



COUNTY OF SAN DIEGO

LAND USE AGENDA ITEM

BOARD OF SUPERVISORS

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DATE: October 9, 2024

02

TO: Board of Supervisors

SUBJECT

EXTENSION OF PERFORMANCE COMPLETION DATE ON SECURED AGREEMENT TO COMPLETE SUBDIVISION IMPROVEMENTS AND RELATED CEQA FINDINGS (DISTRICT: 5)

OVERVIEW

Private property owners may use the County of San Diego's (County) land development process to further subdivide their land within the existing legal boundaries of their property, creating new internal legal lots and boundaries which are recorded on subdivision maps. Subdivision developers, as conditions of their permits, are often required to construct specific improvements that benefit the public, such as roads and storm drainage systems. In many cases, these improvements are accepted by the County into the County-maintained system at the completion of the project to be owned, operated, and maintained by the Department of Public Works (DPW) in perpetuity.

Subdivision improvement agreements and the requirement for developers to provide security (i.e., a bond or other financial instrument) ensure that any required improvements are constructed for approved subdivisions with a recorded map. The security amount is 100% of the total estimate of the improvements, conditioned on the developer's completion of the improvements listed in the agreement, and an additional amount of 50% securing payment for labor and materials in the event the developer does not complete the improvements as required. If a developer defaults without completing the improvements included in the subdivision improvement agreement, this security can potentially be used by its provider (e.g., surety), a new owner, or the County to finance the completion of the required improvements.

The San Diego County (County) Code of Regulatory Ordinances allows for and establishes the requirements for time extensions for the completion of these required improvements on private development subdivisions in order to grant the developer additional time to complete construction, while simultaneously preserving the County's rights to have the improvements constructed by the developer. It is not uncommon for development projects to require extended time to complete the improvements. Construction schedules can be affected by local economic conditions, the developer's circumstances, permitting, site conditions, and other related factors.

SUBJECT: EXTENSION OF PERFORMANCE COMPLETION DATE ON SECURED AGREEMENT TO COMPLETE SUBDIVISION IMPROVEMENTS AND RELATED CEQA FINDINGS (DISTRICT: 5)

DPW staff monitors the status of subdivision improvement agreements and the associated work. If developers need additional time and wish to extend the agreement, they can submit an extension request and provide a current cost estimate of the remaining work. DPW staff reviews the estimate to confirm the total security is adequate based on construction progress and estimated costs for remaining work based on current pricing. If staff determine a time extension is appropriate, staff will then bring the request forward for Board of Supervisors (Board) consideration. Extending the agreement ensures the County's legal rights regarding the improvements are continued.

On July 15, 1998 (6), the Board approved the Final Subdivision Map and Joint Improvement Agreement (Agreement) between the County, the Valley Center Municipal Water District, and the subdivision owner. This is known as Tract No. 4744-1, Rimrock, in District 5, located in the North County Metro Area., which includes street and drainage improvements, and water and sewer facilities. Construction of the housing units and the improvements supporting the development are both 60% complete. The project will include bioretention basins on individual lots and tree wells to address stormwater quality. The Agreement has been extended six times previously; the Board last approved an extension to the Joint Improvement Agreement on November 17, 2021 (03). As stated in the Agreement, the Board may extend the completion dates for all work and improvements or the performance of acts or contractual obligations, except the improvement of sewer and/or water facilities, which must be approved by the Valley Center Municipal Water District. The developer will seek an extension on the remaining improvements from the Water District separately.

This is a request for the Board to approve a two-year extension of performance completion date for the subdivision. This project has 70 single-family residential lots and the overall area is 196.6 acres.

DPW staff have determined an extension is appropriate to preserve the County's legal rights under the agreement, and because of the County's continued interest in receiving the improvements. DPW staff also confirmed the absence of negative impacts associated with later delivery of the remaining improvements. Staff has also determined that there is adequate security for all improvements (i.e., capacity through a bond or other financial instrument) to guarantee completion of the remaining work for the agreement, should that become necessary to leverage in the future to ensure improvements are constructed. For these reasons, staff believes there are no adverse consequences to granting the developers additional time to complete the improvements.

Today's request is for the Board to approve the extension of the performance completion date in the subdivision Agreement for the development referenced by Tract No. 4744-1 to October 9, 2026.

SUBJECT: EXTENSION OF PERFORMANCE COMPLETION DATE ON SECURED AGREEMENT TO COMPLETE SUBDIVISION IMPROVEMENTS AND RELATED CEQA FINDINGS (DISTRICT: 5)

RECOMMENDATION(S)

CHIEF ADMINISTRATIVE OFFICER

1. Find in accordance with Section 15060(c)(3) of the California Environmental Quality Act (CEQA) Guidelines that extension of the performance completion date in the subdivision agreement to complete subdivision improvements is not a “project” as defined in Section 15378 of the state CEQA Guidelines.
2. Extend the performance completion date in the subdivision agreement to October 9, 2026, for the developments referenced by Tract No. 4744-1.

EQUITY IMPACT STATEMENT

It is anticipated that the extension will allow time for infrastructure to be completed by the developer for the benefit of the unincorporated community where the project is located. This infrastructure includes roads and drainage systems that will support housing development.

SUSTAINABILITY IMPACT STATEMENT

The extension will allow time for stormwater infrastructure to be completed by the developer, which will have environmental sustainability benefits. Biofiltration basins and tree wells will be installed, which will improve stormwater quality.

FISCAL IMPACT

There is no fiscal impact associated with these recommendations. There will be no change in net General Fund cost and no additional staff years.

BUSINESS IMPACT STATEMENT

N/A

ADVISORY BOARD STATEMENT

Staff reached out to the Hidden Meadows Community Sponsor Group regarding the extension request. Staff also provided information on the projects to labor union and environmental stakeholders. No concerns were received.

BACKGROUND

The Subdivision Map Act, California Government Code Section 66410 et seq., generally requires developers to have completed required improvements, such as public streets, drainage, and water and sewer facilities, at the time a final map is approved. An alternative, if improvements are not completed at the time the final map is approved, is for the County of San Diego (County) to enter into a secured subdivision improvement agreement with the developer to complete the improvements. Security for the subdivision improvement agreements can include performance bonds, letters of credit, or a cash deposit.

SUBJECT: EXTENSION OF PERFORMANCE COMPLETION DATE ON SECURED AGREEMENT TO COMPLETE SUBDIVISION IMPROVEMENTS AND RELATED CEQA FINDINGS (DISTRICT: 5)

In accordance with Section 81.405 of the San Diego County Code of Regulatory Ordinances, improvements identified in the agreement are required to be completed within two years from the approval of the final map. If the improvements cannot be completed within that timeframe, developers may request additional time to complete them. It is not uncommon for development projects to take an extended time to complete. Construction schedules can be affected by the economy, the developer's circumstances, permitting, site conditions, and other factors. If developers need additional time and wish to extend the subdivision improvement agreement, they can submit an extension request and provide a current cost estimate of the remaining work.

Staff reviews the estimate to confirm the total security is adequate based on construction progress and estimated costs for remaining work based on current pricing. If staff determine a time extension is warranted, they bring the request forward for consideration. The County Director of Public Works (DPW) and the Director of Planning & Development Services may grant the first extension for up to two additional years. All subsequent extensions require Board of Supervisors (Board) approval. The County Regulatory Code does not limit the number of times the Board may grant extensions. The project presented in this action contains enhancements to address stormwater quality, including biofiltration basins and tree wells, which reduce the overall impact of pollutants in stormwater. In the future, when building permits are sought, additional sustainability features such as water efficient fixtures, use of Energy Star appliances, and solar energy, will be gained through the application of the building code.

This is a request to approve the extension of performance completion date to October 9, 2026, for the subdivision improvement agreement for Tract No. 4744-1 (Map 13602) Rimrock, located in the North County Metro Subregional Plan Area (District 5). The project has 70 residential lots, and the overall area is 196.6 acres. On July 15, 1998 (6), the Board approved the Final Subdivision Map and Joint Improvement Agreement (Agreement) between the County, Valley Center Municipal Water District, and subdivision owner, which includes street and drainage improvements, and water and sewer facilities. Construction of the housing units and the improvements supporting the development are both 60% complete. In general, improvements are expected to be completed prior to the County granting occupancy to buildings. The project will include bioretention basins on individual lots and tree wells to address stormwater quality. The Agreement has been extended six times previously; the Board last approved an extension to the Joint Improvement Agreement on November 17, 2021 (03). As stated in the Agreement, the Board may extend the completion dates for all work and improvements or the performance of acts or contractual obligations, except the improvement of sewer and/or water facilities, which must be approved by the Valley Center Municipal Water District. The developer will seek an extension on the remaining improvements from the Water District separately.

In the event of a default by the developer, bonding (or other accepted financial security) could be used to finance the completion of the required improvements. County staff monitor the status of agreements and project factors to determine if a time extension is recommended. DPW staff have determined an extension is appropriate to preserve the County's legal rights under the agreement, and because of the County's continued interest in receiving the improvements. DPW staff also

SUBJECT: EXTENSION OF PERFORMANCE COMPLETION DATE ON SECURED AGREEMENT TO COMPLETE SUBDIVISION IMPROVEMENTS AND RELATED CEQA FINDINGS (DISTRICT: 5)

confirmed the absence of negative impacts associated with later delivery of the remaining improvements.

Time extensions preserve the County's and the developer's rights under the improvement agreement for the extension period. Staff has determined that there is adequate improvement security (i.e., capacity through a bond or other financial instrument) to guarantee completion of remaining work for this agreement recommended for extension. In the event of a default by the developer, this security capacity could be used to finish the improvements required by the agreement, and ensure payment to the contractor, subcontractors, and the persons furnishing labor, materials, or equipment to them for the improvements.

Subsequent Development Approvals

There may be significant changes in State and local requirements that may need to be addressed if new development permits and approvals are sought. It is not known at this time if a review and analysis of these requirements will allow for full development of the proposed subdivision. The owner may need to update grading and improvement plans and will likely need to complete additional environmental review at the time any discretionary permits or approvals are sought (e.g., a grading permit) to address at least the following issues:

Stormwater: Updated studies, including Hydromodification Management Plans for Priority Development Projects, may be required prior to approval of grading and improvement plans for construction pursuant to the following:

- County Watershed Protection, Stormwater Management and Discharge Control Ordinance No. 10410 (N.S.), dated January 27, 2016, and
- Standard Urban Stormwater Mitigation Plan (SUSMP) Requirements for Development Applications, dated January 8, 2011, and
- Revised August 1, 2012, and/or Best Management Practice Design Manual, which became effective January 1, 2019.

These requirements are subject to periodic adjustment as changes are made to the National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements. Requirements are imposed by the San Diego Regional Water Quality Control Board (Regional Board) on discharges from municipal separate storm sewer systems (MS4). The new MS4 Permit was adopted by the Regional Board on May 8, 2013, and amended on February 11, 2015, and November 18, 2015. Additional studies and other action may be needed to comply with the new and future MS4 Permits.

Drainage: Updated studies may be required to be submitted with grading plans. The County must be satisfied with the drainage engineering prior to approval of grading and improvement plans for construction pursuant to County Grading Ordinance No. 10224 (N.S.), effective October 25, 2012, and Flood Damage Prevention Ordinance No. 9998, effective September 4, 2009.

SUBJECT: EXTENSION OF PERFORMANCE COMPLETION DATE ON SECURED AGREEMENT TO COMPLETE SUBDIVISION IMPROVEMENTS AND RELATED CEQA FINDINGS (DISTRICT: 5)

Today's request is for the Board to approve the extension of the performance completion date in the subdivision agreement for the development referenced by Tentative Map No. 4744-1 (Rimrock).

ENVIRONMENTAL STATEMENT

Section 15060(c)(3) of the California Environmental Quality Act (CEQA) Guidelines provides that activities identified in Section 15378 of the CEQA Guidelines are not subject to CEQA review. Section 15378 indicates that administrative activities of governments, which will not result in a direct or indirect physical change in the environment, are exempt from CEQA review. The proposed action is administrative in nature as it involves the extension of the performance completion date in a subdivision improvement agreement. CEQA review was completed in connection with the approval of the Tentative Map, which was conditioned on completion of improvements identified in the improvement agreement. The proposed action does not change any improvement obligations imposed at the time of Tentative Map approval. Therefore, the proposed action is not subject to CEQA review pursuant to Section 15060(c)(3) of the CEQA Guidelines.

LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN

Today's proposed action to approve the two-year extension of the secured agreement for this project supports the Community and Sustainability Strategic Initiatives in the County of San Diego's 2024-2029 Strategic Plan by providing private improvements and public infrastructure that strengthen the local economy and support future housing development while providing post-construction features to address stormwater quality.

Respectfully submitted,



DAHVIA LYNCH
Deputy Chief Administrative Officer

ATTACHMENT(S)

A. Subdivision Improvement Agreements to be Extended