

AGENDA ITEM 5

REQUEST

PUBLIC HEARING TO CONSIDER INTRODUCING AN ORDINANCE APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH SURLAND COMMUNITIES, LLC FOR THE ELLIS SPECIFIC PLAN PROPERTY. THE ELLIS SPECIFIC PLAN SITE IS APPROXIMATELY 321 ACRES LOCATED AT THE NORTHWEST CORNER OF CORRAL HOLLOW ROAD AND LINNE ROAD.

EXECUTIVE SUMMARY

This agenda item involves a public hearing to consider Surland Communities, LLC's (Project Applicant, or Surland) application for an amendment to the Development Agreement between the City and Surland. The Development Agreement is titled: Amended and Restated Development Agreement by and between the City of Tracy and Surland Communities, LLC (Original DA or DA). The DA relates to the development of the Ellis project, which proposes a mix of residential, commercial, office/professional, institutional, and recreational uses, parklands, and a Swim Center (collectively, the Project or Ellis Project) at the 321-acre project site. The proposed amendment to the DA would make several changes to how Residential Growth Allotments (RGAs) are processed and how the Swim Center would be constructed, among other changes. The Planning Commission evaluated this application at a public hearing on February 14, 2018, and recommended approval of the DA subject to several changes.

DISCUSSION

Currently, the DA gives Surland the rights to develop Ellis, and makes Surland eligible for up to 2,250 RGAs to be used to develop the Ellis property, based on its existing zoning range of between 1,000 and 2,250 residential units. The amendment to the DA contemplates the developer using Residential Growth Allotments (RGAs) that the developer does not use to develop Ellis (2,250 less the number chosen to develop Ellis) on potential future development areas selected by Surland, if such future development areas are approved by the City Council through typical application processing requirements at the discretion of the City Council. The DA Amendment would also allow Surland, if the City elects to have the Swim Center built within the Ellis Specific Plan area, to design and construct the Swim Center in lieu of paying the outstanding \$8 million contribution. All design and construction costs in excess of \$8 million are to be paid by the City. Additional terms and provisions of the proposed DA Amendment are described below.

History of DA and Summary of Key Terms in the proposed DA Amendment:

On March 5, 2013, the City adopted an Ordinance approving the DA, which provided for, among other things, Surland to dedicate 16 acres of real property in Ellis to be used as a Swim Center, and to pay \$10 million to the City to help fund the design and construction of the Swim Center.

The DA was amended on May 20, 2014 via Ordinance 1194, which provided that the Swim Center funding be installed in two payments. On September 15, 2014, Surland made the first installment payment of \$2 million dollars. Pursuant to the amended DA, the second payment of \$8 million was due on September 15, 2015.

In March of 2014, the City and Surland explored the possibility of forming a public private partnership with Wild Rivers Waterpark, which ultimately was not pursued.

In September of 2014, Surland provided the City with an Irrevocable Offer to Dedicate 16 acres of land within the Specific Plan area (the "Land Dedication Offer"), as required by the DA, which was recorded by the City. However, on February 2, 2015, Surland notified the City that the Land Dedication Offer had inadvertently included certain land designated for commercial uses that Surland did not intend to dedicate to the City. Surland also notified the City that it would submit a new, modified Land Dedication Offer by February 4, 2015. Following that disclosure by Surland, in March of 2015, the City and Surland realized that the recorded Land Dedication Offer also overlapped, to a small extent, with land that was the subject of a tentative subdivision map for residential development submitted by Surland and approved by the City. Following this discovery, the City and Surland agreed to shift the proposed site for the swim center slightly to the south, to remove the inadvertently included commercial land, conform to the approved tentative map, and to better accommodate the proposed Swim Center. To date, the City has not received a revised Land Dedication Offer from Surland.

In August of 2016, the City Council approved Surland's request to authorize staff to negotiate a second amendment to the Development Agreement, to extend the time for Surland to make its second Swim Center contribution payment of \$8 million, and extend the time for the City to accept the Land Dedication Offer so that Surland would have additional time to prepare the revised land dedication offer. In exchange for these extensions of time, Surland offered to (a) construct certain infrastructure improvements intended to serve the proposed Swim Center, (b) construct a monument sign for the proposed Swim Center, and (c) provide \$100 thousand of funding for the design of the Swim Center. To give the parties time to prepare and process this proposed Second Amendment, the City and Surland executed a tolling agreement extending the deadlines for Surland's \$8 million payment and the City's acceptance of the Land Dedication Offer.

In December of 2016, the City and Surland agreed to expand the scope of negotiations for the second amendment to the DA to address the potential for Surland to construct the swim center in lieu of making its outstanding \$8 million payment, and bring additional property not within the existing Ellis Specific Plan area within the coverage of the DA. To give the parties time to conduct and complete these expanded negotiations, the City and Surland executed a Second Tolling Agreement to further extend Surland's \$8 million payment deadline and the City's deadline for accepting the Land Dedication Offer, moving both of these deadlines to December of 2017. Because the parties were not able to complete their negotiations and processing of the proposed Second Amendment, the parties executed a Third Tolling Agreement in December of 2017, extending these deadlines to April 4, 2018.

Surland's proposed Second Amendment to the Amended and Restated Development Agreement By and between the City of Tracy and Surland Communities, LLC (the "Proposed DA Amendment"), is attached here as Attachment A and is labeled Exhibit 1

to the Proposed Ordinance To assist the City Council and the public in evaluating the merits of Surland's proposal, below is a comparison of the respective benefits to the City and Surland under the existing DA and under the DA as it would be amended by Surland's Proposed DA Amendment.

Public Benefits:

Existing DA

- Surland to pay \$10 million for a Swim Center. First payment of \$2 million was received, second payment tolled to April 4, 2018.
- Surland to dedicate 16 acres of land for a Swim Center within the Ellis Specific Plan area. Surland has provided City with irrevocable offer of dedication, but must provide City with a modified offer to conform to site selected by City Council.
- Design assistance for the construction of a Swim Center, to the extent Surland has voluntarily provided such assistance to date.

Proposed DA Amendment

- The outstanding \$8 million payment, shall be satisfied in full by Surland by providing \$8 million of design and construction costs for the Swim Center, if the City elects to have it built within the Ellis Specific Plan. Surland would get credit against the \$8 million payment for design costs Surland incurred voluntarily under existing DA. Exhibit D to Surland's Proposed DA Amendment is the anticipated Swim Center Design, Funding and Construction Agreement between the City and Surland.
- Surland shall design and construct an entrance sign for the Swim Center at the corner of Summit Drive and Corral Hollow Road at Surland's sole expense in an amount not to exceed \$150,000.
- Surland shall fund up to \$100,000 in costs for Surland's consultants to work with the City to design a Swim Center.
- Surland shall construct the frontage improvements and the stubbed utilities for the Swim Center on Summit Drive.
- Surland shall expand and improve the Summit Drive paved travel section to the northeast along the frontage of the Swim Center to a five-foot wider section to accommodate potential future Swim Center turn lanes.

Developer Benefits:

Existing DA

- Vesting project approvals for the Ellis Specific Plan for the term of the DA (25 years).

- Up to 2,250 RGAs for use at Ellis Specific Plan at a maximum rate of 225 per year.
- Water supply for 2,250 residential units.
- Naming rights to the Swim Center.
- No wastewater treatment cost for first 800 residential units of wastewater capacity.
- No cost for 550 units of Corral Hollow wastewater conveyance.

Proposed DA Amendment

- Removal of the annual limit and the overall limit on RGAs, so that Surland will be eligible for more than 225 RGAs per year and more than 2,250 RGAs over the term of the DA, pursuant to the GMO Guidelines and the DA.
- Surland will have a right of first refusal for any RGAs not claimed by Tracy Hills, up to the GMO limits of 600 per year or 750 per year.
- All owners of property within the coverage of the DA (existing Ellis Specific Plan area plus any future property added to the DA) will receive free annual passes to the Swim Center in exchange for an annual contribution of \$110 per lot via the Ellis Community Facilities District (CFD) for Swim Center maintenance.
- Validity of Building Permits issued to Owner shall be extended to 24 months, and plans approved at issuance of Building Permits may be modified without payment of normal plan inspection fees.
- Owner shall have the right to execute an agreement with the City to provide for payment of certain development impact fees at close of escrow for each residential unit and at final inspection for commercial projects, rather than at issuance of building permit.
- Modifications to park approval process to approve all parks as part of the Specific Plan Approval, where only major modifications would come back to the Parks Commission for approval.
- Affirmation of the intent to expand the coverage of the existing DA in the future to other properties for the benefit of using RGAs and potential nexus infrastructure if future applications are approved by Council, in Council's discretion, consistent with Section 1.02 of the DA.
- City and Owner to execute an Infrastructure Reimbursement Agreement to expand Surland's rights to fee credits and reimbursement of infrastructure costs beyond existing requirements of Title 13 of Municipal Code, and grant

Surland a priority over all other property owners in City with respect to future credits and reimbursements.

- Expansion of existing naming rights for the Swim Center to include additional naming options for Surland, rights to approve types and placement of signs and advertising, and other marketing related restrictions on the City's use of the name.
- All owners of property within the coverage of the DA (existing Ellis Specific Plan area plus any future property added to the DA) and the Ellis CFD will be exempted from all future fees and assessments adopted by the City to fund police services, fire services, public works services, public landscaping, park maintenance, storm basin maintenance, and all other public services.
- Surland and its assigns shall have priority access to purchase, from the City or any other event promoter, at the standard ticket price, tickets to all events held at the Swim Center, and Surland to have a reserved cabana at the Swim Center, in a location selected by Surland, for Surland's exclusive use.

The City has received comment letters in regards to the proposed DA Amendment (Attachment B).

Planning Commission Discussion

On February 14, 2018, the Planning Commission evaluated the application at a public hearing. After several hours of presentation, public testimony and dialogue, the Planning Commission voted 3-0-2 to recommend approval of the DA, subject to several modifications, as noted below. (Attachment C- Planning Commission Resolution). Two Planning Commissioners were not in attendance on February 14, 2018.

The modifications requested by the Planning Commission include the following:

- Reduce the number of Residential Growth Allotments (RGAs) available to Owner under Section F.3 of the Growth Management Ordinance (GMO) Guidelines to 2,000 (as opposed to the 2,250 currently proposed in the Proposed DA Amendment);
- Delete the provisions in the Proposed DA Amendment to expand the scope of the property covered by the DA and limit its application to include the property that currently comprises the Ellis Specific Plan area as of the date of the Amendment;
- Delete Paragraph 1.8 ("Right of Use") of Exhibit A to the Proposed DA Amendment, "Aquatic Park Terms," which proposes, among other things, priority access to event tickets and private use of a cabana;
- Modify the provisions of the Proposed DA Amendment that would provide free annual family passes to the Swim Center to owners of property covered by the DA to instead provide such property owners with a 50% discount on annual family passes in exchange for the annual \$110 per lot CFD contribution for Swim Center maintenance;
- Delete the last two lines of the paragraph defining "Total Cost" under Section 1, "Definitions," of Exhibit D ("Swim Center Design, Funding, and Construction

- Agreement”) to the Proposed DA Amendment. The last two lines state that the total cost includes the cost of land at a cost of \$210,000 per acre. This is language from a different agreement that was included in error; and
- Delete the provisions of the DA that would extend the life of building permits to twenty-four months.

Attachment D is the proposed DA Amendment with modifications recommended by the Planning Commission.

Environmental Document

On January 22, 2013, the City Council certified the Environmental Impact Report (EIR) for the Ellis Project (SCH#2012022023), which also supported the City’s approval of the Original DA. In accordance with California Environmental Quality Act (CEQA) Guidelines Section 15164, an Addendum to the EIR was prepared for the Proposed DA Amendment, as well as for the proposed Ellis Specific Plan Amendment and the associated General Plan Amendment and Zoning Ordinance Amendment being reviewed by Council at the same meeting as this item. The Addendum to the EIR is attached here as Attachment E.

Pursuant to CEQA Guidelines Section 15162 and based on the analysis and evaluation provided in the Addendum, and because any new development outside the existing Ellis Specific Plan Area would be subject to the Council’s discretionary approval and full CEQA review, consistent with existing Section 1.02 of the DA, no new significant impacts would occur from approval of the Proposed DA Amendment, nor would there be any substantial increase in the severity of any previously-identified significant environmental impact. In addition, no new information of substantial importance shows that mitigation measures or alternatives that were previously found not to be feasible or that are considerably different from those analyzed in the EIR would substantially reduce one or more significant effects on the environment. Therefore, pursuant to CEQA Guidelines Section 15164, an Addendum to the EIR, as prepared in compliance with CEQA, is the appropriate CEQA document and is adequate to support the Proposed DA Amendment.

RECOMMENDATION

Staff recommends that City Council discuss the Proposed DA Amendment, consider the Planning Commission recommendation, and take action on the application.

Prepared by: Andrew Malik, Development Services Director

Reviewed by: Karin Schnaider, Finance Director
Kul Sharma, Interim Assistant City Manager

Approved by: Randall Bradley, Interim City Manager

ATTACHMENTS

Attachment A – Surland’s Proposed DA Amendment
Attachment B – Comment Letters

Agenda Item 5
March 13, 2018
Page 7

Attachment C – Planning Commission Resolution Recommending Approval of DA Amendment with Modifications

Attachment D – Proposed DA Amendment with Planning Commission’s Modifications

Attachment E – Addendum to EIR