

PLANNING COMMISSION RESOLUTION NO. 2023-40

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MENLO PARK CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT, ADOPTING FINDINGS REQUIRED BY THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND A MITIGATION MONITORING AND REPORTING PROGRAM (MMRP) ALL PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, FOR THE PROPOSED 123 INDEPENDENCE DRIVE PROJECT CONSISTING OF A 316 UNIT MULTI-FAMILY RESIDENTIAL APARTMENT BUILDING WITH AN APPROXIMATELY 2,000 SQUARE FEET COMMERCIAL SPACE AND 116 TOWNHOME CONDOMINIUM UNITS AT 119 INDEPENDENCE DRIVE, 123-125 INDEPENDENCE DRIVE, 127 INDEPENDENCE DRIVE, 1205 CHRYSLER DRIVE, AND 130 CONSTITUTION DRIVE (APNS: 055-236-140, 055-236-180, 055-236-240, 055-236-300, and 055-236-280), AND ASSOCIATED OPEN SPACE AND INFRASTRUCTURE

WHEREAS, the City of Menlo Park (“City”) received an application requesting environmental review, use permit, architectural control, below market rate (BMR) housing agreement, vesting tentative map, and heritage tree removal permits from The Sobrato Organization (“Applicant”), to redevelop the properties located at 119 Independence Drive, 123-125 Independence Drive, 127 Independence Drive, 1205 Chrysler Drive, and 130 Constitution Drive (APNs 055-236-140, 055-236-180, 055-236-240, 055-236-300, and 055-236-280) (“Property”), with a bonus level development project consisting of an up to 316 unit multifamily rental apartment building with approximately 2,000 square feet commercial space and 116 for-sale townhome condominium units, which development is more particularly described in the Environmental Impact Report 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 D (“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, the proposed Project would be developed with an increase in FAR, height, and density pursuant to City's bonus level development allowances; and

WHEREAS, the proposed Project requests a use permit to allow modifications to the bird friendly design guidelines and allow some balcony railings in the project to be made out of fritted clear-glazed glass; and

WHEREAS, the proposed Project environmental impact report found that combined with low number of birds expected to be exposed to increases risk of collision, the fact that most birds would be urban generalists that already occur in the area, and less than ten percent of the glazing being fritted glass railing, the bird collision risk at the proposed Project would be less-than-significant; and

WHEREAS, pursuant to City's General Plan goals and policies, the proposed Project is required to provide a publicly accessible paseo connecting Constitution Drive to Independence Drive; and

WHEREAS, the Project provides a minimum 20-foot wide paseo which increases in width at certain places. The paseo expands to create publicly open space of approximately 15,367 square feet in size before connecting Independence Drive; 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, pursuant to the requirements of Sections 16.45.060 and 16.96.020 of the City of Menlo Park Municipal Code and the City's Below Market Rate ("BMR") Housing Program, the applicant submitted a BMR proposal that would provide 48 inclusionary rental units (15 percent of total proposed 316 multi-family apartment units), 18 inclusionary for-sale units (15 percent of total proposed 116 for-sale townhome units), and eight additional inclusionary rental units to fulfill the community amenities obligation for the proposed project; and

WHEREAS, as allowed by the State Density Bonus Law and City's Below Market Rate (BMR) Ordinance, the proposed Project requests two concessions for the development of for-sale affordable units: first from BMR Guidelines 5.1 and Section 16.96.060 of City's Municipal Code to allow clustering of the affordable for-sale townhome units and second concession from BMR Guidelines 5.3.1 and Section 16.96.060 of City's Municipal Code to allow a delayed construction schedule to develop the affordable units such that Habitat for Humanity Greater San Francisco ("HGSF") would obtain building permits for the for-sale affordable townhomes within six months from issuance of first building permit for first market-rate townhome and HGSF would be required to complete the affordable townhomes within 24 months from their building permit issuance; and

WHEREAS, the applicant requests the first concession to allow the use of volunteer labor as sweat equity towards purchase of affordable units and to allow leveraging of certain financial opportunities that would otherwise be unavailable and the second concession to allow a delay in the development of affordable units to allow HGSF to rely on volunteer labor and sweat equity model and use donated goods and materials for construction of the affordable for-sale units; and

WHEREAS, as allowed by the State Density Bonus Law and the City's Below Market Rate (BMR) Ordinance, the proposed Project requests three waivers: first from City's Municipal Code Section 16.97.100 and BMR Guideline Section 5.2 to allow the for-sale affordable units to differ in the following design aspects: smaller size, interior layout, fewer bathrooms, increased number of bedrooms, smaller living area, less parking, smaller windows, different exterior finishes and massing, fewer balconies, and different interior finishes, lighting, and appliances, second from City's Municipal Code Section 16.45.120(4)(c)(iii) to allow common open space required as part of the development of the for-sale affordable units of 400 square feet that does not meet the minimum 20 feet by 20 feet dimension requirement pursuant to the code and third from City's Municipal Code Section 16.45.080 allowing no designated vehicular parking spaces for the proposed commercial space within the proposed apartment building that includes rental affordable units; and

WHEREAS, the applicant is requesting the first waiver to allow the construction of for-sale affordable units using volunteer labor and donated materials, the second waiver to allow fit the for-townhomes as programmed and designed at the allowed density without losing any affordable units, and the third waiver to allow development of the commercial space without having to expand the garage area to accommodate dedicated commercial space parking requiring reduction in the residential density and for-rent affordable units; and

WHEREAS, at a duly noticed public meeting on June 7, 2023, the Housing Commission considered the applicant's BMR proposal and draft BMR Housing Agreements, inclusive of the 74 inclusionary BMR units, and forwarded a recommendation of approval to the Planning Commission and City Council of the proposed BMR Housing Agreements showing unit sizes/types affordable to low-income households; and

WHEREAS, as allowed by Section 13 of the City's BMR Guidelines, the applicant requests approval of Project specific alternate guidelines in order to allow the development of the for-sale BMR units consistent with Habitat for HGSF development model; and

WHEREAS, at the duly noticed public meeting on June 7, 2023, the Housing Commission considered the applicant's request for Project specific alternative BMR guidelines and forwarded a recommendation of approval to the Planning Commission and City Council; and

WHEREAS, the Planning Commission has read and considered those certain Below Market Rate Housing Agreements ("BMR Agreements") between the City and The Sobrato Organization and their affordable housing partner HGSF and finds that those satisfy the requirements of Chapter 16.96 of the City's Municipal Code and in the BMR Housing Program Guidelines, except as modified, and would result in affordable housing that meets the City's affordable housing goals and results in a BMR program for the Project with characteristics that

are a reasonable equivalent alternative to a program that strictly complied with the BMR Housing Program Guidelines; 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 R. Blum and Associates to evaluate the appraisal provided by the applicant to determine the value of the Project's community amenities contribution. The appraisal determined the project's community amenities obligation would amount to \$3,350,000. The Community Development Director determined that the appraisal was created pursuant to the City's guidelines and approved the appraisal; and

WHEREAS, on December 6, 2022, the applicant submitted the community amenities proposal that provides eight rental units affordable to low-income households valued at approximately \$4,200,299 as part of the Project's community amenities proposal; and

WHEREAS, the City commissioned BAE urban economics to evaluate the community amenities proposal and subsequently determined that the value of the proposed eight low-income rental units, at \$4,169,795 or \$819,795 greater than the community amenities obligation of \$3,350,000 and is therefore consistent with the Zoning Ordinance requirements; and

WHEREAS, for these reasons, the community amenities proposal meets the minimum requirements of the Zoning Ordinance; and

WHEREAS, the proposed Project includes the removal of 29 heritage-size trees that have been evaluated by the City Arborist and on January 6, 2023 the City Arborist conditionally approved the heritage tree removal permit. The conditional action was posted on the site and mailed notices were sent out stating the action and no appeals were filed with the City; and

WHEREAS, the proposed project would include a minimum of 58 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, a phased vesting tentative map application requests to subdivision to merge the existing five legal parcels within the approximately 8.5-acre project site and create 316 multi-family apartment unit building including the proposed commercial space within one of the legal parcels, 116 townhome condominium units to be sold individually on three legal parcels, and create one legal parcel to accommodate the publicly accessible paseo, emergency vehicle access, and park; 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, on November 29, 2016, in connection with an update to the Land Use and Circulation Elements of the City’s General Plan and related zoning changes, commonly referred to as the ConnectMenlo project, the City certified the ConnectMenlo Final EIR (ConnectMenlo EIR); 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-specific EIR shall include a project specific analysis for all required topic areas pursuant to CEQA Guidelines Section 15162(d). The City shall also prepare a housing needs assessment (“HNA”) to inform the population and housing topic area of the Project EIR; and

WHEREAS, the City released a Notice of Preparation (“NOP”) for a prior version of the project including office buildings along with residential uses was released for a 30-day circulation period starting on January 8, 2021 to February 8, 2021. The City reissued the NOP for a revised 100 percent residential project on September 10, 2021. Following the release of the revised NOP, the Planning Commission conducted a scoping session on September 27, 2021. Comments received by the City on the NOPs and at the public EIR scoping meeting were considered during the preparation of the Draft EIR; and

WHEREAS, on September 27, 2021, 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 November 28, 2022 for a minimum 45-day review period that ended on January 27, 2023. The public review period included one duly noticed public meeting on December 12, 2022 to received oral and written comments on the Draft EIR; and

WHEREAS, On December 12, 2022, 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 August 4, 2023, 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, and an analysis of the Project (which included minor modifications from the project as analyzed in the Draft EIR) that demonstrates that development of the Project would not result in any new or more severe environmental effects than were analyzed in the Draft EIR. The Draft EIR, Response to Comments Document, text changes to the Draft EIR, and analysis of the modified Project constitute the Final EIR, a copy of which is available in Exhibit A; and

WHEREAS, the Final EIR identified no potentially significant adverse effects on the environmental caused by the Proposed Project; and

WHEREAS, the Planning Commission specifically finds that where more than one reason for approving the Proposed Project and rejecting alternatives is given in its findings or in the record; and

WHEREAS, the City prepared or caused to be prepared the Findings of Fact as included in Exhibit B 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 28, 2023 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, and community amenities proposal, and providing a recommendation to the City Council on the BMR Agreements and vesting tentative map.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission 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 Planning Commission 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, architectural control permit, and heritage tree removal permit and approval of the community amenities proposal, BMR Housing agreements, and vesting tentative map for the Project.
3. The Planning Commission 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's 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 Planning Commission adopts the attached Findings of Fact and MMRP as set forth in Exhibits B and C of this Resolution.
8. The Planning Commission 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.

I, Kyle Perata, Planning Manager and Planning Commission Liaison of the City of Menlo Park, do hereby certify that the above and foregoing Planning Commission Resolution was duly and regularly passed and adopted at a meeting by said Planning Commission on the 28th day of August 2023, by the following votes:

AYES: Barnes, Do, Ehrich, Ferrick, Riggs

NOES: None

ABSENT: Harris, Schindler

ABSTAIN: None

IN WITNESS THEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this 28th day of August, 2023.

PC Liaison Signature

DocuSigned by:

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Kyle Perata
Planning Manager
City of Menlo Park

Exhibits

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