

***BEFORE THE PLANNING COMMISSION OF THE COUNTY OF SAN BENITO***

A RESOLUTION OF THE SAN BENITO COUNTY )  
PLANNING COMMISSION RECOMMENDING )  
THAT THE BOARD OF SUPERVISORS APPROVE )  
THE FIRST AMENDMENT TO THE SAN JUAN )  
OAKS LLC DEVELOPMENT AGREEMENT. )  
COUNTY FILE PLN190013. )

Resolution No. 2019-\_\_\_\_

**WHEREAS**, the San Juan Oaks LLC, represented by Scott Fuller filed an application on March 5, 2019 to amend the Development Agreement By and Among the County of San Benito, Pulte Homes Corporation and San Juan Oaks, LLC; and

**WHEREAS**, the Planning Director completed an initial review of the application to determine if the application was appropriately made, and determined that sufficient information and data was submitted to analyze the application under Chapter 19.11 Development Agreements, including a development review deposit to be used to pay for the application and processing fee; and

**WHEREAS**, the subject property of the requested First Amendment to the Development Agreement has a General Plan Designation of Planned Development and Agricultural Rangeland, and Zoning Designation of the San Juan Oaks Specific Plan District; and

**WHEREAS**, 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; and

**WHEREAS**, the Development Agreement currently allows the developer to phase in this expense over subdivision map phases (over several years) of the project; and

**WHEREAS**, the County would be free to apply this \$6,059,000 of immediate money to the general fund and is not encumbered by a contractual assignment of these potential financial resources; and

**WHEREAS**, as a condition of the applicant’s offer to pay the Community Benefit Fee (CBF) “upfront,” 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; and

**WHEREAS**, the County assessed the potential for any substantial effect on the environment for the project consistent with the requirements of the California Environmental Quality Act (CEQA) by preparing an Addendum to the San Juan Oaks Specific Plan Subsequent Environmental Impact Report (State Clearinghouse No. 2013101006); and

**WHEREAS**, the County has determined that none of the triggers under Section 15162 of the CEQA Guidelines requiring preparation of (another) Subsequent Environmental Impact Report has occurred in connection with the County's consideration of the First Amendment of the (December 3, 2015) Development Agreement By and Among the County of San Benito, Pulte Homes Corporation and San Juan Oaks, LLC; and

**WHEREAS**, the Planning Commission of the County of San Benito reviewed the proposed First Amendment of the Development Agreement at a duly noticed public hearing held at the Planning Commission's regularly scheduled meeting on March 20, 2019; and

**WHEREAS**, at the March 20, 2019 Planning Commission hearing the Planning Commission considered a draft Ordinance for eventual Board of Supervisor's action, that included the findings necessary to grant or modify a Development Agreement under County Code (**See Exhibit B of the March 20, 2019 Planning Commission Staff Report**); and

**WHEREAS**, the Planning Commission hereby incorporates and affirms the Findings necessary of Section 19.11 of the County Code to grant or modify a Development Agreement under County Code, (See Below); and

**WHEREAS**, on March 20, 2019, the Planning Commission heard and received all oral and written testimony and evidence that was made, presented, or filed, and all persons present at the hearing were given an opportunity to hear and be heard with respect to any matter related to the proposed First Amendment of the (December 3, 2015) Development Agreement By and Among the County of San Benito, Pulte Homes Corporation and San Juan Oaks, LLC; and

**WHEREAS**, at the conclusion of the public testimony, the Planning Commission closed the public hearing, deliberated, and considered the merits of the proposal.

**NOW THEREFORE BE IT RESOLVED** that based on the evidence in the record, the Planning Commission of the County of San Benito hereby finds as follows:

### **California Environmental Quality Act - Findings**

**Finding:** Pursuant to Sections 15162 and 15164 of State CEQA Guidelines, the County finds, on the basis of substantial evidence in light of the whole record, that:

- (a) The proposed First Amendment of the Development Agreement By and Among the County of San Benito, Pulte Homes Corporation and San Juan Oaks, LLC. does not propose substantial changes to development on the subject property which would require major revisions to the Del Webb at San Juan Oaks Specific Plan Subsequent Environmental Impact Report (SCH #2013101006) due to new or substantially more severe significant environmental effects than previously analyzed in the mitigated negative declaration.
- (b) There have been no substantial changes in circumstances under which the development on the subject property will be undertaken that will require major revisions to the Del Webb at San Juan Oaks Specific Plan Subsequent Environmental Impact Report (SCH #2013101006) due to new or substantially more severe significant environmental effects than previously analyzed in the mitigated negative declaration.

- (c) No new information of substantial importance as described in subsection (a)(3) of Section 15162 has been revealed that would require major revisions to the development on the subject property or its conclusion.

Therefore, in accordance with CEQA Guidelines Section 15164, the Addendum (attached hereto as Exhibit E to the March 20, 2019 Planning Commission Staff report) to the previously adopted Del Webb at San Juan Oaks Specific Plan Subsequent Environmental Impact Report (SCH #2013101006) has been prepared because none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred in connection with its consideration of the First Amendment of the Development Agreement By and Among the County of San Benito, Pulte Homes Corporation and San Juan Oaks, LLC.

***Evidence:** There are items in the Development Agreement 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.*

***Evidence:** The items 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.*

***Evidence:** Therefore, the current project could not lead to a substantial increase in the severity of previously identified significant effects. In addition, the setting of the project has changed minimally in the time since the prior review, and the circumstances under which the present project is undertaken would not in themselves require study revision to consider significant effects. Furthermore, no new information of substantial importance has surfaced in the interim to reveal significant effects or infeasibility of prior mitigation measures, and project proponents have not declined to adopt the mitigation measures.*

***Evidence:** For these reasons, the County has determined that none of the triggers under Section 15162 has occurred in connection with the County's consideration of the First Amendment of the (December 3, 2015) Development Agreement By and Among the County of San Benito, Pulte Homes Corporation and San Juan Oaks, LLC.*

**BE IT FURTHER RESOLVED** by the Planning Commission of the County of San Benito that it hereby finds as follows:

### **Development Agreement - Findings**

**Finding 1:** The First Amendment to the San Juan Oaks LLC Development Agreement application was filed with the Director of Planning, in accordance with County Code section 19.11.007 on March 5, 2019, in that:

**Evidence:** *The complete application included all the required content under County Code section 19.1 1.007(b), including, without limitation, the proposed First Amendment; sufficient documentation to facilitate CEQA review; and the required fee deposit to facility review by San Benito County. The application is on file at the San Benito County Resource Management Agency, Building and Planning Division (File PLN190013).*

**Finding 2:** The First Amendment to the San Juan Oaks LLC Development Agreement is consistent with the General Plan, the Specific Plan and the remaining portions of the County Code:

**Evidence:** *For the reasons set forth in Resolution No. 2019-\_\_\_\_, incorporated herein by reference. (This Resolution)*

**Finding 3:** The First Amendment to the San Juan Oaks LLC Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the applicable zoning of the Project Site (as amended pursuant to the Specific Plan) in that:

**Evidence:** *As part of its 2015 approval of County Code Amendments, the Board of Supervisors, among other things, made determinations regarding the compatibility of the Project with the uses authorized in, and the regulations prescribed for, the applicable zoning.*

**Finding 4:** The First Amendment to the San Juan Oaks LLC Development Agreement is consistent with public health; safety and general welfare and good land use practice, in that:

**Evidence:** *The Amendment does not modify the components of the specific plan development already determined in 2015 to be complementary to public health, safety and general welfare and good land use practices. Among other things, it provides for public benefits beyond those benefits that would be forthcoming through conditions of development project approvals as set forth herein.*

**Evidence:** *The original Project was prepared in accordance with the New Community Study Area Designation and other relevant policies in the County's 2035 General Plan Update. The New Community Study Area Designation is intended to allow higher levels of development as a means of directing anticipated growth to certain areas in San Benito County determined appropriate and able to provide adequate facilities and infrastructure to serve that increased growth, which, in turn, serves to protect and preserve more environmentally sensitive areas and more productive agricultural lands. In addition, the Project includes: the development of employment sites to promote County work opportunities by providing for approximately 65,000 square feet in neighborhood commercial development, as well as additional hotel and assisted living/skilled nursing/memory care uses which could provide new employment opportunities; the construction and dedication of open space, parks and recreational facilities (as well as related funding for ongoing operation and maintenance) in excess of current requirements by including 114 acres of common area open space, approximately seven acres of private parks, approximately 16 acres of public community parks, approximately 41 acres of on-site agricultural preserve, approximately 1,243 acres of on-site permanent wildlife habitat and the provision for approximately 153 acres of*

*agricultural preserve off-site throughout the Project Site and interconnects with the regional network; the facilitation of alternative modes of transportation (e.g., non-motorized travel, use of public transit) through provision of an onsite neighborhood-serving commercial center for convenient shopping and services, a network of bicycle and pedestrian pathways connecting residential and commercial areas, bus turnouts and permitted home occupation uses; implementation of numerous sustainable design, siting and building features that include roof colors and materials that meet or exceed Energy Star requirements to reduce the heat island effect; energy and water-efficient appliances, fixtures, lighting, and windows that meet or exceed state energy performance standards; high-efficient air conditioners; Energy Star bath fans in each home. In addition, among others, the Project would encourage the following features: energy-efficient windows; rooftop solar panels, solar films, small-scale wind turbines, and other similar features to generate energy; small scale wind turbines and solar heating and energy production panels and films; Energy Star qualified (or equivalent rating system) models of mechanical equipment; and energy-efficient, low voltage exterior lighting.*

**Evidence:** *The Project also includes the formation of a Geologic Hazard Assessment District (GHAD) to effectively respond to and abate any identified geologic hazards within the Property; the formation of a Community Facilities District (CPD) or other financing district(s) / mechanisms to provide funding to County to be used to fund various public safety infrastructure, facilities, improvements and services as well as maintenance and operation of the Community Parks; payment of a Community Benefit Fee to the County totaling \$5,559,000, which shall be used in County's sole and absolute discretion as it deems appropriate for the benefit of the County, including, without limitation: general community benefits, street improvements, affordable housing, public safety services, library services, and communications; and an offer to dedicate to the County an approximately two (2) acre Public Safety Facility Site.*

**Finding 5:** The First Amendment to the San Juan Oaks LLC Development Agreement will not adversely affect the orderly development of the surrounding community, in that:

**Evidence:** *In approving the original project in 2015, the Board of Supervisors determined that development of the Project Site with the Project will implement the New Community Study Area Designation and related General Plan policies, which are intended to allow higher levels of development as a means of directing anticipated growth to certain areas in San Benito County determined appropriate and able to provide adequate facilities and infrastructure to serve that increased growth, as described more fully in the Specific Plan and the SEIR (Supplemental Environmental Impact Report).*

**Finding 6:** The development project associated with the First Amendment to the San Juan Oaks LLC Development Agreement should be encouraged in order to meet important economic, social, environmental or planning goals of San Benito County, in that:

**Evidence:** *With regard to planning goals, the Project was prepared in accordance with the New Community Study Area Designation and related General Plan policies, which are intended to allow higher levels of development as a means of directing anticipated growth to certain areas in San Benito County determined appropriate and able to provide adequate facilities and*

*infrastructure to serve that increased growth, which, in turn, protects and preserve other areas in the County that are more environmentally sensitive or productive agricultural land. With regard to economic and social goals, the Development Agreement also facilitates the development of approximately 65,000 square feet of neighborhood commercial development as well as additional mixed uses, which will help to satisfy goals of San Benito County to provide for more employment opportunities and generate sales tax revenue, and impose obligations on the San Juan Oaks in connection with payment of a substantial Community Benefit Fee and other monetary obligations. Moreover, the dwelling units proposed under the Project, numbering up to 1,084, will help to address goals by San Benito County to provide more housing options to residents.*

**Finding 7:** The subject development project and First Amendment to the San Juan Oaks LLC Development Agreement are consistent with Chapter 19.11, in that:

***Evidence:** The purpose of Chapter 19.11: Development Agreements is to strengthen the public planning process, to encourage private participation in comprehensive, long range planning and to reduce the economic costs of development by enabling the county and a developer seeking county approval of a development project to enter into a development agreement which vests certain development rights and which requires a developer to provide additional public benefits. The appropriate use of development agreements will reduce uncertainty in the development review process, will promote long-term stability in the land use planning process and will result in significant public gain.*

**BE IT FURTHER RESOLVED** by the Planning Commission of the County of San Benito that based on the foregoing findings and evidence in the record, that the Planning Commission recommends that:

- A. The Board of Supervisors approve the Draft Ordinance for approval of the First Amendment of the San Juan Oaks LLC. Development Agreement, subject to the finding and evidence therein and subject to the following conditions of approval (**Exhibit B of the March 20, 2019 Planning Commission Staff Report**); and

**CONDITIONS OF APPROVAL:**

- B. Approve the First Amendment of the San Juan Oaks LLC. Development Agreement subject to the following conditions of approval:
  1. **Indemnification:** APPLICANT shall defend, indemnify, and hold San Benito County, its agents, officers, and/or employees (hereinafter “COUNTY”) free and harmless from any and all suits, fees, claims, demands, causes of action, proceedings (hereinafter collectively referred to as “Legal Action”), costs, losses, damages, liabilities and expenses (including, but not limited to, an award of attorneys’ fees, expert witness fees, and court costs) incurred by COUNTY arising (directly or indirectly) or resulting from the review, processing, consideration, or approval of APPLICANT’S Project or action taken by

COUNTY thereon, including Legal Actions based on the negligence of COUNTY. APPLICANT will reimburse COUNTY for any damages, costs, or fees awarded pursuant to any settlement, default judgment, or other judgment taken against the County, whether the result of Applicant's decision not to defend Legal Action or otherwise. COUNTY retains its discretion to direct counsel regarding whether to defend, settle, appeal, or take other action regarding any Legal Action. APPLICANT shall defend COUNTY'S actions with competent legal counsel of APPLICANT's choice without charge to COUNTY, subject to COUNTY approval, which shall not be unreasonably withheld. Nothing contained in the foregoing, however, shall be construed to limit the discretion of COUNTY, in the interest of the public welfare, to settle, defend, or appeal, or to decline settlement or to terminate or forego defense or appeal of a Legal Action. Furthermore, in no event shall COUNTY have any obligation or liability to APPLICANT in connection with COUNTY'S defense or prosecution of litigation related to the Project (including, but not limited to, the outcome thereof) or in the event COUNTY elects not to prosecute a case or defend litigation brought against it. If either COUNTY or APPLICANT determines in good faith that common counsel presents a bona fide conflict of interest, then COUNTY may employ separate counsel to represent or defend the COUNTY, and APPLICANT shall pay the reasonable attorneys' fees and costs of such counsel within thirty (30) days of receiving an itemized billing statement or statements. [Planning]

2. **Notice of Determination (Fish & Game Fees):** The applicant/owner shall be required to file a Notice of Determination for the project. An addendum is not considered a new separate environmental document, therefore, the applicant shall demonstrate (provide a copy to staff of) the receipt for the previously filed and certified Del Webb at San Juan Oaks Specific Plan Subsequent Environmental Impact Report (SCH #2013101006). The notice shall be provided by the County Planning Department and filed by the applicant with the County Clerk within five (5) days of approval of the project. An administrative fee of \$50.00 shall be submitted to the Planning Department for the filing of the notice. [Planning/CDFW].
3. Upon final action on the matter by the Board of Supervisors anticipated in April of 2019 (Adoption of the prepared Ordinance), the applicant and County of San Benito shall **perfect the final language of the First Amendment to the Development Agreement**, as described in materials presented to the Planning Commission March 20, 2019 and as modified or clarified (by motion of) the Planning Commission and Board of Supervisors.

**PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE COUNTY OF  
SAN BENITO THIS 20<sup>th</sup> OF MARCH, 2019 BY THE FOLLOWING VOTE:**

AYES: Commissioner Rodriguez, Commissioner Gibson, Commissioner Egland

NOES: Commissioner Eggert

ABSENT: Commissioner Navarro

ABSTAIN:

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**Robert J. Rodriguez**, Chair  
San Benito County Planning Commission

***ATTEST:***

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**Taven M. Kinison Brown**, Principal Planner  
Resource Management Agency San Benito County