

RESOLUTION NO. 6665

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK CERTIFYING A FINAL ENVIRONMENTAL IMPACT REPORT, ADOPTING FINDINGS REQUIRED BY THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM (MMRP) FOR THE MENLO PORTAL DEVELOPMENT PROJECT

WHEREAS, the City of Menlo Park (“City”) received an application requesting environmental review, use permit, architectural control, below market rate (BMR) housing agreement, heritage tree removal permits, , and community amenities operating covenant from GSMP Portal Owner, LLC (“Applicant”), to redevelop the property located at 115 Independence Drive, and 104 and 110 Constitution Drive (APNs 056-236-10, 055-236-020, 055-236-190) (“Property”), with a bonus level development project consisting of up to 335 multifamily rental units and approximately 34,499 square feet of office space including approximately 1,609 square feet of commercial space plus 2,190 square feet of outdoor space, which combined is proposed to be used as part of the Applicant’s community amenity space as an early childhood education center, which development is more particularly described in the Initial Study to the Project which was prepared pursuant to the California Environmental Quality Act (hereinafter the “**Project**”). The Project is depicted in and subject to the development plans which are attached hereto as Exhibit A (“Project Plans including colors and materials board”) and incorporated herein by this reference; and

WHEREAS, the proposed Project is located in the R-MU-B (Residential Mixed Use-Bonus) zoning district. The R-MU-B zoning district allows a mixture of land uses with the purposes of providing high density housing to complement nearby employment, encouraging mixed use development with a quality living environment and neighborhood-serving retail and services on the ground floor that are oriented to the public, promoting a live/work/play environment with pedestrian activity, and blending with and complementing existing neighborhoods through site regulations and design standards that minimize impacts to adjacent uses; and

WHEREAS, the bonus level provisions identified in the City’s Zoning Ordinance allow a development to seek an increase in floor area ratio (FAR), density (dwelling units per acre), and/or height subject to approval of a use permit and the provision of community amenities equal to a minimum of 50 percent of the fair market value of the increased development potential and the applicant has submitted a community amenities proposal in compliance with the required minimum value; and

WHEREAS, pursuant to the City’s Below Market Rate (BMR) Housing Program (Chapter 16.96.040), the applicant would provide 48 inclusionary units of the 320 maximum units allowed by the Zoning Ordinance. The Project would provide an additional 15 market-rate units pursuant to the density bonus provisions in the BMR Housing Program, resulting in the total number of units included in the Project to 335 rental units; and

WHEREAS, the proposed Project would be developed with an increase in FAR, density, and height pursuant to City’s bonus level development allowances; and

WHEREAS, the proposed Project requests to abandon certain Public Utilities Easements (PUE) and relocate them within the Project Site such that the Project Site is adequately served by the utilities and does not conflict with the proposed development; and

WHEREAS, the proposed Project complies with all applicable objective standards of the City's Zoning Ordinance, including design standards, green and sustainable building standards, and is consistent with the City's General Plan goals, policies, and programs; and

WHEREAS, as allowed by the City's BMR Ordinance, the proposed Project requests waivers from the parking requirements to reduce the required 15 vehicular parking spaces and location of five short-term bicycle racks outside the required fifty feet of the main entrance. These waivers would be necessary to accommodate the 15 additional bonus units allowed by the City's BMR Ordinance to facilitate accommodating the increase density, FAR, and open space; and

WHEREAS, Section 16.45.070 of the City of Menlo Park Municipal Code requires that bonus level projects that are developed at a greater level of intensity with an increase in density, FAR, and/or height shall provide one or more community amenities to address the needs that result from the effect of the increased development. The value of the community amenities to be provided shall be equal to 50 percent of the fair market value of the additional gross floor area of the bonus level development; and

WHEREAS, pursuant to the requirements of Section 16.45.070 of the City of Menlo Park Municipal Code, the City commissioned Fabbro Moore & Associates, Inc. to perform an independent appraisal to determine the value of the Project's community amenities contribution. The appraisal determined the project's community amenities obligation would amount to \$8,550,000. The Community Development Director determined that the appraisal was created pursuant to the City's guidelines and approved the appraisal; and

WHEREAS, on August 3, 2021, the applicant submitted an updated community amenities proposal with two options: Option 1 would provide building space and build-out costs for a childcare center plus a student tuition subsidy of \$5,427,826 for a total community amenities contribution of \$8,550,000 and Option 2 would provide building space and build-out costs for a childcare center plus a student tuition subsidy of approximately \$2,000,000 and a one time in-lieu fee to the City of approximately \$3,770,609 (including administrative fees) for a total community amenities contribution of \$8,892,783, and in either case the applicant would retain the ability to provide a one time in-lie fee to the City of \$9,405,000 instead of Option 1 or Option 2; and

WHEREAS, the City evaluated the two alternative community amenities proposals and determined that the value of each proposal, including the dedicated office space, rent subsidy, tenant improvement subsidy, and financial contribution towards the student tuition subsidy, meets the required community amenity valuation of \$8,550,000 for Option 1 and \$8,892,783 for Option 2 (inclusive of the administrative fee for the in-lieu payment) and both options are consistent with the Zoning Ordinance; and

WHEREAS, utilization of the community amenity space by an early childhood education and care provider, is consistent with Resolution No. 6360 – the City's adopted community amenities list –

because the establishment of such a facility, along with financial contribution towards tuition subsidy for lower income students as defined in the Project's community amenities proposal, is considered under the category of "Social Service Improvements – Education Improvements in Belle Haven";

WHEREAS, for these reasons, staff recommended and the City Council approves of utilization of the community amenity space as a childcare center and the associated student tuition subsidy and/or partial in-lieu fee payment; and

WHEREAS, pursuant to the requirements Section 16.45.060 of the City of Menlo Park Municipal Code, the applicant submitted a Below Market Rate (BMR) proposal that would provide 48 inclusionary housing units (15 percent of the 320 units allowed per R-MU zoning district with a mix of very-low, low, and moderate income limits (18 studio/junior one-bedroom units, 21 one-bedroom units, 8 two-bedroom units, and 1 three-bedroom unit); and

WHEREAS, the Applicant initially proposed to provide all 48 rental units affordable to low-income households, which would comply with the BMR Ordinance and BMR Guidelines; and

WHEREAS, at a duly noticed public meeting on May 5, 2021, the Housing Commission considered the applicant's BMR proposal and draft BMR Housing Agreement Term Sheet, inclusive of the 48 inclusionary BMR units, and forwarded a recommendation of approval to the Planning Commission of the proposed BMR Term Sheet showing mixed income and unit sizes/types that would be equivalent to an all low-income BMR scenario; and

WHEREAS, the Project requires discretionary actions by the City as summarized above, and therefore the California Environmental Quality Act ("CEQA," Public Resources Code Section §21000 et seq.) and CEQA Guidelines (Cal. Code of Regulations, Title 14, §15000 et seq.) require analysis and a determination regarding the Project's environmental impacts; and

WHEREAS, the City is the lead agency, as defined by CEQA and the CEQA Guidelines, and is therefore responsible for the preparation, consideration, certification, and approval of environmental documents for the Project; and

WHEREAS, the Project would be developed at the bonus level allowances of the Zoning Ordinance, and therefore, is subject to the settlement agreement between the City of Menlo Park and City of East Palo Alto ("Settlement Agreement"), which requires project-specific environmental impact reports ("EIRs") for certain future projects. Pursuant to the Settlement Agreement, the project-specific EIR may tier from the certified program level ConnectMenlo Final EIR ("ConnectMenlo EIR") which was certified by the City Council on November 29, 2016, as part of an update to the Land Use and Circulation Elements of the General Plan and related zoning changes, commonly referred to as ConnectMenlo, and the project-level EIR shall include a project specific transportation impact analysis. The City shall also prepare a housing needs assessment ("HNA") to inform the population and housing topic area of the project-level EIR; and

WHEREAS, the City released a Notice of Preparation ("NOP") and Initial Study for the Project on January 7, 2020 for a 30-day public review period ending on February 7, 2020. The City held a

public EIR scoping meeting on January 27, 2020 before the City Planning Commission to receive comments on the NOP prior to the close of the public review period. Comments received by the City on the NOP and at the public EIR scoping meeting were considered during preparation of the Draft EIR. The initial study disclosed relevant impacts and mitigation measures already covered in the program-level ConnectMenlo EIR; and

WHEREAS, on January 27, 2020, concurrently with the public NOP scoping meeting, the Planning Commission conducted a study session to review and provide comments on the Project's conceptual design; and

WHEREAS, pursuant to the requirements of the Settlement Agreement and CEQA, the City prepared, or caused to be prepared, a project level EIR and conducted a HNA for the Project; and

WHEREAS, the Draft EIR was released on February 25, 2021 for a 45-day review period that ended on April 14, 2021. The public review period included one duly noticed public meeting on March 22, 2021 to received oral and written comments on the Draft EIR; and

WHEREAS, On March 22, 2021, as part of the duly noticed public hearing to review the Draft EIR, the Planning Commission also conducted a study session and provided an opportunity for members of the public to provide comments on the proposed project design, BMR proposal, and community amenities proposal; and

WHEREAS, the Draft EIR was filed with the California Office of Planning and Research and copies of the Draft EIR were made available at the Community Development Department, on the City's website and at the Menlo Park Library; and

WHEREAS, on July 30, 2021, the City published a Response to Comments Document that contains all of the comments received during the public comment period, including a transcript of the public hearing, and written responses to those comments, and any text changes to the Draft EIR, prepared in accordance with CEQA and the CEQA Guidelines. The Draft EIR and Response to Comments Document constitute the Final EIR, a copy of which is available by the following the internet link included in Exhibit B; and

WHEREAS, the City prepared or caused to be prepared the Findings of Fact as included in Exhibit C in accordance with CEQA and CEQA Guidelines Section 15091; and

WHEREAS, the City prepared or caused to be prepared a Mitigation Monitoring and Reporting Program ("MMRP"), which is incorporated herein by this reference and as part of the Final EIR, which will ensure all mitigation measures relied upon in the findings are fully implemented and that all environmental impacts are reduced to a less than significant level; and

WHEREAS, all required public notices and public hearings were duly given and held according to law; and

WHEREAS, after notice having been lawfully given, a duly noticed public hearing was held before the City Planning Commission on August 9, 2021 at which all persons interested had the opportunity to appear and comment; and

WHEREAS, after closing the public hearing, the Planning Commission considered all public and written comments, pertinent information, documents and plans and all other evidence in the public record on the Project; and

WHEREAS, the Planning Commission fully reviewed, considered, evaluated, and certified the Final EIR, along with all public and written comments, pertinent information, documents and plans prior to taking action to approve the use permit, architectural control, BMR Housing agreement, and community amenities agreement; and

WHEREAS, following the Planning Commission's review, consideration, evaluation, and certification of the final EIR and approval of the use permit, architectural control, BMR Housing agreement, and community amenities operating covenant, the City Council received a timely appeal of the Planning Commission's actions on the project; and

WHEREAS, on September 14, 2021, the City Council held a public hearing and separately reviewed and considered the aforementioned appeal, and fully reviewed, considered, and evaluated the final EIR, along with all public and written comments, pertinent information, documents and plans prior to taking action to deny the appeal and approve the use permit, architectural control, BMR Housing agreement, and community amenities agreement for the Menlo Portal development project.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Menlo Park finds the foregoing recitals are true and correct, and they are hereby incorporated by reference into this Resolution.

BE IT FURTHER RESOLVED that the City Council of the City of Menlo Park hereby resolves as follows:

1. The Final EIR has been prepared, published, circulated, and reviewed in compliance with the California Environmental Quality Act and the CEQA Guidelines.
2. The Final EIR constitutes an adequate, accurate, objective, and complete analysis addressing all issues relevant to the approval of the proposed Project including the issuance of a use permit and architectural control permit, abandonment of the existing PUEs and replacement with a new on site public utility easement, and approval of the BMR Housing agreement and Community Amenities Operating Covenant for the Project.
3. The City Council has been presented with, reviewed and considered the information contained in the above recitals and within the Final EIR prior to acting on the proposed Project, and the Final EIR reflects the independent judgement and analysis of the City pursuant to section 21082.1(c)(3) of the California Environmental Quality Act.

4. Notice of the Planning Commission and City Council hearings on the Draft EIR and Final EIR have been given as required by law and the actions were conducted pursuant to the State Planning and Zoning Law, CEQA, the State CEQA Guidelines. Additionally, all individuals, groups and agencies desiring to comment were given adequate opportunity to submit oral and written comments on the Final EIR which met or exceeded the requirements of State Planning and Zoning Law and CEQA. All comments submitted during the public review and comment period on the Draft EIR were responded to adequately in the Final EIR.
5. As set forth in the attached Findings of Fact, the Final EIR identifies all potential significant adverse environmental impacts and feasible mitigation measures or standard conditions of approval that would reduce these impacts to a less than significant level. All of the mitigation measures identified in the Final EIR, including those in the Mitigation Monitoring and Reporting Program, will be adopted and implemented as Conditions of Approval for the use permit and architectural control.
6. The monitoring and reporting of CEQA mitigation measures in connection with the Project will be conducted in accordance with the attached MMRP, and incorporated into the Conditions of Approval of the use permit and architectural control for the Project. All proposed mitigation measures are capable of being fully implemented by the efforts of the City, the Applicant, or other identified public agencies of responsibility, and will reduce the environmental impacts to a less-than significant level.
7. Pursuant to CEQA Guidelines Section 15091 and CEQA Section 21081.6, and in support of its approval of the Project, the City Council adopts the attached Findings of Fact and MMRP as set forth in Exhibits C and D of this Resolution.
8. The City Council hereby certifies the Final EIR based upon consideration of the Finding of Facts, together with the staff report (copies of which are on file in the Planning Division), public testimony presented at the hearing, and all other oral and written evidence received by the City on this Project.

SEVERABILITY

If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void or unenforceable, the remaining provisions of these findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City.

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I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the fourteenth day of September, 2021, by the following votes:


AYES: Combs, Mueller, Nash, Wolosin

NOES: Taylor

ABSENT: None

ABSTAIN: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this seventeenth day of November, 2021.

DocuSigned by:

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Judi A. Herren, City Clerk

Exhibits

- A. Project Plans including materials and colors board
- B. Menlo Portal Final EIR
- C. Statement of Findings and Facts pursuant to CEQA
- D. Mitigation Monitoring and Reporting Program (MMRP)