

1. HAMILTON SQUARE (ED)

PUBLIC HEARING AND POSSIBLE ADOPTION OF RESOLUTIONS PROVIDING RECOMMENDATIONS ON MITIGATED NEGATIVE DECLARATION P2013-040; GENERAL PLAN AMENDMENT, MASTER PLAN AMENDMENT, PRECISE DEVELOPMENT PLAN AMENDMENT, TENTATIVE MAP, and DESIGN REVIEW 970 "C" STREET (at MAIN GATE ROAD); APN 157-980-05

Conduct a public hearing, consider and possibly take action to adopt resolutions providing recommendations to the City Council regarding: 1) an initial study and mitigated negative declaration; 2) a general plan amendment; 3) master plan amendments; 4) precise development plan amendment; 5) tentative map; and 6) design review, for a project consisting of 31 townhome-style residential units in 8 three-story buildings and 1 two-story building at 970 "C" Street, APN 157-980-05.

Planning Manager Dunn gave an overview of the project, and presented a power point of the overview.

Commissioner Strauss inquired about what actions were expected of the Planning Commission this evening.

Planning Manager Dunn stated that the original intent of staff was to receive a recommendation on only the proposed environmental document this evening since the other project entitlements cannot be approved until removal of the current deed restriction on residential use following completion of a heightened level of soil remediation due to the former gas station on the site. However, given recent concerns raised by the public regarding the proposed project, staff is recommending that the Planning Commission hear comments from the public on the environmental document and ask questions of staff and consultants. The Commission should provide any initial comments to staff and then continue the item. A subsequent community meeting will be held by the applicant to share detailed information about the site remediation work planned.

Commissioner Strauss inquired as to why the Mitigated Negative Declaration would be approved before the remediation work is actually done.

Planning Manager Dunn stated that the City's environmental document will be used by responsible agencies, the Regional Water Quality Control Board and Department of Toxic Substances Control, in their review and approval of the Remedial Action Plan (RAP). Novato is the project lead agency, and so must approve the environmental document prior to these agencies completing their processes and the Navy then removing the deed restriction, which must occur prior to the City Council approving the project and the General Plan amendment.

City Attorney Nebb added that at the time the application was being processed, City staff, the environmental consultant, the applicant and representatives of the resource agencies discussed the order in which the environmental analysis and the various agency and City approvals would have to take place. It was noted that neither the resource agencies nor the City can take action on the project without an environmental document. Therefore, it was determined that the environmental document needed

to be considered and approved prior to any permit being issued for the project, including any permit for remediation activity. The resource agencies will rely on the environmental document, the RAP and its associated documents prior to issuing any permits for remedial (cleanup) work. Only after all resource agencies have completed their review, granted permits for remedial (cleanup) activity, cleanup activity completed and the deed restriction lifted would the City proceed to consider any entitlements to permit residential use of the property. Therefore, in this instance, environmental review and action on project itself have been separated.

Urban Planning Partners presentation of Initial Study:

Carla Violet of Urban Planning Partners (UPP), the City's environmental consultant, gave an overview of the Initial Study/Mitigated Negative Declaration and provided a brief power point presentation for the proposed project. The purpose of environment document is an informational document so that any agency that has to make a decision on the project will have sufficient information to make an informed decision.

Questions/Comments of Staff:

Commissioner Salazar asked if hazards had been tested for all exposure to different age groups.

UPP responded that yes, hazard evaluation includes standards for all human exposure. It was noted that the list of hazards present at the site are provided in a table in the Initial Study/Mitigated Negative Declaration. UPP also noted that the disposal site for contaminated materials is indicated in the RAP and that the City does not have jurisdiction over the approval of disposal sites.

In response to Commissioner questions UPP further noted that monitoring wells are monitored by the Water Board and that it is fairly common for residential development to take place on formerly contaminated property that has been cleaned to a residential standard.

In response to a Commissioner question regarding cancer rates, UPP advised that the EPA and Water Board standards are based on several factors including cancer rates and research and that such standards continue to evolve. Regulations in California tend to be more stringent and there are standards for protecting both workers and residents.

In response to a Commissioner question, staff noted that the school district had been invited to comment on the environmental document and the project and that the Charter School and Novato Unified School District were provided notice.

In response to a Commissioner question regarding who makes the ultimate safety determination, staff responded that the Regional Water Quality Control Board and the Department of Toxic Substances Control and ultimately the Navy make the determination regarding cleanup, health risk and the determination as to whether the land use covenant will be lifted.

Commissioner Havel asked about the location of schools across from contaminated property. Staff responded that the City has no land use authority over where schools are placed. Commissioner Havel further inquired as to what happens if the site isn't cleaned up by the developer, who cleans the site up? Staff responded that the Navy determined it was sufficiently clean for transfer for non-residential use. The land was sold by the Navy to a private entity. Staff noted that different restrictions were placed on property at Hamilton depending on the level of contamination in different areas. Based on standards, this property was determined to be clean enough for commercial but not for residential use. However,

the restriction included the ability to apply to permit residential uses based upon additional cleanup activities by the private owner.

Based upon questions by Vice Chair Tiernan, staff advised that the Draft Remedial Action Plan (RAP) did go to the responsible agencies and that the public had the opportunity to comment on the RAP to those agencies independent of the CEQA process. Additional mitigation might be deemed appropriate by the resource agencies during their review and approval process.

In response to a Commissioner question regarding the ability of the City to deny the project, staff responded that since this project requires a General Plan Amendment, the City can reject this project. The City can determine that this is not an appropriate place for residential development. Staff further noted that approval of the City's environment document is only an approval of the environmental disclosure document. It is not an approval of the project itself, nor is it approval of the RAP or any actions under these documents.

Presentation by Andy Rogers of West Yost, the developer's environmental engineering consultant:

Andy Rodgers, Engineering Manager at West Yost, made a presentation to the Commission on the Draft Remedial Action Plan (RAP) prepared by his firm. A team of geologists, engineers, and toxicologists worked on the report. He noted that gasoline service stations have been remediated for years and that we have 30+ years of industry standards in evaluating these types of cleanup projects. Mr. Rodgers further noted that since this was a military base, it brings in another level of scrutiny by the federal government as well as state and regional agencies.

Mr. Rodgers presented information about the history of the site, past cleanup efforts, with significantly declining levels of ground water contamination as a result, and the purpose of the RAP to bring the site to higher levels of remediation through removal of on-site soils that still have chemical traces beyond levels allowed for residential use.

In response to questions from the Commission, Mr. Rodgers and staff noted that the Water Board, DTSC and the Department of the Navy all have a role in approving the remediation plan and ensuring that the plan is followed. In addition, prior to the issuance of a grading or other permit by the City, conditions of approval will be attached which will require that the plan be followed, and that site inspection take place.

Public Comments:

Elena Belsky - Sierra Club

- Personally working on issues at Hamilton for the last 15 years. She believes that these are very complicated issues and that Hamilton is full of surprises. She recommended that the City assume the worst. She believes that an MND is not the appropriate CEQA document because it is a very complicated site. She believes an EIR would be more appropriate.

James Nevin - resident

- Showed video of the site after demolition of the former gas station showing strong winds blowing dust from the site. He stated his belief that there has been inadequate consideration to protect children

and to recognize the cumulative impact of construction activities contemplated on three sides of the schools. He noted concerns regarding asbestos abatement which previously took place in removing the former gas station building without a fugitive dust plan. He stated his belief that asbestos materials were scraped off dry and removed dry, and that based on these past actions he has little faith in the RAP being enforced as well.

Stephanie Mosebrook- resident

- Expressed concern that the work be done safely and that there is an increased risk due to cumulative risk of multiple projects. She stated her opinion that the West Yost maps are out of date. She stated that the Planning Commission should not accept the recommendation to accept the CEQA document, that the City should do EIR or focused EIR on soil remediation and that the final RAP approved by Water Board should include a comprehensive Soil Management Plan and a specific Health and Safety Plan that considers children. The public review period for the City's environmental document should not begin until all components of the RAP are made public. She requested that the City compile a history of documents similar to Hamilton Fields project on the City's website.

Brigit Nevin- resident

- Stated that she is not opposed to the project but feels that it needs to be done safely. She believes another community meeting is needed and that the non-compliance of the asbestos removal needs to be addressed. She stated her belief that the Staff report and Initial Study do not address issues and that there is a need for an EIR. She expressed concern that the Draft Soil Management Plan will not be posted for another two weeks.

Marianne Husband - resident

- Expressed concern regarding the impact of the project on low income children. She noted that 65% of students at Hamilton School receive lunch assistance. She stated that children are exposed to other elements and that there are carcinogens all around the schools in this small area.

Lisa Van Balen - resident

- Expressed her support for the other speakers. She expressed concerns regarding the video showing dust blowing from the site, the height of the project, and traffic impacts.

Shannon Delgado - resident

- Expressed agreement with the previous speakers. She asked for transparency and accountability and expressed moral and ethical concerns.

Maureen Zeus - resident

- Expressed compassion with parents. She noted that from Lanham Village bedroom windows she could see demolition workers scraping asbestos off the roof of the gas station. She noted that when the structures were removed some of the activity took place when children were present at the school but that most of it was done when kids were not present. She stated she did not see watering trucks on site. She expressed distrust for the process and developer's consultant team.

Kim Stafford- resident

- Noted that the Planning Commission needs to look at what is being requested. There is a signed easement for sewer through Lanham Village for commercial use. Adjacent to this proposed residential site is Novato Unified School District owned property which is slated for a soccer field and teacher training center. She stated her belief that commercial use is best. Her objections to residential use include height, condensed development in the area of Main Gate Road & C Street and traffic concerns. She expressed safety concerns with children.

Amy Baxt

- Inquired whether the RAP considered the location of the schools, organic garden, SMART station and library. Children as young as 6-weeks old are present at the children's center. She stated that she was present during asbestos removal. She inquired as to whether the Mitigated Negative Declaration is appropriate and believes information is missing. She suggested that a focused EIR should be prepared instead.

Gretchen Taylor - resident

- Noted that as an environmental consultant she participated in preparing the Mitigated Negative Declaration for Hamilton Marketplace. She stated that she is committed to health and safety of schools and believes that there appear to be significant unavoidable impacts that would trigger the preparation of an EIR based on water quality, hazards and cumulative impacts.

Joan Goode- resident

- Believes that it would be wonderful to have something done at this site but is concerned after listening to the issues discussed tonight. She believes a full EIR is needed. She expressed concern for the general appearance of the project, 3-story homes on Main Gate and does not believe that this is a good design or a good use for the property. She expressed concerns with traffic and that there are too many amendments requested. She noted that the real estate market has changed significantly and asked that the Commission look out for interests of the community.

Marie Hoch- resident

- Stated that there is no way to make people park in their garages and no place for bike storage. She stated that the Commission needs to look at how people live.

Pauline Yee - resident

- Expressed concerns for adequacy of disclosure to the Novato Unified School District and parents.

Marla Fields- resident

- Expressed her belief that the level of scrutiny is very high from the resource agencies. She feels that the Federal Government did good job of MTBE cleanup of Parcel 1A. But what's happened on the building demolition is appalling. She expressed concern as to whether an MND is the best document and whether an EIR would be better.

Hutch Turner- resident

- Expressed his opinion that fugitive dust was not handled properly. Remediation does not affect organic compounds- lead, minerals, and small children are the most vulnerable. He questioned whether

state standard are sufficient to address issues for children. He stated his belief that the responsible people are not doing their job. He expressed concern with noticing.

Elena Belski - resident

- Questioned whether a permit was issued for demolition.

In response, Planning Manager Dunn stated that the City did issue a demolition permit when applied for by the property owner, but this was subsequent to asbestos removal activities being carried out. The demolition permit was issued prior to the building demolition. She noted that the Bay Area Air Quality Control District issued their permit known as a J letter prior to the demolition permit being issued.

Commission Questions:

In response to questions from the Commission, staff stated that the City did not know asbestos removal was going on since the demolition permit was applied for subsequent to the asbestos removal. Commissioners expressed concerns with the asbestos removal process.

In response to a question regarding the decision to prepare a Mitigated Negative Declaration instead of an EIR, City Attorney Nebb explained the procedure and the CEQA process, including the requirement for substantial evidence to support the determination that one or more impacts may be significant and unmitigatable. In response to a question regarding the EIR for the Hamilton Resuse Plan, City Attorney Nebb noted that the EIR is a fairly old document and conditions have changed over time. The EIR was to support the reuse plan and is 20+ years old. Staff and the City's consultant together made a determination that a Mitigated Negative Declaration was sufficient for this project.

Staff reiterated that the Commission is not being asked to make a decision on the environmental document this evening. The components of the RAP will be published and the City will reopen the 30-day public review period to coincide with the Water Quality Board's public review period for the RAP. A community meeting will be held to discuss the asbestos removal process and the proposed soil remediation process and oversight.

Motion/Second, Havel/Strauss, to continue this item to a date uncertain 5-0-2: Ayes: Havel, Salazar, Strauss, Tiernan, Wernick. Noes: 0 . Absent: Dawson, Jordan.