

# CITY OF CALISTOGA STAFF REPORT

**TO: CHAIRMAN MANFREDI AND MEMBERS OF THE  
PLANNING COMMISSION**

**FROM: KEN MACNAB, PLANNING AND BUILDING MANAGER**

**MEETING DATE: MAY 23, 2012**

**SUBJECT: VINEYARD OAKS SUBDIVISION – AMENDMENT TO  
APPROVED DEVELOPMENT AGREEMENT**

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1 **REQUEST**

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3 **DA 2007-02:** Consideration of a request submitted by the Carter Family Trust to  
4 extend the term of the approved Development Agreement for the Vineyard Oaks  
5 Subdivision project for two years and to modify provisions of the agreement  
6 regarding payment of required development impact fees. No changes to the  
7 approved project are being proposed. The subject property is located at 2400  
8 Grant Street within the RR - Rural Residential Zoning District. (APN 011-010-  
9 057). This proposed action is exempt from the California Environmental Quality  
10 Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines.

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12 **BACKGROUND**

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14 On June 3, 2008, the City Council approved the Vineyard Oaks Subdivision  
15 project to subdivide approximately 18 acres of land into 15 single-family lots  
16 located at 2400 Grant Street. On June 17, 2008, the City Council adopted  
17 Ordinance No. 652 authorizing the execution of a Development Agreement  
18 between the City and the owners of the subject properties (Ira and Lois Carter)  
19 and the project applicant (BNK, LLC) of the Vineyard Oaks Subdivision Project.  
20 The term of the Development Agreement is for a period of (5) years from the  
21 effective date.

22

23 On April 21, 2009, the City Council approved an amendment to the executed  
24 Development Agreement, specifically Exhibit F (Special Public Benefits) and  
25 Exhibit H (Utility Capacity Allocation and Connection Fees), amending the  
26 timeframe for the payment of fees for the project. A copy of the Development  
27 Agreement and First Amendment to the Development Agreement is provided in  
28 Attachment 5.

29

30 On May 7, 2012, a formal request was submitted by Ira and Lois Carter to extend  
31 the term of the approved Development Agreement for the Vineyard Oaks

32 Subdivision project and to modify provisions of the agreement regarding payment  
33 of required development impact fees (Attachment 6). This request is the result of  
34 BNK, LLC (the project developer) no longer having any relationship with the  
35 project. The Carter's are currently looking for a new developer to purchase the  
36 property and build the project.

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38 **DISCUSSION**

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40 The property owner is requesting to amend the approved Development  
41 Agreement to: (1) extend the term of the agreement until July 18, 2014 as  
42 allowed pursuant to Section 2.02; (2) amend the stipulated timeframes for  
43 payment of affordable housing fees and water and wastewater connection fees;  
44 and (3) allow for possible renegotiation of the stipulated affordable housing,  
45 water and wastewater connection fees.

46  
47 The approved Development Agreement for the Vineyard Oaks Subdivision  
48 project sets forth the amount and timeframe for payment of affordable housing in-  
49 lieu fees, water and wastewater connection fees (see Table 1 below). A portion  
50 of each fee is required to be paid within 180 days of the date of recordation of the  
51 Final Subdivision Map for the project. The remaining portion of each fee is due  
52 to paid in full on the earlier of (1) issuance of a building permit for home  
53 construction, or (2) the four year anniversary of the Effective Date of the  
54 Development Agreement (July 18, 2012).

55  
56 TABLE 1 – SCHEDULED IMPACT FEE PAYMENTS

57

| Fee Category              | Fee Amount            | DA Reference |
|---------------------------|-----------------------|--------------|
| Affordable Housing        | \$600,000.00          | Section 4.01 |
| Water Connection Fee      | \$327,073.50          | Section 5.03 |
| Wastewater Connection Fee | \$608,219.82          | Section 5.03 |
| <b>TOTAL:</b>             | <b>\$1,535,293.32</b> | --           |

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59  
60 The Final Subdivision Map for the project has not been approved by the City or  
61 recorded, and no building permits have been issued for home construction on  
62 any lot within the subdivision. Per the terms of the current Development  
63 Agreement, payment of the fees listed in Table 1 above is due in full on July 18,  
64 2012.

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66 As stated in the letter from the Carter family, payment of these fees by the four  
67 year anniversary date is problematic because the original developer (BNK LLC)  
68 is no longer involved with the project and the family is in the process of attracting  
69 a new buyer to the property. The Carter's are interested in deferring payment of  
70 these fees until the property is under new ownership and the Final Subdivision

71 Map for the project is recorded. The Carter's have also indicated that due to  
72 changes that have occurred in the housing market they would like the new  
73 owner/developer of the property to have the option of renegotiating the stipulated  
74 fee amounts with the City.  
75

76 Staff is supportive of the owner's request to extend the term of the approved  
77 Development Agreement and the timeframes for payment of development impact  
78 fees. Staff also recognizes that changes have occurred in the local, state and  
79 national housing markets since the project was approved in 2008 and  
80 understands the necessity of allowing the new owner/developer of the project to  
81 the option to renegotiate stipulated impact fee amounts. Therefore, staff is  
82 recommending the following (see Attachments 3 and 4 for additional detail):  
83

84 Term of Agreement  
85

- 86 1. Grant the request to extend the term of the agreement to July 18, 2014.  
87

88 Timeframe for Payment of Fees  
89

- 90 2. Amend Section 1 of Exhibit F (Special Public Benefits) of the Development  
91 Agreement to eliminate the "four year anniversary date" provision and  
92 stipulate that after the initial affordable housing in-lieu fee payment of  
93 \$100,000 is made within 180 days of the date of recordation of the Final  
94 Subdivision Map, the remaining \$500,000 (plus accrued interest) shall be  
95 paid prior to issuance of a building permit for home construction on each  
96 lot.  
97

- 98 3. Amend Sections 1 and 2 of Exhibit H (Utility Capacity Allocation and  
99 Connection Fees) of the Development Agreement to eliminate the "four  
100 year anniversary date" provision and stipulate that after the initial payment  
101 of 25% of the total water and wastewater connection fee is made within  
102 180 days of the date of recordation of the Final Subdivision Map, the  
103 remaining 75% of the total water and wastewater connection fee (plus  
104 accrued interest) shall be paid prior to issuance of a building permit for  
105 home construction on each lot.  
106

107 With regard to future renegotiation of stipulated development impact fees,  
108 Section 10.07 of the Development Agreement (Amendment) establishes  
109 provisions for amendment of the Agreement. The new owner/developer of the  
110 property may request an amendment to the fee amounts stipulated in the  
111 approved Development Agreement at any time during the Term of the Agreement  
112 in accordance with procedures set forth in Government Code Section 65868 and  
113 Calistoga Municipal Code Chapter 17.39 (Development Agreements).  
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115 **ENVIRONMENTAL REVIEW**

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117 In accordance with the California Environmental Quality Act (CEQA) and its  
118 Guidelines, a Mitigated Negative Declaration was prepared and adopted by the  
119 City Council for the Vineyard Oaks Subdivision Project on June 3, 2008. No  
120 changes to the approved project are being proposed as part of this request.

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122 The request to amend the approved Development Agreement has been reviewed  
123 pursuant to the California Environmental Quality Act (CEQA). Section  
124 15061(b)(3), the “general rule” exemption, states that where it can be seen with  
125 certainty that there is no possibility that the activity in question may have a  
126 significant effect on the environment the activity is not subject to CEQA. It has  
127 been determined that the activity in question, a request to extend the term of the  
128 Development Agreement for one additional year (as provided for in the current  
129 Agreement) and amend the Development Agreement to defer scheduled  
130 payment of certain development impact fees, will not have any impact on the  
131 environment and therefore is exempt from CEQA under the general rule.

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133 **RECOMMENDATION**

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135 Staff recommends that the Planning Commission adopt Resolution PC 2012-15  
136 recommending that the City Council approve the requested amendments to the  
137 Development Agreement for the Vineyard Oaks Subdivision project (DA 2007-02).

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139 **ATTACHMENTS**

- 140  
141 1. Draft PC Resolution 2012-15  
142 2. Draft Ordinance No. XXX  
143 3. Draft Ordinance Exhibit A  
144 4. “Track-Changes” version of Exhibit A  
145 5. Vineyard Oaks Subdivision Development Agreement  
146 6. Correspondence from Ira and Lois Carter dated May 1, 2012  
147 7. Site Vicinity Map  
148 8. Approved Tentative Subdivision Map

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151  
152 **NOTE:** The applicant or any interested person is reminded that the Calistoga  
153 Municipal Code provides for a ten (10) calendar day appeal period. If there is a  
154 disagreement with the Planning Commission, an appeal to the City Council may be  
155 filed. The appropriate forms and applicable fee must be submitted prior to 5:00  
156 p.m. on or before the tenth calendar day following the Commission's final  
157 determination.

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