

STAFF REPORT

DATE: January 6, 2016

TO: Planning Commission

FROM: Mike Webb, Assistant City Manager and Director of Community Development & Sustainability
Katherine Hess, Community Development Administrator

SUBJECT: Nishi Gateway – Planning Application #14-57: General Plan Amendment #08-14, Rezoning/PPD #06-14, Annexation #2-14.

I. Recommendation

Staff recommends the Planning Commission hold a **public hearing** on the Environmental Impact Report, and project applications, with

- a. Staff summary of applications and responses to questions; and
- b. Public testimony; and
- c. Deliberation and a recommendation that the City Council certify the project EIR and approve the following project applications:
 - i. General Plan Amendment (Nishi Property)
 - ii. Rezoning and Preliminary Planned Development (Nishi Property)
 - iii. Gateway/Olive Drive Specific Plan Amendment (West Olive Drive)
 - iv. Development Agreement, including Baseline Project Features as required by Chapter 41 of the Davis Municipal Code (Nishi Property)

This report is a supplement to the detailed report and analysis provided to the Planning Commission for its December 16 workshop. The report includes responses to Commissioner questions and other additional information. The December 16 packet included attachments for approval of the entitlement applications; these documents are available at <http://cityofdavis.org/city-hall/community-development-and-sustainability/development-projects/nishi-and-downtown-university-gateway-district>

This report is organized into the following sections:

- I. Recommendation (page 1)
- II. Summary Project Description (page 2)
- III. Air Quality Questions (page 3)
- IV. Sustainability Questions (page 6)
- V. Hotel Concept (page 7)
- VI. Update on Development Agreement and Fiscal/Economic Analyses (page 8)
- VII. Conclusion (page 10)

II. Summary Project Description

The requested applications would grant land-use entitlements to allow the 47-acre unincorporated Nishi property to be annexed to the City of Davis and developed as a mixed-use innovation district. The project also includes rezoning of properties on West Olive Drive to accommodate redevelopment at greater density/intensity, should property owners desire to do so.



The Nishi project includes

- 650 residential units
 - ♦ 440 apartments
 - ♦ 210 condominiums
- 325,000 square feet of office/R&D uses
- 20,000 square feet of ancillary retails (coffee shop, café, etc.)
- 19 acres of open space, park, and greenbelt
 - ♦ 3.3 acres of the Putah Creek Parkway
 - ♦ Two parks totaling 11 acres
 - ♦ An additional 4 acres of stormwater detention adjacent to the southern park
- A hotel or extended stay hotel is proposed as a conditionally-permitted use, subject to subsequent review and market analysis.

Vehicular access is proposed from West Olive Drive and a new grade-separated crossing of the railroad tracks to Old Davis Road. Bicycle/pedestrian access would also be provided through the Putah Creek Parkway connections to South Davis and the UC Davis Arboretum.

The project requires a General Amendment and Rezoning/Prezoning. Because the Nishi property would be re-designated from Agriculture to urban uses, voter approval would be required under Measure J/R (Municipal Code Chapter 41). Changes to West Olive Drive would not require voter approval and would be entitled through an amendment to the Gateway / Olive Drive Specific Plan.

III. Air Quality Questions

At the December workshop, Commissioners asked questions about the air quality analysis included in the Environmental Impact Report, and cited comments made by UC Davis Professor Emeritus Thomas Cahill at the DEIR hearing. Dr. Cahill noted impacts of diesel exhaust and ultrafine particles emitted by vehicles on Interstate 80 and trains on the Union Pacific railroad tracks.

As a reminder, the purpose of an Environmental Impact Report is to serve as a disclosure document. The City is not prohibited from undertaking an activity with environmental consequences, provided any impacts are assessed and mitigated to the extent feasible. The City may choose to “override” environmental impacts as it balances competing public objectives (including environmental, legal, technical, social, and economic factors). Dr. Cahill’s comments did not question the adequacy of the EIR, but expressed recommendations for how the City should proceed in its review of the project and the entitlement applications.

In light of comments made at recent Planning Commission meetings, staff considered it important to provide some additional clarification regarding health risks related to air quality at the Nishi site and California Environmental Quality Act (CEQA) compliance. Impact 4.3-5, beginning on page 4.3-28 of the Draft Environmental Impact Report (EIR) for the Nishi Gateway Project, concludes that impacts related to land use compatibility with off-site sources of toxic air contaminants (TACs) and ultra-fine particulates (UFPs) would be significant and unavoidable. This impact determination is largely based on the lack of standards for “safe” levels of TACs and UFPs through establishment of an ambient air quality standard (National Ambient Air Quality Standards [NAAQS] and California Ambient Air Quality Standards [CAAQS]). The EIR requires the applicant to implement three separate mitigation measures that will reduce TAC and UFP concentrations within the buildings and on the site. Mitigation Measure 4.3-5a requires the applicant to locate all residential buildings as far as possible from I-80 with no structures in the southwest portion of the project site and to use the non-residential structures as a barrier between I-80 and the residential structures. Mitigation Measure 4.3-5b requires the establishment of a second vegetative barrier that will achieve a certain height within 15 years and further improve outdoor air quality conditions. Mitigation Measure 4.3-5c requires the applicant to include a state-of-the-art air filtration system within all on-site structures (residential and non-residential) that will remove no less than 95 percent of UFP from indoor air. All mitigation measures presented in this impact were developed in consultation with Dr. Thomas Cahill, who has spoken multiple times before the Planning Commission regarding the project.

As noted above, the final impact determination for Impact 4.3-5 was largely based on the lack of an established standard or accepted “safe” level of exposure to TACs and UFPs, as well as the inability to quantify the reduction in TAC and UFP concentrations that would occur with the structural and vegetative barriers. Dr. Cahill and other professors at UC Davis have done numerous studies regarding potential vegetative barrier and determined that, in general, fine needle conifer trees are more effective at removing TACs and UFPs. Additionally, Dr. Cahill has historically recommended California pepper trees or other “sticky” trees that could provide an effective barrier, similar to what is provided in Land Park in Sacramento, and that could be provided as part of Mitigation Measure 4.3-5b.

With respect to interior air quality, it is also worth noting what the air filtration system required by Mitigation Measure 4.3-5c would achieve. For this, staff evaluated the on-site concentrations of fine particulate matter (PM_{2.5}). PM_{2.5} was measured to be 26 micrograms per cubic meter (µg/m³) approximately double the established CAAQS and NAAQS thresholds of 12 µg/m³. Mitigation Measure 4.3-5c requires the filtration systems to achieve a minimal removal efficiency of 95 percent for PM₁₀. A corresponding reduction in PM_{2.5} concentrations would result in an interior PM_{2.5} concentration of no more than 1.3 µg/m³, which is approximately 11 percent or 1/9th of the ambient air quality standards. In other words, interior air quality conditions would be very good.

However, the primary concern that staff have heard from the Planning Commission during consideration of this impact and the project, in general, relates to the air quality at the site. To answer that, some context is necessary. In terms of developable locations within Davis, the Nishi site, due to meteorological conditions, topographic features, and adjacent facilities (I-80 and secondarily the UPRR line), does warrant some consideration for potentially reduced air quality conditions. (Note: no monitoring of UFP conditions beyond the Nishi site is known to have been conducted within Davis.) However, potential health risks are not uncommon and can be handled effectively through planning, such as the three mitigation measures provided in the Nishi Gateway Project EIR.

According to the *American Cancer Society*, the lifetime probability of contracting/dying from cancer in the United States is 43.3%/22.8% among males and 37.8%/19.3% among females (American Cancer Society 2015). In other words there is a lifetime probability that over 430,000 per 1 million males and over 370,000 per 1 million females will develop cancer. This data is intended to provide perspective in evaluation of the incremental risk of an individual project. For additional context, staff consulted other air quality studies across the state that might provide some insight. The South Coast Air Quality Management District (SCAQMD), which regulates air quality conditions in the Los Angeles and Inland Empire, conducted a district-wide evaluation of air pollution health risks in 2014, finalized in May 2015. The average air pollution health risk (number of individuals per million who are likely to contract cancer) across the monitoring stations within SCAQMD jurisdiction was estimated to be 1,025 per 1,000,000 residents (SCAQMD 2015). The report also estimated that diesel particulate matter (DPM) represents approximately 80 percent of the total air pollution health risk or 820 per 1,000,000 residents. Long-term exposure to the diesel particulate matter on the Nishi site corresponds to an incremental cancer risk level of 235 in one million above the background level of cancer risk

from TACs in the region. The unmitigated DPM health risk at the Nishi site was determined to be approximately one-fourth of that in the SCAQMD area.

It is also worth mentioning a recent California Supreme Court decision related to this type of impact determination and whether or not it is required under CEQA. The *California Building Industry Association v. Bay Area Air Quality Management District* decision was released in mid-December 2015 and addresses the question of whether CEQA requires consideration of the impacts of hazardous environmental conditions on the future residents and users of the project, and whether certain CEQA Guidelines are consistent with CEQA statute on this matter. At one point, the court's decision states that CEQA does not *prohibit* an agency from determining how existing conditions might impact future residents of a project (see footnote 12 on page 17 of the case), but seems to leave that to the discretion of the lead agency. As it applies to the Nishi Gateway Project, the court's decision lends credence to the idea that the type of analysis presented in Impact 4.3-5, while representing good planning and concern by the City for the well-being of its residents, is not required under CEQA. None-the-less, the City is considering air quality impacts to be an important policy issue as addressed in the EIR, and intends to continue to consider the impact to be significant and unavoidable. Staff also notes that this is a conservative conclusion based upon the current regulatory environment, and continued improvement – such as has already occurred with respect to lead, diesel exhaust, and other contaminants – would result in reduction of anticipated impacts.

The Draft EIR for the 2016 SACOG Blueprint acknowledges the health risks associated with Toxic Air Contaminants and placing residential uses and other sensitive receptors near freeways and major roadways (including Interstate 80 through Davis). However, the Blueprint DEIR also notes that “The location and pattern of the proposed MTP/SCS growth is important, because it impacts travel behavior and provides a means to determine the impact of future vehicle emissions in the proposed plan area. A compact growth pattern served by an efficient and diverse transportation system provides the foundation to reduce automotive travel and increase walking, bicycling, and transit use—all of which reduce individual vehicle trips and associated VMT. Reduced VMT and vehicle trips are directly linked.” The DEIR further notes that “in order to achieve the greatest VMT reductions from a compact growth pattern, development also must necessarily be in close proximity to public transit and freeway and major roadway corridors.” The Blueprint DEIR proposes mitigation measures, but concludes that impacts are significant and unavoidable even with mitigation.

In conclusion, the analysis presented in the Nishi Gateway Project EIR acknowledges potential air quality conditions, provides mitigation measures to reduce potential health risks in excess of what is typically required under CEQA, and represents a collaborative effort between staff, its consultants, Dr. Cahill, and the Yolo Solano Air Quality Management District. Further, as evidenced by the examples provided above and in staff's opinion, air quality conditions at the Nishi site while determined to be significant and unavoidable, as acknowledged in the Nishi Gateway EIR and above, do not represent air quality conditions that are unique or within which residences throughout the state do not or cannot exist.

IV. Sustainability Questions

During the December workshop, the Commission heard a presentation from Ascent Environmental on the Sustainability Implementation Plan prepared under contract with the City and funded by the Strategic Growth Council grant. The Commission also heard public comment about components of the Sustainability Implementation Plan and consistency with the City's Climate Action and Adaptation Plan. Staff comments on sustainability issues were included on pages seven through ten of the December 15 packet, and responses to commission comments (Attachments 10a and 10b). The SIP was slightly revised in response to Natural Resources Commissioner comments; the revised SIP is at <http://38.106.5.235/city-hall/community-development-and-sustainability/development-projects/sustainability-implementation-plan>.

The Sustainability Implementation Plan is intended to be an evidence-based analysis of how the Nishi Gateway property could be as sustainable as possible, given the current regulatory, market, and technological environment. Based upon the analysis in the SIP, the Nishi property owner has committed to Development Agreement provisions for 4.9 megawatts of photovoltaics, or equivalent. The Sustainability Implementation Plan also includes provisions for buildings exceeding 2013 Title 24 performance standards by 30 percent and transportation management programs such as a "trip cap" and a minimum ten percent reduction in vehicle parking spaces. These are significant commitments exceeding sustainability efforts of other recent private development projects in Davis.

The Planning Commission, and ultimately the City Council are charged with balancing sustainability goals with other City policy objectives, including fiscal impacts; development feasibility; creation of jobs and housing to meet local needs; quality parks and green space spaces; and contribution to area-wide traffic improvements. Some specific trade-offs include:

- ◆ There is competition for roof space within the project. The SIP estimates that 4.9 MW PV could be installed using roof space on all buildings plus ground-mounted systems in surface parking areas. This would generate approximately 85 percent of the electricity anticipated for the site. (See SIP Table 4-1 and ZNE Feasibility Study Appendix pp 13-15). The Open Space and Habitat Commission expressed a preference for green roofs over energy generation. The Recreation and Park Commission noted the need for significant quality outdoor space, some of which could be provided with roof decks and patios. Similar tensions exist with the stormwater detention pond. This area could be used as a PV production area, but that would likely detract from its ability to provide wildlife habitat and naturalized plantings.
- ◆ The project has unusually large infrastructure obligations, including the connections to Old Davis Road under the railroad tracks, and to Olive Drive over the Putah Creek Parkway. As noted in the next section, there are also demands for revenue neutrality. The City Council Guiding Principles for Davis Innovation Center(s) explicitly recognized the desire to strive for net zero, while recognizing the diminishing returns on investment from making an already energy efficient building even more efficient. Although off-site energy generation or GHG offsets may remain an option, the City Council may determine that the same resources might be better utilized toward public art, enhanced park and recreation areas, transportation improvements, or other public good.

The City of Davis has aggressive goals for sustainability, including a desire for carbon neutrality by 2050. At this time, however, it may not be possible to identify with precision the mechanisms to meet these goals, and evaluate aspects like economic implications. The Davis CAAP does not assign numeric carbon reductions to specific actions. Using the recently-adopted San Diego CAP as an example, the table of local, regional, state, and federal actions projects a 52 percent reduction of GHG from 2010 baseline (a 62 percent reduction from Business as Usual) by the year 2035. Seventy-five percent of the reduction is anticipated to come from regional, state, and federal actions. Of the City of San Diego portion, over sixty percent is anticipated from Community Choice Aggregation or another program that increases the renewable energy supply – a similar effort to that being pursued here in Davis. A City Council decision on CCE is expected in March.

Staff, the applicant, consultants, and members of the public have been engaged in conversations about how to ensure that project commitments to sustainability are both meaningful and enforceable. Appendix F of the Sustainability Implementation Plan includes a summary of each of the recommended actions, and the mechanisms for implementation. In addition, Ascent is preparing a monitoring tool to be used throughout project construction and occupancy. Staff anticipates the following structure for implementation of the SIP:

- ◆ A commitment to the Sustainability Implementation Plan, plus key components (such as the 4.9KW PV or equivalent) will be included in the Development Agreement.
- ◆ The SIP will also be referenced in the Preliminary Planned Development, which runs with the land and does not expire.
- ◆ Conditions for compliance with the SIP will be part of Planning Commission reviews of Tentative Subdivision Maps and Final Planned Developments, and staff review of building permits, as applicable.
- ◆ Monitoring reports, including reports required per EIR Mitigation Measures 4.7-2(b) (GHG Reduction Accountability) and 4.15-5 (Annual TDM report) will be available for public review.

Staff is comfortable that the final Development Agreement provisions will reflect substantial commitment to sustainability within this context.

V. Hotel Concept

At the December workshop, Commission inquired about the number of hotel applications in review by the City, and questioned the ability of the Davis market to absorb all the proposed additional rooms.

The City Council approved a hotel conference facility at 1111 Richards Boulevard in September 2015. Building permit applications have not been submitted and CEQA litigation is unresolved.

Subsequent to Planning Commission review and City Council action on the hotel conference facility, entitlement applications were submitted for two extended-stay hotels: one on Cowell Boulevard in south Davis, and one on 2nd Street in Mace Ranch. Each of the two would require legislative approval by the City (General Plan Amendment or rezoning). Public hearings have not been scheduled.

A potential hotel as part of the Nishi property has been considered as a possibility for some time (see DEIR Project Description, page 3-9, and Alternatives analysis, page 7-11 through 7-14). More recently, a hotel has been identified as a potential mechanism for enhancing both the fiscal benefit to the City of Davis and the economic viability of the project. As proposed, any hotel at Nishi would be subject to discretionary review by the Planning Commission, with appropriate environmental and market analysis.

Staff and the City Council have raised the question of the market's ability to absorb all proposed hotel rooms, and are seeking to have a "game plan" for evaluation of the various proposals to maximize consistency with City Council goals to facilitate development of a hotel conference center, ensure fiscal resilience, develop a diverse economy, and improve downtown as a destination. The City has contracted with HVS, a worldwide firm that specializes in reviews of the hospital industry, to evaluate the proposals and the potential for the Davis market to absorb new rooms. Staff is hoping to bring preliminary conclusions to the City Council in February.

The HVS analysis is not evaluating the hotel proposed as part of the Mace Ranch Innovation Center concept. The analysis prepared as part of the Environmental Impact Report for MRIC concluded that the project itself would generate demand for room nights to support the hotel (see <http://documents.cityofdavis.org/Media/Default/Documents/PDF/CDD/ED/projects/Innovation-Centers/Mace-Ranch/Draft-EIR-Appendices/Appendix%20H%20-%20Urban%20Decay%20Analysis.pdf>). The Commission will review any conditions regarding phasing of that development when it comes forward for hearing later in 2016.

VI. Update on Development Agreement and Fiscal/Economic Analyses

As part of their review of the Nishi and Mace Ranch Innovation Center (MRIC) proposals, the Finance and Budget Commission reviewed a thorough analysis of the fiscal and economic impacts of both proposals. This analysis was also presented to the City Council in September (see materials at <http://documents.cityofdavis.org/Media/Default/Documents/PDF/CityCouncil/CouncilMeetings/Agendas/20150915/08-Impacts-Analysis-Update-Nishi-and-Mace-Ranch.pdf>). An Executive Summary has been prepared for Nishi-specific impacts, included as Attachment 1 to this report. The Executive Summary reflects Nishi-specific findings of the extensive earlier analysis, conducts additional sensitivity analysis, and summarizes mechanisms to ensure that the project pays for its impact on services and infrastructure. These could include privatized park and open space maintenance, a Development Agreement commitment to mitigate lost property tax as a result of UC occupancy of buildings, or inclusion of a hotel as part of the development. The Finance and Budget Commission will receive this report at its meeting of January 11, for recommendation to the City Council.

The City has also contracted with Andy Plescia and Associates for an analysis of the economics and development feasibility for the Nishi property. A preliminary analysis was prepared earlier in 2015 and presented to the Finance and Budget Commission on December 14, 2015 (see http://documents.cityofdavis.org/Media/Default/Documents/PDF/Finance/A.%20Davis_Nishi_Property_PPT_DRAFT_12_11_2015.pdf). The analysis concluded that the proposed project had a "gap" of approximately \$9 million between anticipated infrastructure costs and the amount that could be supported by the development cost, primarily due to the cost of the roadway

connections. That gap, however, could be closed through mechanisms such as a Community Facilities District or other infrastructure financing tool. Andy Plescia will be updating the analysis to reflect the current mix of land uses and project costs, including the parking structure and the bridge over Putah Creek, for consideration by the Finance and Budget Commission at its meeting of January 11, for recommendation to the City Council.

At this time, the draft Development Agreement reflects the following commitments of the City and the Developer:

- ◆ The Developer has a vested right to develop the property in accordance with the entitlements and the Baseline Project Features.
- ◆ Commitment to the SIP and specific to sustainability features, including 4.9 MW PV or equivalent, 10 percent reduction in parking, and building performance exceeding 30 percent better than 2013 Title 24 requirements.
- ◆ Development on the Nishi property cannot go forward without UC Davis commitment to the grade-separated crossing to the UC Davis campus.
- ◆ A Transportation Management and Phasing Plan tied to improvements on Olive Drive, the Richards Boulevard corridor, and the Richards Interchange. No buildings would be allowed to be occupied until Richards Interchange improvements are completed.
- ◆ Agricultural mitigation will be provided in accordance with the Agricultural Protection Ordinance.
- ◆ Developer commitment to a net fiscal positive general fund impact, even without a hotel.
- ◆ Developer reimbursement of City pre-development costs under the cost-sharing agreement.

The Development Agreement also establishes the Baseline Project Features required by Chapter 41 of the Davis Municipal Code. If the project is approved, these Baseline Project Features cannot be removed or significantly modified without subsequent voter approval.

There are components of the Development Agreement that will not be known at the time of City Council action on the applications. This is a factor of both the timeline required to allow the City Council the ability to place the General Plan Amendment on the June 2016 ballot for voter consideration, and a desire to know whether the project is approvable before expending the effort to resolve all remaining issues. Staff anticipates the Development Agreement to have placeholders or re-openers reflecting:

- ◆ Specific details of Community Facilities Districts or other financing mechanisms.
- ◆ Development impact fee and community enhancement contributions, fee calculations and credits, and financial commitments to infrastructure improvements.
- ◆ Specific locations for agricultural mitigation, Compliance will be verified at the time the mitigation land is identified for preservation, which would be required prior to any construction or conversion of the Nishi property.
- ◆ Completion of tax-sharing negotiations with Yolo County.
- ◆ Water and sewer connection obligations and charges.

Some of these components could potentially be resolved between the time of the City Council action on the General Plan Amendment and the Measure J/R election. Staff intends to diligently pursue such efforts.

Should the applications be placed on the ballot and approved by the voters, implementing entitlement applications would return to the Planning Commission for public hearing and consideration, including:

- ◆ Final Planned Development
- ◆ Tentative Subdivision Map
- ◆ Approval of Design Guidelines
- ◆ Conditional Use Permits, if proposed
- ◆ Sustainability Implementation and Monitoring Tools

VII. Conclusion

In summary, staff recommends approval of the applications. Staff believes that the project appropriately integrates the City goals for economic development, housing, environmental sustainability, community character, and fiscal responsibility. Specific reasons for staff's recommendations include:

- This site is identified as a priority development area in SACOG's Sustainable Communities Strategy. SACOG has concluded that the project is supportive of all of the Blueprint principles. Adding housing to meet the needs of community employees will help meet regional goals for VMT and GHG reduction.
- The project has the potential for sustainability components stronger than any development in Davis. The Studio 30 report concluded the Nishi property has a walkable and bike-friendly location that lends itself to a dense, mixed-use development. Staff is comfortable that this proposal, particularly when balanced with a multitude of other policy objectives, appropriately contributes to city sustainability goals and takes the city in the right direction for new development projects.
- Housing and businesses on the Nishi property will provide customers for local businesses, particularly downtown merchants.
- Internal open space and bicycle/pedestrian connectivity forms the backbone of the subdivision layout. The project includes a grade-separated connection to the Old Davis road on the UC Davis campus.
- Development Impact Fees from project can assist in contributions to improving operations of the Richards Boulevard corridor, and the project will not go forward until the connection to the UC Davis campus is assured.
- The project demonstrates unprecedented collaboration with UC Davis and Yolo County. The financial contribution from the State of California Strategic Growth Council to the sustainability and environmental reviews demonstrates the importance of this development to regional efforts in GHG reduction.
- EPS found that the total one-time impact of construction of the Nishi project is estimated at 1,000 jobs, \$186 million of output, and \$75 million of labor income in the Davis economy, while estimates for the Yolo County economy show 1,800 jobs, \$329 million of output, and \$130 million of labor income. The Nishi project is estimated to produce an ongoing economic impact in the Davis economy that totals between 1,500 and 1,800 jobs, \$315 million and \$385 million of output, and \$89 million and \$107 million of labor income.
- The provisions of the Development Agreement will address fiscal impact on the General Fund.

Nishi Gateway represents a culmination of concerted community engagement, incorporation of community input, and ground-up integration of sound land use, urban design, and sustainability principles. The proposal successfully achieves a very difficult balance of multiple and diverse policy objectives. While it can be easy to get caught up in pursuit of perfection on any given issue, staff believes that the proposal appropriately integrates city goals for housing, economic development, sustainability, and community character.

Attachments

1. EPS analysis: Economic and Fiscal Impact Analysis of the Proposed Nishi Gateway Innovation Center Project

Staff report and attachments will be posted on the City's website at <http://cityofdavis.org/city-hall/community-development-and-sustainability/development-projects/nishi-and-downtown-university-gateway-district>