
Appendix A

NOPs and Scoping Comments



**NOTICE OF PREPARATION
OF AN ENVIRONMENTAL IMPACT REPORT
123 INDEPENDENCE DRIVE MIXED-USE PROJECT
CITY OF MENLO PARK**

Date: January 8, 2021

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

From: Kaitie M. Meador
Senior Planner
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

Subject: Notice of Preparation (NOP) of an Environmental Impact Report for the 123 Independence Mixed-Use Project

Lead Agency: City of Menlo Park, Planning Division

Project Title: 123 Independence Drive Mixed-Use Project,

File Number: PLN 2020-00022

Project Location: 119 Independence Drive, 123-125 Independence Drive, 127 Independence Drive, 1205 Chrysler Drive, and 130 Constitution Drive. Bayfront Area of City of Menlo Park, northwest side of the intersection at Independence Drive and Chrysler Drive and bounded on the north side by Constitution Drive.

APN: 055-236-180, 055-236-140, 055-236-300, 055-236-280

INTRODUCTION

The City of Menlo Park (City) is the lead agency for the 123 Independence Mixed-Use Building Project (proposed project). Pursuant to the California Environmental Quality Act (CEQA), upon deciding to prepare an Environmental Impact Report (EIR), the City, as lead agency, must issue a Notice of Preparation (NOP) to inform trustee and responsible agencies, and the public, of the decision to undertake preparation of an EIR. The purpose of the NOP is to provide information describing the proposed project and its potential environmental effects to those who may wish to comment regarding the scope and content of the information to be considered in the EIR. Agencies should comment on such information as it relates to their statutory responsibilities in connection with the proposed project. Agencies and the public are invited to provide comments on the scope and content of the environmental review, potential mitigation strategies, and project alternatives by 5pm on Monday February 8, 2021.

The project description, location, and environmental issue areas that may be affected by development of the proposed project are described below. The EIR will evaluate the project-specific and cumulative impacts, identify feasible mitigation measures to reduce or avoid significant project impacts, and identify a reasonable range of alternatives to the proposed project and their comparative environmental effects.

SCOPING MEETING

A public scoping session will be held as part of the Planning Commission meeting on January 25, 2021 via GotoWebinar or Zoom, at 7 p.m. or as near as possible thereafter. The meeting agenda and link to access the online meeting can be found at menlopark.org/Planning-Commission. Trustee and responsible agencies, as well as members of the public, are invited to attend to learn more about the proposed project and to provide input on the scope and content of the EIR through public comment. The scoping process is designed to enable the City to determine the scope and content of the EIR at an early stage, identify the range of actions, and identify potentially significant environmental effects, alternatives, and mitigation measures to be analyzed in the EIR and eliminate any unimportant issues.

SUBMITTING COMMENTS

Comments regarding the appropriate scope of analysis and content in the EIR are invited from all interested parties. Please submit comments to the City **no later than 5 p.m. on Monday, February 8, 2021**. However, we would appreciate your response at the earliest possible date. Please send your written comments to Kaitie Meador at the address shown below or by email to KMMeador@menlopark.org with “123 Independence Drive Project EIR” as the subject. Due to the ongoing Covid-19 pandemic, emailed comments are preferred.

Kaitie Meador, Senior Planner
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
650-330-6731

Email: KMMeador@menlopark.org

City's website: menlopark.org

Project website: <https://www.menlopark.org/1695/123-Independence-Drive>

PROJECT LOCATION AND EXISTING CONDITIONS

As shown in Figure 1, Project Location, the project site is located in the City on the northwest side of the intersection at Independence Drive and Chrysler Drive. The site is bounded on the north side by Constitution Drive and Marsh Road is 560 feet northwest of the parcels. The assessor's parcel numbers (APNs) for the project site include 055-236-180, 055-236-140, 055-236-300, and 055-236-280.

The project site is designated Mixed Use Residential within the Bayfront Area on the City's General Plan Land Use Designations Map and is within the Residential-Mixed Use-Bonus Zoning District. The approximately 8.15-acre site consists of five existing office and industrial buildings totaling approximately 103,900 square feet, as shown in Figure 2, Existing Site Conditions. The western-most building on Independence Drive, 119 Independence Drive, is a 1-story concrete building. It is approximately 16 feet in height and 13,000 square feet. To the west, 123 and 125 Independence Drive are a 1-story concrete building, 20 feet in height, and approximately 12,300 square feet. It is served by 17 parking spaces. 127 Independence Drive is a 1-story building, 19 feet in height, and approximately 13,800 square feet. To the west of 127 Independence Drive, at the corner of Independence Drive and Chrysler Drive, is 1205 Chrysler Drive. It is a 1-story building, 17 feet in height, and 39,300 square feet. Finally, 130 Constitution Drive is located to the north of 127 Independence Drive. It is a 2-story building, 25 feet in height, and 25,500 square feet.

Vegetation on the project site consists of approximately 48,000 square feet of decorative landscape areas bordering the edges of the parcel boundaries along Independence Drive. The interior of the site is almost exclusively hardscape, consisting of approximately 205,000 square feet of impervious surfaces.

PROJECT DESCRIPTION

The project proposes to demolish the five existing office and industrial buildings (a total of approximately 103,900 square-feet), to shift the parcel boundaries to create four Parcels: A, B, C and D, and to construct 316 rental apartments, 67 for-sale townhomes, and 88,750 square feet of office space, as shown on Figure 3, Proposed Illustrative Site Plan. Both Parcels A and C would support 3-story townhome communities that would be subdivided via condominium mapping and would be oriented to public streets. Parcel A would be developed with 26 townhomes and would include a total of 57 parking spaces. Parcel C would be developed with 41 townhomes and would include a total of 91 parking spaces. These parcels would include a neighborhood park, a paseo, and other common green spaces. Parcel B would support a 5-story building with 316 rental apartments, stoops along public streets and pedestrian walkways, and 316 residential parking spaces in a parking structure with a single level below-grade and a single level at-grade. Parcel D would support 88,750 square feet of office space in a 3-story building and would include 267 parking spaces in parking structure with a single level below-grade, one level at-grade, and one 2nd floor level. As shown in Figure 4, Proposed Site Sections, and Figure 5, Proposed Square Footage and Site Coverage, building heights would range between approximately 32 and 79 feet.

The proposed project would be developed using the bonus level of development allowed by the Zoning Ordinance, which provides for an increase in density, gross floor area, and/or height in exchange for the provision of community amenities. The required value of the community amenities and the identification of the appropriate community amenities would be determined through a process that includes an appraisal, applicant proposal for amenities and associated financial analysis, all of which will be reviewed by decision makers. The community amenities proposal will be incorporated into the environmental analysis as appropriate.

The proposed project would comply with the Below Market Rate (BMR) Ordinance requirements by incorporating a minimum of 15 percent of the proposed units as affordable units, resulting in a total of 58 BMR units: 10 BMR townhomes and 48 BMR apartments. Any affordable unit proposed as a community amenity would be in addition to these inclusionary units.

As shown on Figure 6, Proposed Open Space Diagram, the proposed project includes a paseo running north to south that leads to a centrally located publicly accessible neighborhood open space, which provides a central recreation and gathering space. Public frontages on Independence Drive and Constitution Drive are proposed to be activated with residential stoops, lobbies, leasing office, residential amenities, and commercial office space.

The proposed project would include the removal of 85 trees, of which 28 trees meet the definition of “protected” trees under the City’s Tree Preservation and Protection Ordinance (Municipal Code Chapter 13.24, Heritage Trees). The proposed project includes 364 new trees in the project’s landscape.

PROJECT APPROVALS

The proposed project is anticipated to require the following actions, entitlements, and discretionary project approvals from the City:

- Environmental Review
- Use Permit
- Vesting Tentative Subdivision Map
- Architectural Control
- Below Market Rate (BMR) Housing Agreement
- Heritage Tree Removal Permits

In addition, a Housing Needs Assessment (HNA) and a Fiscal Impact Analysis (FIA) will be prepared for informational purposes. Finally, in order to qualify for bonus-level development within the R-MU-B zoning district, the proposed project will also be required to complete an appraisal process to identify the required value of the community amenities and a financial analysis of the applicant's proposed community amenities to determine the fiscal adequacy of the amenities proposed. Review of the proposed project by the City's Planning Commission would be conducted as a part of the EIR review and entitlement process. The Planning Commission would provide a recommendation regarding certification of EIR and action on the proposed project to the City Council. Certification of the EIR and final action on project entitlements would ultimately be by the City Council.

RESPONSIBLE AND/OR REVIEWING AGENCIES

The agencies listed below are expected to review the draft EIR to evaluate the proposed project:

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

PROBABLE ENVIRONMENTAL EFFECTS AND SCOPE OF THE EIR

The project site is within the ConnectMenlo study area. ConnectMenlo, which updated the City's General Plan Land Use and Circulation Elements and rezoned the land in the M-2 Area (now referred to as the Bayfront Area), was approved on November 29, 2016.

The City has determined that the project warrants a full-scope EIR and thus has elected not to prepare an Initial Study. The EIR is anticipated to include most of the environmental resource topics addressed in CEQA Guidelines Appendix G, specifically:

- Aesthetics and Visual Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Noise
- Population, Employment, and Housing
- Public Services and Utilities
- Recreation
- Tribal Cultural Resources
- Transportation/Traffic

Under a 2017 settlement agreement between the cities of Menlo Park and East Palo Alto, the City is required to prepare an EIR for projects like this one that request bonus level development within the R-MU-B zoning district. The agreement establishes requirements for transportation impact analysis and mitigation and for preparation of a Housing Needs Assessment, both of which will be included in the EIR.

ENVIRONMENTAL RESOURCES WITH NO ADVERSE IMPACTS

The proposed project is not anticipated to result in significant environmental effects in the following areas:

- Agricultural or Forestry Resources
- Mineral Resources
- Wildfire

The project site is fully developed in an urbanized area and located between SR 84 and US 101. As such, there are no agricultural, forestry, or mineral resources on or adjacent to the site and the proposed project would have no adverse effects associated with such resources. Further, wildfires are not a concern because there are no areas of substantial vegetation in proximity to the project site and there are no mapped Fire Hazard Severity Zones near the site. A detailed analysis of these topics will not be included in the EIR.

ALTERNATIVES

Based on the significance conclusions determined in the EIR, alternatives to the proposed project that may be capable of reducing any identified impacts will be analyzed. Section 15126.6(e) of the CEQA Guidelines requires the evaluation of a No-Project Alternative. Other alternatives may be considered during preparation of the EIR and will comply with the CEQA Guidelines, which call for a “range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project.” The EIR will discuss the process by which alternatives are identified, including consideration of any feasible alternatives that are suggested during the scoping process.

EIR PROCESS

Following the close of the NOP comment period, a Draft EIR will be prepared that will consider all NOP comments. In accordance with CEQA Guidelines Section 15105(a), the Draft EIR will be released for public review and comment for a required minimum 45-day review period. Following the close of the 45-day minimum public review period, the City will prepare a Final EIR, which will include responses to all substantive comments received on the Draft EIR. The Draft EIR and Final EIR will be considered by the Planning Commission and City Council in considering whether to certify the EIR and approve or deny the Project.



 Project Boundary

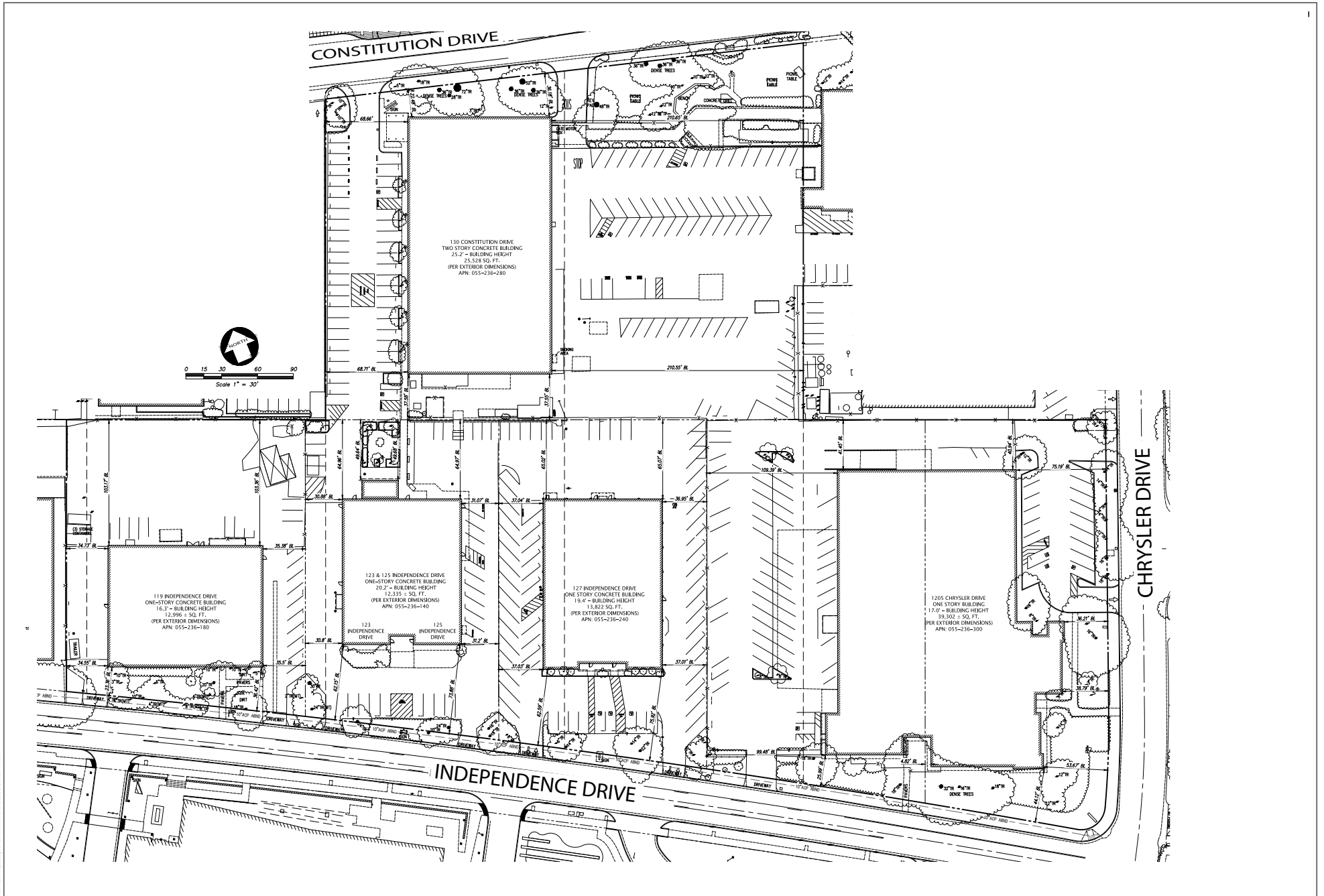
SOURCE: ESRI Basemap (Accessed 2020), San Mateo County 2020



FIGURE 1

Project Location

123 Independence Drive Mixed-Use Project



SOURCE: Kier+Wright, 2020

FIGURE 2

Existing Site Conditions

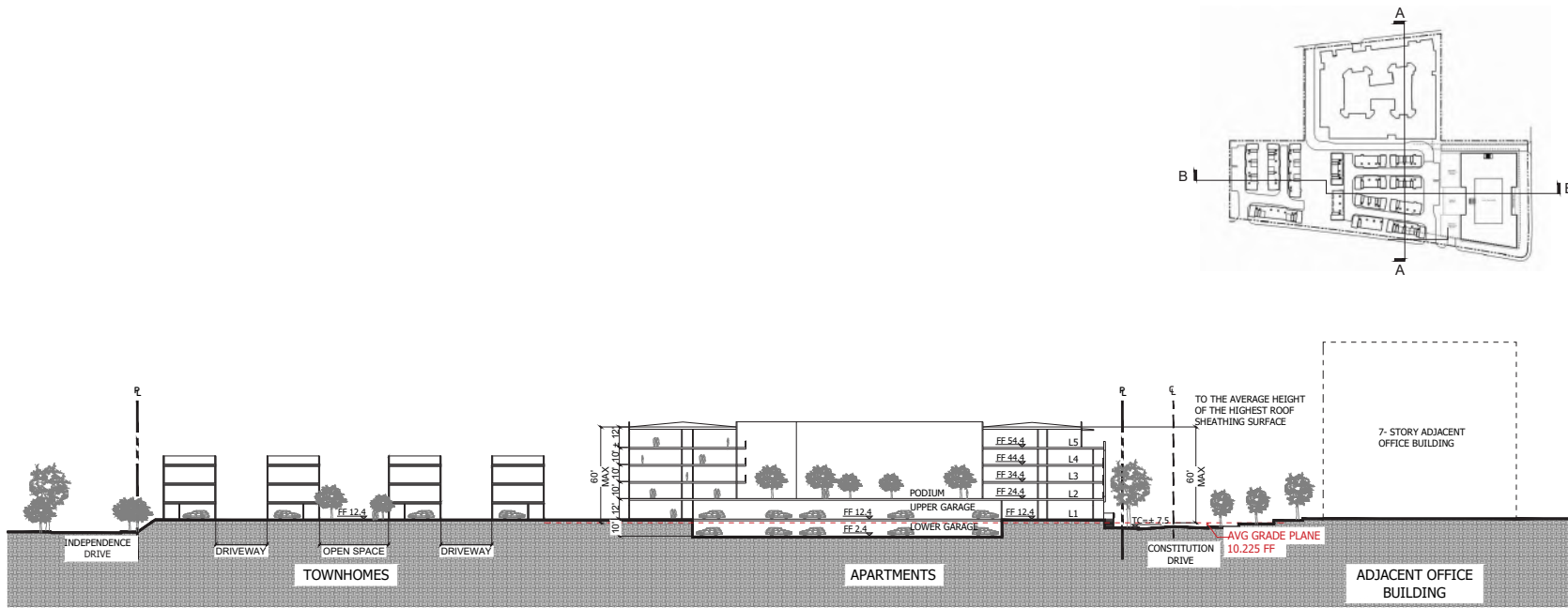
123 Independence Drive Mixed-Use Project



Path: Z:\Projects\131701\123 Independence Drive\1230101.dwg

SOURCE: KSH Architects, 2020

FIGURE 3

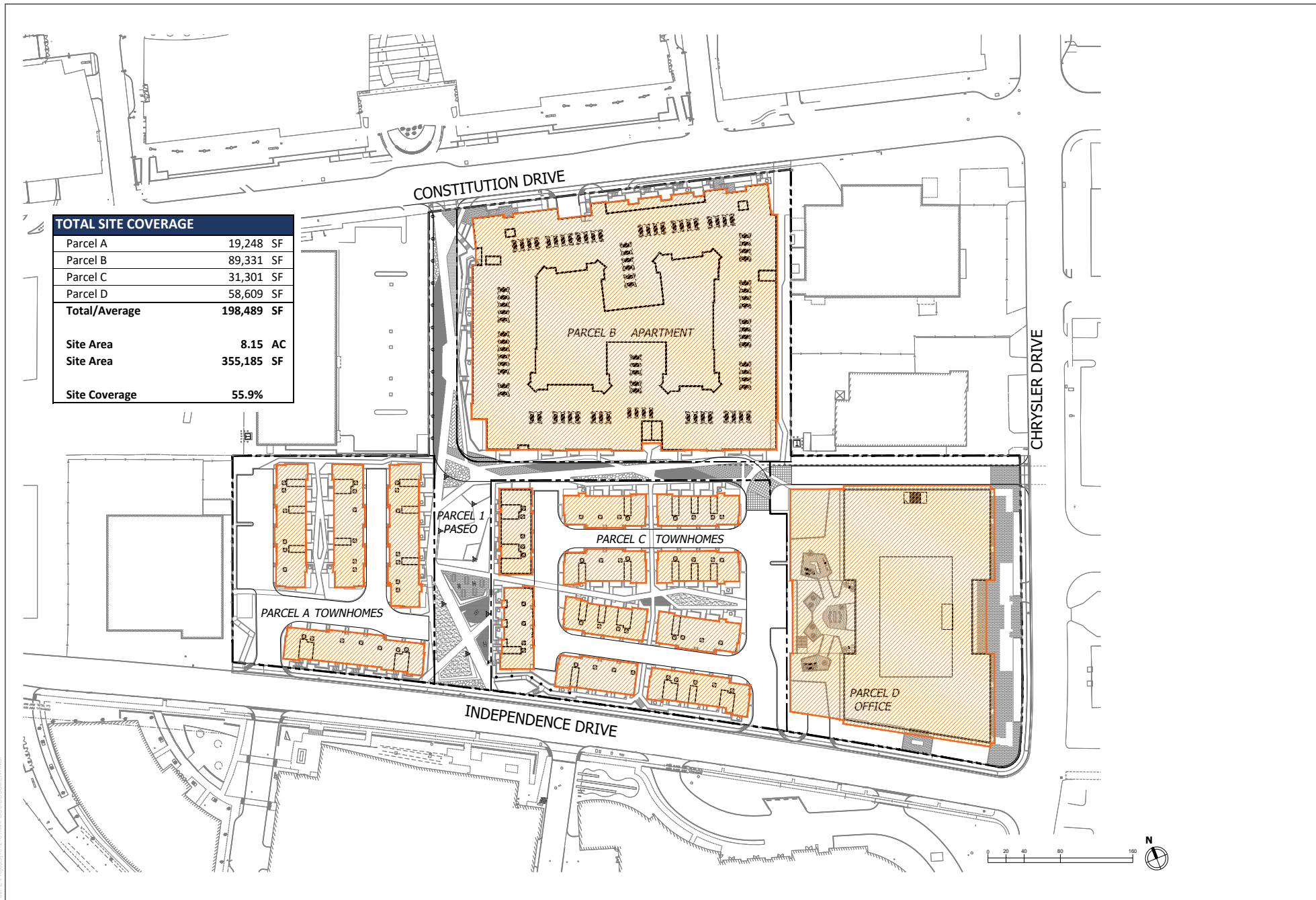


SITE SECTION A



SITE SECTION B

SOURCE: KSH Architects, 2020



SOURCE: KSH Architects, 2020

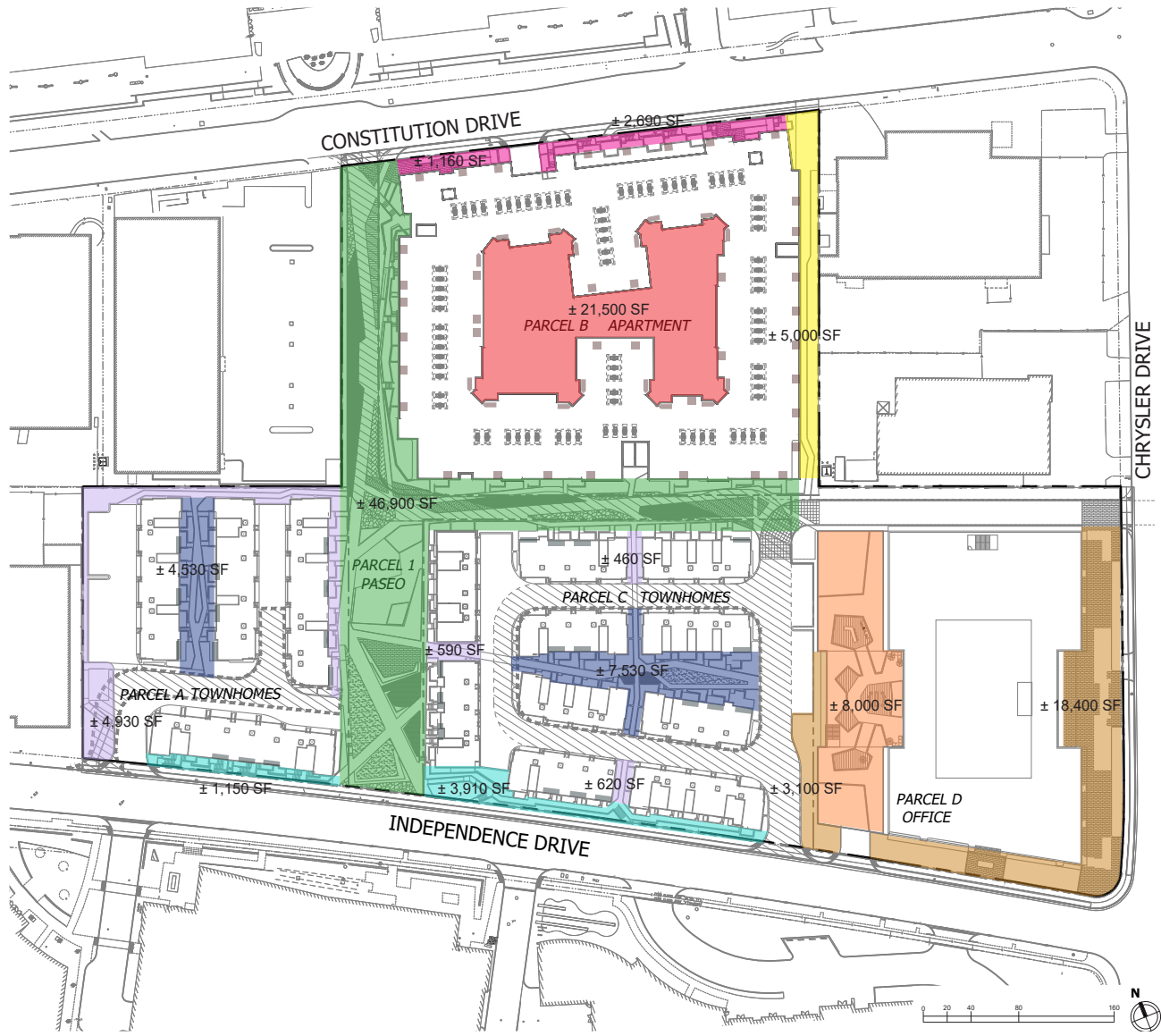
FIGURE 5

Proposed Square Footage and Building Coverage

123 Independence Drive Mixed-Use Project

PUBLIC OPEN SPACE	
APARTMENT OPEN SPACE	
Landscaping Zones	+/- 5,000 SF
Street Frontage	+/- 3,850 SF
TOWNHOME OPEN SPACE	
Parcel A Area between Townhomes	+/- 4,530 SF
Parcel C Area between Townhomes	+/- 7,530 SF
Landscaping Zones	+/- 6,600 SF
Street Frontage	+/- 5,060 SF
OFFICE OPEN SPACE	
Street Frontage	+/- 21,500 SF
PROJECT PUBLICLY ACCESSIBLE OPEN SPACE	54,070 SF
REQUIRED PUBLICLY ACCESSIBLE (1)	22,188 SF
PRIVATE OPEN SPACE	
APARTMENT OPEN SPACE	
Landscape Podium Courtyard	+/- 21,500 SF
Private Balconies (215 units x 45 SF)	+/- 9,675 SF
TOWNHOME OPEN SPACE	
Private Balconies (67 units x 60 SF)	+/- 4,020 SF
OFFICE OPEN SPACE	
Roof Deck	+/- 8,000 SF
PROJECT TOTAL OPEN SPACE	97,265 SF
REQUIRED TOTAL OPEN SPACE (2)	88,754 SF
Paseo and Park	+/- 46,900 SF

Notes:
 (1) 25% of total required open space.
 (2) 25% of total 8.15 AC site.



SOURCE: KSH Architects, 2020

FIGURE 6

Proposed Open Space Diagram

123 Independence Drive Mixed-Use Project

123 Independence Drive Project

EIR Scoping Comments - February 2021

Table of Contents

General Public

-none-

Public Agencies

California Department of Transportation	2
California Department of Fish and Wildlife	6
Native American Heritage Commission	11
Sequoia Union High School District	16

DEPARTMENT OF TRANSPORTATION

DISTRICT 4

OFFICE OF TRANSIT AND COMMUNITY PLANNING

P.O. BOX 23660, MS-10D

OAKLAND, CA 94623-0660

PHONE (510) 286-5528

TTY 711

www.dot.ca.gov

*Making Conservation
a California Way of Life.*

February 8, 2021

SCH #: 2021010076

GTS #: 04-SM-2021-00345

GTS ID: 21635

Co/Rt/Pm: SM/101/3.42

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

Re: 123 Independence Drive Mixed-Use Project + Notice of Preparation (NOP)

Dear Katie Meador:

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

Project Understanding

The project proposes to demolish the five existing office and industrial buildings (a total of approximately 103,900 square-feet) and create four parcels which would encompass 316 rental apartments, 67 for-sale townhomes, and 88,750 square feet of office space. The project intends to comply with the City's Below-Market-Rate ordinance; as such 58 units would be affordable. The site is located north of US-101 and south of State Route (SR)-84, accessible via Independence Drive and Chrysler Drive.

Travel Demand Analysis

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

If the project meets the screening criteria established in the City's adopted vehicle miles travelled (VMT) policy to be presumed to have a less-than-significant VMT impact and exempt from detailed VMT analysis, please provide justification to support the exempt status in align with the City's VMT policy. Projects that do not meet the screening criteria should include a detailed VMT analysis in the DEIR, which should include the following:

- VMT analysis pursuant to the City's guidelines. Projects that result in automobile VMT per capita above the threshold of significance for existing (i.e. baseline) city-wide or regional values for similar land use types may indicate a significant impact. If necessary, mitigation for increasing VMT should be identified. Mitigation should support the use of transit and active transportation modes. Potential mitigation measures that include the requirements of other agencies such as Caltrans are fully enforceable through permit conditions, agreements, or other legally-binding instruments under the control of the City.
- A schematic illustration of walking, biking and auto conditions at the project site and study area roadways. Potential safety issues for all road users should be identified and fully mitigated.
- The project's primary and secondary effects on pedestrians, bicycles, travelers with disabilities and transit performance should be evaluated, including countermeasures and trade-offs resulting from mitigating VMT increases. Access to pedestrians, bicycle, and transit facilities must be maintained.
- Clarification of the intensity of events to be held at the location and how the associated travel demand and VMT will be mitigated.

Mitigation Strategies

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

Given the place, type and size of the project, the DEIR should include a robust Transportation Demand Management (TDM) Program to reduce VMT and greenhouse gas emissions from future development in this area. The measures

listed below have been quantified by California Air Pollution Control Officers Association (CAPCOA) and shown to have different efficiencies reducing regional VMT:

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

Using a combination of strategies appropriate to the project and the site can reduce VMT, along with related impacts on the environment and State facilities. TDM programs should be documented with annual monitoring reports by a TDM coordinator to demonstrate effectiveness. If the project does not achieve the VMT reduction goals, the reports should also include next steps to take in order to achieve those targets.

Please reach out to Caltrans for further information about TDM measures and a toolbox for implementing these measures in land use projects. Additionally, Federal Highway Administration's Integrating Demand Management into the Transportation Planning Process: A Desk Reference (Chapter 8). The reference is available online at:
<http://www.ops.fhwa.dot.gov/publications/fhwahop12035/fhwahop12035.pdf>.

Transportation Impact Fees

Please identify project-generated travel demand and estimate the costs of transit and active transportation improvements necessitated by the proposed project; viable funding sources such as development and/or transportation

Katie Meador, Senior Planner
February 8, 2021
Page 4

impact fees should also be identified. We encourage a sufficient allocation of fair share contributions toward multi-modal and regional transit improvements to fully mitigate cumulative impacts to regional transportation. We also strongly support measures to increase sustainable mode shares, thereby reducing VMT.

Lead Agency

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

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

Sincerely,



MARK LEONG
District Branch Chief
Local Development - Intergovernmental Review

c: State Clearinghouse



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



February 2, 2021

Ms. Katie M. Meador
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
KMMeador@menlopark.org

Subject: 123 Independence Drive Project, Notice of Preparation, SCH No. 2021010076,
City of Menlo Park, San Mateo County

Dear Ms. Meador:

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) prepared by the City of Menlo Park for the 123 Independence Drive Project (Project) located in the City of Menlo Park, San Mateo County. CDFW is submitting comments on the NOP regarding potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

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

PROJECT LOCATION

The Project is located within an 8.15-acre site, at 119 Independence Drive, 123-125 Independence Drive, 127 Independence Drive, 1205 Chrysler Drive, and 130 Constitution Drive, in the City of Menlo Park, San Mateo County.

PROJECT DESCRIPTION SUMMARY

The proposed Project includes demolition of the five existing office and industrial buildings to shift the parcel boundaries, and to construct 316 rental apartments, 67 for-sale townhomes, and 88,750 square feet of office space. The proposed Project would include the removal of 85 trees, and the planting of 364 new trees throughout the Project area.

Ms. Katie M. Meador
City of Menlo Park
February 2, 2021
Page 2 of 5

ENVIRONMENTAL SETTING

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

- Bat species
- Nesting birds

COMMENTS AND RECOMMENDATIONS

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

Comment 1: Full Project Description of Project Features

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

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

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

Comment 2: Nesting Birds

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

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

Ms. Katie M. Meador
City of Menlo Park
February 2, 2021
Page 3 of 5

Recommended Mitigation Measure 1: Nesting Bird Surveys

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

Recommended Mitigation Measure 2: Nesting Bird Buffers

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

Comment 3: Bats

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

Recommended Mitigation Measure 3: Bat Habitat Assessment

To evaluate Project impacts to bats, a qualified bat biologist should conduct a habitat assessment for bats at the site seven (7) days prior to the start of Project activities. The habitat assessment shall include a visual inspection of features within 50 feet of the

Ms. Katie M. Meador
City of Menlo Park
February 2, 2021
Page 4 of 5

work area for potential roosting features (bats need not be present). Habitat features found during the survey shall be flagged or marked.

Recommended Mitigation Measure 4: Bat Habitat Monitoring

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

Recommended Mitigation Measure 5: Bat Project Avoidance

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

REGULATORY REQUIREMENTS

California Endangered Species Act

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

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

Lake and Streambed Alteration Program

Notification is required, pursuant to CDFW's Lake and Streambed Alteration Program (Fish and Game Code, section 1600 et. seq.) for any Project-related activities that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA

Ms. Katie M. Meador
City of Menlo Park
February 2, 2021
Page 5 of 5

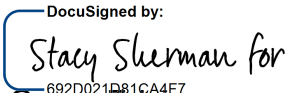
Agreement until it has complied with CEQA (Public Resources Code section 21000 et seq.) as the responsible agency.

FILING FEES

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

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

Sincerely,

DocuSigned by:

692D021D81CA4F7...
Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse (2021010076)



NATIVE AMERICAN HERITAGE COMMISSION

January 11, 2021

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

CHAIRPERSON
Laura Miranda
Luiseño

VICE CHAIRPERSON
Reginald Pagaling
Chumash

SECRETARY
Merri Lopez-Keifer
Luiseño

PARLIAMENTARIAN
Russell Attebery
Karuk

COMMISSIONER
Marshall McKay
Wintun

COMMISSIONER
William Mungary
Paiute/White Mountain
Apache

COMMISSIONER
**Julie Tumamait-
Stenslie**
Chumash

COMMISSIONER
[Vacant]

COMMISSIONER
[Vacant]

EXECUTIVE SECRETARY
Christina Snider
Pomo

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

Re: 2021010076, 123 Independence Drive Project, San Mateo County

Dear Ms. Meador:

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

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

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

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

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

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:

Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

- a. A brief description of the project.
- b. The lead agency contact information.
- c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
- d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).

2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).

- a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).

3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

- a. Alternatives to the project.
- b. Recommended mitigation measures.
- c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).

4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:

- a. Type of environmental review necessary.
- b. Significance of the tribal cultural resources.
- c. Significance of the project's impacts on tribal cultural resources.
- d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).

5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).

6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

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

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- a.** The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b.** A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- a.** Avoidance and preservation of the resources in place, including, but not limited to:
 - i.** Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii.** Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b.** Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i.** Protecting the cultural character and integrity of the resource.
 - ii.** Protecting the traditional use of the resource.
 - iii.** Protecting the confidentiality of the resource.
 - c.** Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - d.** Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e.** Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - f.** Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- a.** The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - b.** The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c.** The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

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

SB 18

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

Some of SB 18's provisions include:

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

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

NAHC Recommendations for Cultural Resources Assessments

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

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

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

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

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

Sincerely,



Nancy Gonzalez-Lopez
Cultural Resources Analyst

cc: State Clearinghouse



Bradley R. Sena
Attorney at Law

E-mail: bsena@lozanosmith.com

February 8, 2021

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

Katie Meador, Senior Planner
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 Environmental Impact Report for 123 Independence Drive Project

Dear Ms. Meador:

This office represents Sequoia Union High School District (“District”). The District appreciates the opportunity to provide comments and input regarding the Notice of Preparation of an Environmental Impact Report (“EIR”) for the 123 Independence Drive Project (“Project”).

As should by now be abundantly clear from the District’s scoping and comment letters recently submitted to the City regarding other projects being considered in the Bayfront Area of Menlo Park, the District is very concerned about the numerous large residential and commercial development projects proposed in the Bayfront Area of Menlo Park, including the Menlo Uptown, Menlo Portal, Menlo Flats, 111 Independence Drive, and Willow Village Master Plan projects. These projects are in very close proximity to the District’s TIDE Academy and are anticipated to result in extensive impacts on student safety, among other impacts. The District is particularly concerned about the rapidity at which these projects are being considered, in light of the incremental pace of development envisioned by the ConnectMenlo General Plan adopted by the City in 2016. Given the similarities between the instant Project and the other projects being considered by the City, the District reiterates many of its prior scoping requests and comments in this letter. **As in the District’s prior letters, the District requests that all direct and indirect impacts related to the Project’s proximity to District schools, and especially TIDE Academy and Menlo-Atherton High School, be thoroughly reviewed, analyzed, and mitigated.**

The Project, sponsored by The Sobrato Organization (“Developer”), is proposed to be located at the approximately 8.15-acre site at 119 Independence Drive, 123-125 Independence Drive, 127 Independence Drive, 1205 Chrysler Drive, and 130 Constitution Drive (the “Property”). The Developer is proposing to demolish the five existing office and industrial buildings and

redevelop the Property with 316 rental apartments, 67 for-sale townhomes, and 88,750 square feet of office space. The Project is anticipated to generate approximately 77 new high school students, which is about 20% of the District's capacity at TIDE Academy. The Project, combined with the five other projects mentioned above (totaling 3,193 new residential units), will result in approximately 639 new students to the District within just a few years' time. This equates to about 160% of the current capacity of TIDE Academy. As explained further below, these projects collectively have the potential to cause severe detriment to the District and its students.

The Notice of Preparation ("NOP") prepared for the Project concludes that the Project may have numerous impacts on the environment, including potential impacts on Public Services and Utilities. The NOP thus correctly concludes that a full-scope EIR is required. This is contrary to the conclusions drawn in the notices of preparation and initial studies prepared for Greystar's various projects in the Bayfront Area (Menlo Uptown, Menlo Flats, and Menlo Portal), and the 111 Independence Drive Project, which inappropriately rely on an improper reading of Senate Bill (SB) 50 and the ConnectMenlo Draft EIR as grounds to disregard all potential impacts on and related to schools, and to support the preparation of focused environmental impact reports. 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.

The District appreciates the Developer's willingness to participate in a few different meetings with the District over the past year regarding the Developer's pending Commonwealth Corporate Center Project, and potential ways to mitigate the impacts of that Project on the District. However, Developer and District have yet to formally resolve the District's concerns regarding the Commonwealth Corporate Center Project, and the Developer has not even contacted the District to discuss the instant Project's impacts and potential mitigation measures. Such failure is alarming: although both this Project and the Commonwealth Corporate Center will result in significant impacts on the District, this Project has the potential to generate a more substantial number of students, and it is therefore of utmost concern to the District. The District is hopeful that the instant Project's anticipated impacts, as well as ways to mitigate those impacts, will be included in future discussions with the Developer. The District remains hopeful that these discussions will yield solutions that benefit the District, Developer, and the community as a whole.

We request that the following topics be analyzed and considered in the Project's Draft EIR.

A. 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.

(a) The 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 regarding traffic, there must be an analysis of safety issues related to traffic impacts, such as reduced pedestrian safety, particularly as to students walking or bicycling to and from TIDE Academy; potentially reduced response times for emergency services and first responders traveling to these schools; and increased potential for accidents due to gridlock during school drop-off and pick up hours. (See, Journal of Planning Education and Research, "Planning for Safe Schools: Impacts of School Siting and Surrounding Environments on Traffic Safety," November 2015, Chia-Yuan Yu and Xuemei Zhu, pg. 8 [Study of traffic accidents near Austin, Texas schools found that "[a] higher percentage of commercial uses was associated with more motorist and pedestrian crashes" around schools].)

The State Office of Planning and Research has developed new CEQA Guidelines which set forth new criteria for the assessment of traffic impacts, and now encourages the use of metrics such as vehicle miles traveled (VMT), rather than level-of-service (LOS), to analyze project impacts on traffic. (14 Cal. Code Regs. § 15064.3.) However, local agencies may still consider impacts on traffic congestion at intersections where appropriate, and must do so where, as here, such traffic congestion will cause significant impacts on air quality, noise, and safety issues caused by traffic. (Pub. Res. Code § 21099(b)(3).)

The Bayfront Area of Menlo Park has experienced a drastic increase in traffic over the last ten to fifteen years as the City has continued to approve of newer corporate campuses and mixed biotechnology, commercial, office, and residential land uses. The City's 2016 General Plan Update calls for an increase of 2.3 million square feet of non-residential space, 400 hotel rooms, 4,500 residential units, 11,570 new residents, and 5,500 new employees in the Bayfront Area. This will result in a total build-out of 4.7 million square feet of non-residential office space, 850 hotel rooms, 5,430 residential units, 13,960 residents, and 20,150 employees, all within the Bayfront Area.¹ The ConnectMenlo EIR concluded that the General Plan Update would result in significant and unavoidable impacts to roadway segments and increase peak hour delays at intersections from increased traffic, even after the mitigation measures called for in the General Plan Update are implemented (if ever).²

Further, the Draft EIRs recently prepared for the 111 Independence Drive Project and the Menlo Uptown Project show that numerous intersections in the Bayfront Area surrounding the Project site and TIDE Academy, including the intersections of Marsh Road/Bayfront Expressway, Chrysler Drive/Independence Drive, Chilco Street/Constitution Drive, Willow Road/Bayfront Expressway, and University Avenue/Bayfront Expressway, are currently operating at an Level of Service (LOS) of 'D' or worse at one or more peak hours, and do not meet the City's desired LOS standards. (See, e.g., 111 Independence Drive Draft EIR, Appx. E, at 10-11.) In analyzing intersection LOS under "Cumulative (2040) Plus Project Conditions," these Draft EIRs show that most intersections in the Project neighborhood will be operating out of compliance with the City's Circulation Policy goals. (See, e.g., *Id.* at 4.2-46-4.2-47.) In addition to deficient vehicular intersections, these Draft EIRs note deficiencies in the sidewalk system in the Bayfront Area, including discontinuous sidewalks, crosswalks, and curb ramps. (*Id.* at 4.2-7.)

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 ability to operate its educational programs, including at TIDE Academy.

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

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

The 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, including along Independence Drive, Constitution Drive, Chrysler Drive, and Jefferson Drive. (See, 5 Cal. Code Regs. § 14010(k), which requires that school facilities be easily accessible from arterial roads.) TIDE Academy is located less than 400 feet southeast of the Property. Both TIDE Academy and the proposed Project would be accessed by the same roads, including those mentioned above. In addition to drawing thousands of new residents to the area, including the estimated 77 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, all of which are shared by TIDE students and families.

As indicated in the City's General Plan and the Draft EIRs prepared for other Bayfront Area projects, the City's roads are not currently equipped to accommodate such high density development and high levels of traffic. Jefferson Drive and Independence Drive are narrow two-lane roads. 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.**

Likewise, the Project roads and neighborhood are not equipped to handle the parking demands of the visitors and residents drawn by the Project. The proposed 731 parking spaces proposed for the Project may technically meet the City's Municipal Code requirements for the number of parking spaces required for bonus level development in the area. However, as indicated in the Draft EIRs prepared for the 111 Independence Drive and Menlo Uptown projects, actual parking demand often exceeds the Municipal Code's parking requirements. If all of the projects in the Bayfront Area continue to propose inadequate parking in order to meet the actual levels of parking demand generated by their projects, serious impacts on pedestrian safety will occur due to cars spilling onto surrounding streets. While perhaps not an environmental impact on its own, the Project EIR must analyze the indirect impacts on student and pedestrian safety that will be caused by shortages of parking.

In addition to increased risks of vehicular accidents, the traffic and parking impacts posed by the Project may 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(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.³ Further, to mitigate the impacts of conflicts

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

and/or dangerous interactions between pedestrians, bicyclists, and vehicles, the District agreed to prepare a “Safe Routes to School Map” that identifies facilities such as traffic lights, crosswalks, and demarcated bikeways that promote safe routes to school.⁴ The City has likewise committed to supporting and promoting such safe route to school programs to enhance the safety of students who walk to school.⁵

The EIR must analyze and mitigate all of the above traffic and related impacts, including those impacts related to student safety and ability to get to school, 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. It is anticipated that these impacts will extend far beyond the Bayfront Area. As such, the analysis of 15 intersections proposed by the lead agency, as indicated in the City Planning Commission Staff Report from January 25, 2021, is wholly inadequate. Rather, the District requests that all intersections that could be impacted by the Project, including those within and outside of the Bayfront Area, be analyzed for LOS and related safety impacts. The District further suggests that the lead agency consult with the District’s own traffic engineering company regarding the placement of Project driveways, so as to achieve a project design that minimizes, to the greatest extent possible, the risk of potential injuries to students walking and biking to school along Independence Drive.

(b) City Must Consider Cumulative Traffic and Related Impacts.

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

The Project’s above- and below-discussed anticipated impacts on the District, combined with the anticipated impacts of the vast number of development projects that have recently been approved and are being considered for approval in the Bayfront Area, and specifically the western

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

⁵ City of Menlo Park General Plan (November 29, 2016), Policy CIRC-1.9: Safe Routes to Schools. Support Safe Routes to School programs to enhance the safety of school children who walk and bike to school.

Bayfront Area, are cumulatively considerable. All of these impacts are exacerbated by the City's haste in considering and approving development projects in the Bayfront Area, as the District will be unable to accommodate the massive influx of students through facilities, infrastructure, and related improvements. 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.⁶ This does not include the 540 units that have already been completed at 3639 Haven Avenue and 3645 Haven Avenue, which would bring the total number of residential units to 3,797. This equates to 84% of the total authorized buildout under ConnectMenlo. It is clear from this trend that full buildout under ConnectMenlo will be achieved well in advance of 2040. Many of these projects, including the instant Project, Menlo Uptown, Menlo Flats, Menlo Portal, 111 Independence Drive, and Willow Village Master Plan projects, are located in the immediate vicinity of TIDE Academy.

Each of these projects alone promises drastically to increase traffic in the neighborhood, resulting in air quality, noise, and safety issues for District families and staff attending TIDE Academy. When considered together, their collective impacts on traffic, safety, and air quality in the neighborhood will be devastating. **These cumulative impacts on the District's TIDE Academy and Menlo-Atherton High School must be analyzed and mitigated.**

B. 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.

⁶ <https://www.menlopark.org/DocumentCenter/View/23346/ConnectMenlo-Project-Summary-Table>

It is anticipated that the Project, including when viewed in conjunction with all of the other developments being considered and approved a few hundred feet from TIDE Academy, will have a significant impact on the air quality of the neighborhood due to extensive construction activities and increases in vehicular traffic. The Belle Haven community is particularly sensitive to such concerns regarding air quality due to the high incidence of asthma throughout the community. Even more pressing, the Project is anticipated to result in significant impacts to sensitive receptors as an increased number of vehicles enter and exit the Project, creating increased levels of air toxins and particulate matter that could negatively impact student health. These impacts, as they relate to the District's students at the TIDE Academy, must be analyzed in the Project's Draft EIR. This analysis also dovetails with the discussion above regarding the necessity of LOS analysis. Decreased levels of service at intersections generally mean lengthier amounts of time for cars to idle, including near schools, resulting in decreased air quality and the potential for substantial impacts on students.

C. 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.

D. 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 383 anticipated residential units, it is anticipated that the proposed Project's 88,750 sf of office 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, 383 anticipated residential units are likely to generate approximately 77 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 by approximately 200 students.

The District, therefore, specifically demands that historic, current, and future population projections for the District be addressed in the EIR. Population growth or shrinkage is a primary

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

E. 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.

California school districts are dependent on developer fees authorized by the provisions of Government Code Sections 65995, *et seq.*, and Education Code sections 17620, *et seq.*, for financing new school facilities and maintenance of existing facilities. The developer fees mandated by Section 65995 provide the District a significant portion of its local share of financing for facilities needs related to development.

The adequacy of the statutory development fees to offset the impact of new development on local school districts can be determined only if the types of housing and average square footage can be taken into consideration. For instance, larger homes often generate approximately the same number of students as smaller homes. At the same time, however, a larger home will generate a greater statutory development fee, better providing for facilities to house the student being generated. It is for these reasons that the Government Code now requires a school district to seek – and presumably to receive – such square footage information from local planning departments. (Gov. Code § 65995.5(c)(3).) The District estimates the per student cost of adding new facilities—including land acquisition—to be approximately \$135,000. For the 77 students generated by the Project, that would amount to \$10.3 million. The developer fees generated by the Project would cover less than 20% of that cost.

While the foregoing funding considerations raise fiscal issues, they also translate directly into physical, environmental impacts, in that inadequate funding for new school construction results

in overcrowding of existing facilities. Without funding to build new facilities or land on which to expand, students may need to attend schools outside their attendance boundaries, creating significant traffic impacts, among others. 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.

F. 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.**

CEQA Guidelines, Appendix G, states that a project may have public services impacts on schools if the project 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 the provision of school services.

There are a myriad of ways in which large residential and commercial development projects can impact a school district’s need for new or physically altered facilities in order to maintain performance objectives. The instant Project’s Draft EIR should 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. Consideration of the above-listed categories information is essential to properly making these determinations.

Lead agencies often cite to SB 50 (specifically, Government Code sections 65995(h) and 65996(a)), for the proposition that the payment of school impact fees (commonly referred to as “developer fees”) excuses them from their obligations to analyze and mitigate impacts posed on school districts by development. This, however, is a misstatement of the law related to developer fees and CEQA. While SB 50 does declare 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)), SB 50 does not excuse lead agencies from analyzing such impacts on school facilities in the first place. Further, **California courts have since acknowledged that developer fees do**

Katie Meador, Senior Planner
City of Menlo Park
February 8, 2021
Page 12

not constitute full and complete mitigation for school-related impacts other than school overcrowding. (*Chawanakee Unified Sch. Dist. v. Cty. of Madera* (2011) 196 Cal.App.4th 1016.) Thus, the payment of fees does not constitute full mitigation for all impacts caused by development related to traffic, noise, biological, pedestrian safety, and all other types of impacts related to the District and its educational program. The District expects the City to analyze and mitigate all such impacts in the EIR for this Project.

Conclusion

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

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

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

Harold M. Freiman, Esq.
Lozano Smith
2001 N. Main St., Suite 500
Walnut Creek, CA 94596

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

Sincerely,

LOZANO SMITH



Bradley R. Sena

cc: Crystal Leach, Interim Superintendent (cleach@seq.org)



**REVISED NOTICE OF PREPARATION
OF AN ENVIRONMENTAL IMPACT REPORT
123 INDEPENDENCE DRIVE PROJECT
CITY OF MENLO PARK**

Date: January 8, 2021, Revised September 10, 2021

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

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

Subject: **Notice of Preparation (NOP) of an Environmental Impact Report
for the 123 Independence Drive Project**

Lead Agency: City of Menlo Park, Planning Division

Project Title: 123 Independence Drive Project

File Number: PLN 2020-00022

Project Location: 119 Independence Drive, 123-125 Independence Drive, 127 Independence Drive, 1205 Chrysler Drive, and 130 Constitution Drive. Bayfront Area of City of Menlo Park, northwest side of the intersection at Independence Drive and Chrysler Drive and bounded on the north side by Constitution Drive.

APN: 055-236-180, 055-236-140, 055-236-240, 055-236-300, 055-236-280

INTRODUCTION

The City of Menlo Park (City) is the lead agency for the 123 Independence Building Project (proposed project). Pursuant to the California Environmental Quality Act (CEQA), upon deciding to prepare an Environmental Impact Report (EIR), the City, as lead agency, must issue a Notice of Preparation (NOP) to inform trustee and responsible agencies, and the public, of the decision to undertake preparation of an EIR. The purpose of the NOP is to provide information describing the proposed project and its potential environmental effects to those who may wish to comment regarding the scope and content of the information to be considered in the EIR. Agencies should comment on such information as it relates to their statutory responsibilities in connection with the proposed project.

A previous NOP was circulated in January 2021 based on the original project application, which proposed development of a mixture of residential and office uses. In July and August 2021, the project applicant submitted revised project plans that omits the office component and adds 49 more residential units, resulting

in 12.8 percent more residences than the original application. This revised NOP documents the project revisions. Agencies and the public are invited to provide comments on the scope and content of the environmental review, potential mitigation strategies, and project alternatives by 5pm on October 11, 2021.

The project description, location, and environmental issue areas that may be affected by development of the proposed project are described below. The EIR will evaluate the project-specific and cumulative impacts, identify feasible mitigation measures to reduce or avoid significant project impacts, and identify a reasonable range of alternatives to the proposed project and their comparative environmental effects.

SCOPING MEETING

A public scoping session based on the original project application was held as part of the Planning Commission meeting on January 25, 2021. Minutes from that meeting are available at the City's website: https://www.menlopark.org/AgendaCenter/ViewFile/Minutes/_01252021-3565.

In consideration of the proposed project revisions, another public scoping session for the revised project application will be held as part of the Planning Commission meeting on September 27, 2021 via GotoWebinar or Zoom, at 7 p.m. or as near as possible thereafter. The meeting agenda and link to access the online meeting can be found at menlopark.org/Planning-Commission. Trustee and responsible agencies, as well as members of the public, are invited to attend to learn more about the proposed project and to provide input on the scope and content of the EIR through public comment. The scoping process is designed to enable the City to determine the scope and content of the EIR at an early stage, identify the range of actions, and identify potentially significant environmental effects, alternatives, and mitigation measures to be analyzed in the EIR and eliminate any environmental resource areas where significant impacts are not expected.

SUBMITTING COMMENTS

Comments regarding the appropriate scope of analysis and content in the EIR are invited from all interested parties. Please submit comments to the City **no later than 5 p.m. on October 11, 2021**. However, we would appreciate your response at the earliest possible date. Please send your written comments to Payal Bhagat at the address shown below or by email to PBhagat@menlopark.org with "123 Independence Drive Project EIR" as the subject. Due to the ongoing Covid-19 pandemic, emailed comments are preferred.

Payal Bhagat
Contract Principal Planner
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
650-330-6702

Email: PBhagat@menlopark.org

City's website: menlopark.org

Project website: <https://www.menlopark.org/1695/123-Independence-Drive>

PROJECT LOCATION AND EXISTING CONDITIONS

There has been no change in the project location or existing conditions since the original NOP was circulated. As shown in Figure 1, Project Location, the project site is located in the City on the northwest side of the

intersection at Independence Drive and Chrysler Drive. The site is bounded on the north side by Constitution Drive and Marsh Road is 560 feet northwest of the parcels. The assessor's parcel numbers (APNs) for the project site include 055-236-180, 055-236-140, 055-236-240, 055-236-300, and 055-236-280.

The project site is designated Mixed Use Residential within the Bayfront Area on the City's General Plan Land Use Designations Map and is within the Residential-Mixed Use-Bonus Zoning District. The approximately 8.15-acre site consists of five existing office and industrial buildings totaling approximately 103,900 square feet, as shown in Figure 2, Existing Site Conditions. The western-most building on Independence Drive, 119 Independence Drive, is a 1-story concrete building. It is approximately 16 feet in height and 13,000 square feet. To the west, at 123 and 125 Independence Drive is a 1-story concrete building, approximately 20 feet in height, and approximately 12,300 square feet. 127 Independence Drive is a 1-story building, approximately 19 feet in height, and approximately 13,800 square feet. To the west of 127 Independence Drive, at the corner of Independence Drive and Chrysler Drive, is 1205 Chrysler Drive. It is a 1-story building, approximately 17 feet in height, and 39,300 square feet. Finally, 130 Constitution Drive is located to the north of 127 Independence Drive. It is a 2-story building, approximately 25 feet in height, and 25,500 square feet.

Vegetation on the project site consists of approximately 48,000 square feet of decorative landscape areas bordering the edges of the parcel boundaries along Independence Drive. The interior of the site is almost exclusively hardscape, consisting of approximately 203,000 square feet of impervious surfaces.

PROJECT DESCRIPTION

The project proposes to demolish the five existing office and industrial buildings (a total of approximately 103,900 square-feet), to shift the parcel boundaries to create five lots: A, B, C, D, and 1, and to construct approximately 316 rental apartments and 116 for-sale townhomes, as shown on Figure 3, Proposed Illustrative Site Plan. Lot A would support a 5-story building with 316 rental apartments, stoops along public streets and pedestrian walkways, and approximately 335 parking spaces in a parking structure with a single level below-grade and a single level at-grade. Lots B, C, and D would support 3-story townhomes that would be subdivided via condominium mapping and would be oriented to public streets. Lot B would be developed with approximately 26 townhomes and would include a total of 74 parking spaces. Lot C would be developed with approximately 18 townhomes and would include a total of 24 parking spaces. Lot D would be developed with approximately 72 townhomes and would include a total of 153 parking spaces. Long-term and short-term bicycle parking would also be provided throughout the site. Lot 1 would stretch across the site from Constitution Drive to Independence Drive, with an approximately 013,200-square foot park near the middle of the site and a 12,100-square foot paseo connecting the park to Constitution Drive and to Independence Drive. A pedestrian pathway would also extend to Chrysler Drive. Figure 3 also shows that the project is proposed to include a landscaped courtyard within the center of the apartment building, landscape zones around building perimeters and along street frontages, private balconies and decks for approximately 214 of the apartment units all of the townhomes. The project proposes a total of approximately 25,300 square feet of public open space, 52,500 square feet of publicly accessible open space (landscape zones and street frontage), and approximately 53,870 square feet of common areas and private open space.

Figure 4, Proposed Site Sections, shows the arrangement of buildings and open space and illustrates the proposed building scale and massing. Building heights would range between approximately 32 and a maximum of 60 feet. Figure 5, Circulation Diagram, shows the proposed pedestrian and vehicular circulation through the site. The project proposes two points of pedestrian access to the publicly accessible open space from the paseo on Constitution Drive and Independence Drive. The project also proposes multiple

pedestrian pathways within the site. The project proposes one point of vehicular access to the apartment parking garage from Constitution Drive, two points of vehicular access to the townhomes from Independence Drive, and one point of vehicular access to the townhomes from Chrysler Drive. Public frontages on Independence Drive and Constitution Drive are proposed to be activated with residential stoops, lobbies, leasing office, and residential amenities.

The proposed project would include the removal of 85 trees. The proposed project landscaping includes 388 new trees. The proposed project would also include a back-up diesel-fueled generator for emergency use.

The detailed proposed project plan set is available for review at the City's website:

<https://www.menlopark.org/1695/123-Independence-Drive>

The proposed project would be developed using the bonus level of development allowed by the Zoning Ordinance, which provides for an increase in density, gross floor area, and/or height in exchange for the provision of community amenities. The required value of the community amenities and the identification of the appropriate community amenities would be determined through a process that includes an appraisal, applicant proposal for amenities and associated financial analysis, all of which will be reviewed by decision makers. The community amenities proposal will be incorporated into the environmental analysis as appropriate.

The proposed project would comply with the Below Market Rate (BMR) Ordinance requirements by incorporating a minimum of 15 percent of the proposed units as affordable units, resulting in a total of 66 BMR units: 18 BMR townhomes and 48 BMR apartments.

PROJECT APPROVALS

The proposed project is anticipated to require the following actions, entitlements, and discretionary project approvals from the City:

- Environmental Review
- Use Permit
- Vesting Tentative Subdivision Map
- Architectural Control
- Below Market Rate (BMR) Housing Agreement
- Heritage Tree Removal Permits

In addition, a Housing Needs Assessment (HNA) and a Fiscal Impact Analysis (FIA) will be prepared for informational purposes. Finally, to qualify for bonus-level development within the R-MU zoning district, the proposed project will be required to complete an appraisal process to identify the required value of the community amenities and a financial analysis of the applicant's proposed community amenities to determine the value of the amenities proposed.

Certification of the EIR and approval of all entitlements except the Vesting Tentative Subdivision Map would be at the discretion of the City's Planning Commission. The Planning Commission would also make a recommendation to the City Council on the Vesting Tentative Subdivision Map and the final action on the subdivision would be at the discretion of the City Council.

RESPONSIBLE AND/OR REVIEWING AGENCIES

The agencies listed below are expected or requested to review the draft EIR to evaluate the proposed project:

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

PROBABLE ENVIRONMENTAL EFFECTS AND SCOPE OF THE EIR

The project site is within the ConnectMenlo study area. ConnectMenlo, which updated the City's General Plan Land Use and Circulation Elements and rezoned the land in the M-2 Area (now referred to as the Bayfront Area), was approved on November 29, 2016.

The City has determined that the project warrants a full EIR and thus has elected not to prepare an Initial Study. The EIR is anticipated to include most of the environmental resource topics addressed in CEQA Guidelines Appendix G, specifically:

- Aesthetics
- Air Quality
- Biological Resources
- Cultural Resources
- Energy
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Noise
- Population, Employment, and Housing
- Public Services
- Recreation
- Tribal Cultural Resources
- Transportation/Traffic
- Utilities and Service Systems

Under a 2017 settlement agreement between the cities of Menlo Park and East Palo Alto, the City is required to prepare an EIR for projects like this one that request bonus level development within the R-MU-B zoning district. The agreement establishes requirements for transportation impact analysis and mitigation and for preparation of a Housing Needs Assessment, both of which will be included in the EIR.

ENVIRONMENTAL RESOURCES WITH NO ADVERSE IMPACTS

The proposed project is not anticipated to result in significant environmental effects in the following areas:

- Agricultural or Forestry Resources
- Mineral Resources
- Wildfire

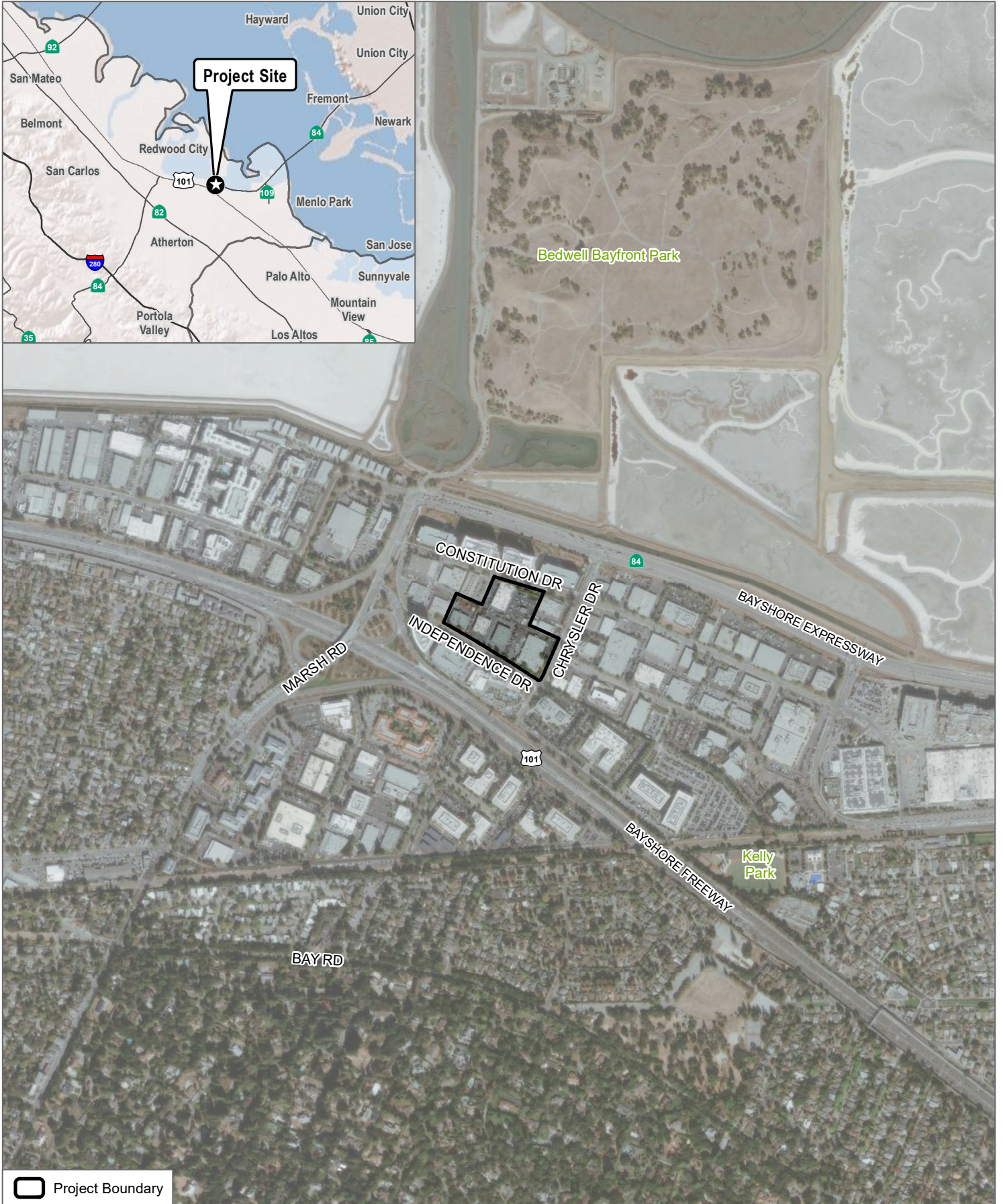
The project site is fully developed in an urbanized area and located between SR 84 and US 101. As such, there are no agricultural, forestry, or mineral resources on or adjacent to the site and the proposed project would have no adverse effects associated with such resources. Further, wildfires are not a concern because there are no areas of substantial vegetation in proximity to the project site and there are no mapped Fire Hazard Severity Zones near the site. A detailed analysis of these topics will not be included in the EIR.


ALTERNATIVES

Based on the significance conclusions determined in the EIR, alternatives to the proposed project that may be capable of reducing any identified impacts will be analyzed. Section 15126.6(e) of the CEQA Guidelines requires the evaluation of a No-Project Alternative. Other alternatives may be considered during preparation of the EIR and will comply with the CEQA Guidelines, which call for a “range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project.” The EIR will discuss the process by which alternatives are identified, including consideration of any feasible alternatives that are suggested during the scoping process.

EIR PROCESS

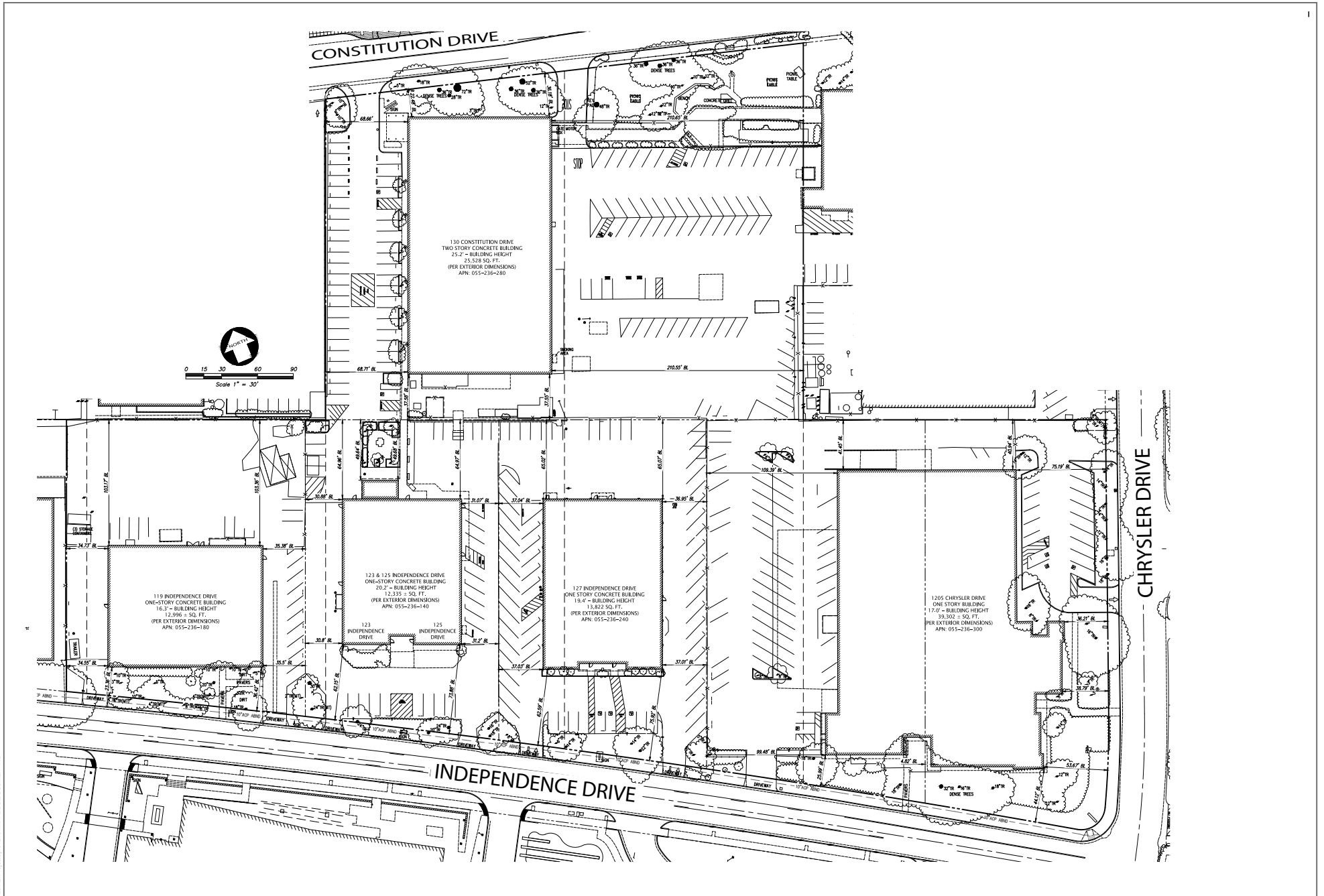
Following the close of the NOP comment period, a Draft EIR will be prepared that will consider all NOP comments. In accordance with CEQA Guidelines Section 15105(a), the Draft EIR will be released for public review and comment for a required minimum 45-day review period. Following the close of the 45-day minimum public review period, the City will prepare a Final EIR, which will include responses to all substantive comments received on the Draft EIR. The Draft EIR and Final EIR and will be considered by the Planning Commission in considering whether to certify the EIR and approve, conditionally approve, or deny the Project, and in considering what recommendation to make to the City Council regarding the proposed Vesting Tentative Subdivision Map. The City Council will also consider the information provided in the Draft EIR and Final EIR if the EIR is certified by the Planning Commission in determining whether to approve, conditionally approve, or deny the Vesting Tentative Subdivision Map.



 Project Boundary

SOURCE: ESRI Basemap (Accessed 2020), San Mateo County 2020

FIGURE 1
Project Location

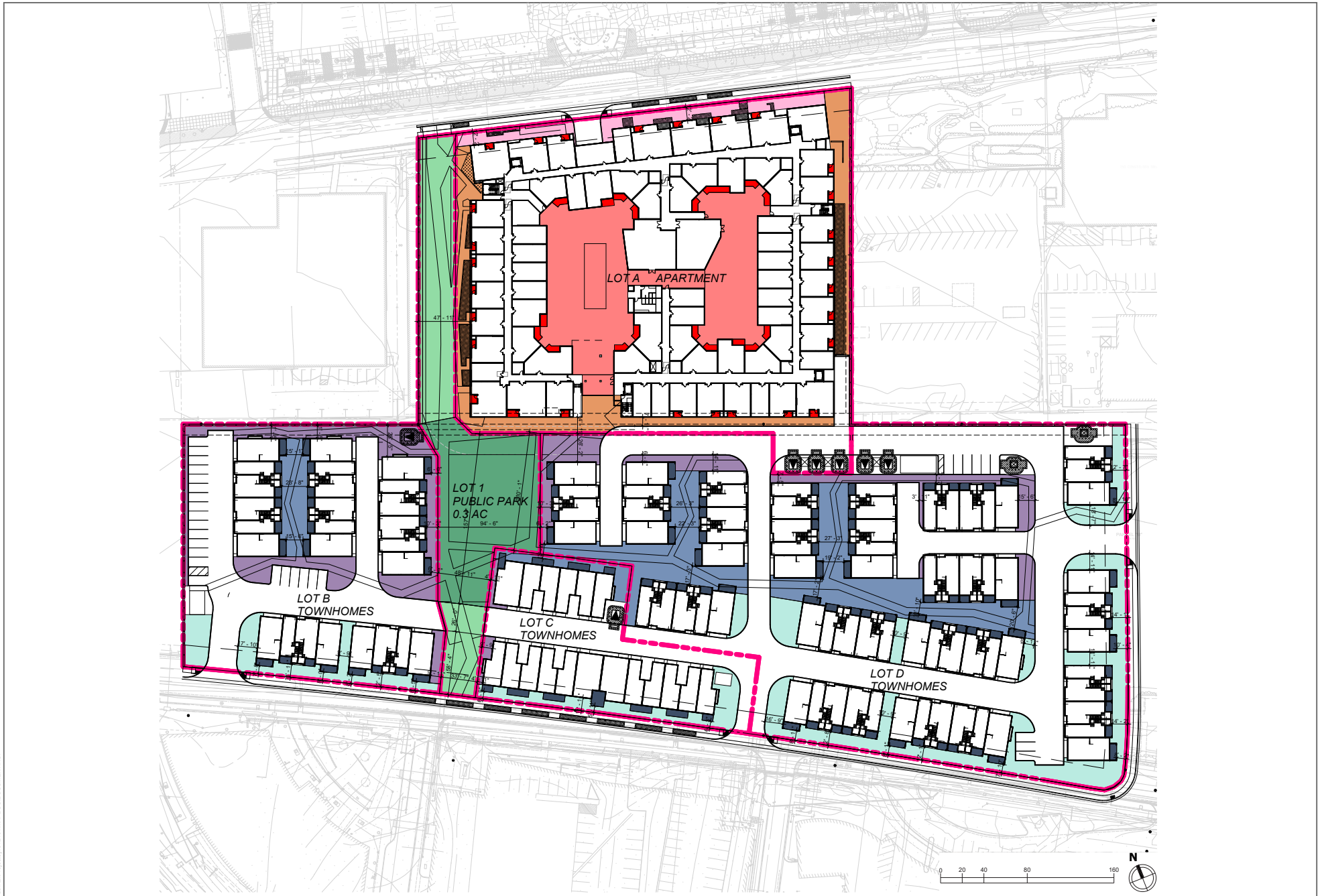


SOURCE: Kier+Wright, 2020

FIGURE 2

Existing Site Conditions

123 Independence Drive Residential Project

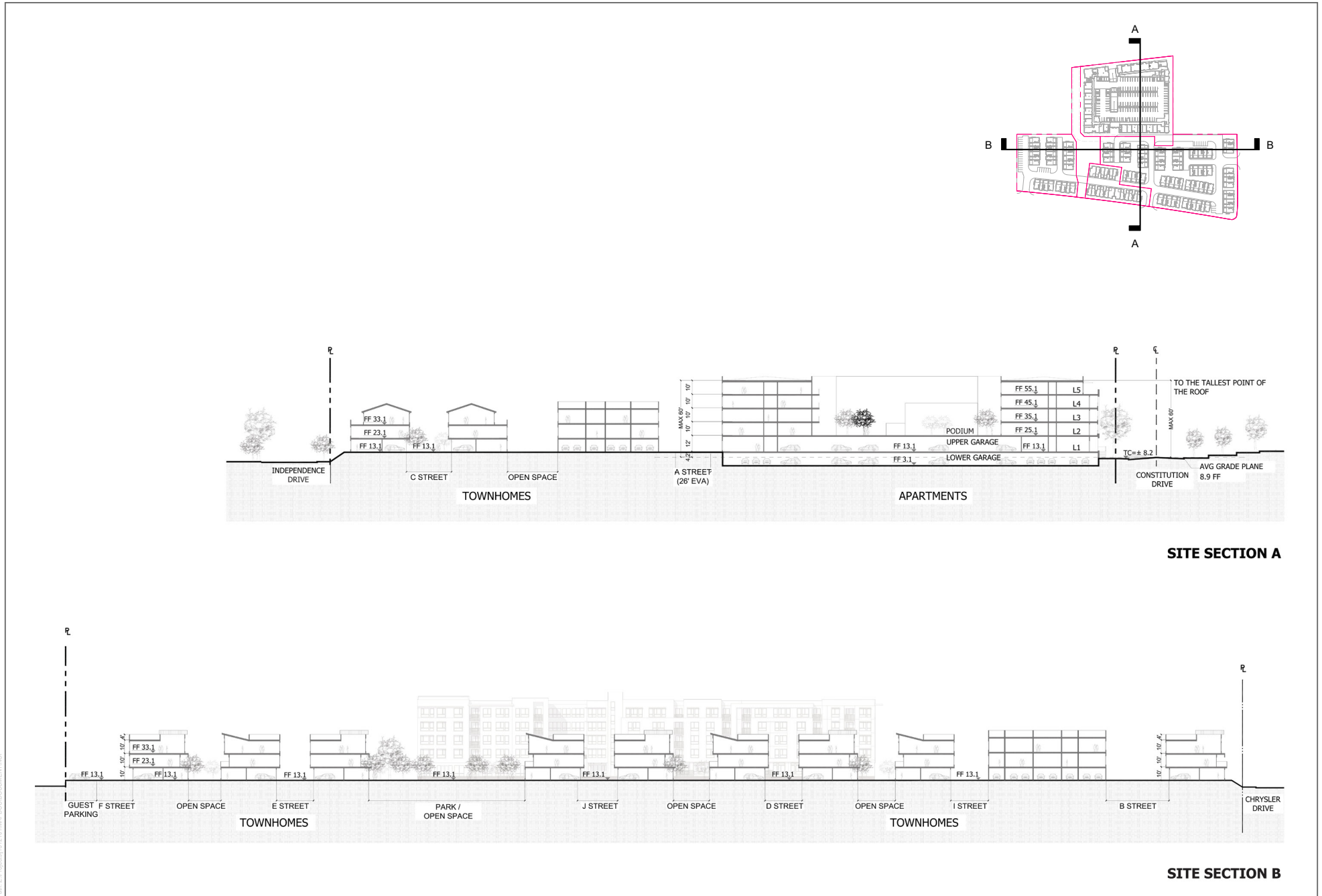


SOURCE: Studio T Square 2021

FIGURE 3

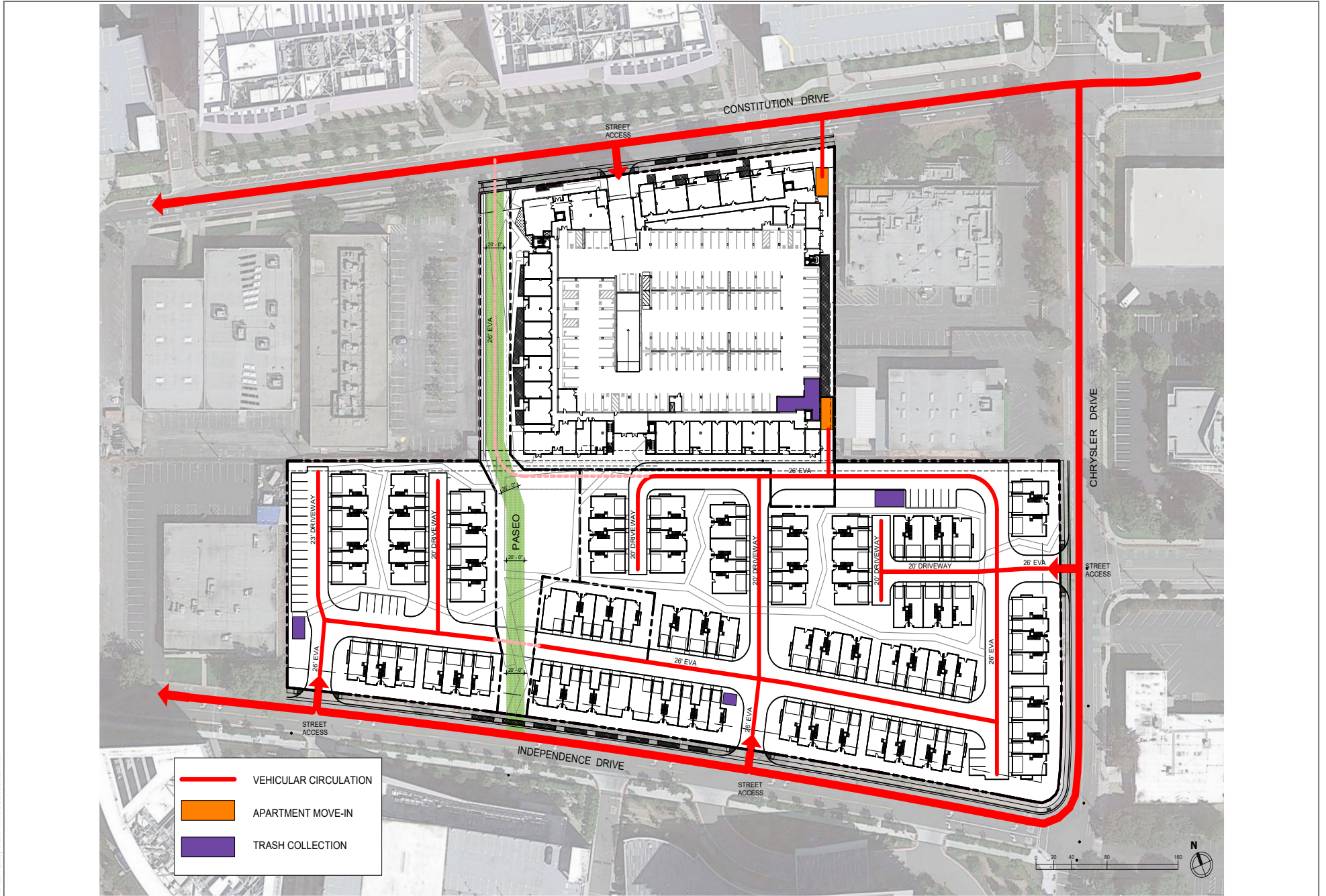
Site Plan and Open Space Diagram

123 Independence Drive Residential Project



SOURCE: Studio T Square 2021

FIGURE 4



SOURCE: Studio T Square 2021

FIGURE 5

Proposed Circulation Diagram

123 Independence Drive Residential Project

INTENTIONALLY LEFT BLANK

123 Independence Drive Project

EIR Scoping Comments

Table of Contents

General Public

Patti Fry 3

Pam Jones 4

Public Agencies

Sequoia Union High School District 7

Department of Transportation 21

Department of Fish and Wildlife 29

Native American Heritage Commission 34

General Public

From: [Patti Fry](#)
To: [Bhagat, Payal](#)
Subject: comments NOP 123 Independence
Date: Thursday, September 16, 2021 2:47:20 PM

CAUTION: This email originated from outside of the organization. Unless you recognize the sender's email address and know the content is safe, DO NOT click links, open attachments or reply.

Dear Planner Bhagat and City,

Given the proximity of the project site to the baylands and Bedwell Bayfront Park, I suggest that the EIR assess impacts and potential mitigation for light and noise pollution or other hazards (e.g., windows or household pets on the loose) that may affect wildlife in those areas. I have not been impressed with control of light pollution from projects constructed along Bayfront Expressway and Marsh Road east of highway 101 so am interested in enforcement of mitigation, too.

The list of groups requested to comment does not appear to include the Friends of Bedwell Bayfront Park or the Audubon Society and I recommend that they be contacted for input on the project.

Thanks for your consideration,
Patti Fry
former Menlo Park Planning Commissioner

From: [Sandmeier, Corinna D](#)
To: [Bhagat, Payal](#); [Malathong, Vanh](#)
Subject: FW: Online Form Submittal: September 27, 2021, Planning Commission Meeting Public Comments
Date: Monday, September 27, 2021 5:06:04 PM
Attachments: [CMP_Email_Logo_100dpi_05d92d5b-e8e3-498f-93a6-d0da509bd60211111111.png](#)

Vanh, could you add a link to this comment to the agenda?

Thanks!
Corinna



Corinna D. Sandmeier
Acting Principal Planner
City Hall - 1st Floor
701 Laurel St.
tel 650-330-6726
menlopark.org

From: no-reply@menlopark.org [mailto:no-reply@menlopark.org]
Sent: Monday, September 27, 2021 4:56 PM
To: Herren, Judi A <jaherren@menlopark.org>; Jerome-Robinson, Starla L <SLRobinson@menlopark.org>; Murphy, Justin I C <JICMurphy@menlopark.org>; Sandmeier, Corinna D <cdsandmeier@menlopark.org>; Chow, Deanna M <DMChow@menlopark.org>; Malathong, Vanh <VMalathong@menlopark.org>; Curtin, Clay J <cjcurtin@menlopark.org>; Perata, Kyle T <ktperata@menlopark.org>
Subject: Online Form Submittal: September 27, 2021, Planning Commission Meeting Public Comments

September 27, 2021, Planning Commission Meeting Public Comments

Thank you for your interest in the Planning Commission's upcoming discussions. Please use the form below to submit your comments no later than one (1) hour before the meeting. Comments received by that time will be forwarded to the Planning Commission and included as part of the public record for the meeting, just as if you had come to comment in person.

Agenda items on which to comment:

- F1. Use Permit/Thomas James Homes/760 College Avenue
- F2. Use Permit/Anke De Jong/153 Oak Court
- F3. Environmental Impact Report (EIR) Scoping Session/The Sobrato

Organization/119-127 Independence Drive, 1205 Chrysler Drive, and 130 Constitution Drive

G1. Study Session/The Sobrato Organization/119-127 Independence Drive, 1205 Chrysler Drive, and 130 Constitution Drive

Agenda item number	F3
Subject	EIR Scoping Session
Meeting date	<i>Field not completed.</i>
Public comment	<p>Chairperson Doran, Vice-Chair DeCardy, Commissioners and staff,</p> <p>The Housing Needs Assessment should include SB 1000 Environment Justice Element and the Investment/Disinvestment Facebook Housing Study as framework for their study. SB 1000 was signed by the Governor on September 24, 2016 prior to the adoption of the ConnectMenlo/General Plan passed by the City Council on November 1, 2016. SB 1000 became law on January 1, 2017.</p> <p>Currently all the M2 housing development plans fall under SB 330 which went into effect January 1, 2020. Certain housing development plans that had been filed in 2019 were pulled and resubmitted 2020 under the protection of SB 330.</p> <p>Since there is a precedence of applying current legislation for projects under the 2016 ConnectMenlo/General Plan, SB 1000 which includes housing and housing displacement should also apply to current projects. A Housing Needs Assessment that considers the displacement of residents, particularly in District 1 should be included. The 2020 Census also demonstrates the number of residents that where displaced when considering the number of “new residents.” Although three apartment complexes were included, they do not account for the change in demographics. A review of residential parcels that have been foreclosed and rental properties that were sold with a substantial rent increase, should be a part of this study.</p> <p>A thorough Housing Element would help to determine if a higher percentage of BMRs should be included. Since this and future projects will be part of Menlo Park’s “fair share” of housing units, additional BMRs would help decrease our RHNA numbers. The Housing Element requirements are detailed in page 15 of the staff report.</p> <p>Thank-you Commissioners for your continued dedication to the residents of Menlo Park. Again, I am appreciative of the Sobrato</p>

Organization for including BMRs in both your apartments and townhouses and your outreach efforts during this difficult time.

Respectfully,
Pam D Jones

First name	Pam D
Last name	Jones
Email address	pam.d.jones70@gmail.com
What is your affiliation?	Resident
Other	<i>Field not completed.</i>
Address1	<i>Field not completed.</i>
Address2	<i>Field not completed.</i>
City	<i>Field not completed.</i>
State	<i>Field not completed.</i>
Zip	<i>Field not completed.</i>

Email not displaying correctly? [View it in your browser.](#)

Public Agencies



Kelly M. Rem
Attorney at Law

E-mail: krem@lozanosmith.com

October 11, 2021

By Email and U.S. Mail: PBhagat@menlopark.org

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

Re: Response of Sequoia Union High School District to Revised Notice of Preparation of Environmental Impact Report for 123 Independence Drive Project

Dear Ms. Bhagat:

This office represents Sequoia Union High School District (“District”). The District appreciates the opportunity to provide comments and input regarding the Revised Notice of Preparation of an Environmental Impact Report (“EIR”) for the 123 Independence Drive Project (“Project”). The District understands that the Project applicant submitted revised Project plans that omit the office component and add 49 more residential units, and that such revisions will be reflected in the EIR.

As the City is aware, the District is very concerned about the numerous large residential and commercial development projects proposed in the Bayfront Area of Menlo Park, including the Menlo Uptown, Menlo Portal, Menlo Flats, 111 Independence Drive, and Willow Village Master Plan projects. This Project applicant, through its revisions, seeks to add a significant number of residential units to the Bayfront Area. This Project and the others being considered by the City are in very close proximity to the District’s TIDE Academy and are anticipated to result in extensive impacts on student safety, among other impacts.

The District reiterates its prior requests and comments that were made in the District’s February 8, 2021, response letter to the Project’s initial Notice of Preparation, a copy of which is enclosed with this letter and incorporated by reference, and **wishes to emphasize the request that all direct and indirect impacts related to the Project’s proximity to District schools, and especially TIDE Academy and Menlo-Atherton High School, be thoroughly reviewed, analyzed, and mitigated.**

The District appreciates the City’s recent efforts toward including the District and its concerns in the planning process. The District is hopeful that it can engage in continual productive dialogue with the City of Menlo Park with respect to the proposed Bayfront Area projects. In keeping

Limited Liability Partnership

2001 North Main Street, Suite 500 Walnut Creek, California 94596 Tel 925-953-1620 Fax 925-953-1625

Payal Bhagat
City of Menlo Park
October 11, 2021
Page 2

with that spirit, the District requests that all notices and copies of documentation with regard to this Project be mailed to both of the following parties:

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

Harold M. Freiman, Esq.
Lozano Smith
2001 N. Main St., Suite 500
Walnut Creek, CA 94596

Please feel free to contact us directly if we can be of any assistance in reviewing the issues raised in the attached letter. Thank you.

Sincerely,

LOZANO SMITH

A handwritten signature in blue ink that reads "Kelly M. Rem". The signature is written in a cursive style.

Kelly M. Rem

KMR/mag

Enclosure: February 8, 2021 Letter to City of Menlo Park

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



Bradley R. Sena
Attorney at Law

E-mail: bsena@lozanosmith.com

February 8, 2021

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

Katie Meador, Senior Planner
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 Environmental Impact Report for 123 Independence Drive Project

Dear Ms. Meador:

This office represents Sequoia Union High School District (“District”). The District appreciates the opportunity to provide comments and input regarding the Notice of Preparation of an Environmental Impact Report (“EIR”) for the 123 Independence Drive Project (“Project”).

As should by now be abundantly clear from the District’s scoping and comment letters recently submitted to the City regarding other projects being considered in the Bayfront Area of Menlo Park, the District is very concerned about the numerous large residential and commercial development projects proposed in the Bayfront Area of Menlo Park, including the Menlo Uptown, Menlo Portal, Menlo Flats, 111 Independence Drive, and Willow Village Master Plan projects. These projects are in very close proximity to the District’s TIDE Academy and are anticipated to result in extensive impacts on student safety, among other impacts. The District is particularly concerned about the rapidity at which these projects are being considered, in light of the incremental pace of development envisioned by the ConnectMenlo General Plan adopted by the City in 2016. Given the similarities between the instant Project and the other projects being considered by the City, the District reiterates many of its prior scoping requests and comments in this letter. **As in the District’s prior letters, the District requests that all direct and indirect impacts related to the Project’s proximity to District schools, and especially TIDE Academy and Menlo-Atherton High School, be thoroughly reviewed, analyzed, and mitigated.**

The Project, sponsored by The Sobrato Organization (“Developer”), is proposed to be located at the approximately 8.15-acre site at 119 Independence Drive, 123-125 Independence Drive, 127 Independence Drive, 1205 Chrysler Drive, and 130 Constitution Drive (the “Property”). The Developer is proposing to demolish the five existing office and industrial buildings and

redevelop the Property with 316 rental apartments, 67 for-sale townhomes, and 88,750 square feet of office space. The Project is anticipated to generate approximately 77 new high school students, which is about 20% of the District's capacity at TIDE Academy. The Project, combined with the five other projects mentioned above (totaling 3,193 new residential units), will result in approximately 639 new students to the District within just a few years' time. This equates to about 160% of the current capacity of TIDE Academy. As explained further below, these projects collectively have the potential to cause severe detriment to the District and its students.

The Notice of Preparation ("NOP") prepared for the Project concludes that the Project may have numerous impacts on the environment, including potential impacts on Public Services and Utilities. The NOP thus correctly concludes that a full-scope EIR is required. This is contrary to the conclusions drawn in the notices of preparation and initial studies prepared for Greystar's various projects in the Bayfront Area (Menlo Uptown, Menlo Flats, and Menlo Portal), and the 111 Independence Drive Project, which inappropriately rely on an improper reading of Senate Bill (SB) 50 and the ConnectMenlo Draft EIR as grounds to disregard all potential impacts on and related to schools, and to support the preparation of focused environmental impact reports. 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.

The District appreciates the Developer's willingness to participate in a few different meetings with the District over the past year regarding the Developer's pending Commonwealth Corporate Center Project, and potential ways to mitigate the impacts of that Project on the District. However, Developer and District have yet to formally resolve the District's concerns regarding the Commonwealth Corporate Center Project, and the Developer has not even contacted the District to discuss the instant Project's impacts and potential mitigation measures. Such failure is alarming: although both this Project and the Commonwealth Corporate Center will result in significant impacts on the District, this Project has the potential to generate a more substantial number of students, and it is therefore of utmost concern to the District. The District is hopeful that the instant Project's anticipated impacts, as well as ways to mitigate those impacts, will be included in future discussions with the Developer. The District remains hopeful that these discussions will yield solutions that benefit the District, Developer, and the community as a whole.

We request that the following topics be analyzed and considered in the Project's Draft EIR.

A. 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.

(a) The 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 regarding traffic, there must be an analysis of safety issues related to traffic impacts, such as reduced pedestrian safety, particularly as to students walking or bicycling to and from TIDE Academy; potentially reduced response times for emergency services and first responders traveling to these schools; and increased potential for accidents due to gridlock during school drop-off and pick up hours. (See, Journal of Planning Education and Research, "Planning for Safe Schools: Impacts of School Siting and Surrounding Environments on Traffic Safety," November 2015, Chia-Yuan Yu and Xuemei Zhu, pg. 8 [Study of traffic accidents near Austin, Texas schools found that "[a] higher percentage of commercial uses was associated with more motorist and pedestrian crashes" around schools].)

The State Office of Planning and Research has developed new CEQA Guidelines which set forth new criteria for the assessment of traffic impacts, and now encourages the use of metrics such as vehicle miles traveled (VMT), rather than level-of-service (LOS), to analyze project impacts on traffic. (14 Cal. Code Regs. § 15064.3.) However, local agencies may still consider impacts on traffic congestion at intersections where appropriate, and must do so where, as here, such traffic congestion will cause significant impacts on air quality, noise, and safety issues caused by traffic. (Pub. Res. Code § 21099(b)(3).)

The Bayfront Area of Menlo Park has experienced a drastic increase in traffic over the last ten to fifteen years as the City has continued to approve of newer corporate campuses and mixed biotechnology, commercial, office, and residential land uses. The City's 2016 General Plan Update calls for an increase of 2.3 million square feet of non-residential space, 400 hotel rooms, 4,500 residential units, 11,570 new residents, and 5,500 new employees in the Bayfront Area. This will result in a total build-out of 4.7 million square feet of non-residential office space, 850 hotel rooms, 5,430 residential units, 13,960 residents, and 20,150 employees, all within the Bayfront Area.¹ The ConnectMenlo EIR concluded that the General Plan Update would result in significant and unavoidable impacts to roadway segments and increase peak hour delays at intersections from increased traffic, even after the mitigation measures called for in the General Plan Update are implemented (if ever).²

Further, the Draft EIRs recently prepared for the 111 Independence Drive Project and the Menlo Uptown Project show that numerous intersections in the Bayfront Area surrounding the Project site and TIDE Academy, including the intersections of Marsh Road/Bayfront Expressway, Chrysler Drive/Independence Drive, Chilco Street/Constitution Drive, Willow Road/Bayfront Expressway, and University Avenue/Bayfront Expressway, are currently operating at an Level of Service (LOS) of 'D' or worse at one or more peak hours, and do not meet the City's desired LOS standards. (See, e.g., 111 Independence Drive Draft EIR, Appx. E, at 10-11.) In analyzing intersection LOS under "Cumulative (2040) Plus Project Conditions," these Draft EIRs show that most intersections in the Project neighborhood will be operating out of compliance with the City's Circulation Policy goals. (See, e.g., *Id.* at 4.2-46-4.2-47.) In addition to deficient vehicular intersections, these Draft EIRs note deficiencies in the sidewalk system in the Bayfront Area, including discontinuous sidewalks, crosswalks, and curb ramps. (*Id.* at 4.2-7.)

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 ability to operate its educational programs, including at TIDE Academy.

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

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

The 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, including along Independence Drive, Constitution Drive, Chrysler Drive, and Jefferson Drive. (See, 5 Cal. Code Regs. § 14010(k), which requires that school facilities be easily accessible from arterial roads.) TIDE Academy is located less than 400 feet southeast of the Property. Both TIDE Academy and the proposed Project would be accessed by the same roads, including those mentioned above. In addition to drawing thousands of new residents to the area, including the estimated 77 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, all of which are shared by TIDE students and families.

As indicated in the City's General Plan and the Draft EIRs prepared for other Bayfront Area projects, the City's roads are not currently equipped to accommodate such high density development and high levels of traffic. Jefferson Drive and Independence Drive are narrow two-lane roads. 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.**

Likewise, the Project roads and neighborhood are not equipped to handle the parking demands of the visitors and residents drawn by the Project. The proposed 731 parking spaces proposed for the Project may technically meet the City's Municipal Code requirements for the number of parking spaces required for bonus level development in the area. However, as indicated in the Draft EIRs prepared for the 111 Independence Drive and Menlo Uptown projects, actual parking demand often exceeds the Municipal Code's parking requirements. If all of the projects in the Bayfront Area continue to propose inadequate parking in order to meet the actual levels of parking demand generated by their projects, serious impacts on pedestrian safety will occur due to cars spilling onto surrounding streets. While perhaps not an environmental impact on its own, the Project EIR must analyze the indirect impacts on student and pedestrian safety that will be caused by shortages of parking.

In addition to increased risks of vehicular accidents, the traffic and parking impacts posed by the Project may 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(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.³ Further, to mitigate the impacts of conflicts

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

and/or dangerous interactions between pedestrians, bicyclists, and vehicles, the District agreed to prepare a “Safe Routes to School Map” that identifies facilities such as traffic lights, crosswalks, and demarcated bikeways that promote safe routes to school.⁴ The City has likewise committed to supporting and promoting such safe route to school programs to enhance the safety of students who walk to school.⁵

The EIR must analyze and mitigate all of the above traffic and related impacts, including those impacts related to student safety and ability to get to school, 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. It is anticipated that these impacts will extend far beyond the Bayfront Area. As such, the analysis of 15 intersections proposed by the lead agency, as indicated in the City Planning Commission Staff Report from January 25, 2021, is wholly inadequate. Rather, the District requests that all intersections that could be impacted by the Project, including those within and outside of the Bayfront Area, be analyzed for LOS and related safety impacts. The District further suggests that the lead agency consult with the District’s own traffic engineering company regarding the placement of Project driveways, so as to achieve a project design that minimizes, to the greatest extent possible, the risk of potential injuries to students walking and biking to school along Independence Drive.

(b) City Must Consider Cumulative Traffic and Related Impacts.

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

The Project’s above- and below-discussed anticipated impacts on the District, combined with the anticipated impacts of the vast number of development projects that have recently been approved and are being considered for approval in the Bayfront Area, and specifically the western

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

⁵ City of Menlo Park General Plan (November 29, 2016), Policy CIRC-1.9: Safe Routes to Schools. Support Safe Routes to School programs to enhance the safety of school children who walk and bike to school.

Bayfront Area, are cumulatively considerable. All of these impacts are exacerbated by the City's haste in considering and approving development projects in the Bayfront Area, as the District will be unable to accommodate the massive influx of students through facilities, infrastructure, and related improvements. 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.⁶ This does not include the 540 units that have already been completed at 3639 Haven Avenue and 3645 Haven Avenue, which would bring the total number of residential units to 3,797. This equates to 84% of the total authorized buildout under ConnectMenlo. It is clear from this trend that full buildout under ConnectMenlo will be achieved well in advance of 2040. Many of these projects, including the instant Project, Menlo Uptown, Menlo Flats, Menlo Portal, 111 Independence Drive, and Willow Village Master Plan projects, are located in the immediate vicinity of TIDE Academy.

Each of these projects alone promises drastically to increase traffic in the neighborhood, resulting in air quality, noise, and safety issues for District families and staff attending TIDE Academy. When considered together, their collective impacts on traffic, safety, and air quality in the neighborhood will be devastating. **These cumulative impacts on the District's TIDE Academy and Menlo-Atherton High School must be analyzed and mitigated.**

B. 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.

⁶ <https://www.menlopark.org/DocumentCenter/View/23346/ConnectMenlo-Project-Summary-Table>

It is anticipated that the Project, including when viewed in conjunction with all of the other developments being considered and approved a few hundred feet from TIDE Academy, will have a significant impact on the air quality of the neighborhood due to extensive construction activities and increases in vehicular traffic. The Belle Haven community is particularly sensitive to such concerns regarding air quality due to the high incidence of asthma throughout the community. Even more pressing, the Project is anticipated to result in significant impacts to sensitive receptors as an increased number of vehicles enter and exit the Project, creating increased levels of air toxins and particulate matter that could negatively impact student health. These impacts, as they relate to the District's students at the TIDE Academy, must be analyzed in the Project's Draft EIR. This analysis also dovetails with the discussion above regarding the necessity of LOS analysis. Decreased levels of service at intersections generally mean lengthier amounts of time for cars to idle, including near schools, resulting in decreased air quality and the potential for substantial impacts on students.

C. 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.

D. 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 383 anticipated residential units, it is anticipated that the proposed Project's 88,750 sf of office 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, 383 anticipated residential units are likely to generate approximately 77 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 by approximately 200 students.

The District, therefore, specifically demands that historic, current, and future population projections for the District be addressed in the EIR. Population growth or shrinkage is a primary

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

E. 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.

California school districts are dependent on developer fees authorized by the provisions of Government Code Sections 65995, *et seq.*, and Education Code sections 17620, *et seq.*, for financing new school facilities and maintenance of existing facilities. The developer fees mandated by Section 65995 provide the District a significant portion of its local share of financing for facilities needs related to development.

The adequacy of the statutory development fees to offset the impact of new development on local school districts can be determined only if the types of housing and average square footage can be taken into consideration. For instance, larger homes often generate approximately the same number of students as smaller homes. At the same time, however, a larger home will generate a greater statutory development fee, better providing for facilities to house the student being generated. It is for these reasons that the Government Code now requires a school district to seek – and presumably to receive – such square footage information from local planning departments. (Gov. Code § 65995.5(c)(3).) The District estimates the per student cost of adding new facilities—including land acquisition—to be approximately \$135,000. For the 77 students generated by the Project, that would amount to \$10.3 million. The developer fees generated by the Project would cover less than 20% of that cost.

While the foregoing funding considerations raise fiscal issues, they also translate directly into physical, environmental impacts, in that inadequate funding for new school construction results

in overcrowding of existing facilities. Without funding to build new facilities or land on which to expand, students may need to attend schools outside their attendance boundaries, creating significant traffic impacts, among others. 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.

F. 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.**

CEQA Guidelines, Appendix G, states that a project may have public services impacts on schools if the project 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 the provision of school services.

There are a myriad of ways in which large residential and commercial development projects can impact a school district’s need for new or physically altered facilities in order to maintain performance objectives. The instant Project’s Draft EIR should 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. Consideration of the above-listed categories information is essential to properly making these determinations.

Lead agencies often cite to SB 50 (specifically, Government Code sections 65995(h) and 65996(a)), for the proposition that the payment of school impact fees (commonly referred to as “developer fees”) excuses them from their obligations to analyze and mitigate impacts posed on school districts by development. This, however, is a misstatement of the law related to developer fees and CEQA. While SB 50 does declare 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)), SB 50 does not excuse lead agencies from analyzing such impacts on school facilities in the first place. Further, **California courts have since acknowledged that developer fees do**

Katie Meador, Senior Planner
City of Menlo Park
February 8, 2021
Page 12

not constitute full and complete mitigation for school-related impacts other than school overcrowding. (*Chawanakee Unified Sch. Dist. v. Cty. of Madera* (2011) 196 Cal.App.4th 1016.) Thus, the payment of fees does not constitute full mitigation for all impacts caused by development related to traffic, noise, biological, pedestrian safety, and all other types of impacts related to the District and its educational program. The District expects the City to analyze and mitigate all such impacts in the EIR for this Project.

Conclusion

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

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

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

Harold M. Freiman, Esq.
Lozano Smith
2001 N. Main St., Suite 500
Walnut Creek, CA 94596

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

Sincerely,

LOZANO SMITH



Bradley R. Sena

cc: Crystal Leach, Interim Superintendent (cleach@seq.org)

California Department of Transportation

DISTRICT 4
OFFICE OF TRANSIT AND COMMUNITY PLANNING
P.O. BOX 23660, MS-10D | OAKLAND, CA 94623-0660
www.dot.ca.gov



October 8, 2021

SCH #: 2021010076
GTS #: 04-SM-2021-00385
GTS ID: 24280
Co/Rt/Pm: SM/101/3.36

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

Re: 123 Independence Drive Project Revised Notice of Preparation (NOP)

Dear Payal Bhagat:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the 123 Independence Drive (Project). We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The following comments are based on our review of the September 2021 NOP.

Project Understanding

The project proposes to demolish the five existing office and industrial buildings (a total of approximately 103,900 square-feet) and create five parcels which would encompass 316 rental apartments, 116 for-sale townhomes, 25,300 square-feet of public open space, 52,500 square-feet of publicly accessible open space, and approximately 53,870 square-feet of common areas and private open space. The project intends to comply with the City's Below Market-Rate ordinance; as such 66 units would be affordable. The project site is located north of US-101 and south of State Route (SR)-84, accessible via Independence Drive and Chrysler Drive.

Travel Demand Analysis

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

If the project meets the screening criteria established in the City's adopted Vehicle Miles Traveled (VMT) policy to be presumed to have a less-than-significant VMT impact and exempt from detailed VMT analysis, please provide justification to support the exempt status in align with the City's VMT policy. Projects that do not meet the screening criteria should include a detailed VMT analysis in the Draft Environmental Impact Report (DEIR), which should include the following:

- VMT analysis pursuant to the City's guidelines. Projects that result in automobile VMT per capita above the threshold of significance for existing (i.e. baseline) city-wide or regional values for similar land use types may indicate a significant impact. If necessary, mitigation for increasing VMT should be identified. Mitigation should support the use of transit and active transportation modes. Potential mitigation measures that include the requirements of other agencies such as Caltrans are fully enforceable through permit conditions, agreements, or other legally-binding instruments under the control of the City.
- A schematic illustration of walking, biking and auto conditions at the project site and study area roadways.
- The project's primary and secondary effects on pedestrians, bicycles, travelers with disabilities and transit performance should be evaluated, including countermeasures and trade-offs resulting from mitigating VMT increases. Access to pedestrians, bicycle, and transit facilities must be maintained.

Mitigation Strategies

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

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

- Orientation of project towards non-auto corridor;
- Pedestrian network improvements;
- Transit access supporting infrastructure (including bus shelter improvements and sidewalk/ crosswalk safety facilities);
- Traffic calming measures;

- Implementation of a neighborhood electric vehicle (EV) network, including designated parking spaces for EVs;
- Limiting parking supply;
- Unbundled parking from property costs;
- Transit and trip planning resources such as a commute information kiosk; and/or
- Real-time transit information system.

Using a combination of strategies appropriate to the project and the site can reduce VMT, along with related impacts on the environment and State facilities. TDM programs should be documented with annual monitoring reports by a TDM coordinator to demonstrate effectiveness. If the project does not achieve the VMT reduction goals, the reports should also include next steps to take in order to achieve those targets.

Please reach out to Caltrans for further information about TDM measures and a toolbox for implementing these measures in land use projects. Additionally, Federal Highway Administration's Integrating Demand Management into the Transportation Planning Process: A Desk Reference (Chapter 8). The reference is available online at: <http://www.ops.fhwa.dot.gov/publications/fhwahop12035/fhwahop12035.pdf>.

Transportation Impact Fees

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

Lead Agency

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

Payal Bhagat, Contract Principal Planner
October 8, 2021
Page 4

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

Sincerely,

A handwritten signature in black ink that reads "Mark Leong". The signature is written in a cursive, flowing style with a long horizontal tail stroke extending to the right.

MARK LEONG
District Branch Chief
Local Development - Intergovernmental Review

c: State Clearinghouse

DEPARTMENT OF TRANSPORTATION

DISTRICT 4

OFFICE OF TRANSIT AND COMMUNITY PLANNING

P.O. BOX 23660, MS-10D

OAKLAND, CA 94623-0660

PHONE (510) 286-5528

TTY 711

www.dot.ca.gov

*Making Conservation
a California Way of Life.*

February 8, 2021

SCH #: 2021010076

GTS #: 04-SM-2021-00345

GTS ID: 21635

Co/Rt/Pm: SM/101/3.42

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

Re: 123 Independence Drive Mixed-Use Project + Notice of Preparation (NOP)

Dear Katie Meador:

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

Project Understanding

The project proposes to demolish the five existing office and industrial buildings (a total of approximately 103,900 square-feet) and create four parcels which would encompass 316 rental apartments, 67 for-sale townhomes, and 88,750 square feet of office space. The project intends to comply with the City's Below-Market-Rate ordinance; as such 58 units would be affordable. The site is located north of US-101 and south of State Route (SR)-84, accessible via Independence Drive and Chrysler Drive.

Travel Demand Analysis

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

If the project meets the screening criteria established in the City's adopted vehicle miles travelled (VMT) policy to be presumed to have a less-than-significant VMT impact and exempt from detailed VMT analysis, please provide justification to support the exempt status in align with the City's VMT policy. Projects that do not meet the screening criteria should include a detailed VMT analysis in the DEIR, which should include the following:

- VMT analysis pursuant to the City's guidelines. Projects that result in automobile VMT per capita above the threshold of significance for existing (i.e. baseline) city-wide or regional values for similar land use types may indicate a significant impact. If necessary, mitigation for increasing VMT should be identified. Mitigation should support the use of transit and active transportation modes. Potential mitigation measures that include the requirements of other agencies such as Caltrans are fully enforceable through permit conditions, agreements, or other legally-binding instruments under the control of the City.
- A schematic illustration of walking, biking and auto conditions at the project site and study area roadways. Potential safety issues for all road users should be identified and fully mitigated.
- The project's primary and secondary effects on pedestrians, bicycles, travelers with disabilities and transit performance should be evaluated, including countermeasures and trade-offs resulting from mitigating VMT increases. Access to pedestrians, bicycle, and transit facilities must be maintained.
- Clarification of the intensity of events to be held at the location and how the associated travel demand and VMT will be mitigated.

Mitigation Strategies

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

Given the place, type and size of the project, the DEIR should include a robust Transportation Demand Management (TDM) Program to reduce VMT and greenhouse gas emissions from future development in this area. The measures

listed below have been quantified by California Air Pollution Control Officers Association (CAPCOA) and shown to have different efficiencies reducing regional VMT:

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

Using a combination of strategies appropriate to the project and the site can reduce VMT, along with related impacts on the environment and State facilities. TDM programs should be documented with annual monitoring reports by a TDM coordinator to demonstrate effectiveness. If the project does not achieve the VMT reduction goals, the reports should also include next steps to take in order to achieve those targets.

Please reach out to Caltrans for further information about TDM measures and a toolbox for implementing these measures in land use projects. Additionally, Federal Highway Administration's Integrating Demand Management into the Transportation Planning Process: A Desk Reference (Chapter 8). The reference is available online at:
<http://www.ops.fhwa.dot.gov/publications/fhwahop12035/fhwahop12035.pdf>.

Transportation Impact Fees

Please identify project-generated travel demand and estimate the costs of transit and active transportation improvements necessitated by the proposed project; viable funding sources such as development and/or transportation

Katie Meador, Senior Planner
February 8, 2021
Page 4

impact fees should also be identified. We encourage a sufficient allocation of fair share contributions toward multi-modal and regional transit improvements to fully mitigate cumulative impacts to regional transportation. We also strongly support measures to increase sustainable mode shares, thereby reducing VMT.

Lead Agency

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

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

Sincerely,



MARK LEONG
District Branch Chief
Local Development - Intergovernmental Review

c: State Clearinghouse



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



February 2, 2021

Ms. Katie M. Meador
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
KMMeador@menlopark.org

Subject: 123 Independence Drive Project, Notice of Preparation, SCH No. 2021010076,
City of Menlo Park, San Mateo County

Dear Ms. Meador:

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) prepared by the City of Menlo Park for the 123 Independence Drive Project (Project) located in the City of Menlo Park, San Mateo County. CDFW is submitting comments on the NOP regarding potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

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

PROJECT LOCATION

The Project is located within an 8.15-acre site, at 119 Independence Drive, 123-125 Independence Drive, 127 Independence Drive, 1205 Chrysler Drive, and 130 Constitution Drive, in the City of Menlo Park, San Mateo County.

PROJECT DESCRIPTION SUMMARY

The proposed Project includes demolition of the five existing office and industrial buildings to shift the parcel boundaries, and to construct 316 rental apartments, 67 for-sale townhomes, and 88,750 square feet of office space. The proposed Project would include the removal of 85 trees, and the planting of 364 new trees throughout the Project area.

Ms. Katie M. Meador
City of Menlo Park
February 2, 2021
Page 2 of 5

ENVIRONMENTAL SETTING

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

- Bat species
- Nesting birds

COMMENTS AND RECOMMENDATIONS

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

Comment 1: Full Project Description of Project Features

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

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

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

Comment 2: Nesting Birds

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

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

Ms. Katie M. Meador
City of Menlo Park
February 2, 2021
Page 3 of 5

Recommended Mitigation Measure 1: Nesting Bird Surveys

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

Recommended Mitigation Measure 2: Nesting Bird Buffers

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

Comment 3: Bats

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

Recommended Mitigation Measure 3: Bat Habitat Assessment

To evaluate Project impacts to bats, a qualified bat biologist should conduct a habitat assessment for bats at the site seven (7) days prior to the start of Project activities. The habitat assessment shall include a visual inspection of features within 50 feet of the

Ms. Katie M. Meador
City of Menlo Park
February 2, 2021
Page 4 of 5

work area for potential roosting features (bats need not be present). Habitat features found during the survey shall be flagged or marked.

Recommended Mitigation Measure 4: Bat Habitat Monitoring

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

Recommended Mitigation Measure 5: Bat Project Avoidance

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

REGULATORY REQUIREMENTS

California Endangered Species Act

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

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

Lake and Streambed Alteration Program

Notification is required, pursuant to CDFW's Lake and Streambed Alteration Program (Fish and Game Code, section 1600 et. seq.) for any Project-related activities that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA

Ms. Katie M. Meador
City of Menlo Park
February 2, 2021
Page 5 of 5

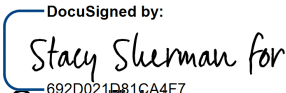
Agreement until it has complied with CEQA (Public Resources Code section 21000 et seq.) as the responsible agency.

FILING FEES

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

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

Sincerely,

DocuSigned by:

692D021D81CA4F7...
Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse (2021010076)

**NATIVE AMERICAN HERITAGE COMMISSION**

September 13, 2021

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

Re: 2021010076, 123 Independence Drive Project, San Mateo County

CHAIRPERSON
Laura Miranda
Luiseño

VICE CHAIRPERSON
Reginald Pagaling
Chumash

SECRETARY
Merri Lopez-Keifer
Luiseño

PARLIAMENTARIAN
Russell Attebery
Karuk

COMMISSIONER
William Mungary
Paiute/White Mountain
Apache

COMMISSIONER
**Julie Tumamait-
Stenslie**
Chumash

COMMISSIONER
[Vacant]

COMMISSIONER
[Vacant]

COMMISSIONER
[Vacant]

EXECUTIVE SECRETARY
Christina Snider
Pomo

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

Dear Ms. Bhagat:

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

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

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

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

AB 52

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

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:

Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

- a. A brief description of the project.
- b. The lead agency contact information.
- c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
- d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).

2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report:

A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).

- a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).

3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

- a. Alternatives to the project.
- b. Recommended mitigation measures.
- c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).

4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:

- a. Type of environmental review necessary.
- b. Significance of the tribal cultural resources.
- c. Significance of the project's impacts on tribal cultural resources.
- d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).

5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).

6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

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

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- a.** The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b.** A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- a.** Avoidance and preservation of the resources in place, including, but not limited to:
 - i.** Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii.** Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b.** Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i.** Protecting the cultural character and integrity of the resource.
 - ii.** Protecting the traditional use of the resource.
 - iii.** Protecting the confidentiality of the resource.
 - c.** Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - d.** Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e.** Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - f.** Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- a.** The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - b.** The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c.** The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

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

SB 18

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

Some of SB 18's provisions include:

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

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

NAHC Recommendations for Cultural Resources Assessments

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

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

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

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

If you have any questions or need additional information, please contact me at my email address:

Katy.Sanchez@nahc.ca.gov.

Sincerely,



Katy Sanchez
Associate Environmental Planner

cc: State Clearinghouse



NATIVE AMERICAN HERITAGE COMMISSION

January 11, 2021

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

CHAIRPERSON
Laura Miranda
Luiseño

VICE CHAIRPERSON
Reginald Pagaling
Chumash

SECRETARY
Merri Lopez-Keifer
Luiseño

PARLIAMENTARIAN
Russell Attebery
Karuk

COMMISSIONER
Marshall McKay
Wintun

COMMISSIONER
William Mungary
Paiute/White Mountain
Apache

COMMISSIONER
**Julie Tumamait-
Stenslie**
Chumash

COMMISSIONER
[Vacant]

COMMISSIONER
[Vacant]

EXECUTIVE SECRETARY
Christina Snider
Pomo

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

Re: 2021010076, 123 Independence Drive Project, San Mateo County

Dear Ms. Meador:

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

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

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

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

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

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:

Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

- a. A brief description of the project.
- b. The lead agency contact information.
- c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
- d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).

2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).

- a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).

3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

- a. Alternatives to the project.
- b. Recommended mitigation measures.
- c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).

4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:

- a. Type of environmental review necessary.
- b. Significance of the tribal cultural resources.
- c. Significance of the project's impacts on tribal cultural resources.
- d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).

5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).

6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

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

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- a.** The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b.** A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- a.** Avoidance and preservation of the resources in place, including, but not limited to:
 - i.** Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii.** Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b.** Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i.** Protecting the cultural character and integrity of the resource.
 - ii.** Protecting the traditional use of the resource.
 - iii.** Protecting the confidentiality of the resource.
 - c.** Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - d.** Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e.** Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - f.** Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- a.** The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - b.** The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c.** The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

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

SB 18

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

Some of SB 18's provisions include:

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

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

NAHC Recommendations for Cultural Resources Assessments

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

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

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

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

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

Sincerely,



Nancy Gonzalez-Lopez
Cultural Resources Analyst

cc: State Clearinghouse

