



City of Sunnyvale

Agenda Item

24-0762

Agenda Date: 7/8/2024

REPORT TO PLANNING COMMISSION

SUBJECT

Proposed Project: Related applications on a 15.6-acre site:

DEVELOPMENT AGREEMENT: Introduction of an Ordinance Approving and Adopting the First Amendment to the Development Agreement between the City of Sunnyvale and Intuitive Surgical Inc.

SPECIAL DEVELOPMENT PERMIT: Modify Special Development Permit (2019-7557) pertaining to 945 - 955 Kifer Road (North Site) of the Intuitive Surgical corporate campus to add an internal courtyard and reduce total building area by 6,000 square feet (from 364,000 to 358,000 square feet), relocate the previously-approved underground parking to a new above-ground structure on an adjacent site at 2900 Semiconductor Drive, Santa Clara, CA (APN 205-39-028), modify the design of the pedestrian bridge connecting the north and south sites, and other minor building and site modifications.

Location: 945 - 955 Kifer Road (APNs: 205-40-001, 205-40-002) and City of Santa Clara APN 205-39-028.

File #: 2022-7369

Zoning: M-S/LSAP 60% (Lawrence Station Area Plan Industrial and Service Zoning District 60% Floor Area Ratio)

Applicant / Owner: Steve Riley (applicant) / Intuitive Surgical, Inc. (owner)

Environmental Review: An Environmental Checklist/Addendum to the Lawrence Station Area Plan Update/Intuitive Surgical Corporate Campus Project Final Subsequent Environmental Impact Report (EIR) has been prepared for the Intuitive North Site Modification Project in compliance with California Environmental Quality Act provisions.

Project Planner: Julia Klein, (408) 730-7463, jklein@sunnyvale.ca.gov

REPORT IN BRIEF

General Plan: Industrial

Existing Site Conditions: 945-955 Kifer Road (north site): Private open space for company employee use.

Surrounding Land Uses

North: Industrial (across Central Expressway)

South: Industrial (between Kifer Rd and the railroad tracks) and Multi-family residential (across the railroad tracks)

East: Industrial (in the City of Santa Clara)

West: Industrial

Issues: Parking Garage Located in Adjacent Jurisdiction in City of Santa Clara, Benefits to the City

Staff Recommendation:

- Make the Determination required by Resolution No. 371-81 for a Development Agreement

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(Attachment 3 to the Report)

Recommend to the City Council:

- Make the required findings to accept the Environmental Checklist/Addendum to the Lawrence Station Area Plan Update/Intuitive Surgical Corporate Campus Project Final Subsequent Environmental Impact Report for the Intuitive North Site Modification Project, finding that it has been prepared in compliance with California Environmental Quality Act provisions and no additional environmental review is required;
- Approve the Modification to Special Development Permit (2019-7557) at 945-955 Kifer Road (North Site) based on Recommended Findings in Attachment 4 and Recommended Conditions of Approval in Attachment 5; and
- Introduce an Ordinance Approving and Adopting the First Amendment to the Development Agreement between the City of Sunnyvale and Intuitive Surgical Inc. included in Attachment 2 and based on the Determination in Attachment 3.

BACKGROUND

Description of Proposed Project

Intuitive Surgical, Inc. (ISI) is a robotic-assisted surgery company with global headquarters in Sunnyvale near the project sites at 1020 Kifer Road. Through the original Special Development Permit and Development Agreement (2019-7557), the applicant proposed to redevelop three project sites (with four assessor parcels) totaling 32.4 acres to expand and consolidate business operations in Sunnyvale. The sites at 932 and 950 Kifer Road are considered the “South Site” and 945-955 Kifer Road is called the “North Site.” Refer to Attachment 6, Vicinity and Noticing Map.

The proposed project (File No. 2022-7369) is referred to as the Intuitive North Site Modification Project. The proposed changes would remove the approved underground parking garage and relocate the parking to a new six-level above-grade parking structure on the adjacent site to the east that is owned by ISI at 2900 Semiconductor Drive within the City of Santa Clara jurisdiction. The new parking structure would require a separate discretionary review and approval through the City of Santa Clara. The proposed project includes other minor building and site changes within the City of Sunnyvale:

- Addition of an internal courtyard and reduction in total building area by 6,000 square feet (from 364,000 to 358,000 square feet)
- Relocation of the loading area approximately 100 feet to the south
- Revision of geometry for the approved Kifer Road intersection across from the 1020 Kifer Road site and private driveway leading to the North Site loading area and proposed new parking structure at 2900 Semiconductor Drive
- Design refinement of the approved pedestrian bridge across Kifer Road, linking together the North and South Sites at the second floor
- Relocation of the employee restaurant from the west to east side of the building
- Extension of roof trellis element along the edges of the building
- Installation of rooftop screening units with associated screening structures
- Modification of spandrel glazing at the second and third floors to vision (transparent) glazing
- Increase of 12” spandrel glazing to 24” consistently throughout the façade.

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The proposed project complies with all applicable Sunnyvale Municipal Code development standards, such as lot coverage, setbacks, parking (subject to approval of the off-site parking structure), height, landscaping, and all applicable policies in the Lawrence Station Area Plan. The Project Data Table in Attachment 7 summarizes the project's compliance with code standards and the project plans are in Attachments 8-12.

Previous Actions on the Site

On September 14, 2021, the City Council approved the Special Development Permit (SDP) and introduced an ordinance to approve and adopt the original Development Agreement for the construction of a new corporate campus totaling 1,211,000 square feet in buildings across both the North and South Sites with new parking, landscaping, open space, and circulation improvements to accommodate 3,500 employees (File No. 2019-7557).

The 16.8-acre South Site (932 and 950 Kifer Road) project included an 847,000 square feet, three-story manufacturing, research, and development facility. The basement level of the facility included a covered loading dock, manufacturing storage, and service space. The South Site also included a six-level, above-grade parking garage in a separate structure. As of June 2024, the South Site development is under construction.

In 2021, the SDP was approved for the 15.6-acre North Site (945/955 Kifer Road) which proposed a three-story 364,000 square foot office building (including 17,000 square feet of basement area) with two levels of underground parking and a one-story 11,000 square foot detached amenity building for employee use, office headquarters and visitor experience center, multi-purpose amenity building, outdoor sports fields and courts, an outdoor dining area, and two levels of underground parking including 785 parking spaces. Construction activities have not yet been initiated on the North Site. The North Site is proposed to be modified as noted above in the project description.

The City Council will consider this item on August 27, 2024.

EXISTING POLICY

Goals, Policies Design Guidelines: A complete list of applicable goals and policies and design guidelines from the Land Use and Transportation Chapter of the General Plan and the Lawrence Station Area Plan (LSAP) are in the Recommended SDP Findings in Attachment 4.

ENVIRONMENTAL REVIEW

As part of the 2021 LSAP Update, the City prepared a Draft and Final SEIR (State Clearinghouse #2019012022) pursuant to the California Environmental Quality Act (CEQA). The SEIR included a program-level analysis of the LSAP amendments, as well as a project-specific analysis of the original project (2019-7557). The Final SEIR includes a Mitigation Monitoring and Reporting Program (MMRP) with mitigation measures to reduce potentially significant impacts to a less than significant level, although some impacts would remain significant and unavoidable after mitigation. The SEIR was certified and a Statement of Overriding Considerations for significant unavoidable impacts was adopted by the City Council. An adopted Statement of Overriding Considerations is deemed by the certification of the SEIR to be applicable to subsequent projects that are consistent with or that implement the LSAP's goals and objectives.

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As the lead agency, the City of Sunnyvale implements the adopted MMRP for each subsequent project. The original project was analyzed in the SEIR and found exempt from additional CEQA review (CEQA Guidelines Section 15168(c)(2) and (4) and Public Resources Code Section 21094 (c)). The LSAP SEIR's MMRP has been incorporated into the Conditions of Approval for the original project and has been updated based upon the changes in the proposed project, refer to the Recommended Conditions of Approval in Attachment 5.

The proposed project (2022-7369) was evaluated by David J. Powers & Associates, Inc., the City's CEQA consultants. In compliance with the provisions of the California Environmental Quality Act (CEQA), DJPA prepared an Environmental Checklist/Addendum to the Lawrence Station Area Plan Update/Intuitive Surgical Corporate Campus Project Final Subsequent Environmental Impact Report (EIR) for the Intuitive North Site Modification Project. The Addendum concluded that the proposed project would not include increases in the number of employees, intensity of use, floor area ratio, building square footage, and net parking available to uses in the North Site compared to the original SDP (2019-7557) and analyzed in the LSAP Update SEIR. Therefore, the proposed project is consistent with the LSAP SEIR, and no additional environmental review is required. The Addendum is included as Attachment 13.

DISCUSSION

Present Site Conditions

The project site at 945-955 Kifer Road serves as an existing private park. It was developed in 1985 as a recreational area for employees of National Semiconductor, Inc., which was later acquired by Texas Instruments. Intuitive Surgical, Inc. purchased the site in 2014 and continues to use the park for their employees' exclusive use.

Special Development Permit

New construction of permitted uses in the M-S/LSAP 60% zoning district requires a Special Development Permit (SDP). The SDP is required to confirm that the proposed changes to the site and architectural design will continue to implement the provisions of the LSAP. While SDPs are typically only reviewed by the Planning Commission, the proposed project must be reviewed at a City Council public hearing because it includes an amendment to the original DA which is subject to City Council review and approval. The City Council hearing date is August 27, 2024.

Proposed SDP Modifications to the North Site

Architecture:

As part of the original planning permit, the design of the buildings in the north and south sites provide a unifying architectural language to create a cohesive campus setting. The north and south main buildings have a similar contemporary architectural style with rectangular forms, large building insets, projecting wall features, curved roofs, and high-quality glass and steel materials to reflect the industrial use of the buildings. The form of the south building follows the function of the manufacturing use that takes up the entire ground floor area. The north building footprint would feature a deep corner setback to preserve a grove of existing trees.

The proposed project includes changes to the office building in the North Site to add an interior courtyard and reduce the building floor area by 6,000 square feet, relocate the loading dock from the

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rear of the building to the east side, change window glazing types at the second and third floors and increase amount of spandrel glazing, relocate air handling equipment from the basement (as the basement garage was removed) to the roof and install 15 foot tall screening units, relocate the employee restaurant from the west to the east side, and other minor updates to interior spaces. The building will continue to integrate bird-safe measures through low-reflectivity glass, interior window blinds, small glass panes, and shielded site lighting near buildings. Overall, the proposed changes to the building are consistent with the overall architectural style and contributes to establishing a cohesive corporate campus.

Pedestrian Bridge:

The proposed project includes design changes to the pedestrian bridge across Kifer Road. The changes to the bridge column enclosure and underbelly are intended to allow for incorporation of utilities, changes to the guardrail from open, picket rail to laminated glass guard is intended to conceal intellectual property as it is transported from the South building to the North building, and the addition of pedestal paver system would allow access to the utility piping for service. This would allow service without the need to obstruct Kifer Road. The bridge span is proposed to increase from approximately 510 feet to 526 feet between the buildings and the bridge width is proposed to increase from 14 feet to 15 feet 7 inches to accommodate the changes.

The design of the pedestrian bridge incorporates materials that complement the main buildings. The contoured underside of the bridge would be finished with wood-appearing metal borrowing from the buildings' roof overhangs. A glass roof across the bridge span shields users from the elements and glass railings line the edges. The pedestrian bridge would have a minimum 20 feet clearance height from Kifer Road.

Site Layout:

The proposed project does not change the general location of the new office building which would be in the eastern half of the site to maximize the existing open space and tree canopy onsite. As the proposed project relocates required parking from the basement to an adjacent parcel in the City of Santa Clara, the site layout has been modified to include paths connecting the two properties for employees and visitors.

Vehicular access is provided through two new driveways along Kifer Road. The eastern driveway is accessed from an existing driveway approach on the adjacent ISI-owned site in the City of Santa Clara. The driveway extends on the project site to the north branching off to lead to the loading area/trash enclosure with further continuation to the rear amenity building and branching to the east to access the parking garage on the adjacent ISI site in the City of Santa Clara. The western driveway is in Sunnyvale and is intended for visitor access, leading to the visitor parking lot and looping to a drop-off area at the building entrance. The two driveways are connected by an interior EVA lane parallel to Kifer Road. Vehicular access from Central Expressway to the future garage would be located on the adjacent ISI site in the City of Santa Clara.

Pedestrians can access the proposed north site office building from the public sidewalk on Kifer Road via two walkways that lead to building entry points. Bicyclists can also enter by the walkway at the visitor entrance and ride to the side or rear building entries. Onsite walkways are proposed on four sides of the building and throughout the open space and amenity areas. A new walkway to the rear of the north building would provide connection to the future garage building in the City of Santa Clara.

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Development Standards

The proposed project complies with LSAP development standards, such as setbacks, height, lot coverage, and landscaping. For more information, refer to Attachment 7 for the Project Data Table.

LSAP Development Capacity:

The past amendment to the LSAP included the Intuitive Surgical, Inc. sites which provide a development capacity of 1,229,503 net new square feet for office/R&D development (because of existing undeveloped potential). The original SDP included a total site floor area of 1,211,000 square feet and a net increase of 1,033,324 million square feet (excluding the floor area credit for the vacant industrial building at 932 Kifer Road). Following approval of the original SDP, the LSAP had a remaining balance of 196,179 square feet available for future projects in the LSAP on a first-come, first-serve basis.

The proposed project includes a reduction in floor area in the north site by 6,000 square feet (from 364,000 to 358,000 square feet). The proposed buildings in the North Site include a 11,000 square feet detached amenity building and a 358,000 square feet main building which includes a 13,000 square feet employee restaurant.

Floor Area Ratio:

The LSAP's incentive-based zoning concept allows higher FAR with the provision of community benefits and requires a Development Agreement (DA) for office/R&D/industrial projects requesting to exceed the base maximum FAR of 35% (up to 150%) and 10% voluntary green building bonus. The original DA memorialized community benefits required in exchange for higher FAR. The proposed project proposes to reduce the building floor area on the north site by 6,000 square feet (from 364,000 to 358,000 square feet) which reduces the FAR from 53.68 to 51.2%. The FAR on south site is not altered by the proposed project changes.

Setbacks:

The proposed buildings and structures exceed minimum setback requirements in the M-S/LSAP 60% zoning districts, including to all property lines and between main buildings. Refer to Project Data Table in Attachment 7.

Lot Coverage:

There is no change to lot coverage percentage with this SDP amendment.

Building Height/Stories:

The number of stories for the north site office building remains the same; however, the proposed project includes a minor building height increase from 61 feet 1 inch to 62 feet 8 inches. Additionally, the proposed project includes the relocation of some mechanical equipment from the basement to the roof top as the underground garage component of the original project has been removed. The applicant proposes to install 15-foot tall screening units around the rooftop mechanical units to minimize visual impact as may be seen from adjacent streets.

Parking:

The proposed project includes the relocation of underground parking for the north site to an adjacent property at 2900 Semiconductor Drive, Santa Clara (APN 205-39-028). The new above grade garage would provide a total of 1,183 parking spaces of which 903 spaces would be allocated for 945-955 Kifer Road (north site). Since parking is off-site, the City of Sunnyvale, the City of Santa Clara and

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Intuitive will need to ensure sufficient parking spaces are provided for 945-955 Kifer Road. The need for on-going multi-agency coordination is documented through a Condition of Approval and staff has requested that the City of Santa Clara include a similar Condition of Approval for the new garage project 2900 Semiconductor Drive (Santa Clara File No. PLN 22-00340).

Tree Preservation, Planting, and Removal:

The proposed project on the north site proposes to remove three additional trees (ranging in size from 8 to 23-inch diameter) that had previously been designated for preservation, and preservation of four trees (ranging in size from 8 to 23-inch diameter) that had previously been designated for removal. This swap is necessary to accommodate the required deceleration lane from Central Expressway which is required by the County of Santa Clara and the widening of the onsite EVA lane (parallel to Kifer Road) to 26 feet. The proposed project plans show 320 new trees with a minimum size of 24-inch box which is consistent with the City's Tree Preservation Ordinance and replacement tree policy.

Green Building Requirements:

The City's Green Building Program requires a minimum of LEED Gold with USGBC certification, including Design Phase credits reviewed and approved by the USGBC. The project will be consistent with this requirement by targeting LEED Gold with a minimum of 63 points.

Traffic and Off-site Improvements:

- **Traffic**

The proposed parking relocation includes the provision of parking in a new garage building in Santa Clara, roadway improvements for those accessing the new garage to/from Central Expressway (a County of Santa Clara roadway), and revised geometry for the Kifer Road intersection across from the 1020 Kifer Road site and private driveway leading to the North Site. The County of Santa Clara required the applicant engage a transportation consultant to evaluate the circulation and provide recommendations. A copy of Hexagon Transportation Consultants, Inc. memorandum is included in Attachment 14. The proposed project and Hexagon's circulation memo was reviewed by staff in the three agencies (City of Sunnyvale, City of Santa Clara and County of Santa Clara) to ensure the circulation met local requirements.

Most roadway improvements to the driveway and expanded acceleration lane would be located within the City of Santa Clara; however, a portion of the expanded deceleration lane would be located within the City of Sunnyvale. To accommodate the expanded deceleration lane, the proposed project plans show the removal of trees adjacent to Central Expressway.

The proposed project is anticipated to have a minor reduction in usage of local streets due to the reduction in building size at the north site and the relocation of parking from the basement to the new garage which would be located closer to Central Expressway in the City of Santa Clara. However, the campus project overall would still have an adverse LOS impact as identified in the original Transportation Impact Analysis (TIA); therefore, the applicant is still required to pay a fair share contribution, in addition to the standard Transportation Impact Fee, towards constructing the needed improvements at several intersections, most of which include County expressways.

- **Other Off-site Improvements**

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The project is required to install new curbs, gutters, sidewalks, street trees, and streetlights along Kifer Road. The sidewalk and street light design will follow the new Lawrence Station Sense of Place (LSSOP) standard.

The proposed project includes a reconfiguration at the intersection which will result in a straighter driveway to access the new parking structure (to be constructed in adjacent parcel in the City of Santa Clara). As the new garage will be in Santa Clara, it will be subject to review and approval through that agency's entitlement process. Staff has coordinated with City of Santa Clara staff to ensure provision of parking spaces meet Sunnyvale's requirements, including the requisite amount of EV charging spaces, and that it will be accessible through connected paths.

Additionally, as the new above ground parking structure will be located closer to Central Expressway, the existing on and off ramps (or on and off driveway) would be too shallow. The County of Santa Clara has required construction of a deceleration lane and an acceleration lane. This would provide more space for vehicles traveling eastbound on Central Expressway to slow down and access the tight curve leading to the new garage. A portion of the deceleration land will occur within the jurisdiction of the City of Sunnyvale with the rest in the City of Santa Clara. The acceleration lane will be located within the jurisdiction of the City of Santa Clara, and they will work with the County on the details of the acceleration lane.

Tri-agency coordination between City of Sunnyvale, City of Santa Clara, and County of Santa Clara will continue through entitlement of the new garage and subsequent construction.

Easements and Utilities:

- **Easements**

The original SDP included requirements for easements in addition to standard utility, sidewalk, emergency vehicle access easements, as well as:

- Kifer Road Pedestrian Bridge: Encroachment Agreement with the City.
- Parking: Parking space utilization for the south and north site so that employees/visitors can park on one site and access the other.
- North Site Driveway: Reciprocal ingress and egress on the shared driveway with the adjacent Intuitive Surgical-owned property in the City of Santa Clara.
- South Site Class I Shared-Use Path: Public pedestrian and bicycle access easement.

The proposed project does not alter the need for the above easements which were incorporated into the conditions of approval for the original project and are incorporated by reference into the conditions of approval for the proposed project.

- **Utilities**

The proposed project would not affect energy use/demand, water demand/usage, waste generation as the project includes a reduction in building floor area in the North Site, which is expected to generate less demand on utilities and services compared to the original SDP.

Development Agreement - Background

A Development Agreement (DA) is a tool used by some cities to assist in providing certain assurances for a developer and a city. A DA is a contract between the city and the developer that

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Council approves through adoption of an ordinance. A DA outlines obligations of the developer and must describe the benefit to both the developer and the city. The City has entered into DAs with many entities, most recently for a mix of uses in Block 18 of the Downtown Specific Plan, an office development at Mathilda and Olive in Block 13 of the Downtown Specific Plan, and two mixed office/residential sites on Sonora Court (part of Lawrence Station Area Plan).

The Lawrence Station Area Plan (LSAP) requires a DA for office/R&D/industrial development above the base maximum FAR with green building bonus (i.e., greater than 45% FAR). Development above this FAR requires the applicant to provide Community Benefits negotiated as part of a DA, which may include incentives from the LSAP Development Incentives Program.

Original Development Agreement

In September 2021 the Council adopted an ordinance for a DA between Intuitive Surgical and the City (RTC 21-0877 and Ordinance 3182-21). The original DA is associated with a Special Development Permit to construct two new three-story office/R&D/manufacturing buildings totaling 1,211,000 square feet (including 148,000 sq. ft. of basement space) connected by a pedestrian bridge across Kifer Road; and construct an 11,000 square foot freestanding amenity building for a total combined FAR of 77%. The project also includes a five-level, above ground parking structure (on the south side of Kifer Road) with an attached 12,000 square foot central utility plant and a request to access part of the development reserve for the Lawrence Station Area Plan area.

The Term (length of time) of the original DA is 15 years; or ten years following issuance of the first building permit. The first building permit was issued in September 2022, the entitlements are vested until September 2032. The DA identifies the terms and obligations of both parties, the general and vested entitlements, and identification of the mutual benefits to both parties.

In summary, the original DA includes the following benefits to the City (see Attachment 16 for the original DA):

- Sales Tax Revenue. The original DA provides a sales tax revenue guarantee amount equal to the average of fiscal years 2018, 2019 and 2020 for the term of the original DA.
- VTA Bus Stop. If requested by VTA, Landowner will install a bus pad and bus shelter on the south side of Kifer Road east of Commercial Street per Santa Clara Valley Transportation Authority's (VTA) latest design standards.
- Reach Codes. The project was exempt from the Reach Codes, however the Landowner agreed to meet or exceed the minimum standards to design and construct the buildings as all electric buildings, provide solar PV of 13.5 megawatts (*note: please see discussion below about a change to this benefit*) and install Electric Vehicle (EV) infrastructure for 100% of the vehicle parking spaces in furtherance of the goals of the City's Climate Action Playbook (2019) (the "CAP").
- Point of Sale. Landowner will designate the City as the point of sale for California sales and use tax purposes for Landowner's direct expenditures on the construction of Project buildings and improvements.
- Recycled Water Contribution. Landowner will design, permit, fund and construct a minimum 8 -inch recycled water line from Wolfe Road to the western property line of 932 Kifer Road for the purpose of connecting the recycled water line to the project,

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Proposed Modification to Project and First Amendment to Development Agreement

The original DA specified the entirety of the project including office, research and development and manufacturing space along with required parking, landscaping and other site amenities. Staff determined that a modification to the project to allow a substantial portion of the parking for the north side of Kifer to be located off-site (in another City) required an amendment to the DA.

The City has approved required parking on off-site (typically adjacent to the proposed use), however, this is the first occasion staff is aware of where the adjacent site would be located in another city.

When a building permit is issued, the City charges permit fees to cover the costs to review the construction plans and inspect the construction. As the construction would not be occurring in Sunnyvale, those fees would appropriately be paid to the city where the construction is occurring (in this case, City of Santa Clara).

However, through the building permit process, the City of Sunnyvale also collects:

- Construction Tax (0.54% of construction valuation) as general fund revenue; and,
- General Plan Maintenance Fee and Lawrence Station Area Plan Maintenance Fee (combined 0.32% of construction valuation) which fund costs associated with the implementation and updates to the General Plan and Lawrence Station Area Plan.

The City would not be receiving construction tax or plan maintenance fees if the structure is built in another city. Nor would the City receive any of the expected construction related sales tax (one of the agreed upon benefits).

The parking structure that would otherwise have been built on the Sunnyvale site would have a construction valuation of over \$25.7 million. Improvement to a property, including a parking structure, adds to the valuation of a property, upon which the county assesses property taxes. That tax assessment would not include a share for Sunnyvale if the parking structure were in another city.

Intuitive Surgical (the landowner/developer) and staff have discussed an amendment to the existing agreement and have agreed on the revised terms. These terms provide the City with the permit related fees and taxes that would have been charged for the underground parking on the north parcel and an amount that essentially covers well over 30 years of property tax. Staff is recommending that Council approve amending the original DA to allow for additional Community Benefits to make up for the loss of construction related revenue and property tax. Staff recommends that these additional Community Benefits be collected at building permit issuance. Below are summaries of the changes included in Attachment 2.

Parking Garage Fee. Landowner shall pay to City a one-time fee in the amount of Two Million Dollars (\$2,000,000) for ongoing loss of property tax, one time construction tax, and one time use tax for the parking garage built outside of City's jurisdictional limits, as provided in Section 4.2.6. Landowner is not required to pay the City any additional permitting fees, construction taxes, or other fees associated with development not located in the City. Payment of this community benefit is due at time of permit issuance

Reach Codes (Solar PV Requirement)

The Developer also requested an amendment to the DA regarding the commitment to provide solar PV of 13.5 megawatts. The Developer indicated it was a typographical error and that they had

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intended to commit to 3.27 megawatts. While considerably less than the amount included in the current DA, 3.27 megawatts is still significantly higher than the minimum of 40 kilowatts that the Building Code would require, cumulatively, for four buildings (over 81 times as much).

Permitted Square Footage

This section is revised to reference Special Development Permit 2022-7369 that enables the off-site parking.

Replacement of Exhibit C. Exhibit C (Site Plan) to the Original DA is deleted and replaced.

Term.

No changes to the length of the DA are proposed.

Summary of Benefits

Staff finds that the original summary of Benefits to the Developer and City, with the revised benefit package, are unchanged:

Benefit to the Developer: The developer benefits from the additional floor area permitted on the project property, not to exceed 80 percent combined FAR and a longer time period in which to exercise the project entitlement. The developer's entitlements would be vested for 15 years; or ten years following issuance of the first building permit.

Benefit to the City: The DA would further implement the objectives of the LSAP by providing development of new office/R&D facilities within walking distance of Lawrence Station, bus stops, and pedestrian and transportation improvements to improve circulation in the area. The City would benefit by allowing a multinational company to grow in Sunnyvale, guaranteed sales tax, point of sale designation during construction, VTA bus stop, all electric building, and expansion of the recycled water distribution system that will benefit City residents and businesses. The proposed ordinance to approve and adopt the First Amendment to the DA, with the DA attached as Exhibit A, are included in Attachment 2.

FISCAL IMPACT

No fiscal impacts other than normal fees and taxes are expected. Additional fiscal benefits as outlined in the First Amendment to the DA would be provided, including a one-time payment of \$2.0 million dollars. Required impact fees include the TIF, Housing Mitigation Fee, and the LSAP Sense of Place fee. Applicants may construct LSSOP improvements in lieu of Sense of Place Fee payments. School impact fees would be paid directly to the Sunnyvale School District and the Fremont Union High School District. The fees are based on a fixed cost per net new square footage.

PUBLIC CONTACT

Neighborhood Outreach Meeting

The applicant held a virtual neighborhood outreach meeting on July 12, 2023. The applicant gave a brief presentation and held a session for attendee questions and comments. Four attendees logged on to the virtual meeting. The applicant was provided with the following comments and questions:

- When would construction work begin?
- What is the HVAC situation?

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- What are the night operations?
- Where is Instructive Surgical based?
- Would they use the Caltrain Station?
- Will the project plant trees between property line?
- Concern about quiet environment.

Staff received 1 public comment letter regarding the quality of information on the plans for the Neighborhood Outreach Meeting (Attachment 15).

Planning Commission Study Session

A Planning Commission Study Session was held on July 24, 2023. The Commission provided the following questions and comments:

- What happens if City of Santa Clara does not approve the garage?
- Are there issues with soil/groundwater contamination?
- What are the community benefits?

One member of the public spoke at the study session with respect to potential for improving connectivity to the Caltrain Station.

Staff has and will continue to coordinate with the City of Santa Clara through the entitlement of the new garage structure. Regarding soil/groundwater contamination issues, staff worked with the California Regional Water Quality Control Board to ensure they were comfortable with the Mitigation Plan that was incorporated as part of the original SDP; and the Mitigation Plan would remain applicable to the north site. There is opportunity for a future trail to extend pedestrian and bike access westward to the rear of the south site; however, that is not part of the proposed project. The community benefits are discussed in the Development Agreement section above.

The Planning Commission generally supported the proposed project including changes to the design of the building and pedestrian bridge, realignment at the intersection, planting of replacement trees, and continued tri-agency coordination regarding the garage and off-site circulation improvements.

Notice of Planning Commission Public Hearing

Public contact for this meeting was made by posting the Planning Commission meeting agenda on the City's official-notice bulletin board at City Hall. In addition, the agenda and this report are available at the NOVA Workforce Services reception desk located on the first floor of City Hall at 456 W. Olive Avenue (during normal business hours), and on the City's website.

The City sent 2,483 notices to surrounding property owners and residents within 1,000 feet of the subject site in addition to standard noticing practices, including advertisement in the Sunnyvale Sun Newspaper and on-site posting.

As of the date of staff report preparation, and since the mailing of notices, staff has received no comments from the public. Any public comments reviewed following publication of the report will be forwarded to the Planning Commission and posted online on the Public Meeting portal.

ALTERNATIVES

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1. Make the Determination required by Resolution No. 371-81 for the First Amendment to the Development Agreement (Attachment 3 to the Report)

Recommend that the City Council:

2. Approve the Modification to the Special Development Permit and the First Amendment to the Development Agreement:
 - a) Make the required findings to accept the Environmental Checklist/Addendum to the Lawrence Station Area Plan Update/Intuitive Surgical Corporate Campus Project Final Subsequent Environmental Impact Report for the Intuitive North Site Modification Project finding that it has been prepared in compliance with California Environmental Quality Act provisions and no additional environmental review is required; and,
 - b) Approve the Modification to Special Development Permit (2019-7557) at 945-955 Kifer Road (north site) based on Recommended Findings in Attachment 4 and Recommended Conditions of Approval in Attachment 5; and,
 - c) Introduction of an Ordinance Approving and Adopting First Amendment to the Development Agreement between the City of Sunnyvale and Intuitive Surgical Inc. included in Attachment 2 and based on the Determination required by Resolution No. 371-81 in Attachment 3.
3. Alternative 2, with modifications.
4. Do not make the CEQA Findings and direct staff as to where additional environmental analysis is required.
5. Deny the Special Development Permit and provide direction to staff and applicant regarding desired modifications.
6. Do not Introduce the Ordinance for the First Amendment to the Development Agreement and provide direction to the staff and developer regarding desired modifications.

STAFF RECOMMENDATION

Alternatives 1 and 2: 1) Make the Determination required by Resolution No. 371-81 for the First Amendment to the Development Agreement (Attachment 3 to the Report); and 2) Recommend that the City Council Approve and Adopt the First Amendment to the Development Agreement and Special Development Permit:

- a) Make the required findings to accept the Environmental Checklist/Addendum to the Lawrence Station Area Plan Update/Intuitive Surgical Corporate Campus Project Final Subsequent Environmental Impact Report for the Intuitive North Site Modification Project finding that it has been prepared in compliance with California Environmental Quality Act provisions and no additional environmental review is required; and
- b) Approve the Modification to Special Development Permit (2019-7557) at 945-955 Kifer Road (north site) based on Recommended Findings in Attachment 4 and Recommended Conditions of Approval in Attachment 5.
- c) Introduction of an Ordinance Approving and Adopting the First Amendment to the Development Agreement between the City of Sunnyvale and Intuitive Surgical Inc. included in Attachment 2 and based on the Determination required by Resolution No. 371-81 in Attachment 3.

Staff supports the proposed modifications to the project as the changes as the high-quality architectural and site design continue to highlight the western entry point into the LSAP district. The modifications do not negatively affect the integrated campus design that allows a Sunnyvale-based company to continue to grow and provide employment opportunities within walking distance of existing and future residential uses in the LSAP. The relocation of the parking to an adjacent site has

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minimal effects on previously anticipated transportation related impacts. The First Amendment to the Development Agreement provides compensation to the City of Sunnyvale for the loss in fees and taxes.

LEVINE ACT

The Levine Act (Gov. Code Section 84308) prohibits city officials from participating in certain decisions regarding licenses, permits, and other entitlements for use if the official has received a campaign contribution of more than \$250 from a party, participant, or agent of a party or participant in the previous 12 months. The Levine Act is intended to prevent financial influence on decisions that affect specific, identifiable persons or participants. For more information see the Fair Political Practices Commission website: www.fppc.ca.gov/learn/pay-to-play-limits-and-prohibitions.html

A check or "Y" in the checklist below indicates that the action being considered falls under a Levine Act category or exemption:

SUBJECT TO THE LEVINE ACT

- Land development entitlements
- Other permit, license, or entitlement for use
- Contract or franchise

EXEMPT FROM THE LEVINE ACT

- Competitively bid contract
- Labor or personal employment contract
- General policy and legislative actions

Prepared by: Julia Klein, Principal Planner
Reviewed by: Trudi Ryan, Director of Community Development
Reviewed by: Connie Verceles, Deputy City Manager
Approved by: Tim Kirby, Interim City Manager

ATTACHMENTS

1. Reserved for Report to Council
2. Draft Ordinance and Development Agreement
3. Draft Determination of the Planning Commission on the Development Agreement
4. Recommended Special Development Findings
5. Recommended Conditions of Approval
6. Noticing and Vicinity Map
7. Project Data Table
8. Project Plans (Vol. 1 of 5) *[note: plans split into 5 volumes due to file size limitations]*
9. Project Plans (Vol. 2 of 5)
10. Project Plans (Vol. 3 of 5)
11. Project Plans (Vol. 4 of 5)
12. Project Plans (Vol. 5 of 5)
13. Addendum to LSAP FSEIR
14. Circulation Memo
15. Public Comment(s)
16. Original Development Agreement

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