

Menlo Portal
EIR Scoping Comments

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General Public

Meador, Kaitie M

From: Amy Roleder <amyrol@gmail.com>
Sent: Friday, January 17, 2020 1:33 PM
To: Meador, Kaitie M
Subject: Menlo Uptown and Portal proposal

Follow Up Flag: Follow up
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Hi Katie,

I would like to comment on the Menlo Uptown proposal. My opinion is, unless the developer makes the majority of the units below market rate, the people who desperately need housing such as our retail and other lower wage earners that are essential to our community and are currently priced out will not be able to afford to live there, which should be the whole point of adding more housing to Menlo Park. So, unless they agree to at least 60% or greater housing below market, I think you should deny it being built.

Other things to consider is that adding this housing is only going to increase traffic further, so unless its for the good of the community, it should not be granted.

Also, the FaceBook expansion hasn't even been fininshed yet. So no new projects should be approved until we can see the traffic impact of that. The traffic problem, as you obviously know, is severe in that area, along with Willow Rd., west of 101.

The Menlo Portal proposal should also not be granted, until again we can see the Impacts of the FaceBook expansion, and the LEAST thing we need is more office space. Please, stop with the office space! Affordable units should also be key to this project as well.

Thank you,
A. Lupo
Durham St., Menlo Park

Meador, Kaitie M

From: jackie leonard-dimmick <akita550@hotmail.com>
Sent: Friday, January 17, 2020 3:43 PM
To: Meador, Kaitie M
Subject: Greystar

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Kaitier Meador:

I read the article in "The Almanac" (1/15/20), 'City Takes on Second Greystar Plan to Add Hundreds of Apartments' by Kate Bradshaw. It stated: "Together, both projects would add 818 new homes to a city where jobs far outnumber housing units."

There has been a lot of publicity about the need for affordable housing and the homeless. Everywhere I look, every local newspaper I read tells about more and more development going up. Some of these buildings will contain "affordable" housing. What is affordable today will not be affordable tomorrow. Before long we will have city to city housing. High density housing "a people factory farm" is not the answer.

The homeless definitely need a place to live, where they feel comfortable. I feel like too much emphasis has been placed on the picture of homelessness - an EFFECT, but little or no energy on the CAUSE. One will get nowhere by constantly baling out an over flowing bath tub. The faucet must first be turned off. The above statement from "The Almanac" makes it quite clear to me. There are too many jobs on the peninsula and/or too many of these jobs hire people from elsewhere, instead of from the local community.

Another issue that few people want to look at is OVER POPULATION - externally and internally, (people coming in from other localities, states and countries, for jobs, and the number of children couples choose to have) .Population plays a BIG role in the health of our environment. It is not just technology that will save(?) us from global warming, climate change and rising tides, but as, if not more important , COMMOM SENSE.

Bottom line is BALANCE. I think we have gone overboard with new construction and it is time to take a break.

Thank you for letting me share a view on this subject from a different angle.

Jackie Leonard-Dimmick

Meador, Kaitie M

From: Judy Adams <judyblueeyes1@gmail.com>
Sent: Monday, January 13, 2020 11:47 AM
To: Meador, Kaitie M; _CCIN
Subject: Menlo Portal proposal

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I applaud the including of a % of affordable/low-income apartments, but would like to see 20% and a specific low-income level listed, as "affordable, below market" is usually woefully out of reach for low-income, minimum wage workforce families. I would further add that I would like to see Menlo Park not consider any developments of office space until we meet an acceptable level of truly low-income housing to bring us up to state requirements or better-than, so that we can restore economic diversity in our community, where workers don't have to drive for an hour or more to get to work, and to include in that requirement, teacher's housing.

Judy Adams
Menlo Park homeowner, family of 2

Meador, Kaitie M

From: Karen Grove <karenfgrove@gmail.com>
Sent: Sunday, January 26, 2020 8:25 PM
To: _Planning Commission
Subject: Menlo Portal study session - BMR

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Dear Planning Commission,

I'm a member of the Housing Commission, but I'm writing as myself.

As you discuss BMR expectations for the Menlo Portal residential project please encourage the developer to include BMR units at a mix of unit sizes that is in proportion to the development overall; and within each unit size, to provide units at a mix of income-level affordability. Having a mix of income levels allows for tenants to remain in the development while their income grows.

Please also keep in mind that we are behind in meeting our RHNA allocation for very low- low- and moderate-income BMR units.

I appreciate the commitment to provide 15% of the units as BMR units at the equivalent of low-income affordability (and hopefully at a range of income levels per the above). I'm very glad that the developer is meeting our baseline BMR requirement. However, the need is so great, I urge you to consider requesting that 20% of the units be BMR units at a mix of sizes and income levels.

For your reference, here is where we were as of the last reporting period in our progress towards meeting our RHNA allocation by income level.

Very Low Income:
RHNA Allocation = 233
Permitted to date = 103
Remaining = 130

Low income:
RHNA Allocation = 129
Permitted to date = 37
Remaining = 92

Moderate Income:
RHNA Allocation = 143
Permitted to date = 4
Remaining = 139

Above Moderate Income:
RHNA Allocation = 150

Permitted to date = 775

Remaining = (none, per RHNA... but we do need them!)

Thanks for your service,

-Karen

Pronouns: she/her/hers

650-868-2732

Public Agencies



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

ALAMEDA COUNTY

John J. Bauters
Pauline Russo Cutter
Scott Haggerty
Nate Miley

CONTRA COSTA COUNTY

John Gioia
David Hudson
Karen Mitchoff
(Secretary)
Mark Ross

MARIN COUNTY

Katie Rice

NAPA COUNTY

Brad Wagenknecht

SAN FRANCISCO COUNTY

VACANT

Shamann Walton
Tyron Jue
(SF Mayor's Appointee)

SAN MATEO COUNTY

David J. Canepa
Carole Groom
Davina Hurt

SANTA CLARA COUNTY

Margaret Abe-Koga
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James Spering
Lori Wilson

SONOMA COUNTY

Teresa Barrett
Shirlee Zane

Jack P. Broadbent
EXECUTIVE OFFICER/APCO

Connect with the
Bay Area Air District:



February 6, 2020

RECEIVED

FEB 10 2020

CITY OF MENLO PARK
BUILDING DIVISION

Ms. Kaitie Meador
Senior Planner
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

RE: Notice of Preparation of an Initial Study and Environmental Impact Report for the Menlo Portal Project

Dear Ms. Meador:

Bay Area Air Quality Management District (Air District) staff has reviewed the Notice of Preparation (NOP) of an Initial Study and Environmental Impact Report (EIR) for the Menlo Portal Project. The Project consists of demolition of existing office and industrial buildings and development of a project site with an approximately 327,970-gross-square-foot (gsf.), seven-story multi-family residential apartment building with approximately 335 dwelling units, a 34,819 gsf. commercial office building and associated open space and parking.

Air District staff recommend the EIR include the following information and analysis:

- **The GHG impact analysis should include an evaluation of the Project's consistency with the most recent draft of the AB 32 Scoping Plan by the California Air Resources Board and with the State's 2030 and 2050 climate goals.** The Air District's current recommended GHG thresholds in our CEQA Guidelines are based on the State's 2020 GHG targets, which are now superseded by the 2030 GHG targets, established in SB 32. The EIR should demonstrate how the Project will be consistent with the Scoping Plan.
- The proposed project site is located east of U.S. Highway 101 (US 101) in the City of Menlo Park. Based on the close proximity to US 101, **the EIR should estimate and evaluate the potential health risk to existing and future sensitive populations within and near the Project area from toxic air contaminants (TAC) and fine particulate matter (PM_{2.5}) as a result of the Project's construction and operation.** Air District staff recommends that the EIR evaluate potential cumulative health risk impacts of TAC and PM_{2.5} emissions on sensitive receptors within and near the Project area.
- **The EIR should evaluate all feasible project features, both onsite and**

offsite, to minimize air quality and GHG impacts. The EIR should prioritize the following desirable project features onsite and offsite within the Project area. Examples of potential project features that should be evaluated and considered include, but are not limited to:

- Requiring construction vehicles to operate with Tier 4 or the highest tier engines commercially available;
- Prohibiting trucks from idling for more than two minutes or prohibiting idling altogether;
- Prohibiting or minimizing the use of diesel fuel, consistent with the Air District's Diesel Free By '33 initiative (<http://dieselfree33.baaqmd.gov/>);
- Implementing a program that incentivizes building residents and tenants to carpool, use electric vehicles (EVs), or use public transit to travel to and from the site. The program may include the following features, as feasible:
 - a. A residential transit pass program;
 - b. Shuttle service to and from Menlo Park Caltrain station, SamTrans bus routes and the Dumbarton Express;
 - c. Preferential parking to carpool vehicles, vanpool vehicles, and EVs;
 - d. Require that parking is paid for separately and is not included in rent (i.e., unbundled leases).
- Providing funding for zero-emission transportation projects, including a neighborhood EV program, community shuttle/van services and car sharing, bike racks and enhancement of active transportation initiatives;
- Providing infrastructure to facilitate bicycle access from the project to bike routes, public transit services and major activity centers and providing funding towards additional bicycle projects to promote and encourage bicycle activity;
- Providing safe and convenient pedestrian access and connections to streets, sidewalks, walkways and paths, transit stops, and local services;
- Implementing green infrastructure and fossil fuel alternatives in the development and operation of the Project, such as solar photovoltaic (PV) panels, electric heat pump water heaters, electric air source heat pump HVAC, and solar PV back-up generators with battery storage;
- Installing EV charging infrastructure on second level of parking garage to minimize potential flood damage;
- Installing outdoor flood resistant electrical receptacles for charging or powering of electric landscape equipment;
- Implementing a zero-waste program consistent with SB 1383 organic waste disposal reduction targets including the recovery of edible food for human consumption.

-
- **The EIR should evaluate the Project's consistency with the Air District's 2017 Clean Air Plan (2017 CAP).** The EIR should discuss 2017 CAP measures relevant to the Project and show the Project's consistency with the measures. The 2017 CAP can be found on the Air District's website: <http://www.baaqmd.gov/plans-and-climate/air-quality-plans/current-plans>.
 - **The EIR should evaluate the Project's consistency with the City of Menlo Park's Climate Action Plan.** The EIR should analyze the Project's consistency with the City of Menlo Park's 2015 Climate Action Plan Update and Status Report (CAP) and discuss the CAP measures relevant to the Project.
 - **The Air District's CEQA website contains several tools and resources to assist lead agencies in analyzing air quality and GHG impacts.** These tools include guidance on quantifying local emissions and exposure impacts. The tools can be found on the Air District's website: <http://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/ceqa-tools>. If the Project requires a site-specific analysis, please contact Air District staff to obtain more recent data.
 - **Certain aspects of the Project may require a permit from the Air District (for example, back-up diesel generators).** Please contact Barry Young, Senior Advanced Projects Advisor, at (415) 749-4721 or byoung@baaqmd.gov to discuss permit requirements. Any applicable permit requirements should be discussed in the EIR.

We encourage the City to contact Air District staff with any questions and/or to request assistance during the environmental review process. If you have any questions regarding these comments, please contact Andrea Gordon, Senior Environmental Planner, at 415-749-4940 or agordon@baaqmd.gov.

Sincerely,



Greg Nudd
Deputy Air Pollution Control Officer

cc: BAAQMD Director David Canepa
BAAQMD Director Carole Groom
BAAQMD Director Davina Hurt

DEPARTMENT OF TRANSPORTATION

DISTRICT 4

OFFICE OF TRANSIT AND COMMUNITY PLANNING

P.O. BOX 23660, MS-10D

OAKLAND, CA 94623-0660

PHONE (510) 286-5528

TTY 711

www.dot.ca.gov

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a California Way of Life.*

January 24, 2020

SCH #2020010055

GTS # 04-SM-2020-00293

GTS ID: 18305

SM/84/PM 25.93

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

Menlo Portal Project – Notice of Preparation (NOP)

Dear Katie Meador:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the Menlo Portal 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 January 2020 NOP.

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 that a total of approximately 48 residential units (15 percent) be affordable to low income households. The proposed allotment of affordable housing units would continue to be refined with the City of Menlo Park. The ground floor of each building would be raised 3 to 5 feet above grade to accommodate flood plain design requirements. The proposed residential building would be a maximum of 84 feet, 9 inches and would front to both Constitution Drive and Independence Drive. The commercial office building would be a maximum of 56 feet, 7 inches in height. The residential building

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system to enhance California's economy and livability”*

would include an at-grade, two-level, approximately 93,716-square-foot, 324-space parking garage. The commercial office building would also include an at-grade, two-level approximately 42,338-square foot parking garage. Across both levels, the parking garage at the commercial office building would include approximately 93 standard parking spaces. Regional access is provided from State Route (SR)-84 (Marsh Road) and Constitution Drive Intersection, approximately 100 feet away from the project site.

Travel Demand Analysis

Please submit a travel demand analysis that provides a Vehicle Miles Traveled (VMT) analysis resulting from the proposed project. With the enactment of Senate Bill (SB) 743, Caltrans is focusing on transportation infrastructure that supports smart growth and efficient development to ensure alignment with State policies using efficient development patterns, innovative travel demand reduction strategies, multimodal improvements, and VMT as the primary transportation impact metric. Please ensure that the travel demand analysis includes:

- A vicinity map, regional location map, and site plan clearly showing project access in relation to the State Transportation Network (STN). Ingress and egress for all project components should be clearly identified. Clearly identify the State right-of-way (ROW). Project driveways, local roads and intersections, car/bike parking, and transit facilities should be mapped.
- A VMT analysis pursuant to the City's guidelines or, if the City has no guidelines, the Office of Planning and Research's Draft Guidelines. Projects that result in automobile VMT per capita greater than 15% below existing (i.e. baseline) city-wide or regional values for similar land use types may indicate a significant impact. If necessary, mitigation for increasing VMT should be identified. Mitigation should support the use of transit and active transportation modes. Potential mitigation measures that include the requirements of other agencies such as Caltrans are fully enforceable through permit conditions, agreements, or other legally-binding instruments under the control of the City.
- A schematic illustration of walking, biking and auto conditions at the project site and study area roadways. Potential safety issues for all road users should be identified and fully mitigated.
- The project's primary and secondary effects on pedestrians, bicycles, travelers with disabilities and transit performance should be evaluated, including countermeasures and trade-offs resulting from mitigating VMT

increases. Access to pedestrians, bicycle, and transit facilities must be maintained.

With respect to the local and regional roadway system, provide project related trip generation, distribution, and assignment estimates, including but not limited to, Marsh Road, SR-84, and US-101. Provide details of the driveways for both the existing and/or the proposed connection from Marsh Road. To ensure that queue formation on the STN does not create traffic conflicts, the project-generated trips should be added to the existing, future and cumulative scenario traffic volumes. Potential queuing issues should be evaluated including on-ramp storage capacity and analysis of freeway segments near the project; turning movements should also be evaluated. In conducting these evaluations, it is necessary to use demand volumes rather than output volumes or constrained flow volume.

Vehicle Trip Reduction

From Caltrans' *Smart Mobility 2010: A Call to Action for the New Decade*, the project site is identified as **Place Type 4c: Suburban Communities** where location efficiency factors, such as community design, are often weak and regional accessibility varies. Given the place, type and size of the project, it should include a robust Transportation Demand Management (TDM) Program to reduce VMT and greenhouse gas emissions. Such measures are critical to facilitating efficient site access. The measures listed below can promote smart mobility and reduce regional VMT.

- Project design to encourage walking, bicycling and transit access;
- Transit and trip planning resources such as a commute information kiosk;
- Real-time transit information system;
- Transit subsidies on an ongoing basis;
- Ten percent vehicle parking reductions;
- Charging stations and designated parking spaces for electric vehicles;
- Carpool and clean-fuel parking spaces;
- Designated parking spaces for a car share program;
- Unbundled parking;
- Showers, changing rooms and clothing lockers for employees that commute via active transportation;
- Emergency Ride Home program;
- Employee transportation coordinator;
- Secured bicycle storage facilities;
- Fix-it bicycle repair station(s);
- Bicycle route mapping resources;

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- Participation/Formation in/of a Transportation Management Association (TMA) in partnership with other developments in the area; and
- Aggressive trip reduction targets with Lead Agency monitoring and enforcement.

Transportation Demand Management programs should be documented with annual monitoring reports by a TDM coordinator to demonstrate effectiveness. If the project does not achieve the VMT reduction goals, the reports should also include next steps to take in order to achieve those targets. Also, reducing parking supply can encourage active forms of transportation, reduce regional VMT, and lessen future transportation impacts on State facilities.

For additional TDM options, please refer to the Federal Highway Administration's *Integrating Demand Management into the Transportation Planning Process: A Desk Reference* (Chapter 8). The reference is available online at: <http://www.ops.fhwa.dot.gov/publications/fhwahop12035/fhwahop12035.pdf>.

Transportation Impact Fees

Please identify project-generated travel demand and estimate the costs of transit and active transportation improvements necessitated by the proposed project; viable funding sources such as development and/or transportation impact fees should also be identified. We encourage a sufficient allocation of fair share contributions toward multi-modal and regional transit improvements to fully mitigate cumulative impacts to regional transportation. We also strongly support measures to increase sustainable mode shares, thereby reducing VMT.

Hydraulics

Please 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.

Sea Level Rise

The effects of sea level rise may have impacts on transportation facilities located in the project area. Executive Order (EO) S-13-08 directs State agencies planning construction projects in areas vulnerable to sea level rise to begin planning for potential impacts by considering a range of sea level rise scenarios for the years 2050 and 2100. Higher water levels may increase erosion rates, change environmental characteristics that affect material durability, lead to increased groundwater levels and change sediment movement along shores and at estuaries and river mouths, as well as affect soil pore pressure at dikes and levees on which transportation facilities are constructed. All these factors

must be addressed through geotechnical and hydrological studies conducted in coordination with Caltrans.

Lead Agency

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

Encroachment Permit

Please be advised that any work or traffic control that encroaches onto the State ROW requires a Caltrans-issued encroachment permit. To obtain an encroachment permit, a completed encroachment permit application, environmental documentation, six (6) sets of plans clearly indicating the State ROW, and six (6) copies of signed, dated and stamped (include stamp expiration date) traffic control plans must be submitted to: Office of Encroachment Permits, California DOT, District 4, P.O. Box 23660, Oakland, CA 94623-0660. To download the permit application and obtain more information, visit <https://dot.ca.gov/programs/traffic-operations/ep/applications>.

Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, please contact Andrew Chan at 510-622-5433 or andrew.chan@dot.ca.gov.

Sincerely,



Mark Leong
District Branch Chief
Local Development - Intergovernmental Review

c: State Clearinghouse



NATIVE AMERICAN HERITAGE COMMISSION

January 8, 2020

Kaitie Meador
Menlo Park, City of
701 Laurel Street
Menlo Park, CA 94025

Re: 2020010055, Menlo Portal Project, San Mateo County

Dear Ms. Meador:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

CHAIRPERSON
Laura Miranda
Luiseño

VICE CHAIRPERSON
Reginald Pagaling
Chumash

SECRETARY
Merri Lopez-Keifer
Luiseño

PARLIAMENTARIAN
Russell Attebery
Karuk

COMMISSIONER
Marshall McKay
Wintun

COMMISSIONER
William Mungary
Paiute/White Mountain
Apache

COMMISSIONER
Joseph Myers
Pomo

COMMISSIONER
**Julie Tumamait-
Stenslie**
Chumash

COMMISSIONER
[Vacant]

EXECUTIVE SECRETARY
Christina Snider
Pomo

NAHC HEADQUARTERS
1550 Harbor Boulevard
Suite 100
West Sacramento,
California 95691
(916) 373-3710
nahc@nahc.ca.gov
NAHC.ca.gov

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JAN 13 2020
CITY OF MENLO PARK
BUILDING DIVISION

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

- 1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:** Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

 - a. A brief description of the project.
 - b. The lead agency contact information.
 - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
 - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
- 2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report:** A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).

 - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
- 3. Mandatory Topics of Consultation If Requested by a Tribe:** The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

 - a. Alternatives to the project.
 - b. Recommended mitigation measures.
 - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
- 4. Discretionary Topics of Consultation:** The following topics are discretionary topics of consultation:

 - a. Type of environmental review necessary.
 - b. Significance of the tribal cultural resources.
 - c. Significance of the project's impacts on tribal cultural resources.
 - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
- 5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process:** With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
- 6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document:** If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

 - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
 - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:

- a.** The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
- b.** A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).

8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).

9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).

10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:

- a.** Avoidance and preservation of the resources in place, including, but not limited to:
 - i.** Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii.** Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
- b.** Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i.** Protecting the cultural character and integrity of the resource.
 - ii.** Protecting the traditional use of the resource.
 - iii.** Protecting the confidentiality of the resource.
- c.** Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
- d.** Protecting the resource. (Pub. Resource Code §21084.3 (b)).
- e.** Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
- f.** Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).

11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:

- a.** The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
- b.** The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
- c.** The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf.

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.

4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
 - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, § 15064.5(f) (CEQA Guidelines § 15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, § 15064.5, subdivisions (d) and (e) (CEQA Guidelines § 15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address: Nancy.Gonzalez-Lopez@nahc.ca.gov.

Sincerely,



Nancy Gonzalez-Lopez
Staff Services Analyst

cc: State Clearinghouse

San Francisco Bay Regional Water Quality Control Board

January 24, 2020

Kaitie Meador
City of Menlo Park
Community Development Department, Planning Division
701 Laurel Street
Menlo Park, CA 94025
Sent via email to: kmmeador@menlopark.org

Subject: Comments on Scope of Environmental Impact Report – Menlo Portal Project, Menlo Park, San Mateo County

Thank you for the opportunity to comment on the scope of the focused Environmental Impact Report for the Menlo Portal Project in Menlo Park, California. The San Francisco Bay Area Water Quality Control Board (Water Board) reviewed the Initial Study and Notice of Preparation and submits these comments.

Background

The proposed Menlo Portal project would demolish existing office and industrial buildings and construct a new mixed-use residential and a new office building at 115 Independence Drive and 104 and 110 Constitution Drive in Menlo Park (the Site). The new apartment building is planned to be seven-stories built at-grade with the ground-floor used for a mixture of retail and parking, the second level used for a mixture of residential use and parking, and the upper levels for residential use. The new office building is planned to be three-stories built at-grade with the ground-floor used for retail space and parking, the second floor for parking, and the third floor for office space. The ground floor of each building would be raised 3 to 5 feet above grade to accommodate flood plain design requirements.

The Initial Study, dated January 2020, states that “the public and/or the environment could be affected by the release of hazardous materials from the project site into the environment by: 1) exposing workers and/or the public to potentially contaminated soil and groundwater during construction and/or operation of the project; or 2) exposing workers and/or the public to hazardous building materials during demolition of the existing office and industrial structures.”

A Phase I Environmental Site Assessment (ESA), dated October 2018, indicates that historical site operations included the use of chlorinated solvents. A Phase II ESA, dated October 2018, determined that concentrations of tetrachloroethene, trichloroethene, and total petroleum hydrocarbons in groundwater at the Site exceed residential environmental screening levels. These volatile organic compounds (VOCs)

JIM McGRATH, CHAIR | MICHAEL MONTGOMERY, EXECUTIVE OFFICER

1515 Clay St., Suite 1400, Oakland, CA 94612 | www.waterboards.ca.gov/sanfranciscobay

could migrate from the groundwater into soil vapor and indoor air, posing a potential vapor intrusion risk to building occupants.

The Initial Study identified the need for the following mitigation measures to ensure that “potential impacts of the proposed project would be less than significant and that no new or more severe impacts would occur beyond those examined in the ConnectMenlo Final [Environmental Impact Report] EIR.”

- Implementation of a project-specific Environmental Site Management Plan (ESMP) that is “prepared in consultation with” the Water Board or Department of Toxics Substances Control (DTSC); and
- A vapor intrusion assessment and associated vapor controls or source removal, as appropriate.

Water Board Comments

1) Because the proposed project is located within the area of a known regional VOC plume, the Water Board agrees that the proposed mitigation measures, including an ESMP, vapor intrusion assessment, and source removal and vapor intrusion mitigation as needed, should be required as described in the Initial Study.

2) The Water Board requests that the City of Menlo Park place conditions on permits as appropriate to require the project to obtain written acceptance of the items summarized below from the regulatory agency overseeing vapor intrusion assessment and mitigation concerns at the time.

Document Title	Timeframe
Environmental Site Management Plan and Vapor Intrusion Assessment – Including VIMS design, operations and maintenance plan, contingency plans, and financial assurance plan	Approval needed prior to start of construction
VIMS Construction Completion Report – Including as-built drawings	Approval needed prior to building occupancy

3) The Water Board is one of at least three regulatory agencies that could potentially oversee future vapor intrusion assessment and mitigation measures associated with this project. The others include the DTSC or the San Mateo County Division of Environmental Health Services.

4) The overseeing regulatory agency will likely require a cost recovery agreement to allow for review and evaluation of monitoring and evaluation reports such as those included in the [Water Board’s Fact Sheet: Development on Properties with a Vapor Intrusion Threat](#).

If you have any questions, please contact Kimberlee West of my staff at (510) 622-2432 or kimberlee.west@waterboards.ca.gov.

Sincerely,

Michael Montgomery
Executive Officer

Copy by email:

Andrew Morcos, Menlo Park Portal Venture, LLC, amorcos@greystar.com

Jacob Madden, San Mateo County Groundwater Protection Program,

JMadden@smcgov.org



SEQUOIA UNION HIGH SCHOOL DISTRICT

ADMINISTRATIVE SERVICES

480 JAMES AVENUE, REDWOOD CITY, CALIFORNIA 94062-1041

TEL. (650) 369-1411 EXT. 22218 - FAX (650) 306-1762

WWW.SEQ.ORG

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MARY STREHLY

ASSOCIATE SUPERINTENDENT

CRYSTAL LEACH

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:

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 Project's Initial Study provides that the Initial Study "tiers from the ConnectMenlo Final EIR, as appropriate." (Initial Study, p. 1-11.) The Initial Study later concludes that the proposed Project would have a less-than-significant impact on schools because 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." (Initial Study, p. 3-48.) The ConnectMenlo EIR concluded that "[b]ecause 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...impacts related to the SUHSD would be less than significant." (ConnectMenlo Draft EIR, p. 4.12-40.)

Both the City's reliance upon the ConnectMenlo EIR, and the City's conclusions regarding the Project's impacts on the District, are misplaced.

A. Neither the ConnectMenlo EIR nor the Initial Study Adequately Identify All Impacts on the District.

As discussed in greater depth throughout this letter, both the program and the Project will pose numerous, significant impacts on the District and its ability to provide its educational program, none of which were adequately identified and addressed in the ConnectMenlo EIR and, as a result, the Initial Study. ConnectMenlo likewise 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 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 335 residential units less than a quarter mile down the street from a District high school would impact the District's program at TIDE Academy.

Further, ConnectMenlo was based on the assumption that development under the program would take place in an incremental fashion, over the course of 24 years. The Initial Study acknowledges the fact that this assumption was incorrect, however, 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, p. 1-4, fn. 8.) The Initial Study goes on to provide 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 the Initial Study's conclusion. 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.

B. Neither the ConnectMenlo EIR nor the Initial Study Adequately Identify Mitigation Measures to Address Impacts caused by the Project.

Aside from a brief discussion of SB 50, neither the Initial Study nor the ConnectMenlo EIR adequately considered mitigation measures intended to alleviate the impacts caused by development on the District's facilities. Of particular note, as part of the ConnectMenlo program, the City developed a "community amenities list" as a means by which project developers can mitigate the impacts of their projects under ConnectMenlo by providing amenities to the community. Specifically, the City approved a list of community amenities that developers may offer in exchange for "bonus level development" in the M-2 and other zoning districts in the City, including the Bayfront neighborhood. Despite several requests by the District, the City has not included any school facilities items on its community amenities list.

As discussed, the Developer and City, both in the Initial Study and the ConnectMenlo EIR, rely upon SB 50 as a panacea to all District impacts caused by development under ConnectMenlo. Such reliance is neither legally nor factually justified, and displays a lack of understanding of how school facilities are funded.

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 sf of residential development, and up to \$0.66 per sf of commercial development, which maximum amounts are increased every two years based on the statewide cost index for class B construction.

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).) However, California courts have since acknowledged that developer fees do not constitute full and complete mitigation for school-related impacts other than school overcrowding. (*Chawanakee Unified Sch. Dist. v. Cty. of Madera* (2011) 196 Cal.App.4th 1016.) Thus, contrary to the assertions of the City in the ConnectMenlo EIR and the Initial Study, the payment of fees do not constitute full mitigation for all impacts caused by development under ConnectMenlo related to traffic, noise, biological, pedestrian safety, and all other types of impacts related to the District and its educational program.

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; (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 Facilities Program (SFP). However, these sources of funds can be equally

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.

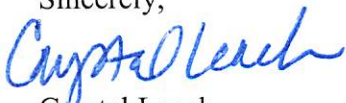
We request that all notices and copies of documentation with regard to this Project be mailed both to the District directly, and also to our legal counsel's attention as follows:

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