



93643

DATE: October 16, 2018

TO: Board of Supervisors

FROM: Sylvia Gallegos, Deputy County Executive
Kirk Girard, Director, Dept. of Planning and Development

SUBJECT: Report on Parameters for a Development Agreement Negotiation Process with Stanford University

RECOMMENDED ACTION

Under advisement from September 25, 2018 (Item No. 15): Receive report from the Office of the County Executive relating to a process for negotiating a Development Agreement with Stanford University.

FISCAL IMPLICATIONS

There is no impact to the General Fund. Negotiation expenses are reimbursable pursuant to the terms of the Planning and Development Department's Development Application Acknowledge and Agreement.

REASONS FOR RECOMMENDATION

Stanford University submitted a Development Agreement application to the County in response to the Board of Supervisors' consideration of Housing Impact Mitigation Fee and Inclusionary Housing Ordinances (Housing Ordinances). On September 25, 2018, the Board referred to the Administration the preparation of a report on how to structure a process for Development Agreement negotiations with Stanford University for discussion at the October 16, 2018 Board of Supervisors meeting.

General Use Permit and Development Agreement Application

Stanford University applied for the 2018 General Use Permit (2018 GUP) in November 2016. The proposed 2018 GUP would authorize future development within the Community Plan Area of Stanford University including up to 2,275,000 square feet of academic space and up to 3,150 housing units/beds, of which up to 550 units would be available for faculty, staff, postdoctoral scholars, and medical residents.

On July 27, 2018, Stanford University submitted a Development Agreement application, and on September 14, 2018, provided a supplement to the application "...to provide reasonable

assurance that the university will be able to proceed with development under its proposed 2018 General Use Permit in accordance with existing Santa Clara County policies, rules and regulations.” (*see Attachment 1 – Application for Development Agreement for the 2018 General Use Permit and Attachment 2 – Stanford University Clarification Response Letter*). In exchange for this contracted assurance, Stanford is offering “community benefits,” in the form of affordable housing commitments and investments.

Executive Summary

As currently offered, Stanford University’s housing proposal does not constitute community benefits in that the proposal does not offer affordable housing beyond a level that can be obtained through existing regulations and the exercise of the County’s police powers. Furthermore, the Administration has concerns about certain proposed terms including Stanford’s proposal to hold all existing “Applicable Rules” constant during the life of the Development Agreement and to make the proposed community benefits contingent upon no changes in the 2018 GUP environmental mitigations beyond those proposed in the Draft Environment Impact Report.

If the Board of Supervisors elects to enter into development agreement negotiations, it is recommended that entering a negotiation process be contingent upon Stanford University’s willingness to first express in writing that it would:

- Increase the proposed level of affordable housing funding and subsidy value to exceed the level of affordable housing resulting from the Housing Ordinances.
- Express a willingness to include other benefits in response to interests expressed by community members and affected jurisdictions in the 2018 GUP process (for example, school site dedication and/or ongoing funding, and other benefits relating to transportation and traffic mitigation, sustainability, open space, drainage, and development that are not otherwise covered by the conditions of approval).
- Express a willingness to reduce the scope of proposed Applicable Rules to be held constant during the life of the Development Agreement.
- Accept an extension of the 2018 GUP application timeline to allow for negotiations, which would likely take many months, especially with a concurrent community engagement and communication process.
- Express a willingness to modify the conditions by which Stanford would execute a development, including reconsidering its condition that its community benefits offer is contingent upon not making substantive modifications in the 2018 GUP environmental mitigations beyond those proposed in the Draft Environment Impact Report.

In addition, the Board should appoint a two-member ad hoc negotiation committee of the Board of Supervisors. The role of an ad hoc development agreement negotiation committee is to provide negotiators with parameters on bargaining terms and to confer with the negotiating team outside of negotiations throughout the negotiation process.

The Administration is also seeking input and guidance with respect to the community/jurisdictional communication and engagement process that is proposed in this report.

Analysis of Development Agreement Housing

In the Development Agreement application, Stanford is proposing the following:

1. Provide **two hundred affordable housing units** on land owned or controlled by Stanford (one hundred for university staff and 100 for postdoctoral students) prior to occupying more than one million square feet of academic space authorized by the 2018 GUP. Affordable units would be provided by rent restricting existing market-rate units or by building new rent restricted units.
 - a. 100 units would be identified before any new academic space square footage is occupied under the 2018 GUP. These units would be set aside for Stanford staff (non-faculty) and would be the result of conversion of existing market rate units.
 - b. A second set of 100 units would be identified prior to occupying more than one million square feet of development of academic space.
 - c. 20% of the units (40 total) would serve Very Low Income Households and 80% of the units (160 total) would serve Low Income Households.
2. Provide **\$14.3 million to the County** for the purposes of fully subsidizing the construction of **38 Extremely Low Income Units**, which is the number identified in the County's Nexus Study, at the time in which the 2018 Stanford General Use Permit is approved.
3. Provide **\$21.7 million to capitalize a revolving low-interest loan fund** for affordable housing projects within San Mateo and Santa Clara Counties. The fund would be managed by a Community Development Financial Institution. Eligible recipients of the loan funds or equity investment would be non-profit and for-profit entities constructing affordable housing, converting market rate housing to affordable units, or preserving affordability covenants on existing housing. Stanford would guarantee the Fund would provide a minimum of 217 affordable housing units (44 Very Low-Income units and 173 Low-Income units) during the life of the 2018 GUP.

As discussed more fully in the Background section, a Development Agreement is a contract allowing a public agency to obtain community benefits from an applicant beyond a level that can be obtained through existing regulations and the exercise of its police powers. In exchange for community benefits, an agency typically provides a legally binding commitment that the regulations applicable to the applicant's project will remain unchanged through the life of the project subject to certain negotiated exceptions, such as, changes in building codes or state and federal laws, increased taxes or fees generally applicable to other developments or properties, and regulations serving public health, safety, or welfare purposes.

The Administration, with supporting analysis by housing and economic consultants, has evaluated the Stanford Development Agreement application to assess the community benefits proposed in relation to the Affordable Housing Impact Mitigation Fee and Inclusionary Housing Ordinances adopted by the Board on September 25, 2018. A summary of the comparison is set forth in Table 1.

200 Units

Stanford's proposal to provide 200 affordable housing units for Very Low- and Low-Income staff and postdoctoral students on land owned or controlled by Stanford is a commitment to build units or provide rent restrictions on existing housing. Under existing Stanford Community Plan Policies and the Housing Ordinances, Stanford University is required to pay an affordable housing impact fee or provide affordable housing in conjunction with development of academic space at the University.

Under the Inclusionary Housing Ordinance, 16% of any market rate housing developed by Stanford University must be affordable housing. Of the affordable housing, 4% percent must be affordable to Extremely Low-Income, 11% to Very Low-Income, 45% to Low-Income, and 40% to moderate income households. Based on the amount of residential development (550 units) proposed in the 2018 GUP, Stanford would be required to build at least 88 affordable housing units spanning these income categories or rent restrict 176 existing market rate units (for purposes of compliance with the Ordinance, placing rent restrictions on two existing units is equivalent to building one new unit). The affordable housing payments and inclusionary housing units required by the Housing Ordinances would occur over the projected seventeen years of the 2018 GUP as development occurs.

Stanford is proposing to provide 100 affordable housing units prior to occupying any new academic space authorized under the proposed 2018 GUP and another 100 affordable housing units prior to occupying more than one million square feet of academic space authorized by the 2018 GUP. However, Stanford is also proposing an "incentive multiplier" of 1.6, so that these 200 units would count as 320 units. The Administration would support only counting actual constructed or converted units as meeting the housing demand.

Thirty-Eight ELI Units

Stanford is also offering \$14.3 million to the County to build 38 Extremely Low-Income units, or fund other high priority affordable housing projects. In financial terms, while Stanford University is proposing \$14.3 million contribution to the County for Extremely Low Income and other housing investments, the Affordable Housing Impact Fee Ordinance will require Stanford University to pay the County \$155.8 million (or be credited for the construction of affordable units) if all academic space applied for under the 2018 GUP is authorized and constructed, which will be used, in part, to develop Extremely Low-Income units.

“Evergreen Fund”

In addition to the \$14.3 million contribution to the County, Stanford is proposing a \$21.7 million contribution to capitalize a revolving low interest loan or equity investment fund (“Evergreen Fund”) for affordable housing projects within San Mateo and Santa Clara Counties. Stanford University anticipates this fund would leverage other investors and revolve over time to provide significantly more affordable housing resources than the initial University contribution. There may be programmatic advantages of the Evergreen Fund managed by a Community Development Financial Institution over a County operated revolving loan program, but the County would have the flexibility to use its affordable housing funds in much the same manner as the proposed Evergreen fund, particularly the leveraging and revolving loan characteristics.

The proposed “Evergreen” housing fund would provide 217 “guaranteed” units, 44 units of which are affordable to Very Low-Income and 173 to Low-Income households. However, the Fund would only provide partial funding (i.e. "the missing slice") of up to \$100,000 per unit. The remainder of the required subsidy would be derived from other public or private sources, possibly including the Measure A Affordable Housing funds passed by the voters of Santa Clara County in November 2016.

The nexus study documents that the subsidy required at these income levels is approximately \$300,000 per unit. Based on this fact and the uncertainty associated with the availability of other funding sources, and to avoid providing a disproportionate amount of credit for these units, the unit count has been adjusted to 76 equivalent units based on the cost of \$300,000 per unit. A range of units from 76 to 217 is shown in the comparison table (Table 1) due to the variables involved and to acknowledge Stanford’s guarantee of 217 units.

In financial terms, the combined value of the \$14.3 million contribution to the County, the \$21.7 million Evergreen Fund, and the subsidy value of the 200 units (\$57.8 million) is significantly less (\$89 million less) than the \$182.8 million that Stanford would be contributing to the County under the Affordable Housing Impact Fee Ordinance (if all academic space applied for under the 2018 GUP is authorized and constructed) and taking into account the subsidy value of the 88 affordable units under the Inclusionary Housing Ordinance that would result if Stanford built its proposed 550 residential units.

Analysis of the Timing of Benefits

A possible benefit of the Stanford University proposal is the timing of the proposed affordable housing and affordable housing payments. The difference in the timing of benefits can be evaluated from an economic and a programmatic perspective:

From an economic perspective, funds paid immediately are worth more than funds paid in the future. Assuming affordable housing impact fees required by ordinance are paid on a uniform basis through the life of the project, the total amount of fees collected over the projected 17-year life of the 2018 GUP would be \$202,214,621 (includes annual inflationary index adjustments).

The net present value of this future revenue stream in today's dollars assuming an average interest rate of 3.9% is \$143 million (*see Attachment 3 – Estimated Net Present Value of Academic Space Fee Revenue*). The net present value of the subsidy payments needed to meet inclusionary housing ordinance requirements over the life of the 2018 GUP is \$26 million (*see Attachment 4 - Estimated Net Present Value of Inclusionary Housing Subsidy Payments*).

The combined net present value of housing impact fees and inclusionary housing subsidy payments therefore is \$169 million. By comparison, Stanford is proposing a combined payment and subsidy with a net present value of \$94 million; a shortfall of \$75 million. (*see Attachment 5 – Estimated Net Present Value of Stanford DA Proposal*).

From a programmatic perspective, the proposed \$36 million total in Stanford affordable housing contributions could be invested in affordable housing projects within the first few years of the 2018 GUP (\$21.7 million at time of project approval plus \$14.3 million prior to occupancy of new development). This is an attractive benefit given the acute and immediate nature of the affordable housing crisis. Under the proposed 2018 GUP, Stanford University has the flexibility to develop at any time within the 2018 GUP period, therefore the timing of the receipt of development-related affordable housing impact fees is uncertain. For comparative purposes however, if proposed development occurred uniformly during the projected 17-year life of the 2018 GUP, Stanford University would be obligated to pay approximately \$38.9 million in net present value terms by the end of the fourth year of development.

In summary, the Stanford University proposal provides significantly less funding and fewer affordable units over the life of the proposed 2018 GUP than what would be required by the Affordable Housing Impact Fee and Inclusionary Housing Ordinances. Stanford University cites other benefits in its Development Agreement application, such as, the use of Stanford lands for affordable housing and the flexibility and long-term financial benefits of the proposed revolving low-interest loan or equity investment fund.

Stanford's Housing Proposal does not, therefore, offer community benefits -- that is, anything above and beyond what an applicant would be required to provide under the conditions of approval and/or regulations.

A comparison of the Stanford Proposal with existing County ordinance requirements is provided in Table 1.

Table 1. Summary Comparison of Stanford Proposal with Combined Affordable Housing Impact Fees and Inclusionary Housing Ordinances

	COMBINED COUNTY ORDINANCES at \$68.50 Fee ¹				STANFORD HOUSING PROPOSAL - JULY 2018 ²	
Funds Available for NEW Afford. Units³ <i>PSF of Academic Space</i>	\$155,837,500				\$36,000,000	
	\$68.50				\$15.82	
Subsidy Value of EXISTING units converted to affordable⁴	N/A				\$57,800,000 \$25.41	
Subsidy Value of Inclusionary Units⁵	\$27,000,000				N/A	
Funds + Subsidy Value TOTAL	\$182,837,500				\$93,800,000 \$41.23	
Number of EXISTING units converted to Afford. Units⁶	N/A				200	
NEW Afford. Units created based on full subsidy amount	663 (575 + 88)				114 (76 + 38)	
NEW Afford. Units created based on guaranteed production	N/A				255 (217 + 38)	
Mix of Affordable Units	% of Nexus Demand⁷	Inclusionary Units	Mitigation Fee Units	SUB-TOTALS	% of Stanford Proposal⁸	Units
Extremely Low Income	4%	6	23	29	Approx. 10%	38
Very Low Income	11%	7	64	71	Approx. 18%	54 to 84
Low Income	45%	40	256	296	Approx. 72%	222 to 333
Moderate Income	40%	35	232	267		0
	SUB-TOTALS	88	575			
TOTAL Number of NEW + CONVERTED Affordable Units based on full subsidy required⁹	663 (575 + 88)				314 to 455 (38 + 76 + 200) to (38 + 217 + 200)	

¹ The combined county ordinances represent the 16% Inclusionary Housing Ordinance in combination with the Housing Mitigation Fee on academic space of \$68.50/PSF under the 2018 GUP application. \$68.50 x Expected Development = \$155.8 million. These calculations assume that the 2018 GUP applied for by Stanford is authorized by the County and the square footage constructed.

² Stanford's Housing Proposal includes: conversion of up to 200 existing units to affordable units; creation of a \$21.7M housing fund and payment of \$13.4M to the County for 38 Extremely Low-Income units. The housing fund would provide 217 guaranteed units, 44 VLI units and 173 LI. However, the fund would only provide partial funding (i.e. "missing slice") of up to \$100,000 per unit. Unit production has been adjusted using the subsidy gaps in the Stanford nexus study, which yields 76 equivalent units based on an average subsidy gap of approx. \$300,000 for VLI and LI units.

³ Amounts based on Affordable Housing Ordinances applied to the 2018 GUP application and Stanford's Housing Proposal.

⁴ Subsidy value of converted or new BMR units are based on affordable housing gaps in the Stanford nexus study based on the county-wide development costs.

⁵ Subsidy value of inclusionary units is based on the 16% affordable housing requirement assuming 550 new market-rate units.

⁶ Assumes nexus study values of \$321,000 for Very Low Income units and \$281,000 for 160 Low Income units.

⁷ Breakdown of units by the four affordability categories. Units are shown distributed by the percentages of need documented in the Nexus Study.

⁸ Breakdown of units by the four affordability categories distributed by Stanford Housing Proposal proposed percentages. The percentages vary because of how the units can be calculated; i.e.; by subsidy amount or guaranteed.

⁹ Number of affordable units in the Ordinances column is the 16% inclusionary units based on 550 new market rate units (88 inclusionary units) and the affordable unit demand from the academic space (575 units) based on 80% AMI and below. The units in the Housing Proposal column are: 200 converted units, the 76 to 217 units from the \$21.7M housing fund and the 38 ELI units from the \$14.3M payment to the County.

Administration's Other Concerns

The Administration has additional concerns associated with the Development Agreement Application. Stanford is proposing to hold all existing "Applicable Rules" constant during the life of the Development Agreement including "...those County of Santa Clara ordinances, rules, regulations, official policies, standards and specifications that govern permitted uses of the Property; building locations, sizes, densities, intensities, design, and heights; site design, setbacks, lot coverage, improvements, and open space; construction standards and specifications; parking; and development impact fees and exactions."

This overly broad description may represent an unacceptable freeze of the County's police powers at a time when there are rapidly changing conditions of development in the region. While Stanford University acknowledges in its application the need to more specifically determine the Applicable Rules prior to the effective date of the Agreement, the County should retain to the maximum extent possible the authority to regulate land use in the Stanford Community Plan Area.

Stanford University has also included conditions on the proposed community benefits that may not be acceptable. For example, Stanford's position is that "any substantive modifications to those [GUP mitigation] measures or new requirements that diminish the value of the 2018 General Use Permit to Stanford or increase costs to Stanford would reduce Stanford's ability and willingness to provide affordable housing benefits that the University has offered." Stanford also takes the position that substantive modifications in the 2018 GUP environmental mitigations beyond those proposed in the Draft Environment Impact Report that reduces the value of the 2018 GUP approvals to Stanford or increases its costs would reduce Stanford's ability and willingness to provide affordable housing benefits. Stanford also states that the Development Agreement is not intended to delay the 2018 GUP processing timeline, which is an unrealistic expectation.

The Board of Supervisors should consider if the Development Agreement Application and Community Benefits Proposal as proposed warrants further discussion and negotiation with Stanford University. If the Board elects to proceed, the Administration is recommending a process that includes:

- Initial clarification of expectations.
- Integration with the 2018 GUP application process and public outreach and input.
- Appointment of a two-member ad hoc negotiation committee of the Board.

Development Agreement Negotiation Process

If the Board elects to proceed with negotiation of a Development Agreement, the Administration recommends the following for consideration.

Clarification of Expectations

Given that Stanford's Development Agreement application does not offer community benefits, the Administration recommends proceeding with negotiations only if Stanford first agrees in writing to incorporate all of the following elements:

- Increase the proposed level of affordable housing funding and subsidy value to exceed the level of affordable housing resulting from the housing ordinances.
- Express a willingness to include other benefits in response to interests expressed by community members and affected jurisdictions in the 2018 GUP process (for example, school site dedication and/or ongoing funding, and other benefits relating to transportation and traffic mitigation, sustainability, open space, drainage, and development that are not otherwise covered by the conditions of approval).
- Express a willingness to reduce the scope of proposed Applicable Rules to be held constant during the life of the Development Agreement.
- Accept an extension of the 2018 GUP application timeline to allow negotiations to proceed.
- Express a willingness to modify the conditions by which Stanford would execute a development, including reconsidering its condition that its community benefits offer is contingent upon not making substantive modifications in the 2018 GUP environmental mitigations beyond those proposed in the Draft Environment Impact Report.

Integration with the 2018 GUP Application Process

If expectations are clarified successfully, the negotiating parties would enter discussions after the preparation of the staff recommended conditions of approval for the 2018 GUP and the finalization of the Environmental Impact Report (EIR), which is estimated to be completed by mid-December 2018.

This proposed timing would provide a stable regulatory baseline for the negotiations and ensure integration and consistency with the 2018 GUP permit application process. If negotiations conclude successfully, the proposed Development Agreement would be included with the Final EIR, Mitigation Monitoring and Reporting Program, and recommended Conditions of Approval for the Planning Commission's and, ultimately, the Board of Supervisors' consideration in 2019.

Public Outreach and Input

Given that the purpose of the Development Agreement is to provide supplemental benefits to affected communities, the Administration recommends public outreach and input designed to inform the negotiation process and obtain input on the proposed Development Agreement

terms and community benefits. The following outreach activities are proposed for the Board's input and guidance:

1. Conduct a public workshop near Stanford University to obtain community input on the range of community interests that could be served through a development agreement. Timing: Within the first few weeks of starting negotiations.
2. Invite staff and elected officials representing public agencies and cities near Stanford University to attend a scoping meeting to discuss community benefits of mutual interest. Timing: Within the first few weeks of starting negotiations.
3. Conduct a second public workshop to advise public of updates concerning proposed community benefits and receive input on draft terms. Timing: At point in time in negotiations at which proposed community benefits are identified.
4. Invite staff and elected officials representing public agencies and cities near Stanford University to a second meeting to discuss preliminary community benefits to receive input. Timing: At point in time in negotiations at which proposed community benefits are identified.
5. Conduct a third public workshop near Stanford University to present and receive input on proposed **Final** Development Agreement terms and community benefits in conjunction with the proposed EIR mitigations and recommended conditions of approval. Timing: At the conclusion of development agreement negotiations but prior to Planning Commission public hearings on the 2018 GUP in 2019.
6. On a request basis, present proposed Development Agreement terms and community benefits in conjunction with the proposed EIR mitigations and recommended conditions of approval at city council meetings and Board meetings of public agencies. Timing: At the conclusion of development agreement negotiations, but prior to Planning Commission public hearings on the 2018 GUP in 2019.
7. Provide periodic Development Agreement process status reports to the Planning Commission and full Board at regularly scheduled hearings. Timing: Throughout the Development Agreement negotiation and public input process.

These recommended activities would be in addition to required Development Agreement noticing and public hearings. Staff would also send periodic update emails to the 2018 Stanford GUP opt-in group (and other stakeholders) and create a Development Agreement Negotiation website to post updates on the status of the negotiations and notice of upcoming meetings.

Board of Supervisors Ad Hoc Negotiation Committee

The Administration recommends the appointment of a two-member negotiation committee. The role of a development agreement negotiation committee is to provide negotiators with parameters on bargaining terms and to confer with the negotiating team outside of negotiations throughout the negotiation process. The Board of Supervisors should make appointments to the committee as it sees fit.

CHILD IMPACT

The recommended action will have no/neutral impact on children and youth.

SENIOR IMPACT

The recommended action will have no/neutral impact on seniors.

SUSTAINABILITY IMPLICATIONS

The recommended action will have no/neutral sustainability implications.

BACKGROUND

The County is currently processing Stanford University's 2018 General Use Permit Application (2018 GUP). A Draft EIR was circulated for comment, followed by a recirculation of portions of the Draft EIR. A Final EIR is now being prepared in anticipation of public hearings on the Final EIR and 2018 GUP application at the Planning Commission and ultimately the Board of Supervisors commencing in 2019.

On June 19, 2018, the Board approved a Zoning Ordinance authorizing development agreements and establishing procedural standards for their adoption and maintenance (*see Attachment 6 – Ordinance No. NS-1200.367 - Development Agreements*).

On July 27, 2018, Stanford University submitted a Development Agreement application including a Community Benefits Proposal describing proposed affordable housing commitments and investments Stanford was willing to provide in exchange for conducting proposed 2018 GUP development under existing Santa Clara County policies and regulations (*see Attachment 1 – Application for Development Agreement for the 2018 General Use Permit*). The Department of Planning and Development reviewed the application and determined it was incomplete.

On September 14, 2018, Stanford University submitted a clarification response to the Department's incomplete determination. (*see Attachment 2 – Stanford University Clarification Response Letter*). The clarification response is under review by the Department.

A development agreement, if ultimately approved by the Board of Supervisors, would be a contract that sets forth the community benefits Stanford is prepared to offer in exchange for long-term regulatory stability for proposed 2018 GUP development. While the contract is subject to negotiation, the terms and allowable land uses must be consistent with County

planning policies including the General Plan and any applicable specific plan and Zoning Ordinance. Neither Stanford nor the County is required to enter into a development agreement and may unilaterally opt out of negotiations at any time. A Development Agreement with Stanford University would be considered in conjunction with the 2018 GUP application and EIR by the Planning Commission and ultimately by the Board of Supervisors in noticed public hearings.

LINKS:

- References: 93469 : Consider recommendations relating to Board authorization for the Administration to commence development agreement negotiations with Stanford University as follows. (Cortese)

ATTACHMENTS:

- ATTACHMENT 1 - Application for Development Agreement for the 2018 General Use Permit (PDF)
- ATTACHMENT 2 - Stanford University Clarification Response Letter (PDF)
- ATTACHMENT 3 - Estimated Net Present Value of Academic Space Fee Revenue (PDF)
- ATTACHMENT 4 - Estimated Net Present Value of Inclusionary Housing Subsidy Payments (PDF)
- ATTACHMENT 5 - Estimated Net Present Value of Stanford DA Proposal (PDF)
- ATTACHMENT 6 - Ordinance No. NS-1200.367 - Development Agreements (PDF)