

# **REPORT TO THE CITY COUNCIL**

## *City of Salinas, California*

DATE: September 20, 2016

FROM: Megan Hunter, Community Development Director  
Christopher A. Callihan, City Attorney

SUBJECT: **GATEWAY CENTER PROJECT:  
ALLOWANCE OF IN-LIEU FEE FOR PARTIAL STORMWATER  
MITIGATION AND AMENDMENT TO THE GATEWAY CENTER  
COMMERCIAL PROJECT ECONOMIC DEVELOPMENT INCENTIVE  
AGREEMENT**

### **RECOMMENDATION:**

It is recommended that the City Council approve:

- 1) A resolution allowing the applicant to pay in-lieu fees totaling \$95,500 for stormwater mitigation in order to address road runoff caused by the addition of traffic lanes; and
- 2) A resolution amending the Economic Development Incentive Agreement as follows: a) Section 7 to define Commencement of Operations as the date the Certificate of Occupancy is issued for the Lowe's home improvement store or twenty-four months from the date the City Council approves this amendment; and (b) Section 3b – City Payments to exclude Measure G in the calculation of Quarterly Incentive Payments.

### **BACKGROUND:**

In October 11, 2011, Cloverfield Management, LLC (applicant) and Rexford Title, Inc. (property owner) obtained approval of a Specific Plan (SPEC 2010-001), Rezone (RZ 2010-002) and Development Agreement (DA 2011-002) to develop the Gateway Center project, an approximately 20.5-acre commercial shopping center located at the northeast corner of San Juan Grade Road and East Boronda Road (on a portion of APNs 211-231-060 and 211-231-061). The site is located within the North of Boronda Future Growth Area (FGA) of the City. The proposed project will consist of commercial and retail uses on approximately 17.5 acres of land and a storm water detention/retention basin on approximately 3 acres of land. A maximum of 205,858 square feet of commercial retail and service uses are planned. A building of approximately 121,000 square foot with an accompanying 31,500 square feet garden center (Lowe's home improvement store) will serve as the anchor tenant. Five additional outbuildings with retail and services uses totaling approximately 54,000 square feet are also proposed (no specific uses or tenants have been identified by the applicant for the five outbuildings).

### Project Timeline:

- September 9, 2008 – Annexation of Future Growth Area located north of East Boronda Road, consisting of approximately 2,400 acres (including the Project site)

- September 30, 2010 – Application submitted for the purpose of developing the Gateway Center shopping center project (the “Project”)
- October 11, 2011 – City Council approval of the Specific Plan, Rezone, and Development Agreement
- October 11, 2011 - City Council approval of economic incentive agreement consisting of sales tax sharing over a 10-year period and deferral of development impact fees over a 5-year period
- November 2011 – Project delayed as Lowe’s scales back store expansion
- December 16, 2015 - Site Plan Review application submitted for project (SPR 2015-011)
- February 23, 2016 - Parcel Map application submitted for project (RS 2016-001)
- September 1, 2016 - Master Sign Plan application submitted for project (MSP 2016-008)
- September 7, 2016 – Letter from applicant is submitted requesting that the ten-year period of the Economic Development Incentive Agreement is reset to the date a Certificate of Occupancy is issued for the Lowe’s home improvement store

### Existing Setting

The Project site is currently utilized for row-crop farming. There are no buildings or other on-site improvements at the site. The site is generally flat and is not in an area subject to flooding based on review of the Flood Insurance Rate Map (FIRM). Storm water surface runoff from the site currently leaves the property generally at the southeast corner where it enters the City’s storm drain system located on Dartmouth Way.

Rexford Title, Inc. is the owner of land within the West Area of the FGA totaling approximately 158.59 acres. The Project site is a part of that area. The site is bounded by San Juan Grade Road on the west and East Boronda Road on the south. Both San Juan Grade Road and East Boronda Road are designated as major arterial roads on the City’s Land Use and Circulation Policy Map and will provide primary vehicular access to the site. There are no easements on the site. There will be various easements created to address access and utility issues including an easement for the detention/retention basin and is included in the parcel map currently under review.

The following provides a brief overview of the Zoning districts/land uses adjacent to the Project site.

North: New Urbanism Interim (NI) (Specific Plan Overlay)/agricultural row crop farming.

South: Commercial Retail (CR), Residential High Density (R-H-2.1) and Residential Medium Density (R-M-3.6)/Harden Ranch Shopping Center and residential uses (located to the southeast).

East: New Urbanism Interim (NI) (Specific Plan Overlay)/agricultural row crop farming.

West: Residential Medium and Residential Low Density (R-M-2.9 and R-L-5.5)/La Canada Mobile Estates and residential uses.

## **DISCUSSION:**

### In-Lieu Fee for Stormwater Mitigation

After securing the necessary entitlements to initiate the Gateway Center Commercial Project, the primary tenant, Lowe's Home Improvement Center decided to scale back the expansion of its stores. As the economy slowly began to improve, the applicant expressed interest in re-starting the project. In 2015, the applicant formally submitted a Site Plan Review Application. Although there was an approved Specific Plan and Development Plan, staff discovered that the applicant would have to adhere to the new requirements of the City's National Pollutant Discharge Elimination System (NPDES) Permit pursuant to the Clean Water Act. As a result, the applicant had to revise the original plans to comply with the new Stormwater Development Standards.

After revising the stormwater management plan, the applicant requested an interpretation of the stormwater requirements related to road widening. Under the Section J.4.g.i.2.b of the NPDES Permit, "Projects adding traffic lanes resulting in less than 50% of the impervious surface of the existing road for which runoff cannot be separated must provide treatment for the entire road runoff." This provision allows for the applicant to either install an offsite treatment system or pay in-lieu fees to address only the runoff from the added traffic lanes. The applicant opted to pay the in-lieu fees with the goal of expediting the site plan review process.

Currently, the City lacks an in-lieu fee schedule for stormwater treatment. As a result, Public Works Engineering Staff calculated the mitigation fee using the following methodology. First, the area of road widening was calculated using the improvement plans dated June 22, 2016. Then, the treatment area was estimated assuming a 4% area of treatment for the widening. The treatment section was calculated based on City Standard Plan SW12 and assumed a uniform vertical section for simplicity. The estimate also assumed two treatment areas for each segment of roadway, but did not include pricing for storm drain piping to connect the treatment area to the development. Unit pricing for the various items was derived from the El Dorado Park Bioretention Project bid opening on May 17, 2016. The highest and lowest contractor bids for each item were not included and the remaining two prices were averaged. A \$10,000 design fee was assumed for the proposed mitigation. The total fee of \$95,500 was reviewed and approved by the City Engineer on August 19, 2016.

Approval of the \$95,500 In-Lieu Fee will allow the project to move forward while the City is able to formally establish an In-Lieu Fee Schedule for the NPDES Permit.

### Amendment to the Gateway Center Commercial Project Economic Incentive Agreement

On September 7, 2016, the applicant transmitted a letter via email to the Community Development Director requesting that the ten-year period of the Economic Development Incentive Agreement be reset to the date a Certificate of Occupancy is issued for the Lowe's home improvement store. After reviewing the Economic Development Incentive Agreement, the only section needing revision to extend the time period is Section 7 – Commencement of Operations. Commencement of Operations is defined as "the date a Certificate of Occupancy is issued for the Lowe's home improvement store to be constructed within the Gateway Center or twenty-four months from the date the City Council approves a Development Agreement...whichever occurs first". Under this definition, Commencement of Operations technically began on October 11, 2013. The amendment would modify Section 7 to read "For purposes of this Agreement and for the commencement of the Quarterly Incentive Payments, the Gateway Center shall be deemed to have commenced operations on the date a Certificate of Occupancy

is issued for the Lowe's home improvement store to be constructed within the Gateway Center or twenty-four months from the date the City Council approves Amendment No. 1 to this Agreement, whichever occurs first ("Commencement of Operations)."

In addition to the applicant's request, Section 3b of the Economic Development Incentive Agreement should be amended to explicitly exclude Measure G from the calculation of the Quarterly Incentive Payments similar to Measure V Transactions and Use Tax. It should be noted that Measure G was passed after this agreement was executed. The purpose of Measure G was to restore city services, especially public safety after a major economic downturn and years of financial deficits.

The original purpose of the Economic Development Incentive Agreement was to achieve the economic development objectives of an enhanced sales tax revenue base, increased job creation, and diversification of the local economy through the proposed Gateway Center Commercial Project. To encourage this development to proceed, the City agreed to share tax revenue over a ten-year period of time up to a maximum total amount of \$1,712,800. In addition, the City agreed to allow the developer to pay development impact fees in five (5) equal annual installments without interest.

Although the development was delayed over the last five years due to weak economic conditions, the original purpose for the project has not changed, nor have the benefits to the City. As outlined in the original Economic Development Incentive Agreement, the Gateway Center is estimated to generate \$51 million in total gross sales and an estimated \$388,600 in sales tax per year. With the adoption of Measure G, the City portion of sales tax revenue is even greater. The proposed development is also projected to generate 325 new full time equivalent (FTE) jobs, 154 FTE jobs from the Lowe's project alone. Moreover, the applicant will pay approximately \$3.2 million in development impact fees over the next five years. If the agreement is not amended, the City risks losing the development and significant economic development benefits outlined above.

When the City entered into the Economic Development Incentive Agreement, it was anticipated that construction would begin promptly. This is reflected in Section 7, Commencement of Operations which provides a general project timeline for the project as the issuance of the Certificate of Occupancy or twenty-four months after the Development Agreement is approved. More commonly these type of agreements are typically tied to issuance of the Certificate of Occupancy because of the unpredictable nature of commercial projects. Unfortunately, this unpredictability delayed the Gateway Center Project and the time that the agreement would take effect. Without the amendment, the ten-year time frame for the agreement will be reduced to approximately half and likely half the economic incentive making it difficult for the applicant to proceed.

Because this project is not currently generating any revenue, the City would only gain if the development proceeds. The applicant, on the other hand, would be negatively impacted by the shortened timeframe, which would reduce the shared revenue needed to offset accelerating development costs. For these reasons, it is recommended that the City Council amend the agreement.

## **ENVIRONMENTAL REVIEW:**

On October 11, 2011, the City Council adopted the Gateway Center Specific Plan Mitigated Negative Declaration (MND) and the Mitigation Monitoring and Reporting Program. The proposed development complies with the Specific Plan and the MND.

## **ISSUES:**

Shall the City Council permit the applicant to pay in-lieu fees totaling \$95,500 for stormwater mitigation to address road runoff caused by the addition of traffic lanes?

Shall City Council amend the Economic Development Incentive Agreement to reset the term to the date of Certificate of Occupancy issuance or twenty-four months from the date the City Council approves Amendment No. 1 to this Agreement and exclude Measure G in the calculation of Quarterly Incentive Payments?

### **FISCAL IMPACT:**

A report entitled Fiscal Impacts of the Proposed Gateway Retail Center on the City of Salinas California was prepared on August 31, 2011 by Alan D. Kotin & Associates to evaluate the financial impacts of the proposed Project on the City of Salinas. The report is attached to the October 11, 2011 staff report that coincided with City Council approval of the Specific Plan, Rezone, and Development Agreement. The report estimated City revenues and service costs associated with the Project, as required by the General Plan; determined the potential impact on applicable City services and facilities; estimated the number of new jobs; estimated how new net sales tax will be generated; and discussed the impact fees required to be paid by the development.

The report indicated that after City service costs, the Project will have a positive net sales tax impact of approximately \$467,000 to City revenues. The report also indicated that the Lowe's project will employ approximately 154 people. The ancillary stores are estimated to employ another 171 people.

### **TIME CONSIDERATIONS:**

Timing is critical as the applicant plans to obtain a grading permit at the end of this month in order to begin construction of the Lowe's store in 2017. Further delay may result in the permanent shelving of the Lowe's home improvement store in Salinas, especially if the economy slows as forecasted in 2018.

If approved, the resolution will resolve the remaining issue with stormwater mitigation so that the site plan review process can be completed. The site plan review application was submitted last December and is ready for approval. During this time, staff has worked diligently with the applicant on submitting plans that are in substantial compliance with the Specific Plan and Development Agreement.

### **ALTERNATIVES:**

The City Council has the following alternatives:

#### In-Lieu Fee for Stormwater Mitigation

1. Approve the resolution allowing the applicant to pay the In-Lieu Fee for stormwater mitigation; or
2. Disapprove the resolution as presented and require that the applicant install the stormwater mitigations as directed by Public Works.

#### Amendment to the Gateway Center Commercial Project Economic Incentive Agreement

1. Approve the resolution amending the Gateway Center Commercial Project Economic Incentive Agreement as proposed;

2. Request additional information and defer consideration of the Economic Development Incentive Agreement;
3. Modify the Agreement consistent with the requirements therein; or
4. Deny the proposed amendment.

### **CITY COUNCIL GOALS:**

The proposed actions are consistent with the following City Council goal:

Economic Diversity and Prosperity. Approval of the resolutions will allow for the construction of a Lowe's home improvement store, which will generate significant sales tax revenue and at least 154 full-time equivalent jobs. Other than new schools, this will be the first major development in the Future Growth Area.

### **CONCLUSION:**

The City has worked tirelessly with the applicant since 2010 to entitle this property, approving a Specific Plan, Rezone, and Development Agreement. After the project was put on hold the prospects for the site were uncertain. Now that the applicant has resurrected the project, the City has been working diligently to clear the last hurdles to ensure construction begins immediately. The recommended actions by City Council will resolve the last obstacles and ensure this important project quickly moves forward. As outlined above, the project will generate multiple economic development benefits for the City.

### **ATTACHMENTS:**

Resolution Allowing In-Lieu Fee for Partial Stormwater Mitigation  
Calculation Sheet for In-Lieu Fee  
Resolution Amending Economic Development Incentive Agreement  
Amendment to Economic Development Incentive Agreement  
Letter Requesting Amendment to Economic Development Incentive Agreement  
Original Economic Development Incentive Agreement