

RESOURCES AND DEVELOPMENT MANAGEMENT DEPARTMENT REPORT

DATE: November 15, 2006

TO: Orange County Planning Commission

FROM: RDMD/PDS/Current and Advance Planning Services

SUBJECT: Public Hearing on Planning Application PA 06-0054; Tonner Hills Planned Community Statistical Table Amendment and Area Plan Text Revision.

PROPOSAL: The project proposes revisions to the Planned Community Statistical Table for the redistribution of land and dwelling units within the Planned Community.

LOCATION: The Tonner Hills Planned Community is located in the northeastern portion of Orange County within the City of Brea. The Orange Freeway (SR 57) bisects the community, with approximately 686 acres on the east side of the freeway and north of Lambert Road and approximately 108 acres on the west side of the freeway at the southwest corner of Tonner Canyon Rd. and the Orange Freeway. (Third Supervisorial District)

APPLICANT: Tonner Hills SSP, LLC

STAFF CONTACT: Chuck Shoemaker, Chief, PDS/Current and Advance Planning
Phone: (714) 834-2166 FAX: (714) 834-4652

SYNOPSIS: Planning and Development Services Department recommends Planning Commission approval of PA06-0054 subject to the attached findings and conditions.

BACKGROUND:

On November 19, 2002, the Board of Supervisors adopted the Tonner Hills Planned Community, which at the time of adoption was located in the City of Brea Sphere of Influence. The planning process which developed this Planned Community involved many hours of coordinated staff time between the City of Brea, the County and the prior property owner, Nuevo Energy. The adoption of the Tonner Hills project included the adoption of a Development Agreement (DA) between the County and Nuevo Energy. Included in the DA was a Memorandum of Understanding (MOU) entered into by the County, the City and Nuevo Energy. Together, the DA and the MOU outlined the orderly, planning, development and annexation of the Tonner Hills Planned Community. It was agreed in 2002 that Tonner Hills would be annexed into the City of Brea, the precise terms and timing of the annexation would be developed through the actual LAFCO (Local Agency Formation Commission) annexation process. The MOU required the three parties to execute a pre-annexation agreement no later than January 15, 2003; however, no agreement was reached by that deadline.

In 2003 the Tonner Hills property was sold to Shea Homes (Tonner Hills SSP, LLC) by Nuevo Energy. Shea Homes acquired the surface and development rights while Blacksand Energy, Inc. acquired the subsurface mineral rights, which included the oil production facilities; 200+/- operating oil wells, pipelines and other oil field related facilities. Shea Homes and the City of Brea restarted annexation discussions but, the two parties were unable to reach agreement on key issues; and therefore, unable to enter into a pre-annexation agreement.

In March 2005 a new process to revive negotiations was convened. A working group comprised of representatives of the City of Brea, Shea Homes, the County, Aera Energy (a neighboring landowner) and LAFCO were tasked with resolving the outstanding annexation issues. The group held seven meetings during a roughly six month meeting schedule. The result of the meetings was the adoption in January 2006 of a Pre-annexation Agreement between the City of Brea, the County of Orange and Shea Homes (Tonner Hills SSP, LLC and Tonner Hills 680, LLC) and a Cooperative Agreement between the City of Brea and the County of Orange. A central element of the two agreements was that the County would continue to process development approvals, including Area Plan amendments, discretionary permits, subdivision maps, grading permits, building permits, etc. Once initial development is completed all follow-on permits (eg, pool permits, room additions, patio covers) would be processed with the City.

DISCUSSION:

In accordance with the initial approval of the Tonner Hills Planned Community and reconfirmed with the adoption of the Pre-annexation Agreement and the Cooperative Agreement, this Area Plan Amendment is submitted for action by the Planning Commission. Section 9 of the Planned Community regulations governs the PC Development Map and Statistical Table. General Regulation 9.3 (5) (Page 9-3) states: “Any revision to reallocate the number of dwelling units assigned to land uses from one Planning Area to another Planning Area by more than ten percent (10%) shall require an amended Statistical Table to be approved by the Planning Commission. Changes of less than ten percent (10%) shall require approval of the Director.” The proposed Area Plan Amendment includes one element that triggers Planning Commission consideration (i.e., boundary adjustment between planning areas 2 and 3 and a resulting density shift greater than ten percent).

When Tonner Hills was initially approved in November 2002, a Memorandum of Understanding was included that specified the provision of affordable housing within the Planned Community. The language specified that any affordable housing projects would comply with the City’s affordable housing regulations in effect on August 20, 2002, but that the County would be entitled to credit toward the County’s RHNA (Regional Housing Needs Assessment) allocation. Subsequent to the adoption of the planned community, recent discussions with Jamboree Housing, a non-profit provider of affordable housing, resulted in the selection of a suitable project site within Planning Area 2. In order to better effect the provision of affordable housing and reflecting a better distribution of dwelling units within the Planned Community, it became apparent that adjusting the boundary line between Planning Areas 2 and 3 would ensure that residential development projects did not exceed planning area boundary lines.

The boundary adjustment would permit Tonner Hills SSP, LLC to adjust dwelling units between planning areas in order to accommodate a cluster style development proposed for Planning Area 3. The number of dwelling units in Planning Area 3 increases from 233 units to a requested number of 269 units, an increase of eleven percent (11%). The total number of dwelling units for the Tonner Hills Planned Community remains 795 dwelling units. The other elements of this proposed Amendment are discussed below.

Area Plan Text Revision

As introduced above, one element of this proposed amendment adjusts the boundary lines between Planning Areas 2 and 3 in order to provide a clearer distinction between project types and developers. Included in this boundary adjustment is an amendment to the development description for Planning Area 2. Though the Tonner Hills Planned Community Development Regulations state on page 2-8 section 2.7.4 that; “Multiple Family Residential (Applies to Planning Area 2)” the Area Plan did not carry forward this provision. This amendment would resolve this apparent inconsistency with the inclusion of the draft language included on page 3-5 and reflected in Table 1 Residential Summary of the Area Plan. It is noted that Planning Area 2 is the proposed affordable housing site and the only planning area that permits multiple family residential development.

Page 3-4 of the Amendment package depicts proposed revisions to Table 1 “Residential Summary” that reflect various adjustments and refinements to the Tonner Hills Planned Community. The principal revision, which affects Planning Areas 2 and 3, has been previously discussed. The other adjustments reflect more accurate planning acreage figures and minor adjustments (less than 10 %) in the number of dwelling units per planning area. Due to refinements in the calculation of acreage the total developable acres decreases from 180 acres to 177.4 acres.

Tonner Hills Planned Community Statistical Summary Table and Development Map

The third principal element of this amendment is reflected in the proposed revisions to Tonner Hills Planned Community Exhibit 6 “Amended Development Plan” which includes the amended Statistical Summary Table. A copy of the current Exhibit 6 is included in the Staff Report to the Planning Commission for comparison purposes. The amended Exhibit depicts the reconfigured Planning Area 2 and 3 boundary line. The exhibit also depicts more accurately the shapes of all of the planning areas. The Tonner Hills Planned Community Regulations recognized the periodic need to adjust planning area acreages. General Regulation 9.3 (4) (Page 9-3) states: “Any revision proposing to increase or decrease the number of acres assigned to a Planning Area (as a result of a Planning Area boundary refinement) shall be offset by a corresponding decrease in the affected, adjacent Planning Area(s). Such adjustments are considered a necessary and routine result of the engineering and planning process.”

The acreage refinements which are the result of more accurate mapping are reflected in the Statistical Table located in the upper right corner of Exhibit 6. As a result of the improved mapping efforts, the total acreage of the Tonner Hills Planned Community is shown as 794.9 acres, as opposed to the previous figure of 789.6 acres. The developable acres are reduced from 180 acres to the current figure of 177.4 acres. Wildcatters Park, a key recreational component of the plan and the City of Brea, is accurately depicted as 15.5 acres, a slight increase of 0.9 acres.

Though the total open space acreage has increased from 559.7 acres to 571.3 acres, the amount of natural/enhanced open space has been reduced from 493.9 acres to 467.6 acres. A primary factor in this change is the need to provide better fire department access. For example, a fire access road is now contemplated connecting Planning Area 5 to Planning Area 4 to the west of the City of Brea water tank, depicted as “N.A.P.” on the “Amended Development Plan.” In order to implement this connection more grading is required. There are other similar refinements to grading that create the differences between the original figures and currently proposed acreage figures.

PUBLIC NOTICE AND REFERRAL FOR COMMENT:

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site. Additionally, a notice was posted at the site, at the 300 N. Flower Building and as required by established public hearing posting procedures. A copy of the Notice of Hearing was also published in the Orange County Register on November 3, 2006. A copy of the planning application and a copy of the proposed area plan were distributed for review and comment.

The City of Brea offered comments concerning the differences in acreage figures; principally, as they relate to Wildcatters Park, open space, Planning Area 9 the Public Use area, and the boundary adjustments. The City also requested a clarification on the incorporation of multiple family residential development in Planning Area 2 when none was shown on the previous Area Plan. This Staff Report has explained that the Planned Community regulations always contemplated that multiple family residential development would be located in Planning Area 2 (page 2-8 of the Planned Community regulations). The City’s comments concerning acreage figures have been responded to in the previous discussion. Related to Planning Area 9, the slight change in acreage (21.5 to 21.1 acres) is the result of improved acreage calculations. The change may also relate to different engineering firms being involved in the preparation of the exhibits. The accuracy is greater now because these exhibits form the basis of the Tonner Hills subdivision mapping effort. The key factor is that Tonner Hills remains true to the original development approval of 795 dwelling units; there is less development area committed to residential development and there is more acreage preserved as open space.

As of the writing of this staff report, no other comments raising issues with the project have been received from other County divisions.

CEQA COMPLIANCE:

Final EIR No.581, previously certified by Board of Supervisors on November 19, 2002 reflect the independent judgment of the lead agency and must again be approved for the proposed project subject to the CEQA findings contained in Appendix A of this Report.

RECOMMENDED ACTION:

Planning and Development Services recommends the Planning Commission:

- a. Receive staff presentation and public testimony as appropriate; and,
- b. Approve PA 06-0054 for the Tonner Hills Planned Community subject to the attached findings and conditions of approval.

Respectfully submitted

Tim Neely, Director
Planning and Development Services

APPEAL PROCEDURE

Any interested person may appeal the decision of the Planning Commission on this permit to the Orange County Board of Supervisors within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$ 760.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana.

ATTACHMENTS:

- Appendix A. Recommended Findings
- Appendix B. Recommended Conditions of Approval

EXHIBITS: (Planning Commissioner’s Packages Only)

- 1. Proposed Tonner Hills Area Plan Text Revisions
- 2. Proposed Tonner Hills Planned Community Statistical Summary Table and Development Map



Appendix A Findings PA060054

-
- 1 **GENERAL PLAN** **PA060054**
That the use or project proposed is consistent with the objectives, policies, and general land uses and programs specified in the General Plan adopted pursuant to the State Planning and Zoning Law.
-
- 2 **ZONING** **PA060054**
That the use, activity or improvement(s) proposed, subject to the specified conditions, is consistent with the provisions of the Zoning Code, or specific plan regulations applicable to the property.
-
- 3 **COMPATIBILITY** **PA060054**
That the location, size, design and operating characteristics of the proposed use will not create unusual conditions or situations that may be incompatible with other permitted uses in the vicinity.
-
- 4 **GENERAL WELFARE** **PA060054**
That the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare.
-
- 5 **PREVIOUS PROJECT LEVEL EIR** **PA060054 (Custom)**
That Final 581, previously certified on November 19, 2002, satisfies the requirements of CEQA for the proposed project is approved based on the following findings:
- A. The County of Orange, as Lead Agency, has reviewed and considered the information in the EIR and
1. The general environmental setting of the proposed project is adequately described in the EIR.
 2. There are no new significant environmental effects beyond those disclosed in the EIR;
 3. There are no substantial changes in circumstances that would result in new significant environmental effects;
 4. The EIR adequately describes alternatives and mitigation measures related to each significant effect identified;
 5. There is no new information of substantial importance that was not known or could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified that shows any of the following:
 - a. The project will have one or more significant effects not discussed in the previous EIR;
 - b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - c. Mitigation measures or alternatives previously found not to be feasible would, in fact, be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt them; and,
 - d. Mitigation Measures or alternatives that are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt them.
- B. The approval of the previously certified Final EIR for the proposed project reflects the independent judgment of the lead agency.
-
- 6 **FISH & GAME - EXEMPT** **PA060054**
That pursuant to Section 711.4 of the California Fish and Game Code, this project is exempt from the required fees as it has been determined that no adverse impacts to wildlife resources will result from the project.

7

NCCP NOT SIGNIFICANT

PA060054

That the proposed project will not have a significant unmitigated impact upon Coastal Sage Scrub habitat and therefore, will not preclude the ability to prepare an effective subregional Natural Communities Conservation Planning (NCCP) Program.



Appendix B Conditions of Approval PA060054

1 CP CP NA

BASIC/ZONING REG

PA060054

This approval constitutes approval of the proposed project only to the extent that the project complies with the Orange County Zoning Code and any other applicable zoning regulations. Approval does not include any action or finding as to compliance of approval of the project regarding any other applicable ordinance, regulation or requirement.

2 CP CP NA

BASIC/PRECISE PLAN

PA060054 (Custom)

Except as otherwise provided herein, this Area Plan (PA06-0054) is approved as a precise plan. If the applicant proposes changes regarding the location or alteration of any use or structure, the applicant shall submit a changed plan to the Director, PDS, for approval. If the Director, PDS, determines that the proposed change complies with the provisions and the spirit and intent of the approval action, and that the action would have been the same for the changed plan as for the approved plot plan, he may approve the changed plan without requiring a new public hearing.

3 CP CP NA

BASIC/COMPLIANCE

PA060054 (Custom)

Failure to abide by and faithfully comply with any and all conditions attached to this approving action including all related conditions of approval contained in Planning Commission Resolution No. 02-10 shall constitute grounds for the revocation of said action by the Orange County Planning Commission.

4 CP CP NA

BASIC/OBLIGATIONS

PA060054

Applicant shall defend at his/her sole expense any action brought against the County because of issuance of this permit. Applicant shall reimburse the County for any court costs and attorneys fees that the County may be required to pay as a result of such action. The County may, at its sole discretion, participate in the defense of any action, but such participation shall not relieve applicant of his/her obligations under this condition.

5 CP CP NA

BASIC/APEAL EXACTIONS

PA060054

Pursuant to Government Code Section 66020, the applicant is hereby informed that the 90-day approval period in which the applicant may protest the fees, dedications, reservations or other exactions imposed on this project through the conditions of approval has begun.