



**REGULAR MEETING AGENDA**

**Date:** 9/14/2021  
**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/publiccommentSeptember14](https://menlopark.org/publiccommentSeptember14) \*
  - 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](https://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](https://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](https://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.

**Closed 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. Closed Session**

Public Comment on these items will be taken before adjourning to Closed Session.

- C1. Closed session conference with labor negotiators pursuant to Government Code §54957.6 regarding labor negotiations with the American Federation of State, County, and Municipal Employees Local 829 (AFSCME) and Confidential employees; Service Employees International Union Local 521 (SEIU); Menlo Park Police Sergeants Association (PSA); Menlo Park Police Officers' Association (POA) and Confidential employees; unrepresented management; City Attorney and; City Manager

Attendees: City Manager Starla Jerome-Robinson, Assistant City Manager Nick Pegueros, City Attorney Nira F. Doherty, Legal Counsel Charles Sakai, Interim Human Resources Manager Kristen Strubbe

- C2. Closed session conference pursuant to Government Code §54957(b)(1) regarding public employee performance evaluation of the City Attorney
- C3. Closed session conference pursuant to Government Code §54957(b)(1) regarding public employee performance evaluation of the City Manager

**E. Adjournment**

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

**F. Call To Order**

**G. Roll Call**

**H. Report from Closed Session**

**I. Presentations and Proclamations**

- I1. Proclamation: Recognizing Ali and Bistro Vida Small Business of the Year ([Attachment](#))

- I2. Proclamation: Recognizing the Suburban Park Association ([Attachment](#))
- I3. Proclamation: Recognizing Linda Hubbard ([Attachment](#))
- I4. Presentation: City manager recruitment ([Presentation](#))

#### **J. Public Comment**

Under “Public Comment,” the public may address the City Council on any subject not listed on the agenda. Each speaker may address the City Council once under public comment for a limit of three minutes. Please clearly state your name and address or political jurisdiction in which you live. The City Council cannot act on items not listed on the agenda and, therefore, the City Council cannot respond to non-agenda issues brought up under public comment other than to provide general information.

#### **K. Consent Calendar**

- K1. Adopt Resolution No. 6664 accepting the revised joint exercise of powers agreement – San Mateo County Operational Area Emergency Services Organization ([Staff Report #21-174-CC](#))
- K2. Authorize the city manager to execute an agreement with Baker & Taylor for the purchasing and processing of library materials in an amount not to exceed \$90,000 ([Staff Report #21-175-CC](#))

#### **L. Public Hearing**

- L1. 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](#)) – **continued from August 31, 2021**

#### **Recess**

- L2. Consider an appeal of the Planning Commission certification of the final environmental impact report 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’s recommendation to approve a public utilities easement abandonment for the proposed Menlo Portal project with 335 multifamily dwelling units and an approximately 34,499-square-foot office space which includes approximately 1,600 square feet of non-office commercial space located at 115 Independence Drive and 104 and 110 Constitution Drive ([Staff Report #21-176-CC](#))

#### **M. Regular Business**

- M1. Adopt Resolution No. 6663 to approve permanent installation of the Belle Haven neighborhood traffic management plan ([Staff Report #21-173-CC](#))

**N. Informational Items**

N1. City Council agenda topics: September – October 12, 2021 ([Staff Report #21-171-CC](#))

N2. Personnel activity report as of July and August 2021 ([Staff Report #21-172-CC](#))

**O. City Manager's Report**

**P. City Councilmember Reports**

**Q. 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](mailto: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](http://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](http://menlopark.org/notifyme). Agendas and staff reports may also be obtained by contacting City Clerk at 650-330-6620. (Posted: 9/9/2021)

# Proclamation

## Recognizing Ali El Safy and Bistro Vida

**WHEREAS**, established in 1998 under the discerning eye of energetic proprietor Mr. Ali El Safy, Bistro Vida is a neighborhood restaurant inspired by the great Parisian bistro culture and traditions of French cooking; and

**WHEREAS**, Mr. El Safy, a Cairo native, lived in Paris before settling in the Bay Area; and

**WHEREAS**, Mr. El Safy's mission was to bring the "joie de vivre", comfort, and community of the City of Lights to Downtown Menlo Park; and

**WHEREAS**, the name "Vida" the Spanish word for life, was chosen as a toast to the enjoyment of life, love, and food; and

**WHEREAS**, Mr. El Safy has been a foundational figure in the Menlo Park business community; and

**WHEREAS**, Bistro Vida and Mr. El Safy were named by Senator Josh Becker as the 13th Senate District's Small Business of the Year 2021,

**WHEREAS**, on August 18, 2021 Senator Josh Becker said, "Bistro Vida and its owner Ali El Safy are standouts for recognition as the 13th Senate District's Small Business of Year. Community spirit is part of Bistro Vida's DNA. That's been clear since Ali opened its doors in 1998. Thanks to that unflagging spirit and Ali's leadership, Bistro Vida not only met the challenges of the pandemic, the restaurant and its owner also helped keep the vibrancy of Menlo Park's Downtown alive;" and

**WHEREAS**, Senator Josh Becker noted, for example, the parklet built outside Bistro Vida last year to make socially distanced al fresco dining possible is now part of a temporary community plaza, engaging several Santa Cruz Avenue businesses and stretching nearly the length of the block. People visiting the plaza, or simply passing by, can enjoy music by student bands that are showcased at the informal venue – another amenity credited to Mr. El Safy; and

**NOW THEREFORE, BE IT RESOLVED** that I, Drew Combs, Mayor of the City of Menlo Park, on behalf of the City Council and the City, do hereby recognize and gratefully acknowledge Mr. Ali El Safy and Bistro Vida both for being an excellent community partner and for being a beacon of hope during difficult times.



*Drew Combs*

Drew Combs, Mayor  
September 14, 2021

## Recognizing Suburban Park Association

**WHEREAS**, for more than seven decades the Suburban Park Association has played a foundational role in the Suburban Park neighborhood in bringing neighbors together, fostering a sense of a community, organizing community events, providing assistance to residents in need, spearheading neighborhood beautification projects and encouraging civic engagement, and

**WHEREAS**, the Suburban Park Association was established by a group of dedicated neighborhood volunteers in the late 1940s and as a result is one of the oldest continually operating neighborhood Associations in California, and

**WHEREAS**, the Association continues to the present day because of the commitment of time and resources by residents of the Suburban Park neighborhood, and

**WHEREAS**, the Association has played a central role not only in the preservation of the quality of life of Suburban Park residents but also in the critical moments in the neighborhood's evolution, and

**WHEREAS**, the Association played a central role in the eventual annexation of the neighborhood by Menlo Park, and

**WHEREAS**, the Association has spearheaded tree planting efforts over the years including the planting Liquid Ambers throughout the neighborhood and the planting of Monterey Pines on the east side of Hedge Road, and

**WHEREAS**, the Association spearheaded the original Spring trash clean-up day, which later spread to other communities in the county, and

**WHEREAS**, the Association's advocacy for the neighborhood has also included lobbying the city, county and other government entities, and

**WHEREAS**, these efforts have resulted in regular maintenance of the landscape area between Bay Road and Little Bay Road and the community being provided with bus shelter 'kits' which residents built and installed at the entrance to the neighborhood, and

**WHEREAS**, the Association organizes and supports more than a dozen family-oriented events each year, including a Holi Festival of Colors celebration, an Easter egg hunt, a neighborhood-wide garage sale, a community picnic in neighboring Flood Park, a Halloween parade, a chili cook off and a Thanksgiving morning turkey trot to name a few, and

**NOW THEREFORE, BE IT RESOLVED** that I, Drew Combs, Mayor of the City of Menlo Park, on behalf of the City Council and the City, do hereby recognize and gratefully acknowledge the Suburban Park Association for all of its efforts throughout the years in fostering a spirit of community engagement and neighborliness that serves as an example for the whole city.

DocuSigned by:

*Drew Combs*

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Drew Combs, Mayor  
September 14, 2021

## Recognizing Linda Hubbard

**WHEREAS**, Linda Hubbard is a beloved and treasured member of the Menlo Park community who, in many respects, has risen to the status of a community institution as an ever-present and studious chronicler of the community, and

**WHEREAS**, for the past 12 years, the primary forum Ms. Hubbard has used to chronicle and share hundreds of stories about the people, places, and events of Menlo Park, has been the InMenlo website, which she co-founded with her late husband Chris Gulker and Scott Loftesness in 2009, and

**WHEREAS**, Ms. Hubbard grew up in Menlo Park, having attended Hillview and Menlo-Atherton High School, returned to the community after attending UCLA and enjoying a successful career as a journalist in southern California which included stints at the Los Angeles Times and Modern Maturity magazine, and

**WHEREAS**, when Ms. Hubbard returned to Menlo Park, first getting involved in community journalism at the Peninsula Times Tribune before she and her InMenlo co-founders created a news outlet that would be "...a place for us to read what we've always wanted to know about our hometown -- stories about all of us and the events, places and highlights of living in Menlo Park", and

**WHEREAS**, Ms. Hubbard has held (and continues to hold) multiple roles at InMenlo including editor, reporter, assigning editor and occasional photographer, and

**WHEREAS**, the lives of residents of Menlo Park and surrounding communities have been enriched by being able to share their stories, read about what their neighbors are accomplishing, learn about events around town, and

**WHEREAS**, over the years, dozens of writers have contributed to InMenlo on a volunteer basis making it possible for Ms. Hubbard to showcase the accomplishments and challenges of the town's many residents and business people, as well as provide information about living in a pandemic, and

**WHEREAS**, Menlo Park and its residents have been the beneficiaries of Ms. Hubbard's commitment to providing a reliable, impartial and detailed news source during a period when many communities have experienced the demise of local news sources, and

**NOW THEREFORE, BE IT RESOLVED** that I, Drew Combs, Mayor of the City of Menlo Park, on behalf of the City Council and the City, do hereby recognize and gratefully acknowledge Linda Hubbard for her work documenting and sharing the stories of Menlo Park residents, for her professional achievements as a journalist and, more generally, for living a service oriented life that has made her hometown proud.

DocuSigned by:

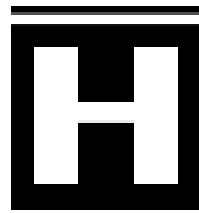
*Drew Combs*

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Drew Combs, Mayor  
September 14, 2021

# CITY OF MENLO PARK

CITY MANAGER EXECUTIVE SEARCH



THE HAWKINS  
COMPANY

Presented by  
Todd Hawkins, Vice President  
Yonnine Hawkins Garr, Vice President



# The Hawkins Company: Experience

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- 35 plus years of Talent Acquisition Consulting experience
- Proven track record in identifying, recruiting and placing transformational and high performing leaders with urban public agencies and meeting our clients' executive talent acquisition needs with a commitment to DEI.
- Over 800 executive searches

# Stakeholder Engagement

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- Individual meetings with members of the City Council
- Individual meetings with City's executive leadership.
- Conduct two community meetings and an online survey.

## Purpose

- Assist in creating the recruitment profile and guiding the approach in recruiting and evaluating candidates.

**Thank you for your time and the  
opportunity to speak with you.**





## STAFF REPORT

**City Council**

**Meeting Date:**

**9/14/2021**

**Staff Report Number:**

**21-174-CC**

**Consent Calendar:**

**Adopt Resolution No. 6664 accepting the revised joint exercise of powers agreement – San Mateo County Operational Area Emergency Services Organization**

### Recommendation

Adopt Resolution No. 6664 (Attachment A) accepting the revised joint exercise of powers agreement (JPA) for the San Mateo County Operational Area Emergency Services Organization, and grant the city manager authority to complete the annual City contribution to the organization.

### Policy Issues

This resolution would revise an existing JPA agreement between the City of Menlo Park and the other member agencies of the Organization to operate pursuant to Presidential Directive 5, the National Response Framework, National Incident Management System (NIMS), Presidential Directive 8, the National Preparedness Goal and California's Standardized Emergency Management System (SEMS) and local adopted Emergency Operations Plans and Annexes.

### Background

The JPA agreement between the City of Menlo Park and the San Mateo County Office of Emergency Services dates from 1997, and was revised in 2015. In 2021, a further revision was necessary to acknowledge the change of the Sheriff's Office of Emergency Services to the County Manager's Department of Emergency Management, reflecting a movement of this supporting agency under the directorship of the County Manager, and adding a position of the Director of the Department of Emergency Management.

### Analysis

The JPA agreement has not changed substantively from the agreement in 2015. The share of cost continues to follow the same formula, and responsibilities and obligations of the agencies remains consistent. Some modifications were made to make the updated document consistent with current county practices and protocols, and previous version language establishing some of the now-established organizations, groups and meetings were removed.

The recent revision was brought forward to the Emergency Services Council for discussion and changes at the April 15, 2021 meeting, and unanimously approved by members attending the June 17 meeting. The City of Menlo Park's representative on the Emergency Services Council was present and approved the JPA agreement (Attachment B.)

### **Impact on City Resources**

There is no change in the funding formula originally adopted in the existing JPA agreement. However, the most recent two annual contributions from the City of Menlo Park toward the San Mateo County Operational Area Emergency Services Authority has exceeded the city manager's independent signing authority:

- Fiscal year 20/21 \$99,652
- Fiscal year 19/20 \$91,072
- Fiscal year 18/19 \$73,050
- Fiscal year 17/18 \$73,050
- Fiscal year 16/17 \$69,822

Therefore, in addition to the adoption of the agreement, it would be efficient to also grant the city manager the authority to approve the ongoing share of cost for this agreement.

### **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. Resolution No. 6664
- B. 2021 County Emergency Services JPA

Report prepared by:  
Dave Norris, Chief of Police

**RESOLUTION NO. 6664**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
AUTHORIZING THE APPROVAL OF: THE SECOND REVISED AND  
RESTATED JOINT EXERCISE OF POWERS AGREEMENT SAN MATEO  
COUNTY OPERATIONAL AREA EMERGENCY SERVICES ORGANIZATION**

RESOLVED, by the City of Menlo Park, County of San Mateo, State of California, that  
WHEREAS, in 2020 the Office of Emergency Services, a division of the San Mateo County  
Sheriff's Office was transferred into the Department of Emergency Management, a division of  
the Office of the County Manager; and

WHEREAS; the exercise of powers agreement adopted in 2015 needed amendment to reflect  
this change as well as current laws, rules, directives, orders and trends; and

WHEREAS, the document has been revised in a format that is consistent with other Joint  
Powers Agreements in the state of California; and

WHEREAS, all cities and towns within San Mateo County are part of the San Mateo Operational  
Area Authorized Disaster Council known as the Emergency Services Council; and

WHEREAS, the Emergency Services Council met on the 17th of June 2021 and by unanimous  
vote of the members present accepted The Second Revised and Restated Joint Exercise of  
Powers Agreement San Mateo County Operational Area Emergency Services Organization; and

NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Mayor of the City  
of Menlo Park is hereby authorized and directed to adopt said Second Revised and Restated  
Joint Exercise of Powers Agreement San Mateo County Operational Area Emergency Services  
Organization and the Clerk of the City of Menlo Park shall attest the Mayor's signature thereto,  
and grant the City Manager signing authority to approve the annual funding share to this  
purpose for the City of Menlo Park.

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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 fourteenth day of September, 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 fourteenth day of September, 2021.

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Judi A. Herren, City Clerk

**Second Revised and Restated  
Joint Exercise of Powers Agreement  
San Mateo County Operational Area Emergency Services Organization**

THIS JOINT POWERS AGREEMENT (“Agreement”) is made as of the Effective Date by and between the public entities set forth below, creating the San Mateo County Operational Area Emergency Services Organization Authority (“Organization”).

Each public entity executing this Agreement shall be referred to individually as a “Member Agency,” with all referred to collectively as “Member Agencies.”

**RECITALS**

**Whereas** the Member Agencies’ goal is to establish a unified emergency services organization; and

**Whereas** the Member Agencies agree that the purpose of this Organization will be to operate pursuant to Presidential Directive 5, the National Response Framework, National Incident Management System (NIMS), Presidential Directive 8, the National Preparedness Goal and California’s Standardized Emergency Management System (SEMS) and local adopted Emergency Operations Plans and Annexes.

**Whereas** the Member Agencies agree that the participants within this Organization may include all local governments within the geographic area of the County, special districts, unincorporated areas, and participating non-governmental entities; and

**Whereas** the Member Agencies agree that the collective goal is to provide coordinated plans for the protection of persons and property based on the phases of emergency management; and

**Whereas** the Member Agencies have the authority to enter into this Agreement under the Joint Exercise of Powers Act, California Government Code Section 6500 *et seq.* (“Act”).

**NOW, THEREFORE**, in consideration of the recitals and mutual obligations of the Member Agencies as herein contained, the Member Agencies agree as follows:

**Article I - GENERAL PROVISIONS**

**1.01 Purpose**

This Agreement creates an entity to exercise the powers shared in common by the Member Agencies to engage in local and regional cooperative planning and coordination and delivery of incident and event supporting services. As part of this Organization’s purpose, Member Agencies seek to meet or exceed the current standard of service in Emergency Response Planning and Management Capabilities within the Operational Area. Further, Member Agencies seek to support the regional Public Information and Notification Systems, and to support the regional hazardous materials emergency response program. Such purposes are to be accomplished and the Members Agencies’ common powers exercised as set forth in this Agreement.



### **1.02 Creation of Authority**

Pursuant to the Joint Exercise of Powers Act, the Member Agencies hereby reaffirm creation of a public entity to be known as the “San Mateo County Operational Area Emergency Services Organization Authority” (“Organization.”) The Organization shall be a public entity separate and apart from the Member Agencies. The geographic jurisdiction of the Organization is all territory within the geographic boundaries of the Member Agencies; however, the Organization may undertake any action outside those geographic boundaries as is necessary and incidental to accomplishing its purpose.

### **1.03 Membership in the Organization**

Membership in the Organization is limited to public entities, as defined by the Joint Exercise of Powers Act, located or operating within San Mateo County that have approved and executed this Agreement, and contributed resources of any kind toward establishing and supporting the Organization (including, but not limited to financial, personnel, equipment, or other resources) as approved by the Emergency Services Council.

### **1.04 Participating Members/Partners in the Organization**

Participation in the Organization is intended to ensure cooperative emergency planning and response; all participating Member Agencies and partners are expected to attend all regular and special meetings of the Emergency Services Council, encourage active participation by their jurisdictions in the development of plans and training programs, drills, exercises and training opportunities, and otherwise assist in supporting the implementation of this Agreement.

### **1.05 Powers of the Organization**

The Organization may purchase, lease, own and/or dispose of property and equipment and enter into contract(s), as required to satisfy the purposes of this Agreement. The Organization may employ agents and/or employees, operate works and improvements, sue and be sued in its own name, and invest surplus funds.

## **Article II – GOVERNANCE**

### **2.01 Composition of the Council**

The Organization shall be administered by the Emergency Services Council (“Council”) consisting of the following members:

- a) A member of the San Mateo County Board of Supervisors, who shall be designated by the Supervisors.
- b) Each governing body of a Member Agency shall annually select and appoint a representative to serve on the Council and may select and appoint an alternate representative. Each representative and alternative representative must be a member of the governing body of the Member Agency.
- c) The Chair of the Emergency Services Council shall be the representative from the Board of Supervisors.
- d) A Vice-Chair shall be selected by the Council.

## 2.02 General Purpose of the Organization

The general purpose of the Organization is to:

- a) Provide structure for administrative and fiscal policies and procedures;
- b) Identify and pursue funding sources;
- c) Set policy;
- d) Maximize the utilization of available resources; and
- e) Oversee all committee activities.

## 2.03 Specific Responsibilities of the Council

The specific responsibilities of the Council shall be as follows:

- a) To review and recommend adoption by the Board of Supervisors and City Councils of each City, Emergency Plans, programs and agreements, in addition to the basic agreements as deemed necessary to carry out the purpose of the Organization.
- b) To approve an annual budget in an amount necessary to carry out the purposes of the Organization. Upon review and approval of the annual budget by the Council, each Member Agency shall recommend the budget to the governing body of the Member Agency for the purpose of securing from each the appropriations in accordance with each Member Agency's identified allocation (via Budget Sheets.)
- c) Each Member Agency's Executive Officer shall identify and designate at the beginning of each fiscal year, a local coordinator for regular participation in the San Mateo County Emergency Managers Association. Should the identified Coordinator change at any time during the year, the Member Agency shall advise the Director of Emergency Management within 30 days.
- d) If a Member Agency participates in a contract relationship for the provision of emergency services, it is still required to name a local emergency coordinator to the Emergency Managers Association who will assure the continuity of communication between the Member Agency, the San Mateo County Department of Emergency Management (DEM) and the Organization.

## 2.04 Meetings of the Organization.

- a) **Regular Meetings:** The Council shall approve a schedule for its regular meetings provided, however, that the Council shall hold at least one regular meeting quarterly. The Council shall fix the date, hour and location of regular meetings by resolution and the Secretary shall transmit a copy of the resolution to each Member Agency at the first meeting of the fiscal year.
- b) **Special Meetings:** Special meetings of the Council may be called in accordance with the Brown Act by the Chair, a majority of the Council or the Director.
- c) **Call, Notice and Conduct of Meetings:** All meetings of the Council, including without limitation, regular, adjourned regular and special meetings, shall be noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, California Government Code section 54950 *et seq.* As soon as practicable, but no later than the time of posting, the Secretary shall provide notice and the agenda to each Member Agency. Any Member Agency may request that an item be considered for placement on the Agenda by submitting the request to the Director of Emergency Management.

- d) Meetings of the Council shall be conducted by the Chair or by the Vice-Chair in the absence of the Chairperson. In the absence of both Chair and Vice-Chair, the meeting shall be chaired by member of the Council selected by a majority vote of the Council.

### **2.05 Minutes**

The Secretary of the Organization shall cause to be kept a digital recording of each meeting, which shall be posted on the San Mateo County Department of Emergency Management Website. The Secretary will create brief summary written minutes for approval by the Council.

### **2.06 Voting**

All power of the Organization shall reside with the Council. Each Member Agency shall have one vote. A Member Agency's alternate representative may participate and vote in the proceedings of the Council only in the absence of that Member Agency's regular representative. No absentee ballot or proxy voting is permitted.

### **2.07 Quorum; Required Votes; Approvals**

A quorum of the Council is a majority of the representatives of the Member Agencies of the Organization. If the number of Member Agencies is an even number, a majority is fifty percent of the Member Agencies, plus one. The Council may not take any substantive action without a majority of the Member Agencies voting to take that action. Action on non-substantive procedural matters may be taken by a majority of a quorum.

## **Article III – PARTICIPATING PARTNERS, EMPLOYEES AND ADVISORY COMMITTEES**

### **3.01 Participating Partners**

In order to ensure cooperative emergency planning and response, a representative of any entity operating in San Mateo County may request in writing to be appointed and attend, as non-voting members, all regular and special meetings of the Council, participate in the development of plans and training programs, and otherwise assist in supporting the implementation of this Agreement. Entities eligible include, but are not limited to: schools, colleges special districts, non-profits, trade associations, utilities, hospitals as well as joint power and other authorities.

Written requests for participation by an entity and appointment of a representative shall be directed to the Chair and will be submitted to the Council for approval.

### **3.02 Treasurer**

The Treasurer of the County of San Mateo shall be the Treasurer of the Organization. The Treasurer shall be the depository, shall have custody of the accounts, funds and money of the Organization from whatever source, and shall have the duties and obligations set forth in the Joint Exercise of Powers Act.

### **3.03 Auditor and Financial Accountability**

The Organization will ensure financial accountability as required by Section 6505 of the Government Code. The Organization will ensure that audits are conducted as required by that Section. Unless the Council votes to appoint a separate auditor, audits will be conducted in accordance with existing County policy, and by the auditor selected by the Office of the County

Manager. In the event that the Council selects a separate auditor, the full cost of the audit will be the responsibility of the Organization.

The Auditor shall perform the functions of auditor for the Organization and shall make or cause an independent annual audit of the accounts and records of the Organization by a certified public accountant, in compliance with the requirements of the Joint Exercise of Powers Act and generally accepted auditing standards.

### **3.04 Legal Counsel**

The San Mateo County Counsel's Office shall be the legal counsel for the Organization. To the extent permitted by the Joint Exercise of Powers Act, the Organization may change, by resolution, the legal counsel to the Organization. The full cost of outside legal counsel will be the responsibility of the Organization.

### **3.05 Secretary to the Organization**

The San Mateo County Department of Emergency Management shall provide a Secretary and administrative support to the Organization.

### **3.06 Contractors**

The Organization shall have the power by resolution to appoint and employ such other consultants and independent contractors as may be necessary to carry out the purposes of the Organization. The Organization will be responsible for any/all incurred costs.

### **3.07 Committees**

The Organization may form and dissolve Committees as determined by the Council.

### **3.08 Director of Emergency Management**

The County Manager or designee is the Director of the San Mateo County Department of Emergency Management ("Director"). The SMC DEM is responsible for the on-going operation of the San Mateo County Operational Area and is also responsible for achieving the purposes of the Organization as follows:

- a) Emergency Response Support - coordination and planning during any regional emergency in accordance with adopted emergency plans.
- b) Emergency Plans - preparation, development, coordination, and integration of compatible and complimentary unified area-wide emergency plans for approval by the State of California and adoption by the Council.
- c) Communications - coordination, development and maintenance of an area-wide emergency communications service, including public alert and warning systems, and other situational awareness tools.
- d) Public Education and Information - coordination and support of an area-wide public education and information program.
- e) Training and Exercise - coordination and assistance in the training and exercising of all County employees identified as Disaster Service Workers, as defined by Sect. 3100 of the California Government Code and volunteers. The Member Agencies will be responsible for the training and exercise of their identified employees; however, DEM will provide needed support as requested.

- f) Grant Program Administration - coordination and assistance with designated emergency coordinators within the Operational Area in the securing and distribution of grant funds for regional emergency management initiatives and program support.
- g) General Administration - coordination and assistance in the procurement and inventory of emergency equipment, management of, maintenance and distribution of area-wide inventories of vital supplies and equipment.
- h) The Organization does not intend to acquire title to any property. But in the event that it does, pursuant to Section 6505.1 of the Government Code, the Organization designates the Director to handle that property. In the event that the Organization does acquire title to property, the Director will obtain a bond in the amount determined by the contracting parties.

**3.09 Staffing Reimbursement**

The County Department of Emergency Management is a division of the County Manager’s Office, staffed by employees of the County of San Mateo. The DEM supports the purposes of the Organization. A portion of the cost of DEM staff is reimbursed by the Organization in an amount determined by the funding allocation in this Agreement.

**Article IV – BUDGET AND COST-SHARING**

In consideration of the mutual promises herein contained, it is hereby agreed that the cost of maintaining the Organization will be shared as described below.

- a) From the total amount of the annual budget there shall be deducted estimated revenue from federal “matching funds,” state grants, and other service revenues.
- b) The balance of the annual budget remaining after anticipated revenues have been deducted shall be paid as follows:
  - 1. The county shall pay 50% of the remaining balance.
  - 2. The cities shall pay the remaining 50% of the balance, apportioned in accordance with the following formula:
    - i. One half of said 50% to be apportioned by people units or population.
      - a) Total population of all member cities divided into one-half of the total of the cities’ share of the budget equals a factor in cents.
      - b) Population of each member city times the factor in cents equals the share for each city.

- ii. The remaining one-half of said 50% to be apportioned on the basis of assessed valuation as follows:
  - a) Total assessed value of real and personal property in all member cities divided into one-half of the total of the city's share of the budget equals a factor in mils.
  - b) Assessed value of real and personal property of each member city times the factor in mils equals the share for each city.
- c) For the purpose of this Agreement the total assessed valuation of real and personal property in all Member Agencies shall be the most recent such total maintained by the offices of the County Assessor.
- d) The figures used for population in each city shall be determined by a method and from a source that is mutually acceptable to the majority of members.
- e) It is understood and agreed that the financial obligations incurred by the Member Agencies under the provisions of this Agreement will be incurred annually, subject to the limitation that the county and cities are financially able to make funds available.
- f) If the Member Agencies representing 25% or more of the county's population do not approve the budget in any fiscal year, the proposed budget will be referred back to the Director and a finance committee for revision and recommendation. If no resolution can be reached by the committee, the Member Agencies may proceed to adopt budgets that provide those services they deem necessary for adequate emergency services protection as a whole, but any Member Agency shall be financially responsible for that portion of the budget unilaterally adopted. Any Member Agency that does not meet its financial commitment under the adopted budget will lose its voting status and/or other such privileges of membership as determined by the Council.
- g) It is further agreed that any excess in federal or state funds, in any year, shall be reviewed by a finance committee, who will then make a recommendation to the Council, as to the disposition of the excess funds.
- h) With respect any Member Agency that is not a City or the County, the amount to be contributed is determined by a negotiation between those Member Agencies and the Director of Emergency Management and must be approved by the Council. A letter memorializing the agreed contribution will be an attachment to this Agreement.

## **Article V - INSURANCE**

- a) The County shall add the Organization and Emergency Services Council to its existing excess liability insurance coverage and shall maintain such coverage in full force and effect during the life of the Agreement. Member Agencies understand that the County is partially self-insured. Unless the Organization decides otherwise, County shall provide for the defense of any claims or litigation within the self-insured retention. Legal representation by the County will ordinarily be provided by the County Counsel.
- b) Any out-of-pocket expense or loss, by way of judgment or settlement, arising out of the operation of this Agreement, within the limits of the County's self-insured retention shall be shared by the parties in accordance with the formula as described in Article IV (b).

## **Article VI - EFFECTIVENESS**

This Agreement shall be effective upon its execution by all Member Agencies. It is effective as to new Members Agencies upon adoption and approval by the Council and by the new Member

Agency's governing body. This Agreement shall continue in effect until terminated as provided herein.

## **Article VII – TERM AND TERMINATION**

### **7.01 Withdrawal by Members**

- a) Any Member Agency may withdraw from this Agreement by written notice given by such Member Agency to all other Member Agencies, which notice shall be given at least 120 days prior to the commencement of the fiscal year in which it is to take effect. For the purpose of such notice, a fiscal year is defined as July 1 of a calendar year through June 30 of the succeeding calendar year.
- b) Any former or prospective Member Agency may enter or re-enter the organization by petition to the Council by its governing body, and majority approval of the petition by the Council. Upon approval, the new Member Agency must agree in writing to all terms of this Agreement.
- c) Should a Member Agency withdraw less than 120 days prior to the commencement of the fiscal year, the withdrawal will be effective, but that Member Agency will be responsible for its calculated contribution for that year pursuant to Article IV.
- d) Should a Member Agency give required notice and withdraw from the Agreement, the prior contribution of that Member Agency will be divided equally by formula among the remaining Member Agencies.

### **7.02 Termination of Organization and Disposition of Surplus Money and Property**

This Agreement shall terminate effective upon a vote of the Council, the County and by at least eleven (11) cities representing the majority of the population of the County. In the event that the Organization ceases to exist, surplus funds will be returned consistent with Section 6512 of the Government Code in proportion to the contributions made. The Organization does not intend to acquire title to any property. But in the event that it does, title to all property acquired by the Organization, shall be owned by the County of San Mateo to be used for "County Wide" purposes.

### **7.03 Amendments**

Any proposed Amendments to this Agreement may be recommended by the Council but must be ratified by each Member Agency's governing body.

### **7.04 Bylaws**

The Council may, from time to time, adopt and/or amend Bylaws for the conduct of its affairs; provided the purpose is consistent with this Agreement and/or are necessary and appropriate.

## **Article VIII - MISCELLANEOUS PROVISIONS**

### **8.01 Notices**

It shall be the responsibility of the County Manager or designee to ensure all notices are provided to Member Agencies and posted in compliance with the legal requirements of the Agreement.

### **8.02 Severability**

If any one or more of the terms, provisions, promises, covenants, or conditions of this Agreement were, to any extent, adjudged invalid, unenforceable, void, or voidable for any reason whatsoever by

a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

### **8.03 Supersession**

It is mutually understood and agreed by the Member Agencies that this Agreement supersedes the 2014 San Mateo County Operational Area Joint Powers Agreement, any previous agreements on this subject matter and any amendments thereto.

### **8.04 Assignment**

No Member Agency shall assign any rights or obligations under this Agreement without the prior written consent of the Council.

### **8.05 Governing Law**

This Agreement is made and to be performed in the State of California, and as such, California substantive and procedural law shall apply. Venue for any litigation under this Agreement shall be in the County of San Mateo.

### **8.06 Headings**

The section headings herein are for convenience only and are not to be construed as modifying or governing the language of this Agreement.

### **8.07 Counterparts**

This Agreement may be executed in counterparts, each of which will be deemed an original and all of which shall constitute this Agreement.

### **8.08 No Third Party Beneficiaries**

This Agreement and the obligations hereunder are not intended to benefit any party other than the Authority and its Members Agencies, except as expressly provided otherwise herein. No entity that is not a signatory to this Agreement shall have any rights or causes of action against any party to this Agreement as a result of that party's performance or non-performance under this Agreement, except as expressly provided otherwise herein.

### **8.09 Filing of Notice of Agreement**

Within 30 days after the Effective Date, the Secretary shall cause to be filed with the Secretary of State the notice of Agreement required by the Act. Within 30 days after any amendment to this Agreement, the Secretary shall file the amendment with the Secretary of State.

### **8.10 Conflict of Interest Code**

The Organization has adopted a conflict of interest code as required by law. Member Agencies understand that representatives and alternate representatives are listed on the Organization's Conflict of Interest Code and will be responsible for filing a Form 700 with the Organization.

### **8.11 Indemnification**

The Organization shall defend, indemnify and hold harmless each Member Agency (and each Member Agency's officers, agents, and employees) from any and all liability, including but not limited to claims, losses, suits, injuries, damages, costs and expenses (including attorney's fees,)



arising from or as a result of any acts, errors or omissions of the Organization or its officers, agents or employees.

Each Member Agency shall defend, indemnify and hold harmless the other Member Agencies (and their officers, agents, and employees) from any and all liability, including but not limited to claims, losses, suits, injuries, damages, costs and expenses (including attorney's fees,) arising from or as a result of any acts, errors or omissions of that party or its officers, agents or employees.

#### **8.12 Dispute Resolution/Legal Proceedings**

Disputes regarding the interpretation or application of any provision of this Agreement shall, to the extent reasonably feasible, be resolved through good faith negotiations between the Member Agencies and/or the Organization.

#### **8.13 Authorization to Enter Into Agreement**

Each party warrants that the person signing this Agreement on its behalf is authorized to bind that party to this Agreement.

#### **8.14 Confirmation of Jurisdictional Authority**

By signing this Agreement, the Member Agencies retain all authority granted to them by the State and/or their respective Charters. The powers and/or authority granted pursuant to this Agreement shall in no way serve to limit or restrict an individual Member Agency's jurisdictional authority.

**(SIGNATURES ARE ON FOLLOWING PAGE)**

IN WITNESS WHEREOF, each Member Agency has caused this Agreement to be executed and attested by its proper officers thereunto duly authorized, as follows:

Signatories	Resolution/Action Number	Date of Adoption
Atherton		
Belmont		
Brisbane		
Burlingame		
Colma		
Daly City		
East Palo Alto		
Foster City		
Half Moon Bay		
Hillsborough		
Menlo Park		
Millbrae		
Pacifica		
Portola Valley		
Redwood City		
San Bruno		
San Carlos		
San Mateo		
South San Francisco		
Woodside		
County of San Mateo		



**STAFF REPORT**

**City Council Meeting Date:** 9/14/2021  
**Staff Report Number:** 21-175-CC

**Consent Calendar:** Authorize the city manager to execute an agreement with Baker & Taylor for the purchasing and processing of library materials in an amount not to exceed \$90,000

**Recommendation**

Staff recommends that the City Council authorize the city manager to negotiate an agreement with Baker & Taylor for the purchase and processing of library materials in an amount not to exceed \$90,000 (Attachment A.)

**Policy Issues**

The requested contract amount requires City Council approval, and is consistent with City procurement policy. City Council approved an agreement with Baker & Taylor in June 2019.

**Background**

Baker & Taylor is a distributor of books and electronic content for libraries, including the physical processing of library materials, inventory control software and bibliographic data. The City's current agreement with Baker and Taylor was authorized by the City Council June 4, 2019, for the purchase and processing of library materials in an amount not to exceed \$250,000, with the option to renew the contract annually for three years (Attachment B.) City Council, at the time of approval, directed staff to return the agreement to them after one year for review. Due to other priorities resulting from the COVID-19 crisis, the agreement was not reviewed in June 2020.

**Analysis**

Staff recommends that City Council authorize a new, one-year agreement in fiscal year 2021-22, in an amount not to exceed \$90,000, consistent with City Council's adopted fiscal year 2021-22 operating budget. (Attachment A.)

**Impact on City Resources**

There is no new financial impact to the general fund associated with this action. This expenditure is included in the City Council approved fiscal year 2021-22 operating budget.



### **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
- B. Hyperlink – City Council June 4, 2019 meeting minutes:  
[menlopark.org/AgendaCenter/ViewFile/Minutes/\\_06042019-3287](http://menlopark.org/AgendaCenter/ViewFile/Minutes/_06042019-3287)

Report prepared by:  
Nick Szegda, Assistant Director of Library Services

Report reviewed by:  
Sean Reinhart, Director of Library Services

**PROFESSIONAL SERVICES AGREEMENT**

City Manager's Office  
701 Laurel St., Menlo Park, CA 94025  
tel 650-330-6620



Agreement #:
<b>AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND BAKER &amp; TAYLOR LLC</b>
THIS AGREEMENT made and entered into at Menlo Park, California, this ____ day of _____, _____, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY," and <b>BAKER &amp; TAYLOR LLC</b> , hereinafter referred to as "FIRST PARTY."
<p>WITNESSETH:</p> <p>WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: <b>CLS Services for libraries</b></p> <p>WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.</p> <p>NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:</p>
<b>1. SCOPE OF WORK</b>
In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A," Scope of Services.
<b>2. SCHEDULE FOR WORK</b>
<p>FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A," Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A." Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.</p> <p>FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this agreement.</p>
<b>3. PROSECUTION OF WORK</b>
FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A," Scope of Services).

#### 4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed \$90,000 as described in Exhibit "A," Scope of Services. All payments shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable.
- B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.
- C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, the FIRST PARTY shall submit a statement describing the services performed to CITY. This statement shall include, at a minimum, the project title, agreement number, the title(s) of personnel performing work, hours spent, payment rate, and a listing of all reimbursable costs. CITY shall have the discretion to approve the invoice and the work completed statement. Payment shall be for the invoice amount or such other amount as approved by CITY.
- D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

#### 5. EQUAL EMPLOYMENT OPPORTUNITY

- A. FIRST PARTY, with regard to the work performed by it under this agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap, marital status or age in the retention of sub-consultants, including procurement of materials and leases of equipment.
- B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.
- E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.
- F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY's agreement with all sub-consultants.

#### 6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

- A. FIRST PARTY shall not assign this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.
- B. In the event there is a change of more than 30 percent of the stock ownership or ownership in FIRST PARTY from the date of this agreement is executed, then CITY shall be notified before the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this agreement upon notice to FIRST PARTY. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this agreement.

## 7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY's services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

## 8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY's work by CITY does not operate as a release of FIRST PARTY from said understanding.

## 9. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

**Sean Reinhart**  
**Directory of Library and Community Services**  
 City of Menlo Park  
 701 Laurel St.  
 Menlo Park, CA 94025  
 650-330-2510  
 ssreinhart@menlopark.org

Notices required to be given to FIRST PARTY shall be addressed as follows:

**Jennifer Rhyne**  
**Baker & Taylor, LLC**  
**2810 Coliseum Centre Dr., Suite 300**  
**Charlotte, NC 28217**  
**704-998-3248**  
**Jennifer.Rhyne@baker-taylor.com**

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

## 10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

## 11. INSURANCE

- A. FIRST PARTY shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
- B. There shall be a contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 9, of any pending cancellation of the policy. FIRST PARTY shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.
1. Workers' compensation and employer's liability insurance:  
The FIRST PARTY shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am 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 Code, and I will comply with such provisions before commencing the performance of the work of this agreement" (not required if the FIRST PARTY is a Sole Proprietor).
  2. Liability insurance:  
The FIRST PARTY shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this agreement, whether such operations be by FIRST PARTY or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) in aggregate, or one million dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this agreement in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.
  3. Professional liability insurance:  
FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this agreement, in the amount of not less than one million dollars (\$1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.
- C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- D. 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, CITY, 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 pursuant to this agreement.
- E. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by CITY.



## 12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, before commencement of said work/services or forfeit any right to compensation under this agreement.

## 13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

## 14. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered under this agreement or which are developed, produced and paid for under this agreement, shall become the property of CITY. The reuse of FIRST PARTY's work products by City for purposes other than intended by this agreement shall be at no risk to FIRST PARTY.

## 15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A."

## 16. TERMINATION OF AGREEMENT

- A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this agreement in whole or in part at any time, either for CITY's convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations or because of FIRST PARTY's change of its assigned personnel on the project without prior CITY approval. Upon receipt of such notice, FIRST PARTY shall:
1. Immediately discontinue all services affected (unless the notice directs otherwise); and
  2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this agreement, whether completed or in process.
- B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- C. If the termination is due to the failure of FIRST PARTY to fulfill its agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.
- D. If, after notice of termination for failure to fulfill agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.
- E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this agreement.
- F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

**17. INSPECTION OF WORK**

It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.

**18. COMPLIANCE WITH LAWS**

It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this agreement, including but not limited to compliance with prevailing wage laws, if applicable.

**19. BREACH OF AGREEMENT**

- A. This agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this agreement, shall constitute a breach of this agreement and may be cause for termination at the election of the CITY.
- B. The CITY reserves the right to waive any and all breaches of this agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of agreement.

**20. SEVERABILITY**

The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

**21. CAPTIONS**

The captions of this agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this agreement.

**22. LITIGATION OR ARBITRATION**

In the event that suit or arbitration is brought to enforce the terms of this agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B," 'Dispute Resolution' attached hereto and by this reference incorporated herein.

**23. RETENTION OF RECORDS**

Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and /or audit of the City, a federal agency, and the state of California.

**24. TERM OF AGREEMENT**

This agreement shall remain in effect for the period of **September 14, 2021** through **June 30, 2022** unless extended, amended, or terminated in writing by CITY.

**25. ENTIRE AGREEMENT**

This document constitutes the sole agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties to this agreement.

**26. STATEMENT OF ECONOMIC INTEREST**

Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant IS NOT required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

**FOR FIRST PARTY:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Tax ID#

**APPROVED AS TO FORM:**

\_\_\_\_\_  
William L. McClure, City Attorney

\_\_\_\_\_  
Date

**FOR CITY OF MENLO PARK:**

\_\_\_\_\_  
Signature Authority, Title

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Judi A. Herren, City Clerk

\_\_\_\_\_  
Date

## EXHIBIT "A" – SCOPE OF SERVICES

### A1. SCOPE OF WORK

FIRST PARTY agrees to provide consultant services for CITY's LIBRARY. In the event of any discrepancy between any of the terms of the FIRST PARTY's proposal and those of this agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A -1, which will become part of this agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY's satisfaction.

### A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY's standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after approval of billing for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY before the commencement of the work.

### A3. SCHEDULE OF WORK

FIRST PARTY'S proposed schedule for the various services required will be set forth in Exhibit A-1.

### A4. CHANGES IN WORK -- EXTRA WORK

In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

- Change in the services because of changes in scope of the work.
- Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY's services before the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. The CITY shall make a determination as to whether such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the Director of Library Services.

**A5. BILLINGS**

FIRST PARTY's bills shall include the following information: A brief description of services performed, project title and the agreement number; the date the services were performed; the number of hours spent and by whom; the current contract amount; the current invoice amount; Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this agreement shall be incurred at the FIRST PARTY's discretion. Such expenses shall be FIRST PARTY's sole financial responsibility.

## EXHIBIT "B" - DISPUTE RESOLUTION

- B1.0** All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:
- B2.0 Mediation**
- B2.1** The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator's fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.
- B3.0 Arbitration**
- B3.1** Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the agreement.
- B3.2** The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:
- B3.3** Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.
- B3.4** The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years' experience in construction litigation.
- B3.5** All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.
- B3.6** The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.
- B3.7** Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.
- B3.8** The prevailing party shall be awarded reasonable attorneys' fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.9** Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.10** The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.



**STAFF REPORT – CONTINUED FROM 8/31/2021**

**City Council**

**Meeting Date:** ~~8/31/2021~~ 9/14/2021

**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
<b>Total</b>	<b>483 units (441 rental units, 42 for-sale townhomes)</b>

\*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"> <li>483 units (441 rental units, 42 for-sale townhomes)</li> </ul>	---	<ul style="list-style-type: none"> <li>Consider better distribution of height and massing across site</li> <li>Expand and aggregate open space</li> <li>Integrate commercial space for mix of uses</li> </ul>
December 16, 2019	EIR Scoping / Study Session	<ul style="list-style-type: none"> <li>483 units</li> <li>2,100 s.f. commercial space</li> </ul>	<ul style="list-style-type: none"> <li>Re-orientation of apartment buildings for improved transition in massing</li> <li>Addition of 2,100 s.f. commercial space</li> <li>Aggregation of publicly accessible open space around paseo and commercial space</li> </ul>	<ul style="list-style-type: none"> <li>Explore additional BMR housing units</li> <li>Enhance open spaces, integrate public art</li> <li>Consider larger commercial space</li> <li>Continue to refine building materials</li> </ul>
January 11, 2021	Draft EIR (DEIR) Public Hearing / Study Session	<ul style="list-style-type: none"> <li>483 units</li> <li>2,940 s.f. commercial space</li> </ul>	<ul style="list-style-type: none"> <li>Increase of commercial space by 840 s.f.</li> <li>Refinement of open spaces and addition</li> <li>Refinement of building materials and color palette</li> </ul>	<ul style="list-style-type: none"> <li>General support for project design and materials</li> <li>Ensure viability and consistent community focus for commercial space</li> <li>General support for level of service (LOS) intersection improvements that would not induce more traffic</li> </ul>

*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.

#### *PILOT agreement proposal*

Members of the community have raised and the applicant is aware of concerns regarding the implications of any sale of the development to an entity exempt from property taxes. The applicant has confirmed there are no plans to sell the property and development to such an entity. Nevertheless, in the event such a sale were to occur in the future, there is a means by which the City could recoup lost property tax revenue.

In California, certain entities are exempt from property taxes, including but not limited to nonprofit educational institutions of collegiate grade, and other nonprofit and religious organizations. Property tax exemptions have prompted some local governments to enter into PILOT agreements.<sup>1</sup> A typical payment

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<sup>1</sup> California Assembly Draft White Paper,

<https://arev.assembly.ca.gov/sites/arev.assembly.ca.gov/files/Draft%20White%20Paper%28v10%29.pdf>. PILOT agreements are only expressly authorized by statute in two cases: for low-income housing owned by either public housing authorities or federally recognized Indian tribes. (*Ibid.*) However, the lack of express authorization has not

in lieu of taxes agreement, or PILOT agreement, is an agreement for a payment made to compensate a government entity for some or all of the tax revenue lost due to tax-exempt ownership or use of real property.<sup>2</sup>

The payments owed under the PILOT agreement would “closely resemble property tax payments,” and might comprise “a portion or all of the property taxes the local government would have received” without the property tax exemption, “a percentage of the project’s assessed value, a flat fee, and an amount to compensate for police and fire service needs generated by the project’s residents.”<sup>3</sup>

In order to address concerns regarding potential future lost property tax revenues, staff will be prepared to present a draft condition of approval if requested at the meeting, which would require applicant to enter into a PILOT agreement with the City. The PILOT agreement would only require payment in the event the property comes to be owned by an entity that is exempt from property taxes. The PILOT agreement would require an annual payment that offsets lost property tax revenue to the City.

## **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

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stopped public entities from entering into PILOT agreements with other developers who could claim an exemption. (See Senate Legislative Analysis, [http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb\\_1201-1250/sb\\_1203\\_cfa\\_20140821\\_233149\\_asm\\_floor.html](http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_1201-1250/sb_1203_cfa_20140821_233149_asm_floor.html).)

<sup>2</sup> See e.g., *Russell City Energy Co., LLC v. City of Hayward* (2017) 14 Cal.App.5th 54, 60 fn. 4.

<sup>3</sup> Senate Legislative Analysis, [http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb\\_1201-1250/sb\\_1203\\_cfa\\_20140821\\_233149\\_asm\\_floor.html](http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_1201-1250/sb_1203_cfa_20140821_233149_asm_floor.html).

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.4<sup>th</sup> 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. 4<sup>th</sup> 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"> <li>Project would redevelop an industrial site with multi-family residential units in close proximity to employment centers</li> <li>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</li> </ul>
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"> <li>Project would include on-site open space, including a paseo providing a mid-block connection between the two project street frontages</li> <li>The publicly accessible paseo and additional open space and landscaped areas would be aggregated around the community amenity space incorporated into the project</li> <li>Project would include bicycle storage and service areas located off of the paseo for use by residents</li> </ul>
Circulation Element Policy CIRC-2.14	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	<ul style="list-style-type: none"> <li>The project would include a publicly accessible open space and a mid-block connection from Jefferson Drive to Constitution Drive for pedestrians and bicyclists</li> <li>The project includes a transportation demand management (TDM) plan that would reduce project trips by 20 percent</li> <li>The project would install frontage improvements to facilitate bike and pedestrian connections within the vicinity of the project site</li> <li>The EIR evaluated the projects potential impact on VMT and determined that its impact would be less than significant</li> </ul>

	connections, amenities and improvements in proportion with the scale of proposed projects; and facilitate appropriate or adequate response times and access for emergency vehicles.	
Housing Element Policy H4.2  Housing Element Policy H4.4	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.	<ul style="list-style-type: none"> <li>● Project would provide 73 BMR housing units, including 67 rental units and 6 ownership units, to households with a range of incomes</li> <li>● 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</li> <li>● 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</li> <li>● Project would provide a variety of unit types, including rentals ranging from studios to three-bedrooms, and ownership units with three and four bedrooms</li> </ul>

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 was 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-](http://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-](http://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](http://menlopark.org/DocumentCenter/View/26852/Appendix-D---Housing-Needs-Assessment)
- E. Hyperlink – FIA: [menlopark.org/DocumentCenter/View/26993/Fiscal-Impact-Analysis](http://menlopark.org/DocumentCenter/View/26993/Fiscal-Impact-Analysis)
- F. Hyperlink – City's community amenities appraisal: [menlopark.org/DocumentCenter/View/26870/Community-Amenities-Appraisal](http://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](https://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](https://menlopark.org/DocumentCenter/View/28363/Community-Amenities-Proposal-Evaluation-June-2021)
- I. Hyperlink – Project plans: [menlopark.org/DocumentCenter/View/28358/June-2021-Project-Plans](https://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](https://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](https://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](https://menlopark.org/DocumentCenter/View/23537/Menlo-Uptown-Notice-of-Preparation)
- P. Hyperlink – Initial study: [menlopark.org/DocumentCenter/View/23536/Menlo-Uptown-Initial-Study](https://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=](https://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



## STAFF REPORT

**City Council**

**Meeting Date:**

**9/14/2021**

**Staff Report Number:**

**21-176-CC**

**Public Hearing:**

**Consider an appeal of the Planning Commission certification of the final environmental impact report 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's recommendation to approve a public utilities easement abandonment for the proposed Menlo Portal project with 335 multifamily dwelling units and an approximately 34,499-square-foot office space which includes approximately 1,600 square feet of non-office commercial space located at 115 Independence Drive and 104 and 110 Constitution Drive**

### Recommendation

Staff recommends that the City Council take the following actions for the proposed Menlo Portal project at 115 Independence Drive and 104 and 110 Constitution Drive in the R-MU-B (Residential Mixed Use-Bonus) zoning district:

1. Adopt Resolution No. 6665 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. 6666 denying the appeal, 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. 6667 approving the public utility easement abandonment, which would allow relocation of existing utilities outside the footprints of the proposed buildings and into a new easement within the project site (Attachment C.)

### Policy Issues

The proposed project requires the City Council to consider the merits of the project and the appeal, including the project's consistency with the City's general plan, R-MU zoning district standards, 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

the CEQA, and adopt the MMRP prior to taking action to approve the project. The required project approvals include a use permit, architectural control, BMR housing agreement, community amenities agreement and public utilities easement abandonment.

In addition to the final EIR, the City has prepared the following documents to analyze the proposed project and provide 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;
- Fiscal impact analysis (FIA) (Attachment E) to inform decision makers and the public of the potential fiscal impacts of the proposed project;
- Applicant's appraisal (Attachment F) to identify the required value of the community amenities in exchange for bonus level development; and
- Evaluations of the applicant's community amenities 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 August 9, 2021 Planning Commission staff report packet (Attachment K.) These reports are not subject to specific City action and are not part of the final project approvals.

## **Background**

### Project description

The applicant is proposing to demolish the existing buildings and site improvements across the entire project site and construct a seven-story approximately 326,816 square-foot residential apartment building with 335 units and a three-story approximately 34,499 square-foot office building, including approximately 1,600 square feet of non-office commercial space. The applicant proposes to merge two parcels located at 110 Constitution Drive and 115 Independences Drive to create parcel B to house the residential building and undertake a lot line adjustment between parcels located at 104 Constitution Drive and the newly created parcel B to house the proposed office building on the newly created parcel A. These parcel actions are administrative and would be processed through the Planning and Engineering Divisions as conditions of approval of the proposed project. The applicant is proposing to develop the project utilizing the bonus level provisions identified in the zoning ordinance. The bonus level provisions of the R-MU-B zoning district regulations allow a development to seek an increase in 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, as described in detail in the Community Amenities section of the August 9, 2021, Planning Commission staff report (Attachment K.) The proposal would also include additional density and gross floor area by utilizing the City's BMR density bonus to add additional units on-site in exchange for providing on-site BMR units.

The R-MU-B zoning district allows for a mixture of land uses with the purpose to provide high density housing and encourage mixed-use development. The commercial component of mixed-use development projects is intended to provide a mixture of uses including neighborhood-serving retail and services that promote a live/work/play environment. Office is an allowed use in the R-MU district, but was not



envisioned to be the primary non-residential component of a project. The proposed project includes an office building which would be approximately at the maximum nonresidential FAR and includes the proposed community amenities space. The applicant is proposing that 15 percent or a minimum of 48 of 320 total units would be affordable to very low-, low-, and moderate-income households to comply with the City’s BMR housing program. Pursuant to the City’s BMR housing program, which allows one additional market rate unit (and associated gross floor area) for every BMR unit provided, the proposal would include an additional 15 market rate units and associated gross floor area for a total of 335 dwelling units.

Residential units are proposed to be a mix of studios, junior one-bedrooms, one-bedrooms, two-bedrooms and three-bedroom units as summarized in the Table 1 below:

Table 1: Residential unit mix	
Unit type	Total
Studio	63 units
Junior (one bedroom)*	56 units
One bedroom	151 units
Two bedroom	51 units
Three bedroom	14 units
<b>Total</b>	<b>335 units</b>

\*This includes 56 units that the applicant refers to as “junior one-bedroom” units with sleeping quarters separated from living areas; however, these units are considered studio units by the Housing Division and for the purposes of the HNA.

The proposed project plans are included as hyperlink Attachment I and a project description letter is included in Attachment J.

*Site layout*

The proposed apartment building would be located on the existing 115 Independence Drive and 110 Constitution Drive parcels, and would have frontages on both Independence and Constitution Drives. A central plaza, dog walk, and fire access lane would run north to south between the apartment building and the proposed residential development at 111 Independence Drive and the proposed commercial building at 104 Constitution Drive (which is part of the project site.) A fire and service access lane would also run north to south along the eastern edge of the apartment building.

The apartment building would have seven stories containing 335 dwelling units located above two levels of above-grade structured parking, lobbies and ancillary spaces for tenants. To account for potential flooding and sea level rise (and comply with the City’s zoning ordinance requirements), the main lobbies and resident ancillary spaces would be elevated approximately five feet above the existing grade of the street. Driveways at the north and south of the building would provide access to the automated parking system within the building. Beginning at the second story, six levels of apartment units would wrap around the perimeter of the building surrounding a terrace with a pool and other private and communal open spaces for tenants located above the garage.

The proposed apartment building complies with the minimum and maximum setbacks permitted at the street frontages. The majority of the street façade is located within the maximum 25-foot setback requirement, with the lobby entrances further set back which is allowed in the R-MU-B zoning district. The building would meet or exceed the minimum interior side setbacks of 10 feet.

To the west of the apartment building and across the central plaza, the commercial building would be located on the 104 Constitution Drive parcel. The three-story building would have frontages on Independence and Constitution Drives. The office space would be located above two levels of above-grade structured parking, lobbies, and commercial space intended to serve the neighborhood. Pedestrian access would be provided from the sidewalk on Constitution Drive and a driveway on Independence Drive would provide access to the parking garage. The third floor would contain approximately 28,409 square feet of office and a roof terrace would provide an outdoor ancillary space for the office tenants.

#### *Hazardous materials*

The project sponsor is requesting the use and storage of hazardous materials (diesel fuel) to power one emergency generator for the multifamily residential building. The emergency generator 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 generator would be located on the north-western side of the building, adjacent to the emergency vehicle access (EVA) and service lane from Constitution Drive. The emergency generator would be fully enclosed in a room within the building. The emergency generator would have a 472-gallon tank and would operate for testing approximately 15 minutes every two weeks (or approximately 6.5 hours per year) with a generation capacity of 250-kilowatt (334 horsepower.) 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. The use of the diesel fuel would be required to be offset through appropriate renewable energy credits, per the requirements of the zoning ordinance. The proposal does not include a request for a separate emergency generator for the office building.

#### *Additional project details*

More details about the proposed project, including information regarding regulations; site location; 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 August 9, 2021 Planning Commission staff report in Attachment K. Because public utilities easement abandonments require City Council approval following a recommendation from the Planning Commission, information about the public utilities easement abandonment request is included in the Analysis section of this staff report, farther below.

#### Housing Crisis Act of 2019 (SB330) application

The proposed project 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 SB330 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 hearing (BMR proposal review)
3. City Council intent to abandon public utility easements, and
4. Planning Commission public hearing for final EIR certification, land use entitlements approval, and public utilities easement abandonment general plan conformance review and recommendation.

The September 14, 2021 City Council meeting to consider the appeal of the Planning Commission's decision on the project final EIR and entitlements and Planning Commission's recommendation on the public utilities easement abandonment would serve as the fifth 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 SB330 project complies with all applicable objective general plan, zoning ordinance, and subdivision standards and criteria (including design review standards) in effect at the time of 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., significant and unavoidable environmental impact.)

#### Previous commission review and actions

##### *Planning Commission reviews*

The proposed project was reviewed at three Planning Commission hearings before the August 9, 2021, Planning Commission hearing where the final EIR was certified, the aforementioned project entitlements were approved, and the public utilities easement abandonment was recommended for City Council approval. Brief summaries of the previous hearings are provided in Table 2 below:

Table 2: Previous Planning Commission reviews				
Meeting date	Meeting purpose	Key project components	Changes since previous review	Commission comments
July 22, 2019	Study Session	<ul style="list-style-type: none"> <li>320 units and approximately 34,708 s.f. office space</li> </ul>	---	<ul style="list-style-type: none"> <li>Consider better garage screening</li> <li>Make public plaza more accessible and welcoming</li> <li>Consider increasing the amount of affordable housing</li> <li>Concerns about potential traffic impacts</li> <li>Recommendations of additional outreach pertaining to community amenity</li> </ul>
January 27, 2020	EIR Scoping / Study Session	<ul style="list-style-type: none"> <li>335 units</li> <li>33,211 s.f. commercial space</li> <li>1,608 s.f. community amenities space</li> </ul>	<ul style="list-style-type: none"> <li>Inclusion of bonus units</li> <li>Redesign the office building</li> <li>Changes to the residential building for compliance with the zoning ordinance</li> </ul>	<ul style="list-style-type: none"> <li>Explore additional BMR housing units</li> <li>Unbundled parking</li> <li>Continue to refine building materials</li> </ul>
March 22, 2021	Draft EIR (Draft EIR) Public Hearing/ Study Session	<ul style="list-style-type: none"> <li>335 units</li> <li>34,868 s.f. office space including 1,600 s.f. community amenities space</li> </ul>	<ul style="list-style-type: none"> <li>Refinement of the community amenities proposal</li> <li>Refinement of building materials and color palette</li> </ul>	<ul style="list-style-type: none"> <li>General support for project design and materials</li> <li>Discussion on the community amenities proposal</li> <li>General support for level of service (LOS) intersection improvements that would not induce more traffic</li> </ul>

*Housing Commission recommendation*

In compliance with the City’s BMR housing program ordinance, Chapter 16.96, and the City’s BMR housing program guidelines, the applicant is proposing to provide 15 percent of the total number of units, 48 of the 320 units (the total number of units, excluding density bonus units) affordable to lower income

households. On May 5, 2021, The Housing Commission unanimously recommended approval of the applicant's proposal and the draft BMR Term Sheet that provides three units affordable to very-low, 14 units affordable to low, and 31 units affordable to moderate income households.

#### *Final Planning Commission actions*

On August 9, 2021, the Planning Commission held its final hearing on the proposed project. After considering four written and five verbal public comments from a mix of individuals and organizations both in favor or opposed to the project, or expressed general questions or concerns about the proposed community amenity for the project and the ConnectMenlo final EIR, and after reviewing and considering the proposed project, the Planning Commission took the following actions:

- Certification of the final EIR, and approval of the findings required by CEQA and a project MMRP with four in favor, one abstention;
- Approval of a use permit and architectural control for the land uses and design of the project components; applicant's BMR proposal; and approval of the community amenities operating covenant for operating an approximately 1,609 square feet child care facility on the project site with amendments to reduce the student tuition subsidy to \$2,000,000, to collect \$3,770,609 as an in-lieu fee (which includes the required 10 percent administrative fee), and to add a preference for hiring qualified applicants from the Belle Haven community as part of the workforce, with a four in favor, one opposed vote; and
- Finds the proposed public utilities easement is consistent with the general plan and recommends that the City Council approve the abandonment of the public utilities easements and relocate the easements within the project site with a unanimous vote (five in favor, zero opposed.)

The excerpt draft minutes from the meeting are included as Attachment L.

#### Changes since Planning Commission action

Following the Planning Commission hearing and during the finalization of the adopted resolutions and document, staff made the following revisions in section 5, "Minimum Operating Standards" and section 6, "Bonus Development Value Confirmation" of the community amenities operating covenant to implement the Planning Commission's direction. The modifications are as follows:

- Include a clause that requires the operator of the child care center to make a good faith effort to advertise employment opportunities in and recruit employees from the Belle Haven neighborhood; and
- As part of the annual reporting requirement, the operator shall include the total number of teachers and the number of other employees that worked at the facility during the preceding year and who live in the Belle Haven neighborhood.
- Section 6 is revised to clarify the Tuition Subsidy Value as being \$2,000,000, and including a Community Amenities in-lieu fee payment of \$3,770,609 as Partial In-Lieu Fee inclusive of the City's required 10 percent administrative fee.
- Section 6 concludes by requiring payment of the In-Lieu Fee prior to issuance of any building permit for the Project. The community amenities operating covenant in Attachment B, Exhibit G incorporates these proposed revisions.

Additionally, the staff made the following revisions in section 6, "Bonus Development Value Confirmation" of the community amenities operating covenant to clarify imprecise language in the original draft. The modifications are as follows:

- Revision to the definition of the term “Construction Value” in the first paragraph. The operating covenant defines the construction value as the applicant’s cost of constructing the community amenities space (an estimated \$2.7 million.) However, that amount is actually the net present value of rent the applicant could have received from a tenant for the 1,609-square-foot office space and 2,190-square-feet of outdoor space on the ground floor over a period of 55 years, had the applicant not provided the space rent-free to the child care facility operator. 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 Childcare Facility Space” in the evaluation of the community amenities proposal performed by BAE Urban Economics (Attachment H.)

### *PILOT agreement proposal*

Members of the community have raised and the applicant is aware of concerns regarding the implications of any sale of the development to an entity exempt from property taxes. The applicant has confirmed there are no plans to sell the property and development to such an entity. Nevertheless, in the event such a sale were to occur in the future, there is a means by which the City could recoup lost property tax revenue.

In California, certain entities are exempt from property taxes, including but not limited to nonprofit educational institutions of collegiate grade, and other nonprofit and religious organizations. Property tax exemptions have prompted some local governments to enter into PILOT agreements.<sup>1</sup> A typical payment in lieu of taxes agreement, or PILOT agreement, is an agreement for a payment made to compensate a government entity for some or all of the tax revenue lost due to tax-exempt ownership or use of real property.<sup>2</sup>

The payments owed under the PILOT agreement would “closely resemble property tax payments,” and might comprise “a portion or all of the property taxes the local government would have received” without the property tax exemption, “a percentage of the project’s assessed value, a flat fee, and an amount to compensate for police and fire service needs generated by the project’s residents.”<sup>3</sup>

In order to address concerns regarding potential future lost property tax revenues, staff will be prepared to present a draft condition of approval if requested at the meeting, which would require applicant to enter into a PILOT agreement with the City. The PILOT agreement would only require payment in the event the property comes to be owned by an entity that is exempt from property taxes. The PILOT agreement would require an annual payment that offsets lost property tax revenue to the City.

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<sup>1</sup> California Assembly Draft White Paper, <https://arev.assembly.ca.gov/sites/arev.assembly.ca.gov/files/Draft%20White%20Paper%28v10%29.pdf>. PILOT agreements are only expressly authorized by statute in two cases: for low-income housing owned by either public housing authorities or federally recognized Indian tribes. (*Ibid.*) However, the lack of express authorization has not stopped public entities from entering into PILOT agreements with other developers who could claim an exemption. (See Senate Legislative Analysis, [http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb\\_1201-1250/sb\\_1203\\_cfa\\_20140821\\_233149\\_asm\\_floor.html](http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_1201-1250/sb_1203_cfa_20140821_233149_asm_floor.html).)

<sup>2</sup> See e.g., *Russell City Energy Co., LLC v. City of Hayward* (2017) 14 Cal.App.5th 54, 60 fn. 4.

<sup>3</sup> Senate Legislative Analysis, [http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb\\_1201-1250/sb\\_1203\\_cfa\\_20140821\\_233149\\_asm\\_floor.html](http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_1201-1250/sb_1203_cfa_20140821_233149_asm_floor.html).

## Analysis

### Appeal 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. 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 August 24, 2021, the City received one appeal of the Planning Commission's certification of the final EIR and approval of the project entitlements. The appeal was submitted by the Sequoia Union High School District (SUHSD), which owns the TIDE Academy high school at 150 Jefferson Drive, 1250 feet east of the project site. The appellant was an active participant during the various phases of project review and offered written testimony that was considered by the Planning Commission at previous hearings. The concerns outlined in the written appeal are similar to what was presented at the earlier Planning Commission meetings. The main points of the appeal letter (Attachment M) are summarized below in italics and followed by staff's responses.

- 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 appeal alleges that the Planning Commission did not have authority to certify the Final EIR based on the incorrect assumption that the Planning Commission was not the "final decision-making body" for the Project. As an initial matter, the appeal falsely states that the City Council is responsible for approving a major subdivision in connection with the Project. No such entitlement is requested, nor is City Council action required for a subdivision for the Project to proceed.

Apart from the appeal of the Planning Commission's actions, the only City Council determination needed for the Project is vacation of an easement to be relocated elsewhere on the Project site. The Planning Commission reviewed and approved the use permit, architectural control permit, BMR agreement and community amenities operating agreement, which together make up the bulk of the Project's necessary entitlements. CEQA Guidelines Section 15352(b) requires the City to comply with CEQA at the "earliest commitment" to the Project's approval. Because the Planning Commission's actions were the first set of binding City approvals, and would have been a final decision regarding the Project but for the appeal, the Planning Commission was required to certify the Final EIR, make findings, and adopt the MMRP before it took action to approve the Project.

Now that the Planning Commission's actions have been appealed, the City Council will serve as the final decision-making body for the Project, and it will need to consider the Final EIR before taking action. Therefore, although the Planning Commission properly took action regarding the EIR before approving the Project, the claim is moot, because City Council is now required to act on the Project by virtue of the appeal. If the City Council determines to reject the appeal and approve the Project, City Council would need to certify the Final EIR, make findings, and adopt the MMRP before taking final action.

- B. *The Draft EIR, Final EIR, and Planning Commission failed appropriately to consider the District's*

*school sites in all discussions of the “environmental setting.”* The applicable environmental setting, including surrounding land uses are 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. In all cases, the District’s school sites were considered, and in several places, they are specifically named and analyzed in detail. The proximity of TIDE Academy to the proposed project as it relates to potential impacts in the topic area of 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 analysis 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 E) and noise impacts to sensitive receptors would be less than significant. Therefore, the EIR and the Planning Commission fully considered the District’s facilities as part of the environmental setting that would be affected by development of the Project.

- C. *The Draft EIR, Final EIR, and Planning Commission failed appropriately to analyze impacts on and related to school 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. 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 and the project draft EIR (including the project 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 project being considered in the Bayfront area 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 Portal project final EIR. This timeframe would allow the district the opportunity to plan for potential student enrollment increases.

- 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 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," prohibits 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. To the extent that the District is concerned with indirect impacts beyond the impact to its facilities, the EIR fully analyzes each environmental topic area for potential impacts. As discussed above, the District's facilities were considered as part of this analysis, and the EIR concludes that, with the implementation of mitigation, no significant environmental effects would occur.

- 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" (Feb. 2021) prepared by BAE Urban 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. Therefore, this claim is unrelated to the adequacy of the EIR or the Planning Commission's decisions made in reliance on the EIR.

- 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 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 that 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 A2-3 through A2-18 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 with mitigation.

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 E) and noise impacts to sensitive receptors would be less than significant.

- G. *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, and all potentially significant environmental effects of the Project would be reduced to a less than significant level through the implementation of mitigation measures identified in the EIR.

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 any evidence, let alone the substantial evidence needed to support a claim that there would be any physical impact on or related to school services.

- H. *The District is within its rights to comment on the potential environmental impacts on its school sites.* The appeal takes issue with the provisions of CEQA that establish specific limits on the scope of comments from a public agency. Specifically, Public Resources Code section 21153 limits public agencies to "substantive comments regarding those activities involved in a project that are within an area of expertise of the agency." The appeal makes the unsupported assertion that this statutory limitation only applies "to early stages of consultation," ignoring the plain statutory language that says

the limit applies prior to completion of an EIR. The appeal also ignores the numerous other provisions of CEQA that limit a public agency's scope of review to its area of expertise; see, e.g., CEQA Guidelines sections 15086(c), 15096(d), and 15204(d.) Regardless, the School District submitted comments in response to the Notice of Preparation and on the Draft EIR, both of which were "prior to completion" of the EIR. Therefore, CEQA limited comments to areas of the School district's expertise.

The appeal attempts to define the School District as having an expertise "providing a safe and high-quality education to its students." Even the incredibly general statement of expertise provided in the appeal does not allege that the School District has technical expertise related to transportation safety or air quality emissions, despite the fact that these topics make up the bulk of the School District's comments. Therefore, these comments exceed the School District's statutory scope of authority under CEQA to provide comment, and the City is under no obligation to respond.

Despite the School District's overreach, the City made a good faith effort to provide a detailed response to each comment provided by the School District. As demonstrated in the Final EIR and previous responses to the School District, none of the asserted deficiencies are present, and the EIR includes substantial evidence to support each of its conclusions that the project would not result in any unmitigated significant environmental effects. Therefore, even assuming *arguendo* that the School District had jurisdiction to comment on these technical matters, its comments are without merit and the appeal should be denied.

Based on staff's evaluation of the appeal above, staff recommends that the City Council deny the appeal, certify the final EIR, adopt 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.

#### Abandonment of public utility easements (PUE)

The project is requesting that the City abandon ten-foot wide public utility easements on both sides of property line for entire block from Independence Drive to Chrysler Drive. Within the project limits, the PUE proposed to be abandoned is 10 feet wide behind 104 Constitution Drive, and 20 feet wide between 110 Constitution Drive and 115 Independence Drive. The easement contains facilities owned by PG&E, AT&T, and Comcast. The existing electric and communication lines are proposed to be undergrounded in a new easement and re-routed accordingly on the subject property. The applicant has obtained "no objection" letters from all relevant public utility agencies provided that a new easement will be dedicated for the relocated utilities. The applicant will be prohibited from placing any permanent structures within the proposed utility easement. At the June 22, 2021, City Council meeting, the City Council adopted a resolution initiating the abandonment process.

#### *Abandonment procedure*

The applicable abandonment procedure is a three step process that requires 1) City Council adoption of a Resolution of Intent to abandon public utility easements; 2) Planning Commission review for conformance to the general plan and recommendation to City Council; and 3) a public hearing by City Council and a Resolution ordering the vacation of the public utility easements.

On June 22, 2021, the City Council adopted Resolution of Intention No. 6640 (Attachment C, Exhibit A) to abandon public utility easements within the properties at 115 Independence Drive, 104 Constitution Drive

and 110 Constitution Drive, referring the matter to the Planning Commission for a recommendation on general plan consistency, and setting a date for a public hearing by City Council.

At its August 9, 2021 meeting, the Planning Commission reviewed the proposed abandonment and determined that it was consistent with the City's general plan, and recommended to the City Council that the public utility easements within the properties at 115 Independence Drive, 104 Constitution Drive, and 110 Constitution Drive be abandoned as proposed. The staff report is included as Attachment K.

The September 14, 2021 public hearing is the final step in the three step process. Should the City Council consider the abandonment favorably, a Resolution (Attachment C) ordering the vacation and abandonment of the public utility easements within the properties at 115 Independence Drive, 104 Constitution Drive, and 110 Constitution Drive would be adopted.

The abandonment would be compatible with the promotion of orderly development, because each required utility would be granted a replacement easement for undergrounded utilities to serve the project and surrounding sites. In addition to not negatively impacting other properties, the proposed abandonment would also benefit the subject site by allowing greater flexibility for redevelopment of the site. The PUE would be created to relocate utilities to adequately serve project needs and not conflict with the proposed development, and there have been no objections to the abandonment of the utilities easement. All procedural requirements for the vacation or abandonment of the PUE have been met. The draft resolution of the City Council approving the abandonment is included in Attachment C.

### **Correspondence**

Between the appeal submittal date of August 24, 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.

### **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 February 25, 2021 with a public comment period that ended 45 days later April 14, 2021. The Draft EIR is also available

on the City's development projects environmental documents website; a hyperlink is included in Attachment N.

Prior to 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 January 7, 2020, beginning a 30-day review and comment period ending February 7, 2020. A NOP begins the EIR process. The NOP is included via hyperlink in Attachment H and the IS are included as a link in Attachment I. Following the release of the initial study, the Planning Commission conducted a scoping session January 27, 2020, 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 initial study. The initial study disclosed relevant impacts and mitigation measures already covered in the program-level final EIR for ConnectMenlo (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 apply 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
- Greenhouse gas 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 both 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
- Greenhouse Gas Emission
- 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 March 22, 2021, 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 March 22, 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. Public comments were received regarding the merits of the project, but not regarding the adequacy of the environmental document or analysis provided in the Draft EIR. The Commission had questions regarding the VMT significance criteria, impact threshold and baseline scenario and proposed TDM measures, their efficiency, and monitoring and evaluation plans. Excerpt minutes of the March 22, 2021, meeting are provided as Attachment R.

Additionally, staff received five written comments during the public comment period for the project. One of the written comments was received was from Lozano Smith, Attorneys at Law representing the Sequoia Union High School District. The letter cited the following concerns that:

- 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 ConnetMenlo 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, impacts of sea level rise and liquefaction due to earthquakes on the development, and lack of services such as grocery stores, pharmacy, office supply, and gas station near new proposed residential development. 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, and requesting clarification on how the raising of ground elevation would not impede flood water flows. Staff also received a letter from the West Bay Sanitary District requesting that the Draft EIR review upsizing of existing main on Independence Drive and capacity issues downstream on Constitution Drive.

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 hyperlink in Attachment A, Exhibit B.) The final EIR was released July 30, 2021, for a 10-day public review pursuant to CEQA. The final EIR is available on the City's development projects environmental documents website (Attachment S.) All the comments received during the Draft EIR public comment period are included in the Final EIR and responses are provided for all comments. The Final EIR concluded that no new analysis or changes to the current 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 City initiated text revisions including a footnote to clarify the location of the backup generator and total number of hours per year it would approximately operate and include Table 4.2.E "Proposed Project Residential TDM Measures and Estimated Vehicle Miles Traveled Reduction" which was inadvertently omitted from Page 4.2-39 of the Draft EIR. The text revisions would not change any conclusions and findings of the Draft EIR.

As part of its consideration staff requests that the City Council review and consider the mitigation monitoring and reporting program (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 appeal of the Planning Commission's August 9, 2021, determination was timely filed with the city clerk August 24, 2021. MPMC section 16.84.020 provides that notice of a hearing on an appeal is given in the same manner as required notice for the hearing at which the decision subject to the appeal was made. 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 properties within 1,320-foot radius of the subject property at least 15 days before the hearing. Additionally, pursuant to the streets and highway code, five physical notices (signs) were posted within the project vicinity September 3, 2021 to notify the community about the City Council review of the public utilities easement abandonment request. Public notification was 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. 6665 certifying a final EIR, adopting findings required by CEQA, and adopting a mitigation, monitoring and reporting program (MMRP)  
Exhibits to Attachment A:
  - A. Project plans (See Attachment I below)
  - B. Hyperlink: Menlo portal final EIR - [menlopark.org/DocumentCenter/View/29275/Menlo-Portal-Final-EIR](https://menlopark.org/DocumentCenter/View/29275/Menlo-Portal-Final-EIR)
  - C. Statement of findings and facts pursuant to CEQA
  - D. MMRP
- B. Draft City Council Resolution No. 6666 adopting findings for project use permit, architectural control, draft BMR agreement, and draft community amenities operating covenant including project Conditions of Approval  
Exhibits to Attachment B:
  - A. Appeal of SUHSD (See Attachment M below)
  - B. Project plans (See Attachment I below)
  - C. Hyperlink: Menlo portal final EIR - [menlopark.org/DocumentCenter/View/29275/Menlo-Portal-Final-EIR](https://menlopark.org/DocumentCenter/View/29275/Menlo-Portal-Final-EIR)
  - D. Statement of findings and facts pursuant to CEQA (See Attachment A, Exhibit C)
  - E. MMRP (See Attachment A, Exhibit D)
  - F. BMR housing agreement
  - G. Community amenities operating covenant
  - H. Conditions of approval
- C. Draft City Council Resolution No. 6667 approving the public utilities easement abandonment  
Exhibits to Attachment C:



- A. City Council adopted Resolution of Intention No. 6640
- B. Project plans (See Attachment I below)
- C. Hyperlink – Menlo portal final EIR: [menlopark.org/DocumentCenter/View/29275/Menlo-Portal-Final-EIR](https://menlopark.org/DocumentCenter/View/29275/Menlo-Portal-Final-EIR)
- D. Statement of findings and facts pursuant to CEQA (See Attachment A, Exhibit C)
- E. MMRP (See Attachment A, Exhibit D)
- D. Hyperlink – HNA: [menlopark.org/DocumentCenter/View/27500/Appendix-D---Housing-Needs-Assessment](https://menlopark.org/DocumentCenter/View/27500/Appendix-D---Housing-Needs-Assessment)
- E. Hyperlink – FIA: [menlopark.org/DocumentCenter/View/27511/Fiscal-Impact-Analysis](https://menlopark.org/DocumentCenter/View/27511/Fiscal-Impact-Analysis)
- F. Hyperlink – City’s community amenities appraisal: [menlopark.org/DocumentCenter/View/27513/Community-Amenities-Appraisal](https://menlopark.org/DocumentCenter/View/27513/Community-Amenities-Appraisal)
- G. Applicant’s final community amenities options proposal, August 2, 2021
- H. City’s evaluation of the applicant’s intermediate community amenities options proposal, June 23, 2021
- I. Hyperlink – Project plans: [menlopark.org/DocumentCenter/View/29555/August-2021-Project-Plans](https://menlopark.org/DocumentCenter/View/29555/August-2021-Project-Plans)
- J. Project description
- K. Hyperlink – August 9, 2021, Planning Commission Staff Report: [menlopark.org/DocumentCenter/View/29318/Menlo-Portal-Staff-Report?bidId=](https://menlopark.org/DocumentCenter/View/29318/Menlo-Portal-Staff-Report?bidId=)
- L. Planning Commission excerpt draft minutes – August 9, 2021
- M. Appeal letter from SUHSD – August 24, 2021
- N. Hyperlink – Menlo portal project draft EIR: [menlopark.org/DocumentCenter/View/27508/Menlo-Portal-Project-Draft-EIR](https://menlopark.org/DocumentCenter/View/27508/Menlo-Portal-Project-Draft-EIR)
- O. Hyperlink – Notice of preparation: [menlopark.org/DocumentCenter/View/27505/Appendix-A---NOP-and-Comments](https://menlopark.org/DocumentCenter/View/27505/Appendix-A---NOP-and-Comments)
- P. Hyperlink – Initial study: [menlopark.org/DocumentCenter/View/27506/Appendix-B---Initial-Study](https://menlopark.org/DocumentCenter/View/27506/Appendix-B---Initial-Study)
- Q. Hyperlink – Planning Commission Staff Report, March 22, 202: [menlopark.org/DocumentCenter/View/27662/F2\\_115-Independence-Staff-Report-Menlo-Portal---Final?bidId](https://menlopark.org/DocumentCenter/View/27662/F2_115-Independence-Staff-Report-Menlo-Portal---Final?bidId)
- R. Planning Commission excerpt minutes and reporter’s transcript of proceedings, March 22, 2021
- S. Hyperlink – Environmental documents website: [menlopark.org/CEQA](https://menlopark.org/CEQA)

### 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.

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Eric Phillips, Special Counsel

## RESOLUTION NO. 6665

**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 PORTAL 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, , and community amenities operating covenant from GSMP Portal Owner, LLC (“Applicant”), to redevelop the property located at 115 Independence Drive, and 104 and 110 Constitution Drive (APNs 056-236-10, 055-236-020, 055-236-190) (“Property”), with a bonus level development project consisting of up to 335 multifamily rental units and approximately 34,499 square feet of office space including approximately 1,609 square feet of commercial space plus 2,190 square feet of outdoor space, which combined is proposed to be used as part of the Applicant’s community amenity space as an early childhood education center, 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 (BMR) Housing Program (Chapter 16.96.040), the applicant would provide 48 inclusionary units of the 320 maximum units allowed by the Zoning Ordinance. The Project would provide an additional 15 market-rate units pursuant to the density bonus provisions in the BMR Housing Program, resulting in the total number of units included in the Project to 335 rental units; 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 requests to abandon certain Public Utilities Easements (PUE) and relocate them within the Project Site such that the Project Site is adequately served by the utilities and does not conflict with the proposed development; and

WHEREAS, the proposed Project complies with all applicable objective standards of the City's Zoning Ordinance, including design standards, green and sustainable building standards, and is consistent with the City's General Plan goals, policies, and programs; and

WHEREAS, as allowed by the City's BMR Ordinance, the proposed Project requests waivers from the parking requirements to reduce the required 15 vehicular parking spaces and location of five short-term bicycle racks outside the required fifty feet of the main entrance. These waivers would be necessary to accommodate the 15 additional bonus units allowed by the City's BMR Ordinance to facilitate accommodating the increase density, FAR, and open space; 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 \$8,550,000. The Community Development Director determined that the appraisal was created pursuant to the City's guidelines and approved the appraisal; and

WHEREAS, on August 3, 2021, the applicant submitted an updated community amenities proposal with two options: Option 1 would provide building space and build-out costs for a childcare center plus a student tuition subsidy of \$5,427,826 for a total community amenities contribution of \$8,550,000 and Option 2 would provide building space and build-out costs for a childcare center plus a student tuition subsidy of approximately \$2,000,000 and a one time in-lieu fee to the City of approximately \$3,770,609 (including administrative fees) for a total community amenities contribution of \$8,892,783, and in either case the applicant would retain the ability to provide a one time in-lie fee to the City of \$9,405,000 instead of Option 1 or Option 2; 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 towards the student tuition subsidy, meets the required community amenity valuation of \$8,550,000 for Option 1 and \$8,892,783 for Option 2 (inclusive of the administrative fee for the in-lieu payment) and both options are consistent with the Zoning Ordinance; and

WHEREAS, utilization of the community amenity space by an early childhood education and care provider, is consistent with Resolution No. 6360 – the City's adopted community amenities list –

because the establishment of such a facility, along with financial contribution towards tuition subsidy for lower income students as defined in the Project's community amenities proposal, is considered under the category of "Social Service Improvements – Education Improvements in Belle Haven";

WHEREAS, for these reasons, staff recommended and the City Council approves of utilization of the community amenity space as a childcare center and the associated student tuition subsidy and/or partial in-lieu fee payment; 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 48 inclusionary housing units (15 percent of the 320 units allowed per R-MU zoning district with a mix of very-low, low, and moderate income limits (18 studio/junior one-bedroom units, 21 one-bedroom units, 8 two-bedroom units, and 1 three-bedroom unit); and

WHEREAS, the Applicant initially proposed to provide all 48 rental units affordable to low-income households, which would comply with the BMR Ordinance and BMR Guidelines; and

WHEREAS, at a duly noticed public meeting on May 5, 2021, the Housing Commission considered the applicant's BMR proposal and draft BMR Housing Agreement Term Sheet, inclusive of the 48 inclusionary BMR units, and forwarded a recommendation of approval to the Planning Commission of the proposed BMR Term Sheet showing mixed income and unit sizes/types that would be equivalent to an all low-income BMR scenario; 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 January 7, 2020 for a 30-day public review period ending on February 7, 2020. The City held a

public EIR scoping meeting on January 27, 2020 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 January 27, 2020, 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 February 25, 2021 for a 45-day review period that ended on April 14, 2021. The public review period included one duly noticed public meeting on March 22, 2021 to received oral and written comments on the Draft EIR; and

WHEREAS, On March 22, 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 July 30, 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 August 9, 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 agreement; 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 a timely appeal of the Planning Commission's actions on the project; and

WHEREAS, on September 14, 2021, the City Council held a public hearing and separately reviewed and considered the aforementioned appeal, and fully reviewed, considered, and evaluated the final EIR, along with all public and written comments, pertinent information, documents and plans prior to taking action to deny the appeal and approve the use permit, architectural control, BMR Housing agreement, and community amenities agreement for the Menlo Portal 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, abandonment of the existing PUEs and replacement with a new on site public utility easement, 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 and City Council 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, 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 Finding of Facts, 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.

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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 fourteenth day of September, 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 fourteenth day of September, 2021.

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Judi A. Herren, City Clerk

Exhibits

- A. Project Plans including materials and colors board
- B. Menlo Portal Final EIR
- C. Statement of Findings and Facts pursuant to CEQA
- D. Mitigation Monitoring and Reporting Program (MMRP)



**RESOLUTION NO. 6666****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK DENYING THE APPEAL OF THE AUGUST 9, 2021 PLANNING COMMISSION DECISION, UPHOLDING THE PLANNING'S APPROVAL OF APPROVING THE USE PERMIT, ARCHITECTURAL CONTROL, BELOW MARKET RATE HOUSING AGREEMENT, AND COMMUNITY AMENITIES OPERATING COVENANT FOR THE PROPOSED MENLO PORTAL PROJECT CONSISTING OF 335 MULTI-FAMILY DWELLING UNITS AND AN APPROXIMATELY 34,499 SQUARE FOOT OF OFFICE SPACE WHICH INCLUDES APPROXIMATELY 1,609 SQUARE FEET OF COMMERCIAL SPACE PROPOSED TO BE USED AS A COMMUNITY AMENITIES SPACE (EARLY CHILDHOOD EDUCATION CENTER) AT 115 INDEPENDENCE DRIVE AND 104 AND 110 CONSTITUTION DRIVE (APNS 056-236-10, 055-236-020, 055-236-190)**

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, and community amenities operating covenant from GSMP Portal Owner, LLC ("Applicant"), to redevelop the property located at 115 Independence Drive, and 104 and 110 Constitution Drive (APNs 056-236-10, 055-236-020, 055-236-190) ("Property"), with a bonus level development project consisting of up to 335 multifamily rental units and approximately 34,499 square feet of office space including approximately 1,609 square feet of commercial space plus 2,190 square feet of outdoor space, which combined is proposed to be used as part of the Applicant's community amenity space as an early childhood education center, 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 (BMR) Housing Program (Chapter 16.96.040), the applicant would provide 48 inclusionary units of the 320 maximum units allowed by the Zoning Ordinance. The Project would provide an additional 15 market-rate units pursuant to the density bonus provisions in the BMR Housing Program, resulting in the total number of units included in the Project to 335 rental units; 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 requests to abandon certain Public Utilities Easements (PUE) and relocate them within the Project Site such that the Project Site is adequately served by the utilities and does not conflict with the proposed development; and

WHEREAS, the proposed Project complies with all objective standards of the City's Zoning Ordinance, including design standards, green and sustainable building standards, and is consistent with the City's General Plan goals, policies, and programs; and

WHEREAS, as allowed by the City's BMR Ordinance, the proposed Project requests waivers from the parking requirements to reduce the required 15 vehicular parking spaces and location of five short-term bicycle racks outside the required fifty feet of the main entrance. These waivers would be necessary to accommodate the 15 additional bonus units allowed by the City's BMR Ordinance to facilitate accommodating the increased density, FAR, and open space; 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 \$8,550,000. The Community Development Director determined that the appraisal was created pursuant to the City's guidelines and approved the appraisal; and

WHEREAS, on August 3, 2021, the applicant submitted an updated community amenities proposal with two options: Option 1 would provide building space and build-out costs for a childcare center plus a student tuition subsidy of \$5,427,826 for a total community amenities contribution of \$8,550,000 and Option 2 would provide building space and build-out costs for a childcare center plus a student tuition subsidy of approximately \$2,000,000 and a one time in-lieu fee to the City of approximately \$3,770,609 (including administrative fees) for a total community amenities contribution of \$8,892,783, and in either case the applicant would retain the ability to provide a one time in-lieu fee to the City of \$9,405,000 instead of Option 1 or Option 2; and

WHEREAS, the City evaluated the two alternative community amenities proposals and determined that the value of Option 1 proposal, including the dedicated office space, rent subsidy, tenant improvement subsidy, and financial contribution towards the student tuition subsidy meet the required community amenity valuation of \$8,550,000 for Option 1 and \$8,892,783 for Option 2 (inclusive of the administrative fee for the in-lieu payment) and both options are consistent with the Zoning Ordinance; and

WHEREAS, utilization of the community amenity space by an early childhood education and care provider, is consistent with Resolution No. 6360 – the City’s adopted community amenities list – because the establishment of such a facility, along with financial contribution towards tuition subsidy for lower income students as defined in the Project’s community amenities proposal, is considered under the category of “Social Service Improvements – Education Improvements in Belle Haven”; and

WHEREAS, for these reasons, staff recommended and the Planning Commission approved of utilization of the community amenity space as a childcare center and the associated student tuition subsidy and/or partial in-lieu fee payment; 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 48 inclusionary housing units (15 percent of the 320 units allowed per R-MU zoning district with a mix of very-low, low, and moderate income limits (18 studio/junior one-bedroom units, 21 one-bedroom units, 8 two-bedroom units, and 1 three-bedroom unit); and

WHEREAS, the Applicant initially proposed to provide all 48 rental units affordable to low-income households, which would comply with the BMR Ordinance and BMR Guidelines; and

WHEREAS, at a duly noticed public meeting on May 5, 2021, the Housing Commission considered the applicant’s BMR proposal and draft BMR Housing Agreement Term Sheet, inclusive of the 48 inclusionary BMR units, and forwarded a recommendation of approval to the Planning Commission of the proposed BMR Term Sheet showing mixed income and unit sizes/types that would be equivalent to an all low-income BMR scenario; and

WHEREAS, 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 July 15, 2021 the City Arborist conditionally approved the heritage tree removal permits. The conditional action was posted on the site and mailed notices were sent out stating the action following the Planning Commission review and action on the architectural control and use permit requests; and

WHEREAS, staff did not receive any appeals to the City Arborist conditional action approving the heritage tree removal permits. Following the City Council action of denying the appeal and affirming the Planning Commission decision on the architectural control and use permit requests, staff will issue permits to remove the heritage trees; 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 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 January 7, 2020 for a 30-day public review period ending on February 7, 2020. The City held a public EIR scoping meeting on January 27, 2020 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 January 27, 2020, 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 February 25, 2021 for a 45-day review period that ended on April 14, 2021. The public review period included one duly noticed public meeting on March 22, 2021 to received oral and written comments on the Draft EIR; and

WHEREAS, On March 22, 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 July 30, 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 C; 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 August 9, 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, on August 9, 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 adopted findings of fact in accordance with CEQA, and adopted a Mitigation Monitoring and Reporting Program prior to taking action to approve the use permit, architectural control, BMR Housing agreement, and community amenities agreement for the Menlo Portal project; and

WHEREAS, on August 9, 2021, following a public hearing, the Planning Commission approved the use permit, architectural control, BMR Housing Agreement, and community amenities operating covenant for the Menlo Portal development project; and

WHEREAS, on August 24, 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 A; and

WHEREAS, on September 14, 2021, the City Council held a public hearing and separately reviewed and considered the appeal, 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 Portal 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 the 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 Portal development project based on the following findings supported by evidence in the whole of record, including pages 8 to 12 of the September 14, 2021 staff report:

*A. Planning Commission did not lack authority to certify the Final EIR.*

Apart from the appeal of the Planning Commission's actions, the only Council determination needed for the Project is vacation of an easement to be relocated elsewhere on the Project site. The Planning Commission reviewed and approved the use permit, architectural control permit, BMR agreement, and community amenities operating agreement, which together make up the bulk of the Project's necessary entitlements. CEQA Guidelines Section 15352(b) requires the City to comply with CEQA at the "earliest commitment" to the Project's approval. Because the Planning Commission's actions were the first set of binding City approvals, and would have been a final decision regarding the Project but for the appeal, the Planning Commission was required to certify the Final EIR, make findings, and adopt the MMRP before it took action to approve the Project.

Regardless, although the Planning Commission properly took action regarding the EIR before approving the Project, the appeal's claim is moot, because Council is now required to act on the Project by virtue of the appeal.

*B. The Draft EIR, Final EIR, and Planning Commission appropriately considered the District's school sites in all discussions of the "environmental setting."*

The applicable environmental setting, including surrounding land uses are 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 area of 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 analysis in the draft EIR. Air quality impacts to sensitive receptors would be less than significant with the implementation of Mitigation Measure AIR-2 of the Final EIR and included in the MMRP (included in Exhibit E) and noise impacts to sensitive receptors would be less than significant.

*C. The Draft EIR, Final EIR, and Planning Commission appropriately analyzed impacts on and related to school, and the environmental analysis properly "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 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 project being considered in the Bayfront area 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 Portal project final EIR. This timeframe would allow the district the opportunity to plan for potential student enrollment increases.

*D. The Draft EIR, Final EIR, and Planning Commission identified and analyzed 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.

- E. The Draft EIR, Final EIR, and Planning Commission were not required to consider evidence of impacts on the District presented in the "Fiscal Impact Analysis Report" (Feb. 2021) prepared by BAE Urban Economics on behalf of the City in connection with the EIR, but such alleged impacts are not physical impacts on the environment for purposes of CEQA.*

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. All CEQA impacts to school districts are mitigated by the payment of impact fees under SB 50, as described previously.

- F. The Draft EIR, Final EIR, and Planning Commission considered and analyzed 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 A2-3 through A2-18 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 (Exhibit E) and noise impacts to sensitive receptors would be less than significant.

*G. The Draft EIR and Final EIR proposed, and the Planning Commission approved, adequate mitigation measures for any impacts of the Project on the District relevant under CEQA.*

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.

*H. The District’s comments exceed the scope of its expertise, and as such, its comments may be disregarded.*

The appeal takes issue with the provisions of CEQA that establish specific limits on the scope of comments from a public agency. Specifically, Public Resources Code section 21153 limits public agencies to “substantive comments regarding those activities involved in a project that are within an area of expertise of the agency.” The appeal makes the unsupported assertion that this statutory limitation only applies “to early stages of consultation,” ignoring the plain statutory language that says the limit applies prior to completion of an environmental impact report. The appeal also ignores the numerous other provisions of CEQA that limit a public agency’s scope of review to its area of expertise; see, e.g., CEQA Guidelines sections 15086(c), 15096(d), and 15204(d). Regardless, the School District submitted comments in response to the Notice of Preparation and on the Draft EIR, both of which were “prior to completion” of the EIR. Therefore, CEQA limited comments to areas of the School district’s expertise.

The appeal attempts to define the School District as having an expertise if “providing a safe and high-quality education to its students.” Even the incredibly general statement of expertise provided in the appeal does not allege that the School District has technical expertise related to transportation safety or air quality emissions, despite the fact that these

topics make up the bulk of the School District's comments. Therefore, these comments exceed the School District's statutory scope of authority under CEQA to provide comment, and the City is under no obligation to respond.

Despite the School District's overreach, the City made a good faith effort to provide a detailed response to each comment provided by the School District. As demonstrated in the Final EIR and previous responses to the School District, none of the asserted deficiencies are present, and the EIR includes substantial evidence to support each of its conclusions that the project would not result in any unmitigated significant environmental effects. Therefore, even assuming *arguendo* that the School District had jurisdiction to comment on these technical matters, its comments are without merit.

BE IT FURTHER RESOLVED that the City Council of the City of Menlo Park, independently, after reviewing all the evidence before it, holding public hearing, considering the appeal 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 H, 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 and office uses 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, 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 mixed use project with multifamily apartment and office buildings with a portion of the ground-floor of the office building proposed to be used as part of the applicant's community amenity proposal as a childcare center with associated outdoor play area along with a philanthropic contribution to be used towards student tuition subsidy, 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 central plaza has been found to meet the requirements of publicly accessible open space and paseos outlined in the Zoning Ordinance and provides pedestrian access across the site connecting two public right-of-ways. The central plaza 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 48 inclusionary rental housing 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 hearing, considering the appeal 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 H, 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 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

office and the apartment buildings. The façades would predominantly consist of smooth troweled stucco portions, phenolic panel (with a wood grain veneer) and metal panels (grey), with vinyl windows for the upper floors and ground floor storefronts would contain an aluminum storefront system with a bronze finish. The Project incorporates 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 mixed use with multifamily rental residential project with an approximately 34,499 square feet of office space including approximately 1,609 square feet of commercial space plus 2,190 square feet of outdoor space, which combined is community amenities space (childcare center) proposed to be used as part of the Applicant's community amenity space as an early childhood education center on the ground floor of the office building. The proposed Project design is generally 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 central plaza, consistent with the vision of ConnectMenlo General Plan. The central plaza along with additional ground floor open space would provide a pedestrian connection across the site connecting two public right-of-ways 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 multifamily rental dwelling units and approximately 34,499 square feet of office space which 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 and underutilized site. The proposed Project contributes towards providing 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 central plaza and additional ground floor open space that would provide additional pedestrian connectivity 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 414 on-site parking spaces, where the minimum number of parking spaces is 405 and the maximum number of spaces allowed is 608. Of the total 414 spaces provided, the residential apartment building would accommodate 320 parking spaces. Pursuant to the provisions of the BMR Ordinance, the proposed Project includes a request to reduce the required minimum residential parking by less than one space per unit requirement to accommodate the BMR bonus units. The Project includes 320 residential parking spaces 335 vehicular spaces would be required by the Zoning Ordinance without the waiver request allowed by the BMR density bonus. The proposed Project is required to reduce vehicle trips from the site by 20 percent from the typical land uses within the site, pursuant to the requirements of the Zoning Ordinance through inclusion of a transportation demand management program. 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. Moreover, guest parking stalls would be provided in the apartment building. Lastly, the project provides 503 long-term bicycle parking spaces and 65 short-term to serve the residential building and 12 long-term and two short-term bicycle parking spaces to serve the proposed office building. 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 hearing, considering the appeal before it, and considering the Planning Commission's Actions, hereby approves the Below Market Rate Housing Agreement ("BMR Agreement") between the City and Applicant that satisfies the requirements of Chapter 16.96 of the Menlo Park Municipal Code and City of Menlo Park Below Market Rate Housing Program Guidelines attached herein as Exhibit F. The City Council hereby resolves:

1. 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 Agreement described above and incorporated herein as Exhibit E.
2. 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 48 BMR units. Pursuant to the City of Menlo Park Below Market Rate Housing Program Guidelines, the applicant elected to provide 3 very low income rental units, 14 low income rental units, 31 moderate income rental units.
3. 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.

4. 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 shall be roughly equivalent to the provision of all of the affordable units at the low income level.
5. Pursuant to MPMC section 16.96.020(c), on May 5, 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 scenario that includes a mix of income limits.
6. 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 the evidence before it, holding public appeal hearing, considering the appeal before it, and considering the Planning Commission’s Actions hereby approves the Community Amenities Operative 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 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 G or to pay an in-lie fee of \$9,405,000.
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.

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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 fourteenth day of September, 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 fourteenth day of September, 2021.

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Judi A. Herren, City Clerk

#### Exhibits

- A. Appeal of Sequoia Union High School District
- B. Project Plans including materials and color board
- C. Menlo Portal Final EIR
- D. Statement of Findings and Facts pursuant to CEQA (See Attachment A, Exhibit C)
- E. Mitigation Monitoring and Reporting Program (MMRP) (See Attachment A, Exhibit D)
- F. Below Market Rate Housing Agreement
- G. Community Amenities Operating Covenant
- H. Conditions of Approval

**RESOLUTION NO. 6667****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
DECLARING THE VACATION AND ABANDONMENT OF PUBLIC UTILITIES  
EASEMENT AT 115 INDEPENDENCE DRIVE AND 104 AND 110  
CONSTITUTION DRIVE (APNS 056-236-10, 055-236-020, 055-236-190)**

WHEREAS, on June 22, 2021, the City Council of the City of Menlo Park adopted Resolution No. 6640 declaring the intention of the City to abandon the Public Utility Easements within property at 115 Independence Drive and 104 and 110 Constitution Drive; and

WHEREAS, on August 9, 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 adopted findings of fact in accordance with CEQA, and adopted a Mitigation Monitoring and Reporting Program; and

WHEREAS, on August 9, 2021, the Planning Commission held a public hearing on this subject to consider the aforementioned proposed abandonment and found that the proposed abandonment consistent with the General Plan and recommended that the City Council approved the requested abandonment as proposed; 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 a timely appeal of the Planning Commission's actions on the project; and

WHEREAS, on September 14, 2021, the City Council held a public hearing and separately reviewed and considered the aforementioned appeal, and fully reviewed, considered, evaluated, and certified the final EIR, adopted findings pursuant to CEQA, and adopted an MMRP;

WHEREAS, on September 14, 2021, the City Council considered the entire record, including all public and written comments, pertinent information, documents and plans prior to taking action to deny the appeal and approve the use permit, architectural control, BMR Housing agreement, and community amenities agreement for the Menlo Portal development project; and

WHEREAS, a public hearing was held before the City Council of the City of Menlo Park regarding the forgoing matter on September 14, 2021; and

WHEREAS, a notice of said public hearing was duly made by publication, mailing, and posting as required by law, and proof thereof is on file with the City Clerk of the City of Menlo Park; and

WHEREAS, no protests were filed with or received by said City Council; and

WHEREAS, the City Council finds that to promote orderly development and necessity require that utility easements be reserved within the area to be vacated.



NOW, THEREFORE, the City of Menlo Park, acting by and through its City Council, having considered and been fully advised in the matter and good cause appearing therefore,

BE IT AND IT IS HEREBY RESOLVED by the City of Menlo Park:

1. That the City Council hereby finds that the Final EIR constitutes an adequate, objective, and complete analysis addressing all issues relevant to the approval of the proposed abandonment of the existing Public Utility Easements and replace them with a new on site public utility easement.
2. That the City Council hereby finds that, the monitoring and reporting of CEQA mitigation measures in connection with the proposed abandonment 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.
3. That the Public Utility Easement should be abandoned, because it is no longer needed in the current location and would be replaced in conjunction with development of the project site, and because abandonment of the easement from its current location would allow the Applicant to proceed with the construction of the proposed housing units and associated site improvements, which therefore demonstrate that the public convenience, necessity, and the best interests of the residents of Menlo Park will be served by such abandonment.
4. That the City Council hereby abandons, to the full extent permitted by law, the Public Utility Easements located 10 feet wide behind 104 Constitution Drive, and 20 feet wide between 110 Constitution Drive and 115 Independence Drive, described on the legal plats, Exhibit B, attached hereto and by the legal description of said public utility easement on file in the Engineering Division, and said Exhibits and legal descriptions area incorporated herein and made part of hereof.
5. That the City reserves Public Utilities Easements as more particularly shown on Exhibit B.
6. That the City Council finds that said abandonment is consistent with the General Plan as the public utility easement abandonment would be compatible with orderly development, because each required utility would be granted a replacement easement for undergrounded utilities to serve the project and surrounding sites.

#### 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.

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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 fourteenth day of September, 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 fourteenth day of September, 2021.

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Judi A. Herren, City Clerk

Exhibits

- A. City Council adopted Resolution of Intention No. 6640
- B. Project Plans
- C. Menlo Portal Final EIR
- D. Statement of Findings and Facts pursuant to CEQA (See Attachment A, Exhibit C)
- E. Mitigation Monitoring and Reporting Program (MMRP) (See Attachment A, Exhibit D)

August 02, 2021

Planning Division  
City of Menlo Park  
701 Laurel Street  
Menlo Park, CA 94025

### **Updated Community Amenity Proposal: Menlo Portal**

#### Summary of Changes Since 06-11-2021 Proposal

- **6-25-2021 Revision**
  - Updated allocation of community amenity value to bridge \$180,000 shortfall identified by BAE Memo dated 6-23-21 → shifted \$180,000 allocation from build-out costs to student tuition subsidy in Option 1 and from build-out costs to City in-lieu fee in Option 2
  - Addition of table with income levels for All Five families
- **7-27-2021 Revision**
  - Updated approximate age of children for childcare center from 3 – 5 years old to 0 – 5 years old
- **7-29-2021 Revision**
  - Addition of in-lieu fee as option due to ongoing liability related to termination fee
  - Addition of cover page with list of changes since 6-11-21 community amenity proposal
- **7-30-2021 Revision**
  - Removal of BAE Evaluation (formerly Exhibit A) from the document; exhibits re-labeled throughout
- **8-2-2021 Revision**
  - Updated Option 2 to incorporate required 10% supplemental administrative fee for in-lieu payment to City
  - Corrected typo in open space and parking totals

Dear Menlo Park Planning Division:

Section 16.45.070 of the Menlo Park Municipal code states that an applicant shall provide one or more community amenities in exchange for bonus level development in the R-MU district. To comply, Greystar provides this proposal to describe the specific amount of bonus development sought, an overview of the proposed amenity options, the value of the amenity as calculated per the City's valuation guidelines and to provide information identifying the value of the proposed community amenities.

We would like to further note that our team has conducted extensive community outreach in developing this proposal including three formal community open houses and numerous other informal meetings with members of the Belle Haven community. We believe the proposals described herein reflect the desires, ideas and suggestions of these community discussions.

On July 15, 2021 Greystar received the City's proposed community amenity covenant describing requirements associated with the childcare facility and operator proposed onsite at Menlo Portal. As a result of these requirements, and specifically the ongoing liability associated with the termination fee, Greystar must amend its community amenity proposal to include an option to pay an in-lieu fee consistent with Menlo Park Code Section 16.45.070(4)(b). This will result in an option for Greystar to pay an in-lieu fee of \$9,405,000 equivalent to 110% of the appraised value. Greystar will be required to make this determination at building permit consistent with code. If the City is unable to provide an option allowing Greystar to continue to pursue childcare in this location, Greystar will default to paying the in-lieu fee instead.

The childcare facility and the in-lieu fee are 100% code compliant.

#### *Bonus Level Development*

The Menlo Portal project proposed at 115 Independence Drive and 104-110 Constitution Drive comprises development of a 3.20-acre site at the bonus level. As such, the project has been designed to comply with the bonus-level design requirements except with respect to FAR, density and parking where we have requested relief under the City's BMR bonus density program.

#### *Amenity Value*

The City engaged Fabbro, Moore & Associates, Inc. ("Fabbro") to prepare an independent appraisal to determine the Menlo Portal community amenity value. In a report sent to Greystar on January 26, 2021, Fabbro determined that the fair market value of the Menlo Portal bonus level development was \$17,100,000 which translates to a required community amenity value of \$8,550,000.

#### *Proposed Community Amenity*

On the basis of the Fabbro appraisal, we have moved ahead with revisions to the project's community amenity appraisal at the City's recommendation in order to avoid any delays to City staff or EIR consultant review.

This updated community amenity proposal incorporates both an expanded community amenity footprint (~3,790 square feet increased from ~1,600 square feet, an expansion of 137%) as well as an updated plan to dedicate the space as an

early childhood education facility. Additional funds would be allocated in one of two proposed structures as summarized in the chart on the following page: 1) \$5.4M for use by the early childhood education program or 2) \$2.0M for use by the early childhood education program and \$3.8M for the City’s in-lieu amenity fund. Finally, the table below reflects Greystar’s option to elect to pay the in-lieu fee at building permit stage. This option would apply regardless of whether Options 1 or 2 is selected.

*Summary of Proposed Community Amenity Alternatives*

<b>Amenity Component</b>	<b>Option 1</b>	<b>Option 2</b>	<b>In Lieu Payment</b>
Building space (All Five)	\$2,762,174	\$2,762,174	-
Build-out costs (All Five)	\$360,000	\$360,000	-
Student tuition subsidy (All Five)	\$5,427,826	\$2,000,000	-
In-lieu fee (City)	-	\$3,770,609	\$9,405,000
<b>Total</b>	<b>\$8,550,000</b>	<b>\$8,892,783</b>	<b>\$9,405,000</b>

These options are described in more detail in the *Proposed Valuation and Program Contributions* section below. Our team has decided to focus this community amenity proposal on expanding affordable early childhood education programs within the Belle Haven community for three primary reasons: 1) we believe that carefully directed investments in early childhood education programs would be a key driver of economic growth for Belle Haven, 2) we understand based on recent studies and feedback from the community that advancements in early childhood education are greatly needed across San Mateo County and in Belle Haven and East Palo Alto in particular and 3) fees for existing affordable early childhood education programs within the community have increased due to COVID and City budget constraints which threatens to further limit families’ access to these educational opportunities.

First, studies show that there is a direct link between early childhood education and economic advancement. Research prepared by the Council of Economic Advisors in 2014 concluded that “expanding early learning initiatives would provide benefits to society of roughly \$8.60 for every \$1 spent, about half of which comes from increased earnings for children when they grow up<sup>1</sup>. In a similar vein, the Committee for Economic Development urged policymakers to consider such investments in young children “one of the most effective strategies to secure the future economic strength of their communities...”<sup>2</sup> Investments in early childhood education pay significant dividends in the form of higher levels of readiness for K-12 education and ultimately higher rates of high school and college graduation. Second, recent studies completed for the San Mateo County Child Care Partnership Council underscored a significant shortage of early childhood education programs in San Mateo County and the Belle Haven and East Palo Alto area in particular, finding that only about 47% of the projected preschool needs in this community were being fulfilled. Moreover, performance in the K-12 school system in the community reflects this inadequacy of early childhood education: only 15.1% of third graders in the Ravenswood City School District which encompasses Belle Haven and East Palo Alto were found to meet the grade-level literacy standard<sup>3</sup>. Since Menlo Portal’s inception in 2019, our team has heard this need for early childhood education echoed throughout our outreach by numerous community members and City officials alike. Finally,

<sup>1</sup> [https://obamawhitehouse.archives.gov/sites/default/files/docs/early\\_childhood\\_report\\_update\\_final\\_non-embargo.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/early_childhood_report_update_final_non-embargo.pdf)

<sup>2</sup> <https://www.firstthingsfirst.org/early-childhood-matters/investing-in-early-childhood/>

<sup>3</sup> [https://www.smcoe.org/assets/files/About\\_FIL/Child%20Care%20Partnership%20Council\\_FIL/Needs%20Assessment\\_FIL/CCPC\\_Needs\\_Assessment\\_East\\_Palo\\_Alto\\_11-17.pdf](https://www.smcoe.org/assets/files/About_FIL/Child%20Care%20Partnership%20Council_FIL/Needs%20Assessment_FIL/CCPC_Needs_Assessment_East_Palo_Alto_11-17.pdf)



To further develop our design for the early childhood education space, our team engaged Dorman & Associates who has worked on Children's Center of the Stanford Community and several other notable early childhood education centers around the San Francisco Bay Area. With assistance from their team, we were able to confirm that the ground floor space dedicated in the office building could accommodate a preschool education center or similar facility serving anywhere from 20 – 24 children. The diagrams below show the proposed location of the childhood education center as well as the proposed layout within the space for use by our proposed operator. All told, the space includes 1,600 square feet of indoor space and 2,190 square feet of outdoor play area space.

#### *Proposed Early Childhood Education Use*

While we are still refining our design for the space, the proposed preliminary layout currently contemplates a preschool classroom setting for children between the approximate ages of 0 to 5 years old. The space incorporates an indoor classroom (~864 square feet), as well as unisex restroom, teacher support areas, reception area and staff lounge inside the building as well as an adjacent outdoor play area covered in artificial turf with tables and play equipment. We would estimate that the center would operate approximately between the hours of 9 am to 5:30 pm with the majority of pickups and drop-offs taking place between the hours of 7:30 am – 9 am and 5:30 pm – 7 pm. We have been working with the City staff to refine our proposed layout for a pickup and drop-off zone along Constitution Drive near the early childhood education center entrance which could be dedicated for use by patrons of the early childhood education center during its hours of operation. Preliminary architectural sketches of the proposed early childhood education center space may be found in Exhibit A.

#### *Sample Play Equipment for Outdoor Play Area*



Based on the number of children the facility could accommodate, we anticipate that approximately six staff members would be required to operate the facility on a day-to-day basis. With 94 total parking spaces and 12 bike parking spaces, the office building has more than enough vehicle and bicycle parking to accommodate these six staff members who will require dedicated parking throughout the hours of operation (i.e. dedicating six parking spaces to early childhood education center staff leaves 88 parking spaces, or a ratio of 2.5 spaces / 1,000 FAR square feet which is more than the City required minimum). Finally, we want to mention that dedication of the 2,190 square feet of outdoor play area to the early childhood education center would still leave 9,575 square feet of publicly accessible open space which is still

10% greater than the minimum required amount of publicly accessible open space for the project which is 8,723 square feet.

*Proposed Early Childhood Education Partner*

As previously noted, our team recommends partnering with Belle Haven-based All Five to bring this proposed community amenity program to fruition based on All Five’s proven track record of providing high-quality early childhood education opportunities since 2015. We first met with All Five back in 2019 through one of our early community outreach conversations and recently reconnected to discuss the prospect of expanding their early childhood education programs to the Menlo Portal amenity space.

All Five is the community’s only program accredited by the National Association of the Education of Young Children (NAEYC) serving local children from low-income families. All Five’s model is based around fostering educational equity and it therefore trifurcates its learning community – 50% of the children come from a low-income tier including homeless and house insecure, 25% from the middle tier (just above the poverty threshold) and 25% come from higher-tier income backgrounds. This model is based on research which supports the positive impact on learning in socio-economically diverse settings. Notably, 80% of All Five families reside in Menlo Park or East Palo Alto. In addition to the student community, All Five’s professional staff also draws heavily from the Belle Haven community having hired and trained six teachers from Belle Haven / East Palo Alto.

The idea for All Five was inspired by thirty years of teaching early childhood education in both lower, as well as higher income communities. The All Five model uncovers the significant opportunity gap between very low-income communities compared to surrounding neighborhoods. However, the model also facilitates sharing of families’ common values and purpose to provide the highest quality education possible for their children.

Based on the trifurcated structured outlined above and shown in the chart below, 75% of children and their families receive significant support to pay their tuition: 50% of the families’ tuition is paid by a combination of CSPP and CCTR contracts (California low-income ECE subsidy) and philanthropic contributions; 25% - who are just above the state’s low-income threshold – pay sliding scale tuition according to their ability to pay with any shortfall being funded through philanthropic contributions. For both of these groups, the philanthropic contribution comprises about \$1,300 per student per month. These families reside, almost exclusively, in the Belle Haven neighborhood.

All Five Families by Income Level

Tier	% of All Five Families	Annual Income (family or 3 or more)	Revenue Source
Lower (subsidized)	50%	<\$73,884	State subsidy + philanthropic contributions
Middle (subsidized)	25%	\$73,884 - \$111,588	Sliding scale tuition + philanthropic contributions
Higher	25%	>\$111,588	Full family-paid tuition

For the program at Menlo Portal, first priority for this 75% subsidized segment would be given exclusively to Belle Haven families with only any remaining seats offered to families in the neighboring community (outside Belle Haven) thereafter. Likewise, first priority for teaching staff positions would also be granted to Belle Haven residents.



Together with All Five, our team has also explored some potential performance metrics which would help provide accountability to the City and community during the early childhood education center's first two years of operations. Such metrics could include:

- 95% of All Five children entering kindergarten rated at "integrating" level on self-regulation DRDP assessments at Spring/Summer rating period.
- 95% of families report that their child is/children are "well-prepared" for kindergarten on self-assessment
- Average 50% attendance at each Family Café throughout year by families
- Average 80% families fulfilling monthly volunteer hours

Attached in Exhibit C is an overview letter which provides further details on All Five, its background and operating model. We are eager to continue working with the City and community to further refine the proposed partnership with All Five to maximize the benefit of its educational program at Menlo Portal.

#### *Proposed Valuation and Program Contributions*

As outlined in the previous section, we propose a partnership with All Five, a Belle Haven-based operator who would bring early childhood education programs to the Menlo Portal amenity space. Under this arrangement, All Five would be invited to occupy the space for the purpose of operating an early childhood education facility with all typical rental costs fully subsidized by Greystar. We are recommending that All Five grant priority enrollment for children residing in the Belle Haven community. We believe this may ultimately be determined by the City in partnership with All Five.

The estimated value of this neighborhood benefit space is comprised of two primary elements: (1) the discounted present value of the net operating cash flows based on similarly located commercial spaces in the Menlo Park and (2) additional funds that will be contributed to either to All Five or towards payment of an "in-lieu" fee which would be used at the City's discretion according to two options presented below. In the case of Option 1, the total of these valuation components will be \$8,550,000, matching the community amenity value as determined by the Fabbro appraisal and in Option 2, total is \$8,892,783 due to the supplemental 10% administrative fee required for the \$3,770,609 in-lieu payment to the City.

Over the past several months, BAE Economics, a third-party economics and real estate advisory consulting firm conducted an independent review of our team's initial valuation. The analysis performed by BAE determined that the value attributable to the commercial real estate space was \$2,762,174. BAE's analysis breaks this value into two components – the net present value of the commercial space subsidy and the net present value of the subsidized operating costs. These costs are projected over a fifty-five-year time horizon assuming a 3.0% annual growth rate. This calculation and the BAE evaluation may be accessed on the City of Menlo Park website.

Based on discussions with City staff and community members, our team has updated this community amenity proposal to include two possible options for the lump sum payment portion of the amenity value. In the first option, the remaining balance of the amenity value due (i.e. \$5,787,826) would be contributed to All Five for its use in covering fit-out, early start-up costs and student tuition roughly according to the following schedule of estimated costs:

<b>CATEGORY</b>	<b>EXPENDITURE ITEM</b>	<b>ESTIMATED AMOUNT</b>
Interior Fit-Out	Interior finishes, fixtures, casework	\$ 95,000
Early Childhood Education Furniture	Community playthings	\$ 65,000
Staff / Teachers' Furniture	Office, teacher's lounge	\$ 25,000
Exterior Fit-Out	Landscaping, groundcover, shade structures	\$ 60,000
Play Yard Equipment	Tables, stools, mud-table, outdoor "kitchen", easels	\$ 30,000
Professional Development	Culture & community building support	\$ 10,000
Start-Up Costs	Educational supplies	\$ 50,000
Technology	Computers, phones, internet, software, support	\$ 25,000
Student Tuition Subsidy*		\$ 5,427,826
<b>Total</b>		<b>\$ 5,787,826</b>

\*Operating cost / state subsidy per child is approximately \$1,300 / month or \$15,600 / year

Notably, subsidizing the cost of student tuition would comprise roughly 94% of the lump sum financial contribution. Based on the current subsidy schedule, this amount would be enough to pay for the tuition of approximately 68 students over a period of five years.

In the second option, \$2,360,000 of the remaining amenity value due would be allocated to All Five for its use in covering fit-out, early start-up costs and revised student tuition contribution with the balance of the funds plus a ten percent administrative fee, or \$3,770,609 being contributed as an in-lieu payment towards the City's community amenity fund. These funds would then be allocated at the City's discretion.

<b>CATEGORY</b>	<b>EXPENDITURE ITEM</b>	<b>ESTIMATED AMOUNT</b>
Interior Fit-Out	Interior finishes, fixtures, casework	\$ 95,000
Early Childhood Education Furniture	Community playthings	\$ 65,000
Staff / Teachers' Furniture	Office, teacher's lounge	\$ 25,000
Exterior Fit-Out	Landscaping, groundcover, shade structures	\$ 60,000
Play Yard Equipment	Tables, stools, mud-table, outdoor "kitchen", easels	\$ 30,000
Professional Development	Culture & community building support	\$ 10,000
Start-Up Costs	Educational supplies	\$ 50,000
Technology	Computers, phones, internet, software, support	\$ 25,000
Student Tuition Subsidy*		\$ 2,000,000
In-Lieu Payment to City		\$ 3,770,609
<b>Total</b>		<b>\$ 6,130,609</b>

\*Operating cost / state subsidy per child is approximately \$1,300 / month or \$15,600 / year

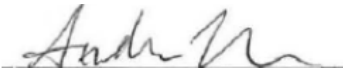
The \$2,000,000 student tuition subsidy contemplated above would be expected to last about four years and would be spent to the reduce the shortfall between student operating costs and tuition at the early childhood education center. This shortfall is driven in large part by three factors:

- The cost of operating a high-quality early childhood education program significantly exceeds the state funding available
- Families who don't qualify for state subsidy pay on a sliding scale rate based on their ability to pay
- The cost of providing teachers and staff, who live almost exclusively in Belle Haven and Menlo Park with a professional wage, benefits (health/life insurance, 401K, vacation) and development

The four years of funding described above would be important for All Five since this would give them the requisite two years to get a full childhood education program up and running smoothly with teachers and students. The ensuing two years of funding would allow All Five to continue building the program and establish funding for future years.

We thank you for the opportunity to submit this community amenity proposal for consideration and look forward to discussing further with City staff.

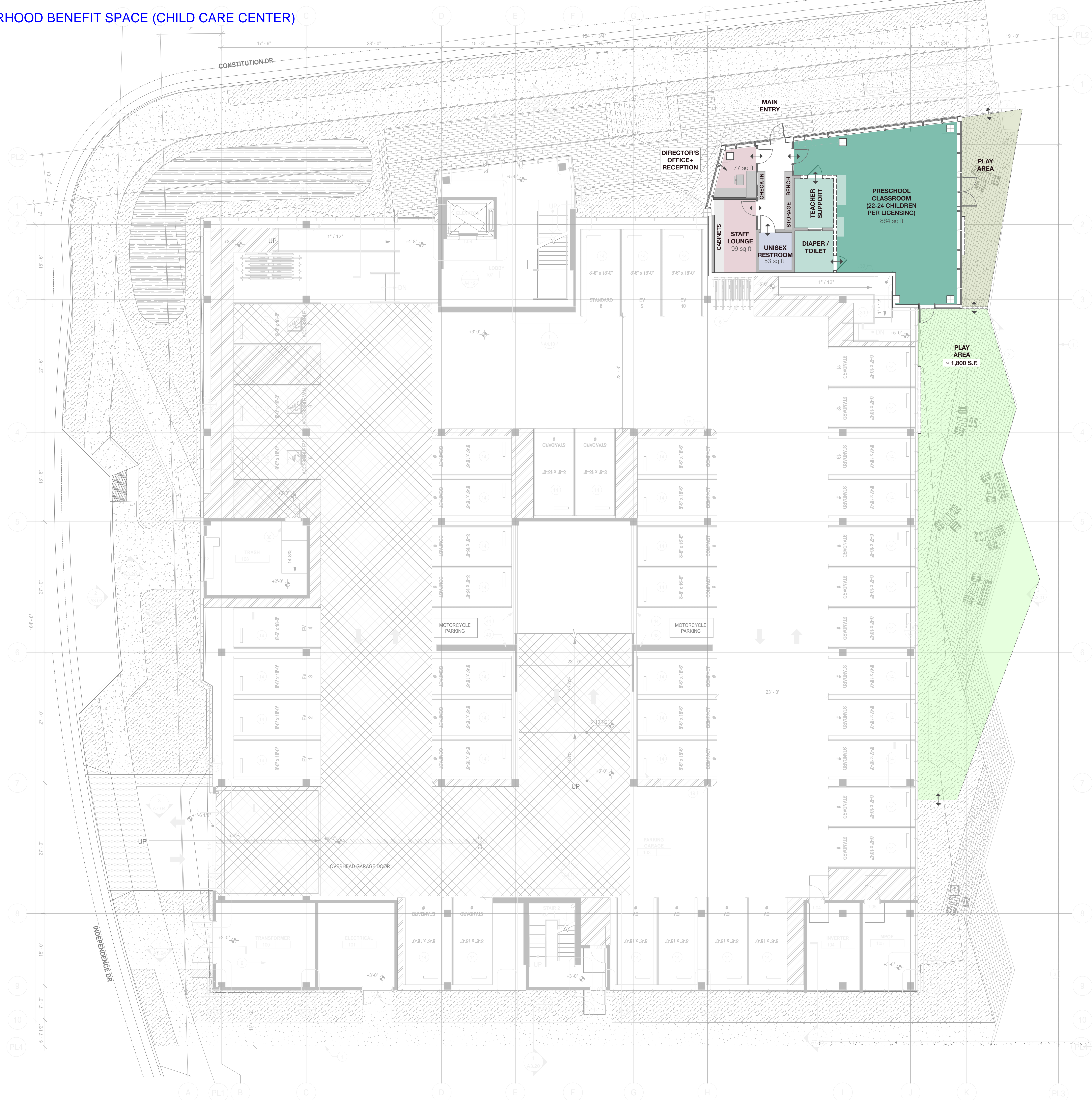
Sincerely,



**Andrew Morcos**  
Senior Development Director  
Greystar

Exhibit A

SKETCH OF MENLO PORTAL NEIGHBORHOOD BENEFIT SPACE (CHILD CARE CENTER)



**Dorman Associates**  
ARCHITECTURE + INTERIORS  
CHRIS DORMAN, AIA  
229 FLAMINGO ROAD  
MILL VALLEY, CA 94541  
415.380.7914 TEL  
415.380.7915 FAX  
CD@DORMANASSOCIATES.COM  
WWW.DORMANASSOCIATES.COM

**MENLO PORTAL OFFICE BUILDING  
CHILD DEVELOPMENT CENTER**  
104 & 110 CONSTITUTION DRIVE  
MENLO PARK, CA 94025

FEASIBILITY STUDY

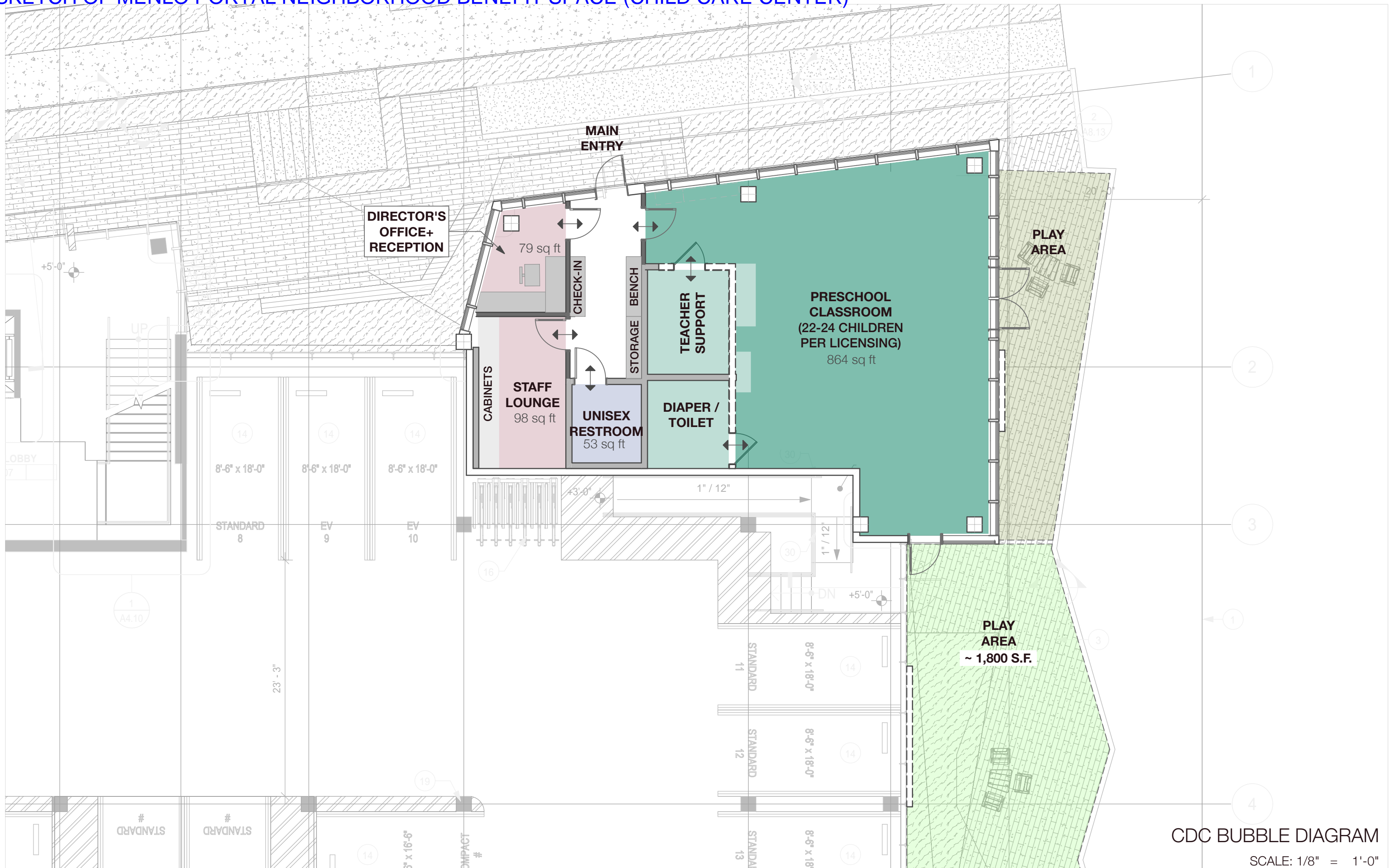
CHILD  
DEVELOPMENT  
CENTER BUBBLE  
DIAGRAM

REVISIONS

DATE: 12/9/20  
SHEET

CDC BUBBLE DIAGRAM  
SCALE: 1/8" = 1'-0"

SKETCH OF MENLO PORTAL NEIGHBORHOOD BENEFIT SPACE (CHILD CARE CENTER)



CDC BUBBLE DIAGRAM  
SCALE: 1/8" = 1'-0"

MENLO PORTAL OFFICE BUILDING - CHILD DEVELOPMENT CENTER  
CDC BUBBLE DIAGRAM  
12/7/20

STREET TREES PENDING CONFIRMATION OF PG&E ABANDONING OF EXISTING GAS LINE BENEATH STREET TREE WELL. IF GAS LINE IS ABANDONED THAN STREET TREES WILL BE INSTALLED. IF GAS LINE IS REMAINING THEN ONLY SHRUBS AND GROUND COVER WILL BE PLANTED

DROP OFF ZONE FOR 3 CARS.

MAINTAIN 5' SIDEWALK

DARK GREEN: AT GRADE PLANTING

LIGHT GREEN: ELEVATED PLANTING

CONCRETE STAIR

**MATERIALS LEGEND**

- STANDARD CITY CONCRETE
- COLORED CONCRETE
- UNIT PAVERS - COLOR A
- UNIT PAVERS - COLOR B
- UNIT PAVERS - COLOR C
- SHRUB AND GROUND COVER
- BIOTREATMENT AREA
- TREE, SEE PLANTING PLAN

**GENERAL SYMBOLS & ABBREVIATIONS**

- PROPERTY LINE
- POINT OF BEGINNING
- CENTERLINE
- EQUAL
- ON CENTER
- NOT IN CONTRACT
- NUMBER
- TYPICAL
- QUANTITY
- VERIFY IN FIELD
- SEE ARCHITECTURAL DRAWINGS
- SEE CIVL DRAWINGS
- SEE STRUCTURAL DRAWINGS
- SEE MECHANICAL DRAWINGS
- SEE ELECTRICAL DRAWINGS

**GATE LOCATIONS**

- SECTION CALLOUT

**LANDSCAPE GENERAL NOTES**

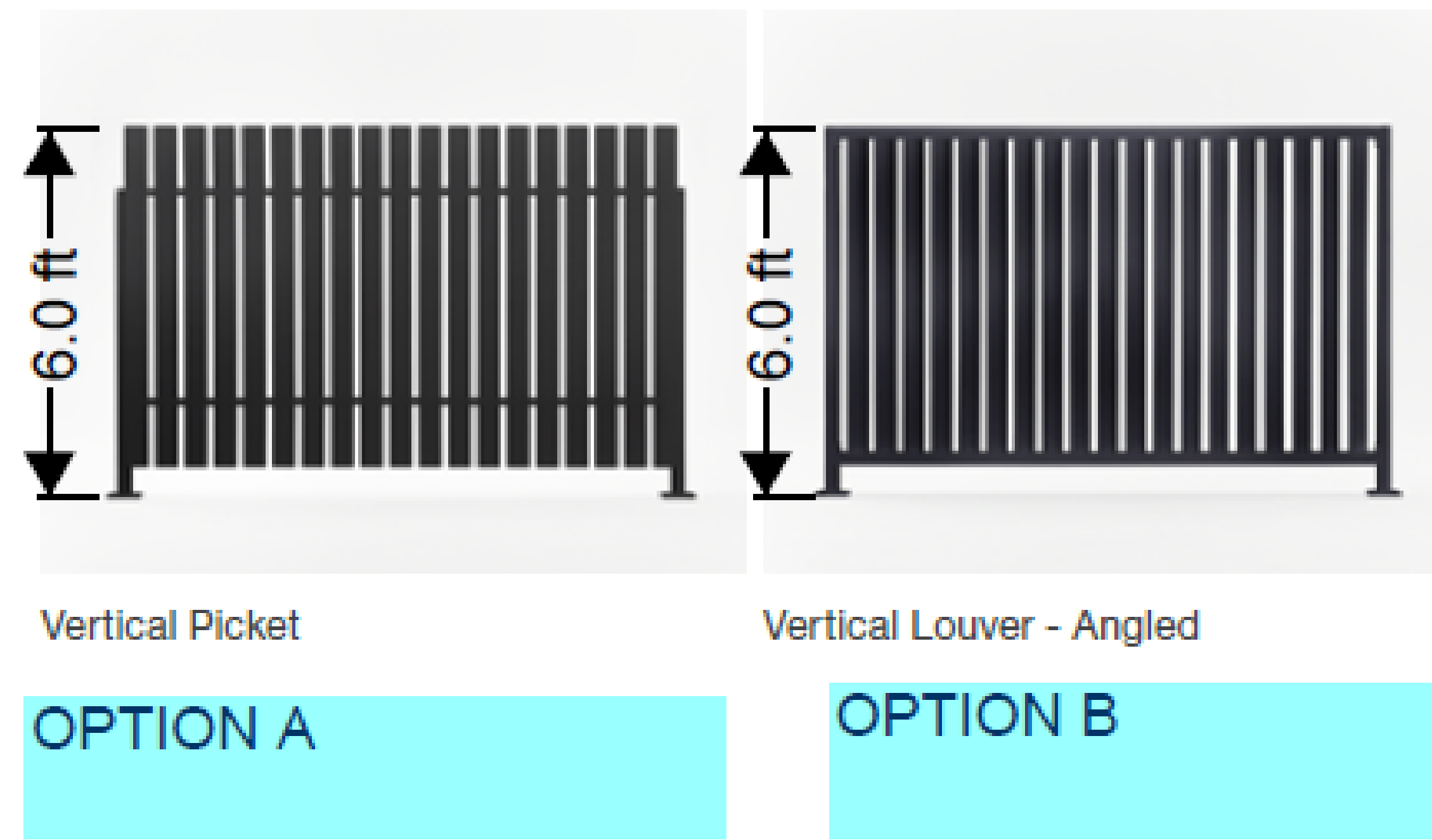
1. "TYP" OR TYPICAL MEANS THAT THE CONDITION IS REPRESENTATIVE FOR SIMILAR CONDITIONS THROUGHOUT, UNLESS OTHERWISE NOTED. DETAILS ARE USUALLY NOTED "TYP" ONLY ONCE WHEN THEY FIRST OCCUR.
2. NOTES AND SYMBOLS ON ONE DRAWING APPLY TO OTHER SIMILAR DETAILS AND CONDITIONS.
3. BECOME ACQUAINTED WITH SUBGRADE UTILITIES, PIPES AND STRUCTURES. SHOULD UTILITIES OR OTHER WORK NOT SHOWN ON THE PLANS BE FOUND DURING EXCAVATIONS, PROMPTLY NOTIFY OWNER'S REPRESENTATIVE. FAILURE TO DO SO WILL MAKE CONTRACTOR LIABLE FOR DAMAGE ARISING FROM HIS OPERATIONS SUBSEQUENT TO DISCOVERY OF SUCH UTILITIES NOT SHOWN ON PLANS.
4. DIMENSIONS ARE FROM OUTSIDE FACE OF BUILDING OR WALLS, UNLESS OTHERWISE NOTED, AND ARE TO BE VERIFIED IN THE FIELD PRIOR TO CONSTRUCTION AND MAJOR EXCAVATION. WRITTEN DIMENSIONS TAKE PRECEDENCE OVER SCALING.
5. UNLESS OTHERWISE NOTED, ANGLES TO BE RIGHT ANGLES, ARCS WHICH APPEAR TANGENT AND UNIFORM ARE TO BE TANGENT AND UNIFORM, LINES WHICH APPEAR PARALLEL ARE TO BE PARALLEL, AND ITEMS WHICH APPEAR CENTERED TO BE CENTERED, MAINTAIN LINES TRUE, LEVEL, PLUMB, AND SQUARE.
6. REFER TO GRADING PLANS FOR GRADING AND DRAINAGE STRUCTURES PRIOR TO INSTALLATION OF WALKS, WALLS.

INDEPENDENCE DRIVE

STAIRS DOWN TO SIDEWALK ELEVATION  
RAMPS DOWN TO CENTRAL PLAZA AND SIDEWALK ELEVATION  
EXTENDED PATHWAY TO ALLOW 2ND EGRESS FROM PLAY AREA

OVERFLOW DROP OFF ZONE FOR 2 MORE CARS

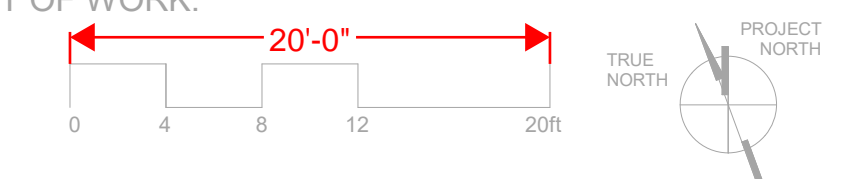
FENCING TYPE OPTIONS AT PLAY AREAS :



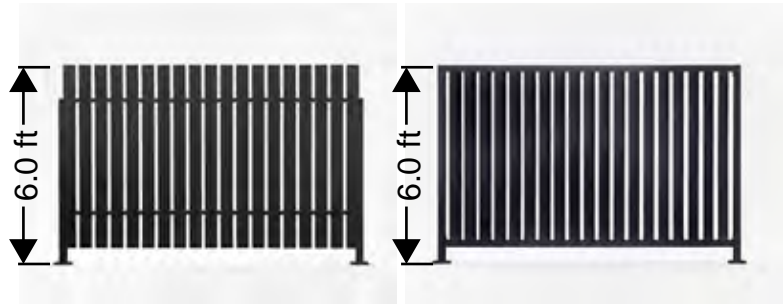
**MENLO PORTAL OFFICE  
DROP OFF ZONE SKETCH**

**PGADESIGN 12/7/2020**

7. VERIFY ALL WALLS, FOUNDATIONS WITH OTHER TRADES TO INSTALL IRRIGATION PIPE, SLEEVE, SANDBEDDING, OR CONDUIT. SHOULD CONFLICTS ARISE REVIEW WITH OWNER'S REPRESENTATIVE FOR RESOLUTION.
8. QUANTITIES PROVIDED ARE FOR INFORMATION ONLY. VERIFY QUANTITIES AND NOTIFY OWNER OF DISCREPANCIES.
9. VERIFY PROPERTY BOUNDARIES AND LOT LINES PRIOR TO COMMENCEMENT OF WORK.



REV	ISSUE	DATE
SD	100%	08.27.2020
DD	100%	09.24.2020
CD	1	10.29.2020



Vertical Picket

Vertical Louver - Angled

OPTION A

OPTION B





OPTION A  
VERTICAL PICKET



OPTION B  
ANGELED LOUVER



OPTION B  
ANGELED LOUVER

Exhibit B

# COMMUNITY AMENITY SURVEY RANKINGS

The following is a table of the community amenities that have been requested during the planning process; the categories and the amenities within each category are listed in order of how they were ranked by respondents at a community workshop on March 12, 2015 and in a survey that followed.

MARCH 12 WORKSHOP RANKING	ONLINE - REGISTERED RESPONDENTS	ONLINE - UNREGISTERED RESPONDENTS	PAPER - COLLECTED IN BELLE HAVEN	PAPER - MAILED IN	TOTAL SURVEYS COMBINED
22 RESPONSES	53 RESPONSES	26 RESPONSES	55 RESPONSES	60 RESPONSES	194 SURVEY RESPONSES
<b>Transit and Transportation Improvements</b>	<b>Transit and Transportation Improvements</b>	<b>Transit and Transportation Improvements</b>	<b>Transit and Transportation Improvements</b>	<b>Transit and Transportation Improvements</b>	<b>Transit and Transportation Improvements</b>
Sidewalks, lighting, and landscaping	Sidewalks, lighting, and landscaping	Sidewalks, lighting, and landscaping	Traffic-calming on neighborhood streets	Sidewalks, lighting, and landscaping	Sidewalks, lighting, and landscaping
Bike trails, paths or lanes	Bike trails, paths or lanes	Traffic-calming on neighborhood streets	Sidewalks, lighting, and landscaping	Traffic-calming on neighborhood streets	Traffic-calming on neighborhood streets
Dumbarton Rail	Traffic-calming on neighborhood streets	Bike trails, paths or lanes	Dumbarton Rail	Dumbarton Rail	Bike trails, paths or lanes
Traffic-calming on neighborhood streets	Dumbarton Rail	Dumbarton Rail	Innovative transportation solutions (i.e. personal rapid transit)	Bike trails, paths or lanes	Dumbarton Rail
Bus service and amenities	Bus service and amenities	Bus service and amenities	Bike trails, paths or lanes	Bus service and amenities	Innovative transportation solutions (i.e. personal rapid transit)
Innovative transportation solutions (i.e. personal rapid transit)	Innovative transportation solutions (i.e. personal rapid transit)	Innovative transportation solutions (i.e. personal rapid transit)	Bus service and amenities	Innovative transportation solutions (i.e. personal rapid transit)	Bus service and amenities
<b>Community-serving Retail</b>	<b>Community-serving Retail</b>	<b>Community-serving Retail</b>	<b>Community-serving Retail</b>	<b>Community-serving Retail</b>	<b>Community-serving Retail</b>
Grocery store	Grocery store	Grocery store	Grocery store	Grocery store	Grocery store
Restaurants	Restaurants	Pharmacy	Pharmacy	Pharmacy	Restaurants
Pharmacy	Pharmacy	Restaurants	Restaurants	Restaurants	Pharmacy
Bank/ATM	Bank/ATM	Bank/ATM	Bank/ATM	Bank/ATM	Bank/ATM
<b>Jobs and Training at M-2 Area Companies</b>	<b>Jobs and Training at M-2 Area Companies</b>	<b>Jobs and Training at M-2 Area Companies</b>	<b>Jobs and Training at M-2 Area Companies</b>	<b>Jobs and Training at M-2 Area Companies</b>	<b>Jobs and Training at M-2 Area Companies</b>
Job opportunities for residents	Education and enrichment programs for young adults	Job opportunities for residents	Job opportunities for residents	Job opportunities for residents	Job opportunities for residents
Education and enrichment programs for young adults	Job opportunities for residents	Education and enrichment programs for young adults	Education and enrichment programs for young adults	Education and enrichment programs for young adults	Education and enrichment programs for young adults
Job training programs and education center	Paid internships and scholarships for young adults	Job training programs and education center	Job training programs and education center	Job training programs and education center	Job training programs and education center
Paid internships and scholarships for young adults	Job training programs and education center	Paid internships and scholarships for young adults	Paid internships and scholarships for young adults	Paid internships and scholarships for young adults	Paid internships and scholarships for young adults
<b>Social Service Improvements</b>	<b>Energy, Technology, and Utilities Infrastructure</b>	<b>Social Service Improvements</b>	<b>Social Service Improvements</b>	<b>Social Service Improvements</b>	<b>Social Service Improvements</b>
Education improvements in Belle Haven	Underground power lines	Education improvements in Belle Haven	Education improvements in Belle Haven	Education improvements in Belle Haven	Education improvements in Belle Haven
Library improvements at Belle Haven	Telecommunications investment	Library improvements at Belle Haven	Medical center	Medical center	Medical center
Medical center	Incentives for private home energy upgrades, renewable energy, and water conservation	Medical center	High-Quality Affordable Housing	Senior service improvements	Library improvements at Belle Haven
Senior service improvements	Soundwalls adjacent to Highway 101	High-Quality Affordable Housing	Library improvements at Belle Haven	Library improvements at Belle Haven	High-Quality Affordable Housing
Add restroom at Onetta Harris Community Center		Senior service improvements	Senior service improvements	High-Quality Affordable Housing	Senior service improvements
Pool House remodel in Belle Haven	<b>Social Service Improvements</b>	Add restroom at Onetta Harris Community Center	Add restroom at Onetta Harris Community Center	Add restroom at Onetta Harris Community Center	Add restroom at Onetta Harris Community Center
High-Quality Affordable Housing	Education improvements in Belle Haven	Pool House remodel in Belle Haven	Pool House remodel in Belle Haven	Pool House remodel in Belle Haven	Pool House remodel in Belle Haven
	Library improvements at Belle Haven				
<b>Energy, Technology, and Utilities Infrastructure</b>	Medical center	<b>Energy, Technology, and Utilities Infrastructure</b>	<b>Energy, Technology, and Utilities Infrastructure</b>	<b>Energy, Technology, and Utilities Infrastructure</b>	<b>Energy, Technology, and Utilities Infrastructure</b>
Underground power lines	Senior service improvements	Underground power lines	Incentives for private home energy upgrades, renewable energy, and water conservation	Underground power lines	Underground power lines
Telecommunications investment	High-Quality Affordable Housing	Telecommunications investment	Underground power lines	Incentives for private home energy upgrades, renewable energy, and water conservation	Incentives for private home energy upgrades, renewable energy, and water conservation
Incentives for private home energy upgrades, renewable energy, and water conservation	Pool House remodel in Belle Haven	Incentives for private home energy upgrades, renewable energy, and water conservation	Telecommunications investment	Telecommunications investment	Telecommunications investment
Soundwalls adjacent to Highway 101	Add restroom at Onetta Harris Community Center	Soundwalls adjacent to Highway 101	Soundwalls adjacent to Highway 101	Soundwalls adjacent to Highway 101	Soundwalls adjacent to Highway 101
<b>Park and Open Space Improvements</b>	<b>Park and Open Space Improvements</b>	<b>Park and Open Space Improvements</b>	<b>Park and Open Space Improvements</b>	<b>Park and Open Space Improvements</b>	<b>Park and Open Space Improvements</b>
Bedwell Bayfront Park improvements	Bedwell Bayfront Park improvements	Bedwell Bayfront Park improvements	Tree planting	Bedwell Bayfront Park improvements	Tree planting
Tree planting	Tree planting	Tree planting	Community garden(s)	Tree planting	Bedwell Bayfront Park improvements
Dog park	Dog park	Dog park	Dog park	Community garden(s)	Community garden(s)
Community garden(s)	Community garden(s)	Community garden(s)	Bedwell Bayfront Park improvements	Dog park	Dog park

## WHERE SURVEY RESPONDENTS LIVE:

Neighborhood/City					
Belle Haven	136	Pine Forest	1	Palo Alto/ East Palo Alto	2
Central Menlo	1	West Menlo	2	Gilroy	1
Downtown	2	Willows/Willow Road	7	Linfield Oaks	1
East Menlo Park	3	Flood Park	1	Undisclosed	37
				<b>TOTAL</b>	<b>194</b>

# REVIEW THE PROPOSED COMMUNITY AMENITIES



CONNECTMENLO  
menlo park | san jose | bay area

The amenities described below were identified during the Belle Haven Vision Plan and during the first year of the ConnectMenlo process. They were ranked in this order in a survey in March/April, 2015. Approximate cost estimates have been added for each amenity.

**Place a dot to the left of the amenities that you think are most important.**

Transit and Transportation Improvements	Jobs and Training at M-2 Area Companies	Social Service Improvements	
A. Sidewalks, lighting, and landscaping – \$100 per linear foot <i>Enhance landscaping and lighting and fill gaps in sidewalk to improve the overall walkability</i>	A. Job opportunities for residents – \$10,000 in specialized training per employee <i>Local employers have a hiring preference for qualified residents</i>	A. Education improvements in Belle Haven – \$10,000 per student <i>Improvements to the quality of student education and experience in Belle Haven</i>	
B. Traffic-calming on neighborhood streets – \$100,000 per block/intersection <i>Address cut-through traffic with design features</i>	B. Education and enrichment programs for young adults – \$10,000 per participant <i>Provide programs that target students and young adults to be competitive in the job market, including existing tech jobs</i>	B. Medical center – \$6 million to construct (\$300 per square foot) <i>Medical center providing health care services and outpatient care</i>	
C. Bike trails, paths or lanes – \$100,000/ mile <i>Install new bike lanes and pedestrian paths and connect them to existing facilities and BayTrail</i>	C. Job training programs and education center – \$10,000 per participant <i>Provide residents with job training programs that prepare them with job skills</i>	C. Library improvements at Belle Haven – \$300,000 <i>Expand library programs and activities, especially for children</i>	
D. Dumbarton Rail– \$175 million to construct and open trolley <i>Utilize the right-of-way for new transit line between Redwood City and Menlo Park in the near term with stations and a new bike/pedestrian path</i>	D. Paid internships and scholarships for young adults – \$10,000 per participant <i>Provide internships at local companies and scholarships to local youth to become trained for tech jobs</i>	D. High-Quality Affordable Housing – \$440,000/unit less land; \$82,000 typical per-unit local gap financing needed for a tax-credit project <i>Integrate quality affordable housing units into new development</i>	
E. Innovative transportation solutions (i.e. personal rapid transit) – PriceVaries <i>Invest in new technology like pod cars and transit that uses separate tracks</i>	<b>Energy, Technology, &amp; Utilities Infrastructure</b>		
F. Bus service and amenities – \$5,000 per rider seat <i>Increase the number of bus stops, bus frequency and shuttles, and bus shelters</i>	A. Underground power lines – \$200/foot min.; \$50,000/project <i>Remove overhead power lines and install them underground along certain roads</i>	F. Add restroom at Onetta Harris Community Center – \$100,000 <i>Additional restroom at the community center</i>	
<b>Community-serving Retail</b>			
A. Grocery store – \$15 million to construct (\$200 per sq ft) plus 25% soft costs, financing, etc.; \$3.7 million for 2 years of subsidized rent <i>A full-service grocery store providing a range of goods, including fresh fruits, vegetables and meat and dairy products</i>	B. Incentives for private home energy upgrades, renewable energy, and water conservation – \$5,000 per home <i>Offer financial assistance or other incentives to help area residents pay for energy-efficient and water conserving home improvements</i>	G. Pool House remodel in Belle Haven – \$300,000 <i>Remodel pool for year-round use with new heating and changing areas</i>	
B. Restaurants – \$1.5 million (3,000 sq ft at \$400 per sq ft plus 25% for soft costs, financing, etc.) <i>A range of dining options, from cafes to sit-down restaurants, serving residents and local employees</i>	C. Telecommunications investment – \$250 per linear foot <i>Improve the area's access to wifi, broadband, and other new technologies</i>	<b>Park and Open Space Improvements</b>	
C. Pharmacy – \$3.75 million (15,000 sq ft at \$200 per sq ft, plus 25% for soft costs, financing, etc.) <i>A full-service pharmacy that fills prescriptions and offers convenience goods</i>	D. Soundwalls adjacent to Highway 101– \$300,000 (\$600/foot) <i>Construct soundwalls between Highway 101 and Kelly Park to reduce sound</i>	A. Tree planting – \$10,000 per acre <i>Plant trees along streets and parks to increase tree canopy</i>	B. Bedwell Bayfront Park improvements – \$300,000 <i>Improve access to the park and trails within it</i>
D. Bank/ATM – \$1.88 million (3,000 sq ft at \$500 per sq ft plus 25% for soft costs, financing, etc.) <i>A bank or credit union branch with an ATM</i>		C. Community garden(s) – \$26,000 to construct ~0.3 acres, 25 beds, 2 picnic tables <i>Expand space for community to plant their own produce and flower gardens</i>	D. Dog park – \$200,000 for 0.5 acre (no land cost included) <i>Provide a dedicated, enclosed place where dogs can run</i>

Exhibit C



2/16/21

**TO:** Tim Racine & Andrew Morcos, Greystar  
[timothy.racine@greystar.com](mailto:timothy.racine@greystar.com) & [amorcos@greystar.com](mailto:amorcos@greystar.com)

**FROM:** Karen Pace & Carol Thomsen, All Five  
[karen@allfive.org](mailto:karen@allfive.org), [carol@allfive.org](mailto:carol@allfive.org)

## All Five Overview

All Five's mission is to empower all families to choose a high-quality early childhood education (ECE) for their children.

Since 2015, All Five leadership and staff have brought early childhood education equity to our community. Our work and community are centered where we are located, in eastern Menlo Park's Belle Haven neighborhood. The families we serve, no matter their socioeconomic background, have access to high-quality early childhood education for their children in a nurturing and respectful learning community. This child-centered, research-based approach to education in a full-day preschool program is designed to support working families. The program provides two meals and two snacks daily to ensure nutritional needs are met for growth and learning. This ten-hour per day, fifty-weeks per year approach matches the needs of working families with a bigger impact on learning.

All Five is our community's only NAEYC (National Association of the Education of Young Children - a highly respected organization and certification) accredited program serving children from low-income families. All Five is bringing equity to early childhood education, to the time when humans' brains grow the most.

Families in the Belle Haven community are 48% non-English-speaking, 40% homeless or house-insecure, 13% of children qualify for special education, and 18% of third graders read at grade level. Yet, our community of All Five families is purposely trifurcated. Research supports the positive impact on learning in socio-economically diverse settings. As such, our community of families fall into three categories: 50% low-tier; including homeless and house-insecure, 25% middle-tier; just above the poverty threshold, and 25% high-tier. Our low- and middle-tier families reside, almost exclusively, in our community.

All Five regularly maintains a lengthy waitlist that is nearly triple our capacity. In addition to unmet community early childhood education demand, we know families are desperate for infant and toddler care on the Peninsula. A county needs assessment report found the county has 10,000 more children under the age of five than early childhood care and education spaces.





2/16/21

The idea for All Five was inspired by thirty years of teaching early childhood education in both lower, as well as higher, income communities. Founder Carol Thomsen experienced young children, in their first five years of life, being treated very differently. Children from low-income families were assumed to need to be told how to learn, even though research shows that approach does not work and does not last. Children from high-income families were being nurtured using the latest research - showing that children are inherently curious, and when given the opportunity to direct their own learning, the learning sticks. Beautiful environments were not considered important for children from low-income families, yet essential for children from high-income families.

Our model uncovers the enormous opportunity gap between very low-income communities compared to surrounding neighborhoods. Yet, our model also facilitates sharing of families' common values and purpose to provide the highest quality education possible for their children. Our families all largely share the desire for community and connection.

Although other agencies provide early childhood education and preschool, All Five is the only intentionally socioeconomically integrated organization doing so. All Five is just five years old, but already its impact is recognized in the community, in San Mateo County, and throughout California. The waiting list of children and families, as well as the desire of teachers and community members, to visit the school (pre-COVID) are an example of All Five's impact locally. More widely, a national journalist featured All Five in a story about the "Extremely Separate and Widely Unequal" landscape of early childhood education programs. The story can be accessed [here](#).

All Five's executive director, and the entire staff, contribute to many of our community's broader educational initiatives including mentoring newer early childhood programs such as Menlo Park City School District's Early Learning Center. Further, since 2015, Carol has hired and trained ten teachers, six from our own Belle Haven/East Palo Alto community. Additionally, three of our students' moms have attended San Mateo County's Teacher Pipeline Program, as they have been inspired and supported by our program to become early education teachers.

All Five is grateful for expert partners who join us in serving our families and community including the Ravenswood City School District. The RCSD Board and District are committed to supporting teachers and staff to make RCSD a superior workplace, as well as to cultivating a connected community. Thus, our lease agreement with the district prioritizes early childhood education and care placement for RCSD staff, faculty, and families, as well as Ravenswood community families.

## Performance Standards

1. NAEYC accredited, high rating on QRIS
2. Since 2015, All Five has provided high-quality early childhood education to Belle Haven students and provided a holistic learning environment for their families
3. Following are All Five scholarship and subsidy data by enrollment percentage
  - a. 50% of family's tuition is paid by CSPP and CCTR contracts (California low-income ECE subsidy)
  - b. 25% of families pay sliding-scale tuition based on ability
  - c. 25% of families are full-pay with no subsidy
4. Fifty percent of All Five families reside in Menlo Park. Eighty percent of All Five families reside in Menlo Park or East Palo Alto
5. All Five is enthusiastic about expanding to the Greystar facility. All Five is committed to expanding enrollment to serve more Belle Haven/Menlo Park families, including a current facilities and enrollment expansion effort at their current location

## Program Implementation Evaluation Proposed Metrics

- o 95% of All Five children entering kindergarten rated at "integrating" level on self-regulation DRDP assessments at Spring/Summer rating period.
- o 95% of families report that their child is/children are "well-prepared" for kindergarten on self-assessment.
- o Average 50% attendance at each Family Café throughout year by families.
- o Average 90% families fulfilling monthly volunteer hours.

As COVID conditions prevent visitors to our magical campus, we created a video to share unique program with you. You can access the video [here](#).

## Memorandum

**To:** Kyle Perata and Payal Bhagat, City of Menlo Park

**From:** Stephanie Hagar, Associate Principal

**Date:** June 23, 2021

**Re:** Evaluation of Menlo Portal Community Amenities Proposal

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### Purpose

This memorandum provides BAE's assessment of the value of the applicant's community amenities proposal for the proposed Menlo Portal Project. The City-approved appraisal for the project site identified a required amenity value of \$8,550,000, and the project applicant has submitted a community amenities proposal that provides two options for addressing the community amenities requirement. Option 1 would provide space for a childcare facility in the project as well as a financial contribution to the childcare provider that would occupy the space. Option 2 would provide space for a childcare facility in the project, a financial contribution to the childcare provider that would occupy the space, and a financial contribution to the City of Menlo Park community amenity in-lieu fund. The applicant has provided an assessment of the value of the community amenities proposals that estimates a total value of \$8.55 million. This memorandum does not assess whether the proposed amenity falls within the current amenity list adopted by the City Council, or whether the same amenity has already been provided by another applicant. This memorandum evaluates the methodology and key assumptions that the applicant used to determine the value of the proposed community amenity and provides BAE's determination of the value.

The analysis presented in this memorandum builds on BAE's prior analysis of the proposed community amenity contribution from the project to assess the applicant's current community amenity proposal and valuation (dated June 11, 2021). BAE's initial evaluation of the community amenities proposal was presented in a memorandum prepared on February 24, 2021, based on the proposal that the applicant had submitted at that time. In response to comments from the applicant on the February 2021 memorandum, BAE prepared a supplemental analysis that was presented in a memorandum prepared on May 20, 2021. Both prior memorandums are attached to this memorandum for reference. The applicant's June 2021 community amenities evaluation incorporates findings from BAE's February and May 2021 analyses, provides additional information about the proposed amenities, and presents a revised proposal.

#### San Francisco

2560 9<sup>th</sup> St., Suite 211  
Berkeley, CA 94710  
510.547.9380

#### Sacramento

803 2<sup>nd</sup> St., Suite A  
Davis, CA 95616  
530.750.2195

#### Los Angeles

448 South Hill St., Suite 701  
Los Angeles, CA 90013  
213.471.2666

#### Washington DC

1140 3<sup>rd</sup> St. NE, 2<sup>nd</sup> Floor  
Washington, DC 20002  
202.588.8945

#### New York City

234 5<sup>th</sup> Ave.  
New York, NY 10001  
212.683.4486

## Key Findings

Table 1 below provides a summary of the value of the community amenities proposal that the project applicant has proposed as part of a request for bonus level development for a proposed project located at 115 Independence Drive and 104 and 110 Constitution Drive in Menlo Park. As shown, BAE found that the value of the proposed community amenity is approximately \$8.37 million, \$180,000 lower than the required \$8.55 million value.

The value of providing a childcare facility in the project would depend on the terms under which the property owner provides the space to the childcare operator. BAE's valuation estimates in the table below reflect the following terms:

- The space will be used as a childcare facility at no cost to the childcare facility operator. This means that the property owner will not charge the tenant for any rent or operating expenses at any point throughout the tenancy.
- The childcare facility space will be provided in the project for the life of the project. For the purpose of this analysis, the life of the project is assumed to be 55 years.
- The project applicant will provide a standard one-time tenant improvement allowance for the childcare operator that occupies the space, equal to \$75 per rentable square foot. This tenant improvement allowance will be provided in addition to any financial contribution to the childcare operator as part of the community amenity package. The value of the tenant improvement allowance will not be added to the overall value of the community amenity package.
- The property owner will provide the childcare facility with access to six parking spaces at no cost to the tenant.

Each of the above terms are consistent with the methodology that BAE used to assess the value of the proposed community amenity.

**Table 1: Summary of Community Amenity Proposal Valuation for Proposed Menlo Portal Project**

	Childcare Building Space	Childcare Build-Out Costs	Student Tuition Subsidy Contribution	Contribution to City In-Lieu Fund	Total	Shortfall (Compared to \$8.55 million required)
<b>Option 1</b>						
Applicant Valuation	\$2,762,174	\$540,000	\$5,247,826	N/A	\$8,550,000	\$0
BAE Evaluation	\$2,762,174	\$360,000	\$5,247,826	N/A	\$8,370,000	(\$180,000)
<b>Option 1</b>						
Applicant Valuation	\$2,762,174	\$540,000	\$2,000,000	\$3,247,826	\$8,550,000	\$0
BAE Evaluation	\$2,762,174	\$360,000	\$2,000,000	\$3,247,826	\$8,370,000	(\$180,000)

### Project Description

The proposed Menlo Portal project consists of 335 multifamily rental units and a 34,868-square foot office building. The project site is located at 115 Independence Drive and 104 and 110 Constitution Drive, within the Bayfront Area of Menlo Park. The project applicant is seeking approvals to construct the project at the bonus level density pursuant to the City’s community amenities program for the Residential Mixed Use Bonus (R-MU-B) zoning district. The R-MU-B zoning district allows a project to develop at a greater level of intensity with an increase in density, floor area ratio, and/or height in exchange for providing community amenities, which are intended to address identified community needs that result from the effect of the increased development intensity on the surrounding community. Community amenities also enable the surrounding community to benefit from the substantial increase in project value that is attributable to the increase in density, floor area, and/or height. Full project details are available on the City of Menlo Park website (<https://www.menlopark.org/1601/Menlo-Portal>).

### Community Amenities Proposal

Because the proposed project would be built at the bonus level of development, the project applicant is required to provide community amenities in exchange for the additional development potential that is allowable under the bonus level of development. In the case of the proposed project, an appraisal commissioned by the City (available at the link shown above) determined that the value of the community amenity must equal \$8,550,000.

The project applicant has provided a community amenities proposal that consists of providing space for use as a childcare facility as well as two options for providing a financial

contribution. In Option 1, the applicant would provide a financial contribution to the childcare provider that would operate out of the space to assist with fit-out and early start-up costs and provide tuition subsidies, with priority for tuition subsidies given to Belle Haven residents. In Option 2, the applicant would provide a smaller financial contribution to the childcare provider to serve the same purposes as in Option 1, and would also provide a financial contribution to the City of Menlo Park’s community amenities in-lieu fund. The proposed childcare facility would consist of approximately 1,600 square feet for indoor space and 2,190 square feet of outdoor space on the ground floor of the office portion of the project. The applicant’s proposal states that the property owner will fully subsidize all rental costs for the space, including the use of six on-site parking spaces. In both Option 1 and Option 2, the total proposed financial contribution to the childcare facility operator would be equal to the difference between the required \$8.55 million community amenity contribution and the value of providing the space for the childcare facility.

***Applicant Valuation of Community Amenities Proposal***

The applicant’s June 2021 community amenity proposal assesses the value of the community amenities proposal as shown in Table 2 below. As shown, the applicant valued the childcare building space at \$2.8 million, consistent with the analysis presented in BAE’s May 2021 memorandum. The applicant has also provided an estimate of \$540,000 to build out the childcare space. The remainder of the community amenities proposal would be comprised of a financial contribution to the childcare provider (Option 1) or the childcare provider and the City’s community amenity in-lieu fee fund (Option 2).

**Table 2: Applicant Valuation of Community Amenity Proposal**

<b>Amenity Component</b>	<b>Option 1</b>	<b>Option 2</b>
Childcare Building Space	\$2.8 M	\$2.8 M
Childcare Build-Out Costs	\$540 K	\$540 K
Student Tuition Subsidy	\$5.2 M	\$2.0 M
City In-Lieu Fee Contribution	<u>N/A</u>	<u>\$3.2 M</u>
<b>Total</b>	<b>\$8.6 M</b>	<b>\$8.6 M</b>

Source: Greystar, 2021.

**Analysis of Value of Community Amenities Proposal**

This section details BAE’s analysis of the applicant’s revised (June 11, 2021) community amenities proposal valuation.

***Evaluation of Providing the Childcare Facility Space***

As noted above, the applicant’s June 2021 valuation of providing space in the project for childcare is consistent with BAE’s May 2021 valuation. The analysis that supports this valuation is described in more detail in BAE’s February 2021 and May 2021 memoranda. These memoranda are provided as attachments for reference.

### **Childcare Fit-Out and Start-Up Costs**

The project applicant estimates that fit-out and start-up costs for the childcare space will total approximately \$540,000, broken down as shown in Table 3.

**Table 3: Applicant Estimate of Childcare Fit-Out and Start-Up Costs**

<b>Category</b>	<b>Expenditure Item</b>	<b>Estimated Amount</b>
Interior Fit-Out	Interior finishes, fixtures, casework	\$215,000
Early Childhood Education Furniture	Community playthings	\$65,000
Staff / Teachers' Furniture	Office, teacher's lounge	\$25,000
Exterior Fit-Out	Landscaping, groundcover, shade structures	\$120,000
Play Yard Equipment	Tables, stools, mud-table, outdoor kitchen, easels	\$30,000
Professional Development	Culture & community building support	\$10,000
Start-Up Costs	Educational supplies	\$50,000
Technology	Computers, phones, internet, software, support	\$25,000
<b>Total</b>		<b>\$540,000</b>

Source: Greystar, 2021.

The following subsections provide BAE's assessment of the fit-out and start-up costs for the childcare space. This analysis focused on the two largest line items in the applicant's estimated budget (interior and exterior fit out), as well as the overall cost, and did not include detailed research on all individual cost items shown in Table 3 above.

**Magnitude of Total Cost:** The estimated fit-out and start-up costs that the applicant has provided are on the high end of the range of typical costs to build out a childcare center. As discussed in BAE's February 2021 memo, fit-out and start-up costs for a childcare facility are often \$100,000 or less, with \$500,000 being the high end. The applicant's estimate of \$540,000 suggests extraordinary costs for build-out of the childcare space in the proposed project.

**Interior Fit-Out:** The largest line item in the applicant's fit-out and start-up cost budget is the interior fit-out cost for the space. The applicant estimates that the cost of the interior build-out will total \$215,000, or \$134 per square foot.

The \$2.8 million valuation for the childcare building space cited above includes a portion of the cost for interior build-out of the space, which should be excluded from the estimated fit-out and start-up costs to avoid double-counting these costs in the value of the proposed community amenity package. The valuation of the childcare building space is based largely on the rent that the property owner would forgo on by providing the space free of charge rather than renting the space to a standard office tenant. If the applicant were to rent the space to a standard office tenant rather than providing it as a community amenity, the lease would typically include a tenant improvement allowance to cover a portion of interior build-out costs, likely in the range of \$75 to \$100 per square foot. The tenant improvement allowance is

typically included as part of the tenant's base rent and is included when determining total project development costs. The total tenant improvement cost usually exceeds the property owner's tenant improvement allowance, with the remainder of the cost borne by the tenant.

In the case of the proposed childcare space, the estimated value of the space is based in part on an assumption that the property owner would provide a comparable tenant improvement allowance to the childcare provider as part of the subsidized rent package. BAE's February and May 2021 assessments of the value of providing the childcare space in the project reflects an assumption that the property owner will provide a tenant improvement allowance to cover a portion of the interior fit-out cost for the space, totaling \$120,000, or \$75 per square foot. Therefore, though the total the cost of the interior build-out space may total \$215,000 as cited by the applicant, only an estimated \$95,000 of this amount (i.e., \$215,000 total minus \$120,000 that would be covered by the standard tenant improvement allowance) would be an additional cost that the applicant would pay compared to a scenario in which the space was not provided as a community amenity. BAE's assessment of the value of the applicant's contribution to fit-out and start-up costs therefore includes an adjustment that reduces the total \$215,000 cost for interior buildout to \$95,000.

**Exterior Fit-Out:** The second largest cost in the applicant's fit-out and start-up cost budget is the exterior fit-out cost for the space, which would cover landscaping, groundcover, and shade structures. The applicant estimates that these costs will total \$120,000.

As discussed in BAE's February and May 2021 memoranda and stated above, BAE's estimate of the value of providing the childcare space is based largely on the rent that the property owner would forgo by providing the space free of charge. The rental rate used in the May 2021 evaluation is based on an assumption that, if rented to a standard office tenant, the space would include the private outdoor space that is part of the proposal for the childcare center. If the applicant were to rent the space to an office tenant, they would likely provide some landscaping for the private outdoor space. The extent of the landscaping and the portion that would be covered by the property owner would depend on negotiations between the property owner and potential tenants during lease-up. Due to its large private outdoor space, the proposed childcare space with would serve as a relatively unique space for office use, with no typical standard to determine the financial contribution that the developer would generally provide toward outfitting the outdoor area. However, even in a case where the outdoor space is not included as private space for an office tenant, the developer would provide landscaping for the space as part of their overall landscaping plan for the project, though likely to a lesser extent than for a private outdoor space. For the purpose of this analysis, BAE assumed that approximately half of the \$120,000 cost for exterior buildout would be an added cost associated with providing the childcare space as an amenity, while the remainder consists of costs that the property owner would cover even if the space were not provided as a community amenity.



**Summary of Analysis of Fit-Out and Start-Up Costs:** BAE’s estimate of the fit-out and start-up costs for the childcare space are shown in Table 4 below, after accounting for the adjustments to the interior and exterior buildout costs discussed above. The figures in the table below estimate the additional cost borne by the project applicant for childcare fit-out and start-up costs, in excess of the costs that the applicant would incur if the space were instead rented to a standard office tenant. As shown, BAE estimates that these costs will total \$360,000. While this estimate is somewhat lower than the estimate provided by the project applicant, these costs are nonetheless substantially higher than the typical fit-out and start-up costs for a childcare space.

**Table 4: BAE Estimate of Childcare Fit-Out and Start-Up Costs**

<b>Category</b>	<b>Expenditure Item</b>	<b>Estimated Amount</b>
Interior Fit-Out	Interior finishes, fixtures, casework	\$95,000
Early Childhood Education Furniture	Community playthings	\$65,000
Staff / Teachers' Furniture	Office, teacher's lounge	\$25,000
Exterior Fit-Out	Landscaping, groundcover, shade structures	\$60,000
Play Yard Equipment	Tables, stools, mud-table, outdoor kitchen, easels	\$30,000
Professional Development	Culture & community building support	\$10,000
Start-Up Costs	Educational supplies	\$50,000
Technology	Computers, phones, internet, software, support	\$25,000
<b>Total</b>		<b>\$360,000</b>

Source: Greystar, 2021; BAE, 2021.

***Remaining Financial Contribution***

The applicant has proposed two options for providing a financial contribution as part of the community amenity package from the proposed project. In Option 1, the applicant would provide \$5.2 million to the childcare facility operator, in addition to the fit-out and start-up costs discussed above, to cover tuition subsidies for children that would attend the childcare. In Option 2, the applicant would provide \$2.0 million to the childcare provider for tuition subsidies and make a \$3.2 million contribution to the City’s community amenity in-lieu fund.

The June 2021 community amenities proposal states that the childcare facility would accommodate approximately 20 to 24 children, and that approximately 75 percent of these children (15 to 18 children) would receive a tuition subsidy of approximately \$1,300 per month (\$15,600 per year) each. Therefore, in Option 1, this subsidy could provide subsidies for approximately 19 to 22 years.<sup>1</sup> In Option 2, this subsidy could provide tuition subsidies for approximately seven to nine years.<sup>2</sup> However, the actual number of years over which the financial contribution will provide enrollment subsidies could be somewhat lower than these estimates. The applicant’s proposal indicates that the \$2,000,000 financial contribution that would be provided in Option 2 would provide approximately four years of funding, as these

<sup>1</sup> \$5,247,826 total ÷ \$15,600 per student ÷ 18 students = 18.7 years; \$5,247,826 total ÷ \$15,600 per student ÷ 15 students = 22.4 years

<sup>2</sup> \$2,000,000 total ÷ \$15,600 per student ÷ 18 students = 7.1 years; \$2,000,000 total ÷ \$15,600 per student ÷ 15 students = 8.5 years

funds would be used in part to cover funding shortfalls during the first two years of the operation of the childcare facility during which the childcare operator would be working get the program to full operations.

**Summary of Determination of Community Amenity Value**

Table 5 below provides a summary of BAE’s determination of the value of the community amenity proposal. The value shown includes the value of providing the childcare facility space, based on the methodology described in BAE’s February and May 2021 memoranda, childcare fit-out and start-up costs, and the proposed financial contributions. As shown, this analysis estimates the total value of the proposed community amenities to be \$8,370,000 for either of the two options, or \$180,000 less than the required community amenity value.

**Table 5: BAE Valuation of Community Amenity Proposal**

	<b>Option 1</b>	<b>Option 2</b>
Childcare Building Space	\$2,762,174	\$2,762,174
Childcare Build-Out Costs	\$360,000	\$360,000
Student Tuition Subsidy	\$5,247,826	\$2,000,000
City In-Lieu Fee Contribution	<u>N/A</u>	<u>\$3,247,826</u>
<b>Total</b>	<b>\$8,370,000</b>	<b>\$8,370,000</b>
Required Community Amenity Value	\$8,550,000	\$8,550,000
<b>Excess / (Shortfall) Community Amenity Value</b>	<b>(\$180,000)</b>	<b>(\$180,000)</b>

Source: Greystar, 2021; BAE, 2021.

**ATTACHMENT 1:**  
**FEBRUARY 2021 ANALYSIS OF COMMUNITY AMENITY  
PROPOSAL**

## Memorandum

**To:** Kyle Perata and Payal Bhagat, City of Menlo Park

**From:** Stephanie Hagar, Associate Principal

**Date:** February 24, 2021

**Re:** Evaluation of Menlo Portal Community Amenities Proposal

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### Purpose

This memorandum provides BAE's assessment of the value of the applicant's community amenities proposal for the proposed Menlo Portal Project. The City-approved appraisal for the project site identified a required amenity value of \$8,550,000, and the project applicant has submitted a community amenities proposal that would commit to providing space for a childcare facility in the project as well as a financial contribution to the childcare provider that would occupy the space. The applicant has provided an assessment of the value of the community amenities proposal that estimates a total value of \$8.55 million. This memorandum does not assess whether the proposed amenity falls within the current amenity list adopted by the City Council, or whether the same amenity has already been provided by another applicant. This memorandum evaluates the methodology and key assumptions that the applicant used to determine the value of the proposed community amenity and provides BAE's determination of the value.

### Key Findings

Table 1 below provides a summary of the value of the community amenities proposal that the project applicant has proposed as part of a request for bonus level development for a proposed project located at 115 Independence Drive and 104 and 110 Constitution Drive in Menlo Park. As shown, BAE found that the value of the proposed community amenity is approximately \$5.29 million, \$3.26 million lower than the required \$8.55 million value.

The value of providing a childcare facility in the project would depend on the terms under which the property owner provides the space to the childcare operator. BAE's valuation estimates in the table below reflect the following terms:

- The space will be used as a childcare facility at no cost to the childcare facility operator. This means that the property owner will not charge the tenant for any rent or operating expenses at any point throughout the tenancy.

- The childcare facility space will be provided in the project for the life of the project. For the purpose of this analysis, the life of the project is assumed to be 55 years.
- The project applicant will provide a standard one-time tenant improvement allowance for the childcare operator that occupies the space, equal to \$75 per rentable square foot. This tenant improvement allowance will be provided in addition to any financial contribution to the childcare operator as part of the community amenity package. The value of the tenant improvement allowance will not be added to the overall value of the community amenity package.
- The property owner will provide the childcare facility with access to six parking spaces at no cost to the tenant.

Each of the above terms are consistent with the methodology that BAE used to assess the value of the proposed community amenity.

**Table 6: Summary of Community Amenity Proposal Valuation for Proposed Menlo Portal Project**

	Childcare Space	Financial Contribution to Childcare Operator	Total	Shortfall (Compared to \$8.55 million required)
Applicant Valuation	\$5,924,228	\$2,625,772	\$8,550,000	\$0
BAE Evaluation	\$2,666,927	\$2,625,772	\$5,292,699	<b>(\$3,257,301)</b>

## Project Description

The proposed Menlo Portal project consists of 335 multifamily rental units and a 34,868-square foot office building. The project site is located at 115 Independence Drive and 104 and 110 Constitution Drive, within the Bayfront Area of Menlo Park. The project applicant is seeking approvals to construct the project at the bonus level density pursuant to the City's community amenities program for the Residential Mixed Use Bonus (R-MU-B) zoning district. The R-MU-B zoning district allows a project to develop at a greater level of intensity with an increase in density, floor area ratio, and/or height in exchange for providing community amenities, which are intended to address identified community needs that result from the effect of the increased development intensity on the surrounding community. Community amenities also enable the surrounding community to benefit from the substantial increase in project value that is attributable to the increase in density, floor area, and/or height. Full project details are available on the City of Menlo Park website (<https://www.menlopark.org/1601/Menlo-Portal>).

## Community Amenities Proposal

Because the proposed project would be built at the bonus level of development, the project applicant is required to provide community amenities in exchange for the additional development potential that is allowable under the bonus level of development. In the case of

the proposed project, an appraisal commissioned by the City (available at the link shown above) determined that the value of the community amenity must equal \$8,550,000.

The project applicant has provided a community amenities proposal that consists of providing space for use as a childcare facility as well as providing a financial contribution to a childcare provider that would operate out of the space to assist with fit-out and early start-up costs and provide subsidies for students who are Belle Haven residents. The proposed childcare facility would consist of approximately 1,600 square feet for indoor space and 2,190 square feet of outdoor space on the ground floor of the office portion of the project. The applicant's proposal states that the property owner will fully subsidize all rental costs for the space, including the use of six on-site parking spaces. The proposed financial contribution to the childcare facility operator would be equal to the difference between the required \$8.55 million community amenity contribution and the value of providing the space for the childcare facility as described above. The community amenities proposal states that the financial contribution could cover tenant improvements, licenses, permits, regulatory fees, fixtures, furniture, equipment, and other setup costs, with any remaining funds to be used to subsidize the childcare provider's early operating costs and contribute towards enrollment subsidies for students from Belle Haven.

***Applicant Valuation of Community Amenities Proposal***

The project applicant has provided an assessment of the community amenities proposal described above. The applicant determined that the value of providing the space for a childcare facility would include:

- 1) The present value of the rent subsidy for the commercial space over ten years, which the applicant values at \$6.50 per square foot per month, increasing by 3.0 percent per year. According to the community amenities proposal, this amount includes both the rent subsidy and an additional liability insurance cost associated with having a childcare facility at the property.
- 2) The present value of the rent subsidy for the six commercial parking spaces over ten years, which the applicant values at \$75 per space per month, increasing by 3.0 percent per year.
- 3) The present value of the operating expenses for the space over ten years, which the applicant estimates at \$1.00 per square foot per month, increasing by 3.0 percent per year.
- 4) The present value of the terminal value (or estimated total value) of the space in year 11.

The community amenities proposal also includes a financial contribution to the childcare facility operator equal to the difference between the total \$8.55 million community amenity value requirement and the sum of the four items listed above.

The applicant’s assessment of the value of the community amenities proposal is shown in Table 2 below. The attachments to this memorandum include the applicant’s calculation of the value of providing the ground floor space for use as a childcare facility.

**Table 7: Applicant Valuation of Community Amenity Proposal**

	<b>Applicant Valuation</b>
1 PV of Space Rent Subsidy (10 years)	\$1,833,696
2 PV of Parking Rent Subsidy (10 years)	\$43,715
3 PV of Operating Costs (10 years)	\$282,107
4 PV of Terminal Value (in year 11)	<u>\$3,764,711</u>
<b>Total Value of Providing Childcare Facility Space</b>	<b>\$5,924,228</b>
<b>Financial Contribution to Childcare Facility Operator (a)</b>	<b>\$2,625,772</b>
<b>Total Community Amenity Value</b>	<b>\$8,550,000</b>

Note:

(a) The applicant’s community amenity proposal states that the financial contribution to the childcare operator would cover fit out and initial start-up costs.

Source: Greystar, 2021; BAE, 2021.

## Analysis of Value of Community Amenities Proposal

This section details BAE’s analysis of the applicant’s community amenities proposal, including a discussion of the value of providing the childcare facility space and a discussion related to the financial contribution to the childcare provider.

### *Evaluation of Providing the Childcare Facility Space*

BAE’s methodology for assessing the value of providing the childcare space differs from the methodology used by the applicant in two respects. First, BAE adjusted the calculations to show the net present value of the property owner’s rent subsidy for the childcare facility over a 55-year term, in contrast to the 10-year term shown in the applicant’s calculations, and excluded the terminal value of the space from the calculations. Second, BAE adjusted some of the underlying assumptions that affect the value of providing the childcare facility space as appropriate based on market practices and industry standards.

**Term of Subsidy & Termination Value.** The applicant’s assessment of the value of providing the childcare facility space includes the net present value of the ongoing rent subsidy to the tenant over a ten-year period as well as the terminal value of the space in year 11. The terminal value calculation is equal to the total estimated property owner subsidy associated with providing the childcare space in year 11 divided by 4.5 percent, multiplied by the present value factor in year 11. In effect, this calculation approximates the capitalized value of the subsidy in year 11, discounted to current dollars based on the present value factor. The capitalized value of a project is typically equal to the net operating income that a project

produces (i.e., rental income less expenses) divided by the capitalization rate (“cap rate,” equal to 4.5 percent in the applicant’s calculations).<sup>3</sup> While the true capitalized value of the project would omit operating expenses from the cash flow calculation, it is appropriate to include operating expenses in this instance if the property owner would pay all expenses on behalf of the tenant, as this subsidy would contribute to the value associated with the total contribution from the project applicant.

Conceptually, this methodology uses the net present value of the terminal value of the subsidy in year 11 as a proxy to represent the net present value of the subsidy from year 11 on into perpetuity. Due to the discount rate used to convert the future values to a current value, the value of subsidy contributions that occur far in the future have only a minimal impact on the value of the subsidy in net present value terms. Therefore, the net present value of the project in year 11 can be used to provide a reasonable estimate of the value of these ongoing subsidy payments into perpetuity.

While the approach that the applicant used is generally reasonable if the space will be fully subsidized for the life of the project, this analysis simplified the conceptual basis for valuing the amenity by calculating the net present value of the subsidy over 55 years and eliminating the terminal value from the calculation. This approach more directly estimates the net present value of the subsidy over the potential life of the project, rather than calculating the net present value of the subsidy over 10 years and using the year 11 terminal value as a proxy for the net present value of the subsidy in years 11 through 55.

**Rental Rate.** The applicant’s assessment of the value of providing the childcare facility space assumes that the market rate rent for the space would be equal to \$6.50 per square foot per month, triple net (NNN), with a 3.0 percent annual increase. The community amenities proposal states that this rental rate includes an additional liability insurance cost that would be borne by the applicant due to the property including a childcare facility on site. Commercial building liability insurance is borne by the building owner and is separate and apart from and in addition to the insurance held by the childcare facility itself. The childcare operator would bear the cost of the insurance that would cover the childcare facility itself, while the building owner would bear the cost of the insurance on the building. The community amenities proposal does not specify the portion of the \$6.50 per square foot per month rental rate that is attributable to rent or the portion that is attributable to the property owner’s estimated increase in insurance costs due to the childcare use.

BAE reviewed data from CoStar on office rents in Menlo Park and determined that the owner of the project could reasonably expect a monthly rent equal to \$6.00 per square foot per month if the community amenity space were rented to an office tenant, given the size,

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<sup>3</sup> The cap rate is a common metric used to estimate the value of a property based on the rental income it produces, and varies based on property type, location, and other property-specific characteristics.



location, and type of office space that the ground floor commercial space would offer. This rental rate approximates the rental income that the property owner would forgo by providing the space for use as a childcare facility at no charge to the childcare provider. This also approximates the cost savings to the childcare provider compared to renting a comparable space at market rates. Therefore, BAE's evaluation of the value of the community amenities proposal includes the value of the rent for the space at a rate of \$6.00 per square foot per month. However, it should be noted that a childcare provider would not necessarily seek out a comparable space if the childcare space were not provided in the proposed project. Childcare facilities occupy a range of spaces, including but not limited to private homes, excess school site facilities, community centers, and buildings primarily used for religious purposes, and therefore this subsidy is not necessarily reflective of the money that the childcare provider would save due to their occupying space in the proposed project.

Unlike the rental rate shown in the evaluation provided by the applicant, this amount does not include any additional commercial building liability insurance as a result of including a childcare facility in the project. BAE contacted three insurance brokers that work with commercial property owners to assess whether the property owner's insurance would be higher due to the presence of a childcare center on site, compared to a scenario in which the ground floor space is occupied by a different tenant. All three brokers stated that fewer insurers would be willing to cover a building with a childcare use, resulting in a smaller pool of potential insurers. One of the brokers reported that, despite more limited options in potential insurers, the cost of the insurance would not increase due to the childcare use. The two other brokers reported that the cost could potentially be higher but would not necessarily be higher. One of these two brokers also stated that any cost increase would be negligible, as the primary insurance would be on the childcare center operator itself rather than the building, while the other did not comment on the potential magnitude of any cost increase.

Based on these discussions, BAE does not recommend that the City give the applicant credit toward the community amenity value due to any potential additional insurance cost unless the applicant is able to demonstrate that the liability insurance on the building would be higher due to the presence of a childcare facility on site, as well as the magnitude of the increase in insurance costs. For reference, prior BAE research on childcare center operating costs indicates that a childcare center operator typically has an annual insurance cost ranging from approximately \$1,000 to \$3,500 per year. Because the childcare center operator would carry the primary insurance associated with the childcare facility, it is unlikely that any increase in the building owner's liability insurance would exceed the amount paid by the childcare center operator itself. If the inclusion of a childcare center on site increased the building owner's insurance cost by \$1,000 per year, this would be equal to approximately \$0.052 per rentable square foot per month for the childcare facility. In net present value terms, an additional \$0.052 per rentable square foot per month in insurance expenses, applied to the 1,600-square foot space and increased by 3.0 percent per year for 55 years, has a value equal to \$19,811.

**Commercial Parking Income.** The applicant's assessment of the value of the commercial space includes the value of six commercial parking spaces that would be dedicated to the childcare operator. The applicant assumed that the value of these spaces would be equal \$75 per space per month, increasing by 3.0 percent per year. BAE's assessment of the value of providing the childcare facility space does not include the value of any parking rent. BAE reviewed listings for office properties in Menlo Park and neighboring cities and did not find any comparable office properties that charge rent to office tenants for use of onsite parking spaces. As a result, BAE determined that the applicant would not be foregoing any revenue by dedicating six commercial parking spaces to the childcare provider. In addition, the dedication of the parking spaces does not represent a cost savings to the childcare provider relative to a scenario in which the provider rents a similar space at market value. Should the applicant want to include any value for these spaces in the community amenity valuation, BAE recommends that the City require the applicant to demonstrate that the parking space rental assumptions are consistent with standard practice for comparable office properties within the Bayfront Area of Menlo Park.

**Expenses/Operating Costs.** The applicant's assessment of the value of providing the childcare facility space use includes \$1.00 per square foot per month in operating expenses for the commercial space, with increases equal to 3.0 percent per year.<sup>4</sup> This operating cost assumption is consistent with typical operating cost assumptions for similar commercial space, and in a standard NNN lease the tenant would reimburse the property owner for these costs. If the project applicant commits to covering these costs in their entirety on behalf of the childcare provider, this would represent an additional cost to the project applicant. Similarly, this would represent a cost savings to the childcare facility operator compared to their renting a comparable space at market rates. Therefore, BAE determined that including these costs in the determination of the community amenity value at the rate identified by the applicant is appropriate, provided that the applicant commits to covering these costs in their entirety throughout the life of the project.

**Rentable Square Footage.** The applicant's community amenities proposal states that the childcare facility would consist of approximately 1,600 square feet of indoor space and 2,190 square feet of outdoor space, totaling 3,790 square feet of combined indoor and outdoor space. However, the calculations provided in the applicant's community amenity proposal value the rent subsidy and operating expenses for the space based on a 2,904-square foot space. In other words, the calculations apply the per-square-foot rental rates and operating expenses described above to a 2,904-square foot space to calculate the total rent subsidy and operating expenses for the space. It is not clear why the square footage of the space in these

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<sup>4</sup> The applicant's operating expense estimate does not include any increase in liability insurance costs attributable to including the childcare space in the project because the applicant included this cost in the assumed rent subsidy amount.

calculations differs from the square footage of the space as stated in the community amenities proposal.

BAE's assessment of the value of the community amenities proposal values the rent subsidy and operating expenses based on the 1,600-square foot indoor portion of the childcare facility only. The indoor square footage constitutes the rentable square footage that the property owner would be able to lease to another tenant if the space were not provided for use as community amenity. Similarly, if the property owner were to rent the ground floor space to a commercial tenant rather than provide it for use as a childcare facility, the operating expenses that property owner would charge for the space would be based on the indoor (i.e., rentable) square footage of the space. Therefore, using the indoor square footage to estimate the value of the space results in an estimate of the income that the property owner would forego, due to foregone rent and expense reimbursement payments, if the space is provided for use as a childcare facility at no cost to the childcare provider.

**Rent and Expense Escalation in Project Completion Year.** While the 3.0-percent annual rent and expense growth rate shown in the community amenities proposal is generally reasonable, this assumption is incorrectly applied in the applicant's calculation of the community amenity value in a manner that overestimates the value. The calculations shown in the community amenities proposal use a 3.0 percent annual escalation rate to estimate growth in rent (both for the childcare space and for parking) and expenses over time. The applicant estimates that the project will be completed in 2023, approximately two years from the date of the community amenities proposal, and therefore the calculations should apply two years of rent and expense escalation to the current year (2021) rent and expense estimates to estimate rent and expenses when the project is completed. However, the applicant's calculations apply four years of rent and expense growth to derive the 2023 rent and expense estimates, which overinflates the value of the space in 2023 and in each subsequent year. BAE adjusted the 2023 rent and expense estimates by applying only two years of escalation to the 2021 base year assumptions. This change also reduced the rent and expense estimates in each subsequent year because the annual growth rate was applied to the corrected 2023 estimates to derive the rent and expense estimates in each subsequent year.

**Tenant Improvement Allowance.** The applicant's community amenity proposal includes a financial contribution to the childcare facility operator to cover tenant improvements as well as other costs but does not specify the portion of the financial contribution that would be used to cover tenant improvements specifically. A standard lease for the commercial space would typically include a tenant improvement allowance in the range of \$75 to \$100 per square foot, and therefore the project applicant would likely offer a tenant improvement allowance within this range even if the commercial space were not offered as a community amenity. A tenant improvement allowance is typically included as part of the tenant's base rent and is included when determining total project development costs. The total tenant improvement cost usually exceeds the property owner's tenant improvement allowance, with the remainder of the cost

borne by the tenant. Therefore, if the financial contribution to the childcare operator is to be included as part of the community amenity package, this contribution should be in addition to the property owner providing a standard tenant improvement allowance to the childcare operator that is not included as part of the community amenity package. In other words, to the extent that the financial contribution is used to cover tenant improvements, it should only be used for the cost that the childcare operator would otherwise need to cover in excess of a standard tenant improvement allowance for the space, with the applicant providing a standard allowance as part of the base rent subsidy amount.

### ***Evaluation of the Financial Contribution***

The applicant has proposed a \$2.6 million contribution to the childcare facility operator, which would cover initial fit-out and start-up costs for the facility, with any remaining funds to be used to subsidize early operating expenses and contribute toward enrollment subsidies for children from Belle Haven. BAE did not provide an assessment of the value of the financial contribution, as the value is equal to the dollar amount. As noted above, unless the initial fit-out or tenant improvements are in excess of the standard allowance they should not be included as a community amenity. BAE recommends that the City request additional information regarding how the financial contribution will be used, to ensure that the use of these funds is consistent with City goals and policies.

The proposed financial contribution is sizable relative to the costs that the financial contribution is intended to cover. BAE research indicates that childcare facility fit-out and start-up costs are typically \$100,000 or less, though these costs could potentially be as high as \$500,000 in some cases. This suggests that over \$2.0 million of the financial contribution could potentially be available to cover early operating costs and enrollment subsidies. Information provided in the community amenities proposal indicates that approximately 50 percent of children served by the childcare facility will have their tuition fully covered by State of California subsidies. These children would not require an additional enrollment subsidy because they are already covered by a State program. Approximately 25 percent of children served would typically be charged on sliding scale based on ability to pay, with the shortfall funded through philanthropy. The remaining 25 percent would be charged the full cost based on their family income, which presumably determines that these families are able to pay the full amount. This suggests that five or six of the 20 to 24 spots in the proposed daycare facility would be filled by students that would typically require philanthropic sources to cover a portion of their tuition. This amounts to hundreds of thousands of dollars for each childcare slot that could be funded in part using these funds. Given that these students would not receive a full enrollment subsidy, it could take several decades to use these funds for enrollment subsidies, potentially extending past the life of the project. To the extent that the financial contribution could be used to cover early operational costs, as indicated in the community amenities proposal, the proposal does not specify which costs this would include, or whether these costs could overlap with operational costs that would be covered by the enrollment subsidies. While there may be factors associated with the proposed childcare

facility that affect start-up costs, operating costs, or enrollment subsidy needs, BAE recommends that the City request additional information on the intended uses of these funds to determine if these uses would be consistent with the goals of the community amenities program.

**Summary of Determination of Community Amenity Value**

Table 5 below provides a summary of BAE’s determination of the value of the community amenity proposal. The value shown includes the value of providing the childcare facility space, based on the methodology described above, as well as the financial contribution to the childcare operator that is shown in the applicant’s community amenities proposal. As shown, this analysis estimates the value of providing the childcare facility space to be equal to \$2,666,927. Combined with the proposed financial contribution to the childcare facility operator, this analysis finds that the value of the community amenity totals \$5,292,699.

**Table 8: BAE Valuation of Community Amenity Proposal**

	<b>Applicant Valuation</b>
1 PV of Space Rent Subsidy (10 years)	\$2,285,937
2 PV of Parking Rent Subsidy (10 years)	\$0
3 PV of Operating Costs (10 years)	\$380,990
4 PV of Terminal Value (in year 11)	<u>N/A</u>
<b>Total Value of Providing Childcare Facility Space</b>	<b>\$2,666,927</b>
Financial Contribution to Childcare Facility Operator (a)	\$2,625,772
<b>Total Community Amenity Value</b>	<b>\$5,292,699</b>
Required Community Amenity Value	\$8,550,000
<b>Excess / (Shortfall) Community Amenity Value</b>	<b>(\$3,257,301)</b>

Note:

(a) The applicant’s community amenity proposal states that the financial contribution to the childcare operator would cover fit out and initial start-up costs, with any remaining funds to be used to subsidize the childcare provider’s early operating costs and contribute towards enrollment subsidies for students from Belle Haven.

Source: Greystar, 2021; BAE, 2021.

## ATTACHMENTS

## Attachment 1: Applicant Calculations of the Value of Providing Space for Use as a Childcare Facility

### Assumptions

Rent (NNN) / SF / month <sup>1</sup>	\$6.50
Neighborhood Benefit Space SF	2,904
Annual Growth Rate	3.0%
Assumed Discount Factor	7.5%
Start of Operations	2023
Assumed Commercial Parking Spaces	6
Assumed monthly parking rent per stall	\$75
Net Expenses / SF / month <sup>2</sup>	\$1.00

Year	Completion	2	3	4	5	6	7	8	9	10	Terminal
	1 2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	11 2033
Less: Commercial Net Operating Income	\$254,944	\$262,592	\$270,470	\$278,584	\$286,941	\$295,549	\$304,416	\$313,548	\$322,955	\$332,644	\$342,623
Less: Commercial Parking Income	6,078	6,260	6,448	6,641	6,841	7,046	7,257	7,475	7,699	7,930	8,168
Plus: Net Expenses (Taxes, Insurance, CAM)	39,222	40,399	41,611	42,859	44,145	45,469	46,833	48,238	49,685	51,176	52,711
<b>Net Cash Flows (Unlevered)</b>	<b>\$300,243</b>	<b>\$309,251</b>	<b>\$318,528</b>	<b>\$328,084</b>	<b>\$337,927</b>	<b>\$348,064</b>	<b>\$358,506</b>	<b>\$369,261</b>	<b>\$380,339</b>	<b>\$391,750</b>	<b>\$403,502</b>
PV factor	0.87	0.80	0.75	0.70	0.65	0.60	0.56	0.52	0.49	0.45	0.42
Present Value Rental Cash Flows	\$259,810	\$248,935	\$238,514	\$228,530	\$218,963	\$209,798	\$201,015	\$192,601	\$184,538	\$176,813	
Terminal Value											<b>\$3,764,711</b>
<b>Total Value of Neighborhood Benefit Space</b>	<b>\$5,924,228</b>										

<sup>1</sup> Based on commercial rents for Menlo Park, adjusted to include an estimate of extra liability insurance costs associated with having an onsite child care facility incurred by Greystar

<sup>2</sup> Estimated expenses; typically includes pro rata share of contract services (fire alarm, fire protection/life safety, intrusion alarm, landscape maintenance, patrol officer, pest control and trash removal), taxes, repairs / maintenance and utilities

## Attachment 2: BAE Calculations of the Value of Providing Space for Use as a Childcare Facility

### Assumptions

Rent (NNN) / SF / month <sup>1</sup>	\$6.00
Neighborhood Benefit Space SF	1,600
Annual Growth Rate	3.0%
Assumed Discount Factor	7.5%
Start of Operations	2023
Assumed Commercial Parking Spaces	6
Assumed monthly parking rent per stall	\$0
Net Expenses / SF / month <sup>2</sup>	\$1.00

	Completion										
Year	1 2023	2 2024	3 2025	4 2026	5 2027	6 2028	7 2029	8 2030	9 2031	10 2032	11 2033
Less: Commercial Net Operating Income	\$122,216	\$125,882	\$129,659	\$133,548	\$137,555	\$141,681	\$145,932	\$150,310	\$154,819	\$159,464	\$164,248
Less: Commercial Parking Income	0	0	0	0	0	0	0	0	0	0	0
Plus: Net Expenses (Taxes, Insurance, CAM)	20,369	20,980	21,610	22,258	22,926	23,614	24,322	25,052	25,803	26,577	27,375
<b>Net Cash Flows (Unlevered)</b>	<b>\$142,585</b>	<b>\$146,863</b>	<b>\$151,268</b>	<b>\$155,806</b>	<b>\$160,481</b>	<b>\$165,295</b>	<b>\$170,254</b>	<b>\$175,362</b>	<b>\$180,622</b>	<b>\$186,041</b>	<b>\$191,622</b>
PV factor	0.87	0.80	0.75	0.70	0.65	0.60	0.56	0.52	0.49	0.45	0.42
Present Value Rental Cash Flows	\$123,383	\$118,219	\$113,270	\$108,528	\$103,985	\$99,632	\$95,462	\$91,466	\$87,637	\$83,968	\$80,453
Year	12 2034	13 2035	14 2036	15 2037	16 2038	17 2039	18 2040	19 2041	20 2042	21 2043	22 2044
Less: Commercial Net Operating Income	\$169,175	\$174,250	\$179,478	\$184,862	\$190,408	\$196,120	\$202,004	\$208,064	\$214,306	\$220,735	\$227,357
Less: Commercial Parking Income	0	0	0	0	0	0	0	0	0	0	0
Plus: Net Expenses (Taxes, Insurance, CAM)	28,196	29,042	29,913	30,810	31,735	32,687	33,667	34,677	35,718	36,789	37,893
<b>Net Cash Flows (Unlevered)</b>	<b>\$197,371</b>	<b>\$203,292</b>	<b>\$209,391</b>	<b>\$215,673</b>	<b>\$222,143</b>	<b>\$228,807</b>	<b>\$235,671</b>	<b>\$242,741</b>	<b>\$250,024</b>	<b>\$257,524</b>	<b>\$265,250</b>
PV factor	0.39	0.36	0.34	0.31	0.29	0.27	0.25	0.24	0.22	0.20	0.19
Present Value Rental Cash Flows	\$77,086	\$73,859	\$70,767	\$67,805	\$64,966	\$62,247	\$59,641	\$57,145	\$54,752	\$52,460	\$50,264

Continued on following page.



**Attachment 2: BAE Calculations of the Value of Providing Space for Use as a Childcare Facility (continued)**

Year	23 2045	24 2046	25 2047	26 2048	27 2049	28 2050	29 2051	30 2052	31 2053	32 2054	33 2055
Less: Commercial Net Operating Income	\$234,178	\$241,203	\$248,439	\$255,892	\$263,569	\$271,476	\$279,621	\$288,009	\$296,650	\$305,549	\$314,715
Less: Commercial Parking Income	0	0	0	0	0	0	0	0	0	0	0
Plus: Net Expenses (Taxes, Insurance, CAM)	39,030	40,201	41,407	42,649	43,928	45,246	46,603	48,002	49,442	50,925	52,453
<b>Net Cash Flows (Unlevered)</b>	<b>\$273,208</b>	<b>\$281,404</b>	<b>\$289,846</b>	<b>\$298,541</b>	<b>\$307,497</b>	<b>\$316,722</b>	<b>\$326,224</b>	<b>\$336,011</b>	<b>\$346,091</b>	<b>\$356,474</b>	<b>\$367,168</b>
PV factor	0.18	0.16	0.15	0.14	0.13	0.12	0.11	0.11	0.10	0.09	0.09
Present Value Rental Cash Flows	\$48,160	\$46,144	\$44,213	\$42,362	\$40,589	\$38,890	\$37,262	\$35,702	\$34,207	\$32,775	\$31,403
Year	34 2056	35 2057	36 2058	37 2059	38 2060	39 2061	40 2062	41 2063	42 2064	43 2065	44 2066
Less: Commercial Net Operating Income	\$324,157	\$333,882	\$343,898	\$354,215	\$364,842	\$375,787	\$387,060	\$398,672	\$410,632	\$422,951	\$435,640
Less: Commercial Parking Income	0	0	0	0	0	0	0	0	0	0	0
Plus: Net Expenses (Taxes, Insurance, CAM)	54,026	55,647	57,316	59,036	60,807	62,631	64,510	66,445	68,439	70,492	72,607
<b>Net Cash Flows (Unlevered)</b>	<b>\$378,183</b>	<b>\$389,529</b>	<b>\$401,214</b>	<b>\$413,251</b>	<b>\$425,648</b>	<b>\$438,418</b>	<b>\$451,570</b>	<b>\$465,118</b>	<b>\$479,071</b>	<b>\$493,443</b>	<b>\$508,246</b>
PV factor	0.08	0.07	0.07	0.06	0.06	0.06	0.05	0.05	0.04	0.04	0.04
Present Value Rental Cash Flows	\$30,089	\$28,829	\$27,623	\$26,466	\$25,358	\$24,297	\$23,280	\$22,305	\$21,372	\$20,477	\$19,620
Year	45 2067	46 2068	47 2069	48 2070	49 2071	50 2072	51 2073	52 2074	53 2075	54 2076	55 2077
Less: Commercial Net Operating Income	\$448,709	\$462,170	\$476,035	\$490,316	\$505,026	\$520,177	\$535,782	\$551,856	\$568,411	\$585,464	\$603,027
Less: Commercial Parking Income	0	0	0	0	0	0	0	0	0	0	0
Plus: Net Expenses (Taxes, Insurance, CAM)	74,785	77,028	79,339	81,719	84,171	86,696	89,297	91,976	94,735	97,577	100,505
<b>Net Cash Flows (Unlevered)</b>	<b>\$523,494</b>	<b>\$539,199</b>	<b>\$555,375</b>	<b>\$572,036</b>	<b>\$589,197</b>	<b>\$606,873</b>	<b>\$625,079</b>	<b>\$643,831</b>	<b>\$663,146</b>	<b>\$683,041</b>	<b>\$703,532</b>
PV factor	0.04	0.03	0.03	0.03	0.03	0.03	0.02	0.02	0.02	0.02	0.02
Present Value Rental Cash Flows	\$18,798	\$18,012	\$17,258	\$16,535	\$15,843	\$15,180	\$14,544	\$13,936	\$13,352	\$12,793	\$12,258
<b>Total Value of Neighborhood Benefit Space</b>	<b>\$2,666,927</b>										

<sup>1</sup> Based on commercial rents for Menlo Park

<sup>2</sup> Estimated expenses; typically includes pro rata share of contract services (fire alarm, fire protection/life safety, intrusion alarm, landscape maintenance, patrol officer, pest control and trash removal), taxes, repairs / maintenance and utilities.

**ATTACHMENT 2:**  
**MAY 2021 SUPPLEMENTAL ANALYSIS OF COMMUNITY  
AMENITY PROPOSAL**

## Memorandum

**To:** Kyle Perata and Payal Bhagat, City of Menlo Park

**From:** Stephanie Hagar, Associate Principal

**Date:** May 20, 2021

**Re:** Response to Project Applicant Comments on Evaluation of Menlo Portal Community Amenities Proposal

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### Purpose

The City of Menlo Park is in the process of evaluating a community amenities proposal for a proposed mixed-use development in the City's Bayfront area and requested that BAE prepare an assessment of the value of the proposed amenity package. BAE provided an assessment of the value of the amenities package in a memorandum dated February 24, 2021. The project applicant has subsequently provided comments to City staff regarding BAE's methodology for evaluating the proposed amenity package. This memorandum provides BAE's responses to the applicant's comments.

Additional background on the proposed project, the community amenities requirement for the project, and the BAE's evaluation of the applicant's community amenities proposal is provided in the memorandum that BAE prepared on February 24, 2021.

### Applicant Comments and BAE Responses

This memorandum responds to comments that the applicant provided regarding two aspects of BAE's February 2021 community amenities evaluation: 1) the rental value for the outdoor space and 2) the rental growth rate.

#### ***Applicant Comment #1: Rental Value for Outdoor Space***

BAE's February 2021 evaluation of the community amenity proposal applied an assumed rent equal to \$6.00 per square foot per month, triple net (NNN), to the indoor portion of the community amenity space. The February 2021 evaluation did not assign any rent value to the outdoor space that would be included as part of the proposed childcare facility in part because the analysis valued the space based on the rent that the property owner would likely receive from the space if it were rented to a traditional office tenant rather than provided as a childcare facility. The project applicant proposed dedicating the outdoor space for the exclusive use of the occupant in the community amenity space as part of the community amenities proposal. This outdoor space is required for the proposed childcare facility in order

to meet State childcare licensing requirements, making this a necessary component of the community amenities proposal. If the property owner were to instead rent the space to an office tenant, there is no indication that the office space would include an outdoor area for the exclusive use of the tenant in the space, as the private outdoor space was added specifically to serve the unique needs of a childcare facility.

The project applicant's response to BAE's community amenity evaluation states that the approach presented in the February 24 memorandum did not account for the value of the outdoor space.

**Analysis:** In response to comments from the applicant, BAE conducted further analysis to assess the value of the outdoor space if the community amenity space were leased to a traditional office tenant with the proposed outdoor space provided for the exclusive use of the office tenant. The valuation of outdoor spaces that are provided to office tenants varies substantially between properties. BAE contacted office brokers who are active in Menlo Park and the surrounding area, who reported that the value of outdoor space for office tenants depends in part on the type of outdoor space provided, such as whether the space provides power outlets, is covered, and has features such as basketball courts or other activity spaces. While some office leases explicitly apply a rental rate to private outdoor spaces, brokers reported that these spaces are more often treated as amenities, and that office tenants are not typically willing to pay high Silicon Valley rents for outdoor spaces.

To the extent that outdoor spaces provide an amenity to office tenants, owners of office properties that provide outdoor space for tenants' use could potentially charge higher rents for these properties than for comparable properties that do not provide outdoor space, even if there is no direct rent charged on the outdoor space itself. However, amenities do not necessarily translate to higher rental rates in all cases and could potentially be offered to attract and retain tenants rather than to charge higher rents. With the possible exception of large corporate campuses and highly amenitized office complexes that target the high end of the market, outdoor spaces that serve office buildings are often the result of excess space on an office site that cannot be used for interior office space due to development standards or other factors. Property owners may choose to position this excess space to provide outdoor amenities that could help to attract tenants, but do not generally see sufficient value in these spaces in set aside outdoor space for office tenants that could otherwise be used for higher-value uses.

To analyze the potential value of outdoor space as part of an office lease, BAE evaluated data from Costar on office rents for properties that are currently leasing space in Menlo Park, Palo Alto, and Redwood City. BAE identified properties for which the amenities listed in Costar include outdoor spaces, then reviewed leasing flyers and other publicly available information to verify the information provided by Costar and assess whether the outdoor spaces for these properties are shared between multiple tenants or available for the exclusive use of the tenant

that would rent an individual office space. BAE then categorized each property based on whether it provides private outdoor space for the exclusive use of the tenant, shared outdoor space for use by multiple tenants, or no outdoor space on the property. The analysis omitted any properties for which Costar did not provide rental rate data as well as those for which Costar did not provide information on the amenities that the property offers.

This analysis found 11 currently-leasing properties in Menlo Park, Palo Alto, and Redwood City that provide office space for the exclusive use of the tenant that would occupy the available space. Of this total, one is located in Menlo Park, four are located in Palo Alto, and six are located in Redwood City. Overall, the median rent for the properties with private outdoor space is higher (approximately \$0.45 per square foot per month) than the average among properties with no outdoor space, though these data alone do not definitively establish whether this difference is due to the private outdoor space or other differences between properties. A range of other factors that could influence rental rates among these properties include but are not limited to location, other on-site amenities, and building age and condition. To the extent that the identified properties with outdoor space have other attributes that lead to higher rental rates, these other attributes could account for some or all of the difference in median rent.

BAE then reviewed publicly-available data on the properties with private outdoor space to assess the extent to which outdoor space that is similar to the proposed space in the Menlo Portal project helps to increase rents in these properties. This analysis consisted of three steps: 1) Identify properties with outdoor space that is somewhat comparable to the type of outdoor space that is proposed for the childcare facility and 2) Identify properties that are comparable to the properties identified in step 1, with the exception that these comparable properties do not include outdoor space 3) Determine the difference in rent between the properties identified in step 1 and the comparable properties identified in step 2.

This analysis determined that the existing property in Menlo Park that is currently leasing with private outdoor space does not have outdoor space that is comparable to the proposed space in the Menlo Portal project. The outdoor space in the existing building consists of relatively small second-floor balconies, which do not provide the usable area that the proposed outdoor space in the Menlo Portal project would provide. This property has a rental rate that is lower than average for Menlo Park and lower than is typical among office buildings in Menlo Park that were built around the same time, likely due to factors unrelated to outdoor space. Overall, BAE determined that the property did not provide a useful comparison for evaluating the proposed community amenity space.

Among the properties with private outdoor space in Palo Alto, one is a large campus with an extensive range of amenities other than outdoor space and one is an unusual property that is not comparable to other properties on the market that do not include outdoor space. For the remaining properties in Palo Alto, the information that was publicly available was insufficient to

assess the comparability to the outdoor space that would be provided in the proposed project and the comparability to other properties on the market. Overall, the median rent among currently-leasing properties in Palo Alto with private outdoor space was lower than the overall median among all currently-leasing properties in Palo Alto. This is likely due to attributes unrelated to outdoor space that have a negative impact on office rents, and which happen to be more common among those properties with private outdoor space.

Among the properties currently leasing in Redwood City, one property includes outdoor space that is relatively comparable to the proposed community amenity space in terms of the type of outdoor space provided and is comparable to other spaces that do not have outdoor space. This property is located at 2625 Broadway in downtown Redwood City and consists of an approximately 12,000-square foot office space with a roof deck. The property was constructed in 1930 and has been updated with exposed ceilings, polished concrete floors, and a loft-like feel. The property has high ceilings with second-floor mezzanine. The asking rent for the space is listed at \$6.75 per square foot per month, NNN. A property located at 812 Theatre Way in Downtown Redwood City is generally comparable to the property at 2625 Broadway, except that the Theatre Way property does not provide any outdoor space. The Theatre Way property was built in 1926 and has also been updated with exposed ceilings, polished concrete floors, a loft-like feel, and a second-floor mezzanine. Costar lists the rent for the Theatre Way property at \$7.50 per square foot per month, NNN, higher than the rent for the comparable space on Broadway with the roof deck. This suggests that the roof deck at the building located on Broadway provides limited value for the property in terms of increased rental rates.

However, compared to currently leasing office properties in Redwood City with no outdoor space, the rental rate for the property at 2625 Broadway is \$0.23 higher than the median NNN rental rate. It should be noted that these calculations are based on a limited sample of properties, and therefore the difference in rental rates between properties could be due to factors unrelated to outdoor space.

Based on this analysis, BAE estimates that, if the proposed community amenity space were rented to an office tenant along with the private outdoor space, the rent for the space could potentially be up to \$0.25 per square foot per month higher than a comparable space with no outdoor space. This would result in an assumed rent for the space totaling \$6.25 per square foot per month, NNN. This adjustment results in an estimated value of the proposed community amenity space totaling \$2,318,185, approximately \$95,000 higher than the valuation estimated in BAE's February 2021 memorandum. However, in order to realize this additional value, the property owner would need to identify an office tenant for which the small ground-floor space in the proposed project meets their needs and that values the outdoor space enough to be willing pay more for that space than for a comparable space with no outdoor space. Therefore, this potential increase in value is somewhat speculative.

Table 9 below summarizes the value of the applicant’s community amenity proposal based on this rental rate as well as the value that BAE provided in the February 2021 memorandum. The attachment to this memorandum shows the detailed calculations of the value of the proposed community amenity space based on this revised rental rate.

**Applicant Comment #2: Rental Growth Rate**

The initial financial analysis provided by the project applicant and BAE’s February 2021 evaluation of the community amenity proposal used a 3.0 percent annual growth rate to estimate long-term rent growth for the proposed community amenity space if the space were instead rented to a traditional office tenant. The applicant’s comments on the February 2021 memorandum state that annual rent growth in the Menlo Park submarket between 1997 and 2020 has been slightly higher, at 3.57 percent. The applicant requested that BAE revise the valuation analysis using a 3.57 percent annual growth rate, rather than the 3.0 percent growth rate, and provided data from Costar showing average rents in the Menlo Park submarket between 1997 and 2020 to support the 3.57 percent annual growth rate assumption.

**BAE Response:** After reviewing the data provided by the applicant, BAE recommends retaining the 3.0 percent annual growth rate assumption from the February 2021 analysis and the applicant’s initial financial analysis. The 3.57 percent growth rate provided by the applicant was calculated by calculating the percentage growth in the office rental rate in each year between 1997 and 2000 and then calculating the average of the growth rates in each year. However, the annual growth rate assumption used in the financial analysis is a compound annual growth rate. This means that the financial analysis for the community amenities proposal increased the rent by 3.0 percent in the second year of operation and this increased rent was then again increased by 3.0 percent in year three, and so on. Using the submarket data provided by the project applicant, the compound annual growth rate would be calculated using the following formula:

$$\left( \frac{\text{Rent in 2020}}{\text{Rent in 1997}} \right)^{\frac{1}{2020-1997}} - 1$$

Using the Menlo Park submarket rent data provided by the applicant, the calculation is:

$$\left( \frac{\$81.02}{\$44.02} \right)^{\frac{1}{23}} - 1 = 2.69\%$$

As shown, the compound annual office rent growth rate in the Menlo Park submarket between 1997 and 2020, according to the data provided by the project applicant, is 2.69 percent. It should be noted that the long-term average annual rent increase in the Menlo Park submarket

is not necessarily consistent with annual rent increases for a specific office space. If the childcare facility space were instead rented to a traditional office tenant, the annual rent increases for the space would be based on the terms of the lease agreement, with 3.0 percent annual escalation being a typical lease term. Based on this analysis, BAE concludes that the 3.0 percent annual compound rent growth rate that BAE used in the February 2021 memorandum is appropriate for the evaluation of the community amenity proposal.

## Summary of Revised Valuation

Table 9 below provides a summary of BAE’s revised valuation of the community amenities proposal for the Menlo Portal project as well as the valuation provided in the February 2021 memorandum. The revised valuation reflects a higher valuation for the community amenity space based on the outdoor space that would be included as part of the community amenity. BAE did not change any other assumptions from the February 2021 analysis. As shown, the revised analysis shows that the revised value of the community amenity proposal is equal to \$5,387,946, \$95,247 higher than the valuation provided in the February 2021 memorandum.

**Table 9: Initial and Revised BAE Valuations of the Community Amenities Proposal**

	<b>Initial BAE Valuation</b>	<b>Revised BAE Valuation</b>
1 PV of Space Rent Subsidy	\$2,285,937	\$2,381,185
2 PV of Parking Rent Subsidy	\$0	\$0
3 PV of Operating Costs	\$380,990	\$380,990
4 PV of Terminal Value	<u>N/A</u>	<u>N/A</u>
<b>Total Value of Providing Childcare Facility Space</b>	<b>\$2,666,927</b>	<b>\$2,762,174</b>
Financial Contribution to Childcare Facility Operator (a)	\$2,625,772	\$2,625,772
<b>Total Community Amenity Value</b>	<b>\$5,292,699</b>	<b>\$5,387,946</b>
Required Community Amenity Value	\$8,550,000	\$8,550,000
<b>Excess / (Shortfall) Community Amenity Value</b>	<b>(\$3,257,301)</b>	<b>(\$3,162,054)</b>

Note:

(a) The applicant’s community amenity proposal states that the financial contribution to the childcare operator would cover fit out and initial start-up costs.

Source: Greystar, 2021; BAE, 2021.



## ATTACHMENTS

## Attachment 1: BAE Calculations of the Value of Providing Space for Use as a Childcare Facility

### Assumptions

Rent (NNN) / SF / month <sup>1</sup>	\$6.25
Neighborhood Benefit Space SF	1,600
Annual Growth Rate	3.0%
Assumed Discount Factor	7.5%
Start of Operations	2023
Assumed Commercial Parking Spaces	6
Assumed monthly parking rent per stall	\$0
Net Expenses / SF / month <sup>2</sup>	\$1.00

	Completion										
Year	1 2023	2 2024	3 2025	4 2026	5 2027	6 2028	7 2029	8 2030	9 2031	10 2032	11 2033
Less: Commercial Net Operating Income	\$127,308	\$131,127	\$135,061	\$139,113	\$143,286	\$147,585	\$152,012	\$156,573	\$161,270	\$166,108	\$171,091
Less: Commercial Parking Income	0	0	0	0	0	0	0	0	0	0	0
Plus: Net Expenses (Taxes, Insurance, CAM)	20,369	20,980	21,610	22,258	22,926	23,614	24,322	25,052	25,803	26,577	27,375
<b>Net Cash Flows (Unlevered)</b>	<b>\$147,677</b>	<b>\$152,108</b>	<b>\$156,671</b>	<b>\$161,371</b>	<b>\$166,212</b>	<b>\$171,198</b>	<b>\$176,334</b>	<b>\$181,624</b>	<b>\$187,073</b>	<b>\$192,685</b>	<b>\$198,466</b>
PV factor	0.87	0.80	0.75	0.70	0.65	0.60	0.56	0.52	0.49	0.45	0.42
Present Value Rental Cash Flows	\$127,790	\$122,441	\$117,315	\$112,404	\$107,699	\$103,191	\$98,871	\$94,732	\$90,767	\$86,967	\$83,327
Year	12 2034	13 2035	14 2036	15 2037	16 2038	17 2039	18 2040	19 2041	20 2042	21 2043	22 2044
Less: Commercial Net Operating Income	\$176,224	\$181,511	\$186,956	\$192,565	\$198,342	\$204,292	\$210,421	\$216,733	\$223,235	\$229,932	\$236,830
Less: Commercial Parking Income	0	0	0	0	0	0	0	0	0	0	0
Plus: Net Expenses (Taxes, Insurance, CAM)	28,196	29,042	29,913	30,810	31,735	32,687	33,667	34,677	35,718	36,789	37,893
<b>Net Cash Flows (Unlevered)</b>	<b>\$204,420</b>	<b>\$210,552</b>	<b>\$216,869</b>	<b>\$223,375</b>	<b>\$230,076</b>	<b>\$236,979</b>	<b>\$244,088</b>	<b>\$251,411</b>	<b>\$258,953</b>	<b>\$266,722</b>	<b>\$274,723</b>
PV factor	0.39	0.36	0.34	0.31	0.29	0.27	0.25	0.24	0.22	0.20	0.19
Present Value Rental Cash Flows	\$79,839	\$76,497	\$73,294	\$70,226	\$67,287	\$64,470	\$61,771	\$59,185	\$56,708	\$54,334	\$52,060

Continued on following page.

**Attachment 1: BAE Calculations of the Value of Providing Space for Use as a Childcare Facility**

Year	23 2045	24 2046	25 2047	26 2048	27 2049	28 2050	29 2051	30 2052	31 2053	32 2054	33 2055
Less: Commercial Net Operating Income	\$243,935	\$251,253	\$258,791	\$266,555	\$274,551	\$282,788	\$291,271	\$300,010	\$309,010	\$318,280	\$327,829
Less: Commercial Parking Income	0	0	0	0	0	0	0	0	0	0	0
Plus: Net Expenses (Taxes, Insurance, CAM)	39,030	40,201	41,407	42,649	43,928	45,246	46,603	48,002	49,442	50,925	52,453
<b>Net Cash Flows (Unlevered)</b>	<b>\$282,965</b>	<b>\$291,454</b>	<b>\$300,198</b>	<b>\$309,203</b>	<b>\$318,480</b>	<b>\$328,034</b>	<b>\$337,875</b>	<b>\$348,011</b>	<b>\$358,452</b>	<b>\$369,205</b>	<b>\$380,281</b>
PV factor	0.18	0.16	0.15	0.14	0.13	0.12	0.11	0.11	0.10	0.09	0.09
Present Value Rental Cash Flows	\$49,880	\$47,792	\$45,792	\$43,875	\$42,038	\$40,278	\$38,592	\$36,977	\$35,429	\$33,946	\$32,525
Year	34 2056	35 2057	36 2058	37 2059	38 2060	39 2061	40 2062	41 2063	42 2064	43 2065	44 2066
Less: Commercial Net Operating Income	\$337,663	\$347,793	\$358,227	\$368,974	\$380,043	\$391,445	\$403,188	\$415,284	\$427,742	\$440,574	\$453,792
Less: Commercial Parking Income	0	0	0	0	0	0	0	0	0	0	0
Plus: Net Expenses (Taxes, Insurance, CAM)	54,026	55,647	57,316	59,036	60,807	62,631	64,510	66,445	68,439	70,492	72,607
<b>Net Cash Flows (Unlevered)</b>	<b>\$391,690</b>	<b>\$403,440</b>	<b>\$415,544</b>	<b>\$428,010</b>	<b>\$440,850</b>	<b>\$454,076</b>	<b>\$467,698</b>	<b>\$481,729</b>	<b>\$496,181</b>	<b>\$511,066</b>	<b>\$526,398</b>
PV factor	0.08	0.07	0.07	0.06	0.06	0.06	0.05	0.05	0.04	0.04	0.04
Present Value Rental Cash Flows	\$31,163	\$29,859	\$28,609	\$27,411	\$26,264	\$25,165	\$24,111	\$23,102	\$22,135	\$21,208	\$20,320
Year	45 2067	46 2068	47 2069	48 2070	49 2071	50 2072	51 2073	52 2074	53 2075	54 2076	55 2077
Less: Commercial Net Operating Income	\$467,405	\$481,427	\$495,870	\$510,746	\$526,069	\$541,851	\$558,106	\$574,849	\$592,095	\$609,858	\$628,154
Less: Commercial Parking Income	0	0	0	0	0	0	0	0	0	0	0
Plus: Net Expenses (Taxes, Insurance, CAM)	74,785	77,028	79,339	81,719	84,171	86,696	89,297	91,976	94,735	97,577	100,505
<b>Net Cash Flows (Unlevered)</b>	<b>\$542,190</b>	<b>\$558,456</b>	<b>\$575,209</b>	<b>\$592,466</b>	<b>\$610,240</b>	<b>\$628,547</b>	<b>\$647,403</b>	<b>\$666,825</b>	<b>\$686,830</b>	<b>\$707,435</b>	<b>\$728,658</b>
PV factor	0.04	0.03	0.03	0.03	0.03	0.03	0.02	0.02	0.02	0.02	0.02
Present Value Rental Cash Flows	\$19,470	\$18,655	\$17,874	\$17,126	\$16,409	\$15,722	\$15,064	\$14,433	\$13,829	\$13,250	\$12,696
<b>Total Value of Neighborhood Benefit Space</b>	<b>\$2,762,174</b>										

1. Based on analysis presented in this memorandum and in the memorandum that BAE prepared on February 24, 2021.
2. As discussed in BAE's February 24, 2021 memorandum.

June 30, 2021

City of Menlo Park  
Planning Division  
701 Laurel Street  
Menlo Park, CA 94025

**Updated Project Description Letter**  
**115 Independence Drive and 104 - 110 Constitution Drive**

Dear Menlo Park Planning Division:

We are pleased to present this updated proposal that would deliver 335 new housing units to the Bayfront Area. As you may recall, we completed the 146-unit multifamily apartment project at 3645 Haven Avenue in 2017 and we look forward to working with you once again to help alleviate the housing and traffic crises in the area.

The proposed project, named "Menlo Portal," is located in the Bayfront Area of Menlo Park, north of Highway US 101 and east of Marsh Road. The project site is across 3 contiguous parcels at 104 Constitution Dr., 110 Constitution Dr. and 115 Independence Dr. The project proposes demolishing the existing office/industrial buildings on the 3 parcels that total approximately 64,832 square feet.

The proposed project is located in the R-MU-B zoning district within the General Plan. The Plan seeks to develop a new live/work/play environment in the M-2 area, and we believe this proposed project would advance that vision. Furthermore, this project proposes to deliver maximum residential density by using the bonus level development and BMR bonus provisions, which would bring much-needed new housing to the area.

As updated, the proposed project consists of 335 apartment units across a single new seven-story building (five floors of Type IIIA over two floors of Type IA) and an approximately 34,499 square foot commercial office building (three floors of Type IIIB). Our project will include 48 below market rate (BMR) units which will be evenly distributed throughout the project in accordance with Menlo Park guidelines. The residential building includes 320 vehicle parking stalls through a combination of a mechanical stacker system and self-parking and the commercial office building provides 94 parking spaces on two levels, all of it self-parked. The residential building would include two levels of above-grade podium garage with five-levels of residential units above, and would include residential amenities, roof decks, and an outdoor courtyard on the podium level. The commercial office building would incorporate roughly 3,790 square feet in total (comprised of ~1,600 square feet of interior retail / commercial space and approximately 2,190 square feet adjacent outdoor area) as a proposed neighborhood benefit space. Additionally, the project proposal incorporates an approximately 9,575 square feet of publicly accessible central plaza greenspace with seating and art between the residential and commercial office buildings from Constitution Drive to the north in order to improve pedestrian activity and accessibility throughout the area.

The context of the site is between Menlo Gateway Phase I which is approximately 135 feet high in the south and Menlo Gateway Phase II Parking Structure 2 which is approximately 90 feet high and Menlo Gateway Phase II Office Building 2 which is approximately 134 feet high to the north. In addition, the proposed development at 111 Independence is 85 feet high. The courtyard of our multifamily building which is approximately 30'-4" feet high opens out to a pedestrian

area below which runs adjacent to the proposed 55-foot high office building. The various built and proposed buildings in this area will provide a textured landscape appropriate for the context. We've identified an approximately 1,608 square foot area on the first floor of the commercial office building facing the publicly accessible open space that has been allocated as a potential neighborhood benefit space. Further details on this potential neighborhood benefit space are available in our team's community amenity proposal which was last updated in February 2021. In addition, the project is expected to include 48 below market rate units that will be equitably distributed throughout the project.

The timing of this project submittal has made it possible for our team to take advantage of initial feedback we received from Planning Commission on our Menlo Uptown project at 141 Jefferson Dr., 180 Constitution Dr. and 186 Constitution Dr. Additionally, our team has received several rounds of constructive feedback from Planning Commission (study sessions in July 2019 and January 2020) and the City's architectural consultant (April 2020) that has allowed us to improve the Menlo Portal project design over the last couple of years. Please note the following summary of major project changes that have been captured since July 2019:

- **Overall architectural**
  - 15 dwelling units added bringing total from 320 units to 335 units per City's BMR density bonus
  - Adjusted lot line between the office and residential buildings was shifted east towards the residential building by 5'-6"
- **Central plaza enhancements**
  - Improved "activation" of the plaza's edges by including residential amenity spaces, office amenity spaces, and outdoor dining areas along the perimeter of the project buildings
  - Added planting, spaces for public art and wayfinding features to draw the public into the site and informal seating areas invite visitors to linger rather than just passing through
- **Project open space**
  - Reallocated ~1,300 sq. ft. from public open space to common open space per City design review (May 2020)
- **Elevation / façade changes**
  - Updated façade treatment to confirm maximum 50% stucco
  - Updated stucco designation to clarify "smooth troweled finish"
  - Added material board w/ detailed material callouts
  - Updated commercial office building façade treatment to incorporate planting that obscures cars
- **Building massing / modulation**
  - Residential*
    - Updated residential building stepback, building projections, major and minor modulations based on clarification and discussion with the City (compliance)
    - Updated bay window projection into setback zone
  - Office*
    - Re-sized non-rectilinear modulation "notches" to address minor modulation requirements
    - Added seating element on office rooftop to provide 4' vertical modulation requirement
    - Incorporated massing adjustments at third level of the building

Our team's community outreach efforts have been foundational to the project development so far. In June 2019, we held our first formal community open house followed by two additional open houses in the Fall 2019. Our team has continued to meet with members of the community virtually as well since the outbreak of COVID and has solicited constructive feedback on topics ranging from neighborhood amenity space to public art to the proposed BMR program. Of particular note are discussions our team has held recently with All Five, a seasoned Belle Haven-based early

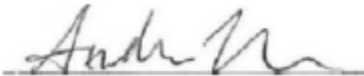
childhood education operator to learn more about the significant need for childhood education in the Belle Haven and neighboring communities. Based on these conversations and numerous other community member discussions on the same topic, we have updated this project's community amenity proposal to focus on early childhood education and providing valuable classroom space in the proposed 3,790 square foot community space as well as financial resources to All Five, with priority on children from the Belle Haven community. As our project continues in the review process, we will continue engaging the community and our future neighbors in order to augment the constructive feedback we have already received.

We anticipate that the project will ultimately require:

- Environmental review to analyze potential environmental and traffic impacts of the project
- Use permit for bonus level development
- Architectural control to review the future design of the project and site improvements
- Public utility easement approval for vacation of existing easement located on existing parcel and recordation of new easement location
- Lot line adjustment to change the boundaries of the three existing parcels on the site
- Lot line merger to merge two of the three existing parcels
- Heritage Tree Removal Permits to remove heritage trees to enable the proposed project and plant heritage tree replacements per the City's municipal code requirements; and
- Below Market Rate (BMR) housing agreement to provide on-site BMR units

We believe that the region is in dire need of more housing, especially as regional employers continue to grow rapidly and traffic worsens. A jobs/housing imbalance is expected to continue into the future, causing further strain on housing availability, increased rents, and traffic. We look forward to working with Planning Commission to deliver this new proposed housing project to Menlo Park.

Sincerely,



Andrew Morcos  
Sr. Development Director  
Greystar

## Planning Commission



## REGULAR MEETING DRAFT MINUTES

**Date:** 08/09/2021  
**Time:** 7:00 p.m.  
**Location:** Zoom

**A. Call To Order**

Vice Chair Chris DeCardy called the meeting to order at 7 p.m. He said he would act as Chair as Chair Michael Doran was absent.

**B. Roll Call**

Present: Andrew Barnes, Chris DeCardy (Vice Chair)), Cynthia Harris, Henry Riggs, Michele Tate

Absent: Michael Doran (Chair), Camille Gonzalez Kennedy

Staff: Payal Bhagat, Contract Principal Planner; Kyle Perata, Principal Planner; Eric Phillips, City Attorney's Office

**C. Reports and Announcements**

Principal Planner Kyle Perata said a project at 124 Dunsmuir Way that had been calendared for this evening's agenda was postponed for consideration. He said notices were mailed and although a notice of hearing was sent for publication in the newspaper, it was not published. He said it would be scheduled and noticed for a future meeting. He said persons wishing to speak on that item might be present and the Vice Chair at his discretion could allow speakers to speak regarding the project under the general public comment since the project was not on the agenda for consideration.

Planner Perata said the City was doing a community survey for the Housing Element Update and that was available on the website through August 29, 2021. He said staff would host a pop-up event on August 29 at the Menlo Park Farmer's Market to explain the Housing Element Update in more detail and respond to questions.

**D. Public Comment**

There was none.

**E. Consent Calendar**

- E1. Approval of minutes from the July 12, 2021, Planning Commission meeting. ([Attachment](#))

**ACTION:** M/S (Henry Riggs/Andrew Barnes) to approve the Consent Calendar consisting of the July 12, 2021 Planning Commission meeting minutes; passes 5-0 with Commissioners Doran and Kennedy absent.

## **F. Public Hearing**

- F1. Use Permit, Architectural Control, Below Market Rate Housing Agreement, Public Utilities Easement Abandonment, and associated Environmental Review/Andrew Morcos for Greystar/104 Constitution Drive, 110 Constitution Drive, and 115 Independence Drive (Menlo Portal Project): Request for a use permit, architectural control, environmental review, below market rate (BMR) housing agreement, and BMR density bonus to redevelop three parcels with approximately 335 multi-family dwelling units (inclusive of 15 additional bonus units for the incorporation of on-site below market rate units per the City's BMR Housing Program (Chapter 16.96.040)), approximately 34,499 square feet of office, and approximately 1,600 square feet of neighborhood serving commercial space. The proposed project would contain two buildings, a seven-story multifamily residential building and a three story commercial building with office use on the upper levels and the neighborhood serving commercial space on the ground level. Both buildings would include above grade two-story parking garages integrated into the buildings. The project site is located in the R-MU-B (Residential Mixed Use, Bonus) zoning district. The project site currently contains three single-story office buildings that would be demolished. The proposed residential building would contain approximately 326,816 square feet of gross floor area with a floor area ratio of 234 percent. The proposed commercial building would contain approximately 36,100 square feet of gross floor area, inclusive of the ground floor neighborhood serving commercial space, with a floor area ratio of 25 percent. The proposal includes a request for an increase in height, density, and floor area ratio (FAR) under the bonus level development allowance in exchange for community amenities. The proposed project would include a below market rate housing agreement that requires a minimum of 15 percent of the units (or 48 units of the 320 maximum units allowed by the Zoning Ordinance before accounting for the 15 bonus units) be affordable. The applicant is proposing to incorporate 15 additional market-rate units (which are included in the total 335 units), per the density bonus provisions in the BMR Housing Program (Chapter 16.96.040), which allows density and FAR bonuses, and exceptions to the City's Zoning Ordinance requirements when BMR units are incorporated into the project. As part of the project, the applicant is requesting an abandonment of an existing public utilities easement within the project site. The proposed project includes a lot line adjustment and lot merger and 10 heritage tree removals. The proposal also includes a use permit request for the storage and use of hazardous materials (diesel fuel) for emergency backup generator to be incorporated into the proposed project. The Final Environmental Impact Report (EIR) pursuant to CEQA was released on July 30, 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, Transportation, and Noise. The Final EIR identifies less than significant (LTS) environmental impacts in the following categories: Population and Housing 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, and Wildfire. The Initial Study identified tribal cultural resources as a potential topic to be analyzed in the EIR, and further evaluation determined that impacts to tribal cultural resources would be less than significant and this topic area was not studied further in the EIR. 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 #21-038-PC](#))

Staff Comment: Contract Principal Planner Payal Bhagat provided an overview of the project proposal. She said the Housing Commission had reviewed the proposed Below Market Rate Housing (BMR) proposal and recommended approval. She said the applicant had proposed two options to meet the project's required community amenity. She said the applicant was requesting flexibility to pay an in-lieu fee for the entire appraised value if they were unable to site the childcare center. She said pursuant to the City's BMR Housing Program the applicant was requesting waivers to reduce residential parking by 15 spaces and allow five short-term bicycle spaces to be located outside of the required 50 feet from any building entrance. She noted that the PUE abandonment, lot merger and lot line adjustment proposed would require the Commission's review for consistency with the General Plan and recommendation to the City Council for approval, which would be the decision-making body for those items. She outlined the meeting format and matters for the Commission's deliberations.

Planner Bhagat said for Commission adoption was a resolution certifying the Final Environmental Report (FEIR), adopting the Mitigation Monitoring and Reporting Program (MMRP), and adopting the CEQA findings. She said a second resolution for adoption would approve the use permit, architectural control permit, the Below Market Rate (BMR) Housing Agreement, and the Community Amenities Operating Covenant. She said the last item presented in the staff report packet was designed around Option 1 of the Community Amenities proposal. She said if the Commission wanted to go with Option 2 then staff would need to revise the Operating Covenant slightly to include the in-lieu fee of \$3.77 million. She said the basic operation of the childcare facility under Option 2 would not change and the other conditions would still apply. She said a third resolution would recommend approval of the PUE abandonment to the City Council. She said the three actions were subject to the conditions of approval in Attachment B, Exhibit G of the staff report.

Planner Payal reported three additions to the staff report that were overlooked. She clarified that on page 9 the height of the building was 83-feet, 9-inches, and that of the office building was 40-feet, 1-inch. She said both height modifications were consistent with the zoning ordinance standard and the findings in the staff report did not change with that minor edit. She said thirdly in Table 6 of the parking requirement, the office parking ratio would be 2.72 instead of 2.71 for 94 parking spaces. She said lastly in Table 11 there was a typo. She said the total value should read \$8,370,000 instead of \$837,000.

Planner Payal said three letters of communication were received by staff after publication of the staff report. She said those were sent to the Planning Commissioners and were now attached to the agenda on the website. One public comment was in support of the proposal, one comments was against the project, and the last comment provided feedback on the proposed community amenities and the last of an environmental justice chapter in the ConnectMenlo Final EIR.

Principal Planner Kyle Perata said that the resolutions to be adopted needed a majority of the full Commission of seven members or four affirmative votes and not a majority of the meeting quorum of five Commissioners.

Theresa Wallace, LSA, the City's consultant for environmental review of the proposed project, presented an overview of that review process and the resultant project Final EIR (FEIR). She said

the project EIR tiered from the ConnectMenlo FEIR. She said based on the analysis of the Initial Study for this project the topics of population and housing, transportation, air quality, greenhouse gas emissions and noise were further evaluated in the focused EIR. She said on those topics the findings were that no significant and unavoidable impacts were identified and all impacts were reduced to less than significant after the implementation of recommended mitigation measures. She said the EIR evaluated a range of alternatives to the proposed project with the objective of avoiding or reducing potential impacts. She said in terms of environmental impacts the base level development alternative would be the superior alternative as it would result in reduced impacts compared to the proposed project. She reviewed for the Commission the preparation of the response to comments document. She said none of the comments on the Draft EIR disclosed any new significant information and no new significant or substantially more severe environmental impacts had been identified. She said no new feasible mitigation measures or alternatives had been identified that were considerably different from others previously analyzed. She said the Planning Commission was asked to decide whether or not the FEIR was adequate. She showed a slide of CEQA Guidelines Section 15151 that defined what adequacy of an EIR entailed.

Applicant Presentation: Andrew Morcos, Senior Development Director for Greystar in Menlo Park, said the proposed project Menlo Portal was their third project in Menlo Park and their second project in the ConnectMenlo plan area. He provided an overview of the key project features. He noted topics Commissioners had raised during the study session for the project prior to this public hearing that they wanted to address. He said one was bicycle parking. He said they previously had provided the number of bicycle parking spaces for 320 units and the Commission asked them to provide bicycle parking for the 335 units. He said they had done that in this proposed plan. He said regarding the childcare space a point was raised whether the space was suitable for childcare and another about fencing options. He said regarding the suitability of childcare in the proposed location they had reached out to experts including GeoKids, Community Equity Collaborative, Build Up San Mateo County, 4C's, and First 5 San Mateo County. He said they all agreed that the proposed location was a suitable and important community amenity. He said regarding the fencing they worked with a childcare facility architect and All Five, the operator they proposed, to provide two fencing options to offer some transparency between the open space and the childcare. He said a comment was also made about the site layout and the property line along 111 Independence Drive. He showed a plan of both their project and 111 Independence Drive. He said at some point the grade between the two properties had to be different due to FEMA and flood plain levels and that was about a four-inch difference between the two properties. He said they were including an attractive fencing to create the needed separation.

Mr. Morcos said they were presenting two options for the childcare facility proposed as the community amenity. He said in Option 1 all \$8.55 million would go to childcare operator All Five with approximately \$2.8 million attributed to the real estate value in the facility, and \$360,000 attributed to the buildout costs. He said the final \$5.4 million was where they provided an option based on feedback. He said in the first option all \$5.4 million would go to tuition subsidy for All Five and in the second option a portion of the \$5.4 million or about \$2.0 million would go to tuition subsidy with the remaining funds going to the City's in-lieu fund and that included the 10% administrative cost required by the City's in-lieu fee ordinance. He said Greystar was retaining the option to pay a 100% in-lieu fee that totaled \$9.4 million inclusive of the 10% administrative fee.

Mr. Morcos said for the BMR unit mix they had two options based on a request from the Housing Commission on Menlo Uptown, another one of Greystar's projects, and that was to add an equivalent alternative with a mix of affordability levels. He said Alternative 1 proposed 48 low-income units and Alternative 2 proposed 3 very low-income units, 14 low-income units and 31 moderate-

income units.

Mr. Morcos said the agenda item misstated the comment period on the Draft EIR and it should be corrected to read from February 25, 2021 and ended on April 14, 2021. He said additionally for the record the Planning Commission hearing to receive public and commission comment on the draft EIR was March 22, 2021.

Clark Manus, Heller Manus Architects, lead project architect, referred to the first-floor plan and said the multi-family residential and the commercial offices both embraced the creation of a pocket park and additionally the paseo on the east side of the site. He said the sea level rise requirement elevated the ground level. He said mechanized parking systems were concealed along streets with active pedestrian frontages. He said residential units began at the second floor and the courtyard plan for the residential was on the third floor. He said the multi-family building combined contrasting primary color and rain screen panels in white color smooth plaster. He said building corners used bold materiality and the setbacks of the balconies and bay windows would provide additional façade character. He said the materiality palette of the commercial office building integrated with the residential character creating a unified site expression design. He said the bronze color window walls above the articulated metal screen concealed parking in the garage. He said they worked carefully on the character and quality of the open space. (Karen Krolewski, PGA Design, project landscape architect, was to speak but had audio difficulties.)

Vice Chair DeCardy opened the public hearing.

Public Comment:

- James Ruigomez, Business Manager, San Mateo Building and Construction Trades Council, asked if the developer had selected a contractor, if prevailing wage was triggered because of affordable housing funding, and if prevailing wage was triggered due to the project consuming a PUE. He said if prevailing wage was triggered by that the Commission had an opportunity to create great policy by converting a prevailing wage job. He suggested turning the prevailing wage into a community work force agreement, which set the wages, standards and conditions and followed the family platform of the worker to earn a decent wage. He encouraged the Commission to have the developer write a letter of intent to the Council stating they would build this project with 100% working family platform contractors and members.
- Christine Padilla, Executive Director, Build Up San Mateo County, said the organization with its leadership partners, 4C's and First 5, submitted a letter of support for siting childcare at Menlo Portal. She said Menlo Park had a growing shortage of childcare. She said with 63% of children aged 0 to 12 years having both parents who worked outside of the home, access to childcare was critical to the pandemic recovery and the ability for residents to return to work. She said finding suitable sites for early learning in the competitive real estate market was the greatest barrier to opening new childcare programs. She said the project would bring new housing and the project sponsor had worked diligently to identify community amenities to benefit Belle Haven, one of which was a high-quality early learning center.
- Heather Hopkins, Community Equity Collaborative, said they had written a support letter and were excited about a childcare facility at this site.
- Pamela Jones, Menlo Park, District 1, said her letter indicated the need for childcare in the area but that this community amenity did not fit with what the Belle Haven visioning brought to the City

in 2013 and it was not part of the adopted amenities because it did not say anything about the relationships between Ravenswood School District and Belle Haven. She said the community amenity should be funds into an in-lieu fee fund that would pay the difference for BMR apartments. She said this in-lieu fee would cover over \$4,000 as a monthly subsidy for a two-bedroom unit and in total 24 units. She said it would also help the City meet its obligation under the current and future Housing Element as it had a severe deficit in providing housing for the very low, low and moderate income. She said the ConnectMenlo General Plan was a flawed document and it helped developers but did nothing for SB1000, which was the environmental justice element.

- Lynne Bramlett, District 3, said she agreed with the previous speaker that development was moving ahead based on a flawed premise. She said at last week's Housing Commission meeting it was noted that District 1 had 3,192 housing units in the project pipeline and that was almost the full Menlo Park RHNA (Regional Housing Needs Allocation). She said the vision for ConnectMenlo and the documents leading to it was to make money for Menlo Park to replace the money the City lost when the state stopped Redevelopment Agencies. She said the Program Level EIR needed to be reviewed as the only benefit outweighing the negative impacts was the money. She said the documents that the Program Level EIR was based on in ConnectMenlo needed review to both look at promises that were not being fulfilled and at new information now known, noting that sea level rise and seismic reports were needed.

Vice Chair DeCardy closed the public hearing.

Commission Comment: Commissioner Riggs asked whether the childcare facility fit within the community amenities list. Planner Bhagat said that was a specific question staff asked the Commission to make a finding on at the March 2021 study session on this project and that was childcare would fit within the educational specificity provided for the Belle Haven community on the community amenity list. She said providing the childcare and the financial subsidies both were options that would comply with the current community amenities list.

Commissioner Riggs said transit from Sevier Avenue to the site of the proposed childcare site would be challenging at 8 a.m. and similarly at 4:30 p.m. He asked if any discussion was had about a shuttle or a transit opportunity that would make the childcare facility actually available to Belle Haven residents. Planner Bhagat said that had not been discussed with the applicant. She requested the applicant reply to that question.

Mr. Morcos said they were working with the City, and it was in the staff report to provide a drop off and pickup zone in front of the childcare area. He said he knew there were Menlo Park shuttles that went to this area. He said with increased residential in the area they could perhaps with others advocate for more shuttles.

Commissioner Riggs asked when the childcare was open if it would be feasible to have an arrangement to provide a shuttle between the childcare location and two to three pickup locations in Belle Haven. Mr. Morcos said they could look into the feasibility of that.

Commissioner Riggs said the applicant asked for alternate locations for short-term bicycle parking and asked if those related to alternate building entries. Mr. Morcos said the proposed locations were just beyond the 50-foot code requirement across the site. Commissioner Riggs said the Commission's interest would be in how attractive those locations were. Mr. Morcos said there were substantial short term parking spaces that met the regulation, and their request was waivers for a

small portion of those required.

Planner Bhagat said the project was required by zoning to provide 14 short term bicycle parking spaces within 50 feet of entryways. She said the project would provide more short-term bicycle parking spaces than what was currently required. She said of those there were five short term bicycle parking spaces that were just a little outside of the 50-foot zone requirement from a main entrance.

Replying to Commissioner Riggs, Planner Bhagat said the lot line merger and lot line adjustment would be reviewed by City Engineering for administrative level approval.

Commissioner Michele Tate said the childcare as a community amenity was great, but she agreed with speakers that the community amenities were intended for Belle Haven community and not for the Bayfront community that was being built. She said she agreed that it would not be easy for Belle Haven residents to travel to the childcare site. She said this childcare facility would serve the Greystar communities and not Belle Haven. She said regarding the BMR mix she wished there were larger units for low-income level instead of all of the larger units for moderate income level.

Commissioner Cynthia Harris referred to Ms. Jones' comments about community amenity. She asked if they decided that all of the community amenity funding should be put into an in-lieu fund who would decide how that money was spent. She asked if it could be used for funding of housing for others not qualifying or lucky enough to get BMR housing. Planner Perata said the in-lieu fee the Council recently initiated and that became effective recently would require staff to create an in-lieu fee fund and put together through a public process what projects of the community amenities list that the funds would contribute to. Commissioner Harris asked if those funds would benefit the Belle Haven community or would they be spread over different communities. Planner Perata said the ordinance had a correlation that those funds would be used more directly in the Belle Haven community, District 1.

Commissioner Harris said a number of comments indicated the list was created in 2014 and since then many changes had occurred in the City. She asked if there was a plan to redo or create a new community amenities list. Planner Perata said the City Council held a study session on the adopted community amenities list in April 2021. He said a community driven process would be needed to update the list that staff would have to develop at the direction of City Council.

Commissioner Harris said while the childcare would definitely be needed, she agreed it needed to serve the Belle Haven community residents. She said she was unsure if a shuttle was the answer. She said if she was a mother with young children, she was not sure taking a shuttle to drop children off and taking it back home and repeating that in the afternoon was something she would want to have to do.

Commissioner Tate said the community amenity offered by Greystar for an urgent care clinic was a great offer and even located outside of Belle Haven that was completely different from the logistics of a childcare facility there for Belle Haven residents.

Commissioner Barnes asked about tuition subsidy for the two childcare options noting the different dollar options. Mr. Morcos said the in-lieu fee option became available about two months prior with City Council ordinance adoption. He said the community amenity list was limited and either some had been chosen for other projects or as stated by the community were not appropriate such as infrastructure in the area. He said with that limited list they thought childcare was an appropriate

amenity. He said admittance to the childcare facility was preferred to Belle Haven residents as well as staff being preferred for Belle Haven residents. He said regarding the \$2 million and \$5.4 million that they had worked closely with All 5 to determine what was an appropriate split that would allow them to get their operation up and running. He said \$2 million approximately covered the operations for about four years and the \$5.4 million approximately covered operations for about 10 years. He said from conversations with All 5 the \$2 million and four years provided enough time for them to get the operation up and running and for them to fundraise. He said 50% of students admitted were fully subsidized, 25% were subsidized on a sliding scale, and the remaining 25% paid market rate.

Commissioner Barnes referred to the community amenity list that included social service and educational improvements in Belle Haven. He noted previous discussion and his belief that childcare fit well into those categories. He said the input to that list was extensive and he did not consider it flawed. He said the discussion was whether residents in Belle Haven would travel to use this childcare facility. He said if the option was no childcare or driving further for it then this site was the best local option for childcare. He said this childcare facility proposed had the subsidies built in that were absolutely critical both for operations and staff retention.

Commissioner Riggs said looking at the area map he could see different routes between Belle Haven and the project site that did not involve Bayshore Expressway. He said a grocery and pharmacy were high priorities for the Belle Haven community and were being considered on other projects. He said he could not see either at this location. He said while he had brought up reservations about childcare at this location that perhaps he was hasty in that. He said he agreed that childcare was a significantly needed use throughout Menlo Park. He said at this point he was supportive of the childcare options and not supportive of the alternative to do 100% in lieu fee. He said otherwise the project was particularly good and supportable.

Commissioner Tate said she thought All 5 had an extension program already in Belle Haven for preference of Belle Haven use. Mr. Morcos said it was located at 1391 Chilco Drive and was an agreement with Ravenswood School District to expand the current space in a slightly different location.

Commissioner Barnes moved to adopt the resolution Certifying a Final Environmental Impact Report (EIR), Adopting Findings Required by the California Environmental Quality Act, and Adopting a Mitigation, Monitoring, and Reporting Program. Commissioner Riggs seconded the motion.

Vice Chair DeCardy referred to page 27 of the staff report and Table 12 that listed the potential impacts on the school districts. He said it seemed to indicate that overall, the project would have negligible impacts on the City and some range of impacts on varied districts. He said it appeared that Sequoia Union High School District seemed to be impacted by about \$460,000 and asked if he was looking at that correctly.

Counsel Phillips said SB50 defined the school impact fees and that set a statutory limit on the City's ability to mitigate impacts that were directly to the school district on school facilities. He said the numbers Vice Chair DeCardy was summarizing on page 27 were correct but for CEQA purposes they were not able to identify an environmental impact to this school based on school facilities because the project would be required to pay its full statutory impact fee as defined by SB50. He said the EIR did comprehensively look at other impacts that could affect the schools such as air quality on nearby school campuses or transportation safety impacts and each of those was found to be less than significant or less than significant with mitigation. He said no unmitigated significant environmental impacts to the schools were identified through the EIR process. Replying further to

Vice Chair DeCardy, Counsel Phillips said that while the City had identified a potential fiscal impact on that school district, under SB50 the City had no authority to levy impact fees other than what was required by statute of the project for school fiscal impacts.

Vice Chair DeCardy referred to page 27 of Attachment A related to the transportation alternatives. He said one of the alternatives was that it was within the project's purview to request a 50% reduction in parking but the finding of the EIR was that would have an increase in environmental impacts because of the potential of cars driving around the neighborhood looking for parking. He asked about the analytics behind that finding. Ms. Wallace, LSA, said it was more of a general finding in that the area was not well served by transit so the assumption was that people would own cars and look for parking in the area adding to congestion, air quality impacts and greenhouse gas emissions as secondary impacts of not providing parking. Replying further to Vice Chair DeCardy, Ms. Wallace said that was primarily for residents and office workers to some extent. Vice Chair DeCardy said he did not buy into that assumption. He asked if that was the only basis to not allow a 50% parking reduction. Ms. Wallace said reducing the parking by 50% was not desired from a policy perspective and that secondary impacts from that was just part of the finding.

Vice Chair DeCardy, after receiving information from Ms. Wallace that discussion between City staff and the environmental technical team found that was not a desirable alternative, said in the Commission's consideration of an EIR there was never the right time to ask a question about the link between parking and transportation. He said building more parking was disastrous for the City and developers did not want to build parking due to the costs and no profit from it. He said housing rather than parking spaces were needed in the mix. He said this EIR and the EIR it tiered from and other EIRs for projects in this area did not shed light on the impacts on the community and environment from transportation. He said the three typical project alternatives presented in these EIRs were frustrating to him as they were not well considered alternatives. He said he would find the EIR adequate as defined but he hoped that EIRs would be done better in the future.

**ACTION:** M/S (Barnes/Riggs) to adopt the resolution Certifying a Final Environmental Impact Report (EIR), Adopting Findings Required by the California Environmental Quality Act, and Adopting a Mitigation, Monitoring, and Reporting Program; passes 4-0 with Commissioner DeCardy abstaining and Commissioners Doran and Kennedy absent.

Expanded Commission discussion with Counsel Phillips ensued relative to the Community Amenities Operating Covenant, Options 1 and 2 for the provision of community amenities included in the second resolution for the Commission's consideration to adopt, and the ordinance by which the applicant could choose to do neither of the community amenities options and pay the total amount of the valuation for community amenity plus a 10% administrative fee as an in-lieu fee.

Commissioner Barnes moved to adopt a resolution approving the use permit, architectural control permit, below market rate housing agreement, and a community amenities operating covenant specifically for Option 1 as presented. Commissioner Riggs seconded the motion.

Replying to a question posed by Commissioner Harris, Mr. Morcos indicate they were open to doing the full in-lieu fee for the community amenity requirement.

Replying to Vice Chair DeCardy, Mr. Morcos said the options for childcare onsite were driven in part by the limited Community Amenities List as well as input they heard from the Commission and community members and consideration of needs for the Belle Haven community. He said passage of the in-lieu fee ordinance provided needed flexibility given the environment today to make sure the

project succeeded.

Commissioner Tate asked how many Belle Haven residents were polled and that wanted a childcare facility. Mr. Morcos said they did not necessarily poll. He said they held two in-person meetings prior to Covid restrictions and numerous phone calls. He said education was identified as something that was significantly concerning. He said with that and also with some of Commission's suggestions a childcare facility was something that they could fit within the project. He said it was a marriage of hearing about concerns in Belle Haven about education and their ability to include something on site. Commissioner Tate suggested that might have been discussed before she was on the Commission as she did not recall that conversation.

Commissioner Harris asked if the Commission were to direct payment of the full in-lieu what would happen with the space designated for the childcare facility. Counsel Phillips said that would be a market driven decision by the developer and might be used for other compliant commercial activities. He said they had discussed internally that possibility and found the EIR would cover other uses. He said the trip generation for a childcare facility or impacts associated with it would be similar to other commercial uses that would by right be allowed in the space.

Replying to Vice Chair DeCardy, Counsel Phillips said the way the childcare amenity itself was valued was for its tenant improvements and the imputed value of the rents for that space over time that would be provided to the operator. He said that valuation was included in the valuation based on the economic analysis the City's consultant BAE did for the childcare amenity. He said the economic effect to the developer was quite similar with the exception of the 10% administrative fee.

Commissioner Riggs said he was uncomfortable with where the discussion was going. He said as an architect and long time Planning Commissioner he was familiar with a developer wanting flexibility. He said as a member of the greater Menlo Park community he was not encouraged with the idea of the developer cashing out the potential childcare center. He noted the extreme difficulty of finding sites for childcare facilities and one of their best opportunities to find sites for that use was to leverage development. He said he hoped they would stay firm and get the childcare center from this project.

Commissioner Tate said the community amenity program was put into place to serve Belle Haven and not places outside of Belle Haven. She said in-lieu fees for that were not an option previously. She said in-lieu fees would best serve the community as it had changed from gentrification that had occurred since the community amenity list was adopted. She said the majority of the people polled in Belle Haven that Commissioner Barnes mentioned including the Spanish community and Belle Haven as a whole were gone. She said if there was another way to better serve Belle Haven perhaps through use of the in-lieu fee for housing subsidies for Belle Haven as suggested by Ms. Jones or to do an improvement project that made sense to her. She asked regarding the proposed childcare facility community amenity option if there was something in place to ensure that Belle Haven residents had priority.

Counsel Phillips said the operating covenant for the childcare facility had a requirement that Belle Haven residents be offered priority registration and enrollment opportunities, and the tuition subsidies were also prioritized similarly. He said each year the property owner and the operator would be required to report back to the City on the enrollment and subsidized tuition demographics.

Commissioner Tate asked when the Council would determine the structure for use of the in-lieu fees. Planner Perata said he did not have an exact timeline, but it was a priority task and was being



worked on hopefully in the near future.

Commissioner Barnes asked if there was a prescriptive number for preference for Belle Haven residents within the childcare center. Counsel Phillips said that was not quantified in the covenant agreement and deferred to the applicant. Mr. Morcos said 24 children was the total enrollment number and the operating covenant said that “enrollment shall be prioritized for children who are residents of the Belle Haven neighborhood.” Commissioner Barnes asked about language prioritizing employing staff who reside in Belle Haven. Mr. Morcos said he did not think that was in the covenant agreement, but they had had discussions with All 5 regarding that and they were open to it. Counsel Phillips said that was correct and that was not something written into the covenant.

Commissioner Barnes asked about enforceability of the requirement for preference to Belle Haven residents for enrollment and what that preference would mean in practice. Counsel Phillips said in practice it obligated the operator and future property owner to make a good faith effort to serve that community and if they were to be overenrolled there would be a priority preference for people in Belle Haven rather than that being opened to the general population.

Replying to Commissioner Barnes, Mr. Morcos said for qualified applicants there would be a preference for those from Belle Haven for staff and they were willing to have that included in the covenant agreement.

Commissioner Barnes said he wanted to add to his motion for Option 1 and that was a preference for qualified applicants for staffing from Belle Haven specified in the covenant agreement. Counsel Phillips said if the maker of the second on the motion on the floor was willing, they could amend the motion to approve the use permit, architectural control permit, below market rate housing agreement, and a community amenities covenant for Option 1 and to amend the covenant to add a preference for qualified applicants from the Belle Haven neighborhood for staffing. Commissioner Riggs said he would support the revision.

Commissioner Tate referred to the mix of BMR units. She said while moderate income people needed units it was the low-income people who needed larger units. She suggested having more one-bedroom units for the very low- and low-income people. Mr. Morcos said they understood which was why they proposed all BMRs at low income and had provided some of each size unit. He said with an equivalent alternative as recommended by the Housing Commission to achieve the overall subsidy that they could only provide very low units if they made the larger units the moderate-income units. He said if the goal was to have some of the larger units at the low level, then they had another option for all the units to be at the low level. Commissioner Tate said she found that disappointing, but she understood it.

**ACTION:** M/S (Barnes/Riggs) to adopt the resolution approving the use permit, architectural control permit, below market rate housing agreement, and a community amenities operating covenant specifically for Option 1 as presented with the addition of language to amend the covenant to add a preference for qualified applicants from the Belle Haven neighborhood for staffing; passes 4-1 with Commissioner Harris opposing and Commissioners Doran and Kennedy absent.

Vice Chair DeCardy said it was an attractive project, it fit the community scale and did a nice job blending business and housing, so it felt approachable. He said he too struggled with the BMR mix but looked to the Housing Commission for recommendation and appreciated the work they put into it. He said he appreciated the applicant team’s efforts for a childcare center as a community amenity and trying to tailor that for benefit of the Belle Haven community. He said that the developer and

Council could elect to do payment of the in-lieu fee.

Vice Chair DeCardy said the remaining item to consider was a public utilities easement (PUE) abandonment. He said the Commission was the recommending body and the Council the approving body.

**ACTION:** M/S (Barnes/Riggs) to adopt the resolution Determining that Public Utilities Easement (PUE) Abandonment is Consistent with the General Plan and Recommending that the City Council Approve the Requested Abandonment; passes 5-0 with Commissioners Doran and Kennedy absent.

Commissioner Tate said she was not comfortable now with her supporting vote on F1.

The Commission adjourned for a short break.

Vice Chair DeCardy reconvened the meeting.

Counsel Phillips said that Commissioner Tate could make a motion to reconsider the action on Item F1 and if seconded the vote would need to be a majority of the quorum members present as it was a procedural vote.

Commissioner Tate moved to reconsider the item specifically the motion to adopt a resolution approving the use permit, architectural control permit, below market rate housing agreement, and a community amenities operating covenant specifically for Option 1 as presented with the addition of language to amend the covenant to add a preference for qualified applicants from the Belle Haven neighborhood for staffing. Commissioner Harris seconded the motion.

Prior to the vote being taken, Commissioner Tate answered Commissioner Barnes' question about why she wanted to reconsider and that was because payment of the in-lieu fee was preferable to her than either option for a childcare center on the project site. She also said many residents of Belle Haven who had been polled and expressed desire for childcare and educational amenities no longer lived in Belle Haven. She said All 5 was expanding its childcare in its Belle Haven facility from 24 to 76 children.

Commissioner Riggs said in his experience that increasing the enrollment at one childcare facility would still not meet the community need and having another facility provided choice.

Commissioner Barnes said he thought it was the wrong direction to take money from the proposed community amenity and put it into an in-lieu fee fund for which there was no processes or procedures. He said it was the loudest voices at the current time that would determine how that money was spent versus a documented public process. He said that was an abdication of responsibility.

**ACTION:** M/S (Tate/Harris) reconsider the item specifically the motion to adopt a resolution approving the use permit, architectural control permit, below market rate housing agreement, and a community amenities operating covenant specifically for Option 1 as presented with the addition of language to amend the covenant to add a preference for qualified applicants from the Belle Haven neighborhood for staffing; passes 3-2 with Commissioners DeCardy, Harris and Tate supporting, Commissioners Barnes and Riggs opposing, and Commissioners Doran and Kennedy absent.

Commissioner Riggs said that he would need to leave the meeting at 11 p.m.

DRAFT



**ACTION:** M/S (Barnes/Riggs) to adopt the resolution approving the use permit, architectural control permit, below market rate housing agreement, and a community amenities operating covenant specifically for Option 1 as presented with the addition of language to amend the covenant to add a preference for qualified applicants from the Belle Haven neighborhood for staffing; fails 3-2 with Commissioners Barnes, DeCardy, and Riggs supporting, Commissioners Harris and Tate opposing and Commissioners Doran and Kennedy absent.

Commissioner Harris said she wanted to do what had the most fairness and created the most housing. She said the in-lieu fee could provide funding for housing. She moved to adopt the resolution approving the use permit, architectural control permit, below market rate housing agreement, and payment of 100% in lieu fee. Commissioner Tate seconded the motion.

Commissioner Barnes said getting affordable housing through the community amenities process was taken out. He said its purpose was to provide amenities to the community aside from inclusionary requirements. He said the money was not intended for buying more BMR units noting that it was less expensive to have the developer build those units rather than going out to the market to get them built.

**ACTION:** M/S (Harris/Tate) to adopt the resolution approving the use permit, architectural control permit, below market rate housing agreement, and for payment of the 100% in lieu fee with the 10% administrative fee for a community amenity; fails 3-2 with Commissioners Barnes and Riggs opposing, and Commissioners DeCardy, Harris and Tate supporting, and Commissioners Doran and Kennedy absent (not a majority of the full Commission).

Vice Chair DeCardy said he too was concerned with how long term political might change and how a pool of funding might be used and for what in the future. He said at this point there was no process. He said he thought they were doing very poorly at meeting the stated needs of the Belle Haven community as it was the most historically discriminated against in all aspects of housing and had experienced the most impacts of development that benefited the City but without seeing the benefits. He said having the potential to systemically take a pool of funding to address the needs of the Belle Haven community was far more effective than what they had, which was an ad hoc approach with a list that felt out of date and items already selected.

Planner Perata said regarding the community amenities ordinance that there were the unknowns such as establishing funds and creating the administrative guidelines for the in-lieu fee. He said the ordinance identified that the community amenities with the exception of housing would be focused on the area north of Highway 101 between 101 and the Bay. He said affordable housing BMR units could be provided throughout the City and was on the table for the Council through the in-lieu fee and had a different geographic reach than the other community amenities.

Counsel Phillips noted Option 2 that was in some ways a hybrid of Option 1 and that of paying the full in-lieu fee as it established a childcare center and contributed to the in-lieu fee.

Commissioner Riggs moved to adopt the resolution approving the use permit, architectural control permit, below market rate housing agreement, and a community amenities operating covenant specifically for Option 2.

Commissioner Barnes asked for an amendment and that the amount for the subsidy in Option 2 be increased from \$2 million to \$3.77 million to provide financial cushion for the childcare facility to be successful and to reduce the in-lieu fee on a pro rata basis.

Counsel Phillips said the \$3.77 million in lieu fee included the 10% administrative fee and that amount would not apply to subsidy for the childcare.

Commissioner Barnes said his requested amendment was for \$3.5 million to go to subsidies for the childcare center and the remainder to the community amenities in-lieu fee.

Commissioner Riggs asked if staff could provide insight on the economic analysis that led to the two options.

Planner Perata said the options were submitted by the applicant and reviewed by staff. He said the question of the \$2 million was best answered by the applicant. He said amendments to the options proposed would have to be agreed upon by the applicant as the ones the applicant had presented complied with the City's objective standards.

Mr. Morcos said in discussion with All 5, the childcare operator, the \$2 million subsidy was the minimum they felt they needed to successfully operate. He said that would support for four years. He said All 5 indicated that through fundraising and other means they felt comfortable they would be able to continue operating the facility for the term. He said part of the amenity was that the operator would not pay any rent. He said the subsidy was entirely for the tuition, staff payroll, and supplies.

Vice Chair DeCardy asked if either Commissioners Harris or Tate might entertain supporting Option 2.

Replying to Vice Chair DeCardy, Commissioner Barnes said he would withdraw his amendment.

Commissioner Tate said she would support Option 2 as written keeping the preferences for Belle Haven residents for tuition and qualified staff applicants.

**ACTION:** M/S (Riggs/Tate) to adopt a resolution approving the use permit, architectural control permit, below market rate housing agreement, and a community amenities operating covenant specifically for Option 2 as presented with the addition of language to amend the covenant to add a preference for qualified applicants for staffing in addition to preference to students from the Belle Haven neighborhood; passes 4-1 with Commissioners DeCardy, Harris, Riggs and Tate supporting, Commissioners Barnes opposing, and Commissioners Doran and Kennedy absent.

Replying to Vice Chair DeCardy, Planner Perata said due to the late hour the Commission could vote to continue F2 and G1. He said if they opened F2 they would need to hear the whole item.

Discussion about hearing the items this evening or not ensued with several Commissioners including Vice Chair DeCardy expressing apology to the applicants and staff present for items F2 and G1.

**ACTION:** M/S (Barnes/Harris) to continue items F2 and G1 to date certain August 23, 2021 Planning Commission meeting; passes 4-0 with Commissioners Doran, Kennedy and Riggs absent.

F2 and G1 are associated items with a single staff report

- F2. Environmental Impact Report (EIR) Scoping Session/Chris Middlebrooks/1105, 1135, and 1165 O'Brien Drive and 1 Casey Court (Referred to as the 1125 O'Brien Drive Project): Request for environmental review for a use permit, architectural control, and Below Market Rate (BMR) Housing Agreement for the construction of a new five-story research and development (R&D) building, approximately 131,825 square feet of gross floor area in size, including chemical storage areas associated with the primary R&D use, and a ground-floor commercial space on a four-parcel site in the LS-B (Life Sciences, Bonus) zoning district. A new surface parking lot would be constructed on 1 Casey Court. The four existing one-story office and R&D buildings would be demolished. As part of the project, 13 heritage trees are proposed for removal. The proposed project would include a BMR agreement per the City's Ordinance and Guidelines. The proposal includes a request for an increase in height and floor area ratio (FAR) under the bonus level development allowance in exchange for community amenities. The proposed project also includes a lot merger and/or lot line adjustment to modify the existing parcels. An Initial Study has been prepared and is included with the Notice of Preparation (NOP) for the proposed project. The NOP and Initial Study were released on Friday, July 30, 2021. The Initial Study scopes out the following environmental topics from further review: aesthetics, agricultural and forestry resources, energy, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, public services, recreation, and utilities and service systems. The focused EIR will address potential physical environmental effects of the proposed project that have not been scoped out, as outlined in the California Environmental Quality Act (CEQA), in the following areas: air quality, biological resources, cultural and tribal resources, greenhouse gas emissions, noise, population/housing, and transportation. The City is requesting comments on the scope and content of this focused EIR. The project location does not contain a toxic site pursuant to Section 6596.2 of the Government Code. Comments on the scope and content of the focused EIR are due by 5:30 p.m. on Tuesday, August 31, 2021 ([Staff Report #21-039-PC](#))

***Continued to the meeting of August 23, 2021***

## **G. Study Session**

- G1. Study Session/Chris Middlebrooks/1105, 1135, and 1165 O'Brien Drive and 1 Casey Court (Referred to as the 1125 O'Brien Drive Project): Study session on a request for a use permit, architectural control, BMR Housing Agreement, and environmental review for the construction of a new five-story research and development (R&D) building, approximately 131,825 square feet of gross floor area in size, including chemical storage areas associated with the primary R&D use, and a ground-floor commercial space on a four-parcel site in the LS-B (Life Sciences, Bonus) zoning district. A new surface parking lot would be constructed on 1 Casey Court. The four existing one-story office and R&D buildings would be demolished. As part of the project, 13 heritage trees are proposed for removal. The proposed project would include a BMR agreement per the City's Ordinance and Guidelines. The proposal includes a request for an increase in height and floor area ratio (FAR) under the bonus level development allowance in exchange for community amenities. The proposed project also includes a lot merger and/or lot line adjustment to modify the existing parcels. ([Staff Report #21-039-PC](#))

***Continued to the meeting of August 23, 2021***

## **H. Informational Items**

### **H1. Future Planning Commission Meeting Schedule**

- Regular Meeting: August 23, 2021

Planner Perata said that the August 23 agenda would have the two items continued this evening as well as two single-family residential projects.

- Regular Meeting: September 13, 2021

## **I. Adjournment**

Vice Chair DeCardy adjourned the meeting at 11:08 p.m.

Staff Liaison: Kyle Perata, Principal Planner

Recording Secretary: Brenda Bennett



Kelly M. Rem  
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August 24, 2021

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

Ms. Judi Herren, City Clerk  
City of Menlo Park  
City Hall, 2nd Fl  
701 Laurel Street  
Menlo Park, CA 94025

Re: Appeal of Planning Commission's Decision to Certify Final Environmental Impact Report for the Menlo Portal 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 Portal Project ("Project") at its meeting held on August 9, 2021 ("August 9 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 the developer of the Project. The Project involves the demolition of the existing commercial and industrial space and redevelopment of the 3.2 acre site with an approximately 326,816-gross-square-foot, seven-story multi-family apartment building with approximately 335 dwelling units. The Project, which is anticipated to generate 67 new high school students to the District, is located approximately 0.25 miles northwest of the District's TIDE Academy, and less than 1.5 miles northwest of the District's Menlo-Atherton High School. 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.

*Limited Liability Partnership*



The District previously submitted a comment letter in response to the Draft EIR, highlighting the District's concerns about the Project on April 14, 2021 ("April 14 Letter"). The April 14 Letter is attached hereto as Exhibit A, and is incorporated herein by this reference.

Through the April 14 Letter, the District 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 this appeal, the District asserts that its concerns raised in the April 14 Letter have not been addressed adequately in the Draft EIR, Final EIR, or by the Planning Commission at the August 9 Meeting. Discussion of the Project's impacts on the District was limited to a brief discussion between Vice Chair Chris DeCardy and City Attorney Eric Phillips regarding the aforementioned improper interpretation of SB 50 and the Final EIR's improper findings that the Project's impacts on the District were less than significant or less than significant with mitigation. Nevertheless, the District again reminds the lead agency of its obligation to fully analyze the Project's impacts on 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 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 school sites in all discussions of the “environmental setting.”**

The District re-states and incorporates herein its objections stated in Section II of the April 14 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. None of the District’s concerns on this point were addressed at the August 9 Meeting other than the conclusory statement that the Project’s impacts on the District were less than significant or less than significant with mitigation.

**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 April 14 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.

As explained extensively in the April 14 Letter, 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 August 9 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 April 14 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 April 14 Letter, 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 August 9 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" (Feb. 2021) prepared by BAE Urban Economics on behalf of the City.**

The District re-states and incorporates herein its objections stated in Section III.C of the April 14 Letter. BAE Urban Economics, on behalf of the City, has prepared a "Fiscal Impact Analysis Report" (Feb. 2021) 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 or Final EIR. Vice Chair Chris DeCardy briefly considered the fiscal impact during the August 9 meeting, though in response, City Attorney Eric Phillips referenced SB 50 as the statutory limit for mitigating impacts on District facilities without actually considering any physical impacts on or related to District facilities. The City Attorney's position is a misstatement of the law.

**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.D of the April 14 Letter.

At the August 9 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 asserted in the April 14 Letter, 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 April 14 Letter 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 August 9 Meeting.

### **III. 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 April 14 Letter, the District objects to assertions in the Draft EIR, Final EIR, and at the August 9 Meeting that payment of school impact fees will mitigate all school impacts to a less than significant level. 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 April 14 Letter.

### **IV. The District is within its rights to comment on the potential environmental impacts on its school sites.**

In its response to the District's April 14 Letter, the City attempts to dismiss the District's concerns regarding Project impacts by asserting that the Project's environmental effects are somehow not within the District's expertise. In order to support this previously unasserted argument, the City relies on Public Resources Code section 21153(c), which states that a public agency "shall only make substantive comments regarding those activities involved in a project that are within an area of expertise of the agency or that are required to be carried out or approved by the agency." In Response A2-2 to the April 14 Letter, the City goes on to state that "[a]lthough each of the SUHSD comments are responded to below, many of the SUHSD comments on the project's environmental effects (e.g., comments regarding transportation and air quality) violate this statutory limitation, because the alleged inadequacies in the Draft EIR involve topics that are outside of SUHSD's area of expertise."

The City's reliance on Public Resources Code section 21153(c) is misplaced, as it applies the incorrect set of standards to the District's April 14 Letter. For one thing, section 21153 applies to early stages of consultation, such as responses to the notice of preparation, as Public Resources Code section 21153(a) describes the applicable time period as "[p]rior to completing an environmental impact report." The District's April 14 Letter was prepared in response to the completed Draft EIR.

CEQA Guidelines section 15209 states that "[e]very public agency may comment on environmental documents dealing with projects which affect resources with which the agency has special expertise regardless of whether its comments were solicited or whether the effects fall within the legal jurisdiction of the agency." The Project's many impacts will undeniably affect District resources. At a minimum, the influx of additional residents and vehicles generated by the Project will have an impact on some of the District's most important resources, in particular the physical sites of both TIDE Academy and Menlo-Atherton High School. Further, the District's students and staff will be required to navigate the safety, air quality, and other impacts that will result from the Project.

In making its argument, City has not particularly defined the District's "area of expertise." If the District can be said to have an expertise, it is in providing a safe and high-quality education to its students. In short, this Project will affect resources with which the District has a special expertise, and the District is well within its rights to comment on the Project's environmental effects.

The City's misapplication of the law would severely limit the District's ability to provide input on the Project. Public participation is an essential part of the CEQA process. (CEQA Guidelines §15201.) The City's argument has the effect of limiting the public's and the District's participation in the CEQA process. Taking the City's argument to its logical endpoint, a school district that is not required to carry out or approve a project would have no basis to comment on a Draft EIR's discussion of environmental effects that may potentially affect its facilities, staff, and students. In so doing, the City has fashioned this argument to function as a shield to meaningful discussion about the Project's environmental effects, which is very much in violation of the spirit of CEQA.

## **V. 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 August 9 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 April 14 Letter, the District objects to and appeals the Planning Commission's certification of the Final EIR at the August 9 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  
August 24, 2021  
Page 7

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



Kelly M. Rem

KMR/kr

Enclosures

cc: Crystal Leach, Associate Superintendent of Administrative Services (cleach@seq.org)

# **EXHIBIT A**

# SEQUOIA UNION HIGH SCHOOL DISTRICT



480 James Avenue, Redwood City, California 94062-1098

Administrative Offices (650) 369-1411

## BOARD OF TRUSTEES

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Crystal Leach

Interim Superintendent

April 14, 2021

By U.S. Mail & E-Mail: [PBhagat@menlopark.org](mailto:PBhagat@menlopark.org)

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

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

Dear Ms. Bhagat:

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Initial Study at 3-48.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Initial Study at 3-46.)

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(*Id.* at 1028-29.)

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

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

**i. Traffic/Transportation/Circulation**

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

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

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

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

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

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

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

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

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

ConnectMenlo calls for an increase of 4.7 million square feet of non-residential office space, 850 hotel rooms, 5,430 residential units, 13,960 residents, and 20,150 employees, all within the Bayfront Area.<sup>6</sup> 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).<sup>7</sup>

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

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<sup>6</sup> 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.

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

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

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

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

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

In addition to increased risks of vehicular accidents, the Draft EIR fails to analyze how traffic and parking impacts posed by the Project will impact the safety and convenience of TIDE Academy students who walk or bike to school. Title 5 of the California Code of Regulations requires that school sites be located within a proposed attendance area that encourages student walking and avoids extensive bussing. (5 Cal. Code Regs. § 14010(1).) To mitigate the impacts of increased traffic in the Bayfront Area, the District has committed to develop and implement a Travel Demand Management Plan. Through this Plan, the District encourages the use of student walking, biking, and other alternative means of student transport to school.<sup>8</sup> 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.<sup>9</sup>

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.

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<sup>8</sup> 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.

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



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

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

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

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

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

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

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

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

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

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

## **ii. Air Quality**

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

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

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

### **iii. Noise**

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

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

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

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

### **iv. Population and Housing**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**A. The Legislature Intended Coordinated Planning for School Sites**

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

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

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

## **B. Alternative Mitigation Measures**

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

### *1. Land Dedication*

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

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

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



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

## 2. *Phasing*

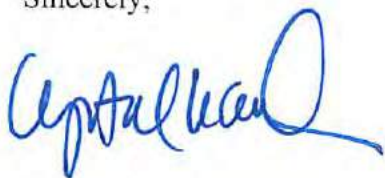
Another method by which the City should work cooperatively with the District within all legal constraints to ensure adequate school facilities with regard to new development allowed by the Project, and which therefore can serve as an appropriate mitigation measure, is the requirement that all future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

## **VI. Conclusion**

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

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

Sincerely,



Crystal Leach  
Interim Superintendent

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



# SEQUOIA UNION HIGH SCHOOL DISTRICT

## ADMINISTRATIVE SERVICES

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February 7, 2020

By U.S. Mail & E-Mail: [kmmeador@menlopark.org](mailto:kmmeador@menlopark.org)

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

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

Dear Ms. Meador:

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

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

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

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

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

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

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

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

### **Inappropriate Reliance on ConnectMenlo EIR**

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

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

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

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

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

#### **Transportation/Circulation/Traffic Analysis**

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

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

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

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

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

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

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

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

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

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

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

As indicated in the City's General Plan, the City's roads are not currently equipped to accommodate such high density development and high levels of traffic. Accordingly, such increases to traffic in the area will not only make it much more difficult for students and staff to travel to and from TIDE Academy, but will also drastically increase the risk of vehicular accidents to District families, students, and staff traveling to and from school. For instance, many students at TIDE Academy access school by turning onto 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 area immediately adjacent to the intersection of Independence Drive and Marsh Road, the Project will be magnifying this dangerous road condition, further placing District students, families, and staff in harm's way.

In addition to increased risks of vehicular accidents, the traffic impacts posed by the Project will severely impact the safety and convenience of TIDE Academy students who walk or bike to school. Title 5 of the California Code of Regulations requires that school sites be located within a proposed attendance area that encourages student walking and avoids extensive bussing. (5 Cal. Code Regs. § 14010(l).) To mitigate the impacts of increased traffic in the Bayfront Area, the District has committed to develop and implement a Travel Demand Management Plan. Through this Plan, the District encourages the use of student walking, biking, and other alternative means of student transport to school.<sup>3</sup> 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.<sup>4</sup> The City has likewise committed to supporting and promoting such safe route to school programs to enhance the safety of school children who walk to school.<sup>5</sup>

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

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<sup>3</sup> 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.

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

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

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

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

### **B. City Must Consider Cumulative Traffic and Related Impacts.**

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

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

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

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



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

### Air Quality

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

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

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

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

### Noise

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

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

### Population

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

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

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

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

### **Housing**

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

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

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

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

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

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

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

### **Public Services**

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

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

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

**Conclusion**

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

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

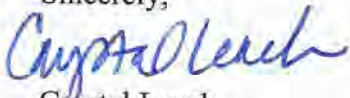
We request that all notices and copies of documentation with regard to this Project be mailed both to the District directly, and also to our legal counsel's attention as follows:

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

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

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

Sincerely,



Crystal Leach  
Associate Superintendent, Administrative Services

cc: Kelly Rem, Lozano Smith



EXCERPT REGULAR MEETING DRAFT MINUTES

Date: 03/22/2021  
Time: 7:00 p.m.  
Location: GoToWebinar

**A. Call To Order**

Chair Henry Riggs called the meeting to order at 7:02 p.m.

**B. Roll Call**

Present: Andrew Barnes, Chris DeCardy, Michael Doran (Vice Chair), Henry Riggs (Chair)

Absent: Larry Kahle, Camille Kennedy, Michele Tate

Staff: Payal Bhagat, Contract Principal Planner; Ori Paz, Associate Planner; Kyle Perata, Principal Planner; Corinna Sandmeier, Senior Planner; Leo Tapia, Planning Technician

**C. Reports and Announcements**

Senior Planner Corinna Sandmeier said the City Council at its March 23 meeting would review the Complete Streets Plan.

**D. Public Comment**

None

**E. Consent Calendar**

E1. Approval of minutes from the February 8, 2021, Planning Commission meeting. ([Attachment](#))

E2. Approval of minutes from the February 22, 2021, Planning Commission meeting. ([Attachment](#))

ACTION: Motion and second (Chris DeCardy/Michael Doran) to approve the consent calendar including the minutes from the February 8, 2021 and the February 22, 2021 Planning Commission meetings as submitted, passes 4-0-3 with Commissioners Larry Kahle, Camille Kennedy, and Michele Tate absent.

**F. Public Hearing**

F2. Draft EIR Public Hearing/Andrew Morcos for Greystar/104 Constitution Drive, 110 Constitution Drive, and 115 Independence Drive (Menlo Portal Project):

Public hearing to receive public comments on the Draft EIR for approximately 335 multi-family dwelling units (inclusive of 15 additional bonus units for the incorporation of on-site below market rate units per the City's BMR Housing Program (Chapter 16.96.040)), approximately 34,868 square feet of office and commercial uses, inclusive of 1,600 square feet of neighborhood serving

commercial space (childcare center). The proposed project would contain two buildings, a seven-story multifamily residential building and a three story commercial building with office use on the upper levels and the neighborhood serving commercial space on the ground level. Both buildings would include above grade two-story parking garages integrated into the buildings. The project site is located in the R-MU-B (Residential Mixed Use, Bonus) zoning district. The proposal includes a request for an increase in height, density, and floor area ratio (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 generator to be incorporated into the proposed project. The Draft EIR was prepared to address potential physical environmental effects of the proposed project in the following areas: population and housing, transportation, air quality, greenhouse gas emissions, and noise (operation period traffic and stationary noise). The Draft EIR identified less than significant effects in the following topic areas: Population and Housing and Greenhouse Gas Emissions. The Draft EIR identified less than significant effects with mitigation for the Air Quality, Transportation, and Noise (operational traffic and stationary noise) topic areas. The City is requesting comments on the content of this focused Draft EIR. The project location does not contain a toxic site pursuant to Section 6596.2 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 April 14, 2021. ([Staff Report #21-015-PC](#))

Item F2 was transcribed by a court reporter.

## **G. STUDY SESSION**

- G1. Study Session for Use Permit, Architectural Control, Lot Line Adjustment, Lot Merger, Below Market Rate (BMR) Housing Agreement, Heritage Tree Removal Permits and Environmental Review/Andrew Morcos for Greystar/104 Constitution Drive, 110 Constitution Drive, and 115 Independence Drive (Menlo Portal Project):  
Request for a study session for a use permit, architectural control, environmental review, lot line adjustment, lot merger, below market rate housing agreement, and heritage tree removal permits to redevelop three parcels with approximately 335 multi-family dwelling units (inclusive of 15 additional bonus units for the incorporation of on-site below market rate units per the City's BMR Housing Program (Chapter 16.96.040)), approximately 34,868 square feet of office and commercial uses inclusive of 1,600 square feet of neighborhood serving commercial space. The proposed project would contain two buildings, a seven-story multifamily residential building and a three story commercial building with office use on the upper levels and the neighborhood serving commercial space on the ground level. Both buildings would include above grade two-story parking garages integrated into the buildings. The project site is located in the R-MU-B (Residential Mixed Use, Bonus) zoning district. The project site currently contains three single-story office buildings that would be demolished. The proposed residential building would contain approximately 326,581 square feet of gross floor area with a floor area ratio of 235 percent. The proposed commercial building would contain approximately 34,868 square feet of gross floor area with a floor area ratio of 25 percent. The proposal includes a request for an increase in height, density, and floor area ratio

(FAR) under the bonus level development allowance in exchange for community amenities. The proposed project would include a below market rate housing agreement that requires a minimum of 15 percent of the units (or 48 units of the 320 maximum units allowed by the Zoning Ordinance before accounting for the 15 bonus units) be affordable. The applicant is proposing to incorporate 15 additional market-rate units (which are included in the total 335 units), per the density bonus provisions in the BMR Housing Program (Chapter 16.96.040), which allows density and FAR bonuses, and exceptions to the City's Zoning Ordinance requirements when BMR units are incorporated into the project. The proposal also includes a use permit request for the storage and use of hazardous materials (diesel fuel) for emergency backup generator to be incorporated into the proposed project. ([Staff Report #21-015-PC](#))

Staff Comment: Planner Bhagat requested the Commission consider the following topics: site layout and proposed open space, overall architectural design of the proposed building, the community amenity proposal, vehicle and bicycle parking waiver, the BMR proposal, potential intersection improvements as project conditions, and the overall development proposal. Commissioner Barnes asked for clarification of the square footage for the childcare center. Mr. Morcos said the overall square footage was 3,790 with 1,600 square feet of interior space and 2,190 square feet of outdoor space.

Commissioner Barnes said the applicant had indicated the value of the community amenity was \$8.44 million. He asked if the childcare center fully met that value, and if not, what was proposed to meet the value fully.

Mr. Morcos said the value was \$8.55 million. He said a portion was dedicated to the actual real estate and the remainder was for the operator of the childcare facility to subsidize children's tuition with priority given to Belle Haven residents. He said they were still working with the City on how much the real estate counted to determine what additional funds would be available. He said the real estate was around \$2 to \$3 million and the remainder would go to support All Five, the operator, through a build out of the space for fixtures, indoor and outdoor equipment, and to subsidize free or reduced admission for Belle Haven residents.

Commissioner Barnes asked if the real estate value was related to the abatement of rent for the space. Mr. Morcos said BAE had only valued the interior space but, in the market, outdoor space dedicated to an interior use also had value. He said BAE was measuring foregone rents over a 50-year period.

Chair Riggs opened the public comment period.

Public Comment:

- Kim Novello, Menlo Park, said she recommended more housing than office space. She noted an apartment building in Seattle that had a grocery store on the first floor. She suggested that as a possibility. She said the outdoor space seemed compact and suggested that outdoor play space for children of families living in the building was needed.

Chair Riggs noted the units in the building were predominantly studio and junior one-bedrooms.

Chair Riggs closed the comment period.

Commission Comment: Commissioner DeCardy asked for information on the community amenities list as to how many people had provided input on it, how items were ranked in priority, and how many items were already accomplished.

Planner Perata explained where the information as to input and priority were found on the documents. He said the community amenities list was used on a project-by-project basis that looked at which of the amenities made the most sense at the project location. He said the ranking did not necessarily affect the Commission's review of the appropriateness of a certain amenity at a certain location. He said at this point no projects had been approved in the Bayfront area, so all the amenities were available. Replying further to Commissioner DeCardy, Planner Perata said staff was tracking the amenities being contemplated for the projects in process but until approval that amenity(ies) would remain on the list. He noted Commissioner DeCardy's request and indicated that staff going forward could provide information on which amenity was being proposed and for which project. He said once a project was approved the amenity associated with the proposal would be taken off the list.

Commissioner DeCardy observed that a childcare facility was an amenity that Belle Haven residents wanted. He suggested to do that the facility would be better located closer to Belle Haven. Mr. Morcos said they had looked at different options for expanding childcare in a location that was immediately within Belle Haven. He said they did not find anything that fit the description immediately within the Belle Haven area. He said they were able to incorporate the amenity within their project and as well to allocate the space for that use for years. He said their site was not immediately adjacent to Belle Haven but was close.

Commissioner DeCardy expressed surprise that an alternative space for childcare was not possible. He pointed to the square foot cost of what they were proposing to build and suggested that was more than what the square foot cost would be in other parts of the community to provide the infrastructure. Mr. Morcos said they did not find that to be the case with needing to acquire indoor and outdoor space as well as the permits and zoning required. Commissioner DeCardy asked for clarification of the applicant's statement earlier in the evening that the 25% market rate spaces would ensure that this childcare facility's delivery of services would meet the standards of delivery provided by other childcare facilities. Mr. Morcos said offering 25% of the spaces at full market rate meant the facility would have a wide range of socioeconomic enrollment to maintain a level of service commensurate with other childcare facilities that did not subsidize for students. He said the concern with subsidizing 100% subsidized was the potential for the level of service to be lower than where all users paid market rate. He said also children interacting with children with a variety of backgrounds that were diverse socioeconomically and otherwise was important for their development.

Commissioner DeCardy said it would be helpful to have an expert in childcare facilities available to answer the type of questions he was asking and to provide the best opportunity for the people who needed support versus the opportunity for the best childcare experience. He said if the childcare facility were the community amenity, he would like to see supporting information of what benefit it would bring. He asked why an opaque fence would be used to separate the childcare outdoor space from the public outdoor space. Mr. Morcos said that was driven by regulations for childcare facility regulations and was for the children's safety to have protection from people being able to look in and to access the space from the exterior. Commissioner DeCardy said he was not an expert but knew of other childcare facilities like Willow Park that did not have opaque fencing. He said he thought the opaque fencing would detract from the children's experience in that they would have to look up to



see anything and the public's experience in not fully seeing the design of the spaces. Mr. Morcos said they would take another look at the fencing.

Commissioner DeCardy said regarding the staff's request to consider the community amenity appropriateness that he had three questions: 1) did the childcare facility have to be at this site or could the resources be used better at another site that would be more accessible; 2) was the fee structure proposed the right mix especially as there was some discrepancy about the total amount of money going to the amenity – he said it should be as affordable as possible for as many people as possible to have the benefit for the community; and 3) if the facility stayed onsite, he had concern with the activation of the outdoor space (opaque fencing).

Commissioner Barnes referred to staff's recommended points for the Commission to discuss. He said firstly the project was well-designed. He said the 90% residential and 10% commercial uses suited the live, work, play goal of the zoning district it was located in. He said he had nothing to add to the site layout, noting it was the project's third study session. He said the architectural design worked for both the office, which was a smaller space, and especially well for the residential portion noting the use of materials, articulation, fenestration and well incorporated side facades. He said regarding the childcare facility proposed that this service at an institutional scale was tremendously challenging in terms of finding a property with the right physical characteristics in a zone that allowed for it. He said the space allocated in this project for childcare was small. He said he supported providing childcare as a community amenity but thought it a valid question as to which was better - doing the proposal onsite or using the resources of \$8.55 elsewhere to create or support childcare. He said they should revisit the size of the space proposed. He said he had trouble with the bicycle parking waiver and that finding space on the site for bicycle parking was an important discussion. He said the project should conform to the bicycle parking requirement. He said he had no comments on the BMR proposal. He said the overall development project was appropriate for the area. He said regarding potential intersection improvements as project conditions that he was not in favor of improvements that would induce traffic demand. He asked staff to outline what the intent or goal of those potential intersection improvements would be.

Associate Transportation Engineer Rene Baile said most of the potential intersection improvements were included in the City's Transportation Master Plan and intended to address additional trips associated with the project. He said the proposed improvements overlapped with those recommended in other projects and were to address congestion and not to induce demand.

Replying to Chair Riggs, Planner Perata referred to the City's Transportation Impact Analysis Guidelines and under CEQA the consideration of vehicle miles traveled or VMT. He said staff also does a level of service (LOS) analysis. He said the staff report referred to the non-CEQA LOS discussion in the draft EIR that identified where there was an increased delay at an intersection due to this project. He said staff had identified a number of intersections that would have that potential delay. He said the Commission was asked whether the City should engage its transportation consultant to further identify what those improvements would be, what was needed and what schematics there were. He said if the Commission were interested, they could condition the approval to require the project to improve intersections to preexisting conditions. He said they had had similar discussions in other study sessions such as 111 Independence Drive and most recently with Menlo Uptown. He said for those he believed the Planning Commission had identified that staff should continue to evaluate those potential intersection improvements as potential conditions of approval and bring those back to the Commission as part of project entitlement.

Chair Riggs asked if staff felt this was consistent with a history of improvements requests outside, above and beyond the Transportation Impact Fee (TIF) payment. Planner Perata said these improvements were what they might have seen traditionally in an EIR as mitigation of LOS but were now shifted to potential conditions of approval noting the use of VMT for CEQA and not LOS. He said these were project specific to improve to pre-existing conditions. He said if an applicant constructed the improvements as a condition of approval and that improvement was within the TIF the applicant would get credit for the cost of that in calculating the TIF. He emphasized it was not above and beyond the TIF.

Commissioner Barnes said it seemed a logical ask to have applicants make such improvements. He asked how cost scoping was done and who made the judgement call of how much bringing the conditions back to pre-existing would cost.

Planner Perata said staff would identify what was feasible. He said they had the improvements identified in the draft EIR but no schematics so they would need to get further designs to see what was feasible. He said staff could provide general cost estimates for things like striping, pavement, or road widening. He said also staff had identified improvements that were not feasible.

Commissioner Barnes said if there was a reasonableness test applied to have a developer improve conditions to pre-existing in a way that was beneficial and had good cost benefit then he could support. Planner Perata said that was reasonable and he agreed that what Commissioner Barnes was asking were fair assessments.

Commissioner Barnes said he thought the childcare amenity needed a third-party expert to look at noting he had experience with consultants who could opine whether this was an appropriate site for childcare.

Commissioner Doran said regarding the topics for consideration that the site layout worked, and he liked the open space. He said he particularly liked the contrast in architectural styles between the office and residential space. He said the applicants had done a good job integrating mixed uses and varied the architecture, so it worked for the project individually and with the area. He said he had nothing to add regarding the overall architectural design. He said regarding the community amenity he believed the Commission had requested childcare. He said the applicants were giving that and should be commended. He said he had sympathy for the applicant and the difficulties associated with the siting of childcare facilities. He said buying a couple of residential homes in Belle Haven to convert for childcare would not provide what was wanted, noting also that homes in that neighborhood were selling for a million dollars. He said the applicants would have the contractor onsite to build the childcare facility to specifications and he understood childcare facility specifications were exacting. He said he thought it was a very appropriate use. He said regarding the 25% paying customers that he understood it from a diversity view and thought it would help ensure that the facility and its services were up to the standards of paying facilities in the area. He said regarding the BMR proposal that the applicant should commit to the Commission's desire to have a mix of income levels for the BMR units and to not have them all be the same. He said he wanted to note that for the record. He said he had nothing to add to the roadway conditions and level of service conversation. He said as the applicant would be contributing to TIF that he would trust the City to identify the best use of that. He said the overall development proposal was very much in keeping with what the City had envisioned for the neighborhood and it was the correct use of space for the parcel. He expressed his support for the application as currently proposed.

Commissioner DeCardy said regarding the areas of consideration requested by staff that the applicant had responded to the Commission's input from previous sessions on the site layout and proposed open space. He said regarding the overall development project that he thought it would be helpful to get plans that showed the transition from this project to the adjacent project. He said he agreed with other Commissioner comments on the overall architectural design. He said it looked nice and did a good job with different massing so from the street it did not feel imposing. He said the boutique office space looked to him like a separate, floating above the community, glassed-in kind of special place that he would like to see be more connected to the ground and to the community. He said this was the one way the project proposal had progressed that did not feel great. He said they had discussed the community amenity proposed and he thought it was worth exploring in the ways discussed. He said in terms of letting the market decide perhaps they could do an \$8 million endowment that would give out \$400,000 in vouchers which he thought would cover 17 slots of GeoKids in perpetuity. He said he thought there were multiple ways to look at it and he thought someone should look at the community amenity carefully. He said he commended the applicant for this creative response to the Commission and community's interest in childcare. He said regarding the vehicle and bicycle parking waiver that he was fine under parking for vehicles but finding spaces to park bicycles was desirable. He said he agreed with Commissioner Doran on the BMR proposal to have a spread of income levels. He said regarding the road congestion and level of service that he liked the principle articulated by Commissioner Barnes that no improvements would be made that would induce traffic. He referred to his comments under the EIR discussion to have a robust and enforceable TDM plan and he thought more than a 15% reduction was achievable. He said Facebook a decade ago was a leader in reducing single-occupancy vehicular travel and he would like the developers bringing these other projects forth to also be leaders in managing transportation impacts. He said regarding the overall development proposal that it worked, and he thought would be a nice addition to the community. He said it was a shame that a diesel generator would be used for emergency back up for a building that otherwise would be splendid in its energy mix.

Chair Riggs said he agreed with the other three Commissioners' comments almost entirely. He said the overall design was done well particularly the residential building. He said the open space was fine as it had been worked on thoroughly with staff. He said given that the community amenity proposed was something that they had asked for it was difficult to criticize in concept. He said he concurred with Commissioner DeCardy about the potential for it to be offered elsewhere. He noted four building conversions to childcare facilities that he had done professionally. He said the most recent was the conversion of a former Sunday school space to an entirely conforming childcare space for 26 to 40 children. He said that was accomplished on a \$450,000 budget inclusive of design and administrative fees but did not include leasing or buying property. He said childcare as community amenity was associated on the list with the Belle Haven community. He said the project site was rather remote from Belle Haven and closer to the North Fair Oaks, Haven Avenue and Lorelei Manor communities. He said he thought childcare facilities would be welcome in any of those communities. He said he was inclined to be supportive of the proposal but thought a review of the budget was appropriate. He said to him it was apparent the childcare facility would not serve the building tenants as those were small units. He said to his knowledge that no other childcare facility in the City used opaque fencing for its outdoor space and he thought its use should be revisited.

Chair Riggs referred to the pocket park and the perforated metal screen between it and the residential parking structure on the left. He suggested some treatment to block the view of the parking structure interior such as planting or lights. He said in agreement with a couple of others about bicycle storage that TDM was particularly important to reducing additional traffic. He said providing bicycle storage space for 60% of units would be fantastic and suggested the applicants reconsider that.

Recognized by the Chair, Mr. Morcos said they would have 480 long term bicycle parking spots and 48 short term ones for the residential use. He said their vehicular parking was at the minimum allowed of one space per residential unit. He said the staff report discussion was about the 15 additional BMR units as those would not have allotted garage parking or additional bicycle parking. Chair Riggs thanked the applicant for the clarification and confirmed that the BMR residents would have access to the bicycle storage spaces. He said he agreed with Commissioner DeCardy that a 15% reduction in traffic through the TDM plan was mild. He said he hoped the bar could be raised on TDM. He complimented the project architect on a marvelous job particularly on the residential and the site planning. He said the project would be an asset to the new neighborhood.

Commissioner Barnes said regarding his earlier comments on the childcare facility that he now saw the operator was NAEYC accredited, which gave him a tremendous level of comfort. He said the proposed site allowed for 35 square foot per child. He said although it might be nice if the facility could support more than 22 children, he was comfortable with the plan and the operator and would remove his request to have a third party look at it. He said in addition the value of having childcare in an office building was quite beneficial with drop off hours as well as parking for the teachers.

Chair Riggs said additionally he supported the staff's efforts at intersection improvements based on staff's judgement. He said he supported the BMR proposal.

Replying to Chair Riggs, Planner Sandmeier said that another Commissioner to make up the quorum needed to consider 2040 Menalto Avenue had not happened and the applicant had communicated she had to leave the meeting as well.

## **H. Informational Items**

### **H1. Future Planning Commission Meeting Schedule**

- Regular Meeting: April 12, 2021

Planner Sandmeier said the April 12 agenda had several smaller items as well as the deferred 2040 Menalto Avenue project.

- Regular Meeting: April 26, 2021

## **I. Adjournment**

Chair Riggs adjourned the meeting at 10:17 p.m.

Staff Liaison: Corinna Sandmeier, Senior Planner

Recording Secretary: Brenda Bennett



**STAFF REPORT**

**City Council**

**Meeting Date:**

**9/14/2021**

**Staff Report Number:**

**21-173-CC**

**Regular Business:**

**Adopt Resolution No. 6663 to approve permanent installation of Belle Haven neighborhood traffic management plan**

**Recommendation**

Staff recommends that the City Council adopt Resolution No. 6663 (Attachment A) to approve permanent installation of the Belle Haven neighborhood traffic management plan.

**Policy Issues**

The development of the Belle Haven Neighborhood traffic management plan (Plan) and its implementation fulfill “Mitigation Measure TRA-3.1” of the mitigation monitoring and reporting program (MMRP) established in the Facebook campus expansion project final environmental impact report (FEIR) approved in 2016. This was identified as a mitigation measure due to the potential for the Facebook Campus Expansion project to exacerbate cut-through traffic in the neighborhood. (The Plan is not a negotiated benefit of the recorded development agreement for the project.) At the request of the City Council, this MMRP requirement is included in the City’s capital improvement program and considered part of staff’s baseline work.

As established by the Belle Haven traffic calming plan agreement November 12, 2020, between the City and Hibiscus Properties, LLC (Facebook), the City Council needs to identify and provide final direction on permanent measures for installation before October 1, 2021. As a result, approval by the City Council at a special meeting (if needed) no later than September 30, 2021 would be required. Deferral or continuance of this item beyond October 1 will result in Facebook providing a one-time in-lieu lump sum fee payment of \$500,000 and relinquish their obligation to construct the selected measures.

**Background**

On August 20, 2019, the City Council approved the final revised Plan, adopted Resolution No. 6492 to remove on-street parking for intersection bulbouts, and amended the standard implementation process, as outlined in the City’s neighborhood traffic management program (NTMP) approved in 2004, to expedite the installation process. After the Plan was approved, staff continued to work with Parisi Transportation Consulting (Parisi) to prepare design plans and started coordination with outside agencies. Parisi was selected by the City and funded by Facebook to provide expertise on the development and design of the Plan.

In June 2020, temporary traffic calming measures within City jurisdiction were installed. Additionally, schematic design plans were submitted to the San Francisco Public Utilities Commission (SFPUC) for improvements along Ivy Drive (Hetch Hetchy pipelines) and Caltrans for improvements along Willow Road (State Route 114) in October 2020 for initial review.

Table 1 provides a summary of the locations, jurisdictions and changes to proposed measures based on

field evaluations and coordination with other agencies.

Table 1: Plan details				
Location	Street segments	Jurisdiction <sup>1</sup>	Initial proposed measures <sup>1</sup>	Final proposed measure <sup>1</sup>
Chilco Street	Terminal Avenue to Newbridge Street	City	Speed feedback signs, signing and striping	Speed feedback signs, signing and striping
Newbridge Street	Chilco Street to Willow Road	City	Bulbouts and striping	Bulbouts and striping
Terminal Avenue	Del Norte Avenue to Chilco Street	City	Bulbouts and striping <sup>2</sup>	Bulbouts and striping <sup>2</sup>
Chilco Street/ Hamilton Avenue/ Newbridge Street	At neighborhood entry points	City	Gateway treatments	Gateway treatments <sup>3</sup>
Hamilton Avenue	At Hamilton Park	City	Speed hump	Speed hump
Ivy Dr.	Chilco Street to Willow Road	SFPUC	Bulbouts, raised intersections, speed feedback signs, gateway treatments, signing and striping, median nose improvements	Signing and striping, median nose improvements <sup>4</sup>
Willow Road	At Newbridge Street	Caltrans	Signal operation and equipment upgrades	Signal operation <sup>5</sup> and equipment upgrades

Notes:

1. Due to expected lengthy approval timelines from SFPUC and Caltrans, the City Council approved staff's recommendation to implement the trial implementation phase only for City jurisdiction measures and utilize its post-trial feedback for decisions related to permanent installation for City, Caltrans and SFPUC jurisdiction measures.
2. Based on cut-through survey results, Facebook is responsible for bulbouts on Almanor Avenue and Modoc Avenue, while the City is responsible for Hill Avenue and Plumas Avenue.
3. Chilco Street near the Fire Station is considered infeasible due to existing roadway constraints.
4. Speed feedback signs and gateway treatments are considered infeasible due to the San Francisco Public Utilities Commission's (SFPUC) requirement for any measures with a foundation to be at least 20 feet away from the edge of their utility line, which would require these measures to be installed partially or completely outside the public right-of-way. Raised intersections and bulbouts are considered infeasible due to conflict with street repair/maintenance guidelines such as street sweeping.

Three operational safety improvements as follows, assuming Newbridge Street is a north-south roadway: a) Reverse the order of the Newbridge Street left turns by assigning the lead (first) phase to northbound left to reduce aggressive drivers interacting with pedestrians. b) Eliminate the conflict between Newbridge Street southbound left and pedestrian crossing Willow Road by providing a dedicated left turn. c) Prohibit Newbridge Street southbound right when Willow Road eastbound left is activated using a "blank out" sign to eliminate conflicts between vehicles on Newbridge Street and those accessing the Willow Road frontage road.

Additionally, SFPUC's review yielded the following procedural updates for the Ivy Drive measures:

- Potholing, a construction activity performed to ensure sufficient vertical clearance from underground utility lines, is required and will lengthen the overall approval timeline
- The City will be required to execute a licensing agreement and pay an annual licensing fee. The City will be responsible for the annual payment (anticipated to be less than \$3000 annually with an annual adjustment according to the consumer price index) and staff has initiated a dialogue with SFPUC.

On March 23, 2021, staff presented to the City Council a set of revisions to the previously approved implementation process as a result of the unexpected COVID-19 pandemic, which centered on data

collection and a neighborhood-wide community survey. A hyperlink of the staff report is provided in Attachment B.

## **Analysis**

### Data collection

Roadway congestion has not yet returned to pre-COVID conditions. Therefore, current traffic data would not provide a clear picture of the efficacy of the trial measures. Instead, staff elected to collect new roadway and intersection data at key neighborhood locations to provide an overview of current patterns.

In April 2021, roadway and intersection transportation volume and speed data were collected at key neighborhood locations to provide an overview of current travel patterns and behaviors. The new data, along with pre-pandemic data collected before the trial installation, are presented in Attachment C.

In general, new pedestrian, bicycle and vehicular volumes decreased when compared to pre-pandemic data. This is consistent with overall transportation patterns exhibited due to the ongoing pandemic. The daily roadway vehicle volumes dropped approximately 8 to 35 percent, while the intersection vehicle volumes dropped approximately 11 to 66 percent.

The measured 85<sup>th</sup> percentile speed generally ranges from 23 to 29 miles per hour (mph) when compared to the pre-pandemic data of 24 to 29 mph. All four surveyed locations experienced a 2 mph or less differential. The 85<sup>th</sup> percentile speed is defined as the speed at or below which 85 percent of all observed free flowing vehicles traveled.

### Community survey

In late June, approximately 1,900 survey packages containing an introductory letter, paper surveys in English and Spanish, and a link to a fillable online version of the same survey, were mailed out to all Belle Haven residents (e.g., renters, owners, rental property owners) and businesses (business owner, property owner, etc.) The survey remained open until July 23, which was extended in response to a request from the community for additional time.

Additionally, the City posted the survey information on all City social media platforms (i.e., Nextdoor, Facebook, etc.) to encourage participation. A copy of the survey is included as Attachment D.

Overall, staff received 94 unique responses (i.e., 45 paper, 47 online, 1 phone, 1 email.)

The following details the general information about the survey responders:

- 12 percent (11 responders) were renters, 76 percent (71 responders) were owners, 2 percent (2 responders) were businesses, 10 percent (10 responders) identified as “other”
- 65 percent (61 responders) were Belle Haven residents/businesses through voluntary self-reporting
- 51 percent (48 responders) knew of the Plan before the survey

Table 2 summarizes the survey responses on the Plan as a whole (note some respondents left questions blank, thus the inconsistent total responses for each question):

Table 2: General survey summary		
Topic	Total responses	Breakdown
Severity of cut-through traffic during pre-pandemic times	87	93% considered it a problem 7% considered it not a problem
Degree of impact these trial installations (i.e., temporary bulbouts, speed feedback signs, etc.) have made to the neighborhood	89	57% considered it positive 18% neutral 25% considered it negative
Changes to driving patterns as a result of the turn restrictions	91	34% changed their pattern 51% remained the same 1% do not drive 14% uncertain
Levels of benefits to vehicle circulation from these trial installations	90	51% considered them beneficial 36% neutral 14% considered them not beneficial

Table 3 summarizes the key general comments from those expressing support and opposition to the Plan.

Table 3: Key survey comments	
Supportive of Plan	Opposed to Plan
Raises awareness for drivers, pedestrians and bicyclists	Turn restrictions are inconvenient to residents
Fewer traffic violations	City needs to address developments and traffic on major corridors
Some reduction in speed with speed feedback signs	Difficult to attribute any benefits to the Plan given the ongoing pandemic
Increased pedestrian safety	Reassign resource for more police enforcement and open up streets

Survey results on specific measures and final recommendations

The following are categorized based on each improvement measures. As stated in the Background section, measures that received a simple majority (i.e., >50 percent) approval from respondents will be recommended for permanent installation.

Speed feedback signs – Chilco Street between Hamilton Avenue and Ivy Drive

Based on 83 survey responses, 4 percent noticed an increase in speed after the installation, 24 percent noticed a decrease in speed, and 72 percent noticed no change in speed.

While this improvement did not reach the >50 percent positive feedback, the results are generally positive. Additionally, survey comments toward this improvement were mostly positive. The 2021 speed surveys, which were measured on Chilco Street between Terminal Avenue and the railroad tracks, indicated a small decrease since 2017 in the eastbound direction (i.e., 27 mph versus 29 mph) and no change in the westbound (i.e., both at 25 mph.)

Temporary bulbouts and gateways – in City jurisdiction

The survey started with a general question on whether the temporary flexible post bulbouts should be converted to permanent concrete bulbouts. Based on 82 survey responses, 52 percent supported the proposal, 32 percent opposed, while 16 percent expressed neutrality.



In April 2021, staff took photos of the temporary bulbouts that showed scuffmarks which typically indicates physical contact from vehicles and/or bicycles. The survey included those photos and solicited feedback on whether to prioritize pedestrian safety or focus on vehicle maneuverability, if the City decides to proceed with permanent installation. Based on 89 survey responses, 57 percent supported prioritizing pedestrian safety, 22 percent supported focusing vehicle maneuverability, while 21 percent expressed neutrality. Table 4 summarizes some of the key reasons from the two opinions.

Table 4: Survey results – permanent bulbout installation	
Support	Opposition
Reduced vehicular turning speed	Potential damage to turning vehicles
Raised driver awareness	Potential collision between turning vehicle and oncoming vehicles
Reduced pedestrian crossing distance	Did not reduce vehicular straightaway speed

Furthermore, the survey solicited feedback on a preferred permanent concrete bulbout design, which included a “traditional” bulbout design and a “detached” bulbout design. Based on the survey responses, both options received approximately equal support.

As a result, staff directed Parisi to explore “traditional” bulbout design unless there are significant constraints (e.g., significant impact to the storm drain infrastructure.) Based on preliminary evaluation, traditional bulbouts would provide lesser ongoing maintenance and are anticipated to be feasible on City-owned streets (i.e., Terminal Avenue and Newbridge Street) given the existing storm drain infrastructure.

Ivy Drive improvements (i.e., crosswalks and medians, bulbouts)

Based on 84 survey responses, 49 percent supported proceeding with permanent installation for all improvements, 26 percent opposed, while 25 percent expressed neutrality.

Traditional bulbouts are infeasible on Ivy Drive, since no underground storm drain line exists due to the SFPUC jurisdiction. Staff explored detached bulbouts, however, they will present a significant demand for ongoing maintenance, especially in the fall season when trees drop their leaves and can block the flow of water through the bulbout. Combined with the minimal support for the proposed bulbouts, bulbouts are not recommended on Ivy Drive, as summarized further below.

Willow Road and Newbridge Street signal modifications

Based on the three proposed modifications identified in the footnote of Table 1 above, staff included a specific survey question about the prohibition of the southbound right on Newbridge Street (assumed north-south) when eastbound left on Willow Road (assumed east-west) is activated. This turn restriction would be achieved by using a “blank out” sign to eliminate conflicts between vehicles on Newbridge Street and those accessing the Willow Road frontage road. Staff elected to highlight this in the survey because of its potential ramification to congestion on Newbridge Street by increasing backups for residents attempting to turn right onto Willow Road. An existing blank out sign is installed at the intersection of Bayfront Expressway and Chilco Street.

Based on 84 survey responses, 33 percent were aware of this proposed modification before the survey and 67 percent were not.

The survey also solicited general feedback on this improvement. The prevailing concern is adding more congestion to an already long queue and wait time on Newbridge Street, particularly during the morning

peak hour, when residents are leaving for work, school, etc. This community feedback was reflected in a modification to the proposed turn restriction blank out sign in the final recommendations, to only operate during the weekday evening peak hours to avoid further congestion during the morning peak hours.

### Other considerations

The survey also solicited general feedback about the neighborhood, as summarized below:

- More police traffic enforcement
- Enforcement should address the issue of vehicles doing donuts at intersections
- More bike lane improvements
- More speed humps neighborhood wide
- More improvements for Pierce Road (e.g., reduce speeding, more pedestrian and bicycle friendly)
- The Willow frontage road serving businesses and residents should be re-evaluated (i.e., double parking, street directionality, jaywalking)
- Major corridor signal timing should be re-evaluated (i.e., Willow Road, Bayfront Expwy.)
- Keep the signal on Chilco Street at Instagram driveway green

While this feedback is outside the scope of this project, staff separated them into two categories and took applicable actions:

- Feedback related to police enforcement was shared with the appropriate Police Department staff member
- Feedback related to the Transportation Division will be considered for future projects. The last two listed points, signal timing on major corridors is underway, and modifying the signal on Chilco Street is completed.

### Complete Streets Commission recommendations

On August 11, 2021, staff presented these findings to the Complete Streets Commission with the following permanent implementation recommendations:

- Speed feedback signs – retain the permanent measure on Chilco Street
- Temporary bulbouts and gateways in City jurisdiction – proceed with permanent installation after consultation with Parisi on ideal bulbout design
- Ivy Drive improvements – continue to coordinate with SFPUC with intent for permanent installation for improvements
- Willow Road and Newbridge Street signal modifications – continue to coordinate with Caltrans with intent for permanent installation for all three modifications, but with one alteration: activate the turn restriction blank out sign between 4 p.m. to 6 p.m. on weekdays

A hyperlink of the staff report is provided in Attachment E.

After discussion, the Commission voted (8-0-0-1, with one commissioner absent), in favor of most recommendations, except the permanent installation of bulbouts on Newbridge Street. In its place, the Commission recommended consideration of other temporary or permanent measures that achieve the current objectives without impacting bicycle travel.

Recognizing the City's future goal of sidewalk widening on Newbridge Street (i.e., transportation master plan project #28), which would use the existing shoulder space, the Commission explained that the shoulder space is being used by bicyclists to avoid interacting with vehicles. As a result, permanent intersection bulbouts would require bicyclists to merge more into the flow of vehicle traffic while riding on Newbridge Street. Additionally, there is not sufficient data to support a heavier demand from one alternative travel

mode over the others to warrant permanent bulbout installation, which is intended as a pedestrian improvement by shortening the crosswalk distance.

Additionally, the Commission advised staff to explore:

- Installing a bike pathway on the existing Ivy Drive center medians with SFPUC
- Installing speed humps along the studied segments of Chilco Street and Newbridge Street with the Fire District

#### Final recommendations

The following summarizes four additional evaluations conducted after the Complete Streets Commission meeting:

- Temporary bulbouts on Newbridge Street - As noted by the Commission, temporary bulbouts would provide additional space for bicyclists until the sidewalks are eventually widened. However, staff believes that while permanent bulbouts may create a need for bicyclists using the shoulder space to shift around intersections, they strengthen the original Plan intent to slow down right turning vehicles and increase pedestrian crossing safety, as instructed by community feedback when the Plan was being developed. As a result, staff is recommending the permanent installation of bulbouts on Newbridge Street.
- Bike pathway on Ivy Drive - Staff reviewed the latest SFPUC guidelines and determined that bike pathways on Ivy Drive center medians are not permitted.
- Speed humps on Chilco Street and Newbridge Street – Staff reached out to the Fire District and due to Chilco Street and Newbridge Street being primary fire response routes, speed humps could potentially slow down response time and are not preferred by the Fire District. Based on the 2021 speed surveys, the measured 85<sup>th</sup> percentile speeds for Chilco Street was 27 mph on eastbound and 25 mph on westbound, compared to the 25 mph posted speed. The measured 85<sup>th</sup> percentile speeds for Newbridge Street was 23 mph on northbound and 26 mph on southbound, compared to the 25 mph posted speed. The results did not warrant additional measures.
- Ivy Drive – New median noses will be installed, where feasible, along the center median to enhance pedestrian safety and improve access in the crosswalks for those with disabilities. However, Ivy Drive currently lacks the existing storm drain infrastructure for traditional bulbouts and staff has significant concerns with the required level of maintenance associated with detached bulbouts and the potential for ponding water created by the bulbouts. As a result, staff is not recommending the permanent installation of bulbouts on Ivy Drive.

In summary, staff is recommending the following measures for permanent installation:

- Speed feedback signs – retain the permanent measure on Chilco Street.
- Temporary bulbouts in City jurisdiction – proceed with permanent installation including Newbridge Street
- Gateways on Newbridge Street and Hamilton Avenue between Willow Road and Carlton Avenue – proceed with permanent installation
- Ivy Drive improvements – continue to coordinate with SFPUC with intent for permanent installation of crosswalks and median nose modifications
- Willow Road and Newbridge Street signal modifications – continue to coordinate with Caltrans with intent for permanent installation for all three modifications, but with one change: activate the turn restriction blank out sign between 4 p.m. to 6 p.m. only on weekdays, in response to community concern that it would further congest Newbridge Street during the morning peak hours.

### Next steps

Staff will incorporate City Council direction to the recommendations, if necessary. Staff will then notify Facebook and commence the requisite steps to initiate final design and implementation.

### **Impact on City Resources**

As a required condition of approval for a development project, staff time on the Belle Haven traffic calming study, development, and implementation of the Plan is considered part of the baseline City service levels. The trial and permanent implementation costs of measures in the Final Plan will be funded by Facebook (Hibiscus Properties, LLC) based on the 2017 neighborhood cut-through traffic survey that identified Chilco Street, Ivy Drive between Chilco Street and Willow Road, Newbridge Street between Chilco Street and Willow Road, and Terminal Avenue east of Modoc Avenue to be the main cut-through routes.

Bulbouts on Terminal Avenue west of Modoc Avenue are included to improve pedestrian crossing safety and create a uniform treatment along Terminal Avenue. Bulbouts west of Modoc Avenue would be designed and constructed with existing funds in the five-year capital improvement program, in the transportation projects (Minor) project.

### **Environmental Review**

The implementation of the Plan is categorically exempt under Class 1 (Existing Conditions) and Class 4 (Minor Modifications) of the State of California Environmental Quality Act 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. Additionally, the introductory letter in the survey package notified the neighborhood of the September 14, 2021 meeting.

### **Attachments**

- A. Resolution No. 6663
- B. Hyperlink – March 23, 2021, City Council staff report: [menlopark.org/DocumentCenter/View/27673/J2-20210323-BH-traffic-management-plan-update](https://menlopark.org/DocumentCenter/View/27673/J2-20210323-BH-traffic-management-plan-update)
- C. Roadway and intersection transportation data
- D. Community survey
- E. Hyperlink – August 11, 2021 Complete Streets Commission staff report: [menlopark.org/DocumentCenter/View/29323/SR-Complete-Streets-Commission-Permanent-Installation](https://menlopark.org/DocumentCenter/View/29323/SR-Complete-Streets-Commission-Permanent-Installation)

Report prepared by:  
Kevin Chen, Senior Transportation Engineer

Report reviewed by:  
Kristian Choy, Senior Transportation Engineer  
Hugh Louch, Assistant Public Works Director - Transportation

**RESOLUTION NO. 6663**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
AUTHORIZING THE INSTALLATION OF PERMANENT TRAFFIC CALMING  
DEVICES IN THE BELLE HAVEN NEIGHBORHOOD NECESSITATED BY THE  
NEIGHBORHOOD TRAFFIC CALMING PLAN**

WHEREAS, on November 1 and November 15, 2016, the City Council approved the Facebook Campus Expansion Project Final Environmental Impact Report (FEIR). The FEIR established a set of feasible mitigation measures to reduce the severity and magnitude of traffic impacts generated by the project; and,

WHEREAS, one mitigation measure required in the FEIR is the development, design, and implementation of a Belle Haven Neighborhood Traffic Calming Plan (Plan) that is intended to address neighborhood cut-through traffic through the use of traffic calming measures; and,

WHEREAS, on August 20, 2019, the City Council approved the final revised Plan to initiate the design and implementation of the Plan, adopted Resolution No. 6492 to remove on-street parking for up to 50 bulbouts; and,

WHEREAS, in June 2020, temporary traffic calming measures within City jurisdiction were installed as a trial; and,

WHEREAS, in June and July 2021, the City surveyed approximately 1900 residents and business owners in the Belle Haven neighborhood to determine the level of support for permanent improvements; and,

WHEREAS, on August 11, 2021, the Complete Streets Commission recommended the permanent installation of measures on Terminal Avenue, Chilco Street, Ivy Drive, and minor crossing streets along Newbridge Street, but recommended against permanent bulbouts on Newbridge Street; and,

WHEREAS, the City of Menlo Park, acting by and through its City Council, having considered and been fully advised in the matter and good cause appearing therefore.

NOW, THEREFORE, BE IT RESOLVED, the City Council of Menlo Park does hereby authorize the permanent installation of all measures shown on Exhibit A.

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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 of said City Council on the fourteenth day of September, 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 fourteenth day of September, 2021.

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Judi A. Herren, City Clerk

Belle Haven  
Neighborhood  
Traffic  
Calming  
Plan

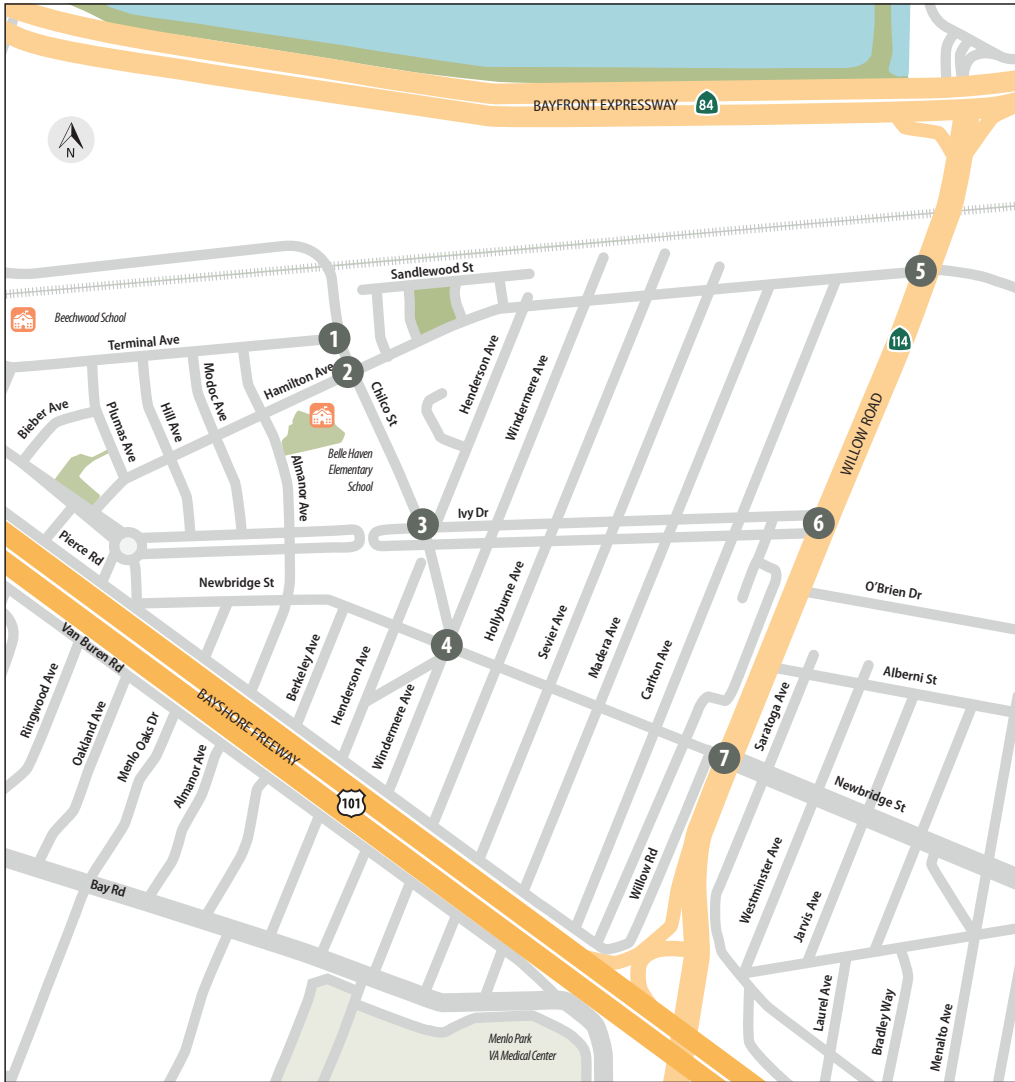




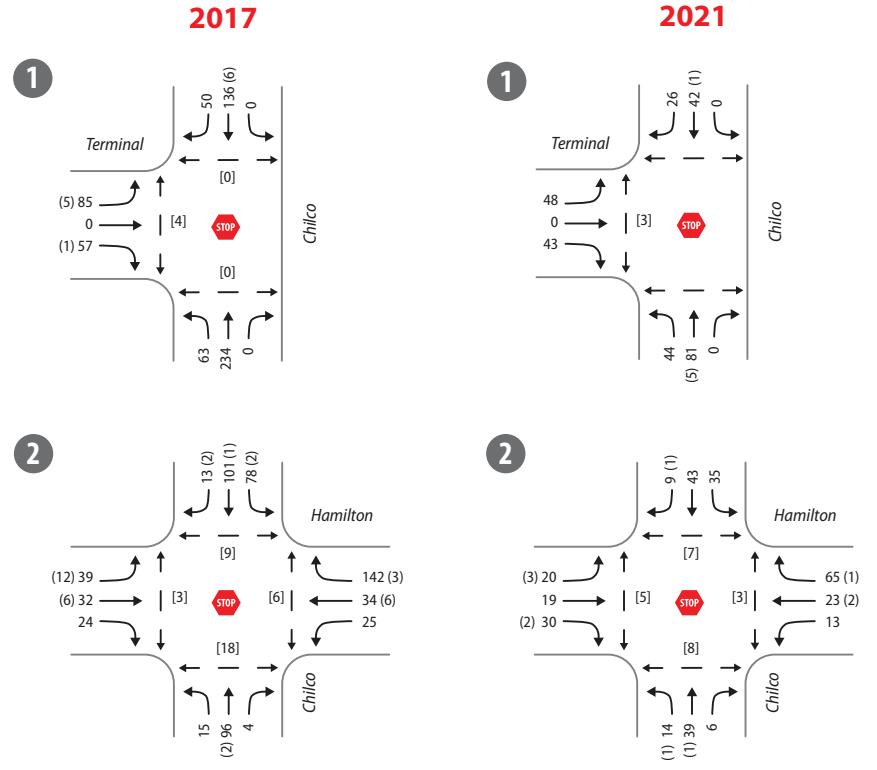
ROADWAY SEGMENT					AVERAGE DAILY TRAFFIC		
Location	Street	Segment		Approach	2017	2021	% Change
		From	To				
A	Chilco Street	Terminal Avenue	Railroad Crossing	EB	2,055	1,206	-41%
				WB	2,720	1,374	-49%
B	Hamilton Avenue	Carlton Avenue	Madera Avenue	NB	1,721	1,350	-22%
				SB	1,779	1,379	-22%
C	Ivy Drive	Carlton Avenue	Willow Road	NB	1,128	994	-12%
				SB	2,038	1,314	-36%
D	Newbridge Street	Carlton Avenue	East of Carlton Avenue	NB	4,740	4,009	-15%
				SB	4,650	4,063	-13%

**Belle Haven Neighborhood Traffic Management Plan**  
**Average Daily Traffic**





### Intersection Counts AM Peak Hour



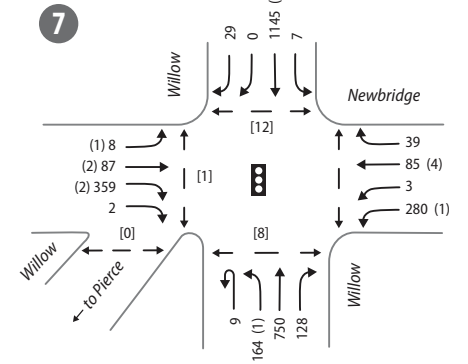
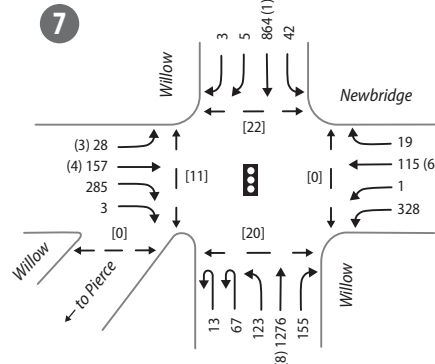
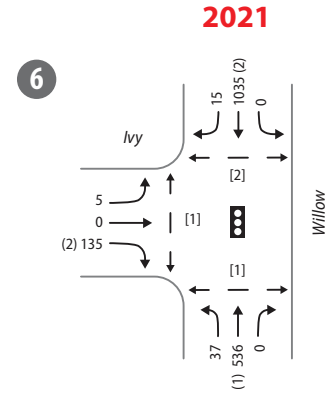
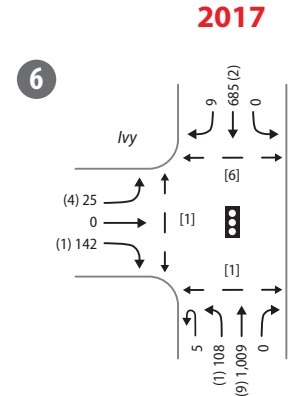
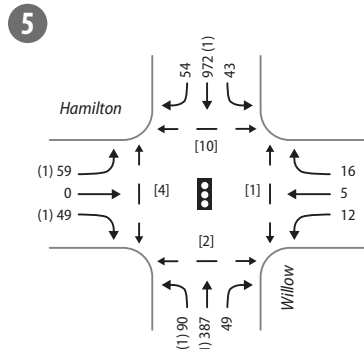
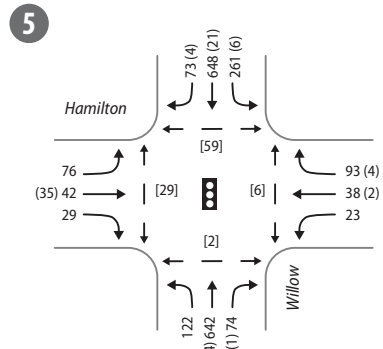
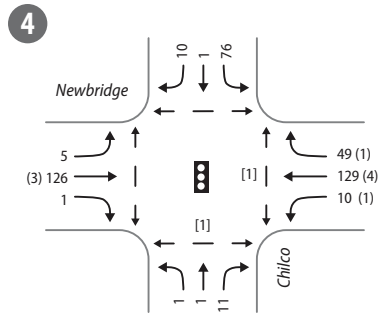
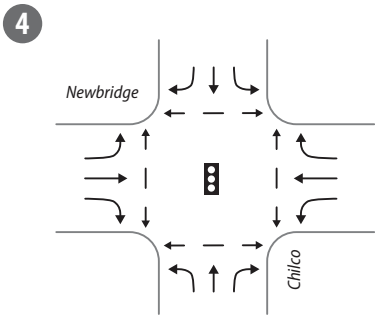
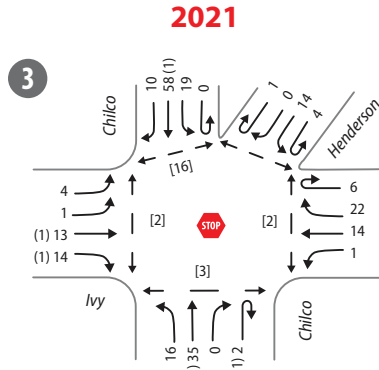
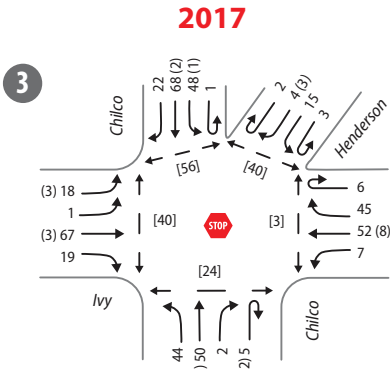
**LEGEND**

- # Study Intersection
- xx Automobile
- (xx) Bicycle
- [xx] Pedestrian
- Signalized Intersection
- All way Stop-Controlled

## Belle Haven Neighborhood Traffic Management Plan Intersection Counts AM Peak Hour



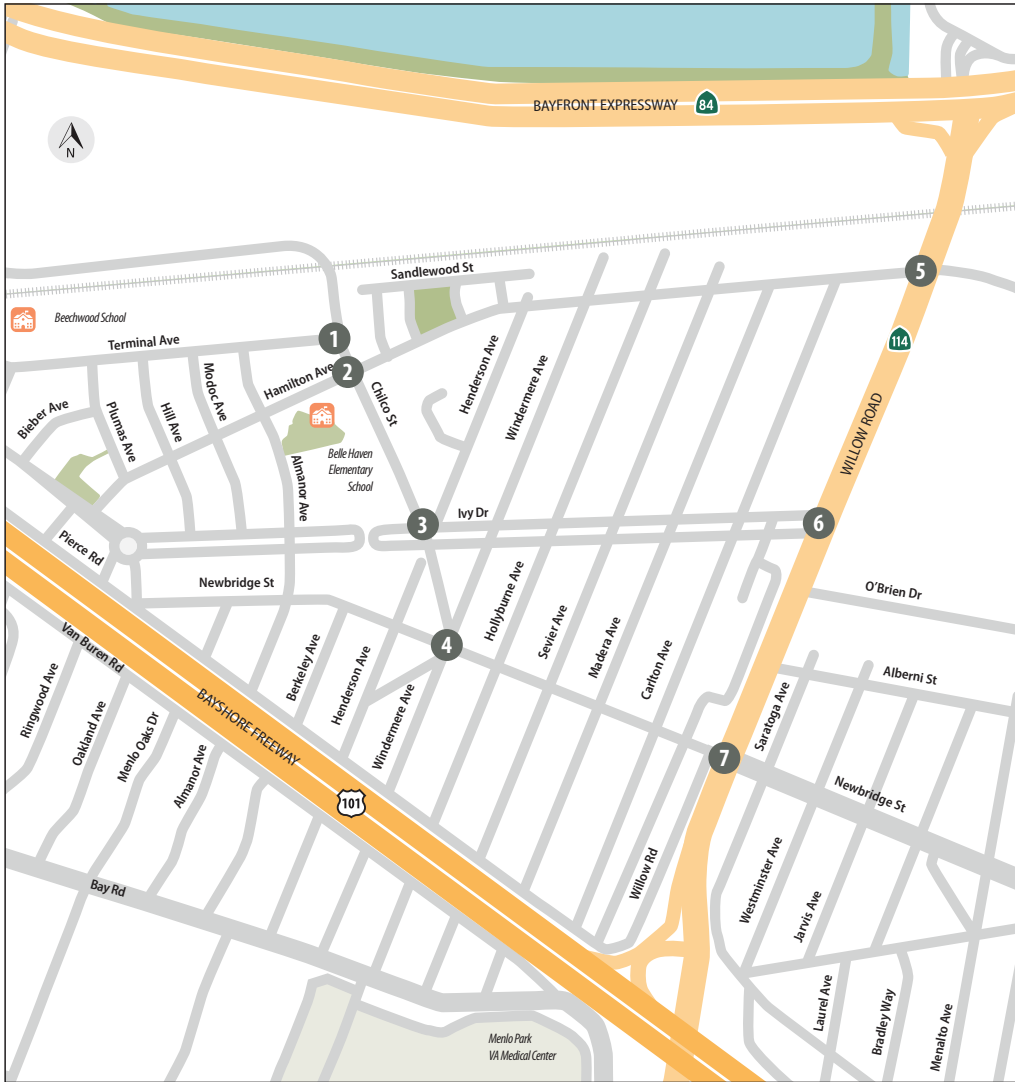
# Intersection Counts AM Peak Hour



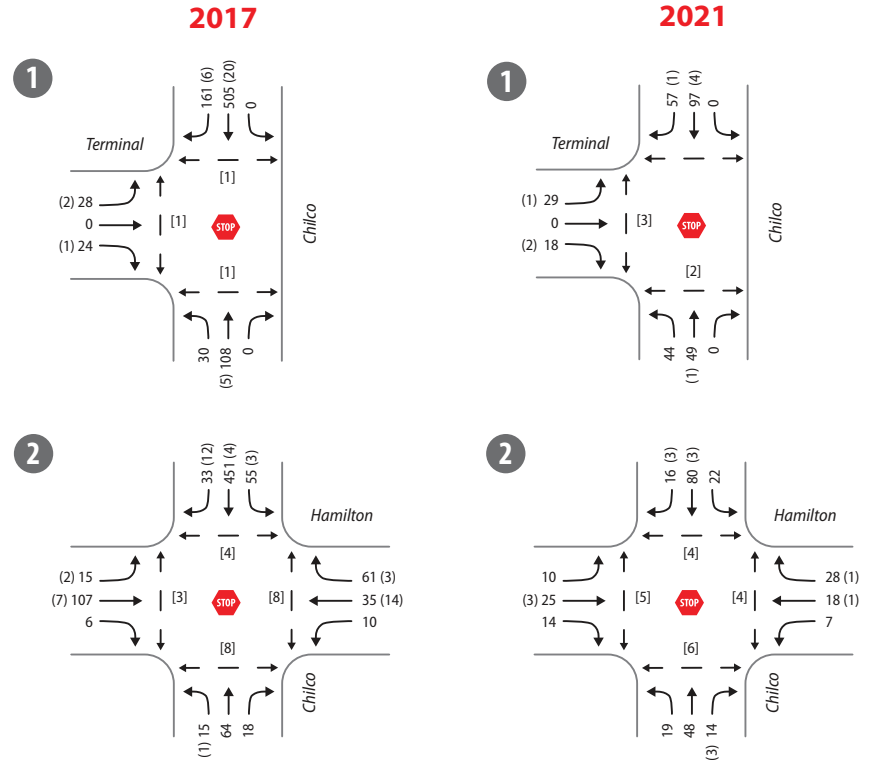
**LEGEND**

#	Study Intersection	xx	Automobile	⬛	Signalized Intersection
(xx)	Bicycle	STOP	All way Stop-Controlled		
[xx]	Pedestrian				





### Intersection Counts PM Peak Hour



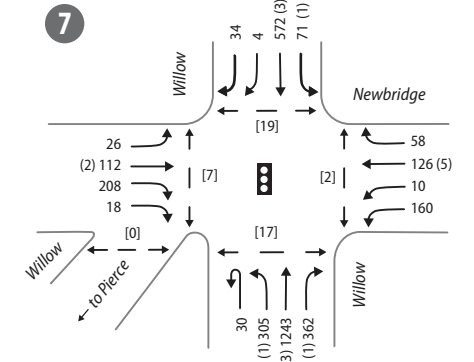
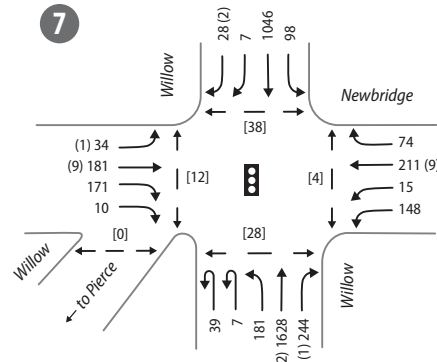
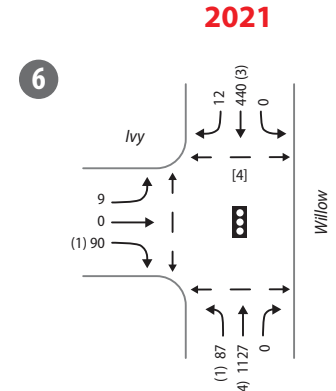
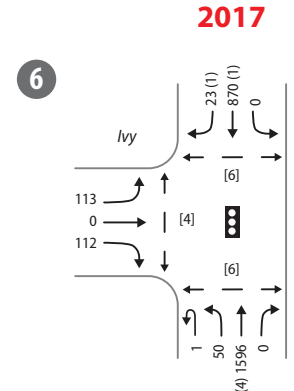
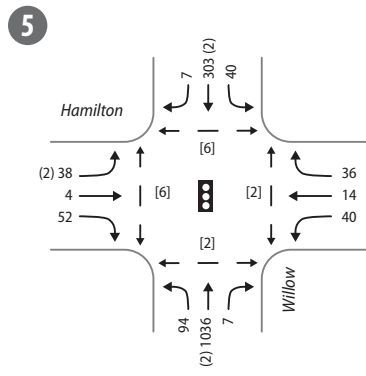
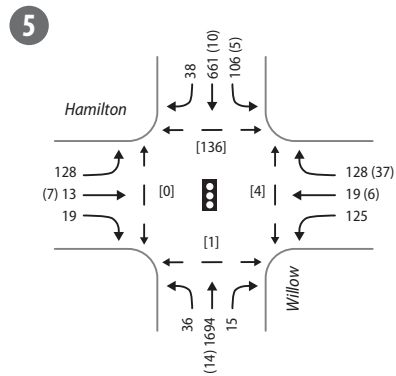
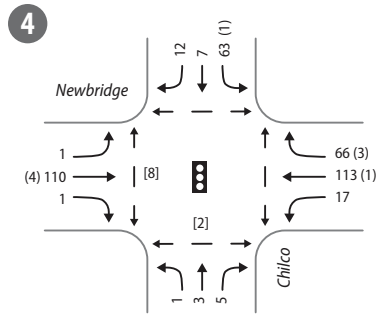
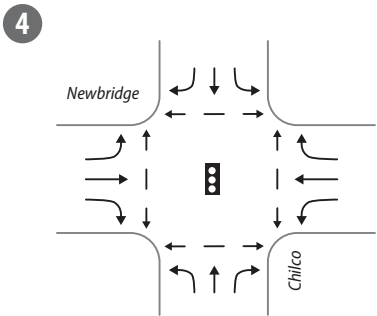
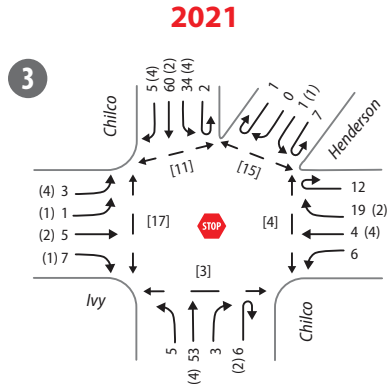
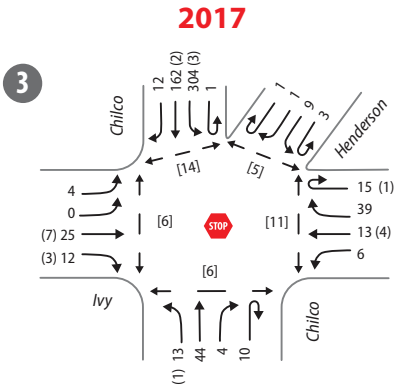
**LEGEND**

#	Study Intersection	xx	Automobile	🚦	Signalized Intersection
		(xx)	Bicycle	🛑	All way Stop-Controlled
		[xx]	Pedestrian		

## Belle Haven Neighborhood Traffic Management Plan Intersection Counts PM Peak Hour



# Intersection Counts PM Peak Hour



**LEGEND**

# Study Intersection

xx Automobile

(xx) Bicycle

[xx] Pedestrian

Signalized Intersection

STOP All way Stop-Controlled



ROADWAY SEGMENT					VEHICULAR SPEED			
					2017		2021	
Location	Street	Segment		Approach	85th Percentile	Speed Limit	85th Percentile	Speed Limit
		From	To					
A	Chilco Street	Terminal Avenue	Railroad Crossing	EB	29	25	27	25
				WB	25	25	25	25
B	Hamilton Avenue	Carlton Avenue	Madera Avenue	NB	27	25	29	25
				SB	28	25	29	25
C	Ivy Drive	Carlton Avenue	Willow Road	NB	26	25	25	25
				SB	27	25	27	25
D	Newbridge Street	Carlton Avenue	East of Carlton Avenue	NB	24	25	23	25
				SB	24	25	26	25

**Belle Haven Neighborhood Traffic Management Plan**  
**Vehicular Travel Speeds**

**Belle Haven traffic improvements survey**

The City Council previously approved the Belle Haven Neighborhood Traffic Management Plan to address cut-through traffic concerns in the Belle Haven neighborhood through the use of traffic calming measures. In June 2020, the installation of temporary traffic calming measures was completed. This survey is being distributed online and via mail to solicit feedback on making the implemented traffic calming measures permanent.

General questions:

- 1) Check all that apply (*see map below*):
- I rent in the neighborhood
  - I own and live in the neighborhood
  - I own and live outside the neighborhood
  - I own business in the neighborhood
  - Other (please specify) \_\_\_\_\_



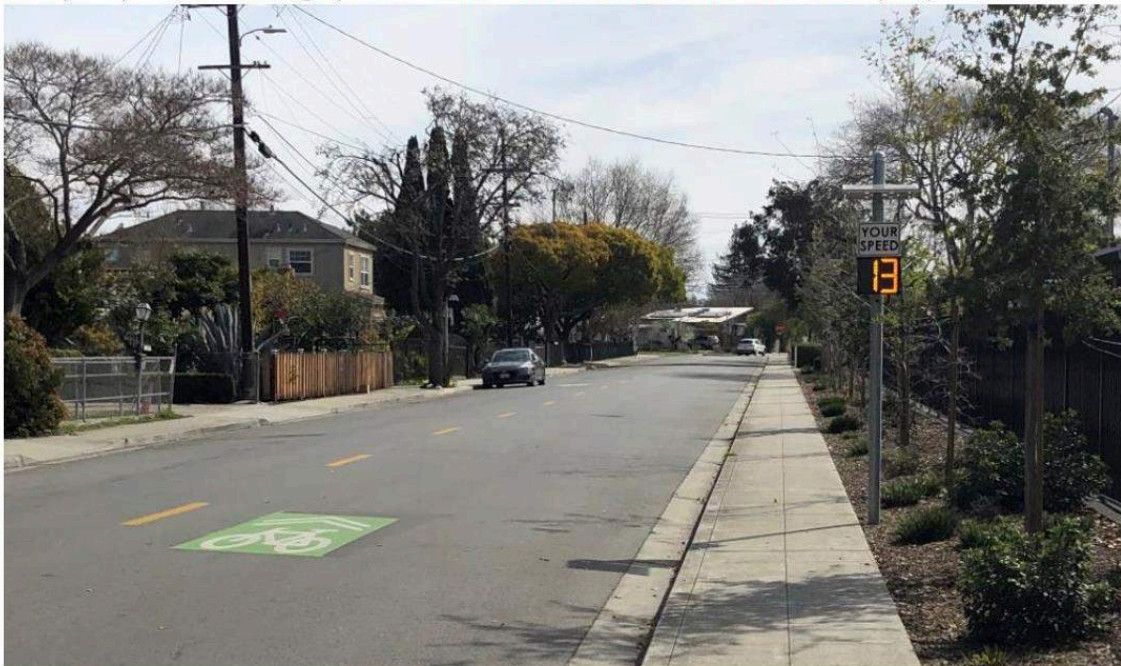
- 2) Were you aware of the Belle Haven Traffic Calming Plan before this mailer? (project webpage: [menlopark.org/bellehavetraffic](http://menlopark.org/bellehavetraffic))
- Yes
  - No

- 3) As part of the plan, temporary bulb outs and a permanent speed feedback sign were installed in June 2020. What type of impacts do you think these changes have made to the neighborhood? *(see photos below)*
- Very positive
  - Somewhat positive
  - Neutral
  - Somewhat negative
  - Very negative

Example: Temporary intersection bulbout (Location: Almanor Ave. at Terminal Ave.)



Example: Speed feedback sign (Location: Chilco St. between Hamilton Ave. and Ivy Dr.)



- 4) In addition to the plan, the City also installed turn restrictions in October 2019 per City Council's request. Did you change your typical driving patterns as a result? *(see map below)*
- Yes
  - No
  - I don't know
  - I don't drive



- 5) Before the installation of the plan and turn restrictions, cut-through traffic in the Belle Haven neighborhood was:

- A serious problem
- A moderate problem
- A minor problem
- Not a problem

- 6) What level of benefits do you think these improvements provide for vehicle circulation?

- Significantly more
- Slightly more
- About the same amount of
- Slightly less
- Significantly less

- 7) Please describe how these improvements have impacted your walking, biking, or driving patterns and behaviors, or provide any other thoughts on these improvements:

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Specific measures:

1) Do you think the City should make these bulb outs permanent, like these examples? (*see photos below*)

- Yes
- No
- Neutral

Example: Permanent detached intersection bulbout (Location: Encinal Ave. at Garwood Wy.)



Example: Permanent tradition intersection bulbout (Location: Chilco St. at Hamilton Ave.)



2) If directed to proceed with permanent design, the City will explore the best design option based on existing constrains (e.g., stormwater flow, ADA, etc.) and feedback from residents. Please share your feedback about each of the design shown in **Question 1**, if any.

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- 3) Field observations revealed scuffmarks on some of the temporary bulb outs. What should be done at those locations in the permanent design? *(see photos below)*
- Focus on pedestrian safety over vehicle maneuverability (e.g., larger vehicles might occasionally go over the curb when turning)
  - Focus on vehicle maneuverability
  - Neutral

Example: Temporary intersection bulbout (Location: Newbridge St. at Carlton Ave.)



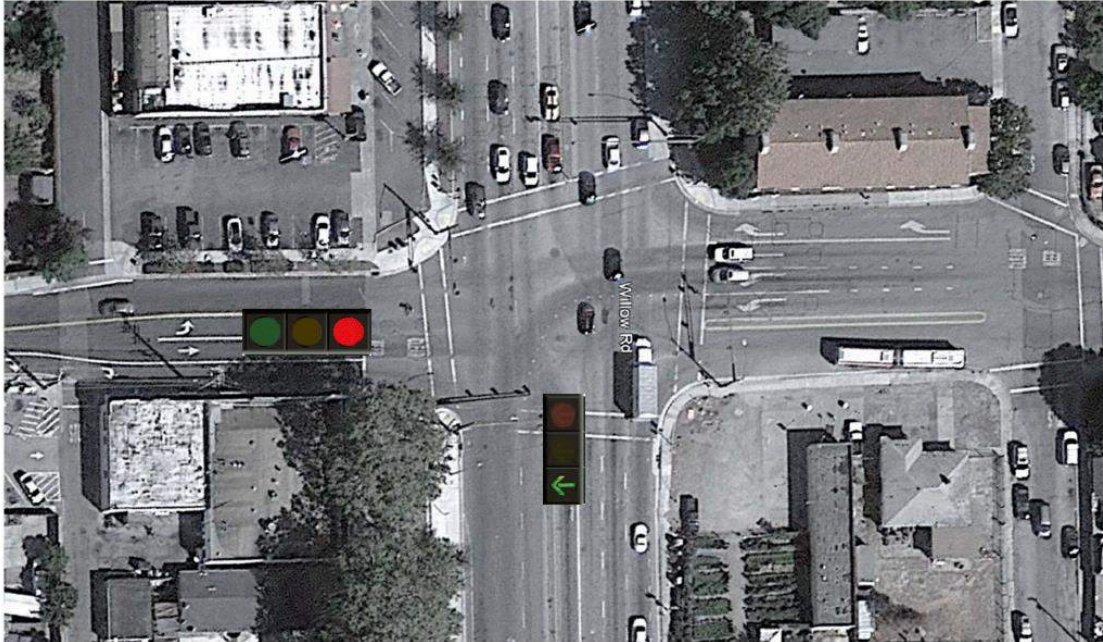
Example: Temporary intersection bulbout (Location: Newbridge St. at Carlton Ave.)



- 4) The plan also included bulb outs on Ivy Drive. Since improvements to Ivy Drive are subject to San Francisco Public Utilities Commission (SFPUC) approval, any bulb outs on Ivy Drive would be constructed using permanent materials without a “temporary” phase. Do you support having permanent bulb outs on Ivy Drive similar to the examples above in **Question 1**?
- Yes
  - No
  - Neutral

- 5) Have you noticed a change in speed on Chilco Street with the new speed feedback signs?
- Increase
  - Decrease
  - No change
- 6) The plan also included a “no right turn on red” sign on eastbound Newbridge Street at Willow Road to come on when northbound Willow Road left turn has a green arrow. The intent is to reduce conflict between vehicles from these two directions at the frontage road entrance and will require Caltrans approval. Are you aware of this improvement? *(see existing and proposed illustrations below)*
- Yes
  - No

Existing signal operation – eastbound Newbridge St. right turn on red is allowed, when northbound left shows a green arrow.



Future signal operation – eastbound Newbridge St. right turn on red is prohibited, when northbound left shows a green arrow.



7) In addition to the improvement described in question 6, please provide any other feedback you might have for the Newbridge Street and Willow Road intersection:

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8) Please describe any other feedback you have:

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Optional:

Please provide your contact information so that we can keep you informed as the project moves forward.

Name: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Zip Code: \_\_\_\_\_



**STAFF REPORT**

**City Council**

**Meeting Date:** 9/14/2021  
**Staff Report Number:** 21-171-CC

**Informational Item:** City Council agenda topics: September – October 12, 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 October 12, 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 – October 12, 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	Regular	Approve
4	491 Middle Ct - Subdivision Ordinance Variance	CDD	Public Hearing	Approve
5	BMR fund recommendation - MidPen Pierce Rd. housing	CDD	Regular	Adopt resolution
6	Samaritan House agreement amendment	CDD	Consent	Approve
7	2021 priorities and work plan quarterly report as of September 30	CMO	Consent	Receive and file
8	Adopt Community Amenity Implementing Regulations and Updated Amenities List	CMO	Regular	Adopt resolution
9	Approve EQC annual work plan	CMO	Consent	Approve
10	CAP No. 1 - existing building electrification strategy recommendation study session	CMO	Study Session	Direction to staff
11	Climate Action Plan Progress, GHG inventory update, and proposed amendments	CMO	Regular	Direction to staff
12	SB1383 study session	CMO	Study Session	No action
13	SBWMA ordinance in the SB1383	CMO	Informational	No action
14	TEFRA Hearing - Silicon Valley International School	CMO	Public Hearing	Adopt resolution
15	Update on MPCC	CMO	Informational	No action
16	Park preservation ordinance and measure	CMO	Regular	Direction to staff
17	Menlo Park Sister Cities Association funding request	CMO	Consent	Approve
18	2021 priorities and work plan quarterly report as of June 30	CMO	Informational	No action
19	Gymnastics reactivation analysis	LCS	Regular	Direction to staff
20	Library Commission work plan	LCS	Consent	No action
21	Response: Grand Jury report-Building trust between Community and Law Enforcement via the Racial and Identity Profiling Act	PD	Consent	Approve
22	Adopt Reso 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	PW	Consent	Approve
23	AMI Project Agreement	PW	Consent	Approve
24	Award contract for 2021 Water Main Replacement Haven Ave. Fire Flow Improvements	PW	Consent	Approve
25	Complete Streets Commission work plan approval and adopt a resolution to support Seamless Transit Principles	PW	Regular	Approve
26	FEMA BRIC grant study session	PW	Study Session	Direction to staff
27	Left-Turn Restriction on Garwood at Oak Grove	PW	Regular	Direction to staff
28	SFPUC Water Service Agreement Amendment	PW	Consent	Approve
29	Transportation Management Association feasibility study approval	PW	Regular	Approve
30	Prioritize issuance of Measure T bonds	PW, ASD	Consent	Approve



**STAFF REPORT**

**City Council Meeting Date:** 9/14/2021  
**Staff Report Number:** 21-172-CC

**Informational Item:** Personnel activity report as of July and August 2021

**Recommendation**

This is an informational item and does not require City Council action.

**Policy Issues**

City Council authorizes the annual budget, including approved full-time equivalent (FTE) personnel budgets, and delegates personnel management to the city manager. The purpose of this report is to transmit the recruitment status of all authorized vacancies as of the reporting period.

**Background**

Personnel activity updates provide a report of activity as of specific dates in time. The report identifies the status of active, pending and yet-to-be prioritized recruitments, new hires, and separations for regular appointed benefited employees.

**Analysis**

Attachment A lists personnel activity for benefited positions for the period of July 1. Attachment B lists personnel activity for the month of August. City staff summarized the activity in Table 1 and intends to transmit September’s data on the October 12 agenda.

Table 1: Personnel activity by headcount: July – September 2021			
Personnel activity	July 2021	August 2021	September 2021
Under recruitment, as of month end	10	23	n/a
New hires, month of	9	3	n/a
New vacancies, month of	9	1	n/a
Recruitment pending prioritization, as of month end	23	14	n/a

**Impact on City Resources**

City staff anticipates returning to City Council in August or September 2021 to request a budget amendment and contract approval to augment recruitment services.

### **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. Personnel activity reports July and August 2021

Report prepared by:  
Nick Pegueros, Assistant City Manager



## Personnel Activity Report

Month of July 2021

Classification	Auth.	Filled	Vacant	FTE Status	Recruitment Status	Dept-Division	Unit
Management Analyst I/II	1	0	1	Vacant	02. Recruitment plan	ASD-HR	Unrep conf
Assistant/Associate Planner	1	0	1	Vacant	02. Recruitment plan	CDD-Planning	SEIU
Water System Operator I	1	0	1	Vacant	02. Recruitment plan	PW-Water	SEIU
Plan Check Engineer	1	0	1	Vacant	03. Accepting apps	CDD-Building	AFSCME
Child Care Teacher I	1	0	1	Vacant	03. Accepting apps	LCS-Childcare	SEIU
Child Care Teacher II	1	0	1	Vacant	03. Accepting apps	LCS-Childcare	SEIU
Assistant Engineer	1	0	1	Vacant	04. Closed, app review	PW-Engineering	SEIU
Librarian I/II	1	0	1	Vacant	06. Dept interviews	LCS-Library	SEIU
Librarian II	1	0	1	Vacant	06. Dept interviews	LCS-Library	SEIU
Facilities Maintenance Technician I	1	0	1	New vacancy - separation	07. Background	PW-Facilities	SEIU
Library and Community Services Supervisor	1	1	0	New appointment	11. Onboarding	LCS-Childcare	AFSCME
Assistant Public Works Director - Transportation	1	1	0	New appointment	11. Onboarding	PW-Transportation	Unrep mgmt
Associate Transportation	1	1	0	New	11. Onboarding	PW-Transportation	SEIU
Library and Community Services Supervisor	1	1	0	New appointment	12. In service	LCS-Childcare	AFSCME
Recreation Coordinator	1	1	0	New	12. In service	LCS-CommunityServices	AFSCME
Program Assistant	1	1	0	New	12. In service	LCS-CommunityServices	SEIU
Police Officer	1	1	0	New	12. In service	PD-Patrol	POA
Police recruit	0	1	-1	New	12. In service	PD-Patrol	POA
Police recruit	0	1	-1	New	12. In service	PD-Patrol	POA
Asst. Administrative Services Director	1	0	1	Separation	98. Pending prioritization	ASD-Finance	Unrep mgmt
Enterprise Apps Support Spe	1	0	1	Vacant	98. Pending prioritization	ASD-IT	SEIU
Enterprise Apps Support Spe	1	0	1	Vacant	98. Pending prioritization	ASD-IT	SEIU
IT Specialist I/II	1	0	1	Vacant	98. Pending prioritization	ASD-IT	SEIU
Community Development	1	0	1	Vacant	98. Pending prioritization	CDD-Admin	Unrep mgmt
Management Analyst I/II	1	0	1	Vacant	98. Pending prioritization	CDD-Admin	SEIU/AFSCME
Building Inspector II	1	0	1	Vacant	98. Pending prioritization	CDD-Building	SEIU
Permit Technician	1	0	1	Vacant	98. Pending prioritization	CDD-Building	SEIU
Senior Planner	1	0	1	New vacancy - separation	98. Pending prioritization	CDD-Planning	SEIU
Planning Manager	1	0	1	Vacant	98. Pending prioritization	CDD-Planning	Unrep mgmt
Principal Planner	1	0	1	Vacant	98. Pending prioritization	CDD-Planning	AFSCME
Economic Development	1	0	1	Vacant	98. Pending prioritization	CMO-EconDev	Unrep mgmt
Management Analyst I/II	1	0	1	Vacant	98. Pending prioritization	CMO-Sustainability	SEIU/AFSCME
Senior Program Assistant	1	0	1	New vacancy -	98. Pending prioritization	LCS-Childcare	SEIU
Program Assistant	1	0	1	New vacancy -	98. Pending prioritization	LCS-CommunityServices	SEIU
Senior Program Assistant	1	0	1	Vacant	98. Pending prioritization	LCS-CommunityServices	SEIU
Library Assistant I	1	0	1	New vacancy - separation	98. Pending prioritization	LCS-Library	SEIU
Program Assistant	1	0	1	Vacant	98. Pending prioritization	LCS-CommunityServices	SEIU
Program Assistant	0.5	0	0.5	Vacant	98. Pending prioritization	LCS-CommunityServices	SEIU
Program Assistant	0.5	0	0.5	Vacant	98. Pending prioritization	LCS-CommunityServices	SEIU
Program Assistant	0.5	0	0.5	Vacant	98. Pending prioritization	LCS-CommunityServices	SEIU
Program Assistant	0.5	0	0.5	Vacant	98. Pending prioritization	LCS-CommunityServices	SEIU
Police Records Specialist	1	0	1	Vacant	98. Pending prioritization	PD-Dispatch&Records	SEIU
Management Analyst I/II	1	0	1	Vacant	98. Pending prioritization	PW-Admin	SEIU/AFSCME
Construction Inspector II	1	0	1	New vacancy - separation	98. Pending prioritization	PW-Engineering	SEIU
Assist. Public Works Director - Engineering	1	0	1	New vacancy - separation	98. Pending prioritization	PW-Engineering	Unrep mgmt
Associate Civil Engineer	1	0	1	New vacancy - separation	98. Pending prioritization	PW-Engineering	SEIU
Maintenance Worker II	1	0	1	Vacant	98. Pending prioritization	PW-Maintenance	SEIU
Maintenance Worker I	1	0	1	Vacant	98. Pending prioritization	PW-Maintenance	SEIU
Maintenance Worker I	1	0	1	Vacant	98. Pending prioritization	PW-Maintenance	SEIU
Public Works	1	0	1	Vacant	98. Pending prioritization	PW-Maintenance	Unrep mgmt
	<b>46</b>	<b>9</b>	<b>37</b>				

**Personnel Activity Report**

Month of August 2021

Classification	Auth.	Filled	Vacant	FTE Status	Recruitment Status	Dept-Division	Unit
Enterprise Apps Support Specialist I/II	1	0	1	Vacant	01. OK to proceed	ASD-IT	SEIU
Enterprise Apps Support Specialist I/II	1	0	1	Vacant	01. OK to proceed	ASD-IT	SEIU
Management Analyst I/II	1	0	1	Vacant	01. OK to proceed	CMO-Sustainability	SEIU/ AFSCME
Management Analyst I/II	1	0	1	Vacant	01. OK to proceed	PW-Admin	SEIU/ AFSCME
Asst/Assoc/Sr/Prin Planner	1	0	1	Vacant	02. Recruitment plan	CDD-Planning	SEIU
Asst/Assoc/Sr/Prin Planner	1	0	1	Vacant	02. Recruitment plan	CDD-Planning	SEIU
Management Analyst I/II	1	0	1	Vacant	03. Accepting apps	ASD-HR	Unrep conf
Asst/Assoc/Sr/Prin Planner	1	0	1	Vacant	03. Accepting apps	CDD-Planning	SEIU
Program Assistant	1	0	1	Vacant	03. Accepting apps	LCS-CommunityServices	SEIU
Program Assistant	1	0	1	Vacant	03. Accepting apps	LCS-CommunityServices	SEIU
Program Assistant	0.5	0	0.5	Vacant	03. Accepting apps	LCS-CommunityServices	SEIU
Program Assistant	0.5	0	0.5	Vacant	03. Accepting apps	LCS-CommunityServices	SEIU
Program Assistant	0.5	0	0.5	Vacant	03. Accepting apps	LCS-CommunityServices	SEIU
Program Assistant	0.5	0	0.5	Vacant	03. Accepting apps	LCS-CommunityServices	SEIU
Police Records Specialist	1	0	1	Vacant	03. Accepting apps	PD-Dispatch&Records	SEIU
Maintenance Worker II	1	0	1	Vacant	03. Accepting apps	PW-Maintenance	SEIU
Maintenance Worker I	1	0	1	Vacant	03. Accepting apps	PW-Maintenance	SEIU
Maintenance Worker I	1	0	1	Vacant	03. Accepting apps	PW-Maintenance	SEIU
Water System Operator I	1	0	1	Vacant	03. Accepting apps	PW-Water	SEIU
Child Care Teacher I	1	0	1	Vacant	04. Closed, app review	LCS-Childcare	SEIU
Child Care Teacher II	1	0	1	Vacant	04. Closed, app review	LCS-Childcare	SEIU
Assistant Engineer	1	0	1	Vacant	04. Closed, app review	PW-Engineering	SEIU
Plan Check Engineer	1	0	1	Vacant	06. Dept interviews	CDD-Building	AFSCME
Librarian I/II	1	0	1	New hire	09. Offer accepted	LCS-Library	SEIU
Librarian II	1	0	1	New hire	09. Offer accepted	LCS-Library	SEIU
Facilities Maintenance Technician I	1	0	1	New hire	09. Offer accepted	PW-Facilities	SEIU
Asst. Administrative Services Director	1	0	1	Vacant	98. Pending prioritization	ASD-Finance	Unrep mgmt
IT Specialist I/II	1	0	1	Vacant	98. Pending prioritization	ASD-IT	SEIU
Community Development Director	1	0	1	Vacant	98. Pending prioritization	CDD-Admin	Unrep mgmt
Management Analyst I/II	1	0	1	Vacant	98. Pending prioritization	CDD-Admin	SEIU/ AFSCME
Building Inspector II	1	0	1	Vacant	98. Pending prioritization	CDD-Building	SEIU
Permit Technician	1	0	1	Vacant	98. Pending prioritization	CDD-Building	SEIU
Deputy Community Development Director - Housing	1	0	1	Separation	98. Pending prioritization	CDD-Housing	Unrep mgmt
Planning Manager	1	0	1	Vacant	98. Pending prioritization	CDD-Planning	Unrep mgmt
Economic Development Manager	1	0	1	Vacant	98. Pending prioritization	CMO-EconDev	Unrep mgmt
Senior Program Assistant	1	0	1	Vacant	98. Pending prioritization	LCS-Childcare	SEIU
Senior Program Assistant	1	0	1	Vacant	98. Pending prioritization	LCS-CommunityServices	SEIU
Library Assistant I	1	0	1	Vacant	98. Pending prioritization	LCS-Library	SEIU
Construction Inspector II	1	0	1	Vacant	98. Pending prioritization	PW-Engineering	SEIU
Associate Civil Engineer	1	0	1	Vacant	98. Pending prioritization	PW-Engineering	SEIU
Public Works Superintendent	1	0	1	Vacant	98. Pending prioritization	PW-Maintenance	Unrep mgmt
	<b>39</b>	<b>0</b>	<b>39</b>				