



Town of Moraga	Agenda Item
CONSENT	6.5

Meeting Date: March 24, 2021

**TOWN OF MORAGA**

**STAFF REPORT**

**To: Honorable Mayor and Councilmembers**

**From: Afshan Hamid, Planning Director  
Brian Horn, Associate Planner**

**Subject: Receive and Accept Annual Review of Camino Ricardo (Harvest Court - Subdivision 9321) Development Agreement Determining Good Faith Compliance by the Developer with the Terms of the Agreement**

**Background**

On March 12, 2014, Town Council adopted Ordinance 244, approving a Development Agreement between the Town, SummerHill LLC, and C&C Equities for the Camino Ricardo Subdivision, also known as Harvest Court. Section 7.5, Periodic Review, of the recorded Development Agreement requires annual review by the Town Manager of the developer's good faith compliance with the terms of the agreement. The annual review is focused on review of accounts of fees paid and owed to the Town, assignments or transfers of property, and the construction status of public improvements that occurred during the past year for the subdivision project. If the Town Manager finds the developer has complied in good faith with the terms of the Development Agreement, then, in accordance with Section 7.5 of the agreement, the developer and Town Council are to be notified in writing, with that action officially completing the review process for the year in question. This report to the Town Council serves as that notification.

On February 10, 2021 SummerHill Homes submitted to the Planning Department the annual report required by the terms of the Development Agreement (Attachment B). The Planning Department and Engineering Department reviewed the report for accuracy and provided an assessment and recommendation to the Town Manager (Attachment A).

**Discussion**

The Town Manager reviewed the annual report submitted by the Developer, as well as staff's review and reconciliation of the report. There are two major outstanding items that remain: 1) an agreement regarding SummerHill's appropriate fair share contribution to the Moraga Road crosswalk; and 2) SummerHill's repair of the failing asphalt

1 pathways throughout the park (the Town will not accept the pathways in their current  
2 condition). The Town continues to discuss these items with SummerHill and remains  
3 hopeful that they will be resolved this year. Notwithstanding the aforementioned  
4 outstanding items, the Town determines that the Developer has complied in good faith  
5 with the terms of the agreement over the last year in accordance with Section 7.5 of the  
6 agreement.

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8 **CEQA**

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10 The annual update is not subject to CEQA, as the action is not a project as defined in  
11 Section 15378(b) (2) of the Public Resources Code.

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13 **Fiscal Impact**

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15 There is no fiscal impact to accepting his report.

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17 **Recommendation**

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19 Receive and Accept Annual Review of the Camino Ricardo (Harvest Court - Subdivision  
20 9321) Development Agreement Determining Good Faith Compliance by the Developer  
21 with the Terms of the Agreement.

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23 **Report reviewed by: Cynthia Battenberg, Town Manager**

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25 **Attachments:**

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A. Memorandum to Town Manager for Review of Annual DA Compliance  
Report, March 9, 2021

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B. 2020 Annual Report on Development Agreement between the Town of  
Moraga, SummerHill Homes LLC, and C&C Equity Company,  
February 10, 2021

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# **ATTACHMENT A**

Memorandum to Town Manager for Review of Annual  
DA Compliance Report, March 9, 2021



# Town of Moraga

## PLANNING DEPARTMENT

### MEMORANDUM

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**To:** Cynthia Battenberg, Town Manager

**From:** Brian Horn, Associate Planner

**Date:** March 9, 2021

**Subject:** Annual Report on Development Agreement between the Town of Moraga, SummerHill Homes, and C&C Equities for the Camino Ricardo Subdivision (SUB 9321)

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On March 12, 2014, the Town Council adopted Ordinance 244, approving a Development Agreement between the Town, SummerHill LLC, and C&C Equities for the Camino Ricardo Subdivision 9321 (now known as Harvest Court). Section 7.5, Periodic Review, of the recorded Development Agreement requires annual review on the effective date of the agreement (April 11, 2014) of the developer's good faith compliance with the terms of the agreement.

To date, SummerHill LLC has submitted annual reports for 2014, 2015, 2016, 2017, 2018 and 2019 in compliance with the Development Agreement. The reports for each of these time periods detailed their account of fees paid and owed to the Town, assignments or transfers of property, and the construction status of public improvements required by the terms of the Development Agreement, in accordance with Section 7.5. The reports were reviewed by the Town Manager who determined that SummerHill had operated in good faith compliance with the Development Agreement during that time period. The Town Manager's recommendation was forwarded to the Town Council and these reports were approved by the Town Council.

Pursuant to Section 7.5 of the Development Agreement, on January 27, 2020, SummerHill LLC submitted for the Town Manager's review their annual report (Attachment 1) which details their 2019 account of fees paid and owed to the Town; assignments or transfers of property; and the construction status of public improvements required by the terms of the Development Agreement.

Staff has reviewed and generally concurs with the statements made by SummerHill LLC with regard to Development Agreement compliance, noting the following:

- **Fees/Payments:** The applicant has submitted their account of payments made to the Town in 2020 which was \$0 (Attachment 1, page 4). The applicant currently has no outstanding deposits with the Planning Department. The Public Works Department has collected bonds, however, there are outstanding deposits needed

for anticipated inspection services and staff time to close out the West Commons Park asphalt park trail completion and the crosswalk fair share closeout. Additional deposits may still be required as the project continues. Other fees that applied to the project include:

- Impact Fees: In 2020, no Traffic Mitigation, Storm Drain, Public Safety, General Government, Specific Plan, Moraga Center Specific Plan (MCSP) and Lamorinda Fee and Finance Authority development impact fees were collected or due. SummerHill completed payment of these fees in previous years.
  - Public Safety Payment: Condition 5.6 of the Development Agreement states that “In order to provide funding for the ongoing costs of police services required by the MCSP, Developer shall pay \$2,810.00 per unit at the close of escrow for each home (“Public Safety Payment”). This fee shall be credited against any Public Safety Impact fees due.” No Public Safety Payment fees were collected or due in 2020. SummerHill completed payment of this fee in previous years.
  - Pedestrian Improvements: The payments totaling \$55,000 to assist in funding pedestrian improvements on Moraga Road have been paid in full. No additional payment was required in 2020.
- Transfer of Property: No transfer of property occurred in 2020.
  - Construction of Public Improvements: Construction of the project and public improvements began in 2015. This included construction of a sidewalk extending from the project site along the east side of Camino Ricardo to the existing sidewalk at Moraga Way. In 2016 installation of the roads, curbs, gutter and sidewalk was completed, landscaping at the entry of the project in the open space areas and bio-retention areas was planted, and pedestrian bridges were constructed over Corliss Tributary and Laguna Creek. Construction of a crosswalk crossing Moraga Road to provide pedestrian access between the Commons and West Commons parks was completed in 2018. The public improvements were accepted by the Town Council on September 26, 2018 with a one-year warranty period on the improvements.
  - Outstanding Items: The West Commons Park is the major feature of the public landscape improvements. As directed by the Town Council at their March 14, 2018 meeting, the developer is working on a solution to correct the deficiencies with the asphalt park trail before it will be accepted by the Town. In addition, the developer is working with the Town to finalize a reimbursement agreement related to the construction of the high-visibility crosswalk on Moraga Road.

During the past year, the applicant has continued to coordinate with Planning and Public Works staff and consultants in completing the project.

While noting that issues with the park and crosswalk reimbursement remain, staff finds that the developer has complied in good faith with the terms of the Development Agreement. In accordance with Section 7.5 of the agreement, this item should be placed on a future Town Council agenda in order to notify the developer and Town Council in

writing that the review is complete and Summerhill is in compliance with the terms of the Development Agreement.

Attachments:

1. 2020 Annual Report on Development Agreement between the Town of Moraga, SummerHill Homes, and C&C Equities

# **ATTACHMENT B**

2020 Annual Report on Development Agreement  
between the Town of Moraga, SummerHill Homes LLC,  
and C&C Equity Company,  
February 10, 2021

## SummerHill Homes<sup>SM</sup>

3000 Executive Parkway, Suite 450  
San Ramon, CA 94583  
Tel: (925) 244-7500  
Fax: (925) 244-7501

February 10, 2021

Town Clerk  
Town of Moraga  
329 Rheem Boulevard  
Moraga, CA 94556

Re: Development Agreement (the “Development Agreement”) by and between the Town of Moraga (the “Town”), SummerHill Homes LLC and C & C Equity Company  
Camino Ricardo Project

Dear Madame Clerk:

This letter is an application and written request pursuant to Section 7.5 of the above referenced Development Agreement by SummerHill Camino Ricardo LLC (as successor in interest to SummerHill Homes LLC, and now “Developer” as defined in the Development Agreement, or “SummerHill” herein) for annual review of Developer’s good faith compliance with the Development Agreement for the time period of January 1, 2020 through December 31, 2020.

Developer previously submitted an annual review to the Town for the period January 1, 2019 through December 31, 2019 and the Town determined that Developer was in compliance through that period of time.

In this letter we demonstrate compliance with the Development Agreement by the Developer, and identify the remaining items.

I. Compliance by SummerHill with the Development Agreement

Section 7.5 of the Development Agreement requires furnishing to the Town three categories of information as follows:

1. “An accounting of the fees due and paid to the Town.” Please see the attached spreadsheet of fees paid to the Town from January 1, 2020 through December 31, 2020.
2. “Any assignments or transfers of the Property.” There were no assignments of transfer of property in 2020.
3. “All construction of public improvements under this Agreement.” All Public and Private Improvements are installed. These include the following:
  - a) The public park was completed and was opened by the Town on 9/23/17 with a Ribbon Cutting and public ceremony. SummerHill has continued since 9/23/17 to work with the Town on formal park acceptance and is currently working with the Town to try and resolve the challenges and receive acceptance by Spring of 2021.

## II. Outstanding Items

Although the Developer has complied fully with the Development Agreement the Town has not accepted the Public Park, and has been slow to finalize a reimbursement agreement due to the Developer for construction of the high-visibility crosswalk on Moraga Road. SummerHill continues to work with the Town to resolve this last remaining item.

## III. Conclusion.

We believe that the above information demonstrates that Developer has complied in good faith with the terms of the Development Agreement. Pursuant to Section 7.5(b)(i) of the Development Agreement, Developer request that the Town Manager notify Developer and the Town Council in writing that it has found good faith compliance by Developer with the terms of the Development Agreement and that the annual review for the period is concluded without any further hearing or appearance from Developer. We further request that in accordance with Section 7.5(d) of the Development Agreement, the Town issue a Certificate of Compliance in recordable form certifying that Developer has been in good faith compliance through the applicable review period.

Finally, we request that the Town continue to work with the Developer to (1) accept the Park; and (2) determine the appropriate fair-share contribution for the crosswalk, and reimbursement to SummerHill.

This information is provided as of the date of this letter. Please contact the undersigned should you require any further information.

Very truly yours,

SummerHill Camino Ricardo LLC

A handwritten signature in blue ink, appearing to read "Denise Cunningham". The signature is fluid and cursive, with the first name "Denise" being more prominent than the last name "Cunningham".

Denise Cunningham  
Vice President of Development

cc: Cynthia Battenberg, Town Manager  
Afshan Hamid, Planning Director  
Brian Horn, Associate Planner  
Michelle Marchetta Kenyon, Esq., Town Attorney  
Joshua Taylor, SummerHill Homes Esq.

Attachments

Fees Paid to the Town

The deposit account was sufficient to fund City efforts on Harvest Court and no additional fees were paid to the Town of Moraga in 2020.