

**DATE:** October 9, 2007

**TO:** Mayor and City Council

**FROM:** Director of Community and Economic Development

**SUBJECT:** Blue Rock Country Club Project Development Agreement (Stonebrae Country Club) - Request to Amend the 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 City Council relies on the previously approved environmental documents, adopt the attached resolution, and introduces the attached ordinance to approve the Blue Rock (Stonebrae) Country Club Development Agreement Amendment by extending its term for five years.

#### **SUMMARY**

The City Council approved the Blue Rock Country Club project, now known as Stonebrae Country Club, in January of 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 would allow 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 a 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; however, home construction has not yet started in this village. The golf course is almost complete and is scheduled to open for play this fall.

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 prior to expiration of the five-year extension. The amendment 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 amendment would also allow for extension of the term of the associated Vesting Tentative Map for Tract 5354 that was approved in September of 2002 to (a) the term of the Development Agreement or (b) the maximum extensions otherwise allowed by the Subdivision Map Act, whichever period is longer. 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 City Council must make a finding that the provisions of the agreement are consistent with the City of Hayward General Plan and any applicable specific plan (Walpert Ridge Specific Plan). The Planning Commission considered the requested amendment at their September 20, 2007 regular meeting and recommended that the City Council make the required finding and approve the Development Agreement amendment. Amendments to the Agreement are authorized with the mutual consent of the parties. The Amendment does not propose new or amended provisions which modify the development authorized under the Agreement. The project is under construction, with the school and a number of homes completed. The golf course construction is almost complete and expected to open this fall.

### **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.

## **FISCAL IMPACT**

There is no known fiscal impact for this recommendation.

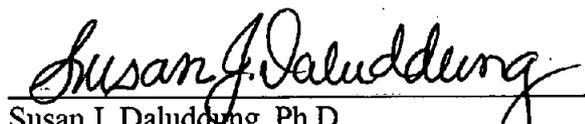
## **NEXT STEPS**

If the Development Agreement amendment is approved, the new agreement with a modified term will be recorded and the construction of the approved improvements will continue in accordance with the modified development agreement.

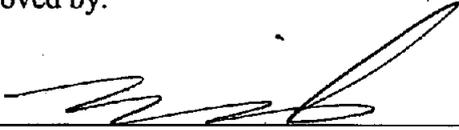
Prepared by:

  
Sara Buizer, AICP, Senior Planner

Recommended by:

  
Susan J. Daluddung, Ph.D.  
Director of Community and Economic Development

Approved by:



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Fran David, Assistant City Manager

Attachments: Exhibit A. Draft Development Agreement Amendment  
Exhibit B. Planning Commission Staff Report, dated September 20, 2007  
Exhibit C. Planning Commission Meeting Minutes, dated September 20, 2007  
Draft Resolution  
Draft Ordinance

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]**



CITY OF  
**HAYWARD**  
HEART OF THE BAY

**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.

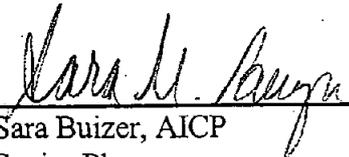
## **FISCAL IMPACT**

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

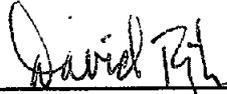
## **NEXT STEPS**

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

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AND WHEN RECORDED MAIL TO:

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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]**



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, September 20, 2007, 7:30 p.m.  
777 B Street, Hayward, CA 94541**

## MEETING

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m., by Chair Peixoto followed by the Pledge of Allegiance.

## ROLL CALL

Present: COMMISSIONERS: Sacks, Lavelle, Mendall, Thnay, Loché  
CHAIRPERSON: Peixoto  
Absent: COMMISSIONER: McKillop

Staff Members Present: Buizer, Connolly, Emura, Rizk, Lens

General Public Present: Approximately 16

## PUBLIC COMMENTS

There were no public comments.

## PUBLIC HEARINGS

- 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**

Staff report submitted by Senior Planner Buizer, dated September 20, 2007, was filed.

Senior Planner Buizer summarized the report and clarified questions from the Commissioners.

Having no requests to speak, Chair Peixoto opened and closed the public hearing at 7:38 p.m.

Commissioner Mendall moved the staff recommendation.

Commissioner Lavelle seconded the motion.

Commissioner Loché inquired how long it would take to complete the project. Senior Planner Buizer estimated that the project would be completed a year or two short of the five-year extension.

Commissioner Mendall moved, seconded by Commissioner Lavelle, and unanimously approved with Commissioner McKillop absent, to recommend to the City Council to approve 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.

2. **Use Permit Application No. PL-2005-0536 - Mario Pena, La Super Tapatia (Applicant), Ken Zemel, Hamburger Properties (Owner) - Request to Allow Sale of Beer and Wine for Off-Site Consumption at an Existing Market – The Project is Located at 603 "A" Street, on the Southeast Corner of "A" Street and Grand Street**

Staff report submitted by Associate Planner Emura, dated September 20, 2007, was filed.

Associate Planner Emura summarized the report and clarified questions from the Commissioners.

Chair Peixoto opened the public hearing at 7:48 p.m.

Mr. Mazen Elmashni, business consultant representing applicant Mr. Mario Pena, spoke about the improvements that have been done to the business and indicated that the applicant should not be penalized for past problems at the store. Mr. Elmashni expressed that the addition of beer and wine would complete the services already offered at the store. He indicated that this is a family store and that the Latino population would be more comfortable with a business that meets its needs. He clarified that the store would not be selling single cans of beer. He indicated that the store is suffering financially and expressed willingness to install cameras outside the store and have security after hours, should the application be approved.

Mr. Alfredo Coria, Prevention Specialist for Community Prevention of Alcohol-Related Problems (COMMPRE), indicated opposition to the conditional permit citing crime statistics for the area, abundance of alcohol outlets and the potential for increase in crime rate and social nuisance. Mr. Coria respectfully asked that staff deny the application.

Chair Peixoto closed the public hearing at 7:59 p.m.

Commissioner Lavelle made a motion per the staff recommendation.

Commissioner Thnay seconded the motion.

Commissioner Lavelle wished Mr. Pena well on his business and stated that the facts on the report and from COMMPRE are overwhelming and contributed to her decision. She indicated that the needs of the Hispanic community have already been met in the area.

Commissioner Thnay thanked Mr. Pena for the improvements he has done to La Super Tapatia. Mr. Thnay spoke about the statistics presented by Mr. Emura and Mr. Coria indicating that the overwhelming evidence contributed to supporting the motion. He recommended that Mr. Pena find alternative means to increase and promote his business.

Commissioner Sacks thanked Mr. Elmashi and Mr. Coria for their contributions. Ms. Sacks commended applicant Pena for the improvements he has made to the business. She also thanked the Police Department for the statistics report. She supported the motion.

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

RESOLUTION AUTHORIZING AMENDMENT OF THE  
BLUE ROCK COUNTRY CLUB PROJECT  
DEVELOPMENT AGREEMENT

WHEREAS, Stonebrae L.P. has requested a five-year extension of the Blue Rock Country Club Project Development Agreement (the Amendment to the Development Agreement) for the project now known as Stonebrae County Club (the "Project"); and

WHEREAS, the Development Agreement provides that the term of the agreement may be extended for an additional five years upon written agreement of the parties, and the delays in the construction of the Project creating the need for the extension were caused by litigation and the need to obtain resource agency approvals; and

WHEREAS, the City Council certified a Final Supplemental Environmental Impact Report (FSEIR) for the Project in 1998 and adopted an Addendum to the FSEIR in 2002 in conjunction with the approval of the Precise Development Plan and the Vesting Tentative Map for the Project; and

WHEREAS, there has been no substantial change proposed in the Project or the circumstances under which the Project is being undertaken, nor is there any new information that would require additional environmental review; and

WHEREAS, on September 20, 2007, the Planning Commission found that the requested Amendment to the Development Agreement is consistent with the General Plan and recommended approval of the Amendment to the Development Agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby approves the Amendment to the Development Agreement attached hereto as Exhibit A, subject to the adoption of the companion ordinance.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2007

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING EXECUTION OF  
AMENDMENT TO THE BLUE ROCK COUNTRY CLUB  
PROJECT DEVELOPMENT AGREEMENT

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Findings. This ordinance authorizes the execution of an amendment to the existing Blue Rock Country Club Development Agreement (“Amendment to Development Agreement”), now known as Stonebrae Country Club, located southeast of Fairview Avenue/Hayward Boulevard in eastern Hayward on Walpert Ridge. The findings and determinations contained in the resolution approving the extension of the Amendment to the Development Agreement are incorporated herein by reference. The following additional findings also support the adoption of this ordinance authorizing the execution of the Amendment to Development Agreement.

- A. This ordinance is adopted pursuant to the enabling provisions of Article 9, Chapter 10 of the Hayward Municipal Code, the City's Development Agreement Ordinance, and the provisions of state law which authorize the City to enter into binding development agreements with persons having legal or equitable interests in real property for the development of their property, contained in Government Code sections 65864 through 65869.5.
- B. The proposed Amendment to Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the City's General Plan, the City's zoning ordinance, and any applicable specific plan.
- C. The proposed Amendment to the Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located, in that the amendment extends the term of the Development Agreement but will not change any of the existing General Plan or zoning designations.
- D. The proposed Amendment to the Development Agreement is in conformity with public convenience, general welfare, and good land use practice, in that it will extend the term of the Development Agreement in order for the applicant to provide new housing opportunities and new public facilities.
- E. Existing or proposed public facilities have sufficient capacity to accommodate the proposed development.
- F. The public health, safety, and general welfare will be promoted and advanced

by the Amendment to the Development Agreement, in that mitigation measures previously required as a part of the development approvals will continue to be an obligation of the developer.

- G. The orderly development of property or the preservation of the property values will be promoted and advanced by the Amendment to the Development Agreement, in that high-quality single-family housing will be constructed as contemplated by the original Development Agreement.

Section 2. Authorization to Execute Amendment to Development Agreement. Based on the findings set forth in this ordinance and in Resolution No.07- , as well as a review of the proposed Amendment to the Development Agreement relating to the Stonebrae Country Club project submitted to the City Council at the October 9, 2007, meeting, the City Council hereby takes the following actions:

- A. The City Manager is authorized to execute the Amendment to Development Agreement, regarding the Stonebrae Country Club project, substantially in the form of the proposed Amendment to Development Agreement presented to the City Council on October 9, 2007, together with such minor clarifying changes as may be necessary upon approval by the City Manager after consultation with the City Attorney.
- B. The City Manager is also authorized to take such further actions which he or she deems necessary and proper to carry out and or monitor performance of the terms of the executed Amendment to Development Agreement pursuant to applicable law and regulation. This authority includes but is not limited to execution of any further agreement which the City Manager deems necessary to implement the Amendment to Development Agreement ("Implementation Agreement").

Section 3. Effective Date. This ordinance shall become effective upon adoption.

Section 4. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

INTRODUCED at a regular meeting of the City Council of the City of  
Hayward, held the \_\_\_\_\_ day of \_\_\_\_\_, 2007, by Council Member \_\_\_\_\_

ADOPTED at a regular meeting of the City Council of the City of Hayward  
held the \_\_\_\_\_ day of \_\_\_\_\_, 2007, by the following votes of members of said City  
Council.

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: \_\_\_\_\_  
Mayor of the City of Hayward

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward