

Dear City Council Members, Board Members, Commissioners, Mr. Lait, and Ms. Raybould:

Given that this development is one of largest in decades, we believe it is vital that the City Council, Board and Commission members, and City staff address critical problems with the project previously identified with the 3200 Park Boulevard/200 Portage (Fry's site). Some problems that the community pointed out before persist while new ones have emerged, causing us even greater concern.

In general, the project:

- was negotiated behind closed doors including economic considerations and site planning
- destroys a major historic resource important to our cultural, business, and industrial legacies
- is largely inconsistent with the NVCAP goals
- fails to provide a realistic timeframe and funding plan for the affordable housing
- is plagued by a lack of publicly available information
- is plagued by a lack of timely notification
- is plagued by irregular review processes including proceeding without benefit of DEIR comments and alternatives analysis

We ask that the City please:

- A. Halt any further hearings/meetings on this project until the response to public comments to the DEIR is released.
- B. Update the project website to include all pertinent documents, including the development agreement with any changes to the development agreement clearly shown.
- C. Make sure that communications on this and all projects are duly noticed well in advance of the meeting to all interested parties, including those with 600 feet of a proposal as well as those who have signed up for notifications.
- D. Make sure that the address is consistent throughout the process.
- E. Address our concerns about the Secretary of Interior's standards being ignored/avoided with regard to the historic significance of the building and its preservation
- F. Cease commingling staff and applicant analyses in the future to avoid work boundary issues and the confusion as to the origin of staff recommendations,

To support our concerns and justify our requests, we offer the following details. Specifically:

- 1) The DEIR comment responses are not available.

Five months have elapsed since the DEIR comments were submitted. CEQA requires consideration of reasonable alternatives to reduce or eliminate identified impacts, of which there are several. Staff has informed us that they are working on the responses, but City meetings about the project continue even though the DEIR identified significant impacts that we believe have not been addressed according to CEQA requirements.

The board and commission meetings proceeding without the DEIR responses is counterproductive and highly irregular. At the last meeting of the Architectural Review Board, members were asked to review the proposals without the benefit of response to the

public comments to the DEIR. We object to the ARB being denied this crucial information. We ask that no further comments or action by any board or commission take place until they and the public see the response to the DEIR. We further ask that recent comments and action by the ARB be reconsidered in light of the upcoming DEIR responses.

2) Procedural Review Irregularities

The HRB recommends to the ARB. However, the ARB has been asked to comment on the satisfaction of the Secretary of the Interior's Standards absent HRB comments stated in motion form, a breach of prescribed protocols. The ARB is not facile with the Standards, which are the purview and expertise of the HRB. Additionally, adequate time needs to be provided between an HRB and ARB meeting so minutes can be prepared for ARB members and the public to understand what has been recommended.

3) The negotiations were held in private.

The public has no access to any studies that may or may not have been provided to the Council in conducting the negotiations. For instance, what are the near-term and long-term financial benefits of the Agreement to both the City (the public) and Sobrato? Was an economic study conducted to investigate the viability of a larger amount of retail at the site, or to consider the likely success or failure of such a small (2600 sq. ft) retail space? What study was conducted to determine reuse possibilities for the Cannery Building? What advice was sought that might have led to a better site plan and circulation plan? The public deserves to see those reports and at a minimum to know what studies were provided.

4) The site planning was also done in closed session without public input, without advisory Board and Commission input.

Why were the affordable housing units not included in the market rate units as is required by City code? Not planning where the affordable units will go or providing details as to mass, scale, and number of units, etc. while asking the ARB to consider other elements of the project makes no sense. There should be visuals showing the entire project.

5) Locating the affordable housing project directly in front of the Cannery presents another significant impact.

Situating the affordable housing is in direct conflict with the Secretary of State standards based on what can be read into the proposed site plan and stated intentions. This impact, as we see it, has not been addressed and has been ignored by having no responses to the DEIR.

6) Notifications are not being sent in accordance with City standards

Those within a 600' radius may or may not be receiving notifications of meetings, but other interested parties, NVCAP Working Group members, and stake holders are not being notified. The notification for the ARB meeting was sent out in the middle of the afternoon on a Wednesday, the day before the 8:30 am meeting on the next day. Notifications should be sent as soon as the meeting date is established along with a link to the staff report once available. In recent correspondence with staff, staff acknowledged this was a concern. How does staff propose to solve the delays in notification? We suggest that no topic be discussed until the notification criteria have been met. The planning department seems short-staffed, and we hope the Council will be addressing this soon.

7) Project notifications and website need to clearly identify the project's location

The address most commonly known to the public, such as 200 Portage needs to be included in any notifications for the public to be adequately informed. Some notifications have listed a series of addresses that were never used before to identify the project and that bear no relevance to many if not most interested people. Because the DEIR was not noticed to stakeholders and neighbors under a meaningful and relevant description/address, and because the DEIR was posted generally using unfamiliar addresses, the existence of the DEIR was not discovered until well into the comment period.

8) An applicant's analysis should not be mingled with the City's analysis.

In the staff report for the prior ARB meeting, both the City's and the Applicant's analyses of whether the project satisfies the Secretary of Interior's Standards were in the same attachment. At a glance, the document appeared to be a product of City staff only. One had to read carefully to distinguish when one analysis ended and the other began.

9) Development scenarios for the Fry's site put forward by the NVCAP Working Group specifically recommended housing over commercial, and yet the current proposal still emphasizes commercial/office over housing and community serving retail. The preferences of the working group, community members who donated months of service are patently being ignored.

10) The Development Agreement (DA) and other relevant documents are not readily available on the project webpage.

Please make all significant and relevant materials available. Public input is stymied because we don't know what the project comprises. Shouldn't the DA be posted to inform the public? While we understand the applicant is making changes to the DA, we believe the public should have access to the original and amended DA which we believe should be provided as a redline version. The optics are very poor here. Even if obfuscation is not the intent, obfuscation is the result.

- If the DA is being changed, how? If the DA is being revised, is what the ARB reviewed consistent with the original or revised DA?
- Has Sobrato revised the agreement? If so, by what authority can Sobrato revise the DA without meeting again with Council? Shouldn't additional discussion be public? Do they respond to the earlier ARB members' comments that were critical of the site plan? Since those comments, it appears that the ARB purview does not include site planning or circulation or desire to see the Cannery building and its history respected.
- Without access to the DA, we the public have no idea how much latitude there is for broader consideration including alternatives that would meet the Secretary of Interior's standards. If Sobrato is making changes, there must be some latitude but neither the public nor reviewing bodies have been provided with what that latitude might be. Ought not broader considerations beyond what is being presented to the ARB and HRB be studied? Again, the EIR identified impacts. Alternatives that avoid and/or mitigate those impacts to less than significant are required.
- If one of the goals of the Draft Agreement is, as was indicated in the initial roll out of the project on Aug 1, 2022, to avoid a lawsuit by helping the applicant achieve a given number of market units, then please acknowledge that fact and let the land use planning happen in public in accordance with our laws and processes. Why the churn to keep documents and processes hidden? Ultimately, transparency will result in a faster process and yield satisfactory outcomes because the public will have been included. The public will insist anyway, so why not be as transparent as possible?

- The August 1, 2022, Council meeting announcing the Sobrato agreement made some commitments in the presentation slides. Presumably, those statements were consistent with the negotiated terms. Please confirm.

For example, it was said during the meeting that the “remnant” Cannery building (that portion remaining after the proposed demolition of 40% would be rehabilitated consistent with the Secretary of the Interior’s Standards. This is backward. The Secretary of Interior’s standards need to be applied when the historic resource is still intact. The loss of the historically significant Cannery has been consistently underplayed and has never been addressed head on. The Cannery qualifies for historic protection. Why have alternatives that preserve this historic resource been denied a hearing with the HRB and the ARB? Even the commitment to applying the Secretary of Interior’s Standards to the “remnant” building are not being held to as the ARB was even asked if they should be applied given the Cannery would no longer be eligible for the CA Register.

11) The review process is following a piecemeal path

The project is being presented to ARB with one or two aspects of the entire proposal being considered at a time, leading to a lack of comprehensive site planning, with no cohesive end product. Please explain why this is the way the review is being put forward. And again, the ARB is being asked to perform the duties of the HRB by commenting on the Secretary of Interior’s compatibility requirements and/or impacts (although not referred to as such) of the housing with/on the Cannery building.

12) Was the PC zoning a stipulation in the Development Agreement (and negotiations)?

- Given PCs offer little assurance to the community, how the property might evolve in the future upon expiration of the DA is unknown and will not be known.
- We understand that the duration of the Development Agreement is only 10 years. Are there any circumstances under which the DA could be extended? What was the basis for such a short period? What governs the development after the end of 10 years?
- By comparison, SOFA’s redevelopment was also complex yet provided clear zoning, development and design standards and guidelines that would govern the future during and beyond the Development Agreement. Will this current DA be adequate to address the future of the site post DA expiration? It appears unlikely, as there are no development or design standards set forth for the ARB to use in reviewing the PC housing development, PC affordable housing development or the commercial/office components of the project. If they exist in the current version of DA, surely, they should be made available for current review. We are concerned, based on what has been presented so far, that there will be little or no provision in the DA to guide the future. The SOFA Plan avoided the PC by creating specific zoning and standards particular to the area and properties. Such measures are not being attempted here even for the few parcels, and the result seems a vague, uncertain future. And we question whether better-informed site planning might avoid non-conformances that have led to application of the PC site-wide.

Finally, on page 17 and other places of the draft agreement we found, Section 10.7 is mentioned, i.e., “Owner’s obligations under this Section 10.7 shall survive expiration or earlier termination of this Development Agreement.” 10.7 does not appear to exist, yet it governs some of the terms of the agreement with regard to expiration. Maybe this has already been corrected. <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas->

[minutes/planning-and-transportation-commission/2022/2022-10-11-wip-draft-da-ptc-clean-copy.pdf](#)

We hope that you will receive these comments in the manner in which they are intended. We support comprehensive, transparent planning that serves the City and the residents, that satisfies the developer, and that follows already clear and defined processes and adheres to established standards.

Thank you.

Sincerely,

Sheri Furman
Becky Sanders
Co-Chairs, Palo Alto Neighborhoods