

Planning Commission

July 25, 2019

Proposal:	FREMONT TECHNOLOGY BUSINESS CENTER DEVELOPMENT AGREEMENT ANNUAL REVIEWS– Cushing Parkway South of Bunche Drive and West of Christy Street - PLN2019-00376 - To consider annual reviews of the Fremont Technology Business Center Development Agreements for a project consisting of 2.53 million square feet of industrial buildings and 100,000 square feet of auto mall buildings on 153 acres located on both sides of Cushing Parkway south of Nobel Drive and Bunche Drive and west of Christy Street in the Bayside Industrial Community Plan Area, and to consider a finding that no environmental review is required pursuant to the California Environmental Quality Act (CEQA) as annual review of Development Agreements does not constitute a project as defined by CEQA Guidelines Section 15378.
Recommendation:	Find the applicant in compliance with the applicable provisions of the Development Agreement.
Location:	Both sides of Cushing Parkway South of Bunche Drive and West of Christy Street
Area:	153 acres
People:	Taline Agopian, Fremont Technology Business Center, LLC; West Parcels Owner and Applicant Michael Johnson, Pacific Commons Owner, LP; East Parcels' Owner and Applicant Joel Pullen, Staff Planner, (510) 494-4436, jpullen@fremont.gov
Zoning:	Tech Industrial (I-T)
General Plan:	Industrial - Tech

EXECUTIVE SUMMARY

On October 17, 2017, the City Council approved two Development Agreements (DAs) between the City and the two developers of the Fremont Technology Business Center project individually: (1) Fremont Technology Business Center LLC, and (2) Pacific Commons Owners, LP. The DAs were approved as part of a major development project that included a General Plan Amendment, Planned District Amendment, Vesting Tentative Tract Map, and Preliminary Grading Plan to allow development of approximately 2,533,000 square feet of industrial uses on 143 acres and approximately 100,000 square feet of auto dealer use on 10 acres, all located south of the Pacific Commons Shopping Center. The purpose of the DAs was to memorialize several obligations offered by the developers—Conor Commercial for the parcels west of Cushing Parkway, and Overton Moore Properties (OMP) for the parcels east of Cushing Parkway—in return for the vested rights to develop the subject properties. Pursuant to Fremont Municipal Code (FMC) Section 18.245.100, the City must conduct an annual review of the DA to determine if the developer is demonstrating good faith compliance with the applicable terms contained in the DA. See Informational Enclosures 1 and 2 for the DAs. Staff recommends that the Planning Commission find the developers

have complied in good faith with the requirements of the DAs during this review period from November 16, 2017, through December 31, 2018.

BACKGROUND AND PREVIOUS ACTIONS

The initial development applications have been proceeding through entitlement and building permit review. Table 1, below, identifies the status of current development within the Fremont Technology Business Center.

Table 1 – Fremont Technology Business Center Development Application Status			
Development Application	Area (Acres)	Square Feet	Status
Tract Map No. 8348	153	N/A	Final Map approved by City Council in July 2018; grading permits issued; public improvements under construction
Auto Mall Lots (south of Bunche Drive between Cushing Parkway and the planned southern extension of Pacific Commons Boulevard)	10	100 ksf*	Partial DA Assignment in January 2018 (see Informational Enclosure 6); Discretionary Design Review Permit for parcel at SE corner of Cushing Parkway and Bunche Drive approved on February 4, 2019, by Zoning Administrator; building permits under review
Conor Building 1 (west of Cushing Parkway)	41	814 ksf	Building permits issued; construction nearing completion
OMP Phase I Buildings 2A, 2B, 3, , 9, and 10 (east of Cushing Parkway and West of the planned southern extension of Pacific Commons Boulevard)	58	982 ksf	Building permits issued; under construction
OMP Phase II Buildings 6, 7, 8 (between Christy Street and the planned southern extension of Pacific Commons Boulevard)	36	670 ksf	Building permits issued; under construction
OMP Phase III Buildings 4 and 5 (south of Bunche Drive between Christy Street and the planned southern extension of Pacific Commons Boulevard)	4.5	67 ksf	Future permitting TBD

*ksf = thousand square feet

PROCEDURE FOR TONIGHT’S HEARING

The Planning Commission is asked to consider the request to find the developers in compliance with the terms and conditions of the DAs for the period under review (from November 16, 2017 through December 31, 2018) pursuant to the provisions of Fremont Municipal Code (FMC) Section 18.245.100 (Periodic review), based on substantial evidence presented by the developers and attached hereto.

DEVELOPMENT AGREEMENT TERMS AND ANALYSIS

The fundamental intent of a DA is to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development. It is a tool for establishing a vested right to proceed with development in conformance with the policies, rules, and regulations in effect at the time of approval. A DA provides a developer with assurances for a specified length of time that its project may proceed as originally approved, and not be affected by future changes in land use regulations. In many cases, and in exchange for this assurance, a developer agrees to certain City interests for public use as conditions of the agreement.

A copy of each of the DAs is attached to this report as Informational Enclosures 1 and 2. The primary obligations of the developers within the DAs are to provide certain public benefits in conjunction with the project in exchange for vested rights to develop the property in a predictable way in accordance with City regulations. The terms of the DAs are for five years, and they are extendable for another five years as long if the developer complies with their obligations. Informational Enclosures 3 and 4, attached in relevant part (detailed attachments to these enclosures have been removed due to inclusion of detailed business and financial information), and Tables 2 and 3 below demonstrate the developers' compliance with the relevant public benefit obligations contained in the DAs.

Table 2 – Fremont Technology Business Center LLC Development Agreement	
City Interest/Developer Obligation	Developer's Action/Status
1. <i>Section 6.2 Transit Option Seed Funding.</i> Within 30 days of the effective date of the Development Agreement, developer must pay the City \$174,200.	Developer made requisite payment to the City on December 20, 2017.
2. <i>Sections 6.3.A., 6.4. and 6.5. Traffic, Public Access, and Infrastructure Improvements.</i> Developer shall install on-site traffic improvements, including: <ul style="list-style-type: none"> a. Cushing Parkway improvements, including centerline improvements, such as a fence in the median, and a traffic signal at the intersection of Cushing parkway and Pacific Commons Boulevard. b. Public trail and landscaping along the wetlands on the West Parcel and Cushing Parkway. c. Relocation of the existing 54-inch public storm drain. 	Developer has made diligent progress on the required traffic improvements as follows: <ul style="list-style-type: none"> a. Improvements to Cushing Parkway are under construction. b. An easement is on title for the public trail. The dedication of an easement of said trail was completed on July 30, 2018. c. Relocation of the existing public storm drain is under construction.
3. <i>Section 6.3.B. Traffic Signal Improvements.</i> Developer is required to pay its fair share (\$6,250) of traffic signal improvements at Christie Street and Auto Mall Parkway on the issuance of the first building permit.	Developer obtained their first building permit in 2018 and tendered the required payment on December 17, 2017.
4. <i>Section 10.3. Processing of Applications.</i> Developer is required to provide in a timely manner any and all documents,	Developer has pursued the project development through the applications noted in Table 1, primarily related to the

Table 2 – Fremont Technology Business Center LLC Development Agreement	
City Interest/Developer Obligation	Developer's Action/Status
applications, plans, and other information necessary for City to carry out its obligations hereunder and cause developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other materials required under applicable law.	development of the Conor Building One on the parcels west of Cushing Parkway.

Table 3 – Pacific Commons Owner LP Development Agreement	
City Interest/Developer Obligation	Developer's Action/Status
1. <i>Section 6.2 Transit Option Seed Funding.</i> Within 30 days of the effective date of the Development Agreement, Developer must pay the City \$475,800.	Developer made requisite payment to the City on December 14, 2017.
2. <i>Section 6.3.A, 6.4, and 6.5 Traffic, Public Access, and Infrastructure Improvements.</i> Developer shall install on-site traffic improvements, including: <u>East Parcel Phase I</u> a. Extension of Pacific Commons Boulevard from Bunche Drive to Cushing Parkway, including intersection improvements at Pacific Commons Boulevard. b. Cushing Parkway improvements to centerline c. Christy Street half-section widening along East Parcel property line. d. Traffic signal at the intersection of Cushing Parkway and Pacific Commons Boulevard. e. Public trail and landscaping along the Christy Street frontage and wetlands boundary with East Parcel and portion of Cushing Parkway. f. Linear Park. <u>East Parcel Phase II</u> g. Pocket Parks along Christy Street. <u>East Parcel Auto Mall</u> h. Landscape improvements along the frontage of Bunche Drive shall be constructed in association with the development of the Auto Mall	Developer has made diligent progress on the required traffic improvements as follows: a. Improvements to the extension of Pacific Commons Boulevard from Bunche Drive to Cushing Parkway are under construction. b. Cushing Parkway improvements to centerline are under construction. c. Christy Street half-section widening along East Parcel property line improvements are under construction. d. Traffic signal at the intersection of Cushing Parkway and Pacific Commons Boulevard improvements are under construction. e. Public trail and landscaping along the Christy Street frontage and the wetlands boundary with East Parcel and portion of Cushing Parkway improvements are under construction. f. Linear Park is under construction. <u>East Parcel Phase II</u> g. Pocket Parks along Christy Street will be constructed in conjunction with Phase II construction. <u>East Parcel Auto Mall</u> h. Landscape improvements along the frontage of Bunche Drive shall be construction in association with the development of the Auto Mall parcels

Table 3 – Pacific Commons Owner LP Development Agreement	
City Interest/Developer Obligation	Developer's Action/Status
established per Section 6.5.	per Section 6.5.
<i>Section 6.3.B. Traffic Signal Improvements.</i> Developer is required to pay its fair share (\$18,750) of traffic signal improvements at Christy and Auto Mall Parkway on issuance of the first building permit	Developer obtained first building permit in 2018 and made the requisite payment on July 1, 2019.
<p><i>Section 6.4. Public Access Improvements.</i></p> <p><u>Phase I</u></p> <ul style="list-style-type: none"> a. Construct the Public Access Improvements, the entire multi-use trail at the edge of the East Parcel, and the linear park. b. Record a public access easement over the trail and linear park associated with the East Parcel prior to the issuance of the first certificate of occupancy for Phase I. <p><u>Phase II</u></p> <ul style="list-style-type: none"> c. Construct the Pocket Parks d. Record a public access easement over the parks prior to issuance of the first certificate of occupancy for Phase II. 	<p><u>Phase I</u></p> <ul style="list-style-type: none"> a. The public access improvements are currently under construction. b. The public access easement over the trail and linear park associated with the East Parcel has been recorded as part of Tract map 8348. <p><u>Phase II</u></p> <ul style="list-style-type: none"> c. Construction of Pocket Parks will coincide with Phase II construction. d. A public access easement will be recorded over the parks prior to issuance of the first certificate of occupancy for Phase II.
<i>Section 6.5. Auto Mall Commitment.</i> Developer shall submit a vesting tentative parcel map to create an approximately 10.5-acre parcel for sale or lease for an automobile sales and dealership use.	Parcel Map 10510 was recorded on November 27, 2017. Both parcels were purchased for automobile sales. Entitlements have been approved for automobile sales on the westerly lot.
<i>Section 10.3. Processing of Applications.</i> Developer is required to provide in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder and cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other materials required under applicable law.	Developer has pursued the project development through the applications noted in Table 1, primarily related to the development of the OMP buildings east of Cushing Parkway.

FINDINGS FOR COMPLIANCE

Pursuant to FMC Section 18.245.100, if the Planning Commission finds on the basis of substantial evidence that the developers have complied in good faith with the terms of the agreement, the review for that period is concluded. However, if the Planning Commission finds on the basis of substantial evidence that the developers have not complied in good

faith with the terms of the agreement, the Planning Commission shall forward its findings in writing to the City Council. The Council would then consider whether to modify or terminate the DAs.

Based on staff's analysis of the material terms and conditions of the DAs, staff recommends that the Planning Commission find the developers have demonstrated compliance in good faith with the requirements of the DAs during this review period.

ENVIRONMENTAL REVIEW

This annual review is not subject to the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378 in that the activity does not meet CEQA's definition of a "project" since it has no potential to result in direct or reasonably foreseeable indirect physical changes to the environment and involves neither an activity undertaken with public funds or a further grant of entitlement to the applicant.

PUBLIC NOTICE AND COMMENT

Public hearing notification is applicable. A total of 30 notices were mailed to owners and occupants of property within 300 feet of the site. The notices to owners and occupants were mailed, and a Public Hearing Notice was published by *The Tri-City Voice*, on July 11, 2019.

RECOMMENDATION

1. Hold public hearing.
2. Find that the review of the Development Agreements is not subject to CEQA pursuant to CEQA Guidelines Section 15378 in that the activity does not meet the definition of a "project" under CEQA.
3. Find on the basis of substantial evidence that the developers of the Fremont Technology Business Center have complied in good faith with the terms and conditions of their respective Development Agreements (provided in Informational Enclosures 1 and 2) for the period under review (November 16, 2017 through December 31, 2018).

ENCLOSURES

- Informational Enclosure 1 - West Parcel DA (Fremont Technology Business Center, LLC)
- Informational Enclosure 2 - East Parcel DA (Pacific Commons Owner LP)
- Informational Enclosure 3 - Annual Review Form for Fremont Technology Business Center LLC
- Informational Enclosure 4 - Annual Review Form for Pacific Commons Owner LP
- Informational Enclosure 5 - Illustrative Site Plan
- Informational Enclosure 6 - Partial DA Assignment (Auto Mall Parcels)