

Resolution No. 2024-XXX N.C.S. of the City of Petaluma, California

RESOLUTION AUTHORIZING GRADING PRIOR TO FINAL MAP APPROVAL FOR THE OYSTER COVE MIXED-USE SUBDIVISION PROJECT

WHEREAS, the developer, Brookfield Properties, has requested permission to grade the Oyster Cove Mixed-Use Subdivision site at 100 East D Street prior to final map approval; and

WHEREAS, the developer agrees to comply with the City Grading and Erosion Control Ordinance No. 1576 N.C.S. and Storm Water Ordinance No. 2209 N.C.S.; and

WHEREAS, the developer agrees to comply with the Regional Water Quality Control Board's policies, file a Notice of Intent, and prepare a Storm Water Pollution Prevention Plan; and

WHEREAS, the developer agrees to enter into a grading agreement and provide surety to secure the performance of the grading work; and

WHEREAS, the environmental analysis for compliance with the California Environmental Quality Act for grading at the Subdivision has already been completed on September 18, 2023, when the City Council adopted the mitigated negative declaration and mitigation monitoring and reporting program for the Oyster Cove Mixed-use Subdivision project located at 100 East D Street, which is filed with the Office of Planning and Research state clearinghouse; and

WHEREAS, the developer shall obtain a grading permit from the City Engineer and the Building Department.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Petaluma as follows:

1. The above recitals are hereby declared to be true and correct and are incorporated into this resolution as findings of the Petaluma City Council.
2. Finds that environmental analysis for compliance with the California Environmental Quality Act for grading at the Subdivision has already been completed. On September 18, 2023, the City Council adopted the mitigated negative declaration and mitigation monitoring and reporting program for the Oyster Cove Mixed-use project located at 100 East D Street, which is filed with the Office of Planning and Research state clearinghouse.
3. Grading of the Riverbend Subdivision prior to final map approval is authorized, conditioned on:
 - a. The developer's first entering into a grading agreement with the City and providing security satisfactory to the City to secure the performance of the grading work.
 - b. The developer's first obtaining a grading permit from the City's City Engineer and Building Department.
 - c. The developer's first filing a Notice of Intent and preparing a Storm Water Pollution Prevention Plan and the developer's compliance with the requirements of the Regional Water Quality Control Board.
 - d. The developer's compliance with the City's Grading and Erosion Control Ordinance, No. 1576 N.C.S., and its Storm Water Ordinance, No. 2209 N.C.S.

Under the power and authority conferred upon this Council by the Charter of said City.

REFERENCE:

I hereby certify the foregoing Resolution was introduced and adopted by the Council of the City of Petaluma at a Regular meeting on the 18th day of March 2024, by the following vote:

Approved as to form:

City Attorney

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

City Clerk

Mayor

GRADING AGREEMENT

The undersigned parties make this agreement in relation to the following material facts:

1. _____, hereinafter called "Subdivider", is developing _____ Subdivision in the City of Petaluma, has obtained appropriate zoning clearances and approvals for the development of said property and approval of a Tentative Subdivision Map on _____, which approval is contingent on, inter alia, the approval of the final map, the execution of certain bonds and an agreement to construct public improvements.
2. Subdivider, because of the limited time available in the current construction season, desires to immediately commence rough grading of the site, but requires permission of the City of Petaluma, hereinafter called "City", in order to commence said work.
3. At a regular meeting of the City Council of the City of Petaluma held on the _____ day of _____, 20____ by a majority vote, the Council authorized the Mayor or City Manager to execute an agreement enabling Subdivider to proceed with grading provided certain terms and conditions were met. Said terms and conditions are included in this agreement.

THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Subdivider shall have the right to commence and complete rough grading of the entire area known as _____ Subdivision, located at _____, in Petaluma, after obtaining a grading permit therefor from the City of Petaluma's Building Division.
2. All grading will be in conformity with the plans regarding grading now on file with the City Engineer, and Subdivider guarantees that it will conform this grading to such grading requirements and to the requirements of the California Building Standards Code, Part 2, Appendix J. Subdivider stipulates and agrees that the City Engineer shall have final authority to establish final grading requirements for the subject property and that Subdivider will make any and all changes in the physical grading that the City Engineer may require. Subdivider acknowledges that final grading plans for said subdivision have not been approved by the City Engineer, and Subdivider agrees to assume all risk and expense of any kind and howsoever incurred occasioned by any change or requirements which the City Engineer, in his sole discretion, may require.
3. Subdivider acknowledges that City will make inspection of said grading work in such manner as City solely determines, and Subdivider agrees to comply with all requirements of said inspectors and the City Engineer, and Subdivider agrees to comply with same at his sole cost and expense.
4. Subdivider agrees at all times to recognize and protect the rights of other persons in, on, or relating to the property encompassed within or adjacent to said subdivision.

Subdivider shall at all times protect and provide access rights of and for neighboring landowners. No person shall be denied access to his property over existing rights-of-way at any time during the term of this agreement. Subdivider agrees to be solely responsible for any liability occasioned by runoff or drainage to adjacent lands from the site.

5. To the maximum extent permitted by law, Subdivider shall, at its own expense, indemnify, defend with counsel acceptable to the City, (which acceptance will not be unreasonably withheld), and hold harmless City and its officers, officials, employees, agents and volunteers (“Indemnitees”) from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorney’s fees and costs and fees of litigation) (collectively, “Liability”) of every nature, whether actual, alleged or threatened, arising out of or in connection with the grading or Subdivider’s failure to comply with any of the terms of this Agreement, regardless of any fault or alleged fault of the Indemnitees.

The Subdivider’s obligation to indemnify, defend and hold harmless under this provision shall not be excused because of the Subdivider’s inability to evaluate Liability, or because the Subdivider evaluates Liability and determines that the Subdivider is not or may not be liable. The Subdivider must respond within 30 calendar days to any tender for defense and indemnity by the City, unless the time for responding has been extended by an authorized representative of the City in writing. If the Subdivider fails to accept tender of defense and indemnity within 30 calendar days, in addition to any other remedies authorized by law, a portion of the money due Subdivider under the deposit or bond identified in paragraph 8 of this Agreement, may be used to rectify Subdivider’s failure as shall reasonably be considered necessary by the City and/or may be retained by the City until disposition has been made of the matter subject to tender, or until the Subdivider accepts the tender, whichever occurs first. In the event that the City must file responsive documents in a matter tendered to Subdivider prior to Subdivider’s acceptance of tender, Subdivider agrees to fully reimburse all costs, including but not limited to attorney’s fees and costs and fees of litigation, incurred by the City in filing such responsive documents.

The Subdivider waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of the Subdivider arising out of or in connection with the grading or Subdivider’s failure to comply with any of the terms of this Agreement.

Notwithstanding the foregoing, to the extent this Agreement is a “construction contract” as defined by California Civil Code Section 2783, as may be amended from time to time, Subdivider’s duty to indemnify under this provision shall not apply when to do so would be prohibited by California Civil Code Section 2782, as may be amended from time to time.

Notwithstanding the foregoing, to the extent that the grading includes design professional services subject to California Civil Code Section 2782.8, as may be amended from time to time, Subdivider's duty to indemnify shall only be to the maximum extent permitted by California Civil Code Section 2782.8.

6. This Agreement is subject to the requirements of the California Prevailing Wage Law, California Labor Code Section 1720 et seq., and the grading as described herein will be performed in accordance with all applicable requirements of the California Prevailing Wage Law, including, but not limited to, all applicable requirements contained in Exhibit A, which is attached to and made a part of this Agreement.
7. If final map approval for said subdivision is not received by Subdivider and said development project is abandoned, Subdivider agrees that it shall restore the area graded hereunder to its prior conditions, and said restoration shall be at the entire cost and expense of Subdivider.
8. In order to ensure Subdivider's faithful performance of all its obligations under this agreement, Subdivider agrees to deposit with City, immediately upon execution hereof, a certificate of deposit payable to the City issued by _____, in the sum of _____ Dollars (\$_____), or a surety bond in the same amount guaranteeing the performance of this agreement, and any amendments thereto. Failure to deposit said security shall make this agreement null and void.

If Subdivider violates any provision of this agreement, City shall be entitled to use so much of said deposit or bond as is necessary to rectify Subdivider's breach. Furthermore, in the event Subdivider fails to provide or protect the access rights of neighboring landowners, City may use such portion of the fund as is necessary to provide or protect said rights. Moreover, if, for any reason, said subdivision does not receive Final Map approval and development project is abandoned, City shall likewise be entitled to use so much of said funds as is necessary to restore the area graded by Subdivider to its prior condition. The City Engineer shall have the right to determine what constitutes restoration of the property to its prior condition.

9. The deposit or bond referred to in paragraph 8 above, or so much thereof as remains after any application made because of the provisions of this agreement, shall be returned to Subdivider or the surety as their rights may appear at the time the subdivision agreement between Subdivider and City is entered into and fully executed relative to development of said subdivision and the normal sureties required pursuant to said subdivision agreement have been posted. In the event no subdivision agreement is executed and said development project is abandoned, any funds remaining after restoration of the property and payment of any charges properly collectible by City have been made shall be returned to Subdivider or its surety, as their rights may appear.

10. For purposes of this agreement, it shall be presumed that the development project is abandoned and restoration is required unless a Final Map approved by the City Engineer, a subdivision agreement and the posting of funds or bonds thereunder, are all accomplished not later than _____.
11. Parties acknowledge that final improvements plans have not been fully received and approved by the City Engineer. At such time as said plans are certified as acceptable by the City Engineer, said plans shall thereupon be deemed the plans referred to in paragraph 2.
12. The conditions set out in City of Petaluma Resolution No. _____ N.C.S. (Exhibit B) shall be fully complied with prior to commencement of any work hereunder.
13. Notwithstanding paragraph 12, Subdivider acknowledges and agrees to comply with Resolution No. 2021-152 N.C.S. (Exhibit C) which was adopted by Petaluma City Council on September 13, 2021, and restricts water usage, and agrees to only use recycled water to perform the grading required under this agreement.

City has executed this agreement at Petaluma, California, on _____, _____, by and through its authorized officer, and Subdivider has executed this agreement at _____, on _____, by and through its counterparts, any of which, if properly executed, may be considered an original document.

CITY OF PETALUMA

SUBDIVIDER

City Manager

By _____
Name and Title

ATTEST:

Address

City Clerk

City State Zip

APPROVED AS TO FORM:

Telephone Number

City Attorney

file name: