units, a 200-room hotel, a four-acre assisted living/skilled nursing/memory care facility, up to 65,000 square feet of neighborhood commercial uses and up to 25,000 square feet of amenity space.



The development of residential, commercial, and resort land uses would occur within the northwestern portion of the Project Site. The Project also includes seven acres of private neighborhood parks to serve the Project's residents, 114 acres of common area open space, 41 acres of on-site agricultural preserve and approximately 1,243 acres of on-site permanent wildlife habitat.



The Present Proposal from San Juan Oaks LLC

The Applicant is requesting to modify the terms of the 2015 Development Agreement by offering to pay the negotiated Community Benefit Fee (CBF) of \$5,559,000 “upfront” with a \$500,000 enhancement. The Development Agreement currently allows the developer to phase in this expense over subdivision map phases (over several years) of the project. The County would be free to apply this \$6,059,000 of immediate money to the general fund.. In trade, the applicant is asking to extend the term that development Impact Fees would remain locked in at the rates of the 2014 Impact fee schedule to March 31, 2029.

Development Impact Fees are the fees assigned to each building permit for commercial and residential construction and are used to pay for Traffic Zone 2, Drainage, Road Equipment, Fire Protection, General Capital Improvements, Law Enforcement, Juvenile Hall, Habitat Conservation, Parks and Recreation, General Government, Information Technology, Libraries and Road Maintenance.

Presently, the negotiated term of the Development Agreement (DA) locks development impact fees at 2014 rates to March 31, 2023 (4 more years). Following that March 31, 2023 date, *without amendment to the Development Agreement*, the County would be able to collect the

adjusted Impact Fees in place at the time of building permit applications. The applicant's requested First Amendment to the DA would extend the "lock term" for the 2014 Impact Fee rates to March 31, 2029. .

Applicant materials provided

The Applicant has provided a cover letter, proposed amendments to the Development Agreement ("Agreement By and Among the County of San Benito and San Juan Oaks, LLC), and a September 2013 Fiscal and Economic Impact report for the original San Juan Oaks Specific Plan proposal. Additional materials were submitted to RMA staff on Monday March 11, 2019. (See **Exhibit B Attachment 2 and 3 and Exhibits C and D**).

Recent History

The Board reviewed and approved the proposed amended development agreement, subject to the Applicant submitting an application to formally amend the development agreement according to County Code Section 19.11 in early 2019. County Administrative Staff supports the proposed amendment due to the economic value of the proposed project (e.g. a 200-room hotel, a four-acre assisted living/skilled nursing/memory care facility, up to 65,000 square feet of neighborhood commercial uses), as well as the public benefits that will be provided by the project (such as the dedication of land for a park and a fire station) and 1,240 acres of dedicated permanent open space (view shed from highway 156), and the benefits of having an active-adult community, which is believed to have less actual impacts on a community than normal residential housing, such as upon local schools. Further, without this amendment, Administrative staff believed that there is a risk of losing the project entirely in this County, at least for the foreseeable future.

Report Organization

This report has been organized to:

- Share the project background, and recent history (above).
- Describe the General Requirements of the Development Agreement.
- Share the Applicant's Need for Changes to the Development Agreement.
- Describe the Applicants offer to pay a Public Benefit Fee of \$6,059,000 upfront, in exchange for locking in the 2014 Development Impact Fees to March 31, 2029.
- Introduce a draft Resolution for Planning Commission consideration and a draft Ordinance for Board action.
- Include a Staff Recommendation.

GENERAL REQUIREMENTS OF THE DEVELOPMENT AGREEMENT

Staff has attached the original Development Agreement to the draft Board of Supervisors' Ordinance for reference (**See Exhibit B, Attachment 2**). Staff has also attached the applicant's proposed "First Amendment to the San Juan Oaks LLC Development Agreement" as they wish the document to be modified. (**See Exhibit B, Attachment 3**).

Broadly, there are items in the DA not proposed for adjustment, such as the requirement to form a Community Facilities District, a Geologic Hazards Assessment District, provide for construction of neighborhood parks and trail network, street improvements and other project

infrastructure and on- and off-site improvements to State Route 156, Bixby Road, San Juan Oaks Drive and Union Road intersections, among others.

The items that are suggested for change by the applicant involve the timing of the payment of the negotiated Community Benefit Fee (CBF), and the extension of 2014 level Development Impact Fees for all 65,000 square feet of commercial construction, the 200-room hotel and the 1,084 homes of the Specific Plan.

Several material dates and information items follow:

- December 3, 2015 is the effective date of the original Development Agreement.
- June 3, 2023 is 7.5 years past the Effective Date of the original Development Agreement
- December 3, 2030 is 15 years past the Effective Date and the end of term for the original Development Agreement.
- March 31, 2029 is the newly requested end of Lock Term for new development to be charged at 2014 Development Impact Fee rates

APPLICANT'S NEED FOR CHANGES TO THE DEVELOPMENT AGREEMENT

Please see the applicant's bound documents including the front cover letter (**Exhibit C**).

“Implementation of the San Juan Oaks project has been delayed because Pulte Homes pulled out of the project and is no longer an Owner under the DA. San Juan Oaks anticipates contracting with a replacement Owner developer in the near future. San Juan Oaks is seeking to amend the DA to account for the delay by extending the Fee Vesting Time Period while assuring that the County will receive the CBF in a timely manner and compensating the County for the Fee Vesting Time Period Extension.”

Upon RMA staff meeting with the applicant to receive the project review materials Tuesday, March 5, 2019, we discussed the applicant's request a little more in depth. Mr. Fuller expressed that one of the reason's Pulte and subsequent potential developers have fallen out of contract with SJO LLC, is an expressed concern that future construction and permitting costs are unknown. In other words, the present DA “lock” on impact fees at 2014 rates will expire June 3, 2023. Following that date, if the DA is left un-amended, it will be necessary for the builder to pay the prevailing development impact fees in place when a future building permit is requested. To express another way, the impact fee expenses of building a home at San Juan Oaks after June 3, 2023 will be more expensive – and not calculable or quantifiable at this time.

This is the main reason for the amendment request to the Development Agreement– to lock in the 2014 Impact Fee rates for potential builders, so that they have a known fixed permitting expense for each house or commercial development that will not be increased.

Mr. Fuller states, that without such a concession, a builder or a developer may never be retained to construct the San Juan Oaks Specific Plan Community, as the project has had a demonstrated difficulty moving forward since it was approved.

APPLICANTS OFFER TO PAY A PUBLIC BENEFIT FEE OF \$6,059,000 UPFRONT, IN EXCHANGE FOR LOCKING IN 2014 DEVELOPMENT IMPACT FEES TO MARCH 31, 2029.

Please refer to the Applicant materials in **Exhibit C** to this Report, and the draft Board of Supervisors Ordinance **Exhibit B, Attachment 3**.

How is the \$5,559,000 CBF treated in the existing 2015 DA for the Specific Plan?	How is the payment of the \$5,559,000 CBF proposed to change in the First Amendment To the Development Agreement?
1) \$1,000,000 to be paid within 5 days of county's approval of the first Final Map	#1 "Owner MAY choose to pay entire \$5,559,000 upon the date of the first Building permit or March 31, 2021 whichever comes first
2) \$505,910 divided into two installments of \$252,955	If Owner makes such an election, then Owner shall pay an additional \$500,000 to County, bringing the total CBF to \$6,059,000
2a) Due upon recordation of first Final Map that includes any of the conventional / market rate units	
2b) Due upon Recordation of second Final Map - that includes any of the conventional / market rate units	#2 <i>If Owners make such an election, then County shall extend the Lock Term ("e.g. Fee Vesting Time Period") for the Development Impact Fees to run seven and one-half years, with the Lock Term commencing six months following the Trigger Date.</i>
3) \$4,053,090 shall be paid and may be divided in thirds	
3a) \$1,351,030 due upon recordation of first Final Map that includes the Adult Active Units	
3b) \$1,351,030 due upon recordation of second Final Map that includes the Adult Active Units	
4c) \$1,351,030 due upon recordation of third Final Map that includes the Adult Active Units	
\$5,559,000 CBF	\$6,059,000 CBF

What does acceptance of the full Community Benefit Fee mean?

Should the present Development Agreement not be amended, the County Impact Fees in place after June 3, 2023 would be collected for construction proposed after that date. Of course, some building permits are likely to be obtained in the next four years prior to the lock term on the 2014 Impact Fees running out and/or after the extended lock period ends. Therefore, the extended lock period applies to only a portion of the residences to be constructed at San Juan Oaks.

The First Amendment to the San Juan Oaks Development Agreement specifies that if the County accepts and agrees to this amendment and the owners make such an election to pay the Community Benefit Fee fully upfront, then the County shall extend the Lock Term ("e.g. Fee Vesting Time Period") for the Development Impact Fees to run seven and one-half years, with the Lock Term commencing six months following the Trigger Date to March 31, 2029.

INTRODUCTION OF THE DRAFT RESOLUTION FOR PLANNING COMMISSION CONSIDERATION AND INTRODUCTION OF A DRAFT ORDINANCE FOR BOARD ACTION

In accordance with the provisions of Chapter 19.11 Development Agreements, a Draft Ordinance for Board of Supervisors action has been prepared that would approve the applicant's requested First Amendment to the Development Agreement, subject to findings (**EXHIBIT B to this Report**) The Planning Commission recommendation to the Board of Supervisors though will be in the form of a Resolution (**EXHIBIT A to this Report**).

Drawing from the County Code Section 19.11.008 REVIEW PROCESS, (B) Planning Commission review.

(1) If the Planning Director determines that the application is appropriately made, the matter shall be scheduled for a public hearing before the Planning Commission. After the public hearing by the Planning Commission, the Commission shall make its recommendation about the application for a development agreement by written resolution to the Board of Supervisors. The Planning Commission shall not recommend that the county enter into the development agreement unless the Commission makes all of the following findings:

(a) The development agreement is consistent with the General Plan and any applicable specific or area plans;

(b) The development agreement is compatible with the uses authorized in, and the regulation prescribed for, the zoning district in which the real property is located;

(c) The development agreement is consistent with public health, safety and general welfare and good land use practice;

(d) The development agreement will not adversely affect the orderly development of the surrounding community;

(e) The proposed development project should be encouraged in order to meet important economic, social, environmental or planning goals of the county; and

(f) The subject development project and development agreement are consistent with this chapter.

(2) The Commission's resolution to the Board shall include evidence supporting its determination regardless of the nature of the Commission's recommendation.

Drawing from the past reports in the 2013-2015 period leading up to approval of the San Juan Oaks Specific Plan, including the Ordinance that was passed adopting the Development Agreement subject to the Findings of Section 19.11 of the County Code, staff is able to recommend that all of the Findings above for Amendment to the Development Agreement can be made. (Please see the attachments.)

ENVIRONMENTAL EVALUATION:

To support approval of the proposal an Addendum to the San Juan Oaks Specific Plan Subsequent Environmental Impact Report (State Clearinghouse No. 2013101006) has been prepared.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission review the staff report, attached draft Resolution and Ordinance for Board action, review the applicant's materials, and take public and land use agency testimony during the public hearing.

Staff further recommends that the Planning Commission make the findings in in the draft resolution and adopt the resolution to recommend that the Board of Supervisors approve the Ordinance approving the First Amendment to the San Juan Oaks LLC Development Agreement.

EXHIBITS

- A. Planning Commission Resolution
- B. Draft Board Ordinance with Attachments
- C. Applicant's cover letter and project materials
- D. Applicant's Redlined Original Development Agreement
- E. CEQA Addendum to the SEIR