

November 21, 2024

Honorable Members of the Planning Commission
City of Los Altos
1 N. San Antonio Road
Los Altos, CA 94022
PCPublicComment@losaltos.gov

Re: 4896 El Camino Real – Requested Modifications to Proposed Conditions of Approval (D23-0011, CUP23-0001, TM23-0003)

Chair Beninato and Honorable Members of the Planning Commission for the City of Los Altos:

This firm represents the applicant Doheny-Vidovich Partners (the “Applicant”) of the proposed project for a five-story mixed-use development with 33 residential units and approximately 16,140 square feet of office space (the “Project”) located at 4896 El Camino Real (the “Property”) in the City of Los Altos (the “City”).

At the outset, we wish to thank City staff for their hard work and diligence to date. The Applicant has enjoyed working with numerous representatives of the City, including the Project’s planner Ms. Liu. The Applicant acknowledges that City staff have played a critical role in ensuring the processing of this Project, which has been refined based on numerous submissions and discussions with the City.

Yet the Applicant is concerned with several of the proposed Conditions of Approval in the draft resolutions before the Planning Commission. Several of the proposed Conditions of Approval conflict with state law and would unnecessarily restrict the Applicant’s ability to proceed with the Project.

Accordingly, the Applicant provides the following requests and recommendations regarding the proposed Conditions of Approval:

1. Conditional Use Permit (“CUP”) Conditions of Approval Nos. 10, 11, 12, and 14

Conditions of Approval Nos. 10, 11, 12, and 14 vest subjective and discretionary authority in the City to approve the materials and color used in the Project’s construction materials. For example, Condition of Approval No. 10 provides that “[d]etails regarding all color and architectural details...shall be subject to review and approval by the Development Services Director or their designee prior to the issuance of building permits.” Similarly, Condition of Approval No. 11 provides that “[f]inal paving design details shall be subject to review and

approval by the Development Services Director or their designee prior to the issuance of building permits.”

As written, these conditions of approval would conflict with the Housing Accountability Act (codified in Government Code section 65589.5), which applies to the Project and limits the City’s ability to impose discretionary rather than objective standards. These conditions create an additional discretionary design review process by which the City could potentially deny the Project based on the subjective review of the Development Services Director or their designee.

Applicant’s Request: The Applicant hereby requests that the City make the following modifications to these conditions of approval:

10. **Exterior Materials:** High-quality materials and finishes shall be used throughout the project and shall remain in compliance with the materials identified in the approved plans, and comply with Building Code requirements, except as modified by the conditions of approval herein. ~~Details regarding all color and architectural details shall be provided in the building permit plan submittal and shall be subject to review and approval by the Development Services Director or their designee prior to the issuance of building permits.~~

11. **Special Paving Materials:** The color, material, design, and product specifications for the special paving materials used on-site shall be submitted with the building permit drawings. Final paving design details shall be subject to review for Building Code compliance purposes only ~~and approval~~ by the Development Services Director or their designee prior to the issuance of building permits.

12. **Windows:** Manufacturer type, design, material, and installation details for all windows within the project shall be specified for each unit in the building permit drawings for review for Building Code compliance purposes only ~~and approval~~ by the Development Services Director or their designee prior to the issuance of building permits.

~~14. **Materials Mock-Up:** The applicant shall set up a large material and color mock-up on-site, prior to building permit issuance and purchase of the finish materials, for final selection and approval by the Development Services Director or their designee. At a minimum, the mock-up shall include all exterior finish materials, trim, railings, and paint samples. Proposed primary and secondary (accent) paint colors should be painted next to each other on the mock-up for purposes of inspection. The color(s) shall not be considered approved until after inspection and approval by the Development Services Director or their designee.~~

2. CUP Conditions of Approval Nos. 62 and 68 and Vesting Tentative Map (“VTM”) Conditions of Approval Nos. 8 and 17.

CUP Conditions of Approval Nos. 62 and 68 and VTM Conditions of Approval Nos. 8 and 17 require the Applicant to abandon all existing storm drainpipes. As written, these conditions would apply to both the existing onsite drainage system and the offsite storm lateral. The Applicant intends to remove the onsite storm system but requests approval to utilize the existing offsite storm lateral at the northeast corner of the Property. Because this lateral crosses multiple utility mains, it would be beneficial for the Project if the Applicant could reuse the existing lateral rather than install a new one.

Applicant's Request: The Applicant requests that the City make the following modifications to these conditions of approval to match the engineering drawings:

62. Public Storm Drain Facilities: The applicant shall abandon existing on-site storm drainpipes.

68. Existing Storm Drain System: The applicant shall ~~cap the on-site SD system at the storm drain main and~~ connect the new on-site storm drainpipes to the public storm drain via new lateral or by reusing the existing storm lateral, and removeing the existing on-site storm drain system entirely prior to issuance of building permit.

3. CUP Condition of Approval No. 49 and VTM Condition of Approval No. 16

CUP Condition of Approval No. 49 requires the Applicant to “pay all applicable development and impact fees prior to issuance of a building permit...”

As written, CUP Condition of Approval No. 49 is inconsistent with Government Code section 66007, as well as recent updates to that code section per Senate Bill (SB) 937.¹ Absent narrow exceptions that do not appear to apply here, Government Code section 66007 prohibits local agencies from imposing fees or charges on residential development projects until the date of final inspection or the date the certificate of occupancy is issued, whichever occurs first. SB 973 clarifies and expands the protections of Government Code section 66007. SB 973 takes effect on January 1, 2025, and will therefore apply to the Project, which will not obtain building permits until after January 1, 2025.

VTM Condition of Approval No. 16 conflicts with CUP Condition of Approval No. 49 by mandating that all applicable fees be paid “prior to Final Map Recordation.”

Applicant's Request: The Applicant requests that the City make the following modifications to these conditions of approval to comply with state law and ensure conformance between the conditions of approval:

¹ A copy of SB 937 is available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB937.

49. Payment of Impact and Development Fees: The applicant shall pay all applicable ~~development and impact permit processing~~ fees prior to issuance of a building permit. The applicant shall pay all applicable development impact fees, including but not limited to Transportation, Park and Recreation, Public Safety, and General Government impact fees as required by the City of Los Altos Municipal Code and current adopted fee schedule, at final inspection or certificate of occupancy, whichever occurs first.

16. Payment of Fees: The applicant shall pay all applicable permit processing fees prior to issuance of a building permit. The applicant shall pay all applicable development impact fees, including but not limited to sanitary sewer connection and impact fees, parkland dedication in lieu fees, traffic impact fees, and public art impact fees and map check fee plus deposit as required by the City of Los Altos Municipal Code prior to Final Map Recordation at final inspection or certificate of occupancy, whichever occurs first. However, utility service fees related to connections may be collected at the time an application for service is received, provided that those fees do not exceed the costs incurred by the utility provider resulting from the connection activities. Any map check fees plus deposits as required by the City of Los Altos Municipal Code shall be paid prior to Final Map Recordation.

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Please do not hesitate to contact me if you have questions regarding the above. The Applicant again thanks the City for its work and looks forward to the Planning Commission's consideration of the Project.

Sincerely,

Cox, Castle & Nicholson LLP



E.J. Schloss

EJS

cc: Ms. Jia Liu, AICP (Associate Planner)
Ms. Stephanie Williams (Planning Commission Liaison)