

Planning Commission

Hearing Date: August 22, 2023

Effective Date: August 23, 2023

PLANNING COMMISSION RESOLUTION NO. 2023-14

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ESCONDIDO, CALIFORNIA, RECOMMENDING CITY COUNCIL APPROVAL OF AN EXTENSION OF TIME FOR AN EXECUTED DEVELOPMENT AGREEMENT

APPLICANT: Trumark Homes (Paul Faye)

CASE NO: PL23-0270

WHEREAS, Trumark Homes (“Applicant”) filed a land use development application, Planning Case No. PL23-0270 (“Application”), constituting a request for an Extension of Time to amend a previously executed Development Agreement (“Project”) on a 41.27-acre site located at the intersection of Bear Valley Parkway and Encino Drive, addressed at 661 Bear Valley Parkway (APN 237-131-01-00 and 237-131-02-00), in the Planned Development – Residential (PD-R) Zone; and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as though fully set forth herein (“Property”); and

WHEREAS, the Application was submitted to, and processed by, the Planning Division of the Development Services Department in accordance with the rules and regulations of the Escondido Zoning Code and the applicable procedures and time limits specified by the Permit Streamlining Act (Government Code section 65920 et seq.) and the California Environmental Quality Act (Public Resources Code section 21000 et seq.) (“CEQA”); and

WHEREAS, amendments to Development Agreements are permitted, in accordance with Section 33-1142 of Article 58 (Development Agreements) of the Escondido Zoning Code; and

WHEREAS, pursuant to CEQA and the CEQA Guidelines (Title 14 of California Code of Regulations, Section 15000 et. seq.), the City is the Lead Agency for the Project, as the public agency with the principal responsibility for approving the proposed Project; and

WHEREAS, the Planning Division studied the Application, performed necessary investigations, prepared a written report, and hereby recommends approval of the Project as described in the First Amendment to the Development Agreement shown in Exhibit "B," which is attached hereto and made a part hereof by this reference as though fully set forth herein; and

WHEREAS, City staff provided public notice of the application in accordance with City and State public noticing requirements; and

WHEREAS, on August 22, 2023, the Planning Commission held a duly noticed public hearing as prescribed by law, at which time the Planning Commission received and considered the reports and recommendation of the Planning Division and gave all persons full opportunity to be heard and to present evidence and testimony regarding the Project. Evidence was submitted to and considered by the Planning Commission, including, without limitation:

- a. Written information including plans, studies, written and graphical information, and other material, submitted by the Applicant;
- b. Oral testimony from City staff, interested parties, and the public;
- c. The staff report, dated August 22, 2023, with its attachments as well as City staff's recommendation on the Project, which is incorporated herein as though fully set forth herein; and
- d. Additional information submitted during the public hearing; and

WHEREAS, the public hearing before the Planning Commission was conducted in all respects as required by the Escondido Municipal Code and the rules of this Planning Commission.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Escondido that:

1. The above recitations are true and correct.

2. The Planning Commission, in its independent judgement, has determined that the Project does not require further environmental review beyond what was analyzed under the previously certified Final Environmental Impact Report (SCH No. 2016111060)

3. After consideration of all evidence presented, and studies and investigations made by the Planning Commission and on its behalf, the Planning Commission makes the following substantive findings and determinations, attached hereto as Exhibit "C," relating to the information that has been considered. In accordance with the Findings of Fact and the foregoing, the Planning Commission reached a recommendation on the matter as hereinafter set forth.

4. The Application is hereby **recommended for approval to the City Council**. The Planning Commission expressly declares that it would not have recommended approval of this Application except upon and subject to each and all of said conditions, each and all of which shall run with the land and be binding upon the Applicant, the owner, and all subsequent owners of the Property, and all persons who use the Property for the use permitted hereby.

BE IT FURTHER RESOLVED that, pursuant to Government Code section 66020(d)(1):

1. NOTICE IS HEREBY GIVEN that the Project is subject to dedications, reservations, and exactions, as specified in the Conditions of Approval. The Project is subject to certain fees described in the City of Escondido's Development Fee Inventory on file in both the Community Development and Public Works Departments. The Applicant shall be required to pay all development fees of the City then in effect at the time and in such amounts as may prevail when building permits are issued. It is the City's intent

that the costs representing future development's share of public facilities and capital improvements be imposed to ensure that new development pays the capital costs associated with growth. The Applicant is advised to review the Planned Fee Updates portion of the web page, www.escondido.org, and regularly monitor and/or review fee-related information to plan for the costs associated with undertaking the Project.

2. NOTICE IS FURTHER GIVEN that the 90-day period during which to protest the imposition of any fee, dedication, reservation, or other exaction described in this Resolution begins on the effective date of this Resolution, and any such protest must be in a manner that complies with Government Code section 66020.

PASSED, ADOPTED, AND APPROVED by a majority vote of the Planning Commission of the City of Escondido, California, at a regular meeting held on the 22nd day of August, 2023, by the following vote, to wit:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAINED: COMMISSIONERS:
ABSENT: COMMISSIONERS:

RICK PAUL, Chair
Escondido Planning Commission

ATTEST:

ADAM FINESTONE, Secretary of the
Escondido Planning Commission

I hereby certify that the foregoing Resolution was passed at the time and by the vote above stated.

Alexander Rangel, Minutes Clerk
Escondido Planning Commission

Decision may be appealed to City Council
pursuant to Zoning Code Section 33-1303

EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of Escondido, County of San Diego, State of California, described as follows:

PARCEL 1: (APN 237-131-01-00)

LOTS 2, 3 AND 4 IN BLOCK 257 OF THE RANCHO RINCON DEL DIABLO, ACCORDING TO MAP THEREOF NO. [648](#), FILED ON NOVEMBER 20, 1890, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO THAT PORTION OF THE UNNAMED STREET BOUNDED ON THE WEST BY SAID LOTS 2 AND 3 AND ON THE EAST BY SAID LOT 4 IN SAID BLOCK 257, VACATED AND ABANDONED TO PUBLIC USE MAY 29, 1939, BY THE BOARD OF SUPERVISORS OF SAN DIEGO COUNTY, A COPY OF SAID VACATION RECORDED JUNE 05, 1939 IN [BOOK 901, PAGE 449](#) OFFICIAL RECORDS.

EXCEPTING THEREFROM THOSE PORTIONS OF SAID LOTS 2 AND 3, LYING NORTHERLY AND WESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF SAID LOT 3 DISTANT THEREON SOUTH 14°15' EAST 853.5 FEET FROM THE MOST WESTERLY CORNER OF SAID LOT 3, RUNNING THENCE NORTH 75°45' EAST 163.0 FEET; THENCE NORTH 3°32' EAST 247.6 FEET; THENCE NORTH 37°41' EAST 277.3 FEET; THENCE NORTH 52°07' EAST 293 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF SAID LOT 2 WHICH IS DISTANT THEREON SOUTH 40°05' WEST 1157 FEET FROM THE ANGLE POINT IN SAID SOUTHEASTERLY LINE LYING IMMEDIATELY WEST OF THE MOST NORTHERLY CORNER OF LOT 4 IN SAID BLOCK 257.

ALSO EXCEPTING THEREFROM THOSE PORTIONS OF SAID LOTS 3 AND 4 AND OF THE SAID VACATED STREET LYING BETWEEN SAID LOTS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID LOT 4; THENCE NORTH 8°39' EAST ALONG THE EASTERLY LINE OF SAID LOT 4, 1120 FEET; THENCE NORTH 79°37' WEST 352.9 FEET; THENCE SOUTH 34°05' WEST 331.7 FEET; THENCE SOUTH 50°49' WEST 104.3 FEET; THENCE SOUTH 34°58' WEST 592.1 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF SAID LOT 3; THENCE SOUTH 14°15' EAST ALONG THE SOUTHWESTERLY LINE OF LOT 3 AND ALONG THE SOUTHWESTERLY LINE OF THE VACATED UNNAMED STREET ABOVE REFERRED TO, 184.2 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT 4; THENCE SOUTHEASTERLY ALONG THE SOUTHERLY LINE OF SAID LOT 4 TO THE POINT OF BEGINNING.

PARCEL 2: (APN 237-131-02-00)

THOSE PORTIONS OF LOTS 3 AND 4 IN BLOCK 257 OF RANCHO RINCON DEL DIABLO, ACCORDING TO MAP THEREOF NO. [648](#), FILED ON NOVEMBER 20, 1890, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND OF THE UNNAMED STREET LYING BETWEEN SAID LOTS 3 AND 4, VACATED AND ABANDONED TO PUBLIC USE MAY 29, 1939, BY THE BOARD OF SUPERVISORS OF SAN DIEGO COUNTY A COPY OF SAID VACATION RECORDED JUNE 05, 1939 IN [BOOK 901, PAGE 449](#) OFFICIAL RECORDS. DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID LOT 4; THENCE NORTH 8°39' EAST ALONG THE EASTERLY LINE OF SAID LOT 4, 1120 FEET; THENCE NORTH 79°37' WEST 352.9 FEET; THENCE SOUTH 34°52' WEST, 331.7 FEET; THENCE SOUTH 50°49' WEST 104.3 FEET; THENCE SOUTH 34°58' WEST, 591.1 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF SAID LOT 3; THENCE SOUTH 14°15' EAST

ALONG THE SOUTHWESTERLY LINE OF SAID LOT 3 AND ALONG THE SOUTHWESTERLY LINE OF THE VACATED UNNAMED STREET ABOVE REFERRED TO, 184.2 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT 4; THENCE SOUTHEASTERLY ALONG THE SOUTHERLY LINE OF SAID LOT 4 TO THE POINT OF COMMENCEMENT.

EXCEPTING THEREFROM THAT PORTION OF SAID LAND AS GRANTED TO THE COUNTY OF SAN DIEGO BY DOCUMENT RECORDED OCTOBER 29, 1969 AS DOCUMENT NUMBER [198728](#) OF OFFICIAL RECORDS.

EXEMPT FROM FEES pursuant to Gov't Code §§ 6103, 27383, and 27388.1 (filing requested/executed by municipality)

RECORDING REQUESTED BY, AND WHEN RECORDED RETURN TO:

Planning Division
City of Escondido
201 North Broadway
Escondido, California 92025-2798

This Space for Recorder's Use Only

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (“**First Amendment**”) is made and entered into effective this _____ day of _____, 2023 (“**Effective Date**”), by and between by and between the City of Escondido, a California municipal corporation (“**City**”), and TH Bear Valley Escondido LLC (“**Owner**”). (The City and Owner each may be referred to herein as a “**Party**” and collectively as the “**Parties**”

WHEREAS, the City and prior owner, Spieth & Wohlford, Inc., previously entered into that certain Development Agreement for 661 Bear Valley Parkway recorded in the Official Records of San Diego County, California, on November 5, 2018, as Instrument No. 2018-0462661 (“**Development Agreement**”), pertaining to that certain real property designated as Assessor’s Parcel Nos. (APNs) 237-131-01 and 237-131-02, as more particularly described in the Development Agreement (the “**Property**”); and

WHEREAS, subsequent to the execution of the Development Agreement, the Property was sold and ownership is now vested in Owner; and

WHEREAS, the Parties desire to amend the Development Agreement to extend its term;

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements, and conditions herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Extension of Term of Development Agreement. The Term of the Development Agreement is hereby extended by a period of two years, commencing on September 21, 2023 and expiring on September 21, 2025.
2. Counterparts. This First Amendment may be executed on separate counterparts that, upon completion, may be assembled into and shall be construed as one document.
3. Effective Date. Unless a different date is provided in this First Amendment, the

effective date of this First Amendment shall be the latest date of execution set forth by the names of the signatories below.

IN WITNESS WHEREOF, this First Amendment is executed by the Parties or their duly authorized representatives as of the Effective Date:

CITY OF ESCONDIDO,
a California municipal corporation

By: _____ Date: _____
Dane White
Its: Mayor

TH BEAR VALLEY ESCONDIDO LLC
a California Limited Liability Company

By: _____ Date: _____
Gregg A. Nelson
Its: Manager

(ABOVE SIGNATURES MUST BE NOTARIZED; ACKNOWLEDGMENT PAGES FOLLOW)

Approved as to Form:

OFFICE OF THE CITY ATTORNEY
Michael R. McGuinness, City Attorney

M. Dare DeLano, Senior Deputy City Attorney

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA]

COUNTY OF _____]

On _____, before me,

_____, a Notary Public, personally appeared

_____, who proved to me on the basis of

satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument

and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),

and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of

which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

City

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA]

COUNTY OF _____]

On _____, before me,

_____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

Owner

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA]

COUNTY OF _____]

On _____, before me,

_____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

City

EXHIBIT "C"

PLANNING CASE NOS. PL23-0270

FACTORS TO BE CONSIDERED / FINDINGS OF FACT

Environmental Determinations:

In accordance with Public Resources Code section 21166 and California Environmental Quality Act (CEQA) Guidelines section 15162, the Planning Commission finds and determines as follows:

1. The potential environmental effects of the actions described in the original Project have been analyzed, considered and mitigated through an Initial Study and a Final Environmental Impact Report ("FEIR") (SCH: 2016111060) prepared and certified on August 18, 2018, pursuant to CEQA. See City Council Resolution No. 2018-20.
2. The City has evaluated and considered the changes that would be implemented by the Project, as amended or modified. These changes do not involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
3. The City has evaluated and considered the changes with respect to the circumstances under which the actions identified in revised Details of Request, as amended by the Project, are being undertaken. The changes with respect to these circumstances do not involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
4. The City is not aware of any new information of substantial importance that discloses that the actions described in the Project, as amended or modified, will have other or more severe significant environmental effects not previously discussed or that previously rejected or other mitigation measures or alternatives are now feasible and effective.
5. Therefore, the Final Environmental Impact Report remains adequate and no further CEQA environmental analysis is required for Project as amended or modified.

Development Agreement Findings (Escondido Zoning Code Section 33-1138)

The proposed project is consistent with the objectives of the General Plan, complies with applicable zoning regulations, Specific Plan provisions, Special Planning Area provisions, and Improvement standards adopted by the City as described below.

1. *The project is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;*

The Project is for an Extension of Time for a previously executed Development Agreement. The Project is in substantial conformance with previous approvals related to SUB15-0002, PHG15-0004, and ENV15-0001. The Project is consistent with policies related to Development Agreements as outlined in the City's 2012 General Plan.

2. *The project is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located and all other provisions of Chapter 33 of this code;*

The Project is related to SUB15-0002, PHG15-0004, and ENV15-0001, which is for a residential development. Residential uses are permitted within the Planned Development – Residential (PD-R) zone. The Project has been previously analyzed for conformance with the regulations contained in Chapter 33 (Escondido Zoning Code). No changes are proposed as a part of this Project's request.

3. *The project is in conformity with public convenience, general welfare and good land use practices;*

The Project substantially conforms to approvals associated with SUB15-0002, PHG15-0004, and ENV15-0001. The Project conforms with the public convenience, general welfare and good land use practices. The Extension of Time will allow for the Applicant to implement the original Project's approvals.

4. *The project will not be detrimental to the health, safety and general welfare;*

The Project is for an Extension of Time for a previously executed Development Agreement. The Extension of Time will not be detrimental to the health, safety and general welfare.

5. *The project will not adversely affect the orderly development of property or the preservation of property values;*

The Project is for an Extension of Time that would allow the Applicant to substantially implement the orderly development of the subject property.

6. *The project is consistent with the provisions of [Government Code](#) Section 65864 et seq*

The Project will extend a previously executed Development Agreement for another two years so that the Applicant may finalize post-entitlement permits. The amended Development Agreement will continue to be consistent with the provisions of Government Code Section 65864.