

TO: JAMES L. APP, CITY MANAGER

FROM: BOB LATA, CONTRACT PLANNER

SUBJECT: PROCESS FOR CONSIDERATION OF DEVELOPMENT AGREEMENTS  
RELATED TO SPECIFIC PLAN AREAS

DATE: APRIL 18, 2006

Needs: For the City Council to consider the process for City consideration of Development Agreements with property owners within (a) specific plans in general and (b) the Chandler Ranch Area Specific Plan in particular.

Facts:

1. On February 21, 2006, the City Council considered a draft policy regarding Specific Plans and Development Agreements (DAs) that would potentially apply to properties within Specific Plan areas. The Council discussion was continued to the meeting of March 21, 2006, and further continued to April 18, 2006.
2. In follow-up to the February 21 meeting, all of the property owners in both the Chandler Ranch Area Specific Plan (CRASP) and the Olsen-Beechwood Specific Plan (OBSP) were invited to provide written input on the proposed policy. Four letters from three of the property owners/representatives were received and copies were sent to Council.
3. On March 13, 2006 a meeting was held with property owners and representatives of two Specific Plan studies currently underway. Copies of the letters were distributed. Following an extended discussion, it was the consensus that further exchanges between the City and the property owners / representatives should be held before bringing the policy matter back to the City Council.
4. Additional meetings were held with CRASP and OBSP property owners on March 27 and April 3, continuing discussion of options under consideration. At the April 3, 2006 meeting the consensus seemed to support bringing options forward for City Council consideration.
5. Attached is an introductory summary of the purposes of a DA, along with a comparison of the advantages and disadvantages of a DA.

6. Development Agreements are provided for in the City's Zoning Code. It is, however, the City Council's discretion whether or not to enter into DAs and, if so, what terms are acceptable.
7. The policy issue before the City Council is what form of relationship there should be between DAs and Specific Plans (in general for all Specific Plan areas, and particularly in relation to the CRASP).
8. Attached is a summary of options that have been under discussion and related variations. The perceived advantages and disadvantages are outlined for each option.
9. Also attached is a memo from the City Attorney's office that addresses the relative degrees of City Council discretion at various points in the planning process.

#### Analysis

#### And Conclusion:

In order to provide better input for City Council consideration, specific plan property owners and representatives along with City participants have undertaken additional meetings to explore the policy options.

The options are presented for City Council consideration to guide the efforts of the property owners, Council ad hoc Committee, City staff and consultants in their efforts to achieve closure on the CRASP process.

The first three options are ones that have been discussed with CRASP and OBSP property owners / representatives. Options No. 4 and 5 are variations on Option No. 1, designed to encourage agreement on DAs before the City grants General Plan Amendments and/or approval of a Specific Plan.

Assuming that the City will not offer public financing unless there is a DA, the remaining key considerations are the following:

- a. Does the City Council wish to have a policy that it is the Council's intent not to consider a Specific Plan unless there are DAs for (1) to all of the property owners within a Specific Plan area, or (2) less than all property owners. Considerations:
  - less than 100 percent participation establishes an "un-even playing field" for the property owners and reduces the

amount of community benefits the City can negotiate through the DA process;

- not all property owners want or need a DA and it may be a significant hardship to hold up the process for one or two property owners who refuse to agree on a DA
- b. For whatever group the City Council wishes to seek agreement on a DA, how early in the Specific Plan process should that requirement apply? Considerations:
- Once the City has granted the requested General Plan Amendments and approved a Specific Plan, the City has lost most of its leverage in terms of legislative discretion (please see the attached memo from the City Attorney's office).
  - Retaining the ability to grant Zoning still leaves the City with one discretionary tool, but Zoning is not nearly as powerful as the General Plan (the City's primary land use policy document) and the Specific Plan that implements the General Plan.
  - Particularly in the case of the CRASP, over 80 percent of the property by acres is under two ownerships who are seeking substantial General Plan, Specific Plan and Zoning changes to achieve the number of dwelling units they are seeking. To approve the General Plan and Specific Plan without first negotiating a DA gives the property owners substantial benefits in terms of increased residential density without seeking a "quid pro quo" for the community.

The City Council has the discretion to select any of the five (5) presented alternatives for linking Development Agreements to the Specific Plan process.

Options No. 1, 4, and 5 would all seek some degree of commitment from the property owners before the City would grant the legislative approvals provided by the General Plan and/or Specific Plan.

Option No. 3 would link Zoning and DAs on part or all of the properties in a Specific Plan (depending upon whether or not the City applies a holding Zone). This option is more complicated / problematic than any of the other options.

Option No. 2 makes DAs voluntary (except for public financing) and is the option favored by the property owners. Under this option, by granting the General Plan, Specific Plan, and Zoning before reaching agreement on the content of any DAs the City has significantly less negotiating strength. Most importantly, however, the community does not know in advance what it is getting in exchange for the City granting increases in entitlements over the current General Plan and Zoning (in particular relating to the CRASP).

- Options:
- A. That the City Council adopt Resolution No. 06-xxx, establishing a consistent process for consideration of Development Agreements in relation to adoption of Specific Plans, selecting:
    - (1) Option No. 5 as described in the attached list of options. This option has a policy that it is the City Council's intent to seek agreement on a DA before granting entitlements above fifty (50) percent of the existing or proposed General Plan designation.
    - (2) Option No. 1 as described in the attached list of options. This option has a policy that it is the City Council's intent to seek agreement on a DA before considering approval of a Specific Plan.
    - (3) That the City Council select Option No. 4 as described in the attached list of options. Under this option it would be the policy of the City Council to seek a DA from the majority property owner(s) before considering a Specific Plan.
    - (4) That the City Council select Option No. 2 as described in the attached list of options. This option would make DAs optional except for public financing.
    - (5) That the City Council select Option No. 3 as described in the attached list of options. This option would tie future Zoning to allow an opportunity to negotiate DAs.
  - B. That the City Council consider a further continuance of discussion of a policy relating DAs to Specific Plans. A further continuance will allow additional meetings with property owners and/or deliberation over the impacts of different alternatives.
  - C. Amend, modify or reject the foregoing options.

## **Introduction to Development Agreements**

A Development Agreement (DA) is a negotiated contract between the City and a developer. The State Planning and Zoning laws allow for such an agreement to be executed. The framework for entering into a DA is important.

A DA allows vesting of a project which means it is protected from future involuntary actions. In other words the vesting effectuated by a DA creates an early level of certainty for a developer that it can not achieve in any other manner. This certainty has value for the developer in the marketplace in terms of financing and/or the sale of the project. It provides added value for the project that the City is not otherwise under any obligation to grant and that the developer can not achieve in any other manner.

It is important to distinguish between: 1) the obligations a developer already has under federal, state, and local laws and regulations; 2) regulatory restrictions on the City that preclude it from requiring anything beyond what existing laws and regulations would allow; and, 3) community benefit items that the City can achieve through the DA.

Currently, the City has the right to require, and the developer has the obligation to satisfy, conditions of approval and mitigation measures that are directly proportional and related to the impacts of the project. This relationship is referred to as “nexus”. The City can only require the developer to “fix” things or do things in a certain manner or order, to the extent that those requirements relate directly to the impacts/effects of their project.

The satisfaction of conditions of approval and mitigation measures are not added community benefits, they simply ensure that the community is (eventually) “made whole” by the development. Said another way, conditions of approval and mitigation measures should ensure that the community is not any worse off after the development than they were before the development, with the important caveat that a project actually can leave a community in a net worse position environmentally if the Council adopts a Statement of Overriding Considerations for unmitigated impacts. As described in the Draft Environmental Impact Report, the CRASP would indeed have a range of unavoidable traffic-related impacts if allowed to move forward.

There is only one way for the City to negotiate with a developer to help assure that a development leaves the City in a net beneficial position, and that is through the negotiations and execution of a DA. Negotiating a DA is very different from applying conditions of approval or mitigation measures. The notions of nexus and proportionality are not applicable during a DA negotiation. Rather the public goal is to achieve (net) benefits for the community in exchange for granting the vesting rights and any other additional rights the developer may desire and the City may agree to provide.

There are many communities that have successfully negotiated community gains over and above the existing obligations of the developer to satisfy their conditions and mitigations. Some of these are: road improvements beyond the project nexus; school financing above the state fee requirements; cash donations for important community projects such as parks; extraordinary design requirements; etc.

The City of Winters outside of Sacramento just last week executed a DA with a developer of 443 units on 100 infill acres that included \$23 million in community benefits over and above the conditions and mitigations required of the project.

The point of a DA is to negotiate a balance of added value for both sides. The DA is a powerful tool and the only tool to ensuring the community comes out better after a development, rather than the same or worse. It is appropriate to allow a DA to vest units, timing, intensity, density, basic land use plan, etc. in order to create value for the developer. But the City should be strong in its resolve to NOT grant such a valuable developer benefits without securing valuable community benefits in return.

Attached is a summary of the Advantages and Disadvantages of Development Agreements.

## Development Agreements

### Advantages and Disadvantages

Introduction: The following summary of advantages and disadvantages is based on the premise that the City of Paso Robles would not permit less than full fiscal neutrality, thus development impact fees, specific plan fees, or any other cost of infrastructure or services would not be “locked in” by a Development Agreement (DA).

#### From the City’s Perspective:

##### Advantages of a DA:

- can obtain community benefits
- can result in accelerated pace of infrastructure improvements
- can allow the City to apply regulations or standards tailored to a particular project area / community concerns
- provides assurances that City requirements will not be challenged

##### Disadvantages of a DA:

- “locks in” approval of a project, preventing the City from making future refinements to project design, density, regulations, or Zoning Code
- places a priority on fully anticipating City needs for the full project build-out
- if not carefully crafted, can “bargain away” or otherwise circumvent adopted City standards in exchange for new community benefits

### From the Property Owner's Perspective:

#### Advantages of a DA:

- provides a “vesting” or guarantee that the land use pattern, density, and applicable regulations that apply at the time of project approval would be in effect for an extended, specific period \*
- the vesting of a Development Agreement protects a property owner from changes

#### Disadvantages of a DA:

- may lock in community benefits that are so costly that they may adversely impact project economics, particularly in a changing market
- could require a property owner / developer to undertake special financing and/or change infrastructure development plans to respond to DA requirements
- may preclude land uses that would otherwise be permitted

\* Court decisions have confirmed that a developer does not have a vested right to proceed with a development until he or she has a Building Permit and has performed substantial work and incurred substantial liabilities. For a long-term, multi-phase project, this creates substantial uncertainties that can adversely impact project financing. A Development Agreement can thereby provide substantial value to a property owner/developer, which provides the opportunity for the City to seek equal off-setting benefits (quid pro quo). Exceptions to vesting: Developments approved under DAs are still subject to State or Federal Law, or new environmental information / circumstances (and the conditions that need to be established to address same).



## **Development Agreement Options in Relation to Specific Plan Process**

### **Introduction:**

The following set of Development Agreement (DA) policy options for City Council consideration includes basic alternatives that have been discussed with property owners and their representatives, plus two additional variations that were subsequently identified.

The first three options are alternative approaches that have been discussed with the property owners / representatives. Options No. 4 and 5 are variations on the first 3.

Under all options, the City would not provide public financing without prior approval of a DA.

**Option 1:** It would be the intent of the City Council to not consider approval of a Specific Plan before each property owner within the Specific Plan has executed a DA .  
*Note: Option 1 was the DA policy language initially reviewed by the City Council in February of this year.*

Effect: Would delay consideration of adoption of Specific Plan until all property owners complete negotiation of DAs with the City

Advantages:

- The City will never be in a more advantageous position for negotiation.
- Taking this position compels the property owners to work together for the good of the community
- The community would have a clear picture of what added community benefit items would be gained by approving the Specific Plan
- Could provide the community support for approval of the Specific Plan with the form and content being sought by the property owners
- No new legislative entitlements would be granted until all agreements are in place

Disadvantages:

- Property owner concerns regarding delay in Specific Plan consideration
- Concern that one or more property owners could hold the balance of the Specific Plan “hostage”

- Not all property owners wish to enter into DAs / see value in DAs

**Option 2:** Development Agreements would be optional for all property owners (except those seeking public financing; a DA would be sought from all who seek public financing).

Effect: This is the option that would appear to be supported by the property owners

Those property owners who see the value in DAs or who wish public financing would request DAs; the substance / content of the DAs would be subject to negotiation with the City.

The two major property owners (Jonatkim/Wurth, Chandler Sand & Gravel), who represent 81 percent of the CRASP land area, would likely be the parties that would be seeking to enter into a DA and would want public financing.

It is unknown at this time whether there is interest in public financing for the Olsen/Beechwood Specific Plan

Advantages:

- No DA related delay in consideration of the Draft Specific Plan

Disadvantages:

- Community would not have a clear picture of what community benefit items would be gained by approving the Specific Plan, which could reduce community support for approval of the Specific Plan with the form and content being sought by the property owners
- Since there are no deferred legislative entitlements, the City's bargaining position to obtain community benefits is weaker than the property owner needing a legislative approval

**Option 3:** It would be the intent of the City Council to entertain a Specific Plan without DAs. Zoning entitlements would however be withheld on those properties that require subsequent zoning prior to development. It would be the intent of the City Council to not consider rezoning any property within the Specific Plan until effected property owners have executed a DA.

Effect: Avoids a delay in consideration of adoption of the Specific Plan

Defers Zoning Approval until the time of other development approval or to when a DA is negotiated

For the residential development areas within the Chandler Ranch Area Specific Plan, this would apply to Jonatkim/Wurth, Chandler Sand & Gravel, and Wilcox/Lloyd. Jonatkim/Wurth and Chandler Sand & Gravel have expressed interest in DAs.

The commercial designation areas are proposed to be covered by the Gateway Zoning Overlay, so they would be handled separately and would not need negotiation of a DA.

This would have no impact on Centex or Our Town since they have Zoning consistent with the General Plan and what they are seeking for development of their properties.

No DAs would be required for properties in the Olsen-Beechwood General Plan and what they are seeking for development of their properties.

#### Advantages:

- Retains an advantageous negotiating position for the City for properties that need alternative zoning.
- Eliminates property owner concerns regarding delay in Specific Plan consideration
- No one property owner can hold another hostage
- By delaying Zoning to the time frame that other entitlements are requested, all of the details of the proposed development will be under consideration at the same point in time

#### Disadvantages:

- General Plan Amendments and the Specific Plan are being adopted in advance of negotiation of community benefit. This grants considerable value to the property owners without commensurate community benefit.
- Zoning could be inconsistent with the General Plan and Specific Plan until development plans are filed.
- Would only apply to properties that require a rezone in order to obtain the development potential authorized by the Specific Plan (Jonatkim/Wurth, Chandler Sand & Gravel, and Wilcox/Lloyd). The remaining Chandler

properties and the entire Olsen/Beechwood Specific Planning Area would not require DAs since their properties are currently zoned appropriately under the draft Specific Plans.

(This potential inequity could be avoided by applying a SP Holding Zone over the entire Specific Plan areas at the time of Specific Plan adoption. A subsequent rezone would then be required prior to development which under this option, would trigger a DA being negotiated for all property owners.)

**Option 4:** It would be the intent of the City Council to consider approval of a Specific Plan after a DA is in place for the property owners who own a majority of the land area within a Specific Plan area. *Note: This is a variation of Option No. 1*

Effect: Would delay consideration of adoption of Specific Plan until most of the acreage within the specific plan area is subject to an executed DA

Since the “majority” property owners in the Chandler Ranch Specific Plan area are those who have expressed interest in entering into a DA, the extent of delay would be a factor of how long it takes to negotiate DAs with the majority property owners

This policy would apply to all future Specific Plans as well. Under the “one plan” principle for the Olsen/Beechwood Specific Plan (OBSP), a DA would need to be negotiated with the “majority” property owner (Olsen family) prior to the OBSP proceeding further

Advantages:

- The City will never be in a more advantageous position for negotiation.
- Taking this position encourages the property owners to work together for the good of the community
- The community would have a clear picture of added community benefit by approving the Specific Plan
- Could provide the community support for approval of the Specific Plan with the form and content being sought by the property owners
- No new legislative entitlements would be granted until all agreements are in place

- Eliminates the ability for an unmotivated property owner to hold others hostage

Disadvantages:

- Property owner concerns regarding delay in Specific Plan consideration (but to a lesser degree)
- A smaller number of property owners would need DAs
- Some property owners are allowed to move forward without the same contributions to the community / Concern of equity from property owners who need to negotiate a DA
- The community will obtain less benefits based on a reduced number of property owners subject to DA negotiations
- “Majority” property owner interest in DA less certain in the Olsen/Beechwood Specific Plan
- This is a new option / alternative that has not been discussed with the property owners.

**Option 5:** It would be the intent of the City Council to provide policies within each Specific Plan establishing “density ranges” rather than “maximum allowable density” figures. In addition, these Specific Plan policies would indicate that it is the Council’s desire to obtain greater community-wide benefits from owners who choose to develop their properties at the upper density ranges. Densities above 50% of maximum and added community-wide benefits would be negotiated on a case by case basis through a Development Agreement. Property owners with fewer than 50 units total or those who propose densities at 50% of maximum or less would then be exempt from negotiating a DA. This concept is similar in nature the City’s Slope Density Regulations where allowable density is adjusted with topography. *This option is another variation on Option No. 1 since it seeks a DA before considering aspects of a Specific Plan.*

Effect: Would establish a quantified threshold for increases in residential density for Specific Plan areas; a request for a Specific Plan that would provide more than 50 percent of the General Plan land use designation would trigger negotiating a DA

Adoption of the Specific Plan could be considered, but policy language would be incorporated that would indicate a DA for property owners seeking greater than 50 percent of the existing / proposed residential entitlement under a Specific Plan.

Zoning of properties that need a zone change to pursue the type of development being sought by the property owners would be established at the time of adoption of the Specific Plan, but only up to the 50 percent threshold level without an accompanying DA.

Advantages:

- The City will be in a more advantageous position for negotiation of a DA in comparison to waiting to work on DAs until after the City has already granted legislative entitlements
- The community would have a clear picture of what added community benefit items would be gained by approving the Specific Plan for those properties that are requesting significant increases in land use entitlement
- Could provide the community support for approval of the Specific Plan with the form and content being sought by the property owners seeking significant increases in entitlements

Disadvantages:

- The property owners seeking increases in density/intensity (above the established thresholds) would be delayed until DAs are completed
- Delays in major property owners obtaining desired entitlements would likely delay minor property owners who cannot develop without Sherwood and/or Airport Road being completed
- This is a new option / alternative that has not been discussed with the property owners.



**Memorandum**

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**VIA ELECTRONIC MAIL**

**DATE** March 22, 2006

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**FROM** Steven P. Rudolph

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This memorandum addresses the levels of discretion the City Council possesses when considering various types of land use decisions.

City land use actions are generally characterized as either legislative acts or administrative acts. Legislative actions are generally those which declare a public purpose and establish policies or laws. When a City Council determines what rules shall apply to the general regulation of future acts or determinations by the City, they are acting in a legislative capacity. The adoptions of General Plans, General Plan Amendments, Specific Plans, and ordinances (including zoning ordinances) are all examples of legislative actions.

Administrative actions, also referred to as adjudicatory or quasi-adjudicatory acts, are those actions where the City Council (or an inferior City body) applies policies and laws to specific facts in determining whether to approve or grant specific rights or permits. The consideration of applications for tentative subdivision maps, conditional use permits, variances and development permits are examples of administrative actions.

As discussed in more detail below, the City has a broader range of discretion when making legislative decisions than when making administrative decisions. Legislative actions usually require adherence to very few procedural requirements and are legally defensible if there is a reasonable basis for the decision. Administrative actions are subject to more stringent procedural requirements, and must be supported by written findings and substantial evidence in order to be legally defensible.



**Memorandum**

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City Councils are granted the discretion to make legislative decisions by the California Constitution or by state law. Courts do not have the authority to make legislative decisions. Therefore, a court will only interfere with a City Council's legislative decision if it is "arbitrary, capricious or wholly lacking in evidentiary support", or fails to conform to legally required procedures. A court will not substitute its judgment for that of the City Council as to whether the act is beneficial to the public, wise or necessary. Unless there is no reasonable basis for the decision or it is manifestly abusive, the courts will uphold legislative acts. It is also extremely rare for a City Council decision not to adopt a General Plan Amendment, Specific Plan or zoning ordinance to be subject to a legal challenge.

Courts have a much greater ability to review administrative determinations and will typically determine (1) whether the City had jurisdiction to consider the matter; (2) whether there was a fair hearing; (3) whether the City's actions conformed to state or local requirements; (4) whether the decision is supported by findings; and, (5) whether the findings are supported by substantial evidence.

While there are certain limited fair hearing (or due process) requirements relating to legislative land use actions (such as notice and the right to be heard when considering zoning amendments), administrative land use matters are subject to more stringent fair hearing requirements. Court will examine whether the permit applicant had an opportunity to be heard at a meaningful time and in a meaningful manner, whether the applicant was made aware of the evidence upon which the decision was based, and whether the applicant was given an opportunity to respond to the evidence.

Most administrative actions must conform with state law requirements. For example, Government Code section 66474 sets forth seven findings that can support the denial of a tentative subdivision map. If the City Council does not have the evidentiary basis to support one of these seven findings, then it may not lawfully deny the subdivision map application.

Courts will also examine whether findings of the City Council are supported by substantial evidence. Substantial evidence is evidence that is reasonable in nature, credible and of solid value. The findings must bridge the gap between the evidence and the ultimate decision, such that the court can determine the basis for the City Council's decision.

The defensibility of an administrative decision depends upon a record that demonstrates compliance with procedural requirements, and includes clear and logical findings that are supported by substantial evidence.





**Memorandum**  
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The following chart summarizes the characteristics of various types of land use decisions.

	<b>Legislative</b>	<b>Admin</b>	<b>Due Process Requirements</b>	<b>Findings Required</b>	<b>Substantial Evidence</b>
<b>GPA</b>	<b>X</b>				
<b>Specific Plan</b>	<b>X</b>			<b>X (Consistent with GP)</b>	
<b>Zoning Amendment</b>	<b>X</b>		<b>X (Limited)</b>	<b>X (Consistent with GP and SP)</b>	
<b>Subdivision Map (TSM)</b>		<b>X</b>	<b>X</b>	<b>X (State law)</b>	<b>X</b>
<b>Use Permit (CUP)</b>		<b>X</b>	<b>X</b>	<b>X (State law)</b>	<b>X</b>
<b>Dev Plan Review</b>		<b>X</b>	<b>X</b>	<b>X (City law)</b>	<b>X</b>

cc: Iris P. Yang, City Attorney

April 11, 2006

City of Paso Robles  
City Council  
1000 Spring Street  
Paso Robles, CA 93446

Paso Robles

APR 11 2006

Planning Division

**RE: Development Agreements Related to Specific Plans**

To the City Council:

On behalf of the Olsen family, owners of the majority acreage in the Olsen Ranch annexation area, **eda** offers the following general comments on the proposed options for Development Agreement (DAs) for proposed Specific Plans. The basis of our comments is the discussion points for the March 27, 2006 meeting with property owners, which covered three primary options for a Development Agreement policy. We understand that the intent of the DA is to provide a contract for a "net community benefit" that goes beyond the impact mitigations required by CEQA.

We urge the Council to adopt a policy that allows DAs to be an option that landowners may pursue with the City, which after fair negotiation would vest landowners with certain development entitlements in exchange for a *quid pro quo* that satisfies the City's desire for a "net community benefit" from some new projects. This approach recognizes the need for flexibility to account for the differences between Specific Plans and their impacts on public services and infrastructure. This also recognizes differences between owners and developers within Specific Plan areas, who vary greatly in their development goals, timelines, and ability to finance their projects without public assistance.

Option #1 would require a DA to be in place prior to adoption of a Specific Plan. We believe that this requirement is unworkable and unfair. It creates an uneven field for negotiating an equitable agreement, on which the City could demand virtually any "community benefit" as a take it or leave it proposition. The only option open to property owners may be walk away from their otherwise viable project. That serves almost no one's goals and could kill the golden goose that Specific Plan areas may represent - new sources of funding to help solve existing community problems.

Furthermore, Option #1 clearly circumvents the intent AB 1600 and may well be illegal. The intent of AB 1600 was to protect project proponents from unreasonable demands from permitting agencies, and it links required mitigations

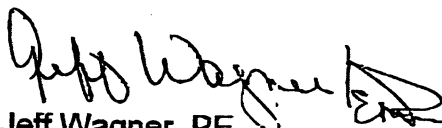
to demonstrated development impacts. In Paso Robles, the City required the Olsen land to be part of a Specific Plan area as a condition of development. A Development Agreement that is required as a precondition of approval for the Specific Plan, which results in mitigations in excess of those required for impact mitigation, effectively requires them to over-mitigate a project's impacts. This violates state law.

We also recommend against delaying certain entitlements (e.g., zoning) that should be part of the Specific Plan approval. There is no good reason to manipulate the Specific Plan process to leverage property owners into over-mitigating their projects. The uncertainty created by such a move could have unforeseen consequences that could prove to be a detriment to the City.

We ask the Council recognize that many owners within the Specific Plan areas will not be able to calculate the economic benefits from their projects for many months, or even years. Remember that without an approved Specific Plan there is no basis for calculating a project's return, and no basis for calculating the affordability of DA conditions that will also bear economic uncertainties.

For these reasons, we ask the Council to adopt a policy that recognizes some landowners will desire a Development Agreement and will approach the City to negotiate a fair contract. We also ask that the Council recognize that other landowners will not need a DA, and that manipulating the Specific Plan process to force them to contract for excess mitigations is unfair and contrary to state law.

Sincerely,  
**eda - design professionals**

  
Jeff Wagner, PE

RESOLUTION NO. 06-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES  
ESTABLISHING A POLICY FOR CONSIDERATION OF DEVELOPMENT AGREEMENTS  
WITHIN SPECIFIC PLAN AREAS

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WHEREAS, the City's General Plan provides a requirement for Specific Plans to be prepared for specified portions of the City; and

WHEREAS, Specific Plans are intended to provide a framework for future development, particularly in areas that are lacking established land use patterns and/or infrastructure and/or have unique topographic and environmental characteristics; and

WHEREAS, the City's adopted Zoning Code provides a process for consideration of Development Agreements; and

WHEREAS, under Section 21.45.010 (purpose and scope), the Zoning Code states that: "Development agreements specify the rights and responsibilities of the city and developers. Used in conjunction with annexation, general plan amendments, specific plans, rezoning, planned development approval, subdivision approval, conditional use permit approval, variance approval, or architectural review approval, development agreements establish the terms and conditions under which development projects may proceed. Development agreements are best used for large, complex, or phased projects which require extended construction time and which involve numerous public improvements such as streets, utilities, flood improvements, schools, parks, and open space, and other improvements of community-wide benefit. Under a development agreement, projects may proceed under the rules, standards, policies, and regulations in effect at the time of original project approval"; and

WHEREAS, Chapter 21.45 of the Zoning Code further provides that "The planning commission may recommend and the city council may enter into a development agreement for the development of real property with any person having legal or equitable interest in such property, as provided below. At its sole discretion, the city council may, but is not required to, approve a development agreement where a clear public benefit or public purpose can be demonstrated."; and

WHEREAS, adoption of a uniform policy for processing Development Agreements within Specific Plan areas would provide consistency and equal treatment of all property owners within the boundaries of an area where the City's General Plan requires preparation of a Specific Plan.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of El Paso de Robles does hereby establish the following policy describing the relationship of each property within a geographic area for which the General Plan requires preparation of a Specific Plan in relation to preparation of a Development Agreement with the City of Paso Robles, in a manner consistent with the following process:

- 1) City Council approval of a DA is a prerequisite to any form of public financing in relation to a Specific Plan.
- 2) In addition to the link between a DA and public financing, that the City direct City staff / consultants to inform property owners within proposed Specific Plan areas that it is the City Council's intent to negotiate DAs before they consider \_\_\_\_\_, and that the format of the DA will be developed by the City.

- 3) That the City will prepare the base DA and distribute that document to the affected property owners to examine. The DA should include a section to define the "net community benefits" to be gained from each project.
- 4) That the City will present its own base set of net benefits that would apply to the property owners proportionately as well as any individual items that would apply only to certain projects.
- 5) That the City utilize the benefits as the City's goals in negotiating the DAs and schedule meetings with the property owners.
- 6) The City prepares a complete draft DA for each owner.
- 7) Negotiate and finalize DAs through meetings between staff, owners, and a CC subcommittee.
- 8) Draft DAs would then be ready in time to be included as attachments to the staff report when \_\_\_\_\_ proceeds to Planning Commission. If Draft DAs are not ready, the City may postpone public hearings for consideration of adoption of \_\_\_\_\_.

ADOPTED by the City Council of the City of El Paso de Robles at a regular meeting of said Council held on the 18<sup>th</sup> day of April 2006 by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
Frank R. Mecham, Mayor

ATTEST:

\_\_\_\_\_  
Cathy David, Deputy City Clerk