

City Council Meeting: March 7, 2017
Agenda Item: 8.A

To: Mayor and City Council
From: David Martin, Director, City Planning
Subject: Annual Development Agreement Compliance Review

Recommended Action

Staff recommends that the City Council:

- 1) Review the status of Development Agreement compliance;
- 2) Determine good faith compliance for those that are in compliance and listed as such in Table 1; and
- 3) Determine that good faith compliance has not been achieved for the Agensys Development Agreement.

Executive Summary

This report provides an annual summary of the status of compliance for each of the Development Agreements that are currently in effect and subject to annual compliance report submittals. Council last reviewed the status of Development Agreement compliance at its January 26, 2016 meeting. This year's summary includes review of all 20 completed projects, six projects that are under construction, and the status of the remaining six Agreements where construction has not commenced. Attachment A provides the summary discussion for each of these 32 properties and Attachments B and C to this staff report provide a summary of the Transportation Demand Management (TDM) Program requirements that have been required for new and amended Development Agreements since 2010.

Based on staff's review of each of the 20 projects already built and the annual reports submitted by the developers or successors-in-interest to demonstrate good faith compliance, staff recommends Council determine that 19 of these Agreements are in good faith compliance with requirements specified for each property and one of these Agreements is not. This report provides information regarding steps for enforcement for one completed project, Agensys, where good faith compliance with its Average Vehicle Ridership (AVR) requirement has not been achieved in the past reporting cycle.

This report also summarizes staff's work with three other properties that are, consistent with development agreement requirements, implementing additional transportation demand management measures to achieve the numeric peak-hour AVR targets identified in each Agreement. These three properties are Colorado Center, Providence Saint John's Health Center, and Crossroads School.

Staff will continue its ongoing and annual review of compliance reports for each Agreement submitted by the developers or successors-in-interest to demonstrate good faith compliance. The next annual report to Council for all Development Agreements subject to annual compliance reporting is scheduled during the first quarter of 2018.

Background

Chapter 9.60 of the Municipal Code establishes the processes and requirements for the City to enter into a Development Agreement. One of the provisions is annual review by the City Council of each approved Development Agreement to determine good faith compliance with the terms and conditions of the Agreements. Since the passage of this ordinance in 1982, 32 Development Agreements have been enacted that are still in effect. Each Development Agreement contains unique time frames, obligations, and requirements. The obligations can be one-time or ongoing; some are fees, some are actual physical improvements, and some are ongoing services.

The 32 Development Agreements monitored by the Planning and Community Development (PCD) Department are listed below and include six properties under construction and six properties where construction has not yet commenced. This includes one project approved since Council's last annual review of Development Agreement compliance in January 2016: a mixed-use commercial/residential project in the Downtown District at 500 Broadway.

PCD staff works closely with other City departments and divisions to confirm compliance with agreement terms that fit within those departments' areas of expertise. For example, Housing and Economic Development performs the annual compliance review of affordable housing obligations in Agreements and Community and Cultural Services performs the annual compliance review of child care program obligations.

Discussion

As noted above, as a result of staff's review of all 32 Development Agreements subject to compliance reporting, 19 of the 20 constructed projects have been determined to be

in good faith compliance. Conversely, staff has determined that the Agensys project at 1800 Stewart Street has not achieved good faith compliance. The status of the Agensys property is discussed in the body of this report. Attachment A summarizes all other Agreements where annual compliance reports are required and have been submitted for the current review period, provides a brief status update on the projects under construction, and those properties where construction has not yet commenced.

Attachments B and C also provide a summary of TDM program measures that have been incorporated in newly-approved or amended Development Agreements since 2010 in conjunction with the City’s Land Use and Circulation Element (LUCE) implementation.

TABLE 1. Development Agreements (32)	Recommended Finding: Good Faith Compliance (19)	Recommended Finding: Not in Good Faith Compliance (1)	Under Construction (6)	Construction Has Not Commenced (6)
2401-2525 Colorado Avenue - Colorado Place II & II (Colorado Center) (1981)	•			
1541 Ocean Ave - Paseo Del Mar (1982)	•			
2700 Colorado Ave - National Medical Enterprise (Viacom) (1982)	•			
530 Pico Blvd - Bayview CA Unlimited Partnership (Le Meridien Delfina) (1983)	•			
2000-2200 Colorado Ave - Arboretum (AO Santa Monica) (1987)	•			
1620 26th Street & 2425 Olympic Blvd - Water Garden (1988)	•			
1733 Ocean Ave - Maguire Thomas (1990)	•			
2221 Santa Monica Blvd - Providence Saint John’s Health Center (1998)	•			
1776 Main Street - Rand (2000)	•			
3030 Olympic Blvd - Lantana East (2004)	•			

TABLE 1. Development Agreements (32)	Recommended Finding: Good Faith Compliance (19)	Recommended Finding: Not in Good Faith Compliance (1)	Under Construction (6)	Construction Has Not Commenced (6)
3030 Olympic Blvd - Lantana South (2004)	•			
1725 Ocean Ave - The Village (2008)	•			
725 California Avenue - Saint Monica's Catholic Community (2010)	•			
1800 Stewart St - Agensys (2010)		•		
2834 Colorado Avenue - Colorado Creative Studios (2011)			•	
702 Arizona Avenue (2011)	•			
1317 7 th Street (2011)	•			
401 Broadway (2011)				•
710 Wilshire Boulevard (2012)			•	
1548 6 th Street (2012)	•			
2930 Colorado Avenue (2013)				•
1318 2 nd Street (2013)	•			
1731 20 th Street - Crossroads School (2013)	•			
1554 5 th Street - Courtyard by Marriott (2013)			•	
501 Colorado Avenue - Hampton Inn & Suites (2013)			•	
315 Colorado Avenue - Arlight Cinemas at Santa Monica Place (2014)	•			
1402 Santa Monica Blvd - Mini Automobile Dealership (2014)			•	
1112-1122 Pico Blvd (2014)			•	
1415 5 th Street (2015)				•
1560 Lincoln Blvd (2015)				•
1601 Lincoln Blvd (2016)				•
500 Broadway (2016)				•
1333-1337 Ocean Avenue - Hill Street Partners III (2007)	Expired in 2012			
1900 Pico Blvd - Santa Monica College Parking & Pool (1989)	Expired in 2014			

Recommended Finding: Not in Good Faith Compliance

Agensys

1800 Stewart Street

Agreement Effective: 10/28/2010

Expiration: at termination of ground lease

Reporting Period: 10/28/2015 to 10/28/2016

Recommended Finding: Not in Good Faith Compliance

The Agensys Agreement permits a project including the following key components:

- 24,625 square feet for administration offices and entry lobby
- 45,590 square feet for manufacturing of new cancer treatments
- 72,050 square feet for research and development
- 11,390 square feet of meeting rooms, employee amenities including a cafeteria open to the public during lunchtime hours
- 5,140 square-feet of publicly accessible open space
- Publicly-accessible pedestrian path to allow access to the Bergamot Station site and future Expo Line light rail station
- Surface parking for 200-220 cars

Community Benefits Summary

- Publicly-accessible pedestrian path
- Publicly-accessible passive open space along Stewart Street
- Widened sidewalk along Stewart Street
- Café open to pedestrians during limited daytime hours
- TDM Program geared to the project site's location within a "Higher Goal" District designated by the Land Use and Circulation Element (LUCE)
- Sculpture garden with up to 10 sculptures adjacent to the pedestrian path
- Local hiring program including a job fair and a local hiring policy
- Student internship program
- Student tours

- Signage and way-finding system
- Shared parking for events at Bergamot Station
- Continued community outreach
- Transit contribution toward improved transit infrastructure focused on bicycle access at the light rail station

Status of Compliance

Construction for the Agensys project began in Spring 2011 and was completed in January 2013. Staff received the facility's annual compliance report on November 4, 2016. All of the site community benefits such as the pedestrian path linking Bergamot Station to Stewart Street, the Sculpture Garden, Pedestrian Café (LIME), public open space, and widened sidewalk were complete with the construction of the project site.

Operational community benefits such as a local hiring program (currently 8% of its workforce is a Santa Monica resident); internship program for Santa Monica College students or Santa Monica residents; Santa Monica-Malibu Unified School District student tours; and providing shared parking for special events at Bergamot Station are on-going benefits. In particular, Agensys has continued its efforts with student tours, lectures, and programs with Santa Monica High School and hosts an annual Family Science Day for elementary, middle school, and high school students in Santa Monica.

Agensys is also preparing for their third sculpture exhibit; works of art are being fabricated and installation is anticipated in March/April 2017. This new exhibit was reviewed by the Santa Monica Arts Commission and its Public Art Committee in a special joint meeting in September 2016. The exhibit will feature works by Lynn Aldrich, Jeremy Kidd, Bertil Peterssen & Pontus Willfors.

Financial payments of \$70,350 for the project's required Bergamot Station Transit Infrastructure Contribution and \$20,000 for bicycle access improvements in the area were verified in January 2014. Agensys is in good faith compliance with these Agreement requirements outlined above.

The Agensys Development Agreement specifies that Agensys' initial employee average vehicle ridership requirement shall be 1.6 until such time that the Expo light rail is operational. More specifically, Agensys is required to achieve a 1.6 AVR rate for the a.m. and p.m. peak-hour periods (6:00 a.m. to 10:00 a.m. and 3:00 p.m. to 7:00 p.m., respectively). This is due to the project site's location within a "higher goal" LUCE District for achieving vehicle trip reduction.

The Agensys Agreement also provides that in the event the applicable AVR requirement is not reached in any annual Employee Trip Reduction Plan (ETRP), Agensys shall propose modifications to the TDM program to achieve the AVR requirements by the next ETRP submittal. This issue of non-compliance with the AVR requirement was also reported on during the last two compliance review cycles for 2014 and 2015.

As outlined in last year's report to Council, the City disagreed with the methodology used for Agensys' 2015 AVR survey and the validity of the survey results as reported in its annual Employee Trip Reduction Plan (required for large employers per SMMC Chapter 9.53) because the AVR calculation reported by Agensys was based upon a survey that was taken during a period when Agensys provided transportation incentives that were not offered to its employees during times outside the survey period. This disagreement was addressed in accordance with the procedures established for employer monitoring, enforcement, and administrative appeals under the Transportation Demand Management Ordinance.

Agensys resurveyed its employees in the February 2016 and resubmitted its Employee Trip Reduction Plan to the City in March 2016 demonstrating that the facility achieved a 1.54 AM AVR and a 1.48 PM AVR. While the City approved the Agensys' survey methodology and revised Employee Trip Reduction Plan in April 2016, the facility did not achieve compliance with its Development Agreement requirements of 1.6 AVR for the AM and PM peak periods. As a result, City staff followed up with Agensys to clarify what additional trip reduction measures would be implemented to achieve the AVR requirement by the next reporting cycle.

City staff met with Agensys on June 2, 2016 and followed up with correspondence and

telephone communications over the summer to determine whether the following four additional trip reduction measures were being implemented in accordance with staff's previous requests:

1. Provide a daily transportation allowance for all employees who do not drive alone to work that is at least equal to the current monthly transportation allowance (\$140) divided by 20, or \$7 per day.
2. Provide a car share or fleet vehicle on-site that may be utilized by all employees who bike, walk, carpool, vanpool, take transit, or otherwise commute to the worksite in a non-SOV vehicle for business and/or personal trips during the workday. This requirement could be met by providing car share subsidies to those employees for an onsite car share vehicle.
3. Provide employee bike share memberships or a minimum of four on-site Bike@Work bicycles for employees to utilize during the workday for business and/or personal trips during the workday.
4. Increased marketing of new TDM Plan Enhancements.

As of September 2016, staff was unsuccessful in obtaining confirmation from Agensys regarding implementation of these plan enhancements requested by the City or other substitute measures.

In October 2016, City staff was informed that a new team at Agensys would be taking the lead on TDM Program implementation and related obligations as a large employer pursuant to the City's Transportation Demand Management Ordinance (SMMC Chapter 9.53). After several communications regarding timely submittal of Agensys' annual commute survey, data from Agensys' survey demonstrated a positive increase since the last survey in February: 1.57 AM AVR and 1.58 PM AVR.

As follow up, City staff met with Agensys' new Human Resources Director, new Vice President of Technical Operations, and Director of Engineering and Facilities Operations in December 2016. The parties discussed implementation of the additional TDM measures required to achieve the facility's AVR requirements, Development Agreement terms, and the difficulties the City has encountered regarding this issue over the past two years. The new team at Agensys committed to renewing their efforts to

implement a robust TDM Program, and asked questions about the four additional measures designed to build on the progress made in the last reporting cycle to help achieve the 1.6 peak hour AVR requirements.

Enforcement of Development Agreement Terms

While discussions with Agensys regarding compliance with its AVR requirements have occurred periodically since 2014, Agensys has not made a consistent and good faith commitment to develop a comprehensive TDM Program that includes implementation of the City staff recommended program enhancements designed to help achieve AVR requirements.

The facility has not yet achieved its 1.6 AVR in the AM and PM peak hours and the requirement will increase to 1.75 AVR in both peak periods later this year. Accordingly, while there has been a positive increase in the facility's AVR during the last reporting cycle, after numerous discussions and communications regarding the need to establish, submit, and implement a written plan for TDM Program enhancements, staff believes that additional efforts are necessary to achieve the necessary TDM Program enhancements.

Therefore, staff's recommendation is that Agensys be required to provide the following information ("Summary of Current TDM Plan and Proposed Plan Enhancements"), in writing, by April 17, 2017 for review and approval by City staff:

- 1) Summary of Transportation Demand Management (TDM) Plan, including all measures and incentives currently implemented in accordance with the Development Agreement and SMMC Chapter 9.53.
- 2) Detailed proposal for TDM plan enhancements that includes, at a minimum, the four measures previously identified by the City, or an alternative proposal for plan enhancements, subject to City approval, designed to achieve the AVR requirements of the Development Agreement.
- 3) Implementation schedule for TDM plan enhancements, bearing in mind that new

measures should be implemented in a timely manner to allow time to assess the effectiveness of such a plan, prior to the facility's annual commute survey of employees.

If the information outlined above is not provided by April 17, 2017, staff recommends commencement of the default procedure under Article 11 of the Development Agreement. This procedure involves the issuance of a Notice of Breach, and the opportunity for cure. If the breach remains uncured, staff will return to Council for a declaration of an "Event of Non-Monetary Default" pursuant to Section 11.3 of the Agreement ("Remedies for Non-Monetary Default"), which will then allow the City to seek other remedies at law, in accordance with the Agreement.

In summary, to date, a comprehensive response to the City's repeated request for implementation of TDM Plan enhancements to achieve the 1.6 AVR in the peak periods has not been provided by Agensys. With a timeline for action identified herein, the City remains available to work with Agensys to build on the peak-hour AVR improvements documented in the facility's most recent employee commute survey and will look for Agensys' commitment and actions to reach a resolution to this issue in a timely manner.

Public Outreach

The Municipal Code requires that that the City provide at least 10 days' notice to the Developer or successor-in-interest of the City Council's scheduled meeting to review Development Agreement compliance. This notice has been provided.

Next Steps

Staff will continue its ongoing Development Agreement compliance review; reports will be made to Council annually during the first quarter of the calendar year. With respect to the Agensys property, as outlined in this report, staff will follow up on the April 17, 2017 deadline for Agensys' submittal of the required "Summary of Current TDM Plan and Proposed Plan Enhancements" and the procedures set forth in Article 11 ("Default") of the Development Agreement between the City of Santa Monica and Agensys, Inc. until resolution is reached on this compliance issue.

Financial Impacts & Budget Actions

There is no immediate financial impact or budget action necessary as a result of the recommended action.

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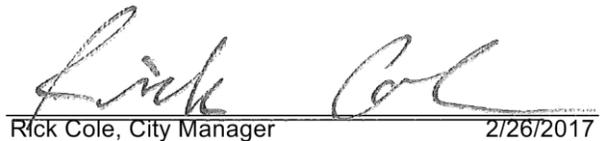
Approved

Forwarded to Council



David Martin, Director

2/23/2017



Rick Cole, City Manager

2/26/2017

Attachments:

- A. Dev Agrmt Compliance Report - Property Summaries (3-7-2017)1
- B. Dev Agrmt Compliance Report - (03-07-2017)
- C. Dev Agrmt Compliance Report - AVR (3-7-2017)1