

**PLANNING COMMISSION RESOLUTION NO. 2023-42**

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MENLO PARK RECOMMENDING CITY COUNCIL APPROVE BELOW MARKET RATE HOUSING AGREEMENTS AND VESTING TENTATIVE MAP FOR THE PROPOSED 123 INDEPENDENCE DRIVE PROJECT CONSISTING OF A 316 UNIT MULTI-FAMILY RESIDENTIAL APARMENT 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 DIRVE, 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 ASSOCAITED 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, major subdivision, 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 of 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 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**, 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 use permit to allow modification to the bird friendly design guidelines to 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 for 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, incorporated herein as Exhibit B, 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 for-sale BMR units consistent with HGSF model, of the City Council; 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, incorporated herein as Exhibits C and D, and their affordable housing partner HGSF, incorporated herein as Exhibit E, 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 \$4,196,795 or \$819,795 greater than the community amenities obligation 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, and the City Arborist conditionally approved the heritage tree removal permit. The conditional action was posted on the site and mailed notices 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**, 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, which is included in Exhibit F; and

**WHEREAS**, a phased vesting tentative map application requests to merge the existing five legal parcels within the approximately 8.5-acre project site and re-subdivide the project site to create 316 multi-family apartment unit building including the 2,000 square feet 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 proposes to execute the vesting tentative map in two phases. First phase would merge all the parcels and create four lots consisting of one lot (lot A) to receive the apartment building fronting Constitution Drive, the public paseo/park lot (lot 1) and third and fourth lots (lot B and lot C) would merge the parcels to create the lot to receive the townhomes. The second phase would further subdivide lots B, C, and D to create townhome condominiums; and

**WHEREAS**, notwithstanding the anticipated phasing plan, included herein as Exhibit G, the applicant may elect to develop the project in a single phase or modify the project phasing as permitted by the Subdivision Map Act; and

**WHEREAS**, staff has determined that the proposed vesting tentative map, included herein as Exhibit H, includes the required data and statements listed in the Subdivision Ordinance, and all information is complete and accurate; 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 Final Project EIR did not identify any potentially significant adverse effects on the environment caused by the Project; and

**WHEREAS**, on August 28, 2023, the Planning Commission fully reviewed, considered, evaluated the whole of the record including all public and written comments, pertinent information, document and plans, and certified the Final EIR for the Project adopted findings of fact in accordance with the CEQA (attached herein as Exhibit I), and adopted a Mitigation Monitoring and Reporting Program, attached herein as Exhibit J, prior to taking action to approve the use permit and architectural control for the 123 Independence Drive Project.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the City of Menlo Park finds that the above recitals together with the staff report and the application materials, including without limitation, the EIR, and all other documents, reports, studies, maps, oral and written testimony, and materials in the City's file for the applications and the Project, and all adopted and applicable City planning documents related to the Project and the Project Site and all associated evidentiary basis for the recommendations set forth in this resolution.

**BE IT FURTHER RESOLVED** that the Planning Commission makes the following findings and recommendations:

1. *BMR Agreements*. The BMR Agreements satisfy the requirements of Chapter 16.96 of the City's Municipal Code and the applicable BMR Housing Guidelines, as amended by the Use Permit. The request to modify BMR Housing Guidelines under Section 13 to allow first right of refusal in favor of Habitat for Humanity Greater San Francisco (HGSF) first and the City second, amending the definition of first-time homebuyer, modify the timing of when the educational requirements are completed and include other educational requirements such as sweat equity, modify what constitutes towards income limits for the purchasers, prohibit refinancing of affordable units after sale, modify the process of resale of the affordable units, and request that the City appoint HGSF as its designee or program provider and coordinator undertaking orientation, education, marketing, applicant selection, and title requirements to provide 18 for-sale low-income affordable units and 56 rental apartment units (includes eight low-income affordable rental units provided as part of the Project community amenities) affordable to low-income households as part of the proposed Project. The Planning Commission finds that the deviations from the BMR Housing Program Guidelines Sections 5.5, 7.1, 7.1.1, 7.2, 7.4, 10.2, and 11 meet the requirement of the BMR Housing Program Guidelines Section 13, which allows the City Council to approve a BMR proposal and ensuring Agreement(s) that is not consistent with every section of the BMR Guidelines where the deviation results in the proposal providing a reasonable equivalent alternative that is commensurate with the goals of the BMR Housing Program Guidelines. The Planning Commission recommends that the City Council waive the BMR Housing Program Guidelines Sections 5.5, 7.1, 7.1.1, 7.2, 7.4, 10.2, 11, and designate HGSF to be the City's designee or program provider to undertake orientation, marketing, and other activities around sale of the affordable townhome units, to promote development of for-sale units affordable to low-income households. The Planning Commission recommends that the City Council approve applicant's BMR proposal and BMR regulatory Agreements, including an agreement for the for-rent affordable units and for-sale affordable units in a form substantially consistent with the Agreements attached

hereto as Exhibits C, D, and E of this resolution, and direct the City Manager to execute the BMR Agreements on behalf of the City.

2. *Vesting Tentative Map*. The Planning Commission recommends that the City Council find that the approval of the Vesting Tentative Map is consistent with the requirements of the Subdivision Map Act and City of Menlo Park Municipal Code Section 15.22.020 for the following reasons:
  - a. The proposed Vesting Tentative Map for the Project Site is technically correct and in compliance with all applicable State regulations, City General Plan, Zoning and Subdivision Ordinances, and the State Subdivision Map Act.
  - b. The proposed Vesting Tentative Map for the project Site, including the contemplated design and improvements, is consistent with the applicable General Plan goals and policies, in particular that goals for the Bayfront Area set forth in the General Plan. The project is consistent with the land use designations described in the General Plan and would be consistent with the City General Plan policies as well as City Zoning Ordinance requirements for bonus level development projects at the proposed density and for the types of uses.
  - c. The project Site is physically suitable for the proposed development, including the proposed density of development, and the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially injure fish or wildlife or their habitat. The project is consistent with the density and uses for the site set forth in the General Plan. The project Site is in an urbanized area of the City currently occupied by office/warehouse development, landscaped, and hardscaped areas that include various urban uses and does not include any aquatic habitat. The project would not cause substantial environmental damage to the already disturbed Project Site and would not substantially injure the limited wildlife that access the site or their habitat.
  - d. The design of the subdivision or types of improvements is not likely to cause serious public health or safety problems. The project would comply with the General Plan's goals and policies, City Zoning and Subdivision Ordinances, and other applicable regulations designed to prevent serious health and safety problems.
  - e. The design of the subdivision or the type of improvements does not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision because alternate easements for access or use will be provided that are substantially equivalent to ones previously acquired by the public.



- f. The project is subject to flood and inundation hazards and is not located within a slide area. The Project Site is located within the 100-year flood hazard zone. However, the contemplated Project design and improvements will be elevated so as to mitigate flood hazards, and the Project would comply with the applicable requirements designed in mitigate flood hazards as well as address future sea level rise.

Based on the above findings, the Planning Commission recommends that the City Council approve the Vesting Tentative Map in form substantially consistent with Exhibit H, subject to Vesting Tentative Map conditions of approval attached herein as Exhibit K.

**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 28<sup>th</sup> day of August, 2023.

PC Liaison Signature

DocuSigned by:  
  
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Kyle Perata  
 Planning Manager  
 City of Menlo Park

Exhibits

- A. Project Plans including materials and color board and vesting tentative map -
- B. Project Below Market Rate proposal including requested concession, waivers, and modifications to the BMR Guidelines

- C. Draft Below Market Rate Housing Agreement and Declaration of Restrictive Covenants with The Sobrato Organization
- D. Draft Below Market Rate For-Sale Housing Agreement and Declaration of Restrictive Covenants with The Sobrato Organization
- E. Draft Below Market Rate Housing Agreement and Declaration of Restrictive Covenants with Habitat for Humanity Greater San Francisco (HGSF)
- F. Final EIR
- G. Vesting Tentative Map phasing narrative
- H. Vesting Tentative Map
- I. Statement of Findings and Facts pursuant to CEQA
- J. Mitigation Monitoring and Reporting Program
- K. Vesting Tentative Map conditions of approval