



AGENDA SUBMITTAL TO SOLANO COUNTY BOARD OF SUPERVISORS

ITEM TITLE Adopt an ordinance to approve and incorporate interest rate terms and related terms into the Master Development Agreement for the Middle Green Valley Specific Plan		BOARD MEETING DATE July 27, 2010 2pm	AGENDA NUMBER
Dept: Contact: Extension:	Resource Management Matt Walsh Ex. 3168	Supervisory District Number 2	
Published Notice Required?		Yes ___X___	No ___
Public Hearing Required?		Yes ___X___	No ___

DEPARTMENTAL RECOMMENDATION:

It is recommended that the Board adopt an ordinance to approve and incorporate interest rate terms and related terms into the approved Master Development Agreement serving the Middle Green Valley Specific Plan.

SUMMARY:

The Department of Resource Management requests that the Board of Supervisors review Attachment A, with its Exhibit H, and approve the proposed interest rate terms to be included in the Master Development Agreement for the Middle Green Valley Specific Plan.

FINANCING:

Cost for staff's preparation of this staff report is borne by the Departmental budget. Financing terms for cost recovery of the Middle Green Valley project will allow the County be reimbursed for the cost of the project with a fair interest accumulation.

DISCUSSION:

Section 3.12. Section 3.12 of the Development Agreement for the Middle Green Valley Specific Plan requires that, prior to issuance of each building permit for a new primary residential unit within the area of the Specific Plan, the Landowner applying for the permit shall pay, per each unit, the amount calculated in Attachment A, Exhibit H.

Exhibit H describes the Interest Rate and related terms used in calculating the amount to be paid.

The Master Development Agreement has been submitted to the Board for consideration and approval on July 27, 2010, prior to consideration of this ordinance.

The principle underlying the choice of interest rate is that there should be no net County cost, and the interest rate should reflect the cost of funds to the County.

Prepayment Without Penalty. Section 3.12 of the Development Agreement provides that any landowner has the right, in its sole discretion, to pay the amount due at any time. If any landowner has a cost of funds that is lower than the County's, that landowner could pre-pay the reimbursement amount using money available to them at their own more favorable rate.

Repayment. Under the Development Agreement, a failure by one landowner to build a unit (or to pay the per-unit fee to reimburse the County for its initial costs) does not create a default for another landowner. In other words, the decision by one landowner to not build one of the units does not add to the reimbursement amount for the other units that are eventually built.

The Specific Plan and Development Agreement do not require the landowners to build. Up to 400 units are allowable within the plan area, but there is no guarantee that 400 units will be built. All, some, or none of the units might ultimately be built. To the extent that fewer than 400 units are ultimately built, less than the total initial County costs will be recovered, since there would be fewer units to charge the reimbursement amount against. As a result, there is a possibility that not all of the Initial County Costs will be repaid.

The recommendation in Exhibit H was developed with input from the County Treasurer. The Board may choose to modify the components of the methodology in Exhibit H as it deems appropriate.

Public Notice. This proposed ordinance is intended to become incorporated into the Middle Green Valley Specific Plan Master Development Agreement. Notice of the public hearing for the Development Agreement was published in the Fairfield Daily Republic and a mailer was sent to all landowners in the Study Area, including a ½ mile radius around the study area.

ALTERNATIVES:

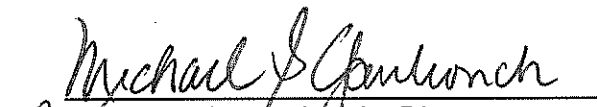
The Board could choose to consider other terms for repayment for this project. This option was not recommended because Attachment A, Exhibit H was developed in consultation with the County Treasurer for interest rate calculation. The Board could choose to change the methodology or the components of the reimbursement calculations. It should note that there is no current Board policy direction for the cost recovery on a specific plan.

OTHER AGENCY INVOLVEMENT:

The draft Ordinance with Exhibit H was prepared with the input and recommendations of the County Treasurer and County Counsel who concur with these recommendations.

CAO RECOMMENDATION:

DEPARTMENT HEAD SIGNATURE:


Clifford K. Covey, Interim Director
Department of Resource Management

Attachment A – Draft Ordinance Approving Interest Rate and Related Terms, with Exhibit H

ORDINANCE NO. 2010-_____

AN ORDINANCE APPROVING
INTEREST RATE AND RELATED TERMS PURSUANT TO
SECTION 3.12 OF THE
MASTER DEVELOPMENT AGREEMENT BY AND AMONG THE MIDDLE
GREEN VALLEY LANDOWNERS AND COUNTY OF SOLANO FOR THE
MIDDLE GREEN VALLEY SPECIFIC PLAN

The Board of Supervisors of the County of Solano ordains as follows:

Section 1. Findings:

The Solano County Board of Supervisors finds and determines, based on the entire administrative record, that:

1.1. On _____, 2010, the Board of Supervisors: (a) adopted Resolution No. 2010-_____, certifying an Environmental Impact Report (EIR) that analyzes the environmental impact of the Middle Green Valley Specific Plan Project (Specific Plan), and adopting a Statement of Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program; (b) adopted Ordinance No. 2010-_____, adopting the Middle Green Valley Specific Plan; and (c) adopted Ordinance No. 2010-_____, approving the Master Development Agreement by and Among the Middle Green Valley Landowners and County of Solano for the Middle Green Valley Specific Plan (Master Development Agreement).

1.2. Section 3.12 of the Master Development Agreement provides for Reimbursement of Initial County Costs to prepare, process, and publish the EIR, Specific Plan, and Master Development Agreement, as further specified in Section 3.12.

Section 2. Approval of Interest Rate and Related Terms

2.1. Attached to this Ordinance as **Exhibit H**, and incorporated by reference in this Ordinance, is a detailed description of the Interest Rate and Related Terms Pursuant to Section 3.12 of the Master Development Agreement.

2.2. **Exhibit H** is approved and shall be applied as provided in Section 3.12 of the Master Development Agreement, and as further described in **Exhibit H**.

2.3. County Counsel is authorized and directed to make all necessary and appropriate clerical, typographical, and formatting corrections to the adopted **Exhibit H**. Any such corrections shall not alter the substance, effect, or effective date of any action taken in adopting **Exhibit H**. In preparing the Master Development Agreement for signature by the parties, County Counsel is authorized to renumber **Exhibit H**, and references to **Exhibit H**, and to attach and incorporate it in sequence with the other exhibits to the Master Development Agreement.

2.4. The provisions of Ordinance No. ____- 2010, approving the Master Development Agreement, are incorporated in this Ordinance by this reference.

Section 3. Severability

If any provision of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, including but not limited to being preempted by state law, that portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion hereof nor other applications of the ordinance which can be given effect without the invalid provision or application.

Section 4. Effective Date

This ordinance shall be effective thirty (30) days after its passage.

Section 5. Publication

A summary of this ordinance shall be published once within fifteen (15) days after its adoption, in the Fairfield Daily Republic, a newspaper of general circulation in the County of Solano.

Passed and adopted by the Solano County Board of Supervisors at its regular meeting on _____ by the following vote:

AYES:

NOES:

EXCUSED:

John M. Vasquez, Chair
Solano County Board of Supervisors

ATTEST:

Michael D. Johnson, Clerk
Solano County Board of Supervisors

By: _____
Patricia J. Crittenden, Chief Deputy Clerk

Introduced:

Adopted:

Effective:

EXHIBIT H

Interest Rate and Related Terms Related to Initial County Costs

Section 1. Reimbursement Amount

The Reimbursement Amount applicable to each new primary residential unit shall mean the amount calculated by dividing the amount of the Initial County Costs by the total number of new primary residential units for participating landowners listed in Table 4-1 of the Specific Plan.

The following example is for illustration purposes only.

Example:

The Initial County Costs are \$1,000,000.00 and the total number of new primary residential units listed in Table 4-1 of the Specific Plan is 390, the Reimbursement Amount is \$2,564.10.

Section 2. Interest Rate:

The amount of the "Interest Rate" which shall be applied pursuant to Section 3.12 of the Master Development Agreement by and Among the Middle Green Valley Landowners and County of Solano for the Middle Green Valley Specific Plan (Master Development Agreement), shall be equal to the sum of the "Interest Rate Index" plus the "Multiplier," but in no event less than the "Minimum Interest Rate" nor greater than the "Maximum Interest Rate," each as set forth below.

Interest Rate Index: The Five-Year U.S. Treasury swap rate as published by Bloomberg

Multiplier: One Percent (1%)

Minimum Interest Rate: Three Percent (3%)

Maximum Interest Rate: Six Percent (6%)

The following example is for illustration purposes only.

Example:

If the Interest Rate Index were 2% and the Multiplier is 1%, the total Interest Rate to be applied pursuant to Section 3.12 would be 3%.

Section 3. Date for Setting of Benchmark Interest Rate:

The date upon which the Benchmark Interest Rate shall be set is the Effective Date of the Master Development Agreement. The Benchmark Interest Rate shall be calculated using the Interest Rate Index that is published on or most recently prior to the Effective Date.

Section 4. Dates Upon Which the Interest Rate Shall be Reset:

The Interest Rate calculated to be in effect starting on the Effective Date of the Master Development Agreement shall apply for the first five years of the Term of the Master Development Agreement. On the fifth (5th) anniversary following the Effective Date of the Master Development Agreement, the Interest Rate shall be reset using the Interest Rate Index that is published on or most recently prior to the fifth anniversary of the Effective Date. Following the fifth anniversary of the Effective Date, the Interest Rate shall be reset in the same manner on the tenth, fifteenth, and twentieth anniversaries of the Effective Date.

The Interest Rates that are calculated in this manner are to be set on the Effective Date and on each subsequent five-year anniversary within the Term of the Master Development Agreement, and are to be applied pursuant to Section 3.12 without regard to changes in the published level of the Interest Rate Index that may occur within each such five-year period.

Section 5. Effect of Minimum and Maximum Interest Rates:

At no time during the Term of the Master Development Agreement shall the Interest Rate (i.e., the sum of the Interest Rate Index and the Multiplier) be less than Three Percent (3%) nor more than Six Percent (6%). The date upon which the Benchmark Interest Rate shall be set is the Effective Date of the Master Development Agreement. The Interest Rate shall be calculated using the Interest Rate Index that is published on or most recently prior to the Effective Date.

On the fifth, tenth, fifteenth or twentieth anniversaries following the Effective Date of the Master Development Agreement, if the Interest Rate set based on the then-published Interest Rate Index would be below 3%, the Interest Rate during the subsequent five-year period shall be 3%. On the fifth, tenth, fifteenth or twentieth anniversaries following the Effective Date of the Master Development Agreement, if the Interest Rate set based on the then-published Interest Rate Index would be above 6%, the Interest Rate during the subsequent five-year period shall be 6%.

Section 6. Compounding:

Interest calculated pursuant to section 3.12 shall be calculated as simple interest, without compounding.

Section 7. Accrual:

Interest pursuant to Section 3.12 shall begin accruing on the Effective Date of the Master Development Agreement.

Section 8. Calculation of Payment Amounts:

The amount payable pursuant to Section 3.12 shall be calculated as of the date of issuance of each corresponding building permit for a new primary residential unit. The dollar amount of the interest payable as of that date shall be calculated using the Interest Rate(s) in effect during the corresponding five-year period(s), and shall be calculated by applying the Interest Rate(s) applicable during each period to the amount of Initial County Costs that have been outstanding and unpaid during each day since the Effective Date. The total amount payable shall be calculated by adding to the Reimbursement Amount an amount equal to the Reimbursement Amount multiplied by the Interest Rate, in the manner demonstrated by the examples below. For purposes of performing this calculation, the Interest Rate shall be translated into a daily

interest rate, as demonstrated in the examples below.

The following examples are for illustration purposes only.

Example 1:

On the Effective Date, the Interest Rate Index is 2.65%, and the Multiplier is 1%, for an Interest Rate of 3.65%. The Initial County Costs are \$1,000,000.00. The total number of units is 390. Reimbursement Amount is determined to be \$2,564.10. On the first anniversary after the Effective Date, a building permit is issued for one new primary residential unit. The amount due under Section 3.12 of the Master Development Agreement would be \$2,657.69.

Initial County Costs = \$1,000,000.00
 Total Units = 390
 Reimbursement Amount = \$2,564.10
 Interest Rate, annualized = 3.65%
 Days in Year = 365
 Daily Interest Rate during relevant period = 0.01%
 Number of Days Interest Accrued = 365

$$\begin{aligned}
 &= (1,000,000 \div 390) + ((1,000,000 \div 390) \times ((0.0365 \div 365) \times 365)) \\
 &= 2,564.10 + (2,564.10 \times ((0.0365 \div 365) \times 365)) \\
 &= 2,564.10 + (2,564.10 \times ((0.0001) \times 365)) \\
 &= 2,564.10 + (2,564.10 \times 0.0365) \\
 &= 2,564.10 + 93.59 \\
 &= \$2,657.69
 \end{aligned}$$

Example 2:

The same example as above, except the building permit is to be issued five days after the first anniversary following the Effective Date. The amount due under Section 3.12 of the Master Development Agreement would be \$2,658.97.

Initial County Costs = \$1,000,000.00
 Total Units = 390
 Reimbursement Amount = \$2,564.10
 Interest Rate, annualized = 3.65%
 Days in Year = 365
 Daily Interest Rate during relevant period = 0.01%
 Number of Days Interest Accrued = 370

$$\begin{aligned}
 &= (1,000,000 \div 390) + ((1,000,000 \div 390) \times ((0.0365 \div 365) \times 370)) \\
 &= 2,564.10 + (2,564.10 \times ((0.0365 \div 365) \times 370)) \\
 &= 2,564.10 + (2,564.10 \times ((0.0001) \times 370)) \\
 &= 2,564.10 + (2,564.10 \times 0.0370) \\
 &= 2,564.10 + 94.87 \\
 &= \$2,658.97
 \end{aligned}$$

Example 3:

The same example as above, except the building permit is to be issued five days after the fifth anniversary following the Effective Date. On the fifth anniversary after the Effective Date, assume that the Interest Rate Index published on that date was 3.65% instead of the 2.65% that applied during the first five years and, as a result, the Interest Rate during the second five years would be 4.65%. The amount due under Section 3.12 of the Master Development Agreement would be \$3,033.68.

Initial County Costs = \$1,000,000.00

Total Units = 390

Reimbursement Amount = \$2,564.10

Interest Rate, annualized during first five years = 3.65%

Days in Year = 365

Daily Interest Rate during first five years = 0.01%

Interest Rate, annualized during second five years = 4.65%

Daily Interest Rate during second five years = 0.0127% (approx.)

Number of Days Interest Accrued at rate in effect for first five years = 1,825

Number of Days Interest Accrued at rate in effect for second five years = 5

$$= (1,000,000 \div 390) \\ + ((1,000,000 \div 390) \times ((0.0365 \div 365) \times 1,825)) \\ + ((1,000,000 \div 390) \times ((0.0465 \div 365) \times 5))$$

$$= 2,564.10 \\ + (2,564.10 \times ((0.0365 \div 365) \times 1,825)) \\ + (2,564.10 \times ((0.0465 \div 365) \times 5))$$

$$= 2,564.10 \\ + (2,564.10 \times (0.0001 \times 1,825)) \\ + (2,564.10 \times (0.000127 \times 5))$$

$$= 2,564.10 \\ + (2,564.10 \times (0.1825)) \\ + (2,564.10 \times (0.000635))$$

$$= 2,564.10 \\ + 467.95 \\ + 1.63$$

$$= \$3,033.68$$