



# COMMUNITY DEVELOPMENT DEPARTMENT

Council Meeting Date: May 25, 2010  
Staff Report #: 10-076

Agenda Item #: E1

**PUBLIC HEARING: Consideration of a Request for a General Plan Amendment, Zoning Ordinance Amendment, Rezoning, Development Agreement, Conditional Development Permit, Tentative Parcel Maps, Below Market Rate Housing Agreement, Heritage Tree Removal Permits, and Environmental Review to Construct an 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**

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## RECOMMENDATION

Staff is not making a recommendation on the policy decision to approve a project of the proposed size at this location given the benefits and impacts, as this is a Council policy decision. The Planning Commission recommended to approve the project at its meeting on May 3, 2010. The City Council needs to consider all inputs, including comments from the community, in making this policy decision. Council should first focus on the larger policy issue before weighing in on the details of the specific proposal.

## Necessary Actions

If the Council decides it is appropriate to amend the General Plan and Zoning Ordinance, then Staff recommends that the City Council concur with the recommendation of the Planning Commission, with one substantive exception discussed in the Analysis section below, and approve the following for the Menlo Gateway project, subject to the findings and actions contained in Attachment A on June 15, 2010:

1. **General Plan Amendment** to create a new Commercial Business Park land use designation, which would allow research and development (R&D) facilities, offices, hotels/motels, health/fitness centers, cafes and restaurants, and related commercial uses. The maximum floor area ratio (FAR) would be 137.5%, provided offices do not exceed 100%;
2. **General Plan Amendment** to change the land use designation of the properties from Limited Industry to Commercial Business Park;

3. **Zoning Ordinance Amendment** to create a new M-3 (Commercial Business Park) zoning district to allow for uses and FAR as stated in the corresponding General Plan land use designation;
4. **Rezoning** the properties from M-2 (General Industrial) to M-3(X) (Commercial Business Park, Conditional Development);
5. **Development Agreement** to create vested rights in project approvals and specify benefits to the City;
6. **Conditional Development Permit** associated with specific project plans for the construction of new buildings with a maximum of 955,170 square feet of gross floor area (137.5% FAR) and a maximum building height of 140 feet;
  - The Constitution Drive site would include two eight-story office buildings totaling 494,669 square feet; potential neighborhood-serving convenience retail and community facility space; and two multi-story parking structures;
  - The Independence Drive site would include a 200,000-square-foot, eight-story office building; a 173,436-square foot, eleven-story, 230-room hotel; a 68,964-square-foot health and fitness center; a 4,285-square-foot restaurant; potential neighborhood-serving convenience retail and community facility space; and a shared multi-story parking structure;
7. **Tentative Parcel Maps** (one on the Independence site and one on the Constitution site) to merge lots, adjust lot lines, establish easements, and abandon areas reserved for future street dedication;
8. **Heritage Tree Removal Permits** to remove 36 heritage trees on the Independence site, 31 heritage trees on the Constitution site, nine off-site trees along Chrysler Drive, one off-site tree along Independence Drive, and two off-site trees along Marsh Road near Florence Street;
9. **BMR Agreement** for the payment of in-lieu fees associated with the City's Below Market Rate Housing Program; and
10. **Environmental Impact Report (EIR)** to analyze the potential environmental impacts of the proposal.

At the May 25, 2010 meeting, the Council also should provide direction to staff on whether to prepare additional materials for a potential ballot proposition to place the approval of the project on the November general election as discussed in the Analysis section below. In addition, the Council should provide direction to staff regarding any additional information or potential changes to the approval documents.

## **BACKGROUND**

The applicant submitted an initial proposal in 2004, and submitted a revised proposal in 2007 to incorporate the features and needs of a specific full-service hotel, namely Marriott Renaissance ClubSport. A comprehensive listing of public meetings and milestones associated with the proposal to date is included as Attachment S. Staff reports and the presentations from all previous meetings plus other related documents are available for review on the City's website or in the City offices.

### **Housing Commission Review**

The proposed project is subject to requirements of the Below Market Rate (BMR) Housing Program. The Housing Commission reviewed the BMR Agreement on April 7, 2010 and recommended approval of the applicant's proposal to pay an in-lieu fee of approximately \$8,543,207 (based on current rates) to meet the BMR commercial requirements. The staff report is available at the Community Development Department and the minutes from the meeting are included as Attachment O. The BMR Agreement has been reviewed by the City Attorney and is included as Attachment K.

### **Planning Commission Review**

On April 19, 2010, the Planning Commission held a public hearing on the project. On May 3, 2010, the Planning Commission made its recommendation after considering all of the public comments and documents, including the draft Development Agreement and draft Conditional Development Permit. Since the April 6, 2010 Council meeting, the City has received 26 pieces of correspondence regarding the Menlo Gateway project. All of the correspondence was presented to the Planning Commission. (Copies of the eight pieces of correspondence related to the Development Agreement have been submitted to the Council under separate cover). The Commission voted 4-3 (with Commissioners Bressler, Kadvanly and Pagee opposed) to recommend approval of the project with the following additional items:

1. Accept the alternate parking structure design;
2. Modify the hotel consistent with the rendering presented at the meeting if acceptable to applicant;
3. Re-examine the amount of the penalty for non-compliance of the trip limitation;
4. Tighten the definition of minor and major modifications and what would come back to the Planning Commission for review;
5. Encourage the applicant to identify five to 10 acres of land for housing in the City;
6. In the negotiations, consider a sales tax in lieu fee to be applied to office square footage as completed in a range of approximately \$1.40 per square foot per year.

Prior to voting on the recommendation on the project, Commissioners in favor of the project stated the project has many substantial benefits that outweigh the significant and unavoidable impacts. Commissioners considered benefits to include increased annual income for the City, the attractive architecture and high quality materials, project amenities that would attract desirable tenants, the creation of jobs, physical improvements around Bayfront Park and/or the Belle Haven neighborhood, funds for affordable housing, trip reduction measures, sustainable building practices and carbon footprint reduction. The support of the Belle Haven community and the support of residents, who had formerly raised major concerns regarding the project impacts, also influenced some Commissioners. Finally, the Commissioners in favor of the project praised the applicant's outreach efforts, willingness work with members of the community to find compromise, and his long-term involvement in the community. One question that was raised by a Commissioner in favor of the project, but never addressed by the Commission, is whether wet lab uses should be restricted. Discussion regarding the potential water impacts associated with wet lab uses is included in the Environmental Review section below.

Commissioners who voted against the motion expressed concerns regarding the terms of the project and whether it was in a place to move forward to the City Council for a final action. Other concerns that were expressed include the autocratic nature of the proposed project due to its location next to Highway 101, the proposed use of 2009 LEED standards, a lack of proposed housing to balance the proposed increase in office space, and a belief that the City should share in more of the potential profits from the office portion of the project.

Transcripts of the April 19, 2010 and May 3, 2010 Planning Commission meetings are included as Attachments P and Q, respectively.

### **City Council Term Sheet Review**

At the May 11, 2010 City Council meeting, the Council considered potential changes to the draft Development Agreement based on Council comments on April 6, 2010 and the Planning Commission recommendation on May 3, 2010. A majority of Council supported the following 12 changes recommended by staff as reflected in the May 11, 2010 staff report and presentation:

- Restrict Bayfront Park funding;
- Explore options for collaborative solutions to underground the transmission lines;
- Re-evaluate trip limit for project changes;
- Begin trip monitoring sooner;
- Re-evaluate \$100/trip penalty;
- Collaborate with Fire District;
- Reorganize school district boundaries;

- Evaluate alternatives to 11% TOT (Construction Sales Tax);
- Parking structure design;
- Updated hotel architecture;
- Planning Commission review of final architecture; and
- Help identify land for housing.

In addition, a majority of the Council provided direction to staff to pursue the following three items:

- Phase in the vehicle trip limits based on completion and occupancy of buildings instead of waiting for completion of the entire project;
- Require compliance with LEED standards in effect at the time of each building permit submittal instead of LEED standards in effect in the Spring of 2009 (NC v2.2); and
- Provide ideas regarding and attempt to negotiate mechanisms for the City to share in the potential upside of the project above a certain baseline and without burdening the base project.

All 15 items are discussed in the Analysis section later in this staff report.

## **PROCEDURE**

As outlined above, the City Council is scheduled to review the proposal at three meetings. The purpose of the May 25, 2010 public hearing is to give the City Council an opportunity obtain public comment and ask questions of staff and the applicant related to the overall project and various documents that have been prepared to date, including the Final EIR and Fiscal Impact Analysis (FIA). At a second meeting on June 15, 2010, the City Council should formulate its final action on the proposed project, environmental review, and requested entitlements in a manner that addresses all of the actions identified in Attachment A and described below. If the Council votes to approve the project on June 15, 2010, then the second reading of the approved ordinances would take place at the third meeting on June 22, 2010. The Ordinances would go into effect 30 days thereafter.

## **ANALYSIS**

The focus of the Analysis section is to provide an overview of the project and associated documents and discuss issues raised at the April 19 and May 3 Planning Commission meetings and the May 11 City Council meeting.

## **Proposed Project**

As referenced above, the proposed project involves General Plan and Zoning Ordinance Amendments to allow the construction of an office, research and development (R&D), hotel, and health club development on two sites (referred to as the Independence Site and Constitution Site) located between US 101 and Bayfront Expressway adjacent to the Marsh Road interchange (see Attachment L). The plans for the project have been included as Attachment M. The following table summarizes some of the key features of the proposal as represented on the attached project plans:

<b>Land Use</b>	<b>Constitution Site (Closest to SR 84)</b>	<b>Independence Site (Closest to US 101)</b>	<b>Total</b>
Office/R&D	494,699 s.f.	200,000 s.f.	694,699 s.f.
Hotel	n/a	173,436 s.f./ 230 rooms	173,436 s.f./ 230 rooms
Health Club	n/a	68,964 s.f.	68,964 s.f.
Café/Restaurant	n/a	4,285 s.f.	4,285 s.f.
<b>Total</b>	<b>494,699 s.f.</b>	<b>446,685 s.f.</b>	<b>941,384 s.f.</b>

## ***Plan Revisions***

Since the May 3, 2010 Planning Commission, staff has worked with the applicant to make minor revisions to the plan set. Examples of revisions made to the plan set are additional height dimensions were added to the elevations and erroneous new property lines were removed from the tentative parcel map sheets. While the applicant has committed to making major changes to the plans related to the parking structures and hotel design, due to the numerous plan sheets that would need to be revised, staff has included these items as conditions of approval. The planned revisions are discussed below.

At the April 19, 2010 Planning Commission meeting, the applicant presented revised parking structure layouts for both sites. The parking structures were modified to reduce the garage footprints, thus providing space for landscape reserve parking areas to be created. The reduction in the size of the garage footprints resulted in a slight increase in the building heights. Additionally, the facades of the parking structures were modified to incorporate accent materials and to break up the surfaces to create a more human scale. The stair towers, which would be sheathed in glass to provide a connection to the office buildings' architecture, became stronger elements, accenting and contrasting the exterior surface of the parking structure. Additional segmented metal mesh accent panels would be layered onto the exterior façade at the corners to give added depth and reduce the apparent size of the structures. Finally, landscape planters were added as accent elements for three floors near the center of the long façade to animate the structure and provide visual interest. Revised site plans and elevations for the parking structures are included as Attachment N. A requirement to fully update the plan sets so

they reflect the parking concept discussed at the April 19, 2010 Planning Commission meeting has been included in the CDP as condition 8.19.

At the May 3, 2010 Planning Commission meeting, the applicant presented revised elevations for the hotel in response to a request by the Planning Commission. The major hotel block would be jogged to reduce its apparent length. Two curved, reflective “sail-like” facades along the building’s southern elevation would effectively divide the length of the major block in two and provide a soft, curvilinear character to the hotel. These sweeping elements are punctuated at their edges by expressed balconies, an accent gesture that would also add a human scale to this façade. The new design refinement adds to the individual identity of the hotel, while maintaining a strong connection to the architecture of the office buildings. Overall, it would help establish a more cohesive campus character while giving an identity to individual uses. In its recommendation, the Planning Commission stated that the applicant should pursue the revised concept. Staff has added a condition 8.20 to the CDP requiring the applicant to fully update the plan sets so they reflect this design.

Additionally, in response to the Planning Commission recommendation, the applicant has agreed to present the final architecture for review and comment by the Planning Commission prior to each building permit submittal. This allows the applicant to share the designs with the public and get input from the Planning Commission. Condition 8.12 has been added to the CDP requiring the applicant to submit the substantially complete site plans, floor plans, elevations, and landscape plans to the Planning Division to schedule a Planning Commission public meeting prior to each building permit submittal.

### **Project Land Use Entitlements**

The proposed project requires various land use entitlements as summarized below.

#### ***General Plan Amendment and Zoning Ordinance Amendment***

The applicant has proposed the creation of a new General Plan Land Use Designation (Commercial Business Park) and Zoning District (M-3 Commercial Business Park), which would be applied to the project sites. The proposed amendments are included as Attachments E and G, respectively.

The following summary table compares the development standards of the existing M-2 and proposed M-3 zoning district, as originally proposed and the modified version.

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	<b>Original M-3 District Proposal</b>	<b>Modified M-3 District</b>		<b>Existing M-2 District</b>
<b>Lot Area</b>	0 sf min.	3 acres min.		25,000 sf min.
<b>Lot Width</b>	0 ft. min.	200 ft. min.		100 ft. min.
<b>Lot Depth</b>	0 ft. min.	200 ft. min.		100 ft. min.
<b>Setbacks</b>				
<b>Front</b>	0 ft. min.	20 ft. min.		20 ft. min.
<b>Rear</b>	10 ft. min.	20 ft. min.		0 ft. min.
<b>Sides</b>	5 ft. avg.	20 ft. min.		10 ft. avg.
<b>Height</b>	140 ft. max.	45 ft. max.		35 ft. max.
<b>Floor Area Ratio (FAR)</b>		Base	Bonus	
<b>Office</b>	100% max.	45%	100%	45% max.
<b>Hotel</b>	24% max. additional			Not applicable
<b>Other</b>	13.5% max. additional			10% max. additional
<b>Total</b>	<u>137.5% max.</u>	<u>45% max.</u>	<u>137.5% max.</u>	<u>55% max.</u>
<b>Coverage</b>	45% max.	45% max.		50% max.
<b>Paving</b>	0% min.	0% min.		0% min.
<b>Landscaping</b>	0% min.	35% min.		0% min.

The proposed General Plan and Zoning Ordinance Amendments, both the original and modified version, would allow the specific development application. The primary difference between the two versions is that the modified (now current) version has a base level Floor Area Ratio (FAR) plus a bonus level, which is tied to a Development Agreement. In addition, all zoning development standards other than FAR could be specifically established for this project through a Conditional Development Permit and associated "X" overlay zoning, which currently exists in the Zoning Ordinance.

Since the May 3, 2010 Planning Commission meeting, staff has revised the General Plan Text Amendment Resolution (Attachment E) to cause it to take effect upon the effective date for the Ordinance amending the Zoning Ordinance. If, for some reason, the ordinance does not become effective within 90 days of the adoption of the resolution, then the resolution would be voided.

***General Plan Map Amendment and Rezoning***

With the creation of the new General Plan Land Use Designation (Commercial Business Park) and Zoning District (M-3 Commercial Business Park), land use designations and zoning classifications for the subject properties would then need to be changed. The proposed General Plan Map Amendment and Rezoning Ordinance are included as Attachment F and H, respectively.

Since the May 3, 2010 Planning Commission meeting, staff has also revised the General Plan Map Amendment Resolution (Attachment F) to cause it to take effect upon the effective date for the Ordinance rezoning the properties. If, for some reason, the

ordinance does not become effective within 90 days of the adoption of the resolution, then the resolution would be voided.

### ***Development Agreement***

Under the proposed M-3 zoning district, a Development Agreement would be a requirement for any increase in FAR above the base of 45 percent up to a maximum of 137.5 percent. A Development Agreement is a legally binding contract between the City of Menlo Park and a project sponsor that delineates the terms and conditions of a proposed development project. A Development Agreement allows a project sponsor to secure vested rights, and it allows the City to secure certain benefits. Development Agreements are enabled by California Government Code Sections 6584-65869.5. The City Council adopted Resolution No. 4159 in January 1990, establishing the procedures and requirements for the consideration of Development Agreements (Resolution No. 4159 is available upon request at City offices or on the project page). The Development Agreement, including the Ordinance to approve the agreement, is included as Attachment I.

Several revisions have been made to the Development Agreement since the May 3, 2010 Planning Commission meeting and May 11, 2010 City Council meeting related to recommendations made by the Planning Commission and direction provided by the City Council. These changes are described in further detail in the Conditional Development Permit and Development Agreement Revisions section below. Revisions have only been made where staff and the applicant are in agreement. Other topics where an agreement has not been reached or a different approach has been taken are discussed in separate sections below.

### ***Conditional Development Permit***

The Conditional Development Permit (CDP) is included as Attachment J. A conditional development permit and the associated "X" overlay is a tool that currently exists in the Zoning Ordinance to allow flexibility from all zoning requirements except FAR, while providing greater certainty of the parameters of a particular development proposal. (The CDP substitutes for the previous application for architectural control). The CDP relies on the comprehensive project plans, included as Attachment M, which have been subject to multiple rounds of review by City staff from various departments. The CDP includes conditions of approval, along with all of the mitigation measures from the EIR. The conditions of approval that are not EIR mitigations are generally standard conditions of approval with a few exceptions.

Several revisions have been made to the Conditional Development Permit since the May 3, 2010 Planning Commission meeting related to revisions to the plans, recommendations made by the Planning Commission, and inclusion of items that are addressed in the Development Agreement. These changes are described in further detail in Conditional Development Permit and Development Agreement Revisions section below. Revisions have only been made where staff and the applicant are in

agreement. Other topics where an agreement has not been reached or a different approach has been taken are discussed in separate sections below.

### ***Tentative Parcel Maps***

The Tentative Parcel Maps are included in the project plans (Attachment M). The applicant is proposing Tentative Parcel Maps (one on the Independence site and one on the Constitution site), in order to merge lots, adjust lot lines, establish easements, and abandon areas reserved for future street dedication on the Constitution Site near Independence Drive. On the Independence Site, the five existing parcels would be merged into either one parcel or two parcels with the parking structure on the office building parcel in a two lot configuration. On the Constitution Site, the four existing parcels would be merged into either one parcel or two parcels with one office building and one parking structure on each parcel in the two lot configuration.

### ***Heritage Tree Removals***

The proposed Heritage Tree removals are summarized in Attachment R. (The full arborist reports are available upon request). Almost all of the redwood trees along the US 101 frontage of the Independence site are proposed to remain, but the proposed project would necessitate the removal of the 79 heritage trees as follows:

- 36 heritage trees on the Independence site to accommodate the grading, improvements, and structures;
- 31 heritage trees on the Constitution site to accommodate the grading, improvements, and structures;
- 9 off-site trees along Chrysler Drive for the connecting sidewalks between the sites;
- 1 off-site tree along Independence Drive for the connecting sidewalks between the sites; and
- 2 off-site trees (black walnuts) along Marsh Road near Florence Street to accommodate a traffic mitigation measure.

The most notable potential tree removals would be the three heritage redwood trees located at the corner of Constitution Drive and Chrysler Drive to accommodate the off-site connecting sidewalks. The applicant and staff have explored alternatives to achieve the retention of the trees while trying to accommodate the sidewalk. Given the fact that a traffic signal will be installed at the intersection of Constitution Drive and Chrysler Drive as a mitigation and modifications to the approaches to the intersection would be made to accommodate the necessary lane configurations, there is no potential to narrow the roadways to construct a sidewalk. The only apparent option that accommodates a sidewalk on that side of the street would involve the need for a public access easement across property that is not owned by the applicant.

The removal of heritage trees requires Heritage Tree Removal Permits and a minimum two-to-one replacement ratio. Although the trees would be approved for removal, they would not be allowed to be removed until such time that the applicant applies for the construction permits that would impact the trees, unless the tree creates a hazardous condition as determined by the City Arborist.

### ***Below Market Rate (BMR) Housing Agreement***

As discussed above, the applicant is proposing to pay the in lieu fee to comply with the City's Below Market Rate (BMR) housing requirements. Based on the current fees and calculating a credit for the existing buildings, the fee is estimated to be \$8,543,207.

### **Conditional Development Permit and Development Agreement Revisions**

The following items reflect changes to the CDP and/or Development Agreement where staff and the applicant are in agreement. In addition, where necessary, staff has modified the CDP and/or Development Agreement to ensure the two documents are consistent.

### ***Bedwell Bayfront Park***

In accordance with staff's prior recommendation to Council, section 5.2.1 of the Development Agreement has been modified to restrict the use of the funds to preclude active recreation, such as golf activities or sports fields.

### ***Undergrounding of Electric Transmission Lines***

In response to the Council's desire to explore options for collaborative solutions to underground the transmission lines on the Constitution Site, the applicant has agreed to incorporate section 5.9 into the Development Agreement as follows:

Owner agrees to work collaboratively with and support City efforts to underground existing electric transmission lines located on the Constitution Site. The City intends to pursue future land use planning studies in the Haven Avenue area, which may include utility undergrounding. If the Constitution Site is included as part of a future undergrounding plan prior to Owner's submittal for a building permit for the Constitution Site, the Owner agrees to work with the City to explore ways of enhancing the site layout for the proposed Project as long as there is no loss of square footage, no delay of Project construction and no significant increase in the estimated cost of construction. Owner agrees to support the undergrounding of utility lines from its Property as long as costs for undergrounding are borne by others. Nothing in this Agreement creates any obligation for the City to provide funding for utility undergrounding.

### ***Trip Monitoring, Penalties, and Reduced Trip Limit***

In an effort to address Planning Commission and City Council requests that staff work with the applicant on beginning the trip monitoring earlier and re-evaluating the trip limit if the hotel product changes or some offices are not built. The applicant has agreed to start trip monitoring upon completion of the hotel, to establish trip limits for each phase of the project, and to re-evaluate trip limits if the project changes. Section 5.6 of the Development Agreement has been revised to add language regarding phasing as follows:

Owner shall cause to be implemented with respect to the Project such mitigation measures as shall be necessary in order to cause Net New Vehicle Trips (as defined in Final EIR) for the Project to be reduced from 11,113 Net New Vehicle Trips to 9,242 Net New Vehicle Trips ("Trip Reduction"). Such Trip Reduction shall be phased in if the Project is developed in phases and shall be modified if either the Hotel is replaced with a different hotel product and/or the land use entitlements for one or both of the office buildings on the Constitution expire or are terminated. Reference is made to the FEIR, the MMRP and the Conditional Development Permit for specific details of the vehicle trip reduction measures and enforcement provisions which are incorporated herein by this reference. The terms and provisions of this Section 5.6 shall survive the expiration of the Development Agreement.

If two consecutive annual traffic counts were to show that the actual trips exceed the trip limitation, then the property owner(s) would be responsible for paying a penalty. Based on the Planning Commission's recommendation and direction from the Council, staff worked with the applicant and presented a new fee structure to the Council on May 11, 2010. Staff has modified condition 8.73 to address the changes regarding phasing, trip monitoring, trip limits if the project changes, and penalties as follows:

Upon completion of project build out in 2018 or later, total net new daily trips shall not exceed 9,242 trips (when calculating net new trips, a credit of 2,019 trips per day shall be used for the pre-project existing uses at the site). Upon submittal of the first building permit for the project, the Transportation Manager shall determine a trip limit for each phase of the project based on the most recent ITE Standards and consistent with the methodology used in the EIR, in consultation with the applicant.

If the proposed Hotel as defined in Section 1.17 of the Development Agreement is replaced with a different hotel product, resulting in reduced square footage of the Hotel and/or sports club, the vehicle trip limitation shall be adjusted downward commensurate with the reduction in uses. The new vehicle trip limitation shall be determined by the City's Transportation Manager in consultation with Owner and/or its representatives based on the most recent ITE Standards and consistent with the methodology used in the EIR. The trip limit for each phase of the project shall also be adjusted accordingly by the Transportation Manager. The determination of the Transportation Manager may be appealed by the Owner to the City Manager, whose

decision shall be final. The adjusted trip limitation, if implemented, shall become the basis for assessing penalties as described below.

Additionally, if land-use entitlements for one or both office buildings on the Constitution site expire or are terminated by Owner, the vehicle trip limitation shall be adjusted downward commensurate with the reduction in approved square footage of uses. The new vehicle trip limitation shall be determined by the City's Transportation Manager in consultation with Owner and/or its representatives based on the most recent ITE Standards and consistent with the methodology used in the EIR. The determination of the Transportation Manager may be appealed by the Owner to the City Manager, whose decision shall be final. The adjusted trip limitation, if implemented, shall become the basis for assessing penalties as described below.

Following occupation of the hotel, the Transportation Division shall perform annual traffic counts for the phases that have been completed with funds provided by the applicant. Daily traffic counts shall be taken at driveways of the project site and shall be the average of at least three weekday counts (Tuesday, Wednesday or Thursday) taken over a three week period between mid-February and late May (before the end of school year) or between Labor Day and Thanksgiving Day. . Counts should avoid days immediately before or after holidays or long weekends, and should not be performed on days of inclement weather conditions. Based upon the traffic counts, if the allowable number of net new trips is exceeded, the applicant shall prepare a plan of additional transportation demand management measures necessary to bring the number of trips into compliance with the trip limit within 90 days of being notified by the City and shall implement said plan within 180 days from said notification. If a second, consecutive annual traffic count shows that actual trips exceed the trip limitation, the property owner(s) shall pay a penalty per excess daily trip each year that this occurs in accordance with the following schedule:

- Up to 500 trips above 9,242 = \$100 per trip
- 500 to 1,500 trips above 9,242 = \$150 per trip
- 1,500 trips or more above 9,242 = \$200 per trip

The base per trip fines shall be adjusted annually starting at base year 2010 per the Consumer Price Index for All Urban All Items Consumers in the San Francisco-Oakland-San Jose Metropolitan Area [1982-84=100]. Revenues from the payment of penalties under this provision are due to the City within 30 days of issuance of the invoice and the City shall use the money for programs designed to reduce trips or traffic congestion within the City of Menlo Park. Additional monetary penalties shall apply for each consecutive year the trip limit is exceeded. If a subsequent annual trip count is below the annual limit, no annual penalty shall apply until at least two consecutive annual counts exceed the trip limit. This condition shall be in effect for the life of the project.

### ***Fire District Collaboration***

Staff has met with Fire District staff to discuss collaborative options. The Fire District did provide a few options to consider that are being reviewed as an attempt to compromise. The applicant has agreed to offer the following two items to the Fire District: (1) payment of a Fire Impact Fee if the Fire District conducts the required nexus study and the City Council adopts a fee prior to issuance of each applicable building permit, and (2) up to \$100,000 in addition to any Fire Code compliance requirements to install emergency vehicle priority devices on traffic signals between 300 Middlefield Road and the project site. Sections 3.5.6 and 5.13 have been added to the Development Agreement, which respectively state:

If the City in coordination with the Menlo Park Fire Protection District adopts a Citywide fire impact fee to be imposed on new construction to fund needed Fire District capital equipment and/or capital facilities, such impact fee shall be applicable to any buildings within the Project constructed after the effective date of such impact fee. Owner reserves the right to reasonably object to or challenge the amount or methodology for calculating the amount of the impact fee.

Prior to issuance of a building permit for the Independence site, Owner shall coordinate with the Fire District to provide up to \$100,000 for the installation of traffic signal priority systems on Middlefield and Marsh Roads between 300 Middlefield Road and the Project site (this requirement is in addition to such traffic signal priority systems on Marsh Road as may be required to meet Fire Code compliance). The maximum amount to be paid by Owner shall be adjusted by the increase in the Consumer Price Index for All Items for All Urban Consumers for the SF-Oakland-San Jose Metropolitan Area [1982-84 = 100] ("CPI") between the CPI published for 2010 and the CPI published most recently prior to the date of the payment of such sum(s) to the Fire District.

In addition, condition 8.40 in the CDP has been modified to incorporate a reference to the traffic signal priority system as follows:

Prior to issuance of each building permit, the applicant shall comply with all Menlo Park Fire Protection District regulations governing site improvements, Fire Code compliance, and access verification that are directly applicable to the project. In addition, prior to issuance of a building permit for the Independence site, the applicant shall coordinate with the Fire District to provide up to \$100,000 (adjusted annually starting at base year 2010 per the Consumer Price Index for All Urban All Items Consumers in the San Francisco- Oakland-San Jose Metropolitan Area [1982-84=100]) for the installation of traffic signal priority systems on Middlefield and Marsh Roads between 300 Middlefield Road and the Project site (this requirement is in addition to such traffic signal priority systems on Marsh Road as may be required to meet Fire Code compliance).

### ***School District Boundaries***

In an effort to evaluate ways to work cooperatively to reorganize school district boundaries, the applicant has agreed to include the following language in the Development Agreement, which has been added as section 5.10:

In the event the City or the Ravenswood School District initiates an effort to reorganize school district boundaries so that the Project site is transferred from the Redwood City Elementary School District to the Ravenswood School District, Owner agrees to cooperate with any such future effort by City or others, but Owner shall not be required to initiate or fund such an effort.

### ***Construction Sales Tax***

The Fiscal Impact Analysis included items for additional revenue. As discussed at the May 11, 2010 Council meeting, one idea was related to construction sales tax. The applicant has agreed to include the following language in the Development Agreement, which has been added as section 5.11:

For all construction work performed as part of the Project, Owner agrees to make diligent good faith efforts to include a provision in all construction contracts with all qualifying contractors, subcontractors and material suppliers, requiring such contractors, subcontractors and material suppliers holding reseller's permits to obtain a sub-permit from the California State Board of Equalization to book and record construction materials purchases/sales as sales originating within the City of Menlo Park. Upon the request of the City Manager, Owner shall make available copies of such contracts or other documentation demonstrating compliance with these requirements.

### ***Identifying Land for Housing***

At the May 3, 2010 Planning Commission meeting, the Commission recommended that the Council encourage the applicant to identify five to 10 acres of land for housing in the City. In response to that recommendation, section 5.12 has been added to the Development Agreement, which states:

Owner shall actively participate in a citizen advisory committee to assist the City in identifying future housing sites within the City when the City updates the Housing Element of the General Plan if the City decides to create such a committee. Such participation shall include utilizing its contacts within the commercial brokerage community to assist the City's efforts as well as such other expertise as may be reasonable in assisting the City to locate and identify land that may be available for housing sites.

## **Items Added by the Applicant in Consultation with Staff and Community Members**

As a result of the applicant's continued work with staff and consultation with community members, the applicant has elected to impose additional conditions and/or requirements on the project. These items and the associated modification to the Development Agreement and/or CDP are discussed below.

### ***Revenue Guarantee in Case of Hotel Delay***

In the event that the hotel opening is delayed, staff has modified section 5.1.1 of the Development Agreement, so the revenue guarantee is also tied to the occupancy of the office building as follows:

Owner's obligation to make Guarantee Payments, if any, shall apply to a twenty (20) year period ("Guarantee Payment Period"), commencing as of the first day of the first full calendar quarter following the earlier of (a) the third anniversary date of the Hotel Opening Date, or (b) the fourth anniversary of the date the City allows occupancy of the office building on the Independence Site, ("Guarantee Commencement Date"), unless the Guarantee Payment Period shall be earlier terminated in accordance with this Agreement. The Guarantee Payments shall be calculated with respect to each year during the Guarantee Payment Period ("Revenue Calculation Period"), the first such year commencing as of the Guarantee Commencement Date.

### ***ClimateSmart***

The applicant has agreed to participate in PG&E's ClimateSmart program to offset greenhouse gas emissions from hotel and office buildings. Section 5.7 of the Development Agreement addresses this provision. The applicant has requested to revise that section as follows in order to offset greenhouse gas emissions associated with water consumption in addition to emissions from electric and natural gas consumption:

Owner shall cause the GHG emissions associated with electrical and natural gas energy consumption for any and all buildings included in the Project, as well as calculated energy emissions from the Project's water consumption, to be fully offset. The offsets for the electrical and natural gas consumption shall be accomplished through participation in PG&E's ClimateSmart program, either by Owner or by Owner's tenants (provided however, Owner shall be responsible for compliance with this condition, including participation in the offset program and all reporting). In the event such ClimateSmart program is discontinued or becomes financially burdensome on the Project, Owner may propose substitution of a comparable GHG offset program selected by Owner, subject to the City Manager's reasonable approval for the Project. The offsets for the Project's water consumption shall be accomplished through Owner contracting with PG&E in its ClimateSmart program or a comparable GHG offset program selected by Owner, subject to the City Manager's

reasonable approval. A comparable program is one that utilizes independently verified GHG reduction projects, with all projects certified using accepted protocols, such as those of the Climate Action Registry. Owner may reduce the total number of metric tons to be offset through installation of renewables (e.g. photovoltaic) within the Project, and GHG emissions associated with potable water use may be partially offset by the use of publicly supplied reclaimed water. All parcels/buildings within the Project shall be enrolled in the same GHG offset program. The terms provisions of this Section 5.7 shall survive the expiration or termination of the Development Agreement and shall be incorporated into the Conditional Development Permit. Owner shall provide City with an annual report and documentation demonstrating compliance with this Section 5.7, which report and documentation shall be provided by the City to the City's Environmental Quality Commission or otherwise be made available for public review.

Condition 8.46 related to participation in this program has been added to the CDP, to correspond with section 5.7 of the draft Development Agreement as follows:

Prior to each building permit final, the applicant shall provide the City with documentation confirming that the subject building has been enrolled in PG&E's ClimateSmart program to fully offset the GHG emissions associated with electrical and natural gas energy consumption and emissions from the Project's water consumption. In the event such ClimateSmart program is discontinued or is determined to be financially burdensome, the applicant may propose substitution of a comparable GHG offset program, subject to the City Manager's reasonable approval. All buildings within the Project shall be enrolled in the same GHG offset program, with the exception of water consumption. Property owner(s) may reduce the total number of metric tons to be offset through installation of renewables (e.g. photovoltaic panels) within the Project and/or through the use of publicly-supplied reclaimed water. The tonnage of GHG emissions annually reduced through such renewables shall be calculated by Property Owner(s) in consultation with the City. Property owner(s) shall provide City with an annual report and documentation demonstrating compliance with this condition. The City shall provide this report and documentation to the City's Environmental Quality Commission or shall otherwise make available for public review. This condition shall be in effect for the life of the project.

### ***Benefits for the Belle Haven***

The applicant has elected to provide an extra \$250,000 for Belle Haven community improvements, which now will be triggered by building permit submittal for the Independence site. Section 5.2 of the Development has been modified as follows:

Owner shall make capital improvements to certain areas of the City in the amount of up to One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) in accordance with the provisions of this Section 5.2.

- 5.2.1 The capital improvements to be paid for and caused to be constructed by Owner, and the areas of the City to which such capital improvements are to be made, shall be determined by the City Council through a City public outreach process; provided, however, that such capital improvements shall be allocated between the Belle Haven neighborhood (not less than \$750,000) and Bedwell Bayfront Park or other city-wide recreational improvements (approximately \$500,000), at the reasonable discretion of the City Council; further provided, no funds expended at Bedwell Bayfront Park shall be used for development of active recreational uses such as golf activities or sports fields. The City shall commence such public outreach process upon Owner's submission of an application for a building permit for the first office building in the Independence Phase, and the City shall complete such public outreach process and identify for Owner in writing the specific capital improvements to be made by Owner within six months of receipt of such building permit application.
- 5.2.2 Provided that the City shall complete its public outreach process and identify the specific capital improvements to be made by Owner as provided in Section 5.2.1 above, Owner shall pay for and cause the construction of such capital improvements to be completed prior to the date of the City's final building inspection of the first office building in the Independence Phase. If the City delays its identification of specific capital improvements beyond six months, or if permits or approvals are required from outside agencies and such permits or approvals delay issuance of permits or completion of construction, then Owner shall have such additional time to complete such capital improvements as may be reasonably necessary resulting from such delays beyond Owner's reasonable control. Notwithstanding anything to the contrary contained in this Section 5.2, in no event shall Owner be obligated to pay or incur costs of constructing such capital improvements in excess of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000); provided, however, that such \$1,250,000 maximum amount shall be adjusted by the increase in the Consumer Price Index for All Items for All Urban Consumers for the SF-Oakland-San Jose Metropolitan Area [1982-84 = 100] ("CPI") between the CPI published for 2010 and the CPI published most recently prior to the date of the City's determination as to which capital improvements shall be constructed by Owner. The amount of Owner's financial obligation set forth in this Section 5.2 shall be calculated as of the date Owner commences construction of such improvements.
- 5.2.3 Owner shall coordinate design of the capital improvements with the City and shall provide detailed plans and specifications for construction of the improvements to the City for final review and approval of the City Manager or designee.

5.2.4 Owner's cost of constructing the improvements in determining the \$1,250,000 limit shall include only the actual costs of design, construction and permits. The cost of design shall not exceed 15% of the actual construction costs. Other indirect costs such as overhead, management fees, or similar costs shall not count towards the \$1,250,000 limit. Owner shall provide to City copies of paid invoices for actual costs incurred.

5.2.5 Owner's obligation to make capital improvements pursuant to this Section 5.2 shall terminate in the event of a Guarantee Payment Termination and effective as of the effective date of such Guarantee Payment Termination.

### ***Additional Greenhouse Gas Reduction Measures***

The applicant has also elected to add three conditions of approval to the CDP related to electric vehicle charging stations, potential photovoltaic systems, and employee/patron convenience services to further reduce greenhouse gas emissions. Conditions 8.27, 8.28, and 8.29 have been added to the CDP as follows:

Concurrent with the building permit submittal for each parking structure, the applicant shall demonstrate that the parking structure has been designed to allow for electrical conduit to be run throughout each garage so as to accommodate future electric vehicle capacity, subject to review and approval by the Building Division prior to building permit issuance.

Concurrent with the building permit submittal for each structure, the applicant shall demonstrate that the building has been designed to structurally accommodate future photovoltaic capacity. The applicant shall design the hotel in particular to accommodate a solar thermal system. The plans shall be reviewed and approved by the Building Division prior to building permit issuance.

Concurrent with the first building permit submittal for each site, the applicant shall show the location on the plans of an ATM and postal service drop to the extent practicable or feasible on both the Independence Site and the Constitution Site, subject to review and approval by the Planning Division prior to building permit issuance.

### **Leadership in Energy and Environmental Design**

At the May 11, 2010 City Council meeting, the Council directed staff to require the applicant to comply with LEED standards in effect at the time of each applicable building permit submittal. While the applicant is only committing to meeting the 2009 LEED standards, staff has modified section 5.5 to add a provision regarding the applicant's intent to make diligent good faith efforts to comply with LEED standards in effect at the time of building permit submittal:

Owner shall use diligent, good faith efforts to cause (a) the Hotel to qualify for the “LEED Silver Certification”, in accordance with the standards for such certification promulgated by the U.S. Green Building Council as of the registration of the Project with the Building Council in 2009 (LEED NC v2.2), and (b) the office buildings included in the Project to qualify for the “LEED Gold Certification”, in accordance with the standards for such certification promulgated by the U.S. Green Building Council as of the registration of the Project with the Building Council in 2009 (LEED NC v2.2). Such diligent, good faith efforts shall include demonstrating to the City’s Building Official that the buildings have been designed to comply with such LEED standards. Owner shall submit each application for such LEED certification following Owner’s Completion of Construction of the Hotel or the applicable office building and shall use diligent, good faith efforts to obtain such LEED certifications, providing City with evidence of such applications and efforts to achieve such certifications. Notwithstanding the foregoing, Owner shall use diligent good faith efforts to comply with LEED standards for the applicable certifications for each building in effect as of the date of building permit application for such building.

Additionally, staff has modified the two conditions of approval in the CDP related to LEED certifications to add language regarding the applicant’s intent to make diligent good faith efforts to comply with LEED standards in effect at the time of building permit submittal. Conditions 8.25 and 8.26 now state the following:

Concurrent with the building permit submittal for the hotel, the applicant shall submit documentation to demonstrate that the buildings have been designed to achieve LEED Silver Certification based on the 2009 registration date (LEED NC v2.2), subject to review and approval of the Building and Planning Divisions prior to issuance of each building permit. Upon completion of the hotel building, the applicant shall make a diligent good faith effort to pursue certification in accordance with the terms of Section 5.5 of the Development Agreement. Notwithstanding the foregoing, Owner shall use diligent good faith efforts to comply with LEED standards for the applicable certifications for each building in effect as of the date of building permit application for such building.

Concurrent with the building permit submittal for each office building, the applicant shall submit documentation to demonstrate that the buildings have been designed to achieve LEED Gold Certification based on the 2009 registration date (LEED NC v2.2), subject to review and approval of the Building and Planning Divisions prior to issuance of each building permit. Upon completion of the each office building, the applicant shall make a diligent good faith effort to pursue certification in accordance with the terms of Section 5.5 of the Development Agreement. Notwithstanding the foregoing, Owner shall use diligent good faith efforts to comply with LEED standards for the applicable certifications for each building in effect as of the date of building permit application for such building.

## **City Revenue Generation from the Office Portion of the Project**

### ***Sale Tax In-Lieu Fee***

As part of its recommendation to the Council, the Planning Commission suggested that Council consider a sales tax in lieu fee to be applied to office square footage as completed in a range of approximately \$1.40 per square foot per year. However, the applicant will not agree to the imposition of a sales tax in lieu fee as that would impose a financial burden on the project and at a minimum could significantly delay development of the project or potentially prevent development of the project and thereby delay the projected TOT and sales tax from the hotel.

### ***Windfall Profit Sharing***

The Council requested that the negotiating team explore various mechanisms for profit sharing or participation if the project is very successful and the revenue/profit/value exceeds expectations/projections and discuss those approaches with the applicant. The negotiating team explored various variations of the following revenue/profit sharing approaches with the applicant:

- Payment of a percentage of gross rents or gross revenue over a certain threshold, with the threshold to be set based on a certain internal rate of return to the developer;
- Payment of a percentage of net revenues after a certain internal rate of return to the developer;
- Payment of a percentage of gross sales proceeds upon sale or exchange of all or a portion of the property within the project over a certain sales price per square foot; and
- Payment of a percentage of the increase in the fair market value of the properties based on the appraised fair market value of the property, minus the land value and the cost of constructing the project, determined after a certain number of years if there has been no sale or exchange of the property.

There are potentially infinite variations of the above mechanisms as well as others. After some discussions with the negotiating team and consideration of these various approaches, the applicant advised the negotiating team that they were unwilling to agree to any such profit sharing or participation and that further negotiations on this subject would not be worthwhile. The applicant expressed concerns that any type of participation in the future profitability of the project by the City would seriously impact their ability to secure financing for the project, might prevent them from obtaining financing, would delay the project based on the potential increase in cost of financing, would potentially open up their books and business methods and practices to the public and their competitors and tenants, and would be very complex if not impossible to

create in a manner where they would feel adequate protections for any downside/risk they are taking. For all of these reasons, they have declined to pursue this further. The applicant provided a communication to the Council stating their position on this issue that is included as Attachment T.

### ***One Percent Transit Occupancy Tax Increase***

In lieu of a profit participation and in response to the Council's previous request that the applicant consider leaving the 1% TOT increase in effect even if the City raises its TOT rate from 10% to 11% or 12%, the applicant has agreed to allow the 1% increase in TOT to remain in effect, regardless of the increase in the City's citywide TOT rate. While this is not a percentage sharing or participation in the office revenue, it does result in a permanent increase in the TOT rate for the project that would result in the City receiving what is estimated to be in excess of \$150,000 per year (on average) for the life of the project. Section 5.3 of the Development Agreement has been modified as follows:

As of the date of this Agreement, the City imposes the TOT on applicable hotel room rents and other receipts at the rate of ten percent (10%). Owner hereby agrees that, during the term of this Agreement and for so long as the Hotel is operating, the TOT applicable to the Hotel shall be assessed at one percent (1.0%) above the Citywide TOT rate in effect from time to time (e.g. if the Citywide TOT rate is 10%, the rate applicable to the Hotel shall be 11%; if the Citywide TOT rate is 11%, the applicable TOT rate for the Hotel shall be 12%; and if the Citywide TOT rate is 12%, the applicable TOT rate for the Hotel shall be 13%; etc.). The City shall have the right to use the additional one percent (1%) in TOT revenue for such Project-related purposes as vehicle trip reduction, greenhouse gas ("GHG") emission reductions and/or other purposes reasonably determined by the City Council. In the event the City adopts a City Wide increase in the rate of the TOT, Owner's obligation to collect and pay the 1% increase in TOT provided for in this Section 5.3 shall continue in effect following the City's adoption of a City Wide increase in the rate of the TOT. Owner's obligation to collect and pay the additional 1% TOT pursuant to this Section 5.3 shall terminate in the event of a Guarantee Payment Termination and effective as of the effective date of such Guarantee Payment Termination. Except as provided in the preceding sentence, the obligations set forth herein to pay the additional 1% TOT shall survive the expiration of this Agreement and shall continue so long as the Hotel is operating on the Property and shall be binding on any and all owners and operators of the Hotel. The provisions of this Section 5.3 shall be included in the Conditional Development Permit.

### **Potential Ballot Proposition**

Councilmember Cohen requested information regarding voter approval of the Menlo Gateway project. California Elections Code section 9222 provides that a City Council may submit to the voters without a petition, a proposition to repeal, amend or enact an ordinance to be voted upon at the next succeeding regular or special city election. If the proposition submitted receives a majority of the votes cast on it at the election, the

ordinance shall be repealed, amended or enacted accordingly. The election must be held not less than 88 days after the date of the order of the election.

If the Council wished to submit a proposition for the approval of the Menlo Gateway project to the voters of Menlo Park, then approval of the project would have to be made contingent upon voter approval at the November general election and the Council would have to adopt appropriate resolutions and actions necessary to place the proposition on the November ballot, to consolidate the election, etc., at the same time as it takes action on the project. Council would need to give the City Attorney direction to prepare the necessary documents, resolutions, etc., so that such documents could be brought to the Council for consideration at the June 15, 2010 meeting when the project returns to the Council for consideration.

### **Correspondence**

Since the April 6, 2010 Council meeting, the City has received 26 pieces of correspondence regarding the Menlo Gateway project. All of the correspondence was presented to the Planning Commission. Copies of the eight pieces of correspondence related to the Development Agreement were been submitted to the Council under separate cover as part of the packet for the May 11, 2010 Council meeting. The remaining 18 pieces of correspondence are being provided to the Council under separate cover as part of the packet for the May 25, 2010 Council meeting. Staff has reviewed all of the correspondence and is prepared to respond to follow-up questions from the City Council at the May 25, 2010 meeting.

### **Conclusion**

The review of the Menlo Gateway project has been extensive with numerous public meetings and a significant amount of attention by staff, Commissions and the City Council. Given (1) the conclusions of the FIA and the financial analysis prepared by independent experts, (2) the requirement that the hotel be built first with potential for significant long-term revenue with guarantees, (3) the extensive measures to minimize environmental impacts, and (4) other Development Agreement terms, such as public benefit funding, staff recommends that the City Council consider the policy decision associated with the proposed Menlo Gateway project. If the Council can support the policy decision, then staff recommends that the Council proceed with the review process and take action on June 15, 2010.

### **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 reviews by consultant. For the consultant review, the applicant deposits money with the City and the City pays the consultants.

The FIA itself provides projections of the potential changes in fiscal revenues and service costs directly associated with development of the proposed project, for both the City and associated special districts. The Draft FIA was released on July 23, 2009 for an extended public comment period that ended on October 19, 2009. The Final FIA, prepared in response to comments on the Draft FIA, was released on March 25, 2010 for a 26-day review period that ended on April 19, 2010. Except as updated by the Final FIA, these significant and unavoidable impacts were explained in detail in the October 5, 2009 Planning Commission staff report.

## **POLICY ISSUES**

The project involves creating a new Commercial Business Park land use designation in the General Plan to permit a base level Floor Area Ratio (FAR) of 45 percent with the ability to increase the FAR to 137.5 percent with a Development Agreement. The Zoning Ordinance Amendment would create a corresponding Commercial Business Park zoning district. The new land use designation and new zoning district would be applied to the Independence and Constitution sites that constitute the project area. Goals and policies from the Land Use Element of the General Plan that are most applicable to the proposal are:

**Goal I-E:** To promote the development and retention of commercial uses which provide significant revenue to the City and/or goods or services needed by the community and which have low environmental and traffic impacts.

**Policy I-E-1:** All proposed commercial development shall be evaluated for its fiscal impact on the city as well as its potential to provide goods or services needed by the community.

**Policy I-E-2:** Hotel uses may be considered at suitable locations within the commercial and industrial zoning districts of the City.

**Policy I-E-4:** Any new or expanded office use must include provisions for adequate off-street parking, mitigating traffic impacts, and developing effective alternatives to auto commuting, must adhere to acceptable architectural standards, and must protect adjacent residential uses from adverse impacts.

**Goal I-F:** To promote retention, development, and expansion of industrial uses which provide significant revenue to the City, and are well designed, and have low environmental and traffic impacts.

**Policy I-F-1:** Industrial development shall be allowed only in already established industrial areas and shall not encroach upon Bay wetlands.

**Policy I-F-3:** Modifications in industrial operations required to keep firms competitive should be accommodated, so long as any negative impacts on the environment and adjacent areas are satisfactorily mitigated.

**Policy I-F-5:** Convenience stores and personal service uses may be permitted in industrial areas to minimize traffic impacts.

**Policy I-G-10:** Extensive landscaping should be included in public and private development, including greater landscaping in large parking areas. Where

appropriate, the City shall encourage placement of a portion of the required parking in landscape reserve until such time as the parking is needed. Plant material selection and landscape and irrigation design shall adhere to the City's Water Efficient Landscaping Ordinance.

**Policy I-G-11:** Well-designed pedestrian facilities should be included in areas of intensive pedestrian activity.

**Policy I-H-2:** The use of water-conserving plumbing fixtures in all new public and private development shall be required.

**Policy I-H-3:** Plant material selection and landscape and irrigation design for City parks and other public facilities and in private developments shall adhere to the City's Water Efficient Landscaping Ordinance.

**Policy I-H-7:** The use of reclaimed water for landscaping and other feasible uses shall be encouraged.

**Policy I-H-9:** Urban development in areas with geological and earthquake hazards, flood hazards and fire hazards shall be regulated in an attempt to prevent loss of life, injury and property damage.

**Policy I-H-11:** Buildings, objects, and sites of historic and/or cultural significance should be preserved.

**Policy I-H-12:** Street orientation, placement of buildings, and use of shading should contribute to the energy efficiency of the community.

The proposed project will require the Council to consider a policy decision whether to create a new General Plan land use designation and new zoning district, and then change the General Plan land use designation and the zoning classification for the property. The project review process has been structured in a way to provide the Council with a broad spectrum of inputs to make an informed decision on the policy matter. The City Council is scheduled to consider policy decision on May 25, 2010 and take action on June 15 and June 22, 2010 (if applicable).

## **ENVIRONMENTAL REVIEW**

The Draft EIR was released on July 23, 2009 for an extended 60-day public comment period that ended on September 21, 2009. The Planning Commission held a public hearing on September 14, 2009 to comment on the Draft EIR. The Final EIR, prepared with response to comments on the Draft EIR, was released on March 25, 2010 for an extended 26-day review period that ended on April 19, 2010.

The EIR analyzes the potential impacts of the project across a wide range of impact areas. The EIR identifies potentially significant environmental effects that would be less than significant in the following categories: Aesthetics, Biological Resources, Cultural Resources, Hydrology and Water Quality, Hazardous Materials, Land Use, Population and Housing, Public Services, Utilities and Services Systems (other than Water Supply), and Climate Change. The EIR identifies potentially significant environmental effects that are significant and unavoidable in the following categories: Air Quality, Noise, Traffic and Circulation, and Utilities and Service Systems (Water Supply only). Except as

updated by the Final EIR, these significant and unavoidable impacts were explained in detail in the September 14, 2009 Planning Commission staff report.

### **Differences between the Draft EIR and Final EIR**

The key differences between the Draft EIR and the Final EIR are related to greenhouse gas emissions, water consumption, and vehicle trips that reflect project refinements and updated regulatory settings. Through a mitigation to reduce total net new trips by 17 percent, previously identified significant and unavoidable transportation, air quality and noise impacts would be reduced to a less-than-significant level. The climate change analysis related to greenhouse gas emissions was updated to incorporate all feasible mitigation measures identified in the Draft EIR plus the latest applicable draft threshold from the Bay Area Quality Management District (BAAQMD) into the analysis.

### ***Impacts to Water Supply Related to Wet Labs***

As analyzed in the Final EIR, water consumption associated with wet lab research and development (R&D) uses would create a significant and unavoidable impact if more than 10 percent of the office buildings were used as wet labs, compared to 37 percent in the Draft EIR. With this potential water supply impact, the City can either adopt a statement of overriding consideration to allow more than 10 percent of the office buildings to be used as wet labs or limit the amount of wet lab space to 10 percent with a mitigation measure. Staff has modified subsection 3.1.2 of the CDP that restricts wet lab space to 10 percent or less of the permitted office area. If the Council wishes to allow more than 10 percent of wet lab space, then the Council should amend this portion of the CDP accordingly.

### **Certification of the EIR**

In order to complete the EIR process and certify the document, CEQA requires the preparation of Findings for Certification, a Statement of Certification, and a Mitigation Monitoring and Reporting Program. The Findings for Certification address the potentially significant impacts identified in the EIR, describing the impact, the mitigation, and the determination of significance. The Statement of Certification states that the City has met all procedural requirements of CEQA. The Mitigation Monitoring and Reporting Program (MMRP) establishes responsibility and timing for implementation of all required mitigation measures. The Findings for Certification, including the Statement of Certification, the Draft Resolution for Certification of the EIR, and the Mitigation Monitoring and Reporting Program are included as Attachments B, C, and D, respectively. Staff would note that minor revisions have been made to the Findings for Certification, such as correcting grammatical errors and an error regarding LEED certification levels.

As identified in the EIR, the project would result in significant, unavoidable impacts. In order to approve the project with significant and unavoidable environmental impacts, the City Council must adopt a Statement of Overriding Considerations. This is a specific

finding that the project includes substantial benefit that outweighs its significant, adverse environmental impact. The Statement of Overriding Considerations is included as part of the Findings for Certification (Attachment B). The Planning Commission reviewed and recommended approval of the Final EIR, Findings for Certification, the Statement of Overriding Consideration, Statement of Certification and Mitigation Monitoring and Reporting Program, at its meeting on May 3, 2010.

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Megan Fisher  
Associate Planner

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Justin Murphy  
Development Services Manager

## **PUBLIC NOTICE**

Public notification consisted of publishing a legal notice in the local newspaper and notification by mail of all property owners and occupants within 300 feet of the subject property. The mailed notice was supplemented by a citywide postcard mailing, which listed the meetings for the project in April, May, and June 2010. In addition, an email update was sent to subscribers to the project page for the proposal, which is available at the following address: [http://www.menlopark.org/projects/comdev\\_iac.htm](http://www.menlopark.org/projects/comdev_iac.htm).

## **ATTACHMENTS**

- A. [Draft Findings and Actions for Approval](#)
- B. [Findings for Certification of the Environmental Impact Report, including the Statement of Overriding Considerations](#)
- C. [EIR Certification Resolution](#)
- D. [Mitigation Monitoring and Reporting Program for the Environmental Impact Report](#)
- E. [Draft Resolution Amending the General Plan to add the Commercial Business Park Land Use Designation](#)
- F. [Draft Resolution Amending the General Plan Land Use Designation from Limited Industrial to Commercial Business Park for property located at 100-190 Independence Drive and 105-155 Constitution Drive \(without property legal description\)](#)
- G. [Draft Ordinance Amending Title 16 of the Menlo Park Municipal Code, Adding Chapter 16.47 M-3 Commercial Business Park](#)
- H. [Draft Ordinance rezoning the property located at 100-190 Independence Drive and 105-155 Constitution Drive from M-2 \(General Industrial\) to M-3-X \(Commercial Business Park, Conditional Development\) \(without Legal Description\)](#)
- I. [Draft Ordinance approving the Development Agreement, including the Development Agreement](#) (without property legal description); ([compare version](#))
- J. Draft Conditional Development Permit ([clean](#)); ([redline version](#))
- K. [Draft Below Market Rate \(BMR\) Housing Agreement](#) (with property legal description)
- L. [Location Map](#)

- M. Project Plans
- N. [Revised Parking Structure and Hotel Plans](#)
- O. [Draft Excerpt of Minutes of the Housing Commission Meeting of April 7, 2010](#)
- P. [Approved Transcript of the Planning Commission Meeting of April 19, 2010](#)
- Q. [Approved Transcript of the Planning Commission Meeting of May 3, 2010](#)
- R. [Heritage Tree Summary Charts](#)
- S. [Project Meetings and Milestones](#)
- T. [Letter from the Applicant Regarding the Windfall Profit Participation Issue](#)

**Note:** Attached are reduced versions of maps and diagrams submitted by the applicants. The accuracy of the information in these drawings is the responsibility of the applicants, and verification of the accuracy by City Staff is not always possible. The original full-scale maps, drawings and exhibits are available for public viewing at the Community Development Department.

#### **EXHIBIT TO BE PROVIDED AT MEETING**

Color and Materials Board

#### **DOCUMENTS AVAILABLE FOR REVIEW AT CITY OFFICES AND WEBSITE**

- [Draft Environmental Impact Report prepared by PBS&J, dated July 2009](#)
- [Draft Fiscal Impact Analysis prepared by BAE, dated July 2009](#)
- [September 14, 2009 Planning Commission Staff Report on the Draft EIR](#)
- [October 5, 2009 Planning Commission Staff Report on the Draft FIA](#)
- [Final Environmental Impact Report \(EIR\), including Response to Comments, dated March 2010](#)
- [Final Fiscal Impact Analysis \(FIA\), dated March 2010](#)
- [FIA Response to Comments, dated March 2010](#)
- [Hotel Financial Analysis, dated March 2010](#)
- [Office Financial Analysis, dated March 2010](#)
- [April 6, 2010 City Council Staff Report on the Draft Term Sheet](#)
- [April 7, 2010 Housing Commission Staff Report](#)
- [April 19, 2010 Planning Commission Staff Report](#)
- [May 3, 2010 Planning Commission Staff Report](#)
- [May 11, 2010 City Council Staff Report on the Development Agreement](#)