

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF CHULA VISTA APPROVING
THE FIRST AMENDMENT TO THE RESTATED AND
AMENDED PRE-ANNEXATION DEVELOPMENT AGREEMENT
BETWEEN THE OTAY LAND COMPANY, LLC AND THE CITY
OF CHULA VISTA FOR PROPERTIES WITHIN THE OTAY
RANCH PLANNED COMMUNITY

WHEREAS, the property which is the subject matter of this Ordinance is identified in that certain Restated and Amended Pre-Annexation Development Agreement with Otay Ranch, L.P. (the "Development Agreement") attached hereto as Exhibit "A" and commonly known as a portion of Planning Area 20 and Otay Ranch Villages 8 West and 9 (the "Property"); and

WHEREAS, on April 7, 2008 the City Council approved a Land Offer Agreement (LOA) between the Otay Land Company, LLC and the City of Chula Vista that contemplated certain amendments to the Development Agreement; and

WHEREAS, those certain amendments to the Development Agreement were a component of the Entitlements described in the LOA, attached hereto as Exhibit C; and

WHEREAS, the City's Development Services Director has reviewed the Project for compliance with the California Environmental Quality Act and determined that the Project was adequately covered in previously adopted Final Second Tier Environmental Impact Reports (EIR-10-03 & EIR-10-04). Thus, no further environmental review or documentation is required; and

WHEREAS, the Planning Commission set the time and place for a hearing on said Development Agreement and notice of said hearing, together with its purpose, was given by its publication in a newspaper of general circulation in the city and its mailing to property owners within 500 feet of the exterior boundaries of the Project site at least ten days prior to the hearing; and

WHEREAS, the hearing was held at the time and place as advertised, namely 6:00 p.m. July 23, 2014, in the Council Chambers, 276 Fourth Avenue, and the Planning Commission voted 4-0-2-1 to approve Planning Commission Resolution PCM-14-08 recommending to the City Council approval of the First Amendment to the Development Agreement; and

WHEREAS, on September 9, 2014, a duly noticed public hearing was scheduled before the City Council of the City of Chula Vista to consider adopting the Ordinance to approve the First Amendment to the Development Agreement between the City of Chula Vista and Otay Land Company, LLC; and

WHEREAS, City staff has reviewed the First Amendment to the Development Agreement and determined it to be consistent with the Otay Ranch General Development Plan and the City's General Plan.

NOW, THEREFORE, THE CITY COUNCIL of the City of Chula Vista does hereby order and ordain as follows:

I. PLANNING COMMISSION RECORD

The proceedings and all evidence introduced before the Planning Commission at their public hearing held on July 23, 2014, and the minutes and resolutions resulting therefrom, are hereby incorporated into the record of this proceeding. These documents, along with any documents submitted to the decision makers, shall comprise the entire record of the proceedings for any California Environmental Quality Act (CEQA) claims.

II. COMPLIANCE WITH CEQA

The City Council hereby finds that the adoption of the Ordinance approving the First Amendment to the Development Agreement, as described and analyzed in the Final Second-Tier EIRs 10-03 & 10-04, would have no new effects that were not examined in said Final EIRs (CEQA Guideline 15168 (c)(2)).

III. CONSISTENCY WITH GENERAL PLAN AND OTAY RANCH GENERAL DEVELOPMENT PLAN

The City Council finds that the proposed First Amendment to the Development Agreement is consistent with the City's General Plan and Otay Ranch General Development Plan (GDP). The First Amendment to the Development Agreement implements the General Plan and GDP by providing for facilities and development that are consistent with the General Plan and GDP.

IV. ACTION

The City Council hereby adopts an Ordinance approving the First Amendment to the Development Agreement Between the Otay Land Company, LLC and the City of Chula Vista in the form presented, with such modifications as may be required or approved by the City Attorney, a copy of which shall be kept on file in the Office of the City Clerk, finding said First Amendment to the Development Agreement Between the Otay Land Company, LLC and the City of Chula Vista consistent with the California Government Code, adopted City policies, the General Plan, and the GDP, which shall include amendment to the following provisions thereto:

1. Term. The following language shall be added to the end of the last sentence of the first full paragraph of Section 3 of the Development Agreement:

"from February 26, 2013, the date upon which the City may accept the Offers of Dedication in Sections 3.3 of that certain "Land Offer Agreement" by and between the City and Otay Land Company, LLC, a Delaware limited liability company, approved by the City Council on or about May 12, 2008."

2. Tentative Map/Permit Duration. Section 6.2 of the existing Development Agreement, entitled "Length of Validity of Tentative Subdivision Maps," is hereby deleted in its entirety and replaced with the following:

"6.2 Tentative Map/Permit Duration." Pursuant to California Government Code section 66452.6, any tentative subdivision map, parcel map or other map authorized by the State Subdivision Map Act that is approved for the Project shall remain valid for a period of time equal to a term of this Agreement. In addition, notwithstanding any condition or provision to the contrary, every permit and approval for the Project other than ministerial approvals shall remain valid for a period of time equal to "the term of this Agreement."

3. Growth Management. The second full paragraph of Section 5.2 appearing at page 8 of the existing Development Agreement, entitled "Development of Property," which begins "Notwithstanding the foregoing," shall be deleted in its entirety and replaced with the following:

"Notwithstanding any provision of this Agreement to the contrary, the City's Growth Management program, as set forth in the Growth Management Element of the City General Plan, applicable to the Project shall be those in effect on the date the City approves the Land Offer Agreement referenced in Section 3 hereof "

4. Modifications to Existing Project Approvals. The following sentence shall be added to the end of Section 5.2.3 of the existing Development Agreement:

"The parties agree that they accept the modifications to the Existing Project Approvals approved by the City Council on December 17, 2013 and June 3, 2014."

5. Reimbursement. At the end of the first sentence of Section 7.5 of the existing Development Agreement, entitled "Facilities Which are the Obligations of Another Party, or are of Excessive Size, Capacity, Length or Number," a new sentence shall be inserted as follows: "City shall not require such monies or improvements unless City provides reasonable assurance of funding or reimbursement in accordance with State law and/or the City's ordinances."

6. No Further Modification. Except as set forth in this First Amendment to the Development Agreement, all of the terms and provisions of the Development Agreement shall remain unmodified and in full force and effect.

V. SEVERABILITY

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or

unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

VI. CONSTRUCTION

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

VII. EFFECTIVE DATE

This Ordinance shall take effect and be in full force on the thirtieth day from and after its adoption.

VIII. PUBLICATION

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

Approved as to form by

Kelly Broughton, FASLA
Development Services Director

Glen R. Googins
City Attorney