

ITEM V-A: DEVELOPMENT AGREEMENT AMENDMENT & MAJOR PROJECT PERMIT MODIFICATION – 200 GIBSON DRIVE (NCRSP PARCEL 40C – HIGHLAND VILLAGE) - - FILE# 2010PL-009 (DA-000045 & MPP-000030)

REQUEST

The applicant requests revisions to the Development Agreement and Major Project Permit conditions of approval for the Highland Village project (NCRSP Parcel 40C) pertaining to: 1) the timing of payment for the project's contribution toward the cost of future pedestrian bridges linking Parcel 40 to the Galleria Mall; and, 2) the timing of installation of electric circuits necessary to serve full buildout of Parcel 40C.

Applicant – David Glimcher
Owner – GVSW Roseville, LLC, Balogh-Glimcher Family Prehm, LLC, ABA-Roseville, LLC

SUMMARY RECOMMENDATION

The Planning Department recommends that the Planning Commission:

- A. Adopt the two findings of fact for the Major Project Permit Modification;
- B. Approve the Major Project Permit Modification;
- C. Recommend the City Council adopt the five (5) findings of fact for the Development Agreement Amendment; and,
- D. Recommend the City Council approve the Development Agreement Amendment.

SUMMARY OF OUTSTANDING ISSUES

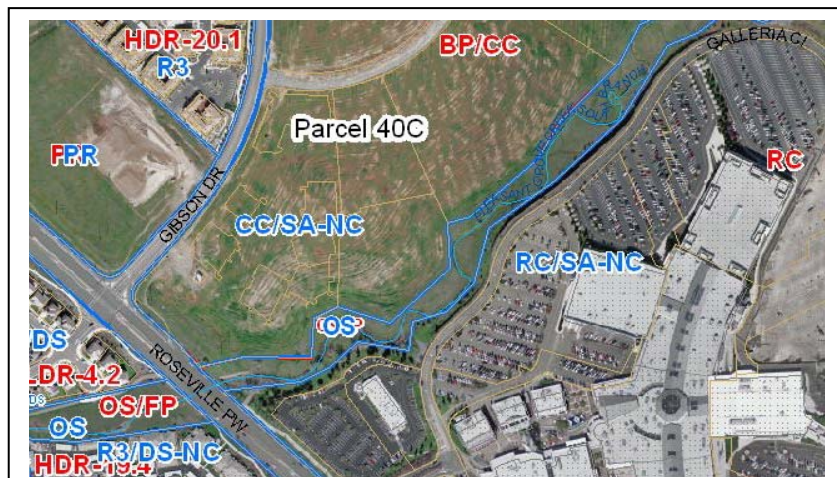
There are no outstanding issues associated with this request. The applicant has reviewed and is in agreement with staff's recommendation.

BACKGROUND

Parcel & Entitlement History

The project site encompasses a portion of the original Parcel 40 of the North Central Roseville Specific Plan (NCRSP) area, generally located on the northeast corner of Roseville Parkway and Gibson Drive. A Tentative Parcel Map was approved March 1, 2005, which allowed the subdivision of NCRSP Parcel 40 into four parcels (Parcels 40A, 40B, 40C, and 40D) ranging in size between 6.74 to 20 acres. The subject property is located on Parcel 40C, which is 15.35 acres.

Figure 1 – Vicinity Map



On January 10, 2008, the Planning Commission approved a Major Project Permit authorizing development of Parcel 40C with two hotels (totaling 274 rooms), two retail buildings (14,800 square feet), five restaurants (36,384 square feet), a bank building (3,500 square feet), and associated landscaping, lighting, and parking. A Tentative Subdivision Map was also approved, further subdividing Parcel 40C into ten lots. Please see the Highland Village staff report included as Attachment 1 for additional project-related background.

EVALUATION

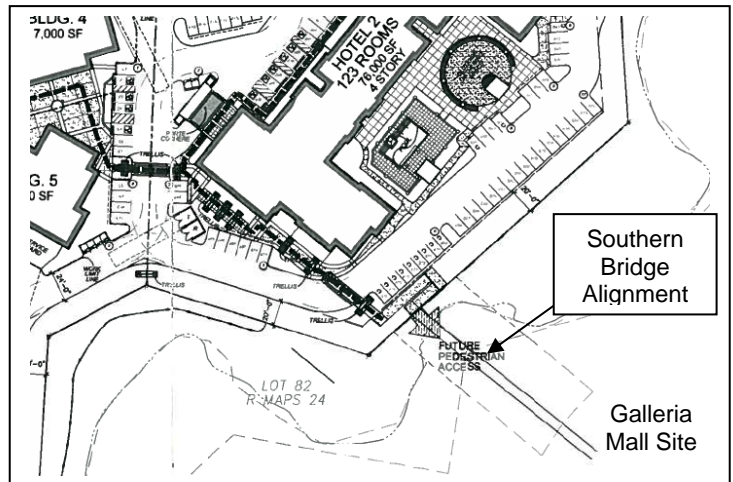
Existing Obligation for Bridge Contribution

The Development Agreement (DA) for Parcel 40 (A-D) and the Lease Agreement for the Galleria Mall requires the respective property owners to exercise good-faith efforts to “conclude agreements” for funding and construction of two pedestrian cross-connections to the Galleria Mall. The pedestrian bridges were identified by the Planning Commission and City Council as an important link between the conference center site, adjacent hotel and retail development, and the Galleria Mall, and was aimed at facilitating pedestrian movement and reducing unnecessary vehicle trips between the Mall and Parcel 40.

The DA obligates the owner of Parcel 40A (conference center site) to contribute \$187,500 toward the cost of the northern bridge, and obligates Parcels 40B, C & D to a \$187,500 contribution divided equally among the parcels (resulting in obligations of \$62,500 per parcel) for the southern bridge. The DA does not specify timing of payment or bridge construction. The dollar contributions were negotiated in 2005 in the Development Agreement involving a Specific Plan Amendment to intensify the permitted development density on NCRSP Parcel 40.

The DA also does not specify preferred locations for the connections; however, two cross-access easements are recorded across the open space parcel connecting the Mall site and Parcel 40. One of the easements is located to the north, connecting to the approved Conference Center/Hotel site. The southern easement originates near the southeast corner of the approved Hotel 2 on Parcel 40C. Consistent with the terms of the Development Agreement, a sidewalk “stub” was designed to the edge of the open space within the southern access easement with the Highland Village development (see Attachment 2). Further, a conceptual bridge design and cost estimate were prepared with the Highland Village project. In 2008, the estimated construction cost for the southern bridge was \$415,048.

Figure 2 – Southern Bridge Alignment



The timing of payment for Parcel 40C's share (\$62,500) was clarified in the Major Project Permit conditions of approval. Condition of approval #13 required the property owner of Parcel 40C to make the \$62,500 cash contribution prior to occupancy of the first building in the development. Alternatively, the owner could elect to enter into a deferred improvement agreement (DIA) and post an equivalent security (i.e., bond or letter of credit) prior to issuance of the improvement plans for the project. The owner (Glimcher) did not enter into a DIA prior to issuance of the improvement plans and indicated at that time (June 2008) that cash payment would be tendered prior to first occupancy to satisfy the requirement. However, economic conditions have made it difficult for the owner to satisfy this

obligation in cash, and Glimcher indicates it is not in a financial position to record a deferred improvement agreement against the property and post the required security. Consequently, the owner requests approval to defer payment of the bridge contribution to future building permits.

Hyatt Place Occupancy Permit

The Hyatt Place hotel is the first building constructed in Highland Village and was seeking occupancy by the end of January. However, the bridge obligation had yet to be satisfied, and the Glimcher had not yet gained approval of the Planning Commission and Council for modifications to the DA and conditions of approval (the entitlement application was submitted January 15th). To satisfy the existing MPP conditions and gain occupancy, the developer and owner of the Hyatt Place parcel (ABA-Roseville, LLC) executed an agreement for cash deposit of security with the City and posted a cash deposit of \$62,500 while Glimcher continued to process the entitlements necessary to modify the project requirements. The terms of the in-lieu agreement state that the City will retain the cash deposit as satisfaction of the bridge obligation should the Commission and Council ultimately not approve the requested modifications. Should the Commission and Council agree to modify the timing of payment, the cash deposit will be released by the City upon recordation of the Development Agreement Amendment.

Anticipated Timing of Bridge Construction / Justification for Deferral of Payment

Timing of future bridge construction is dependent on a number of factors, including participation by future developers of Parcels 40 B and D, and improvements required on the Galleria Mall side of the open space. In addition, bridge construction may require regulatory permits from the Army Corps of Engineers, as impacts to jurisdictional waters may occur if bridge footings are required in the open space. Since the bridge will span open space managed by the City, permitting and construction of the bridge will also be managed by the City. Funds have been allocated in the NCRSP Community Facilities District (CFD) and will be combined with funds required of Parcel 40 as development occurs to construct the bridges.

The City approached Westfield last year to examine the extent of site improvements necessary to provide a pedestrian connection on the mall side of the open space. Retaining walls, ramps, and switchbacks will be necessary on the Westfield side of the open space to provide an accessible path of travel. These improvements were not anticipated in the 2006 approval of the Mall Expansion project, and therefore cannot be required of Westfield at this time. However, the Lease Agreement provision requiring financial participation and good-faith effort on Westfield's part remains, and staff intends to engage Westfield in further dialogue should it seek to make changes to the mall property in the future.

Due to these factors, staff does not foresee construction of the bridge as a short-term improvement; therefore, a deferral in payment of the bridge contribution seems appropriate. Staff believes that current economic conditions warrant special consideration in this matter. Glimcher had initially requested that payment be required when all other property owners of Parcel 40 have paid their respective share. However, staff believes that it is more practical for the obligation to be satisfied as each sub-parcel of Parcel 40 develops (A, B, C, D), which is why a condition of approval was initially placed on the Highland Village project approval. This provides more certainty that the contribution will be secured and helps ensure the requirement is not inadvertently forgotten in the future.

Bridge Contribution Recommendation

Staff recommends that the developer be required to either satisfy the \$62,500 obligation prior to the next *building permit* issuance (for new construction) on Parcel 40c. Staff believes it is more prudent to tie the obligation to building permit issuance (rather than occupancy permit) because the developer can

better plan for the obligation in the project's financing plan and construction loans. This also avoids placing the City in the undesirable position of having to withhold occupancy of a completed building, as was the recent case with the Hyatt Place.

To effectuate this change, staff recommends modification of Condition #13 of the Highland Village Major Project Permit as follows:

~~13. The project proponent shall contribute \$62,500 towards the construction cost of the future pedestrian bridge across the open space (NCRSP Parcel 82) to connect the Galleria Mall site with NCRSP Parcel 40C. This amount shall be paid by the project proponent by either entering into a Deferred Improvement Agreement (DIA) and posting a bond prior to the issuance of the improvement plans or the project proponent shall pay cash prior to issuance of the first occupancy permit. (Engineering)~~

13. "Owners (Glimcher and ABA-Roseville, LLC or their successors) will provide, either jointly or separately, cash, a construction bond, or letter of credit for their allocated portion of the cost (\$62,500.00) for the proposed pedestrian bridge connecting Parcel 40 to the Galleria Mall owned by Westfield prior to the issuance of any additional building permit on any of the sub-parcels (lots) of Parcel 40C. (Planning, Engineering, Building)"

The revised development agreement contains similar language, and is attached as Exhibit A.

Other Issue – Electric Conduit

In addition to the timing of the pedestrian bridge contribution, the applicant seeks changes to the development agreement relative to required electric improvements. The entirety of Parcel 40 is entitled for dense office use, convention center, hotel and retail development. To accommodate the electric demand associated with this entitled development density, additional electrical circuits from the Gibson Drive substation are required. The Major Project Permit includes a condition (#88) requiring additional circuits necessary to serve the Parcel 40C development (Highland Village – subject project). However, the project has not developed at the pace originally envisioned and the circuits are not presently required to accommodate demand.

The applicant has requested additional time to install the required improvements, which would be memorialized in the Development Agreement. In summary, the project proponent would have until January 2012 to commence installation of the circuits. If adequate electric facilities are available, the deadline may be extended at the discretion of Roseville Electric. Alternatively, the City reserves the right to withhold issuance of building permits for future buildings on NCRSP Parcel 40C should existing power distribution facilities be found insufficient to accommodate electrical demand. Language is proposed in the Development Agreement Amendment (Exhibit A) to memorialize this change.

Revision to Major Project Permit Condition #88 is also proposed as follows:

~~88. The developer will be responsible for the installation of 8-4"C's from the Park Substation expansion located on NCRSP Parcel 62 to the project site. All costs associated with the installation of the conduit system by the developer and the costs associated with the installation of 3-1000mcm cables by Roseville Electric will be the responsibility of the developer. (Electric)~~

88. The developer shall be responsible for installation of 8-4"C's from the Park Substation expansion located on NCRSP Parcel 62 to the project site. All costs associated with the installation of the conduit system by the developer and the costs associated with the installation of 3-1000mcm cables by Roseville Electric will be the responsibility of the developer. At

Roseville Electric's discretion, four six-inch conduits may be installed in-lieu of eight four-inch conduits. Developer shall have until January 1, 2012 to commence installation of said circuits. Installation shall be completed within 180 days from the date construction commences. Further extensions of time may be granted by the City of Roseville and Roseville Electric pending future power demand requirements and economic conditions. Provided, however, that City reserves the right to withhold issuance of building permits for future buildings on NCRSP Parcel 40C should existing power distribution facilities be found insufficient to accommodate electrical demand. (Electric)

CONCLUSION

Staff believes that the requested modifications to the Highland Village project approval are warranted and prudent given recent economic conditions and associated financing difficulties. The proposed modifications do not relieve the developer of obligations; they modify the terms under which the obligations are to be satisfied. For the reasons cited in this report, staff supports the requested modifications to the conditions of approval and development agreement and believes the findings required for approval can be made.

ENVIRONMENTAL DETERMINATION

Project level CEQA compliance for the NCRSP Parcel 40C Highland Village project was accomplished with preparation of the Highland Village Initial Study / Negative Declaration (Adopted: January 10, 2008). The proposed modifications to the Highland Village project address timing of certain financial obligations associated with the project and do not result in new effects not previously analyzed or change any of the findings of the previous environmental document. As such, no additional CEQA action is required at this time.

RECOMMENDATION

The Planning Department recommends that the Planning Commission take the following actions:

- A. Adopt the two (2) findings of fact for the **MAJOR PROJECT PERMIT MODIFICATION - 200 GIBSON DRIVE (NCRSP PARCEL 40C – HIGHLAND VILLAGE) – PROJECT #MPP-000030** as follows:
 1. *The proposed modification is substantially consistent with the intent of the original approval.*
 2. *The proposed modification complies with all applicable standards and requirements of this title, with the applicable goals, policies and objectives set forth in the General Plan and the applicable Community Design Guidelines.*
- B. Approve the **MAJOR PROJECT PERMIT MODIFICATION - 200 GIBSON DRIVE (NCRSP PARCEL 40C – HIGHLAND VILLAGE) – PROJECT #MPP-000030**, modifying conditions 13 and 88 as provided below.
- C. Recommend that the City Council adopt the five findings of fact for approval of the **DEVELOPMENT AGREEMENT AMENDMENT - 200 GIBSON DRIVE (NCRSP PARCEL 40C – HIGHLAND VILLAGE) – PROJECT #DAA-000045** as follows:
 1. *The Development Agreement Amendment is consistent with the objectives, policies, programs and land use designations of the City of Roseville General Plan;*

2. *The Development Agreement Amendment is consistent with the City of Roseville Zoning Ordinance and Zoning Map;*
3. *The Development Agreement Amendment is in conformance with the public health, safety and welfare;*
4. *The Development Agreement Amendment will not adversely affect the orderly development of the property or the preservation of property values; and*
5. *The provisions of the Development Agreement Amendment will provide sufficient benefit to the City to justify entering into said Agreement.*

D. Recommend that the City Council approve the **DEVELOPMENT AGREEMENT AMENDMENT - 200 GIBSON DRIVE (NCRSP PARCEL 40C – HIGHLAND VILLAGE) – PROJECT #DAA-000045.**

CONDITIONS OF APPROVAL FOR THE MAJOR PROJECT PERMIT

1. All conditions of approval for the NCRSP Parcel 40c Highland Village project (MPP-000016) shall remain in full force and effect, except as modified below:
 - a. Condition 13 shall be replaced in its entirety to read as follows: “Owners (Glimcher and ABA-Roseville, LLC or their successors) will provide, either jointly or separately, cash, a construction bond, or letter of credit for their allocated portion of the cost (\$62,500.00) for the proposed pedestrian bridge connecting Parcel 40 to the Galleria Mall owned by Westfield prior to the issuance of any additional building permit on any of the sub-parcels (lots) of Parcel 40C. (Planning, Engineering, Building)”
 - b. Condition 88 shall be replaced in its entirety to read as follows: “The developer shall be responsible for installation of 8-4”C’s from the Park Substation expansion located on NCRSP Parcel 62 to the project site. All costs associated with the installation of the conduit system by the developer and the costs associated with the installation of 3-1000mcm cables by Roseville Electric will be the responsibility of the developer. At Roseville Electric’s discretion, four six-inch conduits may be installed in-lieu of eight four-inch conduits. Developer shall have until January 1, 2012 to commence installation of said circuits. Installation shall be completed within 180 days from the date construction commences. Further extensions of time may be granted by the City of Roseville and Roseville Electric pending future power demand requirements and economic conditions. Provided, however, that City reserves the right to withhold issuance of building permits for future buildings on NCRSP Parcel 40C should existing power distribution facilities be found insufficient to accommodate electrical demand. (Electric)”

ATTACHMENTS:

1. January 10, 2008 Highland Village Planning Commission Staff Report
2. Highland Village Pedestrian Connectivity Plan
3. Conceptual Pedestrian Bridge Design (Southern Alignment)
4. Aerial Photograph – Galleria Mall and Parcel 40C

EXHIBITS:

- A. Development Agreement Amendment

Note to Applicant and/or Developer: Please contact the Planning Department staff at (916) 774-5276 prior to the Commission meeting if you have any questions on any of the recommended conditions for your project. If you challenge the decision of the Commission in court, you may be limited to raising only those issues which you or someone else raised at the public hearing held for this project, or in written correspondence delivered to the Planning Director at, or prior to, the public hearing.