



**Contra
Costa
County**

To: Board of Supervisors
From: Brian M. Balbas, Public Works Director/Chief Engineer
Date: April 9, 2019

Subject: APPROVE an Agreement with Hidden Oaks at Blackhawk Association, Inc., to Quitclaim Development Rights and related Quitclaim Deed, Blackhawk area.

RECOMMENDATION(S):

1. DETERMINE that development rights owned by Contra Costa County (County) in an approximately 0.68-acre portion of Parcel O at Hidden Oaks at Blackhawk, are no longer necessary for County or other public purposes, for the reasons set forth herein, pursuant to Government Code section 25526.5.
2. APPROVE and AUTHORIZE the Public Works Director, or designee, to execute the Agreement between the County and Hidden Oaks at Blackhawk Association, Inc. for the Quitclaim of Development Rights ("Agreement").
3. APPROVE and AUTHORIZE the Chair, Board of Supervisors to execute a Quitclaim Deed on behalf of the County, substantially in the form attached, in consideration for the payment received in full in the amount of \$10,191.25.
4. FIND that the above actions are exempt from review under the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15061, subdivision (b)(3), in that it can be seen with certainty that there is no possibility that they may have a significant effect on the environment.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **04/09/2019** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: April 9, 2019

David Twa, County Administrator and Clerk of the Board of Supervisors

Contact: Carmen Piña-Delgado,
925-957-2461

By: Stacey M. Boyd, Deputy

cc:

RECOMMENDATION(S): (CONT'D)

5. DIRECT the Conservation and Development Director to file a Notice of Exemption with the County Clerk and arrange for payment of the \$50 fee to the County Clerk.

6. AUTHORIZE the Public Works Director, or his designee, to cause said Quitclaim Deed and a certified copy of this Board Order to be recorded in the office of the County Clerk-Recorder in accordance with the terms of the Agreement.

FISCAL IMPACT:

100% Developer Fees

BACKGROUND:

On September 21, 1976, the Board approved a final development plan (DP76-3022) and tentative subdivision map (SD 4878) to establish the Hidden Oaks at Blackhawk subdivision. The subdivision was subsequently split into three phases, and on March 15, 1977, the Board approved final maps of Subdivisions 4878, 4962 and 4963.

Hidden Oaks includes approximately 206 acres of open space. Conditions of approval of the development included the deed of development rights to open space areas to the County. Pursuant to this requirement, on August 24, 1977, developer Blackhawk Corporation recorded a document that granted specified development rights in numerous parcels, including Parcel O in Subdivision 4963, to the County ("Grant Deed"). Parcel O is one of the Hidden Oaks open space parcels. Development rights are described in the Grant Deed as a form of negative easement, and defined specifically as the "right to approve or disapprove any proposed construction, development or improvement which would substantially and materially change the nature of the 'current proposed use' of said real property." The "current proposed use" of the parcels identified in the Grant Deed was described collectively in the Grant Deed by reference to the final development plan and subdivision maps, and listing of a broad array of improvements, including facilities for the maintenance and preservation of the property and recreation and leisure activities of the owners, members, residents and users of the property.

The Hidden Oaks conditions of approval also required the installation of a drainage system in the subdivisions, including concrete-lined V-shaped drainage ditches within the open space parcels to protect the residential lots from storm water runoff. One of the ditches was installed on Parcel O, north of Mossy Oak Drive. After installation of this V-ditch, residences were constructed on Lots 14, 15, 16, 17 and 18 of Subdivision 4963 (the "Lots") and a fence was erected to the rear of these residences, adjacent to the V-ditch, instead of along the actual rear boundaries of the Lots. As a result, the fenced-in rear yards of the Lots collectively include an approximately 0.68-acre portion of Parcel O (the "Parcel O Segment"). Hidden Oaks at Blackhawk Association, Inc., ("Association") is the owner of Parcel O.

In Spring 2010, while conducting a land survey for its Geological Hazard Abatement District, the Association discovered that the rear yards of the Lots included the Parcel O Segment, and advised the owners of the Lots (the “Owners”) of the encroachment. Thereafter, the Owners began negotiating a resolution with the Association, and it was agreed that the Association would convey portions of the Parcel O Segment to each of the Owners through a series of lot line adjustments. The Association then applied for approval of a revision of the Hidden Oaks final development plan to reduce the size of Parcel O by removing the Parcel O Segment. The County Zoning Administrator conditionally approved the application on April 18, 2016 (DP14-3022). A condition of the approval is that the County first quitclaim its development rights in the Parcel O Segment (hereafter, the “Development Rights”) to the Association.

Government Code section 25526.5 provides that whenever the Board determines that a real property interest belonging to the county is no longer necessary for county or other public purposes, and its estimated value does not exceed \$25,000, the County may quitclaim that real property interest in the manner and upon the terms and conditions approved by the Board.

Conservation and Development Department staff has evaluated the necessity of the Development Rights by comparing the restrictions on development of the Parcel O Segment under the Grant Deed with legal restrictions that would be applicable to the Parcel O Segment in the absence of the Development Rights. The Grant Deed restricts development that would “substantially and materially change the nature” of the use of the property, as such use was described in the Grant Deed. The Grant Deed requires that proposals for such development need to be submitted to the Board, which would then have an opportunity to approve or disapprove of the proposal. This process is not exclusive, however. In the absence of the Development Rights, a proposal for such development on the Parcel O Segment would be subject to other applicable land use restrictions. These include restrictions imposed by the General Plan on uses in areas designated as open space, the P-1 zoning regulations and minimum setbacks. Significant and material changes to what was proposed in 1976 would require discretionary authorizations, such as General Plan amendments, rezonings and variances, all of which would be appealable to the Board. The Board would therefore retain its authority over this type of development of the Parcel O Segment following a quitclaim of the Development Rights. These facts support a finding by the Board that the Development Rights are no longer necessary for County or other public purposes.

With regard to the value of the Development Rights, Real Estate Division staff has negotiated terms of a potential transaction with the Association. In the course of negotiations, the Association presented a valuation summary that set forth a proposed fair market value of the Development Rights in the amount of \$10,191.25. Real Estate Division staff has accepted this valuation summary.

Approval of the Agreement and Quitclaim Deed, and the resulting conveyance of the

Development Rights to the Association, will not change the existing land use or density, or existing restrictions on the use of the land under the OS (Open Space) General Plan Land Use designation. Moreover, no applicable federal, state, or county standard will change. For these reasons, these actions are exempt from environmental review under Section 15061, subdivision (b)(3), of the CEQA Guidelines, in that it can be seen with certainty that there is no possibility that that they may have a significant effect on the environment.

CONSEQUENCE OF NEGATIVE ACTION:

The County would retain the Development Rights and the conditional modification of the Hidden Oaks development plan to allow reduction in the size of Parcel O would not take effect.

ATTACHMENTS

Agreement

Quitclaim Deed

Notice of Exemption