



## City Council Agenda Item Staff Report

CITY OF SAN BRUNO

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**DATE:** September 13, 2022

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Jovan D. Grogan, City Manager

**PREPARED BY:** Darcy Smith, Assistant City Manager

**SUBJECT:** Hold Public Hearing and Introduce, Read by Title Only, and Waive Further Reading of an Ordinance of the City of San Bruno Approving the First Amendment to a Development Agreement Between the City of San Bruno and Williams Portfolio 16 for the Construction of the Mills Park Center Residential and Commercial Development at 601-799 El Camino Real and the Adjacent Site at 601-611 El Camino Real. CEQA Determination: It Has Been Determined That the Proposed Amendments Are Within the Scope of the Prior Project CEQA Documentation and Exempt From CEQA Pursuant to Sections 15168 (Program EIR), 15162 (Subsequent EIRs and Negative Declarations) and 15183 (Projects Consistent With a Community Plan or Zoning) and Section 15061(B)(3) Because It Can Be Seen With Certainty That the Extension of the Term of the Agreement and Other Deadlines in the Agreement Have No Possibility of Having a Significant Effect on the Environment

**BACKGROUND:** The Mills Park Center project ("Project") consists of the demolition of all structures on the site, and the development two (2) one to five-story, 70-foot tall, mixed-use buildings with a total of 427 residential condominiums units and approximately 7,947 square feet of ground floor commercial space with associated improvements and infrastructure. The project would result in the vacation of Camino Plaza, a portion of San Bruno Ave and Kains Avenue, and the southern portion of White Way, and the realignment of Kains Avenue, along with vacation of certain utility and access easements affected by the project. A total of 676 parking spaces are proposed with the development. The project provides one parking space for each bedroom, plus dedicated guest parking at a ratio of one space for every 10 units.

The development site measures 5.38 acres in total area (inclusive of White Way and Camino Plaza) and is bounded by San Bruno Avenue West to the north, Angus Avenue to the south, El Camino Real to the east, and White Way and Linden Avenue to the west. The project site is currently zoned P-D (Planned Development) to allow mixed-use buildings within close proximity to bus and rail transit as specified within the Transit Oriented District (TOD) General Plan land use designation. The General Plan land use designation was established for this property in 2009. The project site is within the Transit Corridors Specific Plan area, which was approved by the City Council in 2013.

On June 25, 2020, the City Council approved the Project (with subsequent adoption actions on July 14, 2020), which included the following actions:

- Determined that the project was exempt from the California Environmental Quality Act (CEQA) Guidelines sections 15168 (Program EIR), 15162 (Subsequent EIRs and Negative Declarations) and 15183 (Projects Consistent with a Community Plan or Zoning) as described below.
- An Ordinance Amending Section 12.96.020 of Title 12 (Land Use) of the San Bruno Municipal Code to Change the Zoning Map from the Commercial (C) to the Planned Development (P-D) District with a Development Plan;
- Planned Development Permit;
- Architectural Review Permit;
- Phased Vesting Tentative Tract Subdivision Map for Condominium Purposes that would result in lot mergers and the vacation of Camino Plaza, a portion of San Bruno Ave and Kains Avenue, and the southern portion of White Way and the realignment of Kains Avenue and vacation of certain utility and access easements; and
- An Ordinance approving a Development Agreement and Affordable Housing Plan for the Proposed Mixed-Use Development at Mills Park Center.

Approval of the Development Agreement included community benefits agreed to by the applicant. The most notable provision is a \$10 million community benefit payment to the City's General Fund in conjunction with condominiums, which now requires the developer to apply for Condominium Use Permits, a doubling from the former \$5 million base community benefit payment that included an option for another \$5 million if the developer elected to convert to condominiums.

**DISCUSSION:** California Government Code Section 65864, et seq., and City Resolution 1986-77 authorize the City to enter into development agreements establishing certain development rights. Development agreements can provide certainty for the city and developer, and typically address necessary public improvements required by development. In San Bruno, development agreements are common for larger projects to be built in at least two phases that require multiple years to construct.

In conjunction with processing and consideration of the application for development of the Project, the city negotiated the terms of a Development Agreement, the terms of which are summarized in the table below:

Project Summary
<p data-bbox="219 1386 511 1417"><b>Project Components:</b></p> <ul data-bbox="219 1417 1404 1669" style="list-style-type: none"><li>• Two mixed-use buildings ranging in height from one to five stories and divided into smaller components with articulated building setbacks and stepbacks.</li><li>• 427 condominium dwelling units.</li><li>• 65 affordable dwelling units</li><li>• Approximately 7,947 square feet of ground floor commercial space.</li><li>• 676 total parking stalls and 477 bicycle parking stalls on-site.</li><li>• 5.38-acre project site.</li></ul> <p data-bbox="219 1669 1055 1701"><b>Negotiated Community Benefits in Development Agreement:</b></p> <ul data-bbox="267 1701 1404 1837" style="list-style-type: none"><li>• \$10 million community benefit payment to the City's General Fund (subject to annual CPI increases) in conjunction with Condominium Use Permit approval, to be paid in stages based on construction timing on the two parcels comprising the Project. (\$5 million if the City denies condominium permits despite multiple applications)</li></ul>

- \$100,000 direct payment to the City's General Fund to finance bicycle and/or pedestrian improvements to city streets in the general vicinity of the Project.
- \$100,000 direct payment to the City's General Fund to finance parking enforcement and/or implementation of a Residential Parking Permit Program.
- Additional commitments related to affordable housing which are set forth in the Affordable Housing Plan and which exceed the requirements of the City's Affordable Housing Program Ordinance. These include:
  - Provides 55-year term for affordability restrictions on condominiums, which is ten years longer than the Affordable Housing Program Ordinance requirement.

o Applies the same income levels if the 65 affordable units in the Project are sold as condominiums instead of rented (which means lower sale prices), even though the City's Ordinance allows higher income levels: 6% (26 units) very low income, 4.5% (19 units) low income and 4.5% (20 units) moderate income, which will assist the City's compliance with the State RHNA Affordable Housing Goals.

o Makes 4.5% of the affordable units low income and 4.5% moderate income, even though the City's Ordinance only specifies that 9% be "low and moderate income", which could allow fewer low income units.

o Provides additional affordable unit tenant protections if the occupied affordable units are initially rented but later are sold.

- Creation of 17 new public parking spaces in conjunction with the improvement and widening of Linden Avenue, 9 of which the City can reserve for municipal center or other public purposes (replacing diagonal spaces on the Owner's property currently available for library parking).
- Realignment, improvement, and reconstruction of Kains Avenue and installation of a new traffic signal at Kains Avenue and El Camino Real.
- Possible extension of the right turn lane from east-bound San Bruno Avenue onto south-bound El Camino Real (pending CalTrans final approval).
- Sales Tax Point of Sale Designation for construction goods purchases, which may result in additional sales tax revenue to the City during construction.
- Agreement to work in good faith with San Bruno CityNet Services for internet, television and telephone service for the Project.
- Prohibit short term residential rentals unless allowed by City regulations.
- City use of the room identified as Amenity Space – Group Meeting Room in Building B to be made available for City meetings and City events.

**Applicant's Estimated Project Benefits:**

The developer has estimated the following additional items which include ongoing fiscal benefits to the City:

- New property taxes to be collected annually by the City of San Bruno (based on cost of new improvements over the existing tax basis).
- Signed Project Labor Agreement (PLA) committing to the use of union labor throughout construction of the project. This is not a city requirement.
- Construction jobs created during the construction phase.

The approved ten-year development agreement provided the Developer with assurance that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval. The development agreement specifies the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The development agreement includes

conditions, terms, restrictions, time deadlines for the construction, and requirements that must be met during the course of the development.

The development agreement for the Project became effective on November 3, 2020 after all challenge periods for the project had ended. The agreement required that the Developer apply for building permits to construct the project within two years of the effective date (November 3, 2022). As described in the Developer's letter (Attachment 1), the Developer has requested a two-year extension. If a two-year extension is granted, other time limits and deadlines in the development agreement would need to be modified. The parties also propose an amendment to Section 3.2, which would synch the life of project approval with the life of the development agreement. Based on the Developer's request, the following amendments to the development agreement have been identified by staff:

- Amend Section 2.2 (Term of the Agreement) from 10 years to 12 years.
- Amend Section 2.2.1.1 (Parcel A Horizontal Permit Application Deadline) to require submittal of the complete application with 4 years instead of 2 years. This would have the effect of pushing the deadlines under Sections 2.2.1.2 (Parcel A Commence Construction Deadline), 2.2.2.1 (Parcel B Horizontal Permit Application Deadline), and 2.2.2.2 (Parcel A Commence Construction Deadline), which are all keyed to the deadline for the Parcel A Horizontal Application Deadline. This change would also move the payment of the \$1,500,000 Public Benefits payment advance back by two years.
- Amend Section 2.3.1.2 to extend the time for payment of public benefits by two years (i.e., the fifth anniversary goes to seventh, and sixth goes to eighth).
- Amend Section 3.12.1.1 to extend the Condo Application Deadline from 2 years after the Final Approval Date to 4 years. Given that DA Section 3.2 (1) provides for extension of approvals to the end of the Term of the DA (10 years), the extension of the Condo Application Deadline for 4 years should not run afoul of the Vesting Tentative Map, which otherwise would be only for 2 years under the City's default rules.
- Amend Section 3.2 (Life of Approvals) which currently provides as follows:

"3.2 Life of Approvals. Pursuant to Government Code section 66452.6(a) and this Agreement, the life of the Project Approvals shall automatically be extended to and until the later of the following: (1) the end of the Term of this Agreement, as it may be earlier terminated pursuant to the terms set forth herein; or (2) the end of the term or life of any such Project Approval."

To Read: "3.2. Life of Approvals. Pursuant to Government Code section 66452.6(a) and this Agreement, (a) the life of all non-legislative Project Approvals other than the Vesting Tentative Map and any subsequent amendment thereof shall automatically be extended to and until the later of the following: (1) the end of the Term of this Agreement, as it may be earlier terminated pursuant to the terms set forth herein; or (2) the end of the term or life of any such Project Approval, and (b) the life of the Vesting Tentative Map and any subsequent amendment thereof, regardless of any other statute, rule, or authority that purports to set a different term, shall automatically be extended to and until but in no event beyond the end of the Term of this Agreement, as it may be earlier terminated pursuant to the terms set forth herein."

At their meeting of August 16, 2022, the Planning Commission held a public hearing regarding the requested development agreement extension. The Planning Commission asked questions about the approved project, parking and community use of an amenity area in the building. Public notice was provided to property owners within 1,000 feet of the project site. There were

no members of the public that requested to speak on this agenda item. The Planning Commission voted unanimously to recommend to the City Council approval of the development agreement extension and adopted a resolution with their recommendation (Attachment 3, Planning Commission Resolution 2022-11).

**FISCAL IMPACT:** Subject to City Council approval of the amendments and extension, the Developer will execute the first amendment to the development agreement that will continue to require a cash payment of up to \$10,000,000 to the City's General Fund as unrestricted revenue to be allocated at the future discretion of the City Council when the project develops. The City will also obtain other associated permit fees, property taxes, business license taxes, water and sewer capacity fees, cable account revenues, other utility connection fees and utility billing revenue associated with the Project.

**ENVIRONMENTAL IMPACT:** The Mills Park project is located within the Transit Corridors Plan (TCP) area. A Program Environmental Impact Report (EIR) and Mitigation Monitoring and Reporting Program were prepared for the TCP, and both adopted by the City Council on February 12, 2013. The proposed project was analyzed in the TCP EIR at a programmatic level, with potential impacts identified and mitigations applied in the program EIR to avoid or reduce potentially significant impacts.

Under California Environmental Quality Act (CEQA) Guidelines sections 15168 (Program EIR), 15162 (Subsequent EIRs and Negative Declarations) and 15183 (Projects Consistent with a Community Plan or Zoning), subsequent individual projects can utilize a previously certified program EIR if all potentially significant environmental impacts of the proposed individual project: (1) have been previously identified (i.e., are not new) and are not substantially more severe than those identified in the previous EIR, (2) have been avoided or mitigated to the extent feasible as a result of the previous EIR, and (3) have been examined in sufficient detail in the previous EIR to enable those impacts to be avoided or mitigated by the mitigations in the EIR, site-specific project revisions, or the imposition of uniformly applicable development policies. If these conditions are met, then the City can approve the individual project as within the scope of the previous EIR, and no additional environmental document is required. An Initial Study/Environmental Checklist was prepared for the Project prior to the project approval which confirmed that the proposed project would not result in any new or substantially more severe significant environmental effects than those analyzed in the TCP EIR document. Further, the previously certified Transit Corridors Plan EIR adequately describes the proposed project for the purposes of CEQA. In accordance with CEQA Guidelines Section 15168(e), this contemplated development agreement amendment is within the scope of the Program approved earlier in the Transit Corridors Specific Plan and the previously certified program EIR adequately describes the activity for the purposes of CEQA. In addition, the amendment is exempt from CEQA pursuant to the State CEQA Guidelines Section 15061(B)(3) because it can be seen with certainty that the extension of the term of the Agreement and other deadlines in the Agreement have no possibility of having a significant effect on the environment.

**RECOMMENDATION:** Hold a Public Hearing and Take the Following Action:

Introduce, Read by Title Only, and Waive Further Reading of an Ordinance of the City of San Bruno Approving the First Amendment to a Development Agreement Between the City of San

Bruno and Williams Portfolio 16 for the construction of the Mills Park Center residential and commercial development at 601-799 El Camino Real and the adjacent site at 601-611 El Camino Real.

**ALTERNATIVES:** The City Council could choose to not introduce the ordinance which would have the effect of not granting an extension to the Mills Park Center Development Agreement. However, this alternative is not recommended since the benefits of the project and terms of the development agreement are beneficial to the city.

**ATTACHMENTS:**

1. Draft Ordinance
2. Exhibit A to Draft Ordinance
3. Planning Commission Resolution No. 2022-11 recommending approval of amendments and extension of the Development Agreement with the following exhibits:
  - Exhibit A to Resolution 2022-11 Draft First Amendment to the Development Agreement
  - Exhibit B to Resolution 2022-11 Draft City Council Ordinance Approving the First Amendment
4. Executed Development Agreement
5. Development Agreement amendment and extension