



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 26, 2024

TO: Mayor and Members of the City Council

VIA: Dante Hall, City Manager

SUBMITTED BY: Timothy Rood, AICP, Community Development Director

SUBJECT: Five Year Extension of the Expiration Date of the Vesting Tentative Map No. 9533 and Amendment #4 to the Development and Owner Participation Agreement (DOPA 07-01) for the Hill Town Project

RECOMMENDED ACTION:

Staff recommends that the City Council approve adoption of Hill Town Amendment #4 to extend the term of the Development and Owner Participation Agreement (DOPA 07-01) by and between the City of Hercules and the Santa Clara Valley Housing Group, Inc. and authorize the City Manager to execute the amended DOPA if it is substantially similar to the approved draft (Attachment 2A), to extend the expiration date of the Vesting Tentative Map No. 9533 for the Hill Town project and finding the actions are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

PLANNING COMMISSION RECOMMENDATION:

On March 4, 2024, at their regularly scheduled meeting, the Planning Commission approved Resolution No. 24-01 (Attachment 3), recommending City Council approval of the adoption of Amendment #4 to extend the term of the Development and Owner Participation Agreement (DOPA 07-01) by and between the City of Hercules and the Santa Clara Valley Housing Group, Inc. and to extend the expiration date of the Vesting Tentative Map No. 9533 for the Hill Town project for a period of five (5) years, with a new expiration date of April 14, 2029.

BACKGROUND:

The Applicant, Santa Clara Valley Housing Group, Inc. (SCVHG), has requested an entitlement extension of DOPA 07-01 and the Vesting Tentative Map No. 9533. Pursuant to their letter of request, dated February 13, 2024 (Attachment 4), the current request for the fourth DOPA revision and the extension of the Vesting Tentative Map is due to financial constraints, rising construction costs and inflation. The requested extension is for five (5) years, which would end on April 14, 2029.

Project Overview

As approved, Hill Town would include 30 Moderate-Income affordable units per its development agreement and conditions of approval. This is 23% of the City's Moderate-Income Regional Housing Needs Allocation (RHNA) for the 6th cycle (2023-31).

Project conditions of approval require the following community benefits:

- 5% of units affordable to Moderate-Income residents (30 affordable units);
- Bus facilities such as turnouts along San Pablo Avenue and "Dial-A-Ride" passenger pick-up areas within the Hill Town development;
- \$5,000 per unit in-lieu fee (approximately \$3 million total) for the City to use at its discretion for parks and recreation; and,
- Multiple parks, a new traffic signal on San Pablo, and a new sidewalk connecting from the top of San Pablo to Safeway.

The Hill Town site ranges in elevation from 20 to 160 feet, with many steep slopes. Due to the site's location, condition and topography, extensive corrective grading, geotechnical work and fill are required to create level sites for development to occur. The site has active oil lines, EBMUD transmission mains and PG&E transmission lines, all of which need to be relocated outside of the development area. A less efficient grading operation is required to keep the existing lines active while the new alignments and facilities are constructed before the switchover. The site requires a 1,200-foot off-site sewer extension, estimated at \$558,000 (September 2022). Total off-site improvements were estimated at \$4,477,000, equivalent to about \$7,500 per unit. Phase 1 total sitework and onsite infrastructure costs were estimated at \$37.9 million.

If the entitlements lapse as scheduled on April 14, 2024, the site will revert from the approved Planned Development Plan to underlying zoning of PC-R Planned Commercial-Residential Mixed-Use District

Rezoning any housing site to a lower density or non-residential use, or approval of a subsequent project with fewer units than assumed in the Housing Plan, will require the City to make up the lost housing capacity by upzoning other sites per the "no net loss" provisions of Government Code Section 65863 (SB 330). The City's Housing Plan shows only 12 units of "surplus capacity" for moderate-income units based on the state-mandated density assumptions for vacant and underutilized sites. Therefore, losing the

Hill Town project's 30 moderate-income units would create a deficit of 18 moderate-income units that would need to be accommodated elsewhere in the city.

Prior DOPA Amendments

The City Council previously approved three (3) amendments to the original DOPA for the Hill Town site:

DOPA Amendment 1 – Approved by Ordinance 509 on May 8, 2018. The City and Property Owner amended the DOPA for the following reasons:

- Clarify that the Owner is responsible for all design, construction, and installation of required stormwater control and clean water requirements applicable to the project at time of construction.
- Clarify that the in-lieu sports facility fee of \$5,000 per unit (approximately \$3 million total) can be used by the City for any recreational and park related purpose.
- Clarify the Owner's obligation to provide affordable housing.

DOPA Amendment 2 – Approved by Ordinance 516 on January 8, 2019. The City and Property Owner amended the DOPA for the following reason:

- A four (4) month extension to allow the Developer to explore retail opportunities on the subject property.

DOPA Amendment 3 – Approved by Ordinance 525 on December 10, 2019. The City and Property Owner amended the DOPA for the following reasons:

- Modified the Land Use Term of the DOPA to "*June 30, 2020 or the date four months after the date on which the City Council opens the first public hearing on the tentative map application for the Project, whichever is later...*".
- Created a payment date for the remaining Environmental Impact Report funds.
- Clarified the Affordable Housing timing, "*...an Affordable Housing Plan to be agreed to and executed by the Parties prior to issuance of the first residential unit building permit for the Project.*"

Administrative Extension

On September 27, 2022, at the Applicant's request, based upon the cost of off-site sewer improvements and the approval of a Final Map on September 14, 2021, the Vesting Tentative Map No. 9533 approval was administratively extended for 48 months pursuant to California Government Code 66452.6(a) and is set to expire on April 14, 2024 if not extended. While an extension application is under review, State law provides for an

automatic extension of the Vesting Tentative Map expiration for up to 60 days, pursuant to California Government Code 66542.6(e).

ANALYSIS:

Under the Original DOPA and Hercules Municipal Code Section 10-8.402, the procedure for proposing and adopting an amendment to the development agreement is the same as the procedure for entering into an agreement in the first place. Modification of the DOPA, in this instance, therefore, requires a public hearing review by the Planning Commission with a recommendation in the form of a Resolution to the City Council followed by a public hearing before the City Council and consideration of an Ordinance.

Development and Owner Participation Agreement (DOPA 07-01):

Section 10-8.301 of the Municipal Code, *Determination by Planning Commission*, allows the Planning Commission to make a recommendation to the City Council only if certain findings (listed below) are made with supporting facts. The City Council, likewise, in Hercules Municipal Code Section 10-8.302, may accept, modify or disapprove the recommendation of the Planning Commission. Further, the City Council may not approve the development agreement unless it finds that the provisions of the agreement are consistent with the General Plan and any applicable specific plans:

Finding #1: *Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan.*

Facts: The proposal to extend the expiration date of DOPA 07-01 does not bring the Hill Town project out of compliance with the objectives, policies, general land uses and programs in the General Plan. Further, compliance was confirmed through the original approvals.

Finding #2: *Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located.*

Facts: The proposal to extend the expiration date of DOPA 07-01 does not modify the previously approved uses, thereby allowing the Hill Town project to remain compatible with applicable uses and regulations.

Finding #3: *Is in conformity with public convenience, general welfare and good land use practice.*

Facts: The proposal to extend the expiration date of DOPA 07-01 does not modify the original approvals for the Hill Town project, therefore the project continues to be in conformity with public convenience, general welfare and good land use practice.

Finding #4: *Will not be detrimental to the health, safety and general welfare.*

Facts: Modification of the expiration date of DOPA 07-01 will not result in physical modifications to the site or to the approved design, therefore health, safety and general welfare will be maintained.

Finding #5: *Will adversely affect the orderly development of property or the preservation of property values.*

Facts: The proposal to extend the expiration date of DOPA 07-01 will not alter the approved entitlements. Rather, it will provide an additional five (5) years for the Development Team to start construction per the adopted plan. The allowance of additional time will not adversely affect the orderly development of property or preservation of property values.

Vesting Tentative Map (VTM #9533):

Hercules Municipal Code Section 10-2.3.105(c) requires a Vesting Tentative Map to be processed in the same manner as a Tentative Map. Per Hercules Municipal Code Sections 10-2.306-311, a Tentative Map is subject to a Public Hearing before the Planning Commission with a recommendation, via Resolution, to the City Council. The City Council, likewise, processes the Vesting Tentative Map through a public hearing and issues a decision through an Ordinance.

Section 10-2.3.103 of the Municipal Code, *Consistency*, allows an extension of entitlement related to the vesting tentative map only if the finding (listed below) is made with a supporting fact:

Finding #1: *No land shall be subdivided and developed pursuant to a vesting tentative map for any purpose which is inconsistent with the Hercules General Plan and any applicable specific plan or not permitted by the zoning ordinance or other applicable provisions of this Code.*

Facts: Extending the approval timeframe of the Vesting Tentative Map and the DOPA for a period of five (5) years, until April 14, 2029, does not bring the Hill Town project out of compliance with the objectives, policies, general land uses and programs in the General Plan, and compliance was confirmed through the original approvals. No specific plan is applicable to this area. Compliance with the zoning ordinance and other applicable Municipal Code provisions was also confirmed through the original approvals, and extending the approval timeline does not bring the Hill Town project out of compliance.

ENVIRONMENTAL REVIEW

The five (5) year extension request, Amendment #4 to DOPA 07-01 and extension of the Hill Town Vesting Tentative Map, has been determined to be Categorical Exempt from CEQA pursuant to Section 15061(b)(3) of the California Environmental Quality Act

Guidelines. This Exemption is known as the “Common Sense Exemption” that CEQA applies only to projects where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; therefore, the subject request is not subject to CEQA.

FISCAL IMPACT:

There are no direct fiscal impacts associated with this item.

ATTACHMENTS:

Attachment 1 - Staff Report

Attachment 2 - Draft Ordinance

Attachment 2A – Draft DOPA Amendment #4

Attachment 3 – Planning Commission Resolution

Attachment 4 – Hilltown History Overview from Applicant, Dated 2/13/24