



AUDIT DEPARTMENT

Audit Report

Southern Highlands Owner Compliance with Development Agreements

November 2011

Angela M. Darragh, CPA, CISA, CFE
Audit Director

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Angela M. Darragh, CPA, CFE, CISA, Director



November 22, 2011

Mr. Don Burnette
Clark County Manager
500 South Grand Central Parkway, 6th Floor
Las Vegas, Nevada 89106

Dear Mr. Burnette:

As requested by the County Manager's Office, we have conducted an audit of Southern Highlands Owner Compliance with Development Agreements. Our procedures considered transactions as of April 30, 2011. We performed procedures sufficient to conclude on our objectives. We conducted our audit in accordance with generally accepted government auditing standards.

The objective of our audit is to determine whether Owner complied with Southern Highlands master development agreement and subsequent amendments relative to provisions pertaining to: Public Facilities, Parks, Transportation Improvements, and Financial Contributions.

Southern Highlands is in the final phase of development. We noted significant areas of non-compliance with development agreement provisions. Primarily, the Sports Parks and adjacent improvements are not developed, public access easement agreements and land use restrictions for parks do not exist, a portion of a park paseo was built on private property, and two roads were not built as planned missing some turn lanes. Other areas of concern were noted as transportation and streetscape improvements are not complete but contingent on certain events occurring. We further noted that the residential construction tax is not applied consistently to parks, the residential construction tax balance was materially incorrect with an understatement of \$1.6 million, the remote transportation fee balance of \$3.2 million is increasing due to decreasing payments tied to issuance of residential building permits and a 3% annual increase on balance due, and bus easements were not obtained by the County. Other findings were noted and are discussed in detail in the report.

A draft report was provided to the Director of Comprehensive Planning, Public Works, and Parks and Recreation. The management responses from these departments are attached along with the final report. The assistance and cooperation of all department staff is greatly appreciated.

Sincerely,

/s/ Angela M. Darragh

Angela M. Darragh, CPA
Audit Director

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BACKGROUND

Authoritative Basis for Major Projects Development

The Board of County Commissioners (BCC) through the authority of state statutes may carry out a plan for infrastructure in an area that is relatively undeveloped by negotiating master development agreements adopted through ordinance with a person/entity who has a legal or equitable interest in land. Negotiating these agreements enables the BCC to equitably distribute the costs to develop infrastructure for an area of land that is largely undeveloped based on an analysis of the need for infrastructure prepared pursuant to state statutes. This analysis is known as the Public Facilities Needs Assessment (PFNA).

Southern Highlands Development Agreement

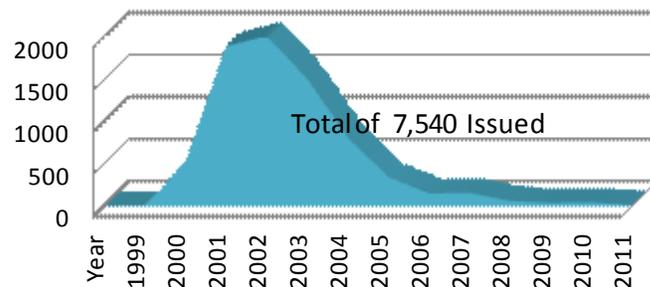
Southern Highlands is a community planned through a master development agreement between the BCC and Southern Highlands Development Corporation and its affiliates and related entities (Owner). The Southern Highlands Master Development Agreement (Master Agreement) was adopted through ordinance effective on November 18, 1998 and terminates on November 18, 2023. The Master Agreement was subsequently amended on December 8, 1999 (Second Amendment), and on November 16, 2005 (Third Amendment). These amendments incorporate the addition of approximately 826 acres of land increasing the cap on residential units within Southern Highlands from 7,000 to 10,400. The addition of land required that provisions within the agreement accommodate the increase in residential units and land area by addressing increased infrastructure needs: public facilities, parks, schools, and transportation.

Infrastructure within the development is generally to be provided by the Owner. Transportation improvements are to be constructed in three separate phases.

Southern Highlands currently consists of approximately 2,690 acres of land area with 10,400 planned residential units at a density rate of 3.87 per acre; two operational elementary schools with a planned third elementary school and middle school; seven parks; a planned sports park; and various commercial centers. A resort hotel with a convention area, several restaurants, entertainment venues, retail shops, and several acres of pools and gardens including a lazy river is also planned on the east side of the community but remains undeveloped. Small land areas, primarily undeveloped, that are not part of the planned community are encompassed within the perimeter of Southern Highlands. The Owner has no responsibility for these areas. As of April 30, 2011, 7,540 residential building permits have been issued with a remaining 2,860 to be issued.

**Southern Highlands
Residential Building Permits Issued
as of April 30, 2011**

Figure 1



**Transportation
Improvements**

Owner responsibility for Southern Highlands transportation improvements consists of ten major roads within the development and surrounding boundary roads including intersections, certain remote transportation improvements, development of back of curb landscape improvements (streetscapes), and development agreement requirements for bus turnouts and related easements. Determining configuration of roads with number of lanes and dedicated right and left turns, remote transportation improvements, and traffic flow that addresses signs and signals is analyzed through traffic studies. The County reviews and accepts the traffic studies through a formal acceptance letter. Together with the development agreements and the acceptance letter details, the Owner's responsibilities are established for transportation improvements within the planned community and remote needs. Planning of bus turnouts is coordinated with the Regional Transportation Commission. The County requires that the Owner post a bond for performance of these improvements. Once the County approves the completed improvements, the BCC approves the release of the bonds.

Within-development improvements include transportation improvements that fall within the boundaries of the Southern Highlands planned community. These improvements are entirely the responsibility of the Owner. The major arterial roadways consist of Southern Highlands Parkway and Valley View Boulevard. Southern Highlands Parkway extends from Cactus Avenue all the way to the I-15 at the Lake Mead interchange, the southern-most interchange in the Las Vegas Valley. In addition, collector and other roadways include Industrial Road, Somerset Hills Avenue (Eastgate Avenue and Westgate Avenue), Shinecock Hills Avenue (Erie Avenue), Starr Hills Avenue, and Starr Avenue.

Public Facilities Needs Assessment The Southern Highlands major development is located within the PFNA (Public Facilities Needs Assessment) area for the Southwest Las Vegas Valley that additionally includes Rhodes Ranch and Pinnacle Peaks. The PFNA is adopted through ordinance in conjunction with the development agreement and is on a project-by-project basis. The PFNA was established to close the funding gap for parks, fire and police service, and transportation where large areas of undeveloped land exist. Major development agreements incorporate construction of infrastructure and funding and are exempt from PFNA assessments.

Residential Construction Tax for Parks The Board of County Commissioners adopted a master parks and recreation plan (Master Parks Plan) on October 5, 1999. Once the plan was adopted, through the authority of NRS 278.4983, a residential construction tax (RCT) could be imposed for the purpose of providing neighborhood parks and facilities for parks which are required by the residents. Neighborhood parks are defined as parks not exceeding 25 acres. An RCT tax is imposed through the issuance of residential permits as specified by the NRS or a planned development may receive credit for the cost of developing open space within.

OBJECTIVES, SCOPE, AND METHODOLOGY The objective of our audit is to determine whether Owner complied with Southern Highlands master development agreement and subsequent amendments relative to provisions pertaining to: Public Facilities, Parks, Transportation Improvements, and Financial Contributions.

To achieve our audit objective, we conducted interviews with key personnel and reviewed pertinent state statutes, regulations, development agreements and subsequent amendments, and relevant documents including, but not limited to, bonds, traffic studies and amendments, and letter correspondence (i.e. traffic study acceptance letters) between Clark County and the Owner. These documents were used to determine the specific criteria for compliance testing. We primarily used the bond releases as a basis for determining compliance with park and transportation improvements criteria. We traced financial contribution amounts to amounts recorded in the County's financial records for those amounts to be received by the County, and to other forms of supporting documentation if the amounts were to be received by an external agency. Where necessary, we reviewed other supporting documentation, such as recorded documents.

In February and March 2011, we performed observations of the entire Southern Highlands development including parks, schools, undeveloped land, traffic signals and road signs, and major regional roadways to physically observe the status of Owner's progress toward meeting requirements. We additionally used digital images from Google Earth and the Clark County Geographic Information System Management Office (GISMO) to assist with observations. The last day of fieldwork was October 4, 2011.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

RESULTS IN BRIEF The Owner is significantly in compliance with the provisions of the development agreements in relation to Public Facilities, Parks, Transportation Improvements, and Financial Contributions at the current and final phase. Parks and transportation improvement areas constructed as of the end of the audit period have been accepted by the County and the bonds for these improvements have been released. Significant provisions that have not been complied with or are contingent on the occurrence of certain events are discussed in detail in the report and a brief list included in Appendix A.

While the Owner is in compliance with agreement provisions for financial contributions of remote transportation fees, the fee balance has progressively increased to \$3.2 million as of April 30, 2011. This was due to the three percent annual increase on the outstanding balance in accordance with agreement provisions and that payments have decreased. Fees are paid when residential building permits are issued, but permits have declined significantly since the peak in 2003. The Owner does have the option of paying in full. The lack of financial contributions directly affects the ability of the County to develop remote transportation. We further noted that RCT credits were not given to the Owner for all parks required to be developed. We also found that some RCT credits approved by the BCC were not recorded in the financial records of the County once the park was fully developed and the bonds released.

DETAILED RESULTS

Public Facilities

*Off-Site Improvements
Adjacent to School Site
Not Completed* The third elementary school (Stuckey Elementary), middle school, and the Sports Park are to be located adjacent to each other. Once the Owner secures the sites for intended schools and parks, the Owner is required to construct a paved access, full off-site improvements, and wet and dry utilities adjacent to the schools and park within one year. The full off-site improvements are to include the completion of full off-sites on Chartan Avenue adjacent to the schools, the extension of full off-sites on Starr Hills Avenue from Chartan Avenue to the south through the site and full off-sites on a paved access road connecting to and completion of Stonewater Lane.

The sites for the middle school and the park where the off-site improvements and paved access are to be constructed remain undeveloped. Wet and dry utilities either exist or are available on adjacent properties.

Recommendation We recommend that Comprehensive Planning require the Owner to provide off-site improvements including paved access between Chartan Avenue and Stonewater Lane in accordance with the Second Amendment of the development agreement.

Parks

RCT Applied Inconsistently to Parks with Less than 5 Acres Goett Family Park and Inzalaco Park were developed with less than 5 acres and would be classified in accordance with the Master Parks Plan as a Mini-Park. Only "Qualified Parks" are considered for application of RCT credits. The Owner received RCT credits for the development of these parks even though these parks were developed under 5 acres. Other parks were planned and developed with less than 5 acres: Doc Johnson (Rose) Park, Jimmy Pettyjohn Jr. Park, and the dog park on the corner of Jones and Cactus. RCT credits were not applied to these parks, nor were they accounted for in the County's financial records for RCT. This indicates that Parks and Recreation Department was defining "Qualified Parks" as 5 acres or more as stated by County Parks Planning. Goett Family Park and Inzalaco Park values were given the RCT credits, as the parks were intended to be 5 acres or more in accordance with the Second Amendment. Determination of whether RCT credits are given or that a park is considered a "Qualified Park" is not applied consistently to parks.

State statutes for RCT define parks qualified to receive RCT credits as having up to 25 acres of park land and designed to serve persons, families and small groups from the neighborhood. Not applying RCT credits to parks that are developed with less than 5 acres may not be in accordance with NRS 278.4983 *Residential Construction Tax*.

Recommendation We recommend that the Finance Division of Parks and Recreation Department and Comprehensive Planning apply RCT credits to developed parks consistently as allowed by state statutes. We further recommend that "Qualified Parks" be defined in development agreements. Clarification of whether RCT credits may be withheld from Mini-Parks as defined by the Master Parks Plan as less than 5 acres should be sought through the District Attorney's Office in order that development agreements are in compliance with NRS 278.4983.

RCT Credits Not Applied to Actual Park Construction Costs The final RCT credits were not always adjusted in financial records to reflect the actual costs of the “Qualified Park” in accordance with Section 6.03(v) of the Second Amendment. As of April 30, 2010, \$5.3 million of RCT credits were recorded in the County’s financial records and park values of \$5.4 million. Actual construction costs and RCT credits as approved by the BCC for “Qualified Parks” amounted to \$7 million. This represents an understated amount of \$1.6 million of RCT credit. State statutes allow RCT credits for the value of the developed park under NRS 278.4985(2) for planned communities.

Recommendation We recommend that the Comptroller’s Office reflect the actual construction costs of park development as RCT credits in financial records as provided for in the Second Amendment and as approved by the BCC.

Public Access Easements and Land Use Restrictions Not Recorded Public Access Easement Agreements have not been recorded for Southern Highlands parks that are considered “Qualified Parks” and for which Southern Highlands Community Association (HOA) owns conditional title and rights. In accordance with Section 6.01(a) Parks, Second Amendment states:

“the County must approve a Public Access Easement Agreement for all Homeowners Association (HOA) maintained “Qualified Parks”. Following County approval, the Owner will record the Public Access Easement Agreement, which will be binding and run with the land.

Land use restrictions for general public use on a non-discriminatory basis of parks was also not recorded in deeds to Southern Highlands Community Association in accordance with Section 6.03, Second Amendment that states:

“All facilities for which tax credits have been granted shall be available for use by the general public on a non-discriminatory basis. In the case of privately owned land, such requirement shall be stated in a land use restriction reasonably acceptable to the County, and recorded against the land on which such facilities are located.”

The fact that these agreements and restrictions have not been recorded is problematic for various reasons:

- Any type of restrictions recorded in HOA deeds are not sufficient to protect public interest as the land, rights, and title may revert back to the Southern Highlands Development Corporation under certain conditions.
- The Southern Highlands Development Corporation is only required to perform up to the date of the expiration of the development agreement.

- HOA deeds do not allow for conveyance of the parks to another entity, including Clark County, without express consent from Southern Highlands Development Corporation.
- The development agreement also gives the exclusive right to the HOA to program and control the use of the parks, provided that in all circumstances the general public has rights of access and use. Language to the effect of general public use is not recorded in deeds.
- In accordance with Section 6.02(b) of the master development agreement, all parks listed in the development agreement are to be available for general public use including non-“Qualified Parks”.
- We observed parks and noted that signage states “*Guests and Residents...*” as opposed to reference to general public use.

These are indications of moving toward restrictive privatization of parks that potentially does not lend towards general public use on a non-discriminatory basis and that does not sufficiently protect land use for parks. Without Public Access Easement agreements and land use restrictions in place, the general public interests for the life of the park are not protected once the development agreement expires on November 18, 2023.

Recommendation We recommend that Comprehensive Planning obtain Public Access Easement Agreements and Land Use Restriction documents from the Owner for County approval and ensure that these documents are subsequently recorded by the Owner.

Paseo Park Section on Private Property The Paseo Park contains developed park area of approximately 1 acre of privately held property. An easement was not recorded for general public use for this portion of the Paseo Park.

The Second Amendment, Exhibit I-2 clearly shows a paseo marked as public facility for the drainage area going through this property. However, this land remains private. The walkways for the park were intended to connect Goett Family Park to Somerset Hills Park and to a currently undeveloped public facility. The general public is essentially walking through private property and could present liability issues for the County and Owner.

Recommendation We recommend that Comprehensive Planning coordinate efforts with the Owner in obtaining a Public Access Easement Agreement from the owner of the private property on which the Paseo Park passes through and is currently open to public use.

Inzalaco Park Not Dedicated Inzalaco Park was to be dedicated to Clark County by October 1, 2006, in accordance with the Second Amendment, Section 6.01. The park was not dedicated by that date. The dedication of this park is in conflict with Section 6.02(ii) of the master development agreement that states that an initial dedication of parks must be at least 18 acres. Inzalaco Park is the only park to be dedicated and is less than 18 acres.

Recommendation We recommend that Comprehensive Planning require Inzalaco Park be dedicated by the Owner. Inconsistencies in agreement provisions should be clarified and agreement amended as appropriate.

Additional Lands Added to Development Requires Adding Parks An additional 826 acres of land was added to the Southern Highlands planned community, increasing total acres from 1,864 to approximately 2,690 acres. Master Agreement, Section 6.07, requires that additional parks be added for additional development land in the ratio of 2.05 acres per 1,000 people.

The requirements for the development of the Sports Park were added to the provisions of the Second Amendment to satisfy the Master Agreement provision for additional parks. While sufficient park acres of approximately 20 to 22 acres of developable land have been provided in the form of BLM leases, the Sports Park was not developed. The Owner is not in compliance with Section 6.07 of the Master Agreement as well as the Sports Park provision in the Second Amendment and the subsequent agreement extending the required completion date to October 2010. The delay in construction of the Sports Park and the extension of the development date was initially caused by the process of obtaining BLM leases. These BLM leases were obtained and recorded July 17, 2008. At the present, the Sports Park should have been constructed by the Owner.

Recommendation We recommend that the County Manager and Comprehensive Planning take action to determine whether the Owner substantially defaulted on the Second Amendment and require correction by the Owner (construction of the Sports Park) or an amendment approved by the BCC to the development agreement be made in accordance with Sections 9.03 *General Provisions – Default* and 9.03(b) *Amendment or Termination by County* of the master development agreement.

Building Permits Issued while Sports Park Remains Undeveloped At least 144 residential building permits for new homes were issued in the Southern Highlands major project development after January 15, 2008, of which 13 were issued after October, 2010. Section 6.02(c) Sports Park of the Second Amendment states:

“Owner will design, construct, and deliver to the County, the Sports Park no later than January 15, 2008 and no residential building permits shall be issued within the Planned Community after this date until the Sports Park is completed and accepted by the County.”

The BCC subsequently extended the date of completion for the Sports Park to October 2010. The Owner is not in compliance with the Second Amendment, 6.02(c) Sports Park provision.

Recommendation We recommend that the County Manager and Comprehensive Planning take action to determine whether the Owner has substantially defaulted on the Second Amendment and require that a correction by the Owner (construction of the Sports Park) or an amendment to the development agreement be made in accordance with Sections 9.03 *General Provisions – Default* and 9.03(b) *Amendment or Termination by County* of the master development agreement.

Lack of Amenities without a Sports Park The Southern Highlands community is lacking in developed parks where residents can enjoy intense recreational activity such as organized sports and field games, including baseball. Second Amendment, Section 6.03 Residential Construction Tax Credit states:

“The park acreage developed shall...include all or some of the following amenities: turf areas, trees, irrigation, playground apparatus, athletic fields, play areas, picnic areas, horseshoe pits, jogging and exercise paths, disc golf, water play features and other recreational equipment designated to serve residences with the Planned Community.”

Goett Family Park, Inzalaco Park, and Somerset Park each offer various amenities except for athletic fields. These parks will not support intense recreational activity. The Sports Park amenities, if constructed in accordance with the Second Amendment, will include lighted ball fields and multi-use fields with spectator seating, among other amenities, satisfying community needs for intense recreational activity. Currently, Southern Highlands residents must travel out of their community to participate in intense recreational activity.

Recommendation We recommend that the County Manager and Comprehensive Planning take action, in accordance with agreement provisions and approval of the BCC, to have the Owner provide the Sports Park.

Bond Not Posted for the Sports Park Park plans have not been submitted by the Owner and a bond was not posted for the Park, as required by the Second Amendment. Since no bond was posted, the County cannot use bond proceeds to develop the park if not provided by the Owner.

Recommendation We recommend that the County Manager require the Owner to comply with agreement provisions noted above or that the County resolve the issue through provisions of the agreement for default or amendment.

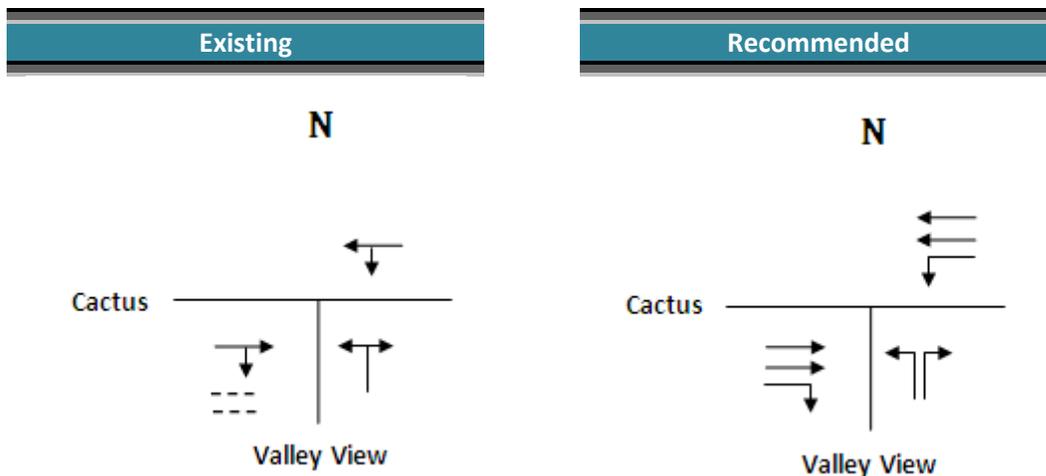
**Transportation
 Improvements**

*Northeast Corner
 Improvements Not Yet
 Complete*

The Owner has completed many of the required improvements along the northern boundary of the project (along Cactus Avenue from Jones Boulevard to Industrial Road), but some transportation improvements remain near the Northeast corner of the project. Specifically, the Owner’s responsibility for transportation improvements along the Cactus Avenue roadway from Industrial to Valley View, at the intersection of Cactus and Valley View, as well as Valley View north of Cactus, is not yet complete.

According to the County’s acceptance letter for the second addendum to the traffic study, Cactus Avenue from Valley View to Industrial Road should have been widened to two through lanes in each direction after 1,000 building permits were issued. Currently, over 7,000 building permits have been issued, and a single lane exists in each direction. In addition, as Figure 2 below shows, the existing intersection at Cactus and Valley View is not yet completed in accordance with the recommendation of the second addendum to the traffic study, as approved by the County. The Southern Highlands planned community is currently in phase three of project build out, as more than 7,000 building permits have been issued. The final configuration should be completed during this phase. Finally, once an interchange at the I-15 and Cactus Avenue is completed, the Owner will be responsible for improving Valley View Avenue from Cactus Avenue north to Silverado Ranch Boulevard in accordance with development agreements.

Figure 2: Intersection at Cactus and Valley View



Recommendation The Owner will need to coordinate with Public Works to construct the remaining improvements near the Northeast corner of the project because a planned interchange at the I-15 and Cactus Avenue, which is immediately adjacent to this area, is scheduled to go to bid in the Spring

of 2012. The construction of this interchange will affect traffic movements at the Northeast corner of the project. We recommend that Public Works assure the Owner’s responsibilities for transportation improvements are met in these areas.

Remote Access Improvements Not Yet Complete

In accordance with the original and amended development agreement, the Owner has completed or substantially completed several remotely adjacent improvements that are designed to improve access to the planned community. Remote access improvements, and the status of their completion, are listed in Table 1 below. According to the transportation improvement exhibit in the development agreement, the Owner will be responsible for completing the remaining projects when the NDOT and County construct the currently planned interchange at the I-15 and Cactus Avenue.

Table 1: Status of Regional Access Improvements

Improvements	Status
Decatur Boulevard from Cactus Avenue to Blue Diamond Road – 4 lanes	Completed
Cactus Avenue from Decatur Boulevard to Valley View Boulevard – 2 lanes	Completed
Silverado Ranch Boulevard from Decatur Boulevard to Valley View Boulevard – 2 lanes	Completed
Silverado Ranch Boulevard from the I-15 to Valley View Boulevard – 4 lanes	Completed
Dual westbound left turn lanes at Decatur Boulevard and Silverado Ranch Boulevard	Partially completed (a)
Decatur Boulevard from Blue Diamond Road to the Union Pacific Railroad – 4 lanes	Partially completed (b)
Turn lanes at Valley View Boulevard and Silverado Ranch Boulevard	Not completed (c)
Valley View Boulevard from Cactus Avenue to Silverado Ranch Boulevard – 2 lanes	Not completed (c)

(a) Decatur Boulevard has been completed with two north, and two southbound lanes in accordance with development agreements. Development documents recommend 600 hundred feet of storage length with dual westbound lefts as acceptable. However, only a single westbound left exists at Silverado Ranch Boulevard

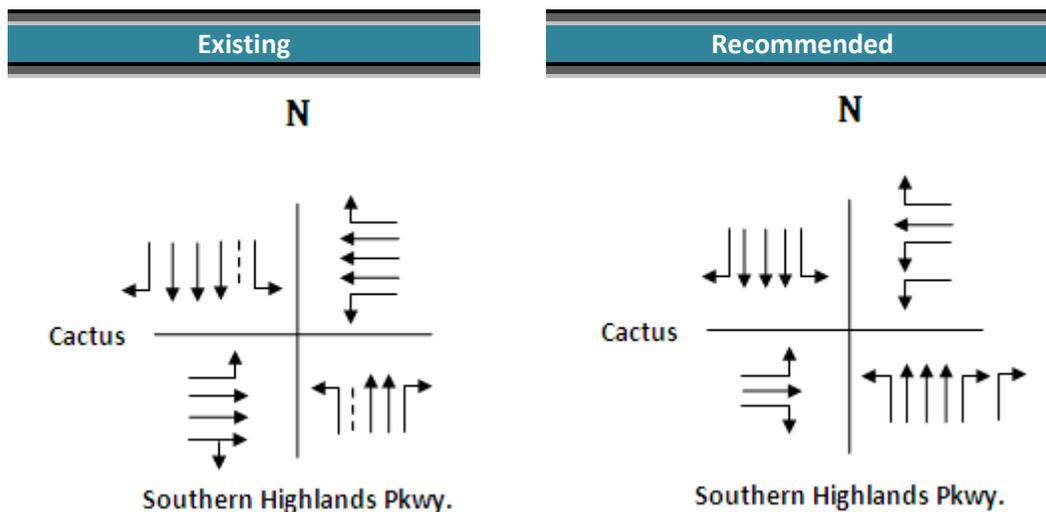
(b) This section of roadway exhibits four lanes of width, but is unfinished. Northbound and southbound lanes vary from one to three lanes inconsistently.

(c) Valley View Boulevard from Cactus Avenue to Silverado Ranch Boulevard has not been started. Accordingly, the southern leg of the intersection does not exist.

Recommendation We recommend that Public Works assure the Owner’s responsibilities for transportation improvements are met in these areas.

Intersection at Cactus Avenue & Southern Highlands Parkway Not Configured Properly The current intersection at Cactus and Southern Highlands Parkway is not configured in conformance with the recommendation of the second addendum to the traffic study, as approved by the County. The north and west legs of the existing intersection, shown in Figure 3 below, are widened in excess of the Traffic Study recommendation, though a dedicated right turn lane is not present on the west leg. The traffic study recommended six lanes on the south leg, with dual dedicated right turn lanes, but the existing south leg appears only wide enough for five lanes and is configured with a single dedicated right. The east leg is configured with one more lane than the traffic study recommended, but a second dedicated left turn lane is not configured.

Figure 3: Intersection at Cactus and Southern Highlands Parkway



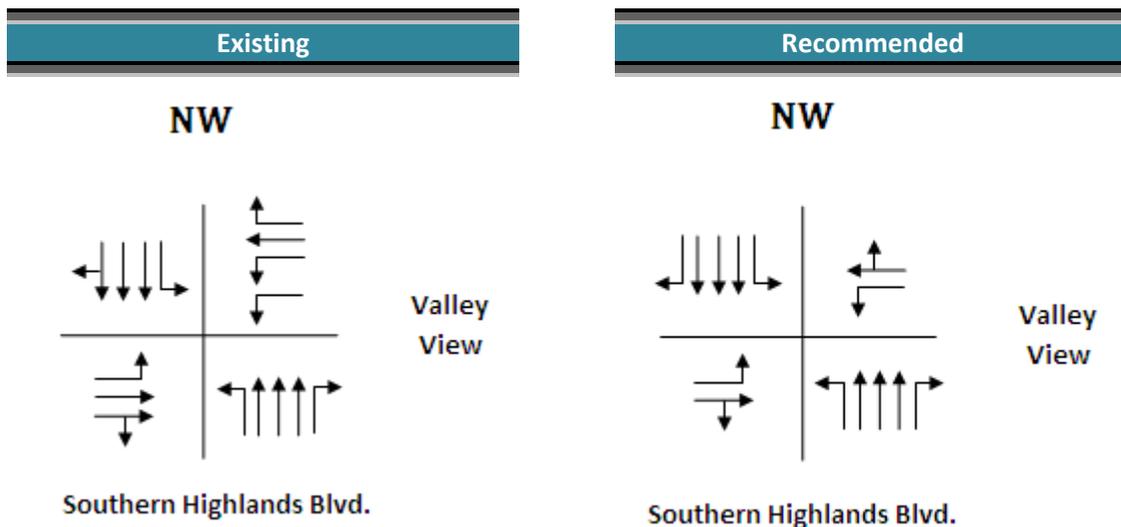
Engineers in Public Works approved plans and recommended the release of construction bonds for this intersection without requiring conformance with the current traffic study or traffic study acceptance letters, or documenting supporting updates to the traffic study.

Recommendation In accordance with the development agreement, traffic studies should be updated and approved prior to approving specific plans for improvements that vary from the current traffic study and traffic study acceptance letters. We recommend that Public Works require the Owner to submit updated traffic studies for approval prior to submitting improvement plans that include a deviation from the currently approved studies and acceptance letters.

Intersection at Valley View Boulevard and Southern Highlands Parkway Not Configured Properly The intersection at Valley View and Southern Highlands Parkway does not include a dedicated right turn lane on the northwest leg, as required by the County-approved second addendum to the traffic study. The required configuration is outlined in Figure 4 below.

Engineers in Public Works approved plans and recommended the release of the construction bonds for this intersection without requiring conformance with the current traffic study or traffic study acceptance letters, or documenting supporting updates to the traffic study.

Figure 4: Intersection at Valley View and Southern Highlands Parkway



Recommendation In accordance with the development agreement, traffic studies should be updated and approved prior to approving specific plans for improvements that vary from the current traffic study and traffic study acceptance letters. We recommend that Public Works require the Owner to submit updated traffic studies for approval prior to submitting improvement plans that include a deviation from the currently approved studies and acceptance letters.

Bus Turnout Easements Not Conveyed No easements have been secured for bus turnout locations that extend beyond roadway rights-of-way and no bus turnouts have been constructed within the project. In accordance with the development agreement, the Owner is required to convey bus turnout easements at County-identified locations when conveying property to the community association. The County did not identify bus turnout locations or require the construction of bus turnouts or require the conveyance of bus turnout easements when roadways were built in the project. According to staff from Public Works and Comprehensive Planning, bus service was new in the Las Vegas valley ten years ago when project roadway plans were approved. In addition, at that time, the project was not a bus

route priority due to the project's distance to the Las Vegas Strip and downtown and relatively few service routes. The Owner did not secure easements for bus turnouts in accordance with the development agreement.

Because all roadways within the Southern Highlands planned community have been approved and constructed, the County or Regional Transportation Commission (RTC) is responsible to construct bus turnouts in the future. Where property has been conveyed to the community association, the County will need to secure applicable easements from the Community association. Where property has not yet been conveyed, such as at the southern end of the project, the County can still require bus turnout easements be conveyed when property is turned over to a community association or private owner.

Recommendation We recommend that Public Works coordinate with the RTC to evaluate the remaining undeveloped portions of Southern Highlands in order to identify potential areas for future bus stops and, where deemed desirable, require the Owner provide and record an easement for a bus turnout prior to, or at the time that, streetscape areas are conveyed to a community association or private owner.

Landscaping Nearly Complete Overall, landscaping improvements along roadways in Southern Highlands are complete and well kept. We noted two areas where landscaping was not complete. First, along the southern portion of Southern Highlands Boulevard from Robert Trent Jones Lane to the I-15, we noted that trees were planted, but shrubs, accents, and grass were not planted. Development adjacent to this section of roadway is also not complete. Subsequent to the end of fieldwork, landscape improvements in this area are substantially complete. Second, landscaping is not present along Starr Avenue, east of Industrial Avenue. According to Public Works, the County is in the preliminary design stage of an interchange at the I-15 and Starr Avenue at this location. Therefore, this section of roadway is not fully improved.

Recommendation We recommend that appropriate Public Works assure the Owner's responsibility for landscaping the east section of Starr Avenue and south section of Southern Highlands Parkway is completed.

Financial Contributions Outstanding

Remote Transportation Contribution Outstanding As of January 1, 2011, the Owner was still responsible for over \$3.2 million in remote transportation contributions to the County, in order for the County to construct regionally adjacent roadways. Initially, the Owner was responsible for a total contribution of \$4 million, and the County has received over \$1.9 million at January 1, 2011. However, any

unpaid balance was to increase by 3% on January 1 of each year, beginning on January 1, 2000. As Table 2 below summarizes, beginning at January 1, 2006, 3% increases on the unpaid balances began to exceed collections, resulting in an annually increasing unpaid balance.

The Owner has the option of paying the full amount due at any time. However, in accordance with development agreements, the contributions have been paid on a per-permit basis for residential construction and a per-square foot basis for commercial constructions. These fee rates increased at 3% per year. Beginning in 2005, following a decline in the number of residential construction permits and commercial construction, remote transportation contribution collections declined significantly. Total collections, including the 3% increase in fee amounts, did not cover the 3% increase in the unpaid balance.

Table 2: Transportation Contribution Collections and Balance Changes

Calendar (range)	Years	Total January 1 3% Unpaid Balance Increase	Total Prior-Year Collections	Outstanding Balance (Decrease) / Increase
January 1, 1999				\$ 4,000,000
1999 - 2005		\$ 623,957	\$ (1,752,462)	(1,128,505)
2006 - 2011		531,985	(178,570)	353,415
TOTAL				<u>\$ 3,224,910</u>

Unless residential construction permitting or commercial construction in Southern Highlands increases to pre-2005 levels, the unpaid balance of the remote transportation contributions will likely continue to increase. The development agreement amendment states that the unpaid balance is due in full prior to the issuance of a building permit for a hotel-casino in the planned community. However, no permit for a hotel-casino in the Southern Highlands planned community is currently under consideration. In addition, as a limited amount of fees are currently collected, the balance available to the County for remote transportation improvements is limited, thus limiting the County's ability to construct regionally adjacent transportation improvements.

Recommendation We recommend that Comprehensive Planning inform the Owner in writing of the current unpaid balance of remote transportation contributions, including recent trends. In addition, Comprehensive Planning should discuss with the County Manager whether an amendment to this section of the development agreement is needed.

LVMPD Substation Contribution Outstanding The Owner met the requirement contained in the second amendment to the development agreement for a \$300,000 contribution toward a Las Vegas Metropolitan Police Department (LVMPD) substation. This requirement was met with three even payments from 2007 to 2009. Unlike other required contributions, no January 1 increase of 3% on any unpaid balance was required for this contribution.

The original development agreement, however, also required the Owner to contribute \$600,000 toward the construction of another LVMPD substation in the region. This amount was to be contributed over the course of a maximum of seven payments. In addition, any unpaid balance was to increase by 3% per year commencing on January 1, 2000. As of January 1, 2007, Clark County received \$662,001 from the Owner to meet this requirement. However, based on our calculations, this amount was \$15,813 short of the required amount, and as a result this amount is currently due to the County.

Recommendation We recommend Comprehensive Planning coordinate efforts with Clark County officials for agreement on final settlement terms with the Owner regarding the remaining balance due.

Fire & Rescue Equipment Contribution Outstanding In accordance with the original development agreement, the Owner met the requirements for a \$410,000 contribution toward a fire engine in March 2000. However, as of March 2003, the Owner was \$1,047 short of the total required contribution for rescue equipment. In March 2003, the County recorded a \$212,800 contribution for rescue equipment. This amount was \$22,800 greater than the amount due at January 1999. However, after 3% increases are added in, which are required to be added on January 1 of each year an unpaid balance remains, the total amount due at January 1, 2003 was \$213,847.

Recommendation We recommend Comprehensive Planning coordinate efforts with Clark County officials for agreement on final settlement terms with the Owner regarding the remaining balance due.

24-Month Review Provision Not Followed The Owner is required by state statute and the Development Agreement Ordinance to provide to the County a status of development every two years. The Owner provided a report dated April 28, 2008, and did not provide the required report in 2010. A 24-Month Review of the Second Amendment was due on December 7, 2009, but was not provided. Without a status report, the County is unable to determine whether the Owner is complying with agreement provisions.

Recommendation We recommend that Comprehensive Planning require the Owner to continue to provide a 24-month review until the development is complete.

APPENDICES

Appendix A: Brief List of Development Agreement Requirements Not Completed

Southern Highlands

List of Development Agreement Requirements Not Completed

- Off-site improvements adjacent to the middle school and the Sports Park do not exist.
- Public Access Easement and Land Use Restrictions for Qualified Parks have not been provided to the County for review or recorded. A portion of the Paseo Park is within private property.
- Inzalaco Park is not dedicated to the County.
- Although the Sports Park is not completed, building permits contingent on its completion were issued. The completion date was extended to October 2010, but as of the audit date, park plans have not been submitted and a bond is not posted for the Sports Park.
- Some transportation improvements are either incomplete, not configured in accordance with development documents, or contingent on the occurrence of future events such as the following:
 - Cactus Avenue along the northern boundary of the development is not developed according to current phase requirements of two lanes in each direction between Industrial Road and Valley View Boulevard. A single lane currently exists in each direction.
 - The intersection at Cactus Avenue and Valley View Boulevard is not complete, as lanes and dedicated turn lanes are missing on all legs. These should have been completed at the current phase.
 - Valley View Boulevard between Cactus Avenue and Silverado Ranch Boulevard will need to be improved once the interchange at I-15 and Cactus Avenue is constructed by NDOT.
 - The following remote access improvements adjacent to Southern Highlands are not complete:
 - Decatur Boulevard and Silverado Ranch Boulevard is missing a westbound left turn.
 - Decatur Boulevard from Blue Diamond Road to the Union Pacific Railroad should be four lanes but varies between one to three lanes inconsistently.
 - There should be two lanes with dedicated turn lanes on Valley View Boulevard from Cactus Avenue to Silverado Boulevard, but work has not started.
 - The intersection of Cactus Avenue and Southern Highlands Parkway is missing a dedicated right turn west leg, second dedicated left turn on the east leg, and a dedicated right turn on the south leg. The County released the bonds for this area without traffic study updates.
 - The intersection of Valley View Boulevard and Southern Highlands Parkway is missing a dedicated right turn lane on the northwest leg. The County released the bonds for this area without traffic study updates.

- Easements were not provided and bus turnouts were not constructed and as the County did not make requirements for bus turnouts at the time back of curb streetscapes were conveyed to Southern Highlands Community Association.
- Landscape improvements are not complete along Southern Highlands Parkway between Robert Trent Jones Lane and 1-15 interchange. Subsequent to the end of fieldwork, landscape improvements in this area are substantially complete. Landscape improvements on Starr Avenue west of Industrial Road do not exist.
- Errors occurred in amounts financially contributed, for either public facilities or public safety equipment, by the Owner totaling approximately \$17,000 primarily due to the incorrect calculation of the annual 3% increase on the outstanding balance. These errors are not considered significant but represent additional monies owed to the County in accordance with the provisions of the agreements.
- The County did not verify that the Owner made a required \$1 million contribution to the Nevada Department of Transportation (NDOT) for the interchange at Interstate 15 and Lake Mead, which is fully developed.
- The Owner did not complete the 24-Month Review required by agreement provisions.

MEMORANDUM

NANCY A. LIPSKI

Department of Comprehensive Planning

Director

TO: ANGELA M. DARRAGH, Acting Director of the Audit Department

FROM: NANCY A. LIPSKI, Director

SUBJECT: Southern Highlands Owner Compliance with Development Agreements

DATE: October 7, 2011

The Department of Comprehensive Planning appreciates the opportunity to review the Southern Highlands Development Agreement Compliance audit. Overall, we agree that there are developer deficiencies that must be addressed. Detailed responses to many of the recommendations are outlined below.

Page 5: Public Facilities: Schools

Recommendation: We recommend that Comprehensive Planning require the Owner to provide off-site improvements including paved access between Chartan Avenue and Stonewater Lane in accordance with the Second Amendment of the development Agreement.

Response: The Second Amendment, Section 6.04(d) states "Once the land as described in this section 6.04(d) is secured for the intended public facility uses (schools and parks), Owner agrees to construct paved access, full off-site improvements, and wet and dry utilities adjacent to the schools and park within one year of securing the land or in a time frame otherwise reasonably requested in writing from the County." Comprehensive Planning will work with Public Works and the developer to determine that timeframe.

Page 6: Parks

Response: NRS 278.4983 has been complied with as all parks that were accepted are less than 25 acres. In addition, a recent update to the Major Projects section of Title 30 does require that the development agreement clearly stipulate many of the items found necessary for future agreements. The District Attorney's Office has been and will continue to be involved in all aspects of the negotiation of Development Agreements.

Page 7: Public Access Easements and Land Use Restrictions Not Recorded

Recommendation: We recommend that Comprehensive Planning obtain Public Access Easement Agreements and Land Use Restriction documents from the owner for County approval and ensure that these documents are subsequently recorded by the owner.

Response: The developer has been notified and is working with staff to assure these easements are recorded.

Recommendation: We recommend that Comprehensive Planning coordinate efforts with the Owner in obtaining a Public Access Easement Agreement from the owner of the private property on which the Paseo Park passes through and is currently open to public use.

Response: The developer has been notified and is working with staff to assure this issue is addressed.

Page 8: Irzalaco Park Not Dedicated

Response: The developer has been notified and is working with staff to assure the park is transferred.

Page 9-10: Sports Park

Staff is working with the developer to determine time frames and design to facilitate the bonding and construction of the Sports Park.

Default

Recommendation: We recommend that the County Manager and Comprehensive Planning take action to determine whether the Owner substantially defaulted on the Second Amendment and require correction by the Owner (construction of the Sports Park) or an amendment approved by the BCC to the development agreement be made in accordance with Sections 9.03 *General Provisions – Default* and 9.03(b) *Amendment or Termination by County* of the master development agreement.

Response: Staff is working with the developer to address the issues. Any default or amendment or termination by the County would be a decision of the Board of County Commissioners through the public hearing process.

Appendix C: Management's Response – Parks and Recreation Department

Clark County Parks & Recreation
Southern Highlands
Audit Report Response
08/31/2011

The following represents responses regarding the Southern Highlands Owner Compliance with Development Agreements Audit Report performed through April 30, 2011 as related to the Department of Parks and Recreation.

Detailed Results:

1. RCT applied inconsistently to Parks with Less than 5 Acres

Staff agrees that RCT credit should be applied consistently for all qualified parks identified in the Development Agreement and that the term "qualified parks" be more clearly defined in all future agreements.

2. RCT Credits Not Applied to Actual Park Construction Costs

The department of Parks and Recreation will work with the Comptroller's Office to track the park bonds and to ensure that the developer receives appropriate Residential Construction Tax Credits at the conclusion of the project.

3. Inzalaco Park Not Dedicated

Inzalaco Park was completed in December of 2004. Comprehensive Planning has notified the developer who is working with staff to assure the park is transferred.

4. Additional Lands Added to Development Requires Adding Parks

The department agrees and submitted a memo to Comprehensive Planning on October 1, 2009 indicating that it Southern Highlands Development Corporation had violated the terms of the development agreement by failing to start construction on Park #8 (Sports Park).

5. Building Permits Issued while Sports Park Remains Undeveloped

Agreed – see above. Any default or amendment or termination by the County would be a decision of the Board of County Commissioners through the public hearing process.

6. Lack of Amenities without a Sports Park

Agreed. Comprehensive Planning staff is working with the developer to address the issues

MEMORANDUM

DENIS CEDERBURG
Director

Department of Public Works

TO: ANGELA M. DARRAGH, ACTING DIRECTOR OF THE AUDIT DEPARTMENT
FROM: ROBERT B. THOMPSON, DEPUTY DIRECTOR OF PUBLIC WORKS 
SUBJECT: SOUTHERN HIGHLANDS OWNER COMPLIANCE WITH DEVELOPMENT AGREEMENTS
DATE: OCTOBER 27, 2011

The Department of Public Works appreciates the opportunity to review the Southern Highlands Development Agreement Compliance audit. Responses to some of the recommendations regarding Public Works Issues are outlined below:

Northeast Corner - Page 10

- As the interchange at Cactus and I-15 has not yet begun construction, there is no need at this time to have constructed Cactus to two lanes each way from Valley View to Industrial (Dean Martin) which is only one lane in either direction.
- We accept the recommendations to coordinate to have these improvements constructed after the completion of the interchange.

Remote Access Improvements - Page 11

- As per the development agreement, these access improvements do not have to be completed until after the Cactus and I-15 interchange has been completed.
- We accept the recommendation to coordinate to have these improvements constructed after the completion of the interchange.

Intersection of Cactus and Southern Highlands Parkway - Page 12

- We accept the recommendation to have the owner update the development traffic studies.

Intersection of Valley View and Southern Highlands Parkway - Page 13

- We accept the recommendation to have the owner update the development traffic studies.

Bus Turnouts - Page 14

- We accept the recommendation to coordinate with the RTC in determining the best locations for bus turnouts and assist in obtaining the necessary rights-of way.

Landscaping - Page 15

- Public Works does not receive, review bond or inspect landscaping within the development. The landscaping behind the curbs is located on private property and any landscaping within the medians of the roadway is allowed through a license and maintenance agreement.

RBT/vv

cc: Randall J. Tarr, Assistant County Manager
Denis Cederburg, Director of Public Works