



Meeting Date: 10/26/2010

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input checked="" type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Linda Windsor, Associate Planner ^{wd} Agenda Item No. K-1

Reviewed By: City Manager [Signature] City Attorney SMF Finance [Signature] Other (Specify) _____

DATE: October 19, 2010

TO: City Council

FROM: Matthew G. Winegar, Development Services Director [Signature]

SUBJECT: **First Amendment to Development Agreement No. A-7113 (PZ 10-670-03) for Planning District B (West Peripheral Commercial District) in RiverPark. Filed by Oxnard Development Company, LLC, 199 Figueroa St, Suite 100, Ventura CA 93001.**

RECOMMENDATION

That City Council approve the first reading by title only and subsequent adoption of an ordinance approving the First Amendment to the Development Agreement No. A-7113 (PZ 10-670-03), between Oxnard Development Corporation and the City of Oxnard, for property located east of North Ventura Road and south of Town Center Drive, within the RiverPark Specific Plan area, and authorizing the Mayor to execute the First Amendment to the RiverPark Development Agreement after the second reading of the ordinance.

DISCUSSION

On November 18, 2008, the City Council adopted Ordinance No. 2787, approving Planning and Zoning Permit No. 08-670-03 (Development Agreement No. A-7113) between the owners of 4.23 acres at the southwestern portion of the RiverPark Project and the City of Oxnard. These properties were not among the holdings of the original RiverPark development partnerships and were part of the original Oxnard Town Center subdivision. The adopted Development Agreement applies to the two vacant parcels, which consist of 4.23 acres designated for commercial development.

The proposed First Amendment modifies Section 6 (Limitation on Increase of Certain Fees for Five Years) from the current terms to allow an additional five years for commercial building permits and makes corrections to several typographical errors within the document.

Section 6 of the Development Agreement specifies that specific development fees ("Development Impact and Capital Fees") paid to the City for construction of new buildings within this portion of the RiverPark Specific Plan Area will remain at the same level as the fees in effect as of January 6, 2006, and limits the new fees that can be assessed on the project. The Development Agreement currently

provides that the limitations on the fee increases will expire on January 4, 2011. The applicant's justification for this request is that holding development fees at 2006 levels for the extended period will allow these applicants and the developers of the larger portion of the RiverPark project to continue developing the project, including continued construction of required public improvements, despite the delayed recovery of the real estate market. As the larger portion of the project develops, these developers feel it will become more economically feasible to develop this smaller portion of the project.

Staff recommends approval of this portion of the development agreement amendment to allow continued timely development of the RiverPark project, including on- and off-site public improvements. The developers of the RiverPark project have invested significant funds into these improvements, which include (both constructed and under construction) modifications to the Highway 101 northbound off-ramps at Oxnard Boulevard and Vineyard Avenue; widening and landscaping of Gonzales Road east of Oxnard Boulevard; widening of RiverPark Boulevard west of Vineyard Avenue; intersection improvements to Vineyard Ave/RiverPark Boulevard; construction of nine parks and two schools within RiverPark, and reclamation grading work for the open space and recharge basins.

The First Amendment also includes corrections to internal references in the document. Specifically, five section number references within the development agreement incorrectly refer to the wrong section numbers and these references will be corrected as part of this approval. None of these corrections makes substantive changes to the development agreement, and staff recommends approval of these changes.

This proposed development agreement amendment does not change the use or intensity of land uses on the site, and is consistent with the project that was evaluated by the EIR. The fee adjustments and corrections to internal document references do not create any additional environmental impacts not previously analyzed in the EIR. Therefore, staff has determined that the previously certified EIR provides adequate California Environmental Quality Act clearance for this development agreement amendment.

FINANCIAL IMPACT

Staff expects that approval of Amendment No. 1 would result in a net positive impact to the City. The ability of the RiverPark Specific Plan area's commercial components to continue moving forward to build out with the current fixed fees would be a minimal decrease in short-term revenue compared to the longer-term revenues related to the project, such as sales tax, and property tax revenues, as well as other development services and City fees lost due to extended delays of the project or its economic failure.

There would be no negative financial impact to the City of Oxnard for corrections to internal references within the document.

Attachment #1 - Ordinance Approving First Amendment to Development Agreement

Attachment #2 - First Amendment to Development Agreement

CITY COUNCIL OF THE CITY OF OXNARD

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF OXNARD APPROVING A FIRST AMENDMENT TO DEVELOPMENT AGREEMENT NO. A-7113 BETWEEN THE CITY OF OXNARD AND OXNARD DEVELOPMENT COMPANY, A CALIFORNIA LIMITED LIABILITY COMPANY

WHEREAS, Government Code Section No. 65864 et seq. authorizes the City Council to adopt development agreements; and

WHEREAS, Government Code Section No. 65868 et seq. authorizes the City Council to adopt amendments to development agreements; and

WHEREAS, the City of Oxnard ("City") and Oxnard Development Company LLC, a California limited liability company ("Oxnard Development Company") wish to enter into a First Amendment to the Development Agreement No. A-7113, dated November 18, 2008, previously entered into by the parties and on file with the City Clerk's Office (the "Development Agreement"); and

WHEREAS, the Environmental Impact Report (the "EIR") for the RiverPark project, which the City certified in August of 2002, evaluated the impacts of the RiverPark project, of which the property subject to the Development Agreement is a part, and the proposed first amendment to the Development Agreement (the "First Amendment to Development Agreement") would not constitute a change in the RiverPark project that requires subsequent environmental review under the California Environmental Quality Act. Rather, the previously certified EIR provides adequate CEQA clearance for this First Amendment to Development Agreement; and

WHEREAS, the City Council has considered the information contained in such EIR before approving this First Amendment to Development Agreement; and

WHEREAS, the City Council finds, after due study, deliberation and public hearing, that the First Amendment to Development Agreement is a logical refinement of the Development Agreement and that the proposed First Amendment to Development Agreement is consistent with the 2020 General Plan; and

WHEREAS, the City Council provided notice of its intent to consider this First Amendment to Development Agreement in accordance with the requirements set forth in Section 65867 of the Government Code; and

WHEREAS, on _____, 2010, the City Council conducted a public hearing on this First Amendment to Development Agreement in accordance with the requirements set forth in Section 65867 of the Government Code.

NOW, THEREFORE, the City Council of the City of Oxnard does ordain as follows:

Part 1. The "First Amendment to Development Agreement" between the City and Oxnard Development Company, on file with the City Clerk, is hereby adopted.

Part 2. The Mayor is authorized on behalf of the City to execute the "First Amendment to Development Agreement" between the City and Oxnard Development Company.

Part 3. Within fifteen days after passage, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation within the City. Ordinance No. _____ was first read on _____, 2010, and was finally adopted on _____, 2010, to become effective thirty days thereafter. Not later than ten (10) days after such date, the City Clerk shall record a copy of the First Amendment to the Development Agreement between the City of Oxnard and Oxnard Development Company in the office of the Ventura County Recorder.

PASSED AND ADOPTED this ____ day of _____, 2010, by the following vote:

AYES:

NOES:

ABSENT:

Dr. Thomas E. Holden, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:



Alan Holmberg, City Attorney

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Oxnard
305 West Third Street
Oxnard, California 93030
Attention: City Clerk

(Gov. Code § 27361.6)

SPACE ABOVE THIS RESERVED FOR RECORDER'S USE

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

A-7113

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the "Amendment") is made in Ventura County, California as of _____, 2010, by and between the **CITY OF OXNARD**, a municipal corporation of the State of California (the "City") and **OXNARD DEVELOPMENT COMPANY, LLC**, a California limited liability company (the "Developer").

RECITALS

A. The City is authorized pursuant to Government Code sections 65864 through 65869.5 and City Council Resolution No. 10,448 to enter into binding development agreements with persons or entities owning legal or equitable interests in real property located within the City.

B. Oxnard Development Company, LLC is the owner of that certain real property more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").

C. On September 10, 2002, the City Council of the City of Oxnard ("City Council") approved the River Park Specific Plan (the "Specific Plan"). The Property is included in the Specific Plan as Planning District B, the West Peripheral Commercial District.

D. On November 18, 2008 the City and Developer entered into a Development Agreement (the "Agreement") with respect to the development on the Property of certain Commercial regional land uses in conformance with the River Park Specific Plan (the "Project").

E. The City and Developer have determined that execution of this Amendment is appropriate in order to extend the time period during which the Existing Fees as defined in the Agreement shall be fixed.

F. The City has determined that implementation of the Specific Plan has slowed during the current period of downturn in economic activity. The City has determined that execution of the Amendment is necessary for the Developer to implement the Agreement, and that implementation of the Agreement, as amended, is in the interest of the City and its citizens.

G. This Amendment will benefit the Developer and the City by eliminating uncertainty in planning and providing for the orderly development of the Project thereby serving the public interest within the City and the surrounding region.

H. The City Council has given notice of its intention to consider this Amendment, has conducted a public hearing thereon pursuant to the relevant provisions of the Government Code, and has found that the provisions of this Amendment are consistent with the City's General Plan for development within the City, City zoning ordinances, and the Specific Plan. The City Council has also specifically considered the impacts and benefits of the Amendment upon the welfare of the residents of the City and the surrounding region. The City Council has determined that this Amendment is beneficial to the residents of the City and is consistent with the present public health, safety and welfare needs of the residents of the City and the surrounding region.

NOW, THEREFORE, in consideration of the foregoing Recitals which are hereby incorporated into the operative provisions of this Amendment by this reference and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and the Developer agree as follows:

1. **Amendment of Section 6 of Agreement.** Section 6 of the Agreement shall be deleted in its entirety and replaced with the following:

“6. Project’s Payment of Development Impact and Capital Fees. Developer shall pay all development impact and capital fees applicable to the Project at such time and in such manner as is provided in the Applicable Law of the Project (“Existing Fees”). The Existing Fees shall be fixed for a period of ten (10) years after January 4, 2006, which constitutes the Fee Start Date contained in the River Park development agreement. The Existing Fees shall consist of those development impact and capital fees in existence on January 4, 2006, including but not limited to Growth Requirement Capital Fees, Planned Drainage Fees, Planned Traffic Circulation Facilities Fees, Planned Wastewater Facilities Fees and Planned Water Facilities Fees. The Existing Fees shall only include such fees that are retained by the City and not paid to another governmental agency, and that offset or reimburse the City for the increased impacts on the City’s public improvements due to development. Any new City development impact and capital fees, and any increases in the Existing Fees, shall be applied to those portions of the Project and Property that receive a building permit ten (10) or more years after January 4, 2006. Any increase in any fee applicable to the Project shall only be applicable to the Project to the extent that any such fee increase is applied consistently and proportionately in accordance with applicable law.”

2. **Correction of Typographical Errors in Agreement.** Typographical errors in the Agreement shall be corrected as follows:

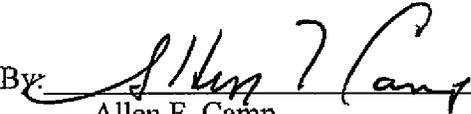
- In Paragraph 5(c), reference to "Paragraph 20(m)" shall be changed to "Paragraph 22(m)."
- In Paragraph 17.1.3, reference to "Paragraph 15.1.2" shall be changed to "Paragraph 17.1.2."
- In Paragraph 17.1.4, reference to "Paragraph 20(e)" shall be changed to "Paragraph 22(e)."
- In Paragraph 17.1.5, references to "Paragraph 20(a)" shall be changed to "Paragraph 22(a)."
- In Paragraph 22(e), references to "Paragraph 20(e)" shall be changed to "Paragraph 22(e)."

3. **No Other Amendments to Agreement.** Except as set forth above, all other provisions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the City and Developer hereto have each executed this First Amendment to Development Agreement as of the date first written above.

Developer:

OXNARD DEVELOPMENT COMPANY,
a California Limited Liability Company
By: Ventura Land Development Company,
a California Limited Liability Company, its
Managing Member

By: 
Allen F. Camp
Manager

CITY OF OXNARD, a municipal corporation of
the State of California

Dr. Thomas E. Holden, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:



Alan Holmberg, City Attorney

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Exhibit A

All that certain real property situated in the County of Ventura, State of California, described as follows:

Lots 8 and 9 of Tract No. 4334, in the City of Oxnard, County of Ventura, State of California, as per map recorded in Book 114, pages 62 to 66 of maps, in the Office of the County Recorder of said County.

Excepting therefrom an undivided one-half interest in and to all oil, gas, other hydrocarbon substances and minerals in and under the property herein described, without, however, the right to enter upon the surface thereof or within 500 feet beneath the surface thereof as reserved in the deed recorded in Book 4723, Page 472 of Official Records.

Also excepting therefrom the remainder of all the oil, gas, other hydrocarbon substances and minerals in and under said property, without, however the right to enter on the surface thereof or within 500 feet beneath the surface thereof as reserved in the deeds recorded December 3, 1986 as Instrument No. 86-175822 through 86-175828, of Official Records.

APN: 132-0-100-085 and 132-0-100-095