



Department: Community Development
Cost Center: 4003
For Agenda of: 11/4/2025
Placement: Consent
Estimated Time: N/A

FROM: Timmi Tway, Community Development Director
Prepared By: Callie Taylor, Senior Planner

SUBJECT: AUTHORIZE CITY MANAGER TO EXECUTE AVILA RANCH SETTLEMENT AGREEMENT

RECOMMENDATION

Authorize City Manager to execute the draft Avila Ranch Settlement Agreement (Attachment A), including all attachments and associated agreements contained therein, and disperse escrow funds to resolve a 2022 dispute and protest regarding development impact fees and other project implementation items.

REPORT-IN-BRIEF

In 2022, a dispute arose between the City and the Avila Ranch developer over the interpretation of several items included in the project's Development Agreement. Avila Ranch submitted numerous letters to the City in which they protested the payment of certain impact fees under the Development Agreement. On March 17, 2023, City Council met in closed session regarding the anticipated litigation. It was determined that the dispute would be best resolved through a negotiated settlement overseen by a neutral third party in mediation. City Council authorized staff to proceed with execution of a tolling agreement of statutes of limitations and authorized staff to participate in mediation in an attempt to resolve the dispute.

Between August 2023 and September 2025, City staff, legal counsel, and the Avila Ranch developer participated in many meetings, including several with a mediator, to work towards practical solutions to resolve the contested issues. Through mediation, the City and the developer came to agreement regarding the fees in question. A fiscal reconciliation was completed to evaluate all development impact fees that were being charged to the Avila Ranch project. This detailed permit by permit analysis was done to ensure accuracy of the permit charges and ensure consistency with the approved Development Agreement.

A draft Settlement Agreement (Attachment A) has been prepared to resolve the 2022 dispute. The agreement includes a list of action items for both parties, as well as disbursement of the disputed funds which are being held in an escrow account. The Settlement Agreement is being presented to City Council for authorization to execute the

agreement, including all attachments and associated agreements contained therein, and close the dispute.

POLICY CONTEXT

A Settlement Agreement is a formal action to resolve a legal dispute, and therefore, City Council authorization is required to execute a Settlement Agreement. This report is being presented to City Council with a request for Council to authorize the City Manager to execute the draft Avila Ranch Settlement Agreement and disperse escrow funds to resolve the 2022 dispute and protest regarding development impact fees and other project implementation items. Action items identified in the Settlement Agreement, including recordation of additional agreements, deeds, and notifications, would be completed upon City Council authorization to execute the Settlement Agreement.

Background

On September 19, 2017, the City Council approved the Avila Ranch Development Plan, Vesting Tentative Tract Map (VTTM) 3089, and Final EIR by [Resolution No. 10832 \(2017 Series\)](#), and a Development Agreement (DA) between the City and Avila Ranch, LLC by [Ordinance No. 1639 \(2017 Series\)](#). Article 5 of the Development Agreement sets forth various financial commitments of the City and Avila Ranch, including the payment of certain development impact fees by Avila Ranch to defray the costs of the project's impacts on City infrastructure. The agreement was amended in April 2019 to address an update to the Los Osos Valley Road (LOVR) Interchange Transportation Impact Add-On Fee to reflect the land uses within the Avila Ranch project.

Per the Development Agreement, the project developer is required to pay the project's fair share of costs to mitigate project impacts as identified in the EIR, Avila Ranch Development Plan, conditions of approval, or as otherwise specified in the Development Agreement. The Development Agreement is a contract and can alter and take precedent over any vested fees or expirations that are normally tied to a vested tentative map. The Development Agreement was negotiated as a method to extend the life of the Avila Ranch tentative map to provide a 20-year project build out, provided that there is a "true up" of fees at the time each final map phase is recorded. This provides the developer with the time needed to build out the project while also providing the City with the funds needed to provide services and infrastructure at the time of phased project build out. The Development Agreement stipulates that impact fees for the project shall be those in effect when each phase of the final map is recorded. The City may adjust the development impact fees not more than once a year with changes no greater than the inflation index identified upon imposition of the fee.

In 2022, a dispute arose between the City and the Avila Ranch developer over the interpretation of the project's fees identified in the Development Agreement, as well as several other items related to project implementation. Avila Ranch submitted numerous letters to the City in which they protested the payment of certain development impact fees. Under San Luis Obispo Municipal Code Section 4.56.060, a party may protest the imposition of impact fees by paying them under protest and providing a statement of reasons for the

Item 5d

protest. Avila Ranch paid those fees under protest at the time of building permit issuance, while demanding a refund of portions of the impact fees paid. The developer asserted that building permits were being overcharged by approximately \$19,000 per permit.

The 2022 dispute between the Avila Ranch developer and the City involved a number of project implementation issues, including the following six (6) primary items:

- 1) Interpretation of the Development Agreement, with respect to development impact fees and vesting rights,
- 2) Entitling condominium units in Phase 4 of Avila Ranch,
- 3) Reimbursements pursuant to the Private Infrastructure Reimbursement Agreement,
- 4) City acceptance of Basin A as a public improvement,
- 5) Implementation of the Down Payment Assistance Program with respect to Workforce Housing units, and
- 6) Distribution and location of “for-rent” affordable housing units in Phase 3.

On March 17, 2023, the City Council met in closed session regarding the anticipated litigation. Thereafter, the parties executed a tolling and escrow agreement to allow the parties to continue working through this dispute without Avila Ranch commencing litigation against the City. Because there are short timelines for Avila Ranch to file suit pursuant to applicable Government Code sections, the tolling agreement suspended those deadlines to give the parties an opportunity to attempt a resolution of the dispute without litigation. The tolling agreement allowed Avila Ranch to continue to develop Phase 1 of the project by paying the development impact fees under protest.

The tolling agreement also required that the City would escrow the disputed fee amount pending final resolution of the dispute. As conditioned by the tolling agreement, the City deposited the sum of \$1,136,000 to the escrow account, which was funded from the respective development impact fee accounts for which the disputed fees were deposited. This amount represented the contested impact fees (approximately \$19,000 per permit) for the first 60 building permits that had been previously issued in Phase 1. Throughout the build out of the remaining dwelling units in Phase 1 in 2023 and 2024, Avila Ranch continued to deposit \$19,000 per dwelling unit (the protested impact fee amount) into the escrow account, pending resolution of the dispute. The escrow account currently retains a total sum of \$2,846,000 of disputed fees.

DISCUSSION

On August 10, 2023, August 24, 2023, and November 16, 2023, City staff, the Avila Ranch developer, and legal counsel for each party engaged in voluntary mediation sessions with a mediator. Further discussions continued between the City, the developer, and legal counsel for each party through September 2025. A draft Settlement Agreement (Attachment 1) has been prepared to memorialize all items agreed upon through those discussions and to resolve all claims relating to the dispute.

Item 5d

The resolutions for each item addressed in the Settlement Agreement are consistent with the Avila Ranch Development Agreement and applicable law. Development impact fees for the project, which are specified in the Development Agreement, are not modified by the Settlement Agreement. The Settlement Agreement memorializes the agreement between the City and the Avila Ranch developer to clarify and properly implement the Development Agreement as it was originally intended.

Resolution for the six (6) primary disputed items is reflected in the Settlement Agreement as follows:

Dispute Item #1: Interpretation of the Development Agreement, with respect to development impact fees and vesting rights

Central to the dispute between the City and Avila Ranch is the timing of the “imposition” of the impact fees. Avila Ranch paid all Phase 1 impact fees under protest at the time of building permit issuance, asserting the misapplication and/or miscalculation of certain impact fees to the project. While the parameters for fee imposition and escalation are identified in the Avila Ranch Development Agreement, it is a relatively complicated fee structure to track and implement, which led to some confusion and misapplication in the early stages of the project’s permit process.

Through mediation, a fee schedule for Phase 1 of Avila Ranch was developed to clearly define each fee described in the Development Agreement, as interpreted and agreed to by both parties. The fee schedule does not make any changes to the provisions of the Development Agreement, but ensures clarity in application. Impact fees for Police, Fire, Traffic (LOVR Base Fee, which is the Citywide Transportation Impact Fee for properties within the LOVR Sub Area, and LOVR Add On Fee), Water, and Wastewater are imposed on the project by the Development Agreement. Once the parties were in agreement to the applicable fees listed in the Phase 1 fee schedule, a thorough reconciliation analysis was prepared jointly by the City and the Avila Ranch developer to identify overpayment and underpayment of each building permit issued for Phase 1. Exhibit “1” of the Settlement Agreement is an “Impact Fee Summary” which summarizes this lot-by-lot fee reconciliation. The Impact Fee Summary details the required impact fee obligations, the impact fees paid by Avila Ranch, the credits issued by City, the reconciliation credits to be issued as part of this Settlement Agreement, and the final overpayment/underpayment amounts for Phase 1 permits. Tables 1 and 2 below summarize the results of the Impact Fee Summary.

Table 1: Avila Ranch Developer Underpaid Impact Fees (Phase 1)

Police	\$ 8,804.60
--------	-------------

Table 2: Avila Ranch Developer Overpaid Impact Fees (Phase 1)

Fire	\$ 93,887.06
Traffic LOVR Base Fee	\$ 803,454.21
Traffic LOVR Add On Fee	\$ 48,858.23
Water	\$ 171,888.01
Wastewater	\$ 159,633.77

The Avila Ranch developer is entitled to fee credits towards impact fees and/or reimbursements where they have installed certain infrastructure projects with citywide benefit or additional capacity. Several offsite transportation improvements have been constructed by the Avila Ranch developer and a parcel for a future fire station (to be constructed by Avila Ranch) has been dedicated to the City. In the early stages of issuance of the project permits, some of these impact fee credits to the developer were not yet available and, in some cases, available credit balances were not consistently applied to eligible building permits. The fee reconciliation developed through mediation accurately applies the project’s Fire and Traffic impact fee credits earned by the developer to eligible permits. The refund amounts that are owed to the Avila Ranch developer for Fire, Traffic LOVR Base Fee, and Traffic LOVR Add On Fee (identified on the tables above) are the result of the fee credits that are now available. This reconciliation is typical for Credit/ Reimbursement Agreements because actual construction costs are typically not known until the developer completes construction and provides the City with records of actual costs.

Per the Development Agreement, the City is permitted to escalate Avila Ranch impact fees, except the Water and Wastewater fees, once annually by the inflationary index in place at the time the final map for that phase records. The inflationary index in place at the time of the recordation of the Phase 1 Final Map is California Construction Cost Index (“CCCI”), as described in Section 4.56.040 of the City’s Municipal Code. With respect to Phase 1 only, the Development Agreement states that Water and Wastewater impact fees may be adjusted once annually by the Consumer Price Index (Los Angeles, All Urban Consumers, All Items) (“CPI”). The overpayment on the Water and Wastewater fees (identified on the tables above) is simply the difference between the fees escalated by CCCI percentage change and the fees escalated by CPI percentage change. Due to the incorrect escalation of Phase 1 Water and Wastewater fees by the City in the early stages of the project using CCCI rather than CPI, the City must refund the overpayment on Water and Wastewater fees in order to be compliant with terms of the Development Agreement.

The Settlement Agreement identifies disbursement of the escrow funds. The amount currently held in escrow is \$2,846,000, which includes approximately \$19,000 in impact fees which were paid under protest for each building permit in Phase 1. Concurrently with the execution of the Settlement Agreement, the parties will direct the escrow holder to

Item 5d

immediately release a total sum of \$1,577,083.32 to the City, and a total sum of \$1,268,916.68 to the Avila Ranch developer. Upon receipt of escrow funds, the City will deposit funds to the respective development impact fee accounts as identified by the reconciliation analysis.

It is worth noting that this disbursement of funds is not a negotiated amount, but rather, a precise accounting of the corrected fees and credits applied to the Phase 1 building permits at Avila Ranch, based on accurate implementation of the approved Development Agreement. The reconciliation of Avila Ranch fees and disbursement of escrow funds does not impact other City projects or programs. The disputed fees have been held in escrow and have not been applied to impact fee program fund balances that were otherwise appropriated or earmarked for other projects or programs.

The City and the developer are now in agreement on the basis for imposition and annual escalation of impact fees and credits for the remaining phases of the project. With respect to all future phases (i.e. Phases 2, 3, 4, and 5) of the project, each phase will vest consistent with impact fees in place at the time of recordation of the final map for that phase. Both parties acknowledge that Development Agreement Section 5.04.2(C) allowed for CPI increases on Water and Wastewater fees for Phase 1 only. All subsequent phases will be increased by the City's current inflationary index, which is CCCI, as described in Section 4.56.040 of the Municipal Code. CCCI will be applied to all impact fees applicable to the project, including Water and Wastewater impact fees, for Phases 2 through 5 of Avila Ranch.

Dispute Item #2: Entitling condominium units in Phase 4 of Avila Ranch

In 2022, the Avila Ranch developer asserted that the original project entitlements provided for the processing of a "condominium plan" with the Department of Real Estate without requiring additional subdivision of Phase 4 pursuant to the Subdivision Map Act. Through the mediation process, the developer acknowledged that the City's Subdivision Ordinance requires approval of a subdivision map for condominium purposes in order to establish for-sale condominiums in Phase 4.

The Settlement Agreement states that the Avila Ranch developer shall submit an application for a tentative map for the condominium subdivision of the six lots currently designated as Phase 4 of the project. This resolution is consistent with the City's Subdivision Ordinance and the Subdivision Map Act. The developer's entitlement application for a Phase 4 tentative map for condominium purposes was submitted in March 2025 and is currently being processed.

Dispute Item #3: Reimbursements pursuant to the Private Reimbursement Agreement

On June 18, 2019, the City and Avila Ranch executed a [Private Infrastructure Reimbursement Agreement](#) to provide a mechanism by which Avila Ranch will be reimbursed for certain transportation improvements, constructed by Avila Ranch, which benefit properties in the City and County of San Luis Obispo, beyond that of the project's

Item 5d

proportionate share. Exhibit “A” to the Private Reimbursement Agreement identifies the properties which benefit from these transportation improvements and attributes a “proportionate share” of the actual costs of the improvements to each property. For benefitting properties within the City’s jurisdiction, the City will require payment of the prorated shares of the reimbursable costs as a condition of any discretionary entitlement or approval. For benefitting properties in the County’s jurisdiction, City will require benefitting properties to pay their prorated share of documented reimbursable costs as a condition of annexation.

As part of the 2022 dispute, the Avila Ranch developer cited concerns regarding payment of reimbursable costs as part of the East Airport Annexation. The East Airport Annexation was conditioned to pay the City a combined total of \$1,000,000 as a Traffic Impact Fee Payment to fulfill the annexation property's participation in the City's citywide transportation impact fee program and/or other area transportation improvement reimbursement obligations as stipulated in the [“Pre-Annexation Agreement”](#) dated March 17, 2020. Payment of those funds was processed through Statewide Community Infrastructure Program (“SCIP”), which took several years to complete. The City is now in possession of the required \$1,000,000 Traffic Impact Fee Payment provided as part of the East Airport Annexation.

The Avila Ranch Private Reimbursement Agreement estimates that properties within the East Airport Annexation area have a proportionate share of improvements installed by Avila Ranch in the amount of \$478,491. As identified in the Settlement Agreement, \$417,452 from the East Airport Traffic Impact Fee Payment will be reimbursed to Avila Ranch upon execution of the Settlement Agreement for improvements which are now complete and final cost documentation has been provided. In addition, \$61,039 will be held by the City and reimbursed to Avila Ranch upon City approval of cost documentation for the South Higuera/Vachell intersection improvement which Avila Ranch is constructing.

The City will continue to track development applications for the benefitting properties and inform the owners of their obligation to provide reimbursement for the infrastructure work Avila Ranch has completed as allowed by applicable law. As part of the Settlement Agreement, the City agrees to record a Memorandum and Notice of Reimbursement Agreement against all benefitting properties, which is required by the terms of the original Reimbursement Agreement.

Dispute Item #4: Acceptance of Basin A as a public improvement

Basin A is an approximately 2-acre bioretention basin located within Lot 30 of Phase 1 of Avila Ranch. Basin A is a deep basin (greater than 2-feet deep) providing flood control for Phases 1 through 5. Due to high ground water in the area, Basin A holds water year-round. After construction of the basin, a dispute arose between the City and Avila Ranch over whether Basin A was constructed and is performing as designed and intended. Avila Ranch has asserted that Basin A was constructed as approved by the City and is performing as intended. The City has asserted that although Basin A may have been constructed as approved, it is not performing as expected in that it has standing water year-round. The City

Item 5d

had concerns regarding the costs of long-term maintenance of this basin, and has therefore not accepted ownership of the improvement.

The City and the developer met with a panel of experts in 2023 and 2024 to provide background on the design, construction, and operation of Basin A. The panel of experts were gathered to answer extensive questions from the City to prove that the basin was constructed correctly and to look at potential options to determine how to proceed. The experts explained that groundwater can fluctuate over time, and it was determined that between the time of testing exploration in 2015 and construction of the basin in 2022, ground water in the area rose. Continued flow of groundwater into Basin A is coming from the storm drain lines and their adjacent sand backfill. It does not appear that groundwater is coming from the bottom of the basin. The project's Final EIR and all relevant regulatory documents were analyzed, and it was found that nothing in those documents prohibit the basin as currently constructed. Two engineering consultants (RRM and Wallace Group) confirmed that the volume of water storage needed for the project is provided in Basin A. An updated Stormwater Control Plan was provided. A maintenance plan and cost estimates were developed by consultants, including a cost comparison to that of a dry basin. A biological evaluation was provided, which states that the basin is a stormwater facility and not considered a jurisdictional wetland. Project engineers confirmed that all other basins and stormwater improvements within future phases of Avila Ranch are designed as shallow basins that will not hold water for longer than 24 hours.

In order to bring resolution to this dispute, the parties agree that the Avila Ranch developer will continue to own and maintain Basin A, at its expense, until the completion of construction of the for-sale single family units in Phase 1, 2, and 3. This is expected to be approximately a 5-year timeframe. Avila Ranch will secure its faithful performance of the obligations by providing a separate maintenance bond in the sum of \$182,500, which is based upon the estimated annual cost of maintenance multiplied by 5 years.

Park A at Avila Ranch is co-located with Basin A on Lot 30 of Phase 1. Since the improvements are located on a single parcel, the City has not yet accepted Park A for ownership and maintenance. Upon execution of the Settlement Agreement, Park A will be separated from Basin A by deed, and the City will accept ownership and maintenance of Park A upon recordation of the deed. Construction of Park A has been completed with no outstanding issues. Staff recommends that the City Council authorize acceptance of Park A in conjunction with execution of the Settlement Agreement.

Upon completion of the single family homes Phases 1, 2, and 3, Avila Ranch and City staff will meet and confer regarding the acceptance of Basin A. Avila Ranch will provide documentation from a qualified biological consultant to confirm that there are no additional permits required for the maintenance or operation of Basin A from other regulatory agencies (e.g. Regional Water Quality Control Board, California Department of Fish and Wildlife, etc.). Other requirements include confirmation of compliant fencing around Basin A, confirmation that the capacity of Basin A is equivalent to its design capacity and has not been materially reduced through means of siltation or sedimentation, and that construction of improvements and homes in Phases 1 through 3 have not materially contaminated Basin A. Avila Ranch

Item 5d

will provide cost maintenance documentation to show that the annual scope of the maintenance activities performed by Avila Ranch for Basin A is similar to the City's originally estimated scope and cost of annual maintenance for Basin A as detailed in the Community Facilities District budget. The City may request pond aeration be installed by Avila Ranch prior to acceptance, if deemed necessary. Provided that Basin A meets these criteria for acceptance, the City will accept Basin A in its entirety, take over the maintenance of the basin, and release the developer from the maintenance bond upon completion of Phases 1, 2, and 3 (anticipated to occur in 5 years). Said acceptance shall be in accordance with Municipal Code Section 16.20.230 without further conditions or discretionary approvals.

Dispute Item #5: Implementation of the Down Payment Assistance Program for the Workforce Housing units

As required by the Avila Ranch Development Agreement, the developer is required to provide an amount of 5% of the purchase price up to \$20,000 as a "silent second" to the initial purchasers of the 25 units in the Workforce Housing Incentive Program. As part of the 2022 dispute, Avila Ranch asserted that requiring the developer to provide down payment assistance was inconsistent with lending practices and violated commercial lender rules and regulations.

In an effort to avoid conflict with commercial lending practice, Avila Ranch agrees to provide the required matching down payment assistance to a City fund, and the City will administer the down payment assistance program for the development. The workforce units are required to be occupied by an income-qualifying workforce housing household for a minimum of ten (10) years. If resold within this ten-year period, the units would need to be sold to another income qualifying workforce housing buyer and the 10-year deed restriction would reset to 10 more years with the new buyer of the home. The down payment assistance loan would be repaid upon sale of the unit or refinancing, and the proceeds would be placed in a revolving loan fund to assist future workforce, moderate-, or lower-income home buyers within the City.

Unlike a reduction in price that would be captured by a future seller at the end of the affordability term, this assistance would continue throughout the life of the funds to assist affordable home buyers within the City. This will establish a revolving loan fund of approximately \$500,000 to be administered by the City of San Luis Obispo. The parties agree that once paid, this contribution by Avila Ranch constitutes compliance with the down payment assistance obligations under Exhibit G of the Development Agreement. The developer acknowledges that the down payment assistance funds will be subject to an interest-bearing promissory note, secured by a deed of trust in favor of the City. The City may utilize said recouped down payment assistance funds in conjunction with affordable housing assistance throughout the City of San Luis Obispo, consistent with the City's Down Payment Assistance Program.

Dispute Item #6: Distribution and location of “for-rent” affordable housing units in Phase 3

Exhibit “G” to the Development Agreement requires a total of 40 low- and moderate-income “for-rent” apartment units to be constructed in Phase 3 (the R-4 zoned portion of the project). This was originally contemplated to be achieved by the developer’s dedication of a 1.2-acre parcel (Lot 300) to an affordable housing provider for the construction of 24 lower-income apartments, and by providing 8 low-income and 8 moderate-income apartments to be dispersed throughout the market rate for-rent apartments on Lot 301. With respect to the location of affordable units, the Avila Ranch developer asserted that the unit distribution of the 8 low-income and 8 moderate-income to be constructed Lot 301 was impractical and requested a modification of said distribution.

The City, the Avila Ranch developer, and the affordable housing provider (C&C Development) commenced discussions in 2022 regarding the construction and development of the affordable units. In 2023, Avila Ranch and C&C Development submitted a Phase 3 Development Review application which proposed increasing the number of affordable units on the project site through a density bonus to include an additional 19 affordable units. On January 23, 2024, in conjunction with the Phase 2/3 Final Map acceptance, the City Council reviewed a draft Phase 3 Affordable Housing Agreement which included transfer of the 8 moderate-income and 8 low-income units to the C&C Development affordable housing site in exchange for the addition of 19 affordable moderate-income density bonus units. On February 14, 2024, the Planning Commission approved a density bonus and site design for the Phase 3 (R-4 zone) multifamily sites. The Phase 3 Affordable Housing Agreement was recorded on April 1, 2025, to reflect this affordable housing distribution. Avila Ranch has dedicated the 1.2-acre parcel (Lot 300) to the affordable housing provider as required by the Development Agreement, who will construct a total of 32 low-income and 27 moderate-income for-rent affordable housing units.

In order to ensure that the affordable housing site is completed earlier in the project, as opposed to the last phase of the project, the Phase 3 Affordable Housing Agreement states that the City will not issue building permits for Avila Ranch’s 500th unit until the affordable housing provider begins construction on Lot 300. Construction of the affordable housing site shall be substantially completed prior to the issuance of a building permit for the 550th unit within Avila Ranch. If the affordable housing provider fails to construct the 32 low-income and 27 moderate-income for-rent affordable housing units, the obligation remains with the Avila Ranch developer to complete.

Previous Council or Advisory Body Action

The following City Council or Advisory Body actions have occurred relevant to the project:

- Vesting Tentative Tract Map (VTTM) Tract 3089, Avila Ranch Development Plan, and the Final EIR were approved by the City Council on September 19, 2017, by [Resolution No. 10832 \(2017 Series\)](#).
- The Avila Ranch Development Agreement was adopted by the City Council on October 3, 2017, by [Ordinance No. 1639 \(2017 Series\)](#).
- Avila Ranch Community Facilities District (CFD) No. 2017-1 was created on

Item 5d

November 21, 2017 by [Ordinance No. 1642 \(2017 Series\)](#), which levies a special tax within the CFD providing a funding source for maintenance and operation of facilities within the District.

- The final map for Tract 3089 Phase 1 was approved by City Council on December 4, 2018, by [Resolution No. 10968 \(2018 Series\)](#).
- The City Council adopted [Resolution No. 11393 \(2023 Series\)](#) for partial acceptance of public improvements and certification of completion of required private improvements for Tract 3089 Phase 1 on February 21, 2023.

Public Engagement

An extensive public review process was completed with the approval of the Tentative Map and Avila Ranch Development Plan, as well with the Draft and Final EIR. The current request for City Council authorization to execute the Avila Ranch Settlement Agreement has a “notify” level of public engagement, which has been accomplished through this agenda item and associated staff report.

CONCURRENCE

The Community Development Director, Public Works Director, Utilities Director, Parks and Recreation Director, and City Attorney concur with the recommended action.

ENVIRONMENTAL REVIEW

The California Environmental Quality Act (CEQA) does not apply to the recommended action in this report because the action does not constitute a “Project” under CEQA guidelines Section 15378. The Settlement Agreement does not change any aspect of the approved Avila Ranch project, nor does it introduce the potential for any new environmental impacts. Therefore, the proposed action does not require further analysis under CEQA.

FISCAL IMPACT

Budgeted: Yes

Budget Year: Annually beginning 2025-26

Funding Identified: Yes

Fiscal Analysis:

Funding Sources	Total Budget Available	Current Funding Request	Remaining Balance	Annual Ongoing Cost
General Fund				
State				
Federal				
Fees				
Other:				
Total	\$0	\$0	\$0	\$0

The distribution of funds identified by the Settlement Agreement represent a complete fee reconciliation which was done to ensure that fees were accurately charged in accordance with the Avila Ranch Development Agreement. The distribution acknowledges overpayments and underpayments made by the developer at the time of permit issuance and reconciles those errors and credits due by truing up the fees to reflect the corrected amounts. There is no financial obligation from the General Fund or any of the Impact Fee Funds because the established escrow account will be the funding source for the disbursement. The amount due to the developer relating to the Private Infrastructure Reimbursement Agreement will be funded from a separately established reimbursement pass-through fund, specifically used to hold amounts collected that must be turned over to the developer.

ALTERNATIVES

1. ***Council could direct staff to not execute the Settlement Agreement.*** This alternative is not recommended as it may lead to litigation. The attached Settlement Agreement represents a mutual understanding of a proper resolution for each of the items detailed in this report, and failure to enter into this agreement may leave legal action as the only course of action available to the Avila Ranch developer. It is likely that the City would still have to refund the fee amounts identified through reconciliation, while also incurring further legal defense costs.
2. ***Council could request modifications to the Settlement Agreement prior to authorization.*** This alternative is not recommended because it would further delay the negotiation process and distribution of the escrow funds. City staff, the developer, and the mediator negotiated the Settlement Agreement over several years of mediation in order to come to solutions that both parties could agree to. The Settlement Agreement, as currently written, implements the Development Agreement as adopted without any amendments and correctly applies permit fees for all issued permits.

ATTACHMENTS

A – Avila Ranch Settlement Agreement