



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Emery Papp, Senior Planner

MEETING DATE: July 9, 2024

SUBJECT: Butterfield Specific Plan Project (“Atwell”) Annual Development Agreement Review for 2024

RECOMMENDATION:

Receive and file the annual review of the Development Agreement for the Butterfield Specific Plan Project being developed by Tri Pointe Homes as the Atwell Master Planned Community, ensuring that the developer is proceeding in good faith and in accordance with Section 12.1 of the Development Agreement and Government Code Section 65865.1.

BACKGROUND:

Government Code Section 65865.1 requires that development agreements include provisions requiring periodic review at least every 12 months, at which time the applicant, or successor in interest thereto, must be required to demonstrate good faith compliance with the terms of the agreement. Section 65865.1 also states that if, as a result of such periodic review, the local agency finds and determines, on the basis of substantial evidence, that the applicant or successor in interest thereto has not complied in good faith with terms or conditions of the agreement, the local agency may terminate or modify the agreement.

The annual review requirements for the Butterfield Specific Plan Project are set forth in Section 12 of the Development Agreement for the Project. In accordance with Section 12 (pages 34-35) of the Development Agreement between the City of Banning (“City”) and Pardee Homes (“Developer”), which was entered into on March 27, 2012, with a subsequent revised effective date of February 9, 2015, the City is conducting an annual review following the commencement of construction, to review the Developer's performance under the Development Agreement on or about each anniversary of the effective date of the Agreement. Try Pointe Homes is a successor in interest to Pardee Homes under the Development Agreement. The Developer has delivered the necessary information, reasonably requested by the City, regarding the Developer's performance under the Agreement. Staff has reviewed the information requested, performed a series of site inspections, conducted several meetings with the Developer, and determined that the Developer has, and continues to, demonstrate compliance with the Agreement. Based on the review, staff has also determined that the Developer is implementing the Development Agreement in good faith, and continues to comply with the provisions and regulations of the adopted Specific Plan, the certified Environmental Impact Report prepared for the Project, and the existing land use regulations applicable to the Project as set forth in the Banning Municipal Code and the Butterfield Specific Plan.

JUSTIFICATION:

A summary of the project activities, over the past year, is detailed in the Table 1 below:

TABLE 1: Atwell Development Activities:

Section 1 - Definitions	Conforming/No Update
Section 2 – Exhibits	Conforming/No Update
Section 3 – Term	Conforming/No Update
Section 4 – Development of the Developer’s Property	(4.7) A Development Impact Fee Update was completed in September 10, 2019.
Section 5 – Financing and the City’s Obligations	Formation of the first, second and third Financing Districts have been completed with the bonds for all three series successfully sold. It is anticipated that the fourth Financing District being formed in the second/third quarter of 2024. A Development Impact Fee Agreement has been approved.
Section 6 – Time for Construction and Completion of Project	<p>(6.1) The development is proceeding at an acceptable pace given current market conditions.</p> <p>(6.2) Permits: All residential permits have been pulled in Phase 1A, Phase 1B and Phase 2A-1. In the new development Phase 2B-1 approximately 51 permits have been pulled. Closings: There have been approximately 460 closings within in Phase 1A, approximately 355 closings within Phase 1B, and approximately 615 closings in Phase 2A-1. All of the homes in the in current phases are in various stages of construction. Sales continue to be strong but there is always the threat of rising interest rates, material costs and material lead times slowing the pace of sales.</p> <p>(6.2.3.) Infrastructure related plans are being developed, have been submitted or approved for all of various development phases.</p> <p>(6.2.4.) Developer has undergone a good faith effort to market the commercial retail planning area. All surrounding infrastructure is in place to accommodate construction should a commercial developer show interest in starting.</p> <p>All other provisions, of Section 6, is proceeding in good faith.</p>

Section 7 – Development Impact Fees	(7.2.2) Development Impact Fee Studies are complete. Adjustments will be made at the 10-year review. (7.3.5.) Fee Impact Studies associated with reclaimed water facilities are complete. (7.5.1 – 7.5.3.) A TUMF Credit Agreement was executed by the City Council at the May 14, 2019 Meeting and work has been completed on Highland Springs Avenue between 8th Street/Wilson Street and Oak Valley Parkway/Meadowline Way.
Section 8 – Dedications and Conveyances of Property Interests	(8.1.1.) Plans have been submitted and are continuing to be submitted for review. Plans are being submitted and actively processed by the City for infrastructure improvements.
Section 9 – Processing of Requests and Applications: Other Government Permits	(9.2) A Deposit Reimbursement Agreement is executed between the Developer and City. (9.3) The City recently implemented a new planning checking software that has slowed the improvement plan turnaround times.
Section 10 – Amendment and Modification of Development Agreement	Conforming/ Settlement Agreement Passed updating Fee Waivers provisions.
Section 11 – Reservations of Authority	Conforming/No Update
Section 12 – Annual Review	Conforming/No Update
Section 13 – Default, Remedies & Termination	Conforming/No Update
Section 14 – Assignment	Conforming/No Update
Section 15 – Releases and Indemnities	Conforming/No Update
Section 16 – Effect of Agreement on Title	Conforming/No Update
Section 17 – City Officers and Employees: Non-Discrimination	Conforming/No Update
Section 18 – Mortgage Protection	Conforming/No Update
Section 19 – Miscellaneous	Conforming/No Update

Public Communication:

The Annual Review of the Development Agreement is a receive and file item and does not require a public hearing or public notice. At the time of this writing, no public comments have been received.

FISCAL IMPACT:

None. As required in Section 12 of the attached Development Agreement, the cost for the annual review is paid by the Developer.

ALTERNATIVES:

Receive and file the annual review of the Development Agreement for the Butterfield Specific Plan

Project.

ATTACHMENTS:

1. [ATT.1- Annual Review Matrix - 2024.pdf](#)
2. [Att 2. Specific Plan Land Use Plan.pdf](#)
3. [Att 3. Dev Agree.Pardee 7-17-12.pdf](#)