

September 17, 2019

Via Electronic Delivery

Supervisor Cindy Chavez  
Supervisor Joe Simitian  
70 W. Hedding Street  
San Jose, CA 95110

Dear Supervisors Chavez and Simitian,

Thank you for taking the time to meet with us on Wednesday. We found the meeting to be positive and productive and we appreciate the time and attention that you and your staffs are devoting to our application. We are providing this follow up letter to address two topics: our understanding of how a development agreement can increase predictability; and clarification of our requests regarding the draft conditions of approval.

### **A. Framework for Predictability**

During our meeting, Supervisor Chavez asked us to provide our vision as to how a development agreement can establish a framework for predictability. We anticipate these matters would be a topic of discussion and negotiation, and we are very open to feedback. As explained in more detail below, there are three types of predictability that we believe can be addressed by a development agreement:

- Predictability that Stanford will be able to complete the approved academic square footage and housing.
- Predictability that the County will not change the land use regulations that apply to this project.
- Predictability that Stanford will deliver defined community benefits on an agreed upon timeline.

A development agreement generally affords an opportunity for a city or county to provide certainty to an applicant that a long-term development project can be completed under a known set of rules and conditions. In enacting the Development Agreement Statute, the State Legislature recognized:

(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public

planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development.

(Gov't Code § 65864)

With this background in mind, we have outlined, below, how we envision predictability to be encompassed in to the development agreement.

**1. Predictability that Stanford will be able to complete the approved academic square footage and housing**

Like the existing permit, Stanford's new General Use Permit would describe the land uses allowed on Stanford's academic campus and the degree to which those uses may be intensified, in the form of an allocation of net new academic square footage and housing units. The permit also would describe the procedures for obtaining subsequent discretionary approvals to construct individual buildings and infrastructure improvements.

A development agreement would "vest" the permit in that the agreement would ensure that Stanford can fully build out the authorized net increase in academic facilities and housing units as long as Stanford remains in compliance with the conditions of the permit and the terms of the development agreement. As required by law, there would be annual hearings to ensure compliance with the development agreement's terms. And, as specified by the draft conditions, there would be compliance hearings at the end of each development phase.

The County would not lose its discretion over subsequent approvals of individual buildings and infrastructure improvements. However, the County would agree not to exercise that discretion in a manner that prevents Stanford from completing the authorized academic square footage and housing units.

The Development Agreement Statute states:

The development agreement may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement.

(Gov't Code § 65865.2)

**2. Predictability that the County will not change the land use regulations that apply to this project**

Normally, a development agreement holds constant, as to the project, the existing city or county regulations that govern the following topics: 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.

A development agreement does not hold constant, or prevent the County from applying to the project, other changes in law that do not conflict with these existing land use regulations.

The Development Agreement Statute states:

Unless otherwise provided by the development agreement, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement. A development agreement shall not prevent a city, county, or city and county, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property as set forth herein, nor shall a development agreement prevent a city, county, or city and county from denying or conditionally approving any subsequent development project application on the basis of these existing or new rules, regulations, and policies.

(Gov't Code § 65866(a))

A development agreement also would not (and could not) prevent the County from applying to the project new regulations that are necessary to protect against conditions that are dangerous to health and safety; nor would a development agreement prevent the County from implementing changes to the uniform building, plumbing, electrical, fire and similar codes or other provisions required by state or federal law. In addition, a development agreement would not limit the County's ability to charge reasonable fees for processing development project applications and monitoring compliance with the conditions of approval.

### **3. Predictability that Stanford will deliver defined community benefits on an agreed upon timeline**

In practice, development agreements often specify the applicant's agreed upon obligations to construct project elements and to make other negotiated payments that are considered beneficial to the community. For example, Stanford has proposed to include development agreement provisions that would advance the timing for provision of housing, including several hundred units of below-market-rate housing, and provide funding for local bicycle, pedestrian and transit improvements and Palo Alto Unified School District needs.

The university anticipates that development agreement discussions would explore these and any other topics that county negotiators would like to discuss. As explained below, we seek predictability about requirements for housing, both below-market-rate and market rate, that Stanford is being asked to provide. We would like to reach agreement upon housing unit totals, location and timing. We also seek greater predictability as to the County's housing ordinances. We would like to satisfy the ordinances through a development agreement, rather than leaving open questions about how the ordinances might be implemented or changed in the future, and rather than engaging in continued debate as to their legality.

### **B. Clarification of our Requests**

After we left our meeting, we realized there may have been some confusion about our position as to the development agreement and the draft conditions of approval. **Based upon careful consideration of the requests by our neighboring communities and the County's draft conditions, we have determined that, to accept a permit, we will need both a development agreement and a feasible and reasonable set of conditions of approval.** We understand that we will need to deliver significant benefits to our neighboring communities, many of which will be provided up front, long before we are able to complete our academic

facilities. To deliver these benefits, we will need a development agreement that ensures predictability and we will need a set of conditions that we know we can satisfy.

Our positions fit into three categories: issues that we hope to resolve through a development agreement; changes to conditions that we consider to be infeasible or unreasonable; and clean-up items.

## **1. Issues that we hope to resolve through a development agreement**

We view a development agreement as the way to gain predictability around how much housing Stanford must build, as well as housing affordability, location and timing. A development agreement provides a path forward to bridge the gap between our views and those of the County administration regarding the legality of the County's Stanford-only housing ordinances and draft conditions pertaining to housing. In a nutshell, a development agreement can enable us to simply agree to comply with specified requirements without debating whether those requirements otherwise could have been imposed by law.

The key items we anticipate discussing would be as follows:

- The number of below-market-rate workforce units that Stanford must fund or construct and the timing for providing these units. The number of below-market-rate units has been a moving target. The draft conditions of approval call for 933 below-market-rate workforce units over a 20-year period. Stanford has proposed to fund or construct all 575 below-market-rate workforce units that were required by the County's Stanford-specific affordable housing fee ordinance, and to do so immediately rather than over a 20-year period. We would like to discuss how we might come to agreement on this item.
- The number of unrestricted, market-rate housing units that Stanford must construct and the location for these units. The draft conditions of approval call for a total of 2,172 housing units, most of which would be unrestricted, market-rate units. Stanford has proposed to provide all 2,172 housing units with credit for increases in housing supply due to units that are currently under construction. We would like to discuss how we might come to agreement on this item.
- Repeal of the Stanford-specific housing ordinances. As noted above, Stanford has proposed to fund or construct all 575 below-market-rate workforce units that were required by the County's affordable housing fee ordinance. Stanford also has proposed to set aside 16% of all new unrestricted faculty/staff housing units on its campus as inclusionary units, consistent with the County's inclusionary housing ordinance. Stanford seeks rescission of the ordinances to gain certainty about housing requirements that will apply to build-out of the development authorized by the General Use Permit and to resolve debates over the ordinances' legality. Rescission of the ordinances would not prevent the County from enacting similar ordinances after Stanford completes the development authorized by the new General Use Permit; however, Stanford is hopeful that, by that time, a countywide approach might be in place.

## **2. Changes to conditions that we consider to be infeasible or unreasonable**

During our meeting, we identified 4 out of the 114 draft conditions of approval that we consider to be infeasible. We believe that there are constructive ways that we can work together to modify these four conditions to achieve the County's policy objectives, while also ensuring that Stanford is able to build its new academic facilities and provide the housing that we all would like to see come to fruition.

The four conditions are as follows:

- Condition F.2: Trip Standards and Penalties for Noncompliance;
- Condition I.2: Parks Study;
- Condition O.9: Municipal Services Study; and
- Condition 0.10: Childcare Facility Review

### 3. Clean-up items

On June 11 and June 21, 2019, we submitted proposed modifications to the draft conditions of approval and draft community plan amendments. Many of our proposals do not represent substantial differences in objectives as to matter of policy; rather, they are intended to clarify the terms of the conditions and ensure success in implementing them. In its packet for the June 27 Planning Commission hearing, the County Administration provided revised draft conditions that addressed some of our proposals. We'd like to work collaboratively to discuss further possible revisions to the conditions and plan amendments that would carry out the County's objectives, while cleaning up ambiguity and addressing practical concerns about implementation. We are not wed to our initial proposals about how this can be achieved; however, we would like to engage in a process to work through each of the conditions and plan amendments to see whether we can reach agreement on these clean-up items.

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Again, we appreciate your time and attention. We are available for a follow-up meeting whenever you'd like to discuss these matters further, and we look forward to continuing to work with you as the Board of Supervisors considers our applications.

Sincerely,



Robert C. Reidy

Vice President

Cc: Kristina Loquist  
Scott Strickland  
Martin Shell  
Jean McCown  
Catherine Palter  
Sean Morley