

**Pancholi, Diana**

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**Subject:** FW: North Bayshore Master Plan Development Agreement Issues

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**Sent:** Wednesday, May 31, 2023 9:16 PM  
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**Subject:** North Bayshore Master Plan Development Agreement Issues

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Hi All:

I have spent quite a bit of time on behalf of the Mountain View Coalition for Sustainable Planning reviewing and commenting on the Development Agreement (DA) for the Google North Bayshore Master Plan. Many of the issues I had with DA were resolved with the redlined DA approved by the Zoning Administrator, but several issues I feel need to be addressed by the City Council remain. I recently met with Joyce Lin on why I feel the EPC should have had the opportunity to review the DA, as this master plan is perhaps the most important land use decision in the history of Mountain View. She asked me to prepare a synopsis so that she could share with others and I completed that on Monday.

The last couple of days I have had several discussions with Google staff including Michael Tymoff regarding the TDM Plan Agreement in Exhibit R of the DA. We did not have time to thoroughly discuss the issues we have with the TDM Agreement in the DA, and significant issues remain in our opinion.

A City Council member I shared the synopsis with encouraged me to forward the attached synopsis to key city staff. The attached synopsis is in response to that request.

Thanks,

Cliff Chambers  
on behalf of the Mountain View Coalition for Sustainable Planning

## **Background**

At the May 3rd Environmental Planning Commission (EPC) meeting on the Master Plan, on behalf of the Mountain View Coalition for Sustainable Planning (MVCSP), I wrote a letter of strong support for the Master Plan, but expressed disappointment that the EPC was not having a chance to review the Development Agreement (DA). From professional experience, I know how important the DA is to the decision-making process for major land use and transportation endeavors like the Master Plan.

During the May 3rd EPC meeting, while both the public and the EPC itself did not have an opportunity to review the DA, there were several references to the DA from both the commissioners and City staff. In particular, there was a staff statement regarding a 2029 deadline and it was theoretically possible (but certainly not probable) that Google could develop the Master Plan without any housing being built. These statements concerned me a great deal and when the DA became publicly available for the May 10th Zoning Administrator (ZA) meeting, I spent hours reviewing it. In consultation with other Mountain View Coalition for Sustainable Planning (MVCSP) members, I told them that my support for the Master Plan had gone from strong support to that strong support being contingent on significant changes to the DA.

**In reviewing the DA on behalf of MVCSP, I focused on the affordable housing, transportation demand management (TDM) agreement terms and district parking, three areas of MVCSP focus. To a lesser degree, I reviewed the parkland dedication strategy. The POPA considerations are beyond my area of expertise and I will let others comment on this section of the DA.** I wrote a preliminary draft of a letter for the May 10 ZA meeting with my concerns for these three focus areas to both Aarti Shrivastava, Assistant City Manager and Community Development Director, and Google staff on the morning of May 8th and asked for separate phone meetings on these concerns. Several phone meetings with both parties occurred on both May 8th and May 9th to address these concerns. Both parties told me that MVCSP concerns were going to be addressed in a redline version of the DA, so I decided not to send the letter to the ZA. Before the meeting, both Michael Tymoff from Google and Aarti Shrivastava told me the changes I had requested were in the redlined version I was handed before the meeting. I trusted these high level assurances and continued to support the Google North Bayshore Master Plan and the Development agreement in public testimony on behalf of MVCSP at the May 10 ZA meeting.

On May 24th, I met with Joyce Lin, EPC Chairperson, to discuss a letter that I had sent to the EPC Commissioners before their retreat on May 17th asking that EPC commissioners request a change in the ordinance that would enable the EPC to review future Development Agreements as part of their advisory capacity to the City Council. After going through the concerns I had originally had with the DA the changes made to the DA in the redlined version that was approved by the ZA on May 10th, she asked me to write this synopsis documenting my original concerns with the DA, the changes made in the redlined DA, and any remaining concerns and issue that might be addressed or at least discussed by City Council before the June 13th City Council, when it considers approval of the Master Plan.

There was not time to fully discuss the implications of the proposed TDM Plan Agreement in Exhibit R of the DA with Google staff. I had further discussions with Google staff including Michael Tymoff on May 30 and 31 to address my concerns, and significant issues from my perspective remain.

Before expressing the concerns, I do want to express gratitude to both the City and Google for formulating an overall excellent DA. It is a negotiated agreement, so there is some very obvious give and take in the details of the DA. From the public perspective, City staff overall did a very good job establishing important milestones to ensure delivery of key elements of the Master Plan early in the project development.

I have organized this synopsis into three parts:

- Issues that still need clarification or City Council consideration
- Issues that were resolved in the DA approved by the ZA
- Issue that is being negotiated in City Council Close Session

## **ISSUES THAT STILL NEED CLARIFICATION OR COUNCIL CONSIDERATION**

**1. While there were provisions for dedicating land for the Eco-Gem and Shorebird Yards (school site) before issuance of the first building permit, there was no such provision for dedication of the three parcels of land for affordable housing in Phase I. In fact, the phasing plan allows Google to unilaterally make changes to the phasing plan without any City Council approval, resulting in the possibility that only office could be developed without any residential development including affordable housing**

### Key Text of Original DA Released for ZA meeting

*5.1.1.1 As a condition to issuance of the first building Permit for Residential Building, Development shall have provided an Irrevocable Offer for the Affordable Housing sites JS4, JS5, and PE2 on the Vesting Tentative Map....*

*3.5.1.1 The Parties agree that the Project will be developed in the Phases described in the Phasing Plan attached as Exhibit D. If Developer desires to modify the Phasing Plan, such alteration shall not be deemed a Material Change or in conflict with this Agreement. Developer shall have the right to incrementally develop each Phase (and subsequently may submit multiple applications for Subsequent Approvals per Phase), and to determine the sequencing of delivery within any Phase.*

### Issue Description

While it is important to provide Google with flexibility in the phasing of the project to address changing market conditions, there needs to be sufficient guardrails to protect the public interest so that the public benefits from the Master Plan are achieved. At the May 3, 2023 EPC meeting Aarti Shrivastava, Assistant City Manager/Community Development Director stated that it was possible while not probable that the development agreement as currently structured could lead to only office development with no housing being developed. This was confirmed in a follow-up call with her on May 8th. As originally written, Google would need to apply for a Residential Building Permit before the three affordable housing parcels would be dedicated. Theoretically, Google could unilaterally change the phasing plan so that the office only is built in early phases. To be clear, this is not the current intent of Google and its management team as they are currently committed to a phasing plan that delivers 50% of the affordable housing land dedication in Phase I.

### How this was resolved in the redline version

The redline version provides the same trigger for the three Phase I affordable housing land dedication as the Eco-Gem and Shorebird Yards by requiring that the land dedication for affordable housing occur before the first Building permit is issued, either an office and/or residential building permit.

Additionally, as documented in the redlined version of Table F, if Google does not submit any building permit before Feb. 1, 2029, the DA now requires Google to provide the City fee title to the three parcels for affordable housing development as a required condition.

These changes close a major loophole in the DA

### Remaining Policy Issue for City Council to Consider

While the above change allows for early development of the three affordable housing parcels, another 1.4 acre parcel is currently scheduled in Phase II. As currently stated in the redlined DA version approved by the ZA, Google has unilateral control in re-arranging the phases so it is possible that no additional affordable housing land dedication could occur until later phases. In my opinion, such a change to the affordable housing land dedication phasing is a material change and should be approved by the City Council before such a phasing plan is made. As I currently understand it, the dedication of the 0.3 acre Shorebird Square parkland dedication in Phase II is tied to the 1.4 acre land dedication in Phase II for affordable housing. It would also affect the actual POPA credit proposed by Phase II.

The DA as currently written provides unilateral authority to Google to change the phasing of the master plan. Overall, Council needs to decide at what point, if any, do phasing changes become “Material Changes” that would require Council approval.

**2. If Google is not able to provide sufficient affordable housing, they should not be able to issue a letter of credit and housing fees that would allow other development approvals in subsequent phases**

### Development Agreement Text: Exhibit F First Page

*In the event that Developer fails to deliver Irrevocable Offers to any Affordable Housing Site and cause such land to be in the Required Condition and be ready for acceptable by the City at the times set forth in this Affordable Housing Delivery Plan, and if there are not sufficient affordable credits available based on Affordable Housing Sites previously dedicated or completed as applicable, City may withhold issuance of Later Approvals for any other building(s) Project-wide for other residential; provided, however, if Developer delivers to City an irrevocable standby letter*

*of credit in a form acceptable to City and in amount equal to 100% of the affordable housing fee credit value of such Affordable Housing Site, City's remedy shall be limited to drawdown of the letter of credit and City shall not withhold issuance of Later Approvals.*

### Issue Description

The successful delivery of both market rate and affordable housing is essential to the development of complete neighborhoods as defined in the Precise Plan. Allowing Google the ability to provide 100% of the affordable housing fee instead of the dedication of parcels for affordable housing is not an acceptable provision because it will be very detrimental to the creation of complete neighborhoods. The City's remedy as stated in the current Development Agreement is not acceptable and needs to be revised.

This same fee mechanism is also utilized for the park land delivery and is also not an acceptable substitution.

According to my understanding of my conversation with Aarti Shrivastava, the stated language in the original DA draft text was not the intent of the City and the redline version has been completely modified.

### How the redline version resolves this issue

The revised text is full of legalese and I'm not sure I fully understand it. My bottom line understanding is that if Google does not deliver the affordable housing parcels, with the redline language, the City can withhold approvals of market rate residential development buildings and parcels in subsequent phases. I believe what the new legalese means is that if the affordable housing offers have been made but not dedicated, then an acceptable letter of credit for 125% of the affordable housing land value until the dedication actually occurs.

### Further clarification is needed by the City Attorney or Community Development Director

However, there needs to be better clarification from the City Attorney and the Assistant City Manager/Community Development Director if my above understanding is correct and what the implications of these legalese changes actually are.

**3. There is a wholesale change from the Precise Plan requirements and Master Plan provision for a trip cap to DA terms in the TDM Plan Agreement for a Trip Cap Implementation Plan. The DA is proposing a trip cap number for Google occupied buildings based on the Master Plan full buildout. There is a need for interim TDM performance milestones for at least three building phases between now and full office building buildout.**

From my professional transportation planning (now retired) perspective, the trip cap requirements and monitoring them are extremely important for the quality of life in the Mountain View community at large but particularly for the residents, visitors and employees in North Bayshore. It is the mechanism that will ensure the car light vision of the Precise Plan. Unfortunately, it's very complicated and this section is a bit long because it needs important context for understanding. The Precise Plan and Master Plan both have sections

on the trip cap that I'm going to review first before discussing the DA TDM Plan Agreement and the proposed Trip Cap Implementation Plan in TDM Agreement in Exhibit R of the DA.

### 2017 Precise Plan Requirements

Section 8.3 Monitoring Program in the Precise Plan sets a Peak Hour Vehicle Trip Cap as 8,290 (AM) and 8,030 (PM) at the three gateways. If monitoring shows that the trip cap is exceeded after two consecutive reporting periods, the City "will not grant any new building permits for new square footage" in North Bayshore with some exceptions. The exceptions include proposals that can demonstrate compliance with trips based on physical infrastructure improvement or additional TDM measures.

The Precise Plan also included provision for "Non-Residential Site Specific TDM Plan and Vehicle Trip Cap Compliance." This requires a site specific TDM Plan and vehicle trip cap monitoring counts one year after receiving a Certificate of Occupancy. If the site specific trip cap is exceeded, the developer must submit a revised TDM Plan to "address the exceedance". If the exceedance continues then a penalty can be assessed.

### 2021 North Bayshore Circulation Feasibility Study (Circulation Study)

The Circulation Study approved by Council included modified trip cap policies to revise the time period and locations for compliance with the most notable changes being:

- The monitoring should measure three hour peak period trips in both directions at each gateway and mode-share trends.
- Measure compliance by comparing actual peak direction trips (a.m. inbound and p.m. outbound) with the gateway capacity for the both the a.m. and p.m. three hour peak periods as opposed to just the peak hour.
- Adjust the Shoreline Blvd. and Rengstorff gateway capacities as new infrastructure projects are completed.
- In order to achieve the three corridor trip cap compliance, there will be a need for a 35% SOV rate instead of the 45% SOV rate.

### North Bayshore Master Plan

In Section 7.1 of the April 2023 TDM Plan in the Master Plan, it states:

To monitor trips compliance of the office trips," Google will develop an annual monitoring report and submit to the City of Mountain View, per the North Bayshore TDM Guidelines." The will include:

- Status of existing and recommended TDM programs
- Driveway traffic counts by an independent licensed consultant for all five weekdays measure the peak 3 hour am and pm counts.

- Monitoring compliance for the a.m. and p.m. actual counts compared to the trip cap. The TDM report will determine if the project has remained below the required project peak period Office Trip Cap.

The purpose of the TDM Plan is to provide detail on specific TDM programs that Google will implement to achieve the project's TDM goals, including the TDM requirements specified in the Conditions of Approval and DA. The Master Plan Implementation Plan did not establish how the site specific trips caps would be established.

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### Framework for TDM Agreement in the DA

Before getting into the details of the DA TDM Agreement, let me first acknowledge that Google has been national leaders in TDM program implementation. Achievement of a 45% SOV rate during the pre-pandemic is quite the accomplishment. Google is a recognized leader in the TDM program development. However, as we know conditions, management, and corporate philosophy change. The literature is full of examples of exemplary TDM program implementation during the entitlement process, with a significant downsizing of program efforts after entitlements have been provided. The DA is a thirty-year agreement and during the entire time frame the DA should ensure that the TDM programs are accountable for continuing to achieve the low SOV rate and trip cap goals even if management or corporate goals change.

As summarized above, the concept and implementation of the trip cap has evolved over time. The prelude in Exhibit R, Transportation Demand Management Agreement states it is actually not an agreement but a "...office TDM framework provisions to be included in the TDM agreement which shall apply to all Google occupied buildings located in the Precise Plan area."

While this is much more complex than it needs to be, essentially, the DA Trip Cap Implementation Plan is a brand new concept not for site specific plans for individual buildings but for all Google occupied buildings collectively in the North Bayshore Precise Plan area.

The City cannot require TDM program requirements on existing employment, but on new employment. Google in the DA has voluntarily included all employment in exchange for once the Trip Cap Implementation Plan is approved by City, there is an "acknowledgement that the Office Trip Cap, when approved, shall supersede all Existing Google Requirements." This allows Google to manage the TDM program for all Google office buildings under their control to achieve a 35% SOV rate. This is a major policy shift from my perspective and was not pointed out as such in the May 3 EPC staff report.

The Trip Cap Implementation Plan is introduced in the DA, but was not included in the Master Plan. It is a framework and the **methodology for determining both the trip cap number for all Google occupied buildings and how the annual TDM monitoring report compares the actual trip counts to the Trip Cap number is NOT**

**INCLUDED in the DA.** The details on how driveway trips counts, district parking and shared parking will be aggregated for all Google buildings into vehicle trips is still to be worked out after the DA is approved.

From both the Google perspective and the Mountain View community perspective, the Trip Cap Implementation Plan is a good framework and I support, but will need close scrutiny and professional peer review before it can be validated that the Trip Cap Implementation Plan protects the public interest in reducing traffic levels for high quality of life in both North Bayshore and beyond. The devils are in the details and the assumptions utilized. As it stands now the Trip Cap Implementation will be approved by City staff with no peer review or public input.

There is much warranted confusion about what the trip cap now means. There first was the trip cap number at the Rengstorff, Shoreline, and San Antonio Gateways as defined by the Precise Plan. There is also a site specific trip cap in the Precise Plan and the City Council approved a site specific trip cap for the Landings in the 2020

#### Issues that Warrant City Council Consideration

Here are some of my concerns as the methodology is not included in the DA but some key assumptions are:

- **The trip cap number as defined in the DA is for full Google Master Plan buildout of office space.** As defined in Table A of Exhibit R, the square footage for the trip cap number includes the new 3.1 million square feet of office in the Master Plan, existing offices (to be determined in the trip cap implementation plan) and the entitlement projects not yet occupied including Landings and East Charleston. Because the Master Plan is being constructed in 8 phases with both office and residential being over time, the office annual TDM Monitoring report will always compare the current year trip count to the full buildout trip cap number as currently written in the DA. Because most of the office will not be built in earlier phases, but the 3.1 million square of office trip generation is included in the trip cap number, in my professional opinion. Google will easily be able to achieve compliance with the trip cap when the first several new office buildings are constructed, even if they reduce the service levels of their TDM plan effort. There are no interim performance milestones by project phases to track progress of the TDM implementation effectiveness in meeting the trip cap number in the DA or recommended for the Trip Cap Implementation Plan. In order to address the above concern, interim TDM performance milestones should be established as part of the Trip Cap Implementation Plan.
- The DA allows Google to propose the Trip Cap Number with the Public Works Director and Community Development Director approving it. With no methodology proposed in the DA, the DA should require Google and the City to jointly hire an independent third party to 1) develop the methodology; 2) propose interim performance milestones by phase including a gradual reduction of current SOV rate to

35% SOV rate by project phase; and 3) determine the trip cap number at full buildout. The key assumptions and findings of the third party should be peer reviewed and taken into account in the decision making process by both the City and Google, who would need to approve all 3 steps above.

- A trip generation rate of 4 persons per 1,000 square feet of office space is specified as a key assumption in the DA. . This is a very traditional, old-school trip generation for a traditional suburban business park. Many suburban office buildings pre-pandemic had much higher trip generation rates, with some observers projecting that many office buildings had 5-6 person per square feet. The independent third party recommended above should validate what the likely persons per square feet were before the pandemic and utilize this number.
- Consistency with peak period trip generation rate that was used in the North Bayshore Master Plan Subsequent Environmental Impact Report (SEIR) Transportation Analysis or the North Bayshore Multimodal Transportation Analysis is also a key assumption and should be validated and scrutinized. Google staff argue that both the 4 persons per 1,000 square of office space and the peak period trip generation rate that were utilized in the SEIR need to be utilized. This is a development agreement and both parties can agree to different, more accurate, and defensible key assumptions that consider the pre-pandemic, pandemic, and post-pandemic realities if they both so desire.

While I am generally supportive of the Trip Cap Implementation Plan if it goes through a rigorous peer review process to validate the key assumptions, it is a major policy shift in my opinion from the Precise Plan and subsequent Council approved changes to the Trip Cap policies with the 2021 Circulation Study. As currently written, the Trip Cap Implementation Plan will supersede all other trip cap requirements and will be approved by the Community Development Director and Public Works Director. The City Council, of course, can make this decision to delegate the approval to City staff, but it should at least recognize that it's a major policy shift and will hopefully address some or all of the issues described above.

#### **ISSUES THAT WERE RESOLVED IN THE REDLINED DA APPROVED BY THE ZA**

#### **4. Google should be required to include commuter shuttles (Google Buses) as a required TDM component.**

##### Development Agreement Text: Exhibit R

The required TDM components include a long list but for the Google buses, the only required TDM component is:

*e. Provide publicly accessible shuttle services to connect employees and visitors to existing public transit stops/hubs, either directly or through the MVTMA.*

The Google buses as we all know them provide direct free services from areas around the Bay Area to North Bayshore. They are NOT a required TDM measure. In fact they are not included in the Development Agreement

## Issue Description

Prior to the pandemic, the Google Commuter Shuttle program was utilized by 31.3% of employees. The mode split that Google achieved in a suburban business park is unprecedented, and largely due to the Google buses. In Condition 264 in Exhibit 2, shuttles to transit hubs are a required TDM measure, but commuter shuttles from Bay Area residential areas to North Bayshore are NOT included as a required TDM program. This omission has been carried forward to the Development Agreement.

The 35% SOV performance has and will continue to largely depend on the Google Commuter Shuttle Program to not only continue but to thrive and even expand as additional office space is occupied. With the trip cap assumption, Google is allowed to utilize a 35% SOV assumption, but without a commitment to sustaining and expanding the Google Shuttle Program in the Development Agreement, this assumption is not feasible.

When the sufficient housing and local services are fully developed, the internal trip rate can be monitored and reported on. There should be performance metrics that would allow Google to reduce the service levels of the Google Commuter Shuttle Program, but only after the internal rate has been documented and achieved.

## How the redlined version resolved this issue

In Exhibit R, in the other TDM Measure section, for “Additional measures that shall be considered as needed to maintain compliance with the Office Trip Cap...” the following has been added “(vii) provide commuter shuttle service for employees”. I’m not sure why this wasn’t included originally in both the Master Plan and DA as Michael Tymoff agreed wholeheartedly that the commuter shuttle will be absolutely needed to obtain the 35% SOV rate.

**5 . There are currently two terms of 15 years in the development which allows Google to proceed with development in a second 15 year term even if major public benefit milestones have not been achieved.**

## Development Agreement Text:

*2.2.3 Term Extension Requirements. In addition to the conditions in Section 2.2.2 above, in order to obtain the Term Extension, Developer shall have fully satisfied all of the following requirements prior to expiration of the Initial Term (collectively, the “Term Extension Requirements”).*

*2.2.3.1 Affordable Housing ..... If Developer is unable to make any such additional Irrevocable Offers prior to the expiration of the Initial Term, then Developer shall still have the right to the Term Extension if, prior to the expiration of the Initial Term, Developer provides City with a letter of credit in the amount of the in-lieu affordable housing fees that would be due in order to achieve the fifteen percent (15%) requirement, which letter of credit shall remain in effect until such time as Developer has made such Irrevocable Offers of dedication.*

### Issue Description:

The above text sets out the requirements for a term extension beyond the first fifteen year term of the DA. Staff is applauded for establishing the performance milestones. We agree with a performance based system for allowing the term extension of the DA. However, the ability of Google to have the right to the Term Extension by providing a letter of credit in the amount of the in-lieu affordable housing fees to achieve

the 15% requirement is not acceptable. it would be as serious detriment to the Complete Neighborhoods envisioned in the Precise Plan as well as the Master Plan.

### How this was resolved in Redlined Version

Section 2.2.3.1 on Affordable Housing Sites for Term Extension beyond the 15 years has been radically changed and now reads:

*“Developer shall have made an Irrevocable Offer(s) and caused to be in the Required Condition a sufficient number of Affordable Housing Sites at least fifteen percent (15%) of the number of market rate residential units for which Developer has obtained Building Permits. For avoidance of doubt, temporary shortfalls in Affordable Housing Site dedications which may otherwise be addressed though delivery of Letters of Credit as provided in Section 4.1 shall not permitted (sic) at the time of term extension.”*

This revised language adequately addresses MVCSP concerns, although we would have preferred a 10 year term with two ten year extensions.

### **ISSUE BEING ADDRESSED IN CITY COUNCIL CLOSED SESSION**

#### **6. The provisions for District Parking are assumed to be Shoreline Amphitheatre but the lease terms and backup options are not included in the DA**

In the Master Plan, Lot C is included as a major feature for district parking with a 6-story 4,300 square foot garage. There is scant attention to District Parking in the Development Agreement. Instead the DA states:

*“Concurrently with this Agreement the Parties are entering into an Option to Ground Lease Lot C pursuant to which the developer has the *option (emphasis added)* to lease all or a portion of Lot C for District Parking use as contemplated in the Master Plan.”* It is our understanding from both Google staff and City staff that the lease agreement will come before the City Council on June 13th. In discussions with a City Council member, the negotiations are being handled in City Council closed sessions.

There are a few concerns here, but mostly common sense questions:

The development agreement does address what happens if Google does not exercise this lease option. What is the backup plan for district parking if this is not specified as specific term and condition in the DA. City staff has indicated that Google would then need to find an alternative site for District Parking. Where?

The phasing of the parking on Lot C is not addressed. When will the 4,300 spaces be needed? Why isn't it included in the Phasing Plan?

What type of shuttle service/active transportation services from Lot C will be required to provide adequate distribution of employees.

When will Lot C be included in the driveway counts for the Trip Cap Implementation Plan.

What will be lease terms and will the City receive adequate compensation for the lease.

What happens after the expiration of the lease?

These questions and others would normally be addressed in the DA and are not. They are hopefully being addressed in the closed session negotiations with Google.