



# STAFF REPORT

AGENDA NO: 10b

MEETING DATE: April 1, 2024

**To:** Honorable Mayor and City Council

**Date:** April 1, 2024

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**Subject:** 1200 – 1340 Old Bayshore Highway, Peninsula Crossing Project

**Adoption of a Resolution Certifying the Final Environmental Impact Report (FEIR) Including a Water Supply Assessment (WSA) for an Application for Commercial Design Review, Special Permits for Building Height and Development Under Tier 3/Community Benefits, and a Vesting Tentative Map, for a New Office / Research & Development Project, Consisting of Three 11-story Office / Research & Development Buildings and Two 10- and 10.5-Story Parking Structures; and**

**Adoption of a Resolution Approving an Application for Commercial Design Review, Special Permits for Building Height and Development Under Tier 3/Community Benefits, and a Vesting Tentative Map, for a New Office / Research & Development Project, Consisting of Three 11-story Office / Research & Development Buildings and Two 10- and 10.5-Story Parking Structures; and**

**Introduction and First Reading of a Proposed Ordinance Adopting a Development Agreement Between the City of Burlingame and Property Owners (DW Burlingame I Owner LLC; DW Burlingame II Owner LLC; DW Burlingame I Owner A LLC; DW Burlingame II Owner B LLC; and DW Burlingame III Owner LLC)**

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Staff recommends the City Council take the following actions regarding the Peninsula Crossing project located at 1200-1340 Old Bayshore Highway:

1. Consider the staff and applicant presentations.
2. Conduct a public hearing and consider all public testimony; provide direction to staff regarding any desired changes to the project entitlements and related Ordinance.
3. Adopt the following Resolution: "Resolution of the City Council of the City of Burlingame Certifying the Final Environmental Impact Report (FEIR) for an Application for Commercial Design Review, Special Permits for Building Height and Development Under Tier 3/Community Benefits, Vesting Tentative Map, and Development Agreement for a New

Development Project, Consisting of Three 11-Story Office/Research and Development Buildings and Two 10- and 10.5-Story Parking Structures at 1200-1340 Old Bayshore Highway, Burlingame, and Adoption of a Water Supply Assessment Prepared for the Project.”

4. Adopt the following Resolution: “Resolution of the City Council of the City of Burlingame Approving an Application for Commercial Design Review, Special Permits for Height and Development Under Tier 3/Community Benefits, and Vesting Tentative Map, for a New Development Project, Consisting of Three 11-Story Office/Research and Development Buildings and Two 10- and 10.5-story Parking Structures at 1200-1340 Old Bayshore Highway, Burlingame.”
5. Introduce and adopt the first reading of the following Ordinance: “An Ordinance of the City of Burlingame Adopting a Development Agreement by and Between the City of Burlingame and DW Burlingame I Owner LLC; DW Burlingame II Owner LLC; DW Burlingame II Owner A LLC; DW Burlingame II Owner B LLC; and DW Burlingame III Owner LLC, Related to the Development Project at 1200-1340 Old Bayshore Highway.”

## **BACKGROUND**

An application has been submitted for the redevelopment of an existing 12-acre site comprised of 13 parcels located at 1200-1340 Old Bayshore Highway, Burlingame. The project proposes the construction of three new 11-story office/research and development (R&D) buildings and two new 10- and 10.5-story parking garages with two below-grade parking levels each. The application is not specific to a future tenant and may accommodate either multiple tenants or one single tenant. Tenant improvements would ultimately determine the end use, which could range from an overall building program of 100 percent R&D use to a 100 percent professional office use, or a combination thereof.

The total project proposes a gross floor area of 1,420,000 square feet (SF) divided between “Building North” (620,700 SF), “Building Center” (437,300 SF), and “Building South” (362,000 SF). Building South and Building Center would have a combined 5,000 SF of restaurant space (2,500 SF) per building. Each of the buildings would include their own amenity spaces, each with a tenant cafeteria ranging from 12,000 – 19,000 SF and a fitness center ranging from 2,500 – 3,500 SF. Two of the new structures, the northern parking structure and Building North, would be located north of Easton Creek. Building Center, the southern parking structure, and Building South would be located south of Easton Creek. Three driveways off Old Bayshore Highway are proposed for access to the buildings and parking structures, one between the northern parking structure and Building North, a second between Building Center and the southern parking structure, and the third between the southern parking structure and Building South. The buildings range from a maximum height of 210’-6” for Building South to 214’-6” feet for Buildings North and Center. The proposed Floor Area Ratio (FAR) for the site would be 2.71 (3.0 FAR maximum allowed with community benefits under Tier 3).

The project includes a total of 3,400 on-site parking spaces provided in two parking structures. The southern parking structure would be 10 stories (104’-10”) in height and 617,400 SF in size (not

included in FAR per code) and would provide 1,768 secure stalls, including 40 permanent public stalls available to the public to accommodate Bay Trail users and the two restaurants, with an additional 210 stalls available to the public on nights, weekends, and state holidays. The northern parking structure would be 10.5 stories (113'-10") in height and 562,800 SF in size and would provide 1,632 secure stalls. It also includes an airplane viewing platform at the top level. Each parking structure includes two basement levels of parking.

Landscaping would be provided throughout the project site, with open space areas surrounding Easton Creek, an unnamed remnant tidal channel at the southern portion of the site, and the shoreline frontage alongside the Bay. The project would provide a missing link of the Bay Trail, connecting the two existing portions of the trail to the north and south, and would also provide pedestrian trails along Easton Creek. A public plaza and seating area are proposed within the southern portion of the project site near the intersection of Old Bayshore Highway and Airport Boulevard/Broadway. A picnic plaza and event lawn area are proposed along the Bay Trail on the northern side of Easton Creek.

An application for a Vesting Tentative Map is included with the entitlements and proposes to create eight parcels (currently 13 parcels) for ownership/management purposes. However, development standards have been applied to the project as a single site given its integrated elements (e.g. shared parking, vehicular access, etc.).

The base FAR in the Bayfront Commercial (BFC) Zoning District is 1.0 but may be increased if the project includes specific community benefits as detailed in Code Section 25.12.040(C). The applicant is requesting to develop with Tier 3 requirements, which requires a minimum of three community benefits to allow for a 3.0 FAR.

The proposed project requires the following approvals:

- **Environmental Review:** Pursuant to the California Environmental Quality Act (CEQA), certification of the Final Environmental Impact Report (Final EIR) prepared for the project, which concludes that with required mitigation measures there will have no significant environmental effects as a result of this project;
- **Water Supply Assessment:** Pursuant to Water Code Sections 10910-10915, approval of the Water Supply Assessment (WSA) prepared for the project (see Final EIR Appendix WSA);
- **Vesting Tentative Map:** Pursuant to Burlingame Municipal Code Chapter 26.08, approval of a vesting tentative map;
- **Commercial Design Review:** Pursuant to Burlingame Municipal Code Sections 25.12.060 and 25.68.020(C)(3)(a), approval of Commercial Design Review for three 11-story office/research and development buildings and two 10- and 10.5-story parking structures;

- **Special Permit for building height:** Pursuant to Burlingame Municipal Code Sections 25.12.030, Table 25.12-2, and 25.78.060(A)(2), approval of a Special Permit for building height greater than 65'-0" (214'-6" maximum proposed);
- **Special Permit for community benefits for increased Floor Area Ratio:** Pursuant to Burlingame Municipal Code Sections 25.12.030, Table 25.12-2, 25.12.040, and 25.78.070(A), approval of a Special Permit for community benefits and Tier 3 Floor Area Ratio (FAR) of 2.71; and
- **Development Agreement:** Pursuant to Burlingame Municipal Code Chapter 25.104 and Government Code Sections 65864 et seq., approval of a Development Agreement by and between the City and the property owners.

The Planning Commission reviewed the application on March 11, 2024 and provided recommendations to the City Council, below. A copy of the March 11, 2024 Planning Commission staff report is attached and provides a full analysis of the proposed project, including conditions of approval recommended by the Planning Commission.

## **DISCUSSION**

The above approvals are collectively before the City Council for review because Burlingame Municipal Code Section 25.62.020 requires multiple applications for the same project to be processed concurrently and approved or denied by the highest review authority for any of the applications. Since this project includes a Development Agreement – an ordinance requiring City Council approval – the City Council is the highest review authority and is tasked with reviewing all of the applications for the project.

## **Environmental Review – California Environmental Quality Act (CEQA)**

In accordance with the requirements of CEQA, the City issued the following notices and conducted the following public reviews:

Notice of Preparation to Office of Planning and Research	August 12, 2022
Planning Commission Scoping Session for Environmental Impact Report	August 22, 2022
Notice of Availability and Completion of Draft EIR	September 20, 2023
Public Comment Hearing on Draft EIR	October 23, 2023
End of 45-day review period for Draft EIR	November 9, 2023
Response to Comments document (Final EIR) made available to public	March 1, 2024

**Draft EIR (DEIR) – Summary of Potential Significant Impacts and Mitigation Measures:** CEQA requires that governmental agencies give “major consideration to preventing environmental damage when regulating activities affecting the quality of the environment.” An EIR is an informational document used to inform decision makers and the public of the potential significant environmental effects of a project, identify possible measures to minimize such effects, and describe reasonable alternatives to the project.

The DEIR analyzed the impacts of the proposed project and concluded that it would have no impacts that would be considered “significant and unavoidable.” The DEIR also concluded that the project would cause impacts to the following environmental resources, but that such impacts could be mitigated to a “less than significant level” through implementation of identified mitigation measures:

- air quality;
- biological resources;
- cultural resources, including tribal cultural resources;
- greenhouse gas emissions;
- hazards and hazardous materials;
- hydrology and water quality; and
- utilities and service systems.

**Final EIR – Response to Comments Document:** A Response to Comments document has been prepared by the City of Burlingame as Lead Agency pursuant to CEQA and the State CEQA Guidelines. This document provides written responses to comments received during the public review period for the DEIR, including comments received at the October 23, 2023, Planning Commission hearing. Together, the DEIR and the Response to Comments document comprise the Final EIR for the project, which was published on March 1, 2024. Overall, the City received comments on the DEIR from 16 commenters. This included three public agencies: San Francisco Bay Conservation and Development Commission (BCDC), California Department of Transportation, and San Francisco International Airport. The comments centered on the following topics:

- traffic and transportation,
- pedestrian and cyclist safety,
- public access and amenities,
- habitat enhancement,
- bird strike prevention,
- lighting,
- aesthetics, and
- building height and massing.

The City responded to all comments in the Final EIR and made some clarifying text revisions to the DEIR. These minor clarifications do not amount to significant new information that would require recirculation of the DEIR. The Response to Comments document, the DEIR, changes to the DEIR, and a Mitigation Monitoring and Reporting Program (MMRP) collectively comprise the Final EIR (see Exhibit A to Resolution certifying Final EIR).

**Certification of EIR:** The City is required to certify that the EIR has been completed in compliance with CEQA Guidelines, that the Final EIR was presented to the decision-making body of the lead agency, and that the decision-making body reviewed and considered the information contained in the Final EIR prior to approving the project. The City must also independently review and analyze the EIR and find that the report reflects the independent judgment of the City.

**CEQA Findings:** When an EIR has identified one or more significant effects of the project, the City must make one or more written findings for each of those significant effects, accompanied

by a brief explanation of the rationale for each finding, in order to approve the project. These findings must be supported by substantial evidence in the record. CEQA Guidelines section 15091 provides a list of such possible findings, which are provided in detail in the attached resolution.

- a) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.
- b) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- c) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.

The Final EIR for the project identified potentially significant effects that could result from project implementation. However, the Final EIR found that the inclusion of certain mitigation measures will reduce all of those effects to less than significant levels. The mitigation measures will be implemented as required by the MMRP.

### **Development Agreement**

The applicant applied for a Development Agreement (DA) on January 17, 2023, to accompany their entitlements for the proposed project. A DA is a voluntary contract between the City and a property owner that details obligations of both parties, specifies standards and conditions that would govern development of property, locks in current City land use regulations for a particular period, and may include negotiated terms related to phasing and community benefits. The City of Burlingame's Development Agreement process is regulated by Chapter 25.104 of the Burlingame Municipal Code, and California Government Code sections 65864 *et seq.* (the "Development Agreement Statute"). Below is a brief overview of the proposed DA's key terms and obligations:

- The DA includes an initial ten-year term with the possibility of two five-year extensions based upon the applicant meeting certain construction milestones.
- The project would generally include three new 11-story office or R&D Buildings (the North Building, the Center Building, and the South Building), two new 10- and 10.5-story parking garages (the Northern Parking Structure and the Southern Parking Structure), and the improvements associated with the community benefits described below. The project would be constructed in three Phases consisting of the following: the North Building and Northern Parking Structure (Northern Phase), the Center Building and Southern Parking Structure (Center Phase), and the South Building (Southern Phase).
- Each Phase includes site preparation (demolition of existing structures and grading), site finishing, and all community benefits associated with the Phase.

The DA requires the project to provide certain community benefits in exchange for locking in applicable fees and regulations during the anticipated 20-year construction. These benefits are in addition to what is required by the master fee schedule and City Codes, plans, and regulations. The DA incorporates the benefits that the applicant has proposed in the table below. Please see the attached Development Agreement for a full description of each of the following:

<b>Proposed Community Benefits Included as Part of the Development Agreement (Beyond Tier 3 Community Benefits)</b>	
<b>Item #</b>	<b>Description</b>
1.	Public Plaza (7,800 SF plaza and bay overlooks)
2.	Publicly Accessible Park Space (public open space with amenities; landscaping along both sides of Easton Creek)
3.	Cultural, Arts and Events Spaces (public art, interpretive signage and story boards, airplane viewing platform, public restaurant)
4.	Transportation (Commute.org or other shuttle service / layby drop-offs)
5.	Public Parking (40 Permanent Public Spaces available 6 am – 10 pm daily; plus a minimum of 210 Additional Public Spaces available on evenings, weekends, and state holidays: Monday – Friday from 6 pm to 10 pm, and on weekends and state holidays from 6 am – 10 pm)
5.	Sea Level Rise Infrastructure (exceeding Code Section 25.12.050)
6.	Grade Separation Contribution of \$3.5 million (funds toward the Broadway Grade Separation Project)

The DA also requires the project to provide these community benefits at specified times during project construction. For example, the DA generally requires that benefits associated with a particular Phase be completed prior to occupancy of the Building in that Phase. The DA also requires:

- Early delivery of a complete temporary bay trail along and through the project site within three years of all required approvals (including BCDC);
- Installation of story boards along the perimeter of the project site that is in a temporary condition (i.e. construction sites) describing the project and particularly the new sea level rise infrastructure and Bay Trail.
- Installation of improvements and landscaping on both the northern and southern sides of Easton Creek will occur as part of the first Phase, unless the first Phase consists of the Southern Phase, in which case such landscaping shall be installed as part of the next Phase.
- Provision of a shuttle service along Old Bayshore Highway to maintain 15-minute headways or better during the weekday peak commute periods with a stop along Easton Creek to be

completed prior to occupancy of the first Building and a stop in the plaza of the South Building to be completed prior to occupancy of the South Building.

- Payment of a \$3.5 million contribution to the City's Broadway Grade Separation Project in three installments, with the first installment of \$1.5 million to be paid prior to issuance of the first building permit for the first Building, and the second two installments of \$1 million prior to issuance of certificate of occupancy for each of the second and third Buildings.

### **PLANNING COMMISSION ACTION**

On March 11, 2024, the Planning Commission reviewed the EIR, requested entitlements, and Development Agreement for the proposed project. The Planning Commission, with Commissioner Tse absent, voted to recommend that the City Council: 1) certify the EIR and approve the WSA (vote 6-0), 2) approve Commercial Design Review, Special Permits for building height and development under Tier 3/Community Benefits, and a Vesting Tentative Map (vote 5-1 [Chair Pfaff voted No]), and 3) adopt the Development Agreement for the project (vote 6-0).

The Commission noted that while the project is quite large, the site is in need of redevelopment and the public benefits outweigh any negative aspects. Commissioners indicated that they would prefer that the term of the Development Agreement not be so long and hoped that the project could be built at once but understand the need for phasing given the size of the project. Commissioners also noted that the parking garages are too large with over 1,000 extra spaces beyond code requirements and that they would like to see the garages be reduced in size to allow for more generous street frontage setbacks and more open space. Traffic was also noted as a concern, particularly the cumulative effect on traffic intersections along Broadway.

Several Commissioners commented that they did not think that 40 public parking spaces in the Southern Parking Structure to be provided for the Bay Trail and the two restaurants would be adequate given the likely use of the public amenities and suggested that more parking spaces be allocated for public use, especially given that the project provides more parking than required. Given this feedback from the Planning Commission, staff requested that the applicant update its public parking proposal to address the Commission's concerns. As stated in the Background section above, the applicant is now proposing to provide 40 permanent public spaces on the lower level of the Southern Parking Structure (available 6:00 am to 10:00 pm daily), as well as an additional 210 public spaces in the Southern Parking Structure on evenings, weekends, and holidays (available Monday through Friday from 6:00 pm to 10:00 pm and on weekends and holidays from 6:00 am to 10:00 pm).

### **CITY COUNCIL ACTION**

In reviewing the Planning Commission recommendations and making a determination on the requested actions, the City Council should consider the following findings regarding the project entitlements:



**Required Findings for Design Review:** Any decision to approve a Major Design Review application shall be supported by written findings addressing the criteria set forth in Chapter 25.68. In making such determination, the following findings shall be made:

1. The project is consistent with the General Plan and is in compliance with all applicable provisions of Title 25, all applicable design guidelines, all other City ordinances and regulations, and most specifically, the standards established in the Design Review Criteria above, as applicable.
2. The project will be constructed on a parcel that is adequate in shape, size, topography, and other circumstances to accommodate the proposed development; and
3. The project is designed and arranged to provide adequate consideration to ensure public health, safety, and general welfare, and to prevent adverse effects on neighboring property.

**Required Findings for a Special Permit:** Any decision to approve a Special Permit application in the BFC Zoning District pursuant to Chapter 25.78 shall be supported by written findings. In making such determination, the following findings shall be made (as outlined in Code Section 25.78.060(B)):

1. The proposed modification to standards respects and preserves the character of the neighborhood in which the project is located;
2. The proposed modification to standards results in a project that is designed and arranged to provide adequate consideration to ensure the public health, safety, and general welfare, and to prevent adverse effects on neighboring properties; and
3. The additional development capacity is consistent with General Plan goals and policies.

**Findings for Vesting Tentative Map:** In order to recommend approval of a Vesting Tentative Map, the City Council must find that the proposed map, together with the provisions for its design and improvement, is consistent with the Burlingame General Plan and consistent with the provisions of the Subdivision Map Act, and that the site is physically suited for the proposed type and density of development.

### **FISCAL IMPACT**

Pursuant to the Development Agreement, the City will receive \$3.5 Million for the Broadway Grade Separation Project. In addition, the project will contribute to the overall economic development of the Bayfront area, as it becomes a center for employment and recreation. Finally, the project will provide a continuation of the Bay Trail, with those improvements provided by the developer.

### **ATTACHMENTS**

- Resolution – Certification of the Environmental Impact Report and adoption of a Water Supply Assessment
  - Exhibit A – FEIR (separate attachment)

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- Draft EIR, dated September 2023
    - Response to Comments document, dated February 2024
    - Mitigation Monitoring and Reporting Plan (MMRP), dated February 2024
    - o Exhibit B - CEQA Findings of Fact and Statements (as required by CEQA)
  - Resolution – Approval of Project Entitlements
  - Ordinance – adopting a Development Agreement by and between the City of Burlingame and DW Burlingame I Owner LLC, DW Burlingame II Owner LLC, DW Burlingame II Owner A LLC, DW Burlingame II Owner B LLC, and DW Burlingame III Owner LLC, related to the development project at 1200-1340 Old Bayshore Highway.
    - o Development Agreement
      - Exhibit A - Property Map
      - Exhibit B - Legal Description of Property
      - Exhibit C - Pre-Vesting Tentative Map Property Ownership
      - Exhibit D - Post-Vesting Tentative Map Property Ownership
      - Exhibit E - Temporary and Final Bay Trail Improvements
      - Exhibit F - Map of Community Benefits
      - Exhibit G - Impact Fees
      - Exhibit H - Annual Review Form
      - Exhibit I - Form of Assignment and Assumption
  - Planning Commission Meeting Minutes – March 11, 2024
  - Planning Commission Staff Reports & Attachments – March 11, 2024 (hard copies provided of both)

Separate Attachments (hard copies of all provided):

- Project Plans
- Draft Environmental Impact Report, dated September 2023
- Final Environmental Impact Report
  - Response to Comments, dated February 2024
  - Mitigation, Monitoring and Reporting Plan (MMRP)