



COMMUNITY DEVELOPMENT DEPARTMENT

Council Meeting Date: April 14, 2009

Staff Report #: 09-051

Agenda Item #: F1

REGULAR BUSINESS: **Consideration of Council Subcommittee Recommendation for a Public Outreach and Development Agreement Negotiation Process for the Menlo Gateway (Bohannon Hotel-Office Mixed-Use) Project, and Appointment of Council Subcommittee for the Remainder of the Process**

RECOMMENDATION

Staff recommends that the City Council approve the Council Subcommittee recommendation for a public outreach and development agreement negotiation process for the Menlo Gateway (Bohannon hotel-office mixed-use) project, and appoint or reaffirm a Council Subcommittee to provide oversight and advisory services to staff during the remainder of the process.

BACKGROUND

The Bohannon Development Company has submitted an application for a General Plan Amendment, Zoning Ordinance Amendment, Rezoning, Development Agreement, and Environmental Impact Report (EIR), associated with a proposal for a mixed-use office, research and development (R&D), hotel, and health club development on nine properties addressed 100 to 190 Independence Drive and 101 to 155 Constitution Drive. The proposal is currently branded as the Menlo Gateway project, although it has also been referred to informally as the Bohannon hotel-office mixed use project.

The proposed project would require the following actions:

1. **General Plan Amendment:** Create a new Mixed-Use Commercial Business Park land use designation and change the land use designation of the properties from Limited Industry to Mixed-Use Commercial Business Park;
2. **Zoning Ordinance Amendment:** Create a new M-3 (Mixed-Use Commercial Business Park) zoning district and undertake associated modifications, in particular the creation of specific parking requirements for the M-3 district;
3. **Rezoning:** Change the zoning district of the nine properties from M-2 (General Industrial) to M-3 (Mixed-Use Commercial Business Park);
4. **Architectural Control:** Approval of specific project plans for the construction of new buildings with a total of 933,371 square feet of gross floor area (134.4% Floor Area Ratio – FAR) and a maximum building height of 140 feet (equating to eight stories);

- The Constitution Drive site would include two office buildings, two parking structures, and neighborhood-serving retail and community facility space (such as meeting rooms or art exhibition space);
 - The Independence Drive site would include one office building, a 156,066-square foot, 230-room hotel, a 67,934-square-foot health/fitness center, a shared parking structure, and associated commercial space;
 - The combined office gross floor area on the two sites would total 694,669 square feet.
5. **BMR Agreement:** Payment of in-lieu fees associated with the City's Below Market Rate (BMR) Housing Program;
 6. **Parcel Maps:** Recordation of parcel maps to combine the existing four parcels on Constitution Drive and five parcels on Independence Drive into a smaller number of parcels, and to record, abandon, and/or modify easements;
 7. **Development Agreement:** Guarantee development rights associated with the requested entitlements in exchange for public benefits; and
 8. **Environmental Impact Report (EIR):** Analyze the potential environmental impacts of the proposal.

City consultants are currently working on the EIR and a Fiscal Impact Analysis (FIA), with release of the public draft documents expected in summer 2009.

The following is a summary table comparing the development standards of the existing M-2 and proposed M-3 zoning districts.

Development Regulation Comparison

	Proposed M-3 District Requirements	Existing M-2 District Requirements
Lot Area	0 sf min.	25,000 sf min.
Lot Width	0 ft. min.	100 ft. min.
Lot Depth	0 ft. min.	100 ft. min.
Setbacks		
Front	0 ft. min.	20 ft. min.
Rear	10 ft. min.	0 ft. min.
Sides	5 ft. avg.	10 ft. avg.
Height	140 ft. max.	35 ft. max.
Floor Area Ratio (FAR)		
Office	100% max.	45% max.
Hotel	24% max. additional	Not applicable
Other	13.5% max. additional	10% max. additional
Total	<u>137.5% max.</u>	<u>55% max.</u>
Coverage	45% max.	50% max.
Paving	0% min.	0% min.
Landscaping	0% min.	0% min.

In addition to the creation of the proposed new M-3 district, the applicant is proposing to undertake several associated amendments to the Zoning Ordinance, such the creation of use-based, shared off-street parking standards specific to the M-3 district. The proposed M-3 maximum office FAR of 100 percent would be larger than what is permitted in any of the existing commercial zoning districts, which have maximums of between 20 and 50 percent. The proposed M-3 total maximum FAR of 137.5 percent would be larger than any other existing commercial district, with the exception of the C-3 (Central Commercial) district, in which an FAR of 200 percent may be permitted by use permit, provided the required parking for the square footage above the 100 percent FAR is provided on site or on nearby private property.

The current application was preceded by an alternate development proposal, which incorporated eight of the nine parcels, had a lower overall FAR, and included only a general hotel use. In 2006, prior to the release of a Draft EIR, the project was put on hold at the applicant's request, in order to consider modifications to the proposal to accommodate a specific hotel operator. The applicant submitted a revised application in early 2007 incorporating the Marriott Renaissance ClubSport product. The following is a comprehensive listing of public meetings associated with the original and revised (2007) proposal:

Date	Body	Purpose
07/14/2005	Community Meeting	EIR Scoping Session
10/04/2005	City Council	Study Session
03/20/2007	City Council	Presentation
06/04/2007	Planning Commission	EIR Scoping Session
06/19/2007	City Council	EIR Scoping Session
07/10/2007	City Council	EIR Scoping Session
07/31/2007	City Council	FIA Procedure Review
08/27/2007	Planning Commission	Study Session
10/23/2007	City Council	Study Session and Regular Business
01/15/2008	City Council	FIA Request for Proposals (RFP) Review
04/22/2008	City Council	FIA Proposal Approval
07/30/2008	Community Meeting	FIA Workshop
09/09/2008	City Council	Subcommittee Appointment

ANALYSIS

At the September 9, 2008 meeting, the City Council formed a Subcommittee of Council Members Cohen and Fergusson to establish the public outreach and development agreement review process. Working with staff, the Subcommittee has prepared a recommendation (Attachment A). The draft schedule includes descriptions of the various meetings, notes on the timing (some meetings have to occur at certain points in relation to document releases or other meetings), methods of notification, and tentative dates. All dates are subject to revision due to external factors, such as if a work product

is delayed, or if a Commission or Council meeting is cancelled. The various meetings are interspersed with milestones relating to the EIR, FIA, and Development Agreement.

Initial Outreach and Draft Environmental and Fiscal Review

A key element of the recommendation is a broad community outreach effort after the release of the Draft EIR and FIA. This initial outreach would be focused around three meetings: one for the Belle Haven residential neighborhood, one for the business community, and one citywide meeting. The first two meetings (#2 and #3 in the attached table) would be held at the Onetta Harris Community Center (in the vicinity of the project area), while the citywide meeting (#4) would be held at the Civic Center complex. These public outreach meetings would serve to educate the community in general about the proposed project, as well as to receive input on public benefit needs. The meetings would be publicized by a citywide postcard mailing, a bulletin in the Chamber of Commerce newsletter, a project web site update and email bulletin, email notice to all City Commissioners, and a press release. The public outreach meetings would be conducted by staff (including the Community Engagement Manager), in consultation with the Council Subcommittee, which is discussed in more detail below.

The public outreach meetings would be immediately followed by a Planning Commission meeting focused on review of the Draft EIR (Meeting #5). This meeting date would also be publicized in the initial citywide postcard mailing. After the close of the Draft EIR comment period, the Planning Commission and City Council would meet in succession (Meetings #6 and #7) to discuss the project in more general terms, including a review of the community's public benefit input, the FIA, and the overall development program (e.g., height and FAR). The City Council would then meet again to provide direction for the Development Agreement negotiations (Meeting #8). The basis for this sequencing of meetings is that the detailed Development Agreement negotiation process should not begin until the general outline of a potentially-approvable project is known, which would not be the case until the draft environmental and fiscal analyses have been fully reviewed and the initial community outreach is complete. Once that general project framework is known, the City's negotiation team would know best what to ask for in the negotiation process.

The applicant's team has indicated that they will concurrently conduct an independent outreach and promotional effort, although specifics are not available at this time.

Final Environmental and Fiscal Review and Draft Development Agreement Negotiation

After Meeting #8, the City's consultants would prepare the final environmental and fiscal documents, which would include responses to comments received during review of the draft documents. Concurrently, staff and the applicant would negotiate a draft Development Agreement.

Under State law, development agreements enable the City to grant a longer-term approval in exchange for demonstrable public benefits. The City Council adopted Resolution No. 4159 in January 1990, establishing the procedures and requirements for the consideration of Development Agreements. The resolution contains specific provisions regarding the form of applications for development agreements, minimum requirements for public notification and review, standards for review, findings and decisions, amendments and cancellation of agreements by mutual consent, recordation of the agreements, periodic review, and modification or termination of an agreement. The City has previously entered into only one Development Agreement, with Sun Microsystems for the development of its campus at 1601 Willow Road (now 10 – 19 Network Circle). Resolution 4159 and the Sun Microsystems Development Agreement are available for review upon request at City offices.

Due to the complexity and technical content of such agreements, the negotiation of a draft agreement with the applicant would be undertaken by a core team, consisting of the following:

- Business Development Manager David Johnson
- City Attorney Bill McClure
- Development Services Manager Justin Murphy
- City Manager Glen Rojas
- Public Works Director Kent Steffens

As stated in an earlier staff report for this project, staff believes that the Development Agreement would have the following core principles:

1. Guarantees must be provided with regard to any public benefits; and
2. Construction of the hotel component must occur prior to any office construction.

In addition, negotiation of the draft Development Agreement would be informed by the following:

- Direction from the full City Council at Meeting #8;
- Ongoing feedback from the Council Subcommittee, which is discussed in more detail below;
- Input from additional staff members, such as the Finance Director, Community Development Director, and Police Chief; and
- Review from an independent development consultant.

The input from the independent development consultant is intended to provide the City with a more detailed understanding of the monetary value of the project approvals. The consultant would be someone who has developed property, not a general fiscal/economic consultant. The City Attorney is currently assembling a list of candidates for this role, to be reviewed with the Council Subcommittee prior to formal selection of a consultant.

While the draft Development Agreement would initially be negotiated by a limited group, after it is released publicly, the full City Council may direct the core negotiation team to pursue revisions at any point before final approval.

Final Review and Approval

The final set of meetings would consist of the required recommendation and approval actions. First, the Housing Commission would review and provide a recommendation on the draft BMR Housing agreement (Meeting #9). Next, the Planning Commission would conduct a comprehensive review of all necessary project approvals and provide associated recommendations (Meeting #10). Lastly, the City Council would conduct the final approvals over two meetings (Meetings #11 and #12). Meeting #11 could itself be expanded into two meetings, if needed.

Council Subcommittee

As noted above, a Council Subcommittee would provide ongoing oversight and advisory services for topics such as:

- Public outreach process;
- Selection of independent development consultant; and
- Development Agreement negotiations.

The existing Council Subcommittee was formed on September 8, 2008 to provide this recommendation for a public outreach and Development Agreement negotiation process. Council Members Cohen and Fergusson have expressed interest in continuing to serve on the Council Subcommittee for the remainder of this process. Staff recommends that the full Council approve the overall role of the Council Subcommittee and reaffirm Council Members Cohen and Fergusson as its members.

IMPACT ON CITY RESOURCES

The applicant is required to pay planning permit fees, based on the Master Fee Schedule, to fully cover the cost of staff time spent on the review of the project. The applicant is also required to bear the cost of the associated environmental review and fiscal and economic impact analysis, as well as the independent development consultant. For the consultant services, the applicant deposits money with the City, and the City pays the consultants.

POLICY ISSUES

The proposed project will ultimately require the Council to consider a policy decision whether to change the General Plan land use designation and the zoning classification

for the property. The implications associated with this decision will be analyzed throughout the project review process.

ENVIRONMENTAL REVIEW

An Environmental Impact Report (EIR) is being prepared for this project. The EIR will review topics such as traffic and transportation, aesthetics, air quality, and noise, and it will analyze the project in relation to five alternatives established by the City Council.

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PUBLIC NOTICE

Public notification was achieved by posting the agenda, at least 72 hours prior to the meeting, with this agenda item being listed.

In addition, the City has prepared a project page for the proposal, which is available at the following address: http://www.menlopark.org/projects/comdev_iac.htm. This page provides up-to-date information about the project, allowing interested parties to stay informed of its progress. The page allows users to sign up for automatic email bulletins, notifying them when content is updated.

ATTACHMENTS

A. Draft Public Outreach and Development Agreement Negotiation Process

**ATTACHMENT A - DRAFT Public Outreach and Development Agreement Negotiation Process
Menlo Gateway (Bohannon Hotel-Office Mixed-Use) Proposal**

#	Meeting Description	Notes / Timing	Method of Notification	Date Scheduled
1.	City Council to review and discuss the Public Meeting Schedule and method of notification	Prior to first public meeting	Council agenda published Web site project page updated & email bulletin sent	04/14/09
MILESTONE: Draft Environmental Impact Report (DEIR), Project Plans, and Fiscal Impact Analysis (FIA) issued for public review				
2. 3. 4.	<p>Public outreach meetings to educate community about the proposed project, get input on public benefit needs and discuss FIA</p> <ul style="list-style-type: none"> • Belle Haven Neighborhood (Onetta Harris Community Center, evening) • Business Community (Onetta Harris Community Center, afternoon) • City-wide (Civic Center, evening) <p><i>(Note: all meetings are open to the public and may be attended by any or all Council Members or Commissioners)</i></p>	Prior to deadline for DEIR comments. (not to receive comments, but let people know how they can submit EIR comments)	City-wide postcard mailing for meetings 2, 3, 4, and 5 Chamber of Commerce newsletter Web site project page updated & email bulletin sent Notice sent to all appointed commissioners Press release	 07/16/09 07/16/09 07/23/09
5.	<p>Planning Commission Public Hearing regarding the draft EIR</p> <p><i>(Outcome: Receive public comments on the DEIR – all comments will be responded to in the Final EIR)</i></p>	After release of the DEIR and FIA – towards the end of the 45 day review period for DEIR	Planning Commission agenda published Public Hearing Notice published and mailed to project distribution area Web site project page updated & email bulletin sent	07/27/09

**ATTACHMENT A - DRAFT Public Outreach and Development Agreement Negotiation Process
Menlo Gateway (Bohannon Hotel-Office Mixed-Use) Proposal**

#	Meeting Description	Notes / Timing	Method of Notification	Date Scheduled
6.	Planning Commission study session item to discuss Public Benefit, FIA, and development program <i>(Outcome: Commission reviews and comments on project proposal)</i>	Prior to final EIR	Planning Commission agenda published Web site project page updated & email bulletin sent	08/24/09
7.	City Council study session to consider feedback from the Planning Commission and discuss environmental impacts and mitigations, Public Benefit, FIA, and development program	Prior to final EIR	Council agenda published Web site project page updated & email bulletin sent	09/22/09
8.	City Council regular item to provide direction or parameters to guide development agreement negotiations	At least two weeks after council study session	Council agenda published Web site project page updated & email bulletin sent	10/06/09
<u>MILESTONE:</u> Prepare Final EIR, FIA and negotiate a draft Development Agreement				
<u>MILESTONE:</u> Publish Final EIR, FIA, draft BMR Housing Agreement, and Recommended Development Agreement for public review				
9.	Housing Commission review and recommendation for approval of draft BMR Housing agreement	Prior to Planning Commission Public Hearing	Housing Commission Agenda posted Web site project page updated & email bulletin sent	12/02/09

**ATTACHMENT A - DRAFT Public Outreach and Development Agreement Negotiation Process
Menlo Gateway (Bohannon Hotel-Office Mixed-Use) Proposal**

#	Meeting Description	Notes / Timing	Method of Notification	Date Scheduled
10.	Planning Commission Public Hearing – Recommendation on final EIR, final FIA, General Plan Amendment (map and text), Zoning Ordinance Amendment, Zoning Map Amendment, Development Agreement, Architectural Control, Tentative parcel Maps, and BMR Housing Agreement	After release of Final EIR	Planning Commission agenda published Public Hearing Notice published and mailed to project distribution area <i>(potentially a joint notice with meeting #11)</i> Web site project page updated & email bulletin sent	12/14/09
11.	City Council Public Hearing – Certification of Final EIR, Acceptance of Final FIA, Approval of General Plan Amendment (map and text) resolution, Introduction of an Ordinance Amending the Zoning Ordinance, Introduction of an Ordinance Rezoning Property, Introduction of an Ordinance Approving the Development Agreement, Architectural Control, Tentative Parcel Maps, and BMR Housing Agreement <i>(Note: may require two meetings)</i>	Approximately/minimum of 6 weeks after Planning Commission recommendation.	Council agenda published Public Hearing Notice published and mailed to project distribution area <i>(potentially a joint notice with meeting #10)</i> Web site project page updated & email bulletin sent	02/02/10
12.	City Council – Adoption of the Ordinances for Amending the Zoning Ordinance, Rezoning Property, and Approving the Development Agreement (consent item)	Next available Council meeting after first reading	Council agenda published Web site project page updated & email bulletin sent	02/09/10

Note: all dates tentative and subject to revision.