DRAFT

COMMENTS AND QUESTIONS

OF

THE EAST PALO ALTO OVERALL ECONOMIC DEVELOPMENT COMMITTEE

REGARDING

THE UNIVERSITY CENTER DEVELOPMENT PROJECT

JULY 11, 1990

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A. Primary Development Objective

Comments: Section 100 of the Redevelopment Plan for the University Circle Redevelopment Project states that the Agency's "primary objective is to seek redevelopment of the Project Area as a single, unified development consisting of a modern office complex with associated commercial uses and a major hotel". A report by Keyser Marston Associates Inc., dated June 5, 1990, concludes that the hotel development, on the scale proposed, is not feasible. A follow-up analysis by William Euphrat Municipal Finance, Inc., dated June 18, 1990, states that a scaled-down hotel project is even less feasible than the original 266-room hotel facility.

Questions:

1. Does the Agency's primary redevelopment objective for the Project Area continue to be a single unified development including a major hotel? Has the Agency redefined its objectives in light of apparently firm opinions that the hotel is not feasible? Has DeMonet submitted any information to negate or qualify the negative opinions of financial feasibility reached by Keyser Marston and William Euphrat?

2. Given that the Agency's "primary objective" for the Project Area--a single, unified development including a major hotel--is not achievable, why is the Agency continuing to negotiate the PUD, the DDA, and the SDA with DeMonet

Industries? What benefits exist for the Agency in granting significant legal rights and incurring significant legal obligations for a project that has been determined to be infeasible? What risks is the Agency incurring in binding itself and the properties in the Project Area to a ten-year statutory development agreement for a project that has been determined not to be feasible? Has the Agency determined that the benefits outweigh the risks?

3. Is the Agency planning to go forward with the office/retail portion of the project, eliminating the hotel portion? From a legal point of view, what impact will this have on the status of the EIR, which analyzes the impact and the mitigation of the Project on the basis that there is single unified development? Have the City's financial consultants determined that the office/retail component of the project is feasible from a marketing point of view without the hotel?

4. The KMA Report finds "no economic justification for future Agency subsidy of the DeMonet project" and also that the hotel would not be economically feasible, "even if the hotel developer was given free land by DeMonet". Notwithstanding these conclusions, if the Agency is committed to going forward with the single unified development project, including the hotel, what sources of subsidy has the Agency identified to make up the financing gap of $13.6 million identified for the hotel?

5. The KMA Report makes it clear that the primary financial benefit from the project for the City is in the hotel development. Yet it finds no economic

justification for subsidizing the hotel development. What is the rationale for proceeding with the office/retail development alone or for proceeding with significant uncertainty that the hotel will be developed?

B. **Developer Capacity**

Comments: It is our understanding that the Agency has entered into an exclusive right to negotiate with DeMonet Industries, Inc.

Questions:

1. What is the net worth of DeMonet Industries? What is its track record in office and hotel development? What assurances has Demonet provided that it has the financial capacity to complete the project?

2. What is the term of the ERN? When will it expire?

3. The KMA Report points out that DeMonet has not developed a financial feasibility analysis for the entire project, or pro forma projections for the hotel development. Does the ERN require that DeMonet develop such analyses prior to the Agency adopting the DDA and SDA and granting the PUD application? Does DeMonet's failure to develop such analyses represent a breach of the ERN? If so, what steps does the Agency plan to take vis-a-vis DeMonet Industries as the developer of the project? Are there any other obligations under the ERN that DeMonet Industries has not satisfied? If so, what is the Agency's position on this default?

4. It is our understanding that because of the ERN, the Agency has not been in a position to require DeMonet Industries to seek out minority developers to assist in the development of the project. Yet the Agency has the right to approve certain changes of ownership of DeMonet Industries or assignments of rights under the various legal documents. Will the Agency use its approval rights to promote minority participation in the equity development of the project (not just minority subcontracting)? If so, how will this be achieved?

5. Existing drafts of the SDA and DDA permit DeMonet Industries to assign those agreements with the consent of the Agency but the Agency's consent may not be "unreasonably withheld". This limitation on the Agency's discretion to disapprove a transfer or assignment of the agreements is not typical. For example, the sample DDAs included in materials prepared by the Community Redevelopment Agencies Association prohibit all transfers without any requirement that the Agency be reasonable in disapproving a transferee. Strict controls on transfer are deemed necessary to prevent developers from speculating in the redevelopment package. Why has the Agency limited its discretion to allow another developer to take over this project?

C. Financial Benefits and Costs to the City if the Project Proceeds Without the Hotel

Comments: According to the KMA Report, the office/retail project could support an additional $6 million in developer financial contributions to the Agency towards public costs associated with the Project ($11 million surplus less $5 million that would not be realized from the hotel pad sale). This assumes project financing of $7.7 million of infrastructure costs but does not include $7.3 million in public improvement costs that have not been officially assessed as a project cost of University Circle. It does not include any community benefits package. Without the hotel, the sales tax receipts would be approximately $100,000 annually, and there would be no transient occupancy tax. The KMA Report does not indicate the tax increments from the office/retail project.

Questions:

1. The KMA Report speaks of an $11 million surplus for the project, not taking into account the $7.3 million infrastructure gap and the community benefits package. But if the project proceeds without a hotel, the surplus would be reduced by the $5 million assigned value from the sale of the hotel pad. Even if the project proceeds with the hotel, due to its lack of financial feasibility, the KMA Report assumes that the hotel land pad would have to be transferred to the hotel developer at no cost. Therefore, is the surplus that the KMA Report speaks of actually $6 million, rather than $11 million?

2. Will the $6 million surplus be used to partially meet the public improvement infrastructure cost of $7.3 million that has not been assigned to the Developer? If not, how will the $6 million surplus be used? Will all of it go to

the Agency or will the Developer negotiate for some? If the $6 million is targeted for the Agency, how will the Agency use it?

3. Aside from the $50,000 commitment to the minority incubation program and the senior center, what community benefits have been exacted? Does the Agency have a community benefits package that bears a rational relationship to the burden on the community services that the project will create? What will the community benefits package cost? Who designed it? How were the competing community needs balanced to arrive at a community benefits package? Will the community benefits package be submitted for public discussion?

4. What are the annual tax increments that are expected from the project without the hotel development? When will tax increments begin to be generated? What documents contain this information?

5. How will the Agency finance the $7.3 million public infrastructure gap identified in the KMA Report? If it will not be met from the $6 million surplus available to the Agency, will tax increment funds be used to support debt for this cost? If so, are the available tax increments sufficient for this purpose, after allowing for the 20% setaside for low-income housing? If the available tax increments exceed the amount necessary to support a bond issuance of $7.3 million, what is the excess and how will it be used?

6. Are there any other costs in addition to the $7.3 million public infrastructure gap and the $13.6 million gap for financing the hotel that the Developer will not be asked to cover?

7. Have the Agency's financial consultants factored the "opportunity cost" of the proposed development into their financial analysis? What are the opportunity costs in pursuing a development that is not rooted in the local economy and that does not allow dollars to recirculate several times within the East Palo Alto community?

8. What is the sum of the Developer's investment in the project? What is the Developer's expected rate of return? Has the Agency evaluated methods for the City to share on an equity basis in the profits that are expected from the project without the hotel?

9. If the project proceeds without a hotel, are there any ongoing financial benefits for the City that are expected in addition to approximately $100,000 in retail sales tax revenue and the undisclosed amount of tax increments? How do these financial benefits compare to the financial benefits that would be realized by supporting revitalization efforts by the existing business owners or by simply allowing the existing area to remain as it is?

10. What are the increased costs in public services that the project will generate? Is the approximately $100,000 in retail sales tax that is projected without the hotel sufficient to cover this amount?

11. Has there been a litigation risk analysis in connection with pursuing the project without the hotel, related, for example, to the fact that the project will differ from the project as analyzed in the EIR? If so, who prepared it and is it set forth in any documents? What are the likely costs of such litigation? How long is such litigation likely to last? Who will pay for the expenses? What will be the impact on the existing community if the redevelopment plans are significantly delayed?

D. Financial Benefits and Costs to the City if the Project Proceeds with a Hotel

Comments: If the Project proceeds with a hotel, the KMA Report identifies an expected $13.6 million financing gap for the hotel in addition to the $7.3 million infrastructure financing gap. It states that Agency subsidies for the hotel development are not warranted.

Questions:

1. What are the projected tax increments from the project including the hotel? What are the documents that set forth the projections of tax increments?

2. How will the $13.6 million hotel financing gap be met? If it will be met by tax increment financing, are the tax increments sufficient to fund this gap after allowing for the 20% set-aside for housing? What are the documents in which this analysis is set forth?

3. Are there any factors that the Agency is considering in evaluating whether to include the hotel development in addition to the negative

recommendations in the KMA Report? Are those factors set forth in any documents?

4. Has DeMonet Industries been required to produce letters of interest from any major hotel developers or franchises? If not, why not? Why has DeMonet Industries failed to submit financial feasibility analyses for the hotel in its negotiations with the Agency? When will DeMonet Industries be required to produce such an analysis?

5. What are the increased costs in public services if the project includes a hotel? Will the projected $131,000 in sales tax revenue and $800,000 in transient occupancy tax be sufficient to pay for these public services?

6. If the Agency determines to proceed with the project with a hotel, what mechanisms exist for preventing DeMonet from reaping the financial benefits of the office/retail development, while defaulting on the obligation to develop the hotel? What deposits is DeMonet required to make? Under what circumstances can these deposits be reclaimed by DeMonet?

7. What is the rationale for phasing the project? What is the timing of the phasing of the hotel development? What assurances of the financing for the hotel will be required before the Agency commences eminent domain proceedings to assemble the site?

8. Has there been a litigation risk analysis related to pursuing the hotel development when the Agency's financial consultants advise against it? Who

prepared such analysis and is it available in any documents? What is such litigation likely to cost? How long is it likely to last? What is the likely impact of such litigation on the existing community if the redevelopment is significantly delayed?

E. Local Business Development

Comment: Section 100 of the Redevelopment Plan for University Circle states that one of the goals and objectives of the redevelopment program in the project area is:

> "The promotion and creation of local business development opportunities".

From an economic development perspective this goal makes sense. Residents of East Palo Alto are already forced to spend their money outside the community due to the lack of local serving businesses. If this development does not ensure that locally serving businesses are promoted or created, the City will lose the opportunity to capture local dollars.

Economic development planners will state that one of the first strategies a city should employ to revitalize a local economy is to reduce the leakage of dollars that flow out of the community. By capturing these dollars, the community benefits from the multiplier effect of money which continues to recirculate through the economy. If businesses are promoted which only serve the project, as described in Section II, Land Use Regulation in the Specific Plan, city residents will be forced to continue to spend money outside the community.

To the extent that the new businesses owners are not local residents, the city will lose the opportunity to capture new dollars which would have been spent by those local business owners in the community. Without local ownership the city will only benefit from the retail sales tax generated by those businesses but not from the continued recirculation of these dollars. Thus money will continue to leak out of the community.

Questions:

1. The project, as it is currently conceived, will provide approximately 39,129 square feet of net rentable retail space (including food and beverage for hotel). Pursuant to the goal of local business promotion and creation, how much of the 39,129 square feet of retail space will be dedicated to existing business?

2. What assurances have been made for the relocation of existing businesses to the project site? Where will existing businesses be located? Will they be given a priority in relocating back to project once the development is built?

3. If residents do not patronize the new business, what benefit are these businesses to the community?

4. A related concern is the cost of retail office space in the new project. Currently, business owners pay approximately $.75-1.25 to lease space in the University Circle Area. The new project, per Kaiser Marston Associates analysis,

projects square footage costs of $2.00 for retail and $30.00 per square foot for office. If existing businesses are interested in relocating to the project site, what assurances have been made for them to relocate to the site at reasonable rates? By gentrifying the area, the city in will effect deny existing businesses the opportunity to relocate to the site, even if they are in compliance with the Redevelopment Plan and the Specific Plan.

5. In addition, who will bear the cost of the temporary and permanent relocation if a business chooses to move back once the project is complete?

6. What provisions have been made to assist local businesses in participating in the economic benefits of the project. According to Kaiser Marston Associates, DeMonet will spend approximately $140 million to develop the project. Will any of these dollars be spent with local businesses? Local businesses should participate in this economic opportunity.

F. Local Hiring and Employment Impacts

Comment: The city currently does not have a legally binding first source hiring agreement. Staff of the National Economic Development and Law Center have reviewed our current documents and have stated: "The language of the East Palo Alto document is not similar to that of First Source policy instruments or implementation instruments. Rather, the language suggests an <u>intent</u> which is very similar to other first source ordinances and first source agreements; however, even the intent is linked to a Minority Incubator Program which is highly unusual in first source programs.

Their analysis further states: "The Employment Resources Development Documents are not structured to obligate the parties" "...any agreements with developers which refers to these documents, or to a city first source program, ...is legally meaningless." Given the conclusions drawn from National Economic Development and Law Center, it is safe to assume that the city does not have a policy or agreement in place which will bind the developer to hiring local residents.

A local hiring ordinance, agreement and implementation document should spell out roles and expectations of the city, developer, and employment training agency. These documents, among other things, should include penalties for non-compliance and should spell out the expected levels of resident employment participation in the project.

The city should not only be concerned with the number of jobs, but also the quality of those jobs. Controls should be put in place so that a certain percentage of local residents will be hired in all levels of the employment spectrum and all phases of the project (pre-construction, construction, and permanent), not just in the lower-skilled jobs.

Furthermore, Section 301 of the Redevelopment Plan states that "the Agency proposes to eliminate and prevent the spread of blight... by the following:"

"Providing for the retention of controls and establishment of restrictions or covenants running with the land so that property will continue to be used in accordance with this Plan."

In accordance with this statement, the first source hiring agreement should bind not only the developer, but also the tenants and future owners of the property.

In addition, the city needs to determine how this program will be implemented and operated. If it does not have enough money to staff such a program, it should consider exacting a fee from the developer to cover the costs to staff this program.

Finally, there is a discrepancy between Resolution No. 672, Exhibit A, Findings Regarding Significant Environmental Effects and Mitigation Measures and the Final Supplemental EIR with relation to the impact of the development on employment. The Findings state:

"Approval of the Implementing Actions will result in the displacement of all businesses currently operating within the Project Area. Consequently, a substantial number of employees currently working for businesses to be displaced will lose their jobs." This report concludes by stating that "the new jobs created will offset the jobs lost as a consequence of the dislocation of existing businesses, and the Project therefore will be a net provider of new jobs." What this report does not address is how many city residents will be employed in the net new jobs created. The Final Supplemental EIR suggests that these new jobs will most likely go to people residing outside the City of East Palo Alto.

In the Final Supplemental EIR questions were ask as to how future employment would impact traffic patterns. Comment A-36, pg. IV-12 asks how traffic volumes were generated. In addressing this concern the report states:

"Removal of the existing retail use would eliminate "passer-by" trips, which would have the effect of increasing through volumes on University immediately at the interchange, while somewhat reducing turning volumes." This statement implies that non-local trips will be generated and thus increase the volume of traffic on University and the freeway interchange.

This response further states, "Project office trips were added back using the travel distribution indicated in the Program EIR. These trips would be more heavily loaded to the freeway and regional arterials than the retail trips. At greater distances from the interchange, home-work office trips would be added to the network resulting in elevated traffic levels."

These statements suggests that the project will tend to employ people that are not local residents and thereby place a higher volume of traffic on the freeways and regional arterials. Obviously if the project expected to hire a significant number of local residents the freeway would not be taxed as expected since local residents would tend to use surface streets to get to work.

The response to Comment L-3 is also telling. In this reponse, the consultant states that "The trip distribution also assumes that a portion of existing East Palo Alto, Menlo Park and Palo Alto residents will be employed by the Project. Therefore, it is reasonable to assume that 32% of the Project trips would travel from these areas, and would not be considered commute traffic."

Thirty-two percent of the estimated 2,000 jobs is 640 jobs. If the hotel is subtracted from the project employment figure (given the fact that it is infeasible) a total of 1743 new jobs will be created (Source: Draft Supplemental EIR). Thirty-two percent of these new jobs is 557. If we assume that these three cities share equally in these jobs only 184 jobs will be created for East Palo Alto residents. The Draft Supplemental EIR states that there are currently 192 persons employed in the Specific Plan Project Area. If all these jobs are lost due to displacement, the City will not actually gain any new jobs from the development, in fact the City will net a loss of eight jobs as a result of the project.

In light of the National Economic Development and Law Center's conclusions and the concerns stated above, the city needs to revisit this issue and ensure that a binding first source hiring agreement is in place before the SDA and DDA are signed.

Questions:

1. What provisions have been made to ensure that the developer will hire local residents? If knowledgeable consultants have stated that the city does not

have a binding first source hiring program in place why has the city continued to reference this non-existent document? How will good faith effort be defined? What sanctions will be placed on the developer if he refuses to comply?

2. It is highly likely that the developer will sell this development after completion. What assurances have been made that the new property owners and tenants will hire local residents?

3. Will the developer be required to sign a separate agreement?

4. What types of preconstruction, construction and permanent jobs will be created as a result of the development? What will be the wage scales of those jobs? What percentage will go to local residents? What training mechanisms are in place to ensure that residents are trained to take advantage of the employment opportunities as the come on line? Who will pay for training? Can the current employment training agencies accommodate the training needs of the developer and local residents? How will the agreement be enforced? Who will be responsible for enforcement?

G. Affirmative Action

Comment: The current Affirmative Action policy, known as the Equal Opportunity Policy (July 1988) needs to be analyzed by a legal expert to determine whether the minority contracting goals will stand up in court in light of the recent Supreme Court decision of Croson v. City of Richmond, Virginia. The Equal Opportunity policy document sets specific minority utilization goals for contractors, subcontractors and vendors. The city needs to ensure that it has adequately documented past discrimination in order to establish set goals for minority participation in contracting, subcontracting and vender contracts. If the city can not document past discrimination, it may be able to avoid legal action if it makes provisions for the hiring of local businesses.

Questions:

1. Given the fact that the city's affirmative action policy may be illegal, any reference in the DDA to this document raises the question as to whether the developer is bound to anything. Is the city's Equal Opportunity Policy legally binding?

2. Has the Agency's legal counsel reviewed the existing affirmative action policy to determine what changes are needed? What is the city's plan for reviewing the Equal Opportunity Policy?

H. Housing Impact

Comment: The Draft Supplemental EIR states that the project will have the effect of displacing 96 units of housing in the project area. Exhibit A, Section B, Population and Housing, of the Findings Regarding Significant Environmental Effects and Mitigation Measures states that: "The Project will generate approximately 2,031 jobs and will cause an increased demand for low-income, moderate-income and above average income housing." This report further states, "The Project will result in a significant decrease in the vacancy rates for housing in the City. Approval of the Implementing Actions therefore will cause significant negative effects on housing both in the City and elsewhere in the region."

All responses to the concerns raised in reference to the impact of the development on the loss of housing and the need for additional housing point out that: 1) the units which are lost are required by law to be replaced and; 2) 20 percent of the tax increment dollars generated by the development are required by law to be spent on housing. These responses imply that not only will the housing units lost be replaced, but that additional units will be built to address the increased need for affordable housing that will result from the project.

These responses do not address the cost to replace the units which will be lost or the cost to relocate those families, nor do they specify the total tax increment amount that is expected to be spent on housing. Without these figures there is no way of knowing if the tax increment dollars that the project will generate are sufficient to replace the exisiting housing units which will be lost, let alone cover the cost to build additional housing.

Section B, of the Findings also notes, "At the time the Project is completed, the population inducing cumulative impacts of the Project and other reasonably anticipated future projects may result in the City failing to meet the Association of Bay Area Government's recommended "fair share" housing projections for the City." The Mitigation Measures of this section state that the city could address this issue by developing its vacant and underdeveloped land for housing. It is unclear from this analysis how many units in East Palo Alto would need to be built to address the housing needs of the new workers employed by the project. No mention is made as to whether the city indeed plans to develop a portion or all of the vacant 142.5 acres of land for housing.

Furthermore, neither the Draft Supplemental EIR nor the Findings referenced above, provide specific information on how the project will impact on the cost of housing in the area. It seems to reason that the decrease in the vacancy rate resulting from the impact of new jobs and population growth and the increase in the cost of land will exacerbate the existing housing crisis locally and in the region. Given the socio-economic status of East Palo Alto residents, it is questionable whether local residents would be able to purchase or rent any housing which may be built.

Finally, none of the documents at our disposal discuss how this housing will be financed and who will build it. It is not clear if the City or developer has tried to involve any local nonprofit housing developers.

Questions:

1. Which apartment buildings will be affected by the development? How many total units will be lost? The Draft Supplemental EIR mentions that 96 units will be lost. Will there be a potential for more units to be lost if the design of the project changes?

2. What is the dollar amount of the tax increment financing which is expected to be generated from the project? What is the dollar amount of the 20 percent tax increment financing which will be spent on housing? How will the funds available for housing replacement be affected if the hotel is not developed?

3. How much will it cost to replace the housing units which will be lost? How much will it cost to relocate those families? How much of the 20 percent tax increment monies will be spent on replacement and relocation? Are the tax increment monies sufficient to cover these costs?

4. How many additional new housing units will be built? What is the breakdown of income levels of these new units? Where will these units be located? How much of the 142.5 acres of vacant land will be dedicated to housing? How will these units be financed?

5. Is the City working with a local nonprofit housing developer to build either the replacement housing or the additional units?

I. Traffic and Infrastructure

Comment: The KMA Report states that approximately $7.3 million in infrastructure costs have not been assessed to the project. These costs include $4.4 million for widening University Avenue, $1.2 million for reconstructing Woodland, $1.2 million for East and West Bayshore Improvements, and $450,000 for six new traffic signals.

Questions:

1. How will the $7.3 million in infrastructure costs be financed? If public financing will be used, what is the specific justification?

2. What public agencies are currently involved in planning for the traffic needs created by the project? Is the Agency involved in these discussions? What plans now exist on the part of Cal Trans and Samtrans to help meet the infrastructure needs of the project? When will a schedule for those improvements be available for consideration? Is the timing of the project development tied to the ability of the transportation agencies to move forward on needed infrastructure improvements.

3. The traffic impact of the project was assessed on the assumption that only a small percentage of the jobs would go to East Palo Alto residents. If the Agency were successful in negotiating a first source hiring program to increase the percentage of jobs to local residents to more acceptable levels, would this alter the traffic infrastructure needs created by the project?

4. The traffic impact of the project was assessed on the assumption that the office/retail/hotel complex will not serve the local community and would not generate neighborhood retail trips. If the agency were successful in negotiating for more community-serving businesses to be located in the project, would this alter the traffic infrastructure needs created by the project?

J. Other Community Benefits and Priorities

Comment: It is our understanding that the developer has contributed $50,000 for the consultant contract for the Minority Incubation Study and $2 million for the development of a senior center. In addition, DeMonet's project concept outlines the following community benefits: child care, recreational services, open space and neighborhood commercial businesses. The development as envisioned, tends to be upscale in nature. It is questionable whether the community will actually enjoy and participate in any of these benefits.

The Child Care Center as presently conceived will only be available to the tenants of the project. It is doubtful whether any of the child care slots for the tenants will be subsidized. Even if local residents are employed in businesses which are located in the project site, it is unclear whether they will be able to take advantage of this service, especially if these employees are employed in lower-wage earning jobs (i.e., clerical).

The open space and recreation facilities referenced as a benefit by the developer will only be available to patrons of the hotel and office building complex. The city has a shortage of open space and recreational facilities for its residents. If the street is dedicated to the developer and becomes a private ingress and egress, then local residents will be denied access to the recreational and open space portion of the development. In effect the development will become a private enclave within the city.

Questions:

1. What benefits will the community receive as a result of the University Circle Development?

2. How was the determination made to fund the minority business incubation program and the senior citizens program over other community needs such as recreation facilities, child care, affordable housing, etc.?

3. Was the community included in prioritizing those needs?

4. Are these exactions to be credited to the project?

5. Are these the only benefits the city will receive?

6. It is unclear who will run and operate the child care facility. Will the developer operate the facility? Will the developer rent the space to another child care provider? How will the developer go about selecting a provider if one is needed?

7. Why is the street being dedicated to the developer? How will the city ensure that local residents be given access to the recreational facilities in the development? How much access will the community have to the recreational facilities, open space, child care facilities, hotel conference rooms, particularly if the street is privatized?

8. What type of businesses will be given priority in the development?

K. Project Area Committee

Comments: California law requires the Agency to consult with the project area committee on the development of the project. But it is our understanding that the PAC has not even been able to assemble quorums at most of its meetings.

Questions:

1. How many meetings of the PAC have been held? At how many meetings has there been a quorum?

2. What steps has the staff taken to support the PAC in its work? What would it take to help the PAC function better?

3. Has the Agency received any written recommendations from the PAC? Is the Agency going to proceed with the development without input from the PAC? What are the risks of litigation if the Agency proceeds with the project without input from the PAC?

L. Owner Participation in Redevelopment Plan

Comments: It is our understanding that the existing property owners in the redevelopment area have developed an alternative proposal to the DeMonet Industries project.

Questions:

1. Does the conclusion that the "single unified development including a hotel" is not feasible and should not be pursued affect the Agency's response to the owners' proposal?

2. How much of the Agency's staff and consulting time has been committed to reviewing and discussing the owners' alternative proposal, compared to the staff and consulting time committed to the DeMonet Industries proposal?

3. Has the Agency Board set aside time to study the existing property owners proposal? What are the financial and community objectives that the Board would use to evaluate the owners' proposal in comparison to DeMonet's proposal?

4. Has the Agency directed its financial and legal consultants to prepare an evaluation of the owners' proposal?

M. Statutory Development Agreement

Comments: We have reviewed a statutory development agreement draft dated July 9, 1990. The statutory development agreement obligates the City to provide the public approvals necessary for the project including the hotel development. It is for a term of ten years.

Questions:

1. Is it advisable to enter into a statutory development agreement when the scope of the project (for example, whether it will include a hotel development) is uncertain? If the City enters into the statutory development agreement, what are the City's obligations to grant public approvals for a project that does not include a hotel? If the project does not include a hotel and does not generate the expected transient occupancy tax, will the statutory development agreement preclude the city from negotiating more development exactions than have previously been

negotiated or from terminating the agreement and pursuing an alternative plan for the site?

2. California law states that the City can enter into a statutory development agreement only with a person who has a legal or equitable interest in the property that is the subject of the statutory development agreement. What is the property that is the subject of the agreement? Please identify any legal or equitable interest that DeMonet Industries has in the property that is the subject of the agreement.

3. The statutory development agreement incorporates by reference many provisions of the DDA, but the committee has not had the opportunity to review a draft of the DDA more recent than March 15, 1990. Is it advisable for the Agency to adopt a statutory development agreement that depends so much on an agreement that has not been finalized?

4. The statutory development agreement eliminates opportunities for community input on the development of the project as it unfolds over time. It greatly restricts the ability of elected officials to respond to a changed development climate created, for example, by subsequent development activities in neighboring jurisdictions. Accordingly, it seems especially important that there be adequate public comment on a project that will circumvent the normal political process and tie the hands of the electorate for ten years. What mechanisms for community input will the Agency implement with respect to the statutory development

agreement? What is the current timing for consideration of the statutory development agreement?

5. It is typical for the statutory development agreement to be conditioned on the developer's commitment to provide mitigation measures to respond to the comments in the EIR and also to provide mechanisms for monitoring actual impacts and providing for additional mitigation measures if the impacts are more severe than anticipated. What mitigation measures are presently imposed on the developer? Do these adequately respond to the traffic and housing problems that will be created by the project? What protections exist to make the developer provide an impact monitoring program and addition mitigation measures if needed?

6. Does the City intend to adopt the statutory development agreement before the disposition and development agreement has been adopted?

N. Disposition and Development Agreement

Comments: Based on the recent draft of the statutory development agreement, the disposition and development agreement is the document where most of the financial and other obligations of the Agency and the developer will be set forth. The community has not had an opportunity to comment on a draft of that critical document more recent than March 15, 1990. Accordingly, it is difficult at this point to fully develop all of the issues of concern to the community about the DDA.

Questions:

1. What is the timing for consideration of the DDA? When will the community receive a draft for comment? How many hearings will be set aside to receive community input?

2. As discussed above, the most recent available draft of the DDA limits the Agency's discretion to disapprove transfers by DeMonet or changes in ownership in DeMonet? Why is this necessary or advisable?

3. What public financing commitments will be made in the DDA? Is the Agency committing itself to use tax-increment funds to finance the project or the infrastructure if the project is not financially feasible without such tax increment financing?

4. The most recent draft of the DDA obligates the City to acquire the property by eminent domain if necessary to accomplish the DDA. In the 1985 case of Huntington Park Redevelopment Agency v. Norm's Slauson, it was held that the adoption of a resolution of necessity to support an eminent domain action was a "mere sham" and a denial of due process when the Redevelopment Agency had already entered into an agreement with the developer to develop the property. Yet this is exactly the scenario that the DDA sets forth. Have the Agency's legal advisors distinguished the Agency's position from the actions that were set aside in the Huntington Park case?

5. What is the timing of the different phases of the project? What are the events or circumstances in the DDA that let the developer off the hook with respect to the hotel development?

6. The DDA needs to allocate appropriate responsibility to the developer regarding the housing, employment and traffic impact on the project and the community benefits that the project should provide. What process will the Agency use to determine its negotiating posture on these issues? In particular, what opportunity for public benefit will there be?