



CITY OF
HAYWARD
HEART OF THE BAY

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DATE: September 20, 2007

TO: Planning Commission

FROM: Sara Buizer, AICP, Senior Planner

SUBJECT: Blue Rock Country Club Project Development Agreement (Stonebrae Country Club) - Request to Amend the Development Agreement by Extending Its Term For Five Years - The Project is Located Southeast of Fairview Avenue/Hayward Boulevard in Eastern Hayward on Walpert Ridge

RECOMMENDATION

That the Planning Commission recommends to the City Council that it approves the Development Agreement Amendment to extend the term for five years subject to the required finding that such amendment is consistent with the General Plan.

SUMMARY

The City Council approved the Blue Rock Country Club project, now known as Stonebrae Country Club, in January 1998. Shortly thereafter, Stonebrae and the City of Hayward entered into a Development Agreement, which was recorded on April 16, 1998. The term of the Development Agreement is for ten years, with five-year extensions allowed with mutual consent of the parties. Due to timing involved to secure the necessary approvals from state and federal agencies, litigation matters that were not resolved until June, 2004, and the extensive grading involved, the project will not be fully constructed within the initial ten year term of the Development Agreement. Stonebrae is requesting a five-year extension to the term of the Development Agreement, which allows them to complete construction of the project.

BACKGROUND

The City Council approved the Blue Rock Country Club project (now known as the Stonebrae Project) in January, 1998. Pursuant to those approvals, on April 8, 1998, Stonebrae LP's predecessor, Hayward 1900, Inc., and the City of Hayward entered into the Blue Rock Country Club Project Development Agreement (Development Agreement). The Development Agreement was recorded on April 16, 1998.

For the next four years, Stonebrae worked to secure approvals for the project from the U.S. Fish & Wildlife Service (USFWS), the U.S. Army Corps of Engineers (Corps), the California Department of Fish & Game, and the Regional Water Quality Control Board. Due to the presence of protected species on site, in particular the Alameda Whipsnake and the Red-Legged Frog, complex and

protracted analysis and discussion with the USFWS was required before the Service finally issued a final biological opinion for the project in July, 2002. Issuance of the biological opinion allowed the Corps to approve the Section 404 permit for the project. After issuance of the final biological opinion and other resource agency approvals, the City of Hayward approved the Precise Development Plan and Vesting Tentative Map for the project in the fall of 2002.

Three litigation matters slowed project construction and were not finally resolved until the summer of 2004. These litigation matters included (1) condemnation proceedings commenced by the Hayward Unified School District over an access easement affecting the school site (this and related actions were resolved in May, 2003); (2) an action brought in state court by the Hayward Area Planning Association (HAPA) and the Greenbelt Alliance challenging the City's approval of the Precise Plan and Vesting Tentative Map under CEQA (final resolution in April, 2004); and (3) an action brought in federal court by HAPA and the Center for Biological Diversity challenging the Army Corps' permit based upon the USFWS biological opinion (final resolution in June, 2004).

Due to the extensive work involved, mass grading of the project site had to be split into two phases. Phase 1 mass grading (school site, portions of Village A and the golf course driving range and the water tank sites) commenced in the summer of 2004. Phase 2 mass grading (remainder of site) commenced in the spring of 2005. Mass grading is complete. School construction commenced in the spring of 2005, and the school opened in the fall of 2006.

The City Council approved the final subdivision map for Village A (Tract 5354) in April, 2005, and the final map was recorded on July 29, 2005. Construction of homes within Village A is ongoing. The City Council approved the final subdivision map for Village B (Tract 7736) in November, 2006, and the final map was recorded on May 24, 2007. Work under the City approved improvement plans for Village B has commenced; home construction has not yet started in this village. The golf course is almost complete and is scheduled to open for play this fall. Construction activities on the project have been continuous since commencement in 2004.

While the actual time necessary to construct the project is not expected to be any longer than originally anticipated and authorized by the Development Agreement, an extension is sought since construction could not commence until four (4) years after execution of the Agreement. Complete construction of the project would extend beyond the terms of the existing agreement, but is anticipated to be completed in advance of the five-year extension. The extension would extend the term of the Development Agreement an additional five (5) years from the date it otherwise would expire, or until February 26, 2013. The developer is in compliance with the Development Agreement and extension of the term will facilitate completion of the project.

DISCUSSION

In order to approve the Development Agreement Extension, the Planning Commission must make a finding that the provisions of the agreement are consistent with the City of Hayward General Plan and any applicable specific plan. The Amendment to the Development Agreement to extend its term is authorized under the Agreement with the mutual consent of the parties. The Amendment does not propose new or amended provisions which modify the development authorized under the Agreement and other City approvals. The project is under construction, with the school, and a

number of the homes, along with other elements, completed. The golf course construction is almost complete and expected to open in fall 2007. The extension of the project Development Agreement is still consistent with the City of Hayward General Plan.

ENVIRONMENTAL REVIEW

The City certified the Final Supplemental Environmental Impact Report (FSEIR) for the Project in 1998, and thereafter adopted an Addendum to the FSEIR when it approved the Precise Development Plan and Vesting Tentative Map in 2002. There is no substantial change proposed in the Project or in the circumstances under which the Project is being undertaken, nor is there any new information, which would require additional environmental review.

PUBLIC NOTICE

On September 7, 2007, a notice of public hearing was published in *The Daily Review* newspaper and mailed to property owners owning property within 300 feet of the Stonebrae Country Club development.

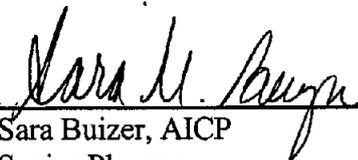
FISCAL IMPACT

There is not a fiscal impact to the City as a result of the Development Agreement Amendment.

NEXT STEPS

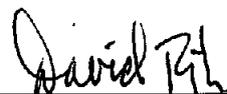
The Planning Commission recommendation will be forwarded to the City Council who will take action on the proposed Development Agreement modification. If the Development Agreement extension is approved, the new agreement with modified terms will be recorded and the construction of the approved improvements will continue in accordance with the modified development agreement.

Prepared by:



Sara Buizer, AICP
Senior Planner

Recommended by:



David Rizk, AICP
Planning Manager

Attachments: Draft Development Agreement Amendment

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City Clerk
City of Hayward
777 B Street
Hayward, California 94541

THIS SPACE ABOVE FOR RECORDER'S USE

This instrument is exempt from Recording Fees (Govt. Code § 27383) and from Documentary Transfer Tax (Rev. and Taxation Code § 11922).

AMENDMENT TO THE BLUE ROCK COUNTRY CLUB PROJECT
DEVELOPMENT AGREEMENT

This Amendment to the Blue Rock Country Club Development Agreement (the "Amendment") is entered into as of _____, 2007 by and between STONEBRAE L.P., a Delaware limited partnership ("Stonebrae") and the CITY OF HAYWARD, a municipal corporation, organized and existing under the Hayward City Charter and laws of the State of California ("City").

RECITALS

A. On or about April 8, 1998, the City and Hayward 1900, Inc., a California corporation ("Hayward 1900") entered into that certain Blue Rock Country Club Project Development Agreement, which was recorded on April 16, 1998 as instrument number 98128317 in the Official Records of Alameda County (the "Agreement").

B. On or about September 10, 2002, the City approved Vesting Tentative Tract Map of Tract Map 5354 ("Vesting Tentative Map") for the Blue Rock Country Club Project (now known and referred to as the Stonebrae Country Club Project).

C. On or about March 16, 2005, Hayward 1900 assigned the Agreement to Stonebrae, which assignment was consented to by the City.

D. State and federal court litigation challenging the City's approval of the Vesting Tentative Map and certain other agency approvals for the Project, along with other actions and delays in securing resource agency approvals, delayed commencement of construction of the Project. Thus, while construction of the Project has commenced and is ongoing, the Project will not be completed within the initial ten (10) year term of the Agreement.

E. The Amendment is being entered into by Stonebrae and the City to extend the term of the Agreement, as authorized in the Agreement and by applicable local and state law.

F. City staff has reviewed this Amendment, deemed it to be complete, and prepared a report to the Planning Commission pursuant to Chapter 10, Article 9 of the City Municipal Code. The Planning Commission adopted findings regarding the Amendment and recommended that the City Council authorize execution of the Amendment. The City Council has held a public hearing on the Amendment, and has determined that the Amendment (i) is consistent with the City's General Plan and the Specific Plan; (ii) is in the best interests of the health, safety and general welfare of the City, its residents, and the public; (iii) is executed pursuant to, and as authorized under the Agreement and the requirements of the Development Agreement Legislation and Development Agreement Ordinance.

G. City has adopted Ordinance No. ___ on _____, 2007 approving this Amendment and its execution in accordance with the provisions of the Agreement and as authorized under the Development Agreement Legislation and Development Agreement Ordinance.

H. All capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, Owner and City hereby agree as follows:

1. The initial term of the Agreement, ten (10) years from its Effective Date, as set forth in Section 7.1 of the Agreement, is hereby extended for an additional five (5) years from the date of expiration of the initial ten (10) year term. Pursuant to this extension, the Agreement is extended to February 26, 2013.

2. A new Section 4.10 is added as follows:

"Term of Vesting Tentative Map. Pursuant to the Subdivision Map Act (Government Code Section 66410 *et seq.*), the term of the Vesting Tentative Map for Tract 5354, approved by Resolution No. 02-132 adopted by the City Council of City on September 10, 2002, may be extended for the longer of (a) the term of the Agreement, as such term may be extended pursuant to Section 7.1 of the Agreement; or (b) the maximum extensions otherwise provided under the Subdivision Map Act."

3. Except as expressly amended herein, the Agreement shall remain in full force and effect.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Amendment to the Blue Rock Country Club Development Agreement. The signatories to this Amendment represent that they are duly authorized to execute this amendment and to bind the Parties hereto.

STONEBRAE L.P.,
a Delaware limited partnership

By: YCS Nevada, Incorporated,
a Nevada corporation,
its General Partner

By _____
Name: Paul W. Yuen
Title: Authorized Representative

By _____
Name: Michael J. Letchinger
Title: Authorized Representative

CITY OF HAYWARD

By: _____
City Manager

Attest: _____
City Clerk

Approved As To Form: _____
City Attorney

EXHIBIT A
[LEGAL DESCRIPTION]