

Menlo Portal Project

Comments on the Draft Environmental Impact Report (DEIR)

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From: Lynne Bramlett [mailto:lynne.e.bramlett@gmail.com]

Sent: Monday, March 22, 2021 8:41 PM

To: Sandmeier, Corinna D <cdsandmeier@menlopark.org>

Cc: Kyle Barriger <kbarriger@gmail.com>

Subject: Request for draft EIR Project -- Menlo Portal Project

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Dear Corinna,

The below email gives more information and background. A parallel City process is the update to the 2016 Local Hazard Mitigation Plan Annex with a focus on identifying hazards and mitigating them.

Unfortunately, the Menlo Portal project is located in a liquefaction risk zone as per Cal My Hazard site. (Listed below). Sea level rise is also causing the water table to rise, which can magnify the liquefaction related damage during and following an earthquake. The cumulative impacts can be significant. Ground water rise is also a potential serious problem as per the Bay Nature article I link to below.

My request:

1) I ask that the EIR include a study of the stability of foundation soils underneath the planned project. Projects in a liquefaction zone can potentially be mitigated due to strengthening the soils or building reinforcement.

2) I ask that the EIR include a mapping study of the ground-water table along with predictions due to global sea level rise.

Much of District 1 is located in an area with substantial hazard risk. These conditions weren't necessarily known (or considered) in 2016. I think it's more than time for the planning department to consider hazards in their

Lynne Bramlett

----- Forwarded message -----

From: Lynne Bramlett <lynne.e.bramlett@gmail.com>

Date: Mon, Mar 22, 2021 at 1:30 PM

Subject: Draft EIR for Menlo Portal Project

To: <planning.commission@menlopark.org>

Cc: Lynne E Bramlett (CERT) <lynne.e.bramlett@gmail.com>

Dear Planning Commission,

I am the Lead for a grass-roots-based disaster preparedness group. I write as an individual but as an informed individual.

POINT ONE: The Menlo Portal project sites are all located in a liquefaction zone area. Most of the damage in the 1989 Loma Prieta earthquake and the 2010-2011 earthquake in Christchurch, New Zealand was due to liquefaction. You can look up the properties (115 Independence Drive, 104 and 110 Constitution Drive) at the Cal OES My hazard tool. According to the United States Geological Society, "Liquefaction takes place when loosely packed, water-logged sediments at or near the ground surface lose their strength in response to strong ground shaking. Liquefaction occurring beneath buildings and other structures can cause major damage during earthquakes."

Request One: I ask that the Menlo Portal Project EIR include a study of the stability of foundation soils underneath the planned project. I also ask that the City's construction permitting process incorporate liquefaction zones.

POINT TWO: Sea level rise predictions have increased (faster and higher) since 2016 when the Connect Menlo program-level EIR was approved. Sea level rise increases the liquefaction vulnerability because it raises the ground-water levels. The harm won't be limited to just the low lying areas near the San Francisco Bay. Please see the Bay Nature article, "The Sea Beneath us," for a general, yet extensive, overview of the potential harm of the rise in the water table. This includes "possibly toxic wetlands," corroding of "urban drainage systems," the carrying to the surface of "hazardous materials trapped in the soil:" and more. As the article notes, "The issue is barely on the radar of Bay Area planners and decision-makers." I don't think it was on the ConnectMenlo "radar" either.

Request Two: I ask that the Menlo Portal EIR include a mapping study of the ground-water table today along with predictions due to sea level rise.

The USGS predicts that the Hayward fault is mostly to erupt next. Perhaps you've heard of the HayWired Scenario, which details the impacts of a 7.0 magnitude eruption and probabilities of impacts to the areas around the Bay. Even a 6.0 earthquake can cause serious harm. The Christchurch earthquake was a magnitude 6.2 and it had an enormous "social and economic impact" on Christchurch and New Zealand. "The City is also now more flood prone and more "vulnerable to liquefaction damage in future earthquake events because the ground surface is now closer to the groundwater level." I have a relative whose home was one of thousands bought by the government to prevent rebuilding on an unsafe spot. It's time to start considering just how habitable the general District 1 area will be following a major earthquake. Before we continue the building, I think we need an economic study that takes into account a scenario like what occurred in Christchurch but perhaps applied to the HayWired Scenario.

The Bay Nature article gives creative suggestions for how the Bay Area can prepare for rising sea levels. We need a new, comprehensive building plan for the District 1 area that takes a regional approach. Projects are coming forward based on 2016 zoning decisions made by three City Council members who are no longer in office. For example, green space can be "used as a sponge to draw out and absorb groundwater." When I read that, I couldn't help but think of the Willows Village site. To me, a big park would be a much better solution for the space.

A CEQA review process alone is not enough. We need a much higher bar before continuing the building in District 1. A ground-water table and soil study is needed so that suitable mitigation can occur. The soil might need to be strengthened or the building reinforced. The report might also recommend no building. As we all know, earthquakes don't kill people but buildings do. Approving this project without the due diligence could put the City (and the builder) at potential serious risk of litigation. Even bricks falling off a crumbling building can kill people. For many reasons, it's time to review the ConnectMenlo Program Level EIR, and the related zoning ordinances, in light of today's knowledge of sea-level rise, liquefaction zones, rising ground water tables, and how these work together to increase probabilities of harm during and after earthquakes. If we cannot show good faith planning efforts to mitigate the risk, the City is likely to be found liable given recent court cases.

The Bay Nature article also included possible solutions to sea level rise that go beyond just building walls. Those can have unintended consequences to the areas without a wall.

Request Three: I ask the Planning Commission to advocate for a comprehensive review of the ConnectMenlo zoning ordinances in light of new (and possibly overlooked) information. I've identified some data gaps above.

Request Four: I recently attended a Housing Element Update reporting seminar where the point was made that cities are also supposed to submit an annual General Plan Progress Report. I asked for the Government Code and I was told it was Section 65400 and 65700. I see the Housing progress report included, but also a broader interpretation of the statute. Verbally, the presenters said that only 25% comply, but that all cities and counties must submit an annual report on the status of their general plan, and progress on its implementation, to their legislative bodies. This is supposed to be done by April 1 each year. Unfortunately, this statute is not currently enforced. I don't think that Menlo Park has been submitting these reports. I ask the Planning Commission to consider this matter and to make recommendations to Council. An annual General Plan Progress Reports would help Council, Staff, Commissioners and the general public to be kept more informed.

Finally, Staff Reports, and even a prior City Budget document ("From vision to fruition") have referred to the ConnectMenlo "vision" without detailing this vision. Based on my reading of the ConnectMenlo planning documents, the "vision" was about creating a revenue stream to the City to make up for the one lost when California shut down redevelopment agencies. It's time to explicitly detail the "vision" so it's in writing. Right now, it's a generic word only masquerading as something more. We need the "vision" detailed in writing so that this too can be examined. For now, I ask that Staff stop using this term until they supply specifics.

Sincerely,

Lynne Bramlett

650-380-3028

From: Louise DeDera [mailto:loudedera@gmail.com]

Sent: Friday, December 18, 2020 1:29 PM

To: Smith, Tom A <tasmith@menlopark.org>

Subject: Input on Menlo UpTown Project

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My comment on this project and adjacent Jefferson Project and 111 Constitution Dr. is that instead of office space, these projects need to include retail which would keep the 600-700 new residents from having to drive to fill basic needs: Grocery, Pharmacy, Office supply, gas station.

Thank you,

Louise

Louise Sturges DeDera cell 650-642-1422 Compass, 1550 El Camino Real Suite 100, Menlo Park,
BRE 00409938 Loudedera@gmail.com

DEPARTMENT OF TRANSPORTATION

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a California Way of Life.*

March 29, 2021

SCH #: 2020010055

GTS #: 04-SM-2020-00351

GTS ID: 18305

Co/Rt/Pm: SM/84/25.93

Payal Bhagat, Principal Planner
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

Re: Menlo Uptown Station + Draft Environmental Impact Report (DEIR)

Dear Payal Bhagat:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for this project. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The following comments are based on our review of the February 2021 DEIR.

Project Understanding

The project sponsor proposes demolition of the existing office and industrial buildings, associated improvements, and redevelopment of the project site with an approximately 327,970-gross-square-foot, seven-story multi-family apartment building with approximately 335 dwelling units and an approximately 34,819-gross-square-foot commercial office building, as well as associated open space, circulation and parking, and infrastructure improvements. The project sponsor is currently proposing 15 percent of the units be affordable to low income households. This project site is located north of U.S.-101 and south of State Route (SR)-84.

Travel Demand Analysis

With the enactment of Senate Bill (SB) 743, Caltrans is focused on maximizing efficient development patterns, innovative travel demand reduction strategies, and multimodal improvements. For more information on how Caltrans assesses Transportation Impact Studies, please review Caltrans' Transportation Impact Study Guide. Caltrans' acknowledges that the project Vehicle Miles Travelled

Payal Bhagat, Principal Planner
March 29, 2021
Page 2

(VMT) analysis and significance determination are undertaken in a manner consistent with the Office of Planning and Research's (OPR) Technical Advisory. Per the DEIR and TRA-1, this project is found to have Less than Significant impacts with mitigations and, subsequently, transportation demand measures have been identified to mitigate the impacts when possible.

Mitigation Strategies and Transportation Demand Management (TDM) Plans

Caltrans acknowledges the mitigation and TDM strategies incorporated into the DEIR and supports the implementation and monitoring of these strategies.

Hydrology

Please clarify and address our comment made in the January 2020 letter. Based on the FIRM06081C0306F dated 4/5/19 Zone AE 11 feet, include an explanation of how raising the ground elevation 3 to 5 feet would not impede or redirect flood flows in a manner which would result in additional flooding impacts to neighboring properties.

Lead Agency

As the Lead Agency, the City of Menlo Park is responsible for all project mitigation, including any needed improvements to the State Transportation Network (STN). The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, please contact Laurel Sears at laurel.sears@dot.ca.gov. Additionally, for future notifications and requests for review of new projects, please contact LDIGR-D4@dot.ca.gov.

Sincerely,



MARK LEONG
District Branch Chief
Local Development - Intergovernmental Review

c: State Clearinghouse



Serving Our Community Since 1902

500 Laurel Street, Menlo Park, California 94025-3486 (650) 321-0384 (650) 321-4265 FAX

SERGIO RAMIREZ
District Manager

In reply, please refer to our
File No. 055-236-010/020/190

March 15, 2021

VIA EMAIL: Payal Bhagat pbhagat@menlopark.org

RE: DRAFT EIR
MENLO PORTAL
104 CONSTITUTION DRIVE, 110 CONSTITUTION DRIVE, AND 115 INDEPENDENCE DRIVE
MENLO PARK, CA 94025
APN: 055-236-010/020/190

Dear Payal Bhagat:

District staff has reviewed the Draft EIR for the above mentioned project and have the following comments:

- The existing 6" VCP main on Independence Drive needs to be upsized to the District's standard 8" PVC C900 DR 18 downstream of connection point (approximately 664').
- Due to capacity issues downstream of the Constitution Drive connection, an overflow line shall be installed to the Independence main for redundancy (approximately 367').

If you have any questions, please call me at 650-321-0384.

Due to the current coronavirus (COVID-19) pandemic, please check the District's website at www.westbaysanitary.org for the latest information on obtaining permits.

Very truly yours,

WEST BAY SANITARY DISTRICT

Jonathan Werness
Engineering Technician

cc: BHK, SXR

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SEQUOIA UNION HIGH SCHOOL DISTRICT



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April 14, 2021

By U.S. Mail & E-Mail: PBhagat@menlopark.org

Payal Bhagat
City of Menlo Park
Community Development, Planning Division
701 Laurel Street
Menlo Park, CA 94025

Re: [Response of Sequoia Union High School District to Draft Environmental Impact Report for the Menlo Portal Project](#)

Dear Ms. Bhagat:

The Sequoia Union High School District (“District”) hereby submits comments regarding the Draft Environmental Impact Report (“Draft EIR”) prepared by the City of Menlo Park (“City”) for the project to be located on an approximately 3.2-acre site having the addresses of 104 Constitution Drive, 110 Constitution Drive, and 115 Independence Drive, Menlo Park, CA (collectively, the “Property”). According to the Draft EIR, the proposed project, sponsored by Menlo Park Portal Venture, LLC (an affiliate of development company Greystar) (“Developer”), will consist of the demolition of the existing commercial and industrial space and redevelopment of the Property with an approximately 326,581-gross-square-foot, seven-story multi-family apartment building with approximately 335 dwelling units (the “Project”). This enormous Project is anticipated to generate approximately 613 new residents and employees, and a corresponding increase of approximately 67 new high school students to the District. The Project will be located approximately 0.25 miles northwest of the District’s TIDE Academy, and less than 1.5 miles northwest of the District’s Menlo Atherton High School.

The Project, like the immediately adjacent 111 Independence Drive project and the Menlo Uptown project located directly across the street from TIDE Academy, are all mixed-use residential projects proposed in the Bayfront Area of Menlo Park a short distance away from the District’s TIDE Academy. Further, the Initial Studies and Draft EIRs for all three of these

projects were prepared by the same firm and are substantially similar. The District submitted extensive comment letters for these projects on February 2, 2021. Yet, almost none of the District's concerns have been addressed in the instant Draft EIR. For these reasons, the District, in this letter, reiterates many of its comments submitted in response to the Draft EIRs prepared for the 111 Independence Drive and Menlo Uptown Projects.

The instant Draft EIR does not comply with the California Environmental Quality Act ("CEQA," Pub. Res. Code §§ 21000, *et seq.*) and its implementing regulations (Cal. Code Regs., tit. 14, §§ 15000, *et seq.*, "CEQA Guidelines"), for both technical and substantive reasons. Moreover, the Draft EIR, based on an improper interpretation of statutes added and amended by Senate Bill (SB) 50, does not include sufficient information to evaluate potential environmental impacts both to schools, and related to schools. **Through this letter, the District again wishes to emphasize that this Project, in combination with the numerous other projects currently pending before the City, has the potential to have a profound negative effect on the District's students, their families, and residents who will reside in and near the Project.** Some of these impacts are further demonstrated through the "Fiscal Impact Analysis Report for Proposed Menlo Portal Project," prepared by BAE Urban Economics for the Project ("Fiscal Impact Report").

With the foregoing in mind, the District requests that the City revise the Draft EIR to address the serious deficiencies identified in this letter, develop appropriate mitigation measures for impacts that are identified as significant, and then recirculate the revised Draft EIR as required by CEQA. (CEQA Guidelines § 15088.5.)

The District addressed many of these issues with the Developer at a meeting on February 25, 2020. Since that meeting, and unlike other developers in the area, this Developer has been entirely unresponsive to District's efforts to have further meetings, and to acknowledge potential impacts related to Developer's numerous projects proposed throughout Menlo Park. The District understands that the City will soon consider Greystar's projects for approval. The District, therefore, requests urgent and serious attention to the concerns expressed in this letter.

I. Background: Initial Study, Notice of Preparation, and District's Scoping Letter

The District previously submitted comments to the City in response to the City's Notice of Preparation ("NOP") and Initial Study ("Initial Study"), on February 7, 2020. A copy of the District's January comment letter (referred to as the "Prior Comment Letter") is attached hereto, and incorporated herein by this reference.

Through the Prior Comment Letter, the District specifically requested that the Draft EIR include a description and evaluation of certain information needed to determine whether impacts related

to schools are potentially significant. The Prior Comment Letter contains six general areas the District believes must be addressed by the Draft EIR in order to adequately evaluate the school impacts: population, housing, transportation/traffic, noise, air quality, and public services (including schools). Within those categories, the District described 27 subcategories that it requested be evaluated in the Draft EIR. Most of the subcategories were nevertheless not addressed at all in the Draft EIR, and the ones that were addressed received no more than a cursory review. Because such information and environmental analysis was not included in the Draft EIR, the document is inadequate as set forth in more detail below.

II. The Draft EIR does not meet its purpose as an informational document because it fails to provide an adequate description of the environmental setting related to schools.

One of CEQA's basic purposes is to inform government decision-makers and the public about the potential significant environmental effects of proposed projects and to disclose to the public the reasons for approval of a project that may have significant environmental effects. (CEQA Guidelines § 15002(a)(1) and (a)(4).) In line with this goal, the preparer of an EIR must make a genuine effort to obtain and disseminate information necessary to the understanding of impacts of project implementation. (See, CEQA Guidelines § 15151; *Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1236.)

An EIR must describe existing environmental conditions in the vicinity of the proposed project from both a local and regional perspective, which is referred to as the "environmental setting." (CEQA Guidelines § 15125.) This description of existing environmental conditions serves as the "baseline" for measuring the qualitative and quantitative changes to the environment that will result from the project and for determining whether those environmental effects are significant. (*Id.*; see also, CEQA Guidelines § 15126.2(a); *Neighbors for Smart Rail v. Exposition Metro Line Constr. Auth.* (2013) 57 C4th 439, 447.)

District facilities are a critical part of the Project location's environment, and should be considered throughout the Draft EIR impact categories. As noted, the Project is located approximately 1,250 feet east of the District's TIDE Academy (less than a quarter of a mile). (Draft EIR at 4.3-31.) TIDE Academy's first year of operations was the 2019/2020 school year. While enrollment was 103 students for the first year of operations, the District anticipates that it will reach its 400-student capacity at TIDE by the fourth year of operations (2023-2024). The Project is otherwise located within the District's Menlo Atherton High School attendance boundary. Menlo Atherton High School, which is the county's largest high school, currently exceeds its capacity by 200 students.¹

¹ As explained below, this is contrary to analysis contained in the Fiscal Impact Report, which concludes that as of the 2019/2020 school year, Menlo Atherton High School had available capacity to accommodate 167 additional students.

The District is inadequately equipped to house these excess students. The proposed Project will be accessed via entrance points on Independence Drive and Constitution Drive, which roads are both used by District families, students, and staff to walk, bike, and drive to TIDE Academy from neighborhoods located to the east, west, and south. Independence Drive, Constitution Drive, and the Bayfront Area generally have been, and are anticipated to continue being, heavily impacted by traffic, traffic exhaust, and fumes due to increased development in the neighborhood.

The Draft EIR purports to describe the Project's environmental setting in each of the five environmental impact categories that are analyzed in the Draft EIR. In doing so, the Draft EIR notes the location of TIDE Academy in a few instances. However, the Draft EIR otherwise fails to present any information needed to assess the Project's environmental impacts on the District, District students, TIDE Academy, or Menlo Atherton High School. For instance, the Draft EIR fails to accurately and fully address the current and projected future enrollment at TIDE or any other District schools that will be affected by the Project; the District's educational program objectives at TIDE and or Menlo Atherton High School; a description of how the District currently uses its facilities at TIDE or Menlo Atherton High School; and the current vehicular and pedestrian paths of travel used by District staff, students, and their families to get to and from these schools, in the context of a neighborhood that has already been severely impacted by traffic. Without consideration of these factors, it is impossible for the lead agency and public to assess whether there are any impacts posed by the Project on the District's students, families, and staff, and whether those impacts are significant.

III. The Draft EIR does not meet its purposes as an informational document because it fails to provide an adequate analysis of environmental impacts on and related to schools.

A. The Draft EIR inappropriately relies on information, analysis, and mitigation measures contained in the "program" EIR prepared for the City's ConnectMenlo project in 2016.

The Draft EIR improperly "scopes out" numerous environmental impact categories, including "Public Services" impacts related to schools. In doing so, the Draft EIR relies on the analysis of Public Services impacts contained in the Initial Study, which in turn tiers off of the analysis of Public Services impacts contained in the City's EIR prepared for its General Plan update (referred to as "ConnectMenlo") in 2016. (Draft EIR at 1-2; Initial Study at 3-48.) Specifically, the Initial Study states as follows:

The ConnectMenlo Final EIR determined that any development associated with ConnectMenlo would be subject to payment of development impact fees, which under Senate Bill 50 (SB 50) are deemed to be full and complete mitigation... Therefore, because the proposed project would comply with existing regulations prepared to

minimize impacts related to schools and would be subject to the mandatory payment of developer impact fees pursuant to SB 50, the proposed project would have a less-than-significant impact related to the need for remodeled or expanded school facilities and no new or more severe impacts would occur beyond those examined in the ConnectMenlo Final EIR.

(Initial Study at 3-48.)

The ConnectMenlo Draft EIR concluded as follows with regard to development impacts on the District and its facilities:

Because future development under the proposed project would occur incrementally over the 24-year buildout horizon and, in compliance with SB 50, would be subject to pay development impact fees that are current at the time of development, impacts related to the SUHSD would be less than significant.

(Connect Menlo Draft EIR at 4.12-40; emphasis added.)

A “program” EIR is an EIR prepared for a series of small projects that can be characterized as one large project. (14 Cal. Code Regs. § 15168(a).) A project proponent may rely on a program EIR’s analysis of the program’s environmental impacts, mitigation measures, and alternatives in order to engage in a simplified environmental review for a future project contemplated by the program. (*Id.* at subd. (d).) However, when a program EIR is relied on by a future project proponent, the new project proponent must carefully examine the impacts addressed in the program EIR and determine whether additional environmental review is required. An agency’s evaluation of the sufficiency of a program EIR for later approval of a project contemplated by the program involves a two-step process:

1. First, the agency considers whether the project is covered by the program EIR by determining whether it will result in environmental effects that were not examined in the program EIR. (14 Cal. Code Regs. § 15168(c)(1).)
2. Second, the agency must consider whether any new environmental effects could occur, or new mitigation measures would be required, due to events occurring after the program EIR was certified. (14 Cal. Code Regs. §§ 15168(c)(2), 15162.)

If the project will result in significant environmental impacts that were not examined in the program EIR, then the project proponent must prepare an EIR analyzing those impacts and corresponding mitigation measures. (14 Cal. Code Regs. §§ 15162 and 15168(c)(1); Pub. Res. Code §§ 21100(a), 21151.)

The Initial Study and Draft EIR's reliance on the ConnectMenlo EIR's analysis of potential impacts on the District and its facilities is improper and misguided. Circumstances have changed since the time that the ConnectMenlo EIR was prepared, and the development assumptions underlying the ConnectMenlo project approvals have proven inaccurate. Critically, ConnectMenlo was based on the incorrect assumption that development under the program would take place in an incremental fashion, over the course of 24 years. As noted in the instant Project's Draft EIR, ConnectMenlo envisioned that 4,500 new residential units would be added to the Bayfront Area by 2040. According to the City's current "ConnectMenlo Project Summary Table," development currently proposed and/or completed in the neighborhood would result in the construction of 3,257 net new residential units. This equates to 72% of the total authorized new buildout under ConnectMenlo.² It is clear from this trend that full buildout under ConnectMenlo will be achieved well in advance of 2040. The Initial Study acknowledges the fact that this assumption was incorrect in providing that "[a]lthough the ConnectMenlo Final EIR assumed a buildout horizon of 2040, the maximum development potential may be reached sooner than anticipated." (Initial Study at 1-6, fn. 9.)

The Initial Study also provides that "the pace of development would not create additional impacts beyond those identified in the ConnectMenlo Final EIR for topic areas identified in this Initial Study." (*Id.*) The District vehemently disagrees with this conclusion. Contrary to the Draft EIR's assertions on page 3-13, footnote 11, the ConnectMenlo EIR's analysis regarding the General Plan Update's impacts on the District (and on other public services) was founded on the assumption that development of the Bayfront Area would take place in an "incremental fashion."

If the City continues to approve new residential development projects at its current pace, the District will be subject to a rapid influx of students to the District's facilities, which are already at or exceeding capacity. This rapid influx, combined with the existing inadequacies of the District's school facilities funding sources (as discussed below), will prevent the District from engaging in meaningful long-term facilities planning, and will instead require the District to spend valuable resources on temporary solutions to the District's facilities problems, such as the purchase and lease of portables. **This influx of students will not only impact the District's ability to accommodate increased enrollment, but will pose numerous traffic, transportation, safety, air quality, noise, and other impacts affecting the District's ability to safely and effectively provide its services.** As discussed below, none of these impacts were properly analyzed in the ConnectMenlo EIR, the Initial Study, or the Draft EIR (including the Fiscal Impact Analysis).

Further, ConnectMenlo did not consider either the program or Project's specific impacts on the District's TIDE Academy, as this school did not yet exist when the ConnectMenlo EIR was prepared. Because TIDE Academy is located in the Bayfront neighborhood, it is particularly

² <https://www.menlopark.org/DocumentCenter/View/23346/ConnectMenlo-Project-Summary-Table>

vulnerable to the thousands of residential units authorized by ConnectMenlo, all of which will be constructed in the Bayfront Area. ConnectMenlo did not consider whether/how the placement of thousands of residential units within a few hundred meters from a District high school would impact the District's program at TIDE Academy. Accordingly, the Draft EIR's reliance on the analysis and mitigation measures described in the ConnectMenlo EIR is inappropriate with respect to impacts on the District.

Finally, as discussed below, ConnectMenlo did not otherwise properly analyze the General Plan update's impacts on or related to the District and its facilities. Accordingly, the Draft EIR's reliance on the ConnectMenlo EIR as the basis for disregarding certain Project impacts on the District is improper.

B. The Draft EIR and ConnectMenlo EIR fail to identify and analyze all impacts on school facilities under CEQA's threshold of significance for Public Services impacts.

The Initial Study, similar to the ConnectMenlo EIR, states that the proposed Project would have a significant "Public Services" impact on schools if it would:

Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for [for the provision of school services].

(Initial Study at 3-46.)

In purporting to analyze public services impacts on the District under this threshold, the Initial Study and Draft EIR tier from the analysis of the ConnectMenlo Draft EIR. The ConnectMenlo Draft EIR's analysis consisted mostly of noting the current enrollment capacity of Menlo Atherton High School and the District's unspecified plans for construction of a future high school. (ConnectMenlo Draft EIR at 4.12-39-4.12-40.) The ConnectMenlo EIR concluded that because the developer would pay developer fees as required by SB 50, any impacts on schools would be less than significant. (ConnectMenlo Draft EIR at 4.12-40.) The instant Project's Draft EIR and Initial Study adopt the same conclusion as the ConnectMenlo EIR, albeit without analyzing the District's facilities capacity in any way. (Initial Study at 3-48; Draft EIR at 5-7.)

Through this short and conclusory analysis, the Initial Study and Draft EIR fail appropriately to analyze the Project's potential impacts under the above-cited Public Services CEQA threshold.

In order to support a determination that environmental impacts are insignificant (and can therefore be scoped out of an EIR), the lead agency must include in either the Initial Study or the

EIR the reasons that the applicable environmental effects were determined to be insignificant. (Pub. Res. Code § 21100(c); CEQA Guidelines § 15128.) An unsubstantiated conclusion that an impact is not significant, without supporting information or explanatory analysis, is insufficient; the reasoning supporting the determination of insignificance must be disclosed. (See, *City of Maywood v. Los Angeles Unified Sch. Dist.* (2012) 208 CA4th 362, 393; *San Joaquin Raptor/Wildlife Rescue Ctr. V. County of Stanislaus* (1994) 27 CA4th 713 [findings that project will not pose biological impacts to wetlands must be supported by facts and evidence showing that the lead agency investigated the presence and extent of wetlands on the property, which analysis must be disclosed to the public].)

The approach utilized in the ConnectMenlo EIR, the Initial Study, and the Draft EIR oversimplifies the myriad of ways in which large residential and commercial development projects, like the Project, can impact a school district's need for new or physically altered facilities in order to maintain performance objectives. These documents fail to analyze all potential impacts under this standard, including but not limited to: (1) whether the influx of students would require "physically altered" school facilities unrelated to the accommodation of additional enrollment; (2) whether other impacts of the proposed Project, such as increased traffic, noise, or air pollutants in the neighborhood surrounding TIDE Academy, could impact the District's need for new or physically altered school facilities; and (3) whether other impacts of the proposed Project could otherwise interfere with the District's ability to accomplish its own performance objectives.

The District anticipates that its ability to provide adequate services at TIDE Academy will be severely impacted by the Project. For this reason, the District requested that the Draft EIR identify, describe, and/or analyze the following:

1. Existing and future conditions within the District, on a school-by-school basis, including size, location and capacity of facilities.
2. Adequacy of both existing infrastructure serving schools and anticipated infrastructure needed to serve future schools.
3. District's past and present enrollment trends.
4. District's current uses of its facilities.
5. Projected teacher/staffing requirements based on anticipated population growth and existing State and District policies.
6. Description of any impacts on curriculum as a result of anticipated population growth.

7. Cost of providing capital facilities to accommodate students on a per-student basis, by the District.
8. Expected shortfall or excess between the estimated development fees to be generated by the Project and the cost for provision of capital facilities.
9. An assessment of the District's present and projected capital facility, operations, maintenance, and personnel costs.
10. An assessment of financing and funding sources available to the District, including but not limited to those mitigation measures set forth in Section 65996 of the Government Code.
11. Any expected fiscal impacts on the District, including an assessment of projected cost of land acquisition, school construction, and other facilities needs.
12. An assessment of cumulative impacts on schools resulting from additional development already approved or pending.
13. Identification of how the District will accommodate students from the Project who are not accommodated at current District schools, including the effects on the overall operation and administration of the District, the students and employees.

Without consideration of the above, the Draft EIR fails as an informational document.

Finally, the Initial Study and the Draft EIR fail to analyze adequately cumulative public services impacts on the District due to extensive new development within District boundaries. EIRs must discuss cumulative impacts of a project when the project's effects on the environment, viewed in conjunction with impacts of other past, present, or reasonably foreseeable future projects, is cumulatively considerable. (CEQA Guidelines § 15130(a); see, *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 CA4th 713, 720, finding that piecemeal approval of several projects with related impacts could lead to severe environmental harm.) The purpose of the cumulative impacts analysis is to avoid considering projects in a vacuum, because failure to consider cumulative harm may risk environmental disaster. (*Whitman v. Board of Supervisors* (1979) 88 CA3d 397, 408.)

As noted in the District's most recent School Fee Justification Study (April 2020), the District anticipates that an estimated 17,516 residential units may be constructed within District boundaries over the next 20 years, including approximately 5,500 units in Menlo Park. (SFJS, Appx. C.) Using the District's current student generation rate of 0.2 new high school students per residential unit, this new development, which will include numerous other development projects in the Bayfront Area, is anticipated to generate well over a thousand new students to the District. (SFJS at 9.) It is therefore likely that the District will exceed its facilities capacity at

various locations throughout its boundaries in the coming years. The District anticipates both that the combined impact of the Project and all other residential development and commercial development projects in District boundaries and the Project neighborhood will significantly impact the District's ability to provide its public service in accordance with established performance objectives, and that the Project's incremental effect is cumulatively considerable.³ (CEQA Guidelines § 15130(a).) Because the District currently exceeds capacity in various locations, it is further anticipated that the Project, when viewed in conjunction with numerous other projects, will cause the District to need new or physically altered school facilities, including at TIDE Academy.

The Initial Study and Draft EIR were required to provide sufficient information for the public and lead agency to assess these impacts and potential mitigation measures. These documents do not provide this information. Rather, the Initial Study and Draft EIR inappropriately rely on the analysis conducted in the ConnectMenlo EIR, which also failed to properly analyze the above impacts.

C. The Draft EIR fails to incorporate findings from the City's Fiscal Impact Report, which Report, despite its shortcomings, reveals potential ways that the Project could impact the District under CEQA.

As a preliminary matter, it is unclear how the Fiscal Impact Report relates to the City's CEQA process for the Project. The cover letter from Bae Urban Economics to the City indicates that the Report is intended to be used by the City in the City's evaluation of the proposed Project. However, the Initial Study and Draft EIR fail to incorporate or discuss the Fiscal Impact Report's findings, despite the Report's clear relevance as to whether or not the Project poses public services impacts under CEQA.

The Report does not support the Draft EIR's findings that the Project poses no significant impacts on the District, as the Report, like the Draft EIR and ConnectMenlo Draft EIR, does not analyze all of the potential ways that the Project could impact the District. Rather, the Report focuses narrowly on how the Project's addition of students to the District could increase current District per-student expenditures, which expenditure amounts are extrapolated from the District's budget for Fiscal Years 2019/2020. The Report does not consider whether or how the addition of new students could result in new District expenditures not accounted for in the current budget, or how other impacts of the Project besides the mere generation of additional students could impact the District's current expenditures or cause the District to incur new expenditures.

³ The Draft EIR contains an inventory of "Cumulative Projects in the Vicinity of the Project Site" on pages 4-3-4-5, but fails to include the proposed, very large mixed-use residential and commercial development project at 123 Independence Drive. It is expected that this project, in combination with the instant Project, will significantly impact District students attending TIDE Academy, and it must be considered when analyzing cumulative impacts on and related to schools.

The Fiscal Impact Report’s findings likewise appear to rely on a number of inaccurate assumptions. For one, the Report overstates the current Menlo Atherton High School capacity by 400 seats.⁴ Further, the Report notes that the District is declining in enrollment, but fails to mention that the decrease is not distributed evenly across schools. Menlo Atherton High School’s attendance area still generates the highest number of students each year, in comparison to other District schools. The High School remains the largest high school in San Mateo County, even taking into account the District’s efforts to move students to other District options through open enrollment. For the above reasons, the District anticipates the expenditures related to enrollment at Menlo Atherton High School will only increase over time as capacity becomes more constrained. As enrollment at TIDE Academy is optional for District students, TIDE will not serve as a guaranteed depository of excess District students in the Menlo Atherton High School attendance area. Perhaps most significantly, the Report fails to consider how the Project, in combination with all other projects being considered in the Bayfront Area, would cumulatively impact the District’s budget.

Despite the Fiscal Impact Report’s shortfalls, it still supports a finding that the Project will pose significant impacts on the District. Specifically, the Report concludes that the Project alone would “result in a net deficit to the Sequoia Union High School District totaling \$460,700 annually.” In light of the above, it can safely be assumed that additional students generated by the Project, in combination with additional students from all other projects being considered in the Bayfront Area, would have a staggering fiscal impact on the District, which would far exceed any revenues being received by the District through property taxes or one-time developer fee payments. These impacts must be considered and analyzed in the Draft EIR, and mitigation measures must be proposed.

D. The Draft EIR contains an inadequate discussion of all other “school-related” impacts.

In addition to impacts on the District’s facilities under the Public Services CEQA threshold of significance noted above, the Draft EIR fails adequately to analyze probable Project impacts “related to” schools, as required by CEQA and case law interpreting CEQA. In disregarding these impacts, the Draft EIR and Initial Study attempt to rely on Government Code section 65996, enacted by SB 50. However, reliance on SB 50 and Government Code section 65996 as a panacea to all impacts caused by the Project on the District demonstrates a misunderstanding regarding the law and developer fees.

⁴ In its letter to the City dated July 31, 2020, the District inadvertently listed its Menlo Atherton High School capacity to be 2,600, when in reality the High School’s capacity is 2,200 seats.

By way of background, developer fees are fees that may be levied or imposed in connection with or made conditions of any legislative or adjudicative act by a local agency involving planning, use, or development of real property. (Ed. Code § 17620.) “Level 1” developer fees are levied against residential and commercial or industrial developments on a price per square foot basis. If a district is able to establish a sufficient “nexus” between the expected impacts of residential and commercial development and the district’s needs for facilities funding, then the district may charge up to \$4.08 per square foot of residential development, and up to \$0.66 per square foot of commercial development, which statutory amounts may be increased every two years based on the statewide cost index for class B construction.⁵

From a practical standpoint, the amount of developer fees received by school districts typically fall woefully short of alleviating the impacts caused by development. This is due largely to the facts that: (1) statutory developer fee amounts fail to acknowledge the differences in costs of school construction from one district to another, which particularly burdens school districts in the Bay Area, where both land and construction costs significantly exceed other parts of the state; (2) **the developer fee amounts fail to contemplate the special facilities needs of those districts experiencing rapid growth, such as the need for portables;** and (3) the adjustment formula for developer fees is based on a “construction cost index” and does not include indexing related to the increases in land costs, resulting in the actual costs of facilities (i.e., land and improvements) increasing at a greater rate than the adjustment.

The inadequacy of developer fees as a source of funding for school facilities has forced school districts to rely increasingly on other sources of funding, primarily including local bond funds and State bond funds administered under the State’s School Facilities Program (SFP). However, these sources of funds can be equally unreliable. Local bond funds are difficult to generate, as local bonds are subject to school district bonding capacity limitations and voter approval. State funds are also unreliable and take considerable time to obtain, especially during this time of funding uncertainty caused by the outbreak of COVID-19. Either way, the funding formula was never intended to require the State and local taxpayers to shoulder a disproportionate portion of the cost of school facilities.

SB 50 declares that the payment of the developer fees authorized by Education Code section 17620 constitutes “full and complete mitigation of the impacts of any legislative or adjudicative act on the provision of adequate school facilities.” (Gov. Code § 65995(h); see also, Gov. Code § 65996(a).) **However, California courts have since acknowledged that developer fees do not constitute full and complete mitigation for school-related impacts other than impacts “on school facilities” caused by overcrowding.** (*Chawanakee Unified Sch. Dist. v. Cty. of*

⁵ Due to a Fee Sharing Agreement between the District and its elementary feeder school districts, the District is currently authorized to impose fees of \$1.63 per square foot for residential construction (40% of \$4.08), and \$0.26 per square foot for commercial/industrial construction (40% of \$0.66).

Madera (2011) 196 Cal.App.4th 1016 (“*Chawanakee*”).) *Chawanakee* addressed the extent to which the lead agency (Madera County) was required to consider school related impacts in an EIR for new development. The court determined that SB 50 does not excuse a lead agency from conducting environmental review of school impacts other than an impact “on school facilities.” The court required that the County set aside the certification of the EIR and approvals of the project and take action necessary to bring the EIR into compliance with CEQA. (*Id.* at 1029.) In so holding, the court explained as follows:

[A]n impact on traffic, even if that traffic is near a school facility and related to getting students to and from the facility, is not an impact ‘on school facilities’ for purposes of Government Code section 65996, subdivision (a). From both a chronological and a molecular view of adverse physical change, the additional students traveling to existing schools will impact the roadways and traffic before they set foot on the school grounds. From a funding perspective, the capped school facilities fee will not be used by a school district to improve intersections affected by the traffic. Thus, it makes little sense to say that the impact on traffic is fully mitigated by the payment of the fee. In summary ... the impact on traffic is not an impact on school facilities and, as a result, the impact on traffic must be considered in the EIR.

(*Id.* at 1028-29.)

Thus, contrary to the assertions of the Initial Study and Draft EIR, the payment of fees does not constitute full mitigation for all impacts caused by development, including those related to traffic, noise, biological resources, air quality, pedestrian safety, and all other types of impacts “related to” the District and its educational program. The Draft EIR’s approach is significantly flawed and inconsistent with the requirements of *Chawanakee*, as it failed to analyze 27 sub-categories of information that are necessary to determine whether the Project results in significant environmental impacts both on and *related to* schools. The Draft EIR likewise failed to consider evidence in the Fiscal Impact Report showing that the Project would increase District expenditures above and beyond District facilities expenditures caused by increased enrollment.

Specific areas where the Draft EIR and Initial Study failed adequately to evaluate school-related impacts are discussed below:

i. Traffic/Transportation/Circulation

Though the Draft EIR generally analyzes the traffic impacts anticipated by the Project, its analysis is inadequate, particularly as related to schools. The following issues require the City to revise and recirculate the Draft EIR.

As explained in the Prior Comment Letter, the Draft EIR was required to address potential effects related to traffic, including noise, air quality, and any other issues affecting schools. (Pub. Resources Code, §§ 21000, *et seq.*; Cal. Code Regs., tit. 14, §§ 15000, *et seq.*; *Chawanakee, supra*, 196 Cal.App.4th 1016.) Additionally, specifically related to traffic, the Draft EIR was required to analyze safety issues related to traffic impacts, such as reduced pedestrian safety, particularly as to students walking or bicycling to and from TIDE Academy; potentially reduced response times for emergency services and first responders traveling to these schools; and increased potential for accidents due to gridlock during school drop-off and pick up hours.

The requirement to analyze student safety issues is rooted in both the California Constitution and CEQA. Article I, section 28(c), of the California Constitution states that all students and staff of primary, elementary, junior high, and senior high schools have the inalienable right to attend campuses that are “safe, secure, and peaceful.” CEQA is rooted in the premise that “the maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.” (Pub. Res. Code § 21000(a).) Naturally, safety is crucial in the maintenance of a quality environment. “The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached.” (Pub. Res. Code § 21000(d).) The Legislature has made clear in declarations accompanying CEQA's enactment that public health and safety are of great importance in the statutory scheme. (Pub. Res. Code §§ 21000 (b), (c), (d), (g); 21001(b), (d) (emphasizing the need to provide for the public's welfare, health, safety, enjoyment, and living environment.) (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 386.)

In order to fully understand these issues, the District requested that the Draft EIR include the following:

14. The existing and the anticipated vehicular traffic and student pedestrian movement patterns to and from school sites, including movement patterns to and from TIDE Academy, and including consideration of bus routes.
15. The impact(s) of increased vehicular movement and volumes caused by the Project, including but not limited to potential conflicts with school pedestrian movement, school transportation, and busing activities to and from TIDE Academy.
16. The estimated travel demand and trip generation, trip distribution and trip assignment by including consideration of school sites and home-to-school travel.

17. The cumulative impacts on schools and the community in general resulting from increased vehicular movement and volumes expected from additional development already approved or pending.
18. The direct, indirect, and cumulative impacts on the circulation and traffic patterns in the community as a result of traffic generated by the transportation needs of students to and from the Project and schools throughout the District during the Project build-out.
19. The impacts on the routes and safety of students traveling to school by vehicle, bus, walking, and bicycles.

The Draft EIR fails to analyze any of the above categories of information. There is, therefore, no way for the lead agency or the public to assess whether the Project will pose a traffic impact related to the District's provision of public services.

As noted in the Prior Comment Letter, the District anticipates that the construction and operation of the proposed Project will have significant impacts on traffic, transportation, circulation, and student safety.

Regional vehicular access to the Property is provided by US Highway 101 (US 101), via the Marsh Road on- and off-ramps located to the west and State Route 84 (SR 84 or the Bayfront Expressway) located to the north. Access to the Project will be provided via Independence Drive and Constitution Drive. The Bayfront Area of Menlo Park has experienced a drastic impact in traffic over the last ten to fifteen years as the City has continued to approve of newer corporate campuses and mixed biotechnology, commercial, office, and residential land uses.

ConnectMenlo calls for an increase of 4.7 million square feet of non-residential office space, 850 hotel rooms, 5,430 residential units, 13,960 residents, and 20,150 employees, all within the Bayfront Area.⁶ ConnectMenlo concluded that the additional development would result in significant and unavoidable impacts to roadway segments and increase peak hour delays at intersections from increased traffic, even after the mitigation measures called for in the General Plan Update are implemented (if ever).⁷

The Level of Service (LOS) analysis included in the Project's Draft EIR further reveals that the intersections surrounding the Project site and TIDE Academy, including the intersections of Marsh Road/Bayfront Expressway, Chrysler Drive/Independence Drive, Chilco

⁶ Menlo Park Small High School Project Final EIR (October 6, 2016), p. 2-12; ConnectMenlo: General Plan Land Use & Circulation Elements and M-2 Area Zoning Update Draft EIR (June 1, 2016), Table 3-2.

⁷ Menlo Park Small High School Project Final EIR (October 6, 2016), pp. 2-15 – 2-16; ConnectMenlo: General Plan Land Use & Circulation Elements and M-2 Area Zoning Update (June 1, 2016), p. 4.13-73.

Street/Constitution Drive, Willow Road/Bayfront Expressway, and University Avenue/Bayfront Expressway, are currently operating at an LOS of 'D' or worse at one or more peak hours, and do not meet the City's desired LOS standards. (Draft EIR, Appx. E, at 11.) Per the Draft EIR, traffic generated by the Project, in conjunction with other near term projects expected to be approved, would also cause the levels of service at the intersection of Chrysler Drive/Constitution Drive to drop to an 'F,' and would further degrade the levels of service at certain other intersections. (Draft EIR at 4.2-49-4.2-50.) In analyzing intersection Levels of Service under "Cumulative (2040) Plus Project Conditions," the Draft EIR shows that most intersections in the Project neighborhood will be operating out of compliance with the City's Circulation Policy goals. (Draft EIR at 4.2-54.) While the Draft EIR discusses certain improvement measures that the City may take to resolve these deficient intersections, including the payment of transportation impact fees to fund some (but not all) of the improvement measures, it is unclear from the Draft EIR exactly when or if many of the improvement measures will be accomplished. (See, e.g., Draft EIR at 4.2-55-4.2-56, with regard to the deficient Chrysler Drive/Constitution Drive intersection ["While the improvements to the westbound approach are included in the City's TIF program, the improvements on the other approaches are beyond those in the TIF program and payment of the TIF would not entirely address the change to LOS as a result of project traffic"]; see also, Draft EIR, Appx. E, at 16 and 18 ["The implementation timeline of these proposed improvements [to walking, biking, and transit facilities] is unknown"].) In addition to deficient vehicular intersections, the Draft EIR states that the "network of sidewalks, crosswalks, and curb ramps are discontinuous in the vicinity of the proposed project." (Draft EIR at 4.2-7.) Finally, the Draft EIR goes on to note several sidewalk gaps that exist in the Bayfront Area. (*Id.*)

The construction of, and traffic generated by, the Project will severely exacerbate the existing inadequacies in the City's roadways/sidewalks noted above, the already stifling traffic in the general area and Bayfront Area, and the safety issues posed thereby. These impacts will severely inhibit the District's ability to operate its educational programs, including at TIDE Academy. However, none of these issues were properly analyzed in the ConnectMenlo EIR or the Draft EIR.

The Draft EIR shows that the proposed Project is anticipated to impede circulation in the Bayfront Area, and clog the access roads to, from, and around the District's TIDE Academy. (See, 5 Cal. Code Regs. § 14010(k), which requires that school facilities be easily accessible from arterial roads.) The TIDE Academy driveway is located a short distance east of the proposed Project. Both TIDE Academy and the proposed Project would be accessed by the same roads, including Marsh Road, Independence Drive, Constitution Drive, Jefferson Drive, and the immediately surrounding streets. In addition to drawing hundreds of new residents to the area, including many new high school students, the proposed Project will draw hundreds of daily office commuters, visitors, and emergency access vehicles from around the Bay Area.

As indicated in the City's General Plan, and as shown in the Draft EIR, the City's roads and intersections are not currently equipped to accommodate such high density development and high levels of traffic. (See, e.g., Draft EIR at 4.2-24-4.2-26 [ConnectMenlo EIR found significant and unavoidable impacts to several different elements of the City's transportation system due to project buildout].) Independence Drive is a narrow two-lane road with sidewalks on only one side of the street. Accordingly, such increases to traffic in the area will not only make it much more difficult for students and staff to travel to and from TIDE Academy, but will also **drastically increase the risk of vehicular accidents to District families, students, and staff traveling to and from school**. For instance, many students at TIDE Academy access the school by turning onto Independence Drive from Marsh Road. This turn is already extremely dangerous, as it requires drivers essentially to complete a 180 degree turn, with no visibility of the cars and/or people traveling on Independence Drive. By packing hundreds of new residents and visitors into the western Bayfront Area, the Project will be magnifying this dangerous road condition, further placing District students, families, and staff in harm's way. This roadway condition was not discussed in the Draft EIR.

In addition to increased risks of vehicular accidents, the Draft EIR fails to analyze how traffic and parking impacts posed by the Project will impact the safety and convenience of TIDE Academy students who walk or bike to school. Title 5 of the California Code of Regulations requires that school sites be located within a proposed attendance area that encourages student walking and avoids extensive bussing. (5 Cal. Code Regs. § 14010(1).) To mitigate the impacts of increased traffic in the Bayfront Area, the District has committed to develop and implement a Travel Demand Management Plan. Through this Plan, the District encourages the use of student walking, biking, and other alternative means of student transport to school.⁸ Further, to mitigate the impacts of conflicts and/or dangerous interactions between pedestrians, bicyclists, and vehicles, the District agreed to prepare a "Safe Routes to School Map" that identifies facilities such as traffic lights, crosswalks, and demarcated bikeways that promote safe routes to school.⁹

The Draft EIR notes the following goals and policies from the City's General Plan related to the safe promotion of alternative modes of transportation:

- Goal CIRC-1: Provide and maintain a safe, efficient, attractive, user-friendly circulation system that promotes a healthy, safe, and active community and quality of life throughout Menlo Park.

⁸ Menlo Park Small High School Project Draft EIR (July 8, 2016), p. S-4; The City of Menlo Park's Comprehensive Bicycle Development Plan (2005) identifies school-aged bicycle commuters as one of the two key bicycle commute groups utilizing the City's bicycle infrastructure.

⁹ Menlo Park Small High School Project Draft EIR (July 8, 2016), p. S-6.

- Goal CIRC-2: Increase accessibility for and use of streets by pedestrians, bicyclists, and transit riders.
- Policy CIRC-2.14. Impacts of New Development. Require new development to mitigate its impacts on the safety...and efficiency...of the circulation system. New development should minimize cut-through and high-speed vehicle traffic on residential streets; minimize the number of vehicle trips; provide appropriate bicycle, pedestrian, and transit connections, amenities and improvements in proportion with the scale of proposed projects; and facilitate appropriate or adequate response times and access for emergency vehicles.
- Policy CIRC-3.4: Level of Service. Strive to maintain level of service D at all City-controlled signalized intersections during peak hours...
- **Policy CIRC-6.4: Employers and Schools. Encourage employers and schools to promote walking, bicycling, carpooling, shuttles, and transit use.**

(Draft EIR at 4.2-17-4.2-20; emphasis added.)

Further, and as noted by the ConnectMenlo EIR (but inexplicably excluded from the instant Project's Draft EIR), the City has committed itself to supporting "Safe Routes to School programs to enhance the safety of school children who walk and bike to school" in General Plan Policy CIRC-1.9. (City of Menlo Park General Plan (Nov. 29, 2016), Circulation Element at CIRC-16.)

While the Draft EIR purports to analyze whether the Project complies with the above policies (except for CIRC-1.9), the Draft EIR does not include adequate information or analysis regarding the transportation needs and patterns of District students, including those attending TIDE Academy. The Draft EIR likewise fails to consider how extreme increases in traffic on roads that are already narrow and crowded will impact the safety of students traveling to and from TIDE Academy. Rather, in assessing whether the Project would be consistent with Policy CIRC-6.4 related to Employers and Schools, the Draft EIR doesn't even mention schools in simply stating that the "proposed project would develop and implement a TDM plan that includes measures encouraging employers to promote walking, bicycling, carpooling, shuttles, and transit use." (Draft EIR at 4.2-35.) The Draft EIR's description of the proposed TDM plan likewise makes no mention of schools or students, and, as noted by Planning Commissioner DeCardy at the March 22, 2021 public hearing for this Draft EIR, provides no concrete evidence that the TDM plan will actually work in reducing traffic in the area. (Draft EIR at 4.2-27-4.2-28.) This analysis is not adequate under CEQA, as it does not provide the public with sufficient information as to whether the Project will comply with the City's General Plan policies, including any "applicable plan, ordinance, or policy...addressing all components of the circulation system." (See, Draft EIR's Transportation Impacts Threshold of Significance No. 1,

which states that the Project will have significant transportation impacts if it would “[c]onflict with an applicable plan, ordinance, or policy...addressing all components of the circulation system.”)

The Draft EIR likewise provides only a surface-level analysis regarding the Project’s compliance with other City policies related to the promotion of safe alternative modes of transportation. The Draft EIR notes that there are several existing deficiencies with pedestrian facilities within and in the vicinity of the Project site, including discontinuous sidewalks, crosswalks, and curb ramps, as well as sidewalk gaps. The Draft EIR also notes that the Project would involve the addition of small portions of sidewalk along the Property’s frontage intended to encourage the use of pedestrian facilities, and some street lighting along Independence Drive and Constitution Drive. (Draft EIR at 4.2-32.) However, the analysis completely fails to consider how the probable increase in traffic congestion to the area could exacerbate existing deficiencies with pedestrian facilities, thereby posing severe safety issues to pedestrian use of the Project neighborhood. Contrary to assertions in the Draft EIR, the new criteria established in CEQA Guidelines section 15064.3 for analyzing transportation impacts does not excuse a lead agency from analyzing and mitigating traffic congestion impacts where such impacts may cause significant impacts on air quality, noise, and pedestrian safety. (Pub. Res. Code § 21099(b)(3).)

The Project also proposes residential parking that both fails to comply with the City’s Municipal Code (thus constituting a significant CEQA impact under Transportation Impacts Threshold of Significance No. 1), and fails to satisfy residential parking demand caused by the Project by 115 stalls. (Draft EIR at 4.2-59.) While inadequate parking in and of itself may not be considered a significant impact under CEQA, the Draft EIR is still required to provide sufficient information regarding any secondary impacts that may result from inadequate parking, such as safety impacts to students traveling to and from school. (See, *Covina Residents for Responsible Development v. City of Covina* (2018) 21 CA5th 712, 728.) Inadequate parking proposed by the Project will result in an increased demand for public parking spaces in the streets surrounding TIDE Academy and the Project site, which will in turn lead to more crowded streets and a higher potential for conflicts between vehicles and pedestrians. As neither the 111 Independence Drive nor the Menlo Uptown Project propose adequate parking, the lack of adequate parking proposed by the Project will further exacerbate parking demand in the area. These secondary impacts on pedestrian and student safety caused by inadequate parking must be analyzed in the Draft EIR.

Finally, the Draft EIR’s cumulative traffic impacts analysis is deficient. As noted above, EIRs must discuss cumulative impacts of a project when the project’s effects on the environment, viewed in conjunction with impacts of other past, present, or reasonably foreseeable future projects, are cumulatively considerable. (CEQA Guidelines § 15130(a).) (See, *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 CA4th 713, 720.) While a lead agency may incorporate information from previously prepared program EIRs into the agency’s

analysis of a project's cumulative impacts, the lead agency must address all cumulative impacts that were not previously addressed in the program EIR. (Pub. Res. Code § 21083.3(c); 14 CCR 14183(b)(3).)

The Project's above-discussed anticipated traffic and safety impacts on the District, combined with the anticipated traffic and safety impacts of the vast number of development projects that have recently been approved and are being considered for approval in the Bayfront Area, and specifically the western Bayfront Area, are cumulatively considerable. Each of the large mixed-use projects proposed in the Bayfront Area alone promises to drastically increase traffic in the neighborhood, resulting in air quality, noise, and safety issues for District families and staff attending TIDE Academy. When considered together, their collective impacts on traffic, safety, and air quality in the neighborhood will be devastating. All of these impacts are exacerbated by the rapidity at which the City is approving of development projects in the Bayfront Area, as the City's roadways have not been updated to handle the increase in traffic associated with full buildout under ConnectMenlo. These cumulative impacts on the District's TIDE Academy were not adequately discussed in the ConnectMenlo EIR or the Project's Draft EIR, and the City proposes no clear measures that could successfully mitigate the impacts.

ii. Air Quality

The Draft EIR analyzes air quality impacts posed by construction and operation of the Project. The Draft EIR further recognizes that the proposed Project would pose a significant environmental impact if it would expose "sensitive receptors," including schools, to substantial pollutant concentrations. (Draft EIR at 4.3-31.) The Draft EIR does not, however, specifically discuss potential construction and operational air quality impacts as they pertain to the District's TIDE Academy, and students traveling to and from TIDE Academy. Air quality impacts on the District, its students, and staff have the potential to disrupt classes, prevent students from being outside during construction, and prevent students from traveling to and from TIDE Academy during construction. The Draft EIR is, therefore, required to analyze the following:

20. The direct and indirect air quality impacts of the Project on the District's TIDE Academy, including District students, families, and staff walking to and from TIDE Academy.
21. The cumulative air quality impacts on schools and the community in general resulting from increased vehicular movement and volumes expected from additional development already approved or pending in the City and Project neighborhood.

As the Air Quality impacts discussion does not provide sufficient information needed to analyze air quality impacts on the District's students and TIDE Academy, the discussion of air quality impacts is lacking, and the Draft EIR is not in compliance with CEQA.

iii. Noise

As with its analysis of Air Quality impacts, the Draft EIR notes that TIDE Academy is a nearby “sensitive receptor.” As such, the Draft EIR appears to acknowledge that noise impacts on the District’s TIDE Academy must be analyzed. (See, Draft EIR at 4.5-17.) The Draft EIR discusses how Project construction may pose potentially significant impacts on sensitive receptors due to the generation of excessive groundborne vibration or groundborne noise levels. (Draft EIR at 2-12.) However, the Draft EIR’s analysis of noise impacts generally contains insufficient quantifiable data and analysis that would allow the public and lead agency to understand whether noise and/or vibration generated from either construction or operation of the proposed Project, including in combination with all past, present, and reasonably foreseeable future projects, would cause significant impacts on the District’s educational program at TIDE Academy.

Noise impacts could disrupt classes, prevent students from being able to be outside due to overwhelming outside noise that would affect teachers’ abilities to monitor and direct students because they cannot be heard, and lastly, could affect the interior of buildings in which students are housed. For these reasons, the District requested that the following information be discussed and analyzed in the Draft EIR:

22. Any noise sources and volumes which may affect school facilities, classrooms, and outdoor school areas.

Because the Draft EIR did not include sufficient quantifiable information related to the generation of noise and vibration impacts on TIDE Academy, the Draft EIR fails to serve its informational purpose.

iv. Population and Housing

The District anticipates that this Project will generate approximately 67 new students, and specifically requested that the Draft EIR analyze:

23. Historical, current, and future population projections for the District.

Relatedly, the District requested that the following categories of information pertaining to housing be addressed:

24. The type and number of anticipated dwelling units indirectly resulting from the Project.

25. The average square footage for anticipated dwelling units, broken down by type of unit, indirectly resulting from the Project.
26. The estimated amount of development fees to be generated by development in accordance with implementation of the Project.
27. The phasing of residential and development over time from inception to build-out of the Project.
28. The anticipated number of units available for low-income housing.

While the Draft EIR noted the anticipated number of low-income housing units, the Draft EIR otherwise fails adequately to address the above categories of information.

As explained in the Prior Comment Letter, population growth or shrinkage is a primary consideration in determining the impact that development may have on a school district, as a booming population can directly impact the District and its provision of educational services, largely because of resulting school overcrowding, while a district with declining enrollment may depend on new development to avoid school closure or program cuts. Overcrowding can constitute a significant impact within the meaning of the CEQA. (See, Cal. Code Regs., tit.14, §§ 15064(e).) This is particularly true where the overcrowding results in unsafe conditions, decreased quality of education, the need for new bus routes, and a need for new school construction. (See, *Chawanakee, supra*, 196 Cal.App.4th 1016.)

The foregoing categories of information are critical for determining the extent of both physical and fiscal impacts on the District caused by increased population growth. As discussed above, California school districts are dependent on developer fees authorized by the provisions of Government Code sections 65995, *et seq.*, and Education Code sections 17620, *et seq.*, for financing new school facilities and maintenance of existing facilities. The developer fees mandated by section 65995 provide the District the bulk of its local share of financing for facilities needs related to development. The adequacy of the statutory development fees to offset the impact of new development on local school districts can be determined only if the types of housing and average square footage can be taken into consideration. For instance, larger homes often generate approximately the same number of students as smaller homes. At the same time, however, a larger home will generate a greater statutory development fee, better providing for facilities to house the student being generated. It is for these reasons that the Government Code now requires a school district to seek – and presumably to receive – such square footage information from local planning departments. (Gov. Code § 65995.5(c)(3).)

While the foregoing funding considerations present fiscal issues, they translate directly into physical, environmental impacts, in that inadequate funding for new school construction can result in overcrowding of existing facilities. Furthermore, fiscal and social considerations are relevant to an EIR, particularly when they either contribute to or result from physical impacts. (Pub. Res. Code § 21001(g); Cal. Code Regs., tit.14, §§ 15021(b), 15131(a)-(c), 15142 & 15382.)

Phasing of development is also a crucial consideration in determining the extent of impact on schools. Timing of development determines when new students are expected to be generated, and it therefore is an important consideration, particularly when considering the cumulative impact of a project in conjunction with other approved or pending development.

The District requests that the Draft EIR be modified to include the above categories of information so that the lead agency, District, and the public may adequately understand the direct and indirect impacts of the Project on the District. (CEQA Guidelines § 15126.2(a) [requires consideration of indirect impacts].)

IV. SB 50 does not absolve lead agencies of their responsibility to ensure General Plan consistency.

In *Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, the Court held that project approvals and findings must be consistent with the lead agency's general plan, and that the EIR for such a project must provide sufficient information for the lead agency to make an informed decision regarding such consistency. A project is consistent with the general plan if it will further the objectives and policies of the general plan and not obstruct their attainment. (See *Endangered Habitats League, supra*, 131 Cal.App.4th 777, 782, quoting *Corona-Norco Unified School District v. City of Corona* (1993) 17 Cal.App.4th 985, 994.)

Fostering quality education should be a priority to the City. As discussed above, the City's General Plan includes goals to support "Safe Routes to School programs to enhance the safety of school children who walk and bike to school," and to encourage schools to promote walking, bicycling, carpooling, shuttles, and transit use. (General Plan at CIRC-16, CIRC-25.) The General Plan also includes Land Use Policy LU-1.7, which states that the City shall "encourage excellence in public education citywide, as well as use of school facilities for recreation by youth to promote healthy living." (General Plan at LU-19.)

As discussed at length above, substantial evidence in the record (as well as in the City's Fiscal Impact Analysis prepared for the Project) establishes a significant possibility that the Project, in conjunction with all other projects being considered in the Bayfront Area of Menlo Park, by generating thousands of new residents and vehicles to the area within a few years, will have a

negative impact on students, education, and educational facilities. These impacts, which were not adequately analyzed in the Draft EIR, will directly impede the fulfillment of the above General Plan policies and goals. As demonstrated in the Fiscal Impact Analysis and California case law, the mere payment of developer fees will not adequately mitigate the impacts of development on the District's schools. Thus, approval of the Project without adopting any feasible measures to address the negative impacts on schools would be contrary to the City's General Plan.

V. The proposed mitigation measures and Project alternatives are inadequate to reduce the impacts related to schools to a less than significant level.

Based on the deficiencies of the Draft EIR described above, the Draft EIR's conclusion that payment of school impact fees will mitigate school impacts to a less than significant level is inaccurate. Since the Draft EIR is lacking in detailed discussion and analysis of existing and projected Project conditions, taking into account both the impact *on* school facilities and the impacts *related to* schools, the City cannot possibly reach the conclusion that developer fees are adequate to mitigate the Project's school impacts because all impacts have not been evaluated.

Furthermore, the Draft EIR's conclusion that SB 50 limits the City's ability to prescribe other types of school mitigation for the Project is unsupported by law. Rather, under the Government Code, the City has a duty to coordinate with the District to provide effective school site planning. The City should consider Project alternatives and/or alternative mitigation measures, such as those proposed below, to fulfill that duty.

A. The Legislature Intended Coordinated Planning for School Sites

Government Code sections 65352 and 65352.2 (all subsequent code sections refer to the Government Code unless otherwise specified) require local cities and counties to coordinate planning of school facilities with school districts. The Legislature confirmed that the parties are meant to coordinate "[o]ptions for the siting of new schools and whether or not the local city or counties existing land use element appropriately reflects the demand for public school facilities, and ensures that new planned development reserves location for public schools in the most appropriate locations."

The Legislature recognized that new planned development should take into consideration and even "reserve" where schools would be located to serve the development because schools are as integral a part of planning for new development as is any other public service, such as fire, police, water and sewer. As it relates to this case, the intent behind sections 65350, *et seq.*, supports the District's position that the City must analyze whether the District's current facilities are adequate to accommodate and serve both its existing population and the new development,

particularly in light of the Project impacts and cumulative factors addressed in this letter. The City can help the District provide adequate facilities resulting from any impacts of the Project, which are not addressed by developer fees, by requiring alternative mitigation measures to assure that there are adequate school facilities available to accommodate the District's needs.

B. Alternative Mitigation Measures

District demands consideration of the following alternative mitigation measures to address impacts related to schools, each of which begin to address the actual school related impacts discussed above.

1. Land Dedication

One possible mitigation method that the District discussed during its meetings with the Developer in February 2020, but which was not addressed meaningfully in the Draft EIR, would be for the City to consider adopting findings requiring any developer building as part of the development allowed by the Project to dedicate land and/or funding pursuant to Government Code sections 65970, *et seq.*, which permit the City to require a developer to dedicate land to a school district.

Section 65974 specifically states that “for the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, . . . a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development.” Nothing in SB 50/Government Code section 65996 precludes this approach. Land dedication is a permissible mitigation measure under Government Code section 65995, *et seq.* Section 65995(a) specifically states that “[e]xcept for a fee, charge, dedication, or other requirement authorized under Section 17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), a fee, charge, dedication or other requirement for the construction or reconstruction of school facilities may not be levied. . . .” (Emphasis added.) Section 65995 expressly excludes Chapter 4.7, inclusive of section 65974, from this limitation, thus permitting a city to address conditions of overcrowding in school facilities or inadequately sized school sites by requiring, for example, the dedication of land.

A land dedication requirement would be good public planning benefiting all residents of the community, including future residents of the Project. Land suitable for new school facilities in Menlo Park is already extremely scarce; it will only become more so if the Project is implemented and further development occurs. Under Government Code sections 65352 and 65352.2, the City has a duty to help plan for adequate services to its residents by ensuring that

future sites are set aside for schools. Failure to do so leads to inadequate services, future controversies, and the potential need for a school district to exercise its rights under eminent domain, displacing existing residents. Therefore, mitigation for the impacts stemming from the Project that are not considered in the Draft EIR are and should be made available even after SB 50.

2. *Phasing*

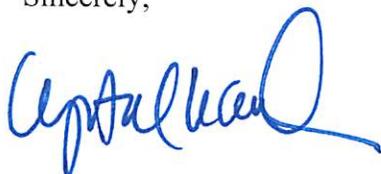
Another method by which the City should work cooperatively with the District within all legal constraints to ensure adequate school facilities with regard to new development allowed by the Project, and which therefore can serve as an appropriate mitigation measure, is the requirement that all future development be phased, including all future development contemplated by ConnectMenlo. Timing development so as to balance the availability of school facilities with new development can significantly aid the District in its attempt to provide for the additional students who will be generated as a result of the Project and development following approval of the Project. Such phasing is not a denial of new development on the basis of insufficient school facilities in contravention to SB 50; it is instead appropriate planning to offset the impacts of new development.

VI. Conclusion

Recirculation is required when the new information added to an EIR discloses: (1) a new substantial environmental impact resulting from the project or from a new mitigation measure proposed to be implemented (CEQA Guidelines § 15162 (a)(1), (3)(B)(1)); (2) a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance (CEQA Guidelines, § 15162 (a)(3)(B)(2)); (3) a feasible project alternative or mitigation measure that clearly would lessen the environmental impacts of the project, but which the project's proponents decline to adopt (CEQA Guidelines §15162 (a)(3) (B)(3), (4)); or (4) that the draft EIR was so fundamentally and basically inadequate and conclusory in nature that public comment on the draft was in effect meaningless (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043); *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1130, as modified on denial of reh'g (Feb. 24, 1994).)

It is the District's position that the Draft EIR, as with the Draft EIR's for the 111 Independence Drive and Menlo Uptown Projects, is incomplete, and does not adequately analyze the Project's potential impacts related to schools, or mitigation measures that would lessen these impacts. The safety of students is paramount to the District, and these safety concerns are not adequately addressed in the Draft EIR as currently constituted. Changes must be made to preserve the safety of the students and allow them to enjoy productive time at school, free from excessive traffic, noise, and pollution. Therefore, the District demands that the Draft EIR be updated and recirculated.

Sincerely,



Crystal Leach
Interim Superintendent

cc: Kelly Rem, Esq., Lozano Smith (krem@lozanosmith.com)



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February 7, 2020

By U.S. Mail & E-Mail: kmmeador@menlopark.org

Kaitie Meador
City of Menlo Park
Community Development Department, Planning Division
701 Laurel Street
Menlo Park, CA 94025

Re: Response of Sequoia Union High School District to Notice of Preparation of Focused Environmental Impact Report for Menlo Portal Project

Dear Ms. Meador:

Sequoia Union High School District ("District") appreciates the opportunity to provide comments and input regarding the Notice of Preparation of a Focused Environmental Impact Report ("EIR") for the Menlo Portal Project ("Project").

The District is particularly interested in and concerned about this Project, along with several other projects pending before the City in the Bayfront neighborhood, because it is located in very close proximity to the District's TIDE Academy. The District has previously submitted comments regarding several other large proposed projects located in the Bayfront Area, most recently including the proposed Menlo Uptown project. Given the similarities between the Menlo Uptown and Menlo Portal projects, the District reiterates many of its prior comments in this letter. **As in the District's prior letter regarding the Menlo Uptown project sent to the City on January 10, 2020, the District requests that all direct and indirect impacts related to the Project's proximity to a school be thoroughly reviewed, analyzed, and mitigated.**

The Project, sponsored by Menlo Park Portal Venture, LLC ("Developer"), is proposed to be located at the approximately 3.2-acre site having the addresses of 104 Constitution Drive, 110 Constitution Drive, and 115 Independence Drive, Menlo Park, CA (collectively, the "Property"). The Property currently contains two single-story office buildings and one warehouse/industrial building with a small office component. The Developer is proposing to demolish the existing office and industrial space and redevelop the Property with a

seven-story, approximately 335 multi-family residential complex, approximately 33,212 square feet (“sf”) of office space, and approximately 1,608 sf of commercial space. The Project, which will require a number of entitlements from the City, is anticipated to generate approximately 70 new high school students.

The City, through its Initial Study, concludes that the Project will have no additional impacts on the District’s ability to provide its public service, other than those impacts addressed in the ConnectMenlo Final Environmental Impact Report (“ConnectMenlo EIR”) that was certified by the City in late 2016. Accordingly, the City is attempting to rely on the ConnectMenlo EIR as grounds to prepare a “focused,” or limited EIR, which does not evaluate the Project’s impacts on the District’s ability to provide its public service. We believe that this approach is improper, and the limited scope of the City’s proposed EIR inappropriate. Rather, the EIR prepared for the Project must contain a detailed discussion of the Project’s potential impacts on the District, and manners in which to mitigate those impacts.

Neither the Initial Study nor the ConnectMenlo EIR adequately evaluated the Project’s impacts to the District and, in particular, the District’s TIDE Academy. Neither study adequately addressed how the Project will impact the District’s ability to house its students; how the Project’s impacts on transportation, traffic, and circulation in the area will impact air quality at the TIDE Academy, as well as the safety and convenience of District students, parents, and staff; and generally how the Project will impact the District’s ability to deliver its educational program at TIDE Academy. All of these impacts, in addition to mitigation measures for same, must be analyzed in the EIR for the Project.

District staff attended and expressed some of the District’s concerns regarding the Project at the City’s Scoping Meeting held on January 27, 2020, and appreciated the City’s time in listening to same. District is hopeful that the District, Developer, and City will continue to be able to engage in a productive dialogue, and that the parties will be able to agree upon mutually beneficial solutions to all impacts posed by the Project, with appropriate mitigation.

The District submits these comments in order to preserve its concerns and rights regarding the proposed scope and content of the proposed EIR.

Inappropriate Reliance on ConnectMenlo EIR

By contending that the ConnectMenlo EIR is a “program” EIR for purposes of evaluating the Project’s impacts, the City relies on the ConnectMenlo EIR as its basis for preparing a “focused,” or simplified EIR for the Project. Due to the City’s failure to appropriately consider the ConnectMenlo program’s impacts on the District’s ability to provide its public service in the first place, and due to changed circumstances since the time that the ConnectMenlo EIR was prepared, the City’s reliance on the ConnectMenlo EIR as the basis for disregarding certain Project impacts on the District is improper and misguided.

A “program” EIR is an EIR prepared for a series of small projects that can be characterized as one large project. (14 Cal. Code Regs. § 15168(a).) A project proponent may rely on a program EIR’s analysis of the program’s environmental impacts, mitigation measures, and alternatives in order to engage in a simplified environmental review for a future project contemplated by the program. (Id. at subd. (d).) However, when a program EIR is relied upon by a future project proponent, the new project proponent must carefully examine the impacts addressed in the program EIR and determine whether additional environmental review is required. An agency’s evaluation of the sufficiency of a program EIR for later approval of a project contemplated by the program involves a two-step process:

unreliable. The last State school facilities bond fund (Proposition 51) has been exhausted, and it is currently unclear when/whether those school districts that apply for state funding will be able to receive such funding. Local bond funds are also difficult to generate, as local bonds are subject to school district bonding capacity limitations and voter approval. Either way, the funding formula was never intended to require the State and local taxpayers to shoulder a disproportionate portion of the cost of school facilities.

Additional changes to the circumstances under which the ConnectMenlo EIR was approved render the analysis of environmental impacts under that EIR inadequate. For one, if Proposition 13, placed on the ballot by California Assembly Bill (“AB”) 48 is approved by the California voters at the March 2020 election, each of the three sources of funds discussed above will be significantly altered. Of particular note, and further undermining the contention that developer fees constitute full and adequate mitigation for impacts caused by the Project, AB 48: (1) eliminates school impact fees for multifamily homes within a half mile of a major transit stop; (2) reduces impact fees for all other multifamily homes by 20%; and (3) suspends level 3 school impact fees. Without full payment of school impact fees from the Project, coupled with the extremely high and rising costs of land, the District will be unable to alleviate many of the Project’s impacts through the acquisition of land and construction of new school facilities.

In light of the ConnectMenlo EIR and Initial Study’s many inadequacies, below are specific scoping requests for the EIR, which the City must address in the EIR to evaluate adequately the potential environmental impacts of the Project on the District and its students.

Transportation/Circulation/Traffic Analysis

- 1. Describe the existing and the anticipated vehicular traffic and student pedestrian movement patterns to and from school sites, including movement patterns to and from TIDE Academy and Menlo Atherton High School, and including consideration of bus routes.**
- 2. Assess the impact(s) of increased vehicular movement and volumes caused by the Project, including but not limited to potential conflicts with school pedestrian movement, school transportation, and busing activities to and from TIDE Academy and Menlo Atherton High School.**
- 3. Estimate travel demand and trip generation, trip distribution, and trip assignment by including consideration of school sites and home-to-school travel.**
- 4. Assess cumulative impacts on schools and the community in general resulting from increased vehicular movement and volumes expected from additional development already approved or pending in the City and Bayfront neighborhood.**
- 5. Discuss the direct, indirect, and cumulative impacts on the circulation and traffic patterns in the community as a result of traffic generated by the transportation needs of students to and from the Project and schools throughout the District during and after the Project build-out.**
- 6. Assess the impacts on the routes and safety of students traveling to school by vehicle, bus, walking, and bicycles.**

The District has significant concerns about the traffic, transportation, and circulation impacts that the Project may have on the District, including the District’s staff, parents, and students that attend the TIDE Academy.

The foregoing categories of information are critical for determining the extent of those impacts on the District, none of which were adequately identified or discussed in either the Initial Study or the ConnectMenlo EIR.

A. City Must Consider All Traffic and Related Impacts, Including Impacts of Traffic on Student Safety, Caused by the Project.

Any environmental analysis related to the proposed Project must address potential effects related to traffic, noise, air quality, and any other issues affecting schools. (Pub. Resources Code, §§ 21000, *et seq.*; Cal. Code Regs., tit. 14, §§ 15000, *et seq.*; *Chawanakee Unified School District v. County of Madera, et al.*, (2011) 196 Cal.App.4th 1016.) Additionally, specifically related to traffic, there must be an analysis of safety issues related to traffic impacts, such as reduced pedestrian safety, particularly as to students walking or bicycling to and from TIDE Academy; potentially reduced response times for emergency services and first responders traveling to these schools; and increased potential for accidents due to gridlock during school drop-off and pick up hours. (See, Journal of Planning Education and Research, “Planning for Safe Schools: Impacts of School Siting and Surrounding Environments on Traffic Safety,” November 2015, Chia-Yuan Yu and Xuemei Zhu, pg. 8 [Study of traffic accidents near Austin, Texas schools found that “[a] higher percentage of commercial uses was associated with more motorist and pedestrian crashes” around schools].) The District’s expectation is that, due to the Project’s proximity to the TIDE Academy, all safety related analysis be robust, detailed, and comprehensive.

The State Office of Planning and Research has developed new CEQA Guidelines which set forth new criteria for the assessment of traffic impacts, and now encourages the use of metrics such as vehicle miles traveled (VMT), rather than level-of-service (LOS), to analyze project impacts on traffic. (14 Cal. Code Regs. § 15064.3.) However, local agencies may still consider impacts on traffic congestion at intersections where appropriate, and must do so where, as here, such traffic congestion will cause significant impacts on air quality, noise, and safety issues caused by traffic. (Pub. Res. Code § 21099(b)(3).) As the District representative stated at the City’s EIR scoping meeting held on January 27, 2020 for this Project, the District insists that the LOS metrics be employed in all traffic related Project analysis.

Regional vehicular access to the Property is provided by US Highway 101 (US 101), via the Marsh Road on- and off-ramps located to the west and State Route 84 (SR 84 or the Bayfront Expressway) located to the north. Direct local access is provided via Independence Drive and Constitution Drive which border the site immediately to the north, west, and south. The Bayfront Area of Menlo Park has experienced a drastic impact in traffic over the last ten to fifteen years as the City has continued to approve of newer corporate campuses and mixed biotechnology, commercial, office, and residential land uses. The City’s 2016 General Plan Update calls for an increase of 2.3 million square feet of non-residential space, 400 hotel rooms, 4,500 residential units, 11,570 new residents, and 5,500 new employees in the Bayfront Area. This will result in a total build-out of 4.7 million square feet of non-residential office space, 850 hotel rooms, 5,430 residential units, 13,960 residents, and 20,150 employees, all within the Bayfront Area.¹ The ConnectMenlo EIR concluded that the General Plan Update would result in significant and unavoidable impacts to roadway segments and increase peak hour delays at intersections from increased traffic, even after the mitigation measures called for in the General Plan Update are implemented (if ever).²

¹ ConnectMenlo: General Plan Land Use & Circulation Elements and M-2 Area Zoning Update Draft EIR (June 1, 2016), Table 3-2.

² Menlo Park Small High School Project Final EIR (October 6, 2016), pp. 2-15 – 2-16; ConnectMenlo: General Plan Land Use & Circulation Elements and M-2 Area Zoning Update (June 1, 2016), p. 4.13-73.

The construction of and traffic generated by the Project will severely exacerbate the already stifling traffic in the general area and Bayfront Area, and the safety issues posed thereby. These impacts will severely inhibit the District's abilities to operate its educational programs, including at TIDE Academy.

The proposed Project is anticipated to impede circulation in the Bayfront Area, and clog the access roads to, from, and around the District's TIDE Academy. (See, 5 Cal. Code Regs. § 14010(k), which requires that school facilities be easily accessible from arterial roads.) As discussed, the District's TIDE Academy is located less than one quarter mile southeast of the Property. Thus, both TIDE Academy and the proposed Project would be accessed by the same roads, including Independence Drive, Constitution Drive, and the immediately surrounding streets. In addition to drawing hundreds of new residents to the area, including an estimated 70 new high school students, the proposed Project will draw thousands of daily office commuters, visitors, and emergency access vehicles from around the Bay Area. In addition to the immediate roads surrounding the Property and TIDE Academy, these new residents and commuters will rely heavily on the Bayfront Expressway, Bayshore Freeway, Willow Road, and Marsh Road to the west of TIDE Academy.

As indicated in the City's General Plan, the City's roads are not currently equipped to accommodate such high density development and high levels of traffic. Accordingly, such increases to traffic in the area will not only make it much more difficult for students and staff to travel to and from TIDE Academy, but will also drastically increase the risk of vehicular accidents to District families, students, and staff traveling to and from school. For instance, many students at TIDE Academy access school by turning onto Independent Drive from Marsh Road (immediately to the northwest of the Property). This turn is already extremely dangerous, as it requires drivers essentially to complete a 180 degree turn, with no visibility of the cars and/or people traveling on Independence Drive. By packing hundreds of new residents and visitors into the area immediately adjacent to the intersection of Independence Drive and Marsh Road, the Project will be magnifying this dangerous road condition, further placing District students, families, and staff in harm's way.

In addition to increased risks of vehicular accidents, the traffic impacts posed by the Project will severely impact the safety and convenience of TIDE Academy students who walk or bike to school. Title 5 of the California Code of Regulations requires that school sites be located within a proposed attendance area that encourages student walking and avoids extensive bussing. (5 Cal. Code Regs. § 14010(l).) To mitigate the impacts of increased traffic in the Bayfront Area, the District has committed to develop and implement a Travel Demand Management Plan. Through this Plan, the District encourages the use of student walking, biking, and other alternative means of student transport to school.³ Further, to mitigate the impacts of conflicts and/or dangerous interactions between pedestrians, bicyclists, and vehicles, the District agreed to prepare a "Safe Routes to School Map" that identifies facilities such as traffic lights, crosswalks, and demarcated bikeways that promote safe routes to school.⁴ The City has likewise committed to supporting and promoting such safe route to school programs to enhance the safety of school children who walk to school.⁵

Finally, as previously discussed, the Project's impacts on traffic, transportation, circulation, and safety will be exacerbated by AB 48 (discussed above), coupled with the extremely high costs of land. As the District's ability to transport students to and from District schools becomes more constrained due to increased development in the District, the District will need to construct new educational facilities to accommodate

³ Menlo Park Small High School Project Draft EIR (July 8, 2016), p. S-4; The City of Menlo Park's Comprehensive Bicycle Development Plan (2005) identifies school-aged bicycle commuters as one of the two key bicycle commute groups utilizing the City's bicycle infrastructure.

⁴ Menlo Park Small High School Project Draft EIR (July 8, 2016), p. S-6

⁵ ConnectMenlo: General Plan Land Use & Circulation Elements and M-2 Area Zoning Update Draft EIR (June 1, 2016), p. 4.9-7 – 4.9-8

changes in transportation patterns. However, AB 48 will hamstring the District's ability to construct new facilities by dramatically reducing the amount of developer fees available to the District.

As TIDE Academy did not yet exist, and AB 48 had not yet been proposed, none of the above impacts on student safety and the District's ability to provide its educational program were adequately evaluated in the ConnectMenlo EIR. While the Initial Study provides that the City will prepare a transportation impact analysis and examine several intersections, the Initial Study otherwise gives no indication that it will examine the above-described impacts, or what criteria will be used by the City in evaluating these impacts. The EIR must analyze and mitigate all of the above traffic and related impacts, including those impacts related to student safety and convenience, the District's ability to implement its transportation and safety mitigation measures for the TIDE Academy, and the District's ability to promote alternative modes of transportation to and from TIDE Academy. It is important that these traffic impacts are not only assessed through a VMT analysis, but also through a LOS analysis, as severe traffic congestion surrounding the District's TIDE Academy caused by the Project will in turn cause significant issues related to safety, noise, and air quality.

B. City Must Consider Cumulative Traffic and Related Impacts.

Environmental impact reports must discuss cumulative impacts of a project when the project's effects on the environment, viewed in conjunction with impacts of other past, present, or reasonably foreseeable future projects, is cumulatively considerable. (14 CCR 15130(a).) (See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 CA4th 713, 720, finding that piecemeal approval of several projects with related impacts could lead to severe environmental harm.) While a lead agency may incorporate information from previously prepared program EIRs into the agency's analysis of a project's cumulative impacts, the lead agency must address all cumulative impacts that were not previously addressed in the program EIR. (Pub. Res. Code § 21083.3(c); 14 CCR 14183(b)(3).)

The Project's above- and below-discussed anticipated impacts on the District, combined with the anticipated impacts of the vast number of development projects that have recently been approved in the Bayfront Area, are cumulatively considerable. Contrary to the assertions contained in the Initial Study, all of these impacts are exacerbated by the rapidity at which the City is approving of development projects in the Bayfront Area, as the District and City are unable to accommodate the massive influx of students through facilities, infrastructure, and related improvements.

Based on the City's website, approximately 3,600 new residential units have already been approved or are in the process of being approved by the City in the Bayfront Area. In the immediate vicinity of TIDE Academy, the City has already approved several large residential projects, including the 777 Hamilton Drive project (195 new apartments); the 3639 Haven Avenue project (394 new apartments); and the 3645 Haven Avenue project (146 new apartments). There are now several other large residential projects being considered by the City, including the Willow Village Master Plan Project at 1350-1390 Willow Road, 925-1098 Hamilton Avenue (1,735 proposed residential units); the Menlo Uptown Project located at 180 and 186 Constitution Drive (483 proposed residential units); and the 111 Independence Drive Project (105 multi-family dwelling units). Thus, in approximately four years since the City has certified the ConnectMenlo EIR, close to 70 percent of the total residential build-out envisioned by ConnectMenlo for the period of 2016-2040 is completed or pending before the City.

Each of these projects alone promises to drastically increase traffic in the neighborhood, resulting in air quality, noise, and safety issues for District families and staff attending TIDE Academy. When considered together, their collective impacts on traffic, safety, and air quality in the neighborhood will be devastating. These

cumulative impacts on the District's TIDE Academy were neither adequately discussed in the Initial Study, nor evaluated in the ConnectMenlo EIR. **The impacts of the Project must be considered in conjunction with the anticipated impacts of all the other development being considered and approved in this area.**

Air Quality

7. Identify and assess the direct and indirect air quality impacts of the Project on sensitive receptors, such as the District's TIDE Academy.

- 8. Identify and assess cumulative air quality impacts on schools and the community in general resulting from increased vehicular movement and volumes expected from additional development already approved or pending in the City and Bayfront neighborhood.**

The Bay Area Air Quality Management District's (BAAQMD) CEQA Guidelines (May 2017) impose numerous limitations on the exposure of "sensitive receptors," such as schools, to odors, toxics, and pollutants, including pollutants from vehicular exhaust.

It is anticipated that the Project, including when viewed in conjunction with all of the other development being considered and approved in the Bayfront neighborhood, will have a significant impact on the air quality of the neighborhood due to extensive construction activities and increases in vehicular traffic. The Belle Haven community is particularly sensitive to such concerns regarding air quality due to the high incidence of asthma throughout the community. Even more pressing, the Project is anticipated to result in significant impacts to sensitive receptors as an increased number of vehicles enter and exit the Project, creating increased levels of air toxins and particulate matter that could negatively impact student health. These impacts, as they relate to the District's students at the TIDE Academy, were not specifically addressed in the ConnectMenlo EIR. Accordingly, they must be analyzed in the EIR.

Noise

- 9. Identify any noise sources and volumes which may affect school facilities, classrooms and outdoor school areas.**

It is expected that noise from construction and operation of the Project will cause impacts on the District's educational programs at the TIDE Academy. Request No. 9 is intended to clarify that the EIR's consideration of noise issues take into account all of the various ways in which noise may impact schools, including increases in noise levels in the immediate vicinity of TIDE Academy. Again, as the District's TIDE Academy did not yet exist, the ConnectMenlo EIR did not consider these impacts on the District, and so may not be relied upon by the City as grounds to disregard noise impacts in the Project EIR.

Population

- 10. Describe historical, current, and future population projections for the District.**
- 11. Assess the impacts of population growth within the District on the District's ability to provide its educational program.**

In addition to 335 anticipated residential units, it is anticipated that the proposed Project's 33,212 sf of office space and 1,608 sf of commercial space will draw thousands of residents into the area on a permanent, or at least a daily basis. Using the District's current student generation rate of 0.2, 335 anticipated residential units is likely to generate approximately 70 new high school students to the District. Without the anticipated increase in students from the Project, the District's student population at TIDE Academy is already expected to exceed capacity by 2023. The second closest District high school to the Property, Menlo Atherton High School, is currently over capacity.

The District, therefore, specifically demands that historical, current, and future population projections for the District be addressed in the EIR. Population growth or shrinkage is a primary consideration in determining the impact that development may have on a school district, as a booming population can directly impact the District and its provision of educational services, largely because of resulting school overcrowding, while a district with declining enrollment may depend on new development to avoid school closure or program cuts. Overcrowding can constitute a significant impact within the meaning of CEQA. (See, 14 Cal. Code Regs. §§ 15064(e).) This is particularly true where the overcrowding results in unsafe conditions, decreased quality of education, the need for new bus routes, and a need for new school construction. The same can hold true for potential school closures or program cuts resulting from a declining population.

While the ConnectMenlo EIR discussed the District's student population projections, the City, in reliance on SB 50, disregarded any impacts the General Plan Update's increase in student population could have on the District. For the reasons discussed above, such disregard was legally and practically improper.

Housing

- 12. Describe the type and number of anticipated dwelling units indirectly resulting from the Project.**
- 13. Describe the average square footage for anticipated dwelling units, broken down by type of unit, indirectly resulting from the Project.**
- 14. Estimate the amount of development fees to be generated by development in accordance with implementation of the Project.**

The foregoing categories of information are critical for determining the extent of both physical and fiscal impacts on the District caused by increased population growth. These impacts were not adequately addressed in the ConnectMenlo EIR.

California school districts are dependent on developer fees authorized by the provisions of Government Code Sections 65995, *et seq.*, and Education Code sections 17620, *et seq.*, for financing new school facilities and maintenance of existing facilities. The developer fees mandated by Section 65995 provide the District a significant portion of its local share of financing for facilities needs related to development. However, as discussed, AB 48, combined with the extremely high costs of land, may significantly impair the District's abilities to mitigate impacts caused by school facilities overcrowding.

The adequacy of the statutory development fees to offset the impact of new development on local school districts can be determined only if the types of housing and average square footage can be taken into consideration. For instance, larger homes often generate approximately the same number of students as smaller homes. At the same time, however, a larger home will generate a greater statutory development fee, better providing for facilities to house the student being generated. It is for these reasons that the Government Code

now requires a school district to seek – and presumably to receive – such square footage information from local planning departments. (Gov. Code § 65995.5(c)(3).)

While the foregoing funding considerations raise fiscal issues, they translate directly into physical, environmental impacts, in that inadequate funding for new school construction results in overcrowding of existing facilities. Furthermore, fiscal and social considerations are relevant to an EIR, particularly when they either contribute to or result from physical impacts. (Pub. Resources Code § 21001(g); 14 Cal. Code Regs. §§ 15021(b), 15131(a)-(c), 15142 & 15382.)

Phasing of development is also a crucial consideration in determining the extent of impacts on schools, which is especially relevant considering the rapid build-out of the ConnectMenlo residential units authorized. The timing of the development will determine when new students are expected to be generated, and therefore is an important consideration particularly when considering the cumulative impact of a project in conjunction with other approved or pending development.

Public Services

- 15. Describe existing and future conditions within the District, on a school-by-school basis, including size, location and capacity of facilities.**
- 16. Describe the adequacy of both existing infrastructure serving schools and anticipated infrastructure needed to serve future schools.**
- 17. Describe the District's past and present enrollment trends.**
- 18. Describe the District's current uses of its facilities.**
- 19. Describe projected teacher/staffing requirements based on anticipated population growth and existing State and District policies.**
- 20. Describe any impacts on curriculum as a result of anticipated population growth.**
- 21. Identify the cost of providing capital facilities to properly accommodate students on a per-student basis, by the District (including land costs).**
- 22. Identify the expected shortfall or excess between the estimated development fees to be generated by the Project and the cost for provision of capital facilities.**
- 23. Assess the District's present and projected capital facility, operations, maintenance, and personnel costs.**
- 24. Assess financing and funding sources available to the District, including but not limited to those mitigation measures set forth in Section 65996 of the Government Code.**
- 25. Identify any expected fiscal impacts on the District, including an assessment of projected cost of land acquisition, school construction, and other facilities needs.**
- 26. Assess cumulative impacts on schools resulting from additional development already approved, pending, or anticipated.**

27. Identify how the District will accommodate students from the Project who are not accommodated at current District schools, including the effects on the overall operation and administration of the District, the students and employees.

As discussed, the Initial Study's reliance on the ConnectMenlo EIR as grounds to disregard the Project's impacts on the District's ability to provide its public services is inappropriate, as the ConnectMenlo EIR did not adequately examine numerous environmental impacts caused by the program and/or the Project, in part due to changes that occurred after the City certified the ConnectMenlo EIR. (14 Cal. Code Regs. § 15168(c)(1).) Nor is the City's reliance upon SB 50 as the sole mitigation measure proper, as developer fees are legally and practically inadequate to mitigate all impacts caused by the Project. Therefore, the District submits the above scoping requests related to the District's ability to continue providing its public service.

Conclusion

The District does not oppose development within District boundaries, and recognizes the importance of housing on the health and welfare of the community. However, the District maintains that the community can only thrive if the District's educational program and its facilities are viable and sufficient, and District staff, families, and students are safe. Accordingly, the needs of the District must be appropriately considered in the environmental review process for all proposed new development that will impact the District, such as the very large Project under consideration.

The District is hopeful that its continued collaboration with Developer and the City will yield solutions that alleviate the impacts caused by the Project, and is prepared to provide any information necessary to assist the City in preparation of the EIR and in addressing each of the comment and scope/content issues set forth above.

We request that all notices and copies of documentation with regard to this Project be mailed both to the District directly, and also to our legal counsel's attention as follows:

Crystal Leach, Associate Superintendent, Administrative Services
Sequoia Union High School District
480 James Avenue
Redwood City, CA 94062

Kelly M. Rem
Lozano Smith
2000 N. Main St., Suite 500
Walnut Creek, CA 94596

Please feel free to contact me directly if we can be of any assistance in reviewing the above issues. Thank you.

Sincerely,



Crystal Leach
Associate Superintendent, Administrative Services

cc: Kelly Rem, Lozano Smith