ITEM 10.G.

MOORPARK CITY COUNCIL
AGENDA REPORT

TO: **Honorable City Council**

FROM: **David A. Bobardt, Community Development Director**
Prepared by: Joseph Fiss, Principal Planner

DATE: **March 11, 2011 (CC Meeting of April 6, 2010)**

SUBJECT: **Consider Report of Annual Development Agreement Review for 34.5 Acres of Land (Tract 5147) Located West of Gabbert Road, North of the Union Pacific Railroad Right-of-Way (A-B Properties)**

BACKGROUND:

Government Code Section 65864 and City of Moorpark Municipal Code Section 15.40 provide for Development Agreements between the City and property owners in connection with proposed plans of development for specific properties. Development Agreements are designed to strengthen the planning process, to provide developers some certainty in the development process and to assure development in accordance with the terms and conditions of the agreement.

On December 16, 1998, the Moorpark City Council adopted Ordinance No. 250 (effective January 15, 1999), approving a Development Agreement between the City of Moorpark and A-B Properties. The agreement was approved in connection with General Plan Amendment (GPA) No. 97-02 and Zone Change (ZC) No. 97-06, for a proposed thirty-four and one-half (34.5) acre industrial development. This property is located approximately 1,300 feet west of Gabbert Road, north of the Union Pacific Railroad right-of-way. The Development Agreement remains in full force and effect for twenty (20) years from the operative date of the agreement (until January 15, 2019).

Provisions of the agreements require an annual review and report to the City Council on the status of completion of all aspects of the agreements. The developer has submitted the necessary application forms, related materials, and fees/deposits. The Community Development Director has reviewed the submitted information, including the project status and provides the following report.

DISCUSSION:

Project Status

Tentative Tract No. 5147, a seventeen (17) lot subdivision proposed by A-B Properties, was conditionally approved by the City Council on March 15, 2000, per Resolution No. 2000-1714. The approved tentative tract map includes offsite improvements for the north-south connector to the future North Hills Parkway, and for the southerly half and easterly extension of "C" Street to Gabbert Road. The easterly extension of "C" Street would serve as interim access to the project until a railroad underpass and linkage to Los Angeles Avenue are constructed. Following completion of this linkage to Los Angeles Avenue, the "C" Street connection to Gabbert Road would be for emergency access only. Portions of these offsite improvements are within the adjacent Southern California Edison (SCE) property. Other activities had been on hold pending resolution of funding mechanisms for infrastructure requirements.

On May 21, 2008, the City Council approved the conceptual design for the North Hills Parkway from Los Angeles Avenue on the west to the extension of Spring Road on the east. The conceptual design addresses crossing of the railroad at the A-B Properties/SCE properties. With the approved and proposed projects along the proposed alignment, there may likely be enough properties to fund, through an assessment district or other financial mechanism, the full construction of North Hills Parkway from Spring Road west to Los Angeles Avenue.

SCE had initiated a lawsuit over the development of an access road on an easement they held over Hitch Ranch property that would have served both Tract 5147, owned by A-B Properties, and the subject SCE property, allowing for industrial development of both properties. On August 5, 2010, AB Properties, Southern California Edison, and the Hitch Owners entered into a settlement agreement that allows for the improvement of an access road that can be used for road, slope, and drain purposes for a period of forty years, or until completion of construction of a second access road that extends from a public road.

A-B Properties has proceeded with grading, drainage, street and utility plans for Tract 5147, along with recordation of the Final Map. A condition compliance deposit has been submitted, and grading plans, drainage plans, street improvement plans, utility plans, and the Final Map have been approved. The applicant is working with Engineering and Community Development staff to verify ongoing compliance with all applicable Development Agreement and Tract Conditions prior to City Council consideration of the Final Map.

Additionally, the City is working with A-B Properties on amending the Development Agreement and modifying the map to relocate the main access to the tract to the east-west frontage of North Hills Parkway, in order to allow for improved access to the future railroad crossing at the north-south segment of North Hills Parkway.

Developer Compliance with Terms of Their Respective Agreements

A-B Properties' development responsibilities are included in Section 6 of the Development Agreement. Compliance with the terms and conditions of the Development Agreement will occur at various stages of the development process. Action by the developer, and other clarifying information, has been noted.

NO.	REQUIREMENT	STATUS
1.	Compliance with Development Agreement, Project Approvals and Subsequent approvals.	A-B Properties has gained approval of Tentative Tract No. 5147, and the Final Map has been recorded. No building permits may be issued until an IPD application is filed and approved for individual lot development or for all of the lots in the subdivision.
2.	Dedicated lands to be free and clear of liens and encumbrances, including off-site property required for street extensions or improvements.	The developer will provide clear title to any property required for dedications.
3.	Payment of Park Improvement Fee of twenty-five cents ($.25) per square foot of gross floor area.	These fees will be adjusted annually (until paid) using the Consumer Price Index (CPI) in accordance with the agreement. Fees must be paid prior to issuance of zoning clearance for building permits. No building permits have been issued to date.
4.	Payment of "Development Fees" of twenty-one thousand dollars ($21,000) per acre of each lot on which the building is located.	These fees will be adjusted annually (until paid) using the Consumer Price Index (CPI) in accordance with the agreement. Fees must be paid prior to issuance of Zoning Clearance for building permits. No building permits have been issued to date.
5.	Payment of "Citywide Traffic Fees" of eighteen thousand dollars ($18,000) per acre of each lot on which the building is located.	These fees will be adjusted annually (until paid) using the State Highway Bid Price Index in accordance with the agreement. Fees must be paid prior to issuance of Zoning Clearance for building permits. No building permits have been issued to date.

NO.	REQUIREMENT	STATUS
6.	Payment of all outstanding City processing and environmental processing costs.	The Annual Review Applications and $2,400 deposits for Annual Reviews were paid.
7.	Agreement for payment of "Air Quality Fee" to be calculated by the City as a condition on each subsequent approval.	Compliance with this requirement must be met prior to building permit issuance. No building permits have been issued to date.
8.	Agreement to cast affirmative vote for the formation of an assessment district with the power to levy assessments for the maintenance of parkway landscaping, street lighting (upon Council request - parks conferring special benefits).	To date, A-B Properties is in compliance with this requirement.
9.	Agreement to pay all City capital improvement, development and processing fees.	Compliance with this requirement must be met prior to building permit issuance. No building permits have been issued to date.
10.	Provide irrevocable offer of dedication to the City for the rights-of-way for the future 118 bypass along the entire length of the north side of the property and along the east side of the Gabbert Channel, including a connector with a radius to be determined by the City. The developer also agrees to dedication of access rights to the City for the future east/west arterial (formerly 118 bypass), except for not more than one (1) approved intersection.	These requirements were met upon City Council action on the Final Map. The required rights-of-way were reflected on the approved Final Map No. 5147.
11.	Agreement to provide grading of right-of-way for the future east/west arterial (formerly 118 Bypass).	Grading for the North Hills Parkway is included in the grading plan and has been bonded for.
12.	Agreement to comply with all provisions of the Hillside Management Ordinance.	This requirement has been included as a part of any grading plan approved for the property.
13.	Payment of pro-rata share of funding and construction of improvements identified in Gabbert and Walnut Canyon Channels Deficiency Study, and acknowledgement that interim improvements may also be necessary.	The developer has bonded for these improvements as agreed and accepted by the City in lieu of payment.
14.	Agreement to acquire and construct dedicated public access to the properties with secondary access in compliance with public safety requirements.	A settlement was reached between SCE and AB Properties that allows for the provision of public access to Gabbert Road. Initial secondary access is proposed using a Watershed Protection District access road.
15.	Agreement to not oppose creation of a Redevelopment Project Area, encompassing any part of the property.	To date, A-B Properties is in compliance with this requirement.

NO.	REQUIREMENT	STATUS
16.	Agreement not to request any concession, waiver, modification or reduction of any fee, regulation, requirement, policy or standard condition for any subsequent approval, and agreement to pay all fees imposed by the City for future buildings.	To date, A-B Properties is in compliance with this requirement.
17.	Grant a conservation easement to retain property west of Gabbert Canyon drain in a predominantly open space condition, with exceptions as described in the Development Agreement.	The conservation easement has been recorded on the Final Map for the property.
18.	Execute and record a covenant concerning restriction of uses to be permitted in the rezoned property, consistent with Exhibit B of the Development Agreement.	The covenant was executed and recorded as a part of the recorded Development Agreement.
19.	Agreement to submit improvement plans for Gabbert Road from the Union Pacific/Gabbert Road rail crossing to a point approximately one hundred twenty-five (125) feet north of the rail crossing, including surety to guarantee improvement.	This improvement is to be constructed prior to issuance of a building permit for any portion of the property in excess of forty percent (40%) of the total acreage for all lots created by the first Final Map. The applicant has posted a bond for the design work, which will be deferred until a final alignment of the North Hills Parkway/Highway 118 bypass has been determined.
20.	Provide traffic study to determine signalization requirements for the Gabbert Road/Poindexter Avenue intersection. The traffic study is required prior to the first subsequent approval for the project. Developer may be conditioned to construct or pay a fair share for the traffic signal.	Fair share intersection improvement fees for specified intersections identified in the tract conditions in the amount of $26,119.00 were paid on January 10, 2007. A traffic study submitted by the applicant did not indicate the need for signalization of the Gabbert Road/Poindexter Avenue intersection.
21.	Construct thirty-two (32) foot wide paved access road to serve as primary access until such time as improvements per Section 6.22 are constructed. The paved access road to become emergency access only upon opening of said improvements to the public.	The paved access has been shown on the Final Map and will be constructed prior to the issuance of the first building permit, consistent with the SCE Settlement Agreement and Mutual Release.

NO.	REQUIREMENT	STATUS
22.	Prior to issuance of a building permit for any portion of the Property that exceeds seventy percent (70%) of the acreage of the total of all lots created by the recordation of the first final Map for the Property occurring after the operative date of this Agreement, Developer shall cause to be constructed a street extending north from Los Angeles Avenue (SR 118) including an underground crossing of the Union Pacific Railroad tracks to a point approximately six hundred (600) feet north of said railroad tracks (improvements) within the area of the offer of dedication required of Developer in Section 6.10 of this Agreement. The preliminary improvement plans must be approved by the City and a surety in an amount and form determined by the City in its sole and unfettered discretion to guarantee the Improvements shall be provided prior to approval of the first final map for the Property occurring after the operative date of this Agreement. Prior to issuance of a building permit for any portion of the Property that exceeds forty percent (40%) of the acreage of the total of all lots created by the recordation of the first final map for the Property occurring after the operative date of this Agreement, City must approve in its sole and unfettered discretion the final design plans and specifications for the Improvements and a financing plan that demonstrates the ability to fund the Improvements. This financing plan may include at City's sole and unfettered discretion, use of Citywide Traffic monies.	The design and improvement of North Hills Parkway has been bonded for as part of the Final Map. The design and improvement of the underpass for North Hills Parkway has been bonded for as part of the Final Map. The developer has informed the City that an application for an amendment to the Development Agreement and a revision to the subdivision map may be submitted in the future to better address these requirements.

City Compliance with Terms of Agreement

The City's responsibilities are included in Section 7 of the agreement and include four (4) specific provisions, as summarized below.

#	REQUIREMENT	STATUS
1.	Expedite (to the extent possible) the processing of plan checking and related processing.	The City has complied with this provision in processing Final Map modifications and improvement/grading plans.
2.	Exempt this project from payment of the Gabbert Road/Casey Road Area of Contribution (AOC) fees.	No further action necessary.
3.	Commence proceedings to form a Mello-Roos Community Facilities District, upon receipt of landowner's petition and payment of fee.	To date no petition or fee payment has been submitted.
4.	Proceed to acquire, if requested, and at developer's sole cost and expense, easements or fee title to land not held by the developer, but necessary for construction of required improvements.	To date no such request has been submitted.

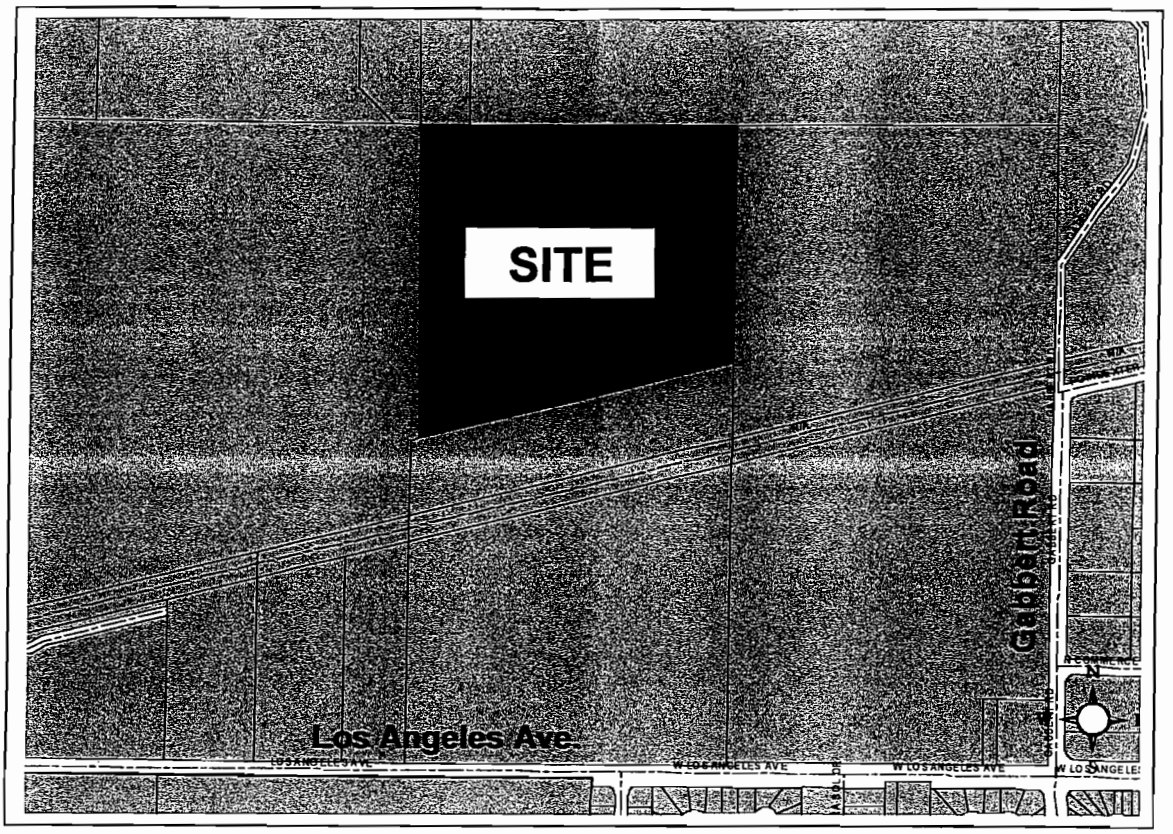
Evaluation of Good Faith Compliance

Based on a review of the Development Agreement Annual Review Application and the status of the project, the Community Development Director has determined on the basis of substantial evidence that A-B Properties has, to date, complied in good faith with the terms and conditions of the agreement.

STAFF RECOMMENDATION:

1. Accept the Community Development Director's Report and recommendation, and find, on the basis of substantial evidence, that A-B Properties has complied in good faith with the terms and conditions of their agreement with the City; and
2. Deem the annual review process complete for A-B Properties' Development Agreement.

ATTACHMENTS:
1. Location Map
2. Narrative prepared by John Newton for A-B Properties



LOCATION MAP
Tract 5147

CC ATTACHMENT 1

NARRATIVE

A settlement Agreement was fully executed, including recordation of grant & easement deeds, as of December 8, 2010. The matters of A-B Properties v. SCE, and City of Moorpark v. SCE are now settled between the parties.

A-B Properties is now in process of re-activating the process of securing approval of revised & re-routed water & sanitation plans through Ventura County Waterworks District No. 1; and, is also activating the process of securing approval of dry utilities for the project from SCE and other utility services. Pre-Construction review & approval of access and fire flow requirements has been secured from the Fire Department.

The Applicant has also processed seven Lot Line Adjustment applications for the purpose of revising the tract's internal circulation, as well as providing for a physical connection to the future North Hills Parkway. The LLA's accomplish agreed-to changes required by the Settlement Agreement, and are approved, ready to record.

Proposed Development Agreement Amendments are currently in the process of review by City Management staff, in compliance with Settlement Agreement requirements. Once approved by the City Council, the LLA's can be recorded.

Upon approval of the D.A. Amendment, revised water & sanitation improvement plans, and dry utility plans; the Applicant plans to reactivate construction, estimated 3 months from now, in order to complete the first 7 finished industrial parcels for sale and development.

Finally, attached is a copy of our 2007 D.A. Annual Review transmittal wherein we requested a correction to the staff report, Item 20. This correction was not made in the 2007 or 2008 staff reports. Please correct this item per the 2007 transmittal letter dated January 27, 2007. The required traffic study submittal and all supporting documents are in the case file. We can supply additional copies if needed.