

STAFF REPORT

DATE: February 21, 2017

TO: City Council

FROM: Mike Webb, Assistant City Manager/Director Community Development & Sustainability

SUBJECT: Mace Ranch Innovation Center (MRIC) Project Applicant Request to Certify the Environmental Impact Report (EIR)

Recommendation

Staff recommends that the City Council take the following actions:

1. Receive a presentation from staff pertaining to the request.
2. Receive public comments.
3. Direct staff to initiate the EIR certification process (requiring future public hearings at the Planning Commission and City Council).

This item was originally on the January 10, 2017 agenda for City Council consideration and was postponed to February at the request of the applicant. On January 10th, the City received a letter commenting on this agenda item (attachment 3). The applicant response to the January 10th letter is included as attachment 4.

Fiscal Impact

Costs associated with this effort are covered by fees paid by the applicant. Should the City Council direct staff to proceed with EIR certification, all associated costs including staff, consultants, and hearings would be paid by the applicant.

Council Goal (s)

This item relates to the following City Council goals and objectives:

Goal 2: Drive a Diverse and Resilient Economy

Objective 1: Provide a robust support network for business

Task D. Create awareness of infrastructure necessary to support business success and collaborate in activities to add capacity.

Objective 3: Address the needs of new businesses and business types identified as desirable additions to our economic diversity and sustainability.

Task A: Address the need for commercial space.

Task B: Consider proposals for development of innovation space

Applicant Request

The Mace Ranch Innovation Center (MRIC) applicant team has requested that the City Council certify the EIR prepared for the MRIC project (Attachment 1). They have expressed the following points in support of the request:

- 1) The staff, technical consultants, City commissions, applicant team, Council, and community spent considerable time and energy participating in the environmental review process and certification of the EIR would formally bring that effort to a close.
- 2) Certification does not approve the project nor commit the City to any future course of action related to the project. They are not asking for approval of a project at this time.
- 3) They recognize that any future approval action on a project proposal may require further environmental analysis.
- 4) Certification would officially acknowledge that the detailed EIR prepared for the project is adequate and complete.
- 5) Certification would assist the applicant in attracting potential tenants and investors. They will look more favorably on the project if there is a certified EIR.
- 6) A certified EIR may serve as a tool for economic development because it will signal that the site (though not approved for development) has undergone a substantial part of the analysis process and that the City is serious about keeping and attracting innovation employers.
- 7) The certification process could provide the City with an additional opportunity to discuss how the project might move forward in the future.

The Davis Chamber of Commerce Board of Directors has taken a position in support of the request. A Position Statement from the Chamber, adopted July 13, 2016, is attached (Attachment 2).

Project Background

The application for the Mace Ranch Innovation Center was filed September 25, 2014. The project proposed a mix of industrial, commercial, and retail uses totaling 2.7 million square feet (sf) on 212 acres. The Mace Triangle component, which included 71,000 sf on 16.6 acres, was subsequently added to prevent the creation of an unincorporated island.

An EIR for the project was prepared that included an equal weight analysis of the project as proposed and an alternative that included housing. The Draft EIR was released in August 2015 and comments were sought from relevant agencies, the community, and City commissions. The Final EIR, with the response to comments, was released in January 2016. The project was reviewed by a number of City advisory commissions, the Planning Commission and the City Council as it was being processed, pursuant to a schedule that would have allowed for a Measure R vote in November 2016.

At the February 23, 2016 meeting, in response to a request from the applicant to focus the process on the alternative that included housing, the Council unanimously directed staff to continue processing the application as originally proposed (with no housing component). On April 13, 2016 the applicant team (Ramco Enterprises, The Buzz Oates Group of Companies, and Reynolds & Brown) notified the City that they were putting the project “on hold to re-evaluate its feasibility.” At this time the project application remains on hold but active. Neither the applicant nor the City has taken steps to withdraw or otherwise close the file.

In June 2016 the applicant proposed a revised project phasing concept that included innovation center uses on the southerly 102 acres, urban reserve on the northerly 110 acres, and the Mace Triangle component. The applicant also proposed a bifurcated Measure R vote, where the urban reserve phase would not be brought to the voters in 2016 but rather at an unspecified later date. The Council discussed this proposal at their June 14, 2016 meeting but took no action.

On June 16, 2016 the applicants submitted a letter to the City indicating that they were “ceasing” their “processing efforts”. The letter indicated the applicant team would “entertain a request” to recommence the project in the future if asked to do so by the City, and identified additional conditions on moving forward.

On October 5, 2016 the applicants submitted a letter focused on their request to seek certification of the EIR (Attachment 1). This request is the subject of this agenda item.

Analysis of Request

EIR CERTIFICATION – Certification of an EIR is required prior to approving a project, but approval of a project is not required following certification. These are two separate and distinct actions. When a lead agency (The City in this case) certifies an EIR they are required to make the following findings pursuant to CEQA Guidelines 15090 (Certification of the Final EIR):

- 1) The EIR has been completed in compliance with CEQA.
- 2) The EIR was presented to the decision making body and that body reviewed and considered the information in the EIR prior to approval of the project.
- 3) The EIR reflects the lead agency’s independent analysis and judgement.

Certification requires no other findings, and can be divorced entirely from consideration of the merits of the project. Essentially, certification signals confidence in the analysis and provides some finality to an expensive and lengthy analytical process.

While typically combined as one concurrent set of actions when approving a project, CEQA does allow for certification apart from project action. It is not uncommon in other jurisdictions for the City to certify an EIR well in advance of any action on a project. While this is not typical in Davis, staff believes this request has merit given the scale and unique nature of this type of undertaking.

ACTION ON THE PROJECT – Certification has no implications for any subsequent action on the project. Following certification, the Council is free to approve, deny, or take no action on a project proposal.

MITIGATION MEASURES – Certification confirms the mitigation requirements for a project based on the regulatory and environmental setting described in the document and based on the project and alternatives as defined in the document. This makes clear the mitigation requirements of the project. Adoption of a Mitigation Monitoring and Reporting Program (MMRP) pursuant to CEQA Guidelines Section 15097 (Mitigation Monitoring or Reporting) is not required unless and until approval of a project occurs.

CHANGED CIRCUMSTANCES OR NEW INFORMATION – If significant new information relevant to a project emerges prior to certification of an EIR, recirculation may be required pursuant to CEQA Guidelines Section 15088.5 (Recirculation of An EIR Prior to Certification). Once certification has occurred, CEQA Section 21166 and CEQA Guidelines Section 15162 (Subsequent EIRs and Negative Declarations) set forth the test for determining whether or not a lead agency should prepare a subsequent EIR for a subsequent discretionary decision concerning that project. The conditions described in Section 15162 include: substantial proposed changes to the project or the underlying circumstances surrounding the project which would require major revisions to the EIR; new information that identifies significant effects not addressed in the EIR; or new mitigation measures that would substantially reduce one or more significant environmental effects of the project. For the subject request, the City would only be certifying the EIR, not taking any action on the project or alternatives. A comparison of the implications of the two sections is difficult as there would be no settled “project” against which to judge the significance of any subsequent change in circumstances or impacts. Moreover, there is no case law providing guidance on this question, as all published cases considering the application of Section 21166/Section 15162 consider situations where both certification and project action had occurred.

EIR “SHELF LIFE” –The EIR process began in the fall of 2014 and ended in early 2016. Under CEQA there is no defined “shelf life” for how long EIRs remain valid. Instead, the law relies on an assessment of the significance of the new or changed information and whether that information would result in changed analytical conclusions. This is discussed above under “Changed Circumstances or New Information”.

STATUTE OF LIMITATIONS – A lead agency is required under CEQA Guidelines Section 15095 (Notice of Determination) to file a Notice of Determination (NOD) within five working days after approval of a project. This filing starts a 30-day statute of limitations on court challenges to the approval of the project under CEQA. Because there would be no project action associated with the requested EIR certification, no NOD would be filed and no limitation on legal challenge under CEQA would be established. While the opportunity for legal challenge to the EIR would remain open, any such challenge would more likely occur in the future at the time of a project action that relies on the EIR for purposes of approval.

Process, Timeline, and Resources

The applicant has made no specific proposal of timeframe for how the request should be undertaken. Should the Council direct staff to proceed with the request, the contract project manager (Heidi Tschudin), environmental consultant (Raney Planning and Management), and traffic engineer (Fehr & Peers Associates) would be contacted for budget estimates to review the request, coordinate with and advise City staff, prepare staff reports and findings of fact, and

attend hearings necessary for certification. A budget estimate would be prepared and the applicant would be required to fund associated costs. The request would be heard first by the Planning Commission followed by the City Council. Pending consultant availability, negotiation of scopes and budgets, timely payment by the applicant, and development of an appropriate schedule, it is likely that processing of this request could be completed by this spring.

If directed to move forward, staff is mindful of the importance of clearly communicating to the community throughout the process that certification is not a project action. Direction to proceed with processing this request does not obligate the City Council to certify the EIR. Ultimately that decision would be made if and when a project proposal comes before the City Council.

Attachments

- 1) October 5, 2016 Applicant Letter
- 2) July 13, 2016 Davis Chamber of Commerce Position Statement
- 3) January 10th Letter from Don Mooney
- 4) Applicant Response Letter to Don Mooney



October 5, 2016

City Council
City of Davis
23 Russell Boulevard
Davis, California 95616

Re: Certification of the Environmental Impact Report for the Mace Ranch Innovation Center

Dear Mayor Davis and Members of the Council:

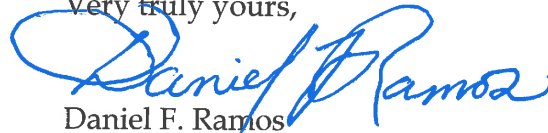
In the fall of 2014, we, along with the City, commenced an environmental review process pursuant to the California Environmental Quality Act (CEQA) for the proposed Mace Ranch Innovation Center (MRIC). Over the course of the next year and one-half, City staff, technical consultants, City commissions, the applicant team, your Council and the Davis community spent considerable time and energy participating in that effort which resulted in a very thorough environmental impact report (EIR). We now respectfully request that your Council take action to certify that EIR so as to formally bring the environmental review process to a close.

We recognize that certification of the EIR does not approve MRIC nor commit the City to any future course of action with respect to the project. To be clear, we are not requesting that any project be approved at this time. We also recognize that any future approval action may require further environmental analysis. Nonetheless, your certification of the EIR would officially acknowledge that the voluminous environmental document prepared for MRIC is adequate and complete. It would also provide us with an environmental document which we will be able to use to help attract potential tenants and investors, all of whom are likely to look more favorably on our project if we can show them a certified EIR. A certified EIR should accordingly serve as a tool for economic development as certification signals to potential users that this site, though not approved for any development, has undergone the most substantial part of the entitlement process and that the City of Davis is serious about keeping and attracting innovation employers. Finally, we believe that the certification process should provide the City an additional opportunity to discuss how our project might move forward in the future.

Together, we have invested considerable time, resources and energy into this document which clearly meets the requirements of CEQA, includes reliable analysis and reaches appropriate conclusions. We accordingly believe that certification of the EIR is

warranted as it recognizes the adequacy of the document and the significant efforts of so many participants. For the reasons stated herein, we again respectfully request that the City Council certify the "Environmental Impact Report for the Mace Ranch Innovation Center," doing so hopefully during November of this year.

Very truly yours,



Daniel F. Ramos
Vice President

Cc: Dirk Brazil
Harriet Steiner
Mike Webb
Troy Estacio
Dana Parry
John Taylor

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POSITION STATEMENT



Mace Ranch Innovation Center EIR

July 13, 2016

Adopted by the DCOC Executive Board of Directors

The Davis Chamber of Commerce Board of Directors urges the Davis City Council to certify the Environmental Impact Report (EIR) that was prepared on behalf of Mace Ranch Innovation Center. While we recognize that specific items within the EIR may require updating for future use and that certifying the document does in no way indicate approval of a project or development, approving certification indicates your faith in the integrity of the report and will avoid unnecessary costs and staff time to repeat and or create a new report for projects submitted in relation to this site. This report, which includes the City's 25 acre site, was an investment by the project proponent with a cost of upwards of \$1.6 million. Certifying the EIR will also provide an opportunity for use as an economic and marketing tool for future projects.

Davis Chamber Commerce Guiding Statements

The mission of the Davis Chamber of Commerce is to promote, support and advocate for the general economic vitality of its membership and quality of life for the community, with specific focus on the following objectives as stated in our prosperity plan:

- Objective 1: Enhance Membership Value
- Objective 2: Strengthen Community Relations
- Objective 3: Cultivate Economic Vitality
- Objective 4: Engage in Local & Regional Advocacy
- Objective 5: Grow & Maintain a World Class Workforce

The following Guiding Statements apply to the Davis Chamber of Commerce's stated objectives to common policy areas affecting the local business community, and provides a transparent framework for Chamber assessment and evaluation of programs, initiatives, projects, and activities in Davis.

Quality of Life: Obj. 1-5

The Davis Chamber of Commerce recognizes that the quality of life in Davis is a driver for the decision by many businesses to locate, start, grow, and invest in our city. The Chamber supports organizations and initiatives that improve the quality of life in the community.

Effective use of Land: Obj. 3

Davis Chamber of Commerce - POSITION STATEMENT

A strategic land use policy should allow for a healthy integration of neighborhoods and business growth, and support efficient and balanced land use for agriculture, housing, parks, and commercial development.

Education and Workforce: Obj. 2-5

The Chamber supports investment in quality education, advocating for consistent and ongoing communication and collaboration with our local educational systems to enhance career technical education and training opportunities to assure a strong workforce to meet future demand.

Taxation & Fees: Obj. 3-4

Taxes & fees should be levied only for the purpose of maintaining essential services with the least detrimental effect on economic vitality. The Chamber supports (and encourages) the increased use of technology by local government to maximize efficiency, as well as regular review of fees for services.

Infrastructure: Obj. 1, 3

The Chamber believes that well-planned and maintained infrastructure (including transportation, communications, water, wastewater, parks, and security) is vital to both business and the community at large. The Chamber supports a city budget that is fiscally responsible and which allocates necessary resources to ensure ongoing maintenance and necessary improvements to all infrastructure.

Partnerships: Obj. 2-4

Working in partnership with the City of Davis and other regional agencies, the Chamber supports a proactive approach to business development through collaborative business attraction and relationship building. The Chamber supports legislation and regulation that is transparent, balanced, increases collaboration, and encourages sustainable economic development.

Fiscal Sustainability: Obj. 3, 5

The chamber believes that job creation and retention are the key drivers for sustainable revenue generation and alleviates the need to rely on increased taxes to support and maintain infrastructure and amenities.

LAW OFFICE OF DONALD B. MOONEY

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Davis, CA 95616
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January 10, 2016

VIA ELECTRONIC MAIL

The Honorable Rob Davis
Members of the City Council
City Council City of Davis
23 Russell Boulevard
Davis, California 95616

***Re: Mace Ranch Innovation Center Project Application
Request to Certify the Environmental Impact Report (EIR)***

Dear Mayor Davis and Members of the City Council:

This office represents Dr. Billie Bensen Martin, DVM, regarding the Mace Ranch Innovation Center (MRIC) Project. Dr. Martin owns a 160-acre farm located at the corner of Roads 105 and 30 in close proximity to the proposed MRIC. Since 1999, Dr. Martin has been one of the 4 organic farmers in Yolo County that raise organic alfalfa and grains for organic dairies in the Petaluma area that supply milk and other dairy products to local stores. Dr. Martin submitted comments on the Draft EIR. (Final EIR at 4-250 to 4-256.) Dr. Martin's comments addressed concerns at the Project impacts to burrowing owls and polluted drainage from the Project that would negatively impact her 160-acre organic farm.

RAMCO Enterprises requests that the City Council certify the Final Environmental Impact Report ("EIR") for Mace Ranch Innovation Center ("MRIC") Project even though RAMCO previously informed the City that it ceased moving forward with the Project. On behalf of Dr. Martin, we respectfully request that the City Council reject RAMCO's request to certify the Final EIR. First, RAMCO fails to provide a timeline for any future project approval. Thus, if the City moves forward with certification, the Final EIR could sit on the shelf for an indefinite period of time. Second, RAMCO requests that the City Council certify the Final EIR even though RAMCO has failed to identify the project that it intends to pursue. It is simply not in the public interest or good public policy to certify a Final EIR when the applicant cannot provide a timeline for project approval nor can identify the project that it intends to pursue. Thus, RAMCO's request for certification is simply an attempt to preclude any further public discussion and participation on the Final EIR.

Additionally, RAMCO recognizes that any future approval action may require further environmental analysis. Such further environmental review is in the form of a supplemental or subsequent EIR. CEQA requires a supplemental or subsequent EIR when there are substantial changes to the project or there are changed circumstances

The Honorable Rob Davis
Members of the City Council
January 10, 2017
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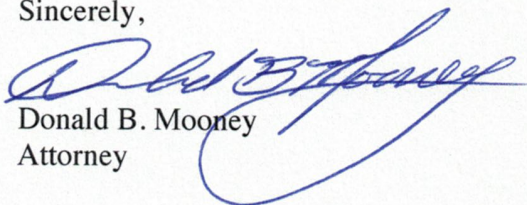
surrounding the project. (Pub. Resources Code, § 21166, CEQA Guidelines, §§ 15162, 15163.) Changed circumstances only trigger the requirement for supplemental or subsequent environmental review if they are substantial and could lead to new or more severe significant impacts. (*Id.*) Changed circumstances do not require subsequent or supplemental environmental review if the resulting environmental impacts are already addressed in the Final EIR. (*A Local & Regional Monitoring v. City of Los Angeles* (1993) 12 Cal.App.4th 1773, 1803.) CEQA also requires a subsequent or supplemental EIR if “[n]ew information, which was not known and could not have been known at the time the environmental impact report was certified as complete becomes available. (Pub. Resources Code, § 21166(c).)

Thus, RAMCO requests that the City Council certify the Final EIR when RAMCO recognizes that there may be substantial modifications to the Project or changed circumstances regarding the Project. Changes and modifications so significant that they would require subsequent or supplemental environmental review. Prior to certifying the Final EIR, the City Council should require that RAMCO identify to the City Council and the public what is the project that it intends to pursue and what, if any, changed circumstances may apply to that project. The City Council should not blindly certify the Final EIR without this critical information.

RAMCO also argues that certification of the Final EIR at this time would create certainty for marketing its undefined project. This argument fails in part because RAMCO acknowledges that there may be need for additional environmental review due either a major modification for the Project and/or changed circumstances that may lead to new or more severe significant environmental impacts. Thus, RAMCO cannot offer the certainty that it seeks to offer.

Based upon the foregoing it is not in the public interest for the City Council to certify the Final EIR at this time. It makes no sense from a public policy point of view to certify a Final EIR when RAMCO acknowledges the potential for future environmental review. Prior to certification of the Final EIR, the City Council should request that RAMCO submit a specific project so that it can be evaluated in light of the current Final EIR.

Sincerely,



Donald B. Mooney
Attorney

cc: Dr. Billie Bensen Martin

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January 16, 2017

The Honorable Robb Davis
Members of the City Council
City of Davis
23 Russell Boulevard
Davis, California 95616

Re: Mooney Letter Concerning the Mace Ranch Innovation Center's Request that its Environment Impact Report Be Certified.

Dear Mayor Davis and Members of the City Council:

On January 10, 2017, your Council received a letter from the Law Office of Donald B. Mooney (Mooney Letter) urging you to reject the Mace Ranch Innovation Center's (MRIC) request to certify its Environmental Impact Report (EIR). In response to that letter, we requested that our certification request be continued so that we could carefully review and respond to the Mooney Letter. Having now done so, we would offer to you the following thoughts:

- (1) The Mooney Letter offers no legal reason why your Council should reject the MRIC's request that its EIR be certified. Instead it makes a series of public policy arguments asserting that certification "is not in the public interest." The Council is accordingly completely free to weigh these contentions in its overall decision making as it sees fit, deciding as it does so whether they are or are not meritorious.
- (2) The Mooney Letter observes that the MRIC project provides no timeline for seeking project approval and that the certified EIR "could sit on the shelf for an indefinite period." We concede that the point made is entirely correct. However, we fail to see why this possibility—which is legally permissible—should be of concern to Mr. Mooney's client or your Council. Why? Because no harm will occur to anyone if an approved EIR simply "sits on the shelf" and collects dust.
- (3) More significantly, the Mooney Letter asserts that "RAMCO's request for certification is simply an attempt to preclude any further discussion and participation on the Final EIR." This is simply not so. Any party will be free, at the time project approval is requested, to claim that the EIR is not adequate and then file a legal action based upon that claim should a project be approved. And if circumstances change, additional environmental

analysis and review, including public comment, may be required, a possibility which the MRIC proponents have recognized and accepted.

- (4) The Mooney Letter next contends that “RAMCO recognizes that there may be substantial modifications to the Project or changed circumstances regarding the Project.” At this time, the MRIC proponents do not know whether they may in the future propose a changed project. Should, however, that occur, additional environmental analysis, and corresponding public opportunity to comment on that analysis, will be conducted as deemed necessary to comply with the California Environmental Quality Act. The result: any changed project which is brought forth for approval will have been fully environmentally reviewed consistent with the requirements of CEQA. Given this reality, the concern expressed in the Moody Letter appears not to be a reason your Council should reject the MRIC request.
- (5) Finally, the Mooney Letter states that “RAMCO also argues that certification of the Final EIR at this time would create certainty for marketing its undefined project” (emphasis added). The problem with this assertion is that the MRIC proponents have never said certification will “create certainty.” The statement made was, instead, that certification could be helpful in seeking investors and potential tenants. The argument advanced in the Mooney Letter should accordingly be disregarded because it is built upon a notion—“certainty”—never advanced or even mentioned by the MRIC proponents.

Altogether, the Mooney Letter advances no legal or policy reason as to why your Council should not certify the MRIC EIR. Rather valid policy reasons exist for proceeding with certification now, with the most important of those reasons being:

- (1) Certification will not result in project approval;
- (2) Additional environmental review will be required, consistent with CEQA, if circumstances or the project itself change before approval is sought; and
- (3) Certification will likely serve to assist the MRIC proponents efforts to secure investors and/or tenants, all of which would be use for achieving the City’s stated goal of fostering economic development and securing a first class innovation center within its boundaries.
- (4) Certification will preserve and conserve the valuable work product contained in the EIR produced by City staff and its team of extensive consultants.

We accordingly again request that your Council support our request and certify the MRIC EIR.

Very Truly Yours,



John M. Taylor