

MEMO: Comments on Conditions of Approval
TO: Charlie Knox, Director of Community Development
FROM: Elizabeth Patterson
DATE: May 13, 2008

For a comprehensive understanding of the potential impacts to downtown, it is necessary to see a comparison of the existing retail commercial square footage in downtown and all other locations and compare to potential Seeno 850,000 square feet. Please provide table.

The conditions of approval for the Seeno Business Park Vested Tentative Map need to be put into context of the planning process.

The City Council is review a new plan without the benefit of a detailed assessment at a level consistent with a CEQA initial study. The standard of review for such a plan would be to determine the potential impacts of the parcels sizes, intensity of use, road alignment for determining grading, air, water and environmental impacts.

The planning process would normally develop a master plan with the overall objective of land uses and activities and provide a roadmap for achieving these. The only plan before the Council is the parcel map with development phasing.

Therefore, the following conditions not only address some of the physical impact issues, but also the need for an actual economic development plan associated with sustainable development including a climate action plan.

1. Prior to filing the vested tentative map, there shall be a Specific Plan development pursuant to Government Code Section 65450 et seq. See Attachment 1 for an explanation and description of the purposes of the Plan. Clearly this is the proper approach to provide assurances that the project will be developed according to many of the principles of the draft conditions of approval. Having the plan in place is the one document that summarizes the conditions of approval and mitigation monitoring plan as well as the financing agreements. The specific plan will reference the EDB economic development strategy and use as objectives of the Plan and phasing will be the implementation strategy for the Plan.
2. Prior to filing the vested tentative map develop and adopt Form Base Code for the entire project. See Attachment 2. This has been successfully done for Benicia Downtown and is proposed for the Arsenal. Again, adopting the FBC is the most certain way to achieve design goals as well as green building guidelines (standards).
3. Prior to filing the vested tentative map develop and enter into a Development Agreement. Cities use Development Agreements, among other

reasons, for dealing with tricky problems involved with timing and sequencing, to lock in assurance that a particular mix of development will occur. For instance in a high profile development agreement case, the City of Irvine and the Irvine Company used a development agreement to work out a problem over the timing of a mixed commercial/residential development. Company officials wanted to build the residential portion of the project first but city officials wanted to get the sales tax flowing from the commercial portions. In a development agreement, the company agreed to make payments to the city if residential construction ran ahead of commercial development. As a result of the agreement, The Company paid the city an average of \$1 million per year. See Guide to California Planning, Fulton.

Another primary reason a city considers a development agreement is that the agreement may be the only legal vehicle available to achieve a certain amenity or public benefit that otherwise exceeds the agency's ability to demand in conjunction with a development approval. As an example, a particular need may exist for child care, transit, or recreation facilities. The voluntary contractual nature of development agreements takes them outside the traditional and legally constrained (Nollan and AB 1600) context. In other words, a tentative map conditions may be challenged AFTER the map is approved and the court may decide the condition of approval fails to meet the nexus requirements. The map then remains, but the condition is removed. The public and city have no recourse.

4. There shall be an initial study for the new project, Specific Plan, FBC and Development Agreement.

5. Benicia Planning Commission shall review and comment on new project and draft conditions of approval prior to Council action on vested tentative map.

6. Pg. 79 of the Draft Addendum uses non binding words such as "encourage, recommendations, intended, seek and identified" without being binding. The analysis in the Addendum reveals that site design is essentially up to the future studies and review without standards. See requirement for Form Based Code.

7. Pg. 79 of the Draft Addendum notes that the streets "would not be connected as through streets until the final phase of the development. The addendum fails to provide a measurable assessment of the walkability of the project and the phasing of the street will contravene successful walkability. Studies demonstrate that people will choose job locations, in part, based on walkability and thus it is important to provide the proper street alignment and design in the beginning to attract people with this interest and to develop the habit of walking. This also tied to the need for phasing the project to avoid freeway retail commercial and to site retail and services throughout the project rather than clustered in one freeway oriented location. Phasing bicycle trails and

interconnecting trails at the first phase is necessary to establish this pattern of getting around. To measure walkability the Addendum should apply LEED-ND grid pattern of streets. Depending on the density of the grid pattern the site plan is determined to be walkable.

8. At Addendum page 80 and 81 reference is made to “native grasses”, but the listed grasses are not native. Furthermore, the palette of plants has a few native plants, but the majority are not. Therefore, the Addendum fails to identify this as inconsistent with the General Plan policies of drought tolerant and native plants. This is particularly important in light of the proximity to the Suisun Marsh Preserve and the Sky Valley open space areas.

9. At Addendum page 81, there is reference to “wetlands fill” with potential and expected grading in streams. There is no assessment of the specific potential impacts to each of the wetland areas. CEQA does not recognize generic impacts. Each stream and wetland area must be described and specific mitigation measures identified.

10. Addendum page 84 “negligible wetlands” is used at Table 3 with reference to activities such as grading and road construction whose disturbance would likely be “minimized through compliance with standard wetland avoidance measures, which would likely be required by agencies permitting wetland fill”. CEQA does not support non specific assessment of wetlands and potential impacts and future “studies” and remedies.

ADD condition: Full delineation of wetlands, construction and fill potential shall be assessed and responsible agency requirement provided prior to filing vested tentative map.

11. Addendum page 86 notes that the mitigated project “would marginally promote alternative modes of transportation . . . and therefore . . . represents a slight improvement”.

ADD condition: designate site for Intermodal Transportation Station (consistent with Resolution adopted in 2004) and determine funding needs and Seeno contribution prior to filing tentative map.

12. Addendum admits own shortcomings with statement at page 107: “. . . based on the analysis conducted as part of this Addendum, it cannot be determined whether the mitigated project would avoid any other significant transportation and circulation impacts besides Impact TRANS-22”. Thus a supplement EIR is required.

ADD condition: there shall be a climate action plan prepared to adopt a VMT reduction program based on alignment of streets, transit and other methodology to reduce or avoid projects greenhouse gas emissions to a level and rate

consistent with goals of AB 32. Annual reporting and threshold triggers necessary to achieve AB 32 goals shall be part of the climate action plan. Plan to be submitted and approved prior to filing tentative map.

13. Addendum page 114 discussion of water makes no mention of the impacts of the Wanger decision on state water supplies.

14. Addendum page 118, refers to Master Plan that “would encourage energy efficiency and sustainable design . . . [and] would not achieve all of the feasible State strategies to reduce greenhouse gas emissions.” For instance, state strategies include water conservation since water supply and treatment are some of the biggest energy consumers. Water conservation would also save energy thus reduce greenhouse gases.

ADD condition: Use alternative energy, such as solar or windmills for water supply. Establish 20% water conservation for project demands. See plant material, recycling and grey water strategies. Develop a comprehensive Low Impact Development plan that incorporates LID in building design and function for interior and exterior water use and runoff.

15. **ADD** condition: This project is subject to city’s public art ordinance. Develop public art program for project as part of the Specific Plan prior to filing of tentative map.

16. Addendum page 118-119 statement about recommended measure, “. . . is not required to reduce the significant environmental impacts of the project . . .” is made to avoid the obvious need for a supplement EIR. Such avoidance does not make is correct.

17. **ADD** condition: Adoption of Specific Plan and Form Based Code will provide office and commercial uses by right without a use permit as long as such uses are consistent with Specific Plan and form based code.

18. **ADD** condition: Future permits shall affirm that the application is consistent with applicable CC&Rs prior to approval.

DRAFT CONDITIONS OF APPROVAL (following numbers refer to condition number)

13. **EXPAND**: Condition 13 to state that a single document shall be created and posted electronically for public review and monitoring. Routine reports determined by an adopted schedule shall be made to the Planning Commission and City Council on all conditions of approval.

14. Change Condition 14 to read, “Prior to issuance of a grading permit . . .”.

- 16. Add “prior” to filing tentative map.
 - 19. Add conservation easement overlay to open space. Easement to be held by city for specific purposes.
 - 21. Add, prior to filing tentative map there shall be an open space management plan reviewed and approved by PC/CC and subsequent annual review by Parks and Recreation Commission.
 - 25. Use metrics for condition. City of Emeryville LID program should be model.
 - 28. Add “Building must be located and oriented for energy efficiency and alternative energy siting . . .”
 - 36. Avoid curbs in order to capture street runoff into swales. Alternatively design “pipes” to capture water through curb and convey to landscaped area.
 - 42 and 43 – these actually deter walkability.
 - 49. Automatic irrigation may need to be used during severe droughts to avoid large plants dying.
 - 52. spell out requirements for placing in vaults or extensive screening.
 - 60. establish lumens standard to avoid night light pollution.
- new section: Form Based Code to incorporate or replace all Architecture conditions.
- Sustainable Design – amend to include metrics (see LEED-ND or comparable programs)
- Public Works Conditions – prior to filing tentative map, develop LID program to avoid parking lot, building and street runoff; include metrics.
- 98 (h) – ensure construction of all trails and bikeways (in new realignment pursuant to specific plan) in first phase.
- 103 (g) – must pay for 24-hour watch person (may be same as (f) and (g) but must be around the clock.
- 103 last paragraph – are impact fees new rates or 2002 rates?
- 126 (1) who pays for regular inspections – develop assessed fee for routine and annual inspections with enforcement provision.

141 – establish conservation easement maintenance district and after 5-year establishment, report annually as describe above.

186 – Add ITS as discussed above.

205 – typo, should be “most”

ATTACHMENT 1

SPECIFIC PLANS

A specific plan is a regulatory tool that local governments use to guide development in a localized area and to systematically implement the general plan. A specific plan is intended as a more detailed development plan than is a general plan.

WHAT DOES A SPECIFIC PLAN LOOK LIKE?

According to state law, a specific plan must be in the form of a map and a written text.

WHAT INFORMATION DOES IT CONTAIN?

State law (Government Code Section 65450 et seq.) states that a specific plan must include the following information: (1) the distribution, location, and extent of land uses, including open space, within the area covered by the plan; (2) the proposed distribution, location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other essential facilities proposed to be located within the area covered by the plan and needed to support the land uses described in the plan; (3) standards and criteria by which development will proceed, and standards for the conservation, development, and utilization of natural resources, where applicable; (4) a program of implementation measures including regulation, programs, public works projects, and financing measures necessary to carry out 1, 2, and 3, above; and (5) a statement of the relationship of the specific plan to the adopted general plan.

In simple terms, a specific plan will set forth goals, objectives, policies, and programs for development for the area within which they apply.

WHAT DETERMINES IF DEVELOPMENT IS SUBJECT TO A SPECIFIC PLAN?

In some instances, a developer may choose to prepare a specific plan simply because it is found to be desirable to have the development subject to a specific plan because of some practical reason, such as financing, marketing, or administration.

In other instances, the authority to require the preparation of a specific plan was delegated to local governments by the state legislature.

ATTACHMENT 2

Definition of a Form-Based Code

Draft Date: January 29, 2008

A method of regulating development to achieve a specific urban form. Form-based codes create a predictable public realm primarily by controlling physical form, with a lesser focus on land use, through city or county regulations.

Form-based codes address the relationship between building facades and the public realm, the form and mass of buildings in relation to one another, and the scale and types of streets and blocks. The regulations and standards in Form-based codes, presented in both diagrams and words, are keyed to a *regulating plan* that designates the appropriate form and scale (and therefore, character) of development rather than only distinctions in land-use types. This is in contrast to conventional zoning's focus on the micromanagement and segregation of land uses, and the control of development intensity through abstract and uncoordinated parameters (e.g., FAR, dwellings per acre, setbacks, parking ratios, traffic LOS) to the neglect of an integrated built form. Not to be confused with design guidelines or general statements of policy, Form-based codes are regulatory, not advisory.

Form-based codes are drafted to achieve a community vision based on time-tested forms of urbanism. Ultimately, a Form-based code is a tool; the quality of development outcomes is dependent on the quality and objectives of the community plan that a code implements. Form-based codes commonly include the following elements:

- *Regulating Plan.* A plan or map of the regulated area designating the locations where different form standards apply, based on clear community intentions regarding the physical character of area being code.
- *Public Space Standards.* Specifications for the elements within the public realm (e.g., sidewalk lanes, on-street parking, street trees, street furniture, etc.).
- *Building Form Standards.* Regulations controlling the configuration, features, and functions of buildings that define and shape the public realm.
- *Administration.* A clearly defined application and project review process.
- *Definitions.* A glossary to ensure the precise use of technical terms.

Form-based codes also sometimes include:

- *Architectural Standards.* Regulations controlling external architectural materials and quality.
- *Landscaping Standards.* Regulations controlling landscape design and plant materials on private property as they impact public spaces (e.g. regulations about parking lot screening and shading, maintaining sight lines, insuring unobstructed pedestrian movements, etc.).
- *Signage Standards.* Regulations controlling allowable signage sizes, materials, illumination, and placement.
- *Environmental Resource Standards.* Regulations controlling issues such as storm water drainage infiltration, development on slopes, tree protection, solar access, etc.
- *Annotation.* Text and illustrations explaining the intentions of specific code provisions.

