



REGULAR MEETING AGENDA

Date: 8/31/2021
Time: 5:00 p.m.
Location: [Zoom.us/join](https://zoom.us/join) – ID# 998 8073 4930

NOVEL CORONAVIRUS, COVID-19, EMERGENCY ADVISORY NOTICE

On March 19, 2020, the Governor ordered a statewide stay-at-home order calling on all individuals living in the State of California to stay at home or at their place of residence to slow the spread of the COVID-19 virus. Additionally, the Governor has temporarily suspended certain requirements of the Brown Act. For the duration of the shelter in place order, the following public meeting protocols will apply.

Teleconference meeting: All members of the City Council, city staff, applicants, and members of the public will be participating by teleconference. To promote social distancing while allowing essential governmental functions to continue, the Governor has temporarily waived portions of the open meetings act and rules pertaining to teleconference meetings. This meeting is conducted in compliance with the Governor Executive Order N-25-20 issued March 12, 2020, and supplemental Executive Order N-29-20 issued March 17, 2020.

- How to participate in the closed session and regular meeting
 - Submit a written comment online up to 1-hour before the meeting start time:
menlopark.org/publiccommentAugust31 *
 - Access the meeting real-time online at:
[Zoom.us/join](https://zoom.us/join) – Meeting ID 998 8073 4930
 - Access the meeting real-time via telephone at:
(669) 900-6833
Meeting ID 998 8073 4930
Press *9 to raise hand to speak

*Written public comments are accepted up to 1-hour before the meeting start time. Written messages are provided to the City Council at the appropriate time in their meeting.

- Watch meeting:
 - Cable television subscriber in Menlo Park, East Palo Alto, Atherton, and Palo Alto:
Channel 26
 - Online:
menlopark.org/streaming

Note: City Council closed sessions are not broadcast online or on television and public participation is limited to the beginning of closed session.

Subject to Change: Given the current public health emergency and the rapidly evolving federal, state, county and local orders, the format of this meeting may be altered or the meeting may be canceled. You may check on the status of the meeting by visiting the City's website www.menlopark.org. The instructions for logging on to the webinar and/or the access code is subject to change. If you have difficulty accessing the webinar, please check the latest online edition of the posted agenda for updated information (menlopark.org/agenda).

According to City Council policy, all meetings of the City Council are to end by midnight unless there is a super majority vote taken by 11:00 p.m. to extend the meeting and identify the items to be considered after 11:00 p.m.

Regular Session ([Zoom.us/join](https://zoom.us/join) – ID# 998 8073 4930)

A. Call To Order

B. Roll Call

C. Agenda Review

Agenda Review provides advance notice to members of the public and City staff of any modifications to the agenda order and any requests from City Councilmembers under City Councilmember reports.

D. Public Comment

E. Presentations and Proclamations

- E1. Proclamation: Recognizing Rayna Lehman ([Attachment](#))

F. Study Session

- F1. Receive Environmental Quality Commission's recommendations to electrify 95 percent of existing buildings in Menlo Park and provide direction on next steps ([Staff Report #21-170-CC](#)) ([Presentation](#))

[Web form public comment on item F1.](#)

G. Consent Calendar

- G1. Accept the City Council meeting minutes for July 20 and 29, and August 16 and 17, 2021 ([Attachment](#))
- G2. Adopt Resolution No. 6654 approving the funding agreement with Hibiscus Properties for the construction of raised median islands on Chilco Street and authorizing the city manager to execute the funding agreement ([Staff Report #21-163-CC](#))
- G3. Adopt Resolution No. 6655 approving the funding agreement with 1540 El Camino Real developer for median landscaping improvements along El Camino Real, between Glenwood Avenue and Encinal Avenue and authorizing the city manager to execute the funding agreement ([Staff Report #21-164-CC](#))
- G4. Adopt Resolution No. 6656 approving Alcoholic Beverage Control grant ([Staff Report #21-165-CC](#))
- G5. Adopt Resolution No. 6657 and approve agreement with Turbo Data Systems, Inc. for citation processing and payment and adjudication services ([Staff Report #21-166-CC](#))

H. Public Hearing

- H1. Consider two appeals of the Planning Commission certification of a final environmental impact report and approval of a use permit, architectural control, below market rate housing agreement, and community amenities operating covenant, and consider the Planning Commission recommendation to approve a vesting tentative map for a major subdivision for the proposed Menlo Uptown project with 483 multifamily dwelling units comprised of 441 rental units and 42 for-sale condominium units and approximately 2,940 square feet of commercial space at 141 Jefferson Drive and 180-186 Constitution Drive ([Staff Report #21-169-CC](#))

Recess

- H2. Consider an appeal of the Planning Commission's denial of a use permit for the sale of beer and wine for off-premises consumption every day from 6 a.m. to 2 a.m. the following day, and for 24-hour operations of an existing service station and associated convenience store at 710 Willow Road ([Staff Report #21-167-CC](#)) ([Presentation](#))

[Web form public comment on item H2.](#)

I. Regular Business

- I1. Adopt Resolution No. 6659 establishing the Independent Redistricting Commission ([Staff Report #21-168-CC](#)) ([Presentation](#))

[Web form public comment on item I1.](#)

J. Informational Items

- J1. City Council agenda topics: September 2021 ([Staff Report #21-159-CC](#))
- J2. Request for information on the former redevelopment agency, also known as the Community Development Agency ([Staff Report #21-160-CC](#))
- J3. Update on housing element update community engagement and outreach efforts ([Staff Report #21-161-CC](#))
- J4. Recreation scholarship pilot program update ([Staff Report #21-162-CC](#))

K. City Manager's Report

L. City Councilmember Reports

M. Adjournment

At every regular meeting of the City Council, in addition to the public comment period where the public shall have the right to address the City Council on any matters of public interest not listed on the agenda, members of the public have the right to directly address the Council on any item listed on the agenda at a time designated by the chair, either before or during the City Council's consideration of the item.

At every special meeting of the City Council, members of the public have the right to directly address the City Council on any item listed on the agenda at a time designated by the chair, either before or during consideration of the item. For appeal hearings, appellant and applicant shall each have 10 minutes for presentations.

If you challenge any of the items listed on this agenda in court, you may be limited to raising only those issues you or

someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Menlo Park at, or prior to, the public hearing. Any writing that is distributed to a majority of the City Council by any person in connection with an agenda item is a public record (subject to any exemption under the Public Records Act) and is available by request by emailing the city clerk at jaherren@menlopark.org. Persons with disabilities, who require auxiliary aids or services in attending or participating in City Council meetings, may call the City Clerk's Office at 650-330-6620.

Agendas are posted in accordance with Government Code Section 54954.2(a) or Section 54956. Members of the public can view electronic agendas and staff reports by accessing the City website at menlopark.org/agenda and can receive email notification of agenda and staff report postings by subscribing to the "Notify Me" service at menlopark.org/notifyme. Agendas and staff reports may also be obtained by contacting City Clerk at 650-330-6620. (Posted: 8/26/2021)

Proclamation

Recognizing Rayna Lehman

WHEREAS, Rayna Lehman came to Menlo Park, California in 1970 and in 1974 Lehman joined Painters Local 1146 in Redwood City; and

WHEREAS, Rayna became the first female apprentice Painters District Council 33, graduated top of the class in 1978 and turned out as a Journeyman Union Painter and Decorator; and

WHEREAS, serving as Delegate to the San Mateo Building Trades Council, Rayna was elected Trustee and ultimately President of Painters Local 1146, a position she held for nine years; and

WHEREAS, Rayna went on to recruit women and minorities for the road building trades with the Bay Area Construction Opportunity Program; and

WHEREAS, on April 26, 1982, Rayna was selected as the first San Mateo Central Labor Council Community Services Director and Labor Liaison to United Way Bay Area in San Mateo County; and

WHEREAS, Rayna provided service and assistance to union members and families facing hard times; represented Labor on numerous boards, commissions, workgroups and initiatives; created workforce policy, implemented programs, conducted workshops and training courses; and

WHEREAS, Rayna led a program focused on individual and community impact - creating and supporting programs and policies that reduce poverty, enhance self-sufficiency, expand workforce training, expand access to affordable health care, childcare, and early childhood education, promote and protect workers' rights, workplace health and safety; and

WHEREAS, Rayna has responded to natural disasters, recessions, depressions, strikes, plant closures, layoffs, and most recently a pandemic; and

WHEREAS, in every interaction, Rayna demonstrated a passion for justice and has built strong relationships with Labor Council affiliates, local labor institutions, local nonprofit community partners, education partners and local government; and

WHEREAS, for the past 20 years, Rayna has been a workshop coordinator, a presenter, a moderator and participant at most California Labor Federation/ WED Building Workforce Partnerships conferences and an expert presenter on "Labors Role in Workforce Development"; and

WHEREAS, Rayna has been a member of Office and Professional Employees Locals 3 and 29, for 39 years and a member of Painters Locals 1146 and 15 for seventeen years; and

WHEREAS, Rayna has always considered workforce the pivotal issue and remains a tireless champion of workers – "a good job with good pay, good benefits, upward mobility and training is the underpinning of all social and economic justice."

NOW THEREFORE, BE IT RESOLVED that I, Drew Combs, Mayor of the City of Menlo Park, on behalf of the City Council and City, thank Rayna Lehman for all her hard work in the community and wish her the very best in her retirement.



DocuSigned by:
Drew Combs
52C1D497248E4A3
Drew Combs, Mayor
August 18, 2021



STAFF REPORT

City Council
Meeting Date: 8/31/2021
Staff Report Number: 21-170-CC

Study Session: **Receive Environmental Quality Commission's recommendations to electrify 95 percent of existing buildings in Menlo Park and provide direction on next steps**

Recommendation

Receive Environmental Quality Commission's (EQC) recommendations to electrify 95 percent of existing buildings in Menlo Park, climate action plan (CAP) No. 1, and provide direction to EQC, city attorney, and City staff on additional analysis and desired timeline for return to City Council.

Policy Issues

In 2019, the City Council declared a climate emergency (Resolution No. 6535) committing to accelerating actions to address climate change at a local level. In 2020, the City adopted a 2030 CAP with the bold goal to reach carbon neutrality (zero emissions) by 2030 that included a goal to electrify 95 percent of existing buildings by 2030. Meeting the electrification goal is a top priority in the City Council 2021 work plan.

Background

Electricity consumed in Menlo Park is greenhouse gas (fossil fuel) free as almost all households and businesses are subscribed to Peninsula Clean Energy (PCE.) This provides an opportunity to eliminate the use of natural gas (a fossil fuel contributing to climate change) in buildings.

In 2020, the city positioned itself as a leader by requiring newly constructed buildings (residential and commercial) to be all electric with very few exceptions. Since its adoption, many other communities have followed in Menlo Park's footsteps leading to greater greenhouse gas reductions beyond the city's limits.

In order to achieve the CAP's goal of carbon neutrality by 2030, efforts will need to focus on transitioning natural gas equipment and appliances in existing buildings to all electric. In 2019, natural gas consumption in buildings accounted for 41 percent of Menlo Park's greenhouse gas emissions that contribute to climate change. However, there are many considerations in electrifying existing buildings, and include but are not limited to building stock diversity, equity, cost effectiveness and market readiness.

In April, the City Council directed staff to complete a cost effectiveness analysis and policy options report (Report) to be presented in August that would support the City Council in providing direction on additional analysis of policy considerations outlined in the Report. In addition, the City Council requested the EQC review and feedback on the Report.

TRC and DNV consultants prepared the Report (Attachment B) with funding from PCE and in collaboration with City staff. The policy options were developed by both staff and the consultant team.

The EQC reviewed the report in July and August, and provided feedback that resulted in some modifications to the report. One of the most important changes included updating the residential energy escalation rates according to a white paper prepared by the California Energy Commission in February 2021.

Given the urgency of climate change, the EQC recommends the following:

1. Adopt an ordinance to prohibit the installation of new gas equipment in buildings throughout the city
2. Protect low income residents through
 - a. Creating an equity fund to fully electrify 1,400 households that are currently in the city using bill assistance through PG&E
 - b. Implementing a turnkey installation program administered by a city partner, such as PCE or an experienced private entity such as BlocPower
 - c. Adopting rental protection policies to ensure that rents do not increase or result in “renovictions” that would displace residents as a result of electrification upgrades
3. Reduce the “hassle factor” by
 - a. Educating building owners and contractors about ways to avoid panel upgrades
 - b. Offer free consultation services to building owners. PCE currently offers this type of service for new construction electrification projects
 - c. Streamline the city permitting process for electrification
 - d. Consider proactively providing every Menlo Park building owner with a free electrification plan.
4. Develop a long-term plan/roadmap to phase out natural gas over the next few months

The EQC established a CAP subcommittee (Commissioners Gaillard, Evans and Kabat) to advise the full EQC on CAP matters, including CAP No. 1. City Council also established a CAP subcommittee (Wolosin, Nash) and both subcommittees have worked in tandem over the past year to advise on various technical and policy considerations encountered during the CAP No. 1 analysis.

The EQC also approved forwarding the EQC subcommittee’s recommendation (Attachment A) to the City Council that provides additional information on each of the recommendations. The Report, Attachment B, includes an evaluation of most of the EQC’s policy and program recommendations, and are summarized in the analysis section of this report.

Electrifying 95 percent of buildings by 2030 is a top priority in the city council’s 2021 work plan and the 2030 CAP. The city council identified that the next step after being presented the Report and EQC advice is to provide further direction. Some possible next steps have been provided at the end of this report.

The city attorney’s office has not analyzed the EQC’s recommendation and has not reviewed or edited related consultant/staff analyses and reports, including this staff report.

Analysis

An ordinance to prohibit the installation of new gas equipment in buildings throughout the city

The Report calculates that this policy option has a lower cost over the long term in some circumstances for residential buildings when comparing the cost of a gas replacement to an electric conversion. Conversion of gas water and space heating to electric may increase utility costs in the first few years. The Report estimated a utility bill increase between \$0 and \$1 per month for water heating and between \$3 and \$31 per month increase for space heating depending on efficiency, system design, current technologies and current rebates. Commercial results are still being evaluated by TRC/DNV and staff. Tables 1 and 2 summarize

increase/(decrease) in costs of various residential electrification options.

Table 1: Residential heat pump hot water results				
Upfront cost differential to replace gas water heater with heat pump (over 30 years)	Increase/(Decrease) first year bill impact monthly	Increase/(Decrease) 30 year average bill impact monthly	Net present value Increase/(Decrease) - 30 year bill payback of electric conversion cost compared with gas	Time dependent value Increase/(Decrease) - 30 year payback of electric conversion cost compared with gas
\$2,775 increase *with incentives \$555 upon initial replacement	\$1	(\$7)	\$706 (\$1,540) with incentive	(\$2,424)
<ul style="list-style-type: none"> • TDV is “time dependent value” and includes time of use rates and societal values/costs • Modeled using \$2,700 square foot home and three different building vintages/ages • 30 year equipment life cycle used • PCE /BayREN rebate of \$2,000 • Lower efficiency equipment is not available on the market, but does not preclude it from being produced in the future, and would lower cost effectiveness • Other technology was not evaluated such as electric resistance water heating, and would lower cost effectiveness 				

Table 2: Residential heat pump space heating				
Upfront cost differential to replace gas with heat pump (over 30 years)	Increase/(Decrease) first year bill impact monthly	Increase/(Decrease) 30 year average bill impact monthly	Net present value Increase/(Decrease) - 30 year bill payback of electric conversion cost compared with gas	Time dependent value Increase/(Decrease) - 30 year payback of electric conversion cost compared with gas
Lower Efficiency Rating \$501	\$25	\$6	\$2,710	(\$2,348)
Higher Efficiency Rating \$3,749 *with incentive \$1,509 upon initial replacement	\$6	(\$9)	\$913 (\$209) with incentive	(\$3,617)
<ul style="list-style-type: none"> • TDV is “time dependent value” and includes time of use rates and societal values/costs • 30 year life cycle • PCE BayREN Rebate is \$1,000 • Other technology such as electric resistance space heating was not evaluated, and would reduce cost effectiveness 				

Other gas equipment analyzed for residential included clothes dryers and stoves. These were not found to be cost effective for on-bill or using the time dependent value (TDV) methodology. Attachment C provides an infographic of what a residential building owner could anticipate when converting gas appliances to electric.

It is important to note that an ordinance to prohibit the installation of new gas equipment in buildings would yield the least amount of greenhouse gas emission reductions compared to other options studied (except for electric ready requirements.) This is due to challenges in implementation and enforcement.

Installation of gas equipment is typically done at the end of its useful life (or when the equipment fails or breaks.) The building code currently allows emergency replacements without obtaining a permit for water and space heating equipment. However, a permit is required after work is complete. This can lead to frustration and inconvenience if a community member seeks to obtain a permit to find out they have not installed the incorrect equipment (gas) and would be required to correct the situation by installing electric equipment. Education could help to ensure that buildings owners would be more aware of the city's regulations on gas equipment. However, a building may need further upgrades in order to convert gas equipment/appliances to electric, such as additional wiring, additional space needs, or electrical panel upgrades. This could also inconvenience community members that need hot water or space heating right away.

The city does not have a permitting process for changing gas cooking or cloth drying appliances if the gas infrastructure is already present. It would be difficult to implement and enforce this requirement with current building code requirements and processes.

Menlo Park's noise and building setback regulations likely need to be modified to accommodate building electrification needs as some heat pump equipment require more space and some models of heat pumps exceed the city's noise ordinance requirements.

The technology is available for full electrification of all building stock today, with exception in a minority of industrial and process loads. Across all these technologies, the primary barrier is the unique site considerations and heightened electrical requirements when replacing gas appliances and the related challenges posed to contractors. A major barrier specific for HVAC and plumbing contractors has been simple preference for gas-fired equipment to maintain business-as-usual practices. Mechanical contractors may be already well-suited for installation, as they are accustomed to installing air conditioner and heat pumps. For heat pump water heaters, contractor knowledge is still relatively low making it difficult in some cases to find an available and knowledgeable contractor. Heat pump education is needed both for contractors and the community, and is becoming more mainstream due to incentive programs being offered.

The cost effectiveness study in Attachment B (Study) uses a highly conservative model and methodology that has been historically used by the California Energy Commission and investor owned utilities, and includes nominal costs to society. Examples of nominal costs to society include greenhouse gas emissions avoided through time of use rates that incentivize using energy when solar production is highest. The goal of the conservative methodology is to identify the average and "worst case" impacts on residents within the model's assumptions. There will no doubt be outliers who realize greater savings from electrification and others who incur greater costs from electrification. Perhaps the greatest unknown in the Study are the price impacts on consumers resulting from massive public and private investments in sustainable technologies and the economies of scale realized by broader adoption of building electrification.

In addition to uncertainties in underlying methodologies inherent in any cost effectiveness study, the Study does not include the full cost of societal impacts. TDV is the contemporary methodology agreed upon by utilities and regulating agencies as capturing certain society costs, however TDV falls short of the costs recently experienced and attributed to changes in weather patterns wildfire and sea level rise mitigation, public health impacts of poor air quality, and threats to water and food supplies.

Equity and protecting low income residents and renters

Electrification policy must make financial sense for all community members, including lower-to-moderate income (LMI) residents. Menlo Park has an estimated 1,400 to 1,500 LMI households, and approximately 40 percent of households in Menlo Park are renter-occupied. Ensuring that benefits of electrification, such as health, safety, and affordability, are targeted toward marginalized communities reverses compounding

historical injustices. The literature review conducted as part of the Report identified the following findings:

- Without equitable policy development, local building regulations run the risk of doing more harm than good. For example, landlords may raise rents or evict tenants when making building upgrades, a harmful practice known as “renovictions.”
- Rental property energy performance standards, coupled with rental housing policies, could reduce the energy cost burden on tenants, eliminate the split incentive, and support cities in meeting climate goals as well as general equity goals.
- Ensuring incentives and programs are easily accessible and convenient, and provide other elements to protect LMI residents from bill increases, such as weatherization measures, energy efficiency, and solar production.
- Avoiding financing programs that increase debt for LMI residents.

The city could explore existing funds that could be used to support this effort or explore ways to sustain the program through ongoing funding.

Reducing the “hassle factor” to electrify

As mentioned, Menlo Park’s noise and building setback regulations likely need to be modified to accommodate building electrification needs. In addition, providing education, personalized planning support for building owners, and streamlining the city permit process can advance the penetration of using heat pump technology in the community. This will require significant staff resources, partnering with local utilities such as PCE, and overseeing contractors/consultants that can provide technical services.

Other considerations

It is important to note that no one electrification policy or program will be the silver bullet to achieve 95 percent electrification of the existing building stock by 2030. Instead, the report in Attachment B identifies that all electrification policies and programs options presented in the report would need to be implemented in order to reach the city’s CAP goal. Additionally, state and federal government support will be needed to ensure the city is able to reach its goal to electrify existing buildings.

This is not unique to Menlo Park. Many cities are grappling with how to electrify the existing building stock to address climate change, such as Berkeley, Half Moon Bay, and Denver. Berkeley has released a report that recommends a phased approach to electrifying its building stock. It involves a roadmap that includes short, medium, and long term policy and programs to implement by 2045. For example the first phase (2021-2025) involves community engagement, pilot projects, education campaigns, well trained job force, additional incentive programs, and larger scale financing programs, and collaboration with regional and state partners. The second phase (2022-2025) would include requirements/mandates implemented only after accessible funding and financing programs are in place or the upfront costs of electrification reach parity with gas infrastructure.

Direction options

The city council may want to consider the following options to help guide further implementation of CAP No. 1:

1. Identify which EQC recommendations or Report policy options to analyze further including work by the EQC, City staff and the City Attorney’s Office. The City Attorney’s office has not analyzed the EQC’s recommendation and has not reviewed or edited related consultant/staff analyses and reports, including this staff report. City staff recommends limiting the number of policy considerations to focus limited resources and expedite return to City Council.

2. Identify the desired deliverables from City staff and the EQC and a timeline for return to City Council with a follow-up study session. Deliverables might include:
 - a. Short, medium, and long term roadmap to reach the CAP goal to electrify 95 percent existing buildings by 2030.
 - b. Identify additional options to reach building electrification goals faster. Additional options range from electric ready requirements to replacement requirements during certain types of additions and renovations. See Attachment B.
 - c. Propose criteria to prioritize and weight which recommendations to implement first and provide direction on what criteria to use (e.g. equity, GHG reductions, building type (commercial or residential), convenience, industry capability and knowledge, legal or safety risks, cost effectiveness)
 - d. Develop a public engagement plan to receive public input on all or some of the policy options
 - e. Prepare a full societal cost methodology and assumptions for City Council consideration and potential direction to conduct a supplemental cost effectiveness study to assess the full societal cost/benefit of building electrification.

Impact on City Resources

It is anticipated that a significant amount of resources will be needed to develop and implement the policy and program options recommended by the EQC and/or additional options presented in the Report in Attachment B.

Environmental Review

The environmental impacts of existing building electrification policies or programs and any California Environmental Quality Act (CEQA) compliance needs will be identified as they are approved for work by the City Council and analyzed further.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Memorandum from the EQC
- B. Cost effectiveness results and potential policy options to electrify Menlo Park's existing buildings
- C. Infographic: Household impacts of converting gas appliances to electric

Report prepared by:
Rebecca Lucky, Sustainability Manager

Reviewed by:
Nick Pegueros, Assistant City Manager

MEMORANDUM

Date: 8/10/2021
 From: Environmental Quality Commission
 To: Menlo Park City Council
 Re: Building Electrification Policy Recommendations based on TRC Cost Effectiveness Report

*Stabilizing the climate will require strong, rapid, and sustained reductions in greenhouse gas emissions, and reaching net zero CO2 emissions. Limiting other greenhouse gases and air pollutants, **especially methane**, could have benefits both for health and the climate.*

— Panmao Zhai, IPCC Working Group I Co-Chair, August 9, 2021

Menlo Park's stated greenhouse gas reduction targets (90% reduction by 2030) require that the city begin phasing out the use of methane gas in existing buildings, where 41% of the city's emissions are generated. In December 2020, Peninsula Clean Energy (PCE) authorized \$100,000 for a study assessing the cost effectiveness of building electrification policies in Menlo Park, intending to make the study conclusions and analysis broadly available to PCE's other member cities, a number of whom are also considering policies to decarbonize existing buildings.

On July 21, a consultant team led by TRC (<https://www.trccompanies.com/>) presented draft findings of their study to the EQC, after which the EQC crafted a policy recommendation for City Council. This memo captures the EQC's policy recommendation to the City Council, recognizing that it is based on a draft of TRC's final report.

Summary of TRC Cost Analysis

After reviewing the TRC draft report, we conclude that even using **worst case assumptions**, for the sum of \$23-\$36 per household per month, city residents can convert their aging gas water heaters and furnaces to clean all-electric heat pumps and help eliminate approximately 41% of the city's greenhouse gas emissions (GHG). Below is a breakdown of these costs for single family households and multifamily households.

Worst Case* Cost Premium to Electrify Single family home		
Equipment	\$/month (no incentive)	\$/month (w/ incentive)
HVAC	-\$22	-\$10
Water Heater	-\$14	-\$2
HVAC + Water Heater	-\$36	-\$12
Solar + Prewiring	\$36	\$36
TOTAL	\$0	\$24

* Taken from TRC/Frontier draft report tables 7 and 8, using highest possible costs: 1) pre-1978 vintage building, 2) no incentives, 3) low efficiency appliances and 4) "Customer On-Bill" 30-yr NPV, which includes both upfront capital costs and operating costs

Worst Case** Cost Premium to Electrify Multifamily home		
Equipment	\$/month (no incentive)	\$/month (w/ incentive)
HVAC	-\$11	-\$8
Water Heater	-\$12	-\$3
HVAC + Water Heater	-\$23	-\$11
Solar + Prewiring	\$13	\$13
TOTAL	-\$10	\$3

** Taken from TRC/Frontier draft report tables 9 and 10, using highest possible costs: 1) pre-1978 vintage building, 2) no incentives, 3) mix of high and low efficiency equipment and 4) "Customer On-Bill" 30-yr NPV, which includes both upfront capital costs and operating costs

According to TRC these monthly cost premiums only occur under **worst case conditions assuming**: pre-1978 vintage building, no incentives and no solar. **However, if a modest amount of rooftop solar is**

added to these buildings, the costs premium for electrification drops to \$0 for single family households and \$10 per unit per month for multifamily buildings.

Premium to electrify will be lower than study predicts. The TRC study makes some assumptions that we believe overstate the cost premium of electrifying existing buildings:

1. ~~*THIS ISSUE HAS BEEN CORRECTED IN THE AUGUST 18th DRAFT OF THE REPORT. According to recent studies presented by the CPUC, natural gas prices are expected to rise further and faster than the TRC study assumes, as safety-conscious Californians defect from the gas grid, leaving a dwindling number of gas customers to pay for expensive maintenance of the frail and aging pipelines running through their neighborhoods.*~~
2. The low efficiency equipment assumed in the study is so outdated that it is not popular in California, but the study authors included it because Federal regulations require that this low-efficiency heat pump equipment be included in California studies and arcane rules at the California Energy Commission require that cost effectiveness analyses use this outdated, low-efficiency equipment as its baseline equipment. In some cases, this inflates study costs for electrification in ways that do not reflect real life.
3. In its draft form the study does not assign any costs to continuing the status quo, which is allowing new gas equipment in the city, even though studies show that installing any new fossil fuel equipment will push us well past 1.5°C in temperature rise and perhaps past 2°C. This is a serious flaw in the analysis, one that economists describe as not correctly pricing externalities. While it is certainly difficult to correctly price externalities like the GHG emissions that drive climate change, their omission from this study makes it wrongly appear that not addressing climate change will be cheaper than addressing it, whereas in fact the opposite is true. Once again, this flawed assumption biases the analysis resulting in a higher apparent premium for electrification, one that will not be borne out in practice.

However, even using these biased assumptions that make gas appliance costs look unrealistically low, the analysis still shows that the premium to electrify in a worst case scenario is modest, at \$23-36 per household per month. That is equivalent to the cost of two cups of coffee per week to save our climate and help avoid catastrophic economic consequences for future generations. Furthermore, if the building owner adds a modest amount of rooftop solar, the monthly capital and operating cost premium of electrification is reduced to \$0 for single family and \$10 for multifamily households.

Equity Considerations: Guardrails, Cost savings and the Creation of Good Jobs

Even though the cost premium to electrify is modest, for the city's lowest income residents who may struggle for their next meal, even this modest amount will be an impossible financial burden. Therefore, ***we recommend that the city create a special equity fund to fully electrify the ~1,400 households in the city that are currently on bill assistance through PG&E. This fund would fully protect the city's low income population from incurring any extra expenses related to electrification and, in fact, would result in a net gain to the wallets of low-income homeowners by reducing their energy bills, starting in the first month post electrification.***

How the Low-Income Program Would be Funded. Staff estimates that approximately \$3 million per year in additional revenue could be raised by simply allowing the city's utility users tax (UUT) to float to voter-approved levels, an act that would require a simple majority vote on council. Over a 10-year period, this \$3 million per year in additional revenue would yield enough to fund electrification of all 1,400 low-income homes in the amount of \$20,000 per household. Eligible households could be identified easily by their participation in PG&E's screened on-bill assistance programs (CARE and FERA) for low-income households.

Turnkey Solutions. Any remaining barriers to implementation for low-income households could be further reduced by providing a turnkey installation program, administered by a city partner, such as Peninsula Clean Energy or an experienced private entity such as BlocPower (<https://www.blocpower.io/>). BlocPower specializes in retrofitting and electrifying low income residences and has recently launched a California presence. In addition to the pocket savings from electrification for low income residents, a scaled electrification effort in our low income community could also be designed to produce good, new jobs for local residents, providing a much-needed economic boost. BlocPower, for example, includes local hiring to create jobs as part of its overall mission to increase equity in low income communities. BlocPower also creates community advisory boards that allow the company to hire locally (if working on 10 or more buildings in the area).

Reducing Household Energy Burden and Improving Health. We believe it is entirely possible that low-income households who benefit from a turnkey program such as the one outlined above will reduce their household's overall *energy burden* significantly, **putting thousands of dollars back into the pockets of the city's lowest-income residents**. Reductions in *household energy burden* can further benefit low income households by reducing dependency on payday loans, which can carry interest rates as high as 400% over 5 months and are often used to pay utility bills (“Gassed Out”, Menlo Spark p. 12). Electrification can also help lower healthcare costs to families with children, who are more likely to be diagnosed with asthma (or other respiratory or cardiac diseases) when exposed to pollutants. Children in homes with methane gas stoves are 42% more likely to develop asthma (see Weiwei Lin, Bert Brunekreef, Ulrike Gehring, *Meta-analysis of the effects of indoor nitrogen dioxide and gas cooking on asthma and wheeze in children*, *International Journal of Epidemiology*, p. 1724–1737, <https://doi.org/10.1093/ije/dyt150>). Exhaust from other household methane gas appliances pours into our city neighborhoods every day further damaging residents' lung health. A closer examination of Belle Haven, just one neighborhood that is already burdened with poor air quality, reveals that baseline asthma rates there are much higher than in other parts of the city, due in part to freeway proximity, heavily congested thoroughfares and inequitable access to indoor air filtration. Thus, children in this neighborhood are already at even *higher elevated risk of asthma* from continued exposure to methane gas stoves. As a reminder, asthma is a life-long condition, a source of stress for families, reduces quality of life and is expensive to treat. For reference, asthma medications alone cost Americans an average of \$3,266 per year. (“Gassed Out”, Menlo Spark, p. 13). This figure does not include high costs of urgent care or ER visits from asthma-related emergencies.

Protections for Renters. The City should also consider passing new policies to protect renters from increased rents or “renovictions” in tandem with this work. The electrification turnkey service provider mentioned above, BlocPower, specializes in retrofitting and electrifying low income residences and includes covenants in their agreements with building owners that, in partnership with local government and utilities, prohibit the electrification retrofit from being used as a legal rationale to raise rents.

Reducing Barriers to Electrification

Although the TRC report did not focus on feasibility, some Menlo Park building owners have reported challenges converting their existing buildings from gas to all-electric. The city can address these barriers in four ways:

- **Educate building owners and contractors about ways to avoid electrical panel upgrades.** Increasing a building’s electric service from PG&E can result in significant delays and add cost to a project. Most residents can fully electrify their homes on their existing electrical panels, a fact that is not currently well understood by contractors. Training and education would eliminate this barrier.

- **Offer free consultation services to building owners.** Peninsula Clean Energy currently offers this service to those designing new all-electric buildings, but a similar service could be extended to existing building owners seeking to go all-electric.
- **Streamline city permitting for electrification.** Make it easy and inexpensive for building owners to get permits from the city for electrification-related work, specifically the following: 1) pre-wiring for electrification, 2) installation of a heat pump water heater, 3) installation of a heat pump HVAC, 4) installation of a heat pump pool heater and 5) installation of an electric fireplace. See the CAP Subcommittee's September 2021 memo to EQC on this topic.
- **Consider proactively providing every Menlo Park building owner with a free electrification plan.** Building owners would likely feel more comfortable with an electrification policy if they knew exactly what was involved in converting their gas appliances to all-electric. While electrifying one's home is not inherently difficult, it is possible to be steered down wrong paths by uneducated contractors. A clear, detailed plan from a third party helps avoid mishaps brought about by poorly informed choices.

Specific Policy

We recommend that the city draft and enact an ordinance that is simple, outlining one core authority, which is to prohibit the installation of new gas equipment in buildings throughout the city. Applying for a new gas appliance permit is the act that would trigger this ordinance. Since some building owners currently skirt the law and do not seek permits from the city for new gas water heaters and furnaces, the law may be difficult to enforce. However, we believe there is value in getting this law on the books and then working to beef up enforcement later, if building owners as a whole are found to be not in compliance. We would recommend that the city educate contractors and building owners about the new ordinance in an effort to increase compliance, especially among those who do not apply for permits.

Community Engagement

We recommend that Council direct staff to immediately begin public outreach on the policy and programs outlined above. Any building decarbonization policies enacted by City Council today would have a slow, gradual impact on the city's GHG emissions, since gas appliances are so long-lived and most building owners will not voluntarily replace their appliances early. That means time is critical and the Council should not delay.

Final Recommendation

Given the urgency of climate change and the relative affordability of electrification, per the TRC study, we recommend that the City Council push forward as quickly as possible on the Specific Policy outlined above plus two additional initiatives: 1) protect low income residents (see recommendation in Guardrails section above) and 2) reduce the "hassle factor" of electrification policies for building owners (see recommendations in Reducing Barriers section above). With strong, informed leadership, we believe that city residents and building owners will join in the fight against climate change.

The time to act is now. In the words of United Nations Secretary-General Antonio Guterres "there is no time for delay and no room for excuses". Our future as a species depends on it.



August 11, 2021



City of Menlo Park:

Cost Effectiveness Results and Potential Policy Options to Electrify Existing Buildings

DRAFT

Prepared for:

City of Menlo Park

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2 Introduction

The City of Menlo Park (City) has set out to achieve an ambitious climate action plan (CAP) goal: to be carbon neutral or greenhouse gas (GHG) free by 2030. The 2030 CAP was adopted in 2020, and it included six strategies to begin local work in reaching this goal. One of the main strategies involves converting 95% of existing buildings to electric by 2030.

Why electric? Menlo Park procures clean and GHG free electricity for residents and business through Peninsula Clean Energy (PCE). This means that all Menlo Park residents and business have access to affordable clean and GHG-free electricity, making natural gas equipment the remaining fossil fuel in buildings that contribute to climate change (See Figure 1). Natural gas consumption emits about 12 pounds of carbon or GHG emissions per therm.

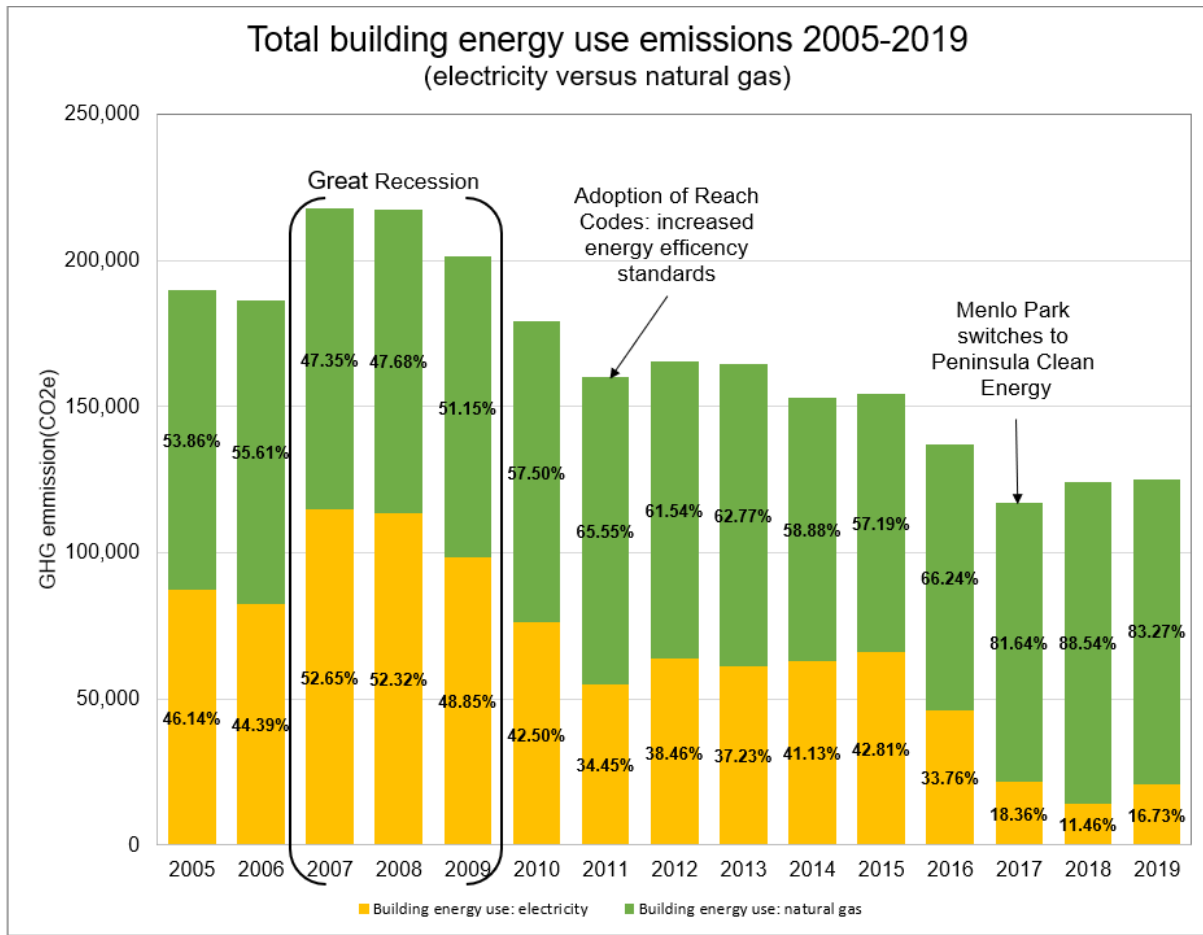


Figure 1: Menlo Park Annual Building GHG Emissions

City of Menlo Park communitywide greenhouse gas emissions 2019

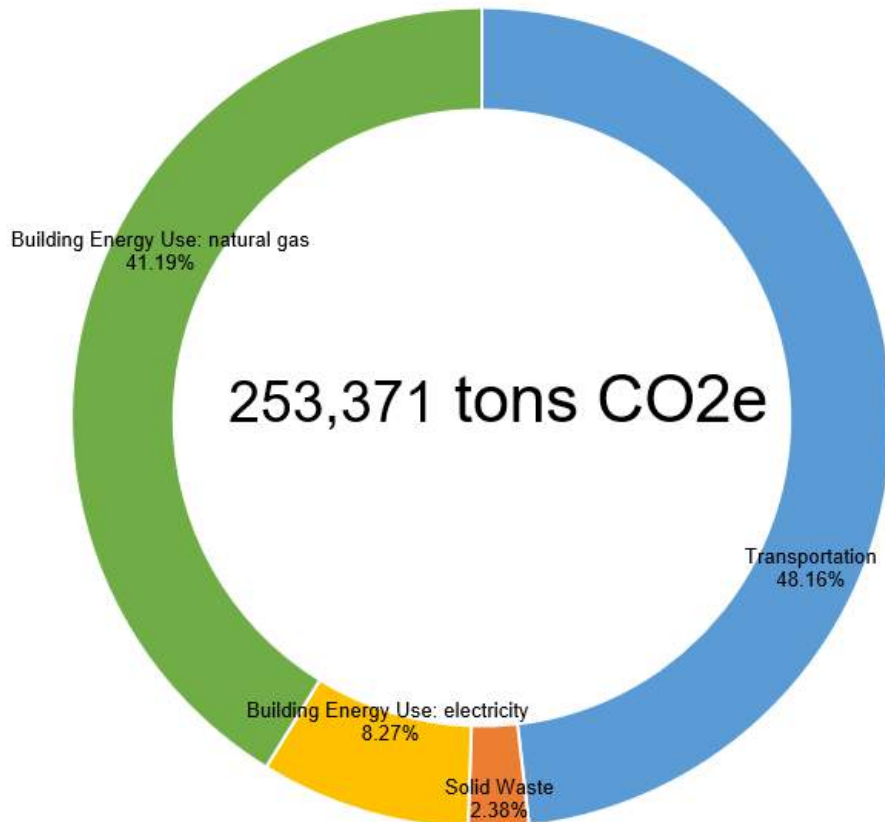


Figure 2: City of Menlo Park Communitywide GHG Emissions, 2019

Many communities with access to GHG-free electricity have an opportunity to reduce their emissions/climate change impacts by replacing all natural gas appliances and equipment with electric versions (e.g., heat pumps). Electric appliance and equipment technology has come a long way over the last few decades and is more efficient, healthier, and safer than natural gas appliances and equipment. Much of the nation's buildings (both residential and commercial) are served by all electric appliances and equipment.

Menlo Park has already positioned itself as an electric building leader through being one of the first to implement all-electric requirements for *newly constructed buildings* in 2020. Energy consumed by new buildings in Menlo Park will be GHG-free energy which will help Menlo Park reach its climate action plan goals. The next step for Menlo Park is to strategize on how to convert its existing building stock to all-electric. However, the transition from natural gas to electric in existing buildings will take special consideration.

Electrifying *existing* buildings will present unique challenges in ensuring equity, ability to develop and access incentives/financing, addressing unique building ages and layouts, permit efficiencies barriers, and education of trade professionals.

The city council has requested that a cost effectiveness analysis be completed and potential policy options be identified as a first step to developing a plan to convert Menlo Park's existing building stock to an all-electric future. This report provides an overview of cost considerations, market readiness, ability to address equity in an all-electric future, and potential policy options, such as education and outreach, developing additional incentives, adopting building code requirements that range from electric ready to equipment change out requirements, and time of sale policies.

3 Evidence/Data And Other Considerations

3.1 Cost Effectiveness Analysis Results

The California Codes & Standards Reach Codes program is funding cost-effectiveness analysis for electrification of fossil gas appliance measures in existing buildings.¹ The Program provides technical support to local governments considering adopting a local ordinance (reach code) intended to support meeting local and/or statewide energy and greenhouse gas reduction goals.

The Program focuses on analysis that would support energy conservation standard amendments, though a jurisdiction can choose to use findings to inform any type of local ordinance. Local jurisdictions that adopt energy conservation amendments or ordinances as the term is used in Public Resources Code 25402.1(h)2 must demonstrate that the requirements of the proposed ordinance are cost-effective according to the local jurisdiction criteria, and do not result in buildings consuming more energy than is permitted by Title 24. For energy conservation amendments, the jurisdiction must obtain approval from the Energy Commission and file the ordinance with the BSC for the ordinance to be legally enforceable.

The majority of scenarios across both residential and nonresidential building types have shown a mix of cost effectiveness for electrification under the California Statewide Codes and Standards Reach Codes Team (Statewide reach code team) assumptions. Assumptions include 15- to 30-year lifecycle periods, long-term fuel escalation rates from TDV forecasts, excluding vehicle electrification from the scope, and including locally available incentives. These assumptions are assumed to be the most realistic and somewhat conservative. Other assumptions may lead to different results.

Cost effectiveness metrics that are common across the residential and nonresidential studies include:

- Use of two metrics to identify benefits:
 - **Utility Bill Impacts (On-Bill):** Values energy based upon estimated site energy usage and customer on-bill impacts using electricity and fossil gas utility rate schedules over a 30-year duration, accounting for discount rate (three percent real rate) and energy inflation (two percent real rate).
 - **Time Dependent Valuation (TDV):** California Energy Commission Life Cycle Costs methodology, which is intended to capture the “societal value or cost” of energy use including long-term projected costs such as providing energy during peak periods of demand and other societal costs such as projected costs for carbon emissions, as well as grid transmission and distribution impacts.
- Cost effectiveness is presented using net present value (NPV) and benefit-to-cost (B/C) ratio metrics.
 - **NPV:** Net savings (NPV of benefits minus NPV of costs) as the cost effectiveness metric. If the net savings of a measure or package is positive, it is considered cost effective. Negative savings represent net costs.
 - **B/C Ratio:** Ratio of the present value of all benefits to the present value of all costs over 15 or 30 years (NPV benefits divided by NPV costs). The criterion for cost effectiveness is a B/C of 1.0 or greater, representing a positive return on investment.
- Three building vintages were evaluated to determine sensitivity of existing building performance on cost effectiveness of upgrades. Vintages were selected based on historical code requirements and construction practices, and represent prevailing construction practices in the 1980s, 1990s, and 2000s.

3.1.1 Residential

Methodology

The statewide reach codes team examined a single family building and a multi-family building with eight dwelling units, testing a variety of scenarios for electrification upon the end of life of existing gas appliances. The statewide reach codes team used the same methodology as in the statewide analysis (*reference*) with Menlo Park-specific exceptions:

- Local Peninsula Clean Energy (PCE) electric utility tariff (TOU-C) and Pacific Gas and Electric Company (G-1) tariffs
- Current PCE and Bay Area Regional Energy Network (BayREN) incentives

¹ <https://localenergycodes.com/>

- A single-family 2,700 square foot home is used in place of the 1,665 square foot home applied in the statewide study. This larger home better reflects the Menlo Park building stock, which has a median single-family square footage of 2,240 ft² and average of 2,426 ft².
- No efficiency measures, only the electrification of fossil gas appliances are evaluated, including furnace, water heater, clothes dryer, and range
- Two additional measures are evaluated showing the energy impact of converting a gas dryer and gas range/oven to electric resistance appliances

Also note that in scenarios where air conditioning (AC) is not existing on-site and is not planned to be installed, there will be additional incremental costs for installing an outdoor unit, refrigerant lines, and condensate drain pan. The incremental costs from this 'heating-only' baseline were not examined in this study.

Key Results

Key cost effectiveness results include the following. The full cost effectiveness report for nonresidential can be accessed in Attachment A. The values below are drawn from the single-family prototype findings and blended across vintages for simplicity, but results generally align between the single family and multi-family building prototypes.

- Water heating natural gas to electric measures
 - Heat pump water heaters (HPWHs) are all-electric water heaters that use refrigerant to transfer heat from air to water and are more efficient than electric-resistant and gas storage water heaters.
 - HPWHs cost approximately \$2,700 more than gas water heaters over a 30-year lifecycle period, including replacements. This includes differences in equipment costs between a HPWH and a gas water heater as well as utility bill impacts over the 30 year period.
 - HPWHs were found to be cost effective when using the TDV metric.
 - On-bill impacts
 - A high-efficiency (UEF>3.0) HPWH costs approximately the same to operate as a gas equivalent in Year 1, and it saves approximately \$6/month on average over 30 years. Note that while federal pre-emption disallows setting higher efficiency, it does allow parallel paths for higher efficiency as long as there is at least one feasible path for a minimum efficiency appliance to meet a state or local code. Further, high-efficiency HPWH are more commonly sold in the market and thus more likely to be purchased by consumers.
 - After BayREN and PCE incentives, a high-efficiency HPWH is narrowly cost effective when using the On-bill metric with a net present value of \$1,612 over 30 years.
 - HPWHs are cost effective On-bill when combined in a measure package including on-site solar photovoltaic (PV).
- Space heating fuel-substitution measures are:
 - Baseline efficiency (14 seasonal energy efficiency ratio or SEER, an efficiency metric used specifically for air conditioners) heat pump space heaters cost approximately \$500 more than baseline combined gas furnaces and air-conditioners over a 30 year lifecycle period, including replacements.
 - High efficiency (21 SEER) heat pump space heaters cost approximately \$3,800 more than baseline combined gas furnaces and air conditioners over a 30 year lifecycle period, including replacements.
 - Heat pump space heaters were found to be cost effective when using the TDV metric.
 - On-bill impacts
 - A 'standard' or baseline efficiency heat pump space heater costs approximately \$25/month more to operate than a gas equivalent in Year 1, and \$6/month more on average over 30 years.
 - A high efficiency heat pump space heater costs approximately \$5/month more to operate as a gas equivalent in Year 1 but saves approximately \$17/month over 30 years. Note that while both kind

of heat pumps take advantage of fuel escalation rate assumptions, the higher efficiency version saves more energy and thus more money in the long run.

- After BayREN and PCE incentives, a high-efficiency heat pump space heater is narrowly cost effective when using the On-bill metric by approximately \$1,400 over 30 years.
- Heat pump space heaters are cost effective On-bill when combined in a measure package including on-site solar PV.
- Clothes drying and cooking measures are not currently cost effective using either TDV or customer On-bill metrics.

Results for all appliances, both TDV and On-bill are shown in Figure 3 for a single-family building. It is important to note:

- These results assume replacement at the end of useful life, and results would become less cost effective upon early replacement.
- The results assume that the replacement will be heat pump equipment versus other electric equipment that may be more costly to operate such as the traditional electric resistance technology.
- Includes BayRen and PCE incentives: SEER 21 Heat Pump rebate is \$1,000 and HPWH rebate is 2,000. These rebates reduce the upfront costs to install equipment and increase NPV savings for on-bill.
- Does not include the future costs of climate change. This analysis is under development and will be included in the updated report by the end of August 2021.

Figure 3: IOU Team Findings for Cost Effectiveness of Water Heating, Space Heating, Clothes Drying, and Cooking Measures in a 2,700 ft² Existing Home.

Type of Equipment	Measure	Vintage	30-Year Measure Cost	Annual Electricity Savings (kWh)	Annual Gas Savings (therm)	Monthly Utility Cost Savings		30-Year Customer On-Bill			30-Year 2022 TDV
						Year 1	Avg	B/C Ratio	NPV	B/C Ratio	NPV
Space Heating Equipment Note that the analysis focuses only on heat pump technology	Heat Pump at HVAC Replacement	Pre-1978	\$501	-4,528	451	(\$31)	(\$5)	0	(\$2,271)	9.3	\$4,160
		1978-1991		-3,173	309	(\$25)	(\$6)	0	(\$2,710)	5.68	\$2,348
		1992-2010		-2,722	265	(\$22)	(\$6)	0	(\$2,683)	4.96	\$1,984
	High Efficiency Equipment SEER 21 Heat Pump at HVAC Replacement	Pre-1978	\$3,749	-3,261	451	(\$3)	\$18	1.56	\$2,273	3.17	\$8,152
		1978-1991		-2,337	309	(\$6)	\$9	0.77	(\$913)	1.96	\$3,617
		1992-2010		-2,011	265	(\$6)	\$7	0.59	\$209 with incentive*	1.6	\$2,244
	Heat Pump at HVAC Replacement + 2.82 kW _{DC} PV (solar)	Pre-1978	\$9,454	-27	451	\$66	\$70	2.42	\$14,803	2	\$9,478
		1978-1991		1,328	309	\$72	\$69	2.37	\$14,339	1.81	\$7,637
		1992-2010		1,779	265	\$75	\$69	2.38	\$14,382	1.77	\$7,292
Water Heating Equipment Note that the analysis focuses only on heat pump technology.	NEEA Tier 3 HPWH at Replacement	Pre-1978	\$2,775	-1,146	177	\$0	\$8	0.87	(\$387)	1.87	\$2,419
		1978-1991		-1,152	179	(\$1)	\$7	0.77	\$1,859 with incentive*	1.87	\$2,424
		1992-2010		-1,155	180	(\$1)	\$6	2.83	(\$706)	1.85	\$2,359
	HPWH at Water Heater Replacement + 2.82 kW _{DC} PV (solar)	Pre-1978	\$11,546	2,913	179	\$88	\$75	2.12	\$1,438 with incentive*	1.52	\$6,017
		1978-1991		2,908	181	\$87	\$74	2.09	\$14,333	1.52	\$6,003
		1992-2010		2,907	181	\$87	\$74	2.09	\$13,995	1.52	\$5,956
	2.82 kW _{DC} PV (solar) + Electric Ready	Pre-1978	\$13,044	4,501	0	\$97	\$75	1.86	\$13,893	1.09	\$1,156
		1978-1991		4,485	0	\$91	\$70	1.75	\$12,419	1.08	\$1,100
		1992-2010		4,400	0	\$89	\$69	1.71	\$10,837	1.07	\$848
Other Appliances	Electric Clothes Dryer	All	\$313	-891	33	(\$15)	(\$0)	0	(\$4,058)	0	(\$2,242)
	Electric Range/Oven	All	\$608	-295	14	(\$5)	(\$3)	0	(\$1,746)	0	(\$1,229)

*Peninsula Clean Energy (PCE)/BayREN rebates include *\$2,000 for heat pump water heaters and \$1,000 for heat pump space heating.

Residential Water Heating Efficiencies Not Included in Overall Findings

A ‘standard’ or baseline HPWH (lowest efficiency one can legally buy with a Uniform energy factor, or UEF, an efficiency metric specifically for water heaters, of 2.0) costs approximately \$10 more per month to operate than a gas equivalent in Year 1, and costs approximately the same to operate as a gas equivalent on average over 30 years. It is important to note that while 2.0 is the federal minimum efficiency, these appliances are **not available** on the market for purchase. Thus, it was excluded as part of the analysis above. However, these are included in reach code studies since federal appliance standards have a provision called pre-emption that prevents state and local jurisdiction from having higher efficiency standards for appliances that are regulated by federal appliance standards. Figure below shows the cost-effectiveness of a baseline HPWH. If a local jurisdiction seeks California Energy Commission approval, this analysis would need to be included in making a determination on the cost effectiveness of a measure. There are no rebates available for this type of technology likely because it is not sold on the market currently.

Measure	Vintage	30-Year Measure Cost	Annual Electricity Savings (kWh)	Annual Gas Savings (therms)	Monthly Utility Cost Savings		30-Year Customer On-Bill		3-Year 2022 TDV	
					Year 1	Avg.	B/C Ratio	NPV	B/C Ratio	NPV
HPWH at Water Heater Replacement	Pre-1978	\$2,594	-1,588	179	(\$10)	\$0	0	(\$2,901)	1.2	\$522
	1978-1991		-1,593	181	(\$10)	(\$1)	0	(\$3,231)	1.2	\$517
	1992-2010		-1,594	181	(\$11)	(\$1)	0	(\$3,334)	1.18	\$466

Figure 5. Cost-effectiveness of UEF 2.0 HPWH

3.1.2 Nonresidential

The Statewide Utility Codes and Standards program has not completed the review of the Nonresidential Electrification Alteration results, but it is allowing TRC to share preliminary results to support Menlo Park’s policymaking schedule. As such, these results are TRC’s representation rather than the Statewide Utility Program’s. TRC examined seven nonresidential building prototypes, testing a variety of scenarios for electrification at the end of useful life of an existing gas appliance. The report is still in progress, and final results are expected to be published in the third quarter of 2021.

Methodology

TRC used modified versions of the following seven U.S. Department of Energy building prototypes to evaluate cost effectiveness of measure packages: Medium Office, Stand-alone Retail, Warehouse, Quick-service restaurant, Full-service restaurant, High-rise Multifamily, and Small Hotel. The analysis assumes some equipment replacement over time across three vintages, based primarily on the Senate Bill 350 analysis.² The rate of replacement varies by building system and by envelope component. General prototype characteristics are outlined in Figure 3.

Nonresidential Prototypes Analyzed for Cost-Effectiveness				
Building Type (All Vintages)	Conditioned Floor Area (ft2)	# of floors	Baseline HVAC Distribution System	Baseline Hot Water System
Medium Office	53,628	3	Packaged multizone variable air volume reheat + boilers	Central Gas Storage
Stand-alone Retail	24,563	1	Packaged single zone (SZ) constant air volume (CAV) + gas furnace	Central Gas Storage
Warehouse	17,548	1	<u>Warehouse:</u> Gas furnace serving 10% of floor area, exhaust-only ventilation <u>Office:</u> Packaged SZ CAV + gas furnace	Central Gas Storage
Quick-service Restaurant	2,500	1	Packaged SZ CAV + gas furnace	Central Gas storage
Full-service Restaurant	5,000			
HRMF: 1980s	125,400 117 dwelling units	10	Packaged terminal air conditioning (PTAC) + boilers serving heating-only baseboard	Central Gas storage

² <https://www.cpuc.ca.gov/sb350/>

Nonresidential Prototypes Analyzed for Cost-Effectiveness				
Building Type (All Vintages)	Conditioned Floor Area (ft ²)	# of floors	Baseline HVAC Distribution System	Baseline Hot Water System
HRMF: 1990s			PTAC + boilers serving heating-only fan coils	
HRMF: 2000s			Split air conditioner + gas furnace	
Small Hotel: 1980s			PTAC + gas wall furnace	
Small Hotel: 1990s	42,552	4		Central Gas storage
Small Hotel: 2000s			SZAC + furnace	

Figure 6: Nonresidential Prototypes Analyzed for Cost Effectiveness.

Note that the High-rise Multifamily prototype assumes that cooling is installed, similar to the low-rise residential analysis. In scenarios without air-conditioning, the incremental costs for electrification retrofits, or electrofits are likely to be higher than those estimated in this study.

TRC electrified appliances with heat pumps for all appliances, except for restaurant cooking appliances, which are either induction or resistance technologies. TRC examined the following packages for each prototype:

- **Mixed Fuel Code Minimum Package:** Appliance upgrades on the existing building using code-minimum fossil gas equipment.
- **All-electric Code Min:** Replace any gas equipment with electric, code-minimum equipment, including heating, ventilation and air-conditioning (HVAC), service hot water (SHW), and cooking appliances (for restaurants only). Upgrade electrical infrastructure as-required. The baseline for this package is a gas code-minimum equipment replacement, including HVAC, SHW, and appliances.
- **All-electric Code Min (2022 TDV):** All-electric Code Min, with cost-effectiveness calculations done using 2022 TDV multipliers. The baseline for this package is the same as the all-electric Code Min Baseline, except with 2022 TDV multipliers.
- **Electric HVAC + SHW:** This package is specifically for the restaurant prototypes, and it replaces gas space and water heating equipment with electric code-minimum equipment.
- **All-Electric + Efficiency:** Adds efficiency measures to the All-Electric Code Min package, except in restaurants where it adds efficiency measures to the Electric HVAC + SHW package.
- **All-electric + PV:** All-electric Code Min, including a solar PV array, plus battery storage for the Restaurant prototypes only. The solar PV size is customized for each prototype based on either offsetting annual kWh consumption, or the size accommodated by 50% of the roof, whichever is smaller. Batteries were sized to offset the majority of peak load hours. The baseline for this package is the same as the All-electric Code Min Baseline.
- **All-electric + PV (2022 TDV):** All-electric + PV, with cost-effectiveness calculations done using 2022 TDV multipliers. The baseline for this package is the same as the All-electric Code Min Baseline, except with 2022 TDV multipliers.

Results

TRC identified the results summarized below. For complete findings, please reference the attached Nonresidential memo.

- **Restaurants:** no cost-effective electrofit packages identified yet.
- **Stand-alone Retail:** electrofits are cost effective using both On-Bill and TDV metrics when combining efficiency measures or solar PV. The efficiency measure packages represent a much lower upfront cost than PV, and more widespread cost effectiveness. Efficiency measures include window film and a lighting retrofit to 2019 code-minimum requirements (0.95 W/ft²).
- **Warehouse:** electrofits are cost effective using the On-Bill metric when combining with solar PV.
- **Medium Office:** little-to-no cost-effective electrofit packages identified yet. Adding solar PV narrowly achieves a cost-effective outcome in the 1980’s vintage.

- **High-rise Multifamily:** The 90's vintage, which has a negative incremental cost for electrofit, is cost effective using TDV and when including solar PV.
- **Small Hotel:** Electrofits are very cost effective, both on-bill and TDV, due to the installation of package terminal heat pumps (PTHPs) instead of separate furnace and air-conditioning systems that are assumed in the mixed-fuel baseline.

3.2 Incentives and On-bill Financing

The Team performed an extensive literature review (attached) to identifying financing options for existing building electrification. The literature review lists the currently available incentive programs and financing options for Menlo Park residents and businesses. The review also identified that local jurisdictions could serve in the lead role in providing the following financing pathways:

- **Municipal Financing** (e.g., green bonds and local taxes and fees): Voter-approved fund generation mechanisms can affirm a community's willingness to invest in decarbonization measures. Bonds can be used for public infrastructure projects, and increased revenues from utility taxes can serve to potentially provide consumer financing.
- **Incentive Programs:** A jurisdiction may lead the development of incentive programs, likely with funding from a partner organization, such as San Jose and Marin County partnering with the Bay Area Air Quality Management District. Redwood City has recently started a modest program offering electrification incentives.

Local jurisdictions may also serve educational and advocacy roles for the following mechanisms:

- **Electrification as a Service:** A local jurisdiction can play a key role in reducing market entry barriers for providers such as BlocPower, or advocate for establishing local programs that create a market for contractors and installers by paying them for projects that deliver metered bill savings.
- **Tax Credits, Deductions, and Rebates:** Federal tax incentives can be attained for eligible electrofits and stacked with incentive programs, though they are fairly low amounts.
- **On-bill Financing:** The Investor-owned utilities (IOUs) and local community choice aggregation programs can offer on-bill financing to their customers for energy efficiency and electrification upgrades. These loans are associated with the utility customer and not the meter, which usually disqualifies renters from being eligible. On-bill financing loans offer low interest rates and can serve customers with low credit history. PCE is exploring implementing an on-bill financing program in 2022 for its customers.
 - The IOUs can also offer *tariffed* on-bill (TOB) financing to its customers. TOB loans are associated with the utility meter and not the customer, which allow them to serve a wide market including hard-to-reach segments such as renters.
- **Loan Programs:** A suite of loans are available for credit-worthy residential and nonresidential building owners through the California Hub for Energy Efficiency Financing, including programs for residential, affordable multi-family, and small businesses. These programs may fill in gaps where building owners may have insufficient access to incentive programs or tax deductions. Loans are expected to be one of the last options to financing a project, as they carry more risk for the applicant than many of the preceding options listed. They also can increase debt and have equity impacts, as it can further exacerbate financial vulnerability for low-income communities.

The review also noted the following financing mechanism gaps:

- High investment costs and limited incentives for heat pump space heating as a replacement for a methane gas furnace in a building that does not already have air-conditioning.
- Limited precedence for existing building electric vehicle (EV) financing. A jurisdiction may supplement PCE's EV incentive program with additional incentives or additional loan programs targeted toward EV investment in a similar manner that Boulder partnered with a local credit union (See Section 3.4 for more details).
- Nonresidential buildings are eligible for fewer incentive programs than residential. This may be due to the higher financing needs and access of the nonresidential market.

3.3 Market Readiness

3.3.1 Technology

The technology is available for full electrification of all building stock today, with exception in a minority of industrial and process loads. As outlined in the New Building Institute's [Building Electrification Technology Roadmap](#), there are limited technology barriers to building electrification. Key takeaways from the study include:

- Space Heating
 - Various forms of heat pump systems are technically ready and available to address most retrofits, including commercial space heating needs. More difficult buildings include those with large heating loads, such as labs and hospitals, and those with physical constraints that would prevent the footprint and hot water storage necessary for a load-flexible heat pump.
 - Electric resistance boilers and electric reheat coils are technically ready and available to address niche space heating needs, but they do not offer the high efficiency and GHG reduction benefits that heat pumps do.
- Water heating
 - HPWHs are technically ready and available to address some retrofits and multi-family hot water needs with demand control capability.
 - Solar thermal and electric resistance water heaters are technically ready but have drawbacks.
- Cooking
 - Induction cooktops and electric resistance ovens are technically ready and available to address some retrofits and commercial cooking needs.
 - Barriers include:
 - Consumer desires for charbroiling.
 - Low consumer education.
 - Ferrous cookware requirements that are a separate investment from the range. This can have equity impacts in requiring further investment in new cooking equipment to use induction cooktops. Conversely, there are utility bill impacts in using electric resistance ovens, which have equity impacts on low-income communities.
 - There are some range sizes that non-standard in the induction market (e.g., 24" and under, 36" and over).
 - Limited stock in stores. Many models are available online, though this may lead to long shipping times.
 - Induction cooktops rated for outdoor kitchens are not currently available.
- Clothes dryers
 - Heat pump dryers and combo washer/dryers (condensing dryers) are the recommended technologies to focus electrification efforts for residential buildings right now.
 - Electric resistance dryers are technically ready and available to address residential new construction and commercial laundry needs.
 - The primary roadblock is the lack of commercial-grade heat pump clothes dryers in the U.S. market, which are more common in Europe and Asia.
- Pool heating
 - Pool heat pumps are [widely available in the US](#).
 - Contractor education will be required in order to make pool heater heat pump installations more common.

Across all these technologies, the primary barrier is the unique site considerations and heightened electrical requirements when replacing gas appliances and the related challenges posed to contractors. A major barrier specific for HVAC and plumbing contractors has been simple preference for gas-fired equipment to maintain business-as-usual practices.

3.3.2 Contractors

Although used widely throughout the United States and other countries, HPHW represent the newest technology for contractors in California. This will be a major overhaul in how contractors provide space and water heating services to customers. As mentioned in the previous section, the preferences of contractors to continue to use gas-fired equipment will continue over the next few years, resulting in a limited supply of contractors capable and willing to do this type of work. This is a natural and normal process for any industry or professional grappling with deep trade related changes. It requires a significant time investment for the contractor to learn about the technology, how to expertly install and inform customers about its use and performance, and become efficient at installing and problem solving gas to electric conversions to lower overall labor costs.

Installation in existing buildings can require a different configuration than gas equipment, and it may require both an electrician and a plumber for a task that once required only one trade. The industry will need time to become more educated and align their trade licenses in a way that provides convenient and efficient services.

Mechanical contractors may be already well-suited for installation, as they are accustomed to installing air conditioner and heat pumps. Electric ranges and dryers do not require special installation, except for an adequately-sized electrical circuit, which can be performed by a licensed electrician.

Property owners can utilize two resources to find contractors that are well versed in electrification technologies:

- [Bay Area Regional Energy Network](#) has a database of nearly 100 certified contractors throughout the Bay Area that specialize in residential energy assessments, heat pump HVAC, HPWHs, solar PV, and other building components.
- [The Clean Energy Connection](#) has a database of contractors serving single family, multi-family, and commercial properties across California. It also includes information on whether the contractor provides financing, participates in rebate programs, and speaks multiple languages.

3.4 Other Bay Area Cities' Progress Toward Existing Building Electrification

Representatives of many other cities have indicated interest in electrifying existing building stocks in order to meet GHG reduction goals. Cities at the forefront of early analysis and public engagement include the City of Berkeley and Half Moon Bay. Half Moon Bay is considering a requirement to replace natural gas equipment at the end of its useful life known as a “burnout” type regulation/ordinance.

In April 2021, the City of Berkeley developed an Existing Buildings Electrification Strategy (draft).³ A major conclusion included that before any mandatory measures can be implemented or considered, there are equity issues that need to be addressed to make the mandatory policies effective and doable for all members of the community. This has ultimately led to a delayed ability to mandate electrification of existing buildings. Berkeley projects that they will be able to electrify all existing buildings by 2045.

Many foundational policies/activities need to be developed or enhanced to prepare for mandatory requirements such as tenant protections, advocacy at the state level, building set back requirements, and energy efficiency upgrades in the existing housing stock to ensure affordability. A road map was prepared that identifies short, medium, and long-term strategies. Below is a table that summarizes their roadmap.

³ https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Draft_Berkeley_Existing_Bldg_Electrification_Strategy_20210415.pdf

Berkeley's Existing Building Electrification Strategy

Phase 1: 2021-2025

Demonstrate the benefits and feasibility of electrification through:

Short Term

- Community engagement
- Pilot projects
- Education campaigns
- Well trained job force
- Additional incentive programs
- Larger scale financing programs, such as tariffed on-bill financing.
- Collaborate with regional and state partners to ensure the ability to execute Phase 2

Phase 2: 2022-2030

The following would be only implemented after Phase 1 actions have demonstrated feasibility, cost effectiveness and best practices:

Medium Term

- Mandating electrification at points of sale, lease, renovation, and part of a building performance standards program.
- Neighborhood scale electrification

Some Phase 2 actions will need to be implemented only after accessible funding and financing programs is in place or the upfront costs of electrification reach parity with gas infrastructure.

Phase 3: 2027-2045

Bans the use of gas

Long Term

Figure 7: Berkeley's Existing Building Electrification Strategy

In April 2021, Half Moon Bay proposed a draft building electrification ordinance that includes new construction electrification requirements, and it prohibits replacing fossil gas appliances with another gas appliance in alteration scenarios.⁴ The City is conducting public engagement through September of 2021 before making a final decision.

3.5 Equity

Electrification policy must make financial sense for all community members, including lower-to-moderate income (LMI) residents. Ensuring that benefits of electrification, such as health, safety, and affordability, are targeted toward marginalized communities reverses compounding historical injustices, many of which have been created and perpetuated by government action. PCE's literature review identified the following findings:

- Without equitable policy development, local building regulations run the risk of doing more harm than good. For example, landlords may raise rents or evict tenants when making building upgrades, a harmful practice known as "renovictions."
- Partnering directly with local community based organizations (CBOs) can expand city efforts and deepen engagements in the creation of building decarbonization policies. CBOs and community members may initially be skeptical of governmental interventions, but early and regular engagement can lead to honest discussions around climate policy, establish a strong commitment, demonstrate accountability, repair trust, and lead to better overall policy.
- Rental property energy performance standards, coupled with rental housing policies, could reduce the energy cost burden on tenants, eliminate the split incentive, and support cities in meeting climate goals.

⁴ <https://www.half-moon-bay.ca.us/761/Building-Electrification>

- CBOs and community members should be compensated for attending workshops or meetings to cover childcare, food, travel, or other expenses.

The City of Berkeley Existing Buildings Electrification Strategy defines the multiple forms of equity, establishes the intention to design policy around the goal of Targeted Universalism, and will leverage the Greenling Institute’s Equitable Building Electrification Framework.^{5,6} Berkeley’s strategy aims to address LMI populations’ ability to invest and access available incentives, avoid increasing debt in financing programs, and invest in energy efficiency and solar and battery storage to ensure bill impacts are reduced or negligible.

Using the [LEAD tool](#), Figure 7 shows American Community Survey data indicating that there are approximately 1,500 housing units in Menlo Park that are below the 30% area median income (AMI).⁷ The occupants of these housing units are mostly renters and pay seven to eleven percent of their income on energy (also known as *energy burden*). As one example, an equitable policy would strive to ensure that the energy burden of LMI communities matches that of more affluent populations (see Section 3.1.4).

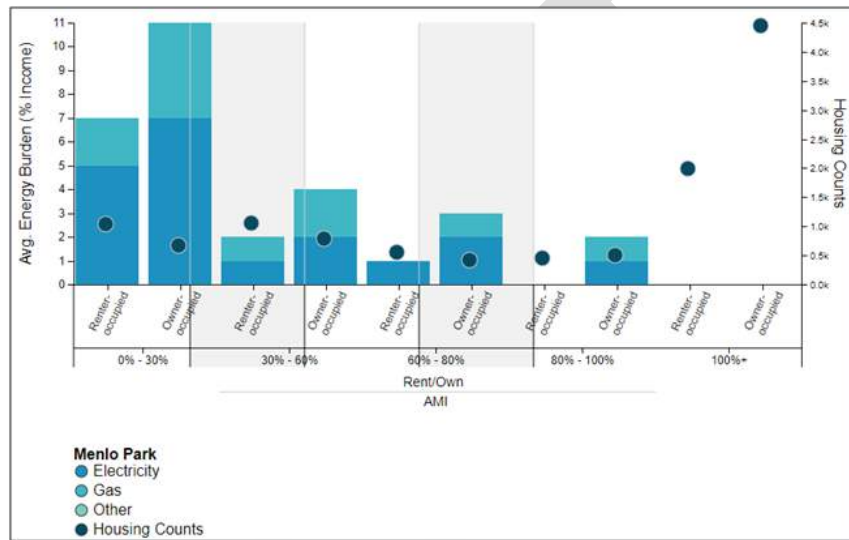


Figure 8: Average Energy Burden (Percent of Income) for Menlo Park

⁵ https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Draft_Berkeley_Existing_Bldg_Electrification_Strategy_20210415.pdf

⁶ https://greenlining.org/wp-content/uploads/2019/10/Greenlining_EquitableElectrification_Report_2019_WEB.pdf

⁷ <https://www.energy.gov/eere/slsc/maps/lead-tool>

4 Policy Options

This section provides an overview of possible policy and program options that Menlo Park can consider in advancing building electrification of existing buildings. The policy options currently focus on existing single family and some multi-family electrification opportunities. Nonresidential (commercial) will be added once further the cost-effectiveness data is completed. The next section of this report analyzes the GHG reductions for each option. The last section uses criteria to rank policy options for consideration.

There are three important notes to make:

1. Implementing all of the policy options will only achieve half of the needed GHG reductions by 2030; efforts at the regional, state, and federal government levels will be needed to support Menlo Park in meeting its GHG reduction goal.
2. It will be important to consider the GHG emissions differences between commercial and residential consumption when finalizing an existing building electrification strategy for Menlo Park. See graph below.
3. Similar to Berkeley's findings, significant foundational work may be needed before considering any regulations and/or mandates. Further discussion is provided below.

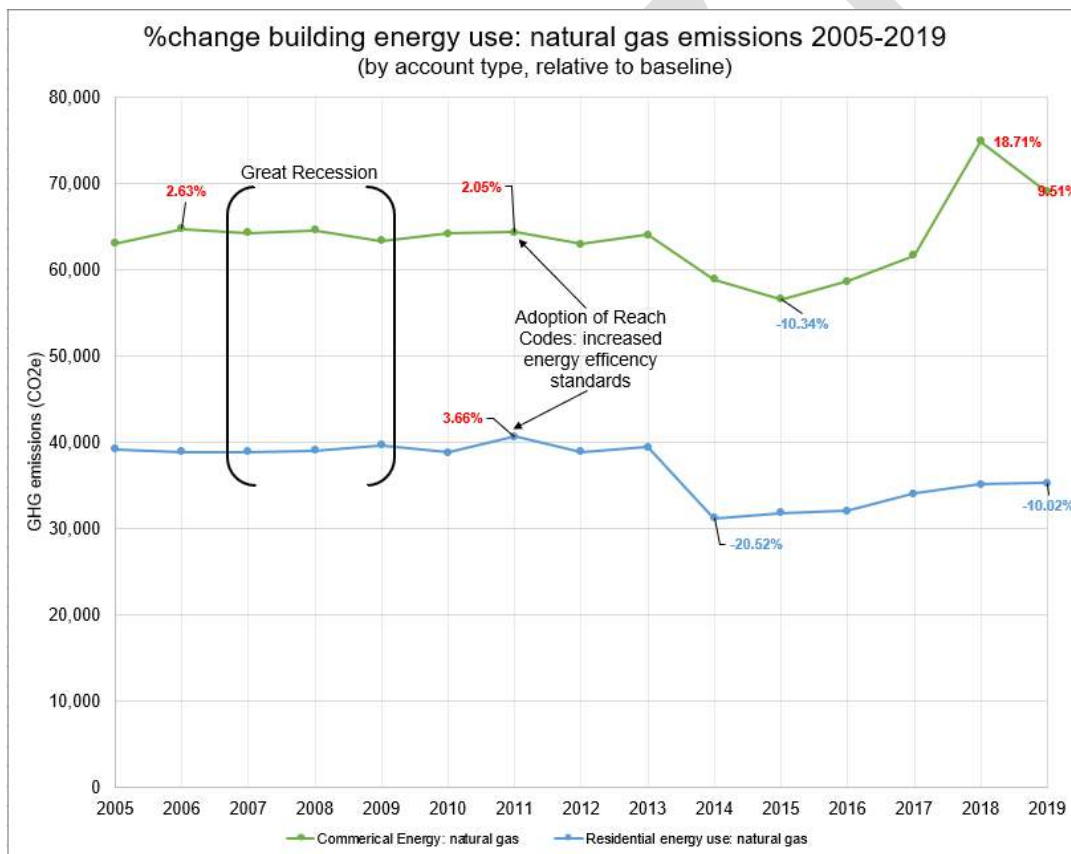


Figure 9: Natural Gas Emissions by year in Menlo Park

4.1 Groundwork to Pave the Pathway Towards Electrification Mandates

Similar to Berkeley's findings, significant foundational work may be needed before considering mandates, and includes:

- Robust engagement and education to assist residents and business on grid resiliency through solar and battery storage and addressing climate change through all-electric buildings.
- Pilot projects that include solar, energy storage, and electrification that support LMI community members.
- Advocate at regional and state levels to advance electrification for existing buildings.

- Development of additional incentives and financing programs and explore possible funding mechanisms
- Development of rental protections and/or rental license program that would not cause displacement or rent increases because of future electrification mandates.
- Development of, or include in, housing rehab programs such as solar installation, energy efficiency upgrades, and building electrification.
- Modify Menlo Park's noise and building setback regulations to accommodate building electrification needs.

Addressing these areas before mandates are adopted will be key in gaining community buy-in, trust, and support. It will help to identify and problem solve for unusual or unique building layouts or energy needs (e.g., must relocate equipment in setback areas). It will place equity at the forefront by creating policies or programs in advance of regulations to ensure that a financial safety net is provided to LMI community members.

4.2 Option 1: Public Engagement and Education

4.2.1 Develop a Robust Public Engagement and Education Program

This option involves developing a comprehensive concierge type of service to assist residents and businesses through the electrification process. This can include partnering with PCE on projects/programs, piloting projects for electrification in LMI neighborhoods, providing energy analysis and design services for all members of the community, permit counter education opportunities, large-scale community education forums and outreach for residents and businesses, and assistance with rebate and financing eligibility.

City Resources Required

Additional staff would be necessary to perform this work. The staff required could be minimized (but not eliminated) if the City is able to contract/partner with a local nonprofit, utility, or company to support the work.

4.3 Option 2: Generate Funds to Develop Additional Incentive and Financing Program Offerings

In order to provide additional incentives and financing programs for Menlo Park residents and business, Menlo Park may want to consider generating revenues from various sources to support electrification particularly for LMI residents.

4.3.1 Potential Revenue Sources

A local jurisdiction can use one time reserves as an option to fund additional incentives or programs to support electrification efforts for LMI residents. Funds from American Rescue Plan Act may also have flexibility in being used for electrification efforts.

There are a variety of ways a local government generates revenue to fund incentives and use fees as a disincentive to continue to generate GHG emissions. Local governments may incorporate a fee for building projects that generate GHG emissions and use the funding to incentivize future decarbonization offsets throughout the jurisdiction. This also has the added effect of disincentivizing generating GHG emissions on site. An example of this includes:

- **The City of Watsonville** adopted a carbon fund ordinance in 2015 that charges a fee to all development projects including new construction, additions, and alterations, with the exception of single family alterations. The additional carbon impact fee is between 30% and 50% of the building permit fee. Projects may be refunded the fee if they install on-site renewable generation to offset the average annual electricity load.¹⁰²
- In late 2019, the **City of San Luis Obispo** tentatively proposed a GHG *in-lieu fee* for new construction projects that installed fossil fuel consuming appliances, ranging from \$6,013 for a typical single family residence up to \$89,000 for a 54,000 ft² office.¹⁰³ This measure has been delayed for adoption due to community concerns.

Utility Users Tax to Fund Low-Income Electrification

A utility users' tax (UUT) may be levied by municipalities to provide general fund revenue. The tax may be increased to generate funds for projects and programs that reduce GHG emissions and provide catered offerings for income-qualified projects.

- **The City of Berkeley** proposed Measure HH in 2020 to increase the UUT from 7.5 to 10% for electricity and 12.5% for methane gas.¹⁰⁰ The UUT proposal included special rates for income-qualified residents. Despite strong community support during survey, the ballot measure was ultimately defeated.
- **The City of Albany** proposed Measure DD to increase the UUT from 7 to 9.5% for electricity and gas and apply a tax to water service at 7.5%. The measure passed. The measure is estimated to generate an additional \$675,600 in new revenues annually for the City.¹⁰¹

As part of the 2006 general election, Menlo Park voters passed a ballot measure imposing a maximum 3.5% tax on gas, electrical, and water usage, and a maximum 2.5% tax on cable, telephone, and wireless services. These maximum tax rates became effective on April 1, 2007.⁸ Menlo Park City Council has maintained the tax across all utilities at 1%, and can increase this tax on natural gas to 2.5% and 3.5% without requiring a new ballot initiative. The tax would not be imposed on those on subsidized energy (electric and gas) rates such as participants in the [CARE or FERA programs](#). Increasing the taxes up to its voter approved limits would result in an additional \$3 million per year in revenues.

4.3.2 Financing

A municipality can also use borrowing capacity or loan loss reserve to develop a partnership with a local lender and create a loan program to finance electrification enhancements. A dedicated loan program brings a streamlined funding opportunity and rate certainty to property owners who are considering the prospect of electrification and would benefit from the extra financial line of sight. California has several dedicated loan programs for energy related upgrades through the California Hub for Energy Efficiency Financing, and there are a few examples outside of California of cities partnering with lenders to create customized programs, such as Fort Collins Home Efficiency Loan Program and Boulder’s partnership with Elevations Credit Union.

4.4 Option 3: Time Certain Building Performance Standards

Building performance standards can alert building owners of citywide, deadline-driven requirements, allowing them to plan long-term upgrades. They also capture buildings that are not retrofitted, sold, or submitted for permit during an alteration. In some cases, cities require that upgrades be performed within certain time windows or face a penalty. Examples of these policies, and the issues contained, are listed below. Similarly, a jurisdiction may adopt an ordinance requiring that all buildings replace their existing appliances to be all-electric by 2030. To enhance compliance, cities may need add field inspection programs and penalties for noncompliance.

- **The City of Brisbane** requires most owners of buildings larger than 10,000 ft² to report energy benchmarking results using ENERGY STAR Portfolio Manager[®] to the city annually on May 15th starting in 2021. Starting in the 2023 reporting cycle, buildings will be required to demonstrate building efficiency performance metrics or conduct an audit to identify and implement savings opportunities.
- Some cities may leverage existing structure from rental policies and business license programs to enforce disclosure programs and require additional upgrades. The **City of El Cerrito** is a California example of a residential rental inspection program, operating since 1997. El Cerrito requires all residential rental units to be registered, obtain a business license, pay an annual license tax, and be inspected every two years. The inspection costs approximately \$129 per multi-family unit. The inspector checks for a variety of measures including appliance installation and operation as well as electrical wiring. The cities of Richmond, San Pablo, and San Rafael also include rental inspection programs, though triggers can vary by regular time periods, time of sale, and/or complaints. These programs achieve an average of 80% compliance rates.
 - StopWaste has developed key considerations and estimates of carbon impacts to support jurisdictions exploring the idea of a *rental housing inspection program* with energy efficiency requirements.
- **The City of Berkeley** may expand their Building Emissions Savings Ordinance (BESO) program to include GHG emissions per square foot estimates and require building owners to limit emissions according to gradually decreasing threshold through 2045. This may be administratively challenging—even under the current BESO program design, a recent evaluation found that the “BESO administrative process [and ensuring compliance] is staff-intensive and time consuming.”
- Outside of California, the **City of Boulder** adopted the SmartRegs program in 2010, which required that rental properties meet energy efficiency requirements by 2018 or before a rental license application approval. In 2017, 100

⁸ <https://www.menlopark.org/377/Utility-user-tax>

percent of the rentals were inspected, and 86% were compliant. Similarly, Boulder also requires that commercial and industrial building owners complete one-time lighting upgrades and implement cost-effective retro-commissioning measures by set dates, depending on the size of the building. Failure to perform upgrades can result in fines of \$0.0025 per square foot up to \$1,000 per day of non-compliance. To support property owners, the City provides a set of resources including a cost estimation tool and a list of service providers.

- Since 2013, the **City of Chicago** has required multi-family and commercial buildings of at least 50,000 ft² to report whole-building energy use annually, according to a custom energy rating system that went into effect in 2019. The rating is required to be posted in a prominent location on the property, and either the energy rating or ENERGY STAR[®] score must be listed in any advertisements for sale or lease at the time of listing.
- In May 2021, the **City of Burlington** adopted an ordinance requiring rental units that consume over 90 kBtu/ft² for space heating purposes to implement energy efficiency measures up to a cost cap of \$2,500/unit to complete the initial work, not including incentives. After the initial work is completed, property owners are given a three-year extension to finish the required efficiency improvements with no cost cap.
- **Gainesville, Florida** has a rental unit permit and inspection program that requires rental units apply for permits annually and demonstrate that they meet a set of energy efficiency requirements.

Time certain building performance standards raise community awareness and allow the opportunity for property owners to comply through our policy pathways, such as permitting (Option 4) or time of property transfer (Option 5). Inspection requirements for rental licensing programs can also be used to achieve equitable outcomes such as adequate living standards and fair leasing practices.

Pros	Cons
<ul style="list-style-type: none"> • Easy for residents to understand • Reduces missed opportunities with gas replacements during burnout • Can directly tie to time-specific goals • Ability to impact all buildings • Can be integrated well with incentives • Rental license program could be leveraged for many other uses and help create equity. 	<ul style="list-style-type: none"> • Time certain years require enforcement in those years, such as rental license or business license programs, increasing staff responsibilities • Right timing replacements may be difficult, such as emergency replacements • May require a new tracking platform for buildings and residences • Without incentives, can add significant cost to annual operating budgets of constituents • Expected backlash from realtors

Figure 10: Pros and Cons of Time Certain Ordinance

Creating Rental License Program to Enforce End-of-life and Time-certain Electrification in Rental Housing

Rental units are notoriously difficult for energy efficiency programs, because there is a split-incentive issue. In most cases, the landlord would need to invest in energy efficiency upgrades, while the tenant reaps the benefits of energy savings. Since approximately 40% of households in Menlo Park are renter-occupied, a program targeting rental units is critical to meeting the City’s residential decarbonization targets.

The City of Boulder’s SmartRegs program has seen significant success. Since the programs implementation in 2013, 23,000 rental units have been licensed. In order to utilize this policy option, Menlo Park will first need to create a rental license program. Boulder first instituted rental licensing in the 2000s in order to create a pathway to track rentals in the jurisdiction, and an inspection program to ensure safety of rental units. In a conversation with Boulder staff, the investment to create the program included:

1. 1 full time employee (FTE) for a full year to create a tracking system for all rental licenses in Boulder
2. One quarter FTE continuing to implement the program
3. Creation of [GIS dashboard](#) to track rental licenses

Creation of a rental license program, with a goal of creating a rental-focused electrification policy and enforcement mechanism could be an approach to achieve the city’s goals. The program would require end-of-life electrification and time certain total building electrification of all rental units by 2030, and the license would be utilized as the enforcement mechanism.

Additional benefits of a rental license program above and beyond the scope of building decarbonization initiatives include:

1. Ability to track safety of rental properties within Menlo Park
2. Ability to track rental price increases and implement programs to manage increases in rental costs
3. Ability to utilize rental licensing to track and regulate Short Term Rentals (STRs.) – Note: Boulder uses the rental license program to track STRs in addition to safety and energy efficiency
4. Venue to encourage decarbonization efforts through direct correspondence with landlords.

4.5 Option 4: Permitting

California’s Title 24, Part 6 Building Energy Efficiency Standards contain various efficiency upgrade requirements that additions and alterations must comply with if the trigger conditions are met. For example, the standards dictate that space-conditioning system replacements (the trigger event) are limited to methane gas, liquefied petroleum gas, or the existing fuel type, except in the case of going from gas or liquefied petroleum gas to heat pumps (the requirement).

Local governments may use the same triggering events, such as the replacement of a mechanical and/or domestic water heating system, and further require electrification measures. In this case, a local code amendment could further require that replacement equipment be heat pump systems, as opposed to the like-for-like replacement currently allowed in Title 24, Part 6.

Encouraging or requiring electrification conversions make most economic sense when coupled with major renovations, because it can be more cost effective and less disruptive to the building owner. Solar PV installations have an added benefit of improved operational cost effectiveness.

Pros	Cons
<ul style="list-style-type: none"> • Easy path to enforcement • Clearly within City of Menlo Park purview • Good opportunity to integrate with incentives 	<ul style="list-style-type: none"> • Without incentives, can add significant cost to some improvement projects • May decrease permit adoption • Permit adoption rates are low, reducing effectiveness of this approach

Figure 11: Pros and Cons of Permitting as Intervention Point

4.5.1 Option 4A-4B: Electrification Ready Upgrades in Minor Alterations and Additions:

The electrification readiness option is intended to start the conversion process for existing residential multi-fuel buildings to all-electric buildings by requiring the installation of the electrical infrastructure needed to allow for the future conversion. This approach requires additional scope of work to a building permit; however, it does not add significant cost to the project due to the contractor being hired specifically to work on the building’s electrical systems.

The electrification readiness requirements are triggered by building permits with a scope of work that includes:

- The installation of a photovoltaic system or the replacement/upgrade to a main electric panel.
- The installation of a reverse cycle air conditioning condensing (heat pump) unit instead of a traditional air conditioning condensing unit.

4A: The Installation of a Reverse Cycle Air Conditioning Condensing (Heat Pump) Unit

This option would require a reverse cycle air conditioning condensing (heat pump) unit to be installed instead of a traditional air conditioning condensing unit when a building permit application is made that includes replacing an existing air conditioning condensing unit or the installation of an entirely new system.

The reverse cycle condensing unit is the critical piece of the infrastructure needed for the conversion to HPSH (heat pump space heating equipment) system. This option also builds on the electrification provisions of electrification readiness by making the conversion to a HPWH and/or HPSH equipment no more difficult than the replacement of a gas-fired water heater (GFWH) and gas-fired space heater (GFSH) equipment like in kind.

The number of structures that are made electrification-ready could be increased by including building permit applications for additions to existing buildings that also include:

- An increase the overall condition space,
- Modifications to the electrical, plumbing, or HVAC systems.

These additional scope of work requirements to trigger of the electrification readiness option are intended to avoid capturing projects, such as a roof being added over an existing porch/patio or an increase in the square footage of a garage or carport, which do not affect the overall consumption of energy for a structure.

4B: Installation Electric-Ready Infrastructure During Photovoltaic System Installation or Panel Upgrade Replacement

When a permit application is made that includes the installation of a solar PV system or the replacement/upgrade to a main electric panel for one- and two-family homes and townhomes, the applicant would also be required to provide:

- The reservation of breaker space in the existing or new electric panel to accommodate anticipated future electrification of single and multi-family buildings' electrical load.
- Wiring to a current water heater location to allow for the installation of a HPWH in an emergency repair situation for single-family buildings.

When a permit application is made that includes the installation of a solar PV system or the replacement/upgrade to a main electric panel for all other multi-family buildings, the applicant would also be required to provide:

- Wiring to current water heater location in multi-family buildings that have all of the water heaters serving individual units installed in the same location or in buildings with a centralized building water heater.
- The reservation of breaker space and electrical capacity to accommodate the additional electrical loads associated with heat pump water and space heating, a 120-volt, 30-amp circuit per unit to allow for electric vehicle charging, electric stove, ovens, and clothes dryers can potentially necessitate the upsizing of the panel size. However, this is solely an equipment and wiring cost, and it should not adversely affect the overall labor cost.

The requirement to add wiring to the current gas fired hot water heater does add both labor and material cost. However, by having the wiring installed allows for a property owner to replace the existing gas fired water heater at the end of its life cycle with a HPWH without experiencing any additional time without hot water than would normally be experienced. The requirements do not include wiring for the HPSH due to not knowing the desired location of the heat pump space heating equipment being based on the City's zoning ordinance requirements for required side and rear yards and the City's noise ordinance, which cannot be determined until the equipment has been selected.

There is the possibility that the installed wiring to the existing water heater location may never be used due to an increase in the HPWH physical size that prohibits the HPWH from being installed in the same location. The rate of recovery for a HPWH being considerable slower than a gas fired water heater, and most manufacturers recommend that the storage size be increased for a HPWH to offset the slower rate of recovery. A typical recommendation for a replacement of a 40-gallon gas fired water heater is 60 to 80 gallons for a HPWH. The increase in physical size can potentially cause a conflict with:

- The City's zoning ordinance requirements if the water heater is located in a garage and the new HPWH encroaches into the required interior clear space for parking cars.
- Adequate space in an existing water heater closet located in single-family buildings or individual dwelling units in multi-family buildings.

However, most HPHW of larger capacities only increase height, resulting in marginal increase to footprint. The height, still being below seven feet.

4.5.2 Option 4C: Heat Pump Based Equipment Installed Upon Voluntary Replacement

The voluntary replacement option is intended to begin the electrification process by leveraging the educational and electrification readiness ground work for single- and multi-family home property owners who are voluntarily replacing existing gas fired water heating and/or space heating equipment prior to the equipment's end of life.

The conversion from an existing GFWH to a HPWH poses some challenges. HPWH require the discharge of condensate water, typically requires the installation of a larger sized water tank and involves a licensed electrical contractor to install the electrical wiring and a licensed plumber to install the HPWH. The conversion from a GFSH to a HPSH equipment only requires a licensed HVAC contractor.

Heat pump based equipment generates condensate water. Condensate is caused by moisture accumulating on the heat pump evaporator coils where the refrigerant absorbs heat. The discharge of condensate water requires both the discharge line and an overflow line in the event that the discharge line becomes plugged. The discharge of the water can be particularly challenging for equipment not located on an exterior wall, above the first floor of a structure or for structures where the first floor is a concrete slab.

The condensate water needs to be captured and discharged outside in most cases because West Bay Sanitary District (District) does not allow the discharge of condensate water into the sanitary sewer system. The California plumbing Code states, "No plumbing fixtures served by indirect waste pipes or receiving discharge therefrom shall be installed until first approved by the Authority Having Jurisdiction." and defines air conditioning condensate discharge as indirect waste. The District is the Authority Having Jurisdiction (AHJ) as it applies to the discharge of condensate water and requires all condensate water to be discharged to landscape for buildings with 1 to 50 units. A permit from the District is required thereafter with a connection fee and an annual Sewer Service Charge.

The recovery rate for a HPWH is considerable slower than a gas fired water heater. A water heater's recovery rate is the amount of hot water the amount of hot water a tank water heater can provide in just one hour after being completely drained. Most manufacturers recommend that the storage size be increased for a HPWH to offset the slower rate of recovery. While the recommended increase in size varies based on demand and rate of recovery, a typical recommendation for a replacement of a 40-gallon gas fired water heater is 60 to 80 gallons for a HPWH.

The increase in physical size can potentially cause a conflict with the City's Zoning ordinance requirements if the water heater is located in a garage and the new HPWH encroaches into the required interior clear space for parking cars. A potential resolution to this encroachment issue is to install the HPWH in a new location however they cannot be located where they are exposed to the elements and there is a potential for considerable additional cost associated with the reconfiguration of the existing plumbing to accommodate the new hot water heater location. Additionally, heat pump equipment typically generates noise levels above 70 dBa which can potentially cause a conflict with the City's Noise Ordinance for all heat pump equipment located outside.

The Voluntary replacement option also captures hot water replacements in multi-family buildings that have existing electric resistance water heaters located in each unit. While this does potentially add cost to the project, some of those costs can be offset with available incentives. It is difficult to ascertain if additional electrical work will be required to address the electricity requirements for a HPWH and how condensate water will be discharged due to the differing ages and construction of the existing multi-family building stock. However, the requirements would result in an approximate 66% reduction in electricity consumption per water heater.

Permits for the replacement of GFWH and GFSH are applied for and issued on-line, which poses a challenge in determining how to implement this requirement since the permit information does not note whether the replacements are voluntary or due to the end of equipment life. Additionally, the 2019 California Building Standards Code allows for emergency replacement or repair to a structure prior to obtaining a building permit. This allows property owners to make repairs in an emergency situation to prevent further damage to a structure and protect life and safety. The more likely scenario is that this option will only capture GFWH and GFSH being replaced or relocated as part of an addition and alteration projects.

The voluntary replacement option requirements only address voluntary replacement, upgrade, or relocation of the existing GFWH and GFSH. The voluntary-only provision of the requirements allows single-family property owners whose structures are electrification-ready the flexibility to research and maximize monetary incentives prior to replacing GFWH and/or GFSH equipment. Property owners making incremental improvements to their structures have time to research contactors, products, and incentives prior to the commencement of the work.

4.5.3 Option 4D: Heat Pump Based Equipment Installed During Additions to Single-Family Residential Buildings

This option would require additions to single-family homes that increase the existing conditioned space to convert the existing gas fired water heating or space heating equipment or both to heat pump based equipment, depending on the scope of work.

Conditioned space is defined in the 2019 California Energy Code as, “An enclosed space within a building that is directly conditioned or indirectly conditioned” and is included to avoid capturing projects whose scope of work is unrelated to water or space heating. Additionally, the option requires the structure to be made electrification ready as prescribed in the electrification readiness option. This option will add cost to the project and the cost effectiveness will be less than if replacing the equipment at the end of its life.

The electrification requirements of this option would have two exceptions.

1. Additions that do not alter the existing space heating system. This exemption is included to avoid adding the cost associated with the installation of new space heating equipment to a project where the existing system has capacity to heat the new conditioned space. Dedicated wiring for the future electrification of the existing space heating equipment is not required since the location of the HPSH equipment is based on the City’s zoning ordinance requirements for required side and rear yards and the City’s noise ordinance, which cannot be determined until the equipment has been selected.
2. Additions that do not alter the water supply system, which is included to avoid adding the cost associated with new water heating equipment to a project. However, it does require the installation of a dedicated 240-volt, 30-amp branch circuit to be installed within three feet from the existing water heater location to prepare the house for future electrification.

As stated in previous option analysis, the requirement to add wiring to the current gas fired hot water heater does add both labor and material cost. However, by having the wiring installed allows for a property owner to replace the existing gas fired water heater at the end of its life cycle with a HPWH without experiencing any additional time without hot water than would normally be experienced. The requirements do not include wiring for the HPSH due to not knowing the desired location for the location of the HPSH being based on the City’s zoning ordinance requirements for required side and rear yards and the City’s noise ordinance, which cannot be determined until the equipment has been selected.

There is the possibility that the installed wiring to the existing water heater location may never be used, due to rate of recovery for a HPWH, which is considerably slower than a gas fired water heater. A water heater's recovery rate is the amount of hot water the water heater is capable of providing in a given period of time. Most manufacturers recommend that the storage size be increased for a HPWH to offset the slower rate of recovery. While the recommended increase in size varies based on demand and rate of recovery, a typical recommendation for a replacement of a 40-gallon gas fired water heater is 60 to 80 gallons for a HPWH. The increase in physical size can potentially cause a conflict with:

- The City’s zoning ordinance requirements if the water heater is located in a garage, and the new HPWH encroaches into the required interior clear space for parking cars.
- Adequate space in an existing water heater closet located in a single-family building or individual dwelling units in multi-family buildings.

A potential resolution to these conflicts is to install the HPWH in a new location; however, the equipment cannot be located where it is exposed to the elements. Where the HPWH cannot be relocated within the existing single-family buildings footprint, the existing structure would need to have a shelter constructed to accommodate the HPWH. The shelter could not be placed in the required side or rear yards and could potentially add lot coverage and/or floor area. Additionally, heat pump equipment typically generates noise levels above 70 dBA, which can potentially cause a conflict with the City’s noise ordinance for all heat pump equipment located outside. The challenges associated with the relocation to accommodate a HPWH within a dwelling unit in a multi-family building are even more complex.

4.5.4 Option 4E: Heat Pump Pool Heating Equipment for New Pools

This option would require the installation of heat pump pool water heating equipment for all new pool construction. Currently all new single-family home development that includes the construction of a new pool are required to use heat pump pool water heating equipment. However, a new pool being constructed on a property with an existing single- or multi-family or non-residential building is not required to install heat pump pool water heating equipment.

The requirement for the use of heat pump pool water heating equipment for all newly constructed pools does increase the cost of the direct pool construction cost due to the additional cost associated with using heat pumps rather than gas fired equipment. Additionally, the use of a heat pump could result in the requirement to upgrade the existing electrical panel. A typical heat pump pool water heating equipment requires a 40 to 60 Amp, 240 Volt circuit and greatly depends on the size of

the pool. The electrical panel upgrade could potentially trigger the electrification ready requirement for existing Single- or multi-family buildings should those policies be adopted. The additional capital cost associated with the heat pump equipment, upgrade to the panel and electrification ready provisions could add significant cost to the overall project. The noise level would be comparable to a similar sized air conditioning unit, and the noise from multiple heat pump sound sources is cumulative. A cost effectiveness analysis was completed in Santa Monica, and found that pool heat pumps would be cost effective in their climate zone (6), and may be cost effective in other communities upon further evaluation.

4.5.5 Option 4F: Electric Appliances and EV Charging in Alterations to Residential Buildings

This option requires alterations to single-family homes to convert the existing gas fired water heating or space heating equipment or both to heat pump based equipment depending on the scope of work. This option will add cost to the project and the cost effectiveness will be less than if replacing the equipment at the end of its life. Additionally, the option requires the structure to be made electrification ready as prescribed in the electrification readiness option. There are two exceptions to the requirements of this option:

- The first exempts alterations that do not alter the existing space heating system. This exemption is included to avoid adding the cost associated with new space heating equipment to a project. Dedicated wiring for the future electrification of the existing space heating equipment is not required, since the location of the heat pump space heating equipment is based on the City's zoning ordinance requirements for required side and rear yards and the City's noise ordinance, which cannot be determined until the equipment has been selected.
- The second exception exempts alterations that do not alter the water supply system. It is included to avoid adding the cost associated with new water heating equipment to a project. However, it does require the installation of a dedicated 240-volt, 30-amp branch circuit to be installed within three feet from the existing water heater location to prepare the house for future electrification.

The requirements also capture alterations to multi-family buildings. Specifically, it requires:

- The main panel serving the units have enough breaker space and electrical capacity to electrify all of appliances in the unit; and a 120-volt, 20-amp circuit per unit to allow for electric vehicle charging but does not require the installation of the outlet. Currently there is a rebate available through Peninsula Clean Energy to upgrade panel space for multifamily properties.
- The existing space heating equipment be replaced with heat pump space heating equipment when the heating system is altered
- The existing water heating equipment be replaced with heat pump water heating equipment when the water supply system is altered; and
- A dedicated 240-volt, 30-amp branch circuit be installed within three feet from the existing water heater location(s) when there is an existing gas fired water heater in the unit under alteration, but the work scope does not include alterations to the existing water supply system.

There are exceptions for multi-family residential buildings where the existing GFSH and GSWH systems are centralized for the entire building(s)—the systems are required to be replaced with heat pump equipment when 50% of the units in the building(s) have been altered. While these requirements do potentially add cost to the project, some of those costs can be offset with currently-available incentives. It is difficult to ascertain if additional electrical work will be required to address the electricity requirements for a HPWH due to the differing ages and construction of the existing multi-family building stock.

Alterations are defined in the 2019 California Residential Code as, "Any construction or renovation of a structure other than repair or addition". The term is used specifically in this option as it is a codified term however, it does have the potential of capturing projects where the cost of this option requirements greatly exceeds the cost of the proposed alterations. As an example, replacing a window would require making the building electrification ready by installing a dedicated 240-volt, 30-amp branch circuit within three feet from the existing GFWH location(s), The reservation of breaker space and electrical capacity to accommodate the additional electrical loads associated with heat pump water and space heating, a 120-volt, 20-amp circuit per unit to allow for electric vehicle charging, electric stove, ovens, and clothes dryers can potentially necessitate the upsizing of the panel size and the possibility that the installed wiring to the existing water heater location may never be used due to potential conflicts associated with the increase in physical size, as discussed in the electrification readiness analysis. There are three possible outcomes in this type of scenario:

1. The property owner moves forward with a permit and complies with the option requirements.
2. The property owner moves forward without the benefit of permit which prevents the inspection of the installation to ensure the proper installation of the equipment for the safety of the occupants.
3. The property owner elects to not replace the window and the potential energy efficiency gains associated with a new window are lost.

Further consideration of more exceptions need to be explored to avoid the unintended consequence of adding significant costs to small projects.

4.5.6 Option 4G: Replacement at End of Life

The requirement for the replacement of the existing gas fired water and space heating equipment at the end of life (burnout) has some significant associated challenges. However, it is the most cost effective option. The replacement of gas fired water and space heating equipment at burnout can potentially increase the amount of time between the time of burnout and the time of completed installation due to additional tasks such as adding infrastructure for the discharge of condensate water. This can ultimately result in permit avoidance and other enforcement challenges. More importantly, it could result in life and safety impacts if community members install gas equipment without the benefit of a permit and inspection to ensure proper installations.

Currently, when existing gas fired water and space heating equipment burns out it can be readily replaced by contractors who specialize in replacement and typically carry inventory so that equipment can be replaced within 24 hours of notification which is especially true with water heaters. If an ordinance is adopted that requires the replacement of existing gas fired water and space heating equipment at burnout and structures are not prepared for the installation of heat pump equipment, the time between burnout and the completed installation is greatly increased.

There are some challenges associated with heat pump water heating (HPWH) in a structure that does not have the required infrastructure to support the new type of equipment. The property owners will have to:

- Hire an electrician to install the required wiring to support the heat pump equipment;
- Schedule the installation which most likely won't be next day;
- Hire a contractor to install the heat pump equipment; and
- Schedule the installation.

This process can take several days or weeks depending on contractor and equipment availability leaving the occupants without hot water during that duration of time.

The recovery rate for a HPWH is considerably slower than a gas fired water heater. A water heater's recovery rate is the amount of hot water a tank water heater can provide in just one hour after being completely drained. Most manufacturers recommend that the storage size be increased for a HPWH to offset the slower rate of recovery. While the recommended increase in size varies based on demand and rate of recovery, a typical recommendation for a replacement of a 40-gallon gas fired water heater is 60 to 80 gallons for a HPWH.

The increase in physical size can potentially cause a conflict with the City's Zoning ordinance requirements if the water heater is located in a garage and the new HPWH encroaches into the required interior clear space for parking cars. A potential resolution to this encroachment issue is to install the HPWH in a new location however they cannot be located where they are exposed to the elements and there is a potential for considerable additional cost associated with the reconfiguration of the existing plumbing to accommodate the new hot water heater location. Additionally, heat pump equipment typically generates noise levels above 70 dBA which can potentially cause a conflict with the City's Noise Ordinance for all heat pump equipment located outside.

The challenges for replacement of space heating equipment are similar to those associated HPWH equipment with the significant exception that an HVAC contractor can install both the electrical wiring and the equipment. However, the location of the condensing unit is outside and needs to be located in compliance with the City's Zoning and Noise Ordinances.

Heat pump based equipment generates condensate water. Condensate is caused by moisture accumulating on the heat pump evaporator coils where the refrigerant absorbs heat. The discharge of condensate water requires both the discharge line and an overflow line in the event that the discharge line becomes plugged. The discharge of the water can be particularly challenging

for equipment not located on an exterior wall, above the first floor of a structure or for structures where the first floor is a concrete slab.

The condensate water needs to be captured and discharged outside in most cases because West Bay Sanitary District (District) does not allow the discharge of condensate water into the sanitary sewer system. The California plumbing Code states, "No plumbing fixtures served by indirect waste pipes or receiving discharge therefrom shall be installed until first approved by the Authority Having Jurisdiction." and defines air conditioning condensate discharge as indirect waste. The District is the Authority Having Jurisdiction (AHJ) as it applies to the discharge of condensate water and requires all condensate water to be discharged to landscape for buildings with 1 to 50 units. A permit from the District is required thereafter with a connection fee and an annual Sewer Service Charge.

Permits for the replacement of water and space heating equipment are applied for and issued on-line which poses a challenge since the permit information does not note whether the replacements are voluntary or due to the end of equipment life. Additionally, the 2019 California Building Standards Code allows for emergency replacement or repair to a structure prior to obtaining a building permit. This allows property owners to make repairs in an emergency situation to prevent further damage to a structure and protect life safety. In the event that a property owner has gas fired equipment replaced like in kind in an emergency situation and then applies for a permit, the expanded requirements would obligate them to remove and replace the newly installed equipment with a HPWH and/or HPSH equipment. An equally likely scenario is the potential of the replacement of gas fired equipment like in kind without the benefit of a building permit (permit avoidance) to avoid significant time without hot water or heat and any additional costs. The permit avoidance prevents the inspection of the newly installed equipment for compliance with the fire life safety aspects of the California Building Standards Code to ensure the proper installation for the safety of the occupants.

The Burnout option requirements could be applied to hot water replacements in multi-family buildings that have existing electric resistance water heaters located in each unit. While this does potentially add cost to the project, some of those cost can be offset with currently available incentives. It is difficult to ascertain if additional electrical work will be required to address the electricity requirements for a HPWH and how condensate water will be discharged due to the differing ages and construction of the existing multi-family building stock. However, the requirements would result in an approximate 66 percent reduction in electricity consumption per water heater.

Most water heating for non-residential applications excluding restaurants/food service and laundry services is currently achieved through electric resistance water heating due to relatively low hot water loads which is primarily associated with handwashing and some showers. The use of a HPWH could be mandated at the end of life and could result in up to a 66 percent reduction in electricity consumption per water heater. However, the noise associated with the HP equipment may not be suitable for office environments and the discharge of the condensate could pose a significant challenge.

Heat pump based heating for non-residential applications is possible however far more complicated due to the variety of building uses and systems currently installed in the existing building stock. These systems range from package Variable Air Volume (VAV) systems using a water based chiller/boiler, centralized gas fired heating packages with separate cooling to individual heating and cooling per unit in a building. It is difficult to ascertain the different types and ages of systems currently in use and the potential additional infrastructure work in a building that would be required to convert an existing non-residential building to a heat pump based space heating system.

4.6 Number of Buildings Impacted by the Permitting Options

There are 7,333 single-family homes and 5,669 multi-family units (two or more units per building) per the 2019 ACS census data. Below are the number of permits issued for additions, alterations and the installation of new electric panels, photovoltaic systems, water heaters, and HVAC equipment in single- and multi-family residential buildings between 2017 and 2020.

Single-Family Average Number of Permits by Use and Work Type							
Year	Electric Panels	PV	Water Heaters	HVAC	Additions	Alterations	Pools
2017	51	76	59	53	59	172	27
2018	34	66	38	86	61	204	16
2019	37	75	49	53	45	195	12
2020	6	125	3	39	37	249	TBD
Average	32	86	37	58	51	205	18

Figure 12: Single-Family Average Number of Permits by Use and Work Type

Multi-Family Average Number of Permits By Use and Work Type						
Year	Electric Panels	PV	Water Heaters	HVAC	Additions	Alterations
2017	3	0	14	18	0	88
2018	6	1	12	23	0	87
2019	2	2	26	10	1	73
2020	0	3	0	12	1	36
Average	3	2	13	16	1	71

Figure 13: Multi Family Average Number of Permits by Use and Work Type

Using the average number of issued permits per year and the 2019 census data the permitting options, the anticipated average number of buildings based on each permitting option are as follows.

4.6.1 Electrification Readiness

An average of 32 permits were issued specifically for new electric panels and 86 for PV systems between 2017 and 2020. This data does not include electric panel upgrade/replacement or PV system installations associated with additions and alterations, as accurate data is difficult to ascertain without review of each individual plan set. If the requirements for electrification readiness are implemented, it is anticipated that an average of 118 buildings per year will be electrification ready by 2030. This equates to 1.6% of the existing single-family and multi-family structures building stock, but it does not account for the new all-electric buildings that are currently being built in compliance with the City's adopted 2020 electric building codes.

Between 2017 and 2020 an average of 51 permits were issued for additions to single-family structures, and 1 permit was issued for a multi-family residential structure addition, per year. If the requirements for electrification readiness are expanded to include additions to single-family and multi-family buildings are implemented, it is anticipated that an additional average of 2.3% of the existing single-family and multi-family structures building stock will be made electrification ready for a total of 6% annually. This does not account for the new all electric buildings that are currently being built in compliance with the City's adopted 2019 building codes.

4.6.2 Voluntary Replacement:

The number of voluntary replacements/relocations associated with additions and alterations in single-family buildings is difficult to ascertain without review of each individual plan set. An average of 37 permits were issued specifically for the replacement of water heaters in single-family buildings and 58 for the replacement of HVAC equipment between 2017 and 2020. If the requirements for the voluntary replacement are expanded to include the mandatory replacement of existing gas fired equipment at the end of equipment life with heat pump equipment, it is anticipated that an average of 95 single-family buildings (37 water heater permits and 58 HVAC permits) and 29 multi-family buildings (13 water heater permits and 16 HVAC permits) per year will be electrification ready by 2030, which is approximately 1.7% of the existing building stock per year.

4.6.3 Additions to Single-Family Residential Buildings:

An average of 51 permits were issued specifically for additions to single-family homes between 2017 and 2020. It is difficult to ascertain the number of these permits that would have triggered the Option's requirements without review of each individual plan set. Assuming that an annual average of 51 permits for additions to single-family homes trigger at least one of the requirements, this would equate to .7% of the existing single-family home building stock having some form of heat pump equipment installed and made electrification ready annually if implemented. This is in addition to the new all-electric buildings that are currently being built in compliance with the City's adopted 2019 building codes.

4.6.4 Alterations to Single-Family Residential Buildings:

An average of 205 permits were issued specifically for alterations to single-family homes and 71 for multi-family homes between 2017 and 2020 that would have triggered the requirements. It is difficult to ascertain how many individual dwelling units are associated with of the multi-family permits without review of each individual plan set. If the requirements are implemented, it is anticipated that an average of 2.7% of the existing single-family home building stock would have some form of heat pump equipment installed and made electrification ready annually. Assuming each permit issued for a multi-family building was for a single dwelling unit, an average of 1% of the existing multi-family building stock would have some form of heat pump equipment installed and made electrification ready annually. This is in addition to the new all electric buildings that are currently being built in compliance with the City's adopted 2019 building codes.

4.6.5 Impacts to State Building Codes or City Ordinances

The permitting options will require local amendments be made to the California Building Standards Code (CBSC) and possibly the California Energy Commission Efficiency Code, the City's zoning, noise, and heritage tree ordinances. The CBSC allows for local jurisdictions to establish more restrictive and reasonably necessary to the CBSC. The local amendments are required to be based on climatic, topographic, or geographical conditions and approved by City Council. All the proposed permitting policy options will require going through the local amendment process.

Legal review is necessary to determine if building codes would require California Energy Commission approval. If so, it does require the local agency demonstrate that the measure or regulations will be cost effective. However, there may be flexibility

for the agency to determine the methodology or analysis to determine cost effectiveness, such as the increasing costs of climate change.

Several aspects of the permitting options could require amendment to the City's zoning and noise ordinance. As mentioned earlier, a new HPWH may not fit into the existing GFWH location, or it could encroach into the required clear space for covered parking. Where the HPWH cannot be relocated within the existing buildings footprint, the existing structure would need to have a shelter constructed to accommodate the HPWH. The shelter could not be placed in the required side or rear yards and could potentially add lot coverage and/or floor area. Additionally, heat pump equipment typically generates noise levels above 70 dBA, which can potentially cause a conflict with the City's noise ordinance for all heat pump equipment located outside. Similarly, the location of the heat pump space heating equipment being based on the City's zoning ordinance requirements for required side and rear yards and the City's noise ordinance. The challenges associated with the relocation of existing water and space heating equipment to accommodate a heat pump equipment in multi-family buildings are even more complex.

The heritage tree ordinance prohibits installation or storage of equipment under a heritage tree. Specifically, any person who owns, controls, or has custody or possession of any real property within the city shall use reasonable efforts to maintain and preserve all heritage trees located thereon in a state of good health. This requirement can pose limits on possible heat pump equipment location.

Amending the City's zoning, noise, and heritage tree ordinances could be undertaken to exempt heat pump equipment in some capacity to encourage its installation. The process would require a comprehensive study of allowing possible equipment location to be closer to property lines and/or heritage trees than currently allowed but still maintains a distance that does not cause a nuisance for the adjoining properties. At a minimum, the process would require:

- Studying typical equipment size, weight, noise levels and installation requirements.
- Analyzing each zoning district's typical lot dimensions and size for determination of allowable distance to property line for the equipment.
- Analyzing the attenuation of sound over distance to ensure noise levels are not increased to a nuisance level by reducing the allowable proximity to property lines.
- Analyzing potential harm to heritage trees if equipment is allowed to be located under them.
- Drafting of revised Ordinance language.
- Performing potential public outreach for feedback.
- Presenting to and receiving recommendations from the Planning Commission.
- Presenting to and approval by the City Council.

4.6.6 City Resources Necessary for Permit Requirements

The permitting options potentially impact the Sustainability Manager, Building Official and City Attorney during the code adoption process for the selected options as well as the time associated with permit processing, plan review and inspection for the Building and Planning Divisions. The time impacts are cumulative with respect to each option that is adopted and to the potential number of permits each option captures. Additionally, there is the time impact associated with staff providing written and verbal educational information to the public, which is very difficult to quantify.

The permitting options that are chosen to be implemented are adopted as amendments to the California Building Standards Code. The California Building Standards Code is adopted in three year cycles, with local amendments to the code typically adopted at the same time. This does not preclude the adoption of an amendment in a non-code adoption year. For an amendment to be brought forward for adoption, The Building Official will have to determine which sections of the code that is required to be amended, determine that the new code language does not create conflict with any other code sections, and write the code language for the amendment. The amendments are reviewed by the City Attorney and ultimately brought to the City Council for approval. A considerable amount of time is required to write an amendment to ensure that the amendment captures the intended structures and uses and does not create any unintended consequences.

The impact associated with the electrification readiness option beyond the educational component will be the additional Building Division plan check and inspection time associated with the electrification readiness requirements. Specifically, the

permit application will have to be accompanied by electrical load calculations for the structure to demonstrate compliance to both the California electric code requirements and the requirements of this option. The plan checker will have to then review the load calculations prior to issuance of the permit. Likewise, the Building Inspectors will have to confirm that the requirements of the option are incorporated into the new electric panel and the wiring installed to the existing water heater location.

The anticipated impact to staff associated with voluntary replacement option will be the additional plan check and inspection time associated with the plan checker determining whether or not the existing GFWH is being replaced, upgraded, or relocated in order to apply the requirements. Additionally, if the equipment is being relocated or placed outside of the building, a Planning Division staff member will have to review the plans for compliance with the City's zoning and noise ordinances. Likewise, the Building Inspectors will have to confirm that the existing GFWH has not been replaced, upgraded, or relocated during the construction of the project. If the scope of work has been increased during construction, the plans will be required to be updated to show the increased scope of work and compliance with the option requirements, the revisions submitted for plan review, and the revised plans issued and re-inspected for compliance.

The anticipated impact to staff associated with the additions and alterations to existing buildings options will be the additional plan check and inspection time associated with this option's requirements. Specifically, the Building Division plan checker will have to determine whether or not the existing water supply and/or space heating systems are being altered in order to apply the requirements. Likewise, the Building Inspectors will have to confirm that the existing water supply and/or space heating systems are being altered during the construction of the project. If there are alterations made during construction that are not shown on the plans, the plans will be required to be updated to show the increased scope of work and compliance with the option requirements, the revisions submitted for plan review, and the revised plans issued and re-inspected for compliance.

4.7 Option 5: Electrification Ready at Time of Sale

A jurisdiction may encourage or require electrification upgrades at time of real estate sales. The City could consider electrification ready at the time of sale. Existing examples require some energy assessment and/or label and disclosure policies, with no explicit link to electrification. Notable instances include:

- Since 2015, **City of Berkeley's** BESO has required an energy efficiency assessment for all single-family, commercial, and multi-family buildings at time of listing, and/or annual benchmarking, using either the Department of Energy Home Energy Score or ENERGY STAR Portfolio Manager. Exemptions are allowed for new construction, extensive renovations, or financial hardship (such as participation in income-qualified or tax-postponement programs). A 2020 evaluation of the program states that while the program helped the City attain energy consumption information that is useful for shaping policy, it has also been challenging for the city to track conversion rates from assessment to energy upgrade, due to privacy protections of utility program data and a lack of granular building permit data.
- The **City of Berkeley** also has a Real Property Transfer Tax that is imposed on all property transfers, and ranges from 1.5 to 2.5% of the property value. Up to 1/3 of the base 1.5% transfer tax rate is eligible for a Seismic Transfer Tax Refund, if the property owner performs voluntary seismic upgrades within one year of the transfer.⁷⁴ Historically, an average of 13% of eligible homeowners have received the refund between 2014 and 2019.⁷⁵ The City is considering updates to expand the Seismic Tax Refund Program include resilience, energy efficiency, and electrification measures for commercial and mixed-used buildings.⁷⁶
- **The City of Davis'** Resale Program, implemented in 1976, requires a building inspection to certify that the building meets local ordinance requirements as part of a residential property transaction. The inspected items include various health and safety measures including air conditioner disconnect, furnace combustion air, laundry outlet voltage, energy standards compliance with retrofit, and pipe insulation. As of 2018, the cost for the inspection was \$426. Davis inspects approximately three to four percent of its housing stock annually, and since 2014, only five percent of resale inspections have found unpermitted heating, ventilation, and air conditioning (HVAC) installations.
- **City of Piedmont** requires that at point of listing for sale of a property, a report from a Home Energy Audit or Home Energy Score (homeowner's choice) must be provided to potential buyers and submitted to the City—unless the residential building was constructed in the past 10 years. This requirement was implemented in early 2021, and there is limited compliance and implementation data at this time.
- Since 1982, the **City of San Francisco** has required energy and water conservation measures for all residential dwellings that undergo a property transfer or major improvements (e.g., \$20,000 of estimated improvements for a

single-family home). Measures include a minimum of R-11 attic insulation, water heater insulation, weatherization, and duct insulation, and dwellings must be inspected for compliance. Costs are capped at \$1,300 per single-family dwelling, and for multi-family buildings:

- 1% of the assessed value of the building if improvements are performed prior to property transfer
- 1% of the purchase price as stated in the real estate sales contract

Pros	Cons
<ul style="list-style-type: none"> ● Ability to create total electrification of homes and buildings ● May provide incentive for property owners to consider electrification ahead of property sales ● Relatively high GHG impact 	<ul style="list-style-type: none"> ● Without incentives, can add significant cost to property transfer ● Limited total number of buildings that can be impacted ● Expected backlash from realtors

Figure 14: Pros and Cons of Time of Sale Ordinance

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5 Projected GHG Reduction Outcomes

5.1 GHG Savings Opportunity of Proposed Policy Options

To determine the effectiveness of each proposed policy pathway, DNV-GL quantified GHG savings potential in terms of annual reduction of Metric Tons Carbon Dioxide equivalent (MT CO₂e) on an annual basis. This specifically answers the question “how much will annual emissions be reduced if we enact this policy on January 1st 2023 and it impacts buildings through December 31st 2030.” The total emissions savings of all policies listed below is not expected to meet the target outlined in the CAP.

Intervention Point	Methodology	GHG Savings w/o leakage (MT CO ₂ e yr)
Reductions needed to meet 2030 goal (95% of buildings)	95% x comm & res natural gas use from CAP	51,636 ⁹
Business and Usual	Assumes 10% of Menlo Park residents will electrify their home by 2030 without incentive or mandate.	5,164
Marketing and Education	Assumes 10% of Menlo Park residents will be inspired to perform total electrification by 2030 by marketing and education efforts.	5,164
HVAC Permit	Assumes every HVAC permit with existing gas equipment results in electrification.	653
Water Heating Permit	Assumes every water heating permit with existing gas equipment results in electrification.	894
Single-Family Additions	Assumes every addition results in total electrification.	1,006
Single-Family Alterations	Assumes every alteration results in total electrification.	3,652
Single-Family Repair	Assumes every repair results in total electrification.	2,708
Panel Upgrade Electrification Readiness	Assumes that 10% of panel upgrade permits results in electrification of two end uses.	2,661
Solar PV Permit	Assumes every PV installation permit receives total electrification.	359
Pool Permit	Assumes every new pool is heated with heat pumps instead of natural gas.	193
Point of Sale	Assumes every home sale results in total electrification.	6,874

Figure 15: GHG Savings of Policy Options

The waterfall chart below¹⁰ outlines the GHG savings opportunity (excluding the gas grids fugitive methane emissions,) if each policy is selected. DNV has created a corresponding dashboard is available in Microsoft Excel®, to allow users to select or de-select each measure.

⁹ The table above has yet to compare the GHG savings methodology against the methodology used by the CAP. In order to provide and apples-to-apples GHG reduction comparison, it is critical to square up against the numbers used in the CAP.

¹⁰ Waterfall chart does not include the impact of fugitive methane emissions

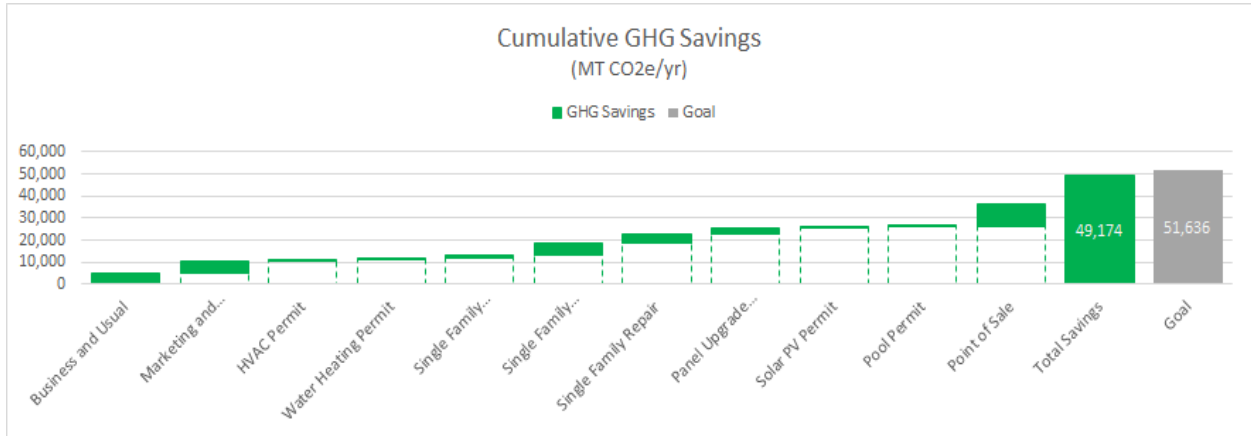


Figure 16: Cumulative GHG Savings of Proposed Options

5.2 Permits as Intervention Points Cannot Alone Meet the 2030 Goal

There appears to be a low permit capture rate within Menlo Park, which aligns with DNV’s findings in a [2017 study for the California Public Utilities Commission](#). The chart below outlines the differences between the GHG savings of capturing every equipment replacement, as compared to the GHG savings of capturing equipment only when HVAC or water heating permits are pulled. Based on these findings, it may benefit Menlo Park to consider alternative policy pathways to meet the 2030 GHG savings goal outlined in the CAP.

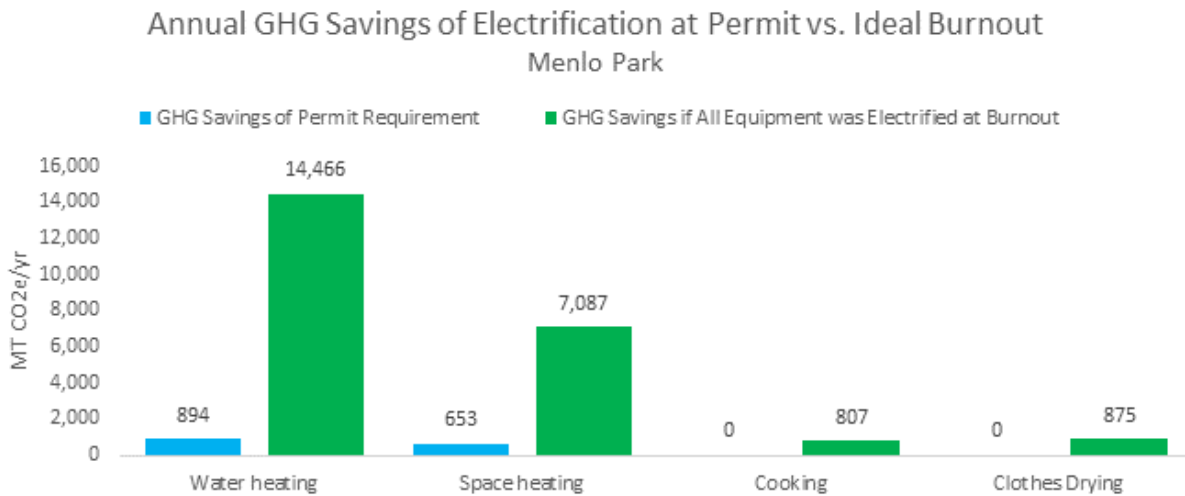


Figure 17: Annual FHG Savings of Electrification - Permit vs. Ideal Burnout

5.3 State and Federal Action is Needed to Meet Carbon Neutral Goal

Since not all projects go through the permit process, and some buildings may find a way to keep old, gas-fired equipment running long-past its life expectancy, state or federal action will be needed to help reach local climate goals. Environmental health risks have long been the bedrock of local, state, and federal mandates on the reduction or end of use of certain equipment. Asbestos has been heavily regulated under many uses since [1970s Clean Air Act](#), lead paint has been banned for residential use

[since 1978](#), and the [Montreal Protocol](#) represented a global effort to save the planet’s ozone layer by ending the use of Chlorofluorocarbons (CFCs)¹¹.

If the state or federal government bans the sale of gas-fired equipment, it could significantly help Menlo Park meet its ambitious climate goals. This may be the only path, which enables the world to meet its global climate goals and avoid catastrophic global warming.

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¹¹ The Montreal protocol may be the closest example to efforts to stave off global warming today. Ozone depletion due to CFCs was a known issue since the 1970s, but slowly phased out through the 1990s with some older HVAC equipment still using CFCs today. While the ozone layer has been largely preserved, a thinning of the ozone layer over the Southern Hemisphere occurred. As a result, [skin cancer rates are the highest in countries in the region](#) – Australia and New Zealand.

6 Next Steps and Potential Criteria

Each of the options could be evaluated using the following criteria to build an electrification roadmap to help guide implementation timelines and public engagement conversations:

- **Ease of Implementation/Process:** 1) There is a low level of engagement necessary during the adoption process, 2) does not require long term-staff resources, 3) does not require coordination with other agencies.
- **Convenience:** 1) Does not increase scope beyond the original plan, 2) does not increase project timeline or cause a physical impact to the property, 3) skilled workforce for the required upgrade is available
- **Equitable:** 1) Tenant protections exist, 2) there are income-qualified exemptions, incentives, and financing available, 3) there is community engagement on policy design and workforce development and training
- **Cost effectiveness:** 1) Demonstrates on-bill savings, 2) does not increase upfront costs, 3) incentive programs are available or forth-coming
- **Effectiveness:** 1) Is an enforceable mandate, 2) transforms the market, 3) is scalable

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7 Attachments

Attachment A: 2019 Residential Cost Effectiveness Analysis

Attachment B: Memorandum on preliminary cost effectiveness analysis for non-residential.

Attachment C: Existing Building Electrification and Multifamily Electric Vehicle Charging Policy and Financing Literature Review and Analysis

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Last modified: 2021/07/08

2021 LOW-RISE RESIDENTIAL COST-EFFECTIVENESS ANALYSIS: FUEL
SUBSTITUTION IN MENLO PARK'S EXISTING BUILDINGS
ADDENDUM TO STATEWIDE COST-EFFECTIVENESS STUDY

City of Menlo Park

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Acronym List

B/C – Benefit-to-Cost Ratio

BayREN – Bay Area Regional Energy Network

CBECC – California Building Energy Code Compliance

CBSC – California Building Standards Commission

CEC – California Energy Commission

CZ – Climate Zone

GHG – Greenhouse Gas

IOU – Investor-Owned Utility

PCE – Peninsula Clean Energy

POU – Publicly Owned Utility

PG&E – Pacific Gas & Electric (utility)

SCE – Southern California Edison (utility)

SCG – Southern California Gas (utility)

SDG&E – San Diego Gas & Electric (utility)

CPAU – City of Palo Alto Utilities

SMUD – Sacramento Municipal Utility District

LADWP – Los Angeles Department of Water and Power

kWh – Kilowatt Hour

NPV – Net Present Value

PV - Solar Photovoltaic

TDV - Time Dependent Valuation

Title 24 – California Code of Regulations Title 24, Part 6

TOU – Time of Use



Summary of Revisions		
Date	Description	Reference (page or section)
4/22/2021	Original Release	NA
6/23/2021	Update to include multifamily analysis; include additional detail on incremental costs.	NA
7/8/2021	Update to PCE HPWH incentive, GHG savings, and 1992-2010 HP results. Add cost details on electric ready measures.	NA

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1 Introduction

The California Codes and Standards Reach Codes program provides technical support to local governments considering adopting a local ordinance (reach code) intended to support meeting local and/or statewide energy and greenhouse gas reduction goals. The program facilitates adoption and implementation of the code when requested by local jurisdictions by providing resources such as cost-effectiveness studies, model language, sample findings, and other supporting documentation. Local jurisdictions that are considering adopting ordinances may contact the program for support through its website, LocalEnergyCodes.com.

The California Building Energy Efficiency Standards Title 24, Part 6 (Title 24) (California Energy Commission, 2018) is maintained and updated every three years by two state agencies: the California Energy Commission (the Energy Commission) and the Building Standards Commission (BSC). In addition to enforcing the code, local jurisdictions have the authority to adopt local energy efficiency ordinances—or reach codes—that exceed the minimum standards defined by Title 24 (as established by Public Resources Code Section 25402.1(h)2 and Section 10-106 of the Building Energy Efficiency Standards). Local jurisdictions must demonstrate that the requirements of the proposed ordinance are cost-effective and do not result in buildings consuming more energy than is permitted by Title 24. In addition, the jurisdiction must obtain approval from the Energy Commission and file the ordinance with the BSC for the ordinance to be legally enforceable.

This analysis is an update to the statewide cost-effectiveness study for existing building upgrades completed in March 2021 (Statewide Reach Code Team, 2021) which evaluates the feasibility and cost-effectiveness of retrofit measures in existing single family homes built before 2010. This report presents results from analysis conducted in response to a request from the City of Menlo Park to evaluate the fuel substitution measures with revisions that more accurately reflect local conditions. Cost-effectiveness is reported for California Climate Zone 3 based on Peninsula Clean Energy (PCE) electric tariffs for both single family and low-rise multifamily buildings. This report was developed in coordination with the California Statewide Investor Owned Utilities (IOUs) Codes and Standards Program, key consultants, and engaged cities—collectively known as the Reach Code Team.

The Department of Energy (DOE) sets minimum efficiency standards for equipment and appliances that are federally regulated under the National Appliance Energy Conservation Act, including heating, cooling, and water heating equipment (E-CFR, 2020). Since state and local governments are prohibited from adopting higher minimum efficiencies than the federal standards require, the focus of this study is to identify and evaluate cost-effective packages that do not include high efficiency heating, cooling, and water heating equipment. High efficiency appliances are often the easiest and most affordable measures to increase energy performance. While federal preemption limits reach code mandatory requirements for covered appliances, in practice, builders may install any package of compliant measures to achieve the performance requirements.

2 Methodology and Assumptions

The same methodology used in the statewide analysis (Statewide Reach Code Team, 2021) is applied to this analysis with the following exceptions:

- Local PCE electric utility tariffs are used in place of PG&E tariffs.
- PCE and BayREN incentives are considered.
- A single family 2,700 square foot home is used in place of the 1,665 square foot home applied in the statewide study. This larger home better reflects the Menlo Park building stock.
- A two-story multifamily apartment building was also evaluated. The eight-unit building has four one-bedroom 780 square foot units and four two-bedroom 960 square foot units.
- Only the fuel substitution measures are evaluated.
- Two additional measures are evaluated showing the energy impact of converting a gas dryer and gas range/oven to electric resistance appliances.

Key components of the methodology are repeated below. Refer to the statewide study for further details.

2.1 Measures and Costs

In addition to the fuel substitution measures for space heating and water heating the Statewide Reach Code Team also evaluated fuel substitution for clothes drying and cooking. Standard and high efficiency heat pumps were considered in this analysis. For space conditioning, the study assumes that an existing AC and natural gas furnace is replaced with a heat pump. It is assumed there is no incremental labor except in providing new 240 V electrical service to the air handler location. In mild climates, where AC may not be installed, there will be additional costs for installing an outdoor unit, refrigerant lines, and condensate drain pan. A 21 SEER, 11 HSPF variable capacity heat pump was modeled for the high efficiency space conditioning heat pump.

The heat pump water heater (HPWH) measures are based on replacement of a natural gas storage water heater with a HPWH, assuming the existing water heater is located in the garage for single family buildings and an exterior closet for multifamily buildings. Costs include all material and installation labor including providing new 240 V electrical service to the water heater location.

Incremental costs for these fuel substitution measures are presented in Table 1, Table 2, and Table 3. All equipment is assumed to be replaced at end-of-life and incremental costs are relative to comparable gas equipment. The lifetime for the heat pump, furnace, and air conditioner are based on the Database for Energy Efficient Resources (DEER) (California Public Utilities Commission, 2021). In DEER heat pump and air conditioner measures are assigned an effective useful lifetime (EUL) of 15 years and a furnace an EUL of 20 years. The heating and cooling system components are typically replaced at the same time when one reaches the end of its life and the other is near it. Therefore, it is assumed that both the furnace and air conditioner are replaced at the same time at year 17.5, halfway between 15 and 20 years. Future replacement costs for the heat pumps are reduced by 20% to account for cost reductions as a result of a maturing market. The HVAC single family costs reflect a 3-ton heat pump or air conditioner and a 60,000 Btu/h furnace. The multifamily costs are slightly lower as they reflect a 2-ton heat pump or air conditioner and a 40,000 Btu/h furnace. Incremental costs for electric ready measures are presented in Table 4.

Table 1: HVAC Measure Cost Assumptions – Electric Replacements

	Single Family (3-ton HP/AC, 60kBtu/h furnace)			Multifamily (2-ton HP/AC, 40kBtu/h furnace)			Notes
	Gas Furnace /AC	14 SEER Heat Pump	21 SEER Heat Pump	Gas Furnace /AC	14 SEER Heat Pump	21 SEER Heat Pump	
First Cost	\$8,738	\$9,101	\$11,247	\$8,545	\$8,731	\$10,725	Equipment costs from on-line sources and HVAC contractors. Other supply and labor costs from 2019 report on residential building electrification in California (Energy & Environmental Economics, 2019). First cost includes disposal, electrical upgrade, and labor costs.
Replacement Cost (Future Value)	\$8,738	\$6,729	\$8,445	\$8,545	\$6,433	\$8,028	Future total replacement costs for the heat pumps are reduced by 20% to account for cost reductions because of a maturing market and electrical upgrade costs are removed.
Replacement Cost (Present Value)	\$5,209	\$4,319	\$5,421	\$5,094	\$4,129	\$5,153	Based on 17.5-year lifetime for gas furnace/AC, 15-year lifetime for heat pumps, 3% discount rate.
Remaining Value at Year 30	(\$1,029)	\$0	\$0	(\$1,006)	\$0	\$0	Residual value of the gas furnace/AC to account for the remaining life at end of 30-year analysis period.
Total Lifecycle Cost	\$12,918	\$13,419	\$16,667	\$12,633	\$12,859	\$15,878	
Incremental Cost	-	\$501	\$3,749	-	\$227	\$3,245	

Table 2: Water Heating Measure Cost Assumptions – Electric Replacements

	Single Family & Multifamily			Notes
	Gas Storage Water Heater	2.0 UEF HPWH	NEEA Tier 3 HPWH	
First Cost	\$1,600	\$4,018	\$4,155	First cost based on 2018-2020 costs from SMUD incentive program for NEEA Tier 3 HPWH (Sacramento Municipal Utility District, 2020). 2.0 UEF first cost assumes 90% of equipment cost compared to NEEA Tier 3 unit based on on-line product research. Includes equipment cost, electrical upgrade, permitting, and labor.
Replacement Cost (Future Value)	\$1,600	\$1,874	\$1,943	Future replacement cost assumes the same labor for the gas and HPWH case. HPWH replacement equipment costs are reduced by 50% to account for cost reductions because of a maturing market.
Replacement Cost (Present Value)	\$1,027	\$1,203	\$1,247	Based on 15-year lifetime and 3% discount rate.
Remaining Value at Year 30	\$0	\$0	\$0	
Total Lifecycle Cost	\$2,627	\$5,221	\$5,402	
Incremental Cost	-	\$2,594	\$2,775	

Table 3: Cooking and Clothes Dryer Measure Cost Assumptions – Electric Replacements

	Single Family & Multifamily				Notes
	Gas Range	Electric Resistance Range	Gas Dryer	Electric Resistance Dryer	
First Cost	\$1,510	\$2,118	\$1,805	\$2,118	Costs from E3 study for Climate Zone 3 (Energy & Environmental Economics, 2019). No incremental replacement costs assumed.
Incremental Cost	-	\$608		\$313	

Table 4: Electric Ready Cost Assumptions

	Incremental Cost	Notes
Appliance pre-wire	\$455 per appliance. \$910 total for space and water heating	\$125 parts, \$330 labor. (Energy & Environmental Economics, 2019).
Main service panel upgrade	\$3,181	Upgrade 100A to 200A (TRC, 2016)

A PV system is evaluated in combination with select fuel substitution measures. The PV system size presented in Table 5 was based on the sizing methodology of the 2019 new construction standards in Climate Zone 3. It was evaluated in CBEC-Res according to the California Flexible Installation (CFI) assumptions. Table 5 also presents incremental costs.

Table 5: PV System Capacity & Costs

	PV Size	Total Lifecycle Cost	Notes
Single Family	2.82 kW-DC	\$3.18/kW-DC (\$8,953 total)	First costs are from LBNL's Tracking the Sun 2019 costs (Barbose, 2019) and represent costs for the first half of 2019 of \$3.70/WDC for residential systems and \$3.10/WDC for small commercial systems. These costs were reduced by 26% for the solar ITC, which is the average credit over years 2021-2022.
Multifamily	13.33 kW-DC total (1.67 kW-DC per dwelling unit)	\$2.74/kW-DC (\$4,559 per dwelling unit)	Inverter replacement cost of \$0.14/WDC present value includes replacements at year 11 at \$0.15/WDC (nominal) and at year 21 at \$0.12/WDC (nominal) per the 2019 PV CASE Report (California Energy Commission, 2017). System maintenance costs of \$0.31/WDC present value assume \$0.02/WDC (nominal) annually per the 2019 PV CASE Report (California Energy Commission, 2017).

2.2 Cost-effectiveness

This analysis uses two different metrics to assess cost-effectiveness. Both methodologies require estimating and quantifying the incremental costs and energy savings associated with energy efficiency measures as compared to the 2019 prescriptive Title 24 requirements. The main difference between the methodologies is the way they value energy and thus the cost savings of reduced or avoided energy use.

- **Utility Bill Impacts (On-Bill):** Customer-based Lifecycle Cost (LCC) approach that values energy based upon estimated site energy usage and customer on-bill impacts using electricity and natural gas utility rate schedules over a 30-year duration accounting for discount rate and energy inflation.
- **Time Dependent Valuation (TDV):** Energy Commission LCC methodology, which is intended to capture the "societal value or cost" of energy use including long-term projected costs such as the cost of providing energy during peak periods of demand and other societal costs such as projected costs for carbon emissions, as well as grid transmission and distribution impacts. This metric values energy uses differently depending on the fuel source (gas, electricity, and propane), time of day, and season. Electricity used (or saved) during peak periods has a much higher value than electricity used (or saved) during off-peak periods (Horii, Cutter, Kapur, Arent, & Conotyannis, 2014). This is the methodology used by the Energy Commission in evaluating cost-effectiveness for efficiency measures in Title 24, Part 6. Analysis based on both 2019 and 2022 TDV is presented in this report.

On-Bill analysis was completed using the utility rates described in Table 6. PCE's TOU-C rate is similar to PG&E's TOU-C rate except with a lower generation rate and additional credit for solar PV generation. Rates reflect PCE's most recent updates on April 1, 2021 and PG&E's March 1, 2021 updates. Monthly net energy production is credited at \$0.01/kWh in addition to the retail rate. See 5.1 Utility Tariff Details in the Appendix for details.

Table 6: Utility Tariffs Applied in Analysis

Electricity	Natural Gas
PCE TOU-C	PG&E G-1

Source: Utility websites, see 5.1 Utility Tariff Details in the Appendix for details on the tariffs applied.

Utility rates are assumed to escalate over time, using assumptions from research conducted by Energy and Environmental Economics (E3) in the 2019 study Residential Building Electrification in California (Energy & Environmental Economics, 2019). Escalation of electric utility rates for PCE was not available and the assumptions used in this analysis are based on those from the statewide studies (Statewide Reach Code Team, 2019).

Results are presented as a lifecycle benefit-to-cost (B/C) ratio, a net present value (NPV) metric which represents the cost-effectiveness of a measure over a 30-year lifetime considering discounting of future savings and costs and financing of incremental first costs. A value of one indicates the NPV of the savings over the life of the measure is equivalent to the NPV of the lifetime incremental cost of that measure. A value greater than one represents a positive return on investment.

3 Results and Discussion

Table 7 through Table 10 summarize cost-effectiveness of the fuel substitution measures evaluated. Cost-effectiveness analysis was evaluated using both On-Bill and TDV cost-effectiveness criteria. Site energy savings, cost savings, measure cost, and cost effectiveness including lifecycle B/C ratio and NPV of savings are provided. Where measures are dependent on building vintage (envelope efficiency measures), cost effectiveness is reported for each vintage. The electric clothes dryer and electric cooking measure results do not differ by vintage.

3.1 On-Bill Cost Effectiveness

The fuel substitution measures are not cost-effective on their own based on the On-Bill approach. When coupled with PV both the heat pump at HVAC replacement and HPWH at water heater replacement are cost-effective across all vintages. PCE¹ and BayREN² each offer a \$1,000 incentive for a combined \$2,000 incentive for installing a HPWH with a Uniform Energy Factor (UEF) of 3.1 or greater that replaces a gas water heater. These incentives reduce the first incremental cost substantially but not enough to make this measure cost-effective across the three vintages for either single family or multifamily. Because the incentives only apply to HPWHs with UEFs higher than the federal minimum standard, the cost-effectiveness results for single family cannot be used as the basis of an ordinance. Higher efficiency HPWHs can be installed as an option to an ordinance that is based on minimum efficiency equipment.

BayREN also offers a \$1,000 incentive for a space conditioning heat pump with a minimum SEER of 17 and HSPF of 9.4. While this incentive improves cost effectiveness for the high efficiency heat pump measure, it is not enough to result in a positive On-Bill NPV over the lifetime.

The electric dryer and range measures are not cost-effective on their own. They may be cost effective if evaluated as a package with PV measures or if incentives were available.

For multifamily buildings, this study assumed the water heater is located in an outdoor closet. Performance of a HPWH will be slightly better if the existing water heater is located inside the unit (in conditioned space) but would create potential sound and comfort issues. Cost to install a HPWH inside the apartment would also be higher and most likely require ducting to properly vent the unit.

3.2 TDV Cost Effectiveness

Cost effectiveness improves for the fuel substitution measures based on the 2019 and 2022 TDV metric and all the measures except for the high efficiency heat pump for multifamily and the electric clothes dryer and range/oven are cost effective based on 2022 TDV. The measures are cost-effective under 2019 TDV when combined with a PV system. PV systems are more cost-effective On-Bill than with the TDV metrics, but the PV packages are all cost-effective based on all metrics.

¹ PCE incentive is currently \$1,500 but will be reduced later in 2021 to \$1,000.

<https://www.peninsulacleanenergy.com/heat-pump-water-heater/>

² https://bayrenresidential.org/sites/default/files/2021-01/BayREN_Home+_Measures_10292020.pdf

Table 7: Single Family Equipment Fuel Substitution Cost-Effectiveness Results – No Incentives

Measure	Vintage	Measure Cost	Electricity Savings (kWh)	Gas Savings (therm)	GHG Savings (lb CO ₂ e)	Utility Cost Savings		Customer On-Bill		2019 TDV		2022 TDV	
						Year 1	Avg Annual	B/C Ratio	NPV	B/C Ratio	NPV	B/C Ratio	NPV
Heat Pump at HVAC Replacement	Pre-1978	\$501	-4,528	451	2,409	-\$377	-\$249	0	-\$8,006	0	-\$5,462	9.30	\$4,160
	1978-1991		-3,173	309	1,606	-\$295	-\$200	0	-\$6,547	0	-\$2,318	5.68	\$2,348
	1992-2010		-2,722	265	1,398	-\$262	-\$179	0	-\$5,922	0	-\$1,109	4.96	\$1,984
SEER 21 Heat Pump at HVAC Replacement	Pre-1978	\$3,749	-3,261	451	2,977	-\$30	\$26	0.19	-\$3,290	0.92	-\$312	3.17	\$8,152
	1978-1991		-2,337	309	1,984	-\$66	-\$19	0	-\$4,637	0.52	-\$1,788	1.96	\$3,617
	1992-2010		-2,011	265	1,713	-\$67	-\$25	0	-\$4,820	0.78	-\$825	1.60	\$2,244
Heat Pump at HVAC Replacement + 2.82 kW _{DC} PV	Pre-1978	\$9,454	-27	451	2,702	\$786	\$670	1.92	\$9,644	1.33	\$3,111	2.00	\$9,478
	1978-1991		1,328	309	1,899	\$868	\$717	2.06	\$11,078	1.66	\$6,222	1.81	\$7,637
	1992-2010		1,779	265	1,691	\$901	\$739	2.12	\$11,720	1.79	\$7,455	1.77	\$7,292
HPWH at Water Heater Replacement	Pre-1978	\$2,594	-1,588	179	1,358	-\$114	-\$71	0	-\$5,032	0	-\$4,546	1.20	\$522
	1978-1991		-1,593	181	1,369	-125	-80	0	-\$5,305	0	-\$4,486	1.20	\$517
	1992-2010		-1,594	181	1,372	-128	-83	0	-\$5,391	0	-\$4,458	1.18	\$466
NEEA Tier 3 HPWH at Replacement	Pre-1978	\$2,775	-1,146	177	1,491	\$5	\$22	0.21	-\$2,434	0.22	-\$2,168	1.87	\$2,419
	1978-1991		-1,152	179	1,505	-\$6	\$13	0.13	-\$2,702	0.23	-\$2,140	1.87	\$2,424
	1992-2010		-1,155	180	1,510	-\$9	\$10	0.10	-\$2,788	0.24	-\$2,116	1.85	\$2,359
HPWH at Water Heater Replacement + 2.82 kW _{DC} PV	Pre-1978	\$11,546	2,913	179	1,651	\$1,057	\$852	2.00	\$12,781	1.36	\$4,167	1.52	\$6,017
	1978-1991		2,908	181	1,662	\$1,046	\$843	1.98	\$12,500	1.37	\$4,218	1.52	\$6,003
	1992-2010		2,907	181	1,666	\$1,042	\$840	1.97	\$12,416	1.37	\$4,246	1.52	\$5,956
2.82 kW _{DC} PV + Electric Ready	Pre-1978	\$13,044	4,501	0	293	\$1,161	\$916	1.90	\$12,994	1.34	\$4,375	1.09	\$1,156
	1978-1991		4,485		292	\$1,093	\$862	1.79	\$11,378	1.33	\$4,365	1.08	\$1,100
	1992-2010		4,400		287	\$1,069	\$844	1.75	\$10,829	1.33	\$4,365	1.07	\$848
Electric Clothes Dryer	All	\$313	-891	33	118	-\$182	-\$140	0	-\$4,555	0	-\$3,770	0	-\$2,242
Electric Range/Oven	All	\$608	-295	14	59	-\$55	-\$42	0	-\$1,949	0	-\$1,692	0	-\$1,229

Commented [FF1]: Revise to assume 0 emission electricity, note that this doesn't reflect 24/7 emissions.

Add separate table depicting the value of GHG savings per Menlo Park's CAP and add to on-bill. In the Policy Options document.

Blake to sketch avoided GHG \$cost/ton similar to Tom's request.

Note: Values shaded in red indicate option is not cost-effective with B/C ratio less than 1. Values shaded in green indicate option is cost-effective with B/C ratio greater than or equal to 1. Cells with "n/a" reflect cases where cost effectiveness was not evaluated.

Table 8: Single Family On-Bill Cost-Effectiveness Comparison with Incentives

Measure	Vintage	Gross Measure Cost	PCE/ BayREN Incentive	Net Measure Cost	Year 1 Utility Cost Savings	No Incentive		With Incentive	
						On-Bill B/C Ratio	On-Bill NPV	On-Bill B/C Ratio	On-Bill NPV
SEER 21 Heat Pump at HVAC Replacement	Pre-1978				-\$30	0.19	-\$3,290	0.26	-\$2,168
	1978-1991	\$3,749	\$1,000	\$2,749	-\$66	0	-\$4,637	0	-\$3,514
	1992-2010				-\$67	0	-\$4,820	0	-\$3,697
NEEA Tier 3 HPWH at Replacement	Pre-1978				\$5	0.21	-\$2,434	0.78	-\$188
	1978-1991	\$2,775	\$2,000	\$775	-\$6	0.13	-\$2,702	0.46	-\$456
	1992-2010				-\$9	0.10	-\$2,788	0.36	-\$542

Note: Values shaded in red indicate option is not cost-effective with B/C ratio less than 1. Values shaded in green indicate option is cost-effective with B/C ratio greater than or equal to 1. Cells with "n/a" reflect cases where cost effectiveness was not evaluated.

Table 9: Multifamily Equipment Fuel Substitution Cost-Effectiveness Results Per Dwelling Unit – No Incentives

Measure	Vintage	Measure Cost	Electricity Savings (kWh)	Gas Savings (therm)	GHG Savings (lb CO _{2e})	Utility Cost Savings		Customer On-Bill		2019 TDV		2022 TDV	
						Year 1	Avg Annual	B/C Ratio	NPV	B/C Ratio	NPV	B/C Ratio	NPV
Heat Pump at HVAC Replacement	Pre-1978	\$227	-615	61	2,508	-\$71	-\$50	0	-\$1,755	0	-\$851	2.60	\$363
	1978-1991		-402	40	1,585	-\$47	-\$34	0	-\$1,261	0	-\$678	1.53	\$119
	1992-2010		-337	34	1,378	-\$39	-\$28	0	-\$1,087	0	-\$590	1.40	\$91
SEER 21 Heat Pump at HVAC Replacement	Pre-1978	\$3,245	-453	61	3,084	-\$26	-\$15	0	-\$3,959	0.20	-\$2,585	0.60	-\$1,311
	1978-1991		-294	40	1,972	-\$17	-\$10	0	-\$3,813	0.14	-\$2,782	0.41	-\$1,900
	1992-2010		-254	34	1,683	-\$16	-\$10	0	-\$3,809	0.02	-\$3,191	0.33	-\$2,184
Heat Pump at HVAC Replacement + 1.67 kW _{DC} PV	Pre-1978	\$4,785	2,044	61	3,894	\$616	\$492	2.80	\$9,484	2.03	\$4,909	1.88	\$4,224
	1978-1991		2,257	40	2,971	\$640	\$508	2.89	\$9,973	2.06	\$5,075	1.83	\$3,974
	1992-2010		2,322	34	2,764	\$598	\$475	2.70	\$8,980	2.08	\$5,163	1.82	\$3,941
HPWH at Water Heater Replacement	Pre-1978	\$2,594	-1,037	141	8,868	-\$74	-\$46	0	-\$4,277	0	-\$3,042	1.29	\$753
	1978-1991		-1,037	141	8,868	-\$74	-\$46	0	-\$4,284	0	-\$3,042	1.29	\$753
	1992-2010		-1,037	141	8,868	-\$74	-\$46	0	-\$4,284	0	-\$3,042	1.29	\$753
NEEA Tier 3 HPWH at Replacement	Pre-1978	\$2,775	-842	141	9,561	-\$20	-\$3	0	-\$3,194	0.29	-\$1,961	1.57	\$1,591
	1978-1991		-842	141	9,561	-\$20	-\$4	0	-\$3,201	0.29	-\$1,961	1.57	\$1,591
	1992-2010		-842	141	9,561	-\$20	-\$4	0	-\$3,201	0.29	-\$1,961	1.57	\$1,591
HPWH at Water Heater Replacement + 1.67 kW _{DC} PV	Pre-1978	\$7,152	1,623	141	10,254	\$621	\$502	1.90	\$7,137	1.41	\$2,905	1.67	\$4,806
	1978-1991		1,623	141	10,254	\$620	\$502	1.90	\$7,127	1.41	\$2,902	1.67	\$4,803
	1992-2010		1,623	141	10,254	\$620	\$501	1.90	\$7,122	1.41	\$2,899	1.67	\$4,797
1.67 kW _{DC} PV + Electric Ready	Pre-1978	\$8,650	2,660		1,386	\$608	\$480	1.50	\$4,771	1.19	\$1,650	0.97	-\$239
	1978-1991		2,655	0	1,384	\$600	\$473	1.48	\$4,573	1.18	\$1,573	0.97	-\$257
	1992-2010		2,578		1,343	\$578	\$456	1.42	\$4,064	1.16	\$1,392	0.94	-\$493
Electric Clothes Dryer	All	\$313	-671	25	898	-\$148	-\$114	0	-\$3,782	0	-\$2,888	0	-\$1,764
Electric Range/Oven	All	\$608	-232	11	395	-\$48	-\$37	0	-\$1,786	0	-\$1,737	0	-\$1,073

Note: Values shaded in **red** indicate option is not cost-effective with B/C ratio less than 1. Values shaded in **green** indicate option is cost-effective with B/C ratio greater than or equal to 1. Cells with "n/a" reflect cases where cost effectiveness was not evaluated.

Table 10: Multifamily On-Bill Cost-Effectiveness Comparison with Incentives

Measure	Vintage	Gross Measure Cost	PCE/ BayREN Incentive	Net Measure Cost	Year 1 Utility Cost Savings	No Incentive		With Incentive	
						On-Bill B/C Ratio	On-Bill NPV	On-Bill B/C Ratio	On-Bill NPV
SEER 21 Heat Pump at HVAC Replacement	Pre-1978	\$3,245	\$1,000	\$2,245	-\$26	0	-\$3,959	0	-\$2,836
	1978-1991				-\$17	0	-\$3,813	0	-\$2,691
	1992-2010				-\$16	0	-\$3,809	0	-\$2,686
NEEA Tier 3 HPWH at Replacement	Pre-1978	\$2,775	\$2,000	\$775	-\$20	0	-\$3,194	0	-\$948
	1978-1991				-\$20	0	-\$3,201	0	-\$955
	1992-2010				-\$20	0	-\$3,201	0	-\$955

Note: Values shaded in red indicate option is not cost-effective with B/C ratio less than 1. Values shaded in green indicate option is cost-effective with B/C ratio greater than or equal to 1. Cells with "n/a" reflect cases where cost effectiveness was not evaluated.

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5 Appendices

5.1 Utility Tariff Details

5.1.1 PCE

Following are the PCE electricity tariffs applied in this study. The “Rate with PG&E Surcharges” was used in place of PG&E’s generation rate. PG&E’s net energy metering (NEM) rules are applied. Additionally, monthly net energy production is credited at \$0.01/kWh in addition to the retail rate at the hour of generation.

RESIDENTIAL CUSTOMER RATES

Rates Effective April 1, 2021



RATE SCHEDULE	SCHEDULE TIMES	ENERGY CHARGE \$/kWh		
		GENERATION RATE	RATE WITH PG&E SURCHARGES ¹	3.1.21 PG&E GENERATION RATE
E-TOU-C (PG&E equivalent: E-TOU-C)				
SUMMER - June 1 through September 30				
PEAK	4 pm to 9 pm every day	\$ 0.10773	\$ 0.15577	\$ 0.16397
OFF-PEAK	All other hours	\$ 0.05696	\$ 0.10500	\$ 0.11053
WINTER - October 1 through May 31				
PEAK	4 pm to 9 pm every day	\$ 0.06141	\$ 0.10945	\$ 0.11521
OFF-PEAK	All other hours	\$ 0.04713	\$ 0.09517	\$ 0.10018

5.1.2 PG&E

Following are the PG&E electricity tariffs applied in this study for non-generation rates. The electricity baseline territory used for Climate Zone 3 is T.

ELECTRIC SCHEDULE E-TOU-C Sheet 3
 RESIDENTIAL TIME-OF-USE (PEAK PRICING 4 - 9 p.m. EVERY DAY)

RATES:
(Cont'd.)

UNBUNDLING OF E-TOU-C TOTAL RATES

Energy Rates by Component (\$ per kWh)	PEAK		OFF-PEAK	
Generation:				
Summer (all usage)	\$0.16397	(I)	\$0.11053	(I)
Winter (all usage)	\$0.11521	(I)	\$0.10018	(I)
Distribution**:				
Summer (all usage)	\$0.14292	(I)	\$0.13292	(I)
Winter (all usage)	\$0.09459	(I)	\$0.09229	(I)
Conservation Incentive Adjustment (Baseline Usage)			(\$0.02659)	(R)
Conservation Incentive Adjustment (Over Baseline Usage)			\$0.04925	(I)
Transmission* (all usage)			\$0.03704	
Transmission Rate Adjustments* (all usage)			(\$0.00248)	(R)
Reliability Services* (all usage)			\$0.00017	
Public Purpose Programs (all usage)			\$0.01575	(I)
Nuclear Decommissioning (all usage)			\$0.00093	
Competition Transition Charges (all usage)			\$0.00004	
Energy Cost Recovery Amount (all usage)			\$0.00032	
Wildfire Fund Charge (all usage)			\$0.00580	
New System Generation Charge (all usage)**			\$0.00442	

* Transmission, Transmission Rate Adjustments and Reliability Service charges are combined for presentation on customer bills.
 ** Distribution and New System Generation Charges are combined for presentation on customer bills.

(Continued)

<i>Advice</i>	6090-E-A		<i>Submitted</i>	<u>February 26, 2021</u>
<i>Decision</i>		<i>Issued by</i> Robert S. Kenney	<i>Effective</i>	<u>March 1, 2021</u>
		<i>Vice President, Regulatory Affairs</i>	<i>Resolution</i>	

ELECTRIC SCHEDULE E-TOU-C Sheet 4 (T)
 RESIDENTIAL TIME-OF-USE (PEAK PRICING 4 - 9 p.m. EVERY DAY)

SPECIAL CONDITIONS: 1. BASELINE (TIER 1) QUANTITIES: The following quantities of electricity are to be used to define usage eligible for the baseline credit (also see Rule 19 for additional allowances for medical needs):

Baseline Territory*	BASELINE QUANTITIES (kWh PER DAY)			
	Code B - Basic Quantities		Code H - All-Electric Quantities	
	Summer	Winter	Summer	Winter
	Tier 1	Tier 1	Tier 1	Tier 1
P	14.2	12.0	16.0	27.4
Q	10.3	12.0	8.9	27.4
R	18.6	11.3	20.9	28.1
S	15.8	11.1	18.7	24.9
T	6.8	8.2	7.5	13.6
V	7.5	8.8	10.9	16.9
W	20.2	10.7	23.6	20.0
X	10.3	10.5	8.9	15.4
Y	11.0	12.1	12.6	25.3
Z	6.2	8.1	7.0	16.5

2. TIME PERIODS FOR E-TOU-C: Times of the year and times of the day are defined as follows: (T)

Summer (service from June 1 through September 30):

Peak: 4:00 p.m. to 9:00 p.m. All days

Off-Peak: All other times

Winter (service from October 1 through May 31):

Peak: 4:00 p.m. to 9:00 p.m. All days

Off-Peak: All other times

* The applicable baseline territory is described in Part A of the Preliminary Statement

(Continued)

Advice Decision	5759-E D.19-07-004	Issued by Robert S. Kenney Vice President, Regulatory Affairs	Submitted Effective Resolution	February 14, 2020 March 1, 2020
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The following provide details on the PG&E natural gas tariffs applied in this study. The PG&E monthly gas rate in \$/therm was applied on a monthly basis for the 12-month period ending March 2021 according to the rates shown in Table 11. The natural gas baseline territory used for Climate Zone 3 is T.

Table 11: PG&E Monthly Gas Rate (\$/therm)

Month	Procurement Charge	Transportation Charge		Total Charge	
		Baseline	Excess	Baseline	Excess
Jan 2021	\$0.49332	\$1.09586	\$1.53752	\$1.58918	\$2.03084
Feb 2021	\$0.49073	\$1.09586	\$1.53752	\$1.58659	\$2.02825
Mar 2021	\$0.42316	\$1.19868	\$1.68034	\$1.62184	\$2.1035
Apr 2020	\$0.23856	\$1.13126	\$1.64861	\$1.36982	\$1.88717
May 2020	\$0.23187	\$1.13126	\$1.64861	\$1.36313	\$1.88048
June 2020	\$0.24614	\$1.13126	\$1.64861	\$1.3774	\$1.89475
July 2020	\$0.23892	\$1.13126	\$1.64861	\$1.37018	\$1.88753
Aug 2020	\$0.28328	\$1.13126	\$1.64861	\$1.41454	\$1.93189
Sept 2020	\$0.41891	\$1.13126	\$1.64861	\$1.55017	\$2.06752
Oct 2020	\$0.38068	\$1.13416	\$1.65280	\$1.51484	\$2.03348
Nov 2020	\$0.46046	\$1.13416	\$1.65280	\$1.59462	\$2.11326
Dec 2020	\$0.48474	\$1.13416	\$1.65280	\$1.6189	\$2.13754

**GAS SCHEDULE G-1
 RESIDENTIAL SERVICE**

Sheet 2

**BASELINE
 QUANTITIES:**

The delivered quantities of gas shown below are billed at the rates for baseline use.

Baseline Territories	BASELINE QUANTITIES (Therms Per Day Per Dwelling Unit)					
	Summer (April-October)		Winter Off-Peak (Nov, Feb, Mar)		Winter On-Peak (Dec, Jan)	
	Effective Apr. 1, 2020		Effective Nov. 1, 2019		Effective Dec. 1, 2019	
P	0.39	(R)	1.88	(R)	2.16	(I)
Q	0.59	(R)	1.55	(R)	2.16	(I)
R	0.36	(R)	1.28	(R)	1.97	(I)
S	0.39	(R)	1.38	(R)	2.06	(I)
T	0.59	(R)	1.38	(R)	1.81	(I)
V	0.62	(R)	1.51	(R)	1.84	(I)
W	0.39	(R)	1.18	(R)	1.84	(I)
X	0.49	(R)	1.55	(R)	2.16	(I)
Y	0.69	(R)	2.15	(R)	2.65	(I)

**SEASONAL
 CHANGES:**

The summer season is April-October, the winter off-peak season is November, February and March, and the winter on-peak season is December and January. Baseline quantities for bills that include the April 1, November 1 and December 1 seasonal changeover dates will be calculated by multiplying the applicable daily baseline quantity for each season by the number of days in each season for the billing period.

Get In Touch

The adoption of reach codes can differentiate jurisdictions as efficiency leaders and help accelerate the adoption of new equipment, technologies, code compliance, and energy savings strategies.

As part of the Statewide Codes & Standards Program, the Reach Codes Subprogram is a resource available to any local jurisdiction located throughout the state of California.

Our experts develop robust toolkits as well as provide specific technical assistance to local jurisdictions (cities and counties) considering adopting energy reach codes. These include cost-effectiveness research and analysis, model ordinance language and other code development and implementation tools, and specific technical assistance throughout the code adoption process.

If you are interested in finding out more about local energy reach codes, the Reach Codes Team stands ready to assist jurisdictions at any stage of a reach code project.



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Contact info@localenergycodes.com for no-charge assistance from expert Reach Code advisors



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436 14th Street
Oakland, CA 94612
Farhad Farahmand
510.473.8421

MEMORANDUM

August 26, 2021

To: Rebecca Lucky (Menlo Park)

CC: Rafael Reyes (Peninsula Clean Energy), Kelly Cunningham (Pacific Gas & Electric Company), Christopher Kuch (Southern California Edison)

From: Farhad Farahmand (TRC)

Re: **Preliminary Cost Effectiveness Results for Nonresidential Electrofits in Climate Zone 3**

OVERVIEW

TRC is providing preliminary cost-effectiveness results for nonresidential alterations in Menlo Park (California Climate Zone 3), based on work we are performing on behalf of the Statewide Utility Reach Codes Program. These preliminary results are to inform near-term decision-making toward achieving Menlo Park's existing building electrification goals, and to allow Menlo Park to provide feedback on methodology and assumptions. These results have not been approved by the Statewide Utility Team, and represent solely represent TRC's work to date. We anticipate that the statewide report will be published by the third quarter of 2021.

INTRODUCTION

This memo documents preliminary cost-effectiveness analysis of measures that exceed the minimum state requirements, the 2019 Building Energy Efficiency Standards, effective January 1, 2020, for nonresidential alterations. Measures include energy efficiency, electrification, solar photovoltaics (PV), and battery storage.

The Department of Energy (DOE) sets minimum efficiency standards for equipment and appliances that are federally regulated under the National Appliance Energy Conservation Act, including heating, cooling, and water heating equipment (E-CFR, 2020). Since state and local governments are prohibited from adopting higher minimum efficiencies than the federal standards require, the focus of this study is to identify and evaluate cost-effective packages that do not include high efficiency heating, cooling, and water heating equipment.

METHODOLOGY

The Reach Codes Team used the following cost effectiveness methodology to analyze prototype alteration measures.

Cost-Effectiveness

This section describes the approach to calculating cost effectiveness including benefits, costs, metrics, and utility rate selection.

Benefits

This analysis used both *on-bill* and *time dependent valuation (TDV) energy* based approaches to evaluate cost-effectiveness. Both on-bill and TDV require estimating and quantifying the energy savings and costs associated with energy measures. The primary difference of on-bill and TDV is how energy is valued:

- ◆ **On-Bill:** Customer-based lifecycle cost approach that values energy based upon estimated site energy usage and customer on-bill savings using electricity and natural gas utility rate schedules over a 15-year duration for nonresidential buildings, accounting for a 3 percent discount rate and energy cost inflation.
- ◆ **TDV:** TDV is developed by the Energy Commission to reflect the time dependent value of energy including long-term projected costs of energy such as the cost of providing energy during peak periods of demand and other societal costs including projected costs for carbon emissions and grid transmission impacts. With the TDV approach, electricity used (or saved) during peak periods has a much higher value than electricity used (or saved) during off-peak periods. This metric values energy use differently depending on the fuel source (gas, electricity, and propane), time of day, and season. Electricity used (or saved) during peak periods has a much higher value than electricity used (or saved) during off-peak periods.

TRC performed energy simulations using the most recent software available for 2019 Title 24 code compliance analysis, CBECC-Com 2019.1.3. TRC also simulated packages in 2022 research version software to test the impact of 2022 TDV multipliers and weather files on cost-effectiveness.

Costs

TRC assessed the incremental costs and savings of the energy packages over the 15 years for nonresidential prototypes. Incremental costs represent the equipment, installation, replacements, and maintenance costs of the proposed measure relative to the 2019 Title 24 Standards minimum requirements. Where applicable we accounted for demolition costs. TRC obtained measure costs from engineering cost estimators, manufacturer distributors, contractors, literature review, and online sources such as Home Depot and RS Means. Taxes and contractor markups were added as appropriate.

Metrics

Cost effectiveness is presented using net present value (NPV) and benefit-to-cost (B/C) ratio metrics.

- ◆ **NPV:** TRC uses net savings (NPV benefits *minus* NPV costs) as the cost effectiveness metric. If the net savings of a measure or package is positive, it is considered cost effective. Negative savings represent net costs. A measure that has negative energy cost benefits (energy cost *increase*) can still be cost effective if the costs to implement the measure are even more negative (i.e., construction and maintenance cost *savings*).
- ◆ **B/C Ratio:** Ratio of the present value of all benefits to the present value of all costs over 15 or 30 years (NPV benefits *divided by* NPV costs). The criterion for cost effectiveness is a B/C greater than 1.0, representing a positive return on investment. A value of one indicates the savings over the life of the measure are equivalent to the incremental cost of that measure.

Improving the energy performance of a building often requires an initial investment. In most cases the benefit is represented by annual on-bill utility or TDV savings, and the cost by incremental first cost and replacement costs. However, some packages result in initial construction cost savings (negative incremental cost), and either energy cost savings (positive benefits), or increased energy costs (negative benefits). In cases where both construction

costs and energy-related savings are negative, the construction cost savings are treated as the *benefit* while the increased energy costs are the *cost*.

Utility Rates

TRC determined appropriate utility rates for each prototype and package based on the annual load profile of each prototype and the corresponding package, the most prevalent rate in each territory. For some prototypes there are multiple options for rates because of the varying load profiles of mixed-fuel buildings versus all-electric buildings. If more than one rate schedule is applicable for a particular load profile, TRC did not attempt to compare or test a variety of tariffs to determine their impact on cost effectiveness. TRC used PG&E electric utility rates B-1 and B-10 depending on the prototype, and G-NR1 for Climate Zone 3.

Utility rates are assumed to escalate over time, using assumptions from research conducted by Energy and Environmental Economics (E3) in the 2019 study Residential Building Electrification in California (Energy & Environmental Economics, 2019) and escalation rates used in the development of the 2022 TDV multipliers.^{1,2}

Figure 1. Real Utility Rate Escalation Rate Assumptions Above Inflation

Year	Source	Statewide Electric Nonresidential Average Rate (%/year, real)	Natural Gas Nonresidential Core Rate (%/year, real)
2020	E3 2019	2.0%	4.3%
2021	E3 2019	2.0%	4.3%
2022	E3 2019	2.0%	2.7%
2023	E3 2019	2.0%	4.0%
2024	2022 TDV	0.7%	7.7%
2025	2022 TDV	0.5%	5.5%
2026	2022 TDV	0.7%	5.6%
2027	2022 TDV	0.2%	5.6%
2028	2022 TDV	0.6%	5.7%
2029	2022 TDV	0.7%	5.7%
2030	2022 TDV	0.6%	5.8%
2031	2022 TDV	0.6%	3.3%
2032	2022 TDV	0.6%	3.6%
2033	2022 TDV	0.6%	3.4%
2034	2022 TDV	0.6%	3.4%
2035	2022 TDV	0.6%	3.2%
2036	2022 TDV	0.6%	3.2%
2037	2022 TDV	0.6%	3.1%

¹ <https://www.ethree.com/e3-quantifies-the-consumer-and-emissions-impacts-of-electrifying-california-homes/>

² <https://www.energy.ca.gov/event/workshop/2020-03/staff-workshop-2022-energy-code-compliance-metrics>

Year	Source	Statewide Electric Nonresidential Average Rate (%/year, real)	Natural Gas Nonresidential Core Rate (%/year, real)
2038	2022 TDV	0.6%	2.9%
2039	2022 TDV	0.6%	3.2%
2040	2022 TDV	0.6%	2.9%
2041	2022 TDV	0.6%	3.5%
2042	2022 TDV	0.6%	3.4%
2043	2022 TDV	0.6%	3.4%
2044	2022 TDV	0.6%	3.4%
2045	2022 TDV	0.6%	3.5%
2046	2022 TDV	0.6%	2.0%
2047	2022 TDV	0.6%	1.8%
2048	2022 TDV	0.6%	2.1%
2049	2022 TDV	0.6%	1.7%
2050	2022 TDV	0.6%	2.1%
2035	2022 TDV	0.6%	3.2%
2036	2022 TDV	0.6%	3.2%
2037	2022 TDV	0.6%	3.1%
2038	2022 TDV	0.6%	2.9%
2039	2022 TDV	0.6%	3.2%
2040	2022 TDV	0.6%	2.9%
2041	2022 TDV	0.6%	3.5%
2042	2022 TDV	0.6%	3.4%
2043	2022 TDV	0.6%	3.4%
2044	2022 TDV	0.6%	3.4%
2045	2022 TDV	0.6%	3.5%
2046	2022 TDV	0.6%	2.0%
2047	2022 TDV	0.6%	1.8%
2048	2022 TDV	0.6%	2.1%
2049	2022 TDV	0.6%	1.7%
2050	2022 TDV	0.6%	2.1%

Prototype Characteristics

TRC used modified versions of the following five DOE building prototypes to evaluate cost effectiveness of measure packages:

- ◆ Medium Office
- ◆ Stand-alone Retail
- ◆ Warehouse
- ◆ Quick-service restaurant (QSR) and Full-service restaurant (FSR)
- ◆ High-rise multifamily (HRMF)
- ◆ Small Hotel

TRC created three vintages of prototypes by leveraging data and methodologies from IOU studies, Senate Bill 350 (SB350) analysis, and Commercial Building Energy Consumption Survey (CBECS) to identify appropriate characteristics.^{3,4,5} These datasets include estimates of retrofits/upgrades to older buildings as well as field data on existing conditions. The three vintages that TRC analyzed include:

- ◆ 1980's – represents buildings built prior to 1990 (reference year 1982).
- ◆ 1990's – represents buildings built during the 1990 era (reference year 1992).
- ◆ 2000's – represents buildings built during the 2000 era (reference year 2006).

The analysis presented in this report assumes a certain set of existing conditions within each prototype, and that buildings operate as intended. Real building existing conditions are often a variety of old and new components, and equipment performance degrades over time. The analysis assumes some equipment replacement over time, based primarily on the SB350 analysis. The rate of replacement varies by building system and by envelope component.

TRC's prototypes and cost effectiveness results represent a range of vintages in an attempt to account for the variety of existing conditions in real buildings in a simplified way. Jurisdictions should consider how TRC's measure-specific findings would apply to the existing conditions in the jurisdictions' building stock, and in what instances they would be applicable.

Figure 2 summarizes the baseline prototype characteristics.

³ http://capabilities.itron.com/W0024/Docs/California%20Commercial%20Saturation%20Study_Report_Final.pdf

⁴ <https://efiling.energy.ca.gov/getdocument.aspx?tn=221631>

⁵ <https://www.eia.gov/consumption/commercial/>

Figure 2. Prototype Summaries

Building Type (All Vintages)	Conditioned Floor Area (ft ²)	# of floors	Baseline HVAC Distribution System	Baseline Hot Water System
Medium Office	53,628	3	Packaged multizone Variable Air Volume (VAV) reheat + boilers	Central Gas Storage
Stand-alone Retail	24,563	1	Packaged single zone (SZ) Constant Air Volume (CAV) + gas furnace	Central Gas Storage
Warehouse	17,548	1	Warehouse: Gas furnace serving 10% of floor area, exhaust-only ventilation Office: Packaged SZ CAV + gas furnace	Central Gas Storage
QSR	2,500	1	Packaged SZ CAV + gas furnace	Central Gas storage
FSR	5,000			
HRMF: 1980s vintage	125,400	10	Packaged terminal air conditioning (PTAC) + boilers serving heating-only baseboard	Central gas storage
HRMF: 1990s vintage			PTAC + boilers serving heating-only fan coils	
HRMF: 2000s vintage			Split air conditioner + gas furnace	
Small Hotel: 1980s vintage	42,552	4	PTAC + gas wall furnace	Central gas storage
Small Hotel: 1990s vintage				
Small Hotel: 2000s vintage			SZAC + furnace	

Greenhouse Gas Emissions

The analysis uses the greenhouse gas (GHG) emission multipliers developed by E3.⁶ The multipliers have been developed to support development of compliance metrics for use in the 2022 California Energy Code. There are 8760 hourly multipliers accounting for time dependent energy use and carbon emissions based on source emissions, including renewable portfolio standard projections. For the 2022 code cycle, the multipliers also incorporate greenhouse gas emissions from methane and refrigerant leakage, which are two significant sources of greenhouse gas emissions.⁷ There are 32 strings of multipliers – strings differ by the California climate zone and fuel type (electricity or natural gas).

Greenhouse gas (GHG) savings in lb CO₂e do not represent Peninsula Clean Energy values, but rather those for Pacific Gas & Electric Company based on the automatically generated outputs of CBECC-Res. It is likely that higher GHG savings are achievable from an increased penetration of renewable energy supply, such as that provided by Peninsula Clean Energy.

⁶ <https://efiling.energy.ca.gov/GetDocument.aspx?tn=233260&DocumentContentId=65748>

⁷ Energy and Environmental Economics, Inc. 2020. "Time Dependent Valuation of Energy for Developing Building Efficiency Standards." <https://efiling.energy.ca.gov/GetDocument.aspx?tn=233257&DocumentContentId=65743>

MEASURE PACKAGES AND COSTS

TRC analyzed the electrification retrofit (*electrofits*), efficiency, solar photovoltaics (PV), and battery measures described in this section.

Electrofit

TRC examined the potential for electrofits of HVAC, hot water, cooking, and clothes drying end-uses where applicable. In some scenarios, partial electrofits were considered.

TRC received cost estimates from Western Allied Mechanical, a San Francisco Bay Area mechanical contractor for the HVAC and water heating systems, for all packages. The mechanical contractor gave labor costs for typical new installations and noted that retrofit labor costs are highly variable. Building-specific considerations such as tight conditions, prepping surfaces, elevated work, material handling, specialty rigging, and protecting existing finishes can vary building to building. These details can have a large labor cost impact, and it is difficult to define a typical condition. Because of this variation, TRC used multipliers typically ranging from 25 to 50 percent on the new construction labor cost.

For each electrofit, TRC considered the mechanical equipment impact at the central system, distribution, and zone levels. TRC assigned a retrofit labor multiplier separately to the central system equipment, distribution equipment, and zonal equipment based on challenges the installers are likely to encounter. TRC estimated a different multiplier for the mixed fuel retrofit as well as the electrofit for each prototype. The final multipliers range widely, with lower multipliers typical of like-for-like replacements such as replacing a packaged SZ unit, and higher multipliers where additional demolition, physical space, and coordination may be needed.

TRC determined electrical upgrades required for each electrofit and the cost of the upgrade through design engineering coordination with P2S Engineers and costs from RSMeans. TRC intended to capture all components of electrical upgrades, from receptacles to transformers. Costs for utility service upgrades were out of the scope of this study.

TRC assumed that all HVAC and SHW equipment has a 15-year useful life and therefore did not consider replacements in either the mixed-fuel or the all-electric scenario for all nonresidential building types. TRC assumed that the maintenance requirements would be the same in the mixed-fuel and all-electric scenarios, and therefore did not consider any incremental maintenance costs, except as noted.

Medium Office

The existing HVAC system is a VAV reheat system which includes one gas hot water boiler, one packaged rooftop unit per floor, and VAV hot water reheat boxes. The existing SHW design includes one gas storage water heater.

To replace the incumbent gas-fired boiler for the Medium Office electrofit, TRC selected a central heat pump water heater with a storage tank and electric resistance booster only to be used during peak heating demand periods. This approach utilizes the existing hydronic plumbing infrastructure and VAV terminals, and supply lower water temperature except during peak heating demand periods. To replace the existing gas storage SHW heater for the electrofit, TRC selected a central heat pump with storage tank. The HVAC and SHW electrofit systems present higher costs compared to the mixed-fuel replacements due to the increased equipment costs and electrical infrastructure needs.

For a mixed-fuel retrofit baseline, TRC assumed the gas boiler and gas water heater replacements are a one-to-one replacement of equipment at the system level, with no demolition required, and a labor retrofit multiplier of 25

percent. For the electrofit, TRC assumed a labor retrofit multiplier of 35 percent for both HVAC and SHW to account for installation of additional components and floor area required for the heat pump and storage tank. No distribution or zonal equipment changes are required as part of the electrofit.

Figure 3 shows the costs for Medium Office averaged across all climate zones for the 1980’s vintage.

Figure 3. Medium Office Electrofit Costs

Mixed-fuel measure	Mixed-fuel cost	Electrofit measure	All-Electric cost	All-electric incremental cost	Source
Boilers	\$45,508	Central heat pump water heater with electric resistance booster	\$157,070	\$111,562	Cost estimator
Service water heater	\$73,479	Central heat pump water heater	\$88,762	\$15,283	Cost estimator
Electrical upgrades	\$0	Wiring, distribution boards, and transformers to serve central HVAC and SHW systems	\$31,233	\$31,233	Design engineer, RSMMeans
Total	\$118,987		\$277,065	\$158,078	

Stand-Alone Retail

The existing HVAC system includes four packaged single zone rooftop ACs with gas furnaces. The existing SHW design includes one gas storage water heater.

To replace the existing packaged rooftop units for the Stand-alone Retail electrofit, the Reach Codes Team selected packaged heat pumps to replace the packaged ACs with gas furnaces. To replace the existing gas storage water heater for the electrofit, TRC selected one electric resistance point of use water heater for each of the three sinks.

TRC assumed a labor retrofit multiplier of 25 percent for both the mixed fuel and the all-electric HVAC retrofits. This is the low end of retrofit labor multipliers because in both the mixed fuel case and the all-electric case, the packaged units are drop-in replacements at the system level, with no demolition required. No HVAC distribution or zonal equipment changes are required as part of the electrofit. For a mixed-fuel SHW retrofit baseline, TRC assumed a labor retrofit multiplier of 25 percent because the water heater is a drop-in replacement of the existing water heater. For the SHW electrofit, TRC assumed a labor retrofit multiplier of 35 percent to account for installing equipment in three different locations.

Figure 4 shows the cost data for Stand-alone Retail averaged across all climate zones for the 1980’s vintage.

Figure 4. Standalone Retail Electrofit Costs

Mixed-fuel measure	Mixed-fuel cost	Electrofit measure	All-Electric cost	All-electric incremental cost	Source
HVAC: Packaged SZ AC + gas furnace	\$176,229	Packaged SZ Heat Pump	\$173,617	(\$2,612)	Cost estimator
SHW: Gas storage	\$1,255	Point of use electric resistance	\$1,723	\$468	Cost estimator
Electrical upgrades	\$0	Wiring for SHW	\$2,007	\$2,007	Design engineer, RSMMeans
Total	\$177,484		\$177,347	(\$137)	

Warehouse

The baseline HVAC system includes one packaged single zone rooftop AC with gas furnace which serves the office. The warehouse space does not have cooling, but approximately 10% of the floor area is heated by a ceiling suspended gas unit heater. Exhaust fans provide stand-alone ventilation and are not considered as part of any measure packages. The existing SHW design includes one gas storage water heater.

To replace the existing packaged rooftop unit for the office space, the Reach Codes Team selected a packaged heat pump. For the warehouse space, where 10% of the floor area is heated, TRC selected an electric radiant heater to replace the gas unit heater. To replace the existing gas storage water heater for the electrofit, TRC selected one electric resistance point of use water heater for the sink.

TRC assumed a labor retrofit multiplier of 25 percent for both the mixed fuel and the all-electric office HVAC retrofits, as well as the warehouse space mixed fuel retrofit. Similar to the Retail prototype, the equipment represents drop-in replacements without significant demolition. For the all-electric warehouse space HVAC retrofit TRC also assumed 25 percent because the electrofit requires little space and only requires hanging equipment in an open area. For a mixed-fuel SHW retrofit baseline, TRC assumed a labor retrofit multiplier of 25 percent because the water heater is a drop-in replacement of the existing water heater. For the SHW electrofit, TRC assumed a labor retrofit multiplier of 35 percent to account for installing equipment in a different location than the existing water heater.

Figure 5 shows the cost data for Warehouse averaged across all Climate Zones for vintage 1.

Figure 5. Warehouse Electrofit Costs

Mixed-fuel measure	Mixed-fuel cost	Electrofit measure	All-Electric cost	All-electric incremental cost	Source
Office HVAC: Packaged SZ AC + gas furnace	\$56,013	Packaged SZ Heat Pump	\$60,462	\$4,449	Cost estimator
Warehouse HVAC: Gas heaters. Exhaust only ventilation	\$6,529	Electric radiant heaters. Exhaust only ventilation	\$10,958	\$4,429	Cost estimator
SWH: Gas storage	\$1,255	Point of use electric resistance	\$1,149	-\$106	Cost estimator
Electrical upgrades	\$0	Wiring for warehouse HVAC and SHW	\$6,231	\$6,231	Design engineer, RSMMeans
Total	\$63,797		\$78,800	\$15,003	

Quick-Service and Full-Service Restaurants

TRC analyzed two prototypes, QSR and FSR, to discern the variance in analysis results depending on the type of restaurant. TRC developed a basis-of-design (BOD) for kitchen cooking equipment, HVAC, and service water heating (SWH) for mixed-fuel kitchens and all-electric kitchens. The BOD served as the foundation for modeling inputs and cost assumptions for the cost effectiveness analysis. None of the cooking appliances examined in this study are subject to federal energy efficiency requirements.

TRC determined cost estimates for kitchen appliances from online retailers. Whenever possible, TRC gathered costs from three different appliance retailers and used the average for the analysis. TRC adjusted material and labor costs for each climate zone based on weighting factors from RS Means.

The Reach Codes Team compared the incremental differences in equipment selection and associated costs from a mixed-fuel baseline to all-electric restaurants for HVAC, SWH, kitchen process equipment, and gas/electrical infrastructure.

For replacement and maintenance costs, TRC assumed all cooking appliance replacement at year 10. Based on interviews of subject matter experts, kitchens with all-electric cooking appliances would call for maintenance five times a year, while a typical mixed-fuel kitchen would need regular maintenance 10 times a year, with each visit costing \$150.

Figure 6 and Figure 7 show the costs for QSR and FSR, respectively, averaged across all climate zones for the 1980's vintage.

Figure 6. QSR All-Electric Construction Costs

Mixed-fuel measure	Mixed-fuel cost	All-electric measure	All-electric cost	All-electric incremental cost
Mechanical Equipment				
HVAC: Packaged furnace, DX A/C	\$120,811	HVAC: Packaged heat pump	\$128,154	\$7,343
SWH: Gas storage water heater - One 150 kBtu/hr heater - One 100-gallon tank	\$21,860	SWH: Heat pump water heaters with storage tank - A.O. Smith CHP-120 - One 120-gallon tank	\$27,963	\$6,103
Kitchen Appliances				
Gas appliances: - French Fryer (4) - Griddle, single sided (2) Electric appliances: - Half-size electric convection oven (1)	\$21,291	French Fryer (4) Griddle, single sided (2) Half-size electric convection oven (1)	\$42,815	\$21,524
Infrastructure Upgrades				
n/a	\$0	Electrical	\$25,832	\$25,832
Total	\$163,962		\$224,763	\$60,801

Figure 7. FSR All-Electric Construction Costs

Mixed-Fuel Measure	Mixed-Fuel Cost	All-Electric Measure	All-Electric Cost	All-Electric Incremental Cost
Mechanical Equipment				
HVAC: Packaged furnace, DX A/C	\$160,889	HVAC: Packaged heat pump	\$161,013	\$123
SWH: Gas storage water heater - One 150 kBtu/hr heater - One 100-gallon tank	\$61,194	SWH: Heat pump water heaters with storage tank - Four Colmac CxV-5 - Total 750-gallons of primary storage - One 5 kW electric resistance loop heater - One 120-gallon loop tank	\$161,943	\$100,749
Kitchen Appliances				
Gas appliances: - Underfired Broiler (1) - French Fryer (2) - Griddle, single sided (1) - Broiler, Salamander (1) - Oven, convection double deck (1) - Oven, Range (2) - Range, Six open Burners (2) - Range, Stock pot (2)	\$52,383	Electric appliances: - Chain Broiler (1) - French Fryer (1) - Griddle, single sided (1) - Broiler, Salamander (1) - Oven, convection double - deck (1) - Oven, induction range (2) - Range, Six burner induction cooktop (2) - Range, Induction Stock pot (2)	\$99,959	\$47,576
Maintenance costs: - \$750/yr - Assuming 15 years lifetime	\$11,250	Maintenance costs: - \$1,500/yr - Assuming 15 years lifetime	\$22,500	\$11,250
Infrastructure Upgrades				
n/a	\$0	Electrical	\$37,213	\$37,213
Total	\$285,716		\$482,628	\$196,911

High-Rise Multifamily

The existing HRMF HVAC system varies by vintage, and the electrofit system varies depending upon the existing HVAC system. A description of the mixed fuel retrofit system and the all-electric retrofit systems for each vintage are shown in Figure 8 through Figure 10.

The existing DHW design for all vintages is a gas storage water heater. For the all-electric design, TRC selected heat pump water heaters with storage to replace the gas water heaters.

In the 1980s vintage, the existing HVAC system consists of hydronic baseboard heaters in each dwelling unit, which are served by a gas boiler. The dwelling units each have packaged terminal air conditioners (PTACs) for cooling. For the all-electric HVAC design, TRC selected packaged terminal heat pumps (PTHPs) to provide both heating and cooling to the dwelling units. The PTHP fits directly into the PTAC housing. TRC assumed a weighted labor retrofit multiplier of 28% in the all-electric design and a 25% for the mixed fuel design.

For cooking, TRC assumed existing gas cooking in scenarios where there is no existing cooling and existing electric cooking in scenarios where there is existing cooling. These assumptions intend to represent the wide range of

potential electrical infrastructure upgrades required (high to low, respectively). For clothes drying, TRC selected a 120-volt combination washer and dryer that replaces the existing washer and dryer without any electrical upgrade.⁸

Figure 8 shows the cost data for the 1980s vintage averaged across all Climate Zones.

Figure 8. HRMF Electrofit Costs, 1980s Vintage

	Mixed-Fuel Measure	Mixed-Fuel Cost	Electrofit Measure	All-Electric Cost	All-Electric Incremental Cost	Source
HVAC	Replace PTACs and boilers. Baseboards remain in place.	\$616,741	Replace PTACs with PTHPs. Decommission boilers and baseboards.	\$610,651	-\$6,090	Cost estimator
DHW	Gas water heater with storage	\$55,037	Heat pump water heater with storage	\$275,352	\$220,315	Cost estimator
Appliances	Electric stove, gas dryer	\$1,151,791	Electric stove, electric dryer	\$526,500	\$46,800	Online retailers, E3 2019 report
Infrastructure	Wiring and distribution replacements, like for like replacement	\$312	Wiring and distribution for central DHW heat pump water heater.	\$8,552	\$8,240	Design engineer, RSMMeans
Total		\$1,151,791		\$1,421,056	\$269,265	

In the 1990s vintage, the existing HVAC system consists of heating-only fan coils in each dwelling unit, which are served by a gas boiler. The dwelling units each have PTACs for cooling. TRC assumed the same all-electric HVAC design as the 1980s vintage.

Figure 9 shows the cost data for the 1990s vintage averaged across all Climate Zones.

⁸ Examples available in: <https://www.redwoodenergy.tech/wp-content/uploads/2019/11/Multifamily-ZNC-Guide-7-10-19-sa-clean.pdf>

Figure 9. HRMF Electrofit Costs, 1990s Vintage

	Mixed-Fuel Measure	Mixed-Fuel Cost	Electrofit Measure	All-Electric Cost	All-Electric Incremental Cost	Source
HVAC	Replace PTACs, fan coils, and boilers	\$1,075,630	Replace PTACs with PTHPs. Decommission boilers and fan coils.	\$605,149	-\$470,481	Cost estimator
DHW	Gas water heater with storage	\$55,037	Heat pump water heater with storage	\$275,352	\$220,315	Cost estimator
Appliances	Electric stove, gas dryer	\$479,700	Electric stove, electric dryer	\$526,500	\$46,800	
Infrastructure	Wiring and distribution replacements, like for like replacement	\$312	Wiring and distribution for central DHW heat pump water heater	\$8,552	\$8,240	Design engineer, RSMMeans
Total		\$1,610,679		\$1,415,554	-\$195,126	

In the 2000s vintage, the existing HVAC system consists of central furnaces and split air conditioners. For the all-electric HVAC design, TRC selected split heat pumps to provide both heating and cooling to the dwelling units. TRC assumed a weighted labor retrofit multiplier of 25% in the all-electric and mixed fuel designs

Figure 10 shows the cost data for the 2000s vintage averaged across all Climate Zones.

Figure 10. HRMF Electrofit Costs, 2000s Vintage

	Mixed-Fuel Measure	Mixed-Fuel Cost	Electrofit Measure	All-Electric Cost	All-Electric Incremental Cost	Source
HVAC	Central furnace + Split AC	\$1,183,585	Split heat pump	\$1,023,382	-\$160,203	Cost estimator
DHW	Gas water heater with storage	\$55,037	Heat pump water heater with storage	\$275,352	\$220,315	Cost estimator
Appliances	Electric stove, gas dryer	\$479,700	Electric stove, electric dryer	\$526,500	\$46,800	
Infrastructure	None	\$0	Wiring and distribution for central DHW heat pump water heater	\$8,552	\$8,552	Design Engineer, RSMMeans
Total		\$1,718,322		\$1,833,786	\$115,464	

Small Hotel

The existing HVAC system varies by vintage, and the electrofit system varies depending upon the existing HVAC systems. A description of the existing system, the mixed fuel retrofit system, and the all-electric retrofit systems for each vintage are shown in Figure 11 through Figure 12.

The existing DHW design for all vintages is a gas storage water heater. For the all-electric design, TRC selected heat pump water heaters with storage to replace the gas water heaters.

In the 1980s and 1990s vintage, the existing HVAC system in the guest rooms is gas wall furnace for space heating and PTACs for cooling. For the all-electric HVAC design, TRC selected PTHPs to provide both heating and cooling to the dwelling units. The PTHP fits directly into the PTAC housing. TRC assumed a weighted labor retrofit multiplier of 25% in both all-electric and the mixed fuel design.

Figure 11 shows the cost data for the 1980s and 1990s vintage averaged across all Climate Zones.

Figure 11. Small Hotel Electrofit Costs, 1980s and 1990s Vintage

	Mixed-Fuel Measure	Mixed-Fuel Cost	Electrofit Measure	All-Electric Cost	All-Electric Incremental Cost	Source
HVAC	Replace PTACs and wall furnaces	\$408,151	Replace PTACs with PTHPs. Decommission wall furnaces.	\$227,317	-\$180,834	Cost estimator, Online retailers
DHW	Gas water heater with storage	\$36,303	Heat pump water heater with storage	\$101,446	\$64,842	Cost estimator, HRMF New Construction Reach Codes Cost Effectiveness Study
Infrastructure	None	\$0	Wiring and distribution for central DHW heat pump water heater.	\$8,240	\$8,240	RSMeans
Total		\$444,754		\$337,003	-\$107,751	

In the 2000s vintage, the existing HVAC system in guest rooms consists of central furnaces and split air conditioners. For the all-electric HVAC design, TRC selected split heat pumps to provide both heating and cooling to the guest rooms. TRC assumed a weighted labor retrofit multiplier of 25% in the all-electric and mixed fuel designs.

Figure 12 shows the cost data for the 2000s vintage averaged across all Climate Zones.

Figure 12. Small Hotel Electrofit Costs, 2000s Vintage

	Mixed-Fuel Measure	Mixed-Fuel Cost	Electrofit Measure	All-Electric Cost	All-Electric Incremental Cost	Source
HVAC	Central furnace + Split AC	\$699,398	Split heat pump	\$611,888	-\$87,510	Cost estimator
DHW	Gas water heater with storage	\$36,603	Heat pump water heater with storage	\$101,446	\$64,842	Cost estimator, HRMF New Construction Reach Codes Cost Effectiveness Study
Infrastructure	None	\$0	Wiring and distribution for central DHW heat pump water heater	\$8,240	\$8,240	RSMMeans
Total		\$736,002		\$721,573	-\$14,428	

Solar PV

TRC estimated 50 percent of the roof area is available to install PV and has solar access, with a capacity of 15 W/ft². This approach assumes that the other 50 percent of the roof is for skylights, mechanical equipment, and walking paths. PV energy output is built into CBECC-Com and is based on the National Renewable Energy Lab's PVWatts calculator, which includes long-term performance degradation estimates.⁹

The costs for PV include first cost to purchase and install the system, inverter replacement costs, and annual maintenance costs, summarized in Figure 13. Upfront solar PV system costs are reduced by the federal income tax credit (ITC), approximately 26 percent due to a phased reduction in the credit through the year 2022.¹⁰

⁹ More information available at: <https://pvwatts.nrel.gov/downloads/pvwattsv5.pdf>

¹⁰ The federal credit drops to 26% in 2020, and 26% in 2021 before dropping permanently to 10% for commercial projects. More information on federal Investment Tax Credits available at: <https://www.seia.org/initiatives/solar-investment-tax-credit-itc>; <https://www.seia.org/sites/default/files/2021-01/SEIA-ITC-Factsheet-2021-Jan.pdf>

Figure 13. PV Construction Costs

		Unit Cost	Useful Life (yrs.)	Source
Solar PV System	Small NR <100kW (QSR, FSR, Warehouse)	\$3.20 / Wdc	30	LBNL – Tracking the Sun
	Large NR >100kW (Medium Office, Retail)	\$2.50 / Wdc		
Inverter Replacement (at year 11)		\$0.15 / Wdc	10	E3 Rooftop Solar PV System Report
Annual Maintenance Costs		\$0.02 / Wdc	1	

Battery

This measure includes installation of batteries to allow energy generated through PV to be stored and used later, providing utility cost benefits. TRC applied battery measures to only the QSR and FSR prototypes because these prototypes have significant electrical loads during peak periods (i.e., 4p-9p).

TRC ran test simulations to assess the impact of battery sizes and control algorithms on TDV savings. The battery size is optimized for each prototype to offset the majority of the peak period load. TRC used the ‘Ranked Day Demand Response’ control method, which assumes batteries are charged anytime PV generation is greater than the building load but discharges to the electric grid beginning on the highest priced hour of the day. This control algorithm uses the relative ranking of the highest TDV for a day to determine its rank instead of a specific TDV value as threshold. This control option is not reflective of the current products on the market and represents an ideally controlled condition where there is real-time pricing of electricity. While this control strategy is being used in the analysis, there would be no mandate on the control strategy used in practice. The current simulation software has approximations of performance characteristics changes due to environmental conditions, charge/discharge rates, and degradation with age and use.

TRC used costs of \$1,000 kWh based on preliminary findings from concurrent research by the IOU Codes and Standards Program, using data from the Self Generation Incentive Program (Itron, 2019). Batteries are also eligible for the ITC if they are installed at the same time as the renewable generation source and at least 75 percent of the energy used to charge the battery comes from a renewable source. Thus, TRC applied a 26 percent cost reduction to battery costs.

Efficiency Measures

For each prototype, the Reach Code Team assessed the viability of achieving a cost effective outcome when combining efficiency measures with all-electric packages based on the NPVs achieved from each individually. The Team determined that testing All-Electric + Efficiency may be most successful for the Standalone Retail, QSR, and FSR prototypes. The efficiency measures and their applications are listed in the Figure 14.

Figure 14. Efficiency Measures Analyzed

Efficiency Measure Description	Retail	Full Service Restaurant	Quick Service Restaurant
<p><u>Window film:</u> This measure reduces window SHGC of existing windows to 0.39 by adding window film.</p>	•	•	•
<p><u>Lighting retrofit:</u> This measure replaces the existing light fixtures to reduce the existing LPD in select areas to the following, representing 2019 code-minimum upgrades:</p> <ul style="list-style-type: none"> • Standalone Retail: Reduces LPD to 0.95 W/ft² • Restaurants: Reduces LPD for dining spaces to 0.45 W/ft²; Reduces LPD for kitchen space to 0.95 W/ft² 	•	•	•
<p><u>Transfer air for commercial kitchens:</u> This measure expands the Title 24 Part 6 Section 140.9 (b)2 requirements kitchen ventilation per the following:</p> <ul style="list-style-type: none"> • Reduces the transfer air requirement for kitchens with exhaust hoods to air flows greater than 2,000 ft³/min from 5,000 ft³/min. For exhaust hood with air flow rate greater than 2000 ft³/min but lower than 5000 ft³/min, this measure would require at least 15 percent of all replacement air come from transfer air in the dining space, which would otherwise be exhausted. This measure only applies to the Quick Service Restaurant. • For exhaust hoods with an air flow rate greater than 5,000 ft³/min for Full Service Restaurant: <ol style="list-style-type: none"> 1. Use transfer air for at least 25 percent of all replacement air that would otherwise be exhausted; and 2. Install demand ventilation systems meeting Title 24 Section 140.9 (b)2.B.ii. 		•	•

Measure Packaging

TRC examined the following packages for each prototype

- ◆ Mixed Fuel Code Minimum package: Appliance upgrades on the existing building using code-minimum fossil gas equipment.
- ◆ All-electric Code Min: Replace any gas equipment with electric, code-minimum equipment, including HVAC, SHW, and appliances. Upgrade electrical infrastructure as-required. The Baseline for this package is a gas code-minimum equipment replacement, including HVAC, SHW, and appliances.

- ◆ All-electric Code Min (2022 TDV): All-electric Code Min, with cost-effectiveness calculations done using 2022 TDV multipliers. The Baseline for this package is the same as the all-electric Code Min Baseline, except with 2022 TDV multipliers.
- ◆ Electric HVAC and SHW: This package is specifically for the restaurant prototypes, and replaces gas space and water heating equipment with electric code-minimum equipment.
- ◆ All-Electric + Efficiency: Adds efficiency measures to the All-Electric Code Min package, except in restaurants where it adds efficiency measures to the Electric HVAC and SHW package.
- ◆ All-electric + PV: All-electric Code Min, including a solar PV array, plus battery storage for FSR and QSR only. The Baseline for this package is the same as the All-electric Code Min Baseline.
- ◆ All-electric + PV (2022 TDV): All-electric + PV, with cost-effectiveness calculations done using 2022 TDV multipliers. The Baseline for this package is the same as the All-electric Code Min Baseline, except with 2022 TDV multipliers.



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COST EFFECTIVENESS RESULTS

Figure 15 through Figure 21 present the preliminary cost effectiveness results for Climate Zone 3 using PG&E electric and gas rates. TRC did not compare a variety of tariffs to determine their impact on cost effectiveness, and utility rate updates can affect cost effectiveness results.

For the Mixed Fuel Code Minimum package, the baseline is the existing building. For all other packages, the baseline is the Mixed Fuel Code Minimum package.

Figure 15. FSR Cost Effectiveness Results

Full Service Restaurant (FSR)	Vintage	Annual Elec Savings (kWh)	Annual Gas Savings (therms)	Annual GHG savings (tons)	Upfront Incremental Package Cost	15-year Lifecycle Energy Cost Savings	15-year \$TDV Savings	15-year B/C Ratio (On-bill)	15-year B/C Ratio (TDV)	15-year NPV (On-bill)	15-year NPV (TDV)
Mixed Fuel Code Minimum	80's	100,806	(2,809)	2	\$352,211	\$276,888	\$209,903	0.8	0.6	(\$75,323)	(\$142,308)
	90's	79,955	(2,380)	1	\$352,211	\$216,787	\$161,006	0.6	0.5	(\$135,424)	(\$191,205)
	00's	60,077	(1,963)	0	\$352,211	\$160,076	\$113,857	0.5	0.3	(\$192,136)	(\$238,354)
All-electric code minimum	80's	(311,520)	24,813	78	\$233,981	(\$453,326)	(\$505,496)	-1.9	-2.2	(\$687,307)	(\$739,477)
	90's	(310,227)	24,636	77	\$233,981	(\$453,243)	(\$505,670)	-1.9	-2.2	(\$687,225)	(\$739,651)
	00's	(312,028)	24,885	78	\$233,981	(\$454,924)	(\$506,162)	-1.9	-2.2	(\$688,905)	(\$740,143)
All-electric code minimum + PV + Battery	80's	(248,537)	24,813	85	\$544,423	(\$317,088)	(\$197,436)	-0.6	-0.4	(\$861,511)	(\$741,859)
	90's	(247,243)	24,636	84	\$544,423	(\$317,004)	(\$197,608)	-0.6	-0.4	(\$861,427)	(\$742,031)
	00's	(249,052)	24,885	85	\$544,423	(\$318,395)	(\$198,118)	-0.6	-0.4	(\$862,818)	(\$742,541)
Electric HVAC and SHW + Efficiency	80's	(55,145)	10,886	48	\$143,990	\$26,760	\$62,953	0.2	0.4	(\$117,229)	(\$81,037)
	90's	(53,658)	10,709	47	\$143,021	\$28,306	\$62,698	0.2	0.4	(\$114,715)	(\$80,323)
	00's	(58,995)	10,958	48	\$142,097	\$15,808	\$52,444	0.1	0.4	(\$126,289)	(\$89,653)
All-electric code minimum (2022 TDV)	80's	(301,073)	23,131	70	\$233,981	(\$448,342)	(\$98,842)	-1.9	-0.4	(\$682,323)	(\$332,823)
	90's	(299,969)	22,972	70	\$233,981	(\$447,884)	(\$99,966)	-1.9	-0.4	(\$681,865)	(\$333,947)
	00's	(301,427)	23,184	71	\$233,981	(\$450,175)	(\$98,422)	-1.9	-0.4	(\$684,157)	(\$332,403)
All-electric code minimum + PV + Battery (2022TDV)	80's	(241,504)	23,131	87	\$544,423	(\$331,602)	(\$2,266)	-0.6	0.0	(\$876,025)	(\$546,689)
	90's	(240,399)	22,972	87	\$544,423	(\$331,181)	(\$3,389)	-0.6	0.0	(\$875,604)	(\$547,812)
	00's	(241,858)	23,184	88	\$544,423	(\$333,420)	(\$1,845)	-0.6	0.0	(\$877,843)	(\$546,268)

Figure 16. QSR Cost Effectiveness Results

Quick Service Restaurant (QSR)	Vintage	Annual Elec Savings (kWh)	Annual Gas Savings (therms)	Annual GHG savings (tons)	Upfront Incremental Package Cost	15-year Lifecycle Energy Cost Savings	15-year \$TDV Savings	15-year B/C Ratio (On-bill)	15-year B/C Ratio (TDV)	15-year NPV (On-bill)	15-year NPV (TDV)
Mixed Fuel Code Minimum	80's	42,633	(306)	5	\$215,324	\$135,341	\$106,511	0.6	0.5	(\$79,982)	(\$108,813)
	90's	32,497	(560)	3	\$215,324	\$96,299	\$74,531	0.4	0.3	(\$119,025)	(\$140,793)
	00's	27,574	(284)	3	\$215,324	\$85,761	\$65,358	0.4	0.3	(\$129,563)	(\$149,966)
All-electric code minimum	80's	(142,624)	12,065	39	\$70,184	(\$242,256)	(\$211,832)	-3.5	-3.0	(\$312,440)	(\$282,016)
	90's	(141,190)	11,921	38	\$70,184	(\$240,375)	(\$210,671)	-3.4	-3.0	(\$310,559)	(\$280,854)
	00's	(142,618)	12,011	38	\$70,184	(\$243,185)	(\$212,228)	-3.5	-3.0	(\$313,369)	(\$282,411)
All-electric code minimum + PV + Battery	80's	(113,575)	12,065	41	\$234,260	(\$150,327)	(\$84,836)	-0.6	-0.4	(\$384,587)	(\$319,097)
	90's	(112,141)	11,921	41	\$234,260	(\$148,445)	(\$83,675)	-0.6	-0.4	(\$382,706)	(\$317,935)
	00's	(113,571)	12,011	41	\$234,260	(\$151,265)	(\$85,236)	-0.6	-0.4	(\$385,526)	(\$319,496)
Electric HVAC and SHW	80's	(41,151)	4,610	17	\$26,282	(\$39,280)	(\$19,603)	-1.5	-0.7	(\$65,562)	(\$45,885)
	90's	(39,679)	4,466	16	\$26,282	(\$37,119)	(\$18,388)	-1.4	-0.7	(\$63,401)	(\$44,671)
	00's	(40,768)	4,556	17	\$26,282	(\$39,483)	(\$19,416)	-1.5	-0.7	(\$65,765)	(\$45,698)
Electric HVAC and SHW + Efficiency	80's	(24,501)	4,610	20	\$32,917	\$14,086	\$24,478	0.4	0.7	(\$18,831)	(\$8,439)
	90's	(22,913)	4,466	19	\$31,948	\$16,614	\$25,819	0.5	0.8	(\$15,335)	(\$6,129)
	00's	(26,071)	4,556	19	\$31,439	\$7,776	\$18,494	0.2	0.6	(\$23,663)	(\$12,944)
All-electric code minimum (2022 TDV)	80's	(138,948)	12,051	39	\$70,184	(\$227,566)	(\$116,366)	-3.2	-1.7	(\$297,750)	(\$186,549)
	90's	(137,848)	11,870	38	\$70,184	(\$227,750)	(\$118,794)	-3.2	-1.7	(\$297,934)	(\$188,978)
	00's	(138,946)	12,006	39	\$70,184	(\$228,745)	(\$116,892)	-3.3	-1.7	(\$298,929)	(\$187,076)
All-electric code minimum + PV + Battery (2022TDV)	80's	(109,879)	12,051	43	\$234,260	(\$158,529)	(\$7,988)	-0.7	0.0	(\$392,789)	(\$242,249)
	90's	(108,780)	11,870	42	\$234,260	(\$158,950)	(\$10,418)	-0.7	0.0	(\$393,211)	(\$244,678)
	00's	(109,880)	12,006	42	\$234,260	(\$159,935)	(\$8,522)	-0.7	0.0	(\$394,196)	(\$242,783)

Figure 17. Medium Office Cost Effectiveness Results

Medium Office (MO)	Vintage	Annual Elec Savings (kWh)	Annual Gas Savings (therms)	Annual GHG savings (tons)	Upfront Incremental Package Cost	15-year Lifecycle Energy Cost Savings	15-year \$TDV Savings	15-year B/C Ratio (On-bill)	15-year B/C Ratio (TDV)	15-year NPV (On-bill)	15-year NPV (TDV)
Mixed Fuel Code Minimum	80's	0	3,092	17	\$147,638	\$62,267	\$50,700	0.4	0.3	(\$85,371)	(\$96,938)
	90's	0	162	1	\$147,638	\$3,033	\$2,677	0.0	0.0	(\$144,605)	(\$144,961)
	00's	0	100	1	\$147,638	\$1,894	\$1,686	0.0	0.0	(\$145,744)	(\$145,953)
All-electric code minimum	80's	(87,716)	14,697	3	\$184,316	\$71,483	\$29,069	0.4	0.2	(\$112,833)	(\$155,247)
	90's	(57,558)	9,573	1	\$184,316	\$44,609	\$18,378	0.2	0.1	(\$139,707)	(\$165,937)
	00's	(63,627)	6,120	2	\$184,316	(\$40,081)	(\$50,394)	-0.2	-0.3	(\$224,396)	(\$234,710)
All-electric code minimum + PV	80's	122,607	14,697	13	\$561,038	\$574,511	\$479,348	1.0	0.9	\$13,473	(\$81,690)
	90's	152,765	9,573	11	\$561,038	\$551,596	\$468,658	1.0	0.8	(\$9,442)	(\$92,380)
	00's	146,697	6,120	11	\$561,038	\$462,222	\$399,885	0.8	0.7	(\$98,815)	(\$161,153)
All-electric code minimum (2022 TDV)	80's	(89,850)	15,572	3	\$184,316	\$11,634	\$107,868	0.1	0.6	(\$172,682)	(\$76,448)
	90's	(58,665)	9,480	1	\$184,316	(\$24,155)	\$56,742	-0.1	0.3	(\$208,471)	(\$127,573)
	00's	(64,256)	6,195	2	\$184,316	(\$118,057)	(\$28,522)	-0.6	-0.2	(\$302,373)	(\$212,838)
All-electric code minimum + PV (2022TDV)	80's	124,181	15,572	13	\$561,038	\$581,508	\$593,215	1.0	1.1	\$20,470	\$32,177
	90's	155,366	9,480	10	\$561,038	\$556,157	\$542,089	1.0	1.0	(\$4,881)	(\$18,948)
	00's	149,775	6,195	11	\$561,038	\$457,031	\$456,825	0.8	0.8	(\$104,007)	(\$104,213)

Figure 18. Warehouse Cost Effectiveness Results

Warehouse	Vintage	Annual Elec Savings (kWh)	Annual Gas Savings (therms)	Annual GHG savings (tons)	Upfront Incremental Package Cost	15-year Lifecycle Energy Cost Savings	15-year \$TDV Savings	15-year B/C Ratio (On-bill)	15-year B/C Ratio (TDV)	15-year NPV (On-bill)	15-year NPV (TDV)
Mixed fuel code minimum	80's	3,638	120	1	\$67,787	\$13,879	\$10,054	0.2	0.1	(\$53,908)	(\$57,733)
	90's	1,127	54	0	\$67,787	\$4,618	\$3,402	0.1	0.1	(\$63,169)	(\$64,385)
	00's	1,085	33	0	\$67,787	\$4,145	\$2,919	0.1	0.0	(\$63,642)	(\$64,868)
All-electric code minimum	80's	(24,313)	1,283	2	\$83,396	(\$48,273)	(\$32,214)	-0.6	-0.4	(\$131,669)	(\$115,610)
	90's	(15,201)	832	2	\$83,396	(\$28,957)	(\$18,925)	-0.3	-0.2	(\$112,353)	(\$102,321)
	00's	(19,212)	1,042	2	\$83,396	(\$37,236)	(\$24,153)	-0.4	-0.3	(\$120,632)	(\$107,549)
All-electric code minimum + PV	80's	85,475	1,283	7	\$294,192	\$276,259	\$202,831	0.9	0.7	(\$17,933)	(\$91,361)
	90's	94,587	832	7	\$257,532	\$273,461	\$216,120	1.1	0.8	\$15,929	(\$41,412)
	00's	90,576	1,042	7	\$259,823	\$263,805	\$210,892	1.0	0.8	\$3,981	(\$48,931)
All-electric code minimum (2022 TDV)	80's	(21,432)	1,283	3	\$83,396	(\$39,409)	(\$4,999)	-0.5	-0.1	(\$122,805)	(\$88,395)
	90's	(13,605)	832	2	\$83,396	(\$23,999)	\$3,448	-0.3	0.0	(\$107,395)	(\$79,948)
	00's	(16,977)	1,042	2	\$83,396	(\$30,331)	(\$848)	-0.4	0.0	(\$113,727)	(\$84,244)
All-electric code minimum + PV (2022TDV)	80's	90,263	1,283	7	\$294,192	\$293,568	\$182,015	1.0	0.6	(\$624)	(\$112,177)
	90's	98,091	832	7	\$257,532	\$287,485	\$190,462	1.1	0.7	\$29,953	(\$67,070)
	00's	94,719	1,042	7	\$259,823	\$279,361	\$186,167	1.1	0.7	\$19,538	(\$73,657)

Figure 19. Retail Cost Effectiveness Results

Retail (RE)	Vintage	Annual Elec Savings (kWh)	Annual Gas Savings (therms)	Annual GHG savings (tons)	Upfront Incremental Package Cost	15-year Lifecycle Energy Cost Savings	15-year \$TDV Savings	15-year B/C Ratio (On-bill)	15-year B/C Ratio (TDV)	15-year NPV (On-bill)	15-year NPV (TDV)
Mixed Fuel Code Minimum	80's	157,836	(1,497)	13	\$178,825	\$374,441	\$400,298	2.1	2.2	\$195,616	\$221,473
	90's	128,627	(1,132)	12	\$178,825	\$306,529	\$330,867	1.7	1.9	\$127,704	\$152,043
	00's	111,283	(1,345)	8	\$178,825	\$252,433	\$275,690	1.4	1.5	\$73,609	\$96,865
All-electric code minimum	80's	(39,706)	3,832	14	\$3,471	(\$45,056)	(\$30,431)	-13.0	-8.8	(\$48,527)	(\$33,902)
	90's	(31,545)	2,809	10	\$3,471	(\$31,568)	(\$29,294)	-9.1	-8.4	(\$35,040)	(\$32,765)
	00's	(35,483)	3,339	12	\$3,471	(\$40,089)	(\$29,469)	-11.5	-8.5	(\$43,560)	(\$32,940)
All-electric code minimum + PV	80's	249,195	3,832	27	\$520,937	\$503,018	\$588,085	1.0	1.1	(\$17,919)	\$67,148
	90's	257,355	2,809	23	\$520,938	\$518,580	\$589,221	1.0	1.1	(\$2,358)	\$68,284
	00's	253,417	3,339	25	\$520,938	\$599,511	\$589,025	1.2	1.1	\$78,573	\$68,087
All-electric + Efficiency Measures	80's	54,910	3,832	25	\$93,821	\$235,177	\$220,386	2.5	2.3	\$141,356	\$126,565
	90's	44,824	2,809	19	\$80,533	\$189,969	\$172,392	2.4	2.1	\$109,436	\$91,858
	00's	17,844	3,339	18	\$79,043	\$127,773	\$111,385	1.6	1.4	\$48,730	\$32,342
All-electric code minimum (2022 TDV)	80's	(35,499)	3,348	12	\$3,471	(\$39,061)	(\$11,127)	-11.3	-3.2	(\$42,533)	(\$14,599)
	90's	(28,570)	2,452	8	\$3,471	(\$26,865)	(\$14,997)	-7.7	-4.3	(\$30,336)	(\$18,468)
	00's	(31,865)	2,910	10	\$3,471	(\$34,159)	(\$11,871)	-9.8	-3.4	(\$37,630)	(\$15,342)
All-electric code minimum + PV (2022 TDV)	80's	258,421	3,348	24	\$520,938	\$503,899	\$481,009	1.0	0.9	(\$17,039)	(\$39,928)
	90's	265,350	2,452	21	\$520,938	\$519,248	\$477,118	1.0	0.9	(\$1,689)	(\$43,820)
	00's	262,055	2,910	23	\$520,938	\$517,196	\$480,244	1.0	0.9	(\$3,741)	(\$40,694)

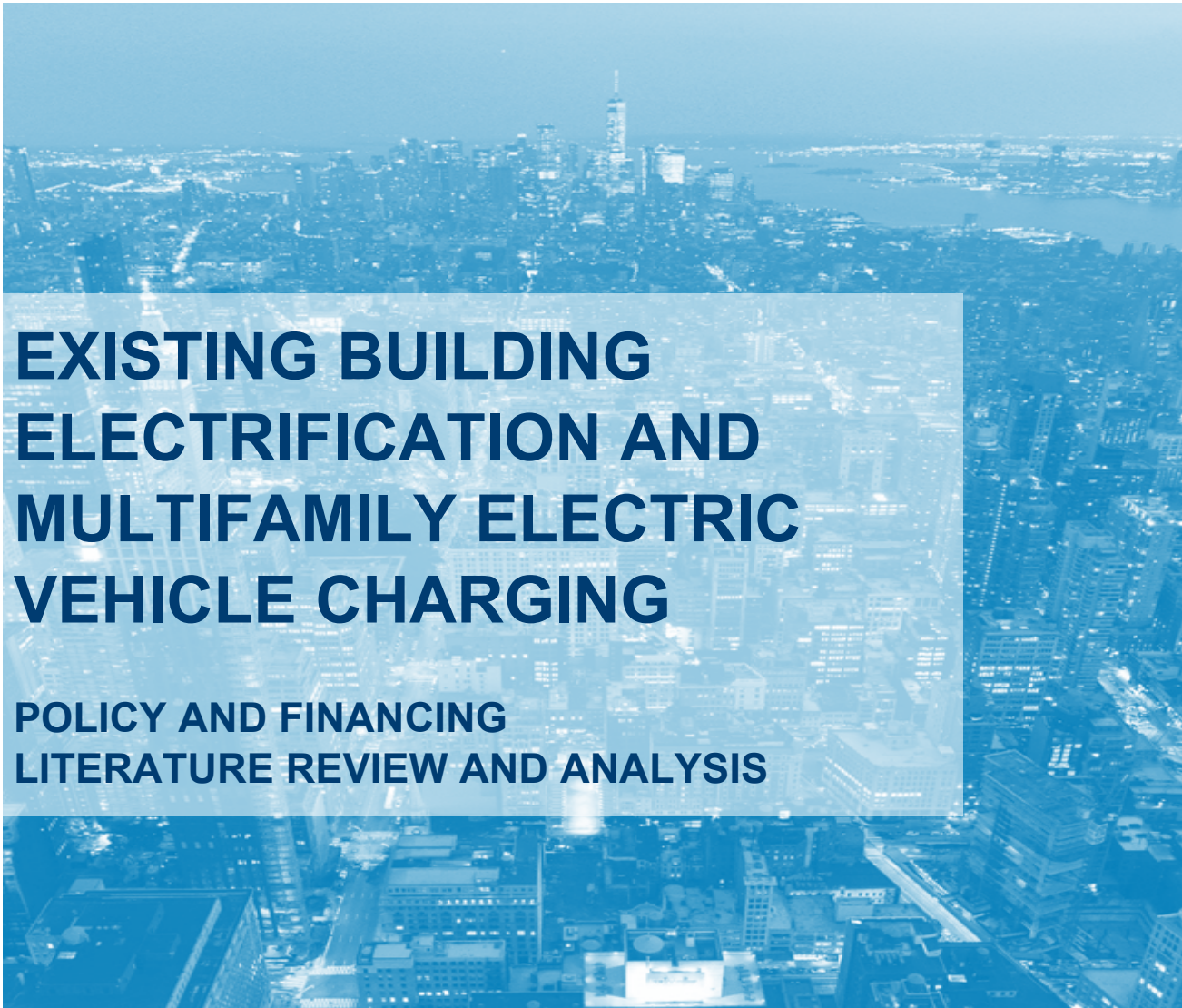
Figure 20. HRMF Cost Effectiveness Results

Highrise Multifamily (HRMF)	Vintage	Annual Elec Savings (kWh)	Annual Gas Savings (therms)	Annual GHG savings (tons)	Upfront Incremental Package Cost	30-year Lifecycle Energy Cost Savings	30-year \$TDV Savings	30-year B/C Ratio (On-bill)	30-year B/C Ratio (TDV)	30-year NPV (On-bill)	30-year NPV (TDV)
Mixed Fuel Code Minimum	80's	81,743	279	10	\$3,063,764	\$631,499	\$394,769	0.2	0.1	(\$2,432,266)	(\$2,668,996)
	90's	73,187	139	7	\$4,352,364	\$562,138	\$350,597	0.1	0.1	(\$3,790,226)	(\$4,001,767)
	00's	40,614	(18)	4	\$5,168,400	\$307,860	\$193,674	0.1	0.0	(\$4,860,540)	(\$4,974,726)
All-electric code minimum	80's	(166,209)	16,337	71	\$660,313	(\$758,233)	(\$345,680)	-1.1	-0.5	(\$1,418,546)	(\$1,005,993)
	90's	(181,938)	16,342	68	(\$520,022)	(\$863,596)	(\$407,041)	0.6	1.3	(\$343,574)	\$112,980
	00's	(186,902)	19,434	85	\$175,631	(\$761,891)	(\$332,774)	-4.3	-1.9	(\$937,522)	(\$508,404)
All-electric code minimum + PV	80's	(24,985)	17,159	80	\$914,485	\$278,275	\$201,298	0.3	0.2	(\$636,210)	(\$713,187)
	90's	(38,332)	16,342	81	(\$265,849)	\$211,107	\$872,714	>1	>1	\$476,956	\$1,138,563
	00's	(43,296)	19,434	98	\$429,803	\$312,415	\$946,982	0.7	2.2	(\$117,389)	\$517,179
All-electric code minimum (2022 TDV)	80's	(273,990)	17,772	72	\$660,313	(\$1,564,454)	(\$515,714)	-2.4	-0.8	(\$2,224,766)	(\$1,176,027)
	90's	(309,011)	17,874	64	(\$520,022)	(\$1,784,472)	(\$659,757)	0.3	0.8	(\$1,264,450)	(\$139,735)
	00's	(288,709)	25,834	109	\$175,631	(\$1,255,033)	(\$283,410)	-7.1	-1.6	(\$1,430,664)	(\$459,041)
All-electric code minimum + PV (2022TDV)	80's	(138,491)	17,772	103	\$914,485	(\$498,087)	\$590,638	-0.5	0.6	(\$1,412,572)	(\$323,847)
	90's	(173,512)	17,874	95	(\$265,849)	(\$718,586)	\$446,596	0.4	>1	(\$452,737)	\$712,445
	00's	(143,342)	25,834	124	\$429,803	(\$179,383)	\$764,356	-0.4	1.8	(\$609,187)	\$334,552

Figure 21. Small Hotel Cost Effectiveness Results

Retail (RE)	Vintage	Annual Elec Savings (kWh)	Annual Gas Savings (therms)	Annual GHG savings (tons)	Upfront Incremental Package Cost	15-year Lifecycle Energy Cost Savings	15-year \$TDV Savings	15-year B/C Ratio (On-bill)	15-year B/C Ratio (TDV)	15-year NPV (On-bill)	15-year NPV (TDV)
Mixed Fuel Code Minimum	80's	917	307	2	\$634,374	\$8,878	\$9,265	0.0	0.0	(\$625,496)	(\$625,109)
	90's	755	126	1	\$634,374	\$4,837	\$5,562	0.0	0.0	(\$629,537)	(\$628,813)
	00's	408	213	1	\$1,045,348	\$5,285	\$4,684	0.0	0.0	(\$1,040,062)	(\$1,040,664)
All-electric code minimum	80's	(70,984)	9,462	42	(\$119,961)	(\$64,992)	(\$11,075)	1.8	10.8	\$54,969	\$108,886
	90's	(71,350)	9,512	42	(\$119,961)	(\$67,100)	(\$11,048)	1.8	10.9	\$52,861	\$108,913
	00's	(73,402)	9,780	43	(\$30,564)	(\$72,689)	(\$10,877)	0.4	2.8	(\$42,124)	\$19,688
All-electric code minimum + PV	80's	54,175	9,462	48	\$104,218	\$255,503	\$256,877	2.5	2.5	\$151,285	\$152,659
	90's	53,809	9,512	48	\$104,218	\$253,472	\$256,903	2.4	2.5	\$149,254	\$152,685
	00's	51,757	9,780	49	\$193,615	\$245,221	\$257,075	1.3	1.3	\$51,606	\$63,460

June 2021

A blue-tinted aerial photograph of a city skyline, likely New York City, with the Empire State Building prominent in the center. The image is used as a background for the title text.

EXISTING BUILDING ELECTRIFICATION AND MULTIFAMILY ELECTRIC VEHICLE CHARGING

POLICY AND FINANCING LITERATURE REVIEW AND ANALYSIS

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1 Executive Summary

This study is intended to aid Menlo Park, Peninsula Clean Energy, and other agencies to understand the policy and financing landscape for existing building electrification and multifamily EV charging infrastructure retrofits. TRC has compiled research on relevant state and local building codes and financing approaches that could support achieving carbon neutrality goals. TRC has preliminarily identified gaps and developed recommendations for future programs.

TRC recommends that municipalities address all areas of the market by invoking as many effective policy and financing options as resources allow. The highest ranking in this study include:

- ◆ **Policy:** The jurisdiction has the ability to serve as the lead agency in all of these policy options, which is beneficial to enforce customized policies but may also lead to higher administrative investment.
 - Triggered Appliance Conversion (e.g., time of transfer, burnout permit, major alteration) – Highly scalable and readily enforceable if permits are pulled regularly. An example of successful policy implementation includes City of Davis’s Resale Program (triggered at point of transfer). A notable gap is the limited implementation period of local policies requiring significant energy upgrades at the time of major alterations.
 - Building Performance Standards (e.g., emissions criteria achieved by a deadline) – Highly scalable and readily enforceable. The City of Boulder’s SmartRegs Program is an example that has achieved high compliance in existing building energy efficiency compliance.
 - Municipal Buildings Lead with Electrification – An important policy to raise the profile of community goals, increase government familiarity with the challenges and opportunities of electrification, and establish notable precedents. Jurisdictions should also explore electrification policies as part of Capital Improvement Projects.
 - Achieving Equitable Outcomes – Early and regular communications with marginalized community members can avoid inadvertently harmful policies, and ensure electrification works to reverse compounding historical injustices. A key policy approach includes rental property energy performance standards.
- ◆ **Financing:** Local jurisdictions can serve in the lead role in providing the following financing pathways:
 - Municipal Financing (e.g., Green Bonds and Local Taxes and Fees) – Voter-approved fund generation mechanisms can affirm a community’s willingness to invest in decarbonization measures. Bonds can be used for public infrastructure projects, and increased revenues from utility taxes can serve potentially provide consumer financing.
 - Incentive Programs – A jurisdiction may lead the development of incentive programs, likely with funding from a partner organization, such as San Jose and Marin County partnering with BAAQMD.

Local jurisdictions may also serve educational and advocacy roles for the following mechanisms:

- Electrification as a Service – A local jurisdiction can play a key role in reducing market entry barriers for providers such as BlocPower, or advocate for establishing local programs like

NYSERDA's that creates a market for contractors and installers by paying them for projects that deliver metered bill savings.

- Tax Credits, Deductions, and Rebates – Federal tax incentives can be attained for eligible electrofits and stacked with incentive programs, though they are fairly low amounts.
- Ratepayer-Funded Tariffed On-Bill Investment – Tariffed on-bill programs serve a wide market, including the harder to reach markets such as renters with modest credit history.
- Loan Programs – A suite of loans are available for credit-worthy residential and nonresidential building owners through the state financing authority. These programs may fill in gaps where building owners may have insufficient access to incentive programs or tax deductions. Loans are expected to be one of the last options to financing a project, as they carry more risk for the applicant than many of the preceding options listed.

TRC noted the following financing mechanism gaps

- ◆ High investment costs and limited incentives for heat pump space heating as a replacement for a methane gas furnace in a building that doesn't already have air-conditioning.
- ◆ Limited precedence for existing building EV financing. A jurisdiction may supplement PCE's EV incentive program with additional incentives, or additional loan programs targeted toward EV investment in a similar manner that Boulder partnered with a local credit union.
- ◆ Nonresidential buildings are eligible for fewer incentive programs than residential. This may be due to the higher financing needs and access of the nonresidential market.

Alongside exploring these policy and financing options, TRC recommends local jurisdictions:

- ◆ Thoroughly assess the people and buildings that must be reached to achieve the carbon neutrality goals (e.g., square footage of buildings by type, number of multifamily buildings with parking, major property owners in the City, energy burden for low-income residents, etc ...).
- ◆ Understand the scale of the challenge to estimate the corresponding scale of the solutions necessary (e.g., dollars of investment, outreach strategies, retrofit rates, consumer protections, etc...).
- ◆ Support a range of market transformation strategies (e.g., workforce development, permit streamlining, etc...).

2 Codes and Policies

This chapter provides examples of policies, implementation tools, and strategies that were deployed to support existing building electrification and existing multifamily EV readiness topic areas. Each policy example contains descriptions of mechanisms, applicability to topic areas, instances of policy implementation, and results if available. An example is presented in the following format:

{Name of Policy Mechanism}
{Role of Municipality} | {Policy Action}

TRC has listed policy examples in perceived order of maturity and prevalence.

2.1 Existing Building Electrification

All of the established precedents identified in this literature review are intended to be directly applicable to building electrification policies; however, only a limited set of planned policy approaches currently consider building electrification specifically. All policy approaches are provided for full context and consideration.

2.1.1 Municipal Buildings Lead with Electrification

Local Government Authority | Municipal Resolution

To raise the profile and encourage acceptance of new policies, government agencies often start with mandating and implementing new policies on their own assets and business practices.

- ◆ **California** established a requirement for 100 percent of new state buildings, major renovations, and build-to-suit leases beginning design after October 2017 to be verified zero net energy (ZNE), and 50 percent of existing square footage to include measures achieving ZNE by 2025.¹ The Department of General Services definition of ZNE allows offsetting natural gas with renewable electricity production on a kBtu basis.
- ◆ **San Mateo County's** climate action plan establishes a goal for carbon neutrality by 2035 across government operations, including the electrification of 100 percent of existing County-owned building stock.² The other areas covered in the plan include water, transportation, solid waste, materials management, and carbon sequestration.

Local government could set an example, learn from experience, and chart a pathway for existing building electrification by mandating electrification on its own existing building portfolio.

¹ <https://www.dgs.ca.gov/OS/Resources/Page-Content/Office-of-Sustainability-Resources-List-Folder/Zero-Net-Energy>

² <https://www.smcsustainability.org/wp-content/uploads/Attachment-A-Government-Operations-Climate-Action-Plan-Pathway-to-Carbon-Neutrality.pdf>

2.1.2 Triggered Appliance Conversion

Local Government Authority | Local Ordinance or Resolution

Local governments have some leverage in requiring electric equipment or preparation for electric equipment through amendments to the building code, ordinance(s), or time of sale requirements. Electrification could be prompted for certain types of building permits, such as installation of space- and water-heating equipment, additions, or alterations.³ Policy levers can range from providing pre-wiring for future electrical equipment, to replacement of fossil fuel equipment when an event is triggered (e.g. building permit or sale of property).

City of Berkeley's Equitable Electrification Strategy includes many of the trigger mechanisms and strategies described in this study, including time of sale and replacement and renovation.⁴ The proposed timeline goal for Berkeley is to decarbonize by 2045. Prior to implementing a electrification requirement, it will be imperative for local governments to consider related market preparedness and developments that encourage electric replacement prior to the fossil fuel equipment's end of life. The market must have a robust supply chain, a well-stocked equipment distribution network, and promote a well-trained contractor workforce for installations.

Triggered at Point of Building Sale or Transfer

A jurisdiction may encourage or require electrification upgrades at time of real estate sales. Existing examples require some energy assessment and/or label and disclosure policies, with no explicit link to electrification. Notable instances include:

Within California

- ◆ Since 2015, **City of Berkeley** Building Emissions Savings Ordinance (BESO) has required an energy efficiency assessment for all single family, commercial, and multifamily buildings at time of listing, and/or annual benchmarking, using either the Department of Energy Home Energy Score or ENERGY STAR Portfolio Manager.^{5,6} Exemptions are allowed for new construction, extensive renovations, or financial hardship (such as participation in income-qualified or tax-postponement programs). A 2020 evaluation of the program states that while the program helped the City attain energy consumption information that is useful for shaping policy, it has also been challenging for the city to track conversion rates from assessment to energy upgrade, due to privacy protections of utility program data and a lack of granular building permit data.⁷
- ◆ **City of Davis'** Resale Program, implemented in 1976, requires a building inspection to certify that the building meets local ordinance requirements as part of a residential property transaction. The inspected items include various health and safety measures including air

³ http://www.buildingdecarb.org/uploads/3/0/7/3/30734489/building_decarbonization_legal_opportunities.pdf

⁴ https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Draft_Berkeley_Existing_Bldg_Electrification_Strategy_20210415.pdf

⁵ <https://www.cityofberkeley.info/beso/>

⁶ https://www.cityofberkeley.info/benchmarking_buildings/

⁷ https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/BESO%20Evaluation%20Final%20Report.pdf

conditioner disconnect, furnace combustion air, laundry outlet voltage, energy standards compliance with retrofit, and pipe insulation.⁸ As of 2018, the cost for the inspection was \$426. The City inspects approximately three to four percent of its housing stock annually, and since 2014, only five percent of resale inspections have found unpermitted heating, ventilation, and air conditioning (HVAC) installations.⁹

- ◆ **City of Piedmont** requires that at point of listing for sale of a property, a report from a Home Energy Audit or Home Energy Score (homeowner’s choice) must be provided to potential buyers and submitted to the City—unless the residential building was constructed in the past 10 years.¹⁰ This requirement was implemented in early 2021, and there is limited compliance and implementation data at this time.
- ◆ Since 1982, the **City of San Francisco** has required energy and water conservation measures for all residential dwellings that undergo a property transfer or major improvements (e.g., \$20,000 of estimated improvements for a single-family home).¹¹ Measures include a minimum of R-11 attic insulation, water heater insulation, weatherization, and duct insulation, and must be inspected for compliance. Costs are capped at \$1,300 per single-family dwelling, and for multifamily buildings:
 - 1% of the assessed value of the building if improvements are performed prior to property transfer
 - 1% of the purchase price as stated in the real estate sales contract

Outside of California

- ◆ **City of Minneapolis’ Truth in Sale of Housing (TISH)** requires home inspections prior to sale. Inspected items include water heater and space heater venting and improper gas lines.¹² Home energy data is also collected in an energy disclosure, but no energy improvements are required. All of the data is published and available to the public.
- ◆ **City of Chicago** requires the seller of a residential property to provide a *heating cost disclosure form* to the prospective purchaser during the sale of a property, based on historical information. Landlords are required to provide the same report to prospective renters.¹³ No retrofits are required.
- ◆ **City of Austin’s Energy Conservation Audit and Disclosure (ECAD) Ordinance** requires energy audits and disclosures for all buildings to promote energy efficiency. Audits are required at time of sale for residential buildings (costing \$200-\$300), annually for commercial buildings larger than 10,000 ft², and every ten years for multifamily buildings.¹⁴ The ECAD Ordinance requires multifamily buildings that are high-energy users (exceeds 150 percent of average energy use for

⁸ <https://www.cityofdavis.org/city-hall/community-development-and-sustainability/building/resale-program>

⁹ https://www.bayrencodes.org/wp-content/uploads/2020/12/EE-and-Electrification-White-Paper_FINAL_12.28.2020.pdf

¹⁰ <https://piedmont.ca.gov/common/pages/DisplayFile.aspx?itemId=17376920>

¹¹ <https://sfenvironment.org/residential-energy-conservation-ordinance>

¹² <https://www.minneapolismn.gov/resident-services/property-housing/buying-selling/tish/>

¹³ <https://www.chicago.gov/content/dam/city/depts/dol/rulesandregs/HeatingCostDisclosureRules.pdf>

¹⁴ <https://austinenergy.com/ae/energy-efficiency/ecad-ordinance/energy-conservation-audit-and-disclosure-ordinance>

multifamily properties) to make energy efficiency improvements to reduce energy use by at least 20 percent.

Each of these ordinances carry penalties ranging from a few hundred to a few thousand dollars for non-compliance.

Triggered by Major Alteration

California's Title 24, Part 6 Building Energy Efficiency Standards contain various efficiency upgrade requirements that additions and alterations must comply with if the trigger conditions are met. For example, the standards dictate that space-conditioning system replacements (the trigger event) are limited to methane gas, liquefied petroleum gas, or the existing fuel type, except in the case of going from gas or liquefied petroleum gas to heat pumps (the requirement).

Local governments may use the same triggering events, such as the replacement of a mechanical and/or domestic water heating system, and further require electrification measures. In this case, a local code amendment could further require that replacement equipment be heat pump systems, as opposed to the like-for-like replacement currently allowed in Title 24, Part 6.

Encouraging or requiring electrification conversions make most economic sense when coupled with major renovations, because it can be more cost effective and less disruptive to the building owner. Solar photovoltaic (PV) installations have an added benefit of improved operational cost effectiveness.

Notable instances include:

Within California

- ◆ **City of Piedmont** recently passed an existing building ordinance requiring:¹⁵
 - Projects proposing an entire new upper level on a low-rise residential building or increasing a low-rise residential building's total roof area by 30 percent or more, install solar panels on the roof.
 - A renovation project on a low-rise residential building that costs \$25,000 or more will require the applicant to choose one item from a list of energy efficiency or heating system electrification improvements to include in the renovation.¹⁶ A renovation project on a low-rise residential building that costs \$100,000 or more will require the applicant to choose two items.
 - An application for an electrical panel upgrade must include capacity in the panel to accommodate future electrification of all appliances in the residence. The building official has the authority to approve of a panel physical size that can accommodate an amperage larger than the service connection, ostensibly with a main breaker that sized no larger than the building service.
 - An application for a kitchen or laundry area renovation must include electrical outlets for future appliance installation.
- ◆ **City of Portola Valley** requires that nearly all residential additions or remodels, including accessory dwelling units, achieve a certain number of GreenPoint Rating Points, depending on

¹⁵ <https://piedmont.ca.gov/cms/one.aspx?portalId=13659823&pageId=17415806>

¹⁶ <https://piedmont.ca.gov/common/pages/DisplayFile.aspx?itemId=17426428>

the exact scope. The project documents must include the proposed measures to achieve the required number of points, and prior to building permit issuance, documentation must be provided by a certified GreenPoint Rater.¹⁷

- ◆ **City of Chula Vista** Existing Home Energy Sustainability Ordinance (EHSO) requires two-to-four efficiency measures to be installed for existing homes performing major alterations that were built in Chula Vista before 2006, such as adding square footage, moving interior walls, or moving windows and doors.¹⁸
- ◆ **City of Berkeley** is planning for a *time of replacement and renovation plan* that requires equipment changeout at the end of life or during a renovation. Their current timeline would require electric HVAC and hot water as early as 2025 if accessible financing and funding is available.¹⁹
- ◆ **City of Emeryville** is considering adopting model code language developed by East Bay Community Energy that requires replacement HVAC equipment be heat pumps in low-rise and high-rise residential, office, and retail buildings, and that panel upgrades be electric-ready to the extent that the service connection capacity allows.²⁰

Outside of California

- ◆ **City of Seattle** adopted an energy code that requires heat pump installation in commercial alterations (and new construction) effective on building permits applied after January 1, 2022. There are exemptions that would allow methane gas in limited instances, but exemptions are specific to occupancy types (e.g., less than five percent of the conditioned floor area) and technologies (e.g., existing district energy or emergency generators).²¹
- ◆ **City of Boulder's** Green Building and Green Points Program required that renovations that add over 500 square feet to pre-existing housing also have to meet an energy efficiency requirement that may trigger mandatory upgrades.²²

2.1.3 Building Performance Standards

Local Government Authority | Local Ordinance

Setting performance standards and enforcing compliance via a timeline can allow for long-term planning by building owners.

¹⁷ <https://www.portolavalley.net/building-planning/green-building-and-your-project>

¹⁸ <https://www.chulavistaca.gov/departments/clean/retrofit>

¹⁹ [https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Energy/2021-01-](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Energy/2021-01-27_EC_Item%209_Late%20Communication_Item%204_Proposed%20Existing%20Building%20Electfication%20Strategies.pdf)

[27_EC_Item%209_Late%20Communication_Item%204_Proposed%20Existing%20Building%20Electfication%20Strategies.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Energy/2021-01-27_EC_Item%209_Late%20Communication_Item%204_Proposed%20Existing%20Building%20Electfication%20Strategies.pdf)

²⁰ <https://ebce.org/reach-codes/>

²¹ <http://seattle.legistar.com/View.ashx?M=F&ID=9085266&GUID=545EA5F5-8C47-4A56-80FF-7846BA07EFCF>

²² <https://www.aceee.org/toolkit/2020/02/residential-energy-use-disclosure-guide-policymakers>

Disclosure Programs

Energy use disclosures can educate building owners and provide customized, discrete next steps toward compliance with specific thresholds.²³ In some cases, cities require that upgrades be performed within certain time windows or face a penalty.

Within California

- ◆ **City of Brisbane** requires most owners of buildings larger than 10,000 ft² to report energy benchmarking results using ENERGY STAR Portfolio Manager to the city annually on May 15th starting in 2021. Starting in the 2023 reporting cycle, buildings will be required to demonstrate building efficiency performance metrics or conduct an audit to identify and implement savings opportunities.²⁴
- ◆ Some cities may leverage existing structure from rental policies and business license programs to enforce disclosure programs and require additional upgrades.²⁵ The **City of El Cerrito** is a California example of a residential rental inspection program, operating since 1997. El Cerrito requires all residential rental units to be registered, obtain a business license, pay an annual license tax, and be inspected every two years. The inspection costs approximately \$129 per multifamily unit. The inspector checks for a variety of measures including appliance installation and operation as well as electrical wiring.^{26, 27} The cities of Richmond, San Pablo, and San Rafael also include rental inspection programs, though triggers can vary by regular time periods, time of sale, and/or complaints. These programs achieve an average of 80 percent compliance rates.
- ◆ **City of Berkeley** may expand their BESO program to include greenhouse gas emissions per square foot estimates and require building owners to limit emissions according to gradually decreasing threshold through 2045.²⁸ This may be administratively challenging—even under the

Relevant Resources

1. While existing building electrification will ultimately require mandatory approaches, disclosures may provide an important foundational dataset and administrative framework. The American Council for an Energy Efficient Economy has published a [Guide for Policymakers](#) to establish energy disclosure programs, as has the [Federal Office of Energy Efficiency and Renewable Energy](#).
 2. StopWaste developed key considerations and estimates of carbon impacts to support jurisdictions exploring the idea of a [Rental Housing Inspection Programs](#) with energy efficiency requirements.
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²³ <https://www.aceee.org/toolkit/2020/02/residential-energy-use-disclosure-guide-policymakers>

²⁴ <https://www.brisbaneca.org/bbep#:~:text=The%20first%20step%20was%20development,May%2015th%20startin%20in%202021.>

²⁵ <https://rmi.org/rental-efficiency-standards-a-win-for-equity-and-climate/>

²⁶ <http://www.el-cerrito.org/563/Residential-Rental-Inspection-Program>

²⁷ https://library.municode.com/ca/el_cerrito/ordinances/code_of_ordinances?nodeId=958375

²⁸ [https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Energy/2021-01-](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Energy/2021-01-27_EC_Item%209_Late%20Communication_Item%204_Proposed%20Existing%20Building%20Electfication%20S)

[27_EC_Item%209_Late%20Communication_Item%204_Proposed%20Existing%20Building%20Electfication%20S](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Energy/2021-01-27_EC_Item%209_Late%20Communication_Item%204_Proposed%20Existing%20Building%20Electfication%20S)
[trategies.pdf](#)

current BESO program design, a recent evaluation found that the “BESO administrative process [and ensuring compliance] is staff-intensive and time consuming.”²⁹

Outside of California

- ◆ **City of Boulder** adopted the SmartRegs program in 2010, which required that rental properties meet energy efficiency requirements by 2018 or before a rental license application approval. In 2017, 100 percent of the rentals were inspected, and 86 percent were compliant.³⁰ Similarly, Boulder also requires that commercial and industrial building owners complete one-time lighting upgrades and implement cost-effective retro-commissioning measures by set dates, depending on the size of the building.³¹ Failure to perform upgrades can result in fines of \$0.0025 per square foot up to \$1,000 *per day* of non-compliance. To support property owners, the City provides a set of resources including a cost estimation tool and a list of service providers.
- ◆ Since 2013, the **City of Chicago** has required multifamily and commercial buildings of at least 50,000 ft² to report whole-building energy use annually according to a custom energy rating system that went into effect in 2019. The rating is required to be posted in a prominent location on the property, and either the energy rating or ENERGY STAR® score must be listed in any advertisements for sale or lease at the time of listing.³²
- ◆ In May 2021, the **City of Burlington** adopted an ordinance requiring rental units that consume over 90 kBtu/ft² for space heating purposes to implement energy efficiency measures up to a cost cap of \$2,500/unit to complete the initial work, not including incentives. After the initial work is completed, property owners are given a three-year extension to finish the required efficiency improvements with no cost cap.³³
- ◆ **Gainesville, Florida** has a rental unit permit and inspection program that requires rental units apply for permits annually, and demonstrate that they meet a set of energy efficiency requirements.³⁴
- ◆ **City of Boston** has proposed updates to the Building Emissions Reduction and Disclosure Ordinance (BERDO) intended to meet carbon neutrality by 2050 (Figure 1).³⁵ Every building over 20,000 ft² will need to achieve zero emissions per square foot by the year 2050. The policy has flexible compliance options, such as alternate timing or carbon payments, as well as the purchase of off-site renewable energy combined with on-site electrification. The policy does not currently account for time-of-use of electricity but may in the near future.

²⁹ [https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3 - Energy and Sustainable Development/BESO%20Evaluation%20Final%20Report.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/BESO%20Evaluation%20Final%20Report.pdf)

³⁰ http://rmi.org/wp-content/uploads/2018/05/Better-Rentals-Better-City_Final3.pdf

³¹ <https://bouldercolorado.gov/sustainability/boulder-building-performance-efficiency-requirements>

³³

[https://go.boarddocs.com/vt/burlingtonvt/Board.nsf/files/C2RKKP51C01A/\\$file/BCO%20Chapter%202018.%20Housing%20Change%20re%20Energy%20Efficiency%20and%20Weatherization%20in%20Rental%20Housing_Revised%20-%20%20City%20Council%20205.10.2021.pdf](https://go.boarddocs.com/vt/burlingtonvt/Board.nsf/files/C2RKKP51C01A/$file/BCO%20Chapter%202018.%20Housing%20Change%20re%20Energy%20Efficiency%20and%20Weatherization%20in%20Rental%20Housing_Revised%20-%20%20City%20Council%20205.10.2021.pdf)

³⁴ <https://gainesville.legistar.com/View.ashx?M=F&ID=8805396&GUID=444F88CC-EDFB-4498-AA98-04C0110A3AD0>

³⁵ <https://www.imt.org/boston-introduces-building-performance-standard/>

Figure 1. Boston's Emissions Performance Standards Extending to 2050.

Building use	Emissions standard (kgCO ₂ e/SF/yr.)					
	2025 - 2029	2030-2034	2035-2039	2040-2044	2045-2049	2050-
Assembly	7.8	4.6	3.3	2.1	1.1	0
College/ University	10.2	5.3	3.8	2.5	1.2	0
Education	3.9	2.4	1.8	1.2	0.6	0
Food Sales & Service	17.4	10.9	8.0	5.4	2.7	0
Healthcare	15.4	10.0	7.4	4.9	2.4	0
Lodging	5.8	3.7	2.7	1.8	0.9	0
Manufacturing/ Industrial	23.9	15.3	10.9	6.7	3.2	0
Multifamily housing	4.1	2.4	1.8	1.1	0.6	0
Office	5.3	3.2	2.4	1.6	0.8	0
Retail	7.1	3.4	2.4	1.5	0.7	0
Services	7.5	4.5	3.3	2.2	1.1	0
Storage	5.4	2.8	1.8	1.0	0.4	0
Technology/Science	19.2	11.1	7.8	5.1	2.5	0

- ◆ The **State of Colorado** recently signed into law HB21-1286, which requires buildings to track progress toward meeting a 90 percent reduction in emissions by 2050 from 2005 levels. The implementation of the law will be developed through a stakeholder process starting in late 2021.³⁶

Appliance NOx Emission Limit

Another approach to effectively disallow gas appliances upon burnout or by a deadline is to set the equipment outdoor emission limits low enough based on health and safety reasons. Many dwellings use gas wall furnaces for heating, which can contribute to poor indoor air quality because of over spillage of furnace combustion products.³⁷ Few or no gas equipment would meet the low combustion emission thresholds, and this helps pave the path for electrification.

The State's health and safety code permits local governments to exceed the State's indoor air quality (IAQ) standards. However, potential limitations to the approach include Clean Air Act (CAA) preemption and complications from interactions with building ventilation requirements.³⁸

There are no known instances of this policy implementation, but TRC did find examples of air-quality related policies:

- ◆ **Portola Valley's** fireplace policy prohibits wood burning fireplaces unless they are an EPA-qualified or EPA-certified fireplace for air quality reasons. The policy is also enforced at the time-of-sale, requiring Certificate of Compliance for the wood burning heater, or removal of the appliance.³⁹

³⁶ <https://www.imt.org/colorados-new-building-performance-standards/>

³⁷ <https://www.osti.gov/servlets/purl/1375004>

³⁸ http://www.buildingdecarb.org/uploads/3/0/7/3/30734489/matrix_of_decarbonization_options.pdf

³⁹ https://www.ci.portola.ca.us/uploads/4/3/3/5/43350423/ord_354-wood_stove_ordinance_amendment_2019_and_open_burn_ban.pdf

- ◆ The Express Terms proposed 2022 Standards by the **California Energy Commission** (draft policy, not final) includes a provision in Table 150.0-G requiring a greater airflow rate over natural gas ranges than electric ranges, reflecting the increased NO₂ emissions resulting from natural gas combustion.⁴⁰

A more feasible, though indirect, approach for a local jurisdiction may be to support the regional Air Quality Management District via advocacy to establish this requirement, rather than local ordinance adoption. The Bay Area Air Quality Management District is considering such a program, though the timeline is uncertain.⁴¹

2.1.4 Elimination of Fossil Fuel Infrastructure

Support Utility | Resolution, Advocacy, and Support

Local governments may adopt a *no reconnection* methane gas policy to eliminate gas utility obligation to serve gas, and over time, develop strategies for gas infrastructure pruning, while prioritizing low-income neighborhoods. The main barrier and area needing clarity remains how this interferes with the utility's obligation to serve gas and coordination with utilities. Identifying suitable locations that meet technical, financial, equity, and community considerations to implement gradual reduction and elimination of gas infrastructure requires high and sustained commitment and resources from municipalities.

Initial market penetration may be targeted in sites and neighborhoods where high-cost propane is used for heating to capture improved economics while the local market develops.⁴²

- ◆ **City of Berkeley** is in the process of drafting a plan containing phased actions. Pilot programs are projected to begin prior to 2025, and the strategy may begin wider implementation in 2030, pending appropriate funding and financing strategies.⁴³

2.1.5 Achieving Equitable Outcomes

Local Government Authority | Resolution, Advocacy, and Support

Electrification policy must make financial sense for all populations, including lower-to-moderate income (LMI) residents. Ensuring that benefits of electrification, such as health, safety, and affordability, are targeted toward marginalized communities reverses compounding historical injustices, many of which have been created and perpetuated by government action.

- ◆ **The Zero Cities Project**, led by the Urban Sustainability Director's Network, supported the development of workplans for several cities that center equity and community decision-making in the development of local building decarbonization policy.⁴⁴ Takeaways from projects implemented at Portland, San Francisco, Washington, DC, Boston, and several others include:

⁴⁰ <https://efiling.energy.ca.gov/GetDocument.aspx?tn=236876&DocumentContentId=70030>

⁴¹ See slides 23-34: https://www.baaqmd.gov/~/_media/files/board-of-directors/2021/sscic_presentations_04192021_v2-pdf.pdf?la=en

⁴² https://www.colorado.edu/rasei/sites/default/files/attached-files/accelerating_the_us_clean_energy_transformation_final.2.pdf

⁴³ https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Draft_Berkeley_Existing_Bldg_Electrification_Strategy_20210415.pdf

⁴⁴ https://www.usdn.org/uploads/cms/documents/rm_zero_cities_project_report_portland.pdf

- Without equitable policy development, local building regulations run the risk of doing more harm than good. For example, landlords may evict tenants when making building upgrades, a harmful practice known as “renovictions.”
 - Partnering directly with Community Based Organizations (CBOs) can expand city efforts and deepen engagements in the creation of building decarbonization policies. CBOs and community members may initially be skeptical of governmental interventions, but early and regular engagement can lead to honest discussions around climate policy, establish a strong commitment, demonstrate accountability, repair trust, and lead to better overall policy.
 - Rental property energy performance standards, coupled with rental housing policies, could reduce the energy cost burden on tenants, eliminate the split incentive, and support cities in meeting climate goals (See Section 2.1.3 for related policies).
 - CBOs and community members should be compensated for attending workshops or meetings to cover childcare, food, travel, or other expenses.
- ◆ **City of Berkeley** Existing Buildings Electrification Strategy defines the multiple forms of equity, establishes the intention to design policy around the goal of Targeted Universalism, and will leverage the Greenling Institute’s Equitable Building Electrification Framework.^{45,46}
 - ◆ **The Executive Branch of the U.S. Government** has established an Environmental Justice Interagency Council, as part of a broad executive order on climate action, that will ensure that achieving environmental justice is including in their mission when developing programs, policies, and activities designed to combat climate change.⁴⁷

Using the LEAD tool (see sidebar), the American Community Survey indicates that there are approximately 1,500 housing units in Menlo Park that are below the 30 percent Area Median Income (AMI). The occupants of these housing units are mostly renters and pay seven to eleven percent of their income on energy (also known as ‘Energy Burden’). As one example, an equitable policy would strive to ensure that the energy burden of LMI communities matches that of more affluent populations (see section 3.1.4)

Relevant Resource

The U.S. Department of Energy’s [Low-Income Energy Affordability Data \(LEAD\) Tool](#) extracts data from the U.S. Census Bureau’s 2018 American Community Survey 2018 to help communities create better energy strategies and programs by improving their understanding of low-income housing and energy characteristics.

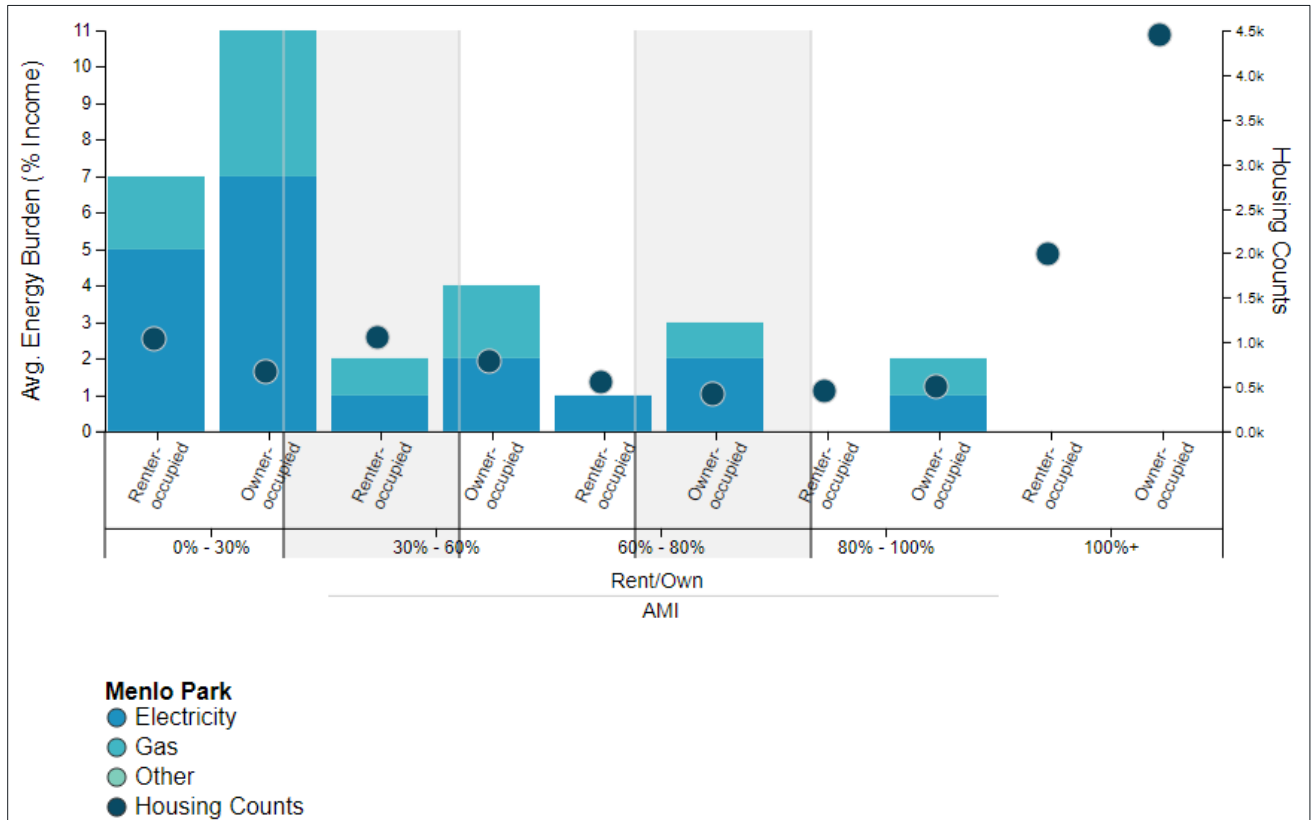
⁴⁵ [https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3 -](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Draft_Berkeley_Existing_Bldg_Electrification_Strategy_20210415.pdf)

[Energy and Sustainable Development/Draft Berkeley Existing Bldg Electrification Strategy 20210415.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Draft_Berkeley_Existing_Bldg_Electrification_Strategy_20210415.pdf)

⁴⁶ <https://greenlining.org/publications/reports/2019/equitable-building-electrification-a-framework-for-powering-resilient-communities/>

⁴⁷ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>

Figure 2. Average Energy Burden (percent of income) for Menlo Park



2.2 Existing Multifamily EV Charging

2.2.1 Establish Alteration Threshold

Local Government Authority | Local Reach Code

Examples of existing policy governing clear definitions and threshold for EV infrastructure requirements in multifamily building alterations are limited.

- ◆ **City and County of San Francisco** requires that 100 percent of the total number of parking spaces on a building site be EV charging spaces (EV spaces) capable of supporting future electric vehicle supply equipment (EVSE) for major multifamily alterations. In major alterations where existing electrical service will not be upgraded, this requirement applies to the maximum extent that does not require an upgrade to existing electrical service.⁴⁸ Major alterations appear to be defined as 25,000 ft² of floor area or more where interior finishes are removed and significant upgrades to structural and mechanical, electrical, and/or plumbing systems are proposed.
- ◆ **City of Carlsbad** requires multifamily projects install EV infrastructure when performing major alterations (i.e., interior finishes are removed, upgrades to structural and mechanical, electrical and/or plumbing systems, and a grading permit to rehabilitate or install 2,500 square feet or more of landscaping; or repave, replace or add 2,500 square feet or more of vehicle parking and drive area). These buildings must have 5 percent of parking by EV capable and 5 percent EVCS.⁴⁹
- ◆ **California's** green building standards, Title 24 Part 11, requires 10 percent EV capable spaces for additions and alterations of existing residential buildings as new construction. The requirements apply where the addition or alteration increases the building's conditioned area, volume, or size, and only to and/or within the specific area of the addition or alteration.⁵⁰

Relevant Resources

1. The [Alternative Fuels Data Center](#) maintained by the Department of Energy, contains a variety of laws and incentives related to clean transportation. TRC explored the database but it's possible more relevant findings existing than those presented.
 2. The [Charge4All](#) tool, developed by Arup, will help prioritize EV charging suitability based on density, ground conditions, electrical infrastructure, road types, and equity factors to support development at multi-family dwelling sites. The tool is currently in beta testing, and timeline and cost for commercial service have yet to be determined.
 3. East Bay Community Energy commissioned a [report](#) indicating that direct install Level 1 charging programs can enable large scale deployment at multifamily unit dwellings due to low costs and strong market acceptance from both property tenants and owners.
-

⁴⁸ https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_building/0-0-0-87834

⁴⁹ <https://www.carlsbadca.gov/services/depts/pw/environment/cap/evres.asp>

⁵⁰ <https://codes.iccsafe.org/content/CAGBSC2019>

- ◆ **City of Menlo Park** requires that nonresidential additions or alterations affecting over 10,000 ft² of building area provide a Level 2 raceway for 5 to 10 percent of the associated total parking spaces, and Electric Vehicle Supply Equipment for one plus 1 percent of total required parking spaces. There are currently only voluntary requirements for residential buildings.⁵¹
- ◆ **The City of Los Angeles** Department of Public Works initiated a pilot program to provide Level 2 EV charging stations on streetlights in the right-of-way, and has installed 431 stations over the last few years.⁵² While this program is not directly related to multifamily alterations, it may support broader access to EV charging for tenants that do not reside in multifamily buildings triggered by other city policies to install EV charging stations.

⁵¹ <https://www.menlopark.org/1480/Electric-vehicle-EV-chargers>

⁵² <https://bsl.lacity.org/smartcity-ev-charging.html>

3 Incentives and Funding Mechanisms

This chapter starts by presenting existing incentives and resources for existing building electrification and for existing multifamily EV charging. The chapter then identifies various funding and dispersion mechanisms that municipal governments can either lead or play a critical role in catalyzing to leverage stable financial resources to support electrification initiatives.

The **City of Berkeley** estimated that they require \$700M to \$1.4B in investment to electrify 90 percent of all Berkeley buildings by 2045, including envelope efficiency and solar PV measures to ensure equitable outcomes.⁵³ To put these numbers into context, here are some characteristics for Berkeley:

- ◆ Population of 122,000
- ◆ 20.7M square feet of nonresidential space and 65.1M square feet of residential space
- ◆ 35,432 total buildings, 92 percent of which are residential
- ◆ Residential comprises 48 percent of greenhouse gas emissions from buildings, while nonresidential comprises 52 percent

For further context, E3 estimates that approximately \$10B per year is necessary, every year from now through 2050, to electrify all of the 8.7M single-family buildings and 3.3M low-rise multifamily units in the state of California.⁵⁴ The scale and speed of the building-industry investments that are necessary to avoid the worst impacts of climate change are unprecedented.

3.1 Consumer Financing

3.1.1 Incentive Programs

Co-Lead with Other Agencies | Municipal Resources

Building Electrofit

The following entities provide program incentives or for heat pump water heaters (HPWH), heat pump space heating, induction cooking, and/or heat pump clothes drying often including income-qualified options. This is not an exhaustive list but includes some of the most relevant programs for San Mateo County and the neighboring region:

Community Choice Aggregators: Peninsula Clean Energy, Silicon Valley Clean Energy, Clean Power SF, East Bay Community Energy, Marin Clean Energy, San Jose Clean Energy, and Sonoma Clean Power. **Peninsula Clean Energy** provides up to \$1,500 to replace a methane gas water heater, with bonus

⁵³ https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Energy/2021-01-27_EC_Item%209_Late%20Communication_Item%204_Proposed%20Existing%20Building%20Electification%20Strategies.pdf

⁵⁴ <https://www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=6442467615> . Does not include high-rise multifamily or nonresidential.

incentives of \$1,000 for California Alternate Rates for Energy (CARE) and Family Electric Rate Assistance (FERA) customers, and up to \$1,500 for panel upgrades.⁵⁵

Regional Agencies: Bay Area Regional Energy Network (BayREN), StopWaste, California Department of Community Services and Development (CSD), Bay Area Air Quality Management District (BAAQMD), and South Coast Air Quality Management District (SCAQMD).

- ◆ **BayREN** currently administers the Home+ program, which provides \$1,000 rebates each for HPWHs and heat pump space heaters, and \$300 each for induction cooktops and clothes dryers in single family residences. Their Bay Area Multifamily Building Enhancements program provides significant incentives via the Clean Heating Pathway (e.g., \$1,000 for each in-unit heat pump, or \$15,000 for a central heat pump water heater serving at least 19 units).⁵⁶
- ◆ The CSD's **Low-Income Weatherization Program**, funded by the State's cap-and-trade proceeds, focuses on low-income multifamily buildings located in disadvantaged communities as defined by the CalEPA, and it funds electrification upgrades within its portfolio.⁵⁷

Local Governments:

- ◆ **County of Marin** administers the Electrify Marin program with funding from BAAQMD, providing rebates for water heaters, space heaters, and cooktops replacing of gas equipment for existing single-family properties.⁵⁸ Appliance specific rebates range from \$250 for an induction cooktop to \$1000 for a heat pump water heater, and a \$500 rebate is available for updates to the main electric service panel. Income-qualified owners qualify for 2x-4x higher rebates.
- ◆ **City of San Jose** had an Electrify San Jose program with funding from the BAAQMD, which provided rebates for switching from methane gas water heater to an electric heat pump water heater. The maximum rebate per single- and multifamily dwelling was \$4,500 with an electric service panel upgrade, or \$2,000 without.⁵⁹ CARE and FERA customers qualified for additional rebate amounts.
- ◆ **City of Santa Monica** administers the Electrify Santa Monica pilot program which provides up to \$1,000 in rebates for replacement of gas equipment in existing residential properties, (\$1,800 for income-qualified applicants), and service panel upgrades.⁶⁰ Appliance specific rebate amounts range from \$100 for a HPWH to \$300 for induction cooking.
- ◆ **Redwood City** has started a rebate program for homeowners offering \$500 for heat pumps, \$500 for electrical panel upgrades if necessary, \$500 for income-qualified residents, \$500 for level 2 chargers, and \$250 for electric lawn care equipment.⁶¹

⁵⁵ <https://www.peninsulacleanenergy.com/heat-pump-water-heater/>

⁵⁶ <https://www.bayrenresidential.org/get-rebates>; <https://bayareamultifamily.org/>; <https://www.bayren.org/clean-heating>

⁵⁷ <https://www.csd.ca.gov/Pages/Low-Income-Weatherization-Program.aspx>

⁵⁸ <https://www.marincounty.org/depts/cd/divisions/sustainability/energy-programs/electrify>

⁵⁹ <https://www.sanjoseca.gov/your-government/departments-offices/environmental-services/climate-smart-san-jos/electrify-san-jos>

⁶⁰ <https://www.smgov.net/uploadedFiles/Departments/OSE/Categories/Energy/Electrify%20Santa%20Monica%20Rebate%203%20pg%20PDF.pdf>

⁶¹ <https://www.redwoodcity.org/home/showpublisheddocument/23493/637566742860930000>,

Investor Owned Utilities (IOUs): IOUs, including Pacific Gas and Electric Company (PG&E) and Southern California Edison, provide incentives for new construction and retrofit projects that include multiple electrification technologies. Fifteen of the sixteen separate building electrification programs that the IOUs implement fund HPWHs.⁶²

- ◆ **PG&E** provides equipment rebates for retrofitting with ENERGY STAR high efficiency electric heat pump storage water heaters. Qualifying products listed in their rebate catalog qualify for a \$300 per unit.⁶³
- ◆ **Southern California Edison** provides \$1,000 in rebates for HPWHs, \$300 per ton for central HVAC heat pumps, and \$600 per ton for minisplit HVAC heat pumps.⁶⁴

State Agencies: The **California Public Utilities Commission (CPUC)** is administering and/or implementing several relevant programs listed below. These programs are primarily intended to improve market conditions for heat pump water heaters statewide rather than achieve deep penetration of electrofits in any locale.

- ◆ The Technology and Equipment for Clean Heating (TECH) Initiative will provide incentives to heat pump space and water heating to encourage sales and adoption, up to \$120M program budget statewide.
- ◆ The Self-Generation Incentive Program (SGIP) was updated to include incentives for HPWHs as energy storage devices (anticipated to be a \$1500 rebate) up to a program budget of \$45M statewide.⁶⁵ The proposed incentive would pay a bonus for models with controls that enable HPWHs to be grid responsive. This typically requires additional hot-water storage and capability to perform pre-determined load-shift modes.⁶⁶

TECH and SGIP combined are anticipated to fund approximately 75,000 heat pump water heater installations across California, made available by the third quarter of 2021.

Municipal Utilities: City of Palo Alto, Alameda Municipal Power, and Sacramento Municipal Utility District provide rebates in the range of thousands of dollars to electrify a wide range of residential appliances.⁶⁷

Each program has specific funding rules, and some rebates can be layered while others may not. For example, a PG&E rebate cannot be layered with a BayREN rebate as they come from the same pool of public funding, while the PCE rebate can. Figure 2 below depicts how the layered funding sources can cover conversions of existing methane gas equipment in Menlo Park residential buildings. The

⁶² <https://www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=6442465700>

⁶³ https://www.pge.com/pge_global/common/pdfs/save-energy-money/savings-solutions-and-rebates/rebates-by-product/ee_residential_rebate_catalog.pdf

⁶⁴ <https://www.sce.com/residential/rebates-savings/rebates>

⁶⁵ *Self-Generation Incentive Program*. Retrieved from <https://www.cpuc.ca.gov/sgip/>

⁶⁶ Retrieved from Heat Pump Water Heater Workshop - Part 2:

https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Energy/Energy_Programs/Demand_Side_Management/Customer_Gen_and_Storage/SGIP.HPWH.Workshop.Part2.pdf

⁶⁷

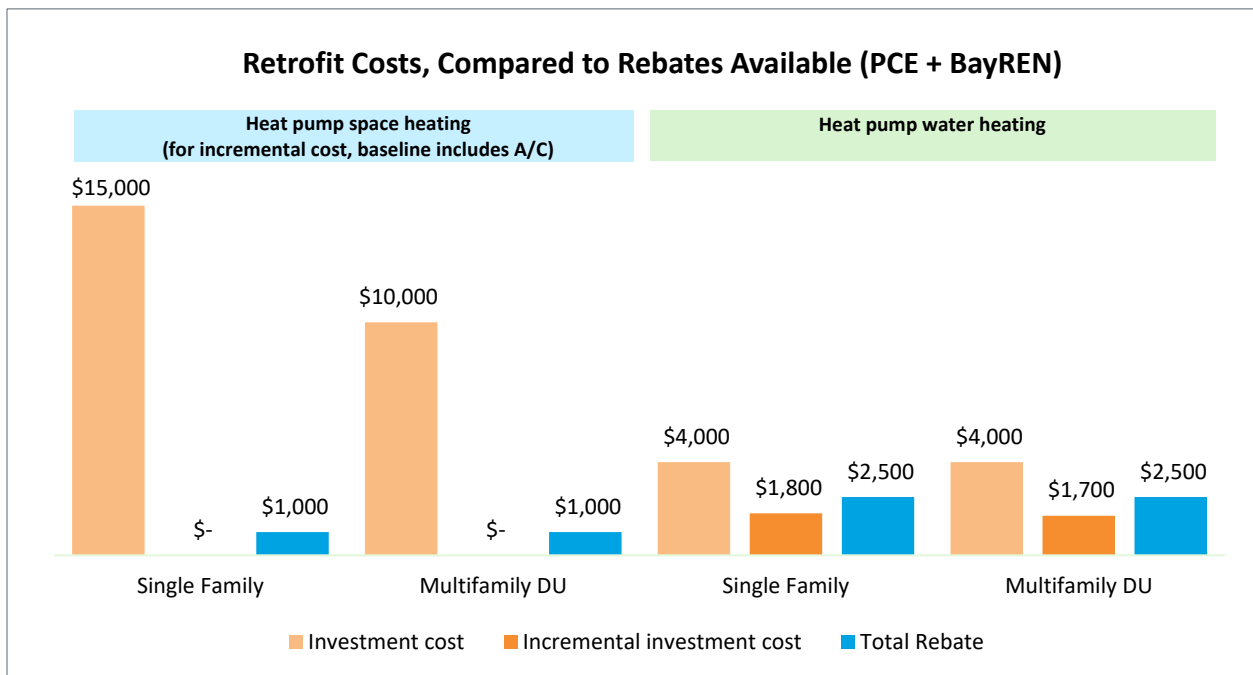
https://www.cityofpaloalto.org/gov/depts/utl/residents/save_energy_n_water/rebates/heat_pump_water_heater/program_details.asp; <https://www.smud.org/en/Rebates-and-Savings-Tips/Go-Electric/Residential-Go-Electric>

investment costs are estimated from the Energy & Environmental Economics retrofit study, and do not include panel upgrades.⁶⁸

As an example, a multifamily building (up to four dwelling units) in Menlo Park can receive a \$1,500 incentive from Peninsula Clean Energy and a \$1,000 incentive from BayREN to replace an in-unit existing methane gas water heater with a HPHW. This would cover about half of the estimated investment cost of \$3,349-4,388 to install a heat pump water heater, and it would more than cover the incremental cost (\$1,435-1,927) compared to replacing a like-for-like methane gas water heater.⁶⁹

For heat pump space heating, the incremental cost is assumed to be \$0 if the existing installation or planned retrofit includes air-conditioning. If air-conditioning is not included, costs associated with siting the exterior unit, electrical wiring, and refrigerant piping add up to dwarf BayREN’s current incentive offering.

Figure 3. Retrofit Costs Compared to Rebates Available



Existing Multifamily EV Charging Rebate Programs

The following programs reduce cost barriers for EV charging in major alterations:

- ◆ The **Peninsula-Silicon Valley Incentive Project**, funded by the California Energy Commission as part of the California Electric Vehicle Infrastructure Project (CALeVIP), offers rebates in for installations at new, replacement, or make-ready sites.⁷⁰ The incentives for direct current fast EVSE greater than 100 kW covers 75 percent of total project costs, up to \$70,000; projects located in disadvantages communities (DACs) has a higher cap at \$80,000. For Level 2 EVSE for

⁶⁸ <https://www.ethree.com/e3-quantifies-the-consumer-and-emissions-impacts-of-electrifying-california-homes/>

⁶⁹ https://www.ethree.com/wp-content/uploads/2019/04/E3_Residential_Building_Electrification_in_California_April_2019.pdf

⁷⁰ <https://calevip.org/incentive-project/peninsula-silicon-valley>

multi-unit dwelling projects, the maximum incentive amount is \$5,500 outside of DACs, and \$6,000 for DACs.

- ◆ **Peninsula Clean Energy's** EV Ready Program is providing \$28M to install 3,500 charging ports in San Mateo County over the next four years. Incentives range from \$2,000 to \$5,500 per port for existing multi-unit dwellings. There is no limit on the cap for installing L1 chargers, and a cap of \$44,000 for L2 EVSE ports. An additional \$4,000 is available for main panel upgrades.⁷¹
- ◆ **Santa Monica's** EV Charging Station Rebate Program for multifamily unit dwellings (MUDs) and small businesses provides up to \$1,000 (\$1,800 for income-qualified applicants) to offset the cost of purchasing and installing residential Level 1 or Level 2 charging infrastructure.⁷² The program offering can be layered with SCAQMD EV residential EV charging pilot, which provides an additional \$250.⁷³

3.1.2 Tax Credits, Deductions, and Rebates

Co-Lead with Other Agencies | Municipal Resources

Beyond equipment rebates and building retrofit program incentives, there are number of federal tax deduction and tax credits, equipment tax credits, and examples of local tax refund/rebates applicable to electrification retrofits.

- ◆ The **Energy-Efficient Commercial Buildings Federal Tax Deduction** offers \$1.80/ft² tax deduction to buildings that install qualifying building systems that reduce the building's total energy and power cost by 50 percent in comparison to the most recent ASHRAE 90.1 standards, for the year when the system installation was completed.⁷⁴
- ◆ The **Residential Energy Efficiency Federal Tax Credit** was retroactively extended from 2017 through the end 2021. Residential property owners are eligible for tax credits of \$300 for qualifying HPHW and qualifying heat pump air conditioning equipment, with the maximum tax credit for all improvements of \$500 in 2005-2021.⁷⁵

On a municipal level the city can provide tax rebate to encourage electrification measures.

- ◆ **City of Berkeley's** Real Property Transfer Tax is imposed on all property transfers, and ranges from 1.5 percent - 2.5 percent of the property value. Up to 1/3 of the base 1.5 percent transfer tax rate is eligible for a Seismic Transfer Tax Refund, if the property owner performs voluntary seismic upgrades within one year of the transfer.⁷⁶ Historically, an average of 13 percent of eligible homeowners have received the refund between 2014 and 2019.⁷⁷ The City is considering

⁷¹ <https://www.peninsulacleanenergy.com/ev-ready-incentives/>

⁷² https://www.smgov.net/uploadedFiles/Departments/OSE/Categories/Transportation/Phase3_EV_RebatePacket.pdf

⁷³ <http://www.aqmd.gov/home/programs/community/community-detail?title=ev-charging-incentive>

⁷⁴ <https://programs.dsireusa.org/system/program/detail/1271/energy-efficient-commercial-buildings-tax-deduction>

⁷⁵ https://www.energystar.gov/about/federal_tax_credits

⁷⁶ https://www.cityofberkeley.info/Finance/Home/Real_Property_Transfer_Tax_Seismic_Refunds.aspx

⁷⁷

updates to expand the Seismic Tax Refund Program include resilience, energy efficiency, electrification measures for commercial and mixed-used buildings.⁷⁸

3.1.3 Grant Programs

Co-Lead with Other Agencies | Municipal Resources

Federal grants are targeted to specific demographics and types of projects, creating a patchwork of funding that is generally not available to all residents. Generally, the Biden Administration has signaled an emphasis in delivering grants (and loans) to energy projects that create new, high-paying jobs.⁷⁹

- ◆ **Community Development Block Grants (CDBGs)** is a program administered by the Department of Housing and Urban Development and provide communities with energy improvements by giving state and local governments the ability to transform a portion of their CDBG funds into federally guaranteed loans.⁸⁰ The grant is only available for projects in cities with populations of less than 50,000, except principal cities in metropolitan areas.
- ◆ The **Weatherization Assistance Program** is a grant program administered by the Department of Energy for residential energy efficiency retrofits (including electrofit measures) and solar additions. This program focuses on residences with elderly individuals, individuals with disabilities, and families with children. Recipients must be a resident of California and have an annual income that is below 60 percent of the state median Income.⁸¹
- ◆ The **U.S. Department of Transportation** has highlighted several EV infrastructure programs with substantial funding, though they are primarily for Highway installations and other public areas.⁸² Nevertheless, President Biden’s American Jobs Plan includes \$15 billion to fund a national network of 500,000 charging stations, including grant and incentive programs for local governments to accelerate deployment in apartment buildings.⁸³

3.1.4 Loan Programs

Co-Lead with Other Agencies | Municipal Resources

A municipality can use borrowing capacity or loan loss reserve to develop a partnership with a local lender and create a loan program to finance electrification enhancements. A dedicated loan program

⁷⁸ https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Energy/2021-01-27_EC_Item%209_Late%20Communication_Item%204_Proposed%20Existing%20Building%20Electfication%20Strategies.pdf

⁷⁹ <https://www.politico.com/news/2021/03/04/granholm-clean-energy-spending-473668>

⁸⁰ <https://www.hudexchange.info/programs/cdbg-state/>

⁸¹ <https://www.benefits.gov/benefit/1844>

⁸²

https://www.fhwa.dot.gov/environment/alternative_fuel_corridors/resources/ev_funding_report_2021.pdf

⁸³ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-biden-administration-advances-electric-vehicle-charging-infrastructure/>

brings a streamlined funding opportunity and rate certainty to property owners who are considering the prospect of electrification and would benefit from the extra financial line of sight.

Within California

- ◆ The California Hub for Energy Efficiency Financing has several financing options available for energy related upgrades, excluding solar PV but including several electrification measures. The program is administered by CPUC and paid for with IOU program funds.⁸⁴ Eligible properties must receive either electric or gas service from an IOU, and up to 30 percent of financing can be used for non-eligible improvements.
 - **Residential Energy Efficiency Lending (REEL)** and program provides financing for energy related upgrades for owners of any residential property up to four units. Borrowers can access up to \$50,000 for payback terms between 5 to 15 years. Interest rates are between 3.99 – 5.99 percent depending on credit scores, and the average interest rate is 5.02 percent across all terms. Only 28 percent of loans were made to customers with credit scores less than 700, and 18 percent of loans were made to upgrade properties in disadvantaged communities. In early 2021, approximately 1,059 loans have been administered on a total of \$2.6M. For every dollar lent, \$6.60 in private lending has been leveraged.⁸⁵
 - The **Affordable Multifamily Financing (AMF)** program is available for properties of five or more units, where at least 50 percent of the units are restricted to income-eligible households. The property must be subject to deed restrictions that require the owner to keep rents affordable for a minimum of five years. Repayment can be either direct to the finance company or on-bill for master-metered multifamily properties.
 - The **Small Business Financing (SBF)** program is for business and nonprofit building owners or tenants with fewer than 100 employees and limitations on annual revenue.
- ◆ **BayREN** has recently launched the Small Business Microloan program provides no-interest financing on ENERGY STAR certified products. The program is still in a pilot phase. Pre-existing monthly debt payments must be less than half of the business's monthly income.⁸⁶
- ◆ **Property-Assessed Clean Energy (PACE)** is a financing mechanism available to private ownership models that enables low-cost, long-term funding for energy efficiency, renewable energy, and water conservation projects. PACE allows property owners to borrow money to pay for energy improvements and repay via a special contractual assessment on the property over a length of the agreement terms (up to 20 years). California state law enabled municipalities to offer PACE financing programs since 2008. The California State Treasurer says that PACE may be used to finance electrification conversions, though specific examples have not been identified.

PACE has had consumer protection issues such as abusive contractor practices and unsustainable loans.⁸⁷ In 2010, the Federal Housing Finance Agency (FHFA) directive prevented Fannie Mae and Freddie Mac from purchasing home mortgages with a PACE lien, and the residential PACE activity had since subsided, except for PACE programs that operate with loan

⁸⁴ <https://gogreenfinancing.com/>

⁸⁵ <https://www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=6442467615>

⁸⁶ <https://www.missionassetfund.org/bayren/>

⁸⁷

reserve funds or other measures that address concerns raised in FHFA’s directive.⁸⁸

Nonetheless, the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) has established a PACE Loss Reserve program to mitigate risk to mortgage lenders associated with residential PACE financing.⁸⁹

- ◆ **Fannie Mae** provides HomeStyle Energy Mortgage works with lenders to offer loan products to their consumers specifically for energy or water improvements. Borrowers can finance energy or water efficiency improvements or resiliency upgrades when purchasing or refinancing a home. HomeStyle Energy may be a more affordable financing solution than a subordinate lien, home equity line of credit, PACE loan, or unsecured loan.⁹⁰

Outside of California

- ◆ **City of Fort Collins** instituted a Home Efficiency Loan Program with local banks to identify inefficient homes occupied by low-to-moderate income families. The program also connected the building owners with local contractors and suppliers who do the renovations. The City’s borrowing capacity helped deliver up to \$3.25M over 15 years and provide on-bill financing of efficiency projects, including HVAC upgrades, envelope upgrades, and solar PV.⁹¹
- ◆ **City of Boulder** leveraged a local credit union, Elevations Credit Union, and created an energy loan for homeowners that Boulder County supports with a loan loss reserve. Loan rates range from an APR of 2.75 percent for a 3-year loan up to 8.125 percent for a 15-year loan.⁹² Similar offerings are available to homeowners in Colorado with various local municipal program partners.
- ◆ **Connecticut Green Bank** provides a sub-ordinated debt vehicle, technical assistance, and outreach strategy for their Solar for All program. The program is available to all homeowners (not renters), not dependent on credit score, and focuses on enrolling low-to-moderate income (LMI) applicants. The program aimed to reduce the energy burden for LMI customers down to where it would be if the applicant was affluent and was able to reach 7.5 percent of LMI multifamily housing in the state since FY2014.

3.1.5 Electrification as a Service

Co-Lead, or Support IOUs and Community Choice Aggregations (CCAs) | Pilot, or Support and Advocacy

Building owners can *host* the electrification or EVSE infrastructure and receive lease payment from vendors for allowing them to develop, install, own, and operate the equipment. This is similar to a power purchase agreement for solar installations. In these arrangements, a third-party company would finance and own the asset and be responsible for system design, install, and operation and maintenance, while the host building receives reoccurring payments for providing the property for the system, or they agree to purchase the energy at an agreed upon rate.

⁸⁸ <https://programs.dsireusa.org/system/program/detail/3527/local-option-municipal-energy-districts>

⁸⁹ <https://www.treasurer.ca.gov/caeatfa/pace/index.asp>

⁹⁰ <https://singlefamily.fanniemae.com/originating-underwriting/mortgage-products/homestyle-energy-mortgage>

⁹¹ <https://www.fcgov.com/utilities/epicloan>

⁹² <https://www.elevationscu.com/loans/energy-loans>

- ◆ **BlocPower** provides heat pump leasing models aimed at affordable multifamily buildings and small/medium commercial buildings. Since 2012, the company has completed energy projects in 1,000 buildings, and implements leasing structures, project management, and monitoring while delivering energy bill reductions.⁹³
- ◆ **SparkFund** provides a subscription-based approach to energy systems for commercial and industrial customers, with monthly payments for energy upgrades and operation that deliver outsized utility bill savings.⁹⁴
- ◆ **NYSERDA** and **National Grid** are in the process of launching the Home Energy Savings Program pilot, which utilizes ratepayer funding for a pay-for-performance approach that funds whole-house efficiency measures. The program solicits bids from service providers and installing contractors who will develop a project pipeline to receive payments from the program. Development of financing for upfront measure costs is encouraged in a variety of ways, as preferred by the service provider, including upfront payments from customers, debt financing, and equity financing. Service providers and installing contractors are compensated by the program over a period of three years via metered reductions in energy and bill savings.⁹⁵

A fundamental challenge to the *as-a-service* model is to identify buildings with predictable energy consumption that provide steady revenue streams and motivates vendors. This is an area where local governments can provide a critical matchmaking function between technology providers and high potential host sites, such as defining provider criterion and a portfolio of qualifying host sites, to lower development and customer acquisition costs. Local governments can further assist with the development of template agreements that lower the transactional costs of electrification-as-a-service projects.

3.1.6 Ratepayer-Funded Tariffed On-Bill Investment

Support to CPUC, IOUs, and CCAs | Support and Advocacy

There are multiple types of on-bill financing and investment. According to a recent white paper on accessible financing:⁹⁶

“A tariffed on-bill program allows a utility to pay for cost-effective energy improvements at a specific residence, such as home heating and cooling units, and to recover its costs for those improvements over time through a dedicated charge on the utility bill that is immediately less than the estimated savings from the improvements. The tariffed on-bill model differs from on-bill loans and repayment models in that tariffs are not a loan, but rather a utility investment for which cost recovery is tied to the utility meter according to terms set forth in a utility tariff.”

Tariffed on-bill models, also known as *pay as you save*, are particularly well suited for LMI homeowners and renters of all incomes, because they do not provide cost or credit barriers while enabling behind-the-meter investment.

⁹³ <https://www.blocpower.io/>

⁹⁴ <https://www.sparkfund.com/case-studies/>

⁹⁵ <https://www.nyserda.ny.gov/All-Programs/Programs/Home-Energy-Savings-Program/Portfolio-Managers>

⁹⁶ https://www.buildingdecARB.org/uploads/3/0/7/3/30734489/bdc_whitepaper_final_small.pdf

Municipalities must rely on CPUC regulation to authorize, and the IOUs and perhaps CCAs to administer on-bill financing in the coming years. Local governments would ensure that renters have access to on-bill savings associated with decarbonization investments and enforce affordable housing provisions.

- ◆ The **Town of Windsor** and the **City of Hayward** received permission from their oversight bodies and implemented tariffed on-bill water efficiency programs, known as Windsor Efficiency PAYS and Green Hayward PAYS, respectively. **BayREN** now administers the Water Upgrades \$ave program, which has enrolled 584 multifamily units and 247 single family units across the nine Bay Area counties. 87 percent of program participants would recommend the program.⁹⁷
- ◆ **Sonoma Clean Power** is launching an on-bill financing program in March 2021.
- ◆ The **Southeast Energy Efficiency Alliance** has invested in a variety of loan and on-bill financing programs and found that tariff on-bill investments have outperformed loans in multiple metrics.⁹⁸

3.2 Municipal Mechanisms

3.2.1 Green Bonds

Local Government Authority | Resolution, Ballot Measure

Green bonds issued by municipal entities help finance projects with a positive climate impact, such as renewable energy and energy efficiency. Funds can likely only be used for public buildings. Governments issue bonds, and investors receive principle and fixed interest payments in return. CAEATFA has provided Energy Conservation Bond financing to 26 projects amounting to \$212M.⁹⁹

Green bonds have higher transactional costs than conventional loans and have standards and certification for use of funds to qualify attaching the green label. Notable issuances of green bonds include:¹⁰⁰

- ◆ **Hayward Unified School District** issued \$20M in bonds for renewable energy and sustainability projects.
- ◆ **Imperial Irrigation District** issued \$65M in bonds for renewable energy projects.
- ◆ **Sacramento Municipal Utility District** issued \$75M in bonds for green building projects.

In 2019, the cumulative issuance of municipal bonds exceeded \$8 billion, and the California Green Bond Market Development Committee was launched.¹⁰¹

⁹⁷

⁹⁸ <https://www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=6442467615>

⁹⁹ <https://www.treasurer.ca.gov/caeatfa/incentives.asp>

¹⁰⁰ <https://www.treasurer.ca.gov/cdiac/webinars/2019/greenbonds/green-bonds-session.pdf>

¹⁰¹ <https://gspp.berkeley.edu/centers/cepp/projects/green-bonds-market-development-committee/ca-green-bond-market-development-committee>

3.2.2 Local Taxes and Fees

Local Government Authority | Ballot Measure

Local governments may tax building projects for greenhouse gas emissions and use the funding to incentivize future decarbonization offsets throughout the jurisdiction. A utility users' tax (UUT) may be levied by municipalities to provide general fund revenue. The tax may be increased to generate funds for projects and programs that reduce greenhouse gas emissions.

- ◆ **City of Berkeley** proposed Measure HH in 2020 to increase the UUT from 7.5 percent to 10 percent for electricity and 12.5 percent for methane gas.¹⁰² Despite strong community support from a survey, the ballot measure was ultimately defeated.
- ◆ **City of Albany** proposed Measure DD to increase the UUT from 7 percent to 9.5 percent for electricity and gas and apply a tax to water service at 7.5 percent. The measure passed. The measure is estimated to generate an additional \$675,600 in new revenues annually for the City.¹⁰³
- ◆ **City of Watsonville** adopted a Carbon Fund Ordinance in 2015 that charges a fee to all development projects including new construction, additions, and alterations, with the exception of single-family alterations. The additional carbon impact fee is between 30 and 50 percent of the building permit fee. Projects may be refunded the fee if they install on-site renewable generation to offset the average annual electricity load.¹⁰⁴
- ◆ In late 2019, the **City of San Luis Obispo** tentatively proposed a greenhouse gas *in-lieu fee* for new construction projects that installed fossil fuel consuming appliances, ranging from \$6,013 for a typical single-family residence up to \$89,000 for a 54,000 ft² office.¹⁰⁵ This measure has been delayed for adoption due to political pressure.

¹⁰² [https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_\(4pm\)_Special_Item_05_Placing_a_Tax_Measure_on_the_November_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_(4pm)_Special_Item_05_Placing_a_Tax_Measure_on_the_November_pdf.aspx)

¹⁰³ <https://cdn.kqed.org/wp-content/uploads/2020/10/09-Measure-DD-City-of-Albany-UUT.pdf>

¹⁰⁵ <https://www.sanluisobispo.com/news/local/environment/article234680472.html>

4 Recommendations and Gaps

Given the pace and scale of efforts necessary to achieve carbon neutrality, municipalities must address all areas of the market by invoking as many effective policy and financing options as resources allow. To assess the policy and financing options that may be most effective, TRC developed a scoring system by which to rate each option described in this report. Each option was assessed on a red (“low”) to green (“high”) scale according to each of the following characteristics:

- ◆ Availability – How widely available is the policy or financing option currently, particularly in California? An option with several examples would indicate a high degree of readiness for replication.
- ◆ Ease of Implementation – How easily would this policy or financing option be administered from the perspective of the agency, and/or participate in from the perspective of the applicant? Reduced administrative burden suggest quicker processing, a high application rate, and stretching resources for a longer program period.
- ◆ Scalability – If given enough resources, can the policy or financing option be scaled to capture all of targeted population?

TRC also characterized each policy and financing option by target market (residential buildings, nonresidential buildings, or EV infrastructure), target population (building owners, renters), target income level (i.e., low-income), and potential role for the municipality (lead or advocate). These characterizations allowed for a standardized format to develop recommendations and point to significant gaps.

Results are sorted by those scoring highest in Figure 3, and are accompanied by a narrative providing further detail.

Figure 4. Policy and Financing Characteristics Summary

	Sub-Category	Mechanism			Ease of			Recommended	Muni Role
			Bldg	EV	Availability	Implementation	Scalability		
Policy	Triggered	2.1.2 Point of Transfer	●		●	●	●	●	Lead
	Gov't Buildings	2.1.1 CIP	●		●	●	●	●	Lead
	Performance	2.1.3 Disclosure	●		●	●	●	●	Lead
	Triggered	2.1.2 Major Alteration	●	●	●	●	●	●	Lead
	Achieving Equitable Outcomes	2.1.5	●		●	●	●	●	Lead, Advocacy
	Performance	2.1.2 Emissions Limits	●		●	●	●		Advocacy, Lead
	Eliminate Gas Inf.	2.1.4	●		●	●	●		Advocacy
Consumer Financing	Incentive Programs	3.1.1 CCA (PCE) - EV		●	●	●	●	●	Advocacy
	Incentive Programs	3.1.1 Regn'l Agency (BayREN)	●		●	●	●	●	Advocacy
	Incentive Programs	3.1.1 Local Gov't - Bldg	●		●	●	●	●	Lead
	Tax Credit/Deduction	3.1.2 Federal	●		●	●	●	●	Advocacy
	Electrification as a Service	3.1.5	●	●	●	●	●	●	Advocacy
	Incentive Program	3.1.1 CCA (PCE) - Bldg	●		●	●	●	●	Advocacy
	Incentive Programs	3.1.1 IOUs (PG&E)	●		●	●	●	●	Advocacy
	Tariffed On-Bill	3.1.6	●		●	●	●	●	Advocacy
	Incentive Programs	3.1.1 Regn'l Agency (CSD)	●		●	●	●	●	Advocacy
	Loan Programs	3.1.4 AMF	●		●	●	●	●	Advocacy
	Loan Programs	3.1.4 Municipal Support	●		●	●	●	●	Lead
	Loan Programs	3.1.4 REEL	●		●	●	●	●	Advocacy
	Loan Programs	3.1.4 SBF	●		●	●	●	●	Advocacy
	Grants	3.1.3 WAP	●		●	●	●	●	Lead
	Incentive Programs	3.1.1 Local Gov't - EV		●	●	●	●	●	Lead
	Loan Programs	3.1.4 PACE	●	●	●	●	●	●	Lead, Advocacy
	Tax Credit/Deduction	3.1.2 RPTT	●		●	●	●	●	Lead
Incentive Programs	3.1.1 State Agencies	●		●	●	●	●	Advocacy	
Grants	3.1.3 CDBGs	●	●	●	●	●	●	Lead	
Muni	Local Taxes and Fees	3.2.2 UUT, Carbon Tax	●		●	●	●	●	Lead
	Green Bond	3.2.1	●	●	●	●	●	●	Lead

4.1 Policy Findings

4.1.1 Recommendations

TRC recommends that Menlo Park and other jurisdictions with similar goals explore the following policy options in the near term for building electrification:

- ◆ 2.1.1 Municipal Buildings Lead with Electrification – An important policy to raise the profile of community goals, increase government familiarity with the challenges and opportunities of electrification, and establish notable precedents. Jurisdictions should also explore electrification policies as part of Capital Improvement Projects though this policy cannot scale beyond municipal projects.
- ◆ 2.1.2 Triggered Appliance Conversion – Highly scalable and readily enforceable if permits are pulled regularly. An example of successful policy implementation includes City of Davis’s Resale Program (triggered at point of transfer).
- ◆ 2.1.3 Building Performance Standards – Highly scalable and readily enforceable. The City of Boulder’s SmartRegs Program has achieved high compliance in existing building energy efficiency compliance.
- ◆ 2.1.5 Achieving Equitable Outcomes– Critical to reversing the lasting impacts of discriminatory policies and ensuring

The jurisdiction has the ability to serve as the lead agency in all of these policy options, which is beneficial to enforce customized policies but may also lead to higher administrative investment.

4.1.2 Gaps

TRC noted the following policy mechanism gaps:

1. Though there are several examples of policies triggering additional requirements at the time of major alterations (2.1.2), they have not been implemented for a significant time period and have unknown potential for success. Applicants may attempt to dodge electrification requirements through creative permit applications or avoiding the process entirely.
2. There are very limited examples of existing building policies applying to electric vehicle infrastructure.

4.2 Financing Findings

4.2.1 Recommendations

TRC recommends that jurisdictions explore the following financing pathways for building electrification, largely serving in advocacy and educational outreach roles:

Consumer Financing

- ◆ 3.1.1 Incentive Programs – A local jurisdiction may share eligible incentives with project applicants. Several entities, notably PCE and BayREN, have incentive programs in place that are broadly applicable, including carveouts for low-income populations. PCE in particular has two

programs specifically for adding EV charging infrastructure in existing multifamily buildings, although is slightly limited in scalability as applicants must be PCE customers to be eligible.

A local jurisdiction may also lead the development of incentive programs, likely with funding from a partner organization. San Jose and Marin County funded electrofit incentives by partnering with BAAQMD.

- ◆ 3.1.2 Tax Credits, Deductions, and Rebates – Federal tax incentives can be attained for eligible electrofits and stacked with incentive programs, though they are fairly low amounts.
- ◆ 3.1.5 Electrification as a Service – A local jurisdiction can play a key role in fostering an Electrification as a Service market by reducing market entry barriers for providers such as BlocPower. Or, a jurisdiction can advocate for establishing a local program like NYSEERDA's, which creates a market for contractors and installers by paying them for projects that deliver metered bill savings.
- ◆ 3.1.6 Ratepayer-Funded Tariffed On-Bill Investment – Tariffed on-bill programs serve a wide market, including the harder to reach markets such as renters with modest credit history. Local jurisdictions can advocate with the CPUC to ensure this policy option becomes available.
- ◆ 3.1.4 Loan Programs – A suite of loans are available for credit-worthy residential and nonresidential building owners through the state financing authority. These programs may fill in gaps where building owners may have insufficient access to incentive programs or tax deductions. Loans are expected to be one of the last options to financing a project, as they carry more risk for the applicant than many of the preceding options listed.

Municipal Financing

- ◆ 3.2.1 Green Bonds and 3.2.2 Local Taxes and Fees – Voter-approved fund generation mechanisms can affirm a community's willingness to invest in decarbonization measures. Bonds can be used for public infrastructure projects, and increased revenues from utility taxes can serve potentially provide consumer financing.

4.2.2 Gaps

TRC noted the following financing mechanism gaps:

1. The investment for heat pump space heating as a replacement for a methane gas furnace can be very high in a building that doesn't already have air-conditioning, which is prevalent in the Bay Area according to the Residential Appliance Saturation Survey. TRC did not identify incentives large enough to support this market to transition away from methane gas.
2. As with policy options, there is limited precedence for existing building EV financing. A jurisdiction may supplement PCE's EV incentive program with additional incentives, or additional loan programs targeted toward EV investment in a similar manner that Boulder partnered with a local credit union.
3. Nonresidential buildings are eligible for fewer incentive programs than residential. This may be due to the higher turnover rate of nonresidential spaces and equipment, the higher financing needs and access of the nonresidential market.

4.3 Further Considerations

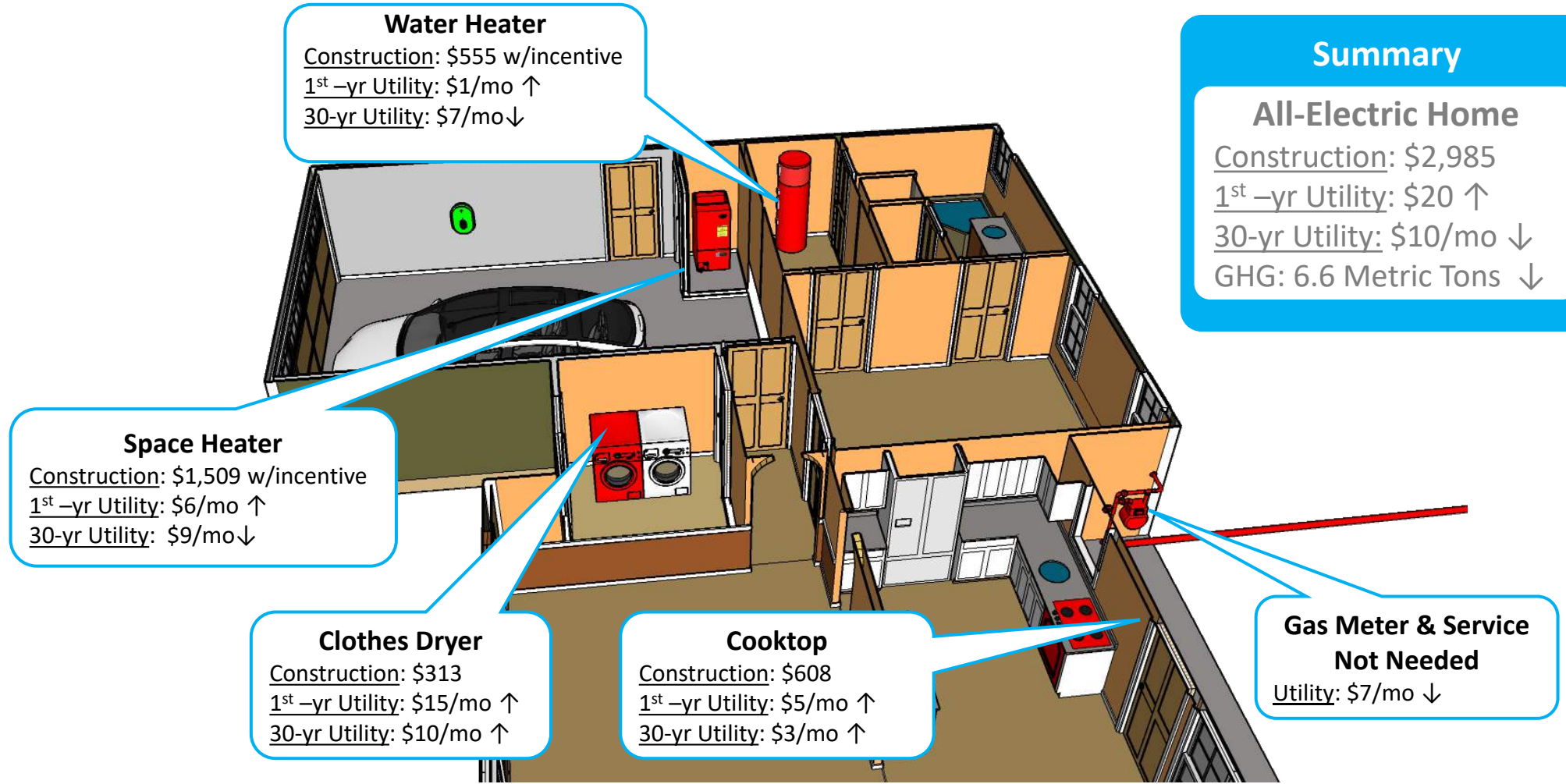
TRC recommends that local jurisdictions thoroughly assess the people and buildings needing that must be reached to achieve the carbon neutrality goals. Understanding the scale of the challenge (e.g., square footage of buildings by type, number of multifamily buildings with parking, major property owners in the City, energy burden for low-income residents) will allow the jurisdiction to estimate the corresponding scale of the solutions necessary (e.g., dollars of investment, outreach strategies, retrofit rates, consumer protections).

Several related issues emerged throughout the course of TRC’s research that did not explicitly fit within the scope of this report. These additional considerations, listed briefly below, suggest that the policy and financing options in this report would be implemented more effectively if the jurisdiction a range of market transformation strategies:

1. Protecting consumers must be a priority to prevent the abusive practices that emerged in the PACE program. For example, financing energy upgrades with home-secured debt is inappropriate for homeowners with lower incomes.
2. Simplifying permitting processes will reduce administrative burden. Coordinating the processes across jurisdictions will familiarize the building industry with requirements.
3. Measure packaging, such as combining electrofits, EV charging, efficiency, demand response compensation, and/or on-site solar may drive down operating costs and improve cost effectiveness. Adding vehicle-to-building charging or battery storage may improve resiliency and project appeal.
4. Inspecting, auditing, and/or evaluation provides an accurate understanding of program impacts and informed position by which to make future investments.
5. Targeting outreach and programs to portfolio property owners may generate economies of scale.
6. Achieving ‘early wins’ can demonstrate feasibility, drive down market barriers, and improve public perception.
7. Ensuring that the workforce is well-trained and incentivized to perform high-quality installations will require dialogue with local trade associations, unions, training programs, and certifying bodies. These efforts can achieve equitable outcomes, as demonstrated by the RichmondBUILD and Rising Sun Center for Opportunity’s Climate Careers programs.^{106,107}
8. Providing technical assistance with engineering and financing approaches can simplify compliance and mitigate negative experiences.

¹⁰⁶ <http://www.ci.richmond.ca.us/1243/RichmondBUILD>

¹⁰⁷ <https://risingsunopp.org/>



Agenda item F1
Ann Dorsey

Menlo Park City Council Members,

I urge you to keep moving forward with your plans to electrify 95% of the buildings in the city by prohibiting the installation of new gas equipment and converting gas using buildings to all electric and support your efforts to ensure these transitions are socially equitable.

Thank you for taking the climate emergency seriously and making the much needed changes happen in a timely manner.

Sincerely,

Ann Dorsey



**CLIMATE ACTION PLAN GOAL NO.1
ELECTRIFY 95% OF EXISTING BUILDINGS BY 2030**

Rebecca Lucky, Sustainability Manager



ANNEBERG FAMILY
GYMNASIUM

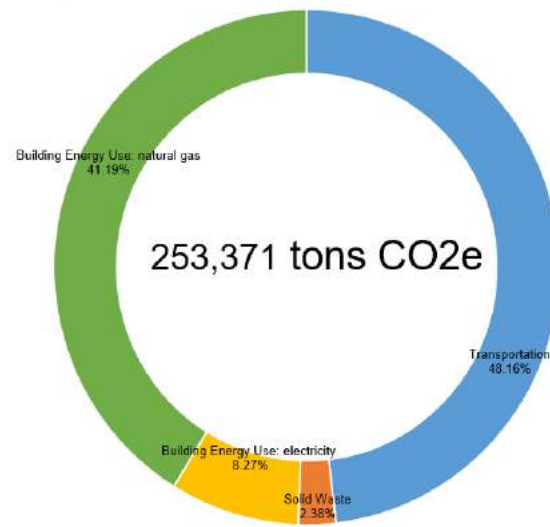
REQUESTED DIRECTION

- Provide direction to the Environmental Quality Commission (EQC) and city staff on additional analysis, education, community engagement and/or desired timelines
- EQC recommendations:
 - Adopt an ordinance to prohibit the installation of new gas equipment in buildings throughout the city
 - Protect low income residents by providing direct funding and considering rental protections
 - Reduce the “hassle factor” through education, personalized consultation services, providing free electrification plans, and streamlining the permitting process
 - Develop a long-term plan/roadmap to phase out natural gas
- No policy change will result from direction received this evening without extensive outreach and applicable public hearings

CLIMATE ACTION PLAN GOAL NO. 1

- Convert 95% of existing buildings (residential and commercial) to electric by 2030
- Top priority of the city to meet its carbon neutral goal by capitalizing on clean and fossil fuel free energy from Peninsula Clean Energy
- Menlo Park adopted electric requirements for new construction in 2020
- Existing buildings project officially started in January

City of Menlo Park communitywide greenhouse gas emissions 2019



CITY COUNCIL DIRECTION APRIL 2021

- Prepare a cost effectiveness analysis and policy/program pathways to present to the City Council
- Requested feedback from the Environmental Quality Commission (EQC)
 - EQC reviewed in July concurrently with staff and finalized feedback and recommendation in August
- Staff recommendation and assessment deferred to after City Council study session

COST EFFECTIVENESS RESULTS

- Methodology used is recognized by the California Energy Commission and energy providers in California
 - Result: Short term bill increases, but long term bill savings for residential customers
 - Energy efficiency appliances/ equipment is still important
 - Installing solar on buildings can protect customers from future rate increases and provide resiliency
- Current incentives help customers transition and increase payback savings over the long term
- Limitations
 - Worst case scenarios and equipment efficiencies
 - Quantifying total societal cost of climate change and inaction
 - Other technologies and potential advancements
 - Still evaluating commercial results

POTENTIAL POLICY PATHWAYS IDENTIFIED

- Policy options focus on single family and some multifamily opportunities:
 - Education and outreach
 - Generate funds to develop additional incentives and financing
 - Time certain building performance standards
 - Permitting regulations
 - Electric ready, voluntary replacements, end of life, additions and alterations
 - Electrification ready at the time of sale

- Implementing all for residential sector would reach almost half of CAP No.1 goal

- Environmental and financial equity

- Noise and setback requirements likely need to be modified

- GHG reductions and cost effectiveness trade-offs

REQUESTED DIRECTION

- Provide direction to the Environmental Quality Commission (EQC) and city staff on additional analysis, education, and community engagement and/or desired timelines:
 - Adopt an ordinance to prohibit the installation of new gas equipment in buildings throughout the city
 - Protect low income residents by providing direct funding and considering rental protections
 - Reduce the “hassle factor” through education, personalized consultation services, providing free electrification plans, and streamlining the permitting process
 - Develop a long-term plan/roadmap to phase out natural gas



THANK YOU

Environmental Quality Commission Recommendation to City Council

Josie Gaillard, Tom Kabat, and Angela Evans

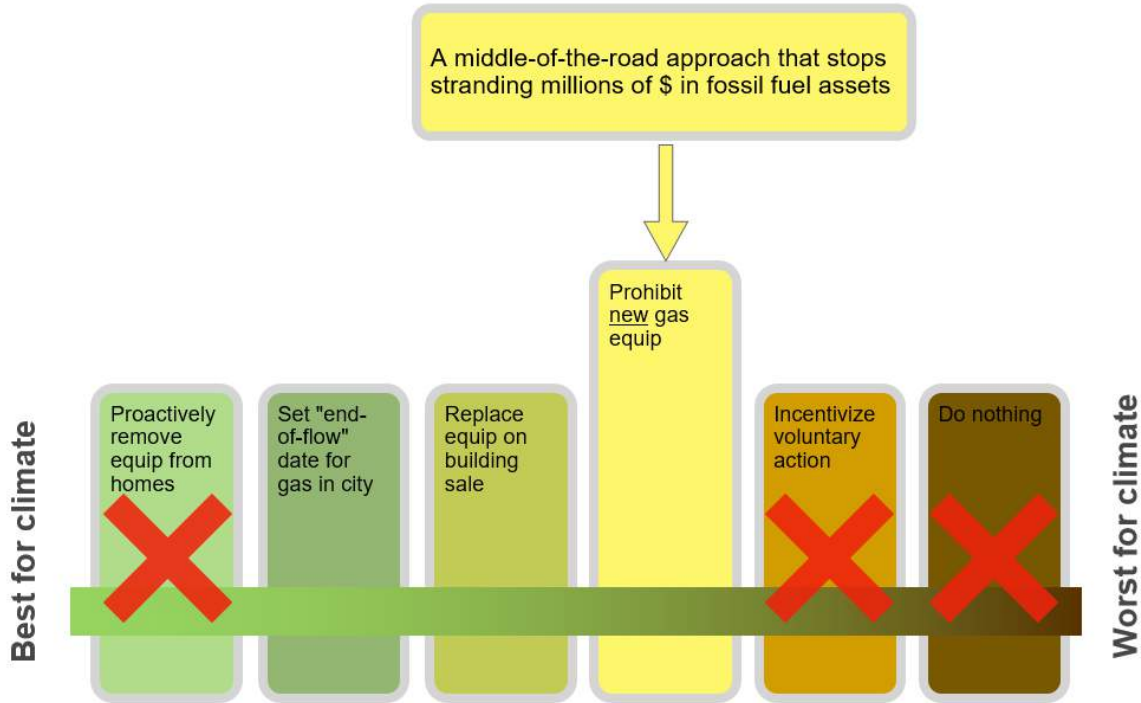
"Today's IPCC ... report is a code red for humanity. The alarm bells are deafening, and the evidence is irrefutable: greenhouse gas emissions from fossil fuel burning and deforestation are choking our planet and putting billions of people at immediate risk. Global heating is affecting every region on Earth, with many of the changes becoming irreversible."

UN Secretary-General Antonio Guterres

Not on Track to Meet Goals

- Menlo Park is not currently on track to meet its adopted climate goals: 90% emissions reduction by 2030
- Not on track for Paris Climate Goals
- Not on track for GHG cuts required for 1.5°C
- Not on track for GHG cuts required for 2.0°C
- IPCC's 6th Assessment (August 9, 2021)

EQC Recommendation



EQC Recommendations

To meet CAP #1 goal, we recommend 6 actions that can be grouped as follows:

- Design for **equity and affordability**
- Reduce practical **barriers**
- Develop **policy**

Design for equity and affordability

1. Allow UUT to be collected at voter-approved levels (council action required) and establish a dedicated fund to support building decarbonization
2. Identify partners for funding and financing programs, including a specific low-income turnkey program

Reduce Barriers

3. Develop program proposals to reduce "hassle factor" for building owners. Could include solutions like:
 - Contractor education, including "amp diet" training
 - Building owner education
 - Permit simplification for electrification projects
 - Concierge service, including free electrification plans

Develop the policy

4. Begin outlining an ordinance
 - **Core authority? Prohibiting new gas appliances in the city**
 - **What buildings? Residential single family and multi-family**
 - **What appliances? New furnaces, water heaters and other gas devices that need a permit**
 - **Trigger? Permit application**
 - **Special protections? Hardship exemptions, waivers, no "renovictions"**

5. Begin public engagement immediately
 - Public outreach meetings plus additional actions per staff recommendations
 - Cover: Climate Action Plan, CAP #1, 41% of GHGs from buildings, IPCC methane findings and the framework of the ordinance (above)
 - Take public input and report back to council

6. Develop a long term plan/roadmap to phase out natural gas

Summary of EQC Recommendation

To recap, we recommend that 6 actions be taken in parallel and completed as soon as possible:

1. Allow UUT to be collected at voter-approved levels (council action required) and establish a dedicated fund to support building decarbonization
2. Identify partners for funding and financing programs, including a specific low-income turnkey program
3. Develop program proposals to reduce "hassle factor" for building owners
4. Begin outlining ordinance to prohibit the installation of new gas appliances that require permits
5. Begin formal public engagement immediately
6. Develop long term plan/roadmap to meet CAP #1 goal

THANK YOU

Agenda item F1
Frengiz Surty, resident

Dear Menlo Park City Council Members,

I am the leader of the Menlo Park Climate Team. A rapidly growing, passionate group of more than 40 residents across several districts, who believe a clean energy future is in our hands.

A key to this is the transition away from natural gas. I heartily support the EQC's policy recommendations and believe an ordinance prohibiting the installation of new natural gas equipment in homes and buildings is essential for the City to meet its stated greenhouse gas reduction targets by 2030.

Menlo Park has a reputation as a local and national climate leader, and many of us have been proud to hear of cities and towns, near and far, that have followed our lead over the past year. Now, the Council has an opportunity to continue to solidify this leadership by stepping into a bold implementation phase. Additional initiatives including streamlining permitting for electrification, providing building owners with a free electrification plan and creating a fund to electrify all low-income residences are part of this multi-pronged, complex effort. It isn't easy and the time will never be right.

Please accept the EQC's recommendations.

Thank You,
Frengiz Surty

Agenda item F1
Martin Rosenblum, resident

Thank you for the opportunity to address the electrification project. This is a difficult and complex issue, but one that is very important to address Menlo Park's contribution to climate change.

Equity and perceived equity are very important to achieve success in convincing the public of the necessary changes to city codes and costly capital requirements for residents and businesses. Perceived equity is the fairness that is judged by all participants.

The report discusses contractor and equipment availability. For an electrification goal of 95% in 2030, I believe the resources will be put under serious stress. This will result in substantial increases in the prices of contractor services and equipment. I do not know, if there was an attempt to address this quantitatively in the report calculation. There may be extensive delays in getting onto qualified contractors' schedules. It will be important to work with regional and state governments to mitigate these limitations. Working with the equipment suppliers may be needed to smooth the demand curves.

I make these observations based on my recent experience of having a new roof installed on our small home. This was a conventional job with conventional technology. However, 4 of 7 contractors did not bid on the job and 2 of the 3 bids were for 50% more (with no apparent justification) than the successful bid. The contractor who did the job informed me that he routinely bid on jobs that were 5 to 15 times more costly than ours. I feel fortunate to have gotten the work done competently and on schedule.

Agenda item F1 James Lockhart, resident

Dear Menlo Park City Council:

We write in regard to Agenda Item F1 for the Aug. 31 Council meeting, which involves study of the Environmental Quality Commission's recommendation to electrify 95% of existing buildings in Menlo Park by eliminating gas appliances.

We are strong supporters of efforts to reduce greenhouse gas emissions (electric vehicle owners, 40-year Sierra Club members, etc.). However, we strenuously object to the proposal to force retro-fitting of electric heating appliances when existing gas heating appliances need to be replaced. The Environmental Quality Commission has not taken into consideration the hardship, the great cost, and the environmental cost of retro-fitting the older homes in Menlo Park which cannot add new major electric appliances without the installation of new electric service which would necessitate major house rewiring with exterior and interior walls demolished, etc.

We are 73 years old and have lived in Menlo Park for more than 35 years. Our home was built in 1964 and has 100-Ampere electric service, which was common at the time of construction. The following statement of 100-Amp service capabilities comes from www.thespruce.com/electrical-service-size-of-my-home-1152752 :

" 100-amp service provides enough power for a small home without electric heating. This can supply an electric range and dryer, plus general lighting and receptacle outlets. "

We fully utilize all of this 100-Amp service; in fact, to charge the electric vehicle, we have to unplug the electric dryer. For us to upgrade to the 200- or 250-Amp service need for electric space and water heating would be enormously expensive and would require moving out of our home for an extended period. We would have to have PG&E install the upgraded service wiring to our home, along with new metering and main disconnect (requiring cutting into exterior walls). We would have to relocate, upgrade, and totally rewire our circuit breaker panel -- every single circuit would have to be rewired. We would then have to run additional 220-Volt high-current feed lines to the various heating appliance areas, requiring ripping out sheetrock walls throughout the house. Costs of \$25,000 to \$30,000 could be incurred in addition to relocation costs.

We are not alone in facing enormous costs and extended relocation if forced retro-fit electrification were to be required. Many older homes in Menlo Park have only 100-Amp electric service, while some homes have only 60-Amp service. Low income residents could be forced out of their homes by requirements for retro-fitted electrification. The Commission report states "Most residents can fully electrify their homes on their existing panels...", but no data to support this contention are provided. On what data is this contention based?

While elimination of gas heating in new and significantly-remodeled homes makes sense, forced retro-fitting of older homes having limited electric service certainly does not. We sincerely hope the Council will see the impracticality and potential huge burden on homeowners of such action.

Sincerely,

Jim & Kathy Lockhart

Agenda item F1
Knute Ream, resident

The Environmental Quality Commission has a laudable bias towards protecting and preserving the environment, but this unchecked bias is not producing objective recommendations. The draft materials they have presented so far vastly understate the realistic cost of conversion from natural gas to electric, and are very misleading about the contribution of natural gas towards global warming. Unburned methane is the demon here, and the reality is that natural gas burns very cleanly, producing primarily water vapor and CO₂. Two other highly relevant facts that are conveniently omitted from the reports:

1) California is heavily dependent on natural gas-fired power plants to handle the electrical demand surge that happens late afternoon into early evening when solar panels are not producing, but A/C, cooking, etc are still at peak. There will eventually be a transition to power storage methods to mitigate this, but it won't be large scale anytime soon

2) Natural gas production is largely a by-product of extracting crude oil; if large scale shifts are made away from using natural gas, it creates another problem. Historically, natural gas was burned off in flares in the oil fields as an unwanted by-product until other uses were found and a market developed. Without a natural gas market to use it, the primary choice is to waste it in flares (for safety reasons); why not use it productively instead in a clean burning natural gas power plant?

Ultimately, this "problem" of natural gas vs electric appliances will be solved by economics. The costs in the draft study to date are not realistic or sustainable, and it is not a solution to magically make the conversion "affordable" by increasing taxes to fund conversion subsidies. (That only plays games with the exorbitant costs involved and won't have enough positive environmental impact to be worth the huge cost)

I implore the city council to be objectively rational when considering these recommendations! The draft report is only giving you part of the story, from a very biased perspective.

Agenda item F1
Caitlin Darke, resident

Mandating electric appliances is short sighted and will create bigger problems for MP residents and is cost prohibitive. Its bad enough that you passed, without a vote, new construction electric appliances. The climate change if affected by fossil fuels won't be helped by little Menlo Park. The big time offenders are in different countries. How do you think electricity is generated let alone transported. we loose about 30-40 percent of the power in the transmission of the electricity. will you build another sub-station in Menlo Park - where will that be? Whose property will you take to house the sub stations we need to support the demand? The reports and numbers you have are not realistic. I just upgraded a sub panel in my house and know that your estimates are off. this is the individuals choice and should be voted on - and you need real experts weighing in on these issues.

Ive met and talked with the Mayor and Rebecca Lucky on these issues and both agree your mandates have gone too far and are not appropriate.

Have any of your council members turned your house GREEN and adopted all the electric appliances or will this be similar to the Clinton Health Care plan where the representatives where exempt from the plan?

These ideas may make you feel good but won't move the needle in terms of climate change.

Agenda item F1 M Buerger, resident

I am concerned that the EQC report is incomplete and underestimates the economic costs and adverse outcomes associated with mandating the use of electricity in place of natural gas within Menlo Park. Items requiring further study include:

a) The current grid's inability to provide reliable electrical service 24 hours a day, especially during the hours of 4pm to 9pm when users are being warned of brownouts and limits on electricity use. The study does not address these problems and appears to assume that these current issues and any needed expansion of the electricity supply will somehow occur with little or no adverse impact on costs. Layering a mandate on top of the current failing system is putting the cart before the horse.

b) The cost estimates used.

1) There are indications that the projected replacement costs could be much higher than what the study used. These projected costs should be vetted by independent third parties, who do not have a vested interest in the outcome, along with comment from members of the community.

2) An evaluation of the likelihood of different scenarios based on various ongoing costs of electricity and gas should be incorporated into the study. For one example, a greater reliance on electricity will place greater upward price pressure on electricity costs in the future -- just as reduced gas use could lead to higher unit costs for natural gas. The underlying assumptions of how electricity and gas cost scenarios are likely to play out, under a mandate and then compared to a no-action approach, is fundamental to the cost-benefit analysis and should be better understood and certainly more fully delineated.

b) The disparate impact of the mandates on marginalized communities. "Unintended consequences" can lead to forms of systemic racism, especially if community leaders ignore the potential of such impacts up front. With a sweep of the hand, the report appears to minimize the size and scope of the marginalized communities, which are impacted, and further analysis should be undertaken before any action is taken. For example, the number of lower to moderate income families that are affected could well be more than the number postulated in the report. In addition, if building owners are expected to absorb the added upfront costs through rent increase limitations, such a taking, or even the pass-through of such upfront costs, could lead to a deterioration of housing stock in marginalized communities, potentially resulting in disparate adverse impact to those communities down the road.

Finally, any such mandate would represent a sweeping assault on personal liberty and property rights, which runs contrary to the principles and values of a free society. People, who are not placed under the yoke of government edicts and regulation but rather are free to act with resilience and innovation, can slow if not stop human-induced climate change. Helping people to understand the trade-offs, using persuasion, and leading change by example are far better ways to encourage such resilience and innovation.

Please send this report back for further work, with consideration on how to achieve real change without using autocratic measures.

Agenda item F1
Sloane Citron, resident

As someone who owns four homes in Menlo Park and two businesses, I am outraged that the city council believes it has any business whatsoever determining the use of gas in our homes and in our businesses. This is NOT your job and everyone I know is furious over this. You were elected to run our town, not decide energy policy. I will work tirelessly to unseat you in the next election if you vote in favor on this or any other similar issue regarding gas use.

Instead of spending time on an issue that citizens don't want and that is none of your business, why don't you bother to fix our crumbling, embarrassing downtown? Landlords can't fill space because of the decrepit state of the streets and sidewalks and the the allowance of homeless setting up offices on the sidewalks. THIS is your provenance and what you should be fixated on.

Agenda item F1

David Fogel, resident

In recent years California has been suffering from inadequate supply of electrical power. At cold night the temperature can deep below freezing. In all electric house when the power is cut off there are no means to heat it up. This can be death sentence to some people.

We all saw what happened in Texas when they lost electricity. People died because of it.

The city council has to figure out how to guarantee up power 99.99% of the time before they enact the all electric ordinance. Otherwise it will be a death sentence for some people when power runs out for prolong period of time on and freezing weather

Agenda item F1

Eduardo Pelegri-Llopart, resident

I fully support the goal of helping Menlo Park residents switch to full electric households. I'd encourage the commission to continue exploring how to accomplish this.

Our household transitioned from gas to electricity in the last few years. We currently have a full-house Heat Pump, Electric washer and dryer, two EV chargers, and a Heat Pump Water Heater. Our last remaining gas appliance is our stove. Based on our own experience and research, different energy uses encounter different challenges in this transition. It may make sense for the commission to explore a phased approach according to the uses.

* House heating is well suited to an electric heat pump system. The systems are silent, ergonomic, and very efficient. Pretty much all households can switch to them now.

* Refrigerators are already electric. Cooking stoves and ovens can switch now. Dryers can also switch now; there are condensing clothes dryers as well as heat pump clothes dryers.

* The biggest challenge is switching the water heating from gas to electricity.

If the current water heater is a gas tank system, there are reasonable heat pump water heaters available. The models available in California are suboptimal in two manners: (1) they require a 220V circuit, which may require electrical work, perhaps even expanding the main electrical panel. And (2), the models in California are relatively noisy. But there are valid HPWHs and I think it is feasible to switch to a HPWH when replacing an existing gas tank water heater.

The hardest scenario is if the current water heater is a tankless gas water heater, which is almost always installed outside the house. A HPWH cannot be installed outdoors - at least as far as I know. There may not be space in the garage, and installing it indoors may not be practical because of the 220V circuit and/or the noise.

My recommendation would be to split the use cases. Place strong requirements on the easy cases. Keep exploring solutions to how to replace a tankless gas water heater.

Two additional comments.

There are much better Heat Pump Water Heaters available outside of California. There are split systems from Mitsubishi, and systems from LG that are very quiet and use linear compressors. The Bay Area counties have a very strong consumer power; perhaps we can unite to help bring these products to our market.

And finally, full electrification is much easier when coupled with solar panels and batteries. Anything the council can do to simplify that installation and reduce its cost will help households move to full electrification.

Agenda item F1
Mark Cohen, resident

While we support efforts to reduce Menlo Park's energy footprint, we are strongly opposed to mandatory changes in existing residential equipment/appliances. Not only are the costs cited for new appliances extremely unrealistic (\$300 for a new dryer and \$800 for a new range/oven???), but they do not take into account additional expenses such as construction costs associated with removing and replacing built-in kitchen appliances, making room for a larger and noisier water heater, etc.

In addition, your own report shows that these changes are not cost-effective for the consumer. The tables on pages F-1.60 to F-1.63 are more than half red. Section 3.1 states: "The fuel substitution measures are not cost-effective on their own based on the On-Bill approach. ... Incentives reduce the first incremental cost substantially but not enough to make this measure cost-effective across the three vintages for either single family or multifamily.... The electric dryer and range measures are not cost-effective on their own."

Is there a plan to deal with the equipment backlogs, skyrocketing shipping costs, and long waiting lists for overworked contractors that will result from the sudden increase in demand for appliances and installation?

It is certainly desirable for Menlo Park, along with other California cities and towns, to attempt to make our air cleaner. But the first step should be to offer appropriate incentives to encourage residents to replace existing gas appliances with electric, not hurriedly passing an ordinance requiring substantial upfront expenses and hidden costs for all of Menlo Park.

Thank you,
Mark Cohen and Jackie Pelavin
Park Forest

Agenda item F1
Steven Carnevale, resident

Before you consider next steps on the Environmental Quality Commission's recommendations to electrify 95 percent of existing buildings in Menlo Park , I would suggest you listen to your constituents, most of whom may not be climate activists and many of whom are voters. A good place to start would be the current Nextdoor thread on this issue: Banning Natural Gas in Menlo Park. There are currently 110 public comments from locals on this issue. If you are not aware of the issues suggesting that the recommendations are impractical (e.g. prohibitively expensive or impossible to implement in smaller homes) or quixotic (e.g. not sustainable by current grid infrastructure), then your staff is doing a poor job. Please inform yourselves before deciding on your course of action.

Agenda item F1 Carol Carnevale, resident

Tomorrow evening you will be receiving the Environmental Quality Commission's recommendations for electrifying 95% of the City's buildings.

I am writing in opposition to this proposal.

Homeowners should have the choice of how they wish to run their households. If they choose to embrace these environmental recommendations it should be up to them to pay for the costs associated with converting to alternative power sources.

For homeowners whose homes are currently powered by gas, the proposed measure places a potential undue hardship. Some of the older homes were not constructed with these more modern systems in mind, and the cost to install and comply with electrification could pose an undue burden. Some of the city's oldest homes were built with fuse boxes and some of the earlier electric panels may not accommodate the power requirements of some of the more modern systems.

We already live in a time when we routinely hear commercials about limiting our electric usage during certain peak times. Why should the City Council even be considering a measure such as this one at a time when the power structure is insufficient to meet current needs? Should the priority not be to work with the power company to upgrade and increase their ability to supply the power needs that will be required should the City achieve its 95% goal of electrification? Once that assurance is received, then pursue your goals of converting residents to electrification. Until the power companies are able to reliably provide the needed supply it is Menlo Park residents and businesses that will suffer in the event of a power failure.

In addition, at this particular time, when homeowners and builders are severely constrained due to supply chain failures, why would the City Council even be considering a further restriction? My microwave went out about 3 months ago – I thought I would replace it. The appliance store indicated that it could not supply an appliance that fits the opening in the cabinet. Instead, they recommended a repair. The part has been on order for 3 months! Talk to any homeowner in the midst of a remodel or a builder and they will tell you that there are supply chain problems!

I would encourage our officials who were elected to represent us to consider the burdens this proposal makes on the population that elected them to their offices.

Agenda item F1 Frank Tucker, resident

I have read the staff report for agenda item F1, and I have a few comments about its application to single family residences. While I would generally support requirements for use of heat pump based water and space heating equipment for new home construction, and perhaps for major remodels, I do not think that it makes sense to require this technology for all appliance replacements.

1. Per the table on page F-1.60, replacement of gas clothes dryers and cooking appliances produces miniscule GHG reductions (less than 10% of the reductions possible with water and space heating equipment), and replacement of these two types of appliances is not cost effective for the homeowner under any of the analyses performed. Requiring installation of electric appliances in these two categories at time of replacement certainly does not make sense. Also, disallowing gas cooking equipment in new construction will not produce meaningful GHG reduction, due to the small amount of GHGs associated with these sorts of gas-fired appliances.

2. The analysis of costs associated with gas water heater replacement with HPWH neglects the costs that will accrue to many homeowners if the water heater must be relocated. For example, my current, gas-fired water heater is installed in a 50 cubic foot closet, while manufacturers of HPWH units recommend installation in a space of at least 1000 cubic feet. This closet is also probably too small to install the recommended 80 gallon unit that would be required to make up for the longer recovery time of a HPWH. In my case, I would presumably have to relocate the water heater to my garage on the opposite side of the house, with significantly increased plumbing costs, in addition to the additional high capacity electrical circuit. My home is located in a large housing tract where this is a common situation.

3. As mentioned in several places in the staff report, the costs associated with replacing a gas-fired furnace with a heat pump space heater assumes that the home already has the refrigerant plumbing, outside pad and condensate drains associated with a pre-existing air conditioning system. Homes without existing AC will incur additional costs to add those facilities. Many older homes in Menlo Park do not currently have air conditioning installed, so installation of a heat pump system will incur those greater costs.

4. As mentioned on page F-1.59, "The fuel substitution measures are not cost-effective on their own based on the On-Bill approach", and this applies to both water heaters and space heaters. Later, the report describes that using the TDV cost analysis, which includes the "social costs" of GHG production, some of the alternatives are cost effective. Since most homeowners will easily understand the On-Bill analysis which shows that the heat pump equipment will directly cost them more than the gas-fired equipment over a 30 year time frame, the City will need to do a lot of consumer education to explain the significance of the TDV analysis, which reaches a different conclusion.

5. Also on page F-1.59 there is a comment that if a new PV installation is included, then some of the heat pump conversions become cost effective using On-Bill analysis. This ignores the fact that some home sites are ill-suited to rooftop solar installations due to shade from large trees or other limitations, and the fact that adding the cost of solar PV to their remodeling project may exceed the budget of many homeowners, even it does ultimately pay off over 30 years.

6. This subject has received very little public exposure in Menlo Park, and as suggested in the Staff Report, the City should launch a comprehensive public education effort to engage the public before enacting any new rules. Enacting a prohibition on new gas appliances without significant community discussion will generate a huge backlash.

Thank you for considering my comments on this matter.

Agenda item F1
Savita, resident

Please stop this effort to electrify existing and future buildings in Menlo Park. This is not only an overreach but it makes no logical sense. Hopefully you are aware of the blackouts, brownouts and failures of the electric power grid that we are already facing. We cannot become so dependent on a single source of energy. The requirements of this proposal are far too onerous. Home owners cannot simply swap out gas appliances for electric ones. If they do so, especially for major appliances like HVAC or water heating, they may be required to retrofit the entire electrical system for their home, costing hundreds of thousands of dollars. There is already a shortage of contractors available. PG&E is backed up and has difficulty delivering on requests as it is. This pursuit of turning the whole world "electric" needs to stop. You are actually harming our city with such proposals.

Agenda item F1
Gail Sredanovic, resident

I am writing in support of vigorous environmental action and am generally in support of ordinances that require replacement of gas appliances by electric when they come up for replacement or when the property is sold. I have some concerns for the complaints of some homeowners of potentially very burdensome expenses and hope this can be address so as not overburden residents, especially if they are low income. It seems that we all need a little more information before putting together a detailed plan.

For sure it seems not a heavy burden to replace gas stoves with electric stoves in the circumstances described.

Agenda item F1

Eduardo Pelegri-Llopart, resident

I support a move towards full electrification in Menlo Park.

I am providing the perspective of a single-family household. This is my second comment on this topic. The first one was focused in the challenges of households switching to electrical power. This one builds on some of that experience and on the impact of drought in our ability to generate hydroelectric power.

I'd encourage the city to facilitate further the installation of solar powers and batteries in our residences. This has multiple benefits:

- * Photovoltaic power is clean power
- * Batteries produce power after hours
- * This reduces the cost of electric power to the households
- * And this eliminates one of the factors limiting the conversion of house appliances to electric power.

Thanks for listening to this comment

Agenda item F1
Sue Kayton, resident

Please do not require replacing electric appliances with gas, except for brand-new construction or extensive remodels. Most older homes do not have sufficient electric service, and it can cost \$10,000 - \$25,000 to drop new electric service from the utility pole, replace the circuit breaker panels, break open the walls to run new wires, etc. Due to the difference in size of electric appliances, it may even be necessary to reconfigure kitchen cabinets and take away closet space inside a house, or move a water heater outdoors.

Agenda item F1
Sarah Bjorkman, resident

I am not supportive of the initiative to mandate 95% of users in Menlo Park to convert to all electric appliances.

Agenda item F1
Darlene Pylkkanen

I am an apartment building owner in Menlo Park. I oppose the mandate to electrify all appliances in MP. This will create a hardship for many who currently have gas appliances who can not afford to make the upgrade needed to support a replacement of an electric water heater or stove. Changing a gas water heater or stove to electric is not a small feat. It requires running 220 volt line and upgrading an electrical panel. These are costly upgrades. In addition, we already have rolling blackouts for PG&E so I don't believe our electrical provider will be able to support the electric demand with an electrification mandate. This is simply a bad idea.

Agenda item F1
Kevin Guibara, resident

Dear Council,

Please consider the hardship caused to residents vs. the potential gains. Changing all appliances to electric is not a reasonable action, saves very little greenhouse gas emissions and has enormous cost relative to the benefit.

This is an overreach of government. I do not want you to micromanage my life and all my actions.

Agenda item F1
Michael Barclay, resident

Please be very careful when imposing electrification requirements on existing homes, and especially don't underestimate the costs of electrification. For an older home, swapping an existing gas dryer or water heater for electric ones isn't as simple as replacing a \$500-\$1000 appliance. Many older homes will require upgraded electrical service to handle the new appliances. That upgraded service will often require extensive work, such as new electrical panels, new 240V power, and new wiring. If the house has a slab foundation, that could require ripping up the foundation and putting in a new foundation to run the wiring. If the City intends to pay for these retrofits, make sure the budget permits it.

Agenda item F1

Michael DeMoss, resident

At the next meeting on "Banning Gas" please publicly answers these questions, and email me a copy of the answers:

- 1) What will the typical family of 4, "all electric" homeowner, pay for electricity as compared to the existing home with gas heating, gas water heater, etc. if this plan was implemented today?
- 2) What energy source produces the current electricity in Menlo Park?
- 3) What energy source will be used to produce the additional electricity needed to replace gas usage?
- 4) isn't it better to have gas AND electric in case one of them fails, as happened in the recent blackouts?
- 5) Where has this has been tried and what was their findings? (reported conclusions)?
- 6) Has this been placed on a ballot for public approval. Is it legal to impose building restrictions based on politics? (there are 2 opposing sides to the question of climate change)
- 7) Will the city pay homeowners for the cost of conversion to electric, including electrician services and possibly remodeling expenses?
- 8) if an adjoining city or state does NOT implement "all electric" will businesses and individuals leave our city, in the same way many Californians have moved away because of oppressive Covid-19 lockdown restrictions?
- 9) If you are a believer in preserving our environment, as I am, shouldn't we find ways to accomplish this without dividing us even further?
- 10) Will Council members who vote to ban gas, pledge to immediately convert their homes and businesses to electricity?
- 10) Will Menlo Council members Publicly condemn China, India and other polluters, and demand that they ban gas and impose similar environmental restrictions?

Thanks,

Mike DeMoss

Attorney

Menlo Park, CA

Email: Lawreview@mac.com

Agenda item F1

Michael DeMoss, resident

Warning from PG&E Saturday 8/28/2021

Dear Valued Customer:

To help you and your family prepare and stay safe during potential power outages, information and resources are available.

We know how important reliable energy is to you and your family. That is why we are working nonstop to make our system safer and more resilient.

Power outages can happen at any time due to things like emergency repairs and active wildfires, so it is important to be prepared ahead of time. To keep you and your family safe during outages, here are some tips to consider:

Health

- Restock your first aid supplies.
- Plan for medications that require refrigeration.

Technology

- Use a portable charger to power cell phones and stay in touch.
- Use flashlights, not candles, to navigate in the dark.
- Keep two extra sets of batteries on hand and consider using a battery-powered radio.

Food

• Use coolers to keep food cold while the power is off. • Have a stock of shelf stable foods and drinking water. Be sure to include food for all members of your household, including pets.

Home

- Build and/or restock your supply kit using the Emergency Supply Kit Checklist.
- Have a backup key to replace electronic keys, locks and doors which need power to operate.

You can also stay informed with outage alerts. Sign up to be notified of an outage in your area and when to expect service to be restored. Notifications can be received by text, phone or email. To set up outage notifications, sign into your account and update your contact information at pge.com.

To prepare and practice an emergency plan, visit safetyactioncenter.pge.com. For more safety tips, visit pge.com/emergencypreparedness.

Sincerely,

PG&E Community Wildfire Safety Team

Based on the above warning from PG&E, dated Saturday 8/28/2021, "banning Gas is irresponsible".

Please submit this "gas ban" ordinance to the legal counsel for the city to determine if the city has the legal authority to impose rules that are based on environmental assumptions that are subject to honest debate.

I believe that the legal advice will advise, as I would, that the council: Submit the "NO GAS" "question/ordinance" to a ballot. Let the people that are affected decide something that is this important. Otherwise, the city will probably end up in a lawsuit for exceeding their authority.

This is a divisive issue. Banning gas has adverse health and economic outcomes.

Read the PG&E warnings above:

"Plan for medications that require refrigeration."

- Use a portable charger to power cell phones and stay in touch.
- Use flashlights, not candles, to navigate in the dark.

- Keep two extra sets of batteries on hand and consider using a battery-powered radio.

Do we really need to endure these unnecessary health and safety hazards?

Backup electric home and business generators are powered by GAS. Banning GAS is illogical.

Anyone who wants to disconnect their home or business from gas is free to do so.

We are still "The Land of the Free"

This proposed gas ban appears to be politically motivated, and is not otherwise justified.

Michael DeMoss Attorney

Menlo Park, CA

Agenda item F1
Linh Dan Do, resident

To Mayor Combs and the Members of the Menlo Park City Council:

Thank you for considering the EQC's recommendations on building electrification this evening.

Today was a beautiful day - blue sky, cool temperatures, sparkling sunshine. It was a welcome respite from the past few weeks of haze, ash, and smoke. However, I am under no illusions that everything is fine and that we don't need to act. We DO need to act, and like others in our community, I am looking to the City Council to approve the EQC's recommendations on building electrification - prohibit the installation of new gas equipment in homes & buildings throughout the city.

As a society, we banned DDT in 1972 because of its adverse effects on wildlife. We banned leaded gas in 1996 because it was damaging brain development in our children. We transitioned away from burning coal because it was causing acid rain and spewing pollutants into the air. Once believed to be a "better" fossil fuel, it is now known that natural gas is responsible for releasing methane, an extremely potent greenhouse gas and contributor to climate change. California has a history of leading the nation on environmental action. It is now time for California, and Menlo Park, to take the lead by banning natural gas.

Thank you.

Agenda item F1
Melissa Whitenight, resident

Dear Council Members,

Please do NOT pass this recommendation across Menlo Park! To be succinct - here are the main reasons to keep natural gas as an energy source for our town:

Energy Cost Reduction.

Energy Efficiency.

Environmentally Cleaner.

Heats Quicker.

Natural Gas is Paid for After Usage.

Continues to Work During Power Outages!

Perfect for Clean, Beautiful, and Warm Fireplaces.

Natural Gas Sourcing Rarely Requires any Foreign Imports.

First and foremost, California has, at best, an unreliable energy grid...exorbitant PG&E costs, fires and routine rolling brown-outs during the hottest time of the year are perfect examples of this short-sighted thinking but coupled with all the new housing units, cars and people in our little town is a perfect recipe for disaster.

While I acknowledge your desire to be among the first to go "all in" on electric, I am begging you to consider the exorbitant costs associated with this plan and the impact that will take on many of our residents that cannot afford it for one reason or another. Natural gas is the cleanest, safest, most efficient and cost effective form of energy - at the moment - to power our homes, pools, schools, businesses and appliances.

Agenda item F1

Robert Gould

(Statement of Dr. Robert Gould (SF Bay PSR), Menlo Park City Council, August 31, 2021)

I'm Dr. Robert Gould. After working as a Pathologist for over 30 years since 2012, I've been an Associate Adjunct Professor at UCSF School of Medicine, working in our Program on Reproductive Health and the Environment. I've been on the National Board of Physicians for Social Responsibility (PSR), since 1993, serving twice as President in 2003 and 2014.

Since 1989 I've also been President of San Francisco Bay PSR, for which I'm speaking today, representing hundreds of health professionals throughout our region, who speak for the health of our patients and communities, who are increasingly impacted by the unfolding public and environmental health impacts of global warming, and clearly connected issues of air pollution. Because of this we support rapid electrification of our infrastructure provided by renewable and sustainable, non-nuclear sources, as replacement for natural gas, in support of climate, respiratory and cardiovascular health.

Affordable and energy efficient housing is a public health imperative. The just released assessment by the Intergovernmental Panel on Climate Change is unequivocal in its call for urgent action to ensure an energy efficient and fossil free future. Creating market-based and other incentives to reduce reliance on gas appliances is health protective, not only in their climate benefits of moving away from fossil fuel extraction use, but also because gas stoves and other appliances can be a large source of toxic pollution in homes, reaching levels of pollution that would be illegal in outdoor settings. Children, especially those of color, are particularly at risk of respiratory illnesses, such as asthma, associated with gas appliance pollution, and lower income households may be at higher risk of exposure.

As such, we strongly support the recommendations made by Menlo Park's Environmental Quality Commission calling for:

1. Enacting an ordinance prohibiting the installation of new gas equipment in homes & buildings throughout the city;
2. Protecting low-income residents through proposed "Equity Guardrails" (a full home electrification program for 1500 LMI households funded by the UUT or other funds); and,
3. A suite of programs to ease and assist home- and building owners with electrification.

In summary, we at SF Bay PSR urge you to use this critical opportunity to demonstrate the City of Menlo Park's leadership and commitment to rapidly develop the more economical, pollution-free buildings we need now for the optimal public, environmental and climate health we and future generations so deserve.

Sincerely,

Robert M. Gould, MD
President
San Francisco Bay Physicians for Social Responsibility

Agenda item F1
Margaret Osborn, resident

Dearest Council Members,
I vehemently Oppose, vehemently Oppose the Ban of Natural Gas in Menlo Park.
No one has the power to dictate what appliances I use in my home.
I come from an immigrant family who fled a government that dictated what was is good for the masses.
STOP! I oppose the ban on Natural Gas.

Agenda item F1

James Tuleya

Honorable Menlo Park Leaders,

I am an on-the-ground energy industry expert who works directly with residents of Menlo Park and others in PG&E's territory, and I would like to ask you to strongly support your EQC's set of recommendations to meet the city's goal of electrifying 95% of its buildings by 2030.

From both my work and community service experience, the EQC's recommendations will provide a very feasible, cost-effective, smart path forward that is needed now and that will benefit the residents and businesses of Menlo Park. While these steps will be challenging, they will not lead to significant burdens or risks to members of the community and will provide a cost-effective way to help residents and businesses be best prepared and resilient for the future. Supporting the EQC recommendations also will provide your city's needed ongoing leadership to our region and state in showing the way to keeping communities thriving, safer and healthier in the face of increasing climate disruption and the other proven harms caused by burning fossil fuels in our homes and other buildings and from the related methane leaks throughout the lifecycle of fossil fuel extraction, distribution and end-use.

Within PG&E's set of customer energy programs, I've worked almost the past dozen years designing and implementing energy programs that save energy and money for businesses and residents -- about eight years at PG&E and the last four with the free HomeIntel program that Home Energy Analytics runs for PG&E to serve residential customers, including those of Peninsula Clean Energy. My experience is also informed from serving as Vice-Chair of the City of Sunnyvale's Community Advisory Committee for their recent climate action plan update and as a member of Silicon Valley Clean Energy's Customer Programs Advisory Group. For this and other expert input provided to help the regional community over the past five years, I earned one of only two SVCE 2021 Community Energy Hero Awards.

As an Energy Coach for the free HomeIntel program, I have worked directly with hundreds of Bay Area residents to help them understand their home energy usage and costs and to find ways to save energy and money through energy efficiency. And since there are proven and available electric appliance technologies that are dramatically more energy efficient than the best fossil-fueled options for any home appliance, I've already worked closely with dozens of city and regional residents on how to make smart upgrades to their homes by choosing to Go Electric and how to operate these more-advanced electric appliances cost-effectively. My experience has shown that these improvements to existing homes can be challenging, but they benefit from information, guidance and planning ahead -- and they are clearly feasible without significant burden to most people. And as the EQC recommends, disadvantaged residents would benefit from some additional city support in some cases.

While we all know that the changes that come with progress can be puzzling and uncomfortable for many people, that can be eased with good information, guidance and other support that needs to continue to be developed and offered to the community. As is envisioned by the EQC's excellent set of recommendations, while this community support continues to accelerate from local, regional, state and national entities, more bold, rational action is needed now to provide for the best future for the community of Menlo Park and beyond.

I implore you to please continue to demonstrate the necessary informed leadership for your city, our region and our state by voting to support the EQC's well-informed and well-reasoned recommendations for the smart path to upgrade Menlo Park's buildings to be safer, more-healthy, more-resilient and to operate more cost-effectively.

Thank you for your consideration.

Kind Regards,
James

James Tuleya
Resident of nearby Sunnyvale and serving Menlo Park resident clients through the free HomeIntel energy savings program provided by PG&E

Agenda item F1
Rich Wipfler, resident

This is an excerpt from the Staff Report under consideration in this agenda item, Page F-1.4

"Menlo Park's noise and building setback regulations likely need to be modified to accommodate building electrification needs as some heat pump equipment require more space and some models of heat pumps exceed the city's noise ordinance requirements."

I object to the first of the two proposals.

Adjusting the building setback regulations makes sense but allowing more intrusive noise levels for adjacent neighbors to say nothing of noise levels heard at the street detracts greatly from the great privilege that we enjoy, the privilege of living in a serene city. Please resist the urge to make our neighborhoods noisier.

And while you're at it how about banning gas-powered leaf blowers in Menlo Park?

Agenda item F1
Rich Wipfler, resident

At the most recent meeting of the Environmental Quality Commission one or more of the commissioners suggested that the 95% Electrification rules should be adopted very rapidly by the City Council in order to prevent too many residents from anticipating the proposed code changes and replacing their aging gas-fired appliances with new gas-fired units in advance of the implementation. I urge the City Council NOT to rush the process but rather to take the time to do it right. The proposed changes, especially the house electrification retrofits that are triggered by appliance failure, are fraught with details and subtleties that will cause homeowners to spend money unwisely if the City doesn't sweat the details. Sweating the details may prolong the process but that's the price we need to pay for being in the vanguard of city electrification. Menlo Park will set a benchmark if we do it right. If we rush it and do it wrong then other cities will be discouraged from following an aggressive electrification path.

Agenda item F1

Dave Sharp, resident

To The City Council:

This ill-conceived natural gas ban proposal being rushed through under the cover of summer (when most people are not paying attention) needs to be stopped dead in its tracks at today's City Council Meeting.

Look at the City Manager's Report – all the holes in this proposal are right there in plain sight:

1) The financials used to justify this are highly rigged/biased/unrealistic in 4 main ways:

First, a 30 year equipment life expectancy for residential heat pumps? No way!
Heat pump hot water heaters only last 10-15 years (12.5 years on average), while heat pump space heaters only last 10-20 years (15 years on average).
Don't believe me? A simple Google search will reveal the truth.

Second, generous PCE BayREN rebates are included, with no guarantee that they will be still around when people are forced to make this costly transition.

Third, as pointed out later in the report, costly building upgrades may be required in terms of additional wiring and electrical panel upgrades – and those are not accounted for in the analysis.
I myself have a 20 year old house (not that old) that I would put solar on except for the fact that the associated electrical upgrades needed (\$5000+) make it a no-go economically. I'd be looking at that same 5k "hidden cost" under this proposal – no thanks!

Fourth and finally, the cost of electricity keeps on steadily rising, and will continue to rise as wildfire response and cleanup costs (owing to PG&E's incompetence) and prevention costs (including the \$20 billion PG&E now plans to spend to bury 10,000 miles of power lines to reduce wildfire risk) are factored in. That needs to be taken into account in this analysis.

Bottom-line: The financials used to justify this aren't worth the paper they are printed on!

2) They don't even try to financially justify the conversion of clothes dryers and gas stoves (because they can't – from the report: "These were not found to be cost effective").

3) The ban isn't even going to yield great results – from the Report:

"It is important to note that an ordinance to prohibit the installation of new gas equipment in buildings would yield the least amount of greenhouse gas emission reductions compared to other options studied (except for electric ready requirements.)"

and later on:

"It is important to note that no one electrification policy or program will be the silver bullet to achieve 95 percent electrification of the existing building stock by 2030."

4) Excessive noise is now going to be allowed to accommodate heat pumps – from the Report:

"Menlo Park's noise and building setback regulations likely need to be modified to accommodate building electrification needs as some heat pump equipment require more space and some models of heat pumps exceed the city's noise ordinance requirements."

5) Heat pump water heaters are not yet ready for prime-time – from the Report:

"For heat pump water heaters, contractor knowledge is still relatively low making it difficult in some cases to find an available and knowledgeable contractor."

Sorry, but I don't want to be a guinea pig for contractor training.

6) Berkeley – the most environmentally progressive city out there – isn't even pushing things as fast as Menlo Park is trying to do – and it's not even close. Per the Report, they are taking a phased approach that stretches out to 2045 with a first phase (from 2021-25) that involves "community engagement, pilot projects, education campaigns, well trained job force, additional incentive programs, and larger scale financing programs, and collaboration with regional and state partners" And their second phase would include requirements/mandates implemented "only after accessible funding and financing programs are in place or the upfront costs of electrification reach parity with gas infrastructure."

You know that you're "off the rails" when you're off to the left of Berkeley on something

Bottom-line: You need to send this proposal packing, City Council members – or else in this time of recall mania, you will each find yourself a target once word gets out of what this proposal involves and just how bad (and costly) of a mandate it is.

Dave Sharp
MP Resident

Agenda item F1
Bruce Hodge

I'm writing in support of electrifying Menlo Park's building stock. In order to avoid catastrophic climate change, we need to avoid putting into service any new fossil-fueled devices in buildings.

Currently, it's sufficient to simply replace devices at their end-of-life with ultra-efficient electric devices. The two most important device classes to focus on are water heaters and furnaces.

The operation cost of gas vs. new electric devices is about the same. The additional upfront cost required to electrify can be financed via low-interest loans, just as we finance long-term costs such as buying a house or building.

The City of Menlo Park should work together with Peninsula Clean Energy to provide on-bill financing and installation programs that make it easy for building owners to upgrade on a per-device basis. Carbon Free Palo Alto has designed a program called BE Smart that can serve as a template for these next steps.

BE Smart - <https://tinyurl.com/txpxn328>

Act today, do not delay!

Bruce Hodge
Founder, Carbon Free Palo Alto
hodge@tenaya.com

Agenda item F1
John Wu, resident

I strenuously object to the plan mandating replacement of gas appliances with electric. It's a radical proposition juxtaposed with PG&E's current inability to provide inexpensive, reliable electricity. Functionally, a local effort of this sort is unlikely to have any significant effect on the global environment; it's an insignificant drop in the ocean when compared to the unrestrained emissions coming from places like China and Congress. If adopted, the new rules would inflict heavy costs and regulatory impositions on homeowners and businesses, while not accomplishing anything of environmental significance.

While an effort has been made to quantify costs inflicted by the new requirements, estimates can be notoriously unreliable (think high-speed rail) and there are outside factors that aren't well addressed in the plan. I only skimmed through the proposal, and forgive me if I missed it, but I didn't see a chapter addressing the problem of PG&E, a huge wildcard. Our electricity costs are among the highest in the nation and we already suffer from periodic rolling blackouts and forest fires caused by deficient power lines. There are also natural and man-made electromagnetic events that could adversely affect, or disable, electrical grids. Shifting everything over to electricity is forcing a lot of eggs into one basket. And the basket is suspended in the air by a cherry-picker operated by PG&E. Is anyone nervous about that or what?

In summary, I believe the EQC proposal is ineffective and carries a high potential cost. It's an expensive nuisance that won't accomplish anything except expense and nuisance. It's also dependent on PG&E, which has demonstrated a notable propensity to fall short of even its basic goals: giving us reliable, cheap electricity and not burning down our forests. I hope the town will reject the proposal in its entirety, rip it up, burn it and then pour water on it so it doesn't start a forest fire. Oh, and not on a clean air day.

Agenda item F1

Brian Boate

I support the proposed policy and recommend immediate action.

Agenda item F1
Cynthia Cima-Ivy, resident

The report, while well-intentioned, seems to gloss over both the cost and delay associated with mandating gas appliance replacement with electrical, upon mere failure, rather than during a major remodel. The city cannot simply spring a month-plus long project and thousands of dollars of additional expense on someone who has just lost their hot water or furnace or cooktop. It's no wonder the city report actually assumes residents will ignore the permit requirement! (pF-1.10). This is a very odd way to encourage people to do the right thing by the climate. I sent an email to the city council address which has more specific comments based on first impressions of this proposal, and also some personal experiences that might illustrate the kind of convincing the city will have to do in its desire to fully electrify in a place not known for its reliable electrical grid. Please think this through and come up with a plan that will actually achieve the goal, not encourage people to ignore it. There are many issues associated with these changes, for example, such as the additional noise of heat pumps, that should not be casually addressed with an offhand reference to an unspecified change in the noise ordinance. The city should want to encourage a harmonious transition to clean electric, not foment discord and a resistance to change, which I feel this particular proposal will do.

Agenda item F1
Kathy Neuman, resident

Dear MP Council,

In addition to the concerns my husband and I raised via e-mail on 8/30/21 (from 'engrwip@aol.com'), please take note of the excellent list of "further considerations" by TRC on Page F-1.129 of the staff report.

Item #6 - to achieve "early wins" - stood out in particular as very good advice.

Both of the consultant reports make note of the "gaps in analysis" relating to electrification of existing homes with gas furnaces and gas water heaters in interior spaces. Modifications in these homes will be much more challenging than those with gas furnaces and gas water heaters in the garage.

Perhaps there is an "early win" to be achieved by focusing initially on existing homes with gas furnaces and gas water heaters in the garage?

Then tackle the approach to the existing homes with equipment in interior spaces when the EQ Commission has completed their analysis of this "gap" - and has more real-life experience with the homes that fall into the "early wins".

Thank you very much for holding this study session on such an important subject.

Sincerely,

Kathy Neuman

Agenda item F1 Randy Avalos, resident

The EQC has explicitly stated in their meetings their goal is to lead by example for the rest of the state. What Menlo Park does will not make a difference in climate change, but if others can copy Menlo Park then maybe it can feasibly make a difference.

It is an ambitious and well intended belief. However, this lacks two fundamentally things to realize that leadership dream.

1. Household and public engagement. A carrot and stick, that is heavy on the stick, mentality has not proven to be successful in over a century of electrification. Community engagement and buy in is the most meaningful way to set about change. Historically this has required household level engagement, not just advertising at a market or worse yet waiting until a formalized and constrained council meeting. A council meeting and format will only serve to entrench beliefs. If councilors believe in this change, the community is best served by them getting out on the street and explaining block by block. Engaging households to bring about electrification has over a century of examples of failure and success. The current recommendation neglects this experience. Please take time to learn from the past or we will repeat the failures.

2. Scalability. A wealthy community can subsidize and bear the explicit and implicit taxes for this forced change. There will of course be those at the margins that cannot bear the cost, and who will not qualify the subsidies, thus forcing them out of compliance and/or the community. I hope the Council sees this exclusion as something that cannot be tolerated. These burdens are much harder to bear in communities with average or below means. Infrastructure is difficult and costly to change once implemented. Yet no testing or even engineering design looks to have been done at small block scale to determine what will fail at a block level. No thought is given to how this can scale. Much less has any thought been given to how this community will communicate the success and failures to other communities across this state.

Please advise the EQC to work through historical examples of community engagement to develop a context for engagement. Conduct field studies on what works and what does not work in specific neighborhood engagements so that when council goes block by block they have a framework to work.

Advise EQC to work with planning commission and city planning on defining key restrictions. Advising residents on specifics such as not upgrading panels, before considering system design and implementation design, is a terrifying and short sighted recommendation. Invest in small scale test to address potential solutions to scaling issues. Report on findings to the public and council. Much more work is needed.

Explicitly design a way to engage other communities so that they can learn from our process, what works, and importantly what does not. If the goal is to lead, then design to lead.

Acting just to act will have unintended consequences. Acting with purpose will require much of your time and dedication. Both may benefit a politician but only one requires the cost of being a leader.

Please act and engage thoughtfully,
Randy

Agenda item F1
Bret Andersen

Please support the continued work of the EQC on the transition to all-electric buildings by 2030. I am commenting as a resident of neighboring Palo Alto and member of Carbon Free Palo Alto.

The majority of people in the Bay Area share Menlo Park's sense of obligation to do our part to reduce the bulk of local fossil fuel use by 2030. Our communities must electrify the bulk of existing buildings by 2030. But it is not easy. And telling folks that they should switch to electric without the policy and programs required to make it feasible for them raises valid concerns.

Your EQC has laid out a clear and actionable way to move forward at the necessary scale and bring the benefits of electrification equitably to all members of your community. Their policy proposal to prohibit the installation of new gas devices with programs to make that easy for residents is the only way forward to meet the 2030 goal.

We applaud Menlo Park for serving as an example and inspiration to Palo Alto and other communities by taking the mass electrification need in the fight against global warming seriously.

Sincerely,

Bret Andersen, Carbon Free Palo Alto

Agenda item F1

Wendy McPherson, resident

I applaud the city for trying to move forward on the climate change issue. However, I think we are at the 'premature' stage. There are too many unanswered questions and issues to be resolved not the least of which is grid capabilities. And a big financial one! It is one thing to be on the cutting edge of a technological/environmental issue and another to be on the bleeding edge. Menlo Park residents will be on the bleeding edge.



SPECIAL MEETING MINUTES – DRAFT

Date: 7/20/2021
Time: 5:00 p.m.
Location: Zoom

Closed Session

A. Call To Order

Mayor Combs called the meeting to order at 5:06 p.m.

B. Roll Call

Present: Combs, Mueller, Nash, Wolosin
Absent: Taylor
Staff: City Manager Starla Jerome-Robinson, City Attorney Nira F. Doherty, and Attorney Martin Ambacher from McNamara, Ney, Beatty, Slattery, Borges & Ambacher LLP

C. Agenda Review

No changes.

D. Closed Session

D1. Claimant: Lexington Insurance Company/San Mateo County Schools Insurance Group

Agency Claimed Against: City of Menlo Park

E. Adjournment

Mayor Combs adjourned to the closed session at 5:11 p.m.

Special Session

F. Call To Order

Mayor Combs called the meeting to order at 5:58 p.m.

G. Roll Call

Present: Combs, Mueller, Nash, Wolosin
Absent: Taylor
Staff: City Manager Starla Jerome-Robinson, City Attorney Nira F. Doherty, City Clerk Judi A. Herren

H. Presentations and Proclamations

H1. Proclamation: Menlo Park Historical Association 50th Anniversary (Attachment)

- Pamela Jones spoke in support of the proclamation and expressed gratitude to the City Council for their support of the Menlo Park Historical Association.

Mayor Combs read the proclamation (Attachment).

Menlo Park Historical Association President Tim Johnston accepted the proclamation.

I. Consent Calendar

- I1. Accept the City Council meeting minutes for June 10, 15, 22, 28, and 29, 2021 (Attachment)
- I2. Adopt Resolution No. 6644 approving grant of easement to the United States of America for construction of a water control structure within Bedwell Bayfront Park for the South Bay Salt Pond Restoration project and authorize the city manager to execute the easement agreement (Staff Report #21-138-CC)
- I3. Adopt Resolution No. 6646 authorizing the city manager to execute an agreement with California department of education to reimburse the City for Belle Haven Child Development Center operational costs in fiscal year 2021-22 (Staff Report #21-141-CC)
- I4. Adopt Resolution No. 6647 modifying the City Council's regular meeting schedule to include August 17 and 31, 2021 (Staff Report #21-142-CC)

ACTION: Motion and second (Nash/Wolosin) to approve the consent calendar, passed 4-1 (Taylor absent).

J. Public Hearing

- J1. Hold a public hearing and consider any protests related to the collection of the stormwater regulatory fee on the tax roll; adopt Resolution No. 6645 authorizing the collection of the stormwater regulatory fee on the tax roll at the existing rates to implement the City's stormwater management program (Staff Report #21-140-CC) (Presentation)

Assistant Engineer Scott Jaw made the presentation (Attachment).
The City Council received clarification on the number of protests received.

ACTION: Motion and second (Nash/ Wolosin) to adopt Resolution No. 6645 authorizing the collection of the stormwater regulatory fee on the tax roll at the existing rates to implement the City's stormwater management program, passed 4-1 (Taylor absent).

K. Informational Items

- K1. City Council agenda topics: August 2021 (Staff Report #21-139-CC)
 - Pamela Jones requested clarification on when reimaging the police department will come before the City Council.
- K2. Recruitment status report as of July 14, 2021 (Staff Report #21-143-CC)

Web form public comment on item K2 (Attachment).

L. Adjournment

Mayor Combs adjourned the meeting at 6:24 p.m.

Judi A. Herren, City Clerk

NOVEL CORONAVIRUS, COVID-19, EMERGENCY ADVISORY NOTICE

On March 19, 2020, the Governor ordered a statewide stay-at-home order calling on all individuals living in the State of California to stay at home or at their place of residence to slow the spread of the COVID-19 virus. Additionally, the Governor has temporarily suspended certain requirements of the Brown Act. For the duration of the shelter in place order, the following public meeting protocols will apply.

Teleconference meeting: All members of the City Council, city staff, applicants, and members of the public will be participating by teleconference. To promote social distancing while allowing essential governmental functions to continue, the Governor has temporarily waived portions of the open meetings act and rules pertaining to teleconference meetings. This meeting is conducted in compliance with the Governor Executive Order N-25-20 issued March 12, 2020, and supplemental Executive Order N-29-20 issued March 17, 2020.

- How to participate in the closed session and regular meeting
 - Submit a written comment online up to 1-hour before the meeting start time:
menlopark.org/publiccommentJuly20 *
 - Access the meeting real-time online at:
[Zoom.us/join](https://zoom.us/join) – Meeting ID 998 8073 4930
 - Access the meeting real-time via telephone at:
(669) 900-6833
Meeting ID 998 8073 4930
Press *9 to raise hand to speak

(670) Written public comments are accepted up to 1-hour before the meeting start time. Written messages are provided to the City Council at the appropriate time in their meeting.

- Watch meeting:
 - Cable television subscriber in Menlo Park, East Palo Alto, Atherton, and Palo Alto:
Channel 26
 - Online:
menlopark.org/streaming

Note: City Council closed sessions are not broadcast online or on television and public participation is limited to the beginning of closed session.

Subject to Change: Given the current public health emergency and the rapidly evolving federal, state, county and local orders, the format of this meeting may be altered or the meeting may be canceled. You may check on the status of the meeting by visiting the City's website www.menlopark.org. The instructions for logging on to the webinar and/or the access code is subject to change. If you have difficulty accessing the webinar, please check the latest online edition of the posted agenda for updated information (menlopark.org/agenda).

According to City Council policy, all meetings of the City Council are to end by midnight unless there is a super majority vote taken by 11:00 p.m. to extend the meeting and identify the items to be considered after 11:00 p.m.



SPECIAL MEETING MINUTES – DRAFT

Date: 7/29/2021
Time: 5:00 p.m.
Location: Zoom

Special Session

A. Call To Order

B. Roll Call

Present: Combs, Mueller (arrived at 6:34 p.m.), Nash, Taylor, Wolosin
Absent: None
Staff: City Manager Starla Jerome-Robinson, City Attorney Nira F. Doherty, City Clerk Judi A. Herren, Police Chief Dave Norris

C. Study Session

C1. Community conversation on reimagining police services (Presentation)

Police Chief Dave Norris made the presentation (Attachment).

Web form public comment on item C1 (Attachment).

- Lynne Bramlett spoke in support of fostering relationships between MPC Ready the Menlo Park police department (MPPD) and using the housing element update to explore local housing opportunities for public safety staff.
- Jeff Fenton requested clarification on the decrease in MPPD staff and the resignation of former Police Chief Dave Bertini.
- Vicky Robledo spoke in support of healing the relationship between MPPD and residents as well as utilizing volunteer patrols.
- Katie Behroozi spoke in support of MPPD bicycle patrols with the use of electronic bicycles and for MPPD staff and officers being a role model for residents.
- Pamela Jones spoke in support of a report on MPPD officer mindfulness training and the issues related to institutional bias.
- Josue Moreno-Silva spoke on concerns related to police officers being intimidating and requested clarification on plans to remedy the fear people have of police officers.
- Soody Tronson spoke in support of MPPD reform and consideration on reevaluating all staff where institutional bias is a problem.
- Adina Levin spoke on former Police Chief Dave Bertini's resignation and in support of reimagining MPPD.
- Phil Barre spoke in support of the conversation and the need to focus on Menlo Park public safety.
- Café Zoë owner Kathleen Daly spoke in support of MPPD reform and the need to understand mental health for residents and MPPD officers.
- Kevin Gallagher spoke in support of MPPD reform and requested clarification on the plan for public engagement.
- Paul Kick spoke on concerns of rule avoidance in Menlo Park parks and the impacts to residents

safety related to non-residents and homeless.

- Gail Redanovic spoke on concerns related to mental health services not being available 24/7 and immigration violation protocols.
- Tracie VanHook spoke in support of MPPD reform and the need for community input during budgeting for reimagining MPPD.
- Alejandro Vilchez spoke in support of MPPD reform and encouraged open community engagement.
- Miyko Harris-Parker spoke in support of MPPD reform, community input during the budget process, and funding a community position in the MPPD.
- Mary Kuechler spoke in support of MPPD reform.

The City Council received clarification on the needed resources to start the process, timelines from pilot programs, civil immigration violation policy, COVID-19 procedures, ShotSpotter, body camera video release, realistic timelines, and the daily police log.

The City Council discussed Taser use, K-9 unit, mutual aid, the need for community engagement, foot and bicycle patrols, impacts to services with reduced MPPD staff, revision of policies that encourage racism and bias, advisory commission, current MPPD training and classes, the increase of youth suicides, intimidation of police appearance, repetitive calls for service, the 2013 Belle Haven Visioning Process, and a City Council subcommittee.

The City Council directed staff to return with a City Council Reimagining Public Safety Ad Hoc Subcommittee with City Councilmembers Taylor and Wolosin serving, to be officially confirmed at a regular Council session.

D. Adjournment

Mayor Combs adjourned the meeting at 8:31 p.m.

Judi A. Herren, City Clerk

NOVEL CORONAVIRUS, COVID-19, EMERGENCY ADVISORY NOTICE

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- How to participate in the meeting
 - Submit a written comment online up to 1-hour before the meeting start time:
menlopark.org/publiccommentJuly29 *
 - Access the meeting real-time online at:
[Zoom.us/join](https://zoom.us/join) – Meeting ID 997 7407 7462
 - Access the meeting real-time via telephone at:
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Meeting ID 997 7407 7462
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SPECIAL MEETING MINUTES – DRAFT

Date: 8/16/2021
Time: 5:00 p.m.
Location: Zoom

Closed Session

A. Call To Order

Mayor Combs called the meeting to order at 5:07 p.m.

B. Roll Call

Present: Combs, Mueller, Nash, Taylor, Wolosin
Absent: None
Staff: City Manager Starla Jerome-Robinson, City Clerk Judi A. Herren, Legal Counsel Charles Sakai, Police Chief Dave Norris, Interim Human Resources Manager Kristen Strubbe

C. Closed Session

C1. Closed session conference with labor negotiators pursuant to Government Code §54957.6 regarding labor negotiations with the Menlo Park Police Officers' Association (POA)

No reportable action.

D. Adjournment

Mayor Combs adjourned the meeting at 6:55 p.m.

Judi A. Herren, City Clerk

NOVEL CORONAVIRUS, COVID-19, EMERGENCY ADVISORY NOTICE

On March 19, 2020, the Governor ordered a statewide stay-at-home order calling on all individuals living in the State of California to stay at home or at their place of residence to slow the spread of the COVID-19 virus. Additionally, the Governor has temporarily suspended certain requirements of the Brown Act. For the duration of the shelter in place order, the following public meeting protocols will apply.

Teleconference meeting: All members of the City Council, city staff, applicants, and members of the public will be participating by teleconference. To promote social distancing while allowing essential governmental functions to continue, the Governor has temporarily waived portions of the open meetings act and rules pertaining to teleconference meetings. This meeting is conducted in compliance with the Governor Executive Order N-25-20 issued March 12, 2020, and supplemental Executive Order N-29-20 issued March 17, 2020.

- How to participate in the closed session and regular meeting
 - Submit a written comment online up to 1-hour before the meeting start time:
menlopark.org/publiccommentAugust16 *
 - Access the meeting real-time online at:
[Zoom.us/join](https://zoom.us/join) – Meeting ID 852 7343 5801
 - Access the meeting real-time via telephone at:
(669) 900-6833
Meeting ID 852 7343 5801
Press *9 to raise hand to speak
Written public comments are accepted up to 1-hour before the meeting start time. Written messages are provided to the City Council at the appropriate time in their meeting.
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menlopark.org/streaming

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REGULAR MEETING MINUTES – DRAFT

Date: 8/17/2021
Time: 5:00 p.m.
Location: Zoom

Closed Session

A. Call To Order

Mayor Combs called the meeting to order at 5:07 p.m.

B. Roll Call

Present: Combs, Mueller (arrived at 5:15 p.m.), Nash, Taylor, Wolosin
Absent: None
Staff: City Manager Starla Jerome-Robinson, City Attorney Nira Doherty, Assistant City Attorney Nicholas Muscolino

C. Agenda Review

The City Council pulled items L1., L2., and N2.

Staff reported that items M1. and M2. will be presented together.

D. Closed Session

- D1. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Government Code § 54956.9)
Michael Zeleny v. Rob Bonta, et al (Case No. 17-cv-07357-RS)
Claimant: Michael Zeleny
Agency Claimed Against: City of Menlo Park
- D2. CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION (Paragraph (1) of subdivision (d) of Section 54956.9) Case number: 21-CIV-01717
- D3. Closed session conference pursuant to Government Code §54957(b)(1) regarding public employee performance evaluation of the City Attorney

E. Adjournment

Mayor Combs adjourned to the regular session at 7:50 p.m.

Regular Session

F. Call To Order

Mayor Combs called the meeting to order at 7:56 p.m.

G. Roll Call

Present: Combs, Mueller, Nash, Taylor, Wolosin
Absent: None

Staff: City Manager Starla Jerome-Robinson, City Attorney Nira Doherty, City Clerk Judi A. Herren

H. Report from Closed Session

No reportable actions.

I. Presentations and Proclamations

- I1. Certificates of Recognition: Boy Scout Troop 222 (Attachment)
Mayor Combs read the certificates of recognition (Attachment).

J. Public Comment

None.

K. Study Session

- K1. Provide direction on parks projects and the use of remaining Measure T bond funds (Staff Report #21-153-CC) (Presentation)

Public Works Director Nikki Nagaya made the presentation (Attachment).

The City Council received clarification on bond payments and impacts to tax payers, costs and efficiencies associated with issuing bonds once or twice, impacts to current projects, the recreation in-lieu fee funds, prioritization and resourcing options, and park capital projects.

The City Council discussed how Measure T funds are allotted and the need for equity across the Districts.

The City Council directed staff to proceed with issuing Measure T bonds for the total remaining amount (\$14.3 million), proceeding with using \$8.8 million in funds for the Menlo Park Community Campus (MPPC) and existing parks projects in the capital improvement plan after returning to City Council for the mid-year budget amendment expected in early 2022. Any additional future expenditures of Measure T funds are to return to the City Council prior to budgeting those funds.

L. Consent Calendar

- L1. Receive Finance and Audit Committee's recommendation and adopt Resolution No. 6651 approving the 2021-22 investment policy for the City and the former Community Development Agency of Menlo Park (Staff Report #21-146-CC)

The City Council directed staff to update the "Delegation of authority" as the "administrative services director or designee". The City Council also requested an information item to provide transparency and clarification on successor agency (Resolution No. OB18-001 and Staff Report #18-001-OB).

- L2. Approve the 2021-22 Finance and Audit Committee work plan (Staff Report #21-147-CC)

The City Council discussed fossil fuel investments and updating the investment policy, climate action

plan (CAP) costs related to the Finance and Audit Committee (FAC) scope, timeline, and environmental and social responsibility.

The City Council directed staff to strike analysis of the CAP from the FAC work plan.

- L3. Adopt Resolution No. 6652 to reduce the posted speed limit in school zones consistent with the California Vehicle Code (Staff Report #21-149-CC)
- L4. Award an on-call construction contract to Catos General Engineering, Inc. for the on-call asphalt and concrete repair services project (Staff Report #21-150-CC)
- L5. Award a construction contract to Terramark General Engineering Contractors, Inc. for the Sharon Park walkways reconstruction project (Staff Report #21-151-CC)
- L6. Award a construction contract to Tricon Construction for the Burgess Pool chemical room renovations (Staff Report #21-152-CC)
- L7. Adopt Resolution No. 6653 to authorize the city manager to accept the grant deed for 1155 Merrill St. Unit 209, execute all documents necessary to complete the purchase and approve the appropriation of below market rate housing funds not to exceed \$355,000 to purchase and retain the property in the below market rate housing program (Staff Report #21-154-CC)
- L8. Establish the Reimagining Public Safety Ad Hoc Subcommittee and appoint City Councilmembers Taylor and Wolosin (Staff Report #21-155-CC)

ACTION: Motion and second (Nash/ Combs) to approve the consent calendar with an update to the investment policy’s “Delegation of authority” as the “administrative services director or designee”, striking the analysis of the CAP from the FAC work plan, and returning an information item on the successor agency, passed unanimously.

M. Regular Business

- M1. Adopt Resolution No. 6648 to ratify successor agreement between the City of Menlo Park and the Service Employees International Union Local 521 expiring June 30, 2023 (Staff Report #21-144-CC) (Presentation)
- M2. Adopt Resolution No. 6649 to ratify a successor agreement between the City of Menlo Park and the American Federation of State, County, and Municipal Employees Local 829 expiring June 30, 2023 (Staff Report #21-145-CC) (Presentation)

Interim Human Resources Director Kristen Strubbe made the presentation (Attachment).

The City Council requested clarification on stipends and/or CalPERS credit for advisory bodies and received clarification on questions regarding year 1 and year 2 versus the compounded amounts summed for both years.

ACTION: Motion and second (Combs/ Taylor) to adopt Resolution No. 6648 to ratify successor agreement between the City of Menlo Park and the Service Employees International Union Local 521 expiring June 30, 2023, passed unanimously.

ACTION: Motion and second (Combs/ Taylor) to adopt Resolution No. 6649 to ratify a successor agreement between the City of Menlo Park and the American Federation of State, County, and Municipal Employees Local 829 expiring June 30, 2023, passed unanimously.

- M3. Receive report and recommendation from the city manager recruitment services request for proposals subcommittee, select a firm to perform the recruitment, authorize Mayor to execute professional services agreement with the selected firm, and appoint a City Council Ad Hoc Subcommittee for City Manager Recruitment (Staff Report #21-156-CC)

City Attorney Nira Doherty and City Councilmembers Taylor and Wolosin introduced the item.

The City Council received clarification on the cost of The Hawkins Company proposal.

The City Council discussed the value of the Hawkins Company, the City Council Ad Hoc Subcommittee for City Manager Recruitment, and the current city manager's engagement in the recruitment, and public engagement.

ACTION: Motion and second (Nash/ Taylor) to select The Hawkins Company to perform the recruitment, authorize Mayor to execute professional services agreement with The Hawkins Company, passed unanimously.

ACTION: Motion and second (Nash/ Wolosin) to establish a City Council Ad Hoc Subcommittee for City Manager Recruitment appointing City Councilmembers Taylor and Wolosin, passed 4-1 (Mueller dissenting).

ACTION: By acclamation, the City Council continued the meeting past 11 p.m.

- M4. Adopt Resolution No. 6650 of the City Council of the City of Menlo Park determining that the City Council shall take an appeal of the Planning Commission's June 21, 2021, approval of the Menlo Uptown Development Project (Staff Report #21-148-CC)

City Attorney Nira Doherty introduced the item.

The City Council received clarification on a City Council versus City Councilmember appeal.

ACTION: Motion and second (Nash/ Combs) to adopt Resolution No. 6650 of the City Council of the City of Menlo Park determining that the City Council shall take an appeal of the Planning Commission's June 21, 2021, approval of the Menlo Uptown Development Project, passed unanimously.

N. Informational Items

- N1. City Council agenda topics: August to September 2021 (Staff Report #21-157-CC)
- N2. Update on the Menlo Park local hazard mitigation plan annex to the San Mateo County hazard mitigation plan (Staff Report #21-158-CC)

The City Council received clarification on the multijurisdictional local mitigation plan timeline.

O. City Manager's Report

None.

P. City Councilmember Reports

P1. Confirm voting delegate for the League of California Cities annual conference (Attachment)

ACTION: By acclamation, the City Council selected Mayor Combs as the voting delegate and City Councilmember Wolosin and Vice Mayor Nash as alternates for the League of California Cities annual conference.

Q. Adjournment

Mayor Combs adjourned the meeting at 11:29 p.m.

Judi A. Herren, City Clerk

NOVEL CORONAVIRUS, COVID-19, EMERGENCY ADVISORY NOTICE

On March 19, 2020, the Governor ordered a statewide stay-at-home order calling on all individuals living in the State of California to stay at home or at their place of residence to slow the spread of the COVID-19 virus. Additionally, the Governor has temporarily suspended certain requirements of the Brown Act. For the duration of the shelter in place order, the following public meeting protocols will apply.

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menlopark.org/publiccommentAugust17 *
 - Access the meeting real-time online at:
[Zoom.us/join](https://zoom.us/join) – Meeting ID 998 8073 4930
 - Access the meeting real-time via telephone at:
(669) 900-6833
Meeting ID 998 8073 4930
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STAFF REPORT

City Council Meeting Date: 8/31/2021
Staff Report Number: 21-163-CC

Consent Calendar: **Adopt Resolution No. 6654 approving the funding agreement with Hibiscus Properties for the construction of raised median islands on Chilco Street and authorizing the city manager to execute the funding agreement**

Recommendation

Staff recommends the City Council adopt Resolution No. 6654 (Attachment A) approving the funding agreement (Attachment B) with Hibiscus Properties for the construction of raised median islands on Chilco Street and authorizing the city manager to execute the funding agreement.

Policy Issues

City Council authorization of a funding agreement is required as the agreement amount exceeds the city manager's expenditure authority.

Background

The Facebook campus expansion project was approved November 1, 2016, and includes two new office buildings (Buildings 21 and 22) and a limited service hotel. The project also includes approximately two acres of publicly accessible open space and a bicycle/pedestrian bridge over Bayfront Expressway. Applicable entitlements and agreements for the project included an amended and restated conditional development permit, a development agreement, rezoning, a zoning ordinance text amendment, heritage tree removal permits, and a below market rate (BMR) housing agreement. The development agreement and associated conditional development permit were amended in November 2017 as part of applicant-initiated revisions to the approved campus expansion project.

As part of the development agreement, per sections 7.1.6 and 7.1.7, Facebook agreed to design and construct streetscape improvements along Chilco Street between Bayfront Expressway and Hamilton Avenue. The improvements include roadway, intersection, pedestrian, bicycle, landscaping and stormwater improvements. The addition of raised median islands as shown in Attachment C is a desired improvement that is not required per the development agreement. The median islands would help to reduce speed and increase safety along Chilco Street as described further in the following section.

Analysis

In consultation with the Menlo Park Fire Protection District (MPFPD) during the Chilco Street streetscape design phase, it was determined that a minimum street width of 28.5 feet is needed for a fire truck to navigate the street during commute peak hours. This width would mean each travel lane is more than 14 feet wide and is anticipated to encourage higher than desired travel speeds. As a result, a center median

was considered to narrow the lanes in an effort to slow traffic while still providing clear travel path for fire vehicles. A total of five median islands are proposed along the section of Chilco Street that parallels the Dumbarton Rail tracks, where speeding tends to occur. The islands would be 6.5 feet wide and would separate the two 11-foot travel lanes. The islands would have a concrete finish and rolled curbs, which would allow emergency vehicles to drive on or over them if needed. The MPFPD is supportive of the project and has reviewed the design plans.

The proposed median island improvements are estimated to cost \$335,650. This cost assumes that the work would be consolidated into an approximately two-week timeframe, during which time Chilco Street would be fully closed to the traffic from Constitution Drive to Terminal Avenue. Access to entrances and driveways would be permitted. The approved detour plan is included as Attachment D. Without the full road closure, only half of the medians could be built at a time, thus extending the construction time to approximately four weeks and resulting in an additional cost of approximately \$270,000.

Funding agreement

The City will reimburse the project developer 100 percent of the cost of the median island improvements. The funding agreement is included as Attachment B.

Next steps

If authorization of the funding agreement is approved by the City Council, the agreement will be executed and outreach regarding the traffic detour would occur immediately. Construction would begin approximately the week of September 13, 2021.

Impact on City Resources

Funding for the median island improvements is included in the capital improvement plan (CIP) under the Chilco streetscape and sidewalk installation project. The project is funded through the building construction street impact fee. The available fund balance is \$926,695. The total project construction budget, including contingencies, inspection, and contract administration is \$389,358. The estimated construction cost would not exceed this amount, per Table 1.

Table 1: Construction budget	
Item	Amount
Project construction bid	\$335,650
Inspection services	\$3,360
Construction contingency (15%) (held by City)	\$50,348
Total construction cost	\$389,358

Upon completion of construction, if funds remain, they will be returned to the CIP budget.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Resolution No. 6654
- B. Funding agreement
- C. Median island exhibit
- D. Detour plan

Report prepared by:
Theresa Avedian, Senior Civil Engineer

Report reviewed by:
Karen Pachmayer, Interim Assistant Public Works Director

RESOLUTION NO. 6654

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
APPROVING THE FUNDING AGREEMENT WITH HIBISCUS PROPERTIES,
LLC FOR CONSTRUCTION OF MEDIAN ISLANDS ALONG CHILCO STREET
AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE FUNDING
AGREEMENT**

WHEREAS, the Owner owns real property commonly known as 1 Facebook Way, Menlo Park, California; and

WHEREAS, the 1 Facebook Way project (the “Campus Expansion” project) is currently under construction; and

WHEREAS, pursuant to sections 7.1.6 and 7.1.7 of the Development Agreement, Owner is required to complete certain capital improvements on Chilco Street (the “DA Chilco Street Improvements”); and

WHEREAS, the City believes that the addition of raised median islands (the “Chilco Street Median Islands”) as specified in Exhibit A to the Funding Agreement would reduce vehicle speed and improve safety along Chilco Street. The addition of the Chilco Street Median Islands is not required by the Development Agreement and will be fully funded by the City; and

WHEREAS, the Parties recognize that it would be more efficient, less disruptive, and more cost-effective for the Owner to construct the Chilco Street Median Islands at the same time as the DA Chilco Street Improvements, in consultation with the City, subject to all the terms and conditions set forth in the Funding Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Menlo Park that the City Council does hereby approve the Funding Agreement with Hibiscus Properties, LLC for construction of the Chilco Street Median Islands; and

BE IT FURTHER RESOLVED that said City Council authorizes the City Manager to execute the Funding Agreement.

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I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the thirty-first day of August, 2021, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this thirty-first day of August, 2021.

Judi A. Herren, City Clerk

FUNDING AGREEMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620



This Funding Agreement ("Agreement") is made this day of _____, ("Execution Date") by and between the City of Menlo Park ("City") and Hibiscus Properties, LLC, a Delaware limited liability company ("Owner"), each of which is referred to herein individually as "Party" and jointly as "Parties."

RECITALS:

WHEREAS, the Owner owns real property commonly known as 1 Facebook Way, Menlo Park, California ("Property"); and

WHEREAS, a project to expand the Property (the "Campus Expansion" project) is currently under construction; and

WHEREAS, pursuant to sections 7.1.6 and 7.1.7 of the Development Agreement between the Parties (as amended, the "Development Agreement") and relating to the Campus Expansion project, Owner is required to complete certain capital improvements to Chilco Street (the "DA Chilco Street Improvements"); and

WHEREAS, the City believes that the addition of raised median islands as specified in Exhibit 1 to this Agreement (the "Chilco Street Median Islands") would reduce vehicle speed and improve safety along Chilco Street. The addition of the Chilco Street Median Islands is not required by the Development Agreement and will be fully funded by the City; and

WHEREAS, the Parties recognize that it would be more efficient, less disruptive, and more cost-effective for the Owner to construct the Chilco Street Median Islands at the same time that Owner constructs the DA Chilco Street Improvements, subject to all the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the Parties agree as follows:

SECTION 1: SCOPE OF WORK AND REPORTING

1.1 Owner shall be responsible for the following Scope of Work:

- 1.1.1 Owner shall hire a consultant for designing the Chilco Street Median Islands, hire a licensed Contractor to perform the work to complete the Chilco Street Median Islands and pay for all such work (subject to the City's reimbursement obligation set forth below).
- 1.1.2 Owner shall be responsible for procuring and handling all material required for the completion of the Chilco Street Median Islands.
- 1.1.3 Owner shall be responsible for construction of the Chilco Street Median Islands in accordance with the approved project plans to the reasonable satisfaction of the Public Works Director.
- 1.1.4 Owner will provide the City a copy of the construction contract for the Chilco Street Median Islands (the "Construction Contract"), and Owner will obtain the City's prior written approval before entering into the Construction Contract. Owner will not enter into change orders relating to the Chilco Street Median Islands without the City's prior written approval. Owner shall deliver copies of all invoices related to the Chilco Street Median Islands to the City.
- 1.1.5 Owner acknowledges that public funds are being used to pay for the Chilco Street Median Islands and shall ensure that any construction work related to the Chilco Street Median Islands includes payment of prevailing wages as defined and required by law.

SECTION 2: ACCESS TO RECORDS AND RECORD RETENTION

2.1 At all reasonable times, Owner will permit, upon request, the City to access all reports, designs, drawings, plans, specifications, schedules and other materials prepared, or in the process of being prepared, for the Chilco Street Median Islands by Owner or any contractor or consultant of Owner. Owner will provide copies of any documents and Autocad drawings described in this Section to the City upon request and the City may use them for construction of the Chilco Street Median Islands without further approval from Owner. Owner will assist the City with obtaining any third party consents required for the City to use any documents or Autocad drawings described in this Section. Owner and the City will retain all records pertaining to the work for at least three years after completion of the Work.

SECTION 3: FUNDING AND PAYMENT

3.1 Upon completion of the Chilco Street Median Islands and the City's receipt of invoices showing amounts paid by Owner for the Chilco Street Median Islands work, the City shall pay Owner for all costs that Owner incurred with respect to the Chilco Street Median Islands, provided however, that the City's reimbursement obligation shall not exceed the estimated cost to construct the Chilco Street Median Islands plus a 15% contingency. The Chilco Street Median Islands are estimated to cost \$335,650. Therefore, the City's reimbursement obligation shall not exceed \$385,998.

SECTION 4: TERM

4.1 This Agreement shall commence upon the Effective Date. Prior to the execution of the Construction Contract, this Agreement may be terminated by either Party in writing with sixty (60) days advance written notice. This Agreement shall end upon completion of the Chilco Street Median Islands unless terminated earlier.

SECTION 5: INDEMNIFICATION AND INSURANCE

5.1 Owner agrees, while engaged in the work provided for in this Agreement, to place and maintain suitable safeguards sufficient to prevent injury to any persons and to indemnify, defend and save harmless the City, its officers, representatives, and employees from and against any and all claims for loss, injury or damage resulting from the prosecution of said work except to the extent any claim arises out of the sole negligence or willful misconduct of the City. To the full extent required by applicable federal and state law, Owner and its contractors and agents shall comply with California Labor Code Section 1720 et seq. and the regulations adopted pursuant thereto, and shall be solely responsible for carrying out the requirements of such provisions. Owner shall indemnify, defend and hold the City and its elected and appointed officers, officials, employees, agents, consultants, and contractors harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages.

5.2 City agrees, while engaged in the work provided for in this Agreement, to place and maintain suitable safeguards sufficient to prevent injury to any persons and to indemnify, defend and save harmless Owner, its officers, representatives, and employees from and against any and all claims for loss, injury or damage resulting from the prosecution of said work except to the extent any claim arises out of the negligence or willful misconduct of Owner.

SECTION 6: MISCELLANEOUS

6.1 Notices. All notices required or permitted to be given under this Agreement must be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or by personal delivery or overnight courier to the appropriate address indicated below or at such other place(s) that either Party may designate in written notice to the other. Notices are deemed received upon delivery if personally served, one day after mailing if delivered via overnight courier, or two days after mailing if mailed as provided above.

To Owner: Hibiscus Properties, LLC
 c/o Facebook, Inc.
 Attn: Facilities
 1 Hacker Way
 Menlo Park, CA 94025

Cc: Facebook, Inc.
 Attn: Real Estate Counsel
 1 Hacker Way
 Menlo Park, CA 94025

To the City: City of Menlo Park,
 Attn: Public Works Director
 701 Laurel Street
 Menlo Park, California 94025-3409

Cc: City of Menlo Park
 Attn: City Attorney
 Burke, Williams & Sorensen, LLP
 181 Third Street, Suite 200
 San Rafael, CA 9490

6.2 No Waiver. No waiver of any default or breach of any covenant of this Agreement by either Party will be implied from any omission by either Party to take action on account of such default if such default persists or is repeated. Express waivers are limited in scope and duration to their express provisions. Consent to one action does not imply consent to any future action.

6.3 Assignment. The Parties are prohibited from assigning, transferring or otherwise substituting their interests or obligations under this Agreement without the written consent of all other Parties, provided however, Owner shall have the right to assign this Agreement to an affiliated entity of Owner that is the owner of the Property without the prior approval or consent of the City.

6.4 Governing Law. This Agreement is governed by the laws of the State of California as applied to contracts that are made and performed entirely in California.

6.5 Compliance with Laws. In performance of this Agreement, the Parties must comply with all applicable Federal, State and local laws, regulations and ordinances.

6.6 Modifications. This Agreement may only be modified in a writing executed by both Parties.

6.7 Relationship of the Parties. It is understood that this Agreement does not create the relationship of agent, servant, employee, partnership, joint venture or association between the parties.

6.8 Intentionally Deleted.

6.9 Warranty of Authority to Execute Agreement. Each Party to this Agreement represents and warrants that each person whose signature appears hereon is authorized and has the full authority to execute this Agreement on

behalf of the entity that is a Party to this Agreement.

6.10 Severability. If any portion of this Agreement, or the application thereof is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining portions of this Agreement, or the application thereof, will remain in full force and effect.

6.11 Counterparts. This Agreement may be executed in counterparts.

6.12 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to its subject matter and supersedes any prior or contemporaneous written or oral agreement between the parties on the same subject.

(Signatures on following page)

IN WITNESS WHEREOF, the Parties have hereunder subscribed their names the day and year indicated below.

Hibiscus Properties, LLC
a Delaware Limited Liability Company

By: _____

Name:

Title:

CITY OF MENLO PARK, a municipal corporation

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date

CITY OF MENLO PARK:

Starla Jerome-Robinson, City Manager

Date

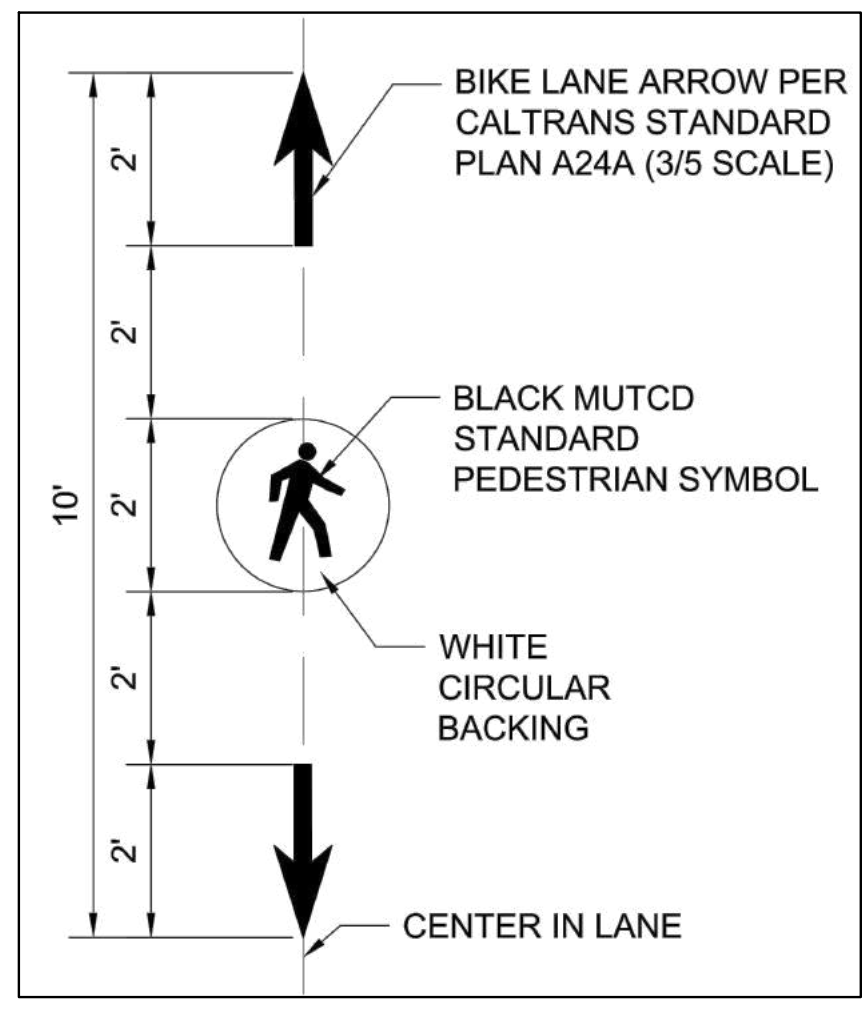
ATTEST:

Judi A. Herren, City Clerk

Date

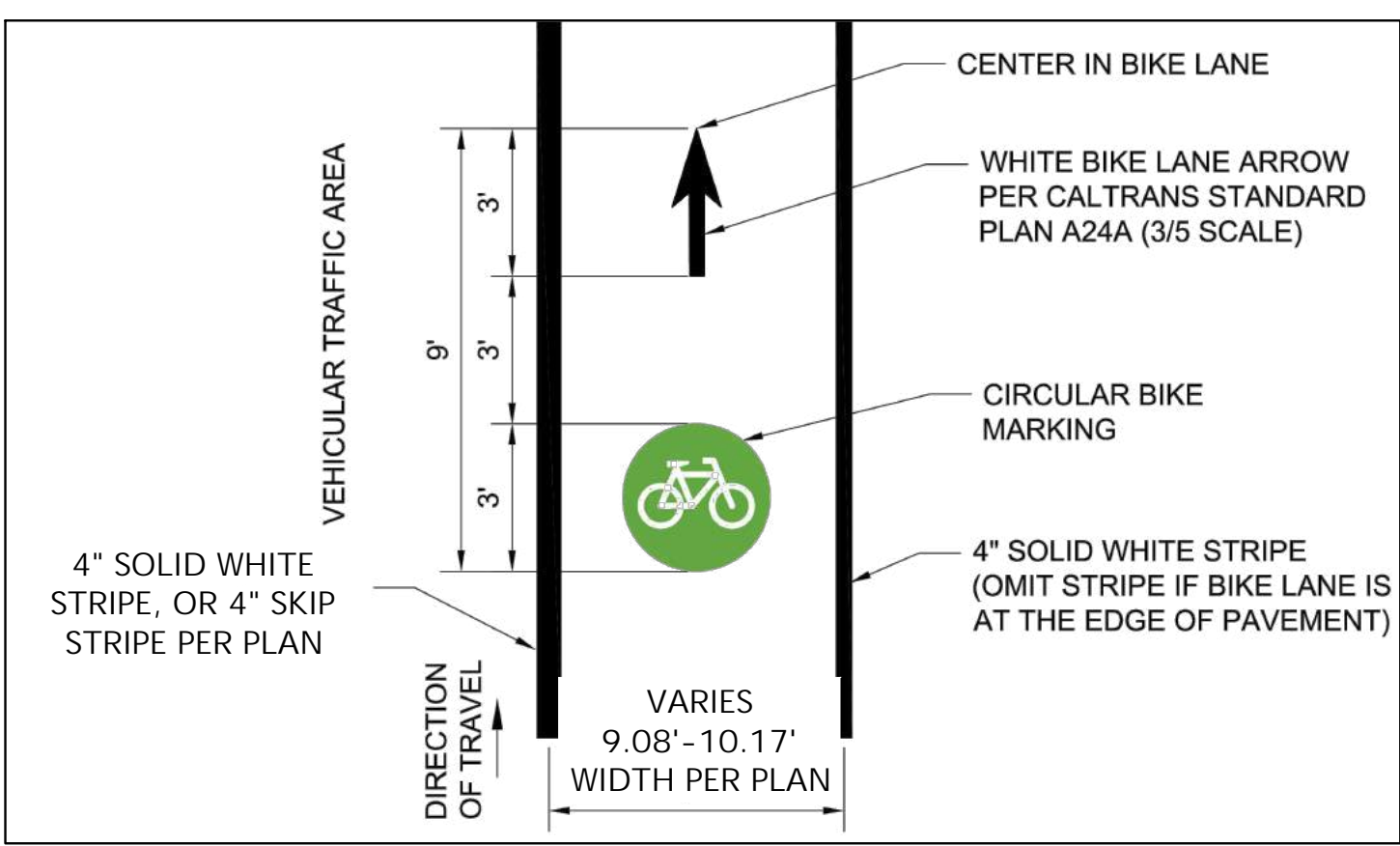
Attachments: Exhibit 1, Improvement Plan

**Exhibit 1
(Improvement Plan)**



PEDESTRIAN MARKING
NOT TO SCALE

1



BIKE LANE MARKING-TYPE I
NOT TO SCALE

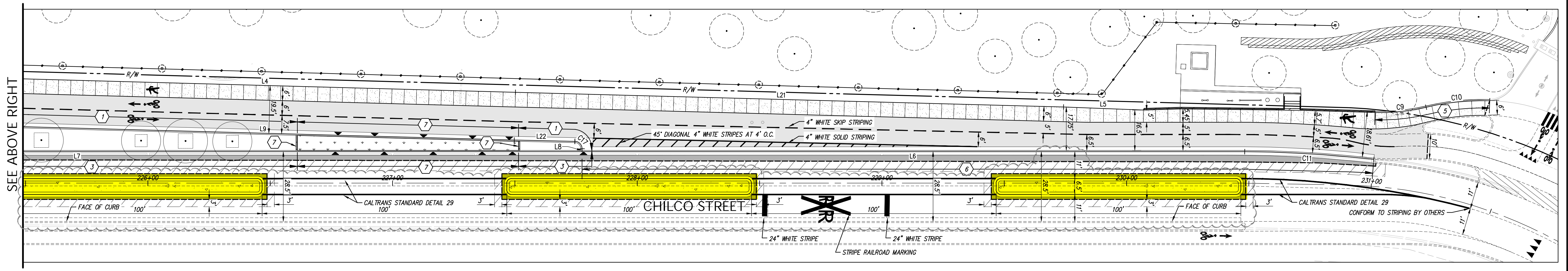
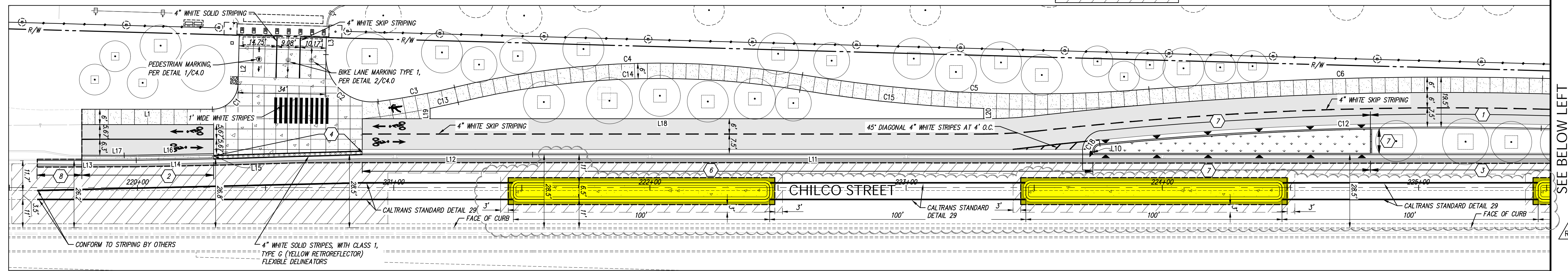
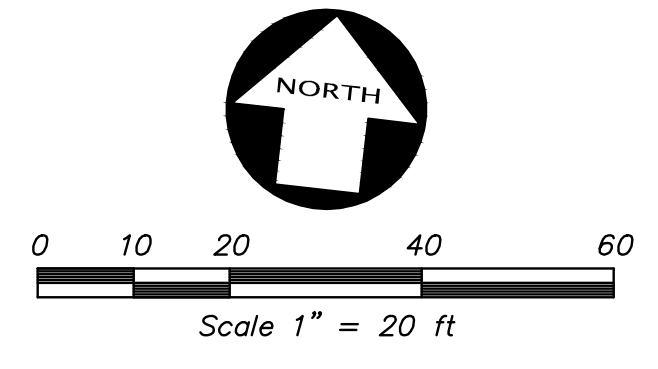
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LINE TABLE			CURVE TABLE			
LINE #	DIRECTION	LENGTH	CURVE #	RADIUS	DELTA	LENGTH
L1	N74°48'00"E	50.96'	C1	10.00'	88°26'29"	15.44'
L2	N13°38'29"W	19.58'	C2	18.00'	99°13'55"	31.17'
L3	N13°38'29"W	7.05'	C3	298.00'	5°49'51"	30.33'
L4	N76°21'31"E	201.93'	C4	342.00'	22°54'59"	136.79'
L5	N77°00'18"E	32.61'	C5	551.00'	14°06'39"	135.70'
L6	N74°48'00"E	270.83'	C6	1408.00'	6°15'26"	153.77'
L7	N74°48'00"E	404.58'	C9	80.00'	15°03'37"	21.03'
L8	S15°12'00"E	1.19'	C10	99.50'	15°06'12"	26.23'
L9	N76°21'31"E	201.96'	C11	496.50'	6°06'07"	52.88'
L10	S15°12'00"E	1.23'	C12	1388.50'	7°07'06"	172.51'
L11	S74°48'00"W	218.68'	C13	304.00'	2°06'43"	11.20'
L12	N74°48'00"E	66.47'	C14	336.00'	22°54'59"	134.39'
L13	N74°39'45"E	38.60'	C15	557.00'	7°25'10"	72.13'
L14	N73°44'44"E	30.24'	C17	3.00'	88°42'59"	4.65'
L15	S15°12'00"E	2.00'	C18	3.00'	84°26'25"	4.42'
L16	N73°44'44"E	34.93'				
L17	S74°58'00"W	16.54'				
L18	N74°48'00"E	216.07'				
L19	S15°12'00"E	3.98'				
L20	S15°12'00"E	4.00'				
L21	N76°19'44"E	224.07'				
L22	N76°05'01"E	24.76'				

- KEYNOTES**
- 36" KEYED CURB AND GUTTER PER DETAIL 3/C1.1
 - CURB AND GUTTER WITH MEDIAN PER DETAIL 10/C1.1
 - 42" KEYED CURB AND GUTTER PER DETAIL 4/C1.1
 - 3" TRANSITION OF CURB FROM 8" HIGH TO 0" HIGH
 - FLUSH CURB PER DETAIL 8/C1.1
 - 8" CURB WITH GUTTER ON BOTH SIDES PER DETAIL 9/C1.1
 - LINEAR BIORETENTION CURB AND GUTTER AND CUTOFF WALL PER DETAIL 4/C1.2
 - CURB AND GUTTER PER DETAIL 11/C1.1
 - MEDIAN ROLLED CURB AND GUTTER PER DETAIL 6/C1.2

PAVING LEGEND

	ASPHALT VEHICULAR PAVEMENT	12" AC DEEP LIFT
	ASPHALT BIKE PLANE PAVEMENT	3" AC OVER 8" CLASS II AB OVER 16" NON-EXPANSIVE FILL
	CONCRETE VEHICULAR PAVEMENT	8" PCC OVER 8" CLASS II AB ON 92% R.C. SUBGRADE WITH #4 BAR 18" O.C.E.W. CONTRACTION JOINTS 12' O.C.
	CONCRETE SIDEWALK	4" PCC OVER 24" NON-EXPANSIVE FILL
	GRIND AND OVERLAY	GRIND DOWN A MINIMUM OF 1" AND OVERLAY A MINIMUM OF 1 1/2"



DATE: 08/11/2020
 SCALE: AS SHOWN
 DRAWN BY: NLH
 DRAWING NAME: A15571-7
 DESIGNED BY: NLH
 CHECKED BY: EYS
 SURVEYED BY:

APPROVED:

EMAD Y. SARNEDONE, P.E., RCE 65112 EXP 9/30/2021
 KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC.
 08/11/2020
 DATE

65112
 R.C.E. #

NO.	BY	DATE	REVISIONS
1		11/22/19	PERMIT SUBMITTAL
2		03/31/20	PERMIT R1
3		06/08/20	PERMIT R2
4		07/02/20	PERMIT R3
5		07/14/20	PERMIT APPROVAL
6		08/11/20	PERMIT R4

KIER+WRIGHT

2850 Collier Canyon Road Phone (925) 245-8788
 Livermore, California 94551 www.kierwright.com

CURB, STRIPING, & PAVING PLAN
 STREET IMPROVEMENT PLANS
 CHILCO STREET

SHEET
C4.0
 OF 64 SHEETS
 PROJ. NAME
CHILCO STREET

"TRAFFIC CONTROL GENERAL NOTES"

1. ALL TRAFFIC CONTROL DEVICES AND THEIR PLACEMENT SHALL CONFORM TO THE REQUIREMENTS OF THE CALIFORNIA MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (CA-MUTCD), 2014 EDITION -REVISION 4.
2. FIELD CHANGES, OTHER THAN MINOR ADJUSTMENTS APPROVED BY THE CITY'S INSPECTOR OR AUTHORIZED AGENT, MUST BE AUTHORIZED IN WRITING BY CITY TRAFFIC ENGINEER.
3. PLAN IMPLEMENTATION AND DEVICES PLACEMENT SHALL BE PERFORMED BY CERTIFIED TRAINED PERSONNEL.
4. ALL FLAGGERS SHALL BE CERTIFIED AS REQUIRED BY CAL OSHA.
5. TRAFFIC CONTROL DEVICES MUST BE MONITORED AND MAINTAINED BY CERTIFIED TRAFFIC CONTROLLERS OR THE CONTRACTOR AT ALL TIMES.
6. TEMPORARY NO PARKING SIGNS MUST BE PLACED 72 HOURS IN ADVANCE OF SCHEDULED CLOSURE.
7. CONTRACTOR SHALL MAINTAIN ACCESS TO ALL DRIVEWAYS, RESIDENCES AND BUSINESS AT ALL TIMES UNLESS OTHERWISE NOTED. CONTRACTOR SHALL NOTIFY ALL AFFECTED RESIDENCES AND BUSINESSES 72 HOURS IN ADVANCE PRIOR TO CLOSURE OF A DRIVEWAY OR ACCESS.
8. THE CONTRACTOR SHALL PROVIDE SAFE PEDESTIAN ACCESS THROUGH THE PROJECT SITE AT ALL TIMES. ONLY ONE STREET & SIDEWALK WILL BE CLOSED AT A TIME. PEDESTRIAN & DISABLED ACCESS TO BE MAINTAINED PER THE LATEST 2014 CA MUTCD STANDARD.
9. ALL TRAFFIC CONTROL DEVICES WILL BE PLACED THROUGHOUT THE DURATION OF PROJECT COMPLETION.
10. ANY TRAFFIC CONTROL DEVICES TO REMAIN IN PLACE OVERNIGHT SHALL BE LIGHTED.
11. ANY TRAFFIC CONTROL DEVICES SHALL NOT BE PLACED ON PRIVATE PROPERTY.
12. ANY CHANGES TO THE TRAFFIC CONTROL PLAN(S) WILL NEED TO BE APPROVED BY THE CITY OF TRAFFIC ENGINEER OR INSPECTOR.
13. THE CONTRACTOR SHALL REASONABLY ACCOMMODATE A PROPERTY OWNER'S REQUEST TO CROSS THE WORK ZONE TO ENTER OR LEAVE THEIR PROPERTY AT ALL TIMES.
14. THE ADVANCE NOTIFICATION SIGNS SHALL BE SUFFICIENT SIZE TO ACCOMMODATE THE MESSAGE. SIGN AND CHANNELIZING DEVICES MUST BE RETRO REFLECTIVE OR ILLUMINATED FOR THE NIGHT. MINIMUM VISIBILITY 1000FT.
15. TRAFFIC SHALL BE UNDER FLAGGING CONTROL WHEN ANY CONSTRUCTION OPERATION IS OCCURRING IN THE ROADWAY.
16. THE CONTRACTOR SHALL PROVIDE EMERGENCY ACCESS TO THE JOB SITE AND TO ANY ADJACENT PRIVATE PROPERTY AT ALL TIMES.

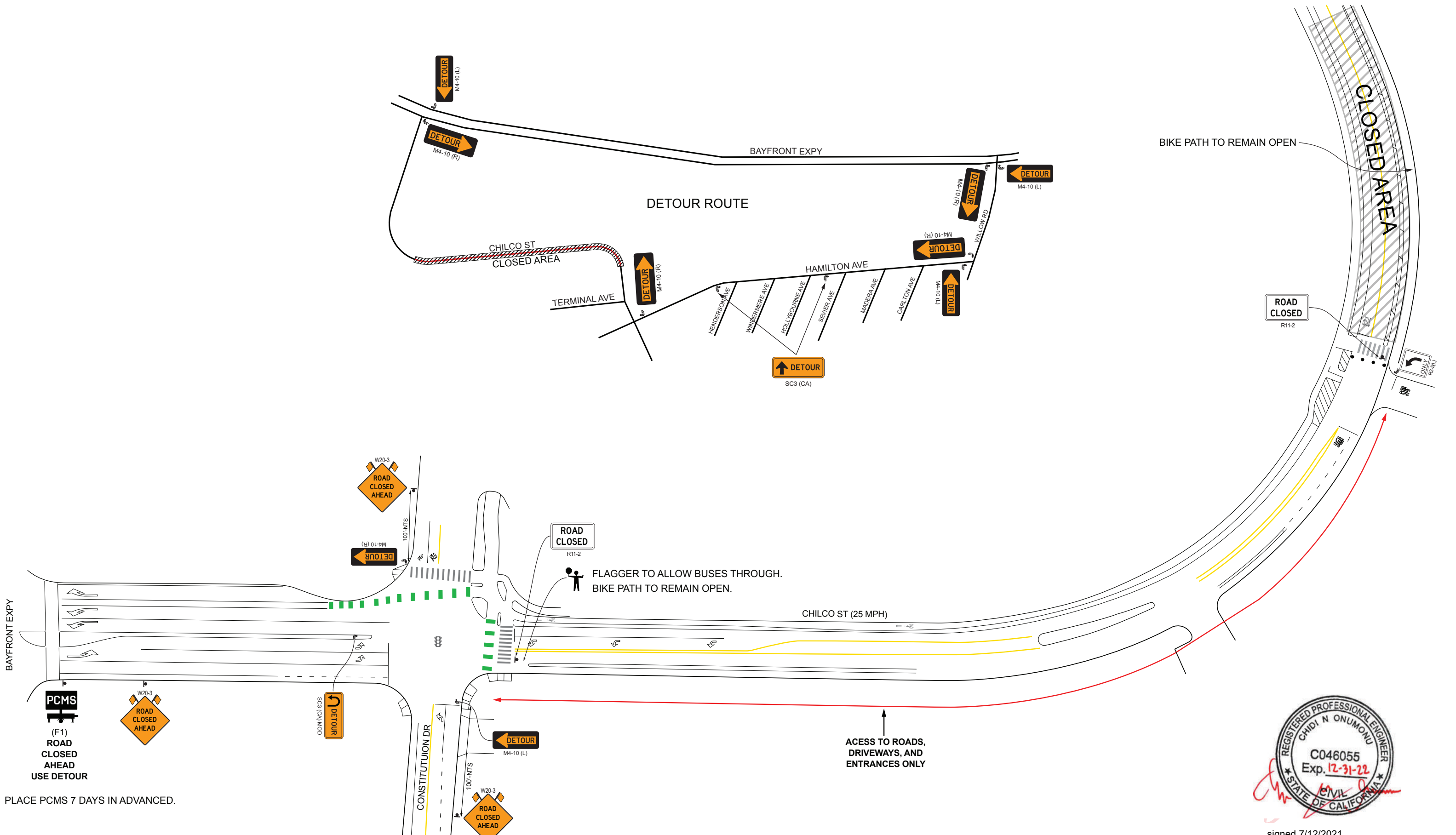


845 Reed St. Santa Clara, CA. 95050 (408) 436-1127

Requested By	
Name:	Company:
Direct Line:	Address:
Mobile Phone:	
Email:	
PO#:	JOB #:

Project Information
Name:
Location:
Description:

















Plan & Revision Dates
Plan Date:
Rev Date:
Rev Date:
Total Plan Pages:
<small>not including cover page</small>



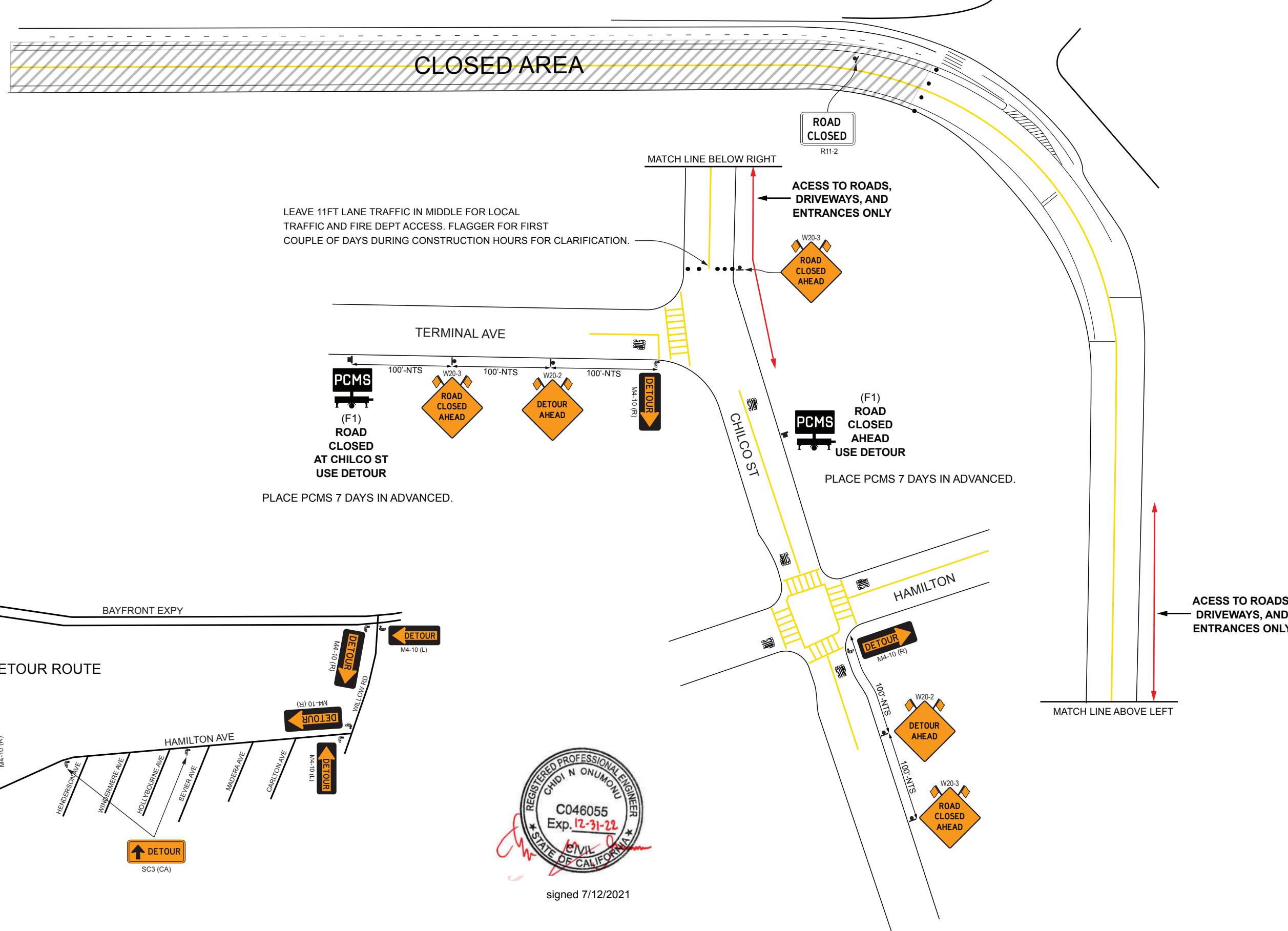
signed 7/12/2021

PLACE PCMS 7 DAYS IN ADVANCED.

ALL TRAFFIC CONTROL DEVICES AND THEIR PLACEMENT SHALL CONFORM TO THE REQUIREMENTS OF THE CALIFORNIA MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (CA-MUTCD), LATEST EDITION

 <p>845 Reed St, Santa Clara, Ca 95051 408-436-1127</p>	LEGEND:  High Visibility Sign  Cone/Delineation  Work Area  Flagger  Type I barricade w/ sign  Type III barricade w/ sign  Directional Travel  Flashing Arrowboard  Message Board (PCMS)  Flashing Beacon  Temp No Parking Signs  Type I barricade w/o sign  Type III barricade w/o sign  Temporary ADA Ramp Work Vehicle	NOTES: <ul style="list-style-type: none"> LOCATIONS OF ADVANCE WARNING SIGNS ARE APPROXIMATE, EXACT LOCATIONS TO BE DETERMINED IN THE FIELD. ALL ADVANCED WARNING SIGNS SHALL BE EQUIPPED WITH 2 (18" ORANGE FLAGS) TEMPORARY NO PARKING SIGNS SHALL BE PLACED A MIN OF 72 HRS PRIOR OF WORK. SIGNS SHALL STATE DATE(S)/HOURS OF RESTRICTION. NOTIFY POLICE DEPT ONCE SIGNS ARE POSTED. CERTIFIED TRAFFIC CONTROL WORKERS SHALL HAVE TYPE II VESTS, WORK SHOES, HARD HATS & RADIO. ALL DEVICES SHALL BE REMOVED WHEN NO LONGER REQUIRED. ROADWAY SHALL NOT BE OPENED UNTIL SAFE FOR PUBLIC USE. ALL OPEN TRENCHES MUST BE PLATED OR BACKFILLED PRIOR TO PUBLIC USAGE. ALL DRIVEWAYS TO REMAIN ACCESSIBLE AT ALL TIMES. 	CONTRACTOR: JJ ALBANESE	REV LOG 1 8-16-21	DATE 8-16-21	DRAWING BY: <i>W. Smith</i>		TEMP TCP FOR: ROAD CLOSURE
			LOCATION: CHILCO ST, MENLO PARK	SUBMITTAL DATE: 7-12-21	TCP SHEET 1 OF 2	NOT TO SCALE		Page G-2.14

D&M TRAFFIC SERVICES ACKNOWLEDGES NO RESPONSIBILITY IN THE CASE OF ANY ACCIDENT, INJURY, OR DEATH OCCURING DURING THE USE OF THESE PLANS. PLANS CANNOT BE DUPLICATE FOR USE BY ANY PERSONS NOT INCLUDED IN THIS CONTRACT WITHOUT THE CONSENT OF D&M TRAFFIC SERVICES, OR OWNER.



LEAVE 11FT LANE TRAFFIC IN MIDDLE FOR LOCAL TRAFFIC AND FIRE DEPT ACCESS. FLAGGER FOR FIRST COUPLE OF DAYS DURING CONSTRUCTION HOURS FOR CLARIFICATION.

PLACE PCMS 7 DAYS IN ADVANCED.

PLACE PCMS 7 DAYS IN ADVANCED.



signed 7/12/2021

ALL TRAFFIC CONTROL DEVICES AND THEIR PLACEMENT SHALL CONFORM TO THE REQUIREMENTS OF THE CALIFORNIA MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (CA-MUTCD), LATEST EDITION

LEGEND:	
	High Visibility Sign
	Cone/Delineation
	Work Area
	Flagger
	Type I barricade w/ sign
	Type II barricade w/o sign
	Type III barricade w/ sign
	Directional Travel
	Flashing Arrowboard
	Message Board (PCMS)
	Flashing Beacon
	Temp No Parking Signs
	Type I barricade w/o sign
	Type II barricade w/o sign
	Temporary ADA Ramp
	Work Vehicle

NOTES:

- LOCATIONS OF ADVANCE WARNING SIGNS ARE APPROXIMATE, EXACT LOCATIONS TO BE DETERMINED IN THE FIELD.
- ALL ADVANCED WARNING SIGNS SHALL BE EQUIPPED WITH 2 (18" ORANGE FLAGS)
- TEMPORARY NO PARKING SIGNS SHALL BE PLACED A MIN OF 72 HRS PRIOR OF WORK. SIGNS SHALL STATE DATE(S)/HOURS OF RESTRICTION. NOTIFY POLICE DEPT ONCE SIGNS ARE POSTED.
- CERTIFIED TRAFFIC CONTROL WORKERS SHALL HAVE TYPE II VESTS, WORK SHOES, HARD HATS & RADIO.
- ALL DEVICES SHALL BE REMOVED WHEN NO LONGER REQUIRED.
- ROADWAY SHALL NOT BE OPENED UNTIL SAFE FOR PUBLIC USE.
- ALL OPEN TRENCHES MUST BE PLATED OR BACKFILLED PRIOR TO PUBLIC USAGE.
- ALL DRIVEWAYS TO REMAIN ACCESSIBLE AT ALL TIMES.

CONTRACTOR:
JJ ALBANESE

LOCATION:
CHILCO ST, MENLO PARK

D&M TRAFFIC SERVICES ACKNOWLEDGES NO RESPONSIBILITY IN THE CASE OF ANY ACCIDENT, INJURY, OR DEATH OCCURING DURING THE USE OF THESE PLANS. PLANS CANNOT BE DUPLICATE FOR USE BY ANY PERSONS NOT INCLUDED IN THIS CONTRACT WITHOUT THE CONSENT OF D&M TRAFFIC SERVICES, OR OWNER.

REV LOG	DATE	DRAWING BY:
1	8-16-21	W... W...
		SUBMITTAL DATE: 7-12-21
		TCP SHEET 2 OF 2

NOT TO SCALE

TEMP TCP FOR:
ROAD CLOSURE

Page G-2.15



STAFF REPORT

City Council

Meeting Date:

8/31/2021

Staff Report Number:

21-164-CC

Consent Calendar:

Adopt Resolution No. 6655 approving the funding agreement with 1540 El Camino Real developer for median landscaping improvements along El Camino Real, between Glenwood Avenue and Encinal Avenue and authorizing the city manager to execute the funding agreement

Recommendation

Staff recommends the City Council adopt Resolution No. 6655 (Attachment A) approving the funding agreement (Attachment B) with the 1540 El Camino Real developer for median landscaping improvements along El Camino Real, between Glenwood Avenue and Encinal Avenue and authorizing the city manager to execute the funding agreement.

Policy Issues

City Council authorization of a funding agreement is required as the agreement amount exceeds the city manager's expenditure authority.

Background

On February 26, 2018, the Planning Commission approved an architectural control application at 1540 El Camino Real to demolish the existing building and construct a new two-story, nonmedical office building and a three-story residential building with 27 residential units with a two-level underground parking garage serving both buildings in the El Camino Real downtown/specific plan zoning district.

On February 8, 2021, the Planning Commission approved a revision which includes the addition of a rooftop deck restroom and elevator vestibule for the office building. In addition, in response to the developer's request, the Planning Commission approved two options for complying with landscaping conditions. Initially, the project was required to plant four street trees along El Camino Real (which have not been planted.) Because the planting of the four trees would require the relocation of a water main, the developer pursued an alternative option for complying with the landscape frontage improvement requirements. As such, the Planning Commission approved Condition No. 4(a), which permits the developer to comply with project landscaping requirements by either 1) planting the four trees and relocating the water main; or 2) installing four planter boxes along the building's frontage and providing median landscaping improvements along El Camino Real, between Glenwood Avenue and Encinal Avenue. The developer has elected to pursue the second option by installing the four planter boxes and providing the median landscape improvements.

Analysis

The developer has elected to forgo the relocation of the water main and will pursue improvements in the

median between Glenwood Avenue and Encinal Avenue to satisfy the landscaping condition of approval for the project. The project will remove 24 existing trees provide replacement landscaping including 15 Columbia sycamore trees at a distance of 35 feet on center within the wider portion of the median. For the narrower portions of median closer to Glenwood Avenue and Encinal Avenue, six crepe myrtle trees near Glenwood Avenue and three crepe myrtle trees near Encinal Avenue will remain. The proposed median landscaping improvements are estimated to cost \$180,324. The developer is required to provide 25 percent of the total funding (\$45,081) of the median landscaping, which would include any irrigation or paving improvements, along with other associated costs such as Caltrans permitting fees. The 25 percent value is based on the length of the subject property's frontage facing the median, relative to the median length between Glenwood Avenue and Encinal Avenue.

The City will reimburse the developer 75 percent of the median island improvements cost, not to exceed \$135,243 upon completion of work. In the event that the developer diligently pursues completion of the landscaping improvements, but for reasons outside of their control (for example Caltrans does not grant the necessary approval), the installation of all median island landscaping is not completed within five years from the first temporary certificate of occupancy, then the developer will be relieved of the responsibility to construct the improvements, but instead provide funds in the amount of 25 percent of the bid construction cost of the landscaping improvements to the City. The City would then be able use the developer's funds for other landscaping improvements elsewhere in the City.

Next steps

The city attorney and staff have finalized the agreement (Attachment B.) Once executed, staff would work with the 1540 El Camino Real developer to prepare final landscape plans, provide an updated cost estimate for construction of the median landscaping improvements, secure Caltrans encroachment permits, and pursue construction concurrent with the 1540 El Camino Real on-site construction.

Impact on City Resources

The City's contribution of \$135,243 is included in the five year capital improvement project (El Camino Real median island trees improvements) funded by the heritage tree fund.

Public Notice

Public Notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Resolution No. 6655
- B. Funding agreement

Report prepared by:
Rambod Hakhamaneshi, Associate Civil Engineer

Report reviewed by:
Ebby Sohrabi, Senior Civil Engineer
Karen Pachmayer, Interim Assistant Public Works Director

RESOLUTION NO. 6655

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
APPROVING THE FUNDING AGREEMENT WITH 1540 EL CAMINO REAL
DEVELOPER FOR MEDIAN LANDSCAPING IMPROVEMENTS ALONG EL
CAMINO REAL, BETWEEN GLENWOOD AVENUE AND ENCINAL AVENUE
AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE FUNDING
AGREEMENT**

WHEREAS, the Owner owns real property commonly known as 1540 El Camino Real, Menlo Park, California; and

WHEREAS, the 1540 El Camino Real project is currently under construction; and

WHEREAS, the 1540 El Camino project is conditioned to design and construct median landscaping improvements along El Camino Real, between Glenwood Avenue and Encinal Avenue, in consultation with the City; and

WHEREAS, the City Council authorization is required as the agreement amount exceeds the City Manager's expenditure authority.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Menlo Park that the City Council does hereby approve the funding agreement with 1540 El Camino Real developer for median landscaping improvements along El Camino Real, between Glenwood Avenue and Encinal Avenue; and

BE IT FURTHER RESOLVED that said City Council authorizes the City Manager to execute the funding agreement.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the thirty-first day of August, 2021, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this thirty-first day of August, 2021.

Judi A. Herren, City Clerk

FUNDING AGREEMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620



This Funding Agreement ("Agreement") is made this day of _____, ("Execution Date") by and between the City of Menlo Park ("City") and the 1540 ECR Owner, LLC, a Delaware Limited Liability Company ("Owner"), each of which is referred to herein individually as "Party" and jointly as "Parties."

RECITALS:

WHEREAS, the Owner owns real property commonly known as 1540 El Camino Real, Menlo Park, California ("Property"); and

WHEREAS, the 1540 El Camino Real project is currently under construction; and

WHEREAS, the 1540 El Camino Real project is proposing to design and construct median island improvements along El Camino Real, between Glenwood Avenue and Encinal Avenue, in consultation with the City, as specified in Exhibit 1 subject to all the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the Parties agree as follows:

SECTION 1: SCOPE OF WORK AND REPORTING

- 1.1 Owner shall be responsible for the following Scope of Work:
 - 1.1.1 Owner shall hire a consultant for designing the Project, hire a licensed Contractor to perform the work and pay for all such work
 - 1.1.2 Owner shall be responsible for procuring and handling all material required for the completion of the Project.
 - 1.1.3 Owner shall be responsible for removing all existing trees (excluding the narrower nose ends), as specified in Exhibit 1, within the wider median island on ECR between Glenwood Avenue and Encinal Avenue, reinstalling new landscaping and trees, and modifying existing irrigation (and other improvements) as necessary, to the satisfaction of the Public Works Director.
 - 1.1.4 Owner shall deliver copies of all invoices to the City.
 - 1.1.5 Owner is responsible to fund the entire project and will be reimbursed 75%, not to exceed \$135,243. The owner's contribution may exceed 25%.
 - 1.1.6 Owner acknowledges that public funds are being used for this project and shall ensure that any contract it enters into for the installation of the Median Island Improvements shall require the payment of prevailing wages as defined and required by law.

SECTION 2: ACCESS TO RECORDS AND RECORD RETENTION

2.1 At all reasonable times, Owner will permit, upon request, the City to access and use all reports, designs, drawings, plans, specifications, schedules and other materials prepared, or in the process of being prepared, for the work by Owner or any contractor or consultant of Owner. Owner will provide copies of any documents and Autocad drawings described in this Section to the City upon request and the City may use them for construction of the work without further approval from Owner or its consultants. Owner and the City will retain all records pertaining to the work for at least three years after completion of the Work.

SECTION 3: FUNDING AND PAYMENT

3.1 Upon completion of the improvements and receiving receipt of all invoices, the City shall pay the Owner 75 percent of the median island improvements cost, not to exceed \$135,243. The proposed median island improvements are estimated to cost \$180,324.

3.2 In the event that the Owner diligently pursues completion of the landscaping improvements, but for reasons outside of their control, for example Caltrans does not grant the necessary approval, the installation of all median island landscaping is not completed within five years from the first temporary certificate of occupancy, Owner will be relieved of the responsibility to construct the improvement and the required bond would be released by the City after the funds equal to 25 percent of the bid construction cost to the City are submitted. The City would then be able use the developer's funds for other landscaping improvements elsewhere in the City.

SECTION 4: TERM

4.1 This Agreement shall commence upon the issuance of a Notice to Proceed to a General Contractor to perform the work specified in the 1540 El Camino Real Project ("Project"). This Agreement may be terminated by either party in writing with sixty (60) days advance written notice. This Agreement shall end upon completion of services and payment by the City unless terminated earlier.

SECTION 5: INDEMNIFICATION AND INSURANCE

5.1 Owner agrees, while engaged in the work provided for in this Agreement, to place and maintain suitable safeguards sufficient to prevent injury to any persons and to indemnify, defend and save harmless the City, its officers, representatives, and employees from and against any and all claims for loss, injury or damage resulting from the prosecution of said work except to the extent any claim arises out of the sole negligence or willful misconduct of the City. To the full extent required by applicable federal and state law, Owner and its contractors and agents shall comply with California Labor Code Section 1720 et seq. and the regulations adopted pursuant thereto ("Prevailing Wage Laws"), and shall be solely responsible for carrying out the requirements of such provisions. Owner shall indemnify, defend and hold the City and its elected and appointed officers, officials, employees, agents, consultants, and contractors (collectively, the "Indemnitees") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages.

5.2 City agrees, while engaged in the work provided for in this Agreement, to place and maintain suitable safeguards sufficient to prevent injury to any persons and to indemnify, defend and save harmless Owner, its officers, representatives, and employees from and against any and all claims for loss, injury or damage resulting from the prosecution of said work except to the extent any claim arises out of the negligence or willful misconduct of Owner

SECTION 6: MISCELLANEOUS

6.1 Notices. All notices required or permitted to be given under this Agreement must be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or by personal delivery or overnight courier to the appropriate address indicated below or at such other place(s) that either Party may designate in written notice to the other. Notices are deemed received upon delivery if personally served, one day after mailing if delivered via overnight courier, or two days after mailing if mailed as provided above.

To Owner: 1540 ECR Owner, LLC
Attn: Rich Ying
339 S. San Antonio Rd. #2B
Los Altos, CA 94024

To the City: City of Menlo Park,
Attn: Public Works Director
701 Laurel Street
Menlo Park, California 94025-3409

Cc: City of Menlo Park
Attn: City Attorney
Burke, Williams & Sorensen, LLP
181 Third Street, Suite 200
San Rafael, CA 9490

6.2 No Waiver. No waiver of any default or breach of any covenant of this Agreement by either Party will be implied from any omission by either Party to take action on account of such default if such default persists or is repeated. Express waivers are limited in scope and duration to their express provisions. Consent to one action does not imply consent to any future action.

6.3 Assignment. The Parties are prohibited from assigning, transferring or otherwise substituting their interests or obligations under this Agreement without the written consent of all other Parties, provided however, Owner shall have the right to assign this Agreement to an affiliated entity of Owner that is the owner of the Property without the prior approval or consent of the City.

6.4 Governing Law. This Agreement is governed by the laws of the State of California as applied to contracts that are made and performed entirely in California.

6.5 Compliance with Laws. In performance of this Agreement, the Parties must comply with all applicable Federal, State and local laws, regulations and ordinances.

6.6 Modifications. This Agreement may only be modified in a writing executed by both Parties.

6.7 Relationship of the Parties. It is understood that this Agreement does not create the relationship of agent, servant, employee, partnership, joint venture or association between the parties.

6.8 Ownership of Work. All reports, designs, drawings (including Autocad files), plans, specifications, schedules, studies, memoranda, and other documents assembled for or prepared by or for, in the process of being assembled or prepared by or for, or furnished to Owner under this Agreement are the property of the City. The City may use all reports, designs, drawings (including Autocad files), plans, specifications, schedules, studies, memoranda, and other documents assembled for or prepared by or

for under this agreement with Owner to construct the work. The Parties are entitled to copies and access to these materials during the progress of the work and upon completion or termination of the work or this Agreement. Owner may retain a copy of all material produced under this Agreement for its use in its general activities.

6.9 Warranty of Authority to Execute Agreement. Each Party to this Agreement represents and warrants that each person whose signature appears hereon is authorized and has the full authority to execute this Agreement on behalf of the entity that is a Party to this Agreement.

6.10 Severability. If any portion of this Agreement, or the application thereof is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining portions of this Agreement, or the application thereof, will remain in full force and effect.

6.11 Counterparts. This Agreement may be executed in counterparts.

6.12 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to its subject matter and supersedes any prior or contemporaneous written or oral agreement between the parties on the same subject.

(Signatures on following page)

IN WITNESS WHEREOF, the Parties have hereunder subscribed their names the day and year indicated below.

1540 ECR OWNER, LLC
a Delaware Limited Liability Company

By: 1540 ECR Holdings, LLC
a Delaware limited liability company
its Managing Member

By: FCP ECR JV, LLC,
a Delaware limited liability company,
its Managing Member

By: FCP ECR Manager, LLC,
a Delaware limited liability company,
its Managing Member

By: Four Corners Properties, LLC,
a Delaware limited liability company,
its Managing Member

By: _____
Bruce Burkard, its sole member

CITY OF MENLO PARK, a municipal corporation

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date

CITY OF MENLO PARK:

Starla Jerome-Robinson, City Manager

Date

ATTEST:

Judi A. Herren, City Clerk

Date

Attachments: Exhibit 1, Improvement Plan

**Exhibit 1
(Improvement Plan)**



THE
GUZZARDO PARTNERSHIP INC.
Landscape Architects · Land Planners
181 Greenwich Street
San Francisco, CA 94111
T 415 433 4672
F 415 433 5003

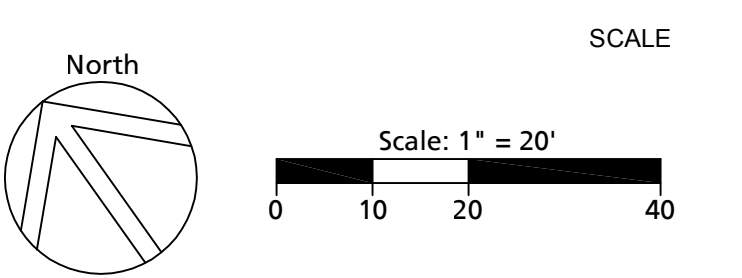


ISSUES AND REVISIONS

No.	Date	Description
1	02/25/21	Permit Set
2	06/16/21	Permit Resubmittal
3	07/07/21	Permit Resubmittal

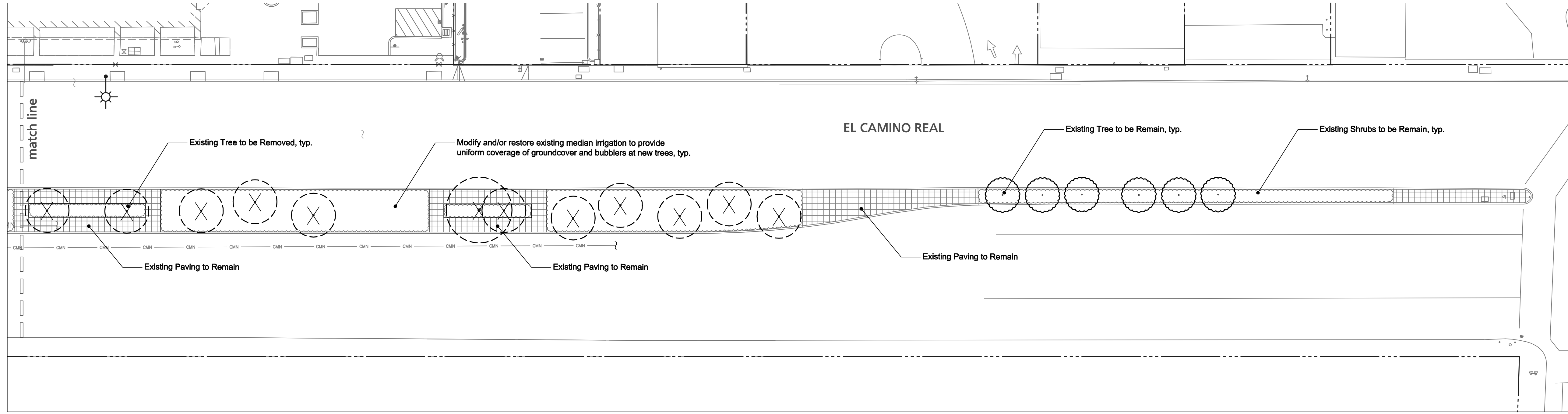
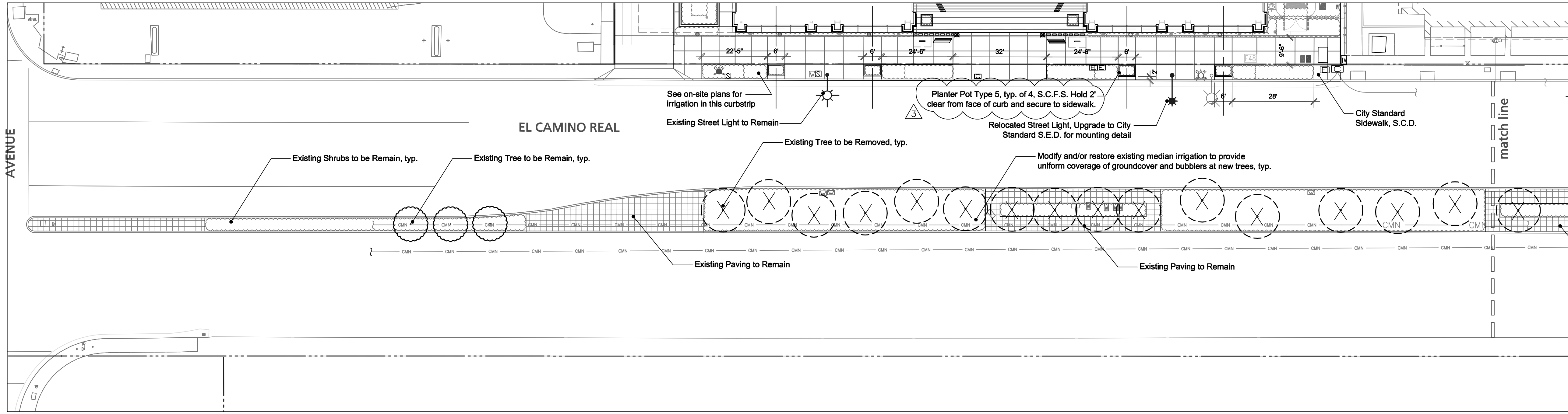
PROJECT NUMBER
16010.00

SHEET TITLE
**Layout
Plan - Median**



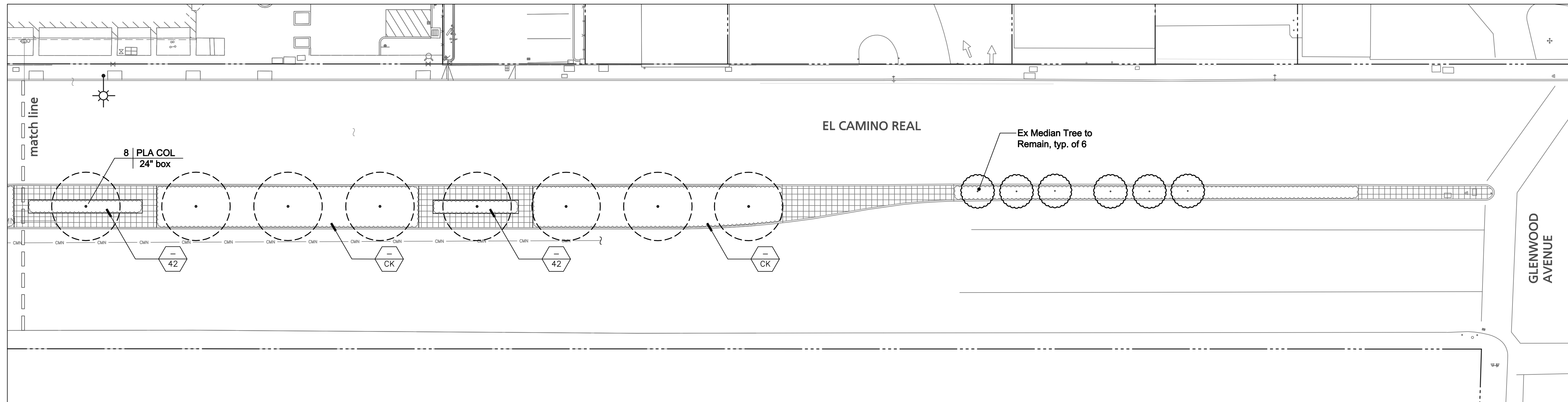
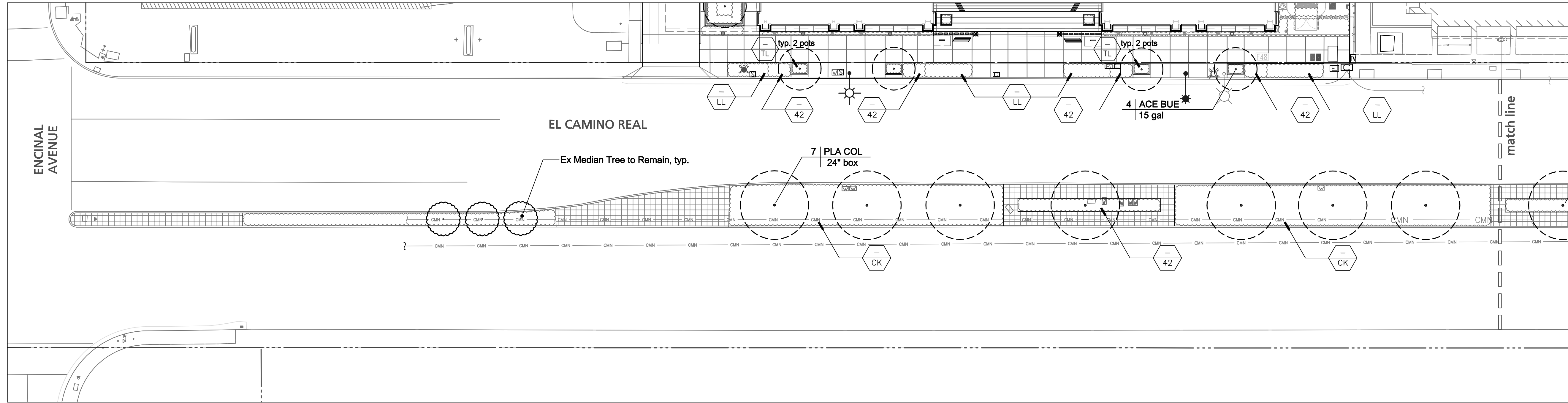
SHEET NUMBER

LM-2.1





THE
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Landscape Architects · Land Planners
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San Francisco, CA 94111
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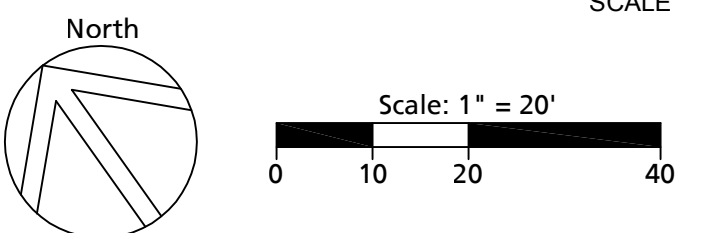
ISSUES AND REVISIONS

No.	Date	Description
1	02/25/21	Permit Set
2	06/16/21	Permit Resubmittal
3	07/07/21	Permit Resubmittal

PROJECT NUMBER
16010.00

SHEET TITLE
**Planting
Plan - Median**

SCALE



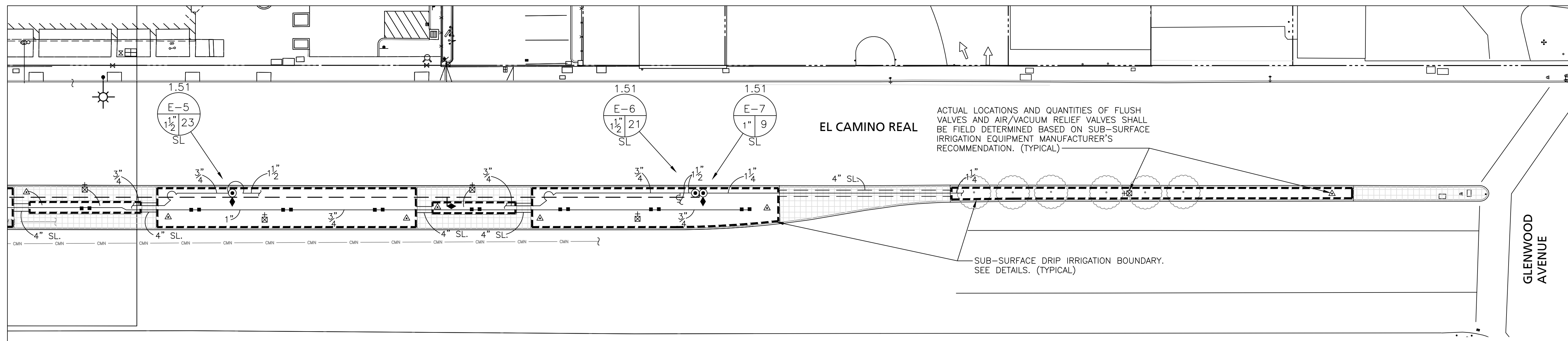
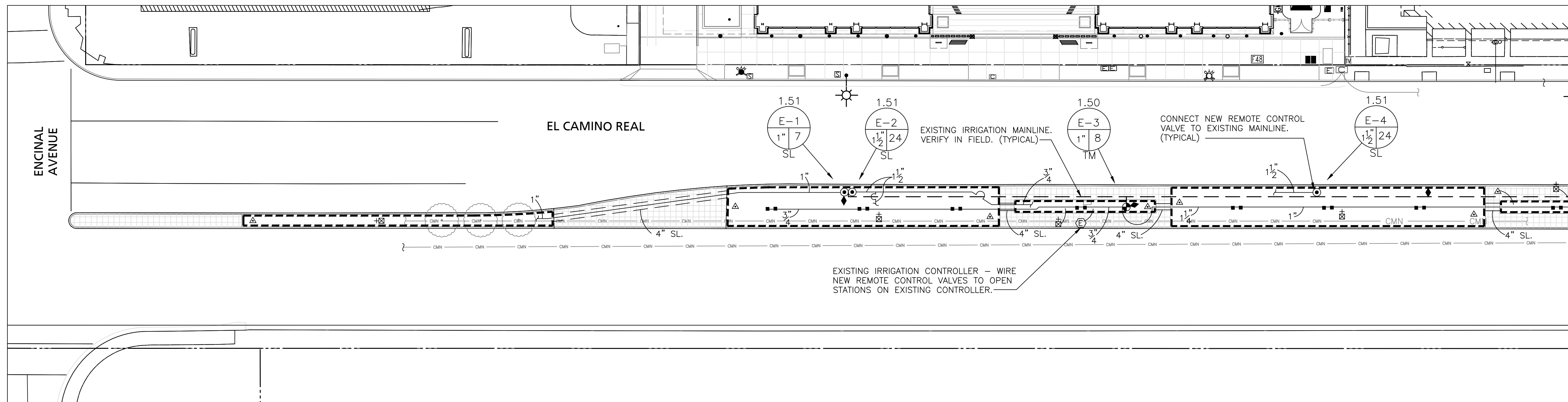
SHEET NUMBER

LM-3.1



THE
GUZZARDO PARTNERSHIP INC.
 Landscape Architects • Land Planners

181 Greenwich Street
 San Francisco, CA 94111
 T 415 433 4672
 F 415 433 5003



NOTE:
 THIS IRRIGATION SYSTEM INTERFACES WITH AN EXISTING IRRIGATION SYSTEM WHICH SHALL REMAIN IN SERVICE. THE EXISTING UNDERGROUND IRRIGATION EQUIPMENT AND OTHER UTILITIES HAVE NOT BEEN FIELD VERIFIED UNDER THE CONSTRUCTION DOCUMENT PHASE OF WORK. THE CONTRACTOR SHALL FIELD VERIFY THE LOCATION OF EXISTING IRRIGATION MAINLINE PIPING, LATERAL LINE PIPING, LOW VOLTAGE AND HIGH VOLTAGE WIRE, AND VALVES BEFORE CONSTRUCTION IS STARTED. DAMAGE TO THE EXISTING IRRIGATION SYSTEM AND OTHER VARIOUS UTILITIES SHALL BE REPAIRED BY THE CONTRACTOR AT NO ADDITIONAL EXPENSE TO THE OWNER. THE CONTRACTOR IS RESPONSIBLE FOR MAINTAINING THE CURRENT OPERATION OF THE EXISTING IRRIGATION SYSTEM WHICH SERVES AREAS OUTSIDE OF THE CONTRACT WORK AREA. DO NOT SHUT DOWN GATE VALVES, SEVER MAIN OR LATERAL PIPING, AND/OR SEVER WIRE WHICH ORIGINATES IN OR TRAVELS THROUGH THIS CONTRACT WORK AREA UNLESS SPECIFICALLY DIRECTED TO DO SO BY THE CONTRACT DOCUMENTS OR BY WRITTEN APPROVAL FROM THE ARCHITECT. VALVE WIRING BETWEEN CONTROLLER AND EXISTING REMOTE CONTROL VALVES SHALL BE RESTORED WHERE DAMAGED DURING DEMOLITION. LANDSCAPE STRESS OUTSIDE OF THIS CONTRACT AREA WILL REQUIRE FULL REPLACEMENT OF THE LANDSCAPE DAMAGED UNDER THIS CONTRACT WORK AT NO ADDITIONAL EXPENSE TO THE OWNER.

COMMISSIONING AND MANAGEMENT OF SUB-SURFACE DRIP IRRIGATION SYSTEMS

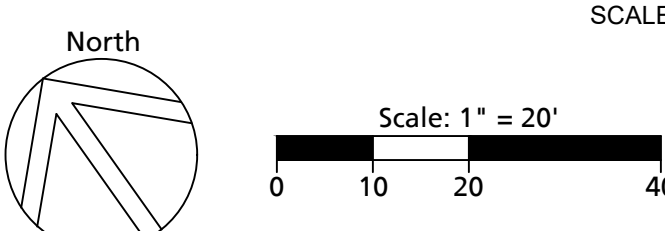
- PRIOR TO PLANTING, CONTRACTOR SHALL PREPARE SOIL FOR PLANTING BY HAND WATERING TO BRING SOIL MOISTURE CONTENT UP TO AN IDEAL GROWING CONDITION THROUGHOUT THE INTENDED ROOT ZONE. OPERATE SUB-SURFACE DRIP SYSTEM AS NECESSARY TO MAINTAIN MOISTURE LEVEL IN SOIL. DO NOT LET SOIL DRY OUT. MOISTURE DEPLETION SHOULD NOT EXCEED 20% DEPLETION (80% OF DESIRED MOISTURE CONTENT REMAINS). CONTRACTOR SHALL MONITOR MOISTURE CONTENT TO ENSURE DESIRED MOISTURE CONTENT IS MAINTAINED WITHOUT OVER-SATURATION. USE CARE TO NOT DAMAGE SUB-SURFACE DRIP TUBING WHEN PROBING SOIL FOR MOISTURE CONTENT TESTING.
- INSTALL TUBING ACCORDING TO SPACING SPECIFIED IN THE DRAWINGS AND DETAILS. DRIP TUBING MUST REMAIN AS CLOSE AS POSSIBLE TO THE SPACING IDENTIFIED IN THE DRAWINGS. THE GRID OF EMITTERS ARE INTENDED TO IRRIGATE THE ENTIRE PLANTED AREA (NOT INDIVIDUAL PLANTS). LIKEWISE, DO NOT MOVE PLANTS FROM THEIR DESIGNED SPACING TO BE CLOSER TO AN EMITTER. WHEN PROPERLY MANAGED, THE DRIP SYSTEM WILL PROVIDE WATER TO THE ENTIRE PLANTED AREA, CREATING AN INVITING CONDITION FOR THE ROOTS TO GROW AND THE PLANTS TO THRIVE.

ISSUES AND REVISIONS

No.	Date	Description
1	02/25/21	Permit Set
2	06/16/21	Permit Resubmittal

PROJECT NUMBER
 16010.00

SHEET TITLE
**Irrigation Plan -
 Median**



SHEET NUMBER

LM-4.1



STAFF REPORT

City Council

Meeting Date: 8/31/2021
Staff Report Number: 20-165-CC

Consent Calendar: Adopt Resolution No. 6656 approving Alcoholic Beverage Control grant

Recommendation

The staff recommends that the City Council adopt Resolution No. 6656 to accept a grant awarded in the amount of \$70,300 from the California Department of Alcoholic Beverage Control (ABC) grant program and authorize Chief Norris to execute the contract, including any extensions or amendments thereof and any subsequent contract with the State in relation thereto.

Policy Issues

The proposed action and spending plan require City Council authorization.

Background

The ABC multi-program grant program provides funding to local law enforcement agencies to broaden their efforts in addressing alcohol related problems. The ABC program employs strategies including: The Minor Decoy Program, the Shoulder Tap Program, and IMPACT (Informed Merchants Preventing Alcohol-Related Crime Tendencies) inspections. The funding for the ABC program comes from the Office of Traffic Safety through the National Highway Safety Administration.

The City has been a recipient of ABC Grant funding in previous years, the most recent funding amount of \$54,400 was awarded in 2020 and resulted in the education of businesses as well as citizens. Education opportunities are accomplished through inspections conducted at licensed businesses, during which, no enforcement action is taken. During the last grant cycle, the department was able to perform inspections at 30 licensed businesses. In addition, there were approximately 85 businesses visited for general enforcement, the Minor Decoy Program and the Shoulder Tap program resulting in 38 percent of businesses selling to minors. The department not only met, but exceeded the performance metrics outlined in the grant proposal. The 2021 grant program would provide funding for overtime costs associated with enforcement operations and community/licensee education and outreach. The funds must be spent by June 30, 2022.

Analysis

One of the police department's priorities is to address quality of life issues which include the illegal purchasing and distribution of alcoholic beverages by and to minors. Statistics from the Office of Traffic Safety for the year 2018 show the City of Menlo Park was ranked 17 out of 97 cities of similar population for "total fatal and injury" collisions.

In addition, there are many public and private high schools, colleges, parks and other various public venues located near the 106 ABC licensee establishments in the City of Menlo Park. The Menlo Park police

department has responded to problems commonly associated with irresponsible and illegal alcoholic beverage service including consumption of alcohol by minors, driving under the influence, intoxicated subjects in public and disturbances. Investigations revealed that minors obtained alcohol from either establishments or adults furnishing the alcohol to them.

This grant focuses on education of licensees and community members and enforcement of applicable laws. The funds would allow the Menlo Park police department to expand its present efforts in identifying and targeting potential problematic ABC licensed establishments. The grant would fund six overtime minor decoy operations, eight shoulder tap operations, and five IMPACT inspections, two task force operations and four general enforcement operations.

The goal of the Minor Decoy Program is to reduce the number of licensees who sell alcoholic beverages to minors. The Minor Decoy Program has proven to be a significant and effective tool for law enforcement officials in combating sales of alcoholic beverages to underage persons.

The Shoulder Tap Program is used to detect and deter adults who furnish alcoholic beverages to minors. "Shoulder Tapping" refers to the practices used by minors to obtain alcohol from adult strangers near off-sale retail outlets.

IMPACT inspections focus on licensee education. Officers randomly select licensed outlets to conduct business friendly compliance inspections. The officers look for loitering, litter, graffiti, posted signs, lack of food service in restaurants, illegal weapons or other violations. The licensee must then correct any problem areas. Follow up visits are then conducted to ensure the licensee has corrected the problems.

In addition to educating the public regarding the sales and distribution of alcohol to minors, conducting Minor Decoy Programs, Shoulder Tap Programs, and IMPACT Inspections would emphasize the legalities regarding the sales of alcohol to minors.

Impact on City Resources

The fiscal year 2021-2022 grant funds must be spent or encumbered by June 30, 2022.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. ABC agreement
- B. Resolution No. 6656

Staff Report #: 21-165-CC

Report prepared by:
David Norris, Chief of Police

EXHIBIT A SCOPE OF WORK

I. SCOPE OF WORK

- Contractor agrees to implement the Department of Alcoholic Beverage Control (ABC), Alcohol Policing Partnership program. This program is intended to work with law enforcement agencies to develop an effective, comprehensive and strategic approach to eliminate the crime and public nuisance problems associated with problem alcoholic beverage outlets.
- Contractor agrees to implement ABC's Minor Decoy, Shoulder Tap Programs and conduct Informed Merchants Preventing Alcohol-Related Crime Tendencies (IMPACT) Inspections. These Programs target both ABC licensed premises and individuals who furnish alcoholic beverages to the underage operators. The project is targeted to reduce underage drinking and the resultant DUI driving injuries and fatalities, and/or property damages, reduce youth access to alcoholic beverages through the education of licensee(s), enforcement intervention and the impressions of omnipresence of law enforcement. In addition, Contractor agrees to the following goals:
 1. The operation period of the grant is July 1, 2021 through June 30, 2022.
 2. Contractor agrees to raise public awareness that selling, serving and/or furnishing alcoholic beverages to individuals under twenty-one years old is a criminal violation that will be prosecuted by local city and district attorneys.
 3. Minor Decoy operations are designed to educate and deter licensed locations from selling/furnishing alcohol to minors. Contractor agrees to conduct Minor Decoy Operations at both "On-Sale" and "Off-Sale" licensed establishments within the operation period of the grant.
 4. Shoulder Tap operations are used to detect and deter adult furnishers outside of a licensed business. Contractor agrees to conduct Shoulder Tap Operations at "Off-Sale" licensed locations to apprehend adults that are unaffiliated with the licensed businesses and who are purchasing alcohol for minors outside of the stores within the operation period of the grant.
 5. Informed Merchants Preventing Alcohol-Related Crime Tendencies (IMPACT) primary goal is to educate licensee's on alcohol related laws to help reduce alcohol-related crime in and around licensed premises. Contractor agrees to conduct visits and inspections of licensed premises identifying areas of non-compliance at "On-Sale" and "Off-Sale" licensed locations within the operation period of the grant.

II. GOALS AND OBJECTIVES

1. Conduct at least six (6) Minor Decoy operations.
2. Conduct at least eight (8) Shoulder Tap operations.
3. Conduct at least five (5) IMPACT operations.
4. Conduct at least two (2) Task force operations.

5. Conduct at least four (4) general enforcement operations.
6. Conduct at least one (1) roll call training.
7. Provide at least three (3) press releases on grant enforcement activities.
 - A. To announce the start of the program;
 - B. At the conclusion of each Minor Decoy Operation has been held (to announce the number of licensed premises who sold to the minor decoy)
 - C. At the conclusion of each Shoulder Tap Operation has been held (to announce the number of adults arrested for purchasing alcoholic beverages for the decoy).
8. Contractor will fax (916) 419-2599 or email each press release to the Department's Public Information Officer (pio@abc.ca.gov) as soon as it is released.
9. Contractor agrees in all press releases, in addition to any credits the agency wishes to give, will include the following statement: "This project is part of the Department of Alcoholic Beverage Control's Alcohol Policing Partnership."

Contractor agrees to complete and submit monthly reports, on a format designed and provided by the Department of Alcoholic Beverage Control due no later than 15th of the following month.

III. PROJECT REPRESENTATIVES

The project representatives during the term of this agreement will be:

Menlo Park Police Department
Galen Fliege, Officer
701 Laurel Street
Menlo Park, CA 94025
(650) 847-0574
gpfliege@menlopark.org

Department of Alcoholic Beverage Control
Brandon Shotwell, Supervising Agent in Charge
3927 Lennane Drive, Suite 100
Sacramento, CA 95834
(916) 419-2329
Brandon.shotwell@abc.ca.gov

Direct all fiscal inquiries to:

Menlo Park Police Department
Patricia Barboza, Senior Accountant
701 Laurel Street
Menlo Park, CA 94025
(650) 330-6632
pobarboza@menlopark.org

Department of Alcoholic Beverage Control
Kristine Okino, Grant Coordinator
3927 Lennane Drive, Suite 100
Sacramento, CA 95834
(916) 419-2572
Kristine.okino@abc.ca.gov

EXHIBIT B BUDGET DETAIL AND PAYMENT PROVISIONS

I. INVOICING AND PAYMENT

- For services satisfactorily rendered and upon receipt and approval of the invoice, the Department of Alcoholic Beverage Control agrees to pay a monthly payment of approved reimbursable costs per the Budget Detail of personnel overtime and benefits (actual cost) and/or allowable costs.
- Invoices shall clearly reference this contract number (21-APP26) and must not exceed the contract total authorized amount of \$70,300. Invoices are to be submitted by the 15th of every month, on the prescribed form designed by the Department of Alcoholic Beverage Control.

Submit to: Department of Alcoholic Beverage Control
Attn: Kristine Okino, Grant Coordinator
3927 Lennane Drive, Suite 100
Sacramento, California 95834

- Payment shall be made in arrears within 30 days from the receipt of an undisputed invoice. Nothing contained herein shall prohibit advance payments as authorized by Item 2100-101-3036, Budget Act, Statutes of 2021.
- Contractor understands in order to be eligible for reimbursement; cost must be incurred on or after the effective date of the project, July 1, 2021 and on or before the project termination date, June 30, 2022.
- Revisions to the "Scope of Work" and the "Budget Detail" may be requested by a change request letter submitted by the Contractor. If approved, the revised Grant Scope of Work and/or Budget Detail supersedes and replaces the previous grant and will initiate an amendment. No revisions can exceed allotted amount as shown on the Budget Detail. The total amount of the grant must remain unchanged.
- Contractor agrees to refund to the State any amounts claimed for reimbursement and paid to Contractor which are later disallowed by the State after audit or inspection of records maintained by the Contractor.
- Only the costs displayed in the Budget Detail are authorized for reimbursement by the State to Contractor under this agreement. Any other costs incurred by Contractor in the performance of this agreement are the sole responsibility of Contractor.
- Title shall be reserved to the State for any State-furnished or State-financed property authorized by the State which is not fully consumed in the performance of this agreement. Contractor is responsible for the care, maintenance, repair, and protection of any such property. Inventory records shall be maintained by Contractor and submitted to the State upon request. All such property shall be returned to the State upon the expiration of this grant unless the State otherwise directs.
- Prior approval by the State in writing is required for the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop or conference, and over any reimbursable publicity or educational materials to be made available for distribution. Contractor is required to acknowledge the support of the State whenever publicizing the work under this grant in any media.

II. BUDGET DETAIL

COST CATEGORY	TOTAL COST
A. Personnel Services	
<u>Overtime</u>	
Officers (\$91.49/hour) & Reserve Officer (\$88.40/hour)	\$65,300.00
Benefits	\$.00
TOTAL Personnel	\$65,300.00
B. Operating Expenses (receipts required)	
Buy Money	\$2,500.00
TOTAL Operating	\$2,500.00
C. Equipment (receipts required, must be purchased by 12/31)	
n/a	\$2,500.00
TOTAL Equipment	\$2,500.00
D. Travel Costs	
n/a	\$0.00
TOTAL Travel	\$0.00
GRANT TOTAL	\$70,300.00

III. BUDGET CONTINGENCY CLAUSE

- It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.
- Due to current and on-going fiscal uncertainty caused by the COVID-19 crisis, the grantee may spend no more than fifty percent (50%) of the grant amount without prior written authorization from the Department. The Department intends to authorize expenditures beyond the amount of fifty percent (50%) should its fiscal condition allow.

IV. PROMPT PAYMENT CLAUSE

- Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

EXHIBIT C GENERAL TERMS AND CONDITIONS

1. **APPROVAL**: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. **AMENDMENT**: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. **ASSIGNMENT**: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. **AUDIT**: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. **INDEMNIFICATION**: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. **DISPUTES**: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. **TERMINATION FOR CAUSE**: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
8. **INDEPENDENT CONTRACTOR**: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.
12. TIMELINESS: Time is of the essence in this Agreement.
13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

- a. The Government Code Chapter on Antitrust claims contains the following definitions:
 - 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
 - 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
 - b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
 - c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
 - d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.
16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:
- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 - b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.
19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:
 - a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
 - b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)
20. LOSS LEADER: If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

EXHIBIT D SPECIAL TERMS AND CONDITIONS

1. **Disputes:** Any disputes concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Director, Department of Alcoholic Beverage Control, or designee, who shall reduce his decision in writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Department shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the State a written appeal addressed to the Director of the Department of Alcoholic Beverage Control. The decision of the Director of Alcoholic Beverage Control or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Contractor shall proceed diligently with the performance of the contract and in accordance with the decision of the State.
2. **Cancellation/Termination:** This agreement may be cancelled or terminated without cause by either party by giving thirty (30) calendar days advance written notice to the other party. Such notification shall state the effective date of termination or cancellation and include any final performance and/or payment/invoicing instructions/requirements. No penalty shall accrue to either party because of contract termination.
3. **Contract Validity:** This contract is valid and enforceable only if adequate funds are appropriated in Item 2100-101-3036, Budget Act of 2021, for the purposes of this program.
4. **Contractor Certifications:** By signing this agreement, Contractor certifies compliance with the provisions of CCC 04/2017, Standard Contractor Certification Clauses. This document may be viewed at: <https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/Standard-Contract-Language>
5. If the State determines that the grant project is not achieving its goals and objectives on schedule, funding may be reduced by the State to reflect this lower level of project activity and/or cancel the agreement.

RESOLUTION NO. 6656

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK TO
ACCEPT A GRANT AWARDED IN THE AMOUNT OF \$70,300 FROM THE
CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL (ABC)
GRANT PROGRAM**

WHEREAS, The Menlo Park City Council desires to undertake a certain project designated as the Alcoholic Beverage Control Grant to be funded in part from funds made available through the Alcohol Policing Partnership Program (APP) administered by the Department of Alcoholic Beverage Control (hereafter referred to as ABC);

NOW, THEREFORE, BE IT RESOLVED that Chief Norris of the Menlo Park Police Department is authorized to execute on behalf of Mayor Combs, Vice Mayor Nash, City Councilmembers Mueller, Taylor, and Wolosin the attached contract, including any extensions or amendments thereof and any subsequent contract with the State in relation thereto.

IT IS AGREED that any liability arising out of the performance of this contract, including civil court actions for damages, shall be the responsibility of the grant recipient and the authorizing agency. The State of California and ABC disclaim responsibility for any such liability.

BE IT FURTHER RESOLVED that grant funds received hereunder shall not be used to supplant expenditures controlled by this body.

IT IS ALSO AGREED that this award is not subject to local hiring freezes.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the thirty-first day of August, 2021, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this thirty-first day of August, 2021.

Judi A. Herren, City Clerk



STAFF REPORT

City Council

Meeting Date:

8/31/2021

Staff Report Number:

21-166-CC

Consent Calendar:

Adopt Resolution No. 6657 and approve agreement with Turbo Data Systems, Inc. for citation processing and payment and adjudication services

Recommendation

Adopt Resolution No. 6657 and approve an agreement with Turbo Data Systems, Inc. (Turbo Data) for citation processing and payment and adjudication services for a term beginning July 1, 2021, through June 30, 2026, and authorize the city manager to execute the agreement in substantially the form presented.

Policy Issues

City Council must authorize the City manager to execute agreements in excess of \$78,000.

Background

Since 1999, the County of San Mateo (County) has served as the lead agency in procuring parking citation and adjudication services through a consolidated request for proposals (RFP) process, and all other agencies in the County piggy-backed on that RFP process and the resulting contract. This process has proved to be greatly beneficial, resulting in savings of both staff time and overall cost of services by combining the volume of all ticketing agencies in the County and leveraging economies of scale.

In 2015, the City of Menlo Park entered into an agreement with Turbo Data for the provision of citation processing and payment and adjudication services. The contract term was set to expire June 30, 2020, so the County began the collaborative process to issue an RFP, which was paused as a result of the pandemic, and the City extended the term of the agreement to June 30, 2021. In preparation for the contract expiring, the County issued a consolidated RFP for the provision of citation processing; payment and adjudication services; web-based information management; and records and case management for San Mateo County agencies in November 2020. Three proposals were received in response to the RFP. The responding vendors were Data Ticket, Quicket Solutions and Turbo Data. A subcommittee consisting of representatives from the County and the finance directors from the cities of Belmont, San Mateo, and Daly City was formed to evaluate proposals.

The proposals were evaluated on four criteria: 1) firm experience, 2) project approach, 3) team qualifications, and 4) fee proposal. Based on these criteria, the subcommittee determined Turbo Data to be the best option for the County and the recommended provider of service. Services include citation processing and collection by mail, telephone or website; multiple reminder notices; placing of Department of Motor Vehicles (DMV) holds; appeals and administrative adjudication services; optional advanced collection efforts; and leasing of the contractor's mobile ticket writers.

Analysis

The contract with Turbo Data covers the processing and outfitting of the automated ticket-writing process for both moving/criminal citations and parking citations. Turbo Data will handle the interface of our automated ticket-writers, maintain the database of citation information for staff, and interact with the courts and DMV as appropriate. Turbo Data will also handle customer service, payment options (including payment plans when necessary), collections, and appeals hearings for parking citations.

Impact on City Resources

Impact on city resources is difficult to assess given the uncertainty of the total number of citations issued by this department in the coming years, but can reasonably be informed by the historical expenses by this department over the past five years:

Table 1: Historical expenses			
Turbo Data	Maintenance and equipment costs	Processing costs	Total cost
2017	24,373	42,768	67,141
2018	38,254	62,167	100,421
2019	24,130	59,326	83,456
2020	25,211	36,556	61,767

Given that the total annual costs can exceed the \$78,000 signing authority of the city manager, City Council authorization for city manager approval of the annual costs would be an efficient strategy in this contract period.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Agreement with Turbo Data
- B. Resolution No. 6657

Report prepared by:
Dave Norris, Chief of Police

**AGREEMENT BETWEEN CITY OF MENLO PARK
AND TURBO DATA SYSTEMS, INC.**

This Agreement is entered into this _____ day of _____, 2021, by and between the City of Menlo Park, hereinafter called "City" or "Customer," and Turbo Data Systems, Inc., hereinafter called "Contractor."

* * *

Whereas, Customer may contract with independent contractors for the furnishing of specialized services to or for Customer; and

Whereas, Contractor has been selected to provide parking citation processing, adjudication services, traffic citation processing and issuance equipment for jurisdictions within and including San Mateo County, thereby providing coordinated services at lower cost than would be available through separately-negotiated agreements; and

Whereas, the Customer does not have existing resources to provide parking citation processing and adjudication through its own personnel and it is therefore necessary and desirable that Contractor be retained for the purpose of parking citation processing and adjudication services.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A—Services
- Exhibit B—Payments and Rates

2. Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for Customer in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, Customer shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. Customer reserves the right to withhold payment if Customer determines that the quantity or quality of the work performed is unacceptable. In the event that the Customer makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the Customer at the time of contract termination or expiration.

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from **July 1, 2021** through **June 30, 2026**.

5. Termination; Availability of Funds

This Agreement may be terminated by Contractor or by the Customer, acting through its City Manager, Police Chief, or the Police Chief's designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

Customer may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or City funds by providing written notice to Contractor as soon as is reasonably possible after Customer learns of said unavailability of funding.

Customer may terminate this Agreement for cause. In order to terminate for cause, Customer must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, Customer may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that Customer provides notice of an alleged breach pursuant to this section, Customer may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. Customer has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and Customer shall use reasonable judgment in making that determination.

6. Contract Materials

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of Customer and shall be promptly delivered to Customer. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

7. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of Customer and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of Customer employees.

8. Hold Harmless

a. General Hold Harmless

Contractor shall indemnify and save harmless Customer and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

(A) injuries to or death of any person, including Contractor or its employees/officers/agents;

(B) damage to any property arising out of the acts or omissions or property damage by the contractor, its agents, employees, or subcontractors;

(C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or

(D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of Customer and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which Customer has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

b. Intellectual Property Indemnification

Contractor hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this Agreement. Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless Customer from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) Customer notifies Contractor promptly in writing of any notice of any such third-party claim; (b) Customer cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without Customer's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on Customer, impair any right of Customer, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of Customer without Customer's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes Customer's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for Customer the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to Customer under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for Customer (other than modification performed by, or at the direction of, Contractor) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by Customer in a manner prohibited by this Agreement.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

9. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of Customer. Any such assignment or subcontract without Customer's prior written consent shall give Customer the right to automatically and immediately terminate this Agreement without penalty or advance notice.

10. Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

11. Insurance

a. General Requirements

Contractor shall not commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by the Customer, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish Customer with certificates of insurance and endorsements evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to Customer of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

<input checked="" type="checkbox"/> Comprehensive General Liability...	\$1,000,000
<input checked="" type="checkbox"/> Motor Vehicle Liability Insurance...	\$1,000,000
<input checked="" type="checkbox"/> Professional Liability.....	\$1,000,000

Customer and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to Customer and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, including if such limits are greater than the minimums specified here and (b) if the Customer or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, Customer, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

12. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

13. Non-Discrimination and Other Requirements

a. General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition, military service, or genetic information.

b. Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for

all employees under this Agreement. Contractor's equal employment policies shall be made available to Customer upon request.

c. Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Compliance with San Mateo County's Equal Benefits Ordinance

With respect to the provision of benefits to its employees, Contractor shall comply with Chapter 2.84 of the County Ordinance Code, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. In order to meet the requirements of Chapter 2.84, Contractor must certify which of the following statements is/are accurate:

- Contractor complies with Chapter 2.84 by offering the same benefits to its employees with spouses and its employees with domestic partners.
- Contractor complies with Chapter 2.84 by offering, in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic partner that is equal to Contractor's cost of providing the benefit to an employee with a spouse.
- Contractor is exempt from having to comply with Chapter 2.84 because it has no employees or does not provide benefits to employees' spouses.
- Contractor does not comply with Chapter 2.84, and a waiver must be sought.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. History of Discrimination

Contractor must check one of the two following options, and by executing this Agreement, Contractor certifies that the option selected is accurate:

- No finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- Finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other

investigative entity. If this box is checked, Contractor shall provide Customer with a written explanation of the outcome(s) or remedy for the discrimination.

g. Reporting; Violation of Non-discrimination Provisions

Contractor shall report to the Customer the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or Section 12, above. Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the Customer, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a Customer contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the Customer.

To effectuate the provisions of this Section, the Customer shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and Customer.

14. Retention of Records; Right to Monitor and Audit

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after Customer makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by Customer, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by Customer.

(c) Contractor agrees upon reasonable notice to provide to Customer, to any Federal or State department having monitoring or review authority, to Customer's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

15. Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition,

provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

16. Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

17. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of Customer, to:

Name/Title: Tracy Weber
Records / Communications Manager
Address: Menlo Park Police Department
701 Laurel St.
Menlo Park, CA 94025
Telephone: 650-330-6313
Facsimile: 650-327-1682
Email: taweber@menlopark.org

In the case of Contractor, to:

Name/Title: Roberta J. Rosen, President
Address: 18302 Irvine Blvd, Ste. 200, Tustin, CA 92780-3464
Telephone: 714-573-5757
Facsimile: 714-573-0101
Email: roberta@turbodata.com

* * *

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

FOR CUSTOMER:

CITY OF MENLO PARK

By: Starla Jerome-Robinson

Title: City Manager

Date:

Approved as to form:

By:

City Attorney,

ATTEST:

By:

City Clerk

FOR CONTRACTOR:

Turbo Data Systems, Inc.

By:

Roberta J. Rosen, President, Turbo Data Systems, Inc.

Date:

Exhibit A - Services

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

1. MOVING AND CRIMINAL CITATION PROCESSING SERVICES

A. Handheld Ticket Writer Interface - Contractor will provide automated import of electronic citations into Customer's database. Batch files will be uploaded within forty-eight (48) hours upon file transfer to the Customer's records management system and San Mateo County Superior Court – Traffic. Data will be generated and pushed or pulled depending on Customer preference and technology department accommodation. Electronic transfer is available depending on the recipient County's case management system and its ability to accept electronic files.

B. Electronic Moving and Criminal System Access – The Contractor will provide moving and criminal violation enforcement software with the Customer's records management system. This will include the following:

- 1) Cloud hosting
- 2) Electronic Court Integration/Export
- 3) TR-10/tracking
- 4) Viewing of records including photos/signatures
- 5) Daily, monthly, shift summary reporting
- 6) Citation reprint for officer or public
- 7) Ongoing support, training, and maintenance for devices.

C. System and Document Storage - Contractor will retain all digital citations on the computer system for two (2) years and then remove.

D. Online Reporting - Contractor will provide regular daily, weekly and monthly reports in a format as agreed upon. Additional reports will be provided at no additional cost for operating, production and audit functions. Reports will be made available online via a secure web page and be available for Customer access no later than the thirtieth (30th) day of the following month, except when February is the following month, in which case this information will be available by the last day of February.

E. Online Inquiry Access and Support for Customer's Staff - Contractor will provide access to the traffic and criminal citation database via a web page using a secure log-on procedure. Customer shall be provided access to their own database. A "NOTES" feature will allow authorized personnel to easily enter comments for a particular citation or license plate to be viewed by other inquiry function users. Contractor's technical staff will provide support during normal business hours. Technical support will be provided for any communication or logon problems as well as immediate technical support when problems arise in the uploading, downloading and transferring of files.

F. Contract Requirements:

1) **Privacy and Security of Customer Data** - Contractor agrees to keep all Customer data private and secure and will not share, sell, or otherwise access the Customer data for reasons other than the normal processing of moving and criminal citations or as otherwise required by law.

2) **Notice of Security Breach** – Contractor must immediately notify the Customer when it discovers that there may have been a data security incident that has or may have resulted in compromise to the Customer for purposes of this Section, "immediately" is defined as within twenty-four hours of discovery. The Contractor must immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of any suspected breach or security vulnerability and must promptly alert the Customer of any such circumstances, including information sufficient for the Customer to assess the nature and scope of any suspected data breach. In the event of an unauthorized disclosure of Customer data, the Contractor will be liable for paying for the following costs to remediate any such unauthorized disclosure:

- The reasonable cost of providing notice of the breach to individuals affected by such breach;

- The reasonable cost of providing required notice of the breach to government agencies, credit bureaus, and/or other required entities;
- The cost of providing individuals affected by such breach with credit protection services designed to prevent fraud associated with identity theft crimes for a specific period not to exceed twelve (12) months; and any other service required by applicable law.

The Contractor must provide any information and/or support to the Customer in issuing the actual notification and at the Customer's sole discretion, the Contractor must provide actual notification if the Customer desires. This section will survive termination or expiration of this Agreement.

Confidentiality of all other data and materials - In addition to the data security and privacy requirements detailed above that apply to the Customer, any other Customer data or materials to which the Contractor has access or materials prepared by the Contractor during the course of this Agreement ("confidential information") shall be held in confidence by the Contractor, who shall exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the officers, employees and agents of the Contractor as necessary to accomplish the rendition of services set forth in Section 1 of this Agreement.

3) **System Backups** - All systems will be backed up daily to ensure safety of data in the event of a power outage or natural disaster. All backup data should be transferred and stored off-site for disaster recovery.

4) **Vehicle Code Compliance** - Contractor will comply with all requirements of the California Vehicle Code in regard to processing of citation records sent by the issuing agency during the entire term of this Agreement, including extensions if any.

5) **Right to Audit** - If Customer requests it, an auditor shall be hired to perform a financial and/or performance audit. The Customer shall pay the cost of the audit upon the written approval of auditor's cost.

6) **Meeting Attendance** - Contractor will be available to attend Customer meetings as needed at Contractor's own expense.

7) **Transition to Next Contractor** - In the event of a future change of vendor, Contractor agrees to fully cooperate in any transition. This shall include but not be limited to provision of data in an acceptable electronic format, provision of information as requested by the Customer to facilitate a future RFP process, and assistance with any and all transition processes necessary to provide for uninterrupted services to the Customer.

G. Software Disclosure - The Contractor may subscribe to various third-party software services for the purpose of automating input of various fields of information into the citation information while writing a ticket. The third-party software services may include but are not limited to Google Maps, Google location services GPS, LPR Services, and VIN lookups. The Contractor reserves the right, should these services terminate, to disable those services in the software at any time. These services are integrated in to the ticketPRO software for convenience and do not affect the issuance of citations. Manual entry of information into the citation is never affected by these third-party software services and is always available.

H. Termination - Termination fee of \$4,000 per unit at outset, each month thereafter reduced \$75 per month per unit.

I. Training - The Contractor will provide training for software and hardware. The Contractor will provide training manuals to the Customer. Training will include step-by-step manuals on how to issue citations and access back-end ticket reporting portals. Training, equipment initialization and setup will be provided by the Contractor and is included in the lease of the ticketwriters. The Contractor will provide RemoteConnect support for devices while in the field.

J. Optional Services:

- 1) Provision of Automated Ticket Media - Contractor will provide paper ticket stock for electronic citations. See exhibits.
- 2) **Racial and Identity Profiling Act (RIPA) CA** - The Contractor is currently working on a RIPA application that would be an optional service. If the RIPA option is exercised by the Customer, it will coincide with the length of this contract.

K. Software Development

If the Customer requires any additional software development for special projects and/or programs. The Customer will work with the Contractor on a scope of work to determine the specifications and requirements and the Contractor will provide the cost estimate and timeline.

2. PARKING CITATION PROCESSING SERVICES

A. Basic Processing - Contractor will enter manual citations and citation dispositions into Customer's database within two business days. The basic service includes database maintenance, daily system backups, toll-free phone number for the public, Interactive Voice Response System (IVRS) with customized recorded information and citation lookup capability, www.pticket.com web-based Inquiry System for the public with customized content, Contractor's Customer Service Representatives (9:00a.m.- 5:00 p.m., Monday through Friday, excluding holidays) to speak with the public regarding parking citation issues, ongoing Client support, and documentation and training for use of the Contractor-provided online system. Contractor will process correction notices and notify Customer of citations unable to be entered for any reason, (such as no violation code, unreadable license, etc.).

B. Handheld Ticket Writer Interface - Contractor will provide for automated import of electronic citations into Customer's database. Batch files will be uploaded immediately upon file transfer. Contractor will maintain and update the hot sheet or scofflaw files on a daily basis for Customer. Identifying vehicles which have accumulated five (5) or more outstanding citations in the combined San Mateo County contract area to upload into their handheld ticket writers. Contractor will provide electronic reports on a monthly basis. Contractor will work with Customer to implement any changes required for handheld ticket writer equipment.

C. Customer Service and Toll-Free Telephone Number - Contractor will provide a toll-free automated telephone number for inquiries and credit card payments. The toll-free telephone service will be available a minimum of 20 hours per day, 7 days per week for the 50 United States and Canada, with the exception of backup time sometime between the hours of midnight and 4:00 a.m. A customized recorded voice response system in English and Spanish will be available to provide information for each pay or on how to pay and contest citations, registration violation information, and Customer address information. The automated telephone system will be capable of receiving a minimum of 20,000 incoming calls per month. Downtime for required maintenance will be between midnight and 4:00 a.m. The automated voice response system will be capable of providing real-time data regarding the citation issue date, amount due, delinquent date and total amount due for each license plate when multiple citations are outstanding. The system will provide information about appealed citations and the results of the appeal. Contractor Customer Service Representatives (CSRs) will be available Monday through Friday, 9:00 a.m. to 5:00 p.m., excluding Customer recognized holidays. CSRs will be available to provide instructions and information on general parking policies and procedures, and administrative adjudication procedures for the Customer. At least one CSR will be available for Spanish translation during regular business hours Monday through Friday. Calls will be answered in six rings or less. In order to assist CSRs with non-English speakers, AT&T's Language Line (or similar) will be available at all times the CSRs are available and shall be employed to accomplish translations as required. The telephone system will provide up-to-date information on the status of a citation with the option to speak with a live representative during normal business hours. CSR's will provide customer service for the public in resolving parking citation questions of a non-judicial nature and research specific citation data when necessary. CSRs will be fully trained in all informational aspects of parking citation processing and related information specific to the Customer.

D. System and Document Storage - Contractor will retain all citations paid or dismissed on the computer system for three years and then be removed. Unpaid citations will be retained on the computer system for five (5) years and then be removed. Citation documents will be stored for two (2) years from date of issue and then shredded. Payment documents will be stored for two (2) years from the date of payment and then shredded.

E. Online Reporting - Contractor will provide regular daily, weekly and monthly reports in a format as agreed upon. Additional reports will be provided at no additional cost for operating, production and audit functions. Reports will be made available online via a secure web page and be available for Customer access no later than the thirtieth (30th) day of the following month, except when February is the following month, in which case this information will be available by the last day of February.

F. DMV Interface for Registered Owner Name Retrieval - Contractor will obtain names and addresses of registered owners of cited vehicles from California DMV using online or manual access to registered owner information from California DMV when necessary. Upon return of registered owner information from DMV, Contractor will validate vehicle make. Contractor will also review DMV "No Hit" list to ensure that license plate and state have been entered correctly.

G. Notice Processing - Contractor will print the required Notice and mail to each registered owner whose name has been retrieved within 10 to 21 days after the citation has been issued. This includes second notices mailed for bounced checks, partial payments, and name or address changes. Contractor is required to send notices to lessees or renters of cited vehicles when provided with proof of a written lease or rental agreement. All postage, notice forms and envelopes will be provided by Contractor. All notices and letters will be formatted using custom #10 window envelopes with the Customer's return address. The interior #9 return envelope will be customized with the Customer's payment address. Drive Away Notices will be mailed by first class mail to registered owners of vehicles that drive away from the officer at citation issuance time as required by the California Vehicle Code. Notices are mailed no later than 15 days from the date of the original citation to the registered owner of the vehicle. Delinquent Notices generated will be mailed at least once a week by first class mail to registered owners. Returned check notices will be mailed by first class mail to individuals immediately upon notification from the Customer that a check has been returned for non-payment. These notices will state the amount of original penalty, delinquent amount, and the appropriate returned check fee. Partial Payment Notices will be sent by first class mail to those who do not pay the full penalty amount. The notice will indicate the amount that was paid and the remainder that is due. The Contractor will generate Reminder Notices for unpaid accounts at a time frame acceptable to the Customer. Contractor will communicate with violators in a timely manner by mail in response to correspondence such as incomplete registration, citation, or payment information.

H. Additional Notices - Contractor will mail Other Correspondence as required for processing. Adjudication Letters will be mailed as required. DMV Hold Letters shall be mailed to registered owners on citations remaining open 18 months after a DMV Hold is placed.

I. DMV Interface for Placing Registration Holds - Contractor will transmit a Notice of Delinquency to the California DMV for vehicles with California license plates after a Notice of Violation has been mailed to the registered owner and Contractor has not received notification that the citation has been cleared. This Notice of Delinquency will be transmitted to the California DMV within two (2) business days after the date specified by the Customer to be the DMV Date.

J. DMV Interface for Releasing Registration Holds - Contractor will transmit a Notice to the California DMV that a Notice of Delinquency has been cleared within two (2) business days after Contractor has received notification of clearance.

K. DMV Interface for Monthly Payment File - Contractor will receive payment files from DMV as available (currently monthly) and update DMV transactions into Customer's database, providing reporting for reconciliation purposes.

L. Document Exchange/Transfer - Customer will scan all manual tickets, appeals and other documents and electronically transmit to Contractor. TDS will provide an SFTP secure access for the transfer. Contractor will provide

electronic reporting using ReportNet. Reports are available at any time for multiple years and months and can be printed and/or emailed as desired.

M. Collection and Payment Processing - Contractor will provide the following collection and payment processing services for Customer:

- Provide P.O. Box where payments, administrative review correspondence, and other documents are mailed within San Mateo County
- Courier pickup from P.O. Box daily
- Open all mail enter and process payments received by mail within one (1) business day, including opening all mail received, entering suspense date, verifying payment amounts, updating computer system, and make daily bank deposits directly into a Customer assigned bank account
- Process all correspondence within two (2) business days from the date of receipt
- Sort and batch all correspondence by postmark date. Envelopes shall be kept on file with correspondence
- Track rebilling on partial payments, non-payment of approved payment plans, checks returned for insufficient funds, vehicle change of ownership, re-entered citations for payment
- File and store all source documents in an easily retrievable system
- Respond to reasonable non-judicial public inquiries by phone or mail
- Return questionable mail to Customer for decision
- Provide reporting of bank deposits made for Customer within one day following the deposit
- Provide toll-free number for citizen inquiries
- Provide reports for bank statement reconciliation
- Provide monthly Paid Citation Distribution Report for Customer to pay surcharges. Contractor will scan checks and deposit parking funds (remote deposits) into Customer's bank account. This method is safe, secure and efficient. Checks never leave our facility. Check scanning hardware and software is provided by Customer for its specific banking requirements.
- Contractor does not charge for remote deposits; however, the financial institution may charge a fee, which is the responsibility of the Customer.
- Customers not set up for bank check scanning will incur additional courier fees.

N. Out of State Citations - Contractor will process citations for non-California license plates by entering the citation information into the system database and report them along with all other citations on the database with the standard reports. If they become delinquent, requests for registered owner information will be sent to the appropriate out-of-state DMV. The Notice of Intent will be generated to the registered owner and the fine amount requested. Contractor will incur all costs for out of state name retrieval, including out-of-state DMV fees and charges. Contractor will receive payment from Customer based on the amount of revenues collected from out-of-state citations after the Notice of Intent has been issued.

O. Public On-Line Access - www.pticket.com - Contractor will supply a web site for public use allowing the receiver of a parking violation to enter the parking citation number or other identifying information in order to view parking citation data on line in real time. The website incorporates the highest level of data security and data privacy in the industry. Web-based data traffic, which includes names, addresses, parking ticket numbers or credit card numbers is encrypted using the highest level of industry standard encryption. Public access will include access to current citation status, including status of contested citations, due dates, original fine amount, late charges, information on how to contest a citation, how to show proof of correction for correctable violations, how to submit claims of indigence prior to a hearing, and addresses for paying in person or by mail.

P. IVR and Web Payment Systems - Payment by Credit Card - Through the Interactive Voice Response (IVR) System, and through the pticket.com web site, Contractor will accept credit card payments via Visa, MasterCard and Discover. The systems authorize each transaction while the caller is on the phone or online. Payees are given an authorization number or email confirmation to confirm their charge. The IVR system and the pticket.com web payment system both automatically update the citation database with the payment immediately. Credit Card monies will be paid to a Contractor bank account and reconciled monthly. Customer will receive a credit card post log which shows in detail which citations were paid and for what amount, along with the deposit slip from the bank or the ACH

deposit email showing that these funds have been deposited into the Customer's account. Should there be any charge backs to a merchant account, the funds are pulled directly from the Contractor master account and the citation will be reactivated, much like a bounced check. The violator will be sent a notice and will then proceed to DMV hold. Contractor will provide all services regarding reconciliation, reactivation of charge backs, etc. The Customer will not be involved in the daily processing.

Q. Administrative Adjudication Processing - Contractor will provide for the processing of requests for contesting citations, allowing for Customer processing of administrative reviews, tracking and monitoring all relevant dates on an automated system, mailing timely notification to respondents regarding the status of their claims, and scheduling of administrative hearings. All Administrative Adjudication information entered into the system will be done in real time and linked to existing database information to ensure proper tracking of relevant dates, mailing names and addresses and other pertinent information. Administrative Review requests will be entered within two (2) business days of receipt. Adjudication documents will be stored for two (2) years from their activity date and then shredded. Contractor will notify Customer of citations that have been found Not Liable that need refunds, so the Customer can issue the refund. Contractor will schedule combined San Mateo County Hearings up to three (3) weeks in advance, according to citizen selection by location and day of week in one of the San Mateo County locations. Hearings may be scheduled manually if requested. Contractor will print and mail (by first class mail) customized hearing notification letters to appellant and respond to inquiries from Customer and the public regarding date of hearing, mailing date, location of hearing and directions to hearing location. Contractor will provide the capability to use customized text, such as liable reason codes, in letters for Customer and re-send letters should changes or reschedules occur. Contractor agrees to provide all information required under the Vehicle Code in a timely manner at no additional cost to the Customer should an appeal be made to the Superior Court.

R. Payment Plan – The Contractor will have a payment plan system in place to comply with all legislation. The plan will allow for waivers when necessary for indigent and non-indigent individuals. Plan requests will be submitted to the Customer for review/approval/denial. The Contractor will mail correspondence to let the applicant know the status of their payment plan application and other details. Payment Plans allow the agency to waive fees for indigent persons, adjust the length of the plan and set minimum payments due. If a plan defaults prior to full payment, the system automatically resumes the citation process (DMV, Collections, etc.). The Contractor will provide customized agency specific information for indigent payment plans on pticket.com.

S. Paperless Appeals (eAppealsPRO & Scanning) - Contractor will provide online appeal capability for the public to appeal their citations online. Contractor will provide the scanning of all mailed-in appeal documents and electronic storage of those documents. Contractor will provide an online application to access the appeals, which will be searchable and sortable. Contractor will keep an electronic history of processed appeals for at least two years.

T. Independent Hearing Examiner Services - Contractor will contract with Independent Third-Party Hearing Examiners to provide fair and impartial hearings for Customer and the public. Contractor will provide a monthly report of hearing results by citation number. The Independent Third-Party Hearing Examiners will meet all training, education and other requirements specified in the California Vehicle Code which apply to the performance of administrative hearings.

U. Online Inquiry Access and Support for Customer's Staff - Contractor will provide access to the parking citation database via a web page using a secure log-on procedure. This access includes citation inquiry by citation number, license plate number, full or partial name and VIN (includes citation status, history status, administrative adjudication status, notes, etc.), the ability to enter and view NOTES, post dismissals/payments, view daily deposits made at Contractor's facility and view daily file transfers sent from the handheld ticket writer software and received at Contractor's facility. A "NOTES" feature will allow authorized personnel to easily enter comments for a particular citation or license plate to be viewed by other inquiry function users. Contractor's technical staff will provide support during normal business hours. Technical support will be provided for any communication or logon problems as well as immediate technical support when problems arise in the uploading, downloading and transferring of files.

V. ICS Collection Service - Special Collections - Contractor will transfer outstanding citations (DMV No-Holds, DMV Transfer of Ownership Releases, Non-California plates, citations delinquent over 90 days) and any other citations

deemed as delinquent citations by Customer into the ICS system on a weekly basis. Up to two collection letters will be mailed for each ICS account requesting payment. Payments will be processed daily and deposited to the Customer's regular citation processing bank account. The Contractor's Customer Service Center will handle all ICS related calls through a special toll-free number dedicated to ICS accounts. Monthly reporting will show all accounts moved to the ICS system and all payments received due to ICS efforts.

W. Franchise Tax Board Offset Program - Contractor will combine citations by license number for total amount due, eliminate corporate names, retrieve SSN's by name from a 3rd party, combine accounts by SSN, mail required FTB letters in advance of placing accounts at FTB, process payments generated by the FTB process, receive phone calls generated by the FTB process, provide all systems and operational procedures required for the FTB process. and provide complete reporting and reconciliation for the FTB process. Customer will be required to complete required FTB paperwork and forms (with Contractor's assistance), establish a SWIFT account with the FTB, and provide whatever assistance may be required to work with the FTB regarding the FTB process.

X. Contract Requirements

- **Privacy and Security of Customer Data**- Contractor agrees to keep all Customer data private and secure and will not share, sell, or otherwise access the Customer data for reasons other than the normal processing of parking citations or as otherwise required by law.
- **Notice of Security Breach** – Contractor must immediately notify the Customer when it discovers that there may have been a data security incident that has or may have resulted in compromise to the Customer for purposes of this Section, “immediately” is defined as within twenty-four hours of discovery. The Contractor must immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of any suspected breach or security vulnerability and must promptly alert the Customer of any such circumstances, including information sufficient for the Customer to assess the nature and scope of any suspected data breach. In the event of an unauthorized disclosure of the Customer, the Contractor will be liable for paying for the following costs to remediate any such unauthorized disclosure:
 - The reasonable cost of providing notice of the breach to individuals affected by such breach;
 - The reasonable cost of providing required notice of the breach to government agencies, credit bureaus, and/or other required entities;
 - The cost of providing individuals affected by such breach with credit protection services designed to prevent fraud associated with identity theft crimes for a specific period not to exceed 12 months; and any other service required by applicable by law.

The Contractor must provide any information and/or support to the Customer in issuing the actual notification and at the Customer’s sole discretion, the Contractor must provide actual notification if the Customer desires. This section will survive termination or expiration of this Agreement.

Confidentiality of all other data and materials - In addition to the data security and privacy requirements detailed above that apply to the Customer, any other Customer data or materials to which the Contractor has access or materials prepared by the Contractor during the course of this Agreement ("confidential information") shall be held in confidence by the Contractor, who shall exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the officers, employees and agents of the Contractor as necessary to accomplish the rendition of services set forth in Section 1 of this Agreement.

- **System Backups** - All systems will be backed up daily to ensure safety of data in the event of a power outage or natural disaster. All backup data should be transferred and stored off-site for disaster recovery.
- **Subcontracting** - No portion of the Agreement, other than the independent administrative hearings, shall be permitted to be subcontracted to another private or public agency without express written approval from the Customer. Contractor must disclose the nature of work being subcontracted, and the name of the private or public agency which shall perform the work.

- **Vehicle Code Compliance** - Contractor will comply with all requirements of the California Vehicle Code in regard to processing and adjudication of citation records sent by the issuing agency during the entire term of this Agreement, including extensions if any.
- **Right to Audit** - If Customer requests it, an auditor shall be hired to perform a financial and/or performance audit. The Customer shall pay the cost of the audit upon the written approval of auditor's cost.
- **Meeting Attendance** - Contractor will be available to attend Customer meetings as needed at Contractor's own expense.
- **Transition to Next Contractor** - In the event of a future change of vendor, Contractor agrees to fully cooperate in any transition. This shall include but not be limited to provision of data in an acceptable electronic format, provision of information as requested by the Customer to facilitate a future RFP process, and assistance with any and all transition processes necessary to provide for uninterrupted services to the Customer.

Y. Software Disclosure - The Contractor may subscribe to various third-party software services for the purpose of automating input of various fields of information into the citation information while writing a ticket. The third-party software services may include but are not limited to Google Maps, Google location services GPS, LPR Services, and VIN lookups. The Contractor reserves the right, should these services terminate, to disable those services in the software at any time. These services are integrated in to the ticketPRO software for convenience and do not affect the issuance of citations. Manual entry of information into the citation is never affected by these third-party software services and is always available.

Z. Termination - Termination fee of \$950 per unit at the outset, and each subsequent month reduced \$18 per month per unit. (**ticketPRO Magic two-piece device only**)

AA. Optional Services:

- 1) Interfacing with Coplink
- 2) Provision of Automated Ticket Media - Contractor will provide paper ticket stock for electronic citations. See exhibits.
- 3) **Racial and Identity Profiling Act (RIPA) CA** - The Contractor is currently working on a RIPA application that would be an optional service. If the RIPA option is exercised by the Customer, it will coincide with the length of this contract.

AB. Training - The Contractor will provide training for software and hardware. The Contractor will provide training manuals to the Customer. Training will include step-by-step manuals on how to issue citations and access back-end ticket portals. Training, equipment initialization and setup will be provided by the Contractor and is included in the lease of the ticketwriters. The Contractor will provide RemoteConnect support for devices while in the field.

AC. Software Development - If the Customer requires any additional software development for special projects and/or programs. The Customer will work with the Contractor on a scope of work to determine the specifications and requirements and the Contractor will provide the cost estimate and timeline.

3. EQUIPMENT LEASING SERVICES

A. Leasing Options - Customer may add devices at any time throughout the life of the contract for the leased price. If a new device is leased, the new device's lease will rollover to the next contract with the Contractor with no termination penalties. If the Customer does not exercise the option to renew the contract with the Contractor, the Customer agrees to pay the termination fees:

- 1) ticketPRO Magic (parking citations): \$950 per unit at the outset, and each subsequent month reduced \$18 per month per unit.

- 2) ticketPRO nFORCER All-in-One (moving citations): \$4,000 per unit at the outset, and each subsequent month reduced \$75 per month per unit.

B. Warranties - The Contractor will provide to the Customer the full benefit of any warranties provided by the manufacturers of the equipment, parts, materials, hardware, firmware, and software provided under this Agreement.

- 1) The Contractor will be responsible for the maintenance and repair of the equipment under normal wear and tear. In the event that any hardware stops functioning, Customer staff should report the issue to ticketPRO support and the Contractor will replace or repair the malfunctioning hardware.
- 2) The Contractor will provide a parts and repairs fee schedule for anything not included in the above warranties to the Customer for the term of the contract.
- 3) Contractor will not be responsible for Lost, Stolen or Damaged Devices, outside of normal wear and tear.

C. Upgrades - The Contractor must substitute the hardware during the Lease Term if it is mutually agreed upon by both parties. The upgraded supported devices will provide better improved functionality.

D. Additional Supplies Not Included in Lease

- Replacement Batteries, AC Adapters and Accessories: The Contractor will make replacement batteries, AC adapters or charging stations and accessories available to the Customer for purchase at then-current prices.
- Citations and Envelopes: The lease does not include citation forms or envelopes, which the Contractor will provide to the Customer at then-current prices, which will vary by quantities ordered. Citations are water and heat resistant poly-thermal, and standard and custom designs are available. Envelopes are preprinted with the payment address and online payment options.
- Replacements for Damaged/Lost/Stolen hardware:
 - Contractor will provide fully configured replacement ticketPRO Magic Ticketwriters for \$950 each (parking)
 - Contractor will provide fully configured replacement ticketPRO nFORCER Ticketwriters for \$4,000 each (traffic)
- Return of hardware: At the end of the lease term, all hardware will be returned to Contractor in good working order. If equipment is not returned, the lease will revert to a month-to-month lease with 30 days' notice required for discontinuation of that lease.

EXHIBIT B
Payments & Rates

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, Customer shall pay Contractor based on the following fee schedule and terms:

1. TRAFFIC/MOVING CITATION SERVICES AND FEES

A. Equipment Leasing Fees: Customer will pay Contractor according to the following rates and terms:

ticketPRO nFORCER-II All-in-One

Traffic Equipment Leases (Includes all items listed in Purchase Option)	nFORCER-II Print	nFORCER-II Scan	nFORCER-II ID	nFORCER-II ID/Scan
nFORCER-II 5 Year Lease- Traffic TicketWriters (per unit/month)	\$150.00	\$175.00	\$200.00	\$225.00

nFORCER-II Model options: All nFORCER-II units include an AC Adapter. Accessories are optional and are listed in section G below. All models can be used for Parking, Traffic and Code enforcement. Below is a recommendation based on typical use:

Model	Description	Recommended use
nFORCER-II Print	Includes a built-in printer	PARKING enforcement only
nFORCER-II Scan	Includes a built-in printer and a Laser Barcode Scanner for scanning DLs, IDs, VIN, etc.	PARKING & Traffic enforcement
nFORCER-II ID	Includes a built-in printer and a Biometric finger scanner	Traffic enforcement
nFORCER-II ID/Scan	Includes a built-in printer, Laser Barcode scanner and a Biometric Finger scanner	Traffic enforcement

B. Device Features: Lease agreement will include the following:

- 1) ticketPRO nFORCER all-in-one
- 2) Bar code Laser Scanner (optional)
- 3) Built-in Biometric Finger Scanner (optional)
- 4) ticketPRO Magic Software and License
- 5) ticketPRO Magic Software Setup/Configuration: Initial setup and installation of software with Customer specific information - Includes 1-day training
- 6) ticketPRO Magic Software Maintenance and Support: Remote servicing and updates, user support including RemoteConnect assistance, and email support
- 7) Smartphone with Managed 4G LTE data plan
- 8) High-Definition (HD) display
- 9) Android OS
- 10) GPS
- 11) High Resolution Camera
- 12) IP65 Rated
- 13) Internal and Hot Swappable Battery
- 14) Integrated 3" Thermal Printer

C. Service Fees: The following fees will be charged to the Customer by the Contractor as these items are processed. A Single Site or Multiple Site Access/Hosting Fee is required for each Agency utilizing the Traffic system. Costs will be determined by the quantity processed and will be invoiced to the Customer monthly.

Fee	Rate
Electronic Traffic Citation Processing Fee- Customer orders citation rolls	\$1.50 per citation
Electronic Traffic Citation Processing Fee- Turbo Data provides citation rolls at no extra cost	\$1.80 per citation
Traffic Processing System Access/Hosting Fee. Single site; includes services below	\$300.00 per month
Traffic Processing System Access/Hosting Fee. Multiple sites; includes services below	\$600.00 per month
Hosting Service: <ul style="list-style-type: none"> • Cloud hosting • Electronic Court Integration, export, and maintenance • Electronic TR-100 Corrections • Support for records personnel • Security Account management and maintenance • Web access for viewing records including photos, signatures and biometric images • Daily/Monthly shift summary reporting • Citation copy reprint for officer and public • Ongoing back-office support and enhancements 	

D. Additional Lease Options for Traffic/Moving Devices

Traffic Equipment Leases (Includes all items listed in Purchase Option)	nFORCER-II Print	nFORCER-II Scan	nFORCER-II ID	nFORCER-II ID/Scan
nFORCER-II 5 Year Lease- Traffic TicketWriters (per unit/month)	\$150.00	\$175.00	\$200.00	\$225.00
nFORCER-II 4 Year Lease- Traffic TicketWriters (per unit/month)	\$170.00	\$200.00	\$230.00	\$260.00
nFORCER-II 3 Year Lease- Traffic TicketWriters (per unit/month)	\$200.00	\$240.00	\$280.00	\$320.00
nFORCER-II 2 Year Lease- Traffic TicketWriters (per unit/month)	\$255.00	\$320.00	\$380.00	\$440.00
nFORCER-II 1 Year Lease- Traffic TicketWriters (per unit/month)	\$430.00	\$555.00	\$680.00	\$800.00

E. Purchase Options for Traffic/Moving Devices

Traffic Equipment Purchase	nFORCER-II Print	nFORCER-II Scan	nFORCER-II ID	nFORCER-II ID/Scan
nFORCER-II Purchase- Traffic writers (Each)	\$2,700.00	\$3,400.00	\$3,850.00	\$4,500.00
Support/Maintenance/4G Data Plan Required for each nFORCER purchased	\$80.00 per month for all options			
Configuration & Setup (each)	Waived (normally \$100.00)			
Training	Included			

F. Lease to Purchase Option for Traffic/Moving Devices

The Customer will have the option to purchase any leased Traffic/Moving device throughout the contract. The price for the purchase would be **\$94/unit/month left on the lease**.

For example, 18 months into the 60-month contract, the Customer decides to purchase the nFORCER the cost would be: \$94 X 42 months or \$3,948. \$80 per month Communications and Support Fee required for service.

G. Accessories and Extended Warranty

nFORCER-II accessories and options		
Item	Description	Price
1	Single Dock with power supply	\$ 219.00
2	Single Dock without power supply (used with quad base)	\$ 195.00
3	Quad Dock base only	\$ 365.00
4	Quad Dock base with docks	\$ 1,147.00
5	Hot swap Battery	\$ 138.00
6	Carry case	\$ 39.00
7	USB Car charger	\$ 50.00
8	USB AC Adapter	\$ 65.00
9	Hand Strap	\$ 24.00
10	Top Strap	\$ 24.00
11.	High-Capacity Hot Swap Battery	\$ 180.00

Five (5) Year extended Manufacturer Warranty

- Free from defects in materials and workmanship, under normal intended use
- 10 business day turnaround for repairs
- Consumables not covered

H. Upgrades - Through the life of the contract, if the equipment being leased to the Customer becomes obsolete or no longer supported by the Contractor, the Contractor shall upgrade the leased equipment to a supported product similar or exceeding the current leased item at no cost to the Customer.

2. PARKING CITATION SERVICES AND FEES

A. Equipment Leasing Fees - Customer will pay Contractor according to the following rates and terms.

Description	Rate	Term
ticketPRO Magic two-piece device	\$87 per month per unit	5 years

B. Service Fees: The following fees will be charged to the Customer by the Contractor as these items are processed. Costs will be determined by the quantity processed and will be invoiced to the Customer monthly.

Fee	Rate
Electronic Parking Citation Processing Fee	\$.40 per citation
Electronic Parking Citation Processing Fee Turbo Data provides citation rolls (2 inches) at no extra cost	\$.50 per citation
Electronic Parking Citation Processing Fee Turbo Data provides citation rolls (3 inches) at no extra cost	\$.55 per citation
Manual Parking Citation Processing	\$.70 per citation
Notice Processing	\$.76 per citation
Final Notice Letters	\$.76 per letter
DMV Hold Letters	\$.76 per letter
Administrative Adjudication - per appeal	\$1.50 per appeal
Adjudication Letters-per letter	\$.76 per letter
Administrative Hearings	\$25.00 per hearing
Out of State Processing - % of revenue collected	25%
Collections for Citations delinquent over 90 days (ICS)	25%
Franchise Tax Board Processing - % of revenue collected	25%
Payment Plans Entered	\$5.00 per plan
Payment Plans Letters Mailed	\$0.76 per letter
Banking Services Options- Scan Checks directly into Agency Bank Account	No Charge
Banking Services Options- Courier Daily Bank Deposit Service(Monthly Fee)	\$200.00

Postal Rate Increase Offset - If postal rates increase during the term of this agreement notice, letter fees to TDS shall be raised immediately to offset the effect of the postage rate increase.

CITY OF MENLO PARK TICKETER OPTIONS – July 1, 2021

3. TRAFFIC/MOVING CITATION EQUIPMENT

Purchase Cost	Quantity	Cost
nFORCER-II Print		\$2,700
nFORCER-II Scan		\$3,400
nFORCER-II ID		\$3,850
nFORCER-II ID/Scan		\$4,500

All Purchases require \$80 per month per unit Support/Maintenance/Communications Fee

Lease Cost per Month – 5 years	Quantity	Cost
nFORCER-II Print		\$150
nFORCER-II Scan		\$175
nFORCER-II ID		\$200
nFORCER-II ID/Scan		\$225

All Leases include the monthly Support/Maintenance/Communications Fee

4. PARKING CITATION EQUIPMENT

Purchase Cost	Quantity	Cost
ticketPRO Magic (2 piece)		\$950

All Purchases require \$80 per month per unit Support/Maintenance/Communications Fee

Lease Cost per Month – 5 years	Quantity	Cost
ticketPRO Magic (2 piece)		\$87

All Leases include the monthly Support/Maintenance/Communications Fee

5. TICKET ROLL STOCK for CITATION EQUIPMENT

TRAFFIC CITATIONS

For Traffic Citations, please indicate if you will order citation rolls on your own or if you will pay a per citation fee for the option that includes ticket rolls where Turbo Data provides citation rolls.

TRAFFIC CITATIONS	YES/NO	Cost
Electronic Traffic Citation Processing Fee Customer orders citation rolls		\$1.50 per citation
Electronic Traffic Citation Processing Fee Turbo Data provides citation rolls at no extra cost		\$1.80 per citation

PARKING CITATIONS

For Parking Citations, please indicate if you will order citation rolls on your own or if you will pay a per citation fee for the option that includes ticket rolls where Turbo Data provides citation rolls.

PARKING CITATIONS	YES/NO	Cost
Electronic Parking Citation Processing Fee Customer orders citation rolls		\$0.40 per citation
Electronic Traffic Citation Processing Fee- Turbo Data provides citation rolls (2 inches) at no extra cost		\$0.50 per citation
Electronic Parking Citation Processing Fee Turbo Data provides citation rolls (3 inches) at no extra cost		\$0.55 per citation

6. INVOICING PROCEDURES

- A.** Customer shall pay Contractor upon receipt of an invoice for services rendered. Each invoice must include the following information at a minimum.
- Agreement Number
 - Time period covered
 - Detailed statement of services/work completed for the invoiced amount
- B.** Contractor shall prepare and submit an invoice for payment of services monthly. Payments shall be made within thirty (30) days from the date of applicable undisputed invoice

RESOLUTION NO. 6657

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH
TURBO DATA SYSTEMS, INC. FOR A FIVE (5) YEAR TERM EXPIRING JUNE
30, 2026 FOR CITATION PROCESSING AND ADJUDICATION SERVICES**

WHEREAS, Menlo Park, along with the other cities in the County, has entered into an agreement with Turbo Data for citation processing and adjudication services (“Agreement”); and,

WHEREAS, the Agreement expired in June 2021; and,

WHEREAS, the County and cities have negotiated an Agreement that will provide citation processing and adjudication services with Turbo Data through June 2026.

NOW, THEREFORE, the City Council of the City of Menlo Park resolves as follows:

SECTION 1. The City Council approves the Agreement and authorizes the City Manager to execute the Agreement on behalf of the City for a five-year period expiring June 30, 2026, for services and fees as described in Exhibits A and B, respectively, of said Agreement attached hereto, on a form approved by the City Attorney.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the thirty-first day of August, 2021, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this thirty-first day of August, 2021.

Judi A. Herren, City Clerk



STAFF REPORT

City Council

Meeting Date: 8/31/2021

Staff Report Number: 21-169-CC

Public Hearing:

Consider two appeals of the Planning Commission certification of a final environmental impact report and approval of a use permit, architectural control, below market rate housing agreement, and community amenities operating covenant, and consider the Planning Commission recommendation to approve a vesting tentative map for a major subdivision for the proposed Menlo Uptown project with 483 multifamily dwelling units comprised of 441 rental units and 42 for-sale condominium units and approximately 2,940 square feet of commercial space at 141 Jefferson Drive and 180-186 Constitution Drive

Recommendation

Staff recommends that the City Council take the following actions for the proposed Menlo Uptown project at 141 Jefferson Drive and 180-186 Constitution Drive in the R-MU-B (Residential Mixed Use-Bonus) zoning district:

1. Adopt Resolution No. 6660 making the required findings per the California Environmental Quality Act (CEQA) and certifying the final environmental impact report (EIR) that analyzes the potential environmental impacts of the proposed project, and adopt an associated Mitigation, Monitoring and Reporting Program (MMRP) (Attachment A, Exhibit B and D);
2. Adopt Resolution No. 6661 denying the appeals, upholding the Planning Commission's approval of and approving a use permit, architectural control, below market rate (BMR) housing agreement, and community amenities operating covenant (Attachment B); and
3. Adopt Resolution No. 6662 approving a vesting tentative map for a major subdivision to create 42 condominium townhome units and adjust the lot lines of the three existing parcels on the site, locating two apartment buildings on individual parcels and 42 condominium townhomes on a third parcel (Attachment C.) The Planning Commission recommended that the City Council approve the major subdivision at its June 21, 2021, meeting.

Policy Issues

The proposed project requires the City Council to consider the merits of the project and the two appeals, including the project's consistency with the City's general plan, R-MU zoning district standards, subdivision ordinance, BMR housing program, community amenities requirements for bonus level development, and other adopted policies and programs. If the City Council elects to approve the project, the City Council will need to consider and certify the final EIR, make findings regarding the project's environmental effects

pursuant to CEQA, and adopt the proposed MMRP. The required project approvals include a use permit, architectural control, BMR housing agreement and community amenities operating covenant, and major subdivision.

In addition to the final EIR, the City has prepared the following documents which provide an analysis of the proposed project and background information:

- Housing Needs Assessment (HNA) (Attachment D), including an analysis of the multiplier effect for indirect and induced employment from the proposed project, in compliance with the terms of the 2017 settlement agreement between the City of Menlo Park and the City of East Palo Alto (Settlement Agreement);
- Fiscal impact analysis (FIA) (Attachment E) to inform decision makers and the public of the potential fiscal impacts of the proposed project;
- Appraisal (Attachment F) to identify the required value of the community amenities in exchange for bonus level development; and
- Evaluations of the applicant's original community amenities proposal (Attachment G) and additional community amenities options proposal (Attachment H) to determine if the options would meet the required value identified by the appraisal.

The main findings of these documents are discussed in the June 21, 2021, Planning Commission staff report packet (Attachment J.) These reports are not subject to specific City action and are not part of the final project approvals.

Background

Project description

The proposed project would result in the redevelopment of the project site with residential buildings totaling approximately 472,956 square feet of gross floor area with a maximum of 441 multifamily rental units, 42 for-sale townhome units, and approximately 2,940 square feet of commercial space, as well as associated open space, circulation and parking, and infrastructure improvements. The three major components of the project are referred to in this report as Buildings A and B and Building Site TH1. Building A would contain 221 rental units and front to Constitution Drive. Building A would also include the previously mentioned 2,940-square-foot commercial space on the ground floor. The proposed commercial space and its uses are part of the project sponsor's community amenities proposal for an urgent care center and funding of its ongoing operations, described in detail in the Community Amenities section of the June 21, 2021, Planning Commission staff report (Attachment J.) Building B would include 220 rental units and would front to Jefferson Drive. Building Site TH1 has frontage along Constitution Drive and would have six townhome buildings with seven units in each building, for a total of 42 units.

Residential units across the project would be a mix of studios, one-, two-, three-, and four-bedroom units, as summarized in Table 1 below.

Table 1: Residential unit mix	
Unit type	Number of units
Studio	172 rental units*
One bedroom	224 rental units
Two bedroom	33 rental units
Three bedroom	12 rental units; 30 for-sale townhomes
Four bedroom	12 for-sale townhomes
Total	483 units (441 rental units, 42 for-sale townhomes)

*This includes 68 units that the applicant refers to as “junior one-bedroom” units with sleeping quarters partially or fully separated from living areas; however, these units are considered studio units by the Housing Division and for the purposes of the HNA.

The project would be developed utilizing the bonus level provisions in the R-MU-B zoning district, which allow a development to seek an increase in density, floor area ratio (FAR) and/or height subject to obtaining a use permit or conditional development permit (CDP) and providing one or more community amenities. The proposed project plans are included as hyperlink Attachment I and a project description letter is included in Attachment J.

Site layout

The two proposed apartment buildings would be located on the existing 141 Jefferson Drive parcel, and both buildings would be seven stories tall. Parking, residential amenities, the leasing area, and tenant bicycle storage would be incorporated on the first and second floors of each building. Parking would largely be managed through an automated parking system, with a few spaces reserved for accessible parking, loading, guests, employees and prospective tenants. The main residential structures above the podium base would form U-shaped courtyard buildings, with the opening of Building A facing east to provide a massing transition from the townhome site, and the opening of Building B facing west. The buildings would be separated by a central area used for storm water treatment, a dog run, and landscaping that would run east to west between the two buildings. A 20-foot-wide paseo, identified on the City’s adopted zoning map, is proposed directly east of the apartment buildings and would run north to south connecting Constitution Drive and Jefferson Drive. A fire and service lane would also run north to south along the western edge of the apartment buildings between Constitution Drive and Jefferson Drive.

Farther east across the paseo and a 26-foot wide fire access road directly adjacent to the paseo, the six townhome-style condominium buildings would be located in an array two buildings wide by three buildings deep. The townhomes would have one- and two-car garages on the ground level, with living areas and bedrooms on the upper floors. The buildings would have north and south orientations fronting onto Constitution Drive, interior roads running east to west, a central lawn area, and paths and landscaping that would connect to the paseo across the fire lane. The U-shaped road would be bisected by a road and sidewalks running east to west between the four townhome buildings closest to Constitution Drive. Bollards would be installed in the portion of the fire lane adjacent to the paseo to prevent vehicles from using the area and to encourage more pedestrian activity adjacent to the paseo, except in the event of an emergency.

Hazardous materials

As part of the proposed project, the applicant is requesting a use permit for the use and storage of hazardous materials (diesel fuel) to power one emergency generator for each of the multifamily residential buildings (Buildings A and B.) The emergency generators would allow for continued operation of automated parking systems, emergency lighting, and smoke exhaust fans in the event of an electrical power failure or required shut-off. The generators would be located on the western side of the buildings, adjacent to the emergency vehicle access (EVA) and service lane. The emergency generator in Building A would be enclosed by walls on three sides, with one side open adjacent to the EVA and service lane but screened by fencing. The emergency generator in Building B would be fully enclosed in a room within the building. Each generator would have a 400-gallon tank and would operate for testing approximately 15 minutes every two weeks (or approximately 6.5 hours per year.) The proposal was reviewed and found acceptable by the City's Building Division, the Menlo Park Fire Protection District (MPFPD), the San Mateo County Environmental Health Services Division, and West Bay Sanitary District.

Additional project details

More details about the proposed project, including information regarding development regulations; design standards compliance; general plan compliance; vehicular and pedestrian circulation, parking and roadway congestion; open space and landscaping; green and sustainable building standards compliance; BMR housing program compliance; community amenities; and the project FIA are included in the June 21, 2021, Planning Commission staff report in Attachment J. Because major subdivisions require City Council approval following a recommendation from the Planning Commission, information about the major subdivision vesting tentative map request is included in the Analysis section of this staff report, farther below.

Housing Crisis Act of 2019 (SB 330) application

The proposed project application was formally submitted in July 2019 under the City's typical review process. However, the proposed project qualifies as a housing development project pursuant to Senate Bill (SB) 330, the Housing Crisis Act of 2019, which became effective January 1, 2020. The project sponsor converted the project application to a SB 330 application in January 2020. SB 330 was designed to remove barriers to the development of housing projects. Some key features of SB 330 include shortening the timeframe for housing development project review under the Permit Streamlining Act and limiting the number of public meetings on a housing project proposal to no more than five hearings. For the proposed project, the following hearings have been conducted since the preliminary application was deemed complete:

1. Planning Commission draft EIR public hearing and study session
2. Housing Commission public meeting (BMR proposal review)
3. Planning Commission public hearing for final EIR certification, land use entitlements approval, and major subdivision recommendation

The August 31, 2021 City Council meeting to consider the appeals and the Planning Commission's recommendation of the major subdivision approval would serve as the fourth hearing for the project.

In addition to the above-mentioned requirements, cities are prohibited from adding new fees or raising existing fees beyond automatic annual escalation. Furthermore, cities are prevented from requiring

housing development projects to comply with an ordinance, policy or standard, including subjective or objective development standards, not in effect when the complete preliminary application was submitted. If an SB 330 project complies with all applicable objective general plan, zoning ordinance, and subdivision standards and criteria (including design review standards) in effect at the time the application is deemed complete, the City may not deny the project or reduce its density, unless the City makes written findings supported by a preponderance of evidence that there is a specific adverse impact on public health or safety that cannot be satisfactorily mitigated (e.g., a significant and unavoidable environmental impact.)

Previous commission reviews and actions

Planning Commission reviews

The proposed project was reviewed at three Planning Commission hearings before the June 21, 2021, Planning Commission hearing where the final EIR was certified, the aforementioned project entitlements were approved, and the tentative map was recommended for City Council approval. Brief summaries of the previous hearings are provided in Table 2.

Table 2: Previous Planning Commission reviews				
Meeting Date	Meeting purpose	Key project components	Changes since previous review	Commission comments
February 11, 2019	Study Session	<ul style="list-style-type: none"> 483 units (441 rental units, 42 for-sale townhomes) 	---	<ul style="list-style-type: none"> Consider better distribution of height and massing across site Expand and aggregate open space Integrate commercial space for mix of uses
December 16, 2019	EIR Scoping / Study Session	<ul style="list-style-type: none"> 483 units 2,100 s.f. commercial space 	<ul style="list-style-type: none"> Re-orientation of apartment buildings for improved transition in massing Addition of 2,100 s.f. commercial space Aggregation of publicly accessible open space around paseo and commercial space 	<ul style="list-style-type: none"> Explore additional BMR housing units Enhance open spaces, integrate public art Consider larger commercial space Continue to refine building materials
January 11, 2021	Draft EIR (DEIR) Public Hearing / Study Session	<ul style="list-style-type: none"> 483 units 2,940 s.f. commercial space 	<ul style="list-style-type: none"> Increase of commercial space by 840 s.f. Refinement of open spaces and addition Refinement of building materials and color palette 	<ul style="list-style-type: none"> General support for project design and materials Ensure viability and consistent community focus for commercial space General support for level of service (LOS) intersection improvements that would not induce more traffic

Housing Commission recommendation

On February 3, 2021, the Housing Commission considered the applicant’s BMR proposal and the draft BMR Housing Agreement Term Sheet (Term Sheet) for the proposed project. The proposed project is required to provide 15 percent of the total number of units across the entire project, or a minimum of 72.45 units (rounded to 73 whole units), affordable to lower income households in compliance with the City’s

BMR housing program ordinance, Chapter 16.96, and the City's BMR housing program guidelines. The 73 BMR units would be a mix of rental apartments and ownership townhomes. The proposed BMR rental units are required to be affordable to low income households, whereas the BMR for-sale townhomes are required to be affordable to very low, low or moderate income households. An applicant may propose to provide a mix of income levels for the BMR rental units if the proposed mix of income levels is equivalent to an all low income BMR unit proposal. The applicant proposed to provide the 73 required inclusionary units through a combination of 67 rental units affordable to low income households and six for-sale townhome units affordable to moderate income households. The Housing Commission approved the BMR term sheet with five commissioners in favor, one opposed and one abstaining. As part of its approval of the BMR term sheet, the Housing Commission also recommended that the applicant consider an alternative mix of income levels equivalent to all low income for the BMR rental units and a mix of incomes for the for sale units. After the Housing Commission meeting, the applicant elected to develop a second BMR proposal option with a mix of income levels equivalent to all low income for the BMR rental units, but did not propose any modification to the all moderate income for-sale BMR units.

Final Planning Commission actions

On June 21, 2021, the Planning Commission held its final hearing on the proposed project. After considering 11 written and 11 verbal public comments from a mix of individuals and organizations in favor or opposed to the project, or with general questions or concerns about broader development trends in the city, and after reviewing and considering the proposed project, the Planning Commission unanimously (seven in favor, zero opposed) took the following actions:

- Certification of the final EIR, and approval of the findings required by CEQA and a project MMRP
- Approval of a use permit and architectural control for the land uses and design of the project components;
- Approval of the applicant's second BMR proposal option with a mix of income levels for the BMR rental units and moderate income for the for-sale units;
- Approval of a community amenities operating covenant, selecting the Ravenswood Family Health Network urgent care center to be located in the 2,940-square-foot commercial space in Building A, as well as a direct payment to Ravenswood Family Health Network for ongoing operations, as the project's community amenities with a total value of \$8.9 million; and
- Recommendation to the City Council to approve the major subdivision vesting tentative map for 42 proposed condominium townhome units.

The excerpt draft minutes from the meeting are included as Attachment K.

Staff-initiated changes since Planning Commission action

Following the Planning Commission hearing and during the finalization of the adopted resolutions and documents, staff identified two recommended revisions in section 6, "Bonus Development Value Confirmation," of the approved community amenities operating covenant. The proposed modifications are as follows:

- Revision of the definition of the term "Construction Value" in the first paragraph of section 6. The approved operating covenant defines the construction value as the applicant's cost of constructing the community amenity space (an estimated \$4.46 million.) However, that amount is actually the net present value of rent the applicant could have received from a tenant for the 2,940-square-foot commercial space over a period of 55 years, had the applicant not provided the space rent-free to

Ravenswood Family Health Network. The amount also includes operating costs that a tenant would normally pay, such as utilities expenses, which would be covered by the applicant. This value is also referred to as the “Value of Providing Commercial Space at No Cost to the Tenant” in the evaluation of the community amenities proposal performed by BAE Urban Economics (Attachment H.) The community amenities operating covenant in Attachment B, Exhibit H incorporates this proposed revision.

- Revision to the components of the “Cost Report” identified in the second paragraph of section 6. The approved operating covenant includes a requirement for the applicant to submit a cost report to verify that the actual costs to build out the interior of the urgent care space and outfit it with specialized medical equipment match the tenant improvements value (approximately \$1.84 million) and equipment value (approximately \$882,000) included in the applicant’s community amenities proposal, before the City issuing a certificate of occupancy for the project. The approved operating covenant also requests proof of the construction value in the cost report. However, since the construction value as defined above (i.e., the net present value of foregone rent over 55 years) is not an amount that can be verified through copies of receipts or invoices, staff proposes to remove the construction value from the cost report. Instead, the owner would be required to submit to the City an annual certification for a period of 55 years that the community amenities space in Building A is being provided at no cost to the operator of the community amenity. The community amenities operating covenant in Attachment B, Exhibit H incorporates this proposed revision.

Staff also identified an additional recommended condition of approval for the project, as follows:

- The applicant has requested that the City consider an indented loading zone turnout along the Constitution Drive project frontage between the expanded paseo and the proposed townhomes. The loading zone would facilitate drop offs and deliveries from rideshare and delivery services to the project without blocking other vehicles operating on the street. Menlo Park Municipal Code (MPMC) section 11.24.027 authorizes the Complete Streets Commission (CSC) to designate timed parking restrictions, including loading zones, near schools and businesses at up to five spaces per location. The applicant is requesting a single loading zone for the proposed project. Recommended condition 2.qq. for the project (Attachment B, Exhibit I) would require the CSC to review the request before submittal of a permit for off-site improvements. If the CSC does not approve the request, the applicant would be required remove the loading zone from the permit plans before approval of the off-site improvements.

Analysis

Appeals of the Planning Commission’s action

Pursuant to MPMC section 16.86, any person may appeal to the City Council any order, requirement, decision, or determination of the Planning Commission. Appeals must be made in writing and filed with the city clerk within 15 days of a final action of the Planning Commission. Appeals by the City Council and city councilmembers are governed by MPMC section 16.86.025, which states that any city councilmember may file an appeal with the city clerk within the 15-day appeal period without payment of an appeal fee, and the question of whether the appeal will be an appeal by the full city council shall be determined as soon as practicable at a regular city council meeting. If the City Council determines not to take the appeal, the city councilmember who filed the appeal has two days afterward to deposit the appeal fee; otherwise

the appeal shall be dismissed. At a City Council public hearing of any appeal, the City Council may affirm, reverse, or modify the decision of the Planning Commission. To reverse or modify the Planning Commission's decision requires an affirmative vote of three-fifths of the City Council (i.e., three of the five members.)

On July 6, 2021, the City received two timely appeals of the Planning Commission's certification of the FEIR and approval of the project entitlements. The first appeal was submitted by the Sequoia Union High School District (SUHSD), which owns the TIDE Academy high school at 150 Jefferson Drive, across the street from the project site. The appellant was an active participant during the various phases of project review and offered verbal and written testimony that was considered by the Planning Commission at previous hearings. The concerns outlined in the document are similar to what was presented at the earlier Planning Commission meetings. The main points of the appeal letter (Attachment L) are summarized below in italics and followed by staff's responses.

- *The Planning Commission lacked authority to certify the final EIR, as the Planning Commission was not the "final decision-making body" for approval of the project.* The appellant claims the Planning Commission lacked the authority to certify the final EIR because the City Council was responsible for approving the major subdivision. The appellant's assertion is misguided and not supported by law. Pursuant to the MPMC, the Planning Commission is required to review, issue and/or deny the various entitlements which were considered and approved by the Planning Commission (see MPMC sections 16.82.030 (use permit), 16.96.040 (BMR Agreement), and 16.45.070 (community amenities.)) These approvals constitute sufficient agency commitment to a defined project such that CEQA review is required pursuant to State law (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116..)
- *The draft EIR, final EIR, and Planning Commission failed appropriately to consider the district's TIDE Academy in all discussions of the "environmental setting."* The applicable environmental setting, including surrounding land uses such as the TIDE Academy, is discussed in Chapter 3.0, Project Description of the draft EIR, and each topical section of the draft EIR begins with a description of the physical setting for the project. The proximity of TIDE Academy to the proposed project as it relates to potential impacts in the topic areas of Transportation, Air Quality, and Noise is discussed in the draft EIR. Section 4.2, Transportation, of the draft EIR indicates that, as it relates to TIDE Academy, the proposed project would not conflict with any applicable plans, ordinances, or policies addressing components of the circulation system and would not substantially increase design hazards. In addition, TIDE Academy was considered as a sensitive receptor for the purposes of the air quality and noise analyses in the draft EIR. Air quality impacts to sensitive receptors would be less than significant with the implementation of Mitigation Measure AIR-2 (included in Attachment B, Exhibit F) and noise impacts to sensitive receptors would be less than significant.
- *The draft EIR, final EIR, and Planning Commission failed appropriately to analyze the impacts on and related to schools because the environmental analysis improperly tiered from the ConnectMenlo EIR.* The appellant claims that the EIR improperly relied on the information, analysis, and mitigation measures in the programmatic EIR prepared for the City's 2016 General Plan Update (ConnectMenlo) because ConnectMenlo did not consider the proposed project's specific impacts on the district's TIDE Academy since the school did not exist when the ConnectMenlo EIR was prepared. However, although

the TIDE Academy was not yet constructed or operational at the time that the ConnectMenlo final EIR was prepared, the new high school was contemplated and discussed in the ConnectMenlo final EIR. Further, changed circumstances related to the physical environmental setting, including the location of TIDE Academy, are considered and evaluated in the project EIR. The findings of the ConnectMenlo final EIR and the draft EIR (including the initial study) and final EIR prepared for the proposed project remain valid.

The appellant also claims that circumstances have changed since the ConnectMenlo EIR, and the proposed project in conjunction with all other projects being considered in the Bayfront will result in significant environmental impacts to district schools. As stated in the ConnectMenlo Draft EIR: "...the California State Legislature, under Senate SB 50, has determined that payment of school impact fees shall be deemed to provide full and complete school facilities mitigation. All new developments proposed pursuant to the adoption of the proposed project will be required to pay the school impact fees adopted by each school district." According to California Government Code Section 65995(3)(h), the payment of statutory fees is "deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use or development of real property, or any change in governmental organization or reorganization...on the provision of adequate school facilities." Therefore, the payment of school impacts fees to the district serves as full mitigation and all projects currently proposed in the Bayfront would be required to pay fees to the district. As a result, there would be no significant environmental impacts to schools from the proposed project.

Finally, the appellant claims that the proposed project EIR improperly relied on the ConnectMenlo EIR because the latter EIR assumed that development would occur incrementally over a 24-year period. The impact conclusion from ConnectMenlo does not rely on the assumption that impacts to schools would be less than significant due to the incremental phasing of development over a 24-year buildout horizon. Rather, impacts would be less than significant and would be further reduced due to the anticipated incremental pace of development. Payment of school impact fees would occur with the pace of development and issuance of building permits for each development project that may generate new students. Therefore, if buildout of ConnectMenlo occurs sooner than the buildout horizon projected in the ConnectMenlo Final EIR, payment of mitigation fees would be accelerated, and the district would collect these fees sooner than previously anticipated. In addition, the proposed project is not anticipated to be constructed and operational until 2024, approximately three years from the date of preparation of the Menlo Uptown project final EIR. This timeframe would allow the district the opportunity to plan for potential student enrollment increases.

- *The draft EIR, final EIR, and Planning Commission failed to identify and analyze all impacts on school facilities under CEQA's threshold of significance for public services impacts.* The appellant contends the City failed to analyze impacts on school facilities and on the district. However, SB 50, the "Leroy F. Green School Facilities Act of 1998," excuses direct impacts of development on school facilities and buildings from being considered and mitigated in an EIR. SB 50 implemented the following: (1) provided a cap on the amount of fees or other requirements that can be imposed on new developments to fund construction of school facilities; (2) removed from local agencies the authority to refuse to approve legislative or adjudicative acts on the basis of inadequate school facilities or a

developer's unwillingness to pay more than the capped fee amounts; and (3) limited mitigation measures that can be required under CEQA to payment of capped school facilities fees, and found such payment to be full and complete school facilities mitigation (Government Code section 65996.)

Government Code section 65995(i) prohibits a city from denying or refusing to approve a legislative or adjudicative act involving development "on the basis of a person's refusal to provide school facilities mitigation that exceeds the amounts authorized [by SB 50]." SB 50 specifically limits a city's power under CEQA to mitigate school facilities impacts. As a result, the City may not deny approval of a legislative or adjudicative action (such as a use permit or other development entitlements) under CEQA on the basis of the inadequacy of school facilities, nor may the City impose, in its MMRP, mitigation measures to offset impacts of development on school facilities.

- *The draft EIR, final EIR, and Planning Commission failed to consider evidence of impacts on the district presented in the fiscal impact analysis report prepared by BAE Economics on behalf of the City.* The appellant claims the FIA shows the proposed project would have significant fiscal impacts on the district, which would result in physical impacts on district facilities, and these impacts were not properly considered in the draft EIR, final EIR or at the Planning Commission hearing.

A FIA was conducted for the proposed project in compliance with general plan policy LU-4.7, which requires mixed-use projects of a certain minimum scale to include analysis of the potential fiscal impacts on the City, school districts and special districts. However, the FIA conducted for the proposed project is not a requirement under CEQA and its results are not related to physical impacts on the environment that require mitigation. The City may, but is not required to, impose conditions of approval based on the findings of the FIA. All CEQA impacts to school districts are mitigated by the payment of impact fees under SB 50, as described previously.

- *The draft EIR, final EIR, and Planning Commission failed to consider and analyze all school-related impacts that may be caused by the project.* The appellant asserts the final EIR did not properly mitigate school-related impacts, including those analyzed in *Chawanakee Unified School District v. City of Madera* (2011) 196 Cal.App.4th 1016 and 27 subcategories of information that are necessary to determine whether the Project will result in significant impacts related to schools.

However, as previously stated, all CEQA impacts to school districts are mitigated by the payment of impact fees under SB 50. Furthermore, the final EIR adequately addressed these "sub-categories," As discussed throughout the draft EIR and as further explained in responses A2-9 through A2-17 of the final EIR, potential impacts to school facilities (which are sensitive receptors) located within the vicinity of the project site were considered and were determined to be less than significant.

The proximity of TIDE Academy to the proposed project as it relates to potential impacts in the topic areas of Transportation, Air Quality, and Noise is discussed in the draft EIR. Section 4.2, Transportation, of the draft EIR indicates that, as it relates to TIDE Academy, the proposed project would not conflict with any applicable plans, ordinances, or policies addressing components of the circulation system and would not substantially increase design hazards. In addition, TIDE Academy was considered as a sensitive receptor for the purposes of the air quality and noise analyses in the

draft EIR. Air quality impacts to sensitive receptors would be less than significant with the implementation of Mitigation Measure AIR-2 (included in Attachment B, Exhibit F) and noise impacts to sensitive receptors would be less than significant.

- *The draft EIR, final EIR, and Planning Commission failed to propose adequate mitigation measures for any impacts of the project on the district.* The appellant restates a number of contentions and argues the draft EIR, final EIR and Planning Commission failed to propose adequate mitigation measures for impacts on the district including impacts on school facilities and impacts “related to schools.” Again, as explained previously, all CEQA impacts to school districts are mitigated by the payment of impact fees under SB 50.

Although it is unclear what impacts “related to schools” is intended to mean, the final EIR adequately addressed indirect impacts on traffic, air quality, noise levels (which impacts were the subject of *Chawanakee Unified School District v. City of Madera* (2011) 196 Cal. App. 4th 1016), and other indirect impacts to schools. Information regarding indirect impacts, all of which would be less than significant or less than significant with mitigation, is provided above and covered in more detail in the draft EIR and final EIR for the proposed project. Furthermore, the district has failed to provide substantial evidence that there would be any physical impact on or related to school services.

The second appeal was submitted by City Councilmember Taylor, who is the City Council representative for District 1, which includes the proposed project location in the city’s Bayfront area. The concerns outlined in the appeal include both project-specific concerns and broader policy concerns that relate to development in the Bayfront and/or across the city. The appeal letter (Attachment M) is summarized below and followed by staff’s responses.

- *Concerns about upcoming development and water shortages due to drought.* On May 25, 2021, the City Council adopted the 2020 Urban Water Management Plan (UWMP) and the 2020 Water Shortage Contingency Plan (WSCP.) The 2020 UWMP projects future water demands within the Menlo Park Municipal Water (MPMW) service area over the next 20 years based on population and employment projections related to the City’s recently approved projects and the current General Plan. The WSCP is included within the UWMP and provides six water shortage stages, ranging from 10 percent to more than 50 percent reductions. Each drought stage lists specific actions the MPMW could take and corresponding regulations/prohibitions that could be implemented for various shortage scenarios (such as drought surcharges, limiting landscape irrigation hours and time, implementing customer water budgets, and not allowing new water connections.) The WSCP provides flexibility for the City Council to incorporate additional regulations/prohibitions based on any future emergency water regulation adopted by the State Water Board or drought-related action imposed by San Francisco Public Utilities Commission (SFPUC), MPMW’s sole water provider.

The 2020 UWMP concludes that water demands within the MPMW service area can be met in normal years, however, water demand will exceed the reduced MPMW water supply during single dry and multiple dry water years. In the event of a water shortage, the WSCP policies and actions would apply to all existing and future water customers within MPMW’s services area, including the proposed project.

In addition, to alleviate future demand to the potable water supply, the proposed buildings would include low-flow plumbing fixtures and be dual plumbed for the internal use of recycled water if a future recycled water source is developed for the area.

- *In District 1, there is an extreme heat and climate crisis concern and the City does not have an emergency preparedness plan to mitigate existing conditions.* Compliance with an emergency preparedness plan is not currently required for individual development projects. Without such a plan and requirement in place at the time the preliminary application for the proposed project was deemed complete under SB 330, there is not a basis to reverse the Planning Commission actions and deny the project. Evaluation of individual projects for compliance with emergency preparedness would require the development and approval of an emergency preparedness plan, which is a matter of citywide policy and may be undertaken independently of the project approvals.

Regardless, the proposed project incorporates green and sustainable building design standards, as required by MPMC section 16.45.130. The project would meet 100 percent of annual energy demand through renewable electricity sources and would also incorporate an approximately 46 kilowatt roof-mounted photovoltaic solar array to generate on-site renewable energy. Further, the proposed project would comply with the City's reach codes and no natural gas would be used as part of the project. The development would meet LEED Gold BD+C standards for the apartment buildings and LEED Silver BD+C standards for the townhomes, and would incorporate 67 electric vehicle (EV) charging spaces and 102 EV-ready parking spaces to meet the City's requirements. The proposed project would reduce, reuse, recycle, and compost waste from the demolition, construction, and occupancy phases of the project through implementation of a zero waste management plan. Finally, the proposed project would reduce the amount of impervious surfaces on the site compared to the existing development, increase the amount of pervious area, and increase the number of trees on the site from 41 to approximately 148 trees. These aspects of the proposed project design would help address concerns regarding climate change in the project vicinity and demonstrate the feasibility of green and sustainable buildings in the city and region.

As noted in the project EIR, GHGs are the primary cause of the human-induced component of warming associated with climate change. Chapter 4.4, Greenhouse Gas Emissions of the draft EIR indicates that the proposed project has less than significant and less than significant with mitigation impacts to greenhouse gas (GHG) emissions.

CEQA generally does not require the analysis and mitigation of the impacts of environmental conditions on a project's future residents or users. However, separate from the requirements of CEQA, additional factors would ensure that the buildings have been designed to adapt to climate change for future occupants. The first floor of all buildings would be raised two feet above the base flood elevation to prepare for potential sea level rise. Units would be equipped with air conditioning to adapt to future increases in the outdoor air temperature. The proposed project complies with all existing identified plans, programs, policies, ordinances, standards and requirements.

- *Naming rights on the urgent care center facility by District 1 residents.* Naming rights for community amenities are not a requirement of the existing community amenities process, outlined in MPMC

section 16.45.070. The City may negotiate the possibility of naming rights for community amenities with the applicant and the operator of the community amenity, but the project complies with all existing identified plans, programs, policies, ordinances, standards and requirements.

- *Transportation issues and improvements must happen within the Belle Haven neighborhood before project completion.* The transportation impact analysis (TIA) for the project was performed consistent with the City's TIA Guidelines approved by the City Council in June 2020. The TIA used industry standards for analysis, including the most recent versions of the Institute of Transportation Engineers Trip Generation Manual to develop vehicle trip generation estimates and the Transportation Research Board Highway Capacity Manual for the level of service (LOS) analysis of signalized and unsignalized intersections. The proposed project is primarily residential and a majority of peak hour trips are expected to be regional trips to U.S. 101 via Marsh Road and the East Bay via Bayfront Expressway. However, the transportation analysis for the project also assigned local trips to nearby neighborhoods and cities. Approximately three to five percent of trips for the project were assigned through the Belle Haven neighborhood, which would equal approximately five peak hour trips in either direction. The City's TIA guidelines for selecting study intersections generally targets intersections likely to have 10 or more trips per travel lane per intersection. Accordingly, the following 29 intersections were studied for the proposed project: 1. Marsh Road and Bayfront Expressway/Haven Avenue (Local Approaches to State), 2. Marsh Road and US-101 NB Off-Ramp (State), 3. Marsh Road and US-101 SB Off-Ramp (State), 4. Marsh Road and Scott Drive (Menlo Park), 5. Marsh Road and Bay Road (Menlo Park), 6. Marsh Road and Middlefield Road (Atherton), 7. Chrysler Drive and Bayfront Expressway (Local Approaches to State), 8. Chrysler Drive and Constitution Drive (Menlo Park), 9. Drive and Jefferson Drive (Menlo Park), 10. Chrysler Drive and Independence Drive (Menlo Park), 11. Chilco Street and Bayfront Expressway (Local Approaches to State), 12. Chilco Street and Constitution Drive (Menlo Park), 13. Willow Road and Bayfront Expressway (State), 14. Willow Road and Hamilton Avenue (Local Approaches to State), 15. Willow Road and Ivy Drive (Local Approaches to State), 16. Willow Road and O'Brien Drive (Local Approaches to State), 17. Willow Road and Newbridge Street (Local Approaches to State), 18. Willow Road and Bay Road (Local Approaches to State), 19. Willow Road and Durham Street (Menlo Park), 20. Willow Road and Coleman Avenue (Menlo Park), 21. Willow Road and Gilbert Avenue (Menlo Park), 22. Willow Road and Middlefield Road (Menlo Park), 23. University and Bayfront Expressway (State), 24. Middlefield Road and Ravenswood Avenue (Menlo Park), 25. Middlefield Road and Ringwood Avenue (Menlo Park), 26. Marsh Road and Florence Street-Bohannon Drive (Menlo Park), 27. Willow Road and US-101 SB Ramps (State), 28. Willow Road and US-101 NB Ramps (State), and 29. Bay Road and Ringwood Avenue (Menlo Park.)

No intersections internal to the Belle Haven neighborhood were identified as meeting the criteria for study in the TIA Guidelines, and less than 10 trips per travel lane would be estimated to pass through intersections within the Belle Haven neighborhood to the project site. As a result, the proposed project is unlikely to create an operational deficiency in Belle Haven.

Separate from the proposed project, the City has installed several turn restrictions and a set of temporary traffic calming measures aimed at discouraging cut-through traffic in the Belle Haven neighborhood. Staff anticipates presenting the resident survey results from the temporary traffic calming measures to the City Council in September 2021.

- *Non-community members negotiating community amenities on the behalf of a community that have not reached out.* The City developed the community amenities list through a public outreach and input process that included residents, property owners, and key stakeholders through outreach meetings, public meetings, meetings of the General Plan Advisory Committee, and public hearings. The City Council adopted the community amenities list November 29, 2016. As indicated in Menlo Park Municipal Code section 16.45.070(1), the list of community amenities may be updated from time to time through a resolution of the City Council.

The applicant selected a community amenity from the adopted list (an urgent care center under the category of “Social Service Improvements – Medical Center”) and the project complies with all existing identified plans, programs, policies, ordinances, standards and requirements in place at the time of the SB 330 preliminary application for the proposed project.

In addition, the applicant held three in-person community meetings at the Menlo Park Senior Center and conducted phone calls with community members as part of its community outreach process. Based on feedback received at the community meetings and in individual conversations, Greystar modified its community amenities proposal to better respond to the community’s interests within the framework of the City Council-approved amenities list. Staff is interested in and receptive to hearing about ways to ensure appropriate stakeholders are involved in community amenities reviews for future projects.

- *The immediate below market rate policy does not address the immediate needs of the community to prevent displacement or further displacement.* Based on the requirements of MPMC section 16.45.060, the applicant submitted a BMR housing proposal that would provide 73 inclusionary housing units (15.1 percent of the 483 units allowed per the R-MU-B zoning district) inclusive of 67 multi-family rental units with a mix of very-low, low and moderate income limits (29 studio/junior one-bedroom units, 33 one-bedroom units, 4 two-bedroom units and 1 three-bedroom unit) and six for-sale moderate income townhome units (5 three-bedroom units and 1 four-bedroom unit.) The Housing Commission considered the applicant’s BMR proposal and draft BMR housing agreement term sheet, inclusive of the 73 inclusionary BMR units, and forwarded a recommendation of approval to the Planning Commission of the proposed BMR term sheet with a request for the applicant to evaluate including a mix of income limits into the proposal. The proposed project complies with all existing identified programs, policies, ordinances, standards and requirements related to BMR housing.

In addition, the HNA prepared for the project estimates that the proposed development would result in a 110-unit increase in housing availability due to the removal of existing on-site jobs associated with the existing commercial buildings; a 95-unit reduction in housing availability due to new off-site jobs in retail, health care, and other services to new residents of the proposed project; and a 483-unit increase in housing availability due to the construction of the proposed project. The net effect of these changes would be an overall increase of 498 units in housing availability. Because the proposed project would add to the supply of market rate and affordable housing and reduce the level of demand for housing by eliminating existing employment uses, the proposed project is not anticipated to contribute to displacement in East Palo Alto or Belle Haven. Increasing the availability of market rate and affordable

housing would tend to moderate or counteract displacement pressures to some degree by relieving market pressures on existing housing stock.

Revisions to the City’s BMR Housing Guidelines and policies are a matter of citywide policy and may be undertaken independently of the proposed project approvals.

Based on staff’s evaluation of the two appeals above, staff recommends that the City Council deny the appeals, certify the FEIR, adopt the findings required by CEQA, and adopt a MMRP for the project. Staff also recommends that the City Council uphold the Planning Commission approval of the use permit, architectural control, BMR housing agreement, and community amenities operating covenant for the proposed project.

Major subdivision

The applicant is requesting approval of a vesting tentative map for a major subdivision to create 42 residential condominium units on Building Site TH1 (described in the Project Description section of the report above.) The potential condominium subdivision would allow the townhome units to be purchased and sold separately. State law outlines five factors that the City Council may consider in reviewing the request for subdivisions.

The first consideration is whether the proposed subdivision is in conformance with the City’s General Plan. The General Plan land use designation for the subject property is Mixed-Use Residential, which is consistent with the R-MU-B zoning district regulations and the intended uses of the proposed project. The proposed subdivision would be consistent with general plan goals and policies, including those listed in Table 3 below.

Table 3: Key general plan policies and programs compliance summary		
Policy or program	Requirement	Project compliance details
Land Use Element Policy LU 2.9 Compatible Uses	Promote residential uses in mixed-use arrangements and the clustering of compatible uses such as employment centers, shopping areas, open space and parks, within easy walking and bicycling distance of each other and transit stops.	<ul style="list-style-type: none"> Project would redevelop an industrial site with multi-family residential units in close proximity to employment centers Community amenity space located on site would provide a community-oriented use to be approved by the Planning Commission through a community amenities operating covenant
Land Use Element Policy LU 6.3 Public Open Space Design Land Use Element Program LU 6.B Open Space Requirements and Standards	Promote public open space design that encourages active and passive uses, and use during daytime and appropriate nighttime hours to improve quality of life.	<ul style="list-style-type: none"> Project would include on-site open space, including a paseo providing a mid-block connection between the two project street frontages The publicly accessible paseo and additional open space and landscaped areas would be aggregated around the community amenity space incorporated into the project Project would include bicycle storage and service areas located off of the paseo for use by residents

<p>Circulation Element Policy CIRC-2.14</p>	<p>Require new development to mitigate its impacts on the safety (e.g., collision rates) and efficiency (e.g., vehicle miles traveled (VMT) per service population or other efficiency metric) of the circulation system. New development should minimize cut-through and high-speed vehicle traffic on residential streets; minimize the number of vehicle trips; provide appropriate bicycle, pedestrian and transit connections, amenities and improvements in proportion with the scale of proposed projects; and facilitate appropriate or adequate response times and access for emergency vehicles.</p>	<ul style="list-style-type: none"> • The project would include a publicly accessible open space and a mid-block connection from Jefferson Drive to Constitution Drive for pedestrians and bicyclists • The project includes a transportation demand management (TDM) plan that would reduce project trips by 20 percent • The project would install frontage improvements to facilitate bike and pedestrian connections within the vicinity of the project site • The EIR evaluated the projects potential impact on VMT and determined that its impact would be less than significant
<p>Housing Element Policy H4.2 Housing Element Policy H4.4</p>	<p>Strive to provide opportunities for new housing development to meet the City’s share of its Regional Housing Needs Allocation (RHNA.) In doing so, it is the City’s intent to provide an adequate supply and variety of housing opportunities to meet the needs of Menlo Park’s workforce and special needs populations, striving to match housing types, affordability and location, with household income, and addressing the housing needs of extremely low income persons, lower income families with children and lower income seniors.</p>	<ul style="list-style-type: none"> • Project would provide 73 BMR housing units, including 67 rental units and 6 ownership units, to households with a range of incomes • Of the 73 BMR units, applicant’s BMR proposal would provide the majority (43 units) to moderate income households, which is the City’s greatest area of need in terms of meeting current RHNA numbers • Project would also provide seven very low income and 23 low income BMR units to help address a broader range of housing needs in the community • Project would provide a variety of unit types, including rentals ranging from studios to three-bedrooms, and ownership units with three and four bedrooms

The second factor to consider is whether the site of the subdivision is physically suitable for the proposed type or density of the development. The proposed subdivision would meet all applicable regulations of the Subdivision Ordinance as well as all development regulations pertaining to the R-MU-B zoning district. The existing site contains commercial buildings in a developed area planned for a broader mix of uses and greater density, and the proposed subdivision would result in six three-story, seven-unit townhome buildings in the vicinity of the city’s major employment centers.

The third and fourth factors are concerned with whether the design of the subdivision or proposed improvements is likely to cause substantial environmental damage or serious public health problems. The proposed subdivision is located within a fully developed neighborhood and necessary utilities are

available. In addition, the development of the properties would adhere to specific conditions of the Engineering Division, all applicable building codes, and requirements of other agencies such as the Sanitary District, MPFPD, and other utility companies. Adherence to the MMRP, the recommended conditions of approval, and all applicable codes would eliminate substantial or serious environmental or public health impacts.

The final factor to consider is whether the proposed subdivision would conflict with any public access easements. No public access easements currently exist on the site, so there would be no conflict. In addition, the proposed project would add a pedestrian paseo providing a mid-block connection between Jefferson Drive and Constitution Drive with landscaping, seating, lighting, and other elements to encourage pedestrian use. A public access easement would ensure that the paseo remains open to the public and has been integrated into the planning and design of the proposed project.

Staff has reviewed the vesting tentative map and has found the map to be in compliance with State and City regulations subject to the conditions outlined in Exhibit B of Attachment C. All standard and project specific conditions of approval would need to be complied with before recordation of the final map. The applicant would need to apply for the final map within two years of the approval date of the vesting tentative map. The final map would return to the City Council for approval at a future meeting date. In order to deny the proposed subdivision, the City Council would need to make specific findings that would identify conditions or requirements of State law or the City's ordinance that have not been satisfied.

Correspondence

Between the appeals submittal date of July 6, 2021, and the publication of this staff report, staff did not receive any correspondence on the proposed project.

Impact on City Resources

The project sponsor is required to pay planning, building and public works permit fees, based on the City's master fee schedule, to fully cover the cost of staff time spent on the review of the project, for the period between the application submittal and the appeal of the Planning Commission action. The SUHSD paid a \$1,000 deposit to file an appeal of the Planning Commission's decision. Staff time spent on the review of the SUHSD appeal will be billed to the appellant. Staff time spent on the review of the City Council's appeal is not otherwise recovered.

Environmental Review

As stated in the CEQA Guidelines, an EIR is an informational document that is intended to provide the City, responsible and trustee agencies, other public agencies, and community members with detailed information about the environmental effects that could result from implementing the proposed project, examine and implement mitigation measures to reduce or avoid potentially significant physical environmental impacts if the proposed project is approved, and consider feasible alternatives to the proposed project (including a required No Project Alternative.) Members of the Planning Commission were previously provided a copy of the Draft EIR for the proposed project, which was released December 4, 2020 with a public comment period that ended 60 days later February 2, 2021 to account for winter

holidays. The Draft EIR is also available on the City's development projects environmental documents website (Attachment N.)

Before development of the focused Draft EIR, and in accordance with CEQA Guidelines Section 15168(c), an initial study was prepared to evaluate the potential environmental impacts of the proposed project and determine what level of environmental review would be appropriate for the project EIR. The initial study (IS) and a Notice of Preparation (NOP) were released November 25, 2019, beginning a comment period ending January 10, 2020. A NOP is the start of the EIR process. The NOP is included via hyperlink in Attachment O and the IS is included as a link in Attachment P. Following the release of the IS, a scoping session was conducted December 16, 2019, to provide an opportunity early in the environmental review process for the Planning Commission and interested persons to provide comments on the scope and content of the EIR as well as the IS. The IS disclosed relevant impacts and mitigation measures already covered in the program-level ConnectMenlo Final EIR (ConnectMenlo EIR), which was certified by the City Council November 29, 2016, as part of an update to the Land Use and Circulation Elements of the General Plan and related zoning changes, commonly referred to as ConnectMenlo. Applicable mitigation measures from the ConnectMenlo EIR would be applied to the proposed project.

Based on the findings of the IS, the following potential environmental effects of the proposed project would have no impacts, less-than-significant impacts or less-than-significant impacts with mitigation measures (including applicable mitigation measures from the ConnectMenlo EIR), and are not studied in detail in the focused Draft 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
- Mineral resources
- Noise (construction-period, groundborne vibration and aircraft-related noise)
- Public services
- Recreation
- Utilities and service systems
- Tribal cultural resources
- Wildfire

Consistent with the findings of the IS and Settlement Agreement, which requires preparation of an EIR including a HNA and transportation impact analysis (TIA) for proposed bonus level development, a focused Draft EIR was prepared to address potential physical environmental effects of the proposed project in the following areas:

- Population and housing
- Transportation
- Air quality
- GHG emissions
- Noise (operational period traffic and stationary noise)

Although the IS identified tribal cultural resources as a potential topic to be evaluated in the Draft EIR, further evaluation determined that impacts to tribal cultural resources would be less than significant. Pursuant to AB 52, a State law that provides for consultation between lead agencies and Native American tribal organizations during the CEQA process, the City sent a letter to Native American tribes providing the

opportunity for consultation on the project during the EIR scoping period. No requests for consultation were received. As a result, the topic is not included as a separate section of the Draft EIR.

For each of the analyzed topic areas, the Draft EIR describes the existing conditions (including regulatory and environmental settings) and analyzes the potential environmental impacts (noting the thresholds of significance and applicable methods of analysis.) Impacts are considered for the project individually, as well as cumulatively, for the project in combination with other projects and cumulative growth. The Draft EIR identifies and classifies the potential environmental impacts as:

- Less than Significant
- Potentially Significant
- Less than Significant with Mitigation
- Significant and Unavoidable

Where a potentially significant impact is identified, mitigation measures are considered to reduce, eliminate, or avoid the adverse effects (less than significant with mitigation.) If a mitigation measure cannot eliminate/avoid an impact or reduce the impact below the threshold of significance, it is considered a potentially significant and unavoidable impact.

The Draft EIR prepared for the project identifies less than significant effects and effects that can be mitigated to a less-than-significant level in all five studied topic areas:

- Population and housing
- Transportation
- GHG emissions
- Air quality
- Noise (operational period traffic and stationary noise)

The Draft EIR does not identify any potentially significant environmental effects that are significant and unavoidable in any topic area. The January 11, 2021 Planning Commission staff report provides a detailed analysis of the findings in the focused Draft EIR for the Population and Housing, Transportation and Alternatives topic areas (Attachment Q.)

During the January 11, 2021 Planning Commission meeting, the Commission reviewed the Draft EIR and solicited comments on the accuracy and content of the document from members of the community. One community member spoke and identified concerns with ensuring continued access to the property at 167 Constitution Drive during construction, as well as concerns about noise impacts from existing industrial properties in the vicinity on residents of the proposed project. The Commission had no comments on the Draft EIR. Excerpt minutes of the January 11, 2021 meeting are provided as Attachment R.

Additionally, staff received four written comments during the public comment period for the project. One of the written comments was received from Lozano Smith, Attorneys at Law representing the SUHSD. The letter cited the following concerns:

- The Draft EIR did not adequately evaluate the potential impacts related to traffic, noise, biological resources, air quality, pedestrian safety, and other impacts related to schools,
- The Draft EIR inappropriately relied on the information, analysis, and mitigation measures contained in the ConnectMenlo Final EIR because that document assumed full project build out over a 24-year horizon, while it is anticipated that the full potential development of the Bayfront Area may be much

- sooner than anticipated,
- The ConnectMenlo Final EIR did not consider project-specific impacts to the TIDE Academy because the school was not yet contemplated at the time of preparation of the ConnectMenlo EIR,
 - The Draft EIR for the project did not adequately analyze the impacts of the project related to traffic, transportation, safety, air quality, noise and public services,
 - The Draft EIR did not provide sufficient information or adequately analyze issues related to transportation, including pedestrian safety, emergency access, traffic hazards or cumulative conditions,
 - Roadway segment and intersection operations analysis findings from the ConnectMenlo Final EIR, traffic congestion impacts on TIDE Academy, and increased risk of vehicle collisions were not adequately analyzed, and
 - The Draft EIR did not adequately analyze population growth resulting from the proposed project and any growth inducing impacts.

The remaining items of correspondence received by staff were from community members outlining their concerns regarding the total amount of development currently occurring in the city and impacts of the proposed project on traffic congestion. Staff also received a comment letter from the California Department of Transportation, District 4, acknowledging that the VMT analysis in the Draft EIR was adequately prepared and consistent with the Office of Planning and Research's Technical Advisory.

In accordance with CEQA, staff prepared a response to all substantive comments received and made editorial changes to the Draft EIR as necessary and prepared what is referred to as a "Response to Comments" document or Final EIR (included as a hyperlink in Attachment A, Exhibit B.) The Final EIR was released June 11, 2021, for a 10-day public review pursuant to CEQA. The Final EIR is available on the City's development projects environmental documents website (<https://www.menlopark.org/CEQA>.) All the comments received during the Draft EIR public comment period were included in the Final EIR and responses were provided for all comments. The Final EIR concluded that no new analysis or changes to the analysis included in the Draft EIR were necessary in response to any comments received on the Draft EIR prepared for the project. No additional mitigation measures or impacts were identified based on any comments received on the Draft EIR.

The Final EIR includes additional analysis in Chapter 2.0, Potentially Revised Project, to describe the potential revisions to the proposed project with the additional community amenities alternatives identified by the applicant after publication of the Draft EIR. The Final EIR finds that the potential changes would not require recirculation of the Draft EIR as they would not result in any new or substantially more severe impacts than those identified in the Draft EIR. Chapter 5.0 of the Final EIR includes City-initiated text changes to clarify improvements that address non-CEQA LOS conditions at certain intersections studied as part of the City's Transportation Impact Analysis requirements. LOS is no longer a CEQA threshold; therefore, the information was included in the Draft EIR for informational purposes only and the text revisions in the Final EIR have no significance with regard to CEQA compliance. Finally, Chapter 5.0 of the Final EIR also includes text revisions to consider operations of the emergency generators for up to 50 hours of maintenance and testing per year, which is consistent with the default operation limits for Bay Area Air Quality Management District (BAAQMD) permitting, and provides an analysis of the proposed project's potential impacts related to GHG emissions using the statewide 2030 target. The text revisions conclude that these changes would result in less than significant GHG emissions generated by the proposed project and remain below the 2030 operational GHG emission impact threshold, consistent with

the findings of the Draft EIR.

As part of its consideration staff requests that the City Council review and consider the MMRP (Attachment A, Exhibit D.) The MMRP includes all feasible mitigation measures identified in the Final EIR and ensures that full implementation of the mitigation measures would reduce the environmental impacts to a less than significant level. The MMRP identifies monitoring and reporting of the environmental mitigation measures and is included as part of the conditions of approval for the project. The MMRP is designed to aid the City of Menlo Park, the applicant, and other identified public agencies in the implementation and monitoring of measures adopted from the certified EIR.

Public Notice

The appeals of the Planning Commission's June 21, 2021, determination were timely filed with the city clerk July 6, 2021. MPMC section 16.84.020 provides that notice of a hearing on an appeal is given in the same manner as the required notice for the hearing at which the decision subject to the appeal was made. The noticing requirement also applies to the City Council's review and action on the major subdivision.

Pursuant to this noticing requirement, a notice was published in the local newspaper 10 days before the hearing and notice was mailed to owners and occupants of property within a 1,320-foot radius of the subject property at least 15 days before the hearing. Public notification was also achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Draft City Council Resolution No. 6660 certifying a final EIR, adopting findings required by the CEQA, and adopting a MMRP

Exhibits to Attachment A:

- A. Project plans (See Attachment I below)
- B. Hyperlink – Menlo Uptown final EIR: menlopark.org/DocumentCenter/View/28355/Menlo-Uptown-Final-EIR-
- C. Statement of findings and facts pursuant to CEQA
- D. MMRP

- B. Draft City Council Resolution No. 6661 adopting findings for project use permit, architectural control, draft BMR housing agreement, and draft community amenities operating covenant including project conditions of approval

Exhibits to Attachment B:

- A. City Council call-up appeal (See Attachment M below)
- B. Appeal of SUHSD (See Attachment L below)
- C. Project plans (See Attachment I below)
- D. Hyperlink – Menlo Uptown final EIR: menlopark.org/DocumentCenter/View/28355/Menlo-Uptown-Final-EIR-
- E. Statement of findings and facts pursuant to CEQA (See Attachment A, Exhibit C)
- F. MMRP (See Attachment A, Exhibit D)
- G. BMR housing agreement
- H. Community amenities operating covenant

- I. Conditions of approval
- C. Draft City Council Resolution approving a vesting tentative map for a major subdivision
Exhibits to Attachment C:
 - A. Vesting tentative parcel map for major subdivision (See Attachment I below)
 - B. Conditions of approval for vesting tentative map
- D. Hyperlink – HNA: menlopark.org/DocumentCenter/View/26852/Appendix-D---Housing-Needs-Assessment
- E. Hyperlink – FIA: menlopark.org/DocumentCenter/View/26993/Fiscal-Impact-Analysis
- F. Hyperlink – City’s community amenities appraisal:
menlopark.org/DocumentCenter/View/26870/Community-Amenities-Appraisal
- G. Hyperlink – City’s evaluation of the applicant’s original community amenities proposal dated December 23, 2020: menlopark.org/DocumentCenter/View/26991/Community-Amenities-Proposal-Evaluation
- H. Hyperlink – City’s evaluation of the applicant’s additional community amenities options proposal dated June 3, 2021: menlopark.org/DocumentCenter/View/28363/Community-Amenities-Proposal-Evaluation-June-2021
- I. Hyperlink – Project plans: menlopark.org/DocumentCenter/View/28358/June-2021-Project-Plans
- J. Hyperlink – June 21, 2021, Planning Commission Staff Report:
menlopark.org/DocumentCenter/View/28392/F2_Menlo-Uptown-Staff-Report
- K. Planning Commission excerpt draft minutes - June 21, 2021
- L. Appeal letter from SUHSD - July 6, 2021
- M. Appeal letter from City Councilmember Taylor - July 6, 2021
- N. Hyperlink – Menlo Uptown project draft EIR: menlopark.org/DocumentCenter/View/26844/Menlo-Uptown-Project-Draft-EIR
- O. Hyperlink – Notice of preparation: menlopark.org/DocumentCenter/View/23537/Menlo-Uptown-Notice-of-Preparation
- P. Hyperlink – Initial study: menlopark.org/DocumentCenter/View/23536/Menlo-Uptown-Initial-Study
- Q. Hyperlink – Planning Commission Staff Report, January 11, 2021:
menlopark.org/DocumentCenter/View/27091/F3_-Menlo-Uptown?bidId=
- R. Planning Commission excerpt minutes and reporter’s transcript of proceedings, January 11, 2021

Disclaimer

Attached are reduced versions of maps and diagrams submitted by the applicants. The accuracy of the information in these drawings is the responsibility of the applicants, and verification of the accuracy by City Staff is not always possible. The original full-scale maps, drawings and exhibits are available for public viewing at the community development department.

Report prepared by:
Tom Smith, Senior Planner

Report reviewed by:
Kyle Perata, Principal Planner
Deanna Chow, Assistant Community Development Director
Nira Doherty, City Attorney

RESOLUTION NO. 6660

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
CERTIFYING A FINAL ENVIRONMENTAL IMPACT REPORT, ADOPTING
FINDINGS REQUIRED BY THE CALIFORNIA ENVIRONMENTAL QUALITY
ACT AND ADOPTING A MITIGATION MONITORING AND REPORTING
PROGRAM (MMRP) FOR THE MENLO UPTOWN DEVELOPMENT PROJECT**

WHEREAS, the City of Menlo Park ("City") received an application requesting environmental review, use permit, architectural control, below market rate (BMR) housing agreement, heritage tree removal permits, community amenities operating covenant, and major subdivision from CLPF GRP Uptown Menlo Park, LLC and CLPF CRP TH Menlo Park, LLC ("Applicant"), to redevelop the property located at 141 Jefferson Drive, and 180-186 Constitution Drive (APNs 055-242-030, 055-242-040, 055-242-140) ("Property"), with a bonus level development project consisting of 483 multifamily dwelling units comprised of 441 rental units and 42 for-sale condominium units and approximately 2,940 square feet of commercial space proposed to be used as part of the Applicant's community amenity, which development is more particularly described in the Initial Study to the Project which was prepared pursuant to the California Environmental Quality Act (hereinafter the "**Project**"). The Project is depicted in and subject to the development plans which are attached hereto as Exhibit A ("Project Plans including colors and materials board") and incorporated herein by this reference; and

WHEREAS, the proposed Project is located in the R-MU-B (Residential Mixed Use-Bonus) zoning district. The R-MU-B zoning district allows a mixture of land uses with the purposes of providing high density housing to complement nearby employment, encouraging mixed use development with a quality living environment and neighborhood-serving retail and services on the ground floor that are oriented to the public, promoting a live/work/play environment with pedestrian activity, and blending with and complementing existing neighborhoods through site regulations and design standards that minimize impacts to adjacent uses; and

WHEREAS, the bonus level provisions identified in the City's Zoning Ordinance allow a development to seek an increase in floor area ratio (FAR), density (dwelling units per acre), and/or height subject to approval of a use permit and the provision of community amenities equal to a minimum of 50 percent of the fair market value of the increased development potential and the applicant has submitted a community amenities proposal in compliance with the required minimum value; and

WHEREAS, pursuant to the City's Below Market Rate Housing Program, the applicant has proposed 73 BMR units within the Project, 67 of which are rental units within the apartment building portion of the Project and 6 of which are for-sale units within the townhome portion of the Project; and

WHEREAS, the proposed Project would be developed with an increase in FAR, density, and height pursuant to City's bonus level development allowances; and

WHEREAS, the proposed Project complies with all objective standards of the City's Zoning Ordinance, including parking standards, design standards, green and sustainable building standards, and is consistent with the City's General Plan goals, policies, and programs; and

WHEREAS, Section 16.45.070 of the City of Menlo Park Municipal Code requires that bonus level projects that are developed at a greater level of intensity with an increase in density, FAR, and/or

height shall provide one or more community amenities to address the needs that result from the effect of the increased development. The value of the community amenities to be provided shall be equal to 50 percent of the fair market value of the additional gross floor area of the bonus level development; and

WHEREAS, pursuant to the requirements of Section 16.45.070 of the City of Menlo Park Municipal Code, the City commissioned Fabbro, Moore & Associates, Inc. to perform an independent appraisal to determine the value of the Project's community amenities contribution. The appraisal determined the project's community amenities obligation would amount to \$8,900,000. The Community Development Director determined that the appraisal was created pursuant to the City's guidelines and approved the appraisal; and

WHEREAS, on June 9, 2021, the applicant submitted an updated community amenities proposal with two alternative proposals: an alternative to provide the commercial space to a non-profit to use for administrative offices and an alternative to provide the commercial space to a non-profit health care provider to use as an urgent care or express care health center. Both community amenity alternatives include additional contributions to either a community land trust or a health care network; and

WHEREAS, the City evaluated the two alternative community amenities proposals and determined that the value of each proposal, including the dedicated office space, rent subsidy, tenant improvement subsidy, and financial contribution to either the land trust or the health care network would meet the required community amenity valuation of \$8,900,000; and

WHEREAS, utilization of the community amenity space by a non-profit health care network for an urgent care center and associated financial contribution to the health care network, is consistent with Resolution No. 6360 – the City's adopted community amenities list – because the urgent care center is considered under the category of "Social Service Improvements – Medical Center"; and

WHEREAS, for these reasons, staff recommended and the City Council approves of utilization of the community amenity space by a non-profit health care network for an urgent care center and associated financial contribution to the health care network as the Project's community amenity, and does not approve of utilization of the community amenity space by a non-profit for administrative offices because administrative office uses are not included in the community amenities list; and

WHEREAS, pursuant to the requirements Section 16.45.060 of the City of Menlo Park Municipal Code, the applicant submitted a Below Market Rate (BMR) housing proposal that would provide 73 inclusionary housing units (15.1 percent of the 483 units allowed per R-MU zoning district inclusive of 67 multi-family rental units with a mix of very-low, low, and moderate income limits (29 studio/junior one-bedroom units, 33 one-bedroom units, 4 two-bedroom units, and 1 three-bedroom unit) and six for-sale moderate income townhome units (5 three-bedroom units and 1 four-bedroom unit); and

WHEREAS, at a duly noticed public meeting on February 3, 2021, the Housing Commission considered the applicant's BMR proposal and draft BMR Housing Agreement Term Sheet, inclusive of the 73 inclusionary BMR units, and forwarded a recommendation of approval to the Planning Commission of the proposed BMR Term Sheet with a request for the Applicant to evaluate including a mix of income limits into the proposal; and

WHEREAS, the Project requires discretionary actions by the City as summarized above, and therefore the California Environmental Quality Act (“CEQA,” Public Resources Code Section §21000 et seq.) and CEQA Guidelines (Cal. Code of Regulations, Title 14, §15000 et seq.) require analysis and a determination regarding the Project’s environmental impacts; and

WHEREAS, the City is the lead agency, as defined by CEQA and the CEQA Guidelines, and is therefore responsible for the preparation, consideration, certification, and approval of environmental documents for the Project; and

WHEREAS, the Project would be developed at the bonus level allowances of the Zoning Ordinance, and therefore, is subject to the settlement agreement between the City of Menlo Park and City of East Palo Alto (“Settlement Agreement”), which requires project-specific environmental impact reports (“EIRs”) for certain future projects. Pursuant to the Settlement Agreement, the project-specific EIR may tier from the certified program level ConnectMenlo Final EIR (“ConnectMenlo EIR”) which was certified by the City Council on November 29, 2016, as part of an update to the Land Use and Circulation Elements of the General Plan and related zoning changes, commonly referred to as ConnectMenlo, and the project-level EIR shall include a project specific transportation impact analysis. The City shall also prepare a housing needs assessment (“HNA”) to inform the population and housing topic area of the project-level EIR; and

WHEREAS, the City released a Notice of Preparation (“NOP”) and Initial Study for the Project on November 25, 2019 for a 30-day public review period ending on January 10, 2020. The City held a public EIR scoping meeting on December 16, 2019 before the City Planning Commission to receive comments on the NOP prior to the close of the public review period. Comments received by the City on the NOP and at the public EIR scoping meeting were considered during preparation of the Draft EIR. The initial study disclosed relevant impacts and mitigation measures already covered in the program-level ConnectMenlo EIR; and

WHEREAS, on December 16, 2019, concurrently with the public NOP scoping meeting, the Planning Commission conducted a study session to review and provide comments on the Project’s conceptual design; and

WHEREAS, pursuant to the requirements of the Settlement Agreement and CEQA, the City prepared, or caused to be prepared, a project level EIR and conducted a HNA for the Project; and

WHEREAS, the Draft EIR was released on December 4, 2020 for an extended 60-day review period (to account for the December holidays and City hall closures) that ended on February 2, 2021. The public review period included one duly noticed public meeting on January 11, 2021 to receive oral and written comments on the Draft EIR; and

WHEREAS, On January 11, 2021, as part of the duly noticed public hearing to review the Draft EIR, the Planning Commission also conducted a study session and provided an opportunity for members of the public to provide comments on the proposed project design, BMR housing proposal, and community amenities proposal; and

WHEREAS, the Draft EIR was filed with the California Office of Planning and Research and copies of the Draft EIR were made available at the Community Development Department, on the City’s website and at the Menlo Park Library; and

WHEREAS, on June 11, 2021, the City published a Response to Comments Document that contains all of the comments received during the public comment period, including a transcript of the public hearing, and written responses to those comments, and any text changes to the Draft EIR, prepared in accordance with CEQA and the CEQA Guidelines. The Draft EIR and Response to Comments Document constitute the Final EIR, a copy of which is available by the following the internet link included in Exhibit B; and

WHEREAS, the City prepared or caused to be prepared the Findings of Fact as included in Exhibit C in accordance with CEQA and CEQA Guidelines Section 15091; and

WHEREAS, the City prepared or caused to be prepared a Mitigation Monitoring and Reporting Program (“MMRP”), which is incorporated herein by this reference and as part of the Final EIR, which will ensure all mitigation measures relied upon in the findings are fully implemented and that all environmental impacts are reduced to a less than significant level; and

WHEREAS, all required public notices and public hearings were duly given and held according to law; and

WHEREAS, after notice having been lawfully given, a duly noticed public hearing was held before the City Planning Commission on June 21, 2021 at which all persons interested had the opportunity to appear and comment; and

WHEREAS, after closing the public hearing, the Planning Commission considered all public and written comments, pertinent information, documents and plans and all other evidence in the public record on the Project; and

WHEREAS, the Planning Commission fully reviewed, considered, evaluated, and certified the Final EIR, along with all public and written comments, pertinent information, documents and plans prior to taking action to approve the use permit, architectural control, BMR Housing agreement, and community amenities operating covenant and recommended approval of the major subdivision to the City Council for the Menlo Uptown project; and

WHEREAS, following the Planning Commission’s review, consideration, evaluation and certification of the Final EIR and approval of the use permit, architectural control, BMR Housing agreement, and community amenities operating covenant, the City Council received two timely appeals to the Planning Commission’s actions on the project; and

WHEREAS, on August 31, 2021, the City Council held a public hearing and separately reviewed and considered the aforementioned appeals, and fully reviewed, considered, evaluated, and certified the Final EIR, along with all public and written comments, pertinent information, documents and plans prior to taking action to deny the appeals and approve the use permit, architectural control, BMR Housing agreement, and community amenities agreement for the Menlo Uptown development project.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Menlo Park finds the foregoing recitals are true and correct, and they are hereby incorporated by reference into this Resolution.

BE IT FURTHER RESOLVED that the City Council of the City of Menlo Park hereby resolves as follows:

1. The Final EIR has been prepared, published, circulated, and reviewed in compliance with the California Environmental Quality Act and the CEQA Guidelines.
2. The Final EIR constitutes an adequate, accurate, objective, and complete analysis addressing all issues relevant to the approval of the proposed Project including the issuance of a use permit and architectural control permit, and approval of the BMR Housing agreement and community amenities operating covenant for the Project.
3. The City Council has been presented with, reviewed and considered the information contained in the above recitals and within the Final EIR prior to acting on the proposed Project, and the Final EIR reflects the independent judgement and analysis of the City pursuant to section 21082.1(c)(3) of the California Environmental Quality Act.
4. Notice of the Planning Commission's hearings on the Draft EIR and Final EIR have been given as required by law and the actions were conducted pursuant to the State Planning and Zoning Law, CEQA, and the State CEQA Guidelines. Additionally, all individuals, groups and agencies desiring to comment were given adequate opportunity to submit oral and written comments on the Final EIR which met or exceeded the requirements of State Planning and Zoning Law and CEQA. All comments submitted during the public review and comment period on the Draft EIR were responded to adequately in the Final EIR.
5. As set forth in the attached Findings of Fact, the Final EIR identifies all potential significant adverse environmental impacts and feasible mitigation measures or standard conditions of approval that would reduce these impacts to a less than significant level. All of the mitigation measures identified in the Final EIR, including those in the Mitigation Monitoring and Reporting Program, will be adopted and implemented as Conditions of Approval for the use permit and architectural control.
6. The monitoring and reporting of CEQA mitigation measures in connection with the Project will be conducted in accordance with the attached MMRP, and incorporated into the Conditions of Approval of the use permit and architectural control for the Project. All proposed mitigation measures are capable of being fully implemented by the efforts of the City, the Applicant, or other identified public agencies of responsibility, and will reduce the environmental impacts to a less-than-significant level.
7. Pursuant to CEQA Guidelines Section 15091 and CEQA Section 21081.6, and in support of its approval of the Project, the City Council adopts the attached Findings of Fact and MMRP as set forth in Exhibits C and D of this Resolution.
8. The City Council hereby certifies the Final EIR based upon consideration of the Findings of Fact, together with the staff report (copies of which are on file in the Planning Division), public testimony presented at the hearing, and all other oral and written evidence received by the City on this Project.

SEVERABILITY

If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void or unenforceable, the remaining provisions of these findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the thirty-first day of August, 2021, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this thirty-first day of August, 2021.

Judi A. Herren, City Clerk

Exhibits

- A. Project plans including materials and colors board
- B. Menlo Uptown Final EIR
- C. Statement of Findings and Facts pursuant to CEQA
- D. Mitigation Monitoring and Reporting Program (MMRP)

Exhibit C

Statement of Findings and Facts Pursuant to the California Environmental Quality Act in Support of Adopting the Final Environmental Impact Report for the Menlo Uptown Project

Findings of Fact

The following findings, include impact statements, mitigation measures, findings, and facts in support of findings, are based on the full administrative record including but not limited to the Final EIR which contains a greater discussion of each issue. Pursuant to CEQA Guidelines Section 15091(a)(1), the mitigation measures will be required in the Project and avoid or substantially lessen the significant environmental effects identified in the Final EIR, as described herein. In addition to the following findings of fact, the City remakes each of the findings included in Resolutions Nos. _____ and _____, which are incorporated by reference as though fully restated in these Findings.

A. Findings Regarding Impacts Which Remain Less Than Significant

The Initial Study for the EIR and the EIR identified thirteen less than significant impacts. The City finds that, based upon substantial evidence in the record, the following areas would result in impacts that have been determined to be less than significant by the Initial Study and the Final EIR. Therefore, no mitigation measures would be required for any of the following areas:

1. Aesthetics

Aesthetics were analyzed in section 3.1 of the Initial Study. The Initial Study found that the project would result in less than significant impacts related to aesthetics. The project site is located within a developed portion of the Bayfront Area and does not provide public views of the Bay, and therefore would not block any scenic vistas as the Bayfront Area is not located within the view shed of Interstate 280, which is considered a State scenic highway. The proposed project would comply with the City's maximum height and average height requirements and all adopted design standards of the Zoning Ordinance. Further, the project is subject to the City's existing architectural control process, which would ensure the proposed project complies with the existing design standards outlined in the Zoning Ordinance, including light and glare standards. Additionally, Policy LU-2.3 from the City's General Plan requires that new development with residential units address potential compatibility issues such as light spillover. Therefore, potential impacts related to scenic vistas, scenic resources, scenic regulations, and light and glare would be less than significant.

2. Agriculture and Forestry Resources

Agriculture and Forestry resources were analyzed in section 3.2 of the Initial Study and the Initial Study found that the project would result in no impact to agriculture and forestry resources. The project site and vicinity are located within an urban area of the city. The project site is located within the R-MU-B (Residential Mixed Use Bonus) zoning district and is classified as "Urban and Built-Up Land" by the State Department of Conservation. The

project site is not used for agricultural production nor does it support forestry resources. Therefore, there would be no impact to agricultural and forestry resources.

3. Biological Resources

Biological Resources were analyzed in section 3.4 of the Initial Study and the Initial Study determined that the project would result in a less than significant impact on biological resources. The project site is currently developed and does not include any sensitive habitat, nor is it located near any sensitive habitats and therefore, Mitigation Measure BIO-1 from the ConnectMenlo Final EIR would not be applicable to the proposed project. The proposed project would be required to comply with the bird-safe design measures included in the building regulations for the Bayfront Area. The project site does not contain any riparian habitat, federally protected wetlands, wildlife movement corridors, or trees. The proposed project includes the removal of 10 heritage size trees, which would be replaced at a 2:1 ratio for a total of 20 heritage tree replacements, in compliance with the City's Tree Preservation Ordinance in effect at the time of a complete submittal under Senate Bill (SB) 330. The proposed project complies with the City's Tree Preservation Ordinance. Furthermore, the proposed project is not subject to the Stanford University Habitat Conservation Plan. Therefore, potential impacts related to biological resources would be less than significant.

4. Energy

Energy was analyzed in section 3.6 of the Initial Study for the proposed project and the Initial Study determined that the proposed project would result in a less than significant impact. The proposed project would comply with specific green building requirements for LEED certification, provide outlets for EV charging, provide on-site renewable energy generation (per the City's adopted Reach Codes), enroll in the USEPA Energy Star Building Portfolio Manager, use new modern appliances and equipment, and comply with current CALGreen standards, which would help to reduce energy consumption. Per the City's Reach Codes, the buildings would be all electric with the exception of emergency backup (diesel generators) to operate critical building systems in the event of a power failure. The proposed project would not result in the wasteful, inefficient, or unnecessary consumption of fuel or energy and would incorporate renewable energy or energy efficiency measures into building design, equipment use, and transportation. Electricity demand associated with the proposed project would be less than 0.06 percent of San Mateo County's total energy demand. Further, per the City's Zoning Ordinance, all electricity used by the project would be purchased through renewable energy from the local provider and the use of diesel fuel by the emergency generators would require the proposed project to purchase carbon credits/offsets annually based on generator use. Moreover, the proposed project is required to reduce trips generated by at least 20 percent through implementation of a Transportation Demand Management measures and would help the area change from an auto-oriented corridor to a multi-modal oriented community, with related energy conservation resulting from the more efficient use of transportation, circulation, and infrastructure systems by locating a residential use within a jobs-rich area. The proposed project would be consistent with the State's goal of reducing vehicle miles traveled and vehicular greenhouse gas emissions as outlined in SB 743 and the City's Climate Action Plan. Therefore, potential impacts related to energy use would be less than significant.

5. Hydrology and Water Quality

Potential impacts on Hydrology and Water Quality were analyzed in section 3.10 of the Initial Study and the Initial Study determined that the proposed project would result in a less than significant impact. The proposed project would be required to comply with the City's Stormwater Management Program, and would be required to prepare a Hydrology Report. The project would be required to prepare a stormwater pollution prevention plan (SWPPP) for the project site. The proposed project would incorporate site design measures to reduce stormwater runoff during the operation period, including directing runoff onto vegetated areas, maximizing permeability by clustering development and preserving open space, and using micro-detention per the City's stormwater requirements and Zoning Ordinance requirements. The proposed project would also implement source controls to reduce pollution runoff during the operation period. The proposed project would result in a net decrease in impervious surface coverage of approximately 11,362 square feet compared to existing conditions. Regardless of the decrease in impervious area, the proposed project would include stormwater control features that would enhance filtration of stormwater to the subsurface and would therefore further increase the amount of groundwater recharge compared to existing conditions. The project site is located within a flood zone with a base elevation of 11 feet, and the grade of the project site would be raised to meet FEMA requirements and the City's sea level rise resiliency requirements, which require the finished floor to be an additional 24 inches above the BFE set by the FEMA flood zone. The proposed project would connect to the Menlo Park Municipal Water system, and would not require the use of any groundwater. Therefore, the proposed project's impact to hydrology and water quality would be less than significant.

6. Land Use and Planning

Potential impacts on Land Use and Planning were evaluated in section 3.11 of the Initial Study and the Initial Study determined that implementation of the proposed project would result in less than significant impacts. The ConnectMenlo Final EIR concluded that implementation of ConnectMenlo would not include any new major roadways or other physical features through existing residential neighborhoods or other communities that would create new barriers in the city. The proposed project is consistent with ConnectMenlo. Therefore, the proposed project would not physically divide an established community. The project site is located within the R-MU-B zoning district, which allows for residential uses. The proposed project would be consistent with the mix and intensity of development contemplated by ConnectMenlo, as it includes bonus-level residential development with community amenities. As noted throughout the Initial Study and this EIR, the proposed project would generally not conflict with land use plans, policies, or regulations adopted for the purpose of avoiding or mitigating an environmental effect. Therefore, impacts related to land use and planning for CEQA purposes would be less than significant.

7. Mineral Resources

Potential impacts on Mineral Resources were evaluated in section 3.12 of the Initial Study and the Initial Study determined that implementation of the proposed project would result in

no impacts to mineral resources. The project site is currently developed and located within an urban area. The ConnectMenlo Final EIR determined that there are no mineral resource recovery operations within the city. Therefore, there would be no impact related to mineral resources.

8. Public Services

Potential impacts on Public Services were evaluated in section 3.15 of the Initial Study and the Initial Study determined that implementation of the proposed project would result in less than significant impacts. Impacts to public services would occur if the proposed project increases demand for services such that new or expanded facilities would be required, and these new facilities would themselves cause environmental impacts. The ConnectMenlo Final EIR determined that adherence to State and City requirements and the Menlo Park Fire Protection District (MPFPD) permitting process would ensure that future proposed projects would not result in the need for remodeled or expanded MPFPD facilities. Additionally, Station 77, which would serve the project site, was planned and budgeted for prior to ConnectMenlo. The Menlo Park Police Department (MPPD) also indicated implementation of ConnectMenlo would not require the expansion or addition of facilities. Further, the proposed project is required to implement a TDM program to reduce trips from the project site by 20 percent, which would help alleviate potential congestion that could interfere with MPPD operations. The proposed project would be subject to the payment of development impact fees, which under Senate Bill 50, are deemed to be full and complete mitigation for the generation of new students. The proposed project would have a less-than-significant impact related to the need for remodeled or expanded school facilities and no new or more severe impacts would occur beyond those examined in the ConnectMenlo Final EIR. The proposed project would include private and public open space and contribute development impact fees that would address infrastructure and service needs, and would not result in substantial deterioration of parks or other public facilities. Therefore, the proposed project's impacts to public services would be less than significant.

9. Recreation

Potential impacts on Recreation were evaluated in section 3.16 of the Initial Study and determined to be less than significant. The ConnectMenlo Final EIR determined that full buildout of ConnectMenlo would result in a parkland ratio per 1,000 residents for every 5.2 acres, which complies with the City's goal to maintain 5 acres of parkland for every 1,000 residents. In addition to the existing parkland within the city, the proposed project would include a total of approximately 87,053 square feet of open space, which would include common courtyards, a roof terrace, a pool, and a publicly accessible plaza. Because the proposed project would be consistent with the type and intensity of development and population projections assumed for the project site in ConnectMenlo and would include private and public open space, the proposed project would not result in substantial or accelerated physical deterioration of recreational facilities. The proposed project does not include or require the construction or expansion of existing public recreational facilities. Therefore, the proposed project's impacts on recreational facilities would be less than significant.

10. Utilities and Service Systems

Potential impacts on Utilities and Services Systems were evaluated in section 3.19 of the Initial Study and determined to be less than significant. The project sponsor would be required to coordinate with the City, MPFPD, and West Bay Sanitary to ensure that water and wastewater supply and infrastructure would be adequate. Additionally, as a part of the Zoning Update, ConnectMenlo includes green and sustainable building standards in the Bayfront Area that require all new buildings within the Bayfront Area to be maintained without the use of well water and incorporate dual plumbing within all buildings for future recycled water. Landscaping on the project site would be required to comply with the City's water efficient landscape ordinance, reducing the project's water demand. No proposed apartment buildings would be subject to a water budget, subject to review and approval by the City's Public Works director that the proposed project would be required to comply with and document compliance with annually. The proposed project would also comply with CalGreen requirements of the California Building Code, including water efficient fixtures. Therefore, impacts to utilities and service systems would be less than significant.

11. Wildfire

Potential impacts associated with Wildfire were evaluated in Section 3.20 of the Initial Study and determined to be less than significant. The ConnectMenlo Final EIR determined that the Bayfront Area does not contain areas of moderate, high, or very high Fire Hazard Severity for the Local Responsibility area, nor does it contain any areas of moderate, high, or very high Fire Hazard Severity for the State Responsibility Area. The project is generally level and bounded by existing development on all sides and would not exacerbate fire risks. Therefore, the proposed project would have no impact related to wildfire.

12. Population and Housing

Potential impacts on Population and Housing were evaluated in section 4.1 of the Draft EIR and determined to be less than significant. The proposed project itself would not directly displace people or housing by demolishing units and represents a small percentage of the population and housing growth assumed and studied under ConnectMenlo. Instead, the proposed project would add to the supply of market rate and affordable housing. Furthermore, the proposed project would reduce the level of demand for housing in Menlo Park by eliminating existing employment uses, and that reduction in demand would exceed any increase in employment demand created to service the new residential units. Therefore, the Draft EIR determined that the proposed project is not anticipated to contribute to displacement either in the Belle Haven neighborhood of Menlo Park or in East Palo Alto. The HNA, which is not a required study under CEQA and was prepared per the terms of the settlement agreement with the City of East Palo Alto, found that increasing the availability of market rate and affordable housing would instead tend to moderate or counteract displacement pressures to some degree by relieving market pressures on existing housing stock and could contribute to a reduction of rents in the area making housing more affordable and accessible. Therefore, the Draft EIR determines that the development of the proposed project would not displace substantial number of people or housing, and therefore, the impact would be less than significant. Because the proposed project population growth was already anticipated in the ConnectMenlo EIR and the project contributes towards the City's current 2014-2022 RHNA for BMR units; the project is not anticipated to result in new impacts, making its potential impact less than significant.

13. Transportation

Potential impacts related to Transportation were evaluated in section 4.2 of the Draft EIR and found to be less than significant. The estimated VMT does not factor in the TDM plan requirement of the Zoning Ordinance, which requires the applicant to create a program to reduce vehicle trips by at least 20 percent from typical project land uses. Without any TDM measures the proposed project would result in a substantial increase in VMT above the City's adopted threshold and would result in a potentially significant impact. The focused Draft EIR determined that the proposed TDM program (provided by the applicant) for the project could reduce the trips by up to 30 percent, which would exceed the City's trip reduction requirement of 20 percent. The Draft EIR estimated that the proposed project TDM would have to reduce trips by 17 percent to reduce the project impact below the 13.7 City VMT threshold. Since the effectiveness of the TDM at 30 percent cannot be reliably predicated, the project would be required to comply with the minimum required trip reduction of 20 percent through the implementation of the proposed project and this would be an adequate amount to reduce impacts to less than significant. Therefore, the Draft EIR determined that the project would have a less than significant impact after accounting for the required TDM program and would not exceed the applicable VMT threshold.

The Draft EIR determined that the proposed project would provide adequate bicycle and pedestrian infrastructure and would represent an overall improvement to bicycle and pedestrian circulation. While the project adds vehicles and bicycles, in doing so, the Draft EIR determined that it would not substantially impact emergency vehicle response time. The proposed project would incorporate a publicly accessible paseo, in compliance with the City's adopted Zoning Map and would provide additional off-street bicycle and pedestrian connections within the vicinity of the project site. The proposed project would be constructed with appropriate permits and review from the City's Public Works Department, Planning, Building, and Menlo Park Fire Protection District for compliance with the applicable codes. Therefore, the Draft EIR determined that the proposed project would not substantially increase hazards due to a design feature or incompatible uses and would not have a significant impact to emergency access or circulation and the impact would be less than significant.

In terms of cumulative transportation impact, the OPR's Technical Advisory on Evaluating Transportation impacts for CEQA outlines that "incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." A project that falls below an efficiency-based threshold that is aligned with the long-term environmental goals and relevant plans, would have no cumulative impact distinct from the project impact. Since the proposed project VMT does not exceed the threshold of significance when TDM measures are implemented, the proposed project would not have cumulative impacts with respect to VMT. Since the project is being developed consistent with the General Plan for this area and is required to implement Zoning Ordinance requirements and comply with other applicable City codes, guidelines, and policies; the proposed project combined with cumulative projects would have a less than significant impact with respect to design features and incompatible uses, and emergency access.

B. Findings and Recommendations Regarding Potentially Significant Impacts Which Are Avoided or Reduced to Less Than Significant by Mitigation

Pursuant to Section 21081(a) of the Public Resources Code and section 15091(a)(1) of the CEQA Guidelines, the City finds that, for each of the following significant effects identified in the Final EIR, changes or alterations have been incorporated into the Project through mitigation measures that avoid the identified significant effects on the environment to less than significant levels. These findings are explained below and are supported by substantial evidence in the record of the proceedings.

The Initial Study for the EIR and the EIR identified eight significant impacts that, with mitigation, can be reduced to less than significant level. Based on the findings in the Initial Study, Final EIR, and the evidence in the record, these impacts can be mitigated to a less than significant level, as follows:

Air Quality

Air quality was analyzed in section 4.3 of the Final EIR. The Final EIR found that the proposed project would not conflict with or obstruct implementation of the 2017 Bay Area Clean Air Plan, would not result in operational air quality emissions in excess of established thresholds, and would not expose sensitive receptors to substantial pollutant concentrations once operational. Consistent with the requirements of ConnectMenlo Final EIR Mitigation Measure AQ-3b, an analysis of potential health risk was performed for the proposed project. Results of the analysis indicate that the maximum long-term health risk from mobile and stationary sources and cumulative risk from all sources would not exceed established thresholds and that this impact would be less than significant.

It was determined that the project could result in significant impacts due to project construction, which could violate air quality standards and expose nearby sensitive receptors to toxic air contaminants. To mitigate these potential impacts to a less than significant level, the Final EIR requires the following mitigation measures:

1. Project Mitigation Measure AIR-1
2. Project Mitigation Measure AIR-2

Findings:

The City finds that the above mitigation measure[s] are feasible, will reduce the impacts of the Project to less-than-significant levels, and that they have been adopted by the City. Before approving the proposed project, the City reviewed the proposal to confirm it complies with the mitigation measures' requirements. Accordingly, the City finds that, pursuant to Public Resources Code section 21081(a)(1), and CEQA Guidelines section 15091(a)(1), changes or alterations have been required in, or incorporated into, the proposed Project that mitigate or avoid significant effects on the environment identified in the Final EIR.

Facts and Explanation in Support of Finding:

Site preparation and project construction would involve demolition, grading, paving, and other activities. Construction-related effects on air quality from the proposed project would be greatest during the site preparation phase due to the disturbance of soils. If not properly

controlled, these activities would temporarily generate particulate emissions. Sources of fugitive dust would include disturbed soils at the construction site. Unless properly controlled, vehicles leaving the site would deposit dirt and mud on local streets, which could be an additional source of airborne dust after it dries. PM10 emissions would vary from day to day, depending on the nature and magnitude of construction activity and local weather conditions. PM10 emissions would depend on soil moisture, silt content of soil, wind speed, and the amount of operating equipment. Larger dust particles would settle near the source, while fine particles would be dispersed over greater distances from the construction site. ConnectMenlo Final EIR Mitigation Measure AQ-2b2 requires implementation of BAAQMD-approved mitigation measures if it is determined through project-specific evaluation that individual development projects would generate construction exhaust emissions in excess of the BAAQMD significance thresholds. The project does not exceed BAAQMD thresholds. However, Mitigation Measure AIR-1 requires the contractor to implement certain measures to reduce construction emissions, to the extent feasible and consistent with BAAQMD requirements. Implementation of this measure would reduce fugitive dust and other air contaminants from project construction to a less than significant level.

Sensitive receptors are defined as residential uses, schools, daycare centers, nursing homes, and medical centers. Individuals particularly vulnerable to diesel particulate matter are children, whose lung tissue is still developing, and the elderly, who may have serious health problems that can be aggravated by exposure to diesel particulate matter. Exposure from diesel exhaust associated with construction activity contributes to both cancer and chronic non-cancer health risks. The closest sensitive receptors include the TIDE Academy, located at 150 Jefferson Drive, approximately 85 feet south of the project site. In addition, across the UPRR tracks and 0.6 mile east of the site is the Belle Haven residential neighborhood, which is generally occupied by single-family residences. Project construction could exceed the threshold for carcinogenic health risk (one in a million) due to the concentrations of toxic air contaminants. The EPA identifies engines based on tiers that track with emissions standards. Tier 4 equipment represents the cleanest engines related to emissions. The Final EIR found that implementation of Mitigation Measure AIR-2 would reduce substantial pollutant concentrations during project construction to the extent feasible and to a less-than-significant level.

Mitigation Measure AIR-1: Consistent with Connect Menlo Final EIR Mitigation Measure AQ- 2b1, the proposed project would be required to comply with BAAQMD basic control measures for reducing construction emissions of PM10 (Table 8-2, Basic Construction Mitigation Measures Recommended for All Proposed Projects, of the BAAQMD 2017 CEQA Guidelines), as follows:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.

- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number and person to contact at the City of Menlo Park regarding dust complaints. This person shall respond and take corrective action within 48 hours. The phone number for BAAQMD shall also be visible to ensure compliance with applicable regulations.

Mitigation Measure AIR-2: During construction of the proposed project, the project contractor shall ensure all off-road diesel-powered construction equipment of 50 horsepower or more used for the project construction at a minimum meets the California Air Resources Board Tier 4 emissions standards or equivalent. In the event that some specialty equipment (e.g., geotechnical, vibratory compaction, or soil mixing equipment), is not Tier 4 compliant due to lack of availability, then Tier 3 equipment shall be used.

Findings:

The City finds that the above mitigation measure[s] are feasible, will reduce the impacts of the Project to less-than-significant levels, and that they have been adopted by the City. Before adopting the proposed Project, the City reviewed the proposal to confirm it complies with the mitigation measures' requirements. Accordingly, the City finds that, pursuant to Public Resources Code section 21081(a)(1), and CEQA Guidelines section 15091(a)(1), changes or alterations have been required in, or incorporated into, the proposed Project that mitigate or avoid significant effects on the environment identified in the Final EIR.

Cultural Resources

Potential impacts on cultural resources were analyzed in section 3.5 of the Initial Study. In compliance with ConnectMenlo Final EIR Mitigation Measure CULT-1 a Historic Resources Assessment was prepared for the project and determined that none of the three buildings constructed between 1963 and 1964 appear to be eligible for listing in the National Register of Historical Places or the California Register of Historical Resources. Therefore, the proposed project would not cause a substantial adverse change in the significance of a historical resource pursuant to CEQA Guidelines Section 15064.5.

It was determined that the project could result in significant impacts due to project construction, which could result in disturbance of unidentified subsurface materials that have the potential to contain prehistoric archaeological resources, including unrecorded Native American prehistoric archeological sites or human remains associated with pre-contact archeological deposits. To mitigate these potential impacts to a less than significant level, the Initial Study requires the following mitigation measures:

1. ConnectMenlo Final EIR Mitigation Measure CULT-2a
2. ConnectMenlo Final EIR Mitigation Measure CULT-4

Findings:

The City finds that the above mitigation measure[s] are feasible, will reduce the impacts of the Project to less-than-significant levels, and that they have been adopted by the City. Before approving the proposed Project, the City reviewed the proposal to confirm it complies with the mitigation measures' requirements. Accordingly, the City finds that, pursuant to Public Resources Code section 21081(a)(1), and CEQA Guidelines section 15091(a)(1), changes or alterations have been required in, or incorporated into, the proposed Project that mitigate or avoid significant effects on the environment identified in the Final EIR.

Facts and Explanation in Support of Finding:

Due to the highly disturbed nature of the site, it is unlikely that archaeological deposits associated with the historic period of Menlo Park and Native American prehistoric archeological sites exist on the site, or that human remains associated with pre-contact archaeological deposits would be encountered during construction; however, the potential to encounter such resources during project ground-disturbing activities cannot be discounted. If deposits of prehistoric or historic archaeological materials are encountered during project activities, Mitigation Measure CULT-2a requires the construction contractor to stop work within 100 feet of the find and requires the project applicant to retain a qualified archaeologist to assess the deposit finds and make recommendations. If deposits cannot be avoided, further measures for recovery and documentation are required. Implementation of this measure would avoid destroying a unique prehistoric or historic archaeological resource or site and would reduce the impact to a less-than-significant level. Mitigation Measure CULT-4 requires the project applicant to contact the San Mateo County Coroner immediately upon discovery of human remains, and an archaeologist contacted to assess the situation and consult with appropriate agencies. If the human remains are of Native American origin, the Coroner must notify the Native American Heritage Commission. Implementation of this measure would avoid potential adverse effects to human remains and tribal cultural resources. Therefore, with implementation of Mitigation Measures CULT-2a and CULT-4 from the ConnectMenlo Final EIR, impacts to cultural resources would be less than significant with mitigation.

Connect Menlo Final EIR Mitigation Measure CULT-2a: If a potentially significant subsurface cultural resource is encountered during ground disturbing activities, all construction activities within a 100-foot radius of the find shall cease until a qualified archeologist determines whether the resource requires further study. All developers in the study area shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. Any previously undiscovered resources found during construction activities shall be recorded on appropriate California Department of Parks and Recreation (DPR) forms and evaluated for significance in terms of the CEQA criteria by a qualified archeologist. If the resource is determined significant under CEQA, the qualified archaeologist shall prepare and implement a research design and archaeological data recovery plan that will capture those categories of data for which the site is significant. The archaeologist shall also perform appropriate technical analyses; prepare a comprehensive report complete with methods, results, and recommendations; and provide for the permanent curation of the recovered

resources. The report shall be submitted to the City of Menlo Park, Northwest Information Center (NWIC), and State Historic Preservation Office (SHPO), if required.

Connect Menlo Final EIR Mitigation Measure CULT-4: Procedures of conduct following the discovery of human remains have been mandated by Health and Safety Code Section 7050.5, Public Resources Code Section 5097.98 and the California Code of Regulations Section 15064.5(e) (CEQA). According to the provisions in CEQA, if human remains are encountered at the site, all work in the immediate vicinity of the discovery shall cease and necessary steps to ensure the integrity of the immediate area shall be taken. The San Mateo County Coroner shall be notified immediately. The Coroner shall then determine whether the remains are Native American. If the Coroner determines the remains are Native American, the Coroner shall notify the NAHC within 24 hours, who will, in turn, notify the person the NAHC identifies as the Most Likely Descendant (MLD) of any human remains. Further actions shall be determined, in part, by the desires of the MLD. The MLD has 48 hours to make recommendations regarding the disposition of the remains following notification from the NAHC of the discovery. If the MLD does not make recommendations within 48 hours, the owner shall, with appropriate dignity, reinter the remains in an area of the property secure from further disturbance. Alternatively, if the owner does not accept the MLD's recommendations, the owner or the descendent may request mediation by the NAHC.

Geology and Soils

Potential impacts on geology and soils were analyzed in section 3.7 of the Initial Study. It was determined that potential impacts associated with fault rupture, seismic ground shaking, seismic-related ground failure and liquefaction, erosion, unstable soils, and expansive soils would be less than significant with compliance with the California Building Code.

It was determined that the project could result in significant impacts due to project construction, which could result in disturbance of previously unrecorded fossils. To mitigate this potential impact to a less than significant level, the Initial Study requires the following mitigation measure:

1. ConnectMenlo Final EIR Mitigation Measure CULT-3

Findings:

The City finds that the above mitigation measure[s] are feasible, will reduce the impacts of the Project to less-than-significant levels, and that they have been adopted by the City. Before approving the proposed Project, the City reviewed the proposal to confirm it complies with the mitigation measures' requirements. Accordingly, the City finds that, pursuant to Public Resources Code section 21081(a)(1), and CEQA Guidelines section 15091(a)(1), changes or alterations have been required in, or incorporated into, the proposed Project that mitigate or avoid significant effects on the environment identified in the Final EIR.

Facts and Explanation in Support of Finding:

Demolition, site preparation, and construction activities associated with the proposed project could reach significant depths below the ground surface where no such excavation has previously occurred and unrecorded fossils of potential scientific significance and other unique geologic features could exist. The ConnectMenlo Final EIR identified Mitigation Measure

CULT-3 to ensure that such impacts would be reduced to a less than significant level. If paleontological resources are encountered during site preparation or grading activities, this mitigation measure requires the construction contractor to stop work within 50 feet of the find and requires the project applicant to retain a qualified paleontologist to assess the discoveries and make recommendations. Implementation of this measure would avoid destroying a unique paleontological resource or site. With implementation of Mitigation Measure CULT-3 from the ConnectMenlo Final EIR this construction-period impact would be less than significant with mitigation.

ConnectMenlo Final EIR Mitigation Measure CULT-3: In the event that fossils or fossil bearing deposits are discovered during ground disturbing activities, excavations within a 50-foot radius of the find shall be temporarily halted or diverted. Ground disturbance work shall cease until a City-approved qualified paleontologist determines whether the resource requires further study. The paleontologist shall document the discovery as needed in accordance with Society of Vertebrate Paleontology standards [Society of Vertebrate Paleontology 1995]), evaluate the potential resource, and assess the significance of the find under the criteria set forth in CEQA Guidelines Section 15064.5. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction activities are allowed to resume at the location of the find. If avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of construction activities on the discovery. The excavation plan shall be submitted to the City of Menlo Park for review and approval prior to implementation, and all construction activity shall adhere to the recommendations in the excavation plan.

Greenhouse Gas Emissions

Greenhouse Gas (GHG) Emissions were analyzed in section 4.4 of the Final EIR. The Final EIR found that operation-period GHG emissions would be below established thresholds and that the project would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing GHG emissions; therefore, these impacts were determined to be less than significant.

It was determined that the project could generate construction-period GHG emissions that may have a significant impact on the environment. To mitigate these potential impacts to a less than significant level, the Final EIR requires the following mitigation measures:

1. Project Mitigation Measure AIR-1
2. Project Mitigation Measure AIR-2

Findings:

The City finds that the above mitigation measure[s] are feasible, will reduce the impacts of the Project to less-than-significant levels, and that they have been adopted by the City. Before adopting the proposed project, the City reviewed the proposal to confirm it complies with the mitigation measures' requirements. Accordingly, the City finds that, pursuant to Public Resources Code section 21081(a)(1), and CEQA Guidelines section 15091(a)(1), changes or alterations have been required in, or incorporated into, the proposed Project that mitigate or avoid significant effects on the environment identified in the Final EIR.

Facts and Explanation in Support of Finding:

Project construction could result in engine idling and equipment use that generates greenhouse gas emissions. Although the BAAQMD does not have adopted thresholds for construction emissions, without implementation of all feasible reduction measures, construction-period GHG emissions would contribute to global climate change and impacts would be potentially significant. Implementation of Mitigation Measure AIR-1, as identified in section 4.3, Air Quality, would require implementation of the BAAQMD's Basic Construction Measures as required by ConnectMenlo Final EIR Mitigation Measure AQ-2b1, which would reduce GHG emissions by reducing the amount of construction vehicle idling and by requiring the use of properly maintained equipment. In addition, implementation of Mitigation Measure AIR-2, as identified in section 4.3, Air Quality, would require the use of Tier 4 construction equipment. Therefore, project construction impacts associated with GHG emissions would be less than significant with mitigation.

Hazards

Hazards and Hazardous Materials were evaluated in section 3.9 of the Initial Study. The project site is not located on a site included on a list of hazardous materials sites, nor is it located within and airport land use plan or two miles of any airport. The proposed project would not substantially alter any adjacent roadways, and therefore would not be expected to impair the function of nearby evacuation routes. As noted in the ConnectMenlo Final EIR, compliance with existing regulations, including the California Building Code, California Fire Code, and Menlo Park Fire Protection District Fire Code would ensure that the proposed project would not expose people to loss, injury, or death involving wildland fires. These impacts would be less than significant.

It was determined that the public or the environment could be affected by the release of hazardous materials from the project site into the environment during the construction period through exposure to potentially contaminated soils or groundwater or hazardous building materials. To mitigate these potential impacts to a less than significant level, the Initial Study requires the following mitigation measures:

1. ConnectMenlo Final EIR Mitigation Measure HAZ-4a
2. ConnectMenlo Final EIR Mitigation Measure HAZ-4b

Findings:

The City finds that the above mitigation measure[s] are feasible, will reduce the impacts of the Project to less-than-significant levels, and that they have been adopted by the City. Before approving the proposed Project, the City reviewed the proposal to confirm it complies with the mitigation measures' requirements. Accordingly, the City finds that, pursuant to Public Resources Code section 21081(a)(1), and CEQA Guidelines section 15091(a)(1), changes or alterations have been required in, or incorporated into, the proposed Project that mitigate or avoid significant effects on the environment identified in the Final EIR.

Facts and Explanation in Support of Finding:

A Phase I ESA was prepared for the project site and identified that the three existing buildings had been used as hazardous materials facilities with limited subsurface investigations. A Phase II ESA was prepared for the project site and recommended further assessment of vapor intrusion risks and identified that implementation of vapor intrusion mitigation measures may

be necessary for the development of residential land uses on the project site, particularly in the eastern area of the site. While VOC concentrations encountered in soil, soil vapor, and groundwater at the site are not indicative of widespread or significant contamination, the elevated concentrations were identified in regions near former hazardous materials storage, processing, and treatment areas. The Initial Study found that implementation of ConnectMenlo Final EIR Mitigation Measures HAZ-4a (preparation of a site specific environmental site management plan) and HAZ-4b (inclusion of a vapor intrusion barrier in the new buildings) would ensure that impacts associated with potential exposure to hazardous soil vapor and groundwater conditions during project construction and operation would be reduced to a less-than-significant level. These are standard measures applicable to redevelopment projects located in areas of previously identified soil and groundwater contamination. Further incorporation of Mitigations Measures HAZ-4a and HAZ-4b from ConnectMenlo would reduce potentially significant impact to less than significant. Therefore, impacts related to hazards and hazardous materials would be less than significant with mitigation.

Connect Menlo Final EIR Mitigation Measure HAZ-4a: Construction at the sites of any site in the City with known contamination, shall be conducted under a project-specific Environmental Site Management Plan (ESMP) that is prepared in consultation with the Regional Water Quality Control Board (RWQCB) or the Department of Toxic Substances Control (DTSC), as appropriate. The purpose of the ESMP is to protect construction workers, the general public, the environment, and future site occupants from subsurface hazardous materials previously identified at the site and to address the possibility of encountering unknown contamination or hazards in the subsurface. The ESMP shall summarize soil and groundwater analytical data collected on the project site during past investigations; identify management options for excavated soil and groundwater, if contaminated media are encountered during deep excavations; and identify monitoring, irrigation, or other wells requiring proper abandonment in compliance with local, State, and federal laws, policies, and regulations.

The ESMP shall include measures for identifying, testing, and managing soil and groundwater suspected of or known to contain hazardous materials. The ESMP shall: 1) provide procedures for evaluating, handling, storing, testing, and disposing of soil and groundwater during project excavation and dewatering activities, respectively; 2) describe required worker health and safety provisions for all workers potentially exposed to hazardous materials in accordance with State and federal worker safety regulations; and 3) designate personnel responsible for implementation of the ESMP.

Connect Menlo Final EIR Mitigation Measure HAZ-4b: For those sites throughout the city with potential residual contamination in soil, gas, or groundwater that are planned for redevelopment with an overlying occupied building, a vapor intrusion assessment shall be performed by a licensed environmental professional. If the results of the vapor intrusion assessment indicate the potential for significant vapor intrusion into an occupied building, project design shall include vapor controls or source removal, as appropriate, in accordance with regulatory agency requirements. Soil vapor mitigations or controls could include vapor barriers, passive venting, and/or active venting. The vapor intrusion assessment and associated vapor controls or source removal can be incorporated into the ESMP (Mitigation Measure HAZ-4a).

Noise

Potential Noise impacts were analyzed in section 3.13 of the Initial Study and 4.5 of the Final EIR. It was determined that the Project would expose sensitive receptors to construction period noise, generate construction-period vibration, and locate residential land uses in an area that is considered a conditionally acceptable noise environment based on the City's Noise and Land Use Compatibility Guidelines for multifamily residential land uses. To mitigate these potential impacts to a less than significant level, the Final EIR requires the following mitigation measures:

1. ConnectMenlo Final EIR Mitigation Measure NOISE-1c
2. ConnectMenlo Final EIR Mitigation Measure NOISE-2a
3. Project Mitigation Measure NOI-1

Findings:

The City finds that the above mitigation measure[s] are feasible, will reduce the impacts of the Project to less-than-significant levels, and that they have been adopted by the City. Before approving the proposed Project, the City reviewed the proposal to confirm it complies with the mitigation measures' requirements. Accordingly, the City finds that, pursuant to Public Resources Code section 21081(a)(1), and CEQA Guidelines section 15091(a)(1), changes or alterations have been required in, or incorporated into, the proposed Project that mitigate or avoid significant effects on the environment identified in the Final EIR.

Facts and Explanation in Support of Finding:

Demolition, site preparation, and construction would require the use of heavy construction equipment including pile drivers, bulldozers, scrapers, loaders, excavators, cranes, and trucks, the operation of which could result in substantial temporary increases in ambient noise and vibration in the vicinity of the project. Demolition and site preparation phases are typically the loudest phases of construction due to the types of equipment used. There are sensitive receptors within 100 feet of the project site, which could be exposed to construction period noise. The ConnectMenlo Final EIR identified Mitigation Measures NOISE-1c (measures to reduce excessive construction-period noise levels) and NOISE-2a (pre-construction noise and vibration analysis) to ensure that construction-period noise and vibration are reduced to the extent feasible through implementation of standard reduction measures. Implementation of these measures would ensure that these impacts are reduced to a less-than-significant level with mitigation.

The noise environment at the project site is dominated by vehicle traffic noise on Jefferson Drive and Constitution Drive. Based on the traffic noise modeling presented in Table 4.5.F of the Draft EIR, traffic noise levels associated with Constitution Drive would result in the highest traffic-related noise levels at the project site. The proposed multi-family buildings would be located approximately 35 feet from the centerline of the outermost lane of Constitution Drive. At 35 feet, there would be an increase of approximately 3.1 dBA from the modeled noise levels of 63.7 dBA at 50 feet from the centerline due to attenuation with distance from Constitution Drive. Therefore, the proposed multi-family residential building may be subject to traffic noise levels of approximately 66.8 dBA CNEL. Based on the City's noise and land use compatibility standards, this noise level is considered conditionally acceptable for multi-family residential land uses. Such land use may be permitted only after detailed analysis of the noise reduction features proposed to be incorporated in the building design. Consistent with the City's

requirements and the requirements of Mitigation Measure NOISE-1a of the ConnectMenlo Final EIR, a detailed interior and exterior noise analysis was prepared as part of the Draft EIR. The interior noise analysis determined that with windows open, the buildings would not meet the City's normally acceptable interior noise standard of 45 dBA CNEL (i.e., 66.8 dBA – 15 dBA = 51.8 dBA). Therefore, modifications to ensure that buildings would comply with the City's noise and land use compatibility standards and reduce interior noise impacts are required to be implemented as outlined in Mitigation Measure NOI-1. Implementation of Mitigation Measure NOI-1 would allow windows to remain closed in order to reduce interior noise levels by 25 dBA, resulting in interior noise levels of 41.8 dBA CNEL, which would meet the City's interior noise standard of 45 dBA CNEL. Further, since interior noise levels would meet City standards, the proposed project would meet the City's exterior land use compatibility standards. Therefore, the Final EIR found that implementation of Mitigation Measure NOI-1 would reduce operation-period noise to a less-than-significant level.

ConnectMenlo Final EIR Mitigation Measure NOISE-1c: Project applicants for all development projects in the city shall minimize the exposure of nearby properties to excessive noise levels from construction-related activity through CEQA review, conditions of approval and/or enforcement of the City's Noise Ordinance. Prior to issuance of demolition, grading, and/or building permits for development projects, a note shall be provided on development plans indicating that during on-going grading, demolition, and construction, the property owner/developer shall be responsible for requiring contractors to implement the following measures to limit construction-related noise: Construction activity is limited to the daytime hours between 8:00 a.m. to 6:00 p.m. on Monday through Friday, as prescribed in the City's municipal code.

- All internal combustion engines on construction equipment and trucks are fitted with properly maintained mufflers, air intake silencers, and/or engine shrouds that are no less effective than as originally equipped by the manufacturer.
- Stationary equipment such as generators and air compressors shall be located as far as feasible from nearby noise-sensitive uses.
- Stockpiling is located as far as feasible from nearby noise-sensitive receptors.
- Limit unnecessary engine idling to the extent feasible.
- Limit the use of public address systems.
- Construction traffic shall be limited to the haul routes established by the City of Menlo Park.

ConnectMenlo Final EIR Mitigation Measure NOISE-2a: To prevent architectural damage citywide as a result of construction-generated vibration: Prior to issuance of a building permit for any development project requiring pile driving or blasting, the project applicant/developer shall prepare a noise and vibration analysis to assess and mitigate potential noise and vibration impacts related to these activities. The maximum levels shall not exceed 0.2 inch/second, which is the level that can cause architectural damage for typical residential construction. If maximum levels would exceed these thresholds, alternative methods such as static rollers, non-explosive blasting, and drilling piles as opposed to pile driving shall be used.

To prevent vibration-induced annoyance as a result of construction-generated vibration:

- Individual projects that involve vibration-intensive construction activities, such as blasting, pile drivers, jack hammers, and vibratory rollers, within 200 feet of sensitive receptors shall be evaluated for potential vibration impacts. A vibration study shall be conducted for individual projects where vibration-intensive impacts may occur. The study shall be prepared by an acoustical or vibration engineer holding a degree in engineering, physics, or allied discipline and who is able to demonstrate a minimum of two years of experience in preparing technical assessments in acoustics and/or groundborne vibrations. The study is subject to review and approval of the Community Development Department.

Vibration impacts to nearby receptors shall not exceed the vibration annoyance levels (in RMS inches/second) as follows:

- Workshop = 0.126
- Office = 0.063
- Residential Daytime (7:00 AM – 10:00 PM) = 0.032
- Residential Nighttime (10:00 PM – 7:00 AM) = 0.016

If construction-related vibration is determined to be perceptible at vibration-sensitive uses, additional requirements, such as use of less-vibration-intensive equipment or construction techniques, shall be implemented during construction (e.g., nonexplosive blasting methods, drilled piles as opposed to pile driving, preclusion for using vibratory rollers, use of small- or medium-sized bulldozers, etc.). Vibration reduction measures shall be incorporated into the site development plan as a component of the project and applicable building plans, subject to the review and approval of the Community Development Department.

Mitigation Measure NOI-1: Consistent with ConnectMenlo Final EIR Mitigation Measure NOISE-1a, the proposed project shall implement the following building design measures to the satisfaction of the City in order to reduce interior noise impacts in compliance with City noise standards:

- In order for windows and doors to remain closed, mechanical ventilation such as air conditioning shall be provided for all units.
- All windows and glass doors shall be rated STC 28 or higher such that the noise reduction provided will satisfy the interior noise standard of 45 dBA CNEL.
- All vent ducts connecting interior spaces to the exterior (i.e., bathroom exhaust, etc.) shall have at least two 90 degree turns in the duct.

C. Findings Regarding Alternatives to the Project

1. Alternatives Considered and Rejected During the Scoping/Project Planning Process.

During the Notice of Preparation comment period, the City received verbal and written suggestions for the identification and evaluation of alternatives to the proposed project. The

following provides a description of various potential alternatives that were identified and considered, and the reasons why they were ultimately not selected for further evaluation in this EIR.

- **Off-Site Locations.** Although relocation of the proposed project to an area with low VMT could avoid the VMT impact of the project, an alternative location was not considered for analysis because the project sponsor does not own or would not feasibly otherwise be able to gain control of a suitable vacant site within the city. In addition, major objectives of the project include the development of housing within close proximity to a jobs center. An alternative location located outside of the Bayfront Area would fail to meet this and several objectives of the project and would not further the goals of the City's General Plan and Zoning Ordinance.
- **Reduced Parking.** A reduced parking alternative, in which the number of on-site parking spaces would be reduced or eliminated, was also considered. The City's Zoning Ordinance requires one parking space per residential unit and 2.5 parking spaces per 1,000 square feet nonresidential use. The proposed project already provides close to the minimum number of parking spaces required, with a total of 553 spaces. A reduction in the number of parking spaces on the site would not comply with the City's parking requirements, although a variance could be requested for a reduction in parking of up to 50 percent. Although reducing or eliminating parking on the site could further reduce VMT, the project site is not located in a transit-rich area and such an alternative would likely result in secondary impacts through increased operational air quality and greenhouse gas emissions and safety impacts as area roadways would become more congested as drivers circle the site in search of parking.
- **Additional Reduction in Residential Development.** The Base Level alternative addresses a potential reduced development scenario of approximately 70 percent fewer residential units but at the maximum base residential density permitted within the R-MU-B zoning district. Additional reductions in the total number of units on the site would not result in a substantial additional reduction or avoidance of any additional impacts of the project as most project impacts are location-based (i.e., located adjacent to a high-volume roadway). As discussed above, because the project site is located within a high-VMT area, any increase in development compared to existing conditions that is not also coupled with improvements to transit infrastructure within the area would likely result in an increase in VMT. Furthermore, an additional reduction in residential development would fail to further the goals of the City's General Plan and Zoning Ordinance to promote high density housing to complement nearby employment.
- **All Affordable Housing or Senior Housing.** An alternative was considered that would result in the same development pattern as proposed by the project but all residential units would be affordable to low-income residents rather than a mix of affordable and market-rate units. Affordable units sometimes correlate to lower rates of vehicle ownership; thereby potentially reducing VMT. However, this cannot be guaranteed and lower rates of vehicle ownership were not assumed for the proposed project's BMR units. While the developer could choose to provide a 100 percent affordable housing project on the site, such an alternative would not reduce or avoid any impacts of the project as identified in this EIR. In addition, the site is not designated as an affordable housing site in any adopted planning or policy document.

Similarly, an age-restricted senior housing development, where data supports that residents typically have a lower rate of vehicle ownership, would not be an appropriate use in this location as the site is not located in a transit-rich area. Furthermore, the site is located within a jobs-rich area and residential development in this location is anticipated to reduce the jobs/housing imbalance by locating more residents within proximity to existing professional service and office jobs.

- **No Net VMT Increase/No Net GHG Increase.** An alternative that would result in no net increase in VMT or GHG emissions would likely not be feasible without development and implementation of programs that would increase the availability of alternative modes of transit within the Bayfront Area as a whole. Such improvements cannot be developed and implemented by individual project sponsors. A no net VMT increase could also be achieved by either replacing the existing use with a similar use (i.e., an approximately 30,000-square-foot light industrial building and 15,000-square-foot office building) or by limiting the residential units included in a new project to be equal to the VMT generated by the existing use, which is estimated to be approximately 70 residential units. As discussed in the bullet above regarding an additional reduction in residential development, the potentially significant impacts associated with the proposed project are location-based, and would not be reduced to less-than-significant levels by reducing the amount of development.

Findings:

The City Council hereby finds and rejects the above alternatives, as undesirable for the reasons described above and because specific economic, legal, social, technological or other considerations, including consistency with the Applicant's project objections, make each alternative infeasible. Further, some of the rejected objections would not have been consistent with specific General Plan goals, policies, or programs for which the proposed project would be consistent. The City finds that any of these grounds are independently sufficient to support rejection of this specific alternative.

2. Alternatives Selected for Analysis.

Section 15126.6(a) of the CEQA Guidelines requires the discussion of "a reasonable range of alternatives to a project, or the location of a project, which would feasibly attain most of the basic objectives of the proposed project but would avoid or substantially lessen any of the significant effects of the proposed project and evaluate the comparative merits of the alternatives." The EIR identified and considered the following reasonable range of feasible alternatives to the proposed Project that would be capable, to varying degrees, of reducing identified impacts:

- 1) No Project alternative, 2) Base Level alternative, and 3) Maximum Buildout alternative.

These alternatives were evaluated for their ability to avoid or substantially lessen the impacts of the proposed project identified in the Final EIR, as well as consideration of their ability to meet most of the basic objectives of the proposed project.

No Project alternative:

Under the No Project alternative, the project site would continue to be occupied by the three existing single-story office and industrial buildings totaling approximately 110,356 square feet with designated surface parking for approximately 221 vehicles. No modifications to existing site access or infrastructure would occur. The No Project alternative would avoid all of the less

than significant impacts of the proposed project. Compared to the other alternatives selected for analysis, the No Project alternative would have the fewest impacts and would be the environmentally superior alternative. Under CEQA, if the No Project alternative is the environmentally superior alternative, the EIR must identify an environmentally superior alternative from among the other alternatives (CEQA Guidelines Section 15126.6(e)(2)). While the No Project alternative would be environmentally superior in the technical sense in that contribution to the aforementioned impacts would not occur, it would also fail to achieve any of the project's objectives. The No Project alternative would not provide affordable or market rate housing that would tend to moderate displacement pressures, would not provide housing in a job-rich area to reduce the jobs-housing imbalance and reduce vehicle miles traveled, would not contribute to electrification within the City, would not develop a high-quality-aesthetic project, and would not provide any community amenities. Furthermore, the No Project alternative would not further any of the objectives of the Land Use Element for Mixed Use Residential to promote live/work/play environments oriented toward pedestrians, transit, and bicycle use, especially for commuting to nearby jobs or achieve the purpose and intent of the R-MU zoning district to provide high density housing to complement nearby employment and encourage mixed use development.

Findings:

The City Council hereby finds and rejects the No Project Alternative, as undesirable as it fails to satisfy the proposed Project's underlying purpose and to meet most Project objectives, and because specific economic, legal, social, technological or other considerations, including considerations for the provision of affordable and market rate housing and employment opportunities for highly trained workers, make the alternative infeasible. The City finds that any of these grounds are independently sufficient to support rejection of this alternative.

Base Level alternative:

The Base Level alternative assumes development of the site at the base level of development allowed under the R-MU-B zoning district. The Base Level alternative would include approximately 144 residential units (21 of which would be affordable units), which would include 102 multifamily units and 42 townhomes and up to 31,539 square feet of nonresidential space, which would include approximately 21,539 square feet of office space and up to 10,000 square feet of child care center space. The building's maximum height would be 45 feet with a maximum gross floor area of 220,776 square feet. The multifamily and office buildings would include a ground floor parking garage with a combined total of 210 vehicle parking spaces and similar site access and infrastructure improvements as those identified for the proposed project. The total square footage of open space would be reduced compared to the proposed project.

The Base Level alternative would achieve most of the project objectives, although to a lesser extent than the proposed project. In particular, objectives related to electrification, a high-quality aesthetic project, and providing community amenities would be achieved under this alternative, although the objective related to providing affordable and market rate housing would not be achieved to the same extent as the proposed project as the site would only be developed at the base level residential density, and not the bonus level residential density. The Base Level alternative would require implementation of the same mitigation measures as those

required for the proposed project, although construction-related impacts would be reduced given that construction activities on the site would be reduced with the smaller buildings, as compared to the proposed project. However, the Base Level alternative would result in a new significant and unavoidable impact which would not occur with the proposed project. Specifically, TDM measures would not sufficiently reduce VMT generated by the nonresidential use such that this impact can be reduced to a less than significant level.

Findings:

The City Council hereby finds and rejects the Base Level alternative, as undesirable as, although it would meet most project objectives, it would result in new significant unavoidable environmental impacts where none were found for the proposed project, and because specific economic, legal, social, technological or other considerations, make the alternative infeasible. The City finds that any of these grounds are independently sufficient to support rejection of this alternative.

Maximum Buildout alternative:

Under the Maximum Buildout alternative, the proposed project would be developed at the maximum bonus level of development allowed in the R-MU-B zoning district. The Maximum Buildout alternative would include approximately 483 residential units (73 of which would be affordable units) within two residential buildings (approximately 473,091 gross residential floor area) and up to 52,565 square feet of nonresidential space, which would include approximately 42,565 square feet of office space and up to 10,000 square feet of child care center space within a single building. The buildings would have a maximum height of approximately 85 feet. Each building would include a ground floor parking garage with a combined total of 505 vehicle parking spaces and similar site access and infrastructure improvements as those identified for the proposed project. The total square footage of open space would be reduced compared to the proposed project.

The Maximum Buildout alternative would achieve all of the project objectives to a similar degree as the proposed project. This alternative would provide affordable and market rate housing, contribute to electrification within the city, construct a high-quality-aesthetic project, and provide communities amenities. However, the Maximum Buildout alternative would require implementation of the same mitigation measures as those required for the proposed project, and would result in a new significant and unavoidable impact, compared to the impacts of the proposed project. Specifically, TDM measures would not sufficiently reduce VMT generated by the nonresidential use such that this impact can be reduced to a less than significant level.

Findings:

The City Council hereby finds and rejects the Maximum Buildout alternative, as undesirable as, although it would meet most project objectives, it would result in new significant unavoidable environmental impacts where none were found for the proposed project, and because specific economic, legal, social, technological or other considerations, make the alternative infeasible. The City finds that any of these grounds are independently sufficient to support rejection of this alternative.

D. Mitigation Monitoring and Reporting Program (MMRP)

Based on the entire record before the City Council and having considered the impacts of the proposed Project, the City Council hereby determines that all feasible mitigation measures identified in the EIR within the responsibility and jurisdiction of the City have been adopted to reduce or avoid the significant impacts identified in the EIR. As noted in Resolution _____, all feasible mitigation measures identified in the Final EIR will also be incorporated as conditions of approval for the project.

The City further finds that no additional feasible mitigation measures are available to further reduce significant impacts. The feasible mitigation measures are discussed in these Findings, above, and are set forth in the Mitigation Monitoring and Reporting Program.

Section 21081.6 of the Public Resources Code requires the City Council to adopt a monitoring or compliance program regarding the changes in the proposed Project and mitigation measures imposed to lessen or avoid significant effects on the environment. The City Council hereby adopts the Mitigation Monitoring and Reporting Program for the Project. The City Council finds that this Mitigation Monitoring and Reporting fulfills the CEQA mitigation monitoring requirements because:

- The Mitigation Monitoring and Reporting Program is designed to ensure compliance with the changes in the proposed Project and mitigation measures imposed on the proposed Project during Project implementation; and
- Measures to mitigate or avoid significant effects on the environment will be fully enforceable through conditions of approval, permit conditions, agreements or other measures.

MITIGATION MONITORING AND REPORTING PROGRAM

This Mitigation Monitoring and Reporting Program (MMRP) has been formulated based upon the findings of the Environmental Impact Report (EIR) prepared for the Menlo Uptown Project (project) submitted by Uptown Menlo Park Venture, LLC (the project sponsor) for which the City of Menlo Park (City) is the CEQA Lead Agency for environmental review. The MMRP, which is provided in Table A, lists mitigation measures recommended in the EIR for the proposed project and identifies mitigation monitoring requirements. The Final MMRP must be adopted when the City makes a final decision on the project.

This MMRP has been prepared to comply with the requirements of State law (Public Resources Code Section 21081.6). State law requires the adoption of an MMRP when mitigation measures are required to avoid significant impacts. The MMRP is intended to ensure compliance during implementation of the project.

The MMRP is organized in a matrix format:

- The first column identifies the mitigation measure that would be implemented for each project impact.
- The second column refers to the party or agency responsible for implementing the mitigation measure.
- The third column refers to the action that prompts implementation and/or implementation timing.
- The fourth column refers to the agency responsible for oversight or ensuring that the mitigation measure is implemented.
- The fifth column refers to the action that prompts the commencement of monitoring.
- The sixth column refers to when the monitoring will occur to ensure that the mitigation action is completed.
- The seventh and final column is where the lead agency contact initials and dates are provided as verification of mitigation measure implementation.

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Table A: Mitigation Monitoring and Reporting Program

Mitigation Measures	Party Responsible for Implementation	Implementation Trigger/Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency	Verified Implementation
AIR QUALITY						
<p>Project Mitigation Measure AIR-1: Consistent with Connect Menlo Final EIR Mitigation Measure AQ-2b1, the proposed project would be required to comply with Bay Area Air Quality Management District (BAAQMD) basic control measures for reducing construction emissions of PM₁₀ (Table 8-2, Basic Construction Mitigation Measures Recommended for All Proposed Projects, of the BAAQMD 2017 CEQA Guidelines), as follows:</p> <ul style="list-style-type: none"> • All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day. • All haul trucks transporting soil, sand, or other loose material off-site shall be covered. • All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. • All vehicle speeds on unpaved roads shall be limited to 15 mph. • All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. • Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points. 	Project applicant	Prior to issuance of a building permit	City of Menlo Park Planning Division	Plan review and approval	Prior to approval and during scheduled site visits	Initials: _____ Date: _____

Table A: Mitigation Monitoring and Reporting Program

Mitigation Measures	Party Responsible for Implementation	Implementation Trigger/Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency	Verified Implementation
<p>Project Mitigation Measure AIR-1 (continued):</p> <ul style="list-style-type: none"> • All construction equipment shall be maintained and properly tuned in accordance with manufacturer specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. • Post a publicly visible sign with the telephone number and person to contact at the City of Menlo Park regarding dust complaints. This person shall respond and take corrective action within 48 hours. The phone number for BAAQMD shall also be visible to ensure compliance with applicable regulations. 						
<p>Project Mitigation Measure AIR-2: During construction of the proposed project, the project contractor shall ensure all off-road diesel-powered construction equipment of 50 horsepower or more used for the project construction at a minimum meets the California Air Resources Board Tier 4 emissions standards or equivalent. In the event that some specialty equipment (e.g., geotechnical, vibratory compaction, or soil mixing equipment), is not Tier 4 compliant due to lack of availability, then Tier 3 equipment shall be used.</p>	Project applicant	Prior to issuance of a building permit	City of Menlo Park Planning Division	Plan review and approval	Prior to approval and during scheduled site visits	Initials: _____ Date: _____

Table A: Mitigation Monitoring and Reporting Program

Mitigation Measures	Party Responsible for Implementation	Implementation Trigger/Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency	Verified Implementation
CULTURAL RESOURCES						
ConnectMenlo Final EIR Mitigation Measure CULT-2a: If a potentially significant subsurface cultural resource is encountered during ground disturbing activities, all construction activities within a 100-foot radius of the find shall cease until a qualified archeologist determines whether the resource requires further study. All developers in the study area shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. Any previously undiscovered resources found during construction activities shall be recorded on appropriate California Department of Parks and Recreation (DPR) forms and evaluated for significance in terms of the CEQA criteria by a qualified archaeologist. If the resource is determined significant under CEQA, the qualified archaeologist shall prepare and implement a research design and archaeological data recovery plan that will capture those categories of data for which the site is significant. The archaeologist shall also perform appropriate technical analyses; prepare a comprehensive report complete with methods, results, and recommendations; and provide for the permanent curation of the recovered resources. The report shall be submitted to the City of Menlo Park, Northwest Information Center (NWIC), and State Historic Preservation Office (SHPO), if required.	Project applicant	During construction	Qualified archaeologist approved by the City of Menlo Park Planning Division	Initiated in the event that a find is made during construction	During regularly scheduled site inspections that would be initiated in the event that a find is made during construction	Initials: _____ Date: _____
ConnectMenlo Final EIR Mitigation Measure CULT-4: Procedures of conduct following the discovery of human remains have been mandated by Health and Safety Code Section 7050.5, Public Resources Code Section 5097.98 and the California Code of Regulations Section 15064.5(e) (CEQA). According to the provisions in CEQA, if human remains are encountered at the site, all work in the immediate vicinity of the discovery shall cease and necessary steps to ensure the integrity of the immediate area shall be taken.	Project applicant	During construction	The San Mateo County Coroner	Initiated in the event that a find is made during construction	During regularly scheduled site inspections initiated after a find is made during construction	Initials: _____ Date: _____

Table A: Mitigation Monitoring and Reporting Program

Mitigation Measures	Party Responsible for Implementation	Implementation Trigger/Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency	Verified Implementation
<p>ConnectMenlo Final EIR Mitigation Measure CULT-4 (continued): The San Mateo County Coroner shall be notified immediately. The Coroner shall then determine whether the remains are Native American. If the Coroner determines the remains are Native American, the Coroner shall notify the Native American Heritage Commission (NAHC) within 24 hours, who will, in turn, notify the person the NAHC identifies as the Most Likely Descendant (MLD) of any human remains. Further actions shall be determined, in part, by the desires of the MLD. The MLD has 48 hours to make recommendations regarding the disposition of the remains following notification from the NAHC of the discovery. If the MLD does not make recommendations within 48 hours, the owner shall, with appropriate dignity, reinter the remains in an area of the property secure from further disturbance. Alternatively, if the owner does not accept the MLD’s recommendations, the owner or the descendant may request mediation by the NAHC.</p>						
GEOLOGY AND SOILS						
<p>ConnectMenlo Final EIR Mitigation Measure CULT-3: In the event that fossils or fossil bearing deposits are discovered during ground disturbing activities, excavations within a 50-foot radius of the find shall be temporarily halted or diverted. Ground disturbance work shall cease until a City-approved qualified paleontologist determines whether the resource requires further study. The paleontologist shall document the discovery as needed in accordance with Society of Vertebrate Paleontology standards (Society of Vertebrate Paleontology 1995), evaluate the potential resource, and assess the significance of the find under the criteria set forth in CEQA Guidelines Section 15064.5.</p>	Project applicant	During construction	Qualified paleontologist approved by the City of Menlo Park Planning Division	Initiated in the event that a find is made during construction	During regularly scheduled site inspections initiated after a find is made during construction	Initials: _____ Date: _____



Table A: Mitigation Monitoring and Reporting Program

Mitigation Measures	Party Responsible for Implementation	Implementation Trigger/Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency	Verified Implementation
<p>ConnectMenlo Final EIR Mitigation Measure CULT-3 (continued): The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction activities are allowed to resume at the location of the find. If avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of construction activities on the discovery. The excavation plan shall be submitted to the City of Menlo Park for review and approval prior to implementation, and all construction activity shall adhere to the recommendations in the excavation plan.</p>						
<p>HAZARDS AND HAZARDOUS MATERIALS</p>						
<p>ConnectMenlo Final EIR Mitigation Measure HAZ-4a: Construction at any site in the City with known contamination shall be conducted under a project-specific Environmental Site Management Plan (ESMP) that is prepared in consultation with the Regional Water Quality Control Board (RWQCB) or the Department of Toxic Substances Control (DTSC), as appropriate. The purpose of the ESMP is to protect construction workers, the general public, the environment, and future site occupants from subsurface hazardous materials previously identified at the site and to address the possibility of encountering unknown contamination or hazards in the subsurface. The ESMP shall summarize soil and groundwater analytical data collected on the project site during past investigations; identify management options for excavated soil and groundwater, if contaminated media are encountered during deep excavations; and identify monitoring, irrigation, or other wells requiring proper abandonment in compliance with local, State, and federal laws, policies, and regulations.</p>	<p>Project applicant</p>	<p>Prior to permit issuance</p>	<p>The appropriate "oversight agency" designated by the City of Menlo Park Planning Division</p>	<p>Plan review and approval</p>	<p>Prior to construction and during regularly scheduled site inspections</p>	<p>Initials: _____ Date: _____</p>

Table A: Mitigation Monitoring and Reporting Program

Mitigation Measures	Party Responsible for Implementation	Implementation Trigger/Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency	Verified Implementation
<p>ConnectMenlo Final EIR Mitigation Measure HAZ-4a (continued): The ESMP shall include measures for identifying, testing, and managing soil and groundwater suspected of or known to contain hazardous materials. The ESMP shall: 1) provide procedures for evaluating, handling, storing, testing, and disposing of soil and groundwater during project excavation and dewatering activities, respectively; 2) describe required worker health and safety provisions for all workers potentially exposed to hazardous materials in accordance with State and federal worker safety regulations; and 3) designate personnel responsible for implementation of the ESMP.</p>						
<p>ConnectMenlo Final EIR Mitigation Measure HAZ-4b: For those sites throughout the city with potential residual contamination in soil, gas, or groundwater that are planned for redevelopment with an overlying occupied building, a vapor intrusion assessment shall be performed by a licensed environmental professional. If the results of the vapor intrusion assessment indicate the potential for significant vapor intrusion into an occupied building, project design shall include vapor controls or source removal, as appropriate, in accordance with regulatory agency requirements. Soil vapor mitigations or controls could include vapor barriers, passive venting, and/or active venting. The vapor intrusion assessment and associated vapor controls or source removal can be incorporated into the ESMP (Mitigation Measure HAZ-4a).</p>	Project applicant	Prior to permit issuance	Licensed environmental professional in accordance with RWQCB, DTSC, and SMCEHD approved by the City of Menlo Park Planning Division	Plan review and approval	Prior to construction and during regularly scheduled site inspections	Initials: _____ Date: _____

Table A: Mitigation Monitoring and Reporting Program

Mitigation Measures	Party Responsible for Implementation	Implementation Trigger/Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency	Verified Implementation
NOISE						
<p>ConnectMenlo Final EIR Mitigation Measure NOISE-1c: Project applicants for all development projects in the city shall minimize the exposure of nearby properties to excessive noise levels from construction-related activity through CEQA review, conditions of approval and/or enforcement of the City’s Noise Ordinance. Prior to issuance of demolition, grading, and/or building permits for development projects, a note shall be provided on development plans indicating that during on-going grading, demolition, and construction, the property owner/developer shall be responsible for requiring contractors to implement the following measures to limit construction-related noise:</p> <ul style="list-style-type: none"> • Construction activity is limited to the daytime hours between 8:00 a.m. to 6:00 p.m. on Monday through Friday, as prescribed in the City’s municipal code. • All internal combustion engines on construction equipment and trucks are fitted with properly maintained mufflers, air intake silencers, and/or engine shrouds that are no less effective than as originally equipped by the manufacturer. • Stationary equipment such as generators and air compressors shall be located as far as feasible from nearby noise-sensitive uses. • Stockpiling is located as far as feasible from nearby noise-sensitive receptors. • Limit unnecessary engine idling to the extent feasible. • Limit the use of public address systems. <p>Construction traffic shall be limited to the haul routes established by the City of Menlo Park.</p>	Project applicant	Prior to issuance of construction permits	City of Menlo Park Planning Division	Plan review and approval	During construction	Initials: _____ Date: _____

Table A: Mitigation Monitoring and Reporting Program

Mitigation Measures	Party Responsible for Implementation	Implementation Trigger/Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency	Verified Implementation
<p>ConnectMenlo Final EIR Mitigation Measure NOISE-2a: To prevent architectural damage citywide as a result of construction-generated vibration:</p> <ul style="list-style-type: none"> • Prior to issuance of a building permit for any development project requiring pile driving or blasting, the project applicant/developer shall prepare a noise and vibration analysis to assess and mitigate potential noise and vibration impacts related to these activities. The maximum levels shall not exceed 0.2 inch/second, which is the level that can cause architectural damage for typical residential construction. If maximum levels would exceed these thresholds, alternative methods such static rollers, non-explosive blasting, and drilling piles as opposed to pile driving shall be used. <p>To prevent vibration-induced annoyance as a result of construction-generated vibration:</p> <ul style="list-style-type: none"> • Individual projects that involve vibration-intensive construction activities, such as blasting, pile drivers, jack hammers, and vibratory rollers, within 200 feet of sensitive receptors shall be evaluated for potential vibration impacts. A vibration study shall be conducted for individual projects where vibration-intensive impacts may occur. The study shall be prepared by an acoustical or vibration engineer holding a degree in engineering, physics, or allied discipline and who is able to demonstrate a minimum of two years of experience in preparing technical assessments in acoustics and/or groundborne vibrations. The study is subject to review and approval of the Community Development Department. 	<p>Project applicant</p>	<p>Prior to issuance of construction permits</p>	<p>City of Menlo Park Planning Division</p>	<p>Plan review and approval</p>	<p>During construction</p>	<p>Initials: _____ Date: _____</p>

Table A: Mitigation Monitoring and Reporting Program

Mitigation Measures	Party Responsible for Implementation	Implementation Trigger/Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency	Verified Implementation
<p>ConnectMenlo Final EIR Mitigation Measure NOISE-2a (continued): Vibration impacts to nearby receptors shall not exceed the vibration annoyance levels (in RMS inches/second) as follows:</p> <ul style="list-style-type: none"> ● Workshop = 0.126 ● Office = 0.063 ● Residential Daytime (7:00 AM – 10:00 PM) = 0.032 ● Residential Nighttime (10:00 PM – 7:00 AM) = 0.016 <p>If construction-related vibration is determined to be perceptible at vibration-sensitive uses, additional requirements, such as use of less-vibration-intensive equipment or construction techniques, shall be implemented during construction (e.g., nonexplosive blasting methods, drilled piles as opposed to pile driving, preclusion for using vibratory rollers, use of small- or medium-sized bulldozers, etc.). Vibration reduction measures shall be incorporated into the site development plan as a component of the project and applicable building plans, subject to the review and approval of the Community Development Department.</p>						

Table A: Mitigation Monitoring and Reporting Program

Mitigation Measures	Party Responsible for Implementation	Implementation Trigger/Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency	Verified Implementation
<p>Project Mitigation Measure NOI-1: Consistent with ConnectMenlo Final EIR Mitigation Measure NOISE-1a, the proposed project shall implement the following building design measures to the satisfaction of the City in order to reduce interior noise impacts in compliance with City noise standards:</p> <ul style="list-style-type: none"> • In order for windows and doors to remain closed, mechanical ventilation such as air conditioning shall be provided for all units. • All windows and glass doors shall be rated STC 28 or higher such that the noise reduction provided will satisfy the interior noise standard of 45 dBA CNEL. <p>All vent ducts connecting interior spaces to the exterior (i.e., bathroom exhaust, etc.) shall have at least two 90 degree turns in the duct.</p>	Project applicant	Prior to issuance of construction permits	City of Menlo Park Planning Division	Plan review and approval	Prior to approval	Initials: _____ Date: _____

Source: LSA (2021).

RESOLUTION NO. 6661

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK DENYING APPEAL OF THE JUNE 21, 2021 PLANNING COMMISSION DECISION, UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF AND APPROVING THE USE PERMIT, ARCHITECTURAL CONTROL, BELOW MARKET RATE HOUSING AGREEMENT, AND COMMUNITY AMENITIES OPERATING COVENANT FOR THE PROPOSED MENLO UPTOWN PROJECT CONSISTING OF 483 MULTI-FAMILY DWELLING UNITS AND AN APPROXIMATELY 2,940 SQUARE FOOT COMMERCIAL SPACE AT 141 JEFFERSON DRIVE AND 180-186 CONSTITUTION DRIVE (APNS 055-242-030, 055-242-040, 055-242-140)

WHEREAS, the City of Menlo Park ("City") received an application requesting environmental review, use permit, architectural control, below market rate (BMR) Housing Agreement, heritage tree removal permits, major subdivision, and community amenities operating covenant from CLPF GRP Uptown Menlo Park, LLC and CLPF CRP TH Menlo Park, LLC ("Applicant"), to redevelop the property located at 141 Jefferson Drive, and 180-186 Constitution Drive (APNs 055-242-030, 055-242-040, 055-242-140) ("Property"), with a bonus level development project consisting of up to 483 dwelling units comprised of 441 rental units and 42 for-sale condominium units and approximately 2,940 square feet of commercial space proposed to be used as part of the Applicant's community amenity, which development is more particularly described in the Initial Study to the Project which was prepared pursuant to the California Environmental Quality Act (hereinafter the "Project"). The Project is depicted in and subject to the development plans which are attached hereto as Exhibit C ("Project Plans including colors and materials board") and incorporated herein by this reference; and

WHEREAS, the proposed Project is located in the R-MU-B (Residential Mixed Use-Bonus) zoning district. The R-MU-B zoning district allows a mixture of land uses with the purposes of providing high density housing to complement nearby employment, encouraging mixed use development with a quality living environment and neighborhood-serving retail and services on the ground floor that are oriented to the public, promoting a live/work/play environment with pedestrian activity, and blending with and complementing existing neighborhoods through site regulations and design standards that minimize impacts to adjacent uses; and

WHEREAS, the bonus level provisions identified in the City's Zoning Ordinance allow a development to seek an increase in floor area ratio (FAR), density (dwelling units per acre), and/or height subject to approval of a use permit and the provision of community amenities equal to a minimum of 50 percent of the fair market value of the increased development potential, and the applicant has submitted a community amenities proposal in compliance with the required minimum value; and

WHEREAS, pursuant to the City's Below Market Rate Housing Program, the applicant has proposed 73 BMR units within the Project, 67 of which are rental units within the apartment buildings and 6 of which are for-sale units within the townhome portion of the Project; and

WHEREAS, the proposed Project would be developed with an increase in FAR, density, and height pursuant to City's bonus level development allowances; and

WHEREAS, the proposed Project complies with all objective standards of the City's Zoning Ordinance, including parking standards, design standards, green and sustainable building standards, and is consistent with the City's General Plan goals, policies, and programs; and

WHEREAS, Section 16.45.070 of the City of Menlo Park Municipal Code requires that bonus level projects that are developed at a greater level of intensity with an increase in density, FAR, and/or height shall provide one or more community amenities to address the needs that result from the effect of the increased development. The value of the community amenities to be provided shall be equal to 50 percent of the fair market value of the additional gross floor area of the bonus level development; and

WHEREAS, pursuant to the requirements of Section 16.45.070 of the City of Menlo Park Municipal Code, the City commissioned Fabbro Moore & Associates, Inc. to perform an independent appraisal to determine the value of the Project's community amenities contribution. The appraisal determined the project's community amenities obligation would amount to \$8,900,000. The Community Development Director determined that the appraisal was created pursuant to the City's guidelines and approved the appraisal; and

WHEREAS, on June 9, 2021, the applicant submitted an updated community amenities proposal with two alternative proposals: an alternative to provide the commercial space to a non-profit to use for administrative offices and an alternative to provide the commercial space to a non-profit health care provider to use as an urgent care health center. Both community amenity alternatives include additional contributions to either a community land trust or a health care network; and

WHEREAS, the City evaluated the two alternative community amenities proposals and determined that the value of each proposal, including the dedicated office space, rent subsidy, tenant improvement subsidy, and financial contribution to either the land trust or the health care network would meet the required community amenity valuation of \$8,900,000; and

WHEREAS, utilization of the community amenity space by a non-profit health care network for an urgent care center and associated financial contribution to the health care network, is consistent with Resolution No. 6360 – the City's adopted community amenities list – because the urgent care center is considered under the category of "Social Service Improvements – Medical Center";

WHEREAS, for these reasons, staff recommended and the Planning Commission approved of utilization of the community amenity space by a non-profit health care network for an urgent care center and associated financial contribution to the health care network as the Project's community amenity, and did not approve of utilization of the community amenity space by non-profit for administrative offices because administrative office uses are not included in the community amenities list; and

WHEREAS, pursuant to the requirements Section 16.45.060 of the City of Menlo Park Municipal Code, the applicant submitted a Below Market Rate (BMR) proposal that would provide 73 inclusionary housing units (15.1 percent of the 483 units allowed per R-MU zoning district inclusive of 67 multi-family rental units with a mix of very-low, low, and moderate income limits (29 studio/junior one-bedroom units, 33 one-bedroom units, 4 two-bedroom units, and 1 three-bedroom unit) and six for-sale moderate income townhome units (5 three-bedroom units and 1 four-bedroom unit); and

WHEREAS, the Applicant initially proposed to provide all 67 rental units affordable to low-income households and to provide the six for-sale BMR units affordable to moderate income households, which would comply with the BMR Ordinance and BMR Guidelines; and

WHEREAS, at a duly noticed public meeting on February 3, 2021, the Housing Commission considered the applicant's BMR proposal and draft BMR Housing Agreement Term Sheet, inclusive of the 73 inclusionary BMR units, and forwarded a recommendation of approval to the Planning

Commission of the proposed BMR Term Sheet with a request for the Applicant to evaluate including a mix of income limits into the proposal; and

WHEREAS, on February 18, 2021 the Applicant submitted a second BMR proposal that includes a mix of income limits that was evaluated by the City's Deputy Community Development Director for Housing and determined to be equivalent to an all low-income limit BMR proposal and compliant with the City's BMR Ordinance and Guidelines. The mix of income limits and unit sizes/types would be equivalent to an all low-income BMR scenario alternative and has been incorporated into the proposed BMR Agreement, based on the Housing Commission's recommendation; and

WHEREAS, the Proposed Project includes 10 heritage-size tree removals that have been evaluated by the City Arborist and on March 11, 2021 the City Arborist approved the heritage tree removal permits, subject to Planning Commission review and action on the architectural control and use permit requests, and sent the required public notice of heritage tree removals; and

WHEREAS, the proposed project would include a minimum of 20 heritage tree replacements, per the required 2:1 replacement ratio of the Heritage Tree Ordinance in effect at the time of submittal of a complete application under the provisions of SB 330; and

WHEREAS, the City did not receive an appeal of the City Arborist's determination on the heritage tree removal permits, making the permits valid subject to Planning Commission action on the architectural control and use permit; and

WHEREAS, the Project requires discretionary actions by the City as summarized above, and therefore the California Environmental Quality Act ("CEQA," Public Resources Code Section §21000 et seq.) and CEQA Guidelines (Cal. Code of Regulations, Title 14, §15000 et seq.) require analysis and a determination regarding the Project's environmental impacts; and

WHEREAS, the City is the lead agency, as defined by CEQA and the CEQA Guidelines, and is therefore responsible for the preparation, consideration, certification, and approval of environmental documents for the Project; and

WHEREAS, the Project would be developed at the bonus level allowances of the Zoning Ordinance, and therefore, is subject to the settlement agreement between the City of Menlo Park and City of East Palo Alto ("Settlement Agreement"), which requires project-specific environmental impact reports ("EIRs") for certain future projects. Pursuant to the Settlement Agreement, the project-specific EIR may tier from the certified program level ConnectMenlo Final EIR ("ConnectMenlo EIR") which was certified by the City Council on November 29, 2016, as part of an update to the Land Use and Circulation Elements of the General Plan and related zoning changes, commonly referred to as ConnectMenlo, and the project-level EIR shall include a project specific transportation impact analysis. The City shall also prepare a housing needs assessment ("HNA") to inform the population and housing topic area of the project-level EIR; and

WHEREAS, the City released a Notice of Preparation ("NOP") and Initial Study for the Project on November 25, 2019 for a 30-day public review period ending on January 10, 2020. The City held a public EIR scoping meeting on December 16, 2019 before the City Planning Commission to receive comments on the NOP prior to the close of the public review period. Comments received by the City on the NOP and at the public EIR scoping meeting were considered during preparation of the Draft EIR. The initial study disclosed relevant impacts and mitigation measures already covered in the program-level ConnectMenlo EIR; and

WHEREAS, on December 16, 2019, concurrently with the public NOP scoping meeting, the Planning Commission conducted a study session to review and provide comments on the Project's conceptual design; and

WHEREAS, pursuant to the requirements of the Settlement Agreement and CEQA, the City prepared, or caused to be prepared, a project level EIR and conducted a HNA for the Project; and

WHEREAS, the Draft EIR was released on December 4, 2020 for an extended 60-day review period (to account for the December holidays and City hall closures) that ended on February 2, 2021. The public review period included one duly noticed public meeting on January 11, 2021 to received oral and written comments on the Draft EIR; and

WHEREAS, On January 11, 2021, as part of the duly noticed public hearing to review the Draft EIR, the Planning Commission also conducted a study session and provided an opportunity for members of the public to provide comments on the proposed project design, BMR proposal, and community amenities proposal; and

WHEREAS, the Draft EIR was filed with the California Office of Planning and Research and copies of the Draft EIR were made available at the Community Development Department, on the City's website and at the Menlo Park Library; and

WHEREAS, on June 11, 2021, the City published a Response to Comments Document that contains all of the comments received during the public comment period, including a transcript of the public hearing, and written responses to those comments, and any text changes to the Draft EIR, prepared in accordance with CEQA and the CEQA Guidelines. The Draft EIR and Response to Comments Document constitute the Final EIR, a copy of which is available by the following the internet link included in Exhibit D; and

WHEREAS, the City prepared or caused to be prepared the Findings of Fact as included in Exhibit E in accordance with CEQA and CEQA Guidelines Section 15091; and

WHEREAS, the City prepared or caused to be prepared a Mitigation Monitoring and Reporting Program ("MMRP"), which is incorporated herein by this reference and as part of the Final EIR, which will ensure all mitigation measures relied upon in the findings are fully implemented and that all environmental impacts are reduced to a less than significant level; and

WHEREAS, all required public notices and public hearings were duly given and held according to law; and

WHEREAS, after notice having been lawfully given, a duly noticed public hearing was held before the City Planning Commission on June 11, 2021 at which all persons interested had the opportunity to appear and comment; and

WHEREAS, after closing the public hearing, the Planning Commission considered all public and written comments, pertinent information, documents and plans an all other evidence in the public record on the Project; and

WHEREAS, on June 21, 2021, the Planning Commission fully reviewed, considered, evaluated the whole of the record including all public and written comments, pertinent information, documents and plans, and certified the Final EIR for the Project, prior to taking action to approve the use permit, architectural control, BMR Housing Agreement, and community amenities operating

covenant, and recommended approval of the major subdivision to the City Council for the Menlo Uptown project (Planning Commission's Actions); and

WHEREAS, following the Planning Commission's review, consideration, evaluation and certification of the Final EIR and approval of the use permit, architectural control, BMR Housing Agreement, and community amenities operating covenant, the City Council received two timely appeals to the Planning Commission's Actions on the project; and

WHEREAS, on July 6, 2021, Menlo Park Councilmember Taylor, called up the Planning Commission's Actions pursuant to Menlo Park Municipal Code section 16.86.025, which authorizes any Councilmember to file an appeal of any final action of the Planning Commission, said appeal is attached hereto and incorporated herein by this reference as Exhibit A; and

WHEREAS, on August 17, 2021, the City Council for the City of Menlo Park passed a motion determining that Councilmember Taylor's appeal would be a City Council appeal; and

WHEREAS, on July 6, 2021, the Sequoia Union High School District filed an appeal of the Planning Commission's Actions pursuant to Menlo Park Municipal Code section 16.86.010, which authorizes any person to file an appeal of any final action of the Planning Commission, said appeal is attached hereto and incorporated herein by this reference as Exhibit B; and

WHEREAS, on August 31, 2021, the City Council held a public hearing and separately reviewed and considered each of the two appeals, and fully reviewed, considered, evaluated, and certified the Final EIR, along with all public and written comments, pertinent information, documents and plans prior to taking action to deny the appeals and approve the use permit, architectural control, BMR Housing Agreement, and community amenities operating covenant for the Menlo Uptown development project.

NOW, THEREFORE, BE IT RESOLVED that the City Council finds the foregoing recitals are true and correct, and they are hereby incorporated by reference into this Resolution.

BE IT FURTHER RESOLVED that the City Council hereby denies Appeal No. _____ (appeal of the City Council of the City of Menlo Park), affirms the Planning Commission Actions, and approves the use permit, architectural control, BMR Housing Agreement, and community amenities operating covenant as those documents are reflected in Attachments G, H, and I, attached hereto and incorporated herein by this reference, for the Menlo Uptown development project based on the following findings:

1. The grounds upon which the Council has called up the Planning Commission Actions are not a basis to reverse the Planning Commission Actions and deny the project, for the following reasons:
 - a. *Concerns about upcoming development and water shortages due to drought.*

On May 25, 2021, the City Council adopted the 2020 Urban Water Management Plan (UWMP) and the 2020 Water Shortage Contingency Plan (WSCP). The 2020 UWMP projects future water demands within the Menlo Park Municipal Water (MPMW) service area over the next 20 years based on population and employment projections related to the City's recently approved projects and the current General Plan. The WSCP is included within the UWMP and provides six water shortage stages, ranging from 10 percent to more than 50 percent reductions. Each drought stage lists specific actions the MPMW could take and corresponding regulations/prohibitions that could be implemented for various shortage scenarios (such as drought surcharges, limiting landscape irrigation hours and time, implementing customer water budgets, and not allowing new water connections). The WSCP

provides flexibility for the City Council to incorporate additional regulations/prohibitions based on any future emergency water regulation adopted by the State Water Board or drought-related action imposed by SFPUC, MPMW's sole water provider.

The 2020 UWMP concludes that water demands within the MPMW service area can be met in normal years, however, water demand will exceed the reduced MPMW water supply during single dry and multiple dry water years. In the event of a water shortage, the WSCP policies and actions would apply to all existing and future water customers within MPMW's services area, including the proposed project.

In addition, to alleviate future demand to the potable water supply, the proposed buildings would be dual plumbed for the internal use of recycled water if a future recycled water source is developed for the area. Therefore, because the adopted 2020 UWMP finds that the City would have adequate water to serve anticipated growth in the Bayfront Area, measures to address water shortages are identified in the WSCP, and the project has been designed for potential future recycled water use, this is not a basis to reverse the Planning Commission Actions and deny the project.

- b. *In District one, there is an extreme heat and climate crisis concern and the City does not have an emergency preparedness plan to mitigate existing conditions.*

Compliance with an emergency preparedness plan is not currently required for individual development projects. Without such a plan and requirement in place at the time the preliminary application for the proposed project was deemed complete under SB 330, there is not a basis to reverse the Planning Commission actions and deny the project. Evaluation of individual projects for compliance with emergency preparedness would require the development and approval of an emergency preparedness plan, which is a matter of City-wide policy and may be undertaken independently of the project approvals.

Regardless, the proposed project incorporates green and sustainable building design standards, as required by MPMC section 16.45.130. The project would meet 100 percent of annual energy demand through renewable electricity sources and would also incorporate an approximately 46 kilowatt roof-mounted photovoltaic solar array to generate on-site renewable energy. Further, the proposed project would comply with the City's reach codes and no natural gas would be used as part of the project. The development would meet LEED Gold BD+C standards for the apartment buildings and LEED Silver BD+C standards for the townhomes, and would incorporate 67 electric vehicle (EV) charging spaces and 102 EV-ready parking spaces to meet the City's requirements. The proposed project would reduce, reuse, recycle, and compost waste from the demolition, construction, and occupancy phases of the project through implementation of a zero waste management plan. Finally, the proposed project would reduce the amount of impervious surfaces on the site compared to the existing development, increase the amount of pervious area, and increase the number of trees on the site from 41 to approximately 148 trees. These aspects of the proposed project design would help address concerns regarding climate change in the project vicinity and demonstrate the feasibility of green and sustainable buildings in the city and region.

As noted in the project EIR, GHGs are the primary cause of the human-induced component of warming associated with climate change. Chapter 4.4, Greenhouse Gas Emissions of the draft EIR indicates that the proposed project has less than significant and less than significant with mitigation impacts to greenhouse gas (GHG) emissions.

CEQA generally does not require the analysis and mitigation of the impacts of environmental conditions on a project's future residents or users. However, separate from the requirements of CEQA, additional factors would ensure that the buildings have been designed to adapt to climate change for future occupants. The first floor of all buildings would be raised two feet above the base flood elevation to prepare for potential sea level rise. Units would be equipped with air conditioning to adapt to future increases in the outdoor air temperature. The proposed project complies with all existing identified plans, programs, policies, ordinances, standards and requirements. Therefore, this is not a basis to reverse the Planning Commission Actions and deny the project.

c. *Naming rights on the urgent care center facility by District 1 residents.*

Naming rights for community amenities are not a requirement of the existing community amenities process, outlined in MPMC section 16.45.070. The project complies with all existing identified plans, programs, policies, ordinances, standards and requirements. The City may negotiate the possibility of naming rights for community amenities with the applicant and the operator of the community amenity, but this is not a basis to reverse the Planning Commission Actions and deny the project.

d. *Transportation issues and improvements must happen within the Belle Haven neighborhood prior to project completion.*

The transportation impact analysis (TIA) for the project was performed consistent with the City's TIA Guidelines approved by the City Council in June 2020. The TIA used industry standards for analysis, including the most recent versions of the Institute of Transportation Engineers Trip Generation Manual to develop vehicle trip generation estimates and the Transportation Research Board Highway Capacity Manual for the level of service (LOS) analysis of signalized and unsignalized intersections. The proposed project is primarily residential and a majority of peak hour trips are expected to be regional trips to U.S. 101 via Marsh Road and the East Bay via Bayfront Expressway. However, the transportation analysis for the project also assigned local trips to nearby neighborhoods and cities. Approximately three to five percent of trips for the project were assigned through the Belle Haven neighborhood, which would equal approximately five peak hour trips in either direction. The City's TIA guidelines for selecting study intersections generally targets intersections likely to have 10 or more trips per travel lane per intersection. Accordingly, the following 29 intersections were studied for the proposed project: 1. Marsh Road and Bayfront Expressway/Haven Avenue (Local Approaches to State), 2. Marsh Road and US-101 NB Off-Ramp (State), 3. Marsh Road and US-101 SB Off-Ramp (State), 4. Marsh Road and Scott Drive (Menlo Park), 5. Marsh Road and Bay Road (Menlo Park), 6. Marsh Road and Middlefield Road (Atherton), 7. Chrysler Drive and Bayfront Expressway (Local Approaches to State), 8. Chrysler Drive and Constitution Drive (Menlo Park), 9. Drive and Jefferson Drive (Menlo Park), 10. Chrysler Drive and Independence Drive (Menlo Park), 11. Chilco Street and Bayfront Expressway (Local Approaches to State), 12. Chilco Street and Constitution Drive (Menlo Park), 13. Willow Road and Bayfront Expressway (State), 14. Willow Road and Hamilton Avenue (Local Approaches to State), 15. Willow Road and Ivy Drive (Local Approaches to State), 16. Willow Road and O'Brien Drive (Local Approaches to State), 17. Willow Road and Newbridge Street (Local Approaches to State), 18. Willow Road and Bay Road (Local Approaches to State), 19. Willow Road and Durham Street (Menlo Park), 20. Willow Road and Coleman Avenue (Menlo Park), 21. Willow Road and Gilbert Avenue (Menlo Park), 22. Willow Road and Middlefield Road (Menlo Park), 23. University and Bayfront Expressway (State), 24. Middlefield Road and Ravenswood Avenue (Menlo Park), 25. Middlefield Road and Ringwood Avenue (Menlo Park), 26. Marsh

Road and Florence Street-Bohannon Drive (Menlo Park), 27. Willow Road and US-101 SB Ramps (State), 28. Willow Road and US-101 NB Ramps (State), and 29. Bay Road and Ringwood Avenue (Menlo Park).

No intersections internal to the Belle Haven neighborhood were identified as meeting the criteria for study in the TIA Guidelines, and less than 10 trips per travel lane would be estimated to pass through intersections within the Belle Haven neighborhood to the project site. As a result, the proposed project is unlikely to create an operational deficiency in Belle Haven. Therefore, this is not a basis to reverse the Planning Commission Actions and deny the project.

- e. *Non-community members negotiating community amenities on the behalf of a community that have not reached out.*

The City developed the community amenities list through a public outreach and input process that included residents, property owners, and key stakeholders through outreach meetings, public meetings, meetings of the General Plan Advisory Committee, and public hearings. The City Council adopted the community amenities list on November 29, 2016. As indicated in Menlo Park Municipal Code section 16.45.070(1), the list of community amenities may be updated from time to time through a resolution of the City Council.

The applicant selected a community amenity from the adopted list (an urgent care center under the category of “Social Service Improvements – Medical Center”) and the project complies with all existing identified plans, programs, policies, ordinances, standards and requirements in place at the time of the SB 330 preliminary application for the proposed project. Therefore, this is not a basis to reverse the Planning Commission Actions and deny the project. Staff is interested in and receptive to hearing about ways to ensure appropriate stakeholders are involved in community amenity review.

- f. *The immediate below market rate policy does not address the immediate needs of the community to prevent displacement or further displacement.*

Based on the requirements of Section 16.45.060 of the City of Menlo Park Municipal Code, the applicant submitted a Below Market Rate (BMR) housing proposal that would provide 73 inclusionary housing units (15.1 percent of the 483 units allowed per R-MU zoning district) inclusive of 67 multi-family rental units with a mix of very-low, low, and moderate income limits (29 studio/junior one-bedroom units, 33 one-bedroom units, 4 two-bedroom units, and 1 three-bedroom unit) and six for-sale moderate income townhome units (5 three-bedroom units and 1 four-bedroom unit). The Housing Commission considered the applicant’s BMR proposal and draft BMR Housing Agreement Term Sheet, inclusive of the 73 inclusionary BMR units, and forwarded a recommendation of approval to the Planning Commission of the proposed BMR Term Sheet with a request for the Applicant to evaluate including a mix of income limits into the proposal. The proposed project complies with all existing identified programs, policies, ordinances, standards and requirements related to BMR housing. Therefore, this is not a basis to reverse the Planning Commission Actions and deny the project.

In addition, the Housing Needs Assessment (HNA) prepared for the project estimates that the proposed development would result in a 110-unit increase in housing availability due to the removal of existing on-site jobs associated with the existing commercial buildings; a 95-unit reduction in housing availability due to new off-site jobs in retail, healthcare, and other services to new residents of the proposed project; and a 483-unit increase in housing

availability due to the construction of the proposed project. The net effect of these changes would be an overall increase of 498 units in housing availability. Because the proposed project would add to the supply of market rate and affordable housing and reduce the level of demand for housing by eliminating existing employment uses, the proposed project is not anticipated to contribute to displacement in East Palo Alto or Belle Haven. Increasing the availability of market rate and affordable housing would tend to moderate or counteract displacement pressures to some degree by relieving market pressures on existing housing stock.

Revisions to the City's BMR Guidelines and policies are a matter of City-wide policy and may be undertaken independently of the project approvals.

BE IT FURTHER RESOLVED that the City Council hereby denies Appeal No. _____ (appeal of the Sequoia Unified High School District), upholds the Planning Commission Actions, and approves the use permit, architectural control, BMR Housing Agreement, and community amenities operating covenant for the Menlo Uptown development project based on the following findings:

1. The grounds upon which the appellant has submitted its appeal of the Planning Commission Actions are not a basis to reverse the Planning Commission Actions and deny the project:

a. *The Planning Commission lacked authority to certify the Final EIR as the Planning Commission was not the "final decision-making body" for approval of the Project.*

Appellant claims the Planning Commission lacked the authority to certify the Final EIR because the City Council was responsible for approving the major subdivision. The appellant's assertion is misguided and not supported by law. Pursuant to the Menlo Park Municipal Code, the Planning Commission is required to review, issue and/or deny the various entitlements which were considered and approved by the Planning Commission (see MPMC sections 16.82.030 (use permit), 16.96.040 (BMR Agreement), and 16.45.070 (community amenities).) These approvals constitute sufficient agency commitment to a defined project such that CEQA review is required pursuant to State law (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116.)

b. *The Draft EIR, Final EIR and Planning Commission failed to appropriately consider the District's TIDE Academy in all discussions of the "environmental setting."*

Appellant claims the EIR failed to provide an adequate description of the environmental setting related to schools and specifically the TIDE Academy. The applicable environmental setting, including surrounding land uses such as the TIDE Academy, is discussed in Chapter 3.0, Project Description of the Draft EIR, and each topical section of the Draft EIR begins with a description of the physical setting for the project. The proximity of TIDE Academy as it relates to potential impacts of the proposed project in the topic areas of Transportation, Air Quality, and Noise is discussed in the Draft EIR. Section 4.2, Transportation, of the Draft EIR indicates that, as it relates to TIDE Academy, the proposed project would not conflict with any applicable plans, ordinances, or policies addressing components of the circulation system and would not substantially increase design hazards. Further, TIDE Academy was considered as a sensitive receptor for the purposes of the air quality and noise analyses in the Draft EIR. Air quality impacts to sensitive receptors would be less than significant with the implementation of Mitigation Measure AIR-2 (included in Exhibit F) and noise impacts to sensitive receptors would be less than significant. Therefore, this claim is not a basis to reverse the Planning Commission Actions and deny the project.

- c. *The Draft EIR, Final EIR and Planning Commission failed to appropriately analyze impacts on and related to schools because the environmental analysis improperly 'tiered from the ConnectMenlo EIR.'*

Appellant claims that the EIR improperly relied on the information, analysis and mitigation measures set forth in the programmatic EIR prepared for the City's 2016 General Plan Update (ConnectMenlo) because (1) ConnectMenlo assumed that development would occur incrementally over a 24-year period and (2) ConnectMenlo did not consider the Project's specific impacts on the District's TIDE Academy as this school did not yet exist when the ConnectMenlo EIR was prepared. Appellant further claims that circumstances have changed since the ConnectMenlo EIR and the Project, in conjunction with all other projects being considered in the Bayfront Area, will result in significant environmental impacts. The TIDE Academy was not yet constructed or operational at the time that the ConnectMenlo Final EIR was prepared; however, the new high school was contemplated at the time and discussed in the ConnectMenlo Final EIR. Further, changed circumstances related to the physical environmental setting, including the location of TIDE Academy, are considered and evaluated in the project EIR. The findings of the ConnectMenlo Final EIR and the Draft EIR (including the Initial Study) and final EIR prepared for the proposed project remain valid. As stated in the ConnectMenlo Draft EIR: "...the California State Legislature, under Senate SB 50, has determined that payment of school impact fees shall be deemed to provide full and complete school facilities mitigation. All new developments proposed pursuant to the adoption of the proposed project will be required to pay the school impact fees adopted by each school district. According to California Government Code Section 65995(3)(h), the payment of statutory fees is "deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization...on the provision of adequate school facilities." Payment of fees would occur with the pace of development and issuance of building permits for each development project that would generate new students. Therefore, with buildout of ConnectMenlo occurring sooner than the buildout horizon projected in the ConnectMenlo Final EIR, payment of mitigation fees would be accelerated in a linear fashion, and the Sequoia Union High School District would collect these fees sooner than previously anticipated. The proposed project is not anticipated to be constructed and operational until 2024, approximately three years from the date of preparation of the Menlo Uptown Project Final EIR. This timeframe would allow the SUHSD the opportunity to plan for student enrollment increases. Therefore, this claim is not a basis to reverse the Planning Commission Actions and deny the project.

- d. *The Draft EIR, Final EIR, and Planning Commission failed to identify and analyze all impacts on school facilities under CEQA's threshold of significant for Public Service impacts.*

Appellant contends the City failed to analyze impacts on school facilities and on the District. However, SB 50, the "Leroy F. Green School Facilities Act of 1998," excuses direct impacts of development on school facilities and buildings from being considered and mitigated in an EIR. SB 50 (1) provided a cap on the amount of fees or other requirements that can be imposed on new developments to fund construction of school facilities; (2) removed from local agencies the authority to refuse to approve legislative or adjudicative acts on the basis of inadequate school facilities or a developer's unwillingness to pay more than the capped fee amounts; and (3) limited mitigation measures that can be required under CEQA to payment of capped school facilities fees, and finding such payment to be full and complete school facilities mitigation. (Government Code section 65996.)

Government Code section 65995(i) prohibits a city from denying or refusing to approve a legislative or adjudicative act involving development “on the basis of a person’s refusal to provide school facilities mitigation that exceeds the amounts authorized [by SB 50].” SB 50 specifically limits a city’s power under CEQA to mitigate school facilities impacts. Thus the City may not deny approval of a legislative or adjudicative action (such as a use permit or other development entitlements) under CEQA on the basis of the inadequacy of school facilities, nor may the City impose, in its MMRP, mitigation measures to offset impacts of development on school facilities. Therefore, this claim is not a basis to reverse the Planning Commission Actions and deny the project.

- e. *The Draft EIR, Final EIR and Planning Commission failed to consider evidence of impacts on the District presented in the Fiscal Impact Analysis Report prepared by BAE Urban Economics.*

Appellant claims the Fiscal Impact Analysis shows the Project will have significant fiscal impacts on the School District which would result in physical impacts on District facilities, and these impacts were not properly considered in the Draft EIR, Final EIR or at the Planning Commission hearing.

The City incorporates by reference its findings regarding SB 50 set forth above in section 1(d). Furthermore, the City Council finds that a fiscal impact analysis was conducted for the proposed project, in compliance with General Plan Policy LU-4.7, which requires mixed-use projects of a certain minimum scale to include analysis of the potential fiscal impact on City, school districts, and special districts. The fiscal impact analysis conducted for the proposed project is not required under CEQA, and its results are not related to physical impacts on the environment that require mitigation. The City may, but is not required to, impose conditions of approval based on the findings of the fiscal impact analysis. Therefore, this claim is not a basis to reverse the Planning Commission Actions and deny the project.

- f. *The Draft EIR, Final EIR and Planning Commission Failed to Analyze all “School Related” Impacts that May be Caused by the Project.*

Appellant asserts the Final EIR did not properly mitigate school-related impacts, including those analyzed in *Chawanakee Unified Sch. Dist. v. Cty of Madera* (2011) 196 Cal.App.4th 1016 and 27 sub-categories of information that are necessary to determine whether the Project will result in significant impacts related to schools.

The City incorporates by reference its findings regarding SB 50 set forth above in section 1(d). Furthermore, the City Council finds that the Final EIR adequately addressed these “sub-categories,” and the City incorporates by reference its findings from section 1(b). As discussed throughout the Draft EIR and as further explained in Responses A2-9 through A2-17 of the Final EIR, potential impacts to school facilities (which are sensitive receptors) located within the vicinity of the project site were considered and were determined to be less than significant. Therefore, this claim is not a basis to reverse the Planning Commission Actions and deny the project.

- g. *The Draft EIR, Final EIR and Planning Commission Failed to Propose Adequate Mitigation Measures for Any Impacts of the Project on the District.*

Appellant restates a number of its other contentions and argues the Draft EIR, Final EIR and Planning Commission failed to propose adequate mitigation measures for impacts on the District including impacts on school facilities and impacts “related to schools.” The City incorporates by reference its findings regarding SB 50 set forth above in section 1(d).

Although it is unclear what impacts “related to schools” is intended to mean, the City Council finds that the Final EIR adequately addressed indirect impacts on traffic, air quality, noise levels (which impacts were the subject of *Chawanakee Unified Sch. Dist. v. City of Madera* (2011) 196 Cal.App.4th 1016), and other indirect impacts to schools. The City incorporates by reference its findings from section 1(b) regarding indirect impacts, all of which would be less than significant or less than significant with mitigation. The District has failed to provide substantial evidence that there would be any physical impact on or related to school services. Therefore, this claim is not a basis to reverse the Planning Commission Actions and deny the project.

BE IT FURTHER RESOLVED that the City Council of the City of Menlo Park, independently, after reviewing all of the evidence before it, holding public appeal hearings, considering the two appeals before it, and considering the Planning Commission’s Actions, hereby approves a use permit, subject to conditions, attached hereto and incorporated herein by this reference as Exhibit G, for the Project. The approval is granted based on the following findings which are made pursuant to Menlo Park Municipal Code Section 16.82.030:

1. That the consideration and due regard to the nature and condition of all adjacent uses and structures, and to general and specific plans for the area in question and surrounding areas, and impact of the application hereon; in that, the proposed project Final Environmental Impact Report determined that the proposed project with mitigation incorporated would cause less than significant impacts on the environment or less than significant impacts on the environment with mitigation incorporated. The proposed project is designed in a manner consistent with the goals, policies, and objectives of ConnectMenlo and applicable Zoning Ordinance requirements. Specifically, the proposed project would be an infill project that would be compatible with the surrounding uses. The building would redevelop a project site currently occupied by older industrial and commercial buildings and would locate new residential on an underutilized property and the redevelopment would be undertaken at the bonus level of development in exchange for community amenities. The proposed project includes on-site open space, required parking, and the proposed buildings would adhere to the design standards set for the by the Zoning Ordinance and would therefore, be consistent with ConnectMenlo. Compliance with the Zoning Ordinance and consistency with ConnectMenlo would ensure the project would not be detrimental to the health, safety, and welfare of the surrounding community. The project is subject to mitigation measures and conditions of approval that ensure that all existing adjoining structures are appropriately protected during and after construction and the heritage tree removals would be replaced at a 2:1 ratio on site, in compliance with the Heritage Tree Ordinance in effect at the time of the submittal of a complete SB 330 development application. Moreover, the proposed project is designed with appropriate ingress and egress and sufficient on-site bicycle and vehicular parking; and therefore, will not have a detrimental impact on the surrounding areas.
2. That whether or not the establishment, maintenance, or operation of the use applied for will, under the circumstance of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the city; in that, the proposed Project is designed as a predominantly multifamily dwelling project with a ground-floor commercial space proposed to be used as part of the applicant’s community amenity proposal as either an office or medical use, which are permitted uses pursuant to Chapter 16.45.020 of the City of Menlo Park Municipal Code. The proposed project is designed to meet all the applicable codes and ordinances of the City of Menlo Park Municipal Code and staff believes the proposed Project would not be detrimental to the health, safety, and welfare of the surrounding community due to the architectural design of the building and compliance with the Zoning Ordinance design standards and the architectural review process. The proposed project is

consistent with the goals and policies established by the ConnectMenlo General Plan and would result in a project that embodies the live/work/play vision of ConnectMenlo and the R-MU zoning district. Specifically, the proposed project would be a mixed-use building designed to be compatible with surrounding uses, and the mixed use building design addresses potential compatibility issues such as traffic, parking, light spillover, dust, odors, and transport and use of potentially hazardous materials. The proposed project is designed with sufficient off-site vehicular and bicycle parking, as well as public, common, and private open spaces. The public open spaces include a publicly accessible paseo bisecting the site, as identified on the adopted Zoning Map. The paseo has been found to meet the requirements of publicly accessible open space and paseos outlined in the Zoning Ordinance. The paseo would further the goals and policies of the land use and circulation elements of the General Plan related to bicycle and pedestrian circulation and open space design and provision within project sites. The project includes 73 BMR housing units, including 67 rental units and six for-sale townhome units and on-site amenities to serve the future residents of the project site. The proposed project is designed with appropriate ingress and egress and off-site improvements such as landscaping, street lighting, and sidewalks. The project-level Final Environmental Impact Report determined that the project would have a less than significant impact on the environment after implementation of mitigation measures. Further the Initial Study prepared for the project found the project would have a less than significant impact on the environmental after implementation of mitigation measures from the program-level EIR prepared for the ConnectMenlo General Plan Update. Therefore, the proposed project would not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood.

BE IT FURTHER RESOLVED that the City Council of the City of Menlo Park, independently, after reviewing all of the evidence before it, holding public appeal hearings, considering the two appeals before it, and considering the Planning Commission's Actions, hereby approves an architectural control permit, subject to conditions, attached hereto and incorporated herein by this reference as Exhibit I, for the Project. The approval is granted based on the following findings which are made pursuant to Menlo Park Municipal Code Section 16.68.020:

1. That the general appearance of the structures is in keeping with character of the neighborhood; in that, the proposed project is designed in a contemporary architectural style incorporating both solid elements and aluminum and glass storefronts along the majority of the primary street façades. The materials and forms of the proposed buildings would provide modulations and articulations along the façades of the buildings. The materials and modulations would comply with the City's Zoning Ordinance design standards and would provide visually interesting building facades on both the townhomes and the apartment buildings. The façades would predominantly consist of aluminum siding with a wood grain pattern, fiber cement rainscreen panels (a cladding system of interlocking panels attached over top of a waterproof barrier), and vinyl windows. The fiber cement panels would incorporate complementary colors and the stucco would comply with the Zoning Ordinance design standards. The project would comply with the base height, building projections, and major and minor modulations along with ground floor transparency, entrances, and garage entrance requirements. Compliance with the Zoning Ordinance would further the goals and policies of ConnectMenlo for mixed-use design and compatible buildings with surrounding land uses.
2. That the development will not be detrimental to the harmonious and orderly growth of the city; in that, the project is a predominantly residential project with an approximately 2,940 square foot ground floor commercial space proposed to be used for part of the applicant's required community amenity. The proposed Project design is consistent with all applicable requirements of the City of Menlo Park Municipal Code. The proposed project does not include any modifications to the design standards of the R-MU zoning district to modify the design standards. The proposed project is consistent with the new development and population growth envisioned by ConnectMenlo. Moreover, the proposed project is designed in a manner that is consistent with the existing and future development in the area. The project is designed with appropriate ingress and egress and

appropriate number of vehicular and bicycle parking on site to serve the residents and commercial space. Further, the project would construct a publicly accessible paseo, identified on the adopted Zoning Map. The paseo would provide additional safe bicycle and pedestrian access through the site along with publicly accessible open space that would be consistent with the land use and circulation element goals and policies of ConnectMenlo. Therefore, the project will not be detrimental to the harmonious and orderly growth of the city.

3. That the development will not impair the desirability of investment or occupation in the neighborhood; in that, the proposed Project consists of predominantly multifamily dwelling units with a small ground floor commercial space and is consistent with the adopted Zoning Ordinance for the project site. The proposed project is designed in a manner consistent with all applicable codes and ordinances, as well as the ConnectMenlo goals and policies. The proposed project contributes to the available affordable housing in the area and provides community amenities to serve the adjoining neighborhood and businesses. The proposed Project would redevelop an underutilized site. The proposed project provides residential apartment units in the area and provides affordable housing, adding to the availability and variety of housing stock to households with various needs at different income levels. The proposed project includes a publicly accessible paseo that would provide additional bicycle and pedestrian enhancements within the vicinity of the project site. Therefore, the proposed project would not impair the desirability of investment or occupation in the neighborhood.
4. That the development provides adequate parking as required in all applicable city ordinances and has made adequate provisions for access to such parking; in that, the proposed project provides a total of 553 on-site parking spaces, where the minimum number of parking spaces is 489 and the maximum number of spaces allowed is 734. The parking stalls associated with the residential rental units would be unbundled from the price of the units and the townhomes would include attached one-car and two-car garages. Guest parking stalls would be provided for both the rental units and for-sale townhome units. Further, the proposed project is required to reduce vehicle trips from the site by 20 percent from typical land uses within the site, pursuant to the requirements of the Zoning Ordinance through the inclusion of a transportation demand management (TDM) program. The TDM program was evaluated as part of the environmental review process and determined to meet the minimum trip reduction requirements. The on-site parking would be unbundled from the units and would likely reduce the parking demand of the project, per the requirements of the Zoning Ordinance. Lastly, the project provides 798 long-term and short-term bicycle parking spaces. Therefore, the proposed development provides sufficient on-site parking for both vehicles and bicycles.
5. That the development is consistent with any applicable specific plan; in that, the project is located in the Bayfront Area which is not subject to any specific plan. However, the project is consistent with the all the applicable goals, policies, and programs of ConnectMenlo and is consistent with all applicable codes, ordinances, and requirements outlined in the City of Menlo Park Municipal Code.

BE IT FURTHER RESOLVED that the City Council of the City of Menlo Park, independently, after reviewing all of the evidence before it, holding public appeal hearings, considering the two appeals before it, and considering the Planning Commission's Actions, hereby approves the Below Market Rate Housing Agreement ("BMR Agreement") between the City and Applicant which BMR Agreement is attached hereto as Exhibit G and incorporated herein by this reference. The City Council hereby resolves:

1. The BMR Agreement satisfies the requirements of Chapter 16.96 of the Menlo Park Municipal Code and City of Menlo Park Below Market Rate Housing Program Guidelines.

2. Pursuant to Chapter 16.96 of the City of Menlo Park Municipal Code and the City of Menlo Park Below Market Rate Housing Program Guidelines, public interest and convenience require that City to enter into the BMR Housing Agreement described above and incorporated herein as Exhibit G.
3. Pursuant to Menlo Park Municipal Code Chapter 16.96, section 16.96.020(b), Applicant is required to provide no less than fifteen percent (15%) of the units at below market rates to very low, low and moderate-income households. ("For residential development projects of twenty (20) or more units, the developer shall provide not less than fifteen percent (15%) of the units at below market rates to very low-, low- and moderate-income households." (MPMC § 16.96.020(b).) The proposed Project would provide 73 BMR units, inclusive of 67 rental units and 6 for-sale condominium townhome units. Pursuant to the City of Menlo Park Below Market Rate Housing Program Guidelines, the applicant elected to provide 7 very low income rental units, 23 low income rental units, 37 moderate income rental units, and 6 moderate income ownership units (the "proposed BMR alternatives").
4. The Applicant's proposed BMR alternatives are commensurate with the applicable requirements of Chapter 16.96 of the City of Menlo Park Municipal Code and the City of Menlo Park Below Market Rate Housing Program Guidelines because the total rent subsidy would be equivalent to an all low-income scenario.
5. The proposed BMR alternatives are consistent with the Goals of the City of Menlo Park Below Market Rate Housing Program Guidelines because the City's current Housing Element (2015-2023) identified the need for 655 units to be produced affordable to very low-, low-, moderate-, and above moderate-income households. Further, the BMR Housing Program Guidelines allow for the provision of affordable units at extremely low, very low, low and/or moderate income levels that shall be roughly equivalent to the provision of all of the affordable units at the low income level.
6. Pursuant to MPMC section 16.96.020(c), on February 3, 2021 the Housing Commission considered Applicant's BMR proposal and associated BMR Agreement Term Sheet, and forwarded a recommendation to the Planning Commission to approve the BMR Agreement pursuant to the BMR Agreement Term Sheet, with the recommendation that the applicant also explore an alternative proposal with a mix of income limits.
7. The Applicant elected to provide an alternative BMR Proposal for review and consideration of the City per the recommendation of the Housing Commission and the current BMR proposal includes an all low-income scenario and a scenario with a mix of income limits. Staff has evaluated both scenarios and determined that the alternative scenario would meet the BMR Housing Guidelines and would be consistent with the recommendation of the Housing Commission.
8. Based on the foregoing, the City Council of the City of Menlo Park hereby approves the BMR Agreement and the City Manager is hereby authorized on behalf of the City to execute the BMR Agreement; any modifications to the BMR Agreement shall be approved by the City Attorney prior to execution of the BMR Agreement.

BE IT FURTHER RESOLVED that the City Council of the City of Menlo Park, independently, after reviewing all of the evidence before it, holding public appeal hearings, considering the two appeals before it, and considering the Planning Commission's Actions, hereby approves the Community Amenities Operating Covenant ("Community Amenities Operating Covenant") between the City and Applicant that satisfies the requirement that the Applicant comply with Chapter 16.45, Section 16.45.070 of the City's Municipal Code and with Menlo Park City Council Resolution No. 6360 (the City Council adopted Community Amenities List); the Community Amenities Operating Covenant is

attached hereto as Exhibit H and incorporated herein by this reference. The City Council hereby resolves:

1. Pursuant to Chapter 16.45, Section 16.45.070 of the City's Municipal Code and with Menlo Park City Council Resolution No. 6360 (the City Council adopted Community Amenities List), public interest and convenience require the City to enter into the Community Amenities Operating Covenant described above and incorporated herein as Exhibit F.
2. The City of Menlo Park hereby approves the Community Amenities Operating Covenant and the City Manager is hereby authorized on behalf of the City to execute the Agreement; any modifications to the Community Amenities Operating Covenant shall be approved by the City Attorney prior to execution of the Community Amenities Operating Covenant.

SEVERABILITY

If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void or unenforceable, the remaining provisions of these findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the thirty-first day of August, 2021, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this thirty-first day of August, 2021.

Judi A. Herren, City Clerk

Exhibits

- A. City Council Call-Up Appeal
- B. Appeal of Sequoia Union High School District
- C. Project Plans including materials and colors board
- D. Menlo Uptown Final EIR
- E. Statement of Findings and Facts pursuant to CEQA
- F. Mitigation Monitoring and Reporting Program (MMRP)
- G. Below Market Rate Housing Agreement
- H. Community Amenities Operating Covenant
- I. Conditions of Approval

This document is recorded for the benefit of the City of Menlo Park and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code.

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Menlo Park
Attn: City Clerk
701 Laurel Street
Menlo Park, CA 94025

**BELOW MARKET RATE HOUSING AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS**

(141 Jefferson Drive, 180 Constitution Drive and 186 Constitution Drive Project)

THIS BELOW MARKET RATE HOUSING AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (“Agreement”) is entered into as of _____, 2021 (“**Effective Date**”), by and between the City of Menlo Park, a California municipal corporation (“**City**”), and CLPF GRP Uptown Menlo Park LLC, a Delaware limited liability company (“**Owner**”). City and Owner may be referred to individually as a “**Party**” or collectively as the “**Parties**” in this Agreement.

RECITALS

A. Owner is the owner of that certain real property located at 141 Jefferson Drive, 180 Constitution Drive and 186 Constitution Drive (APNs 055-242-030, 055-242-040, 055-242-140), in the City of Menlo Park, California (“**Property**”), as more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

B. Owner applied to demolish existing office and industrial buildings and to redevelop the site with a new multifamily residential project with 441 rental units, 42 for sale townhome units and an approximately 2,940 square feet of community amenity space, as well as associated open space, circulation, parking and infrastructure improvements. (“**Project**”).

C. Menlo Park Municipal Code Chapter 16.96, the Below Market Rate Housing Program (“**BMR Ordinance**”), and the Below Market Rate Housing Program Guidelines (“**Guidelines**”) require the Owner to provide fifteen percent (15%) of the total number of units in the Project as affordable to below market rate (“**BMR**”) households. To satisfy the requirements of the BMR Ordinance and Guidelines, Owner has proposed (the “**BMR Proposal**”) to provide BMR units as follows: sixty-seven (67) rental units to BMR households (“**BMR Rental Units**”) and six (6) for-sale units to BMR households (“**BMR For-Sale Units**”) for a total of seventy-three (73) BMR Units (collectively, the “**BMR Units**”).

D. On May 5, 2021, after a duly noticed public hearing, the Housing Commission

recommended approval the BMR Proposal with the following units: seven (7) very low income Units (“**Very Low Income Units**”), twenty-three (23) low income units (“**Low Income Units**”) and forty-three (43) moderate income units (“**Moderate Income Units**”). The seventy-three (73) BMR Units will include 7 units affordable to very low income households, 23 units affordable to low income households, and 43 units affordable to moderate income households. (“**BMR Units**”). The allocations of BMR Units across the unit-sizes in the Project (both BMR Rental Units and BMR For-Sale Units) is more particularly described on Exhibit B, attached hereto and incorporated herein by this reference.

E. On _____, 2021, after a duly noticed public hearing, and on the recommendation of the Housing Commission, the City Council certified the environmental impact report and granted architectural control, use permit, and BMR Housing Agreement approvals for the Project (“**Project Approvals**”). The Project Approvals require the Owner to provide BMR Units in accordance the BMR Proposal. In accordance with the BMR Ordinance and Guidelines, Owner is required to execute and record an approved BMR Housing Agreement as a condition precedent to the issuance of a building permit for the Project. This Agreement is intended to satisfy that requirement.

NOW, THEREFORE, the Parties hereto agree as follows. The recitals are incorporated into this Agreement by this reference.

1. CONSTRUCTION OF THE IMPROVEMENTS.

1.1 Construction of the Project. Owner agrees to construct the Project in accordance with the Menlo Park Municipal Code and all other applicable state and local building codes, development standards, ordinances and zoning ordinances.

1.2 City and Other Governmental Permits. Before commencement of the Project, Owner shall secure or cause its contractor to secure any and all permits which may be required by the City or any other governmental agency affected by such construction, including without limitation building permits. Owner shall pay all necessary fees and timely submit to the City final drawings with final corrections to obtain such permits; City staff will, without incurring liability or expense therefore, process applications in the ordinary course of business for the issuance of building permits and certificates of occupancy for construction that meets the requirements of the Menlo Park Municipal Code, and all other applicable laws and regulations.

1.3 Compliance with Laws. Owner shall carry out the design, construction and operation of the Project in conformity with all applicable laws, including all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Menlo Park Municipal Code, and **all** applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

2. OPERATION OF THE BMR UNITS

2.1 Affordability Period. The Property, provided that the Project remains on the Property, shall be subject to the requirements of this Agreement from the Effective Date until the 55th anniversary of such date. The duration of this requirement shall be known as the “Affordability Period.”

2.2 Maintenance. Owner shall comply with every condition of the Project Approvals and shall, at all times, maintain the Project and the Property in good repair and working order, reasonable wear and tear excepted, and in a safe and sanitary condition, and from time to time shall make all necessary and proper repairs, renewals, and replacements to keep the Project and the Property in a good, clean, safe, and sanitary condition.

2.3 Monitoring and Recordkeeping. Throughout the Affordability Period, Owner shall comply with all applicable recordkeeping and monitoring requirements set forth in the Guidelines. City shall have the right to inspect the books and records of Owner and its rental agent or bookkeeper upon reasonable notice during normal business hours. Representatives of the City shall be entitled to enter the Property, upon at least 48-hour prior written notice, which can be provided via email, to monitor compliance with this Agreement, to inspect the records of the Project with respect to the BMR Units, and to conduct, or cause to be conducted, an independent audit or inspection of such records. Owner agrees to cooperate with the City in making the Property available for such inspection or audit. Owner agrees to maintain records in businesslike manner, and to maintain such records for Affordability Period.

2.4 Non-Discrimination Covenants. Owner covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, familial status, disability, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall any occupant of any BMR Unit or any person claiming under or through such occupant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

a. In deeds, the following language shall appear:

(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location,

number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

b. In leases, the following language shall appear:

(1) The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

c. In contracts pertaining to management of the Project, the following language, or substantially similar language prohibiting discrimination and segregation shall appear:

(1) There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or

enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

2.5 Subordination. This Agreement shall be recorded in the Official Records of the County of San Mateo and shall run with the land. The City agrees that the City will not withhold consent to reasonable requests for subordination of this Agreement for the benefit of lenders providing financing for the Project, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

3. OPERATION OF THE BMR RENTAL UNITS

3.1 BMR Rental Units. Owner agrees to make available, restrict occupancy to, and lease not less than sixty-seven (67) BMR Rental Units, inclusive of seven (7) Very Low Income Units, twenty-three (23) Low Income Units and thirty-seven (37) Moderate Income Units, to Qualifying Households, as hereinafter defined, at an affordable rent, pursuant to the terms set forth below. The BMR Rental Units shall be of a quality comparable to all of the other rental units in the Project. The BMR Rental Units shall be initially distributed as set forth in Exhibit C, attached hereto and incorporated herein by this reference. Thereafter, the location of the individual BMR Rental Units may float to account for the next available unit requirement set forth below and as otherwise necessary for the professional maintenance and operation of the Project provided that the distribution of BMR Rental Units are equitably disbursed throughout the Project and the City's Deputy Director of Community Development ("**Deputy Director**") shall be notified of any change or relocation of BMR Rental Units by Owner.

3.2 Qualifying Households. For purposes of this Agreement, "**Qualifying Households**" shall mean those households with incomes as follows:

- a. "**Very Low Income Unit**": means units restricted to households with incomes of not more than fifty percent (50%) of AMI. "AMI" means the median income for San Mateo County, California, adjusted for Actual Household Size, as published from time to time by the State of California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations or successor provision.

Qualifying Households shall continue to qualify unless at the time of recertification, the household's income exceeds the Very Low Income eligibility requirements, then the tenant shall no longer be qualified. Upon Owner's determination that any such household is no longer qualified, the unit shall no longer be deemed a Very Low Income Unit, and Owner shall either (1) make the next available unit, which is comparable in terms of size, features and number of bedrooms, a Very Low Income Unit, or take other actions as may be necessary to ensure that the total required number of Very Low Income Units are rented to Qualifying Households, or (2) if the tenant's income does not exceed eighty percent (80%) of the maximum income that would qualify the tenant as a Low Income Household, the tenant shall be allowed to remain in the unit at a Low Income rent. If the tenant originally qualified as a Very Low Income Household, then the tenant's rent will be increased to a Low Income rent upon the later of sixty (60) days' notice or the renewal of the tenant's lease, and the Owner shall rent the next available unit to a Very Low Income Household. Owner shall notify the City annually if Owner substitutes a different unit for one of the designated Very Low Income Units pursuant to this paragraph.

- b. **“Low Income Unit”**: means units restricted to households with incomes of not more than eighty percent (80%) of AMI. “AMI” means the median income for San Mateo County, California, adjusted for Actual Household Size, as published from time to time by the State of California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations or successor provision. Qualifying Households shall continue to qualify unless at the time of recertification, the household's income exceeds the Low Income eligibility requirements, then the tenant shall no longer be qualified. Upon Owner's determination that any such household is no longer qualified, the unit shall no longer be deemed a Low Income Unit, and the Owner shall either (1) make the next available unit, which is comparable in terms of size, features and number of bedrooms, a Low Income Unit, or take other actions as may be necessary to ensure that the total required number of Low Income Units are rented to Qualifying Households, or (2) if the tenant's income does not exceed one hundred twenty (120%) of the maximum income that would qualify the Tenant as a Moderate Income Household, the tenant shall be allowed to remain in the unit at a Moderate Income rent. If the tenant originally qualified as a Low Income Household, then the tenant's rent will be increased to a Moderate Income rent upon the later of sixty (60) days' notice or the renewal of the tenant's lease, and the Owner shall rent the next available unit to a Low Income Household. Owner shall notify the City annually if Owner substitutes a different unit for one of the designated Low Income Units pursuant to this paragraph.
- c. **“Moderate Income Unit”**: means units restricted to households with incomes of not more than one hundred and twenty percent (120%) of AMI.

“AMI” means the median income for San Mateo County, California, adjusted for Actual Household Size, as published from time to time by the State of California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations or successor provision. Qualifying Households shall continue to qualify unless at the time of recertification, the household’s income exceeds the Moderate Income eligibility requirements, then the tenant shall no longer be qualified. Upon Owner’s determination that any such household is no longer qualified, the unit shall no longer be deemed a Moderate Income Unit and the Owner shall either (1) make the next available Moderate Income Unit, which is comparable in terms of size, features and number of bedrooms, a Moderate Income Unit, or take other actions as may be necessary to ensure that the total required number of Moderate Income Units are rented to Qualifying Households, or (2) If the tenant’s income does not exceed one hundred twenty (120%) of the maximum income that would qualify the Tenant as a Moderate Income Household, the tenant shall be allowed to remain in the unit at a Moderate Income rent. If the tenant originally qualified as a Moderate Income Household, then the shall be notified they are no longer eligible for the BMR unit and tenant’s rent will be increased to a market rate rent upon the later of sixty (60) days’ notice or the renewal of the tenant’s lease, and the Owner shall rent the next available unit to a Moderate Income Household. Owner shall notify the City annually if Owner substitutes a different unit for one of the designated Moderate Income Units pursuant to this paragraph.

3.3 Income Verification and Annual Report. On or before July 1 of each year, commencing with the calendar year that the first residential unit in the Project is rented to a tenant, and annually thereafter, Owner shall obtain from each household occupying a BMR Rental Unit and submit to the City an income computation and certification form, completed by a tenant of such unit, which shall certify that the income of each Qualifying Household is truthfully set forth in the income certification form, in the form proposed by the Owner and approved by the Deputy Director (“**Annual Report**”). Owner shall make a good faith effort to verify that each household leasing a BMR Rental Unit meets the income and eligibility restrictions for the BMR Rental Unit by taking by taking the following steps as a part of the verification process: (a) obtain a minimum of the three (3) most current pay stubs for all adults age eighteen (18) or older; (b) obtain an income tax return for the most recent tax year; (c) conduct a credit agency or similar search; (d) obtain the three (3) most current savings and checking account bank statements; (e) obtain an income verification form from the applicant's current employer; (f) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (g) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of tenant income certifications shall be available to the City upon request. The Annual Report shall, at a minimum, include the following information for each BMR Rental Unit: unit number, number of bedrooms, current rent and other charges, dates of any vacancies during the reporting period, number of people residing in the unit, total household Gross Income, and lease commencement and termination dates. The Report shall also provide a statement of the owner’s management

policies, communications with the tenants and maintenance of the BMR Rental Unit, including a statement of planned repairs to be made and the dates for the repairs.

3.4 Affordable Rent. The maximum Monthly Rent, defined below, chargeable for the BMR Rental Units and paid shall be as follows:

- a. **“Very Low Income Household”**: shall be 1/12th of 30 percent of not to exceed 50 percent of the AMI. The Monthly Rent for a Very Low Income Unit rented to a Very Low Income Household and paid by the household shall be based on an assumed average occupancy per unit of one person per studio unit, 1.5 persons for a one- bedroom unit, 3 persons for a two- bedroom unit and 4.5 persons for a three- bedroom unit, unless otherwise approved by the Deputy Director for an unusually large unit with a maximum of two persons per bedroom, plus one.
- b. **“Low Income Household”**: shall be 1/12th of 30 percent of not to exceed 80 percent of the AMI. The Monthly Rent for a Low Income Unit rented to a Low Income Household and paid by the household shall be based on an assumed average occupancy per unit of one person per studio unit, 1.5 persons for a one-bedroom unit, 3 persons for a two-bedroom unit and 4.5 persons for a three-bedroom unit, unless otherwise approved by the Deputy Director for an unusually large unit with a maximum of two persons per bedroom, plus one.
- c. **“Moderate Income Household”**: shall be 1/12th of 30 percent of not to exceed 120 percent of the AMI. The Monthly Rent for a Moderate Income Unit rented to a Moderate Income Household and paid by the household shall be based on an assumed average occupancy per unit of one person per studio unit, 1.5 persons for a one- bedroom unit, 3 persons for a two- bedroom unit and 4.5 persons for a three- bedroom unit, unless otherwise approved by the Deputy Director for an unusually large unit with a maximum of two persons per bedroom, plus one.

For purposes of this Agreement, **“Monthly Rent”** means the total of monthly payments actually made by the household for (a) use and occupancy of each BMR Rental Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by Owner which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, and which are not paid directly by Owner, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone or internet service, which reasonable allowance for utilities is set forth in the County of San Mateo’s Utility Allowance Schedule for detached homes, apartments, condominiums and duplexes, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Owner. Pursuant to the Guidelines, in no case shall the Monthly Rent for a BMR Rental Unit exceed 75 percent of comparable market rate rents.

3.5 Agreement to Limitation on Rents. As described in Recital C above, Owner is developing at the bonus level of development, which is a form of assistance authorized by Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code. Sections 1954.52(b) and 1954.53(a)(2) of the Costa-Hawkins Act provide that, where a developer has received such assistance, certain provisions of the Costa-Hawkins Act do not apply if a developer has so agreed by contract. Owner hereby agrees to limit Monthly Rent as provided in this Agreement in consideration of Owner's receipt of the assistance and further agrees that any limitations on Monthly Rents imposed on the BMR Rental Units are in conformance with the Costa-Hawkins Act. Owner further warrants and covenants that the terms of this Agreement are fully enforceable.

3.6 Lease Requirements. No later than 180 days prior to the initial lease up of the BMR Rental Units, Owner shall submit a standard lease form to the City for approval by the Deputy Director or his/her designee. The City shall reasonably approve such lease form upon finding that such lease form is consistent with this Agreement and contains all of the provisions required pursuant to the Guidelines. The City's failure to respond to Owner's request for approval of the standard lease form within thirty (30) business days of City's receipt of such lease, shall be deemed City's approval of such lease form. Owner shall enter into a written lease, in the form approved by the City, with each new tenant of a BMR Rental Unit prior to a tenant or tenant household's occupancy of a BMR Rental Unit. Each lease shall be for an initial term of not less than one year which may be renewed pursuant to applicable local and State laws, and shall not contain any of the provisions which are prohibited pursuant to the Guidelines, local, state and Federal laws.

3.7 Selection of Tenants. Each BMR Rental Unit shall be leased to tenant(s) selected by Owner who meet all of the requirements provided herein, and, to the extent permitted by law, with priority given to those eligible households who either live or work in the City of Menlo Park, or meet at least one of the other preferences identified in the Guidelines. The City's BMR Administrator, on behalf of the City will provide to Owner the names of persons who have expressed interest in renting BMR Rental Units for the purposes of adding such interested persons to Owner's waiting list, to be processed in accordance with Owner's customary policies. Owner shall not refuse to lease to a holder of a certificate or a rental voucher under the Section 8 program or other tenant-based assistance program, who is otherwise qualified to be a tenant in accordance with the approved tenant selection criteria.

4. OPERATION OF THE BMR FOR-SALE UNITS

4.1 Sale to Moderate Income Households. The six (6) BMR For-Sale Units are to be sold in accordance with the BMR Ordinance and the Guidelines. Each BMR For-Sale Unit shall be affordable to eligible households which are moderate income as defined in Section 50093 of the California Health and Safety Code, as described in the Guidelines, which households meet all of the requirements set forth in the Guidelines, and are of the smallest household size eligible for the BMR For-Sale Units on the BMR waiting list maintained by the City on the date that the Sales Prices are set, as more particularly described below and in the Guidelines. The eligibility requirements for buyers of the BMR For-Sale Units, the selection process for buyers for the BMR For-Sale Units, the purchase process and sale procedures, the

occupancy requirements for the BMR For-Sale Units and the process for resale of the BMR For-Sale Units are all set forth in the Guidelines.

All BMR For-Sale Units shall be subject to deed restrictions and conditions which include a right of first refusal in favor of the City for the duration of the Affordability Period, pursuant to the terms and conditions set forth in the Guidelines.

The BMR For-Sale Units shall be located in the Project as set forth in Exhibit C.

The Sales Price shall be calculated according to the following formula by reference to the definitions and standards set forth below: the “Sales Price” shall be calculated by adding the cash down payment, to the Maximum Mortgage Amount, less lender and escrow fees and costs incurred by the buyer. The Sales Price shall be set before the commencement of the sale process for the BMR For-Sale Units.

(a) The “Smallest Household Size” means the household with the smallest number of persons eligible for the BMR For-Sale Units, as shown in Section 14, Table C (Occupancy Standards) of the Guidelines.

(b) The current “Maximum Eligible Income” shall be the most current State Income Limit for San Mateo County, Moderate Income category, as published by the State of California Department of Housing and Community Development, for the Smallest Household Size.

(c) The “Maximum Allowable Monthly Housing Expenses” is calculated by multiplying the Maximum Eligible Income by 33 percent and dividing by 12.

(d) The “Actual Monthly Housing Expenses” are calculated by adding the following costs associated with a particular BMR For-Sale Unit and dividing by 12: (i) any loan fees, escrow fees and other closing costs (amortized over 360 months) and/or private mortgage insurance associated therewith; (ii) property taxes and assessments; (iii) fire, casualty insurance and flood insurance, if required; (iv) property maintenance and repairs, deemed to be Two Hundred Dollars (\$200) per month; (v) a reasonable allowance for utilities as set forth in the Guidelines, not including telephones, and (vi) homeowners association fees, if applicable, but less the amount of such homeowners association fees allocated for any costs attributable to (iii), (iv) or (v) above.

(e) The “Maximum Monthly Mortgage Payment Amount” is calculated by subtracting the Actual Monthly Housing Expenses from the Maximum Allowable Monthly Housing Expenses.

(f) The “Maximum Mortgage Amount” is established by determining the amount of mortgage that a lender would loan, based upon the Maximum Monthly Mortgage Payment Amount and based upon the down payment found to be the lowest that lenders are willing to accept in a survey of lenders as described below. The City shall survey and take the average of at least three local lenders who regularly make home loans at a typical housing expense ratio to first-time buyers in the price range of the BMR home on the day that the price is set. The mortgage amount shall be for a 30-year fixed rate mortgage with standard fees, closing costs and no points, and shall be less than or equal to the Maximum Monthly Mortgage Amount.

4.2 Additional Sales Price Factors. The calculation of the Sales Price shall be based upon the factors defined below. These definitions conform to the eligibility and underwriting standards established by the major secondary mortgage market investors, such as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(a) **Mortgage Interest Rate.** The mean average of contract interest rates on the date that the Sales Price is set, for fixed rate, 30-year “Conforming” mortgages (presently \$822,375 or less, as such amount may be adjusted from time to time as the maximum amount of FHA Conforming mortgages), or for jumbo mortgages if applicable; as quoted by three local retail lenders. The three local retail lenders shall be selected at random by the City from the list of lenders certified by San Mateo County to make first mortgage loans with Mortgage Credit Certificates.

(b) **Points.** The mean average of points quoted by three local lenders that make mortgage loans to first time home buyers in the City of Menlo Park on the date that the Sales Price is set for fixed rate, 30 year mortgages of \$822,375 or less, or for jumbo mortgages if applicable, which lenders are selected on a random basis by the City. Points are a one-time fee paid to a lender for making a loan. One point is equal to one percent of the loan amount.

(c) **Lender/Escrow Fees.** The mean average of fees charged by three local lenders that make mortgage loans to homebuyers, which lenders are selected on a random basis by the City, plus escrow company fees, for such items as title insurance, appraisal, escrow fees, document preparation and recording fees.

(d) **Loan to Value Ratio.** The maximum ratio of the dollar amount of a conforming mortgage to the sales price of a home which a lender is willing to approve at a given point in time. For purposes of this Agreement, the loan to value ratio shall be calculated as the mean average of the maximum loan to value ratios as quoted by three local lenders selected on a random basis by the City from a list of lenders who actively make loans to homebuyers and who participate in the Mortgage Credit Certificate program.

(e) **Housing Expense Ratio.** The mean average of the housing expense ratio as reported on the date that the sales price is set, for fixed rate, 30-year mortgages of \$822,375 or less, or for jumbo mortgages if applicable, by three local lenders that make mortgage loans to homebuyers in the City of Menlo Park, which lenders are selected on a random basis by the City. Housing expense is defined as the sum of the annual mortgage payment (including principal and interest), and annual payments for taxes, homeowners association dues, insurance, property maintenance and repairs, a reasonable allowance for utilities according to the San Mateo County Housing Authority Utility Financial Allowance Chart which is periodically updated and amended, and any secondary financing (but excluding any portion of the aforementioned expenses covered by homeowners association dues). To determine the ratio, this sum is divided by gross annual income.

(f) **Homeowners Insurance.** Calculated as the mean average of the annual cost of insurance quoted by two or three local brokers, based on their experience, for a housing unit of the price, room configuration, location, construction material and structure type of the subject

BMR For-Sale Unit. Flood insurance costs, if required, shall be calculated by this same method.

(g) **Private Mortgage Insurance.** The mean average of the annual cost of private mortgage insurance quoted by two or three local lenders, based on their experience, for a housing unit of the price, location, and structure type of the subject BMR For-Sale Unit.

(h) **Taxes.** The tax rate as reported by the San Mateo County Assessor's Office.

(i) **Homeowner's Dues.** Reported by the Owner and as set forth in the Public Report issued by the California Department of Real Estate for the Project.

(j) **Down Payment.** Cash portion paid by a buyer from his own funds, as opposed to that portion of the purchase price which is financed. For the purpose of calculating the Sales Price, the down payment will be defined as the mean average of the smallest down payment required by the two or three local lenders surveyed.

4.3 Presale. If there is a standard pre-sale requirement by the BMR applicant's lender for a certain percentage of units in the Project to be sold before the BMR applicant's lender will close escrow on the loan, then the time for the City's purchase or the buyer's purchase will be extended until that requisite number of units has closed.

4.4 Term. Any and all obligations or responsibilities of Owner under this Agreement with regard to a BMR For-Sale Unit shall terminate upon the recording of the grant deed conveying the BMR For-Sale Unit to a qualified third party purchaser in accordance with the terms and provisions of this Agreement and the recording of the deed restrictions in compliance with the Guidelines against such BMR For-Sale Unit.

4.5 Third Party Purchasers. The execution and delivery of this Agreement shall not be deemed to be for the benefit of the third party purchasers of any BMR For-Sale Unit or any other third party and any and all obligations and responsibilities of Owner under this Agreement are to the City for whose benefit this Agreement has been entered into. No third party purchaser of a BMR For-Sale Unit or market rate unit, homeowners' association or any other third party shall obtain any rights or standing to complain that the BMR For-Sale Unit was not constructed, designed, sold or conveyed in accordance with this Agreement, or the BMR Ordinance and the Guidelines as a result of this Agreement. Furthermore, the acceptance of this Agreement by the City, the acceptance of the interior specifications for the BMR For-Sale Units and the conveyance of the BMR For-Sale Units to qualified third parties shall conclusively indicate that Owner has complied with this Agreement and the BMR Ordinance and the Guidelines.

5. DEFAULT AND REMEDIES

5.1 Events of Default. The following shall constitute an "Event of Default" by Owner under this Agreement: there shall be a material breach of any condition, covenant, warranty, promise or representation contained in this Agreement and such breach shall continue for a period of thirty (30) days after written notice thereof to the defaulting party without the defaulting party curing such breach, or if such breach cannot reasonably be cured within such 30 day period, commencing the cure of such breach within such 30 day period and thereafter diligently proceeding

to cure such breach; provided, however, that if a different period or notice requirement is specified for any particular breach under any other paragraph of Section 5 of this Agreement, the specific provision shall control.

5.2 Remedies. The occurrence of any Event of Default under Section 5.1 shall give the non-defaulting party the right to proceed with an action in equity to require the defaulting party to specifically perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions of this Agreement, and the right to terminate this Agreement.

5.3 Obligations Personal to Owner. The liability of Owner under this Agreement to any person or entity is limited to Owner's interest in the Project, and the City and any other such persons and entities shall look exclusively thereto for the satisfaction of obligations arising out of this Agreement or any other agreement securing the obligations of Owner under this Agreement. From and after the date of this Agreement, no deficiency or other personal judgment, nor any order or decree of specific performance (other than pertaining to this Agreement, any agreement pertaining to any Project or any other agreement securing Owner's obligations under this Agreement), shall be rendered against Owner, the assets of Owner (other than Owner's interest in the Project), its partners, members, successors, transferees or assigns and each of their respective officers, directors, employees, partners, agents, heirs and personal representatives, as the case may be, in any action or proceeding arising out of this Agreement or any agreement securing the obligations of Owner under this Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding. No subsequent Owner of the Project shall be liable or obligated for the breach or default of any obligations of Owner under this Agreement on the part of any prior Owner. Such obligations are personal to the person who was the Owner at the time the default or breach was alleged to have occurred and such person shall remain liable for any and all damages occasioned thereby even after such person ceases to be the Owner. Each Owner shall comply with and be fully liable for all obligations the Owner hereunder during its period of ownership of the Project.

5.4 Force Majeure. Subject to the party's compliance with the notice requirements as set forth below, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to causes beyond the control and without the fault of the party claiming an extension of time to perform, which may include, without limitation, the following: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, assaults, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, acts or omissions of the other party, or acts or failures to act of any public or governmental entity (except that the City's acts or failure to act shall not excuse performance of the City hereunder). An extension of the time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within 30 days of the commencement of the cause.

5.5 Attorneys' Fees. In addition to any other remedies provided hereunder or available pursuant to law, if either party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder, the prevailing party shall be entitled to recover from the other party its costs of suit and reasonable attorneys' fees. This Section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

5.6 Remedies Cumulative. No right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise.

5.7 Waiver of Terms and Conditions. The City may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

5.8 Non-Liability of City Officials and Employees. No member, official, employee or agent of the City shall be personally liable to Owner or any occupant of any BMR Unit, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Owner or its successors, or on any obligations under the terms of this Agreement.

6. GENERAL PROVISIONS

6.1 Below Market Rate Guidelines (“Guidelines”). This Agreement incorporates by reference the Guidelines as of the date of this Agreement and any successor sections as the Guidelines may be amended from time to time. In the event of any conflict or ambiguity between this Agreement, the requirements of state and federal fair housing laws and the Guidelines, the terms and conditions of this Agreement and the requirements of state and federal fair housing laws shall control.

6.2 Time. Time is of the essence in this Agreement.

6.3 Notices. Unless otherwise indicated in this Agreement, any notice requirement set forth herein shall be deemed to be satisfied three days after mailing of the notice first-class United States certified mail, postage prepaid, or by personal delivery, addressed to the appropriate party as follows:

Owner: 1 CLPF GRP Uptown Menlo Park LLC
450 Sansome, Suite 500
San Francisco CA 94111
Attention: Andrew Morcos
Email: amorcos@greystar.com

City : City of Menlo Park
701 Laurel Street
Menlo Park, California 94025-3483

Attention: City Manager

Such addresses may be changed by notice to the other party given in the same manner as provided above.

6.4 Successors and Assigns. This Agreement constitutes a covenant and legal restriction on the Property and shall run with the land, provided the Project remains on the Property, and all of the terms, covenants and conditions of this Agreement shall be binding upon Owner and the permitted successors and assigns of Owner.

6.5 Intended Beneficiaries. The City is the intended beneficiary of this Agreement and shall have the sole and exclusive power to enforce this Agreement. It is intended that the City may enforce this Agreement in order to, satisfy its obligations to improve, increase and preserve affordable housing within the City, as required by the Guidelines, and to provide that a certain percentage of new housing is made available at affordable housing cost to persons and families of very low, low and moderate incomes as required by the Guidelines. No other person or persons, other than the City and Owner and their assigns and successors, shall have any right of action hereon.

6.6 Partial Invalidity. If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

6.7 Governing Law. This Agreement and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto. The venue for any action shall be the County of San Mateo.

6.8 Amendment. This Agreement may not be changed orally, but only by agreement in writing signed by Owner and the City.

6.9 Approvals. Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of the City, such approval shall not be unreasonably withheld may be given on behalf of the City by the City Manager or his or her designee. The City Manager or his or her designee is hereby authorized to take such actions as may be necessary or appropriate to implement this Agreement, including without limitation the execution of such documents or agreements as may be contemplated by this Agreement, and amendments which do not substantially change the uses or restrictions hereunder, or substantially add to the costs of the City hereunder.

6.10 Indemnification. To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel reasonably approved by City) and hold the City, its heirs, successors and assigns (the “**Indemnitees**”) harmless from and against any and all demands, losses, claims, costs and expenses, and any other liability whatsoever, including without limitation, reasonable accountants’ and attorneys’ fees, charges and expense (collectively, “**Claims**”) arising directly or indirectly, in whole or in part, as a result of or in connection with Owner’s construction,

management, or operation of the Property and the Project or any failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this Section 6.10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 6.10 shall survive the expiration or earlier termination of this Agreement, but only as to claims arising from events occurring during the Affordability Period.

6.11 Insurance Coverage. Throughout the Affordability Period, Owner shall comply with the insurance requirements set forth in Exhibit D, attached hereto and incorporated herein by this reference, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Exhibit D.

6.12 Transfer and Encumbrance.

6.12.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of any BMR Rental Unit, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners shall be restricted by this provision.

6.12.2 Permitted Transfers. The prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of easements or permits to facilitate development of the Property; or (ii) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest.

6.12.3 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement and/or a BMR Rental Unit if all of the following requirements are met (provided however, the requirements of this Section 6.12.3 shall not apply to Transfers described in clauses (i) or (ii) of Section 6.12.2.

(i) The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete and manage the Project and to otherwise fulfill the obligations undertaken by the Owner under this Agreement.

(ii) The Owner and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of all or any

part of or interest in the BMR Rental Unit or this Agreement together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Owner under this Agreement arising after the effective date of the Transfer and all obligations of Owner arising prior to the effective date of the Transfer (unless Owner expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Owner's obligations pursuant to conditions, and restrictions set forth in this Agreement.

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the City's Authorized Representative unless the City's Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within forty-five (45) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

6.13 Effect of Transfer without City Consent. In the absence of specific written agreement by the City, no Transfer of any BMR Rental Unit shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. This Section 6.12 shall not apply to Transfers described in clauses (i) and (ii) of Section 6.12.2.

6.14 Recovery of City Costs. Owner shall reimburse City for all reasonable City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's delivery to Owner of an invoice detailing such costs.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

SIGNATURES ON FOLLOWING PAGE(S).

OWNER:

CLPF GRP Uptown Menlo Park LLC, a Delaware limited liability company

By: _____

Its:

CITY:

CITY OF MENLO PARK, a California municipal corporation

By: _____

City Manager

ATTEST:

By: _____

City Clerk

List of Exhibits:

- Exhibit A: Property Description
- Exhibit B: Allocation of the BMR Units
- Exhibit C: BMR Unit Locations
- Exhibit D: Insurance Requirements

Exhibit A
Property Description

Exhibit B
Allocation of BMR Units in the Project

BMR Rental Units	Very Low	Low	Moderate
Studio apartment	6	19	4
1 bedroom apartment	1	4	28
2 bedroom apartment			4
3 bedroom apartment			1
Total - BMR Rental Units	7	23	37

BMR For-Sale Units	Very Low	Low	Moderate
3 bedroom townhouse			5
4 bedroom townhouse			1
Total – BMR For-Sale Units			6

Total – All BMR Units	Very Low 7	Low 23	Moderate 43
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Exhibit C
BMR Unit Locations

Exhibit D Insurance Requirements

Prior to initiating work on the Project and continuing throughout the Affordability Period, Owner shall obtain and maintain the following policies of insurance and shall comply with all provisions set forth in this Exhibit.

1. General Requirements. Owner shall procure and maintain the following insurance providing coverage against claims for injuries to persons or damages to property that may arise from or in connection with the Project, construction, management, or operation of the Property by the Owner or the Owner's agents, representatives, employees and contractors, or subcontractors, including the following:

(a) Commercial General Liability: The Owner and all contractors working on behalf of Owner on the Property shall maintain a commercial general liability policy in an occurrence policy for protection against all claims arising from injury to person or persons not in the employ of the Owner and against all claims resulting from damage to any property due to any act or omission of the Owner, its agents, or employees in the conduct or operation of the work or the execution of this Agreement. Such insurance shall include products and completed operations liability, blanket contractual liability, personal injury liability, and broad form property damage coverage. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage.

(b) Commercial Automobile Liability: The Owner and all contractors working on behalf of Owner on the Property shall maintain insurance for protection against all claims arising from the use of vehicles, owned, hired, non-owned, or any other vehicle in connection with the Project, construction, operation or management of the Property. Such insurance shall cover the use of automobiles and trucks on and off the site of the Property. Coverage shall be at least as broad as Insurance Services Office covering Commercial Automobile Liability, any auto, owned, non-owned and hired auto.

(c) Workers' Compensation Insurance: The Owner (and the general partners thereof) shall furnish or cause to be furnished to City evidence satisfactory to City that Owner (and the general partners thereof), and any contractor with whom Owner has contracted for the performance of work on the Property or otherwise pursuant to this Agreement, shall maintain Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance.

(d) Builder's Risk: Upon commencement of any construction work on the Property, Owner and all contractors working on behalf of Owner shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as loss payee as its interests may appear.

(e) Professional Liability/Errors and Omissions: Owner shall require any architects, engineers, and general contractors working on the Property to maintain Professional Liability/Errors and Omissions insurance with limits not less than Two Million Dollars (\$2,000,000) each claim. Certificates evidencing this coverage must reference both the Owner and the Indemnitees. If the professional liability/errors and omissions insurance is written on a

claims made form: (i) the retroactive date must be shown and must be before the Effective Date, (ii) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of Project construction, and (iii) if coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the Effective Date, Owner must purchase, or require the provision of, extended period coverage for a minimum of three (3) years after completion of construction.

(f) Property: Owner shall maintain property insurance covering all risks of loss, including earthquake and flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, naming City as loss payee as its interests may appear.

2. Minimum Limits; Adjustments. Insurance shall be maintained with limits no less than the following:

(a) Commercial General Liability and Property Damage: \$2,000,000 per occurrence and \$5,000,000 annual aggregate for bodily injury, personal injury and property damage; provided however, with City's advance written approval, subcontractors may maintain liability coverage with limits not less than \$1,000,000 per occurrence, \$2,000,000 annual aggregate.

(b) Products and Completed Operations: \$3,000,000 per occurrence/aggregate.

(c) Commercial Automobile Liability: \$2,000,000 combined single limit.

(d) Employer's Liability:

Bodily Injury by Accident - \$1,000,000 each accident.

Bodily Injury by Disease - \$1,000,000 policy limit.

Bodily Injury by Disease - \$1,000,000 each employee.

(e) Professional Liability/Errors and Omissions: \$2,000,000 per occurrence or claim. If the policy provides coverage on a claims-made basis, the retroactive date must be shown and must be before the date of the Agreement or the beginning of the contract work.

Coverage limits, and if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every five (5) years after the Effective Date nor more than once in every three (3) year period) to address changes in circumstance, including, but not limited to, changes in inflation and the litigation climate in California. City shall give written notice to Owner of any such adjustments, and Owner shall provide City with amended or new insurance certificates or endorsements evidencing compliance with such adjustments within thirty (30) days following receipt of such notice.

3. Deductibles and Self-Insured Retention. Any deductibles or self-insured retention must be declared to, and approved by, the City. Payment of all deductibles and self-insured retentions will be the responsibility of Owner. If the City determines that such deductibles or retentions are

unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the Indemnitees or Owner shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense.

4. Additional Requirements. The required general liability and automobile policies shall contain, or be endorsed to contain, the following provisions:

(a) The Indemnitees are to be covered as Additional Insureds as respects: liability arising out of activities performed by or on behalf of the Owner; products and completed operations of the Owner; premises owned, occupied or used by the Owner; or automobiles owned, leased, hired or borrowed by the Owner. The coverage shall contain no special limitations on the scope of protection afforded to the Indemnitees. Additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(b) All insurance shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the Indemnitees shall be excess of the Owner's/contractor's insurance and shall not contribute with it.

(c) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Indemnitees.

(d) The Owner's insurance shall apply separately to each insured against whom claim is made or suit is brought except, with respect to the limits of the insurer's liability.

(e) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

(f) If any insurance policy or coverage required hereunder is canceled or reduced, Owner shall, within five (5) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Owner's expense, and Owner shall promptly reimburse City for such expense upon receipt of billing from City.

(g) Owner agrees to waive subrogation rights for commercial general liability, automobile liability and worker's compensation against Indemnitees regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors or others involved in any way with any construction on the Property to do likewise. Each insurance policy shall contain a waiver of subrogation for the benefit of City. If any required insurance is provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs are included in such annual aggregate limit, such annual aggregate limit shall be three times the applicable occurrence limits specified above.

(h) It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirement and/or limits shall be available to the additional insured. Furthermore, the requirement for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. For all liability insurance required by this Agreement, Owner (and Owner's contractors, as applicable) shall obtain endorsements that name the Indemnitees as additional insured in the full amount of all applicable policies, notwithstanding any lesser minimum limits specified in this Agreement. This Agreement requires Owner (and Owner's contractors, as applicable) to obtain and provide for the benefit of the Indemnitees, additional insured coverage in the same amount of insurance carried by Owner (or Owner's contractors, as applicable), but in no event less than the minimum amounts specified in this Agreement. In the event that Owner (or Owner's contractors as applicable) obtains insurance policies that provide liability coverage in excess of the amounts specified in this Agreement, the actual limits provided by such policies shall be deemed to be the amounts required under this Agreement. Without limiting the foregoing, the limits of liability coverage specified in this Agreement are not intended, nor shall they operate, to limit City's ability to recover amounts in excess of the minimum amounts specified in this Agreement.

(i) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

5. Acceptability of Insurers. Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

6. Verification of Coverage. Prior to the Effective Date of this Agreement, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraphs (a), (b), (c), and (e) of Section 1 above, duly executed endorsements evidencing the Indemnitees' status as additional insured, and all other endorsements and coverage required hereunder pertaining to such coverage. Prior to commencement of any construction work on the Property, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraphs (d) and (g) of Section 1 above. Prior to City's issuance of a final certificate of occupancy or equivalent for the Project, Owner shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraph (f) of Section 1 above. Owner shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf.

7. Insurance Certificates and Endorsements. Owner shall submit to the City all of the necessary insurance documents, including the applicable amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of required Owner policies listing all required policy

endorsements to the City. Insurance Certificates and Endorsements are to be received and approved by the City within the time periods specified in Section 6 above. Should Owner cease to have insurance as required at any time, all work by Owner pursuant to this Agreement shall cease until insurance acceptable to the City is provided. Upon City's request, Owner shall, within thirty (30) days of the request, provide or arrange for the insurer to provide to City, complete certified copies of all insurance policies required under this Agreement. City's failure to make such request shall not constitute a waiver of the right to require delivery of the policies in the future.

Recording requested by, and when recorded
return to:

City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
Attn: City Manager

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space Above this Line For Recorder's Use

COMMUNITY AMENITY OPERATING COVENANT THIS COMMUNITY AMENITY OPERATING COVENANT (this "**Covenant**") is entered into this ____ day of _____, 20__, by and between the City of Menlo Park, a California municipal corporation (the "**City**") and CLPF GRP Uptown Menlo Park LLC and CLPF CRP TH Menlo Park, LLC, Delaware limited liability companies (together the "**Owner**"). City and Owner are referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, Owner is the owner of that certain real property located at 141 Jefferson Drive, 180 Constitution Drive and 186 Constitution Drive, in the City of Menlo Park, State of California, and more particularly described in the legal description attached hereto as Exhibit A and incorporated herein by this reference (the "**Property**"); and

WHEREAS, the Property is located within the R-MU Residential Mixed Use District ("**R-MU District**") of the zoning districts established within the City pursuant to the Menlo Park Zoning Ordinance ("**Zoning Ordinance**"); and

WHEREAS, in accordance with the provisions of Chapter 16.45 of the Zoning Ordinance governing the R-MU District, Owner has submitted an application to City for bonus level development in order to demolish existing office and industrial buildings and redevelop the Property with a new multifamily residential project with 441 rental units, 42 for sale townhome units and approximately 2,940 square feet of commercial space within the multifamily residential building (the "**Project**"), which requires issuance of a conditional use permit, architectural review, heritage tree removal permits, a major subdivision map, Below Market Rate Agreement, and approval of an increase in height, density, and floor area ratio (FAR) under the bonus level development allowance ("**Project Approvals**"); and

WHEREAS, pursuant to City of Menlo Park City Council Resolution No. _____, adopted on August 31, 2021, the City approved the Project Approvals for the Project, subject to conditions of approval (the "**Project Approval Resolution**"); and

WHEREAS, in accordance with the Zoning Ordinance governing bonus level development in the R-MU District, the Project Approval Resolution requires Owner to construct the 2,940 square feet of commercial space as community amenity space within the multifamily residential

building and in the precise location identified in the Project Plans approved pursuant to the Project Approval Resolution (“the “**Community Amenity Space**”); and

WHEREAS, the Community Amenity Space is located within that portion of the Property more particularly depicted in Exhibit B attached hereto and incorporated herein by this reference (the “**Covenant Property**”); and

WHEREAS, the Conditions of Approval, approved as a part of the Project Approval Resolution further provide that prior to issuance of the first building permit, this Covenant shall be executed and recorded in the Official Records of San Mateo County (“**Official Records**”), and that the Owner shall cause the Community Amenity Space to be used, operated and maintained during the Covenant Term, in accordance with this Covenant; and

WHEREAS, City is a beneficiary of the terms and provisions of this Covenant and of the restrictions and covenants running with the land, for and in its own right and for the purpose of protecting the interests of the community in whose favor and for whose benefit the covenants running with the land have been provided.

OPERATIVE PROVISIONS

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. Incorporation of Recitals. The Recitals set forth above are true and correct and are hereby incorporated herein among the Operative Provisions of this Covenant.
2. Covenant Term. The term of this Covenant shall commence on the date of recording of this Covenant in the Official Records of San Mateo County, and shall continue in effect until the earlier of (i) fifty five (55) years from the date of recording of a Certificate of Completion of Construction of Community Amenity Space (“**Certificate of Completion**”), in the form attached hereto as Exhibit C, in the Official Records as provided herein or (ii) the date the multifamily residential structure containing the Community Amenity Space is no longer permanently affixed to the Covenant Property (the “**Covenant Term**”). Upon issuance of a certificate of occupancy by the City for the multi-family residential building containing the Community Amenity Space, the Parties shall promptly execute and record the Certificate of Completion in the Official Records (hereinafter, the “**Covenant Term Commencement Date**”). This Covenant shall automatically terminate and be of no further force or effect on the last day of the Covenant Term, and at Owner’s request, City shall execute such termination instruments as Owner may request to confirm the termination of this Covenant.
3. Use Covenant. Owner covenants and agrees for itself and its successors in interest that the Community Amenity Space shall only be used, operated and maintained for use by a *non-profit organization providing medical center services* and in accordance with the minimum operating standards set forth in Section 5 of this Covenant (hereinafter referred to interchangeably as the “**Use Covenant**” and the “**Community Amenity**”), during the Covenant Term.

4. Operator. As of the Covenant Term Commencement Date, Owner shall retain a reputable, responsible and experienced non-profit organization to provide programs and services within the Community Amenity Space in a manner consistent with the Use Covenant (the “**Operator**”). Owner shall provide City a copy of all fully executed leases and agreements by and between Owner and Operator, and any and all New Operators or Replacement Use and Operators as defined below, governing the use of the Community Amenity Space, and any amendments thereto as may be executed from time to time. Operator shall commence operation of the Community Amenity within one (1) year of issuance of the first Temporary Certificate of Occupancy for any residential unit (ownership or rental) within the Project, and may request an extension from the Community Development Director, or their designee (“**Community Development Director**”) in their reasonable discretion.
- a. Termination. In the event the Operator vacates the Community Amenity Space and Operator’s use and operation in the Community Amenity Space is terminated for any reason, whether by Owner, Operator or otherwise (an “**Operator Termination**”), within thirty (30) days of the date thereof Owner shall notify City in writing of the date that Operator vacated the Community Amenity Space and its right to operate therein was terminated (the “**Operator Termination Date**”). Owner shall thereafter have six (6) months from the Operator Termination Date to either (i) secure a new Operator to operate within the Community Amenity Space in a manner consistent with the Use Covenant (the “**New Operator**”), or (ii) submit a complete application to City in writing for a replacement use consistent with the community amenities list adopted by City Council Resolution No. 6360, as may be amended or modified over time, and the identification of an organization to use, operate and maintain the replacement use in the Community Amenity Space (“**Replacement Use and Operator**”), together with an irrevocable standby letter of credit in favor of the City, in a form approved by the City, in the amount of the Termination Fee set forth below, and payable to City upon submission of a signed statement by City to issuer that (x) a Replacement Use and Operator is not approved by the City Council, and (y) Owner has not paid the Termination Fee to City within ninety (90) calendar days following the hearing on Owner’s application for a Replacement Use and Operator (the “**Standby Letter of Credit**”).
- b. New Operator. If Owner secures a proposed New Operator pursuant to Section 4.a.i. above, no less than forty-five (45) calendar days prior to the effective date of the proposed lease or agreement between Owner and New Operator, Owner shall provide Community Development Director, a copy of the proposed lease or agreement with the New Operator for Community Development Director’s review and approval. Community Development Director shall complete its review of the proposed lease or agreement between Owner and New Operator within thirty (30) calendar days following its receipt thereof, and shall approve said lease or agreement if New Operator’s operation and use of the Community Amenity Space is consistent with the Use Covenant.
- c. Replacement Use and Operator or Termination Fee Proposal. If Owner submits an application for a proposed Replacement Use and Operator pursuant to Section

4.a.ii. above, then within ninety (90) calendar days of City's receipt of Owner's complete application, the City Council shall conduct a noticed public hearing and consider in its reasonable discretion whether to (i) approve, conditionally approve, or deny Owner's application for a proposed Replacement Use and Operator, or (ii) in-lieu thereof, approve and accept the payment of a fee by Owner to City equivalent to the appraised value of the bonus level development potential of the Project, which appraised value was established by an independent appraisal prepared by Fabro, Moore, and Associates, Inc., and is in the amount of \$8,900,000 ("**Bonus Development Value**"), times the percentage increase in the assessed valuation of the Covenant Property as determined by the San Mateo County Assessor on the tax rolls between the Covenant Term Commencement Date and the Operator Termination Date ("**Termination Fee**"). The application form and materials, as prescribed by the Community Development Director, shall be accompanied by a fee, set by the City Council.

- d. Replacement Use and Operator Approved. If a Replacement Use and Operator is approved by the City Council, then (i) within ninety (90) calendar days following the hearing on Owner's application for a Replacement Use and Operator, the Owner and City shall prepare, execute and record in the Official Records an amendment, as appropriate, to Section 3, Use Covenant, and Section 5, Minimum Operating Standards of this Covenant, (ii) within one (1) year of the Operator Termination Date, the Replacement Use and Operator shall commence operations in the Community Amenity Space, and (iii) within thirty (30) calendar days following commencement of operations of the Replacement Use and Operator in the Community Amenity Space, the City shall return the Standby Letter of Credit to Owner.
- e. Replacement Use and Operator Not Approved. If a Replacement Use and Operator is not approved by the City Council, then Owner shall pay the Termination Fee to City within ninety (90) calendar days following the hearing on Owner's application for a Replacement Use and Operator. Within thirty (30) calendar days following Owner's payment to City of the Termination Fee, (i) Owner and City shall prepare, execute and record in the Official Records an agreement terminating this Covenant and releasing any interest in the Covenant Property, and (ii) the City shall return the Standby Letter of Credit to Owner. If Owner fails to pay the Termination Fee to City within ninety (90) calendar days following the hearing on Owner's application for a Replacement Use and Operator, then City may draw on the Standby Letter of Credit and upon receipt of the Termination Fee, the City and Owner shall prepare, execute and record in the Official Records an agreement terminating this Covenant and releasing any interest in the Covenant Property.

5. Minimum Operating Standards. The Community Amenity Space shall be used in a manner consistent with the Use Covenant and the following minimum operating standards:

- a. During the first year of the Term, the Operator shall maintain the Community Amenity Space open to the general public during the minimum operating hours of

a minimum of forty (40) hours, seven (7) days a week. Following the first year of the Term, the Owner may submit a request, in writing, to the City Manager to modify the hours of the Operator based on reasonable business necessity to do so. Any modification to the hours of operation of the Operator approved by the City Manager shall be memorialized in writing between the Owner and City

- b. The Operator shall operate a walk-in clinic focused on the delivery of medical care services for minor illnesses and injuries. New Operator may provide a range of services typical of an urgent care center, including but not limited to x-ray/imaging, pharmacy, and/or laboratory services. New Operator shall obtain and maintain any and all required State licensing to provide medical care services. The facility shall meet healthcare-grade HVAC filtration requirements and provide a minimum of three wheelchair accessible restrooms. Physicians employed by New Operator shall have emergency care backgrounds and obtain and maintain all necessary qualifications and professional licensing required to provide healthcare services. The Owner may submit a request, in writing, to the City Manager for a minor modification to the operating standards described in this subsection based on a reasonable business necessity to do so. Any such minor modification approved by the City Manager shall be memorialized in writing between the Owner and City.
 - c. The Community Amenity Space shall at all times be maintained in a condition which is free of nuisances and in a manner which is (i) in a neat and clean condition and free of trash and debris, and (ii) in good condition and repair, including the exterior and interior portions of the Community Amenity Space.
6. Bonus Development Value Confirmation. The Parties acknowledge that the Bonus Development Value to be provided by Owner is comprised of the following components: (i) net present value of forgone rent of the Community Amenity Space for a period of 55 years at an estimated cost of \$4,455,124.00 (“**Construction Value**”), which Community Amenity Space and the interior improvements next described are to be leased to Operator for the Covenant Term at no cost or expense to Operator; (ii) installation and construction of interior improvements to the Community Amenity Space by Owner at an estimated cost of \$1,837,500.00 (“**Tenant Improvements Value**”); (iii) if requested by Operator, acquisition of specialty equipment by Owner at a cost not to exceed \$882,000.00, which equipment shall be delivered and dedicated to Operator for use in the Community Amenity Space only (“**Equipment Value**”); and (iv) a direct financial contribution by Owner to Operator in an amount of \$1,725,376 (“**Financial Contribution Value**”).

As condition precedent to the City’s obligation to execute and record the Certificate of Completion, Owner shall provide to City an accounting of all costs actually incurred by Owner that comprise the Tenant Improvements Value and Equipment Value, supported by copies of receipts, invoices, contracts and/or other documents reasonably requested by City as may be necessary to establish the aforementioned values (“**Cost Report**”). Further, prior to execution of the Certificate of Completion, Owner shall: (i) provide to City an annual certification by January 1 of each year for a period of 55 years following execution of this Agreement, signed under penalty of perjury, that Owner has provided Operator the

Community Amenity Space and interior improvements at no cost or expense to Operator; (ii) as directed by City in its sole reasonable discretion, (a) pay to City as additional “**In-Lieu Fee Value**”, the difference between the Tenant Improvements Value less the amount actually expended by Owner on the installation and construction of the interior improvements to the Community Amenity Space, as reflected in the Cost Report, or (b) pay said difference to Operator as additional Financial Contribution Value; and (iii) pay to Operator as additional Financial Contribution Value, the difference between the Equipment Value less the amount actually expended by Owner on specialty equipment, as reflected in the Cost Report.

If the Tenant Improvements Value is less than the amount actually expended by Owner on the installation and construction of the interior improvements to the Community Amenity Space, as reflected in the Cost Report, the differences, not to exceed \$300,000, shall be credited against the Financial Contribution Value.

Any sums paid to City by Owner as an In-Lieu Fee Value as provided above shall only be utilized by City to fund community amenities within the area of the City between U.S. Highway 101 and the San Francisco Bay.

City shall, within fifteen (15) calendar days after receipt thereof, notify Owner in writing of any items included on the Cost Report which are not approved and the reason for such disapproval. The Parties shall attempt in good faith to informally resolve any dispute within 30 calendar days of Owner’s receipt of City’s written notice of the dispute. If the Parties have not been able to resolve the dispute within 30 calendar days of Owner’s receipt of City’s written notice of the dispute, the Parties shall resolve the dispute through binding arbitration in front of a single arbitrator administered by the American Arbitration Association under its Construction Industry Arbitration Rules and this Agreement. The award of the arbitrator shall be final as long as the award is rendered in conformity with, and applies, California statutory and decisional law and the terms of this Agreement and may be entered in any court having jurisdiction. The arbitrator shall be a retired superior or appellate court judge and shall have at least 10 years of experience in the construction industry. Hearings shall take place in the County of San Mateo, or such other location as agreed to by the arbitrator and the Parties, and at the time and place selected by the arbitrator. The arbitrator’s compensation and other arbitration expenses shall be divided equally among the Parties and the arbitrator shall have no jurisdiction or authority to award otherwise. The prevailing Party, as designated by the arbitrator, if any, shall be entitled to reasonable attorney fees, costs and expenses, including expert witnesses, actually incurred in connection with any dispute arising out of this Agreement.

7. Covenants Run with the Land. Owner hereby subjects its interest in the Covenant Property and the Community Amenity Space to the covenants and restrictions set forth in this Covenant during the Covenant Term. Owner and the City hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land, and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and City, regardless of any sale, assignment, conveyance, transfer, lease or rental of the Covenant Property or the

Project, or any part thereof or interest therein; provided, however, notwithstanding anything to the contrary contained in this Covenant, the covenants, restrictions and other terms and conditions of this Covenant shall expire and be of no further force or effect, and thus shall not be binding on the Covenant Property following the expiration of the Term. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Covenant Property shall be subject to all of the restrictions and obligations imposed hereby through the remainder of the Term (but not thereafter). Each and every contract, deed, ground lease or other instrument affecting or conveying the Covenant Property or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, and obligations set forth herein for the duration of the Term, regardless of whether such covenants, restrictions, and obligations are set forth in such contract, deed, ground lease or other instrument. Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Covenant Property in favor of City through the remainder of the Term.

8. Transfers. During the Term of this Covenant, Owner may sell, transfer or convey the Covenant Property resulting in a change in ownership without the prior express written consent of City; provided, however, the Covenant Property shall remain subject to the terms and conditions of this Covenant following such sale, transfer or conveyance and Owner shall provide City notice of the name, address and contact information of their successor in interest to the Covenant Property within thirty (30) calendar days following such change in ownership.

9. Default. City shall have the right to enforce the terms of this Covenant during the Covenant Term as against Owner. Owner shall be in “**Default**” under this Covenant in the event (i) the Community Amenity Space is being used in a manner inconsistent with the Use Covenant for any period of time, (ii) the *non-profit medical center* is closed or not operating in a manner consistent with the Use Covenant and Minimum Operating Standards for any reason and for any period of time, except for an Excused Closure, or (iii) Owner fails to perform any obligation required of it pursuant to and in accordance with the terms of this Covenant. Notwithstanding the foregoing or anything to the contrary contained in this Covenant, Owner shall not be in Default under this Covenant if the Community Amenity Space is closed and not operating due to any of the following reasons (each an “**Excused Closure**”): (i) as a result of an Operator Termination in accordance with Section 4.a. and Owner securing a New Operator, provided such closure does not exceed six (6) months following the Operator Termination Date; (ii) as a result of an Operator Termination in accordance with Section 4.a. and Owner’s submission of a complete application for a Replacement Use and Operator, provided such closure does not exceed one (1) year following the Operator Termination Date; (iii) remodeling construction activities, provided Owner has a valid building permit for such work issued by the City; (iv) war, insurrection; strikes, lockouts and labor disputes; riots, floods, earthquakes, fires, casualties, acts of God and acts of the public enemy; (v) epidemics, quarantine restrictions, freight embargoes, and governmental restrictions or priority; or (vi) environmental conditions, pre-existing or discovered, impeding the use and occupancy of the Community Amenity Space thereon.

In the event City claims that Owner is in Default under this Covenant, City shall give written notice to Owner specifying the Default complained of (the “**Notice of Default**”). Owner shall have thirty (30) calendar days following receipt of the Notice of Default, to cure, correct or remedy the Default, or if such Default cannot reasonably be cured within such thirty (30) calendar day period, excluding the payment of money which must be cured within such thirty (30) calendar day period, Owner commences to cure the Default within said thirty (30) calendar day period and thereafter completes such cure, correction or remedy with diligence, provided such Default is cured, corrected or remedied no later than ninety (90) calendar days following receipt of the Notice of Default. Upon the occurrence of a Default which has not been timely cured as provided herein, the City shall have the right to bring any action at law or equity against Owner to remedy the default, or to submit an invoice to Owner for the payment of a fee equivalent to the Bonus Development Value, times the percentage increase in the assessed valuation of the Covenant Property as determined by the San Mateo County Assessor on the tax rolls between the Covenant Term Commencement Date and the date of the Notice of Default (the “**Default Fee Invoice**”).

Owner shall pay the Default Fee Invoice to City within ninety (90) calendar days following its receipt thereof. If Owner shall fail to timely pay to City the Default Fee Invoice, City shall thereafter have the right to petition a court of competent jurisdiction to collect the Default Fee Invoice. Within thirty (30) calendar days following Owner’s payment to City of the Default Fee Invoice, Owner and City shall prepare, execute and record in the Official Records an agreement terminating this Covenant and releasing any interest in the Covenant Property.

10. Miscellaneous.

10.1 Notices. Any notice or communication required hereunder between Owner and City (“**Notice**”) must be in writing, and given both by email and by registered or certified mail (return receipt requested). Such Notices shall be given to the Parties at their respective addresses set forth below:

City:	Owner:
City of Menlo Park	CLPF GRP Uptown Menlo Park, LLC and
CLPF CRP TH Menlo Park, LLC	
701 Laurel St.	450 Sansome St., Suite 500
Menlo Park, CA 94025	San Francisco CA 94111
Attn: City Manager	

10.2 Attorneys’ Fees. If an action is brought to enforce the rights of a Party under this Covenant, the prevailing Party shall be entitled to recover its costs of enforcement, including reasonable attorneys’ fees and court costs.

10.3 Binding Covenant. This Covenant supersedes all prior and contemporaneous discussions, agreements and understandings between Owner and City with respect to the subject matter of this Covenant, and constitutes the entire agreement between Owner and City with respect thereto.

10.4 Amendments. This Covenant may be amended or modified only by a written instrument executed by Owner and approved by the City Council.

10.5 Governing Law; Venue. This Covenant shall be governed and construed in accordance with the laws of the State of California, without reference to its choice of law rules. The exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of San Mateo or the Federal District Court for the Northern District of the State of California.

10.6 Waivers. No waiver of any provision of this Covenant or any breach of this Covenant shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Covenant or any other or subsequent breach of this Covenant.

10.7 Severability. If any term or provision of this Covenant, or the application of any term or provision of this Covenant to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Covenant, or the application of this Covenant to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

10.8 Construction. Section headings in this Covenant are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Covenant. This Covenant has been reviewed and revised by legal counsel for Owner and City, and

no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Covenant.

10.9 No Joint Venture. Owner and City hereby renounce the existence of any form of agency relationship, joint venture or partnership between Owner and City and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Owner.

10.10 Time. Time is of the essence of this Covenant and of the performance of all the terms, covenants and conditions contained in this Covenant.

10.11 Counterparts. This Covenant may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement.

10.12 City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise. The foregoing notwithstanding, nothing herein shall preclude the City Manager from deferring such action or approval to the City Council.

10.13 Recordation. This Covenant shall be recorded in the Official Records of the County of San Mateo following execution of this Covenant by the Parties.

10.14 Legal Advice. Each Party represents and warrants to the other that they have carefully read this Covenant, and in signing this Covenant, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to matters set forth in this Covenant, or have knowingly chosen not to consult legal counsel as to matters set forth in this Covenant; and, they have freely signed this Covenant without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or attorneys, except as specifically set forth in this Covenant, and without duress or coercion, whether economic or otherwise.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Parties have executed this Community Amenity Operating Covenant as of the date first written above.

OWNER:

CLPF GRP Uptown Menlo Park LLC, a Delaware limited liability company

CLPF CRP TH Menlo Park, LLC,

, a Delaware limited liability company

By: _____
Andrew Morcos

CITY:

CITY OF MENLO PARK, a California municipal corporation

By: _____
Starla Jerome- Robinson, City Manager

Attest:

By: _____
Judi Herren, City Clerk

Approved as to form:

By: _____
Nira Doherty, City Attorney

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

notary public, personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Notary Signature)

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Exhibit A

EXHIBIT B
DEPICTION OF COVENANT PROPERTY

Exhibit B

EXHIBIT C

CERTIFICATE OF COMPLETION OF CONSTRUCTION OF COMMUNITY AMENITY SPACE

Recording requested by
and when recorded mail to:

City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
Attention: City Manager

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

CERTIFICATE OF COMPLETION OF CONSTRUCTION

This Certificate of Completion of Construction (this “**Certificate of Completion**”) is made by the City of Menlo Park, a municipal corporation (“**City**”) effective as of _____, 20__.

RECITALS

A. City and CLPF GRP Uptown Menlo Park LLC, a Delaware limited liability company and CLPF CRP TH Menlo Park, LLC, a Delaware limited liability company (“**Owner**”) entered into that certain Community Amenity Operating Covenant dated as of _____, 20__ (the “**Agreement**”), and recorded on _____ 20__, in the Official Records of the County of San Mateo, State of California (“**Official Records**”) at Instrument No. _____, concerning the development, use and occupancy of certain real property located in the City of Menlo Park, County of San Mateo, California and more particularly described in the legal description attached to the Agreement as Exhibit A (the “**Property**”).

B. Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the Agreement.

C. Pursuant to Section 2 of the Agreement, the City is required to execute, acknowledge and record this Certificate of Completion in the Official Records upon completion of construction of the multi-family residential building containing the Community Amenity Space by Owner, and approval of occupancy by the City.

D. The City has determined that Owner has completed construction of the multi-family residential building containing the Community Amenity Space in accordance with applicable state and local laws and regulations and thus has approved occupancy thereof.

NOW, THEREFORE, City hereby certifies as follows:

1. Development of the multi-family residential building containing the Community Amenity Space
Exhibit C

Amenity Space has been satisfactorily completed in conformance with the Agreement and occupancy of the multi-family residential building containing the Community Amenity Space has been approved.

2. The Agreement shall remain in effect and enforceable in accordance with its terms. This Certificate of Completion does not constitute evidence of Owner's compliance with the terms of the Agreement. Nothing contained in this Certificate of Completion shall modify any provisions of the Agreement or any other document executed in connection therewith.

3. This Certificate of Completion does not constitute evidence of compliance with or satisfaction of any obligation of Owner to any holder of a deed of trust securing money loaned to finance the multi-family residential building containing the Community Amenity Space or any part thereof, and does not constitute a notice of completion under California Civil Code Section 9204.

IN WITNESS WHEREOF, City has executed and issued this Certificate of Completion as of the date first written above.

CITY OF MENLO PARK, a municipal corporation

By: _____

Name: _____
City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

Exhibit C

Menlo Uptown Project – Attachment B, Exhibit I – Conditions of Approval

<p>LOCATION: 141 Jefferson Drive, 180-186 Constitution Drive</p>	<p>PROJECT NUMBER: PLN2019-00062</p>	<p>APPLICANT: Andrew Morcos</p>	<p>OWNER: CLPF GRP Uptown Menlo Park LLC and CLPF CRP TH Menlo Park, LLC</p>
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PROJECT CONDITIONS:

1. The architectural control permit and use permit shall be subject to the following **standard** conditions:

General Conditions

- a. Development of the project shall be substantially in conformance with the plans prepared by Heller Manus Architects, ktgy Architecture + Planning, BDE Architecture, and PGAdesign Landscape Architects attached to the June 21, 2021 Planning Commission staff report as Attachment E, and consisting of 138 plan sheets, dated received on June 11, 2021 (hereinafter the “Plans”). The Plans are incorporated by reference herein. The Plans may only be modified by the conditions contained herein (conditions 1d. and 1e.), subject to review and approval of the Community Development Director or their designee.
- b. The Project shall be subject to the California Environmental Quality Act Environmental Impact Report prepared for and certified prior to approval of the Project and the associated Mitigation Monitoring and Reporting Program (MMRP), CEQA Clearinghouse No. 2019060108. The project shall comply with all mitigation measures of the MMRP which is attached to Menlo Park City Council Resolution No. 2021-___ and incorporated herein by this reference.
- c. All outstanding and applicable fees associated with the processing of this Project shall be paid prior to the issuance of any building permit for the Project.
- d. Substantially consistent and minor modifications to building exteriors and locations, fence styles and locations, signage, and significant landscape features may be approved in writing by the Community Development Director or designee, based on the determination that the proposed modification is consistent with other building and design elements of the approved architectural control permit and will not have an adverse impact on the character and aesthetics of the site. Substantially consistent modifications are modifications to the development that do not increase the intensity or density of the project or the allowed uses. The Director may refer any request for revisions to the plans to the Planning Commission. If the Director refers the plans to the Planning Commission, the Director shall provide written documentation of the Director’s determination that the modification is substantially consistent and a member of the Planning Commission may request to discuss these modifications on the next agenda within 72 hours of notification of the modifications by the Community Development Director. Further environmental review and analysis may be required if such changes necessitate further review and analysis pursuant to the California Environmental Quality Act.
- e. Major modifications to the development plan which involve material expansion or intensification of development, modifications to the permitted uses, or modifications to the architectural design, including materials and colors may be allowed subject to obtaining architectural control and use permit revisions from the Planning Commission.
- f. Prior to issuance of the first building permit, the applicant shall execute and record in the San Mateo County Recorder’s office the Below Market Rate (BMR) Housing Agreement. Agreement is attached to Menlo Park City Council Resolution No. 2021-___ as Exhibit G and incorporated herein by this reference.
- g. Prior to issuance of the first building permit, the applicant shall execute and record in the San Mateo County Recorder’s office a covenant or deed restriction, to the satisfaction of the City Attorney, documenting that all applicable development regulations (including density, floor area ratio, height, parking, and open space) are calculated across all three parcels on the entire

Menlo Uptown Project – Attachment B, Exhibit I – Conditions of Approval

LOCATION: 141 Jefferson Drive, 180-186 Constitution Drive	PROJECT NUMBER: PLN2019-00062	APPLICANT: Andrew Morcos	OWNER: CLPF GRP Uptown Menlo Park LLC and CLPF CRP TH Menlo Park, LLC
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PROJECT CONDITIONS:

- project site and notifying any future owners of the shared development potential between project parcels.
- h. Applicant shall keep the property in a clean and sanitary condition at all times, maintain its site in a fashion that does not constitute a public nuisance and that does not violate any provision of the City of Menlo Park Municipal Code.
 - i. The Project shall adhere to all ordinances, plans, regulations and specifications of the City of Menlo Park and all applicable local, State, and Federal laws and regulations.
 - j. Prior to issuance of the first building permit, the applicant shall comply with all requirements of and conditions imposed by the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
 - k. Prior to issuance of any building permit for the Project, Applicant shall clearly indicate compliance with all conditions of approval on the plans and/or provide written explanations to the Director of Community Development regarding any inability to satisfy all conditions of approval.
 - l. The applicant or permittee shall defend, indemnify, and hold harmless the City of Menlo Park or its agents, officers, and employees from any claim, action, or proceeding against the City of Menlo Park or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Planning Commission, City Council, Community Development Director, or any other department, committee, or agency of the City concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.

Building Division Conditions

- m. The use permit granted in accordance with Section 16.82.170 of the Menlo Park Municipal Code shall be null and void if not used within one year from the date of approval. The applicant shall be required to submit a complete building permit application within one year from the date of approval (June 21, 2022) for the use permit to remain in effect. The Community Development Director or their designee may extend the effective date of approval upon written request of the applicant for up to one year, if the Director or their designee finds that there is a good cause for the extension based upon unusual circumstances and/or conditions not of the making of the applicant.
- n. Simultaneous with the submittal of a complete building permit application, the applicant shall submit plans to the Building Division verifying that the project complies with all applicable Municipal Code Title 12 (Buildings and Construction) for review and approval.
- o. The project is subject to the California Building Code, the California Building Standards Code and any adopted Reach Codes and/or local building code ordinances in effect at the time of complete building permit application submittal.

Menlo Uptown Project – Attachment B, Exhibit I – Conditions of Approval

LOCATION: 141 Jefferson Drive, 180-186 Constitution Drive	PROJECT NUMBER: PLN2019-00062	APPLICANT: Andrew Morcos	OWNER: CLPF GRP Uptown Menlo Park LLC and CLPF CRP TH Menlo Park, LLC
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PROJECT CONDITIONS:

- p. The project is subject to the California Green Building Standards Code (CalGreen) and any local amendments to the Code in effect at the time of submittal of the complete building permit application. Other forms of green building checklist will not be acceptable in-lieu of the CalGreen requirements.
- q. The complete building permit application shall include all unit plans to be fully drawn and detailed including mirrored plans. Further, all residential building plans are required to include drawings for mirrored units including structural, mechanical, electrical, and plumbing plan sheets.
- r. All deferred submittals other than trusses are to be approved by the Building Official or their designee prior to submittal of the complete building permit application.
- s. The complete building permit application shall include information on all imported fill. The imported fill must meet the City of Menlo Park’s requirements. Documentation demonstrating that the fill meets the City’s requirements must be submitted to and approved by the Building Official or their designee prior to fill being brought on site. Fill requirements are outlined in CBC appendix J section J107 as adopted in MPMC Section 12.06.020.
- t. As part of the complete building permit application submittal, approved soil management plans and work plans by the agency with jurisdiction over any remediation work is required to be submitted to the City for reference purposes. Any excavation related to soils remediation shall require issuance of a building permit from the City.
- u. Each occupancy and unit set forth in the Plans shall have the required fire protection systems, allowable building height and separations per Table 508.4 of the 2019 California Building Code (CBC) or whichever CBC is in effect at the time of building permit submittal. Simultaneous with the submittal of a complete building permit application, the applicant shall include documentation the Plans have been reviewed and approved by the Menlo Park Fire District.
- v. The complete building permit application shall include construction documents needed to identify the location of electric vehicle (EV) spaces as per 2016 Cal Green Code 4.106.4.3 and the City’s local amendments or the CalGreen code and any local amendments in effect at the time of submittal of a complete building permit application.
- w. The complete building permit application shall include pedestrian protection along the public right-of-way with sidewalks, as required per Section 3306 of the 2019 CBC or the CBC in effect at the time of submittal of a complete building permit application.
- x. The complete building permit application shall include details regarding protection of adjoining property, as required per Section 3307 of the 2019 CBC or the CBC in effect at the time of submittal of a complete building permit application.
- y. The complete building permit application shall include details demonstrating that the building meets the sound transmission requirements of Section 1207 of the 2019 CBC or the CBC in effect at the time of submittal of a complete building permit application.
- z. Simultaneous with the submittal of a complete building permit application, the applicant shall submit and get approval of a construction waste management plan per City’s ordinance

Menlo Uptown Project – Attachment B, Exhibit I – Conditions of Approval

LOCATION: 141 Jefferson Drive, 180-186 Constitution Drive	PROJECT NUMBER: PLN2019-00062	APPLICANT: Andrew Morcos	OWNER: CLPF GRP Uptown Menlo Park LLC and CLPF CRP TH Menlo Park, LLC
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PROJECT CONDITIONS:

12.18.010. The construction waste management plan is subject to approval by the Building Official or their designee.

- aa. The complete building permit application shall include details demonstrating that all sanitary sewer lines will gravity feed to the sewer mains in the public right-of-way unless otherwise approved by the Building Official or their designee.
- bb. The complete building permit application shall include details demonstrating that all slopes away from the building shall comply with the Section 1804.4 of the 2019 CBC or the current CBC in effect at the time of submittal of a complete building permit application.
- cc. Simultaneous with the submittal of a complete building permit application, the applicant shall submit plans for: 1) construction safety fences around the periphery of the construction area, 2) dust control, 3) air pollution control, 4) erosion and sedimentation control, 5) tree protection fencing, and 6) construction vehicle parking. The plans shall be subject to review by the Engineering, Planning, and Building Divisions and the City's Building Official or their designee shall approve the Plans subject to input by City staff. The safety fences, dust and air pollution control measures, erosion and sedimentation control measures, and tree protection measures shall be installed according to the approved plan prior to commencing construction and implemented throughout the duration of construction at the project site.

Engineering Division Conditions

- dd. Simultaneous with the submittal of a complete building permit application, the applicant shall provide documentation indicating the amount of irrigated landscaping. If the project includes more than 500 square feet of irrigated landscaping, it is subject to the City's Water Efficient Landscaping Ordinance (Municipal Code Chapter 12.44) and a detailed landscape plan shall be submitted simultaneously with the submittal of a complete building permit application, subject to review and approval by the Engineering Division.
- ee. Simultaneous with the submittal of a complete building permit application, the applicant shall submit a draft "Stormwater Treatment Measures Operations and Maintenance (O&M) Agreement" to the City subject to review and approval by the Engineering Division. With the executed agreement, the property owner is responsible for the operation and maintenance of stormwater treatment measures for the project. The agreement shall run with the land and shall be recorded with the San Mateo County Recorder's Office prior to building permit final inspection.
- ff. Simultaneous with the submittal of a complete building permit application, the applicant shall submit all applicable engineering plans for Engineering review and approval. The plans shall include, but are not limited to:
 - i. Existing Topography (NAVD 88')
 - ii. Demolition Plan
 - iii. Site Plan (including easement dedications)
 - iv. Construction Parking Plan
 - v. Grading and Drainage Plan
 - vi. Utility Plan
 - vii. Erosion Control Plan / Tree Protection Plan
 - viii. Planting and Irrigation Plan
 - ix. Off-site Improvement Plan

Menlo Uptown Project – Attachment B, Exhibit I – Conditions of Approval

LOCATION: 141 Jefferson Drive, 180-186 Constitution Drive	PROJECT NUMBER: PLN2019-00062	APPLICANT: Andrew Morcos	OWNER: CLPF GRP Uptown Menlo Park LLC and CLPF CRP TH Menlo Park, LLC
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PROJECT CONDITIONS:

- x. Construction Details (including references to City Standards)
- gg. During the design phase of the construction drawings, all potential utility conflicts shall be potholed and actual depths shall be recorded and submitted to the City simultaneous with the submittal of a complete building permit.
- hh. Simultaneous with the submittal of a complete building permit application, the applicant shall submit a plan for any new utility installations or upgrades for review and approval of the Planning, Engineering and Building Divisions. Utility equipment shall meet the requirements of Chapter 16.45.120(6)(B) of the Menlo Park Zoning Ordinance. All utility equipment that is installed outside of a building and that cannot be placed underground shall be properly screened by landscaping, subject to review and approval of the Planning, Engineering, and Building Divisions. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes.
- ii. Simultaneous with submittal of a complete building permit application, the applicant shall submit plans that include proposed measures to prevent erosion and polluted runoff from all site conditions, subject to review and approval of the Engineering Division. During construction, if construction is not complete by the start of the wet season (October 1 through April 30), the applicant shall implement a winterization program to minimize the potential for erosion and sedimentation. As appropriate to the site and status of construction, winterization requirements shall include inspecting/maintaining/cleaning all soil erosion and sedimentation controls prior to, during, and immediately after each storm event; stabilizing disturbed soils through temporary or permanent seeding, mulching, matting, tarping or other physical means; rocking unpaved vehicle access to limit dispersion of much onto public right-of-way; and covering/tarping stored construction materials, fuels, and other chemicals. A site specific winterization plan implemented during construction would be subject to review by the Engineering, Building, and Planning Divisions and subject to approval by the Building Official or their designee with input from City staff. The winterization plan would be in addition to the erosion control plan required in condition 1.ff.
- jj. Simultaneous with the submittal of a complete building permit application, the Applicant shall submit a plat and legal description and proposed form of irrevocable easement agreement for public utilization of the Publicly Accessible Open Space, including the publicly accessible paseo, to the satisfaction of the Public Works Director and City Attorney. The form of irrevocable easement shall ensure, to the satisfaction of the City, that the Applicant has reasonable control over the Publicly Accessible Open Space and that the Publicly Accessible Open Space is accessible to the general public, in perpetuity during reasonable hours of each day of the week.
 - i. The irrevocable easement agreement requires City Manager approval and shall be recorded with the County of San Mateo prior to granting of the first unit and/or building occupancy.
- kk. Prior to issuance of the first building permit, the applicant shall comply with all Sanitary District, Menlo Park Municipal Water, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the project.

Menlo Uptown Project – Attachment B, Exhibit I – Conditions of Approval

LOCATION: 141 Jefferson Drive, 180-186 Constitution Drive	PROJECT NUMBER: PLN2019-00062	APPLICANT: Andrew Morcos	OWNER: CLPF GRP Uptown Menlo Park LLC and CLPF CRP TH Menlo Park, LLC
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PROJECT CONDITIONS:

- ii. Prior to building permit issuance (grading and utilities phase), applicant shall coordinate with Menlo Park Municipal Water (MPMW) to confirm the existing water mains and service laterals meet the domestic and fire flow requirements of the project. If the existing water main and service laterals are not sufficient as determined by MPMW, applicant may, as part of the project, be required to construct and install new water mains and service laterals sufficient to meet such requirements. Any required off-site improvements would be required to be completed prior to the granting of occupancy.
- mm. Prior to building permit issuance (grading and utilities phase), applicant shall coordinate with West Bay Sanitary District to confirm the existing sanitary sewer mains and service laterals have sufficient capacity for the project. If the existing sanitary sewer mains and service laterals are not sufficient as determined by West Bay Sanitary District, applicant may, as part of the project, be required to construct and install new sanitary sewer mains and service laterals sufficient to meet such requirements. Any required off-site improvements would be required to be completed prior to the granting of temporary occupancy.
- nn. Simultaneous with the submittal of a complete building permit application, the applicant's design professional shall evaluate the Project's impact to the City's storm drainage system and prepare a hydrology report to the satisfaction of the City Engineer. Post-construction runoff into the storm drain shall not exceed pre-construction runoff levels.
- oo. Simultaneous with the submittal of a complete building permit application, the applicant shall submit a Storm Water Management Report that meets the requirements of the San Mateo County's C.3 Stormwater Technical Guidance Manual.
- pp. The Project Stormwater Management Plan shall incorporate trash capture measures such as screens, filters or CDS/Vortex units to address the requirements of Provision C.10 of the Regional Water Quality Control Board (RWQCB) Municipal Regional Permit (MRP). The Stormwater Management Plan shall be reviewed and approved by the Engineering Division prior to building permit issuance (grading and utilities phase).
- qq. Prior to issuance of the first building permit, the applicant shall submit plans for construction related parking management, construction staging, material storage and Traffic Control Handling Plan (TCHP) to be reviewed and approved by the Transportation, Engineering, Planning, and Building Divisions. The applicant shall secure adequate parking for any and all construction trades, until the parking podium is available on the project site. The plan shall include construction phasing and anticipated method of traffic handling for each phase. The plan shall include construction phasing and anticipated method of traffic handling for each phase. The existing sidewalk and bike lanes or an acceptable pedestrian and bicycle pathways along project's frontage shall be provided during all construction phases except when the new sidewalk is being constructed.
- rr. Prior to issuance of the first building permit, all applicable Public Works fees shall be paid. Refer to the most current City of Menlo Park Master Fee Schedule.
- ss. Prior to Final Map approval or Building Permit issuance, whichever comes first, the Applicant shall enter into an Agreement for Completion of Development Improvements and provide a performance bond for the completion of the off-site improvements as shown on the approved Off-site Improvement Plans. The Applicant shall obtain an encroachment permit, from the

Menlo Uptown Project – Attachment B, Exhibit I – Conditions of Approval

LOCATION: 141 Jefferson Drive, 180-186 Constitution Drive	PROJECT NUMBER: PLN2019-00062	APPLICANT: Andrew Morcos	OWNER: CLPF GRP Uptown Menlo Park LLC and CLPF CRP TH Menlo Park, LLC
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PROJECT CONDITIONS:

appropriate reviewing jurisdiction, prior to commencing any work within the right-of-way or public easements.

- tt. As part of the complete building permit application, the plan shall include details on all Stormwater Pollution Prevention Program Best Management Practices (BMPs). Prior to commencing any work on the project site, BMPs for construction shall be implemented to protect water quality, in accordance with the approved Stormwater Pollution Prevention Plans.
- uu. Heritage trees to remain in the vicinity of the construction project shall be protected during the entire construction phase, pursuant to the Heritage Tree Ordinance and the arborist report prepared by HortScience | Bartlett Consulting, dated received November 20, 2019.
- vv. Heritage tree replacements, required as part of approval of heritage tree permit HTR2021-00035, shall be planted on the project site to the satisfaction of the City Arborist and Planning Division prior to final building permit inspection.
- ww. Prior to final inspection, all public right-of-way improvements, including frontage improvements, shall be completed to the satisfaction of the Engineering Division.
- xx. The applicant shall retain a civil engineer to prepare "as-built" or "record" drawings of public improvements, and the drawings shall be submitted in AutoCAD and Adobe PDF formats to the Engineering Division. "As-built" or "record" drawings shall be submitted to the Engineering Division prior to granting of occupancy.

2. The architectural control and use permit shall be subject to the following **project-specific** conditions:

Planning Division Conditions

- a. Simultaneous with the submittal of a complete building permit application, the applicant shall enroll in EPA Energy Star Building Portfolio Manager. Prior to building permit final approval, the applicant shall submit documentation showing compliance to the satisfaction of the Planning and Building Divisions.
- b. Simultaneous with the submittal of a complete building permit application, the applicant shall submit an updated LEED Checklist, subject to review and approval of the Planning Division. The Checklist shall be prepared by a LEED Accredited Professional (LEED AP). The LEED AP shall submit a cover letter stating their qualifications, and confirm that they have prepared the Checklist and that the information presented is accurate. Confirmation that the project conceptually achieves LEED Gold certification for the apartment buildings and LEED Silver certification for the townhomes and registration with the USGBC shall be required before issuance of the building permit. Prior to final inspection of the building permit or as early as the project can be certified by the United States Green Building Council, the project shall submit verification that the development has achieved final LEED Gold and LEED Silver certification. Occupancy and/or final inspection can be granted with an agreed upon timeline for final certification between the City and the Applicant.
- c. Prior to issuance of the first building permit, the Community Amenities Operating Covenant, attached to Menlo Park City Council Resolution No.2021-___ as Exhibit H, and incorporated herein by this reference, shall be executed and recorded with the County of San Mateo and a conformed copy shall be submitted to the Planning Division.

Menlo Uptown Project – Attachment B, Exhibit I – Conditions of Approval

LOCATION: 141 Jefferson Drive, 180-186 Constitution Drive	PROJECT NUMBER: PLN2019-00062	APPLICANT: Andrew Morcos	OWNER: CLPF GRP Uptown Menlo Park LLC and CLPF CRP TH Menlo Park, LLC
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PROJECT CONDITIONS:

- d. The applicant shall operate and maintain the Community Amenities pursuant to the Project Plans and as more fully set forth in the Community Amenities Operating Covenant. The required Community Amenities shall be consistent with the appraisal and valuation approved by both Applicant and the City of Menlo Park pursuant to section 16.45.070 of the Menlo Park Municipal Code.
- e. Operator shall commence operation of the Community Amenity within one (1) year of issuance of the first Temporary Certificate of Occupancy for any residential unit (ownership or rental) within the Project.
- f. Operator shall maintain the Community Amenity space open to the general public for a minimum of 40 hours per week, seven days a week, consistent with the Community Amenities Operating Covenant for the project. The City Manager may approve modified minimum hours of operation upon written request, including reasonable justification(s) for the request, from the Operator.
- g. Simultaneous with the submittal of a complete building permit application, the applicant shall submit a zero-waste management plan to the City, which will cover how the applicant plans to minimize waste to landfill and incineration in accordance with all applicable state and local regulations, including compliance with the requirements of Chapter 16.45.130(5)(A) of the Zoning Ordinance. Applicants shall show in their zero-waste plan how they will reduce, recycle and compost wastes from occupancy phases of the building. Zero Waste plan elements shall include the property owner’s assessment of the types of waste to be generated during occupancy, and a plan to collect, sort and transport materials to uses other than landfill and incineration. The plan shall be subject to the satisfaction of the Sustainability Manager or their designee and comply with requirements in place at the time of the SB 330 application for the project.
- h. Prior to issuance of the first building permit, the applicant shall submit plans and supporting documentation to the Building and Planning Divisions documenting that the project meets one hundred percent of its energy demand (electricity and natural gas), as required by Chapter 16.45.130(2) of the Zoning Ordinance, through the combination of the following measures and to the satisfaction of the Building and Planning Divisions:
 - i. On-site energy generation;
 - ii. Purchase of 100% renewable electricity through Peninsula Clean Energy or Pacific Gas and Electric Company in an amount equal to the annual energy demand of the project;
 - iii. Purchase and installation of local renewable energy generation within the City of Menlo Park in an amount equal to the annual energy demand of the project;
 - iv. Purchase of certified renewable energy credits and/or certified renewable energy off-sets annually in an amount equal to the annual energy demand of the project.

If a local amendment to the California Energy Code is approved by the California Energy Commission (CEC), the following provision becomes mandatory:

Menlo Uptown Project – Attachment B, Exhibit I – Conditions of Approval

LOCATION: 141 Jefferson Drive, 180-186 Constitution Drive	PROJECT NUMBER: PLN2019-00062	APPLICANT: Andrew Morcos	OWNER: CLPF GRP Uptown Menlo Park LLC and CLPF CRP TH Menlo Park, LLC
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PROJECT CONDITIONS:

The project will meet one hundred percent (100%) of energy demand (electricity and natural gas) through a minimum of 30% of the maximum feasible on-site energy generation, as determined by an On-Site Renewable Energy Feasibility Study and any combination of measures ii to iv above. The On-Site Renewable Energy Feasibility Study shall demonstrate the following cases at a minimum: 1. Maximum on-site generation potential. 2. Solar feasibility for roof and parking areas (excluding roof mounted HVAC equipment). 3. Maximum solar generation potential solely on the roof area.

- i. Simultaneous with the submittal of a complete building permit application, the applicant shall incorporate dual plumbing for internal use of future recycled water to the satisfaction of the Building Division.
- j. Simultaneous with the submittal of a complete building permit application, the applicant shall submit updated water budgets and accompanying calculations following the methodology approved by the City and consistent with submitted building permit plans. The water budget and calculations shall be reviewed and approved by the City’s Public Works Director prior to certification of occupancy. On January 1 of the year following the first full calendar year after the date of occupancy, the building owner shall submit data and information sufficient to allow the city to compare the actual water use to the allocation in the approved water budget. In the event that actual water consumption exceeds the water budget, a water conservation program, as approved by the city’s Public Works Director, shall be implemented. Twelve (12) months after City approval of the water conservation program, the building owner shall submit data and information sufficient to allow the city to determine compliance with the conservation program. If water consumption exceeds the budgeted amount, the city’s Public Works Director may prohibit the use of water for irrigation or enforce compliance as an infraction pursuant to Chapter 1.12 until compliance with the water budget is achieved.
- k. Prior to framing inspection for the building, the applicant shall construct an in-field mock-up to demonstrate that the exterior stucco is smooth troweled, per the requirements of Chapter 16.45.120(6)(F) of the Zoning Ordinance, to the satisfaction of the Community Development Director or their designee.
- l. During all phases of construction, potable water shall not be used for dust control.
- m. Prior to final inspection, occupancy sensors or other switch control devices shall be installed on nonemergency lights and shall be programmed to shut off during non-work hours and between ten (10) p.m. and sunrise, as required by Section 16.45.130(6)(C) of the Zoning Ordinance.
- n. Prior to occupancy of the first apartment building to be constructed on the site, the applicant shall construct the paseo and publicly accessible open space on the apartment building parcels for the project to the satisfaction of the Building, Engineering, Planning, and Transportation Divisions. The remainder of the publicly accessible open space on the townhome parcel shall be constructed prior to occupancy of the first townhome building on the site.
- o. Within one year of issuance of the first temporary certificate of occupancy for any residential unit (ownership or rental) within the project, Operator shall commence operation of the

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PROJECT CONDITIONS:

Community Amenity, and may request an extension from the Community Development Director, or their designee, in their reasonable discretion.

- p. During all phases of construction and after final inspection for the life of the project, rodenticides shall not be used on the property in accordance with Section 16.45.130(6)(G) of the Zoning Ordinance.
- q. Any project up-lighting shall be programmed to automatically shut off at or before midnight daily and remain off until sunrise, consistent with the recommendations of the Avian Collision Risk Assessment prepared by H.T. Harvey & Associates, dated November 5, 2020.
- r. Exterior lighting fixture types L1, L1A, L2, and L7 shall be International Dark-Sky approved fixtures; and exterior lighting fixture types L4, L5, L8, L10, D1, D2, D3, and D4 shall be shielded or directed lights, as identified in the Avian Collision Risk Assessment prepared for the project by H.T. Harvey & Associates, dated November 5, 2020.
- s. If there is an increase in the quantity of hazardous materials on the project site, a change in the location of the storage of the hazardous materials, or the use of additional hazardous materials after entitlements are granted, the applicant shall apply for an administrative permit revision.
- t. Any citation or notification of violation by the Menlo Park Fire Protection District, San Mateo County Environmental Health Department, West Bay Sanitary District, Menlo Park Building Division or other agency having responsibility to assure public health and safety for the use of hazardous materials will be grounds for considering revocation of the use permit.
- u. If operations discontinue at the premises, the use permit for hazardous materials shall expire unless a new user submits a new hazardous materials information form to the Planning Division for review by the applicable agencies to determine whether the new hazardous materials business plan is in substantial compliance with the use permit.
- v. Testing of the generators shall be limited to the hours between 8:00 a.m. and 6:00 p.m., Monday through Friday.

Engineering Division Conditions:

- w. Simultaneous with the submittal of a complete building permit application, the applicant shall submit an Off-Site Improvements Plan for review and approval of the Engineering Division. The Off-Site Improvements Plan shall include all improvements within public right-of-way including curb, gutter, sidewalks, street trees, street lights, storm drain extension, undergrounding utilities, and water and sanitary sewer connections. The Off-Site Improvements Plan shall be approved prior to issuance of the building permit (superstructure phase).
- x. The Off-Site Improvement Plans shall include Green Infrastructure in the form of a stormwater treatment area along the project's frontage to treat runoff from the public right-of-way. The treatment area shall be located within the landscape area between the curb and sidewalk. Sizing and design shall conform to San Mateo Countywide Water Pollution Prevention Program design templates and technical guidance and be approved by the Engineering Division. The street tree planting plan for Green Infrastructure improvements along the project frontages is subject to review and approval by the City Arborist and Planning Division.

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LOCATION: 141 Jefferson Drive, 180-186 Constitution Drive	PROJECT NUMBER: PLN2019-00062	APPLICANT: Andrew Morcos	OWNER: CLPF GRP Uptown Menlo Park LLC and CLPF CRP TH Menlo Park, LLC
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PROJECT CONDITIONS:

- y. Simultaneous with the submittal of a complete building permit application, the stormwater main shall be designed to the satisfaction of City Engineer.
- z. Prior to granting of occupancy, Jefferson Drive and Constitution Drive along the project frontage shall receive an asphalt concrete overlay at the completion of improvements. Existing striping, markings, and legends shall be replaced in kind, or as modified by the City Engineer.
- aa. Simultaneous with the submittal of a complete building permit application, the applicant shall submit documentation of acceptance of the frontage improvements by West Bay Sanitary District. The existing sanitary sewer line appears to conflict with the proposed street trees and other required frontage improvements. If West Bay Sanitary or other utility agencies will not allow the frontage improvements as proposed, the project will be required to relocate the existing utilities at the applicant's expense and the Off Site Improvements plan shall incorporate the relocated sanitary sewer and other applicable utility lines.
- bb. Prior to granting of occupancy, streets adjoining the project frontage shall receive an asphalt concrete overlay at the completion of improvements. Existing striping, markings, and legends shall be replaced in kind, or as modified by the City Engineer.
- cc. Non-standard features such as pavers or special sidewalk treatment are not allowed in the right-of-way. Sidewalk must conform to City Standard Details.
- dd. The project is in the Special Flood Hazard Area (Zone AE) and must be designed and constructed in compliance with current FEMA regulations and the City's Flood Damage Prevention Ordinance. Simultaneous with the submittal of a complete building permit application, the applicant shall document compliance with the City's Flood Damage Prevention Ordinance, applicable FEMA requirements, and the City's sea level rise resiliency ordinance (16.45.130(4)(A)).
- ee. Simultaneous with the submittal of a complete building permit application, the applicant shall submit a FEMA Conditional Letter of Map Revision-Fill (CLOMR-F) application to the Public Works Department for review and approval. In accordance with the National Flood Insurance Program (NFIP), Section 65.5, the applicant shall prepare supporting data, including relevant hydraulic and hydrologic analyses, delineation of floodplain boundaries and all other information required by FEMA to review and evaluate the request for a CLOMR-F. Upon receiving City approval, the applicant shall submit the CLOMR-F application to FEMA. Prior to issuance of the building permit the applicant shall obtain a CLOMR-F from FEMA.
- ff. The applicant shall submit an elevation certificate to the Engineering Division prior to final signoff of the foundation inspection.
- gg. When construction is complete, appropriate as-built data must be supplied to FEMA for a permanent LOMR-F to be issued.
- hh. Prior to issuance of the first building permit, the Applicant shall file and obtain a VOC and Fuel Discharge Permit with the San Francisco Bay Regional Water Quality Control Board as necessary for groundwater discharge. All groundwater discharge to the City storm drain during construction shall be approved to the satisfaction of the Public Works Department prior to commencement of work. The City may request, at the behest of the Public Works Department, additional narratives, reports, or engineering plans to establish compliance with state and local

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PROJECT CONDITIONS:

regulations prior to approval. Similarly, any discharge to the City’s Sanitary Sewer system shall be approved to the satisfaction of West Bay Sanitary District, with proof of acceptance, prior to commencement of work.

- ii. If existing utilities are in conflict with required frontage improvements, including PG&E natural gas and City water lines, the utilities must be relocated at the Applicant’s expense.
- jj. For construction activity resulting in a land disturbance of one acre or more, Applicant shall file a Notice of Intent (NOI) with the State Water Resources Control Board under the Construction Activities Storm Water General Permit (General Permit). The NOI indicates the Applicant’s intent to comply with the San Mateo Countywide Stormwater Pollution Prevention Program, including a Stormwater Pollution Prevention Plan (SWPPP).
- kk. Stormwater Pollution Prevention Program Best Management Practices (BMPs) for construction shall be implemented to protect water quality, in accordance with the approved Stormwater Pollution Prevention Plan (SWPPP). BMP plan sheets are available electronically for inserting into Project plans.
- ll. Simultaneous with the submittal of a complete building permit application, the Applicant shall submit plans indicating that the Applicant shall remove and replace any damaged and significantly worn sections of frontage improvements. The plans shall be submitted for the review and approval of the Engineering Division.
- mm. Single pass cooling systems shall be prohibited in all new buildings.
- nn. All new buildings shall be built and maintained without the use of well water.
- oo. Simultaneous with the submittal of a complete building permit application, the applicant shall submit plans demonstrating that potable water shall not be used for decorative features, unless water is recirculated subject to review and approval of the Building, Planning, and Engineering Divisions.

Transportation Division Conditions

- pp. All public right-of-way improvements, including frontage improvements, shall be completed to the satisfaction of the Engineering Division and Transportation Division prior to the granting of occupancy. The applicant shall notify the Transportation Division prior to commencing design for each intersection, to avoid duplicating efforts started by the City and/or other development projects.
- qq. Prior to submittal of a building permit for off-site improvements, the Complete Streets Commission shall review the proposed loading zones adjacent to the project frontage(s) and determine whether to allow the loading zones with timed parking restrictions. If the Complete Streets Commission does not approve the request, the applicant shall remove the loading zones from the building permit plans prior to approval of the permit for off-site improvements.
- rr. Prior to issuance of the first building permit, the Applicant shall pay the transportation impact fee (TIF) in effect at the time of payment, subject to review and approval of the Transportation Division. Such fee includes:

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PROJECT CONDITIONS:

- i. The TIF is estimated to be \$1,048,172.51. This was calculated by multiplying the fee of \$5,383.85 per multi-family unit by 483 units plus the fee of \$10.81/s.f. per restaurant space by 713 s.f. of café space and subtracting a credit by multiplying \$18.55/s.f. per office space by 15,000 s.f. of existing office space. Fees are due prior to issuance of the first building permit.
- ss. For intersection improvements requiring Caltrans’ approval, simultaneous with the building permit submittal, the applicant shall provide complete plans to install improvements, including all work in the Caltrans right-of-way. Complete plans shall include all necessary requirements to construct the improvements, including but not limited to, grading and drainage improvements, utility relocations, tree protection requirements, striping modifications, and a detailed cost estimate. The plans are subject to review by the City. After receiving approval for the improvements plans, the applicant shall submit the improvement plans to Caltrans and request encroachment permit approvals.
- tt. The applicant shall submit complete plans to construction improvements to the City and provide a bond for improvements prior to issuance of building permit. The applicant shall construct all improvements prior to occupancy, upon obtaining final approval from the City and Caltrans.
- uu. In order to overcome shortfalls in level of service created by the Project, the applicant shall perform, construct and complete, at the applicant’s own expense, certain transportation improvements, prior to issuance of certificate of occupancy for the Project. The Director of Public Works or designee shall determine the reasonable cost of said transportation improvements and the applicant shall be entitled to credit and/or reimbursement for said transportation improvements pursuant to MPMC 13.26.80, should the final expenses for improvements included in the TIF program exceed the Project TIF payment. If the final expenses to the applicant for the required intersection improvements included in the City’s TIF program exceed the Project’s TIF payment the City and the applicant shall enter into a reimbursement agreement.

The transportation improvements shall include all near term intersection improvements and cumulative intersection fair share contributions identified below. Applicant shall enter into an improvement agreement with the City memorializing the terms for performance, construction, and completion of the transportation improvements.

- i. Under the Near Term scenario, the proposed intersection improvement at the intersection of Marsh Road and Bayfront Expressway/Haven Avenue is to restripe the through lane on Haven Avenue to a shared through/right lane resulting in having one shared left/through lane, one shared through/right lane, and one right-turn lane. This improvement was studied and is included in the City’s TIF program. Note this improvement has been initiated. The applicant shall consult with the City for direction prior to proceeding to the next step and the applicant’s obligation. Simultaneous with the submittal of a complete building permit application, the applicant shall submit complete plans for this improvement. Complete plans shall include all necessary requirements to construct the improvements, including but not limited to, grading and drainage improvements, utility relocations, tree protection requirements, striping modifications, and a detailed cost estimate. The plans are subject to review by the City. Upon obtaining approval from the Director of Public Works or designee, the applicant shall construct the improvement prior to occupancy.

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PROJECT CONDITIONS:

- ii. Under the Near Term scenario, the proposed intersection improvement at the intersection of Willow Road and Newbridge Street is to modify signal timing to a protected left-turn phasing operation on Newbridge Street. Provide a leading left-turn phase on southbound Newbridge Street and a lagging left-turn phase on northbound Newbridge Street and optimize the signal timing. This improvement was studied and is included in the City’s TIF program. The proposed improvement would require Caltrans approval. Signal and other electrical utilities and equipment will also require modification. Note this improvement has been initiated. The applicant shall consult with the City for direction prior to proceeding to the next step and the applicant’s obligation. Simultaneous with the submittal of a complete building permit application, the applicant shall submit complete plans for this improvement. Complete plans shall include all necessary requirements to construct the improvements, including but not limited to, grading and drainage improvements, utility relocations, tree protection requirements, striping modifications, and a detailed cost estimate. The plans are subject to review by the City. Upon obtaining approval from the Director of Public Works or designee, the applicant shall construct the improvements prior to occupancy of the first building. If Caltrans approval has not been obtained prior to occupancy of the first building, but the applicant demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Director of Public Works or designee, the applicant shall submit to the City a performance bond for 100 percent of the estimated costs plus a 30 percent contingency. The applicant shall continue to pursue approval and construction for a period of five years from the date of issuance of the first building permit. If the applicant continues to work diligently to the satisfaction of the Director of Public Works or designee, but has not yet obtained approval to construct the improvement, then the applicant shall be relieved of responsibility to construct the improvement and the bond shall be released by the City of Menlo Park.

- iii. Under the Near Term scenario, the proposed intersection improvement at the intersection of Willow Road and Bay Road is to modify southbound Bay Road to have two left-turn lanes and one right turn lane. This improvement was studied and is included in the City’s TIF program. The proposed improvement would require Caltrans approval. Both above and below ground utilities may require modification due to the widening. Simultaneous with the submittal of a complete building permit application, the applicant shall submit complete plans for this improvement. Complete plans shall include all necessary requirements to construct the improvements, including but not limited to, grading and drainage improvements, utility relocations, tree protection requirements, striping modifications, and a detailed cost estimate. The plans are subject to review by the City. Upon obtaining approval from the Director of Public Works or designee, the applicant shall construct the improvements prior to occupancy of the first building. If Caltrans approval has not been obtained prior to occupancy of the first building, but the applicant demonstrates that it has worked diligently to pursue Caltrans approval to the satisfaction of the Director of Public Works or designee, the applicant shall submit to the City a performance bond for 100 percent of the estimated costs plus a 30 percent contingency. The applicant shall continue to pursue approval and construction for a period of five years from the date of issuance of the first building permit. If the applicant continues to work diligently to the satisfaction of the Director of Public Works or designee, but has not yet obtained approval to construct the improvement, then the applicant shall be relieved of responsibility to construct the improvement and the bond shall be released by the City of Menlo Park.

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PROJECT CONDITIONS:

- iv. Under the Near Term scenario, the proposed intersection improvement at the intersection of Willow Road and Coleman Avenue is to install a right-turn lane on eastbound Willow Road and restripe the shared through/right lane to through lane resulting in having one left-turn lane, one through lane, and one right-turn lane in this direction. Both above and below ground utilities may require modification due to the widening. This improvement is not included in the City’s TIF program. Simultaneous with the submittal of a complete building permit application, the applicant shall submit complete plans for this improvement. Complete plans shall include all necessary requirements to construct the improvements, including but not limited to, grading and drainage improvements, utility relocations, tree protection requirements, striping modifications, and a detailed cost estimate. The plans are subject to review by the City. Upon obtaining approval from the Director of Public Works or designee, the applicant shall construct the improvements prior to occupancy. Any project(s) approved within 10 years of the approval date of the Menlo Uptown project and required to implement the same intersection improvement shall reimburse the Menlo Uptown applicant for its proportional fair share of the improvement costs.

- v. Under the Near Term scenario, the proposed intersection improvement at the intersection of Willow Road and Gilbert Avenue is to install a right-turn lane on eastbound Willow Road and restripe the shared through/right lane to through lane resulting in having one left-turn lane, one through lane, and one right-turn lane in this direction. Both above and below ground utilities may require modification due to the widening. This improvement is not included in the City’s TIF program. Simultaneous with the submittal of a complete building permit application, the applicant shall submit complete plans for this improvement. Complete plans shall include all necessary requirements to construct the improvements, including but not limited to, grading and drainage improvements, utility relocations, tree protection requirements, striping modifications, and a detailed cost estimate. The plans are subject to review by the City. Upon obtaining approval from the Director of Public Works or designee, the applicant shall construct the improvements prior to occupancy. Any project(s) approved within 10 years of the approval date of the Menlo Uptown project and required to implement the same intersection improvement shall reimburse the Menlo Uptown applicant for its proportional fair share of the improvement costs.

- vi. Under the Cumulative scenario, the proposed intersection improvements at the intersection of Chrysler Drive and Jefferson Drive are to install 1) a traffic signal and 2) convert the shared left/right lane to one left-turn lane and one right-turn lane on northbound Jefferson Drive. The installation of a traffic signal was studied and is included in the City’s TIF program. The TIF payment will fulfill this requirement. To fulfill the other intersection improvement, the applicant shall provide a conceptual plan and a cost estimate (including design engineering) for approval by the Transportation Division to determine the fair share contribution. The fair share contribution for the intersection improvement, calculated as 7.4% of the cost estimate, shall be paid prior to the issuance of a building permit. If these funds are not used within a 5-year period, they will be returned to the Applicant.

- vii. Under the Cumulative scenario, the proposed intersection improvement at the intersection of Chilco Street and Bayfront Expressway is to modify the center left-turn lane to shared left-/right lane on Chilco Street and re-design the existing shared bike

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PROJECT CONDITIONS:

lane, resulting in having one left-turn lane, one shared left/right lane, and one right-turn lane. This improvement is not included in the City's TIF program. To fulfill this improvement, the applicant shall provide a conceptual plan and a cost estimate (including design engineering) for approval by the Transportation Division to determine the fair share contribution. The fair share contribution for the intersection improvement, calculated as 2.2% of the cost estimate, shall be paid prior to the issuance of a building permit. If these funds are not used within a 5-year period, they will be returned to the Applicant.

- viii. Under the Cumulative scenario, the proposed improvement at the intersection of Chilco Street and Constitution Drive is to install a left-turn lane and convert the shared left/through lane to through lane on southbound Constitution Drive resulting in having one left-turn lane, one through lane, and one right-turn lane. Applicant shall provide a conceptual plan of the following improvement and a cost estimate (including design engineering) for approval by the Transportation Division to determine the fair share contribution. This improvement is not included in the City's TIF program. The fair share contribution for the intersection improvement, calculated as 3.5% of the cost estimate, shall be paid prior to the issuance of a building permit. If these funds are not used within a 5-year period, they will be returned to the Applicant.

- vv. Prior to issuance of any project-related building permit and within each construction phase, the applicant shall submit plans for construction related parking management, construction staging, material storage and Traffic Control Handling Plan (TCHP) to be reviewed and approved by the City. The applicant shall secure adequate parking for any and all construction trades. The plan shall include construction phasing and anticipated method of traffic handling for each phase. The existing sidewalk and bike lanes or an acceptable pedestrian and bicycle pathways along project's frontage shall be provided during all construction phases except when the new sidewalk is being constructed.

- ww. Simultaneous with the submittal of a complete building permit application, the applicant shall submit a Transportation Demand Management (TDM) plan consistent with the plan outlined in the Final Environmental Impact Report. Any changes to the plan are subject to review and approval by the City prior to occupancy. On January 1 of the year following the first full calendar year after the date of occupancy, or as otherwise designated in the Zoning Ordinance, the applicant shall submit an Annual Monitoring Report to determine that implementation of the TDM plan is effective in reaching the trip reduction requirements established in the Zoning Ordinance and incorporated into the approved TDM plan. The monitoring report shall be submitted annually to the City's Transportation Division. If the subject site is not in compliance with the anticipated trip reductions from the TDM program, the applicant shall submit a detailed mitigation and monitoring plan identifying steps to be taken to bring the project site into compliance with the maximum Daily, AM and PM trips identified in the trip generation analysis and TDM program.

- xx. Prior to issuance of building permit, the applicant shall submit plans for street light design per City standards LE-02A and LE-02B, at locations approved by the Transportation Division based on the photometric analysis to be submitted by the applicant.

RESOLUTION NO. 6662**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK APPROVING A VESTING TENTATIVE MAP FOR A MAJOR SUBDIVISION TO CREATE 42 FOR SALE CONDOMINIUM TOWNHOME UNITS AND ADJUSTING EXISTING LOT LINES FOR THE PROPOSED MENLO UPTOWN PROJECT CONSISTING OF 483 MULTI-FAMILY DWELLING UNITS AND AN APPROXIMATELY 2,940 SQUARE FOOT COMMERCIAL SPACE AT 141 JEFFERSON DRIVE AND 180-186 CONSTITUTION DRIVE (APNS: 055-242-030, 055-242-040, 055-242-140)**

WHEREAS, the City of Menlo Park (“City”) received an application requesting environmental review, use permit, architectural control, below market rate (BMR) housing agreement, heritage tree removal permits, major subdivision, and community amenities operating covenant from CLPF GRP Uptown Menlo Park, LLC and CLPF CRP TH Menlo Park, LLC (“Applicant”), to redevelop the property located at 141 Jefferson Drive, and 180-186 Constitution Drive (Assessor’s Parcel Numbers: 055-242-030, 055-242-040, 055-242-140) (“Property”), with a bonus level development project consisting of up to 483 multifamily dwelling units comprised of 441 rental units and 42 for-sale condominium units and approximately 2,940 square feet of commercial space proposed to be used as part of the Applicant’s community amenity, which development is more particularly described in the Initial Study to the Project which was prepared pursuant to the California Environmental Quality Act (hereinafter the “Project”). The Project is depicted in and subject to the development plans which are attached hereto as Exhibit A (“Project Plans including colors and materials board”) and incorporated herein by this reference; and

WHEREAS, the proposed Project is located in the R-MU-B (Residential Mixed Use-Bonus) zoning district. The R-MU-B zoning district allows a mixture of land uses with the purposes of providing high density housing to complement nearby employment, encouraging mixed use development with a quality living environment and neighborhood-serving retail and services on the ground floor that are oriented to the public, promoting a live/work/play environment with pedestrian activity, and blending with and complementing existing neighborhoods through site regulations and design standards that minimize impacts to adjacent uses; and

WHEREAS, the major subdivision application requests to subdivide to adjust the lot lines of the existing three legal parcels within the approximately 4.83-acre project site and create 42 condominium units within one of the parcels to allow for the 42 townhome units to be sold individually, with the 441 apartments located in two individual buildings on individual legal parcels; and

WHEREAS, the proposed Project complies with all objective standards of the City’s Zoning Ordinance, including parking standards, design standards, green and sustainable building standards, and is consistent with the City’s General Plan goals, policies, and programs; and

WHEREAS, all required public notices and public hearings were duly given and held according to law; and

WHEREAS, after notice having been lawfully given, a public hearing was scheduled and held before the Planning Commission of the City of Menlo Park on June 21, 2021 whereat all persons interested therein might appear and be heard; and

WHEREAS, the Planning Commission reviewed the project on June 21, 2021, and found the project to be within the scope of the project covered by an Initial Study and Final Environmental Impact

Report, which was prepared, published, circulated, and reviewed in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines; and

WHEREAS, the Planning Commission of the City of Menlo Park having fully reviewed, considered, and evaluated all the testimony and evidence submitted in this matter voted affirmatively to approve the findings and conditions for a use permit, architectural control, a Below Market Rate Housing Agreement, and a Community Amenities Operating Covenant for the project; and

WHEREAS, following its affirmative actions on the use permit, architectural control, below market rate housing agreement, and community amenities operating covenant, the Planning Commission of the City of Menlo Park having fully reviewed, considered, and evaluated all the testimony and evidence submitted in this matter voted affirmatively to recommended that the City Council of the City of Menlo Park to make findings that the proposed vesting tentative map for a major subdivision is technically correct and in compliance with all applicable State regulations, City General Plan, Zoning and Subdivision Ordinances, and the State Subdivision Map Act and approve the tentative map for a major subdivision; and

WHEREAS, after notice having been lawfully given, a public hearing was scheduled and held before the City Council of the City of Menlo Park on August 31, 2021 whereat all persons interested therein might appear and be heard; and

WHEREAS, the City Council of the City of Menlo Park having fully reviewed, considered and evaluated all the testimony and evidence submitted in this matter voted affirmatively to approve the findings and conditions for the vesting tentative map.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Menlo Park, independently, after reviewing all of the evidence before it, holding a public hearing, and considering the Planning Commission's recommendation, hereby approves the major subdivision vesting tentative map, which vesting tentative map is attached hereto as Exhibit A, and associated conditions, which are attached hereto as Exhibit B, and incorporated herein by this reference, based upon the following findings:

1. The proposed subdivision, together with the provisions for its design and improvement, is consistent with the General Plan, including the Land Use, Circulation, Housing, and other elements, and is also consistent with all other applicable plans and ordinances.
2. Pursuant to Government Code section 66474, a tentative map cannot be approved if any of the following findings can be made. The City Council determines that none of the findings can be made and approves the vesting tentative map on that basis, subject to the Conditions set forth in Exhibit B:

- a. That the proposed map is not consistent with the applicable general and specific plans as specified in Government Code section 65451.

This finding cannot be made. The Vesting Tentative Map, together with its conditions of approval, is consistent with the General Plan.

- b. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.

This finding cannot be made. The Vesting Tentative Map, together with its conditions of approval, is consistent with the General Plan.

- c. That the site is not physically suitable for the type of development.

This finding cannot be made. The proposed subdivision would meet all applicable regulations of the Subdivision Ordinance as well as all development regulations pertaining to the R-MU-B zoning district.

- d. That the site is not physically suitable for the proposed density of development.

This finding cannot be made. The existing site contains commercial buildings in a developed area planned for a broader mix of uses and greater density, and the proposed subdivision would result in six three-story, seven-unit townhome buildings in the vicinity of the city's major employment centers at a density consistent with the designated land use and zoning for the site.

- e. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

This finding cannot be made. The proposed subdivision is located within a fully developed neighborhood and would result in the redevelopment of an existing commercial site. Adherence to the MMRP, the recommended conditions of approval, and all applicable codes would eliminate substantial or serious environmental impacts.

- f. That the design of the subdivision or type of improvements is likely to cause serious public health problems.

This finding cannot be made. The proposed subdivision is located within a fully developed neighborhood and necessary utilities are available. In addition, the development of the properties would adhere to specific conditions of the Engineering Division, all applicable building codes, and requirements of other agencies such as the Sanitary District, Menlo Park Fire Protection District, and other utility companies. Adherence to the MMRP, the recommended conditions of approval, and all applicable codes would eliminate substantial or serious public health impacts.

- g. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

This finding cannot be made. No public access easements currently exist on the site, so there would be no conflict.

ENVIRONMENTAL REVIEW

The City Council of the City of Menlo Park has certified the Final EIR for the proposed Project, and in support of its approval of the Project, the City Council has adopted Findings of Fact and a Mitigation Monitoring and Reporting Program (MMRP) pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15091 and 21081.6. In compliance with CEQA and the CEQA Guidelines, the Final EIR for the proposed Project contemplated the vesting tentative map as part of the environmental review.

SEVERABILITY

If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void or unenforceable, the remaining provisions of these findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the thirty-first day of August, 2021, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this thirty-first day of August, 2021.

Judi A. Herren, City Clerk

Exhibits

- A. Vesting tentative parcel map for major subdivision
- B. Conditions of approval for the vesting tentative map

Menlo Uptown Project – Attachment C, Exhibit B – Conditions of Approval

<p>LOCATION: 141 Jefferson Drive, 180-186 Constitution Drive</p>	<p>PROJECT NUMBER: PLN2019-00062</p>	<p>APPLICANT: Andrew Morcos</p>	<p>OWNER: CLPF GRP Uptown Menlo Park LLC and CLPF CRP TH Menlo Park, LLC</p>
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PROJECT CONDITIONS:

1. The tentative map shall be subject to the following **standard** conditions:
 - a. The Applicant shall adhere to the Subdivision Map Act and Chapter 15 of the City's Municipal Code.
 - b. Within two years from the date of approval of the tentative map, the Applicant shall submit a Final Map for City approval.
 - c. Prior to Final Map approval or Building Permit issuance, whichever comes first, the Applicant shall submit engineered Off-site Improvement Plans (including specifications & engineers cost estimates) for approval by the City Engineer, showing the infrastructure necessary to serve the Project. The Off-Site Improvements Plan shall include all improvements within public right-of-way including curb, gutter, sidewalks, street trees, street lights, and undergrounding of overhead electric distribution lines, water and sanitary sewer.
 - d. The Off-Site Improvement Plans shall include Green Infrastructure in the form of a stormwater treatment area along the project's frontage to treat runoff from the public right-of-way. The treatment area shall be located within the landscape area between the curb and sidewalk. Sizing and design shall conform to San Mateo Countywide Water Pollution Prevention Program design templates and technical guidance and be approved by the Engineering Division.
 - e. Prior to Final Map approval or Building Permit issuance, whichever comes first, the Applicant shall enter into an Agreement for Completion of Development Improvements and provide a performance bond for the completion of the off-site improvements as shown on the approved Off-site Improvement Plans. The Applicant shall obtain an encroachment permit, from the appropriate reviewing jurisdiction, prior to commencing any work within the right-of-way or public easements.
 - f. If existing utilities are in conflict with required frontage improvements, the utilities must be relocated at the Applicant's expense.
 - g. Prior to Final Map approval or Building Permit issuance, whichever comes first, the lot line adjustments shall be recorded with the County of San Mateo.
 - h. Prior to Final Map approval, the Applicant shall submit Covenants, Conditions and Restrictions (CC&Rs) to the City Engineer and City Attorney for review and approval. The CC&Rs shall provide for the maintenance of all infrastructure and utilities within the Project site or constructed to serve the Project which serve two or more units and are not accepted by the City or a utility company for maintenance. This shall include, but not be limited to, the private open spaces, shared parking spaces, common walkways, common landscaping, and the stormwater drainage and sewer collection systems.
 - i. Prior to recordation of the Final Map, the Applicant shall pay Recreation In-Lieu Fee per Municipal Code Section 15.16.020 of the Subdivision Ordinance. The estimated current recreation in-lieu fee is \$3,292,800.00 (based on 42 units at \$78,400.00 per unit).



REGULAR MEETING – EXCERPT MINUTES

Date: 06/21/2021

Time: 7:00 p.m.

Meeting Location: GoToWebinar.com – ID #206-879-723

A. Call To Order

Chair Michael Doran called the meeting to order at 7:03 p.m.

B. Roll Call

Present: Andrew Barnes, Chris DeCardy (Vice Chair), Michael Doran (Chair), Cynthia Harris, Camille Gonzalez Kennedy; Henry Riggs, Michele Tate

Staff: Corinna Sandmeier, Senior Planner; Tom Smith, Senior Planner; Chris Turner, Assistant Planner

F. Public Hearing

- F2. An application from Andrew Morcos/141 Jefferson Drive and 180-186 Constitution Drive (Menlo Uptown) for a Use Permit, Architectural Control, Major Subdivision, Below Market Rate (BMR) Housing Agreement, and associated Environmental Review pursuant to the California Environmental Quality Act: The proposed project would redevelop three parcels with 483 multi-family dwelling units, comprised of 441 rental units split between two seven-story apartment buildings with above-grade two-story parking garages integrated into the proposed buildings and approximately 2,940 square feet of commercial uses located on the ground floor of one of the proposed buildings, and 42 for-sale townhome-style condominium units, located in the R-MU-B (Residential Mixed Use, Bonus) zoning district. The proposed project would have approximately 475,896 square feet of total gross floor area (GFA) and a floor area ratio (FAR) of approximately 224.9 percent for residential uses and 1.4 percent for commercial uses. The proposal includes a request for an increase in height, density, and FAR under the bonus level development allowance in exchange for community amenities. The applicant is proposing two options for its community amenity proposal, with an alternative to provide the commercial space to a non-profit to use for administrative offices and an alternative to provide the commercial space to a health care non-profit to use as an urgent care or express care health center. Both community amenity alternatives include additional contributions to either a community land trust or a health care network. The proposed project would include 67 below market rate (BMR) rental units and six for-sale townhome BMR units for a total of 73 BMR units or approximately 15.1 percent of the total 483 proposed dwelling units, in compliance with the City's BMR Ordinance requirements. The project site currently contains three single-story office and industrial buildings that would be demolished. The project also includes a hazardous materials use permit request to allow for diesel generators to operate automated parking systems and critical building resources in the event of an emergency. The Final Environmental Impact Report (EIR) pursuant to CEQA was released on June 11, 2021. The Final EIR for the proposed project does not identify any significant and unavoidable environmental impacts that would result from the implementation of the proposed project. The Final EIR identifies potentially significant environmental impacts that can be mitigated to

a less than significant level (LTS/M) in the following categories: Air Quality and Noise. The Final EIR identifies less than significant (LTS) environmental impacts in the following categories: Population and Housing, Transportation, and Greenhouse Gas Emissions. The City previously prepared an initial study for the proposed project that determined the following topic areas would have no impacts, less-than-significant impacts, or less than-significant impacts with mitigation measures (including applicable mitigation measures from the ConnectMenlo 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, Mineral Resources, Noise (construction-period, groundborne vibration, and aircraft-related noise), Public Services, Recreation, Utilities and Service Systems, Tribal Cultural Resources, and Wildfire. The Draft EIR was circulated for an extended 60-day public review from December 4, 2020 through February 2, 2021 and the Planning Commission held a public hearing on the Draft EIR at its meeting on January 11, 2021. The Final EIR includes responses to all substantive comments received on the Draft EIR. The project location does not contain a toxic site pursuant to Section 6596.2 of the Government Code. ([Staff Report #21-032-PC](#))

Staff Comment: Senior Planner Tom Smith said staff had received a number of correspondences on the project that day. He summarized them.

- Scott Bohannon writing on behalf of the David D. Bohannon Organization requested the Commission forego action on the project so that they could better understand what would occur along shared property lines between the proposed project and 101 Jefferson Drive that was owned by the David D. Bohannon Organization. Planner Smith said a new retaining wall was proposed along the property line adjacent to the fire access road. He said the letter expressed concerns with elevating the subject property site to meet the City's sea level rise requirements to have the first floor two feet above the base flood elevation and with importing fill to do that. He said the letter questioned whether this was appropriately analyzed in the CEQA process and if hydrology, storm water flow and the structural soundness of the retaining wall would be ensured. He said staff had an opportunity to review the information in the letter and the plans before the weekend. He said the elevation of the site to comply with City requirements was disclosed in the Initial Study specifically in Section 3.10 Hydrology and Water Quality. He said the project would decrease the amount of impervious surfaces on the site and runoff would be directed to an 18-inch storm main located below Constitution Drive. He said the project would have to meet all City requirements and that meant no net increase in the amount or rate of storm water runoff that would happen post-project compared to the current conditions. He said proposed conditions 1.ee, 1.oo, 1.tt and others would ensure that the project adequately managed and treated storm water runoff. He said they looked at the proposed plans and at this conceptual stage staff believed the proposed retaining wall could feasibly support the proposed development of Menlo Uptown. He said more detailed structural calculations and drawings would need to be provided at the building permit stage for confirmation.
- Jackie Leonard Dimmick expressed a desire for balanced housing and jobs in the City and suggested that companies hire people who lived near the workplace to help that balance.
- Victoria Robledo wrote she opposed new housing in Belle Haven and had concerns with pollution, noise, and traffic that would be caused by the project. She requested that housing units for the project be reduced to 200 with 75 below market rate (BMR) units and indicated that areas west of Highway 101 should be the focus of housing development in the community.

- Kelly Rem, Lozano Smith Attorneys at Law, on behalf of the Sequoia Union High School District, objected to the Final EIR, claiming that the City Council was the final acting body on the project because of the tentative map so that approval by the Planning Commission was not final under CEQA and that the EIR failed to adequately describe the environmental setting for the schools and improperly relied on the ConnectMenlo EIR and reliance of SB50 payment of school impact fees as part of mitigations for the project.
- Pam Jones expressed issues with the existing Community Amenities list and a preference for more affordable housing, Belle Haven sidewalk replacements, utilities undergrounding in Belle Haven or money to the in-lieu fee the City Council was in the process of establishing for the Bayfront area.
- Sheryl Bims expressed concerns about housing density in District 1 and requested community amenities placed within the residential areas of Belle Haven, more equitable housing development throughout Menlo Park, and modification to the ConnectMenlo General Plan Update.
- Jeff Blandford requested that more affordable housing be included and incorporated into the project.
- Lorena Cuffy wrote she appreciated the applicants' interest and commitment to listen to what was needed and believed the project would be an asset to the community.
- Ceci Conley, Silicon Valley Leadership Group, expressed support noting it was a prime housing location that offered a variety of BMR and market rate options.
- Nehezi Ollarvia wrote the project needed to address longstanding housing inequities in the community and questioned the project in relation to the City's Housing Element and goals and how it would address the housing crisis in the area.
- Luisa Buada, Ravenswood Family Health Network, expressed support for the project and the community amenity option of an urgent care center that provided health care access to persons regardless of ability to pay.
- Brad Sena, Lozano Smith, wrote comments that closely mirrored Ms. Rem's letter on behalf of Sequoia Union High School District objecting to the Final EIR.

Chair Doran complimented the staff report and noted that its length made it hard to navigate on the virtual meeting platform they were using. He suggested the use of hyperlinks in the future.

Planner Smith said staff understood and would look at ways to make it more navigable in the future.

Planner Smith made a presentation overview of the proposed project noting it was the Final EIR certification and project entitlements public hearing. He said redevelopment of the site would include 483 residential units with 441 of those rentals in two apartment buildings and 42 for sale townhomes. He said the project proposed 2,940 square feet of commercial space that would be dedicated to a community amenity. He said 73 of the residential units were BMR with 67 of those rentals and six of those townhomes. He said community amenities were required to construct at the bonus level of

development for increases in density, height, and floor area ratio and the applicant had proposed multiple community amenity options. He said staff was recommending approval of an urgent care center to be operated by the Ravenswood Family Health Network. He said that amenity was included in the current City Council approved Community Amenities list under Social Services – Medical Center. He said the breakdown of costs for that amenity if chosen would be \$8.9 million, which was the assessed value of the amenity toward the construction and buildout of the urgent care space, specialized medical equipment to be used at the site, and a direct contribution to fund the operation of the organization. He said the project was subject to the requirements of SB330, the Housing Crisis Act of 2019. He said the applicant converted the application to a SB330 application in January 2020. He reviewed the stipulations of that Act. He said recommended actions were to adopt a resolution certifying the Final EIR, adopting the Mitigation and Monitoring Program, adopting the CEQA findings, and adopting a resolution approving the use permit, architectural control permit, BMR Housing Agreement, Community Amenities Operating Covenant and a resolution to recommend to the City Council approval of a vesting tentative map for a major subdivision. He said these actions were subject to conditions of approval and found in Attachment D, Exhibit G.

Planner Smith said he had some clarifications to attachments in the staff report. He said the first revision that he would read into the record was for the Community Amenities Operating Covenant, Section 6, page B-42 of the staff report packet. He said it was updated to modify the tenant improvement value previously identified as \$2,058,000 to \$1,837,500 as BAE, the City's consultant, had identified some double counting in the project, part of which would come out of this tenant improvement value. He said the other change was in the first paragraph of Section 6 that identified a financial contribution value of \$1,425,376 and a direct in-lieu payment to the City of \$300,000. He said the direct in-lieu payment was an error and not offered by the applicant. He said the applicant would make a direct financial contribution to Ravenswood Family Health Network of \$1,725,376. He referred to Condition 2n that read: Prior to occupancy of the first apartment building to be constructed on the site, the applicant shall construct the publicly accessible open space for the project to the satisfaction of the Building, Engineering, Planning and Transportation Divisions. He said staff was recommending that condition be modified to read: Prior to occupancy of the first apartment building to be constructed on the site, the applicant shall construct the **paseo and** publicly accessible open space ~~for the project~~ **on the apartment building parcels** for the project to the satisfaction of the Building, Engineering, Planning and Transportation Divisions. **The remainder of the publicly accessible open space on the townhome parcel shall be constructed prior to occupancy of the first townhome building on the site.** He said that condition was to better specify what components of publicly accessible open space should be provided with which buildings. He said there were a few minor changes that the City Attorney would read into the record.

City Attorney Nira Doherty said she would read a few final revisions that were requested by the applicant and/or were typographical administrative revisions staff felt were appropriate. She said she would do that towards the end of the item as none of them substantively changed the project in a significant manner.

Commissioner Andrew Barnes said they were being asked to approve the Community Amenity Operating Covenant that was part of the use permit. He said he wanted the discussion on that to be integrative of the project and community amenity and not bifurcated as had happened in past discussions. He said he wanted to confirm that approving the BMR Agreement was for the Table 11 Alternative BMR proposal that staff proposed.

Planner Smith said that discussions about the community amenities should wait until after the applicants' presentation as they would provide more information about the two alternatives. He said staff was recommending the alternative BMR proposal, which was a mix of income levels for the rental units. He said it was the Commission's discretion if they preferred the original BMR proposal, which were all low-income level for the rental units.

Theresa Wallace, LSA, City Consultant for environmental review of the project, provided the overall timeframe for the CEQA process. She said all comments received during the 46-day scoping period were considered during preparation of the Draft EIR. She said the City and LSA and its technical specialists then prepared the Draft EIR. She said at the close of the 60-day comment period on February 2, 2021 they prepared written responses to each substantive comment received on the adequacy of the EIR in a Response to Comments document. She said this document was published and available for review on June 11, 2021.

Ms. Wallace said the environmental analysis for the project tiered from the ConnectMenlo Final EIR (FEIR), which provided a program level analysis of the development potential envisioned for the entire City including the increased development potential in the Bayfront area, where this project was located. She said the FEIR evaluated the impact of approximately 2.3 million square feet of nonresidential space, 400 hotel rooms and 4,500 residential units and the proposed project fit within the development assumptions of the FEIR. She said a settlement agreement with the City of East Palo Alto required certain projects that tiered from the ConnectMenlo FEIR including those using bonus level development to do a focused EIR with regards to housing and transportation. She said environmental review of the subject project also complied with the terms of the settlement agreement.

Ms. Wallace said based on the analysis in the Initial Study the topics of population and housing, transportation, air quality, greenhouse gas emissions and noise were further evaluated in the focused EIR. She said no significant unavoidable effects were identified and all impacts could be mitigated. She said the EIR also evaluated a range of alternatives to the project with the objective of voiding or reducing potential impacts. She said three full analyses were done including the CEQA required no project alternative and two development alternatives. She said ultimately it was determined in terms of environmental impact that the proposed project itself would be the superior alternative as it would not result in any significant or unavoidable impacts.

Ms. Wallace said they were now considering the Final EIR that consisted of the Draft EIR, the Response to Comments document, and the Mitigation and Monitoring Reporting Program (MMRP). She said the Planning Commission was being asked to decide whether the FEIR was adequate. She outlined what constituted the standard for adequacy.

Commissioner Riggs referred to traffic and transportation mitigations on page 14 of the staff report. He asked how many of those were conditions of approval for the project. Planner Smith said this was the level of service intersection improvements. He said to clarify level of service was no longer a CEQA threshold and thus was independent of the CEQA mitigations and requirements for the project. He said the level of service intersection improvements were requirements because of the City's Traffic Impact Analysis Guidelines (TIA). He said the tables on pages 14, 15 and 16 of the staff report listed potential intersection improvements that were evaluated by staff as part of conditions of approval for the project. He said staff was recommending intersection improvements based on a feasibility evaluation that was performed and were recommending five near term plus

project conditions and four cumulative intersection improvements conditioned as part of the project, a total of nine intersection improvements.

Replying to Commissioner DeCardy's question relating to the School District's written concern that this project could cause greater costs to the District and how the FEIR for ConnectMenlo and the EIR for this project considered cumulative impacts, Ms. Wallace said the ConnectMenlo FEIR evaluated 4,500 residential units and looked at impacts to that School District and other school districts that served the area. She said this project and many other projects the Commission was considering fit within the parameters of the development potential that was evaluated in the ConnectMenlo FEIR. She said the Program EIR was intended to identify impacts to schools by developments like the proposed project. She said related to reaching a development potential sooner than what was perhaps anticipated at the time ConnectMenlo was prepared that the analysis and the assumptions related to impacts on schools in ConnectMenlo was not based on incremental development. She said there was no limit on the pace of development and when that might occur. She said all the impacts related to schools raised in the letter they had submitted on the Draft EIR and the letter sent today had been addressed and thoroughly evaluated. She said payment of development fees had been determined by the State to be adequate and complete mitigation for impacts to schools and addressed the full impact of capacity issues and the like.

Applicant Presentation: Andrew Morcos, Senior Development Director with Greystar, said Menlo Uptown was his company's second project in Menlo Park and first housing development following adoption of ConnectMenlo. He said regarding the community amenity they had two options. He said one was building space, tenant improvements and free rent for Samaritan House and funds for a local community land trust, Valley Community Land Trust (VCLT). He said the second option was building space, tenant improvements, operating startup up funds and free rent for Ravenswood Family Health Network to open an urgent care center of just under 3,000 square feet located onsite. He said they were providing 24,000 square feet of publicly accessible open space and that was 80% more than required. He said part of that was a paseo that would connect Jefferson to Constitution and provide pedestrian and bicycle access to the largest employers in Menlo Park. He said from an environmental perspective this project was achieving LEED Gold with substantial EV charging opportunities and all electric infrastructure.

Mr. Morcos referred to the community amenity options. He said the first was centered around affordable housing and a community land trust VCLT and Samaritan House, a City partner providing support services. He said VCLT would receive \$3.5 million in funds to purchase homes in Belle Haven and create affordable housing and Samaritan House would receive just under 3,000 square feet of building space within the project and as mentioned previously tenant improvements and free rent. He said the second was funds for the Ravenswood Family Health Network and related to the medical office amenity listed in the Community Amenities list. He said there was not a City in-lieu payment, rather they would provide space and funds for the Ravenswood Family Health Network to buildout tenant improvements of \$1.8 million and specialty equipment \$882,000. He said funds to support operations would be the \$1.4 million plus the \$300,000 that was listed on the slide incorrectly as City in-lieu payment. He said the options were driven by the Belle Haven community.

Mr. Morcos said the BMR proposal included 73 BMR units, 67 of which were rental multi-family units and six were for sale townhomes. He said initially the proposal for BMR was all rental units at the low-income level. He said when they took the proposal to the City's Housing Commission it requested that they prepare an alternative equivalent. He said this was the second option that was being recommended by staff and included seven very low-income units, 23 low income units and 37

moderate income units. He said for both proposals BMR rents were capped at 75% of comparable market rate rents. He said those were distributed throughout the project and indistinguishable from market rate units.

Mr. Morcos said they had two requests for the Planning Commission based on the published staff report. He said regarding the community amenity default on pages 26 and 27 of the staff report that they were requesting a \$2,282,000 reduction in the \$8.9 million default fee in the community amenity covenant. He said the default fee was required if Ravenswood Urgent Care could not continue operation and a replacement use could not be found. He said from their perspective the default should consist of the real estate value and the tenant improvements for the space totaling \$6,618,000 and should exclude the budget that would go directly to Ravenswood for equipment and operating startup costs totaling \$2,282,000. He said that money could not be recouped and were not related to the real estate. He said the community amenity default fee currently included a growth rate that was in line with their assessed value growth rate. He said from their perspective if anything that should be a depreciation as time passed, but they would be satisfied with eliminating a growth rate on the default fee.

Mr. Morcos said the second point they wanted to bring to the Commission's attention was the level of service intersection improvements. He said their position was that improvements outside of the TIF program should be excluded from Greystar responsibility, noting pages 12 through 17 of the staff report. He said specifically the Willow and Coleman and Willow and Gilbert intersections required road widening, utility relocation, signal modification, restriping and were likely to exceed \$1.4 million on top of a \$1 million TIF required separately. He said their understanding of policy was there was a focus on multi-modal transportation improvements, and they felt the Willow and Coleman and Willow and Gilbert intersections improvements conditions of approval were unreasonable requirements of the project.

Mr. Morcos introduced the project team: Clark Manus, Heller Manus, lead architect on the multi-family buildings; David Burton, KGT Architecture, lead architect on the townhomes; and Karen Krolewski, PGA Design, landscape architect.

Mr. Manus said in maximizing residential density and achieving compliance they successfully incorporated two multi-family buildings and six townhouse buildings. He said they believed the site plan did a great job in maximizing and reflecting publicly accessible open space and integrating both building types. He said regarding the multi-family building designs they wanted to reflect the importance of the Constitution and Jefferson Street frontages and the paseo's relationship to them. He said sea level rise requirement elevated the ground levels, the lobbies and active uses, including the neighborhood benefit spaces. He said the mechanized parking system was concealed within the building. He said they worked heavily on providing bicycle parking along the paseo frontage. He said the buildings combined a brick tone rain screen with colored smooth cement plaster. He said they added balconies and bay windows for character.

Karen Krolewski, PGA Design, said they worked to form a connection between the multi-family buildings and the townhomes to share the open space between the two and with the surrounding neighborhood.

Commissioner Riggs asked about target market noting that the rents as he recalled for the Greystar project on Haven Avenue ranged from \$3,100 to \$4,400 for one- to three-bedroom units. Mr. Morcos

said the referenced project was 50% two-bedroom units, about the same number of one-bedroom units and a handful of three-bedroom units. He said it was fair to use that range as a reference.

Commissioner Riggs said the site was generally elevated and the paseo would be elevated. He said the adjacent property owner asked about how the raised elevation would meet the lower elevation of their property. He asked if they had a site section or a graphic that would help the Commission understand. Mr. Morcos said the letter referenced the property to the west of 141 Jefferson at 101 Jefferson and 165 Jefferson, the latter being one of Greystar's projects, Menlo Flats. He provided some elevations describing the retaining wall and fence. He said along 101 Jefferson the tallest areas of the retaining wall were two-foot, six-inches and varied with the grade. He said along 165 Jefferson there was a bit more of a grade difference. He said at the tallest point it was a five-foot retaining wall that would be topped with a four-foot fence. He said they were entitling 165 Jefferson Avenue and were under contract. He confirmed with Commissioner Riggs that no work would occur on the other property for the retaining wall construction on the subject property.

Chair Doran opened the public hearing.

Public Comment:

First speaker, Ceci Conley had audio difficulties and staff indicated returning to her later.

- Corey Smith said the Housing Action Coalition was a regional nonprofit that advocated for more homes at all levels of affordability. He indicated strong support for the Menlo Uptown project. He said the proposal's community amenity open space would provide the opportunity to showcase the work of local artists and other neighbor serving retail or a café to help activate the street. He said they were pleased the project set a high environmental standard target.
- Ceci Conley, Silicon Valley Leadership Group, said on behalf of their more than 350 members, they supported the approval of the Menlo Uptown project. She said the project was a great opportunity to create more housing including 15% affordable.
- Delia Perla, Belle Haven, said she was a volunteer for VCLT. She said they supported the project and it was evident how important housing was to people who had been displaced in Belle Haven. She said they supported the BMR proposal with mixed affordability and the community amenity option to support VCLT and Samaritan House.
- Leora Tanjuatco Ross, Housing Leadership Council of San Mateo, said their mission was to work with communities and their leaders to create and preserve quality and affordable homes. She concurred with prior speaker comments about how sorely housing was needed and at different income levels. She said they supported the project.
- Lynne Bramlett, District 3, said the project should go to the City Council for its review as this project and others in the District 1 development pipeline were putting the City at increased risk of litigation following a major eruption of the Hayward fault. She referenced a presentation made to the City Council on May 8, 2018 by USGS on a Hayward fault eruption scenario and impacts on Menlo Park. She said the ConnectMenlo document should have been reviewed and updated with what the City learned then including the program level EIR and the precursor geology, soils and seismicity section of the ConnectMenlo land use element. She said it was time for the

Council to consider a safe growth audit to identify gaps in the ConnectMenlo growth guidance documents and instruments and improvements that could and should be made.

- Matt Regan said he was representing the Bay Area Council, which was 350 of the Bay Area's largest employers, including several in Menlo Park. He said he was speaking in support of the project. He said he currently sat on a bi-regional planning committee and had previously sat on the RHNA (Regional Housing Needs Assessment) methodology committee. He said in the 2007-2014 RHNA cycle Menlo Park got an allocation of 993 housing units. He said in the 2015-2023 cycle its allocation was 665 housing units. He said in the upcoming 2023-2031 cycle the City's allocation would be in the range of 3,000 housing units. He said this was an SB330 project and was compliant with all objective standards and General Plan and Housing Element.
- Nehezi Ollarvia expressed confusion about the transparency related to the proposed project as it seemed to do the opposite of what the Housing Element indicated should be happening. She said there did not seem to be any real low-income housing for people with multiple children. She said this project was going to leave a huge disparity of people that still could not afford to live there. She asked what demographic the project was speaking to and their occupations other than the population of people who had greater incomes. She questioned the use of the terms of moderate income and above moderate income as the latter could not be considered BMR.
- Pam Jones, Menlo Park, Belle Haven, questioned whether the four years to develop the project was so it could be accomplished under SB330. She said she believed in CLTs but not this type that worked to increase housing density with ADUs and Junior ADUs. She said this was classic segregation and the result of historical redlining and gentrification. She said she supported the Ravenswood Clinic as they had shown themselves to be advocates for the community noting their COVID-19 testing and vaccination work. She said Menlo Park had done nothing to address the over 30,000 jobs that were brought into the area. She said they were stuck with the project and it was unfortunate that the money for it did not go directly into the community of Belle Haven to address things like sidewalks that were not ADA compliant and to begin undergrounding utilities. She said most importantly the money could be used to subsidize all levels of BMR units in the facility. She said they could subsidize over 20 units for at least 10 years by putting that money into a different kind of project. She said for the future these were things that might be considered to really address the housing and jobs imbalance that Menlo Park created for itself.
- Scott Bohannon, David D. Bohannon Organization, said they owned 101 Jefferson and were in negotiations with Greystar for 165 Jefferson. He said they had provided comments regarding their concerns about building along property lines. He said they supported ConnectMenlo and were generally supportive of all its findings. He said generally they liked Greystar's project and their proposed community benefits including the affordable housing options or the urgent care, whichever the Commission found best. He said their primary issues were related to property line and were detailed in their letter.
- Soody Tronson, District 4, said although she was serving on the City's Housing Element Engagement Committee, her comments were as a resident. She said projects with higher density continued to be approved in minimal locations leading to further separations in the community. She said there did not seem to be a cohesive plan or at least one communicated to the community about how these projects together addressed the critical housing issue. She said in earlier studies commissioned by the City, overcrowding affected Belle Haven and other vulnerable communities. She said this project was not technically in Belle Haven and its intended

objective was to provide housing to lower income families. She said the majority of BMR units for the project were targeted for family sizes of one to two people with no rental units for a family of four and only one rental unit for a family of three. She said some cities provided that BMR units should have at least the same number of bedrooms as the average unit in the project but that was not the case with this project and how others were deployed in the City. She said the City required 15% of units be allocated to BMR but did not specify or mention anything about the BMR unit size. She said the City's BMR Housing Program Guidelines said, "The City will consider creative proposals for providing lower cost units available to lower income households such as a smaller unit size." She said this was not in code and yet seemed to lead to a disproportionate number for BMR units. She said the BMR units for sale did not provide much of an opportunity for achieving the American dream as those were proposed for moderate and over AMI income levels. She said the Menlo Park BMR Housing Program Guidelines were inconsistent with the purpose for which BMR housing programs were created and the City's "creative" language deprived families from affordable housing whether rental or for sale. She said she urged the City to consider that codes, guidelines and zoning must be written to advance the equitable well being of the people and not the other way around.

- Sue Connelly said she was a long time Menlo Park resident. She said she had not been included in the feedback opportunities in the community for the project. She said she was also representing several neighbors that had to drop off the call but the net of what she was requesting was that the entire housing project be dedicated entirely to affordable housing. She said the reference to 3,000 housing units under the next RHNA cycle was closer to 3,900, which she had heard at a Council meeting and Housing Element meeting. She said the City was not even close to what it had to do and besides market rate housing, they had to take care of people who had been displaced by massive overdevelopment east of Highway 101. She said the community amenities were very small carrots in the massively negative impact on the community particularly for those who lost housing due to development. She said developers and Facebook had to take responsibility and fix the lack of affordable housing in the very development where they were reaping profit. She said massive development had a permanent impact on Menlo Park and asked that the Commission take action to protect seniors and children who lived in Menlo Park already. She proposed a building moratorium until they could see the impacts of the projects soon to be opened.

Chair Doran closed the public hearing.

Commission Comment: Commissioner DeCardy said the applicant had requested a change to the default fee for the community option for an urgent care center and asked staff's perspective on that. He said the other request was to remove the conditions for intersection improvements at Willow and Coleman and Willow and Gilbert and asked for staff's perspective on that. He asked if that would result in a net reduction of fees and if so, how much.

Planner Smith said potentially the request to change the default fee for the urgent care center might be reasonable as there were certain expenditures that the developer would make that they could not recoup. He said he did not agree with the applicant's characterization of the intersection improvements. He said the intersection widening mentioned in the staff report was not the widening of adding a travel lane to a roadway or something that would induce more travel. He said they were talking about adding turn pockets and things that could be accommodated within the existing right of way, things that improved intersection movement and not inducing additional traffic. He said for any of these intersection improvements if there were other projects approved and identified as having

effects on the same intersection then those projects would have to reimburse this project for a portion of the fees.

Commissioner Barnes said in reading about the default fee it seemed it was the City's way of keeping the value of the amenity should the amenity itself default. He said he could see the potential of that loss with the clinic but not with the VCTL and Samaritan House as there would be real estate purchase and the office space for Samaritan House could be leased to another entity. Planner Smith said the way the Operating Covenant was written was exclusively for the Ravenswood Family Health Network option. He said if the Commission chose another option there would also be a default fee. He suggested conferring with the City Attorney.

Ms. Doherty said the default fee was to ensure that in the event of non-continuation of the proposed amenity that the City had a means of reestablishing a similar amenity elsewhere or in a similar geographical area so as to recoup the benefit of the bargain for the bonus level development. She said the value of the bonus level development did not go away with an amenity that ceased to operate. She said the default fee provided some recourse for the City should that amenity cease to operate.

Commissioner Barnes asked about the escalators in the fee over time that the applicant mentioned. Ms. Doherty said it was the same idea that should the cost to reimplement or reestablish the community amenity increase along with the county increased fair market value that the City would have recouped those costs to do so. Commissioner Barnes asked if any credit was given for the length of time the amenity served the City. Ms. Doherty said the issue with the credit idea was that at some point in the useful life of the community amenity's space, tenant improvements and the business itself that it might be more cost effective for the operator to default.

Commissioner DeCardy said he could make the required findings per CEQA and certify the FEIR and associate MMRP. He said he was prepared to approve the use permit and architectural control permit and recommend approval of the vesting tentative map for a major subdivision to the City Council. He said he was in favor of density and that was needed to address housing and jobs imbalance. He said it should be thought of across the entire community and he encouraged looking at the Housing Element. He said he was supportive of the City Council looking at residential zoning. He said right now they were talking about Belle Haven, a neighborhood that historically had been maligned through redlining, racist loan practices and zoning. He referred to the proposed BMR Housing Agreement and the speaker's point that the BMR units were skewed to the smaller units than the larger units.

Mr. Morcos said per the BMR code they had to provide as close as possible an equal percentage of the types of units being provided as market rate. He said the project had 104 studios, just under 399 one-bedrooms, 33 two-bedrooms and 12 three-bedrooms. He said applying 15% to each of those resulted in the breakdown of BMR unit types. He said that was 17 studios, 45 one-bedrooms, 4 two-bedrooms and 1 three-bedrooms.

Commissioner DeCardy said the original BMR proposal was at one tier and when they moved that across income tiers that it no longer seemed proportional. Mr. Morcos said the BMR code had a provision that BMR rents could not exceed 75% of market rate rates. He said that cap was reached the most at the moderate-income level. He said if the rent for a two-bedroom unit was \$4,000 the BMR rent per the code would be 75% of that or \$3,000. He said in some cases the moderate-income rent was more than that so they could not achieve the full potential of that moderate-income

unit. He said the way the subsidy per unit worked out did not allow them to get the equal subsidy for the various unit types. He said they had to work out the subsidies, so it was an equivalent alternative.

Commissioner DeCardy asked staff to address why the second BMR proposal was considered stronger if the goal was to maximize the number of people who otherwise would not be able to afford market rate rents. Planner Smith said there were multiple ways to look at it. He said staff looked at its current RHNA numbers and the area in which Menlo Park was most deficient was in moderate income units. He said they saw an ability to fill the gap with provision of units. He said it also addressed some very low-income units as well. He said there was more diversity of income level types and that was the request from the Housing Commission to explore that.

Commissioner DeCardy said he was satisfied that the project worked with the number of BMR units and would defer to the Housing Commission and staff's interpretation regarding the tiered assessment as opposed to the flat tier assessment. He asked regarding the community amenity why they could not collect the full value of money for that as the City Council worked through the community amenities list or take it as in-lieu fees and use the money where it was really needed.

Planner Smith said it was an SB330 project and they had developed their community amenity without any certainty of Council going forward and under SB330 it was compliant. He said they were really evaluating the proposal the applicant put together as part of the application. Ms. Doherty said the City was restricted in its discretion with a SB330 housing project that was designed and proposed such that it met objective development standards. She said for the Community Amenities Program the Community Amenities list was an objective standard. She said also the Community Amenities Ordinance itself established a process for community amenities that did not necessarily allow the Planning Commission or City Council to select the amenity themselves but allowed them to review and approve the appropriateness of the proposed amenity. She said two alternatives had been proposed for this project and the Planning Commission had the discretion to determine if they were from the approved list and if they were appropriate.

Commissioner DeCardy said he thought the two options were both great. He said he would prefer if the amenity was located closer to the Belle Haven community. He said he would support as preference the second option for the urgent care center. He said he was not prepared to meet the applicant's two requests for change of the default fee and conditioned intersection improvements.

Commissioner Barnes said he could support the required findings to certify the FEIR and the associated MMRP. He said regarding the use permit this project was the correct alignment with the ConnectMenlo plan and accomplished bringing housing to the area. He said he could support the architectural control permit. He said regarding the BMR Housing Agreement that page 23 of the staff report indicated that this scenario was equivalent to all low-income rental units. He asked if that was averaging across the different affordability levels. Planner Smith said it was an averaging in the amount of rental subsidy the developer would provide equivalent to all low-income units. He said the Housing Division used a spreadsheet that calculated what the developer's subsidy would be and if they could propose a range of units that matched that dollar value then that was considered equivalent.

Commissioner Barnes said he liked the idea of the urgent care center as the community amenity noting it matched housing with health care and was within a half mile of everything in the area.

Commissioner Cynthia Harris said she was fine with the FEIR, the use permit and architectural control permit. She said regarding the community amenity she also favored the urgent care center. She said she had heard from Belle Haven residents that this was the favored amenity as it was located squarely in the social services improvement category of the Community Amenities List. She said it would alleviate the need for so many to travel to Stanford Hospital ER and absorbing those costs. She said it was in good proximity to Belle Haven and North Fair Oaks and the new residents of the M2 area. She said she wished the space was larger to accommodate a pharmacy as well. She said she was in favor of the alternate BMR proposal as it did get the City closer to the RHNA 5 requirements. She said they had not done a great job so far of meeting the very low and especially the moderate incomes. She said going forward she was concerned with how they would meet the RHNA 5 and then the RHNA 6. She questioned if the 15% BMR required would get them to the numbers needed for very low, low and moderate incomes. She appreciated all the public comments and especially the two speakers that encouraged the City to have developers not only provide low-income units but low-income units that could house a family.

Commissioner Riggs said he concurred with supporting the FEIR and the use permit. He said he would support staff's recommendation of the alternate BMR program. He said he had spoken with a couple of Belle Haven leaders and agreed with the urgent care center. He said it was well located to serve North Fair Oaks and the Belle Haven communities. He said he was reassured that the property line concerns would be addressed during the building permit phase. He said his heart went to lower income housing as the need was visible and palpable, but the City had done housing surveys repeatedly and found that the middle range was the most in demand. He said regarding traffic impacts that projects generate traffic. He said he was glad the City still addressed level of service and was making efforts through TIF and conditions of approval to improve. He said regarding the architecture that he appreciated the work of the talented architects that responded to the design guidelines, which were challenging and to the Commission's feedback. He said the apartment buildings were well designed. He said the townhomes would prove themselves or not. He said he supported everything in the staff report and supported the urgent care center. He made a motion to approve as recommended in the staff report.

Chair Doran suggested holding off on the motion to allow other Commissioners to speak.

Commissioner Michele Tate said she agreed with other Commissioners on the first items. She asked why the developer had not considered a mix of income levels for the for-sale townhomes. Mr. Morcos said the requirements for the rental units were different than for the for-sale units. He said they were required to provide moderate income for sale units and there was not a range that provided the same subsidy. He said the subsidy required for the for-sale units in general was much greater than for just one rental unit. Commissioner Tate said when she was on the Housing Commission one of the development projects that they reviewed decided to add low income to their for-sale units and it really made an impact. She said she understood about the subsidies but there were many rental units. She said she would have appreciated an effort made as she thought she had requested previously that at least one of the for-sale units be low income. She said home ownership gave people a different sense of community, commitment and overall being. She said it would have been appreciated if compromise had been made elsewhere to provide that opportunity for a family. She said looking at the mix of rental units and the high number for studios concerned her noting the overcrowding in the Belle Haven community. She said the idea of the urgent care center was great. She asked if any consideration had been made to house that in the new Community Center as opposed to being on the subject property as it was more convenient for people to get to the Community Center. She said there used to be a medical center attached to the

Senior Center. Mr. Morcos said there was discussion about some of their funds going to support the community center but at that point the community center had been approved and the direction received was that would not comply with the Community Amenity list. He said it was an urgent care center was a challenging use type because of the air flow transfers required, HVAC requirements, ceiling heights and number of bathrooms. He said as this was a new build and they had started the process with Ravenswood early they could get a Ravenswood architect in to confirm the fit.

Commissioner Tate asked what the City could do to put a for-sale home available at low income. Mr. Morcos suggested including it on the new Community Amenities list and staff presenting the idea to new applicants with for-sale units. He said they provided the VCLT option as that was one way to provide ownership opportunities at whatever affordability income levels the community wanted. He said at this point with this project they could not consider making one of the for-sale units low income. Commissioner Tate asked about their other projects and if there were for-sale units. Mr. Morcos said there were not for-sale units on their other two projects. Commissioner Tate said she hoped going forward that the City could do something to encourage a range of affordability for for-sale BMR units and trying to subsidize those in some way.

Chair Doran said they needed housing in Menlo Park and this company had a record of owning properties long term and would provide almost 500 homes. He said the developer had listened to the community and the Commission. He referred to the comment from the Bohannon Organization and staff's response that this would be resolved through the building permit process. He said the urgent care center was a great use of the space and having it planned through new construction was probably better than if it were built some place else.

Commissioner Kennedy said she had no additions to other Commissioner comments. She said the ongoing challenge was both placement and the large volume of housing needed whether rental or for sale as this was not figured out or how to bundle transit with housing.

Ms. Doherty noted changes to the proposed operating covenant, which was attached to the resolution approving the use permit, the operating covenant and BMR agreement. She said the first change in the operating covenant was in section 4.c to replace the word "sole" in the fifth line with the word "reasonable." She said that made clear that any revisions to the application for proposed replacement use shall be at the reasonable discretion, not the sole discretion of the City. She said the second change was to section 5.b to add a sentence at the end to read: "The owner may submit a request in writing to the City Manager for a minor modification to the operating standards described in this subsection based on a reasonable business necessity to do so. Any such minor modification approved by the City Manager shall be memorialized in writing between the Owner and the City." She said changes to Section 6 of the operating covenant were noted previously by Planner Smith. She said that was to revise the value of \$2,058,000 to \$2,837,500 which was just a mathematical error. She said the other change was to remove the requirement of a direct in-lieu payment to the City in the amount of \$300,000 and change \$1,425,376 to \$1,725,376. She noted a typographical error in subsection 6.b where it said "owner" when it should say "operator." She said the last was Condition 2n that should read as revised: "Prior to occupancy of the first apartment building to be constructed on the site, the applicant shall construct the paseo and publicly accessible open space on the apartment building parcels for the project to the satisfaction of the Building, Engineering, Planning and Transportation Divisions. The remainder of the publicly accessible open space on the townhome parcel shall be constructed prior to occupancy of the first townhome building on the site."

Ms. Doherty said there was a reference to a legal description for the community amenity space in the recitals to the Community Amenity Operating Agreement and that would be changed to reference the Community Amenity space as is depicted in the Exhibit attached hereto.

Replying in the affirmative to Chair Doran, Commissioner Riggs moved to approve all the recommended actions as stated in the staff report and to include the revisions made by staff this evening. Commissioner Barnes seconded the motion.

City Attorney Doherty confirmed with Commissioner Riggs that included adoption of the resolution certifying the FEIR and associated MMRP, the resolution approving the use permit, architectural control permit, BMR Housing Agreement, and Community Amenity Operating Agreement, and the resolution recommending that the City Council approve the vesting tentative map for the major subdivision.

ACTION: M/S (Riggs/Barnes) to approve the item as recommended in the staff report; passes 7-0.

1. Make the required findings per the California Environmental Quality Act (CEQA) and certify the final environmental impact report (FEIR) that analyzes the potential environmental impacts of the proposed project, along with an associated Mitigation, Monitoring, and Reporting Program (MMRP) (Attachment A, Exhibit B and D);
2. Approve the use permit to demolish three single-story industrial and office buildings with a total of 110,356 square feet, and construct 483 dwelling units comprised of 441 multi-family rental units and 42 for-sale townhomes, and approximately 2,940 square feet of commercial space. The use permit includes a request for bonus level development potential, which would allow increases in floor area ratio (FAR), density, and height in exchange for providing community amenities. The use permit also includes a request for hazardous materials to allow for diesel generators to operate automated parking systems and critical building resources in the event of an emergency (Attachment B);
3. Approve the architectural control permit for the design of the new buildings and associated site improvements (Attachment B);
4. Recommend the City Council approve the vesting tentative map for the major subdivision to create a tentative map with 42 condominium units and to adjust the lot lines of the three existing parcels on the site, locating the two apartment buildings on individual parcels and the 42 condominium townhome units on an individual parcel (Attachment C);
5. Approve the below market rate (BMR) housing agreement for the inclusion of 73 on-site BMR units (67 rental units and six for-sale townhomes) in compliance with the City's Below Market Rate Housing Program requirements (Attachment B, Exhibit E); and,
6. Approve the community amenity operating covenant as part of the use permit request for the operation of commercial space within the proposed project in exchange for bonus level development potential, in compliance with the City's Community Amenities requirement for bonus level development (Attachment B, Exhibit F).

H. Adjournment

Chair Doran adjourned the meeting at 10:55 p.m.

Staff Liaison: Corinna Sandmeier, Senior Planner

Recording Secretary: Brenda Bennett

Approved by the Planning Commission on July 26, 2021



Kelly M. Rem
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July 6, 2021

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

Ms. Judi Herren, City Clerk
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

Re: Appeal of Planning Commission's Decision to Certify Final Environmental Impact Report for the Menlo Uptown Project

Dear Ms. Herren:

This office represents the Sequoia Union High School District ("District"). Through this letter, the District submits its formal appeal of the Menlo Park Planning Commission's ("Planning Commission") decision to certify the Final Environmental Impact Report ("Final EIR") prepared for the Menlo Uptown Project ("Project") at its meeting held on June 21, 2021 ("June 21 Meeting"). To the extent that certification of the Final EIR served as a necessary predicate in approving the Project's use permit, architectural control permit, below market rate housing agreement, and community amenities, the District hereby appeals those approvals as well.

I. Background and Reason for Appeal

As previously indicated, Greystar LLC ("Developer") is proposing an enormous mixed-use project directly across the street from the District's TIDE Academy. As noted in the Final EIR and discussed in the District's prior correspondence to the City, a Fiscal Impact Analysis Report prepared for the City indicates that this Project will cause the District to lose hundreds of thousands of dollars every year. Further, it is anticipated that the Project, in combination with the numerous other projects being considered by the City, will generate thousands of new vehicles to the area on a daily basis. The District expects that these vehicles, combined with fiscal impacts to the District's budget, will inevitably impact the District's ability to provide its public service, as well as the safety of District students traveling to and from school.

The District has submitted numerous comment letters highlighting the District's concerns regarding the Project, including on February 2, 2021 ("February 2 Letter"), and June 21, 2021 ("June 21 Letter," and collectively with the February 2 Letter, the "Comment Letters"). The February 2 Letter and the June 21 Letter are attached hereto as Exhibits A and B, respectively, and are incorporated herein by this reference.

Limited Liability Partnership

Through the February 2 Letter, we noted that the Draft EIR did not comply with the California Environmental Quality Act (“CEQA,” Pub. Res. Code §§ 21000, *et seq.*) and its implementing regulations (Cal. Code Regs., tit. 14, §§ 15000, *et seq.*, “CEQA Guidelines”), for both technical and substantive reasons. Specifically, the Draft EIR, based on an inappropriate reliance on the ConnectMenlo EIR and improper interpretation of Senate Bill (“SB”) 50, did not include sufficient information to evaluate potential environmental impacts both to schools, and related to schools. Through our June 21 Letter, we highlighted some of the major deficiencies in the Final EIR, and formally preserved the District’s rights to object to the Project on CEQA grounds, including on those grounds listed in the February 2 Letter, should the District’s concerns remain unaddressed.

Through this appeal, the District asserts that its concerns raised in the Comment Letters have not been addressed adequately in the Draft EIR, Final EIR, or by the Planning Commission at the June 21 Meeting. As indicated by Commissioner Doran towards the end of the June 21 Meeting, the Planning Commission’s position appears to be that the District should not have located TIDE Academy in the Bayfront Area in the first place. The District’s decision to locate TIDE Academy in the Bayfront Area is no longer relevant, however, and does not relieve the lead agency of its obligation to fully analyze the Project’s impacts on and related to the District’s educational program, including at TIDE Academy.

II. Issues on Appeal

The District appeals the Planning Commission’s decision to certify the Final EIR on the following grounds:

A. Planning Commission lacked authority to certify the Final EIR, as the Planning Commission was not the “final decision-making body” for approval of the Project.

The District re-states and incorporates herein its objections stated in Section II of the June 21 Letter.

As previously explained, the City Planning Commission would only have authority to certify the Final EIR if the Planning Commission is the final decision-making body for approval of the “project” under CEQA. (See, *California Clean Energy Committee v. City of San Jose* (2014) 220 Cal.App.4th 1325 [delegation to Planning Commission of the obligation to certify EIR was improper where City Council had final decision-making authority over project approval].) CEQA Guidelines section 15378(a) defines “project” as the “whole of the action.” In deciding what constitutes the “whole of the action,” California courts look to the circumstances surrounding project approval, and whether the agency has committed itself to the project so as to effectively preclude the consideration of any alternatives to the project, including mitigation measures or the alternative of not going forward with the Project. (See, *Save Tara v. City of West Hollywood* (2008) 45 C4th 116, 139.)

In this instance, while certain elements of the Project may be approved by the Planning Commission, the City Council is responsible for approving the major subdivision. This is a very significant entitlement, and if the City does not grant this approval, the Project would not be able to move forward as proposed. For this reason, the District contends that the City is the “final decision-making body” regarding Project approval, and so is the entity responsible for certifying the Final EIR. The City Planning Commission exceeded its authority in certifying the Final EIR, and as such, all entitlement approvals by the Planning Commission based on that certification are invalid.

B. The Draft EIR, Final EIR, and Planning Commission failed appropriately to consider the District’s TIDE Academy in all discussions of the “environmental setting.”

The District re-states and incorporates herein its objections stated in Section II of the February 2 Letter and Section III of the June 21 Letter. Neither the Draft EIR nor the Final EIR met their purpose as informational documents because they failed to provide an adequate description of the environmental setting related to schools, and specifically TIDE Academy. None of the District’s concerns on this point were addressed at the June 21 Meeting.

C. The Draft EIR, Final EIR, and Planning Commission failed appropriately to analyze impacts on and related to schools because the environmental analysis improperly ‘tiered’ from the ConnectMenlo EIR.

The District re-states and incorporates herein its objections stated in Section III.A of the February 2 Letter and Section IV.A of the June 21 Letter to the Draft EIR’s and Final EIR’s reliance on the information, analysis, and mitigation measures contained in the “program” EIR prepared for the City’s General Plan update in 2016, referred to as the ConnectMenlo project.

The District appreciates that this issue was raised by Commissioner DeCardy during the June 21 Meeting. Unfortunately, in response to Commissioner DeCard’s concerns, the City’s CEQA consultants only repeated assertions made in the Final EIR that the impacts of the proposed Project would fit within the parameters of development potential that were evaluated in the ConnectMeno EIR. As explained extensively in the Comment Letters, this is not the case. Rather, the ConnectMenlo EIR, including the document’s analysis of public service impacts, was explicitly based on the assumption that development would occur incrementally over a 24-year period. (ConnectMenlo Draft EIR at 4.12-40 [“Because future development under the proposed project would occur incrementally over the 24-year buildout horizon and, in compliance with SB 50, would be subject to pay development impact fees that are current at the time of development, impacts related to the SUHSD would be less than significant”].) Further, ConnectMenlo did not consider either the program or Project’s specific impacts on the District’s TIDE Academy, as this school did not yet exist when the ConnectMenlo EIR was prepared. This latter comment was not addressed during the June 21 Meeting.

Because circumstances have changed since the ConnectMenlo EIR was drafted, and because the Project, in conjunction with all other projects being considered in the Bayfront Area, will result

in significant environmental impacts that were not examined in the program EIR, the District objects to the Draft EIR's and Final EIR's reliance on the ConnectMenlo EIR.

D. The Draft EIR, Final EIR, and Planning Commission failed to identify and analyze all impacts on school facilities under CEQA's threshold of significance for Public Services impacts.

The District re-states and incorporates herein its objections stated in Section III.B of the February 2 Letter and Section IV.B of the June 21 Letter. The Draft EIR, as modified by the Final EIR, maintains an inadequate discussion of impacts on schools under CEQA's threshold of significance for Public Services impacts. Rather, the Draft EIR and Final EIR attempt to avoid analyzing impacts on the District and its schools through reliance on the ConnectMenlo EIR. As extensively explained in the Comment Letters, the Draft EIR's and Final EIR's reliance on the public services impacts analysis in the ConnectMenlo EIR is improper.

The ConnectMenlo EIR, Draft EIR, and Final EIR all fail to provide sufficient information needed to analyze all potential impacts of the Project on the District under the stated Public Services threshold of significance, including but not limited to: (1) whether the influx of students would require "physically altered" school facilities; (2) whether other impacts of the proposed Project, such as increased traffic in the neighborhood surrounding TIDE Academy and/or Menlo-Atherton High School, could impact the District's use or need for new or physically altered school facilities; and (3) whether other impacts of the proposed Project could otherwise interfere with the District's ability to accomplish its own performance objectives. None of these issues were addressed at the June 21 Meeting.

E. The Draft EIR, Final EIR, and Planning Commission failed to consider evidence of impacts on the District presented in the "Fiscal Impact Analysis Report" (Dec. 2020) prepared by BAE Urban Economics on behalf of the City.

The District re-states and incorporates herein its objections stated in Section IV.C of the June 21 Letter. BAE Urban Economics, on behalf of the City, has prepared a "Fiscal Impact Analysis Report" (Dec. 2020) analyzing the Project's anticipated fiscal impacts on the City and various special districts and school districts serving the Project. While flawed, the Report shows that the Project will have significant fiscal impacts on the District. Fiscal impacts caused by the Project will likely result in physical impacts on District facilities, which will interfere with the District's ability to provide its public service in accordance with the District's performance objectives. These impacts were not properly considered in the Draft EIR, Final EIR, or at the June 21 Meeting.

F. The Draft EIR, Final EIR, and Planning Commission failed to consider and analyze all "school-related" impacts that may be caused by the Project.

The District re-states and incorporates herein its objections stated in Section III.C of the February 2 Letter and Section IV.D of the June 21 Letter.

At the June 21 Meeting, the Planning Commission again appeared to rely on Senate Bill (SB) 50 for the assertion that all of the Project's impacts on the District will be mitigated through the payment of school impact fees. The Government Code provides that the payment of developer fees authorized by Education Code section 17620 constitutes "full and complete mitigation of the impacts of any legislative or adjudicative act on the provision of adequate school facilities." (Gov. Code § 65995(h); see also, Gov. Code § 65996(a).) However, as repeatedly asserted in the Comment Letters, California courts have since acknowledged that developer fees do not constitute full and complete mitigation for school-related impacts other than impacts "on school facilities" caused by overcrowding. (*Chawanakee Unified Sch. Dist. v. Cty. of Madera* (2011) 196 Cal.App.4th 1016.) Thus, the assertion that school impact fees are considered full and complete mitigation for all of the Project's "potential impacts to school services" is inconsistent with California law.

In light of the above, the District in the Comment Letters requested that the Draft EIR and Final EIR analyze 27 sub-categories of information that are necessary to determine whether the Project will result in significant environmental impacts both on and related to schools, including impacts that would not be impacts "on school facilities" caused solely by overcrowding. Both documents failed to do so, and none of the District's concerns were addressed by the Planning Commission at the June 21 Meeting.

V. The Draft EIR, Final EIR, and Planning Commission failed to propose adequate mitigation measures for any impacts of the Project on the District.

Based on the deficiencies of the Draft and Final EIRs described above and in the Comment Letters, the District objects to assertions in the Draft EIR, Final EIR, and at the June 21 Meeting that payment of school impact fees will mitigate all school impacts to a less than significant level is inaccurate. Since there has been no detailed discussion or analysis of existing and projected Project conditions, considering both the impact on school facilities and the impacts related to schools, one cannot accurately reach the conclusion that developer fees are adequate to mitigate the Project's school impacts. The District re-states and incorporates herein its assertions in Section V of the February 2 Letter and Section V of the June 21 Letter.

VI. Conclusion

As explained extensively by the District, the Draft EIR, as modified by the Final EIR, does not adequately analyze the Project's potential impacts on and related to schools and mitigation measures that would lessen these impacts. At the June 21 Meeting, the City Planning Commission and staff did not adequately address the District's concerns. For these reasons, and for all of the reasons stated in the Comment Letters, the District objects to and appeals the Planning Commission's certification of the Final EIR at the June 21 Meeting. To the extent that certification of the Final EIR was a necessary predicate to the Planning Commission's approval of the Project's use permit, architectural control permit, below market rate housing agreement, and community amenities, the District hereby objects to and appeals those approvals.

Ms. Judi Herren
City of Menlo Park
July 6, 2021
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The District remains prepared to provide information as necessary to assist City and Developer in addressing each of the District's concerns regarding the proposed Project. The District stands ready to meet and work with the City and Developer to address these vital issues.

Sincerely,

LOZANO SMITH

A handwritten signature in blue ink that reads "Kelly M. Rem". The signature is written in a cursive style with a large, looped "K" and "R".

Kelly M. Rem

KMR/mag

Enclosures

cc: Crystal Leach, Associate Superintendent of Administrative Services (cleach@seq.org)

EXHIBIT A



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

Mr. Tom Smith
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 Draft Environmental Impact Report for the Menlo Uptown Project

Dear Mr. Smith:

This office represents Sequoia Union High School District (“District”). On behalf of the District, we are hereby submitting comments regarding the Draft Environmental Impact Report (“Draft EIR”) prepared by the City of Menlo Park (“City”) for the project to be located on an approximately 4.83-acre site having the addresses of 141 Jefferson Drive, 180 Constitution Drive, and 186 Constitution Drive, Menlo Park, CA (collectively, the “Property”). According to the Draft EIR, the proposed project, sponsored by Uptown Menlo Park Venture, LLC (an affiliate of development company Greystar) (“Developer”), will consist of the demolition of the existing commercial and industrial space and redevelopment of the Property with three residential buildings totaling approximately 471,986 square feet (“sf”) with 441 multi-family rental units, 42 townhomes, and 2,940 sf of office space, associated open space, circulation and parking, and infrastructure improvements (the “Project”). This enormous Project is anticipated to generate approximately 1,242 new residents, and a corresponding increase of approximately 100 new high school students to the District. The Project will be located directly across the street from the District’s TIDE Academy.

Please note that, concurrently with this letter, the District is transmitting its response to the Draft Environmental Impact Report for the 111 Independence Drive Project. Both the 111 Independence Drive Project and the instant Project are mixed-use residential projects proposed in the Bayfront Area of Menlo Park a short distance away from the District’s TIDE Academy. Further, the Initial Studies and Draft EIRs for both projects were prepared by the same firm and are substantially similar. For these reasons, the District’s comments in response to both Draft EIRs are substantially similar.

Limited Liability Partnership

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

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

The District addressed many of these issues with Developer at a meeting on February 25, 2020. Since that meeting, and unlike other developers in the area, Developer has been entirely unresponsive to District’s efforts to have further meetings, and to further discuss potential impacts related to Developer’s numerous projects proposed throughout Menlo Park. The District is hopeful that collaboration with City and Developer, as outlined in this letter, will yield meaningful solutions that alleviate the impacts caused by the Project. District is prepared to provide information as necessary to assist City and Developer in addressing each of the District’s concerns regarding the proposed Project.

I. Background: Initial Study, Notices of Preparation, and District’s Scoping Letter

The District previously submitted comments to the City in response to the City’s Notice of Preparation (“NOP”) and Initial Study (“Initial Study”), on January 10, 2020. The District likewise attended and submitted oral comments during a scoping session held for the Project in December of 2019. A copy of the District’s January comment letter (referred to as the “Prior Comment Letter”) is attached hereto, and incorporated herein by this reference.

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

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

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

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

District facilities are a critical part of the Project location's environment, and should be considered throughout the Draft EIR impact categories. As noted, the Project is located directly across the street from the District's TIDE Academy (85 feet north of TIDE Academy, according to the Draft EIR). (Draft EIR at 4.5-14.) TIDE Academy's first year of operations was the 2019/2020 school year. While enrollment was 103 students for the first year of operations, the District anticipates that it will exceed its 400-student capacity at TIDE by the fourth year of operations (2023-2024). The Project is otherwise located within the District's Menlo Atherton High School attendance boundary. Menlo Atherton High School, which is the county's largest high school, currently exceeds its capacity by 200 students. The District is inadequately equipped to house these excess students. The proposed Project will be accessed via Jefferson Drive, which road is used by District families, students, and staff to walk, bike, and drive to school from neighborhoods located to the east, west, and south. Jefferson Drive and the Bayfront Area generally have been, and are anticipated to continue being, heavily impacted by traffic, traffic exhaust, and fumes due to increased development in the neighborhood.

The Draft EIR purports to describe the Project's environmental setting in each of the five environmental impact categories that are analyzed in the Draft EIR. In doing so, the Draft EIR notes the location of TIDE Academy in a few instances. However, the Draft EIR otherwise fails to present any information needed to assess the Project's environmental impacts on the District, TIDE Academy, or Menlo Atherton High School. For instance, the Draft EIR fails to address the current and projected future enrollment at TIDE or any other District schools that will be affected by the Project; the District's educational program objectives at TIDE and or Menlo Atherton High School; a description of how the District currently uses its facilities at TIDE or Menlo Atherton High School; and the current vehicular and pedestrian paths of travel used by District staff, students and their families to get to and from these schools, in the context of a neighborhood that

has already been severely impacted by traffic. Without consideration of these factors, it is impossible for the lead agency and public to assess whether there are any impacts posed by the Project on the District's students, families, and staff, and whether those impacts are significant.

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

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

The Draft EIR improperly "scopes out" numerous environmental impact categories, including "Public Services" impacts related to schools. In doing so, the Draft EIR relies on the analysis of Public Services impacts contained in the Initial Study, which in turn tiers off of the analysis of Public Services impacts contained in the City's EIR prepared for its General Plan update (referred to as "ConnectMenlo") in 2016. (Draft EIR at 1-2; Initial Study at 3-45.) Specifically, the Initial Study states as follows:

The ConnectMenlo Final EIR determined that any development associated with ConnectMenlo would be subject to payment of development impact fees, which under Senate Bill 50 (SB 50) are deemed to be full and complete mitigation... Therefore, because the proposed project would comply with existing regulations prepared to minimize impacts related to schools and would be subject to the mandatory payment of developer impact fees pursuant to SB 50, the proposed project would have a less- than- significant impact related to the need for remodeled or expanded school facilities and no new or more severe impacts would occur beyond those examined in the ConnectMenlo Final EIR.

(Initial Study at 3-45.)

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

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

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

A "program" EIR is an EIR prepared for a series of small projects that can be characterized as one large project. (14 Cal. Code Regs. § 15168(a).) A project proponent may rely on a program EIR's analysis of the program's environmental impacts, mitigation measures, and alternatives in order to engage in a simplified environmental review for a future project contemplated by the program. (*Id.* at subd. (d).) However, when a program EIR is relied on by a future project

proponent, the new project proponent must carefully examine the impacts addressed in the program EIR and determine whether additional environmental review is required. An agency's evaluation of the sufficiency of a program EIR for later approval of a project contemplated by the program involves a two-step process:

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

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

The Initial Study and Draft EIR's reliance on the ConnectMenlo EIR's analysis of potential impacts on the District and its facilities is improper and misguided. Circumstances have changed since the time that the ConnectMenlo EIR was prepared, and the development assumptions underlying the ConnectMenlo project approvals have proven inaccurate. Critically, ConnectMenlo was based on the incorrect assumption that development under the program would take place in an incremental fashion, over the course of 24 years. As noted in the instant Project's Draft EIR, ConnectMenlo envisioned that 4,500 new residential units would be added to the Bayfront Area by 2040. According to the City's current "ConnectMenlo Project Summary Table," development currently proposed and/or completed in the neighborhood would result in the construction of 3,257 net new residential units. This does not include the 540 units that have already been completed at 3639 Haven Avenue and 3645 Haven Avenue, which would bring the total number of residential units to 3,797. This equates to 84% of the total authorized new buildout under ConnectMenlo.¹ It is clear from this trend that full buildout under ConnectMenlo will be achieved well in advance of 2040. The Initial Study acknowledges the fact that this assumption was incorrect in providing that "[a]lthough the ConnectMenlo Final EIR assumed a buildout horizon of 2040, the maximum development potential may be reached sooner than anticipated." (Initial Study at 1-4, fn. 8.)

The Initial Study goes on to provide that "the pace of development would not create additional impacts beyond those identified in the ConnectMenlo Final EIR for topic areas identified in this Initial Study." (*Id.*) The District vehemently disagrees with this conclusion. Contrary to the Draft EIR's assertions on page 3-10, footnote 9, the ConnectMenlo EIR's analysis regarding the General Plan Update's impacts on the District (and on other public services) was founded on the assumption that development of the Bayfront Area would take place in an "incremental fashion."

¹ <https://www.menlopark.org/DocumentCenter/View/23346/ConnectMenlo-Project-Summary-Table>

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

Further, ConnectMenlo did not consider either the program or Project’s specific impacts on the District’s TIDE Academy, as this school did not yet exist when the ConnectMenlo EIR was prepared. Because TIDE Academy is located in the Bayfront neighborhood, it is particularly vulnerable to the thousands of residential units authorized by ConnectMenlo, all of which will be constructed in the Bayfront Area. ConnectMenlo did not consider whether/how the placement of thousands of residential units within a few hundred meters from a District high school would impact the District’s program at TIDE Academy. Accordingly, the Draft EIR’s reliance on the analysis and mitigation measures described in the ConnectMenlo EIR is inappropriate with respect to impacts on the District.

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

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

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

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

(Initial Study at 3-44.)

In purporting to analyze public services impacts on the District under this threshold, the Initial Study and Draft EIR tier from the analysis of the ConnectMenlo Draft EIR. The ConnectMenlo Draft EIR’s analysis consisted mostly of noting the current enrollment capacity of Menlo Atherton High School and the District’s unspecified plans for construction of a future high school. (ConnectMenlo Draft EIR at 4.12-39-4.12-40.) The ConnectMenlo EIR concluded that

because the developer would pay developer fees as required by SB 50, any impacts on schools would be less than significant. (ConnectMenlo Draft EIR at 4.12-40.) The instant Project's Draft EIR and Initial Study adopt the same conclusion as the ConnectMenlo EIR, albeit without analyzing the District's facilities capacity in any way. (Initial Study at 3-45; Draft EIR at 5-7.)

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

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

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

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

1. Existing and future conditions within the District, on a school-by-school basis, including size, location and capacity of facilities.
2. Adequacy of both existing infrastructure serving schools and anticipated infrastructure needed to serve future schools.
3. District's past and present enrollment trends.
4. District's current uses of its facilities.

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

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

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

As noted in the District's most recent School Fee Justification Study (April 2020), the District anticipates that an estimated 17,516 residential units may be constructed within District boundaries over the next 20 years, including approximately 5,500 units in Menlo Park. (SFJS, Appx. C.) Using the District's current student generation rate of 0.2 new high school students

per residential unit, this new development, which will include numerous other development projects in the Bayfront Area, is anticipated to generate well over a thousand new students to the District. (SFJS at 9.) It is therefore likely that the District will exceed its facilities capacity at various locations throughout its boundaries in the coming years, including at TIDE Academy. The District anticipates both that the combined impact of the Project and all other residential development and commercial development projects in District boundaries and the Project neighborhood will significantly impact the District's ability to provide its public service in accordance with established performance objectives, and that the Project's incremental effect is cumulatively considerable.² (CEQA Guidelines § 15130(a).) Because the District currently exceeds capacity in various locations, it is further anticipated that the Project, when viewed in conjunction with numerous other projects, will cause the District to need new or physically altered school facilities, including at TIDE Academy.

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

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

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

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

² The Draft EIR contains an inventory of “Cumulative Projects in the Vicinity of the Project Site” on pages 4-3-4-5, but fails to include the proposed, very large mixed-use residential and commercial development project at 123 Independence Drive. It is expected that this project, in combination with the instant Project, will significantly impact District students attending TIDE Academy, and it must be considered when analyzing cumulative impacts on and related to schools.

development, which statutory amounts may be increased every two years based on the statewide cost index for class B construction.³

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

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

SB 50 declares that the payment of the developer fees authorized by Education Code section 17620 constitutes “full and complete mitigation of the impacts of any legislative or adjudicative act on the provision of adequate school facilities.” (Gov. Code § 65995(h); see also, Gov. Code § 65996(a).) **However, California courts have since acknowledged that developer fees do not constitute full and complete mitigation for school-related impacts other than impacts “on school facilities” caused by overcrowding.** (*Chawanakee Unified Sch. Dist. v. Cty. of Madera* (2011) 196 Cal.App.4th 1016 (“*Chawanakee*”).) *Chawanakee* addressed the extent to which the lead agency (Madera County) was required to consider school related impacts in an EIR for new development. The court determined that SB 50 does not excuse a lead agency from conducting environmental review of school impacts other than an impact “on school facilities.” The court required that the County set aside the certification of the EIR and approvals of the project and take action necessary to bring the EIR into compliance with CEQA. (*Id.* at 1029.) In so holding, the court explained as follows:

[A]n impact on traffic, even if that traffic is near a school facility and related to getting students to and from the facility, is not an impact 'on school facilities' for purposes of Government Code section 65996, subdivision (a). From both a chronological and a molecular view of adverse physical change, the additional students traveling to existing

³ Due to a Fee Sharing Agreement between the District and its elementary feeder school districts, the District is currently authorized to impose fees of \$1.63 per square foot for residential construction (40% of \$4.08), and \$0.26 per square foot for commercial/industrial construction (40% of \$0.66).

schools will impact the roadways and traffic before they set foot on the school grounds. From a funding perspective, the capped school facilities fee will not be used by a school district to improve intersections affected by the traffic. Thus, it makes little sense to say that the impact on traffic is fully mitigated by the payment of the fee. In summary ... the impact on traffic is not an impact on school facilities and, as a result, the impact on traffic must be considered in the EIR.

(*Id.* at 1028-29.)

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

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

i. Traffic/Transportation/Circulation

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

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

The requirement to analyze student safety issues is rooted in both the California Constitution and CEQA. Article I, section 28(c), of the California Constitution states that all students and staff of primary, elementary, junior high, and senior high schools have the inalienable right to attend campuses that are “safe, secure, and peaceful.” CEQA is rooted in the premise that “the maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.” (Pub. Res. Code § 21000(a).) Naturally, safety is crucial in the maintenance of a quality environment. “The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached.” (Pub. Res. Code § 21000(d).) The

Legislature has made clear in declarations accompanying CEQA's enactment that public health and safety are of great importance in the statutory scheme. (Pub. Res. Code §§ 21000 (b), (c), (d), (g); 21001(b), (d) (emphasizing the need to provide for the public's welfare, health, safety, enjoyment, and living environment.) (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 386.)

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

14. The existing and the anticipated vehicular traffic and student pedestrian movement patterns to and from school sites, including movement patterns to and from TIDE Academy, and including consideration of bus routes.
15. The impact(s) of increased vehicular movement and volumes caused by the Project, including but not limited to potential conflicts with school pedestrian movement, school transportation, and busing activities to and from TIDE Academy.
16. The estimated travel demand and trip generation, trip distribution and trip assignment by including consideration of school sites and home-to-school travel.
17. The cumulative impacts on schools and the community in general resulting from increased vehicular movement and volumes expected from additional development already approved or pending.
18. The direct, indirect, and cumulative impacts on the circulation and traffic patterns in the community as a result of traffic generated by the transportation needs of students to and from the Project and schools throughout the District during the Project build-out.
19. The impacts on the routes and safety of students traveling to school by vehicle, bus, walking, and bicycles.

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

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

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

campuses and mixed biotechnology, commercial, office, and residential land uses. ConnectMenlo calls for an increase of 4.7 million square feet of non-residential office space, 850 hotel rooms, 5,430 residential units, 13,960 residents, and 20,150 employees, all within the Bayfront Area.⁴ ConnectMenlo concluded that the additional development would result in significant and unavoidable impacts to roadway segments and increase peak hour delays at intersections from increased traffic, even after the mitigation measures called for in the General Plan Update are implemented (if ever).⁵

The Level of Service (LOS) analysis included in the Project's Draft EIR further reveals that the intersections surrounding the Project site and TIDE Academy, including the intersections of Marsh Road/Bayfront Expressway, Chrysler Drive/Independence Drive, Chilco Street/Constitution Drive, Willow Road/Bayfront Expressway, and University Avenue/Bayfront Expressway, are currently operating at an LOS of 'D' or worse at one or more peak hours, and do not meet the City's desired LOS standards. (Draft EIR, Appx. E, at 10-11.) Per the Draft EIR, traffic generated by the Project, in conjunction with other near term projects expected to be approved, would also cause the levels of service at the intersection of Chrysler Drive/Constitution Drive to drop to an 'F,' and would further degrade the levels of service at numerous other intersections. (Draft EIR at 4.2-43-4.2-44.) In analyzing intersection Levels of Service under "Cumulative (2040) Plus Project Conditions," the Draft EIR shows that most intersections in the Project neighborhood will be operating out of compliance with the City's Circulation Policy goals. (Draft EIR at 4.2-53-4.2-54.) While the Draft EIR discusses certain improvement measures that the City may take to resolve these traffic issues, including the payment of transportation impact fees to fund some (but not all) of the improvement measures, it is unclear from the Draft EIR exactly when or if these measures will be accomplished. (See, e.g., Draft EIR at 4.2-48 ["While the improvements to the westbound approach are included in the City's TIF program, the improvements on the other approaches are beyond those in the TIF program and payment of the TIF would not entirely address the change to LOS as a result of project traffic"]; see also, Draft EIR, Appx. E, at 16 and 17 ["The implementation timeline of these proposed improvements [to walking, biking, and transit facilities] is unknown"].) In addition to deficient vehicular intersections, the Draft EIR states that the "network of sidewalks, crosswalks, and curb ramps are discontinuous in the vicinity of the proposed project." (Draft EIR at 4.2-7.) Finally, the Draft EIR goes on to note several sidewalk gaps that exist in the Bayfront Area. (*Id.*)

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

⁴ Menlo Park Small High School Project Final EIR (October 6, 2016), p. 2-12; ConnectMenlo: General Plan Land Use & Circulation Elements and M-2 Area Zoning Update Draft EIR (June 1, 2016), Table 3-2.

⁵ Menlo Park Small High School Project Final EIR (October 6, 2016), pp. 2-15 – 2-16; ConnectMenlo: General Plan Land Use & Circulation Elements and M-2 Area Zoning Update (June 1, 2016), p. 4.13-73.

The Draft EIR shows that the proposed Project is anticipated to impede circulation in the Bayfront Area, and clog the access roads to, from, and around the District's TIDE Academy. (See, 5 Cal. Code Regs. § 14010(k), which requires that school facilities be easily accessible from arterial roads.) The TIDE Academy driveway is located almost directly across Jefferson Drive from the Project's proposed entryway. 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 thousands of new residents to the area, including an estimated 100 new high school students, the proposed Project will draw thousands of daily office commuters, visitors, and emergency access vehicles from around the Bay Area.

As indicated in the City's General Plan, and as shown in the Draft EIR, the City's roads and intersections are not currently equipped to accommodate such high density development and high levels of traffic. (See, e.g., Draft EIR at 4.2-23-4.2-26 [ConnectMenlo EIR found significant and unavoidable impacts to several different elements of the City's transportation system due to project buildout].) Jefferson Drive is a narrow two-lane road. Accordingly, such increases to traffic in the area will not only make it much more difficult for students and staff to travel to and from TIDE Academy, but will also **drastically increase the risk of vehicular accidents to District families, students, and staff traveling to and from school**. For instance, many students at TIDE Academy access the school by turning onto Independence Drive from Marsh Road (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. This roadway condition was not discussed in the Draft EIR.

In addition to increased risks of vehicular accidents, the Draft EIR fails to analyze how traffic and parking impacts posed by the Project will impact the safety and convenience of TIDE Academy students who walk or bike to school. Title 5 of the California Code of Regulations requires that school sites be located within a proposed attendance area that encourages student walking and avoids extensive bussing. (5 Cal. Code Regs. § 14010(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.⁶ 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.⁷

⁶ 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.

⁷ Menlo Park Small High School Project Draft EIR (July 8, 2016), p. S-6.

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

- Goal CIRC-1: Provide and maintain a safe, efficient, attractive, user-friendly circulation system that promotes a healthy, safe, and active community and quality of life throughout Menlo Park.
- Goal CIRC-2: Increase accessibility for and use of streets by pedestrians, bicyclists, and transit riders.
- Policy CIRC-2.14. Impacts of New Development. Require new development to mitigate its impacts on the safety...and efficiency...of the circulation system. New development should minimize cut-through and high-speed vehicle traffic on residential streets; minimize the number of vehicle trips; provide appropriate bicycle, pedestrian, and transit connections, amenities and improvements in proportion with the scale of proposed projects; and facilitate appropriate or adequate response times and access for emergency vehicles.
- Policy CIRC-3.4: Level of Service. Strive to maintain level of service D at all City-controlled signalized intersections during peak hours...
- **Policy CIRC-6.4: Employers and Schools. Encourage employers and schools to promote walking, bicycling, carpooling, shuttles, and transit use.**

(Draft EIR at 4.2-17-4.2-19; emphasis added.)

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

While the Draft EIR purports to analyze whether the Project complies with the above policies, the Draft EIR does not include adequate information or analysis regarding the transportation needs and patterns of District students, including those attending TIDE Academy. The Draft EIR likewise fails to consider how extreme increases in traffic on roads that are already narrow and crowded will impact the safety of students traveling to and from TIDE Academy. Rather, in assessing whether the Project would be consistent with Policy CIRC-6.4 related to Employers and Schools, the Draft EIR doesn't even mention schools in simply stating that the "proposed project would develop and implement a TDM plan that includes measures encouraging employers to promote walking, bicycling, carpooling, shuttles, and transit use." (Draft EIR at 4.2-33.) This analysis is not adequate under CEQA, as it does not provide the public with sufficient information as to whether the Project will comply with the City's General Plan policies.

The Draft EIR likewise provides only surface-level analysis regarding the Project's compliance with other City policies related to the promotion of safe alternative modes of transportation. The

Draft EIR notes that there are several existing deficiencies with pedestrian facilities within and in the vicinity of the Project site, including discontinuous sidewalks, crosswalks, and curb ramps, as well as sidewalk gaps. (Draft EIR at 4.2-7.) The Draft EIR also notes that the Project would involve the addition of a paseo and a small portion of sidewalk intended to encourage the use of pedestrian facilities. (Draft EIR at 4.2-31.) However, the analysis completely fails to consider how the probable increase in traffic congestion to the area could exacerbate existing deficiencies with pedestrian facilities, thereby posing severe safety issues to pedestrian use of the Project neighborhood. Contrary to assertions in the Draft EIR, the new criteria established in CEQA Guidelines section 15064.3 for analyzing transportation impacts does not excuse a lead agency from analyzing and mitigating traffic congestion impacts where such impacts may cause significant impacts on air quality, noise, and pedestrian safety. (Pub. Res. Code § 21099(b)(3).)

The inadequate parking proposed for the Project will also magnify issues related to pedestrian safety. While inadequate parking in and of itself may not be considered a significant impact under CEQA, the Draft EIR is still required to provide sufficient information regarding any secondary impacts that may result from inadequate parking, such as safety impacts to students traveling to and from school. (See, *Covina Residents for Responsible Development v. City of Covina* (2018) 21 CA5th 712, 728.) While the number of parking spaces proposed for the Project would satisfy the City's Municipal Code requirements, the Draft EIR notes that demand for parking generated by the Project would exceed the proposed supply by at least 80 spaces. (Draft EIR at 4.2-68.) This will result in an increased demand for public parking spaces in the streets surrounding TIDE Academy and the Property, which will in turn lead to more crowded streets and a higher potential for conflicts between vehicles and pedestrians. These secondary impacts on pedestrian and student safety caused by inadequate parking must be analyzed.

Finally, the Draft EIR's cumulative traffic impacts analysis is deficient. As noted above, EIRs must discuss cumulative impacts of a project when the project's effects on the environment, viewed in conjunction with impacts of other past, present, or reasonably foreseeable future projects, is cumulatively considerable. (CEQA Guidelines § 15130(a).) (See, *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 CA4th 713, 720.) While a lead agency may incorporate information from previously-prepared program EIRs into the agency's analysis of a project's cumulative impacts, the lead agency must address all cumulative impacts that were not previously addressed in the program EIR. (Pub. Res. Code § 21083.3(c); 14 CCR 14183(b)(3).)

The Project's above-discussed anticipated traffic and safety impacts on the District, combined with the anticipated traffic and safety impacts of the vast number of development projects that have recently been approved and are being considered for approval in the Bayfront Area, and specifically the western Bayfront Area, are cumulatively considerable. Each of the large mixed-use projects proposed in the Bayfront Area alone promises drastically to increase traffic in the neighborhood, resulting in air quality, noise, and safety issues for District families and staff attending TIDE Academy. When considered together, these collective impacts on traffic, safety, and air quality in the neighborhood will be devastating. All of these impacts are exacerbated by the rapidity at which the City is approving of development projects in the Bayfront Area, as the City's roadways have not been updated to handle the increase in traffic associated with full buildout under ConnectMenlo. These cumulative impacts on the District's TIDE Academy were

not adequately discussed in the ConnectMenlo EIR or the Project's Draft EIR. The District recognizes the need for housing and is not opposed to it, so long as the City ensures that all impacts that new developments have on and related to the District are adequately mitigated.

ii. Air Quality

The Draft EIR analyzes air quality impacts posed by construction and operation of the Project. The Draft EIR further recognizes that the proposed Project would pose a significant environmental impact if it would expose "sensitive receptors," including schools, to substantial pollutant concentrations. (Draft EIR at 4.3-30.) The Draft EIR does not, however, specifically discuss potential construction and operational air quality impacts as they pertain to the District's TIDE Academy, and students traveling to and from TIDE Academy. Air quality impacts on the District, its students, and staff have the potential to disrupt classes, prevent students from being outside during construction, and prevent students from traveling to and from TIDE Academy during construction. The Draft EIR is, therefore, required to analyze the following:

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

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

iii. Noise

As with its analysis of Air Quality impacts, the Draft EIR notes that TIDE Academy is a nearby "sensitive receptor." As such, the Draft EIR appears to acknowledge that noise impacts on the District's TIDE Academy must be analyzed. (See, Draft EIR at 4.5-14.) The Draft EIR discusses how Project construction may pose potentially significant impacts on sensitive receptors due to the generation of excessive groundborne vibration or groundborne noise levels. (Draft EIR at 2-13.) The document concludes that vibration impacts to sensitive receptors within 200 feet of the Project (presumably including TIDE Academy) will be analyzed at a later date, and vibration impacts to nearby receptors "shall not exceed the vibration annoyance levels" for workshop, office, residential daytime, and residential nighttime property uses. (*Id.*)

This deferred analysis of vibration impacts is improper, as it fails to provide the District and lead agency with a sufficient degree of analysis to make an intelligent judgment concerning the Project's environmental impacts. (CEQA Guidelines §§ 15121(a) and 15151; see, *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 CA4th 48, 104 [holding that EIR must disclose information that is indispensable to a reasoned analysis of an issue], overruled on other

grounds in *Neighbors for Smart Rail v. Exposition Metro Line Constr. Auth.* (2013) 57 CA4th 439.)

Further, the Draft EIR's analysis of noise impacts generally contains insufficient quantifiable data and analysis that would allow the public and lead agency to understand whether noise and/or vibration generated from either construction or operation of the proposed Project, including in combination with all past, present, and reasonably foreseeable future projects, would cause significant impacts on the District's educational program at TIDE Academy. Noise impacts could disrupt classes, prevent students from being able to be outside due to overwhelming outside noise that would affect teachers' abilities to monitor and direct students because they cannot be heard, and lastly, could affect the interior of buildings students are housed in. For these reasons, the District requested that the following information be discussed and analyzed in the Draft EIR:

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

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

iv. Population and Housing

The District anticipates that this Project will generate 100+ students, and specifically requested that the Draft EIR analyze:

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

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

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

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

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

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

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

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

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

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

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

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

As discussed at length above, substantial evidence in the record establishes a significant possibility that the Project, in conjunction with all other projects being considered in the Bayfront Area of Menlo Park, by generating thousands of new residents and vehicles to the area within a few years, will have a negative impact on students, education, and educational facilities. These impacts, which were not adequately analyzed in the Draft EIR, will directly impede the fulfillment of the above General Plan policies and goals. The simple payment of developer fees will not adequately mitigate the impacts of development on the District's schools. Thus, approval of the Project without adopting any feasible measures to address the negative impacts on schools would be contrary to the City's General Plan.

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

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

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

A. The Legislature Intended Coordinated Planning for School Sites

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

The Legislature recognized that new planned development should take into consideration and even “reserve” where schools would be located to serve the development because schools are as integral a part of planning for new development as is any other public service, such as fire, police, water and sewer. As it relates to this case, the intent behind sections 65350, *et seq.*, supports the District’s position that the City must analyze whether the District’s current facilities are adequate to accommodate and serve both its existing population and the new development, particularly in light of the Project impacts and cumulative factors addressed in this letter. The City can help the District provide adequate facilities resulting from any impacts of the Project, which are not addressed by developer fees, by requiring alternative mitigation measures to assure that there are adequate school facilities available to accommodate the District’s needs.

B. Alternative Mitigation Measures

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

1. Land Dedication

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

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

be levied. . . .” (Emphasis added.) Section 65995 expressly excludes Chapter 4.7, inclusive of section 65974, from this limitation, thus permitting a city to address conditions of overcrowding in school facilities or inadequately sized school sites by requiring, for example, the dedication of land.

A land dedication requirement would be good public planning benefiting all residents of the community, including future residents of the Project. Land suitable for new school facilities in Menlo Park is already extremely scarce; it will only become more so if the Project is implemented and further development occurs. Under Government Code sections 65352 and 65352.2, the City has a duty to help plan for adequate services to its residents by ensuring that future sites are set aside for schools. Failure to do so leads to inadequate services, future controversies, and the potential need for a school district to exercise its rights under eminent domain, displacing existing residents. Therefore, mitigation for the impacts stemming from the Project that are not considered in the Draft EIR are and can be made available even after SB 50.

2. *Phasing*

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

VI. **Conclusion**

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

It is the District's position that the Draft EIR is incomplete, and does not adequately analyze the Project's potential impacts related to schools, or mitigation measures that would lessen these impacts. The safety of students is paramount to the District, and these safety concerns are not

Mr. Tom Smith
City of Menlo Park
February 2, 2021
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adequately addressed in the Draft EIR as currently constituted. Changes must be made to preserve the safety of the students and allow them to enjoy productive time at school, free from excessive traffic, noise, and pollution. Therefore, the District demands that the Draft EIR be updated and recirculated.

District encourages the City and Developer to work cooperatively with the District and consider alternative mitigation measures, such as phasing and land dedication, which can assist in adequately mitigating the impacts on the District's schools and the affected surrounding environment.

Sincerely,

LOZANO SMITH

A handwritten signature in blue ink, appearing to read "B. Sena".

Bradley R. Sena

BRS/mag

Enclosure

cc: Crystal Leach, Interim Superintendent (cleach@seq.org)



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CRYSTAL LEACH

January 10, 2020

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

Tom A. Smith
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 Uptown Project

Dear Mr. Smith:

Sequoia Union High School District (“District”) appreciates the opportunity to provide comments and input regarding the Notice of Preparation of an Initial Study and Environmental Impact Report for the Menlo Uptown Project (“Project”). Specifically, this letter responds to the City of Menlo Park’s (“City”) invitation to submit comments on the proposed scope and content of the Focused Environmental Impact Report (“EIR”) that is planned to be prepared for the Project.

The District is particularly interested in and concerned about this Project because it is located directly across the street from the District’s TIDE Academy on Jefferson Drive. The District requests that all direct and indirect impacts related to the Project’s proximity to a school be thoroughly reviewed, analyzed, and mitigated.

The Project, sponsored by Uptown Menlo Park Venture, LLC (“Developer”), is proposed to be located at the approximately 4.83-acre site having the addresses of 141 Jefferson Drive, 180 Constitution Drive, and 186 Constitution Drive, Menlo Park, CA (collectively, the “Property”), which was previously a technology park consisting of three single story commercial and industrial buildings. The Developer is proposing to demolish the existing commercial and industrial space and redevelop the Property with three residential buildings totaling approximately 466,000 square feet (“sf”) of gross floor area with 441 multi-family rental units, 42 townhomes, and 2,100 sf of commercial space, associated open space, circulation and parking, and infrastructure improvements. This Project, which will require a number of entitlements from the City, is anticipated to

generate approximately 14,150 new residents, and a corresponding increase of approximately 100 new high school students.

The City, through its Initial Study, concludes that the Project will have no additional impacts on the District's ability to provide its public service, other than those impacts addressed in the ConnectMenlo Final Environmental Impact Report ("ConnectMenlo EIR") that was certified by the City on December 6, 2016. Accordingly, the City is attempting to rely on the ConnectMenlo EIR as grounds to prepare a "focused," or limited EIR, which does not evaluate the Project's impacts on the District's ability to provide its public service. We believe that this approach is improper, and the limited scope of the City's proposed EIR inappropriate. Rather, the EIR prepared for the Project must contain a detailed discussion of the Project's potential impacts on the District, and manners in which to mitigate those impacts.

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

District staff attended the Planning Commission scoping meeting for this Project and was pleased by some of the comments made by the Commissioners supporting consideration of the District. The District met with various developers of projects in the area, but has had very limited interaction with the Developer of this Project (Greystar Partners). We are hopeful that we will be able to forge a more collaborative relationship and discussion as this Project continues through the planning and approval stages.

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

Inappropriate Reliance on ConnectMenlo EIR

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

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

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

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

The Project's Initial Study provides that the Initial Study "tiers from the ConnectMenlo Final EIR, as appropriate." (Initial Study, p. 1-11.) The Initial Study later concludes that the proposed Project would have a less-than-significant impact on schools because the "ConnectMenlo Final EIR determined that any development associated with ConnectMenlo would be subject to payment of development impact fees, which under Senate Bill 50 (SB 50) are deemed to be full and complete mitigation." (Initial Study, p. 3-45.) The ConnectMenlo EIR concluded that "[b]ecause future development under the proposed project would occur incrementally over the 24-year buildout horizon and, in compliance with SB 50, would be subject to pay development impact fees...impacts related to the SUHSD would be less than significant." (ConnectMenlo Draft EIR, p. 4.12-40.)

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

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

As discussed in greater depth throughout this letter, both the program and the Project will pose numerous, significant impacts on the District and its ability to provide its educational program, none of which were adequately identified and addressed in the ConnectMenlo EIR and, as a result, the Initial Study. ConnectMenlo likewise did not consider either the program or Project's specific impacts on the District's TIDE Academy, as this school did not yet exist when the ConnectMenlo EIR was prepared. Because TIDE Academy is located in the Bayfront Neighborhood, it is particularly vulnerable to the 5,500 residential units authorized by ConnectMenlo, most of which will be constructed in the Bayfront neighborhood. ConnectMenlo did not consider whether/how the placement of 483 residential units directly across the street from a District high school would impact the District's program at TIDE Academy.

Further, ConnectMenlo was based on the assumption that development under the program would take place in an incremental fashion, over the course of 24 years. The Initial Study acknowledges the fact that this assumption was incorrect, however, in providing that "[a]lthough the ConnectMenlo Final EIR assumed a buildout horizon of 2040, the maximum development potential may be reached sooner than anticipated." (Initial Study, p. 1-4, fn. 8.) The Initial Study goes on to provide that "the pace of development would not create additional impacts beyond those identified in the ConnectMenlo Final EIR for topic areas identified in this Initial Study." (Id.)

The District vehemently disagrees with the Initial Study's conclusion. If the City continues to approve new residential development projects at its current pace, the District will be subject to a rapid influx of students to the District's facilities, which are already at or exceeding capacity. This rapid influx, combined with the existing inadequacies of the District's school facilities funding sources (as discussed below), will prevent the District from engaging in meaningful long-term facilities planning, and will instead require the District to spend

valuable resources on temporary solutions to the District's facilities problems, such as the purchase and lease of portables.

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

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

As discussed, the Developer and City, both in the Initial Study's 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 \$3.79 per sf of residential development, and up to \$0.61 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.

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

The inadequacy of developer fees as a source of funding for school facilities has forced school districts to rely increasingly on other sources of funding, primarily including local bond funds and State bond funds administered under the State Facilities Program (SFP). However, these sources of funds are equally unreliable. The last State school facilities bond fund (Proposition 51) has been exhausted, and it is currently unclear

when/whether those school districts that apply for state funding will be able to receive such funding. Local bond funds are also difficult to generate, as local bonds are subject to school district bonding capacity limitations and voter approval. Either way, the funding formula was never intended to require the State and local taxpayers to shoulder a disproportionate portion of the cost of school facilities.

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

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

Transportation/Circulation/Traffic Analysis

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

6. Assess the impacts on the routes and safety of students traveling to school by vehicle, bus, walking, and bicycles.

The District has significant concerns about the traffic, transportation, and circulation impacts that the Project may have on the District, including the District's staff, parents, and students that attend the TIDE Academy. The foregoing categories of information are critical for determining the extent of those impacts on the District, none of which were adequately identified or discussed in either the Initial Study or the ConnectMenlo EIR.

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 also 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 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 via Jefferson Drive and Constitution Drive, which border the Property to the north and south. The Project Site is located in the Bayfront Area of Menlo Park that 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. As discussed, the City's 2016 General Plan Update calls for an increase of 4.7 million square feet of non-residential office space, 850 hotel rooms, 5,430 residential units, 13,960 residents, and 20,150 employees, all within the Bayfront Area.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 General Plan Update does not consider how these impacts would be exacerbated by the current Project.

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

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

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.

As discussed, the District's TIDE Academy is located across Jefferson Drive from the Project Site (less than 100 feet away), in the Bayfront neighborhood of Menlo Park. Thus, both TIDE Academy and the proposed Project would be accessed by Jefferson Drive and the immediately surrounding streets.

The proposed Project is anticipated to impede circulation in the Bayfront neighborhood, 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.) In addition to drawing over 14,000 new residents to the area, including an estimated 100 new high school students, the proposed Project will draw thousands of daily office commuters, visitors, and emergency access vehicles from around the Bay Area. In addition to the immediate roads surrounding the Property and TIDE Academy, these new residents and commuters will rely heavily on the Bayfront Expressway, Bayshore Freeway, Willow Road, and Marsh Road to the west of TIDE Academy. As indicated in the City's General Plan, the City's roads are not currently equipped to accommodate such high density development and high levels of traffic. Accordingly, such increases to traffic in the area will negatively impact the District's abilities to operate its educational program, and also cause a drastic increase in the risk of vehicular accidents to District families, students, and staff traveling to and from TIDE Academy. It is important that these traffic impacts are not only assessed through a VMT analysis, but also a LOS analysis, as the proposed Project will cause severe traffic congestion surrounding the District's TIDE Academy, which impacts will in turn cause issues related to safety, noise, and air quality.

Adding to the District's concerns regarding traffic surrounding the Project site and the TIDE Academy are the vast number of development projects that have recently been approved, and the speed at which the development projects have been approved by the City and/or completed in the area, including the 777 Hamilton Drive project (195 new apartments), the Facebook Campus Project at former 1601 Willow Road and 312 and 313 Constitution Drive (78.9 acres of mixed use development), and the Menlo Gateway Project at 100-190 Independence Drive (cafe/restaurant, health club, 230-room hotel, three office and research and development buildings, and three parking structures covering 15.9 acres). There are several other projects that are being considered by the City, including the Facebook Campus Expansion Projects at 301-309 Constitution Drive, the Willow Village Master Plan Project at 1350-1390 Willow Road, 925-1098 Hamilton Avenue, and 1005-1275 Hamilton Court (1,735 residential units), and the 111 Independence Drive Project (106 multi-family dwelling units). Each of these projects alone promise to drastically increase traffic in the neighborhood. When considered together, their collective impact on traffic in the neighborhood will be devastating. The impacts of the Project must, therefore, be considered in conjunction with the anticipated impacts of all the other development being considered and approved in this area. (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.)

Further, the traffic impacts posed by the Project, combined with all the other City-approved development in the area, will severely impact the safety and convenience of TIDE Academy students who walk or bike to school, significantly increasing their risk of suffering from traffic-related physical injuries and death. The analysis of student safety must be clearly delineated and given the extensive focus that it deserves. 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 Project Site neighborhood in implementing the District's TIDE Academy project, the District 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 To mitigate the impacts of conflicts and/or dangerous interactions between pedestrians, bicyclists, and

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.

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, through the City’s General Plan Land Use and Circulation Element, has committed to support and promote such safe route to school programs to enhance the safety of school children who walk to school.⁵ The EIR must analyze and mitigate any impacts on the District’s ability to implement its transportation and safety mitigation measures for the TIDE Academy, and the District’s abilities to promote alternative modes of transportation to and from TIDE Academy. As TIDE Academy did not yet exist, these impacts were not adequately addressed in the ConnectMenlo EIR.

Finally, as previously discussed, the City must consider the extent to which the Project’s impacts on traffic, transportation, circulation, and safety will be exacerbated by AB 48 (discussed above), coupled with the extremely high costs of land. As the District’s ability to transport students to and from District schools becomes more constrained due to increased development in the District, the District will need to construct new educational facilities to accommodate changes in transportation patterns. However, AB 48 will hamstring the District’s ability to construct new facilities by dramatically reducing the amount of developer fees available to the District.

We urge the City thoroughly to address and analyze each of the above listed items through its EIR, and implement extensive and thoughtful mitigation measures.

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, when combined with all of the other development being considered and approved in the Bayfront neighborhood, will have a significant impact on the air quality of the neighborhood due to increases in vehicular traffic. These air quality impacts and corresponding mitigation measures must be analyzed in the EIR. Even more importantly, the Project is anticipated to result in significant impacts to sensitive receptors as increased 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 adequately addressed in the ConnectMenlo EIR.

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

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

Noise

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

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

Population

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

In addition to 483 anticipated residential units, it is anticipated that the proposed Project's 2,100 sf of commercial space sf 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, 483 anticipated residential units is likely to generate at least 97 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 requests that historical, current, and future population projections for the District be addressed in the EIR. Population growth or shrinkage is a primary consideration in determining the impact that development may have on a school district, as a booming population can directly impact the District and its provision of educational services, largely because of resulting school overcrowding, while a district with declining enrollment may depend on new development to avoid school closure or program cuts. Overcrowding can constitute a significant impact within the meaning of CEQA. (See, 14 Cal. Code Regs. §§ 15064(e).) This is particularly true where the overcrowding results in unsafe conditions, decreased quality of education, the need for new bus routes, and a need for new school construction. The same can hold true for potential school closures or program cuts resulting from a declining population.

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

Housing

- 12. Describe the type and number of anticipated dwelling units indirectly resulting from the Project.**
- 13. Describe the average square footage for anticipated dwelling units, broken down by type of unit, indirectly resulting from the Project.**

14. Estimate the amount of development fees to be generated by development in accordance with implementation of the Project.

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

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

The adequacy of the statutory development fees to offset the impact of new development on local school districts can be determined only if the types of housing and average square footage can be taken into consideration. For instance, larger homes often generate approximately the same number of students as smaller homes. At the same time, however, a larger home will generate a greater statutory development fee, better providing for facilities to house the student being generated. It is for these reasons that the Government Code now requires a school district to seek – and presumably to receive – such square footage information from local planning departments. (Gov. Code § 65995.5(c)(3).)

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

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

Public Services

- 15. Describe existing and future conditions within the District, on a school-by-school basis, including size, location and capacity of facilities.**
- 16. Describe the adequacy of both existing infrastructure serving schools and anticipated infrastructure needed to serve future schools.**
- 17. Describe the District's past and present enrollment trends.**
- 18. Describe the District's current uses of its facilities.**
- 19. Describe projected teacher/staffing requirements based on anticipated population growth and existing State and District policies.**
- 20. Describe any impacts on curriculum as a result of anticipated population growth.**

21. **Identify the cost of providing capital facilities to properly accommodate students on a per-student basis, by the District (including land costs).**
22. **Identify the expected shortfall or excess between the estimated development fees to be generated by the Project and the cost for provision of capital facilities.**
23. **Assess the District's present and projected capital facility, operations, maintenance, and personnel costs.**
24. **Assess financing and funding sources available to the District, including but not limited to those mitigation measures set forth in Section 65996 of the Government Code.**
25. **Identify any expected fiscal impacts on the District, including an assessment of projected cost of land acquisition, school construction, and other facilities needs.**
26. **Assess cumulative impacts on schools resulting from additional development already approved, pending, or anticipated.**
27. **Identify how the District will accommodate students from the Project who are not accommodated at current District schools, including the effects on the overall operation and administration of the District, the students and employees.**

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

Conclusion

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

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

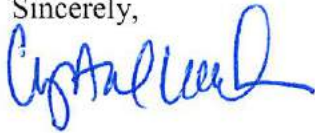
We request that all notices and copies of documentation with regard to this Project be mailed both to the District directly, and also to our legal counsel's attention as follows:

Mary E. Streshly, Superintendent
Sequoia Union High School District
480 James Avenue
Redwood City, CA 94062

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

Please feel free to contact me directly if we can be of any assistance. Thank you.

Sincerely,



Crystal Leach
Associate Superintendent Administrative Services

cc: Kelly Rem, Lozano Smith, Mary E. Streshly

EXHIBIT B

Kelly M. Rem
Attorney at Law

E-mail: krem@lozanosmith.com

June 21, 2021

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

Mr. Tom Smith
City of Menlo Park
Community Development Department, Planning Division
701 Laurel Street
Menlo Park, CA 94025

Re: Reply of Sequoia Union High School District to Final Environmental Impact Report for the Menlo Uptown Project

Dear Mr. Smith:

As noted in our prior letter of February 2, 2021 (the "February 2 Letter"), attached hereto and incorporated herein by this reference, this office represents Sequoia Union High School District ("District"). Through our February 2 Letter, we submitted comments regarding the Draft Environmental Impact Report ("Draft EIR") prepared by the City of Menlo Park ("City") for the project to be located 85 feet north of the District's TIDE Academy in Menlo Park, California (the "Project"), sponsored by Greystar LLC ("Developer"). Specifically, we noted in our letter that the Draft EIR did not comply with the California Environmental Quality Act ("CEQA," Pub. Res. Code §§ 21000, *et seq.*) and its implementing regulations (Cal. Code Regs., tit. 14, §§ 15000, *et seq.*, "CEQA Guidelines"), for both technical and substantive reasons. Moreover, the Draft EIR, based on an inappropriate reliance on the ConnectMenlo EIR and improper interpretation of Senate Bill ("SB") 50, did not include sufficient information to evaluate potential environmental impacts both to schools, and related to schools. We requested that the City revise the Draft EIR to address the serious deficiencies identified in the District's letter, develop appropriate mitigation measures for impacts that are identified as significant, and then recirculate the revised Draft EIR as required by CEQA. (CEQA Guidelines § 15088.5.)

The District has reviewed the City's Final Environmental Impact Report prepared for the Project, including the responses to the District's comments ("Final EIR"). The responses to the District's comments in the Final EIR are deficient for a number of reasons. This letter is intended to highlight some of the major deficiencies, and also to serve as the District's formal preservation of its rights to object to the Project on CEQA grounds, including on those grounds listed in the February 2 Letter, should the District's concerns remain unaddressed. The District, by inclusion of certain objections within this letter, does not waive any other objections it may have to the

Limited Liability Partnership

Draft and Final EIRs, including those raised in the District's February 2 Letter but not addressed in this letter.

I. Background

The Developer is proposing an enormous mixed-use project directly across the street from a District school. As noted in the Final EIR and discussed below, a Fiscal Impact Analysis Report prepared for the City indicates that this Project will cause the District to lose hundreds of thousands of dollars every year. (Response to Comments A2-4.) Further, it is anticipated that the Project, in combination with the numerous other projects being considered by the City, will generate thousands of new vehicles to the area on a daily basis. The District expects that these vehicles, combined with fiscal impacts to the District's budget, will inevitably impact the District's ability to provide its public service, as well as the safety of District students traveling to and from school.

For these reasons, the District's prior comment letters on this Project, including the February 2 letter and the District's letter submitted on January 10, 2020, have consistently requested that the Draft EIR include a description and evaluation of certain information needed to determine whether impacts related to schools are potentially significant. The prior comment letters contained six general areas the District believed must be addressed by the Draft EIR in order to adequately evaluate the school impacts: population, housing, transportation/traffic, noise, air quality, and public services (including schools). Within those categories, the District described 27 subcategories that it requested be evaluated in the Draft EIR.

Despite the District's requests and the City's fiscal impact findings, and despite the fact that the Final EIR cites to numerous General Plan policies that would purportedly incentivize the City to work with the District in ensuring excellence in public schools, most of the categories of information requested by the District remain unaddressed or inadequately addressed in the Draft EIR and Final EIR. Instead, the Final EIR asserts that the one-time payment of \$944,614 in school impact fees will be sufficient to alleviate all potential impacts on the District.

II. Project Approval

The District objects to the City's proposed certification process of the Final EIR by the City Planning Commission. As noted in the City's Notice of Availability of Final Environmental Impact Report for the Project, the City is proposing that the Planning Commission be the "acting body on...the certification of the Final EIR," but the City Council be the "final decision-making body on the major subdivision." However, the City Planning Commission would only have authority to certify the Final EIR if the Planning Commission is the final decision-making body for approval of the Project under CEQA. (See, *California Clean Energy Committee v. City of San Jose* (2014) 220 Cal.App.4th 1325 [delegation to Planning Commission of the obligation to certify EIR was improper where City Council had final decision-making authority over project approval].) While the Planning Commission may grant certain approvals related to the proposed Project at its meeting on June 21, 2021, these approvals do not constitute "approval of the project" under CEQA as those terms have been defined in the CEQA Guidelines and California case law. Specifically, because the City Council will be considering whether to approve of a

major subdivision for the Project, the City Council will be the body responsible for considering whether to commit itself to the “whole of the action” constituting the Project. (See, CEQA Guidelines § 15378(a) [defining “project” as the “whole of the action”]; see also, *Save Tara v. City of West Hollywood* (2008) 45 C4th 116 [“[C]ourts should look not only to...the surrounding circumstances to determine whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project”].)

III. Environmental Setting

The District, through its February 2 letter, noted that the Draft EIR did not meet its purpose as an informational document because it failed to provide an adequate description of the environmental setting related to schools.

While the Draft EIR and Final EIR state the distance between the Project and one of the District’s schools, TIDE Academy, the Final EIR continues to fail to provide a complete picture of the environmental setting as it relates to schools. For instance, the Draft and Final EIRs fail to analyze the current vehicular and pedestrian paths of travel used by District staff, students and their families to get to and from TIDE Academy and/or Menlo-Atherton High School in the context of a neighborhood that has already been severely impacted by traffic. Without consideration of these factors, it is impossible for the lead agency and public to assess the extent of any safety impacts posed by the Project on the District’s students, families, and staff. Such an analysis of safety impacts is critical to the determination of whether the Project will impact the District’s ability to provide public services and whether the Project will have traffic/transportation impacts (as discussed below). The Draft EIR, as modified by the Final EIR, likewise continues to fail appropriately to consider the District’s programs, facilities, and funding needs at TIDE Academy and/or Menlo-Atherton High School beyond the simple issue of overcrowding.

IV. Analysis of Impacts Related to Schools

A. Improper Reliance on ConnectMenlo EIR

The District reiterates and incorporates herein its objections raised in the February 2 Letter to the Draft EIR’s and Final EIR’s reliance on the information, analysis, and mitigation measures contained in the “program” EIR prepared for the City’s General Plan update in 2016, referred to as the ConnectMenlo project. The Draft EIR improperly “scopes out” numerous environmental impact categories, including “Public Services” impacts related to schools, in reliance on the analysis of Public Services impacts contained in the ConnectMenlo EIR prepared in 2016. (Draft EIR at 1-2; Initial Study at 3-45.) However, 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.)

As previously indicated, circumstances have changed since the time that the ConnectMenlo EIR was prepared, and the development assumptions underlying the ConnectMenlo project approvals

have proven inaccurate. First, ConnectMenlo was based on the incorrect assumption that development under the program would take place in an incremental fashion, over the course of 24 years (and, by extension, that students would be generated to the District in an incremental fashion). (See, ConnectMenlo Draft EIR at 1-4 [“In this case, the proposed project that is the subject of this EIR consists of long-term plans that will be implemented over a 24-year buildout horizon (e.g., 2016 to 2040)”].) The Response to Comments acknowledges that this assumption is no longer correct. (Response to Comments A2-7 [“The City acknowledges that applications on file for the buildout potential envisioned and analyzed in the ConnectMenlo Final EIR is reaching capacity and that future projects may no longer appropriately tier from this program EIR”].) Contrary to assertions in the Response to Comments that the “analysis and impact conclusions in the ConnectMenlo EIR do not rely on the assumption that development would occur over an incremental 24-year period,” the lead agency has presented no basis for divorcing the incremental-buildout assumption in the ConnectMenlo EIR from the EIR’s impact conclusions. The District anticipates that full buildout of ConnectMenlo in the next few years will cause a rapid influx of students. **This influx will not only impact the District’s ability to accommodate increased enrollment, but will pose numerous traffic, transportation, safety, air quality, noise, and other impacts affecting the District’s ability to safely and effectively provide its services.**

Further, as noted in the February 2 Letter, ConnectMenlo did not consider either the program or Project’s specific impacts on the District’s TIDE Academy, as this school did not yet exist when the ConnectMenlo EIR was prepared. The Response to Comments A2-4 notes that the “new high school was contemplated at the time and discussed in the ConnectMenlo Final EIR.” However, no location or other physical or operational characteristics were included in the ConnectMenlo Draft or Final EIRs. Without understanding what or where the District’s new school would be, it is impossible to analyze a project’s potential impacts on that school and the District’s educational program. For these reasons, it is inappropriate for the Project Draft EIR to rely on the ConnectMenlo EIR’s vague references to a potential new District high school.

B. Impacts on Schools

The Draft EIR, as modified by the Final EIR, maintains an inadequate discussion of impacts on schools under CEQA’s threshold of significance for Public Services impacts. The Initial Study, which is relied on by the Draft EIR and the Final EIR, states that the proposed Project would have a significant impact on schools if it would:

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

In purporting to analyze public services impacts on the District under this threshold, the Initial Study, Draft EIR, and now Final EIR tier from the analysis of the ConnectMenlo Draft EIR. The ConnectMenlo Draft EIR’s analysis consisted mostly of noting the current enrollment capacity of

Menlo-Atherton High School and the District's unspecified plans for construction of a future high school. (ConnectMenlo Draft EIR at 4.12-39-4.12-40.) The ConnectMenlo EIR concluded that because the developer would pay developer fees as required by SB 50, any impacts on schools would be less than significant. (ConnectMenlo Draft EIR at 4.12-40.) Response to Comments A2-4 notes that the ConnectMenlo EIR from which the instant EIR tiers concluded that "impacts to SUHSD facilities were determined to be less than significant due to a number of factors." While the ConnectMenlo EIR does discuss certain general policies and goals that the City may implement to the benefit of school districts, it is clear from the ConnectMenlo Draft EIR's analysis specific to the District that the primary basis for determining that the General Plan update would not impact schools was the following:

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

(ConnectMenlo Draft EIR at 4.12-40.)

The instant Project's Initial Study, Draft EIR, and Final EIR adopt the same conclusion as the ConnectMenlo EIR. (Initial Study at 3-45; Draft EIR at 5-7.) As explained in the District's February 2 Letter, this short and conclusory analysis is flawed.

The Draft EIR, as modified by the Final EIR, fails to provide sufficient information needed to analyze all potential impacts of the Project under the stated Public Services threshold of significance, including but not limited to: (1) whether the influx of students would require "physically altered" school facilities; (2) whether other impacts of the proposed Project, such as increased traffic in the neighborhood surrounding TIDE Academy and/or Menlo-Atherton High School, could impact the District's use or need for new or physically altered school facilities; and (3) whether other impacts of the proposed Project could otherwise interfere with the District's ability to accomplish its own performance objectives. In order to analyze these questions, the Draft and Final EIRs would have needed to analyze how the District currently uses its facilities at TIDE Academy and Menlo-Atherton High School, how the Project would impact these uses, and what sort of mitigation could alleviate these impacts (see February 2 Letter requests for specific information nos. 1-13). Rather than engaging in this analysis, the Response to Comments contends that this information is not required. (See, e.g., Response to Comments A2-3 ["The TIDE Academy's status as a sensitive receptor and the analysis is constant regardless of enrollment numbers or educational programming".]) This response is improper and inconsistent with the requirements of CEQA, as it constitutes the evasion of the lead agency's duty to investigate potentially significant environmental impacts as required by CEQA. (Pub. Res. Code § 21100(b)(1).)

Finally, the Draft EIR, as modified by the Final EIR, fails to analyze adequately cumulative public services impacts on the District due to extensive new development within District boundaries. Instead, the Final EIR simply relies on the incomplete cumulative impacts analysis in the ConnectMenlo EIR. (Response to Comments A2-7.)

C. Failure to Incorporate Findings from Fiscal Impact Analysis

As noted in the Response to Comments, BAE Urban Economics, on behalf of the City, has prepared a “Fiscal Impact Analysis Report” (Dec. 2020) analyzing the Project’s anticipated fiscal impacts on the City and various special districts and school districts serving the Project. The Initial Study and Draft EIR failed to incorporate or discuss the Fiscal Impact Report’s findings, despite the Report’s clear relevance to whether or not the Project poses public services impacts under CEQA. The Final EIR contends that the Report’s results “are not related to physical impacts on the environment that require mitigation.” (Response to Comments A2-4.) The District disagrees, however, as fiscal impacts caused by the Project may cause physical impacts on District facilities, which will interfere with the District’s ability to provide its public service in accordance with the District’s performance objectives. (See, CEQA Guidelines, Appendix G, Public Services Threshold of Significance.)

The Fiscal Impact Report’s findings appear to rely on a number of inaccurate assumptions. For one, the Report overstates the current Menlo-Atherton High School capacity by 400 seats.¹ The Final EIR also makes this error. Further, the Report and the Final EIR note that the District is declining in enrollment, but fail to mention that the Menlo-Atherton High School’s attendance area still generates the highest number of students each year in comparison to other District schools. (Response to Comments A2-6.) The High School remains the largest high school in San Mateo County, even taking into account the District’s efforts to move students to other District options through open enrollment. For the above reasons, the District anticipates the expenditures related to enrollment at Menlo-Atherton High School will only increase over time as capacity becomes more constrained. As enrollment at TIDE Academy is optional for District students, TIDE will not serve as a guaranteed depository of excess District students in the Menlo-Atherton High School attendance area. Perhaps most significantly, the Report fails to consider how the Project, in combination with all other projects being considered in the Bayfront Area, would cumulatively impact the District’s budget.

Despite the Fiscal Impact Report’s shortfalls, it still supports a finding that the Project will pose significant impacts on the District. Specifically, the Report concludes that the Project alone would “result in a net deficit to the Sequoia Union High School District totaling \$797,900 annually.” In light of the above, it safely can be assumed that additional students generated by the Project, in combination with additional students from all other projects being considered in the Bayfront Area, would have a staggering fiscal impact on the District, which would far exceed any revenues being received by the District through property taxes or one-time developer fee payments. These impacts should have been considered and analyzed in the Draft EIR, and mitigation measures should have been proposed.

¹ In its letter to the City dated July 31, 2020, the District inadvertently listed its Menlo-Atherton High School capacity to be 2,600, when in reality the High School’s capacity is 2,200 seats.

D. “School-Related” Impacts

As noted, the Final EIR, like the Draft EIR and Initial Study, attempts to rely on SB 50 and Government Code section 65996 in an effort to limit its analysis of impacts caused by the Project “related to” schools. (See, Response to Comments A2-4 [“These fees...are considered full and complete mitigation for potential impacts to school services that could occur as a result of new development”].) The District reiterates and incorporates its objections in the February 2 Letter to the Draft EIR’s reliance on SB 50 as both practically and legally improper. SB 50 declares that the payment of the developer fees authorized by Education Code section 17620 constitutes “full and complete mitigation of the impacts of any legislative or adjudicative act on the provision of adequate school facilities.” (Gov. Code § 65995(h); see also, Gov. Code § 65996(a).) **However, California courts have since acknowledged that developer fees do not constitute full and complete mitigation for school-related impacts other than impacts “on school facilities” caused by overcrowding.** (*Chawanakee Unified Sch. Dist. v. Cty. of Madera* (2011) 196 Cal.App.4th 1016.) Thus, the assertion that school impact fees are considered full and complete mitigation for all of the Project’s “potential impacts to school services” is inconsistent with California law.

In light of the above, the District requested that the Final EIR analyze 27 sub-categories of information that are necessary to determine whether the Project results in significant environmental impacts both on and related to schools, including impacts that would not be impacts “on school facilities” caused solely by overcrowding. As the Final EIR failed to analyze most, if not all of these categories of information, the District maintains and re-asserts its objections to approval of the Project for its failure to adequately analyze “school-related” impacts.

i. Traffic/Transportation/Circulation

As explained in the District’s prior comment letters, the Draft EIR was required to address potential effects related to traffic, including noise, air quality, and any other issues affecting schools. (Pub. Resources Code, §§ 21000, *et seq.*; Cal. Code Regs., tit. 14, §§ 15000, *et seq.*; *Chawanakee, supra*, 196 Cal.App.4th 1016.) Additionally, specifically related to traffic, the Draft EIR was required to analyze safety issues related to traffic impacts, such as reduced pedestrian safety, particularly as to students walking or bicycling to and from TIDE Academy and Menlo-Atherton High School; 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. Along these lines, the District requested in its February 2 Letter that the Draft EIR analyze six essential categories of information related to existing and the anticipated vehicular traffic in the Project area, student pedestrian movement patterns to and from school sites in the Project area, and school transportation and busing activities to and from TIDE Academy and Menlo-Atherton High School.

Rather than addressing the District’s requests for additional analysis, the Final EIR asserts that all information and data required by CEQA in order for one to ascertain the Project’s potential traffic/transportation impacts on the District and its students were provided in the Draft EIR, the Level of Service Analysis included in the Draft EIR, and the Transportation Impact Analysis

technical report included as Appendix E to the Draft EIR. (Response to Comments A2-9.) While these studies provide traffic counts and level of service data (which data shows that certain intersections frequented by District staff and students will become more congested as a result of the Project), neither the Draft EIR nor the Final EIR provides the District with adequate information and analysis to conclude whether the Project will pose significant safety impacts to District students, families, and staff related to traffic and transportation.

The Final EIR remains deficient in its continued reliance on the cumulative transportation impacts analysis contained in the ConnectMenlo EIR. As explained in the February 2 Letter, 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).) It is anticipated that the scope and rapidity of buildout under ConnectMenlo will 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, the collective impacts of rapid development on traffic, safety, and air quality in the neighborhood will be devastating. Given the incremental buildout assumptions employed in ConnectMenlo, these impacts were not anticipated and analyzed in the ConnectMenlo EIR.

Finally, the Final EIR fails to describe how the Project would comply with the City's General Plan Policy CIRC-6.4 and the City's commitment to supporting "Safe Routes to School" programs to enhance the safety of school children who walk and bike to school" contained in General Plan Policy CIRC-1.9. (City of Menlo Park General Plan (Nov. 29, 2016), Circulation Element at CIRC-16.) Policy CIRC-6.4 requires the City to encourage employers and schools to promote walking, bicycling, carpooling, shuttles, and transit use. The Final EIR notes that the proposed Project was found to be consistent with this Policy because "the project proposes to provide a TDM plan that implements measures encouraging employers to promote walking, bicycling, carpooling, shuttles, and transit use." (Response to Comments A2-13.) This response again fails to address, or provide the information one would need to understand how the Project would encourage schools to promote alternative modes of transportation.

In again failing to provide sufficient information to allow the District to analyze the above-discussed impacts, the Draft EIR, as modified by the Final EIR, remains deficient. The District hereby incorporates and preserves all objections raised in the February 2 Letter regarding the Draft EIR's transportation impacts analysis.

ii. Air Quality

The District reiterates and incorporates herein its objections raised in the February 2 Letter regarding the air quality analysis contained in the Draft EIR.

iii. Noise

The District reiterates and incorporates herein all objections raised in the February 2 Letter regarding potential noise impacts. The Draft EIR discusses how Project construction may pose potentially significant impacts on sensitive receptors due to the generation of excessive

groundborne vibration or groundborne noise levels. (Draft EIR at 2-12.) The Final EIR re-states this conclusion. (Response to Comments A2-17.) However, the Draft EIR's analysis of noise impacts generally contains insufficient quantifiable data and analysis that would allow the public and lead agency to understand whether noise and/or vibration generated from either construction or operation of the proposed Project, including in combination with all past, present, and reasonably foreseeable future projects, would cause significant impacts on the District's educational program at TIDE Academy.

iv. Population and Housing

In its February 2 Letter, the District listed six categories of information that the Draft EIR needed to include in order for the District to understand whether the proposed Project would have significant physical and fiscal impacts related to population and housing. While some of this information was included in the Final EIR, other necessary information was excluded. The District reiterates and incorporates herein its February 2 Letter population and housing objections to the Draft EIR, as well as the District's requests for information.

V. Inadequate Mitigation Measures

Based on the deficiencies of the Draft and Final EIRs described above, the District maintains its position that the lead agency's position that payment of school impact fees will mitigate school impacts to a less than significant level is inaccurate. Since the Draft EIR, as modified by the Final EIR, is lacking in detailed discussion and analysis of existing and projected Project conditions, taking into account both the impact on school facilities and the impacts related to schools, one cannot accurately reach the conclusion that developer fees are adequate to mitigate the Project's school impacts because all impacts have not been evaluated.

VI. Conclusion

It remains the District's position that the Draft EIR, as modified by the Final EIR, does not adequately analyze the Project's potential impacts related to schools, and mitigation measures that would lessen these impacts. The safety of its students is paramount to the District, and its safety concerns are not adequately addressed in the Draft EIR or Final EIR. Changes must be made to preserve the safety of the children and allow them to enjoy productive time at school, free from excessive traffic, noise, and pollution. For this reason, and in order to allow the District additional time to meet with the Developer, the District requests that any decision by the Planning Commission be postponed.

Mr. Tom Smith
City of Menlo Park
June 21, 2021
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The District is hopeful that collaboration with City and Developer will yield meaningful solutions that alleviate the impacts caused by the Project. District remains prepared to provide information as necessary to assist City and Developer in addressing each of the District's concerns regarding the proposed Project. The District stands ready to meet and work with the City and Developer to address these vital issues.

Sincerely,

LOZANO SMITH



Kelly M. Rem

KMR/df

Enclosure

cc: Crystal Leach, Interim Superintendent (clcach@scq.org)



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February 2, 2021

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

Mr. Tom Smith
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 Draft Environmental Impact Report for the Menlo Uptown Project

Dear Mr. Smith:

This office represents Sequoia Union High School District (“District”). On behalf of the District, we are hereby submitting comments regarding the Draft Environmental Impact Report (“Draft EIR”) prepared by the City of Menlo Park (“City”) for the project to be located on an approximately 4.83-acre site having the addresses of 141 Jefferson Drive, 180 Constitution Drive, and 186 Constitution Drive, Menlo Park, CA (collectively, the “Property”). According to the Draft EIR, the proposed project, sponsored by Uptown Menlo Park Venture, LLC (an affiliate of development company Greystar) (“Developer”), will consist of the demolition of the existing commercial and industrial space and redevelopment of the Property with three residential buildings totaling approximately 471,986 square feet (“sf”) with 441 multi-family rental units, 42 townhomes, and 2,940 sf of office space, associated open space, circulation and parking, and infrastructure improvements (the “Project”). This enormous Project is anticipated to generate approximately 1,242 new residents, and a corresponding increase of approximately 100 new high school students to the District. The Project will be located directly across the street from the District’s TIDE Academy.

Please note that, concurrently with this letter, the District is transmitting its response to the Draft Environmental Impact Report for the 111 Independence Drive Project. Both the 111 Independence Drive Project and the instant Project are mixed-use residential projects proposed in the Bayfront Area of Menlo Park a short distance away from the District’s TIDE Academy. Further, the Initial Studies and Draft EIRs for both projects were prepared by the same firm and are substantially similar. For these reasons, the District’s comments in response to both Draft EIRs are substantially similar.

Limited Liability Partnership

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

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

The District addressed many of these issues with Developer at a meeting on February 25, 2020. Since that meeting, and unlike other developers in the area, Developer has been entirely unresponsive to District’s efforts to have further meetings, and to further discuss potential impacts related to Developer’s numerous projects proposed throughout Menlo Park. The District is hopeful that collaboration with City and Developer, as outlined in this letter, will yield meaningful solutions that alleviate the impacts caused by the Project. District is prepared to provide information as necessary to assist City and Developer in addressing each of the District’s concerns regarding the proposed Project.

I. Background: Initial Study, Notices of Preparation, and District’s Scoping Letter

The District previously submitted comments to the City in response to the City’s Notice of Preparation (“NOP”) and Initial Study (“Initial Study”), on January 10, 2020. The District likewise attended and submitted oral comments during a scoping session held for the Project in December of 2019. A copy of the District’s January comment letter (referred to as the “Prior Comment Letter”) is attached hereto, and incorporated herein by this reference.

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

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

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

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

District facilities are a critical part of the Project location's environment, and should be considered throughout the Draft EIR impact categories. As noted, the Project is located directly across the street from the District's TIDE Academy (85 feet north of TIDE Academy, according to the Draft EIR). (Draft EIR at 4.5-14.) TIDE Academy's first year of operations was the 2019/2020 school year. While enrollment was 103 students for the first year of operations, the District anticipates that it will exceed its 400-student capacity at TIDE by the fourth year of operations (2023-2024). The Project is otherwise located within the District's Menlo Atherton High School attendance boundary. Menlo Atherton High School, which is the county's largest high school, currently exceeds its capacity by 200 students. The District is inadequately equipped to house these excess students. The proposed Project will be accessed via Jefferson Drive, which road is used by District families, students, and staff to walk, bike, and drive to school from neighborhoods located to the east, west, and south. Jefferson Drive and the Bayfront Area generally have been, and are anticipated to continue being, heavily impacted by traffic, traffic exhaust, and fumes due to increased development in the neighborhood.

The Draft EIR purports to describe the Project's environmental setting in each of the five environmental impact categories that are analyzed in the Draft EIR. In doing so, the Draft EIR notes the location of TIDE Academy in a few instances. However, the Draft EIR otherwise fails to present any information needed to assess the Project's environmental impacts on the District, TIDE Academy, or Menlo Atherton High School. For instance, the Draft EIR fails to address the current and projected future enrollment at TIDE or any other District schools that will be affected by the Project; the District's educational program objectives at TIDE and or Menlo Atherton High School; a description of how the District currently uses its facilities at TIDE or Menlo Atherton High School; and the current vehicular and pedestrian paths of travel used by District staff, students and their families to get to and from these schools, in the context of a neighborhood that

has already been severely impacted by traffic. Without consideration of these factors, it is impossible for the lead agency and public to assess whether there are any impacts posed by the Project on the District's students, families, and staff, and whether those impacts are significant.

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

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

The Draft EIR improperly "scopes out" numerous environmental impact categories, including "Public Services" impacts related to schools. In doing so, the Draft EIR relies on the analysis of Public Services impacts contained in the Initial Study, which in turn tiers off of the analysis of Public Services impacts contained in the City's EIR prepared for its General Plan update (referred to as "ConnectMenlo") in 2016. (Draft EIR at 1-2; Initial Study at 3-45.) Specifically, the Initial Study states as follows:

The ConnectMenlo Final EIR determined that any development associated with ConnectMenlo would be subject to payment of development impact fees, which under Senate Bill 50 (SB 50) are deemed to be full and complete mitigation... Therefore, because the proposed project would comply with existing regulations prepared to minimize impacts related to schools and would be subject to the mandatory payment of developer impact fees pursuant to SB 50, the proposed project would have a less- than- significant impact related to the need for remodeled or expanded school facilities and no new or more severe impacts would occur beyond those examined in the ConnectMenlo Final EIR.

(Initial Study at 3-45.)

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

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

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

A "program" EIR is an EIR prepared for a series of small projects that can be characterized as one large project. (14 Cal. Code Regs. § 15168(a).) A project proponent may rely on a program EIR's analysis of the program's environmental impacts, mitigation measures, and alternatives in order to engage in a simplified environmental review for a future project contemplated by the program. (*Id.* at subd. (d).) However, when a program EIR is relied on by a future project

proponent, the new project proponent must carefully examine the impacts addressed in the program EIR and determine whether additional environmental review is required. An agency's evaluation of the sufficiency of a program EIR for later approval of a project contemplated by the program involves a two-step process:

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

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

The Initial Study and Draft EIR's reliance on the ConnectMenlo EIR's analysis of potential impacts on the District and its facilities is improper and misguided. Circumstances have changed since the time that the ConnectMenlo EIR was prepared, and the development assumptions underlying the ConnectMenlo project approvals have proven inaccurate. Critically, ConnectMenlo was based on the incorrect assumption that development under the program would take place in an incremental fashion, over the course of 24 years. As noted in the instant Project's Draft EIR, ConnectMenlo envisioned that 4,500 new residential units would be added to the Bayfront Area by 2040. According to the City's current "ConnectMenlo Project Summary Table," development currently proposed and/or completed in the neighborhood would result in the construction of 3,257 net new residential units. This does not include the 540 units that have already been completed at 3639 Haven Avenue and 3645 Haven Avenue, which would bring the total number of residential units to 3,797. This equates to 84% of the total authorized new buildout under ConnectMenlo.¹ It is clear from this trend that full buildout under ConnectMenlo will be achieved well in advance of 2040. The Initial Study acknowledges the fact that this assumption was incorrect in providing that "[a]lthough the ConnectMenlo Final EIR assumed a buildout horizon of 2040, the maximum development potential may be reached sooner than anticipated." (Initial Study at 1-4, fn. 8.)

The Initial Study goes on to provide that "the pace of development would not create additional impacts beyond those identified in the ConnectMenlo Final EIR for topic areas identified in this Initial Study." (*Id.*) The District vehemently disagrees with this conclusion. Contrary to the Draft EIR's assertions on page 3-10, footnote 9, the ConnectMenlo EIR's analysis regarding the General Plan Update's impacts on the District (and on other public services) was founded on the assumption that development of the Bayfront Area would take place in an "incremental fashion."

¹ <https://www.menlopark.org/DocumentCenter/View/23346/ConnectMenlo-Project-Summary-Table>

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

Further, ConnectMenlo did not consider either the program or Project’s specific impacts on the District’s TIDE Academy, as this school did not yet exist when the ConnectMenlo EIR was prepared. Because TIDE Academy is located in the Bayfront neighborhood, it is particularly vulnerable to the thousands of residential units authorized by ConnectMenlo, all of which will be constructed in the Bayfront Area. ConnectMenlo did not consider whether/how the placement of thousands of residential units within a few hundred meters from a District high school would impact the District’s program at TIDE Academy. Accordingly, the Draft EIR’s reliance on the analysis and mitigation measures described in the ConnectMenlo EIR is inappropriate with respect to impacts on the District.

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

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

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

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

(Initial Study at 3-44.)

In purporting to analyze public services impacts on the District under this threshold, the Initial Study and Draft EIR tier from the analysis of the ConnectMenlo Draft EIR. The ConnectMenlo Draft EIR’s analysis consisted mostly of noting the current enrollment capacity of Menlo Atherton High School and the District’s unspecified plans for construction of a future high school. (ConnectMenlo Draft EIR at 4.12-39-4.12-40.) The ConnectMenlo EIR concluded that

because the developer would pay developer fees as required by SB 50, any impacts on schools would be less than significant. (ConnectMenlo Draft EIR at 4.12-40.) The instant Project's Draft EIR and Initial Study adopt the same conclusion as the ConnectMenlo EIR, albeit without analyzing the District's facilities capacity in any way. (Initial Study at 3-45; Draft EIR at 5-7.)

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

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

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

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

1. Existing and future conditions within the District, on a school-by-school basis, including size, location and capacity of facilities.
2. Adequacy of both existing infrastructure serving schools and anticipated infrastructure needed to serve future schools.
3. District's past and present enrollment trends.
4. District's current uses of its facilities.

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

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

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

As noted in the District's most recent School Fee Justification Study (April 2020), the District anticipates that an estimated 17,516 residential units may be constructed within District boundaries over the next 20 years, including approximately 5,500 units in Menlo Park. (SFJS, Appx. C.) Using the District's current student generation rate of 0.2 new high school students

per residential unit, this new development, which will include numerous other development projects in the Bayfront Area, is anticipated to generate well over a thousand new students to the District. (SFJS at 9.) It is therefore likely that the District will exceed its facilities capacity at various locations throughout its boundaries in the coming years, including at TIDE Academy. The District anticipates both that the combined impact of the Project and all other residential development and commercial development projects in District boundaries and the Project neighborhood will significantly impact the District's ability to provide its public service in accordance with established performance objectives, and that the Project's incremental effect is cumulatively considerable.² (CEQA Guidelines § 15130(a).) Because the District currently exceeds capacity in various locations, it is further anticipated that the Project, when viewed in conjunction with numerous other projects, will cause the District to need new or physically altered school facilities, including at TIDE Academy.

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

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

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

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

² The Draft EIR contains an inventory of “Cumulative Projects in the Vicinity of the Project Site” on pages 4-3-4-5, but fails to include the proposed, very large mixed-use residential and commercial development project at 123 Independence Drive. It is expected that this project, in combination with the instant Project, will significantly impact District students attending TIDE Academy, and it must be considered when analyzing cumulative impacts on and related to schools.

development, which statutory amounts may be increased every two years based on the statewide cost index for class B construction.³

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

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

SB 50 declares that the payment of the developer fees authorized by Education Code section 17620 constitutes “full and complete mitigation of the impacts of any legislative or adjudicative act on the provision of adequate school facilities.” (Gov. Code § 65995(h); see also, Gov. Code § 65996(a).) **However, California courts have since acknowledged that developer fees do not constitute full and complete mitigation for school-related impacts other than impacts “on school facilities” caused by overcrowding.** (*Chawanakee Unified Sch. Dist. v. Cty. of Madera* (2011) 196 Cal.App.4th 1016 (“*Chawanakee*”).) *Chawanakee* addressed the extent to which the lead agency (Madera County) was required to consider school related impacts in an EIR for new development. The court determined that SB 50 does not excuse a lead agency from conducting environmental review of school impacts other than an impact “on school facilities.” The court required that the County set aside the certification of the EIR and approvals of the project and take action necessary to bring the EIR into compliance with CEQA. (*Id.* at 1029.) In so holding, the court explained as follows:

[A]n impact on traffic, even if that traffic is near a school facility and related to getting students to and from the facility, is not an impact 'on school facilities' for purposes of Government Code section 65996, subdivision (a). From both a chronological and a molecular view of adverse physical change, the additional students traveling to existing

³ Due to a Fee Sharing Agreement between the District and its elementary feeder school districts, the District is currently authorized to impose fees of \$1.63 per square foot for residential construction (40% of \$4.08), and \$0.26 per square foot for commercial/industrial construction (40% of \$0.66).

schools will impact the roadways and traffic before they set foot on the school grounds. From a funding perspective, the capped school facilities fee will not be used by a school district to improve intersections affected by the traffic. Thus, it makes little sense to say that the impact on traffic is fully mitigated by the payment of the fee. In summary ... the impact on traffic is not an impact on school facilities and, as a result, the impact on traffic must be considered in the EIR.

(*Id.* at 1028-29.)

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

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

i. Traffic/Transportation/Circulation

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

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

The requirement to analyze student safety issues is rooted in both the California Constitution and CEQA. Article I, section 28(c), of the California Constitution states that all students and staff of primary, elementary, junior high, and senior high schools have the inalienable right to attend campuses that are “safe, secure, and peaceful.” CEQA is rooted in the premise that “the maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.” (Pub. Res. Code § 21000(a).) Naturally, safety is crucial in the maintenance of a quality environment. “The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached.” (Pub. Res. Code § 21000(d).) The

Legislature has made clear in declarations accompanying CEQA's enactment that public health and safety are of great importance in the statutory scheme. (Pub. Res. Code §§ 21000 (b), (c), (d), (g); 21001(b), (d) (emphasizing the need to provide for the public's welfare, health, safety, enjoyment, and living environment.) (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 386.)

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

14. The existing and the anticipated vehicular traffic and student pedestrian movement patterns to and from school sites, including movement patterns to and from TIDE Academy, and including consideration of bus routes.
15. The impact(s) of increased vehicular movement and volumes caused by the Project, including but not limited to potential conflicts with school pedestrian movement, school transportation, and busing activities to and from TIDE Academy.
16. The estimated travel demand and trip generation, trip distribution and trip assignment by including consideration of school sites and home-to-school travel.
17. The cumulative impacts on schools and the community in general resulting from increased vehicular movement and volumes expected from additional development already approved or pending.
18. The direct, indirect, and cumulative impacts on the circulation and traffic patterns in the community as a result of traffic generated by the transportation needs of students to and from the Project and schools throughout the District during the Project build-out.
19. The impacts on the routes and safety of students traveling to school by vehicle, bus, walking, and bicycles.

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

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

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

campuses and mixed biotechnology, commercial, office, and residential land uses. ConnectMenlo calls for an increase of 4.7 million square feet of non-residential office space, 850 hotel rooms, 5,430 residential units, 13,960 residents, and 20,150 employees, all within the Bayfront Area.⁴ ConnectMenlo concluded that the additional development would result in significant and unavoidable impacts to roadway segments and increase peak hour delays at intersections from increased traffic, even after the mitigation measures called for in the General Plan Update are implemented (if ever).⁵

The Level of Service (LOS) analysis included in the Project's Draft EIR further reveals that the intersections surrounding the Project site and TIDE Academy, including the intersections of Marsh Road/Bayfront Expressway, Chrysler Drive/Independence Drive, Chilco Street/Constitution Drive, Willow Road/Bayfront Expressway, and University Avenue/Bayfront Expressway, are currently operating at an LOS of 'D' or worse at one or more peak hours, and do not meet the City's desired LOS standards. (Draft EIR, Appx. E, at 10-11.) Per the Draft EIR, traffic generated by the Project, in conjunction with other near term projects expected to be approved, would also cause the levels of service at the intersection of Chrysler Drive/Constitution Drive to drop to an 'F,' and would further degrade the levels of service at numerous other intersections. (Draft EIR at 4.2-43-4.2-44.) In analyzing intersection Levels of Service under "Cumulative (2040) Plus Project Conditions," the Draft EIR shows that most intersections in the Project neighborhood will be operating out of compliance with the City's Circulation Policy goals. (Draft EIR at 4.2-53-4.2-54.) While the Draft EIR discusses certain improvement measures that the City may take to resolve these traffic issues, including the payment of transportation impact fees to fund some (but not all) of the improvement measures, it is unclear from the Draft EIR exactly when or if these measures will be accomplished. (See, e.g., Draft EIR at 4.2-48 ["While the improvements to the westbound approach are included in the City's TIF program, the improvements on the other approaches are beyond those in the TIF program and payment of the TIF would not entirely address the change to LOS as a result of project traffic"]; see also, Draft EIR, Appx. E, at 16 and 17 ["The implementation timeline of these proposed improvements [to walking, biking, and transit facilities] is unknown"].) In addition to deficient vehicular intersections, the Draft EIR states that the "network of sidewalks, crosswalks, and curb ramps are discontinuous in the vicinity of the proposed project." (Draft EIR at 4.2-7.) Finally, the Draft EIR goes on to note several sidewalk gaps that exist in the Bayfront Area. (*Id.*)

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

⁴ Menlo Park Small High School Project Final EIR (October 6, 2016), p. 2-12; ConnectMenlo: General Plan Land Use & Circulation Elements and M-2 Area Zoning Update Draft EIR (June 1, 2016), Table 3-2.

⁵ Menlo Park Small High School Project Final EIR (October 6, 2016), pp. 2-15 – 2-16; ConnectMenlo: General Plan Land Use & Circulation Elements and M-2 Area Zoning Update (June 1, 2016), p. 4.13-73.

The Draft EIR shows that the proposed Project is anticipated to impede circulation in the Bayfront Area, and clog the access roads to, from, and around the District's TIDE Academy. (See, 5 Cal. Code Regs. § 14010(k), which requires that school facilities be easily accessible from arterial roads.) The TIDE Academy driveway is located almost directly across Jefferson Drive from the Project's proposed entryway. 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 thousands of new residents to the area, including an estimated 100 new high school students, the proposed Project will draw thousands of daily office commuters, visitors, and emergency access vehicles from around the Bay Area.

As indicated in the City's General Plan, and as shown in the Draft EIR, the City's roads and intersections are not currently equipped to accommodate such high density development and high levels of traffic. (See, e.g., Draft EIR at 4.2-23-4.2-26 [ConnectMenlo EIR found significant and unavoidable impacts to several different elements of the City's transportation system due to project buildout].) Jefferson Drive is a narrow two-lane road. Accordingly, such increases to traffic in the area will not only make it much more difficult for students and staff to travel to and from TIDE Academy, but will also **drastically increase the risk of vehicular accidents to District families, students, and staff traveling to and from school**. For instance, many students at TIDE Academy access the school by turning onto Independence Drive from Marsh Road (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. This roadway condition was not discussed in the Draft EIR.

In addition to increased risks of vehicular accidents, the Draft EIR fails to analyze how traffic and parking impacts posed by the Project will impact the safety and convenience of TIDE Academy students who walk or bike to school. Title 5 of the California Code of Regulations requires that school sites be located within a proposed attendance area that encourages student walking and avoids extensive bussing. (5 Cal. Code Regs. § 14010(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.⁶ 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.⁷

⁶ 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.

⁷ Menlo Park Small High School Project Draft EIR (July 8, 2016), p. S-6.

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

- Goal CIRC-1: Provide and maintain a safe, efficient, attractive, user-friendly circulation system that promotes a healthy, safe, and active community and quality of life throughout Menlo Park.
- Goal CIRC-2: Increase accessibility for and use of streets by pedestrians, bicyclists, and transit riders.
- Policy CIRC-2.14. Impacts of New Development. Require new development to mitigate its impacts on the safety...and efficiency...of the circulation system. New development should minimize cut-through and high-speed vehicle traffic on residential streets; minimize the number of vehicle trips; provide appropriate bicycle, pedestrian, and transit connections, amenities and improvements in proportion with the scale of proposed projects; and facilitate appropriate or adequate response times and access for emergency vehicles.
- Policy CIRC-3.4: Level of Service. Strive to maintain level of service D at all City-controlled signalized intersections during peak hours...
- **Policy CIRC-6.4: Employers and Schools. Encourage employers and schools to promote walking, bicycling, carpooling, shuttles, and transit use.**

(Draft EIR at 4.2-17-4.2-19; emphasis added.)

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

While the Draft EIR purports to analyze whether the Project complies with the above policies, the Draft EIR does not include adequate information or analysis regarding the transportation needs and patterns of District students, including those attending TIDE Academy. The Draft EIR likewise fails to consider how extreme increases in traffic on roads that are already narrow and crowded will impact the safety of students traveling to and from TIDE Academy. Rather, in assessing whether the Project would be consistent with Policy CIRC-6.4 related to Employers and Schools, the Draft EIR doesn't even mention schools in simply stating that the "proposed project would develop and implement a TDM plan that includes measures encouraging employers to promote walking, bicycling, carpooling, shuttles, and transit use." (Draft EIR at 4.2-33.) This analysis is not adequate under CEQA, as it does not provide the public with sufficient information as to whether the Project will comply with the City's General Plan policies.

The Draft EIR likewise provides only surface-level analysis regarding the Project's compliance with other City policies related to the promotion of safe alternative modes of transportation. The

Draft EIR notes that there are several existing deficiencies with pedestrian facilities within and in the vicinity of the Project site, including discontinuous sidewalks, crosswalks, and curb ramps, as well as sidewalk gaps. (Draft EIR at 4.2-7.) The Draft EIR also notes that the Project would involve the addition of a paseo and a small portion of sidewalk intended to encourage the use of pedestrian facilities. (Draft EIR at 4.2-31.) However, the analysis completely fails to consider how the probable increase in traffic congestion to the area could exacerbate existing deficiencies with pedestrian facilities, thereby posing severe safety issues to pedestrian use of the Project neighborhood. Contrary to assertions in the Draft EIR, the new criteria established in CEQA Guidelines section 15064.3 for analyzing transportation impacts does not excuse a lead agency from analyzing and mitigating traffic congestion impacts where such impacts may cause significant impacts on air quality, noise, and pedestrian safety. (Pub. Res. Code § 21099(b)(3).)

The inadequate parking proposed for the Project will also magnify issues related to pedestrian safety. While inadequate parking in and of itself may not be considered a significant impact under CEQA, the Draft EIR is still required to provide sufficient information regarding any secondary impacts that may result from inadequate parking, such as safety impacts to students traveling to and from school. (See, *Covina Residents for Responsible Development v. City of Covina* (2018) 21 CA5th 712, 728.) While the number of parking spaces proposed for the Project would satisfy the City's Municipal Code requirements, the Draft EIR notes that demand for parking generated by the Project would exceed the proposed supply by at least 80 spaces. (Draft EIR at 4.2-68.) This will result in an increased demand for public parking spaces in the streets surrounding TIDE Academy and the Property, which will in turn lead to more crowded streets and a higher potential for conflicts between vehicles and pedestrians. These secondary impacts on pedestrian and student safety caused by inadequate parking must be analyzed.

Finally, the Draft EIR's cumulative traffic impacts analysis is deficient. As noted above, EIRs must discuss cumulative impacts of a project when the project's effects on the environment, viewed in conjunction with impacts of other past, present, or reasonably foreseeable future projects, is cumulatively considerable. (CEQA Guidelines § 15130(a).) (See, *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 CA4th 713, 720.) While a lead agency may incorporate information from previously-prepared program EIRs into the agency's analysis of a project's cumulative impacts, the lead agency must address all cumulative impacts that were not previously addressed in the program EIR. (Pub. Res. Code § 21083.3(c); 14 CCR 14183(b)(3).)

The Project's above-discussed anticipated traffic and safety impacts on the District, combined with the anticipated traffic and safety impacts of the vast number of development projects that have recently been approved and are being considered for approval in the Bayfront Area, and specifically the western Bayfront Area, are cumulatively considerable. Each of the large mixed-use projects proposed in the Bayfront Area alone promises drastically to increase traffic in the neighborhood, resulting in air quality, noise, and safety issues for District families and staff attending TIDE Academy. When considered together, these collective impacts on traffic, safety, and air quality in the neighborhood will be devastating. All of these impacts are exacerbated by the rapidity at which the City is approving of development projects in the Bayfront Area, as the City's roadways have not been updated to handle the increase in traffic associated with full buildout under ConnectMenlo. These cumulative impacts on the District's TIDE Academy were

not adequately discussed in the ConnectMenlo EIR or the Project's Draft EIR. The District recognizes the need for housing and is not opposed to it, so long as the City ensures that all impacts that new developments have on and related to the District are adequately mitigated.

ii. Air Quality

The Draft EIR analyzes air quality impacts posed by construction and operation of the Project. The Draft EIR further recognizes that the proposed Project would pose a significant environmental impact if it would expose "sensitive receptors," including schools, to substantial pollutant concentrations. (Draft EIR at 4.3-30.) The Draft EIR does not, however, specifically discuss potential construction and operational air quality impacts as they pertain to the District's TIDE Academy, and students traveling to and from TIDE Academy. Air quality impacts on the District, its students, and staff have the potential to disrupt classes, prevent students from being outside during construction, and prevent students from traveling to and from TIDE Academy during construction. The Draft EIR is, therefore, required to analyze the following:

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

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

iii. Noise

As with its analysis of Air Quality impacts, the Draft EIR notes that TIDE Academy is a nearby "sensitive receptor." As such, the Draft EIR appears to acknowledge that noise impacts on the District's TIDE Academy must be analyzed. (See, Draft EIR at 4.5-14.) The Draft EIR discusses how Project construction may pose potentially significant impacts on sensitive receptors due to the generation of excessive groundborne vibration or groundborne noise levels. (Draft EIR at 2-13.) The document concludes that vibration impacts to sensitive receptors within 200 feet of the Project (presumably including TIDE Academy) will be analyzed at a later date, and vibration impacts to nearby receptors "shall not exceed the vibration annoyance levels" for workshop, office, residential daytime, and residential nighttime property uses. (*Id.*)

This deferred analysis of vibration impacts is improper, as it fails to provide the District and lead agency with a sufficient degree of analysis to make an intelligent judgment concerning the Project's environmental impacts. (CEQA Guidelines §§ 15121(a) and 15151; see, *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 CA4th 48, 104 [holding that EIR must disclose information that is indispensable to a reasoned analysis of an issue], overruled on other

grounds in *Neighbors for Smart Rail v. Exposition Metro Line Constr. Auth.* (2013) 57 CA4th 439.)

Further, the Draft EIR's analysis of noise impacts generally contains insufficient quantifiable data and analysis that would allow the public and lead agency to understand whether noise and/or vibration generated from either construction or operation of the proposed Project, including in combination with all past, present, and reasonably foreseeable future projects, would cause significant impacts on the District's educational program at TIDE Academy. Noise impacts could disrupt classes, prevent students from being able to be outside due to overwhelming outside noise that would affect teachers' abilities to monitor and direct students because they cannot be heard, and lastly, could affect the interior of buildings students are housed in. For these reasons, the District requested that the following information be discussed and analyzed in the Draft EIR:

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

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

iv. Population and Housing

The District anticipates that this Project will generate 100+ students, and specifically requested that the Draft EIR analyze:

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

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

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

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

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

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

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

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

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

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

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

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

As discussed at length above, substantial evidence in the record establishes a significant possibility that the Project, in conjunction with all other projects being considered in the Bayfront Area of Menlo Park, by generating thousands of new residents and vehicles to the area within a few years, will have a negative impact on students, education, and educational facilities. These impacts, which were not adequately analyzed in the Draft EIR, will directly impede the fulfillment of the above General Plan policies and goals. The simple payment of developer fees will not adequately mitigate the impacts of development on the District's schools. Thus, approval of the Project without adopting any feasible measures to address the negative impacts on schools would be contrary to the City's General Plan.

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

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

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

A. The Legislature Intended Coordinated Planning for School Sites

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

The Legislature recognized that new planned development should take into consideration and even “reserve” where schools would be located to serve the development because schools are as integral a part of planning for new development as is any other public service, such as fire, police, water and sewer. As it relates to this case, the intent behind sections 65350, *et seq.*, supports the District’s position that the City must analyze whether the District’s current facilities are adequate to accommodate and serve both its existing population and the new development, particularly in light of the Project impacts and cumulative factors addressed in this letter. The City can help the District provide adequate facilities resulting from any impacts of the Project, which are not addressed by developer fees, by requiring alternative mitigation measures to assure that there are adequate school facilities available to accommodate the District’s needs.

B. Alternative Mitigation Measures

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

1. Land Dedication

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

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

be levied. . . .” (Emphasis added.) Section 65995 expressly excludes Chapter 4.7, inclusive of section 65974, from this limitation, thus permitting a city to address conditions of overcrowding in school facilities or inadequately sized school sites by requiring, for example, the dedication of land.

A land dedication requirement would be good public planning benefiting all residents of the community, including future residents of the Project. Land suitable for new school facilities in Menlo Park is already extremely scarce; it will only become more so if the Project is implemented and further development occurs. Under Government Code sections 65352 and 65352.2, the City has a duty to help plan for adequate services to its residents by ensuring that future sites are set aside for schools. Failure to do so leads to inadequate services, future controversies, and the potential need for a school district to exercise its rights under eminent domain, displacing existing residents. Therefore, mitigation for the impacts stemming from the Project that are not considered in the Draft EIR are and can be made available even after SB 50.

2. *Phasing*

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

VI. **Conclusion**

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

It is the District's position that the Draft EIR is incomplete, and does not adequately analyze the Project's potential impacts related to schools, or mitigation measures that would lessen these impacts. The safety of students is paramount to the District, and these safety concerns are not

Mr. Tom Smith
City of Menlo Park
February 2, 2021
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adequately addressed in the Draft EIR as currently constituted. Changes must be made to preserve the safety of the students and allow them to enjoy productive time at school, free from excessive traffic, noise, and pollution. Therefore, the District demands that the Draft EIR be updated and recirculated.

District encourages the City and Developer to work cooperatively with the District and consider alternative mitigation measures, such as phasing and land dedication, which can assist in adequately mitigating the impacts on the District's schools and the affected surrounding environment.

Sincerely,

LOZANO SMITH

A handwritten signature in blue ink, appearing to read "B.R. Sena".

Bradley R. Sena

BRS/mag

Enclosure

cc: Crystal Leach, Interim Superintendent (cleach@seq.org)



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CRYSTAL LEACH

January 10, 2020

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

Tom A. Smith

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 Uptown Project

Dear Mr. Smith:

Sequoia Union High School District ("District") appreciates the opportunity to provide comments and input regarding the Notice of Preparation of an Initial Study and Environmental Impact Report for the Menlo Uptown Project ("Project"). Specifically, this letter responds to the City of Menlo Park's ("City") invitation to submit comments on the proposed scope and content of the Focused Environmental Impact Report ("EIR") that is planned to be prepared for the Project.

The District is particularly interested in and concerned about this Project because it is located directly across the street from the District's TIDE Academy on Jefferson Drive. The District requests that all direct and indirect impacts related to the Project's proximity to a school be thoroughly reviewed, analyzed, and mitigated.

The Project, sponsored by Uptown Menlo Park Venture, LLC ("Developer"), is proposed to be located at the approximately 4.83-acre site having the addresses of 141 Jefferson Drive, 180 Constitution Drive, and 186 Constitution Drive, Menlo Park, CA (collectively, the "Property"), which was previously a technology park consisting of three single story commercial and industrial buildings. The Developer is proposing to demolish the existing commercial and industrial space and redevelop the Property with three residential buildings totaling approximately 466,000 square feet ("sf") of gross floor area with 441 multi-family rental units, 42 townhomes, and 2,100 sf of commercial space, associated open space, circulation and parking, and infrastructure improvements. This Project, which will require a number of entitlements from the City, is anticipated to

generate approximately 14,150 new residents, and a corresponding increase of approximately 100 new high school students.

The City, through its Initial Study, concludes that the Project will have no additional impacts on the District's ability to provide its public service, other than those impacts addressed in the ConnectMenlo Final Environmental Impact Report ("ConnectMenlo EIR") that was certified by the City on December 6, 2016. Accordingly, the City is attempting to rely on the ConnectMenlo EIR as grounds to prepare a "focused," or limited EIR, which does not evaluate the Project's impacts on the District's ability to provide its public service. We believe that this approach is improper, and the limited scope of the City's proposed EIR inappropriate. Rather, the EIR prepared for the Project must contain a detailed discussion of the Project's potential impacts on the District, and manners in which to mitigate those impacts.

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

District staff attended the Planning Commission scoping meeting for this Project and was pleased by some of the comments made by the Commissioners supporting consideration of the District. The District met with various developers of projects in the area, but has had very limited interaction with the Developer of this Project (Greystar Partners). We are hopeful that we will be able to forge a more collaborative relationship and discussion as this Project continues through the planning and approval stages.

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

Inappropriate Reliance on ConnectMenlo EIR

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

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

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

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

The Project's Initial Study provides that the Initial Study "tiers from the ConnectMenlo Final EIR, as appropriate." (Initial Study, p. 1-11.) The Initial Study later concludes that the proposed Project would have a less-than-significant impact on schools because the "ConnectMenlo Final EIR determined that any development associated with ConnectMenlo would be subject to payment of development impact fees, which under Senate Bill 50 (SB 50) are deemed to be full and complete mitigation." (Initial Study, p. 3-45.) The ConnectMenlo EIR concluded that "[b]ecause future development under the proposed project would occur incrementally over the 24-year buildout horizon and, in compliance with SB 50, would be subject to pay development impact fees...impacts related to the SUHSD would be less than significant." (ConnectMenlo Draft EIR, p. 4.12-40.)

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

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

As discussed in greater depth throughout this letter, both the program and the Project will pose numerous, significant impacts on the District and its ability to provide its educational program, none of which were adequately identified and addressed in the ConnectMenlo EIR and, as a result, the Initial Study. ConnectMenlo likewise did not consider either the program or Project's specific impacts on the District's TIDE Academy, as this school did not yet exist when the ConnectMenlo EIR was prepared. Because TIDE Academy is located in the Bayfront Neighborhood, it is particularly vulnerable to the 5,500 residential units authorized by ConnectMenlo, most of which will be constructed in the Bayfront neighborhood. ConnectMenlo did not consider whether/how the placement of 483 residential units directly across the street from a District high school would impact the District's program at TIDE Academy.

Further, ConnectMenlo was based on the assumption that development under the program would take place in an incremental fashion, over the course of 24 years. The Initial Study acknowledges the fact that this assumption was incorrect, however, in providing that "[a]lthough the ConnectMenlo Final EIR assumed a buildout horizon of 2040, the maximum development potential may be reached sooner than anticipated." (Initial Study, p. 1-4, fn. 8.) The Initial Study goes on to provide that "the pace of development would not create additional impacts beyond those identified in the ConnectMenlo Final EIR for topic areas identified in this Initial Study." (Id.)

The District vehemently disagrees with the Initial Study's conclusion. If the City continues to approve new residential development projects at its current pace, the District will be subject to a rapid influx of students to the District's facilities, which are already at or exceeding capacity. This rapid influx, combined with the existing inadequacies of the District's school facilities funding sources (as discussed below), will prevent the District from engaging in meaningful long-term facilities planning, and will instead require the District to spend

valuable resources on temporary solutions to the District's facilities problems, such as the purchase and lease of portables.

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

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

As discussed, the Developer and City, both in the Initial Study's 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 \$3.79 per sf of residential development, and up to \$0.61 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.

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

The inadequacy of developer fees as a source of funding for school facilities has forced school districts to rely increasingly on other sources of funding, primarily including local bond funds and State bond funds administered under the State Facilities Program (SFP). However, these sources of funds are equally unreliable. The last State school facilities bond fund (Proposition 51) has been exhausted, and it is currently unclear

when/whether those school districts that apply for state funding will be able to receive such funding. Local bond funds are also difficult to generate, as local bonds are subject to school district bonding capacity limitations and voter approval. Either way, the funding formula was never intended to require the State and local taxpayers to shoulder a disproportionate portion of the cost of school facilities.

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

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

Transportation/Circulation/Traffic Analysis

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

6. Assess the impacts on the routes and safety of students traveling to school by vehicle, bus, walking, and bicycles.

The District has significant concerns about the traffic, transportation, and circulation impacts that the Project may have on the District, including the District's staff, parents, and students that attend the TIDE Academy. The foregoing categories of information are critical for determining the extent of those impacts on the District, none of which were adequately identified or discussed in either the Initial Study or the ConnectMenlo EIR.

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 also 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 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 via Jefferson Drive and Constitution Drive, which border the Property to the north and south. The Project Site is located in the Bayfront Area of Menlo Park that 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. As discussed, the City's 2016 General Plan Update calls for an increase of 4.7 million square feet of non-residential office space, 850 hotel rooms, 5,430 residential units, 13,960 residents, and 20,150 employees, all within the Bayfront Area.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 General Plan Update does not consider how these impacts would be exacerbated by the current Project.

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

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

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.

As discussed, the District's TIDE Academy is located across Jefferson Drive from the Project Site (less than 100 feet away), in the Bayfront neighborhood of Menlo Park. Thus, both TIDE Academy and the proposed Project would be accessed by Jefferson Drive and the immediately surrounding streets.

The proposed Project is anticipated to impede circulation in the Bayfront neighborhood, 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.) In addition to drawing over 14,000 new residents to the area, including an estimated 100 new high school students, the proposed Project will draw thousands of daily office commuters, visitors, and emergency access vehicles from around the Bay Area. In addition to the immediate roads surrounding the Property and TIDE Academy, these new residents and commuters will rely heavily on the Bayfront Expressway, Bayshore Freeway, Willow Road, and Marsh Road to the west of TIDE Academy. As indicated in the City's General Plan, the City's roads are not currently equipped to accommodate such high density development and high levels of traffic. Accordingly, such increases to traffic in the area will negatively impact the District's abilities to operate its educational program, and also cause a drastic increase in the risk of vehicular accidents to District families, students, and staff traveling to and from TIDE Academy. It is important that these traffic impacts are not only assessed through a VMT analysis, but also a LOS analysis, as the proposed Project will cause severe traffic congestion surrounding the District's TIDE Academy, which impacts will in turn cause issues related to safety, noise, and air quality.

Adding to the District's concerns regarding traffic surrounding the Project site and the TIDE Academy are the vast number of development projects that have recently been approved, and the speed at which the development projects have been approved by the City and/or completed in the area, including the 777 Hamilton Drive project (195 new apartments), the Facebook Campus Project at former 1601 Willow Road and 312 and 313 Constitution Drive (78.9 acres of mixed use development), and the Menlo Gateway Project at 100-190 Independence Drive (cafe/restaurant, health club, 230-room hotel, three office and research and development buildings, and three parking structures covering 15.9 acres). There are several other projects that are being considered by the City, including the Facebook Campus Expansion Projects at 301-309 Constitution Drive, the Willow Village Master Plan Project at 1350-1390 Willow Road, 925-1098 Hamilton Avenue, and 1005-1275 Hamilton Court (1,735 residential units), and the 111 Independence Drive Project (106 multi-family dwelling units). Each of these projects alone promise to drastically increase traffic in the neighborhood. When considered together, their collective impact on traffic in the neighborhood will be devastating. The impacts of the Project must, therefore, be considered in conjunction with the anticipated impacts of all the other development being considered and approved in this area. (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.)

Further, the traffic impacts posed by the Project, combined with all the other City-approved development in the area, will severely impact the safety and convenience of TIDE Academy students who walk or bike to school, significantly increasing their risk of suffering from traffic-related physical injuries and death. The analysis of student safety must be clearly delineated and given the extensive focus that it deserves. 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 Project Site neighborhood in implementing the District's TIDE Academy project, the District 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 To mitigate the impacts of conflicts and/or dangerous interactions between pedestrians, bicyclists, and

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.

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, through the City’s General Plan Land Use and Circulation Element, has committed to support and promote such safe route to school programs to enhance the safety of school children who walk to school.⁵ The EIR must analyze and mitigate any impacts on the District’s ability to implement its transportation and safety mitigation measures for the TIDE Academy, and the District’s abilities to promote alternative modes of transportation to and from TIDE Academy. As TIDE Academy did not yet exist, these impacts were not adequately addressed in the ConnectMenlo EIR.

Finally, as previously discussed, the City must consider the extent to which the Project’s impacts on traffic, transportation, circulation, and safety will be exacerbated by AB 48 (discussed above), coupled with the extremely high costs of land. As the District’s ability to transport students to and from District schools becomes more constrained due to increased development in the District, the District will need to construct new educational facilities to accommodate changes in transportation patterns. However, AB 48 will hamstring the District’s ability to construct new facilities by dramatically reducing the amount of developer fees available to the District.

We urge the City thoroughly to address and analyze each of the above listed items through its EIR, and implement extensive and thoughtful mitigation measures.

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, when combined with all of the other development being considered and approved in the Bayfront neighborhood, will have a significant impact on the air quality of the neighborhood due to increases in vehicular traffic. These air quality impacts and corresponding mitigation measures must be analyzed in the EIR. Even more importantly, the Project is anticipated to result in significant impacts to sensitive receptors as increased 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 adequately addressed in the ConnectMenlo EIR.

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

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

Noise

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

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

Population

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

In addition to 483 anticipated residential units, it is anticipated that the proposed Project's 2,100 sf of commercial space sf 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, 483 anticipated residential units is likely to generate at least 97 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 requests that historical, current, and future population projections for the District be addressed in the EIR. Population growth or shrinkage is a primary consideration in determining the impact that development may have on a school district, as a booming population can directly impact the District and its provision of educational services, largely because of resulting school overcrowding, while a district with declining enrollment may depend on new development to avoid school closure or program cuts. Overcrowding can constitute a significant impact within the meaning of CEQA. (See, 14 Cal. Code Regs. §§ 15064(e).) This is particularly true where the overcrowding results in unsafe conditions, decreased quality of education, the need for new bus routes, and a need for new school construction. The same can hold true for potential school closures or program cuts resulting from a declining population.

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

Housing

- 12. Describe the type and number of anticipated dwelling units indirectly resulting from the Project.**
- 13. Describe the average square footage for anticipated dwelling units, broken down by type of unit, indirectly resulting from the Project.**

14. Estimate the amount of development fees to be generated by development in accordance with implementation of the Project.

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

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

The adequacy of the statutory development fees to offset the impact of new development on local school districts can be determined only if the types of housing and average square footage can be taken into consideration. For instance, larger homes often generate approximately the same number of students as smaller homes. At the same time, however, a larger home will generate a greater statutory development fee, better providing for facilities to house the student being generated. It is for these reasons that the Government Code now requires a school district to seek – and presumably to receive – such square footage information from local planning departments. (Gov. Code § 65995.5(c)(3).)

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

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

Public Services

- 15. Describe existing and future conditions within the District, on a school-by-school basis, including size, location and capacity of facilities.**
- 16. Describe the adequacy of both existing infrastructure serving schools and anticipated infrastructure needed to serve future schools.**
- 17. Describe the District's past and present enrollment trends.**
- 18. Describe the District's current uses of its facilities.**
- 19. Describe projected teacher/staffing requirements based on anticipated population growth and existing State and District policies.**
- 20. Describe any impacts on curriculum as a result of anticipated population growth.**

21. **Identify the cost of providing capital facilities to properly accommodate students on a per-student basis, by the District (including land costs).**
22. **Identify the expected shortfall or excess between the estimated development fees to be generated by the Project and the cost for provision of capital facilities.**
23. **Assess the District's present and projected capital facility, operations, maintenance, and personnel costs.**
24. **Assess financing and funding sources available to the District, including but not limited to those mitigation measures set forth in Section 65996 of the Government Code.**
25. **Identify any expected fiscal impacts on the District, including an assessment of projected cost of land acquisition, school construction, and other facilities needs.**
26. **Assess cumulative impacts on schools resulting from additional development already approved, pending, or anticipated.**
27. **Identify how the District will accommodate students from the Project who are not accommodated at current District schools, including the effects on the overall operation and administration of the District, the students and employees.**

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

Conclusion

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

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

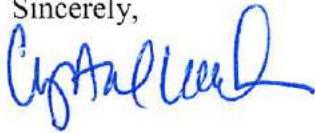
We request that all notices and copies of documentation with regard to this Project be mailed both to the District directly, and also to our legal counsel's attention as follows:

Mary E. Streshly, Superintendent
Sequoia Union High School District
480 James Avenue
Redwood City, CA 94062

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

Please feel free to contact me directly if we can be of any assistance. Thank you.

Sincerely,



Crystal Leach
Associate Superintendent Administrative Services

cc: Kelly Rem, Lozano Smith, Mary E. Streshly

Good afternoon Mayor, City Manager, City Attorney, and City Clerk,

I am requesting to Call Up project Menlo Uptown for the following reasons:

1. Concerns about upcoming development and water shortages due too drought.
2. In District one, there is an extreme heat and climate crisis concern and we do not have a emergency preparedness plan nor to mitigate existing conditions.
3. Naming rights on the urgent care facility by District 1 Residents.
4. Transportation issues and improvements must happen within the Belle Haven neighborhood prior to project completion.
5. Non-community members negotiating community amenities on the behalf of a community that have not reached out.
6. The existing below market rate policy does not address the immediate needs of the community to prevent displacement or further displacement.

I appreciate your consideration.

All the best,

Cecilia Taylor
Councilmember
City Hall - 2nd Floor
701 Laurel St.
tel 650-589-5073
menlopark.org



REGULAR MEETING MINUTES - EXCERPT

Date: 01/11/2021
Time: 7:00 p.m.
GoToWebinar.com – ID #573-151-371

A. Call To Order

Chair Henry Riggs called the meeting to order at 7:07 p.m.

B. Roll Call

Present: Andrew Barnes, Chris DeCardy, Michael Doran (Vice Chair), Camille Kennedy (left meeting at 11 p.m.), Henry Riggs (Chair)

Absent: Larry Kahle, Michele Tate

Staff: Payal Bhagat, Contract Principal Planner; Kyle Perata, Principal Planner; Tom Smith, Senior Planner; Leo Tapia, Planning Technician; Chris Turner, Assistant Planner

F. Public Hearing - 2

- F3. Draft Environmental Impact Report (EIR) Public Hearing/Andrew Morcos/141 Jefferson Drive and 180-186 Constitution Drive (Menlo Uptown):
Public hearing to receive public comments on the Draft EIR for the proposed Menlo Uptown project consisting of 483 multi-family dwelling units, comprised of 441 rental units and 42 for-sale townhome units, and approximately 2,940 square feet of office uses located on the ground floor of one of the proposed buildings. The project site is located in the R-MU-B (Residential Mixed Use, Bonus) zoning district. The Draft EIR identifies less than significant effects in the following topic areas: Population and Housing, Transportation, and Greenhouse Gas Emissions. The Draft EIR identifies less than significant effects with mitigation for the Air Quality and Noise (operational traffic and stationary noise) topic areas. The California Environmental Quality Act (CEQA) requires this notice to disclose whether any listed hazardous waste sites are present at the location. The project location does not contain a hazardous waste site included in a list prepared under Section 65962.5 of the Government Code. The City previously prepared an initial study for the proposed project that determined the following topic areas would have no impacts, less-than-significant impacts, or less-than-significant impacts with mitigation measures (including applicable mitigation measures from the ConnectMenlo 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, Mineral Resources, Noise (construction-period, groundborne vibration, and aircraft-related noise), Public Services, Recreation, Utilities and Service Systems, Tribal Cultural Resources, and Wildfire. Written comments on the Draft EIR may also be submitted to the Community Development Department (701 Laurel Street, Menlo Park) no later than 5:00 p.m. on February 2, 2021 ([Staff Report #21-003-PC](#))

Court reporter transcribed Item F3.

G. Study Session - 2

- G2. Study Session for Use Permit, Architectural Control, Major Subdivision, Heritage Tree Removal Permits, Below Market Rate (BMR) Housing Agreement, and Environmental Review/Andrew Morcos/141 Jefferson Drive and 180-186 Constitution Drive (Menlo Uptown):
Request for a use permit, architectural control, major subdivision, heritage tree removal permits, BMR housing agreement, and environmental review to redevelop three parcels with 483 multi-family dwelling units, comprised of 441 rental units split between two seven-story apartment buildings with above-grade two-story parking garages integrated into the proposed buildings and approximately 2,940 square feet of office uses located on the ground floor of one of the proposed buildings, and 42 for-sale townhome-style condominium units, located in the R-MU-B (Residential Mixed Use, Bonus) zoning district. The proposed project would have approximately 471,986 square feet of total gross floor area (GFA) and a floor area ratio (FAR) of approximately 224.4 percent. The proposal includes a request for an increase in height, density, and FAR under the bonus level development allowance in exchange for community amenities. The proposal also includes a use permit request for the storage and use of hazardous materials (diesel fuel) for emergency backup generators to be incorporated into the proposed project. The project site currently contains three single-story office and industrial buildings that would be demolished. ([Staff Report #21-003-PC](#))

Staff Comment: Planner Smith said staff had a few key topics for the Commission's consideration:

- Site and building design
- BMR housing unit mix
- Potential intersection improvements through project conditions
- Size of the commercial space its proposed use
- Community amenities proposal

Commission Comment: Chair Riggs asked the applicant to speak about the striated fiber cement material. Mr. Manus said the terra cotta rust color and the darker gray color were both fiber cement panels. He said the charcoal colored one had a very fine horizontal texture to it that they had introduced and that was also true with the terra cotta color. He said at the corners they were using a metal panel in a portion for the accent at the surrounds and for the corner elements they were using a wood textured finish. He said on the upper levels they would use a lighter finish and in all cases the cement fiber panels were less flat in color and had a texture to them.

Chair Riggs said when the outside corners met with fiber cement panels and where they were used as a rain screen there frequently was about a 3/8-inch gap among the panels and also at the corner where it lapped. He said here it did not here look like they were gapping the panels. Mr. Manus said it was the corner they were trying to make monolithic to avoid the corner that you would see. Chair Riggs said it looked like a humungous piece of limestone. Mr. Manus said not quite but that was the idea.

Chair Riggs said he really liked the transparency of the pedestrian level and asked if that was a different material from the fiber cement panel. Mr. Manus said the ground level was all storefront and between those were some solid panels. He said the idea was to pick up on that porosity particularly at the street and wrapping around onto the paseo frontage. Replying to Chair Riggs, Ms. Krolewski said the green flat area was lawn and then colored concrete was used for much of the pathway with circular accents that were hexagonal pavers.

(Commissioner Kennedy had left the meeting.)

Commissioner DeCardy said the staff report indicated there was less public open space and asked where that was lost. Mr. Morcos said staff had suggested that it was not appropriate to call some areas around the entrances to the multi-family building open space so they removed those from the calculations.

Commissioner DeCardy referred to the applicant's explanation of the reasoning for the diesel generator backup for the stacked parking garage. He asked as the project moved forward if the applicant would keep an open mind about batteries as a potential alternative. Mr. Morcos noted the room to store battery backup and the capacity of batteries to power the garage for longer than 90 minutes were considerations but he was as interested in the future of battery as anyone and was happy to continue studying that.

Commissioner DeCardy said the site and building design were looking good and the open space was looking promising. He said he was much more interested in the public open space. He said the BMR mix was important to him and he thought that getting the income level where the City had the greatest shortfall would be welcome. He said definitely they should look at non-CEQA transportation conditions. He said related to the community amenity that he was a fan conceptually on nonprofit space. He said it looked like they could easily meet the community amenity level expected.

Commissioner Barnes said regarding the site and building design that the project had come a long way and he did not have any refinements for it. He said it worked well contextually in the area and with the building types around it. He said he did not have anything to offer about the nonresidential space. He said he did not know anything about the proposed nonprofit and his only concern was their viability. He recommended provisions to allow for changes in the use of the nonresidential space for reasons such as nonperformance of the tenant. He said it was more important that the space remained rather than who was using the space. He said there should be mechanisms to make and keep the space productive. He said as to the question of what the Commission's idea was about a different use of funds for the gap in the community amenity valuation that he thought it should go to the Ravenswood School District if there was anything in the list that related to education. He noted a reference at some point to a childcare center. Mr. Morcos said they were working on a childcare center in their other project Menlo Portal. Commissioner Barnes said he was very supportive of any childcare alternatives that they might be thinking of in that area.

Commissioner Barnes referred to potential intersection improvements through project conditions and asked about its benefit to the area. Planner Smith said if the intersection improvements were implemented that it would return all of those intersections back to the pre-project conditions and reduce potential congestion at those intersections associated with an increase in traffic. He said the difference between the high feasibility projects were reasonably easy to consider as they did not require additional right of way, acquisitions or road widening and were covered by the project's payment of a Transportation Impact Fee. He said low feasibility intersection improvements took a little bit more thought as they could lead to induced demands because of roadway widening or moving traffic signals. He said many of those were under State control and it would take work with Caltrans and going through their processes to accomplish.

Commissioner Barnes said that he supported the high feasibility improvements for sure and also the low feasibility improvements as long as there was no inducement of demand and that other modalities of travel were not adversely impacted.

Chair Riggs said regarding potential intersection improvement that he was somewhat aligned with Commissioner Barnes in that he would not want to see compromises and a lot of extra paving. He said he thought a goal had to be kept in mind that these projects were impacting the continuing existing uses of this area which were industrial and development adjacent to biotech and such. He said some of those uses would continue. He said as they heard from a neighbor deliveries would be important, and in these areas that so clearly were mixed use that commercial transportation was something they needed to keep in mind. He said Menlo Park had a problem with finishing its traffic signal programming. He noted the impediment of red left signal lights to intersection flow.

Chair Riggs closed the study session.

I. Adjournment

Chair Riggs adjourned the meeting at 11:34 p.m.

Staff Liaison: Kyle Perata, Principal Planner

Recording Secretary: Brenda Bennett

Approved by the Planning Commission on February 22, 2021

CITY OF MENLO PARK
PLANNING COMMISSION

In re)
141 JEFFERSON DRIVE)
180-186 CONSTITUTION DRIVE)
MENLO UPTOWN)
_____)

ENVIRONMENTAL IMPACT REPORT
SCOPING SESSION
REPORTER'S TRANSCRIPT OF PROCEEDINGS
MONDAY, JANUARY 11, 2021
TAKEN REMOTELY THROUGH GO-TO-MEETING

Reported by: MARK I. BRICKMAN, CSR, RPR
License No. 5527

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ATTENDEES

THE PLANNING COMMISSION:

- Henry Riggs - Chairperson
- Michael C. Doran - Vice Chairperson
- Camille Kennedy (Absent)
- Chris Decardy
- Michele Tate (Absent)
- Andrew Barnes
- Larry Kahle (Absent)

THE CITY STAFF:

- Thomas Smith - Senior Planner

SUPPORT CONSULTANT:

- Matthew Wiswell, LSA Associates
- Theresa Wallace, LSA Associates

PROJECT PRESENTERS:

- Andrew Morcos
- Clark Manus
- Karen Krolewski

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BE IT REMEMBERED that, pursuant to Notice of the Meeting, and on January 11, 2021, 10:13 PM at the Menlo Park City Council Chambers, 701 Laurel Street, Menlo Park, California, before me, MARK I. BRICKMAN, CSR No. 5527, State of California, there commenced a Planning Commission meeting under the provisions of the City of Menlo Park.

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1	MEETING AGENDA		
2			Page
3	Presentation by Thomas Smith	6	
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5	Consultant EIR Presentation	13	
6	Public Comments		22
7	Commission Comments - None		
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1 JANUARY 11, 2021

10:13 PM

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P R O C E E D I N G S

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CHAIRPERSON RIGGS: Let's start the EIR. So

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let me expand this a little bit. We are reconvening our

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Commission hearing. This is for item F3.

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This is a Draft Environment Impact Public

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Hearing, Applicant Andrew Morcos for 141 Jefferson Drive

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and 180-186 Constitution Drive.

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This public hearing is to receive public

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comments on the Draft EIR for the proposed Menlo Uptown

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project consisting of 483 multi-family dwelling units,

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comprised of 441 rental units and 42 for-sale townhouse

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units and approximately 2,940 square feet of office uses

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located on the ground floor of one of the proposed

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buildings.

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The project site is located in the R-MU-B --

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that is the Residential Mixed Use-Bonus -- Zoning

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District.

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The Draft EIR identifies less than significant

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effects in the following topic areas: Population and

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housing, transportation, greenhouse gas emissions.

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The Draft EIR identifies less than significant

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effects with mitigation for the air quality and noise

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(that's operational traffic and stationary noise) topic

1 areas.

2 The California Environmental Quality Act, CEQA,
3 requires this notice to disclose whether any listed
4 hazardous waste sites are present at the location.

5 The project location does not contain any
6 hazardous waste site included in a list than significant
7 prepared under Section 65962-5 of the Government Code.

8 The City previously prepared an initial study
9 for the proposed project to determine that the following
10 topic areas would have no impact, less than significant
11 impacts or less than significant impacts with mitigation
12 measures (including applicable mitigation measures from
13 the Connect Menlo EIR), and those areas would be
14 aesthetics, agriculture and cultural resources,
15 biological resources, cultural resources, energy, geology
16 and soils, hazards and hazardous materials, hydrology and
17 water quality, mineral resources, noise (being
18 construction-period, groundborne vibration and
19 aircraft-related noise) as well as public services,
20 recreation, utilities and service systems, tribal
21 cultural resources and wildfire.

22 Written comments on the Draft EIR may also be
23 submitted to the Community Development Department at 701
24 Laurel Street, Menlo Park no later than 5:00 PM on
25 February 2 of this year.

1 I give this to Mr. Smith. I believe this is
2 your project.

3 MR. SMITH: Good evening, Planning Commission
4 members. If we can move into the first presentation for
5 Menlo Uptown.

6 Okay. So I have here a map of the project
7 site. You can see the project site outlined in red here.
8 The orange parcels shown on this map are Zone R-MU-B
9 residential and just a little bit of context.

10 The project that you were just discussing is
11 located on this parcel a distance away from it. It is a
12 4.83 acre site, and as mentioned R-MU-B. There's the
13 paseo, which is the blue dotted line which runs through
14 the center of the project site.

15 And the redevelopment of this office site,
16 which is currently, would result in the construction of
17 483 residential units and 2,940 of office space for
18 non-profit uses.

19 73 of the units would be for BMR, below market
20 rate households, and amenities to construct at the bonus
21 level of development.

22 As with the previous project, there are two
23 public hearings this evening. One is a Draft
24 Environmental Impact Report Public Hearing which is the
25 opportunity to comment on the Focused Draft EIR for the

1 project, and the second portion will be a Study Session,
2 very similar to what was just done to provide feedback on
3 the overall project, BMR housing proposal and the
4 amenities proposal.

5 There were two previous Study Sessions for the
6 project held in February of 2019 and December of 2019, so
7 this will be the Commission's third look at the project.

8 I want to reiterate that there are no actions
9 being taken this evening. There is a public comment
10 period currently open which ends February 2nd, and after
11 that the EIR consultant will review and respond to all of
12 the comments and the Final EIR for the project, and at
13 that time the Planning Commission will consider the Final
14 EIR and land use entitlements and make a recommendation
15 to City Council to review the project, which would
16 include a major subdivision.

17 And so I won't go through this whole format,
18 but it's essentially the same format that we went through
19 before. So we'll start with the Draft EIR for the
20 hearing.

21 I will return turn it over to the applicant
22 followed by the EIR consultant at the end and then we can
23 go from there to public comment, then Commissioner
24 questions and comments.

25 For the applicant, Greystar, I believe Andrew

1 Morcos will be starting out off the presentation.

2 MR. MORCOS: Yes, good evening, Planning
3 Commissioners. Thank you for having us tonight on this
4 late schedule. We appreciate you accommodating us as
5 much as possible. Hoping our presentation will come up
6 here soon.

7 My name is Andrew Morcos. As Tom said, I am
8 the senior development director for Greystar in Menlo
9 Park and we are here presenting Menlo Uptown, 441 rental
10 multi-family units and 42 townhomes between Constitution
11 and Jefferson just east of Chrysler in the Bayfront area.

12 On -- on the next slide, you'll see the
13 location of our project, and as I said, it's located
14 between Jefferson and Constitution just east of Chrysler.

15 On the following slide I'm going to not have
16 you or I read through this, but basically I wanted to
17 highlight the comments that were made at the last
18 Planning Commission meeting and since then through our
19 community outreach.

20 They centered around these six items, but can
21 be summarized in affordable housing, community amenity,
22 public art, materials and refinement of renderings and
23 Dumbarton rail development, and I'll focus most of my
24 time on the community amenities because I think this
25 is -- that's what I'm really excited about.

1 That's what has come from all the community
2 outreach that we've done, and it's also come from the
3 report by UC-Berkeley and Y-PLAN titled Investment and
4 Disinvestment.

5 So in summary, the total value of the community
6 amenity is determined to be 8.9 million. We're
7 recommending that that 8.9 million is accounted for
8 through 2,940 square feet of ground floor community space
9 that will be donated to a non-profit supporting community
10 land trusts in Belle Haven and Menlo Park.

11 The remainder 4.4 million of additional funds
12 would go directly and immediately to support the
13 preservation of housing and affordable housing to
14 prevention of displacement in Belle Haven where it's been
15 a significant issue as detailed in the report by UC-
16 Berkeley.

17 So what this does is it offers high quality
18 permanent affordable housing integrated into the Belle
19 Haven community, which I think along with the affordable
20 housing that's in our project is a significant
21 complement, and this is borne straight from that -- that
22 report and the community's input.

23 One of the great things about the community
24 land trust is that the board who controlled kind of
25 decision- making and flexibility is made up of, you know,

1 usually three different groups of people.

2 One is the community land trust residents, so
3 the people living in the affordable housing. The second
4 group is residents from the greater community, and the
5 third is technical experts.

6 So experts in community land trust, governance
7 and tenant support, people that can help make sure that
8 the community land trust is run efficiently and
9 compassionately.

10 This slide is just a little bit more detail on
11 community land trusts. It's really about facilitating
12 the preservation of affordable units in the communities
13 where they need them the most and promoting affordable
14 housing production by developed land and keeping that
15 land in perpetuity for affordable housing.

16 Go on to the next slide. I'll skip over this.
17 This is just an increase in space that was allocated.
18 And then quickly I'll go through the EIR.

19 The main thing from the EIR is that this does
20 not identify any significant environmental impacts, and
21 our comment period closes on February 2nd.

22 We look forward to any comments at this
23 meeting, and if anyone out there can -- who's watching
24 this wants to speak to us directly, please reach out.
25 We're happy to have one-on-one meetings, as well.

1 With that, I'll hand it over to Clark Manus,
2 our architect on this to discuss multi-family and
3 townhome progression.

4 MR. MANUS: So Commissioners, good evening.
5 I'll keep my comments very concise here.

6 So the first image that's in front of you was
7 one that you saw in December of 2019 and reflects the
8 comments that you provided on the creation of the park at
9 the Constitution frontage.

10 Next.

11 So as a result of that, and recently with the
12 comment that you've shared with us, we've continued to
13 refine the project and the three renderings that you'll
14 see here are projections of the multi-family, the
15 combined site and the townhouses.

16 The next one.

17 The aerial rendering demonstrates the
18 importance of the organizing principle of the paseo and
19 the relationship of the public open space to the
20 buildings, and the western side of the paseo, as you
21 know, accommodates the seven-story U-shaped parking,
22 buildings with elevated courtyards on the eastern side on
23 the left is really the relationship of the paseo to the
24 townhouses, and David Burton, if you need, can talk about
25 the townhome layout.

1 Karen, our landscape architect, will also
2 address some of the issues that have been raised by Staff
3 on the open space in terms of its amenity.

4 Next. Next. So next -- one more.

5 So the following three plans depict as you've
6 seen before the ground floor parking and plans for the
7 multi-family homes, active uses front both Constitution
8 and the Jefferson street frontages, and as you remember,
9 automated parking is free use and bicycle parking along
10 the paseo help to screen it.

11 Perhaps mostly really by intent the community
12 benefits space that Andrew touched on touch both the
13 street and the paseo, and we believe it really further
14 reinforces the potential.

15 The open spaces, the multi-family buildings,
16 the massing does provide the setbacks in the key
17 locations that we've identified.

18 Next. Next. Next. Next.

19 And then lastly there was some discussion as a
20 result of the comments that you shared with us on the
21 materiality of the building.

22 These renderings and the ones that you've seen
23 before depict the multi-family and the townhouses in
24 terms of the range of materials that we're proposing.

25 Warm colors on the exterior facades to help to

1 unify the sight expression, and on the interior
2 courtyards and the upper level setbacks, you can see
3 their light colors to provide enhanced sunlight
4 expression.

5 So with that, I'd like to turn it over to Karen
6 to highlight some of the issues associated with the open
7 space.

8 MS. KROLEWSKI: Thank you, Clark.

9 So as a reminder, the Uptown project is a
10 cohesive site connecting the multi-family and townhome
11 sites, specifically with the paseo design.

12 We have worked to incorporate your comments.
13 Revisions include an expanded multi-use lawn area
14 basically for artwork, public artwork, seating elements,
15 strong connections -- as well as strong connections to
16 the townhome site.

17 We believe they have incorporated all the
18 comments that have been previously received and we thank
19 you for having the design and development team present
20 tonight and for your thoughtful feedback throughout
21 review of this project.

22 Thank you.

23 MR. SMITH: And so with that, I believe we can
24 move into the presentation by the EIR consultant.

25 CHAIRPERSON RIGGS: Yes, please.

1 MR. WISWELL: Good evening, everyone. Matthew
2 Wiswell from LSA. You have the same project team for
3 this EIR for Menlo Uptown. So again Theresa Wallace is
4 with me, as well. I'm Matthew Wiswell. This
5 presentation will be pretty similar for the one at 111
6 Independence. You'll also have the opportunity to
7 provide your comments again.

8 At this time I'll move through my presentation.
9 Following my presentation any member of the public that
10 wants to comment may do so. This agenda is similar to
11 EIR presentation for 111 Independence to supplement the
12 distinction.

13 So similar to 111 Independence, the public
14 comments began December 4th and written comments must be
15 received by the close of business on February 2nd.

16 Again, we would encourage that comment tonight
17 also be submitted in writing. Each comment on the EIR
18 will be publicly responded to.

19 On November 25th, 2019, the City issued the NOP
20 and the initial study that was included for review. The
21 comment period for the NOP for the scope and the content
22 of the EIR ended on December 16th, 2019, and as I just
23 noted, the comment period ends on February 2nd, after
24 which we'll prepare our responses to comments received on
25 the adequacy of the EIR.

1 Now, in the response to comments document, it
2 will also include any revisions if necessary after which
3 the City will consider certification of the EIR and --
4 and consider approval of the project as a separate
5 action. The 111 EIR is slated for early summer.

6 I will review the CEQA process with the items
7 in blue as the opportunities for public comment. We're
8 now in that sixty-day comment period for the Draft EIR
9 and then there will be an opportunity for public comment
10 during the final certification again.

11 More background on the purpose of CEQA. Two
12 things I want to call out in particular. CEQA documents
13 are disclosure documents. The lead agency is using the
14 information provided in the document to make informed
15 decisions about the project to disclose potential
16 environmental impacts in connection with construction
17 operation, and the environmental document does not
18 dictate whether or not the project should be approved or
19 not.

20 I think we've touched on the Connect Menlo EIR,
21 but the -- the public does share in the analysis for the
22 Connect Menlo Final EIR, and those development
23 assumptions of the Connect Menlo EIR.

24 So this -- this slide shows the findings of the
25 initial study that was stipulated with the Notice of

1 Preparation.

2 Based on the conclusions of the initial study,
3 the topics shown in the right three boxes of this table
4 were not further evaluated because it's been found that
5 the project would result in no significant effects
6 related to these issues by the Connect Menlo EIR.

7 The EIR including the evaluation of population
8 and housing, transportation and air quality, greenhouse
9 gas emissions and noise as an overview.

10 As you can see, no significant unavoidable
11 impacts, and all impacts can be reviewed with the
12 implementation of mitigation measures.

13 So population and housing again. The housing
14 needs assessment was prepared with the settlement
15 agreement with East Palo Alto which provided most of the
16 context and background population of the EIR.

17 The EIR for this project. The project would
18 fit within the growth projections identified in the EIR
19 and population growth and will not increase the pressures
20 on Belle Haven or East Palo Alto, as well, and no
21 mitigation measures will be required.

22 On the topic of transportation. Similarly the
23 TIA was prepared consistent with the City's TIA
24 guidelines. Again, not level of service and it needs to
25 be fifteen percent below that established regional

1 threshold.

2 So the EIR determined that the project would
3 comply and would be below the TDM threshold with the
4 project implementation and will be exempted because it
5 was too small.

6 The EIR also determined that the project would
7 generally comply with all those plans as well as
8 transportation and wouldn't result in any new impacts or
9 a design hazards for emergency access, and this EIR also
10 includes that non-CEQA analysis for a level of service.

11 Nine intersections were determined to exceed
12 the critical movement delay under the near-term and
13 twelve exceeded under the cumulative conditions.

14 There were some improvement measures that would
15 be included as -- as conditions of approval to improve.

16 For air quality, similar to 111 Independence,
17 implementation of the BAAQMD basic construction measures
18 will be implemented via Connect Menlo, and the project
19 would also not exceed any air quality emissions through
20 operations.

21 A no-project alternative was prepared for this
22 project, as well, and mitigation measures will be
23 required to ensure that construction-specific emissions
24 would be controlled to reduce exposure to outside
25 receptors, and it was determined that on-and-off site

1 detectors would not be exposed to potential increases in
2 toxics.

3 Greenhouse gas emissions. All impacts are less
4 than significant with the implementation of those basic
5 construction measures. Through further review impacts,
6 the project would be well below the threshold for
7 operational emissions and would be generally consistent
8 with all those plans that are aimed at the GHG emissions.

9 Finally for noise, increases in noise would not
10 exceed City standards. There are some -- because there
11 are potential land uses, conditionally acceptable noise
12 environment, mitigation measures will be required to
13 reduce those interior noise impacts, including the
14 implementation of air conditioning, which is consistent
15 with the Connect Menlo EIR.

16 This slide shows the project alternatives that
17 were considered. It's the same alternatives that were
18 considered under 111 Independence.

19 The base level alternative is 339 fewer
20 residential units in the project, and it would increase
21 the office space by 18,000 square feet and the inclusion
22 of approximately 10,000 square feet of childcare space.

23 So while some of the impacts will be slightly
24 reduced to reduced construction, no impact will be
25 entirely avoided and similar mitigation will be required.

1 In addition, the increase office use will
2 result in an increase in VMTs, such that this alternative
3 would result in a significant unavoidable VMT impact
4 associated with that.

5 And then the maximum buildout alternative
6 looked at development of the site. The maximum
7 residential density, the same number of residential
8 units, but approximately 39,000 square feet of office use
9 increase as well as that childcare use of 10,000 square
10 feet.

11 Similarly, none of the impacts would be reduced
12 or avoided and the same mitigation measures would be
13 required and there would also be that same significant
14 unavoidable VMT impact associated with this alternative.

15 So it was determined that the -- in terms of
16 the environmental impacts, the proposed project itself
17 would not have environmental impacts beyond the
18 acceptable levels.

19 And that will wrap it up for CEQA and our
20 overview of the CEQA process and the EIR analysis.
21 Comments should be directed towards Tom for this one, and
22 again submitted before February 2 at 5:00 PM.

23 CHAIRPERSON RIGGS: Thank you.

24 So Tom, is this an appropriate time to ask
25 for -- well, first I've got Commissioner questions I'd

1 like to ask for, but can I follow that up with Public
2 Comment?

3 MR. SMITH: Yes. First I would recommend
4 actually taking Public Comment and then moving into the
5 Commissioner questions.

6 Before you do that, I would be remiss if I
7 didn't mention that shortly before the meeting we did get
8 one additional item of correspondence, and that comment
9 was from the owner of 167 Constitution Drive, which is
10 located directly across from the project site, and he had
11 expressed a concern about access to Constitution Drive
12 during construction that could potentially prevent large
13 trucks from making deliveries to his business.

14 Plumbing supplies get frequent deliveries from
15 fairly large trucks and semis, and so he was concerned
16 about issues on Constitution during the construction
17 process.

18 CHAIRPERSON RIGGS: All right. And is this
19 something that the Building Department can take care of
20 in terms of traffic management requirements?

21 MS. SMITH: I actually looked back at the
22 applicant's preliminary construction plan and the project
23 entrances for construction would actually be located in
24 the vicinity of where the paseo would be towards the
25 center of the project site away from this driveway and

1 then also at the far edge of the proposed townhomes.

2 And so those two main accesses would be a -- a
3 fairly good distance away from the concerns for this
4 property.

5 CHAIRPERSON RIGGS: All right. Thank you.

6 MR. SMITH: Mm-hmm.

7 CHAIRPERSON RIGGS: All right. With that I
8 will take your advice and we'll ask for public comment.

9 For those who are up late and are interested in
10 this project and following us on this Go-To Webinar you
11 will see the hand icon on the side of the control panel
12 that's on the right side of your screen, the webinar --
13 the Go-To Webinar info panel.

14 If you click on that hand icon, it will
15 indicate to Staff that you would like to speak and we
16 will put you through.

17 We're inviting the public to see for up to
18 three minutes on the subject of Menlo Uptown project at
19 this time.

20 Alternatively if you would like to use the chat
21 method to type a question or brief comment, that is at
22 the lower portion of the Go-To Webinar control panel.

23 I would ask that you type at least an initial
24 word or two at this time so we know you are there and
25 interested in making a comment, and we will give it

1 another, oh, half a minute to see if anyone responds to
2 our invitation to speak at this time.

3 MR. TAPIA: Good evening, Chair. It looks
4 like we have a virtual hand raised. So I will go ahead
5 and open their microphone at this time.

6 Glenn Lynch, you should be able to activate
7 your microphone now.

8 CHAIRPERSON RIGGS: Welcome, Mr. Lynch.

9 MR. LYNCH: Thank you, Commissioners. I am
10 Glenn Lynch, a business owner across the street that
11 submitted the question. Thanks for reading that about
12 truck access.

13 My big concern there was that the big project
14 on Constitution that just finished up took up half of
15 Constitution for most of the year while that project was
16 going on.

17 Fortunately it didn't affect me at all, but the
18 entire length of Constitution was -- was closed halfway
19 down.

20 If that happens in front of my site, those
21 trucks will not be able to get into my driveway, and
22 that's my concern there. So I just wanted to make sure
23 it was on the record.

24 My -- my other question is about the -- the
25 building of residential so close to industrial

1 occupancies.

2 You know, we do start early in the morning. We
3 have forklifts and trucks running, and I kind of want to
4 also be on record to say that that occupancy does
5 generate noise.

6 I do occasionally have a customer emergency
7 late at night where I have to open my warehouse and fire
8 up a forklift and load a commercial water heater on to
9 somebody's truck.

10 It's not a lot of noise, but there is noise
11 generated there. To what extent will people moving in
12 and buying these units sort of be cognizant of that so
13 that we don't end up with the classic moving next to an
14 airport and then complain about the noise? I just want
15 to know if any of that has been considered.

16 Thank you.

17 CHAIRPERSON RIGGS: All right. Thank you.

18 And Mr. Tapia, do we have any other hands
19 raised for comments?

20 MR. TAPIA: At This time, Chair, I'm not
21 seeing any other comments or correspondence being
22 submitted.

23 CHAIRPERSON RIGGS: All right. At this time
24 I'd like to close the public comment period, bring it
25 back to Commissioners for questions or comments.

1 At this point the floor is entirely open as we
2 address first the EIR and its adequacy and any elements
3 therein.

4 All right. Seeing no comments on the EIR, I'd
5 close the EIR Public Hearing noting that Commissioners
6 had no comments on that and then open the Study Session.

7 (This portion of the meeting concluded at 10:37
8 PM).

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1 STATE OF CALIFORNIA)

2 COUNTY OF SAN FRANCISCO)

3

I, the undersigned, hereby certify that the discussion in the foregoing meeting was taken at the time and place therein stated; that the foregoing is a full, true and complete record of said matter.

7

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing meeting and caption named, or in any way interested in the outcome of the cause named in said action.

8
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14

IN WITNESS WHEREOF, I have

15

hereunto set my hand this

16

_____day of _____,

17

2021.

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19

MARK I. BRICKMAN CSR 5527

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STAFF REPORT

City Council

Meeting Date:

8/31/2021

Staff Report Number:

21-167-CC

Public Hearing:

Consider an appeal of the Planning Commission's denial of a use permit for the sale of beer and wine for off-premises consumption every day from 6 a.m. to 2 a.m. the following day, and for 24-hour operations of an existing service station and associated convenience store at 710 Willow Road

Recommendation

Staff recommends that the City Council adopt Resolution No. 6658 (Attachment A) making the necessary findings and denying the appeal and upholding the Planning Commission's denial of a use permit request to allow the sale of beer and wine at an existing service station convenience store for off-premises consumption every day from 6 a.m. to 2 a.m. the following day, and to operate the service station and convenience store 24 hours a day, in the C-4 (General Commercial) district.

Policy Issues

The proposed project requires the City Council to consider the merits of the project and the appeal. Each use permit request is considered individually. The City Council should consider whether the required use permit findings can be made for the proposal.

Background

Project description

The applicant is requesting a use permit to operate an existing service station and convenience store 24 hours a day, and also to allow the sale of beer and wine for off-premises consumption (ABC Type 20 license) between the hours of 6 a.m. and 2 a.m. the following day. The site is currently developed with eight fueling stations, a 1,000-square foot snack shop and a 160-square foot storage shed, with a total of 1,160 square feet of gross floor area. The fueling pumps and convenience store are currently open daily from 6 a.m. to midnight. No changes are proposed to the existing site improvements.

The applicant states that the convenience store sells a number of products including snacks, coffee and soft drinks, tobacco products, and items related to vehicle maintenance such as automotive oil and air fresheners. The proposed alcohol sales would be limited in size relative to the overall business, occupying approximately 20 percent of the existing wall cooler space.

The applicant indicates that the convenience store cash register presently has software programmed to restrict sales of tobacco without scanning the date of birth from a purchaser's Identity document (ID.)

Cashiers are trained on the use of the register software and specific regulations regarding the sale of tobacco. The applicant states that the same principles and protocols would be implemented with regard to the sale of alcohol to prevent any illegal sales to minors. More details about the proposed project, including a location map and plans, are included in Attachment B.

Determination of public convenience or necessity

One of the components of the proposed application is the determination of public convenience or necessity (PCN) for the sale of beer and wine, as required by the State Department of Alcoholic Beverage Control (ABC.) Prior to the licensing of a new “off-sale alcohol” establishment, ABC requires the local jurisdiction to make a determination of public convenience or necessity if there is “undue concentration” in an area. Undue concentration exists when 1) the premises are located in a crime reporting district has a 20 percent greater number of reported crimes than the average number of reported crimes and 2) the ratio of on- and off-sale retail licenses to population in the census tract of the subject site exceeds the ratio in the County. In Menlo Park, such a determination is made by the Planning Commission (unless appealed to the City Council), in conjunction with any associated application such as a use permit for the retail sale of alcohol to be consumed off-site. The criteria for this determination are not explicitly defined by State or City code, and each determination is reviewed on a case-by-case basis to consider the specific factors involved.

As a mixed-use corridor in the Willows neighborhood, the section of Willow Road between Middlefield Road and US 101 currently contains a variety of uses, including alcohol sales. Three businesses in the same census tract as the subject property, all grocery stores, currently have off-sale ABC licenses:

- Hacienda Super Mercado – 1933 Menalto Avenue (Type 20 – beer and wine)
- The Willows Market – 60 Middlefield Road (Type 21 – beer, wine and spirits)
- El Rancho Market – 812 Willow Road (Type 20 – beer and wine)

ABC has indicated that the addition of a fourth off-sale alcohol license would mean the census tract is considered over-concentrated. However, if the City Council finds that the proposal serves a public necessity or convenience, ABC may issue a Type 20 license for the subject business.

Staff shared the proposal with the Menlo Park police department, who reviewed calls for service over the last few years related to the service station and convenience store. The police department determined that most calls for service to the site were not unusual compared to the levels and types of calls for service for other gas stations and convenience stores in Menlo Park. As a result, the police department indicated it did not believe that approving the request for an off-sale alcohol license at the site would lead to a significantly higher volume of calls for service.

Business operations after midnight

The second component of the proposed application is a request for 24-hour operations of the existing gas pumps and convenience store. Chapter 8.12 of the Municipal Code requires a permit for business operations between the hours of midnight and 6 a.m. on premises within 300 feet of any property zoned for or occupied by residential uses. Parcels zoned for and occupied by residential uses are located immediately adjacent to the rear of the subject site and across O’Keefe Street. Additional residentially-

zoned and occupied parcels are located within 300 feet in the Willows neighborhood.

Menlo Park Municipal Code (MPMC) Chapter 8.12 specifies that the criteria for granting or denying a permit for operating a business after midnight shall be as follows:

- Whether the permit will allow activity which interferes with the peace and quiet of persons of ordinary sensibility while enjoying property in use as residential property,
- The number of persons affected,
- The extent of such interference,
- The length of time during which an existing business has been operating between the hours of midnight and 6 a.m. without significant complaint to the city, and
- Hardship to the business from loss of income or other factors if the permit is not granted.

The MPMC further states that the permit shall be granted unless it is found that the interests of the residents in the peaceful and quiet enjoyment of residential property outweigh the interests of the business seeking the permit. The permit shall be denied in whole or in part, or conditions shall be attached to the permit, only to the extent that the denial or conditions are supported by the findings.

Thirty-seven parcels with residential uses and/or zoning are located within 500 feet of the subject property in the Willows neighborhood, and many more properties with residential zoning and uses are located in the neighborhood to the east. Before to the Planning Commission public hearing in 2020, staff received nine emails opposing the proposed application. Of those nine, six directly mentioned concerns and existing issues related to maintaining peaceful and quiet enjoyment of the surrounding residential properties. The items of correspondence described noise, light and glare, litter, loitering, potential drunken and disorderly behavior, and other concerns related to the proposed and existing operations at the subject site and other commercial properties along Willow Road.

Planning Commission review

On March 9, 2020, the Planning Commission held a public hearing to review the use permit request. The staff report is included as Attachment B with excerpt minutes includes as Attachment C. In the staff report, staff recommended that the Planning Commission approve the use permit request for alcohol sales but deny the use permit request for 24-hour operations and outlined the basis for the recommended approach in the report. However, after the publication of the staff report, staff received an email from an area resident who was trained by San Mateo County to conduct outreach to tobacco retailers about the City's new ordinance restricting the sale of flavored tobacco and electronic cigarettes in Menlo Park. The resident indicated that the convenience store was displaying flavored tobacco products on store shelves in violation of the City's new ordinance, which became effective January 15, 2020. As a result, staff indicated at the public hearing that the new information suggested the potential for compliance issues with future alcohol sales at the site. Staff recommended that the Planning Commission deny the use permit request for alcohol sales and 24-hour operations. Nine members of the public made comments at the meeting, all in opposition to the proposal.

MPMC section 16.42.020 states that retail sale of beer, wine, alcoholic beverages off sale or on sale, except in residential zoning districts is a conditional use allowed in the C-4 zoning district, subject to

obtaining a use permit. The Planning Commission determined that it could not make the required use permit findings in MPMC section 16.82.030 and denied the application on a 6-0-1 vote with the following points:

- Some Commissioners believed that the business's alleged non-compliance with the City's flavored tobacco and electronic cigarette ordinance requirements were a relevant concern, while others believed that the issue had not been investigated thoroughly or conclusively enough to inform their decision. The Commissioner who seconded the motion to deny the use permit stated that his support for the motion was made without regard to the claims about flavored tobacco products on display at the subject property.
- The majority of Commissioners stated that the business was too close to sensitive land uses, such as residences in the Willows neighborhood and the Veterans Affairs (VA) medical center, to permit alcohol sales or 24-hour operations at the site.
- Some Commissioners indicated that they were persuaded by members of the public who wrote correspondence and spoke at the meeting that the use permit request was not appropriate for the project site.
- Commissioners stated that with other nearby businesses offering alcohol sales, there would not be an overriding need or benefit from increasing the concentration of ABC licenses in the area, which was a required finding for the use permit in order for ABC to grant the license.

Analysis

On March 19, 2020, the applicant submitted an appeal of the Planning Commission's denial of the use permit (Attachment D.) However, in the time between the Planning Commission hearing and the applicant's appeal of the Commission's decision, San Mateo County issued a regional stay at home order to slow the spread of the COVID-19 virus March 17, 2020. A statewide stay at home order was issued March 19, 2020. The City Council began holding teleconference meetings in March 2020, but the applicant requested to defer the appeal hearing until the City Council meeting could be conducted in person. At the time, it was understood that in-person City Council meetings may not resume for an undetermined amount of time, and staff has continued to honor the appeal request in light of the unusual circumstances. However, the City has continued to conduct public meetings by teleconference and the applicant requested that it would be preferable for City Council to hear the appeal at a teleconference meeting rather than continuing to wait for in-person meetings to resume.

The main points of the appeal letter are summarized below in italics and followed by staff's responses:

- *The request is categorically exempt from environmental review under Class 1 (Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines.* The project is categorically exempt from CEQA review under Class 1 (Existing Facilities.) However, exemption from CEQA review does not exempt the project from the required findings for a use permit listed in MPMC 16.82.030. The Planning Commission determined that the required use permit findings could not be made, regardless of the project's CEQA exemption.
- *Alcohol is already being sold in the neighborhood, as close as 400 feet away from the subject property. The granting of a use permit would not be detrimental to the health, safety, morals, comfort, and general welfare of the neighborhood since alcohol sales already occur in the vicinity. Further, the*

applicant proposes to sell only beer and wine, but other retailers in the area sell liquor in addition to beer and wine, which can cause more significant impairment to consumers. As mentioned in a previous section of this staff report, there are three existing ABC licenses within the census tract where the subject site is located. As a result, ABC requires that the City make a finding of public convenience or necessity from increasing the number of ABC licenses in the tract.

The project site is within close proximity of sensitive land uses, including existing residences, schools and the VA medical center, which includes a substance abuse program. The sale of beer and wine at the subject site, in addition to the request for 24 hour operations, may subject neighborhood residents to additional noise, light, litter, traffic, and other issues which could degrade the health, safety, morals, comfort, and general welfare of the neighborhood. Given the sale of alcohol at other locations within close proximity of the subject site, there is not an overriding public necessity to add additional beer and wine retailers in the neighborhood. In light of the concerns expressed at the Planning Commission hearing and through correspondence to the City Council by local residents, there would not be an overriding public convenience from permitting an additional ABC license in the neighborhood. Without a finding of public convenience or necessity, the ABC license for the project cannot be granted.

- *After the City Council adopted the ordinance restricting the sale of electronic cigarettes and flavored tobacco products, the applicant removed all of the products from display and denied the sale of the products to customers. The products were set aside to be returned to the distributor in the cashier's office, which is not a public area of the store and not accessible to customers. At no point were any flavored tobacco products illegally sold to consumers. The applicant will ensure strict compliance with alcohol sales regulations if a use permit is granted.* Regardless of compliance with City's ordinance restricting the sale of electronic cigarettes and flavored tobacco products, the sale of beer and wine for off-site consumption is regulated through licenses granted by ABC and a use permit granted by the City. As described above, the Planning Commission found and staff agrees that the finding for public convenience or necessity could not be made for the granting of an ABC license. Further, the findings for a use permit could not be made as described above.
- *Multiple customers have requested that beer and wine be sold at the subject business for their convenience and personal enjoyment to consume off-premises when they have returned home.* Although customers of the service station may believe it would be convenient to be able to purchase alcohol in combination with gasoline or other convenience store purchases, there are several other nearby businesses that offer these products. The appellant's claim also ignores the potential impacts to the immediately adjacent residential, medical and educational uses, as described above.
- *The applicant monitors the property 24 hours a day with camera surveillance and maintains access to public trash bins on the property. Loitering and littering issues are discouraged and appropriately managed by staff and the authorities, as needed.* The Planning Commission found and staff agrees that while camera surveillance and trash bins on the property may reduce certain potential impacts that could be created or increased by the appellant's use permit request, these features would not be sufficient to address all potential impacts, such as additional noise and traffic, among other concerns. Further, the use permit request is for sale of beer and wine to be consumed off-site, so the applicant's on-site controls would not be sufficient to manage potential impacts in the vicinity of the business, such

as litter, noise, crime, and other concerns raised in correspondence and testimony from area residents.

The Planning Commission's decision to deny the request was based on concerns about the proximity of the business to sensitive land uses, such as the hospital and private residences; concerns from area residents about the potential impacts of another alcohol retailer in the area; and the lack of an overriding need or benefit from increasing the number of ABC licenses in the area, of which there are already three within the census tract where the subject site is located.

Per Section 16.86.040 of the zoning ordinance, the City Council may affirm, revise, or modify the decision of the Planning Commission. To reverse or modify the Planning Commission's decision requires the affirmative vote of three-fifths of the City Council (or three City Councilmembers.) If the City Council does not take any action on the appeal, the Planning Commission's action shall be deemed affirmed.

The service station and convenience store are located directly adjacent to single family- and multifamily-zoned parcels on O'Keefe Street. These parcels are developed with existing residential uses. Staff has received correspondence expressing concerns about noise, lighting and glare, debris, and safety associated with the existing service station and convenience store operations at the site. Given the number of nearby retailers that sell wine and beer and no distinction in the proposed project, staff does not believe there is a public necessity or convenience for the off-sale of alcohol at the site. Staff also does not believe the loss of hours would be a hardship to the business as the store currently does not operate during these hours. The applicant has indicated that hours were reduced during late nights and early mornings in the past given lack of business. Twenty-four hour operations at the site could interfere with the peaceful and quiet enjoyment of the adjacent and nearby residential properties during the late evening and early morning hours.

Based on the Planning Commission's previous actions and staff's evaluation of the appeal above, staff recommends that the City Council deny the appeal and uphold the Planning Commission's denial of the use permit for the sale of beer and wine for off-premises consumption and 24-hour operations for the proposed project.

Correspondence

Staff received five items of correspondence on the appeal from residents of The Willows neighborhood (Attachment E.) All of the items of correspondence express opposition to the project and reiterate concerns expressed during the Planning Commission public hearing on the request:

- The gas station and convenience store are located at the edge of a residential neighborhood in close proximity to homes occupied by families with children.
- Activity at the gas station in the evening hours generates noise and undesirable behaviors by certain individuals who stop at the gas station and/or convenience store.
- There are concerns about increases in crime if the gas station and convenience store are open 24 hours a day.
- There are already places to buy alcohol in the vicinity, and providing additional outlets for alcohol purchases near the VA medical center is undesirable.
-

Impact on City Resources

The project sponsor is required to pay planning, building and public works permit fees, based on the city's master fee schedule, to fully cover the cost of staff time spent on the review of the project, for the period between the application submittal and the appeal of the Planning Commission action. The appellant paid a \$1,000 deposit to file an appeal of the Planning Commission's decision.

Environmental Review

The project is categorically exempt under Class 1 (Section 15301, "Existing Facilities") of the current CEQA Guidelines.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting. Public notification also consisted of publishing a notice in the local newspaper and notification by mail of owners and occupants within a 500-foot radius of the subject property.

Attachments

- A. Draft City Council Resolution No. 6658 adopting findings to deny the use permit
- B. Hyperlink – March 9, 2020, Planning Commission staff report (Staff Report# 20-016-PC):
menlopark.org/DocumentCenter/View/24520/F4_710-Willow?bidId=
- C. Planning Commission excerpt minutes – March 9, 2020
- D. Appeal letter – March 19, 2020
- E. Correspondence

Disclaimer

Attached are reduced versions of maps and diagrams submitted by the applicants. The accuracy of the information in these drawings is the responsibility of the applicants, and verification of the accuracy by City Staff is not always possible. The original full-scale maps, drawings and exhibits are available for public viewing at the community development department.

Report prepared by:
Tom Smith, Senior Planner

Report reviewed by:
Deanna Chow, Assistant Community Development Director

DRAFT

RESOLUTION NO. 6658

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK TO DENYING THE APPEAL OF THE PLANNING COMMISSIONS MARCH 9, 2020 DECISION, UPHOLDING THE PLANNING COMMISSION'S DENIAL OF AND DENYING A USE PERMIT TO ALLOW THE SALE OF BEER AND WINE AT AN EXISTING SERVICE STATION CONVENIENCE STORE FOR OFF-PREMISES CONSUMPTION EVERY DAY FROM 6 A.M. TO 2 A.M. THE FOLLOWING DAY, AND TO OPERATE THE EXISTING SERVICE STATION AND ASSOCIATED CONVENIENCE STORE 24 HOURS A DAY AT 710 WILLOW ROAD (APN 062-202-200)

WHEREAS, the City of Menlo Park ("City") received an application requesting a use permit to allow the sale of beer and wine at an existing service station convenience store for off-premises consumption every day from 6 a.m. to 2 a.m. the following day, and to operate the existing service station and associated convenience store 24 hours a day, at 710 Willow Road; and

WHEREAS, the proposed Project is located in the C-4 (General Commercial) zoning district. The C-4 zoning district allows retail stores, most financial establishments, professional and administrative offices, personal services, and cafes and restaurants not serving liquor as permitted uses. As stated in Menlo Park Municipal Code (MPMC) section 16.42.020, and further stated in MPMC section 16.78.030(7), service stations, automotive sales and repair, and retail sale of beer, wine, alcoholic beverages off sale are conditional uses in the district, which require a use permit from the Planning Commission with findings, as per section 16.82.030 of the MPMC; and

WHEREAS, MPMC section 8.12.010 states that no person shall, without a permit, operate any business establishment between the hours of 12 midnight and 6 a.m. on premises within 300 feet of any property zoned or in use as residential property, and the proposed Project is located within 300 feet of residential uses and requested such permit to allow for overnight operations; and

WHEREAS, the Project requires discretionary actions by the City as summarized above, and the project is categorically exempt under Class 1 (Section 15301, "Existing Facilities") of the California Environmental Quality Act (CEQA) Guidelines; and

WHEREAS, all required public notices and public hearings were duly given and held according to law; and

WHEREAS, after notice having been lawfully given, a duly noticed public hearing was held before the City Planning Commission on March 9, 2020 at which all persons interested had the opportunity to appear and comment; and

WHEREAS, after closing the public hearing, the Planning Commission considered all public and written comments, pertinent information, documents and plans and all other evidence in the public record on the Project; and

WHEREAS, on March 9, 2020, the Planning Commission fully reviewed, considered, evaluated the whole of the record including all public and written comments, pertinent information, documents and plans, prior to taking action to deny the use permit, (Planning Commission's Actions); and

WHEREAS, following the Planning Commission's review, consideration, evaluation and denial of the use permit, the City Council received a timely appeal to the Planning Commission's Actions on the Project; and

WHEREAS, on March 19, 2020, the Project applicant, Aparna Saha, filed an appeal of the Planning Commission's Actions pursuant to Menlo Park Municipal Code section 16.86.010, which authorizes any person to file an appeal of any final action of the Planning Commission, said appeal is attached hereto and incorporated herein by this reference as Exhibit A; and

WHEREAS, on August 31, 2021, the City Council held a public hearing and reviewed and considered the appeal, and fully reviewed, considered, evaluated all public and written comments, pertinent information, documents and plans prior to taking action to deny the appeal and deny the use permit for the Project.

NOW, THEREFORE, BE IT RESOLVED that the City Council finds the foregoing recitals are true and correct, and they are hereby incorporated by reference into this Resolution.

BE IT FURTHER RESOLVED that the City Council hereby denies the appeal, affirms the Planning Commission Actions, and denies the use permit for the Project based on the following findings:

1. The grounds upon which the Council has called up the Planning Commission Actions are not a basis to reverse the Planning Commission Actions and deny the project, for the following reasons:
 - a. *The request is categorically exempt from environmental review under Class 1 (Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines.*

The Project is categorically exempt from CEQA review under Class 1 (Existing Facilities). However, exemption from CEQA review does not exempt the Project from the required findings for a use permit listed in MPMC 16.82.030. The City has determined that the required use permit findings cannot be made, regardless of the project's CEQA exemption. Therefore, CEQA exemption of the Project alone is not a basis to reverse the Planning Commission Actions and approve the use permit.

- b. *Alcohol is already being sold in the neighborhood, as close as 400 feet away from the subject property. The granting of a use permit would not be detrimental to the health, safety, morals, comfort, and general welfare of the neighborhood since alcohol sales already occur in the vicinity. Further, the applicant proposes to sell only beer and wine, but other retailers in the area sell liquor in addition to beer and wine, which can cause more significant impairment to consumers.*

There are three existing California State Department of Alcoholic Beverage Control (ABC) licenses within the Census tract where the subject site is located. As a result, ABC requires that the City make a finding of public convenience or necessity from increasing the number of ABC licenses in the tract.

The project site is within close proximity of sensitive land uses, including existing residences and the Palo Alto Veterans Affairs Medical Center-Menlo Park, which includes a substance abuse program. The sale of beer and wine at the subject site, in addition to the request for 24 hour operations, may subject neighborhood residents to additional noise, light, litter, traffic, and other issues which could degrade the health, safety, morals, comfort, and general welfare of the neighborhood. Given the sale of alcohol at other locations within close proximity of the subject site, there is not an overriding public

necessity to add additional beer and wine retailers in the neighborhood. In light of the concerns expressed at the Planning Commission hearing and through correspondence submitted to the City Council by local residents, there would not be an overriding public convenience from permitting an additional ABC license in the neighborhood. Without a finding of public convenience or necessity, the ABC license for the Project cannot be granted. Therefore, this is not a basis to reverse the Planning Commission Actions and approve the project.

- c. *After the City Council adopted the ordinance restricting the sale of electronic cigarettes and flavored tobacco products, the applicant removed all of the products from display and denied the sale of the products to customers. The products were set aside to be returned to the distributor in the cashier's office, which is not a public area of the store and not accessible to customers. At no point were any flavored tobacco products illegally sold to consumers. The applicant will ensure strict compliance with alcohol sales regulations if a use permit is granted.*

Regardless of compliance with City's ordinance restricting the sale of electronic cigarettes and flavored tobacco products, the sale of beer and wine for off-site consumption is regulated through licenses granted by ABC and a use permit granted by the City. The City incorporates by reference its findings from section 1(b) above. Therefore, this is not a basis to reverse the Planning Commission Actions and approve the project.

- d. *Multiple customers have requested that beer and wine be sold at the subject business for their convenience and personal enjoyment to consume off-premises when they have returned home.*

While customers of the service station may believe it would be convenient to be able to purchase alcohol in combination with gasoline or other convenience store purchases, the appellant's claim ignores the potential impacts to the immediately adjacent residential and medical uses, as described above. The City incorporates by reference its findings from section 1(b). Therefore, this is not a basis to reverse the Planning Commission Actions and approve the project.

- e. *The applicant monitors the property 24 hours a day with camera surveillance and maintains access to public trash bins on the property. Loitering and littering issues are discouraged and appropriately managed by staff and the authorities, as needed.*

While camera surveillance and trash bins on the property may reduce certain potential impacts that could be created or increased by the appellant's use permit request, these features would not be sufficient to address all potential impacts, such as additional noise and traffic, among other concerns. Further, the use permit request is for sale of beer and wine to be consumed off-site, so the applicant's on-site controls would not be sufficient to manage potential off-site impacts in the vicinity, such as litter, noise, crime, and other concerns raised in correspondence and testimony from area residents. Therefore, this is not a basis to reverse the Planning Commission Actions and approve the project.

BE IT FURTHER RESOLVED that the City Council of the City of Menlo Park, independently, after reviewing all of the evidence before it, holding a public appeal hearing, considering the appeal before it, and considering the Planning Commission's Actions, hereby denies a use permit for the Project to allow beer and wine sales for off sale consumption. The denial is made on the following findings, which are made pursuant to MPMC section 16.82.030:

1. That the consideration and due regard to the nature and condition of all adjacent uses and structures, and to general and specific plans for the area in question and surrounding areas, and impact of the application hereon; in that, adjacent properties are primarily residential in nature, but also include the Palo Alto Veterans Affairs Medical Center-Menlo Park, which operates a substance abuse program among its various services. Given the close proximity of the subject site to these uses, the proposed project would have a detrimental impact on the surrounding areas. Further, three ABC licenses have already been granted to businesses within the same Census tract and the addition of a fourth ABC license would be considered an over-concentration. Therefore, there is no overriding public convenience or necessity from permitting another ABC license at this location.
2. That whether or not the establishment, maintenance, or operation of the use applied for will, under the circumstance of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the city; in that, the sale of beer and wine at the subject site, in addition to the request for 24 hour operations, may subject residential uses in close vicinity to additional noise, light, litter, traffic, and other issues which could degrade the health, safety, morals, comfort, and general welfare of the neighborhood. The health and safety of persons residing or working in the neighborhood cannot be ensured if the business is granted a use permit for the sale of beer and wine for off-premises consumption, and no overriding need or benefit for beer and wine sales has been demonstrated.

BE IT FURTHER RESOLVED that the City Council of the City of Menlo Park, independently, after reviewing all of the evidence before it, holding public appeal hearings, considering the two appeals before it, and considering the Planning Commission's Actions, hereby denies a use permit to allow for 24-hour operations. The denial is made on the following findings, which are made pursuant to MPMC section 8.12.010:

1. That whether the permit will allow activity which interferes with the peace and quiet of persons of ordinary sensibility while enjoying property in use as residential property; in that, residents have submitted correspondence indicating concerns and existing issues, such as noise, light, litter, and loitering, related to operations at the service station and convenience store, as well as other commercial properties in the vicinity. Residential parcels are located immediately adjacent to the subject property. The permit would allow activity which interferes with the peace and quiet of persons of ordinary sensibility while enjoying property in use as residential property.
2. That the number of persons so affected; in that, thirty-seven residential parcels are located within 300 feet of the subject property. The number of residents affected by business operations after midnight at the site would be significant.
3. That the extent of such interference; in that, the extent of interference would be significant, given that the subject parcel is surrounded by a number of residential properties and located at one of the few entrances into the Willows neighborhood from Willow Road.
4. That the length of time during which the existing business has been operating between the hours of 12 midnight and 6 a.m. without significant complaint to the City; in that, the existing business is not currently operating between the hours of 12 midnight and 6 a.m. Thus, adding additional hours could create new interference with the enjoyment of residential properties in the vicinity.

5. That hardship to the business from loss of income or other factors if the permit is not granted; in that, hardship to the business from loss of income or other factors would be minimal since the business is not operating during these hours at present.

SEVERABILITY

If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void or unenforceable, the remaining provisions of these findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the thirty-first day of August, 2021, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this thirty-first day of August, 2021.

Judi A. Herren, City Clerk

Exhibits

A. Appeal of Aparna Saha



STAFF REPORT

Planning Commission

Meeting Date: 3/9/2020
Staff Report Number: 20-016-PC

Public Hearing: Use Permit/Aparna Saha/710 Willow Road

Recommendation

Staff recommends that the Planning Commission approve a use permit to allow the sale of beer and wine at an existing convenience store for off-premises consumption. The convenience store is associated with an existing service station at 710 Willow Road in the C-4 (General Commercial) zoning district. In accordance with the requirements of the California State Department of Alcoholic Beverage Control (ABC), staff recommends that the Planning Commission find that the off-sale of alcohol at this location (ABC Type 20 License) serves a public convenience or necessity. Staff also recommends that the Planning Commission deny a use permit to operate the existing service station and associated convenience store at the site 24 hours a day. The recommended actions are included as Attachment A.

Policy Issues

Each use permit request is considered individually. The Planning Commission should consider whether the required use permit findings can be made for the proposal and whether the sale of beer and wine at this location serves a public convenience or necessity. The Planning Commission should also consider whether the existing service station and associated convenience store should be permitted to operate 24 hours a day, or whether the business should be closed between the hours of midnight and 6:00 a.m.

Background

Site location

The subject property is located at 710 Willow Road, in the northeast corner of the intersection of Willow Road and O'Keefe Street, and is accessible from both Willow Road and O'Keefe Street. To be consistent with the orientation of the building, this report refers to Willow Road as the front of the property. The adjacent parcel to the north at 718 Willow Road is also in the C-4 (General Commercial) zoning district and is occupied by acupuncture, massage therapy, and chiropractic uses. The adjacent parcels to the east and south across O'Keefe Street are in the R-3 (Apartment) zoning district and occupied by a mix of single-family and multi-family residences. Parcels to the west across Willow Road are zoned PF (Public Facilities) and are the site of the Menlo Park Veterans Affairs Medical Center. A location map is included as Attachment B.

Previous Planning Commission review

On January 14, 2019, the Planning Commission approved a proposal to convert an automotive mechanic shop into additional convenience store area, install new exterior doors and windows, and make changes to the trim and colors on the exterior of the convenience store building. The applicant received a building

permit for the alterations in February 2019, and the work was completed in August 2019.

Analysis

Project description

The applicant is requesting a use permit to operate the 76 service station's existing gas pumps and convenience store 24 hours a day, and also a use permit to allow the sale of beer and wine for off-premises consumption (ABC Type 20 license) between the hours of 6:00 a.m. and 2:00 a.m. the following day. The site is currently developed with eight fueling stations, a 1,000-square foot snack shop and a 160-square foot storage shed, totaling 1,160 square feet of gross floor area. The fueling pumps and convenience store are currently open daily from 6:00 a.m. to midnight. No changes are proposed to the existing site improvements. The project plans and the applicant's project description letter are included as attachments C and D, respectively.

The applicant states the existing convenience store sells a number of products including a variety of snacks, coffee and soft drinks, tobacco products, and items related to vehicle maintenance such as automotive oil and air fresheners. The proposed alcohol sales would be limited in size relative to the overall business, occupying approximately 20 percent of the existing wall cooler space.

The applicant indicates that the convenience store cash register presently has software programmed to restrict sales of tobacco without scanning the date of birth from a purchaser's ID. Cashiers are trained on the use of the register software and specific regulations regarding the sale of tobacco. The applicant states that the same principles and protocols would be implemented with regard to the sale of alcohol to prevent any illegal sales to minors.

Determination of public convenience or necessity

One of the components of the proposed application is the determination of public convenience or necessity, as required by ABC. Prior to the licensing of a new "off-sale alcohol" establishment, ABC requires the local jurisdiction to make a determination of public convenience or necessity. In Menlo Park, such a determination is made by the Planning Commission (unless appealed to the City Council), in conjunction with any associated application such as a use permit for the off-site retail sale of alcohol. The criteria for this determination are not explicitly defined by State or City code, and each determination is reviewed on a case-by-case basis to consider the specific factors involved.

As a mixed-use corridor in the Willows neighborhood, the section of Willow Road between Middlefield Road and US 101 currently contains a variety of uses, including alcohol sales. Three businesses in the area, all grocery stores, currently have off-sale ABC licenses:

- Hacienda Super Mercado – 1933 Menalto Avenue (Type 20 – beer and wine)
- The Willows Market – 60 Middlefield Road (Type 21 – beer, wine, and spirits)
- El Rancho Market – 812 Willow Road (Type 20 – beer and wine)

Of the businesses listed above, all three are in the same census tract as the subject parcel. ABC has indicated that the addition of a fourth off-sale alcohol license would mean the census tract is considered

over concentrated. However, if the Planning Commission finds that the proposal serves a public necessity or convenience, ABC may issue a Type 20 license for the subject business.

Although the area surrounding the subject site contains grocery stores providing the off-site sale of alcohol, the format, size, and focus of these businesses varies. In staff's view, convenience encompasses a broader set of factors beyond an absolute number of stores, including considerations of location, an availability of product types, pricing, and a store's overall product mix (including non-alcoholic products). Staff believes the addition of a relatively limited set of beer and wine offerings would complement the other products for sale. In addition, the proposed operations would provide a convenience for customers by allowing them to make such purchases at a service station in combination with fueling their vehicles or purchasing limited convenience items, without having to make additional trips to area grocery stores to purchase beer or wine. Staff believes the proposed off-sale of beer and wine in conjunction with the existing convenience store operations would provide a convenience and service to patrons traveling on Willow Road and residing in the vicinity of the subject site.

Staff shared the proposal with the Menlo Park Police Department, who reviewed calls for service over the last few years related to the service station and convenience store. The Police Department determined that most activities in the vicinity were officer-initiated, such as regular patrols of the area and traffic stops, and not calls for service related to the gas station or convenience store. As a result, the Police Department indicated they did not believe that approving the request for an off-sale alcohol license at the site would lead to a higher volume of calls for service.

Business operations after midnight

The second component of the proposed application is a request for 24-hour operations of the existing gas pumps and convenience store. Chapter 8.12 of the Municipal Code requires a permit for business operations between the hours of midnight and 6:00 a.m. on premises within 300 feet of any property zoned for or occupied by residential uses. As described in a previous section, parcels zoned for and occupied by residential uses are located immediately adjacent to the rear of the subject site and across O'Keefe Street. Additional residentially-zoned and occupied parcels are located within 300 feet in the Willows neighborhood.

Chapter 8.12 specifies that the criteria for granting or denying a permit shall be as follows:

- Whether the permit will allow activity which interferes with the peace and quiet of persons of ordinary sensibility while enjoying property in use as residential property,
- The number of persons affected,
- The extent of such interference,
- The length of time during which an existing business has been operating between the hours of midnight and 6:00 a.m. without significant complaint to the city, and
- Hardship to the business from loss of income or other factors if the permit is not granted.

The Municipal Code further states that the permit shall be granted unless it is found that the interests of the residents in the peaceful and quiet enjoyment of residential property outweigh the interests of the business seeking the permit. The permit shall be denied in whole or in part, or conditions shall be attached

to the permit, only to the extent that the denial or conditions are supported by the findings.

As indicated in the Correspondence section below, staff received nine emails opposing the proposed application. Of those nine, six directly mention concerns and existing issues related to maintaining peaceful and quiet enjoyment of the surrounding residential properties. The items of correspondence describe noise, light and glare, litter, loitering, potential drunken and disorderly behavior, and other concerns related to the proposed and existing operations at the subject site and other commercial properties along Willow Road.

Thirty-seven parcels with residential uses and/or zoning are located within 500 feet of the subject property in the Willows neighborhood, and many more properties with residential zoning and uses are located in the neighborhood to the east. The number of residents affected by 24-hour operations at the site and the extent of interference would be significant, given that the subject parcel is surrounded by a number of residential properties and located at one of the few entrances into the Willows neighborhood from Willow Road. Additionally, it does not appear there would be any hardship to the service station and convenience store from loss of income since the business does not currently operate during these hours and has not operated during these hours for several years. The applicant indicated that the hours of operation were reduced in the past due to lack of business overnight and during the early morning. Consequently, staff believes that the findings to grant a permit outlined in Chapter 8.12 cannot be made, and that permitting 24-hour operations at the site would likely create or exacerbate activities that interfere with the peace and quiet of persons of ordinary sensibility enjoying their residential property during the hours of midnight to 6:00 a.m.

Correspondence

With the submittal of the previous 2019 application to expand the convenience store and modify the exterior of the building, the applicant provided 89 signed form letters from customers residing in Menlo Park and neighboring jurisdictions. Of the 89 form letters, 38 included suggestions requesting the sale of alcohol and/or 24-hour operations. In response, the applicant applied to ABC and the City for a license and use permits to provide these services for patrons.

However, staff also received nine items of correspondence in opposition to the proposed project. All items of correspondence are included in Attachment E. The main objections to the requests include trash and debris generated by the uses of the property, traffic and parking, nighttime noise, trespassing/loitering on the property and in the vicinity, and concerns about potential alcoholism and drunk driving. In response, the applicant states that video surveillance footage from cameras kept on the site indicate that during approximately 90% of the hours of operation, only one car is parked in the designated parking area adjacent to the convenience store building. Additional cars are parked in the 10 spaces next to the gas pumps and on the north side of the convenience store less than 10% of the time. Vendors currently make deliveries to the convenience store on-site, but as an added precaution, the applicant has informed all vendors to ensure that they do not park on the street or block driveways in the vicinity. Finally, the applicant indicates that the business maintains lighting and surveillance cameras on the premises to monitor and deter loitering, trespassing, and crime. Because existing markets in the vicinity already sell beer and wine for off-site consumption, the subject business would not be the first retailer to offer alcohol sales in the area. In addition, compared with the size and scale of other markets in the area selling beer

and wine, the potential offerings of the subject business would be limited in size and confined to a relatively small area of the convenience store. Cashier training and controls on the sale of alcohol from the convenience store would further limit any potential nuisances and illegal activities.

Conclusion

The proposed alcohol sales would be limited in size relative to the overall business operations. The operations would include employee training. The proposed off-sale of beer and wine in conjunction with the existing convenience store operations would provide a public convenience and service to patrons by allowing customers of the gas station and/or convenience store to purchase beer and wine along with other products in a single visit. Staff recommends that the Planning Commission approve the request to allow the sale of beer and wine at an existing convenience store for off-premises consumption (ABC Type 20 License).

The service station and convenience store are located directly adjacent to single family- and multifamily-zoned parcels on O’Keefe Street. These parcels are developed with existing residential uses. Staff has received correspondence expressing concerns about noise, lighting and glare, debris, and safety associated with the existing service station and convenience store operations at the site. In the interest of residents living in close proximity to the site, and to ensure the peaceful and quiet enjoyment of their property during the late evening and early morning hours, staff recommends that the Planning Commission deny the request to operate the business between the hours of midnight and 6:00 a.m.

Impact on City Resources

The project sponsor is required to pay Planning, Building and Public Works permit fees, based on the City’s Master Fee Schedule, to fully cover the cost of staff time spent on the review of the project.

Environmental Review

The project is categorically exempt under Class 1 (Section 15301, “Existing Facilities”) of the current California Environmental Quality Act (CEQA) Guidelines.

Public Notice

Public Notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting. Public notification also consisted of publishing a notice in the local newspaper and notification by mail of owners and occupants within a 500-foot radius of the subject property.

Appeal Period

The Planning Commission action will be effective after 15 days unless the action is appealed to the City Council, in which case the outcome of the application shall be determined by the City Council.

Attachments

A. Recommended Actions

- B. Location Map
- C. Project Plans
- D. Project Description Letter
- E. Correspondence

Disclaimer

Attached are reduced versions of maps and diagrams submitted by the applicants. The accuracy of the information in these drawings is the responsibility of the applicants, and verification of the accuracy by City Staff is not always possible. The original full-scale maps, drawings and exhibits are available for public viewing at the Community Development Department.

Exhibits to Be Provided at Meeting

None

Report prepared by:
Tom Smith, Senior Planner

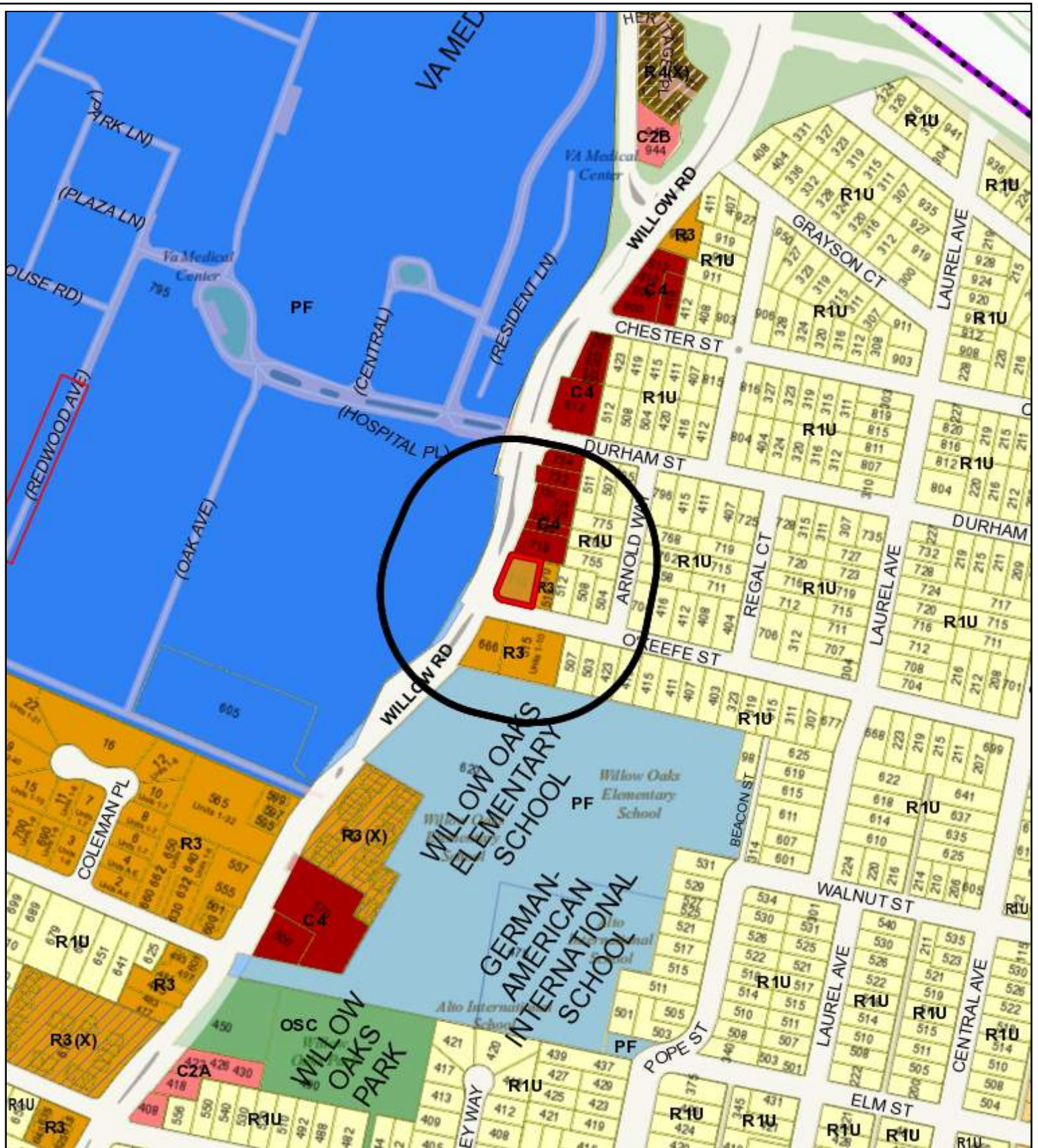
Report reviewed by:
Corinna Sandmeier, Senior Planner

710 Willow Road – Attachment A: Recommended Actions

LOCATION: 710 Willow Road	PROJECT NUMBER: PLN2019-00094	APPLICANT: Aparna Saha	OWNER: Aparna and Subal Saha
PROPOSAL: Request for a use permit to allow the sale of beer and wine at an existing service station convenience store for off-premises consumption every day from 6:00 a.m. to 2:00 a.m. the following day, and to operate the existing service station and associated convenience store 24 hours a day, in the C-4 (General Commercial) district. As part of the review, the Planning Commission will need to determine whether the sale of alcohol at this location serves a public convenience or necessity, in accordance with the requirements of the State Department of Alcoholic Beverage Control (ABC).			
DECISION ENTITY: Planning Commission	DATE: March 9, 2020	ACTION: TBD	
VOTE: TBD (Barnes, DeCardy, Doran, Kennedy, Kahle, Riggs, Tate)			
ACTION:			
<ol style="list-style-type: none"> 1. Make a finding that the project is categorically exempt under Class 1 (Section 15301, “Existing Facilities”) of the current California Environmental Quality Act (CEQA) Guidelines. 2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City. 3. Make a finding that the proposed use would serve a public convenience because the proposed use would allow residents, visitors, and employees of the immediate vicinity a convenient location to purchase beer and wine. 4. Approve the use permit for off-sale alcohol sales (ABC Type 20 license) subject to the following standard conditions: <ol style="list-style-type: none"> a. Development of the project shall be substantially in conformance with the plans prepared by Iyer & Associates consisting of 4 plan sheets, dated received October 19, 2019, and the project description letter dated received October 19, 2019, approved by the Planning Commission on March 9, 2020, except as modified by the conditions contained herein, subject to review and approval of the Planning Division. b. The applicant shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies’ regulations that are directly applicable to the project. c. The applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project. 5. Deny the use permit for business operations after midnight based on the following criteria set forth in Section 8.12.010 of the Municipal Code: <ol style="list-style-type: none"> a. Residents have submitted correspondence indicating concerns and existing issues, such as noise, light, litter, and loitering, related to operations at the service station and convenience store, as well as other commercial properties in the vicinity. The permit would allow activity which interferes with the peace and quiet of persons of ordinary sensibility while enjoying property in use as residential property. b. Thirty-four residential parcels are located within 300 feet of the subject property. The number of residents affected by business operations after midnight at the site would be significant. c. The extent of interference would be significant, given that the subject parcel is surrounded by a number of residential properties and located at one of the few entrances into the Willows neighborhood from Willow Road. 			

710 Willow Road – Attachment A: Recommended Actions

LOCATION: 710 Willow Road	PROJECT NUMBER: PLN2019-00094	APPLICANT: Aparna Saha	OWNER: Aparna and Subal Saha
PROPOSAL: Request for a use permit to allow the sale of beer and wine at an existing service station convenience store for off-premises consumption every day from 6:00 a.m. to 2:00 a.m. the following day, and to operate the existing service station and associated convenience store 24 hours a day, in the C-4 (General Commercial) district. As part of the review, the Planning Commission will need to determine whether the sale of alcohol at this location serves a public convenience or necessity, in accordance with the requirements of the State Department of Alcoholic Beverage Control (ABC).			
DECISION ENTITY: Planning Commission	DATE: March 9, 2020	ACTION: TBD	
VOTE: TBD (Barnes, DeCardy, Doran, Kennedy, Kahle, Riggs, Tate)			
ACTION:			
<ul style="list-style-type: none"> d. The existing business is not currently operating between the hours of midnight and 6:00 a.m. e. Hardship to the business from loss of income or other factors would be minimal since the business is not operating during these hours at present. 			



CITY OF MENLO PARK

City of Menlo Park

Location Map
710 Willow Road



Scale: 1:4,000

Drawn By: TAS

Checked By: CDS

Date: 3/9/2020

Sheet: 1



A&S UNION 76 MINI-MART REMODEL

710 WILLOW ROAD,
MENLO PARK, CA 94025

**AREA PLAN, AREA
DIAGRAM &
STREETSCAPE**

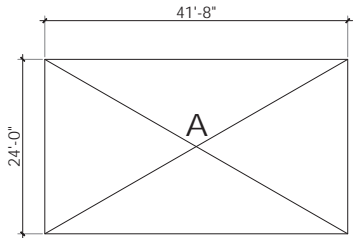
Date:	Issued for:
09-21-2018	PLANNING APPROVAL
11-06-2018	PLANNING REVIEW

Drawn by SV/MM/SSV

Checked by ASI

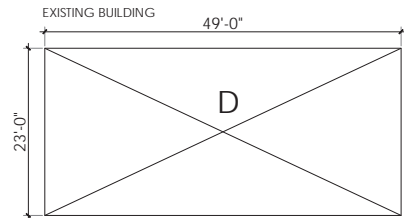
Project no. 12180823 Sheet no. A-2

GROSS FLOOR AREA AND BUILDING COVERAGE DIAGRAMS



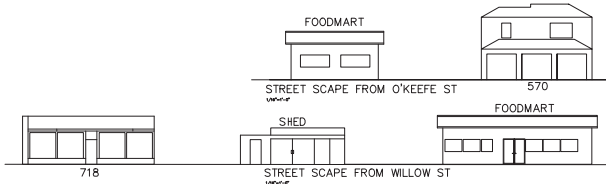
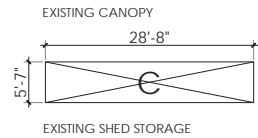
FLOOR AREA LIMIT CALCULATION

AREA	DIMENSION	AREA IN SF
A	41'-8" X 24'-0"	1000
C	28'-8" X 5'-7"	160
TOTAL FAL		1160

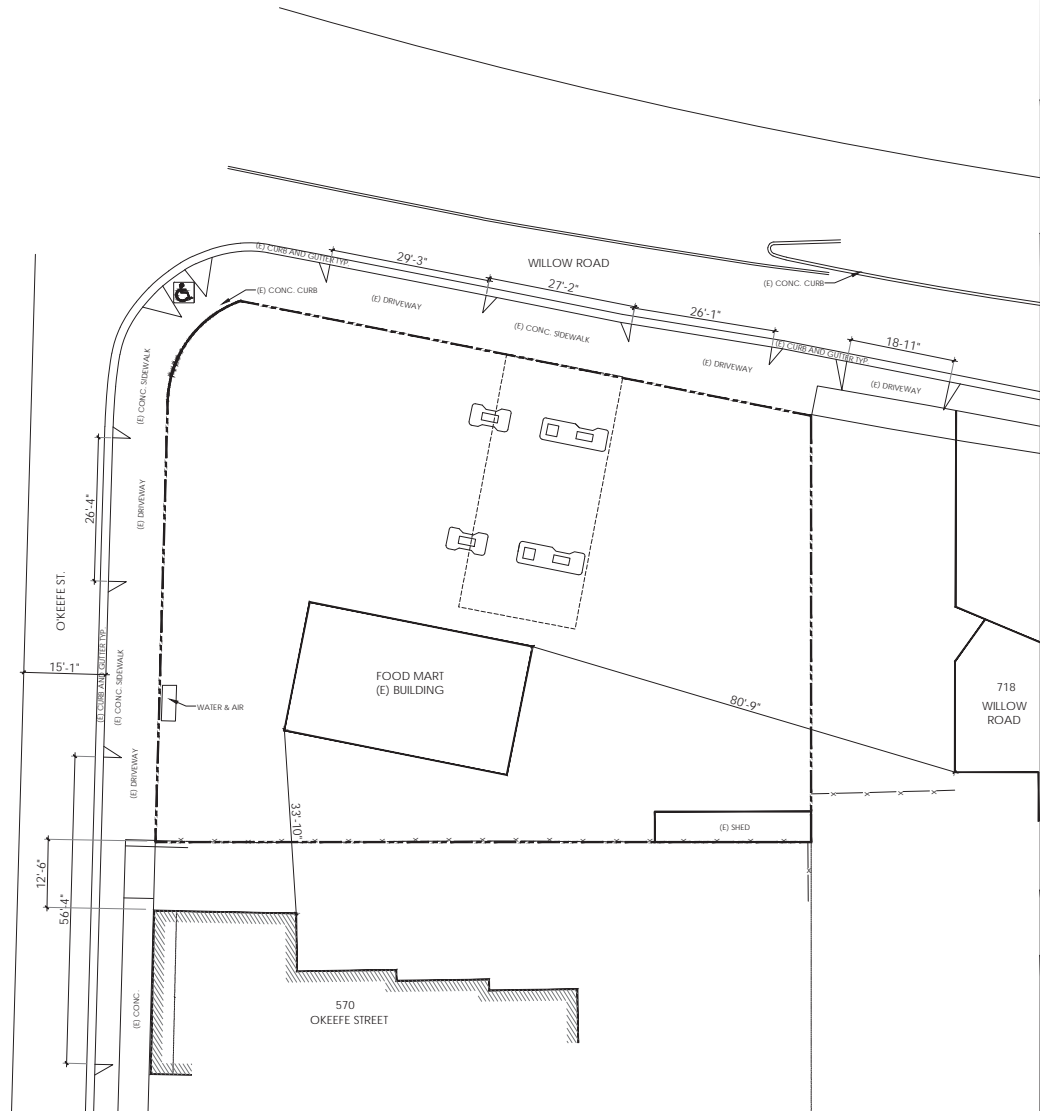


BUILDING COVERAGE CALCULATION

AREA	DIMENSION	AREA IN SF
A	41'-8" X 24'-0"	1000
D	49'-0" X 23'-0"	1127
C	28'-8" X 5'-7"	160
TOTAL BUILDING COVERAGE		2287.00

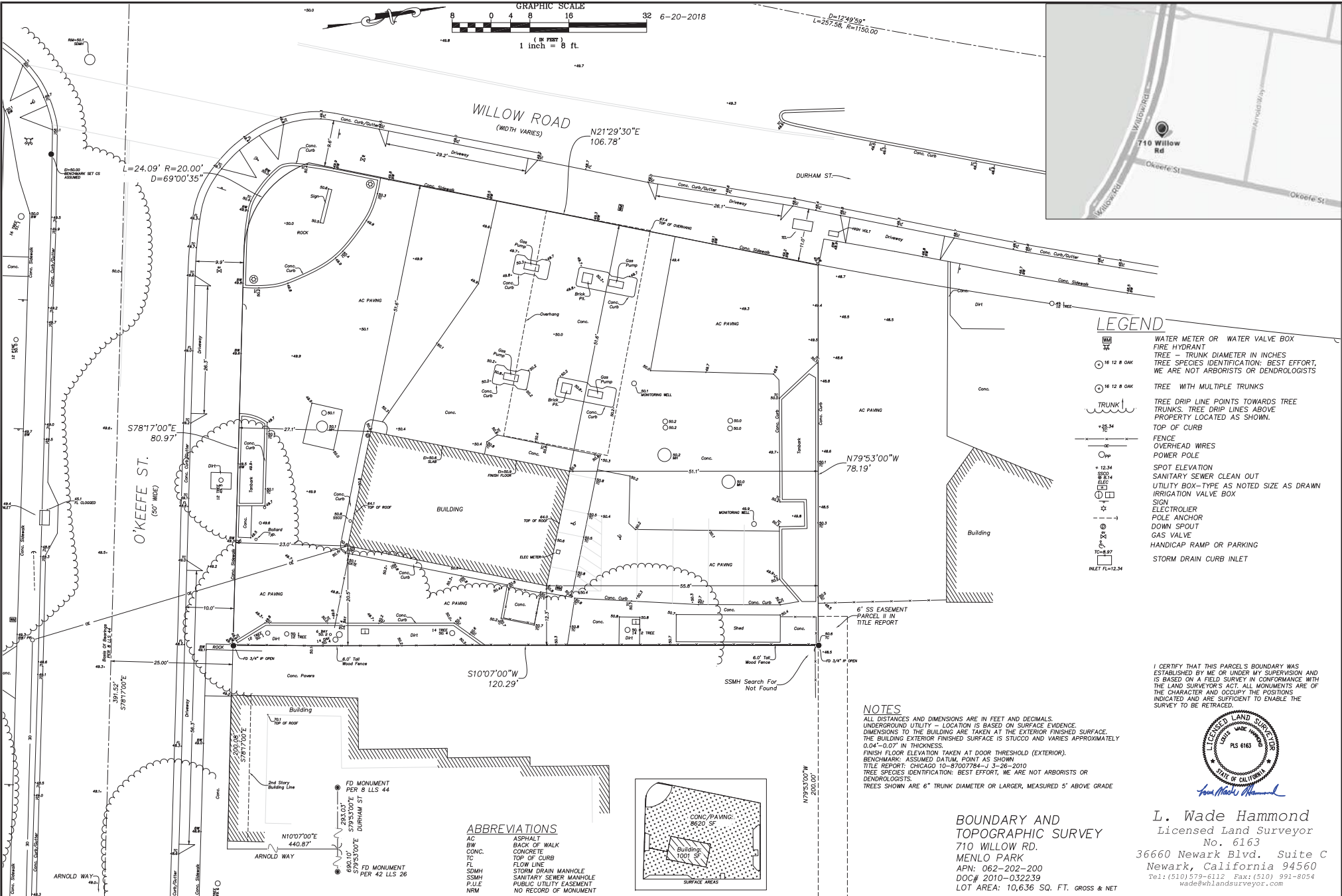


B **STREETSCAPE**
1/16"=1'-0"



A **AREA PLAN**
3/32"=1'-0"





A & S Enterprise

43570 Vista Del Mar, Fremont, ca 94539

tel. no: (510) 395 3438

fax no: (510) 656 1827 email:

aparnasaha86@yahoo.com

LOCATION: 710 WILLOW ROAD, MENLO PARK CA 94025

APPLICANT: A&S ENTERPRISE

EXISTING USE: Service Station & FOOD MART OWNER: Partnership

PROPOSED USE: Service Station & FOOD MART with beer and wine (type20 ABC License)

APPLICATION: Use Permit

ZONING: C-4 (General Commercial Retail)

**WRITTEN DESCRIPTION FOR The
Project: 710 Willow Road Menlo Park, CA
94025**

Subal Saha & Aparna Saha on behalf of A & S Enterprise, submitting the Use Permit Application for the above referenced gas station. The project scope of work includes to add beer and wine sale in the existing convenience store and to extend the hours of operation to 24 hours, seven days a week like it was before for customers convenience at their request. Also, while the gas pumps and convenience store would be open 24 hours a day, 7 days a week, alcohol would not be sold between the hours of 2:00 a.m. and 6:00 a.m., consistent with State law.

ITEMS TO BE SOLD AT THIS FACILITY: The gas station will sell gasoline, the Food Mart will sell all the items as existing such as- pre packaged food items, sundry items, some automobile accessories (i.e.- air fresheners, cell phone accessories, antifreeze, motor oil, etc.) self-service beverages, fresh and/or pre-packaged pastries & can and/or bottles of soda, water & sports/energy drinks, along with that we are requesting the permit to sell beer and wine only, no hard liquor will be sold here.

EMPLOYEE: The gas station employees are (1) employee per shift. There will be (3) shifts per day (7) days per week. **HOURS OF OPERATION:** proposed hours of operation for both the Gas Station and Food Mart will be: 24 hrs every day, 7 days a week, 365 days per year.

FUEL DELIVERY: The fuel delivery truck will make deliveries 3-4 times / week.

PROJECT DESCRIPTION:

The project scope of work includes ONLY add beer and wine sale in the existing convenience store and to extend the hours of operation to 24 hours, seven days a week like it was before for customers convenience at customers request.

There will be no change or addition in the exterior or interior of the existing building including the roof or facade or adding any additional equipment's such as coolers or freezers. Fuel canopy and fuel system are to remain as is. Also, the rest of the existing building remain as is. There will be no change in the existing parking stalls. There are altogether 11 parking spaces which includes 3 striped parking, 8 at the fueling pumps and one van accessible handicap parking stall.

Rest room and Trash enclosures remains as is.

DEMOLITION NARRATIVE: N/A

If you have any questions please don't hesitate to contact Aparna Saha at (510) 395-3438.

**NOTE: All the Engineering drawings sheets T1, A1 to A5 -
wherever it says NEW or Proposed, please consider as Existing.**

Sincerely,

APARNA SAHA

A & SENTERPRIS

710 WILLOW ROAD
MENLO PARK, CA 94025

From: Dev Datta
To: [Smith, Tom A](#)
Cc: [Rebecca O. Brien](#)
Subject: Objection to application by Aparna Saha, 710 Willow Road
Date: Thursday, October 24, 2019 9:48:11 AM

CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.

Hello Tom,

My wife and I would like to object to the application by Aparna Saha, 710 Willow Road to extend business operations from midnight to 6 am, and allow the sale of alcohol, on the grounds that:

1. We live at 504 O'Keefe street, 400 feet away from the 76 gas station at 710 Willow. Our driveway and front garden is daily littered with wrappers, cigarette butts etc. from purchases at this business. Offering extended hours and alcohol will accentuate this problem for us, and all our neighbors, and will be detrimental to the cleanliness of the Willows neighborhood.
2. Our neighborhood consists of many young families, with young children. We have a 10 and a 13 year old, and we don't want to risk the presence of drunken and disorderly behavior that could be a danger to, or a bad influence for children in our neighborhood.
3. The extended hours will create more noise, traffic, and attract crime to the Willows neighborhood which is a quiet, residential area. This 76 gas station has already been the location of a number of crimes over the years, including armed robbery.
4. We support the well-being of our veterans. The VA is right across the road from the business and providing access to alcohol at all hours will make it more difficult for the VA to contain alcohol abuse by troubled veterans who need more help, not more access to alcohol.
5. Groceries and alcohol are already readily available during normal business hours (up to 10pm) at El Rancho Market (459 feet away from the applicant's business), at Mardinis Deli Cafe (0.3 miles away), and at Willows Market (0.8 miles away). There is absolutely no need for yet another vendor, especially not at extended business hours being proposed, which is essentially all through the night.

We would like to highlight that we fully understand businesses wanting to extend their ability to generate more revenues and maximize their potential. The difficulty in this case, is the proximity of this business to the Willows neighborhood. The fact that the business is a gas station already makes it undesirable at the very entrance to the neighborhood. If this was a gas station located downtown, away from residential neighborhoods, we would have no objections. However, in the interest of preserving

the wonderful family neighborhood that is the Willows, we request that Planning Division reject the permit for extended hours and the sale of alcohol. We have lived in the Willows for over 10 years now and during that time we have seen it transition into an increasingly wonderful family neighborhood, with more young families moving in, attracted by the the great schools we have, making it one of the most desirable neighborhoods in the Bay Area. These long term transitions are far more important to Menlo Park's long term economic viability and strength of community, than the short term profits of a single gas station business.

We hope our feedback is taken into consideration seriously and we are happy to discuss further if necessary. We are also filing a Form ABC-510 with the Department of Alcohol Beverage Control.

Regards,

Dev Datta and Rebecca O'Brien
504 O'Keefe Street
Menlo Park
CA 94025

(510) 504 0244 (cell)

From: Maricela G Valencia
To: [Smith, Tom A](#)
Subject: 710 Willow Road
Date: Thursday, October 31, 2019 10:40:46 AM

CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.

Hi Tom,

I received a notice for a business on Willow Road to sell alcohol.

My family and I have lived in the Willows for 30+ years. We don't want another establishment selling alcohol (especially late at night). It will draw the wrong people. The VA hospital across the street has a lot of vets that don't need access to alcohol. I think it is a bad idea. We already have homeless people camping in our neighborhood.

A couple of years ago we had a very terrifying experience with one of the vets from the VA. He jumped into our living room (late at night) through our front window, knocked over my husband and me, ran through our home bleeding all over and ran out our bedroom window! I don't want a repeat of something similar. Making the alcohol available 24/7 is definitely a bad idea. We take pride in our home. My husband always gets compliments on our front yard. This business is just a block away from our home.

Please don't approve another liquor license.

Thank you,

Maricela G. Valencia
Office Manager
Montclair Group Limited
T: 650-814-1210
E: mvalencia@montclairgroup.com

From: Michelle Garff
To: [Smith, Tom A](#)
Cc: [Combs, Drew](#)
Subject: Use Permit at 710 for sale of beer and wine and extended business hours
Date: Friday, November 1, 2019 2:12:46 PM

CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.

Mr. Smith and Mr. Combs.

I am emailing you in regards to the Use Permit request at 710 Willow Road for extended business operations and to allow the sale of beer and wine.

I live around the corner from the convenience store and while I am grateful for the recently improved exterior appearance, we have experienced unwanted behavior from the increase in customers to the expanded mini mart. Customers loiter at the back corner of the convenience store lot and then stroll through the neighborhood while they consume their purchases.

We have had an increase in littering, twice in the past few months we have cleaned up human feces from the sidewalk and we have found hypodermic needles on the sidewalk in front of our house. In August, someone dumped an old couch on the sidewalk across the street and a homeless man spent nearly all day and night on that couch until we could have it removed in a bulk Recology pick-up.

Of course this unwanted behavior in the neighborhood cannot be directly attributed to the convenience store in all circumstances; however, the access to consumer goods and increased business has definitely escalated the amount of non-Willows residents loitering within and passing through the neighborhood.

Furthermore, the convenience store is a poor location for alcohol sales - it is centrally located at the entrance to the family-friendly Willows neighborhood and just blocks from Willow Oaks Park, Willow Oaks School and Alto International School. And, most unsettling, the convenience store is across the street from the VA residential treatment program for homeless and/or substance-dependent Veterans.

Alcohol sold at this location for off-premises consumption will surely equate to consumption on our neighborhood streets, at our city park, around school properties and in the company of at-risk veterans.

I strongly urge to you advise against this Use Permit request. The consequences of this proposed business plan will negatively impact the quality of our neighborhood and will be a nuisance to our community.

Thank you for your consideration,
Michelle Garff

From: Tricia Barr
To: [Smith, Tom A](#)
Subject: 710 Willow Rd - Sale of alcohol
Date: Saturday, November 2, 2019 10:03:55 PM

CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.

Disregard my last note. I cleaned it up and added to it below:

Please do not issue 710 Willow Rd a permit to sell alcohol. We already have a retailer with an alcohol permit within 300 ft at 812 Willow Rd. We do not need retailers so close to each other.

There is also another establishment with an alcohol permit at 408 Willow Rd.

710 Willow Rd has already been found to sell tobacco to minors:
https://www.accessdata.fda.gov/scripts/oc/inspections/oc_insp_searching.cfm

Unfortunately, due to budgeting, according to the San Mateo County Tobacco Prevention Program, there has not been more recent State/County enforcement / decoy operations of this. If we know selling to minors has been a problem in the past, we should not provide a permit to sell alcohol.

A retailer at this location would be with 400 ft of public and private schools, Willow Oaks School and Alto International. We should not have a tobacco or alcohol retailer that close to schools.

This is also right across the street from the VA where one of the services offered there is to help with substance abuse: <https://www.va.gov/directory/guide/facility.asp?ID=5195>

Net-net: there is no public benefit to issuing an alcohol permit to this retailers. Please do not approve.

From: Susan Bryan
To: [Smith, Tom A](#)
Subject: no alcohol sale 76 station Willow Road
Date: Monday, November 4, 2019 9:23:18 AM

CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.

Mr. Smith: Please do not allow the 76 gas station at 710 Willow Road to sell alcohol. There is already a market a block away that sells wine and beer. Selling alcohol at a gas station encourages drunk driving. In addition, the VA hospital across the street has an alcohol addiction treatment program. And the streets behind the 76 station are full of families with young children. Thank you for listening.

And please , regarding those big trees that had to be removed at the corner of El Camino and Ravenswood, thank the person who had came up with the imaginative idea to have the logs carved and set on the library grounds. That's real leadership. - Susan Bryan 222 Blackburn Avenue

Tom Smith, Senior Planner
City of Menlo Park

Planning Commission, City of Menlo Park

November 5, 2019

Regarding the request for a use permit at 710 Willow Road by Aparna Saha:

I would urge that the portion of the use permit for a liquor license be denied. Extending hours of gasoline sales is a benefit for the neighborhood. However, the request for alcohol sales in the neighborhood, late at night, is detrimental to our community.

There are already several retail outlets in the Willows for alcohol. The addition of this location and these times is not conducive to a neighborhood of largely single family homes, with no late night entertainment venues. In fact, on the next block is one such location.

The location of the store is not conducive to late night alcohol sales. Within 500 feet of the store's location are 30 single family homes, in addition to a small collection of apartments. There are no natural barriers to separate the property from the neighborhood. Any problem at the store or from its customers will immediately spill into a family neighborhood. The other gas station located in the Willows is actually a better location for alcohol sales. It has no houses within 500 feet, in fact its immediate neighbors are a medical clinic and a park. The closest residences are across a busy street and not likely to attract problems.

The extended hours and availability of alcohol will just contribute to more crime in the neighborhood. The area around the store has in the past attracted criminal activity, including drug transactions, public intoxication, and trespassing. Adding late hours and alcohol could also attract homeless to the area. Also, since the primary activity of the location is gasoline sales, selling alcohol could lead to an increase in DUIs.

When I first moved into the neighborhood, nearly 20 years ago, the property was a haven for drug sales throughout the night, attracting criminals to a largely family based neighborhood. While this problem has largely been dealt with, will the sale of alcohol bring back these problems?

In the past couple of years, in the area near the store, we have seen homeless camp out. Will adding alcohol availability help with these types of problems?

What will be the impact of late night auto and foot traffic related to the purchase alcohol at this location on this family neighborhood's tranquility, after midnight?

The best option for this location was to provide automotive related services, but they have chosen to go another way, which is fine. But selling alcohol brings nothing positive to the neighborhood.

As a long-term resident of the Willows, who lives a couple doors down from the location, I urge the planning commission to deny the use permit for alcohol sales.

Michael Palma
508 O'Keefe Street
Menlo Park, CA
650-326-2288

From: Daniel Prodan
To: [Smith, Tom A](mailto:Smith.Tom.A)
Subject: Fwd: Material concerns re proposed development at the 76 gas station in Willow
Date: Saturday, November 16, 2019 10:37:24 PM

CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.

resending again without photo

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

From: Daniel Prodan <danprodan@gmail.com>
Date: Sat, Nov 16, 2019 at 9:40 PM
Subject: Re: Material concerns re proposed development at the 76 gas station in Willow
To: Smith, Tom A <tasmith@menlopark.org>

Hi Tom, resending this email as I keep getting 'message too large' replies.

Thanks.

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

From: Daniel Prodan <danprodan@gmail.com>
Date: Fri, Nov 15, 2019 at 10:48 PM
Subject: Re: Material concerns re proposed development at the 76 gas station in Willow
To: Smith, Tom A <tasmith@menlopark.org>
Cc: Marianna Prodan <mariannaprodan@gmail.com>

Hi Tom, I understand the gas station owners are looking to sell alcohol and have extended hours.

We strongly oppose this proposal - unfortunately our concerns re initial development have largely materialized, and we've raised them with station manager to no avail. The extended hours and alcohol license will only make things materially worse for us.

The challenge arise as gas station customers use the air station area, Okeefe street and side walks, and the space in front of house (our house is in immediate vicinity to gas station) as resting area. This creates all sorts of issues:

smoking, specifically very close to our house - in addition to the danger of smoking at a gas station, my teenager's room and windows are a few feet away from gas station. We often have to close all windows so that smoke does not come in. I've raised this with the gas station manager two months ago, he promised to put a sign to remind his customers (not happened, not sure if it will help) and we see no change. This happens on almost daily basis.

drinking and eating on our stairs - we have to clean up fast food boxes in front of our house quite often, including empty bottles

noise from customers - this happens almost daily, gas station customers stopping at the air

station and listening to loud music well past 10 pm, arguing, yelling etc
homeless people camping close to gas station or across the street
bright led lights - gas station white led lights illuminate my bedroom throughout the night,
not too happy about that
safety - I am concerned about the safety of my family given all the cars stopping next to our
house, and all related activity

See a picture with garbage from a few days ago

Thank you for considering our concerns

Daniel and Marianna Prodan
6467120477
570 Okeefe street

Smith, Tom A

From: Thomas Burg <thomas.burg@sbcglobal.net>
Sent: Friday, February 28, 2020 12:13 PM
To: Smith, Tom A
Cc: Thomas Burg
Subject: Use Permit -- 710 Willow Road

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.

Dear Mr. Smith:

I write to express my objections regarding the use permit application for 710 Willow Road. My concerns follow:

- **The Proposed Use Creates Additional Public Safety Risks.** The link between single serving/minimart alcohol sales and crime and public nuisance behavior is well documented. ([The Impact of Single-Container Malt Liquor Sales Restrictions on Urban Crime](#)) In fact, many municipalities are restricting retail operations of this nature. ([New Hesperia booze ordinance bans single-serve alcohol for new retailers](#)) This location was also the subject of armed robberies in 2010 ([Armed men rob Menlo Park gas station](#)), 2004 and 2008. The additional operating hours (I believe the station is currently open from 6 or 7am-midnight) could potentially increase the risk of another event. In addition, both the 76 location and the nearby strip malls on Willow are the site of regular transient/homeless activity which often spills over into the residential neighborhood. The other locations have early closing hours and the 24/7 nature of the proposed operation could increase this activity.
- **The Proposed Use Is Inconsistent With Nearby Uses.** The VA hospital across the street is providing in-patient support services to veterans facing PTSD and other military trauma survivors. Adding a nearby early morning/late night alcohol sales outlet does not seem like it would help the VA meet its objectives with respect to its at-risk patients.
- **The Proposed Use Does Not Fill a Neighborhood Need.** There are at least four existing nearby locations selling beer and wine (Nardini's Market, Willow Market, La Hacienda and El Rancho). El Rancho is ~500' from the 76 location. The expanded alcohol sales operations appear targeted at commuter/out of area traffic as opposed to local or neighborhood residents.
- **The Site Does Not Comply With Parking Requirements and Increased Retail Activity Could Create Parking Issues that Burden the Neighborhood.** As city staff notes in the above-linked 2019 recommendation regarding the expansion, parking is substandard on the property unless the spaces in front of the gas pumps are counted as parking spaces which has been done before with other gas stations in the city. I believe that since the applicant is shifting the business model to favor a retail operation with increased hours and sales, the existing site should comply with parking requirements. As neighbors noted in their correspondence in connection with the 2019 application, overflow parking often spills onto congested streets blocking nearby driveways. Since the applicant is now dramatically expanding operating hours and its

operations to include alcohol sales to increase business, the site should be treated like any other retail outlet for purposes of parking requirements and should no longer be treated as a gas station.

- **The Applicant Was Not Transparent About Expansion Plans In Connection With Its Prior Permit Applications.** The owners of the station successfully obtained a permit to expand the size of the mini mart in 2019. At the time, the owners did not inform the City that alcohol sales were planned. (<https://www.menlopark.org/DocumentCenter/View/20394/F2---710-Willow-Road?bidId=>) (p.2) Almost immediately after the application to expand was approved, the owners applied for an off-sale alcohol permit and are now seeking to expand their retail operation to provide for additional operating hours and alcohol sales. I understand there may have been no requirement for the applicant to disclose its future plans but the optics are not great.

Thank you for your consideration and time with respect to this application. I know it is a busy time at the Planning Department. Please do not hesitate to contact me with any questions.

Regards,

Thomas Burg

Smith, Tom A

From: Brian Gilmer <bgilmer1@yahoo.com>
Sent: Tuesday, March 3, 2020 2:00 PM
To: _Planning Commission
Cc: Smith, Tom A
Subject: 76 Gas Station 710 Willow Road

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.

Dear Members of the Planning Commission,

I am writing to you in regards to the 76 Gas Station on Willow Road at O'Keefe Street. The owners of the station have recently expanded what used to be a mechanics garage space in to a small convenience store. They are now requesting that the store be allowed to stay open from 12 midnight until 6:00 AM and to be allowed to sell beer and wine. I strongly urge you to vote no on both of these requests.

There are other stores nearby, not open as late, that already sell beer and wine, however they are not as close to residential properties as the 76 gas station. There have also been problems of noise from patrons of the gas station where they were shouting, slamming doors and in one case urinating on the fence of the closest residential neighbor. Having this type of behavior going all night would have a very negative impact on those of use that live nearby.

Selling alcohol at a convenience store that is right in the middle of a residential neighborhood is not wise and something that all the nearby neighbors oppose. There are already several places to purchase alcohol in the area; none are as close to residential property as the 76 gas station. I would also point out that the gas station is located across the street from the Veterans Administration Mental Health facility that has an addiction treatment program. I believe having alcohol sales late into the night is not supportive of this program.

For the sake of the residents that live near the 76 gas station I ask you to please deny both the extended hours and the request to sell beer and wine. If approved I strongly believe either of these will have a negative impact on the peace of the neighborhood.

Thank you

Brian Gilmer

O'Keefe Street.

AN
Hello Neighbors,

We are expanding our convenient Store, by adding the closed Smog Shop area in the convenient Store, so that we can serve our customer in a better way by keeping more varieties of items. We will appreciate if you give your opinion and suggestions about our project.

Thanks
(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES

No

NAME: Cassandra Span

Signature: Cassandra Span

Address : 605 Willow Rd MP

Suggestions: Hot food, Alcohol

Hello Neighbors,

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Thanks
(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES

No

NAME: Jose Valdes

Signature: *[Handwritten Signature]*

Address :
565 Willow Road #9
Menlo Park, CA 94025

Suggestions:
Sell Alcohol
24 hour hours

AN.
Hello Neighbors,

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(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME: E. Roberto Sansano Jr

Signature: 

Address : 2037 Menlo Ave
MP

Suggestions: Beer

FW-
Hello Neighbors,

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Thanks
(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME: Peter Sharpe

Signature: 

Address : 2030 ~~Menlo Park~~ Menlo Ave.
Menlo Park, CA 94025

Suggestions: Beer wine & beef jerky

E.S. 8/11/18

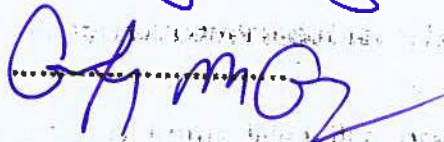
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(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME: Courtney Carey

Signature: 

Address: ~~5178B~~ 3695 Stevenson Blvd
Fremont, CA 94538

Suggestions: Stay Open 24hrs Still
-Wine & Beer would be great!

* "Eduardo, he is a great employee. I always get gas here after work, I feel safe!!" *

E.S 8/11/18

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Thanks
(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection... YES

No

NAME: *Diana Lynn*

Signature:

Address : *240 E. Okcete st*

Suggestions: *beer , keep all 24 hours*

25. 8/11/18

YES

NO

Hello Neighbors,

We are expanding our convenient Store, by adding the closed Smog Shop area in the convenient Store, so that we can serve our customer in a better way by keeping more varieties of items. We will appreciate if you give your opinion and suggestions about our project.

Thanks
(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES

NO

NAME: JOHN POCH

Signature: 

Address : 500 O'KEEFE
MENLO PARK CA.

Suggestions:

ALCOHOL, WINE, BEER, PIZZA
ALL IN ONE CONVENIENT STOP.

E.S. 8/11/18

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(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME: Luis Jimenez

Signature: *[Handwritten Signature]*

Address : 395 okeefe

Suggestions:

open all day

E.S. 8/11/18

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Thanks
(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES

No

NAME:

Signature:

Address :

Willow Menlo Park.

Suggestions:

Sale Beer - 24 Hours.

E.S. 8/11/18

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(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES

No

NAME: *Toa Fan*

Signature: *[Handwritten Signature]*

Address : *715 E. Okubo*

Suggestions:

*Ready stand!
open 24 hours*

V-T

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(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME:

Signature: 

Address : 315 E. Okeefe St
Menlo Park

Suggestions:

convenient Store in nature
with plenty to choose from -
eg hot food,
liquor etc
walk in Store would be fine

V.T


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Thanks
(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME: Jose castillo

Signature: 

Address : 380 E ORANGE ST #14
Pasadena ALto

Suggestions: HAVE Not Food w/ Beer }

Please let us know if you have any objection.... YES

V-T

Please let us know if you have any objection.... YES
NO

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Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME: CARLOS GERON

Signature: *Carlos Geron*

Address : 135 DONCHOEST

Suggestions:

HOT FOOD / BEER

Please let us know if you have any objection.... YES

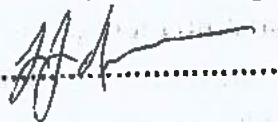
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710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME: SIITIA FALEPOUONO

Signature: 

Address : 201 E. O'KEEFE ST- APT 101

Suggestions: SELL BEER / 24 HOURS

Hello Neighbors,

We are expanding our convenient Store, by adding the closed Smog Shop area in the convenient Store, so that we can serve our customer in a better way by keeping more varieties of items. We will appreciate if you give your opinion and suggestions about our project.

Thanks
(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME: Maria E. Mendoza

Signature: 

Address : 1017 Madera Ave
Menlo Park CA 94025

Suggestions: Alcoholic Bev, hot food,
love this 76 gas station

Hello Neighbors,

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Thanks
(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME: Alex Chavez

Signature: *[Handwritten Signature]*

Address : 820 Willow Rd.
Menlo Park, CA 94025

Suggestions: GOOD IDEA
SELL ALCOHOL, OPEN LATE,

Hello Neighbors,

We are expanding our convenient Store, by adding the closed Smog Shop area in the convenient Store, so that we can serve our customer in a better way by keeping more varieties of items. We will appreciate if you give your opinion and suggestions about our project.

Thanks
(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME: Jeff Freese

Signature: 

Address : 605 Willow Rd

Suggestions:

Wish you could stay open 24 hrs. for people like me getting off work late.


Hello Neighbors,

We are expanding our convenient Store, by adding the closed Smog Shop area in the convenient Store, so that we can serve our customer in a better way by keeping more varieties of items. We will appreciate if you give your opinion and suggestions about our project.

Thanks
(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME: Albert Vargas

Signature: 

Address : 1986 Euclid Ave Apt 4

Suggestions: Liquor and beer Hello ~~XXXXXXXXXX~~

Hello Neighbors,

We are expanding our convenient Store, by adding the closed Smog Shop area in the convenient Store, so that we can serve our customer in a better way by keeping more varieties of items. We will appreciate if you give your opinion and suggestions about our project.

Thanks
(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME:

Signature: *David M. H.*

Address : *235 East O'Keefe
MP, CA, 94303*

Suggestions:

*Yes, I am up here 3 Time
a day ~~too~~ good looking
need 24h*

A.N.

Hello Neighbors,

We are expanding our convenient Store, by adding the closed Smog Shop area in the convenient Store, so that we can serve our customer in a better way by keeping more varieties of items. We will appreciate if you give your opinion and suggestions about our project.

Thanks
(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME:
Signature: *Mr. [Signature]*

Address : *438 Donahoe*

Suggestions: *good stay open
24 HR'S People
Need Food and
Scratches for
the Evening*

Hello Neighbors,

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(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME:

Signature: Buckner

Address: 605 Willow RD.

Suggestions: Beer, Wine

ES 8/10/18

Hello Neighbors,

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Thanks
(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME: Candelario Beltran

Signature: *C. Beltran*

Address : 642 Ramana st
Palo Alto Ca.

Suggestions: Keep open at least until
2:AM and if can sell
Beers, I wouldn't ~~go~~ to
Make my second stop
Thank you and I look
to see your progress grow

E.S. 8/10/18

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(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME: MARK ELOLA

Signature: *[Handwritten Signature]*

Address : 505 CENTRAL AVE
MENLO PARK 94025

Suggestions:

GREAT IDEA
CONVENIENCE MARKET
24 HRS

E.S 8/13/18

Hello Neighbors,

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(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES

No

NAME: Adela Garcia.

Signature: 

Address : Redwood City

Suggestions:

Beer Wine fast food Pizza.
24 Hours

E.S 8/13/18

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710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES

No

NAME: PERLA LEMUS

Signature: 

Address : MENLO PARK
CA.

Suggestions:

24 HOURS BEER WINE

E.S. 8/13/18

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(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection... YES

No

NAME: Ramon Perez.

Signature: RP

Address : 500 Okeefe
Menlo Park

Suggestions:

Beer Wine Champagne
Car stuff. fast food.
More hours

V.T

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(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection... YES

No

NAME:

*Suzanne
Tasiatu*

Signature:

Address :

*3980 E Camino Real, Palo Alto, CA,
94036*

Suggestions:

*Hot food, open 24 hour,
need more space,*

V.T

Hello Neighbors,

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(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES

No

NAME: Nisa Pousima

Signature: *Nisa Pousima*

Address : 165 Oakdale, Menlo Park, CA, 94025

Suggestions: Hot food and open 24 hours.

V.T

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(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME:

Signature: 

Address : 7 coleman pt, Menlo Park, CA, 94025

Suggestions:

work 24 hours

MARTIN
DILLY

V.T

Hello Neighbors,

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(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME:

Signature: ..MICHAEL..... 605 Willow Rd

Address : PLUM

Suggestions: B&E, Good Idea

V.T

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Menlo Park, CA 94025

Please let us know if you have any objection.... YES

No

NAME: *Jill Fegan*

Signature:

Address : *290 E. Olive St*

Suggestions: *24 hour open,*

V.T

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Thanks
(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME: Maurice Thompson

Signature: 

Address : 411 Willow Rd.

Suggestions:

Hot Food, BEER, open 24 hours
love this store, employee so nice

V. T

Hello Neighbors,

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710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES

No

NAME: Jorge Rodriguez

Signature: JRW

Address : 301 E. Okeefe apt #2

Suggestions: open 24 hour

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(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME:

Signature: *Am Kim*

Address : *355 G Okeef*

Suggestions: *Beer*

ES. 8/12/18

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Thanks
(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES

No

NAME: Martha Doran

Signature: *Martha Doran*

Address : Okafe
Menlo Park.

Suggestions:

Fast food, Milk, Tomatoe Juice, Beer, Wine.
24 hours Service

E.S. 8/12/10

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(Owners of 76 Gas Station)
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Menlo Park, CA 94025

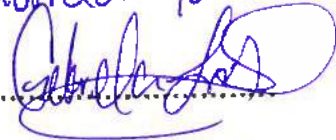
Please let us know if you have any objection.... YES

No

NAME:

Gabriela Torres

Signature:



Address : 355 E' OIKEEKE'S #14

Suggestions:

fast food voss watter.
Beer wine

ES. 8/12/18

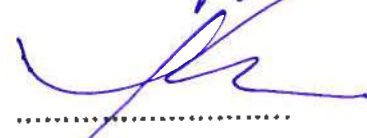
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(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME: TERI ASCAWI

Signature: 

Address : 226 Donohoe St.
PALO ALTO CA
94303

Suggestions:

Beer, wine

E.S. 8/12/18

Hello Neighbors,

We are expanding our convenient Store, by adding the closed Smog Shop area in the convenient Store, so that we can serve our customer in a better way by keeping more varieties of items. We will appreciate if you give your opinion and suggestions about our project.

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(Owners of 76 Gas Station)
710 Willow Road
Menlo Park, CA 94025

Please let us know if you have any objection.... YES
No

NAME: Mayra Cija

Signature: Mayra Cija

Address : 201 E. O'Keefe St
E. Palo Alto CA. 94303

Suggestions: Sandwiches, Beer, ice Cream,
Pizza,



REGULAR MEETING MINUTES

Date: 3/9/2020
Time: 7:00 p.m.
City Council Chambers
701 Laurel St., Menlo Park, CA 94025

A. Call To Order

Chair Andrew Barnes called the meeting to order at 7:00 p.m.

B. Roll Call

Present: Andrew Barnes (Chair), Chris DeCardy, Michael Doran, Camille Kennedy, Henry Riggs (Vice Chair), Michele Tate

Absent: Larry Kahle

Staff: Rhonda Coffman, Deputy Community Development Director; Kaitie Meador, Senior Planner; Mike Noce, Management Analyst II (Housing Division); Matt Pruter, Associate Planner; Corinna Sandmeier, Senior Planner; Tom Smith, Senior Planner

C. Reports and Announcements

Senior Planner Corinna Sandmeier said the City Council at its March 10, 2020 meeting would receive a report on Menlo Park's Tenant Relocation Assistance Program administered by the Samaritan House and would provide direction on next steps.

D. Public Comment

There was none.

E. Consent Calendar

E1. Approval of minutes from the February 10, 2020, Planning Commission meeting. ([Attachment](#))

Commissioner Henry Riggs moved approval of the February 10, 2020 Planning Commission meeting minutes.

Commissioner Michael Doran said he had corrections to the minutes. He said on page 14, the first paragraph, six lines up from the end of the paragraph in the sentence: *He said for new construction if the property was near transit there was a waiver of the City's existing parking requirements and no impact fees on ADUs less than 700 square feet* that 700 should be replaced with 750. He said on page 15, about 12 lines up from the bottom of the 1st paragraph that two words would help the clarity of the sentence to read: *He suggested it might be a good time **to think** about some two-story ADUs on some lots that could accommodate those and what the setbacks and daylight plane should be.* He said on page 16, first full paragraph, first line to add **to** in the sentence:

*Commissioner Tate said regarding an amnesty program she agreed that it had **to** be well defined on what things would be able to be passed through and not. He said on page 17, the last full paragraph, last line, in the sentence, insert **and**: He said there were things that were clearly in the Planning Commission's purview **and** that were not and he thought the same could be said for the Housing Commission.*

Commissioner Riggs said as the maker of the motion he accepted the proposed revisions.

ACTION: Motion and second (Riggs/Chris DeCardy) to approve the minutes with the following modifications; passes 5-0-1-1 with Commissioner Camille Kennedy abstaining and Commissioner Larry Kahle absent.

- Page 14, the first paragraph, six lines up from the end of the paragraph, modify sentence to read: *He said for new construction if the property was near transit there was a waiver of the City's existing parking requirements and no impact fees on ADUs less than ~~700~~ 750 square feet.*
- Page 15, about 12 lines up from the bottom of the 1st paragraph, modify sentence to read: *He suggested it might be a good time **to think** about some two-story ADUs on some lots that could accommodate those and what the setbacks and daylight plane should be.*
- Page 16, first full paragraph, first line, modify sentence to read: *Commissioner Tate said regarding an amnesty program she agreed that it had **to** be well defined as to what things would be able to be passed through and not.*
- Page 17, last full paragraph, last line, modify sentence to read: *He said there were things that were clearly in the Planning Commission's purview **and** that were not and he thought the same could be said for the Housing Commission.*

F. Public Hearing

- F1. Use Permit/Lisa Wellman/130 Baywood Avenue:
Request for a use permit to demolish an existing one-story, single-family residence and construct a new two-story residence on a substandard lot with regard to minimum lot width and area in the R-1-U (Single Family Urban Residential) district. As part of the project, one heritage Japanese maple tree in the front yard is proposed for removal. ([Staff Report #20-013-PC](#))

Staff Comment: Senior Planner Kaitie Meador said she had no additions to the written staff report.

Applicant Presentation: Lisa Wellman, Plan A Design Group, San Carlos, said the proposed new two-story residence would have four bedrooms and four bathrooms along with a new in-ground swimming pool. She noted as the property was located in a FEMA-designated flood plain that it would have to be built at a higher elevation than surrounding homes. She said covered porches with horizontal siding and a garage at the ground level with lower wall heights were designed to break up the larger massing that resulted from the higher floor level requirement. She said the modern farmhouse style would have white board and batten siding with dark divided windows and matching fascia and gutters and a dark colored composite shingle roof.

Chair Barnes opened the public hearing and closed it as there were no speakers.

Commission Comment: Chair Barnes said he was a social acquaintance of the property owner Mr. Murugan but that would not influence his decision making on this particular application. He said he

thought the proposed project was well done and would integrate well with the neighborhood aesthetically. He said the second floor was set back to modulate the design. He said the garage while front facing was well integrated into the house. He said the project was perfectly approvable. Commissioner DeCardy said he was a social acquaintance of the property owner as well. He said the applicant indicated the pool was designed toward the left regarding privacy but it appeared equidistant from both adjoining side property lines.

Ms. Wellman said the comment about privacy was regarding the adjacent neighbor on the left as the pool was not next to that house but next to a detached garage. She indicated the property on the right also had an accessory dwelling unit in a similar location.

ACTION: Motion and second (Barnes/Kennedy) to approve the item as recommended in the staff report; passes 6-0-1 with Commissioner Kahle absent.

1. Make a finding that the project is categorically exempt under Class 3 (Section 15303, “New Construction or Conversion of Small Structures”) of the current California Environmental Quality Act (CEQA) Guidelines.
2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Approve the use permit subject to the following **standard** conditions:
 - a. The applicant shall be required to apply for a building permit within one year from the date of approval (by March 9, 2021) for the use permit to remain in effect.
 - b. Development of the project shall be substantially in conformance with the plans prepared by Plan A Design Group, consisting of 17 plan sheets, dated received February 18, 2020, and approved by the Planning Commission on March 9, 2020, except as modified by the conditions contained herein, subject to review and approval of the Planning Division.
 - c. Prior to building permit issuance, the applicant shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies’ regulations that are directly applicable to the project.
 - d. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
 - e. Prior to building permit issuance, the applicant shall submit a plan for any new utility installations or upgrades for review and approval by the Planning, Engineering and Building Divisions. All utility equipment that is installed outside of a building and that cannot be placed underground shall be properly screened by landscaping. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes.

- f. Simultaneous with the submittal of a complete building permit application, the applicant shall submit plans indicating that the applicant shall remove existing driveway and replace with a new curb, gutter, sidewalk and landscape. Additionally, the applicant shall replace any damaged and significantly worn sections of frontage improvements. The plans shall be submitted for review and approval of the Engineering Division.
- g. Simultaneous with the submittal of a complete building permit application, the applicant shall submit a Grading and Drainage Plan for review and approval of the Engineering Division. The Grading and Drainage Plan shall be approved prior to the issuance of grading, demolition or building permits.
- h. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance and the arborist report prepared by Kielty Arborist Services LLC, dated February 7, 2020.

F2. Use Permit/Cynthia Thiebaut/106 Baywood Avenue:

Request for a use permit to demolish an existing two-story, single-family residence and construct a new two-story residence on a substandard lot with regard to minimum lot width and area in the R-1-U (Single Family Urban Residential) zoning district. ([Staff Report #20-014-PC](#))

Staff Comment: Associate Planner Matt Pruter said the applicant had prepared a perspective drawing facing the street frontage. He said copies of that were provided at the dais for the Commission and on the table in the back of the room for the public. He said the applicant also revised the landscape plan and planting plan, sheets L1 and L2, copies of which were provided at the dais and back table, to reflect the addition of three proposed Western redbud trees that would be located in the rear of the adjacent property.

Questions of Staff: Commissioner DeCardy referred to the street view perspective and said that a segment on the left first floor appeared to have an angle but from the plans seemed to possibly be related to the site topography.

Planner Pruter said the property was in the FEMA flood zone and appeared to have this particular sloping feature because of the raising of the floor plate and general building features. Commissioner DeCardy confirmed that it should be interpreted as a right angle.

Applicant Presentation: Cynthia Thiebaut, Director of Development for Thomas James Homes, said the proposed home was a modern style home with four bedrooms, three bathrooms and a two-car garage on a 6,038 square foot lot. She noted that several properties in the area were rebuilding and they thought this home would be a good addition to the neighborhood. She noted there were no neighbor comments. She said the site was in a flood zone but they had the reduced plate height and the total height was 26 ½ feet. She said the second-floor setbacks were increased on the sides to reduce massing.

Chair Barnes said at the Commission's last meeting they had considered two other Thomas James Homes projects and had discussed the faultiness of neighbor outreach associated with those. He said the project description letter indicated notices being mailed but no other outreach. He asked the applicant to address what they considered was their responsibility regarding neighbor outreach.

Ms. Thiebaut said upon obtaining property ownership that they then had someone go door to door

in the vicinity to provide information on who they were, they installed fencing on the subject property, and placed their contact information on that fence. She said they then sent the plans to the neighbors. She said thus far no one had contacted them about this proposed project. Chair Barnes asked about recordation of neighbor outreach. Ms. Thiebaut said they kept a record if neighbors expressed concerns as to who made those comments and what they did to accommodate the concerns.

Replying to Chair Barnes, Planner Pruter said they advised applicants to provide details on their outreach efforts. He said they did not give exact direction on that but did recommend trying to contact neighbors door to door, with mailings and other forms of outreach if necessary.

Commissioner Riggs said he did not see any perimeter trees on the landscape plan. He said the survey on the left side showed a couple of three-inch caliper trees adjacent to the house and on the right showed shrubbery. Ms. Thiebaut referred to page L-2 and said they were proposing adding trees. She said they were preserving one existing tree and would plant a new tree in the front and one in the rear.

Chair Barnes opened the public hearing and closed it as there were no speakers.

Commission Comment: Commissioner Riggs said he admired modern architecture but thought it had a higher hurdle than so called traditional forms partly because of the dominance of the parapets as opposed to the attic height and partly because of the relatively austere finishes. He said the Willows neighborhood was built in the 1940s and was by far dominated by traditional styles. He said he was uncomfortable with the large shed roofs, left and right, which was why he requested the front perspective to get a sense of how dominant those were. He said it was difficult to make the conclusion that this design was harmonious with Baywood Avenue. He noted the elevated stairwell window, which caused privacy concerns. He referred to the landscape plan and said it did not appear that any attention was given to the neighbor's privacy. He said in general the rather high white stucco walls called for perimeter planting. He queried whether the applicant would be amenable to plantings along the side property lines.

Ms. Thiebaut said they were agreeable to privacy plantings on the sides. Commissioner Riggs confirmed with her that their landscape architect would look at doing that.

Commissioner Riggs moved to approve as recommended in the staff report with an additional condition for property line planting on either side of the structure when in the vicinity of neighboring structures. He said the plantings would be designed for the purpose of privacy screening with particular emphasis on privacy of the left side on either side of the stairwell for review and approval by staff. He said trees were preferred at an appropriate height.

Planner Pruter said it might be difficult to put trees in that specific space of the distance between the building footprint and the fence but they would pursue that option and work in collaboration with the City Arborist and applicant. Commissioner Riggs said plantings were very important to the present and/or future neighbors and a way needed to be found to fit them. He said if the setbacks were insufficient for planting then they should perhaps reconsider the site plan.

Replying to Chair Barnes, Planner Pruter said they could look at plantings with the City Arborist and applicant. He suggested that the stairwell window might be part of the condition to require treatment for privacy if plantings were not sufficient.

Commissioner Riggs said that would work for the stairwell window but it was a different question for bedroom #2 window as that was needed egress. He agreed with Chair Barnes that bedroom #2's windows could be translucent. He said if trees could not be fit into the plan that the stairwell window and bedroom #2's windows should be treated to solve privacy. He said he did not know if that solved the high white stucco walls next to traditional homes.

Chair Barnes asked why the applicant had not merged the two lots. Ms. Thiebaut said they were only going to do plantings and not build anything on the back lot and saw no need to merge the lots. Chair Barnes asked staff about development potential on the rear unmerged lot. Planner Pruter said it was virtually impossible to build on the lot due to setback requirements and required access on its own and would need to be connected with some other lot and merged to be developed.

Chair Barnes said Commissioner Riggs' motion was to do planting screening or window treatment measures for privacy for staff review and approval. Planner Pruter asked if that was for both sides or just the left side of the house. Commissioner Riggs said for both sides noting the stairwell window on the left side and bedroom #2's windows on the right side. Commissioner Kennedy seconded the motion.

ACTION: Motion and second (Riggs/Kennedy) to approve the item with the following modifications; passes 6-0-1 with Commissioner Kahle absent.

1. Make a finding that the project is categorically exempt under Class 3 (Section 15303, "New Construction or Conversion of Small Structures") of the current California Environmental Quality Act (CEQA) Guidelines.
2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Approve the use permit subject to the following **standard** conditions:
 - a. The applicant shall be required to apply for a building permit within one year from the date of approval (by March 9, 2021) for the use permit to remain in effect.
 - b. Development of the project shall be substantially in conformance with the plans prepared by KTG Y Group, Inc., consisting of 18 plan sheets, dated received March 3, 2020, and approved by the Planning Commission on March 9, 2020, except as modified by the conditions contained herein, subject to review and approval of the Planning Division.
 - c. Prior to building permit issuance, the applicants shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the project.

- d. Prior to building permit issuance, the applicants shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
- e. Prior to building permit issuance, the applicant shall submit a plan for any new utility installations or upgrades for review and approval by the Planning, Engineering and Building Divisions. All utility equipment that is installed outside of a building and that cannot be placed underground shall be properly screened by landscaping. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes.
- f. Simultaneous with the submittal of a complete building permit application, the applicant shall submit plans indicating that the applicant shall remove and replace any damaged and significantly worn sections of frontage improvements. The plans shall be submitted for review and approval of the Engineering Division.
- g. Simultaneous with the submittal of a complete building permit application, the applicant shall submit a Grading and Drainage Plan for review and approval of the Engineering Division. The Grading and Drainage Plan shall be approved prior to the issuance of grading, demolition or building permits.
- h. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance and the arborist report prepared by Sierra Nevada Arborists, dated October 14, 2019.

4. **Approve the use permit subject to the following project-specific condition:**

- a. **Simultaneous with the submittal of a complete building permit application, the applicant shall submit revised plans for the purpose of providing privacy screening between the window at the stairs along the left elevation and the windows at bedroom #2 along the right elevation and the neighboring residences. The revised plans shall show one of the following revisions, subject to review and approval of the Planning Division:**
 - i. **The addition of trees along both sides of the proposed residence that are tall enough to provide privacy screening between the window at the stairs and the windows at bedroom #2 and the neighboring residences, or**
 - ii. **The use of obscured or tempered glass for the window at the stairs and for the lower portions or the entire windows at bedroom #2.**

- F3. Use Permit/Yujuan Wang/1800 El Camino Real: Request for a use permit to operate a massage therapy business in an existing multi-tenant commercial building in the SP-ECR/D (El Camino Real/Downtown Specific Plan) zoning district. The proposed use is a conditional use in the El Camino Real Mixed Use land use designation. The proposal also includes a request for a use permit for a change of use on a lot that is substandard with regard to parking. ([Staff Report #20-015-PC](#))

Staff Comment: Planner Pruter said a public comment on the application had been received over

the weekend, forwarded by email to the Commissioners, and copies were distributed at the dais and table in the back of the room for the public.

Questions of Staff: Commissioner DeCardy referred to the staff report, page 3: *The Transportation Division has also reviewed the project and determined that the proposed project would generate one additional peak-hour trip.* He asked how that was determined and if it was based on vacant units or full occupancy. Planner Pruter said the previous suite use was nonmedical office and its proposed conversion to the particular use of massage therapy was what resulted in the proposed one additional peak hour trip.

Commissioner DeCardy said the proposed way to address the additional trip was a Transportation Demand Management plan (TDM), which was an offer of \$20 per month with \$240 for the year to an employee to encourage alternative transit but was not linked to the use's lease on the site. Planner Pruter said the TDM measure came from discussion with Transportation Division staff about what the City's TDM guidelines could require for the project. He said this guideline was from the City and County Association of Governments' (C-CAG) recommendations and it was for one year.

Applicant Presentation: Tom Olsen said he was representing himself and Yujuan Wang. He said she was unable to attend as she was working. He said their business was currently located at 708 Willow Road and had been operating for a year and a half. He said they wanted to extend the business to the subject property.

Chair Barnes asked about their parking plan for the site. Mr. Olsen said they would incentivize their employees to Uber or be driven to work or use other transportation so they would not use the parking spaces allotted to the site. He said neighbors' concerns had some discrepancies in that their business would never be normally at full capacity. He said their customers tended to come at off-hours, usually starting around 6:30 p.m. with the earliest at 4:30 p.m. to 8 p.m. He said they have space for four people to receive treatment at one time and parking would be adequate for that. He said staff would not park onsite or on the street.

Chair Barnes noted 13 parking spaces including one handicapped space for the site and asked what the applicant's portion of those were. Olsen said ideally that they would use only three spaces or four spaces at maximum for their customers. He said another part of the building was empty and it was not known what tenant or business would be there or the amount of parking it would use. He said if the other business had normal working hours that his parking needs would not compete.

Chair Barnes said the proposed use required a use permit in the El Camino Real mixed use zoning and asked the applicant to address why he thought the massage therapy business was the right use for that zoning district. Mr. Olsen said their business served the community. He said they had multiple current clientele that used their spa on Willow Road including families, parents, and couples. He said their business was an extension of wellness to their community where there were high levels of stress, frustration, and fatigue. He said massage therapy alleviated those conditions and also led to therapeutic recovery.

Chair Barnes asked about the size of their existing site and the proposed site, the number of parking spaces at the existing site, and use of those. Mr. Olsen said their existing site was about 1700 square feet and the proposed site was close to 1200 square feet. He said they had seven parking spaces at the current site and those typically were at the most used 50% at any one given

time.

Commissioner Riggs confirmed with Planner Pruter that personal services were allowed at the subject site. Planner Pruter said typical personal services included beauty parlors, barber shops, and laundromats.

Commissioner Riggs said they received a letter about overflow parking not only on a public street but into a private residential area. He said apparently that was an ongoing problem when the subject building was fully occupied. He asked if that required the residential property owner to call the police every time there was an issue. Planner Pruter said it could also include the property owner working with the building tenant to bring the issue to their attention for resolution.

Commissioner Kennedy said a personal trainer gym was located the corner of Stone Pine Lane and El Camino Real that significantly lacked parking. She said adjacent to 1180 El Camino Real was a fine wine store that seemed to not have enough parking for it. She said she was a client of the spa on Willow Road and typically biked to it from her home in Allied Arts. She said she thought it was an appropriate use and the applicants had created a successful business that was well managed. She said supporting the expansion of small businesses rather than chain businesses was preferable and what the Planning Commission should be doing. She said she would support approval.

Commissioner DeCardy asked how they would incentivize employees to use alternate transportation not requiring parking. Mr. Olsen said they would inform their employees about preferred transportation alternatives for getting to and from work and incentivize financially. He said hopefully within five years a parking structure might be built to alleviate the parking situation.

Commissioner DeCardy said currently the TDM included \$240 per year or \$20 per month to incentivize. He asked if the applicant was open to offering a stipend for a longer period of time. He said also dependent on where their employees lived that the cost of an Uber ride could be great. He asked what the hardship would be for the applicant if the TDM was more prescriptive in terms of duration and an incentive that was more reasonable so that at least one of their employees would not use their own car to zero out the one added peak trip.

Mr. Olsen said they were committed to the one-year plan to at least minimize the one added peak hour trip. He said they felt their business was small enough that it would not greatly impact nearby streets as they would only have four customers at any one time. He said their parking would most likely commence after 5 p.m. so he presumed most of the spaces would be available then. He said in addition to alternate transit incentives they were willing to buy one City parking permit.

Commissioner Riggs said the staff report indicated five therapy rooms and five massage therapists. Mr. Olsen said that was an error by the architect. He said the fifth room was a rest area for staff and where towels and supplies would be. He said three rooms were for individual use and one room was for couple use. Commissioner Riggs said that explained the fifth massage therapist.

Commissioner Riggs asked staff about the incentive. He said the \$20 per month was for someone who took alternate transportation. He asked what would happen if no one opted into the TDM incentive. Planner Pruter said the measure was an option and was expected to be used for someone. He said if someone was not available to use the TDM incentive that potentially in that case the measure would not be applicable.

Commissioner Kennedy asked about feasibility of the applicant's staff using parking at the Willow Road location if there was not enough parking at the El Camino Real location and to carpool or Uber from there. Mr. Olsen said it was.

Chair Barnes said the applicant would be a lessee at the El Camino Real location and would have the right to a certain amount of spaces. He asked whether the applicant could request that the landlord allocate a certain amount of spaces out of the 13 available spaces for his business' use. Mr. Olsen said he had not. He said based on his current business model that he was operating with optimism that parking would not be an issue due to the hours they normally operated.

Chair Barnes opened the public hearing and closed it as there were no speakers.

Commission Comment: Commissioner DeCardy said he thought the use was fine and he appreciated understanding more about the applicant's commitment to the community and the current use on Willow Road. He said the broader concerns about parking were not the applicant's problem at one level as the building was under parked for its potential use, which happened at some point historically. He said he did not have a problem with sites under parked as that in itself was an incentive for people to take alternative transportation. He said the problem was when parking overflowed into other places disrupting neighborhoods. He said he appreciated that the net delta looked like one additional trip during peak hours and that the use might not operate during peak hours. He said however that the TDM plan proposed was inadequate.

Commissioner Riggs said the building and its historic use was under parked. He said he thought it was fair the City was asking the applicant to address on extra car trip. He said he did not think \$20 a month was enough incentive for a person to change habit and that an alternative proposal was necessary for the TDM. He said the proposed TDM plan might be an acceptable formula to address the extra trip for a year so that an employee used it but questioned what happened after the year. He said a solution for one year was not sufficient for a neighborhood that hoped to be inviolable much longer than one year. He said the use was easily approvable.

Mr. Olsen said he was open to alternative TDM solutions. He said he was operating out of limited experience in that area. He said with limited parking in the area the only thing he could do was incentivize staff to take public transit, park where there was ample public parking, permitted use parking, and have them come either by foot or park at their Willow Road location and then get dropped off at the El Camino Real location.

Commissioner Riggs said permit parking was something the City was holding back on until there was additional parking. He asked how they would work with an employee to embrace alternative work transit solutions. Mr. Olsen said given their Willow Road location having that employee park there and driven over in one car would resolve the parking for a period of time as they worked collaboratively with the City to find alternatives that were more meaningful for not just staff but all. Replying to Commissioner Riggs, Mr. Olsen said there was no parking issue at the Willow Road site as they had their own parking spaces.

Planner Pruter said the project location was within the Downtown Specific Plan so a TDM was required. He said regarding mitigating one additional peak hour trip that they had discussed various measures with the applicant such as bicycle racks and providing showers for those bicycling to work. He said that was not practical with the physical constraint of the smaller suite on

the site. He said the City's TDM guidelines was the source of the measure to offer \$20 per month to an employee to use alternative transit.

Replying to Commissioner Riggs, Mr. Olsen said he felt limited in his options. He said he had proposed incentivizing staff by paying them to come to work and there were 13 parking spaces he was entitled to have as a potential tenant. He said they had parking spaces at 718 Willow Road where staff for the El Camino Real site could park and literally be driven over by another staff person and dropped off at work. He said there was public transportation and Uber. He said he was trying his best to minimize any negative impact to an area in which he wished to do work and increase the overall effectiveness of community wellness. He said he was open to learning what more he could do as a small business owner to not increase traffic or congestion.

Commissioner Kennedy said she thought the burden being placed on a small business owner who was following the guidelines given to him by the City to reduce one car trip did the applicant a disservice. She said she was considering making a motion to approve with a condition the applicant work with staff to potentially subsidize one employee all the time or the manager who runs the space so that person was the one car trip not added. She said \$20 per person a month for a year would not get anyone anywhere. She moved to approve the project and as part of that ask the applicant to work with staff to identify a solid TDM plan that subsidized one fulltime employee's trip.

Commissioner DeCardy said the present TDM plan proposed was \$20 per month and that might not be used by of the employees. He said there was no enforcement anyway unless a complaint was made to the City. He said he would approve the application if the \$20 was done per month for the duration of the lease as opposed to one year and that they would utilize the parking at both sites to mitigate the impact of parking on the El Camino Real site. He said that was his motion.

Replying to Chair Barnes, Commissioner Kennedy said she had made a motion but she would defer to Commissioner DeCardy.

Chair Barnes said that Commissioner DeCardy's motion to approve had a condition that the \$20 per month would be for the duration of the lease and an agreement to share parking at another site. He said cross parking arrangements would be impacted should the business owner lose the lease on the other site. Planner Pruter agreed that there were unknowns. He said staff would need to research the specifics of the other site and know what the conditions were there to have a firmer understanding of the relationship between the two sites.

Chair Barnes said that the cross parking of two sites could be very problematic based on lease and ownership. He said the other site had to be encumbered with a parking agreement, which made it hard to do. He asked whether Commissioner DeCardy was willing to drop that condition should the Commission want to move the project forward. Commissioner DeCardy said he would rather lose on the vote.

Chair Barnes said the motion by Commissioner DeCardy was to approve with a condition of \$20 per month for the duration of the lease and a condition that would require further research with staff making a determination on the feasibility of a cross parking agreement. He asked staff if that was the mechanics of what was being conditioned. Planner Pruter said generally that sounded correct. He asked to confirm if Chair Barnes was speaking of a potential continuance. Chair Barnes said he was.

Commissioner Kennedy noted projects for which they had allowed tandem parking and bundled parking in the Life Sciences district with significant amounts of parking. She said that for one additional trip because they could not figure out what the TDM plan was they were going to continue this project. She said if that was the case that the process was broken.

Commissioner Riggs asked staff if the approval had a condition that the applicant provide carpooling from a legal space offsite whether that would alleviate the need to encumber a specific property. Planner Sandmeier said staff would need more information on where the space was and what the requirements were. She said one option was to take a vote on Commissioner DeCardy's motion that would include a continuance. She said if seconded and the motion failed then another Commissioner could make a motion to approve the project without the second condition.

Commissioner Riggs said he would second the motion with the friendly suggestion that they decouple the location of the alternative parking space. He said they could say that at least one of the employees would be carpooling without saying where that employee parked. He said also a friendly suggestion was that the \$20 be paid to someone involved in the carpooling solution.

Commissioner DeCardy said his intent was not to continue the project and if the implication of his motion was continuance then he would not support his own motion. He said he appreciated Commissioner Riggs' efforts to put together something that met the spirit of what they were trying to do and get the project approved but it felt like a fool's errand to have the Commission try to design things and then have staff say what would be continued and what would not be continued. He said if nothing could be done in the spirit of what he and Commissioner Riggs were attempting then it should be dropped.

Planner Sandmeier said a TDM plan was required by the Mitigation Monitoring and Reporting Program (MMRP) for the Downtown Specific Plan EIR. She said it did not look like paying \$20 to carpool was a measure because that money was meant to be used for transit. She said she understood the frustration that it was difficult to condition the project. She said if they were looking for staff feedback that the easiest condition was to require payment of \$20 per month for employee transit for the life of the project as well as encouraging the applicant to use carpooling. She said it was difficult for staff as they had not researched the other site and did not have specifics about its parking and how that might work. She said the two options she saw was making the TDM plan more robust for the timeframe of the project or continuing the project to allow staff to do more research. She said for the larger projects with bundled parking that was something brought forth by applicants so staff had time to research before bringing to the Commission.

Chair Barnes noted for the record that Commissioner DeCardy had withdrawn his motion. Chair Barnes asked how they knew whether the additional car trip was made by an employee or a customer. He said they also did not know if people would be riding their bicycles to the business. He said they did not know how things were going to work for this particular business at this particular location. He said it was not known if the TDM issue would be solved by an employee.

Commissioner Doran said to that point all the car trips were fungible and it did not really matter whether it was an employee or a customer. He said to get past the impasse he moved that they approve the application with the condition the \$20 per month run the length of the lease and be used for traffic reduction as permitted under the TDM regulations and recommend that the applicant encourage his employees to carpool where possible. Commissioner Kennedy seconded

the motion.

ACTION: Motion and second (Doran/Kennedy) to approve the item with the following modifications; passes 5-0-1-1 with Commissioner DeCardy abstaining and Commissioner Kahle absent.

1. Make findings with regard to the California Environmental Quality Act (CEQA) that the proposal is within the scope of the project covered by the El Camino Real/Downtown Specific Plan Program EIR, which was certified on June 5, 2012. Specifically, make findings that:
 - a. The project is categorically exempt under Class 1 (Section 15301, “Existing Facilities”) of the current CEQA Guidelines.
 - b. Relevant mitigation measures have been incorporated into the project through the Mitigation Monitoring and Reporting Program (Attachment F), which is approved as part of this finding.
2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Approve the use permit subject to the following **standard** conditions:
 - a. The applicant shall be required to apply for a building permit within one year from the date of approval (by March 9, 2021) for the use permit to remain in effect.
 - b. Development of the project shall be substantially in conformance with the plans provided by Sigma Design, consisting of seven plan sheets, dated received March 3, 2020, and the project description letter from Tom Olsen, dated received February 28, 2020, and approved by the Planning Commission on March 9, 2020 except as modified by the conditions contained herein, subject to review and approval of the Planning Division.
 - c. Prior to commencing any work within the right-of-way or public easements, the applicant shall obtain an encroachment permit from the appropriate reviewing jurisdiction.
 - d. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
4. Approve the use permit subject to the following **project-specific** conditions:
 - a. The applicant shall address all Mitigation Monitoring and Reporting Program (MMRP) requirements as specified in the MMRP (Attachment F). Failure to meet these requirements may result in delays to the building permit issuance, stop work orders during construction, and/or fines.
 - b. The building on site shall be limited to the following days and times of operation:
 - i. Monday – Saturday: 10:00 am – 9:00 pm

ii. Sunday: 10:00 am – 8:00 pm

- c. The project is subject to a Transportation Impact Fee (TIF). The fee is calculated at \$15,308.32. Please note this fee is updated annually on July 1st based on the Engineering News Record Bay Area Construction Cost Index. Fees are due before a building permit is issued.
- d. ***The applicant shall offer a subsidy of \$20 per month for a transit pass for one employee, for as long as the use permit remains in effect. The Transportation Demand Management (TDM) plan for the project shall reflect this requirement.***

F4. Use Permit/Aparna Saha/710 Willow Road: Request for a use permit to allow the sale of beer and wine at an existing service station convenience store for off-premises consumption every day from 6:00 a.m. to 2:00 a.m. the following day, and to operate the existing service station and associated convenience store 24 hours a day, in the C-4 (General Commercial) district. As part of the review, the Planning Commission will need to determine whether the sale of alcohol at this location serves a public convenience or necessity, in accordance with the requirements of the State Department of Alcoholic Beverage Control (ABC). ([Staff Report #20-016-PC](#))

Staff Comment: Senior Planner Tom Smith said a couple of emails about the application had been received over the past couple of days. He said both expressed opposition to the project. He referred to one of the emails received yesterday. He said for background that on December 17, 2019 the City Council adopted an ordinance restricting the sale of flavored tobacco and electronic cigarettes in Menlo Park. He said that ordinance went into effect on January 15, 2020. He said the email received outlined concerns about the sale of flavored tobacco at the subject property. He said an individual who was a resident of the area and was trained by San Mateo County to volunteer with outreach to tobacco retailers about the new ordinance went to the subject store on March 4, 2020 and observed that there were flavored tobacco products on the shelves. He said the ordinance specified that if those items were even visible on shelves that was considered available for sale. He said because of concerns about potential violations of that ordinance staff had concerns with how that might translate to the ability to regulate alcohol sales at the site. He said staff's recommendation was to deny the use permit for alcohol sales and had prepared findings to do that. He said the Commission's options were to deny the use permit according to the new findings, to continue the use permit to gather more information and determine if compliance was being made in regard to the sale of tobacco, to approve the use permit with a condition that would place an expiration date on the use permit for sale of alcohol to gauge whether it was being done in the appropriate manner over time, or to approve the use permit with the conditions outlined in the original staff report.

Questions of Staff: Replying to Chair Barnes, Planner Smith said the new findings would be to deny the use permit to allow the sale of beer and wine at an existing service station convenience store for off-premises consumption and make findings that the proposed use would be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use in particular because the business had not demonstrated strict compliance with regulations related to the sale of tobacco such that the health and safety of persons residing or working in the neighborhood could not be ensured if the business was granted a use permit for the sale of beer and wine for off-premise consumption. He said a second option

would be to continue if there was a need to get more information and determine if the retailer had come into compliance with the sale of tobacco. He said this would involve staff going out to the site to see if it had been brought into compliance, and if so, return to the Commission for consideration of the reasons for the noncompliance and potentially to approve a use permit for the sale of alcohol based on bringing the site into compliance. Chair Barnes confirmed that potentially staff might return with a recommendation for denial.

Replying to Chair Barnes, Planner Smith said the third option would be to approve the use permit with an added condition placing an expiration date on the use permit so that after a period of a certain number of years or whatever timeframe the Commission determined the use permit would expire and the applicant would need to return to the Commission to request a new use permit to allow for continued sale of alcohol. He said there were two use permit requests. He said the first was for alcohol sales and the second was for 24-hour operations specifically between the hours of midnight and 6 a.m. He said staff had recommended denial of the 24-hour operation and the options he was listing only catered to the use permit for alcohol sales. He said the fourth option would be to approve the use permit for alcohol sales as originally recommended and deny the use permit for 24-hour operations.

Applicant Presentation: Aparna Saha said she had operated a business at this location since 1985. She said the reason for the incident mentioned by staff was that they received a letter from the City on January 2, 2020. She said she was about to leave on her trip outside the country that had been planned for a long time. She said on January 6 she called her supplier about the letter and that they would have to take all the material back. She said she called the City of Menlo Park, the City Manager's Office, and left a message and requested if they could get at least a four week extension as that was what the supplier was requesting. She said her message included that she would be out of the country and would return the last week of February. She said she also communicated with Cara Silver, who said she would work with her and asked her to send her a list of how much stock she had. She said she made a spreadsheet and sent it to her. She said she received a letter from Ms. Silver on January 22 that the City would not give any extra time. She said she was out of the country and informed her business manager to please stop all the sales of the flavored tobacco. She said she did not know that the items had to be physically removed from the site. She said she relayed to Ms. Silver she would be back the last week of February and would take care of it. She said when she returned, she fell ill and the first time she went to the site was March 4. She said she was taking inventory to give the suppliers when a person stopped by and was trying to take pictures from outside the kiosk as she was trying to do the inventory. She said she asked the person what she was doing and who she was with and the person did not answer and just came into the room and started taking pictures. She asked her if she was with the City of Menlo Park and the woman said yes. Ms. Saha said she asked for her business card but she did not. She said she again asked her if she was from Menlo Park. She said in her 30 plus years of operating a business in the City that whoever came from the City to the site for official business would introduce themselves and give a business card. She said the woman then indicated she was a volunteer working with the City of Menlo Park. She said she explained that they were not selling anything and she had just come in that day to deal with it, and was not aware they could not keep things on the premises. She said the woman told her then she could not store those on the premises. She said if it was not stored on the premises the cigarette companies would not take back those materials. She said since Ms. Silver's email on January 22 they had not sold any of the prohibited products. She said her business had never violated any rules and they had beautified the location. She said they accommodated neighbors by putting up no smoking signs on the property. She said they also have surveillance cameras all over the property. She said most

customers came into the site by car and did not park for a long time and walk around in the neighborhood.

Commissioner Riggs asked if any of the flavored tobacco was currently visible in the store. Ms. Saha said it was packed in a box and would be picked up by the supplier the following week.

Chair Barnes asked if the letter from the City arrived on January 2 and Ms. Saha responded to it on January 22. Ms. Saha said she responded the week after the letter came. She said Ms. Silver responded to her on January 22 in response to her request for an extension until the end of January informing her an extension would not be granted. Chair Barnes asked from January 22 to March when the photos were taken what was happening and why were the prohibited products behind glass and visible to people. Ms. Saha said she knew that they could not sell the products but she did not know it had to be removed or she would have had staff remove it and store it in a box until she returned from her trip. Chair Barnes asked whether the letter from the City on January 2 and Ms. Silver's response on January 22 said anything about removing the products from the shelf. Ms. Saha said no and that they talked about the extension.

Chair Barnes asked if staff knew whether the two correspondences indicated removing inventory from shelves. Planner Smith said they did not have copies of those letters. He said the ordinance specifically stated that an offering for sale is if tobacco products were sold and/or displayed in a retail establishment but he did not know if that was included in the letter or not.

Commissioner Kennedy said that the applicant received the letter and asked for more time, which was denied, and she was out of the town. She asked whether there was a way the applicant could have authorized the person on staff left in charge to follow up and remove the products from the display. Ms. Saha said she knew that they could not sell it but she did not know it could not be stored on the premises. Commissioner Kennedy said that was not her question. She said her question was the products were still on display until the applicant returned from her trip. Ms. Saha said that most of it was removed. She said one of the suppliers had taken all of the cartons but would not take the loose packs. She said for those she had to call the manufacturer Philip Morris. She said they could not be contacted unless she was here. Commissioner Kennedy asked if once the applicant received the letter if she took all the products out of display but they were still in the store. Ms. Saha said some of them were there. Commissioner Kennedy asked the applicant why she did not remove all of the products and put them away in a box. Ms. Saha said that the only storage area was one room where they kept all cigarettes so they could not be accessed. She said the day the photos were taken she was inventorying the loose packs to tell the manufacturer that those were what they had. She said the cartons were taken by the supplier in January. She said she was a very responsible citizen and knew what was good and bad and she knew once there was an ordinance you had to follow it. She said if they checked her 35 years of experience in business that they would see she had never violated any regulation.

Chair Barnes asked if the applicant wanted to talk about her use permit request for alcohol sales. Ms. Saha said prior to their remodel they had never thought about selling alcohol. She said after the remodel they asked customers for suggestions on what they could provide for better service. She said lots of requests came for 24-hour operation and for beer and wine. She said they thought about those and then went to City Planning to talk about it. She said the first thing they had to do was go to ABC which they did as well as the use permit application. She said ABC inspected the site and had no problem and were waiting for the approval from the Planning Commission. She said regarding the request for 24-hours service that they had customers who wanted them to be open after midnight as other places were closed. She said being open 24 hours would not boost

her business a lot but was for the convenience of the neighborhood people who had asked them to stay open. She said if the Planning Commission could not support that request that they would let their customers know they tried but it did not fly. She said they had no intention of selling alcohol after midnight or 2 a.m. She said the ABC stated alcohol sales were allowed from 6 a.m. to 2 a.m. the next day. She said they were open to conditions.

Chair Barnes opened the public hearing.

Public Comment:

- Michele Garff, Menlo Park, said she lived right around the corner from the subject property. She said her concern was for the safety, quiet, and cleanliness of what was happening on the street where her children played and commute to school. She said she appreciated that the store's appearance was improved. She said they had noticed unwanted behaviors in the increasing number of customers. She said as products could not be consumed on site people were gathering in the back corner or walking through the streets consuming products they purchased and smoking. She said there was trash on the ground. She said along the street were two stretches of fence and those were common places where people stopped as they were not directly in front of a house. She said they had had to clean up human feces twice from there and hypodermic needles. She said they were very unhappy with the extra traffic and the parking there. She said the staff report indicated it had to serve a public convenience or necessity and she felt with all the other places around including El Rancho Market that was only one block away selling alcohol it was not a convenience or necessity for people living in the Willows and the requests for these added services was not coming from her neighborhood.
- Karina Steib, Menlo Park, said she lived about a block away from the subject property and that it was a family neighborhood. She commented on the unsavory history of the area before it was cleaned up. She requested the Planning Commission help keep the neighborhood safe, and not just for the children, but for all the residents who lived there.
- Rocky Garff, Menlo Park, said he was a neighbor. He said he thought the data was misrepresented and referred to the letters and addresses in the packet. He said he thought only one address was actually within any proximity to the subject property. He said there was an address across the street, addresses in Fremont and in East Palo Alto. He said the applicants did not come to his neighborhood seeking input. He said he did not think the demand they indicated existed. He said there were plenty of other options for responsible adults to buy beer and wine in the area. He said he was not necessarily opposed to beer and wine sales but allowing it at those hours of the night was not needed as a person could drive to Safeway to buy beer and wine. He said the VA served veterans suffering from PTSD or addiction and did not allow smoking or alcohol there. He said some of individuals in those programs already walked around the neighborhood. He said giving them access to buy alcohol at midnight they would not have anywhere to consume it except on the neighborhood streets.
- Dev Datta, Menlo Park, said his home was about 400 yards away from the business. He said previous speakers had covered much of what he was going to say. He said nearly daily he was picking up litter from his driveway noting cigarette boxes and candy packets were thrown there. He said the observation that people consumed what they bought after they left in their cars from the business was not true. He said for the list of proponents of this proposal two people

were listed as living at 500 O’Keefe Street but there was no 500 O’Keefe Street. His address was 504 O’Keefe Street.

- Daniel Prodan said his home was directly adjacent to the rear of the gas station. He said he shared very much the concerns expressed by speakers. He said because of his home’s proximity the issues were amplified. He said for instance that a bedroom window was a couple of feet away from the air pump at the gas station. He said the project expansion created a rest area and restroom area for the patrons where they smoked and consumed. He said that they had to clean up a lot of stuff from that. He said a homeless person was allowed to live at the site and had been very loud. He said it took a great deal of effort to get that person removed from the site. He said he was concerned with extra traffic from alcohol sales, changed traffic patterns, and local children bicycling in that area.
- Brian Gilmer, Menlo Park, said some of the applicant’s comments this evening did not make sense. He said she commented she received the letter on January 2 and asked for a four week extension, yet on March 4, she was still not in compliance and that was much longer than four weeks. He said she also said she had never had a problem or violated any laws regarding tobacco sales. He said this site was cited for selling tobacco to minors in the past. He said there was a letter in the agenda packet with a link to that report. He said the applicant indicated she had addressed all the neighbors’ concerns. He said when they applied to become a convenience store in 2019 that he had several concerns including trash which the neighborhood gets daily (cigarette wrappers, candy wrappers) and delivery trucks blocking O’Keefe Street. He said he was told both concerns would be addressed by putting additional trash cans out and signs that no delivery trucks would park on O’Keefe Street. He said the trash cans did not exist and he had not seen any signs. He said he had pictures of two delivery trucks blocking O’Keefe Street and his neighbor’s driveway last week. He said he had lived in the Willows when there were a lot of problems with veterans with mental health issues. He said they used to have to roust people off of their lawn who had passed out from drinking. He said then they were not able to go to the park because people were drunk and abusive and he did not want the Willows to go back to those conditions. He said selling alcohol after 10 p.m. was a good introduction to going back to that kind of neighborhood. He asked the Commission to vote against alcohol sales and noted the ABC found there were three other locations in the neighborhood that sold off premise alcohol consumption and two with on premise alcohol consumption.
- Brian Gilmer said he was now speaking for Tricia Barr at her request. Replying to Chair Barnes, Mr. Gilmer said Ms. Barr was part of the organization trained by the County and Menlo Park to address flavored tobacco sales after January 17, 2020 and she lived on Willow Road. He said her letter was in the Commission’s packet so he would not read it in its entirety. He quoted that she was opposed to the subject property expanding its business to sell alcohol as it was detrimental to the health, safety, morals, comfort and general welfare of their neighborhood. She said the business had shown disregard for compliance with the laws governing the sale of regulated products. She said the business had been cited for selling tobacco to minors in the past and as of Monday, March 4, they were still displaying or selling flavored tobacco. She said there were other retailers nearby, one less than a block away, that sold alcohol, and this site was located within 400 feet of public and private schools, Willow School and the Alto School in addition to public parks. She said it was also located across from the Veterans Health Administration facility that had substance and smoking cessation services. She indicated she had met with all of the 21 businesses that sold flavored tobacco when the

ordinance went into effect. She revisited several times after that and every one except for this subject business was in compliance with the ordinance.

- Shawn Vanderhoven said his home was just around the corner from the subject property. He said his primary concern was for the kids and residents in the neighborhood. He said he was concerned about the risk of increase of motor vehicle accidents in the area and in studies they learned that fatal accidents had a four time increase after 10 p.m. He said his other concern was an increase in violent crimes noting the U.S. Department of Justice found that 40% of violent crimes occurred when people were under the influence or intoxicated. He said the data also showed between 10 p.m. and 2 a.m. the vast majority of crimes were committed. He said this was also disrespectful to veterans receiving services at the health facility across the street. He said he was opposed to the alcohol sales and 24-hour operations.
- Michael Palmer said he had submitted a long letter opposing the longer hours and sale of alcohol. He said from the foot traffic at the subject property neighbors on a weekly basis were dealing with trash. He said in the last two years he had to call the police about three different transients living in the bushes across from the convenience store. He said people gathered at the convenience store and hung out at the property. He said it was a small concentrated property without shelter from the neighboring community. He said he was opposed to the use permit.

Chair Barnes closed the public hearing.

Commission Comment: Commissioner Doran said for the record that the City Council lagged precipitously on this ordinance regarding flavored tobacco. He said 30 days notice over a holiday was not sufficient so he had some sympathy with the applicant on it. He said that did not really change his view of the application. He said he was very persuaded by the neighbors and their concerns. He said the presence of a Veterans Administration Hospital and its rules about drinking and smoking and its proximity to the subject property were further persuasive and he was inclined to vote against both use permits.

Commissioner Kennedy said the Commission had considered a couple of months prior an application for a use permit for a gas station to have alcohol sales for off premise. She said they debated for some time the merits of that request and with similar concerns. She said however that gas station was on El Camino Real adjacent to the train station and half a block away from a 7-11 that also sold alcohol. She said she agreed with Commissioner Doran and also, she looked at people acting in good faith. She said that she did not see good decision making or neighborliness on the part of the applicant. She moved to deny both use permit requests. Commissioner Riggs seconded the motion. He said he did not think a 24-hour operation right on the edge of a neighborhood was a good idea. He said regarding alcohol sales at first, he thought that was maybe okay and would help the business but there was no persuasive need or convenience.

Commissioner DeCardy said for the record that Ms. Barr was a friend of the family but he could fairly take into consideration all of the points that had been raised tonight.

Chair Barnes said it was certainly persuasive that something should have been done about the flavored tobacco sales but it was unclear what that all entailed. He said setting that aside he asked what made this business any different from Willow Market that was very close to his home and sold alcohol until 10 p.m. or what was different in this location from El Rancho Market, which sold

alcohol until he believed 9 p.m. He said Willow Market was open from 6 a.m. to 10 p.m. and El Rancho Market open from 7 a.m. to 9 p.m. He said that customer service and interface with the customers at Willow Market was fundamentally different from how the gas station convenience store was laid out. He said he had great confidence in how they monitored alcohol sales at Willow Market and he had seen how they did it at El Rancho Market. He said what was different about this facility was that he did not know if it would have the same ability to monitor the sale of alcohol. He said he decided that the sale of alcohol at this location was not appropriate. He said he did not make that decision lightly in terms of the applicant's ability to monetize their business.

Commissioner DeCardy asked what a denial meant. Planner Sandmeier said with a denial the applicant could appeal the decision to the City Council. She said if they did not appeal then after one year if things changed, they could apply again. She said for the motion it should clarify if the revised findings were part of the motion that referenced the tobacco sales or if other findings were being made.

Commissioner DeCardy said he was compelled primarily by the findings presented in the revised staff report. He said it was incumbent to show good faith and the fact of adhering to existing regulations regarding the sale of tobacco and alcohol. He said given the unique location of the business he thought it was a pretty high bar to have an expectation that there would be no instances of noncompliance. He said he would support denial.

Chair Barnes said there was a lack of specificity, documentation and investigatory process to state that the applicants were not in strict compliance with regulations related to the sale of flavored tobacco. He said he was a bit uncomfortable in making the findings for denial of beer and wine sales that included flavored tobacco due to the lack of documentation for them to review.

Commissioner Kennedy said if the applicant had a spotless record and if at least one other of the other 21 businesses that sold flavored tobacco in Menlo Park had the same obstacle regarding leaving products on the shelves then she would give the applicant the benefit of the doubt. She said they had a link to a document reporting the business was in violation of selling tobacco to a minor. She said the applicant said she was the only one authorized to remove those tobacco products from the space. She said how was the Commission to know in good faith that 24 hours a day when they were selling alcohol that there was a person of sufficient responsibility to make the decisions around selling alcohol to anyone who came into the business and whether it was someone who already had been drinking whether they drove or came from across the street, whether they were buying for someone else and where they were going after the purchase. She said this business was not the place for alcohol sales and 24-hour operation on the edge of a residential neighborhood was not appropriate. She said she understood the need to make a living but she thought it curious that the request to sell alcohol came after the loss of the ability to sell flavored tobacco. She said her motion to deny stood with the revised findings presented by staff.

Chair Barnes asked if they knew other than hearsay if 21 other locations complied. Commissioner Kennedy asked how many purveyors of flavored tobacco were in Menlo Park. Planner Smith said they did not have that information at this time.

Commissioner Michele Tate confirmed with staff that the hours of operation currently were until midnight.

Commissioner DeCardy said on page 4 of the attachment from Ms. Barr was a letter from Behavioral Health and Recovery Services. He said he used his phone to magnify to read it and it looked like it stated very clearly (and was posted by the owner on the window of the establishment) that as of January 17, 2020 you had to be in compliance and between December 26 and January 17 make that happen, that a copy of the ordinance was at this location, and please call if you have any concerns.

Chair Barnes confirmed they were looking at a Cease and Desist letter and asked Planner Smith to read it. Planner Smith read: dated December 26, 2019; Dear Storeowner, On December 17, 2019, the Menlo Park City Council adopted an ordinance restricting the sale of all tobacco products in pharmacies and flavored tobacco products and electronic cigarettes, vaping products in tobacco retailers in the City of Menlo Park. Free samples, coupons, out of package samples and self service displays of tobacco products are also restricted. The ordinance will go into effect on January 17, 2020. We hope that the time between the adoption of the ordinance and the effective enforcement date provides you with enough time to reduce your inventory and comply with the ordinance. A copy of the adopted ordinance can be found here ([link](#)). Please contact us at TobaccoPrevention@smcgov.org or our phone number if you have any questions about the ordinance. Thank you for your compliance. He said the letter was from the Tobacco Prevention Program Director for San Mateo County Health, Francesca Lomotan.

Chair Barnes said it was somewhat academic and he was agreeing with it but the letter to him did not say take it off the shelves right away nor did he know if the letter from the City had said that.

Recognized by the Chair, Ms. Saha said it was false that homeless people slept at their site as they kept the gates locked. She said referring to littering that their property was always neat and clean. She said their restrooms were very clean. She said one of the speakers met with her the middle of last year because of complaints to the City about litter. She said when asked what kind of litter, he indicated beer cans. She said that had to come from somewhere else. She said people living on Regal Court or Arnold Way were too far inside from the gas station and people coming to the gas station did not walk around those streets. She said regarding compliance they had software that scanned a person's id and if the person was not 21 years old the cash register would be blocked from making a sale. She said that someone indicated they had sold cigarettes to a minor. She said she wanted to know when that was. She said in the last 10 years and the time she could recall that she had never seen such a citation. She said the franchisee Philips 76 used mystery shoppers and they always scored 95% and above as their site was the neatest and cleanest site. She said it was a false allegation that they had sold flavored tobacco after the ordinance was effective. She said she had high respect and regard for the VA. She said El Rancho Market was closer to that facility. She said most of her customers came into the site from Willow Road. She said she would like to see the picture of the delivery truck on O'Keefe Street as she did not think it was for her business as she had designated locations for deliveries. She said she suspected litter came from the other market. She said gas station customers did not park and then walk for two blocks and waste their time. She said she was the one who had to deal with \$10,000 worth of material with the supplier not that staff had no authority to make important decisions.

Commissioner Riggs said in making his second he did not want to bring in the tobacco issue. He said he wanted to be clear he would deny the sale of alcohol during the current store hours regardless of any tobacco issue as it would override the ABC's basic concentration and he did not see the benefit it would serve. He said for him he would add there was no overriding need or benefit to increase the concentration per ABC's formula.

Commissioner Kennedy asked staff to confirm that her motion to deny would not preclude the applicants from coming back in a year and applying for a use permit. Planner Sandmeier said that was correct.

Commissioner Riggs asked if Commissioner Kennedy would consider adding after consumption the phrase *and does not demonstrate an overriding need or benefit for beer and wine sales*. Commissioner Kennedy accepted the addition to the motion.

ACTION: Motion and second (Kennedy/Riggs) to make the findings to deny the use permit requests as follows; passes 6-0-1 with Commissioner Kahle absent.

1. Make a finding that the project is categorically exempt under Class 1 (Section 15301, “Existing Facilities”) of the current California Environmental Quality Act (CEQA) Guidelines.
2. ***Deny the use permit to allow the sale of beer and wine for off-premises consumption, and make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will be detrimental to property and improvements in the neighborhood and the general welfare of the City because the business has not demonstrated strict compliance with regulations related to the sale of tobacco, and the health and safety of persons residing or working in the neighborhood cannot be ensured if the business is granted a use permit for the sale of beer and wine for off-premises consumption, and no overriding need or benefit for beer and wine sales is demonstrated.***
3. Deny the use permit for business operations after midnight based on the following criteria set forth in Section 8.12.010 of the Municipal Code:
 - a. Residents have submitted correspondence indicating concerns and existing issues, such as noise, light, litter, and loitering, related to operations at the service station and convenience store, as well as other commercial properties in the vicinity. The permit would allow activity which interferes with the peace and quiet of persons of ordinary sensibility while enjoying property in use as residential property.
 - b. Thirty-four residential parcels are located within 300 feet of the subject property. The number of residents affected by business operations after midnight at the site would be significant.
 - c. The extent of interference would be significant, given that the subject parcel is surrounded by a number of residential properties and located at one of the few entrances into the Willows neighborhood from Willow Road.
 - d. The existing business is not currently operating between the hours of midnight and 6:00 a.m.
 - e. Hardship to the business from loss of income or other factors would be minimal since the business is not operating during these hours at present.

Chair Barnes recessed the meeting for a short break at 10:18 p.m.

Chair Barnes called the meeting back to order at 10:24 p.m.

G. Regular Business

- G1. Housing Element Annual Report/City of Menlo Park:
Opportunity to consider and provide comments and/or a recommendation to the City Council on the 2019 Annual Report on the status and implementation of the City's Housing Element (2015-2023). ([Staff Report #20-017-PC](#))

Staff Comment: Mike Noce, Housing Division, introduced Rhonda Coffman, Deputy Community Development Director. He presented an overview of the City's Housing Element Annual Report. He said the current Regional Housing Needs Allocation from the State for the 2015 to 2023 cycle was 655 dwelling units. He said in the next Housing Element they expected that number would be higher. He said the Annual Progress Report (APR) was due on April 1 each year. He said the City Council would receive the report on March 24. He said the APR tracked the life cycle of project applications and if a development had no action items, did not receive approval or construction permits, it would not be reflected in the APR. He said that there could be gaps in when a development was reflected in an APR. He said staff however tracked those numbers.

Mr. Noce said for 2019 their current number was 196 dwelling units and had received building permits. He said 183 of those units were attributed to 1300 El Camino Real, the Station 1300 project, which included 20 below market rate units (BMR) with 14 units at low income and six units at moderate income. He said the City was one of 28 jurisdictions in California that were still under the SB 35 exemption, which could change in the future. He said currently they were maintaining their Regional Housing Needs Assessment/Allocation (RHNA) numbers. He said they had four Accessory Dwelling Units (ADU) submitted in 2019. He said that number decreased from 2018 but was expected to increase with the changes in State law. He said the PowerPoint would be part of the minutes going out to the public. He said for very low income they were 63.5% complete; for low income 43%, and for moderate income 7% complete. He said they had far exceeded the above moderate income level. He said their allocation was 150 units and they had 947 such units to date permitted and most completed.

Mr. Noce said regarding units he mentioned that might not appear on the 2019 APR under construction or approved that they had 439 market rate units, 6 moderate, 32 low and 58 very low or extremely low. He said in addition they had about 3200 units in the application pipeline. He said four developments to date had been submitted under the SB 30 streamlining that would move through the process of review quite a bit faster.

Mr. Noce referred to milestones and said the City Council approved a Tenant Relocation Assistance Ordinance that reduced the disruption of tenants facing relocation for households at 80% average median income or lower and only on parcels with five or more units. He said meeting requirements a renter could qualify for three months of rent reimbursement or four months for special circumstances. He said the Council also in 2019 approved ahead of AB 1482 taking effect the Rent Limits and Just Cause Urgency Ordinance, which went into effect in November 2019. He said they also had two Funding Agreements, one for 1300 Willow Road, which would result in 58 net new units at the extremely low and very low range. He said the development would have a total of 140 units and \$6.7 million was approved by the Council. He said they also had a preservation project for \$635,000 that was also approved for Willow Court at 1105 and 1141 Willow Road for six existing BMR units. He said they also created a Homeless Outreach team that focused on some of the vulnerable populations in the community. He said the team had members from the Housing Division, the Police Department, and a nonprofit called LifeMoves that coordinated outreach, provided resources and a path for anyone needing that assistance. He said they worked with individuals on a case by case basis. He said the City was assisting MidPen on their 1300 Willow

Road project with a component of the funding going to the production and a smaller component was reserved for bicycle and pedestrian improvements needing coordination from the City, Caltrans and the applicant. He said they offered a First Time Homebuyers Workshop in March 2019 with HEART (Housing Endowment and Regional Trust) of San Mateo County. He outlined other efforts made.

Questions of Staff: Commissioner DeCardy asked about the purpose or intent of the APR. Mr. Noce said the State required the City to report annually on how it was doing with its housing production. He said it was really a progress report on the City's housing production every year. He said the RHNA numbers were the City's requirement for the number of housing units that needed to be produced.

Chair Barnes asked about the general zoning amendments that were proposed on the last slide. Deputy Community Development Rhonda Coffman said those related to the planning grant application under SB 2 that the City submitted for \$160,000. She said they had to identify programs or activities that had the capacity to accelerate housing production. She said they identified two specific projects with one related to ADUs and that was to amend the zoning, not only to comply with the State law, but do a more comprehensive zoning update around ADUs. She said in addition they had proposed developing some user navigation tools to make it easier for residents to navigate the process of getting an ADU permitted. She said the other was looking at potential zoning amendments in the El Camino Real / Downtown Specific Plan area that might increase housing production. Replying to Chair Barnes, Ms. Coffman said this was not yet formulated but was in context with what the next, the sixth, RHNA cycle as that was anticipated to be the most difficult to comply with of all the cycles to date. She said all communities were anticipating a significant increase in their RHNA allocations and every city would have to identify where those housing units would be built. She said that would require all cities to look at their zoning.

Chair Barnes opened the public comment period.

Public Comment:

- Karen Grove, Housing Commission, said she was speaking on behalf of the Housing Commission and providing highlights of their discussion of the APR at its meeting the previous week. She said the City was building many more market rate housing units than required by the RHNA numbers which was a positive. She said where those homes were built and for whom mattered as well. She said most of the housing the City was producing was built on the Bayside where there was not great access to transit and no services. She said where the City could improve was to build housing more equally for everyone. She said they were not meeting the goals for very low income, low income and especially for moderate income where they were missing 132 out of the 142 required. She said very low income included the extremely low income category. She said at a recent roundtable on homelessness it was noted that even when cities were doing a fantastic job of housing the homeless that more people were entering homelessness than were being housed. She said the people most at risk at becoming homeless were generally earning but earning extremely low incomes. She said the RHNA numbers did not specifically call out extremely low income but it was very important and the City had nothing except the numbers in the pipeline. She said the Housing Commission noted that the City was overachieving in market rate housing but that only served the top 10 to 20% of earners and were underachieving in the other areas. She said they wanted to focus on the latter and would love to partner with the Planning Commission in terms of zoning when there

was an opportunity to up zone downtown near transit and services for the very low and extremely low, low and moderate income earners. She said that could be done through deed restriction or working with an affordable housing builder. She said it could be deed restricted ADUs or non-deed restricted ADUs considered in one of the low income categories. She said they also discussed the idea of having the Notice of Funds Available (NOFA) have an over the counter process such that any time someone could submit a proposal in addition to the bi-annual consideration of a pooled set of applications. She said they also hoped the City would be aggressive and proactive in pursuing the development of housing at the USGS site.

Chair Barnes closed the public comment period.

Commission Comment: Commissioner Tate thanked the Housing Commission and staff for their hard work. She said she totally agreed with everything Commissioner Grove said and hoped the Planning Commission would be able to support in moving forward. She said she also hoped in some way they would be able to make housing a priority for Council as she felt like it was sliding further and further down as a priority. She asked for the slide with the numbers to be shown. She said right now she thought the low and the very low income housing numbers related to MidPen projects. Mr. Noce said the very low was a combination of extremely low and very low and most of that portion was related to MidPen projects. Commissioner Tate said hopefully they could find space with the parking lots or elsewhere on City-owned property to increase those numbers.

Commissioner Kennedy said she wanted to echo Commissioner Tate's appreciation to the Housing Commission and staff. She said she recently started looking for a new place to live and unsurprisingly found it was nearly impossible to find an affordable three-bedroom home of any size anywhere in the City. She said significant housing stock was being built that was beautiful, two-bedroom and tiny but unaffordable. She said she did not know how they could fix the situation as building construction costs were rising and building was being done for the jobs being created and those job holders were getting younger and younger and the housing stock was getting older. She said there was no incentive to protect the housing stock that could house a small family.

Commissioner DeCardy thanked Commissioner Grove and the Housing Commission. He said density was clearly a piece of the solution and he believed they needed to look at density where no one wanted to look at it and that was where single-family residences were zoned now. He said they were doing it exactly in the opposite direction with projects demolishing duplexes and replacing with single-family residences. He said density in all its forms, in all places, including looking at all the most uncomfortable places had to be on the agenda. He said transportation needed to be on the agenda. He said the incentives for transportation to get people in and out as there were way too many jobs for any total amount of housing long term and they were failing at that. He said they were failing at that in the micro and failing at that deeply in the macro. He said he was not surprised that they were overproducing housing at over moderate income. He said every time they discussed BMR applicants would say the only thing possible was above moderate as it penciled out. He said they needed to change that penciling out so extremely low, very low, low and moderate income units were incentivized to meet the housing needs. He said this was beautifully illustrated in the report and City Council should be able to recognize the same thing in the report.

Chair Barnes asked how much money was currently in the BMR fund. Mr. Noce said the last report would have been part of the rehabilitation approval in November 2019 and that was just over \$9 million and with anticipated funds he believed that would be closer to \$15 million. Chair Barnes

asked how they saw that money being used and whether there were sites in the City for use. Ms. Coffman said NOFA included several activities the funds could be used for and those were preservation of existing affordable housing and usually included rehabilitation to keep the housing in good condition; new construction of affordable housing and site acquisition and sometimes site acquisition and rehabilitation. She said \$15 million did not go far in Menlo Park and was not enough to buy a site. She said the strategies that worked was when cities actually acquired a site or had land. She said land was so much more vital for nonprofit developers to attract them to come and to develop. She said what the Housing Commission subcommittees had been discussing was looking at other strategies of identifying some sites for sale as the BMR funds grow. She said they put NOFA funds out every two years. She said they had two applications for the last cycle and one withdrew. She said land was a successful strategy for getting affordable development.

Replying to Chair Barnes, Ms. Coffman said when a site comes up for sale that they were looking for opportunities in having partners, nonprofit partners that were agile and ready to move on those sites. She said it was hard for a city to be agile and use funds to acquire a site. She said she was trying to build relationships with those partners and bring those nonprofit affordable housing developers to Menlo Park to look at what was available. She said they certainly had sites identified in the Housing Element as opportunity sites but those had to be on the market.

Chair Barnes said he saw a lot of potential for density in the Downtown Specific Plan area but thought it would take tremendous political will to be able to strike village character from the Plan. He asked if there were other ideas for where density might go. Ms. Coffman said as mentioned the expectation was the sixth cycle of RHNA was going to be the most difficult that any city ever encountered. She said the current cycle was 655 units and 10,000 units was being tossed around as what the City of Menlo Park might get as allocation need in the next cycle. She said that meant the City would have to look very strategically at where they could site that housing. She said in the new Housing Element there were two new requirements. She said there was the affirmatively furthering fair housing requirement, which required a city to look at where affordable housing was sited within its city so it could not be concentrated in one area. She said if it was then they had to look at how to deconcentrate it and make sure it goes into areas where it was not currently. She said also there was an environmental justice requirement. She said they were getting affordable housing on the east side of Menlo Park and not the west side due to where the development opportunities were. She said the new state law around housing element now had some enforcement mechanisms so cities were going to have to comply with some of these new requirements. She said they were going to have to look very strategically citywide at where higher density could be located. She said a lot of that was directed to be near transit and transit corridors which naturally made the downtown and El Camino Real areas of interest.

Commissioner Tate asked in the quest for land and nonprofit partners whether the public parking lots had been considered as land as it was owned by the City. Ms. Coffman said last year when she started with the City the City Council was going through their prioritization and the downtown parking lot was lowered in priority but was still on the list. She said there had been some discussion through this year's Council priority setting so she hoped that would continue to be considered. She said with the new Housing Element cycle it would have to be considered as they would need to look at all the City-owned land inventory and evaluate where housing could be developed. Replying further to Commissioner Tate, Ms. Coffman said staff was now having to commence work on the new cycle that would start in 2023. She said it would take the next two years to develop all the plans to prepare a Housing Element. She said a Housing Element typically required zoning amendments. Commissioner Tate said 2023 was too far to start considering the

City-owned land. She asked what Ms. Coffman's recommendation was for getting that fast tracked. Ms. Coffman said the City Council had to make it a priority. Commissioner Tate asked if the Housing Division and Housing Commission had done any studies on it to present to City Council as a good thing to look at before the close of the Housing Element in 2023. Ms. Coffman said the Housing Division staff was Mr. Noce and herself. She said that they had priority work items they had been working on and took direction from City Council based on what it wanted the Division to work on. She said the past year they had been working on short-term rental regulations along with the Housing Commission and other studies. Commissioner Tate said she recalled when she was on the Housing Commission that Commissioner Merriman had indicated there were resources out there that would not cost a lot to evaluate and do scoping. She said maybe it was the Housing Leadership Council. She asked if that was something the Housing Commission might work on with another resource outside to at least get scoping done to see what was possible and present it. She said that way it was not affecting staff time necessarily but putting something in motion. She said it was a question as she did not know if that was possible or not. Ms. Coffman said scoping was possible and that was a great idea to get the City some information to be able to make decisions. She said she would just caution though that any kind of study needed staff time as the City had procurement requirements staff had to oversee. Commissioner Tate said as she recalled the cost was very low and if she remembered correctly that the Housing Leadership Council might have already done some work around this area once before so there were pieces of this work already done.

Commissioner Doran asked what the timeline was for getting the money for the SB 2 grant. Ms. Coffman said the application had basically been approved but the applications had to go to the Loan Committee for final approval after which letters were generated. She said probably within 30 to 60 days they would receive the letter and grant agreement.

Commissioner Riggs said the parking lots were studied for housing in 2015. He said with the replacement parking and parking for the units it was found that the buildings were expected to be six or seven stories at which point he recalled interest dwindled. He said there was land on El Camino Real that could be repurposed and pointed out the Charles Schwab building and 700 El Camino Real. He said the Charles Schwab building might be on City owned land. He said 700 El Camino Real would have to be purchased. He said the bottom line and irony was the housing need was driven primarily by the office buildings. He said cities expressed the need for housing and continued to approve large office projects. He said he had not seen much office space approved lately in Menlo Park. He said they could address this directly by buying some old office buildings and demolishing them.

Commissioner Kennedy said along El Camino Real up to Belmont that parking lots were gone along the train tracks and housing built. She said she did not think it should be just along the rail side of El Camino Real in Menlo Park and there had to be a counterpoint on the other side. She said bringing this into deeper west Menlo was the only way to get people to see that it was possible to do density housing in a way that was attractive and helpful. She said the City's parking lot was not optimal but the Safeway shopping center was for such redevelopment.

Chair Barnes said there was a focus on rentals in the housing production numbers but he did not want for sale units forgotten. He said staying a renter in perpetuity was great for the development companies but not so great for people trying to build wealth including buying into units. He said in the downtown area he would like to see incentives to build for sale units and he would like to see how they could increase development of for sale units.

Commissioner Tate said she liked that idea and at all income levels.

Replying to Chair Barnes, Mr. Noce said they would provide a summary of Commission comments when they took the item to the City Council.

ACTION: Motion and second (Barnes/Kennedy) to recommend the City Council accept and approve the 2019 Annual Housing Element Progress Report; passes 6-0 with Commissioner Kahle absent.

H. Informational Items

H1. Future Planning Commission Meeting Schedule

- Regular Meeting: March 23, 2020

Planner Sandmeier said the next Planning Commission meeting would be at the Menlo Park Senior Center at 100 Terminal Avenue. She said the agenda would have one single-family residential development at 11 Greenwood Place, a use permit request and architectural control for West Bay Sanitary District for their 700 Marsh Road facility, a study session for 100 to 110 Terminal Avenue for future architectural control to demolish the existing Onetta Harris Community Center, Menlo Park Senior Center, Belle Haven Youth Center and Belle Haven Pool and construct a new multi-generational community center and library. She said a study session would be held for 165 Jefferson Drive, which was a proposal for 158 multi-family dwellings and 14,422 square feet of commercial space.

- Regular Meeting: April 6, 2020
- Regular Meeting: April 20, 2020

I. Adjournment

Chair Barnes adjourned the meeting at 11:24 p.m.

Staff Liaison: Corinna Sandmeier, Senior Planner

Recording Secretary: Brenda Bennett

Approved by the Planning Commission on April 6, 2020

City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
tel 650-330-6600

RE: 710 Willow Road (PLN2019-00094)

Dear Planning Commission,

This letter serves to appeal the denial of our request for a use permit at 710 Willow Rd. We feel the reasons cited for the action taken are based on misinformation and false premises that require further clarification.

In response to point 1: "Make a finding that the project is categorically exempt under Class 1 (Section 15301, "Existing Facilities") of the current California Environmental Quality Act (CEQA) Guidelines."

§ 15301. Existing Facilities. Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.

XXXXXXXX

In response to point 2: "Deny the use permit to allow the sale of beer and wine for off-premises consumption, and make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will be detrimental to property and improvements in the neighborhood and the general welfare of the City".

Alcoholic beverages, including hard liquor, beer and wine are already being sold at a convenience store just 400 feet from 710 Willow Rd. In contrast, we are not even asking to sell hard liquor at our facility, as it can cause more significant impairment to consumers. By granting us a use permit, we would not be altering the current environment of the community, with alcohol already being sold just 400 feet away. As such, we would not be causing detriment to health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood. Also with alcohol already being sold in the zone in question, granting us a use permit would not be detrimental to property and improvements in the neighborhood and the general welfare of the City any more than that which already exists due to the current availability of alcohol, even hard liquor, within the zone. In 30+ years, we have never had incidents of alcohol related misconduct or property damage with alcohol being sold just 400 feet from our location.

In response to the latter half of point 2 : “because the business has not demonstrated strict compliance with regulations related to the sale of tobacco, and the health and safety of persons residing or working in the neighborhood cannot be ensured if the business is granted a use permit for the sale of beer and wine for off-premises consumption...”

We feel the council is misinformed. From the time of the ordinance of December 17, 2019 adopted by the City Council restricting the sale of flavored tobacco products and flavored electronic cigarettes/vaping products, our business removed all such products from our visible window display and denied the sale of these products to customers. Accordingly we set them aside in storage for return back to our distributor. As these products are expensive and had been pre-purchased, they cannot be discarded and are awaiting pickup by the distributor to exchange for appropriate and compliant products that can be legally sold at our facility. So that the products would not be accessible to customers, they were set aside for storage in the cashier’s office, an area that is clearly marked as restricted to customers. It is considered trespassing for any unauthorized personnel to enter the cashier’s office because that is also where we keep our safe, lotto machine, and conduct financial transactions. It is not possible for a customer to have obtained flavored tobacco or vaping products from our facility for these reasons, and this also speaks to our strict compliance with and regard for regulations related to the sale of tobacco, and the health and safety of persons residing or working in the neighborhood. If our business is granted a use permit for the sale of beer and wine for off-premises consumption, it can be ensured that we will adhere with strict compliance to the regulations of the use permit just as we have adhered to the flavored tobacco ordinance. We never sold any flavored tobacco products and electronic cigarettes/vaping products on or after January 17th, 2020.

In response to the last sentence of point 2: “and no overriding need or benefit for beer and wine sales is demonstrated.”

We have received multiple requests from customers stopping for gas on their way home from work to keep beer and wine at our facility because it would allow them to get home sooner and provide them more time to relax and spend time with their families before returning to work the next day. Alcohol in moderation is legal and widely used for relaxation. According to the 2019 National Survey on Drug Use and Health, 85.6% of adults reported consuming alcohol in America. By providing this convenience to our customers, we would be improving the quality of life for those living and working in the neighborhood by allowing them to get home sooner and spend more time with loved ones.

In response to point 3a: “Residents have submitted correspondence indicating concerns and existing issues, such as noise, light, litter, and loitering, related to operations at the service station and convenience store, as well as other commercial properties in the vicinity. The permit would allow activity which interferes with the peace and quiet of persons of ordinary sensibility while enjoying property in use as residential property.”

In past correspondence with the Commission, we have already established that the complaints of noise, litter and loitering were not attributable to patrons of our business. The litter that was photographed as evidence by the complainants were shown not to even be products we sold on our premises. Our property is monitored with camera surveillance 24/7 and we have a strict policy to notify the authorities if loiterers are present. It appears that complainants are mistakenly under the impression that the loiterers originated from our facility, when they were customers of another store within the zone. In addition we provide ample access to trash bins on our property so we help to keep the

community litter free by providing places for all members of the community to dispose of their trash. By taking all these measures, our business contributes to the peace and quiet of persons of ordinary sensibility in the community.

In response to points 3b and 3c: “Thirty-four resident parcels are located within 300 feet of the subject property. The number of residents affected by business operations after midnight at the site would be significant. The extent of interference would be significant, given that the subject parcel is surrounded by a number of residential properties and located at one of the few entrances into the Willows neighborhood from Willow Road.”

Again, the loiterers in question did not arise from our facility. Most of the comments and reviews our business receives from customers are very positive and encouraging and show that our presence is a vital part of the community. Here are some comments customers have left about our facility on social media.

★★★★★ 3/13/2020

Best station ever! Love the new food and drink options they added. I also love the convenience of being able to pick up last minute emergency vitamin C and hand sanitizer here with the whole corona virus epidemic right now. I appreciate how clean the station and food mart is kept and I see the employees wash their hands often in the sink. I have gotten to know their regular cashiers over the years and I enjoy seeing them when I come in. They just renovated I love the personal touches throughout the store. I highly recommend this station!

Useful Funny Cool



Emily L. Elite '2021
Greater Toronto Area, Canada
198 1200 4951

★★★★★ 3/4/2020

4 photos

This gas station is very well lit at night with no blind spots as it were so I wasn't afraid to pull up and fill up here. There are 8 pumps so it isn't a huge gas station but it was quiet at night. Cash customers have to prepay before filling up. If you're paying by card, payment is accepted right at the pump. An odd observation was that it smelled really clean, almost like someone had wiped down the pumps with cleaning liquid or something. I found that the prices at this gas station were exactly the same as other nearby stations like Shell.

 **Jesus T.**
East Palo Alto, CA
📍 0 🗨️ 1

★★★★★ 3/12/2020

This gas station is great, the service is amazing, everything is clean, the pumps are brand new, and they have so much things you can buy inside. Their decorations are also good and their staff can help you with anything you need and they are also very friendly. One of the best stations I've been to so far, for sure!

 **Robert G.**
Menlo Park, CA
📍 45 🗨️ 222 📷 288

★★★★★ 8/22/2017

📷 1 photo

Most recent reviews here are really old so I decided to give this place a rating. This is the gas station I always go to when I need because it's on my way to work. Everytime I go, it's in the morning and everytime I have been, I see a cleaning crew cleaning the premises. It gives a nice touch to the place. I've never had problems at the pump and anytime I have needed to go inside, the attendant is really helpful! Just wanted to write a quick review of this place!

In response to points 3d and 3e: “The existing business is not currently operating between the hours of midnight and 6:00 a.m. Hardship to the business from loss of income or other factors would be minimal since the business is not operating during these hours at present.”

Due to the COVID-19 pandemic and quarantine, our business incurred a significant loss to our normal income. Being granted the use permit would help us to generate more revenue and help us to recover from the financial hardships of the pandemic. As it is still unclear how long the pandemic will continue with new variants of COVID emerging, the addition to our income would be extremely helpful to our business.

From: Brian Gilmer [mailto:brian@briangilmer.com]

Sent: Friday, June 11, 2021 11:05 AM

To: _CCIN <city.council@menlopark.org>

Subject: 76 Gas Station Appeal

CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.

Dear City Council Members,

I recently received a notification that the 76 Gas Station located at 710 Willow Road has appealed the City Council denial last year to have their convenience store remain open 24 hours a day and to sell beer and wine. I have to express my deepest opposition to both these requests. They applied last year and were unanimously rejected on both requests by the Planning Commission and the City Council. The gas station generates noise and crime, remaining open 24 hours will only exacerbate those problems.

The gas station and convenience store are located in a residential neighborhood and are close to many houses, several of which have young children including the one they share a border with. People visiting the gas station late in the evening have been noisy and caused problems including urinating on private property and yelling. The station has also attracted crime including armed robberies which will only get worse if they remain open 24 hours and sell alcohol. In the neighborhood opposition to these requests last year several issues were cited that impacted the quality of life along with the fact that there is no need for another store to sell alcohol in our area, especially one across the street from the Veterans Administration hospital that has addiction treatment programs. I encourage you to become familiar with the staff report generated last year and the opposition presented by many Willows residents.

There is no need for another store selling alcohol in the area, especially not on that has been cited in the past, I sincerely hope that this application is again rejected.

Best Regards,

Brian Gilmer

-----Original Message-----

From: Susan Bryan [<mailto:tucson103@att.net>]

Sent: Sunday, June 13, 2021 8:06 AM

To: _CCIN <city.council@menlopark.org>

Subject: No on permit for 76 station Willow Road

CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.

Dear Council Members: Once again the owner of the 76 station on Willow Road is applying for a license to sell liquor between midnight and 6am. I objected last year and I still strenuously object.

This station may seem to be on a busy, through-street but it is in the middle of the Willows neighborhood. It is surrounded by residential homes - bought by people who did not expect the near-by station to become a magnet for people who want to buy liquor after midnight. Buying liquor after midnight leads to bad public behavior, noise, even crime — such as “nuisance” fireworks — which we are all now battling to reduce here. Liquor is the “false courage” that gives otherwise sober people the impetus to do things that hurt the community, themselves, and, perhaps even their loved ones.

Please leave our neighborhood in peace. I live on the outer edges of the Willows but selling liquor at this station would affect everyone in the area.

Also, It is just plain wrong to have liquor sold at all so near the VA where there is a drug and alcohol addiction treatment program that is the only hope of veterans to get rid of their addictions. Putting liquor across the street at all hours is like making someone go on a diet while living 24 hours a day in a candy store — or a chocolate factory.

I am TOTALLY AGAINST letting this station sell liquor. Please protect us and refuse to grant this permit.

Sincerely, Susan Bryan, 222 Blackburn Avenue, Menlo Park

From: [Heather Young](#)
To: [Smith, Tom A](#)
Subject: 710 Willow Use Permit
Date: Wednesday, August 18, 2021 4:16:49 PM

CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.

Hi Tom -

I'm a resident home-owner at 503 O'Keefe just around the corner from 710 Willow and I agree with the City Council that the requested Use Permit for extended business operations between midnight - 6:00 am should not be granted. I also agree with the City Council that the sale of beer and wine should not be allowed at this location.

710 Willow is roughly 350' from a school zone, adjacent to a residential neighborhood, and opposite the VA complex. Convenient as it might be for many people, I agree that both the extended hours and sale of beer and wine requests should not be granted.

Regards -
Heather

Heather Young, Partner



www.hyarchs.com

81 Encina Ave, Suite 100

Palo Alto, CA 94301

D 650-459-3203

C 650-793-1289

From: [Erika Louie](#)
To: [Nash, Betsy](#); [Taylor, Cecilia](#); [Combs, Drew](#); [Mueller, Ray](#); [_CCIN](#); [Wolosin, Jen](#); [Smith, Tom A](#)
Subject: Concerns on the 76 Gas Station's Appeal on Aug 31st
Date: Sunday, August 22, 2021 9:02:40 AM

CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.

Dear City Council Members,

I was recently informed by mail that the 76 Gas Station on Okeefe and Willow Road is appealing the city's decision to deny their application to run 24/7 operations, inclusive of allowing for the sale of alcohol beverages.

My family and I are deeply concerned about this appeal and the implications for our neighborhood. We've been homeowners here since 2014 and love the Willows neighborhood because of the number of families and sense of community. Since we moved in as a newly married couple, we have had the fortune of raising both of our kids in the Willows, including our son who will be attending Laurel Elementary this week.

According to the WHO, [reducing the availability of alcohol substantially decreases violence.](#)

The availability of alcohol can be regulated either through restricting the hours or days it can be sold or by reducing the number of alcohol retail outlets. Generally, reduced sales hours have been found to be associated with reduced violence and higher outlet densities with higher levels of violence. In the former Soviet union in the mid-1980s, strict alcohol regulation, which included among other measures restricted hours and fewer outlets, led to a dramatic fall in violence.

We have huge concerns about the safety of our children if the 76 is allowed to run 24/7 and sell alcohol, especially at night. A couple months after we moved in, there was an armed robbery at night [El Rancho market nearby](#) and the armed robbers were last seen on our intersection (Arnold and O'keefe), which was extremely disturbing. We already get quite a lot of car traffic on O'keefe on the way to Willow (at all hours of the night), and we're concerned if the 76 were allowed to sell alcohol at night, this jeopardizes the safety of our neighborhood and community.

Respectfully,
Erika Louie Movsesyan
704 Arnold Way, Menlo Park, CA 94025

RE: Public Comment - Objecting to the sale of alcohol and extension of hours of operation at 710 Willow Road

August 25, 2021

Dear Menlo Park City Councilmembers,

We, the residents in the Willows, would like to object to the City granting a license to the convenience store and gas station on the corner of Willow Road and O'Keefe Street to sell alcohol and to extend their hours of operation to 24 hours a day.

We believe it is against the public interest that alcohol can be sold at this business establishment because it increases the risk of DUI-related accidents and public disturbance inside and outside Menlo Park's city boundaries.

The gas station is located 2 blocks away from the US 101 freeway on ramp and 1 block away from KIPP Valiant Community Prep School and Silicon Valley International School campuses. It is located on the corner of O'Keefe Street, which leads into the Willows neighborhood. Allowing the sale of alcohol will increase the likelihood of DUI incidents on the freeway and disturbances near and around the Willows neighborhood.

The patrons of the business are very likely to be drivers. Since the business is the closest gas station to US 101, patrons who buy alcohol from this gas station are either on their way to the freeway, or the rest of the Menlo Park city boundaries. Patrons are not purchasing alcohol from a gas station convenience store for a planned meal or event. They would buy alcohol for immediate consumption, just like they would if they had bought a soda or a bag of chips.

Additionally, allowing the sale of alcohol 24 hours a day introduces a real possibility of a DUI-incident especially in the middle of the night. The [National Highway Traffic Safety Administration \(NHTSA\) observes that the number of fatal crashes involving an alcohol-impaired driver is highest between 12:00AM and 6:00AM](#) over the course of a day.

It is irresponsible for the community to permit the business to sell alcohol and extend the business hours to 24 hours when the risks are known. The business may benefit from increased revenues, but the City, the community, the people bear the burden. Will the business be held responsible for the lives lost and property damage from patrons driving under the influence from alcohol purchased from the gas station? Will the City ensure that patrons don't consume their alcoholic purchases while they drive in and out of city limits? We, the City of Menlo Park, should not be enablers of risky, irresponsible behavior. We must not grant the license to sell alcohol and extend the hours to 24 hours a day.

Sincerely,
Susan Austin and Kern King, 403 O'Keefe Street
Fiona and Dave Walker, 404 O'Keefe Street

Travis and Ingrid Katz, 407 O'Keefe Street
Jeffrey and Emily Chen, 408 O'Keefe Street
Merrill Knapp, 411 O'Keefe Street
Houman and Parissa Modarres, 412 O'Keefe Street
Brian and Susan Hart, 423 O'Keefe Street
Brain Gilmer, 503 O'Keefe Street
Rebecca Nathenson and Dan Montague at 715 Regal Court

Agenda item H2
Amit Paka, resident

As a resident of Willows, I wanted to share my concerns about alcohol sales from midnight to 6a at the gas station at 710 Willow Road. Willow Road is right off the 101 freeway, next to VA and is a pass through transit road. This makes it vulnerable to criminal activity from outside the city. Selling alcohol at from midnight to 6a serves no local demand and can only attract more criminal activity. I can always drive to existing 24 hr stores nearby to get liquor if needed.

I'd like to urge the council to decline this request.

Agenda item H2
George Cole, resident

I ask that you oppose the Appeal. I did not think another off-sale "beer and wine" license made sense; particularly given its location: next to a school, opposite the Veteran's Hospital, and on a major arterial with traffic congestion near Highway 101.

The Staff Report indicated that the CA ABC reported that granting this fourth off-sale alcohol license would mean the census tract — not just that immediate neighborhood — would be "over-concentrated".

I do not think the potential loss of business between midnight and 6 am constitute a significant burden to the already-operating business. Their additional prosperity would come entirely to them, yet the burden of noise and traffic would be a direct burden on the immediately adjacent residents with no ameliorating benefit to those residing there. Moreover, it could well drive down the value of their homes — who wants to move in next to an all-night store on a major arterial?

This matter was fairly and reasonably investigated and the Staff quite sensibly concluded that neither "necessity" nor "public convenience" could be made, and thus the request should be denied.

Sincerely;

George S. Cole



710 WILLOW ROAD

Use Permit Appeal Public Hearing

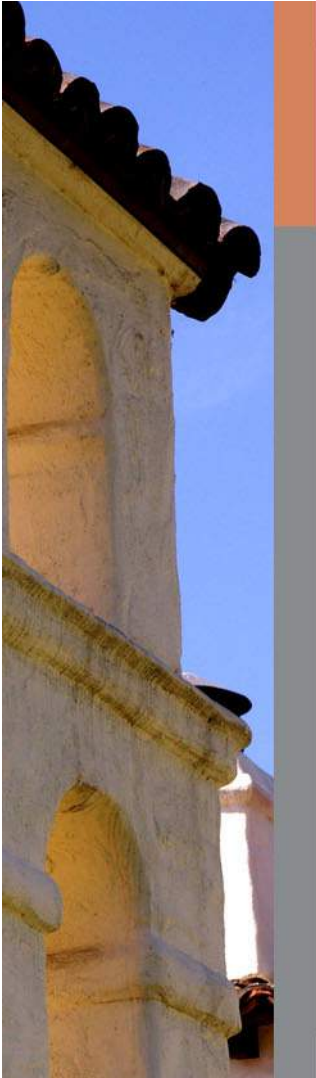
August 31, 2021 Staff Presentation to City Council





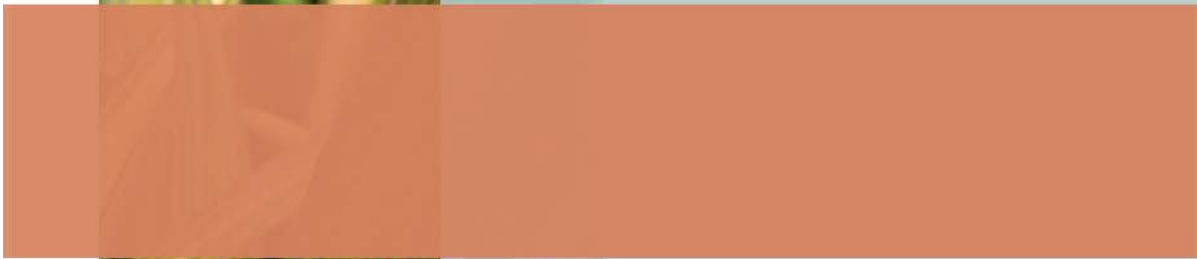
USE PERMIT REQUEST AND HISTORY

- Request for use permit
 - Operate existing service station and convenience store 24 hours a day
 - Allow the sale of beer and wine for off-premises consumption (ABC Type 20 license)
- Planning Commission denied request on March 9, 2020
- Applicant appealed decision to City Council on March 19, 2020
 - Due to pandemic concerns, City agreed to delay appeal hearing



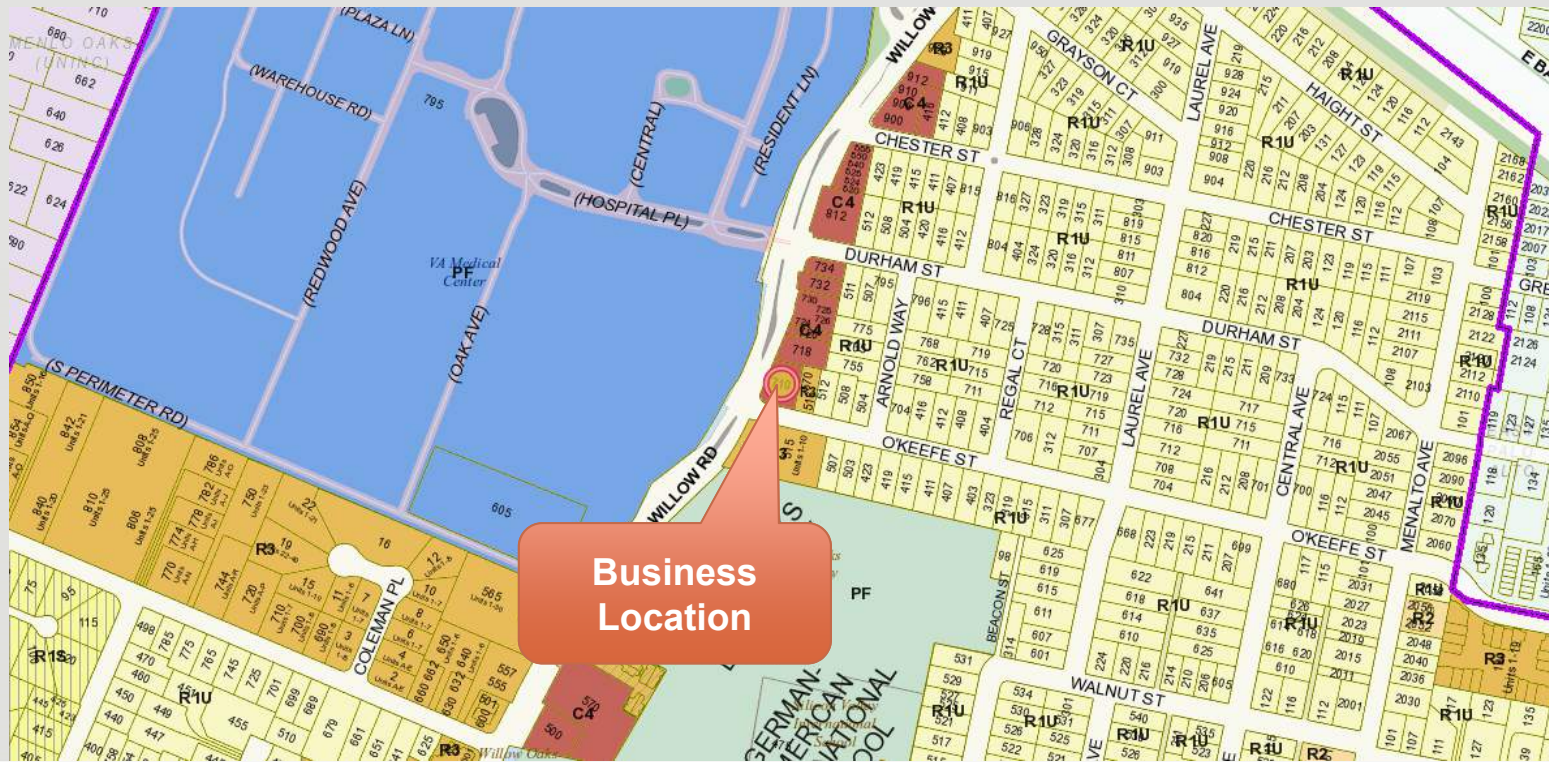
RECOMMENDED MEETING FORMAT

- Appeal Public Hearing
 - Introduction by staff
 - Remarks from appellant, Aparna Saha
 - Response from City staff
 - Rebuttal by appellant
 - Clarifying questions from City Council
 - Public comment
 - Deliberation and vote by City Council





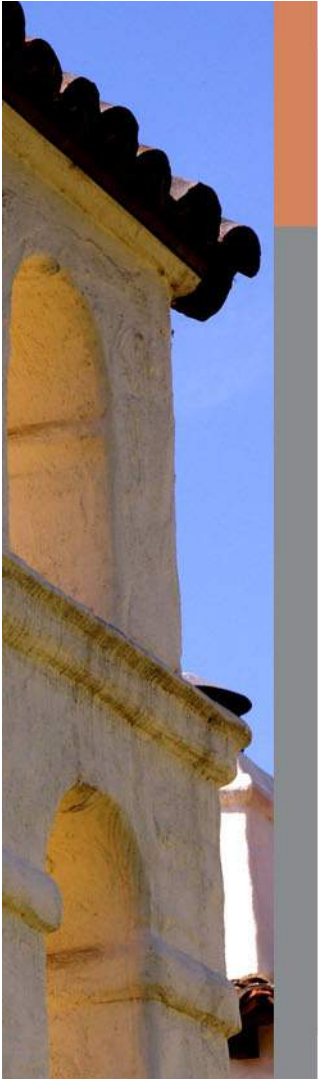
710 WILLOW ROAD LOCATION





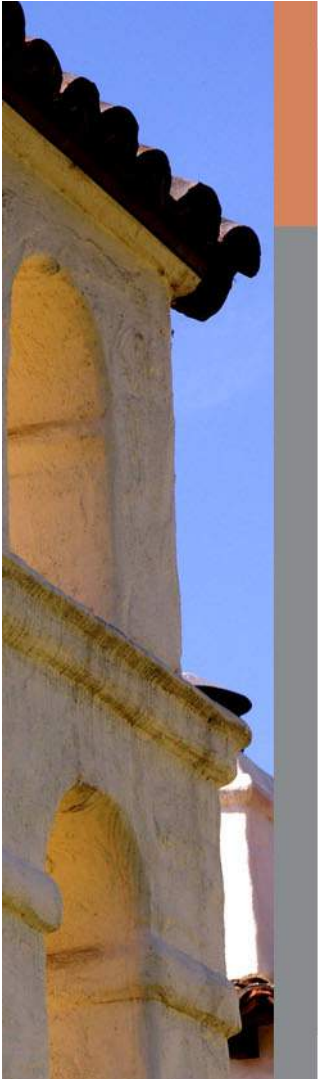
RESPONSE TO APPEAL

- Full responses are included in the staff report
- In summary:
 - Request is exempt from CEQA environmental review, but not from required findings for a use permit from the Municipal Code
 - 3 existing ABC licenses in the Census tract and project site close to sensitive land uses; no overriding public convenience or necessity
 - Regardless of compliance with e-cigarette and flavored tobacco regulations, sale of beer and wine is regulated under separate requirements
 - Despite convenience to customers, nearby residents could be impacted; on-site controls would not be sufficient to manage off-site impacts



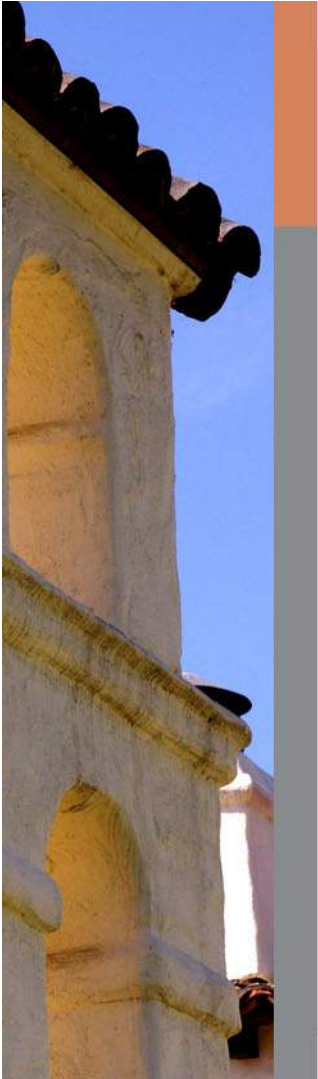
RESPONSE TO APPEAL

- 3 existing ABC licenses within Census tract; ABC requires finding of public convenience or necessity
- Planning Commission found and staff agrees that:
 - Project site is close to sensitive land uses: residential, medical, and educational
 - Sale of beer and wine and 24 hour operations may lead to noise, light, litter, traffic, and other issues
 - No public necessity or convenience
 - Alcohol already sold at other locations nearby
 - 14 items of correspondence from neighbors opposed to request



RECOMMENDATION

- Recommended Actions
 - Deny the appeal and uphold Planning Commission actions
 - Adopt resolution to:
 - Deny the use permit for sale of beer and wine for off-premises consumption
 - Deny the use permit to operate service station and convenience store 24 hours a day



RECOMMENDED MEETING FORMAT

- Appeal Public Hearing
 - Introduction by staff
 - Remarks from appellant, Aparna Saha
 - Response from City staff
 - Rebuttal by appellant
 - Clarifying questions from City Council
 - Public comment
 - Deliberation and vote by City Council



THANK YOU



STAFF REPORT

City Council

Meeting Date:

8/31/2021

Staff Report Number:

21-168-CC

Regular Business:

Adopt Resolution No. 6659 establishing the Independent Redistricting Commission

Recommendation

Adopt Resolution No. 6659 (Attachment A) establishing the Independent Redistricting Commission (IRC.)

Policy Issues

Upon completion of the U.S. Census every 10 years, State law requires the City Council to review and, if necessary, adjust the boundaries of its districts that were established October 4, 2017 with the adoption of Ordinance No. 1044 to ensure compliance with State and Federal law.

Background

On June 29, 2021, the City Council conducted a study session, to consider the various methods for reviewing and adjusting district boundaries. At the conclusion of the study session, the City Council directed staff to return with an action item establishing an Independent Redistricting Commission (IRC) to review the 2020 U.S. Census data and adopt boundaries for the City of Menlo Park.

The State has enacted various laws governing the redistricting process, including the Fair and Inclusive Redistricting for Municipalities and Political Subdivisions Act ("Fair Maps Act"), which creates standardized redistricting criteria aimed to keep communities together and to prohibit partisan gerrymandering. It also contains expanded community outreach and public hearing requirements and timelines, which more closely track the State redistricting schedule.

Certain legally required criteria must be observed when redrawing districts:

- Each City Council district shall contain a nearly equal population;
- A districting plan shall be drawn in a manner that complies with the Federal Voting Rights Act and the Equal Protection Clause of the U.S. Constitution; and
- City Council districts shall not be drawn with race as the predominate factor.

Additionally, the Fair Maps Act now requires the City Council to adopt district boundaries using specific criteria as set forth in the following order of priority:

1. To the extent practicable, city council districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.
2. To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A "community of interest" is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest do not include

- relationships with political parties, incumbents or political candidates.
3. City Council district boundaries should be easily identifiable and understandable by residents. To the extent practicable, city council districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the city.
 4. To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, city council districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

State law does not allow city council district boundaries to be drawn for the purpose of favoring or discriminating against a political party.

Requirements to redistrict under the Fair Maps Act stipulate that following each federal decennial census, and using that census as a basis, the City Council must adopt boundaries for all City Council districts so that the districts shall be substantially equal in population as required by the U.S. Constitution. The City Council shall adopt boundaries that comply with the U.S. Constitution, the California Constitution, and the Federal Voting Rights Act of 1965.

The Fair Maps Act also specifies deadlines for the adoption of new boundaries by the governing body and standardizes redistricting procedures and requirements for counties and cities, including imposing new public hearing, outreach, notice and transparency requirements. The Fair Maps Act requires the governing body to take specified steps to encourage the residents of the local jurisdiction to participate in the redistricting process. Cities are required to hold at least four hearings, including at least one hearing or workshop on a weekend or after 6 p.m. on a weekday. Cities are additionally required to provide live translations of hearings – if requested 72 hours in advance – into languages other than English. In addition, the City Council must engage in other specified outreach requirements.

In lieu of holding the public hearings itself, City Council is authorized to establish a redistricting commission to hold the required public hearings. California Elections Code Section 23001 to 23003 states a jurisdiction may establish by resolution, ordinance, an independent, hybrid or an advisory redistricting commission composed of residents of the local jurisdiction.

The establishment of an IRC would require empowering that body to adopt the district boundaries for the City. Pursuant to Elections Code 23003, the City Council may prescribe the manner in which members of the IRC are appointed to the commission, provided that the jurisdiction uses an application process open to all eligible residents and provided that the commissioners are not directly appointed by the City Council or any other elected official of the local jurisdiction.

Analysis

In response to City Council's direction provided at the June 29, 2021, City Council study session, the city attorney's office has prepared a resolution that, if adopted, would establish an IRC.

The proposed resolution contains the following provisions:

Establishment

The resolution establishes the Menlo Park IRC. The IRC is tasked with adopting a redistricting report and final map establishing new city council district boundaries within prescribed timeframes. The City Council shall have no role in developing or adopting a redistricting report or a final map. Once established, the City Council divests itself of all oversight and authority over the IRC, which operates independently of the City Council. The proposed resolution appoints the city clerk as being largely responsible for appointment of the Commissioners as State law prohibits the City Council from appointing IRC Commissioners.

Composition

The Commission shall be comprised of seven (7) commissioners (“Commissioners”) and two (2) alternate commissioners (“Alternates.”) Alternates may fully participate in Commission deliberations but may not vote and may not be counted toward the establishment of a quorum. Alternates are subject to the same qualifications, restrictions, and standards of conduct as all other Commissioners. At its first meeting, the Commission shall select one (1) Commissioner to serve as chair and one (1) Commissioner to serve as vice chair. The Commission may designate other officers from its membership and may establish subcommittees and ad hoc committees. Subcommittees and ad hoc committees shall report on their actions at the next meeting of the Commission.

Qualifications and restrictions

Under the proposed IRC Resolution, applicants shall comply with the eligibility requirements in California Elections Code Sections 23001 and 23002(b), (c) and (d) and shall meet all of the following minimum qualifications at the time an application is filed:

1. Be at least eighteen (18) years of age on the date of application; and
2. Be a resident of the City for at least three (3) years immediately preceding the date of application.

A person shall not be appointed to serve on the Commission if any of the following applies:

1. If the person or any family member of the person has been elected or appointed to, or been a candidate for, City Council in the eight (8) years preceding the person's application.
2. If the person or the person's family member has done any of the following in the four (4) years preceding the person's application:
 - a. Served as an officer of, employee of or paid political consultant to, a campaign committee or a candidate for City Council.
 - b. Served as a staff member or a political consultant to, or who has contracted with, a currently serving City Councilmember or San Mateo County supervisor.
 - c. Contributed five hundred dollars (\$500) or more in a year to any seated city councilmember or current candidate for City Council.
3. If the person or the person's family member served as an officer of, employee of or paid consultant to, a political party or as an elected or appointed member of a political party central committee in the eight (8) years preceding the person's application.
4. If the person currently serves as a staff member or a political consultant to an elected official holding a partisan office.
5. If the person is a paid employee of the City or a current City Councilmember.
6. If the person is a paid employee of any redistricting contractor or consultant.
7. Any other restrictions identified in Elections Code section 23003 applicable to independent redistricting commissions, as may be amended from time to time.

In addition to an application, all applicants shall file a Statement of Economic Interests (Form 700) with the city clerk.

Selection

The proposed IRC resolution provides that the city clerk is largely responsible for managing the selection of the Commissioners. The city clerk shall in each year ending in the number zero initiate and widely publicize application process, open to all City residents who meet the requirements listed above in a manner that promotes a qualified commissioner applicant pool that is large and reflective of the diversity of the City. The city clerk is also responsible for review of each submitted application for completeness. If the city clerk deems an application to be incomplete, the city clerk shall notify the applicant of such and provide the

applicant an opportunity to complete the application. The submittal deadline shall not be extended to allow correction of incomplete applications.

The city clerk shall, at a public meeting, randomly select three (3) names from the pool of qualified applicants. Those three (3) shall serve as Commissioners and shall, by majority vote at a separate noticed public hearing, select the final four (4) Commissioners and two (2) Alternates from the remaining pool of qualified applicants. The initial three (3) Commissioners should select applicants that are best qualified to carry out the Commission's duties under this Section and that, as a group, reasonably reflect the diversity of the City, provided that no quotas, formulas, or ratios may be applied for this purpose.

Restrictions after appointment

The proposed IRC resolution provides that if appointed to the Commission, a Commissioner or Alternate shall not do any of the following:

1. While serving on the Commission, endorse, work for, volunteer for, or make a campaign contribution to, a candidate for City Council.
2. Be a candidate for City Council if less than five (5) years has elapsed since the date of the member's appointment to the Commission.
3. For four (4) years commencing with the date of his or her appointment to the Commission:
 - a. Accept employment as a staff member of, or political consultant to, a City Councilmember or candidate for City Council.
 - b. Receive a noncompetitively bid contract with the City.
 - c. For two (2) years commencing with the date of his or her appointment to the Commission, accept an appointment to the City Council.

Redistricting criteria

The proposed IRC resolution states that the Commission shall draw its final map so that:

1. Following each decennial federal census, and using that census as a basis, shall, by resolution, adopt boundaries for any or all of the City Council districts of the City so that the City Council districts shall be substantially equal in population as required by the United States Constitution.
2. Population equality shall be based on the total population of residents of the City as determined by that census.
3. The City Council district boundaries must comply with the United States Constitution, the California Constitution, and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.)
4. The Commission shall adopt district boundaries using the following criteria as set forth in the following order of priority in accordance with California Elections Code section 21601.
5. The Commission shall not adopt City Council district boundaries for the purpose of favoring or discriminating against a political party.

Public hearings

The Commission shall conduct a minimum of two (2) public hearings before the drawing of any draft map or maps of the proposed City Council boundaries and a minimum of (2) public hearings after drawing of any draft map or maps of the proposed City Council boundaries. At least one of these public hearings or workshops must be held on a Saturday, on a Sunday or after 6 p.m. on a weekday Monday through Friday. Nothing stated herein shall prevent the Commission from conducting public hearings beyond the minimum number of public hearings stated herein.

Administration

The IRC will be subject to both the Brown Act, the California Public Records Act, and the Political Reform Act. The proposed resolution would direct a budget be established for the IRC and that City staff, such as the city attorney's office, assist the IRC in carrying out their task.

The City Council will need to take future action to repeal or amend certain provisions of the Menlo Park Municipal Code to conform to the establishment of the IRC as well as the City's conflict of interest code. For example, the City Council will need to repeal section 2.04.220, which identifies the district map adopted by the City Council through Ordinance No. 1044, and specify that the district boundaries shall be those adopted by the IRC through a resolution. Additionally, amendments will need to be made to section 2.04.200 to clarify that the IRC is independent, and not an advisory board and/or commission. Given the time constraints relating to the redistricting process, staff will focus first on establishing the IRC and will bring those necessary conforming amendments to the City Council after the IRC is formed.

As an independent body, the IRC will need to conduct its own meetings, which will require the establishment of meeting procedures and staff assistance to conduct the meetings.

Impact on City Resources

City Council's 2021-22 adopted budget includes \$100,000 to support the redistricting effort. The proposed resolution to establish the IRC would also require that the IRC receive City funding in order to conduct its redistricting activity, which may include hiring consultants for the redistricting process, reimbursing Commissioners for incidentals and paying for other costs associated with the redistricting effort. Staff time will also be utilized to assist the IRC by providing support from the city attorney's office and city manager's office.

City staff believes that the IRC will need the following in terms of City resources:

- City attorney's office legal support
- City manager's office staff support, including city clerk, public engagement and communication
- Administrative support (finance and information technology)

IRC members would also receive an official City of Menlo Park email address and individual zoom accounts to conduct all official City business.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it is an organizational structure change that will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Resolution No. 6659

Report prepared by:

Nira Doherty, City Attorney

Denise S. Bazzano, Assistant City Attorney

Judi A. Herren, City Clerk

RESOLUTION NO. 6659**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
CREATING AN INDEPENDENT REDISTRICTING COMMISSION**

WHEREAS, the United States Constitution, as interpreted by the courts, prohibits violations of equal protection, including intentional dilution or abridgement of the right to vote of protected classes, and racial gerrymandering; and

WHEREAS, on October 4, 2017, with the adoption of Ordinance No. 1044, the City Council established five electoral districts for the election of City Councilmembers; and

WHEREAS, Ordinance No. 1044 established five districts from which City Councilmembers would be elected with City Council District Nos. 1, 2 and 4 beginning at the general municipal election in November 2018, and every four (4) years thereafter, and City Council District Nos. 3 and 5 beginning at the general municipal election in November 2020, and every four (4) years thereafter; and

WHEREAS, California Elections Code section 21600 *et seq.*, requires, among other things, that following each decennial federal census, and using that census as a basis, the city council by ordinance or resolution, adopt boundaries for any or all of the city council districts of the city so that the city council districts shall be substantially equal in population as required by the United States Constitution (“redistricting”); and

WHEREAS, California Elections Code section 23000 *et seq.*, governs the formation of local independent redistricting commissions; and

WHEREAS, California Elections Code section 23001 provides that a local jurisdiction may establish by resolution, ordinance, or charter amendment an independent redistricting commission, a hybrid redistricting commission, or an advisory redistricting commission composed of residents of the local jurisdiction to change the legislative body’s district boundaries or to recommend to the legislative body changes to those district boundaries; and

WHEREAS, establishing a redistricting process that is open and transparent and allows public comment on the drawing of City Council district boundaries, ensures that the district boundaries are drawn in accordance with state and federal law, and ensures that the redistricting process is conducted with integrity, fairness, and without personal or political considerations, the City Council hereby desires to establish an Independent Redistricting Commission; and

WHEREAS, the City Council has determined that it is in the City of Menlo Park’s interest to establish and appoint a seven (7) member Independent Redistricting Commission, to redraw district boundary lines, as authorized by state and federal law.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Menlo Park finds the foregoing recitals are true and correct, and they are hereby incorporated by reference into this Resolution.

BE IT FURTHER RESOLVED that the City Council of the City of Menlo Park hereby resolves as follows:

1. For the purposes of this Resolution, the following words and phrases shall have the meanings respectively ascribed to them below:
 - a. "Commission" means the City of Menlo Park Independent Redistricting Commission.
 - b. "Consultant" means a person, whether or not compensated, retained to advise the Commission or a Commissioner regarding any aspect of the redistricting process. Consultant excludes outside legal counsel.
 - c. "Family member" means a spouse, parent, sibling, child, or in-law.
 - d. "Federal decennial census" means the national decennial census taken under the direction of the United States Congress at the beginning of each decade.
2. That the Menlo Park Independent Redistricting Commission ("Commission") is hereby established. The exclusive authority to redraw City Council district boundaries shall be vested in the Commission, until such time as the City Council rescinds this Resolution. Accordingly, the City Council shall have no role in developing a redistricting report or map.
3. The Commission shall:
 - a. Be independent of City Council control;
 - b. Conduct an open and transparent redistricting process, enabling full public consideration of and comment on the drawing of City Council district boundaries;
 - c. Comply with the provisions of state and federal law; and
 - d. Conduct itself with integrity and fairness.
4. Duties. The Commission shall, following each decennial federal census, adopt a final map establishing City Council district boundaries and a final report explaining its decision in accordance with this Resolution, within the redistricting deadlines as established by state law. These district boundaries shall be used for the establishment of City Council electoral districts as set forth in Menlo Park Municipal Code section 2.04.210 and 2.04.220.
5. The Commission may adopt for itself rules of procedure that do not conflict with state or federal law or this Resolution.
6. Composition. The Commission shall be comprised of seven (7) commissioners ("Commissioners") and two (2) alternate commissioners ("Alternates"). Alternates may fully participate in Commission deliberations but may not vote and may not be counted toward the establishment of a quorum. Alternates are subject to the same qualifications, restrictions, and standards of conduct as all other Commissioners. At its first meeting, the Commission shall select one (1) Commissioner to serve as Chair and one (1) Commissioner to serve as Vice Chair. The Commission may designate other officers from its membership and may establish subcommittees and ad hoc committees. Subcommittees and ad hoc committees shall report on their actions at the next meeting of the Commission.

7. Qualifications and restrictions.
 - a. Qualifications. Applicants shall comply with the eligibility requirements in California Elections Code Sections 23001 and 23002(b), (c) and (d) and shall meet all of the following minimum qualifications at the time an application is filed:
 - i. Be at least eighteen (18) years of age on the date of application; and
 - ii. Be a resident of the City for at least three (3) years immediately preceding the date of application.
 - b. A person shall not be appointed to serve on the Commission if any of the following applies:
 - i. If the person or any family member of the person has been elected or appointed to, or been a candidate for, City Council in the eight (8) years preceding the person's application.
 - ii. If the person or the person's family member has done any of the following in the four (4) years preceding the person's application:
 1. Served as an officer of, employee of, or paid political consultant to, a campaign committee or a candidate for City Council.
 2. Served as a staff member or a political consultant to, or who has contracted with, a currently serving City Councilmember or San Mateo County supervisor.
 3. Contributed five hundred dollars (\$500) or more in a year to any seated City Councilmember or current candidate for City Council.
 - iii. If the person or the person's family member served as an officer of, employee of, or paid consultant to, a political party or as an elected or appointed member of a political party central committee in the eight (8) years preceding the person's application.
 - iv. If the person currently serves as a staff member or a political consultant to an elected official holding a partisan office.
 - v. If the person is a paid employee of the City or a current City Councilmember.
 - vi. If the person is a paid employee of any redistricting contractor or consultant.
 - vii. Any other restrictions identified in Elections Code section 23003 applicable to Independent Redistricting Commissions, as may be amended from time to time.
 - c. All applicants shall attest to compliance with all of the criteria in subsections 7(a) and (b).
 - d. In addition to an application, all applicants shall file a Statement of Economic Interests (Form 700) with the City clerk.
 - e. If an applicant to the Commission currently serves on another City of Menlo Park board or commission, he or she may serve on the Commission if selected, as long as he or she agrees not to serve on another board or commission during his or her term of office on the Commission. Once sworn into office on the Commission, the Commissioner shall be deemed to have forfeited their previous board or commission position.
 - f. Commissioners shall serve without compensation.
8. Selection.
 - a. The City clerk shall in each year ending in the number zero initiate and widely publicize an application process, open to all City residents who meet the requirements listed in section 7 above in a manner that promotes a qualified Commissioner applicant pool that is large and reflective of the diversity of the City.

- b. Commissioners shall be selected through an open application process.
- c. The City clerk shall initiate and widely publicize the Commission application process. To promote a large and diverse applicant pool, the City clerk shall seek assistance from a broad range of community-based organizations to encourage qualified persons to apply. The application period shall be open for at least one month and shall specify a closing date for submission of all applications.
- d. The City clerk shall review each submitted application for completeness. If the City clerk deems an application to be incomplete, the City clerk shall notify the applicant of such and provide the applicant an opportunity to complete the application. The submittal deadline shall not be extended to allow correction of incomplete applications.
- e. Upon close of the application submittal period, the City clerk shall review all applications and remove incomplete or untimely applications and remove individuals who do not meet the qualification criteria listed in Sections 7(a) and (b) from among the Commission applicants.
- f. If the City clerk does not receive sufficient applications to meet the requisite number of Commissioner positions and Alternate positions upon the close of the application submittal period, the City clerk may extend the application deadline and continue to seek assistance from a broad range of community-based organizations to encourage qualified persons to apply until such time as sufficient applications are received.
- g. The City clerk shall, at a public meeting, randomly select three (3) names from the pool of qualified applicants. Those three (3) shall serve as Commissioners and shall, by majority vote at a separate noticed public hearing, select the final four (4) Commissioners and two (2) Alternates from the remaining pool of qualified applicants.
- h. The initial three (3) Commissioners should select applicants that are best qualified to carry out the Commission's duties under this Section and that, as a group, reasonably reflect the diversity of the City, provided that no quotas, formulas, or ratios may be applied for this purpose. The initial three (3) Commissioners shall select the additional four (4) Commissioners such that the Commission shall not be comprised entirely of Commissioners who are registered to vote with the same political party preference.
- i. In evaluating applications, the initial three (3) Commissioners shall consider each applicant's:
 - i. Competency to carry out the responsibilities of the Commission;
 - ii. Ability to serve with impartiality in a nonpartisan role;
 - iii. Familiarity with the City's neighborhoods and communities;
 - iv. Appreciation for the diverse demographics and geography of the City.
 - v. Apparent ability to work cooperatively with other Commissioners;
 - vi. Relevant civic and/or volunteer activities.
- j. The Commission shall be fully established no later than December 1, 2021, and thereafter no later than December 1 in each year ending in the number zero, unless otherwise prescribed by the City Council.
- k. If a Commissioner resigns or is removed from the Commission, the next Alternate in line shall fill the vacancy as a voting Commissioner.
- l. For purposes of this subsection, "diverse" means diversity of geography, race and ethnicity, gender, and age.

9. Appeal. There is no right of appeal to a determination by the Clerk or a Commissioner regarding the appointment process or appointment of a Commissioner.
10. Restrictions after appointment. If appointed to the Commission, A Commissioner or Alternate shall not do any of the following:
 - a. While serving on the Commission, endorse, work for, volunteer for, or make a campaign contribution to, a candidate for City Council.
 - b. Be a candidate for City Council if less than five (5) years has elapsed since the date of the member's appointment to the Commission.
 - c. For four (4) years commencing with the date of his or her appointment to the Commission:
 - i. Accept employment as a staff member of, or political consultant to, a City Councilmember or candidate for City Council.
 - ii. Receive a noncompetitively bid contract with the City.
 - iii. For two (2) years commencing with the date of his or her appointment to the Commission, accept an appointment to the City Council.
11. Removal. The Commission by a 2/3 vote may remove a Commissioner or Alternate for substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office, but only after providing the subject Commissioner or Alternate with written notice and an opportunity for response at a public Commission meeting.
12. Redistricting criteria.
 - a. The Commission shall do the following:
 - i. Following each decennial federal census, and using that census as a basis, shall, by resolution, adopt boundaries for any or all of the City Council districts of the City so that the City Council districts shall be substantially equal in population as required by the United States Constitution.
 1. Population equality shall be based on the total population of residents of the City as determined by that census.
 2. Notwithstanding paragraph (1), an incarcerated person as that term is used in Section 21003, shall not be counted as part of a city's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the City, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.
 - b. The City Council district boundaries must comply with the United States Constitution, the California Constitution, and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).
 - c. The Commission shall adopt district boundaries using the following criteria as set forth in the following order of priority in accordance with California Elections Code section 21601:
 - i. To the extent practicable, City Council districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.

- ii. To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A “community of interest” is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.
 - iii. City Council district boundaries should be easily identifiable and understandable by residents. To the extent practicable, City Council districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the City.
 - iv. To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, City Council districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.
- d. The Commission shall not adopt City Council district boundaries for the purpose of favoring or discriminating against a political party.

13. Adoption of redistricting report and map.

- a. The Commission shall conduct at least two (2) public hearings prior to the drawing of any draft map or maps of the proposed City Council boundaries.
- b. The Commission shall conduct at least three (3) public hearings after drawing of any draft map or maps of the proposed City Council boundaries.
- c. At least one public hearing or public workshop shall be held on a Saturday, on a Sunday, or after 6 p.m. on a weekday Monday through Friday.
- d. Public hearing buildings shall be accessible to persons with disabilities.
- e. The Commission shall, at a minimum, take the applicable steps identified in Elections Code section 21608 to encourage residents, including those in underrepresented communities and non-English speaking communities, to participate in the redistricting public review process.
- f. Prior to adoption of a final map, the Commission shall file a preliminary redistricting plan and draft map with the City clerk, along with a written statement of findings and reasons for proposed adoption, which shall include the criteria employed in the process and a full analysis and explanation of decisions made by the Commission. The City clerk shall publish the preliminary redistricting plan and draft map in accordance with Elections Code section 21608(d). After having heard comments from the public on the preliminary redistricting plan and draft map, the Commission shall adopt a final redistricting report and final map. A Commission-adopted final redistricting report and final map has the force and effect of law and shall be effective after it is filed with the City clerk and shall remain effective until the adoption of new district boundaries following the next federal decennial census. The City Council may not revise the district boundaries adopted by the Commission.
- g. The final redistricting report and final map shall be subject to referendum in the same manner as ordinances.

14. Administration.

- a. The City Council shall appropriate sufficient funds to support the work of the Commission, including funds necessary to recruit Commissioners and Alternates, meet

the operational needs of the Commission, conduct any community outreach to solicit broad public participation in the redistricting process, pay for City staff time associated with supporting the work of the Commission, hire any necessary consultants, and obtain any necessary redistricting tools or resources.

- b. The City Manager, City Clerk, and City Attorney shall assign sufficient staff to support the Commission. The City clerk or the City clerk's designee shall serve as secretary to the Commission. The City Attorney or the City Attorney's designee shall serve as legal counsel to the Commission.
- c. Subject to funds appropriated to the Commission, the Commission may retain consultants following the City's standard procurement processes and the City Council shall approve any applicable consultant agreements. The Commission shall retain the sole authority for determining the selection criteria for consultants.
- d. The Commission is subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and the Political Reform Act (Chapter 7 (commencing with Section 87100) of Title 9).

15. Dissolution.

- a. The Commission shall cease operations and dissolve on the ninety-first day following approval of a final redistricting report and final map, unless a referendum against the final redistricting report and final map has qualified or a lawsuit has been filed to enjoin or invalidate the final redistricting report and final map, in which case the Commission shall continue operations until a final redistricting report and final map is implemented by the City. Notwithstanding the foregoing, if a lawsuit to enjoin or invalidate a final redistricting report and final map is filed later than the ninety-first day following approval of a final redistricting report and final map, the Commission shall automatically revive and continue operations during the pendency of such lawsuit and until a final redistricting report and final map is implemented by the City.

BE IT FURTHER RESOLVED, if any term, provision, or portion of this Resolution is held by a court to be invalid, void or unenforceable, the remaining provisions of this Resolution shall continue in full force and effect unless amended or modified or repealed by the City.

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I, Judi A. Herren, City clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the thirty-first day of August, 2021, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this thirty-first day of August, 2021.

Judi A. Herren, City clerk

Agenda item I1
Julie Shanson, resident

Dear Mayor Combs and Honorable Council Members Nash, Wolosin, Taylor and Mueller,

I appreciate the spirit of inclusion that drives the electoral process here in Menlo Park, and I am eager to see you adopt the proposed Independent Redistricting Commission.

While we are a small city, we have areas with more dense population, with more commercial and retail and office space and with better access to public transportation and walkable amenities. An independent redistricting commission is imperative to ensure all areas of the city are represented fairly.

It is an important and often unsung effort to work for fellow residents in elected and appointed roles, as you do here on the council and as our many commissioners do for city commissions. Let me sing it here - thank you for all you do.

Tonight, please ensure Menlo Park continues to be in compliance with state law and remains a city that acts with integrity to ensure fair representation.

Please approve the creation of the Menlo Park Independent Redistricting Commission.

Agenda item 11
Pam D Jones, resident

Hello Mayor Combs, Vice-Mayor Nash, Councilmembers Taylor, Wolosin and Mueller, City Attorney Doherty, Assistant City Attorney Bazzano, and City Clerk Herren,

Thank-you for the report and recommended resolution for an independent redistricting commission. This is a powerful statement by our city to elevate and strengthen our representative democracy.

Of course, I have several suggestions that may increase resident participation:

1. Place a link to the Redistricting page on the City's home page for easy public access.
2. Publicize residents can request 72 hours in advance, real-time translation of hearings. This may encourage more people who are non-English as a primary language to attend hearings as they may feel welcomed to the process.
3. Increase public hearings to at least one in each district prior to the drawing of any map or maps, and
4. To the extent possible, include one resident from each district in the composition of the commission.

Again, thank-you.

Respectfully,
Pam D. Jones, Menlo Park Resident



HIGHLIGHTS OF INDEPENDENT REDISTRICTING COMMISSION (IRC)

- IRC is tasked with adopting a redistricting report and final map
 - City Council has no role in developing/adopting redistricting report or final map
 - City Council divests itself of all oversight and authority over the IRC
 - IRC operates independently of the City Council
- IRC comprised of 7 commissioners and 2 alternates
 - City clerk to randomly select first 3 members
 - Those 3, by majority vote, select 4 commissioners and 2 alternates
- IRC members must be at least 18 and a resident of Menlo park for no less than 3 years
- IRC members cannot:
 - serve on City Council for a minimum 5 years
 - endorse, work for, volunteer for, or make a campaign contribution to a City Councilmember or candidate for City Council for a minimum of 4 years
 - Receive a noncompetitively bid contract with the City for a minimum of 4 years
- IRC must hold a minimum of 4 public hearings (2 pre and 2 post maps)
 - IRC is not limited by the required minimum public hearings/meetings
- IRC is subject to:
 - Brown Act
 - Public Records Act
 - Political Reform Act



STAFF REPORT

City Council
Meeting Date: 8/31/2021
Staff Report Number: 21-159-CC

Informational Item: City Council agenda topics: September 2021

Recommendation

The purpose of this informational item is to provide the City Council and members of the public access to the anticipated agenda items that will be presented to the City Council. The mayor and city manager set the City Council agenda so there is no action required of the City Council as a result of this informational item.

Policy Issues

In accordance with the City Council procedures manual, the mayor and city manager set the agenda for City Council meetings.

Analysis

In an effort to provide greater access to the City Council's future agenda items, staff has compiled a listing of anticipated agenda items, Attachment A, through September 21, 2021. The topics are arranged by department to help identify the work group most impacted by the agenda item.

Specific dates are not provided in the attachment due to a number of factors that influence the City Council agenda preparation process. In their agenda management, the mayor and city manager strive to compile an agenda that is most responsive to the City Council's adopted priorities and work plan while also balancing the business needs of the organization. Certain agenda items, such as appeals or State mandated reporting, must be scheduled by a certain date to ensure compliance. In addition, the meeting agendas are managed to allow the greatest opportunity for public input while also allowing the meeting to conclude around 11 p.m. Every effort is made to avoid scheduling two matters that may be contentious to allow the City Council sufficient time to fully discuss the matter before the City Council.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

A. City Council agenda topics: September 2021

Report prepared by:
Judi A. Herren, City Clerk

Tentative City Council Agenda

#	Title	Department	Item type	City Council action
1	Financial advisory services and bond counsel services for a Measure T bond issuance	ASD	Regular	Contract award or amend
2	Ratify successor MOU - POA	ASD	Regular	Adopt resolution
3	Appeal provision revision-Ordinance first reading	CA	Public Hearing	Approve
4	Samaritan House agreement amendment	CDD	Consent	Approve
5	2021 priorities and work plan quarterly report as of June 30	CMO	Consent	Receive and file
6	Adopt Community Amenity Implementing Regulations and Updated Amenities List	CMO	Regular	Adopt resolution
7	Menlo Park Sister Cities Association funding request (presentation?)	CMO	Consent	Approve
8	Quarterly personnel update (Jul-Sep)	CMO	Consent	Receive and file
9	SB1383-Short-lived climate pollutants: methane emissions: dairy and livestock: organic waste: landfills	CMO	Study Session	No action
10	Gymnastics reactivation analysis	LCS	Study Session	Direction to staff
11	Library Commission work plan	LCS	Presentation	No action
12	Award contract for 2021 Water Main Replacement Haven Ave. Fire Flow Improvements	PW	Consent	Approve
13	Complete Streets Commission work plan approval	PW	Regular	Approve
14	FEMA BRIC grant study session	PW	Study Session	Direction to staff
15	Permanent installation of Belle Haven Traffic Calming Plan improvements	PW	Regular	Approve
16	Transportation Management Association feasibility study approval	PW	Regular	Approve
17	West Bay Sanitary - MOU for Recycled Water	PW	Regular	Approve
18	Prioritize issuance of Measure T bonds	PW, ASD	Consent	Approve
19	Menlo Portal	PW, CDD	Pubic Hearing	Approve
20	Records destruction	VARIOUS	Consent	Adopt resolution
21	Rescind the portion of Emergency Order No. 2 related to Arrillaga Family Gymnasium	VARIOUS	Consent	Adopt resolution



STAFF REPORT

City Council Meeting Date: 8/31/2021
Staff Report Number: 21-160-CC

Informational Item: Request for information on the former redevelopment agency, also known as the Community Development Agency

Recommendation

This report transmits information requested by City Council at their August 17 meeting. No action is recommended.

Policy Issues

There are no policy issues related to this informational item.

Background

City Council requested that City staff provide additional information regarding the former redevelopment agency at their August 17 meeting. Of particular interest were the various terms used by City staff and city documents about the former Redevelopment Agency.

Analysis

City Council requested a summary of various documents and names associated with Menlo Park's redevelopment agency.

Key terms

- Community Development Agency is the official name of the City of Menlo Park's agency formed under the California Community Redevelopment Act of 1945. The name used in all official documents pertaining to the Community Development Plan of the City of Menlo Park and is synonymous with Menlo Park's redevelopment agency.
- Redevelopment Agency is the common term used by local and state officials when referencing entities created under the California Community Redevelopment Act of 1945. As stated in Attachment A, the Community Redevelopment Act provided local governments with tools to address urban problems such as blight, degraded buildings, and a lack of affordable housing. Redevelopment agencies develop a plan and provide the initial funding to encourage and attract private investment that otherwise wouldn't occur. Redevelopment activities create jobs and expand business opportunities, provide housing for families most in need, help reduce crime, improve infrastructure and public works, and cleanup of environmentally threatened and rundown areas. Redevelopment agencies are comprised of plan areas to focus the agency's efforts and define the boundaries of the financing mechanisms authorized under state law for redevelopment agencies.
- Las Pulgas Community Development Plan Area was established in 1981 by the Menlo Park City Council

and Attachment D specifies the purpose and geographic area of a plan area within the redevelopment agency's boundaries.

- Successor Agency is the local agency responsible for carrying out the dissolution of redevelopment agencies under their purview. All administration of the former redevelopment agency falls to the successor agency as a fiduciary of the assets and liabilities held by the redevelopment agency upon its dissolution. The City of Menlo Park is the fiduciary of liabilities, debt service, incurred by the former Community Development Agency.
- Menlo Park Community Development Agency Oversight Board existed to ensure that successor agency fulfilled their fiduciary responsibilities to dissolve the former redevelopment agency. The Oversight Board is comprised of representatives from taxing agencies financially impacted by the creation of the redevelopment agency. The Oversight Board's responsibility transferred to the San Mateo County Countywide Oversight Board to oversee the final wind-down of redevelopment agencies in the County.
- San Mateo County Countywide Oversight Board was established effective July 1, 2018, in accordance with Health and Safety Code § 34179(j.) The board is responsible for providing direction and oversight to the Successor Agencies as they wind-down the affairs of their former redevelopment agencies. There are thirteen (13) Successor Agencies in San Mateo County: Belmont, Brisbane, Daly City, East Palo Alto, Foster City, Menlo Park, Millbrae, Pacifica, Redwood City, San Bruno, San Carlos, San Mateo, South San Francisco.

Reference documents

- Attachment A transmits a "The History of Redevelopment Agencies in California and in Menlo Park" prepared by City staff.
- Attachment B transmits a slide deck overview of Menlo Park's Redevelopment Area.
- Attachment C transmits a 2012-13 report on Unwinding Redevelopment issued by the State of California's Legislative Analyst's Office, the California Legislature's nonpartisan fiscal and policy adviser.
- Attachment D transmits Menlo Park Ordinance No. 670 establishing the Las Pulgas Community Development Area.
- Attachment E transmits Staff Report No. 15-001-OB seeking oversight board approval to refund (refinance) 2006 debt issued to improve the Plan Area.
- Attachment F transmits Staff Report No. 18-001-OB seeking Oversight Board's approval to issue the last and final Recognized Obligations Payment Schedule (ROPS) before consolidating with the Countywide oversight board. The action authorizes debt service payments through 2029 and administrative cost reimbursement to the City of Menlo Park's General Fund. City of Menlo Park is eligible for administration cost reimbursements of up to \$250,000 per year. Upon review of the administrative needs for the duration of the outstanding debt from the 2015 refunding, City staff report 18-001-OB Attachment B details a request for up to \$60,000 per year. The City only seeks reimbursement for actual costs incurred and may not exceed \$60,000 per year.
- Attachment G transmits the hyperlink to the San Mateo County Countywide Oversight Board where all meeting agendas and agenda packets since the board's formation.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Hyperlink – The History of RDAs in California and in Menlo Park:
menlopark.org/DocumentCenter/View/756/The-History-of-RDAs-in-California-and-in-Menlo-Park
note: hyperlinks are broken
- B. Hyperlink – Slide presentation: menlopark.org/DocumentCenter/View/741/RDA-Highlights?bidId=
- C. Hyperlink – Legislative Analyst's Office 2012-13 report "Unwinding Redevelopment":
lao.ca.gov/analysis/2012/general_govt/unwinding-redevelopment-021712.aspx
- D. Hyperlink – Menlo Park Ordinance No. 670 menlopark.org/DocumentCenter/View/752/Community-Development-Agency-First-Project-Area-Plan?bidId=
- E. Hyperlink – Staff Report No. 15-001-OB: menlopark.org/DocumentCenter/View/7778/OB---Refunding-Bonds-Staff-Report?bidId=
- F. Hyperlink – Staff Report No. 18-001-OB: menlopark.org/DocumentCenter/View/16557/D2---Last-and-Final-ROPS-20180123?bidId=
- G. Hyperlink – San Mateo County Countywide Oversight Board – July 31, 2018:
controller.smcgov.org/sites/controller.smcgov.org/files/documents/files/Revised%20-%207-31-18%20Agenda%20Packet.pdf

Report prepared by:
Nick Pegueros, Assistant City Manager



STAFF REPORT

City Council
Meeting Date: 8/31/2021
Staff Report Number: 21-161-CC

Informational Item: Update on housing element update community engagement and outreach efforts

Recommendation

The purpose of this informational item is to provide the City Council and members of the public an update on the housing element community engagement and outreach efforts. This is an informational item and does not require City Council action.

Policy Issues

State Housing Law requires that jurisdictions throughout California adequately plan to meet the housing needs of everyone within their community and future residents, by regularly updating their general plan's housing element. The Regional Housing Needs Allocation (RHNA) identifies the specific number of housing units at each income level category required to comply with State mandates. Additionally, the Affirmatively Furthering Fair Housing (AFFH) Act requires that all local public agencies facilitate deliberate action to explicitly address, combat, and relieve disparities resulting from past patterns of segregation to foster more inclusive communities.

As part of the housing element update, the city is also updating its safety element and preparing its first environmental justice element. The components of the housing element update will consider a number of land use, housing and environmental policies. The City will prepare an environmental impact report (EIR) to comply with the project's California Environmental Quality Act (CEQA) requirements. The purpose of an EIR is to identify potential environmental impacts related to the project.

Background

The housing element update is a City Council priority and the City began its efforts to update its housing element and safety element and prepare a new environmental justice element in early 2021, with the selection of the M-Group as the primary consultant to lead the City's effort. From the outset of this effort, the City Council has stressed the importance of community engagement, especially with underrepresented populations, and creating a process that is inclusive and intentional. To assist in achieving this goal, the City Council formed the Community Engagement and Outreach Committee (CEOC) April 27, 2021. At the City Council meeting May 25, 2021, the City Council appointed members to the CEOC after an application and selection process. There are currently 12 members and one vacant seat for a District 5 representative.

Since the formation of the CEOC in May, the Committee has conducted five meetings. CEOC agendas and meeting materials are located on the CEOC webpage (Attachment A) and links to the meeting videos are located by meeting date under the Project timeline (Attachment B) of the housing element project webpage (Attachment C.) In addition to their regular meetings, the CEOC formed two subcommittees. One

subcommittee focused attention on providing feedback for the citywide survey. The survey subcommittee met July 6, 2021 and July 21, 2021. The second subcommittee is focused on the process for the housing element update and the CEOC's involvement. The second subcommittee had an initial meeting without staff. The CEOC's input has been valuable in helping the project team refine our outreach and engagement efforts.

Analysis

The information below provides a summary update of the project team's completed and active outreach efforts. More information about our events and activities can be found on the Project timeline subpage of the housing element project webpage (Attachment B.)

Land use strategies study session with the Housing Commission

One focus of current information gathering efforts is to identify preferred land use strategies for the housing element in the context of addressing existing socio-economic and racial inequities. On August 4, 2021, the project team conducted a land use strategies study session with the Housing Commission. The staff report for this meeting is provided as Attachment D and a link to the meeting video is available on the Project timeline in Attachment B.) The Housing Commission reviewed the information and provided feedback on potential land use strategies to meet the City's RHNA for the 2023-2031 planning period. Several members of the public also provided comments. The purpose of this meeting was to acquire insight from the Housing Commission before presenting consolidated feedback to the City Council for direction. At this study session, several Commissioners strongly recommended that city-owned properties be considered as a land use strategy for potential housing developments. Location within the Downtown parking lots and use of parkland such as Sharon Park were noted. Members of the Housing Commission also referenced and supported actions recommended in an August 4, 2021 letter written by Housing Leadership Council (HLC), Public Advocates and Public Interest Law Project to conduct meaningful engagement, conduct an assessment of AFFH, and prioritization of public lands for affordable housing.

Community meetings

The project team has held three community meetings. The team recognizes that housing, especially in a regulatory context, is a complex and nuanced topic and structured the first two meetings to become progressively more detailed so that residents can find the topic more accessible for discussion. The list below provides a summary of each housing meeting. Recordings of the meetings as well as the presentation slides are available in Attachment B.

- Community meeting #1: Introduction to housing seminar: On July 1, 2021, the project team provided an Introduction to housing seminar. This community meeting provided general information to the community about housing element topics in addition to a brief introduction to the safety and environmental justice elements.
- Community meeting #2: Preliminary housing strategies meeting: On August 14, 2021, the project team presented preliminary land use strategies to the community. The presentation was similar to the presentation provided to the Housing Commission. The questions at the end of the presentation were adjusted for community member input. This community meeting was conducted with simulcast Spanish interpretation. The PowerPoint presentation is also available in Spanish, and available on the website.

Most recently, the project team conducted a third community meeting to further the conversation around

housing equity and introduce the topics of the safety element and environmental justice.

- Community meeting #3: Housing equity, safety and environmental justice: On August 26, 2021, the project team gave an overview of issues related to housing equity, safety and environmental justice. This community meeting was also conducted with simulcast Spanish interpretation. The PowerPoint presentation was also provided in Spanish.

Focus groups

The public engagement and outreach strategy includes a number of targeted focus group discussions. These meetings are designed to garner comments and enable the project team to understand local issues and concerns from those experiencing them firsthand. The targeted groups include housing organizations, housing service providers, renters, homeowners, businesses and housing developers. The list below summarizes current completed and active efforts.

- Renters Focus Group #1

On Tuesday, July 20, 2021, the project team hosted a focus group for renters of Menlo Park regarding the housing element update. Out of eight total confirmed participants, four renters attended the meeting. The goal of the focus group was to gain an understanding of housing challenges and opportunities in Menlo Park.

Some renters recently moved to Menlo Park for the first time while others had been away but recently moved back to the city. The renters have lived in Menlo Park from a range of 4 to 14 years in apartments, duplexes and below market rate (BMR) housing. Common concerns cited by the group included issues related to lack of on-street parking (or affordable on-site parking), traffic congestion and poor air quality. Additionally, zoning restrictions such as minimum lot size and setbacks, as well as the challenging/lengthy public review process for additions, remodels and new construction, were noted as constraints to the supply of housing.

A majority of the renters expressed interest in homeownership, however, they were experiencing difficulties finding housing opportunities in Menlo Park due to high costs for all income levels, including those with higher wages and more assets. Looking ahead, the renters desired for Menlo Park to have a wider array of housing options (rental and for-sale) suitable to all income levels and stages of life (e.g., students, single-person households, families with children, seniors.) The renters also emphasized diversity, walkability and beautiful tree-lined streets connected to nearby amenities and services as high priorities for Menlo Park.

- Homeowners Focus Group #1

On Thursday, July 22, 2021, the project team hosted a focus group for homeowners of Menlo Park regarding the housing element update. Out of 15 total confirmed participants, 11 homeowners attended the meeting. The goal of the focus group was to gain an understanding of housing challenges and opportunities in Menlo Park.

Homeownership duration in Menlo Park ranged from 15 years to over 59 years, as well as two multi-generational homeowners of 74 years. The focus group attendees generally acknowledged the past patterns of discrimination in housing policy and had questions for that topic to which the project team responded and provided reference resources. Challenges noted by the homeowners included the adequacy of open space and recreation opportunities to accommodate the growing population as well as

whether or not the City has enough resources to accommodate new housing needs. When discussing potential housing options such as accessory dwelling units (ADUs), duplexes and triplexes, several homeowners noted challenges/constraints resulting from zoning regulations (e.g., restrictive land uses, minimum lot sizes, required setbacks.) While a minority of the homeowners noted that they would not like other types of housing or services integrated into traditionally single-family residential neighborhoods, a majority of the homeowners noted higher density, mixed-use development as desirable, particularly in the downtown area, to foster a lively and robust community.

The project team conducted three additional focus group meetings the week of August 23 and are preparing summaries of those meetings. The renter and homeowner focus groups were conducted a second time to allow for greater participation given feedback that evening meetings could be more accessible. Unfortunately, the second meeting resulted in lower participation rates with one renter attendee and two homeowner attendees out of 39 invited participants who had previously expressed interest in participating in a focus group. Similarly, the project team invited a mix of affordable and market rate housing developers to join us in conversation about the housing element update. Of the 26 invitations, only three participated (two of which were from the same organization.)

- Renters Focus Group #2, August 23, 2021 (6-7:30 p.m.)
- Homeowners Focus Group #2, August 23, 2021 (6-7:30 p.m.)
- Housing Developers Focus Group, August 27, 2021 (1-2:30 p.m.)

The project team also invited 44 housing service providers and 72 local businesses to conduct respective focus group meetings to learn about issues that matter to them and receive input about the housing element update. Unfortunately, the project team was unable to conduct these group meetings as there were no responses to participate. The project team will regroup to review our approach to obtain feedback from these important groups.

Individual (and/or small group) interviews

The purpose of individual or small group interviews are to provide meetings that concentrate on groups such as seniors, veterans and people with disabilities. These meetings can be conducted on the phone, over video conference and in-person. These meetings are currently being scheduled to begin in early September.

Community partners

The project team is also reaching out to religious institutions in the City to invite them to participate in a small group meeting to hear their input on the housing element update and to share information about new State legislation (AB 1851) that allows faith organizations an opportunity to develop housing on existing parking spaces on their property. The discussion is scheduled for September 8. In addition, the project team is beginning to reach out other key community stakeholders/partners such as the school districts, Menlo Park Fire Protection District, and Cal Water. The city manager and the superintendent of the Menlo Park City School District met during the week of August 23. The superintendent expressed the School District wish to participate more extensively throughout the process.

Pop-up events

Pop-up events provide the project team an informal way to meet people, share information and garner input. The following are a list of completed and planned pop-up events.

- Downtown farmers market pop-up

On Sunday August 1, 2021, between 9 a.m. to 1 p.m., the project team hosted a pop-up booth at the Downtown farmers market. CEOC Members Feldman, Fennell, and Dao also participated in the pop-up. As people shopped for produce, they were drawn in by an interactive poster asking, “*What type of housing do you want to see in Menlo Park?*” where they had the opportunity to place dot stickers to show their preferences for different types of housing. Additionally, participants had access to information about the housing element update and developments in the planning and approval process along El Camino Real and the Downtown corridor.

About 120 people including, residents, workers, and visitors participated and engaged with the pop-up booth. Approximately 80 hardcopy surveys were distributed, accompanied by addressed/postage-paid envelopes for ease of return. About 60 people used their mobile devices to scan the QR code to access the survey and about 30 people returned completed hardcopy surveys directly to the pop-up booth.

- Belle Haven pop-up (at Mi Terra Linda Market)

On Saturday, August 7, 2021, between 10 a.m. to 2 p.m., the project team hosted a pop-up booth at the Mi Terra Linda grocery store located at 1209 Willow Road in Menlo Park. Approximately 80 hardcopy surveys (in Spanish) were distributed, accompanied by addressed/postage-paid envelopes for ease of return. Several people also used their mobile device to scan the QR code for the survey link.

- Other events

The project team will be conducting pop-up events at the Downtown Farmers Market and in Belle Haven (Mi Terra Linda, Soleska Market and Belle Haven Shopping Center) Sunday, August 29, 2021 between 9 a.m. to 1 p.m.

Community survey

The housing element update community survey is available in English and Spanish, online and hardcopy. Initially the survey period closed August 22, 2021, a duration of about one month. However, the survey has been extended to August 29, 2021. The survey is an opportunity to gain a better understanding of community values and priorities and to create a foundation for future conversations about possible solutions and policy changes, which will be discussed further at community meetings in the coming months. As of August 17, 2021, the online survey has been completed by approximately 200 participants. However only 5 percent are from residents of District 1, indicating a need for additional outreach efforts. In response to low participation rates from District 1 on the survey, the project team has deployed two electronic message boards in Belle Haven at Newbridge Street and Willow Road and Ivy Drive and Willow Road with messages in both English and Spanish, and a targeted email was sent to District 1 residents. In addition, the team will be present in the neighborhood Sunday, August 29, for a final push on the survey.

Additional outreach efforts Based upon feedback from the CEOC, the project team is also working on additional broad community outreach tools such as banners to be displayed in Downtown and Belle Haven (targeted early September) and a more robust online presence, including Facebook posts, Facebook ads and Nextdoor ads.

Project gallery

The project team prepared materials for project galleries at the Menlo Park Library and the Belle Haven Library. The project galleries are scheduled to be open at the end of August/early September. Project galleries are physical displays that allow people to walk through and understand the project without internet access. The galleries include resources, such as existing documents and elements, maps and informational posters and project schedule. People are also able to come and go as is convenient for them during the hours of operation. It is anticipated that the project galleries will be up for the length of the project.

Overall element progress reports

The following information provides status updates for all three elements undergoing analysis. While much of the documentation relies on the outreach and engagement efforts addressed above, the project team continues to diligently complete procedural steps that keep the City on track with the project scheduled completion in late 2022 to ensure meeting the State's adoption requirement of January 15, 2023.

Housing element progress

The housing needs assessment is nearly complete as most of the data has already been provided by the Association of Bay Area Governments and the Metropolitan Transportation Commission (ABAG/MTC.) The project team is also coordinating to finalize a draft of the review of the fifth cycle housing element. While the project team has advanced components of the housing element, finalized RHNA numbers from ABAG/MTC are not anticipated from ABAG/MTC until late 2021. Local jurisdictions had until early July to submit appeals to ABAG's draft RHNA allocations and identify any concerns. No jurisdiction in San Mateo County appealed the allocation; however, if other appeals are successful and ABAG adjusts their allocation, it is possible that the current number of units required in Menlo Park could increase. When planning for how to meet the RHNA needs, the State recommends an additional "buffer" of the housing allocation between 15-30 percent. The project team is currently analyzing housing needs at the draft RHNA amount provided to the City in May 2021, with an additional 30 percent buffer. This buffer is an important component of planning for housing because it supports case-by-case decision making on individual projects and ensures that an adequate supply of sites is provided throughout the entire planning period. The buffer is especially important in planning for lower-income RHNA and to ensure compliance with the "No Net Loss Law" (Government Code Section 65863.) The City can also create a buffer by projecting site capacity at less than the maximum density in order to allow for some reductions in density at the project level.

Environmental justice element progress

The first community meeting for environmental justice occurred August 26, 2021. This new environmental justice element is in the very early stages of development and the project team is collecting and analyzing data. The team will be evaluating CalEnviroScreen's four broad groups of environmental conditions indicators—exposures, environmental effects, sensitive populations and socioeconomic factors—to help inform plans for promoting public health, protection from environmental hazards, and enriching the quality of life for all Menlo Park residents. Preliminary analysis suggests that disadvantage communities (a term from Federal and State law) exists in the Belle Haven area. Based on feedback from the CEOC, the term "priority equity community" or a term other than 'disadvantaged communities' could potentially be used. The purpose of the environmental justice element is to address the unique or compounded health risks in equity priority communities within a jurisdiction. These measures could include, but are not limited to,

reducing pollution exposure, including the improvement of air quality, and the promotion of public facilities, food access, safe and sanitary homes, and physical activity.

Safety element progress

San Mateo County released a draft local hazard mitigation plan (LHMP) Update August 5, 2021, and accepted comments until August 23, 2021. Staff prepared a staff report on the plan for the August 17, 2021 City Council meeting (Attachment E.) The County is incorporating public comments will then send the plan to the Federal Emergency Management Agency (FEMA) and the Governor's Office of Emergency Services (Cal OES) for approval August 31, 2021. The City Council's authorization of the plan is tentatively targeted for November 2021 with final approval by the San Mateo County Board of Supervisors targeted for December 2021. Once the plan is approved, it will provide information for the City to update the safety element and address climate adaptation for compliance with State law.

Next steps

The project team is planning to conduct a community meeting tentatively scheduled for September 9, 2021, which invites the public to provide input on where the City should meet its housing allocation. Based upon the ConnectMenlo General Plan land use changes, the location of pipeline projects in District 1, and the requirement to address AFFH, much of the focus for additional housing sites will be located around the City and outside of District 1. After receiving public input, the project team will prepare three land use alternatives for the Planning Commission and Housing Commission to tentatively scheduled for October 2021. It is anticipated that the Planning Commission and Housing Commission will make a recommendation to the City Council on the preferred land use alternative that would form the basis for detailed analysis. The City Council review of this recommendation is tentatively scheduled for November 2021.

Environmental review

This City Council update item is not a project within the meaning of the CEQA Guidelines §§ 15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment. As part of the housing and safety element update and formation of a new environmental justice element process, an EIR will be prepared.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Hyperlink – Housing element CEOC webpage: menlopark.org/ceoc
- B. Hyperlink – Housing element project timeline webpage: menlopark.org/1838/Project-timeline
- C. Hyperlink – Housing element project webpage: menlopark.org/housingelement
- D. Hyperlink – August 4, 2021 Housing Commission staff report: menlopark.org/DocumentCenter/View/29271/D2-20220804_Housing-Element-update-review?bidId=
- E. Hyperlink – August 17, 2021 City Council staff report: menlopark.org/DocumentCenter/View/29396/N2-20210817-CC-Local-hazard-mitigation-plan-annex

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STAFF REPORT

City Council

Meeting Date:

8/31/2021

Staff Report Number:

21-162-CC

Informational Item:

Recreation scholarship pilot program update

Recommendation

An informational item to provide City Council with an update on the recreation scholarship program directed by City Council at their study session March 9, 2021. This is an informational item and does not require City Council action.

Policy Issues

The City Council's October 2019 adoption of the parks and recreation facilities master plan included the following goal:

GOAL 1. ONE MENLO PARK

Menlo Park has a high quality system of parks and recreation facilities. The City's parks, facilities, and events bring the community together as "One Menlo Park." As the City grows and evolves it must ensure that these parks and facilities meet the needs of all members of the Menlo Park community. The system should provide equitably distributed active and passive recreation opportunities which engage users, and which are accessible to residents of all ages and abilities, throughout the City.

1.1.4 Equitable Access: Activity and rental fees and program offerings should be comparable and balanced across the City. Implement a scholarship program to support access to recreation and sports facilities and programs to residents with limited financial means.

Background

At the City Council March 9, 2021 meeting, City Council directed staff to develop a pilot program for need-based recreation scholarships for residents of Menlo Park. The Parks and Recreation Commission on May 26, 2021 reviewed and unanimously recommended the recreation scholarship pilot program (Pilot Program) for implementation (Attachment A.)

Analysis

The purpose of this informational item is to provide City Council with an update on the upcoming recreation scholarship pilot program. As presented at City Council's March 9, 2021 meeting, in the absence of a citywide financial assistance or scholarship program, residents with a financial need have been limited to participating in a relatively small selection of subsidized classes at Onetta Harris Community Center for their recreational needs. Classes at the Arrillaga Family Recreation Center, Gymnastics Center and Gymnasium are not financially accessible to some residents.

The Pilot Program will provide low and moderate income residents a new scholarship option for recreation programs citywide, in the form of discounting recreation fee classes by 75 percent for income-eligible residents. Municipal recreation professional associations recommend that participants pay a nominal fee toward the activity to promote attendance; the Pilot Program will yield data that may be used for City Council to evaluate whether the nominal fee presents a barrier for low and moderate income residents and tweak the program fees, if desired.

Pilot Program-eligible residents may receive up to one discounted class or activity per activity guide cycle, with up to four activity guide cycles offered in a year, and with a maximum yearly scholarship of \$250 per individual or \$500 per family. Staff estimates that up to 100 qualifying scholarship applications could be approved during the 12-month pilot program.

Pilot program applications will be available at all City public facilities and may be mailed or dropped off at any city facility. The applications will also be available online and in Spanish. To demonstrate income eligibility, applicants are required to provide proof of eligibility based on:

- Household participation in subsidized utility programs (e.g., PG&E CARE or Menlo Park Municipal Water's reduced rate program)
- Menlo Park residents and their household who are enrolled at Belle Haven Child Development Center

Staff will review and approve applications in a timely manner, and estimates that the Pilot Program can be launched in conjunction with the Fall 2021 recreation season.

The pilot program will not extend to aquatics programming which is operated by third-party provider Menlo Swim and Sport (MS&S.) MS&S provides fee assistance to eligible participants via scholarships administered by the Beyond Barriers Athletic Foundation. In 2019, 271 youth participants (not exclusively Menlo Park residents) received free swim lessons at both Burgess and Belle Haven pools. The Beyond Barriers scholarship can also be applied toward Menlo Swim and Sport's summer camp and the lifeguard certification program.

Impact on City Resources

Staff estimates that up to 100 scholarship applications could be approved during the one-year pilot program, with a maximum yearly scholarship of \$250 per eligible individual or \$500 per eligible family. Staff estimates that gross revenue from recreation program user fees would potentially be reduced by up to \$50,000 over the course of the 12-month pilot period. Additionally, some indirect costs are incurred through staff time to accept, review and process the applications, which staff anticipates can be absorbed into existing operations.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment.

Public Notice

The Parks and Recreation Commission in a duly noticed public meeting on May 26, 2021 reviewed and unanimously recommended the Recreation Scholarships Pilot Program for implementation.

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Hyperlink – Parks and Recreation Commission Staff Report #21-011-PRC:
menlopark.org/DocumentCenter/View/28171/Staff-Report-LC-21-011_Recreation-Scholarship--Program

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