

CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 09/25/01

AGENDA ITEM 5b

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Mt. Eden Business and Sports Park – Approval of an Assumption Agreement for Duc Housing Partners, Inc. and Approval of Assignment Agreement for Oliver West to Acacia Credit Fund 7, LLC and Standard Pacific Corporation of California

RECOMMENDATION:

It is recommended that the City Council authorize the attached resolution that:

1. Approves the Assumption Agreement by Duc Housing Partners, Inc. of rights and obligations of the Oliver Trust Development Agreement; and
2. Approves the Assignment Agreement for Oliver West from Duc Housing Partners, Inc. to Acacia Credit Fund 7 LLC, and Standard Pacific Corporation of California.

DISCUSSION:

Background

The City Council adopted the South of Route 92 Specific Plan and Development Guidelines on February 17, 1998, and on September 21, 1999, the vesting tentative map and the development agreement were approved. The vesting tentative map provided for residential development on the westside of the railroad right-of-way (referred to as Oliver West) and a business park and sports park on the eastern portion (referred to as Oliver East). The vesting tentative map included a phasing plan which had as the first phase the southern portion of the Business Park and the northern portion of the housing (see Exhibit A). At the time it was assumed that one developer would be responsible for the entire development. After the development was sold by the Oliver Trust to Duc Housing Partners, Inc., a revised phasing plan was developed because the Business Park (Oliver East) is intended to be under one developer and the housing (Oliver West) under another. The first Final Map phase now encompasses the eastern portion of the project consisting of the Business Park and the Sports Park. To ensure that the rights and responsibilities are allocated properly, an assumption and assignment agreement are necessary. The housing will likely follow the original phasing in 4 phases.

Assumption Agreement – Oliver Trusts to Duc Housing Partners, Inc.

The Development Agreement entered into by the City and the Oliver Trusts states that the Oliver Trusts' rights may be conferred to Duc Housing Partners, Inc. (Duc), without prior written consent of the City, provided that Duc executes any document reasonably requested by the City with respect to the assumption of the obligations of the Development Agreement. An "assumption agreement" refers to the *assumption of responsibility* for tract improvements rather than rights of development. Under the proposed Assumption Agreement, Duc expressly agrees to assume the obligations of the development agreement with respect to both Oliver East and Oliver West and to provide adequate financial security in the form of a letter of credit in addition to normal bonding if adequate progress is not made on meeting the required substantial completion date for the Sports Park. A new substantial completion date of July 1, 2002 is proposed for the Sports Park and has been incorporated into the attached Assumption Agreement, as well as the Conditions of Approval of the Final Map. The Assumption Agreement by Duc that covers both the Oliver East and Oliver West properties is in accordance with the original Development Agreement. The Assumption Agreement is attached as Exhibit B.

On February 13, 2001, Council authorized assignment of the development agreement as it pertains to Oliver East from Duc Housing Partners to Glenborough Realty Trust Incorporated. However, the assignment of the development agreement has not been executed because Glenborough Realty and Trust has since declined to purchase the property. Hence, the first map is being processed by Duc Housing Partners.

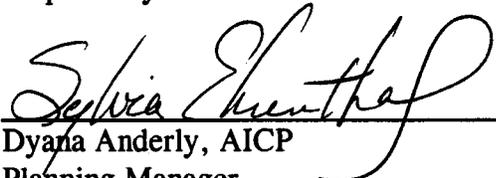
Assignment Agreement for Oliver West Development

An "assignment agreement" is an agreement that *assigns* development rights. Staff has been informed by Duc Housing Partners, Inc. that they have sold the Oliver West property to Standard Pacific Corporation and Acacia Credit Fund 7, LLC. Therefore, Duc is seeking to have the development rights assigned in accordance with the Development Agreement to the new property owners. The new owner of record is Acacia Credit Fund 7, LLC, a holding company. Through a land banking agreement with Acacia, Standard Pacific Corporation has the exclusive option to repurchase Oliver West from Acacia, and plans to do so upon the completion of development of the Oliver West parcels by Standard Pacific.

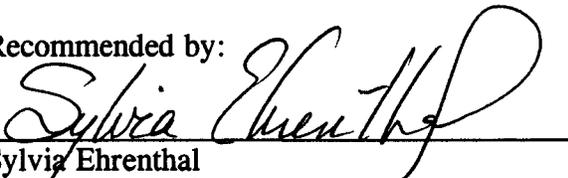
Staff has reviewed the financial capability of both Standard Pacific Corporation and Acacia and has determined that they have the financial capacity to accept assignment of the track obligations of Oliver West. Given that the Assumption Agreement mentioned above holds Duc Housing Partners Inc.'s responsible for the required public improvements on both Oliver East and Oliver West, and based on the staff's review of the financial capabilities of the new property owners, staff recommends assignment of the development rights for Oliver West to Standard Pacific and Acacia. After the execution of the Assignment Agreement (see Exhibit C), the next step for the development of Oliver West will be the approval of its first Final Map which is presently under

review. Initial grading has already been approved, and the hauling operation is expected to begin shortly.

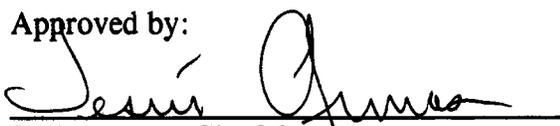
Prepared by:

for 
Dyana Anderly, AICP
Planning Manager

Recommended by:

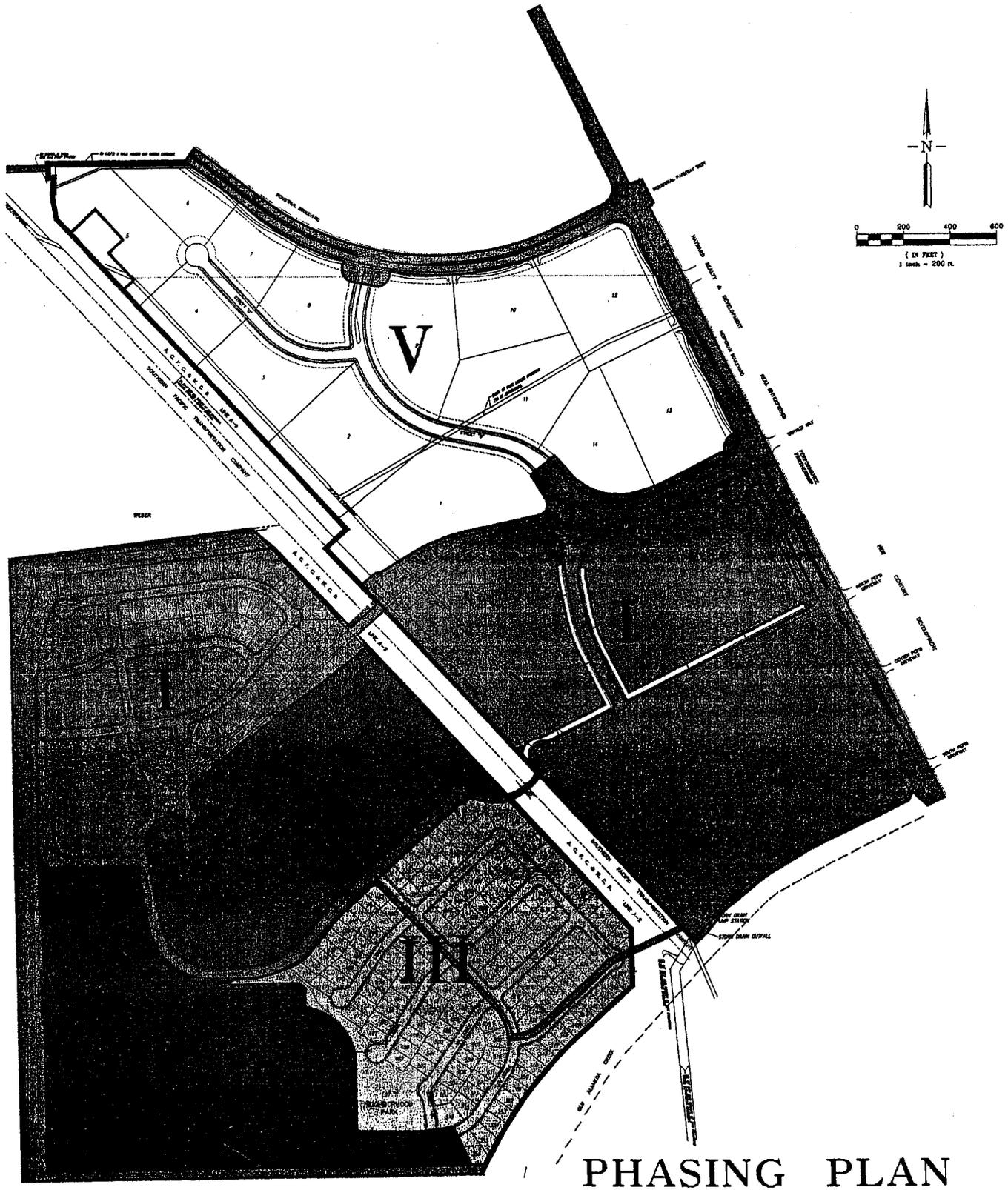

Sylvia Ehrental
Director of Community and Economic Development

Approved by:


Jesús Armas, City Manager

- Attachments: Exhibit A: Phasing Plan
- Exhibit B: Assumption Agreement
- Exhibit C: Assignment Agreement
- Draft Resolutions

9.20.01/15:13



PHASING PLAN

EXHIBIT A

WHEN RECORDED, MAIL TO:

City Attorney
City of Hayward
777 B Street
Hayward, CA 94541-5007

ASSUMPTION AGREEMENT

THIS ASSUMPTION AGREEMENT ("this Agreement"), effective this _____ day of _____, 2001, is entered by and between DUC HOUSING PARTNERS, INC., a _____ corporation (the "Developer") and the CITY OF HAYWARD, a municipal corporation, organized and existing under the Hayward City Charter and the laws of the State of California (the "City").

RECITALS

- A. Developer, as successor-in-interest by assignment to the Gordon Oliver Estate and Trust and the Alden Oliver Trust (the "Original Owner Parties"), is a party to the Mount Eden Business and Sports Park Community Development Agreement (herein "the Development Agreement") with the City, recorded on December 13, 1999, as Series No. 1999443129 of the Official Records of Alameda County, California, which relates to the development of the real property described in Exhibit "J" to the Development Agreement.
- B. Article 6 of the Development Agreement requires Developer to execute any document reasonably requested by the City with respect to Developer's assumption of the Original Owner Parties' obligations under the Development Agreement.

AGREEMENTS

NOW, THEREFORE, THE DEVELOPER AND THE CITY HEREBY AGREE AS FOLLOWS:

- 1. For good and valuable consideration, the receipt of which is hereby acknowledged, Developer does hereby agree to assume each and every obligation of the Original Owner Parties under the Development Agreement. Developer

further agrees to provide the City, upon thirty days' written notice, with adequate financial security in one of the forms set forth in Government Code §§66499-66499.10, to be determined by the City, of Developer's ability to construct the Public Facilities, as defined in the Development Agreement. In the event that the Sports Park Complex (the "Sports Park") contemplated by the Development Agreement is not substantially completed by July 1, 2002, Developer shall provide to the City, upon thirty days' written notice, an irrevocable letter of credit securing completion of the Sports Park. Should Developer fail to comply with any of the milestone dates indicated below, the City shall have the right to accelerate the dates for the remainder of construction of the Sports Park. The requisite letter of credit shall secure performance of all remaining construction according to the plans for the Sports Park and not be limited to Developer's performance then due under the milestone dates indicated below. Developer and the City agree to the following milestone dates for construction of the Sports Park:

11/15/01 - Completion of rough grading of the site
12/31/01 - Commence construction of the buildings
4/02/02 - Completion of AC Parking Lot
5/15/02 - Completion of the buildings
7/01/02 - Substantial Completion of the Sports Park

2. In the event of any subsequent assignment of its rights and obligations under the Development Agreement, Developer shall remain liable for all the Original Owner Parties' burdens and obligations unless expressly released in writing by the City.
3. All of the covenants, terms and conditions set forth herein shall be binding upon and shall insure to the benefit of the parties hereto and to their respective heirs, successors and assigns.
4. This Agreement shall be recorded in the Office of the Alameda County Recorder.
5. The individuals executing this Agreement represent and warrant that they have the right, power, and legal capacity, and authority to enter into and to execute this Agreement of behalf of the respective legal entities of the Developer and the City.

IN WITNESS WHEREOF, the parties hereto do hereby agree to the full performance of the terms set forth herein.

DEVELOPER

DUC HOUSING PARTNERS, INC.,
a _____ corporation

By: _____

Title: _____

Date: _____

CITY OF HAYWARD

By: _____

Jesús Armas, City Manager

Date: _____

Approved as to form:

City Attorney
W:\Maureen\Planning\South of 92\Assumption Agr - Duc.wpd

WHEN RECORDED, MAIL TO:

City Attorney
City of Hayward
777 B Street
Hayward, CA 94541-5007

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT (herein "this Agreement") is entered by and between DUC HOUSING PARTNERS, INC., a _____ corporation (herein "Developer/Assignor"), and STANDARD PACIFIC CORP., a Delaware corporation, and ACACIA CREDIT FUND 7 L.L.C., a Delaware limited liability company (herein collectively referred to as "Assignee"), effective as of _____, 2001.

RECITALS

- A. Developer/Assignor is a successor-in-interest by assignment to The Gordon Oliver Estate and Trust and The Alden Oliver Trust to that certain Mount Eden Business and Sports Park Community Development Agreement (herein "the Development Agreement") with the City of Hayward ("City"), recorded December 13, 1999, as Series No. 1999443129 of the Official Records of Alameda County, California, which relates to the development of, among other property, the real property described on Exhibit "A" attached hereto and incorporated herein by this reference (herein "Oliver West").
- B. Effective June __, 2001, STANDARD PACIFIC CORP. entered into a land banking arrangement with ACACIA CREDIT FUND 7 L.L.C., which arrangement grants STANDARD PACIFIC CORP. the exclusive option to repurchase Oliver West from ACACIA CREDIT FUND 7 L.L.C. Said land banking arrangement contemplates that STANDARD PACIFIC CORP. will exercise its option to repurchase upon the development of the Oliver West parcels in accordance with the terms of the Development Agreement.
- C. Assignee meets the requirements of Article 6 of the Development Agreement for obtaining the City's consent to an assignment of Developer/Assignor's rights thereunder with respect to Oliver West.
- D. Article 6 of the Development Agreement requires the consent of the City to the assignment.

AGREEMENTS

NOW, THEREFORE, DEVELOPER/ASSIGNOR AND ASSIGNEE HEREBY AGREE AS FOLLOWS:

1. For good and valuable consideration, the receipt of which is hereby acknowledged, Developer/Assignor does hereby, sell, transfer, assign, convey and deliver to Assignee all of Developer/Assignor's rights and interest under the Development Agreement.

2. Assignee hereby acknowledges and agrees that development of Oliver West is subject to all of the burdens and obligations of the "Owner" under the Development Agreement and Assignee is obligated to, and shall, fully perform all of the duties and obligations of the "Owner" under the Development Agreement with respect to Oliver West. Assignee further acknowledges and agrees that Developer/Assignor has specific obligations under the Development Agreement with respect to Oliver East and Assignee's right to develop and/or transfer Oliver West may be affected by Developer/Assignor's performance and/or failure to perform such obligations under the Development Agreement. Such obligations include, but are not limited to, the construction of the Sports Park Complex and the other Phase 1 improvements set forth in Conditions of Approval Nos. 8 and 9 to Vesting Tentative Map Tract 7065. The failure of Developer/Assignor to perform said obligations may result in the City withholding development rights for Oliver West, including, but not limited to, the withholding of certificates of occupancy and termination of the Development Agreement. Assignee is entitled to cure Developer/Assignor's default by either performing the obligations or providing financial security in one of the forms set forth in Government Code §§66499-6499.10 to be determined by City. In the event that construction of the Sports Park Complex is not substantially completed or has not progressed to the satisfaction of the City by July 1, 2002, Assignee shall provide to the City, upon thirty days' written notice, an irrevocable letter of credit securing completion of the Sports Park. Should Assignee fail to comply with any of the milestone dates indicated below, the City shall have the right to accelerate the dates for the remainder of construction of the Sports Park. The requisite letter of credit shall secure performance of all remaining construction according to the plans for the Sports Park and not be limited to Assignee's performance then due under the milestone dates indicated below. Assignee and the City agree to the following milestone dates for construction of the Sports Park:

- 11/15/01 - Completion of rough grading of the site
- 12/31/01 - Commence construction of the buildings
- 4/02/02 - Completion of AC Parking Lot
- 5/15/02 - Completion of the buildings
- 7/01/02 - Substantial Completion of the Sports Park

No vested development rights, other than any rights that may have previously vested pursuant to the Development Agreement, shall attach to the Oliver West portion of the Project (as defined in the Development Agreement) until said improvements have completed.

2. Nothing in this Agreement is intended to release, or releases, Developer/Assignor from the burdens and obligations it assumed pursuant to that certain Assumption Agreement entered into between Developer/Assignor and the City, effective _____.

3. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, successors and assigns.

4. This Agreement shall be recorded in the Office of the Alameda County Recorder.

5. The individuals executing this Agreement represent and warrant that they have the right, power, and legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Developer/Assignor and the Assignee.

IN WITNESS WHEREOF, the parties hereto do hereby agree to the full performance of the terms set forth herein.

DEVELOPER/ASSIGNOR
DUC HOUSING PARTNERS, INC.
a _____ corporation

By: _____

Title: _____

Date: _____

ASSIGNEE

STANDARD PACIFIC CORP.,
a Delaware corporation

By: _____

Title: _____

Date: _____

ACACIA CREDIT FUND 7 L.L.C.,
a Delaware limited liability company,

By: Fund 7 Management Company
L.L.C., a Delaware limited liability
company, its Managing Member

By: Acacia Capital Corporation,
A California corporation,
Its Managing Member

By: _____
Rick Malouf
Vice President

Date: _____

CITY OF HAYWARD CONSENT

The City Council of the City of Hayward hereby consents to the covenants, terms and conditions of the foregoing Assignment Agreement by Resolution _____ on _____.

By: _____
Jesús Armas, City Manager

Approved as to form:

City Attorney

W:\Maureen\Planning\South of 92\Assign.2.wpd

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

me
1/20/01

**RESOLUTION APPROVING THE ASSUMPTION AND
ASSIGNMENT AGREEMENT FOR THE MT. EDEN
BUSINESS AND SPORTS PARK**

BE IT RESOLVED that the City Council of the City of Hayward hereby approves the Assumption Agreement by Duc Housing Partners, Inc., of rights and obligations of the Oliver Trust Development Agreement, and the Assignment Agreement for Oliver West from Duc Housing Partners, Inc. to Acacia Credit Fund 7 LLC, and Standard Pacific Corporation of California in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2001

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

me
1/20/01

Introduced by Council Member _____

RESOLUTION AUTHORIZES THE CITY MANAGER
TO NEGOTIATE AND EXECUTE THE ASSUMPTION
AND ASSIGNMENT AGREEMENT FOR THE MT.
EDEN BUSINESS AND SPORTS PARK

BE IT RESOLVED that the City Council of the City of Hayward hereby authorizes and directs the City Manager to negotiate and execute the Assumption Agreement by Duc Housing Partners, Inc., of rights and obligations of the Oliver Trust Development Agreement, and the Assignment Agreement for Oliver West from Duc Housing Partners, Inc. to Acacia Credit Fund 7 LLC, and Standard Pacific Corporation of California in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2001

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward