

RESOLUTION NO. 6666

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK DENYING THE APPEAL OF THE AUGUST 9, 2021 PLANNING COMMISSION DECISION, UPHOLDING THE PLANNING'S APPROVAL OF APPROVING THE USE PERMIT, ARCHITECTURAL CONTROL, BELOW MARKET RATE HOUSING AGREEMENT, AND COMMUNITY AMENITIES OPERATING COVENANT FOR THE PROPOSED MENLO PORTAL PROJECT CONSISTING OF 335 MULTI-FAMILY DWELLING UNITS AND AN APPROXIMATELY 34,499 SQUARE FOOT OF OFFICE SPACE WHICH INCLUDES APPROXIMATELY 1,609 SQUARE FEET OF COMMERCIAL SPACE PROPOSED TO BE USED AS A COMMUNITY AMENITIES SPACE (EARLY CHILDHOOD EDUCATION CENTER) AT 115 INDEPENDENCE DRIVE AND 104 AND 110 CONSTITUTION DRIVE (APNS 056-236-10, 055-236-020, 055-236-190)

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 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 increased 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-lieu 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 Option 1 proposal, including the dedicated office space, rent subsidy, tenant improvement subsidy, and financial contribution towards the student tuition subsidy meet 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”; and

WHEREAS, for these reasons, staff recommended and the Planning Commission approved 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 mix of income limits and unit sizes/types would be equivalent to an all low-income BMR scenario alternative and has been incorporated into the proposed BMR Agreement, based on the Housing Commission’s recommendation; and

WHEREAS, the Proposed Project includes 10 heritage-size tree removals that have been evaluated by the City Arborist and on July 15, 2021 the City Arborist conditionally approved the heritage tree removal permits. The conditional action was posted on the site and mailed notices were sent out stating the action following the Planning Commission review and action on the architectural control and use permit requests; and

WHEREAS, staff did not receive any appeals to the City Arborist conditional action approving the heritage tree removal permits. Following the City Council action of denying the appeal and affirming the Planning Commission decision on the architectural control and use permit requests, staff will issue permits to remove the heritage trees; and

WHEREAS, the proposed project would include a minimum of 20 heritage tree replacements, per the required 2:1 replacement ratio of the Heritage Tree Ordinance in effect at the time of submittal of a complete application under the provisions of SB 330; 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 C; 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, on August 9, 2021, the Planning Commission fully reviewed, considered, evaluated the whole of the record including all public and written comments, pertinent information, documents and plans, and certified the Final EIR for the Project adopted findings of fact in accordance with CEQA, and adopted a Mitigation Monitoring and Reporting Program prior to taking action to approve the use permit, architectural control, BMR Housing agreement, and community amenities agreement for the Menlo Portal project; and

WHEREAS, on August 9, 2021, following a public hearing, the Planning Commission approved the use permit, architectural control, BMR Housing Agreement, and community amenities operating covenant for the Menlo Portal development project; and

WHEREAS, on August 24, 2021, the Sequoia Union High School District filed an appeal of the Planning Commission's Actions pursuant to Menlo Park Municipal Code section 16.86.010, which authorizes any person on file an appeal of any final action of the Planning Commission, said appeal is attached hereto and incorporated herein by this reference as Exhibit A; and

WHEREAS, on September 14, 2021, the City Council held a public hearing and separately reviewed and considered the appeal, and 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 deny the appeals and approve the use permit, architectural control, BMR Housing Agreement, and community amenities operating covenant for the Menlo Portal development project.

NOW, THEREFORE, BE IT RESOLVED that the City Council 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 hereby denies the appeal of the Sequoia Unified High School District, upholds the Planning Commission Actions, and approves the use permit, architectural control, BMR Housing Agreement, and community amenities operating covenant for the Menlo Portal development project based on the following findings supported by evidence in the whole of record, including pages 8 to 12 of the September 14, 2021 staff report:

A. Planning Commission did not lack authority to certify the Final EIR.

Apart from the appeal of the Planning Commission's actions, the only Council determination needed for the Project is vacation of an easement to be relocated elsewhere on the Project site. The Planning Commission reviewed and approved the use permit, architectural control permit, BMR agreement, and community amenities operating agreement, which together make up the bulk of the Project's necessary entitlements. CEQA Guidelines Section 15352(b) requires the City to comply with CEQA at the "earliest commitment" to the Project's approval. Because the Planning Commission's actions were the first set of binding City approvals, and would have been a final decision regarding the Project but for the appeal, the Planning Commission was required to certify the Final EIR, make findings, and adopt the MMRP before it took action to approve the Project.

Regardless, although the Planning Commission properly took action regarding the EIR before approving the Project, the appeal's claim is moot, because Council is now required to act on the Project by virtue of the appeal.

B. The Draft EIR, Final EIR, and Planning Commission appropriately considered the District's school sites in all discussions of the "environmental setting."

The applicable environmental setting, including surrounding land uses are discussed in Chapter 3.0, Project Description of the draft EIR, and each topical section of the draft EIR begins with a description of the physical setting for the project. The proximity of TIDE Academy to the proposed project as it relates to potential impacts in the topic area of Air Quality and Noise is discussed in the draft EIR. Section 4.2, Transportation, of the draft EIR indicates that, as it relates to TIDE Academy, the proposed project would not conflict with any applicable plans, ordinances, or policies addressing components of the circulation system and would not substantially increase design hazards. In addition, TIDE Academy was considered as a sensitive receptor for the purposes of the air quality and noise analysis in the draft EIR. Air quality impacts to sensitive receptors would be less than significant with the implementation of Mitigation Measure AIR-2 of the Final EIR and included in the MMRP (included in Exhibit E) and noise impacts to sensitive receptors would be less than significant.

C. The Draft EIR, Final EIR, and Planning Commission appropriately analyzed impacts on and related to school, and the environmental analysis properly "tiered" from the ConnectMenlo EIR.

The appellant claims that the EIR improperly relied on the information, analysis, and mitigation measures in the programmatic EIR prepared for the City's 2016 General Plan Update (ConnectMenlo) because ConnectMenlo did not consider the proposed project's specific impacts on the district's TIDE Academy since the school did not exist when the ConnectMenlo EIR was prepared. However, although the TIDE Academy was not yet constructed or operational at the time that the ConnectMenlo final EIR was prepared, the new high school was contemplated and discussed in the ConnectMenlo final EIR and the draft EIR (including the initial study) and final EIR prepared for the proposed project remain valid.

The appellant also claims that circumstances have changed since the ConnectMenlo EIR, and the proposed project in conjunction with all other project being considered in the Bayfront area will result in significant environmental impacts to district schools. As stated in the ConnectMenlo Draft EIR: "...the California State Legislature, under Senate SB 50, has determined that payment of school impact fees shall be deemed to provide full and complete school facilities mitigation. All new developments proposed pursuant to the adoption of the proposed project will be required to pay the school impact fees adopted by each school district." According to California Government Code Section 65995(3)(h), the payment of statutory fees is "deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use or development of real property, or any change in governmental organization or reorganization...on the provision of adequate school facilities." Therefore, the payment of school impacts fees to the district serves as full mitigation and all projects currently proposed in the Bayfront would be required to pay fees to the district. As a result, there would be no significant environmental impacts to schools from the proposed project.

Finally, the appellant claims that the proposed project EIR improperly relied on the ConnectMenlo EIR because the latter EIR assumed that development would occur incrementally over a 24-year period. The impact conclusion from ConnectMenlo does not rely on the assumption that impacts to schools would be less than significant due to the incremental phasing of development over a 24-year buildout horizon. Rather, impacts would be less than significant and would be further reduced due to the anticipated incremental pace of development. Payment of school impact fees would occur with the pace of development and issuance of building permits for each development project that may generate new students. Therefore, if buildout of ConnectMenlo occurs sooner than the buildout horizon projected in the ConnectMenlo Final EIR, payment of mitigation fees would be accelerated, and the district would collect these fees sooner than previously anticipated. In addition, the proposed project is not anticipated to be constructed and operational until 2024, approximately three years from the date of preparation of the Menlo Portal project final EIR. This timeframe would allow the district the opportunity to plan for potential student enrollment increases.

D. The Draft EIR, Final EIR, and Planning Commission identified and analyzed all impacts on school facilities under CEQA's threshold of significance for Public Services Impacts.

The appellant contends the City failed to analyze impacts on school facilities and on the district. However, SB 50, the "Leroy F. Green School Facilities Act of 1998," excuses direct impacts of development on school facilities and buildings from being considered and mitigated in an EIR. SB 50 implemented the following: (1) provided a cap on the amount of fees or other requirements

that can be imposed on new developments to fund construction of school facilities; (2) removed from local agencies the authority to refuse to approve legislative or adjudicative acts on the basis of inadequate school facilities or a developer's unwillingness to pay more than the capped fee amounts; and (3) limited mitigation measures that can be required under CEQA to payment of capped school facilities fees, and found such payment to be full and complete school facilities mitigation (Government Code section 65996.)

Government Code section 65995(i) prohibits a city from denying or refusing to approve a legislative or adjudicative act involving development "on the basis of a person's refusal to provide school facilities mitigation that exceeds the amounts authorized [by SB 50]." SB 50 specifically limits a city's power under CEQA to mitigate school facilities impacts. As a result, the City may not deny approval of a legislative or adjudicative action (such as a use permit or other development entitlements) under CEQA on the basis of the inadequacy of school facilities, nor may the City impose, in its MMRP, mitigation measures to offset impacts of development on school facilities.

- E. *The Draft EIR, Final EIR, and Planning Commission were not required to consider evidence of impacts on the District presented in the "Fiscal Impact Analysis Report" (Feb. 2021) prepared by BAE Urban Economics on behalf of the City in connection with the EIR, but such alleged impacts are not physical impacts on the environment for purposes of CEQA.*

The appellant claims the FIA shows the proposed project would have significant fiscal impacts on the district, which would result in physical impacts on district facilities, and these impacts were not properly considered in the draft EIR, final EIR or at the Planning Commission hearing.

A FIA was conducted for the proposed project in compliance with general plan policy LU-4.7, which requires mixed-use projects of a certain minimum scale to include analysis of the potential fiscal impacts on the City, school districts and special districts. However, the FIA conducted for the proposed project is not a requirement under CEQA and its results are not related to physical impacts on the environment that require mitigation. All CEQA impacts to school districts are mitigated by the payment of impact fees under SB 50, as described previously.

- F. *The Draft EIR, Final EIR, and Planning Commission considered and analyzed all "school-related" impacts that may be caused by the Project.*

The appellant asserts the final EIR did not properly mitigate school-related impacts, including those analyzed in *Chawanakee Unified School District v. City of Madera* (2011) 196 Cal.App.4th 1016 and 27 subcategories of information that are necessary to determine whether the Project will result in significant impacts related to schools.

However, as previously stated, all CEQA impacts to school districts are mitigated by the payment of impact fees under SB 50. Furthermore, the final EIR adequately addressed these "sub-categories." As discussed throughout the draft EIR and as further explained in responses A2-3 through A2-18 of the final EIR, potential impacts to school facilities (which are sensitive receptors) located within the vicinity of the project site were considered and were determined to be less than significant.

The proximity of TIDE Academy to the proposed project as it relates to potential impacts in the topic areas of Transportation, Air Quality, and Noise is discussed in the draft EIR. Section 4.2, Transportation, of the draft EIR indicates that, as it relates to TIDE Academy, the proposed project would not conflict with any applicable plans, ordinances, or policies addressing components of the circulation system and would not substantially increase design hazards. In addition, TIDE Academy was considered as a sensitive receptor for the purposes of the air quality and noise analyses in the draft EIR. Air quality impacts to sensitive receptors would be less than significant with the implementation of Mitigation Measure AIR-2 (Exhibit E) and noise impacts to sensitive receptors would be less than significant.

G. The Draft EIR and Final EIR proposed, and the Planning Commission approved, adequate mitigation measures for any impacts of the Project on the District relevant under CEQA.

The appellant restates a number of contentions and argues the draft EIR, final EIR and Planning Commission failed to propose adequate mitigation measures for impacts on the district including impacts on school facilities and impacts “related to schools.” Again, as explained previously, all CEQA impacts to school districts are mitigated by the payment of impact fees under SB 50.

Although it is unclear what impacts “related to schools” is intended to mean, the final EIR adequately addressed indirect impacts on traffic, air quality, noise levels (which impacts were the subject of *Chawanakee Unified School District v. City of Madera* (2011) 196 Cal. App. 4th 1016), and other indirect impacts to schools. Information regarding indirect impacts, all of which would be less than significant or less than significant with mitigation, is provided above and covered in more detail in the draft EIR and final EIR for the proposed project. Furthermore, the district has failed to provide substantial evidence that there would be any physical impact on or related to school services.

H. The District’s comments exceed the scope of its expertise, and as such, its comments may be disregarded.

The appeal takes issue with the provisions of CEQA that establish specific limits on the scope of comments from a public agency. Specifically, Public Resources Code section 21153 limits public agencies to “substantive comments regarding those activities involved in a project that are within an area of expertise of the agency.” The appeal makes the unsupported assertion that this statutory limitation only applies “to early stages of consultation,” ignoring the plain statutory language that says the limit applies prior to completion of an environmental impact report. The appeal also ignores the numerous other provisions of CEQA that limit a public agency’s scope of review to its area of expertise; see, e.g., CEQA Guidelines sections 15086(c), 15096(d), and 15204(d). Regardless, the School District submitted comments in response to the Notice of Preparation and on the Draft EIR, both of which were “prior to completion” of the EIR. Therefore, CEQA limited comments to areas of the School district’s expertise.

The appeal attempts to define the School District as having an expertise if “providing a safe and high-quality education to its students.” Even the incredibly general statement of expertise provided in the appeal does not allege that the School District has technical expertise related to transportation safety or air quality emissions, despite the fact that these

topics make up the bulk of the School District's comments. Therefore, these comments exceed the School District's statutory scope of authority under CEQA to provide comment, and the City is under no obligation to respond.

Despite the School District's overreach, the City made a good faith effort to provide a detailed response to each comment provided by the School District. As demonstrated in the Final EIR and previous responses to the School District, none of the asserted deficiencies are present, and the EIR includes substantial evidence to support each of its conclusions that the project would not result in any unmitigated significant environmental effects. Therefore, even assuming *arguendo* that the School District had jurisdiction to comment on these technical matters, its comments are without merit.

BE IT FURTHER RESOLVED that the City Council of the City of Menlo Park, independently, after reviewing all the evidence before it, holding public hearing, considering the appeal before it, and considering the Planning Commission's Actions, hereby approves a use permit, subject to conditions, attached hereto and incorporated herein by this reference as Exhibit H, for the Project. The approval is granted based on the following findings which are made pursuant to Menlo Park Municipal Code Section 16.82.030:

1. That the consideration and due regard to the nature and condition of all adjacent uses and structures, and to general and specific plans for the area in question and surrounding areas, and impact of the application hereon; in that, the proposed project Final Environmental Impact Report determined that the proposed project with mitigation incorporated would cause less than significant impacts on the environment or less than significant impacts on the environment with mitigation incorporated. The proposed project is designed in a manner consistent with the goals, policies, and objectives of ConnectMenlo and applicable Zoning Ordinance requirements. Specifically, the proposed project would be an infill project that would be compatible with the surrounding uses. The building would redevelop a project site currently occupied by older industrial and commercial buildings and would locate new residential and office uses on an underutilized property and the redevelopment would be undertaken at the bonus level of development in exchange for community amenities. The proposed Project includes on-site open space, parking, and the proposed buildings would adhere to the design standards set for the by the Zoning Ordinance and would therefore, be consistent with ConnectMenlo. Compliance with the Zoning Ordinance and consistency with ConnectMenlo would ensure the project would not be detrimental to the health, safety, and welfare of the surrounding community. The project is subject to mitigation measures and conditions of approval that ensure that all existing adjoining structures are appropriately protected during and after construction and the heritage tree removals would be replaced at a 2:1 ratio on site, in compliance with the Heritage Tree Ordinance in effect at the time of the submittal of a complete SB 330 development application. Moreover, the proposed project is designed with appropriate ingress and egress and sufficient on-site bicycle and vehicular parking; and therefore, will not have a detrimental impact on the surrounding areas.
2. That whether or not the establishment, maintenance, or operation of the use applied for will, under the circumstance of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such

proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the city; in that, the proposed Project is designed as a mixed use project with multifamily apartment and office buildings with a portion of the ground-floor of the office building proposed to be used as part of the applicant's community amenity proposal as a childcare center with associated outdoor play area along with a philanthropic contribution to be used towards student tuition subsidy, which are permitted uses pursuant to Chapter 16.45.020 of the City of Menlo Park Municipal Code. The proposed Project is designed to meet all the applicable codes and ordinances of the City of Menlo Park Municipal Code and staff believes the proposed Project would not be detrimental to the health, safety, and welfare of the surrounding community due to the architectural design of the building and compliance with the Zoning Ordinance design standards and the architectural review process. The proposed project is consistent with the goals and policies established by the ConnectMenlo General Plan and would result in a project that embodies the live/work/play vision of ConnectMenlo and the R-MU zoning district. Specifically, the proposed project would be a mixed-use building designed to be compatible with surrounding uses, and the mixed use building design addresses potential compatibility issues such as traffic, parking, light spillover, dust, odors, and transport, and use of potentially hazardous materials. The proposed Project is designed with sufficient off-site vehicular and bicycle parking, as well as public, common, and private open spaces. The central plaza has been found to meet the requirements of publicly accessible open space and paseos outlined in the Zoning Ordinance and provides pedestrian access across the site connecting two public right-of-ways. The central plaza would further the goals and policies of the land use and circulation elements of the General Plan related to bicycle and pedestrian circulation and open space design and provision within project sites. The Project includes 48 inclusionary rental housing units and on-site amenities to serve the future residents of the project site. The proposed Project is designed with appropriate ingress and egress and off-site improvements such as landscaping, street lighting, and sidewalks. The project-level Final Environmental Impact Report determined that the project would have a less than significant impact on the environment after implementation of mitigation measures. Further the Initial Study prepared for the Project found the project would have a less than significant impact on the environmental after implementation of mitigation measures from the program-level EIR prepared for the ConnectMenlo General Plan Update. Therefore, the proposed Project would not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood.

BE IT FURTHER RESOLVED that the City Council of the City of Menlo Park, independently, after reviewing all of the evidence before it, holding public appeal hearing, considering the appeal before it, and considering the Planning Commission's Actions, hereby approves an architectural control permit, subject to conditions, attached hereto and incorporated herein by this reference as Exhibit H, for the Project. The approval is granted based on the following findings which are made pursuant to Menlo Park Municipal Code Section 16.68.020:

1. That the general appearance of the structures is in keeping with character of the neighborhood; in that, the proposed project is designed in a contemporary architectural style incorporating both solid elements and glass storefronts along the majority of the primary street façades. The materials and forms of the proposed buildings would provide modulations and articulations along the façades of the buildings. The materials and modulations would comply with the City's Zoning Ordinance design standards and would provide visually interesting building facades on both the

office and the apartment buildings. The façades would predominantly consist of smooth troweled stucco portions, phenolic panel (with a wood grain veneer) and metal panels (grey), with vinyl windows for the upper floors and ground floor storefronts would contain an aluminum storefront system with a bronze finish. The Project incorporates complementary colors and the stucco would comply with the Zoning Ordinance design standards. The Project would comply with the base height, building projections, and major and minor modulations along with ground floor transparency, entrances, and garage entrance requirements. Compliance with the Zoning Ordinance would further the goals and policies of ConnectMenlo for mixed-use design and compatible buildings with surrounding land uses.

2. That the development will not be detrimental to the harmonious and orderly growth of the city; in that, the Project is a mixed use with multifamily rental residential project with an 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 community amenities space (childcare center) proposed to be used as part of the Applicant's community amenity space as an early childhood education center on the ground floor of the office building. The proposed Project design is generally consistent with all applicable requirements of the City of Menlo Park Municipal Code. The proposed project does not include any modifications to the design standards of the R-MU zoning district to modify the design standards. The proposed Project is consistent with the new development and population growth envisioned by ConnectMenlo. Moreover, the proposed Project is designed in a manner that is consistent with the existing and future development in the area. The Project is designed with appropriate ingress and egress and appropriate number of vehicular and bicycle parking on site to serve the residents and commercial space. Further, the Project would construct a publicly accessible central plaza, consistent with the vision of ConnectMenlo General Plan. The central plaza along with additional ground floor open space would provide a pedestrian connection across the site connecting two public right-of-ways consistent with the land use and circulation element goals and policies of ConnectMenlo. Therefore, the project will not be detrimental to the harmonious and orderly growth of the city.
3. That the development will not impair the desirability of investment or occupation in the neighborhood; in that, the proposed Project consists of multifamily rental dwelling units and approximately 34,499 square feet of office space which is consistent with the adopted Zoning Ordinance for the project site. The proposed Project is designed in a manner consistent with all applicable codes and ordinances, as well as the ConnectMenlo goals and policies. The proposed Project contributes to the available affordable housing in the area and provides community amenities to serve the adjoining neighborhood and businesses. The proposed Project would redevelop and underutilized site. The proposed Project contributes towards providing residential apartment units in the area and provides affordable housing adding to the availability and variety of housing stock to households with various needs at different income levels. The proposed Project includes a publicly accessible central plaza and additional ground floor open space that would provide additional pedestrian connectivity within the vicinity of the project site. Therefore, the proposed project would not impair the desirability of investment or occupation in the neighborhood.
4. That the development provides adequate parking as required in all applicable city ordinances and has made adequate provisions for access to such parking; in that, the proposed Project

provides a total of 414 on-site parking spaces, where the minimum number of parking spaces is 405 and the maximum number of spaces allowed is 608. Of the total 414 spaces provided, the residential apartment building would accommodate 320 parking spaces. Pursuant to the provisions of the BMR Ordinance, the proposed Project includes a request to reduce the required minimum residential parking by less than one space per unit requirement to accommodate the BMR bonus units. The Project includes 320 residential parking spaces 335 vehicular spaces would be required by the Zoning Ordinance without the waiver request allowed by the BMR density bonus. The proposed Project is required to reduce vehicle trips from the site by 20 percent from the typical land uses within the site, pursuant to the requirements of the Zoning Ordinance through inclusion of a transportation demand management program. The on-site parking would be unbundled from the units and would likely reduce the parking demand of the project, per the requirements of the Zoning Ordinance. Moreover, guest parking stalls would be provided in the apartment building. Lastly, the project provides 503 long-term bicycle parking spaces and 65 short-term to serve the residential building and 12 long-term and two short-term bicycle parking spaces to serve the proposed office building. Therefore, the proposed development provides sufficient on-site parking for both vehicles and bicycles.

5. That the development is consistent with any applicable specific plan; in that, the Project is located in the Bayfront Area which is not subject to any specific plan. However, the project is consistent with the all the applicable goals, policies, and programs of ConnectMenlo and is consistent with all applicable codes, ordinances, and requirements outlined in the City of Menlo Park Municipal Code.

BE IT FURTHER RESOLVED that the City Council of the City of Menlo Park, independently, after reviewing all of the evidence before it, holding public appeal hearing, considering the appeal before it, and considering the Planning Commission's Actions, hereby approves the Below Market Rate Housing Agreement ("BMR Agreement") between the City and Applicant that satisfies the requirements of Chapter 16.96 of the Menlo Park Municipal Code and City of Menlo Park Below Market Rate Housing Program Guidelines attached herein as Exhibit F. The City Council hereby resolves:

1. Pursuant to Chapter 16.96 of the City of Menlo Park Municipal Code and the City of Menlo Park Below Market Rate Housing Program Guidelines, public interest and convenience require that City to enter into the BMR Agreement described above and incorporated herein as Exhibit E.
2. Pursuant to Menlo Park Municipal Code Chapter 16.96, section 16.96.020(b), Applicant is required to provide no less than fifteen percent (15%) of the units at below market rates to very low, low and moderate-income households. ("For residential development projects of twenty (20) or more units, the developer shall provide not less than fifteen percent (15%) of the units at below market rates to very low-, low- and moderate-income households." (MPMC § 16.96.020(b).) The proposed Project would provide 48 BMR units. Pursuant to the City of Menlo Park Below Market Rate Housing Program Guidelines, the applicant elected to provide 3 very low income rental units, 14 low income rental units, 31 moderate income rental units.
3. The Applicant's proposed BMR alternatives are commensurate with the applicable requirements of Chapter 16.96 of the City of Menlo Park Municipal Code and the City of Menlo Park Below Market Rate Housing Program Guidelines because the total rent subsidy would be equivalent to an all low-income scenario.

4. The proposed BMR alternatives are consistent with the Goals of the City of Menlo Park Below Market Rate Housing Program Guidelines because the City’s current Housing Element (2015-2023) identified the need for 655 units to be produced affordable to very low-, low-, moderate-, and above moderate-income households. Further, the BMR Housing Program Guidelines allow for the provision of affordable units at extremely low, very low, low and/or moderate income levels shall be roughly equivalent to the provision of all of the affordable units at the low income level.
5. Pursuant to MPMC section 16.96.020(c), on May 5, 2021 the Housing Commission considered Applicant’s BMR proposal and associated BMR Agreement Term Sheet, and forwarded a recommendation to the Planning Commission to approve the BMR Agreement pursuant to the BMR Agreement Term Sheet, with the scenario that includes a mix of income limits.
6. Based on the foregoing, the City Council of the City of Menlo Park hereby approves the BMR Agreement and the City Manager is hereby authorized on behalf of the City to execute the BMR Agreement; any modifications to the BMR Agreement shall be approved by the City Attorney prior to execution of the BMR Agreement.

BE IT FURTHER RESOLVED that the City Council of the City of Menlo Park, independently, after reviewing all the evidence before it, holding public appeal hearing, considering the appeal before it, and considering the Planning Commission’s Actions hereby approves the Community Amenities Operative Covenant (“Community Amenities Operating Covenant”) between the City and Applicant that satisfies the requirement that the Applicant comply with Chapter 16.45, Section 16.45.070 of the City’s Municipal Code and with Menlo Park City Council Resolution No. 6360 (the City Council adopted Community Amenities List). The City Council hereby resolves:

1. Pursuant to Chapter 16.45, Section 16.45.070 of the City’s Municipal Code and with Menlo Park City Council Resolution No. 6360 (the City Council adopted Community Amenities List), public interest and convenience require the City to enter into the Community Amenities Operating Covenant described above and incorporated herein as Exhibit G or to pay an in-lie fee of \$9,405,000.
2. The City of Menlo Park hereby approves the Community Amenities Operating Covenant and the City Manager is hereby authorized on behalf of the City to execute the Agreement; any modifications to the Community Amenities Operating Covenant shall be approved by the City Attorney prior to execution of the Community Amenities Operating Covenant.

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. Appeal of Sequoia Union High School District
- B. Project Plans including materials and color board
- C. Menlo Portal Final EIR
- D. Statement of Findings and Facts pursuant to CEQA (See Attachment A, Exhibit C)
- E. Mitigation Monitoring and Reporting Program (MMRP) (See Attachment A, Exhibit D)
- F. Below Market Rate Housing Agreement
- G. Community Amenities Operating Covenant
- H. Conditions of Approval