



## Travis County Commissioners Court Agenda Request

**Meeting Date:** October 7, 2014

**Prepared By:** Michael Hettenhausen, Planner **Phone #:** (512) 854-7563

**Division Director/Manager:** Anna Bowlin, Division Director Development Services  
Long Range Planning

**Department Head:** Steven M. Manilla, P.E., County Executive-TNR

**Sponsoring Court Member:** Commissioner Daugherty, Precinct Three

**AGENDA LANGUAGE:** Consider and take appropriate action on the Second Amendment to the Sweetwater Ranch Section One and Section Two Phasing Agreement in Precinct Three.

### **BACKGROUND/SUMMARY OF REQUEST:**

The current developer of the Sweetwater Ranch subdivision, WS - COS Development, LLC, wishes to amend the existing Phasing Agreement, originally approved in 2004 and amended in 2006. The amendment is necessary as the obligations set forth in Section 1 of the original Phasing Agreement have been satisfied in full compliance with the terms of the first amendment and no longer remain outstanding. Also, the developer has directed and authorized its engineer to design and prepare construction plans, contract documents and a right-of-way (ROW) dedication plat for that part of Pedernales Summit Parkway shown in the preliminary plan for Section Two and to submit same to TNR for review and approval.

Per the proposed amended Phasing Agreement, the developer shall be allowed to submit plat applications for new phases within Sweetwater Ranch for review, approval, and posting of fiscal security or alternative fiscal security as is allowed under Chapter 82, until the time of recording of the final plat containing the 600th platted lot situated in Section One and/or Section Two. After the recording of the final plat containing the 600th platted lot situated in Section One and/or Section Two, the developer agrees to cease submitting new plat applications for new phases within Sweetwater Ranch until the following conditions are satisfied with respect to the then remaining roadway improvements for Pedernales Summit Parkway Section 2:

A. Developer shall have posted fiscal security or alternative fiscal security, as allowed under Chapter 82, in an amount equal to the estimated costs for the following (to the extent such security is not already posted within the county): construction of the bridge over Bee Creek; the water quality structure(s) associated with such roadway improvements; revegetation of construction areas related to such

roadway improvements; and temporary erosion and sedimentation controls relating to construction of such roadway improvements;

B. Developer shall have recorded the ROW dedication plat for Pedernales Summit Parkway Section 2 with the security required by the county; and

C. Developer shall have submitted to TNR the construction plans for Pedernales Summit Parkway Section 2, and TNR shall have issued the permit for the construction of these improvements.

After the obligations listed above have been met, the developer shall be allowed to submit plat applications for new phases within Sweetwater Ranch for review, approval, and posting of fiscal security or alternative fiscal security as is allowed in Chapter 82, until the recording of the final plat containing the 700th platted lot situated within Section One and/or Section Two. After the recording of the final plat containing the 700th platted lot situated in Section One and/or Section Two, the developer agrees to cease submitting new plat applications for new phases within Sweetwater Ranch until construction has started on Pedernales Summit Parkway Section 2. After these requirements have been met, the developer shall have the right to continue submitting new plat applications for new phases within Sweetwater Ranch for review, approval, and posting of fiscal security or alternative fiscal security as allowed under Chapter 82.

**STAFF RECOMMENDATIONS:**

Staff has reviewed the terms of the amended Phasing Agreement and finds them acceptable; staff recommends approval of the amended Phasing Agreement.

**ISSUES AND OPPORTUNITIES:**

Staff has not registered any interested parties nor been contacted by any adjacent property owners regarding this item.

**FISCAL IMPACT AND SOURCE OF FUNDING:**

N/A

**ATTACHMENTS/EXHIBITS:**

- Precinct Map
- Location Map
- Proposed Amended Phasing Agreement

**REQUIRED AUTHORIZATIONS:**

Cynthia McDonald	Financial Manager	TNR	(512) 854-4239
Steven M. Manilla	County Executive	TNR	(512) 854-9429

**CC:**


**SM:AB:mh**

**1101 - Development Services Long Range Planning - Sweetwater Ranch Preliminary Plan  
Amended Phasing Agreement**



LOCATION MAP  
NTS

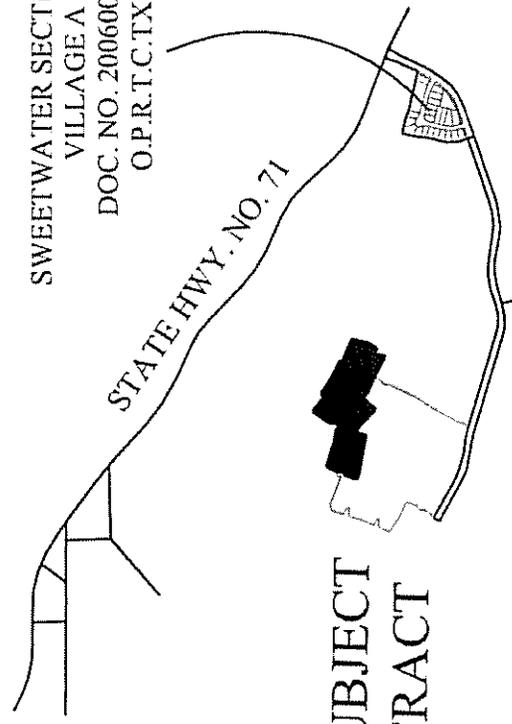


SWEETWATER SECTION ONE  
VILLAGE A  
DOC. NO. 200600162  
O.P.R.T.C.TX.

STATE HWY. NO. 71

SUBJECT  
TRACT

PEDERNALES SUMMIT  
PARKWAY



**SECOND AMENDMENT TO PHASING AGREEMENT -  
SWEETWATER RANCH, SECTION ONE AND SECTION TWO**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

This Second Amendment to Phasing Agreement – Sweetwater Ranch, Section One and Section Two (this "Second Amendment") is made and entered into by and between WS-COS Development, LLC, a Delaware limited liability company ("Developer"), and Travis County, Texas (the "County"), (hereinafter Developer and County may be collectively referred to as the "Parties", or individually as a "Party") for the purposes and consideration stated herein.

WHEREAS, Sweetwater Austin, L.L.P., a Texas limited partnership ("Sweetwater Austin"), as "Developer" and the County entered into that certain Sweetwater Ranch Section One Phasing Agreement dated effective as of July 16, 2004, and recorded in the Official Public Records of Travis County, Texas, as Document Number 2006070705 (the "Original Phasing Agreement"), providing for, among other things, the orderly development of certain property described therein in conjunction with a process to coordinate the construction and improvement of certain roads and streets with the phased development of such property;

WHEREAS, Forest City Sweetwater, L.P., a Texas limited partnership ("Forest City"), succeeded Sweetwater Austin as "Developer" under the Original Phasing Agreement and, subsequently, Forest City and the County entered into that certain Sweetwater Ranch Section One Amended Phasing Agreement Section Two Phasing Agreement, dated effective as of May 24, 2006, and recorded in the Official Public Records of Travis County, Texas, as Document Number 2006100748 (the "First Amendment"), amending the Original Phasing Agreement (as so amended, the "Amended Phasing Agreement") and affecting that certain 1,048 acres described in Exhibit "A" attached to the First Amendment (as defined therein and used herein, the "Property");

WHEREAS, the Developer previously submitted (i) the Sweetwater Ranch Master Development Plan, depicting Sweetwater Ranch Sections One and Two, which plan the County approved, (ii) the Preliminary Plan for Sweetwater Ranch – Section One ("Section One"), which was approved by the County on June 29, 2004, and (iii) the Preliminary Plan for Sweetwater Ranch - Section Two ("Section Two"), which was approved by the County on March 14, 2005, and which preliminary plans were and remain valid, in force and vested as of their respective County approval dates, for all purposes;

WHEREAS, Developer succeeded Forest City as "Developer" under the Amended Phasing Agreement;

WHEREAS Developer is in the continual and ongoing process of subdividing certain tracts of land as described in the Amended Phasing Agreement;

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WHEREAS, the obligations set forth in Section 1 of the Original Phasing Agreement have been satisfied in full compliance with the terms of the First Amendment and no longer remain outstanding;

WHEREAS, Developer has heretofore directed and authorized its engineer to design and prepare construction plans, contract documents and a right-of-way (ROW) dedication plat for that part of Pedernales Summit Parkway shown in the Preliminary Plan for Section Two (“PSP Section 2”) and to submit same to Travis County Transportation and Natural Resources for review and approval in order to avoid delays in the ongoing development of the project; and

WHEREAS, Developer and the County desire to further amend the Amended Phasing Agreement to, among other things, coordinate the phasing process and the future improvements of PSP Section 2.

NOW THEREFORE, in consideration of these premises set forth above (which the Parties hereby confirm are true and correct) and the promises contained herein, the Parties agree as follows:

1. The Amended Phasing Agreement, as amended by this Second Amendment, is herein called the "Phasing Agreement". Capitalized terms not otherwise defined herein shall have the meanings set forth for such terms in the Phasing Agreement.

2. Developer has currently submitted plat applications to the County for over 700 lots situated within Section One and/or Section Two of the Property. The County has currently approved alternate fiscal requests for a total of 523 lots within the Property (“Alternate Fiscal Lots”), and the Developer has submitted fiscal security for, and the County has approved and recorded, final plats for a total of 509 lots within the Property (“Final Platted Lots”). Developer and County acknowledge that even after there are 600 Final Platted Lots within the Property, it may be well over one year before there are 600 or more completed single family homes within the Property, due to the amount of time that it will take the homebuilders to sell and build the homes on the Final Platted Lots.

3. Sections 1 and 3 of the Original Phasing Agreement are hereby deleted, because the obligations therein have now been completed.

4. Section 1a of the First Amendment is hereby deleted, because the obligations therein have now been completed. Sections 1b and 1c of the First Amendment are replaced by Sections 6 and 7 below.

5. As each phase of the Property is final platted, Developer will post County-approved construction fiscal security or alternative fiscal security, as allowed under Chapter 82-Travis County Development Regulations (“Chapter 82”), for the cost of street and drainage improvements within, or necessary to provide access to, such phase, to the extent not already secured with the County.

6. Developer shall be allowed to submit, without limitation, plat applications for new phases within the Property for review, approval and posting of fiscal security or alternative fiscal security as is allowed under Chapter 82, until the time of recording of the final plat containing the 600th platted lot situated in Section One and/or Section Two. After the recording of the final plat containing the 600th platted lot situated in Section One and/or Section Two, Developer agrees to cease submitting new plat applications for new phases within the Property until the following conditions are satisfied with respect to the then remaining roadway improvements for PSP Section 2:

- a. Developer shall have posted fiscal security or alternative fiscal security, as allowed under Chapter 82, in an amount equal to the estimated costs for the following (to the extent such security is not already posted within the County): construction of the bridge over Bee Creek; the water quality structure(s) associated with such roadway improvements; revegetation of construction areas related to such roadway improvements; and temporary erosion and sedimentation controls relating to construction of such roadway improvements;
- b. Developer shall have recorded the ROW dedication plat for PSP Section 2 with the security required in Section 6a of this Second Amendment; and
- c. Developer shall have submitted to the County the construction plans for PSP Section 2, and the County shall have issued the permit for the construction of these improvements. Such permitting shall not be unreasonably delayed or withheld by County.

7. After the obligations of Paragraph 6 have been met, the Developer shall be allowed to submit plat applications for new phases within the Property for review, approval and posting of fiscal security or alternative fiscal security as is allowed in Chapter 82, until the recording of the final plat containing the 700<sup>th</sup> platted lot situated within Section One and/or Section Two. After the recording of the final plat containing the 700<sup>th</sup> platted lot situated in Section One and/or Section Two, Developer agrees to cease submitting new plat applications for new phases within the Property until construction has started on PSP Section 2. The term "construction has started" as used in the preceding sentence shall mean (a) completion by Developer of the pre-construction meeting onsite with County construction inspection staff, and (b) the issuance of a written notice to proceed from the Developer to the contractor who will be constructing PSP Section 2. After these requirements have been met, Developer shall have the right to continue submitting new plat applications for new phases within the Property for review, approval and posting of fiscal security or alternative fiscal security as allowed under Chapter 82, without limitation.

8. The notice addresses for Developer in the Amended Phasing Agreement are hereby deleted and replaced for the Phasing Agreement with the following:

c/o Wheelock Street Capital  
660 Steamboat Road, 3rd Floor  
Greenwich, CT 06830  
Attn: Lawrence Settanni

with copy to:

c/o Wheelock Street Capital  
3303 Quiet Glen Drive  
Kingwood, Texas 77345  
Attn: Mike Rafferty

9. Whenever the provisions of this Second Amendment are inconsistent with the provisions of the Amended Phasing Agreement, the provisions hereof shall control. In addition, it is acknowledged that whenever the provisions of the First Amendment are inconsistent with the Original Phasing Agreement, the provisions of the First Amendment shall control. Except as expressly amended, modified and supplemented hereby, all the terms and provisions of the Amended Phasing Agreement are hereby ratified and remain in full force and effect.

[SIGNATURE PAGES FOLLOW]

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EXECUTED to be effective as of the later date set forth below.

**DEVELOPER:**

**WS – COS DEVELOPMENT, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name: Michael L. Rafferty

Title: Authorized Signatory

Date: \_\_\_\_\_

**COUNTY:**

**TRAVIS COUNTY, TEXAS**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: County Judge

Date: \_\_\_\_\_

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THE STATE OF TEXAS    §  
  §  
COUNTY OF TRAVIS     §

This instrument was acknowledged before me on \_\_\_\_\_, 2014, by Michael L. Rafferty, Authorized Signatory of WS-COS Development, LLC, a Delaware limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public, State of Texas  
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THE STATE OF TEXAS    §  
  §  
COUNTY OF TRAVIS     §

This instrument was acknowledged before me on \_\_\_\_\_, 2014, by \_\_\_\_\_, County Judge of Travis County, on behalf of said county.

\_\_\_\_\_  
Notary Public, State of Texas  
[Seal]