



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Development Department

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Community Development Director

City Manager Approval: 

TOPIC: BIOMARIN DEVELOPMENT AGREEMENT

SUBJECT: ACCEPT THE 3rd ANNIVERSARY ANNUAL REPORT FOR THE EXECUTED DEVELOPMENT AGREEMENT (ORDINANCE NO. 1982) BETWEEN BIOMARIN PHARMACEUTICAL AND THE CITY OF SAN RAFAEL FOR THE DEVELOPMENT OF AN EXPANDED SAN RAFAEL CORPORATE CENTER (750-790 LINDARO STREET AND 781-791 LINCOLN AVENUE AND 999 3RD STREET); CASE NO.: P23-004

RECOMMENDATION:

Accept the 3rd Anniversary Annual Report for the Executed Development Agreement (Ordinance No. 1982) Between BioMarin Pharmaceutical and the City of San Rafael for the Development of An Expanded San Rafael Corporate Center (750-790 Lindaro Street and 781-791 Lincoln Avenue and 999 3rd Street).

EXECUTIVE SUMMARY:

On [March 23, 2020](#), the City Council adopted Ordinance No. 1982 approving a Development Agreement (DA) between BioMarin Pharmaceutical (BioMarin) and the City of San Rafael. This DA permits the phased development and expansion of the San Rafael Corporate Center and the 999 3rd Street property with laboratory and research and development (R&D) buildings. The DA vests the land use and development entitlements/approvals for 10 years.

The procedures and requirements for reviewing and approving DAs are prescribed by City Resolution No. 6089. The procedures require periodic review to ensure that the project is proceeding in good faith and that the terms of the DA are being met. Ordinance No. 1982 specifically requires an annual review for this DA. This report presents the 3rd anniversary annual review, and a public hearing is required to solicit comments on the review of the DA. BioMarin has submitted an Annual Report (Attachment 1) which demonstrates progress and compliance with the terms of the DA.

BACKGROUND:

In 2012, BioMarin purchased the San Rafael Corporate Center (SRCC), a 15.54-acre campus of office buildings located south of Second Street. Since the initial purchase, BioMarin has built-out the original campus of buildings (five office buildings and two parking garages) and now occupies the campus with corporate office, R&D, and laboratory uses. In 2015, BioMarin was granted entitlements to expand the SRCC campus to develop a sixth office/lab building on the surface parking lot west of Lindaro Street

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

(755 Lindaro Street), and to expand the existing parking garage located east of Lincoln Avenue. This expansion has not been built.

In 2018, BioMarin purchased the three-acre site at 999 3rd Street, formerly owned and occupied by PG&E. This property, which also fronts on Lindaro Street and 2nd Street is contiguous to the SRCC. This three-acre site previously underwent a two-phased soils remediation project administered by both PG&E and BioMarin. The fully remediated site is now vacant and paved with asphalt.

BioMarin & Vivalon/EDEN Housing Development Approvals

On March 23, 2020, the City Council approved entitlements to redevelop the 999 3rd Street site and append this site to the SRCC for an expanded campus. BioMarin intends to develop the properties over a phased period to maintain its corporate campus and increase laboratory and research and development space. The City Council actions for this approval included the following:

- Certification of a Final Environmental Impact Report (FEIR).
- Expansion of the Planned Development (PD) zoning District adopted for the SRCC to encompass/incorporate the 999 3rd St. property. Within the expanded PD District, a General Plan Amendment was granted to allow for a new floor area ratio allowance (development intensity) to govern the expanded SRCC as one project site. The approvals also extended and incorporated the previously approved expansion of the SRCC campus, which, as noted above is the development of an office/lab building at 755 Lindaro Street and expanded parking garage.
- Approval of a Master Use Permit, Environmental and Design Review Permit, and Tentative Parcel Map. The Vesting Parcel Map divides the three-acre, 999 3rd Street into two parcels: a large parcel (116,680 square feet), and a small parcel (15,000 square feet) at the northwestern portion of the site.
- Approval of most of the 999 3rd Street site (large parcel reference above) for development of the expanded BioMarin campus with 207,000 sq. ft. of laboratory/research and development (R&D) and office space (split about equally between the two uses). This development consists of two, 72-ft tall, four-story buildings. The ground floor is designed to provide amenities to support the BioMarin campus, which may include lobbies; an auditorium; conference rooms; a small café; and dining space. A useable roof top deck (above the ground floor between the two buildings) is proposed for employee use as noted in the concept drawing package.
- Approval of a senior center and senior housing on northwest portion of the property (15,000 square foot small parcel reference above) was allocated to Vivalon (formerly Whistlestop) and EDEN Housing was approved for development of a six-story building for a new senior center and senior housing (67 low-income rental units). The expanded PD District does not apply to this parcel.
- Approval of a Development Agreement (DA) (adopted on April 6, 2020) to vest the approvals for an extended period (10 years). The DA freezes the City's development fees at the current fee schedule rates in exchange for BioMarin providing certain public benefits (discussed below). The DA is applicable to the expanded BioMarin campus development only. Vivalon and EDEN Housing are not party to this DA, so the vesting does not apply to the senior center and senior housing.

A complete and detailed Background and Project Description discussion can be found in the [January 28, 2020 Planning Commission staff report](#) and the [March 23, 2020 City Council staff report](#). The Planning Commission and City Council meetings can also be viewed on the Meeting Agendas & Videos page, online at: <http://www.cityofsanrafael.org/meetings>. Referenced application material exhibits are also included within FEIR attachments, also online at: https://www.cityofsanrafael.org/999-3rd.

Terms of the Development Agreement

The DA afforded the City and the developer (BioMarin) the opportunity to negotiate terms and conditions, as well as public benefits, in exchange for the 10-year vesting of the project approvals. The executed DA, which can be accessed [here](#) includes the following list of the public benefits, as well as other obligations and requirements:

1. Northwestern Portion Donation. BioMarin is required to donate the 15,000 square foot northwestern parcel on the 999 3rd Street site to Vivalon (formerly Whistlestop). The donation is part of a land exchange; based on the final appraisals of the two properties exchanged and the delta in value reflected in those appraisals, BioMarin's donation to Vivalon is One Million Three Hundred and Thirty Thousand Dollars (\$1,330,000).
2. Remediation. For the benefit of development of a healthy aging campus and affordable senior housing, BioMarin is required to complete the second phase of the soil remediation for the 999 3rd Street Property by performing an investigation and cleanup under the State Department of Toxic Substance Control (DTSC) Voluntary Cleanup Program. BioMarin is responsible to fund this remediation (\$2,000,000). The total remediation costs for the entire three-acre site are over \$16,000,000.
3. Retail Space. BioMarin agreed to provide 3,500 square feet of retail space on a portion of the 999 3rd Street property (the actual layout and location of such space to be determined by BioMarin). The retail space is required to be open to the public during BioMarin's business hours (from 9 a.m. to 5:00 p.m.).
4. Public Plaza. BioMarin agreed to provide an approximately 6,000 square feet of landscaped plaza "Front Porch" located at the corner of 3rd Street and Lindaro Street (the actual layout of such plaza to be determined by BioMarin). This plaza is required to be open to the public from dawn to dusk.
5. Striping for Bike Lane. BioMarin is required to add striping for Class II Bike Lane on Lindaro Street from 3rd Street to Andersen Drive or up to one mile of an equivalent section of roadway in San Rafael that is determined by the City to meet the City's Bicycle & Pedestrian Master Plan.
6. Restriping for Pedestrian Safety. BioMarin is required to improve pedestrian safety with restriping at the corner of Lindaro Street and 3rd Street.
7. Contribution for Traffic Light Synchronization. BioMarin is required to contribute \$500,000 to the City towards the synchronization of traffic lights along the 2nd and 3rd Street corridors to improve traffic flow or for other traffic/circulation/parking improvement measures as reasonably determined by the City. This obligation may be payable in full at the first anniversary of the Effective Date, or \$125,000 each year for four (4) years (commencing on the first anniversary of the Effective Date), at the option and sole discretion of BioMarin.
8. Contribution for Shuttle Service. BioMarin is required to contribute \$400,000 to the City for purposes of implementing a first mile/last mile shuttle service or for other traffic/circulation/parking improvement measures as reasonably determined by the City. This obligation shall be payable in increments of \$100,000 each year for four (4) years (commencing on the first anniversary of the Effective Date).
9. City's Use for Public Parking and Ancillary Uses. Upon the effective date of the DA and until BioMarin submits any construction related permit (grading, building, etc.) for either Building A or

B, BioMarin is required to allow the City to utilize up to 70% of the surface area of the 999 3rd Street property (the exact layout to be reasonably negotiated and agreed to by the parties so as to maximize the utility of the portion to be used by the City and the remaining portion) for public parking and ancillary uses (such as food truck market, etc.) until such time as commencement of construction activities for either building on this property.

10. Donation of Lease to Vivalon. Upon BioMarin's acquisition of the Vivalon property at 648 Lindaro Avenue (land exchanged referenced above), BioMarin is required to donate to Vivalon a leaseback of 930 Tamalpais Avenue for three (3) years. The property continues to be leased back to Vivalon and is expected to be leased back through Jan. 2025 (beyond the 3 years)

Additional Obligations. BioMarin agreed to the following additional obligations if certain timing milestones in the DA are not met:

- If construction on the 999 3rd Street property (now 801/815 Lindaro (APN011-265-02) has not commenced by the sixth (6th) anniversary (2026) of the effective date of this DA, then BioMarin is required to construct the Class II Bike Lane along Lindaro Street from 3rd Street to Andersen Drive (Item #5 Above) and required improvements to the 2nd Street and Lindaro Street intersection; and
- If construction of the second building at the 999 3rd Street property (now 801/815 Lindaro (APN011-265-02) has not commenced by the eighth (8th) anniversary (2028) of the effective date of the DA, then the vesting of the entitlements for the SRCC expansion (approved office/lab building at 755 Lindaro Street) shall expire.

Continuing Obligations Relating to the Original SRCC Development Agreement. The 1998 DA executed for the SRCC campus (initially executed between Fair Isaac and the City of San Rafael) included the following ongoing obligations (in perpetuity), which were carried over into the current DA between the City and BioMarin:

1. Public Parking on Nights and Weekends. The Project shall continue to make available to the public parking on the western SRCC surface parking lot and garage (west of Lindaro Street) during evening and weekend hours.
2. Park Area. The Project shall continue to provide the publicly accessible park located along the south side of the SRCC campus (south of and between Building A at 750 Lindaro Street and Building B at 781 Lincoln Avenue). This park area shall be open to the public from dawn to dusk. The public's use of the park area shall be subject to the Reservation Rules and Policies on file with the City.
3. Conference Facility. The Project will continue to offer an after-business-hours publicly accessible, interior conference facility consisting of 2,500 square feet. At the sole option of BioMarin, this facility may be relocated from the current location on the SRCC property to a location within the 999 3rd Street property that provides substantially equivalent amenities and space, as determined upon the completion of the retail and plaza portions of the R&D Development Property. The public's use of the Conference Facility shall be subject to the scheduling, fee, priority use and rules, regulations and guidelines provisions set forth in the Reservation Rules and Policies on file with the City.

Annual Reporting. Upon the City's request, BioMarin is required to report to the City, no more frequently than once per calendar year, on the status of its development plans related to the DA.

ANALYSIS:

Annual Report on Development Agreement

Per City Resolution No. 6089, periodic review is required to ensure that the project is proceeding in good faith and that the terms of the DA are being met. Per the terms of the DA, BioMarin has submitted an Annual Report (Attachment 2), which represents the 3rd year anniversary status of the project. While the Annual Report states that there are no updates on the start of the project construction, it reports on the status of the DA terms and obligations. The following is the status of the key terms and obligations (listed above) that are pertinent to this 3rd anniversary annual review:

- Item #1-Northwestern Portion Donation [COMPLETED IN 2022]- BioMarin and Vivalon (previously Whistlestop) negotiated and executed a Charitable Contribution and Exchange Agreement on September 14, 2020, to effectuate BioMarin's donation of the northwest portion of the property for the benefit of development of a healthy aging campus and affordable senior housing. Parcel separation and transfer to Vivalon was completed on January 21, 2022. Based on the final appraisals of the two properties exchanged and the difference in value reflected in those appraisals, BioMarin's donation to Vivalon is One Million Three Hundred and Thirty Thousand Dollars (\$1,330,000).
- Item #2-Remediation [COMPLETED 2021]. BioMarin has completed the remediation of the western portion of the 999 3rd Street property. Final site certification for the completed remediation (for the entire three-acre site) was provided by DTSC on March 24, 2021.
- Item #7-Contribution for Traffic Light Synchronization [75% COMPLETE]. BioMarin submitted a check in the amount of \$125,000 to the City of San Rafael in April 2023 as contribution towards the synchronization of traffic lights along the 2nd and 3rd Street corridors to improve traffic flow or for other traffic/circulation/parking improvement measures as reasonably determined by the City. This is the third of 4 annual payments. The total amount paid to date is \$375,000 of the required \$500,000.
- Item #8-Contribution to Shuttle Service [75% COMPLETE]. BioMarin submitted a check in the amount of \$100,000 to the City of San Rafael in April 2023. This contribution is to support the City of San Rafael implementing a first mile/last mile shuttle service or for other traffic/circulation/parking improvement measures as reasonably determined by the City. This is the third of 4 annual payments. The total amount paid to date is \$300,000 of the required \$400,000.
- Item #9-City's Use for Public Parking and Ancillary Uses [COMPLETED AGREEMENTS IN 2022]. BioMarin negotiated a license agreement with the City San Rafael for temporary public parking and ancillary uses and the agreement was fully executed on February 2, 2022.
- Item #5-Striping for Bike Lane [NOT COMPLETED]. BioMarin is required to add striping for Class II Bike lane on Lindaro Street from 3rd Street to Anderson Drive or up to one mile of an equivalent section of roadway in San Rafael that is determined by the City to meet the City's Bicycle & Pedestrian Plan. This obligation will commence upon issuance of the certificate of occupancy for either building A or B.

Staff has concluded that BioMarin has demonstrated good faith in meeting the terms and obligations of the DA. Through the City Council's acceptance of BioMarin's Annual Report, the Council will find and determine on the basis of substantial evidence that the property owner has complied in good faith with

the terms and conditions of the agreement during the period under review, and that the 3rd anniversary annual review is concluded.

Status of Vivalon/EDEN Housing Senior Center and Senior Housing

As discussed above, the Vivalon/EDEN Housing Senior Center and Senior Housing project was entitled concurrent with the BioMarin project approvals. However, Vivalon/EDEN Housing is not party to the DA. This project has progressed through the City building permit process. Building permits have been issued and the project is currently under construction.

Environmental Review

As discussed above, the BioMarin and Vivalon/EDEN Housing development projects were subject to environmental review and a Final Environmental Impact Report was prepared and certified. As required by State law (California Environmental Quality Act), action on the annual review of the Development Agreement must be reviewed to determine if it is subject to environmental review. As the Annual Review is an informational report, it will have no physical impact on the environment, and is therefore exempt from environmental review per CEQA Guidelines under 14 CRR Section 15061(b).

FISCAL IMPACT:

This project is a private development and does not have a negative impact on the City budget given that the planning review and processing of these applications are subject to 100% cost recovery fees, paid for by the applicant.

As discussed above, the DA for the project will be subject to the City's development fees but the required fees and fee amounts are locked-in at the time the DA is executed. In exchange for the vesting of the fees, the DA obligates BioMarin to other financial contributions to the City which are discussed above.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Accept the Annual Report as recommended by staff;
2. Accept the Annual Report with modifications; or
3. Continue the public hearing and require additional information, study, or analysis.

ATTACHMENTS:

1. BioMarin Annual Report, March 30, 2023



BioMarin Annual Report

Obligations Relating to the R&D Development Agreement

March 30, 2023



BioMarin Annual Report

Obligations Relating to the R&D Development Agreement

San Rafael, CA

March 30, 2023

As required by the Development Agreement (“DA”), BioMarin is pleased to submit this annual report to provide an update on the status of the new projects and compliance with the DA’s terms and obligations, due on each anniversary of the Effective Date. While there are no updates on the start of construction of new R&D projects, the following addresses compliance with the obligations to date.

Northwestern Portion Donation. Developer shall donate the Northwestern Portion to Whistlestop as part of a land swap through which the delta in value of the swapped properties, as of a June 2018 appraisal, results in a One Million Two Hundred Thousand Dollars (\$1,200,000) donation. Developer shall donate the Northwestern Portion in its then current as-is condition, for development of a healthy aging campus and affordable senior housing.

BioMarin and Vivalon (previously Whistlestop) negotiated and executed a Charitable Contribution and Exchange Agreement on September 14, 2020 to effectuate BioMarin’s donation of the northwest portion of the property for the benefit of development of a healthy aging campus and affordable senior housing. The agreement was completed in 2021 and Parcel separation was completed.

Remediation. For the benefit of development of a healthy aging campus and affordable senior housing, Developer shall complete the second phase of the soil remediation for the 999 3rd Street Property by performing an investigation and cleanup under the DTSC’s Voluntary Cleanup Program. Developer shall complete such second phase of remediation prior to commencement of construction and development activities for the R&D Development Property, resulting in out-of-pocket costs for Developer of over Two Million Dollars (\$2,000,000) and total remediation costs of over Sixteen Million Dollars (\$16,000,000).

BioMarin completed the remediation of the west portion of the property and received DTSC’s final site certification for the entire property on March 24, 2021.

Retail Space: Developer agrees that a portion of the R&D Development Property consisting of approximately 3,500 square feet of retail space (the actual layout and location of such space to be determined by Developer) (the “Retail Space”) shall be open to the public during Developer’s business hours (from 9 a.m. to 5:00 p.m.). This obligation shall commence upon the issuance of the certificate of occupancy for the Retail Space and when the Retail Space is open for business and continue until such time as the Retail Space is vacant because a tenant cannot be found despite commercially reasonable efforts to market the space at a commercially reasonable rent for three years.

This obligation will commence upon the issuance of the certificate of occupancy for retail space.



Public Plaza: Developer agrees to provide an approximately 6,000 square feet of landscaped plaza “Front Porch” located at the corner of 3rd Street and Lindaro Street (the actual layout of such plaza to be determined by Developer) that will be open to the public from dawn to dusk. This obligation shall commence upon the issuance of the certificate of occupancy for such plaza.

This obligation will commence upon the issuance of the certificate of occupancy for retail space.

Striping for Bike Lane: Developer shall add striping for Class II Bike lane on Lindaro Street from 3rd Street to Anderson Drive or up to one mile of an equivalent section of roadway in San Rafael that is determined by the City to meet the City’s Bicycle & Pedestrian Plan. This obligation shall be required at the time of the issuance of the first certificate of occupancy for either Building A or B, unless otherwise required by Section 4.11.1.

This obligation will commence upon issuance of the certificate of occupancy for either building A or B.

Contribution for Traffic Light Synchronization: Developer shall contribute \$500,000 to the City towards the synchronization of traffic lights along the 2nd and 3rd Street corridors to improve traffic flow or for other traffic/circulation/parking improvement measures as reasonably determined by the City. This obligation may be payable in full at the first anniversary of the Effective Date, or \$125,000 each year for four (4) years (commencing on the first anniversary of the Effective Date and continuing for the next three (3) anniversaries of the Effective Date), at the option of Developer, in Developer’s sole discretion. In exchange for this \$500,000 contribution and in light of significant concerns about pedestrian safety and the fact that a parallel public path already exists, the City is eliminating a prior requirement that the Lindaro and Parking Expansion Project develop and maintain a trail along the backside of the Lincoln Avenue garage which is along southern edge of the campus abutting Mahon Creek.

BioMarin submitted checks in the amount of \$125,000 to the City of San Rafael in April 2021 and 2022 as contribution towards the synchronization of traffic lights along the 2nd and 3rd Street corridors to improve traffic flow or for other traffic/circulation/parking improvement measures as reasonably determined by the City. This is the 3rd of four annual payments for a total of \$500,000.

Contribution for Shuttle Service: Developer shall contribute \$400,000 to the City for purposes of implementing a first mile/last mile shuttle service or for other traffic/circulation/parking improvement measures as reasonably determined by the City. This obligation shall be payable in increments of \$100,000 each year for four (4) years (commencing on the first anniversary of the Effective Date and continuing for the next three (3) anniversaries of the Effective Date).

BioMarin submitted two checks each in the amount of \$100,000 to the City of San Rafael in April 2021 & 2022. This contribution is to support the City of San Rafael implementing a first mile/last mile shuttle service or for other traffic/circulation/parking improvement measures as reasonably determined by the City. This is the 3rd of four annual payments for a total of \$400,000.



City's Use for Public Parking and Ancillary Uses. As of the Effective Date of this Agreement and until Developer submits any construction related permit (grading, building, etc.) for either Building A or B, the Developer shall allow the City to utilize up to 70% of the surface area of the R&D Development Property (the exact layout to be reasonably negotiated and agreed to by the parties so as to maximize the utility of the portion to be used by the City and the remaining portion) for public parking and ancillary uses (such as food truck market, etc.) (the "Temporary Public Parking Parcel") until such time as commencement of construction activities for either building on the R&D Development Property. City shall be financially and legally responsible for (i) any improvements or modifications to the R&D Development Property that

BioMarin entered into the License Agreement for a Right of Entry for Temporary Use with the City of San Rafael on February 2, 2022. This License Agreement, which was amended in November 2022, allows for temporary public parking and ancillary uses, including construction lay down activities. City has been using the area for construction layout to support the 3rd street improvements and Eden Housing and Vivalon's construction activities.