



City of Sunnyvale

Agenda Item-No Attachments (PDF)

File #: 21-0542, Version: 1

REPORT TO PLANNING COMMISSION

SUBJECT

Proposed Project: Forward Recommendations to the City Council for related actions:

LAKESIDE SPECIFIC PLAN AMENDMENT: Adopt a Resolution to Amend the Lakeside Specific Plan to allow modification of the timing of development for the required hotel.

SPECIAL DEVELOPMENT PERMIT (SDP): Modify SDP 2015-7576 Condition of Approval GC -11 related to the timing of hotel construction.

POST ENTITLEMENT DEVELOPMENT AGREEMENT Introduce an Ordinance Approving and Adopting a: Post Entitlement Development Agreement between the City of Sunnyvale and Sunnyvale Partners Ltd Co. including consideration of community benefits

Location: 1250 Lakeside (APNs: 216-43-037, -038, -039 and -040)

File #: 2021-7341

Zoning: Lakeside Specific Plan

Applicant / Owner: Sunnyvale Partners Ltd Co. (owner)

Environmental Review: Addendum to the Supplemental Environmental Impact Report

Project Planner: Trudi Ryan, (408) 730-7444, tryan@sunnyvale.ca.gov

REPORT IN BRIEF

General Plan: Lakeside Specific Plan

Existing Site Conditions: Partially Developed Residential and Hotel

Surrounding Land Uses

North: U.S. Highway 101

South: Lake, restaurant and office uses

East: Residential (Avalon apartments)

West: Hotel (Residence Inn)

Issues: Timing of hotel construction

Staff Recommendation: Recommend to City Council: Accept the Addendum to the previously certified Supplemental Environmental Impact Report Pursuant to CEQA Guidelines Section 15164, Adopt a Resolution to amend the Lakeside Specific Plan; Approve a modification to condition of approval GC-11 for Special Development Permit 2015-7576; and Introduce an ordinance for a Post Entitlement Development.

BACKGROUND

The City Council initiated a Specific Plan Amendment for the Lakeside Specific Plan on May 4, 2021 (RTC No. 21-0377). The Amendment focuses on the timing of hotel construction.

Council acknowledged the concurrent review and processing of the related actions: the property owner/applicant filed three related applications: a formal Specific Plan Amendment; a modification to

a condition of approval of Special Development Permit 2015-7576; and, a Post Entitlement Development Agreement.

Description of Proposed Project

The project site is 8.83 acres in size and currently has construction of 250 apartments nearing completion; the site also has approval for a 263 room hotel with conference and banquet space, a restaurant and other hotel amenities. The project includes public access along the lake in partial satisfaction of the park dedication requirements for new residential development. The Lakeside Specific Plan (LSP) and the Special Development Permit approving the development proposal require that the hotel be completed at substantially the same time as the residential development.

See Attachment 2 for a Vicinity and Notice Map.

See Attachment 3 for more details about the approved project (SDP 2015-7576).

Previous Actions on the Site

The site was formerly developed as a hotel with amenities (including small conference and banquet facilities), which was in operation from 1979 to 2006.

The Lakeside Specific Plan was adopted in 2005 and subsequently amended in 2016 (RTC No. 16-1094). The original LSP established the ability to develop a mixed-use project of a hotel and residential uses. The 2016 amendment included switching the location of the residential and hotel orientation on the property (placing them both adjacent to similar nearby uses), an increase in allowable height (seven feet) for the residential component, and inclusion of 3.44-acre publicly accessible park area, adjacent to the lake. A link to the adopted Lakeside Specific Plan is available as Attachment 7.

Special Development Permit 2015-7576 was approved at the same time as the amendment to the Lakeside Specific Plan, in December 2016 (also addressed in RTC No. 16-1094).

EXISTING POLICY

General Plan Goals and Policies:

LAND USE AND TRANSPORTATION ELEMENT

GOAL LT-11 SUPPORTIVE ECONOMIC DEVELOPMENT ENVIRONMENT - Facilitate an economic development environment that supports a wide variety of businesses and promotes a strong economy within existing environmental, social, fiscal, and land use constraints.

Policy LT-11.2 Support a full spectrum of conveniently located commercial, mixed-use, public, and quasi-public uses that add to the positive image of the community.

Policy LT-11.3 Promote business opportunities and business retention in Sunnyvale.

- *LT-11.3a Encourage conveniently located retail, restaurant, and other supportive land uses near business areas.*

GOAL LT-12 A BALANCED ECONOMIC BASE - Develop a balanced economic base that can resist downturns of any one industry and provides revenue for City services.

Policy LT-12.4 Attract and retain a diversity of commercial enterprises and industrial uses to sustain and bolster the local economy and provide a range of job opportunities.

- *LT-12.4b Ensure that rezoning of industrial or commercial areas and sites will not significantly hurt the community's economic base.*

Policy LT-12.5 Encourage land uses that generate revenue while preserving a balance with other community needs, such as housing.

- *LT-12.5a Monitor revenues generated by different economic sectors on an ongoing basis.*

Policy LT-12.9 Consider the importance of tax generation (retail, hotel, auto, and business-to-business uses) to support the fiscal health of the community and to fund municipal services.

GOAL LT-14 SPECIAL AND UNIQUE LAND USES TO CREATE A DIVERSE AND COMPLETE COMMUNITY - Provide land use and design guidance so that special and unique areas and land uses can fulfill their distinctive purposes and provide a diverse and complete community fabric.

Existing Plans

Policy LT-14.2 Support the following adopted specialized plans and zoning tools, and update them as needed to keep up with evolving values and new challenges in the community:

Downtown Specific Plan, **Lakeside Specific Plan**, Arques Campus Specific Plan, Lawrence/101 Site Specific Plan, Precise Plan for El Camino Real, Moffett Park Specific Plan, Peery Park Specific Plan, and Lawrence Station Area Plan. (*emphasis added*)

Community Benefits

Policy LT-14.8 Ensure that development projects provide appropriate improvements or resources to meet the city's future infrastructure and facility needs, and provide development incentives that result in community benefits and enhance the quality of life for residents and workers.

- *LT-14.8c Include a discussion of community benefits in area plans and specific plans that defines the City's priorities and outlines an implementation program.*

GOAL LT-6 PROTECTED, MAINTAINED, AND ENHANCED RESIDENTIAL NEIGHBORHOODS -

Ensure that all residential areas of the city are maintained and that neighborhoods are protected and enhanced through urban design which strengthens and retains residential character.

LAKESIDE SPECIFIC PLAN GOALS AND POLICIES:

The Lakeside Specific Plan (LSP) implements goals and policies of the General Plan for the project site. The purpose of the LSP is to facilitate the development of a mixed-use hotel and residential project for the 8.83-acre site located at 1250 Lakeside Drive. The site is recognized as being of significant economic benefit to the City and to the implementation of adopted goals for housing and neighborhood sensitivity.

- The goals for this site as summarized in the LSP:
 - ♦ Create a landmark project that showcases the City at this important gateway site.
 - ♦ Maintain a successful hotel that is an important part of the City's economy and business environment.
 - ♦ Increase the City's supply of housing stock and improve the jobs/housing ratio.

- ♦ Residential should only be allowed if a high quality residential project is created.

Quotes from the LSP

“Maintaining a successful hotel operation for the property is an important part of the City’s economic development objectives.”

“the hotel must be a required condition for approval of residential use on the larger portion of the Lakeside Specific Plan site”

6.0 Implementation

The Specific Plan project is not dependent on any public improvements or financing. All funding will be developer driven. On-site maintenance also will be developer financed.

The project may be phased only in the sense that demolition and new construction may require a particular sequence of actions. However, the development of residential units cannot occur without replacement of the hotel use, as planned.

Conditions of Approval for Special Development Permit (SDP) 2015-7576

GC-11. PROJECT PHASING:

The project shall not be phased during construction. The residential portion of the project shall be constructed at substantially the same time as the hotel portion of the project.

RESOLUTION NO. 371-81

Resolution of the City of Sunnyvale establishing procedures and setting a fee for processing Development Agreements (Attachment 9).

ENVIRONMENTAL REVIEW

In 2005, the City Council certified an Environmental Impact Report (EIR) for the adoption of the Lakeside Specific Plan (SCH #2005022089). On November 14, 2016, the City Council certified a Supplemental Environmental Impact Report (SEIR) for the update to the Lakeside Specific Plan (SCH #2016022035). The SEIR found that the development described in the updated Specific Plan would result in one significant unavoidable level-of-service (LOS) impact to transportation under background-plus-project conditions at the intersection of of Lawrence Expressway/Oakmead Parkway, and three significant and unavoidable LOS impacts to transportation under cumulative conditions at Lawrence Expressway/Oakmead Parkway, Lawrence Expressway/US 101 Southbound Off-ramp, and Central Expressway/Oakmead Parkway. These impacts were considered significant and unavoidable because the improvements necessary to mitigate the impacts are under the jurisdiction of Santa Clara County. The Council adopted a Statement of Overriding Considerations finding that there were significant overriding social, economic, and other considerations that outweighed the project’s environmental impacts. These overriding considerations included the benefits of a highly visible, landmark project with a high-quality hotel that would generate Transit Occupancy Tax (TOT) and provide space for meetings and special events. The Statement of Overriding Considerations also cited other benefits including new housing to meet the City’s housing needs, addition of residents to support commercial retail uses in that area of Sunnyvale, improved pedestrian and bike safety, removal of contaminated soils from the site, payment of transportation impact fees, and completion of a fully improved public park. The Statement of Overriding Considerations also stated that each one of these factors was a “separate and independent basis” upon which to approve the Project. Following Certification of the of SEIR and adoption of the amended Specific Plan, the City Council approved a Special Development Permit for the

development project.

The Lakeside Specific Plan envisioned an integrated development of the site that would include both the hotel and the residential apartments. To that end, the Specific Plan contains language stating that “the development of residential units cannot occur without replacement of the hotel use”. The project description in the SEIR stated that the construction of the hotel and apartments would take approximately 20 months and would occur “simultaneously.” The proposed amendment to the Lakeside Specific Plan would add language to the Specific Plan and modify the development project’s Conditions of Approval in order to allow the developer to delay construction of the hotel, after completion and occupancy of the residential portion of the project, in return for provision of other community benefits as provided in the parties’ Post-Entitlement Development Agreement.

Section 15164 of the Guidelines to the California Environmental Quality Act (CEQA Guidelines) provides that an agency shall prepare an addendum to a certified EIR “if some changes or additions are necessary” but none of the conditions described in Section 15162 or 15163 calling for preparation of a subsequent or supplemental EIR have occurred. Section 15162 requires an agency to prepare a subsequent or supplemental EIR if “substantial changes” are proposed in the project that will require “major revisions” to the EIR due to the involvement of “new significant environmental effects or the substantial increase in the severity of previously identified significant effects”.

As stated in the Addendum (Exhibit A to Attachment 4) the proposed change to the timing of the hotel construction has no relation to the physical impacts that were identified in the 2016 SEIR because the SEIR analyzed the impacts of the fully completed project. Construction activities will temporarily impact surrounding uses over a longer total period of time but, phased construction of the Apartments and Hotel will lessen the severity of the construction-related impacts such as air quality, noise, dust, and traffic. All mitigation measures required by the 2016 Final SEIR remain in effect and no other changes to the project described in the 2016 Final SEIR are proposed. Furthermore, the hotel is not being removed from the Specific Plan, so the benefits will eventually be realized when the hotel is built. Finally, the City will still receive the social and economic benefits of new housing, public improvements, a fully improved public park, TIF payments associated with the residential development, and other factors cited in the Statement of Overriding Considerations, each of which was a separate and independent basis for approving the 2016 amendments to the Specific Plan, as well as the additional community benefits offered by the Developer.

Section 15164 of the CEQA Guidelines provided that an Addendum does not have to be circulated for public review. However, the decision-makers must consider the Addendum, prior to making a decision on the project (Exhibit A to Attachment 4).

DISCUSSION

The Lakeside Specific Plan and the Conditions of Approval for this site require that the residential and hotel components of the Project be constructed at substantially the same time. Residential construction is nearing completion whereas permits for construction of the hotel have not been issued. The Developer has indicated challenges in satisfying the requirement to complete the hotel construction and is offering alternative community benefits in exchange for being allotted additional

time to construct the hotel.

Construction on the site commenced in July 2019, when the building permit was issued for the residential component of the Project along with site improvements for the entire property (rough grading for site preparation and elevator pit were permitted in November 2018). A Building Permit application for the hotel was submitted in December 2019; the Developer requested that staff wait until March 2020 to review the plans pending submittal of additional materials for the application. Public Health orders for Santa Clara County placed restrictions on construction activity; all construction on this site was paused from March 29, 2020 to April 28, 2020. The additional building permit application materials for the hotel were not submitted until September 2020; staff reviewed the plans and provided plan check comments to the applicant in October 2020. No revised plans have been submitted. While permits have not yet been issued for the hotel structure, much of the site work for that portion of the property has been completed under other permits. The Developer expects that the first phase of residential units will be complete and ready for occupancy in June 2021.

Staff and the Developer have been discussing the timing requirements since early 2020, and in more depth since January 2021. The Developer has indicated that delays on the hotel construction are due to a variety of factors including embargos on pre-fab construction (an earlier concept that would have allowed quicker construction of the hotel) and the pandemic uncertainties in the hospitality industry.

Present Site Conditions

Construction of the residential portion of the site is nearing completion. Site work including grading, managing contaminated soils, and some of the utility infrastructure have been completed for the hotel side of the Project. The applicant has obtained approval from Santa Clara County Health Department (the agency overseeing the soil remediation requirements) to isolate contaminated soils under the future hotel and hotel garage structures and, for the interim, to fence off the area and to provide a soil cap to the area that will be covered with structures once the hotel is constructed.

Lakeside Specific Plan Amendment - Timing of Hotel Construction

As can be seen in the Existing Policy section of this report, there are several places in the Lakeside Specific Plan that discuss the importance of having a hotel on this site.

Page 40 of the Lakeside Specific Plan is the implementation program which begins:

6.0 IMPLEMENTATION

The Specific Plan project is not dependent on any public improvements or financing. All funding will be developer driven. On-site maintenance also will be developer financed.

The project may be phased only in the sense that demolition and new construction may require a particular sequence of actions. **However, the development of residential units cannot occur without replacement of the hotel use, as planned.** (*emphasis added*)

Other areas of the LSP note the importance of having a hotel development as part of site development. Only the implementation section includes specific timing of construction. Staff recommends a simple amendment to address the current situation, which provides the City Council with discretion to approve an alternative schedule for hotel construction:

The project may be phased only in the sense that demolition and new construction may require a particular sequence of actions. However, the development of residential units cannot

occur without replacement of the hotel use, as planned, unless alternative timing with community benefits, is approved by the City Council.

(*underlined text is recommended amendment*, also see Attachment 4 Draft Resolution Amending the Lakeside Specific Plan)

Modification to SDP Condition of Approval GC-11

Approval for site development was provided through the SDP in accordance with the plans submitted with the application and the final Conditions of Approval as approved by the City Council. Staff is recommending an amendment to the condition of approval that parallels the recommended language for the LSP.

Conditions of Approval

GC-11. PROJECT PHASING:

The project shall not be phased during construction. The residential portion of the project shall be constructed at substantially the same time as the hotel portion of the project, unless alternative timing with community benefits is approved by the City Council.

(*underlined text is recommended amendment*, also see Attachment 5 Findings and Modified Condition of Approval of SDP 2015-7576)

Post Entitlement Development Agreement (PEDA)

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 the City Council approves through adoption of an ordinance. A DA outlines the obligations of the developer and must describe the benefit to both the developer and the City. The City has entered into DAs with other property owners/developers, most recently two projects in the Downtown Specific Plan area. A PEDA is a variation on the typical DA to address issues that arose after the project was approved (entitled); in this case, after construction has commenced.

A DA is commonly used to guarantee development approvals to the landowner (in this case a modification to a former approval) and to provide additional benefits to both the City and a developer that could not otherwise be obtained through standard land use approvals. The City has primarily used DAs for major development projects that may take longer to complete construction. This is the first Post Entitlement Development Agreement the City has negotiated.

The Lakeside Specific Plan amendment has been written to enable a modification to the timing of hotel construction, subject provision of community benefits approved by City Council.

The project applicant (developer/owner) is identified as "Landowner" in the PEDA. The term of the PEDA would be six years. The PEDA identifies the terms and obligations of both parties, the general and vested entitlements, and identification of the mutual benefits to both parties. The full draft of the PEDA is found in Attachment 6. Below are summaries of the respective benefits outlined in the PEDA.

City Benefits

The PEDA includes the following benefits to the City:

- Community Benefit Fund Guaranteed Contribution of \$750,000, in two payments: \$450,000 prior to occupancy of the residential units and \$300,000 at the beginning of Phase 2, January 1, 2023.
- Community Benefit Fund Contingent Contributions for failure to meet specific construction performance deadlines. Contingent contributions would be due at the end of each phase for which there is non-performance. The table below shows the performance requirements and contingent timelines.

Phase - End	Performance Requirement	Amount
1 - Dec 2022	Building Permits Issued	\$500,000
2 - Jun 2024	Infrastructure & Foundation Complete	\$750,000
3 - Jun 2025	Vertical Construction Commenced	\$1,000,000
4 - Jun 2026	Vertical Construction Progressing	\$1,250,000
5 - Jun 2027	Hotel Construction Complete & Open	\$1,500,000
	Maximum Contingent Contribution	\$5,000,000

Developer Benefits

Benefits to the Developer contained in the PEDAs:

- Longer timeframe to construct hotel: a total of 6 years to complete construction and begin operation of the hotel.
- Occupancy of residential units: upon payment of first guaranteed contribution to the Community Benefit fund of \$450,000.

Other Provisions

- The term of the PEDAs is for six (6) years.
- Standard protections against unforeseen delays not under the developer's control such as acts of nature, specified types of violence, and a pandemic.
- Ability to file an application for revised hotel design allowed - A Special Development Permits (SDP) may be submitted for City consideration of a revised design of the hotel. The City is not obligated to approve the revised design and the development must meet LSP design standards and the performance deadlines or make the contingent contribution to the community benefit fund. Any such application would be subject to the standard application processing timelines.
- Acknowledgement of the City's ability to place a lien on the property for failure to make any required or contingent contribution to the Community Benefit Fund.
- Requirement that residential portion of site needs to be complete (satisfying all requirements of the building permit) with a provision for short-term deferral of a small portion of the landscaping adjacent to the lake; and, clarification of what improvements need to be completed on the hotel site to allow occupancy of the residential units.
- General provisions regarding review, responsibilities of each party, procedures for default, etc.

FISCAL IMPACT

Delay of hotel construction could affect City revenue from Transit Occupancy Tax (TOT); currently TOT in Sunnyvale is 12.5% of the rate charged by the hotel operator. Currently, due to the pandemic, overall hotel occupancy is significantly reduced (pre-pandemic occupancy rates averaged 75% and

as of March 2021 rates, on average, are about 40%). As it is unclear when the hotel industry will see significant changes in increased occupancy it is difficult to predict the value in unrealized TOT revenue. The guaranteed contributions to the Community Benefit Fund offset unrealized TOT had the hotel been completed at the same time as the residential development.

Lack of timeliness in hotel construction would result in contingent contributions to the Community Benefit Fund (as soon as December 31, 2022) starting at \$500,000, which increase by \$250,000 for each phase. Contingent benefits would be a maximum of \$5 million over six years. The completion of the residential units increases expenses for certain community services; many of those expenses will be covered by increased property tax associated with site development.

PUBLIC CONTACT

Notice of Public Hearing, Staff Report and Agenda:

- 1 Published in the *Mercury News* newspaper
- 2 Posted on the City of Sunnyvale's Web site
- 3 Agenda posted on the City's official notice bulletin board
- 4 Notices mailed to property owners and tenants within 300 feet

See Attachment 2 for Vicinity and Noticing Map.

As of the date of staff report preparation, staff has received no comments from the public.

ALTERNATIVES

1. Make the Determination required by Resolution No. 371-81 (Attachment 8 to the Report).

Recommend to City Council:

2. Accept the Addendum to the previously certified Supplemental Environmental Impact Report Pursuant to CEQA Guidelines Section 15164 and Adopt a Resolution to amend the Lakeside Specific Plan Attachment 4 to the Report); Approve a modification to a condition of approval GC-11 for Special Development Permit 2015-7576 (Attachment 5 to the Report); and, Introduce an ordinance for a Post Entitlement Development Agreement (Attachment 6 to the Report).
3. Alternative 2, with modifications.
4. Do not accept the Addendum, approve the amendment to the Lakeside Specific Plan, Special Development Agreement or Post Entitlement Development Agreement

STAFF RECOMMENDATION

Alternative 1: Make the Determination required by Resolution No. 371-81 (Attachment 8 to the Report); and, Recommend to City Council Alternative 2: Accept the Addendum to the previously certified Supplemental Environmental Impact Report Pursuant to the California Environmental Quality Act Guidelines Section 15164 and Adopt a Resolution to amend the Lakeside Specific Plan (Attachment 4 to the Report); Approve a modification to a condition of approval for Special Development Permit 2015-7576 (Attachment 5 to the Report); and Introduce an ordinance for a Post Entitlement Development Agreement (Attachment 6 to the Report).

The current economic situation has added uncertainty in the hotel industry. The amendment to the LSP considers this uncertainty and provides the City a mechanism to achieve alternative community

benefits. The modification to the Condition of Approval of the SDP implements the amendment to the LSP and the PEDAs places clear obligations on the Developer for the alternative community benefits.

Prepared by: Trudi Ryan, Director, Community Development

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. *Reserved for Report to Council*
2. Vicinity and Notice Map
3. Summary of Lakeside Special Development Permit
4. Draft Resolution Amending the Lakeside Specific Plan with Exhibit A (Addendum to the 2016 Supplement EIR)
5. Findings and Modified Condition GC-11 of SDP 2015-7576
6. Draft Ordinance for a Post Entitlement Development Agreement with Exhibit A (Post Entitlement Development Agreement)
7. Link to Lakeside Specific Plan Adopted in 2016
8. Draft Planning Commission Determination on Post Entitlement Development Agreement
9. Resolution No. 371-81