



AGENDA REPORT

Date: June 28, 2016

To: City Manager for Council Action

From: Economic Development Officer/Assistant City Manager
Acting Director of Planning and Inspection

Subject: Public Hearing for the CityPlace Santa Clara Project Located at 5155 Stars and Stripes Drive, et al, on an approximately 240 acre site. (APNS: 104-03-036, 104-03-037, 104-03-038, 104-03-039, 104-01-102, 097-01-039, and 097-01-073) [PLN2014-10554, CEQ2014-01180, SCH#2014072078]

EXECUTIVE SUMMARY

CityPlace Santa Clara is a proposed phased development of approximately 240 acres of City-owned land that includes a new urban center with a retail and entertainment district, office development, and residential uses, as well as outdoor amenities, infrastructure, parkland, and open space. The core retail and entertainment district with some office and residential uses is identified as City Center, located in close proximity to Levi's Stadium and the City's Convention Center. The overall project includes the construction of medium and high-rise buildings up to 17 stories in height and a maximum of 9.16 million gross square feet of overall floor area for all uses, excluding the floor area of associated parking structures. A minimum of 200 residential units and a maximum of 1,680 residential units are contemplated within the City Center portion of the project.

The site encompasses all of the current Santa Clara Golf and Tennis Club, as well as the vacant parcels across from Levi's Stadium along Tasman Drive that flank Stars and Stripes Drive and Centennial Boulevard (the "Tasman Parcels"), and the retention basin site on Lafayette Street abutting State Highway 237. All parcels and rights-of-way within the project boundaries are owned by the City. The site currently has frontages on Tasman Drive, Great America Parkway, Great America Way, and Lafayette Street. New roadway connections will be created as development advances. The site also has direct access to both the Great America Station (served by commuter rail lines ACE and Capitol Corridor) and the Valley Transportation Authority's (VTA) light rail stations on Tasman Drive. Creek and river trails abutting the site add pedestrian and bicycle access and connections to the public street/sidewalk network in the area.

The DISCUSSION section at the end of this report provides additional details on the nature and scope of the development, as well as more detailed information about the entitlement process, the land lease arrangements and particular issues of special interest or concern.

At the outset of this development idea in 2013, the City entered into an Exclusive Negotiating Agreement (ENA) with the Related Santa Clara LLC (Developer) for all of the golf course. At that time, the City had already entered into an ENA with the Montana Property Group for the development of the Tasman Parcels, but the two concepts have since been combined into this single CityPlace project. The decision to offer development of the project site is based upon the social and economic benefits that will accrue to the City and region in terms of new retail and entertainment opportunities not readily found in the south bay area, as well as creation of jobs,

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property tax and sales tax revenues, and land lease revenues. In addition, the City Center uses and activities will provide support for nearby employment and residential sites, the Convention Center, Levi's Stadium, Great America Theme Park, and for a variety of visitors from near and far.

Development is anticipated to occur over approximately 25 to 30 years and the development rights will be granted and controlled via the following contractual documents: (1) a Development Agreement (DA) between the City of Santa Clara and Related Santa Clara, LLC (Developer), which will vest the density and intensity of development at the project site for 30 years, and confer other rights and obligations on both the City and Related Santa Clara, LLC; and (2) a Disposition and Development Agreement (DDA) between the City of Santa Clara and Related Santa Clara, LLC, which among other things will (a) provide for the phased ground leasing of multiple parcels to be created in accordance with a development schedule, (b) require certain minimum levels of project development, and (c) regulate the provision and maintenance of certain public facilities and services. Because development of a majority of the site involves repurposing a closed municipal landfill facility, the development parcels within the landfill area will be "airspace parcels," with a large amount of development (in the City Center portion of the site) constructed upon concrete podium(s) constructed atop the landfill. Landfill operation and maintenance will be governed by a "Landfill Operations & Maintenance (O&M) Agreement," which will be entered into at a later date but must be consistent with a term sheet attached to the DDA. The City will continue to maintain and monitor the landfill below, including the operation of an upgraded gas recovery system to be provided by the Developer.

Land Use Entitlements - In addition to the contractual arrangements between the City, as landowner, and the Developer via the DA, DDA, and later ground leases, among other documents (the Transactional Documents), the project will be granted land use rights to develop by several approvals, including a General Plan Amendment addressing the City's land use designations and policies (GPA#83), and a rezoning of the site from its current designations to a planned development designation (PD-MC, SCCC Ch. 18.56) that involves approval of a Master Community Plan (MCP) for the entire site. The PD-MC zoning calls for a preliminary infrastructure master plan, which is included in the MCP in the form of an Infrastructure Master Plan (IMP) with supporting technical reports. The IMP spells out all aspects of infrastructure that the Developer and City will need to coordinate and construct generally in phase by phase progression.

Prior to taking any other action on the project, the City Council must first certify the Environmental Impact Report (EIR) for the project, which is an informational document providing analysis of the potential environmental effects of developing the proposed project and mitigation measures that can avoid or reduce identified adverse effects. There are other related actions that the City Council will need to take, such as an override of the Airport Land Use Commission (ALUC) findings of inconsistency of the project with the ALUC land use plan, an ordinance to permit 99-year ground leases of the project site, and other items as spelled out in the recommendations below. A number of attached resolutions and two proposed ordinances represent the actions that the City Council may take to approve this project.

The City's Planning Commission reviewed the project, including the information provided as a part of this report, with the exception of the DDA, at a noticed public hearing on June 8, 2016. The Planning Commission recommended to the City Council that they approve the project. A draft of the Planning Commission's minutes is attached. Those summary minutes reflect comments made by the Planning Commission and by agencies and persons speaking at the public hearing.

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Concerns from that meeting and gleaned from written and oral comments during the course of review of all of these entitlement documents are provided in the DISCUSSION section at the end of this report; among others, these concerns include jobs/housing balance, burrowing owls, and transportation issues (including transportation demand management)

In making its recommendation, the Planning Commission moved to incorporate the Enhanced Open Space (EOS) Variant and the Increased Housing Alternative as elements of the project. The EOS Variant is provided as an MCP Supplement, dated June 1, 2016, and will be incorporated into the MCP following approval by the City Council.

Notice of public hearing for this item was posted within 1,000 feet of the site and published in the *Santa Clara Weekly* as well as mailed to property owners within 1,000 feet of the project site. Comments received outside of the EIR process are attached to this staff report. The full administrative record is available for review during normal business hours in the Planning Division office at City Hall.

Land Transaction - The Disposition and Development Agreement (DDA) and attachments thereto (including the Ground Lease) document the terms and conditions of conveyance of property rights from the City as Landlord to the Developer. The terms included in the DDA and the Development Agreement are consistent with the Term Sheets previously approved by the City Council on February 11, 2014; July 1, 2014 and June 16, 2015.

Key terms of the DDA and Ground Lease include: phasing; schedule of performance; annual rent & escalations; pre-conditions to take down; pre-conditions to the start of construction; minimum development; and funding of public services and facilities. Other key terms of the overall land transaction are documented in the Development Agreement including: payment of development and traffic fees; and provision of affordable housing.

Basic terms of the land transaction include:

Phasing:	Seven phases over 25-30 years
Minimum Initial Buildings:	Phase 1: 600,000 sf office, hotel and/or retail, including minimum 300-key hotel (not extended stay) and 50,000 sf retail Phase 2: 700,000 sf, including 500,000 sf retail and either 200,000 sf office or 300-key hotel 200 residential units in Phases 1 or 2
Minimum Retail Buildings:	Phase 1: 50,000 sf Phases 2 and 3: 750,000 sf
Best Effort Obligations:	Phase 1: additional 200,000 sf office, retail and/or residential over minimum requirements Phase 2: additional 230,000 sf office, retail and/or residential over minimum requirements Phases 2 and 3: total of 1,500,000 sf retail

	Phases 1, 2 and 3: in addition to other obligations, 2-3 department stores of 100,000 sf or larger with middle to high price points, at least two of which would be stores not currently located within the City
Initial Annual Rent:	Phase 1: \$750,000 @ take down; \$1.0M @ opening; and \$1.5M @ 4 th Anniversary of Opening Phase 2 – \$1,500,000; Phase 2A – \$750,000; Phase 3 – \$500,000; Phase 4 – \$750,000; Phase 5 – \$750,000; Phase 6 – \$875,000; and Phase 7 – \$875,000.
Rent Escalation (Phase 1):	3% per year except below Annual CPI increase capped at 3% after Year 45 10% increase in Years 25, 35, 53, 61, 80 and 90 Year 20: Fair Market Rent Adjustment with a floor and ceiling Years 45, 70: Fair Market Rent Adjustment with a floor
Rent Escalation (Phase 2-7)	3% per year except below Annual CPI increase capped at 3% after Year 45 10% increase in Years 15, 25, 35, 53, 61, 80 and 90 Year 45: Fair Market Rent Adjustment based on the development and taking into account the premium costs associated with the extraordinary infrastructure needed to develop the site. Adjustment has a floor and ceiling. Year 70: Fair Market Rent Adjustment similar to Year 45 with a higher floor and ceiling.
Payment of City Services:	The project will pay for: 1) all park maintenance except CityPlace Park on Parcel 3; 2) any enhanced public services such as street maintenance, repair of streets due to settlement of landfill; 3) the construction of a replacement of Fire Station #10 and staffing for a new hazardous materials unit if necessary for landfill conditions; and 4) enhanced police services (e.g., evenings/ weekends)
CityPlace Park:	The Developer must take down Parcel 3, and subsequently reconvey most of it (all but the portion designated as North Park to serve the project) to the City, together with a payment of \$5 million, to be used to improve the property for use as a park (the "CityPlace Park").

The DISCUSSION section at the end of this report provides additional details on the nature and scope of these terms.

ADVANTAGES AND DISADVANTAGES OF ISSUE

The proposed CityPlace development opportunity provides a number of advantages to both the City and the region. This adaptive reuse of a closed landfill facility within an urbanized area provides desirable jobs, housing and services where infrastructure improvements can be efficient and cost-effective for the City, compared to development elsewhere that would require further extension and dispersion of utility and roadway infrastructure and limit opportunities to take advantage of and support use of transit and other alternative modes of travel and access.

The development will provide to the City substantial annual lease revenues, as well as property tax, transient occupancy tax, and sales tax revenues not realized today with the current use of the site. Other public entities, such as schools and special districts, will also benefit with increased taxes. Much of the cost to construct and maintain site infrastructure (including some public facilities) will be borne by the development.

The site location provides a unique opportunity to concentrate development where transit resources can be a significant alternative to auto-oriented access common to development across most of Silicon Valley, with both light and heavy rail access immediately adjacent to the site, as well as multiple bus lines. This development specifically, and Silicon Valley generally, still must accommodate the demand for automobile access in light of the suburban character of the region. The site is suitably accessible as it is readily served by various major local roadways, three expressways, and three State highways in close proximity, presenting little to no need for intrusion into local residential areas. Also, the surrounding employment sites, the City's Convention Center, Great America Theme Park and Levi's Stadium will all be served by food and entertainment businesses within walking distance, services that are in short supply today in the vicinity.

The urbanization of this site adjacent to transit facilities, with good bike and pedestrian connections to the surrounding land uses, will enhance the likelihood of development of substantial residential densities at opportunity sites such as the Tasman East Focus Area, where proposed new housing at high densities is expected to offset some job growth and also take advantage of transit and nearby services and employment. Planning for that area is underway now.

A notable disadvantage of the project development is the displacement of the municipal golf course, tennis club, and bicycle motocross (BMX) track. While an inherent drawback of golf course facilities is the large acreage that generally serves a limited number of patrons at any given time, it does represent a visual open space for the general area. With respect to the loss of the tennis club and the BMX track, there are 114 tennis courts and five BMX tracks in the vicinity of the project site that would be able to accommodate the users who currently use the project site. The loss of these facilities also will be offset to some degree by the set-aside of more than 30 acres of the project site for City-owned open space with access for all, with bike and pedestrian links to the creek and river trails, as well as to the Ulistac Open Space Preserve.

In consideration of the project's advantages, disadvantages, alternatives, and variants, the Increased Housing Alternative coupled with the EOS Variant bring the most benefits to the City, as this combination allows substantial amounts of housing growth and open space on the project site.

ECONOMIC/FISCAL IMPACT

The development of the project will provide substantial land lease revenues to the City's General Fund. Development fees and other exactions paid for and provided by the project (including up to \$17.4 million for implementation of a multimodal improvement plan and a voluntary contribution to VTA of approximately \$16 million) will also benefit the City.

Sales, transient occupancy tax, and property tax revenues will accrue to the City, as well as to nearby agencies that benefit from the increases in the distribution of property tax that will grow as the project develops and is occupied. The economic analysis provided by the Developer's economic consultant (which was peer reviewed by the City's economic consultant, Keyser Marston) projected as follows:

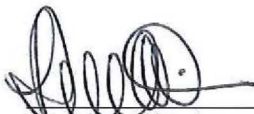
- The fiscal surplus from the project (General Fund tax revenues minus expenditures) is estimated at \$13.1 million annually after completion of the first three phases and at \$16.9 million annually at buildout. The net additional funds will be available to support other City services.
- Sales tax and transient occupancy tax, which will comprise the largest revenues from the project to the City's General Fund, largely will be driven by new retail and food and beverage sales that will substantially increase the City's sales and draw visitors/tourists to the area.
- The project will generate substantial special tax revenue towards the Communities Facilities District (CFD) which was formed as part of the Levi's Stadium project. While the CFD revenue does not contribute directly to the General Fund, it is estimated to generate a total of \$1.2 million to annually finance portions of the publically-owned infrastructure for the Levi's Stadium.
- In addition to the ongoing revenues, one-time sales tax revenues will be generated for the City from construction purchases. Through the purchase of building materials within the City, total buildout construction is expected to generate approximately \$1.7 million in one-time sales tax revenues to the General Fund.

The project will also enhance the gas recovery system currently operating on the closed landfill. The project also will create a substantial number and variety of jobs for residents in the City and region, and provide new retail and business services to residents in the area. Finally, the public benefits of the project include a new fire station, a commitment that at least 10% of all residential units on the site will be affordable to at least a moderate income level, and the set aside of open space, associated improvements and funds to enable the development of that open space.

RECOMMENDATION

That the City Council accept the Planning Commission's recommendations for the CityPlace Santa Clara Project located at 5155 Stars and Stripes Drive, et al, on an approximately 240 acre site. (APNS: 104-03-036, 104-03-037, 104-03-038, 104-03-039, 104-01-102, 097-01-039, and 097-01-073) [PLN2014-10554, CEQ2014-01180, SCH#2014072078] and take the following actions, subject to conditions of approval, to:

- 1) Adopt a resolution approving and Certifying an Environmental Impact Report (EIR) and adopt CEQA Findings, a Statement of Overriding Considerations (SOC) and the Mitigation Monitoring and Reporting Program (MMRP);
- 2) Adopt a resolution approving General Plan Amendment #83 to change the land use designation from Parks/Open Space and Regional Commercial to Urban Center/Entertainment District; changes to Figure 2.3-1 Areas of Potential Development and Table 8.6-2 Proposed Development (Approved, Not Constructed and Pending Projects) and related minor text amendments; and revisions to the Climate Action Plan to add TDM and VMT goals for the new land use designation;
- 3) Adopt a resolution approving the rezone from Public, Quasi-Public, Park or Recreation (B) and Commercial Park (CP) to Planned Development-Master Planned Community (PD-MC) and approving the Master Community Plan to allow the phased development of a new multi-phased, mixed-use development of up to 9.16 million gross square feet of office buildings, retail and entertainment facilities, residential units, hotel rooms, surface and structured parking facilities, new open space and roads, landscaping and tree replacement, and new upgraded and expanded infrastructure and utilities, subject to the development implementing the Increased Housing Alternative and Enhanced Open Space Variant analyzed in the EIR;
- 4) Pass to print an Ordinance to approve the Development Agreement;
- 5) Adopt a Resolution to approve the Disposition and Development Agreement;
- 6) Pass to print an Ordinance to allow leases up to 99 years in length within the CityPlace Santa Clara MCP area; and
- 7) Adopt a Resolution Overriding Airport Land Use Commission Determination of Inconsistency.



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Sharon Goei
Acting Director of Planning & Inspection

APPROVED:



Rajeev Batra
Acting City Manager

Documents Related to this Report:

- 1) *Draft Environmental Impact Report (DEIR) [Previously Distributed]*
- 2) *Final Environmental Impact Report (FEIR), including public comments both before and after initial publication of the FEIR [Previously Distributed]*
- 3) *FEIR Exhibit A (Enhanced Open Space Variant Analysis) and Exhibit B (FEIR Responses to Comments)*
- 4) *Resolution Approving and Certifying Environmental Impact Report and Adopting CEQA Findings, Statement of Overriding Considerations (SOC) and Mitigation Monitoring and Reporting Program (MMRP)*
- 5) *CEQA Findings and Statement of Overriding Considerations*
- 6) *Mitigation Monitoring and Reporting Program*
- 7) *Resolution Approving General Plan Amendment #83*
- 8) *Resolution Approving the Rezoning to PD-MC*
- 9) *General Plan Consistency Findings*
- 10) *Ordinance Approving the Development Agreement*
- 11) *Development Agreement*
- 12) *Resolution Adopting the Disposition and Development Agreement*
- 13) *Disposition and Development Agreement*
- 14) *Ordinance Authorizing Leases of the Project Site in Excess of 55 Years*
- 15) *Resolution Overriding Airport Land Use Commission Determination of Inconsistency*
- 16) *Draft Excerpt Planning Commission Meeting Minutes of June 8, 2016*
- 17) *Planning Commission Staff Report of June 8, 2016*
- 18) *Conditions of Approval*
- 19) *Correspondence as of June 23, 2016*
- 20) *City Council Agenda Report dated September 3, 1999 (attaches a fully-executed copy of a Mitigation Agreement between the City of Santa Clara and the California Department of Fish and Game (Ref. No. 1802-1999-024-3))*
- 21) *Development Plans (Master Community Plan [including Infrastructure Master Plan] and Master Community Plan Supplement)*
- 22) *CityPlace Fiscal Impact Analysis*
- 23) *Keyser Marston Associates Peer Review of Fiscal Impact Analysis*
- 24) *Memorandum from Acting Assistant Director of Public Works regarding City Place 100% Responsible Intersection mitigation*
- 25) *Memorandum from Acting Assistant Director of Public Works regarding City Place Fair Share and Voluntary Contribution Fee*

DISCUSSION

Additional details provided below expand upon the EXECUTIVE SUMMARY presented above. These include the nature and scope of the development, explanation of the elements of the entitlement process, information regarding the contractual obligations and rights of the parties via the DA and DDA, CEQA information and issues, and identification and discussion of particular issues of special interest or concern.

Project Nature and Scope:

The proposed CityPlace project would result in office, retail, entertainment, hotel and residential uses at a maximum Floor Area Ratio (FAR) of 1.0 across 240 acres, including the construction of roadways, parking facilities, infrastructure and utilities to support the land uses and intensity of site development. Parkland development and the provision of open space within the project site boundaries are included with project implementation. Implementation of the project will come about in phases according to a schedule of completion that is a part of the DDA.

The EOS Variant that was prepared and provided as a supplement to the completed Master Community Plan would provide approximately 31 acres for a new City park on Parcel 3. The 720,000 square feet of office space originally proposed on Parcel 3 would be redistributed to Parcels 1, 2 and 5, resulting in no net change in project floor area or overall FAR. The Developer would initially take down and make lease payments on Parcel 3 as Phase 2A, such that the land area in Parcel 3 would remain a part of the overall 240-acre CityPlace project; however, the majority of Phase 2A would revert to the City within two years after it is ground leased by the Developer. The Developer would complete an access road from City Center to Parcel 3 and would provide five million dollars toward the cost of park development, but the decisions about use and development of this open space would be the City's to make.

The Planning Commission and staff recommendations to approve the Increased Housing Alternative as a part of the project would permit a maximum of 1,680 residential units to be constructed within City Center (including the minimum of 200 units required by the Development Agreement to be constructed as part of Phase 1 or 2.). While the additional units would be beneficial to the vitality of City Center and of some assistance in the jobs-housing balance, there is no certainty at this point that the regulatory agencies that govern land uses on a closed landfill will allow these units to be built there. To date there has been cautious acceptance of this proposed housing alternative by those agencies, but no final decision on whether it would be permitted. Furthermore, even if the landfill regulatory agencies do permit housing on the landfill area (to a maximum of 1,480 units), there is no obligation that the Developer build these units.

Site development will mean the closure of the existing facilities on the site as individual phases necessitate, including the Golf and Tennis Club, David's Restaurant and Banquet Facility, and the PAL BMX facility on Parcel 1. Fire Station #10 will likely be relocated on-site or very nearby to ensure continued coverage of the service area by that facility. The details of that relocation process and timing are included in the transactional documents.

Land Use Entitlement Process:

The City intends to retain ownership of the project site and operational responsibility of the former landfill, on which much of the project is located, and to ground lease the site for development to Related Santa Clara, LLC. The transactional documents set expectations between the City and Developer about the investment in and revenues derived from the development of the site, and (in conjunction with the land use entitlements) establish the rights and limitations of the developer(s) related to the physical construction and uses of the land.

To accommodate the proposed high-intensity urban environment contemplated by the project, a new General Plan land use designation, *Urban Center/Entertainment District*, is proposed within the category of Mixed-Use designations. The new designation has both a high intensity (maximum 2.0 FAR) and a low intensity (maximum 1.0 FAR) development scenario that sets a limitation for the entire floor area allowance under each designation (not including parking structure area). While the General Plan allows up to 2.0 FAR for office/R&D development across the Bayshore North area, this development will apply the low intensity designation, thereby effectively limiting the intensity of campus office development here, as a substantial portion of the floor area is expected to be developed within the City Center area. The proposal will result in a gross FAR of 0.87 for the project, with a 1.19 FAR on Parcels 4 and 5, where nearly 2.1 million square feet of the 4.12 million square feet of the floor area there is expected to involve retail/entertainment commercial and hotel uses.

The General Plan Amendment also includes modifications to the General Plan text to revise citywide limitations on office development and changes to Table 8.6-2 Proposed Development (Approved, Not Constructed and Pending Projects) in the General Plan to acknowledge the proposed development project. General Plan Policy 5.3.1-P18, which addresses the metering of new commercial and industrial development in the City, would be amended to correct a misprint in the reference to General Plan Figure 2.3-1, which is a map depicting the areas of potential development that are excluded from the metering requirements. The project site is proposed to be added to General Plan Figure 2.3-1, thereby exempting it from the Citywide square footage metering requirements along with the various other development sites. General Plan policies 5.3.5-P9 and 5.5.1 would also be modified to clarify that the discretionary policies associated with changes in the use, density, and square footage will not apply to the CityPlace Project. Moreover, the addition of the new *Urban Center/Entertainment District* land use designation to the General Plan necessitates setting TDM goals and minimum vehicular miles traveled reduction requirements for the new designation in Appendix 8.13, the City's Climate Action Plan (CAP). The specific edits associated with each of these GPA changes are provided in the attached GPA resolution and the exhibits attached thereto.

To implement the proposed mix and intensity of uses on the site, the project includes a rezone from *Public, Quasi-Public, Park or Recreation* (B) designation on the golf course, retention basin and one Tasman Parcel, and *Commercial Park* (CP) on the other Tasman Parcel to *Planned Development-Master Community* (PD-MC). In accordance with Santa Clara City Code (SCCC) 18.56.060, a Master Community Plan (MCP) must be prepared and approved. The MCP includes the IMP, which satisfies the City Code requirement that the PD-MC application include a preliminary infrastructure master plan. The PD-MC zoning and MCP also include unique procedural provisions for the subsequent Development Area Plan (DAP) applications that supersede the existing PD-MC procedures, and include substantive elements that supersede

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selected provisions of the Zoning Ordinance, such as the list of permitted and conditionally permitted uses, signage, parking, and development density transfers.

Transactional Documents/Agreements:

As noted above in the Executive Summary, the transactional documents include a Development Agreement (DA) and a Disposition and Development Agreement (DDA). The City and the Developer (or its successors) will enter into a series of Ground Leases over time as the development of the project progresses. City staff gave a presentation on the transactional documents to the City Council at a study session on June 7, 2016. Some of the major points related to each of these documents are as follows:

Development Agreement

- Vesting - The density and intensity of uses approved as part of the Project would be vested for 30 years.
- Freezing of Fees and Costs
 - Development fees: The amounts and categories of City fees (aside from traffic, described below) would freeze at current levels until 7 years after approval of the first DAP, providing an incentive for early development of project space; thereafter, fees could be charged at then current rates and new fees could be imposed except to the extent that new fees were to cover items already incorporated into the project
 - Administrative fees: The DPW Plan Check Fee (charged on a per sheet basis) would also be frozen at current levels until seven years after the first DAP approval; all other administrative fees (such as application fees and processing fees) would be paid at the rates then in effect.
 - City Costs: The Development Agreement and DDA recognize that the City will incur costs over time for third party consultants for such activities as environmental review, fiscal and economic analysis, legal tasks and more (including bringing on board a Priority Project Manager to facilitate project implementation from the City's side and help navigate the DAP approval processes). City will provide a semi-annual budget of projected costs and Developer will fund costs.
- Traffic Fees
 - Local traffic fees: payable when due at today's rates until the later of (a) seven years after the first DAP or (b) building permits have been issued for three million square feet of office development in the project; thereafter, the rates may rise to no greater than \$2.25 per square foot for office and \$900 per hotel room (each 2.25 X current rates) for the 30-year life of the Development Agreement.

- Voluntary regional traffic fees: Developer will voluntarily pay \$1 per square foot for office and \$.50 per square foot for residential
- Multimodal Improvement Plan (MIP) - Developer is required to fund the City's preparation of the MIP, which is expected to contain transit, bike, pedestrian and other such compensatory improvements, and could include an upgrade of the transit center and/or enhanced signal priority for VTA light rail trains. The MIP first would be approved by the City Council and then ultimately by VTA, and it is expected that the MIP would be implemented over time as the project traffic ramps up to demand the offsetting improvements. As to funding of the MIP improvements, the project's regional traffic fees could be used, followed by the local traffic fees as needed, and if there remain expenses thereafter, City and Developer would evenly contribute the next \$8 million in improvements, so \$4 million each. Any amounts above and beyond that initial amount (roughly \$21.4 million, of which \$17.4 million would be paid by Developer) would be borne by the City.
- Voluntary VTA contribution - Developer would pay to VTA more than \$16 million as a voluntary contribution to offset freeway impacts. This amount is included in the fair share fee attached to the MMRP that is payable on a per trip basis as the project develops.
- Housing – 10 percent of the residential units constructed within the project will be affordable to at least a moderate income level; any Phase 1 units may be all market rate, in which case the affordable component of that development could be deferred to Phase 2. Only if the environmental regulatory agencies forbid housing construction on the landfill or make it economically infeasible could Developer pay an in lieu fee instead for the affordable units that would be required during Phase 1. Such in lieu fee would be \$20 per square foot, comparable to neighboring jurisdictions and suggested by KMA.

Disposition and Development Agreement

- Schedule of Performance – The Developer must ground lease (or "take down") and begin construction of infrastructure for each phase by certain outside dates set forth in the schedule of performance attached to the DDA. The DDA permits the re-ordering of certain phases, and governs the configuration of the phases and the rents to be paid in connection with each phase.

The final commencement of infrastructure on the last phase will occur by 2036. An 18-month notice period to the City before Developer may take down any portion of Parcel 1 that contains the BMX track is required.

Phases 1, 2 and the new Phase 2A (for the Parcel 3 park, referred to as "CityPlace Park") are firm obligations; if any of those phases is not taken down per the schedule of performance, Developer will forfeit the right to all future phases and rights under the DDA, but does not forfeit its rights as to Phases already taken down.

Phases 3 through 7 are on a use it or lose it basis. If Developer fails to take down the next phase per the schedule of performance, Developer loses the right to take down that next numbered phase as shown on the phasing plan at that time, but not the right to future phases after that. If the Developer loses the right to take down a phase, the City could offer that development site to a replacement developer.

With the exception of Phases 1 and 2, Developer may take down the phases in any order. Thus, even though an area may be shown as Phase 4, for example, if Developer chooses to take down Phase 5 before the area that is shown as Phase 4 now, Developer may do that and must submit a renumbered Phasing Plan showing the former Phase 5 as Phase 4 and indicating numbers for the future phases yet to come. Those numbers only really matter if Developer fails to take down a phase, in which case the skipped phase is the next numbered phase.

Sub-phases may be taken down so long as the remainder of the phase is a developable area of land. The minimum land area that may be taken down at one time is 20 acres (unless a smaller size is approved by the City Manager). Taking down a portion of a phase does not alter the deadline for taking down the remainder of the phase.

- Minimum Development – The Developer must develop certain stipulated minimum square footages of different uses within City Center as described in the Executive Summary.

As to Minimum Initial and Retail Buildings, Developer is obligated to commence and complete construction (subject to force majeure principles, including economic force majeure for the take down of Phases 1 and 2 and for commencement of construction on Phases 1, 2 or 3). Failure to do so is a breach of the DDA, risking loss of the future development opportunities and the existing ground leases.

- Best Efforts – The Developer must use best efforts to develop additional square footage of various uses, as well as department stores, within City Center by certain dates (See Executive Summary).

In addition to other obligations, Developer must use best efforts to include two to three department stores of 100,000 square feet or larger with middle to high price points, at least two of which would be stores not currently located within the City.

Developer must also engage in diligent marketing efforts to secure tenants for the best efforts obligations and every 6 months (and with Phase Option Notice and DAP) submit a Best Efforts Report that includes a leasing plan, marketing and leasing efforts, success or failure, and list of any brokers used. If after taking down a phase, Developer concludes that the best efforts will not be fruitful and Developer has an alternate leasing plan for replacement uses, Developer may request to be relieved of certain best efforts obligations. If Developer documents its efforts and goes through a 90 day meet and confer process with City (including taking additional steps as requested by City to attempt to secure tenants), Developer may pursue its alternate leasing plan subject to any required CEQA review and changes in the MCP if needed.

- Rent – Initial rent and rent escalations are described in the Executive Summary. As to the market rent adjustments, because Phase 1 is not on former landfill, the adjustment process is slightly different than Phases 2 through 7. For Phase 1, in year 20, the annual rent will be reset to the fair market value of the underlying land, subject to inflation and to a floor of \$3 million and ceiling of \$3.5 million. Furthermore, for rent in the 45th and 70th lease years, the rent is increased to an amount equal the fair market value of the underlying land, multiplied by six and one half percent, but in no event less than ten percent (10%) more than the rent for the prior lease year.

For all of the other phases, in the 45th and 70th lease years, the rent is increased to equal the fair market value of the underlying land multiplied by six and one half percent, but value is adjusted by the amount of "Premium Costs" that are allocated to the phase in question. Categories of Premium Costs are generally defined as excess costs that are incurred by the Developer due to the fact that Parcels 2 through 7 are located on landfill, as well as off-site costs, such as traffic mitigation costs, that are incurred due to the size of the overall project and the fact that the land is largely undeveloped, without public improvements to serve it. Premium Costs are allocated among Phases 2 through 7 and then are deducted from fair market rent in years 45 and 70. These rent resets for Phases 2 through 7 for years 45 and 70 are subject to certain floors and ceilings to make sure that neither the party is subject to a rent burden or benefit that is out of line with general expectations on rent increases as the years go by.

- Pre-Conditions Land Conveyance (Take Down) - There must be an approved Development Area Plan for each phase, approved by the City Council, except as to Phase 2A. As part of each DAP submittal, Developer must provide: (a) all information required for a DAP, including a site plan, uses, infrastructure correlated to the planned development, and building design if known at the time, etc.; (b) an updated report on the progress of best efforts development for the types and amounts of development for which City has negotiated above and beyond the minimums, both of which will be discussed later; and (c) a financing plan for the phase that includes a development and construction budget, projected total debt and equity funding and sources of funds if known, possible use of public financing vehicles like CFDs (with no use of general fund allowed), and mechanisms for financing privately maintained public improvements.

Other preconditions include the following:

- City and Developer must have entered a Landfill Operation and Management Agreement
 - Master CC&Rs must be recorded
 - Title insurance must be in place, insurance in place and subdivision approvals done
 - Developer must have provided an anticipated construction schedule for the phase
 - Any tenants on the site must have been relocated
- Pre-Conditions to Start of Construction for Each Phase – The City will approve schedules of performance for Phases 1, 2 and 3 for the special obligations

concerning minimum development, fire station, etc. In addition, a detailed financing plan that includes a pro forma will be submitted to the City's economic consultant, together with information as to the sources of funds to be funded with equity, commitments from lenders, details on public financing vehicles to be used, and detailed descriptions of funding mechanisms for Developer's obligations pertaining to development and maintenance of public and private improvements and public services per the DDA. The Developer must have provided security for improvements, either through subdivision security mechanisms for the public improvements or through completion guaranties for infrastructure and buildings in Phases 1, 2 and 3. Other conditions include securing all government approvals needed for construction.

- CityPlace Park –The Developer must take down Parcel 3, and subsequently reconvey most of it to the City, together with a payment of \$5 million, to be used to improve the property for use as a park (the "CityPlace Park").
- Public Services and Facilities – In addition to paying rent, Developer has committed to funding several types of public services and facilities, including police, fire, and parks.
 - With respect to police services, the City will provide basic services to serve the project, but Developer has committed to paying for the cost of any additional police officers (or off-duty police officers) that are necessary to service the Project on an on-going, periodic or one-time basis. The procedures that will govern the Developer's obligations with respect to police services will be established in connection with Phase 1 and set forth in the Master CC&Rs for the project. They will include the preparation of an annual security plan for the applicable Phase and/or Project.
 - Since development of the Project will require the relocation of the existing Fire Station 10, Developer has committed to construct any necessary improvements that are required as part of that relocation. The relocation may entail a move first to a temporary fire station location and then to a new permanent fire station site, or it may entail a move directly to the new permanent fire station site.

If a temporary station is required, then the DAP application for Phase 1 must include the general location of the station and a conceptual design for the station, and it must be completed no later than the first certificate of occupancy for any building within Phase 1. However, the City may require completion of the temporary station improvements earlier than that date if the existing fire station would be adversely affected prior to that.

For the permanent station, Developer must receive City Council approval for the conceptual design and location before commencing infrastructure for Phase 2. Developer must complete the permanent fire station improvements no later than the issuance of the first certificate of occupancy for any building within Phase 2. If the City and the Developer mutually agree, then the City will instead construct the permanent fire station, but

there would be no requirement that it occur before the first certificate of occupancy for any building in Phase 2.

With respect to fire services, although the City generally will be responsible for providing fire protection services and equipment to the Project, Developer will be responsible for funding any increase in fire protection services and equipment that is required due to the project's location on a landfill. Before the DAP application for Phase 2 is submitted, the City is required to commission an independent study to provide recommendations about the level of fire protection services (equipment, FTEs and equipment replacement costs and timing) to address hazardous materials issues on the Landfill Parcel. This could include equipment, FTEs, and/or equipment replacement costs or timing. The project will be required to bear the costs for these obligations, up to a maximum of 4.5 Fire FTEs annually, and one piece of equipment if recommended by the study.

- With respect to park maintenance, Developer can decide whether it or the City will undertake the maintenance for the three neighborhood parks proposed within the City Center portion of the project – East Park, North Park, and West Park. In any event, however, Developer will be responsible for the costs of performing the maintenance for those three neighborhood parks. By contrast, the City will retain the responsibility for the development and maintenance of the CityPlace Park on Parcel 3.
- In addition, Developer has also agreed to be responsible for the costs of maintaining public streets, to the extent that those costs exceed the typical and customary costs incurred by the City for the maintenance of public streets built to City standards located elsewhere in the City. This means, for instance, that the Developer would be responsible for increased public street maintenance costs due to the presence of the landfill, or due to any different or more costly public street improvements that the Developer elects to install.
- Financing and Security - The Developer must provide pro formas to the City's economic consultant at certain stipulated times during the development of the project, must supply financing plans to the City and must also provide security for public improvements as well as for the infrastructure and buildings in City Center.
- Assignment and Assumptions - The Developer has a limited ability to transfer its rights and obligations under the transactional documents to third parties. There are two types of transfer – one is a "consent transfer," and one is a "permitted transfer." With consent transfers, Developer must demonstrate to the City that the proposed transferee satisfies a number of preconditions that are intended to ensure that the transferee has sufficient financial resources and development expertise to undertake the scope of rights and obligations being transferred. With permitted transfers, Developer must demonstrate to the City that the proposed transferee is an affiliate of, or otherwise legally linked to, Developer.

Issues of Special Interest or Concern:

Following City staff's presentation of the project at the Planning Commission hearing, Commissioners and a number of members of the public spoke on the proposal. Many individuals, some representing organizations such as the Valley Transportation Authority (VTA), City of San Jose, and ACE Train, expressed various concerns about the project. These, in addition to comments submitted in writing over the course of project review and made in prior study sessions, highlight some key issues to address in the City Council's consideration of the project. Comments varied widely, with many individuals expressing both support for and concerns about the project. The key issues include:

- *Housing:* The project will not advance the City's General Plan policies aimed at improving the City's jobs/housing balance. At the Planning Commission hearing on June 8, 2016, there was a discussion of this imbalance, and the limitations on housing atop the landfill; the Planning Commission supported maximizing housing opportunities and including affordable housing opportunities. The Planning Commission also recommended adoption of the "Increased Housing Alternative" in the EIR, which would increase the maximum number of residential units that can be constructed on the project site from 1,360 to 1,680. It should be noted that there are several other projects within the City that are at the "pending" or "conceptual" stage that would propose more housing units than contemplated under the General Plan. Although many of these projects are subject to their own CEQA review and to discretionary approvals by the City and other agencies, if all of the proposed projects were ultimately approved and constructed, they would provide an additional 9,576 units within the City that were not contemplated by the General Plan. Just as none of these projects would be viewed in isolation when analyzing the City's jobs/housing balance, the current project should similarly not be viewed in isolation, as development of the project, in concert with one or more of these additional projects identified above, could result in a substantially lower jobs/housing ratio within the City overall than currently pertains.
- *Burrowing Owls.* No owls have been identified on the site during the course of project review. However, the EIR includes mitigation measures that require pre-construction surveys for burrowing owls, annual surveys for burrowing owls, and the provision of replacement habitat, if burrowing owls are found on site during site development. Certain commenters have argued that the City has an obligation to reserve acreage on the project site for burrowing habitat as a result of direction from City Council in 2000 to "seek the development and maintenance of 44.5 acres of burrowing owl habitat in some combination" on three sites (two of which are located on the project site). However, the circumstances surrounding the 2000 directive have been examined thoroughly, and it has been determined that this direction, which was given in connection with the potential loss of burrowing owl habitat in connection with the Bayshore North Redevelopment Plan project, was not intended to constitute a binding commitment to reserve acreage on the three identified sites for burrowing owl habitat. The City has timely fulfilled its only mandatory and legally binding commitment with respect to burrowing owl habitat that may be affected by the Bayshore North Redevelopment Plan project, which was to provide 58.5 acres of land near the city of Byron as replacement burrowing owl habitat. Furthermore, recent research has determined that 26 of the 58.5 acres of offsite habitat that was actually dedicated by the City served as mitigation for burrowing owl habitat on the project site. (See the attached City Council Agenda Report dated September 3,

Subject: Public Hearing for the CityPlace Santa Clara Project Located at 5155 Stars and Stripes Drive, et al, on an approximately 240 acre site. (APNS: 104-03-036, 104-03-037, 104-03-038, 104-03-039, 104-01-102, 097-01-039, and 097-01-073)

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1999, which includes a fully-executed copy of a Mitigation Agreement between the City of Santa Clara and the California Department of Fish and Game) (Ref. No. 1802-1999-024-3).) Therefore, mitigation has already been provided for the loss of 26 acres of burrowing owl habitat on the project site itself.

- *CityPlace Park.* The applicant has proposed to set aside approximately 31 acres of open space on Parcel 3 that will be turned back to the City, a proposal (known as the Enhanced Open Space, or "EOS," Variant). The EOS Variant was evaluated pursuant to CEQA (see Appendix A to the FEIR). The Parcel 3 location is convenient to the City Center core and will have good roadway, trail and sidewalk connections. Open space advocates have suggested that this acreage could be located adjacent to the Guadalupe River on some of either/both of Parcels 1 and 2; however, the Developer has explained that relocating the open space from Parcel 3 to Parcels 1 and 2 (adjacent to the Guadalupe River and future Tasman East development) would be logistically difficult to accomplish, and City staff also stated that such a change to the park location also would necessitate a renegotiation of the DA, the DDA, and the amendment of the MCP, and could also trigger additional environmental review. After considering these points, the Planning Commission recommended that the City Council adopt the EOS Variant as proposed by the Developer.
- *Transit Improvements.* Traffic generated by this project will cause a total of five Congestion Management Program (CMP) intersections within the City to operate at LOS F at some time in the future. As a result, VTA requires the City to prepare a multimodal improvement plan, or MIP, to address those impacts. The MIP will evaluate and govern the implementation of a range of multimodal improvements in the area, which could include such things as enhanced signal priority for the VTA light rail and improvements to the Great America Station area. The overall total cost to implement the MIP is currently unknown; however, the DA requires that the Developer fund approximately the first \$13.4 million in implementation costs (this number may depend on the amount of square footage developed). The City and the Developer then will split the next \$8 million in costs, with the City funding any MIP costs in excess of that amount. The Developer's total contributions therefore are expected to be a maximum of \$17.4 million.
- *Station Area.* The commuter rail providers estimate that the current 10,000 passengers at Great America Station could rise to 50,000 within a decade, and that the station itself needs to be upgraded to accommodate that growth. As reflected in the MCP, the construction of Avenue C would provide an opportunity to improve the station area with an enhanced transit plaza that is shown in a concept plan that was previously presented to the City Council. This concept plan would expand the Transit Plaza north of the Tasman bridge, improving the movement and volume of shuttle and bus service at the station. Situated along the easterly edges of Parcels 5 and 4, this type of improvement would create a link from the station to Avenue C, and, along with the eastbound slip ramp from Tasman Drive down to the station, could facilitate circulation to both the station and the parking podium at the eastern end of the Parcel 5 development. The Developer has proposed a left turn across the Light Rail at Avenue C that creates some concerns for VTA and the California Public Utilities Commission about adversely affecting the efficiency of rail operations but which could reduce the turning movement volumes at Centennial Boulevard and Tasman Drive, where these volumes could be dispersed over the two intersections.. City staff has suggested a condition of approval that

requires this enhanced transit station plan to be added to the MCP as a possible amenity in the event that Avenue C is constructed.

- *Transportation Demand Management (TDM) Plan.* The TDM Mitigation Measure was substantially strengthened based on comments received on the EIR and at public meetings. Annual third-party monitoring is required to evaluate compliance with trip reduction targets, with City review and reporting to the Planning Commission. The City does not currently have a policy in place for monetary penalties for non-compliance with TDM targets or a program for the allocation of any such funds to transportation related capital improvement projects. There has been some call for imposing penalties with respect to the TDM Plan for this project, but the concept that staff supports calls for the Developer to incorporate new measures if some are not effective.
- *School Fees.* The Santa Clara Unified School District has requested the payment of increased school fees in connection with the project. However, not only is the project committed to paying the amount of school fees required by law, but the project is projected to generate approximately \$33 million of property tax revenue *per year* to the school district once the project is fully built out.

CEQA Issues:

A Draft Environmental Impact Report (DEIR) was prepared for the CityPlace Santa Clara Project in accordance with California Environmental Quality Act (CEQA) requirements. The DEIR and Notice of Availability were circulated and noticed on October 9, 2015 for a 45-day review period for public comment and was extended an additional 15 days upon agency request, and subsequently closed on December 8, 2015. The City received comments from the following agencies, organizations and individuals:

- Norman Y. Mineta San Jose International Airport
- State Water Resources Control Board
- County of Santa Clara Parks and Recreation Department
- Santa Clara Unified School District
- Santa Clara Valley Habitat Agency
- California Department of Resources Recycling and Recovery
- County of Santa Clara Department of Health
- Pacific Gas & Electric
- San Joaquin Regional Rail Commission
- California Department of Transportation
- Santa Clara Valley Water District
- Santa Clara Valley Transportation Authority
- San Francisco Bay Regional Water Quality Control Board
- Capitol Corridor Joint Powers Authority
- Bay Area Air Quality Management District
- County of Santa Clara Roads and Airports Department
- City of San Jose
- City of Mountain View

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- City of Sunnyvale
- Organizacion Comunidad De Alviso
- Westfield
- Committee for Green Foothills,
- Santa Clara Audubon Society
- Friends of Caltrain
- Sierra Club
- Center for Public Environmental Oversight
- Irvine Company
- SV@Home
- Brandan Croom
- Mark Espinoza
- Richard Santos
- Jan Hintermeister
- Kirk Vartan
- Steven Chang
- Sudshanshu Jain
- Anonymous

A Final Environmental Impact Report (FEIR) was subsequently prepared that included responses to all comments received on the DEIR, and the FEIR was circulated for a 10-day review period on April 19, 2016, with that period further extended for an additional 10 days upon agency request and ending on May 9, 2016.

In addition, the City completed an impact analysis of the proposed EOS Variant and determined that the proposed changes associated with the EOS Variant, including the additional parkland and the associated redistribution of office square footage, did not alter the conclusions of the FEIR. The impact analysis of the EOS Variant is included as Appendix A to the FEIR and is attached for review.

The City received comments on the FEIR from the following agencies, organizations and individuals: San Francisco Bay Regional Water Quality Control Board, County of Santa Clara Department of Health, Santa Clara Valley Transportation Authority, Santa Clara Valley Water District, Santa Clara Unified School District, San Joaquin Regional Rail Commission, Friends of Caltrain, Sierra Club, Santa Clara Audubon Society, The Sohagi Law Group (representing the City of San Jose), Irvine Company, Jan Hintermeister, and Sudshanshu Jain. Copies of the DEIR and FEIR were previously distributed to the City Council. CEQA does not require that a Lead Agency respond, but written responses have been prepared for the comment letters received on the FEIR. Those comment letters and City responses to those comments, are provided in Appendix B to the FEIR. In addition, the comment letter and attachments provided by the City of San Jose (dated April 29, 2016) are posted on the City's website and may be downloaded from this web page. <http://www.santaclaraca.gov/government/departments/planning-inspection/planning-division/ceqa-documents>

The DEIR, FEIR and FEIR Appendices constitute the EIR for the project (with a few final, clarifying changes being made via the resolution to certify the EIR). The EIR presents a detailed environmental analysis of potential impacts, an evaluation of project alternatives, and

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identification of mitigation measures for implementation with project development. The mitigation measures are made conditions of project approval and would be implemented in accordance with the timing and specifics set forth in the Mitigation Monitoring and Reporting Program (MMRP) for the CityPlace Santa Clara Project. Some clean-up changes have been made to the MMRP since it was presented to the Planning Commission at its hearing on June 8. In addition, the MMRP was altered to clarify that the City (instead of the Developer) will undertake one-time clearing of the retention basin drainage swale and that, as to certain transportation mitigation measures (those within City of San Jose jurisdiction and some within County jurisdiction), the Developer will fund rather than install the improvements.

Copies of the EIR are available in the Planning Division office during normal business hours at City Hall (1500 Warburton Avenue, Santa Clara) and on the City's website.

To view the attachments please follow the link below:

<http://www.santaclaraca.gov/cityplace>