



PLANNING COMMISSION STAFF REPORT

FOR THE PLANNING COMMISSION
MEETING OF DECEMBER 16, 2013
AGENDA ITEM D2

LOCATION:	100 – 190 Independence Drive and 101 – 155 Constitution Drive	APPLICANT AND OWNER:	Bohannon Development Company
EXISTING USE:	Offices, Research and Development (R&D), Light Industrial, Vacant Land		
APPROVED USE:	Offices and R&D, Hotel, Health Club, Cafe and Restaurant, Neighborhood- Serving Retail and Community Facilities	APPLICATION:	Annual Review of Approved Development Agreement
ZONING:	M-3-X (Commercial Business Park – Conditional Development)		

PROPOSAL

The City of Menlo Park is conducting the third annual review of the property owner's good faith compliance with the terms of the Development Agreement for the Menlo Gateway (Bohannon Hotel & Office) project on nine properties addressed 100 to 190 Independence Drive (Independence Site) and 101 to 155 Constitution Drive (Constitution Site).

BACKGROUND

In June 2010, the City Council voted to approve the Menlo Gateway project, subject to voter approval of a ballot measure for the November 2, 2010 general election. The voters approved Measure T, and the project approvals became effective with the certification of the election results on December 7, 2010.

The project involved General Plan and Zoning Ordinance Amendments and a number of other approvals, including a Development Agreement, 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. The following table summarizes some of the key features of the project on approximately 15.9 acres:

Land Use	Constitution Site (Closest to SR 84)	Independence Site (Closest to US 101)	Total
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.
Total	494,699 s.f.	446,685 s.f.	941,384 s.f.

The Planning Commission considered the first annual review on December 5, 2011, and the second annual review on December 17, 2012. In each instance, the Commission found that the property owner had complied in good faith with the terms and conditions of the Development Agreement.

ANALYSIS

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.

Development Agreements are commonly used for land use developments which are implemented in phases over a long period of time. Development Agreements provide assurances to both the applicant and the City that the terms of the agreement will be in force until the completion of the project, and they are legally binding on each party.

State Planning law requires periodic review at least every 12 months to determine compliance with the terms of the agreement. City Council Resolution No. 4159 calls for the Planning Commission to conduct a public hearing at which the property owner must demonstrate good faith compliance with the terms of the agreement. The Planning Commission is to determine, upon the basis of substantial evidence, whether or not the property owner has, for the period under review, complied in good faith with the terms and conditions of the Agreement. The decision of the Planning Commission is final, unless it is appealed to the City Council.

Section 7.1 of the Development Agreement sets forth the requirement of the Annual Review as follows:

The City shall, at least every twelve (12) months during the term of this Agreement, review the extent of Owner's good faith compliance with the terms of this Agreement pursuant to Government Code § 65865.1 and Resolution No. 4159. Notice of such annual review shall be provided by the Director to Owner not less than thirty (30) days prior to the date of the hearing by the Planning Commission on Owner's good faith compliance with this Agreement and shall to the extent required by law include the statement that any review may result in amendment or termination of this Agreement. A finding by City of good faith compliance by Owner with the terms of Agreement shall conclusively determine the issue up to and including the date of such review.

Government Code § 65865.1 reads as follows:

Procedures established pursuant to Section 65865 shall include provisions requiring periodic review at least every 12 months, at which time the applicant, or successor in interest thereto, shall be required to demonstrate good faith compliance with the terms of the agreement. If, as a result of such periodic review, the local agency finds and determines, on the basis of substantial evidence, that the applicant or successor in interest thereto has not complied in good faith with terms or conditions of the agreement, the local agency may terminate or modify the agreement.

Section 2 of the Menlo Gateway Development Agreement identifies the term for retaining development rights. The initial term of the Development Agreement is five years from the effective date. By the fifth year of the agreement, the applicant either needs to make a complete building permit submittal, which would likely cost hundreds of thousands of dollars to prepare the necessary documents or pay a fee to the City in the amount of \$300,000 for a two year extension, with the ability to get a third year if a complete building permit submittal is made by the end of the second year, i.e. year seven. If submittal for building permits was made by the fifth year, then there would be an automatic three year extension of the Development Agreement. To keep the Development Agreement active, the applicant needs to obtain a building permit and start construction by the end of the eighth year. Once construction starts on the Independence (Hotel) phase, then the applicant would have until the 15th year from the effective date to start construction on the first office building on the Constitution phase. Upon starting construction on the first Constitution office building, the applicant would have an additional five years (i.e., 20 years from the effective date) to start construction of the second Constitution office building.

Section 3.2 of the Menlo Gateway Development Agreement outlines the project phasing. This section requires the construction of the hotel to occur prior to or concurrently with the construction of any of the office buildings. In addition, the hotel construction needs to make substantial progress prior to completion of any of the office buildings.

The Bohannon Development Company has submitted a letter (Attachment B) to demonstrate its good faith effort to comply with the provisions of the Development Agreement. The letter includes a description of the efforts made over the last year, the state of the office market, and an update of the hotel component of the project. The letter states that the applicant is in the midst of discussions with a hotel operator, who has the potential to finance, construct and operate the hotel. The current negotiations are confidential, but the applicant hopes to be able to announce a deal with the hotel operator in early 2014.

ENVIRONMENTAL REVIEW

On June 15, 2010, the City Council adopted findings in accordance with the California Environmental Quality Act and certified the Environmental Impact Report prepared for the project.

RECOMMENDATION

Staff recommends that the Planning Commission find and determine upon the basis of substantial evidence that the property owner has, for the period between December 2012 and December 2013 complied in good faith with the terms and conditions of the Development Agreement.

Report prepared by:

Justin Murphy
Development Services Manager

Report reviewed by:

Arlinda Heineck
Community Development Director

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-foot radius of the subject property. Planning Commission action will be effective after 15 days unless the action is appealed to the City Council, in which case the outcome of the application shall be determined by the City Council.

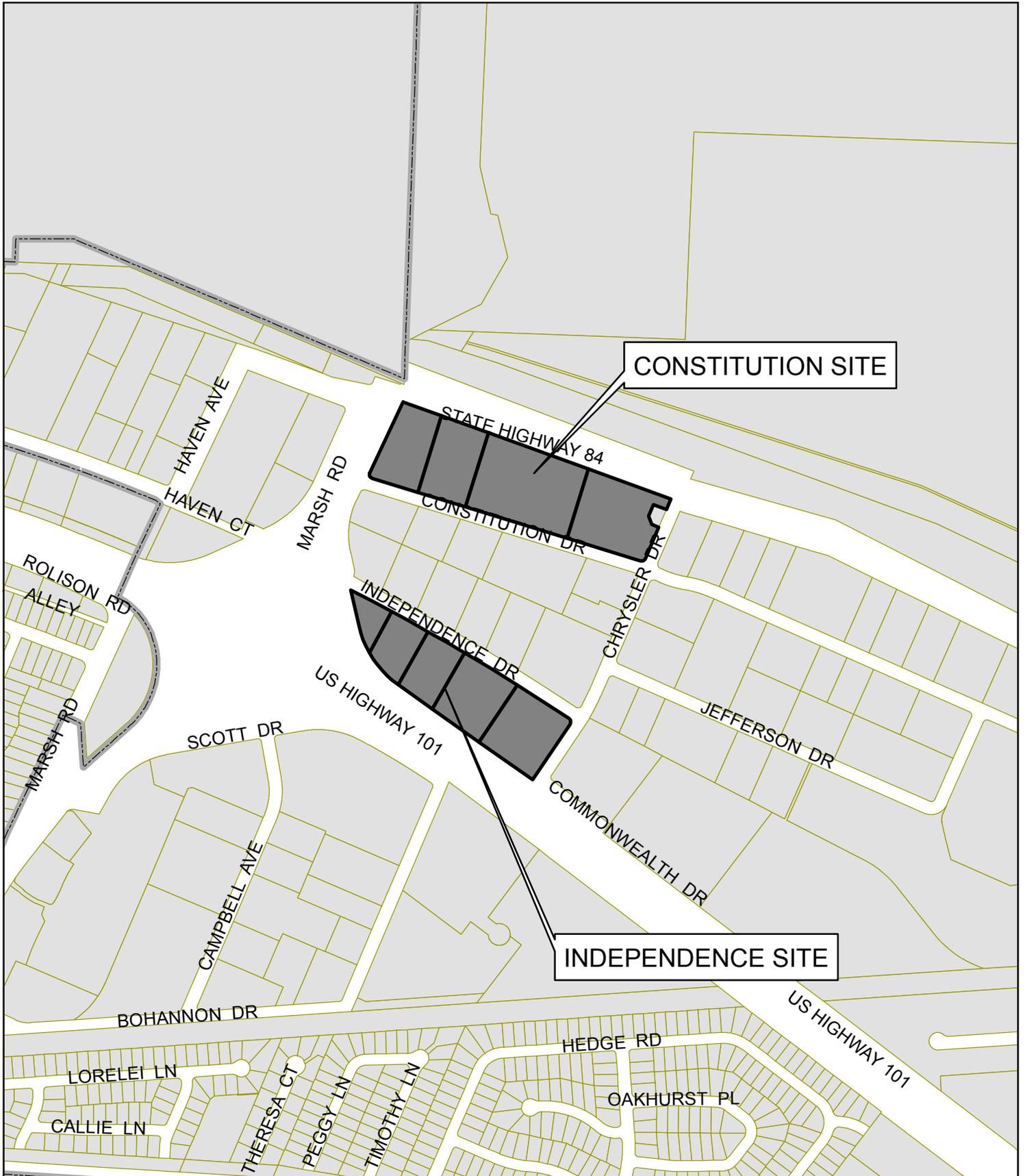
ATTACHMENTS

- A. Location Map
- B. Letter from Bohannon Development Company, dated December 9, 2013

AVAILABLE FOR REVIEW AT THE CITY OFFICES AND ON THE CITY WEBSITE

- City Council Resolution No. 4159
- Development Agreement between the City of Menlo Park and Bohannon Development Company

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CONSTITUTION SITE

INDEPENDENCE SITE



CITY OF MENLO PARK

LOCATION MAP

MENLO GATEWAY PROJECT

A1





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San Mateo, CA 94403-3404 W ddbo.com

December 9, 2013

Mr. Justin Murphy
Development Services Manager
Planning Division
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

Re: Menlo Gateway Project – Status of Bohannon’s Efforts to Proceed

Dear Justin:

Under Section 7.1 of the Menlo Gateway Project Development Agreement (“Agreement”), the City is to review the Owner’s (i.e. Bohannon Development Company) “good faith compliance” with the terms of the Agreement each year. We understand that the plan this year is to schedule the annual review for the Planning Commission’s December 16, 2013 hearing. The following information is intended to assist the staff and the Planning Commission in completing this review.

As we have reported over the past couple years, we have actively been pursuing financing opportunities to move the Menlo Gateway Project (“Project”) forward toward the start of construction. As we have discussed, the major impediment to these opportunities has been the prolonged economic downturn and the lasting uncertainty and slow growth which has prevailed since the end of the recession. Now, however, we are excited to announce that we are in the midst of discussions with a hotel operator who we believe can finance, construct, and operate the hotel component of the Project. Because of the confidential nature of our ongoing negotiations, we cannot disclose details about this development, but we hope that the Planning Commission shares our enthusiasm about the exciting prospect of getting the Project off the ground.

As you will recall, during 2012 we continued our efforts to move the Project forward despite the challenges associated with the hotel financing. We have worked actively with a team that has helped us evaluate the markets and opportunities and we have aggressively pursued those opportunities when presented. Key members of this team include NorthMarq Capital, Inc. the largest privately owned provider of capital for commercial real estate in the U.S.; Colliers PKF Consulting USA, one of the leading consultants for the hotel industry; and Cornish & Carey Commercial/Newmark Knight Frank (“Cornish & Carey”), an expert in the Silicon Valley office market.

Justin Murphy
December 9, 2013
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NorthMarq still believes that the office component is imminently financeable because the Project is within the heart of one of the most desirable submarkets in the country. Potential sources of financing include bank loans and insurance companies. Joint venture equity financing also is a possibility worth exploring. While any financing is likely to depend on pre-leasing to credit-worthy tenants, we are confident that the necessary tenants will be very interested in the Project when it is ready to proceed.

So, we hope it is clear that we are continuing to pursue commencement of the Project by all reasonable means and believe that, for the first time in three years, we have a potential "deal" for the hotel component that, if consummated, means that we can finally take the steps necessary to break ground in late 2015 or early 2016. We appreciate the opportunity to share this good news with the Planning Commission and we hope to announce a deal in early 2014.

Please contact us if you have any questions about any of the above.

Sincerely,



David D. Bohannon II
Senior Vice President

DDBII/dmd