

APPENDIX A

NOTICE OF PREPARATION AND COMMENT LETTERS

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**NOTICE OF PREPARATION
ENVIRONMENTAL IMPACT REPORT
MENLO PORTAL PROJECT
CITY OF MENLO PARK**

Date: November 16, 2020

To: State Clearinghouse
State Responsible Agencies
State Trustee Agencies
Other Public Agencies
Interested Organizations

From: Payal Bhagat
Consulting Planner
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

Subject: **Notice of Preparation of an Initial Study and Environmental Impact Report for the Menlo Flats Project**

Lead Agency: City of Menlo Park, Planning Division
Project Title: Menlo Flats Project
Project Area: Bayfront Area, City of Menlo Park

Notice is hereby given that the City of Menlo Park (City) will be the lead agency and will prepare a focused environmental impact report (EIR) for the proposed Menlo Flats Project (project). An Initial Study has been prepared along with this Notice of Preparation (NOP), which scopes out several environmental topics from further review. The focused EIR will address potential physical environmental effects of the proposed project that have not been scoped out, as outlined in the California Environmental Quality Act (CEQA). The City is requesting comments on the scope and content of this focused EIR.

A scoping session will be held as part of the Planning Commission meeting on **December 7, 2020 at 7:00 p.m.** In response to the ongoing COVID-19 pandemic, the Planning Commission meeting will be held remotely via Gotowebinar, which can be accessed at: menlopark.org/PlanningCommission. The scoping session, which is part of the focused EIR process, is the time when the City solicits input from the public and agencies on specific topics they believe should be addressed in the environmental analysis. The scoping process is designed to enable the City to determine the scope and content of the focused EIR, identify the range of actions, and identify potentially significant environmental effects, alternatives, and mitigation measures to be analyzed in the focused EIR. Written comments on the scope of the focused EIR may also be sent to:

Payal Bhagat
City of Menlo Park
Community Development Department, Planning Division
701 Laurel Street
Menlo Park, CA 94025
PBhagat@menlopark.org
Phone: 650.330.6702

Comments on the NOP are due no later than the close of the NOP review period (5:00 p.m. on **December 21, 2020**). However, we would appreciate your response at the earliest possible date. Please send your written comments to Payal Bhagat at the address shown above or by email to PBhagat@menlopark.org with “Menlo Flats Project EIR” as the subject. Public agencies that provide comments are asked to include a contact person for the agency.

The Initial Study is available online at: <https://www.menlopark.org/1537/CEQA-documents>. Due to the ongoing COVID-19 pandemic, paper copies are not currently available for review. If you require additional assistance, please contact Payal Bhagat at PBhagat@menlopark.org.

PROJECT LOCATION AND EXISTING CONDITIONS: The project site is located east of US Highway 101 (US 101) in the City of Menlo Park, San Mateo County, as shown in Figure 1. The approximately 1.38-acre project site is located at 165 Jefferson Drive and is generally surrounded by a mix of uses, including older buildings and new construction. The project site is bordered to the north by the Synergy Badminton Club, to the east by two light industrial buildings, to the south by Jefferson Drive, and to the west by a single-story light industrial building.

The project site is designated Mixed Use Residential within the Bayfront Area on the City’s General Plan Land Use Designations Map and is within the Residential-Mixed Use-Bonus (R-MU-B) Zoning District. The generally-level project site is currently developed with a single-story, approximately 24,311-square-foot commercial office building, as shown in Figure 2. The existing building on the project site was constructed in 1964 and is currently occupied by a commercial tenant. A total of 40 surface parking spaces are provided on the project site. Vegetation on the project site consists of small landscaped areas along the southern border and includes a total of 11 mature trees, 4 of which are Heritage Trees.

PROJECT DESCRIPTION: The proposed project would result in demolition of the existing office building and associated improvements and redevelopment of the project site with an approximately 253,702-gross-square-foot, eight-story mixed-use building with approximately 158 dwelling units and approximately 15,000 square feet of commercial space, as well as associated open space, circulation and parking, and infrastructure improvements, as shown in Figures 3, 4, and 5. The project sponsor is currently proposing that 15 percent of the units would comply with the City’s Below Market Rate (BMR) Housing Program Ordinance, Chapter 16.96, and the City’s Below Market Rate Guidelines (Guidelines). The proposed allotment and mix of affordable housing units would continue to be refined with the City.

The ground floor of each building would be raised approximately 5 feet above grade to accommodate flood plain design requirements. The proposed residential building would be a maximum of 84 feet, 11 inches and would front to Jefferson Drive. The proposed building would include an at-grade, three-level, approximately 81,988-square-foot, 176-space parking garage.

A total of approximately 20,929 square feet of open space would be provided across the entire project site, including private residential open space, common open space, and an approximately 1,647-square-foot public plaza located at the southeast corner of the building and a 3,375-square-foot publicly-accessible pedestrian paseo along the eastern boundary of the project site.

PROJECT APPROVALS: The following City discretionary approvals would be required prior to development at the project site:

- EIR Certification
- Use Permit
- Architectural Control
- Heritage Tree Removal Permit
- Below Market Rate Housing Agreement
- Building Permit
- Encroachment Permit

There will be a fiscal impact analysis conducted regarding the proposed project. In order to qualify for bonus-level development within the R-MU-B zoning district, the proposed project will also be required to complete an appraisal process to identify the value of the community amenities to be provided in exchange for the opportunity to develop at the bonus level.

RESPONSIBLE AGENCIES: The agencies/entities listed below are expected to review the draft focused EIR to evaluate the proposed project:

- Pacific Gas & Electric
- California Department of Transportation
- California Department of Toxic Substances Control
- California Regional Water Quality Control Board/San Mateo Countywide Water Pollution Prevention Program
- Native American Heritage Commission
- City/County Association of Governments
- Bay Area Air Quality Management District
- San Mateo County Transportation Authority
- San Mateo County Environmental Health Division
- West Bay Sanitary District
- Menlo Park Fire Protection District

INTRODUCTION TO EIR: ConnectMenlo, which updated the City’s General Plan Land Use and Circulation Elements and rezoned land in the M-2 Area (now referred to as the Bayfront Area), was approved on November 29, 2016. Because the City’s General Plan is a long-range planning document, the ConnectMenlo EIR was prepared as a program EIR, pursuant to CEQA Guidelines Section 15168. The City certified the program EIR for ConnectMenlo on November 29, 2016. Section 15168(d) of the CEQA Guidelines provides information for simplifying the preparation of environmental documents by incorporating by reference analyses and discussions from the program EIR. CEQA Guidelines Section 15162(d) states that where an EIR has been prepared and certified for a program or plan, the environmental review for a later activity consistent with the program or plan should be limited to the effects that were not analyzed as significant in the prior EIR or susceptible to substantial reduction or avoidance.

An Initial Study for the proposed project, which is available for review online, has been prepared to evaluate the potential environmental impacts of the proposed project and determine what level of additional environmental review is appropriate. In accordance with the requirements outlined in Section 15168 of the CEQA Guidelines, the Initial Study has been prepared to disclose the relevant impacts and mitigation measures covered in the certified program-level ConnectMenlo Final EIR and discuss whether the proposed project is within the parameters of the certified ConnectMenlo Final

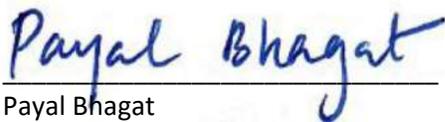
EIR. In addition, as a result of the settlement agreement between the City of Menlo Park and the City of East Palo Alto regarding the ConnectMenlo Final EIR, certain topics are required to be analyzed. Based on the findings of the Initial Study, a focused EIR will be prepared for impacts that need further discussion and/or mitigation beyond that provided in the certified ConnectMenlo Final EIR. The focused EIR for the proposed project will be prepared and processed in accordance with CEQA and the CEQA Guidelines.

PROBABLE ENVIRONMENTAL EFFECTS: Based on the conclusions in the Initial Study, the following topics will be scoped out of the EIR: aesthetics; agriculture and forestry resources; biological resources; cultural resources; energy; geology and soils; hazards and hazardous materials; hydrology and water quality; land use and planning; noise (construction-period); mineral resources; public services; recreation; utilities and service systems; and wildfire. These topic areas were adequately analyzed in the ConnectMenlo Final EIR and no additional potential impacts or mitigation measures have been identified in the Initial Study. Therefore, the focused EIR will analyze whether the proposed project would have a significant environmental impact in the following areas:

- Air Quality;
- Greenhouse Gas Emissions;
- Noise (traffic noise);
- Population and Housing; and
- Transportation.

ALTERNATIVES: Based on the significance conclusions determined in the focused EIR, alternatives to the proposed project will be identified and analyzed to reduce identified impacts. Section 15126.6(e) of the CEQA Guidelines requires the evaluation of a No Project Alternative. Other alternatives may be considered during preparation of the EIR and will comply with the CEQA Guidelines, which call for a range of reasonable alternatives to the project, or the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project.

EIR PROCESS: Following the close of the NOP comment period, a draft focused EIR will be prepared that will consider all NOP comments. In accordance with CEQA Guidelines Section 15105(a), the draft focused EIR will be released for public review and comment for a required 45-day review period. Following the close of the 45-day public review period, the City will prepare a final EIR, which will include responses to all substantive comments received on the draft focused EIR. The draft focused EIR and final EIR will be considered by the Planning Commission in making the decision to certify the EIR and approve or deny the project.



Payal Bhagat
City of Menlo Park

November 16, 2020

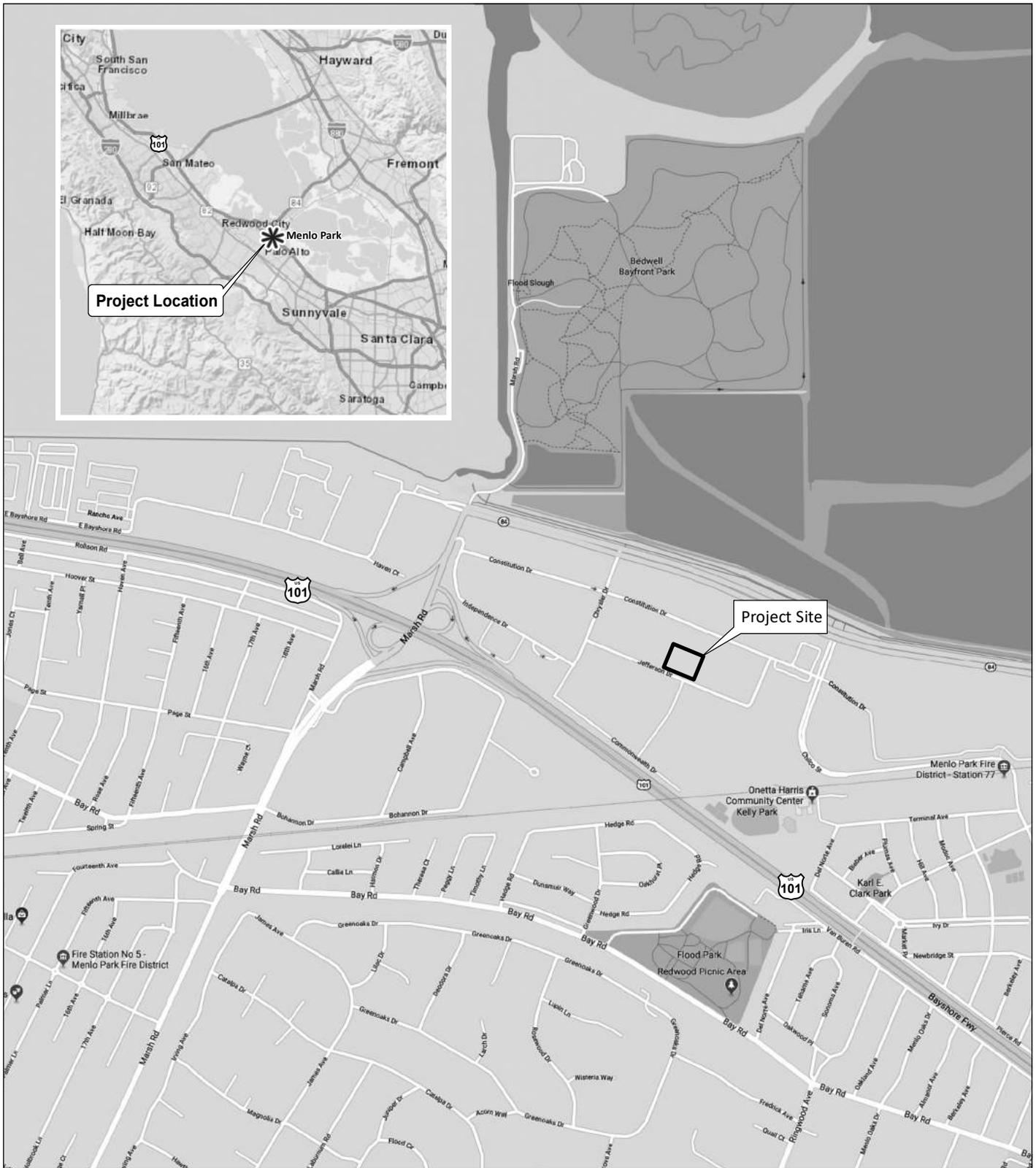
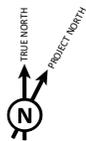


FIGURE 1

LSA



 Project Site

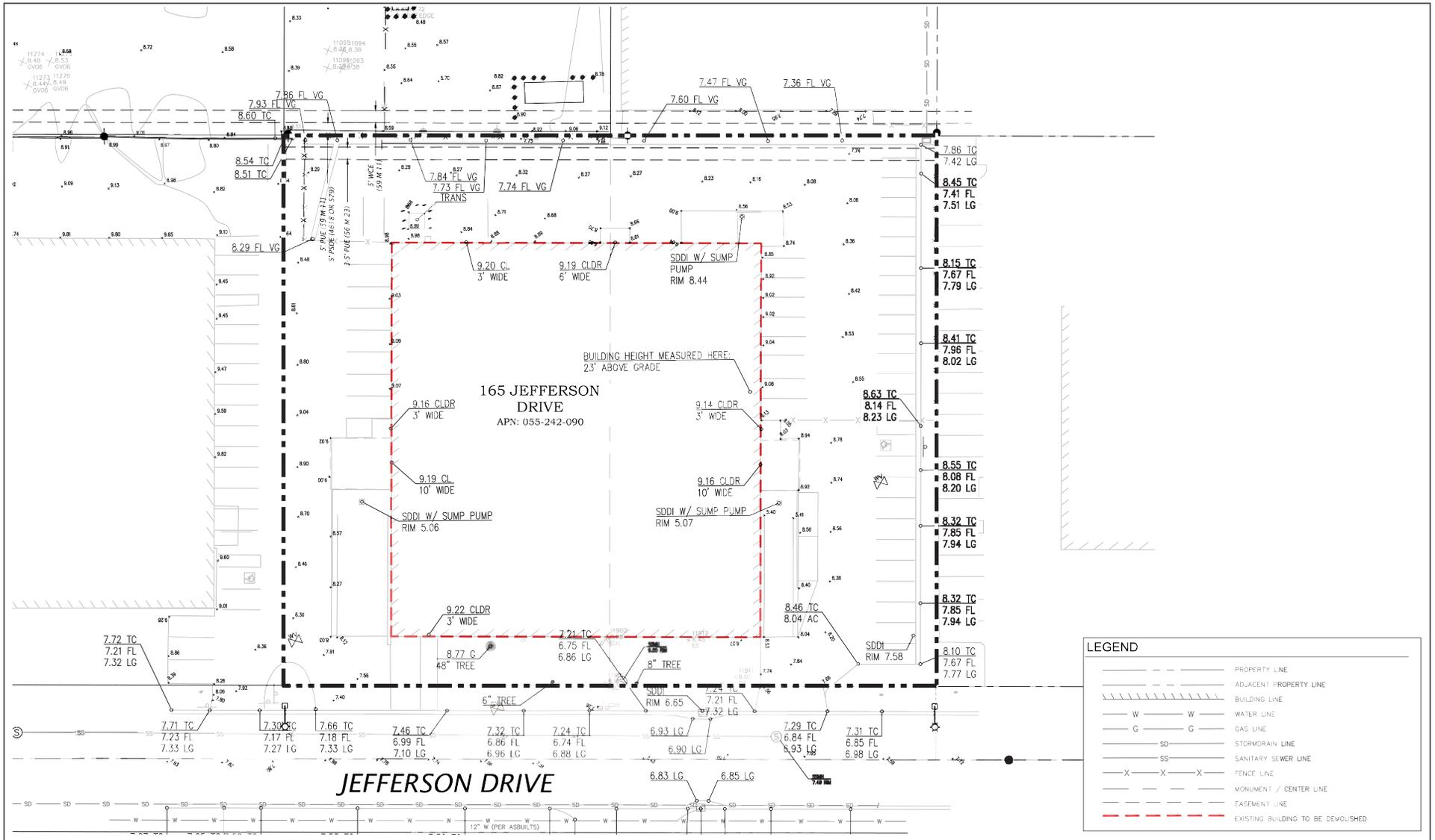
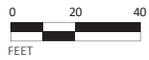


FIGURE 2

LISA

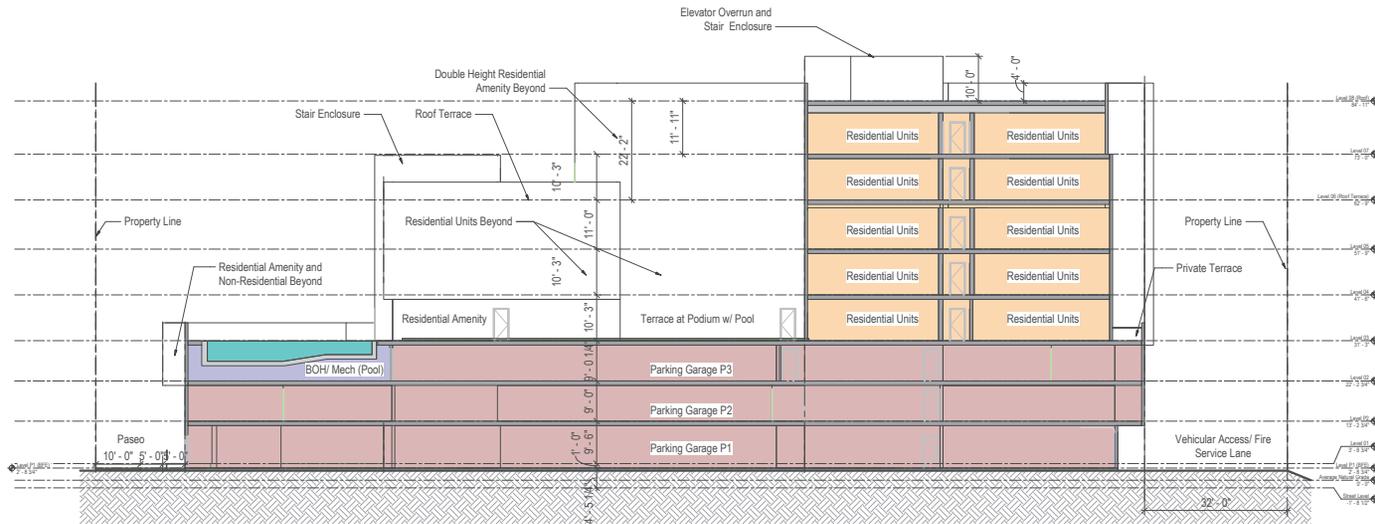


Project Boundary

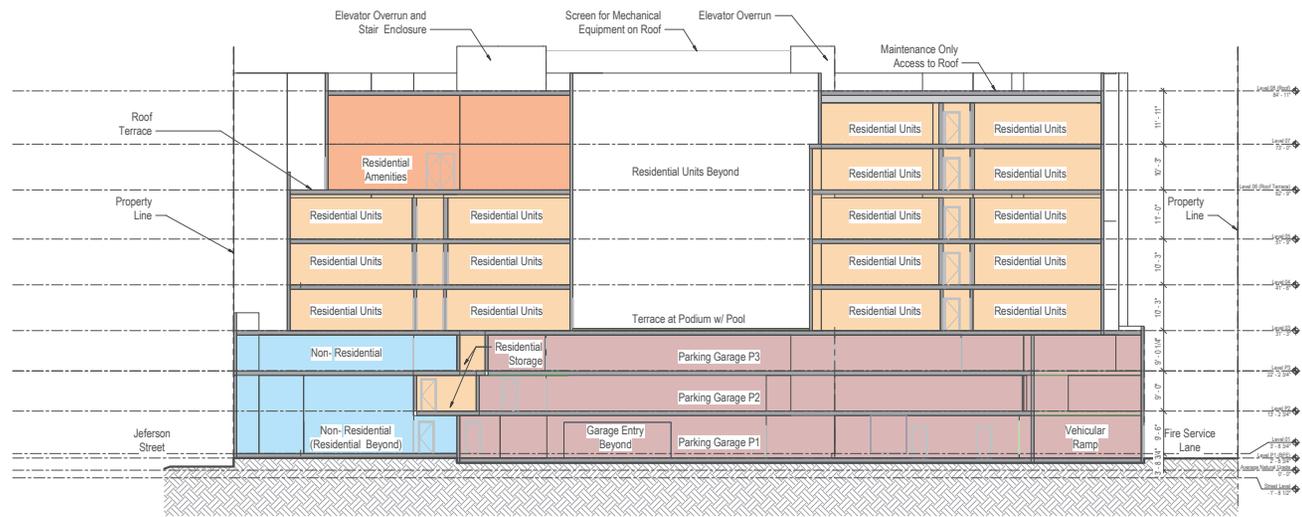
SOURCE: Greystar; HM; BKF, 7/21/2020

P:\CMK2001 Menlo Flats\PRODUCTS\Initial Study\Figures\Figure 1-4.ai (8/13/2020)

Menlo Flats Project NOP
Existing Site Conditions



EAST WEST BUILDING SECTION



SOUTH NORTH BUILDING SECTION

LSA

FIGURE 5



Menlo Flats Project

Comments on the Notice of Preparation (NOP) Scoping

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General Public

Susan Erhart_____	3
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On December 5, 2020 at 11:13 AM

From: Susan Erhart (email: sipaktchian@gmail.com)

Dear members of the planning commission,

In setting the scope for the draft EIR for the proposed Menlo Flats project, I would ask that the report document the additional traffic and parking issues associated with deliveries to the future tenants.

Although the developers say they have limited the number of Menlo Flats parking spaces in order to reduce car traffic, it doesn't take into account the full range of additional traffic the tenants will generate.

In today's environment, residents don't rely solely on their personal vehicles. Rather, they are the recipients of package and meal deliveries, in addition to being passengers in ride-share vehicles. This is especially true of apartment dwellers in the 20-40 age range, which would likely be the majority of tenants in the Menlo Flats project.

The apartment complex at 777 Hamilton Ave. is a prime example of the traffic difficulties posed by delivery and ride-share vehicles. Parking and stopping aren't permitted on the side of Hamilton where the apartment complex is located, and yet numerous times each week the single lane of northbound traffic is blocked by a delivery truck, a DoorDash driver or an Uber vehicle dropping off a resident. The complex doesn't have a designated area for these vehicles.

Jefferson Street, where the Menlo Flats project is located, doesn't allow parking or stopping on either side of the road. Where will the delivery and ride-share vehicles stop? Does the project have a designated parking area for them?

Given the ubiquity of delivery and ride-share vehicles in this area, the environmental impacts of these vehicles should be documented in assessing the Menlo Flats project and all other large residential proposals. These vehicles will be a factor in the air quality, traffic noise and traffic congestion for Belle Haven and the M-2 zone.

Thank you for your consideration.

Sent on – December 18, 2020 @ 1:29 PM

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

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

*Making Conservation
a California Way of Life.*

December 18, 2020

SCH #: 2020110243

GTS #: 04-SM-2020-00339

GTS ID: 21311

Co/Rt/Pm: SM/ 84/ 26.483

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

Re: Menlo Flats Project Notice of Preparation (NOP) of an Environmental Impact Report (EIR)

Dear Payal Bhagat:

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

Project Understanding

The project proposes a mixed-use building with 158 dwelling units and commercial space, including open space and parking. This project proposes to comply with the City of Menlo Park's Below Market Rate (BMR) Ordinance with 15 percent of units BMR. The site is within close proximity to US-101 and 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.

Vehicle Miles Traveled (VMT) Screening: If the project meets the screening criteria established in the City's Council Procedure #CC-20-012 (Transportation Impact Analysis Guidelines) to be presumed to have a less-than-significant VMT

impact and exempt from detailed VMT analysis, please provide justification to support the exempt status in align with the City's VMT policy. Projects that do not meet the screening criteria should include a detailed VMT analysis in the DEIR.

Mitigation Strategies

Location efficiency factors, including community design and regional accessibility, influence a project's impact on the environment. Using Caltrans' *Smart Mobility 2010: A Call to Action for the New Decade*, the proposed project site is identified as a Close-In Compact Community where community design is moderate and regional accessibility is strong.

Given the place, type and size of the project, the DEIR should include a robust Transportation Demand Management (TDM) Program to reduce VMT and greenhouse gas emissions from future development in this area. The measures listed below have been quantified by California Air Pollution Control Officers Association (CAPCOA) and shown to have different efficiencies reducing regional VMT:

- Increase in number of affordable housing units in project;
- Orientation of project towards non-auto corridor;
- Pedestrian network improvements;
- Bicycle network improvements or Fair Share contribution to such measures;
- Traffic calming measures;
- Implementation of designated parking spaces for EVs;
- Limiting parking supply;
- Unbundled parking from property costs;
- Transit and trip planning resources such as a commute information kiosk;
- Real-time transit information system;
- Transit access supporting infrastructure (including bus shelter improvements and sidewalk/ crosswalk safety facilities);
- VMT Banking and/or Exchange program;

Using a combination of strategies appropriate to the project and the site can reduce VMT, along with related impacts on the environment and State facilities. TDM 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.

Payal Bhagat, Principal Planner
December 18, 2020
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Please reach out to Caltrans for further information about TDM measures and a toolbox for implementing these measures in land use projects. Additionally, 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.

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



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



December 9, 2020

Ms. Payal Bhagat
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
pbhagat@menlopark.org

Subject: Menlo Flats Project, Notice of Preparation, SCH No. 2020110243, City of Menlo Park, San Mateo County

Dear Ms. Bhagat:

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) prepared by the City of Menlo Park for the Menlo Flats Project (Project) located in the City of Menlo Park, San Mateo County. CDFW is submitting comments on the NOP regarding potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources (e.g., biological resources). CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT LOCATION

The Project is located within a 1.38-acre site, at 165 Jefferson Drive in the City of Menlo Park, San Mateo County. The Project site is bordered to the north by Synergy Badminton Club, to the east by two light industrial buildings, to the south by Jefferson Drive, and to the west by single-story light industrial buildings.

PROJECT DESCRIPTION SUMMARY

The proposed Project includes demolition of the existing office building and redevelopment of the Project site with an approximately 253,702 gross-square-foot, eight-story mixed use building. The proposed building would be a maximum height of 84 feet, 11 inches, and would front to Jefferson Drive. The proposed building would also

Ms. Payal Bhagat
City of Menlo Park
December 9, 2020
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include an at-grade, three-level, approximately 81,988 square-foot 176 space parking garage. Approximately 20,929 square feet of open space throughout the Project area is proposed.

ENVIRONMENTAL SETTING

The state special-status species that have the potential to occur in or near the Project site, include, but are not limited to:

- Bat species
- Nesting birds

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Menlo Park in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on biological resources.

COMMENT 1: Full Project description of Project features

The CEQA Guidelines (§§15124 & 15378) require that the draft Environmental Impact Report (EIR) incorporate a full Project description, including reasonably foreseeable future phases of the Project, and require that it contain sufficient information to evaluate and review the Project's environmental impact.

To fully address the Project's impacts to fish and wildlife resources. Please include complete descriptions of the following features within the draft EIR, if applicable:

- Residential and commercial building heights and widths;
- Introduction of sources of light and glare into habitat areas;
- Stormwater or effluent drainage outlet systems
- Detailed description of proposed work (e.g., crossing improvements, repairs, etc.) at and within stream crossings; and
- Location, type, and height of all fencing.

COMMENT 2: Nesting Birds

CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through early-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or Fish and Game Codes.

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To evaluate and avoid for potential impacts to nesting bird species, CDFW recommends incorporating the following mitigation measures into the Project's draft EIR, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 1: Nesting Bird Surveys

CDFW recommends that a qualified avian biologist conduct pre-activity surveys for active nests no more than seven (7) days prior to the start of ground or vegetation disturbance and every fourteen (14) days during Project activities to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. Prior to initiation of ground or vegetation disturbance, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once Project activities begins, CDFW recommends having the qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

Recommended Mitigation Measure 2: Nesting Bird Buffers

If continuous monitoring of identified nests by a qualified avian biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified avian biologist advise and support any variance from these buffers.

COMMENT 3: Bats

Bat species may occur within and surrounding the Project site, including in existing buildings. Bats are considered non-game mammals and are protected by state law from take and/or harassment (Fish and Game Code §4150, CCR §251.1). Several bat species are also considered Species of Special Concern (SOC). To evaluate and avoid potential impacts to bat species, CDFW recommends incorporating the following mitigation measures into the Project's draft EIR, and that these measures be made conditions of approval for the Project.

Ms. Payal Bhagat
City of Menlo Park
December 9, 2020
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Recommended Mitigation Measure 3: Bat Habitat Assessment

To evaluate Project impacts to bats, a qualified bat biologist should conduct a habitat assessment for bats at the site seven (7) days prior to the start of Project activities. The habitat assessment shall include a visual inspection of features within 50 feet of the work area for potential roosting features (bats need not be present). Habitat features found during the survey shall be flagged or marked.

Recommended Mitigation Measure 4: Bat Habitat Monitoring

If any habitat features identified in the habitat assessment will be altered or disturbed by Project construction, the qualified bat biologist should monitor the feature daily to ensure bats are not disturbed, impacted, or fatalities are caused by the Project.

Recommended Mitigation Measure 5: Bat Project Avoidance

If bat colonies are observed at the Project site, at any time, all Project activities should stop until the qualified bat biologist develops a bat avoidance plan to be implemented at the Project site. Once the plan is implemented, Project activities may recommence.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Permit must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (CEQA section 21001(c), 21083, & CEQA Guidelines section 15380, 15064, 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the Project proponent’s obligation to comply with Fish and Game Code section 2080.

Lake and Streambed Alteration Program

Notification is required, pursuant to CDFW’s LSA Program (Fish and Game Code section 1600 et. seq.) for any Project-related activities that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank

Ms. Payal Bhagat
City of Menlo Park
December 9, 2020
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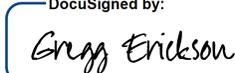
including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA (Public Resources Code section 21000 et seq.) as the responsible agency.

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, section 711.4; Pub. Resources Code, section 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

Thank you for the opportunity to comment on the Project's NOP. If you have any questions regarding this letter or for further coordination with CDFW, please contact Ms. Stephanie Holstege, Environmental Scientist at (707) 210-5104 or Stephanie.Holstege@wildlife.ca.gov; or Mr. Wesley Stokes, Senior Environmental Scientist (Supervisory), at Wesley.Stokes@wildlife.ca.gov.

Sincerely,

DocuSigned by:

BE74D4C93C604EA...
Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse #2020110243



NATIVE AMERICAN HERITAGE COMMISSION

November 17, 2020

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

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nahc@nahc.ca.gov
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Re: 2020110243, Menlo Flats Project, San Mateo County

Dear Ms. Bhagat:

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.

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
Cultural Resources Analyst

cc: State Clearinghouse



Kelly M. Rem
Attorney at Law

E-mail: krem@lozanosmith.com

December 21, 2020

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

Payal Bhagat
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 Flats Project

Dear Ms. Bhagat:

This office represents the Sequoia Union High School District ("District") with regard to the above referenced matter. The District appreciates the opportunity to provide comments and input regarding the Notice of Preparation of a Focused Environmental Impact Report ("EIR") for the Menlo Flats Project ("Project").

The District is very concerned about this Project, along with the two other Greystar projects and one SP Menlo, LLC, project pending before the City in the western Bayfront neighborhood, due to their close proximity to the District's TIDE Academy and anticipated impacts on student safety. The District has previously submitted comments regarding these other projects, most recently including the proposed Menlo Portal project. Given the similarities between the Menlo Uptown, Menlo Portal, and Menlo Flats projects, and given the nearly identical initial studies prepared for these three projects, the District reiterates many of its prior comments in this letter. **As in the District's prior letters, the District requests that all direct and indirect impacts related to the Project's proximity to District schools be thoroughly reviewed, analyzed, and mitigated.**

The Project, sponsored by Menlo Park Flats Venture, LLC ("Developer"), is proposed to be located at the approximately 1.38-acre site at 165 Jefferson Drive (the "Property"). The Developer is proposing to demolish the existing single-story office and industrial space and redevelop the Property with an approximately 253,702-gross-square-foot, eight-story mixed-use building with 158 dwelling units and 15,000 square feet of commercial space (the "Project"). The Project, which will require a number of entitlements from the City, is anticipated to generate approximately 32 new high school students. All three Greystar projects, combined with the SP Menlo project adjacent to Greystar's proposed Menlo Portal project, are anticipated to generate approximately 216 students within a few hundred meters of the District's TIDE Academy.

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 on 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.

A. 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 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 Project's Initial Study provides that the Initial Study "tiers from the ConnectMenlo Final EIR, as appropriate." (Initial Study at 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 at 3-46.) 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.) (Emphasis added.)

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

- 1. 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, its students, 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. With regard to Greystar's projects, ConnectMenlo did not consider whether/how the placement of 976 residential units less than 400 meters away from a District high school would impact the District's program at TIDE Academy.

Further, as discussed above, 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 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 1-10, fn. 10.) The Initial Study goes on to state, however, that "no new or additional impacts are anticipated as a result of the expedited buildout." (*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, many of which are already at or exceeding capacity. For instance, TIDE Academy's current capacity is 400 students. The District expects to meet or exceed this 400-student capacity within 3 years without accounting for the Greystar projects. The proposed Greystar and SP Menlo projects in the area, however, will generate over half of the students needed to fill this capacity in a few years' time. 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.

2. 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 that would aid the District.

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 School Facilities Program (SFP). However, these sources of funds can be equally unreliable. It is currently unclear when/whether those school districts that have applied for State funding will be able to receive such funding. Local bond funds are also difficult to generate, as local bonds are subject to 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.

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.

B. 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 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).)

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 Jefferson Drive, which borders 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

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.) TIDE Academy is located almost directly across Jefferson Drive from the Property. Both TIDE Academy and the proposed Project would be accessed by the same roads, including Jefferson Drive, Independence Drive, Constitution Drive, and the immediately surrounding streets. In addition to drawing hundreds of new residents to the area, including an estimated 32 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. Jefferson Drive is a narrow two-lane road. Accordingly, such increases to traffic in the area will not only make it

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.

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 Independence 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 western Bayfront Area, the Project will be magnifying this dangerous road condition, further placing District students, families, and staff in harm's way.

Likewise, the Project roads and neighborhood are not equipped to handle the parking demands of the visitors and residents drawn by the Project. The proposed 176 parking spaces proposed by the Project will not come close to providing sufficient parking for all residents and visitors of the Project site. As a result, vehicles will spill onto Jefferson Drive and the surrounding streets, which are already suffer from severe parking constraints. While perhaps not an environmental impact on its own, the Project EIR must analyze the indirect impacts on student and pedestrian safety that will be caused by this shortage of parking.

In addition to increased risks of vehicular accidents, the traffic and parking 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

As TIDE Academy did not yet exist, 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

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 Arca Zoning Update Draft EIR (June 1, 2016), p. 4.9-7 – 4.9-8

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 and are being considered for approval in the Bayfront Area, and specifically the western 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 3,257 new residential units have already been approved or are in the process of being approved by the City in the Bayfront Area.⁶ 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); the Menlo Portal Project at 104-110 Constitution Drive and 115 Independence Drive (320 proposed dwelling 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.

⁶ See, ConnectMenlo Project Summary, which can be accessed here: <https://www.menlopark.org/1396/Bayfront-Area-projects-overview>

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.**

C. 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 Greystar developments being considered and approved a few hundred feet from TIDE Academy, 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.

D. 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.

E. 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 158 anticipated residential units, it is anticipated that the proposed Project's 15,000 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, 158 anticipated residential units is likely to generate approximately 32 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 historic, 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.

F. 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.

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.

G. 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.

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 attention as follows:

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

Harold M. Freiman, Esq.
Lozano Smith
2001 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,



Kelly M. Rem

cc: Crystal Leach, Interim Superintendent (*by email*)