



PLANNING COMMISSION STAFF REPORT

FOR THE PLANNING COMMISSION
MEETING OF APRIL 19, 2010
AGENDA ITEM C1

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

PROPOSED USE: Offices and R&D,
Hotel, Health Club,
Cafe and Restaurant,
Neighborhood-
Serving Retail and
Community Facilities

APPLICATION: General Plan
Amendment,
Zoning Ordinance
Amendment,
Rezoning,
Development
Agreement,
Conditional
Development
Permit, BMR
Agreement,
Environmental
Review, Tentative
Parcel Maps,
Heritage Tree
Removal Permits

**EXISTING
ZONING:** M-2 (General
Industrial)

**PROPOSED
ZONING:** M-3-X (Commercial
Business Park –
Conditional
Development)

**EXISTING
GENERAL PLAN
DESIGNATION:** Limited Industry

**PROPOSED
GENERAL
PLAN
DESIGNATION:** Commercial
Business Park

PROPOSAL

The Bohannon Development Company has submitted a proposal for an office, research and development (R&D), hotel, and health club development on nine properties addressed 100 to 190 Independence Drive (Independence Site) and 101 to 155 Constitution Drive (Constitution Site). The proposal is currently branded as the Menlo Gateway project, although it has also been referred to informally as the Bohannon hotel and office project. The proposed project would require the following actions:

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.

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 R. The Planning Commission reviewed the proposal at meetings in September, October and November 2009. 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.

On April 6, 2010, the City Council reviewed the proposed Development Agreement Term Sheet, which covers 12 topics as follows: (1) Quality Hotel; (2) Revenue Guarantee; (3) Term for Retaining Development Rights; (4) Public Benefits; (5) LEED Building Standards; (6) Vehicle Trip Reduction; (7) Greenhouse Gas Reduction; (8) Permit Processing; (9) Land Use Vesting Rights; (10) City Fees; (11) Project Modifications; and (12) Transferability. The staff report, handouts of the presentation and archived video streaming of the presentation are available on the City's website. In addition to reviewing the term sheet, the Council authorized the continued review of the project according to the following schedule:

- April 7: Housing Commission recommendation on the BMR (Below Market Rate) Housing In Lieu Fee Agreement;
- April 19: Planning Commission public hearing on all aspects of the project;
- May 3: Planning Commission recommendation on all aspects of the project;
- May 11: Development Agreement Term Sheet check in with Council;
- May 25: City Council public hearing on all aspects of the project;
- June 15: City Council first step of actions on the entire project; and
- June 22: City Council second (and final) step of actions on the entire project.

As part of the Development Agreement Term Sheet check in, the Council asked staff to report back to the Council on a number of topics such as undergrounding the transmission lines; collaborating with the Fire District, aligning the greenhouse gas reductions to the terminology of the EIR, etc. Staff is currently preparing responses that will be presented to the Council on May 11.

PROCEDURE

As outlined above, the Planning Commission is scheduled to review the proposal at two dedicated meetings. The purpose of the April 19, 2010 public hearing is to give the Planning Commission 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 May 3, 2010, the Planning Commission should formulate its final recommendation for the City Council on the proposed project, environmental review, and requested entitlements in a manner that addresses all of the actions identified in Attachment D and described below.

ANALYSIS

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. The plans for the project have been included as Attachment B. The following table summarizes some of the key features of the proposal as represented on the attached project plans:

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.

Project Modifications

Based on comments received regarding the proposal after the release of the Draft EIR, the applicant pursued modifications to the plans to address concerns regarding greenhouse gas emissions, the parking structures, and the proposed General Plan Amendment and Zoning Ordinance Amendment. Changes regarding greenhouse gas emissions associated with energy consumption, water consumption and vehicular emissions have been addressed in the Development Agreement (Attachment L) and the Final EIR (see Appendix D). Changes related to the parking structures have been addressed in the Final EIR, Development Agreement and Conditional Development Permit (Attachment M). (Alternate parking layout studies with landscape reserve are included as Attachment C). Changes to the General Plan Amendment and Zoning Ordinance Amendment have been addressed in the EIR and modified versions are included as Attachments H and J, respectively. The Planning Commission should use

the April 19 meeting to become more familiar with these changes and ask clarifying questions as necessary.

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 H and J.

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.

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

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 is included as Attachment I and the Rezoning is included as Attachment K.

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 City's negotiating team has been meeting with the project applicant's team since the late November 2009 to define the terms of the Development Agreement. The 12 topics of the three-page term sheet presented to the Council on April 6, 2010 have been transformed into a 40 plus page legal document. The Development Agreement, including the Ordinance to approve the agreement, is included as Attachment L. Some of the topics crossover into mitigation measures from the EIR and potential conditions of approval contained in the Conditional Development Permit.

Conditional Development Permit

The Conditional Development Permit (CDP) is included as Attachment M. 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 B, 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. One notable exception is recommended condition 8.18 related to the parking structures. This condition would require the applicant to modify the design of the proposed parking structures to reflect the landscape reserve option as was analyzed in the Final EIR and as shown in Attachment C. The changes mainly impact the footprint and placement of the parking structures, but may also affect driveway placement. The applicant is generally amenable to the

recommended condition of approval pending input from the public, Planning Commission and City Council.

Tentative Parcel Maps

The Tentative Parcel Maps are included in the project plans (Attachment B). 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 Q. (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 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. 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

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 \$8,543,207.25. The Housing Commission reviewed the BMR Agreement (Attachment N) on April 7, 2009 and recommended approval. The staff report and the minutes from the Housing Commission meeting are included as Attachment O and P, respectively.

FISCAL ANALYSIS

The City's independent economic consultant, Bay Area Economics (BAE) prepared a Fiscal Impact Analysis (FIA), projecting the potential changes in fiscal revenues and service costs directly associated with development of the proposed project, as well as the five alternatives that were defined through the EIR process. The FIA also explores a number of related topics, including indirect revenues/costs from potential induced housing demand and possible development pressures on nearby parcels. In addition, the FIA analyzes one-time/non-recurring revenues (such as impact fees) and discusses potential additional opportunities for fiscal benefits. The Draft FIA was released on July 23, 2009 for an extended public comment period that ended on October 19, 2009. The staff report for the October 5, 2009 Planning Commission meeting includes a summary of the Draft FIA.

The Final FIA, prepared in response to comments on the Draft FIA, was released on March 25, 2010 for a 26-day review period. No comments have been received thus far. The document is available for review on the City's website and the City offices. Comments on the Final FIA are due on or before the Planning Commission public hearing scheduled for April 19, 2010. A presentation highlighting the findings of the Final FIA was provided before the start of the regularly scheduled City Council meeting on April 6, 2010. Handouts of the presentation and archived video streaming of the presentation are available on the City's website.

The FIA does not require action by either the Planning Commission or the City Council. The Planning Commission and City Council should use the FIA in reviewing the development proposal. The Commission may provide comments on the FIA for the City Council's consideration as part of the Commission's recommendation on the development proposal.

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 Environmental Impact Report for the Menlo Gateway project. 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. Comments on the Final EIR are due on or before the Planning Commission public hearing scheduled for April 19, 2010. No comments have been received thus far. A

presentation highlighting the findings of the Final EIR was provided before the start of the regularly scheduled City Council meeting on April 6, 2010. Handouts of the presentation and archived video streaming of the presentation are available on the City's website.

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.

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. 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. 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.

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 E, F, and G, respectively.

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 E). The Planning Commission should review and forward a recommendation to the City Council on the adequacy of the Final EIR, Findings for Certification, Statement of Certification, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program. The City Council will be the final decision-making body on all documents associated with the certification of the Final EIR.

CORRESPONDENCE

Staff has not received any correspondence on the project since the April 6, 2010 City Council meeting. All past correspondence is on file at the Community Development Department.

RECOMMENDATION

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.

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 decision. The Planning Commission, however, is being asked to make a recommendation on this policy decision at its meeting on May 3, 2010. The City Council would then need to consider all inputs, including the Planning Commission's recommendation, in making the policy decision.

If the Planning Commission at the May 3 meeting believes that the potential positive benefits outweigh the potential negative impacts of this proposed development, staff recommends that the Planning Commission recommend certification of the EIR, and recommend approval of the General Plan Amendment, General Plan Map Amendment, Zoning Ordinance Amendment, Rezoning, Development Agreement, Conditional Development Permit, Tentative Parcel Map, BMR Agreement, and Heritage Tree Removal Permits. The Draft Findings and Actions for Approval are included as Attachment D. If the Planning Commission does not believe that the potential positive benefits outweigh the potential negative impacts, staff recommends that the Planning Commission provide input to the Council on each of requested actions.

Megan Fisher
Associate Planner

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 a quarter-mile (1,320 feet) of the subject property. The mailed notice was supplemented by a citywide postcard mailing, which listed the remaining meetings for the project through 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.

ATTACHMENTS

- A. [Location Map](#)
- B. [Project Plans](#)
- C. [Landscape Reserve Parking Option \(Alternate Site Plan Study\)](#)
- D. [Draft Findings and Actions for Approval](#)
- E. [Findings for Certification of the Environmental Impact Report, including the Statement of Overriding Considerations](#)
- F. [EIR Certification Resolution](#)
- G. [Mitigation Monitoring and Reporting Program for the Environmental Impact Report](#)
- H. [Draft Resolution Amending the General Plan to add the Commercial Business Park Land Use Designation](#)
- I. [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 \(without property legal description\)](#)
- J. [Draft Ordinance Amending Title 16 of the Menlo Park Municipal Code, Adding Chapter 16.47 M-3 Commercial Business Park](#)
- K. [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 \(Commercial Business Park, Conditional Development\) \(without Legal Description\)](#)
- L. [Draft Ordinance approving the Development Agreement, including the Development Agreement \(without property legal description\)](#)
- M. [Draft Conditional Development Permit](#)
- N. [Draft Below Market Rate \(BMR\) Housing Agreement \(with property legal description\)](#)
- O. [Housing Commission Staff Report for the Meeting of April 7, 2010 \(without attachments\)](#)
- P. [Draft Excerpt of Minutes of the Housing Commission Meeting of April 7, 2010](#)
- Q. [Heritage Tree Summary Charts](#)
- R. [Project Meetings and Milestones](#)

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](#)

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