



Council Agenda Report

Item 6d

Department: Community Development
Cost Center: 4003
For Agenda of: 3/21/2023
Placement: Consent
Estimated Time: N/A

FROM: Michael Codron, Community Development Director

Prepared By: John Rickenbach, Contract Planner and Callie Taylor, Associate Planner

SUBJECT: ANNUAL MONITORING FOR THE AVILA RANCH DEVELOPMENT AGREEMENT, MITIGATION MEASURES, AND PROJECT CONDITIONS

RECOMMENDATION

Receive and file the Annual Monitoring Report for the Avila Ranch Development Agreement, mitigation measures, and required project conditions.

POLICY CONTEXT

The approved Avila Ranch project was found to be consistent with the General Plan at the time of its approval. This report focuses on determining whether the multi-phase project is in compliance with key provisions related to its approval, notably a Development Agreement, required mitigation measures, and project conditions. Compliance with these provisions is discussed in the body of this report. A Community Facilities District for Avila Ranch has been established to provide ongoing funding for City services and infrastructure maintenance. The CFD annual report is prepared at the end of each fiscal year to coincide with the Citywide annual budget, and is therefore not included in this report.

REPORT-IN-BRIEF

On September 19, 2017, the City Council approved a vesting tentative map for Tract 3089 (Avila Ranch), a Development Agreement (DA) between the City and Avila Ranch, LLC, and certified the Final Environmental Impact Report (EIR) for the project. On October 24, 2017, the City Council approved the Avila Ranch Community Facilities District (CFD) Resolution of Formation. The DA, the EIR Mitigation Monitoring and Reporting Program (MMRP), and the CFD require annual monitoring and reporting of activities, pursuant to articles 10 and 11 of the DA. The CFD annual report is typically prepared at the end of each fiscal year to coincide with Citywide annual budget, and is therefore not included in this report. The CFD annual report was last completed and presented to Council July 13, 2022.

This report addresses activities that have taken place during 2022, and whether those are in substantial compliance with the DA, applicable project conditions, and EIR mitigation measures. Substantial public improvements were made during this past year, both onsite and offsite, which prior to their installation were reviewed and approved by the City's Public Works, Engineering, and/or Utilities departments as appropriate. Substantial private development also occurred within Phase 1 of the project, the design of which was reviewed and approved by the Planning Commission in September 2021. This first phase of Tract 3089 created 179 single-family residential lots, three lots for 125 multi-family units, a lot for an interim fire station, and various lots for parks and public facilities.

The approved DA is a contract authorized by California Planning and Zoning Law and the City's Municipal Code that provides certain benefits to the developer, typically in the way of certainty and assurances to the developer regarding what rules will be applied for the project, in exchange for extraordinary public benefits. The DA includes a variety of provisions related to the timing of development, construction of public infrastructure, payment of fees, and in certain instances reimbursement beyond the project's fair share for public improvements that have citywide benefits. One provision of the DA is to annually monitor whether the project is in compliance with all relevant aspects of the DA itself, as well as the EIR mitigation measures.

To the extent that it can be determined, the project is in compliance with the applicable provisions of the DA, as well as relevant EIR mitigation measures. Since many of these also relate to project conditions, this report also evaluates compliance with these conditions, and finds that it is in compliance. For certain aspects of the DA, mitigation measures, and project conditions, it is not yet possible to determine compliance, because of the fluid nature of the phased project, and that such activities are subject to ongoing monitoring as development occurs. However, the intent of the developer is to comply with these provisions, and the development team has been working closely with the City to ensure that its actions are consistent with key requirements.

DISCUSSION

The Avila Ranch project site is located at 175 Venture Drive. **Figure 1** shows the project area with phasing. Although in general, public and private improvements completed in 2022 were within Phase 1 of the project area, some public improvements associated with later project phases, including Earthwood Lane, were constructed concurrently with Phase 1.

Background

On September 19, 2017, the City Council approved the Development Plan, Vesting Tentative Tract (VTTM) 3089, and Development Agreement (DA) between the City and Avila Ranch, LLC. Both the DA and Mitigation Monitoring and Reporting Program (MMRP) require annual monitoring and reporting of activities per Articles 10 & 11 of the DA.

The following discusses what aspects of the project were in progress or completed in 2022, and thus the focus of this report. It also provides additional context, with a brief encapsulation of the activities that occurred before 2022, and highlights activities that are anticipated in 2023 and beyond.

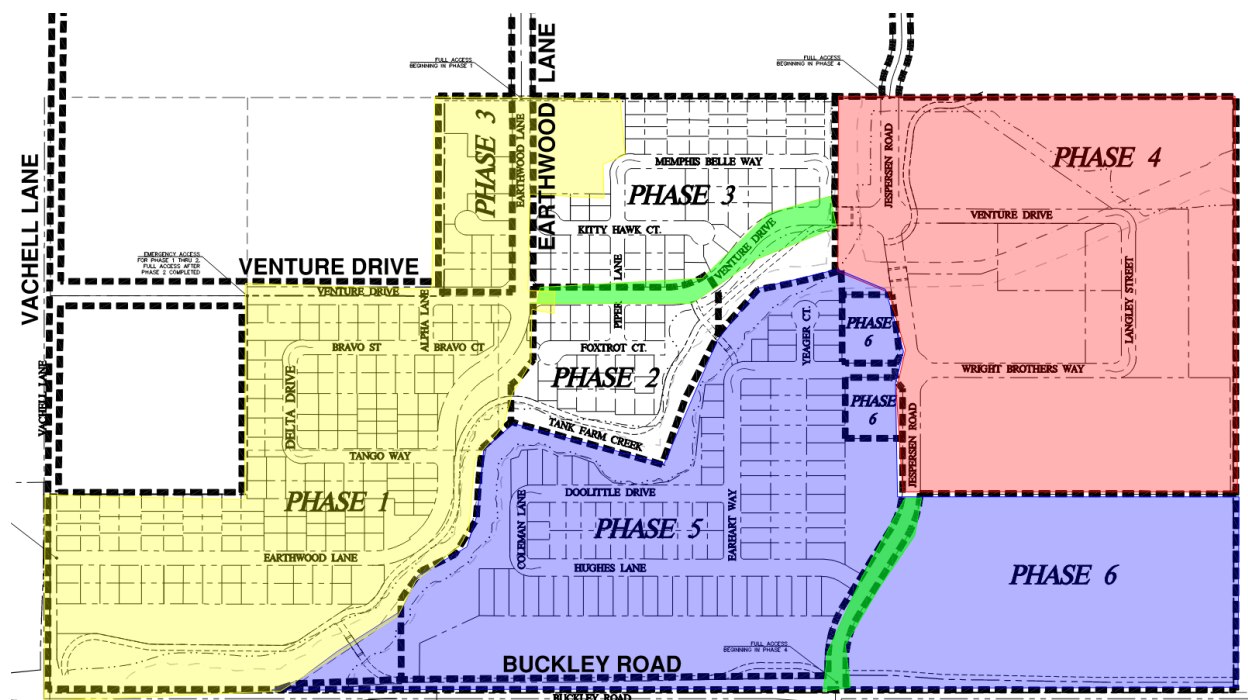


Figure 1. Avila Ranch Project Area Phasing Map

Project Activities Prior to 2022

Prior to 2022, no public improvements or development activity was completed, although several entitlements related to the approved Development Plan were approved. These included the following:

- A. Phase 1 Final Map (R-2 zone). A final map was approved on December 4, 2018 for Phase 1 of development, covering a 26-acre area, and would accommodate up to 179 dwelling units in the R-2 zone.
- B. Lot Line Adjustment. A lot line adjustment was proposed in April 2020 to facilitate future development in the Avila Ranch area, to be coterminous with future project phases as depicted in the approved Development Plan. The Lot Line Adjustment was subsequently approved by the City Council.
- C. Phase 1-3 Review (R-2 zone). An application for Architectural Review Commission (ARC) review of Phases 1 through 3 of development was submitted in December 2020. This area would include up to 297 dwelling units in the R-2 zone. Based on the recommendation of the ARC, the Planning Commission (PC) approved the architecture for all the R-2 product in the first three phases on September 22, 2021, by Resolution PC-1046-2021.

D. Public Improvements. Public Improvement Plans (PIPs) were submitted in 2018, and were approved on September 10, 2019 for some onsite improvements associated with VTTM 3089. This included mass grading and installation of some supporting infrastructure associated with future development in the area, as well as some required offsite improvements, which include the following:

- Higuera/South Street NB Right Turn Pocket Extension
- Higuera/Suburban Road Striping Modifications

E. Phases 2-6 Mass Grading Plans. An application for mass grading plans for Phases 2-6 was submitted in November 2021.

Development Activities in 2022

The following development-related activities took place in 2022, since the time of the previous annual report related to the DA, MMRP, and Project Conditions. These include development in Phase 1, onsite public improvements, offsite public improvements, and various private infrastructure improvements within the subdivision, all of which are described below.

Phase 1 (Tract 3089) Development

The approved Phase 1 map (tract 3089) created a total of 192 lots consisting of:

- 179 single-family residential units (Lots 1 to 28, Lots 31 to 86, Lots 88 to 182). These are all the single-family residential units that were included in the Phase 1 tentative map.
- Three out-of-phase lots for multi-family (Lots 185, 186, and 188), These lots were originally planned to be created and developed in Phase 3.
- Four public park lots (Lots 30, 87, 183, 189)
- Two lots for public open space (Lot A and Lot 184)
- Two lots for public facilities (Lot 29 for sewer lift station & Lot 187 for interim fire station)
- Two lots for future phases of the subdivision (Lots 190 and 191)

Figure 1 shows Phase 1 in the context of the Avila Ranch Development Plan. The following Phase 1 development is nearing completion:

- 19 single-family residential (SFR) units completed and occupied
- 39 SFR units currently under construction
- 71 SFR building permit applications submitted and under review (not yet issued)
- Four public parks (Parks A, B, C and Stevenson Park)
- Roadways and other infrastructure needed to support the above development, including utilities, lighting, and landscaping.

Tract 3089 Private Infrastructure

Tract 3089 (Phase 1) includes certain improvements to be privately maintained, including the private common driveways and the underlying utilities and storm drain improvements. These private driveways are connected to the public street system and serve anywhere from four to eight single family dwellings.

Park Development

All park development described above proceeded consistent with what was anticipated within the ARDP, with the exception of Park A. Park A as originally approved in the Development Plan was intended to be 2.57 acres, with a central usable turf area that would also function as a seasonal drainage basin. But on the approved Tract Map, Park A increased in size from 2.57 to 3.07 acres. However, in late 2022 it became clear that the central turf area may not have the intended long-term utility as a play area because of unanticipated drainage issues. From an acreage perspective, the loss of this 0.31-acre drainage area of potential use does not affect the project's overall compliance with park acreage requirements, which is more than offset by the 0.5-acre increase in size of Park A from what was approved compared to what is shown on the Tract Map. However, the loss of the multi-use turf field differs from the use concept that was approved in 2017. That said, there are no specific requirements in the Avila Ranch Development Plan, Airport Area Specific Plan, or the Parks and Recreation Element that relate to the number and size of turf fields in mini parks.

Because no specific regulatory direction is provided, the Community Development Director in consultation with the Parks and Recreation Director has determined that the intent of the parks programming is still met with the reconfigured plan for Park A.

Public Improvements

Work has been completed for the majority of the required Phase 1 public in-tract and offsite improvements. In general, the improvements consist of street construction, curb, gutter, sidewalks, Class 1 multi-use paths, pedestrian paseos, streetlights, water main and sewer main extensions, fire hydrants, reclaimed water main, storm drain and stormwater quality improvements, parkways and landscaping. Earthwood Lane has been constructed providing a connection between Suburban Drive and Vachell Lane. Venture Drive has been extended to intersect Earthwood Lane at a new roundabout.

The public improvements include multiple offsite transportation improvements to mitigate for the increase in traffic generated by the development as required by the project conditions of approval, mitigation measures (MM), and the Development Agreement. The offsite improvements completed with Phase 1 include:

1. Extension of Earthwood Lane to Suburban Road [Condition #101]
2. Suburban Road Improvements, S. Higuera to Earthwood [Condition #102]
3. Sidewalk on portions of Vachell Lane [Condition #124]
4. Intersection improvements at South Street/Higuera Street [Conditions #112]
5. Intersection improvements at Tank Farm Road / S. Higuera Street [Condition #114/MM TRANS-7b]

Offsite Improvements in the County

The following offsite improvements located outside the City Limits were constructed under a County encroachment permit and will be maintained by the County:

1. Extension of Buckley Road from Vachell Lane to South Higuera Street and installation of a traffic signal at the newly created intersection [Condition #100]

2. Installation of Class II bicycle lanes along Vachell Lane between Buckley Road and South Higuera Street [Condition #105]

The Buckley Road extension, originally a Phase 2 requirement, was completed in 2022 and allowed the inclusion of three out-of-phase multi-family lots which were included in Phase 1. These lots were created in Phase 1 consistent with the Affordable Workforce Housing Plan (Exhibit G of the Development Agreement) to provide affordable housing units as early as possible.

New Applications in 2022 for Which Activities Have Not Yet Begun

The following project-related applications were received by the City in 2022, and are currently under review. Actions related to these applications have not yet commenced.

- A. Tract Map 3089 Phase 2-3 Public Improvements. Public improvement plans for Phases 2 and 3 (the remainder of the R-2 zone) were submitted in August 2022 and are currently under review.
- B. Tract Map 3089 Phase 4-6 Public Improvements. Public improvement plans for Phases 4 through 6 were submitted in July 2022 and are currently under review.

PROJECT COMPLIANCE

Development Agreement

Implementation of the Avila Ranch project requires substantial new infrastructure to support new development, most of which is the responsibility of the developer. The approved Development Agreement (DA) for the project describes the developer's responsibilities in that regard.

The DA is a contract authorized by California Planning and Zoning Law and the City's Municipal Code that provides certain benefits to the developer, typically in the way of certainty and assurances to the developer regarding what rules will be applied for the project, in exchange for extraordinary public benefits. For example, Tract 3089 provides more affordable housing units than required by the City's standard inclusionary housing requirements and is dedicating more parkland than ordinarily required by the City. Tract 3089 is also required to construct an interim fire station prior to the construction of the 361st unit (Phase 1 only had 179 units) to serve the southern portion of the City (unless a permanent facility is constructed first) and to contribute funding to reimburse the City for the recent Los Osos Valley Road (LOVR) interchange project.

Tract 3089 constructed offsite improvements as part of Phase 1 to mitigate for the increase in traffic generated by the development. The developer will also be paying fair share fees for projects that are not triggered solely by this development but will ultimately be needed upon build-out of the City. As described in the DA and the conditions of approval, some of the improvements being constructed with Tract 3089 are eligible for reimbursement either through impact fee credits or through payments from other developers.

Reimbursement agreements have been established for a Public Reimbursement/Credit Agreement, Private Reimbursement Agreement, and Wastewater Reimbursement Agreement. No reimbursement payments were made in 2022, and the City expects the first reimbursement payments to occur in 2023.

Tract 3089 is meeting the City's agricultural land preservation requirements through a combination of onsite easements and payment of in-lieu fees. In compliance with the DA and the entitlement documents, Phase 1 has satisfied its agricultural mitigation obligations by providing in-lieu fees which have been paid in-full. Onsite agricultural conservation easements will be provided along Buckley Road with subsequent map phases.

Although the DA also addresses financing issues in great detail, compliance with these provisions will be addressed at the end of Fiscal Year 2022-2023 (end of June 2023) in a separate agenda item related to activities under the Community Facilities District (CFD) that was created pursuant to the DA.

Attachment A summarizes the project's current compliance status with respect to relevant provisions of the DA. As of February 2023, the developer is in compliance with all applicable requirements of the DA with respect to project milestones. As is the case with the MMRP, compliance with many provisions that are keyed to later project activities or phases cannot be determined at this time.

Protest Over Fees

The Avila Ranch Development Agreement includes provisions regarding payment of City-wide and project-specific development impact fees. Impact fees were negotiated and agreed upon with the original project developer, Avila Ranch, LLC, in 2017, and were included in both the original DA and an amendment to the DA which was executed April 16, 2019.

Per the DA, the developer is required to pay for the project's fair share of the cost to mitigate project impacts as identified in the EIR, Specific Plan, conditions of approval, or otherwise specified in the DA in effect when each final map is recorded in accordance with AB1600 analysis. 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. Sewer and water impact fees shall be paid as identified in the original 2017 DA. The Los Osos Valley Road interchange impact fees shall be paid as agreed upon by the City and the developer in 2018 and memorialized in the 2019 DA amendment.

The Development Agreement was negotiated as a method to extend the life of the tentative maps to provide a 20-year project build out, provided that there is a "true up" of fees at the time each phase of the final map is recorded. This provides the developer with the time they need to build out the project, and provides the City with the fees needed to provide services and infrastructure at the time of build out. 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 current Avila Ranch developer, Wathen Castanos, has raised issue with the payment of impact fees as identified in the DA. On February 16, 2023, the City received a letter from Wathen Castanos stating that the development impact fees which are being charged with each building permit are being “paid under protest with notice to cure.” The City is currently having ongoing discussions with the developer regarding the fees and payments.

Mitigation Monitoring and Reporting Program

As part of the environmental review of a development project, the California Environmental Quality Act (CEQA) requires public lead agencies to impose feasible mitigation measures in order to substantially lessen or avoid the significant adverse effects of the project on the physical environment. All mitigation must be feasible and fully enforceable. Mitigation measures were included in the Final Environmental Impact Report (EIR) for Avila Ranch, certified by the City Council on September 19, 2017. The Mitigation Monitoring and Reporting Program (MMRP) describes the procedures for the implementation of the mitigation measures identified in the Final EIR. The MMRP specifies the entity responsible for monitoring the program and when in the process it should be accomplished.

Attachment D is the updated MMRP, showing the current status of compliance with all mitigation measures. In summary, the project is in compliance with all applicable mitigation measures required to date. In some instances, compliance is ongoing (e.g., with respect to biological and cultural resource issues) or currently in process of being completed. In other cases, compliance cannot yet be determined because the project has not progressed sufficiently to trigger the required mitigation (e.g., items that relate to the design of commercial buildings). Attachment B is a summarized version of the MMRP for easy reference, with all mitigation measures put in sequential order of when compliance is required.

Project Conditions

Conditions of approval are imposed by the municipality as part of a land development application to be adhered to and exercised as part of a right granted to the property. Conditions of approval were adopted as part of the Avila Ranch subdivision map (vesting tentative map for Tract 3089) approved by the City Council on September 19, 2017.

Attachment C shows the current status of compliance with all relevant project conditions. In summary, the project is in compliance with all applicable project conditions required to date. Some conditions of approval have been fulfilled, while some are ongoing, and others will be addressed in later phases of development.

Community Facilities District (CFD)

A Mello-Roos Community Facilities District (CFD) was established and approved on October 24, 2017 ("Avila Ranch Community Facilities District No. 2017-1 "). The CFD for Avila Ranch is a special tax assessment in the district which was established to fund both services and infrastructure maintenance.

The City is authorized to levy the tax through the annual property tax roll. Section 10(ii) of the CFD resolution also has an annual reporting requirement, similar to the requirement for annual reporting of the MMRP and DA which is included in the Development Agreement. The City's Finance Department is responsible for preparing an annual report on the CFD at the end of each fiscal year to coincide with the Citywide annual budget, and is therefore not included in this report. The CFD annual report was last completed and presented to Council July 13, 2022.

Previous Council or Advisory Body Action

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

- Vesting Tentative Tract Map (VTTM) Tract 3089 was approved by the City Council on September 19, 2017, by Resolution No. 10832 (2017 Series).
- The 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 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 Planning Commission (PC) approved the architecture for all the R-2 project in the first three phases on September 22, 2021, by Resolution PC-1046-2021.
- A Memorandum of Agreement was executed in September 2021 between the City Manager and the Avila Ranch development team to allow for the advancement of Phases 4 and 5 prior to Phases 2 and 3, provided that improvements required for Phases 2 and 3 are included as part of the development. To date, no development applications related to Phases 4 and 5 have been approved.
- The City Council adopted a resolution 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. The annual monitoring of the Avila Ranch Development Agreement and associated project mitigation measures and conditions have 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, and Parks and Recreation Director concur with the recommended action.

ENVIRONMENTAL REVIEW

Annual monitoring of the Avila Ranch DA and MMRP is categorically exempt from California Environmental Quality Act (CEQA) according to CEQA Guidelines Section 15306 (Information Collection), which exempts “basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource.” These actions also qualify for the “commonsense” exemption under Section 15061(b)(3), which covers activities “where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” Annual monitoring 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 is categorically exempt from further analysis under CEQA.

FISCAL IMPACT

Budgeted: Yes

Budget Year: Annually beginning 2022-23

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

Section 5.04.2.(i) of the Avila Ranch Development Agreement requires the developer to pay for consultant costs related to annual Mitigation Monitoring and Reporting Program evaluation and Development Agreement review. The consultant’s scope of work to prepare this year’s annual evaluation and reporting for the Avila Ranch MMRP and DA review totaled \$9,360. The consultant is contracted by the City and paid for by the Avila Ranch developer. There are no direct fiscal impacts to the City related to the MMRP and DA annual review and reporting.

Supplemental taxes are assessed and collected on the project through the Community Facilities District to pay for City services and infrastructure maintenance. The CFD annual compliance report will be a future agenda item prepared at the end of each fiscal year to coincide with the Citywide annual budget, and is therefore not included in this report. The CFD annual report was last completed and presented to Council July 13, 2022.

ALTERNATIVES

1. ***Council could decide to provide direction to staff regarding the annual monitoring report for the Avila Ranch project, and continue the item to a future meeting.***
2. ***Council could decide to reject the annual monitoring report for the Avila Ranch project.*** This is not recommended since annual monitoring is a requirement of the DA.

ATTACHMENTS

- A – Compliance with Provisions of the Development Agreement
- B – Summary of Compliance with the MMRP
- C – Summary of Compliance with Project Conditions
- D – Avila Ranch Mitigation Monitoring and Reporting Plan (Feb 2023)