



**MEETING DATE: 08/09/16**  
**ITEM NO. 1**

## **COUNCIL AGENDA REPORT**

**DATE:** AUGUST 4, 2016

**TO:** MAYOR AND TOWN COUNCIL

**FROM:** LAUREL PREVETTI, TOWN MANAGER

**SUBJECT:** ARCHITECTURE AND SITE APPLICATION S-13-090 AND VESTING TENTATIVE MAP APPLICATION M-13-014. PROPERTY LOCATION: SOUTHERLY PORTION OF THE NORTH 40 SPECIFIC PLAN AREA, LARK AVENUE TO SOUTH OF NODDIN AVENUE. APPLICANT: GROSVENOR USA LIMITED. PROPERTY OWNERS: YUKI FARMS, ETPH LP, GROSVENOR USA LIMITED, SUMMERHILL N40 LLC, ELIZABETH K. DODSON, AND WILLIAM HIRSCHMAN. CONSIDER A REQUEST FOR THE CONSTRUCTION OF A NEW MULTI-USE, MULTI-STORY DEVELOPMENT CONSISTING OF 320 RESIDENTIAL UNITS, WHICH INCLUDES 50 AFFORDABLE SENIOR UNITS; APPROXIMATELY 66,800 SQUARE FEET OF COMMERCIAL FLOOR AREA, WHICH INCLUDES A MARKET HALL; ON-SITE AND OFF-SITE IMPROVEMENTS; AND A VESTING TENTATIVE MAP. APNS: 424-07-024 THROUGH 027, 031 THROUGH 037, 070, 083 THROUGH 086, 090, AND 100.

### RECOMMENDATION:

After opening and closing the public hearing, it is recommended that the Town Council accept the Planning Commission's recommendation and adopt a resolution (Attachment 12) denying the Architecture and Site and Vesting Tentative Map applications.

### BACKGROUND:

#### North Forty Specific Plan

On June 17, 2015, the Town Council adopted the North 40 Specific Plan, providing detailed land use and development guidance for the area bounded by Highway 17 to the west, Los Gatos

PREPARED BY: JOEL PAULSON  
Community Development Director

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Reviewed by: N/A Assistant Town Manager \_\_\_\_\_ Town Attorney \_\_\_\_\_ Finance

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MAYOR AND TOWN COUNCIL

SUBJECT: N. 40 PHASE I DEVELOPMENT APPLICATIONS/S-13-090 and M-13-014

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BACKGROUND (Continued):

Boulevard to the east, Lark Avenue to the south and Highway 85 to the north. The Specific Plan implements the General Plan through this detailed guidance for new development. The approval of the North 40 Specific Plan also amended the zoning of the property to North 40 Specific Plan to allow a total of 270 housing units and 501,000 square feet of non-residential uses (see pages 2-6 through 2-10 of the Specific Plan for details). An Environmental Impact Report (EIR) was prepared and certified for the Specific Plan in compliance with the California Environmental Quality Act (CEQA).

Proposed Development Applications

While the Specific Plan was going through its extensive public process (see page 4 of the Report to the Planning Commission for its March 30, 2016 meeting), Grosvenor USA Limited submitted Architecture and Site (A&S) and Vesting Tentative Map (VTM) applications for the portion of the Specific Plan area south of Noddin Avenue (see Exhibit 2 of Attachment 1). After the Specific Plan was approved, revised plans were submitted to the Town for the previously submitted applications.

The proposed development included in the A&S application includes: 260 residential condominiums/rowhomes, 10 rental apartments (including two live-work units), 50 affordable senior rental units, and 66,791 square feet of commercial floor area. The VTM proposes to subdivide the 20.7-acre Phase 1 project area into 113 lots, with up to 320 residential condominiums.

The Specific Plan and certified EIR require off-site improvements within the Town and Caltrans right-of-ways. The applicant is proposing to build the required improvements along Lark Avenue for the full build out of the Specific Plan area, and interim improvements for Phase 1 along Los Gatos Boulevard. Specific on-site and off-site improvements are discussed in the Report to the Planning Commission for its March 30, 2016 meeting on pages 11 through 15 (Attachment 1). Full implementation of the improvements in the right-of-ways will require continued coordination between the applicant, the Town, and Caltrans.

Story Poles for the Proposed Applications

As part of the development application process, proposed projects are required to install story poles. On February 16, 2016, consistent with the Town's Story Pole Policy, the Town Council approved a Story Pole Exception for the Phase 1 development applications to provide for a reduced time frame and other exceptions given the existing uses on the properties.

On April 19, 2016, the Town Council denied a subsequent request to modify the approved Story Pole Exception, and requested a joint Study Session with the Town Council, Planning Commission, and associated School District Boards. On May 4, 2016, the story poles were certified as complete in accordance with the approved Story Pole Exception. The February motion for the exception allowed the poles to be installed for 60 days "sandwiched between

BACKGROUND (Continued):

Planning Commission meetings.” The Study Session was held on June 15, 2016 and the verbatim minutes for that meeting are included in Exhibit 28 of Attachment 5.

On June 29, 2016, the Town Council discussed the original Story Pole Exception and provided clarification that the primary story poles, except for those that are a detriment to tenants (e.g., along Los Gatos Boulevard), should be kept up through August 9, 2016, the first Town Council meeting scheduled to review the Phase 1 development applications.

Planning Commission Hearing and Recommendation

On March 30, 2016, the Planning Commission opened the public hearing on the applications, took public testimony, and continued consideration of the applications to April 27, 2016. The Commission could not take an action because the story poles had not been completely installed in accordance with the approved Story Pole Exception. On April 27, 2016, the Planning Commission continued the applications to a date uncertain given the Council’s action on April 19, 2016 calling for a Study Session in mid-June. After the Study Session, the Town noticed the hearing for the Planning Commission’s consideration of the North 40 applications for a meeting on July 12, 2016.

On July 12, 2016, the Planning Commission opened the public hearing, heard public testimony, closed the public comment portion of the public hearing, and began to ask questions of the applicant team. The item was continued to the following night due to the lateness of the hour.

On July 13, 2016, the Planning Commission concluded its questions of the applicant and staff, and deliberated on the applications. The Commission voted 4-2-1 (Commissioners Erikson and O’Donnell opposed, and Commissioner Burch recused) to recommend that the Town Council deny the proposed development applications based on findings that:

- The project is not consistent with the General Plan and the North 40 Specific Plan.
- Specifically, the project does not address the unmet needs for senior housing as noted in Section 2.4 and Appendix C of the Specific Plan.
- The project does not incorporate views adequately in the layouts as called out in Open Space Policy 01 View Preservation and does not comply with Design Guideline 3.2.1.d. Site Planning and Design, and Section 3.2.6.e.i. Building Elements and Articulation which states “Special care shall be taken to avoid obstructing views to the surrounding hills.”
- The project’s economic study as required in Section 2.4.2 was flawed because it did not consider the downtown Conditional Use Permit and parking requirements.
- The units should be smaller, typical of the examples cited on page 6 of the Planning Commission Report for its July 12, 2016 meeting.
- The project does not comply with Policy DG6 Architecture particularly for buildings 24 and 25.
- The Specific Plan envisions lower intensity residential uses in the Lark District.

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BACKGROUND (Continued):

While not explicitly part of the motion, the Commission acknowledged that a redistribution of the housing units within the application area or larger district would be one way to address the concerns regarding intensity and views.

Verbatim minutes of the Commission's meetings are contained in Exhibit 27 of Attachment 1 (March 30, 2016), Attachment 9 (July 12, 2016), and Attachment 10 (July 13, 2016).

DISCUSSION:

Overview

The Town Council is the deciding body for the proposed development applications. These actions are quasi-judicial in that the Council will be applying the adopted General Plan, North 40 Specific Plan, and other Town documents in its evaluation of the proposals. In making its decision, the Council will need to make findings (Attachment 11) based on the facts in the record. As with the Planning Commission decision, the Council will need to cite specific sections of the Specific Plan and/or specific attributes of the development applications as facts to support the findings.

Permit Streamlining Act

As communicated to the Town Council and Planning Commission (see Exhibit 29 of Attachment 1), the Council must complete its work by September 7, 2016. To this end, dates have been reserved for the Council to conduct its hearing and deliberations on the North 40 applications. These dates include August 9, 11, and 16, and September 1 and 6, 2016. August 16 and September 6 are regular sessions of the Town Council and other Town business may need to be conducted on those dates.

Due to these time constraints, the applications must be evaluated against the existing, adopted North 40 Specific Plan.

In the course of its deliberations, the Council may identify future changes to the Specific Plan document which would need to be evaluated and considered through the process identified in State law. The process includes environmental review, a Planning Commission public hearing and recommendation to the Town Council, and a Town Council public hearing. The Town Council is the deciding body for final action on proposed amendments to a Specific Plan and any associated General Plan amendments to maintain consistency between the two documents. It is difficult to predict the length of time associated with the process without an understanding of the potential changes to the Specific Plan.

Legal Issues related to "By Right" Development and the Housing Element

Each community's General Plan must include a Housing Element, which outlines a long-term plan for meeting the community's existing and projected housing needs.

DISCUSSION (Continued):

The Housing Element demonstrates how the community plans to accommodate its “fair share” of its region’s housing needs. To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. Communities also identify regulatory barriers to housing development and propose strategies to address those barriers. State law requires cities and counties to update their Housing Elements every eight years.

The Town’s Housing Element required adoption of the North 40 Specific Plan with certain development assumptions in order to meet existing and projected housing needs in the Town and to obtain certification of the Housing Element from the State. The Town’s Housing Element (Action HOU 1.7) required the Town to rezone 13.5 acres within the North 40 Specific Plan Area to comply with a minimum density of 20 units per acre and establish “by-right” development for these units. More specifically, the Town’s Housing Element states:

Additional opportunities for affordable housing are being facilitated through the consideration of the North 40 Specific Plan and associated rezoning of 13.5 acres with a minimum density of 20 units per acre to yield 270 units. The Specific Plan would provide certainty regarding objective criteria in the form of development standards and design guidelines that would be implemented through “by right development” in the consideration of Architecture and Site applications. This process involves site and architectural review and if a proposal meets the objective criteria in the Design Guidelines, then the project is approved. Therefore, the Planning application process and review is not an undue burden or constraint on the production of affordable housing.

The Town will re-zone 13.5 acres within the North 40 Specific Plan area within three years of Housing Element adoption at minimum a density of 20 dwelling units per acre to facilitate affordable housing production. After rezoning, owner occupied or multiple family development will be by-right as defined by not requiring a conditional use permit or other discretionary approval; however, design review according to the objective standards contained in the Specific Plan can occur.

Based upon the Town’s Housing Element, the Town cannot require a Conditional Use Permit, Planned Unit Development Permit, or other discretionary review or approval for the applications. In addition, the applications are entitled to “by right” development. This means that the Town must only apply the objective standards found in the North 40 Specific Plan in its review, analysis and determination whether to approve or deny the applications. These same legal principles are set forth in the letter from the applicant’s attorney dated July 7, 2016. The Town Attorney and staff agree with the legal analysis set forth in this letter that “conditions cannot be imposed on the project unless they are required by objective standards and policies, and the Town cannot use subjective criteria and findings to condition or deny the Planning Applications.”

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DISCUSSION (Continued):

However, the Town Attorney and staff disagree that the Town does not have the discretion to either modify or deny the project based upon its determination that the application does not comply with objective North 40 Specific Plan standards and criteria.

As discussed at the Study Session in mid-June, the Town's certified Housing Element is part of the Town's General Plan and is a plan for meeting the Town's fair share of the regional need for housing through 2023, known as the Regional Housing Need Allocation (RHNA). The North 40 was one of the Housing Element sites in Los Gatos. The Housing Element included an action item for the Town to adopt the North 40 Specific Plan and rezone the property. This action was completed in 2015.

As a Housing Element site, development proposals are considered "by right" and no additional environmental assessment or discretionary permits, such as Conditional Use Permits can be required.

By law, the Town reports on its annual progress in implementing the Housing Element and the Council reviews the annual report typically in early March. The Town reports its progress on the Housing Element action items as well as summarizing the number of building permits issued for new homes, BMP units, and any other affordable housing activities. The State typically accepts these reports with no comment.

In the next Housing Element cycle, the Town will perform an assessment of all the new housing produced in the prior planning period (i.e., 2015 through 2023) by income category. This is simply a reporting with no penalty if housing is not produced in the quantities identified by the prior Housing Element.

In addition, a new RHNA number will be determined for each jurisdiction and then the new Housing Element will need to identify sites to meet the new RHNA number. Typically, the methodology to distribute the RHNA between Bay Area cities is independent of past RHNA numbers; however, cities typically compare numbers between RHNA cycles to determine trends, distribution among cities, etc. California cities prepare Housing Elements and seek certification from the State to maintain its General Plan in good standing to allow home remodels and other building permit activity, seek State funding for capital improvements when available, and demonstrate consistency with State law.

If the development applications are not approved, the North 40 Specific Plan and zoning remain in effect for other future applications. The Housing Element remains unchanged.

If the Council directs modifications to the Specific Plan (and hence the zoning), the Housing Element may also need to be modified depending upon the scope of the changes to the Specific Plan. Any future modifications would not apply to the current, pending applications.

DISCUSSION (Continued):

State Density Bonus

The State Density Bonus Law is one of several California statutes designed to implement an important state policy to promote the construction of low-income housing and to remove impediments to the same. When the Legislature adopted the State Density Bonus Law, it declared that the housing shortage crisis must be addressed and that the State should rely on local governments to provide the necessary increased housing stock and that local discretion and powers shall not be exercised in a manner to frustrate the purposes of the State Density Bonus Law. The Density Bonus Law applies to all cities and towns. It requires cities and towns to adopt an ordinance that specifies how local compliance with the statute will be implemented.

The Town adopted a State mandated Density Bonus Ordinance in 2012 (Ordinance 2209, Exhibit 18 of Attachment 1). The Ordinance was intended to comply with the State's Ordinance (Gov't Code Section 65915-65918, Exhibit 17 of Attachment 1) and its requirements. If requested, the Density Bonus and up to three concessions must be granted.

The proposed application includes 50 affordable senior rental units. 49 units are proposed to be very low and extremely low income (defined as 30 to 50% of the median income of Santa Clara County, which is \$107,100 in 2016), and one manager unit would be moderate income (defined as 120% of median income of Santa Clara County). The proposed number of VLI units is in excess of 11 percent of the base number of units (237 units); therefore the application qualifies for the requested Density Bonus of 35 percent (83 units).

The State Density Bonus Law provides that an applicant may request a waiver or reduction of development standards that would have the effect of physically precluding the construction of the project at the densities permitted under the statute. "Development standard" means a site or construction condition, including, without limitation, local height, setback, floor area ratio, on-site open space, and parking ratio requirements that would otherwise apply to residential development under local ordinances, general plan elements, specific plans, charters, or other local condition, law, policy, resolution, or regulation.

The waivers or reductions of development standards requested by the applicant are discussed within the applicant's Density Bonus Letter (Exhibit 19 of Attachment 1) provided by Barbara Kautz, Partner with Goldfarb Lipman Attorneys. The applicant's Density Bonus Letter provides supporting documentation explaining why certain development standards, if applied, would preclude the applicant from being able to provide the necessary density. The requested waivers and reductions in development standards are:

- Definition of height: The Specific Plan's definition of height aligns with that in Town Code (29.10.020) and includes the measurement from existing or proposed grade (whichever is lower) to the ridge directly above the grade. The applicant is requesting an exception to the inclusion of existing grade due to the topographical constraints in certain locations on the site. The proposed application would utilize the 35-foot maximum height as established by

DISCUSSION (Continued):

the proposed/finished grade. The proposed grade varies from the existing grade between zero to five feet depending on the location.

- Maximum permitted height for the senior/mixed use market hall building: The Specific Plan permits the mixed use/market hall building to be up to 45 feet in height, and does not permit the standard exceptions to height provided within Town Code. The proposed mixed use/market hall building includes several areas that exceed 45 feet in height. The requested exception would allow the senior/ mixed use market hall building to have a maximum height of 53 feet.

In order for the Town to deny a waiver or reduction of a development standard, findings must be made, based upon substantial evidence, that the waiver or reduction would have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low income, very low income, and moderate income households. The State Density Bonus law defines “specific adverse impact” as a significant, quantifiable, direct, and unavoidable impact, based on objective, and identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete.

The Town’s Below Market Price (BMP) Guidelines (Exhibit 20 of Attachment 1) require that affordable units be comparable in size, type, and finish (i.e., materials) to the market rate units and that the location of the affordable units be dispersed throughout the development to the extent feasible. The Characteristics of BMP Units on page 4 of the BMP Guidelines discuss these requirements.

The applicant is proposing the following deviations from the BMP guidelines: aggregating all of the affordable housing into a single affordable senior housing component, providing smaller units than the market rate units, and offering rental units when the market rate units are for sale units. The applicant has provided a response and justification to the proposed deviations from these Guidelines (Exhibit 19 of Attachment 1). Exhibit 19 of Attachment 1 also contains a BMP Plan which discusses the limitations of a senior restricted use based on State and Federal law.

Technical Requirements

The proposed applications went through the Town’s development review process, including review and evaluation by Planning, Building, and Engineering staff, referrals and evaluations by outside agencies, and review by the Town’s Consulting Architect, Historic Preservation Committee (HPC), and Conceptual Development Advisory Committees (CDAC). The Report to the Planning Commission for its March 30, 2016 meeting (Attachment 1) discusses the technical issues of parking, open space, trees, demolition, General Plan conformance, and results of discussions with the Town’s Consulting Architect, HPC, and CDAC. Additional

DISCUSSION (Continued):

information regarding development intensity and follow up issues from the Study Session can be found in the Report to the Planning Commission for its July 12, 2016 meeting (Attachment 5).

Based on the analysis in earlier reports, the proposed applications meet the technical requirements of the Specific Plan. These are: Development Capacity, Development Standards, and Design Guidelines. Below is a discussion of some of the requirements contained in the Specific Plan for each category.

Development Capacity

- Section 2.2 Land Use Policy LU4: Maximum Commercial Development: Commercial development within the Specific Plan Area shall be complementary to Downtown through the careful control of uses and permitted square footage as set forth in the Maximum Development Capacity Table (refer to Table 2-2).

The project would provide a mix of commercial uses, including a market hall/specialty market use, which is permitted in the Transition District (Table 2-1 Permitted Land Uses). Overall, the project would provide 66,800 square feet of commercial development, which is within the Maximum Development Capacity of 435,000 square feet of new non-residential development as allowed in the Specific Plan Area (Table 2-2 Maximum Development Capacity).

- Section 2.2 Land Use Policy LU9: Maximum Residential Development: The maximum number of residential units will be limited as set forth in the Maximum Development Capacity Table (refer to Table 2-2).

Consistent with the district-based approach in the Specific Plan, the project would provide Townhome/Garden Clusters, Rowhouses, and Condominium Clusters, which are permitted in the Lark District; and Rowhouses, Condominium Clusters, Senior Affordable Apartments, Live-Work Lofts, and Apartments, which are permitted in the Transition District (Table 2-1 Permitted Land Uses). The number of base residential units proposed is 237 of the 270 set forth for the Specific Plan Area (Table 2-2 Maximum Development Capacity). Because the project qualifies for a Density Bonus of 35 percent, the 83 density bonus units do not count towards the maximum residential development capacity allowed in the Specific Plan.

Development Standards

- Section 2.2 Land Use Policy LU5: Building Height: Building heights within the Specific Plan Area shall be consistent with the Specific Plan Development Standards.

Consistent with the Specific Plan Development Standards (Section 2.5.2 Building Height), 29% of the overall development in the Lark District would maintain a

DISCUSSION (Continued):

maximum of two-stories and 25 feet, where 15% is required. Buildings located within 50 feet of Lark Avenue or Los Gatos Boulevard would have a maximum height of 25 feet consistent with Section 2.5.7 Perimeter Overlay Zone.

Where the maximum height requirement, excluding affordable housing, of 35 feet as established by existing grade, would preclude the project from being able to provide the necessary density; the project requests a density bonus waiver to utilize the 35-foot maximum height as established by the proposed/finished grade, which varies from zero to five feet. Similarly, where the maximum height requirement of 45 feet for mixed-income development would preclude the applicant from being able to provide the necessary density, the project requests a density bonus waiver that would allow the senior/mixed use market hall building to reach heights of up to 53 feet in a limited number of areas.

Consistent with the Specific Plan Development Standards, buildings would be setback a minimum of 30 feet from Lark Avenue and Los Gatos Boulevard, and a minimum of 24 feet from South 'A' Street, with exceptions as allowed (Table 2-5 Primary Frontage Setbacks and Table 2-6 Non-Residential/Mixed-Use Setbacks). No building would be located within 30 feet of a property line adjacent to the freeway (Section 2.5.7 Perimeter Overlay Zone).

- Section 2.5.3 Open Space Policy O3: Neighborhood Open Space Network: Provide an open space network of neighborhood parks, passive open space, plazas, pedestrian paseos, landscape buffers and/or common open space per Specific Plan Open Space Standards.

39 percent of the project area would be open space, where 30 percent is required; approximately 23 percent of the project area would be green open space, where 20 percent is required (Table 2-3 Minimum Open Space Requirements); and approximately 85 percent of the project open space would be publicly accessible, where 20 percent is required (2.5.4 Open Space Standards).

- Section 2.5.8 Parking Requirements

The project would provide 650 residential parking spaces, where 648 are required (Table 2-4 Residential Off-Street Parking Space Requirement); and 389 commercial/non-residential parking spaces, where 216 are required (2.5.8 Parking Requirements). Consistent with the Parking Standards, the project would consolidate parking into structures, minimize at-grade parking, and increase open space and pedestrian areas.

DISCUSSION (Continued):

Design Guidelines

- Section 3.1 Architectural and Site Character Design Guideline Policy DG1: Neighborhood Design: Promote a healthy, safe, and secure walkable neighborhood environment

The Specific Plan Design Guidelines work in tandem with the Development Standards to implement the architectural design at a human-scale to create a neighborhood with a robust pedestrian and bicycle circulation network. The project proposes buildings that would be oriented towards the street, minimizing street-facing garages and providing visible entries to support a strong pedestrian and retail environment (3.2.1 and 3.3.1 Site Planning and Design). The proposal includes bicycle amenities and multi-modal paths, physically separated from vehicle roadways that provide connectivity to perimeter paths (4.8 Pedestrian Circulation and 4.9 Bicycle Travel).

- Section 3.1 Design Guideline Policy DG2: Neighborhood Identity: Create a new neighborhood that has its own identity yet complements the existing character of Los Gatos.

The project design would create a new neighborhood with its own identity. The Town's Consulting Architect found that the project design has incorporated a texture and character of a neighborhood that has evolved over a much longer time frame, providing high quality design with detail and diversity. Consistent with the Historic Preservation Committee review of the project, wide sidewalks and paths have been designed to be lined with landscape features, including orchard trees, in order to integrate a sense of the agrarian landscape into the project (3.2.4 Architectural Style). Buildings have been designed to minimize visual bulk and relate to the human scale of pedestrians on the street. Wall planes are varied, massing steps down to the street, and blank walls are minimized by providing recesses or adding projections (3.2.5 Building Form and 3.3.6 Building Form and Articulation).

The design would complement the existing character of Los Gatos by establishing compatible maximum project heights, and integrating lower heights and a landscape buffer planted with orchard trees in the Perimeter Overlay Zone where the project height steps down to existing neighborhoods (2.5.9 Primary Street Frontage Setbacks and 3.4 Neighborhood Identity).

ENVIRONMENTAL ASSESSMENT:

Certified Environmental Impact Report and Subsequent Initial Study

The Town Council certified a Program EIR for the North 40 Specific Plan on January 20, 2015 (Resolution 2015-002). An Initial Study was prepared to analyze the proposed uses and improvements associated with the Phase 1 project (Exhibit 3 of Attachment 1). The Initial

ENVIRONMENTAL ASSESSMENT (Continued):

Study concludes that the proposed development applications for Phase 1 comply with the environmental analysis completed with the certified EIR, and therefore no additional environmental analysis is required for the proposed applications. The recommended conditions of approval (Exhibit 6 of Attachment 1) include a condition requiring implementation of the applicable mitigation measures from the adopted Mitigation Monitoring and Reporting Program.

In addition, as a “by right” development, additional CEQA analysis is not required because the proposal (A&S) is not a “project” as defined by CEQA. In other words, the applicant voluntarily completed a new Initial Study beyond the State law requirements.

Thresholds for Additional Environmental Review

At the Study Session, the participants inquired as to the criteria that need to be met for further analysis. Pursuant to CEQA there are three types of additional analysis that can be required after an EIR is certified: a Subsequent EIR, a Supplement to an EIR, and an Addendum to a previous EIR.

A Subsequent EIR can be prepared for projects that change substantially due to new information, a changed project description, or changed circumstances within which the project would take place. Generally, new information requiring a Subsequent EIR would pertain to significant effects that were not previously analyzed. In order to require a Subsequent EIR, the Town must determine, pursuant to CEQA Guidelines Section 15162, based on substantial evidence in the light of the whole record, one or more of the following:

- Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified, shows any of the following:
  - The project will have one or more significant effects not discussed in the previous EIR;
  - Significant effects previously examined will be substantially more severe than shown in the previous EIR;
  - Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

ENVIRONMENTAL ASSESSMENT (Continued):

- Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

A Supplement to an EIR may be prepared for projects in which only minor changes would be necessary to make the previous EIR adequate for the project as revised. A Supplement to an EIR may be circulated by itself without recirculating the previous Draft or Final EIR, but the Supplement must receive the same circulation and review as the previous EIR (CEQA Guidelines Section 15163).

An Addendum to a previous EIR is appropriate where that EIR adequately analyzed the project and if there are only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent or supplemental EIR have occurred (CEQA Guidelines Section 15164).

Since traffic is the key issue of concern and because additional analysis was completed that did not uncover new impacts, no further environmental clearance is necessary beyond the certified EIR which provides the mitigation measures that the Phase 1 applications would need to implement if approved.

Traffic

The EIR for the North 40 Specific Plan included a full Traffic Impact Analysis (TIA). The TIA studied the impact of the full build out of the North 40 Specific Plan on the existing roadways. The analysis concluded that the full build out would result in significant traffic impacts at several intersections, and identified mitigation measures to reduce those impacts to a less than significant level.

As noted in the March 30, 2016 Planning Commission staff report (Attachment 1), the Phase 1 TIA included in the Initial Study for the Phase 1 applications (Appendix D of the Initial Study in Exhibit 3 of Attachment 1) studied the potential traffic impacts specific to the Phase 1 development applications, and found that the Phase I development applications would generate a portion of the North 40 Specific Plan build out traffic. As required by the North 40 Specific Plan EIR, the Phase 1 applications, if approved, are required to pay traffic impact mitigation fees and construct on-site and off-site improvements as part of the required mitigation. In other words, the Initial Study and the additional traffic analysis did not find new significant impacts and therefore, no additional mitigation measures are required.

POTENTIAL TEMPLATE FOR COUNCIL DELIBERATION:

In its deliberations on the applications, the Council has the discretion to evaluate the application based on the objective standards contained in the North 40 Specific Plan, such as the Land Use and Development Standards. The Council should identify specific facts associated with the

POTENTIAL TEMPLATE FOR COUNCIL DELIBERATION (Continued):

application to support the needed findings.

To assist the Council in its deliberations, below is a suggested sequence of the issues for the Council's consideration, following the sequence of the Technical Requirements section of this report.

- Maximum Development Capacity
  - If the Council determines that number and distribution are not consistent with the Specific Plan, then the Council must give a rationale and identify a revised housing yield and/or distribution that would be consistent with the Specific Plan. Specific facts must be articulated for the record.
  - Staff will assist the Council through the related issues of density bonus and by-right development in this discussion.
- Development Standards
  - Discussion of building heights, setbacks, parking, and open space requirements.
- Design Guidelines
  - Discussion of how the project site planning and architecture create an individual identity within and complementary to the identity of the larger Town context.

CONCLUSION:

For the reasons stated in this report, the Planning Commission is recommending denial of the applications (Attachment 11). The Council is welcome to identify additional evidence from the record and the Specific Plan to support its decision.

ALTERNATIVES:

Alternatively, the Town Council can:

1. Continue the hearing to a date certain; or
2. Adopt a resolution (Attachment 13) approving the applications as proposed by the applicant; or
3. Adopt a resolution (Attachment 13) approving the proposed applications with modifications to the project. All modifications must be specific such that additional permit conditions can clearly describe the modifications. These modifications would be administratively reviewed to the satisfaction of the Community Development Director prior to recordation of a map or prior to the issuance of building permits.

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SUBJECT: N. 40 PHASE I DEVELOPMENT APPLICATIONS/S-13-090 and M-13-014

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COORDINATION:

The information provided in the Planning Commission reports, this report, and in the analysis of the applications was coordinated with the Town Attorney's Office, Town Manager's Office, Parks and Public Works Department, Santa Clara County Fire Department, the Historic Preservation Committee, the Conceptual Development Advisory Committee, the Bicycle and Pedestrian Advisory Committee, Caltrans, Valley Transportation Agency, and the Silicon Valley Bicycle Coalition.

Attachments (previously received under separate cover):

1. March 30, 2016 Planning Commission Staff Report (includes Exhibits 1-21)
2. March 30, 2016 Planning Commission Addendum (includes Exhibits 22-23)
3. March 30, 2016 Planning Commission Desk Item (includes Exhibits 24-25)
4. April 27, 2016 Planning Commission Staff Report (no exhibits for this report)
5. July 12, 2016 Special Planning Commission Staff Report (includes Exhibits 26-31)
6. July 12, 2016 Special Planning Commission Addendum (includes Exhibits 32-33)
7. July 12, 2016 Special Planning Commission Desk Item (includes Exhibits 34-35)
8. July 13, 2016 Planning Commission Desk Item (includes Exhibits 36-39)
9. July 12, 2016 Special Planning Commission Meeting Verbatim Minutes
10. July 13, 2016 Planning Commission Meeting Verbatim Minutes

Received with this staff report:

11. Required Findings and Considerations
12. Draft Resolution to deny the applications
13. Draft Resolution to approve the applications (includes Exhibit A, Findings and Exhibit B, Conditions of Approval)
14. Public comments received between 11:01 a.m. July 13, 2016 and 11:00 a.m. August 4, 2016
15. Additional information from the applicant, received July 29, 2016 (11 pages)

Distribution:

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